

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 3
Hearing on the Merits

Wednesday, 24th 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

JAMES LIBSON and 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
Assistant to the Tribunal: MAGNUS JESKO LANGER

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09:30

Wednesday, 24th June 2017

2 (9.36 am)

3 THE PRESIDENT: (In English) Good morning, everyone. So we
4 are starting Day 3 of this hearing, and we have just
5 been handed out some additional demonstratives of the
6 corporate charts. It may be easiest that I give the
7 floor to the Respondent's counsel to explain what it is,
8 and then if you have any comments, you will make your
9 comments. And then we go over to the mini-openings,
10 where I will give you the floor first.

11 Maître Ostrove.

12 MR OSTROVE: (Interpreted) Thank you very much,

13 Madam President. Two housekeeping items.

14 Yesterday we corrected our demonstrative number 1 so
15 as to make sure that Margali Management would come under
16 Onyx Financial Services BVI. I'm showing this on the
17 screen behind you. And on the version of that
18 demonstrative 1(a), we had said that we made sure that
19 what appears on the left-hand side at the bottom be
20 corrected, which has been done.

21 We have also created a new demonstrative, 1(b). The
22 reason is that yesterday there was a clarification given
23 as to Windpoint, which was floating around on the table
24 yesterday because we didn't actually know to whom it
25 belonged. And it was explained that it was under BSGR

09:39

1 Metals and Mining, but we didn't know where BSGR Metals
2 and Mining was either. Yesterday we were told that it
3 was a subsidiary of NYSCO, one of the BSGR companies.
4 So as the information becomes available, we try and
5 clarify these items.

6 Demonstrative 1(b) therefore simply places Windpoint
7 and BSGR Metals and Mining where they belong. This is
8 also something that was mentioned in Mr Tchelet's second
9 witness statement. With my apologies, because I have
10 been mispronouncing his name: it's not "shel-lay" but
11 "hel-let". So these are the only changes pertaining to
12 this demonstrative. Obviously if our friends opposite
13 have something to say about this, I'd be more than
14 pleased to hear them.

15 The second point: Professor van den Berg asked us
16 yesterday to clarify which particular contract was held
17 by Madame Touré, what original contracts she had which
18 would have justified Mr Cilins saying that she would
19 have to destroy them.

20 We tried to find in the case file which were the
21 documents that Madame Touré had, and that therefore the
22 FBI now has. We're trying to prepare now
23 a demonstrative simply listing all the contracts and
24 statements signed by Mamadie Touré, showing whether
25 these are contracts, on the one hand, whose authenticity

09:41 1 is challenged by Claimants, yes or no; and whether
 2 Madame Touré had the originals, and thus the FBI, yes or
 3 no.

 4 So as to avoid any difficulties, we have given this
 5 table to the Claimants this morning. We have agreed
 6 with them that they will be able to take a look at it
 7 during 24 hours. So tomorrow morning either we can
 8 submit a mutually agreed demonstrative with no
 9 challenges at all; or there is a challenge, and we will
 10 submit then our demonstrative and they can do what they
 11 want.

12 THE PRESIDENT: (Interpreted) Yesterday, in connection with
13 the contracts which are alleged to be forgeries, there
14 was an additional question raised: where are they to be
15 found? And which are the ones which have been subjected
16 to a forensic examination, if indeed that took place?
17 I don't know whether that's going to be included on your
18 demonstrative or whether you will have an opportunity to
19 tell us by tomorrow or the day after tomorrow; it
20 doesn't really matter, tomorrow or the day after
21 tomorrow, as long as we can get that information.

22 MR OSTROVE: We can get that information, but there's
23 something in the case file showing the documents that
24 have been subjected to forensic examination or not. We
25 would have to contact the Department of Justice of the

09:43

1 United States of America to try to get a letter from
2 them, for instance, something like that, but that would
3 be an additional element. There may be some information
4 that is available, but which I haven't got.

5 THE PRESIDENT: Well, perhaps then, sir, you will be in
6 a position to give us information after having
7 communicated it to Claimants, and even if they are not
8 substantiated by any one particular piece of evidence,
9 as long as you give us information that is not
10 challenged. Thank you.

11 Something else on 1(b). Tomorrow we shall be
12 hearing Claimants, and I had understood yesterday from
13 Ms Merloni-Horemans's testimony that Windpoint was
14 a 100%-owned NYSCO subsidiary; I didn't think that it
15 was under BSGR Metals, but perhaps we can put the
16 question to Mr Tchelet -- if I'm pronouncing his name
17 correctly -- this afternoon. That may be the best
18 course to follow.

19 (In English) The Claimants can also make their
20 comments on 1(b) either now or tomorrow morning.
21 I don't know whether you are ready to do so now.
22 Obviously we can also ask questions to Mr Tchelet this
23 afternoon.

24 Let me just ask, to proceed in an orderly manner:
25 was this all on the Respondent's side?

09:45

1 MR OSTROVE: Yes, Madam President.

2 MR WOLFSON: Thank you. I was going to address the Tribunal

3 this morning on these issues: which contracts were in

4 dispute, where the originals are, which documents Madame

5 Touré had. But it seems to me that rather than do that,

6 we should try and do it by agreement. So I'm grateful

7 to my colleague for having provided us with a draft. We

8 will see if we can agree it, which is obviously best.

9 If we can't agree it, I hope that tomorrow each party

10 will be able to at least delineate the areas of

11 disagreement, so that we can see what the position is.

12 So far as the demonstrative is concerned, we'll

13 check the position arising from yesterday's evidence as

14 to Windpoint, but obviously that can be asked to other

15 witnesses as well.

16 We would point out that the way Pentler is presented

17 is contested, because you heard evidence on that

18 yesterday, precisely how Pentler was bought, et cetera.

19 But we don't object to the demonstrative per se. We

20 will make submissions on it in due course.

21 THE PRESIDENT: I understand that above Pentler there is

22 a note.

23 MR WOLFSON: Yes.

24 THE PRESIDENT: Do you disagree with this note as well? It

25 says that it was held by Onyx "from its creation", which

09:46

1 I understand to be 4th November 1998, until
2 13th February 2006, this is when it was sold to the
3 three individuals, and then held in trust until
4 14th December 2006, that is when the shares are given
5 over to Messrs Cilins, Lev Ran and Noy.

6 MR WOLFSON: Yes. We are not objecting to the veracity of
7 that statement; it's putting that statement in the
8 context that the witness explained: the purchase of
9 shell companies, and all the rest of it.

10 But those are matters for submissions; they are not
11 a matter for now.

12 THE PRESIDENT: Fine, thank you.

13 MR WOLFSON: So unless I can help the Tribunal further this
14 morning, I was going to postpone any further discussion
15 of those points to see how much agreement we can reach,
16 and then set out any other areas.

17 THE PRESIDENT: That makes a lot of sense, and I'm sure you
18 can at least narrow down the disagreements, and it will
19 be helpful to the Tribunal.

20 So nothing further in terms of mini-openings at this
21 stage. So the question is whether we can already
22 proceed with the examination of Mr Steinmetz or whether
23 we should wait for 10 o'clock, because he is scheduled
24 to be ready at 10 o'clock. What is the position,
25 Mr Garel?

09:48 1 MR GAREL: The connection is made, so we are connected to
2 Tel Aviv. The question is whether --
3 THE PRESIDENT: Whether he's there, yes. (Pause)
4 So we'll be back two minutes before 10.00, and then
5 we can establish the connection and start. It's a good
6 start of the day!
7 (9.48 am)
8 (A short break)
9 (10.02 am)
10 MR BENJAMIN STEINMETZ (called)
11 (Evidence given via video conference)
12 THE PRESIDENT: Mr Steinmetz, good morning. This is
13 Gabrielle Kaufmann-Kohler speaking. I'm the President
14 of the Tribunal. On my right you have Professor
15 van den Berg; on my left you have Professor Mayer.
16 Before we start, can I ask the lady whose name I do
17 not know, who is next to Mr Steinmetz, to remove the
18 screen of the computer somehow. If you push it to the
19 side of the table, it would allow us to have a better
20 view. (Pause)
21 Can I just identify the two people in the room other
22 than Mr Steinmetz? I see the technician, who is
23 Mr Tsahi Ben Assayag; is that right?
24 MS GOODVACH: Yes, he's just left the room.
25 THE PRESIDENT: Oh, so there's someone else there?

10:04 1 MR CANTOR: Hi, I'm Hayden Cantor. I'm here representing
 2 DLA Piper.
 3 THE PRESIDENT: Fine. And can I ask the lady to identify
 4 herself?
 5 MS GOODVACH: Yes, I'm Janet Goodvach, counsel for the
 6 Claimants.
 7 THE PRESIDENT: Fine, thank you.
 8 So, Mr Steinmetz, we are pleased to have this
 9 opportunity to hear you today. We would of course have
 10 preferred doing it in person, and I'm sure you would
 11 have preferred that too. But the connection is very
 12 good, and so we have no doubt that this will work out
 13 perfectly well.
 14 Can you, for the record, please confirm that you are
 15 Benjamin Steinmetz?
 16 MR STEINMETZ: (In English) Yes, I confirm that I am
 17 Beny Steinmetz. Good morning, Professor.
 18 THE PRESIDENT: Good morning. We did not know yesterday
 19 whether we should say "Schtein-metz", like in German, or
 20 "Stein-metz" like in other languages. But you just said
 21 "Schtein-metz", so we'll continue like this.
 22 You are the beneficiary of the Balda Foundation?
 23 A. This is correct.
 24 THE PRESIDENT: You are also an advisor to the companies of
 25 the BSG group?

10:05

1 A. This is correct.

2 THE PRESIDENT: You have provided us with two written
3 statements in this arbitration: one was dated
4 24th February 2016, and the second one
5 10th January 2017?

6 A. Yes.

7 THE PRESIDENT: You have also provided other statements in
8 other proceedings that we have in the record here. [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 THE PRESIDENT: You are heard as a witness in this
19 arbitration. As a witness, you are under a duty to tell
20 us the truth, and nothing but the truth. Usually
21 I would ask the witness to read a declaration into the
22 record. Do you have the declaration there?

23 MR STEINMETZ: Yes.

24 THE PRESIDENT: That's excellent. Fine. So can you please
25 read it?

10:07 1 MR STEINMETZ: Yes. I solemnly declare upon my honour and
2 conscience that I shall speak the truth, the whole
3 truth, and nothing but the truth.
4 THE PRESIDENT: Thank you.
5 So you know how we will proceed: you will first be
6 asked initial questions by Claimants' counsel, and then
7 we will turn to Respondent for cross-examination.
8 Mr Wolfson, please.
9 MR WOLFSON: Thank you. We don't have any questions for
10 Mr Steinmetz at this stage.
11 THE PRESIDENT: Fine. Then I can directly turn to
12 Respondent. (Interpreted) Who do I give the floor to,
13 sir? (In English) You can please proceed in English.
14 MR JAEGER: (In English) Thank you, Madam President.
15 (10.07 am)
16 Cross-examination by MR JAEGER
17 Q. Mr Steinmetz, good morning. I am Laurent Jaeger, I am
18 a partner at Orrick and I represent Guinea in this case,
19 and I am going to ask you some questions about your
20 witness statement.
21 I will ask you first to turn to your witness
22 statement number 1, paragraph 15. In this paragraph 15
23 you state:
24 "I have no formal role in the BSG group. I am not
25 a director of any company."

10:08 1 Have you been in fact a shareholder of other major
2 companies?

3 A. Yes, on my private capacities.

4 Q. For instance, Diacor International?

5 A. No.

6 Q. No, you have never been a shareholder of Diacor?

7 A. No. The foundation was.

8 Q. You go on to say:

9 "The Balda Foundation was created in 1980 for family
10 sucession and governance reasons. I understand that this
11 type of organisation is very common in similar
12 businesses and I adhere to the formalities very
13 strictly. My only role is as an adviser, for which I am
14 paid a flat rate advisory fee."

15 What is exactly the extent of your power within the
16 BSG group?

17 A. Very limited.

18 Q. I'm sorry?

19 A. My power is very limited. It is a power of an advisor.
20 I give my advice on certain things that I'm required and
21 asked for, and many things I'm not even being asked, and
22 sometimes they listen to me and many times they don't
23 listen to me.

24 Q. Are you commonly referred to as "number one" in the
25 group by management?

10:09

1 A. No.

2 Q. You indicate here that you receive a flat fee. Could
3 you tell us what that fee is?

4 A. First of all, I don't think it is any of your matters.
5 But anyway, because I am very open, anything ranging
6 between \$500,000 to \$1 million per year.

7 Q. Did you receive, directly or indirectly, any
8 distribution or payment through performance bonuses?

9 A. No.

10 Q. Did you receive any fee with respect to the \$500 million
11 that Vale paid to BSGR when they acquired the Guinean
12 interest?

13 A. No. No, I'm not considered like one of the employees
14 because -- as I am the beneficiary and the family of the
15 beneficiary, so I have not received a direct fee
16 connected to this transaction.

17 Q. Thank you.

18 Could you please turn to tab 1 in the bundle. This
19 is Exhibit R-170.

20 THE PRESIDENT: Maître Jaeger, we have received no bundles
21 so far.

22 MR JAEGER: The bundles have not been given out?

23 THE PRESIDENT: They seem to be on their way. (Handed)

24 MR JAEGER: Can we resume, Madam President?

25 THE PRESIDENT: Absolutely, yes.

10:12

[PROTECTED]

24 Q. What would the group typically do -- if the group sought
25 an introduction to the Ministry of Mines in Guinea, for

10:14 1 instance, what would the group typically do to get that
 2 introduction?

 3 A. I don't know. It depends. Send a letter, a more --
 4 let's say more elaborate letter, more details about the
 5 activities. But this also -- maybe this is a first
 6 letter for a minister who doesn't want to read a lot;
 7 might be, I don't know. But anything would be -- as
 8 an introduction is fine. Word to mouth is very
 9 important, reputation is important, capacities.

 10 Q. Do you recall that Mr Oron met the Minister of Mines in
 11 Guinea at about that time?

 12 A. No, I don't recall. I was not involved in that. I was
 13 not involved in that time at all in Guinea.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

 19 THE PRESIDENT: Fine, thank you.

 20 MR JAEGER: Was BSGR's goal at the time to obtain the mining
 21 titles for the Simandou site in Guinea?

 22 A. I guess. Again, I want to explain very clearly: before
 23 2008 or the end of 2007 I had almost, I would say, nil
 24 involvement in the iron ore project or in Guinea at all.
 25 It is only after -- Roy Oron at that time was the CEO of

10:15 1 BSGR and he was running the show all over the place.
2 I was not asked by the board to interfere or give my
3 advice on Guinea. So everything I tell you about this
4 period is only from hearing, not from knowledge.
5 What I know definitely, that iron ore is probably
6 the biggest untapped resource in Guinea, and maybe one
7 of the important ones in the world, and BSGR had
8 ambition, or have ambition, on iron ore in Guinea, yes,
9 but nothing beyond that. BSGR also tried, I know, also
10 in other resources in Guinea, like bauxite, by the way
11 against my opinion or against my advice; on diamonds,
12 which first of all nothing happened; and looked at other
13 potential commodities. But it was all failures.
14 Q. The Simandou project was a multi-billion-dollar project;
15 correct?
16 A. It is a multi-billion-dollar project to make into
17 a project, you mean? What do you call a "project": to
18 make it into production?
19 Q. Let me rephrase my question. At the time, in 2005, BSGR
20 knew that potentially the Simandou project was
21 a multi-billion project?
22 A. When you say "multi-billion project", you're talking
23 about the capacity, the capex required to make it into
24 operation; that's what you mean?
25 Q. I'm more referring about profits, the profit that was

10:17

1 expected --

2 A. No, no. The profit can be multi-billion, can be losses.

3 I mean, everything can happen. If you talk about the
4 project -- maybe you're not very acquainted with the
5 mining industry -- but the project had phases, you know?
6 And the first phase of a project is to understand the
7 minerality, the reserves of the project, what's the
8 potential, if it's viable.

9 For this you do a feasibility study, which is a very
10 intense work, which BSGR had done very successfully, in
11 record time, and got the highest remarks and, I would
12 say, close to admiration even from Vale when they have
13 seen the work that BSGR has done.

14 And this is the first phase, first of all to
15 identify, because it's easy to say, "Okay, there is iron
16 ore there", but then you have to prove it, you have to
17 show it is economic to exploit it, you have to show how
18 do you exploit it; there's a whole series of things.

19 And then when it's worked out, it requires a lot of
20 capital invested in order to make it, because iron ore
21 specifically is a very intensive capital because it's
22 all about logistics. It's a very easy minerality to do,
23 but it's just logistics. And then after that, you
24 invest all the money in this: hopefully you can start to
25 make money, if the market is there. And if the market

10:18 1 is there, you make money; if the market is not there,
 2 it's a problem.

 3 In 2005 -- I mean, let's say, put it that way, in
 4 2002/2001 the iron ore was \$25 per tonne. In 2008, in
 5 the height of the market before the crash, iron ore
 6 reached close to \$200. And then today it is \$50 or \$60.
 7 So this is the volatility. The making money, it depends
 8 very much on the price of the commodity.

 9 I apologise for this small lecture, but just to --
 10 you don't talk about the project in profitability; you
 11 talk about the project in a whole.

 12 Q. Thank you.

 13 Could you now turn to your witness statement
 14 number 2, please, paragraph 17. The third sentence of
 15 that paragraph goes:

 16 "The situation as I understood it was that Pentler
 17 had never been a consultant for BSGR in Guinea -- it
 18 introduced the company to the country in 2005 and 2006
 19 and then conducted no further work."

 20 A. Yes.

 21 Q. Do you confirm this statement?

 22 A. I'm sorry, what the question is? I read the question,
 23 yes -- I read the statement.

 24 Q. Yes. You --

 25 A. Yes, yes.

10:20

1 Q. And do you confirm that?

2 A. Totally. Yes, yes.

3 Q. What do you mean by "it introduced the company to the
4 country"?

5 A. Well, again, I was not there. But from what I know and
6 what I was told and what I read, they introduced the
7 company to the country, which means they called BSGR
8 representative in South Africa and told him, "There's
9 a good opportunity in Guinea, iron ore. This is the
10 future. Why don't you come and visit?", et cetera,
11 et cetera. And BSGR at the time, the management decided
12 to make an exploratory trip and to check this, and then
13 they help(ed) -- establishing the business, et cetera.

14 This is what I think I meant, and this is what, as
15 my knowledge is, the situation was. So they opened the
16 gate. And this has happened many times, with many
17 companies all over the world, not only the mining
18 company; we do it every day in other activities. In
19 real estate, people come and tell you, "There is a deal
20 to be done and there is a project to be erected: why
21 don't you look at it?" It's a daily routine for
22 businesspeople.

23 Q. Are you aware that at the time Pentler was a dormant
24 company, it was a shelf company, which was set up by
25 Ms Merloni-Horemans?

10:21 1 A. I'm aware now that this Pentler was a shell company
 2 established by the company of [Ms] Horemans, which is
 3 very common. This is not about the company, it's about
 4 the people. There was people, and they wanted
 5 afterwards to establish the relationship and the
 6 shareholders -- the shareholding in BSGR Guinea, or
 7 BSGR Steel, through a company. That's what I know.
 8 Q. I mean, are you aware that at that time, at the time
 9 BSGR was introduced in Guinea, Pentler was not activated
 10 yet; it was still a shelf company?
 11 A. I'm not -- I'm aware about it now. I was not aware of
 12 anything before 2008; I mentioned it very clearly.
 13 But there's nothing wrong with this, again, because
 14 if somebody wants to introduce you, it's not the
 15 company. A company cannot pick up the phone and call
 16 another company; it's people. So the people [do] this,
 17 and afterwards the people want to establish their
 18 shareholding. I think it's very simple procedures.
 19 Q. Do you know who the people were who introduced BSGR to
 20 Guinea?
 21 A. In that time I never knew, no. I met them -- the first
 22 time I met one of them -- I think it's mentioned in my
 23 statement -- first time I met Michael Noy, it was 2008;
 24 or the end of 2007, December, or 2008.
 25 Q. Can you go to paragraph 26 of your witness statement.

10:23 1 A. Witness statement number 1 or number 2?

 2 Q. Number 2.

 3 A. Sure.

 4 Q. No, it's number 1, I'm sorry. Paragraph 26 of number 1.

 5 A. Yes, I am here.

 6 Q. The second sentence goes:

 7 "I learnt that Pentler had introduced BSGR to Guinea

 8 and helped set up the operations on the ground in 2006.

 9 In return for this, Pentler had been given a free

 10 shareholding in BSG Resources (Guinea) Limited, which

 11 was a BVI company ..."

 12 A. Yes.

 13 Q. "I considered this all to be completely normal."

 14 So you are aware that on 14th February 2006 BSGR

 15 gave a free shareholding to Pentler in BSGR Guinea?

 16 A. I have learnt about it in 2008, when I was asked to give

 17 advice on the project, and I have some -- yes, and

 18 I have some issues about the free shareholding. And

 19 that's why I raised the subject very strongly, and

 20 I think it's all written very well in my statement.

 21 And again I tell you this is common practice in

 22 business: that you sometimes give free carry, sometimes

 23 you give shares, paying shares. It's very common to do

 24 all this kind. Sometimes it's a combination. It can go

 25 up to 50%, it can do anything; whatever it is that the

10:24 1 parties agree between themselves.

2 Q. Do you remember what was the amount of that

3 shareholding?

4 A. The amount? Amount -- what do you mean, "amount"?

5 Q. I mean the extent of that shareholding in the company.

6 How much --

7 A. There's not -- there's nothing -- 17%, I think it's

8 written there, 17.5, whatever it is, per cent is there.

9 But there's no value for that, because it's a project,

10 it's a potential, it's something that you are going to

11 hope to try to create and do something. And you have

12 chances. I mean, 90% of exploration, like in hi-tech,

13 in start-up, 98% or 95%, both in exploration, both in

14 start-up, in these kind of high risk ventures, go down

15 and become zero.

16 Q. If Pentler had kept its shareholding in BSGR Guinea

17 until the sale to Vale, and Vale acquired 51% of

18 BSGR Guinea for \$2.5 billion, if Pentler had kept its

19 shareholding until then, it would have gained about

20 \$880 million; correct?

21 A. Possibly, if Vale would have paid the price, yes. Yes,

22 yes, every -- sure. If they had this percentage, yes.

23 Q. Was it really the group's intention to grant to Pentler

24 such a valuable shareholding for just being introduced

25 in Guinea?

10:26

1 A. There's two answers for this.

2 First of all -- first of all, it was not a valuable
3 shareholding when they received it; it was worthless,
4 because it's only potential. So there's no value for
5 that. You tell somebody, you get something.

6 And second of all, I don't think this was only
7 introduction. I think at the beginning, till Asher
8 Avidan came to the country and became a country manager,
9 they was working on the ground, as far as I understood.

10 And all these things I'm saying with the knowledge
11 which I only learned in 2008, not at the time, and not
12 in real time. They opened the office, they bought the
13 cars, they introduced people, they took employees, they
14 ran around and -- et cetera, they discussed the
15 licences. I don't know what kind of work exactly, but
16 this was -- I was told that there was real work on the
17 ground done by them. So I take it like on the face, and
18 this is correct.

19 And by the way, this has been done by BSGR in many,
20 many other countries, very, very similar. It's not
21 a one-off.

22 Q. But don't you think that there is a lack of proportion
23 between the service --

24 A. No.

25 Q. -- that was rendered by Pentler --

10:27

1 A. No.

2 Q. -- which was just to introduce BSGR to Guinea, and the
3 potential amount of profit that they would get from that
4 service?

5 A. But you're talking about the profit. What about the
6 losses? Why you speak about the profit? There's no
7 profit. Maybe if I would negotiate, I would maybe --
8 personally would recommend BSGR to give 25%, or maybe
9 I would negotiate, I would say they can have 12%, and
10 maybe they walk away. It's all possible.

11 There maybe one offered them -- I suspect and
12 believe that there was strong negotiation between the
13 two parties, and then you come to terms. Because if one
14 offered them 10%, they'll say, "No, we don't want this.
15 Please, very sorry, leave the country. It is our
16 project; we invite you to here. So forget about it".
17 So there is both sides that have to agree to terms. So
18 it's a willing -- I would not say "buyer" -- it's
19 a willing buyer and a willing seller. So it's
20 a compromise.

21 But this is a complete normal act of business. When
22 this become more valorised is after work had been done,
23 and that's why they got money in 2008. But before this,
24 it was worthless: zero, zero. Like most exploration, by
25 the way, in Guinea. Everybody who explored -- and I can

10:29 1 tell you also 98% of the -- 99.5% of the exploration in
 2 Guinea today are worth zero, and worth zero, with all
 3 the money. Rio Tinto have invested billions, which are
 4 worth zero.

 5 So what about -- why you talk about the profit and
 6 the valuation? You don't think about it at the time
 7 when you do a business. You do a business, you want to
 8 construct a deal, you try to make it fair for both
 9 sides, for both contributing work, and then you take it
 10 forward.

 11 Q. Do you know how much Pentler invested in the project?

 12 A. No, I don't -- they invested not much. I don't think
 13 they invested much, but they brought the deal. I mean,
 14 you can tell me that if somebody -- I can give you
 15 thousands and millions of examples that people made
 16 a lot of money without investing their own money, or
 17 very little money, but they had a great idea or they had
 18 a great introduction. There's nothing wrong about it.
 19 It's by all means, by all rule of any business, all
 20 legitimate and all transparent.

 21 Q. Could you move on to paragraph 15 of your second witness
 22 statement.

 23 A. Sure.

 24 Q. You say there, on page 4:

 25 "Firstly, as previously explained, the payments for

10:30 1 the share buyout were a result of Pentler's inability to
2 provide capital contributions to the project. The
3 commitment for Pentler to participate in the funding of
4 the project arises in the shareholders agreement that
5 was entered into between BSGR Steel and Pentler to put
6 into effect the earlier agreed carry arrangements in
7 BSGR Guinea ..."

8 So is it your testimony that at the time when
9 Pentler got a free shareholding in BSGR Guinea, it was
10 the parties' intention that Pentler would invest in the
11 project; financially, I mean?

12 A. When I came to the project in beginning of 2008,
13 I looked at what I was told is the agreement, and I was
14 told that the agreement was a little bit mixed up. On
15 one side, it spoke about free carry; on the other side,
16 the party have to invest.

17 And then also our -- BSGR was starting to invest
18 heavily in this project. It was not a project of
19 investing \$10 million or \$5 [million] or \$20 million
20 also, and then the money is not substantial. In iron
21 ore, especially in this project, because it's a sizeable
22 project, bringing it to another -- to the second phase,
23 to the next phase of -- which I will call
24 a "pre-feasibility study" or a "full feasibility study",
25 what BSGR have done on part of the project -- will

10:32 1 require a lot of money. And the estimation ranged in
2 that time between -- anything between \$50 million to
3 \$150 million; if you take a midway, it's \$100 million.
4 And my recommendation to the board is not to go forward
5 on this agreement, because it's unfair and it's also
6 huge resources.

7 That's why we came to Pentler -- the board asked me
8 to do that, whatever the reason was -- and I mentioned
9 to them that they have to come up with money. They
10 disputed strongly, and there was a big discussion,
11 et cetera, et cetera, et cetera. I believe it's really
12 well written and very well explained.

13 But please continue with your questions.

14 Q. Did you really expect that Pentler, which was a shelf
15 company with no assets, could invest in the project the
16 tens of millions of dollars that were required to carry
17 out the investment?

18 A. The shelf company Pentler is a meaningless saying
19 because also every project that you do, whether it is
20 mining or in real estate or in other aspects, you take
21 a shelf company or you create a new company which is
22 empty, you make it into a very little capitalisation,
23 and you support it from a shareholder loan, either from
24 companies or either from personal.

25 I had no ideas whether they had the capacity to

10:33

1 bring money into the project; I had not idea whether
2 they wanted to. Many people have the capacity, but they
3 don't want to take this kind of risky investment. But
4 that's what you told them: "You have to come up with the
5 money". That's all very simple and that's very clear.

6 By the way, "shelf company" is not -- you are using
7 this word in a negative connotation. It's not
8 a negative connotation. Every business in the world has
9 a special purpose company into it. Some people use it,
10 one company, as a holding. But it is very common,
11 especially in these countries.

12 I mean, also you can say -- you can call the Guinean
13 company which holds the assets as a shell company --
14 shelf company, because it does a very small
15 capitalisation; all the capitalisation comes from
16 shareholding loan. The same thing as Vale.

17 Q. It was easy to assess at the time that Mr Cilins, Mr Noy
18 and Mr Ran had no private funds and they could not fund
19 the company, wasn't it?

20 A. I didn't -- first of all, no, I didn't -- we didn't take
21 this check and I could not assess whether -- I knew that
22 they were successful people in Africa and elsewhere, in
23 the pharmaceutical, in other places. I never heard
24 anything wrong about them or anything wrong about their
25 reputation, never heard anything wrong about financial

10:34

1 incapacities or whatever it is.

2 We asked them, and they could have brought
3 a partner, they could have asked us whether they could
4 bring a partner. If they would have come with the
5 money, they would have stayed a partner; we didn't have
6 any problem with that. We told them very clearly, "You
7 come with the money, you stay. You don't come with the
8 money, you don't stay, it's impossible; it's too large
9 of an amount and it's a long journey".

10 Q. Do you maintain that the free shareholding that was
11 given to Pentler was not meant to compensate it for its
12 services as a consultant in Guinea?

13 A. Which consultant? They didn't give no consultant. What
14 do they know about iron ore? What do they know about
15 Guinea? Which -- what consulting they can do? Why
16 should anybody think in that way? This is something
17 that the people are trying to do it now, to paint in
18 that way; but if you look at the fact, it's just the
19 opposite.

20 But it's -- again, we can give to the Tribunal many
21 list of companies in a situation that was very similar
22 situation. I mean, every day, even now, we are busy
23 with a situation that somebody brings a deal and they
24 get the carry. Sometimes it's free carry, sometimes
25 it's participation, sometimes a combination. It's

10:35

1 a very common, active business life.

2 I don't even understand the question what's wrong
3 with this. Do you think that somebody in hindsight had
4 in 2006 the situation that we would be hiding something,
5 or anything hiding? It's crazy, in my opinion.

6 Q. Let me rephrase the question, if you don't understand
7 it.

8 A. Yes.

9 Q. Do you confirm that Pentler was never a consultant to
10 BSGR in Guinea?

11 A. Never. Never. It was only a shareholder, which was
12 bought out in the beginning of 2008. That's what it is.
13 Nothing less and nothing more.

[PROTECTED]

23 is a column entitled "Milestone", with a number of
24 milestones according to the progress made in Guinea to
25 secure the mining titles.

10:37

1 A. Mm-hm.

2 Q. Then in the second column -- it is entitled "Success

3 Fee" -- there are fees that are owed to Pentler in

4 connection with the reaching of the milestones.

5 A. Yes. What's the question?

6 Q. Was Pentler's role to get those mining titles that are

7 set out in the first column?

8 A. You ask me something which I cannot comment. [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

12 I have seen this paper, and the milestone -- I think

13 the first time the milestone was shown to me, I think in

14 2010 by the Pentler guys. I have never seen it before,

15 I was not involved in that, and I have no idea what does

16 it mean. Milestone, by the way, is a very common

17 practice, but I see a bit contradicted to the 17%. But

18 I don't see any problem with it. But I cannot comment.

19 Q. I am aware that you were not part of the negotiation of

20 this agreement. However, how can you explain that BSGR

21 would pay to Pentler a certain amount of monies, called

22 "Success Fees", in accordance with the securing of

23 mining titles in Guinea, if Pentler was playing no role

24 in getting those mining titles?

25 A. Well, the only explanation I can say, and this was only

10:40

[PROTECTED]

[REDACTED]

10:42

[PROTECTED]

12 MR JAEGER: Could you turn to paragraph 25 of your second
13 witness statement, please. You refer here to the
14 repurchase of the 17% interest in BSGR Guinea.

15 A. Yes.

16 Q. And you say -- let me find the phrase -- that Mr Noy
17 asked for an additional payment of \$50 million. Let me
18 quote it:

19 "He asked for an additional payment of around
20 US\$20 million to settle the issue -- which would give
21 them a total of US\$50 million which Mr Noy said was
22 still a fraction of what they should have got.
23 I believe he argued that this was based on the full
24 amount of the original milestone agreement being due as
25 well as the buyout of the shares. I regarded this

10:45

1 request as ridiculous as Pentler had long before given
2 up any rights to payment under the alleged milestone
3 agreement."

4 You were familiar with the milestone agreement when
5 you negotiated the buyout with Mr Noy, didn't you?

6 A. No. Now, yes. This is 2010, yes. He came to me with
7 that. That's the first time I heard about it.

8 Q. So you discussed with Mr Noy as to whether the
9 \$19.5 million that were owed by BSGR to Pentler under
10 the milestone agreement would be paid or not to Pentler?

11 A. No, I didn't discuss it. No, that's not what I say
12 here. I said that he came after closing the deal with
13 Vale. He was very upset, instead of being very happy,
14 which I told him. Instead of thinking what the money
15 that he's getting, he's thinking of the money what he's
16 losing, which is -- sometimes, you know, human beings
17 are like this, you know? Never the glass is full
18 enough. And there was a big, big argument. And then he
19 told me, "Yeah, but we had the milestone agreement, that
20 if we didn't do it then we would have the debt, and debt
21 to \$800 million".

22 And anyway Frédéric Cilins, his partner, was all the
23 time against this. He mentioned to me about 50 times,
24 20 times, that Frédéric Cilins was against the sale in
25 2008. This was the chance of their life, and they

10:46

1 missed it, whatever it is.

2 And my answer was very simple: "You sold the asset.
3 We could have easily made a very bad business. After
4 buying -- after BSGR bought the assets in 2008, March,
5 and the crash in the market in July or August 2008, this
6 looked the most foolish and most stupidest deals in
7 life, and you have been very, very happy". And now,
8 because they turn it out, and BSGR have done a fantastic
9 job on the ground, invested a tremendous amount of
10 money -- \$150-170 million -- took risk, not only
11 commercial risk but personal risk of people, malaria,
12 all the difficulties working in a very difficult place,
13 difficult location like Guinea, and now -- I told him,
14 "Now you come and claim to be part of the party, but you
15 didn't participate in the party. There is a very clear
16 agreement signed by all the parties that you got what
17 you want -- what you deserve".

18 And I say, "Okay, Pentler was fair. You extended
19 the time of the payment because BSGR in the time after
20 the crash of 2008 were -- Rio Tinto, which is the
21 biggest mining company, non-oil, biggest mining company
22 in the world, was on the brink of bankruptcy, and all
23 the companies was under tremendous debt and problems;
24 the commodity price was terrible. And now you take
25 advantage of the situation, trying to take advantage of

10:47

1 situation. Okay, but you have been nice on the terms".

2 End of the day, after long arguments and shouting,
3 whatever it is, we agreed to a certain additional amount
4 of \$4.5 million, which was just to facilitate, you know,
5 to make them happy, to -- not to have an ex-partner
6 angry and upset and smearing you, whatever it is.

7 And also -- and I brought it to the board, I told
8 the board. They asked me my opinion. And this after
9 negotiating to bring it down to \$4.5 million, this
10 \$20 million. And I told them that in my opinion we
11 should pay the money, because BSGR is going to make
12 \$5 billion potentially on this transaction, or let's say
13 another 2 -- 500 plus 2, and potentially even more
14 after, when the whole project will work.

15 And I saw that again, in the context of the
16 situation -- and that the partner was fair when he
17 extended the payment from 2008/2009 to 2010, which you
18 could have easily brought BSGR still into bankruptcy --
19 this is not a big amount; it's a token amount to be paid
20 in order to make peace. And the board have agreed on
21 that.

22 Q. When you say, "I regarded this request as ridiculous as
23 Pentler had long before given up any rights to payment
24 under the alleged milestone agreement", what do you
25 refer to? When did Pentler give up its rights under the

10:49 1 milestone agreement?

2 A. In 2007 -- if you look, there's a big documentation done

3 by lawyers and signed by both parties -- they relinquish

4 any other request not -- I don't know if it's milestone

5 or any other things. And this sort of surprise --

6 I mean, this dominates, and there is no other agreements

7 whatsoever. It's written in the 2007 agreement. So it

8 was just -- it was just a way of asking for more money,

9 that's all.

10 Q. Could you please turn to tab 40. Are you familiar with

11 this agreement?

12 A. Let me look for a second. When I see -- I don't see

13 an agreement, I see a board resolution. Is that

14 possible, or the agreement is just after?

15 Q. So that's the wrong tab. It should be R-219.

16 A. Yes, I see the page. I see the next page: the fax with

17 the share purchase agreement.

18 Q. That's correct.

19 A. Yes. Yes, I am familiar with this, yes.

20 Q. Did you negotiate this agreement?

21 A. Yes, I negotiated, always subject and with the full

22 approval of the board of BSGR.

23 Q. If you turn to page 2 and look at clause 7, it says:

24 "This agreement cancels all previous agreements

25 between the parties hereto."

10:51

1 A. Yes.

2 Q. So was it under this provision that the milestone
3 agreement was cancelled?

4 A. No, I think this was cancelled before that. I think
5 this cancelled anything. This, I think, was more
6 referring to the 2007 agreement. But I don't know the
7 details. You know, I'm not a lawyer, and this was
8 written by lawyers, not by me.

9 But I think it's very common in any agreement or any
10 MOU that you sign something with people that you already
11 have agreement with them in the past, that the new
12 agreements surpass and bypass -- how do you call it? --
13 surpass the -- cancel all previous agreement. I think
14 it's a very common sentence to put in.

15 Q. Could you look now at clause 1 on page 1, please.

16 A. Yes.

17 Q. It goes:

18 "The Seller agrees to sell its entire 17.65% holding
19 in BSG Resources (Guinea) Limited, a company
20 incorporated under the laws of the British Virgin
21 Islands (the 'Company') to the Purchaser on a free and
22 clear basis with no third party rights."

23 A. Right, yes.

24 Q. You are not aware of any third party rights at the time
25 on the Pentler shares?

10:52

1 A. Nothing.

2 Q. Nothing?

3 A. Nothing whatsoever. There was no third party

4 whatsoever.

5 This is also a very common sentence to put in every

6 agreement.

7 Q. And then the clause goes:

8 "The parties hereby agree on the following terms and

9 conditions for the Purchaser to purchase from the Seller

10 the 17.65% in the Company (the 'Shares'). When the

11 transaction is executed, the Purchaser takes the full

12 responsibility of local consultants, advisers etc."

13 Did Pentler provide you with a list of those

14 consultants and advisors at the time?

15 A. Not -- not that I remember, or not that I was aware

16 about.

17 Q. Did they inform you of the role of these local

18 consultants?

19 A. No. I think also it's a very standard thing, you know,

20 to say. I mean, "Bye-bye, thank you, you're out".

21 Not -- don't tell me afterwards you forgot that, and

22 don't forget that, or whatever it is.

23 Q. Did Pentler inform you of the amounts that they had

24 agreed to pay to local consultants?

25 A. Pentler have not told us of any amount. The answer is:

10:54

1 definitely not.

2 Q. So if I understand well what you have just said, BSGR
3 agreed to take full responsibility for people it didn't
4 know, without knowing what their role was and without
5 knowing how much was owed to them. Is that your
6 testimony, Mr Steinmetz?

7 A. It is my testimony that -- it is very simple -- that
8 BSGR bought something and they have to take full
9 responsibility, because BSGR was managing this for the
10 middle of 2006. From 2006, it was the company. So
11 I guess they was asking -- that is, "We don't want
12 people to come to us and question. We're out, we're
13 out. We don't want this, we don't want this".

14 Anyway, so they had no presence, whatever it is, and
15 the people on the ground said that there's no problem.
16 And this is a very simple thing.

17 Q. You were aware that there were consultants and advisors
18 working for Pentler at the time, weren't you?

19 A. No.

20 Q. That clause put you on notice that there were some local
21 consultants and advisors?

22 A. No.

23 Q. It says that BSGR is taking "full responsibility of
24 local consultants [and] advisers", Mr Steinmetz. It
25 means that --

10:55 1 A. It means -- no, the opposite. It shows that BSGR take
 2 responsibility of full operation and the continuation of
 3 the operation that it had started, and they didn't want
 4 to have any recourse for them if something was wrong or
 5 whatever it is. And this can go for driller, it can go
 6 for supplier or whatever it is.

 7 If something goes wrong and BSGR -- taking, for
 8 example, a contract with the drillers to drill in the
 9 Simandou region for the next six months, and suddenly
10 BSGR doesn't pay this driller, and they don't want that
11 the driller knows that they were there, because they
12 know it from the beginning or whatever it is, and he
13 will come back to them with a recourse for the money.
14 I think that was the idea.

 15 But again, I was not involved in drafting and of
16 every wording of this material of this agreement. But
17 I believe this is it. And again, it's common practice
18 and standard.

19 Q. You are an experienced negotiator, Mr Steinmetz. Does
20 it make sense to take responsibility for people and
21 liabilities without knowing who these people are and
22 what the extent of liability is?

23 A. It cannot be, because we were managing -- BSGR was
24 managing all the operation in the ground for the two
25 years before. So there was no surprises there. It is

10:56 1 something they wanted to put. There was nothing
 2 external out of what can be possible there.

3 Q. Was there a risk manager in the BSGR group at the time?

4 A. Risk manager to what extent?

5 Q. A risk manager in charge of compliance in the group.

6 A. That was people in Guernsey that I was not involved --
 7 or in London that I was not involved with them. I am
 8 just an advisor. And there were lawyers involved, and
 9 the lawyers are -- I don't know if there was a risk
 10 manager specifically; I don't believe so, but I don't
 11 know. I don't think there is anybody reading everything
 12 and looking for red flag or whatever it is; no, I don't
 13 think so. But this is definitely common practice. And
 14 the lawyers looked at it for all the sides.

15 Q. Did Mr Daniel Pollak play the role of the risk manager
 16 in the group?

17 A. Daniel Pollak joined the group, I don't know in which
 18 year, but definitely -- I'm not -- probably in 2008 or
 19 2009, not before. I don't know the exact date. And at
 20 the time he was not involved here at all.

21 Q. Were you aware that corruption was pervasive in
 22 sub-Saharan Africa at the time?

23 A. I was aware that there is corruption all over Africa,
 24 and also many, many other places. And BSGR, I would --
 25 can tell you, even though I'm just an advisor, are very

10:57

1 proud of never being involved in anything corruption or
2 whatever it is close to the corruption.

3 Only the conspiracy against us in Guinea is only the
4 first time that BSGR had ever, in all the projects --
5 and BSGR are present probably in 10/20 countries,
6 different countries in Africa; never had an issue,
7 never. For the very simple reason -- for a very simple
8 reason, this very one simple reason: because BSGR never
9 paid any corrupt money.

10 Q. Does the word "consultant" or "local consultant" or
11 "advisor" ring any bell in relation to corruption?

12 A. Maybe today more than before, 10 years later. It is
13 10/20 years later. I mean, maybe more than before. But
14 still, not really. Sometimes yes, sometimes no; it
15 depends with whom you work.

16 But in reality, you have to work with consultants.
17 You know how many consultants we have -- BSGR had on
18 this project in Guinea? Probably 20/30 consultants.
19 You know how many Rio Tinto and BSG have consultants for
20 any project they have? 50, probably; and advisors,
21 another 10. So you cannot taint everybody because it's
22 consultant or it's advisor, this is bad thing and wrong
23 thing.

24 I consider the lawyers as an advisor/consultant.
25 And maybe they are a bad thing anyway, but it doesn't

10:59 1 matter; that's besides the point.

2 Q. By agreeing to take responsibility for local consultants

3 without knowing who they were, BSGR took the risk of

4 taking responsibility for people who were bribing

5 Guinean officials, didn't they?

6 A. Again, I'm not going to go into this. I explained to

7 you exactly what I said. And for you, every consultant

8 and every advisor is bribe? Fine, this is your way of

9 thinking. I mean, we don't consider that way.

10 It was totally management, and we have checked with

11 the management if there is anything to worry of, any

12 aspect of this agreement. They say, "No, we are totally

13 in control". Asher Avidan, the President of

14 BSGR Guinea, has done an excellent job on the ground and

15 an excellent job on execution of the work. BSGR was

16 focusing on ground, work on the ground; not on this blah

17 blah that it is all talking about here.

18 Q. You told the Tribunal that you negotiated this agreement

19 personally, didn't you?

20 A. With Michael Noy.

21 Q. But you were the one negotiating with Mr Noy, yes?

22 A. With --

23 Q. Mr Noy was on the side of Pentler.

24 A. I have a lot --

25 Q. So you were aware --

11:00 1 A. Exactly. Not alone, but with other people of course:
2 with lawyers, whatever it is. Yes, definitely.

3 Q. So you were aware of that agreement to take full
4 responsibility for local consultants, weren't you?

5 A. I don't remember. But I was aware that they put this --
6 I don't know, I don't remember now whether I was aware
7 or not. But this for me looks very standard. If you
8 ask me to sign something like this today, I would
9 recommend, no problem whatsoever, subject that I check
10 with the management that there is no issue, there is no
11 other problems.

12 Q. And your lawyers at the time did not inform you of the
13 risk associated with this provision?

14 A. No. If they would, I would have not signed.

15 Q. Could you now turn to tab 38, please. That's
16 Exhibit R-29.

17 This is an agreement between BSG Resources Guinea,
18 represented by Mr Avidan, and Matinda & Co Limited,
19 represented by Mrs Mamadie Touré, and it was signed on
20 28th February 2008, so before the share purchase
21 agreement that we have just seen.

22 And it goes -- and I will translate it into English:
23 "BSG Resources ..."

24 A. I can read, I can read, I can read.

25 Q. You can --

11:02 1 A. I can read and I have seen, okay. Yes, I can read and
 2 I have seen it.

 3 Q. So this agreement provides that BSG Resources will give
 4 5% participation in the Blocks 1 and 2 of Simandou --

 5 A. I know. I know that, I know. But you also know that
 6 this is a false paper, so no need to read.

 7 Q. So would that -- leaving aside the fact that it is
 8 forged -- an agreement like that would be consistent
 9 with the concept of taking full responsibility for local
 10 consultants?

 11 A. It's nothing to do with local consultants, nothing to do
 12 with this. This agreement, as far as I know -- which,
 13 by the way, I've seen this paper only -- I don't
 14 remember the year -- 2010, 2011 or 2012, when it comes
 15 all the issues of the blackmail attempt to us.

 16 And this agreement, to my opinion and to the opinion
 17 of all the experts that we have asked and checked with,
 18 is forged. This agreement cannot be happen. This
 19 doesn't show in the BSGR books. And this cannot be --
 20 I mean this is just, I would say, even a joke, to be
 21 honest.

 22 Q. At the time you negotiated the purchase of the 17.65%
 23 participation, were you aware that Mrs Mamadie Touré was
 24 working for Pentler?

 25 A. I was not aware about Mamadie Touré till late, 2000 --

11:05 [REDACTED]

[PROTECTED]

Bar Index	Approximate Length (%)
1	45
2	95
3	98
4	35
5	25
6	92
7	48
8	96
9	95
10	95
11	100
12	98
13	97
14	92
15	91
16	75
17	93
18	92
19	42
20	98
21	98
22	98
23	85
24	93

11:07

[PROTECTED]

Bar Index	Approximate Length (%)
1	100
2	95
3	100
4	90
5	95
6	70
7	85
8	95
9	90
10	95
11	85
12	75
13	60
14	90
15	95
16	85
17	100
18	100
19	95
20	50
21	65
22	90
23	90
24	100

11:08 [PROTECTED]

[REDACTED]

11:09 [PROTECTED]

[REDACTED]

11:11 [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:12

[PROTECTED]

[REDACTED]

11:13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:14 1 MR JAEGER: Madam President, if now is a good time for
 2 a pause, we could take a break.
 3 THE PRESIDENT: We can take a break. Would you like to take
 4 a break now? You are about in the middle of your
 5 examination?
 6 MR JAEGER: Yes.
 7 THE PRESIDENT: Yes?
 8 MR JAEGER: About, yes.
 9 THE PRESIDENT: Fine. Then if everybody agrees, we'll
 10 take -- do you want to take 15 minutes? -- a 15-minute
 11 break.
 12 Mr Steinmetz, while we take the break, I must ask
 13 you not to speak to anyone who is familiar with this
 14 case during the break.
 15 MR STEINMETZ: Will do. Will do. Thank you very much,
 16 Professor. Thank you.
 17 THE PRESIDENT: Thank you. We will resume in 15 minutes.
 18 (11.15 am)
 19 (A short break)
 20 (11.33 am)
 21 THE PRESIDENT: Mr Steinmetz, if you are ready, then we can
 22 continue.
 23 MR STEINMETZ: Sure.
 24 THE PRESIDENT: Maître Jaeger, you have the floor.
 25 MR JAEGER: Thank you, Madam President.

11:33

1 Mr Steinmetz, could you turn to your first witness
2 statement, please, at paragraph 45.

3 A. Yes.

4 Q. In this paragraph 45 you say:

5 "It did not occur to me or anyone at BSGR that we
6 should seek to speak to [Mrs] Touré. Not only did we
7 have no contact and no relationship with her, it was
8 plain to us that there was little point in contacting
9 [Mrs] Touré and it would have been extremely dangerous
10 to have done so."

11 Could you explain why it would have been "extremely
12 dangerous" to contact Mrs Touré?

13 A. She was a blackmailer. She blackmailed us; she sent
14 people to blackmail BSGR. She is a dangerous lady. You
15 know that we went to -- we went to a QC in England
16 and -- BSGR went, actually we done that.
17 Asher Avidan, Dag in London. We went to a QC, Mr Macdonald,
18 in London, in order to seek advice before going to
19 Scotland Yard in order to announce the Hennig blackmail.

20 I'm sorry? Sorry? Ah, okay.

21 And this was a blackmail attack, clear. I mean, she
22 is a dangerous woman, she is a criminal. So we
23 didn't -- we have -- and there was no contact with her.
24 We didn't know her or whatever it is. For sure not me,
25 and neither our people.

11:35 1 MR WOLFSON: I'm sorry to interrupt, but counsel read out
2 the witness statement and it's gone in the transcript as
3 "Mrs Touré". It's typed "Ms", and the Tribunal knows
4 there is an issue here as to whether she was married.
5 So I would ask respectfully for counsel to read out the
6 witness statement correctly, because the issue of
7 whether she was married or not is an issue in the case.
8 It doesn't say "Mrs", it says "Ms", and it is a relevant
9 issue.

10 THE PRESIDENT: The point was just made that the witness
11 statement says "Ms Touré" and not "Mrs Touré". I think
12 we can continue, this being clarified.

13 MR JAEGER: Thank you, Madam President.

14 Mr Steinmetz, you use very strong words here:
15 "extremely dangerous". A blackmailer is only dangerous
16 to the extent that he or she possesses information that
17 can be damaging, don't they?

18 A. Yes. So? What do you want to say by that?

19 Q. I would like to ask you: if you considered that
20 Mrs Touré was lying, and that there had been no improper
21 dealings by BSGR or Pentler with her, why would she be
22 at all "extremely dangerous"?

23 A. Because she was spreading rumours, and she was the base
24 on this, I would say, nice attempt on conspiracy against
25 us. So she is a dangerous lady. She is a liar, she is

11:36

1 dangerous.

2 If BSGR was afraid of any of those documents or any
3 of those sources, BSGR would have bowed to the attacks
4 with the blackmails, would have come to an arrangement
5 where -- with whatever it is, or do some other things.
6 BSGR wouldn't try to go to the police and tell everybody
7 who tried to blackmail BSGR to go home. I mean, this is
8 [in]consistent, it is not consistent. BSGR has refused to
9 pay anybody. And suddenly in 2013 or 2012 we understood
10 there is -- we didn't really understand the extent of
11 the conspiracy that was against us, to be honest. We
12 have been naive, you know. The whole story, we have
13 been very, very naive.

14 The whole story is that we came in the country, we
15 did a fantastic job, paid nobody. And then Mr Alpha
16 Condé came to power in a so-called democratic election,
17 that we believed at the beginning, and we were very
18 happy, BSGR was extremely happy. And then we realised
19 that three or four months afterwards, he stopped the
20 work on the train; and then three months afterwards we
21 stopped the work of BSGR/Vale altogether.

22 And three months later or two months later there is
23 a dinner at George Soros's home, and then in this dinner
24 he doesn't invite BSGR, and he speaks clearly, loudly,
25 against BSGR: that we are corrupted and we did terrible

11:38 1 things, that we should get out of the country. And then
 2 Alpha Condé asked us for [\$1.250 billion] to me
 3 personally, asked me for \$1.250 billion, which is 50% of
 4 what BSGR is supposed to receive from Vale, and he said,
 5 "Talk to my son about it". When you get out, he said,
 6 "Talk to my son". Well, his son is the chief of the
 7 police, or the chief of the tax or what.

 8 This is a pure -- we have been -- BSGR has been
 9 exposed to pure blackmail and exposure from day one.
 10 And what is regretfully, very regretfully, that Soros is
 11 the corruptive party who have corrupted the process in
 12 Guinea. This whole process is corrupt. DLA have
 13 participated this corrupt process. People sitting on
 14 this table next to you have been major leaders in these
 15 corrupt processes, in this corrupt process. The whole
 16 process is corrupted from A to Z, and everything was
 17 done, it's wrong, it was targeted on BSGR.

 18 This is not a process -- this was like in, I would
 19 say, Communist country in the old time, you know,
 20 somehow give an instruction, "Get BSGR out, but make it
 21 look nice". This is the process, and it was terrible.

 22 Even recently, even this week or last year, or the
 23 end of last year, we understand and come to the
 24 understanding of the extent of this conspiracy against
 25 BSGR. But we are not going to stay silent and shut up.

11:39 1 Part of it, we put a claim in America, in New York,
 2 against George Soros. I don't know if the Tribunal have
 3 a copy of this claim. But really, if the Tribunal would
 4 like, I think our lawyer can supply you the claim and
 5 explain extremely well how this conspiracy was turned
 6 about, how this process explode, and how this was
 7 started in the beginning to speak about -- to get the
 8 licence out of BSGR. It's not about a woman, not about
 9 anybody. It's about taking us -- the woman was just
 10 a small excuse: "We didn't find anything else, all the
 11 rest is well. Let us go about the woman".

 12 Let's talk about Mahmoud Thiam. We have been
 13 checked, we have been cross-examined, we have been
 14 certified -- I mean, from all the sides, and no bother,
 15 and that we paid money to Mahmoud Thiam, we have been
 16 checked by all the police around the world, by all
 17 investigative journalists, whatever it is, and we have
 18 done nothing. We are the clear people, we are the
 19 cleanest of the world. We didn't bow to extortion or
 20 blackmail of money from anybody. This is the reality.

 21 Q. Mr Steinmetz, you have just mentioned that people
 22 sitting in this room with me --

 23 A. Yes.

 24 Q. -- were involved in the corruption process.

 25 A. Yes.

11:40

1 Q. Could you be more specific about who these people are?

2 A. Yes, I see -- I say that these people, people from
3 DLA -- you are from Orrick; not Orrick but DLA, not as
4 far as I know -- DLA Piper have been participating in
5 this corrupt -- Veracity, DLA, it's all the process.
6 It's a scheme. It was built the scheme. Even DLA give
7 to the committee telling how to do that.

8 Nava Touré, the chairman of the Comité Technique,
9 admitted in the interview to The New Yorker that he had
10 outsourced the whole work of the committee, because they
11 don't have the capacities, to DLA. DLA was agent of
12 Soros. Even now, who is paying you? Who is paying you?
13 It is George Soros paying this, paying you this sitting
14 now. Monthly or hourly payments for you, all of your
15 lawyers, is being paid by Soros; it's not being paid by
16 Guinea. You know that.

17 This is not a claim against Guinea. This is
18 a claim -- it's not the situation you claim something on
19 Guinea; it is against George Soros. You know it, I know
20 it, and all the DLA people. Let's deny this, tell me that
21 George Soros is not paying you, or not paying DLA. He
22 is paying. We have it from two government sources this
23 week saying they don't care about Paris because anyway
24 they don't pay the money in Paris; it is George Soros.

25 So this is a corrupt process. BSGR have done only

11:41 1 good. I am sorry for two things: I am sorry for BSGR,
 2 of course, and myself, because I suffered a lot.
 3 George Soros has used all his power, all his capacity --
 4 and he is very powerful and has a lot of capacity -- to
 5 run after me everywhere. Justice is going to prevail, I am
not worried at all.

 6 And the second thing which I am very sorry about is
 7 the people of Guinea, who lost a \$10-15 billion project
 8 of iron ore which have doubled or tripled the GDP.
 9 Guinea is dead now and nobody will reverse a penny. The
10 cycle is off for the iron ore and this is finished. The
11 people of Guinea are going to stay poor because of
12 corruption of Alpha Condé, because of the corruption of
13 government, because of corruption of his son.

14 Look at it. I didn't have to -- I don't have to
15 justify anything. Look -- read the papers of Och-Ziff:
16 they paid \$450 million, because they gave \$50 million to
17 the President of Guinea in order to steal the election.

18 It is all one conspiracy against us, and DLA Piper
19 is part of this. People sitting there -- I don't care
20 if it's through the video, I'm not in the room -- next
21 to you, either left or the right, have been a major
22 figure on this. But truth will prevail. And I believe
23 that when the panel will read the claim against
24 George Soros -- and I believe this claim, which is
25 a civil claim now, will be transformed into a criminal

11:43 1 claim in America, I strongly believe so -- then justice
2 will prevail even strongly, because the people who have
3 done it will be punished.

4 Q. Thank you.

5 We will revert to your witness statement. In the
6 same paragraph 45 you say:

7 "In any event, Pentler had a relationship with
8 [Mrs] Touré, but BSGR did not."

9 When were you informed that Pentler had
10 a relationship with Mrs Touré?

11 A. When we were informed? Because BSGR has received from
12 Pentler a declaration from her saying she is taking back
13 all of her attestation and all her -- all the wrong
14 declaration that she give to the Comité Technique at the
15 beginning, blah blah blah, whatever it is. That's why
16 we got aware that they are in touch with her, they have
17 been in contact with her. We didn't have anything.

18 And by the way, Pentler volunteered to do; we didn't
19 ask that anything.

20 Q. Do you remember at about what time that disclosure took
21 place?

22 A. Difficult for me to say exactly, but end of 2012.
23 Probably end 2012. End 2012/beginning 2013. Probably
24 end 2012. This is what I believe. This is the time.

25 Q. And were you informed --

11:44

1 A. I don't know the exact -- the exact date I don't
2 remember by heart. It's about the same time of the
3 blackmail attempts in London.

4 Q. At that time were you informed that Pentler's dealings
5 with Mrs Touré were improper?

6 A. No, I didn't -- was not informed about any improper or
7 proper dealings that they had with them, nothing. This
8 had nothing to do with us. They haven't told us or me
9 anything.

10 Q. You go on to say [at paragraph 45] in your [first]
11 witness statement:

12 "Pentler saw that a problem that was entirely their
13 issue was threatening adversely to affect BSGR's
14 business. Mr Noy spoke to me and told me that Pentler
15 would make efforts to seek to persuade Ms Touré to tell
16 the truth and withdraw, as she had done before, the
17 untrue allegations she was making."

18 A. Yes.

19 Q. So at the time you were informed by Mr Noy that Pentler
20 would make efforts to get Mrs Touré to withdraw her
21 untrue statements; is that correct?

22 A. They didn't tell it to me; they told it to the lawyers
23 as well. We met by the lawyers in Paris, and that's
24 what they said.

25 Q. If you turn to paragraph 46 of the same witness

11:46

1 statement, you go on to say:

2 "So while I was aware that Pentler was going to try
3 to ask Ms Touré to restate the falsity of the
4 allegations she had made and get her to withdraw them
5 again, I never assumed that they would be able [to] get
6 her to withdraw the statements ..."

7 So you were aware of those efforts that Pentler was
8 going to make, although you were not very convinced that
9 they would be successful; correct?

10 A. Let me tell you, first of all it's an assumption that
11 I thought they would not be successful. This is
12 an assumption of mine that I put here, and that's what
13 I told them at the time, because I said, "A crook is
14 a crook and a criminal is a criminal". And they had
15 good faith, these people of Pentler, and I saw that they
16 are naive in their thinking. But it was not our
17 problem.

18 I think we have to put it in the right context. The
19 people of Pentler have contacted -- to be very precise,
20 it's Cilins who have contacted Asher Avidan in the
21 beginning of 2012 or -- I don't remember the timing
22 now -- the end of 2011 -- it's easy to find it -- and
23 saying -- because they heard that there is issue with
24 Alpha Condé, he stopped the work, he stopped the train,
25 he stopped everything.

11:47

1 Will you mention how ridiculous that he stopped the
2 train? You know, I want to tell you -- I take advantage
3 of -- I take pride that it was my idea, in order to get
4 an exit, the whole story of Simandou is a zero project,
5 worthless, unless you get exits for Liberia, which is
6 a short way to the sea, and you can build a normal
7 deporter port, which is not possible in Conakry, on the
8 seaside of the Guinea side. So I get the idea, and
9 I had this idea and dream that if the project is big
10 enough and this, BSGR will build the full train from
11 Simandou, from Conakry to Kankan, which is in the
12 centre, so revive the whole country.

13 Now, we start to do it. Vale joined and took
14 responsibility of the building, because they was the
15 senior operating partner. We did maybe 10 kilometres,
16 5-10 kilometres started -- and President Condé stopped
17 it. The reason for his stopping is that, "You committed
18 to build it for a billion, a billion to Conakry;
19 I believe you should do it for cheaper". I mean, it's
20 crazy. I mean, what do you care? Do you give somebody
21 a present, they tell you, "No, you should buy this
22 present cheaper"? Because we refused to give the money.
23 They wanted [us] to give them the money so they build
24 it, so they can spend the money and put it in their
25 pocket, and we refused.

11:48

1 So just another example. This whole story is full
2 of this kind of an example.

3 But coming back to your previous question, I'm
4 sorry, Pentler came when they heard that there is
5 an issue with Alpha Condé. We stopped the work,
6 everything is going down unfortunately, et cetera,
7 et cetera. So they say, "We can help", they say -- the
8 Pentler guys told Cilins.

9 How they can help? He can help because he say that
10 they know a few people who have still the ear and the --
11 I would say -- listening of Alpha Condé. So they came
12 with three names. Two of the names fall apart. And
13 then they say, "We have the winner joker who can do the
14 job and fix the relationship". This guy was named
15 François de Combret; I think I mentioned him in my
16 statement.

17 And this François de Combret, who is a fellow
18 student of Alpha Condé from the time -- I don't know, in
19 the Sorbonne or another school in Paris -- who really
20 did -- he did -- he brokered the deal for Rio Tinto. So
21 very esteemed, very prestigious. A very prestigious CV,
22 by the way, a track record: banking in Lazard, 40 years;
23 family of Giscard d'Estaing, chief of staff of Giscard
24 d'Estaing. So everybody was very impressed. And very
25 nice, soft-speaking person.

11:49

1 So we meet in person, and me as well, with Cilins,
2 and Asher Avidan, and other people, et cetera. Even
3 your colleague, the famous Scott Horton, I met him a few
4 times in the trying of Alpha Condé's extortion of us,
5 trying to get another \$2 billion from us or from Vale,
6 so -- but we stay out -- we -- to get out of the
7 country.

8 So this François de Combret tried his best over one
9 year to do a deal and make BSGR/VBG/Vale to continue its
10 work and to resume the relationship in the country.
11 Because you cannot work in a country like Guinea when
12 the President is against you, for whatever reason it is.

13 And what happened then? Within this situation that
14 is all work, and they were sure they can come to
15 solution, and there was this, and there is full email
16 supporting of this, and there was meeting with Scott
17 Horton, with number 2 or the head of Comité Technique in
18 Paris, and our team, and Vale team, and lawyers, I don't
19 know, DLA and everybody. But it didn't work.

20 And what they say now the problem was: they saw that
21 the problem is Madame Touré. And they thought they
22 wanted to cover this or to fix this problem, so-called,
23 with the deal that Madame Touré put on the whole
24 process. This was their intention. And they was
25 motivated by money, because they thought: if a deal will

11:50 1 happen, they will get some money. That's the context of
2 what -- the effort of Pentler in reference to
3 Madame Touré here.

4 I'm sorry for my long story, but this explanation
5 I think is needed for the Tribunal to understand the
6 whole story. I really apologise.

7 Q. Thank you. Did you expect Mrs Touré to sign a written
8 statement to restore the truth at the time?

9 A. I didn't expect -- I didn't expect anything. It was not
10 BSGR or my -- or BSGR initiative, or the lawyer; it was
11 their initiative. That's what they wanted to do,
12 because they was looking for doing a deal that BSGR can
13 work back in Guinea. That was the only intention they
14 had. All the rest, we didn't care, we didn't do
15 anything, we didn't tell them what to do, we didn't send
16 them, we didn't authorise them zero. And everybody will
17 witness on that.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:52

[REDACTED]

Bar Index	Approximate Length (%)
1	95
2	98
3	93
4	95
5	25
6	60
7	93
8	30
9	45
10	88
11	100
12	100
13	35
14	95
15	75
16	98
17	100
18	95
19	92
20	98
21	90
22	95
23	98

11:54 [PROTECTED]

[REDACTED]

[illegible]

11:55

[PROTECTED]

[REDACTED]

11:56 [PROTECTED]

A horizontal bar chart consisting of 20 black bars. The bars are arranged vertically, one above the other. Their lengths vary significantly, representing a distribution of values. The longest bars are approximately 100% of the chart's width, while the shortest are around 10%.

Bar Index (from top)	Approximate Length (%)
1	40
2	100
3	100
4	65
5	100
6	95
7	80
8	100
9	45
10	45
11	75
12	100
13	55
14	100
15	100
16	95
17	90
18	95
19	100
20	85
21	100
22	95
23	95
24	100

11:57

[PROTECTED]

A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged in a single column, with the longest bar at the top and the shortest bar at the bottom. The lengths of the bars represent a distribution of data, with the longest bar being approximately 95% of the width and the shortest bar being approximately 5% of the width.

11:59

[PROTECTED]

23 (Pause)

24 Q. Sorry, excuse me. Could you please now turn to

25 Exhibit R-36. I think it's probably the last tab in

12:01 1 your bundle.

2 THE PRESIDENT: So this is the other document that we

3 received during the break?

4 MR JAEGER: Yes.

5 If you go to page 66, you have an English

6 translation of this document.

7 A. Page 65?

8 Q. 66. No, it's not 66, I'm sorry. In fact the numbering

9 is a little patchy.

10 THE PRESIDENT: It starts on 46.

11 MR JAEGER: 46, yes. It's 46.

12 So it is entitled "Recording of a meeting of

13 14 April 2013":

14 "Transcript of recording of a meeting between

15 Mamadie Touré ... and Frédéric Cilins ..."

16 This meeting took place at the airport of

17 Jacksonville in Florida.

18 Could you please turn to page 62. If you go to the

19 middle of the page, there is a statement by Mr Cilins

20 starting:

21 "There will be the 5 and there will be the 800.

22 That will make 6 with what you have."

23 Do you see that paragraph, Mr Steinmetz?

24 A. No.

25 Q. On the top of the page, do you read:

12:03 1 "The check. Yeah, yeah we want the check and um..."

2 A. Yes, yes.

3 Q. So it's the seventh paragraph, starting:

4 "There will be the 5 and there will be the 800."

5 A. Yes, I can see this.

6 Q. So it goes:

7 "That will make 6 with what you have. That's one

8 thing, it's already accepted. Depending -- listen

9 carefully to what I tell you -- because I've always told

10 you that, because I know it's like that. Depending on

11 how it ends. If it's good for him, if we don't cut too

12 right, left, I don't know, there will be more. I don't

13 know how much. There will be 3, 4, 5 more, I don't

14 know. But there will be more. And that's the

15 communication I was given directly by number 1, I don't

16 even want to mention his name. It's like that. Okay?

17 And that's for sure."

18 A. Yes.

19 Q. And Mrs Touré asks a question:

20 "Number one? Michael?"

21 And Mr Cilins answers:

22 "No, no.. Beny ..."

23 And Mrs Touré says:

24 "Ok."

25 And Mr Cilins says:

12:04

1 "Ok? Everything I tell you is directly from Beny.
2 The other day when I tell you, I'm -- I'm waiting there
3 during the meeting, I went on a journey, I traveled to
4 see him directly, talk face to face, and have --
5 everything I tell you comes from him. Nobody else. All
6 right?"

7 So Mr Cilins is referring to you as having
8 instructed him to contact Mrs Touré, correct, in this
9 statement?

10 A. In this statement, that's what he's saying. But he's
11 totally lying or he's puffing with my name, using my
12 name, nothing more than that. And he gave a statement
13 about it, as I have just mentioned before. He mentioned
14 in a statement he was just puffing about using my name.

15 And I want to add something else to this. I don't
16 know, I'm sure that you -- I haven't read the whole
17 document, I don't have the patience to do that, but our
18 team have read it. And you can see definitely, through
19 this text, she is trying to get the name "Beny" from
20 him, Madame Touré, many, many, many times, maybe ten,
21 more than ten times, and he said, "No, no, no, it's me,
22 it's Fred", "No, it's me, it's Fred", "No, it's Fred".
23 And then in the end she says, "Okay" -- because you see
24 she doesn't get their attention, doesn't get her
25 credibility -- "Okay, it's Beny".

12:05

1 And then he called me "number 1". Nobody in the
2 world called me "number 1"; nobody. I am not the
3 number 1 person. I -- we have a very flat organisation.
4 I'm an advisor. Everybody calls me "Beny". Some -- you
5 know, if it's in Europe or in different, more formal
6 situations, they call me "Mr Steinmetz". Nobody ever
7 called me "number 1". I'm not number 1. I don't have
8 aspiration to be number 1.

9 So I want to mention two things. First of all, you
10 can see that she is tampering him, she is putting him --
11 she is bringing him to say this because he wants to get
12 credibility. The only thing in my -- I have to
13 understand why he did it, because I don't know why he
14 say this, but I can guess. I guess that he wanted to
15 make -- he was sure that Pentler will make good money
16 out of BSGR making a good deal with Vale and with the
17 Government of Guinea.

18 Government of Guinea, Alpha Condé, wanted BSGR out
19 at any price. They was dreaming. And there was
20 a meeting that talked about Government finally paying
21 \$2 billion and giving 50% -- paying another \$2 billion,
22 but not to us, and then giving 50% or 40% to the
23 project, to the Guinean, continue carrying them totally.
24 And they was dreaming, everybody was dreaming about, and
25 they was dreaming to make good money, together we

12:06

1 transfer the company. Who will give part of his
2 commission back to the son of Alpha Condé, like he did
3 with the deal of Rio Tinto, which is now public
4 knowledge? And Rio Tinto went to all the authorities
5 around the world, in New York and London, in order to
6 testify, and they are going to negotiate probably a plea
7 bargain and paid a lot of money on this.

8 There is nothing else. I have never spoken to
9 Cilins about this, never saw him about this contract,
10 and I have never given any instruction. This is just
11 using my name for free. Unfortunately it put me a lot
12 of trouble because of it, and put him a lot of trouble:
13 he spent 22 months in prison. But he didn't mention
14 anything about me. He could have lied. He could have
15 put me in bigger trouble. He didn't do, because I guess
16 he is an honest guy, and the truth prevailed before and
17 will prevail in the future.

18 But he testified afterwards that I have not given
19 any instruction. I haven't spoke to him about it,
20 never. This is just crazy. This is hilarious even.
21 Hilarious.

22 Again, I want to say something; I don't know if she
23 said it or not. The woman, Madame Touré, was tampered
24 by the authorities to put me in trouble, and they
25 promised her US citizenship. It is not a secret because

12:08 1 people knows about it. US citizen if she put me in
2 2 trouble, which is unfortunate. And you can see how she
3 3 is putting the trap for him and he is falling into the
4 4 trap.

5 5 This had nothing to do with me, confirm 100% from
6 6 all the sides. I gave all my recording, all my
7 7 communication, all my email, all my telephone.
8 8 Immediately afterwards, we have checked everything.
9 9 They have nothing at all.

10 10 Q. You've seen in this statement that Mr Cilins is offering
11 11 money to Mrs Touré to --

12 12 A. Nothing to do with me. This is probably offered money
13 13 that -- potential money that he might gain out of the
14 14 deal if the deal would have happened. And they was
15 15 talking to us about money, the Pentler guys. They said
16 16 that if the deal will come, and they have brokered the
17 17 deal with François de Combret, he will want to make
18 18 money and they will want to make money, and they were
19 19 talking about tens of millions of dollars.

20 20 So probably Mr Cilins in his mind said, "I will
21 21 make" -- I mean, "Pentler will make a lot of money,
22 22 I will -- and these things happen if these things
23 23 happen. I will promise Madame Touré some money in the
24 24 future". But it is absolutely nothing to do with BSGR.

25 25 Q. But why would Mr Cilins pay money, and significant

12:09 1 amounts of money, to Mrs Touré to secure documents --

2 A. I have no idea.

3 Q. -- that he doesn't need --

4 A. I have no idea. This -- again, first of all, he didn't

5 pay money; he promised her money. It's a big

6 difference.

7 And the thing that -- well, I don't know. He saw

8 that those documents are floating around in London and

9 elsewhere, and the Comité Technique is using them, so he

10 thought probably that this is the heart of the issue

11 that stops -- and the Comité Technique is stopping on

12 this, and this caused all the issues. But for me,

13 I would not pay anybody anything.

14 What we told them, I want to tell you, Asher Avidan,

15 the president of BSGR, when Mr Hennig called him to his

16 office and asked him to show him this copy of these

17 documents and said, "This will cause BSGR a big problem,

18 either we cooperate and give us part of your -- this",

19 you know what Mr Asher Avidan told him? Told him,

20 "Please publish it, put in the newspaper. There is

21 nothing that BSGR should be afraid of, there is nothing

22 that we are worried", and he left the room. Anybody who

23 had something on his conscience, right, who had done

24 something wrong, doesn't act like that. So this was the

25 action, this was always that we handled BSGR.

12:10

1 Everything, we have no problem.

2 Pentler did it in a different way, because they was
3 motivated by making a big commission. They thought that
4 they would make a lot of money out of it. They made
5 a lot of money by being a shareholder and being bought
6 out in 2008, and they thought that they can repeat it by
7 helping -- with the help of François de Combret, who is
8 the best friend of Alpha Condé. So you can understand
9 what kind of pressure and what kind of extortion BSGR
10 was subject to.

11 And by the way, another point which I want to say
12 about all the good friends of your employer George
13 Soros, who is paying your fee today: that he is the one
14 who brokered the corrupt deal of \$700 million to the
15 Guinean Government by Rio Tinto. It's not corrupted
16 only by the \$10.5 million which is public knowledge that
17 François de Combret took as a commission. Four people
18 of Rio Tinto had to leave -- two people had to leave,
19 two people already had left, and they left in a -- the
20 people who have to resign is in a shame situation. And
21 not only that, that he commandeers additional money that
22 was paid, but the \$700 million is extortion and
23 corruption. You should check that.

24 Q. You say that Mr Cilins was acting completely on his own.

25 A. Absolutely.

12:11

1 Q. However, you have stated in your witness statement at
2 paragraph 46 -- we've quoted that before:

3 "So while I was aware that Pentler was going to try
4 to ask [Mrs] Touré to restate the falsity of the
5 allegations she had made ..."

6 So you were aware that Pentler was on its way to get
7 Mrs Touré to restate her allegations?

8 A. No. No, no. I was not aware at all. I had no -- did
9 not know this. They told us they are trying their best
10 to broker a deal. We spoke with Pentler about brokering
11 a deal with Alpha Condé and with the whole situation of
12 the Comité Technique. I mentioned again and again: we
13 have been naive. We didn't understand that this was
14 a setup, this was a conspiracy, this was decided in
15 advance, long, long ago.

16 Mr Alpha Condé sold our assets to the people of --
17 Hennig and all these people of Palladino. That's why
18 they got \$50 million. He had to get -- he had to give
19 them something. It was thought on Day 1 that we got.
20 We didn't know this. We were -- we were sold. We had
21 the biggest and the best project in Africa.
22 Unfortunately it didn't come through; unfortunate for
23 the Guinean people, really unfortunate.

24 And the whole situation with Cilins here is only --
25 well, our interaction with Pentler was that they started

12:13 1 to sue François de Combret. And by the way, it was
 2 Cilins alone, or Pentler, saying that they can fix it.
 3 I would not even -- we would not take them seriously.
 4 BSGR took them seriously for the only reason that they
 5 brought François de Combret, who got credibility because
 6 he is the one who brokered the deal of the \$700 million
 7 with Rio. Otherwise we put it aside.
 8 We thought that everybody is nice people here. But
 9 in the end, everybody are crook and everybody are
 10 corrupted, all - (inaudible)
 11 THE PRESIDENT: Mr Steinmetz, I think the question was
 12 simpler than that. In paragraph 46 of your first
 13 witness statement you write:
 14 "... I was aware that Pentler was going to try to
 15 ask Ms Touré to restate the falsity of the allegations
 16 she had made ..."
 17 So the question I understood was simply: you were
 18 aware of this --
 19 A. No, I was aware by the state of the situation that they
 20 was dealing with her. That's what I was aware. But
 21 I was not aware how, what, when. Maybe in 2015 they
 22 will do it, maybe tomorrow. But I was not aware of any
 23 action. I was aware that there was discussion with her
 24 and him. Yes, I was aware, because they brought us the
 25 previous --

12:14 1 THE PRESIDENT: I think your evidence is clear on this. You
2 were aware of their intent to try and get her to state
3 that her allegations were false. You were not aware --
4 A. Yes.
5 THE PRESIDENT: -- of how they would do it, who exactly
6 would do it, when they would do it.
7 A. Exactly.
8 THE PRESIDENT: Is that a fair restatement?
9 A. Exactly. Very fair, thank you.
10 THE PRESIDENT: Thank you.
11 A. You state it much better than me.
12 MR JAEGER: Thank you, Madam President.
13 The meeting in Jacksonville took place on
14 11th April. [PROTECTED]

[REDACTED]

25 Q. Could you please turn to page 64 of Exhibit R-36, the

12:15 1 transcript of the conversation between Mr Cilins and
 2 Mrs Touré, please, and go to the fifth paragraph. It
 3 starts with a statement by Mr Cilins:
 4 " Oh dear. So listen, what do you want me to do?"
 5 A. No, I see -- let me check -- let me choose -- let me
 6 check my message I have. Go to 64? One second.
 7 Q. It was two pages after the page we were at. (Pause)
 8 A. Okay, yes, I can see.
 9 Q. So that's Mr Cilins talking. And Mrs Touré answers:
 10 "We will sign."
 11 And it goes:
 12 "Yes, yes, I agree with you to sign, but ..."
 13 And Mrs Touré says:
 14 "I say ..."
 15 And we lost the translation. Mr Cilins goes:
 16 "Yes, I know ... That's what I showed you, this is
 17 the official thing, you know? When they officially sent
 18 to the Presidency. I read it to you when we were in
 19 Freetown, remember?"
 20 Mrs Touré says:
 21 "Mmm."
 22 And Mr Cilins goes:
 23 "Here, you see, that's a testimony that I've made
 24 and the lawyer asked me to make some changes. You see,
 25 there are -- there are three pages.

12:17 1 "MT: Mmm.

2 "FC: You see: ..."

3 And he starts quoting the document:

4 "... 'I have never asked Ms Touré to intervene on

5 behalf of BSGR to anyone, and especially to the

6 President ...' right, you see? Oh dear.

7 "... Ok, I'll read it to you ...

8 "'My name is Mamadie Touré. I am of Guinean

9 nationality. I lived most of my life in Guinea and

10 today I live in the United States. The representatives

11 of the company BSGR came to see me and told me that the

12 Republic of Guinea accused them of facts in which I have

13 been implicated. They explained to me'" --

14 A. I can read it. I can see this.

15 Q. -- "'the facts and asked me if I would agree to say my

16 opinion about the matter. I agreed because ... what

17 they referred to is wrong and I want to testify today as

18 follows. My family situation. I'm the half-sister of

19 Ibrahima Touré and not his sister ...'"

20 A. Yes.

21 [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12:19

[PROTECTED]

7 Did Mr Cilins act on your authority?

8 A. You know not. I already answered this question a few

9 times. You are just repeating that. I have no problem;

10 if you want, we can repeat it the whole session.

11 You know that not -- you know that there is -- and

12 you have seen the LCIA, so you have seen the

13 attestation, and you have seen the declaration under

14 oath of Mr Cilins saying that I have not sent him,

15 I have not spoken to him, and we have not -- neither me,

16 nor BSGR, anybody spoke to him about this matter and

17 asked him to do anything. So this is a repetition of

18 the same thing.

19 I am not responsible for Mr Cilins. I think that

20 I have explained -- maybe not good enough, but whatever

21 words I can choose -- the motivation of Mr Cilins to use

22 both my name and to repeat all these things. I mean,

23 I have nothing -- by the way, I don't think there is any

24 lie in everything which is written; I think it's is the

25 truth. But this is nothing, because she is a liar. All

12:20 1 these forgeries she has done herself, et cetera, that's
 2 beside the point.

 3 But not even looking the merits about it, looking
 4 the point on the action, have nothing to do with me,
 5 have nothing to do with BSGR, and you should ask
 6 questions to Mr Cilins about it, and I assure that he
 7 will give you a very good explanation. He was puffing
 8 and using my name for credibility, but that is something
 9 that we all do in certain circumstances. But he has
 10 done it. Unfortunately he caused us a lot of damages.
 11 But this is the reality.

[PROTECTED]

24 Q. How did Mr Cilins get hold of that written statement?

25 A. I have no idea. Don't ask me questions that I have no

12:21 1 idea and I have no connection to.

[PROTECTED]

- 21 Q. Do you mean that Mr Cilins stole that draft statement?
- 22 A. No, I didn't say that he stole it. I have no idea.
- 23 I have no idea of the process there. I was not involved
- 24 in the process, how, or whatever it is. Why should
- 25 I say that he stole?

12:22

1 I just think that Mr -- I believe strongly that
2 Mr Cilins have good intention, positive intention to
3 make money for himself, and he didn't understand the
4 consequence of what he is doing. He is a naive guy.
5 I was told that in this recording, he is -- she is --
6 Mamadie Touré, she is telling him that there is
7 a subpoena. And he answered, "What is subpoena? Forget
8 subpoena. I want to help you. I want to help you.
9 Don't go -- don't go in lies, whatever it is". That's
10 what he is telling her. That's what I was told.

11 I haven't written that. I haven't written, so
12 I must admit that I don't know exactly. But he's just
13 a naive -- it's stupidity, that's the way I look at it.
14 But he was motivated by making money, and making
15 a commission or a transaction fee, together with
16 Mr de Combret, for himself, in order to solve a problem
17 that Alpha Condé have created for us, and took the help
18 of Soros and all the work of Soros in order to make
19 a corrupt process to take away the asset from us. He
20 didn't understand it's too late.

21 Madame Touré received money. She got money for her
22 attestation, for her declaration; it is clear. You try
23 to justify that this is money for lawyers and stuff like
24 this. You know that it is all -- sorry for the word,
25 I mean, I shouldn't use the word, but this is all

12:24 1 rubbish. She got \$50,000 from Mr Kouyaté, who is the
 2 go-between between Mr Soros and Alpha Condé. He is the
 3 agent. He give the \$50,000, in \$10,000, \$5,000, \$10,000
 4 or \$20,000, in order to give a false declaration. This
 5 is clear. And it was not paid by the Government of
 6 Guinea. As far as our information is saying, it was
 7 paid by Soros.

 8 And more than that, Madame Touré received additional
 9 money from George Soros -- are you aware about it? -- in
 10 2015. If you read the claim that we have put against
 11 George Soros, you will see that there is 80 -- to be
 12 very precise, \$78,250 she get in 2015 from George Soros,
 13 in a way that he tries to hide the money that is given.

 14 She is an agent for Soros and for Alpha Condé, who
 15 have lied all along in order to put BSGR in big trouble.
 16 That's the bottom line of it, and this is the real
 17 truth, and it's coming out.

 18 Q. Coming back to this issue of how the document got there,
 19 was there anything wrong with Mr Cilins trying to
 20 convince Mrs Touré on your behalf to sign this document?

 21 I mean, would you have --

 22 A. It was not --

 23 Q. Let me rephrase that.

 24 A. I'm sorry, it's not on our behalf.

 25 Q. Yes, okay.

12:25

1 A. I'm sorry, I'm sorry, I reject the question.

2 Q. Okay.

3 A. He was trying to convince her, that's all. It's nothing
4 to do with us, not on our behalf. If it's wrong or not,
5 I'm not the judge. I don't know. I don't know. If she
6 lies -- or if he believed that she lies, then I don't
7 think there's anything wrong. If she was saying the
8 truth -- which is not the case -- it is wrong. But if
9 she was lying, and getting money in order to lie, and he
10 is trying to prevent her from doing that, I don't think
11 that anything is wrong about it. But I'm not a judge,
12 I'm not a tribunal, and I'm not an expert on that. This
13 you should have expert, not me. But it was definitely
14 not on our behalf.

15 Q. If you had been told at the time that Mr Cilins would
16 take the statement that your lawyer drafted to Ms Touré
17 and ask her to sign it, would you have found any
18 objection to that?

19 A. I don't know, if she is ready to sign with a free will.
20 I don't think -- she signed before this similar
21 attestation, similar declaration, almost the same but in
22 different order. I don't see a problem. What I see
23 a problem: why did he offer money for her? This I don't
24 know. Why he offered to cancel or to destroy such
25 documents which are meaningless documents, I don't know,

12:26

1 I have no idea. Probably because he thought that this
2 is damaging for Comité Technique, this blackmail
3 attempt, deep blackmail attempt.

4 But again, I have no idea. I cannot enter into the
5 mind or the thinking of Fred Cilins. I have no capacity
6 of doing that. You should ask him. One thing is for
7 sure --

8 Q. Mr Cilins would have been sent to get this written
9 statement signed, and then would have sort of
10 overstepped his mission by offering money to Mrs Touré;
11 is that your ...

12 A. I don't know. There was no mission. It is his
13 initiative, he is doing what he wants, and that's his
14 problem, not BSGR problem. Pentler and BSGR have
15 nothing to do to each other. It was proven, it is
16 clear. We have huge fight. In 2008/2009 we had fights
17 from here till tomorrow; not only fights between us in
18 Hebrew or in English, but fights with lawyers. He
19 was -- Pentler at the time was -- had the will to go and
20 make -- to destroy BSGR because we didn't pay the money,
21 because the money what BSGR didn't pay was delayed.
22 They was threatening -- I'm sorry, I forgot the word:
23 they was threatening to put BSGR in default. This is
24 all on paper. We have tremendous fight. The trying --
25 or this trying to say that BSGR and Pentler is the same,

12:27 1 or Pentler is behind -- BSGR is behind Pentler is even
 2 ridiculous.

3 MR JAEGER: I want to thank you, Mr Steinmetz, for answering
 4 my questions. I have no further questions.

5 MR STEINMETZ: Thank you. Thank you.

6 THE PRESIDENT: Thank you.

7 Do I turn to you, Mr Wolfson, for re-direct
 8 questions?

9 MR WOLFSON: We have no need to ask any further questions,
10 in light of those answers.

11 THE PRESIDENT: You have no further questions.

12 Then the Tribunal may have some questions for you,
13 Mr Steinmetz.

14 MR STEINMETZ: Sure.

15 THE PRESIDENT: Do my colleagues have questions? No
16 question on Professor Mayer's part. Do you have
17 questions?

18 (12.28 pm)

19 Questions from THE TRIBUNAL

20 PROFESSOR VAN DEN BERG: Good afternoon, Mr Steinmetz.

21 Would you please go to your first witness statement,
22 paragraph 15.

23 A. Yes.

24 PROFESSOR VAN DEN BERG: There you describe your position in
25 the BSG group.

12:29

1 A. Yes.

2 PROFESSOR VAN DEN BERG: And you are stating that you are
3 an advisor of the Balda Foundation.

4 A. Yes.

5 PROFESSOR VAN DEN BERG: When you refer to "the board", and
6 you give a recommendation, to which of the entities are
7 you referring?

8 A. Normally to the company boards. Very seldom to the
9 foundation trustee, very seldom, something very major,
10 once every year or every few years or whatever it is.
11 To the company, each company have boards, and then I'm
12 being requested by the management, maybe by
13 Mr Dag Cramer, maybe to come, from time to time to make
14 a presentation or to discuss directly with the board
15 member, or sometimes even with management, et cetera.

16 PROFESSOR VAN DEN BERG: When you referred earlier in your
17 testimony to the discussion at the board for the buyout
18 of the Pentler shareholders --

19 A. Yes.

20 PROFESSOR VAN DEN BERG: -- the board of which company was
21 it?

22 A. BSGR.

23 PROFESSOR VAN DEN BERG: Which BSGR? Maybe we can be shown
24 the structure chart.

25 A. BSGR is the company who hold the Guinea, et cetera.

12:30 1 It's what they call -- BSGR is Beny Steinmetz Resource,
 2 you know.

3 PROFESSOR VAN DEN BERG: Can you help me in that respect?

4 A. Sure.

5 PROFESSOR VAN DEN BERG: This matter of buying the shares,
6 that was tabled for a board meeting. Do you recall when
7 that board meeting was?

8 A. I don't recall the date, but it's fully documented. It
9 was a board meeting, a big board meeting -- not a small
10 one, a big one -- because this was a substantial amount
11 of money, this was taking commitment, et cetera,
12 et cetera. There is all documentation, and it can be
13 given to you, and maybe even it is in these files here.

14 PROFESSOR VAN DEN BERG: Was that the first time that you
15 heard about Pentler?

16 A. No, I heard about them in the end of 2009, when I start
17 to get interested in Guinea. Before that, I never heard
18 about him. And I never heard, not about the
19 shareholding, not about the shareholder, not about the
20 company. I'm not involved in the companies level or
21 whatever it is on the administrative side.

22 PROFESSOR VAN DEN BERG: Bear with me one second, please.
23 The SPA, or the share purchase agreement, I think it
24 should be in your hearing bundle at R-219. (Pause)

25 THE PRESIDENT: It is tab 40.

12:32 1 MR OSTROVE: It is also C-84, which is not a protected
2 document.
3 PROFESSOR VAN DEN BERG: You have been asked questions about
4 that at 10.51 or 10.52 this morning, at least our local
5 time; so 11.51 or 11.52 your time (page 37, line 9
6 onwards).
7 That document is dated 29th July 2009; correct?
8 A. I don't see a date here unfortunately.
9 PROFESSOR VAN DEN BERG: Sorry, I stand corrected. If you
10 go to the date of signature, it is 28th March 2008. Do
11 you see that? The next page.
12 A. You are talking now about the agreement or you're
13 talking about the board?
14 PROFESSOR VAN DEN BERG: No, I'm talking about the document,
15 the share purchase agreement, and that is dated
16 28th March 2008.
17 A. Yes.
18 PROFESSOR VAN DEN BERG: Do you see that?
19 A. Yes.
20 PROFESSOR VAN DEN BERG: The other date I am referring to
21 was the settlement agreement. I apologise, I'm a little
22 bit ahead of myself.
23 A. Yes.
24 PROFESSOR VAN DEN BERG: So you were aware of this SPA?
25 A. Yes, I was the one who was negotiating this SPA.

12:33 1 PROFESSOR VAN DEN BERG: So that is in the beginning of
 2 2008, isn't it, and not 2009, as you just said?
 3 A. No, no, I say 2008 all the time. I'm sorry --
 4 PROFESSOR VAN DEN BERG: Sorry, then I misunderstood you.
 5 A. I always say 2008. Maybe -- did I ...
 6 THE PRESIDENT: Just before -- and sorry for interrupting,
 7 Mr Steinmetz -- you said you heard about Pentler at the
 8 end of 2009, and that struck me as somewhat
 9 inconsistent.
 10 A. No, 2007, I'm sorry. Before that -- a few times before
 11 that in today's session I already mentioned the end of
 12 2007. So this is just a mistake.
 13 THE PRESIDENT: That is what I had noted before. Yes,
 14 absolutely.
 15 A. Okay. I'm sorry for that.
 16 PROFESSOR VAN DEN BERG: No problem. So it was the end of
 17 2007 that you became aware of the existence of Pentler;
 18 that's what your testimony is?
 19 A. Yes, when I got involved in the Guinea story.
 20 PROFESSOR VAN DEN BERG: And that was also the first time
 21 you got involved in the Guinea story?
 22 A. Yes, end of 2007.
 23 PROFESSOR VAN DEN BERG: I digress a little bit. As
 24 an advisor of the Balda Foundation, how were you
 25 informed of the various projects in your group?

12:34 1 A. I am informed -- look, the board doesn't inform me of
 2 everything they do. And I am advising not only the
 3 board; I'm mainly advising the companies below. And
 4 there are certain projects -- I am being asked to advise
 5 certain projects they just tell me about. And certain
 6 projects they do, and I have no connection, no
 7 communication whatsoever, and no relationship to it.
 8 And that's the way it works. So it's not a specific.
 9 I'm not a flat advisor for all activity and aware of
 10 everything; no, the opposite.

 11 PROFESSOR VAN DEN BERG: They only come to you when --

 12 A. (Inaudible).

 13 PROFESSOR VAN DEN BERG: Is it fair to assume that they only
 14 come to you when you have important projects --

 15 A. Yes.

 16 PROFESSOR VAN DEN BERG: -- or where there is a problem?

 17 A. When they think -- no, not only when a problem. I hope
 18 not, because I am not a problem solver, and I don't want
 19 to be a problem solver.

 20 They come to me -- my role is, I think I mentioned
 21 in my statement, I'm more of an ambassador. I bring
 22 many times deals, new deals. I speak to head of state,
 23 I speak to important businesspeople, I go to conference,
 24 to exhibition. So I spend my time in a lot of this
 25 advisory role.

12:35 1 So I know I have -- I don't know, maybe this is my
2 opinion, it depends what other people think -- but
3 I believe that I have a good reasonable feeling what's
4 happening on the macro level in the world, in the
5 economic world. I try to follow it very closely, I read
6 a lot, I speak to a lot of people who have a certain
7 position, and we try to identify certain -- also,
8 I would say, trends in the market.

9 And this is very, very important. For example,
10 I was one -- I was in that time before -- about ten
11 years before that, I was one of the first early
12 investors in Russia. I started a company called
13 Hermitage Capital, which afterwards we sold out. This
14 came into the frame, I started it, together with
15 Edmond Safra, who is a partner for Republic National
16 Bank, [which] afterwards became HSBC.

17 So this is my role; sometimes very successful,
18 sometimes less successful. So I'm not involved in any
19 project of what is below the Balda Foundation, for sure.

20 I'll just give you a good example. There is
21 a diamond project, diamond mine in Sierra Leone, which
22 is next door, which is doing very well. It's the only
23 diamond mine working in Sierra Leone and the only mining
24 operation working in Sierra Leone, under very difficult
25 conditions. And I was not consulted and I'm not

12:36 1 involved with that. I went there twice; I met the
2 President. But beyond that, they didn't need my -- and
3 I don't have expertise that I can volunteer into this
4 project.

5 So that's the kind of situation. But we are not
6 a stiff organisation that, you know -- that -- I mean,
7 if I ask something, they will answer me. But I mean,
8 that is not exact definition of role of situation. It's
9 more flow.

10 PROFESSOR VAN DEN BERG: I understand. But do you get
11 management reports on a regular basis?

12 A. Some -- only on the projects in which I'm involved in.
13 In the projects I am not involved, for example the
14 Sierra Leone project, I don't get. If it's not in my
15 business, and not my expertise, I don't help them. If
16 they have an issue, they'll ask me. But I don't have it
17 on a regular basis, no.

18 By the way, this is just an example. We have it in
19 real estate, we have it in capital. We have, for
20 example, capital market -- BSG, the group, Balda had --
21 or the other foundation had -- used to have -- a large,
22 let's say, capital market activity, which was run
23 personally by Dag Cramer, who you met yesterday,
24 I believe. And I have no involvement whatsoever and
25 I don't get any reports. So it's all independently

12:37

1 done.

2 PROFESSOR VAN DEN BERG: Right. When was the first time
3 that you heard about this project in Guinea?

4 A. I mentioned before, I think towards the end, whether
5 it's October or November or December in 2007. There is
6 a special reason for that, and the reason is that the
7 CEO at the time of BSGR had left in the middle of 2007,
8 so the project stayed a bit in the limbo who will follow
9 that. So the BSGR new CEO, Marc Struik, took over, and
10 they wanted also my advice. And we thought also there
11 is a good potential in this iron ore, whether BSGR
12 should go into iron ore, whether it's going to be a big
13 investment, small investment, whatever it is. That
14 was -- I think that was thinking and they were asking.
15 Also, yes, that was the idea behind, I guess, for them
16 asking me to intervene.

17 PROFESSOR VAN DEN BERG: Okay.

18 A. Or to settle.

19 PROFESSOR VAN DEN BERG: When was the first time that you
20 became aware that Pentler had 17.65% in shares?

21 A. This is the end of -- this is the same timing, all the
22 same timing. I knew that there is activity in Guinea,
23 but I didn't know anything. But Pentler -- the same
24 time I learn about Pentler, the same time I learn about
25 the shareholding, and it's all the end of 2007, leading

12:39

1 to the purchase in March 2008.

2 PROFESSOR VAN DEN BERG: Who informed you about this?

3 A. I don't remember. I think that the board started the
4 discussion with me, and then afterwards I spoke to a few
5 people, whatever it is. I learn to meet Asher Avidan,
6 who was the president of the Guinea operation at the
7 time. Till that time, I never met him. That was the
8 first time I met him. He was there from the middle of
9 2006. And so I learn to meet other people, and the
10 discussion started about this project.

11 PROFESSOR VAN DEN BERG: Alright. When you then saw that
12 they had 17.65%, did that raise questions with you: "How
13 on earth did they get 17.65% in this project"?

14 A. Yes, I asked the question, because I answered before to
15 DLA -- I mean, I answer to Orrick, I mean, to the
16 esteemed lawyer -- that it didn't raise question to me.
17 I asked the question, "Fine, you have a partner: will he
18 pay money/will not pay money?" That was the only simple
19 thing.

20 The people -- they say -- the reference was: good,
21 normal people, no issues, no problem, no Africa -- they
22 had been working all over Africa in different sectors.
23 They brought us, in the same time and afterwards, many
24 other projects in different parts of Africa. Some of
25 them we tried to do; most of them we did, or I failed,

12:40 1 or didn't fail, whatever it is. I mentioned before, the
 2 ratio of success in this business, in the mining
 3 business, is very small.

 4 But when I learn to know that they have only free
 5 carry and not paying, and the project will be
 6 substantial, I recommend my opinion to the board, I say,
 7 "We should not stay with them because if they don't put
 8 money, it's not" -- that's what I told them by doing,
 9 and I got authorised from the board. "Pay your 17.5%
 10 portion, pari passu, and you stay in the project; not
 11 an issue". And they didn't want it.

 12 PROFESSOR VAN DEN BERG: Okay, right.

 13 A. Probably they thought that -- probably they thought
 14 that -- they brought us into the country, but probably
 15 they thought that, "You are crazy to invest so much
 16 money in a country like Guinea, on a far-fetched project
 17 which is basically so high-risk and so volatile".

 18 PROFESSOR VAN DEN BERG: Right. And then in 2008, if
 19 I understand correctly in the file, you went to Guinea.
 20 Is that correct?

 21 A. 2008, the first time ever I went to Guinea, yes.

 22 PROFESSOR VAN DEN BERG: Yes. When was it approximately?

 23 A. I don't remember exactly. I don't -- I mean,
 24 something -- I mean, maybe the end days of 2007, maybe
 25 January/February. I don't remember.

12:41 1 PROFESSOR VAN DEN BERG: Mr Steinmetz, don't speculate. If
 2 you know, then you know. If you don't know, tell us you
 3 don't know.

 4 A. I don't know. The exact date, I don't know. But it
 5 must be anything between December and February or
 6 March -- February.

 7 PROFESSOR VAN DEN BERG: And there you met the President; is
 8 that correct?

 9 A. I think that I met him on the first or the second
 10 meeting, yes.

 11 PROFESSOR VAN DEN BERG: Yes. And that was President Conté?

 12 A. I'm sorry, first -- I'm sorry, first or second trip,
 13 yes. I apologise. I'm sorry for the question.

 14 PROFESSOR VAN DEN BERG: Sorry, again: you met then the
 15 President at your first visit?

 16 A. I don't know, either the first or the second. I can't
 17 remember now. It's too long, it's ten years ago.

 18 PROFESSOR VAN DEN BERG: It is said in this case that during
 19 a reception with President Conté, that also Ms Touré --
 20 I say "Ms" Touré because I stand corrected by counsel to
 21 the Claimants -- was there present as well?

 22 A. I was told this afterwards, that there was some woman of
 23 the President. I didn't know her, I didn't know her
 24 name. The name wasn't even mentioned, whatever it is.
 25 But she -- there was many people. It was a funny

12:42

1 meeting, I never had it in my life, and I have quite
2 experience of these things.

3 The President, who was very sick, was sitting with
4 swollen legs under a big tree, next to a palace which
5 was bombed. He was smoking, chain-smoking. There was
6 about 10/15 people around him, sitting on the floor,
7 sitting on these -- it was a hilarious picture. And
8 I was told afterwards that there was one or two -- there
9 was two ladies, or a few ladies, and they said they were
10 a few wives of him. Nothing more than that. Never
11 exchanged a word with them, or with any other -- I spoke
12 only with the President, who spoke very little, and --
13 but was very, I would say, hospitalised. We spent,
14 I don't know half an hour, 20 minutes or whatever it is;
15 not a long meeting.

16 PROFESSOR VAN DEN BERG: Let's now switch subject matters.

17 One subject matter about which you also testified, and
18 Mr Cramer yesterday testified, is about your
19 relationship with Mr Soros.

20 When was the first time that you actually came into
21 contact with Mr Soros?

22 A. The physical contact, only once.

23 PROFESSOR VAN DEN BERG: No, sorry, maybe not physical; by
24 correspondence or otherwise.

25 A. I never had any correspondence with him. The only thing

12:43 1 is that I met him. I mean, Mr Soros is quite a famous
2 person. In the time he was a leading hedge fund
3 manager. I mean, the group had a big investment in many
4 hedge funds, but not with George Soros.

5 And there was a -- because I have been active in
6 Russia in the time, very active, and we have Hermitage
7 and I had other investments in that capacity at the
8 time. And there was a big deal, an auction, the
9 Russian -- and this was the high, high time of Russia,
10 I'm talking the beginning of '98, so it's 19 years ago.
11 And at that time there was a big hype on Russia and the
12 government was selling, auctioning 25.1% of Svyazinvest,
13 which is the telecom company all over Russia.

14 And we have -- I have put together a group, the
15 leader was Telefónica, and we are sitting 50/50 with
16 Telefónica of Spain -- you had to have a telephone
17 company -- and a few other investors, but we have been
18 the majority. And there was a group that Soros
19 participated, he was the majority, and I think Morgan
20 Stanley was there, and a local -- Potanin, a local
21 oligarch, was leading that.

22 And there was -- it was a big deal, attract a lot of
23 noise and publicity, et cetera, and we lost. The other
24 group won, Soros group won. They paid 1.8, \$200 million
25 more than the group that we participate in. And I was

12:45

1 very upset for two/three months. I say -- I thought
2 that we lost the opportunity of life. But life is
3 always very bizarre and changing, and in 2008 in July
4 came the crash in Russia, in August, and this investment
5 went to zero. So big luck for us for losing. So you
6 see it is not in -- I mean, luck, not intelligence.

7 And afterwards, after he declared that he lost
8 a billion dollars on this transaction, he -- I heard
9 from few different sources, five different sources, that
10 he was very upset with me personally. He said that
11 I bragged in the Israeli newspaper that I outwon him,
12 that I made laugh on him; which is, by the way, not
13 true. And this is the only interaction on business.

14 And then in 2005 in January I was -- I made a dinner
15 for the owner of -- then President of Ukraine, who just
16 won the election, the Orange Revolution, there was
17 100 people invited, and he was invited from the form.
18 I invited maybe 20 for my guests, and he was invited
19 with the form; I didn't invite him. And he was very
20 cross because he was sitting in the number two table,
21 not with me and the President of Ukraine and the
22 (indistinct) of Davos, and he made the story about it.
23 In the middle of the dinner he would change, then they
24 put next to me. But he was put next to me, he shook my
25 hand, then we didn't -- he didn't speak to me. I found

12:46

1 it very bizarre.

2 So that is the only interaction personally that
3 I had with him. But I heard many, many stories about
4 him and about me, and about his relation towards Israel,
5 Jews, successful, et cetera. Soros -- there is many,
6 many books, and many, many -- I mean, many -- a lot of
7 literature, videos, whatever it is, that you can
8 entertain yourself with, but I am not an expert. And
9 I think the claim that we have put in New York will help
10 you a lot to understand the background of that.

11 PROFESSOR VAN DEN BERG: Thank you.

12 Thank you, Mr Steinmetz, I have nothing further.

13 MR STEINMETZ: Thank you. I'm sorry for the lengthy
14 answers.

15 THE PRESIDENT: Mr Steinmetz, just following up on this
16 question with respect to George Soros. Let me get
17 organised here.

18 BSGR's counsel in opening said to us two days ago
19 that George Soros was driven by obsessive hatred of
20 Israelis and of yourself, and -- these are my notes, and
21 I think that is about the words that were used; I'm not
22 inventing them -- he would do anything to harm you.
23 Mr Cramer yesterday also spoke of a personal obsession
24 of George Soros vis-à-vis BSGR, and Mr Cramer is here
25 and I see him nodding, so I'm not distorting what he

12:48

1 said.

2 I would like to hear this from you. Before you have
3 just explained the interaction at the dinner and the
4 auction in telecommunications in Russia in 1998. But
5 more generally, what are your views on these matters?

6 A. Look, I just apologised for my long answers. It's not
7 a short answer, so I'm going to apologise in advance
8 now.

9 THE PRESIDENT: No, I know this. But I would appreciate
10 your just telling us how you see it. We will of course
11 assess that. But it is helpful.

12 A. Look, there is no doubt -- first of all, if you put it
13 in order what is happening here, and then I come to the
14 obsession of George Soros.

15 By the way, five different people, even one of them
16 a very famous personality that we all know the names,
17 and it's a French guy, told me about a month ago/two
18 months ago -- and he knows very well George Soros, and
19 even George Soros contributes money from some of his
20 foundations to the activity of this personality -- and
21 he told me, "I can talk [about] anything with
22 George Soros, but if I mention your name, he get crazy".
23 He has an obsession with me. I mean, the guy is nuts.
24 I'm sorry to say this. I know he is 86 or whatever it
25 is. The guy has an obsession with me. I mean, what can

12:49 1 I do? I haven't done -- I don't know. I earned it for
 2 free, not for merits. That's the way I feel. I have
 3 nothing with him, by the way.

 4 But he caused me a lot of harm, because he was the
 5 one -- he came, he met President Alpha Condé and he has
 6 corrupted the whole process. He financed everything.
 7 The guy, this guy Soros, was probably -- I will
 8 estimate -- with this nice occasion of this process of
 9 ICSID, probably he is there with \$40-50 million out of
 10 his pocket in order to destroy me; maybe more.

 11 The guy I think -- but you know, in the beginning
 12 I was thinking also that maybe he is just -- I know he
 13 has made a lot of money, but I think he wants to control
 14 the world and he decides what is white and black and
 15 what is good and bad, and this utopia situation. But in
 16 the end he is not -- I think he's a criminal. And I'm
 17 sorry to say this, but it's on the record, and I think
 18 it will be proven very shortly also that. And if you
 19 want, I am inviting him to call me for defamation.

 20 The guy has done terrible things. The whole -- he
 21 has corrupted the process in Guinea. He used the
 22 lawyers; he is using Mr Scott Horton, who is sitting
 23 next to you, who was involved on everything --
 24 everything against us, from talking to the journalists
 25 to making a rogatory letter, to representing DLA, to

12:50 1 represent of the Government of Guinea, to do everything;
2 to go to the journalists in New York in order to put
3 defamation article against me, did his all work, and
4 using a huge network, powerful network that you cannot
5 imagine.

6 The last episode -- that's why I'm not in Paris and
7 I'm here -- Soros has used his contacts through the
8 OECD. You know that there is nine people out -- what
9 they call high-level anti-corruption committee in the
10 OECD, out of nine people there who preside in this nine
11 committee, which I'm sure is a serious committee, six
12 are people of George Soros.

13 Because George Soros has this Open Society, who give
14 orders maybe of 10 or 20 -- and we can send you
15 materials about it. I don't know how many so-called
16 "funds" that he contributes to them. And he claims he
17 doesn't control them, but of course he controls, because
18 if you give 90% or 60% of the budget of some of those
19 funds -- and some of those funds have maybe good causes,
20 probably -- I don't know, I didn't check -- or they
21 claim to be. But he buys power, and this power allows
22 him to do what he wants.

23 And he put all his power, all his forces against me,
24 against Beny Steinmetz, and against BSGR, which is
25 a terrible thing to do. But we are fighting back. We

12:51 1 are Israelis and we know how to fight. We are not going
2 2 to let it go. We are going to fight till the end.

3 3 But what he has done here, you know how corrupt is
4 4 the process. On this, six people -- part of the six
5 5 people who sit on this committee of -- high-level
6 6 committee, anti-corruption, sitting a person who is on
7 7 the board or below, just below an executive committee of
8 8 Rio Tinto, who was reporting to (indistinct) Valentine,
9 9 who was now dismissed because of the story of corruption
10 10 of Rio Tinto in Guinea. And he is sitting on the EITI,
11 11 the so-called Soros initiative for extracting --
12 12 mining -- cleaning the mining industry.

13 13 Soros has cleaned the mining industry in Guinea,
14 14 yes, he has cleaned. There is no mining industry in
15 15 Guinea. That's what he has done. When he came, there
16 16 was a mining industry; now there is none. It is shut up
17 17 totally.

18 18 He has, together with other people -- I must say not
19 19 alone -- but he has corrupted the process. Alpha Condé
20 20 is a corrupt President, the system is very corrupt.
21 21 Och-Ziff have bought President Alpha Condé the
22 22 election -- yes, we all know it; it is proven by the
23 23 DOJ, not by saying of Beny Steinmetz -- and Palladino
24 24 and the whole story. But he gave them the legitimacy.
25 25 He take Alpha Condé to Davos and he represent him like

12:52 1 a democratically elected president. This is the
2 opposite, while he was not elected, because he stole the
3 election.

4 Second of all, he give them legitimacy. And this
5 all come to one, this all -- this is corruption system
6 and corruption process in order to punish
7 Beny Steinmetz. And I say this on the record, without
8 shame. Why? I cannot -- I'm not a psychologist,
9 I cannot know what's driving him, I cannot go into his
10 head. But this is the reality, and we have full proof.
11 Please, Madam President of the committee, please read
12 our claim in New York. And this is just the beginning,
13 because there is much more to come.

14 THE PRESIDENT: Fine. I note this answer; we'll assess it.
15 Thank you. Now a few other points that arise from what
16 you have said today and what you had written.

17 In your written witness statements, maybe
18 I misunderstood you, but I understood you to say -- and
19 there I don't think I misunderstand you -- that you were
20 first involved in the Guinean project at the end of 2007
21 or early 2008. At the same time, I think I heard you
22 say -- and that can be checked, of course -- that you
23 looked at the bauxite investments or exploration
24 projects in Guinea, and some others, and advised against
25 it, and in my knowledge this was in the spring of 2006.

12:54

1 So did you --

2 A. No, no, no. No, no. It was in the -- it was in the
3 autumn of 2007. Because they have done the bauxite
4 investment or took the licences; nothing, they didn't
5 ask me.

6 In 2007 they asked me: what do I think about it?
7 I told them, "I think it's a big mistake". I don't like
8 bauxite, personally. I don't think -- I don't like
9 bauxite as a commodity, and I can explain a bit why.
10 It's my opinion. And I told them, "I think it's
11 a mistake. Unfortunately I was proven right. They
12 continued against my advice, they invested, I don't
13 know, maybe \$10 million or \$8 million in the bauxite,
14 and at the end of the day it came zero.

15 THE PRESIDENT: So --

16 A. And that is my involvement. But they didn't speak to
17 me, they just sent me an email, "What do you think about
18 bauxite? What is your feeling?" And I was extremely
19 negative, and I would be extremely negative today or
20 anywhere else, unless it's near the coast in a normal
21 country. Otherwise bauxite is out of touch for me, for
22 us. My opinion, that's what I want to say.

23 THE PRESIDENT: Yes, it would be interesting to go into
24 bauxite, but that's not my purpose here.

25 A. Okay.

12:55 1 THE PRESIDENT: So that was after the bauxite permits had
 2 been granted and the project had already started?
 3 A. Yes, yes, long after.
 4 THE PRESIDENT: Yes, good.
 5 A. Yes, yes, long after.
 6 THE PRESIDENT: That clarifies, thank you.
 7 A. You're welcome.
 8 THE PRESIDENT: There's like a -- well, you can call it
 9 a "black hole" in your account of facts, and that is the
 10 time before you got involved, and obviously
 11 understandable, and that is about Mr Oron's activities.
 12 I understand he was someone who Mr Cramer said
 13 yesterday he was a hands-on manager. You said today
 14 that he was running the show. And somehow Mr Cramer
 15 explained us that when he left, there was some kind of
 16 a void. You don't really know what occurred during his
 17 time. I understand you've explained in your witness
 18 statement that you had tried to contact him and he was
 19 not very enthusiastic, to say the least, about assisting
 20 you.
 21 What do we make about this time period? We can ask
 22 Mr Avidan, who was there earlier, that's right; that we
 23 will certainly do. But from your point of view is there
 24 anything you can help us with that?
 25 A. No, I cannot help on anything, you know, because I was

12:57 1 not involved at the time. But I'm sure and certain that
2 everything is 100% that was done, because this was the
3 instruction of the board to everybody in BSGR.
4 And I want to repeat: BSGR, or the whole group, and
5 my name, we had the best possible name in the industry
6 everywhere. Our name was tarnished only when this
7 scheme, conspiracy, started against us in Guinea. So
8 there was never -- never BSGR would get involved in
9 anything which is wishy-washy or problematic. And this
10 was the experience we had in Africa.
11 THE PRESIDENT: I understand you to make quite categorical
12 statements.
13 A. Okay.
14 THE PRESIDENT: But we all know that boards can give
15 instructions, and usually boards do give instructions,
16 then it is another matter having these instructions
17 implemented and monitored at the levels below in
18 a company. So that is the difficulty I have here with
19 this time period, which of course is relevant for our
20 purposes.
21 A. I think this is -- I think you will have some of the
22 other people who come after me to witness, like
23 Marc Struik and Asher Avidan, who will have better
24 knowledge and information about this time period.
25 Because whatever I will tell you is not from knowledge,

12:58 1 it's more from assumption, so probably you're maybe not
 2 interested.

 3 THE PRESIDENT: No.

 4 A. But again -- correct? I'm right? Or you would like
 5 to hear my opinion?

 6 THE PRESIDENT: I don't want assumptions, no, because you
 7 are giving evidence.

 8 A. Because I was not there. But I can tell you what you
 9 said about the board giving instruction and somewhere
 10 else happening, it is not the case, because it is
 11 reasonably -- it can be a big company in certain eyes,
 12 but it's not a very large company that there is such
 13 a distance. And there is -- nobody has anything to gain
 14 by going against the board. It's just personal risk.
 15 I mean, that's very clear. That's what I said. There
 16 is no way that Mr Avidan has signed those forgeries,
 17 there's no way that Marc -- anybody, because you cannot
 18 do that, you cannot hide it. It's not a big enough
 19 company that it can be hidden somewhere in a remote
 20 place or a remote location, or whatever it is.

 21 So this is my assumption, this is my understanding,
 22 and I think because the experience of BSGR and the
 23 successful track record of BSGR working in many places
 24 and never had any issues. You know, if somebody deals
 25 the way -- deals like this, it is not only in one place;

12:59 1 he does it in many places. Our reputation, the
 2 reputation that I -- I love to say "ours", even though
 3 it's not mine, it's BSGR, but also my personal
 4 reputation is involved -- is having impact perfect in
 5 every place.

 6 On the contrary, where there were places that we
 7 felt that there is risk, like we felt there is a risk in
 8 the DRC, we left the country, BSGR left the country.
 9 Although there is many things to be done more, we left
 10 the countries. We say, "It's not for us. It's too
 11 politically motivated, too politically influenced. We
 12 don't want to be there".

 13 And this is the track record of BSGR. It was trying
 14 to be tainted by many, many people. I'm not going to
 15 repeat by whom and whatever it is; you know that all.

 16 THE PRESIDENT: Yes, thank you.

 17 When you make the statements that necessarily
 18 everything was clean before you looked at the Guinea
 19 project, did you investigate this? Did you do
 20 an internal audit? How did you go about making sure
 21 that this is correct?

 22 A. No, when I entered in 2008, I haven't done internal
 23 audit because there was not much internal audit to be
 24 done. It was exploration little company. There was --

 25 THE PRESIDENT: Did you do it later?

13:00 1 A. We did it, internal audit, in 2011 or whatever it is, or
 2 2010 or 2011 or 2012, when the issues start to come up,
 3 and we said, "Okay, let's check everything". And the
 4 internal audit came totally clean and whatever it is.

[PROTECTED]

13:02

[PROTECTED]

7 THE PRESIDENT: As we went along in your examination, we
8 looked at the protocol of February 28th 2008 between
9 Matinda, which is Mamadie Touré's company, and BSGR,
10 that was allegedly signed by Mr Avidan, and you said
11 this is a forgery, and you said, "This is not only my
12 opinion, it's the opinion of all the experts whom we
13 have asked".

14 Can you expand on which experts these were?

15 A. Well, I don't know exactly. But, I mean, these --

[PROTECTED]

[PROTECTED]

[PROTECTED]

23 A. No, but (inaudible) beyond that.

24 THE PRESIDENT: -- authenticity expertise over the
25 signatures?

13:03 1 A. I don't think that BSGR or its lawyer had the original
 2 signature in their hand. I don't think so. I don't
 3 know. But on the forgery -- I mean, the copies of the
 4 forgery, yes, and it came out that these are probably
 5 forgeries, forgeries. But this as far as I know.

[PROTECTED]

17 THE PRESIDENT: Thank you. I'm sorry if I mischaracterised
18 the exercise, yes.
19 Let me see whether there are other questions I had
20 that were not addressed so far. (Pause) We have covered
21 all the questions about Mamadie Touré, we have covered
22 the questions about Pentler, and that is all I had.
23 Are there any follow-up questions from counsel?
24 MR WOLFSON: No, Madam President.
25 THE PRESIDENT: Not on the Claimants' side, not on the

13:05 1 Respondent's side.

2 So that ends your examination, Mr Steinmetz. Thank

3 you very much for your explanations.

4 MR STEINMETZ: Thank you very much. Thank you, everybody.

5 Thank you for the time.

6 THE PRESIDENT: Thank you. So we can now take the lunch

7 break and resume -- when do you want to resume? At

8 2.15? 2 o'clock?

9 MR OSTROVE: 2.15 perhaps.

10 THE PRESIDENT: 2.15? Yes, we can say 2.15. Good. Have

11 a good lunch.

12 (1.06 pm)

13 (Adjourned until 2.15 pm)

14 (2.18 pm)

15 MR JOSEPH TCHELET (called)

16 THE PRESIDENT: Good afternoon, sir.

17 MR TCHELET: Good afternoon.

18 THE PRESIDENT: For the record, can you please confirm for

19 us that you are Joseph Tchelet? And I hope I pronounce

20 your name correctly.

21 MR TCHELET: Good afternoon, Madam President. Yes, my name

22 is Joseph Tchelet.

23 THE PRESIDENT: You hold the position currently of strategic

24 financial specialist at BSGR Limited?

25 A. Yes, this is a position that I held for a number of

14:19 1 years. Currently I am a strategic financial specialist
 2 to one subsidiary, being Octéa Limited.

 3 THE PRESIDENT: Fine, thank you. I hadn't noted this.

 4 You have provided us with two witness statements:
 5 one is dated 29th February 2016 and the other one is
 6 dated 10th January 2017. You have those statements in
 7 front of you?

 8 A. Yes, Madam President, I confirm I do.

 9 THE PRESIDENT: Fine.

 10 You have also given two statements in the LCIA
 11 arbitration that we have in the record here, and for the
 12 record I just state that they are Exhibits R-197 and
 13 C-284. Is that right, that you've given -- I'm not
 14 asking you to confirm the numbers -- but you have given
 15 two witness statements in the LCIA arbitration?

 16 A. Yes, I confirm I have.

 17 THE PRESIDENT: Thank you.

 18 You are heard as a witness, and as a witness you are
 19 under a duty to tell us the truth. Can you please
 20 confirm this by reading into the record the witness
 21 declaration.

 22 MR TCHELET: I solemnly declare upon my honour and
 23 conscience that I shall speak the truth, the whole
 24 truth, and nothing but the truth.

 25 THE PRESIDENT: Thank you.

14:20 1 So you will be first asked some questions in direct
 2 examination by Claimants' counsel and then we will turn
 3 to Respondent's counsel.

 4 MR WOLFSON: Madam President, thank you. We have no
 5 questions in direct.

 6 THE PRESIDENT: You have no questions? Fine. Then we can
 7 go right away to Respondent's counsel.

 8 To whom do I give the floor? To Mr Ostrove?

 9 MR OSTROVE: It will be Mr Naud who will be handling the
 10 cross-examination.

 11 THE PRESIDENT: Fine. Mr Naud, you have the floor.

 12 MR NAUD: Thank you, Madam President.

 13 (2.21 pm)

 14 Cross-examination by MR NAUD

 15 Q. Good afternoon, Mr Tchelet.

 16 A. Good afternoon, Mr Naud.

 17 Q. I'd like to start by understanding your relationship
 18 with BSGR. You are currently strategic financial
 19 specialist for BSGR; is that correct?

 20 A. I held that position from my independent company up
 21 until February of this year. Currently I provide
 22 similar services, but only to one subsidiary of the
 23 group, Octéa Limited.

 24 Q. So you are not an employee of BSGR?

 25 A. No, I've never been an employee of BSGR.

14:22 1 Q. And is your company Evergreen Valley Production Limited?

 2 A. Yes, correct.

 3 Q. Could you tell me where that company is incorporated?

 4 A. Yes: it's in the British Virgin Islands.

 5 Q. Thank you.

 6 Without being an employee of BSGR, you have been

 7 working for a number of years for the group; is that

 8 correct?

 9 A. Well, I have been an employee of Norinter, which was

 10 a South African entity owned by Mr Roy Oron, and -- up

 11 until August 2008, from which time I consulted through

 12 my own company, Evergreen, to various entities of the

 13 BSG group.

 14 Q. And it is my understanding that Mr Oron has left the

 15 BSG group.

 16 A. Correct. Mr Oron left in the first quarter of 2007.

 17 Q. Of ...?

 18 A. 2007.

 19 Q. Thank you. But when he left the group, you stayed on

 20 working for the BSG group?

 21 A. When he left, I remained working for what was his

 22 entity, it was his private company in South Africa,

 23 Norinter, for a further year and a half.

 24 Q. Have you stayed in contact with Mr Oron?

 25 A. No.

14:23 1 Q. You are a qualified chartered accountant; is that
 2 correct?

 3 A. Yes, that is correct.

 4 Q. In South Africa?

 5 A. Yes, in South Africa, and I'm also a member of the
 6 English and Wales Institute of Accountants.

 7 Q. And you agree that chartered accountants have
 8 an obligation to act with integrity and objectivity?

 9 A. Yes, I would agree.

 10 Q. And "integrity and objectivity" would mean without the
 11 undue influence of others?

 12 A. Yes, I would agree.

 13 Q. Would you also agree that in order to perform your
 14 obligations properly as a professional chartered
 15 accountant, you have to make sure that you have access
 16 to what would be complete and accurate information?

 17 A. Yes, in general that is the case.

 18 Q. You say in your first witness statement that:

 19 "[Your] initial responsibilities at ... BSGR
 20 involved setting up financial reporting structures and
 21 ensuring that BSGR's corporate governance requirements
 22 were adhered to."

 23 Is that correct?

 24 A. Yes. I'd like to, if I may, just explain a bit about my
 25 role, which is: beginning in the middle of 2003, I was

14:27

[PROTECTED]

- 21 Q. I understand that there would invariably be a contract
22 with a contractor on the basis of which payments would
23 be made; is that correct?
24 A. Correct.

[PROTECTED]

14:29

[PROTECTED]

3 A. Again, to explain my role, my role was to ensure that
4 Mr Oron's blueprint, which required ensuring that
5 payments, when they were instructed or approved, would
6 be executed in an efficient manner and subject to
7 Mr Oron's strict rules.

8 In that sense, it was not my place to approve the
9 payment in the sense of: is this a payment for the
10 project, to take the project forward in its investment?
11 My role was essentially to ensure that the person in
12 charge in a specific project -- in the case of Guinea,
13 that country manager, or many other projects that I was
14 involved with -- had valid explanations, documentation,
15 and to provide that for Mr Oron's comfort. He would
16 take the decision whether to approve the payment or not.

[PROTECTED]

23 Your role is to make sure that the payment is
24 legitimate; is that correct?
25 A. Correct. I mean, I think again to help you understand

14:30 1 the context, it's that specifically at that stage -- you
 2 are talking about an early stage in the project -- it
 3 was a project that was one of many. And during that
 4 time period, most of my time was taken up with IPOs and
 5 listings that were requiring an immense amount of time.
 6 This specific project therefore had at that stage very
 7 few transactions, and there was no office or team on the
 8 ground, which normally would have been the case once
 9 Mr Oron would have taken a decision to grow the
 10 investments in a project.

 11 Now, the information that was provided to me was
 12 essentially also part of an element of working together
 13 with the team. One of the aspects of Mr Oron is he was
 14 very respectable person, both whilst I was at the
 15 investment bank Investec in South Africa and afterwards,
 16 and the team and people that he hired, he would ensure
 17 that there was a high degree of trust and so on.

 18 Besides that, there was a lot of activity, and there
 19 was not always the time to investigate, as you say, or
 20 really perform a lot of, let's say, diligence on
 21 a payment. And therefore, on the basis of Mr Oron's
 22 framework and on the basis of trust and working together
 23 with the team, the information that was provided to me,
 24 if it met those criteria as far as possible, that is
 25 what one had essentially to review.

14:32 1 Q. Thank you. But it is precisely the criteria that it
 2 should meet which I'm trying to understand.
 3 A. I don't follow your question. What criteria are you
 4 referring to?
 5 Q. I'll try again.
 6 You describe a four-step payment process. The first
 7 step is: a request is sent to you. The second step is:
 8 you look into the payment, who it's to and what it is in
 9 relation to. So that means that you check whether or
 10 not the payment that you're asked to approve is
 11 legitimate. That's your role as chief financial
 12 officer; is that correct?
 13 A. Yes, that is correct. But in terms of legitimacy, you
 14 know, if at the end of the day the person in charge, the
 15 country manager or the project manager, be it in Guinea
 16 or any other country, deemed it to be required for the
 17 project and in keeping with the budget, then most of the
 18 time that is what you had to work with. And therefore
 19 there were questions, there were discussions, and
 20 a decision had to be taken quite soon whether or not to
 21 pay the required invoice.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

14:34 1 You do have a verification process you make; that's
2 what you describe in this witness statement?

3 A. Correct.

4 Q. Thank you. How long would that process take?

5 A. Well, that process could take a number of days or it
6 could be within the same day. In general, every -- as
7 I said, from the time that I met Mr Oron, there was also
8 a legal firm whose senior partner was also a director of
9 Norinter, a non-executive director, and this senior
10 partner was also a director of Investec Bank. And
11 therefore Mr Oron made it his practice that every
12 project would have the involvement of a legal firm in
13 South Africa, Jowell Glyn Marais. And they were
14 involved -- and I worked quite closely with them -- in
15 providing overall comfort of how joint ventures should
16 be operating, and this was no exception. They were
17 involved in drafting of agreements and how the aspects
18 would work.

19 Q. Thank you. I'll ask you to just answer my questions.
20 I understand you want to develop and provide further
21 explanations. We can go into further explanations
22 afterwards. But for now I was just trying to understand
23 how long it takes for a payment request to be approved
24 by you --

25 A. I don't think there was -- I wouldn't say that there was

14:35

1 a rule. Certain payments, if they fitted the budget,
2 could be very simple and quick; and certain payments,
3 one would delve in and ask more.

4 And furthermore, even if I was comfortable, I would
5 have to get Mr Roy Oron's approval, and there were a lot
6 of discussions about that. And it was not a fait
7 accompli that he would always approve a payment, and
8 often he would send me back to get more information.

9 Q. Okay, thank you.

10 So you've done the verification process. Then you
11 approve the payment, and you send it back to Mr Oron for
12 his authorisation. He authorises that payment to be
13 made?

14 A. Again, it depended on the situation. Mr Oron might have
15 been physically present and we may have discussed it in
16 person; it may have been a phone call or a conversation
17 over the phone; or in certain cases it may have been via
18 email. There were a lot of projects that were happening
19 at the time, and we were travelling very often,
20 sometimes every week, to multiple destinations.

21 Q. And after Mr Oron left, because you stayed on, so who
22 would authorise the payments?

23 A. Right, so after Mr Oron left there was a new CEO
24 appointed for the mining and metals division, Mr Marc
25 Struik. Mr Avidan was the country manager for the

14:37 1 project, and was given more responsibility for that
2 specific project.

3 In general, the role that I had been fulfilling,
4 I continued to fulfil. And I had the ability to -- and
5 I was asked from time to time by the board of the
6 company, and I would consult with members of the board
7 of the company. We had an executive chairman,
8 Mr David Clark, who was also financial director. And in
9 any event, even if payments were requested for
10 a specific project, I was also asked from time to time
11 and would seek the advice of the shareholder.

12 Q. Thank you. [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Before payment could be made within BSGR, you would
23 look to see an invoice and a contract; is that correct?
24 A. That is correct. That was what we really strove to do.
25 I can say that --

14:38 1 Q. I think you've answered the question, thank you.

2 A. -- it wasn't always fulfilled, because in certain cases

3 we were not able to get both sets of documentation.

4 Q. And we will certainly look into that.

5 I would like to now go back to your witness

6 statement in this proceeding, paragraph 6.

7 A. The first witness statement?

8 Q. Sorry, the second witness statement, CWS-11,

9 paragraph 6.

10 I'd like to look now at the payments that you

11 authorised on behalf of BSGR for Pentler. You say in

12 this paragraph that:

13 "During the period from March 2006 to May 2008,

14 several payments were made to individuals and companies

15 associated with Pentler ..."

16 Are these individuals Michael Noy, Avraham Lev Ran

17 and Frédéric Cilins?

18 A. What I recall is for those period of time it was made to

19 corporate entities, and I do recall that there was

20 a payment to Mr Cilins as an individual. I do not

21 recall that there were individual payments made to the

22 other two gentlemen you mentioned.

23 Q. So payments were made either to Mr Cilins or to

24 corporate entities?

25 A. That's what I recall.

14:40 1 Q. Have you ever met Mr Cilins?

 2 A. I have not met him.

 3 Q. Mr Avraham Lev Ran?

 4 A. Yes.

 5 Q. May I ask when you first met Mr Lev Ran?

 6 A. Sure. I met Mr Lev Ran at the offices of Norinter. He

 7 was introduced to me by Mr Oron. From the time that

 8 I joined, I recall in September 2003 that he was

 9 a personal friend of Mr Oron, and I recall that he was

 10 given office space which he rented from Mr Oron.

 11 Q. Thank you. With reference to the payments that were

 12 made to either Mr Cilins or the entities that you've

 13 mentioned, do you recall the name of those entities?

 14 A. Yes, I will try. I recall there was certainly a company

 15 called Pentler, there was a company CW France and

 16 a company FMA.

 17 Q. Did BSGR have agreements in place with CW France?

 18 A. I don't recall an agreement with CW France per se.

 19 I recall that in 2005 there was a services and

 20 cooperation agreement with these individuals or the

 21 entities; I don't recall if it was -- with which

 22 specific entity.

 23 Q. Thank you.

 24 You say in the same witness statement, paragraph 6,

 25 the same sentence, the first sentence, which continues,

14:42

1 you say:

2 "... the money being paid was for services in

3 relation to the Guinea project."

4 A. Yes, this is what Mr Oron explained to me.

[PROTECTED]

14:43

[PROTECTED]

Bar Index	Approximate Length (%)
1	95
2	100
3	35
4	92
5	98
6	100
7	97
8	88
9	72
10	96
11	100
12	100
13	95
14	97
15	97
16	60
17	85
18	38
19	93
20	97
21	87
22	98
23	100
24	95

14:45 [REDACTED]

[REDACTED]

[REDACTED]

14:46 [PROTECTED]

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14:48

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A horizontal bar chart consisting of 20 black bars. The bars are arranged vertically, with their lengths representing a distribution of data. The longest bar is at the top, extending nearly the full width of the chart. Subsequent bars decrease in length, with some showing a slight increase in length towards the middle of the chart before decreasing again. The shortest bar is located near the bottom, representing a small fraction of the total width.

14:50

[REDACTED]

A horizontal bar chart consisting of 20 black bars. The bars are arranged in a single column. The lengths of the bars vary, with the longest bars at the top and bottom, and the shortest bars in the middle. The bars are arranged in a single column, with the longest bars at the top and bottom, and the shortest in the middle.

14:52 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14:53 [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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14:55 [REDACTED]

[REDACTED]

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149

14:59

[PROTECTED]

150

15:00 [REDACTED]

[REDACTED]

[REDACTED]

15:02

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[REDACTED]

15:04

[PROTECTED]

153

15:05 [PROTECTED]

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15:06

[PROTECTED]

155

15:08 [PROTECTED]

[REDACTED]

15:09

[PROTECTED]

157

15:10 [REDACTED]

[REDACTED]

15:12

[PROTECTED]

8 I move on to different subject, which is payments
9 that were made by BSGR to Mr Ibrahima Kassory Fofana.
10 You mention in your second witness statement in this
11 arbitration -- that's CWS-11 -- at paragraph 27 that
12 BSGR made two payments to Mr Fofana in the amount of
13 \$100,000 and in the amount of €80,000. Was there
14 an agreement between BSGR and Mr Fofana?
15 A. I was not aware of such agreement. I did request it on
16 several occasions.
17 Q. Because in paragraph 28 of the same witness statement,
18 the second sentence -- top of the page -- you write
19 that:
20 "Through the audit process, it was brought to BSGR's
21 attention that there had not been a contract in place
22 with Mr Fofana."
23 A. Yes.

[PROTECTED]

15:15

[PROTECTED]

21 I'd like to move to payments made to another
22 contractor of BSGR, Mr Ghassan Boutros. In your second
23 witness statement in this arbitration -- so we're
24 staying with the same witness statement -- at
25 paragraphs 14 to 17, you've listed 16 payments that BSGR

15:16 1 made pursuant to an outsourcing and services agreement,
2 you say, in 2008 between BSGR and LMS; correct?
3 A. Correct.
4 Q. The reference to the agreement is paragraph 15. You
5 say:
6 "BSGR and LMS entered into an outsourcing and
7 services agreement in 2008 ..."
8 Have you seen this agreement?
9 A. Mr Avidan had sent me this agreement.
10 Q. Mr Avidan had sent you this agreement?
11 A. The one between the company and LMS, as you refer to in
12 paragraph 15?
13 Q. Paragraph 15, yes. So it exists?
14 A. As far as I recall.
15 Q. But did you see it when you were preparing this witness
16 statement?
17 A. Preparation of the witness statement is some time after
18 the project. I'm not following your question.
19 Q. At the time that you wrote --
20 A. At the time the payment or at the time of --
21 Q. At the time of writing this witness statement.
22 A. I may have refreshed my knowledge by looking at the
23 contract, yes.
24 Q. And at the time of the payments?
25 A. At the time of payments, we requested to see proof of

15:18 1 contracts for every payment.

2 Q. The reason that I ask this question is because it's not

3 attached to your witness statement.

4 A. Okay.

5 Q. In the context of this proceeding, Guinea requested that

6 any agreements with Mr Boutros be produced, and there

7 were no agreements dated 2008 between BSGR and LMS or

8 Mr Boutros.

9 But you've seen this agreement; you confirm that it

10 exists?

11 A. I recall that there's -- I recall that there's

12 an agreement in the company's files and records between

13 the service provider and BSGR Guinea.

14 Q. Thank you.

15 In paragraph 16 you say that:

16 "... between February 2009 and April 2010,

17 16 payments ... were made to LMS ..."

18 That's Mr Boutros's company.

19 "... Ghassan Boutros himself ... or Adama Sidibe

20 (a business partner of Mr Boutros)."

21 And you say:

22 "... these payments related to construction, heavy

23 machinery, computer and communications equipment or work

24 on road works."

25 This is your firsthand knowledge of the services

15:19 1 provided by Mr Boutros?

2 A. Not my firsthand knowledge in those locations, because

3 I never visited those locations. But this is my

4 understanding of what is encapsulated in the agreement

5 with the service provider, and as explained to me by

6 Mr Avidan, the financial manager, and team that we had

7 on the ground.

8 Q. You said in this paragraph we've just read that some of

9 the payments were made to Mr Adama Sidibe, a business

10 partner of Ghassan Boutros. Have you met Mr Sidibe?

11 A. No, I have not.

12 Q. How do you know he's a partner of Ghassan Boutros?

13 A. I recall asking the financial manager who was based in

14 Conakry, Ms Tatiana Rakitina, and she had confirmed to

15 me that she had on several occasions met Mr Sidibe, and

16 specifically confirmed to me that he was a business

17 partner of Mr Boutros.

18 Q. Were there any agreements between Mr Sidibe and BSGR?

19 A. No, there were not.

20 Q. Do you recall -- we don't have the document with us. So

21 I'm just asking whether you recall that the contract

22 that you have seen between BSGR and LMS mentioned

23 Mr Sidibe.

24 A. I do not recall that.

25 Q. I'd like to turn to tab 14. It's document C-336. It's

15:21 1 a document which has payment instructions on the first
2 page; on the second [and third] page[s], a chain of
3 emails; and on the [fourth] page, an invoice.
4 I'd like to turn to the email first. On the second
5 page of the email -- so we start at the back -- you
6 provided instruction to BSGR to "load payment" for
7 \$60,000 to Mr Boutros.
8 A. Yes.
9 Q. So you write to Ms Sarah Bryce, and she responds to
10 you -- that's the email that's on the previous page at
11 the bottom of the document -- well, she responds to you,
12 but she writes:
13 "Hi Asher".
14 That's Asher Avidan; correct?
15 A. Yes.
16 Q. "Do you have an Invoice for this payment?"
17 A. Yes.
18 Q. The next email is sent by Asher Avidan, who writes:
19 "It is for Iron, It is urgent and am not there for
20 about 10 days, so please make the payment and I will
21 send the invoice."
22 This email is dated 7th July 2009. If we turn to
23 the first document, that's the payment instructions, and
24 we see that the payment was issued on 8th July 2009. At
25 that time, the invoice hasn't been received?

15:23

1 A. Correct.

2 Q. So this is one of the circumstances where BSGR would
3 make a payment without an invoice?

4 A. Correct.

5 Q. Just on the basis of Mr Avidan's instructions?

6 A. Well, let's take your statement. The word "just" is
7 very simple, you know, it's simplifying the request and
8 instruction.

9 Q. But the instruction comes from Mr Avidan; is that
10 correct?

11 A. The instruction comes from the country manager running
12 the project. And if it was his instruction, as long as
13 we were assured of obtaining that invoice, we would
14 ensure that the payment would be made in accordance with
15 those rules.

16 Q. So the payment is made before an invoice is provided?

17 A. In this particular case, it was an exception, yes.

18 Q. So this particular case is an exception?

19 A. Yes. There may have been a few others like this. But
20 we certainly endeavoured, in over 16,000 payments, to
21 stick as far as possible to the blueprint and the rules.
22 But this would have been an exception.

23 Q. Thank you.

[PROTECTED]

15:25

[PROTECTED]

7 You discuss this payment, which you approved, in
8 your second witness statement in this arbitration,
9 paragraph 19. Discussing this very specific payment,
10 you say:

11 "I viewed the payments requests as altogether
12 unremarkable. I believed then ... that it was a genuine
13 demand for a known supplier for equipment which, as
14 I understood it, was needed, ordered and, in due course,
15 delivered."

16 Let me ask you: do you consider that a payment
17 request for \$1.3 million is unremarkable?

18 A. Yes, because, as you say, I do not speak French, but
19 I do recall on every instance where I didn't understand,
20 I would have asked Mr Avidan. And for that price, that
21 includes heavy equipment, which was very difficult to
22 obtain in that project in that part of the world. So,
23 yes, unremarkable.

24 Q. It's difficult to obtain Caterpillars in that part of
25 the world?

15:26 1 A. Well, at that period of time, and where the project was
2 operating, it was, I understood from Mr Avidan,
3 difficult to obtain services, equipment and logistics of
4 any nature.
5 Q. Was Mr Boutros a West African dealer for Caterpillar
6 machines?
7 A. I don't know. I knew of him as a supplier of the
8 services and equipment, as I've explained in my witness
9 statement.
10 Q. Did you confirm, after the invoice was processed,
11 whether the Caterpillars were actually provided?
12 A. I don't recall now, but at the time I may have asked
13 various questions. But as I said previously, I did not
14 visit the sites. That was done by the financial manager
15 and the team in Conakry and in the camps.

[PROTECTED]

15:28 [PROTECTED]

[REDACTED]

15:30

[PROTECTED]

169

15:32

[PROTECTED]

170

15:34 [PROTECTED]

[REDACTED]

15:36

[PROTECTED]

172

15:38

2 This could be an appropriate time to take a break,
3 if Mr Tchelet or the Tribunal would like to.

4 THE PRESIDENT: Absolutely, yes. So we'll take a 15-minute
5 break.

6 Mr Tchelet, while you're being examined, you should
7 please not speak to anyone about the case; and the best
8 way of doing this is not to speak to anyone at all.

9 MR TCHELET: I understand. I understand.

10 THE PRESIDENT: Which does not mean that you cannot go and
11 get a coffee.

12 MR TCHELET: Thank you.

13 THE PRESIDENT: Let's take the break now.

14 (3.39 pm)

15 (A short break)

16 (3.58 pm)

17 THE PRESIDENT: We can resume. Mr Naud, please.

18 MR NAUD: Thank you.

19 I'll resume at paragraph 17 of your second witness
20 statement in this arbitration, CWS-11, just going back
21 to the payments that were made either to Ghassan
22 Boutros, LMS or Adama Sidibe.

23 In this list of payments you've listed eight
24 payments to Adama Sidibe between 16th February 2010,
25 that's the last indent on this page 6, which continues

15:59 1 on to the next page, until 21st April 2010; that's the
2 last payment to Adama Sidibe.

3 So what you describe in your witness statement is
4 that between 16th February 2010 and 21st April 2010,
5 BSGR made -- but the payments were approved by you, or
6 authorised by you -- BSGR made eight payments to
7 Adama Sidibe, totalling US\$3 million.

8 We have in the binder all the documentary evidence
9 that has been submitted on the record with respect to
10 each of these payments. I'm not going to go through all
11 those payments, but I will just look at the first two
12 and then summarise.

13 The first payment in this list to Adama Sidibe is
14 for \$1 million on 16th February 2010 [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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16:01 [PROTECTED]

[PROTECTED]

16:03 [PROTECTED]

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[REDACTED]

16:04

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16:06

[PROTECTED]

18 Q. The total amount of these payments -- as I've explained
19 a few minutes ago -- listed in your witness statement
20 comes to \$3.1 million, all paid between 16th February
21 2010 and 21st April 2010, payments made to Mr Adama
22 Sidibe, and for each one of these payments the invoice
23 was produced after the payment was made.
24 If we just run through each of these amounts, we can
25 also see on page 6 of your witness statement,

16:08 1 paragraph 17, going into page 7, that each of the
2 payment amounts is a round figure.

[PROTECTED]

16:10

[PROTECTED]

- 16 Q. So your role was to make sure that whatever payment is
17 requested of you is made, as long as it's within the
18 blueprint of the company?
- 19 A. As long as it is valid and supports the project, that is
20 what I knew. I did not know and I had no knowledge of
21 beyond -- or if there was a beyond -- what the supplier
22 would then carry out had any other functions.
- 23 Q. Do you consider that systems can be put in place to make
24 sure that money that is paid to consultants are
25 legitimate and owed on the basis of services that are

16:12

1 actually provided?

2 A. I think to answer that question goes back to what I've
3 said earlier: it's that there was an element of trust,
4 an element of the team that the group operated in --
5 this was a value that was instilled by Mr Oron from the
6 time that he formed the company -- and that wherever
7 possible, although the team and the management were
8 spread out in different locations, there was that
9 element in place.

10 Q. I'm sorry, I don't think you've answered my question.
11 I'm not asking what was in place at the time or how the
12 team operated. I'm just asking whether you are aware
13 that processes, verifications, can be put in place to
14 avoid payments being made illegitimately.

15 A. Yes, but we were not forensically checking payments that
16 our own project managers were requesting in accordance
17 with board-approved projects, board-approved
18 investments. There wasn't an element of that, or
19 internal suspicion of each other. We were working
20 within an element of team and trust.

21 Q. As long as the payment was requested by the person on
22 the ground, it was approved?

23 A. And as long as they explained what it was for and gave
24 regular updates.

25 There were also -- besides what you say, which must

16:14 1 not be ignored, is that both Mr Struik and Mr Avidan
 2 both regularly gave detailed board updates of how the
 3 projects were developing and what work had been carried
 4 out and what results had been achieved, whether it was
 5 the development of camps or results from assaying
 6 geological samples, et cetera. So it was not done in
 7 isolation, and it was not done without substance and in
 8 detail.

 9 Q. But that doesn't allow to verify whether a specific
 10 payment is legitimate?

 11 A. It allowed, in our opinion, for that, yes. What you're
 12 asking is for us to have checked whether our country
 13 managers or project managers, each and every aspect of
 14 what they were doing was not within my remit. There
 15 were many other projects that I was involved in, even at
 16 the time, in other countries; you know, those didn't
 17 stop. This was not the only project.

 18 Q. In 2010 BSGR adopted an anti-money-laundering policy; is
 19 that correct?

 20 A. Yes, that is correct.

 21 Q. And prior to 2010, no such policy existed within the BSG
 22 group; correct?

 23 A. Again, you are speaking of a specific adoption of
 24 a policy which was required by the board of BSGR. But
 25 I maintain that from the beginning of when BSGR was

16:16

1 formed, the substance of that method of working was the
2 requirement of Mr Oron, and that was his blueprint.

3 So, yes, the policy was adopted as a policy in terms
4 of international law by the group in 2012, but the group
5 had been essentially striving and working within those
6 parameters, I maintain, from the beginning.

7 Q. So the short answer to my question was that before 2010
8 there was no express specific anti-bribery policy within
9 the BSG group. I think that was your answer: no
10 express --

11 A. Yes, but I think the substance is more important than
12 the form. In that sense, the --

13 Q. I think --

14 A. -- the manner of working was just as important.

15 Q. Then I turn to tab 1 of the binder, which is R-500.
16 It's an email which you sent on 27th November 2012 to
17 Asher Avidan and Daniel at BSG Resources.

18 Who is Daniel?

19 A. He's -- I don't know still today, but at the time his
20 role was a business development manager for BSGR.

21 Q. And what's his last name?

22 A. Pollak.

23 Q. And on copy, Dag Cramer. The email attaches the
24 company's anti-bribery compliance policy for
25 BSG Resources (Guinea) Limited. That's the document

16:18 1 that's annexed to that email. And there's a date: it
 2 says "Draft 9 April 2010".

 3 A. Okay.

 4 Q. But there's a signature next to the date; there's
 5 a stamp on each page with a signature. So it looks like
 6 this is the date when the company policy was adopted.
 7 Is that correct?

 8 A. This is a stamp from Vale. Is that what you're
 9 referring to, the stamp from Vale, Vale legal department
 10 stamp?

 11 Q. Yes, there's a stamp from Vale and there's a signature
 12 next to it. But the document is entitled "Anti-Bribery
 13 Compliance Policy for BSG Resources (Guinea) Limited",
 14 and my question is whether this compliance policy was
 15 adopted on 9th April 2010.

 16 A. Look, I don't recall, and it clearly says "Draft". So
 17 I don't recall. But again, to answer your question --

 18 Q. That was my question. That was my question, thank you.

 19 So turning back to the email, the subject headline
 20 is "Anti Bribery Policy adopted 9 April 2010". And you
 21 write in this email:

 22 "By the way, this was the Anti Bribery Policy that
 23 was adopted ... prior to signing the deal, you can see
 24 that Vale's legal department also signed and stamped
 25 each page."

16:19 1 So this is the anti-bribery policy that's adopted on
2 9th April 2010. And the deal with Vale was signed or
3 concluded on 30th April 2010.

4 A. Again, I think the document that you showed me says
5 "Draft", so I cannot confirm the date that it was
6 implemented. But certainly when I page through what
7 this policy says, this was the requirements from our
8 financial director; this was how our board required that
9 we approach these matters.

10 Q. But looking at your email, on 27th November 2012, when
11 you sent that email, you certainly considered that this
12 was the anti-bribery policy adopted on 9th April 2010 by
13 BSGR? That's what you considered at the time when you
14 sent that email; correct?

15 A. Well, I say "prior to signing the deal", and the deal
16 was signed on 30th April. So I can't confirm if it was
17 the 9th or an alternative date, but it certainly was in
18 place prior to signing the deal.

19 Q. In the last sentence of the first paragraph of that
20 email, you write:

21 "Not sure if this is of assistance now, but there is
22 no way that Vale can simply point a finger at us on this
23 topic from this date onwards."

24 Can you explain what you meant by that sentence?

25 A. I think -- I don't recall exactly; this is some time

16:22 1 ago. But from looking at the dates, there were a number
 2 of ...

3 Q. If you don't recall, I don't want you to speculate.

4 A. Yes, I don't recall exactly, yes.

5 Q. Thank you.

6 I move to the final topic for this
7 cross-examination. It's in your first witness
8 statement, CWS-4. I am referring to paragraphs 24 to
9 27. I will try and summarise before I ask my question.

10 In this paragraph (24) you explain that BSGR
11 incorporated the company in the British Virgin Islands
12 called RAS, which stands for Resources Advisory Services
13 Limited; correct?

14 A. Correct.

15 Q. And BSGR and RAS entered together into a services
16 agreement?

17 A. Correct.

18 Q. And you explain at paragraph 26 the purpose of this
19 agreement. You say:

20 "As we were preparing for external investment at
21 this time we realised that we were not fully reflecting
22 the value of BSGR's investment, by simply setting out
23 what we had spent on the feasibility study and what we
24 had spent on costs."

25 If I understand correctly, what you then did is RAS

16:24 1 invoiced BSGR for management services, so as to increase
 2 the value of the company in excess of the actual costs
 3 that were spent on the ground in Guinea. Is that
 4 a correct understanding?

 5 A. Yes, but the last part of what you said is not accurate.
 6 It's not just to simply increase; it's to reflect the
 7 true value of risk being taken, and to price that in, as
 8 well as the services that -- other aspects and other
 9 companies involved and people involved in providing
 10 services provided.

 11 Q. At paragraph 43 of the same witness statement you
 12 summarise the total amount which was invoiced by RAS to
 13 the company, and that total amount is \$71.25 million.
 14 And you say that, including that amount:
 15 "... BSGR's investment in terms of direct funding
 16 and management time exceeded USD 134 million."

 17 A. Yes.

 18 Q. So if we remove the management time of \$71 million which
 19 is invoiced by RAS, a BSGR company, to the entities
 20 active in Guinea, that leaves just \$63 million; correct?

 21 A. Correct.

 22 Q. And that represents the direct costs of BSGR's
 23 investment in Guinea; correct?

 24 A. The direct cash costs, yes.

 25 Q. Do these direct costs include the \$30 million which BSGR

16:26 1 paid to Pentler in accordance with their agreement?

2 A. What is included at this stage, that you refer in these

3 numbers, is you would have had \$22 million, because at

4 that stage that is the amount that the group had paid in

5 terms of the settlement agreement to the Pentler group.

6 Q. So if we deduct \$22 million from the \$63 million

7 remaining, that means that the actual --

8 A. Sorry, just to confirm, if I remember correctly --

9 I would need to check, but I believe that the 22 --

10 well, I don't recall now, but there's certainly

11 a \$22 million which either needs, as you are saying, to

12 be deducted from the 62, or added to the 134. But it's

13 at a point in time. So depending on what date one is

14 looking at it, the number would be appropriate.

15 Q. But you drafted this witness statement?

16 A. Yes.

17 Q. Can you tell us what date you were looking at when you

18 put these figures down on paper?

19 A. Yes, this was prior to signing the transaction with

20 Vale.

21 Q. So at that time, has the \$20 million to Pentler been

22 paid?

23 A. 22, yes. 22 had been paid.

24 Q. So the actual cash spent on the ground by BSGR at the

25 time would have been, if the \$22 million is included,

16:27 1 just \$40 million?

 2 A. Approximately, yes.

 3 MR NAUD: Okay, thank you.

 4 Thank you, I have no more questions.

 5 THE PRESIDENT: Thank you.

 6 Any re-direct questions, Mr Wolfson?

 7 MR WOLFSON: Only one issue, with your permission.

 8 THE PRESIDENT: Yes, sure.

 9 (4.28 pm)

 10 Re-direct examination by MR WOLFSON

 11 Q. Mr Tchelet, you will recall that you were asked some

 12 questions about an agreement between BSGR Guinea and

 13 a company which, for short, has been referred to as

 14 "LMS". You remember that line of questioning?

 15 A. Yes, I do.

 16 Q. It was put to you on a number of occasions that no

 17 document had been produced which was an agreement

 18 between those two parties. Do you recall that?

 19 A. Yes.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16:29

[PROTECTED]

23 MR TCHELET: Thank you.

24 THE PRESIDENT: Thank you.

25 Any questions by my colleagues?

16:30

1 (4.30 pm)

2 Questions from THE TRIBUNAL

3 THE PRESIDENT: I think you have been led through the
4 different payments that were those on which the Tribunal
5 had questions. Let me just check whether we have
6 covered what we thought we should cover.

7 There was also a chart yesterday with payment flows,
8 where we were told that you were the person to explain
9 this chart. I think we have gone through all of this,
10 and my colleagues will correct me if I missed something.
11 We have certainly discussed the Boutros payment, the
12 different Pentler payments as well.

13 Maybe we can show the chart to the witness and he
14 can confirm himself, rather than my trying to confirm
15 and not being sure what I'm doing. I meant this one:
16 it's called (Interpreted) "Flow of Funds 11 January 2012".

17 MR OSTROVE: We are looking for an extra hard copy, and
18 we're putting it up on the screen in the meanwhile.

19 THE PRESIDENT: This, Mr Tchelet, is a demonstrative
20 exhibit; that is, it is not a document that exists as
21 such, it was prepared for purposes of this hearing by
22 the Respondent on the basis of documents that are in the
23 record.

24 What I would like to make sure is that we have had
25 your explanations on all of the payments that we see

16:33 1 going out from BSGR. Do you see payments that we have
 2 not discussed? Let's put the question like this.
 3 A. Sorry, is that a question?
 4 THE PRESIDENT: Yes, it's a question.
 5 A. So do I see payments that -- sorry, I didn't follow you.
 6 THE PRESIDENT: On which you have not been asked questions
 7 before.
 8 A. Between BSGR and Pentler, you ask, or the payments which
 9 are to the right?
 10 THE PRESIDENT: I ask in general --
 11 A. In general?
 12 THE PRESIDENT: -- about payments that go out from BSGR --
 13 A. From BSGR.
 14 THE PRESIDENT: -- and could be one company or another.
 15 A. Right.
 16 THE PRESIDENT: I understand that whichever company within
 17 the group makes the payment, it would be for you to
 18 approve it and process it.
 19 A. Correct.
 20 THE PRESIDENT: Is that correct?
 21 A. Yes, that's correct, yes.
 22 THE PRESIDENT: So those that relate to Pentler we have
 23 discussed. Is the way they are pictured here, coming
 24 from BSGR Treasury Services, correct in your
 25 understanding?

16:34 1 A. It's correct in my understanding, yes.

 2 THE PRESIDENT: Fine. Then the next payments come out from

 3 BSGR: can you just see which way they are going?

 4 A. Madam President, if I understood this chart correctly,

 5 on BSGR there's a blue line that is reflecting payments

 6 going out.

 7 THE PRESIDENT: That goes through the top of --

 8 A. Yes, right at the top.

 9 MR OSTROVE: We have isolated that on the screen.

 10 THE PRESIDENT: This one, yes, absolutely. It's for

 11 \$1 million and \$50,000.

 12 A. What I certainly do not believe is correct is that this

 13 chart seems to indicate what you've isolated: that there

 14 was a payment from BSGR to "Mme Touré". I have no idea

 15 about that. That doesn't look correct to me at all.

 16 THE PRESIDENT: So this is Mamadie Touré, right?

 17 A. I certainly do not recall any payments from BSGR to

 18 Mamadie Touré.

 19 THE PRESIDENT: To Matinda?

 20 A. No.

 21 THE PRESIDENT: Then let's look at the other BSGR payments,

 22 the ones that go through the bottom of the chart.

 23 Take the first one. It's not easy to follow. The

 24 first one goes to Mr Thiam's bank account?

 25 A. Yes, that I recall -- I believe that was the

16:36 1 reimbursement for travel expenses.

2 THE PRESIDENT: That's the \$8,000 amount.

3 MR OSTROVE: We've just isolated those on the screen.

4 THE PRESIDENT: And \$20,000?

5 A. I'm not aware of the \$20,000 payment.

6 THE PRESIDENT: But you're aware of the \$8,000?

7 A. Yes, I recall that payment.

8 THE PRESIDENT: Fine. Then if I look at -- can you isolate

9 the next one?

10 MR OSTROVE: Sorry, which one is the next one?

11 THE PRESIDENT: It's difficult. The next one are the ones

12 dealing with Mr Fofana, Mr Bah and IS Touré. No, I'm

13 sorry, these come from Pentler. They are coming from

14 Pentler.

15 MR OSTROVE: Are these the ones you're looking for that are

16 isolated now?

17 THE PRESIDENT: Yes. Yes, you have taken the \$425,000 out

18 because that comes from Pentler, yes.

19 A. I see that.

20 THE PRESIDENT: Any comments on those, Mr Tchelet?

21 A. Payments that came out of BSGR, those we discussed

22 earlier today. Payments that came out of Pentler,

23 I have no idea.

24 THE PRESIDENT: I understand that, absolutely.

25 A. But the payments that came out of BSGR we have discussed

16:38 1 today, yes.

2 THE PRESIDENT: Fine.

3 Then the last ones, I think, from BSGR -- have we

4 covered them all? I think we have, and my

5 co-arbitrators will correct me if not.

6 Then we have those that come from Windpoint. Do you

7 see those?

8 A. Yes, I do.

9 THE PRESIDENT: They go partly to --

10 A. To Pentler?

11 THE PRESIDENT: -- Boutros, Adama Sidibe; we have discussed

12 those. I believe was had a long list in paragraph 17 of

13 your second witness statement.

14 Then we have above the \$3 million and \$1.5 million

15 to Pentler.

16 A. Yes.

17 THE PRESIDENT: Any other comments on the payments flowing

18 out of the BSGR company?

19 MR OSTROVE: If I may interject one comment, because we see

20 there is a mistake, but no payments flow from it. We've

21 just noticed right now that accidentally the person

22 creating the chart included LMS as a BSGR affiliate,

23 whereas LMS actually is this company here, under

24 "Mr Boutros". So that's a mistake that should be

25 removed. Our apologies.

16:40

1 THE PRESIDENT: Yes.

2 PROFESSOR VAN DEN BERG: You take it out of the box?

3 MR OSTROVE: This was made by a professional consultant.

4 But we'll take it out.

5 THE PRESIDENT: That is not a guarantee of accuracy. But

6 you may wish to change it and resubmit it --

7 MR OSTROVE: We shall do so. Thank you.

8 THE PRESIDENT: -- with an (a) number or whatever, yes;

9 simply a revised version.

10 Fine. Now let me see whether -- yes, in your

11 examination today you insisted very much on Mr Oron's

12 blueprint.

13 A. Yes.

14 THE PRESIDENT: That to me sounded like a guarantee of good

15 governance and of compliance with any legal/regulatory

16 anti-bribery requirements - it seemed very important,

17 and it seemed to outlast Mr Oron's departure, right?

18 A. Yes.

19 THE PRESIDENT: So why was that so important?

20 A. I think to answer, Madam President, one has to know

21 Mr Oron. And Mr Oron was an exceptional person in the

22 sense that when I joined him, he had pulled me out of

23 an investment bank, which obviously had manners of

24 working. And although the office that we were -- in his

25 South African office was very small, with very few

16:42 1 people, he insisted on, together with the legal firm,
2 that every letter, every contract and every manner of
3 working was done in accordance with a set of rules,
4 which I call -- I refer to as a "blueprint".
5 And in that sense it was always of utmost importance
6 to him on any transaction, whether the transaction was
7 developing into an investment or was a project that only
8 costs had been spent and it was terminated, that the
9 same rules and manner of working would apply. And it
10 was always a condition of his that the same Ernst
11 & Young office and the same lawyers would, you know,
12 partner every step of the way.
13 We tried to emulate that even after his departure
14 because soon after his departure, BSGR effectively
15 became like a public company, because BSGR issued bonds,
16 it was credit-rated by Standard & Poor's in Israel, and
17 effectively had to become like a public company. Had we
18 not had that basis demanded by Mr Oron for every --
19 every transaction had to have -- he insisted on board
20 meetings --
21 THE PRESIDENT: When was the bond issuance?
22 A. In July 2007, and he left shortly before. He was not
23 part of that.
24 But what I can tell you is that within a few months
25 we were able to have a number of years of audited

16:44 1 consolidated financial statements in IFRS requirements,
 2 only because Mr Oron always insisted that we are ready
 3 for that type of event at any point in time.

 4 And that's what I mean by the blueprint that he had
 5 installed. And once we had gone to essentially this
 6 public process of the bond issuance, BSGR was, on
 7 a quarterly basis, audited by Ernst & Young, not just in
 8 Guernsey but in all the countries that it operated,
 9 wherever possible. We wouldn't have been able to reach
 10 that type of a level and operate like that, and deliver
 11 within deadlines the reporting requirements during the
 12 bonds' existence, had we not had a foundation, had
 13 a basis.

 14 THE PRESIDENT: I understand that. I'm just not certain
 15 about the link of meeting IFRS requirements and making
 16 sure that on the ground people apply the rules.

 17 A. Okay, if I can answer that.

 18 In a way, there are two distinct aspects. One is
 19 one of controls and policy, and ensuring good business
 20 practice. But very often it does go together, because
 21 the moment that -- and this was something that Mr Oron
 22 always insisted on -- the moment that any project would
 23 need funding, whether it was for the BSGR group or
 24 external funding from banks or partnerships or joint
 25 ventures or IPOs, you had to have independent audits.

16:45 1 You had to have independent audits of the nature of
 2 audited financial statements, as well as independent
 3 geologists, et cetera. Their requirements are IFRS;
 4 their requirements are the cutting edge. And therefore
 5 if you hadn't had the processes on the ground, you won't
 6 be able to complete those audits. And therefore the two
 7 ultimately joined together.

 8 THE PRESIDENT: So I understood that you said that among the
 9 rules of the so-called "blueprint", there was a fact
 10 that you should have a contract and an invoice before
 11 you make a payment. But on several occasions we
 12 encounter a situation where you didn't have one or the
 13 other, and sometimes none. And then you explain that,
 14 "Well, I mean, my role was to support the project". Of
 15 course that is certainly your primary role.

 16 So how do you bring these things together? Somehow
 17 it sounds a little contradictory.

 18 A. I understand the question, Madam President.

 19 And at the end of the day the uniqueness, I would
 20 say, with this particular project is: given that it was
 21 very remote physically, in proximity to where our teams
 22 and our head office was, and the fact that many
 23 processes that we wanted to have, and that we were
 24 having in many other countries where projects were
 25 happening -- in this particular project there was

16:47

1 a constant pressure to deliver, in terms of the
2 requirement of an exploration programme and a timing,
3 and that pressure often became a factor which was
4 unique, or maybe exceptional, in other circumstances
5 where the group was -- had more time perhaps to get
6 contracts and to ensure that the processes could be
7 followed over here.

8 And it was always apparent, in all the presentations
9 that the country managers and Marc Struik had done of
10 the fact that there was a unique opportunity here to
11 develop world class assets, that time was of the essence
12 to meet those requirements. That became often a point
13 of difficulty for me and my team and we were always, in
14 a sense, catching up, as opposed to having the documents
15 upfront.

16 Everything in that sense was hard. For my first
17 encounter when I went to Conakry, it wasn't the same,
18 for example, as in a country like Zambia, where we did
19 have lawyers that we had within working with, Ernst
20 & Young, other service providers. Here everything had
21 to be begun or started from scratch, to the extent that
22 the language was also an issue for me and my team. So
23 it was much more challenging.

24 But I believe -- and I'd like to believe -- that we
25 still satisfied, as far as possible, both the board and

16:49

1 the management's requirements for the corporate
2 governance and for the blueprint, by having many
3 meetings, many briefings about the operations and what
4 was happening. However, it was not a project that had
5 as detailed and as forthcoming documents and contracts,
6 and so on, as in perhaps countries who at the time were
7 more developed.

8 THE PRESIDENT: On the basis of the feasibility study, I can
9 certainly measure the challenge and the magnitude of the
10 project. At the same time, this was an environment that
11 was a particularly risky environment, in terms of
12 particularly corruption, and you certainly knew that.
13 So would that not have required more diligence rather
14 than less because of time pressure?

15 A. I was certainly not aware of any corruption and that was
16 not an aspect that I was privy to.

17 THE PRESIDENT: No, that's not what I'm saying. I'm just
18 saying in terms of the general environment, of which you
19 were certainly aware.

20 A. Again, I think that what struck me was specifically
21 during the time period, I would say, where I became more
22 involved in the project per se, was more after the bond
23 actually failed, or was fully repaid at the end of 2008,
24 was when I began travelling a few times to Conakry for
25 that project and other projects in Africa, and I think

16:51

1 that there was tremendous pressure to meet the
2 requirements of a feasibility study or it was going to
3 be lost.

4 And for the group at the time, what I recall was
5 that the group had had literally billions in value wiped
6 off its balance sheets through the financial crash. The
7 group had -- and I had been involved in the listing of
8 three companies that, due to the financial crash, had
9 been decimated. The group now was in a situation that
10 if it had a project, it needed to realise the full
11 potential of it to survive. And it was very clear that
12 the timetable to execute was pressured.

13 There was also the risk, as you've said, in the
14 country, risk and so on in the region. But there's also
15 a bigger risk which affected the group a number of
16 times, and that's the commodity cycle risk.

17 So there was intense pressure also from the board
18 that BSGR now had to borrow funds from other group
19 companies on the basis of this project to make it
20 a success. And in that sense, it was perhaps different
21 or unique to other situations where the group, a year or
22 two before, had raised significant funds through the
23 bond raise, and had the ability to invest in a different
24 environment, where the commodity prices were different.

25 I mean, at the beginning of 2009, by way of example,

16:53 1 BSGR had to return the keys for an operation in Zambia
2 for a nominal amount of \$1, and that was an investment
3 which the group had made in a joint venture for many
4 millions of dollars. 6,000 people found themselves
5 unemployed at mines/smelters in Zambia, because the
6 copper price was significantly decimated.

7 So I think the focus was very much on execution, to
8 deliver a world-class project, to find funding. There
9 was no funding available for commodity projects.

10 I visited Guinea once, to Conakry, spoke to local banks.
11 It was very clear that finance to make a success of this
12 project would be extremely difficult to find. And
13 therefore the group was in a race against time to
14 develop a bankable feasibility study, so that the group
15 has got some asset that it can then develop, and try and
16 return value back to its balance sheet that had been
17 significantly decimated.

18 THE PRESIDENT: The bond issue failed because of the
19 financial crisis, or ...?

20 A. Sorry, I didn't hear.

21 THE PRESIDENT: The bond issue failed, you said before.

22 A. Yes, yes.

23 THE PRESIDENT: That was just because of the timing, or what
24 was it?

25 A. Yes. What happened was that was a classic margin call,

16:54 1 as it's called, where there were three listed shares
 2 that were all listed during the time of Mr Oron and the
 3 team, we had worked together, between 2005 and 2006. In
 4 one day, by way of example, one of those investments
 5 lost 97% of value, which just BSGR's share was about
 6 \$1.3 billion.

 7 That instigated a margin call from which the group
 8 could not recover. The group, towards the latter part
 9 of 2008, needed to repay the bond-holders in full, in
 10 part, and the bond was then collapsed.

11 THE PRESIDENT: Thank you.

12 Do you have any follow-up questions or other
13 questions? Yes, please go ahead.

14 PROFESSOR VAN DEN BERG: One question you could please
15 confirm. Mr Oron left in the first quarter of 2007?

16 A. Yes.

17 PROFESSOR VAN DEN BERG: Could you be more specific about
18 the reasons why he left?

19 A. From my recollection, Mr Oron, who had also been
20 a minority shareholder of BSGR, had decided that for
21 personal reasons, for reasons that I guess financially
22 it made sense for him then, to sell his minority
23 shareholdings and to leave. And at the time when he
24 left, it was, as I was saying, pretty much at the top of
25 the commodity cycle. So that's my recollection.

16:56 1 PROFESSOR VAN DEN BERG: How much was his participation?

 2 A. If I recall correctly, it was 10%.

 3 PROFESSOR VAN DEN BERG: And in which of the companies was

 4 it of the BSGR group?

 5 A. Of the BSGR group.

 6 PROFESSOR VAN DEN BERG: On the top level?

 7 A. Yes, on the top level.

 8 THE PRESIDENT: If you look at your second statement,

 9 paragraph 21, you explain the use of the word

 10 "consultants". That struck me as quite a surprising use

 11 because you seem to use "consultant" for suppliers of

 12 computers or heavy machinery, and when you don't know

 13 where to put it, you have a default catch-all category

 14 that is "consultants". But would you not have

 15 a category for suppliers of equipment?

 16 A. Yes, let me answer quite simply that there was a very

 17 comprehensive -- and there still is, I believe, for

 18 BSGR -- accounting system called SAGE or ACCPAC, which

 19 has categories. This is a classic example of -- in head

 20 office, the team of accountants that were there were

 21 very far removed from any of the project operations, and

 22 therefore they would have, on a default basis, allocated

 23 almost all payments to "consulting".

 24 I visited the office on a frequent basis and I was

 25 in regular communication with them, and it was then my

16:58 1 role (a) to try and understand from the project managers
 2 precisely what the correct allocation would be, and then
 3 to ensure that the office in Guernsey would allocate it.

 4 In many cases the central allocation database was
 5 also controlled, from the BSG point of view, from
 6 a person that we mentioned earlier, Melissa Chapman. So
 7 regardless of the division, there would be a central
 8 control for categories, but it would be incumbent upon
 9 us to define what those categories were, and then to
 10 have accounting entries to remove out of consulting on
 11 a general basis and be specific, such as a specific
 12 contractor or supplier.

 13 A further aspect of that --

 14 THE PRESIDENT: Let me ask you: when you get an invoice
 15 where it says a power generator and a Caterpillar
 16 tractor, you would put this under "consultants"?

 17 A. That is what the ladies in Guernsey would do, yes.

 18

 19 THE PRESIDENT : Oh really.

A. Initially they would do that. But there would then be an exercise which was
 20 essentially driven not just by me explaining to them,
 21 but coming back to your question about IFRS, so each and
 22 every external audit interval, there was a significant
 23 amount of work that would happen. And one can see in
 24 the company records how many allocations and journal
 25 entries get passed during the audit stage, which would

16:59 1 have been explained, discussed. Auditors would have
 2 also, you know, been very involved in that process.
 3 But yes, initially that is where the accounting team
 4 in Guernsey would allocate payments.

[PROTECTED]

17:01

[PROTECTED]

[REDACTED]

24 THE PRESIDENT: But you seem to say in paragraph 25 of your
25 second witness statement -- do you have it there?

17:03

1 A. Yes, I see it.

2 THE PRESIDENT: -- that there were requests by individuals
3 from Guinea that their names not be disclosed.

4 A. I think -- yes, I think that -- this is number 25 of the
5 second witness statement you're referring to?

6 THE PRESIDENT: Yes.

7 A. So I think what I'm saying there is: at the end of the
8 day, if we go back and we see how the project was
9 funded, the project was very often funded by the
10 Guernsey company direct to suppliers outside of Guinea,
11 and they may have been doing work inside of Guinea.

12 Now, the books and records that the Guinea team,
13 Ms Rakitina and her team were doing, needed to be the
14 books and records for that Guinea Sàrl company. And
15 therefore although Helen, who was trying to be helpful,
16 she was actually in that sense mixing apples and oranges
17 by sending information which did not relate to the books
18 and records of that particular company. And what we
19 were trying to ensure is that there's a delineation
20 between these different entities. That's all.

21 THE PRESIDENT: I can see this. [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17:05 [REDACTED]

[PROTECTED]

17:07

[PROTECTED]

211

17:09

[PROTECTED]

8 THE PRESIDENT: Any further questions? No.

9 Any follow-up questions?

10 MR OSTROVE: If I may, Madam President, a question. I don't

11 want to do anything procedurally untoward, so I'd like

12 to just ask for permission.

13 Opposing counsel helpfully noted that while

14 Mr Tchelet's witness statement in this case referred to

15 the LMS agreement but didn't attach the document

[PROTECTED]

19 If it would be alright with everyone, just so

20 there's no confusion, while Mr Tchelet is here, would it

21 be okay to put that exhibit up on the screen and ask the

22 witness to look at that document, check that it's the

23 contract he was referring to, and ask him a question or

24 two about it, while he is here?

25 MR WOLFSON: I have no objection to that.

17:12

[PROTECTED]

2 Q. So in that case, in your footnote you refer to
3 Exhibit R-180, which is the exhibit number in the LCIA
4 case.

5 I put up on the screen Exhibit R-180 in the LCIA
6 case. It's a document in French, with an English
7 translation after it. Can you see it well enough on the
8 screen?

9 A. I can see it. I'd prefer to see the English
10 translation.

11 THE PRESIDENT: Yes, maybe you will show the English
12 translation.

13 MR OSTROVE: But one thing that I particularly wanted to
14 check, to make sure this is actually the document he was
15 thinking of, is if we go down to the pages, we can then
16 see what it actually covers in terms of obligations; but
17 if we look at the last page of the French original, it's
18 an undated and unsigned copy of the contract.

19 So I just wanted to check if you recall whether this
20 was the version you relied on, an undated and unsigned
21 contract, or whether there was some other contract that
22 was a signed contract that you were referring to.

23 A. I believe there was an executed contract.

24 Q. So the document that you annexed to your LCIA witness
25 statement was not actually the document that you were

17:13 1 relying on at the time?

2 A. I don't recall what was appended to my document. But

3 if you're asking me if the agreement was executed, from

4 my recollection, it was executed.

5 Q. Okay. And with respect to the payment obligations, if

6 you look at Article 4:

7 "Payment under this contract shall be made a maximum

8 of 30 days after receipt of invoice, proven by

9 acknowledgment of receipt and after confirmation of the

10 camp leaders to the following bank account ..."

11 And it provides an LMS account at Banque Populaire

12 Maroco-Guinéenne and an account number?

13 A. Yes.

14 Q. So do you recall if there were different payment

15 instructions that would have justified payment to

16 an account in Belgium for payments under this contract?

17 A. Well, that really is a specific requirement of the

18 project manager. So at the very least we would have

19 expected, as the finance team, to have a contract.

20 A change like that would be change in circumstance which

21 then the project manager would have to answer for. But

22 this was the basic basis that should be in place.

23 MR OSTROVE: I think I will, as Mr Wolfson said before, save

24 the rest for submissions.

25 THE PRESIDENT: Is there any follow-up question you want to

17:15 1 ask on the basis of this document, or are you satisfied?

2 MR WOLFSON: There's nothing on the basis of this document.

3 But, again to be fair to my colleague, there is
4 a question, or really a point, I wanted to make, in
5 fairness to my colleague, while the witness is still
6 here, arising out of a question which Madam President
7 asked the witness.

8 The Tribunal will recall that one of the most
9 serious allegations in this case is the allegation that
10 my client paid \$1,050,000 direct to Mamadie Touré. We
11 made the point on the first morning that there was no
12 evidence of that. Until Madam President asked the
13 witness about that payment, no questions had been put to
14 this witness, who has come especially to give evidence
15 on financial payments and controls, about that payment.

16 Now, my friends have a choice: they can either drop
17 the allegation or they can ask questions about it. They
18 have chosen not to do so. We are therefore taking the
19 position that this allegation is dropped, because it's
20 quite unfair, in my respectful submission, to make that
21 allegation and then not to give the witness a chance to
22 deal with it. The only question put on this critically
23 important allegation was put by Madam President.

24 This is a basic matter of procedural fairness, and
25 it's up to my friends to decide what they want to do.

17:16 1 If they want to ask questions at the last moment, let
2 them ask them. But we don't want any confusion in
3 closing submissions as to which allegations were and
4 were not put to the witness.

5 THE PRESIDENT: In international arbitration we do not
6 operate with strict rules about having to put certain
7 questions to a witness. At the same time, it is true
8 that we will assess the record and the evidence on the
9 basis of questions that were put or not put; that is
10 part of our overall assessment of the facts.

11 Having said that, of course, it is appreciated that
12 you do raise this. Do counsel for Respondent wish to
13 ask any questions to the witness in this respect?

14 MR OSTROVE: Madam President, if it will make opposing
15 counsel and the Claimants in this case feel more
16 comfortable, we could certainly ask two or three
17 questions very briefly to the witness which I think will
18 demonstrate why we weren't asking this witness these
19 questions. Normally in international arbitration we
20 limit questions to witnesses to things that are within
21 the scope of their testimony.

22 Mr Tchelet, you don't provide any testimony
23 regarding payments that Madame Touré alleges that she
24 received in the amount of \$1,050,000, do you? And just
25 to be clear, that line at the top of the chart, the

17:18

1 source of that claimed payment is Madame Touré's
2 declaration that she received cash of \$1,050,000.

3 Did you provide any testimony regarding her claim
4 that she received a cash payment from BSGR?

5 A. No, I am not aware of any such payment from BSGR.

6 Q. And in your role, if there was going to be a payment
7 made in cash, would that be something that you would
8 have to authorise a payment through the system?

9 A. Certainly if a request in cash was asked, I would have
10 had to have known about it and approved. And I was
11 certainly not aware of any such payment.

12 Q. And if cash were obtained from somewhere outside of the
13 formal accounts, then you would be unaware of that;
14 correct?

15 A. I was unaware of this, yes.

16 (5.19 pm)

17 Questions from THE TRIBUNAL

18 PROFESSOR VAN DEN BERG: Mr Ostrove, may I ask you
19 a question, although you are not testifying, but simply
20 as a clarification. In support of your flow chart, if
21 I may call it that way, you have also provided an Excel
22 sheet of which the hardcopy print-out looks like this
23 (indicating). You see this?

24 MR OSTROVE: Yes.

25 PROFESSOR VAN DEN BERG: I was worried because I could not

17:20 1 retrieve it that quickly on my computer. But maybe can
 2 you pull up this Excel sheet? Because if I see
 3 correctly here --

4 MR OSTROVE: Let me just look if I can find it. (Pause)
 5 Fortunately, Professor van den Berg, I'm more organised
 6 than I thought I was, and the Excel spreadsheet is now
 7 on the screen.

8 PROFESSOR VAN DEN BERG: If you go down to row 9, this is
 9 the \$1 million payment in cash, is it?

10 MR OSTROVE: Yes.

11 PROFESSOR VAN DEN BERG: And this is all the backup you have
 12 for this? What I mean is your client. Basically this
 13 is a reference here to your Counter-Memorial, and then
 14 you go to R-35, page 4, and that is -- I think I may
 15 call her "Madame Touré" now? Because she married Mr Cissé
 16 now, so I'm on safe ground now.

 17 This is the statement, R-35. If we can split the
 18 screen, we will look.

19 MR OSTROVE: You would like to look at Exhibit R-35?

20 PROFESSOR VAN DEN BERG: So we go to the source. You don't
 21 have a hyperlink?! (Pause)

 22 Which paragraph is it on page 4? I'm looking to the
 23 statement in R-35 of Mamadie Touré.

24 MR WOLFSON: As I understand it, sir, it's the last sentence
 25 of paragraph 28. That's the entirety of the evidence on

17:23 1 the point. (Pause)

2 PROFESSOR VAN DEN BERG: That is the base on which you place

3 the assertion that \$1 million in cash has been paid by

4 BSGR to Madame Touré?

5 MR OSTROVE: Yes, the evidence we have.

6 PROFESSOR VAN DEN BERG: Any other evidence for that?

7 MR OSTROVE: The only evidence that we have that she

8 received that cash is her statement that she received

9 the cash, which I will put on screen in a moment.

10 PROFESSOR VAN DEN BERG: May I ask, Mr Tchelet: are you

11 aware of any payment in cash of \$1 million which is

12 being discussed?

13 A. No, sir, not at all.

14 PROFESSOR VAN DEN BERG: Thank you.

15 To be complete, the \$50,000, what is the backup for

16 that? If you go back to your Excel sheet.

17 MR OSTROVE: I shall. Sorry, so having just gotten to the

18 page with the statement of the \$1 million, which, as you

19 can see, was in paragraph 28 of her attestation.

20 PROFESSOR VAN DEN BERG: Yes, I've got it.

21 MR OSTROVE: So actually the appropriate witness to ask

22 about it will be Mr Avidan, not Mr Tchelet.

23 PROFESSOR VAN DEN BERG: Sure.

24 MR OSTROVE: Now let's go back to the spreadsheet. The

25 \$50,000 payment is down here in row 14, and that's the

17:24 1 same attestation, paragraph 31. So go back to that.

2 PROFESSOR VAN DEN BERG: That was paid on the beach --

3 MR OSTROVE: Yes --

4 PROFESSOR VAN DEN BERG: -- according to her statement.

5 MR OSTROVE: Yes:

6 (Interpreted) "After having spent several months in

7 Freetown, Avidan sent a representative of BSGR to Sierra

8 Leone to give me 50,000 dollars in new money on a beach

9 close to Freetown."

10 PROFESSOR VAN DEN BERG: Again, Mr Tchelet, to be complete,

11 do you have any knowledge about this payment?

12 A. No, sir, I have no knowledge about this payment.

13 PROFESSOR VAN DEN BERG: Thank you.

14 THE PRESIDENT: Is it a regular practice to make payment in

15 cash?

16 A. No. The only cash payments that I'm aware of in the

17 group were payments whereby from South Africa, in terms

18 of the Reserve Bank regulations, amounts of up to about

19 \$20,000 was entitled to be drawn and taken in cash as

20 travel allowance, which we then had a system for that,

21 both for accounting and reporting to the Reserve Bank in

22 South Africa through Norinter. But I'm not aware of

23 other cash payments, yes.

24 THE PRESIDENT: Thank you. No other questions? No.

25 That then concludes your examination, Mr Tchelet.

17:26

1 Thank you very much.

2 MR TCHELET: Thank you, Madam President.

3 THE PRESIDENT: (Inaudible) And that does conclude our day.

4 With respect to the mini-openings tomorrow -- I am
5 just flagging it now so that you are prepared - (Audible) we
6 would like to know whether the external audit of the
7 group which Mr Steinmetz referred to, that was
8 commissioned, I understand, by the Balda board, whether
9 that is in the record. We don't think so, but maybe we
10 missed something.

11 We have the same question with respect to the
12 complaint filed in the US against George Soros. We
13 understand this to be a civil complaint. We don't think
14 it is in the record either, but we would like
15 a confirmation. We first ask whether it is in the
16 record. If it is not in the record, then we take it
17 from there.

18 That is all on the Tribunal's side. Are there any
19 points that need to be raised before we close, on the
20 Claimants' side?

21 MR WOLFSON: No, thank you.

22 THE PRESIDENT: Thank you. On the Respondent's side?

23 MR OSTROVE: (Interpreted) No, thank you, madam.

24 THE PRESIDENT: So tomorrow we'll start with Mr Struik in
25 the morning; is that right? And then we will go on with

17:28 1 Mr Avidan. Mr Avidan is by video link; is that correct?

2 MR WOLFSON: Yes.

3 THE PRESIDENT: And he is scheduled for 3.00 pm?

4 MR WOLFSON: That's my understanding.

5 THE PRESIDENT: You know how much time you will need, but

6 maybe we can start a little earlier already; at least he

7 could be available, if he can, somewhat earlier, so we

8 don't have to wait. What is the estimate with respect

9 to Mr Struik? I have it here: three hours.

10 MR OSTROVE: (Interpreted) May I now speak French, madam?

11 For Mr Struik, the whole morning. It can't be very

12 short. The whole morning, and perhaps even spilling

13 into the afternoon. And for Mr Avidan, I think there's

14 a pretty good chance that we will not conclude tomorrow

15 afternoon; we might be concluding Friday morning, madam.

16 So I don't think that there is any point in asking him

17 to start earlier.

18 THE PRESIDENT: (Interpreted) Isn't that a bit of a problem?

19 Because he is going to have to be kept in isolation for

20 such a long time.

21 MR OSTROVE: Well, madam, look at it this way: he is at

22 home, not here. He is in his country.

23 THE PRESIDENT: So you accept those circumstances?

24 MR OSTROVE: Yes, of course. We certainly trust that he

25 will pay attention to the sequestering requirement.

17:30 1 I can't actually say that we will conclude tomorrow
 2 evening with him.

3 THE PRESIDENT: (In English) You have understood this?

4 MR WOLFSON: Yes.

5 THE PRESIDENT: The point was that it might not be possible
 6 to complete Mr Avidan's cross-examination tomorrow, and
 7 so he would have to be carried forward to Friday
 8 morning.

9 MR WOLFSON: Yes.

10 THE PRESIDENT: Which would mean he would have to
 11 sequestered overnight.

12 MR WOLFSON: Yes. Let me speak to the relevant people. One
 13 thing that went through my mind is whether we might be
 14 able to get the expert here and, so to speak, interpose
 15 the expert, which would mean that people wouldn't have
 16 to be sequestered. But shall we discuss this between
 17 counsel?

18 THE PRESIDENT: Yes, you can discuss it. Of course the
 19 expert will be shorter; I mean, that's what I estimate.

20 MR OSTROVE: (In English) I will stay in English, with
 21 apologies to my client here.

22 I think the expert can be shortened a little bit
 23 more easily in function of how much time we require for
 24 Mr Struik and for Mr Avidan. So it wouldn't make sense
 25 for us to try to put the expert first, and then go to

17:31 1 Mr Avidan. And then we would also run into Shabbat in
2 Israel if we started later with Mr Avidan.

3 MR WOLFSON: I don't wish to cast doubt on his integrity,
4 but I'm not sure that's an issue for Mr Avidan. But
5 I'll check.

6 THE PRESIDENT: Good. So I think we are clear on the
7 programme, and we will all do our best so it works out
8 well. In the meantime, I wish everyone a good evening,
9 and we will see each other tomorrow at 9.30.

10 MR OSTROVE: Merci beaucoup.

11 (5.32 pm)

12 (The hearing adjourned until 9.30 am the following day)

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