BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/19/6

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In the Matter of Arbitration Between: :
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ANGEL SAMUEL SEDA AND OTHERS, :
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Claimants, :
:
and :
:
REPUBLIC OF COLOMBIA, :
:
Respondent. :
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VIDEOCONFERENCE: HEARING ON JURISDICTION AND MERITS

Friday, May 6, 2022

The World Bank Group
1225 Connecticut Avenue, N.W.
Conference Room C 3-100
Washington, D.C.

The Hearing in the above-entitled matter came on at 9:00 a.m. before:

PROF. DR. KLAUS SACHS
President of the Tribunal

PROF. HUGO PEREZCANO DÍAZ
Co-Arbitrator

DR. CHARLES PONCET,
Co-Arbitrator

ALSO PRESENT:

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Secretary to the Tribunal

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C O N T E N T S

P R O C E E D I N G S

PRESIDENT SACHS: Good morning, ladies and gentlemen. Are there any housekeeping matters that we should address? Claimant?

MS. RITWIK: None from our end, thank you.

MS. BANIFATEMI: Neither, thank you very much.

PRESIDENT SACHS: Okay. Just a matter that the Tribunal wishes to address --it is not excluded that we continue through tomorrow, but it is not excluded either that we finish by tonight. It would be good, if you could, in the course of the day, contact each other with respect to the next steps in the proceedings, namely Post-Hearing Briefs, the deadlines for the Briefs, whether one round or two rounds, possibly a limitation of pages and also how to deal with the exception within that phase of the proceedings.

Ideally, we would like you to come up with a joint proposal, but we are, of course, ready to discuss this --at the--in due course after having heard the Expert, so it is just a message from our side.

We will then start with the Witnesses of today. If I'm correct, we will start with Mr. Dickinson and Mr. Ruiz.

Mr. Ruiz, I suppose, this is you. So good morning. Please take a seat.

And good morning, Mr. Dickinson.

CLAY DICKINSON and FRANCISCO RUIZ,

CLAIMANTS' WITNESSES, CALLED

PRESIDENT SACHS: Mr. Dickinson, can you hear me well?

THE WITNESS: (Mr. Dickinson) Yes, I can hear you very well. Thank you. Good morning.

PRESIDENT SACHS: Okay, we can hear you too well, I would say. Could we lower the tone a little bit?

THE WITNESS: (Mr. Dickinson) Okay.

PRESIDENT SACHS: So I would ask each of you to read for the record the Declaration that you should have in front of you.

VOICE: Go ahead, Clay.

THE WITNESS: (Mr. Dickinson) Okay. My

Expert Declaration: I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere beliefs.

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

PRESIDENT SACHS: Thank you very much.

Now, we invite you and give you the floor to make your presentation.

DIRECT PRESENTATION

THE WITNESS: (Mr. Dickinson) Okay. I'm going to go first and I'm going to share the screen.

Hopefully, you all can see this? Can you?

VOICE: Yes.

PRESIDENT SACHS: Yes, we can.

THE WITNESS: (Mr. Dickinson) Okay. All right. Well, good morning, Tribunal, and thank you very much for the opportunity to give this presentation, even if it is virtual. I have a lot of material to cover in a short period of time, so I'm going to get right to it.

I will be covering the hospitality aspect of the work that Jones Lang LaSalle did in connection with this matter.

Basically, JLL, with regard to the hospitality piece, our instructions were pretty specific, and that was not necessarily to compare a market valuation, whatever, but rather to compile a list of Market Transactions data relevant to the hotel component of their client's portfolio of real-estate projects in Colombia; and, as such, we had to look from properties kind of ranging from upscale, mixed-use, resort-type properties to luxury lifestyle, mixed-use resort properties.

In addition, we were asked to comment on some of Dr. Hern's Report--statements in Dr. Hern's Reports as well as the CBRE report.

Very briefly, a little bit about myself. I've got almost 50 years of experience now across almost every aspect of the hospitality industry. I got a lot of white hair, as you can probably see. There is not a lot of benefits with that white hair, but I think one of them is perspective, especially in a region as dynamic and changing as the Caribbean, Mexico, Latin American region, to be able to see the way the region has evolved over the arc of four decades I think provides--allows for some pretty interesting insights.

I have spent of my 40 years more than 25 focusing on Caribbean, Mexico, and Latin America including the last 12 as a Managing Director of Jones Lang LaSalle's Hotels and Hospitality Group and the Valuation Advisory Services Group for the Caribbean Latin American Region. I've personally been involved in projects in Colombia since about 2008, and I would estimate somewhere between 25 or 30 projects there.

In order to sort of understand our approach to finding the comparable Market Transactions, I just thought it was very sort of important to give a high-level overview of the evolution of Colombia's lodging market. There's sort of Colombian lodging market before 2002 and then after 2002. Before 2002, you know, it was sort of a period of a lot of conflict, and whatnot. You actually had a decrease of about half a million international visitors between, say, 1993 and 2002. But starting--it started transitioning around 2002 up until around 2008, as we started to get some macroeconomic stability. There was a definite focus on trying to crack down on security and things like that. And then really it began to gain steam in the very latter part of the first decade of the new millennium. And I think that, you know, this because there was trust in the macroeconomic stability, there was trust in the security, the peace accord looked like it was imminent, and there was a very targeted fiscal policy in Colombia to try to stimulate growth of the tourism and hospitality industry.

And if you look at this timeline sort of there below, you'll see that, you know, really starting again toward the latter part of the decade, a lot of global hotel chains started coming into the country. And by the time we got to just after the pandemic, 2019, I mean you had 3 million international tourist arrivals. In Colombia, it really kind of emerged as an important regional international tourism destination.

Having said that, you know, in

capital-intensive industries like the hospitality industry, the maturity and liquidity in the capital markets is very important. And in Colombia, as in a lot of Latin American countries, there is kind of a lack of long-term debt and there's a lot of stratified ownership structures as a result, and that has actually retarded the development of an active transactions market in Colombia because institutional investors typically don't like the prospect of having to come in and maybe negotiate with dozens or potentially even hundreds of individual Shareholders that might own a hotel.

We think also it's important to really understand, you know, The Charlee Hotel, I mean it is--it was going to be sort of the brand for the proposed portfolio. And look at the impact that the hotel had when it first entered the scene in 2011. I mean, it was emblematic of an increasing sophistication of the industry in Colombia. There were some other lifestyle-type boutique hotels. The BOG Hotel in Colombia that came in around the same time, but they did not have the same impact that The

Charlee had in terms of, you know, creating a unique atmosphere.

And I think the performance of The Charlee, it has consistently been the market leader when you compare its actual average daily rates with the aggregate of upscale and above-markets not only in Medellín but also in Colombia, in Cartagena, which is notoriously the highest rated market in the country.

And so, you know, the success of lifestyle hotels elsewhere in the world would indicate that The Charlee was a concept that could work well in other markets throughout Colombia.

I'm not going to get deep into our overall methodology because you have both of our Reports and I understand it's a matter of the record, but I wanted to state that, of course, when we were looking at the Transactions, we started with Colombia, and we could identify no comparable hotel transactions for this time frame of entrance, basically 2014-15 to 2019, further of all, you know, some of the reasons that had been previously mentioned with regard to capital market illiquidity, generally.

So, what did we do? Generally, it's a very common practice in the industry, and especially if you're dealing with emerging relatively illiquid capital markets, you sort of cast a wider net and to expand our search for comparable transactions to competitive and/or comparable markets outside Colombia.

You know, Colombia, as a country, if a visitor is thinking about going there, they may well think, well, maybe I'll go to Costa Rica or maybe the Dominican Republic, Mexico, elsewhere in South America; and so, we looked at the Caribbean, Mexico, and sort of Caribbean rim and the Latin American market as comparable.

We were fully cognizant that that would probably produce a greater range, a little bit more variability both in the nature of the markets and in the comparator assets, but we were confident that, in the aggregate, some meaningful results would be produced.

We got the Comparable Transactions data from two primary sources (a), JLL. We have a proprietary database of the transactions, including some data that might not otherwise be available, and then we have a subscription to Real Capital Analytics, which is a global commercial provider of data both for, you know, general commercial transactions and the hospitality industry.

And this slide here really is sort of a summary of everything that we did find out, and we believe, at the end the day, some reasonable, indicative values emerged from our analysis.

Specifically, at about $205,000 per key, we consider that to be a reasonable indication of Market Value for upscale lifestyle mixed use or resort hotels in the Caribbean and the Latin American Region, including in Colombia. And that at about $519,000 per key, we considered that to be a reasonable indication of the Market Value of luxury lifestyle mixed use and resort hotels in the Caribbean and the Latin American Region, including in Colombia.

And then finally, that overall in the aggregate, around $414,000 per key is considered to be a reasonable indication of Market Value for a portfolio of upscale-to-luxury lifestyle mixed use resort hotels in the Caribbean and Latin American Region, including in Colombia.

So, we were asked also, as I mentioned to some of CBRE comments, I've kind of summarized them all here together. It basically goes to the point of whether The Charlee Hotel can really be characterized as a luxury hotel or not. They mention that they consider The Charlee brand does not comply with luxury positioning as it's not a Four Seasons or Ritz-Carlton, 50 square meter rooms, five fixture bathrooms, high-end finishes, et cetera, and that, you know, there is a little comment here about the Phase 1 of the Tierra Bomba in terms of the furniture, fixtures and equipment that, you know, at about 32,000 per key is above the full service which applies to the hotel brand as Charlee, that they had mentioned, according to the HVS surveys around $29,000 per key. I'll deal with that one right away.

In my opinion, that's a--it's a distinction without a difference. Yes, HVS, it is kind of a benchmark survey, it's in the United States, but it's not a very, very high level, and there's really not a material difference between 32,000, 29,000 per room; and probably if you're looking at a luxury lifestyle hotel in a place like Tierra Bomba, there is going to be a lot of imported materials, so that would be a conservative number, at any rate.

Going down a little further on Page 47, they talk about only (drop in audio) well-known brands for outstanding projects have a price premium. Regardless to the alleged success of The Charlee brand, it cannot be characterized as a luxury brand either, so both of those comments relate to the legitimacy of the Charlee's claim to be a luxury property. We felt it was very necessary, very quickly, to try to go over lifestyle hotels because it's really had a changing impact on the industry overall.

You know, the fact that the hallmarks of most legacy brands--think Marriott, Sheraton, Hilton, or whatever--consistent quality of physical facilities, cleanliness, predictable good service. These have now become sort of minimum standards. It's not that they're not important. They're table stakes.

And lifestyle hotels have gained prominence over the past 20 to 25 years partially due to their ability to evolve alongside travelers' ever-changing needs and desires, and modern travelers, they don't really want cookie-cutter hotels anymore. They want those table stakes, but they're looking for an authentic experience, an authentic ambience that reflects the unique aspects of the location where the hotel is located.

You know, more and more, they want the action outside the hotel room, vibrant lounges, innovative cocktails, notable cuisine, and even, like, surprisingly personalized service. This is what makes lifestyle hotels more than just a hotel experience but rather a destination within a destination if it's done right.

And the success of the lifestyle concept is evidenced by the fact that today, most major hotel brands have at least one soft brand that they use to bring in a lot of independent lifestyle type hotels, and as they say, that imitation is the sincerest form of flattery.

A lot of these pioneer lifestyle brands, Thompson, Delano, Kimpton, et cetera--Thompson's now (drop in audio) the Hyatt, the Delano and SLS were part of the (drop in audio) core brand, Kimpton is owned by Intercontinental Hotels Corporation. And, of course, AC Hotels is owned by Marriott.

So, they've either acquired these brands or they--and/or they've developed soft brands and their own lifestyle hard brands.

This is a trend that is not only in the mature markets, but it's also in Latin America. Faena, started in Buenos Aires, moved to Miami Beach, has now been acquired and is part of a core. Selina started in Panamá, grew exponentially, and now is going worldwide; it's about to do a major IPO on the New York Stock Exchange.

So, the question kind of remains: Could this have been the future of The Charlee? So, we believe that The Charlee Hotel, it is a luxury hotel because, No. 1, STR, which is the global leader and, basically, hotel data for the hospitality industry worldwide, does not determine a hotel's class by its physical features. Rather, a hotel's class is based on the average daily rate in relation to the hotels in their proximity. And the STR categorizes The Charlee Hotel as an independent luxury hotel in their database.

With the growth of experienced-based lifestyle hotels, luxury is increasingly defined by the price premium it can achieve and the experience it can deliver rather than the nature of its facilities. You know, even traditional luxury brands like the Four Seasons or the Ritz-Carlton or the Mandarin Oriental are moving toward what they call, sort of, authentic luxury, which is based more upon curated experiences and flexibility than it is on marble floors, and gold-plated fixtures, white glove service and sort of over-the-top opulence. The notion that you have to have a certain brand awareness, virtually every single lifestyle brand has been successful without existing brand awareness before opening. Indeed, that's kind of a hallmark of a good lifestyle hotel. Whisper campaigns and then they open with a bang, public relations is what these guys do best.

And that every single lifestyle brand started out as a single hotel that because it was able to establish a sense of place and drive RevPar premiums and outsize profits by becoming, sort of, the place to be seen both in person and online through social media.

Moving to some of Hern's comments, this notion that using fully operating comparators is conceptually irrelevant. Honestly, I'm a little bit mystified by this because what else would one use if one were trying to come up with a value, you know, whether a hotel is existing or whether it's proposed, it's--it routinely--these were valued on the basis of fully operational comparators. This is to substantiate the assumptions behind the discounted-cash-flow analysis or a prospective value based upon the analysis of comparable sales.

The basic assumption is that these are going concerns and that investors, you know, they're buying cash flow in addition to--they're not just real estate.

To think that the value of projects that are not yet operational or only partially built is not based on really, you know, how much costs had been deployed so far. This would be a minimum value at best, and at worst it could be a negative value. Of course, you know, if you have a failed project and it's half completed, a new buyer either has to go with what they had or they're going to have to incur the cost of getting rid of those improvements that had been put in the ground.

So, for this reason, using fully operational hotels as comparators is not only necessary, but it's absolutely the correct approach.

And then, dealing a little bit with Dr. Hern's claim that, you know, the hotels are not comparable to BRG's in any case, and they talk about, you know, the fact that some of these are located in destinations, they use Mexico as an example, which is a, you know, lower risk country and has a stronger hospitality segment. And then he, you know, mentions here that evidence showing that these comparator hotels charge multiple times higher room rates than five-star hotels, you know, including the Claimants' luxury hotel. As I previously stated, we knew (drop in audio) Colombia was going to produce more variability in the markets, and the markets themselves, and in the assets, but that's not a reason to not follow what's a very common practice.

Moreover, we believe that reasonable results were produced.

Hern's methodology for evidence of much higher room rates is questionable at best because to try to pick a specific moment in time and just (drop in audio) you know, on June 19th the rate at the Four Seasons Papagayo was $2,300. With today's revenue management systems, that's almost worthless information. You could do it a week later or two days before and it could end up being $600. It's sort of the same concept as sitting next to someone on an airplane. You pay $200 for your ticket and the other person paid 2,000. There's a lot of algorithms, and these prices are dynamic, they're changing all of the time.

And it does not necessarily follow that the value per room should be correspondingly higher than in the Claimants' hotels. Using Hern's own example of Mexico to illustrate the point, in Mexico, it produced comparator sales transactions for both upscale and luxury assets that were significantly above and below the regional averages. And as far as the notion that risk--you know, that México's less risk, risk is not a static concept. If you go back to México in 2009-2010, just about a decade ago, it was an investment pariah, you know, between H1N1, and the narco violence in México at the time, the effect of the Great Recession on México, investing in Mexican hospitality may well have been perceived as being higher risk at that time than investing in hospitality in Colombia.

And, you know, there's a lot of other elements that come with risk. You know, other markets are either, you know, equal or greater risk than Colombia due to the lack of volume or the lack of air-accessibility or very high operating costs and low productivity, reliance on a single market source. All of these can affect the relative risk and positioning of a market, and especially in a region such as the one that we used.

And, lastly, EBITDA per key is a lot more important than revenue per key when we're trying to determine price and value.

And I'm going to conclude with talking about, you know, Hern talked about EBITDA margins. I--it continues to be my opinion that to use such general EBITDA margins as, like, you know, the average EBITDA of a publicly traded global hotel (drop in audio) Marriott or a Hilton, or something like that. When you're talking about something as specific as the EBITDA margin of a specific hotel or a specific portfolio of hotels, is simply the wrong way to go about doing it.

EBITDA tends to be very idiosyncratic to the property or to the portfolio. If, for example, I wanted to try to determine what would be a reasonable EBITDA for, say, The Charlee in Medellín, I would be a lot more concerned about picking properties that: Are they using the same accounting principles; is it essentially the same size and the same positioning; is the food and beverage operation very, very similar; is it staffed very similarly; are the overall costs in line? And, you know, that would be more important than the EBITDA margin of, say, you know, Hilton Hotels globally.

I would not, for certain, have used, for example, the Irotama Hotel, which is one of the ones that Dr. Hern used in comparing the Columbian luxury EBITDA margins. Because I know that hotel very well, and I know for a fact that they do not use the uniform system of accounts for the lodging industry, so I have no idea how they're accounting for their revenues, how they're accounting for their expenses, their capital expenditures and whatnot: I do not know whether I'm comparing apples-to-apples.

And equally and importantly, from an operation standpoint, the Irotama has nothing to do with the nature of the operations at a hotel like The Charlee, so it's an absolutely horrible example to use.

And so, with that--I know I had to speak quickly. I hope I was able to make myself understood, and I'm going to turn it over to Francisco.

THE WITNESS: (Mr. Ruiz) Hello. My name is Francisco Ruiz. I am the Vice President for Research Consulting and Capital Markets in JLL Colombia, and I'll make some points that will illustrate, I guess, where our numbers come from and why they would be different from the Respondent's.

So, next, please, Clay.

All right. I want to start from the scope because I think this is where everything starts to diverge. Our scope was to do a complete evaluation of comparable real estate projects relevant to the Claimant's projects in Colombia. Based on those valuations done in 2019, we have to go back and forward to produce historical and projected data both on those sales prices but also on construction costs.

Next.

And at this point, I want to invite the Tribunal to have these images in mind because this is part of the information we were provided with. This is--these were the units we were valuating. Not any high-end property but these very exclusive luxury units and not just any high-end property.

Next.

The same with the other projects.

Next.

So, before we dive into the details, I just wanted to explain how the Colombian market is not as transparent as other markets in the U.S. or Europe where you can get a lot more information on selling prices. It's not completely opaque. You can--there is definitely third-party data providers. But if you want to produce accurate, relevant, and numbers that make sense, you have to be very careful on how you handle the data and not just--and go further than just what you can get from a third-party provider.

Next.

So, what were our sources and methodology and results? So, as I mentioned, we did rely on a third-party provider, Galería Inmobiliaria, which we believe is the best one. I'll explain why. But we didn't stop there, we also leverage our network of contacts across the different markets, and we also relied on information from on-line sites, postings both national level but also market-specific sites that we found.

Finally, for our projections and to produce historical data, we relied to some degree on the national statistics department's information.

Next.

While this is in our Report, I don't want to go into great detail, but as I mentioned we first did a comparable--comparison method where we drag—where we cast a wide net to really try to come up with the best information possible. And based on that, run our comparison, I will explain that a little later, and then go back and forth using basically statistical and econometric methods to produce our output matrix.

Next.

I will refer to this shortly.

Next.

So, at the end, our end results were prices, sale price estimates, and, next, next, construction cost estimates. For these we also went through a very thorough process where we sat down with a specialized construction consultancy that specializes in budgeting for construction projects. We shared the same information we were using with--for our valuations, so that they could have a very clear sense of what they were pricing. They built their numbers from the bottom-up. They get quotes for inputs. They account for transportation costs from the sourcing of the materials to the construction site and so forth so they can provide as accurate a number as possible.

Next.

So, we were asked by counsel to provide some comments on both CBRE and Dr. Hern's reports in terms--in what refers to the real estate data. So, as I mentioned, our methodology differs because we used multiple sources and tried to go at the very micro level. CBRE remained at a very high-level database analysis, and compared with some developers survey they conducted.

And I guess the bottom--the biggest difference will be the comparability. We made sure that the prices we provided were for comparable projects and not just a wide range of high-end projects.

Next.

I believe the best way to understand this is to basically understand a little more what the market looks like when you go down into the detail, so this is an histogram of prices and frequency, how frequent are the datapoints for each price bracket.

So, as you can see, the Colombian market is skewed towards low income and middle income for units for low income and middle income families. There is--this is normal, I guess, in Europe you would have a more symmetrical distribution. But in Colombia it's definitely skewed. If you are talking about luxury, then you have to go towards the right of that distribution.

A quick note, stratum, which is often used in many analyses, you can see there is a lot of overlap between price ranges, so you have to be very careful when you bring that into your analysis.

Next.

So I tried to do a very stylized explanation of what is the main difference so you get a clear sense of what we are talking about--

(Pause.)

PRESIDENT SACHS: I'm sorry. I'm sorry. I have to interrupt.

REALTIME STENOGRAPHER: We've lost connection, the recording has stopped and the Interpreters are not able to hear.

PRESIDENT SACHS: I'm sorry, Mr. Ruiz, we have to solve this technical problem.

REALTIME STENOGRAPHER: It's a technical issue.

(Pause. Technical issues are being worked out.)

SECRETARY MARZAL: You may resume your presentation.

THE WITNESS: (Mr. Ruiz) Okay. Thank you.

So, as I was saying, we prepared this diagram to illustrate the point, and you get a very clear sense of what the root difference is.

So, next.

So, taking into account this distribution, the key here is to remember how it is distributed. So, how did we go about our work? We first casting this wide drag net to identify the best--the most comparable projects.

Next.

We identified a few, and then run some adjustment criteria to make them as close as possible to the Claimants' projects to give you a sense, if I'm valuating a house in a suburb in the United States and the house next door is for sale, that is a very valuable datapoint. But if that house has a pool, then I have to adjust for that factor to make sure that it's comparable and that price can be used to assess the price of the--value of the property I'm valuing. So, we did that with every project, and that's how we got our results.

What CBRE did--next, Clay--was to use a database with a section of the data, they just drew a line and run an average on that section of the data. That results--next--in an average that--next--will be skewed towards the lower part. Why? Because there's just more data the further down you go on prices, so that is why you will see a consistent difference towards the lower part of the values in CBRE's Report.

Next.

If you use surveys, then that is even more acute because when you ask someone for a unit beyond a certain threshold, the person will automatically assume we're talking about the threshold, and then results will be even more biased towards the bottom.

As I mentioned, we believe our data source is better just because they rely heavily on fieldwork and conduct a thorough quality assurance process. That said, none of these are perfect. As I mentioned, we have to go outside just the data to make sure we got a very clear picture of what these markets look like.

Next.

So, what we did to illustrate this was to look at CBRE's sample and take one project on this lower end to give you a sense of what this look likes.

Next.

So, what we found was--oh, previous one.

There were a lot of projects that, even though they are high-end on the left, these are high-rise, high-density, very small units that cannot be compared to the Claimants' projects. Why? Because the Claimants' projects are more to the right of my diagram. So, this is why, when you're pricing on this side and you include a lot of datapoints on this other side, you will have a skewed result.

Same with the --well, these are just examples we drew from the database.

Next, Clay.

We then went out and Googled these projects to see what they looked like, so we realized that you cannot compare these with nice amenities but definitely not comparable to these high-end projects that have these hotels with great amenities and luxury feel to them.

Next.

No, next. Go ahead, Clay, please. Next. Next. Next.

There you go.

The previous one.

So, some of the numbers you see in the CBRE report caught our attention because they were just different from our take on the market, what our take on the market is. We went back and looked at their data, and rerun their numbers for this, Cartagena single-family units. Then we found the exact same number to make sure that we were accurately rebuilding or reconstructing their calculations. And we realized they only--they were basing their number on only four projects, two of them had huge issues, well major problems.

Next.

One was a failed project basically on a fire sale. That project was canceled in 2018, and the other one had just erroneous data.

The same project on the same date had an almost three times higher price in Galería Inmobiliaria's database. So, I think this was just a mistake in the database. This is just to say, you have to be very careful when you run your numbers because you will get nonsensical results if you're not very careful.

Next.

PRESIDENT SACHS: Mr. Ruiz.

THE WITNESS: (Mr. Ruiz)I have to—

PRESIDENT SACHS: your time is over, so please accelerate.

THE WITNESS: (Mr. Ruiz) I'll hurry up. I'll hurry up.

This is just to show that there is a difference between CBRE and JLL consistently lower.

Next.

Then we did a review of Dr. Hern. The first one is we've reviewed Dr. Hern's list for construction companies. They are indeed the biggest companies in Colombia. What Dr. Hern fails to understand about the real estate Colombian market is that it focused mostly on social housing. These construction companies have a large share of their business in the social housing market. And that is a market of volume, not of big profits and value-added. So, probably their profits will be much lower than that of a smaller, high-end luxury-oriented developer.

Next.

There is also the failure-risk data. Dr. Hern raises a couple of reasonable points, although he--he== the way he re-ran the numbers is completely off, and I will explain briefly.

Next.

We basically took into account almost all of his comments to see what that would look like, and the failure rate from our initial estimate would go up if we incorporate most of Dr. Hern's comments up until--to 19.1, which is still below the average failure rate in the U.S.

Next.

Also, the comment on Dr. Hern really confused us because he's saying that the failure rate of projects in Medellín and Cartagena could go up to 85 percent, and that is--that would be basically an Armageddon in the market. If 85 percent of projects are failing, then you would see that, and that is not consistent with what you see when you go to these markets.

So, we went back and looked at how he conducted his calculations, and the problem was that he basically threw off half--well, 31 percent of projects in the case of Medellín and 42 percent in the case of Cartagena. When we did this, we corrected for

Dr. Hern's point, which we believe again it was reasonable, but we didn't overdo it in a way that would skew the numbers and get 100 percent failure, as you can see in Dr. Hern's numbers in the Excel.

Next.

Finally, this is--there is the speed of sales. Dr. Hern refers to CBRE's averages, and again these numbers may be correct in the sense that they are--they are averages run in an Excel spreadsheet, but they failed to account how the market works. These databases are updated monthly, so you get a lot of months. If you look at how successful projects sell, you get most of the sales are happened in the first months, the first year especially. And then they decrease. They are successful, they are built, but they stay in the market for many years. Why? Because every project has a few units that are not desirable. Think of a very nice building, luxury building by the sea with--there is always an apartment that looks to the dumpster that is small and no one wants. Every project has some of those units, so these projects will remain in the market, and will mark as 0000000 for many months throughout years. So, when you run an average, then you get the numbers that--next--you can see in CBRE's Report that again really make no sense, and they're not an accurate--or cannot help you understand how a project would behave, because again, we ran the numbers with CBRE's data, and we noticed--we established that projects could sell--would sell--would take approximately a year selling every month approximately eight--5 percent of their units, and then the number of sales would drop.

So, I don't know if this was clear, but they're basically diluting sales figures by taking this long run view. If you use that number, then no project would have ever been built in Colombia, selling 0.1 units per month, that is one a year, that would take 10 years to build a ten unit house--building, so we try to really understand how they did these numbers to illustrate and come up with better numbers that can be more useful to this analysis.

PRESIDENT SACHS: Thank you very much, Mr. Ruiz.

Who will be in charge of the cross-examination?

MS. BANIFATEMI: It will be Ms. Ribco Borman, who will do the cross-examination.

I just note that we had an additional 10 minutes and we assume that our experts will be also given the additional 10 minutes.

PRESIDENT SACHS: Yes.

MS. BANIFATEMI: And if I may simply ask the technical staff if we could have a switch of the screens so that we can have the Expert right in front of us because it's too far off.

PRESIDENT SACHS: Would that be possible, operator?

MS. BANIFATEMI: Thank you very much.

(Pause.)

MS. RITWIK: Thank you. If it's okay, I'll just address one procedural thing.

Mr. Dickinson has an envelope, a sealed envelope, with his Reports. So, if it's okay, with Respondent's counsel, he can open it up and take a look at it. Thank you.

MS. RIBCO: Thank you.

PRESIDENT SACHS: Ms. Ribco, please.

MS. RIBCO: Thank you, Mr. President.

CROSS-EXAMINATION

BY MS. RIBCO:

Q. Good morning, Mr. Dickinson. Good morning, Mr. Ruiz. My name is Yael Ribco. I represent the Republic of Colombia in this arbitration, and I will be addressing some questions to you regarding your Reports.

PRESIDENT SACHS: Could you kindly put your microphone on.

MS. RIBCO: Sure.

PRESIDENT SACHS: Thank you.

MS. RIBCO: It's better now?

BY MS. RIBCO:

Q. Both of you have before you two reports, correct?

A. (Mr. Dickinson) Correct.

A. (Mr. Ruiz) Yes.

Q. And the first one is your--is named Final

Report, Summary of Results and Methodology, and it was presented to--by JLL to Gibson, Dunn on 10 June 2020, is that correct?

A. (Mr. Ruiz) Correct.

A. (Mr. Dickinson) Correct.

Q. Have you signed this Report?

A. (Mr. Ruiz) I--we didn't.

Q. Mr. Dickinson?

A. (Mr. Dickinson) No.

Q. Did you draft it, or was it someone else?

A. (Mr. Ruiz) It was a team effort, but we reviewed everything. I don't know Clay if you want to--

(Overlapping speakers.)

A. (Mr. Dickinson) Yeah, exactly; that's right.

Q. So, you take responsibility for the content of the statement, correct?

A. (Mr. Ruiz) Yes.

A. (Mr. Dickinson) Yes.

Q. And then on 16 September 2021, you issued a Second Report which is called Replies to Comments about JLL Inputs Included in Expert Report by Dr. Hern, is that correct?

A. (Mr. Ruiz) Yes.

A. (Mr. Dickinson) Correct.

Q. And this time you did sign the report, correct.

A. (Mr. Ruiz) Yes.

A. (Mr. Dickinson) Yes.

Q. Is there anything you would like to amend about any of these Reports?

A. (Mr. Dickinson) No.

A. (Mr. Ruiz) No.

Q. So, you stand by your written reports, correct?

A. (Mr. Ruiz) Yes.

A. (Mr. Dickinson) Correct.

Q. Great. Thank you.

Can we--I first want to check Slide 34 and 35 of your presentation.

A. (Mr. Ruiz) Can you put it up? Is it here?

Q. No, it's not there. It's your presentation.

A. (Mr. Ruiz) Oh, okay.

Q. You don't have it?
A. (Mr. Ruiz) No. Oh, do I have it?
Q. I think we are having a technical problem because it should--
A. (Mr. Ruiz) No, Clay has it on his screen (unclear). I'm--
Q. It's supposed to be on-screen?
A. (Mr. Ruiz) Okay, okay.
(Pause.)
A. (Mr. Ruiz) Can you--
(Overlapping speakers.)
VOICE: --(unclear) stop sharing your screen or--
A. (Mr. Dickinson) Sorry. Do you want me to stop sharing it or can you all see it now?
A. (Mr. Ruiz) Yes, please.
A. (Mr. Dickinson) Okay, that's Slide 34, I believe.
BY MS. RIBCO:
Q. Before I go on with the questions, you're probably aware that pursuant to Procedural Order No. 10, each one of you is supposed to answer

questions regarding the scope of the Report that you were taken care of, correct?

A. (Mr. Ruiz) Yes.

Q. So, I'll be addressing questions to each one of you and, please, you need to respond one by one whoever is addressed the question has to reply. You cannot comment on each other's question or supplement each other's questions—answers.

So, I will start now, and this is Slide 34, and this was—the question is for you, Mr. Ruiz.

On the right side of this slide, we have a picture or what seems to be an image of the Meritage Project. This is computer-generated?

A. (Mr. Ruiz) Yes.

Q. This does not exist in reality, correct?

A. (Mr. Ruiz) No.

Q. Now, I want to go to the left side of the slide where you represent that CBRE's sample, is Biocity Grand.

A. (Mr. Ruiz) Yes.

Q. Did you take this from CBRE's Report?

A. (Mr. Ruiz) The picture or the name of the project?

Q. Either.

A. (Mr. Ruiz) So, as I mentioned, we went through the CBRE database, we filtered by the criteria stated on the report, and we looked at the list of projects, and we just took one to illustrate how these projects on the lower and of the high end would look like. We just wanted to--and then we did a Google search and found this in the developer's website or broker's website.

Q. I don't think this was my question. My question was: Is CBRE identifying the project they referred to as Biocity Grand, or was it --is it your assumption that CBRE is referring to Biocity Grand??

A. This was based on our analysis of their numbers on--

(Overlapping speakers.)

Q. So it's your assumption. CBRE never says it's Biocity Grand. You are just assuming that CBRE is referring to Biocity Grand.

A. (Mr. Ruiz) No, I don't think I am assuming. Again, I filtered CBRE's database, and, given their criteria, we found a list--we just found a list, so I don't know if I'm assuming or just--I don't know. I don't think that's an assumption.

(Overlapping speakers.)

Q. CBRE will tell us later that their project they are referring to is not Biocity Grand.

A. (Mr. Ruiz) Oh, okay.

Q. But I just wanted to state for the record that it is not and that these pictures are not in the record.

A. (Mr. Ruiz) These pictures are not in the record.

Q. Thank you.

A. Yes.

Q. I would like to go now to your Slide 24.

A. Yes.

VOICE: Oh, he's still sharing his--

(Overlapping speakers.)

MS. RIBCO: Mr. Dickinson, could you please stop sharing your screen because we--

(Overlapping speakers.)

THE WITNESS: (Mr. Dickinson) Oh, sure.

Okay.

MS. RIBCO: --we need to take control.

VOICE: Yeah, someone else will do it, Clay.

THE WITNESS: (Mr. Dickinson) Very good. I'm done.

(Pause.)

BY MS. RIBCO:

Q. Apologies. I think we may move on. This is your Slide 24?

A. (Mr. Ruiz) Yes.

Q. And you provide the sales price estimates for different projects for 2017, correct?

A. (Mr. Ruiz) Yes.

Q. And you refer there to your Page 44 or your--of your First Report, do you? It's down there, where you list these hotel--

(Overlapping speakers.)

A. (Mr. Ruiz) Yes. Yes, yes, yes, yes, yes.

Q. So I actually I want you to go to Page 44 of your First Report. It's in Tab 5 of the Cross Bundle.

A. (Mr. Ruiz) Um-hmm.

Q. I would like to go first to Crystal Lakes.

A. (Mr. Ruiz) Crystal Lakes, okay.
Q. And, in your Slide 24 of Crystal Lakes--
A. (Mr. Ruiz) Yupp.
Q. --you state that the price of houses is COL$4,056,118 per square meters. And the price of apartments is COL$3,395,362 per square meters, correct?
A. (Mr. Ruiz) Yes.
Q. Now, if you go to your Report and you see for 2017 for the same project, Crystal Lakes, you have for houses 5,174,845, and for apartments 4,524,560, is that correct?
A. (Mr. Ruiz) Yes.
Q. So, this means that, in your Slide 24, you have revised the price downwards by over COL$1 million per square meters, right?
A. (Mr. Ruiz) Yeah, I apologize. A transcript copy-paste error, like a clerical error. I--you're right.
Q. Okay. Then maybe there's another clerical error?
A. (Mr. Ruiz) Mm-hmm.

Q. If we go to Tierra Bomba, for the apartment, you have in your Page 44, you have COL$11,154,321 per square meters, correct?

A. (Mr. Ruiz) Yeah.

Q. And for houses you have 13,470,346, correct.

A. (Mr. Ruiz) You are correct, yes.

Q. Now if you go again to your Slide 24, for Tierra Bomba houses you have 8,093,211, correct?

A. (Mr. Ruiz) Yeah.

Q. And for apartments you have 7,758,540, correct?

A. (Mr. Ruiz) Yes.

Q. And that's a difference of over COL$5 million.

A. (Mr. Ruiz) Yes.

Q. Is that also a clerical error?

A. (Mr. Ruiz) Yeah, yes.

Can I explain?

Q. Please.

A. (Mr. Ruiz) Yes, this was just a recap, copy pasting results. I apologize for not reviewing this. We stand by our real, original numbers in our Report.

I apologize.

Q. So, we can scrap this slide from the presentation.

A. (Mr. Ruiz) Yes.

Q. And from the record.

A. (Mr. Ruiz) Yes.

Q. Thank you.

So, now I would like to go to your Slide 41.

A. (Mr. Ruiz) Yes.

Q. And you explained that Dr. Hern had made a couple of reasonable points and that you, therefore, reviewed your failure rate, correct?

A. (Mr. Ruiz) Yes.

Q. So, if you go to Tab 7--for everyone's convenience, I included the relevant paragraphs of Dr. Hern's Report, and he lists for example--do you have it there? Tab 7.

So this is Appendix F of Dr. Hern's Second Report. And there, as you said, he lists a number of problems that he identified in your failure rate calculations. So, for example, one of them was that when the Galería Inmobiliaria lists a project as non-applicable. In (a), that where there is no information, you had put it as a successful project whereas it doesn't necessarily mean that it's a successful project, and you adjusted your numbers.

A. (Mr. Ruiz) Yes.

Q. Also for this stratum you adjusted the numbers, and we see it in your Slide 41 but--

A. (Mr. Ruiz) No.

(Overlapping speakers.)

A. (Mr. Ruiz) Sorry. Go ahead. No. I didn't mean to interrupt you.

Q. That—What I meant is that Dr. Hern had criticized, in Paragraph 293 of his Report, that your in your failure rate calculation you had included projects classified as Stratum 4 to 6, but now you revised it to include only Stratum 6?

A. (Mr. Ruiz) Yeah. We did not revise and we do not necessarily agree with that comment. We just ran the numbers to see what they would look like--

Q. Mm-hmm.

A. --because at the end, they don't make that much of a difference, but that's why in my presentation, if you go to my presentation, I marked that in yellow. Look. Assuming that we take everything into consideration, failure rate goes up until 19 percent.

Q. Well, I would say that, when it doubles from 10 to 19, it's kind of a significant difference, isn't it?

A. (Mr. Ruiz) It is a significant difference, but actually it--the more reasonable comments make the failure rate go up to 15 percent. But if you want to narrow the analysis, because this was not what we were asked to do initially, but if you want to narrow the analysis like Dr. Hern is suggesting, then you go to 19 percent.

Q. Thank you.

And also in Paragraph 294 of his Report, Second Report, Dr. Hern criticized that your rates were artificially low because you had not taken into account that some projects that are still in progress may fail in the future, correct?

A. (Mr. Ruiz) Correct.

Q. And that you also adjusted in your Slide 41.

A. (Mr. Ruiz) That is correct.

Q. So, I understand that you consider that a project may still fail even if it has started already, is that correct?

A. (Mr. Ruiz) Yes.

Q. Yes. Thank you. And--

A. (Mr. Ruiz) Well, sorry. Started to pre-sale, that doesn't mean it started construction, but yes, that was a project that has been launched and is on the market.

Q. So, when it has started pre-sale, it can still fail.

A. (Mr. Ruiz) Yes.

Q. And when it has started construction, can it fail?

A. (Mr. Ruiz) No, that is the--well, it could, should something extraordinary happen, but usually construction does not start until a project reaches equilibrium point.

Q. What if after reaching equilibrium point financing dries up for whatever reason? Can the Project still fail?

A. (Mr. Ruiz) I believe the equilibrium point is determined by--is the numbers of--the number of sales that can pay for the--as its name states, the "break-even" of the Project.

Q. Thank you.

Now, there's one more criticism that Dr. Hern made, and it's on Paragraph 291, and it is that you have not really considered the trends in failure rates, correct?

A. (Mr. Ruiz) "Trends"? Allow me to read this.

(Witness reviews document.)

A. (Mr. Ruiz) Oh, yeah, right, I remember this.

Q. So, if you see Figure F.2 on Page 130 of the Second Report of Dr. Hern, you will see that the failure rate has a significantly increasing trend towards 2017 and increasing even like a lot towards 2021, correct?

A. (Mr. Ruiz) Yes, these were the numbers, and I'm sorry because I have to--flew through my presentation, but this is--these are the numbers that we say we believe are nonsensical.

If you think that every project in 2021 in all cities of Colombia have failed, that just shows an utter lack of understanding about the real-estate market. You cannot--this would be worse than 2008 here in the U.S. This would be--this is absolute collapse, every project failing. So, this is why we meant that you have to be very careful when you--how you treat the data. Dr. Hern had some reasonable points, but the way he sold those points were, as I would like to explain, there was a cut-in-the-finger but instead of stitches or a Band-Aid, he amputated the hand, and that's why he got these numbers that have no sense.

Q. But he took them from the database that you have used.

A. (Mr. Ruiz) Yeah, and he could have done other calculations.

And actually, we took into account his observation, and that's how--that was the biggest change; it went from 10 to 15 percent. It's reasonable to be careful with ongoing projects. But if you take them all out, then your denominator drops dramatically, and that's how you get this exponential growth in failure rates. That again, this graph makes no sense.

Q. My last question for you would be we noticed that you--or you confirmed that you had revised the failure rates in your Slide 41. Is this a revision you would like to introduce into your written statements, or you stand by your written statements?

A. (Mr. Ruiz) I--well, if--if I--I--I am to do so I would--I would do so, including the first two. We eliminated--well, we determined the actual status of the few projects that had N/A on them, and that generated a .1 percent increase from zero--from 10.1 percent to two--10.2 percent.

The adjustment for ongoing projects, the way we saw that and--I excuse--I apologize for --if I'm going too much into the detail--we use 2021, the database for 2021 on the record. We eliminated all the ongoing projects that were launched from 2018 on because we don't have enough information. But all those ongoing previous to that, since we're looking at it from a vantage point of 2021, we have four years to determine whether these projects in the market have been successful or not. Remember, most projects sell most of their units in the first year.

So, by 2021, we had a very clear sense of which projects launched prior to 2017 had been successful and which ones were not. That's how we--we ran the numbers and that's how failure rate goes up to 15 percent, 15.3 percent.

Q. So, your Second Report is dated--your Second Report is dated--

A. (Mr. Ruiz) September 16th.

Q. September 2021, right? So, you already had the data by then?

A. (Mr. Ruiz) Yes, yes.

Q. Okay.

A. (Mr. Ruiz) Yes.

And may I clarify something regarding failure risk?

Q. Yes.

A. (Mr. Ruiz) This is not a usual metric we use in our projects or in the market because we work on projects at the developer's level. We don't do this analysis, so we--we did our best. We read Dr. Hern's comments. Again, some of them are reasonable, and we ran the numbers incorporating them, so that's why in this new type of analysis you will get this--oh, that's right, you can improve it a little here or improve it a little there.

Q. Okay. So, you did your best but it can still be a bit improved here and there?

A. (Mr. Ruiz) I think after Dr. Hern's thorough review, we feel much better.

Q. Thank you.

I will turn now to Mr. Dickinson. It's Slide 7, please.

Does Mr. Dickinson have a copy of the record or he's just--

MS. RITWIK: He has copies of both of his Reports and that's it.

MS. RIBCO: Okay. Thank you.

BY MS. RIBCO:

Q. So, in your Slide 7, Mr. Dickinson, you discuss a lot about these 30 transactions, totaling 3 billion, that encompass 9,000 rooms supposedly with comparable hotels, correct?

A. (Mr. Dickinson) Yes. That was in the initial Report, yeah.

Q. And you said that your instructions from counsel were to compile a list of luxury upscale hotels, correct?

A. (Mr. Dickinson) No--upscale to luxury hotels, yeah.

Q. So, that list is in your First Report on Page 106, which is on Tab 5 of the Cross Bundle. Is this the table that you came up with in your First Report?

A. (Mr. Dickinson) It looks like it. If there are 30 transactions there.

What page did you say it is? Because I'm going--

Q. I will not count them now but I can represent that this is your First Report, and it is your Slide 100, your Page 106.

A. (Mr. Dickinson) Page 106.

Okay. I see it.

Q. So, you said there's no comparable hotels in Colombia, and that's why you had to look into other countries: Mexico, Aruba, Puerto Rico, Uruguay, Bermuda, Argentina, et cetera, correct?

A. (Mr. Dickinson) Correct.

Q. Is this list of transactions handpicked?

A. (Mr. Dickinson) This is basically picked based upon certain criteria, for example, that they be between upscale and luxury, that they be full-service hotels, that they be resort hotels or a part of mixed use projects, that they be within the date frame of 2015-2019, and that they be within this Caribbean, Mexico, Central/South American region.

Q. But these are not the full transactions that took place between 2015 and 2019 for upscale to luxury hotels in the Latin America/Caribbean region, is it?

A. (Mr. Dickinson) Well, this is the full listing of the ones that met those criteria.

Q. Okay. The criteria that you came up with, and it's not listed in your report, correct?

A. (Mr. Dickinson) I'm not a hundred percent sure if that criteria is listed, but what I just cited is the criteria that--

Q. It is not. I can represent that.

A. (Mr. Dickinson) Okay.

Q. So, now going back to your Slide 7, you referred to the 30 transactions that total 30 billion, and I've already said this.

Are all these 30 hotels fully built hotels?

A. (Mr. Dickinson) Yes.

Q. And they were operational at the time of the Transaction, correct?

A. (Mr. Dickinson) Yes.

Q. So, you have a very similar table in your Second Report on Page 33, and it's in Tab 1 of the Cross Bundle. Do you have it there?

Sorry, the table is not on Page 33, but there is the explanation of the table. The table is on Page 43 of your Second Report.

A. (Mr. Dickinson) Okay. Give me just a second.

Okay. I found it.

Q. And this list on Page 43 includes only 26 transactions, correct?

A. (Mr. Dickinson) Yes.

Q. And your explanation--and now it is on

Page 33 that I was referring to before--is that, because Dr. Hern had identified that, four of those 30 original handpicked transactions referred to casino hotels and, therefore, the Market Value was not representative of normal hotels. So, you decided for your Second Report to remove those four hotels, correct?

A. (Mr. Dickinson) Yeah, we felt that was a reasonable assertion, and so we removed those for the Second Report.

Q. But still, in your Slide 7, you referred to the 30, and you haven't updated the numbers in accordance with your Second Report?

A. (Mr. Dickinson) No. In Slide 7, I basically say that 30 transactions totaling was reduced to 26 by removing the four large casino hotels.

Q. So, you do acknowledge that removing only four hotels has a difference of $1 billion in terms of--

A. (Mr. Dickinson) Yes.

Q. --market value.

A. (Mr. Dickinson) Yeah.

Q. And this is one-third of the value.
Now, the average per key price has also been reduced from 274,000 to 204,000, correct?
A. (Mr. Dickinson) Yes.
Q. That is a difference of $70,000; correct?
A. (Mr. Dickinson) Correct.
Q. So, is there any other factor, in addition to whether the hotel having a casino or not, that should be considered when comparing these Transactions? For example, would a fully built hotel be comparable or considered as equally as a yet-to-be-built hotel?
A. (Mr. Dickinson) Yeah, I mean, if you were trying to value a yet-to-be-built hotel, the assumption would be that it is built and operational and, therefore, it's comparable. So, yes, that's how you would do it.
Q. So, you mean that if someone would--were to buy today an idea of a Hilton Hotel here next door, he would pay the same as he would have paid for a Hilton that is fully built--
A. (Mr. Dickinson) No.

Q. --because that's the Market Value?
A. (Mr. Dickinson) No, that's a different--that's a different--that's a different assumption. Someone would not pay just for the plans to build a hotel. They would not pay the same amount because you have to go through all the development risk and all of that.
Q. Thank you.
And do you know what was the status of the Claimants' projects in Colombia?
A. (Mr. Dickinson) Yeah. I mean, I do generally know that the Meritage was in the--was kind of in the process of being built and that all the others were proposed projects.
Q. Was the Meritage Hotel in the process of being built?
A. (Mr. Dickinson) I believe it was under construction at the time that it was stopped, but again, I'm not a 100 percent. I know that the Project itself was under construction. Whether the hotel component of it was part of it, I'm not a 100 percent sure.

Q. So, as you mean it was not--would it still be comparable to this fully built and operational hotels?

A. (Mr. Dickinson) Well, the assumption, when you go to try to value a prospective--a proposed hotel is that it is fully built and operational. That's how you do the comparison.

Q. That's a big assumption because you just said that when valuing one that is not fully built, you need to consider all the risks, including, for example, that there was no financing?

A. (Mr. Dickinson) But the fundamental assumption is that when you go to do the value of a proposed hotel, the fundamental assumption is that it is--it is basically an as-complete or as-developed valuation.

Q. I see.

So, there's one more factor to be considered and this you have already acknowledged as well in your Page 34 of your Second Report, it's also on Tab 5--Tab 1, sorry, and basically what you said is that how developed the tourism sector in the country where the hotel is located is a relevant factor when doing the valuation, correct? It's Page 34 of the Second Report, it's this kind of pink-red--yeah.

A. (Mr. Dickinson) Okay. Go ahead. So, I'm on that page now, please repeat it.

Q. So, there you say: "Although this country's tourism sectors are larger and more matured, this transactions data can provide a sense of what similar transactions would carry in the Colombian market." Correct?

A. (Mr. Dickinson) Yes.

Q. So, from there, I understand that you consider that the tourism sector is a relevant factor when considering whether transactions are comparable or not, correct?

A. (Mr. Dickinson) It is one of many factors. And some of these are more developed, and some of them are less developed. I could have been a little bit more artful in the wording of that.

Q. Is any of them as developed as Colombia?

A. (Mr. Dickinson) Are any of these markets as developed as Colombia?

Q. Yes.

A. (Mr. Dickinson) Yeah, I would think some of them are as developed, and perhaps even a little bit more developed.

Q. Less developed?

A. (Mr. Dickinson) But I --Well, some are as or more developed, and some are less developed.

Q. Which one, for example, would be less developed? México?

A. (Mr. Dickinson) No, I think México, generally speaking, is probably more developed than Colombia, as far as its tourism sector.

Q. Yeah. And going through your table, which one would be less developed?

A. (Mr. Dickinson) I think, generally speaking--like--even Barbados or Nevis, Cayman to a certain extent. Less hotel rooms, less visitation numbers, things like that. So, generally speaking, those could be considered less developed.

Q. And when you are within a country, you would agree with me that not every area of a country is equally developed, so you probably have in Mexico more developed areas and less developed areas, correct?

A. (Mr. Dickinson) That's true.

Q. Would that change the comparability of the hotels, or do you compare a country as a whole?

A. (Mr. Dickinson) Well, I think, you know, you look at the country as a whole but you're looking at individual tourist markets within the country. For example, in México, we did look at Cancun, Riviera de Maya, Puerto Vallarta, Peñasco, and Los Cabos, and each of those have their own particular characteristics, but they are all part of México's tourism industry, just as Colombia, too. I think, you know, Cartagena could be considered a little bit more developed, say, than Santa Marta. But it is still all part of the Colombia tourism as a destination.

Q. If you were to consider, for example, Zacatecas in México. Is that--

A. (Mr. Dickinson) I'm sorry?

Q. If you were --Zacatecas. It is a place in México.

A. (Mr. Dickinson) Zacatecas.

Q. Exactly.

It's just a non-touristic place in México. Let's assume you need to value their hotel. Would you value it the same as a hotel in the Caribbean, in Cancun, for example?

A. (Mr. Dickinson) If I were--well, it would depend very much on the nature of this specific hotel to be valued.

Q. So, let's go Tab 6, this Transcript of Day 2 of this Hearing when we were cross-examining Mr. Seda, the Claimant in this Arbitration and we know because Seda told us. It's on Page 440 of the Transcript, Line 9 to 18, where Mr. Seda explained that his business strategy was to check for areas that were not attractive, but where he saw promise, where he would be the first arriver, and then trying to create something attractive, and that usually people would follow. Then he, for example, he referred in particular to Guatapé, where the Luxé hotel was being built.

Have you considered this factor when representing, for example, that the Luxé hotel in Guatapé, which is a region, in case you don't know, that has, until very recently, suffered from severe violence issues without any track record of touristic destination, be comparable to, for example, and I take just one, the Four Seasons in Costa Rica, that is a full service luxury hotel?

A. (Mr. Dickinson) You know I, again, as I mentioned sort of with the white hair or whatever, I actually remember what the region looked like where the Four Seasons is now before it was built. It was very isolated, very--very much on its own. There was absolutely nothing there in Papagayo at the particular time, and it was sort of the first property to be built there. Over the course of 25 years, it has evolved to become quite the destination--

Q. What about--

A. (Mr. Dickinson) --on account of a lot of other developments.

So, I almost think it's a great example of what happens if you pick a fundamentally good spot and invest in the infrastructure, that it can turn into a viable (drop in audio) location. I mean, actually, this same thing happened with Puerto Vallarta, the same thing happened with Cancun, and a lot of tourist destinations. They started out with nothing.

Q. But that is a big assumption because I'm not a hotel expert, but I'm sure there's many others that have failed, that they have gone to Zacatecas thinking it was a great location and build a hotel and it turned out not being a great location, correct?

A. (Mr. Dickinson) I don't know.

Q. Is there a beach in Medellín?

A. (Mr. Dickinson) In Medellín, there is not a beach, no.

Q. In Guatapé? Is there--

(Overlapping speakers.)

A. (Mr. Dickinson) Well, in Guatapé, there is a beach actually because it's on a lake. So, I have been to the site there in Guatapé, so I know the area, and it's phenomenally beautiful. The vistas are incredible, the water is nice, and the beach itself is very nice.

Q. Thank you.

A. (Mr. Dickinson) Um-hmm.

Q. How is the--you have been there. Do you know what the region looks like now? Is it--has it become the new Cancun of the Medellín Region?

A. (Mr. Dickinson) To be frank, ever since the COVID pandemic, I have not been to Colombia now since 2019.

Q. And before the--before 2019? What was Guatapé?

(Overlapping speakers.)

A. (Mr. Dickinson) Well, at the time, Guatapé, it would characterize--it had a number of small kind of--there was one fairly large resort hotel there, but then there was a number of sort of small mom-and-pop type of boutique hotels there. There you could see that it was a weekend destination for people who live in the area.

Guatapé--excuse me, the Luxé would have been a quite--it would have been a unique project within the Guatapé area.

So, I personally believe that the--what's the word I'm--yeah, the base requirements in terms of proximity to a major airport, proximity to a major city, waterfront location with beach, incredible vistas and the facilities themselves were actually proposed, I think could have made for a very, very interesting destination type resort there in Antioquia.

Q. Thank you. We will see with time what turns out of being out of Guatapé.

A. (Mr. Dickinson) Yeah, I mean if you, well--okay.

Q. Well, we cannot predict the future, so--

A. (Mr. Dickinson) No, we can't. We can only sort of--you know, if past is prologue, I remember going to Cartagena in 2008, it was not necessarily a walk-in-the-park compared to what it looked like in 2019.

Q. I would like to go to Slide 5 of your presentation.

A. (Mr. Dickinson) Okay.

Q. And this is where you compare the ADR of The Charlee Hotel versus the top-tier markets in Colombia, correct?

A. (Mr. Dickinson) The aggregate upscale and above markets in Medellín, Bogotá and Cartagena, yes.

Q. So, you have a similar--you have a similar kind of information or you provided this information on Page 46 of your First Report. Is this where your slide--sorry, Page 46 of the Second Report?

A. (Mr. Dickinson) Of the Second Report?

Q. Yeah, I'm sorry. Apologies.

A. (Mr. Dickinson) Okay. Yeah, I see it now, yeah.

Q. So, Slide 4--your Slide 5, sorry, is based on your Page 46 of the Second Report, isn't it?

A. (Mr. Dickinson) Let me look back at--

Q. It's on the screen, if it's easier.

A. (Mr. Dickinson) Okay. Just let me double-check something really quick.

Yeah, it looks like the same information, yeah.

Q. But in your Slide 5, you haven't included all these sources or the comparators that you include on Page 46 of your Second Report, correct?

A. (Mr. Dickinson) Yeah, because I know that it's in the record, and so it's basically just to save space.

Q. Okay. I see.

So, Page 46, and I read: "Based on an evaluation of the rate structure, market orientation, location, facilities, amenities, reputation, quality, and performance--"

REALTIME STENOGRAPHER: Could you slow down a little and start that again.

MS. RIBCO: Sure.

BY MS. RIBCO

Q. "Based on an evaluation of the rate structure, market orientation, location, facilities, amenities, reputation, quality, and performance of The Charlee Hotel, JLL positioned and categorized it as a luxury hotel."

A. (Mr. Dickinson) Yes.

Q. And then you continue saying: "JLL estimates show that The Charlee Hotel outperformed its competition by almost double in terms of ADR before COVID-19." Correct, that's what you say there?

A. (Mr. Dickinson) Yeah, that's right.

Q. So, further down in your Second Report, you say that: "The ADR information for The Charlee Hotel was provided by the hotel while the information for Cartagena and Bogotá were sourced from STR."

A. (Mr. Dickinson) Yes.

Q. Okay. Did you verify the ADR data for The Charlee?

A. (Mr. Dickinson) Uhh, no. Took it--

Q. Okay. So, so--

A. I took it as actual data.

(Overlapping speakers.)

REALTIME STENOGRAPHER: I didn't catch that.

BY MS. RIBCO

Q. Could you please repeat?

A. (Mr. Dickinson) Yes, yes, I just took it as, in that it was historical, just took it as actual historical performance data.

Q. Okay. So, you took the data you got from The Charlee, and then you compared it with data you obtained from these other hotels as processed by STR that you list here on the right side of Page 46 of your Second Report.

A. (Mr. Dickinson) Yes.

Q. And I assume that you consider these hotels listed here to be The Charlee Hotel's competition--correct?--and that's why you're comparing this?

A. (Mr. Dickinson) Well, in the aggregate, it represents kind of the upscale, the upper end of those particular markets. If I were to be doing an analysis specifically of The Charlee Hotel, then I might end up picking, as best as I could, specific competitors, but I'm really trying to compare it to the overall market as opposed to any particular hotel.

Q. I see.

Now, if you go to your Slide 4 of your presentation, I assume these are also top-tier market hotels in Colombia, aren't they?

A. (Mr. Dickinson) They are now, yes.

Q. And you seem to have considered these as competitors of The Charlee Hotel, correct?

A. (Mr. Dickinson) No, not at all. That wasn't the purpose of this here. This was really to show the entrance of a lot of global hotel chains. None of these would necessarily be direct competition with The Charlee Hotel.

Q. Why not? Because these are luxury hotels?

A. (Mr. Dickinson) No, because The Charlee Hotel, 42 rooms and an independent luxury lifestyle hotel would really not compete at all with, say, the Hilton Corferias, which is like a 430-room group-oriented hotel positioned at the upper upscale end of the market. And I think you could say the same thing about the Grand Hyatt Hotel that's over 300 rooms or the Hyatt Regency in Cartagena that's 200 and something rooms. So, these would not necessarily compete with each other.

If there was one there that maybe would compete, it'd be something like The BOG Hotel.

Q. You seem to be a bit selective on what competes because we were just saying that a hotel in, like for example, you have here--and I'm going back to Slide 46, the table that we were just discussing in Slide 46 of your Second Report, where you compare, for example, the Charlee with the Hilton in Los Cabos, and with many hotels in Cancun, but now apparently some of the hotels in Colombia that you have on page 4 are not competing directly, so it seems a bit selective to me.

A. (Mr. Dickinson) Well, you know, everyone is entitled to their own opinion. I think there is a difference when you're trying to look at a hotel that is directly competitive with a particular hotel versus a transaction that is generally comparable because it sorts of fits within the same overall classification, whether it be upscale or a luxury property.

Q. And still, some of the hotels that are listed in your Slide 4 are included in your--in your Page 46 of your second presentation, for example, the Marriott Medellín.

A. (Mr. Dickinson) Yeah. The Marriott Medellín is--again, it is one of the aggregate in order to sort of show the upper end of the Medellín market. And it is probably competitive indirectly for certain market segments with The Charlee Hotel. It's located only about a block or two away. And to a certain extent it probably goes for some of the same transient business traveler or whatever at certain times of the week.

Q. Did you consider the ADR of any of the hotels that are listed in Slide 4 of your presentation?

A. (Mr. Dickinson) Did I consider the--for what purpose?

Q. For comparing them with The Charlee.

A. (Mr. Dickinson) Again, I'm not necessarily comparing any of these here with The Charlee.

You could look at the Marriott. I guess that's the only one, because it was both an example of a globally branded hotel that came in to Colombia in 2018, and it happens to be in Medellín and located very close to The Charlee Hotel.

If I were to—if, you know, if I were to be doing a market study to try to look at The Charlee Hotel, I would interview and determine whether or not the Marriott was or was not either directly or indirectly competitive with it. If it were, then I would consider the average daily rate of the Marriott.

Q. Okay. So, just because I'm a bit confused now.

Which one of the hotels on Page 4 would you consider to be competitor with The Charlee?

A. (Mr. Dickinson) Again, I'm not sure that any of the ones on Page 4 would be direct competitors to the Charlee Hotel. That's not the purpose of--that's not the purpose of that--

Q.   Because the Marriott Medellín, the Sebastian Luxury Hotel and the Sofitel Santa Clara Cartagena are included in your-- on Page 46 in your ADR analysis, whereas all the others are not?

A.   (Mr. Dickinson) Right. Because it's really for a different reason. It's included there in order to get a sense of how the ADR of The Charlee Hotel compares sort of with the given the data in SCR, the aggregate, of sort of the upscale market of Medellín, Bogotá and Cartagena, not that it's directly competitive with any individual hotel per se.

Q.   Okay, so basically it's handpicked. You just handpicked some hotels that you consider to be more or less comparable, and you compare their ADR, and you concluded that The Charlee's is double -- almost double--

(Overlapping speakers.)

A.   (Mr. Dickinson) Yeah, we basically tried to pick the upscale--the upscale and above hotels in those markets that were part of the SCR database in order to give an idea of what is the aggregate ADR of generally upscale and above hotels in those three major market areas.

Q. But it's not an exhaustive analysis, then?

A. (Mr. Dickinson) No. It's just really meant to be representative.

Q. Okay.

A. (Mr. Dickinson) But again, I think the--okay. Go ahead.

Q. Thank you. I--again, staying on this slide, you say that one of the factors why you consider The Charlee to be a luxury hotel is because of its location; correct?

(Overlapping speakers.)

A. (Mr. Dickinson) Not nec--

Q. It's listed there. So you say based on an evaluation of the rate structure, market orientation, location, et cetera, JLL positioned and categorized it as a luxury hotel. This is what you say in your Report?

A. (Mr. Dickinson) Okay, so yeah, I will give you that. That it's location, they're right at

Parqueo Lleras, and Poblado, it's one of the nicer areas in Medellín. So it's among many different factors as listed here that we use to consider The Charlee a luxury hotel, but its primarily its ability to drive ADR and rev par premium.

Q. Okay, so, you just referred to the Parque Lleras as a very nice section of Medellín. Can we please go to Exhibit R-45 of the record. And this is in Tab 4.

[redacted]

[redacted]

(Comments off microphone.)

[redacted]

BY MS. RIBCO

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted]

[redacted]

Do you know, by the way, what Charlee, the name, stands for?

A. (Mr. Dickinson) No, I don't.

Q. Okay.

I would like to turn to Exhibit C-68, which is Tab 3.

PRESIDENT SACHS: I'm sorry, could you enlighten us?

MS. RIBCO: I don't know either. Maybe we can ask Mr. Seda later.

PRESIDENT SACHS: Mr. Seda?

MR. SEDA: I'm fine answering. At this moment, are we asking where--

MS. BANIFATEMI: No, I will have to stop this. I will not ask Mr. Seda to--

PRESIDENT SACHS: I'm sorry, I asked Mr. Seda.

MS. BANIFATEMI: Oh, I'm sorry.

PRESIDENT SACHS: Could you please tell us how you come up with this name--did you come up with this name?

MR. SEDA: Yeah, it's a little quirky.

PRESIDENT SACHS: Very shortly.

MR. SEDA: When I was younger, I used to watch a lot of television with my mother, and there was this commercial about Charlee Perfume and the essence of it was, it was like during the woman's empowerment movement, and there was this powerful woman who was both like an executive and at the same time sexy in her ability to be able to manage both sides of that world, and so that stuck with me in my head. And when we were looking for a name, I was looking for a name with two syllables, and that was something rememberable for me, and that was from my childhood with my mother. It was very important for me. That's where the name comes from.

PRESIDENT SACHS: Thank you.

MS. RIBCO: Thank you, Mr. Seda. [redacted]

BY MS. RIBCO:

Q. Going now to Exhibit C-68--and I want to go to Page 50, and this is a brochure for the 450 Heights investment project, so you can show first maybe the cover page. And then we go to Page 50 where we see that the 450 Heights Hotel was associated with the "Charlee" brand, and that's not surprising because that's the brand that Mr. Seda claims to have established in Colombia.

And if we go now--so, just to pose a question for Mr. Dickinson, you see then--or are you aware that the 450 Heights project was somehow related to the "Charlee" lifestyle hotel brand?

A. (Mr. Dickinson) Yeah. It was my understanding that all of these properties would be somehow related to The Charlee, either Luxé by Charlee or somehow associated with the "Charlee" brand.

Q. So, now, if we go to Page 55 of the same document--and you will need to look at the Spanish version because an English version was not provided by the Claimants. It's the same brochure, and we see at the top it says the Prensa de la Marca Charlee, which means in English Media About The Charlee Brand, is that correct?

A. (Mr. Dickinson) Oh, yeah. Okay, yeah, I see Prensa de la Marca Charlee, okay.

[redacted]

[redacted]

[redacted]

[redacted]

PRESIDENT SACHS: Please move on.

MS. RIBCO: We may move on.

PRESIDENT SACHS: Please move on. And we should soon have a break.

MS. RIBCO: I'm about to finish, a few more questions.

PRESIDENT SACHS: Okay, fine, please finish.

BY MS. RIBCO:

Q. I wanted just to go back to the cover page to establish, to show that this is, in fact, the cover page where the Royal Property Group is advertising a community--right?--do you see that in the cover page? So, "UNA COMUNIDAD PLANEADA POR ROYAL PROPERTY GROUP." Is that what you see there? I think we lost you--

A. (Mr. Dickinson) I'm sorry, I had it on mute.

Yeah, I mean, what I read there is that a community was planned by the Royal Property Group Medellín Colombia, 450 Heights, Medellín. And it looks like an architectural rendering.

Q. Then if we go to Page 4 of the same brochure, and it's important data, datos importantes, of the Project, we see that there was supposed to be a "guardería," which means "daycare" in Spanish, correct?

A. (Mr. Dickinson) A guardería, which means— where is that, where do you see that?

Q. So, you see a daycare, like the proposed product, we include a daycare.

A. (Mr. Dickinson) Okay.

Q. And then if we go to Page 47 of this same brochure, you see that the Project was supposed to include as well an area for kids and pets, correct?

Is that what you see?

A. (Mr. Dickinson) Yeah, I see that there.

[redacted]

[redacted]

Q. Thank you. Thank you, Mr. President. No further questions.

PRESIDENT SACHS: Very good. Thank you.

Will there be redirect?

(Pause.)

MS. RITWIK: Just two questions. One for Mr. Dickinson, please.

REDIRECT EXAMINATION

BY MS. RITWIK:

Q. Mr. Dickinson, are you aware that The Charlee was also advertised in publications such as The New York Times, Condé Nast, Vogue Travel? Are you aware of publicity--of that sort of publicity of The Charlee Hotel?

A. (Mr. Dickinson) Yeah, I have been made aware of that in connection with this particular case.

Q. And this is a question for Mr. Ruiz. Are you aware of the sales velocity of the Meritage Project?

A. (Mr. Ruiz) I believe I saw some numbers in one of the reports, but I haven't.

Q. How would you characterize it? Was it high, low?

A. (Mr. Ruiz) What I saw was consistent with all the comparable projects we found near it. One comes to mind, we did our valuation in 2019, and by then another high-end luxury project had been launched just a mile south of the Meritage, and it was selling at a very fast pace. I can't remember the number, but it was--all of them had a pace of above 10 units per month.

Q. And was the historical sales of the Meritage Project the ones that were already sold in Phases 1 and 6, would you characterize that as high, low--

A. (Mr. Ruiz) If you give me--

(Overlapping speakers.)

MS. RIBCO: Sorry, Mr. President, I don't think I asked any question about speed of sale of the Meritage.

MS. RITWIK: I'm just trying to understand--I can be a little bit clearer in my question, I think.

BY MS. RITWIK:

[redacted]

[redacted]

[redacted]

PRESIDENT SACHS: We have no further questions. Thank you, Mr. Ruiz. Thank you, Mr. Dickinson. We will now have our morning break of 15 minutes, meaning that we would resume at 11:15, please.

THE WITNESS: (Mr. Dickinson) Thank you, and bye-bye.

(Witnesses step down.)

(Recess.)

DAVID ANDRÉS GARCÍA JOYA and CHRIS G. MAUGERI,

RESPONDENT'S WITNESSES WITNESS, CALLED

PRESIDENT SACHS: Alright, we're going to resume.

Good morning, gentlemen.

THE WITNESS: (Mr. Maugeri) Good morning.

THE WITNESS: (Mr. García) Good morning.

PRESIDENT SACHS: To my left is Mr. García Joya, is that correct?

THE WITNESS: (Mr. García) Yes.

PRESIDENT SACHS: And you are Mr. Maugeri?

THE WITNESS: (Mr. Maugeri) Yes.

PRESIDENT SACHS: Thank you very much. Please read for the record the Declaration that is before you.

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

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

PRESIDENT SACHS: Thank you very much.

We now invite you to give us your presentation.

DIRECT PRESENTATION

THE WITNESS: (Mr. Maugeri) Thank you. Good morning, Mr. President and Members of the Tribunal. It is -We thank you for the opportunity to present today.

Just a quick introduction. My name is Chris Maugeri. I am the Senior Managing Director of

Valuation and Advisory Services for CBRE in Latin America. I have a Master's in valuation from Canada. I am also a certified member of the Royal Institute of Chartered Surveyors.

Our group value is approximately $40 billion in real estate in Latin America per year with a number of--several different property types, including those subject to this Hearing.

We've actually valued quite a few of the hotels that were presented in the JLL report and that are clearly not comparable to the projects proposed in this, but I will pass on to my partner and colleague, David García, to present himself.

THE WITNESS: (Mr. García) (Interpreted from Spanish) I speak English, but I feel more comfortable doing this presentation in Spanish. So, we will have two languages. We are going to be passing the floor between us.

And now referring to my experience, I am an economist. I have a Master's degree in finance. I am a specialist in risk economics. I am also a certified appraiser certified by the Colombian Authorities. I have experience in appraisals. I have worked almost 14 years in various roles in the real-estate market, including on market research in--with various institutions. Over the last six years, I have been working with CBRE as part of the team of valuation and advisory, and now I am leading the division, the valuation and advisory division. I have experience in the valuation of various real estate properties including some of the ones mentioned in this case as well as others that are not mentioned here.

So, now I am going to give the floor to my colleague.

THE WITNESS: (Mr. Maugeri) Thank you, David. Just before we get into the methodology, and as a reminder, and I think you understand what our instruction was, but we were instructed by GBS Disputes to analyze various of the assumptions of BRG's that were used in the report to come up with a calculation on damages. These include prices, costs, profitability or developer's profitability, construction costs, and discount rates as well, as well as speed of sales.

So, in terms of methodology, as we mentioned, we really focused on different areas, and I'll describe those below, but we did use the highly recognized residential real estate database by Coordenada Urbana by CAMACOL. We'll describe briefly those differences between what was used by JLL.

And we relied on surveys with very active developers that related to relevant projects and similar projects comparable to that, those being discussed in this Hearing.

Just as a note, surveys are--that monitor specifically investor developer expectations related to Discount Rates are heavily relied upon by valuation experts and analysts when coming up with a DCF Valuation Model.

In the table below, you can see our assumptions, the ones analyzed, and I will describe who focused on those. The first assumption relating to pricing and speeds of sales. My colleague, David García, focused on this area within our Report, and the data that was used principally was Coordenada Urbana by CAMACOL, as was mentioned previously.

I did focus on the section of construction costs, which is related again, data sources we used, active surveys with developers, very, very--with a lot of presence in the market. We reviewed actual construction budgets. We did use DANE, which was mentioned in JLL as well, for the construction costs in Cartagena in particular. We used a construction cost magazine known as Construdata, and we did for some benchmarks related to the hotel, FF&E. Specifically we used HVS.

Related to Discount Rates, we used surveys, again, with active developers, which is very relevant, and we did rely on an investor survey by a very reputable local valuation firm, Logan Valuation.

With that, I will pass it on to my colleague, David, to describe our conclusions related to sales pricing.

THE WITNESS: (Mr. García) From this point, we are going to move on to the assumptions that we have been analyzing the prices, construction costs, and profitability, potential profitability of the projects.

Here, you have a table that is not completely referenced in our report. We just wanted to summarize it so you can see what we saw, and, from there, what we included in our initial report.

We referred directly to the models that were being referenced with all of the information. We carried out a review of what was included in the BRG report, and we also compared that against what we could see in the market.

I should introduce a caveat here. We saw some possible reference to what could possibly be in those locations, but since we couldn't compare that to the actual situation, we just went to the broad market. When we were looking at those prices, we analyzed first which could be a comparison parameter. One is the price, of course. We had to segment the sample based on available price to be able to conduct the analysis, and something very specific in Colombia that you have heard before: in Colombia, we also break down housing based on stratum classification; and Stratum 5 to 6, that is the highest you can have, is ranked or defined as "luxury housing."

So, what we could see in our sample, in general terms and also looking at the markets where we had these projects that we were asked to appraise, we saw what we had there, and what we found is that there were some segments in which there was no market; for example, in the case of Guatapé, there was no active market, and it doesn't mean that that type of real property did not exist; rather, the tradition in the market is just more self-construction. Usually, the person has its own lot, and it develops it based on its own taste or needs, and normally there is no active market with this type of asset, or a first market that has this type of asset which is very active.

So, what we saw from the sample is that what we saw based on square meter, and here this is to have the clarity that we used the square meter measurement, which was significantly lower to what we could find in the market that we are analyzing. We did this for all. In the case of 450 Heights, the difference was there was no such a big difference between the market and the sample, but we did find a difference for the other projects. This is just a reference and also, based on the information, it is not common in the market to have hotels or aparthotels for sale. There are some initiatives and projects, but it is not quite usual. Let's say, it is not the typical product that you would find in Antioquia.

The few we have there, are in Medellín. They are in the metropolitan area of Medellín, and the price reference we were able to find at that point in time, we saw the information between 2015 and 2017 because that was the instruction we had; and so, we had a price range of 6.2 million pesos. To the left you see the information I am sharing with you so that it is on the record.

Now, when we are referring to other determinants, as my colleague just explained, we verified the databases and also because of the type of information being requested, because of the type of request, a lot of this information is not publicly available, there is no reliable database that is open to all or at least that can be opened to all of the players that would include all of the indicators. So we asked these individuals directly and subject to confidentiality, taking advantage of the trust relationship that we have with them and without telling that we were working on a case so that we wouldn't taint their answers and that they wouldn't be biased or had some sort of feelings against it.

So, what we found is that all of those who answered recognized the Charlee hotel as a successful one; they do recognize it as such, as it is in an area with high flow of people, with a good presence of persons. It is not recognized as a luxury brand, and this is what we found, this in the sample.

And seeing that connotation and what we were able to see from the numbers we looked at is that many of the prices seen in those models and the sales projections were very optimistic. It was an optimistic perspective in which a normal investor might normally take a position at the high-end, not in the middle end as in any normal analysis.

Also, talking about the connotation of Parque Lleras, as we saw in the previous presentation, as it's a very active area in terms of the nightlife.

It has bars, restaurants. The rooftop is recognized among the youth.

So, what we see in terms of the project, what we saw from the interviews, is that it's more targeted more to adult leisure rather than family-oriented.

And one of the components in our reading of a luxury brand is that it also includes this family component, so that families would find a natural niche in visiting such hotels. We don't see the link between the recognition of the brand, which is recognized as successful, but it has more to do with adult entertainment, without small children at least, not really a family orientation.

And I now give the floor to Chris.

THE WITNESS: (Mr. Maugeri) Construction costs, I won't spend too much on this slide. We, based on our conclusions, again we provided the data sources, and the segments that -of the--that we focused on which were stratified and above. Our costs--or our evidence really discloses that we're generally in line with the direct costs on the residential components, so I will pass the word back on to David.

THE WITNESS: (Mr. García) Now, this part of our study, came mainly from the survey that we conducted. This is that kind of information that we were mentioning initially that is not typically public information. You have to have some market expertise in order to be able to find this information.

Here, we did not rely on Coordenada Urbana, which was our source of information. Now I should say something about Coordenada Urbana, to establish its significance and why we used surveys at some point in time and why we used Coordenada Urbana at other times.

Coordenada Urbana, the owner behind it is the Colombian Chamber of Construction. That is the association of construction companies in Colombia. It has a 65-year history. It is very well-recognized in the market. All of the members of the Board of Directors of this Chamber of Commerce for construction are well-recognized in the market, they have wide-ranging experience. Part of the relevance of the source as such is that CAMACOL, as it is also known, is part of the national statistics system.

This means that the National Government of Colombia uses the information from CAMACOL to make housing policy decisions.

When we were analyzing what type of information we might get, well, we know about the importance of La Galería Inmobiliaria. It is not that we didn't have access to the database or that we did not know about it. Simply, CAMACOL which is the owner of Coordenada Urbana, has a very important institutional presence. It's used by many banks, and insurance and financial companies in Colombia for their own decision-making. And in our view, these institutions carry out very realistic analyses of projects because when you're undertaking an analysis of financing for a given project, you have to be very careful with your projections because you really need to consider the risk. I'm not saying that this invalidates any other source of information, but I am explaining why we went with Coordenada Urbana.

And in the case of the return for the developers--what we asked was looking at things with a

2017 perspective, pre-pandemic, well, let's take away the effect of COVID, in areas around Medellín, looking at a second home in Cartagena and also in Medellín, and please look as well at the sub-market in Bogotá's Savanah, which is the most natural market for this type of housing, given the socioeconomic level that prevails in Bogotá.

So, what would be a reasonable return that they could expect for their project? What we found was a sample ranging between 10 and 18 percent, based on the answers and performing a normal statistical study of the sample, and also the opinions of those who answered. They were saying: most likely, we would expect between 12 and 15 percent. That's what we found for the expected rate of return for a developer of a project such as this.

And I give the floor to Chris.

THE WITNESS: (Mr. Maugeri) Thank you, David. Discount Rates are an extremely important part of any DCF Model, of course. The highest risk segment in real estate is speculative developments for sale, so we would expect obviously discount rates significantly higher than your standard real-estate projects.

Our findings based on our interviews, and again we focused on the higher-end segment, we mention here over COP800 million, which is broadly speaking about $265,000 and above per unit. Our respondents, we do have 11 indications on this chart, but the actual number of respondents is larger, given that we incorporated the Logan Investment Report as well into our findings. So, we generally have a range between 13.2 and 31.3 from our findings, from our respondents, eliminating the higher end and the lower end of the spectrum, we're generally in a range between 18 and 25 percent.

It's important to know BRG used a post-tax Discount Rate of 7.7 percent. We did adjust that, given that our Discount Rates are unlevered and pre-tax, so we did adjust--make that adjustment, and that brings up the BRG equivalent Discount Rate to 13 percent.

So, this is clearly low, on the low end, given the range between 18 and 25 percent. It is generally more realistic based on our findings.

I will pass on the word back to David.

THE WITNESS: (Mr. García) Here, we'd like to mention our estimate of--well, what we found in the market, and based on our conversations with the most active participants, about the speed of sales and what could be defined as a typical project in the high-end segment in those markets that we analyzed.

So, we wanted to say something about that. We relied on two sources: Coordenada Urbana as the source that is most complete in terms of the history, because we undertook an analysis over the months using that database; but we also in the survey, we included some questions related to this indicator to get a more clear idea of what an investor might be expecting from a project such as these.

Now, in those questions, when, first of all, we acknowledge that projects have their moments, there is a pre-sales phase which is based on the blueprints; and another phase, once the equilibrium point is reached and until the project is finalized. It is recognized that during the initial stages, there is a much higher level of sales, and why is that? There is something in the market which is known as "List Zero." This List Zero, which is used by many developers, is to invite the most recurrent clients, friends, family members or other investors who are very close to them to come forward and buy units. And at that point in time, certainly there will be a greater level of sales, normally, than in subsequent months.

But once we look at the historical, long-term historical data--and here recognizing that projects or really any asset in the economy have ups and downs, so we wanted to remove that effect that you get when you only look at the sales and instead we noticed that one month there may be sales and another month there may not be any sales, and that is how you cover the full spectrum.

What we were able to observe is that Guatapé, for the reasons mentioned earlier, has a low inventory. There may be times when the sales are above the long-term averages, and this is because of the very--of the characteristics of the market.

Now, let's see if one makes an adjustment for that. It makes much more sense to talk about 0.5 to 1.5 units per months, and this could yield two units per months, which is a scenario resulting if we go a little bit beyond the average.

Now, analyzing the assumptions in the data that we obtained, we know that the Meritage at Phase 1 had record sales; we were able to verify this, at least, in the data we were given. It was close to 4 units per month over 39 months. It's a good indicator, but when one goes to see the history, in general, and here what we're replicating is the analysis of a typical and normal investor, not one who would be, say, an adventurer--well, that's not the word, but one who might be a little bit more daring, say, than the average in the industry would have to be a little more conservative thinking about how there will be some moments when there will not be a good level of sales but rather sales will be lower.

And what we can do in comparing with the projections of the other models is, first, they were much more optimistic in almost every scenario in relation to the Meritage, a project which did have confirmed sales at a certain level. In the case of 450 Heights, in Phase 1, they had an average of 14 units per month, which is more than three times what was observed at the Meritage. It then became more conservative downwards as the phases went forward, but it's much higher than what's seen at the Meritage.

And when you trace the market, we're talking about the high-end of the market in a country where one must represent there is major income inequality, there are some families with money, but it's a very small percentage of the population. And so, as a result, the size of potential demand is much less. What one might expect as a response to demand is that it would have to be a bit lower because of the availability and the —profile of the project that's being offered.

This happens systematically for all the cities. In the case of Guatapé, the difference is a bit less, but in the other projects what we're seeing is that they were beyond what the long-term average for the segment in that city was suggesting.

And here, I want to say one more thing,

sorry. Part of the request that was put to us by our clients was, well, they said, please go to the market and try to trace those assumptions that we made.

One method we used, as I already mentioned, were the surveys, and here we went to the market, we asked the question to one of the developers who is very active in the area and who has a highly successful project. I should mention that he was so open to tell us his real figures because we ensured we would keep his identity confidential. This is not something that you would necessarily see in a market report because it's strategic business information.

What we were able to get was that pricing at the time that the project was launched to the market did go up, but around 2017, it was about 4.4 million pesos which is a much lower price than what was defined in BRG's model.

When one looks at sales in the first year of the launch after the hype of the--List Zero and sales go back to normal level, the real average was two units sold per month. And once that was analyzed with a two-year perspective, the average of sales that they might expect to see was actually 1.4 units per month.

The expected Rate of Return of that project, well, effective, because in this case ze refer to figures that were shared with us, was about 14 percent.

[redacted]

[redacted]

(Overlapping interpretation with speaker.)

THE WITNESS: (Mr. Maugeri) Great, thank you, David. So, just based on all of that analysis and based on our independent expert opinion, we concluded pretty much three major items here.

BRG really assumes the developer's profit, specifically for the Meritage and Tierra Bomba projects, that are materially higher than what would be expected in the market, and we also conclude that what's driving the high profit margins are really related to optimistic assumptions on prices.

The second conclusion is that BRG assumes a Discount Rate for the Claimants' real estate activities, which is materially lower than the Discount Rates used by developers of high-end real estate projects in Colombia.

And, thirdly, BRG does assume that the Claimants' real estate could sell at a materially faster rate than what is expected within the Colombian market.

Thank you. That is our presentation, and we are opening it up for questions.

PRESIDENT SACHS: Thank you, gentlemen.

Who would be in charge of cross-examination? Ms. Ritwik?

MS. RITWIK: Yes, that'll be me.

PRESIDENT SACHS: Okay.

MS. RITWIK: Thank you.

CROSS-EXAMINATION

BY MS. RITWIK:

Q. Good morning. I think it's still the morning, yes. Good morning, Mr. García--it's Mr. García or Mr. Joya?

A. (Mr. García) García Joya.

Q. Okay, Mr. García Joya and Mr. Maugeri.

A. (Mr. Maugeri) Good morning.

Q. Thank you for being here. I'll just be asking you a few questions about your Report today.

Before we begin, it was not quite clear to me which of you were in charge of which sections of the Report. So, I was hoping that we could start with clarifying that. Maybe we could start with you, Mr. Maugeri?

A. (Mr. Maugeri) Sure. As I did mention at the beginning of the presentation, we did--David focused on the pricing and speed-of-sales assumptions. I focused on the construction costs as well as Discount Rates, and finally, David did focus more on the developer's profitability.

Q. Okay. Fantastic. Thank you for that.

I think you probably already know that since you were sitting in during JLL's testimony, but the Tribunal has asked that when I do ask the question, since there are two of you, only one of you answer and the other one refrain from supplementing at that time.

So, let's proceed.

I'd like to go to Page 4 of your Report.

So, here, you have listed the instructions that you were provided by GBS. Are these the entirety of the instructions that you were provided with?

A. (Mr. Maugeri) Yes, this is correct.

Q. Okay. So, here it says you were asked to provide certain estimates related to the real estate elements of Claimants' projects, is that right?

A. (Mr. Maugeri) This is correct.

Q. So, you were asked to provide prices, cost, profitability, Discount rates, speed-of-sales all for real estate units and real estate elements?

A. (Mr. Maugeri) This is correct.

Q. You were not asked to provide any data on the hospitality or the hotel aspects of Claimants' businesses?

A. (Mr. Maugeri) This is correct.

Q. Okay.

REALTIME STENOGRAPHER: Keep your voice up, please. Talk louder.

THE WITNESS: (Mr. Maugeri) Okay.

BY MS. RITWIK:

Q. Now, let's move on to Pages 52 to 53 of your Report. These are all the materials that you relied on, yes?

A. (Mr. García) Yes.

Q. And so, there are four case documents that you relied on up there, Number 1 to 4?

A. (Mr. García) Yes.

Q. Yes. And you submitted 18 exhibits consisting of analysis, files and articles that you also relied on. These are the 18 over here?

A. (Mr. García) Yes.

Q. Okay. I don't see the JLL Reports here. Were you asked not to review them?

A. (Mr. García) We did review them. But we focused more on the BRG models that mentioned data used by JLL.

Q. So, you reviewed them, but you didn't list them in the materials relied upon because, presumably, you did not rely upon them or you did not assess them in any great detail?

A. (Mr. García) No. Quite simply because we focused more on the models that we indicate there in our Report.

Q. I understand.

A. (Mr. García) Which had JLL information. But our focus was the BRG model.

Q. Understood. Understood, Mr. García. Thank you for that clarification.

Now, I think you discussed both in your presentation as well as in your Report, that you conducted a survey on which you relied for a number of the estimates that you have provided. Do you recall talking about that?

A. (Mr. García) And what do you want to know about that survey?

Q. I just wanted to--my question was just do you remember talking about that? Yes?

A. (Mr. García) Okay, okay.

Q. Now, let's move to Page 10 of your First Report.

So, I'm trying to look quite a bit in your Report and in the sources that you provided, and this was about the best description of the survey that I could find.

Is this--are these the Respondents that you surveyed? These are all of the Respondents that you asked the questions off of?

A. (Mr. García) Yes.

Q. Now, not on this page nor in the rest of the document did I see a methodology provided of the survey. Did I miss that, perhaps?

A. (Mr. García) When I mentioned each of the datum extracted from the survey, there was the question asked and the answers obtained. And that can be shown there, and if someone is familiar with the Colombian market, well, several of these developers are important, they're important in the markets being analyzed for this case.

(Pause.)

A. (Mr. García) And they have a major institutional presence.

This survey, or the samples that we were able to collect, the only thing it shows is that there are market actors who are relevant, and whose views are important when it comes to answering the questions that we're asking.

Q. Understood.

So--sorry, my echo is bothering me when I have the headphones on--but I think what I surmised from your response was that it's important to get the participants right, correct? To have a good survey.

(Pause.)

A. (Mr. García) Yes.

Q. Okay. And so, apart from the participants, do you think it's also important to have a consistent methodology when you're performing a survey for, say, things like the exact question asked, the person who's asking those questions, how those questions are responded to either by writing or by phone, where those questions are written down, how they're collated. Are those kinds of aspects of a survey methodology also important, in your opinion?

A. (Mr. García) They are descriptive.

Q. I haven't seen anywhere in your Report, though, you describing these aspects of the methodology. You don't list them in your Report anywhere, do you?

A. (Mr. García) Not explicitly, but that does not invalidate the results or those who provided the answers.

Q. Understood. Understood, Mr. García.

So, my understanding is that you recorded all of the responses that you got in this survey in one of the spreadsheets that you submitted with your

Report, is that correct?

A. (Mr. García) In those in which it was possible to actually get an answer, yes. Were that was not possible, it simply was not included.

Q. And did you attempt to verify the data that you received from the survey response?

A. (Mr. García) That depended on the type of question. Not all of the Respondents answered all of the questions. This is because we are dealing with very confidential information, so some of them decided that they didn't want to respond, and that's what they did.

So, what answers we got, we included.

Q. My question was: Did you try to verify them? Did you ask for the underlying data to verify them?

A. (Mr. García) I didn't really understand your question.

Q. So, say that you asked a survey Respondent for their profit margins. Did you then ask for the underlying data, their accounting, their records, to verify that that was, in fact, their profit margin?

A. (Mr. García) Sometimes we did. Sometimes it wasn't necessary because this is something that the market normally knows. This is direct information, so they simply answered on the basis of the question that was posed to them.

So, it wasn't really necessary to look at their financial statements, because all of these individuals were leaders, and they knew about the market, and they had that information at hand and top of mind. They simply answered.

And what we were trying to do here is to find the reasonableness for the profitability that an investor of those characteristics could have in this market. This is what we asked.

And the responses we obtained.

Q. Okay. So, I think you said "no," so the answer to my question is "no", is that right? You did not ask for the underlying data. You took their word for it?

A. (Mr. García) Yes.

Q. Okay. So, let's go to the spreadsheet where you did note down all of the information that was provided to you. Is that CBRE-09? It's not in the binder. It was not printable, so we'll have to see it on the screen. I apologize for that.

So, is this the raw data that you used to draft the Report?

A. (Mr. García) Yes.

Q. Okay. Let's go to the tab that says "Interviews Database Respondent." This is the list of Respondents, yes?

A. (Mr. García) Yes.

Q. Now, if Mr. Schimper can perhaps highlight Rows 3 from 23. All the way down. That's okay.

There are about 21 Respondents here, isn't that right?

A. (Mr. García) Yes.

Q. A couple of them appear to be double counted. So, for example, I see [redacted] over here.

A. (Mr. García) Yes, I think that's a typo. We said there were 18. I think that's a typo. Apologies.

Q. So, there were only 18 Respondents, not 21?

A. (Mr. García) That's right.

Q. Okay. Let's go to Page 10 of your First Report. The first Respondent here is [redacted]

Let's go back to the spreadsheet. I've tried hard, but I don't see [redacted] here.

A. (Mr. García) That's true. It's not there.

Q. Let's go back to your Report, Page 10. I see [redacted] Do you see that? It's the right most column at the top. Um-hmm.

A. (Mr. García) I do.

Q. Thank you. You'll have to answer "yes" or "no" for the record. Thank you for that.

Let's go back to the spreadsheet, thank you.

I don't see [redacted] here either.

A. (Mr. García) We didn't really cross the information of [redacted] with the information from the residential side because they only have experience in hotels. We were asked not to include hotel sectors, so that is why we only stated that we spoke to them, but did not include them in the sample. None of those answers have that component.

Q. Okay. So, which was your list of

Respondents, Mr. García? The one in the spreadsheet? The one in the Report? Something else entirely?

A. (Mr. García) The one in the Report.

Q. But you just told me that you didn't reach out to [redacted], and [redacted] is not listed in this spreadsheet, but did you talk to [redacted]. I'm just a little confused about exactly what happened.

A. (Mr. García) What happened there is that there was an error in the description. We wrote the [redacted] interview twice and we did not include [redacted]. We did talk to [redacted], but that was a transcription error. My apologies.

Q. Okay. Understood.

Let's move to the next tab, which is "Interviews Database Questions."

So, here, Mr. Schimper, if I could ask you to go to the left. Yeah. Thanks.

So, here you've listed the answers that were provided to you from the survey questions; yes?

A. (Mr. García) Yes.

Q. There are a lot of blanks here, so it looks like a lot of the Respondents just didn't answer a bunch of questions, is that right?

A. (Mr. García) Yes. Some of these Respondents did not provide an answer because our surveys were — mostly focused on profitability. We took advantage of this survey to ask other questions because we had the basis of Coordenada Urbana to cover those aspects, but the focus of the surveys, as we mentioned in our presentation, was specifically the profitability.

Q. I understand.

A. (Mr. García) And I'd like to add that we are transparent in connection with all of the information that we obtained, and we included all of that information in the document so that you and the Members of the Tribunal could have access to whatever it was that we saw, and that is why we included everything.

Now, if this made the reading more complicated, I apologize. But, as we stated in our presentation, the interviews were more focused on profitability, as it is a variable that you cannot find freely in the market.

Q. The interviews were focused on

profitability?

A. (Mr. García) Yes, and on Discount Rates.

Q. Okay. Let's move to the right of the spreadsheet.

Column L is "IR high-end hotel." If we scroll down, I see only two responses. You can keep scrolling down just to make sure that everyone sees it.

Do you think that was a sufficient number of responses?

A. (Mr. García) In the Discount Rates that we were referencing in our written report, no mention was made of hotels. That is why the reference there has to do with a competitor's survey that had that information, and we included it there only as a reference. But as you can see on "K", we have a larger amount of data. We know that the more data, the greater the representivity, and so what we did in our report is we focused on the relevant information. As I said before, we want to be completely transparent with the information that we had access to, and, therefore, we submitted everything but our expert analysis is focused on the information included in the Report.

Q. Okay, Mr. García. Let me take you to the 14th row of the spreadsheet. This is an unnamed Respondent, like all of your Respondents are, and there is absolutely no data presented for this Respondent at all, not a single piece.

Is this another error?

A. (Mr. García) No, what happened is that we held a conversation, and this Respondent asked us not to include the data he had provided; so, therefore, we could not include that information.

And we haven't even taken into account in our analysis because, for this project, we were asked by the respondent not to include that information. We respected the instructions and simply did not include it.

Q. Is that something you would have put in your "Notes" column? You have a notes column on this spreadsheet, right?

Can you scroll all the way up.

A. (Mr. García) Possibly, it was necessary to include that information in the "Notes" column. I agree with you.

Q. Okay. So, there were a few oversights while you were preparing the spreadsheet that served as the main source for a number of your estimates, correct?

A. (Mr. García) Could you please repeat the question?

Q. I was just commenting on the fact it looked like there were a couple of errors and oversights, maybe minor typos and things like that in this spreadsheet that served as the source for your Report.

A. (Mr. García) Possibly. However, they were involuntary. If there was an error, it was not voluntary.

Q. Absolutely, that makes sense. How long did you have to prepare your Report?

A. (Mr. García) About a month-and-a-half. Just about a month, a month-and-a-half.

Q. Okay. Let's go to your Report Page 37.

Now, this is a bar graph where you provide the sales absorption by city, correct?

A. (Mr. García) Correct.

Q. And the only source you cite here is CBRE-09?

A. (Mr. García) Correct.

Q. That was the spreadsheet we were just looking at, right?

A. (Mr. García) Correct.

Q. Let's go back to that spreadsheet. Could you please scroll all the way and then up. Thank you.

Now, there are two columns here that set out the sales absorption which is the Units sold per month. There is a minimum in Column E and a maximum in Column F.

Do you see that?

A. (Mr. García) I do.

Q. Let's go to the third row down, which is a merged cell, and it's for Medellín.

Do you see the sales absorption figures that you have listed there? There is 4 and 15 and 5 and 15 and the minimum and maximum columns respectively?

A. (Mr. García) I do see that.

Q. Okay. And if we scroll down further, we see that Medellín has 2 and 3 in Row 10 and 3 and 5 in

Row 12, is that correct?

A. (Mr. García) Agreed.

Q. And then we go all the way down to Row 24, and we see 1.4 and 2 for the minimum and maximum, respectively.

Do you see that?

A. (Mr. García) I do see that.

Q. Let's go back to your Report Page 37.

The sales absorption figure here is 1.4 reported.

A. (Mr. García) Agreed.

Q. That was the minimum sales absorption figure that was provided to you in the surveys?

A. (Mr. García) I would like to mention something here. As the title here indicates, this was done on a personal basis and on the basis of what we got from the survey as to the most relevant projects. The most relevant project--and I understand the point raised about the minimum, the smallest number, because that is the definition of something that is the minimum of something else, but in this case, we need to mention that we were looking at the average of long-term sales.

So, the heading here perhaps may lead you to think that the minimum was chosen in an ad hoc manner, but here we were choosing the most relevant projects among those for which we obtained answers from the respondents.

So, from the answers from the respondents, we looked at the expected sales level per month, and then we also looked at the same sample on the basis of the segmentation, and then we looked at the most comparable piece of information, and then we chose the ones that were the most representative. That is why the data is there.

Q. Let me see if I can understand. Are you saying that the source here is incorrectly listed? Is it not CBRE-09 from where you selected this data?

A. (Mr. García) That's not what I said.

Q. So, it is CBRE-09, from where you got this data?

A. (Mr. García) Yes.

Q. So, you're just saying that the most relevant response provided to you just also happened to be the lowest?

A. (Mr. García) No. That's not what I said.

What I'm saying here is that the sales absorption is being shown of the most relevant projects for that segment by city in accordance with our sample. That is what I said.

Q. Okay, Mr. García, maybe others will understand that better than I did.

Let's go back to the spreadsheet. Let's look at Cartagena next.

So, if we go to Row 8, here the sales absorption is 15 and 20 respectively.

Do you see that?

A. (Mr. García) I do. And I also see the average price, and that is not the most relevant project for that segment. So, this is not representative.

We have to clarify that the highest specifications segment is less liquid, fewer sales are made, and on the basis of the data that we looked for, we found this project, and here we're only looking at the profitability that is more or less stable. This is not the most relevant project to define that sample. That is why we didn't include this in the other table that we showed before.

Q. Understood, Mr. García. So, you're saying this was not relevant. It just happened to have the highest figures, but it's also not relevant, is that what you're saying?

A. (Mr. García) Well, no. I'm saying that this is not the most representative one. That's what I'm saying. Regardless of the data, it is not the most representative one. That's what I'm saying.

Q. Okay. So, the most representative one, according to you, happens to be I believe the data provided at Row 34 of 2?

A. (Mr. García) Yes.

Q. I don't see any other metrics that you were talking about. I don't see the profitability or the prices or anything else. How did you determine this was the most relevant? I don't even see notes here.

A. It was the most relevant because of the sales level. As I said, this was challenging in connection with the sample we were able to collect.

Not all of the survey Respondents were able to provide this information, but we included the information we were able to obtain. This is not a census, it's just a sample. And each one of the Respondents were free to provide information. The only information that they were able to give to us freely with respect to that project was the sale data. This didn't happen in all cases, just for this project. But this was not the only source of data that we used.

Q.   I guess I'm just a little bit confused as to how you determined that this was the most relevant when you don't list any other piece of data about this survey example.

A.   (Mr. García) The only thing we were showing here was the speed of sales, and this is consistent with that.

Q.   The speed-of-sales data that you think is most relevant, also the lowest, yes?

A.   (Mr. García) Please repeat the question.

Q.   That's okay. I don't think we need to keep going on this.

Let's discuss some of your price estimates.

Now, you said you relied on CAMACOL as a database, yes?

A. (Mr. García) Yes.

Q. And you extracted average prices from that database, yes?

A. (Mr. García) Yes.

Q. For certain strata for each of the Projects.

A. (Mr. García) Yes.

Q. And there are 6 Strata?

A. (Mr. García) Yes.

Q. The higher the strata, the more luxurious, the more exclusive the Project?

A. (Mr. García) Typically.

Q. And so, you chose Strata 5 and above for the Claimants' projects? In general.

A. (Mr. García) Yes.

Q. Let's go to the Report at Page 17.

Have you seen any pictures of the Luxé Project?

A. (Mr. García) Yes.

Q. Have you been there?

A. (Mr. García) I have passed by it, but I have never stayed there.

Q. Would you describe it as a luxury project, or at least a high-end project?

A. (Mr. García) At what point in time? Now?

Q. Let's say 2017, as it was supposed to be developed, do you consider that it was going to be a high-end project or a middle-tier project?

A. (Mr. García) High end.

Q. Now, here I see that for Luxé, you have taken prices from CAMACOL for Strata 3 and above. For the other projects you took prices from Strata 5 and above. I'm just confused as to why that is.

A. (Mr. García) I can explain that to you.

In the case of Guatapé, there is no consolidated market for Strata 5 and 6. That was not the only filter that we used. We also used price as a filter because there is a direct relationship between the price of the housing and the place they occupy in the strata. In the case of Guatapé, the information that we could find on the database at that point in time, could be filtered according to those criteria, and the average that we found is the one shown on the screen.

So, to define the analysis of the data, we didn't only take into account the strata, but we also used a segmentation criteria based on price. Here, we used both to be able to truly define the amount of data that we could analyze for this market at that point in time.

Q. So, are you telling me that there was no data for Strata 5 and 6 projects in the CAMACOL database? In Guatapé?

A. Yes. The information was limited.

Q. Okay. Let's move on to the next page.

Here, too, you just used prices for Strata 3 and above, correct?

A. (Mr. García) Agreed.

Q. Oh, sorry, this is still the Luxé. Let's move on to the next page.

Okay. Actually, let's go to CBRE-08. This is the CAMACOL database? So, if we go to Column H, we filter, this is the regions, right?

A. (Mr. García) True.

Q. And Guatapé is in Antioquia?

A. (Mr. García) That is correct.
Q. And the city is Guatapé? That's in Column H, by the way. I'm sorry, J.
And then if we go to the right, I believe it's estrato, estrata?
A. (Mr. García) That's correct. (overlapping speakers)
Q. I see some Strata 5 projects there. Oh, I was just saying that, I think it's Column U is strata, and I think I see some Strata 5 projects here. Do you see those two?
A. (Mr. García) I see them.
Q. So, there are some Strata 5 projects in the CAMACOL database?
A. (Mr. García) Yes, but it could be that they were not active in the time horizon that we studied. That includes all of the information from Coordenada Urbana for 2021 and before. We were asked to analyze data for 2017, a very specific point in time.
Q. So, if you didn't find any comparable projects in CAMACOL at that time, would it have been reasonable to look at another database?

A. (Mr. García) Such as an example?

Q. For example, La Galería Inmobiliaria, which is what JLL used?

A. (Mr. García) Yes. And we saw it.

Q. But you didn't report those figures here, instead you went on to Strata 3.

A. Yes, and for a reason, a specific reason. A strength that we saw in the CAMACOL database was its coverage. The number of municipalities that we found in Antioquia was much higher than the one we usually found in La Galería Inmobiliaria. Since we wanted to identify the Antioquia market in a more fulsome way based on the information available, we chose Coordenada Urbana as our main source of information.

Q. You chose it as your main source of information because coverage was high, and yet you were telling me that there were no comparable projects for Strata 5 and above in Guatapé. That doesn't seem consistent.

A. (Mr. García) No, I may not have expressed myself properly. What I said is that there was not much information for that stratum in Guatapé at that point in time.

Q. At the point of time you were asked to analyze.

A. (Mr. García) On the effective valuation date or the effective analysis date, if you may.

Q. Okay. Let's move on. Your price estimates for the Projects that you provided were for multi-family, single-family, and the land, yes? That's what you provided in your Report.

A. Correct.

Q. Now, I'm not a real estate expert, but I have bought a house, and so just correct my understanding if I'm wrong, but single-family generally means houses, right? A single-family is living in a unit by itself, yes?

A. (Mr. García) Correct.

Q. And multi-family is usually apartment blocks, right?

A. (Mr. García) Yes.

Q. Let's go to Page 15.

Now, these are prices from CAMACOL for Cartagena, right?

And we see here that the single-family houses, which is that line in black, have prices that are about half as much as the prices for multi-family units, so your data was telling you that houses in Cartagena cost on average less than apartments, almost half as much. Did that seem odd to you when you saw that?

A. (Mr. García) The reference is per square meter.

Q. Understood, but houses are generally more expensive on a per meter basis, per-meter squared basis. Wouldn't you agree?

A. (Mr. García) Not necessarily.

Q. Okay. Let's go to Page 13. This is the same data for Envigado, yes? And which is higher: Single family or multi-family?

A. At this point in time in that market, single-family homes, but I do not see the relationship to the rest of the market.

Q. Okay. Let's go to Page 19.

This is the Crystal Lakes project. Yeah, single-family homes are more expensive than multi-family.

Do you see that?

A. (Mr. García) I see it.

Q. So, you're getting these results and also I think on a common sense basis, we would assume that houses would be more expensive than apartments. But, when you saw these figures on Page 15 for Cartagena, that didn't raise an eyebrow?

A. (Mr. García) I do not understand the relationship. Could you please repeat your question?

Q. I'm just asking you that, when you saw the data that you got on Cartagena, which is, I think, Page 15. When you saw here that houses were almost half as expensive as apartments, that didn't raise an eyebrow, you didn't think that was odd, even though you were getting contrary results for other parts of the country for other projects?

A. (Mr. García) What I'm trying to say is that this regularity you're asking me is not always the case. There are some markets in which the multi-family projects need to be more expensive because they have more demand in the market, and the higher the demand, the higher the price, and that is what we were able to see in the database. It is highly related to the type of market and the type of asset that is being offered.

Q. Did you look at the underlying data?

A. Sorry, I did not follow.

Q. Did you look at the underlying data? Did you go and check out what each of the Units for each of the Projects were to try to understand this discrepancy? Or this odd result?

A. (Mr. García) Well, we reviewed that the filtering of the information was consistent. It is difficult to define what could have been the reality of the Project visually, going back to 2017. At that point in time, we had to rely on the data that we were analyzing because it was a purely numerical analysis in this case.

So what we did was to make sure that we segmented based on the criteria which are correctly defined therein, and based on that we estimated.

And I would like to offer some context, and this is also important with the presentation that we saw before. To be able to carry out an appraisal, you have to conduct an inspection. We rely on what we can actually see on-site, and that is the main source of information and analysis that we may have since it is the most objective fact.

In the case of the projects that we had to review, and also looking objectively at what we could see on-site, and since many of those are not constructed, we need to look at the reference as the most normal reference we can have in the market, and that is the way we did it.

Q. Okay. Thank you, Mr. García.

Have you ever done a DCF for an undeveloped project, Mr. Maugeri? Undeveloped, not in development.

A. (Mr. Maugeri) Yes.

Q. Thank you. That will be all from us.

PRESIDENT SACHS: Thank you.

Will there be redirect?

REDIRECT EXAMINATION

BY MS. RIBCO:

Q. I had just a question I had anticipated when--in connection with JLL's presentation that they had incorporated into the record pictures of a project and allocating it to a project, the case study that was mentioned by CBRE. I would just like CBRE to confirm whether the Project to which you refer in your case study is the one that to which JLL referred in their presentation.

A. (Mr. Maugeri) No, it isn't.

Q. Thank you.

MS. RIBCO: That's all.

MS. RITWIK: I just want to clarify that the picture in JLL's presentation is not a picture of a project in the case study. It is a picture of a project that's in the CAMACOL database that was used to arrive at a price which CBRE provided.

MS. RIBCO: Sorry, is that picture, it's on Page 34 of JLL's presentation, and they say that CBRE's sample is Biocity Grand, Strata 5.

BY MS. RIBCO:

Q. Is that your case study, have you referred to the Biocity Grand? in your presentation?

A. (Mr. Maugeri) No.

Q. Thank you.

PRESIDENT SACHS: Okay, so that related to Biocity Grand?, so it is the picture does not show Biocity Grand?, or is it this one here, that one?

MS. RIBCO: Yes.

So, JLL assigned a project and says this is CBRE's sample. And we assumed they referred to the case study that is shown on Page 46 of CBRE's Report.

PRESIDENT SACHS: If there is agreement, then it's fine.

MS. RIBCO: I just asked them to confirm that these pictures here are not their case study.

THE WITNESS: (Mr. Maugeri) Correct.

MS. RIBCO: Thank you.

PRESIDENT SACHS: Thank you.

Questions?

Thank you very much, gentlemen. We have no further questions. Thank you for your expert testimony.

THE WITNESS: (Mr. Maugeri) Thank you.

THE WITNESS: (Mr. García) Thank you.

(Witnesses step down.)

PRESIDENT SACHS: We best should now have our lunch break, maybe again 45 minutes. Is that all right?

MR. MOLOO: That should be okay. The BRG is ready, they are here, right? So that should be fine. So, 1:30?

SECRETARY MARZAL: I just wanted to confirm with everybody because I've spoken with some of you, that tomorrow the Hearing cannot go any longer than lunchtime. I've canceled lunches, as I'm sure you all want to eat off-site, even though our food is wonderful, but just to be careful about that. Thank you.

(Whereupon, at 12:47 p.m., the Hearing was adjourned until 1:30 p.m., the same day.)

AFTERNOON SESSION

SANTIAGO DELLEPIANE and DANIELLA BAMBACHI,

CLAIMANTS' WITNESSES, CALLED

PRESIDENT SACHS: Okay. Good afternoon.

SECRETARY MARZAL: Mr. President, if I may?

PRESIDENT SACHS: Yes.

SECRETARY MARZAL: It's just a request from the Interpreters to please speak very slowly. Thank you.

MS. BANIFATEMI: May I--I just would like to have time counts, if it's possible, just so I know where we are.

PRESIDENT SACHS: Sure.

MS. BANIFATEMI: Thank you.

SECRETARY MARZAL: So, Claimants have 2 hours and 15 minutes left and Respondent, 3 hours and 44 minutes.

MS. BANIFATEMI: Thank you.

PRESIDENT SACHS: Okay. So good afternoon. I see Ms. Bambachi and Mr. Dellepiane, is that correct? Would you kindly read for the record the Declaration of Expert Witnesses that is before you.

THE WITNESS: (Ms. Bambachi) Sure.

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

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

PRESIDENT SACHS: Thank you very much.

We now give you the floor and invite you to give your presentation.

DIRECT PRESENTATION

THE WITNESS: (Mr. Dellepiane) Thank you, Mr. President, esteemed Members of the Tribunal. I will now proceed with our presentation summarizing our damages assessment, instructed by Claimants' counsel.

Presentation contains four sections. I'll cover the first. My colleague will address the second part, which is fairly long, and then I'll come back to discuss Sections 3 and 4.

Start for a moment with a reminder of what it is that we are valuing. In Slide 4--sorry, I'm just getting used to being the one who clicks and speaks at the same time.

We are looking at determining the Fair Market Value of a pipeline of real estate and hospitality projects, a series of developments; and, for that, we look at them individually because there are characteristics in these such as the timing, their own features, whether they have hotel rooms, lots, houses, apartments, long-stay hotels, et cetera, which are different from project to project.

I mentioned timing and features.

And they also do have some commonalities. They're all premised and anchored around the creation of a previously established lifestyle brand of hospitality projects and real estate.

So, the question in determining Fair Market Value of a project of these characteristics arises as to how to do that; and, for that, I present to you here with a simplified framework of some of the options so we can discuss what would be the features that one would take into consideration in selecting the appropriate valuation method.

Let's take an example, first, of a fully undeveloped land, with no vision or clarity on development prospect, somebody who just owns an empty parcel of land. The applicable valuation method, most analysts would agree, would be to look at comparable land across the road. The inapplicable valuation method, and most analysts would agree, would be to observe the years the amount paid for that piece of land in prior years because it simply may not reflect, and likely doesn't reflect, the value of that land in the market today.

At the other end of the spectrum, we have an example here which is a fully developed residential home track or development, and there, I think we would all agree, we would be looking at observable market prices for comparable properties. Likewise, if we had fully developed mixed-use set of properties, we would have to consider both the value in the marketplace as well as the income that these mixed-use properties, via rental of commercial space, rental of office space, or long-term hotels will generate into the future, and, therefore, we will be comparing--not comparing, we would be combining the Market Approach with the Income Approach and doing a Discounted Cash Flow analysis in order to take into consideration that stream of future revenue.

Finally, is examples in the middle, consider hybrid situations in which there is land with a Master Plan backed by branding and with a certain track record. In that case, we say one would use the

Present Value of Future Profits in order to take into consideration the market information as well as to risk adequately the projects that are still in development.

In relation to this framework--we'll go to the next slide, 6--what we see is here is a depiction of where in this spectrum of range of development each of these projects that we're valuing stood, from left to right, from less developed to more developed. We're obviously not computing damages in our model in relation to The Charlee, as that has not been directly affected. We're calculating damages in relation to the pipeline of projects in development and in construction.

One thing worth highlighting perhaps here, is that even though these projects are between development and construction, the fideicomiso, or Trust Fund feature in them, makes the risking of these projects very different in a way from the way in which one would think of a project that has still not broken ground, and my colleague will explain what I mean by this feature with a fideicomiso structure from a financial standpoint.

So, effectively, what we see here is the Claimants' investments consists of a development pipeline with properties in various stages of development, all anchored around the developer's track record, lifestyle brand, and the price point that it commands.

Now, for this case--sorry, I skipped a slide. No, it disappeared. In this case, we know the key characteristics of the portfolio in terms of details of number of units to be sold, the already sold, units remaining to be sold, the prices observed for these units, the prices expected for the units based on market surveys. We know the specific locations, we know the Master Plans and Development Plans. We have--I mentioned observable Market Prices for comparable developments and in the sector for luxury hospitality.

I pause here for a moment because I believe there was reference made to the Rusoro test, the six conditions to adopt the DCF, of which a Tribunal didn't really say you needed all six. It said that it would be good to have most of them, if not all of them. We strongly believe these projects, in terms of the overall pipeline, satisfy five very clear of those conditions and a sixth in an important way, and I can expand on that, if the Tribunal would like.

Our colleague expert for Respondent presents a Cost Approach based on the observed amounts paid according to the financial accounts or certain expenses incurred by Royal Property Group, RPG.

The problem with this is several issues. First of all, as we know that it's not forward-looking, it doesn't capture any of the market information. It doesn't capture the value of the developments, themself--the location, the design, the architecture, the aesthetic--and therefore it doesn't reflect fair market value.

But let me pause here because Dr. Hern says that because there's a line in the balance sheet in the assets that says "intangibles"--it's a very small amount--then, therefore, it must be that the entire value of the intangible, the entire value of the Seda creation, et cetera must be accounted for. That is simply incorrect from a simple accounting standpoint.

If one were to look at the accounts of Norman Foster or Zaha Hadid or one of the great design and architectural studios and developers in the world, unless those studios just happen to have purchased, themselves, and therefore had to reflect the entire value of their goodwill on their books, you would not find the value of their intangible in their books. The value of the intangible will be in the form of software licenses, and some investments that firms are allowed to capitalize by accounting rules because they're being made towards development of projects such as architect fees, renderings and so on.

But they will never capture and except in the unique circumstance of an acquisition being made at that time, the intangible in the books will never capture the full value of that intellectual property or that intangible, and much less the one that has been lost for the years past.

One final note on the issue of the cost approach. It doesn't even matter, frankly, if this is a Tribunal that is looking at this from a point of view of reliance versus expectation damages. Even in the world of reliance damages, the amount spent here don't actually account for the investment made because the investment made is years of sweat equity and development time and effort that have gone into these projects and not others.

So, the way in which we value this is by combining the Income Approach in a pure form first, in a pure form, basically underwriting models, and the information we find on the record, and then combining it with market evidence via comparables. This is depicted in Slide 8.

We then take all that information, which my colleague will explain how we use it, and then we apply discounting at a Risk-Adjusted Rate, and we also apply a probability of survival or probability of failure adjustment for properties that are yet in development.

We calculate loss in equity as well as loss in fees. This is important because the projects as a whole have a total value that they create, but the structure of these deals is such that Mr. Seda established himself as a management company, and therefore appropriated a large percentage of that project value via management fees. It's a very important part of, as you can see here, about 40-45 percent of the total damages are losses and fees. And to the extent that there is delays in project or one has to risk them in an additional manner or anything of that sort, that affects the loss in equity. It doesn't directly affect the loss in fees.

In summary, we reach a conclusion, via the Discounted Cash Flow method of $203 million as of January 2017, our Date of Valuation. This chart here on Slide 10 reconciles or explains the differences between our assessment and Dr. Hern's. We have differences in real estate parameters, in hospitality parameters, and in Discount Rates and Failure Rates. That takes us to the his $27 million via DCF.

He then goes further and says that due to causation issues, he says that Mr. Seda can still develop Luxé and no one is stopping him from doing that, and that he could be providing all kinds of services in Colombia and, therefore, removes the additional to reach a negative value conclusion--sorry, negative damages conclusion.

In summary, in Slide 11, you see our Income Approach. We have two methods which my colleague will explain, and I mentioned before, which are--consist of using market inputs just for real estate or for both real estate and hospitality, and that's where we present these two sensitivities.

THE WITNESS: (Ms. Bambachi) So I will now explain how we come about with how we build.

PRESIDENT SACHS: Microphone, please, and come closer to the microphone.

THE WITNESS: (Ms. Bambachi) Yes, excuse me.

So I will now go to Section 2 where I will explain the components of our --the cash flows that we use in the DCF. In the slide, you can see the cash flows. This is an example based on Meritage, but you will find that all the different projects have a similar pattern in which you have an initial period where you have the real-estate business, you have real-estate side of the business which is followed by the hospitality operations, which is a longer-term aspect of this business.

For the purposes of this presentation, I will first refer to the real estate cash flows and then to hotel operations cash flows.

Moving on to real estate cash flows, these are the one--ones highlighted in the slides. They are composed--they have two main components: One is the revenues that are the sales of units; and the other one is the cost, which is basically the construction costs and the sales costs.

Within the construction costs, we are including the construction of the hotel, too. The separation includes all the constructions.

You will notice that the sales coincide with the construction period, and this is slightly different what you would expect in the typical real-estate project, and this is related to the way it's financed. So, you heard before about the Fiduciary Trust, and that's why there is this coincidence between the sales and the construction costs.

In this slide we show on the upper graph the fiduciary fund cash flows. That is the fiduciary fund that will receive the cash flow from the pre-sales of units. They will accumulate in the fiduciary fund until they reach a certain critical mass, which is called the "equilibrium point." Once the funds reach this amount, which is determined in the contract and it's a percentage of expected sales, the funds will be transferred to the actual project, and that's when the construction begins; and that's why when you look at the annuals--this is on a monthly basis--when we looked before at the annual cash flows we find that the sales and the construction are simultaneous rather than phased.

So, as my colleague explained, we based our forecast--I explained also in the prior slides, we based our forecasts on the business planning documents of a project which we validate with market information. And by "market information," it's information that JLL provided to us. In the case of real estate, it refers to prices and costs that are specific to the project. So they are specifics in that JLL looked at the area of the project and the specification of a project, whether it's luxury, upscale or what kind of project it is, multi-use, and also the type of units involved in the project.

Combined with relevant city-specific inflation indices, JLL provides us the stream of--or the line of annual prices and costs for each project and each kind of unit, which is what I list in the right.

So, I'll go back to the--our forecast. Here I explain how we compute the revenues of the real-estate business, and this just as a reminder, this is the sale of units, and sale of units, the revenues for the sales of units are calculated based on a sales price per square meter of each unit times the saleable area, which is based on the design of the projects, and this is calculated just as the number of units times the square meter per unit, and these are the components of the revenues.

The benchmark we apply is on the sales price, which is what we can benchmark with respect to market information. In the graph, we have the bars showing the sales price per square meter for each project. You will see they differ, and they differ between projects due to the timing and the design of the project specifics in the area.

When we compare them to the Market Prices, which are the orange bars in the graph--I just added the orange bars to the graph that I showed in the previous slide--what we find is that the prices included in the business-planning documents of the projects on which we base our forecasts are very much in line and not slightly lower than the Market Prices that were benchmarked against, showing that our revenue forecast is conservative.

We conducted a similar exercise with costs. The project costs are based on direct construction costs, indirect costs, sales and marketing and pre-development expenses. With respect to direct construction costs, CBRE agrees that they are very much aligned with their professional opinion.

The way we benchmark costs is similar to sales, only that we calculate the total cost per square meter by dividing the total costs times the--or divided by the total square meters of each project, and that is what I show in the right.

In green, the costs forecasted per square meter forecasted in our model and in orange, the ones that are observable in the market are that JLL provided to us as market costs.

Again we find that the business-planning project--the business-planning documents of the project forecasts costs that are slightly higher than what the market indicates. Thereby we have a conservative forecast of costs.

Summarizing these two points, in the graph to the left, we compute--we compare the total revenues of our model   in light blue with the total revenues that would result from applying the sales prices. These graphs are for all projects combined. So, had we applied the Market Sales Prices, what we find is that revenues would have been higher than the ones that we are using in our assessment.

Similarly in costs, to the right of the slide, what we find is that our cost estimate is very much in line when we aggregate all projects, very much in line with the ones that will result from using the market data rather than relying on the business-planning documents of the projects.

Dr. Hern has four criticisms or main criticisms for real estate cash flows that I will deal in, in the next slides I will respond to them.

The first one is related to the sales price--sales prices. Dr. Hern alleges that our sales--the forecasted sales prices are higher, exaggerated when compared to historical sales prices. And for this he bases--or he gets information for his conclusion from the Fiduciaria Corficolombiana document, which is the one I show on the upper left. This is actual information on past sales.

Dr. Hern when doing the analysis, he didn't have the information, the correct allocation of the historical sales to the right phase of the project. Therefore, he assumed that the first 152 units belongs to Phase 1; that part is correct, but the second 21 units, he allocates them to Phase 4 and 6, whereas these belonged to Phase 4 in part; so two Phase 4 houses, and the remaining 19 units belong to Phase 6--used to belong to Phase 1 but we reallocated to

Phase 6. So, using the correct allocation of units, I do a comparison between the historical prices, the forecasted prices in the business-planning documents, and the market information in the graph to the right.

What we see is for Phase 1, historical prices have been slightly lower than what was initially forecasted in the business-planning documents, and this has an explanation. The explanation is that in the historical sales that were--there were two very higher-priced units that hadn't been sold yet; thereby the average price is lower than what was forecasted because these were included in the forecasted sales, and also the historical sales do not include the typical upgrades that would be done to the houses once they were delivered--or to the units--these were apartments, excuse me.

Moving on to the second column, these are the units that were reallocated from Phase 1 to Phase 6. In this case--and these are sales that came after the Phase 1 sales. For these sales we find that the historical price is consistent or actually it outperformed what was the expected price for these units, which was COP 5 million per square meter, and is very much in line with the Market Prices at 5.8, so it's closer to the Market Prices than what was forecasted.

Finally, in Phase 4, we find the same conclusion, that historical prices were lower than the forecasted and even lower than the Market Prices.

For Phases 5 and 6, we don't have actual information on sales, but for the phases that we have, we find that the forecasted prices are in line with the historical and the market.

An important thing to point out is that for Phase 1, we used the historical information in our DCF. We don't use the forecasts, so we use the 4.2.

Dr. Hern's second criticism relates to the speed of sales. Looking at the Phase 1 Meritage speed of sales which is the blue bar that I've circled, he concludes that the speed of sales forecasted, that is the amount of units sold per month for Cartagena, 450 Heights and Sante Fé, is too high. We want to point out that Dr. Hern is ignoring information on Phase 1 of the Luxé Project in which 20 units were sold in the first month, thereby showing that the speed of sales is in fact--or has been attained in the past.

Here, we're going to refer to the costs. Dr. Hern again compares historical information with the forecasted, claiming that the historical costs--for a tower, actually, for Phase 1 is lower than what is--excuse me, is higher than what is being forecasted, therefore, that the forecasts are too aggressive on costs.

In the graph to our left, we show the total costs for Phase 1. These are historical costs incurred, and we compare them to Phase 2 and 3. Dr. Hern, based on this information, divides them by the number of towers and arrives to his conclusion. What Dr. Hern didn't take into account is that the towers have different square meters of built area and different proportion of urbanism affecting, of course, the price per unit. Therefore, the correct comparison would be excluding urbanism and using the square meters as the indicator, dividing by built square meters, and that's what we show to the right, where we find that the historical costs are slightly higher, very similar to the Phase 2 and 3 costs, and again I compared to the market information.

And this is the last point on real estate criticisms. Dr. Hern proposes to compare the EBITDA margin for the real-estate business with two sets of comparables. The first--none of these comparables is applicable or provides any information of what the expected EBITDA should be for these developments.

The sample to the left is composed of construction companies, risks and expected profits and return of a construction company is not the same as for a development company; and also, the key business of the companies in the sample is social housing, which is not related, again, to the business of the Claimants or even comparable to the projects.

Sample to the right is an emerging markets real estate developers sample. This is produced by Damodaran, but it includes companies that have diversified portfolio of businesses and only nine of these companies are in Latin America. Therefore, they don't provide any relevant information on what the expected EBITDA should be.

This is a summary of the best cites for your benefit.

I will now move on to the hotel operations cash flows and how we constructed them and how we validated them. This is the same graph I showed before where I highlight the hotel long-term cash flows. These cash flows are composed of the operating revenues to which we subtract Operating Costs, the Profit-Sharing Agreements in cases in which the Units were not owned by the hotel itself, and the management and ground fees.

We saw this information as in the real-estate business from the projects' business-planning documents, and we validate it with market information. The validation we do for hotels is slightly different than what we did for the real estate. We actually do two validations.

The first one is a full market approach on the hotel value per key. So, we compute the hotel value per key with the parts--excuse me. We compute the value of the hotel--

(Realtime stenographer intervention.)

So, what we do is we compute the value of the hotel and validate in our DCF assessment and we compare it to the value that results from a sample of transactions, of actual transactions, that took place for hotels that are comparable to the portfolio of hotels held by the Claimant. That is what we call the "Market Approach." I will look at it in detail in the next few slides.

We also compare, where possible, some of the operating parameters of the hotel, particularly the RevPar.

So, in this slide, I will show you the Market Approach Validation we do of the value of the hotel. Our starting point is the value of Claimants' hotel's operations portfolio embedded in our DCF. We divide it by the number of keys, and this provides us the value of the hotel per key, so we're able to compare it to these transactions, and this is what I graph in the right. That's the blue bar in the graph, and the orange bars are the comparable hotels values per key.

What's important here, and it refers to the value embedded in our DCF, we're comparing the value of the hotel, and it's--once it's operational. When it fits into our damages assessment, it goes through all the risks, the discounting and the risk adjustments that our values go through, and my colleague will explain in the next section. So this is just a comparison of the value of the hotel to validate the parameters and cash flows embedded.

Here, what we do is we compare the Income Approach, so the value--the levels and value of hotel operations embedded in our DCF using the Income Approach, and the value that will result from using the Market Approach, and what we find is that the--they are not significantly different; they're almost the same. We still use the Income Approach, but both approaches will have provided similar results.

So this is a comparison of RevPars. Now we're moving on to the operating parameters of the hotels. We explain this in our report. We compare the RevPar of the Claimants' hotels with The Charlee to find that's in line, and then we verified that the Cartagena hotels have a premium over the rest of Colombia. You'll see in the SDR information I will explain this in our Reports.

Dr. Hern has two criticisms to our hotel cash-flow forecasts and Market Approach. One is related to the comparability of the sample and the second one to the EBITDA margin.

With respect to comparability of the sample, Dr. Hern claims there's a correlation between the room values and the values per key of hotels, and that thereby the sample is not comparable since the room rates-- So, based on one observation of the room rates collected during COVID, he concludes that the samples are not comparable because the room rates for the sample are higher than for Medellín.

What I show in the graph is that there is no such clear correlation between the hotel value per key and Dr. Hern's sample of room rates. Therefore, you'll find, for example, that at the same hotel value per key, you have different room rates, so there is no statistical reason to do any kind of adjustments.

Similar arguments apply to Dr. Hern's allegation that an adjustment is warranted for Country Risk Premium. There is no correlation between the hotel value per key and the Country Risk Premium that would warrant any adjustment, and the same we conclude for his proposal to adjust the sample for the tourism contribution to GDP of each country from which the sample is collected.

With respect to the hotel EBITDA margin, once again Dr. Hern proposes to use samples that are not comparable, and in the case of the hospitality business, it's even trickier because the calculation of the EBITDA cannot be--it is very likely that different companies report EBITDA in different ways. It depends on where they report the FF&E, where they report the fees; therefore, even as an observation, it's not really comparable. Comparisons are usually made at the RevPar level or value per key level as we do.

Besides that, the samples provided by Dr. Hern are not comparable to the Claimants' hotels. The first sample is based on hotel chains and include portfolios exceeding, in some cases, a hundred hotels, which is not comparable to operations of a single hotel, which is the value we're looking for.

With respect to the sample, he names Colombian luxury hotels. These are based on parent companies' data. Again, not individual hotels that would be relevant to assess EBITDA margins.

And with respect to Professor Damodaran's emerging markets hotel sample, once again it's a very broad and unspecific to the projects and it includes also gaming companies.

So, this is the summary of the hotel criticisms, and I will conclude this section comparing the value of damages under our Income Approach and the value that will result from using in the middle column the real estate parameters, that is prices and costs, so we--validation of revenues and costs.

And the third one is we replace all information for market information; that is prices and costs for real estate and the full value of the hotel per key using market information from transactions.

And with this, I conclude this section.

THE WITNESS: (Mr. Dellepiane) Thank you.

Let me turn now to the issue of risk and how we've accounted for risk in this--in our assessment.

The main thing as analysts we seek out to do in this type of situation is to make sure that we account for risks in the correct place because if we don't we risk over-risking or under-risking the projects, therefore, underestimating value or overestimating value.

In this case, I can provide you with a framework that is summarizing risk in terms of four key categories, demand risk--let me address each of them and how we've addressed it. In the case of Meritage and Luxé, the proof of concept had been established and the presales took place. In fact, at Luxé, there were deliveries made.

In Cartagena, 450 Heights, Sante Fé and the expansion of the Claimants' pipeline, we have projects in development with expectations with a long lead time for those projects to come to fruition. But skeptical as we should be, we've risked them with an additional probability of failure based on empirical data, which

I will explain.

In terms of operational risk, this means sales prices, costs, timing, delivery, construction, overruns, et cetera. We're using underwriting model assumptions to provide an expected value. And granted that these models, to be perfectly honest, they're pretty messy. They're big models, lots of spreadsheets, lots of Tabs, lots of numbers. They actually depict a simple business. This is not an innovated business that we have to worry about, is the market going to absorb this, is the market going to adopt it, are we going to come to market at the right time, or is a competitor going to launch the app first therefore making us irrelevant. This is an established business model.

In terms of industry, country risk, time value of money, et cetera, we've accounted for all of that using an industry-wide market variables in a standard international CAPM model to calculate the WACC, the Weighted Average Cost of Capital, for the Projects, considering with and without different tax situations that each of the projects faced.

And finally, in terms of financing--by this I mean funding short-falls because, as my colleague explained, large part of the real estate development that in itself also pays for much of and some of the overall development and shared facilities. In terms of funding short-falls, if any, we know that when construction loans were needed, they were procured and secured in Luxé and Meritage.

And in terms of the other projects, we know that those projects are solvent. They have positive Net Present Values. I think even according to Dr. Hern, in his model, they would have positive net present values.

Therefore, one needs to consider that this project being solvent and being NPV-positive, a solution will arise and has to be considered to be reasonably obtainable, as it was with the projects that exist.

And in the worst case, one can model delays and sensitivities to additional financing costs but cannot--and can go even further and say that one could face dilution of equity, this was a very creative new launch of a business when it started back in the odds, and what you see in The Charlee Hotel was they ended up not really owning, except for the management of the hotel, which I think basically allowed him or maybe part of the hotel he did, but the funding mechanism allowed for the building of a hotel via a third-party private equity.

Slide 42 I show you that once the cash flows that we've calculated, as my colleague explained, are laid out in nominal terms, we've applied these Discount Rates and failure rates and adjustments for risk, and the reduction is extremely substantial as it should be.

Turning onto the issue of Failure Rates, what we looked at is a database that is kept by the Bureau of Labor Statistics since 1994. It's got hundreds of datapoints and for hospitality and for real estate, we can see the, based on this empirical data, of closure of businesses in a particular sector. They do a survey, and we can tell what percentage of businesses that were active in a particular year, were still active four years later, four years being approximately when these projects reached their equilibrium point. That's why it's so important to risk the projects previous to their equilibrium point, and that's why we risk Cartagena, 450 Heights, and Sante Fé de Antioquia.

We risk further the, what we would refer to as the Terminal Value or the additional expansion of the pipeline, with an additional risk factor of 40 percent reduction or 61 percent success rate. The success rates, or failure rights or one minus the other, are calculated based on the data I explained plus in addition because the Bureau of Labor Statistics data says all these businesses closed. What it doesn't tell you is that some of these businesses closed because they were acquired, so they were successful closures and there's other literature that provides us with indicator of how many of the business that are closed are estimated to be closed due to successful closure or acquisition.

In reference to our numbers, we have JLL coming up with their own estimate, ranging from 81 percent at the lower end, if you accept some of

Dr. Hern's points, to 90 percent, which was their original starting point I think we heard today, 15 percent is what they considered adequate, given some of the criticisms that they received.

Dr. Hern cites to Professor Damodaran, that 48 percent, before adjustments for a successful closure, once applied, that would be a 66 percent success rate.

So, in reality, regarding this issue of risk of failure, we're all converging if you apply the risk of--the adjustment for a successful closure, to somewhere between 66 and 80 percent. We are at 77 percent for Year 4 projects and 61 percent for Year 9 projects.

Turning on to the Discount Rate, this is how we've estimated our Discount Rate based on the standard. CAPM, for the cost of equity plus a cost of debt, each weighted according to the respective weight on the capital structure of a typical firm in hotel and then we have one for real estate. Here we just showed hotel to make this slide less crowded.

We reached a conclusion of about 8 percent in our Discount Rate.

Dr. Hern reaches a conclusion of a 19 percent Discount Rate for a hotel business in Colombia. He, himself, acknowledges that he's reaching that conclusion because he adds a premium for start-up. We disagree fundamentally with the characterization of this ongoing business as a start-up, and we disagree methodologically with the notion of putting start-up risk in the Discount Rate, and we've provided quite a bit of literature on why one should not do that, and how risky is it to start plugging the Discount Rate with risk adders that one doesn't exactly know or could explain why or how they reflect or what they're meaning to reflect. I'll come back to that in a minute.

We have four main disagreements depicted in this slide. Let me turn to each of them.

I'll leave you with that slide just as a summary.

On Slide 45, we have a main disagreement on Cost of Debt and on Country-Risk Premium. Both of these suffer from similar problems in Dr. Hern's estimation, and that is that we both are seeking to discount U.S. dollar cash-flows, and therefore, we both agree we need a U.S. dollar based Interest Rate.

Dr. Hern, despite the fact that it is standard and proven to use the more liquid, the more transparent market, that is the U.S. equities and debt markets, to obtain that information and then add a Country-Risk Premium, instead of doing that standard approach, he goes on to the Colombian market and says, well, let's look at the Cost of Debt of Colombian companies, let's look at Cost of Debt of Colombia as a sovereign State to fund itself. Let's look at this information in Colombian pesos. Then, converts it to dollars, which requires some permutation using inflation expectations, devaluation expectations, and so on, to reach a U.S. dollar rate. So, in other words, he has to go through several paths and permutations to come back the same thing that the screens on Bloomberg can already tell us.

Regarding the Market Risk Premium, this is an important part of the WACC. It says how much more does--do equities demand above the Risk-Free Rate?

And between 1928 and then 2016, that was 4.62 percent, calculated as all financial analysts do, which is the geometric average between those periods. And there are statistical reasons why this is done via geometric average.

In contrast--in comparison to that, we have a survey that is done every year published by Graham and Harvey, two academics, as a survey of CFOs. These are people who are managing portfolios in their businesses. They conclude, depending on the year between 2010 and 2017, a range between 3 and 4 percent. We're above that.

Also, another survey by Berk and DeMarzo says 3 to 5 percent. We're still within the upper end of that range. Dr. Hern provides a calculation only one datapoint, not other sources, no support other than I think a paper in which he submits that the arithmetic average should be used at 6.2 percent for the historical and for projected Market-Risk Premium. I think we've provided plenty of evidence to debunk that. On the issue of the beta, which is the volatility of a particular sector or industry relative to that equity's market. We calculated that using the Bloomberg or the U.S. market for hospitality and the U.S. market of equities for real estate.

And why is that so important? Because we're adding a Country-Risk Premium for Colombia. We cannot do things twice, overcount them, overlap them. We do a U.S. dollar WACC, and then we apply a Country-Risk Premium. That is the clean way of knowing where each of the risks are. Dr. Hern does a blended Risk-Free Rate for Colombia that includes that Country-Risk Premium, and then computes a beta for non-U.S. hospitality and real estate equities.

Therefore, those equities, companies that trade in foreign markets and operate in foreign markets will necessarily double-count the Country-Risk of those emerging markets because that's the sample he used, one for emerging markets.

I know I have two minutes left and I'll hurry up.

Those countries include Pakistan, Sri Lanka, Egypt, Zambia. He excludes a reversion to one adjustment which is a simple processes that is accepted. And he said that within that sample that he found for Emerging Markets, which, by the way, includes casinos that he had JLL remove from their sample, he includes casinos and gaming.

He then takes a sub-sample of these emerging markets companies and says let's take the ones that are undiversified. Why? Because I want to price start-up risk additionally to the risk of failure, additionally to all the risks he puts in the cash flows. He wants to put a start-up risk in the beta. Again, we have a quote from Damodaran here saying why you should not do that.

In fact, I didn't put the other part of the quote. Damodaran, BRG-60. He calls that "sloppiness," his words.

On Slide 48, to finish with issues of risk, I just want to touch on the issue of the internal rate of return. The IRR, as you gentlemen know, is the rate that a set of cash flows needs to--that reconciles a set of cash flows, first negative and then positive with a Net Present Value of zero. It says what is the Internal Rate of Return. That's why it's called Internal Rate of Return. It's not something that we plug as analysts; it's something that we observe in a set of cash flows. It says, if we have to reconcile these negative investments with these positive revenues, what rate makes them whole? Well, that Internal Rate of Return by definition is the rate that makes NPV equal zero. So, if we are going to discount at an Internal Rate of Return, you already know the answer. It's going to be zero, or very close to zero if the IRR is for the business and not necessary for that very specific investment.

Dr. Hern suggests that these projects, his words, "these project IRRs can be interpreted as the Claimants' own estimates of the appropriate Discount Rate for the Project." That is obviously incorrect. Interest Rate--IRR, as you might wonder, why are they even mentioned? Why do investors look at them? For two reasons. They want to know and compare projects across. Investors might want to say, this project's offering me a 30 percent IRR, this project's offering me a 20 percent IRR, this project's in Colombia and the other project is in Brazil. I might have to ponder what risk tolerance and which one seems better given those conditions. But they're not used to discount, and certainly not the Project's own IRRs to discount. The other way in which investors use IRRs is as hurdle rates—I'm sure you've heard the term "hurdle rates"--and that means, are these projects attractive enough to overcome a certain hurdle? Okay. And if you ever see any documents in which an investor or an analyst discounts the IRR is to actually test and compare projects across or because they're looking at very, very long-term IRRs, which for industries at large, as a whole in very long periods, may converge to their industries Cost of Capital. What you would never do is look a project's own IRR and the prospects and so on and say, let's discount at that number. That number is inherent in that valuation in discounting at the number will necessarily produce a value close to zero.

We have a slide on Pre-Award Interest here. We use the Cost of Debt for a real estate and hospitality business in Colombia, the average of the two at 5 percent in order to bring 2017 damages to present time--well, to the date in our Second Report so far. That compares to Colombia's own cost of borrowing, sovereign cost of borrowing, relatively similar, and they're between three-and-a-half and 4.7 percent. That's an important coincidence because it means that an IOU following an award from Colombia has a rate similar but not lower than Colombia's own cost of borrowing, and you understand the risk of it being lower being that the priority of payment becomes I would say non-pari passu. It becomes--disincentivized to pay.

In comparison with this, Dr. Hern proposed that the cost of the debt for these Projects should be 10 percent. So, according to our logic but his rates, Pre-Award Interest would more than double.

With this and this summary on Slide 51, we conclude our presentation, and including the numbers my colleague showed you before plus Interest Rates and Pre-Award Interest--pardon me.

Thank you for your time and attention.

PRESIDENT SACHS: Thank you very much.

Who will be in charge of cross-examination?

MS. BANIFATEMI: Mr. Daoud. Thank you very much.

MR. DAOUD: Thank you, Mr. Chairman. Can you hear me well? Is that better?

PRESIDENT SACHS: Yeah, thank you.

CROSS-EXAMINATION

BY MR. DAOUD:

Q. Good afternoon, Mr.--Ms. Bambachi.

A. (Ms. Bambachi) Yes.

Q. Good afternoon, Mr. Dellepiane.

A. (Mr. Dellepiane) Hi.

Q. Thank you--sorry. Thank you for being here today.

So, you've got the Cross Bundle. This is the Cross Bundle, I'm sure you're familiar with Cross Bundles, has documents in it. You have your presentation and your two reports.

Before we get into your Reports, I want to--can you please go to Slide 34 of your presentation.

A. (Ms. Bambachi) Yes.

Q. Yes, I'm just waiting for...

Can you please confirm that this slide responds to the comment Dr. Hern made in his First Report and his Second Report? Where you have--I can see it in the source. Look at the source, you have a reference to his First Report Paragraphs 218 to 221, and Second Report Paragraphs 91(b) and 94?

A. (Ms. Bambachi) Yes, that's correct, yes.

Q. That's correct. Okay. Okay. Was there any--on the point on which the slide responds, was there any difference between what Dr. Hern said in his First Report and his Second Report?

A. (Ms. Bambachi) I cannot recall exactly if he expanded on this point in his Second Report or not.

Q. Okay. Well, can you please turn to Tab 1 of your bundle? That's Dr. Hern's Second Report.

A. (Ms. Bambachi) Um-hmm.

Q. If you go to Paragraph 94, for example, the one you quote. Paragraph 94 is at page 45.

(Overlapping speakers.)

A. (Ms. Bambachi) Yeah.

Q. You see that it says, "the crucial question for BRG's market crosscheck is whether the BRG/JLL comparator hotels are comparable to the Claimants' hotels. If they are not, we cannot use them as comparators in the market-based crosscheck. As explained above in my First Report, I presented evidence that BRG's alleged comparator hotels are located in countries with lower risks." So, that's all things he said in the First Report.

And then, if you keep going down in Paragraph 94, and the next page, Page 46, the last sentence, second line: "Neither BRG nor JLL have responded to this evidence or presented any evidence that the alleged comparator hotels are comparable to the Claimants' hotels in terms of value per room."

Do you see all of that?

A. I read that, yes.

Q. Yes, okay. So, I don't see anything new here compared to the First Report.

A. (Ms. Bambachi) So, if you go to Paragraph 92, it starts with--I don't remember exactly the paragraph but it starts with --in the Second Report, BRG argues the differences in Country Risk or stronger hospitality sectors, and it continues. It is unclear why BRG refers to what--so it seems he's responding to our response from our Second Report.

Q. Yes, but --This Slide 34, does it relate to what he says on--at Paragraph 92 or 94?

A. (Ms. Bambachi) I think it refers also to comparability of the samples to our response we gave in our Second Report with respect to comparability of sample, it's yes.

Q. You're not mentioning 92 here in your--in your sources, for example. I'm not going to--I'm not going to dwell on that but--

A. (Ms. Bambachi) I cannot confirm either, I'm just reading this and it seems as if it's responding to something we responded. I don't remember exactly, like I studied both Reports and see what they may be--

(Overlapping speakers.)

Q. You can later on look at Paragraphs 91 to 94. The point is, is that you could have provided that answer in your Second Report. You did not and you provided it today.

A. (Ms. Bambachi) So this is--yeah, I mean, we provided this graph. This is just organizing information that's on the record. It's not something new that we introduced or anything.

Q. So, there is no new point being made today? You've made that point in your Second Report?

A. (Ms. Bambachi) No. We haven't made exactly this point.

(Overlapping speakers.)

Q. Okay, exactly, that's my point, is that the point you're making--

REALTIME STENOGRAPHER: Could you go one at a time?

MR. DAOUD: Yes, sorry.

MS. BAMBACHI: Sorry.

BY MR. DAOUD

Q. My point is, the point you're making at Slide 34 could have been made in your Second Report. That was not, it was made today. That's fine. I'm not going to--I'm not going to--I'm not going to go look further in your presentation on points like that. We can, I think, start with your--by looking at your Reports, if you may.

So--sorry, before I start asking questions, so I assume you're familiar with Tribunal's Procedural Order 10 that each of you would answer, like, for each question, one expert would answer?

A. (Ms. Bambachi) Yes.

Q. Yes. That kind of question, you can either answer. So, you--I assume that's fine.

Is there a clear delimitation between the questions each of you address? If there isn't, that's not a problem.

A. (Mr. Dellepiane) There isn't. We will make sure not to duplicate any answers or supplement. We are both responsible for the entire contents, and we focus on a few topics in preparation for today, but as per the slides.

Q. Okay. So, if you please go to your Second Report Page 28, Table 2. So, this is a table that has the summary of the damages to Mr. Seda. And in this table, we see a loss to or in Mr. Seda's equity and the loss in fees.

Do you see that?

A. (Ms. Bambachi) Yes.

Q. So--and then the next page, Page 29, Table 3, you have--you have a table for the loss in equity of the other Claimants, meaning the Claimants other than Mr. Seda, is that correct?

A. (Ms. Bambachi) That's correct, yes.

Q. Now, if we take the Meritage Project as an example, I assume you're familiar that--with the structure, the Meritage Project is owned by a company called Newport S.A.S., is that correct?

A. (Ms. Bambachi) Yes.

Q. And then, the Newport S.A.S., in turn, some of its Shares are owned by Royal Realty?

A. (Ms. Bambachi) Can I look at--we have a--excuse me. We have a footnote where we explain the ownership. I don't have it off the top of my head who's exactly--

(Overlapping speakers.)

Q. It probably is in your First Report, Page 7.

A. (Ms. Bambachi) Page 7, you said?

Q. Yeah. I mean, you tell me--

(Overlapping speakers.)

A. (Ms. Bambachi) I'm sorry, I don't remember exactly the ownership of Royal Realty or Meritage--.

Q. To simplify matters, let's simplify matters and say that Mr. Seda owns Shares in Royal Realty, and Royal Realty in turn owns Shares in Newport, and Newport owns the Meritage Project, the land and everything on it.

A. (Ms. Bambachi) (in Spanish?)

Q. Sorry?

A. (Ms. Bambachi) That I can take - Do you want me to take--I cannot confirm that--

(Overlapping speakers.)

REALTIME STENOGRAPHER: You're overlapping.

PRESIDENT SACHS: That's much too fast and overlapping.

MS. BAMBACHI: Sorry.

MR. DAOUD: Sorry.

BY MR. DAOUD

Q. Yeah, you can take it as--you can assume that's true. I represent that.

Okay. Now, my question is when you talk about loss in equity to Mr. Seda, what you calculate here is the loss to the Fair Market Value of the Shares owned by Mr. Seda in Royal Realty, is that correct?

A. (Ms. Bambachi) I don't think we made the distinction. It's the loss in Mr. Seda's ownership of the Meritage Project.

Q. Okay. But I'm going to ask you to try to be a bit more precise about this question, so Mr. Seda, and that also has implications, legal implications. Mr. Seda doesn't own, himself, the Meritage Project?

A. (Ms. Bambachi) That's what I--

(Overlapping speakers.)

Q. If you look at the title to the assets of the Project, they're not held by Mr. Seda. They're held by a company called Newport.

A. (Ms. Bambachi) I don't think we did the analysis at that level of detail on the ownership or the legal implications.

Q. So, you just assumed that because Mr. Seda owns shares in the Company, that owns shares in the Company that owns the Project, that necessarily any loss to the Project is a loss to Mr. Seda pro-rata to his indirect share?

A. (Ms. Bambachi) Unless instructed differently, we would, but I cannot confirm whether we did it this way.

Q. Okay. But--is that the purely legal matter? Because it seems to me that you would have to determine what asset was damaged in order to value the damage.

A. (Ms. Bambachi) We usually don't--

(Overlapping speakers.)

A. (Ms. Bambachi) Sorry, I overlapped again. I'm sorry.

Q. That's okay.

A. (Ms. Bambachi) We usually don't make a distinction. I cannot confirm whether in this case we received an instruction to do a distinction--to make a distinction or not.

Q. Okay.

A. (Ms. Bambachi) I really cannot remember that.

Q. Okay. I represent to you that the Claimants--and Claimants can object if they see a reason to--that the Claimants consider that their investment in this, for the purposes of this arbitration, is their shares in the Company, in the Company, and let's say in Royal Realty for Meritage. Okay? Not the asset itself in Meritage.

But I'm not asking--

A. (Ms. Bambachi) As equity.

(Overlapping speakers.)

Q. Yeah, exactly. So, we're talking about the equity. Again, I'm--maybe let's look at it from a sep--from a different angle. You're talking about loss to equity, you're not talking about loss to the Project, so there has to be a loss to an equity here?

A. (Ms. Bambachi) We compute loss to equity, which is--my colleague had a slide on that, which is that we started by computing the value of the Project, and then we subtract the debt, we make all the risk adjustments, we subtract the actual, and then we allocate back Claimants' Shareholdings.

Q. Yes, but the equity here that is --that lost something, it has to be an equity of Mr. Seda, held by

Mr. Seda in a company, right?

A. (Ms. Bambachi) So, we have loss to Mr. Seda as an equity-holder, and we have losses to other Claimants as equity-holders.

Q. Okay. But Mr. Seda has--the loss here is a loss to the value of shares held by Mr. equity--Mr. Seda?

A. (Ms. Bambachi) Loss in value of equity held by Mr. Seda. We don't--I don't think or I cannot recall we made any distinction on how we measure the equity and the number of shares of the Company or not.

Q. I'm asking a simple question. The loss to an equity here, it's a term you've used in your Reports.

A. (Ms. Bambachi) Loss and the value of equity, yes.

Q. Loss to value of equity, equity means shares, right?

A. (Ms. Bambachi) Usually, but it can be held directly or indirectly. I--we didn't--I don't remember having analyzed the whole.

Q. Let's simplify things. Let's forget about whether it's direct or indirect. Let's say Mr. Seda owns equity and owns shares in a company, and the Company owns the Project, okay? You're with me?

A. (Ms. Bambachi) Yes.

Q. And, when you say we're valuing the loss to an equity, that's a loss to the Shares owned by Mr. Seda?

A. (Ms. Bambachi) We look at it as a percentage stake on equity. So, usually what we do is we compute the value of equity before, the value of equity or loss in equity, which is the difference between but-for and actual, and we allocate by a percentage—of equity held--

(Overlapping speakers.)

Q. Yes, that's mechanically what you have done. I'm asking now just conceptually, first thing--I look at your Report, the first thing I ask is this is a loss to what, so I look--I see loss to equity, so I assume that means loss to shares held by Mr. Seda. Loss to the value of shares.

Now I understand that because there is a loss in the Project, that could result in a loss to the value of shares.

A. (Ms. Bambachi) I really don't fully understand the question. We make a more general analysis maybe where we calculate what's the percentage stake of Mr. Seda in the equity of the projects and we then compute the reduction in the equity times the percentage that is held by Mr. Seda. We don't make an analysis and we haven't made an analysis exactly on the Shares and how the Shares are held.

Q. Okay.

A. (Ms. Bambachi) We have a percentage stake in equity.

Q. Okay. Let's--I'm going to proceed on the basis that if you're not comfortable with this in term--from an economic point of view. Although, I mean, I don't see why but that's not the point. Let's proceed on the basis that here we are valuing--we're determining the loss in value to number of shares owned by Mr. Seda. Can you assume that?

A. (Ms. Bambachi) I'm not trying to be difficult. You're making a distinction that is not relevant in the economics. We calculate the percentage stake. I feel that shares might have a legal implication I'm not aware of, so I have it that you're asking me did I analyze the Shares, I haven't, I analyzed the percentage stake, how that percentage stake was held, I only look at the implications in the economics, but I cannot--I don't want to really speak about something that exceeds what's the economics and the percentage stake.

(Overlapping speakers.)

Q. Okay, the percentage stake is a percentage in the Shares of a Company, right?

A. (Ms. Bambachi) It can be direct, it can be indirect, via a company, it can be in many ways--

(Overlapping speakers.)

Q. Direct or indirect, it's a percentage in the Shares of a company. Maybe directly, maybe indirectly. But we're talking about shares here.

A. (Ms. Bambachi) I think it might, but I think it's a simplification, so I'm not sure. I cannot answer that question.

Q. Okay. I will default that the

simplification is not to consider the point to follow, but that's fine.

Now, we determined a loss in Fair Market Value, okay? And for--and to determine that loss in Fair Market Value you use a DCF methodology, is that correct?

A. (Ms. Bambachi) That's correct, yes.

Q. And generally when you look at--throughout your Report you make a distinction between hotel businesses and real-estate businesses?

A. (Ms. Bambachi) We do so for purposes of the forecast because the drivers are different, yes.

Q. Okay. Perfect. I'm going to generally focus on the hotel business in my questions.

A. (Ms. Bambachi) Okay.

Q. But some questions will--may be general in nature and therefore potentially can apply to both.

A. (Ms. Bambachi) Okay.

Q. Now, if you--if we look--try to see how you valued the--determined the loss in the Fair Market Value, if you can please go to your First Report, Paragraph 83.

A. (Ms. Bambachi) Yes.

Q. Now, it says the price resulting from a valuation in accordance with FMV will always be greater than or equal to the value perceived to the hypothetical voluntary seller and less than or equal to the value perceived by the hypothetical voluntary buyer. Therefore, FMV represents an equilibrium price between the value placed upon the business by the buyer and that by the seller.

And then if we go down to Paragraph 84, you say: "Considering this equilibrium, an FMV valuation excludes forced sales or other sales that occur under situations of pressure, time constraints or lack of liquidity."

Do you see that?

A. (Ms. Bambachi) Yes.

Q. So, if we're looking at forced sales to try to understand, is it the point that if you have a transaction where the buyer is under pressure, he could potentially pay a higher price than he would otherwise and therefore, it would be inflated, for example?

A. (Ms. Bambachi) Could be, yes.

(Overlapping speakers.)

A. (Ms. Bambachi) That's one example, well it's many examples now, but that could be one example of for sale where the buyer is forced to purchase at a high price.

Q. So, the idea is that the FMV should be based on transactions that where you don't have a forced sale because in that example and the example I gave, the asset that was forced--that was sold in the forceful manner or bought in a forceful manner would have a value different from the FMV?

A. (Ms. Bambachi) Yes. The FMV assumes a transaction that is voluntary and unplanned with no force or pressure to the Parties.

Q. And, okay, so you talk also about pressure which I assume is similar to forced sales, time constraints, lack of liquidity.

Lack of liquidity, what do you mean, a transaction where you have lack of liquidity?

A. Where a seller is forced to sell because they have a lack of liquidity. So they sell at the price that is lower than the Fair Market Value.

Q. Because they need money, and whatever they're selling is, well it's not money, so it's less liquid. Is that the point?

A. (Ms. Bambachi) Yes.

Q. Okay, so, if you're selling an asset, for example, that is not liquid, then the seller can sell it at a lower price than the FMV?

A. (Ms. Bambachi) It's not necessarily the asset. It can be the owner of an asset who has a need for liquidity for some business or personal reasons, a person that sells their car because they need cash. It applies to many circumstances. This is a general definition, so it can apply to many circumstances.

Q. So, do you mean that it's either the seller needs liquidity or the asset being sold is not liquid enough? Among other things.

A. (Ms. Bambachi) The examples I can think of are usually about the seller, not really about the asset. It could be both, but...

Q. So, if you have--if you have an asset that is not liquid in the sense that you don't have a big market to sell it for, sell it at, would that have an impact on the price at which you sell, or not?

A. (Ms. Bambachi) No, that's not what lack of liquidity means here. It means that the asset is lacking the liquidity to continue operating, but there is a contradic—yeah, exactly. It's not the liquidity of the price. It's not the market for the asset. It refers to the liquidity in the operations of the asset of the Company. Or the person who is selling or the buyer.

Q. So, if you have a--if you have an asset that doesn't have enough liquidity, that will--you will sell it--in that case, that FMV will take into account the fact that the asset lacks liquidity? Or--

A. (Ms. Bambachi) No, we should exclude the trans--sorry, I spoke over you. We should exclude the transaction because if it has a—- if it's a transaction that was driven by lack of liquidity, it does not reflect the Fair Market Value. That's what it's saying. That it's not an indicator of Fair Market Value.

Q. Okay. Now, can you please turn to your

Second Report at Page 4--sorry, at Paragraph 14. That's page 9, so that's a point that concerns hotels. As I told you, I'm mostly going to focus on hotels. Do you have it? It says: "In our analysis we validate the assessment of the fees and equity holdings that Mr. Seda and the other Claimants would have received from their hospitality projects. In the absence of the measures, using a Market Transaction analysis based on the value per key metric. Then based on a sample of majority stake acquisitions in the hospitality industry in Latin America provided by JLL."

Do you see that?

A. (Ms. Bambachi) Yes.

Q. Now, when you say "majority stake acquisitions," what do you mean? Do you mean an acquisition of more than 50 percent of the Shares of a Company?

A. (Ms. Bambachi) I don't remember exactly if it's 50 percent or if it was a higher threshold for the majority, but it means that it's a relevant stake in the company, we excluded any minority transfer of shares, like if it's a 5 percent transfer, we excluded it. I don't remember exactly, the threshold was 50 percent, sometimes it's 80, or it could be higher.

Q. So at least 50, and sometimes higher?

A. Um-hmm.

Q. So, the JLL acquisitions--sample of acquisitions, that's why it's limited to majority stake acquisitions?

A. (Ms. Bambachi) Yes.

Q. Yes.

And is that because if you take a minority stake acquisition, it will--that will change something in the value? If you had included--sorry. If JLL had included minority stake acquisitions, would this have driven their value per key metric down?

A. (Ms. Bambachi) It would have required for those transactions in the minority to make some adjustment for ownership for majority ownership.

Q. And what does that mean concretely? They would have--

A. (Ms. Bambachi) You have to make an adjustment upwards, a majority stake has a higher value than a minority stake per unit, you know, when you divide it--

Q. Okay, so a majority stake has a higher value than a minority stake.

A. Per unit.

Q. Right.

A. (Ms. Bambachi) Not in the aggregate.

Q. Okay, in that case. And, well, here you're talking about value per key metric provided by JLL.

A. (Ms. Bambachi) Yes.

Q. And in general, that's a general principle, like if you - if we look at anything else in your model, is anything where, if for any assumption you should also always exclude minority stakes?

(Overlapping speakers.)

Q. Let me simplify the question. Is--Can you generally say a majority stake is worth more than a minority stake?

A. (Ms. Bambachi) With all the caveats, right? so we have two comparable samples, if you have one that is majority and one that is minority and they satisfy all the comparability, yes.

Q. Okay. And for FMV, you look at majority or minority?

A. (Ms. Bambachi) So, we are looking at the full value of the hotel, so it's a majority.

Q. Yes, but if you want to look at market transactions, would you--would you look at--would you compare with one--you want to determine the FMV, will you compare with the Market Transaction only if it's majority--a majority stake, or you can also look at minority stake?

A. (Ms. Bambachi) So, in general, the methodology also allows to look at minority stake. Classic example is when you look at the prices for public companies, which is traded prices for individual shares, and in equity in that case you apply a premium. You can still apply the methodology, you just have to make some adjustments.

Q. Okay. So, in that case, the majority stake also has value--more value—than a minority stake.

(Overlapping speakers.)

A. (Ms. Bambachi) Sorry, I spoke over you. So, if the object of your valuation is a majority stake, you can use either--like you have to look at all the criterias for comparability, assuming that you have satisfied all the criterias of comparability, you can use a majority stake, no additional adjustment is required, you use a minority stake which is the example of public traded companies when you use price of—traded prices, and you make an adjustment. It doesn't discard the methodology. It just requires an adjustment.

Q. Okay. And if we're talking—if we're looking at the Company and you have two Shareholders, one has a majority and one has a minority, is the value per share higher for the one that has a majority than the one that has a minority?

A. (Ms. Bambachi) It depends. It depends. Because if they are selling jointly, it has the same value. The difference is when you're selling a majority stake or when you're selling a minority stake. When you're selling the whole equity of a Company, the proportion of value, except for some special shareholding agreement, would be uniformly distributed.

Q. Okay. And if you're—— if they're--if the Minority Shareholder is selling alone, he would have a lower--the value of his shares would be lower than if he was a majority shareholder?

A. (Ms. Bambachi) Yes, if a majority shareholder sells one share, he would have a lower value than if he sells the full packet of shares.

Q. Okay. In that case, if you look at Page 7 of your First Report, the footnote we were looking at, we see--so, that's Footnote 12, First Report, Page 7, we see, for example, that in 450 Heights, Mr. Seda has 100 percent, so that's clearly a majority stake. In Sante Fé he has 82 percent, so that's--I assume it's probably a majority stake? Would you agree?

A. (Ms. Bambachi) Depends on the case, but yeah, you can assume.

Q. Cartagena, 70 percent.

A. (Ms. Bambachi) Yes.

Q. However, Meritage, 48 percent, that's a minority, not by much, but it's a minority, not by much if we assume it's 50 percent.

A. (Ms. Bambachi) It's not as linear or simple as you put it but okay, yeah.

Q. You told me the majority is at the very least 50 percent.

A. Um-hmm.

Q. And Luxé at 33 percent, that's a minority.

A. (Ms. Bambachi) Yes.

Q. Okay. And then if we go down to the other Shareholders, that's Footnote 13, I'm not going to take the percentages one by one, but you have--they're between 0.5 and I think 6 percent, so these are all clearly minority stakes.

A. (Ms. Bambachi) Yeah, but this is the situation in which we are valuing the change in value in equity as a whole. We're not--we're not building a scenario in which each individual Shareholder goes to America and says they're shareholding. We're valuing the equity, and then we distribute uniformly between the equity-holders; which is a different exercise to the one we were discussing before where I have the subject of my valuation which is a majority shareholder, and I go look to the market for comparable information on prices and I only find minority shareholders. That is a situation in which a majority shareholder is going to a market and minority shares are going to a market. In that case, you need an adjustment. In this case, we're valuing the equity as a whole, so there's no--it's different situations.

Q. I know--

A. In this case, it's not relevant for value the shareholding. It's just a percentage times the change in value in equity.

Q. Well, it's not relevant to the exercise you've done because you haven't even looked at what you're valuing. You haven't asked yourself the question what is this loss in equity I'm valuing?

A. (Ms. Bambachi) The loss in equity is the loss in the value of the Project minus the value of the debt. I have looked at that and I have valued it.

Q. Okay, well, I mean, if there is a person in the world that understands loss in equity as loss to the value of a share, would you agree that if we're valuing in that case, in the present case, if we're valuing the loss to shares held by different Claimants, would you agree that the Shares held by

Minority Shareholders would have less value than those held by a majority shareholder?

A. (Ms. Bambachi) Sorry, I'm reading the question.

Q. If, assuming that what you are asked to do, if I'm asking you to value a loss--a value, a but-for value, of shares held by the different Claimants in that case, if that is an exercise you were asked to do, would the value held in the same company held by a Minority Shareholder be lower than that held by a majority shareholder, not if they're selling together. They're selling separately.

A. (Ms. Bambachi) But, it doesn't have to be sim--, like it has to be separate transactions, yes.

Q. Okay. Thank you.

Okay, I will continue my focus on hotels.

So, if we're looking at the different projects you've looked into in your Reports and the Valuation Date, which is January 2017, in your Report?

A. (Ms. Bambachi) Oh, sorry. Yeah.

Q. The Valuation Date that you've used is January 2017, correct?

A. (Ms. Bambachi) Yes.

Q. Now, as of that Valuation Date, was any of the hotels in the different projects operational?

A. The Charlee Medellín was operational. You mean the hotels developed by Claimant or the hotels that are subject to my valuation?

Q. Subject to your valuation. The ones we're valuing.

(Overlapping speakers.)

A. (Ms. Bambachi) Okay, so the Charlee was not subject to my valuation but the Charlee was operational. And from the ones that are subject to my valuation, I understand that the Luxé was close to completing construction.

Q. But was it operational?

A. (Ms. Bambachi) No.

Q. So, it wasn't making any money?

A. (Ms. Bambachi) The hotel itself as of the Date of Valuation, wasn't no. It didn't start the--you remember my graph with the cash flows by the Date of Valuation, the hotel hadn't started operating. It wasn't finished. They didn't finish building it.

Q. So, we can't use the Luxé hotel to look and say, to use as an example for how a hotel in that project would do in terms of attracting clients who would come and stay for different periods. We can't look at actual data and see in them, for example, the occupancy rate of the hotel because we have no idea because the hotel never started operating in the first place, is that correct?

A. (Ms. Bambachi) We have forecasts. We have market information, and we have, that I relied also on, evidence from The Charlee in Medellín.

Q. I'm not talking about forecasts now.

A. (Ms. Bambachi) If you're asking--

Q. I'm talking about actual--actual performance?

A. (Ms. Bambachi) No, I cannot source information on occupancy from the Luxé because it was not finished yet by the time of Date of Valuation.

Q. Meritage wasn't finished either?

A. (Ms. Bambachi) It wasn't finished either.

Q. Meritage wasn't even—

A. (Ms. Bambachi) - It was under construction.

Q. Yeah, Meritage wasn't even in construction.

A. (Ms. Bambachi) I understand that part of the construction expenses of Phase 1 include common areas and parts of the hotel, too, so it wasn't formally in construction--like the Phase 2 was--Phases 2 and 3 are the hotel, but some of the construction that took place in Phase 1 was related to the hotel.

Q. Okay. If we go to Page 32 of your Second Report, for example, that's a very helpful table, Table 4, that shows what each phase contains. And--

A. (Ms. Bambachi) Page 32 you said?

Q. 32, yes, Table 4 of your Second Report.

So, if I'm looking at the Meritage Phases 2 and 3, they have apartasuites, so that's extensive stay hotel, yeah. And then Phase 3 says combined with Phase 2, which I understand meaning like they're both together.

A. (Ms. Bambachi) Phases 2 and 3 are the construction of the Meritage hotel, yes.

Q. Okay. And Phase 1, yeah, I'm seeing retail units and apartments. I'm not seeing hotel. Now, maybe there is a detail you haven't put it that--

A. (Ms. Bambachi) I can explain that to you.

So, when we did our model, and we allocated all the historical costs to Phase 1, which was the one that was completely sold. However, within those costs, we included--because you cannot separate exactly which costs belong, there is common areas. Right, you have the general gate. You have roads. So you cannot exactly separate the costs per area. For simplicity in our model, we included all the historical costs in Phase 1, but we understand that part of the Phase 1 construction costs would be allocated to the different phases.

Q. The hotel itself--

A. (Ms. Bambachi) The hotel was not operational.

Q. And it was not in construction, the hotel? I mean, you're telling me there are areas that are common between the hotel and real estate--

A. (Ms. Bambachi) Yes.

Q. --that was in construction, but the hotel was not in construction.

A. (Ms. Bambachi) Yes.

Q. Okay. Now, so, if we're looking at the Claimants' projects, there were no hotels operational, you cannot look at them and say, well, actually, this project in terms of hotels has a track record of performance of X because none of them had started operating.

A. (Ms. Bambachi) Yes. And that's why we don't make what--we base our forecasts on business plans, but we also go to the market and look for hotel values per keys because we couldn't benchmark with the market exactly all the parameters as we could for the real-estate business.

Q. So, you do two things. You received models from the Claimants, from Mr. Seda, mainly?

A. (Ms. Bambachi) Business-planning documents.

Q. Yes. And the--you've used them to get your assumptions. And then you've compared the data provided by JLL?

A. (Ms. Bambachi) Market data, yeah. Data collected by JLL based on Market Transactions, actual transactions on hotels, yes.

Q. Now, I'm not going to get into the data from

JLL. We've had the cross of JLL today. I don't know if you've seen it. Also, there's Dr. Hern's Reports have a lot of comments on the JLL data and by his opinion they are not--they are not proper comparators, so I'm not going to get into that.

My point now is you've used the Claimant's models, underwriting models, you call them I think. How do you call them?

A. (Ms. Bambachi) So, it's several--several documents, so in general we call them business planning documents, individually we have underwriting models, we have operation models, we have actual information on sales, actual information on construction completion, construction that was still to be executed.

Q. If I'm talking--if we're talking about hotels, there are no sales, so you don't have anything on the revenue the hotel is bringing. You don't have actual data about the revenue that any of the hotels in question is achieving?

A. (Ms. Bambachi) I'm confused. You asked me where I was sourcing my forecasts. I'm sourcing my forecast from business planning documents.

Q. Because you're saying we got actual performance data on the hotels.

(Overlapping speakers.)

A. (Ms. Bambachi) So, yeah, excuse me. So, the sales are Phase 1, that's related to real estate but the construction costs we have actual information on the construction costs for the Luxé hotel. So, it's a combination of actual information and actual economic information. I think it's mostly operates as models when it refers to hotels, but I don't remember if they all have exactly the same name. It's a combination of all that information.

Q. So, again, so that we don't mix everything up--

SECRETARY MARZAL: Excuse me. I'm sorry, the Interpreters are really having a hard trouble following. Sorry, slow down a little bit.

BY MR. DAOUD:

Q. Sorry. So we don't mix real estate and hotels. I'm only talking about hotels now.

In terms of actual performance that you can base your assumptions on or compare in terms of revenue for the hotels, you have nothing, is that correct?

A. (Ms. Bambachi) We have relied on comparisons in revenues with The Charlee and other market comparables.

Q. That's Charlee.

A. (Ms. Bambachi) Yeah.

Q. But for the ones you're actually valuing, you have no actual performance data on the revenues.

A. (Ms. Bambachi) No, because they're not operating yet.

Q. Yes. And then you have part of the construction--you have data on the construction costs for part of one hotel. That's the Luxé.

A. (Ms. Bambachi) 72 percent, yes.

Q. And the costs is only one part of the story. You also have to look at revenues to get the full picture.

A. (Ms. Bambachi) Future cash flows, yeah.

Q. And, so, when you say you have The Charlee, now The Charlee has 42 rooms, right?

A. (Ms. Bambachi) Yes.

Q. We're looking at still your Page 32 of the same table, if we're looking at the Meritage, for example, it has 300 apartasuites.

A. (Ms. Bambachi) Yes.

Q. Okay. That's roughly seven times bigger than The Charlee?

A. (Ms. Bambachi) Yeah.

Q. The Luxé has 116.

A. (Ms. Bambachi) Yes.

Q. That's almost three times The Charlee?

A. (Ms. Bambachi) Yes.

And the Luxé also has some of the cabañas that are rented via the hotel, so the hotel has revenues from these 116 rooms. It also has revenues for the rentals of some cabañas, so it's actually slightly higher--

(Overlapping speakers.)

Q. But I'm talking about really hotels--

A. (Ms. Bambachi) No, but that's in the hotel cash flows, that's why I'm adding it.

Q. Sure. But I'm talking about what a normal person would look at and say 'oh, that's a hotel'. So the cabañas, I know they get rented.

A. (Ms. Bambachi) Yeah, yeah. I'm just saying it's within the hotel cash flows. If we're talking hotel cash flows, it's within the hotel cash flows.

Q. No, no, I understand that. But I'm saying like for a lay person, like I've rented apartments before and never called them "hotels." So, the cabañas aren't hotel in that sense for a lay person. Now, maybe you call them hotel in your Reports, but I'm not criticizing that. I'm just saying--I'm just confirming that the cabañas aren't a hotel in the normal sense of word.

A. (Ms. Bambachi) It's semantics, but in our model and in the business model, these cabañas were sold to owners and these owners could put them in a rental pool, and this would be operated via the hotel business, and it's part of the hotel future cash flows.

Q. And they can also live in them, if they want to.

A. (Ms. Bambachi) It's a choice, yes.

Q. Yes.

A. (Ms. Bambachi) They can either choose to live in them, or they can put them in the rental pool. And within the future cash flows, the hotel generates revenues also for the rental of these cabañas.

Q. Okay. But what I mean is when you look at The Charlee Hotel or the Luxé hotel or the Meritage hotel, nobody can live in them. You go there, you live—I mean, obviously--

(Overlapping speakers.)

Q. If you decide to live in a hotel for years, okay, you can do it but that's not the normal use of the rooms.

A. (Ms. Bambachi) I'm not judging.

Q. Okay. Then you have hotels in Cartagena and 450 Heights--

REALTIME STENOGRAPHER: I'm sorry. From back here. Can we take a break soon?

MR. DAOUD: I'm in the hands of the Tribunal.

PRESIDENT SACHS: Yes, now we should have a break soon. 5 minutes, would that be okay?

MR. DAOUD: Should we stop now?
PRESIDENT SACHS: I'm looking at the court reporters. 10.
MR. DAOUD: Sorry, I'm not sure. Should I finish--
PRESIDENT SACHS: No, no, no, you have 10 more minutes before the break.
MR. DAOUD: I have--Okay, because I think the court reporter wants a 10 minute break.
PRESIDENT SACHS: Do you want to have it now?
REALTIME STENOGRAPHER: If we are going to break in 10 minutes, I'll hold off until then.
PRESIDENT SACHS: Let's have a break now. I think it's better that we have the break now. 15 minutes. 3:30, please. Thank you.
(Recess.)
PRESIDENT SACHS: All right. Can we resume, please. Mr. Daoud, are you ready?
MR. DAOUD: Yes, I am. Thank you.
PRESIDENT SACHS: Please proceed.
MR. DAOUD: Thank you.

BY MR. DAOUD:

Q. Okay. So to--just to recall before the break, I think you agree that among the projects you're valuing there at Valuation Date, there was no hotel operational.

A. (Ms. Bambachi) Correct.

Q. Now, however, you point to The Charlee Hotel, and do you consider that Charlee Hotel as relevant to determining the expected performance of the other of the hotels you're valuing?

A. (Ms. Bambachi) It is one of the elements that we have considered relevant in assessing the reasonability of the forecast we used, yes.

It's a combined analysis in which we look at information from The Charlee, we look at information from SDI, we look at information on value of hotel per key combined within contents in our forecast that are based on the business planning documents.

Q. Now, if we're talking about track records of the Claimants--

A. Hmm.

Q. --in the hotel business and we want to see their track records and operating hotels, is there any--any track records outside of The Charlee? In operating hotels.

A. (Ms. Bambachi) So, I'll refer to the track record. We refer to a track record in a broader sense as a developer, including the hotel business. In the hotel business, we look at The Charlee, yes.

Q. Is there anything other than Charlee?

A. (Ms. Bambachi) Yes. The sale and delivery of Phases 1, 2, and 5 of Luxé.

Q. Is that hotels?

A. (Ms. Bambachi) I started my prior answer saying that when we look--when we refer to a track record, we refer to a track record as a developer of mixed deals, real estate development, including hotels. So, when we look at hotels, we look at Charlee. When we look at real estate track record, we can refer to Luxé and construction delivery of Phases 1, 2 and 5, I think it is; Meritage, almost complete sale of Phase 1 and the construction that was ongoing in both Meritage and Luxé.

Q. Okay. Would you agree that most of them, vast majority of your damages are hotel-based, not real estate based?

A. (Ms. Bambachi) We value the projects as one. We separate them for the purpose of forecasting cash flows. Yes, the long-term parts of the project as a whole are derived from the hotel business, but our projects are one, including a real estate part and the hotel part.

Q. Sure.

But then I mean, Dr. Hern, I think, says that it's 80 percent of the damages are hotel-based. But would you agree with that, roughly?

A. (Ms. Bambachi) I will qualify that they are derived from the hotel cash flows, but it doesn't mean that the hotel business is one and the real estate is another. It's one and only. It's projects including both businesses. It's the source of the cash flows what you're referring to.

Q. Okay. So, what you're doing when you're doing--when you're looking at the track record, you're telling me you look at them broadly; that means that, in order to look at how well the Claimants are expected to operate a hotel, you also look at how well they're building real estate. That's not hotels.

A. (Ms. Bambachi) Building? We look at what they have built and delivered. Operating the hotel, we look at Charlee.

Q. Okay. So, for one to see how--what's the track record of the Claimants in operating hotels, would you agree with me that, well, you--we would need to see which hotels they have operated so far.

A. (Ms. Bambachi) For the hotel operation, the operating parameters, yes.

Q. And if you look at how they've been building real estate that is not hotels, would that tell you anything about how well they can operate a hotel?

A. (Ms. Bambachi) Not precisely. No, I wouldn't update any of hotel operating parameters from how they build the hotel or how they build a real estate unit.

Q. And the only hotel you can look at to see how well they operate hotels is The Charlee.

A. (Ms. Bambachi) Yes.

Q. Now, The Charlee, as you were saying, it's a

42-room hotel.

A. (Ms. Bambachi) Yes.

Q. Compared to much bigger hotels if we're looking at the table. Around seven times more in the Meritage and almost three times more in Luxé, and then they're also linked projects and--for hotels in Tierra Bomba, 450 Heights, and Sante Fé--all of them, I think, bigger than The Charlee. Would you agree?

A. (Ms. Bambachi) Yes.

Q. Okay. And if we want to look at all of these hotels, these five big hotels, the only track records we have for the Claimants to look at how well are they going to operate these five big hotels, the only track record we have is a 42-room hotel, which is The Charlee; correct?

A. (Ms. Bambachi) So, to compare operating--

Q. Can you just say "yes" or "no," and then explain, correct or incorrect?

A. (Ms. Bambachi) Okay. So the track record we use is The Charlee, but that's not the only source of information we use in our forecast.

Q. For operating revenue from hotels, do you have any track record to use other than The Charlee?

A. (Ms. Bambachi) We don't focus our revenues based on The Charlee.

Q. I know that but--

A. (Ms. Bambachi) No, but it seems like in the question you're confusing both.

Q. I'm not confusing. I'm saying you are--you make the point that the Claimants have a track record that shows that they're successful at their business.

A. (Ms. Bambachi) Yes, I understand they're successfully operating The Charlee at Medellín.

Q. Now, if we look at the hotel portion of the business, which is almost 80 percent of the damages, for that hotel portion, the only track record they have in operating hotels is The Charlee.

A. (Ms. Bambachi) Yes, but I will say that's not the source of our forecasts.

Q. Well, that's not my question.

A. Okay.

Q. The only track record they have in operating hotels is the Charlee, correct?

A. (Ms. Bambachi) I understand, yes.

Q. Correct?

A. (Ms. Bambachi) I understand, yes, I just said it.

Q. Yes. All right.

Charlee, again 42 rooms, these five big ho--five hotels having many more rooms or suites--

A. (Ms. Bambachi) Can I add something on what you just said?

Q. Of course.

A. (Ms. Bambachi) That's exactly why we don't base our forecast on The Charlee operating cash flows. We just use it as a benchmark. We have specific forecasts for each hotel based on the specific characteristics, locations, et cetera, which we validate then with hotel transactions per key.

Q. Yes. But again, I'm talking about the track record. I'm not talking about the forecast.

PRESIDENT SACHS: Mr. Daoud, I think we have covered that point, so could you move on?

MR. DAOUD: Yes. I'm pursuing the point but I keep getting dragged to questions of forecasts. I know the forecasts are based on the Claimants' models and compared with comparators from JLL. I'm talking about now--I'm not going to repeat myself.

BY MR. DAOUD:

[redacted]

[redacted]

[redacted]

[redacted]

(Comments off microphone.)

A. (Mr. Dellepiane) Go ahead.

Q. Do you know where The Charlee Hotel is in Medellín?

A. (Mr. Dellepiane) I do.

Q. Where is it?

A. (Mr. Dellepiane) In Parque Lleras.

Q. Okay. The Tierra Bomba is in Cartagena.

A. (Mr. Dellepiane) Correct.

(Overlapping speakers.)

Q. That's not--

A. Outside--outside Cartagena.

Q. Yes. That's not Medellín.

A. (Mr. Dellepiane) Apparently not.

Q. The Luxé, the Meritage, 450 Heights, these are in the suburbs of Medellín.

A. (Mr. Dellepiane) No, that is not correct.

Q. No? But I'm looking at your--I'm looking at your table.

A. (Mr. Dellepiane) Luxé is not in the suburbs of Medellín. It's in Guatapé. It's quite away from the suburbs.

Q. Okay.

A. It's a rural area. It's a beautiful, natural space, not the suburbs. That's why I'm correcting. 450 Heights and Meritage are. If I had to write that again, I wouldn't say suburbs. I would say they're somewhere between the fringe of the urban area, and I guess you can call that suburbs, and Santa Fé is definitely not in the suburbs. It's also very rural, and I'm not sure you put that in the question.

Q. So, my point is they're all in very different areas than The Charlee. Charlee's in Medellín. None of the five hotels is in Medellín, either suburbs of Medellín, rural areas outside of

Medellín or just in completely different parts of Colombia like one next to Cartagena.

A. (Mr. Dellepiane) Well, that's the whole point, right? It's--If he was flooding the market with the "Charlee" brand in the Medellín urban area, that would be--there would be a problem of absorption. But what he's doing is actually replicating the lifestyle brand--or was doing--was replicating the lifestyle brand into the tourist hubs, established once, like Cartagena and others in--or being sought to be established, like Guatapé.

Q. Okay. And--

A. (Mr. Dellepiane) It's a replicable model. Basically, the idea is basically to scale the brand. It's not invented by Mr. Seda. It's a pretty smart idea that has been done many times.

Q. Yes. If that idea worked in The Charlee, that means it will work again five more times in different places.

A. (Mr. Dellepiane) Is that a question?

Q. Yeah.

A. (Mr. Dellepiane) No. No, it's not. In fact, that's why we risk these quite heavily. We're giving three of these five projects more than a 30 percent chance of disappearing before they even get started.

Our valuation is already taking them with a 30 percent reduction, a haircut, 33 percent haircut on value just because of that, in addition to other discounts.

Q. So, 33 percent haircut?

A. (Mr. Dellepiane) Yeah.

Q. Okay. Because you're--it's 23 in your Report.

A. (Mr. Dellepiane) I'm sorry, 23--

(Overlapping speakers.)

Q. Maybe you can increase it to 33.

A. (Mr. Dellepiane) Well, I provided a, I thought, a very conciliatory start today, explaining that the range of evidence in the record goes from 66 percent to 90 percent and we're at 77 percent survival rate, 23 percent failure rate.

Q. Yeah. And you don't--

A. It's very substantial.

Q. And you don't apply that failure rate to the Meritage or the Luxé.

A. No, clearly not. These places are established. Luxé is in operation. Except for the hotel, it wasn't finished--for what's going on here, and the Meritage is not in operation but sold its entire Phase 1 and part of the following phase.

Q. Okay. Maybe "yes" or "no," and then the explanation. So you don't apply--

A. (Mr. Dellepiane) I said no.

Q. --the failure rate--

A. I said no.

Q. Yes. And you're telling me it's very well-established except for the hotel in Luxé, but you haven't thought of applying a failure rate to the hotel.

A. (Mr. Dellepiane) One could. The Tribunal could instruct us to apply a failure rate to the Luxé. If they feel that being thirty--and I'm going to get the math right this time, sorry, 26.4 percent away from completion and the construction and--means that the hotel was literally going to be a failure.

So, this is something that you have to be very careful about because the failure rates as applied are basically putting a huge haircut that assumes almost a binary yes-no progression with a project; whereas, in reality, what you're saying is that the project could be financially more, less or medium successful. We have an expected value, and then we put a big haircut on these three projects.

And apply the haircut on Luxé. I think it doesn't merit it because it's, you know, an established brand applied to an established area, not far from the hub from where the brand was created.

Q. So, again, so you have one hotel operational, that's The Charlee, and there is two other hotels, Meritage and Luxé, that are not operational, and--

A. (Mr. Dellepiane) Correct.

Q. --in your opinion, there is zero chance that they fail.

A. (Mr. Dellepiane) No. That is not--that is a massive, massive misconstruction of what our Valuation Model does. Our Valuation Model takes business projections, which are middle-of-the-road expected values, expected in the statistical sense that have--the hotel could have a higher occupancy, a higher revenue per average room, available room, higher ADRs or lower.

Our forecast is the middle of the road, is the expected value because Mr. Seda would not benefit from going to his investors and saying let's--trust me, this is going to be worth a fortune and then that not materializing, that is a very short-lived investor right there. And we know that for that, and that gives us validity to the source documents.

Then we go to the market, totally separate from that, and we say how can these market variables inform our Discounted Cash Flow model? And we test that. And we find that the projections that were given to us, that we worked with were actually conservative. So--

Q. Are you going to answer the question on the failure rate or not?

A. (Mr. Dellepiane) I am answering the question. Your question was: Is there a zero chance that they fail? I'm explaining that when you take middle-of-the-road, expected value projections, they amalgamate, they encompass the probability of failure and the probability of success and the probability of more success. What you shouldn't do is treat them as binary.

Q. Then why did you apply a separate failure rate to the other three projects?

A. (Mr. Dellepiane) Because the proof of concept hadn't taken place. Because no one had built, to this day to my knowledge, a Sante Fé de Antioquia luxury property. I've tried to go and stay there myself, and I have not been able to find a place and I don't think you can find a place in Sante Fé de Antioquia on the river that actually provides the kind of vision and idea that this had in mind. So the reason we apply that failure rate is because we're conservatively risking these properties saying there's a chance this goes through, there's a chance it doesn't.

Q. Okay. So, there's a chance that these three go through and there's a chance that they don't, but there is no chance the Meritage doesn't go through, even though the Meritage Hotel had not even started construction.

A. (Mr. Dellepiane) I don't think you understand my pros and cons on probabilities, and I hope I don't have to repeat it entirely because it was a long answer, but let me try again.

What I'm trying to say to you is that our valuation and our projections already encompass probabilities of failure, and it already encompassed the possibilities of higher and lower ADRs, and they come up with an expected value. We find that that expected value is lower compared to any market evidence that we find, and that's when we're satisfied to say, okay, our income-based DCF is actually premised on conservative variables that are lower than those in the marketplace, and therefore, it's been risked appropriately.

For the three projects, we go further and say not in a binary way that we just described "yes" or "no." But we say what happens if those first four years of development, development, development don't pan out and the public isn't there, the demand isn't there. We just don't find the attractiveness. Or if Colombia takes too long to build the double lane highway that they needed to build, which they did finish.

So, there were issues in 2017 that hadn't been completed. The two-lane highway to Sante Fé was an important piece of this.

Q. Sir, to sim--I mean, to simplify all--this very long answer, could you maybe say that for Tierra Bomba, 450 Heights, and Sante Fé, you apply the failure rate because they were not in construction and you did not apply the failure rate to the Luxé and the Meritage because they are in construction? Is that your position or not?

A. (Mr. Dellepiane) It's one of the determinants. I think I explained it in the presentation today. If you want to ask the question that way, I would say, getting to the construction point would be--would be definitely an issue because if they got to the point of deploying those assets on the ground, then there's definitely a lot of backing and support for it--doesn't guarantee it but it's a lot of backing and support.

Q. So you don't say in your report that the reason why you apply failure rates to Cartagena, 450 Heights, and Santa Fé and you don't apply one to the Luxé and the Meritage is because the first three are in construction, they are not in construction, and the second--the last two are in construction.

A. (Mr. Dellepiane) I was trying to help you with your--trying to shorten the answer, but if you want to go to the Report, I believe the way we explain the selection of projects that deserve an--

(Overlapping speakers.)

A. --risk is--hold on.

Q. --I'm sorry, I'm sorry. The question--the question--the question is simple. I'm trying to shorten the answer.

A. (Mr. Dellepiane) Okay. Let's go to the Report.

Q. Is the criterion you use to apply a failure rate or not is whether the project is in construction or not?

A. (Mr. Dellepiane) It's one of the determinants was the beginning part of my answer. Sorry if I went too long. It's the equilibrium point that determines the majority of it, and obviously the equilibrium point is related to construction, so all of this is intertwined.

Q. So--

A. Trying to get yes-or-no answers to this is a little difficult.

Q. So, the failure point, the equilibrium point is the point at which the project starts being in construction, correct?

A. (Mr. Dellepiane) Not exactly. It's a point at which the funds have been committed sufficiently in order to begin construction.

Q. Yes. So, it is the point at which you can start construction.

A. (Mr. Dellepiane) That is correct.

Q. Okay. Now, is it the case that you apply failure rate to Cartagena, 450 Heights, and Sante Fé because they have not fai--they have not reached the fai--the equilibrium point, but you do not apply failure rate to the Meritage and the Luxé because they have reached an equilibrium point.

A. (Mr. Dellepiane) Yes. That's what I referred to earlier as proof of concept.

Q. Okay. So, that's good, so that we know when you have--when you reach an equilibrium point, you apply--you don't apply failure rate. When you don't, you apply the failure rate. That's what you do. Correct?

PRESIDENT SACHS: I think we have this now on the record.

MR. DAOUD: Okay.

BY MR. DAOUD:

Q. Now, the first--so...

A hotel for a project that has reached the equilibrium point, does it--can it still fail or not?

A. (Mr. Dellepiane) I'm sorry. The hotel business, it's not premised on the same equilibrium point dynamics that my colleague explained earlier. So I think you're miss--

Q. You're right.

(Overlapping speakers.)

(Unclear.)

A. (Mr. Dellepiane) You're going to a dangerous territory. The equilibrium point concept is for the fiduciary workings of pre-sales of residential units.

Q. Let's frame this differently.

The equilibrium point is the point for real estate. The equilibrium point is the point where you have enough financing to cover your projected construction costs, correct? Or your projected costs, correct?

A. (Mr. Dellepiane) Certain costs, including margin, et cetera. It's not just to deploy the cost, but yes.

Q. Okay.

A. (Mr. Dellepiane) Generally.

Q. Now, whether for hotels or real estate, the equilibrium point is when you have the necessary financing for these costs for real estate. In the Claimants' hotels, that's--the financing comes in the form of pre-sales and with hotels it comes from equity and loans, is that correct?

A. (Mr. Dellepiane) Well you--I warned you before about extending the concept of equilibrium point to the hospitality section portion of the business, and you again ask me whether for hotels or real estate the equilibrium point is when you have the necessary financing. That's not correct. Equilibrium point could be measured that way. The Investor could decide to build before or after having the financing. I think we established equilibrium point concept as discussed in this record is in relation to the Fiduciary Trust Fund sales. It's not in relation to hospitality.

Q. Would you agree that you apply a failure rate when you have--when the project has not had the necessary financing yet to cover the costs and you do not apply a failure rate when the project has had that necessary financing?

A. (Mr. Dellepiane) Let's look at my report.

Q. Oh, you don't know?

A. (Mr. Dellepiane) I do know. We're being very precise with language. I want to go back to the Report and make sure that we--that I can describe why we did.

And we said, we're exposed to additional risk that might prevent us from reaching--prevent them from reaching equilibrium point to be deemed economically viable. So, to account for that, we've adjusted for the probability of failure. So yes.

Q. Now, if you have your necessary financing to cover the costs--okay?--whether we're in the hotel business or in the real-estate business.

A. (Mr. Dellepiane) Right.

Q. Is it impossible that the project still fails because of a lack of financing?

A. (Mr. Dellepiane) Well, it's not completely impossible. It's incredibly unlikely when you've risked the project appropriately and then including industry risks, including middle-of-the-road projections, you've benchmarked your key variables on revenues and costs against the market, you've done all that homework properly, as we have, and in this kind of risk-adjusted rate, and that presents an attractive Net Present Value and an attractive Rate of Return, then to say that is it impossible that it could still fail by financing? I would say, yeah, at that point, yeah. I mean it's not impossible but it's extremely unlikely. It would have to be subject to some very large outside force that prevented it from happening. But that's the kind of risk that is contemplated in the business, and the beta and in the Discount Rate. That's exactly what that risk is. It's a compound risk that takes years of cash flows and makes every year more and more and more risky and less and less likely to materialize. That's what the discounting process is.

Q. But I'm talking about the project completely failing. Is it impossible?

A. (Mr. Dellepiane) That is--

Q. Is that taken into account by the Discount Rate?

A. (Mr. Dellepiane) A hundred Percent. That's exactly what is it is--

(Overlapping speakers.)

Q. The why did--

A. (Mr. Dellepiane) And you think--

Q. --then why did you--

A. (Mr. Dellepiane) let me please--

Q. --why did you--

(Overlapping speakers.)

PRESIDENT SACHS: Don't over-speak please.

THE WITNESS: (Mr. Dellepiane) Can I finish my answer.

It's a hundred percent taking into consideration the Discount Rate. If you take one dollar of Year 10 at our Discount Rate, it's 40 cents in Year 1. If you take one dollar in 20 years at our Discount Rate of 8 percent, it's 20 cents in year-- in Year 1. That is the process of discounting. You are, in a way, I think, confusing or confounding the idea that there is still a stream of cash flows being projected with the idea that there is inherently and behind that process methodologically, there is a tree diagram that says yes-no, yes-no, yes-no, yes-no. One can convert a discount rate into a series of probabilities of adjustment that can happen on a binary basis every day and every year.

Now, obviously, in some industries that's how they model cash flows. In real estate, in this kind of business, brick and mortar, et cetera, you don't model cash flows that way. It's incredibly arbitrary to say let's open up a restaurant and figure out what if we close tomorrow, what if we close the day after tomorrow, what about next year, and so on and so forth.

So, to avoid that, to bypass all that speculation and arbitrariness, you pick a discount rate, which is an equivalent form of risking a business. But it's exactly--it ultimately does exactly what you're asking, which is to contemplate a go/no-go decision, the go/no-go possibilities that exist between now and the end of the project.

BY MR. DAOUD:

Q. So, if the WACC or Discount Rate takes into account the risk of failure, why did you for the three other projects add a Discount Rate, a failure risk of 23 percent?

A. (Ms. Bambachi) Because we're taking Discount Rate from going concerns and we're applying those to companies that had a proven concept, and we're saying perhaps it's not sufficient for those that hadn't reached the equilibrium point. So I think there's a distinction. You've made it very clear in your other questions and I think you've helped me clarify why--

Q. But your--

A. --why Luxe and Meritage are in a different place relative to these other three.

Q. What I don't understand is that you apply failure risk when you don't--when the project doesn't have the necessary financing yet, and you don't apply it when the nec--when the project has the necessary financing. You confirm that.

A. (Mr. Dellepiane) Sorry, what's the question?

Q. Is that correct or not?

PRESIDENT SACHS: It's the question we had before.

MR. DAOUD: Yeah, okay.

BY MR. DAOUD:

Q. So I'm proceeding on the basis that you still think it's correct.

So, for you whether or not you've had financing determines whether or not you apply failure risk. Now, I am telling you, if you've had the financing that you think is necessary for the project, does that mean that it is still impossible, that it has become impossible that you fail because of lack of financing?

A. (Mr. Dellepiane) I think I answered the question. It is, the possibilities are amalgamated and contemplated via the Discount Rate.

Q. So if you've had--

A. (Mr. Dellepiane) And what I avoid by that is speculating as to in what way, by what reason, due to what cause and when that failure may or may not happen because it's too many years into perpetuity. So the Discount Rate gives you all that information in one observation of Market Values from publicly traded companies.

Q. I'm sorry, but the--you add the failure risk when there isn't enough financing. When there isn't yet enough financing. You remove it when you get the financing. Now, I'm saying is it impossible that after you got the financing, you still need more financing?

A. (Mr. Dellepiane) No. I referred this morning in a presentation, earlier today--pardon me, this afternoon, in my presentation about the fact that there could be cash short-falls. But if you have a project that is solvent with attractive positive NPVs, according to all known information is an attractive project, you're not going to kill it or assume to be dead because there could be cash short-falls at some point. Projects run into cost overruns. Projects run into cost-savings. Colombia devalues the currency, the staff, the local materials become cheaper. All of this is amalgamated in our projections. That's my point.

Q. But if you had the necessary financing and then at the point you need more financing, you're back to a point where you still need financing to continue covering the costs of the Projects?

A. (Mr. Dellepiane) Oh, I see your concern. You're saying that we should understand the term need of financing as one box that we check or don't check, but that's a massive oversimplification. The status of the Meritage and the status of Luxé is different from the status of all the other projects. And in the Report, what we say in the First Report--sorry, the

Second Report, is precisely the way we refer to the equilibrium point, and we don't associate directly with financing, although the two are intertwined.

(Overlapping speakers.)

PRESIDENT SACHS: Might I interject a question for my own comprehension. How do you capture a risk such as a delay in further construction work problems with subcontractors and the finalization of the work, how is that captured? Is that also covered by the DCF, or would that be a risk factor that you have to apply separately and in addition?

THE WITNESS: (Mr. Dellepiane) Yeah. Thank you for your question.

It's covered in two ways. One is via the cash-flow projections in the models. Those models have, in general given how they were structured. Particularly for real estate, it's very dangerous for them to actually be overpromising because of this fiduciary Trust Fund mechanisms. There's things that could click-in. I don't know specifically about these, but in general there's clauses that could click-in and say, if you don't finish this construction by a certain date, you can incur penalties, et cetera. And the managing agent collects fees of the projects in operation. So, obviously, it has a huge incentive to get things going, but things happen, as you know.

And so, the other way in which this risk is contemplated is, as you said it, in the Discount Rate or as I think you hinted. It's in the DCF and the cash flows, but it's also in the Discount Rate. How? Because by taking companies in this business, these companies face those types of risks all the time, and by taking a Colombia Country-Risk Premium that is specific to Colombia, we're additionally saying, well, you knew Colombia has, I think, 23 holidays a year. I think we have, like, 11 in the U.S. Things--not everything happens exactly at the same pace, the same way. So, this is all contemplated in the cash flows in the Discount Rate via the beta parameter, the volatility of real estate relative to the overall market, which is higher, 1.2 times the market, and then additionally through the Country-Risk Premium.

PRESIDENT SACHS: Thank you.

BY MR. DAOUD:

Q. Is it on?

In your experience, have you seen a project, after obtaining the financing, go over budget with construction and need more financing? Have you seen that ever, or not?

A. (Mr. Dellepiane) I have seen projects go over budget. I've seen some perform better than expected.

Q. Okay. And have you seen that--I mean, you can go over budget because construction material gets more expensive?

A. (Mr. Dellepiane) Sure.

Q. You can go over budget because the construction takes longer, correct?

A. (Mr. Dellepiane) Correct.

Q. You can go over budget because you encounter technical difficulties while doing the construction--carrying out the construction?

A. (Mr. Dellepiane) Yeah, I would put that one in a lesser category. If you're--I would put that--more weight on that if there was a particular topography, geography, or archeology. That's a big issue in mining because there might be archaeological or environmental concerns. I think here, the construction is mostly horizontal construction, it doesn't need to dig that deep for foundation.

This is, as I said in my presentation today, relatively simple. In terms of the kinds of risks that it faced.

Q. You can go over budget because the Exchange Rate of the currency you're--you need for construction changes?

A. (Mr. Dellepiane) It can. Although, in this case it's exactly the opposite. Colombia has become much more attractive for businesses that command a price that is somewhat related to the U.S. dollar and a cost that is mostly related to the Colombian peso. Colombian peso has devalued, therefore making labor and local materials extremely cheap in dollars.

Q. So, you think that's highly, highly unlikely that the Claimants would have had problems with financing the construction because of changes to the Exchange Rate?

A. (Mr. Dellepiane) No. Actually, I don't need to make a likelihood assessment of that because I use a forecast by the International Monetary Fund, you see, when you take middle-of-the-road forecast from the market, that's the beauty, it doesn't need to be Ms. Bambachi or Mr. Dellepiane that make a forecast about what's going to happen with the devaluation, who's going to win or lose in the event of a devaluation--

(Overlapping speakers.)

Q. A "yes" or "no," and then given us--

A. (Mr. Dellepiane) I said "no." Look at the Transcript.

Q. Is it highly unlikely for this to happen? What is the position, your position, and then you can explain why.

A. (Mr. Dellepiane) Okay. Thank you for rephrasing the question because now it gets me to correct it. My 'no' was in relation to what I thought the question was.

Your question is: Is it highly unlikely for a devaluation to take place or--an appreciation of the currency to take place making the project more expensive? Is that your question?

Q. My question is: In the case of the Claimants' projects, how likely is it that due to a change, sudden change, in the Exchange Rate--devaluation, evaluation, whichever--they--the financing would become no longer sufficient to cover the costs?

A. (Mr. Dellepiane) Given the projections by the macroeconomic forecast first, extremely unlikely.

(Overlapping speakers.)

A. (Mr. Dellepiane) There's a lot of factors that could affect the valuation, that one is extremely unlikely.

Q. Okay. Now, can you please go to Tab 3. This is the Witness Statement of Felipe López Montoya submitted by the Claimants. Paragraph 45.

A. (Mr. Dellepiane) Yes.

Q. "Colpatria had issued its initial disbursement for the Luxé Project in January 2016. Starting in March 2016, we had entered into negotiations to increase the agreed credit limit due to unexpected changes in the currency exchange rate. The original loan amount of COP 8 billion (USD 4 million), that we had been approved for on 23 September 2014, would no longer cover the cost of construction."

Do you see that?

A. (Mr. Dellepiane) I do.

Q. Okay. In that case, "yes" or "no," the Exchange Rates changed unexpectedly?

A. (Mr. Dellepiane) I think it's much more than the Exchange Rate. And yes, Colombia had a--

Q. I'm sorry, sir. From the paragraph you're seeing, does it say that it changed unexpectedly or not?

A. (Mr. Dellepiane) I'm reading your question.

Q. What question?

A. (Mr. Dellepiane) You said, "do you see that? In that case, "yes" or "no" to the Exchange Rate and was it unexpected?"

Q. Does the paragraph say that there was an unexpected change in the Exchange Rate?

A. (Mr. Dellepiane) Oh, okay. Yes, it does.

Q. "Yes it does." And due to that, they ran out of money and needed more financing?

A. (Mr. Dellepiane) They did.

Q. And that's for the Luxé Project?

A. (Mr. Dellepiane) Correct.

Q. One of the Claimants' projects?

A. (Mr. Dellepiane) Correct.

Q. Okay, thank you.

Now, if we go back to your Second Report, Page 32, the same table we were--we look at the Meritage. The Meritage, the only phase that was in construction is Phase 1, correct?

A. (Ms. Bambachi) Correct.

Q. And that's also the only phase that had the necessary financing to cover the costs, correct?

A. (Ms. Bambachi) Yeah, sorry, I need to make a clarification on the prior question, which comes back to what we discussed earlier. So, we allocated all the historical costs of construction to Phase 1 but they included costs that really belonged to other phases, too.

(Overlapping speakers.)

Q. That's not my question. My question is: Phase 1 is the only phase that had the necessary financing?

A. (Ms. Bambachi) As of the Date of Valuation, it's the phase that had reached the equilibrium point, yes.

Q. Phases 2, 3, 4, 5, 6, 7, 8 did not have the necessary financing?

A. (Ms. Bambachi) Phases 2 and 3 are the construction of the hotel, so there is no equilibrium point there. Phase 4 and 5--

Q. I'm sorry, there is no equilibrium point, but can you also determine whether or--has construction started there or not?

A. (Ms. Bambachi) No.

Q. Okay.

A. (Ms. Bambachi) Phases 4 and 5, I understand Phase 4 had two stages, but I understand that the sales efforts had not started yet. Phase 6, there were some sales of units that were actually built in Phase 1, so I would say that Phase 6--this was an update that it's not included in this table but some of the units of Phase 6 were in construction also because they were part of in Phase 1, like, the construction was part of Phase 1.

Q. Okay. But apart from the construction that was part of Phase 1, which was the only phase that started construction, all the other phases had not started construction?

A. (Ms. Bambachi) By date of valuation, no they hadn't.

(Overlapping speakers.)

Q. Yes, by the date of valuation.

A. (Ms. Bambachi) Except for the costs that were included in Phase 1, that were common to all the different phases.

Q. And you don't apply a Failure Rate to Phase 1, correct?

A. (Ms. Bambachi) We don't apply Failure Rates. The answer is no, because we don't apply Failure Rates per phase. We look at the project as a whole.

Q. So, you've seen one phase that started construction had reached the equilibrium point, and on that basis, you did not apply any Failure Rate to this phase and all the other phases to all projects altogether?

A. (Ms. Bambachi) What we see is that the first phase of the Project, and the only one that was put on the market, was completely sold. That's what we see, and that's why we understand that the concept--the proof of concept hurdle has been successful in this case, and that's why we don't apply--

(Overlapping speakers.)

A. (Ms. Bambachi) You're talking over me.

Q. Sorry.

REALTIME STENOGRAPHER: I need a pause in between question and answer, and please slow down.

THE WITNESS: (Ms. Bambachi) Okay. So, I was saying that what we see is not the equilibrium--it is the equilibrium point but what we see is the complete sale of the only phase of what was put in the market, which is Phase 1.

BY MR. DAOUD:

Q. Yes.

So, based on that, you consider that there is no Failure Risk that will apply to the whole project?

A. (Ms. Bambachi) I don't want to repeat my colleague. We understand that the Project still has risks inherent, but those risks are captured--those risks are captured in the cash flows and in the Discount Rate.

Q. Please, just "yes" or "no," and then you can explain. I understand that. Just--I want to clarify a few things. In this project, in the Meritage, only one phase had started construction, Phase 1, correct?

A. (Ms. Bambachi) Yes, but the Phase 1 also includes construction costs related to the development of the other phases of the Meritage.

(Overlapping speakers.)

Q. Okay, and then, the other seven phases had not started construction, apart from the construction that's part of Phase 1, correct?

A. (Ms. Bambachi) Except for the construction cost of all those phases that is included in the Phase 1.

Q. Yes. And then--because part of the Project, meaning Phase 1, had started construction. You have not applied Failure Rate to all of the project. You do not distinguish phases?

Have you applied the Failure Rate--

Sorry?

A. (Ms. Bambachi) I was just pausing.

No, we have not applied a Failure Rate to the Meritage, as you're saying.

Q. Um-hmm.

A. (Ms. Bambachi) But in the way you're saying it, it appears as if we're not risking the Project. We are risking the Project--

(Overlapping speakers.)

Q. I'm saying, what you call Failure Rate--

A. (Ms. Bambachi) Can I finish please?

PRESIDENT SACHS: I'm sorry, let the Expert please finish the sentence.

MR. DAOUD: I know, but I'm trying to--

PRESIDENT SACHS: Yes, we know.

Please finish the sentence.

THE WITNESS: (Ms. Bambachi) I'm saying that the way you're saying it, it appears as if we're not risking the Project. We are risking the projects via the cash flows and the Discount Rate, as my colleague explained before.

Q. I know you are applying a Discount Rate. My question is: The Failure Risk, what you call a Failure Risk in your Report, you do not apply it, I mean, you apply zero percent Failure Risk to the Meritage?

A. (Ms. Bambachi) I answered that. I said no, we have not applied a Failure Rate.

Q. Yes, okay.

Now, as of the Valuation Date, did the Meritage have enough financing for the entirety of the Project, sufficient to cover the costs of the entirety of the Projects, including all of its phases?

A. (Ms. Bambachi) No, because many of the phases were not even in the market yet.

Q. Thank you.

Now, before we started talking about Failure Risks, I was talking about the track record, and then we left it. So, I'm going to come back to it, with your permission. We had agreed--you had agreed that The Charlee Hotel was the only track record the

Claimants had in respect of the hotel business?

A. (Ms. Bambachi) I understand it's the only hotel they were operating at the time.

Q. Yes. And would you say that the "Charlee" brand is relevant to the determining the likelihood of success of the Claimants' hotel projects?

A. (Ms. Bambachi) Yes, we understand, and we've explained it extensively in our Reports. We understand that the brand is a big part of the--of the value of the development of the Project.

Q. Okay. And in that sense that customers of hotels in the future, these hotels aren't complete yet, would knowing that these hotels are part of the "Charlee" brand would be more tempted to stay at them? Would you agree with that?

A. (Ms. Bambachi) In principle, but I don't think you have to, like, restrain it to being the same customers in the different hotels, because I think the different hotels also were in different areas and attracting different kind of public or of customers.

Q. So, does it help the Meritage, the fact that The Charlee--the fact The Charlee is successful, does that help the Meritage attract more hotel clients?

A. (Ms. Bambachi) I understand it does. When you know a brand of a hotel and you find another brand of the hotel, it does not need to be exactly the same, talking about my personal Experience. I choose a hotel, I know a hotel in a certain place, I go to another place, I find a hotel I knew, yeah.

Q. So, you stay in one time in a Hilton and then you see another in a different trip, completely different place you see another Hilton, and you say, oh, I know the Hilton is good. I stay there. Not systematically. It can happen. It's a factor.

A. (Ms. Bambachi) Yeah, exactly.

(Overlapping speakers.)

Q. Okay. You would say that more or less the same applies to The Charlee?

A. (Ms. Bambachi) Yeah, and the track record is not only in customers finding the hotel attractive, or expecting the same services, it's also in the experience in operating a hotel and successfully operating a hotel with a profit.

Q. Yeah, but for the person wanting to find the hotel to stay, it's the brand that makes the most difference, they're not going to go and study the models or the track record of the hotel economically, I assume.

A. (Ms. Bambachi) No, for customers, yes. I was just saying track record is a broader thing than what you're characterizing as just customers choosing the hotel based on the other hotel.

Q. And that is despite the fact that the Meritage is in completely different areas than the five--sorry--than The Charlee is in the completely different area than the five hotels that are in the projects you're having?

A. (Ms. Bambachi) Yes, because what you're expecting is--it doesn't need to be exactly the same hotel for you to relate one property with the other. It's the concept, it's the lifestyle. It's the team. It's much more than just the location, yes.

Q. Okay. Can you please turn to Tab 2 of your binder, that's C-6bis. That's a sort of brochure for the Meritage.

A. (Ms. Bambachi) Um-hmm.

Q. Now, if you look at the first page, for example, it says, "M Meritage Luxury Community." Do you see "Charlee" anywhere here?

A. (Ms. Bambachi) No.

Q. If you look at the second page, you see the "M," third page "M," and then you have more pages.

A. (Ms. Bambachi) What should I be looking at?

Q. To be honest, I'm just going through it. I'm not seeing The Charlee.

Is it part of the brand being marketed to clients "Charlee" to clients of the future Meritage?

A. (Ms. Bambachi) It doesn't seem to be the same brand, but they can still belong, like, to the same chain of a different brand, but it's still the same--

Q. So, they would have to know that it's owned by Mr. Seda who also owns--the customers--

A. (Ms. Bambachi) But for example, the gym has the same brand.

Q. The gym has the same brand?

A. (Ms. Bambachi) If you go to C--SP-0013 I think is the number, the page number.

Q. But the hotel doesn't have the same brand.

A. (Ms. Bambachi) From this it appears it doesn't, but it doesn't need to have exactly the same name for people to know that they belong to the same operators.

Q. For a layman to know that they belong to the same operators?

A. (Ms. Bambachi) I look into the hotels to what operator they belong to.

Q. I don't think you're a layman.

Okay. Can you please turn to Tab 9. This is the Claimants' Opening Presentation from Monday, CD-1.

And if you turn the page, that says Slide 220. We obviously didn't put the entire document here, nor did we in other--for other tabs. We often made selections to avoid having too big of a bundle.

Now, this--this slide says under the Title 1, it says: "The Claimants' projects were additions to a portfolio that was already operating successfully with high, market-exceeding profit margins."

A. (Ms. Bambachi) Yes.
Q. This chart that you have relates to The Charlee Hotel, correct?
A. (Ms. Bambachi) Yes.
Q. Does this chart show that The Charlee Hotel had market-exceeding profit margins?
A. (Ms. Bambachi) It shows that it has healthy profit margins.
Q. Compared to what?
A. (Ms. Bambachi) I didn't write this.
Q. You--
A. (Ms. Bambachi) I didn't write this. What I see here is EBITDA margins ranging from 24 to 37 percent, which seem very healthy margins
(Overlapping speakers.)
A. (Ms. Bambachi) very healthy EBITDA margins.
Q. Okay. I mean, I'm--my question is: When you look at this graph, do you see a comparison between the profit margin of The Charlee and the profit margin of the market. It says "market-exceeding profit margins."
A. (Ms. Bambachi) Okay. So, if I were to

analyze the performance of The Charlee, I would not recommend to do it on an EBITDA basis. I would recommend to do it on a RevPar basis, and that's because EBITDA might have different--

Q. But that's not my question. My question is: Does this chart show that?

A. (Ms. Bambachi) Okay. This chart does not compare to other market comparators.

Q. Yeah.

A. (Ms. Bambachi) I wouldn't recommend comparing to other market comparators in--

(Overlapping speakers.)

A. (Ms. Bambachi) --at the EBITDA level. That's why we look at RevPar and we look at the whole value per key. What you can still see here is that these EBITDA margins are from a healthy company.

Q. I mean, do I see a comparison of the market here?

A. (Ms. Bambachi) I said it's not comparing market but what I say is I look at 34 percent EBITDA, and I say it is a healthy company.

Q. Healthy company compared to the market?

A. (Ms. Bambachi) Compared to the money they want to make out of every dollar of sales. It's just--but I didn't write this. This is Claimants' Opening. I don't know this comparison--

(Overlapping speakers.)

Q. I know, I know, nor did I.

Now, it does reference your model. It does reference BRG-121.

A. (Ms. Bambachi) The information but not the conclusion and the titles.

Q. Okay. Have you anywhere in your Report said that the chart--or provided data showing that The Charlee exceeds the profit margins of the market?

A. (Ms. Bambachi) We show--and this is out of memory--so we show that it outperforms the market in terms of RevPar, which is the revenue per average room.

(Overlapping speakers.)

A. (Ms. Bambachi) Can I finish?

Q. I'm asking about profit margins. You can answer "yes" or "no" and then--

(Overlapping speakers.)

PRESIDENT SACHS: Please, do not speak at the same time.

THE WITNESS: (Ms. Bambachi) Sorry.

I don't remember if we based our comparison out of EBITDA. I do know that we show that The Charlee outperforms the market in terms of RevPar, and I think it's in terms of occupancy.

Q. Okay. Thank you. Can you please turn to Tab 1. This is Dr. Hern's Second Report, if you go to Page 59, Figure 5.1. Do you see it?

A. (Ms. Bambachi) Yes.

Q. That's the comparison of the EBITDA margin.

And in the orange, you have different--in blue you have the Claimants' projects, the EBITDA margins of the Claimants' projects, according to your valuation, according to your assumptions.

Do you see that?

A. (Ms. Bambachi) Yes.

Q. And then, orange you have the market comparisons, and The Charlee.

So, do you see that?

A. (Ms. Bambachi) Yes.

Q. Now, if we look at The Charlee, you have you "Charlee total" and then next to it, right next to it "Charlee rooms" and then next to it "Charlee F&B," which is food and beverages.

Do you see that?

A. (Ms. Bambachi) Yes.

Q. And the total is the average between the EBITDA margins of The Charlee rooms and Charlee F&B, correct?

A. (Ms. Bambachi) Yes, that's correct.

Q. Okay. Now, for the other--the other comparators, international luxury, Colombia Luxury, Damodaran, these--oh, sorry, I'm--yeah--these are averages. They're not, like, rooms or F&Bs? I don't know if you--do you--do you know that for a fact or not?

A. (Ms. Bambachi) I don't know that for a fact. I would say that these are the samples I explained in my direct. Why they are not comparable to either The Charlee or any of the hotels, Claimants' hotels.

Q. But on that chart, you see that The Charlee is at 22 percent and the other market comparators are at 19, 20, and 21 percent.

A. (Ms. Bambachi) I can see that mathematically they are similar but that provides no information because you're comparing apples with bananas who happen to be the same size. It has no relevance.

Q. Okay. And you wouldn't say that between 22--I understand that--I understand your comment. I'm just talking about the numbers between 22 percent and 19, 20, 21 percent, there isn't a big margin, big difference. It's very close?

A. (Ms. Bambachi) Mathematically, they're very close, yes.

Q. Okay. Thank you.

Can I--Can we go back to Slide 30--sorry, Slide 34 in your presentation. I have already asked you about it.

A. (Ms. Bambachi) 34?

Q. Yes.

A. (Ms. Bambachi) Yes.

Q. I already asked you about it. About why this chart was put today and not in your Second Report, but I have another question.

Here, if I look at the number of transactions over which you have put, I don't know how to call that, an oval form?

A. (Ms. Bambachi) Scattered plot.

Q. Yes. Okay. Here you don't see--

A. (Ms. Bambachi) Ah, in the circle you mean?

Q. Yes, in the circle, oval circle or a circle.

I--If you look at these only alone, you don't see a correlation between the average room rates and the total value per key. That's your point?

A. (Ms. Bambachi) My point is that to make an adjustment over a statistical variable, you need to find a relationship that maintains throughout the sample. What I find here, if I try to make a, for example, let's say we try to make an adjustment due to the room rate, and we look at this--what kind of adjustment can you infer when you have different room rates that have the same hotel value per key. There is no adjustment to be done statistically.

Q. Okay. If we're looking at the dots in red, there is more or less a correlation, not a perfect correlation, but I'm seeing a correlation. I'm seeing a diagonal. Are you seeing a diagonal?

A.   (Ms. Bambachi) I see the--for example, you have one observation that has an average room rate of $500, and a hotel value per key of 150, and I see another one that has a hotel--an average room of a higher average room with a lower value per key.

So, there is no clear way if you try to make a statistical relationship between these to infer an adjustment. There is no way you can adjust it.

Q.   I'm not--

A.   (Ms. Bambachi) There is no statistical constant relation that indicates that one thing determines the other. And that is leaving aside the fact that this whole analysis is based on one observation of an average room rate per sample per a hotel in the comparable sample, and that observation was obtained no less than in 2020 which we know was a disrupted industry.

So, when you combine both of them together, any adjustment that would be inferred from the source of the average room rate or the lack of correlation between the two variables will be completely speculative.

Q. Okay. Do you--Can you say with all that, can we say that there is some correlation between the average room rate and the total value per key, if you look at the red dots? Or if you look at all the dots.

A. (Ms. Bambachi) So, correlation means that you can infer one variable from the other. If I look at the average room rate, I have one that has a 500-dollar average room rate and total value per key that is exactly the same as the other one that has double the room rate, so what kind of adjustment can you make?

Q. If you pick--You can pick ones where there is no correlation, and you can pick ones where there is a correlation.

A. (Ms. Bambachi) The correlation is the average of all of them. So, if you have so many points that have no correlation--there is no--it has to do with the interval of confidence of the adjustment you make. It's statistics.

Q. Okay. My point is, if you look at the--

A. (Ms. Bambachi) If you want hard to look at it, you might find a diagonal, but it's not enough to do a statistical analysis and--

Q. So, you don't see an imperfect diagonal here?

A. (Ms. Bambachi) It's true. It will be like kindergarten. If you remove also the other point, if you remove the outlier, sorry I'll stop laughing, but if you remove the outlier and you amplify this, the diagonal that you're making appear, and I actually had that graph before here but I thought it was too much. But if you remove this diagonal, which is a clear outlier with an average room rate of 3,000, indicating also that the sample of room rates collected is not very reliable--and you amplify this--

PRESIDENT SACHS: I'm sorry. Too fast, too fast.

THE WITNESS: (Ms. Bambachi) I got excited. Ok, I'll start over.

There is a clear outlier and the average room rate of 3,000 and a hotel value per key of 1,400. If you remove this outlier and amplify on the bottom corner of the graph, the diagonal that you're looking at disappears. When you change the scale of the graph, it disappears. If I were to make a serious statistical analysis based on this to adjust the sample, I would clearly remove it. First I would look for a better sample of average room rates.

Second, I would remove the outlier and then any correlation that you are seeing now will completely disappear.

Q. Thank you. I'm going to be honest, I didn't understand--not your fault, but I didn't understand.

A. (Ms. Bambachi) There is no correlation. That's the take-away.

Q. Okay. Can we please--can we please go back to Tab 1, so the Second Report of Dr. Hern, Page 50, Table 4.1.

Okay, so this is a table from Dr. Hern's--Dr. Hern's Report.

Do you see the first row says Meritage and then it says--and then it has a date of May 2013? Can you see that?

A. (Mr. Dellepiane) Yes.

Q. And then are you aware of this Transaction?

A. (Mr. Dellepiane) I saw it here.

Q. I'm sorry?

A. (Mr. Dellepiane) I saw it here in his Report.

Q. Yes, so, you've seen it before?

A. (Mr. Dellepiane) To the extent described in this Report.

Q. Okay. Did you look at the underlying documents?

A. (Mr. Dellepiane) I don't recall right now what those might be. I'm--

Q. Okay. Not a problem.

A. (Mr. Dellepiane) I think I saw them back here, but you'll take me through it.

Q. Okay. Now, if you look at the column saying price paid for shares percent purchased, you have COP 2.25 billion paid for 100 percent of the Shares in Meritage.

Do you see that?

A. (Mr. Dellepiane) Yep.

Q. Do you dispute it? That 100 percent of the Shares were sold for that price.

A. (Mr. Dellepiane) Umm...
Q. Or issued for that price.
A. (Mr. Dellepiane) I have to remind myself. That's actually an acquisition or a share issuance? The two are not the same.
Q. I think it's a share issuance.
A. (Mr. Dellepiane) I think that's more precise. Yeah, it's an issuance.
Q. So, do you dispute that it was for 100 percent of the Shares and for a price of 2.25 billion?
A. (Mr. Dellepiane) It's an initial capitalization of the Company. It could be one dollar.
Q. Yes, but the dispute that it was made at COP 2.25 billion.
A. (Mr. Dellepiane) Unless you want to go through the document, I will take your word that that's what the Share Certificate says in the issuance.
Q. Okay. And then, if you look at the next--sorry, the last column, BRG DCF but-for value of

project at Valuation Date, it says COP 163 billion. Do you dispute that this is the value attributed to the Meritage Project in the but-for scenario at the Valuation Date?

A. (Mr. Dellepiane) I don't recall checking that, but if you represent to me that that's the correct conversion, I will take it upon me to double-check and submit something if I'm in disagreement, but let's assume that that's--the conversion is correct.

Q. I think this--these figures were--

A. (Mr. Dellepiane) This is his Second Report, right?

Q. Yes. But they were all, I think, in his First Report as well. So, are you—I mean--

A. (Mr. Dellepiane) Like I said, I'm not disputing the numbers. You're asking me do I remember exactly that this number is correct? I don't. But I'll take your word that the conversion is adequate.

Q. Okay. For the record, it's in the First Report as well, the same table, Page 97, Table 6.4.

Okay. And then just looking at the numbers, your valuation is 72 times bigger than the price paid for the Shares, correct?

A. (Mr. Dellepiane) No. It's 72 times higher than the capitalization and the share issuance, which is not the price paid for the shares. It's very different.

Q. For the amount paid to have that--for each Shareholder to have these Shares, to acquire these Shares, acquire not meaning purchase but acquire meaning--

A. (Mr. Dellepiane) As I said, they could have chosen to capitalize this Company with one dollar. They chose a number. That is done for various reasons, including tax considerations, including division of equity between partners, contribution of sweat equity versus cash. There's a lot of considerations at the time when a Company's first established as to what should be the original nominal value of shares, this is the nominal value of shares. You pull up the 10-K from IBM or many other companies that are worth thousands of dollars per share, and you will find most of them or many of them, if not most, have a nominal value per share, one cent or one dollar for simplicity purposes.

Q. Sir--

A. (Mr. Dellepiane) And they were originally capitalized by some amount that was just a cash contribution which is not necessarily the contributions that each of the partners make.

Q. The issuance of these Shares to the Shareholders in question was made in return for a payment of a sum. Do you agree?

A. (Mr. Dellepiane) No, that is exactly the wrong interpretation of this. The issuance of these Shares was made in exchange for consideration that these people put into the firm, is my understanding.

Q. Yes.

So, they had to--

A. (Mr. Dellepiane) I thought you said that they would receive a payment in exchange.

Q. That's not a payment?

A. (Mr. Dellepiane) They're not receiving a payment. They're making a payment.

(Overlapping speakers.)

Q. No, they're making a payment, of course.

A. (Mr. Dellepiane) I'm sorry, can we speak one at time. I'm trying not to encroach on your speaking.

Q. Back to--okay.

Q. Again, the Shareholders that got these Shares paid COP 2.25 billion, and in return the Shares were issued to them, is that correct?

A. (Mr. Dellepiane) That's my understanding, and they would have agreed to a certain capitalization total at that time in order to initially capitalize the Company, and usually a set of contributions that each of them would make. Some would stop at making cash contributions; others would continue by contributing sweat equity. Others would continue in other forms, some might pay in capital in kind.

Q. I'm sorry, so, these Shares are equity or they're not equity?

A. (Mr. Dellepiane) I didn't talk about equity--ah, yes I mentioned sweat equity. Yeah, these Shares are equity, this is equity holdings.

Q. So, in this issuance of shares, certain Shareholders became holders of shares in return for a transfer of an amount of money?

A. (Mr. Dellepiane) Presumably an amount of money. I don't know if all of the Shares were capitalized in exchange of cash consideration, is my point. There could have been other consideration contributed. One of them might have a car and the Company needs a car and they might have put a car. Ultimately, this is the nominal value of the Shares that they're agreeing to capitalize in a certain distribution and a certain percentage among the initial holders, initial partners.

Q. Okay. Now, I'm going to move to the document, so that you see it for yourself, but just before we do that, a simple math question: COP 163 billion, which is your valuation of the Meritage, is 72 times the 2.25 billion that were made by the Shareholders in return for the issuance of 100 percent of the Shares, correct?

A. (Mr. Dellepiane) The math is correct, it's 72 times and so on. The problem is that you're comparing two things that are incredibly or he's comparing two things that are tremendously misleading.

What you need to look at is what is the internal rate of return of these investments.

And they're actually quite reasonable, they're between 30 and 40 percent. For an investment of this kind, they're nothing to scream about either for being too high or too low.

So, when you look at the nominal value of capitalized shares at the time of issuance, compare that to the Market Value of the Company years later, once the company in this case has actually sold out all of its offering in Phase 1, began to sell, began to construct, and this is now a real thing, it's on track. It's a train that left the station.

To see a 72 time increase, it could be 6,000 times increase or it could be 10 time increase, and I tell you why it doesn't mean anything? Because the initial capitalization number is a nominal number that doesn't mean anything. So, if you compare a number that means a lot which is an economic number with a number that doesn't mean anything, the multiple could be anything, and it's not indicative of anything.

If you look, on the other hand, at the rates of return that these investors would have received, that's more telling and it's actually a reasonable number.

Q. Okay. But you agree that it's 72 times higher?

A. (Mr. Dellepiane) I agree that 72 times 2.25 equals 163. That's as far as I can agree.

Q. Okay. Can you please go to Tab 4, that is BRG 48, and if we move to the second page, you see that this is the Company agreement of Meritage, RR Meritage Associates.

Do you see that?

A. (Mr. Dellepiane) I do.

Q. Okay. Now, if you move to the last page, you have the Class I investor members and then Class II investor members in Royal Realty.

And inside the Class I, you have Mr. Seda who got 11.4 percent of the Shares?

A. (Mr. Dellepiane) Um-hmm.

Q. And then you have, I think by my count, thirteen other shareholders that got the remaining 89 percent or so.

Do you see that?

A. (Mr. Dellepiane) Yeah, I do.

Q. Now, you're saying basically that the amount of 2.25 billion that was made to the Company in return for this--for the 100 percent of the Shares is--doesn't correspond to the actual value of the Shares. It's much lower?

A. (Mr. Dellepiane) Sorry, that's not what I said. Could I have a calculator, just a regular hand calculator?

Q. I don't have a calculator.

A. (Mr. Dellepiane) I was going to make a point.

Q. If you have your phone, you can--

A. (Mr. Dellepiane) I don't want to pull my phone. I don't think that's--

PRESIDENT SACHS: You can use your phone for the exercise.

THE WITNESS: (Mr. Dellepiane) Thank you. Sorry, thank you, I got it. Thank you.

Okay. Thank you.

Q. Can you hear me? Yes?

So, the math is good?

A. (Mr. Dellepiane) What I was checking, and in fact is the case, is that Group A and Group B of investors are not buying their Shares at the same price. This is part of the point I was making earlier. The implied value per share of the Group A's is lower than the implied value per share of Group B. I'd have to look into further into why that might be the case, but it's exactly, exactly telling of what I tried to illustrate before when I said when you capitalize a Company at the early stage, at the issuing stage, there might be contributions in kind or there might be consideration that some group brings and the other one doesn't. Therefore, they're recognized a higher value per share or a higher consideration per share implicitly.

Q. Okay. So what you're saying is that it's possible that some of these Shareholders have brought a contribution in kind, and therefore got more shares for the same value of money?

A. (Mr. Dellepiane) Basically.

Q. Do you know that as a fact?

A. (Mr. Dellepiane) No, no. I was just checking whether these two issuances--look at a new schedule, I haven't seen this in a while. It's just pictures and you try to figure out what you can. Sorry to distract.

Q. Have you asked for information to try to determine this?

A. (Mr. Dellepiane) No, because it's completely irrelevant for the reason I said before. It doesn't matter at all. We're determining the Fair Market Value of a stream of assets--a series of assets in a portfolio as of January 2017. They could have capitalized this company in 1982 with COP 2 or they could have capitalized this company a few months before the Valuation Date. The question is in what stage of development, what assets and liabilities? What are the prospects? What are the things that we consider in the valuation? That's what gives value to a company. That's how you evaluate the value of a company.

And as I said, go look at the New York Stock Exchange, and you will find that many, many, many companies have nominal value of shares worth one cent per share because it's under that way. And in fact, multiply that by all the shares outstanding and you still won't get to a fraction, 72 times would be paled in comparison, and what you will find is that those companies are simply worth many, many, many hundreds of multiples of the nominal value of those Shares, the nominal value of those Shares, in other words, is completely irrelevant to a fair-market-value determination.

Q. And that's because the value evolves--that's because the value evolves with the development of the Project?

A. (Mr. Dellepiane) That's for a number of reasons.

Q. Is that one of the reasons?

A. (Mr. Dellepiane) It's not the only one.

At the time capitalizing the Company, there is no need for them to actually say, well, we believe this project will be--is worth a lot of money, say, I don't know, $20 million, okay? How much do we need to monetize a $20 million to turn this project into a

$20 million asset? We need $2 million, okay, let's capitalize it with $2 million. And once we put in the brand, the know-how, the business savvy, the experience, leverage the existing structure of RPG Group, et cetera. And with that, it becomes a $20 million enterprise. Without that, it's just 2 million dollars. You want to value $2 million in the bank, just look at the balance on the bank account, and that's basically what you're looking at here is the balance in the bank account on Day 1. That's not the value of the Company, and certainly not the value of a going concern like Meritage and Luxé who had already started construction.

Q. Okay. Now you say this was irrelevant, so you didn't ask for documents to see what the different Shareholders contributed in order to get these Shares, correct?

A. (Mr. Dellepiane) Yeah. This is the starting balance of the bank account. This is--as I said this morning--this afternoon, it's even in a world of sort of reliance on damages, this won't actually even begin to satisfy that principle because it wouldn't tell you where the contributions were by 2017 of those actually invested, time, equity, and brand name into the Project, to be what it was in 2017.

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MR. DAOUD: We have can the break now.

PRESIDENT SACHS: 5:30, please. And please again, do not talk to anybody about the case of the Hearing.

MR. MOLOO: For planning purposes, may I ask roughly how long do you think it will be?

MS. BANIFATEMI: May I ask how much we have?

SECRETARY MARZAL: Respondent has one hour 21 minutes left.

MS. BANIFATEMI: Left. Thank you.

MR. DAOUD: It doesn't only depend on me but the Experts as well, but I think probably around half an hour. Around half an hour.

(Discussion off the record.)

(Recess.)

PRESIDENT SACHS: All right. We may pursue, Mr. Daoud, please.

[redacted]

[redacted]

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BY MR. DAOUD:

Q. Can you please go to your Second Report, Page 69, Paragraph 135? That's Page 69, and I'm at 135(c), so the next page.

Now here you are discussing Dr. Hern's room rate comparison and you're saying it was performed during the pandemic, which has severely impacted the hospitality business, a factor that Dr. Hern doesn't consider. Now, I want to just confirm a few things with you, if I may?

A. (Ms. Bambachi) Yes.

Q. Have you taken into account the impact of the pandemic in your assumptions?

A. No, we haven't because we are doing an ex-ante approach valuation.

Q. Okay. And that means that--

A. (Ms. Bambachi) If you will continue this line of questions.

Q. I mean, I thought you were supposed to each answer--I wanted--

A. (Mr. Dellepiane) I'm not--I'm not adding answers. If you're going to talk about ex-ante, ex-post, I will pursue that. If you're going to talk about hotel rates, she will.

A. (Ms. Bambachi) I thought it was related to hotel rates because of the paragraphs. It was not--

Q. Okay. Then please proceed--

A. (Mr. Dellepiane) Thank you.

Q. Please proceed.

BY MR. DAOUD:

Q. Yes. So, you have haven't taken into account because it's ex-post.

A. (Mr. Dellepiane) That question is answered, and I'm not going to supplement.

Q. So, and to clarify, "ex-post" means information we now know but that was not known at the Valuation Date, is that correct?

A. (Mr. Dellepiane) Correct.

Q. Now, had you taken that into--had you taken the impact of COVID which became known after the Valuation Date, would that have changed your assumptions on hotels?

A. (Mr. Dellepiane) So, there is--sorry, can--sorry, but I'm so sorry--there's probably two ways to take that into account. One would be to--sorry, I'm just thinking of your question.

One would be to try to--and it's done in two ways: One is to maintain a date of valuation of January 2017 in this case, and take into consideration the actual events and the macroeconomy, et cetera, in the cash flows that are being forecasted; the other one is to actually do a Date of Award assessment and stand as of now and say are there any historical profits that were lost or not, and then from here on look forward. Sorry, I'm just thinking of the framework from which I can answer your question.

Q. So, maybe I can help you on that. If you do the former, if you keep your Valuation Date but still take information into account that happened after the Valuation Date, would that, the question is: Would your assumptions change or not?

A. (Mr. Dellepiane) They would--they would change. The problem is that they would change, and then the question becomes in what way do you risk that? And the further problem--and another point: They would change, right? If we were to incorporate actual events, they would definitely be different somewhat. They would no longer measure up to the idea of a Fair Market Valuation as of that date. We need to understand that. It would become some other construct which may or may not be useful to a court or a Tribunal, but there would no longer be a fair-market value assessment as of that date. It would be some hypothetical construct that is a hybrid of what the value might have been, plus/minus things that became known. It would no longer be what the mandate requires, which is the value at which this particular set of assets and investments would have exchanged hands between parties willing to sell, able, et cetera, et cetera.

So, we can conduct not any but virtually all these permutations and exercises mechanically. The question is can they adopt--conform to the fair-market-value standard as of the date of breach.

Q. Okay. Now, my question is, your assumptions on hotel revenues, would they change if you did that?

A. (Mr. Dellepiane) The assumption of hotel revenues would probably change. The assumptions on real estate prices will also change.

Q. No, no, please.

(Overlapping speakers.)

Q. One question--one question at a time. I didn't ask about real estate (unclear)--

(Overlapping speakers.)

A. (Mr. Dellepiane) You want to know how things would have evolved?

Q. No, no, no. I want to know how hotel revenues, your assumptions about hotel revenues would change. Would they change? "Yes" or "no"?

A. (Mr. Dellepiane) Let me put it this way: Yes, we're agreeing that there will be different variables. When you are asking me to think of something that hasn't been brought up to the extent that I recall before and you're asking me to think on my feet about how this would impact our assessment. Ultimately, I think, that's what I'm here to tell you is evidence, and I'm telling you that the hospitality sector suffered, the real-estate sectors in the suburbs of all major cities in the world pretty much have actually gone up in value massively, significantly, including in Medellín. So we should be very careful not to associate the pandemic with a--potential downturn of this particular business because there's two sides to this business.

Q. Okay. But you have confirmed that 80 percent of the damages are based on the hotel business. So, in this paragraph of your Report, you say the pandemic had severely impacted that business.

Now, you also tell me now that the real estate prices have gone up--

A. (Mr. Dellepiane) I'm telling you now that--all I'm telling you now because this hasn't been brought up and there is no--

Q. No, no, I'm not blaming you. I'm not blaming you. I'm just confirming again on hotels, hotel revenues, would they have been impacted? You said yes. Would that impact be negative or positive?

A. (Mr. Dellepiane) For hospitality, it would be a temporary negative impact of not--well, I don't want to speculate about the proportion. Not all the hotels are in operation by then so it wouldn't necessarily impact all the operations. You should be very careful not to assume that because the damages represent--are represented by--largely by the hospitality portion, that wouldn't have a one-to-one impact. So we have to run the model. We have to bring in all those variables and think about how it would impact--I would have to think about how the real estate impact would have--the real estate portion would be impacted positively about that.

Q. And you haven't done that exercise. You haven't--

A. (Mr. Dellepiane) No, I'm doing the fair market value as of January 25, 2017.

Q. You do ex-ante and not ex-post. And would it change the failure rate for hotels, the impact of the pandemic?

A. (Mr. Dellepiane) I don't know. I haven't looked at the latest Bureau of Labor Statistics data. The last datapoint, I think, is in 2019 in our sample.

Q. You--I don't know if you're aware or not, but the Colombian pesos lost value against the dollar after the Valuation Date. You also didn't take that into account. You took into account the projections as of the Valuation Date, so anything that--unexpected that happened after the Valuation Date you didn't take them into account, right?

A. (Mr. Dellepiane) As I explained earlier today to you, the devaluation of the currency would have been a favorable effect for this business that has costs mostly in pesos. The reason why Luxé--and I was trying to say this to you before you ended the cross--the reason why Luxé ran into that problem in relation to the Exchange Rate was because the loan they had was a small loan in pesos, so it didn't satisfy their needs, but the devaluation would have had a positive valuation impact.

MR. DAOUD: Mr. Chairman, I'm sorry, I'm trying to finish in half an hour. It would help if when I ask a question, first I get a "yes" or a "no" before the explanation; then second, we don't get answers to questions I haven't asked including for the interest of time.

PRESIDENT SACHS: Please proceed.

MR. DAOUD: Thank you.

BY MR. DAOUD:

Q. So, the question is if there is an unexpected change in the currency rate after the

Valuation Dates, you have not taken it into account, correct?

A. (Mr. Dellepiane) If it was not contemplated in the projection that we used from the International Monetary Fund, then the answer is correct, we did not.

Q. Okay, thank you.

Now, let's take an example for 2022. If you go to your Exhibit BRG-121, which is your model, an Excel sheet. This one isn't in the bundle, I'm afraid. To be honest, it has been difficult to put in the bundle. 121.

A. (Mr. Dellepiane) Sorry, 121 or 00--

(Overlapping speakers.)

Q. 121.

A. (Mr. Dellepiane) I think you're opening the wrong file.

Q. Until we get that, the hotel revenues, the projected cash flows are in pesos, and then you convert them to dollars, and you discount them back to the Valuation Date, correct?

A. (Mr. Dellepiane) I believe that's correct.

Q. Okay. So yes, at Tab Macro (Y). And then it's Cell R-9. It's a bit difficult to see.

(Voices off microphone.)

So, this is your assumption for the projected Exchange Rates for 2022, and it shows COP 3,012 for $1; is that correct?

A. (Mr. Dellepiane) That's right.

Q. So, that's the number you've used. Now, if you move to RH--Exhibit RH-29, that's the English version, that's one of the exhibits to Dr. Hern's Report. RH-29. And there is a tab called "FX." It's towards the end.

Do you have it, sir?

A. (Mr. Dellepiane) I'm looking at the same thing.

Q. Oh, sorry. I thought you had your own.

A. (Mr. Dellepiane) I don't have anything. I'm not allowed.

Q. Tab FX, it's the last--it's the third from the last, and it's Cell C-14, and here you have the actual Exchange Rates in 2022, COP 3,951 for a dollar.

Do you see that?

A. (Mr. Dellepiane) I do.

Q. So, had you taken that into account when converting the expected cash flows for the Year 2022, for example, from pesos to dollars, they would have given you 33 percent less dollars, roughly.

A. (Mr. Dellepiane) Yes and no. The mechanical act of dividing by a bigger number will produce a smaller number, but you cannot make that adjustment without changing your inflation. You got to look at the whole market and understand what are the prices in this new environment in Colombian pesos, and the devaluation of foreign exchange rates and inflation rates move together, as you know. So, we got to be very careful not to make one adjustment without changing the other--tentacles of the same animal.

Q. Okay. Now, have you discussed the question of ex-post and ex-ante information with counsel for Claimants? Have you--have they given you any instructions?

A. (Mr. Dellepiane) Yeah. Our instruction was to value as of the date of the breach.

Q. Okay.

A. Or January 2017.

Q. Okay. Now--

A. (Mr. Dellepiane) That's the extent of the discussion.

Q. Yeah. Are you aware that the Claimants claim that Colombia expropriated their Investment but also claimed that it breached other treaty standards such as fair and equitable treatment, national treatment, full protection and security?

A. (Mr. Dellepiane) I've read it--

(Overlapping speakers.)

A. Sorry.

Q. These are legal--I just want to know whether you're aware of it or not. I'm not asking you about them.

A. (Mr. Dellepiane) I generally understand that it's not just expropriation that they claim as the cause of harm.

Q. Okay. And the valuation in your Report, as you understand, is relevant to quantifying damages relating to all of these different kinds of breaches, or only expropriation?

A. (Mr. Dellepiane) I think we have to be specific one by one. I'm not sure what they--how they have used our quantification, if it's all the cumulative breaches or any of those individually will produce the same result, I've not been consulted. And sometimes they ask me and say, will this number still be the same number if I just claim violation of FET, or is this a number if I just claim, would you have done something differently? If they didn't check with me, I assume that it's because the full value of the Investment is lost in any of these scenarios and, therefore, other than the actual residual value of the land as is, and, therefore the damage will be the same under any of these causes of harm.

Q. Okay. So, as far as you know, they just asked you for an ex-ante valuation. You don't know if it's used for only expropriation or for everything. You assume it's fair.

A. (Mr. Dellepiane) Yeah. Well, a valuation as of that date and then interest, so full reparation to the date of our Second Report.

Q. Of course. I'm not arguing. I'm talking about the ex-ante exercise. Okay.

And again, I don't know if you're aware or not, the Claimants claim that only the Meritage project was expropriated. They don't claim that other projects were expropriated. If you're--I don't know if you're also aware of this or not.

A. (Mr. Dellepiane) I'm not sure if indirectly expropriated or impeded entirely or unfairly treated. For my purposes, I'm valuing--we are valuing the entirety of those projects, risking them, et cetera, et cetera, expressing them as of January 2017.

Q. Okay. For the record, on Day 1, Page 83, Lines 4 to 6, counsel for Claimant says what has been expropriated, what has been expropriated here in our submission is the Meritage Claimants' interest in the Newport shares. And also if you turn to Tab 10, that's the Claimants' Memorial, if you go to the third page of the index.

A. (Mr. Dellepiane) Okay.

Q. You will see at the bottom, it says: Colombia unlawfully expropriated Claimants' investment.

And then if you go to the next page, it

says: Colombia expropriated Claimants' investment in the Meritage Project. You don't see something on other projects.

It's also the same in the next tab, the reply. I'm not--to save time, I'm not going to go there, but again it says: Colombia unlawfully expropriated the Meritage Claimants' investments.

So, for the other projects, basically no expropriation is being claimed, only other non-expropriatory breaches.

And again one more question: Has--if you turn to Tab 7, I don't know if you're familiar with this authority or not, but it's Claimant's Authority; it's a book on damages called by Ripinsky and Williams. I don't know if you're familiar with it. Claimants again in their Opening, Day 1, Page 145, Lines 20-21, they were talking about the Income Approach, and they said Ripinsky and Williams say that in their seminal text on the matter. So that's a text that's heavily relied on by the Claimants, I think quoted at least--cited at least ten times in their submissions and considered by them to be seminal.

If you go to Page 253, at the bottom, you have a paragraph saying: ex-post information.

A. (Mr. Dellepiane) I see that.

Q. And it says: The question of ex-post information is a difficult one. Valuation itself takes place during the arbitration proceedings, typically several years after the Valuation Date. This presents a question: May or even should the information subsequent to the Valuation Date be taken into account? These questions are particularly relevant when the DCF method is used to estimate the investments and FMV.

So, here it was asking the question about FMV, whether or not to use ex-post information.

So, and it continues saying--or they continue saying because it apparently requires conservation of future events in relation to valuation.

And then if you turn to the next page, you will see they'll take different types of legal breaches of treaties, in turn. There is a section on lawful expropriation. And then if we turn to

Page 256, at the top there's a section on unlawful expropriations.

And then--so he analyzes what the rule is for each type of breach and then in the middle you have non-expropriatory breaches, so that's anything other than expropriation, fair and equitable treatment, national treatment, and full protection and security, et cetera.

And he says: Under the non-expropriatory case analysis where the aim of compensation is to re-establish the situation which would, in all probability, have existed if that act had not been committed, information changes should logically be taken into account, both if they are compensation-increasing and compensation-decreasing, compared to the assessment at the time of breach on the basis of ex-ante information.

This is because the ex-post information is used with a sole aim of increasing with the precision of the analysis, and there is no floor figure, below which compensation cannot fall, as in expropriation cases. There have been several arbitral decisions where Tribunals took account of events subsequent to the Valuation Date, including compensation-reducing factors. They did that without shifting the Valuation Date forward but by correcting the cash-flow projections and other value affecting factors in light of the information available at the time of the Award.

So, what this says here is that, for non-expropriatory breaches, you take into account information known after the Valuation Date, you don't move the Valuation Date, as it is, but you take into account information that became known after. And as we saw at the very beginning, that whole question that authors here are considering relates to a DCF method used to estimate an investment's FMV.

And then to recap at Page 257 at the bottom, you have additional remarks, the practice to date can be summarized as follows, and then you have (1) lawful expropriation, and then (2), unlawful expropriation.

MR. MOLOO: Mr. President, is there a question here? He's been putting in submissions for the last five minutes or so.

MR. DAOUD: Yes. I'm going to ask a

question.

And then (3), non-expropriatory breaches of international law, ex-post information to be taken into account, regardless of whether it leads to an increase or a decrease in value, and the Valuation Date not moved to the Date of Award.

Same thing, just recapped.

Any of these things have been--counsel for Claimants have told you about this text, have given you any instructions in this regard?

THE WITNESS: (Mr. Dellepiane) That is an extremely broad question. I met with these lawyers so many times. I want to respond honestly. I'm not sure how to answer that.

Has any of these things ever come up in my conversations with counsel? Yes.

BY MR. DAOUD

Q. Yes.

A. (Mr. Dellepiane) Of course they did.

Q. And they told you to nonetheless use ex-ante information only and no ex-post information?

A. (Mr. Dellepiane) No. That's not what I said before. I said that they asked me to perform a Fair Market Value assessment as of January 25, 2017. I decided to use what information--in fact, JLL includes some datapoints that are post-date of valuation because they need a sample big enough to be representative.

There is one note I would make since you made me read all this, which is fascinating, is that these non-expropriatory breaches--and I have actually happened to have studied this topic quite a lot, as you might know--refers to contractual or to try to put back in what would be like a contract setting, so I'm not going to get into whether it's legally applicable or not. But when they try to do what I suggested before could be done, which is to take a date in the past and then adjust the cash flows for events in the future to put in the position that would have existed in all probability, et cetera, usually when I've seen that apply is in the context of contractual breaches. I have never seen it applied in an investor-State case, but this I don't know. It was the first time—

(Overlapping speakers.)

Q. Never seen it applied in an investor-State case?

A. (Mr. Dellepiane) Myself, no.

Q. Okay. But you--So, is that like--are you confident that this is representative of the practice or you don't know, that's just what you've experienced?

A. (Mr. Dellepiane) I've never been instructed by a tribunal to mix and match that way that I recall right now.

Q. Okay. Can we go back to Page 1, please. That's the title of--the book.

THE INTERPRETER: Please, you need to speak closer to the mic.

MR. DAOUD: It's called--the title is Damages in International Investment Law.

BY MR. DAOUD

Q. And then I'm not going to spend more time on that.

A. (Mr. Dellepiane) We agree that that includes contractual discussions, in the whole book. And I read this book pretty much cover to cover.

Q. It doesn't--I mean, if you have a contractual--

(Overlapping speakers.)

PRESIDENT SACHS: Gentlemen, I'm afraid this is not so helpful anymore.

MR. DAOUD: I propose to move on, Mr. Chairman. I think that should be my last line of questions.

If you please go back to Slide 22 of your presentation. I will try to be brief here. Who--who--

THE WITNESS: (Ms. Bambachi) Is it related to parameters or to ex-post and ex-ante methodology?

BY MR. DAOUD:

Q. It's related to what you discussed here. I think that was you--

A. (Ms. Bambachi) I did this slide.

(Overlapping speakers.)

Q. So, in context, I believe that what you say here in this slide is that Dr. Hern did not use the correct allocation of the historical sales to the right phase of the Project, Meritage Project.

A. (Ms. Bambachi) Yes, when I recalculate this, I use an updated allocation which I believe is--Dr. Hern didn't have that information by the time he did that calculation.

Q. Yes. That was the first time--first thing I wanted to confirm with you because you refer at the bottom in the notes to BRG 157 and BRG 156.

A. Are you looking at the demonstratives?

Q. To the notes at the bottom of the slide.

A. (Ms. Bambachi) Ah, BRG 157, yeah, that's correct.

Q. And these are--

A. (Ms. Bambachi) The new documents.

Q. They are new documents that were provided like 10 days ago or so.

A. (Ms. Bambachi) Yes.

Q. So, he didn't have these documents.

A. (Ms. Bambachi) Yes, that's correct.

Q. That's the first thing.

And then the second thing is if we go to BRG 157. Now, it's not in the bundles, but we will distribute to you a copy.

Now, to clarify, this is an English translation of the original, the Spanish original, the document was presented--was produced by you, or by the Claimants without an English translation, so we've done an unofficial translation right now to show it to you and the Tribunal.

And if you look at--this is a letter dated 28th of May--March 2016.

Do you see that?

A. (Ms. Bambachi) Yes, I see that. Yes, I see that.

Q. That's before the Valuation Date, correct?

A. (Ms. Bambachi) Yes, that's correct.

Q. And that's before the temporary measures of August 2016?

A. (Ms. Bambachi) It's before August 2016.

Q. It's like five months or so before.

And then it is sent to Corficolombiana by a person called Jorge Hernan Herrera Marquez. And it's titled "Request for Reimbursement of Resources for Failure to Fulfill the Purpose of the Contract

Meritage Stage 4 and 5."

And then it says: "We identified by the number X request the total refund of the contributions that we have deposited for the Meritage Project since the deadline to reach the point of equilibrium of Stages 4 and 5 in which we are investors expired on 17 October 2015, and we do not wish to continue with this investment." Do you see that?

A. (Ms. Bambachi) Yes.

Q. So, and then he's asking for his contribution to be returned and giving his bank account details.

So, do you see from this document that the equilibrium point was reached later than was contractually required, according to this gentleman?

A. (Ms. Bambachi) I don't have in mind the Contract under which this person bought the piece or the Unit or whatever he was buying. In our model, the forecasted date of equilibrium is not October 2015 for Phases 4 and 5.

Q. So, is it because the forecast date that you used is inaccurate or--

A. (Ms. Bambachi) I believe we were using the latest Business Plan as of the Date of Valuation.

Q. Was it maybe pushed, they tried first for October 2015 and failed?

A. (Ms. Bambachi) We can speculate, but I don't know.

Q. You haven't looked into that?

A. (Ms. Bambachi) No.

Q. Okay. And there was already at least one investor before the Measures started, wanting to get out of this project?

A. (Ms. Bambachi) That's what the document says, yes.

Q. Okay. Thank you very much for being here today.

MR. DAOUD: Thank you, Mr. Chairman. I have no further questions.

PRESIDENT SACHS: Thank you, Mr. Daoud.

Thank you.

We will have some questions in redirect?

MR. MOLOO: Just a few, Mr. President.

REDIRECT EXAMINATION

MR. MOLOO: Thank you, Mr. President.

BY MR. MOLOO:

Q. Just a few questions. The first, you were asked about the difference in majority and minority stakeholder--Shareholder interests. Just to be clear, when a minority stake is being valued alongside a majority, it's all being sold together in a hypothetical world, do you treat the valuation of the majority and minority differently?

A. (Ms. Bambachi) No, I treat them the same when the transaction is for the full package including a minority and a majority, we distribute the price evenly or uniformly between the holders.

Q. And are you aware that in the Shareholder's agreements whether or not there were drag-along and tag-along rights?

A. (Ms. Bambachi) No, I'm not aware.

Q. Assuming--if I tell you there are drag-along and tag-along rights, what does that imply?

A. (Ms. Bambachi) If there are, that may affect the allocation of the price.

Q. One question on--you were asked about currency risk, business interruption risk, you know, let's say there's a strike, all of these things, does that uniquely affect a business that's in development or in operation, or is it unique to any one particular phase of a project?

A. (Mr. Dellepiane) No, not particularly. I think, what would be unique here would be for a project, would be as I mentioned, I think I mentioned environmental concerns if they were in a very particular region.

Q. And what generally captures all of that, whether it's, you know--no matter what stage the business is in?

A. (Mr. Dellepiane) The business risk in general is captured in the beta, well, in the complete Cost of Equity but in the beta in particular, the volatility of that particular industry relative to the average of the market.

Q. What about--

A. (Mr. Dellepiane) Sorry, and in the cash flows. I think I broke it down earlier. You have business projections, revenues, costs, prices, units, the cost to build those units and maintain them and run your business, taxes, we take in factor in taxation. The Country's Premium also gives you a buffer in case taxation changes negatively.

Cause it--Keep in mind, when you have this premium on the Discount Rate, all it's doing is saying it could be worse. It's not considering that it could be better, so this is why we talk about risking with risk adders. We begin with a Risk-Free Rate, and we start adding the Equity-Risk Premium and the beta that multiples that and makes it a multiple to make it more volatile than the average of the market then the Country-Risk Premium and so on.

So--

Q. And is that also true of currency risk?

A. (Mr. Dellepiane) Yes, it's all blended within--that element that the market has a lot more wisdom to come up with via thousands and millions of individual transactions by informed sophisticated traders of bonds and stocks, it's a lot more valuable information than me as an expert coming in to say let's add 2 percent here because this is an emerging market. Let's add 4 percent here because this is a start-up. What do I know? The market does.

Q. You were taken to C-0006bis. I would like to put that up, if possible, Franz. And you were asked whether or not--this seems to be a deck for the Meritage community.

A. (Mr. Dellepiane) Yeah, I've seen it.

Q. And you were shown a couple of pages in what I think is quite a lengthy document. And you were asked, well, where is The Charlee on this.

Can we go to Slide 54, please.

A. (Mr. Dellepiane) Do you know the page number at the bottom?

Q. SP-054.

A. (Mr. Dellepiane) No, it's not in the version we got.

(Overlapping speakers.)

MR. DAOUD: Sorry to intercept. You don't have in your bundle the full--

THE WITNESS: (Mr. Dellepiane) Oh, that's convenient.

MR. DAOUD: We put like one-third or so.

MR. MOLOO: Okay, I will show you the rest of the document, then.

BY MR. MOLOO:

Q. Here, you can see the section that--okay. 54, you can see the Royal Property Group there?

A. (Mr. Dellepiane) Yes.

Q. If you go to 55, do you know what this is?

A. (Mr. Dellepiane) Management and sales of RPG. That's the entry to The Charlee Hotel, if I recall, and the gym.

Q. This is by the way the same deck that you were only given the first third? This is the part that--

A. (Mr. Dellepiane) Yeah, on the bottom it says the prior projects or executed projects, hotel The Charlee, Luxé by the Charlee.

Q. Let's go to 56. Do you know what this picture is of?

A. (Mr. Dellepiane) Yeah, I--it's the rooftop of The Charlee Hotel in Medellín.

Q. Go to 57. Do you know what this is?

A. (Mr. Dellepiane) This is the Luxé. I

visited this property as well. Well, it's a rendering obviously. Well, the bottom and right are renderings. The top left I think might be a real picture because these are actually built.

Q. Go to 58. Do you know what this is?

A. (Mr. Dellepiane) Well, it's--no, it doesn't say there. But--

Q. At the bottom it talks about the Luxé by The Charlee.

A. (Mr. Dellepiane) It does mention some of the prior executed projects.

It looks a lot like the Luxé. I'm not sure I saw that particular angle.

MR. DAOUD: Maybe questions shouldn't be that leading.

MR. MOLOO: Well, I think this is definitely appropriate redirect.

BY MR. MOLOO:

Q. But we get the point I think that there's additional slides in this deck that connect the two, it looks like.

Let's go to C-110. Which I think --we don't need to go there.

Let's go to BRG 1, Page 19. Sorry, Franz, I'm jumping all over the place.

You were asked about--you were shown a chart, I think, from Dr. Hern, but you were asked about how The Charlee Hotel compares to the market. Actually, let's go to 20. Sorry, I did mean 19. Go back one.

And you were asked to compare it to—you know, how does it compare to the market generally. I believe you had some charts comparing The Charlee Hotel to other hotels in the Colombia market.

MR. DAOUD: I'm sorry, but the question that was given to the Experts was how does it compare to the market with respect to profit margins.

MR. MOLOO: And I believe--

MR. DAOUD: Based on the slide from the Claimants.

BY MR. MOLOO:

Q. Okay. So, my question is: How does it compare generally in terms of its success to the market based on the--the Colombian market based on the analysis that you've done?

MR. DAOUD: I will note that this does not concern our questions but...

PRESIDENT SACHS: It's permitted.

Please. Thank you.

THE WITNESS: (Ms. Bambachi) Yes, so in our Report we explained that The Charlee outperforms the Colombian market comparing it to a sample provided by SDR, and we show this in terms of occupancy in Figure 2, and then in the next page we do so in terms of ADR, which is the average rate, and combine the occupancy and the ADR, compute the RevPar which is the indicator I responded I would look at if I was to test the performance of The Charlee.

Q. And what does RevPar mean?

A. (Ms. Bambachi) RevPar is just occupancy times ADR. ADR is the rate that they are charging. It doesn't take into account that maybe you have only 50 percent of the whole services. When you combine them, it's an indicator of both the level of rates that the hotel can collect, and the demand of the--the occupation of the hotel, how many rooms are rented each night on average per year.

[redacted]

[redacted]

[redacted]

PRESIDENT SACHS: All right. We have no further questions for you. You are now released. Thank you very much for your expert testimony.

THE WITNESS: (Ms. Bambachi) Thank you.

THE WITNESS: (Mr. Dellepiane) Thank you.

(Witnesses step down.)

PRESIDENT SACHS: Okay, we should deal with housekeeping and organizational matters. I think we can start off the record so that you can start to clean up the Transcript. When we come a point of time where we should put something on the record, we will do so.

(Discussion off the record.)

PRESIDENT SACHS: So, I wish you good evening, and sorry that we will meet again on a Saturday. The dress code on Saturday is not casual but smart casual, please. Thank you.

(Whereupon, at 6:25 p.m., the Hearing was adjourned until 9:00 a.m. 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