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 5 Friday, 16th 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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09:00 1 Friday, 16th September 2016

2 (9.01 am)

3 THE PRESIDENT: Before we start with Mr Hill, have you been
4 able to talk about timing, both parties? What are your
5 ideas for the timing of the day?

6 MR ANWAY: We have not had an opportunity to talk yet.
7 Happy to do at the next break, or we could talk even
8 now. My own thinking was: with this cross-examination,
9 as well as the one to follow, I would suspect we're not
10 going to be finishing the experts until lunchtime, and
11 I think all along the idea was that closing arguments
12 would be this afternoon. I think that's how it's
13 shaping up. I don't think we could expand the time,
14 unless you disagree, just given the time left in the day
15 after the experts will have concluded their testimony.

16 DR GHARAVI: That sounds about right. I think we would have
17 an early lunch break and resume with closing statements
18 in the early afternoon.

19 THE PRESIDENT: Is it possible to finish early this morning,
20 in your opinion?

21 MR MAÑÓN: I have a couple of topics that are kind of
22 discrete I'd like to touch. We may be able to finish
23 with Mr Hill probably in about an hour and a half, and
24 then we go to Mr Sparks.

25 DR GHARAVI: Our cross-examination with Mr Sparks should be

09:03 well below one hour. Well below one hour.

THE PRESIDENT: Good. This afternoon you can have two hours if you want. Do you have any idea how much you need?

MR ANWAY: I think two hours would be fine for us.

DR GHARAVI: That sounds about right, with some degree of flexibility.

THE PRESIDENT: You can speak less, easily! We are flexible.

MR ANWAY: Just one other point. Although the Tribunal of course indicated its wishes that we focus more on the legal issues and treat the closing argument more as rebuttal to Monday's opening statements, it still strikes us that the order from the Tribunal that Respondent would go first on jurisdiction, Claimants then respond, then Claimants go first on merits, Respondent then responds, is still the appropriate order because if it's rebuttal, that's the natural sequence.

THE PRESIDENT: Yes. Unless you agree on something else, that's fine.

MR ANWAY: That's how we're preparing our presentation.

THE PRESIDENT: Okay.

DR GHARAVI: Would you mind if we distribute for purposes of closing our notes with all the references we want to rely on? I think for ease of reference it would be more user-friendly.

09:05 MR ANWAY: Your notes?

DR GHARAVI: It's basically in the form of an outline, something like this. Instead of the PowerPoint basically, it's just an outline with references; it is something we're going to read and develop. What we're going to say orally is going to be more than the outline. Just for ease of reference.

THE PRESIDENT: All I can say is that if you have not prepared a PowerPoint, you don't have it, and it's not necessary to have one, but we need references, definitely.

DR GHARAVI: Yes, yes. This is the idea behind it.

THE PRESIDENT: Okay. So, Mr Mañón.

MR MAÑÓN: Thank you, Mr President.

(9.06 am)

MR ALEX HILL (continued)

Cross-examination by MR MAÑÓN

Q. Good morning, Mr Hill. How are you today?

A. Good morning. Good morning, Mr President, Tribunal.

Q. Mr Hill, I'd like to go back to something that we touched upon yesterday. I want to direct you to Exhibit R-0139, which is a CRIRSCO table we were looking at yesterday. That would be on tab number 54 in the binder, and it will be page 6 of that exhibit.

A. Thank you very much.

09:06 Q. So we were discussing yesterday this figure 1, and the "continuing pendulum of risk" is a term that we were using. You were telling us that, on this figure, the risk would go from "Exploration Results", as being the more subject to risk or the higher risk, and you would go down to "Inferred", "Indicated", "Measured", and then switch over to the right-hand column for "Probable" and "Proven". And on this table the "Proven" mineral reserves would be, on this table, the least risky?

A. That's what we discussed yesterday.

Q. Thank you.

A. But I'd like to point out, having read this, this publication here has been superseded. This is an obsolete publication. So I'd like you to actually acknowledge that there is a more up-to-date publication than this one, which is now obsolete.

Q. Is that updated one on the record, sir?

A. No, it's not.

Q. Okay, thank you.

A. But the updated one makes this document obsolete.

Q. Okay. But this table would be the same in the updated one?

A. The table is the same --

Q. Thank you.

A. -- but there is an amendment in the updated version

09:08 which is different --

Q. Okay, thank you.

A. -- which is referenced to this table.

Q. Okay, thank you.

You would agree with me, sir, that Rozmin did not have any proven reserves?

A. Absolutely. There was no mineral reserves.

Q. Okay. But there were no proven mineral reserves?

A. No proven mineral reserves.

Q. No probable mineral reserves?

A. No probable mineral reserves.

Q. No measured mineral resources?

A. No measured.

Q. Some, according to your testimony yesterday, indicated mineral resources?

A. Having read the updated version of this, there's more than some.

Q. Okay. Well, I don't think we can make reference to a document outside of the record.

A. I don't think we can make reference to a document that is obsolete --

Q. Okay. Well --

A. -- and has been superseded.

Q. Okay.

A. Because it is very clear in the "competent persons"

09:09 element in there that you must refer to the updated table.

Q. So when was that updated?

A. It's on the internet.

Q. Okay. But when? Give me a date, approximate date.

A. In 2013.

Q. Okay. So in 2003, when we're talking about, it was this table?

A. No, not at all. In 2003 this table -- because in 2003, because CRIRSCO started in 1999, under the Denver Agreement, this has moved on on several variations since 2003 and updates.

Q. Okay. So --

A. I haven't got a full list of all the updates. I did not go backwards because I was relying on the new one, which is what they call the "legal" one, making this one obsolete.

Q. Okay. We also saw yesterday a document, which is on tab 59, which is a circular from Belmont to its shareholders, R-0109, and I believe your testimony was that it referred to inferred mineral resources.

A. Could you please read for me which page?

Q. Sure. I believe it was page 10 of that document, and I believe the phrase they use is "drill inferred resource".

09:10 A. Yes.
Q. Okay. And that would correlate with what we have seen in this figure 1; correct? The term "inferred resource"?
A. The term refers to their -- subsequently to those 40 drilled holes that they are referring to, there was an additional six holes.
Q. I understand, but we're not going there yet. I just want to know if that term correlates with this figure 1 of the CRIRSCO standards.
A. I am assuming, because "inferred" is in different standards.
Q. Okay.
Sir, we briefly touched yesterday on the Kloibhofer study, which is C-0154, tab 52 of your binder.
I apologise, because I'm probably going to butcher the pronunciation, but this report is a DI Skacel & Kloibhofer report. For short, I'm just going to refer to it as the "Kloibhofer report" or "Kloibhofer study".
You read Claimants' Reply, correct, in this case?
A. Yes.
Q. So you would agree with me that they place a lot of stock on this Kloibhofer study?
A. And other information, I would assume.
Q. Okay. I'd like to read you a statement made in

09:12 Claimants' Reply, paragraph 299. (Pause) The [third] sentence of that paragraph says:

"With this study ..."

And they are referring to the Kloibhofer study:

"... Rozmin critically increased the proven reserves of talc in the Extraction Area ..."

Do you see that?

A. Yes.

Q. Now, this reference to "proven reserves", that's not accurate; you would agree with me on that?

A. Not under one of the mining codes -- it's not accurate, because there's no such definition under a mining code.

Q. Okay, thank you.

Now, I want to go and focus in a little more detail on this Kloibhofer report. It's my understanding -- and please correct me if I'm wrong -- that according to the Claimants, and specifically to these paragraphs that I have shown you or that are in front of you of the Reply, that it is their understanding -- or their argument at least -- that the Kloibhofer report -- and I think the term they use is: contributed to de-risking the deposit.

Specifically in paragraph 302 of the Reply, they cite to the finding of "contiguous" in that report. Do you see that? They quote and they say:

09:15

"While compiling a 3D representation of the ... sections, Kloibhofer found that, contrary to the assumption on the basis of which the Feasibility Study ..."

And I will submit to you that they are referring to the earlier feasibility study from Mr Haidecker:

"... had been prepared, namely that the distribution of talc in the deposit was not [systemic] ..."

That was the earlier conclusion:

"... [Kloibhofer found that] 'almost all of the rich sections are contiguous'. From a technical standpoint, this implied that the talc extraction process would be much more ... effective than initially anticipated."

Do you see that?

A. Sorry, could I correct you: it "would be much more cost effective".

Q. Sorry, yes. I got ahead of myself. Do you see that?

A. Yes, I see that.

Q. So help me to understand: is the technical case before this Tribunal that this finding of contiguous was important from a perspective of de-risking the deposit?

A. I don't know if it's important. Yes, it's certainly part of the chain. There are so many aspects that come through the Kloibhofer report. Could you remind me which page it's on?

09:16 Q. Yes, of course. It's tab 52.
A. It's for Rozmin in Slovakia. In Slovakia they do not recognise the word "resource". Everything has to be classified as a "reserve", whether it's a resource or a reserve. They have their own mining wording. So their understanding to be contiguous or not, I'm not sure if it's purely drawn from the Kloibhofer report or if he drew it from other aspects as well in his findings.
Q. When you say "he", who?
A. Kloibhofer.
Q. I'm sorry, I thought -- you said that he drew it from where?
A. No, his report -- is it Kloibhofer who found it contiguous, or was it the summary in the feasibility study?
Q. It was Kloibhofer.
A. Yes. So how he has come to that, he's made that statement, I don't know.
Q. You don't know the basis for him to reach that statement?
A. I can see from his cross-sections he is confident, yes. Yes, he's drawn it from these things, but I don't know if that's alone, if that's solely alone.
Q. Okay. Why don't you, for the benefit of the Tribunal,

09:18 explain what "contiguous" would mean in the context of a talc mine, and specifically with respect to the Gemerská Poloma mine?

A. It would be contiguous because the talc was multi-bounded.

Q. Okay. What exactly ...

A. It's layer upon layer. It's like a cake. So there's bands of barren rock and bands of cake; that's my understanding.

Q. So "contiguous" means it's layered?

A. No, it can --

Q. Or is it the opposite?

A. No, it is layered. He has found that the continuity in the deposit is far greater than what was believed initially.

Q. So your understanding is that his finding of contiguous is consistent with the fact that it is layered?

A. I guess so. I assume so. It is certainly layered, and he has identified within his report the continuity of the layering. You have talc at high grades in excess of 10 metres. This is very minable and very, very easy to model.

Q. Okay. And before this finding of contiguous, what was he understanding, from a technical perspective, of how the talc layers laid, so to speak?

09:19 A. The layering was there, but it was not mapped. You had the boreholes with sections. But actually mapping it out gives you that continuity and so the confidence that the bands actually join up. It's a massive folded structure. Where before you've got the results and it is difficult to put together, but now you can actually map it out. You certainly -- from 2000 to now, the software to do this is being developed all the time. In 2000 this was quite crude software.

Q. Okay. Okay. But you haven't seen the basis for his conclusion that this was continuous?

A. I haven't seen the basis for that.

Q. Okay. Now, a finding of continuity -- and I just submit to you that I'm using that word interchangeably with "contiguous", which is what he uses. We could "contiguous" or "continuous": which one would be more technically appropriate?

A. For me, being simpler, "continuous". But I'm ...

Q. I thought so. I like that too.

A. But I don't know if that is the correct interpretation.

Q. Okay. Let's assume that it is for purposes of our conversation.

A. It's my assumption.

Q. It's a little hard for me to pronounce "contiguous". So assuming that "contiguous" is synonymous with

09:21 "continuous", was this an important finding?

A. No, it was another finding. It's not earth-shattering. It's a finding. It can be assumed, but to prove it would have been difficult. But he was proving it at this point.

Q. Okay. And having proven that, was that a significant step in the development?

A. No, it was just another step; not significant. It was just a --

Q. So you would not consider it significant?

A. No.

Q. No.

A. It's all part of developing the deposit. It's not just the geology. The geology is an important part of it. We are making our discussion on the CRIRSCO Code. The CRIRSCO Code actually has a specific definition for industrial mineral resources, which is different to the heart of the code.

Q. Okay. Now, was this an encouraging finding?

A. It's given them a few more tonnes.

Q. Okay. So it would be important for purposes of the quantity?

A. No. In the scope of things, the small area he looked at was in fact a very minute area that was under the magnifying glass, and this has given a sort of 5% uplift

09:22 on 1% or 2% of the whole deposit.

Q. Okay. So this finding of continuous -- and I'm sorry, because this is a little bit technical, but I had not looked at that -- but this finding of continuous pertains to that minute area that he was looking at?

A. Yes, he was looking at the extraction area, which in your Reply here you've highlighted. He was looking at this area alone --

Q. Okay.

A. -- of continuous as a -- it hasn't been extrapolated beyond. But with his working here and other work, this is what brings the confidence that this has moved from inferred to indicated.

Q. Okay. So it was a significant finding then, if it moved it a notch, so to speak?

A. In the quantity of the size of the deposit, no, because this is such a small area, it's a smalling steppingstone.

Q. Okay.

A. Very small. There is other steppingstones which are far more significant.

Q. Okay. Would, let's say, an investor consider this an important finding?

A. Not in -- the word "important" -- the investor would consider it. It's not an earth-shattering finding.

09:24

What it does, it brings you closer to a position of confidence to actually now move into underground development.

Q. Okay. I'm going to refer now to your supplemental report, page 2 at the top.

Before I get to that, you have read Mr Sparks's expert reports, right?

A. I have.

Q. And you understand he contests this finding of continuous?

A. Yes, I have noticed he contests the geology of the deposit.

Q. Well, he contests a finding of continuous, does he not?

A. Yes, he ... but also he says it is continuous because of the folding. So there's quite a contradiction in my mind. I understand what Mr Sparks is getting to on a geological point: that it's not cleanly defined. But what is defined is the folding. It's a hydrothermal intrusion. So hydrothermal intrusions work just like a river.

Q. Okay.

A. So it has that snake effect. So the definitions around it, I understand as a geologist 100% what is being said. But there is not a contradiction, but in words it is a contradiction.

09:25 Q. Now, let me put it to you this way: would it be accurate to say that this finding of continuous applied to the entirety of the deposit?
A. Yes, I would say the deposit was continuous.
Q. The entirety of it, not just that distinct area?
A. Not just that area, the whole area.
Q. Okay. Based on this Kloibhofer report?
A. No, not based on. You would have to carry out further work to define. It is just my view it would be continuous through the whole deposit. It's reasonable -- it's not based on that report. It's based on the borehole sampling --
Q. Okay.
A. -- I would consider it to be continuous through the whole deposit.
Q. Okay. But the finding on this Kloibhofer report at the time, in the year 2000, was not -- and I just want to be clear on this one -- was not continuous throughout the whole deposit?
A. No. That report was very specific modelling of a small area.
Q. Okay. Now, going back to your supplemental report on that first paragraph [on page 2], you say:

"To the contrary ...

And you are questioning Mr Sparks's criticism of the

09:26 report, the finding of continuous. You say:

"... I am of the opinion that the very positive conclusions of the Kloibhofer 2000 Study ... enhanced the level of confidence with respect to the talc resource ..."

I'd like you to explain to us, please, what you mean by "very positive conclusions".

A. The positive conclusion is moving it from an inferred to an indicated.

Q. Based on the finding of continuous?

A. Not based on the finding, based on his assessment of the tonnes and the -- that's not only thing in the report. He has moved that area to a high level of confidence, based on your chart and based on -- that chart is quite a simplistic view across all codes. That has given you a greater confidence of the deposit.

Q. Okay. So it wasn't that the finding of continuous moved the needle; it was the other conclusions in the report?

A. It's altogether, all part of it. It's not just one thing. The needle moves -- as you've pointed out in here, there's all the additional borehole drilling that was carried out at a larger diameter: this could be large-scale tested. So all these things are giving the investors, the owners, greater confidence.

Q. It gives the investors greater confidence?

09:28 A. Yes.
Q. So this is something you want to communicate to the investors, I assume?
A. I would assume so.
Q. Okay. So if we go through the documents, we should see some reference to this? If we go through the subsequent technical reports that were prepared and that an investor saw, we should be seeing these findings there, I assume?
A. I would assume so.
Q. Okay. Sir, did you visit the mine for purposes of preparing your report?
A. I asked to visit the mine, and equally speak to people, but I did not have that luxury. I was informed that it was not convenient.
Q. Who did you ask?
A. I asked my lawyer, the Claimants.
Q. Okay. Did you speak with the mine operator?
A. No. I could not do that.
Q. So you have no current information on how the deposit is coming along from the current mine operator?
A. The information I have is that from 2005 to 2009 they developed their incline. 2009 to 2011 they carried out underground drilling and sampling; that was completed in September 2011. After 2011, the deposit has carried out

09:30 some mining, and some 20,000 tonnes of talc has been mined since 2011.

So the mining operation commenced in 2011. They have now announced that there will be completion of the process plant in 2017. But equally I see on this there will be a delay to that to possibly 2018 -- which is not unusual -- for completion of the process plant.

Q. Okay. Now, the Kloibhofer report, this finding of continuous and the other findings that you said moved the needle, this was based on, I believe, seven new holes that were drilled between I believe it was 1997 and 1999; correct?

A. Not based on all of them. Three holes didn't really support it. One hole was drilled to find the limit of the deposit, hole number 41, and that secured the limit of the deposit in one direction. One hole was a twinning hole, which is to confirm the quality of the area. And hole 45 was a bulk sampling hole. This drilling does reinforce your grid, if you like, but their purpose was to go beyond the grid to obtain further information.

Q. Okay. So before the prior report, which was the Haidecker feasibility study, which was dated, I believe, 1997, and the Kloibhofer report, which is dated 2000, we have those seven boreholes?

09:32 A. Yes.
Q. And one of them was to the limit?
A. Of the whole deposit. Not for the extraction area; for the deposit. Within that time they mapped out the deposit to be roughly just over 2 kilometres by 800 metres, and that was the mapping then. VSK now have mapped it at 2.7 kilometres by 1.2 kilometres. This deposit is about 200 metres in depth, so they have mapped it out. They have not carried out any additional borehole drilling to do this from the surface; all they have carried out is an intensive drill pattern underground in a small location.
Q. Okay. Now, the prior reports, prior to the Kloibhofer report -- and I'm going to focus specifically on the Hansa Geomin report, which is C-0137, and that will be Respondent's bundle, tab 10.
A. This is the DEG feasibility study, tab number 10.
Q. I believe it's the DEG study. I have been told that it is not a feasibility study, so I won't necessarily stipulate to that one. But I believe it is the DEG study, yes.
A. The title says, "Analysis and Evaluation of the Feasibility Study".
Q. I agree with that. I believe it's an analysis and evaluation of the prior feasibility study.

09:34 A. Yes. And the feasibility studies, as with the different mining codes, have developed. It is not a feasibility study of 2016. It certainly is a feasibility study for 1998.

Q. Okay. This report, which is prior to Kloibhofer, has no conclusion on continuity; am I correct?

A. From memory I can't recall, I'm sorry. I think you are right, but I can't remember seeing its omission or inclusion.

Q. Let's go through it, I will show you a couple of passages here, and you will tell me if you agree on whether or not it has a finding of continuity.

So if you go to page 9 of this report, Exhibit C-0137. Tell me when you're there. Under section 2.2, paragraph 1, the second-to-last sentence reads:

"The variation in thickness from 2 m to 400 m of the ... mineralized rock suggest[s] intense faulting in addition to folding."

Do you see that?

A. Yes.

Q. I also want to direct your attention --

A. Is that to connect with continuity? That is quite in line with continuity. The faulting will break it up, but it is such a layered cake that the different layers

09:35 will still run. And the folding is in line, because it is like a river that is initially formed through hydrothermal intrusion that has formed it. And that's why you have the mineralisation that's been seen with it, such as the pyrite, and also tin cassiterite is seen with it.

Q. Okay. But they don't reach that conclusion here, that it is continuous?

A. No, they have just made a statement.

Q. Okay. Now, if you go to page 10, paragraph 6, it says:

"The complicated structure and the varying intersection length of the talc bearing formation and its limited lateral extent requires underground exploration work before and during the mine development. It can not be done by drilling further surface ... holes."

Do you see that?

A. Yes.

Q. Do you agree with that statement, sir?

A. Yes.

Q. There's no mention of continuity, or no implication of that, in this paragraph?

A. Not at all. This is absolutely mining practice everywhere: you do not establish and confirm your mining method until you have an intense exploration, exactly as

09:37 VSK. When they finished the adit, they have spent two years exploring the area from 2009 to 2011, to establish not just the quality but, more importantly, establish a mining method to adopt. So they would have done bulk sampling, probably the source of their 20,000 tonnes, but they would have done bulk mining trials underground before finalising their mining method with the respective legal authorities. This is normal.

Q. Okay. And you would actually have to access the deposit from within to do this?

A. Yes.

Q. You cannot do it from the surface?

A. You physically have to mine it.

Q. Okay, thank you.

A. It's part of the exploration before you bring a business into commercial operation.

Q. So if you go to page 16, please, the last paragraph on that page says:

"A better knowledge of the distribution of high grade mineralised parts in the deposit after an initial operation period of a few years should guide the mine management to adapt the mine method ..."

So is this consistent with what you just described would be the way to do it, so to speak, meaning you would first have to open it and access it from within to

09:38 be able to map it?

A. It's not just the mapping. First you have to enter the ore body. You have perceived mining methods from your core samples, so you can narrow down your ideas, but you cannot come up with a final idea. In this case there's a debate whether you required a sort of sub-level caving method or a Roman pillar method, and whether you can extract the ore out and leave the cavity, or you can extract the ore out and you have to backfill it to maintain the competence of the ground.

Q. Okay.

A. I'm sorry, if it's not described well enough. But considering it is talc, this is quite a soft commodity, so the chamber you would leave would be quite soft. So the preferred mining method prior to entry was a Roman pillar. A Roman pillar is just as it says: you would excavate a room and leave some pillars in the room, and before you then mine further, you would then fill this room with a waste product, there are several different options, but add some cement into that waste product. So that room would then be refilled so you could move to the next block without destabilising the ground.

Q. Okay. So just so I get the sequence -- right, so basically you're trying to figure out what's the best mining method, one of those two; but before you do that,

09:40 you need to do the underground mining to be able to map and see how the resources are -- I don't know if the correct term is "distributed" or "located" or ...

A. No, you would expose the ore body with some tunnels, but you would not have to expose the ore body to actually understand it. This is where your underground drilling -- from the surface drilling, you have a very good view, but you do not have a close view. So you would go underground, which is the plan, and is exactly what VSK have done. You would open up chambers and drill holes of maybe 20, 50, 100 metres. You would not drill the entirety of the ore body; you would drill that area, probably just that extraction zone.

Q. Okay.

A. The length and the holes they've drilled, I'm not aware of, but I wouldn't believe that they were greater than 100 metres, because of the ground conditions.

Q. Okay.

A. I would even say they're a lot less, because of the talc being soft. The whole stability would limit the drilling you could do from one area.

So that's why it says here it's ongoing.

Q. Okay.

A. So as you mine, you would go forward and open up areas to prove and actually accurately establish the

09:41 continuity of the ore bodies, and this would then bring you the knowledge where the faulting was, and the discontinuities, but also bring you the knowledge of the grades.

Q. Okay.

A. Some of the talc bands are very narrow, some are very massive. So you would then manage how to mine the different bands. Some small bands may be, in simple terms, uneconomic to mine. Some large bands may need several cuts to actually mine them out; they could not be mined as one block.

Q. Okay. And if you were to do this, you were to go underground and do the underground mining, drilling, that you need to do to be able to map it out, this would move the pendulum towards a lower risk, I would assume?

A. Absolutely. Once you got underground, you could not move it. Once you have developed your adit underground, the inferred and indicated remains the same. Once you expose the ore body, then you can start bringing in measured reserves, once you expose the ore body.

Q. Okay.

A. Until you actually expose the ore body, you have only got the confidence of indicated. Exposing the ore body is what moves it to measured.

Q. Okay. And Rozmin did not do this, right?

09:43 A. Absolutely not, no.
Q. Okay. Going back to the finding of continuous in the Hansa Geomin study, the DEG study, would you expect this kind of finding -- well, I think we have already established that you would expect it to be found in the documents that the mining company would prepare, its planning and its perspective; we could use that term liberally?
A. If it was there, it was there. I wouldn't actually automatically expect to find it in the feasibility study of 1998.
Q. Okay. Is it something you would expect to find in a POPE?
A. No, I wouldn't expect to find it in there, because the POPE is almost taking the geological information as a given and is summarising other information. So the POPE would be in the frame -- it is a review of what already exists.
Q. Okay. So basically, if I take a snapshot in time -- first of all, why don't you explain for the members of the Tribunal what a POPE is? I think that might be able to frame it a bit better.
A. It's a development plan for the business, in short terms. It's laying down what the plan will be to get approval from the respective authorities: "This is our

09:45 plan". A POPE is a mark in time and it is continually updated, going, and a lot of the updates are amendments to a POPE; and then maybe after one year or two, when there is a significant amount of changes, there is a revision to the POPE. When you have changes, you discuss it with the authorities and you can actually progress discussions of where you're going before a new POPE is submitted.

Q. Okay. In your experience, would, for example, an investor, you know, private equity or private capital that is looking to invest in a mine, say, "I want to see your POPE"?

A. I've never seen one asked for. Equally, it would probably be included in the bundle. But the investor would look at the feasibility study and the finances; the investor wouldn't go as far as looking at the POPE. This is more of a business for the government and the operator.

Q. What else would be in the bundle?

A. There would be competent person's reports.

Q. And in the case of Rozmin, whose reports would those be?

A. Mr Roz ...

Q. Rozloznik. I have trouble with that too!

A. My apologies. I wish I could speak to the gentleman, but our languages don't mix.

09:46 Q. Yes.
A. You would also find in there possibly things on the environment, things on the social aspects of the operation.
Q. The finances would be there too?
A. The finances would be part of the feasibility study.
Q. But it's not in -- okay, so they would be part of the feasibility study. And if there are any documents developed after the feasibility study, would you expect to find those in the bundle as well? Technical documents.
A. Yes, I guess so. The feasibility study is a mark in time. If it was -- but the feasibility study, after its two years you would actually have a renewal of your feasibility study. So I wouldn't actually expect add-ons ad hoc put in. Your feasibility study is your leading document. Other aspects are put in -- for example, the competent person's report, you could have more than one competent person's report. And equally the investors normally ask for their own competent person's report or NI 41-03. So the investor would have carried out his own study; which is, for example, the case with the report we're looking at. As you highlighted, it is DEG who paid for it.
Q. Okay. Would it be, in your experience -- have you

advised investors seeking to invest in --

A. Yes.

Q. So if you are faced with a bundle, is it accurate to describe that as an investor due diligence binder, so to speak?

A. No. As an investor, you ask for specific items. I would look for, for example, the owners', shareholders reports; I would look for feasibility studies, if there were, or if there's other studies.

Q. And you would put all these in that bundle?

A. I would put these in.

Q. Okay.

A. If I'm looking to make the investment, there's certain -- it depends if I'm -- I have carried investments for a bank, for example. Banks would not be interested in seeing, for example, the environmental, social, because they do not pick up these responsibilities. They're looking for -- but if you're going to be the buyer, you would be interested in these things because you would be buying these --

Q. You would be acquiring the risks directly.

A. -- risks. You would be buying these. So there's a slight difference if you're an investor to a business where you don't take the responsibilities. So the direction for who is required for this, some investors

09:49 purely would like to see the quality and the recoveries, and almost nothing else. The finances they will work out themselves --

Q. Okay.

A. -- because they will look at the quality of the product and the capability, and that's it. That's not in 1999; this is in 2016.

Q. Okay, understood. And if you were advising an investor, would you ask for the POPE?

A. Would I ask for it? No, I wouldn't ask for it, because the conditions of operating, you will go there and see it. If you are investing in the business, you will look at the different licences they have, which are then awarded based on the POPE. So if you have the operating licences, that's what I'd want to see.

So you have the licence to operate, crudely. There's lots of little licences that are fringe licences; for water extraction, for example. These are, as an investor, the noise. But you need your operator's licence and to hold the licence of the deposit.

Q. Okay. Now, you mentioned that you would like to see a feasibility study that's no more than two years old.

A. Yes.

Q. Okay. And if you are faced with a situation where you have an older feasibility study, what would you do?

09:51 A. If it's twenty years old, then I wouldn't even read it.
Q. If it's more than two years old?
A. If it's twenty years, I wouldn't read it. But two years, three or four years, I would certainly read it and work with it. But I would certainly have a competent person's report carried out to support it, or not; to review it.
Q. What if it's five years old?
A. Exactly the same.
Q. Six?
A. The same. It depends on what I am looking at. If it's a gold deposit, I wouldn't take any latitude in it at all; I would want it redone. If it's an industrial mineral deposit, then I would be looking at the tonnes and the quality. These things do not change substantially. If there's additional drilling, I would want the additional drilling included. If there's no additional drilling, then I would be quite comfortable with the old report.
Q. The feasibility study in this project is dated 1998, right?
A. Yes.
Q. And there was additional drilling afterwards?
A. Yes.
Q. Did you see a renewed or updated feasibility study?

09:52 A. No.
Q. Okay. Sir, did you see an investor bundle in the documents that were provided to you?
A. An investor bundle?
Q. That bundle that we were describing earlier.
A. All those elements were in there, not as a bundle, but the amount of different documents that I reviewed, from the POPE to the ARP to the development planning studies and the competent person's reports, so all the elements were in there. I had no requirement to review things for water extraction, the environment, the fringe, what I would call -- I just looked at what the investors would have looked at.
Q. I'm sorry, I'm getting confused, because you earlier said that investors would not see a POPE, and now you're telling me that you looked at the POPE.
A. Yes, it was there.
Q. Okay.
A. If it wasn't there, I wouldn't have looked at it, and I wouldn't have asked for it if it wasn't there. I would have looked for the mining licence and worked on the mining licence. The POPE is an agreement between the operator and the government to work. So if a new operator -- or as things move, these will change.
Q. Okay. And whose competent person's reports did you

09:54 read?

A. A competent person's report? Mr Rozloznik's reports I have reviewed there.

Q. Okay. And what were they named? What's the title of them?

A. What you've got is there was a development study report, and I think it was on his name as well, which I read there.

Q. Is that part of the POPE or --

A. No, it's not part of the POPE. It was the year 2000. There was a mining development plan. I've read these reports. So this is written by the competent persons. In the year 2000 they did a development plan, planning in what I call the horizontal adit, and they costed it out in the year 2000. They would have this discussion with the authorities, but it was not included into the POPE, because there were other ideas. And until you firm up your idea, it will not enter into the POPE.

Q. Okay. So you would only put it in the POPE when you firm up your ideas?

A. When you're actually going to do it, yes. You can have ideas and have interaction with the right authorities of what to do, how to do it, because you value their input on where you're going to go. You're not going to say, "I am doing this", and then the authority reject it.

09:55 You are tabling your views of how to develop the business with the authorities. It's not a cold, once-every-two-years report. The authorities and the developer would have probably a very close relationship.

And at the same time, as in the year 2000, planning in to do the adit, they were also doing the ARPs, planning to do the flotation and carry out the flotation. Both these things are not in the POPE.

Q. Okay. You are aware that there was an amended POPE?

A. Yes. Yes, there's several POPEs.

Q. There are two, to be exact.

A. Two, yes. Yes, I've read two POPEs --

Q. Well, two mining POPEs.

A. Yes. But this is not unusual: this would go on and on for the life of the mine. You don't just have one blueprint and that's it for life. Within those POPEs, what builds those POPEs is these other documents, which is people's plans, basically.

For example, in one of the plans they were looking at mining magnesite, and this would enhance the deposit value considerably. So this is not in the POPE. It is certainly what VSK are doing now. So not only have you got a talc deposit, this talc deposit value is complemented by the value of magnesite.

Q. Okay.

09:57 A. So in an industrial mineral deposit, you don't just base your resource estimate on the core item. In an industrial mineral deposit, you base your resource on all the minerals that are available. And you actually convert your resource estimate, on some occasions, to not just the raw mineral, but into what the processed mineral would be. And this is in your CRIRSCO Code, the industrial mineral element, which I'm sure you're familiar with. So your industrial mineral resource, if you stick to the code, would have to define the value of the deposit; not just of the talc, but also of magnesite, which is of a similar value and similar quantity as the talc.

This is not quantified in any of these reports, but it is quantified in these documents that they've looked at: "We've got magnesite, let's look at it later". But the magnesite volume is there. VSK now are introducing it to their business, when the process plant comes in. So the magnesite would double the value of the deposit, and equally halve the risk of the resource.

It's not just magnesite; you've also got in there cassiterite. So there's byproducts. This is captured into the resource estimate for an industrial mineral.

Q. And these were all developed by ARP, right?

A. No, these comments have come through in the experts on

09:59

the site; they have brought in the identification of the magnesite. The ARP did no study on magnesite. This was not progressed during Rozmin's time, but it was -- what I was giving you is the relationship to an industrial mineral resource estimate --

Q. Okay.

A. -- under CRIRSCO Code, because under industrial mineral estimate you capture all the package, not just one, as part of your resource. And if I was an investor, I would look for the whole package of products; that de-risks your value of your deposit. So not only have you got talc there, you've also got a byproduct of cassiterite. In today's market, this would give them a good return.

Q. All of this I would find in the POPE?

A. No. The new POPE today would have this in it.

Q. But not back then?

A. Back then they didn't. But they had it in their documents back then.

Q. Why wasn't it in the POPE back then?

A. Because they were focusing on talc. There was absolutely no value to include it back there.

Q. Okay.

A. But within their resource estimate, as this was developed, this would have been included into the

10:00 resource estimate going forward.

Q. Okay.

A. I think there's probably a misunderstanding between resource values of a metal and a resource estimate for an industrial mineral.

Q. I don't have a misunderstanding.

A. Thank you.

(Pause)

Q. Now, Mr Hill, just to summarise, to see if I understand correctly, you would have the POPE want to be your more up-to-date current plan, with the most up-to-date current information on the technical issues pertaining to the plan, specifically focused on -- I don't know if I want to use the word "opening" or -- you know, something to that effect, the mining or ...?

A. Who would want? Who am I asking for that? Am I the investor, am I the operator?

Q. You're the expert, sir.

A. As the expert? No, I wouldn't want the POPE. The POPE is just another document.

Q. No, I'm sorry, I may have phrased my question poorly. I'm just trying to summarise, to see if I understand your testimony: that you want the POPE to be the most current document for purposes of exploiting, from a technical perspective, a mine?

10:02 A. As an expert, I would look to the licence. The POPE is almost background reading, because it's obsolete on publication, because on publication things have moved on so fast, as with -- as you pointed out -- the amendment. But what is important is where the business is, the steppingstones are, and where it is going. That's more important. The POPE is the contract with the government, it's legally binding. But an operation works faster than bureaucracy.

Q. I understand. So prospectively it would become obsolete, but retrospectively it would include everything you've done to the date of the POPE?

A. No, it would not include everything you've done. Everything you've done certainly wouldn't be in there. What's in there is what you are going to do, as agreed with the government.

Q. Okay.

A. Because what you've done, your ideas would not all be in there because ideas may not be formulated. For example, the adit, which is well covered in the mining development planning, it was covered and costed, but it was not complete.

Q. Okay. I'm going to be a little bit more direct. The findings of the Kloibhofer report, which you have described as "very positive conclusions", you would

10:03 expect to find those in the POPE?

A. No. In the POPE -- the POPE is how you operate. The Kloibhofer is the value of your business. This is a different -- the POPE is an operating document. It can be in there, but it's not essential. It's how you actually operate the business with the government.

Q. But if the POPE touches upon the value, then you would expect the Kloibhofer to be included there?

A. The POPE wouldn't touch on the value; it's an operating document. The government may ask for things to be put in there. But as an operator, what the POPE is, it's demonstrating how you're going to operate your business. It's almost not -- it is the government's business to see what you mine, but the government will get that information through your financials and your operating reports, not through the POPE.

MR MAŃÓN: Okay. Mr President, if I may, I'd like five minutes' break. I think I'm done, but I'd like to organise my thoughts before I conclude.

THE PRESIDENT: Okay.

MR MAŃÓN: Thank you.

(10.06 pm)

(Pause)

(10.10 am)

THE PRESIDENT: Yes.

10:10

Re-direct examination by MR FOY

Q. Mr Hill, you were just asked by opposing counsel whether the findings of the Kloibhofer study were integrated in the POPE, the new POPE. So if I could just ask you to follow me to tab 51 of the bundle you have in front of you, which should be the first POPE that was submitted in 1998 (C-0168), and to turn to page 21 of that document, and just read the first two paragraphs, especially the last sentence of the second paragraph.

For the Tribunal I will just read it out loud. It's a paragraph that describes -- it's called "Distribution of reserves according to excavation preparedness", and it goes on to describe the reserve or resource, and it concludes by saying:

"... [the] volume and quality characteristics of reserves for mining output. These are calculated on" --

A. Sorry, could you say which page?

Q. 21 of tab 51.

A. Page 21?

Q. Yes.

A. This is section 1.1.5.

Q. No, the paragraph just above.

A. Oh, right.

Q. The last sentence, talking about the reserve or resource, says that:

10:12

"These are calculated on [900,000, roughly] ... with the talc content 40%."

A. Yes, okay.

Q. Keeping this information in mind. If you follow me now to tab 58, Exhibit C-230. This is the updated version of the POPE, and it's the same section as in the previous one. Could you read the last paragraph and tell us if it seems that it's been updated compared to what we have just read in the previous POPE?

A. This is on page ...?

Q. Well, it's not paginated, so it's difficult to give you a page number. But if you go to section 1.1.4 of that document. It's the ninth page. I think you're there.

A. 1.1.4?

Q. Yes. The last paragraph, and especially the last sentence, which reads:

"Simultaneously, it will allow recalculation of the volume and qualitative characteristics of reserves for extraction, which, after complete verification by new bore holes, are also calculated in the abovementioned defined western section of the deposit at 1.4 kt of talc."

A. Yes, I see this is certainly updated, not only in the tonnage but also the quality. So this update actually over doubles the volume of talc. I'm sorry, yes,

10:14 I completely forgot it when I was talking earlier. My apologies.

Q. With this new information, would you like to comment further on the questions that my learned colleague asked you earlier?

A. Yes, such a thing is not necessarily usually included in a POPE. But the definition in here between the two, it is an update on the information. It has categorised it as an indicated deposit with 1.4 million tonnes with greater than 60% of talc. So the two reports have, over the space of time, with this additional drilling, it's actually captured the higher volume of tonnes within this small zone.

Q. Just to clarify, this update of new information, is it consistent with the findings of the Kloibhofer study?

A. It's exactly the same number as the Kloibhofer study.

Q. I'd just like to pick up on a comment you made earlier. I think you suggested that with metals such as gold, you would have much more stringent requirements than with industrial minerals such as talc. I just wanted to know if you could expand on this different approach, for the benefit of the Tribunal.

A. It's quite standard within all the codes; it's not just one code fits all. Each code is broken down. CRIRSCO and also PERC, which is actually prevalent to Europe,

10:16 and the JORC Code, which is looked on as the blue chip code which everybody else follows, all of these codes break down. The premise of being a resource and a reserve doesn't change, but how you get there does change.

For a metal it's quite clear; then there is certain latitude, shall we say, when you come to an industrial mineral, because you just cannot take the tonnes and the value. With metals, it's tonnes and value, crudely. But with a mineral, an industrial mineral, it's quite different: you actually have to bring in another parameters, because an industrial mineral, in its face value, a tonne of rock is worth next to nothing.

So with industrial minerals, a lot of industrial minerals, their resources and reserves are actually based on their final product, what they make. You can enhance through engineering and processing an industrial mineral and it can be worth a massive amount of money, but actually in the ground it's almost worthless. As a mined product -- and this is clear -- you know, a tonne of rock, a tonne of talc, isn't much worth more than €100/150, depending on the quality, where an ounce of gold is $1,340. And in a tonne of rock you could get 5 ounces of gold in it. So the work required to give you the confidence is very different.

10:18 So all the minerals have their category. Industrial minerals have their category. There is a very different category for diamonds, which I'm not too familiar with. But the diamonds, there are several different ways diamonds are formed, so their code is more about the formation of diamonds to give the confidence. There is also a different code on coal, and there is also a different code for -- what we would say -- aggregates and construction material.

So these codes -- so to come back to the one that we're on, the talc, the industrial minerals. Crudely, the mining of industrial minerals is not too different the world over for different mineral to mineral, whether it's an open-pit operation, which is most industrial minerals, which is the cheaper way -- when you go underground, you will have extra cost, much greater cost. To mine underground, you would go from an open-pit cost of maybe $20, to underground you've got $80. So your costs are different.

But in making your mineral resource, you would take into account things such as the end product. You would also take into account how you would bag it, how you would actually handle it. You would also take into account who are your end customers. It's very nice to make talc and think, "My best customer is in America",

10:19 but your transport costs would inhibit the product from making a profit. Where if you mine gold and transport it to America, of course it will make a profit. So you've got to take other allocations into an industrial mineral.

When you put a reserve on an industrial mineral, you don't just look at the one product that you are mining. A lot of industrial minerals have byproducts, such as aggregates. So you would mine your product and, as a spin-off industry, you would have road stone, you would have cement product, you would have a byproduct which would add value to that business.

You would also have, in this case, byproducts of actually metals. And this byproduct of tin, it doesn't all happen on day one, because it needs to be developed. But within that area here, when this business started on this deposit they were actually exploring for tin, and there was an extensive drilling programme where they were exploring for tin. This is why a lot of the holes are showing no talc, but in fact they are showing tin. And it's only when they found suddenly that they weren't finding the tin volumes that they were hoping for that they actually started to find talc in there. They didn't go mining there for talc; it's a byproduct from tin. It's quite an interesting history in that region.

10:21 But the actual resource will then have quite a lot of add-ons purely for industrial minerals. This is not the case for metal mining. You cannot make add-ons -- if you mine a metal, say gold, you can't say, "I have a road stone business as well"; you can only put it into the reserve as the metal.

Is that --

MR FOY: I think you've expanded beyond everyone's expectations.

MR HILL: Oh, I haven't started!

THE PRESIDENT: It was very interesting.

MR HILL: I'm sorry.

MR FOY: Thank you very much.

MR HILL: Thank you.

MR MAŃÓN: Mr President, just one question.

(10.22 am)

Further cross-examination by MR MAŃÓN

Q. Mr Hill, the estimate of the tonnage, it would be subject to verification or recalculation after you actually access through the underground and you do the mapping; correct?

MR FOY: I'm sorry, he is just remaking a point.

MR MAŃÓN: It's a question. I just want to know if he agrees with that or not, if it's subject to recalculation after --

10:22 A. It's not subject to recalculation, because in that position that 1.4 million tonnes has moved to indicated. When you go underground, what you would move it to is a measured resource. Normally, if you have an inferred resource, you can guarantee 99% that this will move to indicated, the whole lot will move. So your inferred resource, although they've only isolated that small area, the actual inferred resource is showing over 200 million tonnes of inferred. So this whole 200 million tonnes of inferred is guaranteed to be moved to indicated once you start mining.

Q. Guaranteed?

A. Almost guaranteed.

Q. Almost or guaranteed?

A. It's guaranteed. Even if you look in your CRIRSCO Code, there's a line in there which -- if you could direct me to where your CRIRSCO Code is, to give the right wording. What page is the ...?

MR FOY: It's tab 54 (R-0139).

A. 54. If you bear with me for a second. (Pause)

"It is reasonably expected that the majority of Inferred ... Resources could be updated to Indicated ... Resources ..."

That's what's written in the code. I apologise for using the wrong word, "guaranteed", but "reasonably

10:24 expected". I wouldn't say it's 100%, but that's reasonably expected.

It also puts in that an inferred resource is a resource that:

"Geological evidence is sufficient to imply but not verify geological ... grade [and] quality ..."

So when you say it's upgraded, of course it's always upgraded as you move down the chain. That chart isn't a layer of good to bad; that chart is a map of how you bring a deposit into business.

And all this work has to be carried out by a competent person. These decisions and discussions, as it also implies in here, under CRIRSCO -- which I have not picked up in JORC -- in the CRIRSCO Code it says you must be a competent person in the product that you are working with. In this case it's hydrothermal intrusions and in the mining of talc. And they actually put in that there is a clause in here that [if] this is not followed by having a competent person with the right qualifications, then it must be reported. So I would just like to point out, I am actually covered under a competent person to comment on this talc deposit.

Q. Okay, thank you. I'd like to draw your attention, sir, to --

MR FOY: We are moving beyond the additional question.

10:26 MR MAŃÓN: No. Well, he is talking a lot, but I'm on your point on the tonnage.

I'd like, sir, for you to go to tab 58 (C-230), which is a POPE that counsel was just showing you, POPE 2. I want you to go to page 18 of that POPE, section 1.1.4. (Pause) I'd like you to go to the second paragraph under section 1.1.4:

"Here, it should be stated that the actual deposit was only verified in the research exploration phase. Another more detailed verification phase was not implemented ...

"For the reason above spatial and qualitative complete verification is expected from the implemented mining works by means of mining and drilling work. This work will clarify the localization of the proposed mining and extraction work. Simultaneously, it will allow recalculation of the volume and qualitative characteristics of reserves for extraction ..."

So the POPE itself envisioned the possibility that their estimate of volume and quality would be subject to change upon further exploration; correct?

A. Correct.

MR MAŃÓN: Thank you.

A. Yes.

MR MAŃÓN: No more questions.

10:28 THE PRESIDENT: Thank you, Mr Hill, for your answers and explanations.

MR HILL: Thank you, Mr President.

THE PRESIDENT: So your examination is completed. Now we will have Mr Sparks. We can call him now, yes?

MR FOY: Excuse me, Mr Chairman. If you don't mind, following Alex Hill's testimony, I think I would like to gather my thoughts. I think I can reduce a lot my questions. So I was thinking if we could maybe break for 15 minutes. I think after that I would be able to finish within half an hour/45 minutes. (Pause)

THE PRESIDENT: Okay. So 10.45.

(10.29 am)

(A short break)

(10.49 am)

MR GREGORY B SPARKS (called)

THE PRESIDENT: Good morning, Mr Sparks.

MR SPARKS: Good morning.

THE PRESIDENT: So you are appearing here as an expert witness. Can you read the expert declaration which is in front of you, please.

MR SPARKS: I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

THE PRESIDENT: Thank you.

10:50 Direct?

MR MAÑÓN: No, Mr Chairman.

THE PRESIDENT: Thank you. So, cross-examination.

MR FOY: Thank you, Mr Chairman.

Cross-examination by MR FOY

Q. Good morning, Mr Sparks. My name is Emmanuel Foy, I am acting as counsel for Belmont, and I will just ask you a couple of questions on the two reports you have submitted in this arbitration.

Just as a matter of curiosity, can we start by looking at your CV, which is at the end, appendix C to your first report.

A. Mm-hm.

Q. I am not going to challenge your qualifications, because I don't really have the shoes to do it. But I do see that in your "Foreign Consulting Experience", you list in the last position Slovakia.

A. Yes.

Q. Is that due to your involvement in this arbitration, or...?

A. In part, yes.

Q. In part?

A. Yes.

Q. What's the other part?

A. I also looked at another property in Slovakia.

10:51 Q. When?
A. Approximately the same time that I viewed the Gemerská Poloma deposit.
Q. Acting for the government, or ...?
A. No, this is a totally separate matter.
Q. Just a coincidence.
So as I understand it, you have been able to attend the whole hearing; correct?
A. Yes.
Q. Prior to that, what documents have you been able to review in preparation of your reports? Have you reviewed the pleadings of both parties?
A. I've reviewed the pleadings and I've reviewed at least some of the pertinent exhibits.
Q. Alright. Have you looked at the witness statements?
A. Yes, some of the witness statements.
Q. From both sides?
A. I do not recall seeing or noticing the difference. But I did see Dr Rozloznik's witness statement, and I don't recall seeing others. Perhaps Haidecker's.
Q. Haidecker's?
A. Yes.
Q. I understand you have been lucky enough to do a site visit?
A. Yes, I have.

10:52 Q. Was it one, two?
A. Days, you mean?
Q. No, visits.
A. Oh, one visit.
Q. One visit?
A. Yes.
Q. Was it organised by the government or did you contact VSK Mining directly?
A. It was organised by the government.
Q. Organised by the government?
A. Yes.
Q. And VSK Mining welcomed you with open arms?
A. They were ...? Sorry, I ...
Q. VSK Mining welcomed you with open arms?
A. Yes, they appeared so.
Q. Alright. Can you just remind me: who are the people you talked to during that visit, or people who are now involved in the project, to get some knowledge on the deposit, its history, its current status?
A. I spoke with Mr Corej, and I spoke with the mine manager and the chief geologist at VSK, and I spoke with Mr Haidecker.
Q. Alright. At the time they were all employees of VSK Mining; correct?
A. I don't think Corej was.

10:54 Q. Corej wasn't anymore?
A. I do not think so.
Q. Okay. Turning to the substance of your reports, can we look at paragraphs 17 and 18 of your second report.
A. Yes.
Q. In the second sentence of paragraph 17 -- well, I will just read the first two sentences:
"The Haidecker study is comprehensive, but brief, containing little supporting data. Perhaps this is explained by the title 'Talc-Gemerská Poloma Feasibility Study Outline' ... There are several suggestions in the text of the Haidecker Feasibility Study Outline that the study was at most a Pre-feasibility Study as defined under international standards."
A. Yes.
Q. My question is: did you qualify this document as a pre-feasibility study as per international standards today or international standards at the time?
A. I would say certainly I looked at international standards of today, but fundamentally the standards are separate and apart from good mining practice. Project development is a continuum, beginning with very early information and continuing through production, and this continuum involves de-risking along the way.
So that's it in a nutshell. My principal guidance

10:56 was, I would say, good mining practice, setting aside current standards.

Q. Alright. But what I'm trying to understand is that -- my understanding, based on what I have heard or been told, is that the way you classify a deposit as a reserve or resource, and the different level of confidence that you place into it -- inferred, measured -- changes, or has changed significantly over time, so that something that could have been classified as a "feasibility study" in the '90s today would be considered as a "pre-feasibility study", or not even that; and sometimes a resource would have been classified as a ["reserve"] in the '90s or early 2000s, and today it would be classified as a "resource". Isn't that correct?

A. Not entirely, no. I'm bifurcating the current standards, or standards in general, from ordinary care for this good mining practice, which has been around for as long as mining has been around.

Q. Alright. So you maintain that you qualified the Haidecker feasibility study as a pre-feasibility study --

A. In the current vernacular.

Q. But at the time, there is a chance it would have been perceived as a proper feasibility study?

10:57 A. I think not.

Q. Alright. Then paragraph 18, I'm not going to read the whole thing, but you still conclude by saying:

"Both statements ..."

Quoting the two statements above:

"Both statements are powerful reminders that more work was required before the body of work could be qualified as a Feasibility Study under international standards."

THE PRESIDENT: Sorry, when you read, you must read more slowly, because if not, it will not be on the transcript.

MR FOY: I apologise.

So it's the paragraph above 19, which reads:

"Both statements ..."

And it's quoting statements in the so-called Hansa Geomin study:

"Both statements are powerful reminders that more work was required before the body of work could be qualified as a Feasibility Study under international standards."

A. Yes.

Q. So again, you qualify the conclusions of the Hansa Geomin study, I'm assuming based on your previous answer, on today's standards mixed with what was good

10:58 practice throughout the past 15 years?

A. Well, the explanation is, I believe, straightforward, in the sense that good mining practice is independent from today's standards or yesterday's standards. I chose to use today's standards just for a common reference point.

Q. Right. It just feels a bit artificial, because I'm assuming the standards that were applicable or recognised or relied upon by investors in 2000, when those studies were conducted, are still available, and that it would have been maybe a bit more fair to make that assessment on those standards, those contemporaneous standards.

A. In 2000 I do not believe that is the case.

Q. Understood.

Then in paragraph 19, I do take note of the fact that you say:

"However, for the reasons given in [section] 3(a) above, notwithstanding the completion of six additional drillholes, Rozmin failed to achieve anything more than Inferred Resources."

So you accept that it is, at the very least, inferred resources?

A. Yes, I do.

Q. And "inferred resources", this time I'm assuming that you're referring to today's standards?

11:00 A. Today's standards, but that's been around since, again, before the date of this analysis.
Q. The definition of "inferred resources" has not changed over the past decade? It's more than that: it's 15 years now.
A. Not particularly. But even harking back to the classification as C3, or Z3 under the former Russian standards, the meaning is essentially the same; it's unchanged.
Q. Right. But you don't make a distinction between, say, the mining area and the extraction area, as Alex Hill has done, to show that at least in this small portion, the level of confidence has, at the very least, been increased?
A. I was broadly including the extraction area, as well as the entire mineralised body. And by that I mean, at best, the resource amounted to only inferred in the extraction area. I was taking that collectively.
Q. But correct me if I'm wrong -- and that would mean Alex is wrong too -- it would have been impossible to make your assessment based on the whole mining area, western area of the deposit, and then to see if the level of confidence had been materially increased in that specific extraction area?
A. The level of confidence in the specific extraction area

11:02 in my opinion did not rise above inferred resource.

Q. Alright. Well, without necessarily going into this, don't you think it would have been fair to distinguish between the two, which you haven't done, sir, in your report?

A. No. Perhaps it's just the way it's being read. But my intention in drafting in this fashion was that there was nothing that surpassed inferred resource in any portion of the deposit.

Q. As per today's standards?

A. Yes. Or, as indicated previously, in my previous comment, under Z3 Slovak standards, as indicated in several of the documents that I reviewed.

Q. Can we quickly go over the Hansa Geomin report, which for convenience I will refer to as the "DEG report".

A. Mm-hm.

Q. It's tab 10 of the first bundle, Exhibit C-137. (Pause) Are you familiar with that document?

A. Yes, I am.

Q. Could you tell us, without going into the substance of it, just the background of this document?

A. This was a review of the Haidecker feasibility outline which was performed in connection with the DEG potential financing; a due diligence effort, if you will.

Q. I am just going to read the paragraph that explains

11:05 this, for the benefit of the Tribunal. It's at page 7. It reads:

"The [DEG] has been asked by the promoters of the project to examine the financing of the investment in Gemerská Poloma. In this context, DEG has contracted Hansa GeoMin Consult ... [in] Germany, as consultant to analyse and evaluate the Feasibility Study ..."

Can you tell us who DEG is?

A. My understanding: it's a German state investment bank, similar to the IDRB, for lack of a better way to describe it.

Q. That's pretty accurate. So both these institutions are pretty serious?

A. Yes.

Q. And both of these institutions visibly considered the feasibility study to be rather comprehensive and reliable; sufficiently, at least, to support or recommend going into the project and funding the project?

A. I wouldn't characterise it quite the same way. I believe the Hansa Geomin report found the Haidecker report to be complete with respect to the level of report that it represented, and there are several references throughout the Hansa Geomin that suggest that that is the case. But they did in fact confirm the

11:07

basic findings of the Haidecker feasibility outline.

Q. Right. So we have an independent third party that was hired to review a feasibility study for an interested state-owned investor, who confirms the reliability of the feasibility study?

A. At the stage that it was presented.

Q. Right. But wouldn't you agree that it still shows that this document, at least at the time, in '98, was rather reliable, and neither DEG nor Hansa Geomin ever put in question the fact that the feasibility study was a proper feasibility study?

A. No, I don't reach that conclusion. I'm not sure what you mean by a "proper feasibility study". But a preliminary assessment or preliminary analysis, as suggested by the Haidecker title, which is "Feasibility Study Outline", which is not normally found on a comprehensive study.

Q. But what's produced in this arbitration is the outline, but there's the actual feasibility study. You have not reviewed this document?

A. I have reviewed the feasibility study outline; that's the only thing I've seen.

Q. Did you request the feasibility study?

A. I believe, as I recall -- it's been some time -- but that that was the only document available.

11:09 Q. What if I told you that counsel for Respondent made a document request for the feasibility study: it was produced in the large majority of it, there was only one part that couldn't be found? And you weren't provided a copy of it, you didn't review it, or at least you didn't object to the fact that we didn't produce [it]?

MR MAŃÓN: So is it in the record or is it not in the record?

MR FOY: It's not in the record. I'm just asking if he asked to see a copy at least.

MR MAŃÓN: If it's not in the record, Mr Chairman, I'd raise an objection that he can't ask the witness questions about a document that's not in the record.

MR FOY: If I may, I'm not asking questions about what's in the document; I'm asking if he reviewed or asked to review the document.

THE PRESIDENT: I think that's a fair question.

A. The document that was reviewed in Hansa Geomin is a document that I was provided, which is entitled "Feasibility Study Outline".

MR FOY: I'll take that answer.

Before I move to my next topic, you told us early on that you have met with Mr Corej?

A. Yes.

Q. What were your impressions regarding his qualifications?

11:10 A. That he appeared to be a competent mining engineer. Obviously we have a language barrier between us. I was provided with an interpreter, so I was able to question him. And assuming that the interpretation was reasonably accurate, what he told me in the course of a couple of hours at site -- at the site of the decline portal -- was consistent with what I would believe to be a qualified mining engineer.

Q. Thank you for this. It will become relevant.

As I understand it, your main critique for Claimants' failure to de-risk the deposit is the fact that the additional six boreholes that they carried out since taking over Rozmin did not bring any additional value; correct?

A. Certainly there was some value added, but I don't think it materially de-risked the deposit. And that's really based on two facts. First of all, there is a separation between the confirmation or the increased confidence in the available resource; I don't think that materially changed. And secondly, with respect to the economic analysis, that hasn't changed since the Haidecker feasibility outline, that I'm aware of.

So if I can expand on the additional six drillholes, they were not drilled in a manner consistent with what I would consider to be ordinary good practice in the

11:13 mining industry. The holes, some of them were twinned -- or one was twinned, I believe, and --

Q. Can you just explain what "twinned" means?

A. "Twinned" means drilled adjacent to a previously existing hole, presumably to confirm data, and as well to collect samples -- which is quite legitimate and frequently done as a matter of routine -- to do metallurgical testing. So two of those holes were actually in very close proximity, but they were done for different purposes.

Secondly, the orientation of the holes was really quite different. Ordinarily one would expect drillholes to be lined up in what's considered a fence or a fan, so that the holes all present on a cross-section. But if you'll look at page 7 of my rebuttal report, you'll see that the holes have a variety of different orientations, and none of them appear on section; in other words, line up in a manner that a cross-section can be drawn without significant projection of data over great distances. So that's point one.

Point two: there was a lot of data that was not collected. For example, the spatial location of the actual talc intercepts was apparently not determined. Typically what's done is a down-hole borehole survey, in other words to determine where the actual talc intercept

11:15 lies. Because in deep drilling, particularly in soft rock such as this, drillholes wander considerably away from their dip and their azimuth, and it's standard practice to survey all drillholes when doing the resource development drilling, and this didn't qualify in that regard.

There were a number of other deficiencies that I thought were in the data. There was no mention -- no apparent mention, anyway -- of chemical alteration, which is important in determining continuity, as one measure. Another point was there was no indication of tectonic logs; in other words, faults that may have been observed in the drill core.

So those are just a few examples. But in short, I don't think those extra six drillholes resulted in material de-risking.

Q. Alright. Actually I don't think we have the time to go into that level of detail on this issue. The reason I was asking you this really is because in your executive summary you go over this failure for over three paragraphs, and what you draw from it is at paragraph 8 of your second report, where you say:

"This departure from industry standard operating procedure calls into question whether the geologists who drilled the six additional holes understood this basic

11:17 tenet, and if they did, whether they intentionally ignored routine procedure and simply tried to target big talc intercepts without regard to development of critical data."

A. Yes.

Q. That's rather a harsh comment.

A. I have no knowledge of which one was the situation.

Q. But then I want to ask you: do you know who designed and undertook those drillholes?

A. I do not.

Q. Can someone take you to the witness statement of Mr Corej, paragraph 25. I'd like to draw your attention in particular to the last sentence of paragraph 25. Again I remind you it's the witness statement of Mr Corej. He says:

"I designed these boreholes in person and then managed their realization."

That's new information to you?

A. I'm not sure what "designed" means: if he cited them in terms of location and azimuth, or -- I just have no way to know.

Q. Right. He does seem to take somewhat some pride in this witness statement.

A. I'm not sure ...

Q. If you read the entire paragraph, he is not even talking

11:20 about the cooperation with Claimants, although that happened when Claimants arrived, and they funded to a large extent that additional drilling. This is in a section where he's talking about the cooperation with Dorfner and the original shareholders in Rozmin, and their efforts to explore the deposits.

There is really no reason to doubt that when he says -- which I submit to you is with some pride -- that he "designed these boreholes in person" -- in person -- "and then managed their realization", there is no reason to doubt that he has done it.

A. Perhaps he did.

Q. If that's the case, what I want to ask you is: who is in the wrong? Is it Mr Corej, for having done those boreholes, if, according to you, their added value is close to minimal? Or is it you, because those additional boreholes did enhance the confidence in at least the extraction area?

A. Well, I stand by my statement: I don't think they were drilled in accordance or the data collected was in accordance with good mining practice. There is much more data that could have been collected from those boreholes that would have assisted with developing higher confidence. However, that said, the location and the azimuth and dip of those drillholes do not line up

11:22

on any sections, and thereby reduces the benefit.

Q. I'm not addressing those criticisms at that time, they are not admitted, but I just wanted to get your opinion on a particular point.

A. Sure, yes.

Q. I will have to take Mr Corej's defence on one point: the drilling of drillhole number 45, which I understand to have been a large multi-tonne drilling that allowed then the ARP studies to be carried out.

A. That I don't have a problem with.

Q. No, I know this. I do know this, because you barely mention those studies in your report.

A. Well, I think in order of events, the deposit has to first be verified, before it's terribly meaningful to do metallurgical testing. I mean, that's further down the road. And had these additional drillholes -- along with the metallurgical test hole -- been designed a bit differently and more data collected, I could easily have accepted that the project had been somewhat de-risked.

Q. I don't think I am going to get you to admit during this hour that we have de-risked the project. So I'm just trying to get you to acknowledge the extent to which we did at least increase the level of confidence in the deposit and the interests in opening that deposit for potential investors.

11:23 Just to pick up on that point and explain why I find it particularly surprising that you did not -- or barely -- comment on the ARP study, I'd like to take you to the CRIRSCO standards, which you rely on in your report, which are at tab 54. That's today's standards, so not the ones from the time.

A. 54?

Q. Yes, 54, and it's Exhibit R-0139.

A. Yes.

Q. I'm just picking up on what Alex Hill explained this morning: that the reporting of industrial mineral exploration resource is not the same as for metals.

A. Understood and agreed.

Q. And based on his opinion this morning, he explained that in the case of industrial minerals, there is much more care or attention or focus that is made to the quality of the product and the likely product specification.

A. That I agree with.

Q. I think that is confirmed if you look at page 23 of this document, the last full paragraph on that page, where it says that:

"When reporting information and estimates for industrial minerals, the key principles and purpose of the Template apply and should be borne in mind. Assays may not always be relevant, and other quality criteria

11:25

may be more applicable."

If you turn to the next page, where I think they explain those quality criteria, it says:

"It may be necessary, prior to the reporting of a Mineral Resource or Mineral Reserve, to take particular account of certain key characteristics or qualities such as likely product specifications, proximity to markets and general product marketability."

So keeping that in mind, don't you think that the ARP studies, which determine the quality of the talc that would be extracted, how to best process it to achieve the best talc in the best proportion, according to the different markets -- which I think you don't dispute?

A. No, I do not.

Q. Then, based on what I read here, that would be relevant to determine in the reporting of industrial mineral exploration results. That's why I have trouble understanding how you do not comment on those studies and at least acknowledge that it was a step in the right direction.

A. Until a resource is reasonably proven -- or let me rephrase that. Until a resource is reasonably demonstrated to exist, grade and tonnage, you know, those subsequent items are incidental.

11:27 Q. Right. But if I read your report as a whole, you seem to say that we will not be able to increase the level of confidence without going underground, and we need to increase the level of confidence to secure financing to go underground. So it seems like we're going in a vicious circle we cannot get out of.

A. I think, you know, harking back to the points I made earlier about: the orientation of the drillholes and the data collected could have dramatically improved.

Q. Right.

A. So that's the rub right there.

Q. Maybe that's something else Claimants can blame Mr Corej for. But we can still acknowledge that there were efforts that were in the right direction?

A. Yes, I --

Q. There were some results. And you acknowledge yourself that the ARP study had value, was reliable?

A. Indeed, yes.

Q. Thank you. I have just two last topics that are much more practical.

If you look at the last paragraph of your second report.

A. Mm-hm.

Q. I will read it out loud.

A. 33, that is?

11:28 Q. Yes.
A. Yes.
Q. "Though it is evident that Rozmin failed to open and excavate the deposit, the key question is why, given an elapsed time of six years from the initial POPE submittal to termination of the Rozmin's rights to the property."
That's what I would like to emphasise.
"Perhaps there may have been additional compounding reasons as well, but in [my] Opinion, Rozmin's fundamental failure to take actions ..."
Blah blah blah, "financing".
A. Mm-hm.
Q. You're lucky enough to have been here all week during this hearing to hear all the evidence that's been presented. Based on that evidence, the evidence that's been presented, not necessarily demonstrated, but we submit to you that that's our case -- that there were issues with the contractor, there were issues with the permits, but that once we got the authorisation, we nevertheless got the contractor, we paid the 4 million downpayment -- has any of this information changed your opinion that there may have been serious other reasons that prevented us from opening the deposit earlier, other than financing reasons?

11:30 A. There may have been contributing factors, but I think that in my opinion is the fundamental reason. And the fundamental reason is because the project had not been de-risked to a level that permitted reasonable banking and other financing institutions to get comfortable with it.

Q. But that's where I have a bit of an issue with that paragraph. Because if you were to give your expert opinion and say, "No, the project was not de-risked, it would have had trouble to get financing", that's one thing. We challenge it, but it would be one thing. But to say that in your expert opinion that was the fundamental reason, as if there could not have been other factors, to me that goes beyond your scope.

Did you look into the finances of Rozmin? Did you look into the finances of its shareholders to see if they could have got financing? There's a thousand different factors that could have affected the conclusion that you have just stated outright: that the fundamental reason we did not open the deposit over six years was because we hadn't de-risked the deposit.

You can see my point, no?

A. Well, I disagree with your point, but I will admit to there being contributing factors. But certainly the point that I make here in this paragraph 33 is that in

11:31 my opinion, because the project was not sufficiently de-risked, Rozmin was unable to attract financing.

Q. But then am I right to assume that you looked into those factors and you weighed the impact they had on our capacity to open the deposit?

A. Sure.

Q. You did?

A. Well, I looked into them to the extent that I was furnished with exhibits and so forth. But I am generally familiar with what it takes to finance a project and I am very familiar with the cost.

Q. But did you look into the permitting issues that we at least allege? Did you look into the issues we had with the contractor?

A. I looked at the contractor issues, yes. The permitting issues, I wasn't privy to the information.

Q. I am impressed by your competence.

Just one last topic. Since you know all this, you know that in 1998 the two initial shareholders, who were rather important actors in the mining industry, bailed out?

A. Mm-hm.

Q. That then there wasn't much interest in the deposit, as demonstrated by the fact that Belmont was able to swoop in and buy the shares from those two shareholders

11:33 without there being much of a competition.

And you are also aware that in 2005 there was a bit of a rush to the tender procedure. The two largest producers of talc participated in that tender procedure. Mondo Minerals was so disappointed with the result it filed a complaint. And then when the mining rights were assigned to a one-person company that had no financing at the time of tender, this company was able to find an investor within a matter of months, and start the works within two years, et cetera.

So what I want to ask you is: what changed between then, if it's not the work we did? Because I know it's not the market conditions. To our greatest despair, our own expert has told us that the prices have not raised very significantly during that period. So it seems that in the course of seven years, when there wasn't much interest in that deposit, at the end there was significant interest in the deposit. Can you see any other explanation, other than the studies and additional boreholes that we've done?

MR MAÑÓN: I'm sorry, I'm going to have to object, Mr President. I think the question goes outside his expertise and is asking the witness to opine on some factual issues outside of the technical aspects as to which he is testifying.

11:34 MR FOY: Well, if I may just clarify, I am not asking him to confirm our allegation. And in answer to my question just before, he did opine and said that he had looked at the different issues that had prevented us from opening the deposit. So I think it is only fair to ask him if he can come up with any other determining factor that would have created such an appetite within the course of seven years.

A. There are a myriad of possibilities, to which I am not privy. I just don't have any way of knowing.

MR FOY: That concludes my questions. Thank you very much, Mr Chairman.

THE PRESIDENT: Thank you.

Re-direct?

MR MAŃÓN: Yes, Mr President, I just want to follow up on a topic Mr Foy addressed, if I may.

(11.36 am)

Re-direct examination by MR MAŃÓN

Q. Mr Sparks, in your conversation with Mr Foy you were asked about, if I am not mistaken -- and if I am, please correct me -- what is required for de-risking, or what are the steps that are necessary.

MR FOY: I never asked that.

MR MAŃÓN: Okay. I'd just like for you to explain to the Tribunal, Mr Sparks, if you can, whether you have

11:36 experience advising potential investors on an industrial mine project. This is an industrial mine project.

A. I take it you mean industrial minerals?

Q. Sorry, yes.

A. Yes, I have.

Q. Can you please explain a little bit of your background, for the Tribunal's benefit?

A. In regard to advising financial investors? I'm not quite sure what you mean.

Q. I'm sorry, in advising investors.

A. Well, I can't even think of how many times I've advised investors in the form of due diligence, in the form of deal structuring, in a way that would protect the investors' interest. And this involves a variety of mineral commodities, including industrial minerals and metals. My role in this instance is as a managing director of metals and industrial minerals for the John T Boyd Company, an international consulting firm.

Q. Thank you. When you advise investors, what are the kind of things they are looking for in a mine of this type?

A. Well, I guess the most fundamental principle is having confidence in the resources; number one. And number two, having the ability, based upon definitive economic analysis -- and that requires a whole cadre of things, such as a clear definition of project scope --

11:38 to arrive at an estimate of cost and so forth, as well as mineral processing steps that would result in a saleable product.

And then in the case of industrial minerals, such as talc, an assessment of the market. As I believe was pointed out earlier, markets in industrial minerals are quite different than they are for metals: they are generally transportation-driven and they are highly specification-driven.

So it's important to have that information -- as well as a lot of ancillary information, but those are the fundamentals -- before you can adequately advise a client about a potential investment.

Q. Thank you, Mr Sparks.

You had described earlier that it is your understanding that the holes were not drilled -- the six holes we're talking about, that were included in the Kloibhofer report and the Hansa Geomin report -- were not drilled in a fan?

A. That's correct.

Q. Can you please explain to us: why would that be important if you were advising an investor?

A. Well, I think there are two parts to that.

First, it's ideal that drillholes, exploration drillholes, be drilled essentially on section. If you

11:40 can imagine a vertical section, and you would like to penetrate the ore body at various points within the same section. And that requires then an azimuth, a similar azimuth, along a similar line. And that can be done either from a single drill setup, wherein you would literally fan the holes, or alternatively the same azimuth along the same line.

What this does is it facilitates development of a geologic section; that is, drawing, if you will, from drillhole to drillhole, from intercept to intercept, so that you can get a good sense of continuity, or a better sense of continuity. When holes are drilled not on a section, and when holes are drilled in a variety of different azimuths, different directions, it makes it very difficult and far, far less reliable to determine continuity among other things.

Q. Thank you.

I'd like you to explain to us a little bit more the purpose and significance of the ARP studies, because I was a little confused as to how they relate to this fan drilling.

A. Well, they are really separate considerations. The fan drilling is aimed at defining a reliable resource. The large-diameter drillholes which provided product for testing in the ARP studies, as Mr Foy pointed out,

11:42 provided the opportunity to do some metallurgical testing to assess marketability, as well as cost and recovery of the product.

Q. Okay. So I get it that, if I were to put it in layman's terms -- and I apologise for doing that because I know technical people don't like that -- but if I were to put it in layman's terms, the ARP studies would not be able to quantify the reliability of their resource?

A. No, they're totally separate issues. Yes, that is correct: they would not.

Q. Okay. And in your experience when you're advising investors, are they looking to determine the reliability of the resource?

A. Oh, absolutely. That's a fundamental.

Q. Okay. And what does it tell you, the fact that this was not done here, about whether this project was de-risked or not?

A. Well, as I previously explained, the fact that it was not sufficiently de-risked, not only through development of a reliable resource but also the other components -- the cost components, the capital cost components, the operating cost components, the definition of the development plan and the production plan, and the marketing, as has been pointed out -- is of critical importance in determining economics of an industrial

11:44 mineral.

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

THE PRESIDENT: So, Mr Sparks, this is the end of the examination. Thank you very much.

It's 11.45. I suppose Mr Anway and Dr Gharavi would be happy to have some time, and it's also early for lunch. So what would you suggest? Certainly not before 1.00.

MR MAŃÓN: I think they would be very happy.

MR ALEXANDER: We've actually talked about that and agreed to ask your indulgence to go through lunch to prepare, and then begin right after lunch. 1 o'clock, would that be acceptable to the Tribunal?

THE PRESIDENT: Even 1.15.

MR ALEXANDER: Perfect.

THE PRESIDENT: Good.

MR ALEXANDER: Excellent, thank you.

(11.45 am)

(Adjourned until 1.15 pm)

(1.27 pm)

THE PRESIDENT: We thought you would appreciate having ten more minutes, so that's why we came a little later.

So, Mr Anway, on jurisdiction.

MR ANWAY: Ms Polakova is lead counsel for the Slovak Republic for our closing argument, Mr Chairman.

13:28 THE PRESIDENT: We are very impatient to hear her.

MS POLAKOVA: That is the debt from Monday!

(1.28 pm)

Closing statement on jurisdiction on behalf of Respondent

MS POLAKOVA: Dear members of the Tribunal, on behalf of the Slovak Republic I would first of all like to thank you for your time and attention this week to the Slovak Republic's arguments, as well as your willingness to learn this lovely Slovak word "dobývanie".

During this week we showed that Claimants's claims are tainted by a number of defects on jurisdiction, and that's why they should be dismissed in the first place. But we also showed that, independently of those defects, the reassignment was correct, because Rozmin did not even come close to carrying out dobývanie in the three-year period required by Slovak mandatory law, the 2002 amendment.

In line with the Tribunal's instruction, the Slovak Republic's closing statement will be dedicated to the main legal issues as they have crystallised this week, without commenting really on the hearing at such.

We will start the Slovak Republic's closing statement with my colleague Steve Anway, who will address jurisdictional matters. He will first show that Belmont does not own the protected investment because it

13:29 1 does not own the 57% interest in Rozmin, and then he
2 will show that EuroGas II does not own the 33% interest
3 in Rozmin.
4 We will then leave the floor to Claimants' closing
5 statement on jurisdiction and merits, and following
6 which the Slovak Republic's closing statement will
7 proceed also on the merits.
8 Thank you.
9 MR ANWAY: Thank you, Mr Chairman. Rest assured you'll hear
10 more from Ms Polakova later on the merits section, not
11 her law discussion.
12 THE PRESIDENT: It has been promised.
13 MR ANWAY: It has been promised.
14 As Ms Polakova indicated, I will address
15 jurisdiction first. We will not get into the merits
16 during this presentation; we will of course later today,
17 as we conclude the hearing.
18 I will present the jurisdictional arguments in
19 reverse order: first we're going to deal with the
20 jurisdictional objection with regard to Belmont, and
21 then we will deal with the jurisdictional objection with
22 regard to EuroGas II. We do so because, chronologically
23 at least, that is more appropriate, given that Belmont
24 sold the 57% in 2001, which meant that when EuroGas I
25 entered bankruptcy it had the full 90%: the 57% that

13:30 Belmont transferred to it, and it held that interest directly, as well as the 33%, which it held indirectly through EuroGas GmbH, for the full 90%. And as we will show, when that interest went into bankruptcy, it never came out again.

Let's start with Belmont. The Tribunal will recall that there are two separate jurisdictional objections we have raised with respect to Belmont. The second one, that I described on Monday, was that the Canadian treaty only started to apply in 2009 and Belmont's claims therefore fall outside this Tribunal's jurisdiction ratione temporis.

That jurisdictional objection received little attention after our opening statement this week, and given how little time we have today and how much ground we have to cover, I will not be discussing that jurisdictional objection. But I want to emphasise how crucially important it is to the Tribunal's jurisdiction if the Tribunal makes it that far in the analysis; that is, if the Tribunal can get past the other jurisdictional objections we'll discuss today.

So with that said, I'm going to focus the remainder of my time on the 57% interest and its transfer to EuroGas I.

Particularly given the evidence that emerged at the hearing

13:31 this week in support of this objection, I'd like to pause at the outset and ask you to bear something in mind during my entire presentation, particularly with respect to the Belmont issue. It is the Claimants that bear the burden of establishing the facts necessary for your jurisdiction. It is not the Slovak Republic's burden to show that the Tribunal does not have jurisdiction; it is the Claimants that bear the burden to establish the facts necessary for the Tribunal's jurisdiction. And that burden is particularly important on the Belmont issue.

Based on all the evidence you saw during our opening statement -- you'll recall I put up quote after quote from representatives of both Belmont and EuroGas, and those two companies and their financial statements; statements to the police under oath; statements to prospective third-party purchasers -- they described their deal as a sale that had been completed, and that Belmont retained the shares as a collateral interest only. And of course you saw Mr Anderson's cross-examination yesterday. In view of those facts and Mr Anderson's cross-examination, we don't think there is any conceivable way one could argue that the Claimants have carried their burden of proof.

Indeed, as I noted, we showed you on Monday all of

13:33 those different statements that representatives of Belmont and EuroGas made, and in particular I directed you to sworn testimony that Mr Rauball and Mr Agyagos made to the Slovak police in 2009. If we go to this slide, which is slide 5. This again is a slide I showed you on Monday, and it is an excerpt from a witness statement that Mr Agyagos gave to the Slovak police. He stated:

"With regard to the fact that Belmont Vancouver sold its business share around 2002 to company EuroGas, we did not incur direct damage ..."

And we show you his signature there.

On the next slide (6) you will see that during the hearing this week, under cross-examination, Mr Agyagos confirmed that he did in fact make that statement, and that is his signature. Mr Alexander asked him:

"Question: Did you make that statement under oath to --

"Answer: Yes, I made that statement --

"Question: ... Did you make that statement under oath to Slovak police; yes or no?

"Answer: Yes."

If we go to the next slide (7), you will see that Mr Alexander continued:

"Question: But there's no doubt in your mind [that]

13:34 you made this statement under oath to the police?

"Answer: Yes, yes, that is no doubt."

As I showed you on Monday, there are criminal penalties for untruthful evidence provided to the police.

On the next slide (8) we will see that Mr Rauball gave a similar statement to the Slovak police. He stated:

"Rozmin is a company in which EuroGas GmbH holds 33% of shares and American EuroGas Inc holds 57% of shares, thus together holding 90%."

And you'll see his signature at the bottom.

On the next slide (9), Mr Rauball during cross-examination also admitted that he too provided this testimony, and that that is his signature.

Mr Alexander asked him:

"Question: Did you make that statement to criminal authorities while you were under oath?

"Answer: I did.

"Question: You took seriously the responsibility to tell the truth that day, didn't you, sir?

"Answer: Well, I was of the opinion that this statement was correct at that time."

If we go to the next slide (10), Mr Alexander continued:

13:35 "Question: I assume, just in the interests of time that you also authorised the next paragraph: ..."

This was a different statement that was made in a different document:

"'... EuroGas ... expressly confirmed the rightful title of EuroGas GmbH to 57% of business shares of company Rozmin s.r.o ...'

"Answer: Yes."

Before I go on, let me remind you: this is the document in 2012 that EuroGas AG made to the German stock market. This is the document that shows that the 57% was not just transferred from Belmont to EuroGas in 2001, but that EuroGas then transferred the 57% on to a third party, EuroGas GmbH. This is the document that shows it to be so.

Then Mr Alexander asked Mr Rauball, under cross-examination:

"So you thought it was true at the time you signed it?"

And he answered:

"At the time I signed it, yes."

Next slide (11):

"Question: Then the final paragraph [in that public statement]:

"'EuroGas AG thereby directly or indirectly holds

13:36 90% of Slovak mining company Rozmin s.r.o.'

"Does all your prior testimony about the procedures that were involved apply to this paragraph as well?

"Answer: That's correct."

Members of the Tribunal, you saw the cross-examination of Mr Anderson yesterday. Candidly, I have not included slides of Mr Anderson's testimony because there are too many. If I could put his entire cross-examination on a slide, I would. He was crystal-clear that, not even relying on the public statements I just showed you, looking at the four corners of the document, the SPA, he concluded that it transferred the rights to the 57%, and that the 57% shares were simply held as a collateral measure only, as a security interest, as a pledge.

(Slide 12) Here I asked him, "If you did look at any documentary evidence, which documents would you find most instructive or important on the issue?" And Mr Anderson replied:

"I think the two principal and most reliable documents, from an evidentiary perspective under Canadian law, are those that are most contemporaneous with the transaction. So to me the two documents that best represent and are most helpful in interpreting the contract are the information circular that was prepared

13:38 on June 8th ..."

Let me stop there. That's the document that Belmont circulated to its shareholders because it needed approval for the agreement before it proceeded with it. Remember, as a 57% interest in Rozmin, it was a controlling share in the company, and therefore Belmont had to obtain approval from its shareholders before it could enter into that agreement. The circular -- which is what we call that document -- is what was sent to the shareholders to sell them on the deal. That's the first document. And the second -- and I will just paraphrase -- are the financial statements.

If we go to the next slide (13), I'm going to show you each of these two documents just by review. This is the circular. And as Mr Anderson explained to you yesterday, he was focused in particular on the word "guarantee", and how it was described to the shareholders as a "guarantee". This again is consistent with the notion of the collateral, the security interest.

Then if we go to the next slide (14), the other documents he found most important were the financial statements, and in particular the first financial statements filed after the SPA was entered. Those are the audited and consolidated financial statements for

13:39 the year ending January 1st 2002. During my re-direct of Mr Anderson yesterday we went to these two documents, we spent a little bit of time going through them, and I've highlighted for you up on this slide the key portions that I took you to yesterday.

You'll see that in the very first quote, Belmont stated in its financial statements -- and let me stress: these are audited financial statements. It is difficult to imagine a more authoritative document in the corporate world than financial statements, because they carry with them potential criminal liability for any statement that are not true.

In this financial statement, speaking to investors, the company said:

"The Company [Belmont] sold its 57% interest in Rozmin effective March 27, 2001. The accounts and operations of Rozmin have been consolidated in the accounts up to the date of disposition."

That means prior to the sale -- and Mr Alexander went through this with Mr Agyagos on his cross-examination -- prior to the sale, Belmont had consolidated Rozmin.

After the sale, as you can see from the next sentence:

"The Company has recorded the EuroGas transaction as

13:40 a sale ..."

As a completed sale:

"... and disposition of a subsidiary and holds the shares as a collateral measure only."

In other words, it's disposing of the subsidiary now. It's now longer consolidated within Belmont after this purchase is made.

Then in the notes we saw at the end of the day yesterday, we highlighted a few items here. If you look at Article 2 of the SPA, there are five conditions precedent listed there; these are two of them that shows they were satisfied. One is the transfer of the 12 million shares of EuroGas; the other is the payment of what was called the non-refundable advance royalty of €100,000. The other three, you will notice, all use the word "hereby", in the SPA, and therefore mean the condition precedent is simply granting the right to receive royalties in the future, and similar other rights.

That's the financial statement, the very first financial statement filed after that 2001 SPA between Belmont and EuroGas.

We also think it's important that during their cross-examinations Mr Agyagos and Mr Rauball acknowledged and understood how important it was to be

13:42 accurate in these financial statements. (Slide 15)
Mr Alexander asked Mr Agyagos, who was responsible for the financial statement we just saw:
"Question: Do you take the filing of financial statements to be a serious undertaking?
"Answer: Yes, yes.
"Question: In Canada, are there criminal penalties for filing false financial statements?
"Answer: Yes."
Next slide (16). This too was with Mr Agyagos, and you can see at the bottom of each slide we indicate who we're quoting.
"Question: Given your own characterisation of yourself as the finance guy, you obviously reviewed these [being the financial statements] before they were filed?
"Answer: Yes, I do.
"Question: And you wanted to ensure that they were accurate?
"Answer: Correct.
"Question: Because, as we said, it's a serious undertaking; yes?
"Answer: Yes."
(Slide 17) Mr Alexander then went on:
"Question: Are you telling the Tribunal that your

13:43 financial statements are inaccurate?

"Answer: No, I'm not.

"Question: I didn't think so.

"Answer: No, I'm not, I'm not."

(Slide 18) And again to Mr Agyagos:

"Question: As an experienced businessman, would you agree that's a pretty serious thing, to file a financial statement?

"Answer: That's right."

Indeed, Mr Anderson noted when I asked him, "Have you seen statements from the parties characterising their deal?", he said, "Yes". I said, "Did you consider them to be consistent statements?", and this was his answer (slide 19). Effectively he found that things seemed to change around the 2005 time period, that the statements became more inconsistent after 2005.

Mr Chairman, I would suggest to you and members of the Tribunal that that is not coincidentally around the time of the bankruptcy, when EuroGas had an incentive for the trustee not to believe that they owned the 57%. Prior to that time, the public comments that both parties made were more consistent and described the transaction as a completed sale and only a retention of a security interest.

Indeed, counsel for Claimant put up and presented to

13:44 a witness testimony from Mr Blankenstein from that bankruptcy where Mr Blankenstein specifically stated that they didn't own the 57%. And again, there was an incentive at that time to make the trustee believe that the deal had not occurred, and that's when the statements became contradictory.

Claimants' counsel had suggested to you in the opening statement on Monday that in fact this deal could not have gone through because EuroGas I was a dissolved company at that time. As I hope came through clearly from the witness examinations, in fact the contract, it is undisputed, was signed before EuroGas I became a dissolved entity under Utah law. The contract was signed in March; they did not become dissolved until July.

(Slide 20) Dr Gharavi then put to Mr Gardiner, our Utah law expert that you saw yesterday -- you were able to measure his credibility -- whether the deal could have closed, if it closed after the company was dissolved but it was signed before the company was dissolved, whether that could still lead to a valid transaction. And Mr Gardiner opined that it could, that the sale could be completed notwithstanding the fact that the closure happened after it being dissolved, because it was signed before it was dissolved, and his

13:46 explanation was the following:

"... I think it could do that -- in other words, it could still close that transaction -- because subsection (c) of 1405(1) says a permitted action after dissolution is:

"'... discharging or making provision for discharging liabilities ...'

"I view that to contemplate performing obligations under a contract. So even if the contract entered into prior to dissolution involves the acquisition of an asset, still the company is bound by that contract..."

It signed it before it was dissolved:

"... [it] has a duty to perform, and the statute permits '[the] discharg[e] or making provision for discharging liabilities', and I view 'liabilities' to include contractual obligations. As it moves forward toward liquidation and winding-up, it has to take care of its obligations, and one of them is to close transactions it has previously agreed to enter into."

Then Dr Gharavi asked him:

"But what about if the closure date has not arrived even?"

And Mr Gardiner said:

"Nothing changes in the analysis I just stated. The

13:47 closure date is when it is."

Mr Gardiner also brought to your attention yesterday a brand new case that had been issued after all of the expert reports had been issued in this case, and in fact has just been issued this month in Utah, which he later stated he believes reinforces his ultimate conclusions in his report rather than weakens them, and I'll come to why that it is. It relates to the EuroGas objection; I won't address that now. But I do want to address the suggestion that was made during his cross-examination that somehow that case could in fact help Claimants.

The basic suggestion was that this new case makes contracts entered into by dissolved companies after the two-year reinstatement period has expired void; not voidable, but void. Again, that has serious implications for EuroGas's jurisdictional standing, but for Belmont it doesn't. Why not? Well, as I hope came through during my re-direct of Mr Gardiner, our case is different in two important respects from the new case.

The new case, as I said, involved a situation where the contract was signed after the company had been dissolved and after the two-year reinstatement period was over. Neither is the case here. Neither is the case here.

(Slide 22) I just put these slides up for you to

13:48 note the difference here. One involved a situation where the contract was signed before EuroGas was administratively dissolved; that's why this new case is different from our case. And then Mr Gardiner points out that in the Utah case that came out earlier this month, it happened after the partnership was dissolved.

(Slide 23) And again, that the contract in our case was signed before the two-year period for which the company could seek reinstatement had expired, whereas in the new case it happened after the two-year period.

(Slide 24) I asked Mr Gardiner whether he considered that a relevant distinction between our case and the new case, and he confirmed he thought it was relevant.

(Slide 25) This is again Mr Gardiner confirming that the Utah case does not deal with the same facts as our case.

On Monday we also heard counsel for Claimants make an argument -- and perhaps this is one of the arguments to which the Tribunal was referring when it said it heard either new arguments or arguments that had not been extensively discussed in the parties' submissions. As I understand the suggestion in Claimants' opening statement, the notion is that even if it is just a collateral interest, it is somehow a protected investment under both the BIT and the ICSID Convention,

13:50 both of which would be necessary.

Let me point out, members of the Tribunal, that that argument -- and this is the investment; it's at the heart of the case -- was not in the Request for Arbitration, it was not in the first provisional measures briefing, it was not in the second provisional measures briefing, it was not in their Memorial. There was no mention of this at all until the Reply brief; and even there it was a throw-away argument, no more than a paragraph or two.

It is not appropriate I think for us to be dealing with brand new allegations of what the "protected investment" is at this late stage. There just hasn't been a proper record for the parties to deal with something like this, when so little focus has been spent on this, virtually no notice was given of the argument, and we now are in a situation where we understand this is what they are alleging, even if in the alternative is the alleged investment. I am going to address this, but I do so with that reservation of rights: that I don't think we have been permitted to deal with this assertion, this alleged investment, in the ordinary course.

If this is a security interest, it would not constitute a qualifying investment protected by

13:51 international investment law. And we in fact did mention this -- we paid about as much attention to it as the Claimants did, since they have never affirmatively made this case -- and I will show you in our brief where we did so. But the primary reason that it can't be a protected investment is because, as a collateral interest held by Belmont, it does not directly arise out of a protected investment, as required by Article 25(1) of the ICSID Convention.

What I have up for you on the slide (26) is Article 25. And we did assert this in our Rejoinder, so this is not new.

"The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment ..."

This dispute does not arise directly out of a collateral interest, to state the obvious.

If we go to the next slide (27), this is one place in our Rejoinder where we did assert that proposition. There are surrounding paragraphs that also discuss this in our brief.

Case law has addressed this issue. In a case very familiar to my learned colleague across the table -- and I'm sure I'll mispronounce this -- in Burimi we had an Italian company and an Albanian company. The Albanian company is Eagle Games. They brought a claim

13:52 against Albania and alleged unlawful termination of Eagle Games's gaming licence.

Burimi was not a shareholder of Eagle Games, but it asserted that it had made a protected investment into Eagle Games because it had financed a loan to one of the co-owners and it was guaranteed by a pledge of the shares; exactly our facts. And, like here, the alleged actions of the government did not interfere with the pledge. My learned colleague across the table so argued, and the tribunal so held. And in particular, they held that the dispute does not arise directly out of the pledge.

I have listed up on the screen for you here (slide 29) a quote from the case. Given the importance this issue has now taken, if you'll bear with me, I think it's important to read it. It says:

"However, the financing agreement -- by which Burimi SRL financed Ms Alma Leka's share purchase in exchange for 90 percent of the profits she would receive -- does not represent ownership ... Rather, it represents a private, contractual loan agreement ...

"Moreover, the dispute at hand does not arise out of any government measure affecting [the] agreement ..."

There is another independent ground from Article 25(1), and the language arises directly out of

13:54 a protected investment, and it's one this Tribunal is all too familiar with and I won't spend time going into, and it's the Salini test. (Slide 30) That is, different factors have been found by numerous tribunals to be required under Article 25(1) of the ICSID Convention, namely: a transfer of economic value from Belmont to the Slovak Republic -- clearly that wasn't the case with the pledge; nil effective contribution over a period of time; no contribution to the development of the Slovak Republic's economy; and of course -- although not on the slide -- no risk.

We also cite a third case in our papers, Joy Mining v Egypt, that held that a bank guarantee is not a contingent liability, and did not fall within the definition of an "investment" under the ICSID Convention.

We also noted that Dr Gharavi had made an argument on Monday that registration of the shares had not changed in the Slovak commercial register. This too was an argument that, although there was some mention of it in the provisional measures briefing, didn't have much focus in the parties' Memorials, Counter-Memorials, Reply and Rejoinder.

The fact that registration of the shares had not changed in the Slovak Commercial Register is perfectly

13:55 consistent with the position -- indeed, it supports our position and Mr Anderson's position -- that Belmont retained a security interest in the transferred shares under Canadian law, because if registration had changed, then Belmont would not have been able to hold them as collateral. So there's nothing inconsistent about the fact that the shares are registered in the Slovak Commercial Registry and Mr Anderson's position that Belmont retain a security interest in the shares. Indeed, it's supportive of his position.

More generally, we would make the remark that the Claimants have offered -- and it's not surprising how late in the case this issue arose -- they have offered no affirmative proof that they have registered that collateral in the Slovak Republic. And in the absence of that evidence, there is simply no proof that a collateral interest in the territory of the Slovak Republic -- which is what's required under the Canada-Slovak Bilateral Investment Treaty -- even exists. There's been no affirmative evidence put forward that that collateral interest was ever registered.

As you play this argument out that the Claimants have raised, that, "If there is a collateral interest, that is our protected investment", think about where

13:57 that leads you. If Belmont was a secured creditor, effectively, of EuroGas, then think about what happens when EuroGas goes into bankruptcy. Belmont is a secured creditor at that point, and Mr Rauball, when ordered to provide that schedule of assets and liabilities, would have been required to disclose on that schedule that Belmont was a secured creditor of EuroGas.

But importantly, in US bankruptcy law, if you don't have a perfected security interest, if you can't show that the interest was perfected, then the trustee is perfectly empowered to strip that creditor of the security interest and it effectively comes back into the bankruptcy estate. Which leads you back to exactly where we've been all along: everything is in the bankruptcy estate. But because Mr Rauball didn't file those schedules of assets and liabilities -- in direct violation of the court's order -- that asset was never disclosed to the trustee.

Again, members of the Tribunal, as I asked you at the outset, bear in mind that it is the Claimants who bear the burden of proof on showing that they have a protected investment. They have not put forward an affirmative case that their investment is merely a collateral interest. They have offered you no proof to that effect. What we have, as you know from the

13:58 history of this case, is a situation where they misrepresented a fact to you, we discovered the truth, and now [they] are shifting positions yet again at the last minute to claim a new investment that was not suggested in the Request for Arbitration, in the provisional measures briefing, or in their Memorial.

If you were to recognise this as a protected investment, you would effectively allow the Claimants to benefit from Mr Rauball's wrongful conduct by not filing those schedules of assets and liabilities. Because if he had listed those schedules of assets and liabilities, all collateral interest disclosed would have required the trustee to investigate them; and where they are not perfected, the trustee can, as a matter of US bankruptcy law, strip the security interest from the creditor. And as we all know, under public international law there are well-settled principles that one cannot profit from one's own wrongdoing.

Those conclude my remarks about Belmont and the 57% transfer. I'm now going to move to EuroGas II.

Much like the secondary Belmont jurisdictional objection, which I don't intend to cover today, that the Canadian treaty only start to apply in 2009, I will not be addressing the other EuroGas jurisdictional objection, which is the denial of benefits. I do so

14:00 again because it received very little, if any, attention this week. But I would ask that that not be construed as any suggestion that that is not a crucially important jurisdictional objection as well, if the Tribunal reaches that point in its analysis where it has to deal with it. We don't think you have to because these other jurisdictional objections require dismissal before you even reach them.

The EuroGas jurisdictional objection that did receive significant attention this week is of course whether EuroGas II even owns the claim anymore.

As I noted to you on Monday, we have an ever-changing jurisdictional story that started with three or four different merger theories, and now appears to be that a transfer instead happened through an entity called McCallan. You can avoid all of that simply by concluding that EuroGas I did not emerge from the bankruptcy with the ICSID claim, with the asset, because if you conclude that, then the bankruptcy estate still owns the asset and EuroGas II is prosecuting a claim it doesn't own. You don't have to deal with merger theories, you don't have to deal with McCallan theories; it's as simple as that.

That's also the case if the trustee's deal that it has struck with EuroGas II is approved by the court, but

14:01 the Tribunal recognises that it can't retroactively grant jurisdiction to this Tribunal. On Monday I gave you the example of Mr Pekar and I having a hypothetical investment, which clearly showed that couldn't be the case.

In either one of those situations -- if you conclude the asset was not abandoned; or even if the trustee's deal is approved, but the Tribunal concludes it can't operate retroactively -- you can stop there. No further analysis is needed.

What about that threshold issue then of whether the asset is still an asset of the bankruptcy? As I said on Monday, members of the Tribunal, that is an issue you will have to deal with because the trustee, under her current proposal, will not resolve the question, and I will come to that in a moment.

Before I do so, I noted Ms Burton making an argument in the opening statement on Monday that candidly I had not heard before, another new argument. But before I get to that new argument, I actually want to turn first to that proposed deal with the trustee. Ms Burton indicated to you that the trustee had concluded that asset may well have been abandoned, that the trustee was making that representation in the deal that the trustee had struck with EuroGas, that the asset may well have

14:03 been abandoned.

As I indicated to you, the trustee is not taking a position on the issue. Indeed, it's equally correct for me to say the opposite: the trustee concluded that asset may well not have been abandoned. The reality is she simply doesn't say.

In fact, on the screen (slide 33) you have a red-line that was filed in the Utah Bankruptcy Court last Thursday of the proposal that Ms Burton and EuroGas II made to the trustee -- this is before they finalised their deal -- and it's a red-line. The language that is crossed out is what the trustee rejected. You can see that the trustee was not willing to say -- and I'm down now at (i), the highlighted part -- that:

"... there are reasons to believe the Talc Claims were abandoned ... in light of all the facts and information available to the Former Trustee ..."

She specifically rejected that request. And look what she added up at the top:

"... the Trustee has concluded that (a) the issue of whether the Talc Claims were abandoned by the Former Trustee has not been resolved ..."

So I hope this puts to rest any further suggestion that the trustee was or is somehow suggesting that asset

14:04 is likely abandoned or was abandoned. The trustee simply didn't decide the issue.

Now, you might ask yourselves why: why, if it's as obvious as both sides are saying, does the trustee not resolve the issue? Quite obviously, she is concerned about maximising the money for the creditors. Candidly, the trustee told us that very directly. That was the objective for the trustee: to get as much money to pay the creditors of the bankruptcy estate.

EuroGas II was willing to pay the trustee more than we are. It's as simple as that. Now, why? Why aren't we going to pay more? Because we think our other jurisdictional arguments, which we will come to -- merger, McCallan, denial of benefits -- those are so strong that we do not need to purchase this asset against us, this ICSID claim against us, to prevail in this arbitration. So EuroGas has offered more money. It truly is as simple as that.

The trustee knows that if she did state that the asset was not abandoned, EuroGas II wouldn't sign the deal and wouldn't pay the money. So although she declined EuroGas II's specific language asking for a declaration that the asset was abandoned, she instead decided to stay completely neutral on the question.

Was the asset abandoned? Again, because the trustee

14:06 is not willing to resolve that question, it will be a question that falls to you, members of the Tribunal. And on the issue of whether the asset was abandoned, you saw Ms Jarvis yesterday. You saw Ms Jarvis's demeanour: you were able to judge her credibility. Her opinion was unequivocal, it was backed up by the plain language of the statute and by every court that has ever looked at the issue: the asset could not have been abandoned by operation of law because it wasn't scheduled.

As I showed you on the slide on Monday, the statute on abandonment of property by operation of law specifically uses the word "scheduled". Only scheduled property can be abandoned. Mr Rauball confirmed before you this week he did not file schedules of assets and liabilities, and it is undisputed in the case no one else did either.

Even if -- to stress the point that I made before -- the trustee's deal were to be approved, and there would be abandonment nunc pro tunc, again it still would not solve the jurisdictional problem because that cannot retroactively create jurisdiction under the BIT or under the ICSID Convention.

Now to the new theory to which I referred earlier from Ms Burton. Candidly, it again was not a theory I had heard before. But it appears to be the theory now

14:07 1 that the investment was not part of the bankruptcy
2 estate at all because EuroGas I held it indirectly. You
3 will recall questions about how the assets that
4 a subsidiary may own would not be listed on the
5 schedules of assets and liabilities of a debtor, and the
6 point that Ms Burton made was that the bankruptcy is
7 only concerned with the debtor's direct ownership of
8 assets.
9 There are two reasons why that cannot be right. The
10 first reason is: the 57% which transferred to EuroGas I
11 in 2001, and therefore would have been part of the
12 bankruptcy, was held directly by EuroGas I; it was not
13 held indirectly. The 57% was EuroGas holding those
14 shares in Rozmin; no intermediate company. It was the
15 33% interest that EuroGas held indirectly through
16 EuroGas GmbH. So that argument completely ignores the
17 majority of the claim, which is the 57%.
18 Second, with regard to the 33%, the argument doesn't
19 work either. If you go to slide 37. Ms Jarvis was
20 asked about this on cross-examination, and explained:
21 "So, for instance, the way you determine the
22 property of the estate is you look at the property under
23 the law that applies to determine if the debtor has
24 a property interest. If that property interest exists,
25 then it needs to be -- then you look at whether that

14:09 fits within the definition of 'property of the estate'."

So in other words, Ms Jarvis is looking at the applicable law. Here it would be international law that would govern the property interest. And she says exactly that on the next slide, slide 38. She states, applying that principle to the facts of this case:

"The way it works in this case is that -- so when you look at what is property of the estate, a right under the investment treaty would be determined under international law."

That of course makes sense; how could it be otherwise? And she continues:

"So however the investment is defined under international law [that] would be ... the right ... that debtor has. And then you look at: is that property that fits within the very broad definition of 'property of the estate', and is it property of the estate? In this case, the investment that was made -- the investment right under this treaty -- would have been property of EuroGas I under international law, and therefore it would be property of the estate under [Section] 541."

When the bankruptcy was filed, it's true the talc mines had not yet been reassigned. But EuroGas I had rights under the treaty when it entered into bankruptcy. And indeed it was the only entity in the corporate chain

14:10 that could own those rights; a subsidiary couldn't hold it, because the subsidiaries weren't of US nationality, and you have to be a US national to have rights under the US-Slovak BIT as against Slovakia.

So we know going into the bankruptcy that EuroGas I has the treaty rights. If those rights were violated after the bankruptcy was commenced, then the claim would be derivative of those rights, and therefore property of the estate. (Slide 39) If we look at the question the Chairman asked Ms Jarvis yesterday, he posited this situation with a perfect analogy:

"Suppose the debtor has a house, it exists at the time the bankruptcy starts, then there is a fire, and it's caused by the fault of someone, so it could give rise to damages. That right to damages, would you think it is property of the estate or not?"

Ms Jarvis was unequivocal:

"Answer: Yes, it would be."

She continues in her testimony:

"So even though the event happened after the bankruptcy was filed, it was related to property of the estate, it is property of the estate."

I want to be clear about one thing though. Although the talc interest -- and more specifically the excavation area -- was reassigned after the bankruptcy

14:12 was reopened, those rights were reassigned before Mr Rauball was ordered to make schedules of assets and liabilities. In other words, had Mr Rauball complied with the order made directly against him by the US federal judge to file the schedules of assets and liabilities, [and] at that point the excavation area had been reassigned -- in other words, the facts giving rise to this ICSID arbitration had occurred -- the ICSID claim itself would have had to be filed as a schedule of assets and liabilities. It wasn't done so because he never filed those schedules of assets and liabilities.

(Slide 41) Even Mr Rauball admitted that the Claimants know EuroGas II is now prosecuting what is really EuroGas I's claim. EuroGas II is really prosecuting the 1985 company's claim, and they know it, because under cross-examination Mr Alexander asked him questions relating to this topic, and he stated -- and this was a question in regard to the filing of the Request for Arbitration in this case, when the Claimants represented themselves as EuroGas I:

"Answer: ... At that time I was of the opinion it's the 1985 company which is making the claim."

The Claimants themselves are saying they didn't believe it was EuroGas II's claim; it was the 1985 company's claim. Mr Alexander, so there was no doubt,

14:13 said:

"Question: That was your intention: to make it on behalf of the 1985 company?

"Answer: Yes."

I'm going to move away from that threshold issue of whether the ICSID claim, or any other interest relating to the talc claims, was abandoned or not. Again, if you resolve that question such that you conclude that the interest was not abandoned and that the estate still owns it, even if the trustee's deal is approved, you can stop there, because the Tribunal will not have jurisdiction.

But let's assume you disagree with the analysis I just went through and you conclude it was somehow abandoned, or you conclude that the trustee's proposed deal, if approved, does somehow grant retroactive jurisdiction under ICSID and the BIT. We are in that world now. As I noted on Monday, there are still numerous other jurisdictional problems because now, under this hypothetical, EuroGas I emerges with the asset, this ICSID claim, and it somehow has to get the asset to EuroGas II. How does it do that?

As I told you on Monday, we have been offered now four or five different theories to do so. The way I'm going to do this is very similar to how I did it on

14:15 re-direct with Mr Gardiner yesterday, which is just to quickly march through them.

(Slide 42) First, we were told that it merged pursuant to what they called this type-F or class-F reorganisation. I asked Mr Gardiner:

"Question: ... My question is whether a type-F restructuring, as the Claimants use that phrase, can merge two corporate entities."

Mr Gardiner was definitive:

"Answer: No, it can't."

(Slide 43) What about the second theory, this joint unanimous consent resolution? I asked him: can that effect a merger? "No", he said. I asked him why, and you can read his explanation below. But picking up at the highlighted part at the end, he said:

"One company can't, just by a resolution -- and by the way, the directors are the same on both sides, right? -- decide that the shareholders of one company are now the shareholders of another company. That just doesn't work, at least [not] in Utah corporate law."

If we go to the next slide (44), I had asked him, "What is the way that companies can merge under Utah law? How does this happen then lawfully?" And he said, "There is but one way: statutory merger". And statutory merger, he explained, requires filing of articles of

14:16 merger with the office of state corporations.

I asked him when that merger becomes effective, because in addition to transferring the asset from one entity to another, EuroGas must also make it retroactive to try to cover all of the events that occurred here, and he said it only becomes effective when the articles of merger are filed. You can see that up on this slide here.

If we go to the next slide (45), this is where I asked him:

"Is there any other way to merge in Utah lawfully?"

Mr Gardiner said:

"I am not aware of any other way."

Next slide (46). In fact -- and now I am focused on retroactive nature of the merger they purport to engage in -- Ms Jarvis identified two independent reasons that that retroactive merger cannot work. She states:

"Answer: I think Sam [Gardiner] has stated that under Utah ... law, it cannot [merge retroactively]."

That's the first reason. It's only effective when articles of merger were filed, and they never were here. And then she states:

"And if you're asking for something to come in effect at the time the automatic stay is in place, that would be void."

14:17 In other words, the retroactive nature of the merger would have gone back to 2005, when EuroGas I was in bankruptcy, and there is an automatic stay in place that prohibits anyone from doing anything with the assets of the debtor. So if there was a purported merger, and even if the merger did take place, it couldn't apply retroactively because there was a mandatory stay in the bankruptcy. And as she notes:

"Any act taken in violation of a stay is void ab initio, absolutely void."

(Slide 47) In response to a question from members of the Tribunal, Mr Gardiner was asked about whether merger can be consistent with wind-up activities; as a dissolved corporation under Utah law, the only activity that EuroGas I was permitted to engage in was wind-up activities? And he said, to paraphrase, "It's pretty clear, there's not a whole lot of grey area here". He says:

"For example, in my view a merger is something different from winding up a corporation, because a merger actually is a means by which the business of a company is continued, and it continues on, rather than ceasing operations and ceasing the process. A merger, that's what that does. So a sale of assets is different from that."

14:19 In other words, a merger is the exact opposite of a winding-up activity: it's continuing the business, rather than ceasing it.

Now we come to the application of the new authority that Mr Gardiner found yesterday to EuroGas's jurisdictional objection. I touched on this briefly about why it doesn't apply to the Belmont transaction: because there the contract was entered into before EuroGas I was dissolved, and it occurred prior to the expiration of the two-year reinstatement period. It does apply here, to the EuroGas purported transfer of the ICSID claim to EuroGas II. Why? Because just like in that new case, that purported transaction occurred after EuroGas I was dissolved and after the two-year reinstatement period.

(Slide 48) While Mr Gardiner expressed his view that he thought the court should have come out differently, he acknowledged:

"In my view, it is binding law."

This is why Mr Gardiner, when I asked him, "Does this new case support your conclusions, your ultimate conclusions, or weaken them?", he said, "It supports my conclusions". If you see the excerpt on slide 49, he said:

"Answer: Overall, by the way it reads, it

14:20 strengthens [his position]."

That is his words. I said:

"Question: Why do you say that?

"Answer: Because my portion of the report focuses on the merger and whether a merger occurred or not. And if we assume for the sake of argument that a contract was entered into for a merger, this case supports the conclusion that the contract would be void."

Not just voidable. And I said to him:

"Question: And you have other reasons in your report to conclude that[?]

And he says:

"Answer: Yes."

He says:

"Answer: My answer is: it provides ... additional reason[s] [for my conclusions] that I wasn't aware of when we wrote the report ..."

I want to make one other remark. We have seen -- I showed you on Monday, it was clear again throughout the course of this week -- the type-F restructuring argument has been abandoned, explicitly so. The joint consent resolution, as we've seen, the Utah law expert has stated it has no effect. In fact, Mr Gardiner, you will recall, stated it was not a transfer document; it was not a document that could actually transfer

14:21 an asset. You have seen that.

What about de facto merger? Remember the de facto common-law merger doctrine we saw on Monday: I spent a lot of time talking about how they're all successor liability cases, rather than actually cases that merge two companies. That appears now to have been abandoned as well. We heard nothing about it in Claimants' opening statement. When the two Utah law experts were being cross-examined yesterday, they weren't asked a single question about it, which meant I couldn't ask a single question about it on my re-direct. It appears as though that argument too has now fallen by the wayside.

So we are literally on theory number 5. And theory number 5 appears to still be that the asset somehow made its way to EuroGas II indirectly because of a transaction that was made with McCallan. You will recall I discussed this on Monday. Just by way of a very brief refresher, the allegation -- made only in the Reply for the first time -- is that EuroGas I transferred the shares in GmbH to a UK entity called McCallan in 2007. We know the date of that transaction. And then at some unspecified time in the future, EuroGas II acquires the McCallan shares, and therefore indirectly the EuroGas shares, and therefore indirectly

14:23 the Rozmin shares, and that's now the investment.

I said repeatedly on Monday that even though Claimants introduced five new documents into the record just last week purporting to show when all this occurred and that it had occurred, if you look at those documents carefully, they don't tell you. They are option agreements. They are documents that purport to show what occurred later with EuroGas AG, a Swiss entity, in 2012. They do not tell you when EuroGas II acquired the shares in McCallan, and therefore EuroGas GmbH. And that's the investment.

So I was expecting, during the opening statement, to hear the date on which the investment was made, which is crucially important because you have to compare that date against when the alleged bad acts in this case were occurring, to determine what you have jurisdiction to even consider. And instead what we were told -- and this was no mistake, because it was said twice. (Slide 50) This is counsel for EuroGas stating:

"... as of November 2011, EuroGas owned all of the investment ..."

And the next slide (51):

"... no later than November 2011."

Members of the Tribunal, a sovereign nation is being sued for hundreds of millions of dollars, and we have

14:24 not even been told when the investment was made and we have no evidence that it was even made. So as we sit here today, two years after this case started, now after a week of proceedings, after entering five brand new documents into the record last week, we still don't know when the investment was made. On any objective view, that is a failure to carry your burden of proof to establish the facts necessary for the Tribunal's jurisdiction.

Unless there are any questions from the Tribunal, I will close my remarks on jurisdiction with that point. Again, we rely on our papers and the comments we made on Monday with respect to the jurisdictional objection that EuroGas II was properly denied the benefits of the treaty, and specifically the arbitration right, and that right was denied prospectively, not retroactively, as well as retroactive denial of the actual substantive provisions of the treaty.

Thank you, Mr Chairman.

THE PRESIDENT: Thank you. The Tribunal may have questions, but that will come afterwards, after the end of your oral arguments.

When do we make the break?

DR GHARAVI: I leave it up to you.

THE PRESIDENT: You can start now, if you want, and maybe

14:25 break in the middle?

DR GHARAVI: Whenever you want me to break, I will find a moment to break.

THE PRESIDENT: Let's have a five-minute break first.

(2.26 pm)

(A short break)

(2.35 pm)

MR FOY: Excuse me, Mr Chairman, members of the Tribunal. Just as a preliminary matter, we have a second member of La Française who would like to attend, and who has signed the undertaking. I believe Respondent doesn't have any objections, and we just wanted to ask if you did.

THE PRESIDENT: I didn't hear the beginning of your sentence.

MR FOY: We have a second member of La Française, the funder, who would like to attend the meeting this afternoon. She has signed an undertaking. Her name is Paulina Touroude. I believe we have Respondent's consent, and that's --

THE PRESIDENT: A second member of ...?

MR FOY: La Française.

MR ANWAY: The third-party funder has a second representative here. And I confirm that Respondent has no objection.

14:36 THE PRESIDENT: We don't have an objection.

MR FOY: Thank you.

DR GHARAVI: For purposes of the closing statement, I will be referring to a binder, which I will call the third binder amongst the hearing bundle of Claimants, and I will be relying on this third bundle plus the two bundles for the opening statements that I used. The numbering of the third binder follows the binder 2.

THE PRESIDENT: We start with which one? Just to have it near us.

DR GHARAVI: It's a good question. Would you prefer that I start with the merits or jurisdiction? Okay, I will start with jurisdiction. Then if you could keep the first two bundles. (Pause) Okay, I will start.

(2.38 pm)

Closing statement on jurisdiction on behalf of Claimants

DR GHARAVI: President Mayer, Professor Gaillard, Professor Stern, Belmont will start with its closing statement. It will address jurisdictions that are specific to Belmont, before addressing the merits. Then I will give the floor, if you don't mind, to EuroGas for it to address its specific jurisdictional objections.

Before I start with jurisdiction, I'd like to make a few -- namely three -- preliminary comments.

The first comment are the allegations of procedural

14:38 impropriety and other impropriety made by Respondent during its opening statement and again at closing. Here we go, we hear again, "We are a sovereign state, victim of wrongdoers". Suggestion is made that there are lies that are conveyed on this side of the table and documents, information, hidden.

As far as Belmont is concerned, we wanted to reiterate that we are a good-standing, publicly listed company in Canada and in Germany. We make public statements, and I believe Respondent is heavily relying on public statements that we've made, financial statements. So by essence it's odd to rely on documents to allege dissimulation, alleged documents that are public.

We have at the outset of the proceedings been given an order for production of documents and we have given all the documents that we have, and mainly those other documents are in favour of our position. Plus they have taken all of the documents of Rozmin, by way of the criminal proceedings, so they have all of our documents from the outset. So any suggestions of dissimulation are quite, I would say, laughable in these circumstances.

As to the witnesses, suggestion has been made that they could lie, they should be sequestrated. We offered

14:40 Mr Agyagos: he came, he was direct in his answers. He answered all the questions; he didn't go around to buy time or answer other questions. Mr Rauball, we offered that he come immediately after. When a break was accepted, we said: at least put him under oath, we proposed. And when he took the stand, he responded to our questions.

Listening to Respondent, I thought they would implode or explode on cross-examination. Nothing came out of their mouth that was inconsistent or suggested dissimulation. Only Mr Rauball accepted that he was a wishful thinker in portraying that he could pay the purchase price until the end and obtain the transfer of the shares. Otherwise strictly nothing came out in favour of Respondent, and the only useful information which is entertaining is that the two shared their ex-wives in common; apart from that, nothing.

Regarding Respondent, if I could make a general preliminary remark. Their factual witnesses: wow. Wow. Useful, entertaining. We thank Respondent. And imagine that these are the two that they thought would support their case. I had no choice but to put Mr Agyagos; I cannot pick and choose over Mr Rozloznik or EuroGas or Belmont. They had a choice, and they decided to bring Mr Corej and the other gentleman from the MMO. Imagine

14:42 what are the others.

I mean, Mr Corej reminds me -- I don't know if we have a generation gap -- but the personage in Starsky & Hutch. You know, he's a one and only character: never answers a question, he speaks with his heart to say, "I wanted to kick out the others prior to the revocation because my heart talked, I like it". Then what about the extraction? "I'm a director, I'm a technician, I'm a sportsman". Did you meet with him? "Oh, I met with him at the restaurant in his personal capacity, his professional capacity, twice, three times". Did you write? "No, I didn't write to the government. Oh, this is a document? Oh". Why are you badmouthing? "We didn't badmouth, look".

"I sold the shares", he says, "back then for a nominal value". Here's the receipt. How could you sell for nominal value? Here is the receipt. "Oh, I didn't receive the money. I didn't receive it in cash", first he said. Then I pushed him. "I didn't receive. But my signature -- oh, it may be my signature". Did you try to find out? "No, I didn't. I had this document sitting around, the pleadings".

Anyway, you were served lies, members of the Tribunal, lies and only lies.

The other gentleman, Mr Kúkelcík was candid, but

14:44 pathological and damning to its case. Because what did he say basically? He said, "Rozmin they didn't need to be warned, they didn't need to be explained what the law was. It's their job, we're not there for them. Tough luck". That's what he says. And due process, to review, to look at others, regularities, due process? "Everything was regular, move on. There is this law, we applied the law and there could be nothing wrong".

What about the documents that you were supposed to disclose, that we threw in, that show that Mr Cellar from the District Mining Office was in contract with Mondo, prior to the -- "Oh, it's not good, it's prohibited, it's irregular". But did you try to find out? "No". How come? They're in the record, we submitted it. "Oh, because nobody brought it to my attention". But he read the Reply; he submitted his second rebuttal addressing the peripheral question of stamping an administrative -- some act of his email, his administration, that he would qualify as irregular. That is on the record. He didn't see it, he didn't hear about it, of course he doesn't want to talk about it. As to the other email that you excluded but it was referred to us, of course no mention was made to it, he didn’t request it so it doesn’t exist, we don’t talk about it, I don’t want to hear about it. Again pure lies on material issues in relation to the merits.

The last preliminary remark -- and this is not to object, contrary or reserve our rights; we have no reservation of rights. As far as Belmont is concerned, we are blessed with a nice Tribunal. We are grateful to

14:45 this Tribunal, the way they have conducted these proceedings.

We apologise we could not hold the previous hearing, but it was due to Respondent. And as you can see, there is a real conflict of interest as far as jurisdiction is concerned, that required two different counsels for representation of the two different Claimants.

But we are upset, Mr President. We are upset with you. We are grateful, with no reservations, but we are upset. Why are we upset? For two reasons.

The first reason is the provisional measures. And I do not want to reopen that, but I think there are consequences to that that you still can rectify. A sovereign state can do what it wishes in terms of criminal proceedings, conducting its affairs; but not to touch upon the integrity of the process.

Here, in terms of timing, once we got out of the hamster wheel, they entertained, for months and months, the prospect of payment of a compensation to us. They knew the date we were filing, and they used this time to trigger criminal proceedings to take all the documents of the file. So in terms of timing, it was directly related to these proceedings.

In terms of substance, they founded it, they based it on the fact that we were initiating an arbitration

14:47 for a high amount, and it could only be a fraud. And again, there was no allegation to the EuroGas story.

They came and got all of our documents, including privileged documents. We wrote to the EU Commission, because when there is a sovereign EU state that is defending, it has to inform the EU the way it is defending. And we had constituted a Tribunal, so they had to restitute and stop their nonsense. But the damage was done. Basically your order said: it's done, it's done. Counsel undertook not to read it, to remove it.

But that's not fair. It's not fair for two reasons itself: because it created an unbalance. They have all of our documents; all of our documents, including privileged documents. We don't have their documents.

Secondly, it's a green light for tomorrow for all states to say, "Okay, they are starting an arbitration, let's raid them, let's get them. We'll get a tribunal and we'll restitute them". That's the practical implication of your order.

The second thing we were upset about that is related is our document production order. We have to beg for documents. You ordered them; they don't provide them. We show that they are lying. We undergo the burden of finding them, we disclose them. As a practitioner you

14:48 know very well that we need the consent, because it's sensitive, some of them, especially if there is communication with an administration during the tender process, with the body giving insider information to the tender participant. We got it on the eve because people want money for it, they see that they cannot get it, or they are afraid and they say, "Okay, it's the last opportunity to help", and they finally give it, upon pressure.

And what excuse did we receive for not producing them? One line in a document. Without any explanation, they provided substantiation for the affidavit. This was one line. Then they said, "It's classified. It's classified. We close, it's finished". How is it classified? Who did you ask? When did you ask? What search was carried out? And at the hearing we found out that nobody had even brought it to the attention of Mr Kúkelcík. He didn't know, and he didn't make any enquiries.

And, I would add, what classification of documents? He didn't say: after certain years, my documents are classified. How can an email be classified? He said they are printed, they are there. He didn't say even the computers are destroyed.

So for all these reasons, we think that it is

14:50 completely inappropriate, but at the very least the Tribunal should draw serious inferences specific to this case, so as not to allow other sovereign states -- including the Slovak Republic -- to get away with it and start violating the integrity of the process and the Tribunal's order in this way.

Now I get to jurisdiction as far as Belmont is concerned. Your direction, Mr President, was very blunt. You said: address on both sides the other side's opening statements, including some of the new arguments that the other side may have put forward. We will certainly obey your instructions. As far as the merits are concerned, we will address Slovak law, because I think that was your specific request.

I am disappointed by Respondent's presentation because it didn't address our defences to the jurisdictional objections. I am also upset because I spent a lot of time reading Occidental, going back to reading Bederman's article on the Iran-US Claims Tribunal, looking at all the BITs; nothing.

The primary jurisdictional defence to the objection we had are the clear and unambiguous terms of the BIT. I did not hear a single, single response to our presentation. Our position was clear from the outset: mere title -- which undisputedly we have to the

14:51 shares -- entitles us to jurisdiction. And I went through great detail in walking you through the text of the treaty to say: even more so in this case, given the terms of the treaty, that use "hold or invested directly or indirectly", and with "investors" not being defined. I walked you through the treaties of Respondent, both signed, where, when they wanted to have the ownership plus control, or have the investor carry out certain investment, they did so expressly. In this case, they did not.

What Respondent has come up with is Occidental. It's the only case it has. I distinguished it by saying the terms of that treaty were complete different. It doesn't use the word "hold", and then it relies on a fact-specific case, that I went through the trouble of reading, that has strictly nothing to do with our case, where beneficial ownership was clearly transferred from the outset. And nothing. Zero, zero, zero rebuttal.

I anticipate perhaps the defences you would raise that may indirectly be transposed in some way to this defence that is our primary defence to the jurisdictional objections; mainly, for example, that the ICSID Convention contains specific stand-alone jurisdictional grounds of its own. The Malaysian annulment case, presided over by Judge Schwebel, said:

14:53 no, the BIT contains stand-alone jurisdictional clauses that allow an investor to exercise ICSID jurisdiction.

I'll go a step further with you, and do the job that Respondent could have started to do, although I don't think it is persuasive. But I do so out of an abundance of caution.

Assume you would look at the ICSID Convention and the BIT, and not the BIT as a stand-alone, because if you look at it, especially with the zero defence we got to our primary case that was put straightforward, you can only conclude in favour of jurisdiction, based on Respondent's factual primary case that we only hold the shares. It is not even necessary to look at collateral.

Why? Because in this case you have evidence that is undisputed on the record that we exercised some control. On Respondent's best case scenario at the beginning there is no dispute that we were beneficial and legal owners. Then when Respondent claims -- and we will get to how it claims -- that we somehow transfer -- notwithstanding the clear terms of the SPA -- beneficial title, we still, the record shows, exercised control. We kept the title, and also invested in 2001, 2002, 2003, 2004. So, heads or tails, we have jurisdictional objections and they stand unrebutted.

Now, for the sake of completion, I will address the

14:55 second alternative defence: that assuming the BIT and the facts were not as such, did we transfer beneficial ownership? The answer is clearly no.

Why? We have not transferred beneficial ownership -- if you go to the SPA: it should be tab 57, R-0107 -- simply because of the clear terms of the contract. What are the clear terms of the contract? We went through them again yesterday.

It has an Article 6. It is entitled "Closing". It contains conditions. It provides the transfer of shares to a trust. The shares were never transferred to a trust. And it clearly says:

"... the ownership of the Shares shall not pass to the Purchaser ..."

These are two professionals.

"... the ownership of the Shares shall not pass to the Purchaser ..."

They don't say half of the ownership of the shares, or one third of it, or as the P of the ownership passes, the W remains. It says:

" (a) the ownership ... shall not pass to the Purchaser; and

"(b) no instructions to proceed with the share transfer ... will be given ... unless and until the Vendor has received 125% ... up to $3,000,000 ..."

14:57 It is undisputed that their conditions have not been met. We have never met the 3 million; forget about the 100. It is undisputed that the conditions have not been met. It is indisputable that it has not been placed in trust. Nobody has ever claimed closure. Never someone has asked for transfer of the shares.

So what do we have? What do we have? Based on this, it is enough to dismiss the objections of Respondent. But let's go and look at what they have.

They rely on something that we may have dissimulated, they claim. But this cannot be possible because they rely on the financial statements that are public. The financial statements cannot be read alone as if, like Mr Kúkelcík, the others, they didn't exist, I don't see that, I look at that, I look at the other paragraph, I don't look at this.

First, the financial statement is what it is: it's a financial statement. It has to be read in conjunction with the SPA, the terms of which are clear for a public company. And it says: we keep the shares, guaranteed until realisation. Everywhere, in every document, there is clear reference to the SPA, the terms of which are clear, and clearly it says that outstanding amounts are to be received.

What else can we add? Apart from the fact that it

14:59 is clearly a conditional sale; in France we say réserve de propriété. I don't know how one can go around it.

I will engage with Mr Anderson again to wrap up what we discussed yesterday. First, with all due respect, Mr Anderson is extremely charming, he is lovely, he must be one of the best corporate lawyers; band 4 or band 1, it does not matter. But if he is an expert on contractual litigation, interpretation of the contract, or reading what the contract is, then I'm a sexy blond from Sweden.

The guy never went before a judge, never wrote an article on the subject. I mean, it's extraordinary. It is extraordinary. And Respondent said, "Ooh" -- they provided a ban for a corporate lawyer that never litigated, never wrote an article on this, and said, "Ooh, it was not rebutted because they could not find anybody in Canada that would say the contrary". I mean, that thing is so laughable that it is not even worth to spend some time. But it is entertaining, that's why I want to go through it.

With the gentleman we are in agreement that the clear terms of the contract must prevail. This we are in agreement. So instead of stopping there and saying, "Okay, it's a conditional sale", he says, "No, no, no, no, no, it would lead to an absurd result". And for

15:01 absurd, he cites cases that have nothing to do with the absurd criteria to enable you to depart from the terms of the contract. But let that be.

Why does he say it's absurd? He says, "Oh, because then Belmont can abuse of that, or the triggering amount may not be reached; then what do you do?" I tell him, "You look at the terms of the contract. Look, turn the page, Article 4: you issue the new shares. It has been expressly contemplated. How straightforward could that be?" He said, "But you need to rewrite it". I said, "You don't need to rewrite it; you just read the page, it's written".

Then he goes and abandons that a little bit: he says it's sloppy. I said, "What do you mean it's sloppy? For us it's good: we retain some money and we retain the shares". "Oh, but for the purchaser". I said, "Well, the purchaser, the case law you cited says precisely there are principles of common law, so you don't need to undo the clear terms of the contract, unjust enrichment". And then he goes on to say even unjust enrichment is not appropriate to restore the balance between the negotiation power between the parties.

But he nevertheless goes on -- and that I will go, engage with you again -- he goes on to say, "Let's move out of this". How? I said: principles of

15:02 interpretation. Then here, extraordinary, "Burden of proof? Oh, I didn't address that". Standing? Well, if both parties to the contract agree on the terms of interpretation, or if you take away EuroGas it's EuroGas II, the signatories of the agreements are there, they confirm that they have the same understanding, they are both professionals. "Did you look at whether or not they were professionals?" He didn't look at that. He said, "No, burden of proof, standard, it's not my thing really". Okay. Professional? No, I didn't ask.

Then what did you do then? How do you arrive with this conclusion? And then he moves on to say, "What am I then?" He said, "You hold a collateral". I said, "A collateral? A security under Canadian law? I mean, I spoke to people, I read: it's a complex mechanism to create a security. How do you suggest, under which provision of law?" He said, "I don't know. I don't know, I am not an expert. You don't know either", he told me. I'm fine the way I am; I have legal title. It's your theory: you have to prove to me these steps to get here.

And then how do I become security holder under Canadian [law]? He said, "Well, I spoke to my partner, who told me that there could be some basis to claim security right, and that they are serving upon you".

15:04 Then I say, "Okay, what does it become? Nobody is claiming it was brought before the bankruptcy". It leaves it off as that.

Then what about the other correspondence? He said, "No, you don't look at them. You don't look at them". But I said, "When you look there, you see it is clear". He said, "No, but there are financial statements". "Well, if you want to go further then look at everything. Did you look at the Belmont declaration?" "No, some of them I didn't look".

In the second report -- I mean, it is not serious -- the term is a "conditional sale"; nobody has claimed otherwise. I asked repeatedly both of Mr Rauball and Mr Agyagos. Mr [Agyagos] is hearing Day 2 at page 95:

"When you issued those did anyone at the stock venture exchange -- EuroGas I, EuroGas II, Mr Rauball anyone in the world -- challenge the fact that this was inconsistent with your financial statements?"

I am talking about the press release in later in 2000, when he claimed full exercise of this right. He said, "No". I said, "Are you aware of anyone except the Slovak Republic?" He said, "No". I asked the same question to Mr Rauball: "No".

Then what do they have? They have bits and pieces of the criminal proceedings. I asked Mr Rauball, "What

15:05 was that declaration you made?" He said, "Wishful thinking". Wishful thinking, yes. He always thinks he is going to complete something. Then I said, "What about the $100 million you suggest in your wording you paid?" He said, "No, I should not have put it that way".

And the quotes from Mr Agyagos -- if you take one document, I would like to read your transcript. If you go within a corruption proceedings before a prosecutor, whether you would engage in detail. He said, "Oh, I sold it sometime", referring to the SPA, "I don't have the right damages". I mean, how do you measure that with the unbalance of the clear terms of the contract, the truckload of correspondence that shows that all this was subject to completion, truckload of correspondence showing that there was no transfer, and all the acrobatic steps offered by my dear colleague Mr Anderson to arrive where he wants you to get.

Now I will go a step further, address a very Utah provision in Utah law to say: in any event, this sale purchase agreement, when we entered it, we had no clue that it was a dissolved company. The Venture Exchange final approval: no mention, no disclosure, no information was provided that a dissolved company would be entering this. And had my client known that

15:07 EuroGas I was in this situation, it would never have contracted with somebody at that position; that is clear.

But if we pass that stage, we go to whether EuroGas could have closed the deal. And I believe the best case scenario provided by Mr Gardiner on this issue is that winding-up is possible after dissolution. There is a common agreement between the parties that the company was dissolved at the time of the closure, but the contract was entered before that. And suggestion has been put, he has been fed basically on re-direct with the suggestion that the contract was entered into before and that he should propose something else, and he did the best he could by relying on the Utah provision that you find at tab 73, which is R-19.

He says: well, he can dispose; he says it is a winding-up activity. Well, there is no distinction under that clause 16-10a-1405, "Effect of dissolution", whether or not you entered before the contract or afterwards really. It says:

"A dissolved corporation continues its corporate existence may not carry on any business ..."

May not carry on any business. Then it says:

"... except that appropriate to wind up and liquidate its business and affairs ..."

15:09 And it gives a non-exhaustive list of activities.

Now we're talking about Mr Anderson's theory, let's say, of absurd result. How compatible is it to make the suggestion that to try to come up with money -- because at that time, and still today, the money had not been paid -- that finding money to pay, to close a transaction that would give you a 57% majority shareholding of a company in Slovakia, could substitute winding-up? I think the whole argument, the suggestion defies common sense.

If you want to pass that suggestion, let's look at the text. It says:

"(a) collecting its assets ..."

Is that a collection of assets? The transaction has not closed. I could understand if the full payment price has been paid, and you want and can get your asset. But if, as of today, 1.5 million -- if that agreement was valid, which it's not -- remained, the company was dissolving; how could that be collection of assets?

Could it be "disposing of its properties"? No, "disposing" is selling. "Discharging or making provision for discharging its liabilities"? Who is asking them to discharge their liabilities? Who can benefit? Who can claim that? "Distributing its

15:10 remaining property"? No. "Doing every other act necessary to wind up and liquidate"? No.

I mean, on a plain reading of that law -- and I don't even need to go to the new case. That is the kiss of death, if applied, as far as the jurisdictional objections concerned regarding Belmont. On its face, the fact that the company went into dissolution puts a fatal blow to Respondent's jurisdictional objection.

Finally, assume the reading of Mr Gardiner is correct. Where does he take it? Nobody claimed performance on either side. Who, first, can claim performance? It's us. We should be the aggrieved party. Is it them? Nobody was claiming. The whole asset was even -- the transaction was openly discussed during the Bankruptcy Court, and the gentleman didn't lie. He said that money wasn't outstanding; it was outstanding at the time. Nobody claim it was paid; nobody claims that money could be found even to pay.

That leaves me with the fourth alternative defence to the jurisdictional objections: that assuming Mr Anderson -- everything I said about the treaty language, about the interpretation -- if we go there -- of the contract, dissolution of the company, if you put that in the trash, [there] remains Mr Anderson's suggestion that we hold some sort of guarantee only --

15:12 1 although nobody is claiming it, nobody is claiming
2 beneficial ownership. There is not even split suggested
3 anywhere between legal and beneficial ownership. Well,
4 we exercised it. We wrote to the world. We gave the
5 notice. It's been disclosed to everybody. We de facto
6 exercised: we own it.
7 There is no provision allowing us even to restitute
8 the money. And you put the question or I put the
9 question to Mr Rauball, and he said, "Well, we
10 considered perhaps restitution of the amount, but that
11 would entertain maybe a counterclaim". Yes, we will
12 have a counterclaim, because we had issues with the
13 successive delays that caused damages to my client.
14 And fifth alternative claim: security. Assume that
15 we only have security, we can only have security, we are
16 bound for life, although nobody in the world except the
17 Slovak Republic is claiming this. We only have
18 security, we cannot obtain it and we cannot exercise
19 a close on the security; with the term loose being
20 "security". All this, they say the burden of proof is
21 on us. It is funny.
22 Okay, then still we fall under the BIT. Why?
23 Because it provides what it provides. It says: hold
24 security, pledge, expressly identified. Moreover, we
25 performed, as I mentioned, control, by going -- there is

15:13 evidence unrebutted that we were in October 2004 at the District Mining Office with Mr Baffi, Mr Rozloznik, Mr Agyagos. There is unrebutted evidence that 2002, 2003, 2004, we paid. There are amendments to the SPA saying: okay, take that into consideration if you want to close, that we're not going to sell you even if you're going to perform.

Nobody, by the way, talks about that. Nobody talks about that alternative theory of Mr Anderson. What do you do about that? Clearly stated: for every 10,000, 1% comes back, up to 57%, with the option for us to buy the remaining 43%. We paid 400. Why is nobody discussing that? Is it up to us also to suggest the tenth alternative theories in defence?

Collateral. Now, the only objections we had is based on a case that we argued for the Republic of Albania against Burimi, whose case was dismissed on the ground that a mere share pledge agreement was not enough. But that case -- again, rebuttals are great, spending time is good to engage, but one has to read the case, which we bothered to read, and that case has strictly nothing to do.

Here we are holding, at the very least, legal title, okay? At the very least we are holding legal title, which is being construed by Respondent as a collateral.

15:15 In the other Burimi case, they came, two parties, the one that clearly didn't have jurisdiction otherwise; he had no direct involvement in the project. His name never appeared anywhere in the project. Suddenly popped up, like a Saba Fakes type, a private agreement with some notary stamps, saying, "Look, it's me. I have a loan, I have a pledge. It's me, the investor. I have the treaty, it's me".

I say it has nothing to do with this. Again, we were initial -- at the very least, according to Respondent -- the initial full beneficial and legal holders of the claims. We held title. The collateral is something Respondent is relying on. Whereas in the other one it was the best case scenario of Claimant, here is the best case scenario of Respondent. We provided money, we showed control.

And finally, the most damning is: why doesn't somebody look at the terms of the agreement, for Christ's sake? We're here on a treaty BIT claim. It says "hold". The other one says the term "investment" means whatever the legal form chosen by the [parties], and referenced, "every asset invested". BIT term between the countries: "every asset invested by investors of one country in the territory of the other". It doesn't say "direct/indirect", let alone "holding".

15:17 Then it goes on to say:

"The term 'investor' means a ... legal entity of a Contracting Party which has made, granted or assumed to have obtained any necessary authorization, irrevocable obligation to make investments ..."

So again that has strictly nothing to do with our case. And I'm happy to inform you that I'm done with Belmont, and I am ready to proceed on the merits whenever. (Pause)

THE PRESIDENT: If the Claimants do not mind, we could hear Ms Burton now.

MS BURTON: Alright, you will hear me now.

First, I do want to take the opportunity to say thank you for allowing me to appear in this Tribunal. I consider it an honour to have been able to be here this week and to help present my client's positions to you.

When I spoke with you early on Monday with regard to the opening arguments, with regard to the attempts by the Slovak Republic to impose the terms and provisions of the Bankruptcy Code as an overlay on to the bilateral treaty, I cautioned the Tribunal: do not try to fit a square peg into a round hole, because the statute and the treaty are completely different. They serve different purposes, they have different policies that

15:19 underlie them. And I think that that has come out to a large extent in the evidence that's been produced, and you've seen some of the difficulties that you can face when you try to apply the provisions of the Bankruptcy Code on to the terms of the treaty.

I believe that your decision in this particular matter is guided not by the Bankruptcy Code but by the policies and purposes of the treaty, which are spelt out in the treaty at Exhibit C-1. The treaty's goal is to foster investment between countries. And I believe that your purpose is to assist in that goal, guided by those provisions and by those purposes and policies.

The Bankruptcy Code has a completely different goal. It doesn't foster international investment; its goal is to help resolve commercial disputes that involve companies that are in economic distress, and to find an equitable way to treat the creditors of that enterprise. It's a completely different policy than the one that you serve when you make your decisions on these international disputes.

I believe that giving due respect to the plain language of the Bankruptcy Code and the plain language of the bilateral treaty, as well as the plain language of the Utah Corporations Act, you can resolve whatever jurisdictional issue you believe may face you, and the

15:21 standing issues that the bankruptcy case presents to you.

I had mentioned in my opening statement that the concept of an "investment" under the bilateral treaty is different from the concept of "property of the estate" under the Bankruptcy Code, and the evidence that you have been given this week bears that out. You understand that property and investment under the bilateral treaty is quite broad: it includes property that is owned or controlled, directly or indirectly, by a national or company of one of the parties. And that word "indirectly" and the word "control" are critical, because those provide critical differences between what is an investment under the treaty, and what is property of the bankruptcy estate under the Bankruptcy Code.

As is stated in the expert reports of the bankruptcy experts in front of you -- and since I believe a lot of what they say with regard to my argument is the same, I am going to rely on Annette Jarvis's opinion. I think the ability to rely on the opposing party's opinion and still convince the decision-maker is pretty persuasive.

Property of the estate includes all legal and equitable interests in property owned by the debtor as of the date the case is commenced. Ms Jarvis agreed with that. She says it in her report, and she testified

15:22 to that.

In this particular case, the 1985 company's bankruptcy case was commenced on May 18th 2004. Consequently its property, the property of that estate, is determined by looking at what are the legal and equitable interests that it owned as of that date.

Ms Jarvis agreed with me that the determination of what is property of the estate is really a two-step process, because the Bankruptcy Code does not determine property rights; non-bankruptcy law determines property rights. You may remember our discussion that real estate rights are determined by state law, corporate property rights are determined by corporate law, and intellectual property rights are determined by intellectual property law. And rights under a bilateral treaty are governed by international law.

She described a two-step process, the first step being to determine, under the applicable non-bankruptcy law, what is the nature of the ownership interest in the asset; and then two, take that determination and ascertain if that interest existed as of the date the case was commenced.

Property of the estate, I submit -- and I believe that the testimony of Ms Jarvis supports that -- does not include property which is held indirectly by the

15:24 debtor, whereas an investment under the bilateral treaty does include an investment that is indirectly owned or controlled by the debtor.

You probably recall the discussion I had with Ms Jarvis about parent and subsidiary corporations, and that if they file bankruptcy, they list their assets separately on forms that are promulgated specifically for that purpose. The parent corporation would list on its schedules of assets in its bankruptcy its assets, including its ownership interest, its stock in the subsidiary.

The subsidiary corporation would list on its asset schedules its assets: its equipment, its cash, its inventory. But the subsidiary's assets do not appear on the assets schedules that are filed by the parent. That's because the Bankruptcy Code recognises the separation on ownership between a parent and a subsidiary, whereas the bilateral treaty recognises the right of an indirect investment to grant standing and jurisdiction under the bilateral treaty.

Further, I think this is shown by Ms Jarvis's agreement and our discussion, where we discussed the termination of Rozmin's mining rights after it was placed into bankruptcy, and that the claims that that termination gave Rozmin the right to pursue against the

15:26 Slovak Republic in the Slovak courts were not property of the 1985 company's bankruptcy estate. Nor did Rozmin's prosecution of those claims violate the automatic stay in the 1985 company's bankruptcy estate.

To give a little more clarification, if a United States corporation owned several subsidiaries -- one subsidiary holds mining rights and permits to operate a talc mine in the Slovak Republic, a second subsidiary is an equipment leasing company which leases equipment to that first subsidiary for use in its mining operations, and the third subsidiary develops mining technologies which it licences to the subsidiary that's operating the talc mine -- the US parent, under the bilateral treaty, would qualify as an investor, because the bilateral treaty recognises indirect ownership as a basis for standing to prosecute a claim. However, if the US corporation filed a bankruptcy petition, its property of its bankruptcy estate would not include the mining rights of the first subsidiary, the equipment of its second subsidiary, or the intellectual property of the third.

This is why I told you in my opening statement that the concept of an "investment" under the bilateral treaty is broader than the concept of "property of the estate" under the Bankruptcy Code, even though, as

15:28 Ms Jarvis testified -- and I agreed with her -- the concept of property of a bankruptcy estate is very broad, and it's intended to be broad. But because the bilateral treaty goes further and recognises rights of an investor whose investment is merely indirect, or who controls an investment without owning it, [it] is even broader.

An additional clarification for you I think can come from this. If you have two United States corporations -- the first one provides equipment to a company in the Slovak Republic for use in mining talc, and a second one, which is unaffiliated with the first, provides intellectual property to that same Slovak Republic talc mining company -- both of those US corporations have investments that are recognised by the treaty. But they could not file a joint bankruptcy case. They would have to be debtors in separate bankruptcy cases.

The next concept has to do with the termination of Rozmin's mining rights after the 1985 company was placed into bankruptcy. The concept I want to discuss with you at this point is that property of the estate does not include property acquired by the debtor after the case is filed. I discussed this with Ms Jarvis, and you will see that discussion at the Day 4 transcript at page 35.

15:29 We discussed an example in an individual person's bankruptcy case where an individual files bankruptcy on May 18th 2004, and on June 1st 2004 receives income from his or her employment. That income would not be property of that individual's bankruptcy estate because it is acquired after the filing.

I think when you distill the discussion down that Ms Jarvis and I had, it is that property that's acquired by a debtor after the filing of the bankruptcy case will be property of the estate in certain circumstances. If it's proceeds of property, for example if the trustee sells property of the estate, the proceeds of that will be an asset. In addition, let's assume a claim arises: if that claim is related to property that the bankruptcy debtor owned on the date that it filed bankruptcy, that will also be property of the bankruptcy estate.

Ms Jarvis testified to a particular case for that proposition, and it's known as the Brumfiel case. It's a case of an individual person, not a corporation. But in that particular instance, it was clear when Ms Brumfiel filed bankruptcy that she owned a home, the home was subject to a mortgage, the mortgage company was foreclosing. All of that was in existence when she filed, and she knew of facts that would give rise to a counterclaim that she wanted to assert. That

15:31 counterclaim, even though it didn't come into ripeness for her to be able to prosecute it, was still an asset of her bankruptcy estate.

But I want to compare that to the Slovak Republic's termination of the mining rights post-petition. The question is whether or not that termination was related to or derivative of the interest in GmbH, and whether or not there was sufficient knowledge of that claim for that to be considered property of a bankruptcy estate that was created a year earlier. For this I think you have to look to the testimony of Dr Rozloznik, and specifically his understanding of the meaning of the word "dobývanie" in the 2002 Mining Act.

It was instructive to me to see that discussion among counsel, among Dr Rozloznik, and even to the extent that the Tribunal required Mr Pekar to use the Slovak word in the context of his English language questions because of the disagreement or the dispute over exactly what that word means. And it is, by the way, a lovely word. The sound of it on the English ear is quite good.

Dr Rozloznik testified that he clearly understood the word in the Mining Act to require mining activities to commence within three years, and not extraction. That's found in the Day 2 transcript, page 192.

15:33 Dr Rozloznik was grilled on cross-examination by the Respondent for over four hours. No witness testified longer in this proceeding than 81-year-old Dr Ondrej Rozloznik. His testimony was credible. I believe you can look at him and you will see what we call in the United States a man who is the salt of the earth. He is a wonderful human being, and he was credible.

The bankruptcy case was closed in March 2007 and this Mining Act was amended after that point in time. Rozmin in the meantime was prosecuting its claims arising from termination of the mining rights, which Ms Jarvis agrees did not violate the automatic stay and agrees those claims were not property of the bankruptcy estate. The dispute, for purposes of this arbitration, did not crystallise until at least 2012, five years after the bankruptcy case was closed and even longer from the date that the bankruptcy estate was created.

I think with regard to assessing whether you have jurisdiction in those circumstances, where the crystallisation of the dispute was so remote to the creation of the bankruptcy estate, weighs in favour of your concluding that this dispute was not property of the bankruptcy estate, and that the issue -- which really in the bankruptcy context is, "Was the 1985 company's interest in EuroGas GmbH abandoned or not

15:35 abandoned when the bankruptcy case was closed, or will it be abandoned here shortly by the Bankruptcy Court?" -- is really one of standing. Does the 1985 company or its successor, the 2005 company, have standing to assert those claims under the bilateral treaty? Or are they precluded from doing so for failure to schedule the stock in GmbH in the bankruptcy case?

Ms Jarvis's opinion is that the 1985 company's failure to list this stock interest in GmbH resulted in it remaining in the bankruptcy estate when it was closed. The Snell & Wilmer report comes to a contrary conclusion. David Leta, Snell & Wilmer and Annette Jarvis are outstanding bankruptcy practitioners who both command my highest respect. The Snell & Wilmer report contends that the former trustee actually knew of the stock ownership and intended to abandon it. Ms Jarvis contends that his knowledge -- if he had it -- of that asset is irrelevant.

I think it's clear that the trustee of the case had to have knowledge of the existence of the GmbH stock when you look at Exhibit C-0329. That's the tax return which the bankruptcy trustee prepared on behalf of the 1985 company. The return is a consolidated return, meaning it is prepared for the 1985 company and all of its subsidiaries, and that's normal. Exhibit C-0329 is

15:37 125 pages long. On pages 90 through 104 you will see the informational return the trustee prepared for EuroGas GmbH as part of the consolidated return. I submit the bankruptcy trustee would not have included an informational return for GmbH if he had no knowledge of it.

That being said, the fact remains that you have two outstanding bankruptcy experts coming to different conclusions on whether or not that stock interest in GmbH was abandoned. The good news is that the bankruptcy judge is going to handle that issue for you. He has before him a request by the current trustee to abandon the stock in GmbH. And I will stop here.

I agree with Dr Gharavi that EuroGas, the 1985 company, did not acquire the interest in Belmont. But to the extent you come to a different conclusion, the trustee's abandonment will also be an abandonment of that stock too. She is not abandoning just the GmbH stock; she is abandoning every asset that would be property of the estate as it relates to the investment under the bilateral treaty.

The bankruptcy judge is conducting a hearing on September 26th. He will resolve this one way or the other.

I think it's important to note, as I mentioned to

15:39 you in my opening statement, that EuroGas did not want the bankruptcy case reopened. It believed that the interest in GmbH had been abandoned when the bankruptcy case was closed. The Slovak Republic appeared before the Bankruptcy Court. It was a stranger to the bankruptcy case, by its own admission. Mr Anway mentioned that they learned of the bankruptcy only from our Reply memorial. But they appeared, they filed pleadings joining in the motion to reopen. They wanted the Bankruptcy Court and the bankruptcy trustee to address this issue for you because, as Mr Alexander told the Bankruptcy Court, it would help you.

Well, I mentioned: be careful what you ask for, you may get it. The trustee has entered into an agreement with my client to abandon whatever residual interest remains in the investment treaty claim. The Slovak Republic has gone to extraordinary efforts to obstruct that. They purchased a claim. They have filed an objection. They have engaged in discovery. They have even engaged in conduct this week, while we have been here before you, by filing more pleadings designed to obstruct and delay the Bankruptcy Court's ability to entertain the trustee's motion to abandon.

But the long and the short of it is: the trustee will decide this issue and its decision will inform you.

15:41 The Slovak Republic will either win or lose on its obstruction efforts. But you should allow the bankruptcy process to proceed, and allow the decisions made there to inform your conclusions with regard to standing.

I'd like to address the Utah winding-up statute, which is Exhibit R-19, Section 1405 of the Utah Corporations Act. That statute provides that a dissolved Utah corporation continues its corporate existence, but may only engage in contracts which further its winding-down and liquidation.

We discussed this yesterday with Sam Gardiner, and particularly as it related to the new Utah court opinion of a few days ago which holds that all contracts a dissolved corporation enters into are void. His opinion -- which I think is the important thing for the Tribunal to rely on -- is that Utah courts will recognise the ability of dissolved corporations to engage in transactions which further their liquidation and winding-up, but that transactions by dissolved corporations which do not further their winding-up in liquidation will be considered void. That's from the Day 4 transcript at page 98.

Ms Jarvis agreed with Mr Gardiner. Her opinion was that a dissolved corporation would be able to engage in

15:42 transactions to further its liquidation and winding-up even following a bankruptcy case where the trustee does not administer some of that corporation's assets. That is found on the Day 4 transcript at pages 73, 75 and 100.

That makes sense. What they say makes sense. And this Tribunal should give credence to the enactments of the Utah legislature, which has stated that it will allow a dissolved Utah corporation to continue as a corporation and to engage in transactions which further its liquidation and which further its winding-up.

So what is the result of all of this? The 1985 company's interest in GmbH was either abandoned when the case was originally closed or it wasn't. And I believe it will be abandoned by the bankruptcy trustee; obviously that's been seen from the proceedings in the Bankruptcy Court. If the bankruptcy trustee's motion is granted, the legal effect of that abandonment will be that the bankruptcy estate's interest in EuroGas GmbH, title to that will revert to the 1985 company, effective as of May 18th 2004. That is as a matter of law.

Mr Anway suggested that even if the court approves that abandonment, that you should still consider whether you, as this Tribunal, in the exercise of your

15:44 authority, should nevertheless determine that you will not give effect to that retroactive nature of an abandonment under the Bankruptcy Code. My response to that is: the Bankruptcy Court is respecting your jurisdiction, and I believe you will show him the same reciprocity.

But going further, I point out again that your decision is to be guided by the purposes and policies behind the treaty: to encourage international investment, including investment by the United States in the Slovak Republic; and that not giving respect to the Bankruptcy Court's retroactive order on the abandonment would not meet the policies of the treaty. I know that that will be your decision, and I know that you will make a decision that is in accordance with your charge as arbitrators under the treaty.

With regard to the new Utah case, the abandonment is retroactive to May 18th 2004, and under bankruptcy law the interest in GmbH would be treated as if the bankruptcy had never been filed. Well, at the time the bankruptcy was filed, the debtor was a dissolved corporation, it was beyond its reinstatement period, and so you would need to look at, for jurisdictional purposes, what transactions it could engage in.

I submit that the transaction with McCallan would

15:46 not be one in furtherance of the 1985 company's winding-up, so you would disregard that transaction. Then the only transaction would be whether or not the 2008 transaction pursuant to the joint resolution is one in the nature of winding-up and liquidation.

When you take a look at the joint resolution that was entered by the parties, and compare that to the testimony of Mr Gardiner and the testimony of Wolfgang Rauball, if you take a look at the joint resolution, which is Exhibit C-057, you will see clear language that the parties intended that document to effect a merger. They intended that document to be one under which the 1985 company transferred its assets to the 2005 company, and the 2005 company assumed its liabilities. Mr Rauball testified to that effect on Day 2, at page 91 of his testimony.

Mr Gardiner's opinion is that a dissolved corporation cannot merge. But in their opinion, at paragraph 69 of the rebuttal report, Mr Gardiner and Ms Jarvis state that:

"A transaction may have the same economic effect as a statutory merger even though it is cast in the form of a nonstatutory [merger]."

So in other words, even though there's no statutory merger, or they can't merge under the statute,

15:48 a dissolved corporation can still enter into a transaction which has the same economic effect as a merger. That is their opinion in their report.

I urge you that it doesn't matter whether you consider the joint resolution to be a merger, whether you consider the entities to have engaged in a de facto merger or whether you consider it to be a transaction in furtherance of liquidation and winding-up under Section 1405 of the Utah Corporations Act. The fact remains that the 2005 company took over the assets of the 1985 company and assumed its liabilities, and Mr Gardiner agrees that they had every right to do so. I believe that solves the standing issue.

I want to talk about Wolfgang Rauball. Many accusations have been thrown at him by the Slovak Republic in its opening statement, in its memorials, and in about every other document they filed with you.

The 2005 company was not created in secret. If you take a look at Ms Jarvis's testimony, she and I discussed about Utah corporations, and the website on the state's page which you can visit and you can determine the existence and status of a corporation. The formation of the corporation was not secret; it was a public record. The Slovak Republic learned of the existence of the 2005 company not by hiring a private

15:50 investigator but by going to a public website and reviewing public information.

The formation of the 2005 company was not a fraud. As Mr Rauball testified, the prior management had failed to file the annual report -- a form -- with the State of Utah. Mr Gardiner in his testimony testified that a company's forgetting to file a form is not all that unusual; that's in the Day 4 transcript, page 77. The 1985 company was dissolved, not because it was engaging in illegal or fraudulent conduct, but because it failed to file a form.

The efforts of Mr Rauball and others in management in forming the 2005 company and entering into the joint venture were the efforts of reasonable people attempting to do the right thing. Mr Rauball testified for three hours; you can determine his credibility. I submit to you he is an honourable man and a credible witness and you should believe him.

That concludes mine. Dr Gharavi, do you want to go next, or do you want Ms Witt? Are we out of time completely?

THE PRESIDENT: We will make a break. We have heard everything on jurisdiction, and maybe we will have questions on jurisdiction before going to the merits.

DR GHARAVI: I just want to make sure that, before we break,

15:52 the presentation of both of you on EuroGas is completed, or is there something to say?

MS WITT: Actually we had planned to both address aspects of jurisdiction. But if we could speak over the break, perhaps we can determine whether that's the best use of the remaining amount of our time. And I was just wondering how much time we have left.

MS GASTRELL: Sorry, that would be me. You have 45 minutes left of 2 hours.

MS WITT: In light of that, we may make an adjustment and not further address jurisdiction. But we will speak in the break, if we could?

THE PRESIDENT: Yes, you can.

MS WITT: Thank you very much.

MS GASTRELL: You have used 56 minutes, so you have just over an hour. (Pause) Total Claimants' time is 15 hours 43 minutes; total Respondent is 14 hours 33 minutes.

THE PRESIDENT: But really I think at this point it doesn't matter.

So we come back at 4.10. It may be a little later, on the part of the Tribunal, if we are discussing the questions to be asked. But be there, please, at 4.10 and we will try to be there too.

(3.54 pm)

(A short break)

15:54 (4.21 pm)

THE PRESIDENT: Before we ask our questions, what's the position of Claimants? Do they want to say something more on jurisdiction?

MS WITT: Mr Chairman, I think I have distilled the comments I want to make to very few, but I do have a few points that were not addressed by Ms Burton's comments that I would just like to add before you begin your questioning, if possible.

THE PRESIDENT: Okay.

MS WITT: First, I just want to point out that it is really beyond debate that 100% of the shares of EuroGas GmbH, which is the investment, were owned by EuroGas at the time that the claim crystallised which is no sooner than August 1st 2012, at the time the denial of the rights under the treaty occurred on December 21st 2012, and at the time the demand for arbitration was filed on June 24th 2015. And those are the only dates that Respondent points to in its briefing on this issue as having any relevance to when the ownership of the investment and the bringing of the claim should have coalesced.

Additionally for the reasons that Ms Burton just stated, EuroGas owned the investment consistently from 1998 all the way through. It owned it from 1998 till

16:22 2007, or it was owned by its bankrupt estate. It either acquired it at the end of the bankruptcy, for the reasons Ms Burton articulated, and transferred it to McCallan, and then bought all of that stock back from McCallan when it acquired McCallan back; or that transaction with McCallan was void, and there is no doubt that the transfer of assets and liabilities was a valid and legitimate wind-up activity for EuroGas I, transferring its assets and liabilities to EuroGas II in July 2008, and then EuroGas has owned it consistently and continuously since then.

So for those two reasons, EuroGas has always owned the investment and always had right to bring the claims under the treaty.

Also, Respondent did not properly deny the benefits of the treaty to EuroGas because Mr Rauball never controlled EuroGas. We have talked about that before. Also EuroGas has substantial business activities in the United States. I have provided the Tribunal with all of the cites to the information I explained in opening. That has not been rebutted in this proceeding, and as a result I will not go through it any further because I want to give the time to Dr Gharavi.

Finally -- although I'm sure EuroGas should wait to hear exactly what Dr Gharavi has to say before I say

16:24 this -- EuroGas, in the interests of time, endorses, adopts and concurs with everything Dr Gharavi will say on the merits of this matter in a moment.

Thank you.

THE PRESIDENT: Thank you. So now our questions.

(4.24 pm)

Questions from THE TRIBUNAL

PROFESSOR STERN: Yes, I have a question for Hamid and one for Mona.

So first, Dr Gharavi I wanted to discuss with you the interpretation of two different documents that might not necessarily coincide. You have said at one point the financial statements have to be read in conjunction with the SPA. If there is a contradiction between the SPA and, for example, the audited financial statements, you have argued that the clear term of the contract must prevail.

My question is: I wonder if this is so clear. And more precisely, I would like you to discuss whether or not the common concrete behaviour of the parties, as stated, for example, in the financial statements, could not modify the agreement of the parties.

DR GHARAVI: Could you point me to the financial statements?

PROFESSOR STERN: The financial statements we have seen several times. I think it is ...

16:26 As a general concept, if you want me to be more concrete, you said, for example, that Belmont exercised control, and in one of the financial statements it's written: EuroGas to control. So if you want an example. But I would like you to deal with this more generally.

DR GHARAVI: Yes. What I want to say in response to that is that what you see in terms of documentation, what you heard is what happened. That's the first message I want to say in response, which is a general statement: that you have everything.

Going to the origin of the SPA, it is a réserve de propriété, or a conditional sale, if you want, and then the steps that follow for me, as I read it, are within that spirit each time. Why? Because the documents that, for example, Respondent rely on say, "pending settlement of the guaranteed shares". So for me it is within the context of a conditional sale. When I turn to the following one, it also says: it sold; the terms will be realised when payment would be received.

PROFESSOR STERN: But it's not exactly my question. Let's be abstract. Do you think that the common concrete behaviour of the parties, which maybe appears in some document, can modify a contract?

DR GHARAVI: Well, generally I think a contract can be modified ...

16:28 PROFESSOR STERN: By the concrete behaviour of the parties?
DR GHARAVI: By the concrete behaviour of the parties: you have to tell me under what law are we speaking. It is for me difficult to answer this question in abstract.

But what I can say is that however you look at it -- and let us look at the concrete behaviour of the party. That's why I say what you see -- we're really naked in front of you. We have given you everything there is. It's not just one document; it is everything, throughout many, many years.

You see a sale, a conditional sale. Then you see financial statements. Then you have one person, who has the character he has, that is pushing, pushing, despite the problems he is facing, to try to close. He cannot close. There are correspondences. That's why the term, "Let's complete", "Let's try to complete". There is an intention on both parties to complete. You would see my client at one point says, "Listen, enough is enough. I am going to get out of that thing, and tough luck". And that's what ultimately he ends up doing.

So I think I cannot answer in general. You have to tell me which law. But I would say: ultimately it does not matter, because the conduct is consistent with one party trying to close and the other party having more and more reluctance, seeing the other one cannot close,

16:29 and ultimately retaining not only -- as it had -- full ownership, but also keeping the money.

Maybe I disappoint you, but that's ...

PROFESSOR STERN: You are not my student anymore!

Okay, so now I have a question for Ms Burton. What do you answer to the Respondent's argument that the merger is the contrary of a winding-up as it is a way to continue the rights and liabilities of the former company? What is your answer to that argument?

MS BURTON: Certainly the joint resolution spoke in terms of a continuation of the business. But I think you have to look at the difference between continuing an enterprise, in the sense of the business that is being operated, and continuing the entity that operates the business. Certainly the 1985 company ceased operations because all of its assets were assumed by the 2005 company and the 2005 company assumed all of its liabilities. The shareholders of the 1985 company became shareholders of the 2005 company.

So when you think in terms of a business in the sense of talc mining, exploration for gold in Arizona and Idaho, that business continued, but the entity conducting it did not. It ceased conducting operations, and those were assumed by the 2005 company.

PROFESSOR STERN: It's an interesting distinction. Does the

16:31 fact that it was the same shareholders, the same directors, the same everything, make a difference to your analysis?

MS BURTON: No. They are separate entities under Utah law. If you were to go on to the State of Utah Division of Corporations website and input the name EuroGas, you would find two separate entities, one of which is reflected as having expired because it was dissolved, and the other one appearing to be an active corporation. They have different numbers. Every time a corporation is created in the State of Utah, it's assigned a unique number by the State of Utah, and each of those entities has a unique number. They have unique taxpayer identification numbers with the Internal Revenue code and with the State of Utah.

So at the time of the creation of the 2005 company they may have had virtually the same officers, directors and shareholders, but by Utah law they are different entities.

PROFESSOR STERN: Thank you for that clarification.

PROFESSOR GAILLARD: I don't think I have a question left, but just to clarify on the issue of the first question for Dr Gharavi, to follow up the question posed by Professor Stern.

As to can the SPA be modified by subsequent conduct,

16:33 I think you answered that it depends on the applicable law. But as to the argument of the contradiction made by Respondent, the contradiction between the financial statements and the SPA, is your factual position that there is no contradiction, that it's consistent, or not?

Do I understand well your position? I am not saying who is right or wrong, but what's the position on your side?

DR GHARAVI: Professor Gaillard, I think again I'm telling it to you first as it happened. There's two people who know one another who wanted to enter into a conditional sale agreement, and both had the intention to meet that. So at the earlier stages they were thinking that this would close very rapidly within the context of a conditional sale. So I think it is very consistent within the context of a conditional sale.

Then it dragged, it dragged, hence you see the change. Hence you see, "Okay, well, it's true that I have tied, although it's conditional"; he wants to realise it, but he's not realising it. "Okay, I'm going to continue injecting money. I modify, I write to you. Okay, each time you may not close, but please know that, even if you close now, the deal is different. Every 10,000 I pay, I want to keep back. Even if you can close 1%, I want to retain for 10,000. Then it goes up

16:35 to 20% I transfer, then up to 50% I can get back".

So I think everything is consistent in terms of conduct. I tell you this both legally and factually.

PROFESSOR GAILLARD: I am not cross-examining you. But if I were, I would say: the answer to my question is yes?

DR GHARAVI: Yes.

PROFESSOR GAILLARD: Thank you.

THE PRESIDENT: This is not one of the questions I had, but reacting to this, a pure question of information. You remember after the first session you filed, on our request, in a kind of booklet, a few exchanges of letters between the two parties to the SPA. Was that also filed electronically, in case the paper ...

DR GHARAVI: I didn't get your question. The question is at the provisional measures stage?

THE PRESIDENT: I think we, the Tribunal, were discussing whether there would be a bifurcation. Do you remember that?

DR GHARAVI: Yes, yes, of course. I know you pushed for the dates. You squeezed me on the dates.

THE PRESIDENT: Absolutely.

DR GHARAVI: I'll never forget it!

THE PRESIDENT: So was that done also electronically?

MR ANWAY: Maybe I can help?

THE PRESIDENT: Yes.

16:36 MR ANWAY: If I remember well, there was some discussion of the SPA even at that first hearing we had. We had asked for an authentic version of that contract -- because we had only found an unsigned version of it -- as well as any subsequent amendments to it, and perhaps correspondence relating to it.

So there was some production that the Claimants provided to us in response to that request, which produced an authentic version of the contract, as well as the subsequent amendments, and perhaps some side letters between the parties. I don't know if it was filed with the Tribunal, but it was sent to us electronically. We then took those files and made them exhibits in the case. So it should be in the record, but I think that's how they came to you.

THE PRESIDENT: Just in case, if you both could send it to us once more, let's say, exactly the same.

DR GHARAVI: Yes.

MR ANWAY: We will forward it.

THE PRESIDENT: Maybe it's not necessary, but it's prudent, let's say, for us.

I have three questions. One is for Mr Anway, but of course the other party is invited to react. You said that the termination of the permit was before the time the schedule of assets was or should have taken place,

16:38 or was requested. Is that time relevant?

MR ANWAY: For the reasons I explained this morning, it would not change our position. Our position is that EuroGas I had rights under the treaty when it went into bankruptcy, and if a claim arose thereafter, then it would relate back or be derivative from that interest. And Ms Jarvis answered your hypothetical yesterday about the house, and I think that analysis applies.

So in that case there is no need for us to establish that the talc interests were reassigned before the schedules were filed. I just simply noted it because if the schedules were filed at that point in time, the ICSID claim itself -- which can only be owned by EuroGas I, since it's the only US entity in this corporate chain -- would have to be disclosed with those schedules of assets and liabilities.

THE PRESIDENT: So it's an additional argument?

MR ANWAY: Exactly.

THE PRESIDENT: I'd like to know if you have a response to that.

MS BURTON: I don't know when the deadline or the date for filing schedules was in the bankruptcy case. My answer really is going to be similar to my closing argument, and that is: if the claim under the treaty related to or was derivative of the interest in GmbH, then the debtor

16:39 would have been obligated to amend its schedules to include that. If the claim under the treaty was not derivative of or related to the interest in GmbH, it would have had no obligation to do that.

And that I think is the issue that's before the Tribunal in trying to figure out the interplay between the Bankruptcy Code and the treaty. It's, as Ms Jarvis explained, the two-step process: was that claim under international law one that would be owned by -- when did it arise? What was the nature of it? And if there was an investment or claim existing at that time, then it would be property of the estate. And that's when you take in terms of crystallisation and when does the claim arise.

Those are issues of international law that I am not an expert at. But if it was a property of the estate, it would have needed to be scheduled; I will agree with that.

THE PRESIDENT: But suppose that the right, let's say, the claim for damages, only arose without any connection with anything before. Supposing that. But it arose after the beginning of the bankruptcy but before the time the schedule of assets should have been made. What's the situation then?

MS BURTON: The schedules of assets are required to reflect

16:41 property of the estate as at the date that the case is commenced, and the date on which the schedules are due is irrelevant to that. Whether they're filed one week after the case is commenced or three months after the case is commenced, they are to reflect ownership of property as of the date it is commenced, so as of May 18th 2004. If the claim is not derivative of or related to the property of the estate as of May 18th 2004, the claim is not property of the estate and would not need to be scheduled, no matter when the schedules were due or no matter when the claim arose.

THE PRESIDENT: Thank you. Now -- unless you want to add something.

MR ANWAY: No. Just to clarify, the order to Mr Rauball and the two other individuals to file schedules of assets and liabilities was entered on January 28th 2005, so after the reassignment of the excavation area.

PROFESSOR GAILLARD: Yes, but do you agree with the proposition that what must be answered is the property at the time of the --

MR ANWAY: Yes, as I indicated, our primary position is and has always been that the ICSID claim itself arose after the filing, but it is derivative of and relates to an asset of the debtor, which were the rights under the BIT.

16:43 PROFESSOR GAILLARD: But in terms of bankruptcy law, you agree with the premise?
MR ANWAY: I confess I'd have to ask Ms Jarvis if the question --
PROFESSOR GAILLARD: Well, at this point it's the position of the Respondent. What's the position of the Respondent with respect to what needs to be included in the schedule? Is it correct to say that it's only the property of the estate at the date of the initiation of the bankruptcy?
MR ANWAY: Sitting here right now today, I have no reason to disagree with Ms Burton that if this was completely unrelated to any property that was previously owned by the debtor as of the time of the bankruptcy commencing, that in that instance it may not need to be scheduled.
PROFESSOR GAILLARD: Right. And their position is --
MR ANWAY: Of course, it is --
PROFESSOR GAILLARD: -- as a fact, what really happened, it was connected to fact before.
MR ANWAY: Yes.
PROFESSOR GAILLARD: That I understand.
MR ANWAY: Okay. (Pause) Hence why I had said perhaps I should speak to Ms Jarvis first. She apparently has informed us that is not correct and she in fact testified otherwise. Perhaps we could point the

16:44 Tribunal to that testimony, if it would be helpful.

THE PRESIDENT: Yes, if you find the point, that can help us.

PROFESSOR GAILLARD: You can come back to that after the merits. We will have maybe a series of questions and you can add this one.

THE PRESIDENT: Now a question to Ms Burton. What is your position about the abandonment or non-abandonment of the GmbH shares? Have they been abandoned or not?

MS BURTON: Our position is that they have been abandoned; that the bankruptcy case is an unique one in the sense that, although schedules were not filed, the trustee intended to abandon them, he had actual knowledge of the GmbH shares and that his intent was to abandon those. It would have been extraordinarily expensive and time-consuming for him to have pursued any of the claims that arose from the termination of the mining rights.

So our position is in accordance with the report submitted by Snell & Wilmer.

THE PRESIDENT: Thank you.

Assuming the Tribunal were to decide otherwise -- and that's a question for both parties -- if the GmbH shares were not abandoned, wouldn't the consequence be that EuroGas I ceased to be an investor from the moment -- exactly from which moment, by the way, I'm not

16:46 sure, but maybe the beginning of the bankruptcy?

MS BURTON: I'm not sure I understood your question.

THE PRESIDENT: It's not a question of bankruptcy law, I must say.

MS BURTON: Right, I know, and that's perhaps some of my hesitancy, is that international law is not my expertise. But trying to answer your question, the bankruptcy trustee will step into the shoes, so to speak, of the debtor. Whatever rights the debtor had, the bankruptcy trustee would be able to enforce.

I don't know if that answers your question.

THE PRESIDENT: I think so, yes. On the other side?

MR ANWAY: I think the estate becomes the investor.

THE PRESIDENT: Okay.

A last question, and that's a question of clarification because I'm not sure I understood entirely what Ms Witt said, because my mind is slow and you were speaking fast. But what is the position, let's say, of EuroGas II as to the incidence of the McCallan transaction and what's the relevance to our jurisdiction? Because I had had the impression -- but maybe that's wrong -- hearing Ms Burton, that you abandoned that argument. But then I am not certain.

MS WITT: Our position simply is that McCallan is irrelevant. The McCallan transaction was either void,

16:48 based on the case that was presented yesterday, the Wittingham case; or if the investment was abandoned and EuroGas I had it at the end of the bankruptcy, then EuroGas I sold it to McCallan, but then acquired back all of the shares in GmbH from McCallan before the treaty claims crystallised.

THE PRESIDENT: Supposing they crystallised in 2012; that's right?

MS WITT: That's right. Or actually any time after the acquisition of the shares in McCallan.

THE PRESIDENT: Yes, the acquisition. When was that?

MS WITT: It was by the end of November 2011, when we had the exchange of all of the deeds that showed how it was acquired.

THE PRESIDENT: Okay. Any reaction?

MR ANWAY: Once again, counsel said, "by the end of November 2011". We still don't know when that alleged reacquisition occurred, or have any evidence that it did occur. And of course it impacts it, because the GmbH shareholding, which in turn owned the Rozmin interest, allegedly, transferred under this new theory. So it has very significant impacts on the Tribunal's jurisdiction.

MS WITT: Well, I would disagree with that, that there's no evidence, because we have submitted the transaction documents that show that the GmbH shares were

16:50 transmitted to AG by the end of November 2011. That's why I've picked that date. That's when we can be certain that everything was done. Even though, according to the fact that there are no deeds in England, we don't have the actual deeds, we do know that the transfer was completed before the end of November 2011 because we have the transfer documents from EuroGas to EuroGas AG.

MR ANWAY: There is no evidence in the record showing when McCallan allegedly sold GmbH to EuroGas II; or, I should say, when McCallan was acquired by EuroGas II. There's just no evidence in the record of that. Those five documents they submitted last week do not show that. They do not show the date on which it occurred or that it occurred.

THE PRESIDENT: These documents were filed very late, and were not discussed. So we will have to look at them, of course, and maybe come back to you on that issue. That's not impossible, I would say.

As far as our questions to be asked, we have completed that, and now we hear you on --

MR ANWAY: Mr Chairman, before we move on, I think we have found the passage where Ms Jarvis apparently answered the question that you had raised earlier. I was too bold in trying to respond to it. (Pause)

16:52 This is her testimony in cross-examination. So the reference is Day 4, pages 113 to 114, starting on page 113 at line 7, and going until page 114, line 24. Ms Jarvis in fact cites case law for the proposition that even where a cause of action accrued after the filing of the bankruptcy and did not relate to or was [not] derivative from property that the debtor had at the filing of bankruptcy, even in that case, where the court concluded that the claim was a potential claim, that is that the debtor had enough information to know about that potential, it should have been scheduled.

To quote Ms Jarvis, page 114, line 17:

"Because it was not listed as an asset of the bankruptcy, it was not abandoned and it could not be pursued by her.

"And in addition to that, she was judicially estopped, meaning she took the position that this didn't belong to her in the bankruptcy, she could not now say that it belonged to her thereafter when she sued."

This is the Stephens case.

PROFESSOR GAILLARD: Just to make sure I understand what the position is -- I am not, again, saying who is right or wrong ...

MS BURTON: If you look at Ms Jarvis's testimony on page 114, starting at line 10, she stated that the

16:54 District Court looked at whether this claim was an asset of the state. And going down to line 14:

"[The court] said: this is a potential claim and was a potential claim at the time of the filing of bankruptcy ..."

I don't know that that answers your question about a claim arising later and being related to --

PROFESSOR GAILLARD: Yes, but I would like to understand the Respondent's position on this. The position, as I understand it, expressed here by Ms Jarvis is that what's relevant is indeed the date of the opening of the bankruptcy; but if you have not only a claim but also a potential claim at that time, which is the relevant time, the opening of the bankruptcy, that should be declared as well. So that seems to be the gist of it, right?

MR ANWAY: I am hesitant to make another mistake, but that's what I understand.

PROFESSOR GAILLARD: Because I distinguish the issue of the timing, what's the relevant date, and the issue of what must be disclosed in effect at that date.

MR ANWAY: That's how I understand this.

PROFESSOR GAILLARD: Okay, thank you.

So that conforms to your position as Claimant, Ms Burton?

16:56 MS BURTON: Yes.
PROFESSOR GAILLARD: Thank you.
THE PRESIDENT: Now, closing statements on the merits.
DR GHARAVI: Thank you, President Mayer. Just for the record, we have forwarded to Ms Gastrell the 23rd March 2015 letter from us to counsel for Respondent transmitting the documents responsive to the document production order, in electronic form.
(4.56 pm)
Closing statement on the merits on behalf of Respondent
DR GHARAVI: For purposes of the closing statement on the merits, you have my outline in front of you, and I kindly ask you to have handy two binders, namely binder 1, which is our opening bundle, and binder 3, with the outline, for ease of reference.

Mr President, in the closing statement I will focus on what you encouraged us to focus on, namely Slovak law, and I will try to be as responsive as possible to the arguments raised by Respondent on the merits section, and address even all the documents they rely on in support of their position on the merits. And if you see that I forget something or do not sufficiently address one, please interrupt me so I can do that.

Before I do so, I wanted to make sure that this desire to address above all what you have identified as

16:58 being your priority not be construed as some sort of renouncement or weakness of our main [submission], which is that Slovak law is good. But as professors you are more than familiar with: a decision can be in compliance with Slovak law but nevertheless in violation of international law. And we submit that even if we were to follow at face value the case of Respondent on the merits and how Slovak law is, we would still have a violation of international law. And I will just say to you why, before I move on to say all this doesn't matter because Slovak law is not much different.

Why? Because the 2002 amendment was applied to an ongoing investment. We don't have a stabilisation clause, I grant you that. But this is not a tax, this is not something for the future; it impacts an ongoing investment, and in a material fashion in relation to a deadline. So basically it's saying, "You came in, we gave you something, now the deadlines have changed".

So we believe that this by itself, reliance on this clause then to kick us out, is in violation of international law.

Alternatively, we say that if you turn to tab 25 of the first bundle, you would see that even if you were to apply the three-year period, there were events between 2002 and 2004, and let's take a non-controversial event,

17:00 and that is the decision of the MMO saying that its own District Mining [Office] wrongfully denied an application or, at the very least, didn't wrongfully deny an application, but denied it without identifying the documents it should have identified for Claimant to process its claim, and that it did so with relation to a decision of earlier 2003. And once it finally said so, the District Mining [Office] got its act together, told us what it wanted, and we managed to comply. So even that event alone caused more than six months of delay, which was not at all accounted for when the three-month period was assessed.

Moreover, in any event, the way that that provision was abruptly applied against us, without questions of due respect to proportionality, without a warning, without compliance with the principle of cooperation, mitigation, assistance, and in any event without compensation, allows us to be entitled to a favourable award on liability and compensation.

But I will focus now on the taking, more based on the Slovak law, and address Respondent's defences. I have in total 28 points that I want to convey to you.

First is that the 2002 amendment, which you find at R-62, tab 33, with a translation that is contested by us, uses in the original version, Slovak version, the

17:02 word that you're now familiar with, which is "dobývanie". In this regard, you would see that the term was not defined in the 2002 amendment -- I'm putting it in a way as if I were still your student or intern, in a way that would enable you to draft an award if you were to side with us. That is the purpose of the order of presentation.

The term was not defined in the 2002 amendment nor cross-referenced to any regulation. If you look at R-62, tab 33, you see no definition and no cross-reference to any document. If you look at C-063, tab 77, you would see that the term is defined in the dictionary as meaning "mining, extraction [or] excavation". This is the Slovak-English translation.

It was translated, moreover, spontaneously by the official translators in this Tribunal as "mining". You have that at tab 78, Day 2, pages 192 and 194. That's when my learned colleague tried to interrupt, thinking we were a little bit resting, and said, "Oh, by the way, there is an error in translation, 'dobývanie' means extraction". Well, that's not the case.

Dr Rozloznik confirmed that the use of this term in the industry, it is used to interchangeably mean "mining" or "extraction", and it did so both in answers to questions put to him by counsel for Respondent and

17:04 counsel for Claimants, and you have that reference at tabs 78 and 79. So did Mr Corej, in fact. At tab 80 you have the reference: Day 4, page 220.

The other point I wish to make is to address the only thing that Respondent has in its hands to suggest that it meant "excavation" for purposes of the 2002 amendment, and that is in the outline at 1.3. That is the 1989 Decree on Safety and Health Protection relied on by Respondent. It's R-0165, tab 81. It uses the term "dobývanie" in Slovak -- nothing more, nothing less -- simply here as one of the meanings of the term, within the context here of extraction. It does not intend in that document to define the term "dobývanie"; that is a fact. It is used as "extraction", moreover, within the specific and narrow context of safety regulations, and not in relation to any deadlines and obligations.

You find one reference -- I have searched to this document -- and it's only at C-27, tab 26, which is the 2004 authorisation. You see that on the first page this law is not referred to for purposes of definition or within the main text body; it is referred to on the third page, when the issue of the authorised mining activities are determined in relation to specific conditions. Tab 26, the third page. The second page

17:06 starts with the technical conditions, it lists some. Then on the next page, it says:

"The applicant will inscribe this decision into the construction diary according to [section] 23 paragraph 1 letter b) of the regulations of the State mining office no. ..."

And it cites to this law, Safety and Health Protection during Work and Safety Operations.

Basically it's a safety regulation provision that addresses this issue, nothing less nothing more, and uses one of the few meanings of the term.

It is not cross-referenced in the 2002 amendment, which we covered -- we say the 2002 amendment doesn't define, doesn't cross-reference -- nor in the 2005 revocation letter, nor in any of the decisions of the Supreme Court, be it 2008, 2011.

Where now does it make its appearance? It suddenly pops up in March 2012. After Supreme Court decision one, 2008? No. Supreme Court decision 2011, the Supreme Court says, "Hey, guys, what did you do?" And the District Mining Office takes this, at R-58, page 22, tab 82, to try to now justify in a lengthy way -- that's the time they're writing to us, "It's premature, it's premature, don't come in", they're doing all this, and they're substantiating and desperately trying to find

17:08 something to support their decision and to overcome what the Supreme Court has stated. And there the District Mining Office refers for the very first time to this decree, to justify on safety regulations what it did to us. And then it's passed on the lawyers, that feed it to you and us, hence this rebuttal.

That's the first point. It leaves us with the fact that you have this term, it's not defined in the 2002 amendment, not in the revocation letter, and that term could mean two/three different things.

The second point is that the legislative history of this 2002 amendment is explained to us by Mr Kúkelcík, if you turn to tab 83, his first witness statement at paragraph 9. What does he say? He says: prior to the 2002 amendment, the situation was as follows. These investors could come in and they don't do anything, they sat on it basically, either to block competition or tried to speculate, and nothing was done. He adds in that paragraph that the mere request for an application was sufficient to sustain their rights, and he uses the words:

"No actual activity was required."

He moves on in that paragraph to say that even if they not only didn't have activity, didn't even apply, it was not an absolute right for the District Mining

17:10 Office to kick them out.

Why do I say this to you? To show you that our proposal to you that that term within that context meant that you start your activity was all already a significant improvement. So it's not an illogical case. It's a rational step, a significant step forward, the interpretation, as we understood it, of the term to mean "mining activity", specially if Mr Kúkelcík says no activity was required. We say we understood it that you need to start activity.

The third point I would like to make is that Respondent did not submit one single document by which, as a sovereign state, it warned us or explained to us the meaning of the term "dobývanie", directly or indirectly, but only refers to the conferences that were held in relation to the 200[2] amendment, without providing proof that at these conferences or in the public or anywhere, that term was explained to mean extraction that needed to be carried out within the three-year deadline.

Fourth point, what does Respondent rely on? It relies on two documents in support of its case: R-0115, tab 84; and the other one is R-0181, tab 85.

Let's look at the first one, tab 84. Respondent cites these documents to say that we were warned that

17:12 extraction should start, and we have no reason to complain. Let's take one second to assume that that warning did occur at that time: it was, even on its face, already too late. So that's not a proper warning.

But let's look at what these documents say. If you turn to tab [84], here Mr Agyagos says that the District Mining Office said that if we did not carry out works... So it is perfectly consistent with the chronology, with the timing and our understanding of the term.

If you move now to the next tab, that's the only other thing they have in their hands. This is a press article and it refers to Dr Rozloznik, who may have said that the Mining Act would require the company to commence the mining activity. Well, I apologise, but this is very consistent with our case that mining activity has to start, and not extraction, and Dr Rozloznik was not even questioned on this point.

Now the fifth point. How many witnesses did Respondent submit to try to establish that Respondent gave Claimants notice that "dobývanie" meant "extraction"? Well, zero. Zero. It produced nobody, nobody to try to establish that they told us that that term "dobývanie" meant "extraction".

Well, if someone did tell us that, why are they relying on press releases that don't say that? Where is

17:14 Mr Baffi. I use the word "teaboy" because they were using him as a teaboy coming for an inspection. He is at all material times head of that office. He is available, he is not retired. If he had told us that extraction was requested from us, or expected, he would have been produced. But Respondent chose not to do so.

The sixth point: Claimants introduced two witnesses, Mr Agyagos and Dr Rozloznik, who confirmed in writing that a meeting was held during the fourth quarter in 2004 at the District Mining Office -- you have the references at tab 22 -- with Mr Baffi, head of the office, and both confirmed at the hearing that Mr Baffi did not convey any warning or expectations that extraction should by then start. It's tab 86, Day 2, page 91; and tab 87, Day 3, pages 56 and 57. And you have all the references in the outline; that will spare you having to rewrite it. Again, these statements stand unrebutted.

Seventh, Dr Rozloznik confirmed at the hearing that Mr Baffi did not during the site inspection of the works on December 8th 2011 express any discontent or warning that extraction had not started. That is at tab 88, Day 3, page 58, where he says, in response to my question:

"Question: Did Mr Baffi express to you or not that

17:16 you were not imminently or not breaching any regulation?

"Answer: I have not heard anything like that and he definitely never said anything like that."

Again, Mr Baffi is not here to tell us otherwise.

But he cannot. Why? Moving to the eighth point. Because Mr Baffi confirmed, at Exhibit C-28, tab 38 -- it's the protocol of December 8th 2004 -- that we were in compliance with the law.

Respondent says it could not mean a blanket approval or anything, but this is a factual question. I am not using that document to try to force an estoppel argument or anything of the sort. I am telling you the reality and how things would have happened if Respondent's theory was correct. Mr Baffi would say, "Oh my god, extraction? You're not doing extraction? You have just started mining works? What am I losing my time to? Your thing is going to be annulled in a week or so". Well, he didn't say anything of the sort. Rather, he went and issued a protocol that said that we are working and this is compliant.

Point 9: Mr Kúkelcík, produced by Respondent, confirmed that he did not even bother at any point in time, until this very date, to check with Mr Baffi whether he had warned Claimants during any pre-revocation meetings that the term "dobývanie" meant

17:17 "extraction", nor whether Mr Baffi himself understood the term at the time to mean actual extraction.

Mr Kúkelcík is not somebody that comes to the hearing and was not involved to address a high-level point. He was the boss at the superior office, and he followed all the procedures afterwards. If you look at his testimony at tab 89, Day 3, pages 79 and 80. He says at page 79, line 20:

"Answer: Mr Baffi was not obliged to report or to signal anything other than the violation of legal procedures. The company Rozmin is an officially entitled company which was perfectly familiar with the law that they have obligation to excavate. I'm not going to go into the details on the differences between 'dobývanie' and 'tazba'.

"Any pre-adjudication is not entitled. Mr Baffi was not responsible to tell them that he will act in a certain way in the future. He could act only after three years had lapsed, and this is what happened."

Next, pages 83 and 84. I ask him:

"Question: Assume Mr Baffi had the same understanding ..."

Because previously, at page 82, he said:

"... we haven't discussed the minutes with Mr Baffi. [I don't need to discuss] ..."

17:19 I say, "Why don't you need to discuss?":

"Question: Assume Mr Baffi had the same understanding as my client as to the term. Then Rozmin would not be responsible for this; they had the same understanding as Mr Baffi. Wouldn't that be relevant?

"Answer: I don't know how your client or Mr Baffi understood this problem."

I mean, this is a damning evidence: that even in this dispute, for a person that followed the whole process throughout many years, he has not bothered to talk to anyone, and Mr Baffi has not been offered here. Perhaps with two questions to him, we could have this settled. He would say maybe this: "Yes, I understood it this way. But that's not our problem, Belmont or Rozmin should have known better". But that's the situation we have inherited.

Then if you move to point 10, which we just covered at tab 89: it's that Mr Kúkelcík's position is that the government had no duty to explain or warn in advance Rozmin that its rights were about to be taken, as the law should be complied [with] and understood by Rozmin how it should apply. You have that at pages 79 and 80.

Point 11: Mr Kúkelcík confirmed at the hearing that there is no evaluation on the record of the Slovak administration made prior to the 2005 revocation as to

17:21 where the project stood and was going, and whether revocation would be proportional.

I invite you to look at that, tab 90. It's Day 3, pages 106/107. I put to him again:

"Question: I'm not asking whether you should have done that, why you didn't do that. I'm asking you to confirm basically that you did not see in the [District Mining] Office any report nor any evaluation in terms of proportionality, where the project stood, the intention of the company Rozmin to pursue or not, and what were the alternatives.

"Could you confirm that there was no such evaluation in the records of the District Mining Office prior to January 3rd 2005? That's the question. It's a yes or no, and I suggest it's no."

He responds clearly:

"Answer: Such an assessment was not part of the appellate file and the Mining Office was not obliged to conduct such assessment."

Point 12: the fact that the term "dobývanie" was explained only in 2007 to mean "extraction" further supports Claimants' position. This is a fact recorded in the highest court in Slovakia, Supreme Court decision of 2011; C-36, tab 39.

Moreover, we now know [from] Mr Corej -- tab 91,

17:22 Day 4, page 20 -- that the same 2007 law -- that's even more material. It's only 2007. There must have been a problem, and not just for us, that someone stepped in and said, "We need a new act to explain what the term means". So that alone supports heavily our position. But more, when explaining in 2007 that it means "extraction", they extended the period from three to five years. That's even more damning evidence in support of us, that 2007, "Oh, 'extraction', that's what we meant. Oh well, three years, that's not enough. That's not enough. Let's put it five years".

13: the Supreme Court of Slovakia's decision of 2011 sanctioning the 2005 revocation held that the term "dobývanie" was applied restrictively in these circumstances, and it confirms the illegality of the 2005 revocation under Slovak law.

The Supreme Court's decision is also consistent with international law. You have cases, Tecmed v Mexico and LG&E v Argentina, where it requires for a transparent system, so that:

"... [the investors] know beforehand any and all rules and regulations that will govern ... investments ... [and] all State actions conforming to such criteria should relate not only to the guidelines, directives or requirements issued, or the resolutions approved

17:24 thereunder, but also the goals underlying such regulations."

Or [LG&E v] Argentina:

"... predictable legal framework necessary to fulfill the justified expectations of the foreign investor."

Point 15: alternatively and in any event, the taking was -- and I'm citing the Supreme Court's decision. This is an additional ground relied on by the Supreme Court of Slovakia to sanction the revocation. It was premature, not consistent with the principle of proportionality even if "dobývanie" meant ['extraction'] under the 2002 amendment.

This is at tab 39, C-36, page 25, because it stated: you need to look at the underlying objectives to see the position of the Claimant, where it stood, what it intended, you need to assess that; the same assessment, by the way, that is admitted on the record to have never been carried out. That's why a lot of these points alone allow us to reach the conclusion we want you to reach, and all of them are interrelated and just aggravate Respondent's case.

Now, whether the project had kicked off. Respondent, in defence, tries to post facto create defences saying, "Oh, you were not going anywhere".

17:26 Why? They go back and find Mr Corej. Who is Mr Corej? The beneficiary of the taking. Not only is he the beneficiary of the taking, he is the one that colluded with the state to kick us out. You have the letters, the correspondences that he has sent.

Moreover, the story doesn't make sense. The revocation never identified any financial shortcomings we have or not. There is no such correspondence. And Dr Rozloznik -- at tab 94, Day 2, pages 90 and 91 -- said, "I never received any complaints or any concerns in relation to our financial capacity".

Then Mr Corej tries to involve us in a construction dispute, an accounting dispute, and I confront him, because it doesn't make sense, with R-0169 and R-0126. You also have his testimony at Day 3, tab 96. He was cash-positive, and it was an advance for works he had not even undertaken.

Also the allegations raised by Respondent and Corej, via Corej, are inconsistent, because he's saying we didn't move the project forward, we were not going anywhere, Rauball is a loser, the other is a loser. And then he gets the thing, and what does he do for a month? Tries to negotiate with us to get financing. That also does not make sense.

Otherwise, what was our position in 2004? We had

17:27 truckloads of permits that we had secured during the 2002-2004 period. Respondent tried to engage with our witnesses but I don't know how they could engage, because the evidence is full of events that record our active involvement and efforts to move successfully the file forward, the project forward.

At tab 99, Exhibits C-0259 and subsequent, we have identified a dozen permits that we secured, which are Annex 4 to the contract with Siderit. There are a dozen more, but those we submitted only by way of example.

Then the delays. Of course there were delays, but because we were dealing with -- imagine the equivalent of Mr Kúkelcík at a low level -- when we were applying, they were asking, "Come back with this". We said it didn't make sense. They said, "Come back with this". We said it didn't make sense. "This is the order, go and get it". And this, for example, was sanctioned by the Mining Office by the decision of May 15th 2003.

So at the time, Belmont, listed company, injecting money during the years 2001-2004, notwithstanding the conditional sale agreement. You have that witness statement of Mr Agyagos that refers to exhibits.

You have authorisation for mining works, C-27, tab 26; pre-orders for construction works, C-0254 to C-0257, tab 28. That's works that started

17:29 September 2004. We have a contract signed with Siderit, C-0259, tab 27; downpayments made and works ongoing and certified by Mr Baffi to be compliant.

Point 16: circumstances surrounding the entire revocation and reassignment, those circumstances are blatantly corrupt. "Corrupt", I apologise, I mean in the large sense; "not with standard practice", to be polite, or "not meeting the international norms", up to potentially something else. Again, we do not need to establish corrupt practices, but it's the reality on the ground that only aggravates the situation.

The entire revocation and the re-tender process were not transparent. Mondo and Corej were trying to snatch, before the revocation, the investment. You have documentary evidence at tab 101, R-0247. You have also C-0356, C-0357, C-0358 at tab 46, as well as the testimonial evidence of Mr Corej.

At tab 102, Day 3, pages 199 to 112, he was explaining to us, "Yes, prior to the revocation in November/December I was meeting these people, I was corresponding with these people". Then he realised somehow that this is odd. In a personal capacity? He said, "No, in a professional capacity"; house of technology, here and there. But it was obvious he was trying to discredit us and take, with Mondo, our rights,

17:31 as he ultimately did. And that matches with the inconsistency that on the ground Mr Baffi was not raising any problem, but rather certifying and moving our project forward.

Then decision to revoke taken in December. According to Mr Kúkelcík at tab 104, his testimony, Day 3, page 90, he confirms that a decision was taken in November and December of that year, prior even to the publication, which in turn was prior to the revocation letter that we received.

Respondent did not produce documents responsive to document production. I will skip that. That is also an aggravating factor. We produced documents.

An explanation was provided by Mr Kúkelcík that these irregularities are reprehensible, both contacts, meaning prior to the revocation and those that were during the tender process.

I will go rapidly because we see that you wish to move forward.

17: rights of Rozmin taken in re-tender pursuant to the 2002 amendment and its underlying purpose, and now justified on the ground that we lacked intent and resources to carry out the project, whereas no safeguards were put in place by the government to ensure that the new tender will put them in a better situation.

17:33 In other words, the public purpose reason was of pure form as opposed to substance.

Point 18: Economy Agency could not meet the 2002 amendment's objectives as it did not have any financial support and was not subject to any scrutiny or valuation by the government.

19: Economy Agency's victory over industry leader Mondo is extraordinary. I'm willing that somebody would overbid someone. But when a contract, a tender, doesn't require a bidding amount, and the policy is to move the project forward, it is farcical to suggest that if this was based on meritocracy or for a public purpose, that a company by the name of Economy Agency would prevail over a world leader.

Then you have the complaint of Mondo pointing out serious irregularities, saying that, "These guys don't even have a credit document but a letter that does not mean anything from the bank". We asked Mr Corej about this letter: he doesn't have it. And of course he doesn't have it, because that thing is not worth anything.

When the government received that document, what did it do, the complaint of Mondo? It established a commission. All this, the result you have at tab 105, R-0194. You remember the document? "Well, I looked at

17:34 it, there was a complaint. There were six companies. Five were disqualified for not providing paperwork. One person remained: bravo, Economy Agency. We are not going to tender, we are not going to see whether the public purpose is met, we are not going to address whether the company has backing". Again, it is really, really laughable.

21: ex parte contacts between government and some bidders during the tender process. We covered that. Criminally reprehensible. Tab 103, page 115, Mr Kúkelcík's testimony.

Moving on, Economy Agency did not act as an investor, but immediately tried on the very date -- on the very date. You kick somebody out, you say, "Okay, we want somebody that is serious, can carry out the project"; you give them the contract, despite other world leaders participating. And on the very same day that they are supposed to get the contracts, the guy is negotiating with Rauball and others to pass on the investment acting as an intermediary.

Finally on the merits, VSK missed the three-year deadline under the 2002 amendment, as well as the five-year deadline under the 2007 revised amendment, by failing to reach extraction still as of this date. That is tab 107, C-0306: it's the press article. Because

17:36 otherwise we don't have information. Only Mr Corej says, "I believe we reached extraction". Then he says, "I was a mere employee, I don't know, I only dealt with technical issues". This in fact alone justifies a holding notably of arbitrariness, discrimination and inconsistency in the application of the mining policy of the government.

I won't spend much time on due process, nor liability for compensation. Due process violation: to say that everything, you forget about the substance. There was not the slightest good faith -- I'm trying to be mild -- not the slightest good faith in this process. There was not the slightest transparency. Notification after publication, decision well before the publication, precooked procedure basically, no advance warning, no capacity allowing us to cure.

You have asked us for Supreme Court, Slovak law. What can I offer you more, Mr President than the Slovak Supreme Court decision of 2008, C-33, tab 37, pages 8 and 9. That says, "No, you cannot do that. It's not fair. It violates the right to be heard. You cannot say an administrative body functions like this". It's a really, really good decision. That's why I don't want the position of my client to be portrayed as being critical to the Government of Slovakia or to the people

17:37 of Slovakia. There are very competent, very qualified, very candid organs within the system.

Finally, to say due process is not a question of form simply, it's a question that relates to substance. Why? Because, Professor Stern, if they gave us advance notice, we would have had the benefit of this discussion. We would have sat down around the table, "Why do you say 'dobývanie' means this? It doesn't mean this. Look what we are doing: we are improving your situation. How do you calculate in any event the three years?" Oh this, what we are doing right now, assuming Respondent was in good faith and was legitimately construing this provision for the reasons it indicated against us, would have allowed us in good faith to sit down and possibly settle this, and at least put forward our position, which we were not able to do.

This is why the treaty, international law provides that, irrespective of substantive reasons, a violation of due process during the expropriation gives rise to liability. So again, heads or tails, you want to go to international law, you want to go to due process, substance or Slovak law, the result is the same, and Claimants on substance will prevail.

Thank you for your attention.

THE PRESIDENT: Thank you very much.

17:39 Now, Ms Polakova.

(5.39 pm)

Closing statement on the merits on behalf of Respondent

MS POLAKOVA: Sir, as the new lead counsel on behalf of the Slovak Republic, I will not waste too much of your time on matters on which you are more knowledgeable than me, public international law. I will just very briefly outline the Slovak Republic's defence and show that the Slovak Republic's actions do not constitute any violation of either of the treaties.

THE PRESIDENT: Don't speak too fast, because Mr McGowan will have difficulties.

MS POLAKOVA: Yes, I apologise. This has been my problem since I was a debater in high school. So I will try to rectify it.

The first reason is that the reassignment was a result of the Slovak Republic's legitimate exercise of sovereign powers, a doctrine that you are all very familiar with. The second reason is that Claimants' claims fail under the proper standard under which they should be assessed; that is, the standard of the denial of justice. And third, Claimants' claims also fail under other standards of protection.

First of all, international law recognises that a state is not liable for non-discriminatory regulatory

17:40 action adopted in good faith. This is very well known as the police powers doctrine. It has been applied by a number of tribunals, including Saluka, Burlington and Quiborax.

It has also been recognised that the police powers doctrine applies equally to expropriation and non-expropriation claims, as held, for example, in Spyridon [Roussalis] v Romania, or against Saluka.

(Pause)

So we are talking about how the reassignment of Rozmin's excavation area was precisely the type of legitimate, bona fide, non-discriminatory regulation. It was an implementation of a mandatory provision of the Slovak legislation, the 2002 amendment, which itself -- and it was not really contested here -- was adopted for a legitimate purpose. The fact is that Rozmin simply did not come close to dobývanie within the three-year period, and that is why the 2002 amendment had to apply to Rozmin.

Second, Claimants also complain that the Slovak authorities incorrectly applied the 2002 amendment to Rozmin, and subsequently failed to remedy that purported error. This is a claim on denial of justice. This standard has been specifically developed in international law for precisely this type of claims, to

17:42 address the interplay between the conduct of domestic administrative and judicial authorities in international law, which was famously articulated in Jan de Nul v Egypt.

The standard of denial of justice is subject to two main requirements, [neither] of which has been met here. First, there is the requirement of finality, which was not met because the final DMO decision of March 2012, which was confirmed on appeal by the MMO, was not further pursued and challenged by Rozmin.

Second, denial of justice is also subject to a very high threshold: this requires a failure of the domestic system as a whole. Mere incorrect application of domestic law does not suffice for a denial of justice. It has been recognised by numerous tribunals that international tribunals do not sit as courts of appeal to domestic authorities, because domestic authorities often decide highly technical matters of national law.

Here, the reassignment was substantively correct, all the procedural errors were remedied, and the final product by which the Slovak Republic must be adjudged was simply correct.

It should not also be forgotten that years of litigation could have been saved if only Rozmin had pleaded all the alleged flaws of the first reassignment

17:44 decision already for the first time when it reached out to the Slovak court in 2005. This was explained by Steve Anway on Monday.

Independently of the label of denial of justice, the tribunal in ECE v Czech Republic also held that investment claims alleging incorrect decision-making of domestic authorities are subject to the very same requirements: that means systemic failure of the domestic system, and the fact that the mere incorrect application of domestic law is not sufficient for a finding of a treaty breach.

Claimants' claims also fail under individual standards of investment protection. Notably, the Slovak Republic did not expropriate Claimants' investment.

The essential requirement for a finding of expropriation is a showing of a taking. Here, the reassignment did not constitute a taking. This was made abundantly clear by the tribunal in Quiborax. That tribunal made clear that cancellation of a permit because the holder of the permit failed to comply with the legal requirements for the permit does not constitute a taking. Here, Rozmin simply did not fulfil the requirement prescribed by the 2002 amendment to maintain its rights to the excavation area because it did not commence dobývanie within the three-year period

17:45 between 2002 and 2005. Therefore the reassignment simply was not a taking.

The reassignment was also in the public interest, because it allowed for the efficient use of the talc deposit in Gemerská Poloma, which Rozmin simply was not doing, and it was proportionate. The DMO's last decision includes a thorough analysis of proportionality. The DMO explained very well that Rozmin had not used the excavation area effectively between 2002 and 2005, did not make sufficient efforts to excavate talc, did not obtain sufficient financing, and all the works on the site were only of a superficial nature.

The reassignment respected Claimants' due process, and it's a claim that they much insist on. It was not the case that the reassignment was carried out without any kind of prior warning. What happened was that the DMO simply made a mistake in the beginning because it did not conduct the reassignment as a formal administrative proceeding with Rozmin as a participant. This, however was fully justifiable, not only given the novelty of the 2002 amendment, but also the fact that under this mandatory 2002 amendment, Rozmin simply could not regain its excavation area upon reassignment. So it was fully understandable that the DMO did not believe it

17:46 necessary to consider Rozmin as a formal participant.

However, and most importantly, the initial error of the DMO was fully remedied and had no real impact on Rozmin's rights. Therefore it really can't be said is that the reassignment was an expropriation.

The Slovak Republic also did not violate the standard of fair and equitable treatment. At the outset, the Slovak Republic did not breach any of Claimants' legitimate expectations that Rozmin would maintain its rights to the excavation area. Rozmin's rights to the excavation area were conditional on fulfilment of certain requirements from the very start when Claimants made their investment, in 1998 and 2000 respectively.

For example, Rozmin could lose its rights to the excavation area if it failed to apply for another necessary permit within the three-year period, and it was the authorisation of mining activities. The 2002 amendment then linked the rights to the excavation area to the requirement of actual commencement of dobývanie within three years. Claimants never received any assurance from the Slovak Republic that Rozmin would hold its excavation area independently of this legal requirement. That is why Claimants' legitimate expectations simply cannot be sustained.

17:47 Claimants cannot derive any legitimate expectations from the two events that they so fervently rely on: it is the authorisation of mining activities issued in 2004 or the inspection of Mr Baffi, of the DMO, on the site in December 2004. It has been shown during this week quite clearly that neither of these events related to Rozmin's rights to the excavation area. Also these events occurred much later during the lifetime of Claimants' investment, and therefore cannot be the source of their legitimate expectations under international law.

The Slovak Republic also did not violate the requirement of transparency. My colleagues will later on show that Claimants knew very well what the term "dobývanie" means, as did every person in the mining area in the Slovak Republic from the very start.

Claimants' remaining claims are very brief, and in fact repeat the same allegations, which are of course incorrect. So in the interest of time, I will not address them at this stage, and rather leave the floor to the more exciting matter of causation and dobývanie. But I would just point out that my colleague Rostislav Pekar will specifically show that VSK Mining simply did start dobývanie within the legal period, and the new claim that Claimants have only raised this week,

17:49 the discrimination claim under the treaty, therefore cannot be sustained either.

But before Mr Pekar will explain dobývanie, I will give the floor to Dave Alexander with the causation matters. I would just like to point out that, as before, the issue of causation fails on the utter failure of Claimants to meet their burden of proof. It is widely recognised in public international law that it is Claimants' burden of proof to show that any alleged losses were caused by the breaches of the treaty, so that the breaches of the treaty were the direct and proximate cause of any alleged losses that Claimants put forward in this arbitration. This was blatantly not the case.

MR ALEXANDER: Thank you, members of the Tribunal. I am going to discuss briefly some authorities which probably do not require any discussion before this Tribunal, and for that reason alone I'm going to move quickly through those slides, but just to sort of set the context.

Of course, causation must be established positively, and that is variously phrased as "a sufficient causal link between the actual breach of the BIT and the loss sustained". Importantly, the requirement of causation needs to be established by the claimant with respect to each claim, both for expropriation and any

17:50 non-expropriatory breaches of the treaty.

As I said, the Tribunal I believe well knows the traditional test: the factual link must not be remote or indirect. Indeed, the test is believed to stem from probably one of the most cited cases in international law, the Chorzów Factory case, where the Court of Justice said reparation must establish the situation which would, in all probability, have existed if the illegal act had not occurred; sometimes known as the but-for test. Professor Crawford has discussed it at length, as well as a number of cases. We will leave you with those slides, but not take more time, other than to restate the traditional notion of "but for".

So, here but for the reassignment of the excavation area, have Claimants actually met their burden of proof to show a plausible path to de-risking of the project, acquiring the funds necessary, which by their own expert's opinion is in the range of just under €30 million? Have they shown a plausible path, notwithstanding their control of the project for almost seven years, have they shown a plausible path to secure the necessary capital?

Here their role as the financial supplier is really clear from the very beginning. Indeed Mr Rauball's testimony and Mr Agyagos's testimony say that from the

17:52 very beginning Dr Toeszer, with whom they met, mentioned the need for a strong financial partner. The same for Mr Corej: a strong financial partner, because of the complexity and growing financial demands of the project.

So having expressly promised first to Corej, and then again contractually to Belmont, which became its partner in the project for a brief time, that such financing would be provided in sufficient amounts to bring the project to commercial production within a specified year -- and that year was by 27th March 2002 -- having made those express promises, is there any dispute on this record that those promises were breached in serious and persistent ways? We think not.

From the perspective of both Haidecker and Dorfner, whom the Tribunal will recall represented world-renowned mining companies in mine development, why did they say financing never came? Because new potential investors lost interest and did not otherwise come to the table because potential investors perceived the mine was too risky.

Respectfully, Claimants have not seriously sought to respond to that. Despite their years of experience in the early stages of the mine development -- I mean, think about it for a minute: what Dorfner and Thyssen had invested in this project, in terms of time, dollars,

17:54 commitment, diversion from other profitable tasks. Despite all that commitment, when Rauball entered, they walked away quickly. They said he was an inappropriate partner. And then what happened next? Despite, as Mr Agyagos put it, always trying to secure financing, EuroGas actually consistently failed to perform.

Agyagos himself said, simply:

"EuroGas, however, was unable to sell its interest in Rozmin and did not provide any financing."

That probably overstates it a bit. There were modest amounts of what was referred to as "small bills" financing, very small amounts. I said in opening that the amount of working capital supplied actually was less than 10%. The record now will show you that it was approximately 6/6.5% of the total working capital needed to bring the mine to production; a pittance in the grand scheme of things.

The Claimants' case has been that -- and I read from 117 of their Memorial, which you heard before about:

"... in 2000, once Rozmin had concluded its initial drilling program, and received the Kloibhofer and ARP studies, any uncertainties regarding the commercial and financial viability of the reserves in the Extraction area had been wiped out; the deposit had been de-risked."

17:56 There were two elements to this supposed de-risking: (1) the technical requirements; and (2) the finances, which I have noted already.

What about the technical requirements? Well, their case on the technical requirements was that with the arrival of the Kloibhofer report -- and I now read from 299 of their Reply memorial. They say the news there was so good that:

"... [it] went beyond the expectations of Rozmin and its shareholders. With this study, Rozmin critically increased the proven reserves ..."

That's magic language in this world:

"... proven reserves of talc in the Extraction Area, and at the same time greatly enhanced the level of confidence that could be placed on the reserves ..."

"Proven reserves". What was the testimony? I asked Mr Rauball very directly: were there ever proven reserves established? Answer: no. You heard the testimony this morning elicited by Mr Mańón in cross-examining Mr Hill. Were there proven reserves? No. That was their case: there were proven reserves resulting from the Kloibhofer report. But the testimony did not sustain it.

Instead Mr Rauball said there were "semi-proven reserves", which is sort of back to the pendulum of the

17:58 CRIRSCO standards. But even there, the vast majority of that deposit, according to their own expert, was only inferred [resource], the lowest on the standard.

Why does that matter? Well, it matters because when we asked Mr Rauball:

"Question: Would you agree that if ..."

And I'm reading now from page 113 of the [Day 2] transcript at line 13:

"Question: Would you agree that if 'semi-proven reserves' had ever been discovered, the market might have been interested in that?"

I asked the question simply because the whole theory of their case is that with the establishment of the technical requirements, financing was ready to roll in; the risk was wiped out. You recall that language? Here's his answer:

"Answer: Semi-proven reserves mean nothing."

At line 16.

"You need proven reserves blocked out three sides. If you don't have them, you don't go into production."

(Pause)

So we submit that on this record the only real evidence is that there was substantial doubt about the suitability of Mr Rauball as a partner. Look at it again, get out of the weeds for a minute and think about

17:59 the big picture here. Look at this from an economic lens. If this project had been de-risked, what would we expect of economic actors? "De-risked" means it's ready for development, that the risk is wiped out, it's ready to go to market. Despite all the efforts, all the years of efforts in almost seven years, did they produce a single investor or a single lender with cash? The answer is no, by their own admission.

This project was never de-risked. It was plagued throughout by shortfalls in capital. People who looked at the project saw in the partners' own financial statements a dearth of income, escalating deficits and a clear path to insolvency. And at the end EuroGas, with 90% of Rozmin's shares, had suffered an enormous judgment, had gone into bankruptcy. So in a project that was estimated to require €30 million, according to their own expert, they had invested in working capital, according to their own expert, less than €2.5 million, which ends up being about 6%.

Before I turn the floor to Mr Pekar, which I will do momentarily, Claimants have made repeated references to allegations of corruption. At the end of the day, respectfully, there is no credible evidence to support those allegations. And given the utter lack of the evidence, we are not going to comment further.

18:01 But we do note that these kinds of allegations have regrettably become a common tactical manoeuvre. Or in the words of Dr Gharavi, candidly noted at page 102, line 2 of his opening statement:

"We don't want to establish corrupt practices. It's just for the ambience."

The fact is that following the Supreme Court's decisions in these cases, the process implemented by the Respondent fully complied with all measures of due process. We do urge the panel to read the decisions and look at what the DMO did afterwards. Having followed the process, and having taken an impartial decision in the public interest to put this deposit into production, after no real progress had been made in seven years, the Respondent reached a conclusion which the Claimants did not like. It is precisely for this reason that we have heard allegations of impropriety and corruption for ambience. "Corruption" is a convenient word to use when a decision has not gone in your favour.

Thank you, members of the Tribunal.

MR PEKAR: Good afternoon. Members of the Tribunal, this late in the afternoon, knowing that I am the only thing that keeps you away from a well-deserved dinner, I will try to be a bit quicker than my slides, and not retain you here too long.

18:03 There are five topics that I would like to discuss this afternoon.

First is the definition of "dobývanie".

Second, the point that I was making in the cross-examination of Mr Rozloznik, which is that Rozmin did not and was not authorised to conduct mining activities -- not dobývanie, but mining activities, which is "banskej cinnosti" in Slovak, and I will explain what it is -- at any time in 2002 and 2004.

Then the fact that delays in the permitting proceedings between 2002 and 2004 were caused by Rozmin's defective applications.

Then I will spend a little bit of time with some quotes from the second Supreme Court decision that Dr Gharavi interprets in an original way.

Then the last point: I will briefly address this absolutely new claim that somehow VSK Mining was not able to open the mine within the statutory deadline.

I appreciate that you have heard a lot about dobývanie, and I appreciate that it must be terribly difficult for all of you -- including Dr Gharavi -- who do not speak Slovak. The cause of the problem is this, and it's not too difficult.

In Slovak there are mainly two terms: "dobývanie" and "banskej cinnosti". The difficulty is that when

18:04 those terms are translated into English, the translators would very often use, interchangeably, "mining", "extraction", "excavation" for "dobývanie"; and they would also use "mining" for "banskej cinnosti"; which means that we then have in English an overlap with respect to "mining" which does not exist in Slovak.

The best illustration of it: you may remember there was one document we had with Mr Rozloznik that was the plan they submitted in, I believe, 1998. It was Claimants' translation of this document. The name of the document stated, "Plan for Opening, Preparation and Mining". And then when we went into the table of contents, we saw that it was speaking about "Opening, preparation and excavation". And in the Slovak version, obviously the third word was always "dobývanie", both in the heading and in the table of contents.

So this is just an illustration of the difficulty. So I do appreciate that it's really difficult for you, but I will try to show you that this is not difficult for those who speak Slovak.

We all know that the critical term for this arbitration is "dobývanie", because this is what was required under the 2002 amendment. There was one issue which didn't make it into Dr Gharavi's closing statement, which is that in the Memorial we read a lot

18:06 about how Rozmin was taken by surprise by the application of the 2002 amendment, that they didn't know, and so on. So that's why I clarified in the cross-examination of Mr Rozloznik that he was well aware of the 2002 amendment.

Here's what he confirmed. (Slide 30) I asked him:

"Question: ... was it your understanding at the time [back in 2001 and 2002] that if Rozmin does not start dobývanie within three years, it will lose the licence?

"Answer: Yes, certainly I did realise that, as an executive back then. And I have reminded the shareholders of this fact ..."

This is really interesting because if Dr Rozloznik did not understand what dobývanie means, as he now may be claiming, especially when answering Dr Gharavi's questions, what is it he conveyed to his shareholders? Are we told here seriously that he told them, "There's a new amendment, and I don't know what it means"?

We also are in agreement that the statutory definition of the term "dobývanie" was introduced in 2007, which is too late from the perspective of our time period, so we do not need to look at it for the purposes of interpreting the provision back in 2005. But it is still important actually, because I submit to you that

18:08 this is the definition that everybody in Slovakia understood it to be even before 2007. That term was generally known and absolutely clearly understood even before 2007.

Mr Kúkelcík explained that this is mainly because of this decree from 1989. We heard that the decree does not provide a definition. This is correct, but please do look at the terms of the treaty; you have it on the screen right now. Apologies, I first have the Mining Act, which is important as well, because that will clarify the confusion between what I would call "mining activity", in Slovak "banskej cinnosti", and what I would call "excavation", but we can also call it "extraction", it doesn't matter so much, which is how I understand "dobývanie".

(Slide 33) What you can see here is that the Mining Act defines "mining activities", and there are lots of them, and "dobývanie", which is here translated as "excavation" -- it's in the middle of the highlighted line -- is just one of them. So this allows us, at the very least, to establish that "mining activity" is a much broader term than "dobývanie".

This is why it is so incorrect and confusing when the translators -- in good faith, I appreciate that -- would translate "dobývanie" as "mining", because then

18:10 this creates this confusion that we do not know if we are speaking of something very specific or, on the contrary, a very general term.

This very general term, "banskej cinnosti", you can also see in the permits that Rozmin had. So for example we have the general mining permit, which again is "banskej oprávnenie". This is the general licence -- like the attorney licence I have in the Czech Republic -- which authorises Rozmin to conduct mining activities.

We also then have it in the third, most specific permit, in a way, which is the authorisation of mining activities. Again it uses "mining activities", in Slovak "banskej cinnosti", because what is permitted is obviously not only excavation, dobývanie, but also the opening of the deposit and the preparation of the deposit.

And we saw it in the plans. The plans specifically refer to opening, preparation and dobývanie as the third stage of the process.

This general relation between "banskej cinnosti", or "mining activity", and "dobývanie" was confirmed by Mr Rozloznik, who obviously agreed with me that opening, preparation and dobývanie are all mining activities, and "three different activities" (slide 34).

18:11 (Slide 35) now let's go to the decree from 1989. The one interesting thing that we have from this decree is that the decree says that "dobývacie práce", which means "excavation works":

"... can only be commenced after the completion of necessary opening and preparatory works ..."

This is something which is familiar to you because all the plans you saw had precisely this sequence: opening, preparation, dobývanie.

We do not have the full document in the record, but the document that also lists the so-called excavation methods, that's what you had under the heading "dobývanie", because in Slovakia you cannot mine material just in any way you like; it has to be a method which is pre-approved and which is put into this decree. But maybe I am getting too technical now.

(Slide 36) Third, also in technical literature it was absolutely clear what "dobývanie" means, and we can skip that.

Now we come to in my view the most important point, which is that we know that Rozmin submitted two plans, in 1998 and in 2004. They were both signed by Mr Rozloznik. In those reports, written in the Slovak language, he had a section on dobývanie, and this section on dobývanie corresponds by its substance

18:12 exactly to the definition which was later put into the law in 2007, and which was commonly understood by everybody in the mining industry to mean dobývanie. So Mr Rozloznik knew what it meant.

Then another very important point is that those plans were formally approved by the Mining Office. So one can obviously assume that if something was wrong with those plans, for example if the usage of terminology was incorrect, the Mining Office would have reacted. No, the Mining Office confirmed them, because why wouldn't they confirm a document which uses the term "dobývanie" exactly for what dobývanie is?

Here you will remember those documents when I went through them with Mr Rozloznik, so here are just a few more quotes. The first slides (38, 39 and 40) relate to the 1998 plan of opening, preparation and dobývanie. Then the following slide (41) refers to the one submitted in 2004. I invite you to review them again, judging them by their content. There is no doubt whatsoever that Mr Rozloznik understood what dobývanie is, and that was the basis for the permits that he was able to obtain.

Then it's quite interesting because when I asked him the question, I asked him what dobývanie is, he gave me the right definition (slide 43). He said that:

18:14 "... 'dobývanie' ... is the exploitation of a selected mineral according to a predefined method ..."

Exactly what we say it is.

(Slide 44) Then when Dr Gharavi was asking him his questions, he changed his testimony and suddenly it was something completely different.

You may recall also that we had some issues with the Slovak version of Mr Rozloznik's written witness statement needing significant improvements, which he was candid enough to make before the Tribunal.

Then we can move to point B, in the interest of time. Point B is that even if we do not take this correct definition of "dobývanie", and instead we somehow accept the position which was mentioned by Ms Burton today, that somehow mining works would have been enough to save the excavation area, the reality is that Rozmin was not even conducting mining works in 2004.

Why is that? Here I have to go back to the original permits from 2000, let's say, that period. We know that there are now three stages of starting the extraction of mineral from a deposit. First: opening, preparation works, excavation.

Then there is something which has to take place at the same time, and this is surface construction

18:16 activities. Because obviously the mine cannot exist without surface constructions, just like that in the middle of a forest. So they needed to build accommodation, infrastructure facilities for the workers and so on. And that is not included in mining activity, so they needed a special permit to do that. Then they needed to build some special buildings, bridges, and water management structures. Water management structures proved to be very important and very problematic for Rozmin.

So Rozmin first got the permit from the Mining Authority, but only for the mining activities. Then it also obtained all construction permits for surface construction from different authorities, Environmental Office and Building Office.

We touched on that with Mr Rozloznik, who confirmed that this is so because this is not related to mining activity. The permit was issued by water management companies. They should have said "authorities", but it doesn't matter too much. That is where we had to have deadlines extended, not with the Mining Office, because it was not mining-related.

Which also means that when Rozmin decided to formally inform the Mining Office at the end of 2001 that they were suspending mining activities, this per se

18:18 did not affect the permits they had for those surface structures, because they were governed by different permits. And those permits were still in force because Rozmin was periodically applying for their renewal and Rozmin obtained their renewal. So here on the slide (55) you can see that actually they could build the whole time in 2002, 2003, 2004, even until May 2005.

Why were the water management structures so important? We were discussing with Mr Rozloznik the physical location of the deposit, and it's close to a creek, and the creek is in level 3 protection of sources of drinkable water. Mr Rozloznik actually thinks that it should be level 2 protection, more severe, but it doesn't matter. The problem is that if there is some contamination of water coming from the mine, that would compromise sources of drinkable water for a large part of the population in the area. Therefore it was absolutely essential to make sure that there were proper water management facilities put in place.

At the beginning, both Rozmin and the mining authorities and the environmental authorities were optimistic and thought that this will be what is called a dry mine, meaning that when they dig into the rock, into the mountain, they will not encounter a spring

18:20 which would start flooding the mine. If it happens, it's not a problem; actually most mines do have it this way. But then it means that there have to be pumps available so that the water is taken out of the mine, and it has to go -- logically -- to the creek. The way it can be addressed is there is a water management plan which treats the water, and that's fine.

So at the very beginning they thought it would be a dry mine, and that's why they were authorised to do both the drilling into the mountain and the construction of the water management facilities at the same time. What happened though was that this assumption proved incorrect. When mining, they went into a water source and the water source started to flood the mine. What then happened when the construction was suspended is that the entire mine, the 93 metres that they were able to excavate, were completely flooded with water.

The water management authorities looked at it and said, "Okay, because you have water coming in, we can no longer allow you to do the water management plant and the actual drilling at the same time, but you have to have all the water management structures in place before you can start mining activity again". And the reason is -- and there are two subsets of that.

The first subset is the drilling of the water which

18:21 was already there. This is a relatively simple and, may I say, clean process, because what happens is that you just have a pump and hose and you take the water out of the mine. It needs to be treated, but the treatment does not need to be so thorough, I would say, because in principle the water is not contaminated itself.

The problem is that when the big machines -- and I believe you can imagine how big the machines must be in order to be able to dig a 4 metres times 4 metres profile into the rock -- starts digging, and then there is the water coming from somewhere within the mine. The water first goes down, obviously, it goes by those machines. Then at the bottom of the mine, as it is being drilled and drilled, it is pumped out. But this water is heavily contaminated by oil and especially lubricants coming from those heavy machines which are used. So the level of treatment of that water must be much higher, much more thorough than the one needed to pump out the water which is already there and which I heard is even drinkable, in principle.

So this is why, in 2002, the Environmental Authority said, "Okay if you want to resume mining activity at some point in the future, you have to build the water treatment facility first".

So when then Rozmin in 2004 reapplied and obtained

18:23 actually the authorisation of mining activities, the authorisation made absolutely clear that:

"By this decision are not affected rights and duties according to special regulations comprised in decisions and statements of other authorities of the state administration."

This is a pretty convoluted way to say that, "You must observe the water permits that were given to you by our friends from the District Environmental Office".

This is something which was also expressly acknowledged in the minutes of the 8th December 2004 inspection, because if you look at the third paragraph from the bottom, it says:

"Rozmin has performed and performs work related to the completion of surface water management construction due to the limitation of performance of mining activity by Decision of Rosnava District Authority ... which is conditional on putting temporary surface buildings into use."

So this is absolutely critical because it shows that until those structures, all of them, were put into use, and not just put into use in the sense that they started to use them, but if we went -- let's not go back.

But the decision of the Environmental Authority actually refers to "commissioning", and commissioning

18:24 under Slovak law means two things: basically there has to be an inspection of the structure when it's built, the person comes in, looks if it works; and then there is a special protocol which defines how it will work and what parameters of quality of water will have to be complied with before the water can be put into this creek. So it is again a formal administrative process, and this formal administrative process never happened.

The only one water management structure which was put into use is the one called water management plant. It was put into temporary use just for the purposes of cleaning the water which was already in the mine. But it was not the full set of water management structures which needed to be put into full operation before Rozmin could resume mining activity.

There is one very troubling aspect of all this, which is that Rozmin had known since 2002 that they had this obligation, or rather that they had this impediment to even resume the mining activities, and the cost to basically build those water management structures was not exorbitant. Siderit actually was proposing to do it for approximately 4.5 million Slovak crowns, which, if my math is correct, is like €160,000.

So a relatively small amount that could have been spent, frankly, back in 2002, back in 2003, at the

18:26 beginning of 2004; at any time, because they always had the permits to do that, they didn't have to wait for anything. But they decided not to. They didn't have the money, they didn't really want to do that; we do not know. But what we do know is they never did it.

Here at the next slide (60) you have the list of all the water management structures which had to be put into operation, and we know that the only one which was actually put into operation is the last one.

The following slide (61) illustrates how this permit which we would want to see for all eight of those structures looks like. First there's the right to use the permit:

"... the temporary utilization of a portion of the waterworks implemented as part of the [project] ..."

Then it specifically refers to this construction object 24, "Mining Wastewater Treatment Plant".

On the following slide (62) you have evidence of what I said: that it was approved only to clean the existing water.

So this is why we have to say that until the very end of 2004, Rozmin did not have the right to engage in any mining activities, because they did have the big permit, so to say, but the big permit was expressly conditioned -- or rather did not trump or did not

18:27 prevail over the smaller, but just as important, water management permit, which expressly prohibited them from resuming mining activities before having all those buildings commissioned, and they didn't have them commissioned.

Then as a matter of fact actually we were also discussing with Mr Rozloznik what it is that Siderit was doing at the site at that time, at the end of 2004. We went through the construction diary. We saw that all they were doing was to build those surface structures, some of them, and Mr Rozloznik admitted that building of surface structures is not mining activity. Which is actually quite logical, because I assume that Rozmin would not dare to do mining activity in violation of the terms of the water permit that they had.

Now quickly to point C. I believe that this is very well written in our Rejoinder, so I would only point you to some key facts.

First of all, we were discussing quite extensively the differences in design of the winze, or of the overall, let's say, mining plan which was submitted in 1998 and 2003, and we discovered at the very end that there was virtually no difference; it was only these winze. And even though Mr Rozloznik was very much convinced that they should also do the adit, he also

18:29 confirmed expressly when I asked him that the permit they asked for and got in 2004 was not a permit to build the adit, just the winze.

That obviously begs the question: how come it took them so long to simply reapply for something that they had already approved?

Another big question is: how come it's being claimed that they didn't know what documents they needed to obtain this approval? They went through this approval process already in 1998, so it was the same documents from the same sources.

So this is why we conclude that they were fully aware of everything they needed to submit.

(Slide 69) Then when I asked Mr Rozloznik about whether he did know what documents he needed to submit, he says:

"Question: ... So you had no doubt with respect to what you needed to supplement or not?

"Answer: Yes, that was very clear."

He knew what he needed to provide.

Then point D. I would, members of the Tribunal, invite you to read the decision of the Supreme Court, both what we call the first and the second decision of the Supreme Court. I do not suggest that you try to find there any inspiration with respect to the writing

18:30 style, but the content is interesting, and actually it is not what Dr Gharavi says it is.

So first, the first Supreme Court decision. Basically, just to remind you of the procedural history, there was a first decision -- or even not a formal decision -- of the District Mining Office notifying Rozmin that their rights were forfeited. They appealed that, or brought the issue before the regional administrative court. They were not successful there. They went to the Supreme Court, and the Supreme Court said, "Yes, you are right on procedural grounds". The court said, "Your right to be heard was not respected because there was no formal administrative procedure".

So I found it very cheap, I must say, when I sat here on Day 3 and heard the questions asked to Mr Kúkelcík, all the questions about whether due process was observed or was not observed. Those questions were always carefully framed to only refer to the period end of 2004 and 2005, carefully to be sure that he cannot speak of the decisions which were then later issued after the first and second decisions of the Supreme Court, but only about this first decision, which we all know was not procedurally correct. This is res judicata under Slovak law. The decision was quashed. The decision doesn't exist.

18:32 In terms of public international law, the investor sought redress domestically, and was fully successful. The decision was quashed.

One important thing: the Supreme Court never said that the DMO or the MMO or anybody else was supposed to specifically warn Rozmin that something might happen. This is not how those laws work. If I were to oversimplify a little bit, I have here my passport, which is going to expire in two years: I will not get any notice from any state authority that I need to renew it.

One important thing: when Mr Kúkelcík was asked about that, he specifically referred to a very informal meeting that he had with Mr Rozloznik in September 2004 when he discussed it. So it's not even factually correct for Claimants to say that absolutely no notice was given. It's in the transcript: Day 3, page 167, line 17.

Then we have the second Supreme Court decision. So what happened in between is that the District Mining Office issued a new decision in a formal proceeding in which it heard Rozmin. Rozmin appealed that to the Main Mining Office, not successfully; then to the regional court, again not successfully; and it went up the chain to the Supreme Court again. So we are now in 2011/2012.

18:34 Please do read the decision, but the main points of the decision are: the court said that the decisive date is January 1st 2005. That's at the very bottom of the first slide (73).

And the court criticised. We heard about the decision being premature and so on. Well, yes. This is because the court understood the very point that Dr Gharavi was making: that if the District Office was sending a public announcement of the tender to the Official Gazette of the Slovak Republic on December 30th then it logically must have, in its mind, made the decision before. The Supreme Court understood it and clarified that: yes, it was premature, because the decisive date is January 1st. The difference is two days. In Slovakia they are not very much in favour of the doctrine of non-substantial error, so when they see an error, they correct it. So here two days wrong, but still two days.

Then the main thrust of the decision of the Supreme Court is that more factual findings were necessary. (Slide 74) For example, the Supreme Court had one thing which does not really comport with what the Claimants are saying about the decision. The Supreme Court expressly said that:

"The minutes ..."

18:35 Meaning the minutes from the inspection on December 8th 2004:

"... do not indicate whether the plaintiff did or did not start to perform works immediately leading to excavation of the deposit itself ..."

There is no photo documentation. Then they say that:

"The fact that the plaintiff did not start mining the talc is clear from annual reports on mining activity from 1999 to 2003. Report from 2004 is not included in the ... file."

One important thing is that the court did consider this information to be important, but the court missed the information about mining of talc in 2004 in the file. We now obviously know that no talc was mined in 2004, but the information was missing. And that was a problem from the perspective of the Supreme Court.

Another problem from the perspective of the Supreme Court was the lack of explanation for the definition of "dobývanie" that the District Mining Office adopted. (Slide 75) Again, here the court doesn't say that it was the wrong definition or the right definition; the court only says that it was wrong to use that definition "without ... appropriate reasoning". So the definition was not explained well enough. A procedural issue, not

18:36 a substantive issue with respect to the content of the definition.

Then the court also said that the District Mining Office should have made some proportionality analysis, that there should have been an assessment of public interest, and the court went on to propose how the assessment of public interest might go. One important thing is that the court expressly said that it's absolutely okay to reassign the area if the company that has it behaves "speculatively". This is the last word in the first extract on this slide (77).

The Supreme Court also said that if an organisation with an assigned excavation area artificially delays the start of excavation of the deposit, then it is clearly more effective to reassign it. Artificial delays.

So, members of the Tribunal, if you do not believe Slovak authorities, now you know enough about the behaviour of Rozmin and the behaviour of Claimants, and you can ask yourselves whether their conduct was speculative and whether the delays were artificial or not.

So what is it that the Supreme Court did? The Supreme Court basically said, "There are many factual elements which are missing, and that's why we remand the case back to the District Mining Office to make a new

18:38 1 factual assessment".
2 What happened is that the District Mining Office did
3 that. They produced a 66-page-long decision, which is
4 in the record. We have not heard a single question
5 about that decision from Dr Gharavi. Why? Because the
6 decision is difficult to be attacked. We submit that
7 this is also why the decision, unlike the first two, was
8 not put under judicial review in Slovakia: Claimants
9 knew that they had no chance to win this time.
10 And a very last word on this brand new claim that
11 somehow VSK Mining was not able to start excavation
12 within the statutory time period. This is a new
13 allegation, that's why we were not able to react to it
14 in our written submissions, and therefore we also didn't
15 have a chance to submit written evidence which would
16 prove what I'm going to tell you right now.
17 So, first, we have heard from Mr Corej yesterday his
18 testimony that the first tonne of talc was extracted in
19 April 2009, which is when they finished opening works.
20 You know how it goes: opening, preparation,
21 excavation/dobývanie. So obviously when they finish
22 opening, they have to reach the deposit, so they have to
23 take something from the deposit, so that's what happened
24 in April 2009. Then in March 2010 they started the
25 actual excavation, and there is documentary evidence for

18:39 it with a stamp by the District Mining Office.

If you count, they were assigned the mine, or the excavation area to construct the mine, in April or May 2005. So they did make it within the five-year period, which is the period which applied to them after the amendment in 2007. I think that is uncontroversial between the parties.

Thank you, Mr Chairman. This is all I had on the Slovak law issues.

MR ANWAY: Mr Chairman, I will conclude the Slovak Republic's remarks.

THE PRESIDENT: I have a question about these decisions of the Supreme Court. We know well the decision of 2008 and the one of 2011. The third one is mentioned, it exists, but I confess that it's less clear in my mind when it was rendered and what it says. That's for Mr Pekar.

MR PEKAR: Thank you. To be absolutely honest with you, I believe that that decision is not relevant because it relates to the revocation of Rozmin's general mining licence and not the excavation area. So it has nothing to do with the events of 2005.

THE PRESIDENT: Okay, thank you.

So, Mr Anway.

MR ANWAY: First, members of the Tribunal, I would just like

18:41 to thank you for the time and attention you have paid to the case over the course of the last week, and in fact the last two years. I want to close with two final remarks, one procedural in nature and the other simply thanking some particular people on our team.

The procedural issue is: I just had an opportunity to speak to Ms Holiková, who, as you know, heads the Slovak Ministry of Finance investment treaty arbitration team, and although we had originally asked for post-hearing briefs, in view of how the hearing has gone, we no longer feel that's necessary. Of course, if the Tribunal wishes us to file them, we will certainly will do so, and we can of course talk after the presentation about that. But I did want to state on the record what the Slovak Republic's position is.

Then second, finally, I just wanted to again conclude with a few thank yous, and specifically to Ms Holiková and her outstanding team at the Slovak Ministry of Finance. I think it's appropriate at the end of this hearing to emphasise how instrumental she and her team have been throughout this case. They work every bit as hard as we do -- in fact, probably a little bit harder sometimes -- and it really does make a difference.

Just one example of that critical contribution from

18:42 her and her team. One of the ministry's lawyers, Mr Radovan Hronský -- Radovan, can you raise your hand? I told you that we found out about EuroGas I and EuroGas II by researching the public record. It was Radovan that actually found that out. And as we now end, perhaps we end where we began, with that misrepresentation that is at the very heart of the case. And we might ask ourselves: if it weren't for Mr Radovan discovering that, where would we be today?

With that, Mr Chairman, I close the Slovak Republic's closing statement.

THE PRESIDENT: Thank you.

So we may have other questions. While we discuss that -- maybe a quarter of an hour or maybe less, let's say ten minutes at least -- you might discuss between yourselves a few points that come after we have closed this hearing.

Post-hearing briefs? You expressed your opinion. Statement of costs: when, and in what form? Revision of the transcript: when? And transparency: when, how that will take place. Do you have requests or will you have requests for deletion of some parts of the transcript and the video?

So you can already start discussing that maybe, while we are in our room.

18:44 So at least ten minutes, you can do what you want.

(6.44 pm)

(A short break)

(7.14 pm)

THE PRESIDENT: So we have a few questions.

Professor Gaillard.

Questions from THE TRIBUNAL

PROFESSOR GAILLARD: Thank you, Mr President. It's a question primarily for Respondent, but of course if Claimants have a comment, it's welcome as well.

It has to do with the last slide, Mr Pekar, of your presentation, where you discuss the issue of when in fact, with the new owner, dobývanie actually took place. Because in the record so far -- and you correct me; I'm just stating something but if it's not correct, you absolutely correct me -- what we have is the testimony of Mr Corej, who answered a question which I asked him about that, "When is it that, with the new ownership, dobývanie took place?" It's tab 80 of Claimants' excerpts. He starts to say that mining and excavation, tazba and dobývanie, are pretty much the same thing, or can be used interchangeably. And then against that background, he says that:

"... I think that the key deadline was April 2009. This is when the first tonne of the mineral was

19:16 excavated."

So it's unclear to me if it's a deduction -- the deadline was that, therefore it must be before -- or if it's an actual fact, because he also qualified his statement by saying that he was not in charge at the time; he was only an engineer. So -- and that's why it's a question I'm asking to the Respondent -- in actual fact, when is it that dobývanie took place under the new ownership?

I guess it's a twofold question, and I put all the questions at the same time, so it's not a cross-examination. Does that important event give rise to something in writing, minutes or something? Question 1. And question 2: in any event, irrespective of the answer to the first question, when did that happen in actual fact? Because I see you deduce it also in the last bullet point from another event. So is there an actual fact, and what's the position of the Republic on this?

MR PEKAR: Thank you, Professor Gaillard. The actual dobývanie started, as I stated, in April 2010. We do have a document, which, however, is not in the record, and I was trying to explain that this is because this claim was presented only at the hearing, when we no longer have the ability to submit documents. But we

19:17 actually do have the document even here on our computers.

PROFESSOR GAILLARD: So the answer to my first question, "Does this important dobývanie date give rise to minutes?", the answer is yes?

MR PEKAR: Yes.

PROFESSOR GAILLARD: Right. And the document you are talking about are the minutes of this event, right?

MR PEKAR: Not only of that event. It's a longer document which discussed several issues. But there is one paragraph of the document which says that on that date -- I don't recall the date; let's say April 10th of 2010 -- there was an inspection from the District Mining Office and the inspection witnessed the beginning of dobývanie. And they state, I think, the number of tonnes, which again I don't remember. And they specifically mention the method, the excavation method used, and they state that it's in accordance with what has been approved for excavation.

PROFESSOR GAILLARD: How do you explain the press article which is used on the other side which seems to talk about this event in the future? We heard Mr Corej, I believe, as well, saying, "Well, the press is saying anything", but in fact the press was quoting the new management of the mine. So what's the position of

19:19 the Republic?

MR PEKAR: It is my understanding -- and this was not our main focus, let's say -- but it is my understanding that the levels, dobývanie levels, or I should say production, extraction, were relatively low, and still are.

PROFESSOR GAILLARD: Right. So that may explain that the new management is saying, "We still do not extract"?

MR PEKAR: I can tell you a little bit more because I had the privilege of seeing the mine actually, I was actually even in the mine. So, as I said, the production levels are relatively low, and we were explained by the management that they needed to further de-risk the deposit from within the deposit. So as they were basically preparing the deposit and progressing with their dobývanie already, they are still making some additional boreholes to know exactly how the deposit looks like and so on.

PROFESSOR GAILLARD: Thank you for your explanation.

I guess it is less relevant for the Claimants. Maybe a related question. We heard your expert saying, "I didn't go to the mine". Was he denied access or you just didn't ask? I mean "you", your side; I don't mean you as an individual, but the Claimants' side.

DR GHARAVI: It's difficult for me to respond on the spot.

19:21 Our understanding from the record is that there was no proof of extraction, and we put the question to Corej and we obtained this answer, and here it is. And we believe still on the record on behalf of Respondent there is no proof of extraction. We are left with the article.

They're talking about a document in their possession that dates from April 2010. Why they have not put it on the record? Why didn't they ask for it to be put on the record? They don't know the date? How come they do not know the date? Is it also form or substance? We know that they have their introductions in the government. We know that it could be a rubber stamp, just to say, "Okay, we extract something", but in practice -- and that's what we just heard -- it's not an ongoing process; it's a one-spot shot to get a bit of paper and to use it to be in compliance and then to be able to respond to us.

PROFESSOR GAILLARD: Thank you. Anyway, you have both answered my questions, Mr Pekar and Dr Gharavi. Thank you very much.

MR PEKAR: Professor Gaillard, I would just say that I didn't think that it was so important, but the date of the document is April 9th, so I was wrong by one day. It was a formal letter which was written by the new

19:22 owners to the District Mining Office and telling them that they have started dobývanie.

And I repeat: the reason why we didn't put it into the record is that this issue had not been raised in Claimants' written submissions. But we are absolutely fine putting it into the record now if the Tribunal would find it helpful.

PROFESSOR GAILLARD: That's a decision the Tribunal will have to make. But you have answered my questions.

THE PRESIDENT: Is it requested by Claimants to see the document that has been described?

DR GHARAVI: What you are describing to us, for us it's a unilateral letter. Was it sent, was it received, what are the following correspondence, and what is the exact status of the project today?

So if we're going to go into that, then we have to go all the way into it properly. For us it has not been established on the other side. We had the key witness here who didn't know. And there is an article out there that reports a key person's representation that there is no extraction; it talks about the future.

But if the Tribunal wishes to go in there, we want to go all the way, and not just bits and pieces, and not obviously on form. But we want to find out what happened.

19:24 PROFESSOR GAILLARD: As far as I am concerned, my questions have been answered. Thank you.

THE PRESIDENT: I have three questions for Claimants.

First question: in your Reply you request the Tribunal to order Respondent to pay Claimants damages, costs, et cetera, in an amount to be quantified at a later stage, et cetera. Of course, we have not gone to the quantum stage. It's possible that we do, possible that we don't; it depends on what we decide on jurisdiction and admissibility.

But apart from that, even not knowing a quantum, there is certainly a proportion. Whichever the number we would find on the quantum issue, it would have to be divided, because we are not going to grant damages collectively, even if we are to grant damages. So what's the proportion?

DR GHARAVI: What's the proportion? The proportion is in proportion with the percentages of the shareholding of each company, and that's it.

THE PRESIDENT: Which would be 57%? Well, it's not over 100. But it's 33% or 34%.

DR GHARAVI: It's 57% us; that's what we know.

THE PRESIDENT: 57% and ...?

MS BURTON: 33%.

DR GHARAVI: I believe we have quantified the claims.

19:26 Usually John Ellison quantifies it according to the number of shares, that's how he usually does, and I recall I saw something like that.

THE PRESIDENT: Okay. No, it's good to know officially by both of you.

A second question. You remember this document R-0158, which is Belmont's news release of 20th November 2013. It tells the press what the agreement between Belmont and EuroGas is, and it says:

"The Company ..."

That is Belmont:

"... has agreed to provide a Power of Attorney to a law firm located in Paris, France which is acting on behalf of both Belmont and EuroGas Inc. in filing an action for damages against the Slovak Federal Republic ... The agreement with EuroGas ... also stipulated that Belmont will not be responsible for any expenses, legal fees, or disbursements with respect to the lawsuit, and that the Company would be entitled to receive from EuroGas 3.5% of any award or settlement from the lawsuit ..."

That surprises us, and it's good that we offer you an opportunity to explain.

DR GHARAVI: Professor Mayer, first, on the theme of being naked, we have submitted in document production

19:28 an agreement even between Belmont and EuroGas clearly stipulating the allocation of potential proceedings of an award. We have submitted that to Respondent, who has chosen not to produce it on the record nor question the counsel on this issue.

Second --

THE PRESIDENT: So no one has produced it?

DR GHARAVI: No one has produced it, yes.

THE PRESIDENT: Submitted it, I mean.

DR GHARAVI: Respondent has asked for -- it falls within the scope of your document production order. We have complied with it. We have submitted it to Respondent. Respondent has not submitted it, and has not asked any of the parties to this agreement who are present any question on this. So I just wanted to give you that background.

There is that press release, and more importantly an underlying agreement that has been entered. The agreement, if you read it, good luck in understanding it, because it is a very complex formula of 3.5%. And it's not even sure, if you read it, you would understand it: 3.5%, EuroGas having to pay Belmont from EuroGas's shares, or the contrary. So the press article is misleading, I would say. Also there is a cash amount provided.

19:29 Against this background, my understanding is that there were certain exchanges between Mr Rauball and Mr Agyagos on this subject, where Mr Agyagos thought that there would not be full financing from a third-party funder. Once Mr Agyagos found out there is third-party financing, and found out more about the arbitration process, there is, to the best of my knowledge -- and I regret that the two gentlemen on the stand were not questioned by the Tribunal or Respondent's counsel, who has even the underlying agreement on this subject.

So that's all I can tell you. I can add also that there is no consequence either way, even if it's Belmont that gets 3% from the shares of EuroGas's proceeds, because this is just the allocation of -- it's like if I get a 90% success fee on a case: I know it's an element for you to consider that you may think is very relevant or material, but legally speaking, strictly speaking, it has no consequence on the question you are asked to settle.

THE PRESIDENT: Would any party wish to submit that document?

DR GHARAVI: Again, we are transparent. If the Tribunal wants it, we can submit it. If Respondent has it in its possession for a long time, it has not produced it. If

19:31 1 it wants to produce it, then it has to make a motion.
2 MR ANWAY: Mr Chairman, I confess that document production
3 was so long ago, I truly don't recall. I trust my
4 colleague when he says it was produced; I am not able to
5 recall that. I'd have to go back and check, and we
6 would respectfully request an opportunity to review the
7 document before responding to that. Although, as
8 I understand, there's no objection from Claimants if the
9 Tribunal wishes to see it produced in the record.
10 DR GHARAVI: Of course not.
11 THE PRESIDENT: The Tribunal wishes to see it.
12 DR GHARAVI: Okay. With the understanding that there may be
13 other documents now, and that agreement no longer
14 stands, because there is a subsequent agreement of
15 third-party financing with respect to Belmont and
16 La Française and EuroGas where there is no such
17 allocation of any shares; each party keeps the 57%.
18 So if you want to go down that route, we are very
19 happy. Respondent didn't want to go down that route.
20 But it may entail more than one or two documents.
21 THE PRESIDENT: Maybe we will have a very short break of
22 five minutes to discuss between ourselves what we want
23 and what we do not want.
24 That was the second question. And the third one, to
25 Dr Gharavi: what are the dates of the breaches of

19:33 international law that you are complaining about? That's not related to the issue of when did the dispute arise; it's not that. And I am not asking you to make a choice, not at all, because there may be several breaches or a continuous breach. But can you clarify that for us?

DR GHARAVI: For us it's the date of the revocation, of January 3rd 2005, of our rights. And then there are subsequent breaches, I would say. We do not read the decisions of the District Mining Authority when its decision is quashed and sent back to it, that just rubber-stamps it, we think that's an independent breach afterwards; "independent" meaning within the context of the same global breach. And then again, when it goes to the Supreme Court and comes back, and DMO spends 100 pages and a lot of resources to use whatever it can again to create cosmetics and allow Respondent's counsel to say, "It's so important that the other side didn't address it, that's why they gave up": that's for us another breach, and it has nothing to do also with denial of justice.

THE PRESIDENT: Thank you. So we are going just outside to discuss what documents we would like to receive.

DR GHARAVI: Also we can offer the main signatories of this. There was a missed opportunity to hear directly what

19:34 1 they have to say on this issue, instead of me having to
2 say, "They found out about financing". This is
3 Mr Agyagos, not an arbitration professional. So that's
4 an offer for you as well.
5 (7.35 pm)
6 (Pause)
7 (7.40 pm)
8 THE PRESIDENT: So we would like to receive two sets of
9 documents. The first set Emmanuel Gaillard will
10 explain.
11 PROFESSOR GAILLARD: The first set would be the document you
12 offered to file which is of 9th April.
13 MR PEKAR: It's actually two documents in one. One is dated
14 9th April: this is when they informed the authority that
15 they have started. And then there is minutes from
16 an inspection on site, which is April 14th, so five days
17 later. So we will provide both of them.
18 PROFESSOR GAILLARD: We would like these two documents, plus
19 any other subsequent document related to the same topic.
20 MR PEKAR: Okay. We will have to ask the DMO for the
21 subsequent [documents].
22 PROFESSOR GAILLARD: That's one category of documents.
23 THE PRESIDENT: And the other one is all the successive
24 documents which you mentioned, Maître Gharavi, on the
25 percentage sharing between the two parties of any

19:41 proceeds from the award. The agreement which was incorrectly described in the press release, plus any -- so to whom do we ask that?

DR GHARAVI: We just saw you have it. We have the confirmation that we sent it with the document production. So if you want to produce it, [or] we will be happy to produce it. If you want to produce it ...

MR ANWAY: The version we have does not have the attachments to it. The document itself, we just noted, references two attachments which are missing. But we are happy to send the document you provided us to the Tribunal, although it probably would just be more efficient if you sent everything, since they're your documents. It's up to you.

DR GHARAVI: What we have, we sent, so ...

The other agreement is subsequent, dates from March 2014. It's a little bit more complicated. I don't know if there is a third one. But the second one is with third-party funding, so that contains some privileged information in terms of strategy, amount reserved for this, amount of a prospective settlement. So we would submit it to you with the paragraphs redacted.

THE PRESIDENT: That's agreeable.

DR GHARAVI: And I will see what else is there.

19:42 THE PRESIDENT: Thank you.

Now the issues which I mentioned before we broke. Have you come to an agreement on when you will have an agreement?

MR ANWAY: I think we have agreement on everything.

THE PRESIDENT: Very good.

PROFESSOR STERN: You haven't settled?

MR ANWAY: No, we have not settled! We will not have agreement on that.

Dr Gharavi will correct me if I misstate anything. But the parties have agreed not to submit post-hearing briefs, unless of course the Tribunal requests them. We have agreed to submit our costs within 30 days, and corrections to the transcript within 30 days. With respect to the form of costs, each party will simply provide the lump-sum amount. If there are further questions about that amount, the other side can of course raise it at that time.

With respect to the videotape -- for which we thank you, Lindsay, in particular, and also our cameraman -- we both agree we don't have any confidential information that will need redaction. I think they only thing we agreed we would take out is when I got the Utah law question from Professor [Gaillard] wrong!

So with that, I think it can be published as soon as

19:44 1 it's ready. I haven't discussed this with our
2 colleagues on the other side, but I think maybe if you
3 could delete the breaks, just because people are walking
4 around the rooms, and there are microphones.
5 MS GASTRELL: Yes, we will do our best to edit it in
6 a usable form. I will obviously give a heads-up that
7 it's going online. It will take some time to do that
8 editing. Are you fine if we don't submit it to the
9 parties first, and just put it online, or would you like
10 to have a look first?
11 MR ANWAY: Speaking for just our side, I wouldn't mind
12 having advanced preview of it. I don't know if you have
13 a preference. We are certainly not going to watch
14 a week's worth of hearings, but we may take a glance at
15 it.
16 THE PRESIDENT: So I think this brings us to the end of this
17 hearing. We thank the parties, the counsel, for their
18 very clear explanations; with special thanks to the
19 lawyers from Utah, because we are not familiar with
20 these issues of bankruptcy law and you were extremely
21 clear on them, although it seems to be extremely
22 complicated.
23 MS BURTON: I don't think it's as complicated as your world,
24 but it was a pleasure to be here. Thank you very much.
25 THE PRESIDENT: Our world is more obscure than complicated,

19:45 I would say.

We also of course thank the cameraman and the court reporter and -- although they are not here -- the interpreters. So thank you very much.

(7.46 pm)

(The hearing concluded)