

IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN  
OF THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE UNCITRAL ARBITRATION RULES,

BETWEEN:

WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON,  
DOUGLAS CLAYTON AND DANIEL CLAYTON AND  
BILCON OF DELAWARE INC.

Claimants

- and -

GOVERNMENT OF CANADA

Respondent

TRANSCRIPT OF PROCEEDINGS  
HELD BEFORE JUDGE BRUNO SIMMA (PRESIDING ARBITRATOR),  
PROFESSOR DONALD McRAE, and PROFESSOR BRYAN SCHWARTZ  
held at the offices of Arbitration Place,  
333 Bay Street, Suite 900, Toronto, Ontario  
on Thursday, February 22, 2018 at 9:05 a.m.

VOLUME 4 - FULL TRANSCRIPT {REVISED}

CONDENSED TRANSCRIPT WITH WORD INDEX

APPEARANCES:

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Brent Johnston  
Chris Elrick  
Alex Baer  
Alex Little  
Randy Sutton  
Frank Borowicz, Q.C.

Scott Little on behalf of the Respondents  
Shane Spelliscy  
Rodney Neufeld  
Krista Zeman  
Susanna Kam  
Mark Klaver

ALSO PRESENT:

Lorinda Edmunds, Alison Burns, Raman Bath, Chelsea  
MacDonald, Annie Ronen, Tyler Lalande, Darian  
Parsons, Benjamin Tait, Derek Hehn

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1 Toronto, Ontario  
2 --- Upon resuming on Thursday, February 22, 2018  
3 at 9:05 a.m.  
4 PRESIDING ARBITRATOR: I think we are  
5 ready to proceed.  
6 I would like to start by just kind of  
7 reading out a few things that might be of importance  
8 for the further course of the cross-examination.  
9 Mr. Nash has then asked for the floor, but first I  
10 will just read this out. I think in light of the  
11 discussion we had yesterday, it is good to, first of  
12 all, remind ourselves of paragraph 6.1 of PO25, but  
13 I don't have to read out that text because by now it  
14 is ringing in our heads.  
15 Then we have 4.3, according to which  
16 the scope of cross-examination shall relate to  
17 issues relevant to the witnesses' or experts'  
18 written or oral evidence, and the tribunal is of the  
19 view that paragraph 4.3 does not deal with the  
20 question or at least not -- whether  
21 cross-examination must be exclusively based on  
22 information that is already on the record.  
23 The tribunal has also made up its  
24 mind of the following point and I am going to read  
25 that out. It relates to questions led by counsel:

1 to the extent that counsel allege or mention facts  
2 or events in their questions, the tribunal does not  
3 regard that as evidence and the tribunal will not  
4 rely or place any weight on such assertions by  
5 counsel.  
6 If the witness is unfamiliar with any  
7 facts asserted by counsel, the witness should simply  
8 say so. The tribunal will not be influenced in its  
9 decision by counsel's questions. Thus, the tribunal  
10 makes a distinction between an assertion of a fact  
11 in a cross-examination question and an attempt to  
12 place a new document on the record. With regard to  
13 that, the tribunal says that as an exception to the  
14 previous principle, a party must not circumvent the  
15 prohibition against placing new documents on the  
16 record without the tribunal's leave, by reading into  
17 the record or providing a detailed summary of  
18 documents that are not already in the record.  
19 I think these principles should be  
20 helpful in our further course of work, and having  
21 said that, I give the floor to Mr. Nash who wants to  
22 raise a procedural issue.  
23 MR. NASH: Thank you, Judge Simma.  
24 I wish to raise the issue of the use  
25 of the word "taint." Taint.

1 PRESIDING ARBITRATOR: Case?  
2 MR. NASH: "Taint" by Mr. Little  
3 yesterday.  
4 PRESIDING ARBITRATOR: "Taint"?  
5 MR. NASH: He asserted that either  
6 this proceeding was or might be or could have been  
7 "tainted" by the exchange with Ms. Griffiths  
8 yesterday. That is a very strong word. That smells  
9 of corruption. It smells of spoiling, defiling,  
10 contamination, and it is a very charged word.  
11 By Canada's wish in the procedures of  
12 this proceeding, this is an open, transparent  
13 proceeding. Words like that are completely  
14 inappropriate to describe the exchanges that we had  
15 yesterday, which related to objections about  
16 evidence, objections that happen every day in every  
17 court before every tribunal. They are routine, they  
18 are regular. They don't taint a proceeding.  
19 It is fundamentally wrong to  
20 characterize what went on yesterday as having  
21 anything to do with tainting this proceeding. This  
22 proceeding has been conducted fairly, to both sides,  
23 from the beginning and it continues to be. It has  
24 not been tainted by anything.  
25 This proceeding, we know, it is no

1 surprise to anyone, can be used and indeed, is being  
2 used for another agenda. It is very important how  
3 this proceeding is conducted. It is very important  
4 how this proceeding is described. There is a NAFTA  
5 negotiation going on right now. This very  
6 proceeding is the subject of considerable  
7 controversy. The entire record of the previous  
8 phase of this proceeding, the liability phase, went  
9 before the Federal Court. The entire record of this  
10 proceeding may go back before the Federal Court.  
11 There are interests in this country and beyond which  
12 have an interest in mischaracterizing what has gone  
13 on and what is going on in this proceeding.  
14 So I would ask the tribunal to have  
15 any reference to the word "taint" be stricken from  
16 the record. I'd ask the tribunal to direct  
17 Mr. Little and his colleagues not to use that word.  
18 It is an inappropriate word. It has meaning. It  
19 can be used irresponsibly.  
20 We have responsibilities to have an  
21 open proceeding. There is a responsibility to  
22 attach with that, and that is to ensure that we take  
23 every reasonable step to ensure that this pleading  
24 cannot be used for an ulterior purpose beyond the  
25 merits that are being determined in this proceeding.

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1 This is a damages hearing. We have important legal  
2 issues to deal with. We are dealing with them in a  
3 methodical way.  
4 There was, recall, no objection taken  
5 to the line of questioning of Ms. Griffiths  
6 yesterday on the point that was raised, no objection  
7 taken at the time. There was no interruption.  
8 Nobody got up and said, "This shouldn't be  
9 happening." It was allowed to happen and it was  
10 characterized after-the-fact as tainting the  
11 proceeding and I take strong objection to that.  
12 It is wrong and should not be  
13 allowed.  
14 PRESIDING ARBITRATOR: Thank you,  
15 Mr. Nash.  
16 Mr. Little.  
17 MR. SCOTT LITTLE: I really don't  
18 have any comment other than to say I see no reason  
19 to remove the word "taint" from the transcript.  
20 Mr. Nash said that this hearing has been conducted  
21 fairly. Indeed it has because evidence that  
22 shouldn't have been admitted into testimony  
23 yesterday was stricken from the record. That's all  
24 I will say. I think that's all that needs to have  
25 been done.

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1 PRESIDING ARBITRATOR: That's better,  
2 yes. Okay, Mr. Nash.  
3 MR. NASH: I think he is going to  
4 have some introduction. I'm just standing here.  
5 PRESIDING ARBITRATOR: Yes.  
6 EXAMINATION IN-CHIEF BY MR. KLAVER:  
7 MR. KLAVER: Good morning,  
8 Mr. McLean.  
9 A. Good morning.  
10 Q. You are currently the manager of  
11 the Fisheries Protection Program in the Maritimes  
12 Regional Office at the Department of Fisheries and  
13 Oceans in Nova Scotia; correct?  
14 A. That's correct.  
15 Q. You had the responsibility to  
16 lead the review of the Whites Point for DFO;  
17 correct?  
18 A. That's correct.  
19 Q. And for the Black Point project  
20 you were responsible for overseeing staff who  
21 provided DFO with expert advice under the Canadian  
22 Environmental Assessment Act; correct?  
23 A. Yes, that's correct.  
24 Q. You submitted one witness  
25 statement in the damages phase of this arbitration,

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1 PRESIDING ARBITRATOR: The tribunal  
2 has taken note of that. The question of what will  
3 happen to the word "taint" will have to be decided,  
4 but not now.  
5 I think we can start the  
6 cross-examination and I think we decided to return  
7 to the original order in that regard and that means  
8 that it's now Mr. McLean who will be examined.  
9 AFFIRMED: MR. MARK McLEAN  
10 PRESIDING ARBITRATOR: Good morning,  
11 Mr. McLean.  
12 THE WITNESS: Good morning.  
13 PRESIDING ARBITRATOR: This is your  
14 cross-examination. Will you please read out the  
15 statement that you have in front of you on that  
16 piece of paper.  
17 THE WITNESS: This one here? Yes.  
18 I solemnly declare upon my honour and  
19 conscience that I will speak the truth, the whole  
20 truth and nothing but the truth.  
21 PRESIDING ARBITRATOR: Right. Thank  
22 you.  
23 You might get the microphone a bit  
24 closer.  
25 THE WITNESS: Okay. Is this better?

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1 dated November 6th, 2017; correct?  
2 A. That's correct, yes.  
3 Q. Do you have any corrections that  
4 you wish to make to the statement?  
5 A. I do, so there is two  
6 corrections. So in paragraph 6 it refers to the use  
7 of the Bay of Fundy by North Atlantic right whales.  
8 I think -- I can't remember if it is  
9 the second sentence refers to the use of the Bay of  
10 Fundy for birthing for North Atlantic right whales.  
11 It is actually not used for birthing. It is used  
12 for feeding, calving -- so, feeding, nursery areas,  
13 mating, but not for birthing.  
14 That was corrected in one sentence  
15 but it was mixed in that sentence in paragraph 6 and  
16 also in paragraph 24.  
17 Q. Okay. Anything else?  
18 A. That's it.  
19 Q. Okay.  
20 PRESIDING ARBITRATOR: A correction  
21 has to be made also in paragraph 24?  
22 THE WITNESS: Yes, 24, paragraph 24  
23 as well.  
24 I corrected in one sentence but then  
25 I missed it in going through the document.

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1 PRESIDING ARBITRATOR: Okay. That  
2 was the only --  
3 THE WITNESS: That's the only  
4 correction.  
5 PRESIDING ARBITRATOR: So, Mr. Nash,  
6 it is your turn.  
7 CROSS-EXAMINATION BY MR. NASH:  
8 MR. NASH: Mr. McLean, you appeared  
9 before this tribunal in October of 2013 in the  
10 jurisdiction and liability phase; that is correct?  
11 A. That's correct.  
12 Q. You were a manager with DFO then?  
13 A. That's correct.  
14 Q. And you are still a manager at  
15 DFO; that is correct?  
16 A. That is right.  
17 Q. Do you recall having signed two  
18 affidavits in the jurisdiction and liability phase?  
19 A. I do, yes.  
20 Q. Do you recall that we went  
21 through those affidavits in detail at your last  
22 appearance before this tribunal?  
23 A. I do, yes.  
24 Q. Do you recall in the first phase  
25 confirming that you had no special expertise in

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1 marine mammals?  
2 A. So my expertise is working for  
3 DFO for the past 13 years to review projects for  
4 impacts on fish and fish habitat including marine  
5 mammals.  
6 Q. You are not a research scientist  
7 with the DFO; that is correct?  
8 A. That's not my job. My job is to  
9 review for impacts. I work with research scientists  
10 at DFO.  
11 Q. Who know much more about the  
12 science than you; is that correct?  
13 A. They would be primary researchers  
14 on documents but I would review that literature in  
15 reviewing impacts to projects on marine mammals.  
16 Q. And you are a manager?  
17 A. That's correct.  
18 Q. Do you recall telling the  
19 tribunal in 2013 that the DFO, including you, relied  
20 on DFO scientists to provide a scientific  
21 understanding of the migration patterns of marine  
22 mammals?  
23 A. That's correct.  
24 Q. And that's true today?  
25 A. That's correct.

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1 Q. Do you recall admitting to the  
2 tribunal in October of 2013 that you described  
3 certain events in your affidavit to the tribunal  
4 having had no personal involvement in those events?  
5 A. I'm not sure of the question.  
6 Q. Well, I'll just repeat it: Do you  
7 recall telling the tribunal in 2013 that you  
8 described certain events in your affidavit having  
9 had no personal involvement in those events? If I  
10 can refresh your memory, do you recall that when you  
11 arrived at DFO in 2005 --  
12 A. Right.  
13 Q. -- you reviewed the file and you  
14 described a narrative in your affidavit having  
15 reviewed the file, having selected documents to  
16 insert and to review the file in a narrative form in  
17 your affidavit?  
18 A. Right. So there was, prior to my  
19 arrival in 2005 at DFO I wasn't involved, obviously,  
20 with the department in reviewing Whites Point Quarry  
21 from that perspective.  
22 Q. Do you recall telling the  
23 tribunal that you had described certain events in  
24 your affidavit in which you had had no involvement?  
25 A. No direct involvement but working

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1 with the staff that would have had involvement in  
2 those events.  
3 Q. "No personal involvement", were  
4 your words; do you recall that?  
5 A. No personal involvement in the  
6 discussions that would have happened prior to 2005.  
7 Q. Well, let's just go to tab 13 of  
8 the document in front of you, the binder, page 289,  
9 line 9.  
10 A. Yes.  
11 Q. I state:  
12 "Let's start at paragraph 13.  
13 You say:  
14 "As Nova Stone's application  
15 involved the use of explosives in  
16 close proximity to the Bay of  
17 Fundy, NSDEL contacted a DFO  
18 advisor on marine mammals to  
19 request that DFO consider whether  
20 the proposed engaged concerns  
21 under DFO's jurisdiction'."  
22 That was your sworn affidavit, sworn  
23 evidence in your affidavit; do you recall that?  
24 A. Yes.  
25 Q. And then I say:

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1 "I take it from what you've told  
2 me so far that you actually had  
3 no involvement in that; is that  
4 correct?  
5 Answer: That's correct.  
6 Question: Going on, it states  
7 'DFO expressed concern regarding  
8 the potential impact of blasting  
9 on marine mammals such as the  
10 North Atlantic Right Whale."  
11 And I quote again from your  
12 affidavit. And I say at line 4 at page 290:  
13 "And again, you have no  
14 first-hand knowledge of that.  
15 That is something that has either  
16 been told to you or you concluded  
17 from a document?  
18 Answer: That's correct, yes.  
19 Question: 'In light of this  
20 concern' -- this is a quote from  
21 your affidavit -- 'DFO requested  
22 that two clauses be added to the  
23 industrial approval that be  
24 granted to Nova Stone.'  
25 End quote. Line 15.

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1 "Again, you had no involvement in  
2 that process for the request of  
3 the inclusion of the two clauses  
4 in the approval; correct?"  
5 Answer: That is correct." [As  
6 read.]  
7 A. Right.  
8 Q. And then, just going over, there  
9 is a couple more examples, but go over to page 291,  
10 line 9:  
11 "So you had basically been  
12 through the file, you had seen  
13 these communications, drawn the  
14 conclusions that you draw here  
15 from those documents but you  
16 actually have no first-hand  
17 knowledge of any of the  
18 communications leading up to  
19 them; is that correct?  
20 Answer: That's correct, yes."  
21 Now, the answers that you give to the  
22 tribunal, in October of 2013 were true; is that  
23 correct?  
24 A. Yes.  
25 Q. And there were many more examples

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1 of that; do you recall that?  
2 A. I do, yes.  
3 Q. So, going back to your  
4 background, you were at the Nova Scotia Environment  
5 Department from 1999 to 2002 when you went on a  
6 one-year exchange to DFO; correct?  
7 A. That's correct.  
8 Q. And on April 1st, 2003 you  
9 returned to the Nova Scotia Environment Department;  
10 that's correct?  
11 A. That's correct.  
12 Q. And you were at the Nova Scotia  
13 Environment Department not the DFO in the summer of  
14 2003, that's correct?  
15 A. That's correct, yes.  
16 Q. And that summer of 2003 was when  
17 the Whites Point Project was referred to a Joint  
18 Review Panel; is that correct?  
19 A. Yes.  
20 Q. And in January 2004 you left  
21 Environment to join CEAA; do you recall that?  
22 A. Yes.  
23 Q. And you were at CEAA not at DFO  
24 when the Whites Point Joint Review Project commenced  
25 its work; that's correct?

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1 A. That's correct.  
2 Q. And you were hired by DFO in  
3 October of 2005, one year after the JRP commenced  
4 its work, that's correct?  
5 A. Yes.  
6 Q. And you were hired as an  
7 environmental analyst in 2005; is that correct?  
8 A. Yes.  
9 Q. And you were DFO environmental  
10 analyst with the habitat management division from  
11 October of 2005 to June 2009; that's correct?  
12 A. Yeah, the correct title of the  
13 group was Environmental Assessment in Major Projects  
14 Division but within the Habitat program, yes.  
15 Q. Your position was as a DFO  
16 environmental analyst; is that correct?  
17 A. That's correct, yes.  
18 Q. And that was during the course of  
19 the rest of the environmental assessment of the  
20 Whites Point Project which concluded in 2007,  
21 including the time when the JRP held public hearings  
22 and issued its report; that's correct?  
23 A. Yes.  
24 Q. So all through that period you  
25 were an environmental analyst; is that correct?

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- 1 A. That's correct.  
 2 Q. And today the DFO employs  
 3 hundreds of scientists and engineers who are experts  
 4 in matters related to the ocean; is that correct?  
 5 A. Yes.  
 6 Q. Including oceanographers,  
 7 physicists, biologists and experts on species at  
 8 risk; correct?  
 9 A. Yes.  
 10 Q. And you are aware today that the  
 11 DFO employs 25 scientific experts specializing in  
 12 the study of marine mammals; that's correct?  
 13 A. Yes, and I work closely with  
 14 those scientists that --  
 15 (Simultaneous speakers - unclear)  
 16 Q. I'm sure you do. But they are  
 17 the scientific experts, aren't they?  
 18 A. They would be part of the  
 19 scientific team that would look at projects and  
 20 produce primary publications and research for  
 21 support of management decisions.  
 22 Q. Yes. You manage, they research,  
 23 they study; that's correct?  
 24 A. That's correct.  
 25 Q. And there are many other

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- 1 scientists who specialize in the study of fish and  
 2 lobster; that's correct?  
 3 A. Yes.  
 4 Q. And you are not one of those?  
 5 A. I am working closely with those  
 6 to prepare information like this, and the evaluation  
 7 of projects.  
 8 Q. You are not one of those people,  
 9 that's correct?  
 10 A. I do not prepare primary research  
 11 document on things like lobsters and whales. I do  
 12 apply scientific knowledge, both my educational  
 13 background and experience in the review of projects.  
 14 Q. You are not Dr. Kent Smedbol; is  
 15 that correct?  
 16 A. I'm pretty sure I'm not, no.  
 17 Q. He is a decades-long expert in  
 18 species at risk, in the north -- and the North  
 19 Atlantic Right Whale in particular, isn't that  
 20 correct?  
 21 A. He has some background in North  
 22 Atlantic Right Whale, yes, he has done research in  
 23 that area.  
 24 Q. He has got a background?  
 25 A. That's part of his research.

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- 1 He's done numerous other things as well.  
 2 Q. He is a leading distinguished  
 3 scientist --  
 4 A. Yes.  
 5 Q. -- at the DFO?  
 6 A. Yes.  
 7 Q. Who leads the team, the research  
 8 team on species at risk, isn't that correct?  
 9 A. Not currently, no.  
 10 Q. As of last year?  
 11 A. He's the section head of  
 12 population ecology.  
 13 Q. He's got decades of experience  
 14 dealing with species at risk, and in particular the  
 15 North Atlantic Right Whale; isn't that's correct?  
 16 A. Yes, he has experience in the  
 17 North Atlantic Right Whale.  
 18 Q. And you don't have those  
 19 qualifications; is that correct?  
 20 A. I don't have any direct research  
 21 publications on North Atlantic Right Whale, that's  
 22 correct.  
 23 Q. You manage; that's correct?  
 24 A. I review projects for impacts on  
 25 species like the North Atlantic Right Whale.

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- 1 Q. And you were aware that in 2007,  
 2 DFO scientific experts analysed and opined on the  
 3 potential effects of the Whites Point Project;  
 4 that's correct?  
 5 A. That's correct, yes.  
 6 Q. The effects, if any, of shipping  
 7 to and from Whites Point on marine mammals; that's  
 8 correct?  
 9 A. That is correct.  
 10 Q. The effects, if any, of blasting  
 11 at Whites Point on marine mammals; that's correct?  
 12 A. Yes, that's correct.  
 13 Q. The effects, if any, of blasting  
 14 at Whites Point on lobster; is that correct?  
 15 A. Yes, I would have been working  
 16 with all those staff in preparing the documents in  
 17 preparation for presentation to the panel.  
 18 Q. Could you turn to tab 3, please.  
 19 It's your affidavit, one of your  
 20 affidavits from the first stage of this proceeding.  
 21 If you could go to page 2, paragraph 4. You say:  
 22 "I worked there, NSDEL, until  
 23 October of 2005 when I  
 24 transferred to DFO as a senior  
 25 environmental analyst with the

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1 Habitat Management Division of  
2 DFO's Maritimes Regional office.  
3 Here I was" -- and I focus on  
4 these words --  
5 "I was also involved in the EA of  
6 the Whites Point Project." [As  
7 read.]  
8 Was that true at that time?  
9 A. Sorry, this was in 2005?  
10 Q. Yes.  
11 A. Yes.  
12 Q. Here you say:  
13 "When I was transferred to the  
14 DFO, I was also involved in the  
15 EA of the Whites Point Project."  
16 [As read.]  
17 That's correct?  
18 A. That's correct.  
19 Q. Now, as an environmental analyst,  
20 what was the position of the person that you  
21 reported to in 2005 to 2007?  
22 A. He would have been the manager  
23 for Environmental Assessment and Major Projects  
24 Division.  
25 Q. So there was a manager above you?

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1 A. That's correct.  
2 Q. And who is that person?  
3 A. Ted Potter.  
4 Q. Who did that person, Ted Potter,  
5 report to?  
6 A. He would have reported to the  
7 director of -- we've changed our names so many times  
8 I can't remember whether it was the Oceans Habitat  
9 Species at Risk director.  
10 Q. A director?  
11 A. Yes.  
12 Q. So you were analyst, you reported  
13 to a manager, the manager reported to a director?  
14 A. That's correct.  
15 Q. What position did the person hold  
16 that that person, Mr. Potter reported to?  
17 A. Who was the individual that was  
18 there?  
19 Q. Yes.  
20 A. I believe at the time it was  
21 Carol Ann Rose.  
22 Q. Carol Ann Rose, and what was the  
23 position?  
24 A. She was the director for Oceans  
25 Habitat Species at Risk.

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1 Q. Who did the director report to?  
2 A. It would have been the Regional  
3 Director General.  
4 Q. And was that person Mike Murphy  
5 at the time?  
6 A. I think at that time it was  
7 Mike -- oh, sorry, sorry, the Regional Director  
8 General?  
9 Q. Yes.  
10 A. No, sorry, Mike Murphy was not  
11 the Regional Director General. I believe it was  
12 Faith Scattalon.  
13 Q. Faith Scattalon. And Mike Murphy  
14 was a person between the other person and Faith  
15 Scattalon, the Regional Director of Oceans and  
16 Habitat?  
17 A. Sorry, they've changed so many  
18 times. I think I've gone through a dozen directors  
19 since I've been with the program. Carol Ann Rose  
20 was there when I first started. She was the  
21 director and then I think Mike Murphy took over  
22 somewhere between 2005, and probably 2008 it  
23 switched between Carol Ann Rose and Mike Murphy.  
24 Q. All right. There was a Species  
25 at Risk Coordinator at that time for the Oceans and

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1 Habitat branch; do you recall who that was?  
2 A. Again, it's changed many times.  
3 Could have been -- I'm trying to think.  
4 Q. Does David Miller --  
5 A. Yes, David Miller, I think was  
6 there at that time, yes.  
7 Q. Could you turn, please, to tab 12  
8 at page 767.  
9 PRESIDING ARBITRATOR: 67?  
10 MR. NASH: 767.  
11 The lead researcher for the DFO  
12 Species at Risk research team of scientists in 2007  
13 was Dr. Kent Smedbol; correct?  
14 A. That's correct, yes.  
15 Q. And if you go back to page 766  
16 this is an excerpt for the transcript of the JRP  
17 proceedings on June 20th, 2007, volume 4.  
18 You will see that Dr. Kent Smedbol is  
19 referred to as one of the scientists who appeared  
20 before the JRP and he was stationed -- at the very  
21 bottom, of 766, line 25, he was a -- the lead  
22 research -- the lead region's research team for  
23 Species at Risk at that time, working out of the St.  
24 Andrews biological station; is that correct?  
25 A. Yes. Yes, and as with a lot of



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1 positions, this changed. He was actually the  
2 manager of my program before I took over in 2013.  
3 Q. Interesting, but by the time --  
4 at the time of the actual JRP hearings, he was the  
5 region's lead for the research team for Species at  
6 Risk; correct?  
7 A. Yes, he was.  
8 Q. And under that team there was a  
9 lot of scientific research going on with respect to  
10 the Right Whale which was one of the leading  
11 Species at Risk; correct?  
12 A. DFO has some research capacity  
13 and at that time there was research going on in  
14 North Atlantic Right Whales as well as other  
15 organizations which we partner with to do research  
16 on North Atlantic Right Whales.  
17 Q. Is what I've said correct or  
18 incorrect?  
19 A. That he was one of the lead  
20 researchers? At the time, yes, he was leading that  
21 Species at Risk program from the science  
22 perspective.  
23 Q. He was the region's lead for the  
24 research team for Species at Risk?  
25 A. That's correct.

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1 study of the North Atlantic Right Whale and their  
2 migration patterns; correct?  
3 A. So under the population ecology  
4 division we would have biologists that would look at  
5 marine mammals sections, yes. So he would be the  
6 section head but he's not the primary research lead  
7 for marine mammals at this time.  
8 Q. Have you looked at your website  
9 recently, the DFO's website?  
10 A. I've looked at parts of it.  
11 Q. Are you familiar with how  
12 Dr. Smedbol is characterized on that website?  
13 A. I haven't looked at it lately,  
14 but I'm not sure if that's been updated or not.  
15 Unfortunately with government we seem to lag behind  
16 sometimes in updating our websites.  
17 Q. His qualifications haven't gotten  
18 any staler with time; is that correct?  
19 A. No.  
20 Q. Did you make any inquiries of  
21 Dr. Smedbol regarding the past and present risk to  
22 Right Whales including the risk of fishing gear  
23 entanglements before signing your statement for this  
24 phase of the proceeding?  
25 A. Not with Dr. Smedbol. I would

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1 Q. He was at that time one of many  
2 scientists who had deep knowledge of the migration  
3 patterns of Right Whales; correct?  
4 A. He would be one of them, yes.  
5 Q. And for expert scientific  
6 information and opinions involving the Fisheries and  
7 Oceans, would you defer to Dr. Smedbol has having  
8 superior knowledge and information and understanding  
9 of migration patterns for Right Whales; correct?  
10 A. That's right. So within the  
11 department, that would be the person we would defer  
12 to at that time.  
13 Q. And he continues to be the leader  
14 of the research team researching Species at Risk,  
15 that's correct?  
16 A. I don't believe that's his title  
17 at this time. Things have changed.  
18 Q. Is that his function, though?  
19 A. His function is he's the  
20 section head for the Population Ecology Division.  
21 We don't...  
22 Q. Which includes --  
23 MR. SCOTT LITTLE: Mr. Nash, let  
24 Mr. McLean finish his answer.  
25 MR. NASH: Which includes significant

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1 have referred to Dr. Hilary Murphy-Moors [sic] who  
2 is now sort of the lead for marine mammals with DFO.  
3 Q. Dr. Hilary?  
4 A. Murphy-Moors.  
5 Q. So she is a knowledgeable  
6 scientist in the DFO?  
7 A. Yes.  
8 Q. And she is knowledgeable about  
9 Right Whale migration patterns?  
10 A. Yes.  
11 Q. And she could come here today and  
12 give evidence to this tribunal on a scientific basis  
13 on the question of the migration of North Atlantic  
14 Right Whales; is that correct?  
15 A. That's correct, along with other  
16 staff such as our Species at Risk staff also have  
17 information on this.  
18 Q. And did you rely upon any of  
19 those other staff to put together your affidavit or  
20 your witness statement in this proceeding?  
21 A. I did, yes.  
22 Q. How many other staff did you rely  
23 upon for putting together this witness statement?  
24 A. There was -- Dr. Hilary  
25 Murphy-Moors, one of her staff, as well as Cathy

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1 Marriman [sic] with the Species at Risk management  
2 division.  
3 Q. And Cathy Marriman, her  
4 qualifications are?  
5 A. I don't have her qualifications  
6 in front of me. But she has worked extensively on  
7 North Atlantic Right Whales.  
8 Q. She's a scientist?  
9 A. She is.  
10 Q. And Dr. Hilary Murphy-Moor, she  
11 is a scientist as well?  
12 A. She is.  
13 Q. Highly qualified?  
14 A. Yes.  
15 Q. If you go back to the page we  
16 were looking at, 767, this is a listing of the 11  
17 representatives of DFO who appeared before the JRP.  
18 The next one I'd like to turn to is Dr. John  
19 Tremblay. He identifies himself at line 12 of 767  
20 as a research scientist with the Population Ecology  
21 Division at the Bedford Institute of Oceanography.  
22 Do you know him?  
23 A. Yes, I work with Dr. John  
24 Tremblay before in the past.  
25 Q. Did you ask him about his

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1 scientific opinion on the effect, potential effect  
2 of the Whites Point Project on lobster?  
3 A. At the time when we were  
4 reviewing the project, yes.  
5 Q. Recently?  
6 A. Not recently, no.  
7 Q. Dr. Tremblay is another eminent  
8 and distinguished member of the research team, he's  
9 a scientist, head of the DFO's -- currently --  
10 Atlantic Coast Crustacean and Lobster Unit; that's  
11 correct?  
12 A. Yes.  
13 Q. He has published widely since  
14 2000 with a focus on research and study of lobster,  
15 of the lobster population in the Maritimes; that's  
16 correct?  
17 A. That's correct.  
18 Q. And you didn't consult him for  
19 the purpose of your witness statement, did you?  
20 A. No, it wasn't required. We were  
21 looking at published data as far as the information  
22 that we would present.  
23 Q. What you were looking at in part  
24 was the comparison between Black Point and Whites  
25 Point and the effects of one project on lobster as

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1 opposed to the effects of another project on  
2 lobster. That was in part what you were looking at;  
3 correct?  
4 A. We were looking at the --  
5 certainly the abundance of lobster between those two  
6 locations.  
7 Q. When you have say "we were  
8 looking at", who were "we"?  
9 A. So I would have gotten  
10 information that was -- I'm trying to remember  
11 exactly who provided the information but we had  
12 statistics information on the lobster catches in the  
13 area, so that comes from our Commercial Licenses  
14 Division. I'm trying to think of the other areas,  
15 but it would have been the primary --  
16 Q. Who were the people at the  
17 Commercial License Division?  
18 A. So, one of the publications that  
19 we look at is where they do the analysis of lobster  
20 catches on a grid-by-grid basis.  
21 Q. I am just asking you who they  
22 were?  
23 A. So Scott Coffen-Smout who is a  
24 data analyst with our oceans program, he was the one  
25 who published that information.

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1 Q. Were there any other people that  
2 you consulted with in order to put together your  
3 witness statement for this proceeding within the DFO  
4 whose information you relied upon?  
5 A. For the lobster information?  
6 Q. For the lobster.  
7 A. I don't -- I think that was it,  
8 for the lobster.  
9 Q. So, you didn't consult with any  
10 research scientist for the purpose of doing your  
11 analysis?  
12 A. No, we used the information that  
13 was already published, as well as my knowledge from  
14 the project reviews.  
15 Q. You didn't seek any opinion from,  
16 scientific opinion from one of the scientists who is  
17 an expert in lobsters in the Maritimes region within  
18 the DFO with respect to the impact or potential  
19 impact on the Black Point Project on lobsters and  
20 the impact of the Whites Point Project on lobsters,  
21 that's correct?  
22 A. We looked at --  
23 Q. Just answer my question: Did you  
24 consult with any --  
25 A. Well, I will answer the question.

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1 I'm just going to expand on it, so...

2 Q. Let's just get to the answer

3 first and then you can expand on it. Did you

4 consult with any other scientist, any scientist?

5 A. No, for the reason that we were

6 looking at lobster catches for the area so that

7 information is published within documents and

8 journals so there was no need to go to research

9 scientists for that information.

10 Q. That's all you looked at?

11 A. They would just refer us to that

12 information anyway for what we were looking for.

13 Q. So you had something you were

14 looking for and you simply asked them where to find

15 it; you already knew where to find it?

16 A. Yes.

17 Q. And Dr. Norm Cochrane is also

18 referred to as being a member of the delegation; do

19 you remember Dr. Norm Cochrane attending the JRP

20 hearing in June of 2007 and do you remember that --

21 first of all, do you remember that?

22 A. Yes, I do.

23 Q. And he was a -- was and is a

24 research scientist with the Oceans Physics

25 Section at the Bedford Institute; is that correct?

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1 lead person --

2 A. Yes.

3 Q. -- on the team?

4 A. Yes.

5 Q. You are not a delegate. Is that

6 correct?

7 A. Well, it is and I have a good

8 excuse. So my second child was due the day for the

9 panel presentation, so travelling to Digby was a

10 little bit of a concern that my wife wasn't going to

11 let me go when she was over 9 months pregnant at the

12 time, so I did -- I was preparing all the

13 information, prepared the staff that went up there,

14 but I myself wasn't present. I would have, had my

15 wife not been so adamant about me not travelling

16 three hours away as she was about to give birth.

17 Q. And so above you is Mr. Marshall,

18 he's there, he's the area director?

19 A. He was the area director, yeah.

20 Q. You've got Norm Cochrane, Kent

21 Smedbol who were scientists?

22 A. Yes.

23 Q. Above you was the Regional

24 Director of Oceans and Habitat, there was

25 Mr. Murphy. Above you was Ted Potter, the acting

Page 1097

1 A. Yes, currently still is.

2 Q. And he still is.

3 And Dr. Cochrane got his PhD in 1973;

4 is that correct to the best of your knowledge?

5 A. To the best of my knowledge, yes.

6 Q. And today he is a DFO research

7 scientist in the Oceans Physics Section of the

8 Bedford Institute; is that correct?

9 A. That's correct.

10 Q. There is another delegate there

11 we've covered, David Miller and he was the -- if you

12 go down to the bottom of page 767, line 25, he was

13 the Species at Risk coordinator for the Oceans and

14 Habitat branch; that's correct?

15 A. He would have been the manager of

16 the Species at Risk division at that time, yes.

17 Q. And Tony Henderson who is

18 referred to on page 767 at line 10, he was a habitat

19 assessment biologist; that's correct?

20 A. That's correct, yes.

21 Q. Now, in reviewing these names

22 from the bottom of page 766 to 768, I don't see your

23 name mentioned as being a delegate from the DFO?

24 A. That's right.

25 Q. And you were, you've said, the

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1 Regional Manager for Habitat Protection, Sustainable

2 Marine Development, and then a whole cast of

3 scientists were there?

4 A. So my job would have been to

5 prepare all those people for the panel presentation,

6 including preparing the presentation itself, having

7 it reviewed, going through questions, preparing that

8 information, but physically being there,

9 unfortunately I wasn't able to be there that day.

10 Q. Right. If you go back to tab 3,

11 page 2, paragraph 4, we've been here before.

12 I will just go back to that sentence:

13 "Here I was also involved in the

14 EA of the Whites Point Project."

15 [As read.]

16 That affidavit was sworn on December

17 1st, 2011 and in the last seven years you've

18 graduated, if you go back to tab 1, page 2,

19 paragraph 2, third line from the bottom. Page 2 of

20 tab 1, paragraph 2, third line from the bottom. You

21 graduated in that period of time since 2011 to

22 "having responsibility to lead the review of the

23 Whites Point Project for DFO."

24 Now, that I'm going to suggest to you

25 is a total exaggeration; you had involvement, what

Page 1100

1 you said in 2011 was true, you were not the lead,  
2 responsible person for the review of the Whites  
3 Point Project?  
4 A. For DFO, I was.  
5 Q. Do you deny what I've said?  
6 A. Do I deny that I was not the  
7 lead?  
8 Q. Yes.  
9 A. I was the lead for that project,  
10 as well as other projects.  
11 Q. Why did you not say that in 2011,  
12 when you said you were involved?  
13 A. That's, I guess, semantics at the  
14 time and stuff, but I was the lead for the project.  
15 Q. So being the lead reviewer as  
16 you've described, you would know the scientific  
17 evidence that DFO compiled for presentation to the  
18 JRP regarding the North Atlantic Right Whales;  
19 correct?  
20 A. That's correct.  
21 Q. Regarding their migration  
22 patterns?  
23 A. Yes.  
24 Q. Regarding the effects of  
25 shipping, boating and fishing on North Atlantic

Page 1102

1 regional lead for providing that information.  
2 Q. Was that Faith Scattelon?  
3 A. She would have been the Regional  
4 Director General, yes, and we would have been  
5 feeding up through Ottawa for the briefing material  
6 for the Minister.  
7 Q. And it was important for the  
8 Minister of Fisheries before the Cabinet made the  
9 decision whether to approve or reject the project to  
10 have all of the relevant material available,  
11 information in front of him so he could make a  
12 reasonable and proper decision; that is correct?  
13 A. Yes, we do briefings for projects  
14 for ministerial decisions.  
15 Q. The answer to my question is  
16 "yes."  
17 A. Yes.  
18 Q. And would that report from Faith  
19 Scattelon go up to the Associate Deputy Minister?  
20 A. I believe it would, but I --  
21 after it goes from the RDT, I'm not sure sort of who  
22 sees it, but it's typically would go up through the  
23 associates.  
24 Q. Didn't you draft a memorandum  
25 after the Whites Point JRP hearings that was

Page 1101

1 Right Whales?  
2 A. That's right.  
3 Q. The effects of blasting at Whites  
4 Point on North Atlantic Right Whales?  
5 A. That's right.  
6 Q. The effects of blasting on  
7 lobster?  
8 A. That's right, yes.  
9 Q. Being the lead reviewer, you  
10 would also be completely familiar with all of the  
11 evidence relevant to the effects analysis that may  
12 or may not have been presented to the JRP?  
13 A. That's correct, yes.  
14 Q. Have you read the transcript of  
15 the JRP, where the DFO gave evidence?  
16 A. I did, yes.  
17 Q. When did you read that?  
18 A. As soon as it was published, for  
19 one, and probably several times since then.  
20 Q. And whose responsibility was it  
21 in DFO to ensure that the Minister of Fisheries and  
22 Oceans was aware of all of the relevant facts known  
23 within the DFO before Cabinet made a decision  
24 whether to approve or reject the project?  
25 A. So it would have been part of the

Page 1103

1 assigned by Faith Scattelon which is to the  
2 Associate Deputy Minister; do you recall that?  
3 A. Yes, that sounds accurate.  
4 Q. Do you recall that there were  
5 international shipping lanes in the Bay of Fundy?  
6 A. Yes.  
7 Q. Do you recall hearing the term  
8 "rule vessel"?  
9 A. Yes.  
10 Q. Do you know what a rule vessel  
11 is?  
12 A. My understanding is that it's  
13 applied to those vessels that need to apply to the  
14 shipping lane.  
15 Q. How many of these vessel, rule  
16 vessel were going through the shipping lanes in  
17 2007?  
18 A. I believe the number was 800.  
19 Q. What was the increase in shipping  
20 provided by rule vessels as a result of the opening  
21 of the -- if the Whites Point Quarry operated, what  
22 was the increase in shipping?  
23 A. 6 per cent.  
24 Q. And what was the evidence before  
25 the JRP with respect to the approximate number of

Page 1104

1 smaller vessels going through the Bay of Fundy?  
 2 A. I can't recall that number and  
 3 stuff but it was obviously substantially larger.  
 4 Q. Do you know the range?  
 5 A. Again, I can't recall it off the  
 6 top of my head, no.  
 7 Q. How many fishing vessels were  
 8 operating in the Bay of Fundy in 2007?  
 9 A. Oh, I -- again, I don't have that  
 10 number in front of me or off the top of my head.  
 11 Q. What was the distance between the  
 12 shipping lanes and the Whites Point Quarry?  
 13 A. Shipping lanes, again, I can't  
 14 recall but I would say 20 kilometres or less.  
 15 Q. What was the evidence before the  
 16 JRP with respect to the number of collisions between  
 17 ships travelling through the Bay of Fundy and North  
 18 Atlantic Right Whales during the period 1970 to  
 19 2004?  
 20 A. Again, you're testing my  
 21 knowledge but I would say that there was seven  
 22 deaths in Canadian waters, I believe in that time.  
 23 Q. No, my question is: What was  
 24 evidence before the JRP as to the number of  
 25 collisions between ships travelling throughout Bay

Page 1105

1 of Fundy and North Atlantic Right Whales during the  
 2 period 1970 to 2004?  
 3 A. What was the evidence?  
 4 Q. What was the evidence before the  
 5 JRP?  
 6 A. You are looking for the specific  
 7 numbers or --  
 8 Q. I am.  
 9 A. Again, I don't recall that off  
 10 the top of my head.  
 11 Q. If I was to say to you in 34  
 12 years there had been four Right Whale mortalities as  
 13 a result of a collision with vessels going through  
 14 the Bay of Fundy in that 34 years?  
 15 A. That's -- that sound accurate, I  
 16 think the number that I seem to recall is around 7  
 17 in sort of Canadian waters, but that may extend  
 18 beyond sort of the Bay of Fundy. Again, that's the  
 19 ones that are recorded and documented, yes.  
 20 Q. What was the evidence before the  
 21 JRP with respect to the effect of the relocation of  
 22 the shipping lanes in 2003?  
 23 A. So, some of the scientific  
 24 analysis determined that there would be a  
 25 90 per cent reduction in collisions as a result of

Page 1106

1 moving the shipping lane.  
 2 Q. Dr. Smedbol's evidence was that  
 3 the figure was thought to have been around  
 4 80 per cent, but by the time of the JRP hearing it  
 5 was -- it is thought to be 95 per cent.  
 6 A. All right.  
 7 Q. Have you ever done the math? If  
 8 there were four deaths between 1970 and 2004, and  
 9 the mortalities were reduced by 95 per cent, and the  
 10 four mortalities in 34 years was one in eight and a  
 11 half years, did you ever do the math as to what the  
 12 reduction would be by applying the 5 per cent  
 13 figure?  
 14 A. No.  
 15 Q. If I was to say that that would  
 16 be 175 mortalities -- one in 175 years, would that  
 17 ring true to you?  
 18 A. Yes, I mean that would be based  
 19 on the numbers available at the time.  
 20 Q. And that would be minimal?  
 21 A. That would be considered low.  
 22 DR. PULKOWSKI: Mr. Nash, before you  
 23 move on, sorry to interrupt, I understand that our  
 24 viewer, who was registered today to follow the  
 25 proceeding in the viewing area, has just arrived.

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1 We have not yet turned on the feed because you had  
 2 no prior notice, but I would suggest that we now  
 3 request the technicians to turn on the feed because  
 4 the viewer has arrived and that counsel then pay  
 5 attention to the confidentiality signals as  
 6 previously noted.  
 7 MR. NASH: Thank you. I don't expect  
 8 to have any confidential areas for this purpose.  
 9 You were aware, I take it of the  
 10 evidence before the JRP that Right Whale mortalities  
 11 can result from collisions with vessels of all  
 12 sizes, including small vessels?  
 13 A. Yes, but the mortality is  
 14 obviously less with small vessels.  
 15 Q. Mortalities can result from  
 16 vessels of any size; correct?  
 17 A. Yes, but typically the smaller  
 18 vessels, the rate of mortality would be considered  
 19 lower.  
 20 Q. Were you aware of Dr. Smedbol's  
 21 evidence that between 2005 and 2007, there were two  
 22 known Right Whale mortalities in all Canadian and US  
 23 waters, one in Canadian waters, one in the US  
 24 waters, and that by -- and that one was certain to  
 25 have been caused by a pleasure craft and the other

Page 1108

1 was likely caused by a pleasure craft given the  
2 wounds on the whale; are you aware of that evidence?  
3 A. Yes.  
4 Q. And that there were none caused  
5 by large rule-size vessels; are you aware of that  
6 evidence?  
7 A. At that time, of course now since  
8 2017, the summer we've had, we're up to 12 --  
9 Q. We'll get to that.  
10 MR. SCOTT LITTLE: Mr. Nash, he  
11 wasn't finished.  
12 MR. NASH: No, he wasn't, but he  
13 wasn't at all answering my question.  
14 MR. SCOTT LITTLE: He was providing  
15 context to his answer. I would appreciate if you  
16 would let him finish his answer.  
17 MR. NASH: We can spend a lot of  
18 time, Judge Simma --  
19 MR. SCOTT LITTLE: I've let you go  
20 for a long time, Mr. Nash. Don't interrupt his  
21 answer.  
22 PRESIDING ARBITRATOR: I have the  
23 impression, of course we have to -- we have to  
24 listen to what the witness says, and how it kind of  
25 fits, et cetera, but I also made an effort to see

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1 whether there was any interruption and I think it  
2 has gone quite well until now. So nothing compared  
3 to some of the things that happened at earlier days  
4 so let's -- Mr. Nash, you are, of course very much  
5 aware of that and so let's do our best.  
6 Could you maybe speak up just a  
7 little bit.  
8 THE WITNESS: Sure, yes, sorry.  
9 MR. NASH: Could I have the last  
10 question read out, please.  
11 (Record read.)  
12 I ask you that question again: In the  
13 period of 2005 to 2007, the evidence is that there  
14 were no Right Whale mortalities recorded, human  
15 caused in US or Canadian waters caused by large  
16 size, rule-sized vessels; do you agree with that?  
17 A. None that I'm aware of, correct.  
18 Q. Were you aware of the evidence  
19 before the JRP that DFO reported that for a 36-year  
20 period, from 1970 to 2006, there were 68 known Right  
21 Whale mortalities identified in all Canadian and US  
22 waters; were you aware of that?  
23 A. Yes.  
24 Q. And were you aware that there  
25 were 21 for which there was not a known cause; does

Page 1110

1 that ring true?  
2 A. It sounds approximate, yes.  
3 Q. That there were 20 mortalities  
4 from known or suspected fish entanglements; does  
5 that ring true?  
6 A. That sounds correct.  
7 Q. And that there were 21 that were  
8 believed to be due to vessel strikes?  
9 A. Right.  
10 Q. In all Canadian and US waters.  
11 So there was an equal number of suspected or known  
12 fish entanglement mortalities as vessel-related  
13 mortalities. Does that ring true to you?  
14 A. That sounds correct. Those are  
15 the two main threats to the North Atlantic Right  
16 Whale, is gear entanglement and vessel strikes.  
17 Q. Right, and that continues to be  
18 the case today?  
19 A. It does, yes.  
20 Q. And that continues to the case,  
21 particularly in the Gulf of St. Lawrence today?  
22 A. Yes, which is one of the reasons  
23 they've made changes both for shipping and most  
24 recently for fishing activity.  
25 Q. And there has not been a known

Page 1111

1 Right Whale mortality in the Bay of Fundy since  
2 2007; is that correct?  
3 A. That sounds correct, yes.  
4 Q. And there were -- was it 12 or 15  
5 in the Gulf of St. Lawrence last year?  
6 A. I believe the number was 12 in  
7 Canadian waters, and then five in US waters. For a  
8 total of 17.  
9 Q. So, 12 in the Gulf of  
10 St. Lawrence (unclear) Newfoundland, last year  
11 alone?  
12 A. Yes.  
13 Q. Shocking?  
14 A. Yes.  
15 Q. The largest ever?  
16 A. Represents a 3.7, sort of, rate  
17 of mortality for that species.  
18 Q. Right. And in the 34-year period  
19 between 1970 and 2004 there were four in the Bay of  
20 Fundy; correct?  
21 A. Correct, yes.  
22 Q. And last year alone, one year,  
23 one summer, there were 12 in the Gulf of  
24 St. Lawrence, and none in the Bay of Fundy; that's  
25 correct?

Page 1112

1 A. That's correct.  
 2 Q. And there hasn't been a whale  
 3 mortality in the Bay of Fundy for 13 years, that's  
 4 correct?  
 5 A. None reported.  
 6 Q. None known to be caused?  
 7 A. That's right.  
 8 Q. And that suggests to you  
 9 something that the Right Whales, which used to go  
 10 primarily to the Bay of Fundy have migrated north,  
 11 along the east coast into the Gulf of St. Lawrence?  
 12 A. There's -- I guess that's a bit  
 13 of a misconception. There have always been North  
 14 Atlantic Right Whales that would use the Gulf of  
 15 St. Lawrence, the population and the numbers vary  
 16 year to year depending on food source and  
 17 availability, so whether that's a permanent change  
 18 or it's just something that happened in 2017 over  
 19 the last couple of years, it could go back to,  
 20 again, higher numbers in the Bay of Fundy next year.  
 21 It's -- these are highly mobile species and they are  
 22 chasing food sources, so where they end up we can't  
 23 predict from one year to the next.  
 24 Q. Have you heard of Dr. Moira  
 25 Brown?

Page 1114

1 A. Yes.  
 2 Q. So, if I can refer now to fishing  
 3 gear entanglements. Did you review the statistics  
 4 cited by the DFO to the JRP regarding the incidents  
 5 of Right Whale entanglements in fishing gear?  
 6 A. I would have looked at that, yes.  
 7 Q. Did you review the DFO's evidence  
 8 before the JRP that the Right Whale consortium, of  
 9 which Dr. Jerry Conway is a member, that's right?  
 10 A. Yes.  
 11 Q. So Dr. Jerry Conway, the same  
 12 Dr. Jerry Conway who said in December of 2002 that  
 13 he had no problem with the Whites Point Bilcon  
 14 blasting plant with respect to marine mammals, and  
 15 that was in December of 2002, that same Dr. Jerry  
 16 Conway is now a member of the Right Whale  
 17 consortium; correct?  
 18 A. That's correct.  
 19 Q. And the Right Whale consortium is  
 20 devoted to the preservation of the Right Whale;  
 21 correct?  
 22 A. Yes, that's correct.  
 23 Q. And the Right Whale consortium  
 24 and the New England Aquarium, reported that 71 per  
 25 cent of photographed Right Whales had fishing gear

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1 A. Yes.  
 2 Q. Dr. Moira Brown is probably the  
 3 lead researcher with respect to Right Whales in  
 4 North America, would you agree with that?  
 5 A. Yes.  
 6 Q. She's at the New England  
 7 Aquarium; correct?  
 8 A. Yes.  
 9 Q. A large scientific body which  
 10 studies Right Whales. In fact, Dr. Moira Brown was  
 11 influential and perhaps determinative in the  
 12 movement of the shipping lanes in 2003; is that  
 13 correct?  
 14 A. That's correct.  
 15 Q. Have you come across any of her  
 16 writings or any of the reports about her that have  
 17 said that there is an unexplained scientific reason  
 18 that no one knows yet as to why the Right Whales  
 19 have left the Bay of Fundy and they're being seen in  
 20 far fewer numbers than they ever were, and that  
 21 they've now migrated to the Gulf of St. Lawrence up  
 22 the east coast of Nova Scotia to get to the Gulf of  
 23 St. Lawrence thus resulting in these significant  
 24 whale strikes that had never historically been  
 25 found; are you familiar with that?

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1 entanglement scars; do you recall that statistics?  
 2 A. Yes.  
 3 Q. And are you aware of the evidence  
 4 before the DFO that identified eight Whales that  
 5 were then -- evidence before the JRP, DFO's  
 6 evidence, identified eight Whales that were then  
 7 currently entangled and that 33 had previously been  
 8 identified as entangled Whales were then gear free;  
 9 do you recall that evidence?  
 10 A. Yes, and again, whale  
 11 entanglement in fishing gear is not uncommon.  
 12 Q. It's a huge issue?  
 13 A. Yes.  
 14 Q. And Dr. Moira Brown has reported  
 15 on the efforts to, not to ban fishing, not to ban  
 16 shipping, but particularly not to ban fishing, but  
 17 to have fishing gear redesigned so that it poses  
 18 less of a risk of harm to Right Whales; correct?  
 19 A. Right. So the proposal is to put  
 20 in additional mitigation for fishing gear at a cost  
 21 to the fishing industry to redesign to reduce the  
 22 entanglement so that would be a mitigation measure  
 23 sort of specifically applied in areas that, most  
 24 importantly, North Atlantic Right Whales would be  
 25 found.

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1 Q. Right. So, the result of the  
2 knowledge that fishing gear entanglement does occur  
3 poses a serious risk of harm to North Atlantic Right  
4 Whales, leads to the development of mitigation  
5 measures to attempt to reduce the risk of harm to  
6 the North Atlantic Right Whale; that's correct?

7 A. Yes. So in a case, for any  
8 project, if you have mitigation measures that are  
9 possible, then the department will be looking at  
10 applying those, so whether that's fishing industry  
11 or industrial activities, they would have tried to  
12 apply those mitigation measures to reduce harm.

13 Q. So in the case of risk of harm to  
14 a recognized endangered species of which there are  
15 350 or 320 depending on the statistics you read?

16 A. Yes.

17 Q. In the case of that species, a  
18 highly endangered species, the response of the DFO  
19 is not to ban shipping or to ban fishing, it's to  
20 look for reasonable mitigation measures which can  
21 reduce the risk of harm to that species; that's  
22 correct?

23 A. That's correct. In some cases  
24 for fishing, so one of the measures that's recently  
25 discussed and was announced just within the last

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1 couple of weeks was to actually potentially close  
2 fishing activity or have fishers remove their gear  
3 from an area if there are known Right Whales in that  
4 location.

5 Q. Well, was there a moratorium  
6 implemented last summer or at some point last year,  
7 to close part of the fishery in the Gulf of  
8 St. Lawrence after it was 98 per cent complete?

9 A. Right, so it was closed, ended  
10 early, yes.

11 Q. It ended early?

12 A. Yes.

13 Q. 98 per cent of it was done but it  
14 ended early; is that correct?

15 A. Yes, and that's typical for any  
16 fishing season, particularly crustaceans, is that  
17 most of the fishing, most of the capture takes place  
18 in the first couple of weeks anyway.

19 Q. And there has been no banning of  
20 shipping in the Bay of Fundy; is that correct?

21 A. Correct.

22 Q. And there has been no reduction  
23 in speed limits in the Bay of Fundy; that is  
24 correct?

25 A. That's correct.

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1 Q. And there has been a reduction in  
2 speed limits in the western Gulf of St. Lawrence in  
3 order to try to mitigate the risk of harm with  
4 respect to North Atlantic Right Whales in that  
5 region; is that correct?

6 A. Yes.

7 Q. It's been reduced to 10 knots?

8 A. 10 knots, that's correct.

9 Q. From 12 knots?

10 A. I don't know what the set limit  
11 is within the shipping lane but I know the reduction  
12 was to 10 knots.

13 Q. Did you review the DFO evidence  
14 before the JRP regarding the effect of  
15 whale-watching on behavioural changes in Whales?

16 A. Yes, I would have looked at that.

17 Q. Did you read DFO's evidence  
18 referring to a 2006 study that reported  
19 whale-watching as being the biggest cause of  
20 behavioural changes in whales?

21 A. So, yes, we would have been  
22 looking at any type of vessel interaction with  
23 whales that is causing behavioural effects.

24 Q. Right.

25 A. And putting rules in place to

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1 mitigate those.

2 Q. Right. And whale-watching was  
3 identified by the DFO, referring to a study, as  
4 being the biggest cause of behavioural changes in  
5 Right Whales; correct? In fact, all whales;  
6 correct?

7 A. That we are aware of, the study  
8 at that time for that area, yes.

9 Q. Did you review the DFO's  
10 reference before the JRP to a knowledge gap in DFO  
11 with respect to the impact of whale-watching on the  
12 behaviour of whales?

13 A. Yes.

14 Q. Did you read the DFO's evidence  
15 that there is acknowledgment among whale researchers  
16 that whale exposure to small vessels can interfere  
17 with the whale's ability to understand daily  
18 requirements of feeding?

19 A. Right, and that's why we put in  
20 restrictions around vessels close to whales.

21 Q. Right. But whale-watching hasn't  
22 been banned, has it?

23 A. No, there is mitigation measures  
24 applied.

25 Q. Right. Are you familiar with the



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1 environmental assessment of the Irving Oil LNG  
2 Terminal in 2004?  
3 A. No, I wasn't involved with that  
4 project.  
5 Q. Are you aware at all either from  
6 your own involvement, which you didn't have  
7 involvement, apparently, but from the records of  
8 DFO, that this terminal project was to result in 100  
9 to 150 of LNG super tankers travelling the shipping  
10 lanes through the Bay of Fundy every year?  
11 A. Again, I wasn't involved with the  
12 review of that project. My counterpart who works in  
13 the New Brunswick would have been reviewing that  
14 file.  
15 Q. If there was a DFO document that  
16 said that you would stand by that?  
17 A. I would have to see the document.  
18 Q. Are you aware that the project  
19 was -- this LNG project was approved under CEEA  
20 taking the effects on Right Whales into account?  
21 A. Again, I'm not familiar with the  
22 project itself.  
23 Q. Could I take you to tab 2. This  
24 is exhibit R-769. This is a Government of Canada's  
25 exhibit.

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1 A. That's correct.  
2 Q. Now, Right Whales have been known  
3 for decades to aggregate in the Grand Manan Basin?  
4 A. That's correct, yes.  
5 Q. And there was a large  
6 conservation area created to assist and protect and  
7 reduce the risk in harm to Right Whales; correct?  
8 A. Yes, and it has now been since  
9 identified as the critical habitat area, one of the  
10 two, yes.  
11 Q. Do you know that the ships that  
12 would be travelling from Whites Point to New York  
13 and/or New Jersey would not be going through the  
14 conservation area and were never planned to go  
15 through the conservation area?  
16 A. That's correct, yes, yeah.  
17 Q. I'm going to suggest to you that  
18 this map is intended to show that there are many,  
19 many more North Atlantic Right Whales in the Bay of  
20 Fundy than there are in other locations?  
21 A. Right. That would show there are  
22 sightings outside those conservation areas, so the  
23 critical habitat area.  
24 Q. Now, sightings are measured by  
25 unit effort; that's correct?

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1 The purpose of this map -- first of  
2 all, who put together this map?  
3 A. So this was put together with the  
4 data from DFO science and one of my staff who is a  
5 JIAS [phon] analyst plotted the information on this  
6 map.  
7 Q. And this map was prepared for the  
8 purpose of this proceeding?  
9 A. It was, yes.  
10 Q. And this map is intended to show,  
11 if you look at Whites Point on the left-hand side,  
12 do you see Whites Point Quarry and Marine Terminal?  
13 A. Yes.  
14 Q. This map is intended to show  
15 there were many, many, many more Right Whales in the  
16 Bay of Fundy; correct?  
17 A. It shows the relative sightings  
18 of Right Whales in that area.  
19 Q. It shows the sightings?  
20 A. Yes.  
21 Q. Over what period?  
22 A. So this would go from 1975 up to  
23 2015.  
24 Q. So for a 40-year period it shows  
25 the sightings?

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1 A. These would just be actual  
2 sightings. So this isn't a sort of evaluation of  
3 the unit effort. These are just actual sightings.  
4 Q. These are actual sightings as  
5 reported?  
6 A. Yes.  
7 Q. Sightings are only sightings if  
8 people see them and they are looking for them;  
9 correct?  
10 A. Yes.  
11 Q. So there can be areas which don't  
12 show a lot of sightings because there is no nobody  
13 looking for them there; isn't that correct?  
14 A. Yes, and so obviously, I mean  
15 that is the -- the issue with sightings is that you  
16 would have more where people are looking, where  
17 there's more effort. Now, the sighting is not just  
18 done by scientific opportunity; it would be done by  
19 fishing vessels, whale-watching operations, marine  
20 mammals observers on commercial vessels. So the  
21 data would be collected from a number of different  
22 sources.  
23 Q. And the purpose of putting this  
24 map together by you was to illustrate, was it not,  
25 to contrast the number of sightings of North

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1 Atlantic Right Whales in the Bay of Fundy over that  
2 40-year period?  
3 A. Yes.  
4 Q. As compared to the sightings  
5 along the east coast of Nova Scotia and if you  
6 follow up, you will see Black Point and a star  
7 towards the top of Nova Scotia, just near the Cape  
8 Breton Island; do you see that?  
9 A. That is correct, yes.  
10 Q. And it was to show that there  
11 have been many, many more sightings in the Bay of  
12 Fundy than there have been on that shipping route up  
13 the east coast of Nova Scotia to the Black Point?  
14 A. That's correct, yes.  
15 Q. And we see too that there are  
16 very, very few red dots in the Gulf of St. Lawrence;  
17 do you see that?  
18 A. That's correct, yes.  
19 Q. Very few recorded sightings of  
20 Right Wales in the Gulf of St. Lawrence that the DFO  
21 has.  
22 A. Yes, so that data --  
23 Q. And we know that 12 Right Whales,  
24 there were 12 Right Whale mortalities in one summer,  
25 last summer --

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1 A. And that it was 2017, this data  
2 goes up to 2015, so if we are able to -- once the  
3 map is updated then it's obviously going to show  
4 more sightings within the Gulf of St. Lawrence.  
5 Q. Right. So this just goes to  
6 2015?  
7 A. That's correct, yes. And we  
8 did -- I did get the data, unfortunately it didn't  
9 come out in time for this, but for 2016, which shows  
10 additional plots in the Gulf of St. Lawrence.  
11 Q. I think we better just leave that  
12 off the record.  
13 A. Okay.  
14 Q. Because this is what you  
15 presented and this is what we are dealing with.  
16 Can you go to page 2?  
17 PRESIDING ARBITRATOR: Sorry. Could  
18 you just repeat what you just said. I didn't  
19 understand it. I think --  
20 MR. NASH: He was about to give  
21 evidence on some updating of this document, and I  
22 said we better leave that off the record because  
23 this is the document we are referring to.  
24 PRESIDING ARBITRATOR: Thank you.  
25 MR. NASH: If you go to page 2, let's

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1 review a few of the caveats and disclaimers in this  
2 map. At the very top:  
3 "Please note that the data do not  
4 include sightings from the North  
5 Atlantic Right Whales consortium  
6 settings database that are  
7 included in the species  
8 distribution models. We are not  
9 allowed to publicly share that  
10 data." [As read.]  
11 So there is data that is available  
12 that is not included on this map; that's correct?  
13 A. That's correct, yes. So I  
14 checked with our DFO researchers and asked them, you  
15 know, this is -- it's data that is proprietary to  
16 that organization. They don't release it. They are  
17 familiar with the data and I asked them, would it  
18 substantially change, like addressing things --  
19 Q. I didn't -- this is not a  
20 question I asked you, and I don't want the evidence  
21 of somebody else who isn't here to be cross-examined  
22 on the full evidence, so, I would ask you to confine  
23 your answer to my question. And that question is:  
24 The data is missing. Some data is incomplete,  
25 that's correct?

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1 A. That's right.  
2 Q. Number 2:  
3 "A sighting does not include the  
4 number of individuals seen, just  
5 that a sighting occurred at the  
6 location." [As read.]  
7 So, there is no indication of the  
8 number of Right Whales, but just that there was a  
9 sighting; is that right?  
10 A. That's right, the sighting could  
11 include one whale or it could include ten.  
12 Q. And then it says:  
13 "These data have been aggregated  
14 and cleaned by Catalina Gomez."  
15 [As read.]  
16 Who is she?  
17 A. She would work as a technician, I  
18 think, in the program.  
19 Q. What does "cleaned" mean? Is  
20 that a well known term in the government?  
21 A. Yeah, it would mean cleaning up  
22 the data to make sure if there are any errors so if  
23 some of the data, for example, could you have a "lat  
24 and long" entered incorrectly in the system, so you  
25 would have a North Atlantic Right Whales sighting in

1 the middle of New Brunswick, you would probably  
2 remove that from the database and say that that is  
3 not a correct data entry.

4 Q. Who typed up this page, by the  
5 way, was that you or was it somebody else?

6 A. This is the standard caveats that  
7 would go with the data that's provided because this  
8 data would be provided for numerous projects or  
9 information so, whether that's someone doing  
10 environmental assessment for a project would get  
11 access to this data to produce an environmental  
12 assessment report, they would provide this standard  
13 caveat with this data every time.

14 Q. Let's run through these caveats:  
15 "The sighting data have not been  
16 error checked."

17 I am at number 1.

18 "The quality of some of the  
19 sighting data is unknown. Most  
20 sightings are collected on an  
21 opportunistic basis and  
22 observations may come from  
23 individuals with a variety of  
24 expertise in marine mammals  
25 identification experiences.

1 Most data have been gathered from  
2 platforms of opportunity that  
3 were vessels-based." [As read.]

4 What does that mean?

5 A. So these aren't specific  
6 whale-sighting activities and so we would have,  
7 whether that be fishing vessels, whether that be  
8 seismic off-shore vessels that would have marine  
9 mammal observers, so these aren't specific to sort  
10 of looking for whales; these would be opportunistic,  
11 someone sighting whales as part of some other work  
12 that they were undertaking.

13 Q. Number 4:

14 "Sighting effort has not been  
15 quantified, that is the numbers  
16 cannot be used to estimate true  
17 species density or abundance for  
18 an area. Lack of sightings do  
19 not represent lack of species  
20 present in a particular area."  
21 [As read.]

22 A. Yes.

23 Q. And that would be the case for  
24 the eastern coast of Nova Scotia; isn't that right?

25 A. That's right. So if we don't

1 have efforts like whale-watching activities,  
2 although whale-watching activities tend to aggregate  
3 around where actual whales are, then you would have  
4 less effort in those areas, it doesn't mean that  
5 there is no effort in those areas because we would  
6 have shipping vessels that would have been coming  
7 out of the Strait of Canso that would have people  
8 sighting for marine mammals.

9 Q. Well, that's your logical  
10 conclusion but that's not anywhere in the evidence.

11 What this is saying is that lack of  
12 sightings do not represent lack of species present  
13 in a particular area, and you would agree with that?

14 A. That's right. That's right, yes.

15 Q. And number 5:

16 "Numbers of sightings have not  
17 been verified, especially in  
18 light of significant differences  
19 in detectability among species."  
20 [As read.]

21 So there is another qualification.  
22 These numbers haven't been verified.

23 A. That's correct, yes.

24 Q. And number 6:

25 "For completeness, the data

1 represent an amalgamation of  
2 sightings from a variety of years  
3 and seasons. Effort is not  
4 necessarily consistent among  
5 months, years, and areas. There  
6 are large gaps between years."  
7 [As read.]

8 It gets back to my point about  
9 effort. There are -- there is a measure of --  
10 scientific measure of sightings called sightings per  
11 unit effort, SPUE?

12 A. Correct, yes.

13 Q. And these data would that take  
14 that into account; correct?

15 A. That's correct, yes.

16 Q. So if there is a significant  
17 effort to see that there are whales in a particular  
18 area such as the Grand Manan Basin where they are  
19 known to go, that would increase the sightings per  
20 unit effort; correct?

21 A. Right, yes.

22 Q. And if there is a particular lack  
23 of effort for sightings in another area, it doesn't  
24 mean they aren't there, is what I take this to say,  
25 it means that they haven't been sighted and there

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1 has been less effort in trying to sight them;  
2 correct?

3 A. Correct, but I'll sort of explain  
4 sort of the way it works, that there would be more  
5 sightings, obviously, where there are more whales.

6 The other thing to understand with  
7 this data too is that it is really just to provide a  
8 relative distribution of whales in the area, so it  
9 doesn't provide abundance. But we also use other  
10 things like spatial distribution models and those  
11 spatial distribution models are not just based on  
12 sighting information, but also based on availability  
13 of food sources.

14 So we have detailed information on  
15 phytoplankton abundance and phytoplankton is used as  
16 a surrogate to determine productivity in an area, so  
17 we know where these upwellings that cause  
18 phytoplankton blooms and therefore secondary product  
19 activity such as copepods which are cell plankton,  
20 which the whales feed on, those densities would also  
21 reflect likelihood of where those whales would be.

22 So, when you overlay that data along  
23 with the sighting data there is a high level of  
24 correspondence.

25 Q. Yes, and Dr. Smedbol could easily

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1 have come here today to explain all of that in great  
2 detail based upon his decades of scientific research  
3 and knowledge about the area; right?

4 A. He could, or several others in  
5 the department could.

6 Q. Several scientists, people who  
7 work with this all the time.

8 Dr. Moira Brown could be brought here  
9 today to explain this mystery or to understand the  
10 mystery of why they are going from the Bay of Fundy  
11 to the Gulf of St. Lawrence. She could be brought  
12 here today to explain all of this on behalf of  
13 Canada; is that correct?

14 A. But she did say earlier that she  
15 couldn't explain why they were moving to --

16 Q. She couldn't explain why they  
17 were moving but she could explain her understanding  
18 as a renowned scientist, specialist on the North  
19 Atlantic Right Whale, leading researcher and  
20 scientist as to what's happening with the North  
21 Atlantic Right Whales and how they are getting to  
22 the Gulf of St. Lawrence.

23 Is it the position and knowledge that  
24 the Right Whales are going up the eastern coast of  
25 Nova Scotia; isn't that correct?

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1 A. To get to the Gulf of  
2 St. Lawrence? Yes.

3 Q. Yes. And at the very bottom,  
4 number 9, you, the user:

5 "... recognize the  
6 limitations" -- apparently of  
7 which there are many" -- of the  
8 data and understand that DFO does  
9 not warrant or guarantee the  
10 accuracy, completeness or  
11 currency of the data for any  
12 specific use." [As read.]

13 That's correct?

14 A. That's correct. So, and I guess  
15 this is to explain how scientific data is collected  
16 and used, and so in a case like this, there is a  
17 lack of precision, and science deals in precise  
18 measurements when they are producing documents, or  
19 providing information and data, and so there could  
20 be errors in this and there are likely errors in  
21 this.

22 The information that we go on is the  
23 quantity of data that's provided, produces the  
24 picture and so for this database we have over  
25 115,000 sighting database points on this, and so

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1 for -- there is likely to be errors when you collect  
2 115,000 data points, but it is the 40 years of data  
3 collected, seeing the trends which provides the  
4 information basis to understand where the likely  
5 whale sightings will be.

6 So the caveats are in there to be  
7 precise that somebody isn't sort of using a single  
8 point and saying well, there was definitely a Right  
9 Whales here, we can't do anything, that error point  
10 may be incorrect.

11 Now, if there are 50, 60, 70 points  
12 in that area, it provides a higher degree of  
13 confidence that that trend is reflected in the data.

14 Q. Those are the limitations of the  
15 data?

16 A. Yes.

17 MR. NASH: Right.

18 So, Judge Simma, I see that it's  
19 10:25. Would now be an appropriate time for the  
20 morning break? I do have a few more questions.

21 PRESIDING ARBITRATOR: How many?

22 MR. NASH: I probably have -- I could  
23 look through my notes over the break and try to  
24 narrow it down and reduce the time.

25 PRESIDING ARBITRATOR: Shall we have

1 the break now?  
2 MR. NASH: If that's the will of the  
3 tribunal.  
4 PRESIDING ARBITRATOR: Of course. So  
5 we are going to have the coffee break from up to  
6 10:40.  
7 --- Recess taken at 10:22 a.m.  
8 --- Upon resuming at 10:44 a.m  
9 PRESIDING ARBITRATOR: I think we are  
10 ready to continue, Mr. Nash, you have the floor  
11 again.  
12 MR. NASH: Mr. McLean, were you aware  
13 when you signed your statement -- first of all, can  
14 I ask you this: Do you know Lee Harris?  
15 A. Yes.  
16 Q. Lee Harris is a biologist with  
17 DFO?  
18 A. Yes.  
19 Q. And is he a research biologist  
20 with DFO?  
21 A. She is, yes.  
22 Q. And were you aware when you  
23 signed your statement that Lee Harris concluded that  
24 in 2012, in that year, only 42 Right Whales were  
25 seen in the Bay of Fundy?

1 fishing gear entanglements; would you dispute that?  
2 A. No.  
3 Q. Does that sound correct?  
4 A. That sounds correct.  
5 Q. Could you turn, please, to tab  
6 10. This is a memorandum for the ADM Oceans and  
7 Habitat?  
8 A. Right.  
9 Q. Sorry, have you got it?  
10 A. Yes, yeah.  
11 Q. And this is Exhibit C-869. And  
12 when we see ADM, is that Associate Deputy Minister  
13 or Assistant Deputy Minister?  
14 A. The Associate Deputy Minister.  
15 Q. And the way I read this, but you  
16 can confirm, if you go to the final page of the  
17 document, I read this as being a document that was  
18 drafted, at least in part, by you?  
19 A. That's correct.  
20 Q. Was it -- who -- was M. Murphy an  
21 assistant to you or --  
22 A. He would have been the  
23 director --  
24 Q. And so you --  
25 A. -- at the time.

1 A. Sorry, in which year?  
2 Q. In 2012. That only 42 Right  
3 Whales were seen in the Bay of Fundy?  
4 A. I'm -- I haven't seen that,  
5 but...  
6 Q. Would you accept it?  
7 A. Yes. Yeah, so there have been --  
8 I can't remember the percentages, but they -- it's  
9 like 20 per cent of the population in some years.  
10 So it's gone up over 50 per cent. Some years down  
11 to, in the range of 10 to 20 per cent and then gone  
12 up again so it varies, fluctuates from year to year.  
13 Q. So for that year, the 42 Right  
14 Whale sightings in the Bay of Fundy was concluded by  
15 Lee Harris to be the lowest number recorded since  
16 1988; would you dispute that?  
17 A. No.  
18 Q. And that was before the change in  
19 the international shipping lanes; correct?  
20 A. That's correct, yes.  
21 Q. Were you aware when you signed  
22 your statement that DFO had reported in 2016 that  
23 95 per cent of Right Whale incidents in Atlantic  
24 Canada in the years 2008 to 2014, that were  
25 reported, the incidents that were reported involved

1 Q. And so you and Mr. Murphy drafted  
2 this memo together?  
3 A. That's correct.  
4 Q. And it was drafted for Faith  
5 Scattelon who was the -- was she the Director  
6 General at that time?  
7 A. She was the Regional Director  
8 General, yes.  
9 Q. And so this is a memorandum from  
10 Faith Scattelon, Regional Director General to the  
11 Associate Deputy Minister of Oceans and Habitat  
12 which is drafted by you and Mr. Murphy and signed by  
13 her?  
14 A. Yes.  
15 Q. And if we go back to the first  
16 page, the way I understand this, and you can correct  
17 me if I'm wrong, if you go into that box, the  
18 summary box, the second bullet from the bottom, it  
19 says:  
20 "The two weeks of panel hearings  
21 commenced on June 16th, 2007 and  
22 in Digby Nova Scotia, DFO  
23 presented to the panel on  
24 June 20th on the potential  
25 impacts on fish habitat from

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1 blasting on marine mammals, fish  
2 and lobster, shipping impacts on  
3 marine mammal invasive species  
4 and constructive activities." [As  
5 read.]  
6 The way I'm reading this is that this  
7 memo was drafted after those hearings and was a  
8 report from Ms. Scattelon to the Associate Deputy  
9 Minister on the status after those hearings?  
10 A. That's correct, yes.  
11 Q. And what went on in those  
12 hearings?  
13 A. That's correct, yes.  
14 Q. And if you go to the second page,  
15 the last bullet at the bottom. In your draft signed  
16 by Ms. Scattelon you described that there were six  
17 pages of comments from DFO including concerns about  
18 the potential behaviour impacts of noise on marine  
19 mammals, particularly on endangered species and the  
20 requirements under the Species at Risk Act, effects  
21 of blasting on lobster and conflicts with in-shore  
22 fishing activities, and if you go down to the third  
23 line, fourth line from the bottom on the right-hand  
24 side it says:  
25 "Given the low frequency of

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1 blasting once every two weeks,  
2 and the mitigation measures  
3 proposed, monitoring for whales  
4 prior to blasting, it is expected  
5 that any impacts would be  
6 minimal." [As read.]  
7 Now was that your characterization or  
8 was that the characterization of scientists working  
9 at DFO?  
10 A. That was the characterization of  
11 us at DFO looking at all of the evidence and then  
12 qualified that with the uncertainties around the  
13 ability to monitor, detect whales within that  
14 blasting zone.  
15 Q. And that's handled by the next  
16 sentence:  
17 "However, given the  
18 uncertainties, DFO has requested  
19 that monitoring be conducted on  
20 behavioural impacts to marine  
21 mammals, particularly for Species  
22 at Risk and for any impact on  
23 lobster if the project proceeds.  
24 Monitoring for impacts on Species  
25 at Risk is also a requirement of

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1 Species at Risk Act." [As read.]  
2 So the recommendations from the DFO  
3 through up through to the Associate Deputy Minister  
4 was for to minimize impacts, to have monitoring and  
5 to have continuous monitoring to see what the impact  
6 was after the project began; that's correct?  
7 A. If the project had proceeded and  
8 there was a recommendation, then we would certainly  
9 want to see mitigation measures and monitoring in  
10 place to ensure that impacts didn't happen.  
11 Q. And so this information, you  
12 would expect to go up the chain to the Deputy  
13 Minister of Fisheries?  
14 A. I'm not sure once it goes up to  
15 the ADM. I'm assuming, but I have no knowledge or  
16 information to determine how far this memo went  
17 beyond the ADM.  
18 Q. And would it be fair to project  
19 that the information, in some form or another,  
20 whether by this memo or in another form would  
21 somehow find its way before the eyes of the Minister  
22 of Fisheries and Oceans?  
23 A. I have no way of determining,  
24 sort of how far -- once it leaves sort of the  
25 regional, it is up to them whether they bring it to

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1 the Minister or not.  
2 MR. NASH: Thank you, Mr. McLean,  
3 those are my questions.  
4 PRESIDING ARBITRATOR: Thank you,  
5 Mr. Nash. So re-direct will be done by Mr. Klaver.  
6 RE-EXAMINATION BY MR. KLAVER:  
7 MR. KLAVER: Mr. McLean, Mr. Nash  
8 noted numerous times that you are a manager of  
9 research scientists. Could you please explain what  
10 level of scientific understanding you need in order  
11 to manage the primary researchers?  
12 A. To manage the primary  
13 researchers? So just to clarify, so my position, I  
14 don't manage research scientists. I manage the  
15 biologists and I'm a biologist myself. I manage  
16 those biologists that do the impact assessments of  
17 projects.  
18 We also have a separate DFO science  
19 team that we work in collaboration with that would  
20 do, again, primary research on species. On the  
21 management side, we take that primary research and  
22 apply it to potential impacts of projects that would  
23 have impacts on fish, fish habitat, marine mammals  
24 and such.  
25 Q. And in managing the scientists,

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1 would you need a certain level of scientific  
2 understanding?

3 A. Yeah. So our classifications is  
4 as biologists within the department and so even my  
5 classification as a manager, and as a manager it's  
6 not just, you know, doing paperwork and finances and  
7 stuff. I wish I just had to do that. But I also do  
8 review the assessment of project impacts as I have  
9 done since starting my career, even with Nova Scotia  
10 Environment. So most of my staff would either have  
11 a BSC-in biology or a lot of them have Masters  
12 degrees and that's on the application and then,  
13 obviously, in the science side a lot of the  
14 researchers would have PhDs in their areas of  
15 specialization.

16 Q. Now, Mr. Nash asked you about  
17 being the lead role for DFO at the Whites Point  
18 Project. And he referred to paragraph 4 of your  
19 first statement about the time you returned to DFO  
20 in 2005.

21 Could you explain your role as the  
22 lead role of DFO for the Whites Point Project?

23 A. So as environmental analyst with  
24 the major projects group, I was responsible for all  
25 the evaluation and coordination. And so that would

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1 be working with our science team to collect  
2 information, doing the evaluations myself,  
3 collecting a lot of the primary literature around  
4 impacts. So impacts of blasting on lobster, we  
5 would have reviewed that. Myself specifically made  
6 determinations on sort of level impact, reviewed  
7 that with the science team and then provided all the  
8 material in preparation for the hearing, as well as  
9 any correspondence with the Canadian Environmental  
10 Assessment Agency.

11 Q. Now, Mr. Nash also asked you  
12 about Right Whales moving up to the Gulf of St.  
13 Lawrence from the Bay of Fundy. Is the Bay of Fundy  
14 still a critical habitat for the Right Whales?

15 A. So the two areas of critical  
16 habitat that are identified would be the Grand Manan  
17 Basin that was on the map that was put up, as well  
18 as the Roseway Basin which is off the southwest of  
19 Nova Scotia.

20 Q. Now, Mr. Nash asked you about  
21 fishing nets and other causes of Right Whale  
22 mortality or behavioural effects. He discussed  
23 mitigation measures for these effects.

24 Could you explain what type of  
25 mitigation measures could apply for the broader

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1 range of potential impacts on whales from a project  
2 like this, including shipping and blasting?

3 A. So mitigation measures that would  
4 be applied?

5 Q. Yes.

6 A. So obviously similar to the  
7 mitigation measures that were applied in the Gulf of  
8 St. Lawrence, they could potentially put speed  
9 restrictions on vessels transiting through areas  
10 that may have endangered species like the North  
11 Atlantic Right Whale. And it could go to various  
12 things like having only blasting during conditions  
13 when Right Whales could be sighted. So in fog or  
14 bad weather conditions, if visibility was poor, they  
15 could put restrictions around activities such as  
16 blasting.

17 Some of the challenges around  
18 mitigation measures for this type of project,  
19 because these type of operations aren't necessarily  
20 in control of shipping operations and so they  
21 wouldn't necessarily have control over a vessel once  
22 it left the port so we've had concerns in the past  
23 about how able either DFO or Canadian Environmental  
24 Assessment Agency is to enforce these mitigation  
25 measures.

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1 Q. Okay. Mr. Nash also asked about  
2 the data behind the whale sightings map.

3 So, Derek, I'm wondering, could we  
4 pull that map up on the screen please?

5 Now, Mr. Nash asked about some of the  
6 caveats to this map. Could you explain what level  
7 of scientific certainty underlines the data in this  
8 map?

9 A. Yeah. And, again, this is really  
10 just based on sighting information but the  
11 information is then backed up with doing spacial  
12 distribution models which give us a higher degree of  
13 certainty where those species are found. So as  
14 discussed earlier, you know, there are locations  
15 where we would have low numbers of sighting  
16 availability and part of that becomes, you know, we  
17 have whale-watching on vessels that operate  
18 obviously in the Bay of Fundy. They are not along  
19 sort of the eastern shore of Nova Scotia for the  
20 reason that there are very few whales there and so  
21 these operations don't exist there.

22 But this information is then backed  
23 up, as I mentioned, with spacial distribution model  
24 using prey abundance for whales and specifically for  
25 North Atlantic Right Whales we would have a good

1 indication of where those prey species would occur  
2 based on ocean temperature, oceanographic  
3 conditions. And so areas like the outer Bay of  
4 Fundy is a prime area, but also the Gulf of  
5 St. Lawrence where you have mixing of fresh water  
6 and sea water, you have these deep water upwellings  
7 that provide nutrients and these nutrients feed that  
8 secondary production which the whales are looking  
9 for.

10 Q. Can you explain how DFO screens  
11 and collects the data behind this map?

12 A. So, for most of the time the  
13 information is provided in data sheets, again, from  
14 opportunistic, like fishing vessels, commercial  
15 vessels, whale-watching opportunities but also  
16 scientific data that they would provide information  
17 on the whale, the sighting information, species  
18 identification if that's available and that's not  
19 always available depending on conditions. And so  
20 that information is provided to DFO, it goes into a  
21 database, that database is then checked twice  
22 annually for any errors that may be evident within  
23 the data, and then once it's cleaned, then it goes  
24 into the final database.

25 Q. Okay.

1 A. And it's -- I should add too that  
2 the data has a scoring as well. And so depending on  
3 the source of the information, so, something like a  
4 whale-watching operation which obviously has years  
5 of experience in identifying whales or marine mammal  
6 observers on commercial vessels would have specific  
7 training in whale identification, those data points  
8 get a higher sort of score of reliability.

9 If it's questionable about whether or  
10 not this is a North Atlantic Right Whale that is  
11 identified, then that just goes into general whale  
12 sighting. So we are more confident in the data when  
13 we are looking at species identification because we  
14 are only using the most reliable data for the  
15 sighting information.

16 Q. Okay. And Mr. Nash also asked  
17 you about the effects of the project, the projects  
18 at Whites Point and Black Point on the lobsters.

19 To prepare your statement, were you  
20 asked to assess the actual effects of the project or  
21 the relative abundance of lobster in the lobster  
22 fishery between the two sites?

23 A. I was asked to look at the  
24 relative lobster abundance between the two  
25 locations, Black Point Quarry and Whites Point

1 Quarry.

2 MR. KLAVER: Thank you.

3 PRESIDING ARBITRATOR: Thank you,  
4 Mr. Klaver.

5 Any comment by Mr. Nash? You can  
6 also speak from where you are.

7 MR. NASH: I don't want to speak  
8 behind Mr. McLean's back.

9 THE WITNESS: You wouldn't be the  
10 first.

11 FURTHER CROSS-EXAMINATION BY MR. NASH:

12 MR. NASH: Were you instructed to  
13 pose only that question as between Whites Point and  
14 Black Point?

15 A. That's the question that was  
16 presented to me was the relative difference between  
17 those two locations.

18 MR. NASH: Right. Thank you.

19 PRESIDING ARBITRATOR: Thank you,  
20 Mr. Nash.

21 QUESTIONS FROM THE ARBITRAL TRIBUNAL:

22 PRESIDING ARBITRATOR: I have two  
23 questions. And the first one, could you just -- the  
24 use of the term "unit efforts" wasn't clear to me.  
25 That was used in -- is like something the sightings

1 were measured by units efforts. What precisely does  
2 that mean?

3 THE WITNESS: So when you are  
4 collecting any data, you look at the unit effort  
5 that is used to collect the data so the number of,  
6 for example, vessels that would be in the area  
7 relative to the amount of sightings. So an area  
8 that had low vessel traffic if we were talking about  
9 marine mammal would have, if you came up with a  
10 number of one sighting, well, that's based on how  
11 many hours that vessel was in the area. The vessel  
12 was there longer, saw the same, then the more effort  
13 put in relative to the amount of species that you  
14 are finding.

15 The same would go with any type of  
16 sampling. So if you were laying out a net, if the  
17 net was out for three days, it is to compare the  
18 relative amount of information. So if you had two  
19 locations, you set a net for three days, you caught  
20 three fish and you went to another location and set  
21 it out for three weeks, the effort there is much  
22 higher. So you want to be able to relatively  
23 compare the two data sets based on the amount of  
24 effort you take in sampling.

25 PRESIDING ARBITRATOR: My second



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1 question as a personal background, I have a grandson  
2 who is becoming a scientist and studies marine  
3 biology in Australia. And he sent me a few draft  
4 papers and said, "Opa, could you just kind of review  
5 my English, et cetera?" And that brings me to the  
6 following question: What do you mean when you say  
7 that as a -- that you say that you assess reports or  
8 projects by scientists as a nonscientist. What do  
9 you do as a nonscientist when you assess -- let's  
10 say, documents, project research, results, et cetera  
11 by scientists?

12 A. So, no, my job is to assess  
13 project proposals. I review primary literature so  
14 science publication literature or draft literature.  
15 I don't provide comments or feedback on primary  
16 research document by science. What I do is review  
17 project proposals by proponents for industry and  
18 provide comment and feedback on that.

19 Often I use publication literature or  
20 research data such as, like the unpublished data,  
21 like the whale distribution to evaluate potential  
22 impacts. But I'm not a, you know, a reviewer.  
23 I have reviewed literature document, like published  
24 literature documents as part of science reviews in  
25 the past and will provide feedback on that, but

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1 have a vessel with air guns behind them. So we  
2 review a lot of the primary research literature on  
3 things like noise propagation, responses to marine  
4 mammals, those things, in order for us to have that  
5 knowledge to evaluate the potential impacts of those  
6 projects on species such as whales.

7 So we are applying what would be  
8 scientific literature to a very specific project and  
9 using that as part of the evaluation, as well as  
10 working with those research scientists that have  
11 that direct knowledge through their primary  
12 research.

13 PRESIDING ARBITRATOR: And there is  
14 no problem, you don't see a problem in  
15 non-biologists, non-mineralogists, et cetera,  
16 engage -- studying primary, and then giving an  
17 assessment of what the experts, the real experts  
18 have said and done and proposed in their papers?

19 THE WITNESS: Well, I am a biologist  
20 so my undergraduate degree is in biology. I have my  
21 Masters in Environmental Studies. So the  
22 application of science and the review of projects.  
23 So I've spent close to eight years at university  
24 studying and doing this kind of work including areas  
25 in the Bay of Fundy. So my qualifications along

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1 those are the ones that I would have been involved  
2 in.

3 PRESIDING ARBITRATOR: I think,  
4 Professor, it has been for me quite a while since I  
5 left academia under these practical considerations,  
6 but a lot of what professors now do is assessing  
7 projects of others or projects of the, let's say,  
8 people under their, more or less -- in their  
9 institutions?

10 A. Yes.

11 PRESIDING ARBITRATOR: But I  
12 understood you as saying you are doing more than  
13 just assessing a project with regard to the duration  
14 of a project.

15 Is it reasonable for that project to  
16 be finished within two years? As you are doing  
17 more. You said you study primary research --

18 THE WITNESS: Research document.

19 PRESIDING ARBITRATOR: -- scientific  
20 research?

21 THE WITNESS: Yes, that would apply  
22 to a project. So a good example would be we review  
23 oil and gas seismic surveys and these are -- seismic  
24 surveys would be using noise in the marine  
25 environment, determine oil and gas deposits. So you

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1 with close to 20 years of doing environmental impact  
2 assessments can apply that knowledge and so I feel  
3 comfortable in reviewing and I did this is a part of  
4 my undergraduate degree, reviewing and producing  
5 sort of internal papers, not for publication, but  
6 for evaluation.

7 And so my background, as well as my  
8 the background among my staff are well qualified to  
9 do evaluations and then we are just supported  
10 through either the primary literature, all the stuff  
11 that's documented or through our research scientists  
12 as to any specific questions as to the application  
13 of it.

14 PRESIDING ARBITRATOR: Thank you.

15 THE WITNESS: You're welcome.

16 PRESIDING ARBITRATOR: No further  
17 questions. That brings to an end the  
18 cross-examination. Thanks for your cooperation --  
19 your presence and cooperation.

20 I think we should, without further  
21 ado, ask for Mr. Bickford, correct?

22 Welcome back, Mr. Bickford.

23 THE WITNESS: Now I can say "good  
24 morning."

25 AFFIRMED: MR. GEORGE BICKFORD

1           PRESIDING ARBITRATOR: So again,  
2 welcome, Mr. Bickford. Good morning. You will  
3 cross-examined and Madam -- oh, I didn't get your  
4 name.  
5           MS. ZEMAN: It is Krista Zeman.  
6           PRESIDING ARBITRATOR: Ms. Zeman is  
7 going to do the direct. Please, you have the floor,  
8 Ms. Zeman.  
9 CROSS-EXAMINATION BY MS. ZEMAN:  
10          MS. ZEMAN: Good morning,  
11 Mr. Bickford, we didn't have a chance to be properly  
12 introduced yesterday.  
13          So, again, my name is Krista Zeman  
14 and I'm counsel for Canada in this arbitration, as  
15 you have gathered, I'm sure.  
16          So I have a few questions for you  
17 today about your testimony. So you see that we have  
18 a small binder there beside you, in front of you  
19 there which contains some documents that I may refer  
20 you to as I go through my questions.  
21          We will also bring up those documents  
22 on the screen so if it's easier to reference them  
23 there, you can do that.  
24          If at any point, you don't understand  
25 my question, please let me know and I'll do my best

1 to reframe it because it is important for us to  
2 understand each other.  
3          My first question is: Can you confirm  
4 for the record that you have not spoken with anyone  
5 about your testimony since you last appeared before  
6 the tribunal?  
7          A. Yes.  
8          Q. And before I get to the rest of  
9 my questions, I think we should enter a confidential  
10 session.  
11 --- Upon commencing confidential session under  
12 separate cover at 11:11 a.m.  
13          MS. ZEMAN: In working with clients  
14 to design their projects, you have to understand  
15 their objectives; is that right?  
16          A. Absolutely.  
17          Q. And with respect to the Whites  
18 Point Quarry you had many conversations with  
19 Mr. Wall about his operational objectives; correct?  
20          A. I did.  
21          Q. Would it be fair to say you had a  
22 good understanding of the objectives of the Whites  
23 Point Quarry?  
24          A. I did.  
25          Q. The production goal for the plant

1 was approximately 2 million tons of aggregate per  
2 year; correct?  
3          A. That's correct.  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9          A. That is correct.  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15          A. Correct.  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22          Q. Okay. So I'd like to talk about  
23 the corrections that you made yesterday to your  
24 witness statement which I think I you called  
25 "typos". In particular, [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4          A. Correct.  
5          Q. So, I think we have you have a  
6 pretty good sense of [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10          A. Correct.  
11          Q. And as you said yesterday, [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14          A. Correct.  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18          A. Correct.  
19 [REDACTED]  
20 [REDACTED]  
21          A. Correct.  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 A. Yes.  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. Yes.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. That's correct.  
 14 Q. Sounds about right. So the  
 15 effect of your minor correction, then, is [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 A. Well, that's not exactly true.  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 The reality is that [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 Q. So, Mr. Bickford, if I may bring

1 us back to the --  
 2 [REDACTED]  
 3 Q. So...  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 Q. But Mr. Bickford you stated --  
 8 and --  
 9 [REDACTED]  
 10 [REDACTED]  
 11 Q. In your statement, as before you  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. That's correct.  
 15 Q. Okay. [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 A. Correct.  
 20 [REDACTED]  
 21 [REDACTED]  
 22 A. Correct.  
 23 [REDACTED]  
 24 [REDACTED]  
 25 A. It doesn't. [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 Q. Uh-hmm.  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 Q. Okay. So --  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 So I'd like to turn to the transcript  
 5 of your direct examination from yesterday and we'll  
 6 pull this up on the screen.  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [As read.]  
 16 So my question for you, Mr. Bickford,  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 Q. You would have --  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 Q. Okay. So I'd like to go to page  
 22 6 of your second statement, if we may, which is  
 23 [REDACTED]  
 24 [REDACTED]  
 25 A. Is this under tab 2?

1 Q. Yes. No, it should be -- do you  
 2 have a copy of your reports here, of your statement?  
 3 A. I'm looking at this. I'm looking  
 4 at this statement. I also have mine from yesterday.  
 5 Q. Let's look at your second.  
 6 A. Okay, do you want me to be in my  
 7 witness or my rebuttal?  
 8 Q. Your rebuttal.  
 9 A. Okay.  
 10 Q. On page 6.  
 11 A. Page 6. Fine.  
 12 Q. Okay. So this is one of the  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 So, if I read it the way that you  
 17 corrected it, it reads as follows:  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [As read.]

1 That's an accurate summary of your  
 2 correction?  
 3 A. Yes.  
 4 Q. So if I understand correctly,  
 5 when you [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 A. No. I still don't believe it  
 9 did.  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Q. Okay. So, if you look at the  
 14 words here:  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 A. That's correct.  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 A. Correct.  
 22 [REDACTED]  
 23 A. Correct.  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED] That's your testimony?  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 Q. Right. But here we're talking  
 8 about [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 Q. Right, so --  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED] And  
 11 believe me, I've been involved in -- we have  
 12 probably designed 20, 30 aggregate plants. LB&W, I  
 13 could say, wrote the book on crushing, but that  
 14 would be inaccurate. We really wrote a book on  
 15 crushing and it was for Lafarge North America  
 16 because they wanted a plant that could be designed  
 17 and built 40 times around the world.  
 18 So my job was to write a book that  
 19 told somebody in South Africa or any other country  
 20 if they had this hardness of rock, you use this kind  
 21 of crusher, you use this screen combination, you use  
 22 these in secondary and tertiary crusher.  
 23 So, when that book was published, and  
 24 it is used by Lafarge North America because they  
 25 didn't have project managers to go around the world

1 and build 42 plants, that is the same as this  
2 outline.

3 It came to me with a request for  
4 something but those plants are -- South Africa may  
5 need a finer product or coarser product. They may  
6 want to make gabion stone which is as big as my  
7 fist. They're adjustable.

8 Q. I understand that. [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 A. That is correct.

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 A. No.

21 [REDACTED]  
22 [REDACTED]

23 A. No.

24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 A. Absolutely not. Why would I know  
4 that?

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 Q. I'd like to turn to tab 3 of your  
14 binder. This is Bickford Exhibit 1 or page 1 of  
15 Exhibit C-1001.

16 This would be in the small binder on  
17 your left.

18 A. Oh, and that was tab 3?

19 Q. That's right.

20 A. And we're looking at [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 A. Correct.

25 Q. Now, so it's your testimony that

1 you and Mr. Wall had [REDACTED]  
2 [REDACTED]  
3 [REDACTED]

4 A. Correct. [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 Q. Okay, and --

10 [REDACTED]  
11 [REDACTED]

12 Q. So if -- I'm going to try to use  
13 some technology here. Bear with me. Oh, there we  
14 go.

15 So if you look at [REDACTED]  
16 -- let's see if I can -- yeah, that's, anyways, this  
17 one here, just to identify it on the page for you.

18 A. Yes.

19 Q. That's [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 A. Yes, it's got the same stamp on  
23 it.

24 [REDACTED]  
25 [REDACTED]

1 A. Yes.

2 [REDACTED]

3 A. That's correct.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 A. Yes.

9 Q. Okay. [REDACTED]

10 [REDACTED]

11 A. No.

12 Q. Well, you just said it [REDACTED]

13 [REDACTED]

14 A. I could put -- you could put --

15 [REDACTED]  
16 [REDACTED]

17 Q. Okay.

18 [REDACTED]  
19 [REDACTED]

20 Q. Okay. And so even understanding  
21 very well the [REDACTED]

22 [REDACTED]

23 A. No.

24 Q. You are aware that [REDACTED] is a  
25 [REDACTED]

1 critical fact underlying some of the differences  
2 between your testimony and SCMA's in this  
3 arbitration?

4 A. As I saw, it wasn't a question of

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 So it didn't make any difference.

10 [REDACTED]  
11 The slight difference in, if I

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 Q. We will get there in a moment.

24 A. So I won't even get into that  
25 with this, [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]

5 It makes no difference. [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 [REDACTED]  
10 That was  
11 interesting, I didn't know that.

12 [REDACTED]  
13 [REDACTED]

14 Q. Okay.

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 [REDACTED]  
20 Q. It makes no difference from your  
21 perspective. I understand that.

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 A. Uh-hmm.

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 A. It is.

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 MR. NASH: I was admonished by  
7 counsel for interrupt continuing the witness. Could  
8 the counsel in this case allow the witness to finish  
9 his answer.

10 MS. ZEMAN: My apologies. I thought  
11 that you had finished.

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 Now, that would not have taken four

1 months before [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 They would have begun placing  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 A. That is correct.  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. Yes, because we never received  
 21 permits [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. That's correct. It went from  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. Where are you looking?  
 14 Q. On page 4 of your second  
 15 statement, footnote 2.  
 16 A. Page 3, page 4. What Roman  
 17 numeral?  
 18 Q. It is a footnote at the bottom of  
 19 the page.  
 20 A. That change that I made is  
 21 because the SC-report called that [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 What I've done is  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 But when I saw the comment in the SC-report,  
 9 I thought, I didn't want to be controversial.  
 10 They apparently didn't recognize that  
 11 you could have [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. I appreciate that explanation,  
 19 Mr. Bickford, but I only asked you if you had made  
 20 the change.  
 21 So my next question is: You continued  
 22 to [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]



1 A. That is correct, in preparation  
 2 for this hearing.  
 3 Q. Okay. I'd like to turn to Tab 9  
 4 of your binder, the small one on your left.  
 5 A. Tab 2, 7, 8. There it is.  
 6 Q. This is the expert report of  
 7 Mr. Rosen and I'd like you to look at page 18.  
 8 A. Okay.  
 9 Q. So you see here in the table that  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. That's correct.  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 Q. So you -- would you agree there  
 25 that [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 Q. Right, but are they [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. That is a difficult question for  
 11 me to answer without [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 Q. Uh-hmm.  
 21 A. So I wouldn't have a problem if  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 Right now there are adequate

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 Q. Just to clarify, you have not  
 12 seen [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 A. No.  
 16 Q. -- correct? So if -- I'd like to  
 17 come now to talk about AggFlow.  
 18 This is software that simulates a  
 19 crushing plant's operation; right?  
 20 A. Absolutely.  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 A. Yes.  
 25 Q. And it very closely approximates

1 the operation and output of a given plant design;  
 2 right?  
 3 A. That is correct.  
 4 Q. And you used AggFlow to [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 A. Yes.  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. Correct.  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 Q. Right.  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED] It is an excellent  
 12 software.  
 13 [REDACTED]  
 14 [REDACTED]  
 15 A. That is correct.  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 A. That is correct.  
 20 [REDACTED]  
 21 [REDACTED]  
 22 Q. So I'd like to turn to tab 6 of  
 23 your binder, of the small one here on the left.  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 A. That's correct.  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. Okay.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 Q. Okay.  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. That's correct.  
 5 Q. [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 A. That is correct.  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 Q. Okay.  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. Correct.  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. Correct.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. At the bottom, bottom centre.  
 14 Q. I'm trying to -- oh, I'm pressing  
 15 the wrong button. Technology is supposed to help.  
 16 Here, so these [REDACTED]  
 17 [REDACTED]  
 18 A. Correct. Now, there is only one.  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 Q. Right. Okay. And I'd like to  
 3 come to that in a moment but I just wanted to make  
 4 sure that we are all up to speed on the [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 Q. Yep, we'll come to that in a  
 10 minute.  
 11 A. Okay.  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. Yes, the [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 Q. Both of those things. [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 A. Right [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 Q. Mm-hmm. Okay.  
 25 [REDACTED]

1 [REDACTED]  
 2 Q. Right. Okay. [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 A. That's correct.  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. Yes. That is correct.  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. Right, so if you -- and that is a  
 19 [REDACTED]  
 20 A. That's correct.  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 A. Uh-hmm.  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 A. That's correct. In reality that  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 Q. Correct. [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 A. That's correct.  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 A. No, none at all.  
 23 Q. Okay.  
 24 A. Because if you read the [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 Q. Right.  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 A. Correct.  
 3 [REDACTED]  
 4 [REDACTED]  
 5 A. I did.  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. That's correct.  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 Q. Sure. Sure.  
 24 [REDACTED]  
 25 [REDACTED]

1 A. Yes.  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 A. That's correct.  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. That's correct.  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 A. Correct.  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. Correct.  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 Q. So my question is a little bit  
 21 different.  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 A. That would not be a --  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 Q. Okay. So I'd like to  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. That's correct.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 Q. Okay, so --  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 Q. Okay. So I'd like to turn to tab  
 3 10 of your binder for a moment.  
 4 This is Bickford Exhibit 5 or exhibit  
 5 C-1367.  
 6 A. Uh-hmm.  
 7 Q. And this is a letter that [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 A. That's what I said.  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 Then it goes on to say that, I think,  
 24 that [REDACTED]  
 25 [REDACTED]

1 Q. So, earlier you said that there  
 2 was [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 Q. Sure.  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. Right,  
 14 [REDACTED]  
 15 Q. Right.  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 A. Correct.  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. Well, let's just state that [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]  
Q. Yes.

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[REDACTED]  
Q. So --  
A. -- just in different degrees.  
[REDACTED]  
Q. If we look at this letter in front of you?  
A. Correct.  
[REDACTED]  
A. Yes. [REDACTED]

1 [REDACTED]  
 2 Q. And that's --  
 3 A. This is not a science. [REDACTED]  
 4 [REDACTED]  
 5 Q. Let me just confer one moment  
 6 with my colleagues, if I may.  
 7 Thank you for your patience,  
 8 Mr. Bickford. I'd like to go back to the [REDACTED]  
 9 [REDACTED]  
 10 MR. NASH: What tab are you on?  
 11 MS. ZEMAN: Sorry, this is tab 6.  
 12 MR. NASH: I'm there.  
 13 MS. ZEMAN: So we talked about how  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 A. Uh-hmm.  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 A. That's correct. And as I told  
 4 you, or stated earlier, maybe it didn't -- maybe you  
 5 didn't understand it. [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 PRESIDING ARBITRATOR: Could you get  
 11 a bit closer to the microphone?  
 12 THE WITNESS: Yes, indeed I will.  
 13 Thank you.  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Is it -- if you go into a aggregate  
 19 plant, [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 An over -- [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 Q. So just so I'm clear, as  
 8 presented in this [REDACTED]  
 9 [REDACTED]  
 10 A. Correct.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 MR. NASH: Sorry, I'm not sure that  
 16 was Mr. Bickford's evidence. It wasn't --  
 17 PRESIDING ARBITRATOR: Sorry, sorry.  
 18 MR. NASH: Sorry, I just want to be  
 19 sure that Mr. Bickford's evidence is being  
 20 summarized correctly. I don't believe that  
 21 Mr. Bickford's --  
 22 Sorry, I rise simply to ensure that  
 23 Mr. Bickford's evidence is being summarized and put  
 24 to him correctly, and I don't believe that  
 25 Mr. Bickford's evidence was that the [REDACTED]

1 [REDACTED] I simply want to  
 2 ensure that my friend is being fair.  
 3 MS. ZEMAN: With respect,  
 4 Mr. Bickford can disagree with my question, as  
 5 summarized.  
 6 A. Which was where I was going just  
 7 now. You have either understood or misunderstood  
 8 that the [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Had I known that, I would have [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 Q. Thank you. But to clarify, in  
 6 [REDACTED]  
 7 [REDACTED]  
 8 A. Uh-hmm.  
 9 [REDACTED]  
 10 [REDACTED]  
 11 A. That's correct.  
 12 MS. ZEMAN: Thank you, Mr. Bickford,  
 13 those are all my questions.  
 14 PRESIDING ARBITRATOR: Thank you,  
 15 Ms. Zeman.  
 16 Mr. Johnston will do the re-direct.  
 17 MR. JOHNSTON: Thank you, Judge  
 18 Simma.  
 19 RE-EXAMINATION BY MR. JOHNSTON:  
 20 MR. JOHNSTON: Mr. Bickford, you were  
 21 asked about [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 A. I do.  
 25 Q. And you recall referencing

1 [REDACTED]  
 2 A. I do.  
 3 Q. And did you have an understanding  
 4 as to whether [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 A. Never.  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. And you were asked, as well,  
 11 Mr. Bickford, about the [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. I do.  
 15 Q. Did you have an understanding  
 16 about [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 Q. So your understanding was that it  
 22 was a [REDACTED]  
 23 [REDACTED]  
 24 Did you have an understanding beyond  
 25 [REDACTED]

1 [REDACTED]  
 2 A. I knew that the [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 Q. And you were asked as well, sir,  
 9 about your [REDACTED]  
 10 [REDACTED]  
 11 A. I do.  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. Yes.  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. That's a fact.  
 21 Q. You were asked as well, sir,  
 22 about your understanding -- or about the [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]; do  
 25 you recall those questions?



1 A. I do.  
 2 Q. And are you able to assist the  
 3 tribunal as to whether there is a [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 Other than that, it's wide open.  
 16 [REDACTED]  
 17 Q. And that brings me to, sir, my  
 18 next question about your reference to [REDACTED]  
 19 [REDACTED] and response to other questions by  
 20 Ms. Zeman.  
 21 What do you mean by [REDACTED]  
 22 [REDACTED] when you use that term?  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED] I can't imagine why but it is.  
 3 As I stated earlier, [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 A. Both. Both.  
 2 Q. Both. Thank you.  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 Q. You were asked as well by  
 9 Ms. Zeman about [REDACTED] And you gave an answer  
 10 regarding the [REDACTED]  
 11 do you recall that?  
 12 A. I do.  
 13 Q. And are you able to say, sir,  
 14 whether [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 A. Heavens, no; [REDACTED]  
 18 [REDACTED]  
 19 Q. You were asked, as well, about  
 20 whether you [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. That's correct.  
 24 Q. Would you turn, please, to  
 25 paragraph 27 of your witness statement, your first

1 witness statement. It is page 5, sir.  
 2 A. Just give me a second. I don't  
 3 know why I'm seeing something different. I've got  
 4 you; reply.  
 5 Q. Can I just approach the witness  
 6 to assist him in locating the --  
 7 A. Page 5.  
 8 Q. You have page 5 of paragraph 27  
 9 of your first statement in front of you?  
 10 A. I do, at the bottom of the page.  
 11 Q. And I will just read that:  
 12 "At the detailed design stage,  
 13 LB&W also replaces the 'small  
 14 scale general arrangement'  
 15 drawings with larger scale and  
 16 more detailed 'general  
 17 arrangement' drawings that among  
 18 other things provide sufficient  
 19 information for procurement of  
 20 materials and equipment, the  
 21 creation of drawings necessary  
 22 for fabrication and the issuance  
 23 of building permits." [As read.]  
 24 My question is whether [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 Q. Ms. Zeman asked you as well about  
 22 [REDACTED]  
 23 [REDACTED] do you recall those  
 24 questions?  
 25 A. Yes.

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. Let me think about those [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] We didn't need it.  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 Q. You were also shown a document by  
 15 FTI Consulting; do you recall that document? Well,  
 16 it was a table included in a document that  
 17 referenced [REDACTED]  
 18 [REDACTED]  
 19 A. Oh, you mean today?  
 20 Q. Today, yes, I'm sorry, Ms. Zeman  
 21 referred you to a document --  
 22 A. Yes, yes.  
 23 Q. -- it was a document by FTI  
 24 Consulting?  
 25 A. I saw that, yes.

1 Q. You recall that, sir?  
 2 A. I do.  
 3 Q. Do you have any understanding of  
 4 what the author of that document [REDACTED]  
 5 [REDACTED]  
 6 A. None. I have no clue.  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. They are. [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 A. Yes.  
 16 [REDACTED]  
 17 Q. Thank you. And you were asked  
 18 about AggFlow. [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 A. AggFlow to my knowledge, and it  
 23 is a wonderful program. It is so comprehensive.  
 24 It's got so much depth of research. AggFlow came  
 25 into being around '94. I won't swear to that, but I

1 believe so, middle of '90s.  
 2 I saw it at a convention in Las Vegas  
 3 for producers. It is the biggest aggregate  
 4 producer's trade show and I saw AggFlow and I fell  
 5 in love with it.  
 6 In '98 I bought AggFlow for I think  
 7 \$1,200. And I would go to clients, to customers of  
 8 ours in aggregate-producing plants and we'd sit and  
 9 play "what if" with their plants; just set it up in  
 10 15 minutes you could put all the icons in place for  
 11 their plant and the plant maintenance manager would  
 12 sit there and he'd tell me what screen sizes he has  
 13 and we'd run it.  
 14 I'll bet you, and I'm sorry I didn't  
 15 have commission on it. I'll bet you I sold more  
 16 than 40 of those programs because they made life so  
 17 simple for the operator. He could see it before he  
 18 made the change instead of making the change and  
 19 finding out what the result was.  
 20 AggFlow is an absolutely excellent  
 21 piece of software for guys like us.  
 22 Q. And Mr. Bickford, you were asked  
 23 about [REDACTED] from AggFlow.  
 24 I'm just going to ask you to turn to that document,  
 25 please, sir. It's tab 6 of the binder in front of

1 you.  
 2 A. That's this one?  
 3 Q. Sir, you recall being asked as  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED] Do you recall questions along  
 8 those lines?  
 9 A. I do.  
 10 Q. And I want to refer you, sir, to  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [As read.]  
 22 Do you see that note?  
 23 A. I do.  
 24 Q. Could you assist us in  
 25 understanding what that note means, sir.

1 A. AggFlow [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 In this case it -- [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 Does it matter? I don't think so.  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 MR. JOHNSTON: May I have a moment to  
 11 confer with my colleagues, Judge Simma, members of  
 12 the tribunal?  
 13 PRESIDING ARBITRATOR: Yes,  
 14 Mr. Johnston, go ahead.  
 15 MR. JOHNSTON: A last question,  
 16 Mr. Bickford, and really just by way of assisting us  
 17 to understand some of the terminology that we've  
 18 heard from your testimony, which for those of us not  
 19 familiar with your industry will not necessarily be  
 20 clear.  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. I'm sorry, Mr. Bickford, this is  
 11 tab 6 of the binder in front of you?  
 12 A. That's correct. It is tab 6 of  
 13 the binder. The jargon in the industry is that that  
 14 is a [REDACTED]  
 15 Q. Sorry, where are you, sir? Just  
 16 to be sure we're following you.  
 17 A. Coming from the left-hand side of  
 18 the sheet at the top, [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 That's how you would apply it.  
 3 You'd look into the -- I would look  
 4 into the directory of [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED].  
 18 I'm retired two years now.  
 19 But I was in this business since  
 20 1972. So I saw change but nothing -- as you folks  
 21 know, this is taking big rocks and making little  
 22 rocks out of them. It is not rocket science. [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 MR. JOHNSTON: Thank you,  
 3 Mr. Bickford.  
 4 PRESIDING ARBITRATOR: Thank you,  
 5 Mr. Johnston. Any requests? No. No questions? No  
 6 questions.  
 7 Then brings to an end your  
 8 cross-examination. And I'd like to thank you in the  
 9 name of both parties for your presence and all the  
 10 expertise you have demonstrated and you are a free  
 11 man now.  
 12 THE WITNESS: Thank you for your  
 13 courtesy.  
 14 PRESIDING ARBITRATOR: Pleasure. And  
 15 the question is, I think, we have 15 minutes.  
 16 Probably makes no sense to call Mr. Buxton before  
 17 the lunch break. So I think we are going to have  
 18 our lunch break now which means a quarter to one to  
 19 a quarter to -- to 2:00.  
 20 Yes, actually. So we are going to  
 21 resume at 2:00 o'clock.  
 22 --- Lunch recess taken at 12:46 a.m.  
 23 --- Upon resuming at 2:04 p.m.  
 24 --- Public transcript begins at 2:04 p.m.  
 25 PRESIDING ARBITRATOR: I think we are

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1 all set. Welcome, Mr. Buxton.  
 2 THE WITNESS: Thank you.  
 3 PRESIDING ARBITRATOR: Good to see  
 4 you again.  
 5 Would you please read out the  
 6 statement that you have in front of you?  
 7 MR. BUXTON: I solemnly declare on my  
 8 honour and conscience that I will speak the truth,  
 9 the whole truth and nothing but the truth.  
 10 PRESIDING ARBITRATOR: Thank you very  
 11 much. I give the floor to Mr. Nash for direct.  
 12 AFFIRMED: MR. PAUL BUXTON  
 13 EXAMINATION-IN-CHIEF BY MR. NASH:  
 14 MR. NASH: Mr. Buxton, you appeared  
 15 before the tribunal in the merits phase back in  
 16 October of 2013?  
 17 A. Yes.  
 18 Q. And just to refresh everyone's  
 19 memory, you were the project manager throughout the  
 20 development environmental assessment phase of the  
 21 development of Whites Point?  
 22 A. That is correct.  
 23 Q. And you worked with John Wall on  
 24 the Whites Point Project throughout?  
 25 A. Yes, I did.

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1 this hearing that has been provided to date?  
 2 A. I am. I remember it from the  
 3 first day. Thank you.  
 4 Q. Could I get to you confirm that  
 5 you have not spoken to anyone about the arguments or  
 6 the testimony and the hearing prior to your  
 7 testimony?  
 8 A. I can confirm that.  
 9 Q. You just stated that you were the  
 10 project manager for the Whites Point Project?  
 11 A. Yes.  
 12 Q. And the Whites Point Project was  
 13 the first time that you acted as a project manager  
 14 for a Quarry and Marine terminal project?  
 15 A. That is correct.  
 16 Q. And was it the first time that  
 17 you were involved in a project that underwent a  
 18 review panel environmental assessment?  
 19 A. That was the first time, yes.  
 20 Q. Have you been involved in any  
 21 environmental assessments that have undergone a  
 22 review panel assessment since?  
 23 A. No, I have not.  
 24 Q. Let's start by turning to  
 25 paragraph 20 of your second witness statement filed

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1 Q. You were a professional engineer  
 2 and had been for almost forty years in 2013?  
 3 A. Pretty close.  
 4 Q. You remain a professional  
 5 engineer?  
 6 A. I do, yes.  
 7 Q. And you remain working actively  
 8 as a professional engineer in Nova Scotia?  
 9 A. Yes, I am.  
 10 Q. And you signed two witness  
 11 statements in the damages phase. One was  
 12 December 13th, 2016?  
 13 A. Yes, that is correct.  
 14 Q. And the other, the second was on  
 15 August 18th, 2017?  
 16 A. That is correct.  
 17 MR. NASH: Those are my questions.  
 18 PRESIDING ARBITRATOR: The floor is  
 19 to Ms. Kam for cross-examination.  
 20 CROSS-EXAMINATION BY MS KAM:  
 21 MS. KAM: Good afternoon, Mr. Buxton.  
 22 A. Good afternoon.  
 23 Q. As a witness in this arbitration,  
 24 you are aware of your obligation not to talk to  
 25 anyone about the evidence that has been provided in

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1 in the damages phase.  
 2 Just for reference, this part of your  
 3 witness statement is titled "Environmental Impact  
 4 Statement", and I will just be referring to the  
 5 Environmental Impact Statement as the EIS.  
 6 A. Yes. I wonder if you'd mind  
 7 turning your microphone up or speaking louder. I'm  
 8 afraid my hearing is not as good as it used to be.  
 9 Q. Let me know if you can't hear me  
 10 and I'll do my best to speak louder.  
 11 A. Thank you.  
 12 Q. And as a project manager for the  
 13 Whites Point Project, you were responsible for  
 14 preparing Bilcon's EIS?  
 15 A. Yes, I was, yes.  
 16 Q. And so you were also responsible  
 17 for drafting the EIS?  
 18 A. Yes, I was.  
 19 Q. And you were also responsible for  
 20 commissioning studies for the EIS?  
 21 A. Yes.  
 22 Q. Okay. And in paragraph 20 of  
 23 your witness statement, you describe the EIS as a  
 24 document drafted at a very early stage of the  
 25 project; is that correct?

1 A. That is correct, yes.  
 2 Q. Let's turn now to tab 3 which is  
 3 an excerpt of Exhibit R-580, so tab 3 of the binder  
 4 in front of you.  
 5 A. I'm sorry, this binder?  
 6 Q. This binder. Yes. It's volume 7  
 7 of the EIS. It's just an excerpt so if you flip the  
 8 page, you'll get to page 10 of the document. Under  
 9 the heading "Section 1004", it states that:  
 10 "The Whites Point Project was  
 11 designed to supply Bilcon's  
 12 parent company Clayton Concrete  
 13 Block and Sand with washed  
 14 aggregates to be used in the  
 15 current concrete and block  
 16 operations in New Jersey." [As  
 17 read.]  
 18 Correct?  
 19 A. Yes. Yes, it does say that, yes.  
 20 Q. So the plan was to supply Clayton  
 21 Concrete Block and Sand with washed aggregates for  
 22 their operations in New Jersey; is that correct?  
 23 A. Yes.  
 24 Q. Let's turn now to page 7 of the  
 25 document at tab 1 of the binder which -- starting in

1 the second paragraph, it states that:  
 2 "Bilcon of Nova Scotia  
 3 Corporation is a private  
 4 family-owned business."  
 5 Do you see that?  
 6 A. Yes, I do, yes.  
 7 Q. Could you please read out the  
 8 rest of the paragraph for the record?  
 9 A. (Reading):  
 10 "Its parent company, Clayton  
 11 Concrete Block and Sand,  
 12 manufactures concrete products in  
 13 New Jersey, USA. Bilcon needs a  
 14 source of raw aggregate materials  
 15 that is not subject to market  
 16 fluctuations or market  
 17 disruptions. The development of  
 18 the Whites Point Quarry could  
 19 satisfy this need for the next 50  
 20 years. Thus, the fundamental  
 21 rationale for development of this  
 22 quarry is to supply a stable  
 23 fixed market with the raw  
 24 material necessary for the their  
 25 manufacturing processes. The

1 importance of achieving market  
 2 stability cannot overstated.  
 3 Clayton Concrete Block and Sand  
 4 presently purchase aggregate on  
 5 the open market. In order to  
 6 ensure a dependable uninterrupted  
 7 supply not subject to  
 8 inconsistencies, Clayton Concrete  
 9 Block and Sand, through Bilcon,  
 10 intends to develop and control  
 11 their own supply of aggregate  
 12 exclusively for Clayton Concrete  
 13 Block and Sand.  
 14 In essence, this stability of a  
 15 guaranteed market eliminates the  
 16 instability of the competitive  
 17 marketplace which has contributed  
 18 to the demise of other mining  
 19 ventures in Nova Scotia." [As  
 20 read.]  
 21 Q. Thank you, Mr. Buxton. And does  
 22 this paragraph represent or reflect your  
 23 understanding of the rationale for the Whites Point  
 24 Project?  
 25 A. In general terms, yes. I

1 understood from the beginning, and let me just sort  
 2 of back up a little bit and say that when this  
 3 project was undertaken -- and we're going back now  
 4 to April 2002, when the original 3.9-hectare quarry  
 5 was to be expanded -- my job at that time was to  
 6 carry out whatever environmental assessment  
 7 processes were required. At that time we were not  
 8 in a joint panel review, but I knew that we would  
 9 trigger, at the very least, a comprehensive study.  
 10 So, my job is to assemble the  
 11 information to enable us to get into that  
 12 environmental assessment process. I did not need to  
 13 know all the details. I needed to know the  
 14 fundamentals, the basics. What are we going to do?  
 15 We're going to crush aggregate, we're going to ship  
 16 aggregate. So I need to know some fundamental  
 17 things, what size in general terms is the ship going  
 18 to be. It could have been a barge at that stage for  
 19 all I knew. So we had to work through this process  
 20 of defining what it was we were actually going to  
 21 do, what our footprint was so that we could conduct  
 22 a complete environmental assessment process.  
 23 So, my job then was to seek that  
 24 information and move forward with it. I was not  
 25 interested at that stage in the details, all the

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1 details of a crushing plant or anything else. I  
2 needed to know, in general terms, the size of the  
3 ship. Can we bring the -- can we bring a ship in  
4 here? What size ship can we bring in here at  
5 reasonable cost?

6 So those were the sorts of things  
7 that I needed to know. I did not really need to  
8 know precisely where the ship was going except, in  
9 general terms, the depth of the port to which it was  
10 going; in other words, is it going into port that  
11 can support 20,000 tons or 40,000 tons, 45,000 tons,  
12 simply in general terms, so that we could then  
13 coordinate the activities of the shipping to the  
14 arrival of the ship in the port.

15 So those were the sorts of questions  
16 that I was asking at that time. And did I need to  
17 know everything about the Clayton operation? No, I  
18 didn't.

19 Q. Okay. Mr. Buxton, thank you for  
20 the explanation. My question was just if this  
21 paragraph reflected your understanding of the  
22 project. We'll get into the other details in the  
23 EIS shortly but I just -- if you could stick to  
24 answering my questions. Our time is, unfortunately,  
25 limited.

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1 A. Well, I was trying to answer your  
2 question. At the time that this was written -- and  
3 let me, perhaps, explain a little bit to you. This  
4 is from the project description. The project  
5 description was first drafted, I would say the first  
6 elements of it were set down in December 2002, okay?

7 Q. Okay.

8 A. 2006 is when it was presented as  
9 a document to a Joint Review Panel but we knew  
10 that -- I knew that I would need to indicate to the  
11 regulatory authorities, federal and provincial,  
12 first question they are going to ask is: "What are  
13 you going to do? What is this thing? How big is  
14 the quarry in general terms? Are you going to ship,  
15 marine terminal," et cetera, et cetera.

16 Q. Mr. Buxton, we don't need to know  
17 all the steps.

18 A. Let me finish, let me please  
19 finish. Excuse me, I'm trying to explain. We're  
20 into a process here.

21 MR. SCOTT LITTLE: Judge Simma, Judge  
22 Simma, if I may, I can go back and read the question  
23 that Ms. Kam asked.

24 THE WITNESS: I understand the  
25 question.

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1 MR. SCOTT LITTLE: And the  
2 explanation that Mr. Buxton is providing has nothing  
3 to do with that question.

4 PRESIDING ARBITRATOR: I think we all  
5 remember the question. And, Mr. Buxton, I'm sorry,  
6 I think you should really keep to answering the  
7 question in a succinct way and maybe in the further  
8 course of the examination, you will have a chance to  
9 deal with the points.

10 THE WITNESS: Fair enough, fair  
11 enough.

12 MR. NASH: If I may just say so,  
13 Judge Simma, the question was a very broad question.  
14 It was: Was that your understanding of the project?  
15 And Mr. Buxton is giving his answer to that very  
16 broad question, what was his understanding of the  
17 project.

18 MR. SCOTT LITTLE: If I may clarify,  
19 the question was: Was that your understanding of  
20 the rationale for the project, not "the project",  
21 and Mr. Buxton provided a far broader response than  
22 needed to be provided to that.

23 PRESIDING ARBITRATOR: I think it's  
24 not worth going into a fight about over that.

25 Mr. Buxton, I think you've got the

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1 idea.

2 THE WITNESS: Yes, yes, I wrote it  
3 Mr. President, so, yes.

4 PRESIDING ARBITRATOR: Please. Okay.  
5 Thank you.

6 BY MS. KAM:

7 Q. Thank you. Well, Mr. Buxton, our  
8 time is just limited, so thank you.

9 In terms of this statement, I'm going  
10 to suggest to you that you are informed that the  
11 aggregate from the project was to be shipped  
12 exclusively for captive production for the Clayton  
13 Concrete Block and Sand companies, based on the  
14 statement that: "Bilcon intends to develop and  
15 control their own supply of aggregate exclusively  
16 for Clayton Concrete Block and Sand"?

17  
18  
19  
20  
21  
22  
23  
24  
25

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 Q. And according to the second  
5 sentence in the paragraph, you understood Clayton  
6 Concrete Block and Sand to be located in New Jersey;  
7 correct?  
8 A. Yes.  
9 Q. Okay. Could you please turn now  
10 to tab 4 of your binder, which is Exhibit C-392.  
11 This is a study that was prepared for  
12 Global Quarry Products; correct?  
13 A. Yes, yes.  
14 Q. And as project manager, did you  
15 commission this study?  
16 A. Yes.  
17 Q. And the purpose of this study was  
18 to conduct a risk assessment of invasive species  
19 from ships loading at the Whites Point Project site?  
20 A. Yes, yes.  
21 Q. And the issue of invasive species  
22 was relevant to the environmental assessment of the  
23 project, was it not?  
24 A. It certainly -- it certainly came  
25 up as a question. We expected it as a question so

1 we needed to deal with the issue invasive species,  
2 yes.  
3 Q. And you would agree that where a  
4 ship is coming from would be an important factor in  
5 the risk assessment for invasive species?  
6 A. Coming from or going to?  
7 Presumably, you mean where it's picking up ballast  
8 water.  
9 Q. Picking up ballast water?  
10 A. Yes, yes, of course.  
11 Q. Could you please read the title  
12 of the study out for the record?  
13 A. "A preliminary assessment of the  
14 risks of introducing nonindigenous phytoplankton,  
15 zooplankton species or pathogens/parasites from  
16 South Amboy, New Jersey, Raritan Bay, into Whites  
17 Point, Digby Neck, Nova Scotia."  
18 Q. Thank you, Mr. Buxton. So based  
19 on your understanding that the aggregate would be  
20 shipped to New Jersey, you specifically commissioned  
21 the study that identified South Amboy, New Jersey as  
22 a point at which the ballast water would be taken on  
23 for this project?  
24 A. Yes, Raritan Bay, in general  
25 terms, yes.

1 Q. And this was the only study that  
2 you commissioned for the study of invasive species  
3 for the --  
4 A. Yes.  
5 Q. -- environmental assessment.  
6 I'll just ask if you could let me finish the  
7 question so our court reporter can keep track of all  
8 of us in her transcript.  
9 Now, I'd like to turn to tab 1 of  
10 your binder which is the revised project  
11 description, Exhibit R-581, and if you could please  
12 turn to page 40 of that document. Are you there?  
13 A. I'm on page 40. "Description",  
14 yes.  
15 Q. According to the second sentence  
16 in the last paragraph on this page:  
17 "Bilcon's proposal during the EA  
18 process is that the quarry  
19 operate for approximately 44  
20 weeks of the year with an 8-week  
21 maintenance period during the  
22 winter months." [As read.]  
23 Right?  
24 A. Yes, I can see that.  
25 Q. Let's turn to Exhibit C-154 which

1 is at tab 5 of your binder and that's at volume 1 of  
2 the hearing transcript.  
3 A. All right, I'm in tab 5.  
4 Q. Great. Could you please turn to  
5 page 54 of the transcript.  
6 You would agree that page 54 refers  
7 to your testimony at the Whites Point hearing. If  
8 you look at the top right-hand corner of the page,  
9 it says "Paul Buxton"?  
10 A. Yes. Yes.  
11 Q. And starting at line 8 of this  
12 page, you state that:  
13 "The quarrying and ship-loading,  
14 we anticipate that will continue  
15 for 44 weeks of the year."  
16 Do you see that?  
17 A. Yes.  
18 Q. So Bilcon's proposal during the  
19 environmental assessment process was that the quarry  
20 would operate for 44 weeks of the year and that  
21 included both quarrying and ship-loading; correct?  
22 A. Not necessarily, although it does  
23 say that there. The ship-loading is much more --  
24 actually, is probably less sensitive to the weather,  
25 curiously enough, than the quarry -- than the



1 crushing and the reason for that is and the reason  
2 for us talking about a winter stoppage is that

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 --- Upon commencing confidential session under  
15 separate Cover at 2:24 P.M.

16 The next winter we might get a series  
17 of hard frosts the beginning of December and we  
18 might that winter say, that's it, we're shutting it  
19 down.

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 Q. Okay, Mr. Buxton, could I please  
25 get you to turn to paragraph 22 of your first

1 [REDACTED]  
2 Q. Okay, but in the next sentence of  
3 this paragraph you noted that:

4 "The 44 weeks takes into account  
5 the typical bad weather that we  
6 get in January and February."

7 Correct?

8 A. Well, it -- yes, yes, that's  
9 true. January and February can be poor.

10 Q. So you confirmed that during EA  
11 process the plan was to operate the quarry for 44  
12 weeks in the year, but as I understand, in this

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 Q. Sorry, sir, could you just  
19 confirm, is it correct that --

20 A. Yes.

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 witness statement in this phase of the arbitration?

2 A. First one? I'm in the wrong  
3 document here.

4 Q. I'm not sure how your counsel  
5 organized the witness statement but it should be  
6 that first tab.

7 A. Yeah, I think I messed them up  
8 here. Here they are. There are more ones and twos  
9 of the document.

10 Q. Paragraph 22, please.

11 A. In number 1?

12 Q. Yes. In the second sentence here  
13 it refers to

14 [REDACTED] Do you see that?

15 A. Yes, yes.

16 Q. And if [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 A. Yes.

20 Q. And just factually you would  
21 agree that

22 [REDACTED]  
23 [REDACTED]  
24 A. Absolutely, yes, yes.  
25 Q. And could we please turn to  
Exhibit C-1010, which is at tab 6 of the white

1 binder and it is a document entitled "Whites Point  
 2 Operating Costs 2011 to 2015".  
 3 A. You will have to give me that  
 4 again, I'm sorry.  
 5 Q. Tab 6 in the binder.  
 6 A. Tab 6, it is a very short one?  
 7 Q. Yes. Mr. Buxton, this is a  
 8 document that you created?  
 9 A. Yes, it is.  
 10 Q. And you created this document for  
 11 the purposes of this arbitration?  
 12 A. Yes.  
 13 Q. In the table "Personnel Costs"  
 14 under "Hourly Employees", you estimated that there  
 15 would be [REDACTED] working during production?  
 16 A. Yes.  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. Yes.  
 21 Q. Based on your estimates of the --  
 22 for the number of [REDACTED] for the project, you  
 23 would agree that there [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 A. Yes.  
 3 Q. And so you would agree that by  
 4 [REDACTED]  
 5 [REDACTED]  
 6 A. That's generally true, yes.  
 7 Q. Okay, so let's turn now to tab 1  
 8 of your binder. I am going to ask you to turn to a  
 9 lot of tabs today. Page 6 of that document, please.  
 10 Just for the record, that's Exhibit R-581.  
 11 MR. NASH: May I ask Ms. Kam to go a  
 12 little slower, so that we can all catch up.  
 13 MS. KAM: I am just stating these for  
 14 the record.  
 15 MR. NASH: I understand. Could I ask  
 16 you to go a little slower so that we can all catch  
 17 up.  
 18 PRESIDING ARBITRATOR: To go slower.  
 19 Yes, slower.  
 20 MS. KAM: Sure. I'm watching  
 21 Mr. Buxton so... okay. I'm on page 6.  
 22 Great.  
 23 A. Tab 1, project description.  
 24 Q. Great. So according to the first  
 25 sentence in the fourth paragraph:

1 "Bilcon proposed during the EA  
 2 process that project activities  
 3 would include ship-loading of  
 4 approximately 40,000 tons of  
 5 aggregate weekly." [As read.]  
 6 A. Yes.  
 7 Q. Is that still your position now?  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 Q. Do you know what your position  
 20 now is in terms of the amount of tons of aggregate  
 21 that would be produced weekly for this project?  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 On the other aspect of this, we have  
 7 the marine terminal. My experience over the years  
 8 is that people change their minds over time when the  
 9 project is being developed. Their initial concept  
 10 changes, and I wanted to make absolutely sure that  
 11 we, in fact, provided a facility that would be  
 12 practical and would not run into technical problems  
 13 of size deficiency. So, for example, you will see  
 14 in the EIS I talked about a Panamax-size vessel.  
 15 Q. Sorry, Mr. Buxton, if you  
 16 could just limit --  
 17 A. This is important if you want to  
 18 know the answer.  
 19 Q. I just wanted to know what your  
 20 current estimate of the number of tons of aggregate  
 21 that would be produced weekly would be now. I --  
 22 just a number figure. I don't really -- I'm not  
 23 asking about how you derived that figure.  
 24 [REDACTED]  
 25 [REDACTED]

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1 Q. Okay. Okay. Thank you. Well,  
2 let's look up now at the second paragraph on this  
3 page.  
4 A. Still on page 6?  
5 Q. Yes.  
6 A. Yes.  
7 Q. Here it states that annual  
8 production of aggregate product is estimated to be  
9 2 million tons?  
10 A. Yes.  
11 Q. If you turn to page 24 of this  
12 document, it states here, under the first paragraph,  
13 that:  
14 "The Whites Point Quarry was  
15 designed to produce an  
16 approximately 2 million tons per  
17 year over a 50-year project  
18 life." [As read.]  
19 A. Yes.  
20 Q. Do you see that? So you would  
21 agree that Bilcon consistently represented in its  
22 submissions to the government and to the EA process  
23 that it expected to produce 2 million tons per year  
24 over the 50-year life of the project?  
25 MR. NASH: I object to that question.

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1 PRESIDING ARBITRATOR: Wait a minute,  
2 wait a minute. So as I understood it, Ms. Kam  
3 repeated what the substance of the first sentence in  
4 her own words.  
5 MS. KAM: I did.  
6 PRESIDING ARBITRATOR: But she didn't  
7 change the 40,000 or 50 years or 2 million, so I  
8 don't see anything wrong with that.  
9 MR. NASH: She left out the word  
10 "approximately."  
11 MR. SPELLISCY: That is wonderful  
12 coaching of his witness, which is completely  
13 inappropriate. As Mr. Nash has been instructed, we  
14 can put statements of facts, and this was his  
15 position, we can put a statement of facts to the  
16 witness and he can agree or disagree. What he's  
17 done right now is actually coach the witness to  
18 point to a word; it is inappropriate.  
19 MR. NASH: It is entirely  
20 appropriate. When you put a document, the text of a  
21 document, to a witness and then you leave out an  
22 important word, it is improper.  
23 MR. SPELLISCY: This is exactly what  
24 we've had for this past few days, where Mr. Nash has  
25 read documents without putting them to the witness.

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1 That question is not properly stating what the  
2 document says. Can you read the statement from the  
3 document please?  
4 MS. KAM: So the document states, if  
5 you need a quote:  
6 "The Whites Point Quarry is a  
7 small, basalt rock quarry  
8 designed to produce 40,000 tons  
9 of aggregate per week and  
10 approximately 2 million tons per  
11 year over a 50-year project  
12 life." [As read.]  
13 Is that correct?  
14 A. Yes, yes.  
15 Q. So you would agree that Bilcon's  
16 position in its submission was that it expected to  
17 produce 2 million tons per year over the 50-year  
18 life of the project?  
19 MR. NASH: Well, she's left out a  
20 word.  
21 MR. SPELLISCY: He can answer the  
22 question. I believe we've had this discussion  
23 already, Mr. Nash.  
24 MR. NASH: The word that is in the  
25 document --

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1 She read the text of the document word for word and  
2 then she asked Mr. Buxton the question.  
3 If we are going to have counsel  
4 coaching witnesses on how to respond, it's going to  
5 be a problem.  
6 PRESIDING ARBITRATOR: I think both  
7 sides have made their point and I think we will  
8 continue the examination, keeping in mind the  
9 precision with which these things have to be  
10 handled.  
11 Ms. Kam, please continue.  
12 MS. KAM: Mr. Buxton, I will just  
13 repeat my question to you. So Bilcon consistently  
14 represented in its submissions that it expected to  
15 produce 2 million tons per year over the 50-year  
16 life of the project?  
17 A. Actually, I would have to  
18 disagree with that, [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
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 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 Q. Thank you, you just gave a long  
 4 answer, but just to summarize, so your position is  
 5 that [REDACTED]  
 6 [REDACTED]  
 7 A. Yes.  
 8 Q. Is that correct?  
 9 A. Yes.  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 A. That is a correct statement, yes.  
 17 Q. Could we turn to tab 8 of your  
 18 binder, which is Exhibit C-1003.  
 19 The document titled "Bilcon of Nova  
 20 Scotia Corporation Quarry Employment Schedule,  
 21 Whites Point Quarry"?  
 22 A. Yes, yes.  
 23 Q. And you see the document is dated  
 24 October 18th, 2004, and it was revised October 26th,  
 25 2004 and November 5th, 2004; is that correct?

1 A. Yes.  
 2 Q. And you drafted this document  
 3 with Mr. Wall?  
 4 A. Yes.  
 5 Q. If you read the first sentence it  
 6 states:  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [As read.]  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. And so, according to this  
 16 document, you [REDACTED]  
 17 [REDACTED]  
 18 A. That's what it says, yes.  
 19 Q. Could we now turn to tab 1 of  
 20 your binder. Tab 1 of the white binder, please.  
 21 A. Oh, sorry. That's Exhibit R-581.  
 22 Look at the first page of this  
 23 document, it was submitted in November 2006; is that  
 24 correct?  
 25 A. Yes.

1 Q. And you would agree that the  
 2 revised EIS project description was drafted after  
 3 [REDACTED]  
 4 A. Yes.  
 5 Q. Let's turn to page 135 of this  
 6 document.  
 7 A. Got you.  
 8 Q. Okay. You are there?  
 9 A. I'm there, yes.  
 10 Q. And you would agree that here we  
 11 have a response to an information request to Bilcon.  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. And in the response Bilcon states  
 15 that:  
 16 "The capacity of the production  
 17 line will be 48,000 tons per  
 18 week."  
 19 Do you see that?  
 20 A. Yes.  
 21 Q. And you would agree that  
 22 "capacity" refers to the maximum production output  
 23 for the plant?  
 24 A. Yes.  
 25 Q. And if we use these numbers then,

1 producing, I guess, [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. That is correct.  
 5 Q. And producing at this rate, so  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 A. Very slightly less, but  
 10 [REDACTED], yes.  
 11 Q. For your reference, I got  
 12 [REDACTED]; is that correct?  
 13 A. I don't [REDACTED]  
 14 [REDACTED].  
 15 Something like that, [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 A. Yes.  
 19 Q. So you would agree that according  
 20 to the EIS, [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. That's correct, certainly for [REDACTED]  
 24 [REDACTED]  
 25 Q. Well, in order to get

1 [REDACTED]  
 2 [REDACTED]. That's what I got. Does that  
 3 sound correct to you?  
 4 A. Yes.  
 5 Q. So let's turn to paragraph 62 of  
 6 your second witness statement. I'm not sure if  
 7 counsel can assist you with locating that.  
 8 A. I can probably get that. 62?  
 9 Q. 62. You're there?  
 10 A. I -- is that the --  
 11 "I estimate the cost associated  
 12 with the..."?  
 13 Q. That's correct.  
 14 A. Yes.  
 15 Q. So, here you estimate that  
 16 managerial costs during the construction period of  
 17 the Whites Point Project would be approximately  
 18 [REDACTED]; is that correct?  
 19 A. Yes.  
 20 Q. And this [REDACTED] was to be  
 21 incurred in equal proportions during the years 2008  
 22 to 2010?  
 23 A. Yes.  
 24 Q. So in other words, if we divide  
 25 the [REDACTED] over three years, that's

1 approximately [REDACTED] a year?  
 2 A. Yes.  
 3 Q. Of this amount, John Wall was to  
 4 be paid approximately [REDACTED] in the year as the  
 5 quarry manager?  
 6 A. Yes.  
 7 Q. And you would be paid  
 8 approximately [REDACTED] each year as the project  
 9 manager?  
 10 A. Yes.  
 11 Q. Just if we add your salary with  
 12 Mr. Wall's salary, that equals approximately  
 13 [REDACTED] a year from 2008 to 2010?  
 14 A. Yes.  
 15 Q. Did you and Mr. Wall plan to  
 16 continue on in your roles as project manager and  
 17 quarry manager when the project moved on to  
 18 operation?  
 19 A. The project manager phase would  
 20 be -- would be very much -- very much different. We  
 21 agreed that we would project manage the construction  
 22 of the project, which is my forte, and always has  
 23 been, but remembering that some of the major  
 24 elements such as the marine terminal would be dealt  
 25 with in separate contracts. So the marine terminal,

1 somebody would come in and produce the marine  
2 terminal and loading.

3 I anticipated my involvement in terms  
4 of time would be very much less. We would, as we  
5 had, [REDACTED] I  
6 would do things like I would design, [REDACTED]  
7 [REDACTED]. I would --  
8 I would certainly manage the workforce, in general  
9 terms, because that's what I do. And -- but it  
10 would certainly not be a full-time commitment during  
11 the construction, no.

12 Q. So now I'd like you to turn to  
13 paragraph 56 of this witness statement.

14 A. Yes.

15 Q. And here you state that:

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] [As read.]

22 Do you see that?

23 A. Yes.

24 Q. And specifically [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 A. Yes.

3 Q. And just to be clear, in terms of

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 A. No, no. That would [REDACTED]  
8 [REDACTED].

9 Q. Let's turn now to paragraph 6 of  
10 your damages reply witness statement.

11 A. Well -- sorry?

12 Q. Sorry, it's paragraph 6 of the  
13 same witness statement.

14 A. Okay.

15 Q. Here you state that:

16 "There could be no honest basis  
17 to deny the Whites Point Quarry  
18 any of its permits, licenses and  
19 authorizations." [As read.]

20 Is that correct?

21 A. Yes.

22 Q. Okay, but Mr. Buxton, you would  
23 agree that Bilcon of Nova Scotia didn't obtain any  
24 assurances from the federal or provincial government  
25 that it would obtain all licenses, permits and

1 authorizations had the project received approval?

2 A. No, they gave us no assurances  
3 that they would give all the permits, no.

4 --- Upon commencing public session at  
5 2:50 p.m.

6 BY MS. KAM:

7 Q. Can we now just turn to your  
8 second witness statement, paragraph 47 under the  
9 heading "judicial review."

10 A. Yes.

11 Q. Here you estimate that only about  
12 10 to 20 per cent of the information in the first  
13 JRP process would have been useful in a second JRP  
14 process had the project been judicially reviewed; is  
15 that correct?

16 A. Yes.

17 Q. But you don't provide any  
18 evidence to support this statement; is that correct?

19 A. I didn't provide any evidence,  
20 but if you are interested or if the tribunal is  
21 interested, what I can say is this: There were 74  
22 different valued environmental components. I went  
23 through them carefully and I judged which ones would  
24 have to be repeated. Most of those which involved  
25 any biological process, whether it was flora or

1 fauna or most of them that involved any human  
2 effects, would need to be repeated. There were 54  
3 of those. I judged that 20 could probably stand  
4 pretty much as we had in the original document  
5 because they were things like the geology, the  
6 soils, the things which don't change over time and  
7 so they would be largely the same.

8 Two of them were sort of vague and  
9 maybe they would need to be repeated, maybe they  
10 wouldn't. But in terms of time, in my view, in my  
11 view I'd say no more than 10 per cent but I'm quite  
12 happy if somebody can say or somebody would say it's  
13 actually 20 per cent could be used, but I am  
14 convinced that no more than 20 per cent of the  
15 original EIS could be used in a second EIS process.

16 Q. Okay, and Mr. Buxton, earlier on  
17 you confirmed that the Whites Point Project was the  
18 only environmental assessment that you were involved  
19 in that underwent a review panel assessment?

20 A. That is correct.

21 Q. And the Whites Point Project was  
22 not subject to a judicial review; is that correct?

23 A. No, it was not subject to a  
24 judicial review.

25 Q. Okay, and so you would agree that

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1 you don't have any experience being involved in an  
2 environmental assessment that was referred back to a  
3 review panel by a Canadian court?

4 A. Well, I could also say that  
5 there's never been a quarry ever before that's ever  
6 done a Joint Review Panel, so it would have been  
7 rather difficult for me to have any experience. And  
8 so, further than that, had -- this being the only  
9 one that has ever gone through a Joint Review Panel,  
10 I could hardly have any experience of one either  
11 going or not going for a judicial review afterwards.

12 MS. KAM: Okay. Well, thank you,  
13 Mr. Buxton, those are all my questions.

14 PRESIDING ARBITRATOR: Thank you,  
15 Ms. Kam.

16 I will give the floor to Mr. Nash for  
17 the re-direct.

18 RE-EXAMINATION BY MR. NASH:

19 MR. NASH: Mr. Buxton, can you refer  
20 in the witness statement binder -- to your statement  
21 August 18th, 2007. You might have it in front of  
22 you.

23 A. Yes.

24 Q. Could you turn to --

25 PRESIDING ARBITRATOR: Could you

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1 repeat what you said.

2 MR. NASH: Yes.

3 Could you turn to your witness  
4 statement of December -- sorry, August 18th, 2017.  
5 Could you turn, please, to paragraph 20, which was  
6 put to you in your cross-examination.

7 A. Yes, I have that.

8 Q. Paragraph 20 states:

9 "It was widely known and  
10 understood by those involved in  
11 the environmental assessment  
12 process in the 2000s that an EIS  
13 was drafted at an early stage of  
14 the project, was intended to be  
15 conceptual and was naturally  
16 focussed on the environmental  
17 effects of a project and  
18 mitigation measures not the  
19 specifics of the projects'  
20 business model or design."

21 [As read.]

22 A. Yes.

23 Q. With that in mind, which Ms. Kam  
24 put to you, can you comment on the specific figures  
25 that are in the EIS with respect to such things as

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1 40,000 tons or 2 million tons, 40,000 tons for  
2 shipping or 2 million -- approximately  
3 2 million tons, how does that play into the question  
4 of the EIS being at an early stage conceptual  
5 design?

6 A. Yes, I -- I think I was trying in  
7 my rambling explanation of the first question to  
8 sort of come to this.

9 It's not only -- it's not only  
10 understood to be done in the conceptual phase of the  
11 project, but it's an absolute requirement that it's  
12 done then because one of the purposes of an  
13 environmental impact statement is to determine what  
14 the effects are, and most importantly, when you come  
15 up with an effect which has some negative  
16 implication, that you deal with the mitigation at  
17 that stage, before you get to the detailed design.  
18 So, you know, you recognize that something is going  
19 to happen so we're going to deal with it. That's  
20 what an EIS is all about, is defining effects and  
21 then proposing adequate mitigation to nullify those  
22 effects. That's what it's all about.

23 And, really, it matters very little  
24 whether you are producing 40,000 tons or 41,000 tons  
25 per ship or whatever, it is the footprint of the

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1 project which is important, what are you going to  
2 do? Now, if you were to say -- if you were to say  
3 to me, "Well, what about if you went to 8 million?"  
4 Then I'd say, "Now you've got a point" because now  
5 your footprint changes. The whole -- the whole size  
6 of the crushing area, and the noise, and the size of  
7 the load, everything changes, the number of ships,  
8 that's another EIS. All right? But the difference  
9 between 2 million tons, 2.1 million tons,  
10 2.4 million tons, is irrelevant when you are going  
11 back to the purpose of the EIS, which is to define  
12 effects and define how you are going to get rid of  
13 those effects, to nullify them.

14 That's the purpose of an EIS, not to  
15 drive a proponent to describe exactly how he's going  
16 to build this or that, or the size of this crusher  
17 or the size of that conveyer; it is irrelevant.  
18 Sorry, I tend to get carried away on that subject.

19 Q. Is the EIS, from your  
20 perspective, a business plan?

21 A. No.

22 Q. Does it matter --

23 A. No, it has nothing to do with a  
24 business plan.

25 Q. Does it matter from an

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1 environmental impact statement, impact assessment  
2 point of view, whether the ship is going to and from  
3 New Jersey or New York?

4 A. It doesn't matter. And, in fact  
5 and indeed, you will find, with a little more  
6 careful reading of the transcript of the panel  
7 hearings and the EIS, that New York is widely  
8 described as being one of the terminals. [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED] The East River comes down  
12 one side, the Hudson comes down the other side,  
13 there is an embayment, and half of that embayment is  
14 called Raritan Bay. Within a few kilometres, that  
15 is where that ship would be going, whether it was  
16 going to New Jersey or whether it was going to New  
17 York.

18 Q. Would it have any effect from a  
19 ballast standpoint?

20 A. I can't say that. We had had  
21 quite lengthy discussions with the Department of  
22 Fisheries and Oceans with respect to ballast water.  
23 We had looked at the regulations. The regulations  
24 are set by Transport Canada. Any ship that comes  
25 into a Canadian port is bound by those regulations.

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1 A. Well, certainly, he owned the  
2 company at one time. At that time I can't tell you  
3 but certainly close to it.

4 MR. NASH: Could I ask my colleague,  
5 Mr. Little, to distribute some documents that relate  
6 to this very issue, what was said in the EIS.

7 I'm going to ask you first to refer  
8 to the transcript page in front of you, which should  
9 be page 132 from the JRP transcript, and direct your  
10 attention to line 16. And if you could read that  
11 paragraph out, please.

12 A. (Reading):

13 "Mr. Paul Buxton. The  
14 involvement in New Brunswick is  
15 extremely peripheral, if I can  
16 put it that way. The Bayside  
17 Quarry is operated by other than  
18 Clayton interests, however, the  
19 Claytons have a marketing  
20 distribution on Brooklyn Sand and  
21 Gravel which operates out of New  
22 York and a fair amount of the  
23 quantity of material from Bayside  
24 goes to New York. In that  
25 operation, Clayton is a

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1 Unfortunately, most of them are suggestions. And  
2 ships captains can ignore suggestions. However, we  
3 thought that we would provide some background and  
4 some useful information for the Department of  
5 Fisheries and Oceans so we knew we were coming  
6 somewhere from that area, in Raritan Bay, in the  
7 embayment area of New York and New Jersey harbours,  
8 and so we commissioned a study to at least be able  
9 to say, "This is what is in the water." All right.

10 Now, DFO basically said if our ships  
11 follow the guidelines and regulations under  
12 Transport Canada, they have no problem with that.  
13 And we assured them in our EIS, in one of the  
14 commitment statements, that we would ensure -- we  
15 would hire a carrier that, in fact, adhered to those  
16 regulations and guidelines.

17 Q. And to your knowledge, did CSL  
18 adhere to those regulations and guidelines?

19 A. I'm quite sure that C-SL would.

20 That's their business, hauling from  
21 Canada to New York, and further down the coast to  
22 Atlanta, all the way around to Tampa, and you bet  
23 your boots they would comply.

24 Q. That was Paul Martin's company at  
25 the time; correct?

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1 50 per cent partner and is the  
2 managing partner." [As read.]

3 Q. And if you could also then go to  
4 the next document which is part of Exhibit C-001 and  
5 I would ask you to refer to that second full  
6 paragraph which starts out "bulk carriers" and then  
7 go down to the last sentence in that paragraph.

8 A. I'm sorry, you lost me.

9 Q. Sorry, it is the second full  
10 paragraph. It starts out "bulk carriers are  
11 proposed..."

12 A. Okay. Sorry, I'm on the wrong  
13 page.

14 Q. That's okay. "Bulk carriers are  
15 proposed ..."

16 Looking at that paragraph.

17 A. Yes.

18 Q. Then going down to the third from  
19 last line, the sentence stated there, "The primary  
20 destination..."

21 A. (Reading):

22 "The primary destination of the  
23 rock products is the New  
24 York/New Jersey area, and more  
25 specifically, the ultimate



1 destination is South Amboy  
 2 New Jersey."  
 3 Because that's where the grits would  
 4 have gone.  
 5 Q. Now, in 2006 when the EIS was  
 6 submitted, you were not an employee of the Claytons;  
 7 that's correct?  
 8 A. I was never at any time an  
 9 employee of the Claytons.  
 10 Q. You were retained as an  
 11 independent consultant?  
 12 A. That is correct.  
 13 Q. Were you privy to all of the  
 14 internal dealings with respect to -- I'll just ask  
 15 to go into a closed session for a moment.  
 16 --- Upon commencing confidential session under  
 17 separate cover at 3:05 p.m.  
 18 MR. NASH: Were you privy to all of  
 19 the internal dealings with respect to the internal  
 20 relationships of the various Clayton corporations  
 21 and exactly which company from the Clayton Block and  
 22 Sand group, as it was known, was going to be dealing  
 23 with this aggregate coming from Nova Scotia and for  
 24 what purpose?  
 25 A. It was none of my business. I

1 asked the Claytons the questions that I needed to  
 2 complete the design and the environmental impact  
 3 statement. I got clear, concise answers, but I  
 4 never asked them any of their business, what their  
 5 business interest were or anything like that. Since  
 6 then, I have known them better and I know a little  
 7 bit more about their operations, but at that time I  
 8 didn't need to know and I didn't ask.  
 9 Q. Did you need to know exactly  
 10 which company would be receiving the aggregate  
 11 coming from Whites Point, for environmental  
 12 purposes, did you need to know, and which company  
 13 would be receiving it either in New York or in  
 14 New Jersey?  
 15 A. Oh, it was irrelevant to me.  
 16 Q. Was it irrelevant from the  
 17 standpoint of any aspect of the environmental  
 18 assessment impact process in terms of knowing  
 19 exactly what company it was going to and exactly  
 20 where it would be located in the New Jersey/New York  
 21 area?  
 22 A. I really can't think of any major  
 23 changes that would be made to an EIS because it was  
 24 going 15 miles further down the coast or 10 miles  
 25 further down the coast.

1 Q. Or to this company or to that  
 2 company?  
 3 A. It made no difference to the EIS.  
 4 Q. You referred to VECs, valued, I  
 5 think, environmental components?  
 6 A. Yes.  
 7 Q. How were those handled in the  
 8 EIS?  
 9 A. Well, in my view, they were  
 10 handled in the proper way to handle a VEC. Each VEC  
 11 was identified specifically, whether it was  
 12 biological, human, physical, whatever. And each VEC  
 13 was then described. What is it? What are we doing?  
 14 If we're crushing rock, we're making a noise.  
 15 That's the effect. So we deal with the effect. How  
 16 much noise are we making? How long is the noise  
 17 going on? What is the decibel range at the boundary  
 18 of the property? What's the decibel range for the  
 19 safety of the employees? That's the effect.  
 20 Now we come to the most important  
 21 part, the crucial part, which is: How do we mitigate  
 22 that? How do we mitigate the noise? Okay?  
 23 So then I meet with Mr. Wall. He's  
 24 going to manage this quarry. And he has -- he has  
 25 other interests, perhaps, than mine at the time; he

1 is concerned about costs and he's concerned about  
 2 this and that. [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED] -- we are going  
 6 to mitigate all of that noise so that, at the very  
 7 worst, we'll be 65 decibels at the property line.  
 8 That's the mitigation.  
 9 Now we come to the next very  
 10 important thing in an EIS or an environmental  
 11 assessment and that is to say: What is the residual  
 12 effect? What is it -- when we've done all the  
 13 mitigation, what is the residual effect? But if we  
 14 can say, well, there's no more noise that is going  
 15 to be above the 65 decibel -- and I'm talking 65  
 16 decibel now -- way, way on the property line. So  
 17 we've done our job and we would say, yes, it is an  
 18 adverse effect because we are making some noise but  
 19 it is not significant.  
 20 Then we come to the next important  
 21 step: how are we going to prove that to the  
 22 government? We are going to monitor it. We are  
 23 going to monitor the noise 24 hours a day with  
 24 recorders around the periphery of the property and  
 25 they will be recorded permanently for records

1 purposes. That is the procedure which is  
2 fundamental to any environmental assessment. If  
3 that is not done, you don't have an environmental  
4 assessment. I'm sorry, you don't.

5 And we did not -- we did not get  
6 that; our EIS was not -- I'm sorry, I'm going  
7 further -- was not treated to that respect. And  
8 then what you do as a -- as a furtherance is one  
9 collects all the mitigation together and you put it  
10 in a mitigation table, you collect all the  
11 monitoring together, you put it into a monitoring  
12 table, and those become commitments. And if the  
13 panel wants to say, okay, your mitigation looks okay  
14 but we're going to hold you to that, so, Mr.--  
15 Mr. Government, if you are going to give these  
16 people a permit, those should go in as commitments:  
17 They must do this, and they must do that.

18 That's the process.

19 Q. Was that process conducted in  
20 this case in conjunction with regulatory authorities  
21 such as DFO?

22 A. Well, of course. We -- what you  
23 have to do is you have to find the best advice that  
24 you can get, the best experts that you can get,  
25 because you don't want to get caught short, you

1 know, so.

2 MR. SPELLISCY: Excuse me, we are way  
3 beyond the scope of cross-examination now. I  
4 understand Mr. Buxton mentioned in an answer that  
5 wasn't answering the question VECs, but we just had  
6 a question about environmental assessment that's way  
7 beyond the scope.

8 MR. NASH: Well, he was answering a  
9 question about VECs and he explained why they would  
10 have to be -- the reports would have to be re-done  
11 in the case of a judicial review and so that raises  
12 the issue of VECs, how they're developed, how  
13 they're used, and what the process is to arrive at a  
14 conclusion.

15 MR. SPELLISCY: No, that has to do  
16 with -- the question was, "How did you arrive at or  
17 how did you come at this 10 to 20 per cent number?"  
18 In fact, the question was: "You didn't introduce  
19 any evidence of it?" And he said, "No, I did not."  
20 And then we allowed him to elaborate on that.

21 You've now gone into questioning on  
22 what a VEC is, how you do it, we're into  
23 environmental assessment, none of which was in the  
24 cross-examination.

25 MR. NASH: I take your point.

1 If you could go, Mr. Buxton, to tab 1  
2 of the big white binder to your left. I'm referring  
3 to a part of the environmental impact statement and  
4 information request that's at the top of the page:

5 "Confirm the rate of shipment per  
6 week and the annual total."

7 And the response which I believe  
8 Ms. Kam took you to is the design annual --  
9 PRESIDING ARBITRATOR: What page?

10 MR. NASH: I'm sorry, I didn't give  
11 you a page. Page 135. I got ahead of myself.

12 We are at the response to information  
13 request number 6. Do you see that in about the  
14 middle of the page?

15 A. Yes.

16 Q. And it states:

17 "The design annual production and  
18 shipment of all aggregates is  
19 2 million tons."

20 Then you say in the next sentence:

21 "The 44 weeks per year for the  
22 production of aggregates is based  
23 on severe weather conditions  
24 preventing economic operation of  
25 the plant, particularly with

1 respect to the wash operation,"

2 Which you've alluded to earlier on in  
3 your evidence. And:

4 "The capacity of the production  
5 line will be 48,000 tons per week  
6 thus allowing flexibility in  
7 shipments to provide the required  
8 2 million tons." [As read.]

9 So it was that last part that was put  
10 to you. Keeping in mind your statement that was  
11 also put to you that the EIS is conducted at an  
12 early conceptual stage of the project for the  
13 reasons that you've outlined and looking at what is  
14 said here, [REDACTED]

15 [REDACTED], do they affect  
16 the footprint of the project in its general  
17 description that you are going to have a quarry  
18 plant here, the aggregate is going to be shipped to  
19 there on a ship carrying X number of thousands of  
20 tons; does that have an impact from a business  
21 standpoint?  
22

23 A. No, it would not have a -- it  
24 would not have an impact certainly from the  
25 perspective of the EIS. It is just simply not a big

1 enough -- a big enough change.  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]

17 Q. You were referred in your  
 18 August 18th, 2017 witness statement to the question  
 19 of -- if you go to paragraph 6, page 2 of that  
 20 statement, Ms. Kam took you to the fourth line of  
 21 paragraph 6, which states, where you state:  
 22 "There could be no honest basis  
 23 to deny the Whites Point Quarry  
 24 any of its permit, licenses and  
 25 authorizations including the

1 Navigable Waters Protection Act  
 2 and the Fisheries Act  
 3 authorizations."

4 And Ms. Kam asked you: Were you given  
 5 any promises or assurances that you would get those  
 6 permits, and you said, "no."

7 Can you advise the tribunal of what  
 8 your expectations were at the time?

9 A. I think my expectations are set  
 10 out in this paragraph, and I think there are four  
 11 similar paragraphs where I use the word "honest",  
 12 and I use the word "honest" in this paragraph and  
 13 four other paragraphs after significant thought.

14 "Honest" means free of deceit, it  
 15 means trustworthy and sincere. And it is one of  
 16 those adjectives which cannot suffer gradation, it  
 17 is an absolute. It's words like sincere,  
 18 legitimate, honourable, if you like, they are  
 19 absolute. So because they are absolute, they are  
 20 not capable of partial diminution. You can't be a  
 21 little bit honest, just as you can't be a little bit  
 22 pregnant. You are either honest or you're not.

23 I'm saying if we had an honest  
 24 process in the second part for all the other permits  
 25 that we required, the industrial permit, permits

1 required under Section 35 of the Fisheries Act,  
 2 Beaches Act that sort of thing, if we had had an  
 3 honest process, I'm absolutely, absolutely sure that  
 4 we would have got all the necessary permits.

5 Let me just add this. I'm in this  
 6 business. I do environmental assessments for a  
 7 living. And in the last five years, I have got  
 8 permits and approvals, and I'm guessing a little bit  
 9 here, for about 240 projects. I've never had one  
 10 denied.

11 The field offices of the Department  
 12 of the Environment, Province of Nova Scotia, are  
 13 filled with very fine people, very dedicated people,  
 14 very good people. And amongst those approvals,  
 15 there were 82 mink farms. If you think a quarry  
 16 might be bad, you want to go on a mink farm with  
 17 350,000 animals. All those EISs were done and  
 18 approved and all those mink farms were licensed.

19 So I'm aware of the process, I'm  
 20 aware of the standards, and I have absolutely no  
 21 doubt whatsoever. And, in fact under section 35, we  
 22 virtually had a promise from the Department of  
 23 Fisheries and Oceans that they would give us the  
 24 permit for Section 35 for habitat destruction. And  
 25 there was no Section 32, so we would be looking at

1 an industrial approval and then applications under  
 2 the Beaches Act, et cetera, et cetera, and I have no  
 3 doubt whatsoever that we would have gotten  
 4 industrial approvals. I get industrial approvals  
 5 all the time for mink oil plants, for highway --  
 6 rail crossings, all kinds of things. And they are  
 7 very good, very good people at the Department of  
 8 Environment and the regional offices, they are  
 9 dedicated, sincere, very good people, and they are  
 10 there to protect the environment and they do their  
 11 job, and I have no doubt that we would have got  
 12 permits.

13 Q. Could you turn, please, to tab 6  
 14 of the large white binder, the first page. Ms. Kam  
 15 referred you to that as well.

16 A. Yes.

17 Q. At the same time, could you turn  
 18 in your second -- let's get to tab 6 first in the  
 19 big white binder.

20 A. I'm in tab 6. Give me a page  
 21 number.

22 Q. Tab 6 should be the first -- the  
 23 first page should be "personnel cost", if we're in  
 24 the same binder.

25 A. Tab 6.

1 Q. Ms. Kam took you to that document  
 2 but she also took you to another related paragraph  
 3 and that is paragraph -- sorry, August 18th, 2017  
 4 statement. That's the second statement.  
 5 A. Yes.  
 6 Q. And it's paragraph 56 that she  
 7 took you to on page 13. And she touched upon  
 8 Exhibit 5 to your December witness statement --  
 9 [REDACTED]  
 10 [REDACTED]  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. And then she took you to tab 6 on  
 14 the other binder.  
 15 A. Yes.  
 16 Q. And she referred to [REDACTED]  
 17 and she also asked you questions about management  
 18 and the management from 2008 to 2010?  
 19 A. Yes.  
 20 Q. For [REDACTED] a year?  
 21 A. Yes.  
 22 Q. [REDACTED] allocated to John Wall,  
 23 [REDACTED] allocated to you?  
 24 A. Yes.  
 25 Q. And then we looked at the

1 personnel cost. Could you look down on the  
 2 personnel cost in tab 6 to the -- near the bottom  
 3 line of the first table, under "management"?  
 4 A. Yes.  
 5 Q. Was that the management amount  
 6 allocated for the operation of the project for  
 7 [REDACTED]  
 8 A. Yes.  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 MR. NASH: Thank you, Mr. Buxton,  
 15 those are my questions.  
 16 PRESIDING ARBITRATOR: Thank you,  
 17 Mr. Nash. Let me ask respondents, no further  
 18 questions?  
 19 That takes us to the Tribunal, and  
 20 Arbitrator Schwartz has a number of questions to  
 21 you.  
 22 PROFESSOR SCHWARTZ: I think we're in  
 23 confidential session right now because I'm going to  
 24 ask you about some stuff in tab 6 of the binder.  
 25 THE WITNESS: Okay, got it, yes.

1 QUESTIONS BY THE ARBITRAL TRIBUNAL  
 2 PROFESSOR SCHWARTZ: First of all, on  
 3 the obverse page it says, [REDACTED]  
 4 [REDACTED]  
 5 THE WITNESS: Yes.  
 6 PROFESSOR SCHWARTZ: Would you --  
 7 again, trying to keep this crisp and succinct, what  
 8 does that mean?  
 9 THE WITNESS: [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 Now, if you go into the -- which we  
 17 don't unfortunately have here, but if you refer to  
 18 the [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 For example, we committed, and if you  
 6 look in the commitment table, to elements like we  
 7 would bring in an expert to make sure that the  
 8 glaucous rattlesnake root, which was said to be  
 9 extirpated but which we found hundreds of copies on  
 10 the site were being well-protected, that we were  
 11 doing exactly what the plan called for to protect  
 12 them. So that would be bringing somebody in from  
 13 the outside to do that.  
 14 In the first year, we would do much  
 15 more of that than in subsequent years. So if you  
 16 take a look at the schedule, you will see in the  
 17 first year, [REDACTED], so the first year, we're  
 18 at [REDACTED] to bring in these experts and  
 19 also to sort of -- to do the base parameters to  
 20 check before we start producing, the status of the  
 21 plants, et cetera, et cetera. So that's what that's  
 22 for.  
 23 Then as you go on, that drops off  
 24 [REDACTED]  
 25 because for some of the environmental

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1 reporting, we said that we would report, let's say  
2 every three years, bring an expert in every five  
3 years, et cetera, so, that those three elements make  
4 up the environmental costs of the project.

5 PROFESSOR SCHWARTZ: So, as I  
6 understand it, one of the ways you deal with  
7 uncertainty is monitoring and then potential  
8 mitigation efforts if the monitoring reveals a  
9 problem.

10 THE WITNESS: Yes, yes.

11 PROFESSOR SCHWARTZ: Does the figure  
12 you have here which drops off, does that include a  
13 contingent element to pay for further mitigation  
14 measures that become necessary after monitoring?

15 THE WITNESS: No, it didn't, although  
16 we describe in the -- generally in our EIS, the  
17 entire concept of adaptive management, which  
18 unfortunately got misunderstood. Adaptive  
19 management is an acceptable approach, just as you've  
20 described it. So we describe mitigation, we monitor  
21 it and we find that, wow, we don't quite meet the  
22 standard. So what do we do? We need to do more  
23 mitigation. We need to change this process. We  
24 need to change that process.

25 What we did, and we committed to in

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1 and so on, and also the quarry would pay the  
2 assessment, taxes, the municipal taxes, and of  
3 course we'd pay for everything we bought, the HST.  
4 So those costs or those benefits to the province and  
5 the municipality and federal government would be  
6 paid by Bilcon of Nova Scotia.

7 PROFESSOR SCHWARTZ: Okay, maybe this  
8 is something we should have remembered from the  
9 earlier proceedings but could you just refresh our  
10 memory here. You mentioned very recently you were  
11 an independent consultant.

12 THE WITNESS: Yes.

13 PROFESSOR SCHWARTZ: An independent  
14 consultant to whom, to Bilcon of Nova Scotia, to  
15 Bilcon of Delaware, to the Claytons?

16 THE WITNESS: To Bilcon of Nova  
17 Scotia. I receive monies from Bilcon of Nova Scotia  
18 for my services.

19 PROFESSOR SCHWARTZ: I'm looking at  
20 your witness statement.

21 THE WITNESS: Yes.

22 PROFESSOR SCHWARTZ: Paragraph 33.

23 THE WITNESS: The second witness  
24 statement? August?

25 PROFESSOR SCHWARTZ: The one dated

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1 many forms, is that whatever it took, we would spend  
2 to meet the commitments that we'd made. So -- and  
3 it's hard to -- you know, we think our mitigation is  
4 pretty thorough, and very expert and very thorough,  
5 but if that happened, you're right, that could go,  
6 in one year, [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 PROFESSOR SCHWARTZ: Thank you. Now,  
14 just looking at the chart generally, it says  
15 [REDACTED] and then it says 2011.

16 THE WITNESS: Yes.

17 PROFESSOR SCHWARTZ: Whose personnel  
18 costs are those? Are those Bilcon of Nova Scotia?  
19 Are they the Bilcon of Delaware? To be determined?  
20 How do we understand who is absorbing those costs?

21 THE WITNESS: These costs are the  
22 cost of operating the quarry which would be operated  
23 by Bilcon of Nova Scotia. So these people would be  
24 employees of Bilcon of Nova Scotia and they would  
25 pay provincial taxes and federal taxes, and so on

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1 December 13th, 2016.

2 THE WITNESS: Oh, sorry.

3 PROFESSOR SCHWARTZ: I've got it as  
4 tab K in this large binder.

5 THE WITNESS: Yes, I'm with you.

6 PROFESSOR SCHWARTZ: I will just read  
7 it out:

8 "The amounts the investors  
9 expended on the Whites Point  
10 Quarry up to and including  
11 December 18th, 2007, total  
12 [REDACTED]"

13 THE WITNESS: Yes. Could you give me  
14 the paragraph? I'm sorry.

15 PROFESSOR SCHWARTZ: Paragraph 33,  
16 I'm sorry.

17 THE WITNESS: Yes.

18 PROFESSOR SCHWARTZ: Paragraph 33 on  
19 page 8. So how should the panel understand that in  
20 terms of those are amounts expended by Bilcon of  
21 Nova Scotia, by Bilcon of Delaware, by some  
22 combination of the Clayton family.

23 THE WITNESS: Okay, the vast majority  
24 of those are expenditures by Bilcon of Nova Scotia  
25 and the procedure is and was that every two weeks I

1 would prepare an indent, if you like, a claim, to  
2 the Claytons for the amount of money expended in  
3 that period. And I would then, probably within  
4 three or four days, receive a cheque from the  
5 Claytons. That was paid into the bank account of  
6 Bilcon of Nova Scotia, and I then paid consultants,  
7 staff, anybody that needed to be paid. So, that is  
8 the vast majority of the consultants would have been  
9 paid by Bilcon of Nova Scotia. [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 Now, that amount is included in this  
14 but it was not paid by Bilcon of Nova Scotia. Does  
15 that -- does that --

16 PROFESSOR SCHWARTZ: That's very  
17 helpful. If we were looking through the materials,  
18 we would be able to identify those two individuals  
19 and find out the amount?

20 THE WITNESS: Yes.

21 PROFESSOR SCHWARTZ: Just to give us  
22 a head start, can you recall some names?

23 THE WITNESS: Yes. The material that  
24 we have, first of all, it shows all these two weekly  
25 periods and you can then pick each one that you want

1 out, click on an item on it, and the invoice will  
2 pop up, okay?

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] So they are  
8 there and you can pick those out. Yes.

9 PROFESSOR SCHWARTZ: Thank you very  
10 much.

11 PRESIDING ARBITRATOR: I have a  
12 couple of questions.

13 THE WITNESS: Yes.

14 PRESIDING ARBITRATOR: The first one  
15 is as follows, with regard to the Maritimes  
16 transport down to New Jersey/New York.

17 THE WITNESS: Yes.

18 PRESIDING ARBITRATOR: Is my  
19 understanding correct that the [REDACTED]

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 THE WITNESS: Yes.

1 PRESIDING ARBITRATOR: [REDACTED]

2 [REDACTED]  
3 THE WITNESS: Yes.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 THE WITNESS: Yes, yes.

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 PRESIDING ARBITRATOR: That gets me  
20 to that -- that gets me to this opinion on the --  
21 let's say environmental risks on plankton, et  
22 cetera, et cetera, et cetera.

23 THE WITNESS: Yes.

24 PRESIDING ARBITRATOR: So there  
25 couldn't be a difference with regard to, let's say

1 dangerous stuff in the water between the East River  
2 navy yard and the area in New Jersey with regard to  
3 invasive species.

4 THE WITNESS: Oh, invasive species.  
5 I can't tell you that. It would certainly bear out  
6 everything that comes down the Hudson, and my guess  
7 is that it would also represent a lot of the  
8 material, whatever it is that is coming down the  
9 East River. The line between New York and  
10 New Jersey is a very fragile line. If you are  
11 flying on one side of the Hudson, you are in  
12 New Jersey. If you fly on the other side, you are  
13 in New York.

14 And there was talk at one point --  
15 there was a channel, I believe it's called the  
16 Elizabeth Reach, which goes from sort of the foot,  
17 almost, of -- or lower down than Manhattan, through  
18 -- and I think Staten Island is on the other side  
19 and then it comes out again and in that area it  
20 would have been possible, [REDACTED]

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 And so, yes, Raritan Bay is a big  
25 area in there and I think it would be generally

1 representative. It would be difficult to know where  
2 to take a sample from, and our consultants took one  
3 from Raritan Bay. It is just a -- you could call  
4 the whole bay area the Raritan Bay, but it is shown  
5 separately on most mapping as sort of coming down  
6 almost -- almost into the Brooklyn side. So I think  
7 it would be fairly representative.

8 PRESIDING ARBITRATOR: Okay, my  
9 second question is as follows: In one of your  
10 reports there was a paragraph which was shown, I  
11 think, which said:

12 "In case a new EIS would have  
13 been produced only 10 to  
14 20 per cent of the materials  
15 would still have been of use."

16 THE WITNESS: Yes.

17 PRESIDING ARBITRATOR: I think  
18 "useful."

19 THE WITNESS: Yes.

20 PRESIDING ARBITRATOR: And then  
21 you -- this was a question that you discussed with  
22 Ms. Kam, and there I had a problem because there  
23 what you said was 10 to 20 per cent of the material  
24 could be repeated. I think you used the word  
25 "repeated" or "repeatedly submitted", and I mean

1 that could mean --

2 THE WITNESS: Could be reused, could  
3 be reused.

4 PRESIDING ARBITRATOR: While 80 to  
5 90 per cent --

6 THE WITNESS: Would have to be  
7 re-done.

8 PRESIDING ARBITRATOR: Re-done.  
9 Okay.

10 THE WITNESS: Yes.

11 PRESIDING ARBITRATOR: So revised?

12 THE WITNESS: Well, you are talking  
13 about -- let me give you a good example, which is  
14 very current and it concerns one of our, obviously,  
15 major VECs and that is marine endangered species,  
16 the North Atlantic Right Whale. So we put mapping  
17 in the EIS which showed the occurrence of the Right  
18 Whale in the Bay of Fundy, which is where this  
19 quarry would have been. While it is well away from  
20 the...

21 PRESIDING ARBITRATOR: May I say -- I  
22 don't want to be impolite but I think what you  
23 wanted to say was --

24 THE WITNESS: Things change. They  
25 changed dramatically in a very short period of time.

1 So --

2 PRESIDING ARBITRATOR: That's fine.

3 THE WITNESS: -- there was a lot of  
4 whales then. Some years there are no North Atlantic  
5 Right Whales or five, let's say now.

6 So, you are talking about a whole  
7 different set of circumstances now, and this would  
8 have occurred with every biological feature. Any  
9 panel would have said, "Well, the Harlequin duck  
10 weren't a problem in 2006 when you submitted but  
11 maybe they're a problem now." And I've got to sit  
12 somebody out there for six months all winter, to see  
13 whether there are any Harlequin duck wintering in  
14 Whites Cove. It's got to be done again. Okay?

15 PRESIDING ARBITRATOR: Right, thank  
16 you. Mr. Nash has a question.

17 FURTHER RE-EXAMINATION BY MR. NASH:

18 MR. NASH: Mr. Buxton, Professor  
19 Schwartz asked some questions about mitigation and  
20 costing and how those issues folded together into  
21 the budget.

22 As I understand it, in the EIS, there  
23 are commitments made which incorporate mitigation  
24 and monitoring measures; is that right?

25 A. Yes.

1 Q. And are those costed in the  
2 budget that we were reviewing earlier?

3 A. Absolutely.



16 Q. How about the monitoring for the  
17 North Atlantic Right Whale or other marine mammals?

18 A. Yes, that's taken into account,  
19 yes.

20 Q. Going back to paragraph 33 which  
21 Professor Schwartz put to you in your --

22 A. Yes.

23 Q. -- witness statement. I think  
24 you still have it in front of you.

25 A. Yes.

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1 Q. The reference is to the amounts  
2 that the Investors expended on the Whites Point  
3 Quarry. Professor Schwartz asked you whether those  
4 expenses were made by Bilcon of Nova Scotia. Do you  
5 know where those funds originated to make the  
6 payments, to make the payments of Bilcon of Nova  
7 Scotia to the various consultants and other people  
8 that were paid out of the Bilcon of Nova Scotia bank  
9 account?

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 And thank you Mr. Buxton, those are  
19 my questions.

20 I have one comment after Mr. Buxton  
21 is excused.

22 PRESIDING ARBITRATOR: Thank you very  
23 much. Any reaction to that on the part of  
24 respondents? There does not seem to be. No?

25 MR. SCOTT LITTLE: No, thank you.

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1 PRESIDING ARBITRATOR: Thank you.  
2 That brings to an end your witness examination.  
3 Thank you for your presence and cooperation.  
4 Oh, do you have a question?

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 MR. NASH: We'll give you a list.

10 PRESIDING ARBITRATOR: You'll  
11 identify them.

12 MR. NASH: We're going to do that.  
13 We'll identify them and provide with you a list.

14 MR. SPELLISCY: I'm sorry, I didn't  
15 quite understand. In the existing record?

16 MR. NASH: In the existing record.

17 PRESIDING ARBITRATOR: Okay. Yes,  
18 okay. Thanks again.

19 THE WITNESS: Thank you very much.

20 PRESIDING ARBITRATOR: You are  
21 released and thanks for coming.

22 I think the time is right for a  
23 coffee break.

24 MR. NASH: May I just make one more  
25 comment, just following up on your point to

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1 Mr. Buxton. It is to be recalled -- it is in the  
2 evidence and you can ask Mr. Dooley about it -- that  
3 [REDACTED] already down  
4 to --

5 MR. SPELLISCY: I'm sorry, is this  
6 argument?

7 MR. NASH: No, it's not argument. It  
8 is to assist the Tribunal in any lack of charity  
9 clarity there might be so far.

10 MR. SPELLISCY: Is this evidence  
11 then? There is no witness on the stand.

12 PRESIDING ARBITRATOR: What do you  
13 intend to --

14 MR. NASH: You were asking the  
15 question of Mr. Buxton about the [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 PRESIDING ARBITRATOR: I think I was  
20 fine with the answer.

21 MR. NASH: Oh, you were.

22 PRESIDING ARBITRATOR: Okay, now we  
23 have the coffee break and we start again at  
24 4:00 p.m.

25 --- Recess taken at 3:46 p.m.

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1 --- Upon resuming at 4:04 p.m.

2 --- Upon commencing in public session at 4:04 p.m.

3 PRESIDING ARBITRATOR: Before we  
4 start the witness examination of Mr. Morrison, let  
5 me mention the point of how to spend time in the  
6 evenings in Toronto.

7 I've just heard that there are  
8 various, let's say various views on the kind of  
9 little humour inserts in the transcript. It doesn't  
10 have to go into the -- but I want to say the  
11 Tribunal is ready to sit until 7:00 o'clock every  
12 night, meaning tonight. Friday.

13 In principle, we would also be ready  
14 to spend some time on Monday here and I think the  
15 outfit would be available for that, but my guess is  
16 from some -- looking at some of the faces, that you  
17 would really prefer to sit longer into the evenings  
18 and have Monday for the preparation of your  
19 concluding statements.

20 MR. NASH: The parties are in  
21 agreement on that.

22 PRESIDING ARBITRATOR: Finally, we  
23 have found a point. That can go into the record  
24 because it is so rare.

25 We are ready to sit here until 7:00



1 and maybe not even look nervously at our watches at  
2 7:00 so that we can, let's say, get to an end by  
3 Saturday night. All right. Saturday will be a full  
4 day and the 7:00 o'clock, I think, also applies to  
5 Saturday. Okay, is that all right? Thank you.  
6 Now, we turn to the examination of  
7 Mr. Morrison.  
8 Mr. Morrison, will you please read  
9 out the statement that --  
10 THE WITNESS: Declaration for expert.  
11 I solemnly declare honour and  
12 conscience that I will speak the truth, the whole  
13 truth and nothing but the truth and that my  
14 statement will be in accordance with my sincere  
15 belief.  
16 AFFIRMED: MR. WAYNE MORRISON:  
17 PRESIDING ARBITRATOR: Thank you and  
18 I give the floor to Mr. Johnston for the direct.  
19 MR. JOHNSTON: Thank you, Judge  
20 Simma.  
21 EXAMINATION-IN-CHIEF BY MR. JOHNSTON:  
22 Q. You are Wayne Morrison?  
23 A. Yes, I am.  
24 Q. You signed two expert reports in  
25 this arbitration?

1 marketing and customer service -- director, pardon  
2 me, of marketing and customer service for Canada  
3 Steamship Lines?  
4 A. That's correct, yes, I was.  
5 Q. And what is Canada Steamship  
6 Lines?  
7 A. Canada Steamship Lines is one of  
8 the largest shipping companies in Canada. They own  
9 bulkers and self-discharging vessels on the Great  
10 Lakes. They also own subsidiaries in North American  
11 down in Boston. They have CSL Americas, they have  
12 CSL Australia, they have CSL Europe.  
13 The ships that operate in CSL  
14 Americas are members of a pool operation which they  
15 share -- the ships that are put into that pool  
16 belong to Henning Oldendorff, Oldendorff carriers  
17 out of Lübeck, CSL, Canada Steamship Lines, out of  
18 Montreal, and Algoma Steamship Lines out of St.  
19 Catharines, Ontario?  
20 A. Right, sorry.  
21 Q. And you've also, Mr. Morrison,  
22 held numerous executive positions with industry and  
23 professional associations, including as the director  
24 of the New York Trade and Coal Association?  
25 A. That's correct.

1 A. Yes, I did.  
2 Q. And your first expert report is  
3 dated December 9th, 2016 and your second report is  
4 dated August 18th, 2017?  
5 A. That's correct.  
6 Q. And you hold a Bachelor's of  
7 Business Administration and Master's of Business  
8 Administration?  
9 A. Correct.  
10 Q. And you are the president and  
11 owner of Tamarack Coal and Resources?  
12 A. That's correct.  
13 Q. And Tamarack Coal and Resources  
14 brokers, arranges and manages shipping for cargo  
15 internationally, including bulk cargoes such as coal  
16 and aggregates?  
17 A. That is correct.  
18 Q. And through Tamarack you have  
19 arranged and managed shipping for cargo  
20 internationally since 2007?  
21 A. That is correct.  
22 Q. And you continue to do so today?  
23 A. Continue today.  
24 Q. And previously, for approximately  
25 20 years, Mr. Morrison, you were the director,

1 Q. And as a member of the executive  
2 council of the Shipping Federation of Canada?  
3 A. That is correct.  
4 Q. And as the vice-chair of the  
5 Halifax Shipping Association?  
6 A. Yes.  
7 Q. And as a member of the  
8 Newfoundland Offshore Industry Association?  
9 A. Yes.  
10 Q. And, sir, have you had a chance  
11 to review your statements before today?  
12 A. Yes.  
13 Q. Do you have any corrections that  
14 you would like to make to your statements?  
15 A. Yes, I have one correction that  
16 sort of leads into two. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
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 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
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 20 PRESIDING ARBITRATOR: Thank you, Mr.  
 21 Johnston.  
 22 The cross-examination will be done by  
 23 Ms. Zeman. You may have the floor, Ms. Zeman.  
 24 CROSS-EXAMINATION BY MS. ZEMAN:  
 25 MS. ZEMAN: Good afternoon,

1 Mr. Morrison.  
 2 A. Good afternoon.  
 3 Q. My name is Krista Zeman and I am  
 4 counsel for Canada in this arbitration.  
 5 PRESIDING ARBITRATOR: Just maybe  
 6 give us a chance to get a hold of all the binders.  
 7 MS. ZEMAN: Sure, I was just  
 8 introducing myself but, yes, I can wait.  
 9 PRESIDING ARBITRATOR: Okay, we are  
 10 fine.  
 11 MS. ZEMAN: So as I was saying, my  
 12 name is Krista Zeman. I'm counsel for Canada. I  
 13 think you've been sitting here for a little while so  
 14 you know the drill, you've got the binder in front  
 15 of you, we'll pull the documents up on the screen  
 16 and if you don't -- and if you don't understand the  
 17 question I'm asking let me know and I'll do my best  
 18 to reframe.  
 19 Equally we don't have a lot of time  
 20 together so I'd appreciate a "yes" or "no" to the  
 21 extent that's possible. And I'll do my best to  
 22 allow you to provide any necessary context that you  
 23 feel is necessary.  
 24 Does that sound like an agreeable way  
 25 forward?

1 A. It would be good.  
 2 Q. So, before I start my questions,  
 3 I'd like to go into confidential session. Just a  
 4 note for the record.  
 5 --- Upon commencing confidential session under  
 6 separate cover at 4:13 p.m.  
 7 BY MS. ZEMAN:  
 8 Q. So, as Mr. Johnston introduced to  
 9 you in his direct, so you worked for Canada  
 10 Steamship Lines or CSL as we'll refer to them, until  
 11 2007; correct?  
 12 A. That's correct.  
 13 Q. And your most recent role as  
 14 director of marketing and customer relations?  
 15 A. Customer service.  
 16 Q. And in that capacity you were  
 17 directly involved in the negotiation of contracts of  
 18 affreightment is another one, another short form,  
 19 COAs; is that right?  
 20 A. Yes. Contracts of affreightment.  
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Q. I'd like to go to tab 1 of your binder. For the record the is exhibit R-581 which is the revised product description that Bilcon submitted to regulators in November of 2006.

I'd like to go to page 6.

A. Page 1 has 103?

Q. Yeah, I think it's -- sorry, it's an excerpt. I should have noted that. It is an excerpt from R-581 so it should be the number 6 which should be closer to the front of the document.

A. Mine starts with "7".

Q. Oh, okay, maybe we can blow it up on screen here.

A. That's what I had -- numbers...

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Q. So on the fourth paragraph down, the first sentence reads:

"Water-based infrastructure and activities will include the ship-loading of approximately 40,000 tons of aggregate weekly."

[As read.]

Do you see that?

A. Yes.

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16 [REDACTED]  
17 (Simultaneous speakers - unclear)  
18 COURT REPORTER: One at a time,  
19 please.  
20 A. -- it would be --  
21 (Simultaneous speakers - unclear)  
22 [REDACTED]  
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 6 Q. I'd like to turn to tab 1 of your  
 7 binder again, which is Exhibit R-581.  
 8 I'd like to go to page 137 which  
 9 hopefully is actually in there. In response to the  
 10 second question on the page, Bilcon answers that it  
 11 anticipates employing Panamax sized vessels  
 12 initially; do you see that?  
 13 A. Yep, yes, I do.  
 14 Q. If we can turn back to page 103  
 15 of this document, I think you may have flipped past  
 16 it before. We are looking for a picture.  
 17 A. CSL Spirit.  
 18 Q. CSL Spirit and that's a Panamax  
 19 sized ship; correct?  
 20 A. Yes, it is.  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
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 5 [REDACTED] That came into effect in 2014 that you  
 6 have an ECA, Environmental Controlled Area, EC-A,  
 7 and so in North American and parts of Europe and the  
 8 Caribbean, when you came within 250 -- I think it's  
 9 200 miles or 250 miles of the coastline, you have to  
 10 burn fuel that is less than 1 per cent sulfur.  
 11 [REDACTED]  
 12 [REDACTED]  
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 24 [REDACTED]  
 25 Q. So, Mr. Morrison, you said that

1 those regulations came into effect in 2014.  
 2 A. That's correct, yeah.  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
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 6 Q. Mr. Morrison, I am cognizant of  
 7 the time?  
 8 A. Sorry, I --  
 9 Q. Just to say I have no further  
 10 questions so...  
 11 A. Oh, I'm sorry.  
 12 PRESIDING ARBITRATOR: Mr. Morrison,  
 13 as far as I'm concerned you could go on forever.  
 14 THE WITNESS: I'm sorry.  
 15 PRESIDING ARBITRATOR: That's my  
 16 personal --  
 17 [REDACTED]  
 18 [REDACTED]  
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 13 PRESIDING ARBITRATOR: Unfortunately,  
 14 we need to --  
 15 THE WITNESS: Sorry, go ahead. I  
 16 apologize.  
 17 PRESIDING ARBITRATOR: I give the  
 18 floor Mr. Johnston for the re-direct.  
 19 RE-EXAMINATION BY MR. JOHNSTON:  
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 17 [REDACTED]  
 18 [REDACTED] I've heard the term "COA". Are  
 19 those two terms interchangeable? Is a COA a  
 20 contract of affreightment?  
 21 (Unclear: multiple speakers)  
 22 COURT REPORTER: One at a time,  
 23 please.  
 24 MR. JOHNSTON: Sorry?  
 25 THE WITNESS: Yes, contract of

1 affreightment and COA --  
 2 COURT REPORTER: One at a time  
 3 please. I can't take two people speaking at the  
 4 same time.  
 5 MR. JOHNSTON: Even though you may  
 6 anticipate the question, you need to wait until I  
 7 finish asking --  
 8 A. Oh, I'm sorry.  
 9 MR. JOHNSTON: Madam Reporter, may we  
 10 proceed?  
 11 COURT REPORTER: Yes.  
 12 PRESIDING ARBITRATOR: I think  
 13 probably Mr. Morrison can just repeat.  
 14 COURT REPORTER: It will be on the  
 15 back-up.  
 16 MR. JOHNSTON: No, I was simply just  
 17 confirming that the use of "COA," those three  
 18 letters refers to contract of affreightment because  
 19 I heard those three letters used in Mr. Morrison's  
 20 testimony and simply wanted to ensure that that was  
 21 clarified and that is correct, sir?  
 22 A. Correct.  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

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17 [REDACTED]  
18 [REDACTED]  
19 Q. And you mentioned, sir, the  
20 initials ECA; is that --  
21 A. ECA.  
22 Q. -- Environmental Control Area, is  
23 that what it stands for?  
24 A. Yeah, Environmental Control Area,  
25 yes.

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 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. You were also asked about the EIS  
 19 or project description; do you recall those  
 20 questions?  
 21 A. Yes. The --  
 22 Q. The Bilcon EIS, Environmental  
 23 Impact Statement?  
 24 A. Yeah.  
 25 Q. You recall those questions?

1 A. I do.  
 2 Q. Prior to preparing the reports  
 3 tendered in this arbitration, had you reviewed the  
 4 Bilcon EIS statement?  
 5 A. No.  
 6 Q. You hadn't reviewed the project  
 7 description?  
 8 A. No.  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 MR. JOHNSTON: Thank you. Those are  
 24 my questions on re-direct.  
 25 PRESIDING ARBITRATOR: Thank you.

1 Any further questions from the respondent?  
 2 Questions from the tribunal?  
 3 THE WITNESS: I'm free.  
 4 PRESIDING ARBITRATOR: I wouldn't  
 5 have any. That would concludes the witness  
 6 examination. Thank you very much for your presence  
 7 and for your input and you are free to go.  
 8 THE WITNESS: Thank you very much,  
 9 Judge Simma. I appreciate, it gentlemen. Thank  
 10 you.  
 11 PRESIDING ARBITRATOR: I think we  
 12 probably need a break. How many -- maybe.  
 13 MR. SPELLISCY: I'm in your hands. I  
 14 could certainly use --  
 15 PRESIDING ARBITRATOR: If we go on  
 16 until 7:00 which might be the case if we can handle  
 17 hand Mr. Dooley to the end, right? So give us 10  
 18 minutes.  
 19 MR. SPELLISCY: Sure. Both Mr. Nash  
 20 and I had hoped, perhaps, optimistically we might  
 21 get through Mr. Dooley and Mr. Fougere but --  
 22 PRESIDING ARBITRATOR: Tonight?  
 23 MR. SPELLISCY: Perhaps we are on the  
 24 sunny side of life. We will have to see. Certainly  
 25 we can get through Mr. Dooley.

1 MR. NASH: We had agreement.  
 2 PRESIDING ARBITRATOR: Great,  
 3 wonderful. So we'll start again at 5:45.  
 4 --- Recess taken at 5:35 p.m.  
 5 --- Upon resuming at 5:45 p.m.  
 6 --- Upon commencing public session at 5:46 p.m.  
 7 PRESIDING ARBITRATOR: Now we can go  
 8 on the record. Just before we start the  
 9 cross-examination of Mr. Dooley, let me indicate  
 10 that the tribunal has decided that it would be  
 11 ready -- in addition to starting at 8:30 and going  
 12 to 7:00 to also cut the lunch break to 45 minutes  
 13 and sandwiches to do everything possible to get you  
 14 off that Monday for your own preparation.  
 15 Do you agree?  
 16 MR. NASH: Agree.  
 17 PRESIDING ARBITRATOR: Wonderful. So  
 18 we start tomorrow with that new deal, right.  
 19 Okay, okay. So, welcome Mr. Dooley.  
 20 MR. DOOLEY: Thank you.  
 21 PRESIDING ARBITRATOR: Would you  
 22 please read the statement you have in front of you?  
 23 THE WITNESS: I solemnly declare upon  
 24 my honour and conscience that I will speak the  
 25 truth, the whole truth and nothing but the truth.

1 PRESIDING ARBITRATOR: Thank you.  
 2 You will be directed by Mr. Nash.  
 3 MR. NASH: Thank you, Judge Simma.  
 4  
 5 AFFIRMED: MR. TOM DOOLEY  
 6 EXAMINATION IN-CHIEF BY MR. DOOLEY:  
 7 MR. NASH: You are Tom Dooley?  
 8 A. I am.  
 9 Q. And you've signed two statements  
 10 in this matter; one dated December 9th, 2016 and one  
 11 dated August 16th, 2017?  
 12 A. That's correct.  
 13 Q. And you worked for Clayton  
 14 affiliated companies for a little over 15 years?  
 15 A. That's correct.  
 16 Q. And most significantly you worked  
 17 at New York Sand & Stone from 1999 to 2015?  
 18 A. That's correct.  
 19 Q. And you operated New York Sand &  
 20 Stone?  
 21 A. Yes.  
 22 Q. And prior to that time you worked  
 23 with other companies in the construction industry  
 24 and you became familiar with the department -- the  
 25 New York Department of Transportation Standards that

1 suppliers of stone were required to meet?  
 2 A. That is correct.  
 3 Q. And while at New York Sand &  
 4 Stone you [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 A. That is correct.  
 8 Q. And while working at New York  
 9 Sand & Stone you [REDACTED]  
 10 [REDACTED]; that's correct?  
 11 A. Yes.  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 Q. Thank you. Those are my  
 16 questions.  
 17 PRESIDING ARBITRATOR: Okay. So who  
 18 is going to cross-examine?  
 19 CROSS-EXAMINATION BY MR. SPELLISCY:  
 20 MR. SPELLISCY: Good afternoon, Mr.  
 21 Dooley. I don't think it was clarified for the  
 22 record, just before I start, you didn't have any  
 23 corrections or clarifications to your witness  
 24 statements. I don't think it was asked and I just  
 25 don't want to ask something you wanted to correct.

1 A. No, not that I'm aware of.  
 2 Q. Thank you. You will also have  
 3 heard, Mr. Dooley, that we are undertaking  
 4 extraordinary measures to try to reach our schedule.  
 5 I don't want to seem rude at any point today but I  
 6 will try to keep us on track and so to the extent  
 7 that you can answer my question directly, it will  
 8 help us meet the goal of having the preparation time  
 9 that both parties desire.  
 10 I'd like to start with [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. So the answer to my question is  
 19 "yes" between [REDACTED]  
 20 A. Correct.  
 21 [REDACTED]  
 22 Thank you.  
 23 [REDACTED]  
 24 [REDACTED]  
 25 A. Yes, that is correct.

1 Q. You didn't disclose that fact in  
 2 your witness statements, did you?  
 3 A. I'm not sure if I did or not.  
 4 Q. Didn't think that was a relevant  
 5 fact, Mr. Dooley?  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Q. If you thought it was assumed  
 14 that the Government of Canada -- I should say I  
 15 assumed we were in confidential session because  
 16 there was nobody in the room, but for the record --  
 17 --- Upon commencing confidential session under  
 18 separate cover at 5:52 p.m.  
 19 MR. SPELLISCY: My question, I was a  
 20 bit confused, Mr. Dooley, because you said you had  
 21 assumed -- [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 A. I didn't think it was part of my  
2 witness statement to make anyone aware of that.  
3 Let's put it that way.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 A. I'm assuming that. I don't know  
10 that for a fact.

11 Q. You're not aware of [REDACTED]  
12 [REDACTED]

13 A. I was aware of the [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 Q. You said --  
4 A. At -- excuse me, [REDACTED]

5 Q. You said that [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 A. Yes, I did.  
16 Q. Thank you. That's my question.  
17 A. I'm sorry. Okay.

18 [REDACTED]  
19 [REDACTED]  
20 A. Yes, I did.  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] That's my testimony.

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 This came as a result of a  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 Q. Yes, I --  
20 [REDACTED]  
21 [REDACTED]  
22 COURT REPORTER: Sorry?  
23 MR. SPELLISCY: We are aware of that.  
24 So, Mr. Dooley, I ask, my question was in [REDACTED]  
25 [REDACTED]

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1 [REDACTED]  
2 A. Okay.  
3 Q. -- but it's going to be much  
4 easier and much smoother and much more pleasant for  
5 the court reporter if you answer my questions so  
6 that we can get going faster.  
7 A. Yeah, I mean, my goal here today  
8 is to give the information as I know and in the best  
9 way that I can.  
10 Q. And the best way to do that is by  
11 answering my questions, Mr. Dooley.  
12 A. I think I'm doing that.  
13 MR. NASH: In fairness, Mr. Dooley is  
14 not a clairvoyant, I don't think. So he doesn't  
15 know where Mr. Spelliscy is going so in order to  
16 give an answer he may give some detail in order to  
17 give context and that's perfectly fair.  
18 MR. SPELLISCY: Mr. Nash, with  
19 respect, he doesn't need to be clairvoyant to answer  
20 my questions. And my question is [REDACTED]  
21 [REDACTED] All I need is a "yes" or  
22 "no", much the same way that you asked for from our  
23 witnesses. And so I am simply asking for the same  
24 respect from Mr. Dooley so we can proceed with this.  
25 Now let's continue.

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1 this stuff because I've got a cataract condition in  
2 my right eye and things are not reading as well as I  
3 should be.  
4 Q. If it helps, I'm not sure with  
5 your condition --  
6 A. It doesn't. That's like a blur  
7 to me right now unfortunately. So give me your page  
8 number, I'm sorry?  
9 Q. It's at paragraph 91.  
10 A. Okay.  
11 Q. And in the second sentence here,  
12 you say:  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] [As read.]  
20 And for now I wanted to make sure  
21 that you're with me and you read that sentence.  
22 A. Yes, just give me the context  
23 here. Okay.  
24 Q. You are aware, Mr. Dooley, that  
25 the decisions on the environmental approval for the

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1 MR. NASH: But you said "I'll get to  
2 that."  
3 MR. SPELLISCY: I will get to that.  
4 MR. NASH: So you're trying to save  
5 time by having him give very short answers which may  
6 not be fully explanatory and so he doesn't know  
7 where you're going. So if you tell him where you're  
8 going, then he'll be able to answer your questions  
9 more quickly.  
10 MR. SPELLISCY: I'm assuming if he  
11 can answer a "yes" or "no", then he can do that.  
12 Let's go to paragraph 91 of your  
13 first witness statement, Mr. Dooley. It's on the  
14 table in front of you.  
15 A. Okay.  
16 Q. I think your counsel gave it to  
17 you.  
18 A. In here, right?  
19 Q. No, it's not in that book. I'll  
20 refer to that as our binder. I think counsel give  
21 you your witness statements?  
22 A. December 9th, 2016.  
23 Q. I think that's your first one, is  
24 that right?  
25 A. Now, bear with me here on reading

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1 Whites Point Quarry were issued in 2007; correct?  
2 A. I know that now, but I didn't  
3 know it at that particular time. I was not privy to  
4 all of the information that was going on with the  
5 Whites Point Quarry.  
6 Again, my focus was on operating New  
7 York Sand & Stone.  
8 What was transpiring at the Whites  
9 Point Quarry was a separate entity and was not  
10 really part of my spectrum of information, if I can  
11 explain it that way.  
12 Q. But you knew it when you wrote  
13 this statement; right?  
14 A. I knew it when I wrote this  
15 statement, that's correct.  
16 Q. So then you are aware that by  
17 March of 2010, the Claytons had already been  
18 unsuccessful in obtaining their approvals for the  
19 Whites Point Quarry Project?  
20 A. That's correct, yes.  
21 Q. Now you haven't had the  
22 opportunity to hear the testimony this week so far  
23 so I am going to take you to it. I would put it up  
24 on the screen but also turn you to it.  
25 It is the last tab in your binder.

1 Tab 18 which is a binder which is white; right  
 2 there.  
 3 A. Okay, tab 18.  
 4 Q. Tab 18. I will go there with you  
 5 as well.  
 6 Tab 18 is a transcript reference.  
 7 For the record, it's page 363, lines 6 through 21 of  
 8 the transcript of Mr. Clayton's testimony.  
 9 Here Mr. Clayton testified, starting  
 10 at line 36 -- page 363, line 6. That in response to  
 11 a request to describe the [REDACTED]  
 12 [REDACTED]  
 13 A. Sorry, I didn't mean -- take me  
 14 back where I'm supposed to be here now. Page 363?  
 15 Q. Page 336. You will see line  
 16 numbers on the sides.  
 17 A. Yes.  
 18 Q. Line number 6.  
 19 A. Line number 6 [REDACTED]  
 20 [REDACTED]  
 21 Q. All right. He says in response  
 22 to that he says:  
 23 [REDACTED]  
 24 [REDACTED]  
 25 So I think you said this earlier, and

1 this is just to confirm for the record, in fact, in  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 Q. And so you would agree with me  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. Yes, that's a correct statement.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. They did not.  
 14 [REDACTED]  
 15 [REDACTED]  
 16 A. That's correct.  
 17 [REDACTED]  
 18 [REDACTED]  
 19 A. Where would that be?  
 20 Q. It's just a little bit further  
 21 down in the paragraph that says -- starts:  
 22 "So at that time..."  
 23 It says:  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED] [As read.]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED] You'd  
 13 agree with that; right?  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. But then, Mr. Dooley, in  
 19 paragraph 91 of your witness statement we looked  
 20 at it, you said that [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 A. So here is why that would have  
 2 happened. [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 Q. So your statement in paragraph 91



1 of your first witness statement that it was the fact  
 2 that the [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 A. That's right, yes.  
 10 Q. So the answer to my question is  
 11 yes, [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. Right. [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 Q. It's the second time you've  
 24 referred, Mr. Dooley, in your testimony [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 A. Right.  
 12 Q. You would agree with me, Mr.  
 13 Dooley, that [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 A. I would, yes.  
 19 Q. And you would agree we with me  
 20 that if [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. That is correct, yes,  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED] So let's look at your  
 3 first witness statement at paragraph 65. I'll give  
 4 you a second. Here you say:  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED] [As read.]  
 16 My only question is: Do you see where  
 17 I am there?  
 18 A. I do see it, yes.  
 19 Q. We talked about this earlier,  
 20 about at this time and until today you [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 A. I did know that, yes.  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 Q. If you turn to tab 2 in that  
 23 white binder you have. This is Exhibit C-1398, for  
 24 the record.  
 25 This is a [REDACTED]

1 [REDACTED]  
 2 [REDACTED] If you [REDACTED]  
 3 [REDACTED]  
 4 Do you see that?  
 5 A. I do, yes.  
 6 Q. It looks familiar to you?  
 7 A. It does.  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 Do you remember that?  
 12 [REDACTED]  
 13 [REDACTED]  
 14 Q. Looks about right.  
 15 A. Yes, that would be about right,  
 16 yes.  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. We did. [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. So --  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 Q. Oh, I'm sorry, I'm confused. I  
 22 asked you if you actually [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 Q. I see. So you [REDACTED]  
 5 A. Specific materials. I bought  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 Q. But you think it was around the  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 Q. Let's look at another example of

1 [REDACTED]  
 2 [REDACTED]  
 3 Turn to paragraph 80 of your first  
 4 witness statement. Are you able to find it?  
 5 A. Yes.  
 6 Q. So on paragraph 80 you are  
 7 talking about time in [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED] [As read.]  
 14 Do you see that?  
 15 A. Yes, specifically [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 Q. And you also explained that --  
 21 you have testified in the next paragraph that in mid  
 22 [REDACTED]; is  
 23 that right?  
 24  
 25 A. Yeah, well, it was -- no, it was

1 the latter part of [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 A. I'm sorry, yes. Around that  
 9 time. My mistake there, yeah.  
 10 Q. But you actually, I think you  
 11 agree with me that the [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 Q. Right.  
 18 A. I can't remember when we [REDACTED]  
 19 [REDACTED]  
 20 Q. Now, let's turn back to your  
 21 binder, I apologize for the flipping, back to the  
 22 binder we have given you, which is at tab 3 of that  
 23 binder. This is Exhibit C-1395 for the record.  
 24 Now, this is a letter from  
 25 [REDACTED]

1 [REDACTED] Is that right?  
 2 A. Ask me -- I'm sorry, you asked me  
 3 a question. I was just reading this. I was just  
 4 trying to put the context of what this was.  
 5 Q. This was a letter from [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED] is that right?  
 8 A. Yes.  
 9 Q. If we turn to the second page of  
 10 this letter fourth paragraph down.  
 11 A. Can I say something here?  
 12 Q. Well, answer my question first.  
 13 A. Okay.  
 14 Q. Fourth paragraph down. He says  
 15 in this [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 Do you see that?  
 20 A. I do.  
 21 Q. So at this time you would agree  
 22 with me that [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 A. That's correct.  
 2 Q. In fact you --  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 Q. But it happened; right?  
 7 A. Yes, it did. Uh-hmm.  
 8 Q. And so you would agree with me  
 9 that [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 Q. And you [REDACTED] right?  
 18 A. We [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 Up until this [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 Q. You [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 correct?  
 17 A. That is correct. That is  
 18 correct.  
 19 Q. I'd like to go and understand [REDACTED]  
 20 [REDACTED]  
 21 A. Yes.  
 22 Q. So when New York Sand & Stone was  
 23 established in 1998 it [REDACTED]  
 24 [REDACTED]  
 25 A. That's my understanding, yes.

1 Q. That's your testimony?  
 2 A. I did not get -- I didn't get to  
 3 New York Sand & Stone until May of 1999.  
 4 Q. You've testified to that in your  
 5 witness statement, Mr. Dooley, in paragraph 7 of  
 6 your second witness statement. You've testified  
 7 that New York Sand & Stone [REDACTED]  
 8 [REDACTED], are you  
 9 saying --  
 10 A. Yeah, [REDACTED]  
 11 [REDACTED]  
 12 Q. Ahh. Was [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. That is a correct statement.  
 21 Q. You have testified by 2004, New  
 22 York Sand & Stone was [REDACTED]  
 23 [REDACTED]  
 24 A. That's a correct statement.  
 25 [REDACTED]

1 [REDACTED]  
 2 A. Yes, that's correct, [REDACTED]  
 3 [REDACTED]  
 4 Q. I want to turn to tab 8 in that  
 5 white binder there. This is Exhibit C-1026 for the  
 6 record.  
 7 This is the [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED] so I assume  
 10 you're familiar with this document?  
 11 A. Yes, this is a document that I  
 12 [REDACTED]  
 13 [REDACTED], that is correct.  
 14 [REDACTED]  
 15 [REDACTED] but you  
 16 assisted with the preparation?  
 17 A. That's correct, yes.  
 18 Q. I'd like to you turn to page 25.  
 19 So there's numbers on the bottom, C-1026-025.  
 20 A. Oh okay.  
 21 Q. It is the [REDACTED]  
 22 [REDACTED]  
 23 A. 1026-025.  
 24 Q. 025. That's it there.  
 25 A. Okay.

1 Q. Now it's a little small but if  
 2 you look with me at [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 Do you see that?  
 7 A. Yes. Yes, that's the information  
 8 that's on there, yeah.  
 9 Q. So let's look at [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. Okay.  
 14 Q. So, we know that [REDACTED]  
 15 [REDACTED]  
 16 A. Right.  
 17 Q. So this document shows us that in  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 correct?  
 23 A. That's correct. According to  
 24 this, yes.  
 25 Q. So if we [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]; correct?  
 7 [REDACTED].  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 correct?  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 Q. Well, what you've -- we can go to  
 17 the paragraph. What you said was they were  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. That is correct.  
 21 Q. In fact, in your view, [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]; isn't that  
 24 right?  
 25 A. It was.

1 Q. I want now to come to the  
 2 [REDACTED] witness statement  
 3 about what New York Sand & Stone [REDACTED]  
 4 [REDACTED]  
 5 So turn back to your witness  
 6 statement, your first witness statement, paragraph  
 7 95. Paragraph 95 of your first witness statement  
 8 and you say that you would have [REDACTED]  
 9 [REDACTED].  
 10 [REDACTED]  
 11 [REDACTED]  
 12 A. Absolutely.  
 13 Q. And then if we go to paragraph  
 14 96, you [REDACTED]  
 15 [REDACTED]  
 16 A. Right, that's correct.  
 17 Q. And those [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. That's correct.  
 21 Q. Now, let's come back to the  
 22 [REDACTED] that you have  
 23 open still there on your desk at tab 8 of your  
 24 binder.  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 A. Right. And the reason is [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 Q. And that would have been the  
 24 [REDACTED]  
 25 [REDACTED]

1 A. Not necessarily, no. That is not  
 2 true. That is absolutely not a truth. That's not  
 3 an accurate statement because [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 If we had been [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 Q. They would have [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 That is the key here.  
 9 Overall, there was a [REDACTED]  
 10 I'm not debating that point.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 Q. Please turn to paragraph 84 of  
 17 your first witness statement, Mr. Dooley. Perhaps  
 18 it would help if you read this:  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED] [As read.]  
 12 Do you not accept that testimony  
 13 yourself anymore?  
 14 A. I would say that's an accurate  
 15 statement, [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 Q. Okay. I don't understand,  
 20 Mr. Dooley. You said, "I would say that" --  
 21 A. What I'm saying to you is --  
 22 Q. No, sorry, let me finish my  
 23 question.  
 24 You said "I would say that's an  
 25 accurate statement only in the sense that" -- now,

1 this is your statement, Mr. Dooley. Did you not  
 2 write this statement?  
 3 A. Yes, I wrote this statement and  
 4 what I'm trying to do is give you some clarification  
 5 of the words, and what those meanings were behind  
 6 the words.  
 7 What I'm saying to you, it [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 We were thrust into a situation as [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 Q. I'm sorry, I don't understand  
 15 that last statement, Mr. Dooley.  
 16 [REDACTED]  
 17 [REDACTED]  
 18 That's not accurate, isn't it? They  
 19 [REDACTED]; correct?  
 20 A. What I'm saying to you is this  
 21 and saying to the tribunal: When [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] And so we were now thrust into a  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED] So we were put in a situation by  
 13 [REDACTED]  
 14 [REDACTED] My intention initially was  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED] And  
 18 that's the facts of the case.  
 19 Q. And that's interesting testimony,  
 20 Mr. Dooley. Can you point me to -- [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. I don't know where that would be  
 24 to be honest with you.  
 25 Q. So you didn't describe this story

1 in your witness statement?  
 2 A. I didn't think it was germane at  
 3 that particular point in the course of my  
 4 discussions. But it's what occurred. I mean,  
 5 that's what occurred.  
 6 Q. What you thought was more germane  
 7 is what we read from paragraph 84 of your witness  
 8 statement, correct, [REDACTED]  
 9 That's what you put in your witness  
 10 statement, right Mr. Dooley?  
 11 A. I agree. [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 Q. And I do understand that is at  
 16 paragraph 85 of your witness statement, Mr. Dooley.  
 17 A. Thank you for letting me know  
 18 that, yes.  
 19 Q. Let's come back to where we were,  
 20 back to the [REDACTED].  
 21 You've given an explanation and your  
 22 opinion as to [REDACTED] I was a little confused.  
 23 You said, [REDACTED] If you  
 24 come back to tab 8 at page 25, we see that [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED] right?  
 4 A. Yes. You also have to understand  
 5 that in the [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. Right. In [REDACTED]  
 11 [REDACTED] correct?  
 12 A. That's my understanding, yes.  
 13 [REDACTED]  
 14 [REDACTED]  
 15 A. That is correct.  
 16 Q. Now, what I want to understand,  
 17 given what you said about [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. We started [REDACTED]  
 21 [REDACTED]  
 22 Q. Right.  
 23 A. So by [REDACTED]  
 24 [REDACTED]  
 25 Q. Okay. Now let's turn to that

1 [REDACTED] which is at tab 9 in your binder  
 2 which is Exhibit C-1025.  
 3 I'm going to come to [REDACTED]  
 4 -- looking for it, it is on page 1025-6. So it is  
 5 on [REDACTED]  
 6 You are familiar with this document,  
 7 I assume?  
 8 A. I am familiar with this document,  
 9 yes.  
 10 Q. In fact, [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. That is correct, yes.  
 15 Q. In fact, [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED] right?  
 20 [REDACTED]  
 21 Q. Now, if we come -- if we look at  
 22 the Exhibit of the [REDACTED]  
 23 [REDACTED]  
 24 Same document. Turn earlier to [REDACTED]  
 25 A. Where are we at again on this...

1 Q. No, in the same document you were  
 2 on.  
 3 A. This one here?  
 4 Q. Yes, [REDACTED]  
 5 you've lost tab 8.  
 6 A. Tab 8.  
 7 Q. I'm sorry, I'm not confused.  
 8 It's the same document. We're in tab 8 of the  
 9 [REDACTED] that you  
 10 prepared that is Exhibit C-1026?  
 11 A. Okay.  
 12 Q. And we are at [REDACTED] of that  
 13 document?  
 14 A. What's the page number?  
 15 Q. [REDACTED]  
 16 A. On the bottom or on the side?  
 17 Q. On the side, I think.  
 18 This is [REDACTED] on the bottom, I  
 19 guess, where it says [REDACTED] at the top.  
 20 A. Okay. Okay.  
 21 Q. Got it. You [REDACTED]  
 22 [REDACTED]  
 23 correct?  
 24 A. That is correct.  
 25 Q. And so you [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 A. I did not.  
 7 Q. You didn't [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED] correct?  
 11 A. That is correct. [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. But you would agree with me in  
 19 [REDACTED]  
 20 A. That is correct.  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 Q. Okay.  
 2 A. And the reason being, again, is  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 Q. We'll come back to that in a  
 15 second because I'm not sure I understand it. Let me  
 16 ask a couple of more questions first.  
 17 In this [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED] correct?  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 Q. Right.  
 25 [REDACTED]

1 [REDACTED]  
 2 A. That's correct.  
 3 Q. And you've said in your [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED] correct?  
 6 A. Yes.  
 7 Q. And in your [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. I'm not really sure what that  
 11 means. Can you explain that?  
 12 Q. Let's come to tab 1 of your  
 13 binder. For the record, this is Exhibit C-1015 and  
 14 it is, for the record, the [REDACTED]  
 15 [REDACTED] that you attached to your  
 16 witness statement, Mr. Dooley.  
 17 And if we can turn -- if you are  
 18 there, we can turn to [REDACTED]  
 19 [REDACTED] but it bears  
 20 the label 1015-027.  
 21 There is [REDACTED]  
 22 [REDACTED]  
 23 A. Yes.  
 24 [REDACTED]  
 25 [REDACTED]



1 [REDACTED] Do you see that?  
 2 A. Yes.  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [As read.]  
 10 One of those is [REDACTED]  
 11 [REDACTED]  
 12 A. Yes.  
 13 Q. And if we look [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [As read.]  
 24 Do you see that?  
 25 A. Yes, yes.

1 Q. You are familiar with the  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. I am.  
 5 Q. Let's take a look at [REDACTED]  
 6 [REDACTED]  
 7 Turn to tab 10 in your binder, in my  
 8 binder. This is Exhibit C-1018 for the record. And  
 9 let's take [REDACTED] And you can  
 10 turn -- so you will see it on page C-1018-037.  
 11 A. Are you going to come back to  
 12 this, [REDACTED] or can I just let  
 13 that go?  
 14 Q. I think you can let that go.  
 15 A. What number am I turning to here?  
 16 Q. 037. [REDACTED]  
 17 [REDACTED]  
 18 A. This is under tab 10 you said;  
 19 right?  
 20 Q. Yes.  
 21 A. Give me the number again because  
 22 I'm messing something up.  
 23 Q. Well, if you look on the bottom  
 24 right.  
 25 A. Yes.

1 Q. You see 1018-1001. If we go to  
 2 037?  
 3 A. Oh, 037, okay. Yes.  
 4 Q. So this is the [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 A. That is correct.  
 8 Q. All right. Turn to page 6 of  
 9 this document which has got the label -043. [REDACTED]  
 10 [REDACTED]  
 11 It says here at the very last  
 12 sentence:  
 13 [REDACTED]  
 14 [REDACTED]  
 15 Do you see that?  
 16 A. Yes, I see it.  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. It does, yes.  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. Umm...  
 24 Q. You can look at one if you like.  
 25 A. Yeah, okay, if that's -- I'm not

1 really -- I didn't really pay a lot of attention  
 2 that to be perfectly honest for you.  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 This  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Q. Let's come, Mr. Dooley, since  
 14 you've said that, to the page marked [REDACTED] ?  
 15 A. Same tab?  
 16 Q. Same tab. These are [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 A. Yes.  
 20 Q. Come to page 6 which is a page  
 21 [REDACTED]  
 22 Second to the last sentence:  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 Do you see that?  
 2 A. I do. And, again, I'm making  
 3 this assumption that you are talking about this  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 A. It does, yes.  
 10 Q. I'd like to come to the  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED] Is that right, that you prepared  
 14 that?  
 15 A. Where are we talking about now?  
 16 Q. I'll take you to it. Tab 16 of  
 17 your binder which is Exhibit C-1046 for the record.  
 18 If you come to the last page of this  
 19 document, [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. I contributed to it, yes.  
 24 Q. Now you use in here, [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED] correct?  
 3 A. That's correct.  
 4 Q. You would agree with me, of  
 5 course Mr. Dooley, that the [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED] correct?  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Q. Right, [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. Well, let's take a --  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 A. That's exactly right.  
 8 Q. Okay, let's --  
 9 A. And I'm saying in [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. Yes.  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 It is at tab 9 again. This would be  
 19 C-1025 for the record.  
 20 A. Okay, what am I looking at.  
 21 Q. Tab 9?  
 22 A. I get that.  
 23 [REDACTED]  
 24 [REDACTED]  
 25 correct?

1 A. Right.  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] is that right?  
 5 A. You've got to give me a chance to  
 6 get to it.  
 7 Q. I'm on the first page?  
 8 A. Okay.  
 9 Q. First line?  
 10 [REDACTED]  
 11 Q. Let's come to [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED] do you see that?  
 16 A. You are looking under [REDACTED]  
 17 here?  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. Uh-hmm, yes. What does -- I  
 24 mean, [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. That's what I'd like to  
 11 understand, Mr. Dooley.  
 12 A. Okay.  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED] correct?  
 18 [REDACTED]  
 19 Q. Okay. So now let's look at the  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED] do you see  
 24 that?  
 25 A. I do.

1 Q. What I'd like to do with you, Mr.  
 2 Dooley, is explore the effect of the [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 So let's turn to tab 17, which is  
 8 Exhibit R-834.  
 9 And these are [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 A. Would it be okay if I took this  
 13 off?  
 14 Q. It is a touch warm in here.  
 15 A. Yeah.  
 16 Q. There are those that are sitting  
 17 closer to the windows and closer to the draft than  
 18 us, Mr. Dooley.  
 19 A. I just want you to know it had  
 20 nothing to do with your question.  
 21 Q. Now, I am going to put this up on  
 22 a split screen for you, Mr. Dooley, but that's not  
 23 going to help you. So if you can keep your --  
 24 A. Okay.  
 25 Q. -- finger on this document?

1 A. Okay.  
 2 Q. -- on tab 13, tab 17, Exhibit  
 3 R-834 and we're also going to look at the same time  
 4 at tab 16, Exhibit C-1046 which is the revenue  
 5 matrix.  
 6 You can even, if you want, pull that  
 7 revenue matrix out, maybe that's easier. If you go  
 8 to tab 16.  
 9 A. Okay, I'm in tab 16 now.  
 10 Q. Tab 16 is the pro-forma; correct?  
 11 A. That's right.  
 12 Q. Why don't you just go for your  
 13 ease --  
 14 A. I'll just take this out?  
 15 Q. Take the last page out.  
 16 A. Last page out.  
 17 Q. And we'll bring it up on the  
 18 screen for everybody else and take it out of your  
 19 binders too. It's yours to keep.  
 20 A. Okay.  
 21 Q. All right. So in the revenue  
 22 matrix on the last page of tab 16 you have a [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 A. Yes.

1 Q. So if we turn to -- in the  
 2 invoices we have from [REDACTED], tab 17, the  
 3 one you have open in your binder and we turn to page  
 4 25829.  
 5 This is an invoice from [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED] You can take those down and just  
 10 go back to the document. [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 Do you see that? It is hard for you  
 16 to look. If you look under on the bottom right-hand  
 17 side right above where it says "wire payment  
 18 instructions" you will see the name [REDACTED]  
 19 [REDACTED]  
 20 A. So I'm looking at 30 or 29?  
 21 Q. 29. You see there is an invoice  
 22 date on there. This is an invoice to you.  
 23 A. Right.  
 24 Q. [REDACTED] correct?  
 25 A. Yes.

1 Q. At the -- continue down the  
 2 left-hand side of the page.  
 3 A. Okay.  
 4 Q. And under that you will see  
 5 [REDACTED]  
 6 A. [REDACTED] Yes.  
 7 Q. If you go over to the right  
 8 slightly, you will see [REDACTED]  
 9 [REDACTED]  
 10 A. Yes.  
 11 Q. And so if we look in this  
 12 information, we look at this invoice, we have a [REDACTED]  
 13 [REDACTED] do  
 14 you see where that is?  
 15 A. Yes.  
 16 Q. And if we look down at the box as  
 17 [REDACTED]  
 18 [REDACTED]  
 19 A. Yes.  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 A. Yes, this is probably the worst

1 we ever saw it.  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. Yeah, there is a bunch of other  
 5 ones but, yeah.  
 6 Q. Let's come back to -- I just want  
 7 to compare the same shipment here. So let's come  
 8 back to tab 16, the revenue matrix.  
 9 So for [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]; correct?  
 12 A. Yes.  
 13 Q. Now, you will recall that in the  
 14 [REDACTED]  
 15 [REDACTED] correct?  
 16 A. Yes. The revenue matrix and the  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 A. And the --  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 Q. I understand that.  
 2 A. So it depended on where you were  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 Q. I understand that. But you used  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 Q. They would have been, so what  
 17 you've got here and you see in the revenue matrix is  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. Yes.  
 21 Q. Now, that [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 A. Umm ...  
 25 Q. You don't know this evidence from

1 Mr. Morrison, Mr. Dooley?  
 2 A. Yeah, I don't know if [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 So I can't say to you unequivocally  
 6 that a contract of affreightment between [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] Could have been changed, you  
 9 know, this is we're talking about something that  
 10 would have occurred later.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Q. We heard that, Mr. Dooley --  
 14 A. Okay.  
 15 Q. -- but what I'm asking is, and --  
 16 A. I'm probably missing your  
 17 question here, I'm sorry.  
 18 Q. In your pro-forma, [REDACTED]  
 19 [REDACTED] that you have in this revenue matrix summary --  
 20 A. Right.  
 21 Q. The -- [REDACTED], those  
 22 are based on the [REDACTED]  
 23 [REDACTED] correct?  
 24 A. Okay, yeah.  
 25 Q. Are you aware of that?

1 A. Yes, yes.  
 2 Q. You are aware, then, that  
 3 [REDACTED]  
 4 correct?  
 5 A. I'm not really aware of that, but  
 6 I'll make that assumption.  
 7 Q. For the purpose of this we've  
 8 heard his testimony so --  
 9 A. So, yes, it's been testified to  
 10 that.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 correct?  
 16 [REDACTED]; right?  
 17 A. Yes. But their [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED] And if you look  
 22 as [REDACTED]  
 23 [REDACTED] It was different. They had  
 24 a different, you know, the [REDACTED]  
 25 [REDACTED]

1 [REDACTED].  
 2 Q. Right. But --  
 3 A. And the one coming [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 This is something that you [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 Q. Right, you --  
 12 [REDACTED]  
 13 [REDACTED]  
 14 Q. We can look back at his testimony  
 15 in our closing arguments on that.  
 16 [REDACTED]  
 17 [REDACTED]  
 18 A. The [REDACTED]  
 19 Q. The [REDACTED]  
 20 [REDACTED] And all I'm trying to understand with  
 21 you, and you would agree with me, I think you said  
 22 "yes," that the [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED] correct?  
 25 A. What I'm saying to you is the

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Q. Well, perhaps, Mr. Dooley, we can  
 14 just agree that did you not [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 This was the market [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 I mean, at New York Sand & Stone what  
 23 we were interested in, what was being -- what was  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED] That was very simple, very simple.  
 3 Q. Mr. Dooley, you certainly would  
 4 not have [REDACTED]  
 5 [REDACTED]  
 6 correct?  
 7 A. That was the context, yes, that's  
 8 the concept.  
 9 Q. Give me one second here. Let me  
 10 confer with my colleagues.  
 11 PRESIDING ARBITRATOR: Can I, while  
 12 we break, do you have an idea how long you are going  
 13 to take? I mean, I don't want to end with a  
 14 cliffhanger but let's -- how long -- it's  
 15 7:00 o'clock now and... time flies.  
 16 MR. SPELLISCY: Time flies when you  
 17 are having fun, yes.  
 18 I will consult with my colleagues and  
 19 expect probably not to take any more time. But I  
 20 will just verify that.  
 21 (Pause).  
 22 As I hoped, those are my questions.  
 23 PRESIDING ARBITRATOR: Okay. Thank  
 24 you, Mr. Spelliscy.  
 25 THE WITNESS: All done?

1           PRESIDING ARBITRATOR: Sorry. Not  
2 quite.  
3           What are the prospects for the  
4 re-direct? How long do you need it or --  
5           MR. NASH: It's five past 7:00 now.  
6           It is going to be some time in  
7 re-direct. It will be shortened, I believe, if  
8 I have overnight just to go back.  
9           Mr. Spelliscy has maintained an  
10 admirable clip, but he has hit upon a number of  
11 issues, an number of pieces, paragraphs and  
12 documents. So if I can gather the thoughts  
13 overnight, I think I can shrink it.  
14           I think I would be at least 45  
15 minutes to an hour now. But I think I can shrink  
16 that, I hope I can, by looking at this overnight,  
17 taking a look at those documents that Mr. Dooley has  
18 been referred to, see what questions arise with  
19 respect to them.  
20           I can do it in a much more systematic  
21 way tomorrow morning starting at 8:30.  
22           PRESIDING ARBITRATOR: Mr. Dooley, do  
23 you know what that means for you?  
24           THE WITNESS: Another night of  
25 restless sleep and another night watching the late

1 movies.  
2           PRESIDING ARBITRATOR: But you  
3 understand that you are --  
4           THE WITNESS: I understand.  
5 Absolutely.  
6           PRESIDING ARBITRATOR: So we break  
7 for tonight and tomorrow at 8:30 we complete the...  
8 thank you.  
9 --- Whereupon proceedings adjourned at 7:04 p.m. to  
10 be resumed Friday February 23, 2018, at 8:30 a.m.  
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