INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

- -x
In the Matter of Arbitration :
Between: :
:
GABRIEL RESOURCES LTD. and GABRIEL :
RESOURCES (JERSEY) LTD., :
: Case No.
Claimants, : ARB/15/31
:
and :
:
ROMANIA, :
:
Respondent. :
- -x Volume 6

VIDEOCONFERENCE:
HEARING ON THE MERITS AND JURISDICTION

Saturday, October 3, 2020

The World Bank Group

The hearing in the above-entitled matter came on at 8:00 a.m. before:

PROF. PIERRE TERCIER, President of the Tribunal

DR. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

PROF. ZACHARY DOUGLAS, Co-Arbitrator

Also Present:

MS. SARA MARZAL YETANO
Secretary to the Tribunal

MS. MARIA ATHANASIOU
Tribunal Assistant

Court Reporters:

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APPEARANCES: (Continued)

Attending on behalf of the Respondent:

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C O N T E N T S

P R O C E E D I N G S

PRESIDENT TERCIER: Good morning, good afternoon, ladies and gentlemen. It is my pleasure, it is my honor to open Day 6 in the final hearing in the ICSID Arbitration Case 15/31 between Gabriel Resources Limited and Gabriel Resources (Jersey) Limited versus the Government of Romania.

I hope you had a good rest. And I express a wish once again that we will have an interesting and valuable session. I would like to stress that up until now I find this Hearing has taken place in a very good spirit, and I would like to thank you. I'm happy with that. And it is, of course, in the interest of everybody.

This being said, a few points:

First, we have heard that there are no new participants in the club.

Secondly, again, our thanks to our Court Reporter, Mr. Kasdan, that sent us yesterday evening the Transcript of Day 5.

Three, you have received by our Secretary a written confirmation of the time that has been used and the time that is still to be used by each Party. You had it yesterday, and you made no comment.

Three--I don't know about my numbering--you have seen that we have received an answer from Mrs. Tabet from the Canadian Government and she received the Transcript, and thanks for that.

A new point, I would like to mention the fact that we will have to decide--to agree, if possible, and to decide, if necessary--on the question of the PHB. I would be very grateful if the counsel could liaise in order to have a first contact in order to see whether they have same views on how this could be done. The Arbitral Tribunal had already a first discussion, but we would like first to have your position and your proposals.

Well, are there other points that you would like to raise on Claimants' side?

MS. COHEN SMUTNY: No, thank you. Not at this time.

PRESIDENT TERCIER: Thank you.

On Respondent's side?

DR. HEISKANEN: No issues on the

Respondent's side.

PRESIDENT TERCIER: Okay. Good. In that case, we may start with the examination of the Experts.

PABLO T. SPILLER SANTIAGO DELLEPIANE, CLAIMANTS' WITNESS, CALLED

PRESIDENT TERCIER: Experts for Compass Lexecon, Mr. Pablo T. Spiller and Mr. Santiago Dellepiane.

Good morning, Gentlemen. It's my pleasure to welcome you in this Arbitration. As you know, you will be heard and examined as experts in this case. As such, I invite you to read the formal declaration that you should have on your screen. I would like to ask you to read it aloud.

Mr. Spiller, first.

THE WITNESS: (Prof. Spiller) Good morning. This is Pablo Spiller.

I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief. I will not receive or provide communications of any sort during the course of my examination.

PRESIDENT TERCIER: Thank you very much.

Mr. Dellepiane.

THE WITNESS: (Mr. Dellepiane) Good morning. My name is Santiago Dellepiane.

I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief. I will not receive or provide communications of any sort during the course of my examination.

PRESIDENT TERCIER: Thank you very much to both of you.

The Arbitral Tribunal has ruled on a few items concerning the specificity of this Hearing. I would like to read them to you. It's in Procedural Order No. 33, Paragraph 49: No persons shall be present in the room with the testifying experts.

Can you confirm it?

THE WITNESS: (Prof. Spiller) Yes, no person is in my room, here.

THE WITNESS: (Mr. Dellepiane) The same applies here.

PRESIDENT TERCIER: Okay, good.

Now, the other point, you have already declared that you will not receive any communication.

You shall remain visible at all times during the examination.

And the last point, before another one to which I shall come later, the Expert shall not use a virtual background or in any way prevent or limit the recording of the remote venue from which they are testifying.

I assume all these points are all clear to you. For you, Mr. Spiller, can you confirm it?

THE WITNESS: (Prof. Spiller) I confirm.

PRESIDENT TERCIER: Okay. And to Mr. Dellepiane?

THE WITNESS: (Mr. Dellepiane) Understood.

PRESIDENT TERCIER: Okay.

You have prepared for this procedure two Expert Reports. The first one is entitled "Expert Report on Damages" by Pablo T. Spiller and Santiago Dellepiane with Compass Lexecon on the 13th of June 2017; and the second entitled "Second Expert Report on

Damages" is dated 2nd of November 2018.

I would like to add that, concerning the Second Report, you have communicated through your counsel a list of errata for the Report and also a corrected Exhibit C-25 95.

My question to you is: Can you confirm the content of these Expert Reports, or do you wish to make further amendments, corrections or add comments?

Mr. Spiller?

THE WITNESS: (Prof. Spiller) Mr. President, we confirm the content of the Reports as amended in the latest submission and which follows the errata sheet that we provided also to you.

PRESIDENT TERCIER: Mr. Dellepiane, you can confirm it?

THE WITNESS: (Mr. Dellepiane) Confirmed, and there are no further changes beyond that.

Q. Okay. Thank you.

The point that two experts are examined at the same time call for a rule, and the Arbitral Tribunal has ruled as follows: Once a question is posed by the cross-examiner in the manner and unless such questions relate to the expertise of a particular expert or to a specific part in the Report prepared only by one author, either expert will be able to answer, but only one of them will be allowed to answer to each question. With the addition to the extent that there are clear and justifiable grounds to do so, this rule will be applied with flexibility.

Is the rule clear for you, Mr. Spiller?

A. (Prof. Spiller) Yes, sir.

PRESIDENT TERCIER: And for you, Mr. Dellepiane?

THE WITNESS: (Mr. Dellepiane) Very clear.

PRESIDENT TERCIER: Yes.

Now, can you tell us just in connection with the reservation made in these rules whether you are both--you co-authored this Report, or are there parts that only one of you had prepared?

Mr. Spiller.

THE WITNESS: (Prof. Spiller) We are co-authors in the whole--in both Reports in their entirety.

PRESIDENT TERCIER: Okay. So I assume it

will be in the case also for Mr. Dellepiane. He will confirm it.

You know the procedure that will be followed. Normally, there is a direct, but in lieu of the direct, you will make your presentation. I have just been handed the PowerPoint presentation that you have prepared. Then there will be the cross-examination by counsel for Respondent, and then the redirect.

And I will add that the Members of the Tribunal have called the right to ask any questions when they consider it could be opportune or useful.

Is it clear for you, Mr. Spiller?

THE WITNESS: (Prof. Spiller) Yeah, clear.

PRESIDENT TERCIER: And Mr. Dellepiane?

THE WITNESS: (Mr. Dellepiane) Clear.

PRESIDENT TERCIER: Okay. Good. In that case, I--probably you will--no, you will not. In your PowerPoint, could you just shortly introduce yourself which is done in the first pages of your First Report, but if you could in a few words introduce yourself.

Mr. Spiller, please.

THE WITNESS: (Prof. Spiller) Okay. Thank you.

I'm a professor of business and economics. I have been teaching for 40 years. I just retired from teaching and have been involved in leading the international arbitration practice prior--and before at LECG, and for the last years at Compass Lexecon. I have testified in a variety of cases, in mining and energy and commercial arbitration as well.

PRESIDENT TERCIER: Thank you very much. Mr. Dellepiane, please?

THE WITNESS: (Mr. Dellepiane) Good morning. My name is Santiago Dellepiane again, and my background is in economics and the practice of law and economics. I have been practicing some form of economic business or valuation and damages assessment professionally for more than 20 years.

I have been appointed a restructured--expert witness on damages in more than 50 matters, and I have provided testimony or worked in one capacity or another in--particularly in the mining industry--in several cases, including gold and other mining assets.

PRESIDENT TERCIER: Thank you very much.

If we have no special question from our co-Arbitrators, in that case, Mr. Spiller, Mr. Dellepiane, you have the floor for your presentation. It should not last more than an hour. Please.

DIRECT PRESENTATION

THE WITNESS: (Prof. Spiller) Many thanks, Mr. President and Members of the Tribunal. Good morning.

In today's presentation, we're going to present our framework for damage assessment and respond to some of the criticisms raised by Dr. Burrows. Before we move into damage assessment, I'm going to provide some background on the case as we see it.

So, if we go, please, to Slide 3, by now we should be clear that the Claimants have advanced the development of the Project substantially. When I talk about the Projects, I talk about the three projects in this case: Roșia Montană, which is the main Project; Rodu-Frasin; and Tarnita.

The extensive amount of development has translated in a substantial amount of Reserves found for Roșia Montană and resources for the other two projects. These Reserves and Resources come from a variety of studies, Feasibility Studies, as well as Technical Reports and geological analysis. You have heard all about that. In our assessment, we look at the Technical Reports, particularly as it relates to Roșia Montană, on the Micon and the SRK Report, as you have heard.

Now, because our primary approach to damages consist in the Stock Market approach, we're going to focus a little bit on Gabriel, so let's move to Slide 4, please.

Gabriel, as of Date of Valuation, was listed on the main Stock Exchange for mining, which is the Canadian TSX. It was part of one of its main gold indices, the S&P, so-called "S&P/TSX Global Gold Index." This, as of Date of Valuation and I believe until sometime late 2013.

Now, this index at the time of Date of Valuation was composed of the largest mining companies. There were 64 in the Index with a medium market cap of 1.2 billion. As of Date of Valuation, Gabriel's market cap was close to $3 billion. In Slide 52, you could see all the components of the Index. I'm not going to go there for the time.

Now, please move to Slide 5.

Because of the size of the resources and the market capitalization, Gabriel was followed by a substantial amount of analysts. Now, why is this important? The reason why this is important is because analysts perform an important function, as you heard, in the delivery of information to the public. Analysts perform their independent research on the companies. As it relates to mining companies, they assess the validity of the nature of the reporting by the companies. They also perform Site Visits. They do their own independent study of over and beyond what the companies report. And in that sense, it's an important source of information.

Now, we're going to assess damages. We were tasked with assessing damages. And in Slide 6, we provide to you our main instructions. Normally, as is normally the case, we have been instructed on the Claim, on the facts, on Date of Valuation, which, in this case is July 29, 2011. And these are the main instructions. You can view them later.

So, let's move forward to our primary approach which is the Stock Market Capitalization Method, and we can go directly to Slide 8.

Now, this case provides unique circumstances that facilitate our task as valuators and your task as arbitrators in that Gabriel was publicly traded, and there were in the circumstances which we're going to talk about in a second, makes the stock market capitalization of Gabriel the best assessment or the best reference of value of the Projects.

So, what are these features? Well, the first one is that the Projects were Gabriel's only significant asset, so that buying Gabriel--meaning buying Gabriel is tantamount to buying the assets. Buying a share of Gabriel is tantamount to buying a share or a fraction of the assets. In this case, the assets are the Projects.

Now, Gabriel, up to Date of Valuation, was actively traded, and more than a million shares of Gabriel traded every day on average up to Date of Valuation.

Also, Gabriel had large investment funds, one of the largest gold companies in the world, and other sector specialists as larger holders so that the major holders in Gabriel were sophisticated, as we're going to discuss in a few minutes, and therefore, reasonably well-informed about trends, expectations, and the like.

Now, as I mentioned, Gabriel was covered by multiple gold mining sector analysts and was also included in the S&P/TSX Global Gold Index. Now, what this tells you is that the Gabriel stock price incorporated, in essence, all available information and expectation on production, gold price of cost, and the risk. And, as a consequence, the Stock Market Capitalization Approach has two significant advantages over any other approach to assess the value of the Projects:

First, the Stock Market Approach is an objective approach, in the sense that it doesn't require any type of assumptions about discount rates or gold prices or production levels or a timeline. In essence, the stock market capitalization of Gabriel represents the consensus of millions of transactions over the shares of what can be thought as the Projects. Now, what that tells you is that the--Gabriel's market capitalization provides a direct assessment of the value of the underlying Project--in this case, of the underlying Projects--and, as a consequence, it is much more reliable than any other method that requires substantial assumptions.

Now, let's look at Gabriel's market capitalization up to and circa Date of Valuation. That we can do in Slide 9.

As you may have read, we assess the market capitalization of Gabriel as of Date of Valuation not at the exact value that the Company had at the moment of the Date of Valuation, but rather to smooth out any temporary volatility as well as to provide a robust assessment of value. We took a 90-day weighted average going towards Date of Valuation.

Now, as you can see in this chart, if we would have taken a different average such as the weighted average from the beginning of the year to Date of Valuation, which is presented here in gray, the assessment of the market capitalization of Gabriel would have been essentially the same. And, similarly, if we would have taken the whole year, the weighted average of the whole year, you would have obtained essentially for all purposes the same approach. So, as a consequence, this assessment of value that we provide based on the stock market capitalization of Gabriel is very robust.

Now, based on this approach and based on this 90-day weighted average, we assess damages to Claimants at 3.286 billion.

Now, Dr. Burrows raises several comments and criticisms about our approach, and we would like to deal with them now:

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Now, Dr. Burrows also raises a few other details about these other assets which are in Slide 11. He talks about value of movable and immovable property. This, in fact, in the balance sheet, shows up in the terms of 53.2 million, but recall that all these 53.2 million are directly related to the Project, 50 or so million dollars are long-term equipment and 3 million are related to the relocation assets. So, these are directly related.

He also mentions the Baisoara property. Now, as of Date of Valuation, the Baisoara property's License already expired, but furthermore Baisoara had no resources or Reserves and Gabriel spent I believe .6 million in total. As a consequence, this didn't provide a significant asset as of Date of Valuation.

And Dr. Burrows also raises some strategical considerations about the Projects and how they could affect the stock market capitalization, and our view is that, if that was true, which we disagree and we say so in the Report, that they will be all related to the Project. So, we can conclude that the value of the Project's Rights is what drove Gabriel's market cap and there are no other significant assets that need to be taken into account.

Now, Dr. Burrows also raises some criticisms about the applicability of the Stock Market Capitalization Approach in this case because he says that--he claims that investors were naive and unsophisticated; and, as of Date of Valuation, there was a speculative bubble. So, let's deal with that first, and let's go to Slide 12, please.

As I advanced, there are five, or there were five, substantial investors in Gabriel as of Date of Valuation, and they are presented in this box. These comprise some interesting set of investors with significant stakes, the Paulson and The Baupost Group are well known and are investment funds or hedge funds who have also other investments in gold. They are sector specialists such as Electrum and BSG who also have investments in other gold. And there is obviously the Newmont Mining company, which as you heard is a very large gold-mining company which also had a significant stake.

Now, Dr. Burrows makes the point that the Company's--Gabriel's market capitalization was overpriced, and two reasons: One is, as I said, the unsophisticated nature of the investors. Well, I think that we can see that if you have this type of main Shareholders, they are not so unsophisticated or naive, and they're already strategic, and they take their Investment decisions carefully.

Now, the other consideration that he raises is the fact that, according to him, there was a speculative bubble in gold which may have led to a significant overprice of these shares.

Now, we take exception with the concept of speculative bubble, at least as it relates in this case. If it's the case that they were in a speculative bubble, you will expect that the main Shareholders were sophisticated and obviously involved in gold mining and the like, will try to divest from their shares at least in Gabriel. We don't see any attempt to reduce their stake. Instead, what we saw is that BSG, who as we mentioned is a sector specialist, increased its shares in 2011, first early and then later in 2011 towards Date of Valuation.

So, this obviously would not be the case if The Baupost Group thought that gold prices are going to collapse and lead to a collapse in the value of Gabriel.

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[redacted]

So, we can conclude, therefore, that (1), investors in Gabriel were not naive nor unsophisticated. They were committing resources and maintaining their stakes in Gabriel as of that time, as of Date of Valuation; that they were aware of risks and they were aware of the fact that capital costs increased. As a consequence, we can say that the stock market capitalization provided is a proper assessment of the relevant value of the assets, underlying assets, of the Company.

Now, if the stock market functioned instead of based on individual shares, when you buy a stock, you buy a certain number of shares, you can buy one share, but if instead of buying fractional stakes in the Company, you would buy a large blocks of shares, say, at least 50 percent, then the stock market will be providing a direct--a direct reference--a direct value of the underlying assets of the Company. Instead, the stock market provides a direct reference of value how minority shareholders, fractional shareholders perceive the value for them of the underlying assets.

As a consequence, we have to make the--a counterfactual assessment for a fair-market valuation of what would a willing buyer pay for the underlying value of the underlying assets when minority shareholders assess for themselves the value as equal to the market capitalization of Gabriel, so that the difference between the two is what is known in the industry as the "acquisition premium."

So, let's go to Slide 18.

Now, it is well-known that--and it's actually the norm in the mining industry--that transactions for large stakes of mining companies always command a controlled or acquisition premium. And in this chart, we show you all the transactions between 2000 and 2011, which involved more than a 50 percent of the shares of mining--a gold-mining company. What you see here is that almost 60 percent of the transactions were in the 20 to 60 percent range, and that is very consistent with our assessment of 35 percent, which is, by the way, the same or very similar range to the one you heard earlier in the week from Behre Dolbear.

Now, in this chart, we show three transactions with negative market cap. These were not cash transactions, and that creates problems in computing the premium. But be as it may, Dr. Burrows claims that the academic literature does not support the prevalence of acquisition premium in transactions--in valuation.

Let's go to the next slide, please.

We've reviewed the six texts that Dr. Burrows presented, and all of them support the prevalence of acquisition premium, and all of them in one way or the other say what it does is to gain control of the target, the acquirer must pay the target shareholder a premium over the current market value, and that you can see in all of them.

And not only was it prevalent in the norm and also supported by the academic literature, but also analysts expected that if a transaction will take place that Gabriel will command an acquisition premium.

[redacted] If we go to the next slide, please.

So, we start with the 90-day weighted average market capitalization, with that whatever cash equivalent the Company had as of Date of Valuation, which is 183 million, so the remaining is essentially what was the stake of Gabriel in the assets. Recall that Gabriel doesn't have 100 percent of the Project Rights. It has also 80 plus percent as a consequence. This is their stake. And to that we add the acquisition premium for--to obtain what would be the Fair Market Value of the Projects as of Date of Valuation at $3.286 billion.

Now, Mr. Dellepiane will continue with the secondary fair-market-value assessment.

THE WITNESS: (Mr. Dellepiane) Thank you, Professor Spiller.

Let's turn please to Slide 22. Thank you. The secondary market assessment method of--pardon me, fair-market-value assessment methods consists of the Market Multiples Method and the P/NAV, both of which are secondary but no less important as they confirm and they've allowed us to confirm the damages estimate via the primary method.

The first of the two is the Market Multiples. It consists of the value on the basis of publicly traded companies trading in the marketplace as a function of the Reserves and Resources with the ounces of gold of each.

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PRESIDENT TERCIER: Mr. Dellepiane, may I just intervene to invite you to speak, to slow down a little bit for our Court Reporter, please.

THE WITNESS: (Mr. Dellepiane) Thank you very much. Will do.

Before I turn to the adjustments or final tweaks on--I go from Enterprise Value to damages, I will comment on Slide 25 on the Multiple-Based Valuation that Dr. Burrows put together. He begins with our sample of 77 non-producing gold-mining companies. He excludes companies without Reserves, specifically Proven and Probable Reserves--right?--Reserves specifically, projects that are under construction, companies with less than a million ounces of gold reserves, and makes other ad hoc exclusions.

Now, the sample of 77 has turned on the basis of these adjustments to a sample of four companies only.

And then, to that, he adds two transactions which represent majority stakes, one from 2009 and one from 2013. And one thing I perhaps forgot to mention is that the publicly-traded company values that we obtained in our sample are valued as of the Date of Valuation for the closing price. So, we have contemporaneous valuations according to the market being applied to the ounces of Reserves and Resources of Roșia Montană and the other Gabriel projects, whereas here the 77 companies have been narrowed down to just only four, and two have been added which come from one from two years earlier and one from two years later.

Now, in theory, these are six value observations, market value observations that Dr. Burrows considers highly comparable or that he deems comparable. Notwithstanding that, he then proceeds to make some very, very large adjustments to those and very--and these adjustments are actually quite loaded with discretionary inputs. Let me explain Steps 4, 5 and 6 in the next few slides instead of doing it on this particular slide. If we turn to Slide 26, please. The first of these three final steps consists of computing--this is something I have not encountered before, but he computes for each of these six observations on the basis of the public data that they provide a discounted-cash-flow analysis for each of them, not to be confused with the Discounted Cash Flow Analysis that he performs for Roșia Montană. These are DCF analyses for each of these six companies on the basis of what they published.

That would be an interesting exercise in itself in order to figure out, okay, this is my DCF, is it calibrated in a way that reconciles back to the market values. But what we see here in the Slide here is that side by side, the market valuations of these companies and next to the DCF valuations no matter if they're higher or lower, they're just completely uncorrelated, they just don't match. Which suggests--well, actually shows, doesn't suggest--but it proves it shows--his DCF valuations of these six companies are completely off. Why exactly? There's a number of possible explanations, but to begin with, those DCF valuations for these six supposed to be comparables are off.

Now, the next step that he performs and the reason why he performed these six DCFs, if you're wondering, Slide 27, please, is so that he can or that he can go into the specific parameters of each of these companies, the costs, the Investment amounts, the timeline and so on and modify them one by one to basically turn each of these companies that are supposed to be generally comparable into a mini Roșia Montană. So that, in a way, he basically modifies these DCF valuations to reflect or to make them look more like the Gabriel Project, the main project, the Roșia Montană Project.

So, this leads him to then adjust--so, that he compares this DCF, the first one he made with the second one that is adjusted, and this is what is shown in this chart, that the adjustments are sometimes 50 percent, there is one that is 8 percent, but the rest are 90 percent, 80 percent 74 percent, 74 percent. These are massive adjustments of observed--of DCF that don't match the observed market values that they correspond to, but then they are further adjusted to account for changes in differences supposedly between those and Roșia Montană.

Finally, in the next slide, what he does is apply those percentage adjustments obtained before into the market values that he had started with, but once again, I want to emphasize this, in theory, he had started with six value observations that he deemed comparable and then went on to actually make massive adjustments that are reflected in this slide, but these are made, whether they're correct or not, we believe they're not, but independent of that, they are actually made on the based on a DCF model made for each of them that don't actually reconcile to the market valuations, which is what a DCF should do is, to reconcile back to the market valuations. That's the intent of the fair-market-value assessment, after all.

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Let me turn now to the next of the secondary methods on Slide 32. Thank you. And let's go to Slide 33 directly. Thank you very much.

This is our Income Approach valuation. This is--and you've probably seen in our Reports we've spent some time explaining why the market--why the industry uses the price to net asset value, or P/NAV, approach. I will give you a very quick refresher of that.

Basically, in a traditional--in a Fair Market Value determination, the key parameters in a Discounted Cash Flow or Income Approach overall can be summarized and simplified to production volumes and costs on the left side of this table; gold prices, in the case of gold sales prices; and the Discount Rate is a critical factor in the Income Approach.

And so, in the traditional DCF, where we would use projections of quantities, costs, the amounts of investments, et cetera, it is no different in gold mining. The Feasibility Studies provide that information, typically.

With respect to gold prices, a Fair Market Value assessment will require that, as much as possible, we use market-based inputs. That is the whole purpose of doing this, is to not have discretion on the DCF, but to make it as market-based as possible. And so, market or futures prices would typically be employed.

And finally, with respect to the Discount Rate, the traditional DCF typically relies on a CAPM, or Capital Asset Pricing Model. And the Capital Asset Pricing Model basically leads, or captures and is based on, the relationship between that particular industry that is being valued and the general equities market.

And here is the issue, is that in gold

mining--and gold in particular doesn't have a stable--doesn't follow a stable relationship between gold and the general equities markets, and the different analysts use different gold prices and the different analysts use different discount rates and risk assessments for different projects. So, what do the analysts do? It's not us doing this. What do the analysts covering the industry do? They overwhelmingly, in all the analyst reports you will find in mining, the majority, they overwhelmingly use something called P/NAV, and what it does, and the way they implement it is, like I said, using those Feasibility Studies or the Cash Flows using a standardized spot price or a standardized price path for the gold prices and then a standardized Discount Rate.

Now, standardizing those inputs allows them to calculate a Net Asset Value, which is a Net Present Value calculation much like in the DCF, but in doing so in a standardized manner, what it allows them to do is say, well, if I have NAV for three different companies, let's say, calculated under the same parameters, but one of them is trading at more than the NAV, the other one is trading at less than the NAV, and the other one is trading at the NAV, I can actually look at them and say, well, which one do I think is more attractive, better valued or better priced or more overvalued or more undervalued? And this allows them, the P/NAV method, to compare across the universe of peers and the peer groups that they're working across and say--and gauge these companies and value them in accordance to a base set of standardized criteria. Think of it as a yardstick DCF.

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Let me turn now--I know we are short on time. I'm going to turn very quickly to a couple of points on Dr. Burrows's discounted cash flow valuation of Roșia Montană and damages.

This is Slide 40, please.

There are three main things I want to mention: Discount rate, gold price, and timeline. Let me skip the first two, because I have specific slides on those, and mention on timeline that his assumption--I believe my instruction is that the Project would be delayed by, specifically, six years. This is not a sensitivity analysis. His main assumption is a six-year push of the timeline, and that in itself is already reducing the value substantially, [redacted]

[redacted]

[redacted]

On Slide 42, a brief comment on prices. Dr. Burrows's gold price using his DCF is based on two surveys, the average of two surveys. One of them is from 2010. The other one actually has data from 2011. The 2011 survey--his price is $1,180 based on the average of the two, but the 2011 survey says $1,310. It's unclear why he would not just take that one to begin with, but continuing, the actual survey says--asks the respondents, who are all gold-mining companies: What considerations are important in determination of price assumptions? 70 percent of the respondents say the current price, and the current price at the Date of Valuation was $1,629, not $1,180.

The final point is that 80 percent of the respondents' expected gold prices continued to increase. If you look at the survey in more detail, you will see that many of them are projecting prices between $1,500 and $2,000 per ounce at the time. Those are the people running DCFs. Those are the people in intermediate and major companies making buying decisions. Actually, this is what they're using to make those decisions, meaning that they will put that in their forecasts, in their NAV calculations, in their cash-flow analyses.

Moving on to the final slide of my section, 43, this is a comparison of Dr. Burrows's gold price forecast with the futures market. The top dots on this graph show the futures market is the real market of real-world transactions, buying, selling. This is not just a ticker tape. These are real transactions.

So, in all the gold price forecasts used in his DCF, it doesn't match up to the spot price. It doesn't conform to the survey that he presents for 2011, and it's decoupled from and far away from the market pricing for gold--for future gold at the time of valuation.

Back to Professor Spiller for some final comments. Thank you.

THE WITNESS: (Prof. Spiller) Thank you very much, Mr. Dellepiane.

[redacted]

Now, we have been also asked to provide a pre-Award interest in Slide 46--please. We have assessed--we were tasked to provide an assessment of a normal commercial rate. We provide two, the LIBOR plus 4 and the Prime plus 2, as they are consistent with the commercial cost of financing for gold companies; also for companies in the EMEA Region or corporations generally rated BB.

Now, in contrast, Dr. Burrows advocates for an interest at the Treasury bills' four-week maturation, which is around 0.4 percent. Now, this is not a commercial rate. It's not a rate that companies can obtain financing, and certainly a four-week maturity is unsuitable for the length of this Arbitration.

One point throughout this 2.1 is that he also uses simple interest. Simple interest does not exist in commercial transactions, and it's not endorsed by an economic assessment, economic analysis.

The last point is, as you may know, the LIBOR may be discontinued in December 2021, so the Prime Rate plus 2 will provide a similar assessment.

Now, we have been asked to comment on Dr. Burrows's Second Report, a discussion of the evolution of Gabriel's stock market capitalization post-Date of Valuation, and I would like to deal with that in the last remaining minutes in Slide 48, please.

What Dr. Burrows says in his Second Report is that the market capitalization towards the end of 2013 of Gabriel can’t be reconciled with an evolution of the market capitalization from Date of Valuation, but rather, the actual with what it would have been if the stock of Gabriel would have followed the gold-mining companies indices. Now, as I mentioned, the--Gabriel was in the S&P/TSX Global Gold Index. So, in this chart, what we did is we took what would have been the evolution of Gabriel from Date of Valuation if it would have followed that particular index.

Now, he says that the difference between Gabriel's actual market capitalization and that adjusted index can't be reconciled because--as of late 2013 because of the decline in the general gold-mining companies' prices and the increasing cost that Gabriel reported in November 2012.

And I would like to show you that that's--those two factors, the increasing costs and the decline in the price of gold-mining companies, cannot explain the dramatic reduction that you see here in the value--in the market capitalization of

Gabriel.

To see that, let's look at, when is it that the market capitalization of Gabriel fell dramatically? And what you see is that, between Date of Valuation and May 2015--sorry--May 15, 2012, Gabriel lost 84 percent of its market capitalization.

PRESIDENT TERCIER: Professor Spiller, I'm afraid the time is over. We had now one hour. Would you, in one minute, conclude?

THE WITNESS: (Prof. Spiller) Yes, I could. In one minute.

In contrast, what you see is that the industry fell by just 32 percent, so it cannot be that the industry explains the dramatic fall in price of Gabriel.

The second is that the fall in the price of Gabriel took place several months before the reporting of the increasing costs in November 2012, and that, when the reporting of such increasing costs came, in fact, nothing happened significantly in the market.

One last point in the last slide--49, please. In this slide, we present to you all the indices in the record. Dr. Burrows likes the Junior Gold Miners Index to bring forward the market capitalization of Gabriel. We are of the opinion that the Junior Gold Miners Index is not the appropriate representation for Gabriel if you would like to follow what would have been the price of Gabriel, for several reasons. Gabriel was not in the Junior Miners. Gabriel's market capitalization as of Date of Valuation was substantially larger than the largest company in the index, in the Junior Miners Index.

Finally, this bringing forward the value of Gabriel as of Date of Valuation using any of these indices cannot represent the Fair Market Value of the Projects at that time because, as I mentioned, this would reflect exclusively the value from a minority shareholder, and you ought to take also into account the Acquisition Premium.

That concludes our testimony.

PRESIDENT TERCIER: Thank you very much, Professor Spiller and Mr. Dellepiane.

Now we turn to the cross-examination. Who will lead it? Dr. Heiskanen, will you?

DR. HEISKANEN: Yes, it will be me, Mr. President.

PRESIDENT TERCIER: Okay. You have the floor. And, again, you try to find an appropriate time to introduce a short break somewhere.

DR. HEISKANEN: Yes, indeed. Thank you.

CROSS-EXAMINATION

BY DR. HEISKANEN:

Q. Professor Spiller and Mr. Dellepiane, good morning to you.

A. (Prof. Spiller) Good morning.

A. (Mr. Dellepiane) Good morning.

Q. The President already explained the logistics of our virtual hearing, and I understand you have been following the Hearing this week, so I don't think we need to revisit the basic rules of how the cross-examination will be conducted.

A. (Prof. Spiller) Correct.

Q. Okay. Can you tell me when you were instructed in this matter?

A. (Prof. Spiller) I believe late 2016.

Q. The First Report was then filed on

30 June 2017; correct?

A. (Prof. Spiller) Yes--yeah.

Q. And you were instructed by counsel, White & Case, rather than the Claimants directly?

A. (Prof. Spiller) White & Case, correct.

Q. Mr. Spiller, have you been previously instructed by White & Case in any arbitration matters?

A. (Prof. Spiller) Only--only briefly.

Well, actually, we have been instructed in one case, yes. I believe--yeah, but only briefly. It was another ICSID Arbitration. I did not produce a report.

Q. And Mr. Dellepiane, the same question to you. Have you been instructed previously by White & Case?

A. (Mr. Dellepiane) Previously to the instruction here or--

Q. Previously to this instruction here.

A. (Mr. Dellepiane) Previously to this instruction, no.

Q. Okay. You were instructed by counsel to conduct your damage assessment based on the Valuation

Date of 29 July 2011; that's correct?
A. (Prof. Spiller) Correct.
Q. You have not been instructed to provide a valuation on any other date?
A. (Prof. Spiller) No.
Q. You have not been instructed to provide a valuation on 6 September 2013?
A. (Prof. Spiller) No.
Q. Can we go to the Claimants' demonstrative exhibits that were presented in the Claimants' Opening Statement? There were, I believe, nine exhibits, if we could go through them one by one, and I will have a couple of questions on those.
Please go on until 8 and 9. Maybe we will stop at 7 first.
Were you involved in preparing these exhibits prior to this Hearing?
A. (Prof. Spiller) Not personally, no.
Q. What do you mean by "personally"?
A. (Prof. Spiller) I did not prepare them. I did not review them. I never saw them before they showed up in the Hearing.

Q. Can we compare this slide with your Slide--I believe it was 48 of your presentation?

A. (Prof. Spiller) Sure.

Q. 49. Apologies. 49.

It looks very similar, doesn't it?

A. (Prof. Spiller) Yes.

I believe--if you go to the Claimants' Exhibit, I believe it's truncated for some reason. Can you go to Claimants' Exhibit, please?

Q. It's on the screen, is--No. 7 is what you should be seeing--

A. (Prof. Spiller) Yeah. And here you see it reaches only to 2013, and Exhibit 40--our Slide 49, as well as 48, goes through 2000--oh, sorry. It's the same. Actually, both go to the same period of time--

Q. Yes. Can you show--

(Overlapping speakers.)

A. (Prof. Spiller) I apologize. Yes.

Q. Apologies. Can you show Claimants' Demonstrative 7 instead of 8, on the right-hand side?

A. (Prof. Spiller) Yeah. My apologies. They seem very similar.

Q. You say you were not involved in preparing this Exhibit 7?

A. (Prof. Spiller) No, I didn't provide that, but Claimant obviously had a preview of our presentation and had the underlying data, so they probably took it from there. I would say so.

Q. Does this mean, then, that Slide 49 in your presentation was actually prepared by the Claimants?

A. (Prof. Spiller) No. I would say the other way around, that Demonstrative 7 was taken from our presentation.

Q. Okay. So, somebody else in Compass Lexecon was involved in that?

A. (Prof. Spiller) That, I cannot attest. As is normally the case, we provide our presentation to counsel, including the underlying exhibits relied upon.

Q. Okay. Can we look a bit more closely at Exhibit No. 9 of the Claimants' demonstrative exhibits? And we can take out the slide from the presentation of Professor Spiller and Mr. Dellepiane.

If we go to Demonstrative Exhibit No. 9, which is the last one--this is No. 7; there we go--there are numbers on the upper right-hand corner of this slide.

Do you know what these figures show?

A. (Prof. Spiller) Well, you're covering the presentation, so I cannot tell you exactly--yeah, there.

I will imagine what these are, are--reflect the indices, which will be, if you would have taken the valuation--the market capitalization of Gabriel from Date of Valuation up to September 6, using any of these indices, then that would have been the value of that counterfactual exercise.

Q. Were you asked to calculate these amounts?

A. (Prof. Spiller) No.

Q. And Mr. Dellepiane, were you asked to calculate these amounts?

A. (Mr. Dellepiane) Not personally, no.

Q. There was somebody else in your companies that were involved, were they?

A. (Mr. Dellepiane) That's my, not just suspicion, but understanding, is that these demonstratives were produced by our staff for White & Case to provide in order so that there will be no surprises as to the date of producing our Slides 48, 49, and so on.

I believe that's what these are, although I'm having a little bit of trouble with some of the fonts and axes and all that. They look a little different from what our team typically provides, but I would suspect that's what you're showing us.

Q. Okay. Let's go back to the Valuation Date.

If we go to your First Report, Paragraph 2, you say that you understand that this is the date: the Valuation Date is "the date immediately prior to the beginning, in August 2011, of Romania's Measures that ultimately resulted in the complete loss of value of the Project Rights."

Do you see that?

A. (Prof. Spiller) Yes.

Q. You don't take a view in this report as to what those Measures were?

A. (Prof. Spiller) No.

Q. In the presentation that you just gave--and if we go back to the same slide that we were looking at, Slide 49--no, sorry. There was a subsequent slide on which you may have commented.

Just a second.

(Pause.)

Q.   Yes. What I had in mind was Slide 48.

And you said there that Gabriel's market cap drop is explained neither by the gold sector evolution nor by SRK's higher costs in November 2012; right?

(Overlapping speakers.)

A.   (Prof. Spiller) I think I was much more precise than "market cap drop." And by the "market cap drop," I referred to the drop between Date of Valuation and May 15, which is when--from then on, Gabriel never really recovered, and that's the drop I'm talking about, the 83-84 percent drop in value. It cannot be explained, neither by the increasing costs nor by the evolution of this sector.

Q.   But you don't take a view on what caused this drop? You were not instructed to take that view?

A.   (Prof. Spiller) No. We are not legal experts.

Q. Exactly. That would be outside your area of expertise?

A. (Prof. Spiller) Correct.

Q. If we go back to your First Report and the second paragraph that we had on the screen a while ago, you say there that you understand that these measures that you referred to "ultimately resulted in the complete loss of value of the Project Rights."

A. (Prof. Spiller) Yes.

Q. The fact that they resulted in a complete loss of the value of the Project Rights, was that an instruction by counsel?

A. (Prof. Spiller) Yes, correct; but this also, to some extent, reviewed by our--well, the link, yes. The link between the measures and that is, but our assessment of the value of the Project Rights as being zero is also assessed by our review of the evidence on the--of the evidence currently.

Q. Can we go to your Second Report, Page 9, Footnote 11?

A. (Prof. Spiller) Yes.

Q. You say there towards the middle of that paragraph that you were "instructed to assume that Claimants have effectively lost the Project Rights"?

A. (Prof. Spiller) Yes.

Q. So, you claim this was the counsel's instruction?

A. (Prof. Spiller) Right. That's what I said.

Q. In your two reports, you have only quantified the expropriation scenario; correct?

A. (Prof. Spiller) No.

Q. If we just look at the same footnote that we have there--

A. (Prof. Spiller) Yes.

Q. --you say: "Because we were instructed to assume that Claimants have effectively lost the Project Rights, we only discuss Dr. Burrows's damages assessment under the expropriation scenario in this report."

Correct?

A. (Prof. Spiller) Yes. That is correct, that’s what we discussed. We discussed his assessment of the expropriation scenario, but that doesn't mean that the value of the Company, the remaining value of the

Company, is depending on expropriation or unfair treatment. It's the same from an economic perspective.

The fact of the matter is that the companies under our instructions, they have lost the Project Rights; whether by expropriation or unfair treatment is the same thing.

Q. Expropriation assumes that the Project Rights were lost in their entirety; correct?

A. (Prof. Spiller) Correct, yes.

Q. Whereas a breach of the fair-and-equitable-treatment standard, that's not necessarily--

(Overlapping speakers.)

MS. COHEN SMUTNY: Objection. These are calling for legal conclusions.

DR. HEISKANEN: He was already offering legal conclusions.

MS. COHEN SMUTNY: No. No, he was not.

THE WITNESS: (Prof. Spiller) I was not.

MS. COHEN SMUTNY: These questions are calling for legal conclusions.

BY DR. HEISKANEN:

Q. Let me then confirm: When you discussed that a breach of the fairness standard, as you, I believe, referred to it, may result in a complete loss of the property, that is a legal matter on which you're not qualified to opine?

A. (Prof. Spiller) Well, we were--exactly. We were instructed that the Measures led to the loss of Project Rights. Whether it is one legal aspect or another legal aspect, we did not get involved with that.

Q. Okay. So, your valuation covers the Claimants' Project Rights, and that's a term you use. Let's go back to your First Report, Paragraph 1--

A. (Prof. Spiller) Yeah.

Q. --where you defined the Claimants' Project Rights as their directly or indirectly held rights and related to the development of certain mining projects in Romania, including Roșia Montană and the Bucium Projects.

Do you see that?

A. (Prof. Spiller) Yeah.

Q. What you define here as "Project Rights" are the rights that were available to RMGC under the Mining License, the two Mining Licenses that it held; correct?

A. (Prof. Spiller) I don't know how many licenses were--this involved, but Project Rights is the right to develop Roșia Montană, Rodu-Frasin, and Tarnita.

[redacted]

[redacted]

BY DR. HEISKANEN:

Q. Professor Spiller, if the rights you were referring to were not those defined in the two Mining Licenses, where were they defined? Where do they come from?

MS. COHEN SMUTNY: Objection. This is, again, calling for legal questions for the economic expert. These are inappropriate questions, and they're not designed to yield anything useful to the Tribunal.

PRESIDENT TERCIER: I would like to invite the Experts to elaborate what they exactly understood under the loss of Claimants' directly or indirectly held rights, projects are related for the development of certain mining projects in Romania. Can you for us just elaborate in order to avoid objection on the legal side?

THE WITNESS: (Prof. Spiller) Sure. Thank you, Mr. President.

Really, what it says, and what is normally the case: Companies acquire rights to develop projects, which means to explore, to develop, to produce and sell, in this case the gold and silver or copper that there is, obviously under their general, regular, normal regulations associated with the country. And that is what normally is called "Project Rights," and that's how--and that was our understanding here.

PRESIDENT TERCIER: Okay. Dr. Heiskanen?

DR. HEISKANEN: Yes. Thank you, Mr. President. That's very helpful.

BY DR. HEISKANEN:

Q. What we are trying to understand is: What are the assets that have actually been valued by the Experts here? The Experts in their Report define "Project Rights" as the assets of the Investment that has been lost, and we are trying to understand where these assets come from or what they consist of. But let's leave it at that.

So, effectively, Professor Spiller, I will put this to you one more time: Are you telling us that what you have valued is a legal matter, what is included, but you don't actually know what you have valued?

A. (Prof. Spiller) I don't think I agree with that characterization. It's the right to develop, and by "right to develop," it's very simple, understood: Develop and exploit a particular mine, such as Roșia Montană and Rodu-Frasin and Tarnita, a particular area.

That's what these--those are the rights associated with that development, and that is what we have relied upon with the valued, and for the complete definition of what those rights mean in terms of resources and extractable resources, we would rely on the available evidence on Feasibility Studies or technical reports.

Q. And--

A. (Prof. Spiller) As well as, obviously, on the market capitalization of Gabriel.

Q. I will try one more time. Is Project Rights those rights that Gabriel Canada and Gabriel Jersey directly or indirectly derived from the concession licenses of RMGC?

MS. COHEN SMUTNY: Objection.

PRESIDENT TERCIER: Why do you object? I think it's important for us to know exactly what is meant and what is--what has been evaluated by the Experts.

Please, Professor Spiller.

THE WITNESS: (Prof. Spiller) Yes. Normally

Project Rights are based on concession licenses, which define the area that can be exploited as well as the conditions.

BY DR. HEISKANEN:

Q. And were you aware that the Mining License held by RMGC for Roșia Montană was an Exploitation License, whereas the license held for the Bucium Concessions was an Exploration License?

A. (Prof. Spiller) Generally, I knew--generally, I knew that the one was more advanced than--Roșia Montană was much more advanced than the Rodu-Frasin and Tarnita Project.

Q. And you were aware that these rights were held by RMGC as a Party to these agreements, mining license agreements, concession agreements, and not by the Claimants?

A. (Prof. Spiller) Yes. Of that, I was aware.

Q. And what you assume in your valuation exercise is that RMGC's rights under these two concession agreements have been lost?

A. (Prof. Spiller) Well, the value of those rights have been lost, yes.

Q. Are you aware that the Mining License for the Roșia Montană Project was recently renewed?

A. (Prof. Spiller) I heard about it.

Q. You say that your primary method of valuation is the Stock Market Capitalization Method; correct?

A. (Prof. Spiller) Correct.

Q. And you referred to that in your presentation, that that's the way Gabriel Canada also described these assets, they were their primary assets, the rights held under the concession agreements; correct?

A. (Prof. Spiller) Right.

Q. And your stock market capitalization evaluation covers both the Roșia Montană Project and the Bucium Projects?

A. (Prof. Spiller) Necessarily so, yes.

Q. You have not quantified Bucium separately under the Stock Market Capitalization Method?

A. (Prof. Spiller) No.

Q. Your second methodology is the market multiples analysis; correct?

A. (Prof. Spiller) Correct.
Q. For this methodology, you relied on SRK's audit of the Resources and Reserves held by RMGC; correct?
A. (Prof. Spiller) For Roșia Montană, correct.
Q. You took the Reserves and--Reserves and Resources as audited by SRK as the basis of your valuation?
A. (Prof. Spiller) Yes, correct.
Q. And the third methodology you applied was the P/NAV method; correct?
A. (Prof. Spiller) Yes, yes.
Q. And if we go to your First Report, Paragraph 86, you explain there towards--in that paragraph that you have calculated Roșia Montană's Project NAV by assessing the present value of expected future cash flows from the Project, and you say that you did so based on the Project's mine plan and capital operating costs reflected in the economic model that was verified by SRK Consulting, and then you refer to the 2001--2012 NI 43-101 Technical Report; correct?

A. (Prof. Spiller) Yes.

Q. So, you relied on that economic model as a basis for the Cash Flows that you calculated?

A. (Prof. Spiller) Correct.

We did provide a sensitivity, though, using the cost of Behre Dolbear as well.

Yeah. If we could find that footnote somewhere in the valuation here--but we provided the Tribunal a sensitivity, in the Second Report, obviously. Sorry. So, if it's of interest, I will find it; otherwise, I won't.

Q. I think you answered the question. Thank you very much.

DR. HEISKANEN: Mr. President, this might be a good time to take a short break.

PRESIDENT TERCIER: Thank you very much, Dr. Heiskanen.

So, we will take a 15 minutes' break. We'll start again at 4:00 p.m. Swiss time.

Professor Spiller and Mr. Dellepiane, may I remind you that you are under testimony; and, according to the rule, you are not allowed to have any contact with anybody else.

Thank you very much. So, in 15 minutes.

THE WITNESS: (Prof. Spiller) Okay. Thank you very much.

(Recess.)

REALTIME STENOGRAPHER: Okay. I'm ready.

PRESIDENT TERCIER: Okay. I would like to start again with one question to you, to the Party, to the counsels, I don't know how long this cross-examination could be, but is it imaginable to start today already or is it opportune, I don't know, with the examination of Mr. Burrows in case we could find the time?

Dr. Heiskanen?

DR. HEISKANEN: It's probably unlikely.

PRESIDENT TERCIER: Good. Mrs. Cohen?

MS. COHEN SMUTNY: Claimants are happy to stick with the Schedule as indicated, so to commence with Dr. Burrows tomorrow morning.

PRESIDENT TERCIER: Okay. Very clear from both of you.

Thank you. Dr. Heiskanen, I give you the

floor for the next part of your cross-examination.
DR. HEISKANEN: Thank you.
BY DR. HEISKANEN:
Q. Professor Spiller, Mr. Dellepiane, in your Reports, you say, and I believe you repeated it again during your presentation today that, the Project Rights were Gabriel Canada's only significant assets; correct?
(No response.)
Q. Excuse me, I missed the answer.
A. (Prof. Spiller) Yes.
Q. You agreed that the Claimants held other assets in addition to the Project Rights that RMGC held under the Mining Licenses?
A. (Prof. Spiller) Well, they had cash.
Q. They had cash and short-term investments; right?
A. (Prof. Spiller) Yes.
Q. Which you deduct from your stock market valuation?
A. (Prof. Spiller) Correct.
Q. And the amount that you deduct is some USD

183 million; correct?
A. Correct.
Q. And you take this amount from Gabriel Canada's interim Consolidated Financial Statements for the period that ended shortly before the Valuation Date end of June 2011; correct?
A. (Prof. Spiller) Correct.
Q. And you rely on those statements because, as you say, they are the closest Financial Statements released to the Valuation Date?
A. (Prof. Spiller) Yes. Absolutely, and also--yes.
(Pause.)
Q. So, why did you deduct cash and cash equivalents from your valuation?
A. (Prof. Spiller) Well, that's a good point.
We made the assumption that all this cash was superfluous cash, meaning that it was not going to be used in the Projects. Now, obviously companies hold cash for investment, and the Company here had the same way that it had already acquired a long-lead equipment,it would probably invest some of this in

other long-lead equipment, and other expenditures towards the Project.

So, because we couldn't separate the amounts that would have been devoted to the Project from amounts that were "excess," although we realize that no company holds excess cash uselessly, cash or cash equivalent, we set out to deduct all of that rather than make a judgment call on what portion would be or would not be.

Q. Were you instructed to deduct them, or was this your own conclusion?

A. (Prof. Spiller) No. We decided on our own, yes.

Q. And this implies, of course, that these assets were not lost, they have not been expropriated?

A. (Prof. Spiller) Well, it's deducted from the valuation.

Q. Gabriel Canada also held other assets--property plant and equipment--correct?

A. (Prof. Spiller) Yes, as I mentioned, held property, plant and equipment, which I highlighted here in the presentation is around USD 53-54 million, which 50 million of those were long-lead equipment, and 3 million of those were resettlement costs, and so on. So, these were all properly assigned to the Project.

Q. And you relied--the amounts that you mentioned, 53 million, were also reflected in Gabriel Canada's Financial Statements of 30th of June 2011? That's the value as of that date?

A. (Prof. Spiller) I believe so. I cannot say without looking at the Financial Statements at this moment.

Q. Maybe we could take a quick look at them. C-1885. There is a table, I believe, at Page 2.

A. (Prof. Spiller) May I just get it--sorry, sir. C- what?

Q. You see it on the slide.

A. (Prof. Spiller) Yeah, but I would like to read--I would like to have it on my screen. C-00--if you don't mind, can you repeat?

Q. C-1885.

A. (Prof. Spiller) C-11--

Q. It is the table that you have on the screen that I'm referring to.

A. (Prof. Spiller) Yeah, yeah, I know.

Okay. Go ahead.

Q. So, what we are talking about is Line 6, property plant and equipment, June 30, 2011, value is 51.2 million, and this is Canadian dollars?

A. (Prof. Spiller) Yes.

Q. Correct?

A. (Prof. Spiller) Correct.

Q. And it's around USD 53.2 million as at that date.

A. (Prof. Spiller) That's correct. Yes.

Q. And if we then, go to Page 13--just a second--and Page 14, you see the total--sorry, if we go to stay at Page 13, you will see the balance at the bottom of the page, but if you then go to Page 14 which shows the breakdown of property plant and equipment at Page 14, and construction in progress is explained part of it as well as long lead-time equipment.

A. (Prof. Spiller) It's hard to see. Sorry.

Q. Can you blow it up? There we go.

A. (Prof. Spiller) Yeah, that's correct. Yeah, exactly.

Q. These assets--property plant, and equipment--that Gabriel Canada held in June-July 2011 have not, in fact, been lost; correct?

A. (Prof. Spiller) Oh, yes, they have. My understanding is that 80 percent of them have been impaired. There is, I believe, today 10 million converted to assets for sale, and I believe they were able to sell 10 million of those.

So, yeah, the majority has been lost or impaired with enough.

Q. And is that your own analysis or conclusion based on the facts, or is that an instruction by counsel that they have been lost?

A. (Prof. Spiller) No, it's in the financial--in the most recent Financial Statement that was submitted or that is in the record.

Q. We will come back to the accounting records, but, to your knowledge, have these assets been taken by the Government or expropriated?

A. (Prof. Spiller) That's a legal question. If the Project--that's a legal question. If they have been lost and if the reason they have been lost is because the Project cannot go forward, then it has been lost according to the claim because of the measures.

Q. I believe you stated in your presentation that you have included or considered that these are not significant because they are related to the Project?

A. (Prof. Spiller) No, they are part of the Project. I didn't say they're not significant. I said they're part of the Project.

Q. I'm just trying to understand on what basis you consider that they were lost before they were reflected in the accounting records.

So, your conclusion that they were lost is based on your review of the accounting records; correct?

A. (Prof. Spiller) Correct.

Q. Okay. Are you aware that the Claimants now claim that they lost their Investments in Roșia Montană on 9 September 2013?

MS. COHEN SMUTNY: Objection--

THE WITNESS: (Prof. Spiller) Well, that's a legal issue.

MS. COHEN SMUTNY: I'm sorry. We're also objecting. That's a mischaracterization of the record.

DR. HEISKANEN: It's not a legal question to ask whether he's aware that the Claimants now claim that the breach of the Treaty occurred on 9 September 2013.

BY DR. HEISKANEN:

Q. Are you aware of that?

A. (Prof. Spiller) Well, again, that's a legal issue.

Q. It's not a legal issue whether you're aware of that date as the date of the alleged breach.

A. (Prof. Spiller) Well, that breach--I understand that Claimants have been representing that day as a date where there was a consummation of the breach. My understanding--and I'm not a lawyer, and I don't have to opine on these things, but that is the extent of my understanding.

Q. If you assume with me for a moment that the Tribunal decides that these assets--property plant, and equipment--that we were just looking at were not expropriated by the Romanian Government on that date, on 9 September 2013 or on any other date, would you agree with me that they have not been--that the amount of the value should be deducted from any amount to be awarded?

A. (Prof. Spiller) Well, if the Tribunal is of the opinion that those amounts were not lost at any moment, then that's their opinion, and they would not include that.

Your question is a little--has legal connotations so, it's up to the Tribunal to determine what is--has been lost or not.

Q. And you also determined as part of your analysis that the cash and short-term investments held by Gabriel Canada in July 2011 should be deducted?

A. (Prof. Spiller) Well, that's different. That has nothing to do with the legal issues in the case. Here, it simply has to do with to what extent I can ascertain that those assets are part of the

Projects, those cash were part of the Project. It doesn't explain--he took a very conservative view that none of it, which is, I would say a bit unreasonable to make such an extreme assumption, but because we didn't have any objective evidence to apportion the 183 between projects and excess cash, we decided to take them off in its entirety.

Q. Have you valued the land that RMGC still holds today?

A. (Prof. Spiller) Right now, if we go to the latest Financial Statement in the record, there is no mineral properties left. There is almost no assets to talk about.

Q. You also mentioned that, during your presentation, that Gabriel Canada held an exploration license in relation to the Baisoara property in Romania. Do you remember that?

A. (Prof. Spiller) Yes, by the date of the Financial Statements, it held that, but it expired in July 2011.

Q. That would be information--

A. (Prof. Spiller) Right, prior to Date of

Valuation.

Q. But the information about the expiry became available to the market only in August 2011; correct?

A. (Prof. Spiller) I believe August 4, but it was expiring, it was known.

Q. But what was not known was whether the Concession would be renewed?

A. (Prof. Spiller) Correct, but there were no indications that it would.

Q. Gabriel Canada--

(Overlapping speakers.)

Q. Sorry.

A. (Prof. Spiller) Yeah, go ahead.

Q. Gabriel Canada was required to perform an impairment test as part of its financial reporting; correct?

A. (Prof. Spiller) Yes. Normally, it's normal procedure to impair--to perform an impairment test on an annual basis.

Q. And an impairment test is an accounting procedure which is carried out basically to find out if an asset is impaired, whether the earning power of the asset has reduced to an extent that it needs to be recorded as impaired; correct?

A. (Prof. Spiller) Whether the earning power is less than what is in the books. So, if that's the case, then you have to impair it, according to the Auditors' standard.

Q. And a threat of expropriation would be an indicator of impairment; correct?

A. (Prof. Spiller) Well, that's--that is on the view of the--of the view of the accounting and accountant and the auditors, to what extent the threat actually ought to be--ought to be recorded as an impairment, as not all threats end up being realizing.

For example, if you think about--when you have a legal claim against you, you have to assess to what extent you will have to pay that claim if it shows up, and that is a complicated assessment, even more so in a legal threat of this nature.

Q. And expropriation if one occurs would be an indicator of impairment; correct?

A. (Prof. Spiller) Normally, if there is a physical taking of the assets, there is an expropriation. Practice is that, if there are negotiations and so on, the impairment may be delayed. That's my experience.

Q. Gabriel Canada performed impairment tests on a regular basis; correct?

A. (Prof. Spiller) I will assume so.

Q. Can we look at R-148. Page 23. This is Gabriel Canada's Financial Report. And here, Gabriel Canada states that: "As part of management's annual review process, management reviews all aspects of project advancement issues along with potential indicators of asset impairment when preparing its financial statements."

Do you see that?

A. (Prof. Spiller) Yes.

Q. And then it refers to the standard study it applies.

Do you see that?

A. (Prof. Spiller) Yes.

Q. So, Gabriel Canada had to perform an impairment test if it had identified impairment indicators based on the standards that it applied;

correct?

A. (Prof. Spiller) Yes. That's up--how the Auditors will review that, yes.

Q. And they applied specific standards to determine whether the test had been met?

A. (Prof. Spiller) Yes.

Q. Do you know how often Gabriel Canada performed these tests?

A. (Prof. Spiller) Normally, it's done yearly. I would imagine that that was done, but I don't know exactly.

Q. Okay. Let's look at what Gabriel Canada says. This is R-539, Management Discussion & Analysis of Q3 2013. Page 22. If we go to Page 22 and the second paragraph on that page. It says in the last sentence that "the impairment test is, at a minimum, performed annually."

A. (Prof. Spiller) Perfect.

Q. If we then stay actually on that document, if we go to Page 33, we are now in 2013. Q3 2013, 14 November 2013. It's a long paragraph.

A. (Prof. Spiller) Sir, I would like to have it on my screen, the whole thing.

What number it is?

Q. It's R-539. I'm only going to ask you a question about this paragraph.

A. (Prof. Spiller) Okay. Go ahead.

Q. So, if you could read it for yourself and let me know when you're done.

(Pause.)

A. (Prof. Spiller) Yes.

Q. It deals with the draft Roșia Montană Law; correct?

A. (Prof. Spiller) Um-hmm--yes.

Q. And it reports on the--on how the draft proceeds within the Parliamentary Committee, and it notes that there was a recommendation of a Parliamentary Committee to reject--that's towards the middle of the--if you could highlight that.

A. (Prof. Spiller) Right.

Q. There was the recommendation of a Parliamentary Committee to reject the draft legislation and consider an alternative framework, and then there is at the end a note that: "This constitutes a risk, a possible rejection of the Law, and that such risks may adversely affect the group's ability to continue as a going concern, and may result in the impairment or loss of all or part of the group's assets."

Do you see that?

A. (Prof. Spiller) I see that.

Q. So, what Gabriel Canada is saying here is that a possible rejection of the Roșia Montană Law may result in an impairment? That's how you understand it; correct?

A. (Prof. Spiller) Yes, it says that.

Q. Can we then go to C-1832, which is Gabriel Canada's Consolidated Financial Statements for 2014.

Just to check Page 2 the date of this document, it would be 12 March 2015.

Do you see that?

A. (Prof. Spiller) Yes.

Q. And then, if you go to Page 4, and if you look at the assets, and we are interested in the "non-current assets." You see the three categories of assets reflected under the heading?

A. (Prof. Spiller) Yes.

Q. We see mineral properties recorded as CAD 546 million.

Do you see that?

A. (Prof. Spiller) Yeah.

Q. As at the end of 2014. Property, plant and equipment at CAD 55.4 million.

Do you see that?

A. (Prof. Spiller) I see that, yes.

Q. And the total non-current assets, over CAD 600 million.

Do you see that, as well?

A. (Prof. Spiller) Correct.

Q. And then if we can go to C-1833, which is the Consolidated Financial Statements for 2015, if you look at Page 2 just to see the date of that document, this is now March 29, 2016.

Do you see that?

A. (Prof. Spiller) Yes, sir.

Q. And then if we go to Page 5 of that document, and again we are interested in non-current assets. There, again, the same three categories of assets.

Do you see that?

A. (Prof. Spiller) Yes, I see that.

Q. And now, mineral properties are recorded as zero.

A. (Prof. Spiller) Right. That means zero.

Q. And property, plant, and equipment has been also, as you said earlier, impaired, and it's now CAD 4.6 million; correct?

A. (Prof. Spiller) Correct.

Q. And then if we go to Page 8 of that document, the last sentence on that page, these assets have been impaired and recorded at less than their book value because of the arbitration proceedings that are referred to in that paragraph; correct?

A. (Prof. Spiller) Well, the last paragraph says that "as recognized, the full impairment of the mineral property and material impairment of its property plant, and equipment."

Q. Right.

And this was on 29 March 2016?

A. (Prof. Spiller) Well, that's the date of publication of the Financial Statements. As you know, as you well know, the Financial Statements get published normally at the end of the first quarter for the whole year or for the whole preceding year, so it's--that's exactly what it is, so it's for 2015 appears in early 2016.

Q. Yes, for the Financial Year 2015.

Are you aware that the Request for Arbitration in this case was filed on 21st July 2015?

A. (Prof. Spiller) Can you recall the date?

Q. That was several months before the properties were reported as impaired.

A. (Prof. Spiller) Correct. Taking your date, that's the right date, yes.

Q. Okay. Let's change subject. Let's look at the status of the Roșia Montană Project as of the Valuation Date 29 July 2011. RMGC was at the time a non-producing company; correct?

A. (Prof. Spiller) Yes, correct. I would say so.

Q. It was still at an exploration stage.

A. (Prof. Spiller) Well, I think it was pretty advanced.

Q. But it was still in exploration stage? There was no production?

A. (Prof. Spiller) Well, there was no production, but I would say there is close to start--yeah, my understanding was the expectation was that there will be a permit soon and construction will take place soon, so you are--as of Date of Valuation, you would say that you are much more advanced than just at exploration even considered in development.

Q. RMGC did not have an Environmental Permit in July 2011; correct?

A. (Prof. Spiller) Excuse me?

Q. RMGC did not have an Environmental Permit in July 2011?

A. (Prof. Spiller) No, correct. It didn't have an Environmental Permit.

Q. And it did not have surface rights over the concession area; correct?

A. (Prof. Spiller) Well, it had some surface rights, I understand.

Q. Yes. Why don't we look at how much they had. This would be C-1888. This is Gabriel Resources Management Discussion on Analysis for the second quarter of 2011, so just prior to the Valuation Date. If we go to Page 5. And if we go to the last sentence of the first paragraph: "As previously reported, the Company owns approximately 78 percent of the homes and approximately 60 percent of the land in the Project footprint."

Do you see that?

A. (Prof. Spiller) Yes.

Q. And, if we look at the last paragraph, it says: "Ultimately, the Company's ability to obtain Construction Permits for the mine and plant is predicated on securing 100 percent of the surface rights within the Project footprint, the timing of which is not entirely within the Company's control."

Do you see that?

A. (Prof. Spiller) I see that, yes.

Q. So, in July 2011, they were not controlling the land required for the exploitation of the Project?

A. (Prof. Spiller) That is something I cannot opine, as that goes further than our instructions. As you know, there is a dispute on whether--on how much does it have to be owned or start construction. I heard--meaning I was listening, I read different opinions on this, so we don't take a position on this, but I think these are disputed facts.

Q. But you agree with me that the Company itself said at the time just prior to the Valuation Date that its ability to obtain Construction Permits for the mine is predicated on securing 100 percent of the surface rights.

Do you see that?

A. (Prof. Spiller) Yes, but if I may, there is a verb--sorry, a word here in plural, which is "permits." It's not "permit." If you have--if you want to build your house, you have to get a construction permit. If you want to develop--build a development in stages, you need construction permits, so one cannot infer from this that it is the Company's opinion that you have to have everything on hand. That's how I would read it as an economist from this, and taking the facts in dispute.

Q. But you would agree with me that the Company didn't have a Building Permit or any Building Permits in July 2011?

A. (Prof. Spiller) No, you don't get a Building Permit before getting your Environmental Permit, so...

Q. Excuse me.

(Pause.)

Q. Gabriel Canada is a junior mining company?

A. (Prof. Spiller) Well, junior mining companies are normally called companies that are not in production, but it was not. That junior, for the exchange, for the TSX exchange, to include it together with the larger corporate mining companies in the world, nor for the--those of the Junior Mining Index who didn't see appropriate to include Gabriel as of Date of Valuation as a member of the Junior Mining Index.

The valuation of the Company far exceeded what you would say normally is a junior, but formally speaking, since it was not--you know, it was not in production, will categorize as "junior," and so will--it will classify itself as junior.

Q. Yeah. It described itself as a junior mining company; correct?

A. (Prof. Spiller) Yeah, normally it will, yeah, but neither analysts nor the market took it as a "junior" given the size of the properties in development and the--yeah, given the size of the properties in development.

Q. Okay. Can we look at C-1856? This is Gabriel Resources Management's proxy circular of 12 May 2011. If we go to Page 25 on the top of the page, if you highlight the first sentence, that is how Gabriel Canada described itself a couple of months before the--

A. (Prof. Spiller) Yeah.

Q. --Valuation Date?

A. (Prof. Spiller) Yeah.

Q. A junior mining company engaged in the development of the Roșia Montană Project in Romania. Do you see that?

A. (Prof. Spiller) Right. But that's--if I may, again, that's not how the market saw it, not how the analysts saw it, nor how the Exchange saw it.

Q. I believe you described yourself Gabriel

Canada as a junior mining company in your Report?
A. (Prof. Spiller) Yeah, sure, because that's the technical term.
Q. Okay.
As of July 2011, Gabriel Canada had not been involved in any other mining projects apart from these two projects in Romania; correct?
A. (Prof. Spiller) Sorry, I didn't get your date.
Q. July 2011. We're interested in the Valuation Date because that's the subject matter of your evidence.
A. (Prof. Spiller) That's correct, yes.
Q. Okay.
A. (Prof. Spiller) Apart from--what did you say? Apart from?
Q. Apart from these two Projects, so these were the only mining projects that the Company was involved.
A. (Prof. Spiller) You mean Roșia Montană and the Bucium properties?
Q. Yes.

You agree with me?

A. (Prof. Spiller) Yes, sir.

Q. Okay. Let's go to the--your primary method of valuation, the market cap.

You used the--you used Gabriel Canada's public market capitalization as a proxy for the valuation of the Claimants' Project Rights, as you defined them in your Reports?

A. (Prof. Spiller) I don't think I used the word "proxy," sir.

Q. Let's go to your report, your First Report, Paragraph 5.

If we look at the first sentence--

A. (Prof. Spiller) Yes.

Q. --you say there: "Under normal conditions, the price of a publicly traded company's shares reflects the market's assessment of the value, to a minority shareholder, of the company's underlying assets."

That's what you say; correct?

A. (Prof. Spiller) Correct, sir.

Q. What you're not valuing directly is RMGC's

Mining License or the assets that RMGC held; correct?
A. (Prof. Spiller) Well, no. No. I'm valuing directly these assets, which is the rights to development directly, because there is nothing else in Gabriel, really, but the right to develop these assets. Without the right to develop these assets, there is nothing left in Gabriel at the time.
So, our approach is very directly assessing the value. In a sense, you could think of buying a share in Gabriel as being tantamount to buying a fraction of RMGC, and that these--these are in RMGC the only thing it has, is, again, the assets--as valuing as a fraction of the assets--of the property, sorry.
So, it is extremely directly a reference of--from a minority shareholder of the value of those assets.
Q. You are assuming that the value of Gabriel Canada's public market capitalization is equal to the value of RMGC's Mining License and other assets; correct?
A. (Prof. Spiller) Well, and assets related to

the licenses, because there is nothing else, so there is nothing else to value.

So, if you want to buy shares in the properties--in the Project, sorry, you buy shares in Gabriel. If you want to buy shares in a mine in South America, you buy something else. There is nothing else that you buy if you want to--if there is nothing else--there is nothing else that you can buy by buying Gabriel, so why should you buy it?

Q. You haven't answered the question. I will repeat it again.

You are assuming that the value of Gabriel Canada's public market capitalization is equal to the value of RMGC's Mining License and other assets?

A. (Prof. Spiller) Well, not all of it, because Gabriel doesn't hold 100 percent of value of RMGC; correct? But the stakes that Gabriel has in RMGC, the value of that stake is reflected in the market capitalization of Gabriel from a minority shareholder perspective.

Q. Okay. Let's look a bit more closely at the further assumptions that you make. Let's go to

Paragraph 41 of your First Report.

You assume there that the stock market incorporates all available information and expectations on production costs and prices as well as the market's perception of risk. That's in the last sentence of that paragraph.

Can we highlight that?

A. (Prof. Spiller) Correct.

Q. Your assumption here is based on the theory of efficient markets; correct?

A. (Prof. Spiller) Not of the theory of efficient, but of semi-efficiency. It's reasonable, and there is no reason to think otherwise--that is, when you have millions of transactions on these assets, on these shares, which are--for the purpose of transacting on the assets, when you have sophisticated and large investors investing in these companies for the same purpose who are processing information on a real time, you would expect that the stock market will incorporate all available information and expectations and risk at the time.

Q. And you explained this--actually, maybe we look at your--still on your first paragraph, it's Page 23 and Footnote 52, where you describe the economic or theoretical basis of your approach?

A. (Prof. Spiller) Yes. It's the semi-strong form, as I mentioned.

Q. And you--

A. (Prof. Spiller) But we don't have to only rely on that; right? As I explained, we rely on the actual evidence of who are the investors in this company.

Q. We will come back to who are the actual investors. Let's try to first establish the basis of the method that you apply.

You referred to Eugene Fama's work, article in the Journal of Finance, and you quote there that the--that you're applying the semi-strong form of the efficient market hypothesis, which is what you just referred to?

A. (Prof. Spiller) I didn't quote anything, sir. I just stated. "Semi-strong form" is in quotation mark is because it's a way of mentioning it. But I didn't quote from anybody here, I think.

Q. You mentioned you're relying on the semi-strong form of market efficiency. Maybe I misunderstood you. Are you now saying that you are no longer considering that the markets are efficient in your analysis?
A. (Prof. Spiller) In a semi-strong form, yes. Sure.
Q. Okay. The efficient market hypothesis is about the market; correct? It's about how market operates?
A. (Prof. Spiller) Markets.
Q. Or functions?
A. (Prof. Spiller) Markets, yes.
Q. It is a macroeconomic theory?
A. (Prof. Spiller) No, it's a financial theory. It deals with markets. It deals with stock markets.
Q. It's macroeconomic in the sense that it deals with the market as a whole rather than--it's not the theory of the firm?
A. (Prof. Spiller) That's a different understanding of--for us, it's microeconomics. This is also microeconomics--macroeconomics is the

aggregate economy, inflation. This is not that. This is how financial markets operate, that yes, you may.

Q. And the hypothesis is based on the assumption that the stock price of companies reflects all publicly available information. That's, in a nutshell, the theory, isn't it?

A. (Prof. Spiller) Yes, all--yes, all publicly available information.

And semi-strong says that it responds quickly to new information.

Q. But the efficient market hypothesis doesn't say anything about whether all relevant information is available in the market, does it?

A. (Prof. Spiller) "All relevant information" meaning what, sir?

Q. All relevant information, for instance, about the particular company?

A. (Prof. Spiller) Well, there may be some insider information which is not publicly available, but unless there is insider information, whatever is not insider information will appear.

Q. It is based on the assumption that the stock market, or the stock price, rather, reflects all information that is publicly available, but there is no assumption that all relevant information is publicly available?

A. (Prof. Spiller) Well, when the relevant information--well, yes, I would say that it could be that the company has a secret Plan of Development, and that secret Plan of Development is not known by anybody else; then the stock price would not reflect that secret plan, yeah, as long as there is some type of private insider information. If there is not insider information, then it's known. It's known.

So, this is very important to understand, because only secrets are not known in the market; right? That is, you don't know what I'm going to do tomorrow; so, as a company, we don't know if Apple is going to bring another completely new model. So, that characteristic of that model is not reflected in the stock price of Apple today. However, we know that Apple is going to introduce new iPhones and that there is obsolescence, so that is introduced in the model. But the exact characteristics of the new iPhone is not in the price of Apple today. Same here.

Unless there is some secret about the operations of Gabriel that nobody can know because only Gabriel knows about it, that secret is not going to be in the public domain, and it's not going to be known and not reflected in Gabriel's price.

Q. So, there can be new information which is then reflected in the market when it becomes available; correct?

A. (Prof. Spiller) Always. Always. But what I have trouble with understanding is your "relevant information" because, in the market, all information that is publicly available, if there is some secret--only a secret is not, but I don't know what you mean by what secret information is missing here.

Q. The hypothesis is based on the assumption that all publicly available information is reflected in the stock price; correct?

A. (Prof. Spiller) That's right. All publicly available information.

Q. Information that is privately available is not reflected in the stock price; correct?

A. Information that is secret is not. For example--again, what is publicly available? There are information that you can obtain at a cost. That is publicly available.

For example, in this Arbitration, I used Bloomberg. I have to pay for Bloomberg; so does Dr. Burrows. Is that publicly available? Well, I can access it by paying, and so you can have access to it. But my brother cannot access it because he does not have an account with Bloomberg. Is that publicly available? Absolutely. You can obtain that information at a cost. It's publicly available.

Q. Okay. If you could, Professor Spiller, keep your answers short, because my questions are very focused and short in the interest of time.

The efficient market hypothesis is not based on the assumption that all the information available in the market about a particular company is accurate; correct?

A. (Prof. Spiller) Well, all the information--well, the accuracy of information--information is information.

Now, if there is--if there is misleading information in the market, probably someone will benefit by bringing up proper information. There may be erroneous information, and sometimes that may happen.

Q. So, the information available in the market depends on what is disclosed by the company?

A. (Prof. Spiller) To some extent, what is disclosed by the company. But also, as I said, people who invest money in companies also invest in learning about them, and not all information that investors have comes from the company.

Q. It includes the information that is disclosed by the company?

A. (Prof. Spiller) Absolutely includes--absolutely includes information disclosed, but there is a lot of other information that is used to corroborate information disclosed.

Don't forget, there's a lot of people interested in short-selling--in making money by short-selling, so there's a lot of attempts to find to what extent companies report properly or not.

As you probably know, there is what is called "short attacks." What short attacks are is, essentially, attempts to try to benefit by bringing down the price of a particular company because you perceive that there is some misleading statements.

[redacted]

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[redacted]

[redacted]

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[redacted]

[redacted]

DR. HEISKANEN: Mr. President, this might be a good time to take a break.

PRESIDENT TERCIER: Thank you very much.

It is 5:00. You have, typically, a Swiss precision in the way you stop your examination. It is easy now to decide that we will have an hour break; how it is defined is another question. It can be lunch or tea or a dinner break.

I would like, Professor Spiller and Mr. Dellepiane, to remind you that you still are under testimony. And we will meet again at 6:00. Thank you very much.

THE WITNESS: (Prof. Spiller) Thank you.

(Recess.)

PRESIDENT TERCIER: We can now proceed.

Please, Dr. Heiskanen, you have the floor.

DR. HEISKANEN: Thank you very much, Mr. President.

BY DR. HEISKANEN:

[redacted]

[redacted].

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Q. Okay. Let's move on.

You said in your statement earlier today in your presentation that you had to make counterfactual assessment for a fair market valuation of what a willing buyer would pay for the assets; correct?

A. (Prof. Spiller) No, how much it will pay for the Acquisition Premium. Okay? So, the point is the Acquisition Premium. That's the only part that we need to perform counterfactual because for the remaining stock market capitalization is an objective factor. We don't have to pick it in the sense of make assumptions about that. It's feasible.

Q. Okay--

A. (Prof. Spiller) What we need to assess is the Acquisition Premium.

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DR. HEISKANEN: Mr. President, this might be a good time to take a brief break. I will see in the meantime how we can handle the remaining part. It may not take too long anymore.

PRESIDENT TERCIER: Okay. Thank you very much.

So, we start again at Swiss time--sorry for being so local--7:30 p.m.

Professor Spiller, Mr. Dellepiane, you know that I'm still reminding you that you are under testimony. Sorry for repeating myself so much.

Okay. So, we will see you in a moment.

DR. HEISKANEN: Thank you.

(Recess.)

PRESIDENT TERCIER: Dr. Heiskanen, can you now start by telling us, if you can, how far you are in examination until the time that you would need now to complete.

DR. HEISKANEN: I don't think I will need more than 30 minutes, hopefully less.

PRESIDENT TERCIER: Okay.

DR. HEISKANEN: That depends, of course, on Professor Spiller.

PRESIDENT TERCIER: Okay. You have the

floor.

DR. HEISKANEN: Thank you very much.

BY DR. HEISKANEN:

Q. Professor Spiller, you're aware that the Project relied on the use of cyanide.

A. (Prof. Spiller) Yes, I am aware of that.

Q. I think there is something wrong with your microphone, sir.

A. (Prof. Spiller) I'm sorry. Do you hear me well?

Q. Yes.

A. (Prof. Spiller) Excellent. Yes, I'm aware of that, yes.

Q. In your Reports, you do not discuss the use or transportation or storage of cyanide?

A. (Prof. Spiller) No, it's not our--it's not our milieu, if you wish. That's all included in SRK's Technical Report which were done.

[redacted]

[redacted]

Q. Do you know how the cyanide was to arrive to the Project site?

A. (Prof. Spiller) No, sir. That's a technical aspect which we are not instructed to analyze.

[redacted]

[redacted]

[redacted]

Q. Okay. Let's move on to the Acquisition Premium.

You proposed to add an Acquisition Premium to the market capitalization of Gabriel Canada in your valuation?

A. (Prof. Spiller) Correct, sir.

Q. You discussed this in your First Report? It's Paragraphs 47 and 53, and Second Report Section III, where you quantify the Acquisition Premium at $852 million? You certainly recall that?

A. (Prof. Spiller) Well, it's 35 percent, and that may be the exact number. Okay.

Q. You recall that that is the amount, or would you need to verify that?

A. (Prof. Spiller) Well, I believe it's in the 800 millions, yes.

Q. Okay. And you say that the stock price--you add it because the stock price of a publicly traded company reflects the market's assessment of the value to a minority shareholder of a company's underlying assets?

A. (Prof. Spiller) Correct.

Q. That's what you say in your first paragraph, First Report, Paragraph 5.

So, your position is that this stock market valuation only reflects the value of the Company in the eyes of the minority shareholder?

A. (Prof. Spiller) Correct. It’s from non-controlling stakes, yes.

Q. So, in a sense you're saying that any publicly traded firm is undervalued because the shares represent minority interests in the firm?

A. (Prof. Spiller) Well, I disagree. The shares reflect the Fair Market Value of the shares, which is a share is held by a minority shareholder.

Now, if you have a situation where the company is controlled by a single company meaning the moment that the company becomes private, at that moment or becomes owned by someone else, the controller or whoever purchased that will value at full value of the underlying asset.

So, you have to separate the Fair Market Value of a share from the Fair Market Value of the underlying asset. That's why we make very clear that the stock market capitalization is an excellent reference of value of the underlying assets. And in fact, it's the only--only objective and direct assessment--only--sorry, only objective and direct reference of value of the underlying assets. But, from a controlling perspective, then you have to perform the counterfactual assessment of how much would a controlling stake be transacted for.

Q. Exactly.

So, you would pay for the control?

A. (Prof. Spiller) You pay for having a situation where you manage the company, appoint the

Directors, determine the direction of the company, and so on.

Q. Okay. Let's look at some of the sources that you referred to in support of your position. The first one would be academic writings, Pearl and Rosenbaum, C-1871, Page 71. If we highlight the part starting with: "Second, strategic buyers often have the opportunity to realize synergies, which supports the ability to pay higher Purchase Prices. Synergies refer to the expected cost savings, growth opportunities and other financial benefits that occur as a result of the combination of two businesses."

Would you agree with that?

A. (Prof. Spiller) Yes. That's what a strategic buyer may have, but that's not the reason why you pay an Acquisition Premium. Because synergies, if you think about synergies, synergies relate to the relationship between the buyer and the assets of the buyer and the assets of the seller, but if I'm the only buyer I'm not going to pay anything above the stock price, nothing. Just a little bit because nobody else is.

Q. Okay.

A. (Prof. Spiller) Hold on, you asked me about synergies. But if there are multiple buyers, my synergies are not his synergies, cannot be that. So, they're paying because control provides a different aspect of a management that is not appropriated by a minority shareholder.

So, the companies start bidding and prices go up, but it's not that they don't pay purely because of the synergies. Synergies--and particularly for mining companies, people buy for the resources. People don't buy for growth opportunities and other financial benefits or the combination. They buy because these are assets in the ground, you have resource, you have Reserves, and you buy for that.

Q. Okay, if you could try to keep your answers short. What I'm referring to is the evidence that you have provided in support of your position. I'm just confirming whether you agreed with the textbooks and articles you referred to.

A. (Prof. Spiller) I suggest--hold on, sorry.

Q. Let me ask a question first. Let me ask a question first. In this passage, according to this passage, buyers generally pay a Control Premium when purchasing another company, and there are two reasons given. One of them is control and the other one is synergies. You agree with that?

A. (Prof. Spiller) Well, I agree with the first, as I just said, and I explained to you why synergies are not a good reason to pay more unless you enter into competition with other buyers, in which case the synergies lose the meaning because now we're not talking about particular synergies between you and I, my assets and your assets, but now there are five companies that wonder what synergies are we talking about? So specific for five different buyers? It doesn't work.

Q. Okay. Let's go to the next one. This is C-1873, Rudenno, "The mining Valuation Handbook, Page 304." And I believe you quote the sentence saying: "The premium paid for takeovers in the resources sector is generally in the range of 20 to 35 percent, with an average around 30 percent."

A. (Prof. Spiller) Yes.

Q. So, if we look at the four preceding sentences starting from the second sentence, "If a third party acquires a controlling interest," a bit higher up, "It will gain the benefits of Management control over such matters as dividends, operational and strategic direction, company information and financing decisions. If the third party gains 100 percent of the company, then it will have control of its cash flow and perhaps gain group benefits. For these benefits, the market expects a premium for control." And this is defined as the difference between bid price and share price. You agree with that as well?

A. (Prof. Spiller) I don't have a particular problem with what it says.

Q. And then if we go to Page 299. The paragraph, the first paragraph starting with the "Valuations." "Valuations are often critical in takeovers and mergers, where experts are required to give an opinion on the relative merits of such proposals. In general, they will also use a bottom-up approach by valuing different components and combining them to come up with a Net Asset Value. Control Premium may also have to be added to reflect additional benefits an acquirer might get with 100 percent control."

You agree with that?

A. (Prof. Spiller) Well, yeah. It depends on what type of valuation and how you do these valuations. Yeah. If you do--may or not. It depends because, if you do a valuation--you know, what we are talking about is a very different valuation. It's very different than what we're talking about, because what we're talking about is, here is the stock market price, and here comes a buyer interested in performing an acquisition, how much more it will have to pay over the market price which reflects only minority shareholders.

Now, if I do a valuation, for example, that's using information about stock market price, such as a DCF, you don't add a Control Premium, because you're already internalizing all the tax benefits. You're internalizing everything that you can extract. No Control Premium or Acquisition

Premium. By the way you look at the market, at the stock market price, you know these transactions are not for a controlling stake. You know they are for a small percentage of the shares.

Q. Okay. Professor--

(Overlapping speakers.)

A. (Prof. Spiller) Hold on.

Necessarily, you have to treat the two differently. That's what we do.

Now, when we do a DCF, we don't have an Acquisition Premium because the DCF, which is a valuation which we do based on, you know, the bottom-up, as you say, then you don't need to add. It's a very different--one is a theoretical assumption of what are the components of the production, et cetera, et cetera, and you assume this is what it's going to be, so you don't need to add a Control Premium there, and we don't add.

Q. Professor, I'm simply asking because you have produced these excerpts from textbooks and articles in the field. I'm simply asking whether you agree with the broader context of the passages that you're citing.

Let's go to the next one. This is Damodaran on Valuation, CRA-171. You are familiar with Damodaran, I take it?

A. (Prof. Spiller) Sure.

Q. He's known as the Dean of Valuation?

A. (Prof. Spiller) Well...

Q. You may not agree with it.

A. (Prof. Spiller) That's fine.

Q. But you also refer to him, though?

A. (Prof. Spiller) Sorry, sir?

Q. You also refer to him in your Reports?

A. (Prof. Spiller) Yes, we do. We do.

Q. Okay. Let's look at a couple of passages in that book. Page 481, the passage starting with "The value of control will vary across firms."

A. (Prof. Spiller) Correct.

Q. "Since the Control Premium is the difference between the status quo value of a firm and its optimal value, it follows that the premium should be larger for poorly managed firms and smaller for well-managed firms. In fact, the Control Premium should be zero for firms where Management is already making the right decisions."

Would you agree with that?

A. (Prof. Spiller) Yeah, that sounds reasonable here, generally speaking.

Q. And would you--

A. (Prof. Spiller) Although in a zero part, it is difficult to think because that means it's difficult to assess a situation where we are in Nirvana. I don't think we can believe that we are at any time in our lives in Nirvana, and there's always better ways to do things, but yes, it may--you know, that is--

(Overlapping speakers.)

A. (Prof. Spiller) – I disagree with the last part of the sentence.

Q. Back in 2011, July 2011, was RMGC, in your view, a well-managed or a poorly managed firm?

A. (Prof. Spiller) Average, I would say. If we look at what Dr. Burrows says, it will be very badly managed, but we leave it at that. For me, there is no indication that Management, with all due respect, was particularly--particularly bad or particularly good.

Q. Okay. I don't think Dr. Burrows takes any view on that, but we will see and hear him tomorrow.

Let's go to--it's actually on the same page, there's another passage of interest, starting with "There can be no rule of thumb."

"There can be no rule of thumb of Control Premiums. Since Control Premium will vary across firms, there can be no simple rule of thumb that applies across all the firms. Thus, the notion that control is always 20 to 30 percent of value cannot be right."

Would you agree with that?

A. (Prof. Spiller) Well, I will disagree with this. I agree with the first part, it varies across all firms, but when we have a large sample and there is no indication that this company is particularly better or worse, I think that, as Behre Dolbear stated, a large sample, it's a very useful control for specificities that may not apply.

As a consequence, relying on the average or the median of premiums excludes companies that are fantastically managed from companies that are a real disaster, and I think that it fits very nicely with the Management of Gabriel, is reasonable. At least, we haven't heard that the amazing things--

(Overlapping speakers.) which

Q. Okay. Take a look at one more. Let's go first to your Report, the Second Report, Page 35, where you actually quote Professor Damodaran.

A. (Prof. Spiller) Sure.

At Page 35 or Paragraph 35, sir?

Q. Page 35.

You should also see it on the screen. It's a brief passage. CL-2, Page 35.

A. (Prof. Spiller) Yes. Page 35, very good.

Q. Starting with "Professor Damodaran highlights." It's on the top of the page.

A. (Prof. Spiller) Yes.

Q. "Professor Damodaran highlights that the premium paid by acquirers has been between 20 percent to 30 percent in the 1980s and 1990s in the United States, which represents 'an amalgam of all of the motives behind acquisitions.'"

Do you see that?

A. (Prof. Spiller) Yes.

Q. If we could then go to the actual quote, if we could leave this on the screen and compare it with the Damodaran Page 482, where you take this from: "Researchers have used"--it's a paragraph starting with "Researchers have used the premium aided by acquiring, which is as a measure of control."

A. (Prof. Spiller) Excuse me. Which--

Q. It will show up now. It takes a while. "Researchers have used." It's second paragraph, second sentence. "Amalgam"--it's the first sentence, in fact. "Researchers have used." If you could highlight that. And if you compare with your quote, you have quoted this part of this sentence, but you have omitted including "synergy."

You don't like "synergy," Professor Spiller?

A. (Prof. Spiller) Excuse me. Oh, that's fine. Including "synergy," sure, that's fine.

Q. And if we then look at the next sentence: "The premium paid in an acquisition is a composite value of control, synergy, and overpayment."

Would you agree with that?

A. (Prof. Spiller) Yeah. I don't think that there is systematic overpayment, but in some cases it could be.

Q. And if we could leave this on the slide and look at Dr. Burrows's Report, First Report, Page 27, Paragraph 59--

MR. KOTARSKI: Sorry, Dr. Heiskanen, can you repeat that reference?

DR. HEISKANEN: First CRA Report, Page 27, Paragraph 59. It's a very brief paragraph.

Burrows's Report. Jim Burrows's Report, First Report, CRA-1, Page 27.

BY DR. HEISKANEN:

Q. The three reasons that Professor Damodaran gave for Acquisition Premium are precisely the same three reasons given by Dr. Burrows in this Report for Control Premium, aren't they?

A. (Prof. Spiller) Okay.

Q. Now--

PRESIDENT TERCIER: Mr. Heiskanen, may I just interrupt you? You had estimated half an hour, hopefully less. You can estimate the time you need now to comply with your statement.

DR. HEISKANEN: It will be less than 10 minutes, Mr. President.

PRESIDENT TERCIER: Okay. Good.

BY DR. HEISKANEN:

Q. Professor Spiller, a Control Premium is something that is paid in the context of an acquisition; correct?

A. (Prof. Spiller) Correct.

Q. And it is something that a company may agree to pay after due diligence; correct?

A. (Prof. Spiller) Correct.

Q. If the company doesn't do the due diligence, there will be no acquisition at all; correct?

A. (Prof. Spiller) Correct.

Q. You were involved in the Crystallex versus Venezuela Case as an expert, weren't you?

A. (Prof. Spiller) Yes, sir.

Q. I believe you opined in that case that the Claimant was entitled to a compensation that included a Control Premium; correct?

A. (Prof. Spiller) Correct.

Q. The Tribunal didn't award a Control Premium; correct?

A. (Prof. Spiller) Correct.

Q. You were also involved as an expert in Tenaris and Talta versus Venezuela; correct?

A. (Prof. Spiller) Yes.

Q. And you opined that the Control Premium should be awarded in that case?

A. (Prof. Spiller) Well, you know, you have to refresh my recollection here. I don't believe we had a stock market analysis.

Q. Okay. But you do recall that there was no Control Premium awarded in that case?

A. (Prof. Spiller) Well, if we use an Income Approach such as the DCF, we don't include a Control Premium. Only when you are taking stock prices into consideration do you have to incorporate the Control or Acquisition Premium.

Q. And you were also involved in the Valores Mundiales versus Venezuela Case as an expert, were you not?

A. (Prof. Spiller) Yes, sir.

Q. And you took the view that the Control Premium should be awarded in that case?

A. (Prof. Spiller) I did not, because we did an Income Approach, meaning a DCF. No Control Premium there.

Q. Okay.

A. (Prof. Spiller) I have hundreds of other cases. You can ask me each one.

Q. Okay. That case actually is on record, so that can be checked.

You were also involved as an expert in Stans Energy Corporation and Kutisay Mining LLC versus Kyrgyz Republic?

A. (Prof. Spiller) I was not.

Q. You were not?

A. (Prof. Spiller) No.

Q. Okay.

A. (Mr. Dellepiane) I was.

Q. All right, Mr. Dellepiane. Apologies.

A. (Mr. Dellepiane) No, not at all.

Q. You gave an opinion in that case that recommended awarding a Control Premium; is that correct?

A. (Mr. Dellepiane) Correct.

Q. And the Tribunal didn't grant the premium?

A. (Mr. Dellepiane) The Tribunal did not grant damages pursuant to the stock market capitalization because of a number of reasons, including mostly the fact that the Date of Valuation that Claimant--and this is obviously public; otherwise, I would not necessarily discuss it this way--the Date of Valuation that Claimants were arguing and claiming for was at a certain time with a certain context of stock prices, et cetera. The Date of Valuation from a legal standpoint granted by the Tribunal or decided by the Tribunal was two years later in a completely different economic context, in the rare earth element metals sector, and so the Tribunal determined that at the time of the chosen Date of Valuation, which was different from the one pleaded by Claimants, the method they were comfortable with was not the stock market capitalization.

So, you're correct that there was no Control

Premium awarded, but I think it's important to understand why. It was not that they took the market cap and did not apply a Control Premium. They took a completely different view of what was happening on a date very different from the one at which the Stock Market method was applicable.

Q. Okay. Thank you very much.

A. (Mr. Dellepiane) You're welcome.

Q. Thank you very much, Professor Spiller and Mr. Dellepiane.

DR. HEISKANEN: Mr. President, I have no further questions.

PRESIDENT TERCIER: Thank you, Mr. Heiskanen.

Mrs. Cohen, do you want to have a short break, or are you ready to start with the redirect? Mrs. Cohen.

MS. COHEN SMUTNY: Thank you very much. Claimants would appreciate just about a 10-minute break, and then we will proceed with any redirect.

PRESIDENT TERCIER: Okay. Good. So, we take 10 minutes' break.

(Recess.)

PRESIDENT TERCIER: Good. So, Mrs. Cohen?

MS. COHEN SMUTNY: Yes, I have very few questions for redirect. I'm going to ask my colleagues to pull up--be prepared to pull up a couple--one or two documents that Professor Spiller was referencing.

REDIRECT EXAMINATION

BY MS. COHEN SMUTNY:

[redacted]

[redacted]

MS. COHEN SMUTNY: Mr. President. We have no further redirect. Thank you.

PRESIDENT TERCIER: Thank you very much.

Do my co-Arbitrators have a question? Professor Grigera Naón? No?

Professor Douglas?

ARBITRATOR DOUGLAS: Here is another opportunity to make myself unpopular with everyone because I do have a few questions. I apologize.

PRESIDENT TERCIER: Doesn't matter. Don't apologize. You ask your questions.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR DOUGLAS: It's lovely to see you again, and I'm sorry that you have been on the stand for such a long time.

I want to start with a few general questions about market capitalization as a means of valuing a company, and I want to refer you to a different scenario to start with, which is the Tesla share market value because--as we all read a few months ago, Tesla surpassed Toyota as now the most valuable car company. In fact, at one point it doubled the value of Toyota. The only thing is, though, Toyota sells 11 million cars a year, and Tesla sells 300,000.

And a lot of people, when this happened--this is now the share price, I think, decreased 30 percent or something since that time, but a lot of people at the time, a lot of the financial analysis says that the share price was essentially overvalued. Even Elon Musk, I think, the CEO, testified it was overvalued.

So, how do we make sense of that? I was sort of getting the impression that your view is the markets are always right in the sense--in terms of the value of shares, but what does it mean when someone says the share price is way overvalued?

THE WITNESS: (Prof. Spiller) Well, there is a fundamental--excuse me, do you hear me well? I hear myself echo.

This is a fundamental difference between a company like Tesla that has a--the "sky is the limit," in the sense because, as you know, we're going to convert to electric cars. The question is when and how. But we know the future; we just don't know exactly how it is; and this company, for good or bad, its position, its definite position. So, you are buying into something like that. You aren't buying the current--the current assets of--particular asset of Tesla. You can't compare Tesla with a mining company because the mining company has very clear assets. These are the assets in the ground, and this is what you pay for. Mining companies, you pay for assets in the ground. You don't pay for, "This guy is amazing; he's going to completely revolutionize the mining business." No, you don't pay for that. You pay for resources; you pay for gold in the ground.

So, you could have situations where you and I disagree about the value of Tesla because you say, "No, we're not going to go into electric cars in 200 years," and I would tell you, "no, Professor Douglas, I believe it's going to happen much in our lifetime, or at least in yours."

And that is--that opens a reasonable--we could be reasonable because there is no metric by which we can do our assessment of that. There is no metric. You tell me how do we forecast? When is it that we are going to convert? We just don't know.

ARBITRATOR DOUGLAS: Okay--

THE WITNESS: (Prof. Spiller) With gold, it's different; right? You have the gold price, you have the pricing of all the other mining companies, you have their resources, and you have this Company’s resources, so there is much less potential for these enormous valuations--these enormous valuations. Nobody is going to pay for a mining company what they will pay for Tesla or Apple. These are companies of the future.

ARBITRATOR DOUGLAS: So, to summarize, in relation to Tesla people are betting on the future working out in a certain way, and as such, it's a bet today about what's going to happen in the future.

THE WITNESS: (Prof. Spiller) But you don't have a reference--what I wanted to say is that you don't have that reference for how the future is going to be.

ARBITRATOR DOUGLAS: Okay. But gold-mining is a risky business as well because--

THE WITNESS: (Prof. Spiller) Oh, yeah.

ARBITRATOR DOUGLAS: --because in relation to this Project and I'm sure most others, you don't know for sure whether it's going to go ahead. So, at least in July 2011, the Valuation Date, no one could be sure that this was going to happen.

THE WITNESS: (Prof. Spiller) But nobody is sure about anything. That's the truth about any project. You know, when you buy anything, you don't know about the future. When you do a DCF, you don't know anything. You don't know the future.

ARBITRATOR DOUGLAS: So, that's my question. Isn't there--isn't it possible that a large proportion of the share price in July 2011, given the uncertainty about whether or not this was actually going to go ahead, a lot of it is a bet on the future?

THE WITNESS: (Prof. Spiller) You bet on whatever--and let's put it this way: There are fundamental objective features of the stock market capitalization in this case that we have to take into account, which is you have a big mining company at the time, you have Paulson on hold, you know Paulson is $36 billion at the time, an investor who doesn't--you know, he--they actually forecasted the financial crisis, by the way. If these sophisticated investors thought that the Company's overpriced, they had clear instruments to get away, even without selling. Say that selling is not good, doesn't look good or whatever, they can short. They could enter and put tremendous short, exactly what he did with mortgages. He shorted the banks, and he made--what?--3, $4 million in 2008.

So, it is--these are sophisticated investors that can bring down any company down. If they thought that the company doesn't have a future, boom, they go. They go because they wouldn't make money.

ARBITRATOR DOUGLAS: Presumably they might take a bet--

THE WITNESS: (Prof. Spiller) Exactly.

ARBITRATOR DOUGLAS: There is a 50 percent chance that it will work but we're willing to go along with that risk.

THE WITNESS: (Prof. Spiller) Well, that's precisely what it is. When you do a DCF, for example, when we do a DCF, which we do all the time because most cases don't have publicly traded companies, what do you do? You are--you assume something which is reasonable, but there is always a risk that the Project will not go in, even if it is an existing company.

You know, my father had a company; it went bankrupt.

ARBITRATOR DOUGLAS: My question is, though, we're trying to put a value on something on the basis of what a willing buyer would pay to a willing seller in an arm's length transaction. And, of course, there has to be a willing buyer, and neither party is selling under compulsion. And if we're talking about the sorts of buyers for this particular Project in 2011, we're essentially talking about mining companies, and I imagine mining companies that are specialized in gold mine, and we heard from people associated with those that they would start with the DCF, and they may well have other means of putting a value on something, but at least start with the DCF.

And so, the concern I have is that, on the one hand, we have a DCF, which has been prepared by your colleague, and we have the share market capitalization with a premium, and that comes out at 20 times the value of the DCF that's being run.

So, my question is: If you're Goldcorp or one of those sorts of players and you start with the DCF, you're deciding whether or not to make this acquisition at all, so there has to be a willing buyer, aren't you going to see this difference and say, "Well, this doesn't really add up; we're not going to take a pump on this" because the difference between the DCF and the share price is just too large to bridge.

THE WITNESS: (Prof. Spiller) I think the testimony of the former Goldcorp executive--what?--Jeannes, or something like that, was slightly different. He said that they start with the market capitalization; they look at the market price of the company. Then they do a DCF. And then, if the DCF doesn't conform with the market price, they look at it again, and they look at what extent they do--and here he said "we look at multiples." This is the P/NAV that my colleague explained to you today. They looked at the P/NAV of the target company, say in this case Gabriel, and the P/NAV of Goldcorp, and this is what he said: "If my P/NAV is higher than the P/NAV I have to pay, then I acquire it because it goes"--it's "accretive"; that's what he said.

So, now the P/NAV is done with a basic set of assumptions as Mr. Dellepiane used in the NAVs, with same Discount Rate, same prices. When you do a DCF, you don't use the assumptions that analysts use for P/NAV. When you do a DCF, you have to use what is a reasonable forecast of prices and what is a reasonable Discount Rate.

What happens with the DCF of my colleague, meaning of Dr. Burrows, is that he used prices from analysts but he didn't use Discount Rates from analysts. He used a Discount Rate which is twice the median--he used a Discount Rate of 10--and he used a price which is used for P/NAVs, which use a much lower Discount Rate. So, he has a basic incongruity in his assessment, and that's why the DCF--his DCF is so low.

Now, the goal that he did what he calls a "naive DCF," which he then go on to say only this naive investor would use, which use spot prices and the timeline that we use in our P/NAV, and he gets more than 10--more than 10 times the value. Now, those are--even using a Discount Rate, which is 10 percent, gives more than 10 times.

So, what the beauty of the stock market

capitalization as an approach for valuation in this particular case--not in all, but in this particular case--is that you don't have to make these particular discretionary assumptions. What is the Discount Rate appropriate for a gold-mining company? Is it 10 percent? I doubt it. What is the reasonable price for an acquisition to use? Is it 1100 when the current price in the futures are above 1600? I doubt it.

So--but you will have--if you use a DCF, you will have to decide what are the right parameters to use; and, if you take the Stock Market Approach, you don't have to because everything is objective. The only discretionary thing is the Control Premium or Acquisition Premium. That's the only--

ARBITRATOR DOUGLAS: That's understood, but we normally approach these cases armed with a few different approaches, and we're told--there is a slight irony here, you do enough of these cases, you see a pattern, and the pattern one sees is that normally that the Claimant's expert says, "The DCF was the only way to go; this is the most reliable," and the Respondent's expert says, "Oh, there is too much speculation and too many variables and can't be relied on," and in this case we have the opposite.

THE WITNESS: (Prof. Spiller) Not completely. Professor Douglas, not completely. We have an Income Approach, too. Our P/NAV which, you know, Romania decided not to challenge me on that, but we have the P/NAV. The P/NAV is an Income Approach.

ARBITRATOR DOUGLAS: No, that's understood.

THE WITNESS: (Prof. Spiller) Gold market--right?--as Mr. Dellepiane explained.

So, we have introduced an Income Market Approach, we have introduced transactions which Romania decided not to challenge me on that. We have three methods for you, the three are very close together.

Now, it's true that the three rely on the Acquisition Premium, which we may disagree. Okay? We can have a lot of discussions on that, but the stock market has no other assumptions in it, and would provide a very robust price for all of 2011, if you wish.

So, I think in this case your decision is much simplified than having to decide on all the technical aspects of an Income Approach of a DCF.

ARBITRATOR DOUGLAS: Just a question about--you were asked something at the start about what Project Rights you were actually valuing because, as of July 2011, of course, no one knows whether, for example, the Environmental Permit would be issued, and it may not have been. I mean, the Government might have decided, "Actually, this is too risky; we're not going to issue it because of cyanide transportation" or something like that, and no one knows that in 2011. But, at Paragraph 25 of your Second Expert Report--you were taken to this--your assumption is that permits should have been issued by early 2012.

So, are you--is your assumption essentially that, as of July 2011, everything they need--they had a right to have everything they need to begin development at the mine?

THE WITNESS: (Prof. Spiller) No, because this is--this relates, as I explained, to the P/NAV Approach. In the P/NAV Approach, as in the Income

Approach, as the DCF that Dr. Burrows says, he has to make an assumption about when we can start construction. In doing the NAV, Net Asset Value, as Mr. Dellepiane explained, it's also present in the Net Present Value calculation, so I need to put Cash Flows at some point in time, so we receive an instruction that, as of Date of Valuation, permits--Environmental Permit should have come around the first quarter.

So, with that information, I can build Cash Flows. Otherwise, I cannot be--I'm not an expert--

(Overlapping speakers.)

ARBITRATOR DOUGLAS: It’s about the timing of the Cash Flows.

THE WITNESS: (Prof. Spiller) Yes, what is the time? It's the same. Dr. Burrows is of the opinion that they will start producing 2023, but that is based on an instruction. We don't have an opinion on when it's reasonable to assume. We have an instruction that, "Well, the Environmental Permit should start here around first quarter 2012," so then we just use the SRK, we move back and forth SRK cash flows accordingly. That has nothing to do with the

Stock Market Approach--nothing--because--

ARBITRATOR DOUGLAS: Okay. But you're not suggesting that you're valuing vested rights as of September 2011? Because sometimes when you're answering what rights are included in the Project, you're saying the rights to develop the Project, but, of course, that right was contingent as--

THE WITNESS: (Prof. Spiller) Yes.

ARBITRATOR DOUGLAS: --as of July 2011?

THE WITNESS: (Prof. Spiller) But that's what you're valuing. That's what you're valuing. You need the Stock Market Approach because you're--

ARBITRATOR DOUGLAS: The contingency.

THE WITNESS: (Prof. Spiller) Yeah, you cannot know whether--people--nobody will say that this company will be permitted. We expect this company to be permitted, blah blah blah, but nobody says "I have the permit in hand, the Company never said so, no analysts said so. All emphasized there are risks, there is problems; you know, surface rights, permits, construction. There were these complex and difficult--

ARBITRATOR DOUGLAS: No, I just hadn’t pick up the difference in terms of the Cash Flows to the other methodologies. That's understood.

I think I have just one last question, and that was--and I apologize if you've already addressed it in a report somewhere, but they're lengthy reports, but if someone could bring up CRA Report No. 2 and Paragraph 10. And I'm not sure of you had reacted to this point or not, and I just wanted to give you an opportunity to do so.

It's about this Transaction in July 2011.

THE WITNESS: (Prof. Spiller) Right.

ARBITRATOR DOUGLAS: And what value you can expect from it.

THE WITNESS: (Prof. Spiller) Yeah. I have seen--and this came in the Second Report, so we couldn't really opine in the Second Report. It's too late. As you know, we cannot discuss things not written in the Report in the direct. So, this is an interesting point raised.

My understanding--and I looked at some of these because, obviously, the price is very small. I look at the Foricon transaction, and there are several issues:

First of all, this involves--my understanding, okay, from what I've read and learned--is that this involves an acquisition of a fraction, of .23 percent of the shares. In the period when there was a capital expansion--was going to be a capital expansion of RMGC, my understanding at the same time is that Foricon at the time was in distress and had to sell as it couldn't do the capital acquisition, and that Gabriel had preemptive rights as a consequence Foricon couldn’t sell to anybody but essentially to Gabriel, on top Foricon had a significant loan with Gabriel.

So, my understanding is that Gabriel was able to extract a very good deal from Foricon, which, as you know, when there are preemptive rights, normally prices are substantially discounted, and that's what it is. This is not a fair-market transaction between two unrelated parties. And, furthermore, it's not Fair Market Value because Foricon was in distress.

So, with all that, my view is that these transactions should not be used for fair-market assessments.

ARBITRATOR DOUGLAS: Okay. That's very helpful.

And just a final point, does it concern you at all that you haven't--unless I'm mistaken, have you seen any evidence on the record that any of the majors, the mining majors, were making serious inquiries to acquire the Project around about the Valuation Date or leading up to the Valuation Date? Was that a concern at all?

THE WITNESS: (Prof. Spiller) No, and I will explain to you why. You need a willing buyer--right?--but you need a willing seller. At the time, when you're close to get a permit, you're not going to sell. You could have sold when it was initial in 2002, 2001, when you started to do things, you could have sold then, but if you think that you're going to get a permit in six months, you don't do it because there is going to be a big increase in price once you de-risk the Project of the permit.

Now, in my own experience, companies will gain anything between 30 to 100 percent when a permit is granted because it's a huge--depending on the risk--right?--depending on what was your risk and what was the expectation in the market.

So, I would not expect Management to entertain an acquisition unless we already solved the permitting. And there are some interesting--I saw, I don't recall, some communication from Paulson about that, "We need to get the permit; we need to get the permit," so the permit was the thing that was driving the value, the expectation of the permit, and you would not accept that.

Now, once you get the permit, that's when the companies will come, and Newmont obviously was there; right? For some good reason, Newmont bought in early on and was there.

ARBITRATOR DOUGLAS: It's not a case that, I mean, at the Valuation Date, the share price is pretty high. That's not anticipating--that's not already priced in, in other words, to the share price?

THE WITNESS: (Prof. Spiller) I don't

believe that it will be priced in more than the average, more than the average, because it's a big risk to put it in, to price it in because--you know, you're pricing--if you're pricing an acquisition, you know it's because you're going to get the permit because otherwise there won't be an acquisition, you don't acquire a company a month before getting a permit. You wait for that. It's too risky to do that, so you wait, the acquisition comes in, now someone else did the work, I buy in.

Now, if--so, if you're assuming that there is--now, you're assuming right now that there is some probability of a permit and the price incorporates that assumption, but to put on top that if it is a permit I'm going to--that is double the risk, to double the risk of a transaction, so I would say that number is fairly small, if it is.

ARBITRATOR DOUGLAS: Okay. Well, thank you very much. It's a pleasure as always.

THE WITNESS: (Prof. Spiller) Thank you.

PRESIDENT TERCIER: I'm sorry Professor Douglas gave a bad example, and I still have a question.

THE WITNESS: (Prof. Spiller) Wonderful.

PRESIDENT TERCIER: I will start with a few remarks.

Of course, everybody understands the questions we're asking have nothing to do with the prejudice of the decision which we have already taken. We want to be informed.

My second caveat is the fact I will come back on the question of the Acquisition Premium. You said a moment ago, "Okay, we can discuss about it; there are a lot of discussions," okay, but it is also a lot of money, so I would say it's really worth to discuss it.

THE WITNESS: (Prof. Spiller) Certainly.

PRESIDENT TERCIER: Thirdly, I heard your presentation and read your Report. And now I'm a lawyer, a teacher, and I have tomorrow or Monday to tell my students how to evaluate the value of a company, and so I come and say, "Well, I heard from Professor Spiller there are two ways. The first one is you go with the stock market capitalization. This is the way you will do it just for small investments, small buyer that will pay exactly the price that is the price on the market, and you have another price. It is the price in which you introduce a premium, Acquisition Premium, and this is for the 80 percent, if I'm not mistaken, 80 percent of possible buyer that will pay quite more." And this is--if I understand you, this is the one that we should consider.

Now, I have one or two objections--well, not "objection," but questions--the first, it has been said that the main advantage of the stock market capitalization system is that it is objective because you are based on the market as it is.

THE WITNESS: (Prof. Spiller) Yes.

PRESIDENT TERCIER: And it also corresponds exactly or exactly more or less--it's an open question--to the asset and to the value of the assets. Well, what about the second? The second produce clearly subjective side, you don't know exactly, and you--in fact, you either value that it goes over the assets.

Now, am I right or am I wrong? I might be wrong because I'm a lawyer and simplify everything, but I would be happy because it's a candid question, and I apologize to those who already know the answer, but I would be very happy to have your position.

THE WITNESS: (Prof. Spiller) Okay. Thank you, Mr. President.

I think that we won't disagree that the stock price is the Fair Market Value of a share. That is, if we are in a commercial dispute, for example, about a transaction for a 10 percent of the shares, then we look at the stock price, and that's a really good assessment of Fair Market Value, unless the company is in distress or there are other issues, you know, but the Fair Market Value of a share is the stock price, and we don't have any discussion about that. You shouldn't have a significant discussion.

Now, when you talk about the value of the assets underlying that share, okay, for whom? For a controlling transaction. Okay. Then we have to talk about other transactions. That is the reference--when I say the Fair Market Value of a share is the stock price It’s because there are thousands of those transactions done every day, and we can rely on the beauty of large samples--right?--the beauty of crowds, intelligence of crowds, lots of people transacting on this asset, which is the share, we're done.

But now we want to go to the underlying asset. Okay. The underlying asset is transacted sporadically. It is only transacted when we have an acquisition; and, therefore, we have to look at those--at that set of transactions which are definitely for the underlying asset, not exclusively for the cash flow associated with that for a minority shareholder. And, as a consequence, the set of transactions is different, and you rely on the fact on the large number. Again, what do people pay when they buy an acquisition compared to what they were paying for shares, and the overwhelming evidence is they pay more. The overwhelming evidence. And there is no discussion with the other side that that's the evidence.

Now, we had a discussion with counsel for Romania about mismanagement. All companies are mismanaged, necessarily so, because we are humans;

we're not Steve Jobs or something. We are just regular individuals with all of our or not committing limitations, so nothing is perfect in this world. Some are worse, others are better.

So, the only assumption that I'm making--and this is the only assumption--that there is nothing peculiar about the Management of this Company. That is the only assumption I make. Now, if you think this Management is spectacular, then, then fine.

PRESIDENT TERCIER: Okay. Thank you very much, Professor Spiller.

Do my co-Arbitrators have a follow-up question? That's not the case.

So, I would like to thank you very much, Professor Spiller and Mr. Dellepiane, for your examination. It was for you certainly a long day, and I would like again to thank you.

(Experts step down.)

PRESIDENT TERCIER: It is not for all others exactly the end. We have to recall one or two points:

First, we will receive tomorrow before start of the Hearing Respondent position under what we always call the question of the "new claims."

Secondly, I've invited counsel--I didn't know if you will manage to do that, but to liaise in order to have a first exchange on the question of the Post-Hearing Briefs. This is the second point.

And that's all for me. I would be happy if I could speak with my co-Arbitrators just a few minutes after the end of this Hearing.

Have you a point that you would like to raise at this juncture, Mrs. Cohen?

MS. COHEN SMUTNY: Not at this juncture.

PRESIDENT TERCIER: I don't hear you.

MS. COHEN SMUTNY: Sorry.

Not at this juncture. Thank you.

PRESIDENT TERCIER: Thank you.

Dr. Heiskanen?

DR. HEISKANEN: Nothing from us, Mr. President.

PRESIDENT TERCIER: Okay. In that case, it remains for me to thank you all for today's examination. I wish you a lovely afternoon or lovely evening, depending--or even a good night for those who are far east, and I will see you tomorrow at 2:00. Thank you very much, indeed. Goodbye.

THE WITNESS: (Prof. Spiller) Thank you.

THE WITNESS: (Mr. Dellepiane) Good-bye. Thank you.

(Whereupon, at 2:50 p.m. (EDT), the Hearing was adjourned until 8:00 a.m. (EDT) the following day.)

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