

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

Case No. ARB/14/22

World Bank
66 avenue d'Iéna
Paris, 75116
France

Day 2
Hearing on the Merits

Tuesday, 23rd May 2017

Before:

PROFESSOR GABRIELLE KAUFMANN-KOHLER
PROFESSOR ALBERT JAN VAN DEN BERG
PROFESSOR PIERRE MAYER

(1) BSG RESOURCES LIMITED
(2) BSG RESOURCES (GUINEA) LIMITED
(3) BSG RESOURCES (GUINEA) SÀRL

Claimants

-v-

THE REPUBLIC OF GUINEA

Respondent

KATY COLTON, of Mishcon de Reya, DAVID WOLFSON QC, of One Essex Court, and DAVID BARNETT and GABRIELLE PELED, of Barnea & Co, appeared on behalf of the Claimants.

MICHAEL OSTROVE, SCOTT HORTON, THÉOBALD NAUD and SÂARRA-TILILA BOUNFOUR, of DLA Piper, LAURENT JAEGER and AGNÈS BIZARD, of Orrick Herrington & Sutcliffe, and MOHAMED SIDIKI SYLLA, of Sylla & Partners, appeared on behalf of the Respondent.

Secretary to the Tribunal: BENJAMIN GAREL
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DAG CRAMER, BSGR

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09:30

Tuesday, 23rd May 2017

1
2 (9.34 am)

3 THE PRESIDENT: (In English) Good morning to everyone. We
4 are starting Day 2 of this hearing.

5 We will, as we have agreed, start with the so-called
6 mini-openings. They are a maximum of 15 minutes, but
7 obviously, if there's less to be said, there's no
8 obligation to fill the 15 minutes.

9 Can I turn to the Claimants first.

10 MR WOLFSON: (In English) Good morning. We don't have
11 an opening in the sense of anything further to say in
12 that regard.

13 We do have one procedural housekeeping point which
14 we'd just like to raise with the Tribunal, not in any
15 adversarial sense, but in order to get the Tribunal's
16 confirmation as to what the position is. Can I just
17 take a moment to set out what the position is and
18 explain the current status.

19 The Tribunal will recall, in its first procedural
20 order in paragraph 18.15, the Tribunal made what
21 I respectfully suggest is the normal order with respect
22 to cross-examination of witnesses, i.e. that you have
23 a very short direct examination; you then have -- and
24 this is set out in paragraph 18.15.3 -- you then have
25 cross-examination; and then you have re-direct, which is

09:35

1 limited to matters raised in cross-examination. And
2 then it provides, as usual, that the Tribunal can ask
3 questions at any time.

4 The substance of that procedural order was then
5 repeated in Procedural Order No. 9, where in
6 paragraph 23 it provides that:

7 "The format and scope of witness and expert
8 examinations shall be governed by [paragraph 18] of [the
9 first procedural order]."

10 Also in Procedural Order No. 9 at paragraph 20, the
11 Tribunal invited the parties to draw up a timetable for
12 the witnesses. Paragraph 20 provides that the timetable
13 should deal with the order, the date and the approximate
14 time of the witnesses.

15 The timetable which the parties have discussed --
16 and I think the original version of this was from the
17 Respondent's counsel, although there was plainly
18 a discussion of it between counsel -- provides for
19 direct examination, cross-examination, re-direct, but
20 then also re-cross-examination. That's not something
21 which was in the original procedural order.

22 So in order that we all know what we're going to do
23 before we start, may I respectfully invite the Tribunal
24 to confirm (a) whether we are going to have
25 re-cross-examination, which certainly in my experience

09:37

1 is not usual; and (b), if we are going to have
2 re-cross-examination, is that limited to matters raised
3 in the re-direct examination? Because obviously that
4 has an impact on the questions one may ask of the
5 witnesses.

6 So I don't raise that in any adversarial sense, but
7 I think it is important for both parties to know what
8 the position is. It seems to us, if I may respectfully
9 say, that the normal order is the order which the
10 Tribunal had in Procedural Order No. 1, and repeated in
11 Procedural Order No. 9. The Tribunal didn't direct the
12 parties to agree whether there should be re-cross -- it
13 was meant to be about date, order, time -- and the
14 parties seem to have exceeded what they've been asked to
15 do.

16 I'm not blaming anybody; these things happen. But
17 I do think it is important that we have some
18 confirmation of the position before we start.

19 THE PRESIDENT: Thank you very much. We should have spotted
20 this discrepancy between the timetable and Procedural
21 Order No. 1.

22 Let me just turn to the Respondent.

23 MR OSTROVE: (Interpreted) Thank you very much indeed,
24 madam. After to-ing and fro-ing on the timetable, the
25 parties reached an agreement. However, when they

09:38

1 finally reached an agreement on the timetable, we didn't
2 actually look at all the details.

3 It is true that normally there's no re-cross. But
4 in my experience there's always a very tiny re-cross,
5 and obviously totally confined to what happens during
6 the re-direct, nothing beyond that. We have included
7 ten minutes, but in my experience it is very rare that
8 we should actually use that. We just put it in just in
9 case.

10 That was an agreement between the parties at the
11 time. The idea wasn't at all, of course, to reopen the
12 debate at all, but just to confine it to what may be
13 necessary to cross after the re-direct. Thank you.

14 THE PRESIDENT: The Tribunal suggests to do the following:
15 we would, as a rule, not have re-cross; but if a party
16 asks to have re-cross, then we will consider it, and the
17 re-cross should then be limited to the scope of the
18 re-direct examination.

19 Is that a good way forward?

20 MR WOLFSON: It certainly is for the Claimants. As I say,
21 I was raising it really for the benefit of everybody; it
22 was not raised in any adversarial sense.

23 THE PRESIDENT: No, no, it's appreciated, because it
24 clarifies matters.

25 MR OSTROVE: [We are in complete agreement, and thank you

09:40

1 for raising it].

2 THE PRESIDENT: Is there something else that the Claimants
3 wish to raise, before I turn to the Respondent?

4 MR WOLFSON: No, there isn't. But thank you very much.

5 THE PRESIDENT: Thank you. (Interpreted)

6 [Respondent], have you any presentation or questions
7 that you would like to raise at the moment?

8 MR OSTROVE: In the mini-opening?

9 THE PRESIDENT: Yes.

10 MR OSTROVE: Yes, we do have a very short mini-opening,
11 particularly to deal with a few points pertaining to the
12 question raised by Professor van den Berg.

13 THE PRESIDENT: Yes, please, carry on.

14 MR OSTROVE: In order to do so, however, it seems to me that
15 we have circulated an electronic version of our
16 demonstratives. It might be useful now. If someone
17 wants a hard copy -- you already have them?

18 THE PRESIDENT: I thought that you would give them to me,
19 because I didn't print them out. (Handed)

20 (9.41 am)

21 Mini-opening on behalf of Respondent

22 MR OSTROVE: Thank you very much. We are going to begin
23 with just a word on today's witnesses.

24 You shall be hearing today the examination of
25 Mr Cramer and of Ms Merloni-Horemans. Just to situate

09:42

1 their importance, their main importance is due to the
2 fact that they are both directors of several companies
3 in the BSGR group. And we shall be seeing later, with
4 one of the demonstratives, a part of the BSGR and Onyx
5 structure, and their role as directors therein, so that
6 you can understand more easily how decisions are taken
7 within that group.

8 But in order to situate these decisions and these
9 companies within the world of the BSGR companies, we
10 also have a demonstrative, which is the chronology that
11 you have before you. We simply wanted to situate
12 various times that we will be referring to with both
13 witnesses, Mr Cramer and Ms Merloni-Horemans.

14 First of all, 6th February 2006. Those were the
15 very first permits -- Mr Naud mentioned this
16 yesterday -- the prospection permits obtained by BSGR.
17 Already in 2005 they were trying to get these permits,
18 but it was in February 2006 that they finally got them,
19 particularly North and South Simandou.

20 After which, on 14th February, there was this letter
21 from Mr Struik to Pentler, telling them, "You will be
22 getting 17.65% of the company, and \$[19].5 million,
23 depending on the results". That is what made it
24 possible for Pentler, as we saw yesterday, to commit
25 itself on 20th February vis-à-vis Mamadie Touré, Mr Bah,

09:44

1 Mr Touré and Mr Daou to hand that \$19.5 [million], plus
2 part of the shareholding -- 7% to Mrs Touré and 2% to
3 Mr Daou -- hand all of that over to them. And today we
4 shall be seeing with Ms Merloni-Horemans her role in the
5 signature of these agreements.

6 After these agreements, there is the MOU that was
7 signed on the same day, 20th February 2006, between
8 BSGR BVI and Guinea, something that is hyper-complicated
9 in this business. But BSGR BVI is BSG Resources
10 (Guinea) Limited registered in BVI. And I'm sorry,
11 today we will be going through all kinds of names that
12 are very similar, just slightly different, et cetera, so
13 you will have to bear with us through all of that.

14 Later we saw that BSGR signed two contracts directly
15 with Mrs Touré in February 2008. I will be referring
16 also to which particular contract was validated,
17 Professor Mr van den Berg, because that's a crucial
18 point. Then later we saw then in the month of March --
19 that's to say March 2008 -- there was the purchase of
20 the shares by Pentler by BSGR Guinea, BSGR Steel, which
21 is the parent company of BSGR Guinea, that buys the
22 shares of Pentler for the project. Then after that we
23 get the exploration and prospection permit that we saw
24 in December 2008 on Blocks 1 and 2, the Blocks 1 and 2
25 permit.

09:46

1 Now, to go back to Professor van den Berg's
2 question, when we played Mr Cilins's tapes, the question
3 was then -- I should like to thank Professor van
4 den Berg for that question -- that proves which document
5 was unarguably true by default? And there are two
6 points here.

7 When you look at the various MOUs signed, you know
8 that all the Pentler MOUs with the others are not
9 challenged in this particular arbitration. BSGR said in
10 their memorials and they had confirmed that the Pentler
11 contracts were true, genuine contracts.

12 Moreover, we know that Mamadie Touré had many of
13 these Pentler contracts with her, because the FBI in
14 fact got hold of these contracts through Madame Touré.
15 However, on the question of which are the contracts that
16 are challenged, the BSGR/Mamadie Touré contracts, well,
17 there is where you see that these contracts of
18 27th February 2008 and 28th February 2008 are the first
19 BSGR contracts with Matinda and with Mrs Touré. And
20 there we heard Mr Cilins say: when she had her papers
21 with her on 27th February/28th February, he saw these
22 contracts with her and he said, "Well, these are
23 photocopies and we need the originals".

24 What is the reference; the reference in the tape?
25 THE PRESIDENT: In the recording, if I understand correctly

09:48

1 there is a specific mention of these two contracts;
2 there is no mention of any other contract.

3 MR OSTROVE: Yes, these are the two contracts which are
4 specifically mentioned. R-36, page 76.

5 While you try to find the page, there is one
6 clarification I wanted to add. There is one Pentler
7 contract that is challenged by BSGR, 8th August 2009,
8 but we won't really dwell on it because it has no impact
9 on the case, so we're not taking a stand on that.

10 THE PRESIDENT: It's the first line on page 76, isn't it,
11 that refers to 27th/28th February? (Pause)

12 PROFESSOR VAN DEN BERG: (In English) There was
13 a communication between the Tribunal's assistant and the
14 lawyers: I would like to have that on the record.

15 MR NAUD: I'm sorry. The assistant asked me to confirm
16 which was the date of the Pentler contract the
17 authenticity of which is challenged, which we have
18 recognised.

19 This is a contract of 8th August 2009 signed by
20 Pentler and Mamadie Touré. The authenticity of that
21 contract is challenged by the BSGR companies. This is
22 not a contract that we used yesterday. It's
23 an additional contract between Pentler and Touré which
24 is not essential for this case, in the light of the
25 other contracts, and the authenticity of which is not

09:50

1 challenged.

2 PROFESSOR VAN DEN BERG: (Interpreted) I will ask a question
3 in French. On your table, the timeline table, I think
4 that there's another contract missing, or so-called
5 "contract" -- we have to be cautious -- of 8th July 2010
6 between Madame Touré and Pentler: Annex R-30.

7 MR OSTROVE: Yes, 8th July 2010:

8 "Subject to the development as foreseen ... the
9 Pentler company commits itself to paying ...",
10 et cetera.

11 Yes. This is one of the documents which is not
12 challenged, and I shall try and verify whether this is
13 one of the contracts that the FBI found in the
14 possession of Ms Touré.

15 PROFESSOR MAYER: That is R-30, but there is another
16 contract, R-31, while we're at it.

17 MR OSTROVE: Well, yes. Well, we're not totally exhaustive
18 of the chronology so as to be simple. But it's true
19 there's R-31, which says pretty much the same thing
20 really; 3rd August 2010.

21 PROFESSOR VAN DEN BERG: And on 8th August 2009, what is the
22 reference for that? Because I want to be thorough,
23 because it's not in the index.

24 MR OSTROVE: Sorry, paragraph 30 in the Reply, they don't
25 challenge the 8th August 2009 (sic) contract. It's the

09:53

1 contract that we saw of 8th July 2010 which is being
2 challenged.

3 PROFESSOR VAN DEN BERG: Well, now I'm completely lost.

4 I am really very sorry.

5 MR OSTROVE: The Pentler contracts, as we said, were not
6 being challenged, on the basis of what Mr Noy said, and
7 it was confirmed. However, I'm saying this: taking into
8 account the BSGR Reply, paragraph 30, where the contract
9 that Professor Mayer just mentioned of 8th July 2010 is
10 challenged, and this is R-30.

11 PROFESSOR VAN DEN BERG: 8th August 2009, did you mention
12 that?

13 THE PRESIDENT: No, that is a mistake.

14 MR WOLFSON: I think there was a reference to paragraph 30
15 of our Reply. Is that a correct reference, paragraph 30
16 of the Reply?

17 MR OSTROVE: We shall see that on the screen.

18 MR WOLFSON: Sorry, I should make clear: at least in English
19 it was paragraph 30, but it might be a mistake in the
20 translation.

21 MR OSTROVE: You have two paragraphs 30, and it's
22 paragraph 30 of Annex No. 1. We're trying to show it on
23 the screen, but apparently there's a technical problem.
24 But it says:

25 (In English) "The contract dated 8 July 2010, which

09:55

1 refers to Simandou and which purports to bear Mr Noy's
2 signature, is a forgery. Pentler's contracts with
3 Mamadie Touré had nothing to do with Simandou, and
4 nothing to do with BSGR. It appears that one of the
5 (genuine) 3 August 2010 contracts has been modified to
6 refer to the Simandou project, thereby implicating
7 BSGR."

8 (Interpreted) So there again they're actually
9 accepting the contract of 3rd August 2010 and they're
10 saying that this particular contract of 8th July 2010
11 would be a forgery.

12 THE PRESIDENT: What we can do is, once the Respondent has
13 finished the presentation, if you have immediate
14 replies, you can do so, or otherwise you do it tomorrow
15 morning.

16 MR WOLFSON: Very well.

17 MR OSTROVE: Yes, we are finished on this. We have other
18 demonstratives; we shall see those later. But simply
19 let me point out now that we might take a little bit
20 less time than foreseen with Mr Cramer, under two hours,
21 and we could perhaps begin with Ms Merloni-Horemans
22 before lunch, to save some time and to avoid having her
23 until tomorrow.

24 THE PRESIDENT: We will cross that bridge when we get there.

25 (In English) Will Ms Merloni-Horemans be available

09:56

1 if we are finished with Mr Cramer before lunch?

2 MR WOLFSON: Possibly, although I understand her train
3 doesn't get in till I think 11 o'clock, because she was
4 expecting to be cross-examined this afternoon.

5 Let's see how we go. I'd be reluctant to ask her to
6 get off a train and then be immediately cross-examined,
7 but let's see how we go. Even if we started her early
8 this afternoon, I don't anticipate that we would be
9 running late.

10 THE PRESIDENT: That's fine. Yes?

11 PROFESSOR VAN DEN BERG: Another question. The reference
12 for the contract found by the FBI, what reference is
13 that, please? You don't have to give it to me right
14 now. If you want to look it up, you can tell me
15 tomorrow.

16 MR OSTROVE: Well, I do believe I have them here, but
17 I don't want to make a mistake. So I'll hold that for
18 later, just to make sure.

19 THE PRESIDENT: There's another question that I'm going to
20 ask, to which you can also give us an answer tomorrow:
21 where are the originals of which contracts?

22 MR OSTROVE: Well, I know the answer. The originals of all
23 the contracts that the FBI had, all of the originals
24 available to them are still with the FBI. They are
25 going to be forensically examined in the United States.

09:58

1 I'm going to have to check and see whether I have the
2 right of telling you what I have in mind. And the BSGR
3 companies had the possibility, within the framework of
4 the dealings with the FBI in the United States, the
5 possibility of sending an expert over there also to take
6 a look at the originals in the FBI lab.

7 THE PRESIDENT: Thank you. Perhaps you can tell us, either
8 now or tomorrow, which are the contracts of which there
9 are originals held by the FBI.

10 MR OSTROVE: Yes, of course. I will do that.

11 THE PRESIDENT: (In English) Can I ask the Claimants whether
12 you agree with what was just said about the originals?
13 Either you can answer now or you can answer tomorrow
14 morning.

15 MR WOLFSON: I think it may depend on the originals of which
16 contracts we're talking about. And I think one of the
17 problems is that we have to try and be very clear as to
18 which contracts there's a dispute as to their
19 authenticity and which contracts are physically located
20 where.

21 I think the best thing might be for us to try to put
22 a few notes together and set out the position tomorrow
23 morning. I think that might actually be shorter than
24 doing it now.

25 THE PRESIDENT: That is perfect, absolutely.

10:00

1 Anything else anyone would like to address now,
2 before we go over to the examination of Mr Cramer? Not
3 on the Claimants' side?

4 MR WOLFSON: No, madam.

5 THE PRESIDENT: (Interpreted) Nothing for the [Respondent]
6 either?

7 MR OSTROVE: No, we could continue, Madam President.

8 THE PRESIDENT: [Perfect].

9 (In English) Mr Cramer, may I ask you to take a seat
10 at the witness table, please.

11 (10.01 am)

12 MR DAG LARS CRAMER (called)

13 MR WOLFSON: Madam President, on a point of procedure,
14 I understand that, as per the procedural order, a bundle
15 is being provided to everybody with the documents that
16 are going to be put to Mr Cramer. I haven't yet seen
17 the bundle. I don't know whether his two witness
18 statements are in the bundle. If they are not, could
19 the witness have his witness statements, obviously in
20 an unmarked copy, in front of him?

21 THE PRESIDENT: You should give a copy of the bundle to your
22 opponents.

23 You should get a copy of the bundle, of course.

24 Otherwise ...

25 While you locate an additional one, the Secretary of

10:02

1 the Tribunal has handed his bundle over, so we can just
2 check whether the witness statements are there.

3 MR WOLFSON: It doesn't appear to be. Could I have one
4 passed to him? Of course it will be unmarked, and it is
5 a clean copy. But I think that would be usual
6 procedure.

7 THE PRESIDENT: Obviously the witness should have his
8 witness statements, but unmarked copies. (Pause)

9 Mr Cramer has a bundle of documents provided by the
10 Respondent, and his two witness statements in unmarked
11 copies. Is that right, Mr Cramer?

12 MR CRAMER: Excuse me, madam? I didn't hear.

13 THE PRESIDENT: Do you have your witness statements?

14 MR CRAMER: I believe I do. I was told that I wasn't
15 allowed to bring anything, but I guess that's okay now,
16 no problem.

17 THE PRESIDENT: For the record, Mr Cramer, can you please
18 confirm your identity. You are Dag Lars Cramer?

19 A. That's correct.

20 THE PRESIDENT: You are the CEO of Onyx Financial Advisors?

21 A. I used to be.

22 THE PRESIDENT: You are not anymore, currently?

23 A. No.

24 THE PRESIDENT: When did you cease having this position?

25 A. Onyx as a company has been wound down over the last two

10:05

1 or three years. It is no longer operational.

2 THE PRESIDENT: So what is your current position?

3 A. I am the CEO of a management company that produces the
4 same type of activity, so in the same job. So I am
5 still providing the services to the BSG group.

6 THE PRESIDENT: And the company that you are the CEO of
7 now --

8 A. It's called Norn Verdandi.

9 THE PRESIDENT: Fine, thank you. Are you also the CEO of
10 BSG Capital Markets at present?

11 A. Yes, I am.

12 THE PRESIDENT: And I understand you are a member of the
13 board of directors of BSGR Limited and BSG Real Estate;
14 is that correct?

15 A. Yes.

16 THE PRESIDENT: You have provided us with two witness
17 statements, the ones we just mentioned before. One was
18 dated 29th February 2016, and the second one,
19 10th January 2017; is that correct?

20 A. Yes.

21 THE PRESIDENT: You have also referred in your statements to
22 a statement that you gave in the English High Court that
23 was dated 25th November 2014, and that is filed in this
24 record as C-28; is that correct?

25 A. Yes.

10:06

1 THE PRESIDENT: You are heard as a witness, and as
2 a witness, as you know, you are under an obligation to
3 tell us the truth. I would like you to read into the
4 record the witness declaration that is in front of you,
5 please.

6 MR CRAMER: I solemnly declare upon my honour and conscience
7 that I shall speak the truth, the whole truth, and
8 nothing but the truth.

9 THE PRESIDENT: Thank you.

10 So you know how we proceed, and you have been with
11 us for a day now. We will first have direct questions
12 from the Claimants' counsel, and then we will turn to
13 cross-examination, and then re-direct, and possibly
14 re-cross.

15 Mr Wolfson, please.

16 MR WOLFSON: Thank you, Madam President.

17 (10.07 am)

18 Direct examination by MR WOLFSON

19 Q. Mr Cramer, can I ask you to take up your first
20 statement, please.

21 A. Yes.

22 Q. Would you turn, please, to paragraph 31.2.

23 A. Yes.

24 Q. I understand there is a small correction you want to
25 make to the beginning of that paragraph. Would you

10:08

1 please explain to the Tribunal the correction you want
2 to make to it?

3 A. It says that:

4 "... I was aware from what Mr Hennig ... told me in
5 March and April ..."

6 That's not correct, because I have never met
7 Mr Hennig. In fact, Mr Avidan had told me what
8 Mr Hennig had said. I think if one refers back to 17
9 and 18 that becomes clear, because I make reference to
10 the Walter Hennig and Asher Avidan meetings. So it's
11 just effectively a typo in that regard.

12 Q. If you turn back to paragraph 18, are you referring in
13 particular to the first sentence of paragraph 18?

14 A. Yes.

15 Q. So in paragraph 31.2, as I understand your evidence,
16 31.2 should say:

17 "As I was aware from what Mr Avidan had told me that
18 Mr Hennig had told him in the meetings in March and
19 April ..."

20 Is that correct?

21 A. That's correct.

22 MR WOLFSON: Mr Cramer, I have no further questions for you,
23 but you'll now be asked questions by counsel for the
24 [Respondent].

25 THE WITNESS: Thank you.

10:09

1 THE PRESIDENT: Fine.

2 (Interpreted) You have the floor.

3 MR OSTROVE: It will be Laurent Jaeger who will ask the
4 questions.

5 THE PRESIDENT: You have the floor.

6 (10.09 am)

7 Cross-examination by MR JAEGER

8 Q. (In English) Mr Cramer, good morning. I am Laurent
9 Jaeger, and I'm going to ask you some questions about
10 your witness statement.

11 Could you turn to your first witness statement,
12 please.

13 A. Yes.

14 Q. The address that appears on that witness statement,
15 7 Old Park Lane, London, is your current address?

16 A. Yes.

17 Q. And you are a resident in the United Kingdom?

18 A. No.

19 Q. No? So this is not the address where you reside?

20 A. This is the office address.

21 Q. This is the office address?

22 A. This is an office address in London.

23 Q. What is your personal address? Where do you live?

24 A. I reside in Mauritius at the moment.

25 Q. In Mauritius. And do you have Mauritian nationality?

10:10

- 1 A. No, I'm Swedish.
- 2 Q. You are Swedish?
- 3 A. (Nods head).
- 4 Q. Do you have any other nationality than Swedish?
- 5 A. No.
- 6 Q. You are not a US citizen?
- 7 A. No.
- 8 Q. Have you been a US resident?
- 9 A. No.
- 10 Q. No, you have never lived in the US?
- 11 A. When I was younger, yes.
- 12 Q. Yes?
- 13 A. Yes.
- 14 Q. When was that?
- 15 A. Between the ages of two and seven.
- 16 Q. Between the age of ...?
- 17 A. Two and seven.
- 18 Q. Two and seven?
- 19 A. Yes.
- 20 Q. And where was that in the US?
- 21 A. We lived in Minneapolis. My parents lived there.
- 22 Q. In Minneapolis?
- 23 A. Yes.
- 24 Q. Thank you. Are your parents Americans?
- 25 A. No.

10:11

1 Q. No? Thank you.

2 So you mentioned that Onyx is no longer in business;
3 is that correct?

4 A. That's correct.

5 Q. Do you currently work with a company called Invicta?

6 A. No.

7 Q. No. Are you familiar with that company?

8 A. Yes, I am.

9 Q. Could you describe this company?

10 A. Invicta is a company that belongs to Sandra
11 Merloni-Horemans and she is currently working with it.

12 Q. So this company is run by Ms Horemans; is that right?

13 A. I believe so, yes.

14 Q. Yes. But you have no dealings with that company?

15 A. None whatsoever.

16 Q. Thank you.

17 So you say in paragraph 9 of your first witness
18 statement that you have the role of a CEO "for the BSG
19 group generally". Is that correct? Do you confirm
20 this?

21 A. I would say that that has to be put in the right
22 context. But yes, as it's described in the broader
23 statement, that was how my role evolved over the time
24 that I spent with the BSG group. Originally it was not
25 so, and that was something that probably happened more

10:12

1 from 2008/2009 onwards.

2 Q. And when you say, "my role has developed into more of
3 a CEO role", does that mean that you are not officially
4 the CEO, but that you are playing the role of a CEO for
5 the group?

6 A. I wouldn't say "playing".

7 I would say that in order to understand how this is
8 presented, one needs to better understand the structure
9 of a group like BSG. I've made it quite clear in the
10 witness statement how it works. But what we're dealing
11 with here is a Liechtenstein foundation which ultimately
12 owns Guernsey-based operating companies that in itself
13 is provided with a head office type of corporate
14 structure by an independent third-party service
15 provider. And through the activities that this service
16 provider -- which Onyx was, and now Norn Verdandi is --
17 one is providing the services that normally a corporate
18 head office would provide.

19 So taken out of context, when one puts this type of
20 a structure under scrutiny, it may seem both obtuse and
21 evasive. But in reality it's not, because it's a very
22 common structure in the context of creating the right
23 platform for both being fiscally effective as well as
24 for estate planning.

25 And this is quite common with any number of groups.

10:14

1 There are any -- there are some large companies that are
2 used -- people are familiar with on a day-to-day basis.
3 Ikea is a good example, has a similar structure. So
4 that's how we operate. And in the UK today there are
5 many, many companies, like Norn Verdandi, like Onyx was,
6 providing these type of activities.

7 So I was not the CEO of the group in a traditional
8 sense; I was providing the services that a CEO would
9 provide in a company if you had that traditional
10 structure. And that's the point that we're trying to
11 get across.

12 So Onyx in those days provided, you know, accounting
13 services, PR services, legal services, investment
14 analytics; the kind of thing that you'd find a corporate
15 head office, which these operating companies did not
16 have. These operating companies in themselves, of which
17 BSGR was one, had the relevant substance that they
18 needed in their jurisdiction to be proper companies. So
19 you would have people -- you would have an executive
20 person based in Guernsey, you would have the servers and
21 you would have the treasury services. So we
22 accommodated this in accordance with the structure that
23 was needed for the client, which in this case was the
24 foundation that owned BSGR.

25 So in that sense, one was the CEO. But I wouldn't

10:15

1 use the word "playing", because it would mean that I'm
2 a child, and I'm a grown-up.

3 Q. Thank you, Mr Cramer. In the interest of time, I would
4 ask you to make short answers, to the extent possible.

5 A. No problem.

6 Q. You are also a director of the main BSG group operating
7 companies; is that correct?

8 A. Yes, but I'm a non-executive.

9 Q. Non-exec. Do you work full-time for the BSG group?

10 A. I work full-time at Norn Verdandi providing services for
11 the BSGR group, yes.

12 Q. And since when have you had that role for the BSGR
13 group?

14 A. I don't want to be long-winded, but I think that
15 basically my role evolved into taking more day-to-day
16 responsibilities for this overall administration of the
17 group, having been initially more focused on the capital
18 markets activity within BSG Capital Markets, which I was
19 originally mostly involved in, and up until 2008/2009
20 that was the main focus of my activity.

21 Q. So you started becoming a CEO since 2008; is that
22 correct?

23 A. I think in my previous answer I answered this: that the
24 services that we provided ultimately created these
25 responsibilities, and they were provided in that regard.

10:17

1 Q. No, I'm asking you about the date. Did you start doing
2 that in 2008?

3 A. I don't think it's correct to say that there's
4 a specific date. I think it's a question of the
5 responsibilities evolving into that, right?

6 Q. Right. My question was: when did your responsibilities
7 start evolving into that?

8 A. So it evolved from being more focused on administrative
9 responsibilities to taking a day-to-day role, I would
10 say, around 2009/2010.

11 Q. Thank you.

12 Could you turn to paragraph 27 of your first witness
13 statement. At the second sentence you say:

14 "Having watched the process closely at the time ..."

15 Do you refer here to the Technical Committee
16 process?

17 A. Yes.

18 Q. What was your exact role in relation to the Technical
19 Committee review process?

20 A. I wasn't particularly involved. This was primarily
21 handled by the lawyers that we had hired to do this. So
22 I would read the documents, and that was basically it.

23 Q. You were reading the documents?

24 A. Mm-hm.

25 Q. Do you mean the exchanges between the Technical

10:19

1 Committee and your company?

2 A. Correct.

3 Q. Did you also read the exchanges between the Technical

4 Committee and BSGR Guinea?

5 A. Briefly, yes.

6 Q. Did you make the decisions that related to that process?

7 A. No.

8 Q. Who did?

9 A. We followed the advice of our lawyers.

10 Q. When the decision had to be made, when your lawyers

11 referred to you a decision and asked you whether they

12 should do this or that, who would make the decision?

13 A. You see, I wasn't in a position to provide much input to

14 these decisions because I was not involved with the

15 project that these matters concerned. I had no personal

16 knowledge or awareness of the activities that had taken

17 place on the ground at this time. And I think that the

18 records do show that in the context of all

19 correspondence, I was not involved with these matters.

20 So I was not in a position to add much value, other than

21 being part of the administrative process of managing

22 these responses in accordance with the process that had

23 been presented to us and how our lawyers suggested we

24 manage it.

25 Q. Who made the decision not to participate in the process

10:20

1 in December 2013?

2 A. You mean not to attend at the hearings? I think there
3 was a general view that it would be dangerous for any
4 person within the group to go to Guinea, on the basis of
5 the arrest of BSGR's employees in the country and also
6 the fact that Mr Avidan, who had been the country
7 manager, had somehow been banned from going to the
8 country, and that appeared to be something that various
9 people involved with that work on the Technical
10 Committee side, seemed to be a matter of amusement to
11 them. So we felt unsafe, and in that regard I think it
12 was important that nobody would attend.

13 Q. Did you carry out any investigations about Guinea's
14 lawyers at the time?

15 A. No.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10:23

[PROTECTED]

[REDACTED]

10:27

[PROTECTED]

[REDACTED]

16 Q. Could you now turn to paragraph 27 of your witness
17 statement. You state there:
18 "... I do not believe that the review was a fair or
19 proper process, nor do I believe that the revocation of
20 BSGR Guinea's rights was done in good faith following
21 that review."
22 When you refer to "BSGR Guinea" there, is it the
23 company that was renamed at the time Vale BSGR Guinea
24 Sárl, or VBG?
25 A. I believe so.

10:29

1 Q. Yes. And was BSGR Guinea the only party to the
2 Technical Committee's review process?

3 A. Sorry, I don't -- can you be -- what do you mean?

4 Q. Is it correct that that company, BSGR Guinea, was the
5 only party to the technical review process; that
6 officially the technical review process was conducted
7 vis-à-vis that party alone, and no other party?

8 A. I don't know. I don't really understand what you're
9 asking.

10 Q. Was BSG Resources Limited a party to the technical
11 review process?

12 A. I believe so. I don't really ...

13 Q. Was BSGR the owner of the mining titles?

14 A. Was BSGR the owner of the mining title in ... Yes,
15 I believe -- I think so, yes. I don't really see the
16 relevance. I believe it was, yes. If that was the
17 entity that was being challenged by the Technical
18 Committee, I can only presume so. I mean, I can check,
19 but I don't know.

20 Q. Could you turn to tab 27. It's Exhibit R-415. There is
21 a translation, so if you go to page 12 of the
22 translation, the third paragraph from the bottom of
23 page 12. Are you there?

24 A. Yes.

25 Q. President Touré, the chairman of the committee, asked

10:31

1 this question:

2 "The question that your response begs, and which the
3 Committee somewhat anticipated, is to know if you
4 understand that the current hearing only concerns VBG,
5 because VBG is the apparent holder of the mining rights.
6 The Committee would like to ensure this."

7 And Jean-Yves Garaud, who was BSGR Guinea's lawyer,
8 answered:

9 "VBG is in fact the holder of the mining rights.
10 From our point of view, the Committee sought, before
11 else, information and it sought information which VBG
12 indicated to the Committee, on multiple occasions, that
13 it did not have. It is in this spirit, and with this
14 logic, that we asked BSGR to be present to be able to
15 respond to potential factual questions which the
16 Committee could have. But we obviously understand --
17 and no one can deny this -- that the holder of the
18 mining rights is VBG."

19 Do you understand what Mr Garaud says there?

20 A. Yes.

21 Q. Do you understand that he says that only VBG is the
22 holder of the mining rights?

23 A. Yes.

24 Q. And do you understand that he states that BSGR was asked
25 to provide information in the process --

10:33

1 A. Yes.

2 Q. -- by VBG? Right.

3 Do you also understand that, according to this
4 statement, BSGR was not a party to the review process?

5 A. Yes, okay. Yes. So you're saying VBG was?

6 Q. Yes, VBG, which is BSGR Guinea now, which is a party to
7 this proceeding, at the time was the only party to --

8 A. Yes, that's been clear to me all along.

9 Q. Okay. Very well.

10 Now, could you turn to paragraph 31.7 of your
11 witness statement. The first sentence is:

12 "On the face of the Allegations Letter, it appeared
13 to me that the Technical Committee process was designed
14 to be prejudicial to BSGR."

15 And you go on to say:

16 "Without repeating what is set out in detail in
17 section L of the Cramer Witness Statement, two examples
18 in particular stood out to me. First, the Technical
19 Committee described what it saw as the history of BSGR's
20 involvement in Guinea as 'facts', which included
21 a series of extremely serious allegations which were
22 entirely untrue."

23 So was your conviction that the process was designed
24 to be prejudicial to BSGR based on the fact, inter alia,
25 that the committee described allegations as "facts"? Is

10:35

1 that what you mean here?

2 A. Yes, absolutely, for two reasons. One is: this is what
3 we were told by the people who were involved
4 operationally. And second, at the time, and even more
5 so as things evolved, it was clear to us that the
6 individuals involved in this review, and the auspices of
7 what was happening in Guinea and the people making
8 decisions, were in fact corrupted individuals, which
9 I think we've addressed here, but also it's a matter of
10 public record in any number of proceedings that are
11 taking place and have taken place.

12 It's there in black and white: that people who
13 initiated and instigated these proceedings, the
14 President of the country and members of his entourage,
15 were bribed in any number of situations involving other
16 mining transactions, and that there was a vested
17 interest to undermine our position. And that is
18 a matter of public record. It's there in black and
19 white, in US court documents.

20 Q. Could you turn to Exhibit C-53 -- it's tab 1 -- and go
21 to page 2 of the translation of the letter of
22 allegation. It states:

23 "Please note that no final decision has been made
24 regarding these allegations, and no action will be taken
25 by the CTRTCM before your company has had the

10:37

1 opportunity to respond to these allegations, to develop
2 and present replies, nor before the CTRTCM has had
3 an opportunity to hear the witnesses who will be named
4 regarding these allegations."

5 Where do you see in this letter that the Technical
6 Committee presented allegations as facts?

7 A. Well, I think that from the very start of this process
8 with the Technical Committee, we doubted that it either
9 had legitimate intentions or that the process was being
10 managed properly.

11 And I'll take you back to how we became aware of the
12 existence of these allegations in the first place: it
13 was leaked to the press. The letter addressed to VBG --
14 of which we were a partner, but not the managing
15 partner, at the time -- was leaked to the press. Me and
16 some colleagues -- I and some colleagues were ambushed
17 by a team of journalists who had this letter in their
18 hand before it had been given to us. And in this very
19 letter, once we got it, the Technical Committee talks
20 about this being confidential information and it
21 shouldn't be discussed with anybody. But yet the very
22 people who had been involved in advising the Technical
23 Committee on this letter had in fact leaked it to the
24 press.

25 So for us to take this process seriously and to

10:38

1 believe that what they said was going to happen was in
2 fact going to happen, you have to understand that we had
3 gotten off to a really, really bad start. And that's
4 also a matter of public record.

5 Q. Mr Cramer, I will ask you to listen to my question
6 carefully, and answer the question.

7 A. Sure.

8 Q. I will rephrase the question. The question was: where
9 did you see in the allegation letter that the allegation
10 letter mentioned facts or referred to allegations as
11 "facts"? That was my question.

12 A. Could you repeat the question?

13 Q. Well, you state in your witness statement that the first
14 reason why you believe that the process was prejudicial
15 to BSGR was that:

16 "... the Technical Committee described what it saw
17 as the history of BSGR's involvement in Guinea as
18 'facts', which included a series of extremely serious
19 allegations ..."

20 Where does the letter refer to "facts"?

21 A. Should I read through the whole letter?

22 Q. I mean, what is the basis for the statement you made?

23 Because as I read you this paragraph --

24 MR WOLFSON: Madam President, I'm sorry to object, but these
25 questions are being put on an unfair basis to the

10:40

1 witness because he has not been shown the whole letter.

2 I can deal with it in re-direct examination if you want,

3 but --

4 THE PRESIDENT: Yes, let me ask the question.

5 Mr Cramer, you write in paragraph 31.7 that you
6 consider that the technical review process "was designed
7 to be prejudicial to BSGR", and you want to give two
8 examples for this. The first one is that:

9 "... the Technical Committee described ... the
10 history of BSGR's involvement ... as 'facts' ..."

11 And you said before, and you say it here too, that
12 these were not facts; these were untrue allegations.

13 Untrue allegations: that was your word before.

14 So what is the basis for saying that untrue
15 allegations are presented as facts? Because when you
16 wrote this, you must have something in mind.

17 A. Thank you, that helps.

18 I -- basically what -- I mean, I can't get into the
19 specifics right here and now. I mean, we could if we
20 went through it. But there was a general feeling that
21 things that were loose allegations were presented as
22 facts -- I mean I think that italics are used here --
23 that it wasn't -- the spirit and the tenor of this
24 communication seemed to be trying to tee -- to set BSGR
25 up in a position to justify a decision that had already

10:41

1 been made, which in fact turned out to be the case. And
2 we felt that allegations that lacked substance were
3 being put forward as if they were facts.

4 I guess it's an issue of nuances and --

5 THE PRESIDENT: So do I understand correctly that your
6 statement in 31.7 is not based on specific words in the
7 allegations letter, but is more a general impression?

8 A. Correct.

9 THE PRESIDENT: Let the witness answer.

10 MR WOLFSON: Sure.

11 THE PRESIDENT: Correct?

12 A. Yes.

13 MR WOLFSON: Mrs President, this is unfair, because the
14 letter is a long letter, it goes to page 7. After
15 paragraph 11.25 of the allegations there is a passage in
16 the letter which, in fairness, ought to be put to the
17 witness. Counsel has put to him on four occasions that
18 facts are not set out in the letter, and he hasn't put
19 page 7 of the letter to the witness.

20 THE PRESIDENT: Fine. So I would suggest you come back on
21 this in re-direct, because to me this is typically
22 a re-direct point. Is that acceptable?

23 MR WOLFSON: I'm in your hands. But questions are being put
24 on a false basis and I think that is unfair to the
25 witness.

10:43

1 THE PRESIDENT: No, my question -- and that is what I will
2 remember from this exchange -- was a very
3 straightforward question: "Mr Cramer, in 31.7 you say
4 that allegations are presented as facts; what is the
5 basis for this statement?" And we had the answer, and
6 we can carry forward.

7 MR JAEGER: Thank you, Madam President.

8 So still in paragraph 31.7, at the end of the
9 paragraph on page 16, you state:

10 "Finally, in December 2013, three working days
11 before the final hearing, it provided copies of evidence
12 on which it purported to rely, but even then that
13 evidence was complete."

14 I suppose that it refers to the Technical Committee;
15 correct?

16 A. Correct.

17 Q. What did you mean by "[the] evidence was complete"?

18 A. I meant that the evidence, what they claimed to be
19 evidence and what they were presenting as fact, did not
20 appear to be either factually correct or backed up with
21 the right level of substance.

22 I mean, I think that one of the things that -- their
23 findings and that they were pushing was this affidavit
24 signed by Mamadie Touré, which appeared to be quite --
25 and consistently -- untrue. And I think also, based on

10:45

1 what we have seen and what I've been told, and the
2 representations made by people working for BSGR, it just
3 seemed to be not truthful. And to rely on the
4 statements by a person who in many ways appears to be
5 an untruthful and dishonest person, it just seemed to be
6 strange that the bulk of the so-called "evidence" and
7 "facts" relied on statements by such a person.

8 Q. But what did you mean by "complete"? Because is it your
9 testimony that the evidence that was provided by the
10 Technical Committee in December 2013 was complete?

11 A. Well, they -- I mean, what I'm trying to say here, as
12 I understand it, reading it, is that they said that, you
13 know, this was open and shut and they had complete
14 evidence of something that they did not.

15 Q. But do you mean that it was complete or not complete in
16 your witness statement?

17 A. Well, they appeared to feel that it was complete.

18 Q. And you? What's your position?

19 A. No, I didn't -- I mean, I didn't feel there was any
20 evidence that was either complete or correct in that
21 regard.

22 Q. So here you mean that the evidence is not complete;
23 correct?

24 A. From their perspective, yes.

25 Q. And from your perspective it was complete?

10:46

1 A. Well, I wasn't presenting the evidence; they were.

2 Q. Could you turn to tab 21, please. That's Exhibit C-73,
3 and that is a letter dated 4th December 2013.

4 Could you turn to page 2 of this letter. There is
5 on page 2 a list of the pieces of evidence that were
6 communicated by the Technical Committee to BSGR at the
7 time.

8 A. Mm-hm.

9 Q. Is it your opinion that this list of evidence, this
10 evidence was not complete?

11 A. Well, I mean, I can answer that in two ways.

12 So first of all, evidence of what, and in what
13 context? And here you have all kinds of agreements and
14 statements made by people which is contested by the
15 people that we have spoken to. So the answer is:
16 I think that the evidence is far from complete.

17 And in the context of information that has
18 subsequently come out, okay, which was spoken about
19 yesterday, it's the very fact that Mamadie Touré during
20 this time was paid money by an agent of the Government
21 of Guinea under very suspicious ways. There was no
22 receipt, this was not official. Talk about providing
23 money for her, but meanwhile she was paid cheques to
24 a total of \$50,000 by the partner of the President's
25 son. That's not proper. And then you're supposed to

10:49

1 rely on what she puts forward, when the Government of
2 Guinea, through kind of subversive ways, are paying this
3 cooperating witness money?

4 So I don't think this is complete. I don't think it
5 demonstrates anything, because it relies on people who
6 have been paid to lie.

7 Q. So in that list you can see that there is an affidavit
8 from Mrs Mamadie Touré?

9 A. Yes.

10 Q. Along with the attachment referred to?

11 A. Yes.

12 Q. An affidavit from Mr Frédéric Cilins?

13 A. Yes.

14 Q. A written transcript by a judicial officer of the audio
15 transcript of the conversation between Mr Frédéric
16 Cilins and Mrs Mamadie Touré?

17 A. Mm-hm.

18 Q. I think you were here in this room yesterday when
19 certain parts of this transcript were played?

20 A. I couldn't hear anything. And the translations, as you
21 know, there was no translation, because they couldn't
22 hear either. And my French isn't good enough.

23 Q. What was sent with the letter is a transcript. So you
24 could read the transcript at least, couldn't you?

25 A. Between -- a transcript of the conversation between

10:50

1 Frédéric Cilins and Mamadie Touré; is that what you're
2 saying?

3 Q. Yes, that was what was communicated. There were also
4 copies of cheques signed by Mr Frédéric Cilins for the
5 benefit of Mrs Mamadie Touré; the bills of Matinda & Co
6 company in an amount of \$998,000 and \$2,000; the
7 complaint filed on April 15th 2013 before the United
8 States Federal Criminal Courts; the agreement signed on
9 June 20th 2007 between BSGR and the Matinda company; and
10 other documents.

11 This was a lot of evidence, wasn't it, Mr Cramer?

12 A. If you believe it would be helpful, let's go through
13 them one by one and I can tell you what I think about
14 each one, because we're talking -- you're saying
15 "complete evidence". Evidence of what? I think there
16 are documents here which have to be considered
17 seriously. There are documents here which I don't
18 consider seriously at all; the exact opposite, okay? If
19 you want to start from the top or the bottom.

20 A memorandum prepared by Veracity: as evidence of
21 what? This is like a report put together by a business
22 intelligence firm, which is a sector which is not
23 regulated, not controlled. They put together stories
24 which are presented as facts. How can you talk about it
25 being complete evidence of anything?

10:51

1 So if you'd like to, if it's helpful -- and I want
2 to help -- we can go through this whole list. But you
3 have my answer: I don't believe this is complete
4 evidence of anything.

5 There is a combination of things that need to be
6 taken very seriously. I think when one talks about
7 a complaint filed before the United States Federal
8 Criminal Courts, that's something that needs to be taken
9 very seriously. But when you talk about a memorandum
10 prepared by Veracity, or a transcript between Frédéric
11 Cilins and Mamadie Touré, which I have no involvement
12 with whatsoever, what is it evidence of? And even the
13 context in which these discussions have taken place is
14 not something that I'm particularly familiar with.

15 So that's the answer.

16 Q. Is the FBI a business intelligence company, Mr Cramer?

17 A. Sorry?

18 Q. Is the FBI a business intelligence company?

19 A. I'm not criticising the FBI. What I'm talking about is
20 private individuals in an industry called "business
21 intelligence" who actually -- you know, what they get up
22 to is shameful.

23 And I say this based on facts. I have in my office
24 two large cases of material that was given to us as
25 a result of the proceedings that we were involved with

10:53

1 with Rio, where any number of business intelligence
2 firms were hired to investigate BSGR, and came up with
3 complete nonsense and trash, okay?

4 So -- and if you ask me what I think about Veracity
5 and their activities in this context, I don't believe
6 that it's either truthful or relevant. And I have
7 personal knowledge of the individual who's involved in
8 that company. And I don't think that any serious person
9 in today's world actually would look at a number of
10 these firms, and what they produce and what they say and
11 what it's based on, and would take it seriously.

12 Q. Do you have the same opinion about the evidence that was
13 secured by the FBI, such as, for instance, the written
14 transcript of the conversation between Mr Cilins and
15 Ms Mamadie Touré?

16 A. No, sir, what I'm saying here: obviously if the FBI in
17 America put forward something and they have a case, one
18 has to consider it seriously. But I'm saying in what
19 context here is important. Don't compare that to
20 something prepared by Veracity. It's completely
21 different.

22 And that I think is the whole point. So if one is
23 presenting factual evidence secured by the US Government
24 that is being investigated, one needs to read it
25 carefully, one needs to take it seriously, because they

10:54

1 don't have a hidden agenda; they are trying to seek
2 justice.

3 Whereas a firm like Veracity -- which, by the way,
4 in this specific case, years before -- you should know
5 this -- years before this issue came up, Steven Fox, who
6 is the principal behind Veracity, who I have known for
7 30 years, who was often seeking to do business for us,
8 bragged about doing work for George Soros. And then he
9 appears in this saga.

10 Q. Mr Cramer, I will ask you to keep your calm and please
11 answer the questions.

12 A. I did.

13 Q. And now could you please --

14 A. I'm very calm.

15 Q. -- turn to tab --

16 A. I'm just, like, you know, getting into the moment.

17 Q. Yes.

18 A. Yes.

19 Q. Could you turn to tab 39, please. This is Exhibit C-64,
20 and that is the recommendation that was made by the
21 Technical Committee to the Strategic Committee. If you
22 turn to the last page of this document, there is
23 an annex, which is the list of documents which the
24 committee relied on to make its finding. Do you see in
25 that list the Veracity report? (Pause)

10:56

- 1 A. No, I don't.
- 2 Q. No. Which means that the committee did not rely on the
3 Veracity report to make its recommendation; correct?
- 4 A. The Veracity report was in the previous list that you
5 put in front of me, and I was commenting on it in that
6 context, because it is there.
- 7 Q. The previous letter I showed you was the list of
8 evidence that was communicated to BSGR Guinea.
- 9 A. Yes.
- 10 Q. And this list is the list of evidence on which the
11 committee relied.
- 12 A. Fine. We can go through this list too, as well, in the
13 context of --
- 14 Q. The question is --
- 15 A. Yes.
- 16 Q. Well, you consider that the Veracity report had no
17 value; correct?
- 18 A. Yes, correct.
- 19 Q. You still make that statement?
- 20 A. I do, yes.
- 21 Q. But you can see here that the committee did not rely on
22 that one for its --
- 23 A. But that doesn't mean that this list is something that
24 I consider to have great substance either. So if you
25 want to leave Veracity behind, we can go through this

10:57

1 list as well.

2 I don't believe, okay, that the invoices -- I mean,
3 what we've been told about a lot of these documents is
4 that they're not real. And in the context of relying
5 upon information, if I'm getting information from people
6 within our organisation who are saying that this is what
7 happened, versus allegations again made by a person who
8 has a track record of corruption, I would believe the
9 people that I'm working with.

10 Q. Another question. Is there any document in this list,
11 the list of documents on which the committee relied,
12 that was not communicated to BSGR prior to the hearing?

13 A. So also I go back to what I was originally saying: we
14 did not take the committee's work that seriously, okay?

15 Q. Are you answering my question now?

16 A. Yes, I am.

17 Q. My question was: is there any document in the list of
18 evidence that the committee relied on that was not
19 communicated to BSGR prior to the hearing? Do you
20 understand the question?

21 A. Yes, I mean, I think it's complete. I don't know.

22 I believe so, yes.

23 Q. Okay.

24 So turning back to your witness statement,
25 paragraph 31.7, you state that the evidence was

10:59

1 communicated to BSGR Guinea "three working days before
2 the final hearing". That is your statement?

3 A. Yes.

4 Q. Are you aware that BSGR Guinea requested that the
5 hearing be postponed to 16th December 2013?

6 A. I don't remember that, but it's very possible.

7 Q. And do you know whether the committee granted the
8 extension?

9 A. I don't remember.

10 Q. If you look at tab 27. This is Exhibit R-415 and this
11 is a transcript of the hearing, and you can see that the
12 hearing took place on 16th December 2013.

13 A. Yes. Sorry, what was the question?

14 Q. You mention that the evidence was communicated "three
15 working days before the final hearing". The evidence
16 was communicated on 4th December 2013 and the hearing
17 took place on 16th December 2013. So that is not three
18 working days, is it?

19 A. So which part am I supposed to read to either confirm --
20 so that's Monday 16th December, okay, that's when the
21 hearing starts. And then something:

22 "Finally, in December 2013, three ... days
23 before..."

24 Q. Your statement is that the evidence was communicated to
25 BSGR Guinea three days before the hearing.

11:01

1 A. And you're saying it was how many days?

2 Q. And in fact the evidence was communicated on

3 4th December --

4 A. Yes.

5 Q. -- and the hearing was postponed to 16th December.

6 A. Oh, so it had been set to the 7th, is what you're
7 saying, which would be three days, and then we were
8 given an extension?

9 Q. That's correct.

10 A. That's very possible, yes. Sorry, I mean, that's ... if
11 we're counting the days.

12 Q. At this point BSGR had been provided and had had the
13 opportunity to review the evidence on which the review
14 process was based. Did BSGR provide its comments on
15 that evidence to the committee?

16 A. Its comments, sorry, for the meeting?

17 Q. Did BSGR provide its comments to the committee on the
18 evidence that had been communicated to it by the
19 committee?

20 A. I don't remember. It was being handled by our lawyers
21 at the time. So, I mean, I think that the best thing is
22 to rely on whatever our lawyers submitted, because I was
23 neither managing that process on a day-to-day basis or
24 involved in the detail, because I didn't really have the
25 knowledge that is required to be doing that.

11:02

1 So, you know, I was a bit of a support player in
2 this process. So the kind of detail of what was
3 happening specifically around that time, you know, I'm
4 not particularly well briefed on that. And I'm not
5 trying to be evasive, but if I had known that, you know,
6 we were going to focus on this, I could have prepared
7 myself a little bit better. It's not that I don't want
8 to answer your questions, but they seem a little bit
9 obtuse to me; I'm not getting them, and I'm not normally
10 stupid.

11 Q. So your answer is: you don't know whether BSGR --

12 A. I don't, no.

13 Q. -- commented on the evidence that you -- the list of
14 evidence?

15 A. Yes. I mean, they -- yes, I don't know to what degree
16 they did in this specific case. I mean, there was
17 an ongoing exchange of letters and so on, this I know.
18 And in the context of the general spirit of allegations
19 and BSGR's response, that -- you know, that there was
20 a lack of substance, this I know.

21 And then I know that because there was a very
22 strong-held belief -- which I think is correct -- that
23 it would be unsafe for anybody to go to Guinea, one
24 wasn't as focused on this as one would normally be, for
25 those reasons: it was unsafe; there was a lack of

11:04

1 substance; the lawyers were handling it; that this
2 seemed to be premeditated. I -- I think I've made that
3 clear.

4 Q. Did you consider being represented by counsel at that
5 hearing?

6 A. You mean having counsel represent BSGR to go down there?

7 Q. Yes.

8 A. It may have been discussed. I don't recall the exact
9 details actually.

10 Q. Do you remember why you decided not to send your counsel
11 to the hearing?

12 A. A combination of the reasons that I've just stated:
13 unsafe; that there was a lack of substance and sincerity
14 behind the allegations; that the process in itself was
15 illegal, because we had obtained, you know, advice from
16 French lawyers saying that this was kind of a farce and
17 this was not part of what was considered to be -- it
18 wasn't legally conducted. I think that's in my witness
19 statement as well. We got a French expert legal opinion
20 on this.

21 So the combination of: this is a farce, this is not
22 a proper investigation, it's not a proper trial; it's
23 not safe for us to go there; the allegations lack, you
24 know, the type of substance one would like to see. We
25 didn't feel that the representation that we would make

11:05

1 would be taken seriously. We felt that the decision had
2 already been made, and I think that comments made in the
3 public domain demonstrated this to us.

4 So we didn't feel it was a fair trial or a fair
5 hearing. We said at the time, and have always said
6 since, that we felt that we would get a fair hearing in
7 a forum like this, and this is why we're here. We
8 didn't feel it was something that would be in our best
9 interest. We didn't feel justice would prevail.

10 Q. Did you consider attending the hearing by video link,
11 which would have solved the safety reasons issue?

12 A. I don't recall considering that, because of course
13 ultimately, by participating in a process that you don't
14 believe is legitimate, you give it a certain
15 credibility. So I don't know if we discussed that, if
16 that was offered or investigated. It's possible, but
17 I don't recall.

18 Q. So the reason why you didn't attend the hearing was not
19 the safety issue but the legitimacy of the process;
20 correct?

21 A. No, it was one of the reasons. You know, you consider
22 all of these together, or in isolation. And I think
23 it's a very valid concern for anybody who's been in that
24 part of the world. Certainly if you had spoken to our
25 former employees, who were arrested without any reason

11:07

1 and charges, they would agree.

2 Q. On 8th December 2013, Skadden sent a letter to the
3 Technical Committee stating that BSGR will not attend
4 the hearing. Was this your decision?

5 A. Sir, do you have the letter there?

6 Q. It's tab 23, Exhibit C-74. If you turn to the last page
7 of that document, the conclusion, it reads:

8 "As has been stated from the outset, the so-called
9 'review process' by the committee, instigated under the
10 supervision of President Condé, is part of
11 a pre-conceived and orchestrated plan to expropriate our
12 client's mining interests.

13 "BSGR will not, therefore, be participating further
14 in the 'review' until such time as the Committee engages
15 with the serious matters raised in both our 4 June
16 letter and in this letter, specifies the evidence on
17 which it relies in its entirety, and takes appropriate
18 steps to ensure that its procedures and processes are
19 carried out in accordance with international law and
20 legitimate expectations of fair process, including
21 convening a hearing at which evidence may properly be
22 tested, and at which our client can safely attend."

23 A. That letter had my full support. I like it a lot, yes.

24 Q. Did you take part in the decision of not participating
25 in the process anymore, as stated in this letter?

11:09

1 A. Correct, yes.

2 Q. If you could turn to tab 26. That's Exhibit R-414.

3 This is a letter that was written by BSGR Guinea to the
4 Technical Committee, and there is no translation. Can
5 we ask the interpreter to translate it for you. I will
6 read it in French.

7 A. Sure.

8 Q. And if you can put on your headphones, it will be
9 translated.

10 A. Yes.

11 Q. In this letter BSGR Guinea states:

12 (Interpreted) "Concerning your mail pertaining to
13 BSGR's answer, please note that neither VBG nor Vale
14 have taken part in any way whatsoever in the preparation
15 of this answer that was sent to you by BSGR under its
16 sole responsibility. The observations contained in that
17 answer reflect exclusively BSGR's viewpoint. Neither
18 VBG nor Vale are in a position to make any comments on
19 the accuracy of the factual elements presented by BSGR,
20 since we have no independent information thereupon.

21 "As concerns VBG, the Technical Committee shall have
22 noted that, while reserving its rights for a regular
23 procedure, an equitable treatment, VBG has done
24 everything it could to cooperate with the enquiry
25 procedure, and has already provided all of the

11:11

1 information that it had. It is in this spirit that the
2 VBG representatives will be attending the Conakry
3 hearing."

4 (In English) You can now take off your headphones.
5 I have finished reading that.

6 Were you in contact with BSGR Guinea and their
7 counsel at the time? And did you discuss about this
8 decision to take part in the hearing?

9 A. So I'm going to have to give a bit of an explanation
10 here, if that's alright. It's very difficult to just
11 answer very quickly, because the underlying issue here
12 at the time was that the partnership that we had with
13 Vale was starting to crack at its seams. And Vale were
14 the 51% shareholder in the joint partnership and they
15 were actually the managing partner, and our interest and
16 what we wanted to do, and our respective positions in
17 the context of this project and the future, were
18 starting to fall apart.

19 We also had a VBG board, which unfortunately the
20 communication there had become not as constructive as
21 one wanted it to be. And we also felt that there was
22 a dialogue taking place between our partners, Vale,
23 directly with the Government of Guinea and perhaps the
24 Technical Committee, that was not being communicated
25 transparently and openly to us. And the agenda that

11:13

1 Vale were pursuing was not necessarily in the best
2 interest of the partnership, but in the best interest of
3 Vale, and therefore we were no longer speaking with one
4 voice. So the communication between us, and the
5 agendas, were starting to separate.

6 And we also felt, I recall -- and I'm not really
7 prepared for this -- but reading parts of the
8 transcripts from the actual hearings, and it confirmed
9 to me that Vale were behaving in a way that they wanted
10 to have their cake and eat it too. We felt -- and we
11 have a lot of evidence to believe -- that there was
12 a side-by-side deal between the Government of Guinea and
13 Vale that they would not step up to the plate and
14 protect the partnership; they would stay in the game,
15 and that they would be allowed to stay in Guinea, have
16 this asset, with BSGR out.

17 So the explanation for why we're speaking not
18 together as one would normally expect is explained by
19 those developments.

20 And I think that it's also a matter of public record
21 that there were initiatives not only by Vale to seek
22 this preferential position, but also by former employees
23 of Vale. Unfortunately, Agnelli, who died rather
24 tragically, was in his new occupation -- he was the
25 former CEO of Vale -- trying to re-enter Guinea by doing

11:15

1 a deal with the Government of Guinea, and getting access
2 and indirect access to these blocks, which he obviously
3 considered to be of great value.

4 So this letter I think is demonstrating Vale's
5 position, as opposed to the partnership's.

6 Q. This letter was written by BSGR Guinea and reflected
7 BSGR's position to the Technical Committee, didn't it?
8 That's what they wrote to the Technical Committee?

9 A. Yes, but you see, I think basically VBG was the owner of
10 this asset, right? But VBG had two partners, and
11 ultimately this letter is reflecting the position of
12 Vale, not the partnership, in the spirit of what we were
13 trying to say. So --

14 Q. I understand. But as you'll remember, we established
15 before that the only party to the Technical Committee
16 review process was VBG, BSGR Guinea. So the party who
17 was officially stating the position of BSGR Guinea was
18 VBG, was BSGR Guinea?

19 A. So I'm explaining it how it was, and I think that
20 technically there was one party. But think of it like
21 a husband and a wife, and they together have a claim,
22 but then they're going through a divorce, or there's
23 a problem; and then, even though the husband is
24 representing both people technically, he is representing
25 himself, as opposed to representing the partnership.

11:17

1 This is the explanation and this is what happened.

2 I was never in touch with this individual myself.

3 So our position, as BSGR, was truly reflected by the
4 letter written by Skadden, who we were actively involved
5 with. What VBG were presenting, driven by the managing
6 partner -- I mean, Vale owned 51% -- did not necessarily
7 align or support our position, unfortunately.

8 Q. Could you now turn to tab 27 (R-415), which is the
9 transcript of the hearing, and to page 11 of the
10 translation. If you go to the fourth paragraph from the
11 bottom, there is a statement made by BSGR's
12 representative which goes:

13 "To support this, along the same lines, this is our
14 assessment of the Technical Committee's procedure: since
15 the beginning, we have not had the slightest objection,
16 nor question. We have tried our best to cooperate by
17 counting on the knowledge of BSGR for all the questions
18 which were asked of us and, we, ourselves, worked on
19 these questions."

20 So at the hearing BSGR Guinea's representative says
21 that he has no objection to the review committee
22 process. That was completely opposite to your position,
23 wasn't it?

24 A. I think that this is what I explained: that what was
25 being presented by VBG reflected the position of the 51%

11:19

1 shareholder. And we found ourselves in a very difficult
2 position because of that, and I think that the
3 implications of that unravelling of the relationship at
4 that point in time, you're highlighting very correctly.

5 But our position, where we stood as BSGR on its own,
6 and not as part of this partnership where we could no
7 longer speak on our own behalf, is reflected in the
8 Skadden letter. I don't think it could be clearer. And
9 it's very consistent with what I'm saying.

10 Q. Could you move to paragraph 31.8 of your witness
11 statement.

12 A. Mm-hm.

13 Q. You state there -- and we are going back in time now:

14 "Given my concerns about the Allegations Letter and
15 the motivation behind the Technical Committee review,
16 BSGR instructed legal experts to undertake a review of
17 the legality of the process. Mr Daniel Labetoulle,
18 Honorary Chairman of the Litigation Section of the
19 Conseil d'Etat, and Denys de Béchillon, a leading ...
20 professor of public law, concluded on 9 December 2012
21 that the process was illegal ..."

22 So that was your -- you say, "Given my concerns".
23 So you were the person behind this process of asking for
24 a legal opinion from those professors?

25 A. As in me personally?

11:20

1 Q. Yes.

2 A. No, this was something that was part of the effort that
3 was conducted primarily by the various lawyers that were
4 involved. I'm not an expert on these matters, but this
5 was something that was raised and this was the advice
6 that we were given, which I referred to in an earlier
7 answer. So we were being told that what was being done
8 by this Technical Committee was in fact not ...

9 Q. And that legal opinion was sent to the Technical
10 Committee by you, wasn't it?

11 A. I'm sure it was, yes.

12 Q. Do you remember having discussed this legal opinion with
13 BSGR Guinea at the time, their representatives and their
14 lawyers?

15 A. When -- okay, when you say "BSGR Guinea", you're saying
16 VBG?

17 Q. Yes.

18 A. I don't. It's very possible that our lawyers would have
19 been in touch with the Vale lawyers at that time. And
20 my concern as a representative -- I was the BSGR
21 representative on the VBG board -- was that we were not
22 being treated the way we wanted to be as a minority
23 partner, that we were losing control of many things, and
24 I guess there were reasons for it. But it was very
25 difficult. So the communication between ourselves and

11:22

1 Vale was not going in the direction it should have been;
2 they weren't representing us in the way we wanted to be
3 represented as a partnership.

4 Q. The opinion by Messrs Labetoulle and Béchillon was
5 rendered on 9th December 2012: that is about a year and
6 a half between -- the review by the Technical Committee
7 was finished on 21st March 2014.

8 Did you ask Messrs Labetoulle and Béchillon to
9 update their opinion after the review was completed?

10 A. I don't recall. I mean, I wasn't personally involved in
11 that relationship. I've never met him or exchanged
12 emails with him. It was managed by other people, not
13 me.

14 But his opinion -- this is what I know -- was taken
15 very seriously, and I believe that he is an expert in
16 this field. I believe that he and somebody else were
17 leading experts in this field, and therefore their
18 findings were taken very seriously by BSGR.

19 Q. This opinion, I think that is document C-73. That's
20 tab 7. You can find this opinion and the translation
21 thereof at the end. If you look at page 5 ... (Pause)

22 I'm sorry, we will move to tab 17 in fact, to
23 Exhibit C-72, and that is a letter that Skadden wrote to
24 the Technical Committee. If you go to page 5 of that
25 letter --

11:26

1 MR WOLFSON: Sorry, I don't think the witness has been given
2 the right document.

3 MR JAEGER: Okay. That's tab 17, C-72, page 5 of the
4 document, and that is a letter that was written by
5 Skadden to the Technical Committee.

6 A. Mm-hm.

7 Q. On page 5, third paragraph from the bottom, it reads:

8 "As explained, our client's principal complaint
9 regarding the review process has been the refusal of the
10 CTRTCM to provide it with the opportunity to review the
11 evidence on which the 'review process' is based. You
12 have now, belatedly, proffered limited documents and
13 have demanded explanations in relation to those
14 documents."

15 So this states that one of the main issues was that
16 the evidence had not been provided to BSGR Guinea.

17 Now, as we have seen before, the evidence was
18 provided on 4th December 2013; correct? Do you remember
19 that we have seen the letter with a list of documents
20 that was sent by the Technical Committee --

21 A. The one you showed me earlier here?

22 Q. I'm sorry?

23 A. The one you showed me earlier here?

24 Q. Yes.

25 A. I'm sure it's ...

11:27

1 Q. So Mr Béchillon and Mr Labetoulle made their opinion
2 before the evidence was sent by the Technical Committee
3 to BSGR Guinea. Did you ask them, those two professors,
4 whether the fact that the evidence was communicated to
5 BSGR Guinea would change their opinion?

6 A. I was not in communication with them.

7 Q. So the ...

8 A. When you say "you" --

9 Q. Yes, I mean did you or did Skadden --

10 A. -- you mean BSGR and people working for BSGR?

11 Q. Yes.

12 A. Or do you mean "you" as in me?

13 Q. I mean anyone at BSGR.

14 A. I presume they did, yes, the people managing -- I mean,
15 I think that the people who were dealing with this --
16 I'm not like a lawyer, right? This was Skadden, and if
17 they wrote this at the time, the veracity of what they
18 wrote at the time, I -- I have no reason not to believe
19 that it was correct. I mean, if there are some mistakes
20 in the day here or there, or something like that,
21 I can't comment, because I'm not prepared for that type
22 of questioning.

23 But this was a process that was being managed by the
24 representatives that we handled, and I feel that they
25 were doing a good job. And clearly I do recall that

11:29

1 even before the opinions were actually written and so on
2 by these lawyers, that this was the view: that there was
3 ample reason to believe that this process was not legal.

4 Q. Well, I'm not sure you understood my question. My
5 question was --

6 A. That's very possible, because there's been a lot of
7 that.

8 THE PRESIDENT: It seems to me, just to shorten this, that
9 previously Mr Cramer has said that he did not know
10 whether the two opinions had been updated when you
11 pointed to him that the opinions were dated 9th December
12 2012, which was a year before the hearing, more or less,
13 and Mr Cramer said he did not know whether it had been
14 updated, or he did not remember.

15 A. Correct.

16 THE PRESIDENT: So I think that cuts it.

17 We could move on to the break, should we not? We
18 have been going for two hours now, and it's a long
19 stretch for the court reporters and the interpreters.
20 Unless you are about to finish this topic?

21 MR JAEGER: Which I am.

22 THE PRESIDENT: Fine. Then you should.

23 MR JAEGER: If you could move on to paragraph 31.10 of your
24 witness statement. You state:

25 "As set out in our first response dated

11:31

1 26 December 2012, the Zogota Base Convention included
2 a mechanism for resolving disputes which requires the
3 parties to first submit to a preliminary phase of
4 seeking an amicable resolution and if that fails, to
5 proceed to arbitration. The Respondent chose to ignore
6 these provisions in their entirety."

7 Is this your own opinion, Mr Cramer?

8 A. What is my opinion?

9 Q. This statement: is it your own opinion or is it based on
10 someone else's opinion?

11 A. No, that's my opinion.

12 Q. Are you testifying as a legal expert in this
13 arbitration?

14 A. No.

15 Q. Do you have any legal background?

16 A. No. I mean, I've been dealing a lot with lawyers
17 recently, but I don't, you know, have a legal
18 qualification. I'm not a practising lawyer.

19 Q. So where did you get that? Where does this opinion come
20 from?

21 A. The opinion -- I mean, there's a statement here, right?

22 Q. Yes.

23 A. If we're reading from the same page, right?

24 Q. Yes, that's 31.10 of your witness statement.

25 A. 31.10?

11:32

1 Q. Yes.

2 A. Yes, so ... So I'm saying that the Respondent chose to
3 ignore these provisions. Is there a problem with that
4 or ...?

5 Q. So your opinion is that those provisions should apply,
6 should have been applied by Respondent; is that correct?

7 A. I believe that in the Zogota Base Convention there was
8 a mechanism for resolving disputes, okay, to seek
9 an amicable solution, and what I'm saying is: here there
10 was no such attempt.

11 We were bullied; I mean, we were held at ransom, we
12 were threatened with all kinds of things. We were told
13 we should pay this money. We were approached by the
14 Open Society Institute and people from George Soros
15 Asset Management trying to impose an MOU of
16 understanding where we would pay \$500 million to stay
17 and play.

18 I mean, we had been bullied. There was no amicable
19 approach. There was no genuine intention from the
20 Government of Guinea to resolve this potential dispute
21 to legitimate investors who were trying to develop
22 an asset. It was clear to us that there was no
23 intention to treat us fairly, unless we were prepared to
24 be held at ransom like other people. It was absolutely
25 clear.

11:34

1 And I think that we've made this statement many
2 times: that when we refused to engage in a process that
3 was being managed by other interests, which was not in
4 our best interests and in fact not in the best interests
5 of the Government of Guinea, you know, all of a sudden
6 we were being attacked. The timing of these
7 developments are absolute. Absolute. When we didn't
8 pay the \$500 million that we were, you know, presented
9 with as an option through our partners, VBG, like
10 Rio Tinto paid the \$700 million, they got to stay, they
11 had a good relationship, and we were attacked.

12 So, yes, I mean, the statement is very clear.
13 I think that any genuine solution to solve this
14 conflict, or any problem, any legitimate concern that
15 the Government of Guinea had, was ignored, because they
16 had decided to take this asset from us, because they
17 were incentivised and motivated to take this asset from
18 us because they had been paid by other people, like the
19 Palladino crew. This is also in the public domain.
20 \$25/50 million, support left, right and centre, in order
21 to take these assets. It was a deal that had been
22 already done. We were the victims of this situation.
23 There was no amicable approach.

24 So, yes, I stand by that statement.

25 Q. So now could you move on to paragraph 31.11, just below.

11:35

1 The last sentence says:

2 "This ignored in their entirety the submissions
3 provided by BSGR during the Technical Committee
4 process."

5 In this paragraph you refer to the final report of
6 the Technical Committee, which is Exhibit C-64, tab 39.

7 A. Mm-hm.

8 Q. So is it your testimony that this recommendation ignored
9 the entirety of the submissions provided by BSGR during
10 the Technical Committee process?

11 A. My testimony -- and I think that all of my answers are
12 in that direction: that this Technical Committee, you
13 know, was a stitch-up, okay? We didn't take it
14 seriously because there was no genuine intent, it wasn't
15 a proper committee, it wasn't being conducted properly.
16 We felt that the head of the committee was a puppet.
17 And ultimately this whole process was predetermined;
18 a decision to take our assets had already been made.

19 And you're asking me a lot of questions about, you
20 know, the actual process that we had rejected for the
21 reasons that I have stated again and again and again.
22 This was not a legitimate process in any way. And
23 you're getting into the details of: why did I do this or
24 that?

25 I mean, I cannot be clearer: we felt that this was

11:37

1 not a genuine process, and it was funded and supported
2 by people and organisations who were working against us,
3 who had found us guilty and put out a smearing campaign
4 in the public domain, who were cooperating with
5 journalists, who were pursuing our reputation, who were
6 undermining what we could do, who even approached, as
7 I told you, our PR people who were helping us deal with
8 the press and pulling out of a relationship with us at
9 the moment of need.

10 Q. I will ask you to try to restrict yourself to the scope
11 of the question. Could you turn to page 23 --

12 THE PRESIDENT: I think now we really should take a break.

13 We have been going for almost two hours.

14 MR JAEGER: It was almost my last question.

15 THE PRESIDENT: Yes, but it was the last one before, so I'm
16 not really trusting you anymore!

17 MR JAEGER: It's really going to be two or three minutes.

18 That's why I would like --

19 THE PRESIDENT: Fine.

20 MR JAEGER: Thank you very much. I will go very quickly on
21 this.

22 Paragraph 110. Are you there?

23 A. Paragraph 110?

24 Q. Page 23 of the document that is at tab 39, the
25 committee's report, C-64. Paragraph 110 states:

11:38

1 "First of all, it must be specified that the
2 indications in question are taken from elements of proof
3 whose authenticity was contested not by VBG, holder of
4 the titles and of the agreement in question and the only
5 party to the proceedings, but by the minority
6 shareholder of this company, BSGR."

7 So this statement shows that BSGR's contentions were
8 taken into account by the committee, weren't they?

9 A. No, it just proves that it's been written.

10 Q. And then paragraph 111 reads:

11 "The Technical Committee, however, overrode this
12 contestation for the following reasons: ..."

13 So the committee gives reasons why they do not
14 follow your position in their recommendation. Why did
15 you say that the committee ignored your arguments?

16 A. I still believe that they did, and the fact that they've
17 written a self-serving document to actually address
18 their weak points in this regard to me doesn't
19 demonstrate anything. I don't believe that our position
20 was -- unfortunately, (a) it wasn't supported by our
21 partners, because they had their own agenda at the time;
22 and for sure, as I said in many of my answers, the
23 decision to take the asset away from BSGR, as opposed to
24 VBG, had been taken in advance. There was clearly
25 a dialogue taking place where VBG was going to stay in

11:40

1 the deal.

2 And the reason for this is it was Vale, the majority
3 partner of VBG, that had the balance sheet, that had the
4 means to fund this project. And they had already spent
5 \$700 million on the ground within this company, in
6 a country that has a GDP of, I believe, only \$6 billion.
7 This is significant amounts. Of course the Government
8 of Guinea was cosyng up to Vale; and of course Vale
9 were being clever and commercial and saying, "Let's not
10 rock the boat. Let's keep this option alive". And this
11 was at our expense.

12 The Government of Guinea ganged up with a partner
13 who wasn't behaving in the spirit of a partnership, but
14 in fact was behaving commercially. Whether that was
15 legal or not is not a subject for this hearing. But
16 that's the truth of the matter. And what they have
17 written here, to me, because it has been prepared by
18 people who were giving the intellectual capacity to what
19 they were doing some type of legitimacy, is just wrong.

20 MR JAEGER: Thank you, Mr Cramer. Thank you for answering
21 my questions.

22 MR CRAMER: Thank you.

23 MR JAEGER: Madam President, I have now no further
24 questions.

25 THE PRESIDENT: You have no further questions, fine.

11:41

1 I thought you were coming to the end of a topic, but
2 actually you are coming to an end of your
3 cross-examination?

4 MR JAEGER: That is correct.

5 THE PRESIDENT: That explains that you wanted to finish
6 before the break.

7 So now we will take a break of 15 minutes. Then you
8 will have time for re-direct examination.

9 Mr Cramer, while you are examined and your
10 examination is not completed, please do not speak to
11 anyone about your testimony, what you have said, what
12 you may say --

13 MR CRAMER: During the break?

14 THE PRESIDENT: During the break, absolutely.

15 MR CRAMER: No problem.

16 THE PRESIDENT: Thank you.

17 (11.42 am)

18 (A short break)

19 (12.03 pm)

20 THE PRESIDENT: Fine, so we can resume, and I give the floor
21 to Mr Wolfson for re-direct examination, please.

22 MR WOLFSON: Thank you, Madam President.

23 Re-direct examination by MR WOLFSON

24 Q. Mr Cramer, I want to ask you a few questions arising out
25 of some questions you were asked by counsel for the

12:03

1 Respondent.

2 The first question arises out of a series of
3 questions that you were asked about the letter from the
4 Technical Committee which appears at tab 1 of the
5 bundle that was being used (C-53). If you could just be
6 provided with that letter, please.

7 You were asked a number of questions. For the
8 Tribunal's assistance, the series of questions started
9 at 10:36:32 (page 36, line 20), when you come back to
10 look at the transcript. The question you were asked,
11 you were shown the paragraph at the top of page 2. Do
12 you have that, beginning, "Please note that no final
13 decision ..."?

14 A. Yes.

15 Q. That was read to you, and you were then asked the
16 following question:

17 "Where do you see in this letter that the Technical
18 Committee presented allegations as facts?"

19 You will recall that you were asked that question
20 four times by counsel for the Respondent, and then
21 Madam President asked you a very similar question.

22 Can I ask you to look at the letter itself, please,
23 Mr Cramer. You will see on page 2 that there is
24 a heading "Procedures". Do you see that?

25 A. Yes.

12:04

1 Q. And you'll see on page 3 that there is a heading II,
2 "Allegations". Do you see that?

3 A. Yes.

4 Q. Would you please turn over the page. On page 4, do you
5 see the allegations set out in numbers? We have a Roman
6 II and then we have Arabic, so to speak, 1, 2, 3, 4. Do
7 you see that?

8 A. Yes.

9 Q. II.1, II.2, et cetera.

10 A. Yes.

11 Q. Could you glance through. We have 1 to 6 on page 4, we
12 have 7 to 13 on page 5, we have 14 to 21 on page 6 and
13 we have 22 to 25 on page 7. Do you see that?

14 A. Yes, I do.

15 Q. And that's under the heading "Allegations"; correct?

16 A. Yes.

17 Q. Would you please read the following sentence, after
18 II.25, in the next paragraph.

19 A. II.25, yes.

20 Q. Starting with the word "These".

21 A. Yes.

22 Q. Now let me ask you the question again: where do you see
23 in this letter that the Technical Committee presented
24 allegations as facts?

25 A. Well, they don't, if I can answer this question.

12:06

1 I think now being given the opportunity, without, you
2 know, badgering, to read these crazy allegations that
3 have no fact whatsoever, it brings back my memory.
4 I mean, we were accused of organising a coup d'état in
5 II.25, talking about being involved with military arms,
6 selling arms, talking about visits to hospitals; I mean,
7 in fact it was -- is complete nonsense, was complete
8 nonsense.

9 And basically this is why I made that type of
10 statement, because it was based on the fact that
11 fanciful nonsense was presented as fact. It was so far
12 off the playing field that even if there were kernels of
13 allegations that one needed to take seriously, taken as
14 a whole, it was rubbish.

15 THE PRESIDENT: But read the beginning of the next
16 paragraph; I think that was the question.

17 A. Okay.

18 MR WOLFSON: Just read it out for the record, would you,
19 starting with "These".

20 A. So after II.25?

21 THE PRESIDENT: Yes.

22 MR WOLFSON: Yes.

23 A. "These facts suggest to the CTRTCM that ... BSGR had the
24 intention of acquiring rights to the mineral deposits in
25 Simandou and in Zogota by exploiting their insider

12:07

1 influence exercised vis-à-vis the officials of the
2 Republic of Guinea, and effectively acquired these
3 rights in this manner; and (2) BSGR never had the
4 intention, nor the financial and technical capacities,
5 to honour their undertakings as to the titles that had
6 been granted to them, and instead, on the contrary had,
7 since the beginning, the intention to conclude
8 agreements with third parties having the necessary
9 resources and competences to be able to honour these, in
10 order to be able to extract immediate and substantial
11 profit."

12 Q. Thank you. I think anything else would be submission
13 rather than evidence.

14 A. Well, may I comment on that paragraph?

15 Q. I'm not actually asking you to do that in re-direct.

16 A. Okay.

17 Q. I do want to go to another topic, which is a short point
18 arising out of tab 21. You will recall, Mr --

19 MR OSTROVE: (In English) I'm sorry, could I ask counsel to
20 provide the exhibit number as well, for those of us who
21 don't have a copy of the bundle.

22 MR WOLFSON: I'm sorry, I was using your bundle, but you're
23 right. It's C-73, I'm sorry.

24 MR OSTROVE: Thank you.

25 MR WOLFSON: It's at tab 21 of the cross-examination bundle,

12:08

1 but it's C-73.

2 You were asked a number of questions arising out of
3 your statement that there were three working days
4 between this letter of 4th December and the
5 then-scheduled hearing. Do you recall that?

6 A. Yes, I remember that.

7 Q. You can take it from me, Mr Cramer -- and this won't be
8 a matter of dispute -- that 4th December 2013 was
9 a Wednesday. Can you have a look at the third paragraph
10 of this letter:

11 "The CTRTCM thus requests that you indicate, upon
12 receipt of this letter and by December 5 at the latest,
13 whether VBG requests a postponement of the hearing
14 scheduled for December 10."

15 So that's the following Tuesday.

16 A. Correct.

17 Q. Is it fair to say that the three working days you're
18 referring to are the three working days between the
19 receipt of this letter and the then-scheduled hearing of
20 December 10th? Have I understood your evidence
21 correctly?

22 A. Correct. I didn't really understand the significance of
23 this. I mean, the point was that there was a very, very
24 tight timeframe, which again indicated to us that nobody
25 was really interested in a fair process.

12:10

1 Q. I'd now like you to turn to a different point. If you
2 could have, please, paragraph 31.10 of your witness
3 statement. You can put that document away. If you
4 would look at your witness statement. You were asked
5 two series of questions about paragraph 31.10 and I'm
6 going to try to take each of them separately.

7 MR JAEGER: I'm sorry to interrupt. May I ask that during
8 the direct examination you avoid asking leading
9 questions, please.

10 MR WOLFSON: I was trying to. I wasn't aware that I was
11 leading, but I'm certainly not trying to lead the
12 witness. I'm sure the Tribunal will correct me if I am.

13 THE PRESIDENT: We will, of course. So far I'm not.

14 MR WOLFSON: You were asked two series of questions. I'm
15 first going to ask you about the penultimate sentence of
16 [paragraph 31.10 of] your witness statement:

17 "As set out in our first response dated
18 26 December 2012, the Zogota Base Convention included
19 a mechanism for resolving disputes which requires the
20 parties to first submit to a preliminary phase of
21 seeking an amicable resolution and if that fails, to
22 proceed to arbitration."

23 Do you see that?

24 A. Yes.

25 Q. And do you see that footnote 44 is set out at the end of

12:12

1 that sentence?

2 A. Yes.

3 Q. And that says "Exhibit C-0054"; correct?

4 A. Correct.

5 Q. I hope this is not leading, but take it from me that
6 Exhibit C-54 is a letter from BSGR dated
7 26th December 2012. Yes?

8 I want to show you another letter from BSGR dated
9 26th December 2012, which happily is found in the bundle
10 which has been provided to you at tab 7.

11 Just for the Tribunal's reference, the letter at
12 C-54, which is referred to in footnote 44, is a letter
13 from BSGR to the Technical Committee dated
14 26th December 2012. The letter at tab 7, which is
15 R-400, is another letter from BSGR to the Technical
16 Committee dated 26th December 2012.

17 Do you have tab 7 of the bundle in front of you now?

18 A. Yes, I believe so, yes.

19 Q. I'm going to take it from the English.

20 A. Correct.

21 Q. And you'll see we have a heading in square brackets,
22 "BSGR"?

23 A. Yes.

24 Q. To be fair to you, Mr Cramer, as we can see from the
25 French version -- though not in the English -- you did

12:14

1 not yourself sign this letter; it was signed by
2 Mr Avidan. We can see that from the French version.

3 A. Okay.

4 Q. Could I ask you to have a look at paragraph 5 of this
5 letter.

6 A. Is that the one that says "Finally"?

7 Q. It is. If you could read please to yourself those three
8 paragraphs under 5.

9 A. "Finally, and in any event, we remind you that the Base
10 Convention between VBG-Vale BSGR Guinea and the Republic
11 of Guinea provides for a dispute settlement mechanism
12 requiring parties in a first phase to undergo
13 a preliminary conciliation, and should this preliminary
14 step fail, to go to arbitration.

15 "This mechanism covers both disputes concerning
16 performance as well as those related to the validity of
17 the convention or concession.

18 "It is therefore in violation of this mechanism that
19 the Comité intends to decide whether there are grounds
20 to maintain or abandon the accusations made anonymously
21 in your letter."

22 They weren't following the agreed process.

23 Q. When you say in your witness statement, "the Zogota Base
24 Convention included a mechanism for resolving disputes
25 which requires the parties to first submit to

12:15

1 a preliminary phase of seeking an amicable resolution
2 and ... [then] arbitration", what were you referring to?

3 A. I was referring specifically to this: I mean, that they
4 had avoided -- and I think I said it during my
5 testimony. It was absolutely clear that there was no
6 intention to really openly and honestly seek to address
7 the concerns.

8 Q. The other point you were asked about arising out of this
9 paragraph of your witness statement was the last
10 sentence, where you said:

11 "The Respondent chose to ignore these provisions in
12 their entirety."

13 A. Yes.

14 Q. You will recall you were asked a number of questions
15 about that.

16 A. Yes.

17 Q. Could I ask you please to turn to tab 30 of the bundle
18 you were provided with. For the record, this is
19 document C-0158, tab 30.

20 A. Yes.

21 Q. You'll see this is a letter from Skadden to the Comité
22 Technique dated 16th January 2014?

23 A. Yes.

24 Q. Would you please read to yourself -- you don't need to
25 read it out loud -- the last paragraph on the first

12:16

1 page, beginning "No attention", which you'll see goes
2 over the page and ends with the words, "no response has
3 been forthcoming". Would you read that to yourself,
4 please. (Pause)

5 A. Yes.

6 Q. I'm not sure you were shown this letter during your
7 cross-examination, but would you like to comment on it,
8 given the line you were asked about in your witness
9 statement where you say, "The Respondent chose to ignore
10 these provisions in their entirety"?

11 A. Yes. I mean, it just demonstrates again that they were
12 not engaging in a meaningful way: they weren't answering
13 our questions, addressing our concerns. And it was
14 another indication that the process was predetermined,
15 premeditated and completely unfair. We were never given
16 any answers to anything that we needed answers to; and
17 when we gave answers that they didn't like, it was
18 ignored.

19 Q. Sorry, I think for the record I said 31.10 last
20 sentence; I think I should have said 31.11 last
21 sentence. But I anticipate that's what the witness was
22 referring to:

23 "This ignored in their entirety the submissions
24 provided by BSGR during the Technical Committee
25 process."

12:18

1 A. That's --

2 Q. I was asking you about that in this letter.

3 A. -- correct. It's part of the whole spirit of what I was
4 trying to get across during the cross.

5 MR WOLFSON: Madam President, I have no further in
6 re-direct, unless I can assist the Tribunal further.

7 THE PRESIDENT: Thank you.

8 PROFESSOR VAN DEN BERG: Is there a request for a re-cross?

9 MR JAEGER: No, there is no request for a re-cross.

10 THE PRESIDENT: So we will ask our questions. If there are
11 any follow-up questions to the Tribunal's questions,
12 thereafter you can still ask us.

13 Do my co-arbitrators have questions for Mr Cramer?

14 (12.19 pm)

15 Questions from THE TRIBUNAL

16 PROFESSOR VAN DEN BERG: With the assistance of the
17 Respondent, the demonstrative exhibits you have sent us
18 at the end of last week, could it be shown on the screen
19 so that Mr Cramer can see them, because I have a number
20 of questions about those. I'm talking about especially
21 the charts.

22 Mr Cramer, I am showing you by hand: have you seen
23 those before?

24 A. Yes, I have.

25 PROFESSOR VAN DEN BERG: We'll wait until they are on the

12:19

1 screen. (Pause) It's demo 1 of the Respondent. (Pause)

2 So Mr Cramer, you see this demo 1. There are three
3 demos, apparently successive in time. First of all, can
4 you place this demonstrative exhibit of the Respondent
5 in time? And then you may comment on the demo.

6 A. I think that this representation -- there are some
7 things that aren't correct, which we can talk about.
8 But in the context of the period that's under review,
9 and what we're trying to seek is the right org chart.

10 PROFESSOR VAN DEN BERG: When does the world start here on
11 this chart?

12 A. When, sorry?

13 PROFESSOR VAN DEN BERG: When does the world start on this
14 chart?

15 A. I would say that it would cover, I mean, comprehensively
16 the period from around 2003 forwards to 2010 or 2011.
17 And partially the same structure existed with some other
18 company names; it was a rebranding. But it is very
19 relevant to what we are discussing here.

20 PROFESSOR VAN DEN BERG: Mr Cramer, you will see your name
21 here on top of this tree, if I can call it, and you see
22 Mr Steinmetz's name on this tree.

23 A. Yes.

24 THE PRESIDENT: Is it a fair representation, according to
25 you?

12:21

1 A. The tree representing me is fair, with the exception
2 that Pentler Holdings isn't demonstrated correctly, and
3 I can get into the detail of that if you would like.

4 PROFESSOR VAN DEN BERG: Shall we go one level down then?

5 A. Yes.

6 PROFESSOR VAN DEN BERG: Galena Management Incorporation:
7 where is that incorporated?

8 A. So first, what I think would be helpful, I know that
9 Sandra Merloni-Horemans is giving the witness statement
10 after me, and she is really the person who's an expert
11 on this. So if one wants specific and precise answers,
12 she is the best person to answer.

13 PROFESSOR VAN DEN BERG: And she worked under your
14 instruction?

15 A. She was the person who was responsible for providing all
16 of the company secretarial services and managed all of
17 the aspects of this administration.

18 PROFESSOR VAN DEN BERG: If you look to Ms Merloni's witness
19 statement, you will see in paragraph 7 -- are you
20 familiar with her statement?

21 A. More or less. And I --

22 PROFESSOR VAN DEN BERG: Let me read to you. There is
23 a simple sentence in paragraph 7, and she states:

24 "When working at Onyx, I reported to Dag Cramer, but
25 in relation to the day to day matters I operated mostly

12:22

1 independently. I only contacted him to discuss the
2 bigger strategic points when I felt that it was
3 necessary to do so."

4 A. That's absolutely correct.

5 PROFESSOR VAN DEN BERG: Is that correct?

6 A. Correct.

7 PROFESSOR VAN DEN BERG: So you instructed her?

8 A. I --

9 PROFESSOR VAN DEN BERG: Or she reported --

10 A. I had the overall responsibility. And I think as she
11 says, because of her specific expertise in this area --
12 and this is not my area of expertise -- this was part of
13 her job. But it is correct to say that she reported to
14 me. She was an employee of Onyx, of which I am the
15 owner.

16 PROFESSOR VAN DEN BERG: Thank you.

17 Could we then go from yourself down.

18 A. Correct. So I believe this structure is a correct
19 representation of the Onyx group structure under this
20 relevant time. Any kind of specific technical
21 questions, I believe that Sandra can answer.

22 There are two things that I would like to mention.

23 One is the way that Pentler Holding is represented as
24 a subsidiary of Onyx Financial Advisors. That is not
25 the case because the main -- or one of the activities

12:23

1 that Onyx was involved with, under Sandra's management,
2 was the ongoing establishment of shelf companies that
3 were turned into project companies and operating
4 companies across the group. And I refreshed my memory
5 in the context of the history of Pentler: apparently it
6 was a shelf company that was acquired initially to be
7 involved in some Eastern European property transactions,
8 but then when the need for a project vehicle arose in
9 the context of what was going on with Guinea, it was
10 used in that regard instead.

11 I believe that representing it as a subsidiary here
12 is incorrect because at any given point in time, any
13 number of shelf companies that are held in trust but not
14 owned, whilst they are being created and passed on,
15 should then be reflected. So it's an unfair
16 representation of how Pentler appears. It was part of
17 the job that she did to incorporate companies that were
18 used for projects within the group, for partners of the
19 group and minority partners of the group. So it was not
20 a subsidiary in that --

21 PROFESSOR VAN DEN BERG: This little line you see here
22 should be deleted, according to you?

23 A. Yes. It's not a fair representation of what Pentler was
24 or it being a subsidiary.

25 PROFESSOR VAN DEN BERG: But who held what interest for

12:25

1 whom?

2 A. So again, I think that to get the absolutely correct
3 answer -- and I had an explanation that was emailed to
4 me by Sandra, if I can use that --

5 PROFESSOR VAN DEN BERG: No, we will ask her.

6 A. Yes. I mean, it was basically a shelf company that was
7 incorporated, it was going to be used for projects.
8 I was not aware of its incorporation, I wasn't involved
9 in anything to do with it. It was -- you know, hundreds
10 of companies like this went through her management
11 during this time.

12 PROFESSOR VAN DEN BERG: In this connection, [PROTECTED]

[REDACTED]

12:26

[PROTECTED]

9 Let's go back to your organisation. So can we go
10 back to demo 1. Is there anything else that is not
11 correct in this tree?
12 A. I think that Margali Management Corporation was
13 a subsidiary of Onyx Financial Advisors.
14 PROFESSOR VAN DEN BERG: So we should have here the --
15 A. The one should be -- there should be under Onyx --
16 PROFESSOR VAN DEN BERG: It's this one?
17 A. No, up one further, if you go a little bit higher.
18 Higher. There. That's the mother company of Margali,
19 I believe. So Margali was a subsidiary of Onyx
20 Financial Advisors. It amounts to the same thing
21 because all these companies are 100%, you know, held.
22 But technically it should be there.
23 PROFESSOR VAN DEN BERG: Let's go back to Galena, simply to
24 be complete. Where is it incorporated, or was it
25 incorporated?

12:27

1 A. I think it's BVI. I believe so.

2 PROFESSOR VAN DEN BERG: We'll ask Ms Merloni.

3 A. Yes.

4 PROFESSOR VAN DEN BERG: Any further comment on your side
5 here?

6 A. I believe that the Margali Management Corporation and
7 its role, I believe Sandra will be able to give detail
8 on it, but it needs to be seen as -- you see, Onyx
9 Financial Advisors was the company secretary, the
10 management administrator of any number of companies on
11 behalf of its clients, of which the BSG group is the key
12 and the main client, and it's common in these structures
13 to use a corporate directorship that ultimately takes
14 instruction from various shareholders or parties. It's
15 a common way -- or was -- in this regard.

16 Margali was managed by Sandra, and I believe,
17 I don't think I have ever signed anything on behalf of
18 Margali, even though I was a signature -- signatory.
19 I had the right to do so. But I was not involved in the
20 day-to-day operations of Margali and I never signed
21 anything on behalf of Margali.

22 PROFESSOR VAN DEN BERG: During the period 2003 to 2013,
23 let's take this decade --

24 A. Yes.

25 PROFESSOR VAN DEN BERG: -- this group, this one

12:29

1 (indicating), was rendering services to the BSGR group;
2 correct?

3 A. Yes.

4 PROFESSOR VAN DEN BERG: Roughly, in terms of revenue, what
5 was the percentage of the revenue that came from
6 rendering services to the BSGR group?

7 A. 98%; I mean, the key, key. It was -- Onyx existed in
8 order to provide these services to the BSG group
9 primarily. I mean, it was created and constructed
10 fiscally, legally, in the structure I explained, to
11 provide these services.

12 PROFESSOR VAN DEN BERG: So Onyx, this group was set up to
13 service the BSGR group?

14 A. And it was set up as an independent, separately owned
15 group to maintain the regulatory and fiscal requirements
16 in the jurisdiction. So, if I may, I think that
17 sometimes this is presented as: oh, you know, it's the
18 same, and people aren't being open about it. We have
19 always been open about that. And the independence is
20 not something that we're saying in order to pretend that
21 there's not a very important relationship. The key
22 relationship is there. But it has to be independent in
23 order to be on the right side of the fiscal regimes that
24 one operates within, and that's what we've done. But
25 having said that, of course Onyx, like any other service

1 provider, will always act in the best fiduciary
2 interests of its clients.

3 PROFESSOR VAN DEN BERG: Any comments on the part dealing
4 with the BSGR group?

5 A. So I believe --

6 PROFESSOR VAN DEN BERG: As represented here on this demo 1.

7 A. Yes, I believe that it's incorrect to place Beny
8 Steinmetz on top of the foundation because he's not
9 an owner or a director with any executive powers.

10 PROFESSOR VAN DEN BERG: May I point out to you that this is
11 a solid green line and this is a dotted green line
12 (indicating), and apparently the graphic designer wanted
13 to show that this was a slightly different relationship.

14 A. I -- but ancillary -- I think if I may explain, because
15 I think it will be helpful for the panel here, that what
16 we are dealing with is a discretionary irrevocable
17 Liechtenstein foundation of which Beny Steinmetz was
18 a beneficiary, in a class of beneficiaries together with
19 his wife and children, and the structure of such
20 foundations is that that beneficiary can hold no
21 executive powers in the foundation, which he did not.
22 So I would rather put him, you know, at the bottom.

23 It's very clear that the foundation should act and
24 behave in the interests of its beneficiaries, and my
25 contract was with the foundation. So I -- my

12:32

1 independence --

2 PROFESSOR VAN DEN BERG: Your contract between this or this?

3 A. BVI, I believe, but Sandra will be very specific.

4 So the contract with the relationship -- and this is
5 at the crux of this: that Onyx Financial Advisors has
6 a management contract with the Balda Foundation to
7 provide the services that I explained, operating as
8 a CEO, of accounting, legal, asset management, and this
9 was a contract that they could cancel with three months'
10 notice, as could Onyx.

11 PROFESSOR VAN DEN BERG: Sorry, not a question for you but
12 to the counsel: is the management contract in the
13 record? Simply yes or no.

14 MR OSTROVE: (Interpreted) Not to my knowledge.

15 PROFESSOR VAN DEN BERG: Mr Wolfson?

16 MR WOLFSON: I'll have to check. I don't know off the top
17 of my head. If I can check.

18 A. And I mention this because I think it's something that
19 has sometimes, we feel, intentionally been avoided. We
20 have never made a secret of this.

21 So ultimately Onyx is contracted by Balda, by the
22 foundation council; it's a board much like yourselves.
23 They are not involved in the day-to-day operating. They
24 have signed a contract with Onyx to do this and report
25 to them on a semi-annual basis. So I don't report in

12:33

1 any way to Mr Steinmetz, and I never have. I have
2 a close relationship with him because that's often
3 needed in order to make sure that things work.

4 But structures like this are built not for the
5 present, but for several generations. I mean, if you
6 look at the Rockefeller Foundation or other people's
7 foundations, after several generations the class of
8 beneficiaries grow, and the management companies, they
9 come and go. And that is the reason for the
10 independence that we state, and it's not a disingenuous
11 representation in any way.

12 PROFESSOR VAN DEN BERG: Mr Cramer, is there any observation
13 you would like to make on the remainder of the tree, on
14 the Balda?

15 A. I don't really understand the representation between
16 BSGR Metals and Mining Corp and BSG Resources, and also
17 the BSGR Steel Holdings. I believe that this -- first
18 of all, we need to get that structure right. And
19 I think Sandra will be the person who is best able to
20 say which company held which, because it's not something
21 I focused on on a day-to-day basis.

22 I also believe that at the time we're talking about,
23 BSG Resources was a formidable privately held company
24 that owned a number of mining operations, including
25 significant stakes in listed companies at that time. So

12:35

1 in order for this to be truly reflected, one should show
2 the size and the scope and the scale of BSGR at the time
3 as an organisation, and also the implicit size of its
4 balance sheet.

5 There were several companies at the time that were
6 listed that were held by BSGR that were significant
7 operating companies in their own right: for instance,
8 Bateman Engineering, two engineering companies that had
9 market caps of over \$1 billion, on which BSGR relied on
10 their technical expertise to conduct projects. And
11 that's often why, when we see representation that this
12 was some diamond mining company that had no experience
13 in mining, again it is complete and utter nonsense,
14 because Bateman Engineering had been one of the
15 preeminent engineering firms in its space since the turn
16 of the century.

17 So representing our structure like this in this
18 context in isolation is not a fair reflection. The
19 structure as regards to this part, this snapshot,
20 I think Sandra should comment on; she'll do it better
21 than I.

22 PROFESSOR VAN DEN BERG: Let's move on then to demo 2,
23 please. According to your knowledge, as of which date
24 is this presentation of the structures?

25 A. It looks like the same chart to me. Sorry, I'm missing

12:37

1 something. It's like that thing when you have two
2 different pictures. What are the differences?

3 PROFESSOR VAN DEN BERG: This one is different (indicating).

4 What I can see is that this one seems the same -- I take
5 representation from counsel for Respondent -- but this
6 one is different, especially at the bottom. But if it's
7 in the detail, Mr Cramer, and you do not know, you
8 should not speculate. Then we will ask Ms Merloni.

9 A. Yes, I don't know, and I wasn't involved in the
10 structuring of these things, and Sandra will be the best
11 person to answer.

12 PROFESSOR VAN DEN BERG: Okay.

13 Can we move to demo 3 then, please. One of the
14 changes you see is this one, that is that BSG Resources
15 Guinea Limited is eliminated in 2010.

16 A. The answer is the same: I'm really not the person to
17 answer on this. I wish I could.

18 PROFESSOR VAN DEN BERG: Can you then show demo 4, please.

19 Have you seen this chart before?

20 A. Yes, this one I've seen.

21 PROFESSOR VAN DEN BERG: Of course we'll ask Ms Merloni on
22 this chart, because she is apparently -- it looks like
23 a spider's web literally, if you see this. But
24 figuratively speaking, that may be not the case.

25 A. She is certainly not a spider, the last time I saw her!

12:38

1 PROFESSOR VAN DEN BERG: For me it looked like this, if you
2 look at it graphically.

3 A. I have some comments, yes.

comments

4 PROFESSOR VAN DEN BERG: Go ahead, please. If you have any
5 on this chart, please go ahead.

6 A. I believe it's a really unfair representation of
7 Sandra's role, because it does put her in a position
8 where she appears to be managing everything. In fact,
9 if you were to create an organigram or a structure chart
10 like this, and you pulled out any company secretary in
11 any large company, you would find the same type of
12 representation.

13 Sandra's job -- and she is a highly professional,
14 meticulous, record-keeping, accurate person; you'll be
15 able to judge by yourself -- was to, as part of Onyx,
16 provide exactly this type of activity: all company
17 secretarial work. And often in companies -- and I've
18 worked for some where the company secretary is often
19 a lawyer; in some countries' jurisdictions it's
20 a specially qualified qualification -- they are
21 important, and they often sit on the boards, and they
22 are very important in the context of maintaining the
23 governance of the company.

24 So Sandra, as part of her job at Onyx, with the
25 services that Onyx was providing as part of the contract

12:40

1 with the Balda Foundation, had this role.

2 PROFESSOR VAN DEN BERG: Could you be specific what is,
3 according to you, not correct on this graph?

4 A. Okay. Well, I mean, I'll look at it. I was just saying
5 in the context of a qualitative interpretation, you
6 know, I just felt that maybe it puts her in a position
7 she wasn't, because I would put Sandra here under
8 Onyx Swiss.

9 PROFESSOR VAN DEN BERG: Onyx Swiss, here (indicating)?

10 A. Yes, because --

11 PROFESSOR VAN DEN BERG: Would you put her in the box or
12 under the box?

13 A. Well, I would put her in the box.

14 PROFESSOR VAN DEN BERG: In the box, okay.

15 A. Yes, I wouldn't want to put her under any box, because
16 we can't do that. But you see, because Onyx Switzerland
17 was a subsidiary in Onyx BVI, and Onyx Switzerland was
18 an operating company that paid taxes and had offices
19 full of people and servers in Geneva, and Sandra was
20 based there, and it was from there that the bulk of all
21 of this company secretarial work was done; under very
22 limited supervision, as she says, because she was the
23 expert.

24 So having Onyx Switzerland as part of the Onyx group
25 allowed Onyx to provide the crucial company secretarial

12:41

1 services to the Balda Foundation. So she should be --
2 she was an employee of Onyx Switzerland, a full-time
3 employee of Onyx Switzerland. And from there, her
4 job -- in any other corp, it would have been company
5 secretary for all of these companies that, because of
6 the fiscal structure, she was providing for BSGR as
7 a client.

8 So she should be shown as an employee of Onyx
9 Switzerland. And it's Onyx Switzerland, through her
10 activities, you know, the post and the person, providing
11 these things. And Margali was one of her corporate
12 tools in that regard, and was again a subsidiary of
13 Onyx BVI.

14 So it's wrong and it's misrepresented, and I think
15 it demonstrates the lack of understanding of our
16 business and it demonstrates an idea that this somehow
17 is not a properly run company, and it was.

18 PROFESSOR VAN DEN BERG: One small point. Do you see
19 Windpoint BVI?

20 A. Yes.

21 PROFESSOR VAN DEN BERG: Do you recognise that company?

22 A. Yes, I do. I recognise the name, and I know that there
23 was a company called Windpoint, and I believe it was
24 a subsidiary actually of BSGR. So why it's hanging out
25 there, in ...

12:42

1 PROFESSOR VAN DEN BERG: If you look to the previous demos
2 or slides, you see the same. That's in the middle.

3 A. Yes. Sorry, yes, I can --

4 PROFESSOR VAN DEN BERG: If you don't know what it is,
5 please stop there; don't speculate.

6 A. I don't --

7 PROFESSOR VAN DEN BERG: We'll ask Ms Merloni.

8 A. I don't know.

9 PROFESSOR VAN DEN BERG: I have a few other questions
10 regarding your witness statement, if I may.

11 A. Yes.

12 PROFESSOR VAN DEN BERG: Obviously you have given a lengthy
13 witness statement in the English proceedings before the
14 High Court.

15 A. Yes.

16 PROFESSOR VAN DEN BERG: Ultimately the action was
17 dismissed, as I understand it.

18 But could you please go to your first witness
19 statement and go to paragraph 18.

20 A. Mm-hm.

21 PROFESSOR VAN DEN BERG: You see the reference to Mr Hennig?

22 A. Yes.

23 PROFESSOR VAN DEN BERG: You come back to Mr Hennig actually
24 in paragraphs 21 to 23, and the Palladino affair.

25 A. Yes.

12:43

1 PROFESSOR VAN DEN BERG: Do you have firsthand knowledge of
2 Mr Hennig, in the sense that you met him?

3 A. At that time, no. And I've only seen him once in the
4 flesh and that was many years after, at the Mining
5 Indaba in Johannesburg.

6 PROFESSOR VAN DEN BERG: So what you testify here about
7 Mr Hennig, you say in paragraph 18:

8 "... Mr Hennig ..."

9 That's what Mr Avidan told you:

10 "... Mr Hennig seemed to be attempting to blackmail
11 Mr Avidan by producing documents and accounts that he
12 said evidenced that BSGR had obtained its mining rights
13 illegally."

14 A. Yes.

15 PROFESSOR VAN DEN BERG: Then you come back in 21 on the
16 Palladino affair, where also Mr Hennig, according to
17 you, played a role.

18 A. Yes.

19 PROFESSOR VAN DEN BERG: On what basis do you have this
20 information, apart from Mr Avidan?

21 A. Well, Mr Hennig and his partners were in partnership
22 with a US hedge fund called Och-Ziff, and Och-Ziff is
23 a listed company. And we now know as a fact, because
24 this had been admitted by the founder and the principal
25 and the CFO of Och-Ziff, that the partnership that they

12:45

1 had with Mr Hennig, Mr Willcox and Tokyo Sexwale,
2 through their structure, African Global Limited and
3 African Global Capital, was in fact the vehicle that was
4 used to corrupt the President of Guinea and its
5 entourage.

6 And this is in the -- I don't know if we have
7 submitted this, but there is a compromise agreement
8 between the SEC, the DOJ and Och-Ziff where this is
9 spelt out very, very clearly. They used this middleman,
10 Mr Mebiame. They paid bribes. They signed contracts
11 with the Government of Guinea which was supposed to give
12 them exclusive rights. They lent them money, which was
13 designed as a loan-for-shares organisation. And
14 Mr Hennig, in his attempt to blackmail us, was trying to
15 get BSGR out of the equation in order to accommodate and
16 support the illegal transaction, that he had signed and
17 dealt with, with the Government of Guinea.

18 And I know it's not for this forum perhaps, but it's
19 rather interesting that there were two agreements,
20 a loan agreement and an option agreement, where this
21 company -- with no mining experience other than, you
22 know, some type of political acumen demonstrated by
23 a person who's now in jail and awaiting sentencing,
24 their middleman, Samuel Mebiame -- had signed an option
25 agreement whereby this group, together with their

12:46

1 partners, would own up to 30% of all of the natural
2 resource assets and projects that would fall into the
3 government's hands as a result of the new Mining Code in
4 the country.

5 So he was motivated to do what he did, and it is
6 a matter of public record that he did what we said he
7 did. We talk about my SFO witness statement, which at
8 the time was -- ultimately our complaint was rejected.
9 But at the same time, the judgment -- I've read it --
10 they gave me a lot of credit for the points that I made
11 in this representation. And subsequent events have
12 demonstrated that everything we said about Hennig,
13 Palladino, Och-Ziff, all of these people, was correct in
14 fact. And at the current position, our lawyers have
15 even been thinking about writing to the SFO to
16 demonstrate that in fact, based on subsequent findings
17 and facts that are in the public domain, perhaps our
18 representation wasn't treated the way it should have
19 been.

20 PROFESSOR VAN DEN BERG: Final question. Paragraph 24.

21 A. Yes.

22 PROFESSOR VAN DEN BERG: You refer to Mr Soros?

23 A. Yes.

24 PROFESSOR VAN DEN BERG: That he had a personal obsession
25 with BSGR; you see that?

12:47

1 A. Yes.

2 PROFESSOR VAN DEN BERG: To your personal knowledge, as of
3 when was the relationship, if any, between Mr Soros and
4 Mr Steinmetz deteriorating?

5 A. I will -- it will be a fairly long answer, if I may. Is
6 that alright?

7 PROFESSOR VAN DEN BERG: You may.

8 A. In order to answer that, I think one has to understand
9 Mr Soros and what it is he is trying to achieve and how
10 he operates, which is also the subject for a complaint
11 that we have lodged in the US --

12 PROFESSOR VAN DEN BERG: Could you start simply
13 chronologically? I am not suggesting that they played
14 in the sandbox together and that it originated there.

15 A. No, no, it's not about that, but it's about the
16 objectives that are trying to be obtained.

17 There is -- I cannot get into the detail, I can't
18 demonstrate any great knowledge about the personal
19 animosity between Mr Steinmetz and George Soros, but
20 what I can speak about at great length is why George
21 Soros has been personally involved in this specific
22 campaign against BSGR, and in this context why a person
23 like Beny Steinmetz is a bad person, okay?

24 PROFESSOR VAN DEN BERG: Yes. Could you please give it
25 chronologically, if possible? When did it start?

12:49

1 A. It started because one of the objectives that George
2 Soros has is to bring openness and transparency to the
3 awarding of mining licences in countries that are
4 blessed with an abundance of natural resources and
5 cursed with poor governance and corruption; a very
6 worthy cause, if I may add.

7 And Guinea became a key strategic playground
8 beachhead in this quest because what you had is you had
9 the world's largest mining organisations; you had
10 a corrupted country with a newly elected President where
11 there was hopes, you know, that a democratic election
12 would lead to an opportunity to reduce corruption; and
13 you also had the world's politicians and organisations
14 watching this; and you had what is clearly not part of
15 the remit that was an allowable participant:
16 an entrepreneurial Israeli speculator.

17 And it was absolutely clear that -- within this
18 campaign that was waged that the Israeli speculator
19 should not have a seat at the table, and that's how this
20 animosity began. And once the Israeli speculator, as
21 represented by BSGR, was not prepared to play by the
22 rules that were put down by George Soros and his project
23 managers -- and this includes their ability to
24 manipulate the press through their NGOs, which you can
25 never get to. We tried to get information out of Global

12:50

1 Witness, who are campaigners and funded by George Soros,
2 but they hid behind journalistic privilege, because we
3 knew they were the conduit for the leakage of a lot of
4 this information.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 So all of these forces conspired against BSGR and
12 Beny Steinmetz personally because we were not part of
13 the equation that they wanted to present in the context
14 of the open society that they wanted to create, and it
15 was not justified in any which way.

16 There are stories that Beny Steinmetz and
17 George Soros have been at different sides of various
18 business transactions in the past; I can't really
19 comment about that. I know that George Soros has lied
20 about not having met Beny Steinmetz; he has, that's
21 a matter of public record, both his lie and the fact
22 that they have met.

23 There's a bit of a game being played. It's clear to
24 me that the exercise of power and influence to some
25 people is very important. BSGR is not engaged in that.

12:52

1 We're not a company that seeks a high profile, or did,
2 politically or in the press. I mean, it's a business.
3 Whereas, you know, if you're operating as philanthropist
4 or trying to develop power in the world at large, that
5 is something that George Soros is more interested in,
6 and there are good sides to that and bad. But in this
7 specific case, it led to a collision, and we were the
8 patsy, the bad guy.

9 PROFESSOR VAN DEN BERG: Thank you.

10 THE PRESIDENT: Most of my questions have just been asked,
11 because the personal obsession of George Soros comes at
12 least twice in your witness statement; it was also
13 articulated.

14 A. I can expand a bit and give you some more detail, madam,
15 if you'd like.

16 THE PRESIDENT: Yes, because now what I understood from what
17 you were saying, it was just in relation to Guinea,
18 where there was a constellation of circumstances because
19 of a new President, democratically elected --

20 A. Yes.

21 THE PRESIDENT: -- who might bring a different practice.

22 And there was an Israeli speculator, you said --

23 A. Yes.

24 THE PRESIDENT: -- on the side, who then became the bad guy,
25 if I understand your explanation of the way Soros

12:53

1 approached this. But maybe you can expand on it.

2 A. Yes, I can expand on it. It would take a very long
3 time, but I'll try to keep it as brief as possible.

4 To understand what's going on here, I think one has
5 to understand what it is George Soros believes in and
6 how he operates. I think it would help if one has read
7 Karl Popper's *Open Society*, which his philanthropy is
8 named after, and the world -- how he believes the world
9 should be. And one of the enemies of Karl Popper's open
10 society is any state/any country that has some type of
11 religious foundation; and as such, Israel is one of his
12 many enemies. I mean, he is on public record as saying
13 he's anti-Zionist but he's not anti-Semitic, which to
14 a lot of Jewish people can be a very, very offensive
15 intellectual distinction. I understand the distinction,
16 but that is just one example.

17 I believe that in that regard an Israeli speculator,
18 a person who is proud of being Israeli, is somebody that
19 he does not like, like he does not like Plato or he
20 doesn't like Karl Marx or Hegel. And I think that what
21 George Soros is doing with his various philanthropies is
22 trying to undermine the auspices of the totalitarian
23 state as we see it, and moving towards a society which
24 he believes in. And I have to disclose that
25 I personally believe that there's a lot of value in what

12:55

1 he does.

2 But at the same time, when you are powerful, when
3 you are as wealthy as he is, and when you have amassed
4 as much influence that everybody from Lord Mark
5 Malloch Brown is your little puppet, to basically being
6 associated with the inner workings of people like the
7 Clintons, or the Obama administration as a big funder,
8 to be working with Kofi Annan, and where these agendas
9 of NGOs, where they overlap for all the good reasons,
10 you exercise an enormous amount of power.

11 One of the organisations that was funded and
12 initiated by Soros and his philanthropies was the
13 Extractive Industries Transparency Initiative. And of
14 course, once you have that, then all the big mining
15 houses, they have to send their representatives. And
16 these boards, they're full of people from Global
17 Witness. And then Tony Blair enters the mix and sets up
18 his African Governance Initiative in Conakry, staffed by
19 people that worked at Global Witness, then with him and
20 are now at Open Society. It becomes a bit of a club.

21 We were never part of this club and we didn't know
22 how to play that game, because we were not Rio Tinto or
23 Anglo American, who could have a full-time person to go
24 and hang out at these conventions; we were a private
25 entrepreneurial business. And we were not part of the

12:56

1 people invited to this party, and we seemed to be
2 a party that was threatening this party, even though our
3 activities were legitimate.

4 And our philanthropy, and what we have done in
5 countries, is exercised in a different way. We build
6 schools, we try to engage with the local community. We
7 don't go to Davos and hang out with Shakira or
8 Matt Damon talking about water, or sitting on TV saying
9 that Theresa May should fail or Trump should fail.
10 That's not our style. But yet this is the force that we
11 have been up against, and we are the outsider and the
12 victims of this campaign. And there is ample evidence
13 of this being the case.

14 And furthermore, the pony that was backed in Guinea
15 turned out to be a donkey, because there is no doubt --
16 and I can say that openly here without fear -- President
17 Condé and his entourage are corrupted individuals, and
18 the record shows that. That is a fact.

19 Thank you.

20 THE PRESIDENT: Thanks. That indeed expanded on your
21 previous answer very usefully. Let me see what
22 I have --

23 A. It's a good book, by the way, The Open Society. It's
24 worth reading.

25 THE PRESIDENT: By Karl Popper?

12:58

1 A. I'm sure you've read it.

2 THE PRESIDENT: No.

3 A. Bertrand Russell said it was one of the best books of
4 the 20th century.

5 THE PRESIDENT: Can you go to paragraph 31.14 of your first
6 witness statement.

7 A. Yes.

8 THE PRESIDENT: You told us that you followed, you reviewed
9 that Technical Committee review process, but you were
10 not directly involved, or -- how shall I say? -- you
11 were not involved in every detail. So you will tell me
12 if you cannot answer.

13 A. Yes.

14 THE PRESIDENT: In the middle of that paragraph it says:

15 "The Technical Committee first provided the alleged
16 contract to BSGR Guinea on 7th May 2013."

17 So here we are speaking about the alleged corruption
18 contract.

19 "In response, on 4 June 2013, BSGR ... stated that
20 the contracts were forgeries ..."

21 Then you said they've been using blackmail attempts,
22 and you've spoken about blackmail before.

23 How did you determine that the contracts were
24 forged?

25 A. The individuals whose signatures appear on these

12:59

1 documents have made such representations: Mr Avidan and
2 Mr Struik.

3 THE PRESIDENT: So we'll ask them directly.

4 A. Yes.

5 THE PRESIDENT: There were no other reviews, analysis,
6 forensic expert reports about these contract signatures?

7 A. I don't know the whole process and the procedure, but
8 I think that representations and written representations
9 have been made, and they have consistently been adamant
10 that they are not the signatories of these documents.
11 I don't think that they were -- they weren't locked up
12 or tortured or anything like that.

13 THE PRESIDENT: You have addressed before the Palladino
14 affair, so I will not go back to it. I was just
15 interested in one further matter. It's in your second
16 witness statement, when you describe in paragraph 3 and
17 following the BSG group, the structure, and also the
18 role of Onyx as a corporate management services company.
19 You also explain that Ms Merloni did not report to you
20 about minor pieces of work, in paragraph 5. And that
21 was, I understand, the creation of Pentler, and then the
22 approach by Messrs Noy, Cilins and Lev Ran, who wanted
23 to purchase a shelf company.

24 Have you reviewed the Pentler/BSGR agreements? We
25 spoke before of the one of February 14th 2006. You may

13:01

1 remember you said you did not know it. Have you
2 reviewed any of the documents?

3 A. At the time?

4 THE PRESIDENT: At the time, or --

5 A. No.

6 THE PRESIDENT: -- you have reviewed in preparation for this
7 hearing maybe?

8 A. At the time when they were prepared, and this dialogue
9 and this interaction was taking place, I wasn't involved
10 at all.

11 And I'd like to say, it's not a question of keeping
12 in front minor pieces. I think basically Sandra was
13 operating very, very independently, because this was her
14 business, and the extent of our communication was very
15 limited indeed. You know, we barely exchanged emails.
16 I would visit Geneva a couple of times a year, at board
17 meetings and so on. But she in many ways was the ideal
18 service provider, very professionally managed what she
19 needed to do. And within her remit, she was operating
20 like this.

21 I did not know about this company and I did not know
22 even about the initial participation of this company,
23 which was agreed, I believe, in 2007. What is
24 important, and might be helpful, is that BSGR up until
25 2007 was managed by a CEO who was very hands-on, and he

13:03

1 was based in Johannesburg. His name was Roy Oron.

2 THE PRESIDENT: This was Mr Oron, yes.

3 A. And the interface between BSGR and Sandra at that point
4 in time would have been more between the CEO and her
5 providing the company secretarial services than really
6 at the board level, because he was a very hands-on,
7 strong CEO.

8 And I think one of the problems that we were dealing
9 with post-his departure was that there was a vacuum
10 between how BSGR was being managed and having the right
11 executive participation. And that's often why maybe,
12 you know, the board was not used to getting involved in
13 any day-to-day operational details, and there was
14 certainly, with the benefit of hindsight, you know,
15 a lack of control. But it was never in a situation that
16 anybody wilfully was turning a blind eye to any type of
17 activity.

18 What I would like to mention is also that the UK
19 Anti-Bribery Act, the rewriting of this in 2011 I think
20 acted as the wake-up call that it should for
21 organisations operating like us: you know, you became
22 aware that you had to be more proactive. A lot of these
23 people on the ground in Guinea, 2006/2007, it's very
24 easy to sit here and say: they should have done this,
25 they should have done that. These are people who don't

13:04

1 understand the issues that we here today are experts on.
2 You know, they would have thought, "This is what I can
3 do, this is what I can't do". And I think that the UK
4 Bribery Act in that regard was a very good piece of
5 legislation, because it put the onus on -- you have the
6 responsibility to do things. But pre-then, it was
7 a difference time.

8 THE PRESIDENT: Does Onyx have a compliance department?

9 A. Excuse me?

10 THE PRESIDENT: Does Onyx have a compliance department?

11 A. No.

12 THE PRESIDENT: No.

13 You were not involved either in the repurchase of
14 the share of Mr Noy, Mr Cilins and Lev Ran?

15 A. No. I never met them at this time. I didn't know of
16 them, I didn't talk to them, I didn't exchange emails.

17 THE PRESIDENT: Fine. Let me just see whether I have
18 covered all my questions, but I think I have. (Pause)

19 There's an additional demo that we would like to
20 show you, which is about flow of funds. Can we make
21 sure -- it's this one (indicating). It doesn't have
22 a number, I think, but it can be provided to Mr Cramer?
23 Yes, that's it. So it's the "Flow of Funds
24 11 January 2012", the demo is entitled.

25 Are you the person who we should ask to comment on

13:07

1 this, or are these facts of which you are aware,
2 knowledgeable?

3 A. I'm not the right person, and the reason is I was not
4 involved in any of these payments.

5 It's fair to say that in some cases, like some of
6 the large amounts, once the Pentler share purchase
7 agreement, the \$22 million that I see there, as a board
8 member, one became aware of this because it was
9 a relatively large amount, and I think on that -- parts
10 of that payment, because it was beyond 5 or 10 million,
11 it was something that they had to bring to my attention,
12 I was made aware of when that payment was actually done.

13 But I was not involved in these payments at all.

14 PROFESSOR VAN DEN BERG: Mr Cramer, this payment here
15 (indicating)?

16 A. Yes.

17 PROFESSOR VAN DEN BERG: You were aware of that?

18 A. That's the one, yes. I mean, ultimately the
19 shareholding of Pentler was -- they were bought out,
20 there was a share purchase agreement, and I believe that
21 that \$22 million relates to that transaction.

22 THE PRESIDENT: Yes, I asked you before whether you had
23 reviewed this document for the share purchase agreement
24 where you repurchased the share from Pentler, but
25 apparently --

13:08

1 A. I wasn't involved in that negotiation.

2 THE PRESIDENT: But the board would have to approve this
3 transaction, or would it just --

4 A. Yes.

5 THE PRESIDENT: -- be informed of the transaction?

6 A. Yes. I went back and I checked, and there was a board
7 meeting between David Clark and Kevin McAuliffe --
8 David Clark was the executive director of BSGR and
9 Kevin McAuliffe was a lawyer who was a resident
10 director, and there was a board meeting where this was
11 passed. I didn't attend that meeting but, I mean, I was
12 clearly on the board and I would have seen this
13 documentation. I have to admit that, you know,
14 depending upon how busy you are, you don't always read,
15 you know, the minutes and things as thoroughly as one
16 should. But I was aware of it.

17 At the time my focus was on BSG Capital Markets.
18 And at the time of the financial crisis we were having
19 daily swings of plus/minus \$20 million on our VAR, with
20 liquidity problems and so on, and that was my focus; not
21 what was going on here.

22 THE PRESIDENT: Thank you. Who's the right person to ask
23 about these payments?

24 A. I think that the person who is most familiar with it
25 would be Yossie Tchelet, because he was the financial

13:09

1 specialist involved in this and he had been involved in
2 BSGR, being hired originally in South Africa, working
3 for Mr Roy Oron.

4 THE PRESIDENT: Thank you.

5 Do the parties have any follow-up questions, based
6 exclusively on the Tribunal's questions, of course? The
7 Claimants?

8 MR WOLFSON: No, thank you.

9 THE PRESIDENT: No. (Interpreted) The [Respondent]?

10 MR OSTROVE: (Interpreted) In order to avoid very many
11 questions, may I make a short statement to draw your
12 attention to a document?

13 THE PRESIDENT: Is it something that you could do tomorrow,
14 in the comments tomorrow morning?

15 MR OSTROVE: Well, in that case I would have a couple of
16 questions on what you asked the witness, madam.

17 THE PRESIDENT: Okay.

18 (1.10 pm)

19 Further cross-examination by MR OSTROVE

20 Q. (In English) Mr Cramer, Michael Ostrove from DLA Piper.
21 We've met before; is that correct?

22 A. I don't remember.

23 Q. The President asked you, the Chair of the Tribunal asked
24 you whether you were aware of any forensic review by
25 BSGR of the contracts in question, and your response was

13:11

1 that the individuals have repeatedly denied their
2 signatures. I just wanted to come back on that
3 question.

4 You are aware, are you not, that BSGR did have
5 access to these documents in the FBI laboratory in
6 New York and did a forensic review?

7 A. I recall that through a cooperation agreement at the
8 time of Fred Cilins's arrest in the US, I believe, that
9 his lawyers were cited on these documents. I'm aware of
10 that. But the circumstances, and whether it was
11 a forensic examination, I do not know.

12 But in the context of these documents, personally,
13 I mean, I have seen these documents on the Technical
14 Committee's website; I've seen other documents floating
15 around; I've been handed documents by journalists; I've
16 been handed documents by various business intelligence
17 firms. So if you ask me if I know which is which, and
18 which is a forgery or alleged to be a forgery, or is
19 conceded as a contract, I can't truthfully answer that
20 question. And I believe that David Wolfson made a good
21 suggestion that it might be good to focus on this.

22 I don't know -- sorry.

23 Q. Excuse me, Mr Cramer, that's actually not the question
24 that I asked you.

25 A. Okay.

13:12

1 Q. So rather than raising a question I didn't ask --

2 A. I'll try again.

3 Q. My question was very simple: are you aware or are you
4 not aware of BSGR having had access to the documents at
5 the FBI laboratory in order to be able to have
6 a forensic analysis done by an expert hired by BSGR?

7 A. I believe I answered that question very truthfully,
8 because I don't believe that BSGR had access. I told
9 you that indirectly, right, because of this cooperation
10 agreement, there was a person who didn't work for BSGR,
11 who didn't act for BSGR, who was cited on these
12 documents. I can't answer it better than I did.

13 Q. I'm sorry --

14 A. And I wasn't aware that BSGR specifically was entitled
15 to do this; I had no idea.

16 Q. Are you aware then -- with this person cited on the
17 documents, I think you mean by that Frédéric Cilins?

18 A. Sorry?

19 Q. When you say "[the person] cited on these documents", do
20 you mean Frédéric Cilins?

21 A. No.

22 Q. Who are you referring to?

23 A. His lawyer.

24 Q. Okay. Are you aware of whether his lawyer was able to
25 have a forensic analysis done on the originals?

13:13

1 A. I do not know.

2 MR OSTROVE: Thank you.

3 THE PRESIDENT: So if there are no further questions, then
4 that completes your examination, Mr Cramer. Thank you
5 very much for your explanations.

6 MR CRAMER: Thank you very much.

7 THE PRESIDENT: So now we will take the lunch break. Can we
8 resume at 2.15? We were told that Ms Merloni would be
9 ready from 2 o'clock on. Is this correct?

10 MR WOLFSON: Yes, it is. I'm sure 2.15 should be fine. If
11 there's any problem with that, I will communicate with
12 the Secretary. But I'm sure 2.15 should be fine.

13 THE PRESIDENT: Yes, we had asked the Secretary before to
14 check with you to make sure that this was fine, because
15 initially you had planned 3 o'clock.

16 MR WOLFSON: Yes.

17 THE PRESIDENT: But if she is available, then we avoid
18 wasting time.

19 MR WOLFSON: Yes.

20 THE PRESIDENT: Good. Have a good lunch, everyone.

21 MR CRAMER: Thank you very much.

22 (1.15 pm)

23 (Adjourned until 2.15 pm)

24 (2.19 pm)

25 MS SANDRA MERLONI-HOREMANS (called)

14:19

1 THE PRESIDENT: I hope you all had a good lunch.
2 We can start with the examination of
3 Ms Merloni-Horemans. Good afternoon.
4 MS MERLONI-HOREMANS: Good afternoon.
5 THE PRESIDENT: For the record, can you confirm to us that
6 you are Sandra Merloni-Horemans?
7 A. That's correct, yes.
8 THE PRESIDENT: You were the director and head of
9 administration of Onyx Financial Advisors SA, that is
10 the Swiss company, also Advisors Limited BVI, until
11 2014; is that right?
12 A. That is correct, yes.
13 THE PRESIDENT: You were also an administrator of Margali?
14 A. Correct.
15 THE PRESIDENT: These are not your positions anymore?
16 A. No.
17 THE PRESIDENT: No. Do you have a current position?
18 A. I do not have a current position in Onyx group or in the
19 BSG group.
20 THE PRESIDENT: Do you have another one elsewhere?
21 A. Yes, I have my own company in Switzerland and I'm
22 setting up a new business in Italy at the moment.
23 THE PRESIDENT: I did not hear the last thing: setting up
24 a new business in ... Italy --
25 A. Yes.

14:20

1 THE PRESIDENT: -- at the moment. What is the name of your
2 company in Switzerland?

3 A. Invicta Advisory SA.

4 THE PRESIDENT: And the one you are setting up in Italy?

5 A. Kidz Camp Italy (A) Srl.

6 THE PRESIDENT: Thank you.

7 You have provided us with one witness statement in
8 this arbitration, it was dated 10th January 2017; is
9 that right?

10 A. That is correct.

11 THE PRESIDENT: Do you have it in front of you?

12 A. Yes.

13 THE PRESIDENT: This is an unmarked copy?

14 A. Correct.

15 THE PRESIDENT: Good. You also provided other statements
16 that we do have; that is, a statement in the LCIA
17 arbitration?

18 A. That is correct.

19 THE PRESIDENT: Yes. That was dated 30th June 2015, and
20 it's R-115. You may not know --

21 A. Yes.

22 THE PRESIDENT: -- the exhibit number, but I'm saying it
23 here for the record.

24 You are heard as a witness. As a witness, you are
25 under a duty to tell us the truth. Can you please

14:21

1 confirm that you understand being under this duty by
2 reading into the record the witness declaration. There
3 should be a plastic sheet there -- yes.

4 MS MERLONI-HOREMANS: I solemnly declare upon my honour and
5 conscience that I shall speak the truth, the whole
6 truth, and nothing but the truth.

7 THE PRESIDENT: Thank you. So you know how we will proceed:
8 you will first be asked questions by Claimants' counsel,
9 and then we turn to Respondent.

10 MS MERLONI-HOREMANS: Correct, thank you.

11 THE PRESIDENT: Mr Wolfson?

12 MR WOLFSON: Thank you.

13 (2.22 pm)

14 Direct examination by MR WOLFSON

15 Q. Good afternoon. Could you please look at paragraph 14
16 of your witness statement.

17 A. Yes.

18 Q. You are talking there about a company called Pentler,
19 and you say in the first sentence:

20 "I had initially reserved Pentler for another
21 client's project."

22 Now, I understand that, for reasons of
23 confidentiality, you might not be able to identify other
24 clients. But would you be able to assist the Tribunal
25 by elaborating on what you say in that sentence?

14:23

1 A. Yes, perhaps I can explain a bit about my job at Onyx,
2 what my function basically was.

3 As company secretary, I was buying and selling shelf
4 companies to protect potential clients. And Pentler was
5 part of a group of companies -- of BVI companies -- that
6 I bought from the BVI provider Mossack Fonseca that we
7 had on shelf, and that we kept ready in case a client
8 came with a request to buy a company.

9 In the case of Pentler, we had this company
10 initially reserved for a Turkish hotel group, for
11 a project in Russia. And when the client came back to
12 me and told me that the project was not going ahead,
13 I put this company back on shelf.

14 Q. Thank you.

15 A. So ... yes.

16 Q. And the event you deal with in paragraph 15, when you
17 had a call with Mr Noy, the BVI shelf company you refer
18 to there, in the first sentence of paragraph 15, what
19 company are you talking about there?

20 A. I'm talking here about the company Pentler, that at that
21 time was a dormant company that I had on shelf, that
22 was -- that remained after an aborted transaction, and
23 that I had ready to resell to a new client.

24 MR WOLFSON: Those were the only questions I was going to
25 ask. You will now, I think, be asked questions by

14:24

1 counsel for the Respondent.

2 MS MERLONI-HOREMANS: Okay.

3 MR OSTROVE: (In English) Thank you.

4 (2.24 pm)

5 Cross-examination by MR OSTROVE

6 Q. Good afternoon, Ms Merloni-Horemans. My name is
7 Michael Ostrove, and --

8 A. Do you mind just talking just a little bit louder?

9 Q. My name is Michael Ostrove, representing the Government
10 of Guinea in this case. Certainly if you have any
11 trouble hearing or understanding any of my questions,
12 please let me know.

13 A. Thank you.

14 Q. We saw a few minutes ago that there are a great number
15 of companies in the Onyx and BSGR world. I'm going to
16 take you through some questions about a number of these
17 companies, and my apologies to the people running the
18 technical part, because almost all the documents that
19 actually describe the creation of these companies, or
20 what happened with them, are marked as confidential. So
21 I will try to limit the disruption as much as possible,
22 but there will be lots of red cards going up so that
23 those documents are not shown publicly, and then green
24 cards going up. So we'll do our best.

25 We have put up on the screen a structure chart,

14:26

1 which is very similar to the structure chart that was
2 submitted and reviewed a little bit ago with Mr Cramer.

3 Do you have a copy of that demonstrative exhibit
4 that Ms Merloni-Horemans is going to look at?

5 We understand from testimony of Mr Cramer earlier
6 that we had misplaced Margali Management Corporation as
7 a subsidiary of Onyx Financial Services SA in
8 Switzerland. So during the break the only change we've
9 made is we've moved Margali up so that it's a subsidiary
10 of Onyx Financial Advisors Limited in the BVI.

11 I'm not going to ask you right now to validate
12 everything single thing on this chart, but we will be
13 referring to this chart from time to time.

14 THE PRESIDENT: Mr Ostrove, to avoid confusions, can we name
15 this one "Demonstrative 1(a)", for instance?

16 MR OSTROVE: Certainly.

17 THE PRESIDENT: And then you should also file it
18 electronically and in paper copy. Because we have
19 number 1, and that is the one you have changed.

20 MR OSTROVE: Thank you. And having just prepared this
21 within the last 30 seconds, we will try to get a cleaner
22 version of it, because we didn't get that line exactly
23 straight on the bottom left there.

24 If we understand correctly, Ms Merloni-Horemans,
25 you, during most of the time period that matters for

14:29

[PROTECTED]

[REDACTED]

14:32

1 Q. We can go to a green card, please.

2 You submitted one witness statement in this case;
3 correct?

4 A. In this case, yes.

5 Q. And in it you described your employ. Would it be fair
6 to say that although you were technically an employee of
7 Onyx in Switzerland, would you consider it a fair
8 statement to say that you were an employee of the BSG
9 group overall?

10 A. No, not at all. I was an employee of Onyx Financial
11 Advisors SA in Switzerland, who had a mandate with the
12 Balda Foundation, and this mandate -- and through this
13 mandate we provided certain services to the BSG group of
14 companies, including BSG Resources Limited.

15 Q. So in working for Onyx --

16 A. I have never worked for the group BSG.

17 Q. But in working for Onyx, one of your primary roles was
18 to provide services to the BSG group of companies?

19 A. I was working for Onyx under a mandate, and the mandate
20 provided that Onyx group as a whole was providing
21 services to the BSG Resources group.

22 Q. So with respect to your daily activity -- and you worked
23 for many years there -- is it fair to say that a large
24 part of your activity was devoted to helping Onyx fulfil
25 this mandate towards BSG?

14:33

1 A. I -- my mandate under -- sorry, my work fell under the
2 Onyx mandate for BSG, but also for many other clients.
3 It was not -- definitely not exclusive to the BSG group.

4 Q. So Onyx had many other clients?

5 A. Correct.

6 Q. We'll come back to that in a moment. I just would like
7 to go back for a moment to understand a little bit your
8 history, your work history and all.

9 With apologies for asking a personal question, could
10 you tell me what year you were born?

11 A. I'm sorry?

12 Q. With apologies for asking a personal question, could you
13 tell me what year you were born?

14 A. Sorry. 1970.

15 Q. 1970. In your witness statement in paragraph 4 of
16 CWS-9, you indicate that:

17 "[You] started [your] career in 1989 as
18 an administrative and trading assistant to the rough
19 diamond trading division at R. Steinmetz & Sons ... in
20 Antwerp ..."

21 A. Yes, that is correct.

22 Q. Okay. So is it fair to say that you were either 18 or
23 19 years old when you started working for that group?

24 A. I was 19 years old when I started working for that
25 group; correct.

14:35

1 Q. So just out of high school, was this your first job?

2 A. I started university. I tried to combine university
3 with working together, but ultimately I ended up working
4 full-time for the group.

5 Q. Okay. And that company, R Steinmetz & Sons, do you know
6 who "R Steinmetz" refers to?

7 A. If my recollection is correct, it refers to Ruven
8 Steinmetz, who was the father of Benjamin and Daniel
9 Steinmetz, and who founded the Steinmetz group.

10 Q. Thank you. And while working there from 1989 to 1994,
11 you got to know the Steinmetz family a little bit?

12 A. Yes, I've met them; correct.

13 Q. So in fact all of your business experience from 1989
14 until you left the Steinmetz company to work for Onyx
15 was with the Steinmetz family company; correct?

16 A. I have worked for the Steinmetz diamond company in
17 Antwerp for five years. I was straight out of
18 university, out of high school. And I was basically
19 an assistant to the administration and also to the rough
20 diamond sorting team.

21 Q. Would you say, looking back at that time, that the
22 company was very happy with your work?

23 A. I hope so, and I think so.

24 Q. You didn't leave them on bad terms?

25 A. Yes, absolutely.

14:36

1 Q. So did they introduce you to the opportunity to work
2 with Onyx?

3 A. The owner of Onyx approached me and he offered me to
4 start to work with him in -- more in a corporate
5 position, which I accepted.

6 Q. When you say "the owner of Onyx", who is that?

7 A. Dave Elzas(?) at the time.

8 Q. Sorry?

9 A. Dave Elzas.

10 Q. Thank you. In fact, Onyx at that time had just been
11 created; correct?

12 A. Correct.

13 Q. And you became the director and head of administration
14 at two Onyx companies: Onyx Financial Advisors SA in
15 Geneva and Onyx Financial Advisors in the BVI; is that
16 correct?

17 A. That happened in 1998, when the Onyx office in Belgium
18 closed and when I was proposed to start a new Onyx
19 office in Geneva.

20 Q. Okay. So the Onyx office in Belgium that you worked in,
21 did that provide services, amongst others, to the BSG
22 group in the diamonds trade?

23 A. It provided services to the BSG group, to the Steinmetz
24 Diamond Group, and also to a limited number of other
25 clients.

14:38

1 Q. So it's fair to say that when you worked with Onyx in
2 Belgium, you were in fact continuing to work, but in
3 a corporate capacity, for the Steinmetz Group?

4 A. For the Steinmetz Group and for other clients, yes.

5 Q. So in 1998 -- and thank you for the correction -- when
6 you became the director and head of administration at
7 Onyx in Geneva, and with Onyx Financial Advisors in the
8 BVI, was that, to your mind, a promotion?

9 A. Yes. That's how I experienced it, yes.

10 Q. Were those new companies at the time, in 1998?

11 A. Correct.

12 Q. So nobody had that position before you?

13 A. Correct.

14 Q. Did you feel that this promotion showed that the
15 Steinmetz family, amongst others, had faith in you?

16 A. I think that the owner of Onyx had faith in me.
17 I taught a lot from -- I learnt a lot from him. And
18 when he offered me this opportunity to go to Geneva,
19 I was very grateful for that. I can only assume that
20 also my work for the BSG group, the Steinmetz Diamond
21 Group and the other clients also counted of course.

22 Q. Because the Steinmetz Group and these other Steinmetz
23 companies were important clients of Onyx; correct?

24 A. Of course.

25 Q. Looking at your work for Onyx from 1998 on, is it fair

14:39

1 to say that in fact the BSGR group and various Steinmetz
2 companies were far and away the most important client
3 for Onyx?

4 A. It is true that the BSG group was an important client,
5 as was the Steinmetz Diamond Group; correct.

6 Q. So if you exclude any company not related to the
7 Steinmetz family in any way, or the Steinmetz name,
8 looking only at the Steinmetz business for Onyx, would
9 you say that it was more than 50% of the business of
10 Onyx?

11 A. Yes.

12 Q. Is it fair to say that it would be 98% of the business
13 of Onyx?

14 A. My work personally, I would rather say that it was 90%
15 of my time that I spent for the BSG and Steinmetz
16 Diamond Group, and another 10% for the other clients.

17 Q. So in your role you had to have a pretty good
18 understanding of the Steinmetz business; correct?

19 A. Correct.

20 Q. In your witness statement at paragraph 6 you say that
21 your role was to provide clients of Onyx:

22 "... with advice as to fiscal optimization of
23 international holding and trading structures for both
24 private and corporate clients."

25 In order to provide advice on fiscal optimisation

14:40

1 and trading structures, you had to understand the
2 trading structures and fiscal structures; correct?

3 A. No. We had several external service providers, tax
4 counsel trust companies, that provided advice and that
5 helped us to advise a client on the best structure to
6 put in place for their holdings.

7 Q. I'm sorry, you wrote in your witness statement:

8 "I provided clients with advice as to fiscal
9 optimization ..."

10 So did you personally not provide that advice?

11 A. No. I'm not a tax lawyer, I'm not in that position.
12 I don't have the knowledge to provide any tax advice.
13 We outsourced that advice, and we engaged Onyx or the
14 client directly. We then advised tax counsel, that
15 provided us with their recommendations that we
16 afterwards implemented and helped the client to set up
17 their structures.

18 Q. Did you personally get involved in going and getting the
19 tax advice and then implementing the tax advice?

20 A. Yes, correct.

21 Q. So did you feel that you understood how the structures
22 work pretty well?

23 A. To a reasonable extent, yes. I wouldn't say that I'm
24 an expert, but I've worked for several years in this
25 industry and I think I understand this.

14:42

1 Q. So the use of BVI companies is helpful for tax
2 optimisation; correct?

3 A. Yes. It's a standard practice. Most companies -- trust
4 companies and trust providers in Geneva sell BVI
5 companies and other offshore companies.

6 Q. One reason, do you suppose, is that there's no company
7 tax in the BVI; correct?

8 A. Correct. But I would like to point out that we were not
9 only selling BVI companies; we were both selling onshore
10 and offshore companies.

11 Q. I understand that. I am just trying to understand
12 certain elements.

13 A. Okay, sure.

14 Q. Please.

15 Is it also the fact though that as between onshore
16 and offshore companies, offshore companies such as BVI
17 companies are also useful for confidentiality; correct?

18 A. Yes, correct.

19 Q. One thing is that if somebody wants to own a company,
20 but not have people know that they own the company, they
21 can have a BVI company and use nominee shareholders; is
22 that correct?

23 A. Yes, that could be the case for certain clients. But it
24 was not the case for our clients.

25 Q. You also say in paragraph 6, when you describe your

14:43

1 role, that you:

2 "... assisted ... clients' M&A teams ..."

3 Their mergers and acquisitions teams.

4 A. Mm-hm.

5 Q. "... and [their] front offices for transactions related
6 to diamonds, mining & metals, natural resources, energy,
7 real estate and capital markets."

8 Do you stand by that statement?

9 A. Correct.

10 Q. So what kind of diamond transactions, in terms of M&A,
11 did you help work on?

12 A. Setting up new companies, new joint ventures with new
13 clients, new activities, setting up production plants --
14 or setting up the structure, rather, for a production
15 plant.

16 Q. So if a client came to you and said, "We are going into
17 a new line of business, and we are going to have a JV
18 partner here", you would help them, with your teams at
19 Onyx, put together a structure that worked for that
20 business?

21 A. Yes, that is correct.

22 Q. Let's turn your attention again more specifically to the
23 BSG group of companies, and in particular BSGR. While
24 you were at Onyx, I believe you have stated that you
25 were on the board of most BSG companies; is that

14:44

1 correct?

2 A. Yes, as I am -- I was on the board of -- under the
3 mandate that Onyx had with the foundation which owned
4 ultimately BSG Resources, one of the functions was that
5 we provided directors to sit -- in my personal name or
6 through a corporate director -- to sit on the boards of
7 BSG companies. But that was also the case for other
8 clients, not just for BSG.

9 Q. I understand that you worked for other clients as well.
10 I'm just trying to understand now your role with BSG.

11 A. Sure.

12 Q. But both for BSG and other companies, you ended up
13 sitting on a lot of boards; correct?

14 A. That is correct.

15 Q. So you had to act with the obligations of a director for
16 these companies?

17 A. I had the position of a non-executive director, and my
18 role was mostly to look after the interest of the
19 ultimate beneficiaries.

20 Q. Did you have to gain an understanding of the role of
21 directors in, for example, BVI companies?

22 A. Correct.

23 Q. Are you satisfied that you have an understanding of what
24 the obligations of a director of a BVI company are?

25 A. I think I have a clear understanding, a sufficient

14:46

- 1 understanding to perform my task.
- 2 Q. So you understand that directors, technically at least,
3 either manage or supervise the management of companies
4 for shareholders in the BVI; is that correct?
- 5 A. I believe that that is correct.
- 6 Q. Do you agree that directors of BVI companies have
7 an obligation to act for proper purposes?
- 8 A. Would you repeat that?
- 9 Q. That directors of BVI companies have an obligation to
10 act for proper purposes?
- 11 A. What do you mean by that?
- 12 Q. For the --
- 13 A. I don't understand the question.
- 14 Q. The question is: do you understand that directors of BVI
15 companies have an obligation to act for proper purposes?
- 16 A. Mm-hm. Yes, correct.
- 17 Q. And do you understand that directors must exercise
18 reasonable care and diligence in performing their
19 functions?
- 20 A. Yes, of course.
- 21 Q. And they are supposed to act honestly and in good faith?
- 22 A. That is correct.
- 23 Q. I'd like to put up on the screen another structure chart
24 that indicates a number -- not all, but a number -- of
25 the BSG companies on which you acted as a director.

14:47

1 It's been commented that you look like a spider in a web
2 here. Please understand that the intention was simply
3 to try to find room on the chart to put your name and to
4 see the director affiliations.

5 A. Yes.

6 Q. If we just look through a number of these companies, is
7 it fair to say that most of these companies on the
8 right-hand side here (indicating), these are the BSG
9 group companies on which you sit on the board; is that
10 correct? So, for example, you sit on the board of BSGR
11 in Guernsey?

12 A. Yes, that is correct.

13 Q. And you sat on the board of -- acting through a company
14 called Margali?

15 A. Yes.

16 Q. Which itself was a director of BSGR Guernsey, BSGR BVI,
17 BSGR Treasury Services in the BVI, BSGR Steel: Margali
18 was on the board of these companies?

19 A. Correct.

20 Q. Then you, acting as a director of Margali, fulfilled
21 that role of sitting on the board of these companies; is
22 that right?

23 A. That is correct. At the time of this diagram, and over
24 the period in question, I was sitting on the board of
25 easily 100 to 120 companies. So this is, yes, my

14:49

1 understanding: that [in] all those companies, I was acting
2 [either] directly in my name as a director or through
3 Margali, which was a corporate director in those BVI
4 companies.

5 Q. I recognise that it's hard to keep track of 120
6 different companies and everything. But is it fair to
7 say that when you're acting as a director for companies,
8 there are times in a company's life where there's a lot
9 of activity and you have to pay more attention, and then
10 times in a company's life when there's much less
11 activity and it requires less of your time?

12 A. Yes, that's correct.

13 Q. Let's look for a moment at one company on here, which
14 is -- I'm actually not sure it's on this slide. Yes,
15 I'm sorry. It's this company over here (indicating),
16 which is called on the slide "BSGR Guernsey".

17 Let's go back to a different slide here. This slide
18 has the same companies, but it's got their complete
19 corporate names. One thing I think has been very
20 confusing for everybody is people keep talking about,
21 you know, "BSG Resources" or "BSG Guinea". In fact
22 a lot of the company names are very similar; isn't that
23 right?

24 A. Yes, that is the case.

25 Q. So if I make a mistake, please feel free to point it

14:50

1 out.

2 This company over here that I'm pointing to, which
3 is BSG Resources (Guinea) Limited, which we've been
4 calling in this case "BSGR Guernsey" -- I'm sorry.

5 I'm sorry, let's start one above, BSG Resources
6 Limited, up here. That company was constituted actually
7 in Guernsey in 2007; does that sound correct to you?

8 A. I think the company was constituted in Jersey and moved
9 to Guernsey.

10 Q. You have an exceptional memory. Yes, it was constituted
11 in Jersey in 2003 and then it was moved to Guernsey in
12 2007. Does that sound correct?

13 A. Yes, that may be correct.

14 Q. Do you know why it was moved from Jersey to Guernsey?

15 A. Because ...

16 Q. Only if you have a real recollection; don't speculate,
17 please.

18 A. No, so in that case I don't really recall and I prefer
19 not to say; no mistakes.

20 Q. Okay. Yes, please make sure that you respond correctly.
21 But at the time you were probably aware of why it moved?

22 A. I'm sorry, at the time I was ...?

23 Q. Back in 2007, ten years ago, would you have been aware
24 of why that move was happening?

25 A. Yes. To my recollection, it was fiscal advice that we

- 4 Q. If we go back to the structure chart, which is up here,
5 there's another company called BSG Management Services
6 Limited that appears in the documents. Do you know
7 where that company appears on this?
- 8 A. Which company are you ...?
- 9 Q. A company that maybe once had the name BSG Management
10 Services Limited.
- 11 A. Yes, but it's not in this chart; correct?
- 12 Q. That name does not appear on this chart.
- 13 A. Okay. To my recollection --
- 14 Q. But are you aware of whether that has been renamed?
- 15 A. Yes, to my recollection, BSG Management Services was the
16 company that was set up in London -- in the UK, sorry,
17 with an office in London, and then afterwards renamed
18 into Onyx UK.
- 19 Q. So it originally --
- 20 A. It's not a company that's part of the BSG group; it has
21 always been part of the Onyx group of companies.
- 22 Q. Okay. So even though it's always been part of the Onyx
23 group of companies, it once had the name BSG Management
24 Services?
- 25 A. Correct.

14:54

1 Q. So there can be companies in the Onyx group that have
2 the BSG name?

3 A. I don't know the reason for that.

4 Q. You are also the director of a company called
5 Margali Management Corporation; correct?

6 A. Correct.

7 Q. That, as we've now corrected, is a subsidiary of ...
8 Margali, yes. Margali is over here. I've been spending
9 a lot of time on these structures and I can still get
10 confused.

11 Margali, over here, is a subsidiary, we've
12 clarified, of Onyx Financial Advisors Limited; correct?

13 A. Correct.

14 Q. Sitting as a director of Margali, is it correct that you
15 sat as a director of this company, Windpoint Overseas
16 Limited?

17 A. I believe that that was the case, yes.

18 Q. Then could you tell us, please -- we've had trouble
19 placing this. There was some testimony earlier that
20 that might be a BSGR company. Do you know where that
21 fits in the ownership structure?

22 A. To my recollection, this company was owned by BSG Metals
23 and Mining Corp --

24 Q. This company over here (indicating)?

25 A. Yes -- which in turn was fully owned by NYSCO Management

14:56

1 Corp.

2 Q. Okay, so that one goes here. Thank you. That helps
3 with another question because there are documents that
4 call that a division of BSG Resources Limited. But from
5 your perspective, from a corporate structure point of
6 view, it's a subsidiary of NYSCO?

7 A. That is my understanding and my recollection, yes.

8 Q. Okay. Aside from sitting as a director on these, you
9 also sat in even on the meetings of the foundation at
10 the very top of the BSG structure, correct; the
11 foundation Balda?

12 A. That is correct. I was attending those meetings as
13 company secretary and I took notes and made minutes of
14 those meetings.

[PROTECTED]

[REDACTED]

14:59

[PROTECTED]

[REDACTED]

13 A. BSG Management Services is a company that was and has
14 always been part of the Onyx group of companies, and
15 that was later on renamed into Onyx.

16 MR OSTROVE: This Onyx here?

17 A. No, the Onyx down there, Onyx Financial Advisors (UK)
18 Limited.

19 MR OSTROVE: This one down at the bottom?

20 A. Yes.

21 PROFESSOR VAN DEN BERG: This one (indicating)?

22 MR OSTROVE: It's marked on the slide: BSG Management
23 Services Limited --

24 A. Yes.

25 MR OSTROVE: -- until 7th March 2011.

15:00

1 PROFESSOR VAN DEN BERG: When was it renamed?

2 A. I don't recall by heart.

3 PROFESSOR VAN DEN BERG: Approximately?

4 A. No, I can't guess.

[PROTECTED]

7 Holding your role, the role that you had throughout
8 the BSG structure, you at various times signed
9 agreements on behalf of different BSG companies; is that
10 correct?

11 A. That is correct, according to the instructions that we
12 received from the client.

13 Q. So just as an example, if we turn to tab 25 of the
14 bundle, this is an agreement between BSGR Steel Holdings
15 Limited and BSG Resources (Guinea) Limited, a management
16 agreement.

17 You were a director of BSG Resources (Guinea)
18 Limited; correct? Is that correct, that you were
19 a director of BSG Resources (Guinea) Limited?

20 A. Yes, I was a director of that company, through Margali.

21 Q. But you signed this agreement on behalf of BSGR Steel
22 Holdings Limited, and Mr Struik on behalf of
23 BSG Resources (Guinea); correct?

24 A. If I recall correctly, Marc Struik at that time was my
25 co-director in BSGR (Guinea). I don't recall why he

15:02

1 signed for one side and why I signed for the other side.

2 Q. But you wouldn't want to sign for both in the same
3 document?

4 A. I could have done. I don't recall why it wasn't done in
5 such way.

6 Q. If we could turn to another document: tab 33,
7 Exhibit C-84. This is a share purchase agreement in
8 which BSGR Steel Holdings Limited purchases from Pentler
9 Holdings Limited a shareholding in BSG Resources
10 (Guinea) Limited. Do you recall this document?

11 A. Yes, I do.

12 Q. So you participated in the transfer of the shares of
13 BSG Resources (Guinea) Limited back to BSGR Steel at
14 that time; correct?

15 A. I wasn't part of the negotiations or discussions
16 regarding this transfer. What I recall is that I got
17 an instruction from the client, BSG Resources, to sign
18 this agreement, and then subsequently to put in place
19 a resolution to change the share certificates and the
20 shareholding.

21 Q. Thank you. We'll come back to that, I think, a little
22 bit later.

23 So just summarising your role for the moment -- and
24 please tell me if I understand this correctly -- you sat
25 on the board of most of the BSG companies from their

15:04

1 inception, you sat in as secretary of the meetings of
2 the Liechtenstein foundation, you signed corporate and
3 transaction documents for many BSG entities, and you
4 helped business partners set up companies to do business
5 with BSG. Is that fair, to say you did all those
6 things?

7 A. I did sit in on the meetings of the council and of the
8 directors' meetings. I was director of most of the
9 companies in the BSG Resources group. The fact that
10 I also helped one of the business partners of BSG is
11 unrelated; it's a totally individual, independent
12 client, and has nothing to do with the BSG group.

13 Q. I understand. But if necessary, if BSG's business
14 partners needed a company, you could help them set that
15 up?

16 A. They were referred to me and then I decided whether or
17 not I could help them out, yes.

18 Q. Okay. In being a director in lots of these companies,
19 is it fair to say that you were watching out for the
20 interests of the Balda Foundation and its beneficiaries
21 by being a director in these companies?

22 A. That is correct. (Pause)

23 Q. Now let's talk about the creation of the company called
24 Pentler, which we referred to before.

25 We've seen already that it was a shelf company that

15:05

1 Onyx had, originally for another client. And if
2 I understand, acting for Onyx, you purchased Pentler --
3 or Onyx purchased Pentler -- from Mossack Fonseca in
4 October 2005. Is that correct?

5 A. Yes, that must be correct.

6 Q. Okay. Mossack Fonseca is the firm that today is really
7 famous to the large public because of the Panama Papers,
8 correct?

9 A. Unfortunately, yes.

10 Q. This became an eye-opener for people throughout the
11 world, as they saw how a lot of these BVI companies have
12 been used to hold interests for different people; is
13 that fair to say, as a summary as to why it became
14 a scandal?

15 A. I can't really comment if it was an eye-opener. I know
16 that it's standard practice. And it's not only Mossack
17 Fonseca that are selling BVI companies. There are many
18 providers in the industry; they are just one of them.
19 And as Onyx, we also had other companies that were
20 selling BVI companies. And so the fact that the name
21 Mossack Fonseca unfortunately has been in the news has
22 nothing to do with us.

23 PROFESSOR VAN DEN BERG: Sorry again, but I really would
24 like to follow this. The last one, if I had read
25 correctly the small print, I would have seen that it was

15:06

1 indeed formally known as the BSG Management Services.

2 But I have another one.

3 The Pentler that you -- Onyx -- bought from Mossack
4 Fonseca, which Onyx entity was it? Was it this one,
5 Onyx Financial Advisors?

6 A. Correct, Onyx Financial Advisors BVI.

7 PROFESSOR VAN DEN BERG: Thank you.

8 MR OSTROVE: With respect to Pentler, you explain in
9 paragraph 12 of your witness statement that in
10 February 2016 Yossie Tchelet asked you to provide
11 a shelf company to a business partner of BSGR; correct?

12 A. Yes. That was something that happened quite regularly.

13 Q. Did he explain to you what the role of this business
14 partner would be?

15 A. No, he only called me and said, "I have -- we have
16 a business partner that is looking to quickly
17 incorporate a BVI company. Can you help him out or do
18 you know anybody that can help him?" And afterwards,
19 Michael Noy contacted me.

20 Q. And you knew that it was for work that was going to be
21 done with BSGR in Guinea?

22 A. No. This is something that I learned later, when I was
23 talking to Michael Noy, and also when I got afterwards
24 from Marc Struik the signed letter that confirmed the
25 relationship between Pentler and the BSG group.

15:08

1 Q. But you knew at that time that BSGR was starting
2 activities in Guinea; correct?

3 A. I'm not sure if I knew at that time it was going to be
4 a project in Guinea. I know it was going to be a joint
5 project, but the details for sure I didn't know.

6 Q. Even if you did not know what Pentler was for,
7 independently at that time you knew that BSGR was
8 starting to look at business in Guinea; correct?

9 A. I don't think that at that time, at the beginning of
10 2006, I knew that they were looking into projects in
11 Guinea.

12 Q. Okay.

13 A. I recall that when I looked at the board minutes, there
14 were board packs and a presentation given by Marc Struik
15 to the BSGR team, the management team, but I was never
16 part of those meetings and I have never seen that
17 presentation. So I don't think at that time I would
18 have known it was part of a Guinea transaction.

19 Q. Okay. We'll come back to some of that later. I'm just
20 trying to understand what you knew at which time.

21 You then explain that on February 13th, in your
22 witness statement, that Mr Noy contacted you -- this is
23 in paragraph 15 -- Mr Noy contacted you by phone and you
24 discussed the sale of Pentler; correct?

25 A. Yes, that is correct.

15:09

[PROTECTED]

[REDACTED]

13 Q. Okay. We can go back to green card now. Thank you.

14 In parallel to this, I'd like to understand the
15 creation of another company, which is this company
16 BSG Resources Limited BVI, which is right over there
17 (indicating) on the structure chart.

18 That was also originally a shelf company, correct,
19 called Monital?

20 A. Yes that is correct.

21 Q. Which was created -- Monital -- on the same day as
22 Pentler, 28th October 2005?

23 A. Yes. What we usually did, we bought a batch of
24 companies from Mossack Fonseca, we kept all of those
25 companies on shelf, and they usually had the same date

15:11

1 of incorporation.

2 Q. That company was renamed to BSG Resources (Guinea)

3 Limited on January 17th 2006; do you recall that?

4 A. I don't recall the date, but it could be the case.

[PROTECTED]

[REDACTED]

23 So trying to take us through the creation of the
24 corporate structure -- I'm sorry it's quite slow -- at
25 this point in time you've created Monital, in January

15:12

1 you've turned it into BSGR BVI, and you've created
2 Pentler for Mr Noy.

3 I'd now like to turn to the relations between
4 Pentler and BSGR Metals and Mining Limited. If we could
5 turn to tab 36, which is Exhibit C-331.

6 Do you recall this agreement?

7 A. Yes, I do.

8 Q. By this agreement, Pentler -- if we turn in particular
9 to section 3 -- Pentler has agreed to offer to
10 BSG [Metals and Mining]:

11 "... its deal flow in the mining, infrastructure,
12 engineering and telecommunications sector ..."

13 So you were aware of the purpose of this agreement
14 at that time?

15 A. This agreement, in the first paragraph, says that it
16 enters effective as from the 15th day of October. At
17 the time when I set up -- or when I renamed Monital in
18 BSGR Guinea and when I sold Pentler to the three
19 shareholders, I wasn't aware that they had
20 a corporation.

21 This document was a document that I signed
22 afterwards, at the recommendation -- after explanation
23 that I believe Yossie Tchelet gave to me. He told me
24 that the three shareholders -- and this was after that
25 I sold Pentler to the three shareholders -- he told me

15:14

1 that they had been looking at projects together, that
2 they were introducing certain projects, and that this
3 agreement would basically cover that oral understanding
4 that they previously entered into before 2000 -- before
5 the end of 2005.

6 Q. Thank you.

7 A. So at the time when I sold Pentler, I was not aware that
8 they had those projects in mind.

9 Q. Okay. You've jumped about 25 questions ahead of me, but
10 you might have saved us some time.

11 A. Sorry.

12 Q. Do you recall when you signed this document?

13 A. No. But it was definitely after that I sold Pentler to
14 the three shareholders.

15 Q. So it was after February 13th or February 14th 2006?

16 A. Yes, that is correct.

17 Q. But in your recollection was it around that time,
18 shortly after, or could it have been years later?

19 A. No, it was definitely not years later, but I would say
20 it could have been months later.

21 Q. Did it strike you as odd that if you look at the first
22 page of this document, as you just said, that it was
23 "made and entered into effective as of the 15th day of
24 October"? You've just explained -- so we've saved some
25 questions -- how Mr Tchelet explained to you that this

15:15

1 confirmed a pre-existing oral agreement going back. But
2 as a corporate director, did it seem odd to you to sign
3 an agreement that was going to be made and entered into
4 effect prior to the existence of Pentler?

5 A. I did it at the instruction of the BSGR management team.
6 This document formalised the relationship that they had
7 before, the agreement -- oral agreement that they had
8 before. And you are right that at the time Pentler did
9 not belong to the three shareholders yet.

10 Q. I'm sorry, Pentler didn't even exist yet, right?
11 Pentler was created on 28th October 2005, and this
12 agreement is made to take effect 13 days before it came
13 into existence, right?

14 A. Mm-hm.

15 Q. But you considered, as a company director, that it was
16 in the best interest of the BSG group to sign this
17 document anyway?

18 A. On the recommendations of the BSGR management team,
19 I thought it was the best way possible to document the
20 prior relationship.

21 Q. Did you exercise your own independent judgment, based on
22 the information they gave you?

23 A. I queried the BSGR management why this had to be done.
24 And the fact that there were already discussions going
25 on prior to the date of incorporation of Pentler and

15:17

1 prior to the sale of Pentler to the other client, it was
2 not ideal, but at least it documented and formalised the
3 pre-existing relationship.

4 Q. So your understanding was that Mr Noy, Mr Cilins and
5 Mr Lev Ran, since October 15th 2005, had been assisting
6 BSGR?

7 A. That is what I understood from the explanations of the
8 BSGR management, yes.

9 Q. Thank you.

10 By the way, you signed this one as "Group Company
11 Secretary". What does that mean, "Group Company
12 Secretary"?

13 A. I have many hats. I don't recall why I used that stamp.

14 Q. But what is --

15 A. I could have signed it as director, because I was both
16 director and group company secretary of the BSGR group.

17 Q. Is the BSGR group a legal entity?

18 A. No. The BSGR group is the group of companies which is
19 ultimately held by BSG Resources Limited Guernsey.

20 Q. Did you have a formal role as group company secretary?

21 A. I don't recall if that was formally written down. But
22 in actual fact, that -- in fact that was my position
23 within the BSG group.

24 Q. Okay. If we look back again in Article 1.1, it refers
25 to Pentler having:

15:18

1 "... wide ranging ... experience ... strong presence
2 in Africa ... in particular [in] the ... sectors [of]
3 pharmaceuticals, telecommunications, mining [and]
4 commodities."

5 But then in Article 3, it's supposed to provide
6 a deal flow in "mining, infrastructure, engineering and
7 telecommunications". So if it didn't have a particular
8 experience in engineering or in infrastructure, did you
9 query as to why the deal flow it was going to offer
10 didn't match what its experience was?

11 A. No, I didn't query that. I trusted the judgment of the
12 BSGR management.

13 Q. Okay. Alright. Then let's go back to your witness
14 statement and your role with Pentler.

15 In paragraph 26 of your witness statement, you
16 indicate that you viewed the sale of Pentler to Mr Noy,
17 Mr Cilins and Mr Lev Ran as:

18 "... helping one of BSGR's contacts as a matter of
19 courtesy."

20 Do you stand by that?

21 A. Yes, I do.

22 Q. But you understand from what you learned later that it
23 wasn't just a matter of courtesy; it was to help these
24 three individuals do business with BSGR, as with that
25 document we just looked at. Correct?

15:20

1 A. At the time when I sold them the company, I didn't have
2 knowledge of that document yet.

3 What I say "matter of courtesy", the fact that
4 Yossie Tchelet called me, asked me if I could help out
5 one of their business partners with setting up a company
6 or selling them a company or referring them to any other
7 agent was something that I was going to help him with.

8 When I understood also, from the discussion that
9 I had with Michael Noy, that there was potential --
10 a potential joint venture or partnership or whatever
11 between BSG and the three shareholders of Pentler,
12 I explained to him that it could be a potential conflict
13 of interest, and it was in their interest -- of course
14 I could sell them the company, but it was in their
15 interest to find their own administrators that could
16 follow up on this company.

17 Q. You have once again answered my next five questions, so
18 thank you very much.

19 So you sold the company to them on
20 February 13th 2006; correct?

21 A. Mm-hm.

22 Q. Is that correct?

23 A. Yes, 12th or 13th. Yes, correct.

24 Q. Let's do a red card, please.

[PROTECTED]

15:23

[PROTECTED]

[REDACTED]

15:26

[PROTECTED]

[REDACTED]

15:28

[PROTECTED]

[REDACTED]

15:30

[PROTECTED]

[REDACTED]

14 MR OSTROVE: I think, Madam President, this would be
15 a convenient time for a short break.
16 THE PRESIDENT: That is fine, yes. Absolutely.
17 I should please ask you, Ms Merloni, not to speak to
18 anyone during the break about your testimony.
19 MS MERLONI-HOREMANS: Okay.
20 THE PRESIDENT: Thank you.
21 MS MERLONI-HOREMANS: Okay.
22 (3.31 pm)
23 (A short break)
24 (3.50 pm)
25 THE PRESIDENT: I see everybody is ready, so we can resume.

15:50

1 Mr Ostrove, you may continue.

2 MR OSTROVE: Thank you, Madam President.

3 There is still a bit of ground to cover, and I'm
4 going to try very much to make sure that we finish with
5 your examination today, but I think we will be able to
6 do that.

[PROTECTED]

[REDACTED]

15:53

[PROTECTED]

[REDACTED]

15:54

[PROTECTED]

[REDACTED]

20 MR OSTROVE: We can go back to green now, please.

21 PROFESSOR VAN DEN BERG: Are you leaving this document?

22 MR OSTROVE: Yes.

[PROTECTED]

[REDACTED]

15:56

[PROTECTED]

[REDACTED]

15:57

[PROTECTED]

[REDACTED]

18 THE PRESIDENT: Thank you. Apologies for the interruption.

19 MR OSTROVE: Not at all. Thank you very much. It goes

20 directly to what I wanted to ask about.

[PROTECTED]

[REDACTED]

15:59

[PROTECTED]

[REDACTED]

16:01

[PROTECTED]

[REDACTED]

16:03

[PROTECTED]

[REDACTED]

16:04

[PROTECTED]

[REDACTED]

16:07

[PROTECTED]

[REDACTED]

12 Q. So within essentially three weeks of being introduced to
13 Mr Noy, you've helped him set up a company; you've
14 signed a backdated agreement going to October 15th about
15 cooperation; you've given powers of attorney so they can
16 sign local contracts; you've signed an "A QUI DE DROIT"
17 notification saying that you're holding 17.65% ready for
18 them; you get instructed that they have held up their
19 end of the bargain and you give them 17.65% of the
20 shares. That's a pretty busy three weeks, no?

21 A. I would say that is absolutely normal in our company.

22 Q. It's absolutely normal in your company to set up --

23 A. And there are two clients: there's one client that
24 approached me, to whom I sold a company, for whom I have
25 issued a power of attorney; and there is another client,

16:12

1 I asked them if this was ... if this was an interesting
2 commercial transaction for BSGR, to buy it at this price
3 and at those conditions.

4 Q. But --

5 A. I don't recall if we specifically discussed the fact
6 that BSGR would take on the full responsibility of the
7 local consultants.

8 Q. But you read the contract?

9 A. I did.

10 Q. And you discussed with them that the terms of the
11 contract were in the company's best interest?

12 A. That is correct.

13 Q. And they felt that they were?

14 A. That is what they confirmed to me.

15 Q. You never checked who those local consultants were?

16 A. No, I didn't.

17 Q. And at that time you didn't think back to those
18 agreements that you had looked at in February 2006 with

[PROTECTED]

20 A. As I said, I didn't read those agreements in 2006;
21 I only noticed them in 2013.

22 Q. And you didn't go back through your file and check
23 whether you were aware in the files of any consultants?

24 A. There is no reason why I would have gone back to
25 a Pentler file for a business of BSGR.

16:14

1 And again, I rely on the judgment of the management
2 of BSGR. I'm not involved in the operations of those
3 companies. If they confirm to me that this is a good,
4 sound commercial transaction, there's no reason why
5 I would doubt it.

6 Q. Do you recall that after the signature of this agreement
7 in March 2008, there was a dispute with Pentler about
8 actually paying for the shares that BSGR had bought
9 back?

10 A. I remember that there were a few letters up and down
11 between Pentler and BSGR Steel discussing the timing of
12 the payments.

13 Q. And in fact if you turn to tab 48, which is
14 Exhibit C-330, that should be a settlement agreement
15 that was signed regarding that dispute. Is that
16 correct?

17 A. That is correct.

18 Q. And you signed this on behalf of BSGR Steel Holdings?

19 A. Correct, at the instructions of BSGR.

20 Q. But you testify in your witness statement that you did
21 not negotiate the terms of this agreement?

22 A. That is correct.

23 Q. Do you know who prepared it?

24 A. No, I cannot tell you who prepared this -- drafted this
25 contract.

16:15

1 Q. Before signing it, did you discuss it with someone to
2 make sure it was in the company's best interest?

3 A. I did. If I would have access to my emails, I would be
4 able to retrace who sent it to me for signing. But
5 I don't recall now by heart who sent it to me.

6 Q. And you don't remember who you discussed it with?

7 A. I probably discussed it with -- as I usually did --

8 Q. I'm not asking you --

9 A. -- with Dave Clark, my co-director.

10 Q. I'm not asking you to suppose or to guess. I want to
11 make sure you remember.

12 A. No, whatever I signed, I always tend to discuss it --
13 because we were talking on a daily basis, I tend to
14 discuss it with Dave Clark, who was the treasurer and
15 the chairman of BSG Resources Guernsey. I don't see any
16 reason why I would not have discussed this with him,
17 because at the end of the day he was involved [in] this as
18 financial director. So he should have been aware of the
19 terms of this contract.

20 Q. Up till now, when we've been talking about BSG Resources
21 Limited, we've been talking about a BVI company;
22 correct?

23 A. No, I'm talking about BSG Resources Limited (Guernsey),
24 the holding company.

25 Q. Sorry, when we've been talking up till now about the

16:16

1 shareholding interest that Pentler had --

2 A. That was --

3 Q. -- we were talking about an interest that it was going
4 to have in BSG Resources Limited; correct? The 17.65%
5 that Pentler was going to own was in BSG Resources
6 (Guinea) Limited, BSGR BVI; correct?

7 A. Yes, that is correct.

8 Q. Now I want to talk about this company over here
9 (indicating), the exact same name: BSG Resources
10 (Guinea) Limited, Guernsey.

11 A. Correct.

12 Q. Earlier, when we discussed BSG Resources Limited up
13 here, we saw that the same company existed in Jersey,
14 and then was moved to Guernsey.

15 A. Correct.

16 Q. You didn't do that with BSG Resources (Guinea) Limited
17 BVI, you didn't just move it to Guernsey: you created
18 a new BSG Resources (Guinea) Limited company in
19 Guernsey; is that correct?

20 A. That is correct, yes.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16:18

[PROTECTED]

9 Q. This company here, that's actually the Claimant in this
10 case; correct?

11 A. Correct.

12 Q. And you were on the board of this company; correct?

13 A. I was on the board of this company until the moment the
14 negotiations and the transactions started with Vale.

15 Q. Until the negotiations started with Vale.

16 If we look to tab 21, which is document C-4, this is
17 a resolution of the board of directors of that company
18 on 6th October 2015, which you signed, and it's the
19 resolution that authorises the company to engage two
20 people who are not here today: Mr Libson and Mr Daele
21 from Mishcon. You signed as a director even in 2015;
22 correct?

23 A. I was -- I resigned as a director during the -- prior to
24 the start of the negotiations with Vale, and I believe
25 that I may have been reappointed afterwards. I don't

16:20

1 recall the correct dates. But if I signed this
2 resolution, then for sure I was a director at that time.

3 Q. So if we turn to tab 23 (C-74), which is the joint
4 venture agreement with Vale, April 30th 2010, you had
5 resigned as a director, and you were no longer involved
6 with BSGR Guernsey at the time it cut the deal?

7 A. I don't recall the exact date of my resignation. But
8 around that time, prior to signing the transaction
9 documents, I was no longer a director.

10 Q. Do you know why you resigned as a director?

11 A. Because I was no longer involved in the project. At
12 that time the whole project was taken over by Dave Clark
13 and -- or the corporate side of the transaction was
14 taken over by Dave Clark and Dag Cramer, if I recall
15 correctly. Also at the same time there were two
16 representatives or three representatives of Vale that
17 were appointed to the board. And that's why I decided
18 that I went off, and was replaced by Dag Cramer,
19 together with the appointment of the Vale
20 representatives.

21 Q. I would like to turn to the Claimants' Memorial in this
22 case, pages 12 to 14. We'll put it up on the screen.

23 (Pause)

24 If we look at this, in 2006 the structure for
25 holding in Guinea was BSGR at the top, then BSGR Steel

16:22

1 Holdings, with an 82-point --

2 A. I'm sorry, I cannot -- would you mind to enlarge it?

3 Thank you.

4 Q. BSGR at the top; BSGR Steel Holdings, which held 82.35%
5 of BSGR Guinea BVI, because the rest was held by
6 Pentler, which then held the project company in Guinea.
7 And then we've seen that in March 2008 -- the Claimants
8 here have explained it was "streamlined", meaning
9 Pentler was bought out -- BSGR owned 100% of BSGR Steel
10 Holdings, which now owned 100% of Guinea BVI, which held
11 the project company.

12 Then it explains that in January 2009 there's
13 an internal restructuring. And suddenly we have the
14 same thing: BSGR, again now it's BSG Resources (Guinea)
15 Limited, but now the Guernsey one -- the BVI one has
16 gone -- holding the company in Guinea.

17 Do you know why that restructuring took place?

18 A. As I recall, this was at the request of the buyers of
19 the company. They didn't like BVI companies, they
20 didn't want to have an offshore company. Whereas BSGR
21 Guernsey -- BSGR Guinea, Guernsey, was a company
22 registered in Guernsey, had an office, had staff, and
23 was a more credible company compared to an offshore
24 company in the BVI.

25 Q. So your recollection of the time is that in January,

16:23

1 Vale requested BSGR to restructure, to move the company
2 out of the BVI and to put it into Guernsey?

3 A. I recall that -- I don't know when that request was
4 brought forward, but I do recall that they had
5 a preference that it was a Guernsey company, with
6 substance, with an office, and not a BVI company with
7 a PO box.

8 Q. But this is January 2009; the sale to Vale took place in
9 April 2010.

10 A. So it may not have been Vale. But I recall that at the
11 time the project was marketed to different parties.

12 Q. Okay. So somebody at that time didn't want any BVI
13 companies --

14 A. Correct.

15 Q. But what's wrong with BVI companies?

16 A. In my opinion, nothing. But I can understand that
17 a buyer would prefer to have a more onshore company in
18 Guernsey, that has an actual office. I cannot comment
19 on that.

20 Q. Do you recall who that potential buyer was?

21 A. I know that there were several potential buyers with
22 whom negotiations were started up, but I don't recall
23 which buyer expressed that preference.

24 Q. When the JV with Vale was signed in April 2010, you
25 received a bonus from BSGR, didn't you?

16:25

1 A. Correct.

2 Q. Do you recall the amount of that bonus?

3 A. I believe, if I look at the documents, \$150,000.

4 Q. You're correct, that's exactly the amount, in July 2010.

5 So that's a pretty nice sum of money; do you --

6 A. I am very grateful for that amount. It was a very nice
7 gesture of BSGR to also reward persons that were
8 involved in the project, but were not staff or employees
9 of BSGR.

10 Q. So they recognised the value that you added to the deal?

11 A. Correct.

12 Q. Okay.

13

[PROTECTED]

[REDACTED]

16:28

[PROTECTED]

[REDACTED]

16:30

[PROTECTED]

[REDACTED]

15 PROFESSOR VAN DEN BERG: I'm lost between two islands!

16 MR OSTROVE: Yes. As we just noted --

17 PROFESSOR VAN DEN BERG: Can I backtrack for a second in the

18 questioning.

19 MR OSTROVE: Yes, please.

20 PROFESSOR VAN DEN BERG: Could you go back, please, to the

21 Claimants' Memorial. You took us to paragraph 28. Do

22 you remember that?

23 MR OSTROVE: Yes, it's on the screen now.

24 PROFESSOR VAN DEN BERG: So when you see there the BSGR on

25 top, that was originally the Jersey one and became

16:32

1 a Guernsey one; correct?

2 A. That is correct.

3 PROFESSOR VAN DEN BERG: Well, you can answer the question.

4 Then the next question was, if you go to
5 paragraph 30, about the streamlining, and that took into
6 account -- and I think you confirmed that -- the Pentler
7 sale?

8 MR OSTROVE: That's the purchase back of the Pentler shares
9 in paragraph 30, where Steel now owns 100% of the BVI.

10 PROFESSOR VAN DEN BERG: So then we are in 2008. Go down to
11 31. On top you have the BSGR: is that still the same
12 entity on Guernsey?

13 A. There are two entities. The top holding company there
14 is BSG Resources Limited (Guernsey); and the company
15 underneath, which is 100% held by that company, is
16 called BSG Resources (Guinea) Limited, also based in
17 Guernsey.

18 MR OSTROVE: That's the new Guernsey company with the same
19 name as the BVI company.

20 PROFESSOR VAN DEN BERG: Right, okay.

21 So now the swap -- if I may call it that way -- from
22 BVI to Guernsey, when did it happen?

23 A. That happened ...

24 MR OSTROVE: It's in the Claimants' --

25 PROFESSOR VAN DEN BERG: Now I see two persons testifying.

16:34

1 A. I don't recall the exact dates --

2 PROFESSOR VAN DEN BERG: Arbitration is a flexible process,
3 madam. So you go first.

4 A. I don't recall the exact date, but it was just mentioned
5 briefly before.

6 MR OSTROVE: It's mentioned in Claimants' Memorial at
7 paragraph 31. As at January 2009 an internal
8 restructuring took place. We do not have in the record
9 in this case the transfer of shares from -- or it's not
10 really shares -- the transfer of BSGR Guinea Sàrl, which
11 is the bottom company, which is a Guinean company, which
12 has been sold from BSGR BVI to BSGR Guernsey. We talk
13 about shell companies; we have a bit of a shell game
14 going on with shell companies, moving them around.

15 PROFESSOR VAN DEN BERG: Go back to paragraph 30: there you
16 see BVI. And if you go now to 31. So BVI is gone here,
17 or BVI has simply migrated; what is it? It's gone,
18 sold.

19 A. No, that company was still in existence at that time.
20 The only reason -- I mean we could have migrated
21 BSG Resources (Guinea) Limited BVI to Guernsey, but in
22 the past, since we had the experience that the migration
23 even from Jersey to Guernsey was very time-consuming,
24 very costly and quite complicated, we foresaw that
25 moving a BVI company to Guernsey would end up in a long

16:35

1 delay, several months, that in this case we couldn't
2 use. And that's why we simply decided to transfer the
3 underlying Guinea company from the BVI company to the
4 Guernsey company. That is the only reason why it was
5 done this way.

6 PROFESSOR VAN DEN BERG: And that happened when, madam?

7 A. I'm sorry?

8 PROFESSOR VAN DEN BERG: When did it happen, this transfer
9 of the shares?

10 A. I don't recall the exact date.

11 PROFESSOR VAN DEN BERG: Would it be around 2009? Because
12 if you go to paragraph 31 of the Memorial --

13 A. Yes, that is possible.

14 PROFESSOR VAN DEN BERG: Yes. So this is approximately the
15 date when it happened? It must have happened between --
16 if you go back to 30 -- between March 2008 and
17 January 2009; correct? Because in March 2008 you still
18 had it, the BVI.

19 A. Correct.

20 **[PROTECTED]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[PROTECTED]

[REDACTED]

13 This allows them to have a nice clean company. All
14 the deals with Pentler were done through the BVI
15 company. Now they've created a clean line of companies,
16 shifted the asset over to the clean line of companies,
17 and a few months later they liquidate the BVI company
18 that did the deals with Pentler.

19 PROFESSOR VAN DEN BERG: Thank you for the clarification.

20 Madam, do you have any comment on this?

21 A. Yes. That was definitely not the intention. The only
22 reason why the Guinea company was transferred from the
23 BVI company to the Guernsey company was really to save
24 time, to save cost, and to avoid a lengthy process of
25 a migration from BVI to Guernsey. We could have done

16:40

[REDACTED]

10 Q. So in paragraph 34 you say that you recall receiving
11 threatening letters from Mr Bah, but you don't provide
12 copies of the letters. [PROTECTED]

[REDACTED]

14 A. To my recollection, it was addressed to me, and
15 I received it directly in the office, in my office at
16 Onyx in Geneva. I don't recall if it were these
17 letters; I doubt it. But I can only say I was very
18 surprised to receive these letters. I had no idea who
19 Mr Bah was, why he would be addressing any threatening
20 letter asking for a payment to me. And that is why, as
21 I mentioned in my witness statement, I forwarded
22 everything to Asher Avidan, who was the country manager
23 for Guinea.

24 Q. So once Mr Avidan said he will deal with it, as
25 a director of the company, you were satisfied that he

16:42

1 could handle it?

2 A. He was the country manager for Guinea. I mean, he was
3 the best-placed person, I think, to deal with this.

4 Q. In 2010 you also received some documents from Mr Avidan
5 regarding Mamadie Touré. Do you remember that?

6 A. I recall that Asher Avidan came to my office and he had
7 some documents, he said, and he asked me if I could keep
8 these for [him] in a safe place. So I recall that
9 I didn't look at the content; I've put them in
10 an envelope, sealed them, and put them in my safe.

11 Q. That would be the document, for example, at tab 50 of
12 the bundle, Exhibit C-114? (Pause)

13 A. As I said, I didn't -- when I got the documents from
14 Asher Avidan, I didn't read the content. But I recall
15 that they were signed by a *notaire* or a *huissier*
16 *de justice*, so I assume that this is the same document
17 that you're talking about.

18 Q. When Mr Avidan gives you documents for the company
19 records, you don't read them? Your testimony is that
20 you did not read this document; you just put it in
21 a safe place?

22 A. Correct.

23 Q. Again, you are a director of the companies, with a duty
24 of acting in the shareholders' best interest. The
25 country managing director sends you a document in which

16:44

1 somebody is claiming that they are owed millions of
2 dollars, but you just don't read it; you put it in
3 a safe place?

4 A. As I said, I didn't read the content; I didn't see that
5 this concerned millions of dollars. I can only say,
6 with hindsight again, I would be more cautious, I would
7 ask questions. At the time I had no reason to doubt
8 anything that Asher Avidan, as country manager, was
9 doing. I acted in good faith, put it in my safe and
10 kept it there.

11 Q. You didn't put it in the company file?

12 A. No, I kept it, at his request, in a safe place, being in
13 a sealed envelope in the safe.

14 Q. And in hindsight, you wish you'd been a little bit more
15 careful with reading these things?

16 A. Yes; at least I would have asked more questions.

17 MR OSTROVE: Ms Merloni-Horemans, thank you very much. We
18 have no further questions.

19 THE PRESIDENT: Thank you.

20 Any questions in re-direct, Mr Wolfson?

21 MR WOLFSON: Only one, Madam President, especially given the
22 hour.

23 THE PRESIDENT: Well, you have to take the time you need
24 really.

25 MR WOLFSON: Sure.

16:45

1 (4.45 pm)

2 Re-direct examination by MR WOLFSON

3 Q. You were asked a number of questions about the change of
4 country of incorporation from BVI to Guernsey. You
5 remember those questions?

6 A. Correct.

7 Q. There was a question and answer which went like this.
8 You had said it was at the request of a potential buyer,
9 and the date of the deal with Vale was put to you. And
10 then the question was:

11 "Do you recall who that potential buyer was?"

12 And you answered (page 198, line 23 to page 199,
13 line 1):

14 "I know that there were several potential buyers
15 with whom negotiations were started up, but I don't
16 recall which buyer expressed that preference."

17 I'd like to show you, if I may, the witness
18 statement of Mr Thiam in these proceedings. I'm going
19 to ask for a clean copy -- it's not marked -- to be
20 handed to you. Would you turn, please, to paragraph 77,
21 above which you should see the heading: "F. BSGR Joint
22 Venture Negotiations". Do you see that?

23 A. Yes, I do.

24 Q. Turning through, would you read paragraph 80 to
25 yourself, please. It should be halfway down page 25.

16:47

1 (Pause)

2 Does that assist your recollection with who the
3 potential buyer was before the discussions began with
4 Vale?

5 A. Yes. I now recall that they were initially in
6 negotiations with the LIA, and subsequently Chinalco.

7 Q. And when you say "LIA", just to be clear for the record,
8 that's defined in paragraph 78, a little higher up the
9 page?

10 A. Correct: it is the Libyan Investment Authority.

11 MR WOLFSON: I'm grateful.

12 Madam President, I have no further questions in
13 re-direct examination.

14 THE PRESIDENT: Do my colleagues have questions for
15 Ms Merloni-Horemans? You have asked your questions?
16 Let me see whether we have gone through all my questions
17 or whether there are any left. (Pause)

18 (4.49 pm)

19 Questions from THE TRIBUNAL

20 THE PRESIDENT: I had two questions about your signature of
21 various agreements, such as the settlement agreement,
22 the share purchase agreement, but you have answered
23 those. Let me see whether there was something else.

24 Yes, I was a little intrigued by your way of
25 processing, and the type of diligence or the types of

16:49

1 topics to which you pay attention and those you do not.
2 And very often you said, "Well, I trusted the management
3 of BSG, and therefore I did not enquire further".
4 Sometimes though you asked questions, and you also said
5 that with hindsight you might have asked more questions
6 about the Bah/Touré protocols, for instance.

7 How exactly did you see your director role?

8 A. Well, I was sitting on the board of most companies to
9 look after the interests of the ultimate beneficiaries
10 and of the foundations.

11 The reality was that we had a very limited, small
12 team in Geneva. I was running at that time easily 400
13 companies. I was sitting, as I said, 120/150 companies
14 as a director. And to be honest, I simply didn't have
15 the time to look in depth and to read each and every
16 agreement. Most of the time, in good faith, I relied on
17 the management of the companies. And as I said, with
18 hindsight, I should have restricted my position perhaps
19 and to -- so that I had more time to concentrate and in
20 depth go through each and every agreement that I signed
21 as a director.

22 As for the protocols, it was both clear to me and to
23 the buyers of Pentler that it was going to be a very
24 temporary solution; they were supposed to find
25 an administrator within the days to come. In the end of

16:51

1 the day, it took until November that year. It was not
2 a company where I was supposed to get involved, or it
3 didn't really concern me. It was a temporary solution,
4 I was helping them out, and that is really -- and that
5 is why my involvement was that limited.

6 THE PRESIDENT: Fine. Thank you.

7 A. Unfortunately.

8 THE PRESIDENT: No, no, you've answered my question well.

9 Thank you.

10 Any follow-up questions?

11 MR WOLFSON: No, Madam President.

12 THE PRESIDENT: Not on the Claimants' side. (Interpreted)

13 Neither on Respondent's side?

14 MR OSTROVE: No further questions. Thank you very much.

15 THE PRESIDENT: (In English) Fine.

16 That ends your examination, Ms Merloni. Thank you

17 very much for your explanations.

18 MS MERLONI-HOREMANS: Thank you. You're welcome.

19 THE PRESIDENT: There is a reference? Why don't you ask ...

20 PROFESSOR VAN DEN BERG: I didn't want to interrupt you,

21 Mr Ostrove. I think one reference was not correct,

22 which is tab 48, about the accord transactionnel, the

23 settlement agreement. You said also during your

24 question C-307 -- or, sorry, you said C-330 during your

25 examination, but this is Exhibit C-307. And if you look

16:52

1 to your index in the front of the hearing bundle, you
2 see again C-330. And I think it's not correct.

3 MR OSTROVE: We will certainly check that.

4 PROFESSOR VAN DEN BERG: It is simply for the transcript
5 I mention this, so that you have --

6 MR OSTROVE: Of course. I appreciate it. And we will check
7 that.

8 THE PRESIDENT: Fine. So that leads us to the end of this
9 day. Is there anything that the Claimants would like to
10 raise before we close? I think so.

11 MR WOLFSON: There's only one minor point of housekeeping,
12 which I should raise now rather than tomorrow morning,
13 because it relates to Mr Steinmetz's evidence. He is
14 giving evidence tomorrow morning by video link. So
15 obviously we just want to make sure -- it will be too
16 late to raise this in the morning -- that arrangements
17 have been made that somebody will provide him with
18 a copy of the cross-examination bundle. And if, between
19 counsel, we could just have the name of who is turning
20 up, so they know who to expect.

21 MR OSTROVE: And in fact -- thank you, we were going to
22 raise the same housekeeping issue -- we were attempting
23 to make arrangements for the bundle to be printed out
24 there, but we have just been informed, given the hour in
25 Israel, that it does not look like they can -- at least

16:54

1 our local correspondent there does not have the printing
2 capabilities to get the documents ready in time in paper
3 form. So our question was: in the offices of Barnea, do
4 you have a full printed set of the exhibits, so that at
5 least paper copies can be put to Mr Steinmetz?

6 MS PELED: We don't have a full copy of the material at the
7 office, I'm sorry. But we could maybe print that
8 tomorrow morning, if ...

9 THE PRESIDENT: What time in Israel will the examination
10 take place?

11 MS PELED: At 11.00.

12 THE PRESIDENT: At 11.00, which is 10 o'clock here. Is
13 there no way of copying between 8 o'clock in the morning
14 or 7 o'clock in the morning and 11.00? It would be
15 easier really.

16 MR OSTROVE: Certainly. What time do your offices open in
17 the morning?

18 MS PELED: 8.30 in the morning.

19 MR OSTROVE: Which is 7.30 here. It's only about 100
20 documents, so we're probably talking about 500 pages to
21 print. Can that be done in half an hour or an hour?

22 MS PELED: Yes, we can try to arrange that.

23 MR OSTROVE: So even if you can already warn someone to have
24 tab numbers, if they're available. (Pause)

25 Our only concern of course is, as discussed in the

16:56

1 past, we don't like providing bundles of
2 cross-examination documents. But I'm sure we can get
3 an undertaking that Mr Steinmetz -- and by the way, we
4 are correcting pronunciations: we have Tchelet, we have
5 Struik. Is it "Schtein-metz" or "Stein-metz"?

6 MR WOLFSON: I call him "Stein-metz", but he may call
7 himself "Schtein-metz".

8 MR OSTROVE: I saw it written in Hebrew and it was
9 "Schtein-metz", so I just wanted to know if I was
10 getting it correctly. "Stein-metz" he prefers? Okay,
11 thank you.

12 Then as long as we have an undertaking that
13 Mr Steinmetz will not be shown a copy of the
14 cross-examination bundle before the cross-examination
15 starts, then that's no problem.

16 MR WOLFSON: Madam President, that was precisely the point
17 I was going to offer. I was going to offer to say this:
18 if it's sent in advance, obviously the easier the better
19 for printing purposes, and I'm sure an undertaking can
20 be given that it won't be shown to the witness. We are
21 on the same page.

22 THE PRESIDENT: And you have someone who will represent the
23 Respondent who will attend the examination,
24 I understand?

25 MR OSTROVE: We do, and as requested we will provide that

16:57

1 name to Barnea. So then if we could just have that
2 undertaking on the record, then that would be
3 sufficient.

4 THE PRESIDENT: Is the undertaking on the record now? Maybe
5 we ask the person from -- Ms Peled.

6 MR BARNETT: We undertake to tell the person printing not to
7 show it to him.

8 THE PRESIDENT: I'm not sure we have understood this. The
9 undertaking is that whoever does the printing will make
10 sure that the documents are not shown to Mr Steinmetz
11 before they are presented to him during the
12 cross-examination.

13 MR BARNETT: Okay.

14 THE PRESIDENT: Can you confirm this?

15 MR BARNETT: I can confirm it.

16 THE PRESIDENT: Thank you.

17 MR OSTROVE: Thank you.

18 THE PRESIDENT: Have we made sure that the technical side is
19 ready for the video conferencing?

20 MR GAREL: Yes, I think a test is being done now, I believe
21 by Mr Ben Assayag(?), at the Tel Aviv office of Barnea. So
22 I haven't heard from my side, but --

23 THE PRESIDENT: Maybe we should make sure, so that we have
24 no bad surprises tomorrow morning. (Pause) Fine. So
25 I understand the tests are under control and it will

16:59

1 work tomorrow morning.

2 Is there anything else we need to discuss now?

3 MR OSTROVE: Two last points.

4 First, in answer to Professor van den Berg's
5 question, the Onyx/Balda agreement is not in the record.

6 And second, we've just quadruple-checked and it
7 appears that that document is C-330. So if we can
8 discuss. You think it's ...?

9 PROFESSOR VAN DEN BERG: I'm under the control. C-330 is
10 a transfer slip.

11 MR OSTROVE: So we will --

12 THE PRESIDENT: Can we sort this by tomorrow? I'm sure we
13 will find --

14 PROFESSOR VAN DEN BERG: Okay. It is only to be of
15 assistance. If you say it's C-330, I accept it's C-330.

16 THE PRESIDENT: We will find a solution to this, I think.

17 Is there anything else? No, it doesn't seem to be
18 the case. So I wish everyone a good evening and we'll
19 see each other tomorrow morning at 9.30. Thank you.

20 MR WOLFSON: Thank you.

21 MR OSTROVE: Merci beaucoup.

22 (5.00 pm)

23 (The hearing adjourned until 9.30 am the following day)

24

25

