

NAFTA/UNCITRAL ARBITRATION RULES PROCEEDING

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 In the Matter of Arbitration :
 Between: :
 GLAMIS GOLD, LTD. , :
 Clai mant, :
 and :
 UNITED STATES OF AMERICA, :
 Respondent. :
 ----- x Volume 3

HEARING ON THE MERITS

Tuesday, August 14, 2007

The World Bank
 1818 H Street, N. W.
 MC Building
 Conference Room 13- 121
 Washington, D. C.

The hearing in the above-entitled matter came
 on, pursuant to notice, at 9:06 a. m. before:

- MR. MICHAEL K. YOUNG, President
- PROF. DAVID D. CARON, Arbitrator
- MR. KENNETH D. HUBBARD, Arbitrator

Also Present:

- MS. ELOÏSE OBADIA,
 Secretary to the Tribunal
- MS. LEAH D. HARHAY

0814 Day 3 Final
Assistant to the Tribunal

Court Reporter:

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P R O C E E D I N G S

PRESIDENT YOUNG: We're ready to proceed.

We--I do remind everyone that we are--we are broadcasting this publicly to the adjoining rooms, and we welcome the public from those rooms.

Mr. McCrum, we turn the time to you; but before we start, let me again ask whether either party has any concerns or issues that they want to raise this morning with the Tribunal.

MR. McCRUM: Not here, Mr. President.

MS. MENAKER: No, thank you.

PRESIDENT YOUNG: Okay, thank you.

MR. McCRUM: Good morning, Mr. President, Members of the Tribunal.

Claimant, Glamis Gold, will now present the testimony of Mr. Bernard Guarnera.

BERNARD GUARNERA, CLAIMANT'S WITNESS, CALLED

MR. McCRUM: Mr. Guarnera, will you read the oath for expert witnesses.

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

2 BY MR. McCURUM

3 Q. Mr. Guarnera, will you state your full name,
4 title, and business address.

5 A. Bernard John Guarnera. I'm President and
6 Chief Executive Officer of Behre Dolbear & Company,
7 Inc. My business address is 999 18th Street, Denver,
8 Colorado 80202.

9 Q. Thank you.

10 You may want to move the microphone just a
11 bit closer to you.

12 A. Is that better?

13 Q. Yes.

14 Is Denver, Colorado, the only office of the
15 Behre Dolbear consulting firm?

16 A. No. We have several offices on a global
17 basis. We have an office in New York City, which is
18 where the company was started in 1911. We have an
19 office in Toronto and Vancouver. We have an office in
20 London. We have an office in Guadalajara, Mexico. We
21 have an office in Santiago, Chile. We have an office
22 in Sidney, Australia. We have an office in Sidney,

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09:08:28 1 Australia. We have an office in Beijing, China, and
2 we have a representative office in Hong Kong.

3 Q. And have you been the lead author of the
4 expert reports and rebuttal statements submitted on
5 behalf of Behre Dolbear in this case?

6 A. I have been the lead author, but I was
7 assisted by several other Behre Dolbear professionals.

8 Mr. William Jennings is here sitting at the end, and
9 he was he was also a significant party in the writing
10 of the report.

11 Q. Can you describe your academic degrees that
12 relate to your expert report, Mr. Guarnera.

13 A. I have a Bachelor of Science in geological
14 engineering with an emphasis on mining from the
15 Michigan College of Mines; it's now called Michigan
16 Technological University. And then I have a Master of
17 Science degree in economic geology from the same
18 institution.

19 Q. And are you a Certified Mineral Appraiser,
20 Mr. Guarnera?

21 A. I am.

22 Q. And what certification as a mineral appraiser

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09:09:36 1 do you hold and from what institution?

2 A. I'm a Certified Mineral Appraiser with the
3 American Institute of Mineral Appraisers.

4 Q. Is that a recent designation you received?

5 A. No, sir.

6 Q. Do you conduct mineral appraisal training
7 courses and, if so, for who?

8 A. My firm, Behre Dolbear, does, and I play an
9 integral part in the valuation side of that, and we
10 put them on for financial institutions. We were
11 commissioned by the World Bank to provide a two-day
12 training session for their professionals in--on a
13 global basis here in Washington, D. C.

14 We do it for a lot of venture capital firms,
15 private equity firms; and twice in the last seven
16 years, I have done it for the Mining Engineering Group
17 of the Internal Revenue Service.

18 Q. Is Mr. William Jennings here today? Is he a
19 Certified Mineral Appraiser?

20 A. He is.

21 Q. Are you a Registered Professional Engineer
22 and a Registered Professional Geologist?

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09:10:56 1 A. Yes, sir. I'm a Registered Professional
2 Engineer in the State of Texas. I'm registered as a
3 professional geologist in the states of Idaho and
4 Oregon, and I am a chartered professional with the
5 Austral-Asian Institute of Mining and Metallurgy.

6 Q. What other profession--I'm sorry, were you
7 going to go on?

8 What other professional affiliations do you
9 have, Mr. Guarnera?

10 A. Well, I'm a member of the Society of Mining
11 Engineers, and I am on their Special Committee for Ore
12 Resources and Ore Reserves.

13 I'm a member of the Mining and Metallurgical
14 Society of America. I was a counselor of that
15 association, and I am a qualified professional member
16 in that association.

17 I'm a member of the Canadian Institute of
18 Mining and Metallurgy. I'm a member and fellow of the
19 Society of Economic Geologists. I was a fellow of the

20 Geological Society of America, but I resigned from
21 that.

22 I was a member of the Ontario Association of

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09:12:09 1 Professional Geologists, but I resigned from that, and
2 I am currently serving as Chairman of the Colorado
3 Mining Association. That's an industry trade group
4 comprised of all of the mining companies that are
5 active in the State of Colorado.

6 Q. How much of your work has involved the
7 valuation of metallic mining properties over the past
8 few decades?

9 A. Well, since its founding in 1911, the firm
10 has been known for its valuation expertise, probably
11 reached its claim with the Iranian Awards Tribunal
12 when it represented Atlantic Richfield Company in the
13 seizure of its Sar Chesmeh copper mine. Now, that was
14 before I joined the firm, but Behre Dolbear has always
15 been known for its valuation expertise.

16 I, myself, spend approximately 60 percent of
17 my chargeable time working on valuations. The
18 remainder of that is looking at the certification of
19 mineral resources and ore reserves.

20 Q. Do you do your mining valuation work
21 primarily for mining companies such as Glamis Gold,
22 Limited?

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09:13:27 1 A. Well, we certainly do a lot for mining
2 companies, both major companies like Glams and
3 Goldcorp, as well as for the junior mining companies.
4 We also do a lot for investment banks. We
5 also do a lot for major corporate lenders. We are the
6 primary chosen consultant by Citibank. J.P. Morgan
7 Chase considers us to be their preferred consultant.
8 Standard Chartered Bank considers us as their
9 preferred consultant. Société General has one of our
10 professionals in their office one day a week, so we do
11 a lot of work for the commercial banks, as well.
12 We do a lot of work for state-owned mining
13 companies that would be interested in privatizing
14 their assets to give them a valuation and technical
15 report for public offerings. For instance, we are
16 doing the technical work for the public offering of
17 the Saudi Arabian National Aluminium Company and the
18 Saudi Arabian National Phosphate Company.
19 We just completed a privatization of Jordan
20 Phosphate Mining Company for the Government of Jordan,
21 which was a State-owned mining company. We just
22 finished Arab Potash for the Government of Jordan.

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09:14:57 1 We have done a lot of work for the Government
2 of Nigeria.
3 We are currently very active in the Congo,
4 working with the State-owned company Gecamines and the
5 companies that are working with it.

6 So, our work is very varied. We have done
7 quite a bit of work for the World Bank.

8 Q. In the past several years have you been
9 retained by the U.S. Department of Justice for
10 metallic mineral valuation? And if you have any
11 limitations on describing that work, just describe it
12 in a general way.

13 A. Well, we have been retained on both
14 nonmetallic and metallic minerals. We had two
15 retentions in nonmetallic minerals dealing with values
16 in antitrust cases, and the metallic mineral one was
17 a--kind of in an umpire role to place a value on a
18 major copper company.

19 I am under confidentiality agreement.
20 However, if the Tribunal wishes me to tell the name of
21 the company, I probably can do that.

22 Q. In these varied valuation experiences you

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09:16:04 1 have described, do you apply a consistent methodology
2 or consistent standards?

3 A. We do.

4 Q. Have you applied standards in this valuation
5 on the Glamis Imperial Project that are consistent
6 with your past practices?

7 A. Yes, sir.

8 Q. Do you have other associates at Behre Dolbear
9 who have worked with you on the expert reports in this
10 case beyond Bill Jennings, who you have described?

11 A. Yes, we had three professionals working with

12 us. One of them, Mr. Mark Anderson, worked on the
13 processing side. Mr. Anderson was Vice President and
14 General Manager of Azamara Gold Company.

15 They had two large gold mines, one in the
16 State of Washington, which was an underground mine,
17 and a heap-leach gold mine in the State of Nevada
18 called the Gooseberry Mine, and Mr. Anderson was in
19 charge of those issues, so he helped us very much on
20 metallurgical issues.

21 Mr. Scott--Dr. Scott Mernitz has a degree and
22 background in environmental sciences, and he helped us

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09:17:17 1 on the Project, as well, in looking at some of the
2 backfill requirement issues and regulations.

3 And Mr. Rachal Lewis was very instrumental in
4 helping us on all of the mining aspects on the
5 project.

6 Q. Does Mr. Lewis have experience in connection
7 with operating metallic mines?

8 A. He has experience with operating metallic
9 mines and extensive experience in the operation and
10 development of deposits such as the Imperial Project
11 which are open pit heap-leach gold deposits.

12 Q. And are the resumes of the individuals you
13 referred to contained in the expert reports you have
14 submitted?

15 A. Yes, sir.

16 Q. Mr. Guarnera, can you tell us your overall
17 opinion about the effect of the adoption of the

18 mandatory backfilling and site regrading requirements
19 by the State of California between December 2002 and
20 April 2003, upon the fair market value of the Glamis
21 Imperial Project?

22 A. Yes, sir.

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09:18:42 1 Q. Can you please describe that general opinion,
2 briefly.

3 A. Very simply, it economically sterilized the
4 deposit. You had a deposit that by our calculation,
5 had a net present value in excess of
6 \$49 million--\$49.1 million, I believe to be
7 exact--that was present prior to the enactment of the
8 backfill regulation.

9 And after the enactment of the backfill
10 regulation, we calculated it to have a negative net
11 present value of minus \$8.9 million, I believe. The
12 effect of that, obviously, was to completely destroy
13 any economic value that was present. People raised
14 questions about the property and how good it is, but
15 the fact remains is that the destruction of the
16 economic value has very clearly been demonstrated by
17 the fact that nobody wants it.

18 Q. Mr. Guarnera, a fundamental geologic and
19 engineering issue has been raised in this case by the
20 expert reports of Norwest and Navigant, and that is
21 whether the vast majority of the overburden rock at
22 the Imperial Project area is gravel or cemented

09:20:12 1 conglomerate.

2 Do you have an opinion on that issue, and why
3 is that issue important here?

4 A. Well, I have a definite opinion.

5 Q. And why does it matter if the material is
6 gravel or cemented conglomerate?

7 A. It matters because it dramatically affects
8 the economics of the Project. The issue is what has
9 been referred to as "a swell factor."

10 To kind of give the panel an example, when
11 you're out in the garden digging a hole and then you
12 try to fill that hole back with dirt, there is always
13 a little more dirt left over than you seem to have
14 started with, and it's hard to figure out how it all
15 got there. Well, that's the swell factor.

16 Now, dirt does not have a very high swell
17 factor, but rocks do. As was demonstrated on some of
18 the slides that were shown, the average swell factor
19 is generally considered in the mining industry to be
20 somewhere in the range between 30 and 40 percent,
21 depending upon the rock type.

22 Now, gravel is deemed to have a swell factor

09:21:21 1 of about 15 percent. On the other hand, cemented and
2 compacted gravel, in other words, conglomerate, has a
3 swell factor of 33 percent, and that's a dramatic

4 difference.

5 The reason it's different is that it
6 increases the number of truck hauls you have to make.
7 That increases your costs. If you have something that
8 only has a swell factor of 15 percent versus something
9 with a swell factor of 30 percent, kind of on an
10 empirical basis it takes twice as many trucks to haul
11 it.

12 Q. Mr. Guarnera, did you and other members of
13 the Behre Dolbear project team visit the Imperial
14 Project Site to make a characterization of the rock
15 material?

16 A. It was not only just to make the
17 characterization of the rock material, but yes, we did
18 to do--to see what the rock material looked like and
19 certainly identified it right away as conglomerate. I
20 walked down into the arroyos or waddies, whichever you
21 prefer to call them, and saw the highly indurated
22 conglomerate that was present. But while we were

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09: 22: 46 1 there, we also looked at the entire site area to make
2 sure the site layout was quite appropriate, that
3 everything was accounted for. That's part of the work
4 that we do is to try to check every aspect of the
5 Project to make sure that it is, in our opinion,
6 correct. And if it's not, we will make some
7 corrections.

8 Q. Mr. Guarnera, has your opinion on the rock
9 type been influenced by the rock core samples

10 identified by Mr. Dan Purvance, the Glamis Gold
11 Project geologist?

12 A. It's not been affected by it. Those just
13 confirm what we saw out in the field.

14 Q. I'm referring now to Guarnera Exhibit 1, and
15 we have one of the photographs that Mr. Purvance
16 submitted with his rebuttal statement in July of 2007.

17 Are you familiar with those photographs,
18 Mr. Guarnera?

19 A. Yes, sir.

20 Q. Let's turn to the next picture on that slide,
21 and we have sample WC-4-74, which I will hand you a
22 bag, a sample bag with that legend that corresponds

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09:23:57 1 with the bag in the photograph.

2 And can you take the rock sample out,
3 Mr. Guarnera.

4 And can you offer us your expert geologic
5 opinion about whether that material in your hand is
6 gravel or cemented conglomerate?

7 A. It's definitely conglomerate.

8 Q. Is there any question in your mind about
9 that?

10 A. No, sir.

11 Q. When did you learn the difference between
12 conglomerate and gravel, Mr. Guarnera?

13 A. I learned it as a kid because I used to
14 collect rocks starting when I was six years old.

15 Q. Has your geological training expanded on the

16 understanding you had in your younger days?

17 A. It certainly has.

18 Q. Does the sample that you have correspond to
19 geologic records that were maintained by Mr. Purvance?

20 A. Yes, sir.

21 Q. Let's look at one of the other--the next
22 hearing exhibit, Guarnera Hearing Exhibit Number 2,

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09:25:17 1 and this is the Chemgold letter dated March 5, 1996,
2 and dated--signed by Dan Purvance, and let's turn to
3 the next page on this exhibit, which is--consists of
4 some charts.

5 And can you see on that chart the designation
6 that correlates with the sample you have,
7 Mr. Guarnera, WC-4-74?

8 A. Yes, I can.

9 Q. And on the left side, the sample is--what
10 does the sample description say?

11 A. It says conglomerate/gravel.

12 Q. And as an experienced professional in this
13 field, does it surprise you that a working geologist
14 might make a reference like that to this sample?

15 A. Are you referring to the fact that there is a
16 mixed name of conglomerate and gravel there, sir?

17 Q. Yes.

18 A. No, that's not surprising. My experience is
19 that at many project sites where there is a lithology
20 that is not of commercial importance, it's generally
21 called by various names. And I have seen names, for

22 instance, of--in a lot of pre-Cambrian terrains, which

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09:26:40 1 are very old rocks of just green schist to cover a
2 multiple of rock types, and I have seen at project
3 sites where some people give--some of the noneconomic
4 material just has other acronyms that they use.
5 Sometimes that are not too polite, but they're there.

6 So, I mean, that's not--that's not unusual at
7 all for somebody to do that.

8 Q. Was this material that's referred to as
9 conglomerate/gravel here in this example, was it part
10 of the economic ore deposit of interest?

11 A. No. It actually comprises approximately
12 80 percent of the waste rocks.

13 Q. And let's look at the top of this chart.
14 There is a sample WC-3 at the depth of 90 feet, and
15 that happens to be referred to as gravel there; is
16 that correct?

17 A. Yes, sir.

18 Q. Let's advance two charts ahead in this
19 exhibit.

20 And now we have the same samples referred to,
21 the one you have before you, WC-4-74, and also the
22 sample WC-3 at 90 that we looked at before.

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09:27:58 1 And here in this chart, how are those samples

2 characterized in the left column?

3 A. They're characterized as conglomerate only.

4 Q. And on the far right corner, are there--is
5 there a further geologic description provided?

6 A. Yes, for--I can't quite read the numbers, and
7 I apologize, but it says--

8 Q. Can you pull those up?

9 A. --but it says "well cemented," I believe is
10 what it said in--for one of them, and the other one, I
11 think it said "full core well cemented."

12 Q. And do you agree with the geologic
13 characterizations made by Mr. Purvance in the
14 mid-1990s here?

15 A. Absolutely.

16 Q. And these charts that we're referring to,
17 were they all contained as exhibits in the Norwest
18 technical reports submitted in this case?

19 A. To my knowledge, yes.

20 Q. Mr. Guarnera, was there a report by WESTEC
21 that had a bearing on your ability to classify the
22 material as conglomerate versus gravel?

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09:29:18 1 A. Yes, sir.

2 Q. Let's look at the Behre Dolbear--at Guarnera
3 Exhibit 3, which is excerpts from a WESTEC pit slope
4 study that was included as an excerpt to a Behre
5 Dolbear report in this case.

6 And let's look at the next page of that
7 exhibit.

8 Now, this WESTEC report that we are looking
9 at, the excerpt that was included in the Behre Dolbear
10 reports, is dated February 1996.

11 And let's turn to the second page of this
12 exhibit, and there is a description which states--if
13 we could turn to the next page of this
14 exhibit-- "Tertiary conglomerate overlies the volcanics
15 or lies directly on the Jurassic metamorphic where the
16 volcanics are absent. As much as a 700-foot thickness
17 of conglomerate will be exposed by the proposed pit
18 wall. The conglomerate is typically a moderately
19 well-indurated clay, carbonate and iron oxide-cemented
20 material with coarse subangular gneissic fragments in
21 a moderate to a coarse-grained sand matrix with
22 considerable mica component. "

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09: 30: 45 1 What did this description tell you,
2 Mr. Guarnera, about the nature of the 700-foot
3 thickness of material referred to here?

4 A. That is the same as what we are looking at
5 right here on the witness--or on the expert desk.

6 The other interesting thing is that the prior
7 paragraph that is outlined called the
8 conglomerate/gravel, and I think that shows that even
9 WESTEC was using the vernacular that was used by the
10 Glamis people, but recognized it to be a unit of
11 conglomerate over 700 feet thick.

12 Q. Based on your experience in the field, did
13 you know anything about the WESTEC organization?

14 A. They were a very well regarded and are a very
15 well regarded geotechnical engineering firm.

16 Q. And is there any other very fundamental
17 inference that could be made about this pit wall that
18 would shed some light on whether it might be
19 conglomerate versus loose, unconsolidated gravel?

20 A. Yes. WESTEC was engaged by Chemgold at the
21 time, I believe, which was the predecessor to Glamis
22 here, to do geotechnical drilling, to take samples

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09:32:10 1 that would determine the bearing capacity and the
2 strength of the walls of the proposed open-pit mine.
3 The purpose of that was to make sure that the slopes
4 of the open pit were such that there would not be any
5 danger of slumping rock falls.

6 And the slopes that they designed the open
7 pits at were 40 degrees to 55 degrees. Quite steep.

8 Now, the big significance here is that if it
9 was gravel with its unconsolidated nature, you would
10 have to have a much shallower pit, which probably
11 would have rendered the deposit economic. Or if it
12 was--if WESTEC made a mistake and it was gravel, as
13 has been asserted, the whole pit walls would have
14 collapsed, slid down.

15 Q. Mr. Guarnera, can you describe that one more
16 time. What would be the effect if the pit walls were
17 made of gravel in terms of the economic effect on the
18 Project?

19 A. It would have sterilized the Project.

20 Q. In other words, would the--would gravel--if
21 the pit walls were made of gravel, would they be able
22 to stand up at 40- to 55-degree slopes as had been

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09: 33: 34 1 assumed?

2 A. No, sir.

3 Q. And did the 1996 Feasibility Study reflect
4 assumptions about what the pit slopes would be?

5 A. Yes, sir, it did.

6 Q. And what did the 1996 Feasibility Study
7 indicate?

8 A. That the pit slopes would range from 40
9 degrees to 55 degrees.

10 Q. Now, let's look at Guarnera Exhibit 4. This
11 is a--excerpts from an Excavation Handbook by Horace
12 Church, consulting engineer, published by McGraw-Hill
13 book company.

14 Are you familiar with this handbook,
15 Mr. Guarnera?

16 A. Yes, sir.

17 Q. And does it provide--what does it provide?

18 A. Well, Mr. Church was considered to be one of
19 the principal experts in the compaction, excavation,
20 swell factors for different types of rocks.

21 Q. Let's look at the first page of this exhibit,
22 which is an attachment to a Behre Dolbear expert

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09: 34: 45 1 report. Let's hone in on this chart between the
2 highlighted text, if we could, so we can try to see.

3 And does this indicate what the swell factor
4 for basalt would be?

5 A. Yes.

6 Q. And what swell factor is indicated by the
7 Church Handbook for basalt?

8 A. 64 percent.

9 Q. And is there basalt in the Imperial Project
10 area as well as conglomerate?

11 A. Yes, it comprises--as was noted in the WESTEC
12 section, it comprises a portion of the waste rock.

13 Q. Let's turn to the next page of the Church
14 Handbook and look at the first top two highlighted
15 sections.

16 Does this indicate what the swell factor is
17 for conglomerate?

18 A. Yes.

19 Q. And what does the swell factor indicate here
20 for conglomerate?

21 A. Yes, sir, it indicates that it's 33 percent.

22 Q. And now let's look down to the bottom, two

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09: 35: 51 1 highlighted entries on the Church Handbook, and we
2 have entries for gneiss and gravel, and can you tell
3 me what the different swell factors are?

4 A. The swell factor for gneiss, which is another
5 component of the waste rock, is 67 percent, and gravel

6 is also 15 percent.

7 Q. So, your--what did--how did you come up with
8 your Behre Dolbear swell factor of 35 percent for the
9 waste rock as a whole?

10 A. We derived it from the measurements that were
11 shown in the Feasibility Study, sir.

12 Q. And based on the Church Handbook, would it
13 appear that your swell factor of 35 percent is
14 inflated or conservative?

15 A. It's probably conservative because of the
16 fact that the conglomerate which comprises
17 approximately 80 percent of the waste rock is
18 33 percent, and all of the other rocks that are
19 present would have had a higher swell factor than the
20 conglomerate.

21 Q. In your experience, is a swell factor in the
22 range of 30 to 40 percent for a metallic mine at all

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09:37:17 1 unusual?

2 A. No, sir, that's not unusual.

3 Q. Turning to another issue where your
4 engineering and geologic analysis differs from that of
5 Norwest, why did Behre Dolbear assume that the
6 backfilled material in the pit could not be simply
7 dumped off the edge of the pit as Norwest assumed?

8 A. Well, we reviewed the regulations that were
9 part of the backfill requirement, and it calls for an
10 engineered design to assure that there would be
11 minimal settlement of the material.

12 Now, one of the things about swell factor is
13 that when you--the first time you dig the rock up, you
14 have the initial swell factor, but then every time you
15 move it again, you do have additional swell factor.
16 So the rock is moved from--the waste rock say, is
17 blasted, loaded into a truck, and then it is dumped on
18 a waste pile. That constitutes three areas where you
19 will get some swell. That waste pile is ultimately
20 compacted somewhat by the continued movement of trucks
21 over it.
22 But then, when you try to move the waste

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09:39:04 1 back, you again lift it up, and so you are incurring a
2 swell factor issue again.

3 Now, if you dumped it over the edge of the
4 pit, you are possibly going to have another swell
5 factor impact.

6 Our impression and our belief is that what is
7 needed to be done is to haul the material down in the
8 pit, and to place it down into the pit, and then
9 compact it by the movement of the trucks in gradual
10 levels. This is significantly different than
11 Norwest's program of just going to the edge of the pit
12 and dumping.

13 Q. Mr. Guarnera, there has been reference in
14 this case to the Glamis Gold, Limited, preliminary
15 economic assessment of the impact of the California
16 emergency backfilling regulations prepared by Mr. Jim
17 Voorhees to Kevin McArthur and Charles Jeannes of

18 Glamis Gold, Limited, in January of 2003. Are you
19 familiar with that analysis?

20 A. Yes, sir.

21 Q. And is that analysis consistent with or
22 inconsistent with the conclusions expressed in the

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09:40:20 1 Behre Dolbear report?

2 A. It's both.

3 Q. Can you explain.

4 A. It's consistent with our analysis in that it
5 shows at \$300-an-ounce gold, which was the gold price
6 that Glamis at the time was using for their ore
7 reserve calculations and for also any acquisitions
8 they considered, at that price it was negative. It's
9 inconsistent in that other prices of up to \$375 an
10 ounce, it shows a positive value.

11 Q. And is it--in your assess--have you assessed
12 that analysis by Glamis?

13 A. We have. Several times.

14 Q. And there is a memorandum associated with
15 that analysis. How long is it?

16 A. I really don't know how many pages it is,
17 sir. I'm sorry.

18 Q. Let's pull up the exhibit Guarnera 5.

19 Is this the analysis we are referring to by
20 Glamis Gold, Limited, dated January 9, 2003?

21 A. Yes, sir, it is.

22 Q. And have you determined whether this analysis

09: 41: 50 1 was complete and included all the factors that would
2 be involved in complying with the regulations which at
3 that point had been in effect on an emergency basis
4 for three weeks?

5 A. It is incomplete, sir. There are three key
6 things in our opinion which are omitted in the
7 attached cash flows. The omissions are, number one,
8 the financial assurance requirement that we calculate
9 to be at the beginning of the mine life would have
10 been about \$47 million. That's number one.

11 The second factor that, in our opinion, is
12 missing is that Glamis did not attempt and show any
13 costs for rebuilding their mining equipment. Now,
14 that's critical. In our analysis, we have two
15 tranches of \$7.7 million each for rebuilding the
16 equipment. The trucks at--the trucks that would have
17 been used at the Imperial Project were the trucks that
18 were used at the Picacho project. The intent was to
19 move the equipment over to the other mine and work it
20 at the Imperial Project.

21 Now, after 11 years, those trucks would have
22 had over 50,000 hours on them. That's a lot of time

09: 43: 29 1 for equipment. You need to rebuild it. So, we put
2 \$7.7 million in for rebuilding the equipment prior to
3 undertaking the reclamation.

4 Then the third difference is that Glamis did
5 not account for respreading the heap-leach. They just
6 accounted for backfilling the pit. So, the leach pad
7 would have had to have been spread. In our opinion,
8 that would have taken two years minimum, and that
9 would have required, in our opinion, an additional
10 \$7.7 million for the rebuild, plus the additional
11 costs of moving the rock.

12 Q. Thank you, Mr. Guarnera.

13 Turning to the first page of the exhibit we
14 have up, is the--can you tell me what the column on
15 the left under the \$300-ounce gold category indicates?

16 A. That indicates two negative values.

17 Q. And what was the significance of the \$300
18 figure at that time?

19 A. As I noted, that was the price that Glamis
20 was using to calculate its ore reserves.

21 Q. Was that ore reserve price amount something
22 that was disclosed in Glamis's Annual Reports at that

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09:44:52 1 time?

2 A. I believe that they had to disclose their
3 reserves. I don't know if they disclosed the price
4 they calculated their reserves at, but industry
5 standard is that you would, so I would assume that
6 they did.

7 Q. And those different numbers there, what do
8 they indicate below that \$300 level?

9 A. That at a 5 percent discount rate, it has a

10 negative value of 3/10 of a million dollars, and at a
11 10 percent discount rate it has a negative value of
12 4.8 million.

13 Q. So, what did this tell the--what did
14 this--what would this have indicated to--from a
15 business perspective to a company reviewing this?

16 A. That it's a no-win, walk away.

17 Q. And when moving to the other gold price
18 levels which would have been upside numbers at that
19 time, 375-per-ounce gold, we see higher net present or
20 higher value numbers indicated. Does that mean that
21 the Imperial Project has a high net present value
22 today because the spot price of gold is in the \$600

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09:46:13 1 range?

2 A. Absolutely not.

3 Q. And why is that?

4 A. The increase in mining costs and operating
5 costs.

6 Q. And have you referred to the increase in
7 operating costs in your expert reports?

8 A. Yes, sir, we have.

9 Q. And can you give a further indication of what
10 these cost increases are like?

11 A. Yes. Well, in our report, we underestimated
12 them. We said they were 81 percent over the last
13 several years, but the actual costs are much higher
14 than that. Glamis, in its recent releases for the
15 first quarter of 2007, the Marigold Mine, which is an

16 analog in a way to the Imperial Project, it's a
17 heap-leach open-pit gold deposit low-grade, their cash
18 costs--that's just their operating costs alone--were
19 in excess of \$500. At the end of the second quarter
20 of 2007, they were over \$700 an ounce.

21 MS. MENAKER: Excuse me, this is all new
22 information that's not in the record. It's not even

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09:47:24 1 in the last statement or rebuttal report.

2 MR. McCRUM Mr. Guarnera is referring to
3 published most recent quarterly reports from Goldcorp,
4 indicating the operating costs of the Marigold Mine as
5 Mr. Kaczmarek has referred to recent published
6 statements from the company in his rebuttal report
7 filed a week ago.

8 MS. MENAKER: I understand that, but the
9 Tribunal made clear that there was to be no new
10 evidence introduced at this hearing, and each side had
11 the opportunity to put in rebuttal statements with
12 evidence. So, you did that, we did that, but now
13 there is not an opportunity to put in new evidence.

14 MR. McCRUM Well, as I indicated, Navigant
15 has just referred to recent public statements by
16 Goldcorp in public--published releases from the
17 company in a report filed one week ago, so we think
18 it's only fair Mr. Guarnera can refer to recent
19 published information from the company that's equally
20 available to both sides that has a direct bearing on
21 the issues.

22

MS. MENAKER: It's--unless this information

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09:48:41 1 is less than a week old, it's not new information, and
2 at some point there has to be a stop to new
3 information. That's why the parties are given an
4 opportunity to put in evidence with rebuttal
5 statements, but the hearing is not the proper time to
6 introduce yet new evidence.

7 (Tribunal conferring.)

8 MR. McCRUM: The report from Glamis with the
9 \$700-an-ounce operating cost at the Marigold Mine was
10 publicly released on August 9th. It's new
11 information. It's public. It's been released by the
12 company.

13 MS. MENAKER: It's all the more reason not to
14 let it in at this point in time. We haven't had a
15 chance to look at it. There is a lot of public
16 information out there, but we were limited to
17 information that's already been put into the record.

18 (Tribunal conferring.)

19 PRESIDENT YOUNG: Mr. McCrum, we are going to
20 ask you to move on from that line of questioning, on
21 the one hand, and so we will sustain that objection.

22 On the other hand, we want to put this in the

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09:52:05 1 same category as a few pending document requests that

2 still are sitting out there. We may ask the parties
3 to come back at a later point and both elucidate this
4 information from your perspective and Respondent, this
5 perspective--this information from the Respondent's
6 perspective.

7 MR. McCRUM Thank you, Mr. President.

8 BY MR. McCRUM

9 Q. Mr. Guarnera, let me ask you a hypothetical
10 question. If operating costs at an open-pit mine were
11 in the range of five to \$700 per ounce of gold
12 produced, what would be the net present value of a
13 project that reflected the data we just saw in the
14 Voorhees memorandum of January 2003?

15 A. The net--on the effect--the net effect on a
16 project such as the Imperial Project would be
17 economically negative. It would not be a viable
18 project.

19 Q. Mr. Guarnera, the Navigant firm has offered
20 the view that Behre Dolbear made inappropriate
21 assumptions in assuming that a cash-backed financial
22 assurance would be required for the Imperial Project

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09:53:39 1 as a result of the adoption of the California
2 mandatory backfilling regulations between
3 December 2002 and April 2003. Do you have a response
4 to that criticism?

5 A. I do. I do think it's--I think their opinion
6 is flat wrong. I'm basing that on actual experience,
7 our firm's experience in working with companies to get

8 reclamation bonds at that point in time, and I'm
9 referring also specifically to Mr. Jeannes's testimony
10 and personal discussions that I have had with him.

11 I also know that Navigant also made point of
12 the fact that their new company, Goldcorp, has a \$1.5
13 billion line of credit, but only a limited amount of
14 that line of credit is allowed to be utilized to
15 secure reclamation bonds or any form of surety for
16 reclamation, and I have been advised by Mr. Jeannes
17 that they cannot--

18 MS. MENAKER: Objection. This again is
19 hearsay. Mr. Jeannes had an opportunity to testify
20 earlier. This is not in his statement, anything about
21 this line of credit, and he testified earlier. He
22 could have testified about this. We shouldn't have

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09:55:04 1 this witness testifying on hearsay on this matter.

2 MR. McCURUM: The--this individual is an
3 expert witness who routinely relies on other experts
4 regarding matters within the province of his
5 expertise. Financial assurances are part of the
6 assessment that is done for valuations.

7 He has in his prior reports referred to
8 communications with Charles Jeannes regarding
9 financial assurances. You had the opportunity to ask
10 Mr. Jeannes any questions you wanted about financial
11 assurances. You chose not to, and
12 Mr. Jeannes--Mr. Guarnera is speaking to this
13 contested issue.

14 MS. MENAKER: No. In the reports there was
15 hearsay evidence in the report--not evidence--there
16 was hearsay in the reports, and we did respond to
17 that, but now he is offering new hearsay that
18 Mr. Jeannes was here. He is not an expert,
19 Mr. Jeannes. He is a fact witness. If Mr. Jeannes
20 wanted to discuss these matters, he could have on
21 direct. We could not have crossed him on these
22 matters because this is the first we are hearing about

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09:56:05 1 it. It's through hearsay through Mr. Guarnera, and
2 that should not be permitted.

3 MR. McCRUM: Once again, the particular issue
4 that Mr. Guarnera is responding to was raised by
5 Navigant in its latest rebuttal report filed
6 approximately one week ago.

7 MS. MENAKER: And Mr. Jeannes testified well
8 after that one week ago.

9 MR. McCRUM: This is a subject matter that
10 both Mr. Jeannes and Mr. Guarnera have spoken to in
11 their reports in this statement in this case.

12 MS. MENAKER: I would just again remind the
13 Tribunal or point the Tribunal to its Procedural Order
14 11, paragraph--paragraphs 21 and--21, where it states
15 that the production phase of this proceeding was
16 completed substantially prior to this point and that
17 absent exceptional circumstances, it's not appropriate
18 for new testimony to be offered at this hearing. No
19 exceptional circumstances have been offered in support

20 of the request.

21 ARBITRATOR CARON: Counsel, is your objection
22 that the statement is based on hearsay or that the

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09:57:07 1 statement relates to new matters?

2 MS. MENAKER: That it's based on hearsay and
3 that the other individual was here. If he is going to
4 testify as to what Mr. Jeannes--it's based on both,
5 but if he is going to be testifying as to what
6 Mr. Jeannes told him on an entirely new matter, I
7 mean, it's objectionable on both grounds, but
8 especially the fact that Mr. Jeannes already
9 testified, and we now do not have an opportunity to
10 cross Mr. Jeannes on that matter. And I would object
11 to opening up the ability to recall witnesses at this
12 point in the hearing as well.

13 ARBITRATOR CARON: Counsel, could I just ask
14 further, is it your view that your cross is limited to
15 the direct statements of the witness or to the content
16 of their opinion as submitted?

17 MS. MENAKER: Well, for the expert witnesses,
18 it's limited by the subject matters on which they have
19 testified and their prior reports. For the fact
20 witnesses, it's similarly limited to the subject
21 matters on which they have put in written testimony
22 and their direct. But on this matter, again, this is

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09:58:28 1 not--on this matter, we would have had no opportunity
2 to cross Mr. Jeannes because this information was
3 unbeknownst to us. We had no reason to know that
4 Mr. Jeannes purportedly had a conversation with an
5 expert witness about a line of credit that his company
6 now has and any restrictions that might be placed on
7 that line of credit.

8 MR. McCRUM: The particular line of credit
9 we're referring to is the line of credit that Navigant
10 referred to in its expert report filed just one week
11 ago. So once again, this is our only chance to
12 respond to this information, which has been an issue
13 addressed by Mr. Guarnera.

14 MS. MENAKER: But once again, if this is
15 information--if this is their--this is not their only
16 chance. This hearing may be their only chance, but if
17 they wanted to elicit this information, they could
18 have asked Mr. Jeannes to elicit that information.
19 Are there any restrictions on this line of credit?
20 What line of credit? The United States has pointed to
21 this line of credit in its rebuttal reports; is that
22 correct? Et cetera, et cetera. Not to have an expert

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09:59:33 1 witness now come and give his opinion based on a
2 conversation that he purportedly had with a company
3 officer when we have no ability to cross-examine that
4 officer on this information.

5 MR. McCRUM: Mr. Jeannes did just testify

6 regarding the subject of financial assurances, and the
7 Government had every opportunity to raise any question
8 about his statements on financial assurances, and they
9 chose not to.

10 ARBITRATOR CARON: Counsel, can I just ask,
11 his statement is limited to the market in financial
12 assurances after September 11th, not--it doesn't
13 relate to the line of credit; is that correct?

14 MR. McCURUM: Mr. Jeannes made general
15 statements about the inability of--the difficulty of
16 getting financial assurances for the--for metallic
17 mining operations.

18 ARBITRATOR CARON: Okay.
19 (Tribunal conferring.)

20 PRESIDENT YOUNG: The Tribunal will take a
21 five-minute break. We want to examine some prior
22 testimony and some statements of witnesses.

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10:06:46 1 (Brief recess.)

2 PRESIDENT YOUNG: We are ready to reconvene,
3 please. Thank you.

4 The Tribunal is not at this point entirely
5 convinced that this is completely new information;
6 consequently, we're going to let you pursue the line
7 of questioning. On the other hand, since we are both
8 a little unclear as to where it's going and exactly
9 the details, we will allow Mr. Jeannes to be recalled
10 for 15 minutes with cross-examination by Respondent on
11 this issue that will come out of the Tribunal's time

12 and not out of Respondent's time.

13 MR. McCRUM Thank you, Mr. President,
14 Members of the Tribunal.

15 BY MR. McCRUM

16 Q. And to try to get back on track here,
17 Mr. Guarnera, let me just simply rephrase this
18 question and ask you, do you believe that the Behre
19 Dolbear assumption that a cash-backed financial
20 assurance would be required after the imposition of
21 the California backfilling requirements in between
22 December 2002 and April 2003, do you believe that

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10: 11: 25 1 assumption was appropriate today?

2 A. Yes, sir. That was our experience, and
3 that's our belief.

4 Q. And let's turn to another topic that's been
5 raised by Norwest, which has said that Behre Dolbear
6 and Glami's Gold should have entirely redesigned the
7 Glami's Imperial Project using the Golden Queen Mining
8 Company's recent application under SMARA filed in Kern
9 County in April of 2007.

10 What is your response to that assertion by
11 the Norwest firm?

12 A. Well, as was pointed out by prior testimony
13 here, the Golden Queen Mine, which has not received a
14 permit as of yet, to my belief--and to my
15 understanding, they had not even completed a
16 Feasibility Study, but they have noted that they were
17 planning to sell gravel rather than to back--sell

18 aggregate, excuse me, gentlemen, rather than to
19 backfill the pit completely. They have the privilege
20 of doing that because they're on private ground.
21 Glamis does not have that privilege to do that because
22 under the 1872 Mining Law, aggregates are not

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10:12:57 1 locatable. So, they have to live in the situation
2 that they have.

3 Q. Thank you.

4 Mr. Guarnera, the Navigant Report has been
5 taking issue with your use of a long-term gold price
6 average to evaluate the Imperial Project. What
7 response do you offer to that viewpoint?

8 A. Well, I find it difficult to comprehend.
9 That's standard practice. In many cases, it is
10 required practice that you use a long-term price of
11 gold.

12 I attended a paper in Vancouver in March--I'm
13 sorry, in July at the Rocky Mountain Mineral Law
14 Foundation that presented things--

15 Q. Tell you what, Mr. Guarnera, let's not even
16 get into that particular topic, unless counsel
17 would--I suspect that we would have an objection
18 referring to that particular topic.

19 A. Okay.

20 Q. A paper you attended in July 2007.

21 MR. McCURUM So, I'm saving you the
22 objection, Ms. Menaker, unless you would like him to

10: 14: 08 1 proceed.

2 MS. MENAKER: It wasn't nearly as
3 objectionable as the other, so go ahead.

4 BY MR. McCRUM

5 Q. Go right ahead, then, Mr. Guarnera. Why
6 don't you go ahead and describe what happened then.

7 A. Well, at that presentation, it was a
8 presentation by the former head of the Ontario--the
9 technical head of the Ontario Securities Commission,
10 the head of the British Columbia Securities
11 Commission, and the former head of the British
12 Columbia Securities Commission as to why filings would
13 be rejected. And one of the very clear points was
14 that if the spot price was used instead of a long-term
15 price, your filing will be rejected. That was just an
16 example of how sometimes it is required by the
17 regulators.

18 Q. In your many appraisals that you have done at
19 Behre Dolbear, have you ever used a single spot price
20 to calculate the net present value of a property?

21 A. No, sir, not to my knowledge.

22 Q. As you know, in this case Navigant has

10: 15: 27 1 asserted in its September 2006 expert report and then
2 again in its March 2007 expert report that their,
3 "valuation analysis indicates that the Imperial

4 Project is currently worth 159.1 million. "

5 What do you think of that assertion by
6 Navigant?

7 A. I think it's laughable. It just doesn't work
8 that way. If somebody is going to pay the spot price,
9 what margin do they leave themselves to make money?
10 Nobody buys something unless you're going to make a
11 profit on it.

12 So, that to me bears no fruit, but I think
13 it's erroneous in what they're saying because of the
14 fact that the \$159 million doesn't reflect the proper
15 ongoing capital costs and the ongoing
16 operating--increases in the operating costs.

17 Q. What effect on the fair market value of the
18 Glamis Imperial Project do you think has been caused
19 by public statements of the California Governor in his
20 press release of April 7, 2003, expressing the intent
21 to stop the Glamis Gold Mine by imposing
22 "cost-prohibitive" reclamation requirements because

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10:16:43 1 California sacred sites are more precious than gold?

2 A. As we said in our report, I believe, the
3 property has been significantly stigmatized, and
4 that's clearly reflected in the fact that not a single
5 offer to buy that property has arisen.

6 And this is in an exuberant gold market where
7 junior companies are hungry to buy anything that they
8 can call a resource to put on their books because that
9 is what their stock value is based on, and no one has

10 approached this \$1 million--1 million-ounce-plus
11 deposit to try to get a hold of it. I find that is
12 very indicative of a total lack of value.

13 Q. Mr. Guarnera, in your work at Behre Dolbear,
14 do you evaluate metallic properties in jurisdictions
15 around the world, and can you give me some examples?

16 A. Well, I have--the company right now is
17 working in 57 different countries on projects that
18 include valuations and evaluations, initial public
19 offerings, mergers and acquisitions, et cetera. I,
20 myself, have worked on every continent except
21 Antarctica. So, on valuing mineral deposits and
22 looking at properties, much to the detriment of my

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10:18:08 1 personal life. But we have significant experience,
2 and projects that we have been involved in have been
3 the recent purchase of \$1.1 billion interest in the
4 Ambatovoy nickel project by Korean Resources. We have
5 been involved in the acquisition of the Oyu Tolgoi
6 project in Mongolia, the Pebble project up in Alaska,
7 all by different companies, and it's just part of our
8 work, mergers and acquisitions, valuations.

9 Q. In all your work in these jurisdictions
10 around the world, have you identified any country
11 which has a mandatory complete backfilling regulatory
12 requirement for metallic open-pit mines, without
13 exception, as California has done in this case?

14 A. I have not.

15 Q. Did your first expert report find that there

16 were potential negative environmental factors
17 associated with complete backfilling?

18 A. Yes. As the National Resource Council noted
19 and we noted that as well, that there have been
20 frequently negative aspects of backfilling,
21 particularly the development of acid rock drainage
22 where, if you have sulfide minerals in your waste or

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10:19:35 1 if there is any sulfite minerals even in the present
2 rocks and they come in contact with water, they will
3 develop sulfuric acid, and that sulfuric acid, of
4 course, is a contaminant and can damage the water
5 table. So, that's one aspect.

6 The other aspect is that the reclamation
7 required of this project would require covering
8 basically more than 1,000 acres of land. That land
9 supposedly is desert tortoise habitat, it's an
10 endangered species, and their habitat will likely be
11 affected by any such aspect, and there are other
12 aspects that are negative about the backfilling
13 primarily, of course, as it affects a mining company
14 is the very major increase in costs. You're basically
15 mining the material all over again and bringing it
16 back.

17 Q. Well, in your--in what you were just
18 describing generally, did you find that there would be
19 an increase or decrease in the area of disturbance if
20 complete backfilling and site regrading was carried
21 out at this site?

22 A. I think we actually found that by our

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10: 20: 53 1 calculation, there would be approximately 20 more
2 acres disturbed.

3 Q. So, to summarize, did you find that--what
4 would cause an increased percentage of disturbance
5 from backfilling and site regrading?

6 A. Well, our plan and the plan to meet the
7 reclamation requirement and the backfill requirement
8 was to totally fill the West Pit, and as part of the
9 normal mining process and then fill the East, backfill
10 the East Pit. That still left the leach pit.

11 Now, practice in the industry and required by
12 regulation is that that leach pit has cyanide in it.
13 You first have to leach all the gold out of the pad,
14 which takes about two years, and then you have to
15 rinse the pad for an additional two years to
16 neutralize any cyanide that's present.

17 Now, practice is to leave the pad in place.
18 In some cases they encapsulate it with clay, but you
19 leave it in place generally because it's been
20 neutralized. But in this case now, you have to remove
21 it and spread all of that material to no more than a
22 height of 25 feet and contour it as well, and that was

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10: 22: 20 1 going to expand the area well beyond the original area

2 of disturbance.

3 Q. Thank you, Mr. Guarnera.

4 MR. McCRUM That will conclude our direct
5 testimony.

6 PRESIDENT YOUNG: Thank you.

7 Ms. Menaker?

8 MS. MENAKER: And if I could just have about
9 two minutes.

10 PRESIDENT YOUNG: Absolutely.

11 I propose that we actually take the break
12 starting now, and we will give you two minutes, but we
13 will reconvene back here at five minutes to 11:00.

14 MS. MENAKER: Thank you.

15 (Morning recess.)

16 PRESIDENT YOUNG: Counsel, are we ready to
17 proceed?

18 MR. McCRUM Yes.

19 PRESIDENT YOUNG: Okay. Thank you.

20 Ms. Menaker, we'll turn the time over to you.
21 Thank you.

22 MS. MENAKER: Thank you.

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10:55:49 1

CROSS-EXAMINATION

2 BY MS. MENAKER:

3 Q. Good morning.

4 A. Good morning, Ms. Menaker.

5 Q. Mr. Guarnera, you just testified that you
6 agree with Mr. Purvance's characterizations regarding
7 the waste material at the Imperial Project, the

8 proposed Imperial Project site that he previously
9 made; is that correct?

10 A. That's right, yes.

11 Q. And are you aware that Mr. Purvance made
12 swell factor determinations based on that data?

13 A. I'm aware he made swell factor
14 determinations, yes.

15 Q. And do you have any reason to believe that
16 those calculations made by Mr. Purvance are not
17 correct?

18 A. I believe the correct swell factor is
19 33 percent for conglomerate.

20 Q. And is it your testimony that by visiting the
21 Imperial Project site you were able to confirm the
22 makeup of the waste material that's hundreds of feet

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10:56:42 1 below the surface based upon a surface observation or
2 examination?

3 A. Yes.

4 Q. You also testified that--looking at the
5 Exhibit Number 5 dated January 9, 2003, you testified
6 that the Project would be unprofitable at a
7 300-ounce--at a price of \$300 per ounce of gold; is
8 that correct?

9 A. Is that the exhibit that showed the various
10 spread?

11 Q. Yes. I will show it to you.

12 A. I'm familiar with it. That's fine. Thank
13 you, Ms. Menaker.

14 Q. So, is that correct to say that you testified
15 that the Project would be unprofitable at \$300 per
16 ounce?

17 A. I did, yes.

18 Q. And isn't it true that your expert report
19 states that the appropriate price of gold used to
20 value the Imperial Project mining claims as of
21 December 12, 2002, is \$326 per ounce?

22 A. That was my--that was our number that we

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10:58:04 1 developed, yes.

2 Q. And you also testified that if you were to
3 value the Imperial Project mining claims currently as
4 of today or a few months ago, the value would have
5 decreased from 2002, based on increased operating
6 costs, which I believe you estimated to have gone up
7 in the range between 80 and 85 percent; is that
8 correct?

9 A. That's correct, but as I noted earlier, the
10 increase was--has been significantly higher than we
11 estimated, not just for Glamis, but for all other
12 companies.

13 Am I allowed to introduce information about
14 what other companies have experienced?

15 Q. No. I think you have answered my question.
16 Thank you.

17 MR. McCURUM Well, on the
18 cross-examination--Mr. President, in the
19 cross-examination, the counsel has opened up this

20 topic.

21 MS. MENAKER: You can have a chance at
22 redirect, but he's answered my question.

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10: 59: 04 1 BY MS. MENAKER:

2 Q. And is it correct to say that in your second
3 expert report, you used a figure of an 85 percent
4 increase in operating costs?

5 A. That's correct.

6 Q. And why didn't you provide any support for
7 that figure in your expert report?

8 A. Because it's widely known.

9 Q. Okay.

10 A. Ask anybody in the industry, how much have
11 your costs gone up.

12 Q. Okay. Isn't it true that for many of the
13 things about which you have testified, for many of
14 your conclusions you have relied on information that
15 has been provided to you by Glamis officials or others
16 in the industry privately?

17 A. I wouldn't characterize it solely on that,
18 no. I would say our information was based upon, A,
19 our experience; B, the definitive final Feasibility
20 Study prepared by Glamis--by Glamis's consultant; and
21 C, our knowledge of the industry and discussions with
22 other people in the industry. So they all contributed

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11:00:09 1 to our conclusion, yes, Miss.

2 Q. Okay. So, it is correct to say that your
3 discussions with the people in the industry, including
4 with Glamis officials, did--that you relied on those
5 private discussions in reaching some of the
6 conclusions that you reached in your report?

7 A. Which conclusions are you referring to?

8 Q. Well, for instance, the one that you just
9 referred to, when I asked why you had not included any
10 support for the figure that operating costs have
11 increased by 85 percent, and you said, well, you ask
12 anybody in the industry.

13 A. Well, Ms. Menaker, that's available on the
14 Web sites. You can go to the Newmont's Web site, and
15 you will see that their annual operating costs have
16 increased 121 percent since 2002 to the second quarter
17 of 2007.

18 You can go to Glamis's Web site, and you will
19 see that their operating costs at Marigold Mine have
20 increased over \$700 an ounce, which is more than 205
21 percent. Their operating costs at their other
22 heap-leach open pit mine, the San Martin Mine, have

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11:01:13 1 increased an astounding 300 percent. And this is not
2 atypical. The best results in the gold industry are
3 Barrick, who only have a 69 percent increase from
4 2002. When you add to that the impact of capital
5 costs, which have more than doubled, you make a lot of

6 projects very marginal today.

7 Q. And so, again, though, is it correct to say
8 that you have relied on conversations that you have
9 had with Glamis officials regarding various topics in
10 drawing certain conclusions in your reports?

11 A. I have relied upon discussions primarily with
12 Mr. McArthur and Mr. Jeannes. If I had some
13 questions, for instance, I wanted to make sure that on
14 the surety bonds that they, indeed, had been paying
15 solely in cash, as was the experience of all--most of
16 our other clients in the business. That is correct, I
17 have talked to them about that.

18 Q. Okay. And so if the information that any of
19 these individuals supplied to you privately, if that
20 information is wrong, then that would affect your
21 conclusions; isn't that correct?

22 A. It depends upon what is the nature of the

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11:02:30 1 information.

2 Q. Okay. Thank you.

3 PRESIDENT YOUNG: Ms. Menaker, you--

4 MS. MENAKER: If it would be okay, if I could
5 just have a minute.

6 (Pause.)

7 MS. MENAKER: I have nothing further, thank
8 you.

9 PRESIDENT YOUNG: Mr. McCrum?

10 MR. MCCRUM: No further questions here.

11 PRESIDENT YOUNG: Thank you.

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12 Professor Caron, Mr. Hubbard?
13 Mr. Guarnera, we thank you for your time and
14 your testimony, and you are excused.
15 THE WITNESS: Thank you, sir.
16 (Witness steps down.)
17 PRESIDENT YOUNG: Mr. McCrum, call your next
18 witness.
19 MR. McCRUM: Yes. Our next witness is Mr.
20 Conrad--I'm sorry, Mr. Douglas Craig from the State of
21 California.
22 DOUGLAS CRAIG, RESPONDENT'S WITNESS, CALLED

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11: 04: 26 1 PRESIDENT YOUNG: Mr. Craig, we welcome you.
2 We ask that--we ask that the--there is a statement
3 that we have been asking the witnesses to read and
4 aver to, and if you would be kind enough to do that.
5 THE WITNESS: Sure. I solemnly declare upon
6 my honor and conscience that I shall speak the truth,
7 the whole truth, and nothing but the truth.
8 PRESIDENT YOUNG: Thank you very much.
9 Mr. McCrum
10 CROSS-EXAMINATION
11 BY MR. McCRUM
12 Q. Good morning, Mr. Craig.
13 Can you please state your position with the
14 State of California.
15 A. I'm the Assistant Director for the Department
16 of Conservation in charge of its Office of Mine
17 Reclamation.

18 Q. And does your current position involve the
19 regulation of operating mines under the California
20 Surface Mining and Reclamation Act of 1975 as amended?

21 A. I would say the Office of Mine Reclamation
22 administers--

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11:05:25 1 MS. MENAKER: Excuse me. I apologize, but I
2 was planning on just asking a few direct questions.

3 MR. McCRUM: Oh, I'm sorry. I'm sorry.

4 PRESIDENT YOUNG: I apologize. That's my
5 fault. Please.

6 MS. MENAKER: Thank you.

7 DIRECT EXAMINATION

8 BY MS. MENAKER:

9 Q. Good morning. Can you state your full name
10 for the record, please.

11 A. Sure. It's Douglas Warren Craig.

12 Q. And what is your current position?

13 A. I'm the Chief of the Office of Mine
14 Reclamation, Assistant Director for the Department of
15 Conservation in California.

16 Q. And how long have you held that position?

17 A. Approximately two years and eight months.

18 Q. And can you briefly describe your educational
19 background.

20 A. I have a Bachelor's degree in business
21 administration from the California State University in
22 Sacramento with a concentration in accounting. I

11:06:09 1 received that in January of 1982.

2 Q. And can you also briefly describe the scope
3 of your testimony in this case that you have provided
4 in writing.

5 A. My declaration gave some background on
6 myself, on the Surface Mining and Reclamation Act in
7 California. Some of the processes involved in
8 administering that act. Financial assurances, some
9 details regarding the Soledad Mountain Project. And I
10 believe that's all.

11 MS. MENAKER: Okay. Thank you.

12 CONTINUED CROSS-EXAMINATION

13 BY MR. McCRUM

14 Q. Mr. Craig, you've mentioned the position you
15 have held for two years and eight months since
16 December 2004, I believe. Does that involve the
17 regulation of operating mines under the California
18 Surface Mining and Control Act?

19 A. I need to clarify that the Office of Mine
20 Reclamation doesn't promulgate regulations. We
21 implement and administer the Surface Mining and
22 Reclamation Act. It's the State Mining and Geology

11:07:11 1 Board that promulgates regulations.

2 Q. Okay. I'm trying to just pin down what your
3 personal responsibilities are since December 2004.

4 Those responsibilities of yours include primarily
5 operating mines under the Surface Mining and
6 Reclamation Act; is that correct?

7 A. We administer the Surface Mining and
8 Reclamation Act with regard to active mining
9 operations in California. We are also responsible for
10 inventorying and remediating abandoned mines as well.

11 Q. Mr. Craig, just if I could be clear. I must
12 not be clear. I'm trying to understand your
13 responsibilities, and they involve--your
14 responsibilities since December 2004 cover active
15 operating mines; is that right?

16 A. That's correct.

17 Q. And prior to that time, in December 2004, you
18 were dealing with abandoned mines; is that correct?

19 A. Yes.

20 Q. So, prior to 2004, were you involved
21 with--prior to December 2004, were you involved with
22 the establishment and--the establishment of financial

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11:08:23 1 assurances for active operating mines?

2 A. No.

3 Q. And from 1994 until November 2001, you worked
4 in the Division of Recycling within the Department of
5 Conservation; is that correct?

6 A. Yes.

7 Q. Did the Division of Recycling involve mines
8 regulated under the California Surface Mining and
9 Reclamation Act?

10 A. No.

11 Q. And from 1989 to 1994, you were a Budget
12 Analyst in the California Department of Finance; is
13 that correct?

14 A. That's correct.

15 Q. And did that position involve the regulation
16 of mines under the California Surface Mining and
17 Reclamation Act?

18 A. No, it did not.

19 Q. Mr. Craig, what was your occupation prior to
20 1989, after you graduated from college in 1982?

21 A. Working backwards, before working at the
22 Department of Finance, I worked at the State

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11:09:24 1 Treasurer's office as a Treasury Program Officer for a
2 period of approximately one year.

3 Before that, for approximately five years, I
4 worked for the State Treasurer's office in a variety
5 of accounting positions going all the way from a
6 Student Assistant to a Senior Accounting Officer.

7 Before that I worked for the state--sorry,
8 the City of Sacramento Police Department as a
9 dispatcher. Before that I worked at the University,
10 California State University in various jobs.

11 Q. Thank you.

12 Is it fair that say that from 1982 to 1989
13 you were not involved with the regulation of mines
14 under the California Surface Mining and Reclamation
15 Act?

16 A. Yes.

17 Q. Mr. Craig, in your declaration in this case,
18 you state that most mine operators with financial
19 assurances greater than \$1 million provide financial
20 assurances in the form of a surety bond or a Letter of
21 Credit; is that correct?

22 A. As I recall, that's what my statement says.

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11:10:39 1 Q. And in your declaration, you state that the
2 office of--in your declaration, you described the
3 Golden Queen Mining Company and their Soledad Mine
4 Project; is that correct?

5 A. I do mention that in my declaration.

6 Q. And you point out that the Golden Queen
7 Mining Company in their Soledad Mine Project had an
8 approved Reclamation Plan under the California Surface
9 Mining and Control Act before December 18, 2002, which
10 was the grandfathered date in the backfilling
11 regulation; is that right?

12 A. That's what's in my statement, yes.

13 Q. And do you believe that to be the case, they
14 had an approved Reclamation Plan prior to that date?

15 A. Yes.

16 Q. And is it fair to say that Golden Queen,
17 having had a prior approval, would have been
18 grandfathered and not subject to the emergency
19 backfilling regulations if only they had posted and
20 obtained an approval of a financial assurance for that
21 project?

22 A. Well, the--I think it's the, as you call it,

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11:12:00 1 the grandfathering clause of the backfilling
2 regulations requires that by December 18, 2002, they
3 have to receive approval of a Reclamation Plan, final
4 approval of a Reclamation Plan, and an approved
5 financial assurance prior to that date.

6 So, your statement, your question, had they
7 had both, then I believe they would have met the
8 requirements of the grandfather clause.

9 Q. Okay. And, in fact, Golden Queen, for their
10 Soledad mining project, had neither an approved
11 reclamation--an approved financial assurance, nor had
12 they been able to post a financial assurance with your
13 office; is that correct?

14 A. They did not have an approved financial
15 assurance. Approvals of financial assurances are made
16 by the lead agencies, in this case that would be Kern
17 County. The Office of Mine Reclamation does not
18 approve reclamation plans or financial assurances. We
19 merely comment on them.

20 I'm sorry, you will have to repeat the last
21 part of your question.

22 Q. Sure. My point is simply that the Golden

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11:13:12 1 Queen Mining Company for their Soledad mining project

2 had not even posted or provided a financial assurance
3 prior to the December 2002 cut-off date; is that your
4 recollection?

5 A. That is a true statement.

6 Q. Thank you.

7 In other words, it wasn't simply that the
8 financial assurance had not been approved. The
9 company had not posted the financial assurance.

10 A. On both counts, correct.

11 Q. Okay. Let's take a look at Craig Exhibit 1,
12 which is a letter from Douglas Craig, Department of
13 Conservation, to Ted James, Planning Department,
14 County of Kern, concerning the Golden Queen Mining
15 Company circumstance.

16 Are you familiar with this letter which was
17 submitted as an attachment to your declaration,
18 Mr. Craig?

19 A. Yes, I am.

20 Q. And if we turn to page three of this letter,
21 your--the letter signed by you states, "The GQMC,"
22 which stands for Golden Queen Mining Company, "did not

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11:14:34 1 post an approved instrument, fund, or other form of
2 financial assurance prior to December 18, 2002.
3 Therefore, the backfilling requirements of CCR Section
4 3704.1 apply to SMP."

5 Is that correct?

6 A. I'm not sure I understand your question.

7 That is what is in my letter.

8 Q. Okay. And do you believe that statement to
9 be accurate at the time you made it?

10 A. Yes, I do.

11 Q. And you believe it to be accurate today?

12 A. It's a historical statement that was accurate
13 at that time, and historically it is still accurate.
14 They had not posted a financial assurance prior to
15 December 18, 2002.

16 Q. Okay, thank you.

17 And looking at the line highlighted above
18 that phrase, above that sentence, there is a statement
19 that, "The financial assurance cost estimate for that
20 project as previously approved was roughly \$1.6
21 million." Is that correct?

22 A. Correct.

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11:15:43 1 Q. Are you aware that the--let me strike that.
2 I'll rephrase it.

3 Why do you think the Golden Queen Mining
4 Company had not posted a financial assurance as of
5 December 2002?

6 A. I don't know.

7 Q. If a surety bond was readily available at a
8 reasonable cost, would you have expected Golden Queen
9 to post a surety bond to protect its investment in the
10 Soledad mining project?

11 A. Well, for one thing, I wasn't in my position
12 in December 18, 2002, so I wasn't monitoring this
13 activity at that time.

14 And generally speaking, I don't expect
15 activities on the part of mine operators. There is
16 1,400 of them in the state, so it's really on
17 their--it's their responsibility to comply with the
18 law.

19 Q. Thank you.

20 Have you had communications with
21 representatives of the Golden Queen Mining Company
22 over the past couple of years?

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11:16:51 1 A. Yes.

2 Q. And from those communications, has the
3 company indicated to you why they had not posted a
4 \$1.6 million roughly financial assurance cost as of
5 December 2002?

6 A. They have indicated reasons why, yes.

7 Q. What kind of reasons have they indicated?

8 A. I think I've heard maybe more than one
9 different version, so let me try--

10 MS. MENAKER: Excuse me. Does the Tribunal
11 want to hear--I mean, this is--clearly, he is calling
12 for hearsay.

13 MR. McCRUM: This is a--this is the subject
14 matter of his letter, which is communications. He's
15 got a number of letters communicating with the
16 company.

17 MS. MENAKER: I want to just alert the
18 Tribunal to the fact that this is hearsay testimony.

19 BY MR. McCRUM

20 Q. What reasons has Golden Queen Mining Company
21 given as to why they had not posted a financial
22 assurance as of December 2002?

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11:17:59 1 A. Well, the reason that I can recall was not in
2 a personal communication with me, but was in a
3 statement made to the State Mining and Geology Board
4 by their representative, and that was a statement that
5 they had not commenced mining operations. It was one
6 of the reasons at that time.

7 And the other was that if they had posted the
8 \$1.6 million that you see, that because there was no
9 disturbance at the time, and when the price of gold
10 had diminished, that they would have had to
11 immediately recalculate the financial assurance to
12 zero, and post zero financial assurance.

13 Q. Has the Golden Queen Mining Company given you
14 any indications that a surety bond without--that a
15 surety bond or other financial instrument without cash
16 backing was unavailable at that time to them?

17 A. No.

18 Q. Let's look at Craig Exhibit 2.

19 Is this another communication that you have
20 had with Kern County concerning the reclamation
21 financial assurance concerning the Golden Queen Mining
22 Company Soledad Mine Project?

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11:19:45 1 A. Yes.

2 Q. And does it--does it refresh your
3 recollection as to whether you've had any other
4 indications of Golden Queen's inability to obtain a
5 financial assurance without cash backing?

6 A. No.

7 Q. Are you aware that Golden Queen Mining
8 Company has submitted an application to the California
9 Surface Mining and Reclamation Act--under the
10 California Surface Mining and Reclamation Act to Kern
11 County as of April 3, 2007?

12 A. I have heard that they have. I have no
13 direct knowledge of it.

14 Q. I will refer you to Craig Exhibit 4, which is
15 a letter from the Golden Queen Mining Company to Kern
16 County dated April 3, 2007, and it concerns the
17 Soledad Mountain Project Surface Mining Reclamation
18 Plan. This letter was submitted as an exhibit to the
19 rebuttal statement of Thomas Leshendok in July 2007.

20 And turning to the second page of this
21 exhibit, in the highlighted section on the second
22 page, it states: "The company provided financial

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11:21:23 1 assurance in the form of an irrevocable stand-by
2 Letter of Credit backed by a Certificate of Deposit
3 with the Union Bank of California in the amount of
4 \$245,337 on November 21, 2006, and this is the
5 current, approved estimate for reclamation of

6 historical disturbances on the property, and this is
7 reassessed annually."

8 Do you see that section, Mr. Craig?

9 A. Yes.

10 Q. Now, does that indicate to you that the
11 Letter of Credit that was posted was required by the
12 Union Bank of California to be backed by a Certificate
13 of Deposit?

14 A. Well, it states that they provided a
15 financial assurance in that form backed by a
16 Certificate of Deposit. Yes, that's what it says.

17 Q. Would you agree that's essentially a
18 cash-backed Letter of Credit?

19 A. I'm sorry, I don't know your name.

20 Q. Mr. McCrum.

21 A. Mr. McCrum.

22 Actually, I'm not an expert at financial

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11:22:30 1 assurance documents and that side of the matter. I'm
2 more concerned that a financial assurance is posted
3 that is adequate for reclamation.

4 And so, the backing of it is not something
5 that I am an expert on.

6 Q. Thank you, Mr. Craig.

7 If a company was a--if a company such as
8 Golden Queen Mining Company was able to obtain a
9 Letter of Credit without having to post \$245,337
10 through a Certificate of Deposit, do you think they
11 would have economic incentive to not tie up that cash

12 with the Bank?

13 A. I'm not really comfortable making, you know,
14 a statement for the Golden Queen Mining Company on
15 whether or not that would be an economic
16 decision--that I think that would be their economic
17 decision to make.

18 Q. Do you know what the magnitude of the
19 financial assurance obligations that have been
20 identified by experts in this case for the Glamis
21 Imperial Project are in the range of?

22 A. No.

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11:23:51 1 Q. If I was to ask you if a financial assurance
2 in the range of \$50 million had to be established,
3 would you think that that could be obtained through a
4 surety bond or Letter of Credit without cash backing?

5 A. Well, that's a hypothetical of \$50 million,
6 did I just hear you say?

7 In any case, it would depend upon what the
8 amount of disturbance is estimated to be in the
9 ensuing year, usually in the startup of the mine; the
10 initial costs would not be the full magnitude of the
11 life of mine. So, if they were to do \$50 million
12 worth of disturbance in year one, then the financial
13 assurance would have to be \$50 million. But if it was
14 less, then, correspondingly, the financial assurance
15 would be less.

16 Q. Is the financial assurance estimate at the
17 Golden Queen Soledad Project in the range of--the

18 previous identified range of 1.5 million, what did
19 that estimate reflect?

20 A. I'm not familiar with the financial assurance
21 document that corresponds with that. I don't know the
22 details of it.

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11:25:07 1 Q. And if a financial assurance was needed in
2 the range of \$50 million, do you have any opinion
3 about whether there would have to be a cash backing or
4 a Letter of Credit to establish a financial assurance
5 in that amount?

6 A. Again, it's a hypothetical, but accepting
7 that, the Surface Mining and Reclamation Act requires
8 a financial assurance to be in one of three forms, and
9 that would be the responsibility of the operator to
10 post a financial assurance in the amount that agrees
11 with the approved--the financial assurance.

12 Q. And you have no idea whether such a financial
13 assurance could be obtained without cash collateral
14 backing; is that correct?

15 A. Again, I'm not an expert on that side of the
16 financial--aspect of financial assurances. I'm not an
17 expert on Letters of Credit, so I really can't answer
18 that.

19 Q. Thank you.

20 MS. MENAKER: Mr. McCrum, I would just note
21 if you're going to show the witness any exhibits, he
22 doesn't have a witness bind--an exhibit binder.

11: 26: 25 1 MR. McCRUM Thank you.

2 BY MR. McCRUM

3 Q. Mr. Craig, in your declaration, you provided
4 a chart of financial assurances that had been secured
5 at various times or posted at various times with the
6 agencies of the State of California under the Surface
7 Mining and Reclamation Act; is that correct?

8 A. That's correct.

9 Q. And this--let's pull up Claimant Exhibit 3.
10 And do you have that chart in front of you?

11 A. Yes, I do.

12 Q. And this chart bears the date at the top
13 September 2006; is that correct?

14 A. Yes, it does.

15 Q. And did you prepare this chart?

16 A. I directed my staff to prepare it, yes.

17 Q. And let's turn to page 2 of the chart. And
18 here the two mines are listed which are Glami s Gold,
19 Limited, projects, the Rand project and the Picacho
20 Mine project. Are you familiar with those mines?

21 A. The level of my familiarity is very slim on
22 them, but I do know of them, yes.

11: 28: 06 1 Q. Let's look at the Picacho Mine listing there.

2 There is a surety bond in the amount of \$220, 894.

3 Do you see that?

4 A. Yes.

5 Q. And you have that listed as a surety bond
6 that is associated with that mine; is that correct?

7 A. I would say that it is listed as a surety
8 bond, and I would say that this is based on a query of
9 the database of information that has been provided to
10 the Office of Mine Reclamation.

11 Q. Was the information in this chart intended to
12 reflect surety bonds that were in place as of
13 September 2006?

14 A. The intention of this document was to list on
15 the first page financial assurances greater than a
16 million dollars and also indicate their type.

17 The second page is selected mines, and I'm
18 not sure that I understand your question as far as the
19 purpose.

20 Q. I asked if these charts were intended to
21 reflect surety bonds in place as of September 2006.

22 A. No. If that were the case, then the

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11: 29: 17 1 presentation would be a listing of surety bonds only.

2 Q. So, these surety bonds may have been secured
3 prior to 2006 and no longer be in effect; is that
4 correct?

5 A. The first part of your question is correct.
6 They were probably--in September 2006 or prior, and
7 they would still be in effect, provided they had not
8 lapsed. There are clauses in the requirements for the
9 financial assurances that they--that the Department of

10 Conservation, for one, and the lead agency for another
11 be notified with advance of 120 days of any potential
12 lapse in the financial assurance.

13 So, I would say that at the time of this
14 report, they were in place.

15 Q. Let's turn to Craig Exhibit 5, which is the
16 Picacho Mine reclamation bond release correspondence
17 from Imperial County, California, to Dan Purvance
18 dated March 19, 2002.

19 And the highlighted sentence in this
20 paragraph states, "The Imperial County hereby releases
21 surety bond"--numbers provided, serial numbers
22 provided--"in the amount of \$220,894."

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11:30:50 1 Do you see that?

2 A. Yes, I do.

3 Q. And that amount, \$220,894, corresponds
4 directly to the entry in your chart which bears the
5 date of September 2006; is that correct?

6 A. That's correct.

7 Q. So, if Imperial County released that surety
8 bond in 2002, it would not have been in effect in
9 2006; is that correct?

10 A. That's correct.

11 Q. That is an error in your chart, then,
12 isn't it?

13 A. No, I would disagree. The chart is based on
14 information provided us by the lead agencies, and it's
15 a query of our database. It is an accurate reflection

16 of the information that's contained in our database.

17 Q. Okay. So, it's a reflection of your
18 database, but you wouldn't disagree with the fact that
19 Imperial County may have released the surety bond in
20 2002 in this case; is that right?

21 A. That's right.

22 Q. Now, the other--so, if a surety bond was

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11:31:56 1 obtained prior to 2002 and released by 2002, that
2 provides no indication about the availability of
3 surety bonds in 2006, does it?

4 A. I would agree.

5 Q. Thank you.

6 Let's look at the entry for the Rand Project,
7 the Glamis Rand Project, back on Exhibit 3, page 2 of
8 Exhibit 3. The--there a Letter of Credit is
9 referenced for the Glamis Rand Mine project in the
10 amount of \$919,920.

11 Do you see that?

12 A. Yes.

13 Q. And if I was to tell you that, in fact, the
14 Letter of Credit for the Glamis Mine had been reduced
15 down to below \$400,000 in 2005, would you disagree
16 with that?

17 A. I would have to rely on the numbers that I
18 provided, and I would--if there is additional
19 information that comes to the Department, then we
20 would update our records.

21 Q. Does the information in this chart provide

22 any indication whatsoever of the collateral, cash

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11:33:16 1 collateral, requirements that the Bank would have--may
2 have required to post this Letter of Credit with your
3 agency--with the agencies?

4 A. No.

5 Q. And that type of information is not normally
6 filed with your agency; is that correct?

7 A. I'm not entirely familiar with all of the
8 intricacies involved in the review of financial
9 assurances. That's what my staff does. Whether or
10 not they look into the backing or the details, I don't
11 believe they do, so I guess my answer is no.

12 Q. Thank you.

13 MR. McCRUM I will just take a minute. I
14 think I am just about concluded.

15 I do have a few other questions.

16 BY MR. McCRUM

17 Q. Are you aware that in July of 2002, the U. S.
18 House of Representatives Subcommittee on Energy and
19 Mineral Resources in Washington, D. C., held an
20 oversight hearing on the availability of bonds to meet
21 Federal requirements for mining oil and gas projects?

22 A. No.

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11:34:35 1 Q. That hearing predated your involvement in the

2 regulation of active mines under the California
3 Surface Mining Act; is that correct?

4 A. It predated my being in my current position,
5 yes.

6 Q. In your current position, have you become
7 aware of statements, such as the statement made by the
8 Chair of the Subcommittee, Ms. Barbara Cubin, who
9 stated that the surety industry had a significant
10 underwriting loss in the year 2000, and that this
11 loss, combined with the softening of the economy that
12 began later, caused several bankruptcies in the surety
13 industry, and since 2000, underwriters and reinsurers
14 have continued to exit the sure market causing a
15 significant decline in capacity? Have you heard of
16 statements like that?

17 A. No.

18 Q. Are you aware that this hearing transcript
19 has been submitted with the original filing of the
20 Behre Dolbear Expert Report in this case?

21 A. No.

22 Q. I take it, then, you're not aware of

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11:35:51 1 statements to the effect of that made by Ms. Cubin at
2 that oversight hearing that this crisis continues to
3 worsen as surety bonds are being canceled, and rates
4 are increasing sometimes as much as 500 percent, and
5 more collateral is being required?

6 A. No, I'm aware of no statement like that.

7 Q. You're not aware of statements like that?

8 A. Correct, I am not aware of statements like
9 that.

10 MR. McCRUM: That will conclude my
11 cross-examination.

12 PRESIDENT YOUNG: Thank you, Mr. McCrum
13 Ms. Menaker?

14 MS. MENAKER: I don't have anything, thank
15 you.

16 PRESIDENT YOUNG: Thank you.
17 Mr. Hubbard?

18 QUESTIONS BY THE TRIBUNAL

19 PRESIDENT YOUNG: I actually do have a
20 question or two, Mr. Craig, if you indulge me for a
21 moment. I want to just clarify a couple of things
22 that you might be able to help me with to understand a

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11:36:49 1 little better.

2 Am I correct in understanding that when they
3 filed the assurance bond or guarantee with you they
4 start at the level of the disturbance as likely to
5 occur in the immediately following year and then, at
6 the end of that year, they will repost a bond for the
7 disturbance for the next year, the cumulative
8 disturbance? Is that how it works? So, this is a
9 rolling, shifting process? That's a very confusing
10 question. Can you explain it to me a little.

11 THE WITNESS: In some cases, a Reclamation
12 Plan can be approved even without a financial
13 assurance if there is not a decision or an intention

14 to have any disturbance in the first year. So,
15 it's--and that could be approved, and we would
16 recognize, and we would probably advise the lead
17 agency to ensure that disturbance doesn't take place
18 unless a financial assurance is posted. And when the
19 financial assurance is first posted, the initial one,
20 which usually is at the same time as the Reclamation
21 Plan, the initial Reclamation Plan, it is--envisions
22 the first year of disturbance, and it will be required

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11:37:54 1 that the amount correspond to the cost of reclaiming
2 the disturbance up to that point.

3 In subsequent years, every year, the
4 financial assurance needs to be adjusted for lands
5 reclaimed, new lands disturbed, inflation factors, and
6 an estimate of what additional disturbance is going to
7 take place in the following year, the purpose being to
8 ensure that at any point in time the financial
9 assurance is adequate to reclaim the site.

10 PRESIDENT YOUNG: So, these numbers we have
11 as of September of 2006, presumably would change on an
12 almost annual basis; is that right? They'll be coming
13 in every year, every other year, changing those
14 amounts?

15 THE WITNESS: Right. In fact, that's a large
16 part of one section of my staff. We have 1,400 mines
17 in the state. We should be receiving 1,400 financial
18 assurance cost estimates, and there is a lot of review
19 going on for these in our office.

20 PRESIDENT YOUNG: Thank you.
21 Second question, which I think I now
22 understand, but I just wanted to verify. You

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11:39:00 1 mentioned at one point there were three forms of
2 surety you accept. Are these the three listed at the
3 bottom, the surety bond, the trust fund, and the
4 irrevocable Letter of Credit?

5 THE WITNESS: Correct, for private mine
6 operators.

7 PRESIDENT YOUNG: For private mine operators.
8 Thank you very much.

9 Mr. Craig, we appreciate your time. Thank
10 you very much.

11 THE WITNESS: Thank you.

12 (Witness steps down.)

13 PRESIDENT YOUNG: Mr. McCrum, your next
14 witness?

15 MR. McCRUM: Our next witness is Brent
16 Kaczmarek.

17 BRENT KACZMAREK, RESPONDENT'S WITNESS, CALLED

18 PRESIDENT YOUNG: Mr. Kaczmarek, welcome to
19 the hearing.

20 I wonder if you would be kind enough to read
21 the expert witness affirmation that I think is there.

22 THE WITNESS: I have it, thank you.

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11: 40: 30 1 I solemnly declare upon my honor and
2 conscience that my statement will be in accordance
3 with my sincere belief.

4 PRESIDENT YOUNG: Thank you.

5 MS. MENAKER, do you want to start with a few
6 questions?

7 MS. MENAKER: Yes, please.

8 DIRECT EXAMINATION

9 BY MS. MENAKER:

10 Q. Mr. Kaczmarek, can you please state your full
11 name for the record.

12 A. Brent Charles Kaczmarek.

13 Q. And what is your current position?

14 A. I'm a Managing Director with Navigant
15 Consulting, and I currently run our international
16 arbitration practice.

17 Q. Okay. And what are your professional
18 qualifications?

19 A. I received an undergraduate degree in finance
20 from the University of Virginia, and I hold the
21 internationally recognized designation of Chartered
22 Financial Analyst, which is given to individuals

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11: 41: 14 1 demonstrating competence in the investment valuation
2 and decision-making process.

3 Q. And in this arbitration, you prepared a
4 valuation report; is that correct?

5 A. That's correct.

6 Q. And did anyone assist you with the--in the
7 preparation of those reports?

8 A. Yes. As indicated on the cover of my
9 reports, Mr. Sequeira, a colleague of mine, assisted
10 in the preparation of the report, as well as other
11 individuals at Navigant Consulting, as well as
12 collaboration with Norwest.

13 Q. And before this arbitration, have you ever
14 previously valued mineral companies?

15 A. Yes, I'm currently involved in the valuation
16 of three other mineral companies or properties at the
17 present moment.

18 Q. And can you briefly describe for the Tribunal
19 what Navigant was asked to do for this arbitration?

20 A. Yes, we were asked to evaluate the expert
21 report prepared by Behre Dolbear and asked to give our
22 own independent determination of the value of the

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11:42:22 1 Imperial Project prior to the new reclamation
2 requirements issued by the State of California to
3 determine the value of the project immediately
4 thereafter, as well as to determine a current value
5 for the project.

6 Q. And can you briefly summarize the main
7 conclusions of your report on those three points for
8 the Tribunal?

9 A. Yes. We determined that the value of the
10 Project was 34-and-a-half million dollars prior to the
11 new reclamation requirements. We determined that the

12 value of the Project was 21-and-a-half million dollars
13 immediately thereafter. And we've determined that the
14 current value of the Imperial Project, at least at the
15 time of the issuance of our first expert report in
16 September 2006, was 159.1 million dollars.

17 MS. MENAKER: Thank you.

18 PRESIDENT YOUNG: Mr. McCrum? Please.

19 CROSS- EXAMINATION

20 BY MR. McCRUM

21 Q. Good morning, Mr. Kaczmarek.

22 A. Good morning.

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11: 43: 22 1 Q. Mr. Kaczmarek, is it fair to say you are the
2 lead author of the expert valuation reports regarding
3 the Glamis Imperial Project that have been submitted
4 by Navigant?

5 A. Yes, it is.

6 Q. And the Glamis Imperial Project, which was
7 the subject of your valuation, refers to the property
8 interests associated with a disseminated gold deposit;
9 is that correct?

10 A. That's correct.

11 Q. And this is an undeveloped metallic mine
12 property; correct?

13 A. That's correct.

14 Q. Mr. Kaczmarek, do you hold a degree in mining
15 engineering or geology?

16 A. No, I do not.

17 Q. You hold a Bachelor's degree in commerce with

- 18 a concentration in finance; is that correct?
19 A. That's correct.
20 Q. Do you have any advanced university degrees?
21 A. I do not.
22 Q. And the listed co-author on your report is

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- 11:44:11 1 Mr. Kiran Sequeira; is that right?
2 A. That's correct.
3 Q. And he is the principal person who assisted
4 you in the Navigant phase of this work; is that
5 correct?
6 A. That's correct.
7 Q. And his resume has been provided with your
8 report, along with yours; is that right?
9 A. That's correct.
10 Q. And there are no other resumes provided with
11 the Navigant Reports; is that correct?
12 A. That's correct.
13 Q. Now, does Mr. Sequeira hold a degree in
14 mining engineering or geology?
15 A. No, he does not.
16 Q. Mr. Sequeira has a degree in civil
17 engineering; is that correct?
18 A. He also holds a Master's of business
19 association in finance, an MBA.
20 Q. So, a Master's degree in finance?
21 A. That's correct.
22 Q. And his undergraduate degree in civil

11: 45: 03 1 engineering?

2 A. Correct.

3 Q. Let's take a look at Kaczmarek Hearing
4 Exhibit 1.

5 And I apologize, I understand we've had a
6 copying delay with our hard copies. They are arriving
7 imminently, I understand, and all we have are the
8 screen right now, I believe, for the Navigant
9 exhibits.

10 Mr. Sequeira's resume identifies 19 examples
11 of valuation and financial economic analyses, but only
12 one involves a mining company. Is that your
13 recollection in terms of the number of mining
14 companies that were reflected in his resume with your
15 initial report?

16 A. Mr. Sequeira has prior experience at other
17 firms other than Navigant Consulting, and so I can't
18 testify as to his experience with prior organizations,
19 but I'm familiar with the Project that you have
20 highlighted on the screen.

21 Q. And the Project that is highlighted is a
22 valuation of a nonmetallic mine; is that correct?

11: 46: 23 1 A. That's correct.

2 Q. And is Mr. Sequeira involved in--does his
3 resume submitted in this case identify any other

4 metallic property that he has valued?

5 A. I would be happy to take a look and see if it
6 does.

7 Q. Thank you.

8 A. There doesn't appear to be any others.

9 Q. And the project that Mr. Sequeira identifies
10 in his resume, did you work on that project with
11 Mr. Sequeira?

12 A. Yes, I did.

13 Q. And your resume identifies a variety of
14 matters that you have worked on at Navigant, but only
15 one mine valuation; is that correct?

16 A. On my particular CV?

17 Q. Yes.

18 A. No, I list I think at least four different
19 projects, or at least that's what I'm involved in
20 currently. At the time I submitted my resume last
21 September, nearly a year ago, that figure may have
22 changed.

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11:47:47 1 Q. Well, let's pull up Kaczmarek Exhibit 2. And
2 let's look under the category of international
3 arbitrations.

4 Here come the hard copy exhibits. I
5 apologize for the delay.

6 Now, this is the resume that you submitted
7 with your initial report in this case; is that right?

8 A. That's correct.

9 Q. And by the time of your initial report in

10 September 2002, you had expressed conclusions about
11 the ultimate valuation of the Glamis Imperial Project;
12 is that correct?

13 A. That's correct.

14 Q. Now, did the first matter listed here, the
15 Duke Energy international arbitration, did that
16 involve a valuation of a metallic mine?

17 A. No, it did not.

18 Q. Or any mine?

19 A. No, it did not.

20 Q. Let's look at the next matter.

21 CIT Group v. the Argentine Republic. This is
22 a--did this involve a mining property valuation?

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11:49:02 1 A. No, this involved a valuation of a leasing
2 company.

3 Q. Let's look at the next item. Let's look at
4 all three of those items. The bottom three items, do
5 they involve valuation of a mine property?

6 A. No, they involve valuations of other types of
7 enterprises.

8 Q. Okay. Let's look at the next entries that
9 come after these three on the next page of the resume.

10 Do any of these three international
11 arbitration matters involve a valuation of mine
12 property?

13 A. No, again, they involve valuations of other
14 types of businesses.

15 Q. Let's look at the next ones that come after

16 that, until the highlighted one. The ones above the
17 highlighted entry, do they involve valuation of mine
18 properties?

19 A. No, they do not. They involve valuations of
20 other types of businesses.

21 Q. Let's look at the highlighted one. This
22 would be the valuation of a nonmetallic mine in South

706

11: 50: 07 1 America, the same project that Mr. Sequeira was
2 involved with; is that right?

3 A. That's correct.

4 Q. Then let's look at the ones below this on
5 this page.

6 Do any of those three involve valuation of a
7 mine property?

8 A. Yes. The NAFTA Chapter Eleven dispute I cite
9 there is the present proceedings.

10 Q. Okay, so the present proceeding there, that
11 would be the Glamis Gold Imperial Project matter that
12 we are all present at?

13 A. That's correct.

14 Q. Okay. Let's look at the next page, and let's
15 take the top half there first.

16 Do any of these matters involve valuation of
17 a mine property?

18 A. No, they do not.

19 Q. And let's look at the next two. Do any of
20 these involve valuation of a mine property?

21 A. No, they involve valuations of other

22 projects.

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11:51:10 1 Q. Let's look under the heading "U.S. Litigation
2 and Arbitration."

3 Do any of these matters involve valuation of
4 a mine property?

5 A. No, they do not. They involve valuations of
6 other types of businesses.

7 Q. Let's look at the next page of your resume
8 and the first three or four headings.

9 Do any of these matters involve valuation of
10 a mine property?

11 A. No, they do not.

12 Q. Let's go down the page.

13 Do any of these involve valuations of mine
14 properties under the category of U.S. litigation?

15 A. No, they do not.

16 Q. Let's look to the next page.

17 Under the heading investigations, we have
18 investigations involving money laundering, Federal
19 healthcare program, fraud, Medicare cost review,
20 Puerto Rico Department of Health fraud investigation.
21 Do any of these matters involve valuation of a mine
22 property?

708

11:52:26 1 A. I can possibly assist you in speeding up.

2 None of the Projects under investigations will include
3 anything related to valuing a mining property.

4 Q. Thank you.

5 Let's look under the next category of "other
6 managing consulting assignments."

7 Do any of these matters involve valuation of
8 a mine property?

9 A. No, they do not.

10 Q. Mr. Sequeira, would you agree that at the
11 time of your submission of the initial ex--I'm sorry,
12 Mr. Kaczmarek.

13 Mr. Kaczmarek, would you agree that at the
14 time of the submission of your initial expert report
15 in September 2006, addressing the Glamis Imperial
16 valuation, that you did not have extensive experience
17 in valuing metallic mine properties?

18 A. I had experience valuing other mining
19 properties, and I had extensive experience in valuing
20 a number of various businesses, as my resume reflects.

21 Q. Well, thank you, Mr. Kaczmarek, but that
22 wasn't my question.

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11:53:39 1 Would you agree that at the time you
2 submitted your expert report on the Glamis Imperial
3 Project, that you did not have extensive experience
4 involving the valuation of metallic mineral
5 properties?

6 A. You could say that, yes.

7 Q. And would you agree that at the time of the

8 submission of the initial Navigant expert report in
9 September 2006, that Mr. Sequeira did not have
10 extensive experience involving the valuation of
11 metallic mineral properties?

12 A. Yes, I think that's fair to say, but I would
13 also add that, given the diversity of businesses that
14 we value, that's pretty much the case in almost every
15 valuation we begin to conduct. We might not have
16 significant experience with that particular type of
17 business entity, but you quickly learn it and apply
18 the valuation principles that are core to valuing any
19 type of business.

20 Q. You have criticized Behre Dolbear, Behre
21 Dolbear's report because in your view, it doesn't
22 comply with various aspects of the CIMVal valuation

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11: 54: 52 1 standards as you understand them; is that correct?

2 A. That's correct.

3 Q. And are the CIMVal valuation standards
4 relevant to this valuation we have before us today?

5 A. I don't think they are.

6 Q. But you have criticized Behre Dolbear in
7 connection with those standards; is that right?

8 A. I did because they said that they adhered to
9 those standards; and when I reviewed the standards, I
10 found numerous places in which I did not think that
11 they actually did.

12 Q. Do you think your report is in accordance
13 with the CIMVal standards?

14 A. My reading of the standards, absolutely. I
15 believe our valuation was 100 percent in accordance
16 with the standards.

17 Q. So, you believe that your report is in
18 accordance with the CIMVal standards?

19 A. Yes. I didn't find one aspect that wasn't in
20 compliance with it, and Behre Dolbear didn't point out
21 any aspect of our valuation that wasn't in compliance
22 with it.

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11:55:50 1 Q. What does CIMVal stand for?

2 A. I'm not sure if I recall specifically, but I
3 understand it's the Canadian Institute of Mining, and
4 it's their valuation standards.

5 Q. Let's take a look at Kaczmarek Exhibit 5,
6 which is an attachment from one of your expert reports
7 in this case, after you were--as part of your
8 criticism of the Behre Dolbear's report in connection
9 with these standards.

10 Do you recall that attachment in your expert
11 report?

12 A. Yes, I do.

13 Q. And this document is entitled "Standards and
14 Guidelines for Valuation of Mineral Properties Special
15 Committee of the Canadian Institute of Mining,
16 Metallurgy and Petroleum on Valuation of Mineral
17 Properties," February 2003; is that correct?

18 A. That's correct.

19 Q. And your testimony has been that your report

20 is in compliance with these standards; is that right?

21 A. That's correct.

22 Q. Let's take a look at the next page of this

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11:57:05 1 report and the CIMVal standard definition of a
2 qualified valuator, who is defined as, "an individual
3 who is a professional with demonstrated extensive
4 experience in the valuation of mineral properties, has
5 experience relevant to the subject mineral property,
6 or has relied on a current technical report and is
7 regulated by or is a member in standing of a
8 professional association or self-regulatory
9 professional organization."

10 Do you see that definition?

11 A. I do.

12 Q. And do you believe you meet the definition of
13 a qualified valuator under the CIMVal standards?

14 A. No, I do not.

15 Q. And that's because, in part, you do not have
16 demonstrated extensive experience in the valuation of
17 mineral properties--is that correct?--as of the time
18 you submitted your September 2006 report.

19 A. That would be correct, yes.

20 Q. And let's look at the definition of
21 "professional association" referred to in the last
22 element, small C. That is a self-regulatory

713

11: 58: 14 1 organization of engineers, geoscientists or both
2 engineers and geoscientists; is that correct?

3 A. That is correct.

4 Q. That would be another reason why you wouldn't
5 be a qualified valuator under the CIMVal standards; is
6 that correct?

7 A. That's correct. I don't hold myself out to
8 be a qualified valuator under these standards.

9 Q. Do you believe that the individuals at the
10 Norwest firm that you have associated with here would
11 qualify as a qualified valuator?

12 A. I have no knowledge of whether they do or
13 they don't.

14 Q. Is it fair to say that in this case--well,
15 let me ask a basic question first. Have either you or
16 Mr. Sequeira ever visited the Imperial Project Site?

17 A. No, neither of us did. It was offered to us
18 whether we wanted to visit it, but we declined.

19 Q. And is it fair to say that you're relying on
20 Mr. Conrad Houser and his colleagues at Norwest for
21 all mining engineering and geologic determinations
22 that are reflected in your reports?

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11: 59: 41 1 A. That's correct.

2 Q. Mr. Kaczmarek, prior to this case, have you
3 personally had professional experience evaluating
4 swell factors at metallic mine sites?

5 A. No, I have not.

6 Q. Let's look at Kaczmarek Hearing Exhibit 3.
7 Here in the--is this--Kaczmarek Hearing
8 Exhibit 3 are excerpts of the expert report you
9 submitted in September of 2006.

10 Do you recognize these excerpts?

11 A. Yes, I do.

12 Q. And is it fair to say that, in this report
13 and these pages at pages 55, 56, 57, and 58, Navigant
14 is depicting and analyzing how different swell factors
15 affect mine waste at a mine property?

16 A. That's correct.

17 Q. And these particular figures that you're
18 depicting in this report, were these figures taken
19 from the Norwest Report?

20 A. No, they were not. We developed them
21 ourselves.

22 Q. Let's turn to page 58 of this exhibit. And

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12:01:18 1 we have some highlighted text in paragraph 157, and it
2 is stated, "As can be seen from the above example, the
3 extra spreading costs incurred in the 35 percent swell
4 factor are solely due to the higher swell factor. The
5 swell factor at the Imperial Project Site is,
6 therefore, a key consideration when calculating
7 backfilling and spreading costs for the Imperial
8 Project. "

9 Do you see that?

10 A. Yes, I do.

11 Q. And do you still believe that to be--do you

12 still believe that the swell factor is a key
13 consideration when calculating the backfilling and
14 spreading costs?

15 A. Yes, I do.

16 Q. Do you still believe that the Behre Dolbear
17 estimate of a 35 percent swell factor is inflated?

18 A. Based on the evidence that we have seen and
19 the expert report of Norwest, yes.

20 Q. And in this paragraph 158, you acknowledge
21 that Behre Dolbear references the ratio of bank
22 density to loose density in the 1996 Feasibility

716

12: 02: 29 1 Study.

2 Do you see that?

3 A. Yes, I do.

4 Q. And in making that characterization of what
5 Behre Dolbear was relying on, do you cite the Norwest
6 Report for those statements?

7 A. No, we do not.

8 Q. And then turning down to the last highlighted
9 section here, you state, "While the ratio of loose
10 density to in-place density of ore used in this
11 analysis does produce a swell factor of approximately
12 35 percent, it is inappropriate to rely on this ratio
13 to determine the swell factor for the entire Imperial
14 Project. "

15 Do you see that?

16 A. Yes, I do.

17 Q. Do you believe that statement to be correct?

18 A. Yes, I do.

19 Q. And you are not citing Norwest for that
20 conclusion, are you?

21 A. No, I'm not, but I think it was rather
22 obvious that we were doing this particular analysis in

717

12: 03: 25 1 conjunction with Norwest.

2 Q. But as you have testified, these pictures
3 depicting the effect of swell factor were developed by
4 Navigant on its own; is that correct?

5 A. That's correct.

6 Q. Mr. Kaczmarek, you take the view that valuing
7 mineral properties does not require special or unique
8 expertise regarding mineral properties; is that
9 correct?

10 A. That's correct. The same core principles and
11 concepts in valuation apply across all businesses or
12 income-producing assets.

13 As I indicate in my expert reports, certain
14 businesses have elements to them which may require
15 technical expertise. Mineral properties need
16 geological expertise, engineering expertise, just like
17 an oil refinery would need particular expertise.

18 But the valuation concepts and principles
19 don't change simply because the technical aspects of a
20 particular business are different or unique.

21 Q. And one of the sources that you cite as
22 support for the conclusions that you just expressed is

12: 04: 43 1 a paper by Mr. Trevor Ellis entitled "Philosophy and
2 Application of the International Valuation Stands for
3 Minerals and Petroleum." Is that correct?

4 A. That's correct.

5 Q. And you included that paper by Trevor Ellis
6 in one of your expert reports, and that is reflected
7 as Kaczmarek Exhibit 4.

8 Is this the paper that you were citing as
9 support for the proposition that unique special
10 experience relating to minerals is not needed to carry
11 out a valuation?

12 A. I believe it is, yes.

13 Q. Why don't you review it and refresh your
14 recollection.

15 Let's look at the last page of this article
16 by Trevor Ellis, which is dated January-February 2004.
17 And let's look at the last conclusion or the
18 concluding paragraph of Trevor Ellis's paper. He
19 states: "Certifications should be developed for
20 valuers working in extractive industries, similar to
21 Certified Minerals Appraiser designation provided by
22 the American Institute of Mineral Appraisers. There

12: 06: 06 1 should be a continuing education requirement to
2 maintain such a certification."

3 Do you see that concluding paragraph by

4 Mr. Ellis?

5 A. Yes, I do.

6 Q. And are either you or Mr. Sequeira Certified
7 Mineral Appraisers?

8 A. No, I hold the designation of Chartered
9 Financial Analyst.

10 Q. And are any of the people at Norwest who have
11 assisted with you on this matter Certified Mineral
12 Appraisers?

13 A. I don't know one way or the other if they are
14 or are not.

15 Q. Let's look at the highlighted reference by
16 Mr. Ellis's paper, where he references the CIMVal
17 standards and guidelines.

18 Do you see that?

19 A. Yes, I do.

20 Q. Would that indicate to you that Mr. Ellis
21 thought the CIMVal standards were relevant standards
22 for judging mineral appraisals?

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12: 07: 16 1 A. Certainly.

2 Q. Thank you.

3 When you criticized the Behre Dolbear's use
4 of the 35 percent swell factor, were you aware that
5 the National Research Council of the National Academy
6 of Sciences in the 1979 report on the infeasibility of
7 complete backfilling of noncoal mines specifically
8 asserted that, "Waste and tailings resulting from
9 mining and processing expand on average about 30 to

10 40 percent"?

11 A. No, I was not.

12 Q. When you criticized Behre Dolbear's use of
13 the 35 percent swell factor, were you aware that the
14 vast majority of the overburden material at the
15 Imperial Project Site consisted of hard-cemented
16 conglomerate material, not loose unconsolidated
17 gravel?

18 A. No, I was not.

19 Q. When you criticized Behre Dolbear's use of a
20 35 percent swell factor, were you aware that WESTEC
21 Engineering, a geological consulting firm specializing
22 in mine pit design, had stated that over 700 feet of

721

12:08:32 1 the pit walls of the Imperial Project would consist of
2 well-indurated conglomerate?

3 A. No, I was not.

4 Q. Were you aware when you were evaluating the
5 1996 Feasibility Study for the Glamis Imperial Project
6 and criticizing Behre Dolbear's interpretation of it,
7 that if the pit wall was made of unconsolidated
8 gravel, that the pit wall, which was projected to be
9 40 to 55 degrees in slope, would collapse?

10 A. No, I was not.

11 Q. Mr. Kaczmarek, prior to your involvement in
12 this case and submission of your expert report in
13 September 2006, what professional experience have you
14 had regarding the costs involved to establish and
15 negotiate multi-million dollar financial assurances to

16 guarantee long-term reclamation liabilities at
17 metallic mine sites?

18 A. I didn't have any experience in that subject
19 area.

20 Q. Mr. Kaczmarek, you have pointed out that
21 Glamis Gold, Limited, has been known as a low-cost
22 gold producer; correct?

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12:09:49 1 A. That's correct.

2 Q. And one of the Glamis mines that
3 traditionally has been a low-cost producer in the past
4 was the Marigold open-pit mine in Nevada; is that
5 correct?

6 A. That's my understanding, yes.

7 Q. Mr. Kaczmarek, were you aware that the cash
8 operating costs at Goldcorp's Marigold Mine in Nevada
9 exceeded \$700 per ounce of gold in the latest reported
10 quarter in 2007 from Goldcorp?

11 A. Well, that was brought--that was brought to
12 my attention through earlier testimony. I did look it
13 up in the break. That is correct. However, it is the
14 second quarter only. There were some exceptional
15 items that were noted which were driving that cost. I
16 also did look up the cash operating cost for the mine
17 in 2006 for the full year, and it was only \$304.

18 Q. And did you look in that report and see that
19 the quarter immediately preceding the latest quarter
20 had cash operating costs at the Marigold Mine
21 exceeding \$500 per ounce?

22 A. I did not look at it, but it was clear that

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12:10:54 1 taking a three-month snapshot is not a good way in
2 which to assess the increase or the inflation in
3 operating costs because several other factors, such as
4 the amount of gold that's produced in those three
5 months, or the particular area of the mine which it's
6 being currently mined could heavily influence that
7 cost.

8 Q. Yes, mining--metallic mining is a complex
9 process, isn't it?

10 A. It is.

11 Q. And if the Glamis--if the Marigold Mine costs
12 were 500--more than \$500 per ounce in the quarter
13 preceding the latest quarter, that would mean average
14 operating costs at the Glamis--at the Marigold Mine
15 averaging \$600 an ounce over a six-month period; is
16 that correct?

17 A. I'd have to look at the figures and run it.

18 Q. And you have been scrutinizing recent public
19 reports by Glamis Gold, Limited, and Goldcorp; is that
20 correct?

21 A. In what manner?

22 Q. As part of your work on this case.

724

12:12:06 1 A. Could you cite a specific instance in which I

2 scrutinized their public reports.

3 Q. Well, I have--just simply a question. Have
4 you been scrutinizing the recent public reports from
5 Glamis Gold, Limited, and Goldcorp?

6 A. I have been analyzing those reports.

7 Q. Thank you.

8 Are you aware that at the Marigold Mine that
9 the cash operating costs that have been reported by
10 the company do not include the capital costs of the
11 mine associated with each ounce of gold produced?

12 A. I'm sorry, could you repeat the question?

13 Q. Yes.

14 Are you aware that cash operating costs that
15 be have reported by Glamis Gold, Limited, and Goldcorp
16 do not include the capital costs of the mine
17 associated with each ounce of gold produced?

18 A. I believe that's correct, yes.

19 Q. And, Mr. Kaczmarek, are you aware that the
20 Marigold Mine in Nevada is an open-pit gold mine with
21 no backfilling requirements?

22 A. I believe that's correct, yes.

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12:13:04 1 Q. And would you expect that if the Marigold
2 Mine was subject to complete backfilling requirements
3 that the reported cash operating costs and capital
4 costs would be even higher than are being incurred
5 today?

6 A. That's correct, yes.

7 Q. Mr. Kaczmarek, Glamis Gold, Limited, prior to

8 its acquisition of Goldcorp, was listed and publicly
9 traded on the Toronto Stock Exchange; is that correct?

10 A. It's my understanding, yes.

11 Q. And Goldcorp, Inc., is a publicly traded and
12 listed company on the Toronto Stock Exchange; is that
13 right?

14 A. That's correct.

15 Q. And both companies were also listed on the
16 New York Stock Exchange; is that right?

17 A. I believe that is correct, yes.

18 Q. And Goldcorp is today; correct?

19 A. Correct.

20 Q. Are you aware that the majority of the
21 world's publicly traded mining companies are listed on
22 the Toronto Stock Exchange or the TSX Venture

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12: 14: 14 1 Exchange?

2 A. I believe it is a very popular exchange for
3 companies to list their shares involved in the mining
4 business, yes.

5 Q. Are you familiar with Canadian National
6 Instrument 43-101 regarding the public disclosures by
7 mining companies of technical reports regarding
8 mineral resources, mineral reserves, feasibility
9 studies, and valuations?

10 A. I believe that I have looked at that document
11 before, yes.

12 Q. And are you aware that Canadian National
13 Instrument 43-101 is designed to ensure that investors

14 in mining companies can make better informed
15 investment decisions when considering technical
16 information relating to mineral properties?

17 A. Yes.

18 Q. Are you aware that Canadian National
19 Instrument 43-101 requires technical reports for
20 mineral projects, including feasibility studies and
21 financial analyses regarding mining properties to be
22 submitted by a "qualified person"?

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12:15:20 1 A. I believe that is correct, yes.

2 Q. Have you ever submitted a technical report as
3 a "qualified person" regarding a mineral property to
4 the Canadian Securities Agency pursuant to Canadian
5 National Instrument 43-101?

6 A. No, I have not.

7 Q. Has Mr. Sequeira ever done so?

8 A. Not to my knowledge.

9 Q. Do you consider yourself a "qualified person"
10 under the Canadian National Instrument 43-101 to
11 submit a technical report concerning a mineral
12 property for investors to rely on?

13 A. No, I do not.

14 Q. Do you believe that Mr. Conrad Houser has
15 five years of experience relating to mineral
16 exploration, mine development, or operation of
17 disseminated gold properties or metallic ore deposits?

18 A. I'm not familiar with Mr. Houser's background
19 and qualifications.

20 Q. Is Mr. Houser a Certified Mineral Appraiser?

21 A. I don't know one way or the other if he is or
22 is not.

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12:16:34 1 Q. Do you know if any of the colleagues at
2 Norwest who have worked with Mr. Houser are Certified
3 Mineral Appraisers?

4 A. I don't have any reason to believe they do or
5 do not hold that designation.

6 Q. And to confirm, you have relied on the
7 Norwest Report for all geologic and mining engineering
8 aspects of your report; is that right?

9 A. That's correct.

10 Q. Mr. Kaczmarek, in your initial expert report
11 dated September 2006, you assert that the Glamis
12 Imperial Project is worth at least 159 million as of
13 that date; is that correct?

14 A. That's correct.

15 Q. And you've repeated that assertion in your
16 second report filed in this case in March of 2007; is
17 that right?

18 A. That's correct.

19 Q. Specifically, at page 78 of your
20 September 2006 report, you stated, "We calculate the
21 value of the Imperial Project to be 159.4 million at
22 today's gold prices." Does that sound correct?

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12: 18: 04 1 A. That's correct.

2 Q. And you calculated that value based on a spot
3 price of gold as of September 6, 2006, which you
4 identified as \$635.40 per ounce; is that correct?

5 A. That's correct.

6 Q. Mr. Kaczmarek, are you aware that last month,
7 at a major Mineral Law Institute meeting in Vancouver,
8 British Columbia, that a presentation was co-authored
9 by Mr. Robert Holland of the British Columbia
10 Securities Commission, and that presentation was
11 entitled: "How Not to Annoy the Regulators, At Least
12 Canadian Securities Regulators that Review the
13 Technical Disclosure of Mining Companies"?

14 A. No, I am not.

15 Q. Mr. Kaczmarek, were you aware that
16 Mr. Holland, who co-authored that presentation--

17 MS. MENAKER: Objection. Again, this is
18 evidence that's not in the record.

19 BY MR. McCURM

20 Q. Mr. Kaczmarek--I will rephrase the question.

21 Mr. Kaczmarek, in the course of these various
22 expert reports that have been submitted in this case,

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12: 19: 20 1 since September 2006, have you consulted and
2 communicated with Mr. Conrad Houser of Norwest?

3 A. Yes, I have.

4 Q. Has that included communication by telephone
5 and E-mail?

6 A. Yes, that would be accurate.

7 Q. And does that include face-to-face
8 discussions from time to time?

9 A. That's correct.

10 Q. Did Mr. Houser tell you that he attended that
11 conference in July 2007 in Vancouver, where that
12 presentation was given?

13 A. No, he did not.

14 Q. Are you aware that the position of
15 Mr. Holland, the chief mining advisor to the British
16 Columbia Securities Commission stated, "Don't defend
17 the use of current spot metal prices as reasonable
18 long-term metal price assumptions for determining
19 mineral resources, reserves or in a financial
20 analysis"?

21 A. I'm not aware of that, no.

22 Q. Were you aware that Mr. Holland, of the--who

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12: 20: 37 1 was the chief mining advisor to the British Securities
2 Commission stated and apparently holds--

3 MS. MENAKER: The witness stated already that
4 he is not aware of any of this. It's just a matter
5 for him to--

6 PRESIDENT YOUNG: Perhaps you could rephrase
7 your question, Mr. McCrum.

8 MR. McCRUM: Thank you. I agree with
9 Ms. Menaker. I think the point has been made. I will
10 drop this line of questioning.

11 (Phone rings.)

12 BY MR. McCURUM

13 Q. Mr. Kaczmarek, do you think it is responsible
14 to value a metallic mineral mine based on a spot
15 price?

16 A. I absolutely think it is, and I think I
17 demonstrated that there is a wealth of evidence
18 available to demonstrate that it's how the market
19 values gold companies. I demonstrated in my first
20 expert report in Figure 6 the correlation of spot
21 prices with gold company values.

22 I also pointed out that Glamis itself was

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12:21:58 1 valuing the Imperial Project contemporaneously using a
2 spot price. I've pointed out that the Goldcorp merger
3 that took place not too long ago, it was reported that
4 the price per ounce of gold that they were using was
5 \$550 an ounce, which was just 91 percent of the spot
6 price at the time, and we referenced documents which
7 showed Mr. Jeannes has indicated that Gold Properties
8 can actually achieve spot--prices for gold above spot
9 prices, given the availability of forward contracts.

10 Q. Let's take a look at page 79 of your expert
11 report. I think just probably the prior page from
12 where you are.

13 Now, this is a chart you prepared showing the
14 price of spot price of gold as of September 2006; is
15 that correct?

16 A. It's a chart showing the spot price of gold
17 from December 2002 through September 6, 2006.

18 Q. And would you agree that in this chart the
19 spot price you used was near the top end of the trend
20 over this period?

21 A. Yes.

22 Q. And the statements that you've just referred

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12: 23: 18 1 to regarding positions of companies involving mergers,
2 they involve companies, not individual mineral
3 properties; is that correct?

4 A. That's correct. As I explained, however,
5 gold companies are simply a portfolio of Gold
6 Properties.

7 Q. Mr. Kaczmarek, you're here today as a
8 representative of the United States Government;
9 correct?

10 A. That's correct.

11 Q. Are you--

12 A. A consultant to the United States Government.

13 Q. Are you familiar with a document issued by
14 the Federal Government entitled "Uniform Appraisal
15 Standards for Federal Land Acquisitions"?

16 A. No, I'm not.

17 MS. MENAKER: Mr. McCrum, if you could
18 provide the exhibit number or the place in the record
19 where that document could be found, please.

20 MR. McCRUM: I'm going to ask Mr. Kaczmarek a
21 cross-examination question based on a widely known and
22 published authoritative publication.

12: 24: 27 1 MS. MENAKER: So, it's not in the record or
2 in the witness binder?

3 MR. McCRUM: That's correct.

4 MS. MENAKER: Well, I will wait for the first
5 question, but we may very well object.

6 BY MR. McCRUM:

7 Q. Mr. Kaczmarek, are you aware that in the
8 publication that I referenced, the "Uniform Appraisal
9 Standards for Federal Land Acquisitions," the U. S. --

10 MS. MENAKER: The witness already answered
11 that he is not aware of the document.

12 MR. McCRUM: I will rephrase the question.

13 BY MR. McCRUM:

14 Q. Are you aware that in a publication sponsored
15 by the U. S. Department of Justice that the position as
16 expressed that the--

17 MS. MENAKER: Again, he's already testified
18 that he's not aware of the document.

19 MR. McCRUM: I will rephrase the question
20 again.

21 BY MR. McCRUM:

22 Q. Are you aware that the U. S. Justice

12: 25: 18 1 Department holds the position that appraisals
2 must-- appraisers of mineral properties must have
3 specialized training and experience to properly

4 understand and apply the proper methodologies for
5 estimating the fair market value of mineral
6 properties?

7 A. I'm not aware of any standards by the
8 Department of Justice, no.

9 MS. MENAKER: And I object to the use of the
10 document in this manner because it's not in evidence,
11 so we can't--we have no idea of the content of that
12 document, if it's being misconstrued by--in the manner
13 in which he's been asking the questions.

14 (Tribunal conferring.)

15 PRESIDENT YOUNG: The Tribunal is moving
16 outside to continue to discuss this matter. We will
17 take a five-minute break at this point.

18 MR. McCURUM: Thank you.

19 (Tribunal conferring outside the room.)

20 PRESIDENT YOUNG: We will resume the hearing
21 now.

22 The conclusion of the Tribunal is if this

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12: 41: 37 1 document is a widely recognized authoritative document
2 in the field for the purposes for which it's being
3 offered, to use it in the context of cross-examination
4 for an expert witness would be in a trial context
5 perfectly appropriate. Given the differences in terms
6 of discovery capacity, capacity to take depositions
7 and so forth in an arbitration, we are reluctant to
8 let you use it to pursue this line of questioning.

9 If, on the other hand, you continue to feel

10 strongly about this and would like to use this
11 document, we would invite you to submit a letter to us
12 by tomorrow at noon, indicating why, and, at the same
13 time, share with the Government that document. And we
14 would invite the Government to respond to that by
15 Thursday at noon, at which point we would make a
16 ruling on the use of that document for
17 cross-examination purposes.

18 But at this point in time, we are going to
19 ask you to refrain from using that document for
20 cross-examination purposes.

21 Thank you.

22 MR. McCRUM Thank you, Mr. President.

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12: 42: 43 1 BY MR. McCRUM

2 Q. Mr. Kaczmarek, when you agreed to undertake
3 this valuation retention with the United States, did
4 you consider the potential existence of standards
5 governing mineral appraisals that may be set by the
6 Justice Department or any other Federal agency?

7 A. No. I considered generally accepted
8 valuation principles.

9 Q. Thank you.

10 Mr. Kaczmarek, you agreed in your March 2007
11 report filed with the U.S. Rejoinder that accounting
12 rules essentially required Glamis to write off its
13 sunk costs in the Imperial Project as a result of the
14 Secretary of the Interior's January 17, 2001, denial
15 of the Imperial Project; is that correct?

16 A. That's correct.

17 Q. And isn't it also true that at the time that
18 Glamis took that accounting action in early 2001, that
19 it was then necessary to change the treatment of the
20 reported mineral reserves at the Imperial Project into
21 the category of mineral resources?

22 A. That's correct.

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12:44:03 1 Q. And that's what Glamis Gold, Limited, did at
2 that time; correct?

3 A. That's correct.

4 Q. And the reason for that change was because
5 reserves are considered to have an economic
6 extractability concept associated with them; is that
7 right?

8 A. Yes. I believe the reclassification was due
9 to the uncertainty that had arisen over whether or not
10 Glamis would be able to extract those minerals.

11 Q. And the category of mineral resources as
12 reported by Glamis Gold, Limited, reflected the fact
13 that gold mineralization was known to be there, but it
14 may not be--it might not be legally extractable; is
15 that right?

16 A. That's correct, yes.

17 Q. And the reported mineral resources at the
18 Glamis Imperial Project have continued to be reported
19 annually by Glamis Gold, Limited, as mineral resources
20 subsequent to 2001; is that correct?

21 A. That's correct.

22 Q. And when Goldcorp acquired Glamis Gold,

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12:45:23 1 Limited, it then has continued to report the Glamis
2 Imperial Project mineralization in the mineral
3 resources category, not mineral reserves category; is
4 that correct?

5 A. Correct. I think they wouldn't be able to
6 reclassify them as reserves unless they were to
7 attempt to obtain permits for the Project and move
8 forward with it.

9 Q. And the classifications that regulated
10 publicly traded regulated companies like Glamis Gold
11 Limited, and Goldcorp, Inc., make regarding their
12 mineral reserves and mineral resource reports are
13 closely scrutinized by securities agencies in the
14 United States and Canada; is that correct?

15 A. Certainly.

16 Q. Mr. Kaczmarek, when you used the spot price
17 of \$635 per ounce to calculate the value of the Glamis
18 Imperial Project, you chose a date of September 6,
19 2006; is that correct?

20 A. That's correct.

21 Q. And you chose that date because it was
22 shortly before the filing of the Counter-Memorial of

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12:46:56 1 the United States in this case; is that correct?

2 A. That's correct.

3 Q. Are you aware that just a couple of weeks
4 later on September 19, 2006, that the spot price had
5 declined to \$584 per ounce?

6 A. Yes, I was.

7 Q. Did that indicate that the valuation of the
8 Glamis Imperial Project had dropped substantially from
9 the 159 million-dollar number you put forth?

10 A. Well, I didn't run the number, but yes, it
11 would have dropped.

12 Again, as I demonstrate in my report, the
13 market value of gold companies fluctuates with the
14 prices of gold. So, while gold is volatile, so are
15 the valuations of gold companies.

16 Q. So, you agree that the gold price has been
17 volatile?

18 A. Yes, I do.

19 Q. And yet you still think it's responsible to
20 place a valuation of a mineral property based on a
21 particular date spot price as opposed to a long-term
22 average price?

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12:48:11 1 A. Well, you're trying to differentiate the spot
2 price between a long-term average price, and the price
3 used by Behre Dolbear was the 10-year historic average
4 price; and in its view, that was \$337, and that would
5 be the applicable price to use to value the Imperial
6 Project today.

7 As we demonstrated that clearly can't be

8 correct. If Behre Dolbear is also correct that
9 operating costs have risen 85 percent and one is only
10 supposed to use a 10-year historic average price, 337
11 to value gold projects, the Imperial Project would
12 have been rendered worthless under Behre Dolbear's own
13 valuation matrix anyway, regardless of the imposition
14 of the backfilling regulations.

15 So, I clearly believe using the spot price as
16 his estimates of the price that gold companies can
17 achieve over the long term is appropriate, and it was
18 deemed appropriate, even by Glamis itself in doing its
19 own analysis and its own memorandums which
20 acknowledged specifically that forward contracts would
21 enable then to beat the spot price over a significant
22 duration of the mine life.

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12: 49: 22 1 Q. Mr. Kaczmarek, are you aware that within the
2 last two weeks your firm Navigant has entered into an
3 agreement in principle with Behre Dolbear to submit a
4 joint bid to carry out a multibillion dollar valuation
5 of the aluminium assets of the Alcan Company, which is
6 potentially being acquired by the Rio Tinto Company,
7 one the largest mining companies in the world?

8 A. I'm not aware of that, no.

9 Q. Are you aware that your firm Navigant sought
10 out Behre Dolbear and Mr. Guarnera's participation in
11 that project so that they could take the lead on
12 metallic mineral valuations?

13 A. I'm not aware of it. I don't dispute the

14 expertise that Behre Dolbear has. What I do dispute
15 is the particular content of this report which we
16 demonstrated which was very different from the
17 contents of the other reports that we have seen Behre
18 Dolbear do.

19 Q. Mr. Kaczmarek, would you agree that the
20 history of the publicized denial of the Imperial
21 Project by the Interior Secretary would be a relevant
22 factor that a willing buyer would consider today when

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12: 50: 31 1 contemplating an investment in the Imperial Project?

2 A. The fact that it had been denied in the past
3 might play a part in determining the valuation of the
4 Project today, yes.

5 Q. And you do state in your expert report that a
6 definition of fair market value is the amount at which
7 property would change hands between a willing seller
8 and a willing buyer when neither is acting under
9 compulsion and when both have reasonable knowledge of
10 the facts; is that correct?

11 A. That's correct.

12 Q. Would you agree that a willing buyer who is
13 considering the possible purchase of the Imperial
14 Project today would also consider the public
15 statements by former California Governor Gray Davis on
16 April 7, 2003, where the Governor asserted that the
17 adoption of new mandatory backfilling and site
18 regrading requirements would stop the Imperial Project
19 from proceeding by imposing cost-prohibitive

20 reclamation requirements and that this was all
21 appropriate because sacred sites are more precious
22 than gold?

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12: 51: 36 1 A. How someone might interpret that statement, I
2 can't really opine on. People could interpret it very
3 differently. It's clearly a political statement. It
4 could mean a variety of things, but in analyzing the
5 economics of the Project, it clearly doesn't fit with
6 the statement. The economics of the Project and the
7 regulation simply increase the operating costs of the
8 mine. It could not have the effect that the statement
9 by Governor Gray Davis has indicated it has.

10 Q. Now, would you agree that a willing buyer
11 would want to consider such statements by the Governor
12 of the state where the property is?

13 A. They might consider that statement, yes.

14 Q. Would you agree that a willing buyer who was
15 considering the possible purchase of the Imperial
16 Project also would consider the fact that the Glamis
17 Imperial Project was the only mine identified in the
18 California Governor's public statement on April 7,
19 2003?

20 A. Again, they might consider it; and to what
21 degree they would consider it, I don't know.

22 Q. Would you agree that a willing buyer who was

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12: 52: 53 1 considering the possible purchase of the Imperial
2 Project would also consider the fact that the Glamis
3 Imperial Project was identified as the only reason for
4 the emergency adoption of mandatory backfilling
5 regulations by the California State Mining and Geology
6 Board in 2002?

7 A. I'm not sure if that's--if that's accurate.
8 Presuming that is an accurate reflection of what was
9 stated, again, they might consider it. To what degree
10 it might be considered, again, that would be
11 subjective.

12 Q. Would you agree that a willing buyer who was
13 considering the possible purchase of the Imperial
14 Project would also consider the fact that former
15 California Governor Gray Davis on September 30, 2002,
16 directed his resource agency to use all available
17 means to prevent the Glamis Imperial Project from
18 proceeding?

19 A. Again, same answer. A willing buyer might
20 consider that information. To what degree they would
21 place reliance upon it, that could vary.

22 In my view, in doing my own analysis, I don't

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12: 54: 07 1 place a lot of weight on those statements. They're
2 political statements. I would place more weight on
3 the fact that the owner of the property has been
4 declaring it to be worthless. A willing buyer would
5 be, of course, very skeptical to want to look to

6 purchase a property in which the owner itself is
7 proclaiming it to be worthless.

8 Q. Well, you are asserting that it's worth
9 \$159 million in a public way, as well; is that right?

10 A. Absolutely, absent the public reference to
11 the fact that the property isn't valuable. I'm not
12 considering those aspects in my valuation.

13 Q. Would you agree that a willing buyer who is
14 considering the possible purchase of the Imperial
15 Project would consider the fact that an enrolled bill
16 report to Governor Gray Davis on legislation dated
17 March 23, 2002, identified the purchase of that bill
18 as being to, "permanently prevent the Glamis Imperial
19 Project from proceeding"?

20 MS. MENAKER: Objection because these are
21 confidential documents, so these are not documents
22 that are available to members of the public.

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12: 55: 14 1 MR. McCRUM That's an argument, not an
2 objection.

3 MS. MENAKER: First, he's being asked to
4 speculate, purely speculation, but the documents to
5 which he is referring are confidential documents, so
6 the basis of the question is inappropriate, and there
7 is no basis for the question.

8 PRESIDENT YOUNG: Inappropriate in the sense
9 that counsel is referring to confidential documents?

10 MS. MENAKER: Yes, and also inappropriate in
11 the sense that these documents--I mean, they're not

12 available to members of the public, so we should not
13 be referring to the confidential documents in this
14 respect. We have referred to them in other aspects of
15 the proceeding for different purposes. But since all
16 he's trying to ascertain is what members of the public
17 might think, there is clearly no need to reference
18 nonpublic confidential documents.

19 MR. McCRUM: If I could respond, this
20 particular document we have had up on the screen a
21 number of times in the last couple of days. There has
22 been no objection to its confidentiality.

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12: 56: 39 1 And I will further assert to this Tribunal
2 that we were able to obtain virtually all of these
3 documents from a company in Sacramento called
4 Legislative Intent Services, and they were produced by
5 the Government as well in this case, but we were able
6 to obtain those documents. I believe confidentiality
7 was essentially waived by California.

8 We also believe that when documents were
9 produced to us in this case, documents that were
10 deemed to be confidential and privileged in the
11 California State Government, many were withheld from
12 us.

13 PRESIDENT YOUNG: We will consider it.

14 (Tribunal conferring.)

15 PRESIDENT YOUNG: Thank you.

16 We are not prepared to sustain an objection
17 with respect to speculation, but let me ask you,

18 Ms. Menaker, is your objection regarding
19 confidentiality that we should turn the cameras off at
20 this point?

21 MS. MENAKER: No, that's okay, because when
22 we were conferring, I was reminded that although this

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13:01:12 1 is a confidential document, it was one that we did not
2 redact in the pleadings. So, that's fine.

3 PRESIDENT YOUNG: Okay.

4 Mr. McCrum, if you could just ask a few more
5 questions, and then we will break for lunch.

6 MR. McCRUM: Okay. I would be happy to break
7 right now or we can proceed with a few more.

8 PRESIDENT YOUNG: Why don't we go ahead and
9 break. It's 1:00. We will resume at 2:15.

10 MR. McCRUM: Thank you.

11 PRESIDENT YOUNG: And I do remind counsel not
12 to talk with the witness about the subject matter of
13 the case during the lunch hour. Thank you.

14 MS. MENAKER: Would it be okay for me to ask
15 counsel approximately how much longer he expects to go
16 with this witness, just for timing purposes?

17 MR. McCRUM: I would say I would estimate on
18 the order of 20 to 30 minutes.

19 MS. MENAKER: Thank you.

20 (Whereupon, at 1:02 p.m., the hearing was
21 adjourned until 2:15 p.m., the same day.)

22

1 AFTERNOON SESSION
2 PRESIDENT YOUNG: Good afternoon.
3 We will recommence the hearing, and we left
4 off, Mr. McCrum, you were in the middle of your
5 cross-examination. I will turn the time back to you.
6 MR. McCRUM: Yes, thank you.
7 CONTINUED CROSS-EXAMINATION
8 BY MR. McCRUM:
9 Q. Good afternoon, Mr. Kaczmarek.
10 A. Good afternoon.
11 Q. Shortly before the lunch break, we had been
12 reviewing several statements from the California
13 Government relating to the Glamis Imperial Project.
14 Do you recall those, some of those statements?
15 A. Yes, I do.
16 Q. And in preparing your September 2006 expert
17 report, did you have the opportunity to review the
18 Memorial of Claimant Glamis Gold, Limited, submitted
19 in this case?
20 A. I did review aspects of the Memorial, yes.
21 Q. And do you recall that that Memorial cited
22 and supplied copies of numerous California state

14:17:42 1 Government documents supporting the quotations that I
2 had referenced before the lunch break?
3 A. They may or may not have. Sitting here

4 today, I can't confirm whether or not those quotations
5 were included in documents attached to the Memorial.

6 Q. Okay.

7 Your expert reports dated September 2006, and
8 March 2007, contained lengthy reports and appendices
9 nearly a foot in total thickness.

10 Is that about right?

11 A. That sounds about right, yeah.

12 Q. Did any of your appendices include any of the
13 California state documents reflecting the State
14 Government's intention to prevent the Glamis Imperial
15 Project from proceeding?

16 A. No.

17 Q. Mr. Kaczmarek, in your final rebuttal report
18 filed approximately a week ago, you referred to the
19 Cerro Blanco project of Glamis Gold, Limited; do you
20 recall that?

21 A. Yes, I do.

22 Q. And you pointed out that Glamis Gold,

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14: 18: 56 1 Limited, wrote off the investment at Cerro Blanco in
2 early 2001 at the same time it wrote off the Imperial
3 Project; do you recall that?

4 A. That's correct.

5 Q. And did you do some investigation and
6 analysis of the Cerro Blanco situation?

7 A. At what time?

8 Q. In connection with preparing your rebuttal
9 report filed a week ago.

10 A. Yes, we looked into what activity was taking
11 place at the Project referencing Annual Reports
12 produced by Goldcorp.

13 Q. As part of that review, did you learn of any
14 adverse governmental action that had been taken
15 affecting the Cerro Blanco project?

16 A. I'm not aware of any, no.

17 Q. Is it your understanding that the Project was
18 written off based upon the determination that it was
19 uneconomic at that time?

20 A. Yes, I believe the 2000 Annual Report of
21 Glamis indicated that the Project was shelved, pending
22 an increase in gold prices.

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14:20:14 1 Q. And what rationale did the Glamis Gold,
2 Limited, Annual Report provide for the write-off of
3 the sunk cost investment in the Imperial Project in
4 the early 2001 Annual Report?

5 A. It was the 2000 Annual Report.

6 Q. 2000 Annual Report, finalized in early 2001;
7 correct?

8 A. Yes.

9 The explanation given was the denial of the
10 permits.

11 Q. And who carried out that denial?

12 A. I believe the BLM had carried out that
13 denial.

14 Q. And do you recall that the denial was
15 personally exercised by Interior Secretary Bruce

16 Babbitt through a press conference?

17 A. I'm not aware of a press conference being
18 held, no.

19 Q. Now, you point out in your rebuttal report
20 filed last week that Glamis is pursuing new mineral
21 investigation activities at Cerro Blanco; is that
22 right?

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14: 21: 24 1 A. That's correct.

2 Q. And they have--they're carrying out a
3 feasibility study there; is that right?

4 A. That's my understanding, yes.

5 Q. Are you aware from your investigation that
6 the Cerro Blanco property contains a deep vein
7 structured gold deposit?

8 A. I'm aware from earlier testimony in the
9 proceedings that that is the case, yes.

10 Q. So, you're referring to testimony you have
11 heard here this week?

12 A. That's right.

13 Q. The Imperial Project is not like that
14 geologically, is it?

15 A. No, it's not, but that wasn't the purpose for
16 which I referenced the Cerro Blanco project. What we
17 indicated was that there is a real option with Gold
18 Properties and that they can be put aside and put on
19 hold for a period of time to allow economics to
20 potentially improve for the Project to commence.
21 Clearly economics have improved in the price of gold,

22 which now makes exploration activity at Cerro Blanco

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14: 22: 39 1 justified.

2 Q. And in the case of the Cerro Blanco project,
3 exploration was carried out to explore the deep vein
4 gold structures there and a major new discovery was
5 made; is that right?

6 A. That's right, but those exploration
7 activities have been put on hold for several years
8 because of the current economic conditions that
9 existed in early 2001.

10 Q. And you do recognize that a major new
11 underground discovery was made at Cerro Blanco?

12 A. Yes, that's my understanding.

13 Q. And are you aware that at the Imperial
14 Project area, more than 400 holes have been drilled,
15 and no such deep vein structure has been revealed in
16 that area?

17 A. My understanding is no deep vein has been
18 discovered at the Imperial Project, correct.

19 Q. Let's refer to Kaczmarek Hearing Exhibit 6.

20 Mr. Kaczmarek, prior to filing your expert--

21 MS. MENAKER: Excuse me, if I could just ask,
22 is this document in the record?

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14: 23: 48 1

MR. McCRUM Yes. This document is in the

2 record of this case. It's got the Bates label, I
3 believe is CM 000791-92.

4 MS. MENAKER: No, that's the Bates stamp.
5 That's not showing that it's in the record.

6 MR. McCRUM: Memorial Exhibit 29, Glamis Gold
7 Memorial Exhibit 29.

8 MS. MENAKER: Thank you.

9 BY MR. McCRUM:

10 Q. Mr. Kaczmarek, were you aware that the U.S.
11 Bureau of Mines published a study in 1990 entitled:
12 "A Cost Valuation of Backfilling Open-pit Gold Mines
13 in the California Desert," that concluded that
14 complete backfilling of open-pit gold mines was
15 economically infeasible prior to submitting your
16 expert reports in this case?

17 A. No, I was not.

18 Q. Let's take a look at this exhibit, and it
19 begins by stating, "An evaluation was performed to
20 determine the effects of backfilling costs on the
21 economics of an open-pit mining operation."

22 Turning to the second page of the exhibit, it

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14:25:02 1 states, "In summary, two aspects of backfilling open
2 pits were analyzed. First, NPV was calculated for
3 three cases and plotted against various gold prices.
4 Second, NPV for an operation under the same three
5 situations was determined for various operating costs.
6 Both scenarios indicated that the added costs of
7 requiring the pit to be backfilled could have a

8 significant adverse impact on the economics of an
9 operation. Indeed, for the base case alone,
10 backfilling would make an otherwise profitable
11 operation 111 million NPV at 15 percent ROR
12 unprofitable to minus 13 million NPV. "

13 Were you aware of those findings by the U. S.
14 Bureau of Mines made in 1990?

15 A. I have not before today seen this document,
16 nor am I familiar with the analysis that's conducted
17 in it.

18 Q. Let's turn to Kaczmarek Exhibit 7.

19 This is a Federal Environmental Impact
20 Statement, also an Environmental Impact Report issued
21 by the Bureau of Land Management and County of Kern,
22 and it assesses a maximum pit backfilling alternative

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14:26:24 1 for the Glamis Rand Mine in the California Desert, and
2 it makes certain findings about the maximum pit
3 backfilling alternative.

4 Let's turn to the second page of the exhibit.

5 It states, "Based upon these considerations
6 the potential loss of natural resources and economic
7 disadvantages of the maximum pit backfilling appear to
8 be substantially greater than the potential
9 environmental advantages. "

10 Were you aware of that finding in this
11 Environmental Impact Statement affecting the Rand
12 Project?

13 A. No, I was not familiar with this document.

14 Q. Let's look at the next page of the exhibit.
15 This is a finding by the Bureau of Land
16 Management in the final Environmental Impact Statement
17 on the Rand Project stating that the economic burden
18 of backfilling would place an unreasonable restriction
19 on the statutory right of the Federal Claimant to
20 remove mineral resources. The alternative is
21 ultimately judged not to be a reasonable alternative.
22 Were you aware of this finding relating to

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14: 27: 43 1 the Glamis Rand Project?

2 A. No, this is the first time I have seen this
3 particular document.

4 Q. And turning to Kaczmarek Hearing Exhibit 8,
5 we have the BLM Mineral Report dated ultimately
6 September 27th, 2002, signed by 11 BLM mineral
7 examiners and peer reviewers and supervisors.

8 This report you had seen before; is that
9 correct?

10 A. Yes, that's correct.

11 Q. And turning to the page three of this report,
12 it states in the highlighted section, "We also
13 analyzed the possibility of backfilling the East Pit
14 at the end of operations and determined that it was
15 not economically feasible."

16 You were aware of that finding by the Bureau
17 of Land Management?

18 A. Yes, I was. I did comment on this particular
19 document in my expert report, my second expert report.

20 I indicated that BLM had quantified the cost of
21 backfilling to be \$47 million and had determined the
22 Project to be--have a positive NPV, but not sufficient

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14: 29: 03 1 to make it economic.

2 I didn't find the analysis particularly
3 persuasive, however, because they had made an
4 assumption that backfilling could be completed in one
5 year, which I don't think any of the parties agree was
6 feasible to be done, and had they perhaps considered a
7 longer tail on which the backfilling would be done,
8 the NPV would increase because costs would be
9 deferred.

10 Likewise, there was also a fairly low gold
11 price assumption built into that particular analysis,
12 as well.

13 Q. Did you come to understand that the BLM
14 mineral examiners who prepared these reports
15 receive--have degrees in mining engineering and
16 geology and receive specialized training to become a
17 BLM mineral examiner?

18 A. I wouldn't doubt that they do.

19 Q. But you made your own assessment of their
20 analysis and concluded that you disagreed with it; is
21 that right?

22 A. Clearly, the backfilling exercise wouldn't

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14:30:09 1 take one year in any of the experts' opinions in these
2 matters as well as Glamis's own opinion. So I didn't
3 look at that as a particularly good assumption on the
4 part of the person who made it in authoring that
5 section of the report.

6 Q. And you've attended the proceedings here
7 throughout this week; correct?

8 A. Most of the proceedings, yes.

9 Q. And have there been any BLM mineral
10 specialists that have come in and offered testimony to
11 retract or disagree with the findings made by the
12 Federal Government in this report?

13 A. Not to my knowledge, no.

14 MR. McCRUM I have no further questions of
15 this witness.

16 PRESIDENT YOUNG: Thank you.

17 Ms. Menaker?

18 REDIRECT EXAMINATION

19 BY MS. MENAKER:

20 Q. Thank you.

21 Mr. Kaczmarek, Mr. McCrum today began his
22 examination by spending an inordinate amount of time

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14:31:34 1 discussing your resume and your past experience. And
2 it was clear from that that you have a wide variety of
3 experience valuing different types of income-producing
4 assets.

5 In your view, does this make you competent to

6 value an income-producing asset such as the Imperial
7 Project, as you have done in this case?

8 A. Absolutely. As I explained, valuation
9 principles apply across business types and industries.
10 I valued companies in the oil sector, power
11 generators, banks, leasing companies, manufacturers,
12 and mining companies.

13 So, the--all of the techniques, principles,
14 and concepts that we use in all those valuations apply
15 equally in the case of valuing a mineral property.

16 In fact, in this particular case, I would say
17 that of all the valuation exercises I have done in the
18 past, this was one of the least difficult, and that's
19 because of the amount of information that was already
20 contemporaneously generated. You don't often find a
21 nice 10-year business plan and forecast that's put
22 together with a lot of assistance and help from

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14: 32: 48 1 engineers and geologists and which you can rely on and
2 test, and both experts have done that in this
3 particular case.

4 So, really, you know, in terms of the
5 difficulty of reaching a valuation conclusion relied a
6 lot on just a few simple valuation issues and not
7 necessarily a ground-up DCF valuation which, in some
8 cases, can be more difficult to create.

9 Q. And so, was the majority of the technical
10 information that you incorporated into your valuation
11 based on Glamis's own internal models?

12 A. Yes. Based on Glamis's own internal models
13 and the Feasibility Study that was produced. Behre
14 Dolbear made a few minor adjustments to that. We made
15 a couple of minor adjustments to that. And other than
16 those minor adjustments, everyone has agreed that
17 that's the proper cash flow forecast to use.

18 Q. And for the other unique aspects that
19 would--were aspects unique to valuing a mineral
20 property, some of those technical aspects, where did
21 you get that information?

22 A. For the technical aspects of the forecast and

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14:34:07 1 the Project, I relied on the experience and expertise
2 of Norwest, but in large part, those technical aspects
3 haven't been debated by the parties in this
4 proceeding. The issues that are being debated other
5 than costs to backfill and the amount of material to
6 be backfilled are all related to basic valuation
7 principles.

8 Q. So, when you just referred now to the amount
9 of material to be backfilled, which is obviously
10 affected by the swell factor which you earlier
11 testified is an important issue in the case, did
12 Navigant independently calculate the swell factor that
13 was ultimately used as part of the--as part of
14 reaching a conclusion as to what value the Imperial
15 Project has?

16 A. We did not calculate our own swell factor.
17 We relied on swell factors that were contemporaneously

18 calculated by Glamis, which was 23 percent.

19 Q. Earlier in the week, Mr. Jeannes testified
20 that Glamis could have not obtained a noncash-backed
21 Letter of Credit in the range of \$50 million back in
22 2002.

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14: 35: 26 1 Do you have any opinion on that testimony?

2 A. Yes. I can't agree with Mr. Jeannes on this
3 point. I explained in my expert reports that Letters
4 of Credit are standard banking instruments; and, when
5 banks issue Letters of Credit, they basically
6 undertake a standard underwriting process that they
7 would in issuing a loan.

8 Now, a Letter of Credit is really a
9 contingent loan. It's an agreement to pay something
10 on behalf of the client if they don't have the funds
11 to pay. If the bank is obliged to actually make a
12 payment, it is then basically loaning the client
13 money, and so a Bank is going to evaluate a client's
14 strength, its financial strength, when determining
15 whether or not it will issue a Letter of Credit.

16 In the case of Glamis, we pointed out that in
17 2002, the company's market cap had reached over
18 1 billion. They had a very consistent history of
19 generating operating cash flow. They had absolutely
20 no debt on their books, and in my view, it would be
21 incredible to think that a bank would not issue
22 Letters of Credit for a mere \$50 million at that point

14: 36: 43 1 in time simply to earn a nice fee, a 1 percent fee in
2 the Letter of Credit, and to take the contingent risk
3 of being a lender to Glamis.

4 Q. Now, Mr. Guarnera earlier testified that
5 there has been no offer to purchase the Imperial
6 Project mining claims, and he said that they--the fact
7 that the mining claims had no value was clearly
8 demonstrated by the fact that nobody wants it.

9 In your view, is this a reliable conclusion
10 to draw when seeking to value the claims?

11 A. I think it's a terrible way to judge values,
12 I said in my expert reports.

13 First, of course, I wouldn't expect a lot of
14 potential people to approach Glamis about the Project
15 when they're publicly declaring it has no value.
16 Nonetheless, apparently somebody has. But I think
17 also as Mr. Jeannes testified earlier, he indicated
18 that no one had approached Glamis since they have
19 owned the Project back in the early nineties with an
20 offer to purchase.

21 If we were to judge value based on, you know,
22 an offer to purchase, clearly the Imperial Project

14: 38: 00 1 would have no value since Glamis has acquired it under
2 that particular standard.

3 Q. And in your view--you just testified that the

4 fact that the owner of the property is saying that it
5 has no value may very well impact a potential
6 purchaser's view of the Project.

7 In your view, would the fact that the
8 ownership of the property is, indeed the subject of
9 litigation or arbitration likewise perhaps have an
10 impact on a potential buyer's willingness to come
11 forward?

12 A. Absolutely, it would have an impact on a
13 buyer's interest in the Project.

14 Q. I would like now to turn your attention to
15 the Mineral Report which Mr. McCrum just asked you to
16 take a look at. I think that's--

17 PRESIDENT YOUNG: Which exhibit is that?

18 MS. MENAKER: It's the last exhibit, Exhibit
19 8, although it's not the entirety of the report.

20 So, let me just ask you a question or two.

21 And we have full copies that we can
22 distribute if that would be helpful, if the witness--

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14: 39: 16 1 PRESIDENT YOUNG: Counsel, if you could ask
2 questions about it, I would like to see about parts
3 that aren't included here, I would like to see those
4 parts.

5 MS. MENAKER: Sure, sure. Just one moment.

6 PRESIDENT YOUNG: Thank you.

7 You can proceed.

8 MS. MENAKER: Thank you.

9 BY MS. MENAKER:

10 Q. Now, you testified, Mr. Kaczmarek, that the
11 BLM used a relatively low gold price when they did
12 their analysis, and looking through, isn't it correct
13 that the BLM used a gold price of \$296 per ounce? And
14 I think if you look at the very last page...

15 A. Yes, that's correct.

16 Q. And again, you testified that the BLM
17 estimated even with that very low gold price a cost of
18 backfilling and even with the fact that all
19 backfilling would be done in one year, an approximate
20 cost of backfilling I think was between 47 and
21 \$48 million; is that correct?

22 A. That's correct. On page 45, numbered at the

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14:41:15 1 bottom of the document, third paragraph from the top,
2 it indicates their estimate was \$47.8 million.

3 Q. Okay. And do you recall how that compares to
4 Navigant's or actually maybe if I just refer you to
5 the document, this would be more efficient.

6 In your first report on page 12, you there
7 have a chart showing the cost of backfilling that has
8 been calculated by Navigant, by Glamis itself
9 contemporaneously, and also by Behre Dolbear.

10 And could you let us know what those
11 estimates were.

12 A. Sure. Again, this was for backfilling under
13 the operation of just the two pits, the East and the
14 West. With conservative assumption on a refurbishment
15 costs, our total estimate was 60 million that we

16 included in valuing the Imperial Project in the
17 post-backfill scenario. Glamis's contemporaneous
18 assessment was 51-and-a-half million. Behre Dolbear
19 had assumed 95.5 million.

20 Q. So, in your view, although you have
21 criticized the BLM Mineral Report's conclusions on
22 various grounds, were your estimates closer in line to

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14: 43: 07 1 BLM's, or were Behre Dolbear's estimates closer in
2 line with those?

3 A. Well, clearly our estimates with Norwest were
4 much more in line with the BLM. I don't have any
5 detailed knowledge of how they arrived at the
6 47 million. My only criticism of the analysis was the
7 fact that they made a simplifying assumption of
8 including the entire 47 million cost in the very first
9 year after mining would be complete.

10 Q. Thank you.

11 And can I ask you to please turn back to
12 Glamis Exhibit Number 7 that they gave you--I'm sorry,
13 it would be Number 6.

14 And if you could turn to the second page,
15 please.

16 And looking at the last line on that page,
17 where it says. "Backfilling would make an otherwise
18 profitable operation unprofitable."

19 Isn't it the case that according to this, the
20 operation was deemed to have a net present value with
21 prior to backfilling costs being imposed on it of only

22 \$110,000?

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14:44:32 1 A. \$111,000, yes.

2 Q. Okay. And not \$111 million, as Mr. McCrum
3 previously stated?

4 A. There is no million after the 111,000, so I
5 would assume it's 111,000, yes.

6 Q. So, this backfilling requirement made this
7 project that was previously worth \$111,000 worth an
8 estimated negative 13 million; is that correct?

9 A. Yes, that's correct, which indicates that the
10 net effect is in effect a 13.1 million dollar cost to
11 backfill.

12 Q. And how does that compare with the magnitude
13 of the impact of backfilling on the proposed Imperial
14 Project that Navigant calculated?

15 A. Well, pre-backfill we had estimated the value
16 of the project to be 34-and-a-half million dollars.
17 Post backfill we estimated 21-and-a-half million, so
18 the net impact was \$13 million, very close to and in
19 line with the results of this study.

20 Q. Thank you.

21 PRESIDENT YOUNG: Mr. McCrum, further
22 questions?

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14:45:51 1 MR. McCRUM: Yes, further questions. I stand

2 corrected on the 111 million figure. I misread that
3 in my remarks there.

4 RE-CROSS-EXAMINATION

5 BY MR. McCURUM

6 Q. Mr. Kaczmarek, prior to your expert report in
7 this case, had you ever been involved in the purchase
8 and sale of a metallic mineral property?

9 A. No, I have not.

10 Q. Prior to your expert report in this case,
11 have you ever obtained and negotiated a Letter of
12 Credit for long-term reclamation obligations
13 associated with a metallic mine?

14 A. No, I have not.

15 Q. You referred to the fact that no one had
16 approached or you referred to an assertion that no one
17 had approached Glamis for a purchase of the Imperial
18 Project prior to 2001, I believe; is that right?

19 A. I believe that was Mr. Jeannes's testimony,
20 that no one had approached Glamis to acquire the
21 Imperial Project since they owned the whole project.

22 Q. And that's your recollection.

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14:46:58 1 Is there a distinction--prior to Secretary of
2 the Interior Babbitt's denial of the project, was the
3 Glamis Imperial Project considered a core asset of
4 Glamis Gold, Limited?

5 A. I'm not sure how Glamis considered that
6 particular project in light of its other projects.

7 Q. Are you aware that Glamis, by that point, was

8 phasing down in the operation of the Picacho Mine and
9 planning on transitioning its workforce from Picacho
10 to the Glamis Imperial Project?

11 A. I am aware of that, yes.

12 Q. You referred to the effect of litigation
13 pending relating to a property.

14 Is Glamis the Claimant in this case?

15 A. Yes, that's my understanding.

16 Q. And is Glamis free to voluntarily dismiss
17 this case at any time if an offer for purchase is
18 received?

19 A. That would be my presumption, yes.

20 Q. And again, to confirm your valuation is
21 dependent on Norwest for all mining, engineering, and
22 geologic determinations?

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14: 48: 14 1 A. That's correct.

2 Q. Did I understand you to say earlier that you
3 directly relied on your interpretation of the 1996
4 Feasibility Study for the Glamis Imperial Project?

5 A. Yes. The 1996 Feasibility Study was a
6 document that we referred to in reaching our expert
7 opinions.

8 Q. Prior to filing your expert report in this
9 case, had you ever, in your professional experience,
10 reviewed and interpreted a Feasibility Study for a
11 metallic mine?

12 A. Not for a metallic mine, but feasibility
13 studies related to other projects, yes.

14 Q. Were the other projects that you had reviewed
15 feasibility studies involving mine properties?

16 A. No.

17 Q. Mr. Kaczmarek, who first publicly asserted
18 that the Glamis Imperial Project was rendered
19 economically infeasible? The State of California or
20 the Federal Government, or the Glamis Gold, Limited,
21 company?

22 A. I don't know if it was the Federal Government

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14:49:26 1 or the State of California, but I believe that they
2 made statements that the regulations had that effect
3 before Glamis has stated that the--that same effect,
4 yes.

5 Q. Thank you, Mr. Kaczmarek.

6 MR. McCURUM: That will conclude my
7 questioning.

8 PRESIDENT YOUNG: Counsel?

9 MS. MENAKER: I have nothing further, thank
10 you.

11 QUESTIONS FROM THE TRIBUNAL

12 PRESIDENT YOUNG: Thank you.

13 I would ask if I could ask just a couple of
14 questions, Mr. Kaczmarek, and see if I can clarify a
15 couple of things I'm just a little hazy on.

16 Earlier this morning you indicated regarding
17 swell factor, which I understand to be a somewhat
18 disputed issue here, that you thought that 35 percent
19 swell factor was inflated based on--and you said two

20 things in your testimony, the Norwest Report and
21 evidence you had seen.
22 What other evidence besides the Norwest

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14: 50: 22 1 Report? Can you just give me a sense of what that
2 was?

3 THE WITNESS: Yes. There was a calculation
4 of the swell factor based upon the different types of
5 materials that were deemed to be present at the
6 Imperial Project that was attached to an analysis that
7 Mr. Purvance has put together. I believe it was a
8 page in the document that has been displayed, showing
9 several of the core samples and that's been
10 highlighted where some of the core samples have been
11 shown.

12 PRESIDENT YOUNG: And from - did you actually
13 do an analysis of the relationship between the core
14 sample and percentage, or was it just kind of the
15 conclusion of that report that you looked at?

16 THE WITNESS: To us, that was the conclusion
17 of the report. We didn't do any independent analysis
18 whatsoever ourselves, and we relied upon that
19 particular document. And the modeling that Glamis had
20 prepared to project the cash flows of the Project also
21 included that same analysis in the electronic model.

22 PRESIDENT YOUNG: So, that analysis, Glamis

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14: 51: 34 1 and Norwest. Okay, thanks.

2 The same question I wanted to ask just a
3 clarify a little bit. Obviously, an area we talked
4 quite a bit about has been spot gold price versus the
5 10-year average versus the hundred-year average versus
6 what the 49ers did, but there has been only a little
7 tiny bit of talk about the cost structure and the
8 changes in the cost structure, and I know you disputed
9 earlier Behre Dolbear's analysis of an 85 percent
10 increase in the cost structure because you said that
11 was a spot increase--that that was a spot increase and
12 that the prior year had been lower and so forth.

13 Help me understand how one thinks through or
14 how you did in your analysis the increased cost of
15 gold going up, so obviously revenue changes. Clearly,
16 is there some change in the cost structure, but you
17 seemed to sort of take the historic average there and
18 a spot on gold.

19 Help me understand a little bit what you
20 actually did there in terms of analysis of the cost
21 structure issue.

22 THE WITNESS: Sure. I mean, that was an

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14: 52: 51 1 issue we said it was an inconsistency within the Behre
2 Dolbear model, a 10-year average price, but them
3 trying to bring costs up-to-date. Exhibit N to our
4 first expert report is a summary of--

5 PRESIDENT YOUNG: Just give me one second.

6 Thanks very much. Please.

7 THE WITNESS: So, this is an analysis based
8 upon Western Cost Mine, who we understand and in
9 confirmation with Norwest understand to be a very
10 reputable company who produces inflation factors for
11 both operating costs and capital costs in the mining
12 industry. So, and when we did our current valuation
13 of the Project, we increased all the Project costs in
14 accordance with these inflation factors. So,
15 operating costs were all increased by 26.44 percent,
16 and capital costs were all increased 18.09 percent.
17 So, we did take into account the higher operating
18 costs that are present for mines in coming to our
19 current valuation of the Imperial Project.

20 I would also note that in Behre Dolbear's
21 first report, they had indicated a current valuation
22 was somewhere around negative \$23 million. We weren't

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14:54:31 1 certain how they arrived at that figure, but by
2 adjusting all the capital and operating costs
3 according to Western Mine and using their ten-year
4 average, historical average gold price, we were able
5 to replicate that particular figure very closely.

6 PRESIDENT YOUNG: Thank you.

7 Let me follow up on that with just another
8 question to help me drill down on that--actually, no
9 pun intended--a little bit more here.

10 Some of the testimony that you referred to
11 and was referred to earlier looking at some of the

12 reports, Annual Reports, it indicated that, you know,
13 costs had gone up 800 percent or 200 percent or
14 300 percent. You said there was some exceptional
15 chargeoffs in that that made that unreflective of
16 perhaps a real operating cost.

17 But by any stretch, did those figures seem
18 quite a bit higher than at 26 percent? Can you help
19 me kind of reconcile that.

20 THE WITNESS: Sure. I think we were talking
21 about the Marigold project. And as I pointed out, the
22 full Annual Report for 2006 for Goldcorp indicates the

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14: 55: 43 1 operating costs for that mine over the year were \$304.

2 Yes, the second quarter we confirmed said on
3 the order of 750, but there was some notations to
4 that, that factor that indicate there were exceptional
5 inventory write-offs and other issues.

6 What--the problem I think with using a
7 quarter like that of operating activity is it can be
8 heavily influenced by what happens in that quarter.
9 If production happens to be a little bit lower during
10 those three months or they are in a particular area of
11 the mine, the total costs, you know, may be allocated
12 to a smaller number of produced reserves.

13 So, it can wildly take you off mark I think
14 in looking at it that way.

15 What we are really trying to judge here is
16 how overall operating costs have changed for mines in
17 general over the life of their mines from one year to

18 the next. We are not trying to judge how the
19 performance of a particular mine from quarter to
20 quarter.

21 PRESIDENT YOUNG: When you looked at that
22 700-dollar figure and backed out those exceptional

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14:56:57 1 charges, do you recall what you got?

2 THE WITNESS: I think the number was still
3 around 650 or 630. I think the exceptional charges
4 were at least 115.

5 PRESIDENT YOUNG: Had production declined?

6 THE WITNESS: But the production seemed lower
7 than it had been overall for the prior years, but, you
8 know, I would--we also looked in our report and did
9 some analysis of this generally across the industry.
10 If really the costs were increasing at the level that
11 has been suggested, that they're upwards of 600 and
12 700, first, one wouldn't expect to see significant
13 rises in gold companies in their market values, but
14 that's precisely what we have seen. We have looked at
15 I believe in our second report it's Figure 3. We took
16 some averages of some of the major gold producers--

17 ARBITRATOR CARON: I'm sorry, what page is
18 that?

19 THE WITNESS: Page 107, Figure 3.

20 PRESIDENT YOUNG: Thank you.

21 Go ahead, please.

22 THE WITNESS: Sure.

14: 58: 16 1 What we showed here was in 2002, the market
2 value of gold company was per ounce reserves was
3 trading at \$112. But by 2006, you see it's nearly
4 doubled to \$209.

5 Now, if operating costs were truly rising at
6 a level that would in fact surpass the rise in the
7 gold price, meaning your costs are going to outstrip
8 your revenue, first I would expect all of these gold
9 companies to be bankrupt.

10 Second, I wouldn't expect the market to be
11 doubling its valuation of them.

12 So, clearly the costs haven't nearly been
13 rising as much as the gold prices has been rising.

14 PRESIDENT YOUNG: Thank you very much.

15 Mr. Kaczmarek, we appreciate your time and
16 your testimony. Thank you.

17 THE WITNESS: Thank you.

18 (Witness steps down.)

19 PRESIDENT YOUNG: Mr. McCrum?

20 MR. MCCRUM: Our next witness would be Conrad
21 Houser.

22 CONRAD HOUSER, RESPONDENT'S WITNESS, CALLED

15: 00: 33 1 PRESIDENT YOUNG: Mr. Houser, welcome.

2 We would ask that you start by reading the
3 expert witness statement there.

4 THE WITNESS: I solemnly declare upon my
5 honor and conscience that my statement will be in
6 accordance with my sincere belief.

7 PRESIDENT YOUNG: Thank you.

8 Mr. Sharps, do you want to start with a few
9 questions?

10 MR. SHARPE: Yes, please, just a few
11 questions.

12 DIRECT EXAMINATION

13 BY MR. SHARPE:

14 Q. Good afternoon, Mr. Houser.

15 A. Good afternoon.

16 Q. Can you state your full name for the record,
17 please.

18 A. Conrad Bernard Houser.

19 Q. And what is your current position?

20 A. Currently I am CEO of a metallic mining
21 company up in Idaho, named Shoshone Silver, and I'm
22 also employed as a consultant to two other mining

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15: 01: 26 1 companies, Silver Scott Mining and Sterling Mining
2 Company.

3 Q. And are you still associated with Norwest?

4 A. I'm still an associate with Norwest and
5 continuing to do miscellaneous work for them.

6 Q. I see.

7 And what are your professional qualifications
8 that are relevant to this arbitration?

9 A. Educationally, I got a degree from the United

10 States Air Force Academy in civil engineering, then
11 went to Rice University in Houston, and received a
12 Master's degree in civil engineering also there. Then
13 went to--I worked for a while in the architectural
14 engineering field and then went to Brigham Young
15 University when they opened their law school and did
16 some of my law schooling actually at the University of
17 Utah and followed that up with an executive--worked
18 towards an executive MBA program at the University of
19 Utah.

20 Q. I see. And are you also a Registered
21 Professional Engineer?

22 A. I am a Registered Professional Engineer in

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15:02:42 1 Colorado and Wyoming.

2 Q. How many experience do you have with the
3 mining industry?

4 A. I have been involved with the mining industry
5 since about 1970. I was working with Mobil Oil
6 Corporation in various positions of project
7 management, and I was Vice President of their oil
8 shale operations in western Colorado, and from there
9 it was a series of adventures in the mining industry
10 in a variety, wide variety of industrial minerals,
11 energy minerals, and now metallic minerals.

12 Q. And did anyone at Norwest assist you with the
13 preparations of your--preparation of your reports and
14 supplemental statements in this arbitration?

15 A. Yes, we often do things as a team at Norwest.

16 I was assisted by Mr. Douglas Moore, who did a lot of
17 the number crunching, if you will, the cone
18 variations. He is an experienced gold mining person.

19 I was also assisted by the Vice President of
20 surface mining, who added his thoughts, and also we
21 knew was not to going to testify, so we did not add
22 resumes for a geologist within Norwest, a geotechnical

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15: 04: 07 1 expert within Norwest, and also a certified mine
2 evaluator within Norwest.

3 Q. Thank you.

4 And what were you principally asked to do in
5 this arbitration?

6 A. A fairly narrow scope, to support Glamis, and
7 that was to look at the volume of overburden that
8 would have been changed or the result of the--the
9 impact, I'm sorry, of the change in the regulations on
10 the volumes and costs of overburden, and the movement
11 of that overburden, as well as peripheral issues that
12 were related to that.

13 Q. I think you said to assist Glamis. Did you
14 mean to assist Navigant?

15 A. I meant Navigant, I'm sorry.

16 Q. No problem, but you did not perform an
17 evaluation in this case; is that right?

18 A. We are not, although we have done that many,
19 many times, we are not in this case, no.

20 Q. So, Navigant performed the valuation and you
21 assisted with the technical input for that valuation;

22 is that correct?

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15: 05: 14 1 A. That's correct.

2 Q. And did you also critique the Behre Dolbear
3 reports?

4 A. Also did look at and critique and tried to
5 respond to those aspects of the Behre Dolbear report
6 that were relevant to our scope.

7 Q. And what were the main conclusions that you
8 reached in your expert reports?

9 A. I think they're summarized on page one of
10 Volume 2. That is our March 15th, 2007 report, and
11 there were really three conclusions that were made.

12 Number one, that the costs to the Glamis of
13 complying with the California reclamation regulations
14 was \$55 million.

15 Number two, that they overstated by nearly
16 double the cost of backfilling.

17 And number three, that the backfilling
18 operation would not disturb any other undisturbed
19 land, that there would be plenty of room living with
20 the 25-foot maximum elevation above or approximate
21 original contour, there would still be plenty of room
22 for placement of the waste materials.

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15: 06: 33 1 Q. I see.

2 Just one final question for you. Earlier
3 this week, Mr. Purvance produced a core sample that he
4 argues suggested the dominant waste material at the
5 Imperial Project is conglomerate and not gravel.

6 Do you think this is relevant, and do you
7 have any opinions on this issue?

8 A. We looked very closely at the Glamis
9 documents all through the 1990s, at their densities,
10 at their swell factors, at their terminology.

11 As Mr. Purvance has discussed and Behre
12 Dolbear also, it's very confusing from their testimony
13 now as to how much was gravel, how much was one of the
14 various types of conglomerates, and there are several
15 types of conglomerates. It really doesn't matter what
16 those core samples are. I mean, we could talk about
17 them if they're presented, but the relevance of that
18 is not there. And consistently through the 1990s, the
19 Glamis reports showed the percent of alluvium
20 material, the percent of rock material, and the
21 percent of ore material that was in the midst of all
22 of their drilling program. It didn't really--whether

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15:07:54 1 you take some of that conglomerate and put it under a
2 rock category or put it under a gravel category, they
3 have admitted in prior testimony that I have heard
4 there that 79 of percent of it was alluvial material,
5 and alluvial material, they have given a density and
6 swell factor to that we've agreed upon.

7 Q. What was that swell factor?

8 A. That's a 15 percent swell factor for the
9 gravel, and the weighted average with rock and spent
10 ore was 23 percent. So, those numbers have
11 continually come up. Where there has been a
12 30 percent number come up has referred to rock, and
13 whether that rock is a very highly cemented
14 conglomerate or pure rock of a different type doesn't
15 really matter. The weighted average of the materials
16 that Glamis consistently reported all through their
17 development of the Project until the lawsuit was or
18 this arbitration was instigated consistently showed
19 the same numbers.

20 Q. So, do I understand correctly that regardless
21 of what the material is called, everybody, Glamis and
22 Norwest accept that it has a swell factor of

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15:09:13 1 15 percent; is that correct?

2 A. That's what every report from Glamis shows up
3 until late 2003.

4 Q. Is that the same with the weighted average
5 swell factor that Norwest and Glamis are using the
6 weighted average swell factors in the documents that
7 you have seen?

8 A. Yes. And in my reports it shows that the
9 BLM, when they evaluated it, also came out with the
10 same number. They might have had 24 percent instead
11 of 23, but virtually the same number. Nothing like a
12 35 percent overall swell factor.

13 Q. So, you haven't seen any Glamis documents

14 predate this arbitration that state a 35 percent
15 weighted average swell factor for the material at the
16 Imperial Project?

17 A. Nothing at all.

18 Q. I see. Have you seen any Glami s documents
19 stating anything other than a 23 percent weighted
20 average swell factor for the Imperial Project prior to
21 this arbitration?

22 A. I think not. I'm quite sure that's a true

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15: 10: 11 1 statement.

2 MR. SHARPE: Thank you very much.

3 PRESIDENT YOUNG: Thank you, Mr. Sharpe.

4 Mr. McCrum?

5 CROSS- EXAMINATION

6 BY MR. McCRUM

7 Q. Mr. Houser, good afternoon.

8 A. Good afternoon.

9 Q. You are here today appearing for Norwest
10 Corporation; is that correct?

11 A. That is correct.

12 Q. And you are the lead author of the Norwest
13 expert reports submitted in this case addressing
14 mining engineering and geologic issues; is that right?

15 A. Yes.

16 Q. And your reports involve the Glami s Imperial
17 Project, a disseminated gold deposit; is that correct?

18 A. Yes.

19 Q. In preparing your reports, you have had

20 meetings and communications with Navigant
21 representatives; is that right?
22 A. Yes.

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15: 10: 57 1 Q. Including Mr. Kaczmarek?

2 A. Yes.

3 Q. Your Bachelor's degree and Master's degrees
4 are in civil engineering; is that correct?

5 A. Yes.

6 Q. And you have a law degree; is that right?

7 A. Yes. And I did fail to mention that I do
8 have mining course work at Kings College up in Canada
9 where I have taken course work up there.

10 Q. Your degrees are not in mining engineering or
11 geology, are they?

12 A. Simple answer is no. The broader answer is
13 that most people in mining have civil engineering
14 degrees, equally as many as have mining degrees. So,
15 both of them moved earth and rock and are closely
16 related.

17 Q. Mr. Houser, have you personally visited the
18 Imperial Project Site?

19 A. No. I looked at the materials. I was
20 offered that opportunity. I looked at the exciting
21 picture like we saw the other day of the flat desert.
22 I have been in that country at other mines and saw no

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15:11:59 1 need to go there.

2 Q. Your original--your expert report as
3 originally submitted with the U.S. Counter-Memorial in
4 September 2006 included the resumes of yourself, Gary
5 Stubblefield, and Douglas Moore; is that correct?

6 A. That is correct.

7 Q. And in your supplemental reports, you have
8 not offered any further resumes of the people involved
9 from Norwest on this, have you?

10 A. No.

11 Q. And are you certified as a mineral appraiser
12 as recognized by the American Institute of Mineral
13 Appraisers?

14 A. I am not personally, no.

15 Q. And is Mr. Stubblefield a Certified Mineral
16 Appraiser?

17 A. No.

18 Q. And is Mr. Douglas Moore a Certified Mineral
19 Appraiser?

20 A. No, and I should add to that that none of us
21 in this project did any mineral appraisal work. We
22 are only here for a narrow scope, so it would have

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15:13:05 1 been irrelevant.

2 Q. Okay.

3 A. I'm sorry, I don't mean to come to a legal
4 conclusion.

5 Q. From 1971 to 1973, approximately, you worked

6 as an engineer involved in city planning in Greeley,
7 Colorado; is that right?

8 A. Yes.

9 Q. From 1975 to 1977, you worked as a lawyer in
10 a small law firm; is that correct?

11 A. Yes, in Salt Lake City.

12 Q. From 1977 to 1980, you worked as a marketing
13 operations manager for a terminal in Queensland,
14 Australia; is that correct?

15 A. Next 14 years I spent with Mobil, and first
16 assignment was in Australia, yes.

17 Q. Now, the terminal operation, that did not
18 involve gold mining, did it, from 1977 to 1980?

19 A. No, other natural resources in this case,
20 oil, petroleum products, lubricants.

21 Q. From 1980 to 1981, you worked for Mobil
22 Corporation converting flare gas into replacement fuel

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15:14:13 1 for transportation, not gold mining; is that correct?

2 A. Well, I was General Manager for Mobil Oil in
3 Central Africa in the country of Zambia. We supplied
4 product there to the copper mines, and so I was very
5 familiar with their operations and their needs.

6 Q. What product were you supplying?

7 A. All kinds of gear, lubricants, transmission
8 fluids, diesel fuel, et cetera.

9 Q. From 1982 to 1985, you worked for the Mobil
10 Synfuels Division where you were a Venture Services
11 Advisor; is that correct?

12 A. Yes, and that--yes.

13 Q. And there was some underground mining
14 connected with that; is that correct?

15 A. Underground mine planning, yes.

16 Q. And what was the mineral there?

17 A. That was oil shale.

18 Q. And from 1985 to 1987, you were an engineer
19 and environmental manager at a Mobil coal mine in
20 Wyoming; is that right?

21 A. Yes. The Caballo Rojo Mine. I was
22 responsible for engineering planning, engineering

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15:15:27 1 execution, and all the environmental permitting and
2 environmental work there.

3 Q. From 1988 to 1991, you continued with Mobil
4 Corporation as a Vice President involved in their coal
5 business; is that right?

6 A. Yes.

7 Q. Up until this point in your career, you've
8 had no engineering experience with an operating gold
9 mine or precious metal mine; is that right?

10 A. Other than the relationship with the copper
11 mines in Zambia, that's true.

12 Q. In 1992, you worked for the Drummond Company
13 at their coal mine for one year; is that right?

14 A. They purchased the Mobil mine, and I stayed
15 there, yes.

16 Q. And then you were laid off from that position
17 at the end of that year; is that right?

18 A. I took a golden parachute and left, yes.

19 Q. From 1993 to 1995, you were Vice President
20 and Chief Operating Officer for Wold Trona Company in
21 Casper, Wyoming; is that right?

22 A. That's correct.

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15:16:25 1 Q. And the Wold Trona was a division or
2 affiliate of the Wold Oil Company; is that correct?

3 A. There was a Wold Oil Company. In this case,
4 it was two separate project, but yes.

5 Q. Now, did Wold Trona produce commercial trona
6 during your tenure there?

7 A. No, that was a development project taking all
8 the mine planning, all of the infrastructure,
9 everything else to the point of execution.

10 Q. Can you describe for us what trona is as a
11 mineral.

12 A. Trona is a well hidden mineral. It's--if we
13 look around us, a lot of things are made from trona,
14 mainly glass and other related products. It is a form
15 of catalyst that reduces the heating temperature of
16 silica in glass, basically, the most expensive
17 ingredient in glass. It is quite similar in
18 softness--not softness, really, but in texture and
19 mining methods to coal, even though it's white and
20 coal's black. So, a lot of the same techniques. When
21 it's surface-mined or when it's underground-mined.

22 Q. And when you were at Wold Trona, you had,

15:17:47 1 according to your resume, overall responsibility for
2 integration of a 200 million new mineral process
3 technology development design, financing, and
4 permitting; is that right?

5 A. Yes.

6 Q. And according to your resume, you presold
7 80 percent of the initial 10 years' production; is
8 that right?

9 A. Yes.

10 Q. But during your tenure there, there was no
11 trona commercially produced?

12 A. There was no trona commercially produced.

13 Q. And has the Wold Trona a company ever
14 commenced commercial trona production here?

15 A. I don't know. I haven't--John Wold, we've
16 stayed in contact some. He's changed technologies,
17 and I don't think that they have produced yet.

18 Q. So, despite your overall responsibility for a
19 200 million-dollar budget, there has been no trona
20 produced by the Wold Trona Company since your time
21 there?

22 A. I think that's the case, yes.

15:18:44 1 Q. Turning to Mr. Stubblefield, who assisted
2 with you on your expert report, is it fair to say his
3 mining experience has been focused on coal?

4 A. He started off his career in the Cedar City
5 area in--iron ore reserves, some metal mining, and
6 then at some point took over as and worked his way up
7 to be President of the Trapper Mine near Craig,
8 Colorado, and spent a good bit of his career there
9 before coming to Norwest.

10 Q. What does the Trapper Mining Company mine?

11 A. That's a coal mine. Was a coal mine.

12 Q. And what kind of seam thicknesses were
13 typically encountered with the coal there?

14 A. They were probably--I have only been there
15 once, and I would be estimating, but it would be in
16 the sixties, 70-foot thick range I think.

17 Q. 60-70 foot seam of solid coal?

18 A. Buried under a good bit of overburden, yes,
19 yes.

20 Q. Now, Mr. Douglas Moore, was he the member of
21 your team that submitted resumes who had the most
22 experience with precious metal mining and specifically

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15: 19: 55 1 gold mining?

2 A. That would be correct.

3 Well, I'm sorry, there is one other
4 gentleman, too, Alistair Horn, but relied on Mr. Moore
5 a whole bunch more than Mr. Horn.

6 Q. And the other gentleman you just referred to
7 was not part of the resumes you submitted with your
8 expert reports?

9 A. No, we submitted those three resumes because

10 we didn't know at the time which one of us would
11 testify, and we wanted to be sure that resume was
12 included in the package.

13 Q. But Mr. Douglas Moore, was the--he was the
14 primary person among the resumes you submitted with
15 gold mining experience; is that right?

16 A. Yes.

17 Q. Let's take a look at the resume of
18 Mr. Douglas Moore submitted with your expert report as
19 Houser Hearing Exhibit 1.

20 Actually, before I get into the details of
21 his resume, Mr. Houser, you were here the other day
22 when the Chief Executive Officer of Goldcorp, Inc.,

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15:20:54 1 Kevin McArthur, testified.

2 Do you recall that?

3 A. Yes.

4 Q. And Mr. McArthur can't be here with us today.
5 He's at their Los Filos operation in Mexico. Are you
6 familiar with the Los Filos project?

7 A. No.

8 Q. Where Glamis has just reached their first
9 commercial gold production last month. Had you heard
10 of that?

11 A. No.

12 Q. Do you recall Mr. McArthur's testimony about
13 his early experience at the Picacho Mine developing
14 that and operating that gold mine?

15 A. I recall that he mentioned that he did that,

16 yes.

17 Q. And are you aware that the Picacho Mine
18 operated profitably?

19 A. I have not seen their profit-and-loss
20 statements. One of the Glami's executives said that
21 all of their operations had been profitable, so I
22 assume that's the case.

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15:22:04 1 Q. Do you recall Mr. McArthur's testimony that
2 about his experience as General Mine Manager of the
3 Rand operation, the Rand open-pit gold operation in
4 the California Desert?

5 A. I recall that he did say that he was, yes.

6 Q. And are you aware whether the Rand operations
7 had been profitable?

8 A. The same statement as before. I don't know
9 that--I certainly haven't looked at their P&L, but as
10 a group they stated that they were.

11 Q. Turning to the exhibit of Mr. Douglas Moore--
12 MR. SHARPE: Does the witness have this?

13 THE WITNESS: I do.

14 MR. McCRUM: Yes, he does.

15 BY MR. McCRUM:

16 Q. Let's take a look at Mr. Moore's experience
17 prior to joining Norwest in 2005. Near the top, he
18 was Construction Manager with Bodell Construction
19 Company from 2000 to 2005; is that right?

20 A. Yes.

21 Q. And from 1998 to 2000, he was Mining

22 Superintendent at the Equatorial Tonopah mine in

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15: 23: 39 1 Tonopah, Nevada.

2 Are you familiar with the operation there
3 that Mr. Moore was Mining Superintendent for?

4 A. No, it's a lovely town, but I'm not familiar
5 with that mine.

6 Q. You're not aware that the copper deposit
7 there was a failed project that never went into
8 commercial production that Equatorial pursued there?

9 A. No, I have no knowledge of that.

10 Q. Prior to the mineral--prior to the Equatorial
11 experience, Mr. Moore was Mine Superintendent at the
12 Mineral Ridge resource--Mineral Ridge Mine at Silver
13 Peak, Nevada. Were you aware of that?

14 A. That's what it says, yes. I did not hire
15 Mr. Moore, so I'm not familiar with all these details.

16 Q. You are not aware that that project ran for
17 just under a year and then failed?

18 A. No.

19 Q. Prior to the Mineral Ridge Mine, Mr. Moore
20 worked as a Mine Superintendent at the Goldfield
21 operations of American Pacific Minerals in Goldfield,
22 Nevada, from 1995 to 1996; is that correct?

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15: 25: 01 1 A. That's what it says, yes.

2 Q. Were you aware that that mine produced less
3 than 10,000 ounces of gold in 1995 and then less than
4 4,000 ounces of gold in 1996, which would make it
5 quite a small producer as compared to the Glamis
6 Imperial Project?

7 A. I will take your word for that.

8 MS. MENAKER: Objection. The counsel is
9 admitting a number of new facts into evidence that
10 there are just no documents in the record on any of
11 these facts, and I question the relevance, as well,
12 but obviously that's more for argument.

13 MR. McCRUM: Well, this is--Mr. Moore is the
14 one identified member of the Norwest team that has
15 mining engineering experience at a--in precious metals
16 operations prior to joining Norwest, and I believe I'm
17 entitled to pursue Mr. Houser's awareness of his
18 background.

19 MS. MENAKER: He's also--he's not--I mean,
20 he's not cross-examining Mr. Moore, and these resumes
21 have been in evidence for a couple of years. Had he
22 wanted to introduce evidence about any of the mines

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15:26:07 1 for which these gentlemen had previously worked, he
2 could have done that.

3 ARBITRATOR CARON: If I could just ask a
4 question. Counsel, could you refresh my memory. Did
5 you request that Mr. Moore be present for
6 cross-examination?

7 MR. McCRUM: We made an attempt with one of

8 the other witnesses sponsored by the United States,
9 and we learned that we didn't have the right to select
10 what witnesses would appear here and, of course, we
11 haven't had the opportunity to direct what witnesses
12 would show up for Norwest, nor did we have the
13 opportunity to take depositions in this case, of
14 course.

15 MS. MENAKER: That's just wrong. He's
16 referring when he said that they weren't permitted to
17 have a witness show up. He's referring to Bob
18 Anderson, who you will all recall is someone that just
19 prior to the prehearing conference they put on their
20 witness list who had not put in any statements here.

21 They noticed Conrad Houser, I believe was the
22 name you noticed when you gave us your witness list,

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15:27:05 1 and we produced him. You never asked us to produce
2 Douglas Moore. I don't know why we would ever want
3 two individuals who worked on a joint report to both
4 testify, but certainly if that's what he wanted, we
5 could have discussed that at the prehearing
6 conference. No such request was made.

7 (Tribunal conferring.)

8 PRESIDENT YOUNG: Mr. McCrum, we'll allow you
9 to continue that line of questioning. We would note
10 that the witness has said that he's not familiar with
11 the resume or the details of the resume, and we would
12 note that that doesn't preclude you from later on
13 arguing whatever you choose to argue, but we do note

14 in the interest of proceeding that there has been an
15 overall answer that he's not familiar with this, but
16 we will permit you to continue this line of
17 questioning if you choose.

18 MR. McCRUM Thank you very much,
19 Mr. President and Members of the Tribunal. I will
20 conclude this line of questioning regarding
21 Mr. Douglas Moore very shortly with just a few more
22 questions.

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15:31:54 1 BY MR. McCRUM

2 Q. Mr. Houser, from your knowledge and
3 familiarity with the mining industry, were you aware
4 that the Ray Mining Company, Ray Mining Corporation
5 went into bankruptcy in the late 1990s, leaving
6 unfunded reclamation obligations at the Mount Hamilton
7 Mine in Nevada, which became a matter of widespread
8 public knowledge in Nevada?

9 A. No, I was not.

10 Q. And you are aware that Mr. Moore served as
11 Senior Engineer and Chief Engineer for the Mount
12 Hamilton Mine from 1994 to 1996?

13 A. That's what the resume says, yes.

14 I should add to that that some people learn
15 from less than successes, even if it's not their
16 fault, and Mr. Moore has an excellent, excellent
17 performance record since coming to Norwest.

18 Q. Thank you. Mr. Houser, you joined Norwest in
19 1996; is that right, thereabouts?

20 A. Yes.

21 Q. And your resume indicates you were Vice
22 President of Norwest at the time you submitted your

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15: 33: 15 1 resume?

2 A. Yes.

3 Q. But then you have left Norwest Corporation as
4 of approximately April of 2007; is that right?

5 A. Yes. 1st of March.

6 Q. Was there any reason why, when you submitted
7 your supplemental statement on July 16, 2007, that you
8 did not indicate any change in status?

9 A. No, I'm still an associate for Norwest as far
10 as this case goes. They are the consultant with the
11 U.S. Government, and to represent myself as an
12 independent consultant would have been inaccurate.

13 Q. Okay. Now, since April 16, 2007, you have
14 been Chief Executive Officer of the Shoshone Silver
15 Company?

16 A. If you're in Wyoming, it's Shoshone. If
17 you're in Idaho it's Shoshone.

18 Q. Thank you. And Shoshone Silver Company has
19 mineral property interests in silver, gold, and
20 uranium prospects in Idaho, Arizona, Nevada, and New
21 Mexico; is that correct?

22 A. And Montana, yes.

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15: 34: 31 1 Q. Montana. Some of these properties are based
2 on unpatented mining claims on Federal lands; is that
3 correct?

4 A. Some are patented. Some are not, yes.

5 Q. And on May 18, 2007, you filed a quarterly
6 report with the U.S. Securities Exchange Commission
7 regarding the Shoshone Silver Company, and you
8 certified to the accuracy of that report under the
9 Sarbanes-Oxley Act; is that right?

10 A. Note: Sarbanes-Oxley Act is not yet
11 applicable to small businesses, probably, unless it's
12 extended again, will be by the end of the year,
13 but--and I did not sign that document. I think that
14 was the 10(k) for last year that you're talking about.
15 That was signed by the President who had been there
16 longer there than I and had more experience.

17 Q. I was referring to the quarterly report.

18 A. Quarterly report I did sign, yes.

19 Q. That's what I was referring to.

20 A. Okay.

21 Q. And when you filed the quarterly report, did
22 you review the 2000 Annual Report for the Shoshone

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15: 35: 31 1 Silver Company?

2 A. The 2000 Annual Report?

3 Q. I'm sorry, when you filed the quarterly
4 report in early 2007, did you review the latest Annual
5 Report for Shoshone Silver Company which was filed

6 right about that same time?

7 A. Yes.

8 Q. And in that Annual Report, it is stated that
9 the future profitability--

10 MS. MENAKER: Objection. I think this is
11 well beyond the scope of this witness's testimony, and
12 also I object on grounds of relevance.

13 PRESIDENT YOUNG: Mr. McCrum, I'm also
14 wondering about relevance. Are we going to get to
15 that very soon?

16 MR. McCRUM: Yes.

17 PRESIDENT YOUNG: Okay. We will withhold
18 judgment on this testimony to see if we can--if you
19 can tie this together for us quickly.

20 BY MR. McCRUM:

21 Q. In the Annual Report of Shoshone Silver
22 Company, it states that the future profitability of

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15:36:25 1 that company is dependent upon the location of an
2 economically feasible ore deposit; is that right?

3 A. Well, that's true. I think you're referring
4 to the accountant section, the auditor section in
5 that, and that's probably true, yeah.

6 Q. And as the CEO of Shoshone Silver Company,
7 you have the duty to the shareholders to take steps to
8 locate such an economically feasible ore deposit,
9 don't you?

10 A. Which we have done, yes.

11 Q. And it's a matter of some urgency for

12 Shoshone Silver Company to achieve profitability
13 because the report indicates that you anticipate
14 losses for the next five years and you have an
15 accumulated loss of the company; is that correct?

16 A. There is accumulated loss at the company. I
17 went there to wake up the company as a Rip Van Winkle,
18 if you will, and to.

19 MS. MENAKER: I have to sustain this
20 objection or make it again.

21 PRESIDENT YOUNG: I get to sustain it.

22 MS. MENAKER: Exactly.

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15:37:18 1 MR. McCRUM: I will tie up the relevance here
2 in just another two or three questions, Mr. President.

3 PRESIDENT YOUNG: Thank you. Go ahead.

4 BY MR. McCRUM:

5 Q. You're aware in this case that Navigant
6 Corporation had asserted in multiple reports that the
7 Glamis Imperial Project ore reserves have a market
8 value of at least 159 million?

9 A. I have seen that number, yes.

10 Q. And you're aware in this case that Glamis is
11 seeking compensation for an expropriation in the
12 amount of 49.1 million; is that correct?

13 A. I have seen their valuation of that number,
14 yes.

15 Q. So, if the Navigant Reports are correct,
16 there is a hundred million dollar profit sitting there
17 waiting to be had for whatever company would like to

18 make an offer for this project; is that correct?

19 A. Well, as--

20 PRESIDENT YOUNG: Mr. McCrum, I think I am
21 now going to sustain the objection. I think this is
22 well outside the scope of what this expert was--did

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15:38:18 1 his reports on and prepared to testify on, so if we
2 could bring this back to the report, we would
3 appreciate that.

4 MR. McCRUM Okay.

5 PRESIDENT YOUNG: I think you're trying to
6 sell the company to him.

7 MR. McCRUM I was merely trying to find out
8 if this witness believes the assertions of his expert.

9 THE WITNESS: We will do our due diligence on
10 it next week.

11 PRESIDENT YOUNG: We are slightly past the
12 healthy break, and again David is looking unhealthy,
13 so we will stand in recess until 4:10.

14 I do again remind counsel, as we always do,
15 not to speak to the witness about the case during the
16 break.

17 Thank you.

18 (Brief recess.)

19 PRESIDENT YOUNG: We will commence the
20 hearing.

21 Mr. McCrum.

22 MR. McCRUM Thank you.

16: 11: 00 1 BY MR. McCRUM
2 Q. Mr. Houser, you have been at the hearing
3 generally this week; correct?
4 A. Yes, sir.
5 Q. You have seen rock sample WC-4-74 that
6 Mr. Purvance discussed, have you not?
7 A. Yes.
8 Q. You have seen it from a distance, but you
9 haven't personally examined it yet; right?
10 A. Correct. I don't know if it's a rock sample,
11 but it's a core sample.
12 Q. Let me hand you sample bag WC-4-74, which is
13 the sample that Mr. Purvance sponsored earlier this
14 week.
15 I'm going to refer to the American Geological
16 Institute Dictionary of Geological terms. Are you
17 familiar with this book?
18 A. There are several like it, but I'm not sure
19 about that one.
20 Q. I will read a definition of gravel and then
21 see if you agree with it.
22 "Gravel: An unconsolidated natural

16: 12: 18 1 accumulation of rounded rock fragments mostly of
2 particles larger than sand such as boulders, cobbles,
3 pebbles, granules or any combination of these, the

4 unconsolidated equivalent of a conglomerate. "

5 Does that definition sound right to you, as a
6 geologic definition?

7 A. I will accept that for now, yes.

8 Q. Let's turn to the definition of conglomerate:
9 "A coarse-grained clastic sedimentary rock composed of
10 rounded subangular fragments larger than 2 millimeters
11 in diameter set in a fine-grain matrix of sand or silt
12 and commonly cemented by calcium carbonate, iron
13 oxide, silica or hardened clay, the consolidated
14 equivalent of gravel. "

15 I will hand you the book, and I would
16 encourage you to review those definitions, if you
17 would like.

18 And my question is a rather simple one: Is
19 the rock sample in front of you, in your opinion, a
20 gravel or conglomerate?

21 A. Or neither. I don't know until I have seen
22 the assay results and the strength tests on this piece

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16: 14: 15 1 of material as to what it is. It could be rock.
2 Under the definitions it could be some form of
3 conglomerate, and the Glamis material talks about
4 poorly cemented conglomerate, moderately cemented
5 conglomerate, strongly cemented conglomerate. And it
6 also talks about tertiary and quarternary period
7 conglomerate all having differing characteristics.
8 So, unless I have seen, number one, an
9 analysis and, number two, a plot map of exactly where

10 it came from - I know it's labeled as to depth, but a
11 surveyed map that shows which part of the pit or out
12 of the pit it came from, I really can't make that
13 judgment.

14 Q. Okay. What I would like to do is refer to
15 exhibits that have been provided in today's hearing
16 binder that we have already looked at. These are
17 hearing exhibits of Bernard Guarnera, and I have a
18 witness binder here for Mr. Houser. And let's pull up
19 Guarnera Exhibit 1 on the screen.

20 A. This being the April '06 report?

21 Q. Guarnera Hearing Exhibit 1 is on the screen
22 right now. These are core sample photographs.

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16:15:46 1 A. Okay. I have them here.

2 Q. Now, up on the screen right now is a sample
3 that has been designated EC-3-255.

4 Let's go to the next picture, and that is
5 sample WC-4-74, and that is the sample you have before
6 you; is that correct?

7 A. That's what it says.

8 Q. WC-4-74.

9 And can you check the indelible marker on the
10 sample that Mr. Purvance described and see if it bears
11 the same legend.

12 A. It is 74, okay, yes.

13 Q. And why don't we scan through these
14 photographs and then come back to WC-4-74. There were
15 several photographs that were produced as part of

16 Mr. Purvance's rebuttal report in July 2007.

17 Then let's go back to the sample that's at
18 the depth of 74 feet.

19 So, Mr. Houser, your testimony is that you
20 can't determine whether this rock sample is gravel or
21 conglomerate, without doing some kind of assay or
22 chemical analysis?

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16:17:39 1 A. That's misstating my testimony. It's
2 obviously not gravel or I could throw it around. I
3 don't have a clue what period of time it was created
4 in or its strength or whether it's weak, moderate, or
5 hard cementation; and, therefore, I don't know whether
6 it was classified in the Glamis documents as "rock" or
7 "gravel."

8 We have seen the documents that say sometimes
9 gravel, sometimes gravel/conglomerate, sometimes
10 conglomerate all mixed in, and I don't know which
11 category this is, so I can't--all I can say is it's a
12 heavy tubular cylindrical object right now, and I
13 can't say much more about it right now.

14 Q. And I believe you did say it is obviously not
15 gravel.

16 A. No. I mean, it could be a consolidated
17 gravel, but I don't know that.

18 Q. Let's take a look--

19 PRESIDENT YOUNG: Counselor, could I
20 interrupt, this is the first time I heard that term,
21 "consolidated gravel." What is that? I heard of

22 conglomerate, I have heard of gravel, but I haven't

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16:18:44 1 heard of consolidated gravel.

2 THE WITNESS: That's all conglomerate is,
3 really, is a gravel-type substance, as we read in the
4 definition, under pressure, where there is a matrix of
5 either, in the definition he read, either sand or
6 silt, and the binder in there is a limestone, a
7 calcium carbonate, and under pressure it hardens into
8 something similar--well, this is a cylinder,
9 obviously, but into a rock in which you could see
10 larger rocks or larger rocks.

11 PRESIDENT YOUNG: And that's different from
12 conglomerate?

13 THE WITNESS: No, that's conglomerate.

14 PRESIDENT YOUNG: What is consolidated
15 gravel?

16 THE WITNESS: Same thing.

17 PRESIDENT YOUNG: Same thing?

18 THE WITNESS: Basically.

19 BY MR. McCURM

20 Q. Now, let's turn to Guarnera Hearing Exhibit
21 2, and this is the letter from Dan Purvance, Project
22 Geologist, dated March 5, 1996, and it includes three

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16:19:55 1 charts attached to it. And let's turn to the third

2 chart that is attached to this letter, which is
3 entitled "Chemgold Inc. Imperial Project Rock Density
4 Samples," and it lists a variety of rock types, bears
5 the initials DJP for Daniel J. Purvance and is dated
6 9/1995.

7 Can you see the second entry in the
8 highlighted section from the bottom, WC-4 at 74 feet,
9 would that appear to be the entry that corresponds to
10 the sample in the bag in front of you, Mr. Houser?

11 A. Yes, it appears to be.

12 Q. When we go to the left, it's classified as
13 "conglomerate," and the geological description on the
14 right is "full core, well cemented." Is that correct?

15 A. It's not there.

16 Q. It's the last chart.

17 A. Okay.

18 Yes, that's what it says.

19 Q. And this chart that we are looking at is part
20 of the company geologic records that you reviewed and
21 you included as attachments to your expert reports in
22 this case; isn't that right?

821

16:21:37 1 A. I'm sorry, could you repeat that?

2 Q. This chart that we are looking at right now
3 was part of the Glamis Gold, Limited, company records
4 and was included as an attachment in your expert
5 report; isn't that right?

6 A. Yes, with some additional pages.

7 Q. Okay.

8 Well, the prior two charts that we just
9 looked at were also included in your expert reports,
10 weren't they?

11 A. But there are pages that are missing that
12 were after this.

13 Q. Now, seeing this chart that we are looking at
14 right now that all the six samples that are
15 highlighted here are labeled "conglomerate," did that
16 put you on notice that there was a lot of conglomerate
17 at the Glamis Imperial Project Site at varying depths?

18 A. Well, no, not necessarily a lot. There are
19 over 400 holes, and if each of those were drilled to
20 an average of--the pit itself actually goes down 800,
21 but if it was--if those were drilled, as most are,
22 down to about 800 feet, that would be 30,000 feet of

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16:23:04 1 core. And I'm looking at one or two or three feet of
2 core out of 30,000 or 300,000 feet of core. I can't
3 say that's representative. I can't say it put me on
4 alert that there is a lot or there isn't a lot. The
5 sample is way too small.

6 Q. I'm going to hand you a copy of your
7 March 15, 2007, second expert report in this case.
8 Do you have that in front of you?

9 A. I have it.

10 Q. Okay. I have one copy of the full report,
11 and I could offer it to the Tribunal.

12 PRESIDENT YOUNG: I have it.

13 BY MR. McCRUM

14 Q. Let's go to the last page of your March 2007
15 report, and this is the chart that we are looking at
16 right now on the screen, isn't it? And there is no
17 page behind it in your expert report.

18 A. There is a missing page before it, two
19 missing pages before it. I'm not sure this is the
20 same report.

21 Q. Why don't you verify that this chart that we
22 have been looking at is the same chart on the last

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16:24:20 1 page of your expert report.

2 A. It's not. Mine is dated November 9, 1995.
3 This is November 5th, 1996. So, they're two different
4 charts.

5 Q. I wonder if we could look at the last page of
6 your expert report, the last attachment, last physical
7 page what we are talking about. And as I look in the
8 last page of my copy of your expert report which
9 appears to be the same as yours, it says "Chemgold
10 Inc. Imperial Project Rock Density Samples HQ and PQ
11 Core, 10/95, 9/95 DJP," for Daniel J. Purvance. Is
12 that the same last attachment in your report?

13 A. It is. They're attached to different
14 letters, is the problem, and there are different
15 numbers of attachments. But, yes, you're correct, it
16 is the last page of my--

17 Q. I'm referring to this chart, sir.

18 A. I understand.

19 Q. And did you hear Mr. Purvance testify that

20 these rock samples were selected by him in the mid
21 1990s to be representative of the waste rock at the
22 Imperial Project?

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16: 25: 34 1 A. Yes.

2 Q. And did you see any gravel designations in
3 any of these characterizations on the left?

4 A. There should be. If we start with the one
5 that you wanted to look at, which is WC-4-74, and we
6 go over to the fourth column, we see that the density
7 of that is 152 pounds per cubic foot. If we go up
8 one, we see that the density is 130 pounds per cubic
9 foot.

10 And if you go over to the right, it
11 basically--I'm not sure what "SAA" is, but it's a
12 sandy matrix. In other words, it's not the same
13 thing. It's not a well-cemented conglomerate. So, on
14 the first column--all conglomerates are not created
15 equal, I guess is what I'm saying. These are not all
16 well cemented--I don't know if they are tertiary or
17 quarternary, but these are not all apples. Although
18 they are all called "apples," but they're not, when
19 you look at the densities.

20 Q. But the designations on the left on this
21 chart that we are looking at, which was the last chart
22 included in your second expert report, all say

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16: 26: 48 1 "conglomerate" on the left column under "rock type";
2 is that correct?

3 A. That's what they say. The designation is not
4 correct, but that's what they say.

5 Q. Would the initials "SAA" in capitals be
6 interpreted to mean "same as above"?

7 A. I don't know that. There is inconsistencies
8 in these well logs; and, if that's what it--I don't
9 have any problem, if that's what you say, except that
10 the one up above says "cemented," and that could mean,
11 again, weakly cemented or poorly cemented.

12 Q. Well, earlier in your testimony here today, I
13 believe I heard you assert that 79 percent of the rock
14 material is alluvial gravel. Did I hear that
15 correctly?

16 A. That's a number from--that Mr. Guarnera--I'm
17 sorry, I cannot pronounce that word--stated earlier
18 and with which we agree.

19 Q. It's certainly not your position, sir, that
20 Mr. Guarnera contends that 79 percent of the rock
21 material is alluvial gravel, is it?

22 A. Yes.

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16: 28: 00 1 Q. You have heard him testify, and you think
2 that Mr. Guarnera thinks that 79 percent of the rock
3 material is alluvial gravel?

4 A. It's in his report, I think, which I don't
5 have here in front of me. But he testified to that

6 this morning, and I said yeah, that's right, in my
7 mind.

8 Gravel again being a mixed up term between
9 some conglomerates, some gravel, some sand, some
10 whatever. None of these terms are well-defined and
11 consistently used throughout these drill logs. So, we
12 use the Glamis numbers, which was 79 percent. A well
13 cemented, as in this sample, if it is what you say it
14 is, this could be a rock, part of the 21 percent rock,
15 or it could be something else. There is nothing to
16 tell us that.

17 Q. Let's take a look at Guarnera Exhibit 3.
18 This is an attachment to a Behre Dolbear Report
19 submitted in this case, and it's an excerpt from the
20 WESTEC report. And let's look at the last page of
21 this exhibit, which indicates the date is
22 February 1996 by WESTEC.

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16: 29: 26 1 Are you familiar with the WESTEC firm?

2 A. I have never used them. I know the name,
3 yes.

4 Q. Are you aware that they are regarded as
5 experts in pit slope stability?

6 A. They are, along with some others, yes.

7 Q. And what were the pit slopes at the Imperial
8 Project pits expected to be in the range of?

9 A. They were in the range of 50 to 55 percent.

10 Q. And looking at the highlighted page of the
11 WESTEC excerpt we are looking at, the second sentence

12 says: "As much as a 700-foot thickness of
13 conglomerate will be exposed by the proposed pit wall.
14 The conglomerate is typically a moderately
15 well-indurated clay, carbonate and iron oxide cemented
16 material with coarse subangular gneissic fragments in
17 a moderate to coarse-grained sand matrix with
18 considerable mica component. "

19 Do you dispute that finding by WESTEC in
20 1996?

21 A. No, there were several other expert reports
22 that came to that same conclusion about that same

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16:30:35 1 period of time.

2 It's interesting that their definition of a
3 conglomerate is different than the one that's in this
4 book, but it's not worth worrying about.

5 Q. Yes. In what way do you think the
6 definitions would be materially different as described
7 by WESTEC versus the dictionary of geologic terms?

8 A. I just said I didn't think it wasn't
9 material. I said that they are different definitions,
10 yeah.

11 Q. Now, the WESTEC report was part of the
12 records of Glamis Gold, Limited, that were available
13 to you to review; is that correct?

14 A. Yes.

15 Q. And the WESTEC Report was relied upon by the
16 1996 Feasibility Study for the Imperial Project; is
17 that correct?

18 A. Yes.

19 Q. Now, Mr. Houser, would a 700-foot thickness
20 on a pit wall stand up at an angle of 50 to 55
21 degrees, if it was made of unconsolidated gravel?

22 A. No--if it was unconsolidated gravel, no.

829

16:31:48 1 Q. What would happen to a pit wall made of
2 unconsolidated gravel if you had it at an angle of 55
3 degrees over a 700-foot length?

4 A. Gravel would have a natural angle of repose
5 of roughly 30 percent--I don't remember if it was 28
6 or 30--so, it would slough down into the pit until it
7 hit its natural angle of repose.

8 Q. And "slough" might be another word for
9 collapse?

10 A. Slide--no, it wouldn't be a collapse. It
11 would be a slide.

12 Q. Slide.

13 Did WESTEC indicate that the proposed pit
14 walls would be expected to hold up at an angle of 50
15 to 55 degrees?

16 A. Yes.

17 Q. And you, in fact, assumed pit slopes of 50 to
18 55 degrees in your own analysis of the Imperial
19 Project, didn't you?

20 A. We didn't question that.

21 Q. So, Mr. Houser, you really understood that
22 this 700-foot thickness was not going to be

16: 33: 07 1 unconsolidated gravel, didn't you?

2 A. No. We understood that it was combinations
3 of both, and that it was very unclear of the
4 79 percent labeled as "alluvium" was not clear at all
5 in the reports as to how much of that might be weakly
6 consolidated conglomerate--I'm sorry, weakly
7 consolidated gravel or other forms of gravel or sand.

8 Q. You consider the average swell factor
9 calculated by Behre Dolbear of 35 percent to be
10 inflated; is that correct?

11 A. No, it's not. It's just used improperly.
12 The number 35 percent represents--if I blasted this
13 and it was sitting in a pit, it would expand by about
14 35 percent, maybe 32 percent or 37 percent.

15 And the interesting thing is that, if this is
16 moderate or weakly cemented conglomerate, it's full
17 of--as we already described from the book, it's full
18 of gravels, it's full of silica, it's full of other
19 materials that, when they break up with blasting, turn
20 into fine materials--easily blasted--and then it
21 consolidates much further, and it becomes consolidated
22 in the range of 15 percent, after it has a chance to

16: 34: 42 1 move around or settle or be loaded in the truck or
2 stockpiled or whatever.

3 Q. Let's take a look at Guarnera Exhibit 4, the

4 Horace Church Excavation Handbook published by
5 McGraw-Hill Company.

6 Are you familiar with this handbook,
7 Mr. Houser?

8 A. Yes.

9 Q. Do you consider it a reasonably reliable
10 indicator for swell factors for different types of
11 rock?

12 A. For certain circumstances. I'm not a
13 geologist, but there are two or three of these types
14 of handbooks, and different ones are used for
15 different purposes.

16 Q. Do you think the Horace Church Excavation
17 Handbook is an appropriate indicator of the swell
18 factors to be expected at the Imperial Project Site?

19 A. I will take your word that it is, yes.

20 Q. Well, I would like your opinion. You're the
21 civil engineer who has expressed opinions in this
22 case.

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16: 35: 35 1 Do you think the Horace Church Excavation
2 Handbook provides a reasonable guide of what swell
3 factors can be expected at the Imperial Project Site
4 for different rock types?

5 A. In part, yes. We would take it and compare
6 it to the other books to make sure that there weren't
7 any major inconsistencies, but go ahead from now on
8 this one. I wouldn't give it an absolute seal of
9 approval. I would say it was one of several sources.

10 Q. And the source like this provides a
11 reasonable estimate of what swell factors can be
12 expected; is that fair to say?

13 A. In most cases, yes.

14 Q. Is there any reason, based on your review of
15 the Imperial Project Site, why this Excavation
16 Handbook would not be a reasonably reliable projection
17 of what types of swell factors would be expected for
18 differing rock types at the Imperial Project Site?

19 A. No. Based on my work, no.

20 Q. Thank you.

21 Let's take a look at the first page of the
22 Excavation Handbook included in this exhibit, and

833

16:36:55 1 let's blow up the highlighted section under different
2 type of rock material and percent swell.

3 Do you see the listing for basalt at
4 64 percent swell factor?

5 A. Yes.

6 Q. Is basalt a type of volcanic rock?

7 A. Let me look it up. I'm not sure.

8 Q. Yes, please do that.

9 A. It is an igneous rock, yeah. I don't know if
10 it's the same type of volcanic rock found elsewhere on
11 this site, but it is a type of igneous rock, yes.

12 Q. And is igneous rock a volcanic rock?

13 A. Yes.

14 Q. Now, referring back to Mr. Purvance's chart,
15 I don't know if we need to look back there, but there

16 are some rocks in the Imperial Project Site indicated
17 in that chart as volcanics; is that right?

18 A. Yes.

19 Q. And if they were classified as basalt, which
20 seems reasonable to me, they would have a swell factor
21 of 64 percent; would you agree with that?

22 A. No.

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16: 38: 17 1 Q. Why not?

2 A. Because Mr. Purvance, in his own report, says
3 it has a swell factor of 30 percent. That's why I am
4 saying all basalts are not the same, all igneous rocks
5 are not the same. But, in his report, which is
6 Appendix A to my first amended report, I think, that's
7 what it says. He says that volcanic rock will swell
8 30 percent.

9 Q. Let's turn to the second page of the Horace
10 Church chart and see the listing for conglomerate in
11 the Church chart.

12 Do you see that?

13 And what swell factor is indicated by the
14 Horace Church chart for conglomerate?

15 A. So we are talking about the whole truth and
16 not just part of the truth, could he go over a couple
17 of columns on the chart there?

18 Q. Yes.

19 A. Please.

20 We see an interesting thing where it says, as
21 we would expect, about 33 percent swell; but, when you

22 go over two more columns, it says that, when you

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16:39:31 1 backfill it or stockpile it, it actually shrinks to a
2 minus 8 percent.

3 So, if I started off with a volume of a cubic
4 foot, it's going to be 8 percent less than a cubic
5 foot by the time it goes through its shrinking process
6 in a stockpile or back in the pit.

7 So, yes, you do get a 33 percent expansion,
8 but it shrinks overall, and that's what I was
9 referring to, is when you take this conglomerate and
10 blast it, initially it does explode to 33 percent.
11 But, once it's handled and once it's put back in the
12 pit, it actually shrinks rather than expanding.

13 Q. Would that shrinkage be a type of settlement?

14 A. A type of settlement, yes.

15 Q. And now let's look down for gravel, and what
16 swell factor is indicated by the chart for gravel?

17 A. Interestingly enough, it's 15 percent.

18 But again, two columns over it shrinks to
19 minus 7 percent when it settles. We haven't used
20 those numbers, but we could have.

21 Q. Now, if this rock material as described by
22 WESTEC was conglomerate over a 700-foot length, what

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16:40:53 1 swell factor would apply to the conglomerate as

2 described by WESTEC?

3 A. I'm sorry, could you repeat that? I only
4 caught part of it.

5 Q. Yes.

6 We looked at the WESTEC Report which
7 predicted a 700-foot length of conglomerate over the
8 pit wall. What swell factor would apply to that
9 material as characterized by WESTEC?

10 A. If you didn't blast it, it would be zero.

11 Q. And what if you blasted it and extracted it
12 from the mine pit?

13 A. Then it's going to expand by 33 percent.

14 Q. And then, when you put it back into the pit,
15 according to this chart, it would shrink 8 percent; is
16 that right?

17 A. Eventually, yes.

18 Q. Would it take some long time to achieve that
19 shrinkage?

20 A. Eighty percent of that shrinkage would occur
21 within about six months.

22 Q. And then would there be additional shrinkage

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16:41:46 1 after that?

2 A. There would be both from - as I put in my
3 report, there would be three causes for that, one
4 which is water which you're not going to experience
5 here. The second would be the depth of material
6 that's put on top of it which would aid the shrinkage
7 or the compression. I can't remember what the third

8 one was right off. But the only one that would apply
9 here is the extra fill put on top of this material
10 which would compress it and shrink it.

11 Q. Now, let's just assume for a moment that the
12 material is conglomerate. Take it out of the pit, it
13 expands to 33 percent. You put it back into the pit,
14 it shrinks 8 percent--is that right?--as we are
15 understanding the chart.

16 A. That's the chart. We didn't use that. We
17 said it wouldn't shrink that far. We didn't go
18 negative. We stayed at zero.

19 Q. All right. Now, if it did shrink 8 percent
20 over a 700-foot length of that pit wall, how much
21 shrinkage in terms of feet would that be? In other
22 words, 8 percent for every hundred foot over 700-foot

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16: 42: 52 1 length? How many feet would--

2 A. The mathematics of that was 56 feet.

3 Q. So, you would expect it to drop 56 feet, if
4 it was, in fact, conglomerate; is that right?

5 A. Yes, we didn't use that, but you could, if
6 you use the Church Handbook.

7 Q. Yes.

8 A. There are other handbooks that say different
9 numbers.

10 Q. Yes.

11 Now, would you expect that material to drop
12 56 feet uniformly across the whole backfilled pit, or
13 would you expect it to shrink on a differential basis?

14 A. On the edge it might be one-foot deep, so
15 it's not going to shrink 56 feet where it's only one
16 foot on the side of the mine wall. And, logically, if
17 you didn't take care of it, if you didn't engineer it
18 properly, it would be 56 feet in the middle. It would
19 reflect the shape of the pit itself. But you wouldn't
20 backfill it that way. You would fill in that and make
21 it a flat plane and allow for that settlement.

22 Q. Now, the Behre Dolbear--well, in this case,

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16: 43: 59 1 we are talking about California backfilling
2 regulations, and I believe you characterized them in
3 your report as requiring the prevention of long-term
4 settlement; is that right?

5 A. I don't think I characterized them that way,
6 and really, as has been described earlier, not--it's
7 not the settlement so much they are worried about as
8 the pollution caused by water. If it ponds water, it
9 doesn't handle properly any moisture that would pass
10 through it or on the surface, so it's both groundwater
11 and surface water issues.

12 Q. But, in your expert report submitted in this
13 case, you referred to the regulation as requiring the
14 prevention of long-term settlement, didn't you?

15 A. I don't recall. You would do it that way so
16 you did not have long-term settlement, yes.

17 Q. As an engineer, you would want to avoid
18 long-term settlement?

19 A. Not necessarily as an engineer. You might

20 want a lake, 56-foot deep lake in there. It depends
21 on the end use of the Project. In this case, in the
22 middle of the desert, likely you would want to bring

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16:45:06 1 it to approximate original contours.

2 Q. And the regulation requires the prevention of
3 long-term settlement; is that correct?

4 A. For nonurban areas, I'm not sure that it does
5 or doesn't. It really becomes irrelevant because you
6 would bring it to that height, and you would still
7 have plenty of material to go above the edge of the
8 old pit, so...

9 Q. Well, we are not talking about the wisdom of
10 the regulation. We are talking about what it
11 requires.

12 A. I don't recall if it required--I know it
13 didn't require an absolute zero settlement in the pit,
14 but we said in our report that, done properly, you
15 would only get four feet of settlement which you could
16 easily engineer into the final contouring of the
17 backfill of that pit.

18 Q. In your supplemental report of July 16, 2007,
19 in this case, you referred to the Soledad Mine, the
20 Soledad Project of the Golden Queen Mining Company.
21 Do you recall that?

22 A. Yes.

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16: 46: 27 1 Q. And you indicated that this was a new
2 application that had been filed under this
3 California--

4 PRESIDENT YOUNG: Counsel, could you tell us
5 what page that reference is on? Do you have that?

6 MR. McCRUM: I believe we have the
7 Supplemental Report in the Houser Exhibit Number 2.
8 It's only a two-page document.

9 Why don't we pull up Houser Exhibit 2 on the
10 screen.

11 PRESIDENT YOUNG: Thank you.

12 BY MR. McCRUM:

13 Q. And here you refer to the recently filed
14 application of the Golden Queen Mining Company which
15 is seeking to pursue a project under the revised
16 backfilling regulations that require complete
17 backfilling; is that right?

18 A. Yes.

19 Q. And you point out in your report that Golden
20 Queen had rethought and reengineered its project to
21 find technical and financial solutions that would
22 allow the project to proceed; is that correct?

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16: 47: 36 1 A. Yes.

2 Q. Now--

3 A. Not to proceed, but to again attempt to
4 proceed. We don't know if the permits will be
5 approved or not.

6 Q. To your knowledge, is this the only other
7 application that has been filed to attempt to comply
8 with the California mandatory complete backfilling
9 regulations?

10 A. Yes.

11 Q. And have you reviewed the application filed
12 by the Golden Queen Mining Company dated April 3rd,
13 2007, in Kern County?

14 A. I have reviewed their Reclamation Plan, yes,
15 not the full bugs and bunnies part of it, no.

16 Q. So, your supplemental report only references
17 the Web site of the company; isn't that right?

18 A. No. The only intention of this is not to
19 compare the mines at all, but only to say that they
20 were--they followed normal project protocol by once
21 they ran into a barrier called refilling the pit, they
22 did something about it. They redesigned it and

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16: 48: 41 1 redesigned it and redesigned it until they could make
2 a good project of it. They didn't just say, "Whoop,
3 we are dead, we believe the BLM, we believe the
4 Governor, throw this project away." They worked on it
5 and worked on it, and--as most mining companies would
6 do. It's not a very difficult exercise, and these
7 people took that step, whereas we saw nothing that
8 said that, other than a few internal documents that
9 showed that Glamis did the same thing.

10 Q. Okay. And you had referred to the Golden
11 Queen application or the Golden Queen situation back

12 in your second expert report in this case back in
13 March of 2007; isn't that correct?

14 A. I don't recall. Can you point out where?

15 Q. Well, I don't think we need to bother to look
16 back at that because you refer to it in the July 16,
17 2007, or supplemental report.

18 MR. SHARPE: If the witness is asking about a
19 document he is being asked about, he should be allowed
20 to see that document.

21 MR. McCRUM: I'm not going to ask him about
22 the March 2007 second report.

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16: 49: 55 1 BY MR. McCRUM

2 Q. Now, your supplemental report of July 2007
3 does indicate that you have reviewed and are
4 presenting this Tribunal with information about the
5 Golden Queen Mining Company application; is that
6 correct?

7 A. Unless there is something incidental, the
8 only thing we talked about in here was the fact that
9 they had worked to revise their mine plans and comply
10 with regulations based on revisions and optimizations
11 of their mine plans.

12 Q. Well, you are aware that Golden Queen is
13 proposing a seven-year mine life to extract gold and a
14 30-year period for selling waste rock as aggregate
15 from the waste rock piles at that site. Are you aware
16 of that?

17 A. I'm aware of it; and it's irrelevant, in my

18 mind, for my conclusions.

19 Q. Is the option of--well, let's look back at
20 the Golden Queen situation.

21 In particular, they designate a 19 million
22 ton waste rock pile that would be set aside

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16:51:10 1 exclusively for aggregate sales and not have to be
2 backfilled into the pit; is that your understanding?

3 A. Yes, except you characterize it as a rock
4 pile. It's an aggregate pile which is mostly gravel,
5 sand and gravel.

6 Q. And the aggregate has come out of the Golden
7 Queen Mine pit; is that right?

8 A. Yes.

9 Q. And it was hardrock before it was blasted out
10 of the pit and put into the waste rock pile--

11 A. Not necessarily.

12 Q. Do you have information about what the rock
13 type is in the Golden Queen mine pit?

14 A. No. I just said "not necessarily."

15 Q. Okay. In your experience with metallic
16 mining operations, are open-pit mines typically
17 constructed in large unconsolidated areas of gravel?

18 A. I'm sorry, could you repeat that?

19 Q. In your experience and familiarity with
20 open-pit gold mining as carried out throughout the
21 basin and range geologic province of the Western
22 United States, are open-pit mines carried out in large

- 16: 52: 20 1 areas of unconsolidated gravel material?
- 2 A. Sometimes, yes.
- 3 Q. Which ones can you identify?
- 4 A. There are several in Idaho that I'm working
- 5 with right now that have--there is no blasting needed,
- 6 it's alluvial overburden. And so, as I say,
- 7 sometimes. It's not always solid rock.
- 8 Q. Was there blasting contemplated at the Glamis
- 9 Imperial Project to open the mine pit?
- 10 A. Yes.
- 11 Q. Was there blasting to carry out the
- 12 extraction operations at the Rand and Picacho Mines in
- 13 the California Desert?
- 14 A. I don't know that for a fact, but probably,
- 15 yes.
- 16 Q. Now, this reengineering and new idea that the
- 17 Golden Queen Mining Company has pursued to sell waste
- 18 rock as aggregate, is that an option that's available
- 19 to Glamis Gold at the Imperial Project?
- 20 A. Yes.
- 21 Q. And why is that?
- 22 A. It's unpatented land. They don't have the

- 16: 53: 23 1 right to it, but it happens all the time where they
- 2 negotiate a separate agreement for other minerals.
- 3 For instance, in the Powder River Basin in coal, they

4 don't have the right to use the scoria, which is baked
5 clay on top of the coal, but they buy it in a separate
6 royalty deal agreement with the Government, which
7 could be done in that case, and use it for road
8 surfacing.

9 In this case, if there was a way for the
10 United States to make money by selling to a third
11 party the aggregate, there would be an easy deal to
12 put together.

13 Q. An easy deal to put together?

14 A. Yes, between the Government and Glamis.

15 It doesn't mean there is a market for it, but
16 it's an easy deal, if they want it.

17 Q. But are--you are a lawyer; correct,

18 Mr. Houser?

19 A. Yes.

20 Q. You have participated in appeals before the
21 Interior Board of Land Appeals, haven't you?

22 A. No.

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16: 54: 25 1 Q. Okay. I thought you had.

2 You acknowledged that the unpatented mining
3 claims that Glamis holds in the Imperial Project area
4 do not convey a property right to the common aggregate
5 resource; correct?

6 A. Yes.

7 Q. Just so the record is clear, do the
8 unpatented mining claims convey a property right to
9 the common aggregate resource?

10 A. No, not directly, no, but they can be
11 purchased.

12 Q. Are they valid existing rights that Glamis
13 holds associated with its unpatented mining claims,
14 does that include the right to sell common aggregate
15 material?

16 A. No. It includes the right to negotiate
17 towards the sale of that. It's not a property right,
18 no.

19 Q. Thank you.

20 And you think it would be an easy deal to
21 persuade the Government to issue a discretionary
22 authorization to sell aggregate in the center of an

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16:55:32 1 administratively withdrawn area surrounding the Glamis
2 Imperial Project Site which has been withdrawn for
3 protection of Native American religious and cultural
4 purposes?

5 A. Well, now you're mixing into a hypothetical.
6 Number one, is there a market which BLM would assess
7 if this is a valuable mineral, if it could be removed
8 in a reasonable degree so as not to mess up any of the
9 environmental criteria, they would be glad in most
10 cases to sell it, from my experience.

11 Q. Has your experience included sale of
12 aggregate resources owned by the Government in areas
13 that had been withdrawn from purposes of protection of
14 Native American cultural and religious values?

15 A. No, that's pretty narrow.

16 Q. Well, that happens to be the circumstance we
17 are dealing with here at the Imperial Project Site,
18 isn't it, Mr. Houser?

19 A. Yes.

20 MR. McCRUM I just need another couple of
21 minutes, Mr. President.

22 (Pause.)

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16: 56: 47 1 MR. McCRUM I have no further questions.

2 PRESIDENT YOUNG: Any questions, Mr. Sharpe?

3 MR. SHARPE: Thank you very much.

4 REDIRECT EXAMINATION

5 BY MR. SHARPE:

6 Q. Mr. Houser, did you independently calculate
7 the swell factor for the Imperial Project, or did you
8 rely on the figures that Glamis had already
9 calculated?

10 A. We looked first at the figures that Glamis
11 had calculated and then checked them, number one,
12 against our experience; number two, against the
13 handbooks and then concurred with them.

14 Q. Right.

15 And did you produce those Glamis documents
16 that stated the swell factor with your expert reports
17 that you submitted in this arbitration?

18 A. Yes.

19 Q. Could you turn to Exhibit A of your August 7,
20 2007, supplemental statement.

21 A. I have it.

22 Q. Let's just wait just a moment for the

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17:01:17 1 Tribunal to get this document.

2 We are looking for a November 16, 1994,
3 memorandum from Mr. Purvance to Mr. McArthur.

4 We also have some extra copies, if that would
5 be convenient for the Tribunal.

6 Mr. Houser, what is this document? What does
7 it appear to be?

8 A. The document says on its face that it is a
9 November 16th, 1994, correspondence, which perhaps is
10 a memo from Mr. Purvance, who is the Project geologist
11 to he who has been introduced as the CEO,
12 Mr. McArthur.

13 Q. And the subject line is Imperial Project rock
14 density analysis?

15 A. Which is a bit confusing again because it
16 deals with the broad term "rock;" and, as we talked
17 about, there are many kinds of rocks involved in this.

18 Q. Could you please turn to the third page of
19 that document.

20 A. Yes.

21 Q. What does this table indicate to you?

22 A. It is a breakout in four categories of

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17:02:45 1 "rocks," as they would term them, of characteristics

2 of those four types of rocks.

3 This table does not say that it's only the
4 waste, but it says that it is the material density, so
5 I would have to assume that it's all the ore and all
6 of the overburden in the pit.

7 Q. Right.

8 And so, under gravel, we have 15 percent;
9 volcanics 30 percent, and then the two kinds of ore;
10 is that correct?

11 A. Yes.

12 Q. And what's the weighted average swell factor
13 that is given here?

14 A. The weighted average is over in the
15 right-hand column. The third number down is
16 23 percent.

17 Q. Is that the same figure that you used in your
18 expert reports consistently?

19 A. Consistently, yes.

20 Q. Is this the number that Behre Dolbear used in
21 its expert reports?

22 A. For some reason not. And they were in all of

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17:03:37 1 the Glamis reports, but Behre Dolbear chose to use 35
2 percent.

3 Q. Has Behre Dolbear ever addressed these
4 contemporaneous documents?

5 A. Not in any of their reply documents that I
6 have seen, nor in testimony today.

7 Q. Is this document consistent with all of the

8 other documents that have been introduced in this
9 arbitration, stating a swell factor for the Imperial
10 Project?

11 A. Yes.

12 Q. Mr. Houser, you discussed the Golden Queen
13 Mining Company's Soledad Mountain Project; is that
14 correct?

15 A. Yes.

16 Q. And that was in connection with your first
17 supplemental statement from July 16, 2007; correct?

18 A. I think it was the subject of the second,
19 right, from July 16.

20 Q. Was the purpose of your discussion of the
21 Soledad Mountain Project to suggest that Glamis could
22 sell aggregate material from the Imperial Project?

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17: 04: 40 1 A. No, it had nothing to do with that.

2 Q. What was the purpose--

3 A. The purpose was to show that they were
4 impacted by the complete backfill regulations, as was
5 the Imperial Project, and that they took the
6 initiative after that to try to maintain the value of
7 their project by redesigning it, reengineering it.

8 MR. SHARPE: Thank you very much, Mr. Houser.
9 Thank you, Mr. President. We don't have any
10 further questions.

11 PRESIDENT YOUNG: Mr. McCrum?

12 MR. McCRUM: Unfortunately, I have two or
13 three questions, I believe, Mr. President. I hate to

14 belabor this.

15 I would like to refer to an exhibit, the
16 Behre Dolbear exhibit with the WESTEC Report. I'm
17 sorry, I will get the number here in a minute.

18 THE WITNESS: This is number three.

19 RE-CROSS-EXAMINATION

20 BY MR. McCURM

21 Q. It's Guarnera Exhibit 3, excerpts from the
22 WESTEC Report, and this WESTEC slope stability study

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17:06:15 1 we have already discussed.

2 Mr. Houser, does that bear a date of
3 February 1996 at the bottom on the WESTEC page?

4 A. It's either '95 or '96, yes. Sorry, it is
5 '96.

6 Q. And the WESTEC Report addressed slope
7 stability; we have already discussed this. It states
8 there will be a 700-foot exposure of conglomerate at
9 the pit wall; is that correct?

10 A. That's what it says, although elsewhere the
11 foot is described as 880-foot deep, so I'm not sure
12 why the difference.

13 Q. Okay. And the WESTEC Report, as we have
14 noted, was assessing the pit slopes to be in the range
15 of 50 to 55 degrees; correct?

16 A. Well, we don't call them "pit slopes." We
17 call them "side-wall slopes." And that's right, it
18 was looking at the stability of those with and without
19 benching for safety and general characteristics of

20 those side walls.

21 Q. And this WESTEC Report, as we have noted, was
22 relied upon in the 1996 Final Feasibility Study for

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17:07:26 1 the Glamis Imperial Project; is that correct?

2 A. I don't know that for a fact, but I would
3 assume so, yes.

4 Q. And the WESTEC Report postdates the
5 November 16, 1994, correspondence that has just been
6 discussed; is that correct? This was Attachment A to
7 your supplemental report that we just--that you just
8 discussed with your counsel, November 16, 1994, the
9 WESTEC Report characterizing--

10 A. That's correct.

11 Q. And which would you consider, as an
12 experienced civil engineer, to be more definitive?
13 The WESTEC slope stability characterization, or a memo
14 from the Project Geologist two years earlier?

15 A. Well, there is more choices than that because
16 Mr. Purvance, in '95, '96, and '97, at least twice
17 each year reiterated the same table that is in the '94
18 exhibit that we just looked at.

19 So, for slope stability, as we said, this can
20 be okay as a 55 degree slope; but, as soon as you
21 blast it, it takes on totally different
22 characteristics. So, the two are--it's not an

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17:08:57 1 either/or. It's an analysis for side slopes and an
2 analysis for productivity, density, tonnage that's in
3 the pit itself.

4 Q. And you understood at all times, when you
5 were referring to these Purvance documents, that
6 Mr. Purvance was a project geologist with capability
7 of distinguishing among--well, you understood he was
8 the Project Geologist; is that correct?

9 A. He signed his name as that, yes.

10 Q. Yes.

11 Were there mining engineers on the Project?

12 A. I hope so.

13 Q. And would WESTEC have used mining engineers
14 to calculate the pit slopes?

15 A. No, they would have more likely used
16 geotechnical engineers.

17 Q. Would they have used somebody with merely a
18 geology degree?

19 A. No.

20 Q. A geology degree would be useful to tell the
21 difference between rock types such as conglomerate and
22 gravel; correct?

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17:10:03 1 A. Among other things, yes.

2 Q. Yes.

3 You heard Mr. Purvance's testimony here
4 earlier this week, where he expressed opinions on the
5 nature of the rock type as being conglomerate, not

6 gravel; do you recall that?

7 A. Not specifically, but generally, yes.

8 Q. Do you recall Mr. Purvance expressing any
9 opinions on what the calculated swell factor would be
10 for the rock?

11 A. I heard him express opinion, but it was not
12 dated as to whether it was his nineties opinion or his
13 after-2003 opinion, so I'm not sure which he was
14 referring to.

15 Q. But, as a civil engineer, you understood
16 that--a civil engineer with some familiarity of
17 mining, you understood that a pit slope could not
18 stand 50 degrees if it was made of unconsolidated
19 gravel; is that correct?

20 A. Yes. If it was only, solely unconsolidated
21 gravel.

22 Q. How about if it was 49 percent gravel? Would

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17:11:09 1 the pit slope hold up there?

2 A. Again, it's an ambiguous question. If it was
3 49 percent in the middle of the pit, yes. If it was
4 49 percent homogeneously and included the pit side
5 slopes, no.

6 Q. And when Mr. Purvance produced these rock
7 samples in July of 2007 prior to this hearing, did you
8 make any request to examine these samples?

9 A. No, I saw no need to do so.

10 Q. Okay. And throughout this proceeding, did
11 you make any request through your counsel to examine

12 core samples that might be available to resolve this
13 issue?

14 A. No, just seeing the core sample wouldn't
15 resolve anything without the assays, the strength of
16 material, et cetera, the test results that went with
17 them, which we have seen nothing in any of the
18 materials.

19 Q. And you also decided it wasn't necessary to
20 go to the site to see what rock types might be exposed
21 at the site; is that right?

22 A. That wouldn't mean a thing. What I

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17: 12: 23 1 would--unless I had x-ray eyes, I couldn't tell what
2 was down 4, 5 or 600 feet, by walking across the
3 surface, and very little of what's 10 feet under the
4 ground.

5 Q. Would going into the Arroyos allow you to see
6 exposed rock outcrop that might underlie the
7 superficial alluvium?

8 A. Perhaps, although the alluvium could well be
9 fresh alluvium that would cover up the supporting
10 rocks.

11 Q. But you didn't investigate to find that out,
12 did you?

13 A. No, it wasn't necessary.

14 Q. Okay.

15 MR. McCRUM: No further questions.

16 PRESIDENT YOUNG: Thank you, Mr. McCrum.

17 Mr. Sharpe?

0814 Day 3 Final
18 MR. SHARPE: No more questions, thank you.
19 PRESIDENT YOUNG: Thank you.
20 Professor Caron? Mr. Hubbard?
21 QUESTIONS FROM THE TRIBUNAL
22 PRESIDENT YOUNG: Having been deeply educated

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17:13:14 1 on finance earlier today, I'm going to see if I can
2 get a little education on geology for a moment.
3 Want to ask just a couple of quick questions,
4 see if I can clarify something in my mind.
5 With respect to the Church Handbook, the
6 Horace Church Excavation Handbook, which is Exhibit
7 Number 4-2 in the handbook of exhibits for
8 Mr. Guarnera, it talks about percent swell where the
9 cubic yards are loose and then the percent swell when
10 it's in fill. I'm not quite sure I understand the
11 percentage, what the base is from which these
12 percentages are taken.
13 I take it when it's in the ground and it's
14 blown up, it's 33--let's take conglomerate for a
15 moment. It's blown up. It's 33 percent bigger.
16 THE WITNESS: Yes.
17 PRESIDENT YOUNG: It then at some point
18 becomes 8 percent less, but 8 percent less than what?
19 8 percent less than the hundred percent plus the 33
20 percent or 8 percent less than the hundred percent it
21 was prior to blasting?
22 THE WITNESS: This is actually saying

17:14:16 1 8 percent less than in its natural state.

2 PRESIDENT YOUNG: Natural state, okay.

3 THE WITNESS: That's what this says, yes.

4 PRESIDENT YOUNG: Thank you.

5 Second question, this may not be a fair
6 question, and please tell me if it isn't, but you're
7 sitting there and to your left is a piece of
8 conglomerate--

9 THE WITNESS: Rock.

10 PRESIDENT YOUNG: Rock--consolidated gravel
11 and/or conglomerate which I understand now are the
12 same thing.

13 Can you look at that and get a sense, if that
14 were typical of the whole area, is that likely to be a
15 15 percent--closer to the 15 percent swell factor or
16 the 33 percent swell factor, that piece?

17 THE WITNESS: Again, usually what happens is
18 you will take a core like this, you'll split it into
19 segments and then you will compress it to see how well
20 it is cemented. It's cemented basically with
21 limestone in most cases, which is an ingredient in
22 cement, so they say how well cemented is it. You

17:15:16 1 don't know that until you test it as to whether it's
2 very weak--I don't know if I dropped this on the floor
3 if it would shatter or if it would stay in one piece

4 or exactly what would happen without those kind of
5 tests, and yet this kind of material is called two
6 things, tertiary or quarternary here, and both of them
7 are designated as easily blasted. And when they
8 blast, it doesn't blast into what you would typically
9 see as sharp-edged rocks and boulders and this kind of
10 thing. It breaks up usually into much finer material,
11 and that's why they say in here that it actually can
12 have a negative fill factor.

13 So, this blasts much differently--if it is
14 conglomerate, it blasts much differently than a
15 boulder would if you broke up a boulder. I don't know
16 if I answered your question.

17 PRESIDENT YOUNG: No, that was actually it.
18 I think what I was interested in--but I'm going to
19 drill down on that a little bit more if I can by
20 asking, as I look at this chart, I don't see very much
21 distinction between different kinds of conglomerate.
22 I see sort of one category for conglomerate, and then

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17: 16: 33 1 I see kind of everything else.

2 Why isn't there within these kind of
3 handbooks that talk about swell factors and the other
4 Government reports you're seeing kind of lump it all
5 together. You're suggesting, you know, that it ought
6 to be done in a much more nuanced or refined way. Why
7 don't these handbooks or the government handbook do
8 that?

9 THE WITNESS: Well, they are dealing with

10 generic types of rocks, and you might have a limestone
11 interbedded with a marble, let's say, which is
12 limestone, I'm sorry, more compressed and mixed in
13 with gravel, mixed in with some--an aquifer or
14 whatever, and they would all have different
15 characteristics. This is--these tables are taking,
16 isolating certain kinds of rocks and saying, on
17 average, here is what happens to those kind of rocks.
18 but in the field that doesn't happen.

19 But what you can do is take these--these
20 samples can be taken as much or as little as a mining
21 company wants to, and they're tested individually,
22 characterized in the log, and then weight averaged

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17:17:43 1 together so that they know in certain--and it varies
2 all over the pit vertically and horizontally, as to
3 exactly what the densities are, what the blasting
4 characteristics are, the strength of the rock, if you
5 will, and that is modeled now, and was in the
6 nineties, in very exacting ways.

7 Now, why they picked to only use four
8 categories and to consistently use four categories all
9 through the nineties is somewhat a mystery. We found
10 no documents that broke them out, and we had no
11 geologic models to work with.

12 PRESIDENT YOUNG: Are you talking when you
13 say they decided to use just four categories, are you
14 referring to Mr. Purvance's report or are you
15 referring to these manuals and government documents?

16 THE WITNESS: No, to Mr. Purvance's report,
17 to the Glamis. They only really used four categories
18 of rock.

19 PRESIDENT YOUNG: But I don't see
20 conglomerate broken out in any of these other--

21 THE WITNESS: They are not. It's--I don't
22 know in this Church Handbook we talked--on the second

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17: 18: 42 1 page we talked about, for instance, conglomerate, S.
2 I don't know what that means as far as a type of
3 conglomerate, and I don't know if elsewhere--we don't
4 have the glossary or anything else from that handbook
5 here. They may have another word for that that they
6 use, well cemented versus poorly versus whatever.

7 PRESIDENT YOUNG: Am I mistaken in thinking
8 that, with the exception of mud, which appears to have
9 zero swell factor and coke and cobb, gravel has the
10 lowest swell factor of any of these. Every other kind
11 of rock is higher. Is that correct?

12 THE WITNESS: Precisely.

13 PRESIDENT YOUNG: Thank you.

14 We appreciate your time very much. Thank
15 very much, Mr. Houser.

16 THE WITNESS: Thank you, sir.

17 (Witness steps down.)

18 PRESIDENT YOUNG: Would you like to take a
19 five-minute break as you prepare your next witness?

20 MR. McCURUM: Well, Mr. President, our next
21 witness is James Cleland, who is not available until

22 tomorrow morning as I understand it. So--

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17:19:50 1 MS. MENAKER: That's correct. You will
2 recall he was the witness who couldn't come until
3 Wednesday, and he is not arriving until this evening.

4 PRESIDENT YOUNG: Okay. I think in those
5 circumstances, then, we will stand adjourned until
6 tomorrow morning at 9:00.

7 I do remind the parties that actually we are
8 shifting the breaks slightly from 10:30 to 10,
9 approximately 10:15 to 10:20, and I appreciate
10 people's indulgence on that.

11 MS. MENAKER: Could I just ask a scheduling
12 question before we break up.

13 Tomorrow, we will have Dr. Cleland
14 testifying, obviously, and then is it--what is
15 Glamis's intention?

16 MR. McCURUM: Well, we will have well to check
17 with the Clerk to see how much time we have left to
18 us. Our intention right now is to cross-examine
19 Dr. Cleland for an hour or so, at least I would think,
20 and then with our remaining time, we will make a
21 factual presentation and analysis for the Tribunal.

22 It--I would be probably appreciated to have a

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17:21:10 1 brief break between those two events if we could.

2 Then we have to check and see where we are on our
3 time.

4 PRESIDENT YOUNG: Thank you.

5 So, I anticipate from that, we can check and
6 see how much time Claimant still has, and perhaps you
7 could confer after both and get a sense of your time,
8 which will give you an indication of when you will
9 have an opportunity to start tomorrow.

10 MS. MENAKER: I think as we discussed the
11 other morning, are we safe to assume that we will be
12 starting on Thursday morning? I mean, I think that's
13 what we would like to know now, and that would
14 certainly be our preference.

15 PRESIDENT YOUNG: How much time is remaining
16 for Claimant?

17 SECRETARY OBADIA: The Claimant has used 12
18 hours and 47 minutes. So, if you do one hour
19 tomorrow, it's almost 14 hours. You would have about
20 three hours left. Three hours and 15 minutes.

21 PRESIDENT YOUNG: Three hours left. So, we
22 will end with Claimant's time probably before lunch,

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17:22:10 1 is my guess, which would give us--I suppose so far the
2 stars in this arbitration have been the Arbitrators
3 who have been remarkably parsimonious with their own
4 use of the time, and I suppose we could actually--how
5 much has respondent used?

6 SECRETARY OBADIA: The Respondent has used
7 three hours and six minutes.

8 PRESIDENT YOUNG: If you give us just a
9 moment.

10 MR. McCRUM: Mr. President, if I could just
11 weigh in a little bit here.

12 Frankly, we have put on this series of
13 witnesses here this week. We would request just a
14 brief break for our summation, but otherwise we would
15 rather have the United States go forward sooner rather
16 than later, I think.

17 PRESIDENT YOUNG: I understand that,
18 Mr. McCrum, but we actually had indicated that that
19 would start on Thursday morning, and we have proceeded
20 more quickly than I think we had fully anticipated,
21 and that may have created expectations on the part of
22 Respondent, so let me talk with my fellow Tribunal

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17: 23: 34 1 members for a moment.

2 (Tribunal conferring.)

3 PRESIDENT YOUNG: We are prepared to follow
4 the schedule as it is written here, but we do remind
5 Respondents, if we rise tomorrow afternoon, and you
6 start presentation of your case-in-chief Thursday
7 morning, you will end up with only nine hours and 50
8 minutes remaining.

9 MS. MENAKER: We will all be relieved to know
10 that we weren't planning on arguing for 14 hours.

11 PRESIDENT YOUNG: Okay. So, with that
12 understanding, then, we would be prepared to do that.

13 So, it is possible, unless the Tribunal gets

14 extremely frisky tomorrow afternoon, that we will
15 allot your remaining time to you, and then when we're
16 done we will rise and then commence again on Thursday
17 morning.

18 MR. McCRUM Mr. President, could I just
19 request a clarification on the schedule. If we start
20 with James Cleland at 9:00 tomorrow morning, I would
21 suppose his testimony goes on in total for, say, up to
22 two hours, could we reconvene for our factual

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17:26:18 1 presentation, say, at 2:00 tomorrow, if we are not
2 going to start until again the next morning?

3 PRESIDENT YOUNG: I don't see any problems
4 with that. We'll make that accommodation.

5 MR. McCRUM Thank you.

6 PRESIDENT YOUNG: We are now adjourned, thank
7 you.

8 May I ask one question of counsel before we
9 leave.

10 With James Cleland testifying tomorrow
11 morning, our cultural resources is tomorrow morning's
12 hearing during his testimony closed?

13 MR. McCRUM Yes.

14 MS. MENAKER: Yes.

15 PRESIDENT YOUNG: Okay, thank you. So, we
16 also want to make sure that we notify the public that
17 during his testimony so that means that the tomorrow
18 morning session will not be publicly broadcast.

19 MR. McCRUM Yes.

20 PRESIDENT YOUNG: Thank you very much.

21 MR. McCRUM: Thank you.

22 (Whereupon, at 5:27 p.m., the hearing was

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17:27:07 1 adjourned until 9:00 a.m. the following day.)

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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN