

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, 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 Friday, February 23, 2018, at 8:39 a.m.

VOLUME 5 - FULL TRANSCRIPT {REVISED}

CONDENSED TRANSCRIPT WITH WORD INDEX  
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1 Toronto, Ontario  
 2 --- Upon resuming on Friday, February 23, 2018,  
 3 at 8:39 a.m.  
 4 PRESIDING ARBITRATOR: I think  
 5 we are ready. This is Day 5 of the hearings, and  
 6 we resume the witness examination of Mr. Dooley.  
 7 And, Mr. Nash, you have the floor.  
 8 WITNESS DECLARED PREVIOUSLY: TOM DOOLEY  
 9 MR. NASH: Thank you, Judge  
 10 Simma. I have handed up two documents. One is an  
 11 excerpt from Tab 8, this chart, page 25, and the  
 12 other one is exhibit, or Tab 2 from the  
 13 cross-examination binder, for ease of reference.  
 14 I will also be referring to Mr. Dooley's first  
 15 affidavit, December 9, 2016.  
 16 RE-EXAMINATION BY MR. NASH:  
 17 Q. Good morning, Mr. Dooley.  
 18 A. Good morning, Mr. Nash.  
 19 Q. Could you please turn to  
 20 Tab 1 of the binder in front of you. This is the  
 21 operating agreement which Mr. Spelliscy took you  
 22 to yesterday.  
 23 And could you turn, please, to  
 24 Clause 12.2 on page 23.  
 25 And this is -- also, this is

1 the paragraph or a paragraph in the document that  
 2 counsel took you to. It's the [REDACTED]  
 3 paragraph.  
 4 A. Yes.  
 5 Q. And you will see that it  
 6 states:  
 7 [REDACTED]  
 8 [REDACTED] "[as  
 9 read]  
 10 If you go down to D:  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 And then, please turn to  
 22 page 20. That is the [REDACTED] And  
 23 could you just read that paragraph out?  
 24 A. 10.3, Mr. Nash?  
 25 Q. 10.3 on page 20.

1 [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] as read]  
 19 Q. So, is that your -- is it  
 20 your understanding that it is that [REDACTED]  
 21 [REDACTED]  
 22 A. That's exactly the [REDACTED]  
 23 that was...  
 24 Q. And the result was that  
 25 [REDACTED]; that's correct?

1 A. That's correct.  
 2 Q. And at that point in  
 3 time, what happened to this agreement?  
 4 A. In my opinion, [REDACTED]  
 5 [REDACTED]  
 6 Q. Thank you.  
 7 If you could go to Tab 17,  
 8 please. And, if you go to the page that  
 9 Mr. Spelliscy took you to yesterday, which is  
 10 page 18 on the bottom left or 829 on the bottom  
 11 right of the page.  
 12 A. So this would be BIL  
 13 025818 in the lower right-hand side?  
 14 Q. 829.  
 15 A. 829. Okay.  
 16 Q. You will see and you will  
 17 recall that this is a [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 A. I do see that, yes, sir.  
 22 Q. And you'll see that  
 23 the -- under that box on the left-hand side, you  
 24 will see [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 So pursuant to that [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 A. Yes.  
 6 Q. And of that, [REDACTED]  
 7 [REDACTED]  
 8 that's correct?  
 9 A. Yes.  
 10 MR. SPELLISCY: Excuse me, I  
 11 just remind Mr. Nash, this isn't a  
 12 cross-examination. These questions are leading  
 13 the witness.  
 14 MR. NASH: It's perfectly  
 15 acceptable leading, just taking him through a  
 16 document that he was taken through on cross.  
 17 MR. SPELLISCY: He can read  
 18 the document. I just remind you that I am going  
 19 to watch carefully because we are leading the  
 20 witness right now.  
 21 MR. NASH: And quite  
 22 permissibly so.  
 23 MR. SPELLISCY: No, not  
 24 permissibly so.  
 25 MR. NASH: With respect, we

1 disagree.  
 2 MR. SPELLISCY: Then I ask for  
 3 a ruling from the tribunal.  
 4 PRESIDING ARBITRATOR: I think  
 5 if you want anything from me, at least, you would  
 6 have to speak up a bit because I couldn't really  
 7 follow.  
 8 MR. SPELLISCY: My point,  
 9 Judge Simma, is that this is a direct examination  
 10 -- redirect examination, and while Mr. Nash is  
 11 taking him to a document that I certainly took him  
 12 to, he is walking through the document, asking and  
 13 pointing to things, reading them into the record  
 14 and asking if that's correct. This is not a  
 15 cross-examination. As Mr. Nash was at pains to  
 16 point out the other day with one of our other  
 17 counsel, leading questions are not appropriate on  
 18 redirect. So if he would like to ask him  
 19 generally about the document, he can do so. What  
 20 he can't do is lead the witness by simply reading  
 21 something into the record and asking him to agree  
 22 with it. That's cross-examination.  
 23 MR. NASH: So what I was  
 24 asking him to do was to look at a particular part  
 25 of the written words on the document and just

1 confirm that he read them and that he understood  
 2 them. That's all --  
 3 PRESIDING ARBITRATOR: Are we  
 4 through with that document?  
 5 MR. NASH: No.  
 6 PRESIDING ARBITRATOR: Not  
 7 yet?  
 8 MR. NASH: No. And it's  
 9 perfectly permissible on redirect examination to  
 10 take a witness to a document that's been put to  
 11 him, take him to the certain portions of the  
 12 document, point them out to him and go no further.  
 13 I might ask some questions about that, but the  
 14 questions about that will not be cross-examination  
 15 questions. They will be non-leading questions.  
 16 PROFESSOR SCHWARTZ: As we  
 17 understand it, the purpose of the prohibition on  
 18 leading questions is to make suggestions that will  
 19 influence the substance of the witness' response.  
 20 Simply taking somebody to a section and asking  
 21 that person to read it out doesn't undermine the  
 22 purpose of not influencing the substance of the  
 23 witness' responses, it is therefore acceptable.  
 24 Does that answer the question?  
 25 MR. NASH: Thank you.

1 BY MR. NASH:  
 2 Q. From your perspective as  
 3 a [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 A. There is no distinction.  
 10 I mean, the [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Q. And did you know anything  
 14 about the [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 A. I was not made privy to  
 19 that information.  
 20 Q. Would that be normal,  
 21 from your perspective, from your experience?  
 22 A. Yes, that would be the  
 23 standard, and that was the -- that was what we had  
 24 dealt with [REDACTED]. I was not privy to  
 25 [REDACTED]

1 [REDACTED]  
 2 Q. If you could turn to  
 3 Tab 16, please.  
 4 A. Okay, I've got nothing in  
 5 here, Mr. Nash.  
 6 Q. Nothing in 16?  
 7 A. That could have been  
 8 taken out after yesterday's stuff; right?  
 9 Q. It's the pro forma.  
 10 A. Okay, yes.  
 11 Q. Pro forma -- okay. So  
 12 you were taken to this document by counsel. It's  
 13 the pro forma for the statement of operations for  
 14 five years ending December 31st, 2015. And  
 15 specifically, you were taken to the matrix,  
 16 revenue matrix summary on page 8, the last page.  
 17 A. Okay, so I am looking at  
 18 Document C-1046-010?  
 19 Q. Correct.  
 20 Now, you were taken to some  
 21 figures yesterday regarding shipping and volume,  
 22 and in order to assist the tribunal in the  
 23 understanding of how this is put together and how  
 24 it's structured, can you go to 2012. On the very  
 25 first numbered line, which is shipping volume of

1 [REDACTED]; do you see that?  
 2 A. I see the number [REDACTED]  
 3 yes.  
 4 Q. And that's referred to as  
 5 [REDACTED]  
 6 [REDACTED]; do you see that?  
 7 A. That is correct, yes.  
 8 Q. And you will see the  
 9 figure [REDACTED]; do you see that?  
 10 A. I do see that number,  
 11 yes.  
 12 Q. And below that, we see  
 13 the figure [REDACTED]  
 14 A. Yes, I see that figure.  
 15 Q. And if you go across that  
 16 line to the left, the title for that part is  
 17 [REDACTED] and then under  
 18 that, it says, [REDACTED] that's Whites Point  
 19 Quarry, [REDACTED]  
 20 and we see [REDACTED]; do you see that?  
 21 A. I do see that, yes.  
 22 Q. Now, keeping that figure  
 23 of [REDACTED] in mind, I'd like to take you back to  
 24 the [REDACTED], which you were also  
 25 taken through yesterday. And that is at Tab 9,

1 keeping your finger in the revenue matrix because  
 2 we are going to come back to it.  
 3 A. Yes.  
 4 Q. And if you go to page 7,  
 5 and you go to the left-hand side of the box in the  
 6 middle of the page, you see [REDACTED]  
 7 [REDACTED] do you see that?  
 8 A. I do.  
 9 Q. And do you see [REDACTED]  
 10 [REDACTED]  
 11 A. I do.  
 12 Q. And there's certain  
 13 numbers there; what are those numbers?  
 14 A. Those are the different  
 15 [REDACTED]  
 16 [REDACTED]  
 17 Q. And you see under that,  
 18 [REDACTED]  
 19 [REDACTED] and you see in the next line down, [REDACTED]  
 20 [REDACTED] And then if  
 21 you follow that line across to 2012, do you see  
 22 the figure, the second line down, in the 2012  
 23 year, [REDACTED]?  
 24 A. I do see that number,  
 25 [REDACTED]

1 yes.  
 2 Q. Going back to the revenue  
 3 matrix, then, what is the relationship between  
 4 those two figures, the one in 2012 in the revenue  
 5 matrix, [REDACTED], and that one there in the [REDACTED]  
 6 [REDACTED]  
 7 A. They are exactly the same  
 8 figure.  
 9 Q. And why is that?  
 10 A. Because that's what was  
 11 proposed, [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 A. That's what the document  
 16 says, [REDACTED]  
 17 Q. So I understand, is the  
 18 [REDACTED] was it intended by you, to equate to  
 19 something in the revenue matrix?  
 20 A. [REDACTED] represents the  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 Q. And that figure, if you

1 go down to the next section, which talks about  
 2 [REDACTED]  
 3 [REDACTED] do you see that?  
 4 A. I do.  
 5 Q. And if you go down a bit  
 6 further, you see [REDACTED]  
 7 [REDACTED]  
 8 A. Yes.  
 9 Q. Dollars is [REDACTED]  
 10 A. Yes.  
 11 Q. And that figure is higher  
 12 than [REDACTED]  
 13 A. Yes.  
 14 Q. Why is that?  
 15 A. Because in this  
 16 particular case, the [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 Q. And in the example of  
 23 [REDACTED], what is the scenario there?  
 24 A. The [REDACTED] represents the  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 Q. And so how is that  
 5 coordinated, [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 Q. So when you are speaking  
 4 about [REDACTED]  
 5 [REDACTED]  
 6 A. I am talking about the  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 Q. Thank you.  
 15 Now, you were referred  
 16 yesterday to -- let me locate it.  
 17 A. Are we done with these  
 18 documents, Mr. Nash?  
 19 Q. I will come back to them  
 20 in a moment.  
 21 A. Okay.  
 22 Q. And was that route the  
 23 same or different for the [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]



1 [REDACTED]

10 So, I mean, those were the  
11 circumstances. I don't know the internals of the  
12 [REDACTED]  
15 but that was the parameters on what  
16 had happened.

17 Q. And as I took you to, you  
18 referred in your affidavit to the fact that the  
19 Claytons had been unsuccessful in obtaining  
20 environmental approval for the Whites Point  
21 Quarry, [REDACTED];  
22 [REDACTED]; can you comment  
23 on that?

24 A. What I meant by that  
25 statement was, is that, if, in fact, the approvals  
had been granted for the Whites Point Quarry and

1 we were operating at the Whites Point Quarry,  
2 well, [REDACTED]  
7 So that was  
the issue. I mean, the motivation of not --

[REDACTED]

12 Q. Can I refer you to the  
13 loose document which is page 25 from Tab 8.  
14 Mr. Spelliscy took you to this document, and he  
15 posed the juxtaposition between your projections  
16 that are outlined in the pro forma and on the  
17 revenue matrix for 2011, '12 and '13 and  
18 contrasted those [REDACTED]

[REDACTED]

22 You told counsel yesterday in  
23 response to a question that you were appointed to  
24 New York Sand & Stone in 1999; do you recall that?  
25 A. I do.

1 Q. Your evidence yesterday  
2 was that you ran New York Sand & Stone; do you  
3 recall that?

4 A. I do.

5 Q. You told counsel  
6 yesterday in response to a question that New York  
7 Sand & Stone had sold about [REDACTED] I  
8 think were your words.

9 A. That is correct.

10 Q. We see on this [REDACTED]  
11 [REDACTED]  
14 Who increased the sales of  
15 New York Sand & Stone from [REDACTED] to  
16 [REDACTED]

17 A. You know, without patting  
18 myself on the back, I guess I was responsible for  
19 it.

20 Q. You mentioned yesterday  
21 that Amboy had appointed you the manager of New  
22 York Sand & Stone and their interest in it; is  
23 that correct?

24 A. That is correct.

25 Q. And was that through  
Great Lakes Dredging or was it through the

1 Clayton?  
2 A. It was through  
3 Mr. Clayton.

4 Q. Which Mr. Clayton?

5 A. Senior. Mr. Bill Senior.

6 Q. Do these, the [REDACTED]  
7 [REDACTED]

8 A. I believe so.

9 Q. Keeping in mind that, at  
10 that point, [REDACTED]

11 [REDACTED]  
12 A. Almost [REDACTED]

13 [REDACTED]  
14 Q. So what you are saying,  
15 as I understand it, is that th [REDACTED]  
16 [REDACTED]  
17 is that correct?

18 A. That is correct, yes.

19 Q. Who was the principal  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 Q. Who --  
 4 A. Well, we received our [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 Q. Run that by me again.  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. That's correct.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 yes.  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 A. Yes, well, we would [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 Q. Okay. Who was, during  
 23 that period, [REDACTED]  
 [REDACTED]

1 [REDACTED]  
 2 Q. And was [REDACTED]  
 3 [REDACTED]  
 4 A. Yes, they were.  
 5 Q. [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 A. Yes.  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 A. Well, I know you are not  
 18 going to let me tell you that it was good looks  
 19 and personality.  
 20 Q. So that's a reason --  
 21 A. The reason was, very  
 22 simply, you know, we are [REDACTED]  
 [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 Q. You are talking about the  
 19 [REDACTED]  
 20 A. I am talking about the  
 21 [REDACTED] that's correct.  
 22 Q. By 2007 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 A. They were [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 Q. And during that period of  
 9 time, what [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 Unfortunately, [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]



[REDACTED]

1  
[REDACTED]

2  
[REDACTED]

1  
[REDACTED]

[REDACTED]

1  
[REDACTED]

1  
[REDACTED]

1  
[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]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. Okay.  
 5 Q. -- as the previous  
 6 high --  
 7 A. Okay.  
 8 Q. [REDACTED]  
 9 [REDACTED]  
 10 A. Okay, right.  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. Right.  
 15 [REDACTED]  
 16 [REDACTED]  
 17 A. Right.  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. No, it was not, because  
 5 you were just [REDACTED]  
 6 [REDACTED]  
 7 Q. Do you know if [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 A. Not to my knowledge.  
 12 Q. Did they [REDACTED]  
 13 [REDACTED]  
 14 A. Absolutely not.  
 15 Q. What we have discussed so  
 16 far is a non-Whites Point world; would you agree  
 17 with that?  
 18 A. I would agree.  
 19 Q. How does that change --  
 20 you said that it changed if Whites Point got  
 21 approved. How would that change, from your  
 22 perspective, if Whites Point was the new supplier?  
 23 A. Well, first of all, in  
 24 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 In addition, the [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 So the fact of the matter is,  
 21 is that the Whites Point Quarry was [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]

1 [REDACTED]

7 A. Yes, we did.

8 Q. [REDACTED]

10 A. Yes, we did.

11 Q. Is that different or does

12 that have any [REDACTED]

15 A. Of course. I mean, our

16 situation [REDACTED]

1 [REDACTED]

6 Q. In a Whites Point [REDACTED]

9 A. No, I don't believe we

10 would have.

11 Q. In a Whites Point [REDACTED]

16 Q. And what is your

17 considered belief as to the possibility of [REDACTED]

19 A. Well, I mean, we had a

20 situation, we were -- we were -- literally, you

21 could [REDACTED]

1 [REDACTED]

6 Q. Mr. Spelliscy took you in

7 your affidavit to page 23, paragraph 95. And

8 could you read out paragraphs 95 to 96? I believe

9 he also took you to paragraph 96. Could you read

10 those out?

11 A. Read out 95 and 96?

12 Q. Yes.

13 A. Okay.

14 [REDACTED]

2 [REDACTED]

1 [REDACTED]  
 2 [REDACTED] s read]  
 3  
 4 Q. And what is your basis  
 5 for those confident judgments?  
 6 A. That is based upon my  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED] May I rephrase that?  
 12  
 13 A. Yeah.  
 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 A. The only way an  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 Q. Would you have been, in a  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 A. We never would have  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 MR. NASH: Judge Simma, if now

1 wouldn't be an appropriate time for a short break  
 2 just so I could go over my notes and see if there  
 3 is any dangling matters? Would that be suitable?  
 4 PRESIDING ARBITRATOR: I think  
 5 we are going to have two breaks in the course of  
 6 the morning, starting so early, and so I think  
 7 it's fine to have a first break. Just a short  
 8 break, like 10 minutes?  
 9 MR. NASH: As long as you  
 10 would prefer.  
 11 PRESIDING ARBITRATOR: Well,  
 12 10 minutes, shall we have a break?  
 13 MR. NASH: Sure.  
 14 PRESIDING ARBITRATOR: And we  
 15 will resume again at 9:50.  
 16 MR. NASH: Thank you.  
 17 PRESIDING ARBITRATOR: Wait a  
 18 minute, 9:55, sorry.  
 19 MR. NASH: 9:55, okay, thank  
 20 you.  
 21 --- Upon recess at 9:44 a.m.  
 22 --- Upon resuming at 9:57 a.m.  
 23 PRESIDING ARBITRATOR: We are  
 24 ready to go, and let me just say that I hope that  
 25 the end of the hockey game is not going to

1 disqualify any German participants.  
 2 MR. SPELLISCY: The Government  
 3 of Canada has no comment.  
 4 PRESIDING ARBITRATOR: I  
 5 almost feel sorry about it.  
 6 So we continue, Mr. Nash.  
 7 Mr. Nash, please.  
 8 BY MR. NASH:  
 9 Q. Yes, Mr. Dooley, aside  
 10 from [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. No. Every -- any [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 Q. If you go to Tab 3, the  
 18 binder in front of you, please. Counsel, this is  
 19 a letter from [REDACTED] to you. It's signed  
 20 by [REDACTED]; you see that?  
 21 A. I do.  
 22 Q. And [REDACTED] says:  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 This is [redacted]  
 2 [redacted]  
 3 [redacted]  
 4 [redacted]  
 5 [redacted]  
 6 [redacted]  
 7 [redacted]  
 8 [redacted]  
 9 [redacted] [as read]  
 10 Then there are quantities of [redacted] and I  
 11 believe we covered this yesterday, that there was  
 12 [redacted]  
 13 [redacted]  
 14 [redacted]  
 15 A. That's correct.  
 16 Q. Now, if you go to Tab 9,  
 17 the [redacted] and you go  
 18 to page 7 -- we touched on this earlier -- you  
 19 will see, in that square that we touched on,  
 20 there's the [redacted]  
 21 Number 7, Number 57, et cetera. And there is a  
 22 [redacted]  
 23 [redacted]  
 24 [redacted]  
 25 A. I do see that.

1 Q. Going back to Tab 3, on  
 2 the first page, what is that relationship in terms  
 3 of equivalency of price depicted by [redacted]  
 4 [redacted]  
 5 A. [redacted]  
 6 [redacted]  
 7 Q. Yes.  
 8 A. Which means this is  
 9 [redacted]  
 10 Q. Yes.  
 11 A. -- delivered.  
 12 [redacted]  
 13 [redacted]  
 14 yes.  
 15 [redacted]  
 16 [redacted]  
 17 And then --  
 18 Q. How does that [redacted]  
 19 [redacted]  
 20 A. Well, th [redacted]  
 21 [redacted]  
 22 [redacted]  
 23 Q. Why do you say that?  
 24 A. Because there is an  
 25 [redacted] If you look at the next page, if

1 [redacted] --  
 2 Q. Back at Tab 3?  
 3 A. That's -- I'm sorry -- at  
 4 Tab 3.  
 5 Q. Second page?  
 6 A. Under [redacted]  
 7 [redacted]  
 8 Q. Yes.  
 9 A. Again, we are looking at  
 10 [redacted]  
 11 Q. Yes.  
 12 A. And then if you look at  
 13 the next page.  
 14 Q. Which paragraph?  
 15 A. Page C-1395-002.  
 16 Q. Yes.  
 17 A. In the second paragraph,  
 18 it says:  
 19 [redacted]  
 20 [redacted]  
 21 [redacted]  
 22 [redacted]  
 23 [redacted] [as read]  
 24 So what you have to do is [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. Right. While we are on  
 12 page 2 of that document, there is reference in the  
 13 fifth paragraph down regarding the [redacted]  
 14 [redacted]  
 15 [redacted]  
 16 [redacted]  
 17 [redacted]  
 18 [redacted] what would be the  
 19 implications of that fact to you?  
 20 A. It wa [redacted]  
 21 [redacted]  
 22 [redacted]  
 23 Q. In a Whites Point [redacted]  
 24 [redacted]  
 25 A. Not at this particular

1 point, because there we [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 Q. And there's reference to  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. Well, it was my  
 11 understanding -- and, again, I'm not privy to the  
 12 details of it, [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 A. No, they did not.  
 4 Q. Do you know the  
 5 circumstances?  
 6 A. Again, this is  
 7 secondhand, but this is my understanding of what  
 8 transpired. In 2009, they were attempting --  
 9 Bayside Quarry was attempting to expand their  
 10 facility at Bayside. The Bayside operation  
 11 initially was a port expansion. It wasn't  
 12 initially permitted as a quarry. It was actually  
 13 a port expansion of a port in that area there, in  
 14 Bayside. And, umm, after they had successfully  
 15 mined a certain amount of material out of it, they  
 16 were to leave. With the acquisitions and what had  
 17 transpired as far as the success of selling stone  
 18 down in New York and potentially down into the  
 19 Florida area, they wanted to expand that  
 20 capability and go beyond it and add that long-term  
 21 capability, which any company of the size of  
 22 Vulcan or Florida needs to recover the capital  
 23 expenditures that would be needed to expand their  
 24 quarry.  
 25 So, you know, unfortunately,

1 in 2009, they did not get their permits. At that  
 2 particular point, it's my understanding, [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 MR. SPELLISCY: I am sorry,  
 2 before we go on to this, I didn't hear from the  
 3 record. I don't believe I used this letter at  
 4 all. We are at Tab 9 from the Morrison binder,  
 5 and you've got an exhibit? Is this something that  
 6 was cross-examined on, Mr. Nash?  
 7 MR. NASH: It's a  
 8 directly-related document to the [REDACTED]  
 9 document. One is inextricably related to the  
 10 other.  
 11 MR. SPELLISCY: So the answer  
 12 is no?  
 13 MR. NASH: The first letter  
 14 leads to the second letter. The first letter of  
 15 [REDACTED] leads to the second letter. The  
 16 answer to my friend's question is no, but it's  
 17 perfectly admissible to put to the witness. Who  
 18 has been asked about one matter in a certain  
 19 context, to be directed to comment on another  
 20 letter which is inextricably related to the  
 21 subsequent letter.  
 22 MR. SPELLISCY: The  
 23 cross-examination on this topic was on the fact of  
 24 [REDACTED]  
 25 And so to the extent we are now introducing other

1 letters -- and I have to say, I mean, this has  
2 been despite Mr. Nash's promise yesterday that the  
3 overnight period would help him be more efficient.  
4 We've been going for an hour and a half. This has  
5 been very wide ranging. I have let this redirect,  
6 which is really a direct, go on and on. But at  
7 some point, with the time limited, I do think that  
8 I'm going to have to start objecting, and I object  
9 to this. If the letter wasn't put to him and if  
10 he wants to ask about [REDACTED]

11 [REDACTED]  
12 [REDACTED] Otherwise, like many of the topics, we are  
13 outside of the scope of cross.

14 MR. NASH: I'm just trying to  
15 understand my friend's point. [REDACTED]  
16 [REDACTED] is what  
17 you just said? I don't get that.

18 MR. SPELLISCY: Yes, sorry.  
19 [REDACTED]

20 MR. NASH: Well, it forms the  
21 context in which that [REDACTED]  
22 [REDACTED]. We have a described event where one  
23 [REDACTED]  
24 [REDACTED]  
25 a competitive price. They say in the second

1 [REDACTED], as I recall. And  
2 this is the [REDACTED]  
3 [REDACTED]

4 MR. SPELLISCY: I would say  
5 that, much like the discussion [REDACTED]  
6 [REDACTED] that I didn't cross-examine on at all,  
7 we are, again, beyond the scope of  
8 cross-examination.

9 MR. NASH: You have my  
10 submission.

11 PRESIDING ARBITRATOR: Give us  
12 a moment.

13 PROFESSOR SCHWARTZ: Mr. Nash,  
14 we are having a little trouble coming to a  
15 decision here. Documents could be linked to each  
16 other in any number of ways, inherently,  
17 logically, inextricably, but in order to be within  
18 the scope of redirect, it would have to be on the  
19 same subject matter. You would have to be  
20 covering the same subject matter as the document.  
21 So could you just explain to us how this is -- you  
22 are using the second document to address a matter  
23 that was cross-examined on in relation to the  
24 first document?

25 MR. NASH: Yes.

1 The questions in relation to  
2 the second document, the one that was put to  
3 Mr. Dooley yesterday, is my friend is correct  
4 about the [REDACTED] and how does that  
5 [REDACTED] manifest itself. It manifests itself  
6 [REDACTED] It may also manifest itself  
7 through [REDACTED]  
8 significant factor.

9 So [REDACTED]  
10 [REDACTED]

11 [REDACTED]  
12 [REDACTED] The letter of [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 [REDACTED] Both of them could.  
16 [REDACTED] What the [REDACTED]  
17 [REDACTED]  
18 [REDACTED] And you will see that on the right-hand side. It  
19 says [REDACTED] The second  
20 letter sets out the [REDACTED]  
21 [REDACTED] so that's how  
22 the two relate together.  
23  
24  
25

1 And there's also another  
2 aspect to it, which is a component of [REDACTED]  
3 On the second page, the document says:

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED] [as read]

15 Then follows the letter of [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 PROFESSOR SCHWARTZ: Okay.  
21 Now that it's been explained to us, the panel's  
22 prepared to allow that question, but would take  
23 Mr. Spelliscy's point that, of course, redirect  
24 does have to be directly related to matters that  
25 were cross-examined on in the first place.

1 BY MR. NASH:  
 2 Q. And so, Mr. Dooley,  
 3 looking at the letter [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED] And if there is any significance, could  
 8 you explain it?  
 9 A. No. Just like I had  
 10 indicated before in my testimony, the major  
 11 significance for us was the [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 MR. NASH: Thank you,  
 16 Mr. Dooley. Those are my questions.  
 17 PRESIDING ARBITRATOR: Thank  
 18 you, Mr. Nash.  
 19 Does the respondent want to  
 20 take the floor? Yes, Mr. Spelliscy.  
 21 MR. SPELLISCY: Yes. I don't  
 22 want to call another break. Just give me  
 23 30 seconds or a minute to consult. It's been a  
 24 long redirect.  
 25 PRESIDING ARBITRATOR: Okay,

1 Mr. Spelliscy. You have the floor once you are  
 2 ready.  
 3 FURTHER CROSS-EXAMINATION BY MR. SPELLISCY:  
 4 Q. Good morning again,  
 5 Mr. Dooley.  
 6 A. Good morning.  
 7 Q. You will be happy to know  
 8 I do not plan to take as long as my colleague  
 9 Mr. Nash did, so we will get you out of here.  
 10 A. Well, that's good to  
 11 hear.  
 12 Q. I do have some questions,  
 13 though.  
 14 A. Certainly.  
 15 Q. You had said in response  
 16 to one of Mr. Nash's questions that, if Whites  
 17 Point had [REDACTED]  
 18 [REDACTED]. Now, you  
 19 testified yesterday, as well, that your role,  
 20 managing, and that you had to -- your role was to  
 21 maximize the profits of New York Sand & Stone. So  
 22 I take it you would agree with me that your  
 23 statement that New York Sand & Stone would have  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 correct?  
 3 A. Absolutely correct.  
 4 Q. Absolutely? Okay. And  
 5 so [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 right?  
 9 A. [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Q. And that's what  
 14 happened --  
 15 A. [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. Okay. You talked in your  
 19 redirect examination about the [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 correct?

1 A. Yes, it was.  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] correct?  
 5 A. Can you repeat that  
 6 question?  
 7 Q. Mr. Nash walked you  
 8 through the timeline. [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED] correct?  
 12 A. Correct.  
 13 Q. Okay. So you could not  
 14 have [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED] right?  
 19 A. Not -- if the Whites  
 20 Point Quarry did [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 Q. Right.  
 25 A. [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 Q. Right. So you would have  
 4 [REDACTED]  
 5 A. Not necessarily [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 Q. I'm not sure I  
 13 understand, Mr. Dooley. You had --  
 14 A. Okay. So let me -- what  
 15 I'm saying is --  
 16 Q. Hold on. Let me ask the  
 17 question.  
 18 A. Okay. I'm sorry.  
 19 Q. You had testified that  
 20 you could not [REDACTED]  
 21 [REDACTED]  
 22 that was your testimony; right?  
 23 A. We didn't have [REDACTED]  
 24 [REDACTED]  
 25 Q. Right.

1 A. -- is what my response  
 2 was.  
 3 Q. Right. Sufficient  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 A. Yes. Okay.  
 9 Q. Right. And if Whites  
 10 Point is [REDACTED]  
 11 [REDACTED]  
 12 A. We would hav [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 Q. It's a [REDACTED]  
 17 [REDACTED]  
 18 A. Yes, it is.  
 19 Q. Okay. You don't have any  
 20 [REDACTED]  
 21 [REDACTED]  
 22 correct?  
 23 A. Can you repeat that,  
 24 please?  
 25 Q. You don't have any

1 [REDACTED]  
 2 [REDACTED]  
 3 correct?  
 4 A. Any [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 Q. Right. And that's a  
 9 [REDACTED]  
 10 A. Each [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 Q. Now, let me ask another  
 14 question to try and understand what you had been  
 15 saying about [REDACTED]. In the context of your  
 16 comments and responses to Mr. Nash, you had said  
 17 that [REDACTED]  
 18 [REDACTED]; do you recall that comment?  
 19 A. I do.  
 20 Q. Okay. Have you reviewed  
 21 the evidence of Mr. Wick in this arbitration as to  
 22 the size of the New York market, Mr. Dooley?  
 23 A. Umm, I believe I have,  
 24 yes.  
 25 Q. So it wouldn't surprise

1 you to know that, in 2008, if we take a year, his  
 2 evidence is that the size of the New York City  
 3 market was [REDACTED]? Sounds about  
 4 right to you, anyways?  
 5 A. That's in the ballpark,  
 6 but I don't know what Mr. Wick is specifically  
 7 using as a geographical area for the New York City  
 8 market. So if you could give me a little bit of a  
 9 better parameter as to, you know, how inclusive  
 10 that would be.  
 11 Q. Well, we can ask Mr. Wick  
 12 when he is hopefully up here today.  
 13 But the size of [REDACTED]  
 14 [REDACTED] sounds about right to you for  
 15 the New York City market?  
 16 A. It sounds a little bit on  
 17 the higher side. And I think -- and, again, I'm  
 18 assuming something here, which maybe you don't  
 19 want me to do. But, you know, the markets up in  
 20 and around Rockland County, which is up above the  
 21 city, Westchester counties, would be, in a normal  
 22 context, considered part of the New York City  
 23 market. But we -- as New York Sand being booked,  
 24 [REDACTED]  
 25 [REDACTED] When we talk

1 about a market share for New York Sand & Stone, we  
 2 are talking about [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 8 A. Yes.  
 9 Q. Now, [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 15 A. Yes.  
 16 Q. Okay. So that's [REDACTED]  
 [REDACTED] right?  
 18 MR. NASH: I actually don't  
 19 believe that's correct. Could you just run that  
 20 by Mr. Dooley again?  
 21 BY MR. SPELLISCY:  
 22 Q. [REDACTED]  
 [REDACTED]  
 24 A. Okay. This is on this  
 25 chart?

1 Q. Yes, on this chart.  
 2 [REDACTED]  
 [REDACTED] right?  
 4 A. Well, [REDACTED]  
 5 Q. [REDACTED] I'm going to be in  
 6 trouble if we start using decimals.  
 7 [REDACTED]  
 8 A. Okay.  
 9 Q. Now, yesterday you said,  
 10 and you testified again at length today about the  
 11 [REDACTED]  
 12 [REDACTED] is that right?  
 15 A. No. What I -- yes. I  
 16 did indicate to you in one particula [REDACTED]  
 [REDACTED]  
 18 Q. Right.  
 19 A. -- we did [REDACTED]  
 [REDACTED].  
 21 Q. Okay.  
 22 A. But I don't know what  
 23 that [REDACTED] to be perfectly honest with  
 24 you.  
 25 Q. So in that [REDACTED]

1 Mr. Nash took you to it -- [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 6 Q. Right.  
 7 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED] correct?  
 14 A. No, that's not correct.  
 15 Q. Well, now I'm confused.  
 16 A. Okay. I'd be happy to  
 17 explain it to you.  
 18 Q. Sure. You've got [REDACTED]  
 [REDACTED] You told us  
 20 yesterday, and you talked about it today, that you  
 21 wer [REDACTED]  
 [REDACTED]  
 24 A. Okay. Again, this is not  
 25 [REDACTED]

1 Q. Yup.  
 2 A. [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 9 MR. NASH: Just let him  
 10 finish.  
 11 MR. SPELLISCY: Sorry.  
 12 THE WITNESS: The document is  
 13 a [REDACTED]  
 [REDACTED] That's not what I said to  
 17 you yesterday.  
 18 BY MR. SPELLISCY:  
 19 Q. Your testimony is that it  
 20 was -- [REDACTED]  
 [REDACTED]  
 22 A. Again, my testimony was  
 23 yesterday, and is today. [REDACTED]  
 [REDACTED]

1 [REDACTED]

6 Q. One thing to clarify,  
7 Mr. Dooley. Look at the first sentence of the  
8 document. What does it say?  
9 A. [REDACTED]  
10 [REDACTED] "[as read]  
13 Okay.  
14 Q. So it is a [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
19 Q. I understand it's not a  
20 [REDACTED] Mr. Dooley.  
21 A. Okay. I mean, we could  
22 argue, I guess, you know, what that means.  
23 Q. It's your words; right,  
24 Mr. Dooley?  
25 A. Yeah. I will give you

1 that.  
2 Q. Okay.  
3 MR. NASH: Counsel has put to  
4 Mr. Dooley several times the concept that this was  
5 [REDACTED]  
6 [REDACTED]  
9 Can counsel point to the document  
10 where it says it will be an [REDACTED]  
11 [REDACTED]  
12 MR. SPELLISCY: Sure.  
13 BY MR. SPELLISCY:  
14 Q. Let's go to the second  
15 paragraph under [REDACTED] And it says:  
16 [REDACTED]  
17 Does it not, Mr. Dooley?  
18 A. It does.  
19 Q. So I put it to you again,  
20 Mr. Dooley. We can go back to the transcript  
21 yesterday, but this was for [REDACTED]  
22 [REDACTED] was it not?  
23 A. This was a [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]

6 Q. And sitting here today,  
7 Mr. Dooley, you can't tell us ho [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
11 A. I could not tell you  
12 that --  
13 Q. [REDACTED] sorry.  
14 A. -- without looking at the  
15 records, no.  
16 [REDACTED]  
17 [REDACTED]  
18 A. I'm sorry?  
19 Q. You haven't [REDACTED]  
20 [REDACTED]  
21 A. Not -- I don't believe  
22 [REDACTED].  
23 Q. Right. But you would  
24 agree with me, Mr. Dooley, you have talked about  
25 and you discussed with Mr. Nash how [REDACTED]

1 [REDACTED] you remember  
2 that?  
3 [REDACTED]  
4 [REDACTED]  
6 Q. You would agree with me,  
7 then, that any [REDACTED]  
8 [REDACTED]  
9 [REDACTED] You would agree with that,  
11 wouldn't you?  
12 A. Well, I will tell you  
13 that we made [REDACTED]  
14 [REDACTED]  
15 [REDACTED] I can tell you that much.  
17 Q. You would agree that the  
18 [REDACTED] right?  
19 [REDACTED]  
20 A. Say that again for me.  
21 Q. You would agree that, if  
22 you are [REDACTED]  
23 [REDACTED]  
24 correct?  
25 A. No, I wouldn't agree with

1 that. I will tell you why I wouldn't agree with  
2 it: Because [REDACTED]

[REDACTED]

7 Q. Um-hmm. But you weren't

8 [REDACTED]

10 A. I guess you could look at  
11 it that way. I didn't look at it that way in my  
12 estimations in my witness statements. Let me put  
13 it that way.

14 Q. You have said, as well,  
15 in response to Mr. Nash's questions about the  
16 [REDACTED] that are listed in that presentation, you  
17 have said that the [REDACTED]  
18 and you have testified, as well, that [REDACTED]

[REDACTED]

25 A. I would say, yes, you correct?

1 Q. You would agree with me  
2 that [REDACTED]

[REDACTED]

4 A. I will give you that,  
5 yes.

6 Q. So the [REDACTED]  
[REDACTED]

correct?

10 A. That's correct.

11 MR. SPELLISCY: Just give me  
12 one second. Thank you, Mr. Dooley. That is all I  
13 have for now.

14 PRESIDING ARBITRATOR: Thank  
15 you, Mr. Spelliscy. Mr. Nash has another  
16 question.

17 MR. SPELLISCY: I do want to  
18 raise one procedural point. I won't object. We  
19 have, in this hearing so far, consistently allowed  
20 re-direct from Mr. Nash. It's not provided for in  
21 the procedural order. If you look at the  
22 procedural order, it's very clear that there is  
23 cross-examination, redirect. It doesn't say  
24 recross either, which we have consistently  
25 allowed, but we are now into this game where we

1 would probably have to construe that, yeah.

2 Q. Okay.

3 A. I'm not -- I wouldn't  
4 debate that point with you, no, because it's an

5 [REDACTED]

6 Q. You would --

7 [REDACTED]

10 Q. But it's not part of

11 that. [REDACTED]

[REDACTED]

13 A. Well..

[REDACTED]

[REDACTED]

[REDACTED]

22 Q. Mr. Dooley, you defined

23 the [REDACTED]

[REDACTED]

25 A. Right. That's why --

1 are constantly standing up and sitting down. I  
2 don't want to lodge an official objection to it,  
3 but I note we are not following what the  
4 procedural order says. And with the time  
5 constraints we have, I think we have to monitor  
6 what we are doing here.

7 PRESIDING ARBITRATOR: Did we  
8 exclude it in the order, or did we not mention the  
9 possibility?

10 MR. SPELLISCY: I will turn to  
11 Mr. Pulkowski for help, but my recollection of the  
12 order is that it said that the examinations shall  
13 proceed as follows, which is a short introduction  
14 or direct, cross-examination, followed by  
15 redirect.

16 DR. PULKOWSKI: That is  
17 correct. There was no specific exclusion of the  
18 possibility; rather, the procedural order proceeds  
19 by defining the ordinary course of examination,  
20 brief introduction followed by cross-examination,  
21 and then the side summoning the witness may then  
22 re-examine the witness with respect to any matters  
23 or issues arising out of the cross-examination.  
24 The tribunal may examine the witnesses at any  
25 point.

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1 PRESIDING ARBITRATOR: Does  
2 the word in "ordinary course", "ordinary" in  
3 there, or was that your description?  
4 DR. PULKOWSKI: No. Let me --  
5 so we are talking about section 4.3:  
6 "At the hearing the  
7 examination of each  
8 witness shall proceed as  
9 follows."[as read]  
10 And then come these three  
11 steps that are contemplated.  
12 MR. NASH: Could you just  
13 repeat those three steps again for us,  
14 Mr. Pulkowski?  
15 DR. PULKOWSKI: Sure.  
16 "At the hearing, the  
17 examination of each  
18 witness shall proceed as  
19 follows: The side  
20 summoning the witness may  
21 briefly introduce the  
22 witness and provide him  
23 or her with an  
24 opportunity to make  
25 corrections or

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1 clarifications to his or  
2 her statement. The  
3 opposing side may then  
4 cross-examine the  
5 witness. The side  
6 summoning the witness may  
7 then re-examine the  
8 witness with respect to  
9 any matters or issues  
10 arising out of the  
11 cross-examination."[as  
12 read]  
13 MR. NASH: So I'm going by  
14 recollection, but my recollection is that you  
15 invited me up to ask the question.  
16 PRESIDING ARBITRATOR: Yes,  
17 actually, in -- with a certain disregard to the  
18 rule in there. So would you allow that? Would  
19 you -- you would rather not have Mr. Nash ask that  
20 question or let him have his question, and, from  
21 then on, we are going to be more rigid with regard  
22 to our reading of the 4.3?  
23 MR. SPELLISCY: Well, I  
24 certainly can't accept the last option, because we  
25 have a number of our own witnesses coming up.

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1 MR. NASH: And I agree with  
2 that. I think that's fair that both sides should  
3 have a level playing field.  
4 MR. SPELLISCY: So here's my  
5 concern is that we have allowed -- this is the  
6 first time Canada has gotten up to do any  
7 re-cross. We have, until today, followed the rule  
8 in the procedural order. Mr. Nash has  
9 consistently, after the tribunal questions and  
10 after redirect, every time, gotten up. We have  
11 not objected, but we are back against the wall in  
12 terms of time. And I do have concern with this  
13 constant standing up and sitting down where there  
14 is a constant effort to have essentially the last  
15 word. And we can play this ping-pong all morning,  
16 but I think that the rules are better to be  
17 followed, and we move to the next witness.  
18 MR. NASH: I think the  
19 practice has been so far in the proceeding that  
20 either side has been invited if there were any  
21 matters arising.  
22 PRESIDING ARBITRATOR: Yes. I  
23 asked if the respondent had something, and they  
24 said no.  
25 MR. SPELLISCY: Yes, no

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1 dispute.  
2 MR. NASH: So I think it's  
3 appropriate the practice continue. We are  
4 spending, actually, more time dealing with this  
5 now.  
6 PRESIDING ARBITRATOR:  
7 Mr. Nash, are you going to have one question or  
8 two?  
9 MR. SPELLISCY: I will count  
10 and hold him to that.  
11 MR. NASH: Two questions.  
12 PRESIDING ARBITRATOR: Sorry?  
13 MR. SPELLISCY: I said I will  
14 count, and I will hold him to that.  
15 PRESIDING ARBITRATOR: All  
16 right. So okay.  
17 MR. NASH: I feel held.  
18 PRESIDING ARBITRATOR: So  
19 okay. You have two questions and then, from then  
20 on, we follow the rule more strictly.  
21 MR. SPELLISCY: Well, I would  
22 ask for the same leeway. If I have one or two  
23 questions on redirect, that I be permitted to do  
24 that as well.  
25 PRESIDING ARBITRATOR: Right.

1 MR. SPELLISCY: But I do  
2 suggest that, with recross and redirect, that we,  
3 in general, become more rigid on this.  
4 PRESIDING ARBITRATOR: Yes,  
5 fully agreed, and you have, how do you say, good  
6 faith two questions.  
7 MR. NASH: Two questions. And  
8 I also recall, Judge Simma, that, after the  
9 tribunal has asked questions of the witnesses,  
10 either side has been invited to get up and, "Are  
11 there any questions arising out of those  
12 questions?" And I recall getting up myself. I  
13 don't recall if Canada got up in response to those  
14 invitations. But, again, I have got no objection  
15 at all for that practice -- procedure, as we move  
16 forward, to be equally distributed between both  
17 parties.  
18 PRESIDING ARBITRATOR: Well,  
19 from now on, we are certainly going to be much  
20 more aware of what we do.  
21 MR. SPELLISCY: Yes. This is  
22 fine. I note -- and I think, if we look at the  
23 time that has been used, I mean, just the constant  
24 examination of the same witness over and over has  
25 been one of the drags on the time when I have

1 looked back at the schedule.  
2 MR. NASH: I fundamentally  
3 disagree with that.  
4 MR. SPELLISCY: Sorry, you  
5 fundamentally disagree?  
6 MR. NASH: I do. I simply  
7 disagree with that.  
8 MR. SPELLISCY: With the  
9 simple calculation of time?  
10 MR. NASH: With your  
11 characterization, but I don't propose to spend any  
12 more time debating it.  
13 FURTHER RE-EXAMINATION BY MR. NASH:  
14 Q. So the two questions are,  
15 Mr. Dooley, Mr. Spelliscy asked if you could have  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 A. Yes. [REDACTED]  
20 [REDACTED]  
21 Q. Mr. Spelliscy also raised  
22 a question of document production, and he said --  
23 and I'm paraphrasing -- you didn't produce  
24 documents relating to a matter that he raised in  
25 re-cross. You left New York Sand & Stone when?

1 A. Uh... December of 2015.  
2 Q. And --  
3 MR. SPELLISCY: That's two  
4 questions.  
5 MR. NASH: Well, there's a  
6 follow-up.  
7 MR. SPELLISCY: This seems to  
8 be a problem. It's exactly what I am pointing to.  
9 There was two questions. That's two questions.  
10 MR. NASH: This is a subpart  
11 of the same question.  
12 PRESIDING ARBITRATOR: I think  
13 that's fair, because if then some conclusion, if  
14 it builds on Mr. Dooley having left in -- so let's  
15 see what comes.  
16 BY MR. NASH:  
17 Q. Yes. The first question  
18 was 2A, and this is 2B.  
19 So were you aware of the  
20 status of this tribunal proceeding at the time  
21 that you left?  
22 A. No.  
23 Q. Did you have access --  
24 this is sub C. Did you have access to New York  
25 Sand & Stone after you left in December?

1 A. No.  
2 MR. NASH: Okay. Thank you.  
3 PRESIDING ARBITRATOR: I think  
4 that was a fair connection between the  
5 subquestions. Okay. All right. But point made.  
6 So questions -- no questions  
7 from the tribunal. So that concludes the long  
8 witness examination of Mr. Dooley. Mr. Dooley,  
9 you are a free man again, and we wish you a safe  
10 trip home.  
11 THE WITNESS: Thank you.  
12 Thank you. And I just want to say a special  
13 thanks for you taking your jacket off so I wasn't  
14 the only guy in the room who took my jacket off.  
15 PRESIDING ARBITRATOR: It's  
16 getting colder, so everybody may want to put their  
17 jacket on again.  
18 Okay. And I think we could  
19 instantly call on Mr. Fougere.  
20 Mr. Fougere, you are welcome  
21 to take the seat here.  
22 So good morning again.  
23 Welcome. This will be your witness examination.  
24 Would you please be so kind and read out the  
25 statement that you have in front of you.

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1 WITNESS DECLARATION: DAN FOUGERE  
2 MR. FOUGERE: I solemnly  
3 declare upon my honour and conscience that I will  
4 speak the truth, the whole truth, and nothing but  
5 the truth.  
6 PRESIDING ARBITRATOR: Thank  
7 you. Mr. Nash will direct you.  
8 EXAMINATION IN-CHIEF BY MR. NASH:  
9 Q. Good morning,  
10 Mr. Fougere.  
11 A. Good morning, sir.  
12 Q. You have signed two  
13 witness statements in this matter; correct?  
14 A. That is correct.  
15 Q. And you're a chartered  
16 accountant, now a CPA, in Canada?  
17 A. I am.  
18 Q. And how long have you  
19 been a chartered accountant?  
20 A. Approximately 40 years,  
21 since 1977.  
22 Q. And you are still  
23 practising?  
24 A. I'm not in public  
25 practice, but I'm in industry.

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1 you, Mr. Nash. And examination will be by  
2 Mr. Spelliscy.  
3 CROSS-EXAMINATION BY MR. SPELLISCY:  
4 Q. Good morning,  
5 Mr. Fougere.  
6 A. Good morning.  
7 Q. I have good news and bad  
8 news for you. My good news is I have only one  
9 question. The bad news is it has many, many sub  
10 parts. This is an inside joke that, because you  
11 haven't been sitting here, you won't get.  
12 MR. NASH: How many?  
13 (Laughter)  
14 MR. SPELLISCY: Many.  
15 BY MR. SPELLISCY:  
16 Q. Let me first start with a  
17 little background about the Auld's Cove Quarry,  
18 which you were the manager of. And as we go  
19 through, I'm going to ask you some specific  
20 questions. We are pressed for time, and so I'd  
21 appreciate if you can be as direct in your  
22 responses as possible.  
23 Let's turn to Tab 1 of the  
24 white binder that we have put in front of you  
25 there. Tab Number 1 is Exhibit C 893, for the

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1 Q. And were you in the  
2 aggregates industry as a chartered accountant in  
3 the late '90s and through 2011 approximately?  
4 A. I was indeed employed by  
5 Martin Marietta Materials from 1998 until 2011.  
6 Q. And what was your  
7 position there?  
8 A. I was administrative  
9 manager, which effectively was the controllership  
10 function. And for an interim period in 2008-2009,  
11 I was the interim plant manager.  
12 Q. And you left Martin  
13 Marietta in 2011?  
14 A. In September of 2011, I  
15 left Martin Marietta to go to work as director of  
16 finance with the Sisters of St. Martha in  
17 Antigonish.  
18 Q. Do you have any  
19 corrections to make to your witness statement?  
20 A. I have no corrections to  
21 make.  
22 MR. NASH: Thank you,  
23 Mr. Fougere. My friend from Canada will ask you  
24 some questions.  
25 PRESIDING ARBITRATOR: Thank

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1 record.  
2 This is an article profiling  
3 Martin Marietta's Auld's Cove Quarry in which you  
4 are quoted. The article itself doesn't have a  
5 date on it, but I think you have testified in your  
6 witness statement it was written in 2008; is that  
7 correct?  
8 A. That is correct.  
9 Q. Okay. Now, in the -- I  
10 just want to flip to the last paragraph of the  
11 article on the second page. In that last  
12 paragraph, you confirm that it is an operation  
13 running 24 hours a day and seven days a week;  
14 right?  
15 A. That is correct.  
16 Q. And, in 2008 Auld's Cove  
17 was producing about 3.7 million tons of stone per  
18 year; is that right? I can take you to your  
19 witness statement if you'd like to refresh your  
20 recollection. It's at page 8 of your first  
21 witness statement -- or paragraph 8, sorry, of  
22 your first witness statement.  
23 A. Yeah. This references  
24 2008, at the onset of the recession. 2007, the  
25 production was actually somewhat higher than that.

1 Q. My question is in 2008.  
 2 In 2008, Auld's Cove was producing 3.7 million  
 3 tons annually; correct?  
 4 A. That is correct.  
 5 Q. Thank you.  
 6 MR. SPELLISCY: For the  
 7 record, we will go into confidential session here  
 8 so that, when we are releasing this, we will know  
 9 where to start.  
 10 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
 11 10:50 A.M.  
 12 BY MR. SPELLISCY:  
 13 Q. I'd like to go to  
 14 paragraph 7 of your second witness statement,  
 15 Mr. Fougere. You talk about the recession, the  
 16 one that you just mentioned in there. You say  
 17 that, prior to 2008, Martin Marietta had not  
 18 [REDACTED], but, with the recession,  
 19 it was forced to look to other markets; correct?  
 20 A. That is correct.  
 21 Q. Okay. Now -- and you  
 22 would agree with me that Martin Marietta  
 23 [REDACTED]  
 24 [REDACTED] correct?  
 25 A. That is correct.

1 Q. This was the first time  
 2 that Martin Marietta [REDACTED]  
 3 is that right?  
 4 A. That is correct.  
 5 Q. And Martin Marietta was  
 6 [REDACTED]  
 7 [REDACTED] correct?  
 8 A. That is correct.  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 Q. Right.  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED] is that right?  
 17 A. I was aware of that.  
 18 Q. Okay.  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED] that's correct?  
 23 [REDACTED]  
 24 [REDACTED]

1 Q. Okay. And you were the  
 2 manager at Auld's Cove at the time; right?  
 3 A. I was the manager, but I  
 4 was not a party -- a signatory to the document.  
 5 Q. Let's turn to Tab 4 of  
 6 your binder, Mr. Fougere. It's Exhibit C 1402 in  
 7 the record. [REDACTED]  
 8 [REDACTED] And if you turn to the second page,  
 9 you will see [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 Now, I heard your testimony,  
 13 Mr. Fougere, that you left Martin Marietta in  
 14 2011. Did you review [REDACTED] prior  
 15 to submitting your witness statements?  
 16 A. Well, gentlemen, these  
 17 [REDACTED]  
 18 [REDACTED] came to my  
 19 attention the summer of 2017.  
 20 Q. So you were the one who  
 21 produced this -- provided this document?  
 22 A. I provided this document.  
 23 Q. And so you see, as I  
 24 understand it -- well, we can first agree that  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 A. That is correct.  
 4 Q. Okay. And the document  
 5 goes a little bit the other way. So if we turn to  
 6 the page marked 006. As I understand the  
 7 document, Mr. Fougere, it is [REDACTED]  
 8 [REDACTED] Do you understand the  
 9 document in the same way?  
 10 A. I do.  
 11 Q. Okay.  
 12 [REDACTED]  
 13 [REDACTED] correct?  
 14 A. That is correct.  
 15 Q. That is correct. And we  
 16 see there that [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. It is.  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]



1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED] right?  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. Mr. Fougere, you would  
 11 also agree with me that, [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED] right?  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 Q. Right. [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. Oh, absolutely. [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 Q. So you would agree with  
 24 me that [REDACTED] right?  
 25 [REDACTED]

1 A. Well, I wouldn't make a  
 2 general statement like that. But certainly in the  
 3 case of Porcupine Mountain, we had a diverse  
 4 market, including a market in Prince Edward  
 5 Island, a market in Trinidad, and a market along  
 6 the Gulf Coast of the United States.  
 7 Q. And you're aware of the  
 8 Bayside Quarry, Mr. Fougere?  
 9 A. I am indeed.  
 10 Q. And you are aware that  
 11 Bayside -- [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. That wasn't exactly my  
 25 question. I said: [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. I am aware of that. It's  
 5 one of my exhibits, actually.  
 6 Q. Yes, exactly.  
 7 And, Mr. Fougere, you earlier  
 8 talked about [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED] correct?  
 12 A. That is correct.  
 13 Q. Okay. And we looked at  
 14 the numbers. [REDACTED]  
 15 [REDACTED] did they?  
 16 A. To my knowledge, they  
 17 didn't.  
 18 Q. No. In fact, we looked  
 19 at the numbers above. [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED] right?  
 22 A. It would appear.  
 23 Q. You are also aware,  
 24 Mr. Fougere, [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED] is that right?  
 4 A. I have some recollection  
 5 of that, yes.  
 6 Q. That sounds familiar?  
 7 A. It sounds, yeah, in the  
 8 right range.  
 9 Q. Now, I'd like to go to  
 10 Tab 7 in the binder there, which is exhibit R 834,  
 11 for the record.  
 12 These are [REDACTED]  
 13 [REDACTED] And if you look at the  
 14 bottom on the right, [REDACTED]  
 15 [REDACTED] correct?  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 If we look in the box, we see  
 20 [REDACTED]  
 21 [REDACTED] do you see that?  
 22 A. I do. I do see that.  
 23 Q. Okay. [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED] correct?  
 3 A. That is correct.  
 4 Q. If you look at [REDACTED]  
 5 [REDACTED] do you  
 6 [REDACTED]  
 7 see that?  
 8 A. I do.  
 9 Q. Okay.  
 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 Q. It is. Well, we can turn  
 12 to it. It's at Tab 6 of the binder in front of  
 13 you, Mr. Fougere. [REDACTED]  
 14 [REDACTED] correct?  
 15 [REDACTED]; isn't that right?  
 16 A. Um-hmm. Yes.  
 17 Q. And so, if you go to  
 18 page 5, Mr. Fougere, you see that [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED] are they not?  
 23 A. Well, what you need to  
 24 [REDACTED]  
 25 [REDACTED]

1 understand is that [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. You would agree with me  
 21 that, [REDACTED]  
 22 [REDACTED]; correct?  
 23 MR. NASH: Well, that's very  
 24 much a legal question. That's not a factual  
 25 [REDACTED]

1 question. Whether something is representing a  
 2 fact from one party to another is a question of  
 3 law.  
 4 MR. SPELLISCY: The word  
 5 "representing", it means to show, to display, to  
 6 portray. I believe my question stands.  
 7 THE WITNESS: Yeah. Well --  
 8 and I believe the supply agreement speaks for  
 9 itself, you know.  
 10 BY MR. SPELLISCY:  
 11 Q. [REDACTED]  
 12 [REDACTED]; correct?  
 13 A. Yes. That -- you know,  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED] is that your testimony?  
 21 A. I had a general awareness  
 22 of it as -- on a need-to-know basis. There were  
 23 some requirements in there that were important  
 24 that I would know. [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. To your knowledge, [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 Q. In your experience at  
 22 Martin Marietta, is Martin Marietta in the  
 23 practice of [REDACTED]  
 24 [REDACTED]  
 25 A. That would not be the

1 practice of Martin Marietta nor the practice of me  
 2 as a practising chartered accountant.  
 3 Q. Let's turn to Tab Number  
 4 9 in the binder in front of you, Mr. Fougere,  
 5 which is Exhibit C-1046, for the record.  
 6 These are the pro forma  
 7 financial statements that you prepared and  
 8 submitted with your witness statements; correct?  
 9 A. That is correct.  
 10 Q. Okay. Now, just to  
 11 clarify, you were not working for Bilcon of Nova  
 12 Scotia in 2007; correct?  
 13 A. In 2007? No, no, I was  
 14 not.  
 15 Q. You weren't the CFO of  
 16 Bilcon of Nova Scotia; correct?  
 17 A. In 2007, I was working  
 18 with Martin Marietta Materials Canada Limited.  
 19 Q. So you don't have any  
 20 information as to what Bilcon of Nova Scotia  
 21 actually expected in 2007 in terms of what their  
 22 thoughts were on a pro forma; correct?  
 23 A. I'm trying to recall if  
 24 there were any historical documents shared with  
 25 me, but I, I don't recall seeing documents from

1 2007.  
 2 Q. Do you recall seeing any  
 3 documents from prior to the decision by the  
 4 government not to approve the Whites Point project  
 5 in 2007 that led you -- or that assisted you in  
 6 preparation of this pro forma?  
 7 A. Well, I did indeed see  
 8 the design, the design documents as developed by  
 9 LB&W and Seabulk. I also, I visited the site in,  
 10 I visited the site in August of 2015. I met  
 11 Mr. Paul Buxton down there, and Digby Neck, and I  
 12 was wowed, I must say. You know, I walked onto  
 13 that site, and it was an expansive formation of  
 14 basalt --  
 15 Q. Sorry, Mr. Fougere, my  
 16 question was whether you saw any documents from  
 17 prior to 2007 that assisted you in the preparation  
 18 of your pro forma. The answer is no?  
 19 A. I saw design documents,  
 20 and I saw the site, and I received, over the  
 21 course of two and a half years, cost data from  
 22 Mr. Wall and Mr. Buxton and Mr. Bickford that I  
 23 used to put together these pro forma financial  
 24 statements.  
 25 Q. And that was cost data

1 pre-dating 2007; that's your testimony? That's my  
 2 question, Mr. Fougere. Did you look at data from  
 3 pre 2007?  
 4 A. No. It wasn't historical  
 5 data. It was their best estimates that they could  
 6 provide me on the cost of operating that quarry as  
 7 designed.  
 8 Q. So the data you looked  
 9 at, all of the data you looked at to prepare this  
 10 pro forma, was prepared once -- long after this  
 11 arbitration had begun in 2008; correct?  
 12 MR. NASH: That's not a  
 13 correct representation of his evidence.  
 14 MR. SPELLISCY: Then he can  
 15 correct me, Mr. Nash, and if you want to interrupt  
 16 and lead your witness, I suggest you don't,  
 17 because it's inappropriate. Just like we let you  
 18 consistently ask questions, he can disagree with  
 19 me. In fact, we had a conversation about this  
 20 where we had the same objection, and you said, "I  
 21 can put a statement to him, and he can disagree".  
 22 I put a statement, and he can disagree. He can  
 23 say, "That was not my testimony". I think it was.  
 24 Let's let the witness decide what it says.  
 25 MR. NASH: Are you finished?

1 MR. SPELLISCY: No, I'm not  
 2 finished.  
 3 MR. NASH: Okay. Well --  
 4 MR. SPELLISCY: I'm going to  
 5 ask my question again. Can we read it back?  
 6 MR. NASH: Well, I am going to  
 7 object, and the reason is that Mr. Fougere has  
 8 given a clear answer to the question with respect  
 9 to what he saw prior to the pro forma or back in  
 10 -- before in 2007, or documents existing as of  
 11 2007, which were then given to him for the  
 12 preparation.  
 13 It's unfair to a witness when  
 14 he has given clear evidence on a point to then  
 15 represent that he hasn't given that evidence.  
 16 MR. SPELLISCY: I would point  
 17 out I believe the other day there was a question  
 18 where Mr. Little made the same comment to  
 19 questions from Mr. Nash, and I believe the ruling  
 20 from the tribunal was, if Mr. Nash wants to ask it  
 21 three times, then I'm sure the witness can say no  
 22 three times, even when the evidence was clear.  
 23 As for what his evidence was,  
 24 I asked him about pre 2007, and I had a response  
 25 that included a visit to the site in 2015, so I do

1 not think his evidence was clear.  
 2 PRESIDING ARBITRATOR:  
 3 Mr. Spelliscy, go ahead with your question. As  
 4 far as I'm concerned, we don't need to go back.  
 5 Just ask your question.  
 6 BY MR. SPELLISCY:  
 7 Q. Okay. So again, my  
 8 question, for clarification, was: Did you, in  
 9 preparing your pro forma -- you did not, in  
 10 preparing your pro forma, review any documents  
 11 pre-dating 2007; is that not correct?  
 12 A. Well, I did review the  
 13 documents from the prior arbitration round  
 14 available on, I think it was, the Permanent Court  
 15 website, and there were some references there to  
 16 financial representations. I did not use those in  
 17 preparing my pro forma. But, you know, I think  
 18 everyone has seen what was in the EIS document,  
 19 and there were some financial representations  
 20 included there.  
 21 Q. Okay. So you used for  
 22 your data in the pro forma the information created  
 23 after 2007?  
 24 A. I used the best  
 25 contemporaneous documentation available to me,

1 which, in my mind, was what I received from  
 2 Mr. Wall, Mr. Bickford, and Mr. Buxton.  
 3 Q. To be clear, what you  
 4 received were documents and their best  
 5 contemporaneous evidence from this process;  
 6 correct?  
 7 A. That's correct.  
 8 Q. Thank you. In your pro  
 9 forma, you have assumed production in the five  
 10 years that's there [REDACTED]  
 11 [REDACTED] correct?  
 12 A. That is correct.  
 13 Q. And so, then, you would  
 14 also be assuming production costs [REDACTED]  
 15 [REDACTED] correct?  
 16 A. That is correct.  
 17 Q. Let's come to the page in  
 18 your pro forma, which is at Tab 9 in your binder,  
 19 if you're there. And it is the page marked 006,  
 20 -006 in the bottom right. It's page 4 of the pro  
 21 forma, but it is marked 006, so it can be either  
 22 one. It is the Whites Point Quarry where the  
 23 personnel, energy, and supplies and raw materials  
 24 costs are listed.  
 25

1 A. Um-hmm, yes.  
 2 Q. Okay. Here, you have a  
 3 line that says, "Tons per paid man-hour"?  
 4 A. Yes.  
 5 Q. And that line goes to  
 6 [REDACTED]  
 7 [REDACTED] correct?  
 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]

14 Q. Auld's Cove produced at  
15 the rate of about 14 tons an hour; is that right?  
16 Auld's Cove, 14 tons an hour?  
17 A. No, no. Better than  
18 that.  
19 Q. Okay. Let's go to Tab 1  
20 in your binder. Maybe you can just help me  
21 understand. Back to the article that you had  
22 sent.  
23 Tab 1, if you come to that  
24 last paragraph that we were looking at --  
25 A. Mm-hmm. Yes.

1 [REDACTED]

3 A. Well, if you look at a  
4 stretch of 1,000 days, that's, you know, about  
5 three years, so that would include nine months of  
6 maintenance downtime, yes.  
7 Q. And your number, [REDACTED],  
8 includes hours for maintenance crews too, correct,  
9 in the pro forma?  
10 A. It does.  
11 Q. It does. So it's apples  
12 to apples to compare Auld's Cove maintenance time  
13 with Whites Point in the hours, and that's all I'm  
14 trying to do here. 704 person hours per day, you  
15 say, if we operate 24/7, 365 days in a year, it's  
16 256,000. If we multiply that, that's 256,960  
17 person hours per year at Auld's Cove. I have done  
18 the math.  
19 And I will put this to you.  
20 At 3.7 million tons per year, at least in 2008, if  
21 we divide 3.7 million tons by 256,960 person  
22 hours, that's just over 14 tons per hour, isn't  
23 it?  
24 A. Well, you know, for that  
25 particular year. But I think you are ignoring

1 Q. -- it's referencing an  
2 achievement in August 23rd of 2008. And it said  
3 they reached 1,000 days without a lost time  
4 incident. And you say:  
5 "In our operation,  
6 running 24/7, that means  
7 704,000 person hours,'  
8 says Fougere." [as read]  
9 So 1,000 days, 704,000 person  
10 hours, 704 person hours per day; correct?  
11 A. What's your question?  
12 Q. You said -- you were  
13 quoted in this article. You said 1,000 days at  
14 Auld's Cove means 704,000 person hours. Do you  
15 agree Auld's Cove has a rate of 704 person hours  
16 per day? 704 divided by 1,000; correct?  
17 A. This is over 1,000 days,  
18 which includes winter months when we are not doing  
19 anything but shipping. I'm not sure where you are  
20 going with this.  
21 Q. Well --  
22 A. But I know the 14 tons  
23 per hour is considerably lower than our production  
24 rate.  
25 [REDACTED]

1 that the production in 2007 and 2006 was  
2 considerably in excess of 4 million tons a year.  
3 So, you know, your math is not reconciling with me  
4 because tons per hour is something we measure on  
5 almost a daily basis, and if we were producing  
6 14 tons an hour, I would have been hauled on the  
7 carpet. That is way too low.  
8 Q. And yet you say the math  
9 doesn't reconcile. You would agree with me the  
10 math works. Your explanation was 2008 wasn't a  
11 good year. Is that not correct?  
12 A. Well, that was the onset  
13 of the recession. It was not a good year, and it  
14 took us a while to idle back. We were operating  
15 with excess. We had guys sitting on their loader  
16 with no place to go. We had to take some time to  
17 idle back. Nobody at that time realized the  
18 recession was going to be as deeply entrenched as  
19 it was. We thought it's a temporary blip, but...  
20 Q. But it was deep, and it  
21 lasted for several years?  
22 A. It was deep, and it  
23 lasted a long time.  
24 Q. I want to look at the  
25 revenue matrix summary, which is on page 10, the

1 last page of Tab 9 of your binder, your pro forma  
 2 statement, C-1046 for the record.  
 3 A. Yes.  
 4 Q. In this pro forma, you  
 5 used [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 you see that?  
 10 A. I do.  
 11 Q. Okay. So these are the  
 12 [REDACTED]  
 13 [REDACTED]  
 14 correct?  
 15 A. Well, I don't know if  
 16 [REDACTED]  
 17 [REDACTED] This came through  
 18 Mr. Dooley, I believe, was provided to me through  
 19 Mr. Dooley.  
 20 Q. You didn't verify it  
 21 yourself before attaching it or didn't understand  
 22 it before attaching it to your witness statement?  
 23 A. It looked reasonable to  
 24 me based on, you know, my knowledge of the market.  
 25

1 Q. Okay. I will help you  
 2 out. If we can come, Mr. Fougere, to Tab 6 in  
 3 your binder, which is [REDACTED]. And  
 4 if you turn to page 7 of that [REDACTED] you will  
 5 see [REDACTED] there; do you see that?  
 6 You would agree with me [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] do you see those?  
 9 [REDACTED]  
 10 do you see that?  
 11 A. Um-hmm. Um-hmm. I do.  
 12 Q. Okay. You weren't aware  
 13 of that when you cited the pro forma?  
 14 A. I -- no, I did not have a  
 15 copy of [REDACTED] in hand when I was  
 16 developing the pro forma. Retrospectively, when  
 17 Mr. Dooley filed his witness statement in  
 18 December, it was part of his documents, but by  
 19 then, I had signed off on the pro forma.  
 20 Q. So you prepared the pro  
 21 forma without knowing where those numbers came  
 22 from?  
 23 A. They came from  
 24 Mr. Dooley.  
 25

1 Q. Okay. You didn't verify  
 2 those numbers?  
 3 A. They appeared reasonable  
 4 to me. I had no reason to suspect they weren't  
 5 proper numbers.  
 6 Q. You will see [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] do you see that?  
 9 A. Could you highlight? I  
 10 don't see that.  
 11 Q. Sorry, on the pro forma.  
 12 I'm in your pro forma. Yup. Sorry, my fault.  
 13 Tab 9 of your binder. There were many confused  
 14 faces.  
 15 PRESIDING ARBITRATOR: The  
 16 last page?  
 17 BY MR. SPELLISCY:  
 18 Q. The last page, page 010,  
 19 you have [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]; do you see that?  
 22 A. I do.  
 23 Q. Okay. Now, [REDACTED]  
 24 [REDACTED]  
 25

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] correct?  
 5 A. That is correct.  
 6 Q. Okay. And you would  
 7 agree with me, Mr. Fougere, that the impact of  
 8 that is that [REDACTED]  
 9 [REDACTED] correct?  
 10 A. It does indeed.  
 11 Q. It does indeed. In fact,  
 12 you would agree with me that [REDACTED]  
 13 [REDACTED]  
 14 A. At least that, yes.  
 15 Q. At least that. Okay.  
 16 [REDACTED]  
 17 [REDACTED]  
 18 A. It was.  
 19 Q. It was. And we're  
 20 looking there. [REDACTED]  
 21 [REDACTED]; correct?  
 22 [REDACTED]  
 23 A. That is correct.  
 24  
 25



1 Going to the questions that  
2 Mr. Spelliscy asked you around what he called the  
3 representation of [REDACTED]  
[REDACTED]  
[REDACTED] do you  
8 see that?

9 A. I do see that line.  
10 Q. Is that statement a  
11 representation of what [REDACTED]  
[REDACTED]

13 A. It's --

14 A. It's a representation of  
16 the [REDACTED]  
[REDACTED]

20 [REDACTED]  
[REDACTED]  
25 Q. Right. Okay. You were

1 asked a question about whether there were other  
2 [REDACTED]  
[REDACTED] do you recall that?

4 A. Yes, I do.  
5 Q. And you were employed by  
6 Martin Marietta for the Auld's Cove Quarry; that's  
7 correct?

8 A. That is correct.  
9 Q. And is Auld's Cove and  
10 Porcupine Mountain interchangeable, because it's  
11 referred -- there are two names used.

12 A. Porcupine Mountain is the  
13 name specific to the quarry. Auld's Cove is the  
14 community --

15 Q. I see.  
16 A. -- which includes  
17 Porcupine Mountain, but it includes a residential  
18 area as well.

19 Q. Other than the Bayside  
20 site on the Bay of Fundy and the Whites Point site  
21 on the Bay of Fundy, were there any other Atlantic  
22 quarries of which you are aware that were closer  
23 in distance by ship to New York City and New  
24 Jersey than the Auld's Cove Quarry?

25 A. There were none.

1 Q. Where were the other  
2 Atlantic Maritime province quarries located of any  
3 size, of any significant size?

4 A. Of any significance?  
5 Well, there would be Belledune, up northeast coast  
6 of New Brunswick, considerably more distant away  
7 from New York than Porcupine --

8 Q. When you say  
9 "considerably", what do you mean? By what factor?

10 A. Well, it's double, again,  
11 the distance from Digby to New York. And there  
12 was a limestone quarry on the western coast of  
13 Newfoundland, which, again, would be considerably  
14 more distant, and the transportation costs would  
15 have made them uncompetitive.

16 Q. In terms of the distance  
17 being double, again -- [REDACTED]  
[REDACTED] -- what would be  
19 the magnitude of increase in the shipping cost to  
20 come from Belledune or the other quarry, the  
21 limestone quarry, in Newfoundland, approximately?

22 A. It's a difficult question  
23 to answer because I'm not familiar with the  
24 load-out rates in those locations, and that would  
25 factor in. But, you know, just based on distance,

1 it's probably [REDACTED]  
[REDACTED]  
3 Q. Is there another quarry  
4 in Atlantic Canada called Belleoram?

5 A. That's in Newfoundland.  
6 Q. That's in Newfoundland?  
7 A. They are -- they weren't  
8 operational during my time. I don't know if they  
9 are to this day.

10 Q. When were they -- did  
11 they receive a permit? When I say "they" --  
12 A. I'm not aware. I never  
13 viewed them as a competitor during my time because  
14 they were still mired in trying to develop a  
15 business case.

16 Q. Other than Bayside and  
17 the potential Whites Point site, was there any  
18 other competitor to Martin Marietta in Atlantic  
19 Canada, a quarry --

20 A. Well, of course, Black  
21 Point was on the horizon. And, you know, it's  
22 2018, and they are about to break ground, I  
23 believe, down in Black Point, but...

24 Q. Did Black Point serve the  
25 -- or was it intended to serve, by your knowledge,

1 the New York City market?  
 2 A. Well, no. They had no  
 3 immediately obvious entry point to New York. And  
 4 I, and I have taken a look at their 10K filings in  
 5 recent years, and they need that product to serve  
 6 their markets along the Gulf Coast. They are  
 7 running out of permitable areas, and they need  
 8 Black Point to supply their traditional markets,  
 9 not new markets.

10 Q. Mr. Spelliscy took you to  
 11 a portion of your affidavit which referred to the  
 12 year 2008, the turndown, the recession, and Martin  
 13 Marietta's search for other markets because of  
 14 capacity. Can you comment further on that and  
 15 what the markets had been for Martin Marietta  
 16 prior to [REDACTED]

17 A. Just what years are you  
 18 referring to?

19 Q. Speaking of 2008, which  
 20 was the year you were referred to, and that was as  
 21 the recession was taking course.

22 A. Um-hmm.

23 Q. Did Martin Marietta --  
 24 Martin Marietta, I gather, had other markets  
 25

1 [REDACTED]  
 2 A. Well, absolutely. And,  
 3 you know, up until 2008, we could ship and sell as  
 4 much rock as we could produce. The recession of  
 5 2008 hit. It lingered into 2009. By 2009, the  
 6 company, the company formed what was called a  
 7 Strategic Operation Analysis and Review Team, SOAR  
 8 team, and I was on it. And we met down in Atlanta  
 9 for weeks on end. And we said, "We got to find  
 10 new markets. We got to find new markets". [REDACTED]

11 [REDACTED]  
 12 coincidently with that, I was approached at a  
 13 Chamber of Commerce function in Halifax by Nova  
 14 Scotia Business Inc. to go on a trade mission to  
 15 Trinidad. And they were going to set it up for  
 16 me, line me up with a navigator, set up  
 17 appointments with the five largest aggregate  
 18 producers in Trinidad. And it's Nova Scotia  
 19 Business Inc., a government agency. So I took  
 20 advantage with that with full encouragement from  
 21 the company and the province, and it was a very  
 22 successful trip. So the company did enter  
 23 long-term contracts -- I don't want to say  
 24 anything propriety there -- with a large aggregate  
 25 consumer in Trinidad concurrently with

1 [REDACTED]  
 2 [REDACTED] So that enabled  
 3 Porcupine Mountain to start ramping up again to  
 4 utilize potential. Fixed costs of a quarry are  
 5 significant. It's a very capital intensive  
 6 business. And if you are not using your quarry to  
 7 potential, you know, you are losing out on profit  
 8 opportunities.

9 Q. Who were Martin  
 10 Marietta's customers down the eastern seaboard  
 11 down to the south of the United States prior to  
 12 2008?

13 A. Well, it was -- Martin  
 14 Marietta owned a series of -- or owned or leased  
 15 distribution yards all the way from the Carolinas  
 16 to as far as Texas, and most of our shipments went  
 17 to these distribution yards to serve customers of  
 18 Martin Marietta along the seaboard and Gulf Coast.

19 Q. And was the effect of the  
 20 recession, as you experienced it in that company,  
 21 Martin Marietta, greater or lesser in the south of  
 22 the United States as -- than it was in the north,  
 23 say, the Boston, New York City area in respect to  
 24 the consumption of aggregate?  
 25

A. It was pretty widespread.

1 I think the impact was felt throughout North  
 2 America.

3 Q. If you go to the pro  
 4 forma at Tab 9 and you go to the page that counsel  
 5 took you to, page 4, at the bottom 006, and you go  
 6 to Number 2 and seven categories down, "Tons Per  
 7 Paid Man-Hour", which is what Mr. Spelliscy took  
 8 you to. He took you to the figure of [REDACTED]

9 [REDACTED]  
 10 A. What page are you on  
 11 again?

12 Q. I'm on page 4 of Tab 9,  
 13 page 4, "Tons Per Paid Man" --

14 A. "Tons Per Paid Man-Hour",  
 15 yes.

16 Q. Right. And you see the  
 17 figure [REDACTED]?

18 A. Yes.

19 Q. And you were asked a  
 20 question as to what the comparison of that tons  
 21 per paid man-hour was as between [REDACTED]

[REDACTED]

1 [REDACTED]

4 A. Well, I needed to

5 reconcile those numbers, in my mind, in preparing

6 this pro forma, and it's attributable to a number

7 of factors, really, gentlemen.

[REDACTED]

1 [REDACTED]

12 Q. You said you went to the

13 site, and what was your impression of the site?

14 A. Oh, I remember walking

15 onto that site with Mr. Buxton, and I said, you

16 know, [REDACTED]

[REDACTED]

1 [REDACTED]

21 Q. The Porcupine Mountain

22 site is on the Strait of Canso; is that correct?

23 A. It is.

24 Q. And how far is it from

25 the Strait of -- Auld's Cove site, along the

1 Strait of Canso to the Atlantic where the ship can

2 pick up speed?

3 A. Is your question how far

4 is Porcupine Mountain from the open ocean?

5 Q. Yes.

6 A. Oh, I would, I would

7 guess it's about 10 kilometres.

8 Q. And is the ship going

9 from Auld's Cove out to the open ocean? Is it

10 going at full speed in the Strait of Canso?

11 A. Certainly not. It's a

12 very busy port. There's a number of industrial

13 operations in the Strait of Canso. There's a

14 large petroleum trench shipment facility, which is

15 bringing in tankers on a daily basis, pulp and

16 paper mill. There's Nova Scotia Power bringing in

17 coal. There's a lot of activity in that strait,

18 so there's often delays in vessels coming in and

19 out. And they need to come in and out accompanied

20 by a tug. They can't just come in unassisted --

21 two tugs, actually. And it's a slow journey in

22 and out to the Atlantic Ocean.

23 Q. You were referred to the

24 last page of that document, the revenue matrix

25 summary at page 8. And I believe your evidence

1 was, when you were referred to [REDACTED]  
 2 [REDACTED] are you  
 3 following me?  
 4 A. I am.  
 5 Q. I think your evidence was  
 6 you saw that, and you thought it was reasonable.  
 7 Mr. Spelliscy then took you to [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. Well, like, in my memory,  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 Q. And when was -- did you  
 20 ever [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 A. Well, I did, certainly,  
 25 when I read Mr. Dooley's witness statement. Prior

1 to that, it just -- the numbers just looked  
 2 reasonable to me.  
 3 Q. And looking in your --  
 4 you were asked about [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]; do you see  
 7 those?  
 8 A. I do.  
 9 Q. And do you recall that he  
 10 took you to those?  
 11 A. Well, you know, I looked  
 12 through those, and, you know, I elaborated on the  
 13 reasons earlier, you know, why I would have  
 14 expected it to be different. [REDACTED]  
 15 [REDACTED]  
 16 Q. You would expect Auld's  
 17 Cove to be different from these?  
 18 A. Oh, absolutely.  
 19 Q. Did you have an  
 20 impression from your own perspective as a quarry  
 21 manager as to whether [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]

1 [REDACTED]  
 2 A. To me, they were  
 3 reasonable based on the known differences.  
 4 Q. Could you go, please, to  
 5 Tab 5 and go to the page, which is cited at the  
 6 end 001. I think it's the last page or maybe the  
 7 first page, sorry, on the -- in the tab. Do you  
 8 see [REDACTED]  
 9 [REDACTED]; are you with me?  
 10 A. Is this page 001 under  
 11 Tab 5?  
 12 Q. I'm sorry. I have  
 13 misdirected you. It's Tab 4. I apologize. So go  
 14 to Tab 4.  
 15 So these are [REDACTED]  
 16 [REDACTED]  
 17 A. Yes.  
 18 Q. -- that you amassed. And  
 19 if you go to 001 on that document, it should be  
 20 the page entitled [REDACTED]  
 21 [REDACTED] do you see that?  
 22 A. I do.  
 23 Q. Now, you commissioned

1 these figures; is that correct?  
 2 A. I did.  
 3 Q. And Mr. Spelliscy asked  
 4 you whether you were aware that [REDACTED]  
 5 [REDACTED]  
 6 and I'm giving some parameters around that, but  
 7 that was the question.  
 8 A. Yeah, he did. He did  
 9 ask.  
 10 Q. And what is this -- what  
 11 does this page here show?  
 12 A. Well, it shows what I  
 13 suspected. You know, [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 Q. And can you tell us what  
 21 [REDACTED] What does  
 22 that represent?  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 A. Well, it represents -- I  
 2 don't know. I don't know if this information is  
 3 totally complete, but it's what the subscription  
 4 service provided to me representing [REDACTED]  
 7 [REDACTED]  
 11 Q. And if you go to the  
 12 bottom, [REDACTED]  
 14 correct?  
 15 A. There is.  
 16 Q. [REDACTED]  
 17 to be exact.  
 18 A. There is, yes.  
 21 [REDACTED]  
 22 A. Yes.  
 23 Q. [REDACTED]  
 24 do you see that?  
 25 A. I do.

1 [REDACTED]  
 3 A. Yes.  
 4 Q. [REDACTED];  
 7 is that right?  
 8 A. Yes.  
 9 [REDACTED]  
 11 A. Yes.  
 12 [REDACTED]  
 15 A. I do not.  
 16 Q. [REDACTED]  
 19 correct?  
 21 MR. SPELLISCY: [REDACTED]  
 22 actually.  
 23 MR. NASH: Thank you.  
 24 May 24th, thank you for that correction.  
 BY MR. NASH:  
 [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. You described in answer

1 to one of Mr. Spelliscy's questions that [REDACTED]  
 3 [REDACTED] What did you mean by  
 4 that?  
 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]  
 21 Q. If you could go to  
 22 page 003 of that same document. Mr. Spelliscy  
 23 took you to many pages, including this page, 003.  
 24 [REDACTED]  
 do you see that?



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1 lunch break, at the beginning of the session, to  
2 come up and present me with their ideas as to how  
3 to cope with the remaining issues, because I'm  
4 afraid that the only -- Sunday being excluded, the  
5 only possibility will be to go into Monday and rob  
6 you of part of the time that you need to write  
7 your concluding statements.

8 So would you -- so we have  
9 Mr. Lizak, but yesterday I think you -- I think  
10 you announced that you thought that we would get  
11 two witnesses done, and we got about 60 per cent  
12 of one witness done, Mr. Dooley. So don't be  
13 optimistic, just be realistic. Is there a chance  
14 that Mr. Lizak might be treated fully before our  
15 lunch break, even if the lunch break -- we are on  
16 sandwiches too, so, I mean, we can -- if the lunch  
17 break extends to -- sorry, the end of that  
18 exercise extends to 1:30 or so, or -- okay,  
19 Mr. Spelliscy, you have an idea.

20 MR. SPELLISCY: My --  
21 certainly we have made efforts to streamline our  
22 examinations in light of the time. I would  
23 request in terms of -- well, I will say two  
24 things, one from my perspective and how long my  
25 questions will take. If Mr. Lizak answers them

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1 directly, I would expect to be done before we need  
2 a lunch break. I can't speak to redirect  
3 examination. I think in terms of an overall  
4 planning perspective, it might be useful to hear  
5 from Mr. Pulkowski as to where the parties are,  
6 because one thing that we certainly want to make  
7 sure is the parties have 21 hours of party time  
8 this week. We will not consent to a minute more.  
9 We have been rigorous in ensuring that our  
10 examinations are slimmed down where we need to, if  
11 some go longer, and as long as we are staying to  
12 the 21 hours, I believe that we will have time to  
13 make it. It is only if there is any thought of  
14 going over 21 hours, which we reject, that is our  
15 view. But maybe we can hear from Mr. Pulkowski.

16 PRESIDING ARBITRATOR: Dirk,  
17 do you have --

18 DR. PULKOWSKI: Sure. I can  
19 provide an updated time count, which is, at this  
20 point, in fact, almost identical for each side.  
21 The claimants have used 13 hours and 13 minutes,  
22 and the respondent has used 13 hours and  
23 14 minutes. So assuming that each side wants to  
24 set aside 3 hours for its clothing statements,  
25 this leaves each side essentially with 7 hours 45

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1 for the entire remainder of the exercise.

2 MR. SPELLISCY: That's 7 hours  
3 and 45 minutes, but only 4 hours and 45 minutes  
4 each.

5 DR. PULKOWSKI: Sorry, that  
6 leaves each side with 4 hours and 45 minutes for  
7 the remainder of the cross-examination and direct  
8 examinations, yes.

9 MR. SPELLISCY: So, by my  
10 count, that's nine and a half hours, Judge Simma,  
11 to get through today and tomorrow, which should be  
12 perfectly doable, between a day and a half.

13 PRESIDING ARBITRATOR: Okay.  
14 Can I have Mr. Nash give --

15 MR. NASH: Yes. May I make  
16 this modest proposal, that we take the lunch break  
17 now if it works, and that Mr. Little and  
18 Mr. Spelliscy and our team will discuss this over  
19 the noon hour and then come back, and I would  
20 request that we have a discussion, an-in camera  
21 discussion. This is a procedural question, and as  
22 with all procedural questions in the process, they  
23 are dealt with by the tribunal and counsel, and  
24 that we deal with it as a matter of dealings  
25 between the tribunal and counsel, and we have an

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1 open discussion about what's realistic and what's  
2 reasonable in the circumstances to achieve  
3 fairness to both parties but, from our  
4 perspective, to our client and our team. So that  
5 is what I would propose. And we can have a frank  
6 discussion between counsel over lunch and come  
7 back to you with a position, either a common one  
8 or a different one.

9 PRESIDING ARBITRATOR: If I  
10 have heard you correctly, we would break for lunch  
11 now. That is, Mr. Lizak would be number one in  
12 the afternoon, and you would use the lunch break  
13 to have some kind of conversation. And then, at  
14 the beginning of the afternoon meeting, there will  
15 be a, well, a procedural -- a discussion on how to  
16 handle the rest of the matters?

17 MR. NASH: Exactly.

18 And, in that context, I would  
19 appreciate from Mr. Pulkowski just some  
20 clarification. Is it 4 hours and 45 minutes in  
21 total left for cross-examination of all witnesses  
22 for both sides, each, for each side?

23 DR. PULKOWSKI: Yes, 4 hours  
24 45 per side.

25 MR. NASH: And we had 3 hours

1 set aside in the program in the schedule for the  
2 cross-examination of each of the valuers.  
3 Tomorrow was scheduled to be a three-hour  
4 cross-examination of Mr. Rosen and a three-hour  
5 cross-examination of Mr. Chodorow. So that was --  
6 so, if we were to stick to that program, we would  
7 have, in effect, 1 hour and 45 minutes each side,  
8 as I understand the figures, to do all the rest of  
9 the other witnesses; is that right?

10 DR. PULKOWSKI: That's how I  
11 would understand these figures to work out. If  
12 you wanted to use the full three hours on the  
13 witnesses tomorrow, that would leave you with  
14 1 hour 45 to deal with direct and  
15 cross-examination today.

16 PRESIDING ARBITRATOR: So  
17 1 hour and 45 today with how many persons? Quite  
18 a number.

19 MR. NASH: It's a significant  
20 number. And if I can just express my preliminary  
21 concern here. I think we are returning into an  
22 artificial compression of the reasonable processes  
23 in order to have all of the relevant evidence  
24 properly presented from each of the witnesses,  
25 from both sides. As we are identical -- I think

1 it's a minute off, despite my friends urging that  
2 I was lagging the puck or lagging the time. We  
3 are identical at this stage. We will have -- if  
4 we use the intended time for the valuers, which  
5 is an extremely important part of this case, as it  
6 is with any damages claim -- it's extremely  
7 important. Those valuers have to take into  
8 account the evidence that's been given during the  
9 entire proceeding, and we are obviously not going  
10 to finish all of our witnesses today. We would  
11 obviously be pushed into tomorrow. There would be  
12 no overnight for them to consider, you know, the  
13 evidence of some extremely important witnesses  
14 that remain. So I just -- I guess I'm presaging a  
15 perception on my part that we are getting into an  
16 artificial compression of time for no good reason.  
17 This proceeding has been ongoing for 10 years, and  
18 so we have been in this portion of the proceeding  
19 dealing with the -- after Canada's preliminary  
20 motions on the stay and the damages for over two  
21 years. And my preliminary thoughts on where we  
22 are at and what we should consider to be doing is  
23 to consider an adjournment for the final argument.

24 So, with that thought, I know  
25 I have heard my friend's view, but if we have a

1 chance to review it over the lunch hour and come  
2 back either with a common position or one that's  
3 different.

4 PRESIDING ARBITRATOR: I think  
5 these are ideas that you need to be discussing  
6 with your counterpart.

7 MR. NASH: Yes, yes.

8 PRESIDING ARBITRATOR: I think  
9 we are already losing time. So I think we should  
10 break for lunch. You will have a lunch together,  
11 more or less, in camera caritatis, hopefully. And  
12 when we meet -- so the lunch will be 45 minutes.  
13 That is, we can -- are going to meet at, again, at  
14 1:05, 1:05.

15 MR. NASH: Very good.

16 PRESIDING ARBITRATOR: Then we  
17 will hear what you come up with and what  
18 solutions.

19 MR. NASH: Yes. And I would  
20 urge that we have an in-camera session, that it's  
21 a discussion between the tribunal and counsel on a  
22 procedural matter.

23 MR. SPELLISCY: I'm sorry. An  
24 in-camera session? If we are talking about the  
25 schedule of the arbitration, including what would

1 be potentially, if I hear Mr. Nash's suggestion  
2 right, an adjournment of the closing arguments,  
3 which I can tell you right now there is zero  
4 chance we will consent to, why would that be  
5 in-camera?

6 PRESIDING ARBITRATOR: Can we  
7 leave that to the --

8 MR. SPELLISCY: But why would  
9 we be -- I see no reason to be in-camera. I mean,  
10 the hearing is transparent; it's public.

11 PRESIDING ARBITRATOR: Right.  
12 Can we leave that to 1:05?

13 MR. SPELLISCY: Sure.

14 --- Upon luncheon recess at 12:20 p.m.

15 --- Upon resuming at 1:06 p.m.

16 PRESIDING ARBITRATOR:  
17 Preliminary question, have you agreed on an in  
18 camera session for what follows; is there an  
19 agreement on that?

20 MR. NASH: We have not.

21 PRESIDING ARBITRATOR: You  
22 have not?

23 MR. NASH: No.

24 PRESIDING ARBITRATOR: You  
25 have?

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1 MR. NASH: We have not.  
2 PRESIDING ARBITRATOR: Oh, you  
3 have not. So let's have our in camera session.  
4 MR. SCOTT LITTLE: We have not  
5 agreed to have one.  
6 PRESIDING ARBITRATOR: What  
7 does it actually mean that --  
8 MR. SCOTT LITTLE: In camera  
9 means it wouldn't be on the transcript, Judge  
10 Simma. That's my understanding.  
11 PRESIDING ARBITRATOR: Yeah,  
12 it's not going to be on the transcript.  
13 MR. SCOTT LITTLE: Well, no,  
14 Canada objects to it not being on the transcript.  
15 PRESIDING ARBITRATOR: Not  
16 being on the transcript, oh.  
17 MR. SCOTT LITTLE: Canada  
18 thinks this should be fully open.  
19 PRESIDING ARBITRATOR: All  
20 right, so --  
21 MR. NASH: And nor have we  
22 agreed on a common position with respect to how to  
23 proceed further with the hearing.  
24 PRESIDING ARBITRATOR: Okay,  
25 so let me just add a few numbers to what we had

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1 before the lunch break. I think the situation is  
2 as follows, that each party has available  
3 three hours, I am just adding three hours for the  
4 closing observation, three hours for the quantum  
5 and the -- the quantum phase, and one hour  
6 forty-five minutes for the cross-examination,  
7 which adds up to seven hours forty-five minutes.  
8 Canada's situation is that you have two more,  
9 let's say, witnesses to cross-examine?  
10 MR. SCOTT LITTLE: That's  
11 correct.  
12 PRESIDING ARBITRATOR: The  
13 situation of the claimant is that they have four;  
14 right? Four? Three? Four?  
15 DR. PULKOWSKI: Excluding  
16 the -- Mr. Rosen, so it would be five, three  
17 including Mr. Chodorow because, of course, that's  
18 one and the same time budget as far as procedural  
19 order number --  
20 PRESIDING ARBITRATOR: No, I  
21 am not counting the quantum people. I am just  
22 counting the remaining people to be, let's say,  
23 witnessed before we turn to quantum.  
24 MR. NASH: We have four more  
25 witnesses to cross-examine.

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1 PRESIDING ARBITRATOR: Four  
2 more.  
3 MR. NASH: Yes.  
4 PRESIDING ARBITRATOR:  
5 Including quantum?  
6 MR. NASH: Excluding  
7 Mr. Rosen.  
8 PRESIDING ARBITRATOR: Okay,  
9 so that means that you have a problem. Because  
10 you have the same amount available, one hour  
11 forty-five minutes, but -- and it's not quite  
12 clear to me how you can handle the examination of  
13 four witnesses within one hour and  
14 forty-five minutes, so one question will be -- so  
15 there might be difficulties. One possibility  
16 might be that, instead of four, you could just  
17 decide to only examine three because my impression  
18 is that maybe two of the remaining witnesses kind  
19 of, let's say, they focus on more or less the same  
20 problem, but I might be wrong on that.  
21 Another possibility would be,  
22 I mean, in theory, to just give each party an hour  
23 in addition, but I think that would be unfair  
24 vis-à-vis Canada because you have done your job.  
25 And then you might end up with an hour and not

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1 really with anything much to do.  
2 MR. SCOTT LITTLE: We agree  
3 with that entirely. We have not only done our job  
4 but we made choices, Judge Simma, on who we were  
5 going to cross before we even got here, who we  
6 were going to call in to cross based on the  
7 21-hour limit. So we don't see how this can be  
8 undone at this point.  
9 PRESIDING ARBITRATOR: So the  
10 last opportunity or possibility I see for claimant  
11 to somehow accommodate the entire thing would be  
12 that you cut off time from the time available for  
13 the quantum.  
14 DR. PULKOWSKI: Mr. Rosen.  
15 PRESIDING ARBITRATOR:  
16 Mr. Rosen.  
17 MR. NASH: Or Mr. Chodorow.  
18 PRESIDING ARBITRATOR: Or  
19 maybe have a shorter closing.  
20 DR. PULKOWSKI: Sorry,  
21 Mr. Chodorow, my mistake.  
22 PRESIDING ARBITRATOR: Have a  
23 shorter closing statement. So do you have a view  
24 on that?  
25 MR. NASH: I do.

1                   PRESIDING ARBITRATOR:  
2           Mr. Nash, maybe it would not be, let's say, very,  
3           let's say, how shall I say, productive to go into  
4           the issue that at the beginning you asked that,  
5           the view was that you needed two more weeks, and  
6           then we cut it to one week and three days and that  
7           stuff, I mean, that's done.  
8                   MR. NASH: Yes. Can we have a  
9           decision from the tribunal on the question of this  
10          part of this proceeding being in camera? This is  
11          a procedural question purely. We deal with all  
12          procedural questions in --  
13                  PRESIDING ARBITRATOR: You  
14          mean from now on?  
15                  MR. NASH: From here on.  
16                  PRESIDING ARBITRATOR: In view  
17          of the present situation of the entire institution  
18          of ISDS at the great accent on transparency of the  
19          procedure, that we have decided that this will  
20          remain open.  
21                  MR. NASH: Thank you, Judge  
22          Simma.  
23                  We are prepared to proceed on  
24          the basis of our total time available under the  
25          budget, that's not an issue.

1           is already recognizing that we need more time  
2           rather than just to the end of tomorrow. And the  
3           compression of this time into these number of days  
4           has resulted in everything getting pushed back to  
5           where we are. And to have the two full days to  
6           prepare for final argument, which is always  
7           contemplated within the order, was requested by  
8           both parties, the full two days, which would be  
9           Sunday and Monday, in order to come back before  
10          the tribunal on Tuesday means, the result of that,  
11          is that these witnesses, including Mr. Chodorow,  
12          including Mr. Rosen, have to be finished tomorrow.  
13          And the quantitative experts, those two experts,  
14          it was always contemplated that they would have at  
15          least overnight to review the evidence, look at  
16          the evidence and then take it into account in  
17          presenting their evidence. The reality is they  
18          will not have that. We are not going to finish  
19          all of our other witnesses today. We have six  
20          more witnesses to go. And the requirement, from  
21          our position, to have some fundamental fairness to  
22          the process, this case has been going on for ten  
23          years, as I said before lunch, we've had almost  
24          three years since the liability decision was  
25          given, and it is the way it is, but what we are

1                   The issue is the timing of the  
2           hearing of the witnesses and the time to marshal  
3           the evidence in an appropriate way, in a timely  
4           way, in a fair way. We have been sitting now, and  
5           the tribunal has recognized that we needed to have  
6           more time for the hearing, and we have been  
7           sitting for six extra hours in this  
8           time-compressed time we have had, two and a half  
9           hours budgeted for today, we had two hours  
10          budgeted for yesterday, and I think with other  
11          parts of it, about an extra hour or so.  
12                  PRESIDING ARBITRATOR: May I  
13          just make one reminder?  
14                  MR. NASH: Yes.  
15                  PRESIDING ARBITRATOR: I think  
16          we had a couple of redirect which took almost as  
17          long as the cross-examination. Which is --  
18                  MR. NASH: It may be true, but  
19          we are prepared to live within our time  
20          availability, within the 21 hours, and we will  
21          allocate that time as required.  
22                  The question is the timing of  
23          the procedure -- the proceeding from here to  
24          Tuesday. And the reality of it is that in order  
25          to get from here to Tuesday, I think the tribunal

1           proposing is that all of the evidence be done by  
2           the end of Monday, we take Sunday off, that we  
3           finish all of the other witnesses by the end of  
4           tomorrow, which is Saturday, take Sunday off, the  
5           quantitative experts, remember, keeping in mind,  
6           this case is about damages. We spent an awful lot  
7           of time in this proceeding, in this hearing, so  
8           far this week on the question of environmental  
9           assessment, the question of ministerial  
10          discretion, and those related questions. The  
11          quantum is a complex issue, it's evidence  
12          voluminous. It should be marshalled in a  
13          comprehensive way, in an understandable way so  
14          that the tribunal has the opportunity to properly  
15          deal with and properly assess it. And I can say,  
16          from my perspective and from our team's  
17          perspective, it is not possible to finish all of  
18          the evidence by tomorrow, including the  
19          quantitative experts, and to complete this task  
20          and then to provide on Tuesday a comprehensive  
21          presentation which does the evidence in this case  
22          justice. And it is prejudicial to our clients, I  
23          am saying that, it is unfair to our clients, who  
24          have been in this for ten years, it's not a large  
25          multinational, these are three brothers who have

1 been in this for ten years, to not adjourn for the  
2 shortest mutually convenient time for the tribunal  
3 and for counsel to reconvene at a later date for  
4 one day for the closings on the available time  
5 left for the parties to deal with that so that a  
6 proper marshaling of the evidence can be  
7 presented, and that's what we are requesting.  
8 And, in my vigorous and strong submission,  
9 anything less would render a fundamental  
10 unfairness upon our clients. And we, there's no  
11 reason, there is absolutely no reason for this  
12 proceeding to adjourn for a few weeks, whatever  
13 time it is, to have one day extra. We have  
14 already recognized, I think, Judge Simma, you said  
15 before lunch, that it looks like we might be into  
16 Monday for -- or Sunday for the remainder of the  
17 evidence that we could be going over from  
18 tomorrow, which is contrary to the combined wishes  
19 of the parties and the agreement of the tribunal  
20 that we have two full clear days to make our --  
21 prepare our arguments.  
22 And so to go anything further  
23 than tomorrow is a breach of the procedural order,  
24 is not contemplated by the procedural order, and  
25 we will have one day to prepare final arguments.

1 on track for where we should be right now at this  
2 time to be finished tomorrow night. Maybe it  
3 takes a little bit of starting early in the  
4 morning or later at night, but we are pretty on  
5 track, so --  
6 PRESIDING ARBITRATOR: By  
7 "we", you mean?  
8 MR. SCOTT LITTLE: Both sides.  
9 I think the party time that's remaining, we are  
10 not really that far off. So with diligence and  
11 obviously keeping to the time that is available  
12 that's left to the parties, we shouldn't have any  
13 problem making it, having a closed evidentiary  
14 record by tomorrow night.  
15 Now, in terms of doing  
16 closings, I think it was a luxury in this case to  
17 have two days for closings. I think that's  
18 something that the parties asked for and were  
19 granted, and it's, it is a luxury, but there's  
20 many cases -- in fact, typically, we have no more  
21 than one day to do it. I believe that was the  
22 case in the liability phase. And there's cases  
23 that we are involved in where we break into  
24 closings the next day. So, overall, the plan for  
25 this arbitration was that it was to start last

1 And, so, in my submission,  
2 there should be an adjournment on that basis, we  
3 finish all of the evidence of the non-quantitative  
4 witnesses tomorrow in the time available tomorrow,  
5 we come back on Monday, we have the evidence of  
6 the quantitative experts, we then have an  
7 adjournment of the shortest possible duration as a  
8 convenience of the tribunal and the parties and  
9 counsel, and we come back at that time for one  
10 day.  
11 PRESIDING ARBITRATOR: And  
12 Tuesday would not be used?  
13 MR. NASH: Tuesday would not  
14 be used.  
15 PRESIDING ARBITRATOR: Maybe  
16 Mr. Little or Mr. Spelliscy?  
17 MR. SCOTT LITTLE: First of  
18 all, I still don't think that that addresses the  
19 fact that we have governed ourselves accordingly  
20 in the matter to date. We have, by my count,  
21 three more witnesses left to cross, and we can  
22 finish that by tomorrow night without an issue.  
23 We might have to sit a little bit late, but we can  
24 finish that by tomorrow night. And the time that  
25 the parties have remaining, I think we are pretty

1 Monday, evidence was to close on Saturday, there  
2 would be two days to prepare closings, and then  
3 closings would be offered.  
4 We think that the entire  
5 schedule up to Saturday can be met tomorrow night,  
6 and the parties can have their two days. Time is  
7 going to expire if we -- in any event, although  
8 the parties are free to eat into their closing  
9 time. But we think we can do that, and we don't  
10 think that there should be any change to the  
11 schedule because Canada has adhered to that, kept  
12 the time limits in mind and governed itself  
13 accordingly, and, at this point, to change that is  
14 going to cause prejudice to Canada.  
15 PROFESSOR McRAE: I was just  
16 going to ask Mr. Nash, you said you can finish it  
17 during the time. That means keeping the one hour  
18 forty-five or whatever it is for your four  
19 witnesses, or do you envisage you have the freedom  
20 to eat into your experts' time or eat into your  
21 closing time?  
22 MR. NASH: We will have to eat  
23 into some of the remaining time. Yeah, we will  
24 have to cannibalize some of that time.  
25 PRESIDING ARBITRATOR: I am

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1 very sorry.  
2 MR. NASH: Not a problem.  
3 So the question was how would  
4 we organize ourselves to utilize the time  
5 available to us but to use less for the  
6 quantitative experts or the closing. We can do --  
7 we will abide by that. We don't think the timing  
8 of doing that is proper, fair, because the  
9 experts, the quantitative experts should have some  
10 time between the end of the cross-examination of  
11 the other witnesses, which are quantum witnesses.  
12 We started the quantum of the actual damages  
13 witnesses for the first time yesterday morning,  
14 and what we are contemplating, what is being  
15 contemplated now is that, obviously, we are not  
16 going to sit late, late, late tonight, until 9  
17 o'clock, that's not reasonable. We've started  
18 early and we have ended late on a number of days  
19 now. And so in order to accomplish that  
20 reasonable separation of time between quantum  
21 witnesses, non-quantitative experts, not  
22 Mr. Rosen, not Mr. Chodorow, the only realistic  
23 way to do that is to have Sunday, either for their  
24 evidence or on Monday, and to proceed from there.  
25 In any event, what will occur under any scenario

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1 maybe can you read out what you put together?  
2 DR. PULKOWSKI: Just solely  
3 relates to the number, the hours that we do have  
4 left, and it builds on questions raised by the  
5 parties as to how much time we might have  
6 available on each day.  
7 We -- just to recall, we  
8 currently have 15 hours and a half left. Now,  
9 depending on how much you want to subtract from  
10 that for closing statements, of course, if we were  
11 to subtract six hours, that would leave us with  
12 nine and a half hours to be split across the  
13 afternoon today and tomorrow. So, on that  
14 assumption, just in terms of time allocation,  
15 there is obviously plenty of time to get done,  
16 including some time if closing statements were to  
17 be shortened somewhat.  
18 So, indeed, there is  
19 certainly, if we count four and a half hours today  
20 and five hours tomorrow, or six hours tomorrow, we  
21 would be done with the five- or six-hour time  
22 allotment for closing on Tuesday. So I think the  
23 only question, there is no difficulty in fitting  
24 the remaining, the remainder of those 42 hours  
25 allocated to the parties within the remaining two

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1 is that the time for preparation of closing will  
2 be shortened and will be shrunk, and that's not  
3 contemplated at all in the procedural order. And  
4 luxury or not, that was what the parties agreed  
5 to, that's what they asked for, that's what the  
6 tribunal also agreed to. That forms part of the  
7 procedural order.

8 Procedural fairness is  
9 important, it's important. This is a substantive  
10 issue for our clients who have been at this for a  
11 very, very long time, and there's absolutely no  
12 reason to artificially constrain and to compress  
13 the time in order to stick to a schedule when a  
14 short adjournment for a reasonable time to finish  
15 this case off in the way it should be finished off  
16 at this last part of the process.

17 PRESIDING ARBITRATOR:  
18 Mr. Little, you have to say something?  
19 MR. SCOTT LITTLE: I don't  
20 really see what's artificial about the constraint  
21 that Mr. Nash is talking about. We both have had  
22 a given set of time, and we have to adhere to the  
23 time that we have and then closings can unfold.  
24 Nothing artificial about it.  
25 PRESIDING ARBITRATOR: Dirk,

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1 and a half days that are allocated for the  
2 hearing.  
3 The only question, I believe,  
4 is the one put to you by Mr. Nash, Mr. Chairman;  
5 namely, the question whether there is anything  
6 that should be done by the tribunal in order to  
7 leave a separation after the fact witnesses and  
8 before the valuation experts. In terms of the  
9 actual time budget, I think we are doing okay.

10 PRESIDING ARBITRATOR: At the  
11 moment, I don't see a solution for that  
12 separation, that's an overnight separation.

13 Mr. Nash, are you convinced  
14 that the examination of -- if we go into Saturday  
15 with the witness examination, that the testimonies  
16 of these people is particularly relevant for the  
17 quantum part of the exercise?

18 MR. NASH: Fundamentally  
19 relevant, from our perspective. Fundamentally.

20 MR. SCOTT LITTLE: All I can  
21 say is that we do this all the time. Two days is  
22 a luxury.

23 PRESIDING ARBITRATOR: No,  
24 what I meant was the, for instance, if we go into  
25 Saturday morning with the remaining witnesses, and

1 then after, maybe hopefully before lunch, we would  
2 start with Mr. Rosen and the, so with the quantum  
3 people in the strict sense. And I think that is  
4 your problem; right, that they should have --

5 MR. NASH: They should have  
6 Mr. Rosen on our side -- I am not speaking for  
7 Mr. Chodorow -- Mr. Rosen on our side should have  
8 a period of time, it would normally -- it was  
9 scheduled to be overnight between the end of  
10 Friday and the beginning of Saturday, overnight, a  
11 period of time to take into account whatever  
12 admissions are made on the cross-examinations for  
13 those witnesses and to incorporate that into a  
14 comprehensive presentation by him, and that would  
15 require us to go beyond tomorrow into Sunday.

16 PRESIDING ARBITRATOR: Would  
17 one kind of solution that I see is that we start  
18 even earlier tomorrow morning, finish, I say deal  
19 with the remaining gentlemen, which hopefully  
20 would not be too many, by tomorrow morning, and  
21 then give the quantum experts like two hours, two  
22 to three hours to kind of digest what was said in  
23 the morning and then have the statements into  
24 Saturday night?

25 MR. NASH: No, there has to be

1 a reasonable limit on the number of hours that we  
2 are sitting every day. We have had six hours  
3 already added. There is no reason, in fairness,  
4 to compress this process into --

5 PRESIDING ARBITRATOR: I mean,  
6 if you are ready to go into, even further into the  
7 night, that doesn't seem to me to be an artificial  
8 compression. It's a, we are ready to do that, and  
9 I think we could do it, physically speaking.

10 MR. NASH: Well, speaking  
11 personally, whatever time we sit at the end of the  
12 day or started earlier is two and a half hours of  
13 extra hearing time and two and a half hours less  
14 preparation time, and every minute counts on these  
15 things in order to conduct an effective  
16 presentation, every minute counts. It always  
17 counts. And we have lost about six hours. And if  
18 we start earlier tomorrow, we will lose that many  
19 more. It's not fair. It's simply not fair.

20 PRESIDING ARBITRATOR: Sorry,  
21 Mr. Little?

22 MR. SCOTT LITTLE: First off,  
23 there's nothing in the procedural order that  
24 supports what Mr. Nash is saying about the quantum  
25 experts. They roll into their place in the

1 schedule just like all the other witnesses have.  
2 There's nothing that talks about them having a  
3 period of time to review their evidence.

4 In fact, if you look at  
5 paragraph 5.4, it contemplates that one of the  
6 experts could give evidence the day after the  
7 other one. It had to make that provision because  
8 the presentation that that expert was to provide  
9 was to be held in escrow by Mr. Pulkowski in that  
10 kind of a situation.

11 So they are just like the  
12 causation witnesses. As it turned out, Mr. Estrin  
13 and Mr. Sossin, I believe, ended Tuesday, but had  
14 they ended Wednesday morning, our causation  
15 witnesses, that is the EA decision-making and JRP  
16 witnesses, would have followed right in their  
17 wake.

18 So there's nothing special  
19 about the quantification or damages witnesses that  
20 Mr. Nash is calling that would warrant their being  
21 this break taken. They are just like every other  
22 witness.

23 MR. NASH: With this  
24 exception, they were always scheduled to be on  
25 Saturday, Mr. Rosen in the morning, Mr. Chodorow

1 in the afternoon.

2 MR. SCOTT LITTLE: That's not  
3 correct. Because it says if the presentations  
4 cannot be made on the same day, then at the end of  
5 the day on which FTI Consulting gives its  
6 presentation, the Brattle Group's presentation  
7 shall be provided to the tribunal secretary and  
8 held by him in escrow. So it contemplates that  
9 they could be on different days. And I am  
10 assuming that means that -- or the way this reads  
11 is that FTI could have been giving evidence today.

12 MR. NASH: The schedule, as  
13 it's been set for this hearing, has always  
14 scheduled them on Saturday, one in the morning,  
15 one in the afternoon. That has been from the  
16 beginning of the scheduling of witnesses. It was  
17 contemplated that every other witness would be  
18 finished by Friday, and then there would be an  
19 overnight, and then there would be a presentation  
20 by Mr. Rosen in the morning, tomorrow, and  
21 Mr. Chodorow in the afternoon.

22 MR. SCOTT LITTLE: I don't  
23 want to belabour the point, but Mr. McLean was  
24 scheduled for Tuesday night -- sorry, not  
25 Mr. McLean. Mr. Geddes was scheduled for Tuesday

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1 night, but Mr. Estrin's and Mr. Sossin's exams and  
2 re-exams took a little longer and they started the  
3 next day. One witness must roll after the next.  
4 That's how an efficient proceeding unfolds.  
5 PRESIDING ARBITRATOR: I think  
6 the tribunal will have...  
7 --- Brief recess taken at 1:34 p.m.  
8 --- Upon resuming at 1:51 p.m.  
9 PRESIDING ARBITRATOR: Okay,  
10 so the tribunal will be ready to handle things in  
11 the following way: that tomorrow is devoted to  
12 the examination of witnesses. By "witnesses", I  
13 mean the people that I -- I call the others the  
14 quantum experts, such as the quantum people, which  
15 means the two, Mr. Rosen and Mr. Chodorow, I  
16 think.  
17 So tomorrow, examination of  
18 witnesses. Sunday, first day for the teams to  
19 prepare their closing statements. On Monday, have  
20 the two quantum experts. On Tuesday, you will  
21 have the second day of preparation of closing.  
22 The closings will be on Wednesday in a very  
23 disciplined manner. I think we could put them  
24 into Wednesday and still get our original planes,  
25 because we need to leave on Wednesday. Would that

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1 team not being here; I think we can manage. There  
2 is going to be significant cost consequences of  
3 this. We are going have to have flights changed,  
4 we are going to have to have additional nights in  
5 hotels, and we are going to probably have to deal  
6 with cancellation fees. So I want the tribunal to  
7 take that into account in the new arrangement.  
8 PRESIDING ARBITRATOR: Okay,  
9 all right, thank you.  
10 Mr. Nash?  
11 MR. NASH: We can live with  
12 that and thank the tribunal for that. I am sorry,  
13 did you hear me?  
14 PRESIDING ARBITRATOR: I think  
15 the present position of the tribunal is to go  
16 along with -- to adopt that solution, including  
17 the Wednesday for the closing statements. Of  
18 course, we are aware that costs will arise for  
19 both parties, but we haven't heard anything about  
20 costs yet, and we can devise ways to consider  
21 that. The problem that you've left is that we are  
22 not sure whether the Arbitration Place is in a  
23 position to accommodate that, but we will find out  
24 until the end of the day. Okay. All right.  
25 MR. SCOTT LITTLE: Thank you.

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1 be something that would be acceptable to the  
2 parties?  
3 I repeat, so the quantum  
4 people would be heard and examined on Monday.  
5 Sunday and Tuesday would be off for the  
6 preparation of closing. And on Wednesday would be  
7 devoted to the closing statements of the parties.  
8 So I think on Wednesday, I  
9 think the absolute time bar would be around 4,  
10 4:30 in the afternoon.  
11 Mr. Little?  
12 MR. SCOTT LITTLE: We are  
13 already losing a member of our team. A member of  
14 our team has to be in another place on Wednesday.  
15 PRESIDING ARBITRATOR: And you  
16 would need that person for the, just for the  
17 presentation of the closing?  
18 MR. SCOTT LITTLE: Well, just  
19 let me discuss.  
20 PRESIDING ARBITRATOR: Sorry?  
21 MR. SCOTT LITTLE: Let me  
22 discuss with my colleagues here.  
23 PRESIDING ARBITRATOR: Please.  
24 MR. SCOTT LITTLE: Okay.  
25 There's the logistical issue of the member of our

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1 PRESIDING ARBITRATOR: Okay,  
2 so no further statement?  
3 MR. NASH: No further  
4 statement.  
5 PRESIDING ARBITRATOR: Okay,  
6 that means we instantly turn to the  
7 cross-examination of Mr. Lizak.  
8 THE WITNESS: Good afternoon,  
9 gentlemen.  
10 PRESIDING ARBITRATOR: Yes,  
11 good afternoon, Mr. Lizak.  
12 THE WITNESS: It's good to be  
13 back.  
14 PRESIDING ARBITRATOR: Good to  
15 see you again. And would you please read the  
16 statement that is in front of you?  
17 WITNESS DECLARATION: JOHN LIZAK  
18 MR. LIZAK: Yes.  
19 I solemnly declare upon my  
20 honour and conscience that I will speak the truth,  
21 the whole truth and nothing but the truth and that  
22 my statement will be in accordance with my sincere  
23 belief.  
24 PRESIDING ARBITRATOR: Okay,  
25 thank you. Going to turn over the floor to

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1 Mr. Johnston for direct.  
2 EXAMINATION IN-CHIEF BY MR. JOHNSTON:  
3 Q. Thank you, Judge Simma.  
4 You are John Lizak?  
5 A. Yes, I am.  
6 Q. You signed two expert  
7 reports for this phase of the arbitration?  
8 A. Yes, I did.  
9 Q. Your first statement is  
10 dated November 30th, 2016, and is titled "An  
11 analysis of the regional market for crushed stone  
12 imports into the United States from the Whites  
13 Point Quarry, Nova Scotia"?  
14 A. Yes, it is.  
15 Q. And your second report is  
16 dated August 8, 2017, and is prepared in reply?  
17 A. Yes.  
18 Q. And you signed, also, one  
19 statement for the merits phase of this  
20 arbitration?  
21 A. Yes, I did.  
22 Q. And you are a  
23 professional geologist and mineral valuation  
24 expert?  
25 A. Yes.

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1 Q. And you are the principal  
2 of Mineral Valuation & Capital, Inc., which  
3 specializes in the valuation of minerals, mineral  
4 extraction companies, mineral development, and  
5 market studies, among other things?  
6 A. Yes.  
7 Q. And you hold various  
8 degrees, including a BSc in fundamental sciences,  
9 with a specialty in geology and geotechnical  
10 engineering, and a master's in science and  
11 geology?  
12 A. Yes.  
13 Q. And you have completed  
14 post-grad studies in mineral economics, mining  
15 engineering, corporate finance, and the valuation  
16 of mineral and mineral extraction companies?  
17 A. I have.  
18 Q. And you hold professional  
19 designations as a licensed professional geologist  
20 in four states?  
21 A. I do.  
22 Q. And you are a member of  
23 the Society of Mining and Exploration Valuation  
24 Standards Committee?  
25 A. I am.

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1 Q. And you have  
2 professionally evaluated over 500 domestic and  
3 international mineral ventures and markets?  
4 A. I have, and I think  
5 what's noteworthy to this proceeding is I have had  
6 the opportunity to literally evaluate all of the  
7 exporting companies in New Brunswick, Nova Scotia,  
8 those in Mexico, et cetera, and also virtually all  
9 the quarries in the New York City metro market and  
10 New Jersey.  
11 Q. Sir, have you been  
12 qualified by a court to give expert testimony?  
13 A. I have, many courts,  
14 federal, state and local courts in the United  
15 States. Many on behalf of the U.S. Department of  
16 Justice.  
17 Q. And have you also been  
18 appointed a court master, arbitrator and mediator  
19 to resolve disputes concerning minerals and  
20 construction materials?  
21 A. I have, gentlemen, and I  
22 prefer my job in lieu of yours.  
23 Q. And do you have any, sir,  
24 any corrections or clarifications to make to  
25 either of the two statements that you have

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1 tendered in this phase of the arbitration?  
2 A. I don't. And I'd also  
3 like to add, gentlemen, that I have had an  
4 opportunity, a couple of my clients are Vulcan,  
5 CRH - Oldcastle, U.S. Concrete, they are major  
6 market participants in the markets in which I  
7 value.  
8 Q. Thank you.  
9 PRESIDING ARBITRATOR: Thank  
10 you, Mr. Johnston.  
11 And examination will be done  
12 by Mr. Spelliscy. You have the floor.  
13 CROSS-EXAMINATION BY MR. SPELLISCY:  
14 Q. Good afternoon,  
15 Mr. Lizak.  
16 A. Good afternoon,  
17 Mr. Spelliscy.  
18 Q. You have been here  
19 before, so you know the drill, so we can get right  
20 into it.  
21 Let's turn to page 29 of your  
22 second report.  
23 A. And where do I find that,  
24 sir?  
25 Q. Your counsel has given



1 [REDACTED]  
 2 Q. What you say, Mr. Lizak,  
 3 is [REDACTED]  
 4 [REDACTED] So I understand that you had done a  
 5 report on reserves, but you would agree with me,  
 6 my question again, that economic viability depends  
 7 on more than just the size of the deposit; right?  
 8 A. Yes, it does.  
 9 Q. It does. And you would  
 10 agree with me that by 2002, [REDACTED]  
 11 [REDACTED] for  
 12 example, [REDACTED]; isn't that  
 13 right, by 2002?  
 14 A. Not in 2002, that's  
 15 correct.  
 16 Q. There was [REDACTED]  
 17 [REDACTED] right, in 2002?  
 18 A. Correct.  
 19 Q. In 2002, [REDACTED]  
 20 [REDACTED]; right?  
 21 A. I don't know. That  
 22 wasn't my task.  
 23 Q. You don't know. All  
 24 right. So your comment on, [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. My point is that we have  
 5 over 200,000 tons of stone on the property, which  
 6 are adequate to [REDACTED]  
 7 [REDACTED]  
 8 Q. I think you said 200,000  
 9 tons.  
 10 A. I am sorry, 200 million  
 11 tons.  
 12 Q. Okay.  
 13 A. In excess of.  
 14 Q. Right, but you had [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED] correct?  
 17 correct?  
 18 A. I had not, no.  
 19 Q. Let's spend just a few  
 20 minutes discussing aggregate prices and aggregate  
 21 markets.  
 22 I want you to turn to your  
 23 first report now and look at the bottom of page 14  
 24 and carrying over to page 15. Here you say that  
 25 the [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 It is this last sentence I'd like to focus on.  
 7 [REDACTED]  
 8 [REDACTED]  
 9 A. Uh, let me, let's, in  
 10 order to help the tribunal, let's do away with  
 11 some of the jargon. And, fundamentally, there's  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED] Just in an effort to eliminate  
 15 the jargon and make it a little more palatable.  
 16 Q. I think we can  
 17 understand, hopefully, [REDACTED], but I think  
 18 your answer is, yes, [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 A. Exactly, yes, correct.  
 22 Q. So you would agree with  
 23 me that if we [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED];  
 2 have they?  
 3 A. Let's go to my -- that  
 4 figure you reference.  
 5 Q. Just answer my question  
 6 first, Mr. Lizak. If we [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] correct?  
 9 A. When are we starting? It  
 10 depends when you start. If I start in [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 Q. Your testimony,  
 17 Mr. Lizak, is, [REDACTED]  
 18 [REDACTED]  
 19 A. No, that's not my  
 20 statement. It's that they have [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 Q. Mr. Lizak, you said it

1 depends on when you start. If I start in [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 A. Let's go back to what I  
 6 am saying, that if you do not [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. Right. And if you  
 11 include -- exclude the [REDACTED];  
 12 [REDACTED];  
 13 right?  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. Please go to Tab 10 in  
 19 your binder.  
 20 A. Can we go to my charts,  
 21 sir, that I am referring to?  
 22 Q. Please come to Tab Number  
 23 10 in your binder.  
 24 A. All right.  
 25 Q. This is data produced by

1 the USGS, Exhibit C-1152. And this is  
 2 spreadsheets that gives actually data and  
 3 [REDACTED]  
 4 [REDACTED]  
 5 If you look with me on the  
 6 first page here, you will see that there are  
 7 two units in the chart. You have, about  
 8 three-quarters of the way down, you see you have  
 9 [REDACTED]  
 10 [REDACTED] do you see that Mr. Lizak?  
 11 A. I do.  
 12 Q. Okay. [REDACTED];  
 13 [REDACTED]?  
 14 A. Yes.  
 15 [REDACTED]  
 16 [REDACTED]  
 17 MR. JOHNSTON: Excuse me.  
 18 Mr. Spelliscy, these terms are specifically  
 19 defined at the first page. Can you take Mr. Lizak  
 20 to his affidavits?  
 21 MR. SPELLISCY: We are reading  
 22 them, Mr. Johnston.  
 23 MR. JOHNSTON: Thank you.  
 24 MR. SPELLISCY: This will go a  
 25 lot faster if you read along with us.

1 BY MR. SPELLISCY:  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]; correct?  
 5 [REDACTED]  
 6 A. Correct.  
 7 Q. Let's turn over to the  
 8 chart. On the chart, [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED] do you see that?  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. I do.  
 14 Q. Turn the page over. [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 A. Correct.  
 19 Q. You would agree with me,  
 20 would you not, that the data here shows that if we  
 21 [REDACTED] Would you  
 22 [REDACTED] not?  
 23 [REDACTED]  
 24 A. No, they are basically,  
 25 if you look, and first off, let me say, these are

1 [REDACTED]  
 2 [REDACTED]  
 3 Q. Yes, Mr. Rosen, which is  
 4 why they [REDACTED]  
 5 [REDACTED]; would you not  
 6 agree?  
 7 [REDACTED]  
 8 PRESIDING ARBITRATOR:  
 9 Mr. Lizak.  
 10 MR. SPELLISCY: Mr. Lizak.  
 11 THE WITNESS: Yes.  
 12 BY MR. SPELLISCY:  
 13 Q. We will get to Mr. Rosen.  
 14 This is -- read the chart, the  
 15 value with me:  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED] as read]  
 21 [REDACTED]  
 22 You would agree with me that  
 23 here, the United States Geological Survey has  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]; correct?  
 4 A. Correct, [REDACTED].  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 orrect?  
 11 A. So I am seeing both the  
 12 [REDACTED]  
 13 [REDACTED]  
 14 Q. We are talking,  
 15 Mr. Lizak, about your comment about [REDACTED].  
 16 Right. You wrote in your report [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED] as read]  
 23 The period you were talking  
 24 was [REDACTED].  
 25 A. Yes, in [REDACTED].

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED];  
 4 [REDACTED]  
 5 correct?  
 6 A. I haven't done that  
 7 study.  
 8 Q. It's right here,  
 9 Mr. Lizak. The United States Geological Survey  
 10 has done that study for you; have they not?  
 11 A. Okay. It's, it has  
 12 dropped, but, again, what's the time frame? And  
 13 the other thing that's, I think, that is  
 14 important, these are macro markets. All stone  
 15 markets are local. So this is basically  
 16 macroeconomic data.  
 17 Q. I agree with you,  
 18 Mr. Lizak. I am trying to understand a statement  
 19 that you made in your report, which was you  
 20 [REDACTED]  
 21 [REDACTED]  
 22 And we were agreed, now, that in  
 23 [REDACTED]  
 24 [REDACTED]  
 25 we are agreed on that; right?  
 [REDACTED]

1 [REDACTED].  
 2 Q. Now, let's come to  
 3 another part of your report. You say on page 33,  
 4 this is in your second report again, and that --  
 5 the first little arrow on that page in the second  
 6 sentence, you say:  
 7 [REDACTED]  
 8 [REDACTED] as  
 9 [REDACTED] read]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 But you would agree with me  
 17 that, in fact, [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 correct?  
 21 A. Yes. It is. But, again,  
 22 these are macro markets, and, again, if you start  
 23 [REDACTED]  
 24 [REDACTED]  
 25 Q. Right, so your statement

1 [REDACTED]  
 2 [REDACTED] right?  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 Q. Now, you said just now  
 11 that from 2000 through 2014, [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED] isn't that right?  
 15 A. Yes, there are some  
 16 gyrations in there, as you'd expect.  
 17 And let me also say this: I  
 18 think it's important for the tribunal to  
 19 understand that why this isn't so important where  
 20 you take your snapshot is, for example, if you  
 21 look at [REDACTED]  
 22 [REDACTED]  
 23 Suddenly, the United States starts building its  
 24 highway. Eisenhower comes in, he has the  
 25 international highway transportation act. That's

1 when the industry starts moving forward. Okay, if  
2 you look at the mid-'70s, y [REDACTED]  
3 [REDACTED]. And, you know, so,  
4 it's a function of [REDACTED]  
5 [REDACTED]

6 Q. Mr. Lizak, the snapshot  
7 that you took and you put in your report was [REDACTED]  
8 [REDACTED]  
9 wouldn't you agree with me?

10 A. Yes, but I am pointing  
11 out to the tribunal, that's the element of  
12 complexity. You have to look at when you start  
13 the snapshot and what market you are looking at.

14 If you look at the [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 What's impressive, also, if I  
19 might, please, if I can go to my table here, can I  
20 do that?

21 Q. I am sure your counsel  
22 can take you. Actually, I want to move on to a  
23 different subject.  
24 A. All right.

25

1 Q. You could turn to your  
2 reply report, and let's turn to page 19 in your  
3 second report. So same report we are in now,  
4 page 19.

5 The last sentence on this  
6 page.

7 A. I am sorry. Page?

8 Q. Nineteen of the second  
9 report, the same one we were in.

10 A. Okay.

11 Q. Turn to page 19, and I  
12 want you to look first at the last sentence and  
13 then at the next sentence following, and then I  
14 will ask you some simple questions.

15 A. Where? Would you start  
16 the paragraph for me?

17 Q. The last paragraph, so  
18 the last sentence on the page, the very last  
19 sentence on page 19.

20 A. Yes.

21 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1 [REDACTED] [as read]  
2 And if you turn the page, you  
3 continue down talking about [REDACTED]  
4 [REDACTED] And halfway through the paragraph,  
5 you say:

6 "For example, no new  
7 quarries have been  
8 permitted in northern New  
9 Jersey and southeastern  
10 New York since 1998." [as  
11 read]

12 And you have a similar  
13 sentence in the next paragraph that says:

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] as  
18 [REDACTED]  
19 [REDACTED] read]

20 All right, Mr. Lizak,  
21 obviously, the Whites Point Quarry was [REDACTED]  
22 [REDACTED] ?

23 A. Well, in order to be in  
24 [REDACTED]  
25 [REDACTED]

25

1 the [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] I take it we can  
5 agree to that; correct?

6 A. Yes.

7 Q. Okay. You would agree  
8 with me, then, that simply because no [REDACTED]  
9 [REDACTED]

10 [REDACTED]  
11 [REDACTED] correct?

12 A. Let me provide some  
13 context. I would also like to point out that it's  
14 been 40 years since a new quarry has been  
15 developed in Nova Scotia. I spend my time looking  
16 globally for new quarries. We can't find them.  
17 Okay? I have -- literally scouring the Maritimes,  
18 the Gulf Coast, Columbia, Jamaica. I have clients  
19 that are looking for this stuff all over the  
20 planet. We can't find them. Okay? We can't find  
21 those that meet the quality and the quantity of  
22 Whites Point, and we can't find a place to offload  
23 these quarries. So my point is that, if [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

25

1 [REDACTED]

5 Q. I don't think I got an  
6 answer to my question, Mr. Lizak.  
7 You would agree with me that  
8 simply because [REDACTED]  
9 [REDACTED] correct?  
12 A. That's possible, of  
13 course it's possible.  
14 Q. Let's come to page 11.  
15 Maybe I will just ask you the question because I  
16 think you said it already.  
17 You mentioned in response when  
18 I was taking you to the data that -- on the USGS  
19 that you had referenced that stone prices [REDACTED]  
20 [REDACTED]  
21 So you would agree with me,  
22 then, that in order to assess the economic  
23 viability of a project, it is important to  
24 consider where the project will be sold because  
25 that will affect the price that can be obtained;

1 correct?  
2 A. Are you -- please, one  
3 more time?  
4 Q. You would agree that in  
5 order to assess economic viability, it is  
6 important to consider where the aggregate, where  
7 the product will be sold because that affects the  
8 price that can be obtained; correct?  
9 A. You have got to look at  
10 pricing in the marketplace, yes.  
11 Q. Yes. And you would agree  
12 with me that the [REDACTED]  
13 [REDACTED]  
14 [REDACTED] correct?  
18 A. Sir, I didn't do -- I had  
19 no [REDACTED] I didn't do those  
21 studies.  
22 Q. You have no knowledge of  
23 [REDACTED], Mr. Lizak?  
24 A. Sir, I didn't do that  
25 study. I'd have to -- I would need a lot of

1 information and have to really dive into that in  
2 order to look at the [REDACTED].  
3 Q. And you have never done  
4 that study?  
5 A. No, sir. If you look at  
6 my conclusions, I made no conclusions regarding  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
14 Q. Well, perhaps you can  
15 help me with that last comment because it was  
16 another question I had.  
17 In your first expert report,  
18 page 6, and the summary of conclusions where it is  
19 paragraph 9.  
20 A. Page 6?  
21 Q. Page 6. And so you have  
22 your summary of conclusions and you have 9 here.  
23 So this is the last one, halfway down.  
24 A. Bear with me one second,  
25 sir.

1 Q. Sure. Oh, you don't have  
2 the nice little book I have.  
3 A. Which one of my -- which  
4 conclusion, sir?  
5 Q. Nine.  
6 A. Okay.  
7 Q. Do you have it?  
8 A. I do.  
9 Q. Perhaps you can clarify  
10 this for me. You said here:  
11 [REDACTED] as  
12 [REDACTED]  
17 read]  
18 My first question, Mr. Lizak,  
19 is you understand that Bilcon was not slated to be  
20 in production until 2011; correct?  
21 A. Correct. But I was  
22 tasked with going back to look beyond -- or before  
23 2011.  
24 Q. How can you write,  
25 Mr. Lizak, that Bilcon [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] I don't understand.  
 5 A. I am simply saying if  
 6 they were [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 We have the benefit of hindsight with this  
 12 particular estimate.  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 You are aware, Mr. Lizak, that  
 17 the plan of Bilcon estimated in this arbitration  
 18 was to [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 A. No, I am not really aware  
 22 of that. What I am simply saying is you have got  
 23 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 I  
 13 don't understand, Mr. Lizak --  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 Q. Right, so this was --  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED] isn't that  
 11 right?  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. That's correct, they  
 15 haven't and I haven't.  
 16 Q. You haven't as well.  
 17 [REDACTED]  
 18 [REDACTED]  
 19 A. Correct.  
 20 [REDACTED]  
 21 [REDACTED]  
 22 Q. So if they did [REDACTED]  
 23 [REDACTED]

1 [REDACTED]  
 2 [REDACTED] correct?  
 3 A. That's correct,  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 Q. I recall from the  
 9 liability phase, Mr. Lizak, that you were involved  
 10 in the selection of the Whites Point site for  
 11 Bilcon. In fact, if we are on, I think it's  
 12 page 25 of your first report in the, let's say  
 13 second full paragraph down, you reference:  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED] [as read]  
 17 I would like to go to Table 2  
 18 with you for a second, which is -- unfortunately,  
 19 Table 2 doesn't have a page number on it. Do you  
 20 have it, Mr. Lizak?  
 21 A. I do.  
 22 Q. Let me make sure  
 23 everybody else is caught up.  
 24  
 25

1 Here you have -- it's up on  
 2 the screens for those who have it.  
 3 Here, you have, Mr. Lizak, you  
 4 have [REDACTED]  
 5 [REDACTED] My only question for now  
 6 is do you see that?  
 7  
 8 A. Do I see that on my  
 9 chart?  
 10 Q. Yup.  
 11 A. Yes.  
 12 Q. Now, I want to -- you to  
 13 keep this chart open. I want to look at another  
 14 document here. That's Tab 9 in the binder. This  
 15 is Exhibit R-581, for the record. It is an  
 16 excerpt from the revised project description  
 17 submitted by Bilcon. And if you turn to page 18,  
 18 the last page, you have a similar chart. And you  
 19 prepared this chart as well; right?  
 20 A. Yes, I did.  
 21 Q. And under [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 A. Correct.

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED] correct?  
 6 A. I did. That's because  
 7 that was the focus of this study.  
 8 Q. I'd like to turn to Tab  
 9 Number 13 in your binder, Mr. Lizak. This is an  
 10 excerpt of testimony that you gave, Mr. Lizak,  
 11 before this tribunal in the liability and  
 12 jurisdiction phase.  
 13 And if you turn to page 319.  
 14 You said to this tribunal, if we look down, it  
 15 starts at line 4:  
 16 "The first part is the  
 17 area where you are mining  
 18 the stone. But the other  
 19 thing that is crucial is  
 20 that my client had the  
 21 ability to import stone,  
 22 and that is unusual, you  
 23 know, to have, he had the  
 24 dock down in Nova Scotia  
 25 or -- corrected

1 yourself -- down in New  
 2 Jersey. He had the  
 3 adequate depth. That is  
 4 unusual because most  
 5 facilities, they don't  
 6 have the area, they don't  
 7 have the water depth.  
 8 You see that, Mr. Lizak?  
 9 A. I do.  
 10 Q. Now, Mr. Lizak, you would  
 11 agree with me that during the planning phase of  
 12 this project when you were working on it, as  
 13 reflected in these documents and in your  
 14 testimony, sworn testimony before this tribunal,  
 15 [REDACTED]  
 16 [REDACTED]  
 17 A. I think it was, sir, yes.  
 18 That was the plan. Well, no, wait. [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]; isn't that right?  
 2 A. You see, the problem that  
 3 I am wrestling with here is I [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 Q. Your testimony,  
 7 Mr. Lizak, is that you [REDACTED]  
 8 [REDACTED]; that's your testimony?  
 9 A. Well, I am trying to  
 10 think back, sir. It's been like 12 years. Let  
 11 me, [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED] I think that's probably  
 19 the salient point here. So, you know, in  
 20 hindsight, I would -- that, in itself, tells you  
 21 that it was [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 Q. So your testimony now is  
 25 you wouldn't have been looking at that if it was

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] that's your sworn  
5 testimony here today?  
6

7 A. Again, sir?

8 Q. Your testimony before  
9 this tribunal today is that you knew it was, or  
10 you thought it was [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] hat's the position you are taking in  
18 front of this tribunal today?

19 A. The position I am taking  
20 is this, sir: To be frank, I was not overly  
21 concerned whether [REDACTED]

22 [REDACTED]  
23 What I do know for a fact is  
24 that I was retained to assess the c [REDACTED]  
25 [REDACTED]

1 [REDACTED]. I mean --  
2 Q. I am not sure I  
3 understand, Mr. Lizak.

4 If you weren't concerned with  
5 it, if you didn't know it, why did you say it?

6 A. Again, sir? I am sorry.

7 Q. I am not sure I  
8 understand. If you didn't know and you weren't  
9 concerned with it, why did you say it?

10 A. One more time. I am  
11 sorry.

12 Q. Your testimony was that  
13 you weren't concerned with [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 My question is, if that is true, why did you say  
17 it?

18 A. My point is this, sir, I  
19 don't know if it was [REDACTED]

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 What I do know for a fact is,  
24 recalling my contract, is that I was sent up there  
25 to [REDACTED]

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

7 A. I am saying, sir, I  
8 didn't really [REDACTED]

9 [REDACTED]  
10 MR. SPELLISCY: Just give me  
11 one moment.

12 Thank you, Mr. Lizak. Those  
13 are my questions.

14 PRESIDING ARBITRATOR: Thank  
15 you, Mr. Spelliscy.

16 I call on Mr. Johnston for the  
17 redirect.

18 RE-EXAMINATION BY MR. JOHNSTON:

19 Q. Thank you, Judge Simma.

20 Mr. Lizak, you were asked  
21 questions in reference to a chart in your answers  
22 but did not have an opportunity to go to that  
23 chart. Would you go to that chart now? I believe  
24 it's Figure 2.

25 A. Which --

1 Q. I believe it's in your --  
2 A. The first report or  
3 second report?

4 Q. First report. I'm sorry,  
5 no, it's your second report. The reference in the  
6 report is at page 14.

7 A. I don't have the charts.  
8 I just have the text.

9 Q. You don't have any of the  
10 figures in that?

11 A. No, not in this one. I  
12 may have the same chart in the first report.

13 Q. I am sorry, I believe it  
14 is the first report.

15 A. Okay, I am sorry.

16 Q. It's Figure 2, my  
17 apologies. Figure 2 of your first report, and  
18 it's a chart. As I understand it, sir, it's a  
19 chart titled [REDACTED]

20 [REDACTED]  
21 And if it may assist,  
22 Mr. Lizak, I can put my copy in front of you.

23 MR. SPELLISCY: Can we make  
24 sure that there is no notes of --

25 MR. JOHNSTON: It's just the

1 chart, Mr. Spelliscy.  
 2 DR. PULKOWSKI: I am happy to  
 3 provide my binder.  
 4 MR. JOHNSTON: That would be  
 5 better.  
 6 DR. PULKOWSKI: That might  
 7 make things easier.  
 8 MR. JOHNSTON: The title is  
 9 [REDACTED]  
 10 [REDACTED] I am sorry, there's no page reference.  
 11 It's two pages after the title page figures. It's  
 12 titled "Figure 2", and we are in the first report  
 13 of Mr. Lizak, dated November 30th, 2016.  
 14 THE WITNESS: Um-hmm, yes.  
 15 PRESIDING ARBITRATOR: I am  
 16 almost there. Okay.  
 17 BY MR. JOHNSTON:  
 18 Q. Mr. Lizak, thank you, and  
 19 I apologize, I think I started us off on the wrong  
 20 report.  
 21 Mr. Lizak, is this the figure  
 22 that you referenced in responding to  
 23 Mr. Spelliscy's questions about [REDACTED]?  
 24 A. Yes, it is.  
 25 Q. And what does this figure

1 depict?  
 2 A. This figure depicts the  
 3 [REDACTED]  
 4 [REDACTED].  
 5 Q. And you were asked as  
 6 well, Mr. Lizak, you recall, a question about the  
 7 reference in your report to the [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. Yes. [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED] That's why I am starting -- yeah, go  
 13 ahead, sorry.  
 14 Q. And my question is simply  
 15 whether you can assist us in understanding the  
 16 significance of that reference in your report for  
 17 your analysis. What was it about the lack of  
 18 [REDACTED]  
 19 [REDACTED] in the analysis you provided?  
 20 A. Well, if you look, again,  
 21 if you look at the [REDACTED],  
 22 like I said, [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. You were asked as well,  
 22 Mr. Lizak, questions about your first, the report  
 23 you tendered in the liability phase of this  
 24 arbitration; do you recall those questions?  
 25 A. Do I recall being asked  
 the questions?

1 Q. Right. And the question  
 2 that -- you were asked a question about your, or  
 3 the reference [REDACTED]; you recall  
 4 that question?  
 5 A. You mean the one with the  
 6 chart?  
 7 Q. Well, it was a reference  
 8 to -- in the environmental impact statement or the  
 9 project description --  
 10 A. Yes.  
 11 Q. [REDACTED]  
 12 [REDACTED].  
 13 A. Yes.  
 14 Q. You recall questions  
 15 about that?  
 16 A. Yes.  
 17 Q. And my question is  
 18 whether at the time back when you were first  
 19 engaged by the Claytons to look at the quarry  
 20 opportunities in Nova Scotia, whether you had been  
 21 told that there was any [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 A. No. I mean, and I think

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1 I would be thinking more like [REDACTED]  
 2 [REDACTED] I mean.  
 3  
 4 Q. And you referenced a  
 5 contract in one of your answers to Mr. Spelliscy's  
 6 questions, and I would just like to have you  
 7 reference that document, please, Mr. Lizak. If  
 8 you can...  
 9 A. It's -- I think it's part  
 10 of my first report. It's one of my exhibits, I  
 11 think. One second.  
 12 Q. I think I have identified  
 13 it here, Mr. Lizak. It's Appendix 4 to your first  
 14 report.  
 15 A. It doesn't seem to be  
 16 part of my package.  
 17 DR. PULKOWSKI: Would you like  
 18 to show him in this binder?  
 19 MR. JOHNSTON: If we can.  
 20 Thank you, Dr. Pulkowski.  
 21 Why don't we use this set  
 22 here, if we can, Mr. Lizak.  
 23 THE WITNESS: Okay.  
 24 BY MR. JOHNSTON:  
 25 Q. We will put this one

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1 aside. So your first report, and it is Appendix  
 2 4. It should be behind Tab 4.  
 3 A. Okay.  
 4 Q. That's it there. Thank  
 5 you.  
 6 And would you just please  
 7 describe for the tribunal what this document is?  
 8 A. Yes, my initial  
 9 engagement on this project happened in April 2002,  
 10 and this is the -- essentially my first part of  
 11 the project, and this is the contract specifically  
 12 related to the project.  
 13 Q. And, Mr. Lizak,  
 14 there's -- I just refer you to the second  
 15 paragraph of the letter dated April 25, 2002, that  
 16 covers the contract, and I direct your attention  
 17 to, just for clarification and comprehension  
 18 purposes here, [REDACTED]  
 19 [REDACTED] do you see those  
 20 six letters?  
 21 A. [REDACTED]  
 22 [REDACTED]  
 23 Q. What is that in reference  
 24 to with respect to your contract and your mandate  
 25 for the Claytons, please?

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1 A. Well, again, if you look  
 2 at the contract, my primary task was [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 Q. And what connection, if  
 10 any, to your knowledge, does that relate to [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 A. Well, again, that's, you  
 14 know, one of the things that is crucial is to make  
 15 sure that the [REDACTED]  
 16 [REDACTED].  
 17 MR. JOHNSTON: Thank you.  
 18 Those are my questions on redirect.  
 19 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
 20 2:51 P.M.  
 21 PRESIDING ARBITRATOR: Okay,  
 22 thank you. Any -- no questions, questions from  
 23 the tribunal? That is not the case. So that  
 24 brings to an end your witness examination,  
 25 Mr. Lizak. Thank you.

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1 THE WITNESS: Okay.  
 2 PRESIDING ARBITRATOR: You are  
 3 free.  
 4 THE WITNESS: Thank you, sir.  
 5 PRESIDING ARBITRATOR: I think  
 6 it's a bit early for our break. No? All right,  
 7 so we are going to have a break until three sharp.  
 8 --- Upon recess at 2:52 p.m.  
 9 --- Upon resuming at 3:05 p.m.  
 10 PRESIDING ARBITRATOR: Good  
 11 afternoon. Before we start, just an announcement  
 12 that the Arbitration Place will provide us with  
 13 the room, et cetera, for Wednesday, so this is a  
 14 final decision. That will be Wednesday. And we  
 15 will decide about the hour of start in the morning  
 16 on Monday. Okay. Thank you. Yes?  
 17 MR. SPELLISCY: Logistically,  
 18 will it be this room, or will we be informed?  
 19 PRESIDING ARBITRATOR:  
 20 Dr. Pulkowski?  
 21 DR. PULKOWSKI: Sure. Sorry,  
 22 I understand that this room will have to be  
 23 vacated by the end of Saturday, and the tech  
 24 equipment will actually be broken down on Saturday  
 25 evening. So it will have to move, or we will be

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1 moved to another hearing room, and having  
2 consulted both with the AV company and Arbitration  
3 Place, the decision has been taken to use the  
4 Cabernet room after all, which can be more  
5 flexibly configured, the one that's closest to the  
6 reception. Seems, from the tech point of view,  
7 that that is more appropriate for this hearing.  
8 It will be ready, we are being told, for Monday  
9 morning start.

10 PRESIDING ARBITRATOR: Well,  
11 at least it's a wine that we all know. I have  
12 never heard of this one before. Okay. All right.  
13 Thank you.

14 Would you be so kind and  
15 please read the statement that is in front of you,  
16 sir.

17 WITNESS DECLARATION: MICHAEL WICK

18 MR. WICK: Yes. I solemnly  
19 declare upon my honour and conscience that I will  
20 speak the truth, the whole truth, and nothing but  
21 the truth and that my statement will be in  
22 accordance with my sincere belief.

23 PRESIDING ARBITRATOR: Thank  
24 you, Mr. Wick, and you will be directed by  
25 Mr. Johnston.

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1 MR. JOHNSTON: Thank you,  
2 Judge Simma.

3 EXAMINATION IN-CHIEF BY MR. JOHNSTON:

4 Q. You are Michael Wick?

5 A. Yes. Correct.

6 Q. And you prepared two  
7 expert reports for this arbitration?

8 A. Correct.

9 Q. And your first report is  
10 dated December 16th, and your second report is  
11 dated 2017?

12 A. Correct.

13 Q. And your December 2016  
14 report is titled "Independent Market Review of  
15 Crushed Stone Aggregate Use in the Construction  
16 Industry in New York City and Concrete Sand Use in  
17 Northern New Jersey"?

18 A. Correct.

19 Q. And you hold a bachelor  
20 of science in mining engineering and a master's of  
21 business administration in finance?

22 A. Correct.

23 Q. And you are currently  
24 employed as vice president with John T. Boyd  
25 Company, located near Pittsburgh, Pennsylvania?

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1 A. Correct.

2 Q. And John T. Boyd Company  
3 is an international mining and geological  
4 consulting firm?

5 A. Correct.

6 Q. And prior to joining John  
7 T. Boyd, you were vice president of mining  
8 operations with Rogers Group, which was the  
9 largest private building materials company in the  
10 US from 2005 to 2009?

11 A. Correct.

12 Q. And you also served as  
13 the manager of greenfield and business development  
14 with Lafarge North America, establishing Lafarge  
15 aggregate and cement operations in Chicago and  
16 conducting in-depth market studies for Lafarge?

17 A. Yes. And, also, one of  
18 my focus areas was New York City, so Chicago and  
19 New York City.

20 Q. While you were with  
21 Lafarge?

22 A. Correct.

23 Q. And you also served, sir,  
24 as manager of operations services for American  
25 Limestone TN, Zinc Division, which is now CEMEX,

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1 from 1995 to 2000; is that correct?

2 A. Correct.

3 Q. And you have served, as  
4 well, as a senior mining engineer from Lhoist from  
5 1991 to 1995?

6 A. Correct.

7 Q. And, sir, since  
8 delivering your reports, have you identified any  
9 corrections or clarifications that you wish to  
10 make?

11 A. No.

12 Q. Would you please answer  
13 the questions of Canada's counsel? Thank you.

14 A. Yes.

15 PRESIDING ARBITRATOR: Thank  
16 you. I turn over to respondent, and Mr. Spelliscy  
17 is going to subject you to cross-examination.

18 CROSS-EXAMINATION BY MR. SPELLISCY:

19 Q. Good afternoon, Mr. Wick.

20 A. Good afternoon.

21 Q. I think I will remember

22 this time. Let's just go into confidential  
23 session now.

24 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
25 3:10 P.M.

1 BY MR. SPELLISCY:  
 2 Q. I would like to start,  
 3 Mr. Wick, by trying to understand some of the  
 4 basic distinctions that you seem to be drawing in  
 5 your report. So let's start by turning to page 1  
 6 of your second report. By that, I mean the page  
 7 numbered 1 in the report, not in the cover letter.  
 8 A. Okay.  
 9 Q. You say in the second  
 10 paragraph, at paragraph Number 2 here, you say:  
 11 "In reality, a seaborne  
 12 Canadian stone quarry is  
 13 not a market participant  
 14 of the New York City  
 15 building and construction  
 16 markets."[as read]  
 17 You say:  
 18 "The notion that, if a  
 19 company operates a quarry  
 20 in Canada, then it  
 21 automatically becomes a  
 22 market participant is a  
 23 fallacy."[as read]  
 24 MR. JOHNSTON: There is a word  
 25 in parentheses, "competition". I just want to

1 make sure my friend reads the full text.  
 2 MR. SPELLISCY: I can also  
 3 note that the words "is" and "not" are bolded and  
 4 capitalized, but I think we can all read it.  
 5 BY MR. SPELLISCY:  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. New York Sand & Stone,  
 11 correct.  
 12 Q. Right. And that was your  
 13 focus. [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. Right. And so you didn't  
 19 do any study of the coarse aggregate market in New  
 20 Jersey; correct?  
 21 A. Not the coarse aggregate,  
 22 correct.  
 23 Q. And, in your first  
 24 report, you say that -- this is in your scope of  
 25 work -- that the potential market areas for stone

1 produced from Canadian seaborne quarries includes  
 2 New York City, New Jersey, and other markets; does  
 3 that sound familiar?  
 4 A. Yes. Correct.  
 5 Q. Okay. And so your  
 6 report, your opinion, does not actually concern  
 7 who would supply New York Sand & Stone, just what  
 8 the market for New York Sand & Stone's products  
 9 were in New York City; correct?  
 10 A. Correct.  
 11 Q. Now, your projections, as  
 12 well, they only go to 2020, and that is because  
 13 projections beyond 2020 are inherently inaccurate;  
 14 correct?  
 15 A. Yes, that's correct.  
 16 Q. Now, let's turn to  
 17 something where I hope you can help me understand,  
 18 Mr. Wick. It's in paragraph 6 of your second  
 19 report.  
 20 A. Okay.  
 21 Q. About halfway down that  
 22 paragraph, there's a sentence that says:  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED] [as  
 7 read]  
 8 Do you see that sentence?  
 9 A. Yes.  
 10 Q. My question is as  
 11 follows, Mr. Wick. [REDACTED]  
 12 [REDACTED] correct?  
 13 A. Yes. I'm not sure of  
 14 what [REDACTED]  
 15 [REDACTED]  
 16 Q. Right. So I'm trying to  
 17 understand your sentence, then:  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED] [as read]  
 21 But [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]

6 That is the point of that statement.

7 [REDACTED]

12 Q. Okay. So if there was a

13 [REDACTED] is that

17 right?

18 A. No. What I'm saying is,

19 when you have [REDACTED]

25 Q. I'm not sure I

1 understand. [REDACTED]

4 [REDACTED]; correct?

5 A. Right. And I think the

big -- [REDACTED]

22 [REDACTED] hat's what that statement means.

1 [REDACTED]

4 [REDACTED]

5 Q. Now, let me turn to

6 paragraph 22 of your second report, Mr. Wick, so

7 you can help me understand something else.

8 In the first sentence,

9 paragraph 22, talking about the chart above, it

10 says:

16 [REDACTED] [as read]

17 And then you say:

20 [REDACTED] [as read]

21 And then you say:

1 [REDACTED]

7 [REDACTED] s read]

8 Do you see that?

9 A. Yes.

10 Q. So, for the record, these

12 [REDACTED] correct?

13 A. Correct.

14 Q. Now, you are aware,

17 Mr. Wick, that the plan was [REDACTED]

18 [REDACTED]; are you aware of that?

20 A. No. I'm not aware of any

21 of the [REDACTED]

24 Q. Okay. Well, you would

agree with me, then, would you not, that

[REDACTED] would you not?

A. Yes, with [REDACTED]

[REDACTED]. I did know that, correct.

1 Q. Okay. And so Bilcon of  
 2 Nova Scotia is, [REDACTED]  
 3 [REDACTED]  
 4 A. Correct. That's correct.  
 5 Q. Now, you said with  
 6 [REDACTED], so I take it you would  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED] correct?  
 13 A. If you mean by that that  
 14 there was [REDACTED]  
 15 [REDACTED], yes, I would agree with you.  
 17 Q. You would agree? So I'm  
 18 not sure if you have been here, Mr. Wick,  
 19 throughout the hearing, but are you aware that  
 20 [REDACTED]  
 21 [REDACTED]  
 22 A. I'm not sure at what  
 23 point, but, no.  
 24 Q. You weren't aware of  
 25 that?

1 A. No.  
 2 Q. But knowing that now, you  
 3 would [REDACTED]  
 4 [REDACTED], at least in this paragraph?  
 5 A. No. Again, the [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 Relevant to [REDACTED]  
 13 [REDACTED]  
 14 Q. Hold, on Mr. Wick. I  
 15 haven't asked you about that.  
 16 A. [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 A. No. I know currently, or  
 24 within the past [REDACTED]  
 25 [REDACTED]

1 [REDACTED].  
 2 Q. Right. But you didn't go  
 3 back and in [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 A. No, I did not.  
 11 Q. No, you did not.  
 12 Now, you would also agree with  
 13 me, I think, based on what we talked about  
 14 earlier, that, if one of [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED] correct?  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. No. I totally disagree  
 21 with that. Just because you are a [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED], so I would disagree.  
 2 Q. Right. Okay. But,  
 3 Mr. Wick, you would agree that, if you've got [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] would you not?  
 9 A. You are simply an [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. You would agree with me,  
 19 Mr. Wick, that if, in fact, [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 A. Could you please repeat  
 25 that?

1 Q. You would agree with me  
2 that, if, in fact, there were [REDACTED]  
[REDACTED]  
[REDACTED];  
6 correct?  
7 A. [REDACTED].  
[REDACTED].  
9 Q. Right. But you would  
10 agree with me that that might mean [REDACTED]  
[REDACTED]  
[REDACTED] correct?  
13 A. Yes. If there was no  
14 [REDACTED], correct.  
15 Q. Okay. In fact, you would  
16 agree with me, Mr. Wick, would you not, that when  
17 you talk about the [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]; correct?  
24 A. When you say [REDACTED]  
[REDACTED]

1 [REDACTED], I don't understand your question.  
2 Q. For the b [REDACTED]  
[REDACTED]  
4 A. If they had [REDACTED]  
[REDACTED]  
[REDACTED]  
7 Q. Well, no. You would  
8 agree with me that they would [REDACTED]  
[REDACTED] Mr. Wick?  
10 A. Oh, yes.  
11 Q. I'd like to take just a  
12 little bit of time to understand your projections  
13 as to what [REDACTED]  
[REDACTED].  
15 Let's do this by turning to  
16 page 8-1 of your first report. I want to look at  
17 a sentence midway through this paragraph that  
18 starts:  
19 [REDACTED]  
[REDACTED] [as  
24 read]  
25 You see that sentence?

1 A. It's about -- yes, yes, I  
2 do.  
3 Q. Okay. But help me  
4 understand, Mr. Wick, because when [REDACTED]  
[REDACTED]  
[REDACTED], do you?  
8 A. [REDACTED].  
9 I can't -- I'd have to look at where the -- but I  
10 [REDACTED]  
[REDACTED]  
13 Q. So your statement says:  
14 [REDACTED]  
[REDACTED]  
[REDACTED] [as read]  
19 Let me ask it a different way.  
20 [REDACTED] do you?  
22 A. I'm not sure what you're  
23 asking.  
24 Q. [REDACTED]  
[REDACTED]

1 [REDACTED]  
2 A. Oh, no, I had no  
3 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
13 A. Well, the history  
14 [REDACTED]  
[REDACTED]  
[REDACTED]  
21 Q. And that's what I am  
22 trying to understand, Mr. Wick. So you didn't  
23 consider it [REDACTED]  
[REDACTED]

1 [REDACTED] is that  
 3 right?  
 4 A. [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED] It's very  
 13 simple, very simple calculation.  
 14 Q. But you said, Mr. Wick,  
 15 to [REDACTED]  
 [REDACTED]  
 19 A. Correct.  
 20 Q. Well, I'd like to  
 21 understand a couple of other statements in that  
 22 context, Mr. Wick, because in your reply report --  
 23 and if we turn to your reply report at  
 24 paragraph 8 --  
 25 A. Okay.

1 Q. -- you say Whites Point  
 2 would be commissioned in 2011.  
 3 A. Where? I'm sorry. You  
 4 are at paragraph 8 of my second report? I'm  
 5 reading something different.  
 6 Q. Let me find it. It is on  
 7 page 4, the top paragraph there. It's actually  
 8 paragraph 8 from the previous page.  
 9 A. Okay.  
 10 Q. Okay. And if you come  
 11 down to the bottom there, you say:  
 12 [REDACTED]  
 [REDACTED]  
 [REDACTED] as read]  
 23 So you did have information on  
 24 [REDACTED]; correct?  
 25 A. For the second report,

1 not the independent market assessment. This  
 2 report, yes.  
 3 Q. Now, you say, in the next  
 4 sentence:  
 5 [REDACTED]  
 [REDACTED] as  
 13 read]  
 14 A. [REDACTED]  
 [REDACTED].  
 16 Q. [REDACTED]  
 17 A. Correct.  
 18 Q. Now, I'd like to  
 19 understand that statement in the context of this  
 20 case.  
 21 If you can turn to Tab 9 in  
 22 your binder. This is, for the record, C-1046.  
 23 It's the pro forma prepared by the claimants in  
 24 December of 2016. Have you seen this document  
 25 before?

1 A. No, I have not.  
 2 Q. If you can turn -- in  
 3 this pro forma, we can turn to the page on  
 4 production numbers, which is on the page -- it's  
 5 on page 3 at the top, or 005. And we have a  
 6 column [REDACTED] and you will see it  
 7 [REDACTED]  
 9 [REDACTED]; do you see that?  
 11 A. Yes.  
 12 Q. So I'm not sure, then, in  
 13 this context, Mr. Wick, I understand your  
 14 conclusion in the paragraph you just looked at,  
 15 which you said it would take [REDACTED]  
 [REDACTED]  
 [REDACTED] doesn't it?  
 19 A. I will have to read.  
 20 No. I think the actual peak  
 21 is [REDACTED]  
 [REDACTED]  
 23 Q. I'm trying to understand  
 24 the statement in your report, Mr. Wick. You said  
 25 that the condition would take [REDACTED]

1 [REDACTED]  
 2 You say that [REDACTED]  
 3 [REDACTED]  
 4 A. Correct.  
 5 Q. Okay. They are not [REDACTED]  
 6 [REDACTED]. They are  
 7 [REDACTED]; correct?  
 8 A. According to this, they  
 9 are, but I have never seen this document. You are  
 10 putting a document in front of me that I have  
 11 never seen.  
 12 Q. Mr. Wick, you testified  
 13 as to what you understood the plan was, and you  
 14 drew a conclusion based on that plan. So you now  
 15 understand your conclusion in that paragraph is in  
 16 error?  
 17 A. The plan I looked at was  
 18 the financial analysis that showed production, not  
 19 this document. I have never seen this document.  
 20 Q. So your conclusion would  
 21 -- in fact, the conclusion you have in that  
 22 paragraph would be different if, in fact, as this  
 23 pro forma shows, produced by the claimants, that  
 24 Bilcon, in fact, or Whites Point would [REDACTED],  
 [REDACTED]

1 [REDACTED]  
 2 A. My conclusion is that the  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 That's the point I am making.  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 Q. Your testimony just  
 18 there, Mr. Wick, was that [REDACTED]  
 19 [REDACTED]  
 20 A. Correct.  
 21 Q. That's not what you wrote  
 22 in your opinion, is it?  
 23 A. No. And I would have  
 24 to -- we can go back through the financial model  
 25 [REDACTED] But it -- as I

1 just said, it makes no difference if you go from [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]. It doesn't matter.  
 4 [REDACTED]  
 5 [REDACTED]  
 6 Q. So why did you feel it  
 7 important to tell this tribunal, then, in writing  
 8 your report, that [REDACTED]  
 9 [REDACTED]  
 10 A. Because, when I looked at  
 11 the [REDACTED]  
 12 [REDACTED] I cannot comment on something I  
 13 cannot see. It is unfair.  
 14 Q. Would it surprise you to  
 15 know [REDACTED]  
 16 [REDACTED] Mr. Wick?  
 17 A. I'm not sure what it's  
 18 based on. I just looked at the [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 But, again, it doesn't matter  
 23 if it's [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED] That's the

1 point.  
 2 Q. You would agree with me  
 3 and with Mr. Dooley that [REDACTED]  
 4 [REDACTED] correct?  
 5 A. Yes, I would agree with  
 6 you.  
 7 Q. And you would agree with  
 8 me that, if, in fact, in history, [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. Well, again, I think  
 15 we've stated that New York City -- the exact  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 Companies look at long-term  
 24 averages. They don't cherry-pick and pick  
 25 snapshots and distort downward trends. They look

1 at things -- in mining, [REDACTED]  
2 [REDACTED]. They don't look at one, two,  
3 five years. It's 10 years minimum. Thirty to 50  
4 years is average in the aggregates industry.  
5 Companies do not make decisions based on  
6 cherry-picking downward trends and up cycles or  
7 down cycles.

8 Q. You would agree with me,  
9 Mr. Wick, that, in fact, during an [REDACTED]

14 A. No. I completely  
15 disagree with that. We were doing extensive

22 They want a -- one of the  
23 misconceptions here is that [REDACTED]

1 [REDACTED]

14 Q. I don't think that was  
15 quite my question.

16 My question was that they will

20 A. No. I just said they

1 [REDACTED]  
5 That's poor business.

6 Q. And did you look -- and  
7 you didn't look, Mr. Wick, I put it to you, at the  
8 history of what happened with [REDACTED]

11 A. As far as what?

20 A. Well, right.

25 Q. What I asked about was

1 [REDACTED]

5 A. No. I did not have

6 so the answer is no.

8 MR. SPELLISCY: I will take a  
9 minute, or a second. Mr. Wick, that's all my  
10 questions for now. Thank you.

11 THE WITNESS: Thank you.

12 PRESIDING ARBITRATOR: Thank  
13 you, Mr. Spelliscy. And redirect will be done by  
14 Mr. Johnston.

15 MR. JOHNSTON: Thank you,  
16 Judge Simma.

17 RE-EXAMINATION BY MR. JOHNSTON:

18 Q. Mr. Wick, a few minutes  
19 ago, in your answer, you referenced [REDACTED], and  
20 I believe the question that you were asked  
21 referenced [REDACTED]

23 A. Umm, [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q. And do you recall

5 Mr. Spelliscy asked you questions about your

6 consideration of history? Do you recall those

7 questions?

8 A. Yes, I do.

9 Q. Within the scope of your

10 report and your analysis of the New York market,

11 do you recall those questions?

12 A. Yes, I do.

13 Q. Would you please go, sir,

14 to your first report, page 11.

15 A. Okay.

16 Q. And the subheading under

17 1.0, [REDACTED]

18 [REDACTED] Is this where you set out the [REDACTED]

19 [REDACTED] for your first report?

20 A. Yes, correct.

21 Q. And the two paragraphs of

22 the period immediately beneath that heading, do

23 those summarize the [REDACTED]

24 [REDACTED]

25 A. Yes.

1 Q. And in respect of the

2 first point, I will read it:

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] as read]

18 And does that accurately set

19 out at least part of what your analysis is in your

20 report?

21 A. Yes.

22 Q. You were asked questions

23 as well, sir, in which I heard you use the terms

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 A. Right. [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. I take it, in your

22 report, you considered the New York City market in

23 your analysis?

24 A. The New York City market?

25 Q. Yes.

1 A. Yes.

2 Q. And if you can go, sir,

3 please, to page 5-3 of your first report.

4 A. Okay.

5 Q. And once you have that

6 page.

7 A. Yes.

8 Q. You recall Mr. Spelliscy

9 asked you questions about the recession?

10 A. Yes.

11 Q. And the effect of the

12 recession?

13 A. Correct.

14 Q. And I will just direct

15 your attention, sir, to the second paragraph on

16 page 5-3. The first line you will see reads:

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] [as read]

21 And it goes on. Can you

22 elaborate on what you are saying here and how that

23 relates to, if at all, your evidence about [REDACTED]

24 [REDACTED]

25 [REDACTED]



1 [REDACTED]  
 2 [REDACTED]  
 3 A. No, no.  
 4 [REDACTED]  
 5 Q. And then I would like to  
 6 now take you, sir, to Tab 9 of the binder  
 7 Mr. Spelliscy put in front of you.  
 8 And it was page 3. There was  
 9 a table there that Mr. Spelliscy took you to.  
 10 A. Yes.  
 11 Q. Okay. And the first  
 12 column, [REDACTED] is the column that -- or  
 13 the first row, [REDACTED] is the row that you  
 14 were asked about; do you recall that?  
 15 A. Correct.  
 16 Q. And do you have any  
 17 understanding of what [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. No. I would assume it's  
 21 both the [REDACTED]  
 22 [REDACTED]  
 23 Q. But you have no  
 24 particular understanding of that one way or the  
 25 other?

1 A. No.  
 2 MR. JOHNSTON: Those are my  
 3 questions on redirect.  
 4 PRESIDING ARBITRATOR: Thank  
 5 you very much. Thank you very much.  
 6 Mr. Spelliscy, any...  
 7 FURTHER CROSS-EXAMINATION BY MR. SPELLISCY:  
 8 Q. I'm sorry, Mr. Wick. I  
 9 don't mean to step up again. I just had a  
 10 question. We were looking, again, at the page 4  
 11 of your second report and at the sentence on the  
 12 15 years again.  
 13 A. Okay.  
 14 Q. It says -- you said, I  
 15 think -- just now in response to Mr. Johnston's  
 16 question, you said, [REDACTED]  
 17 [REDACTED]  
 18 A. Right.  
 19 [REDACTED]  
 20 Q. Right. But, Mr. Wick,  
 21 the sentence says:  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED] [as read]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 r.  
 7 A. What I'm saying is it's  
 8 semantics, which is what I meant. [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]. That's what I meant.  
 11 Q. So you'd like to correct  
 12 this sentence?  
 13 A. Yes.  
 14 MR. SPELLISCY: Thank you.  
 15 That's all I have.  
 16 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
 17 3:51 P.M.  
 18 PRESIDING ARBITRATOR: Thank  
 19 you. No further from...  
 20 MR. JOHNSTON: No.  
 21 PRESIDING ARBITRATOR: Okay.  
 22 Questions of the tribunal? No, that is not the  
 23 case. Mr. Wick, this is the end of the exercise  
 24 as far as you are concerned. You are a free man  
 25

1 again.  
 2 THE WITNESS: Thank you very  
 3 much.  
 4 PRESIDING ARBITRATOR: Thank  
 5 you very much for your presence.  
 6 I suggest that we go into the  
 7 next witness, which is -- okay. So now we are  
 8 changing to Canada's experts, and Dr. Sterling  
 9 would be the first to go.  
 10 MR. NASH: We can easily  
 11 finish with Dr. Sterling today after a 10-minute  
 12 break. I would appreciate a 10-minute break.  
 13 PRESIDING ARBITRATOR: I see.  
 14 MR. SPELLISCY: No objection.  
 15 PRESIDING ARBITRATOR: Would a  
 16 break up until four sharp do?  
 17 MR. NASH: Sure.  
 18 PRESIDING ARBITRATOR: Okay.  
 19 --- Upon recess at 3:52 p.m.  
 20 --- Upon resuming at 4:04 p.m.  
 21 PRESIDING ARBITRATOR: Good  
 22 afternoon, Mr. Sterling. Would you be so kind and  
 23 read out the statement that is in front of you.  
 24 WITNESS DECLARATION: DR. ARLIE STERLING  
 25 DR. STERLING: Declaration for

1 expert. I solemnly declare upon my honour and  
2 conscience that I will speak the truth, the whole  
3 truth and nothing but the truth and that my  
4 statement will be in accordance with my sincere  
5 belief.

6 PRESIDING ARBITRATOR: Thank  
7 you.

8 I give the floor to Ms. Zeman  
9 for the direct.

10 MS. ZEMAN: Yes, thank you.

11 EXAMINATION IN-CHIEF BY MS. ZEMAN:

12 Q. Good afternoon,  
13 Dr. Sterling. Can you briefly describe for the  
14 tribunal your background and experience?

15 A. Yes, thank you. I am  
16 trained as an economist. I have an undergraduate  
17 degree from MIT as an -- in economics, a master's  
18 in economics from Northwestern University and a  
19 PhD in macroeconomics and finance from the MIT  
20 Sloan School.

21 I am one of the founders of  
22 Marsoft, my company, and I am the president of  
23 Marsoft Incorporated. I serve on the board of two  
24 companies, the Balticmax Holding Company and the  
25 Acquisition Company One, Maltese companies. We

1 own a fleet of 24 small container ships.

2 My area of expertise for the  
3 past nearly 35 years has been in the maritime  
4 industry. We started our business in the basement  
5 of the Sloan School doing research on oil trade  
6 and tanker market analysis and since then have  
7 grown to span almost all the major shipping  
8 markets.

9 My personal role has been in  
10 developing models for the market research,  
11 developing the credit rating models for shipping  
12 market -- or for the ship finance based on our  
13 market research. I advise investors with regard  
14 to investments in shipping, banks with regard to  
15 pricing a debt, and have served as an expert  
16 witness in a number of shipping cases in the past  
17 several years.

18 Q. Do you have any  
19 corrections to make to your opinions?

20 A. I do. On page 34 of my  
21 first report,

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

DR. PULKOWSKI: I don't have

1 a -- well, we should be in confidential session,  
2 for the record.

3 MS. ZEMAN: We should be in  
4 confidential session, for the record.

5 DR. PULKOWSKI: We will be  
6 editing in due course time, that's good. Fine.

7 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
8 4:07 P.M.

9 THE WITNESS: [REDACTED]

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

14 And then on page 6 of my  
15 second report, paragraph 21, line 2, there is a  
16 reference to [REDACTED]. That's a  
17 mistake. It should be [REDACTED]. That's  
18 page 6, paragraph 21. The second line in that  
19 paragraph.

20 Neither of these corrections  
21 have any impact on my analysis or conclusions.

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]

MS. ZEMAN: Thank you,  
Dr. Sterling.

I pass the floor to Mr. Nash.

THE WITNESS: Thank you.

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1 CROSS-EXAMINATION BY MR. NASH:  
2 Q. Good afternoon,  
3 Dr. Sterling. How are you?  
4 A. I am well, thank you,  
5 sir. How are you?  
6 Q. Very well.  
7 You have signed these two  
8 reports that you referred to. The first is in  
9 Tab 1, you will see that your report there is  
10 dated June 9th?  
11 A. That's correct.  
12 Q. And in Tab 2, your report  
13 is dated November 6th, 2017; do you see that?  
14 A. Yes, I do.  
15 Q. Please turn to Tab 1, and  
16 we are in the binder now. Or you can stay in that  
17 document if you wish, but to page 44 of your first  
18 report, which you will find is your CV. Do you  
19 see that?  
20 A. Yes, sir.  
21 Q. And this CV was complete  
22 and up-to-date as of the date you presented it to  
23 the tribunal for this proceeding?  
24 A. Yes, sir.  
25 Q. And it fully and

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1 completely sets out your qualifications and  
2 experience as of that date?  
3 A. Yes, sir.  
4 Q. And I don't believe  
5 you've filed a second CV with your second report;  
6 is that correct?  
7 A. I don't believe so, sir.  
8 Q. So this CV that is  
9 presented at page 44 of your report is current,  
10 complete, fully complete, and sets out your  
11 qualifications and experience to qualify you as an  
12 expert at this tribunal at this stage?  
13 A. This is the summary of my  
14 professional experience and background, sir, yes.  
15 Q. And it contains all of  
16 your relevant experience in relation to the  
17 matters at issue in this tribunal in regards to  
18 shipping; correct?  
19 A. To my knowledge, sir,  
20 yes, it contains the -- my background and  
21 professional experience.  
22 Q. That would be relevant to  
23 the shipping issues in this proceeding?  
24 A. I believe so, sir.  
25 Q. Looking at page 44, it

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1 says that you are the president of Marsoft. And,  
2 as I understand it, you have been the founder and  
3 president of Marsoft since 1979; is that right?  
4 A. Yeah, sir, just to be  
5 precise, I am the president of Marsoft  
6 Incorporated.  
7 Q. Okay. And Marsoft  
8 Incorporated was founded by you in 1979; that's  
9 correct?  
10 A. My partners and I, yes,  
11 sir.  
12 Q. And you've been the  
13 president of Marsoft Incorporated ever since?  
14 A. Yes, sir.  
15 Q. And Marsoft Incorporated  
16 is a consulting company; is that right?  
17 A. That's correct.  
18 Q. In the shipping industry?  
19 A. Yes.  
20 Q. And you have been a  
21 consultant with Marsoft Incorporated since 1979;  
22 correct?  
23 A. My -- I have -- we have  
24 been engaged in various tasks with Marsoft -- at  
25 Marsoft since 1979, including some of them

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1 consulting but also product development and sales,  
2 yes.  
3 Q. So you would describe  
4 your function and position with Marsoft  
5 Incorporated as developing models and also  
6 consulting; is that fair?  
7 A. Developing models,  
8 interpretation of model results and consulting on  
9 project-specific work, yes.  
10 Q. That would be a  
11 reasonable summary of what you do?  
12 A. Yes.  
13 Q. And what you have been  
14 doing for the last 39 years?  
15 A. Yes, sir.  
16 Q. And in the first  
17 paragraph, your CV says you lead the development  
18 and commercialization of Marsoft's decision  
19 support and risk management services for the  
20 shipping and ship finance markets; is that a  
21 correct description of what you do?  
22 A. Yes.  
23 Q. And I take it, then, that  
24 there, because you lead the development and  
25 commercialization of risk management services to

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1 the shipping industry, that implies to me that  
2 there is risk in the shipping industry; is that  
3 fair?  
4 A. There is a risk in the  
5 shipping industry. The specific area in which  
6 I've focused my time is in the use of scenario  
7 tools to evaluate risk and the use of a number of  
8 statistical tools to evaluate the probability of  
9 default and loss given default on shipping loans.  
10 Q. So going back to my  
11 question, there are risks involved in the shipping  
12 industry; that's correct?  
13 A. Yes, sir.  
14 Q. And part of what you have  
15 been doing for the last 39 years is developing  
16 models to assist shipowners, investors and  
17 financial institutions in the management of the  
18 risk in the shipping industry; is that correct?  
19 A. Yes. Yes, sir.  
20 Q. And if you go down for a  
21 moment to the bottom paragraph on that page,  
22 page 44, you'll see that under part of your  
23 experience, there's credit risk evaluation and  
24 management; do you see that?  
25 The last paragraph.

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1 big part of what you do; is that correct?  
2 A. Yes, sir.  
3 Q. And then if you go down  
4 to the next line, well, actually, just continuing  
5 on in that sentence:  
6 "Risk analytics and deal  
7 evaluation, portfolio  
8 management systems for  
9 the highly fragmented and  
10 volatile maritime  
11 shipping markets." [as  
12 read]  
13 Now, you have been in the  
14 shipping industry for 40 years, thereabouts, and  
15 you have experienced, and you have described here,  
16 that shipping markets are fragmented and volatile;  
17 correct?  
18 A. As I describe here, the  
19 tools that we have developed are specialized in  
20 those -- for the shipping industry, which is a  
21 volatile industry, and the ownership is highly  
22 fragmented across the industry. Ownership of  
23 ships, I should say.  
24 Q. The ownership of ships is  
25 fragmented and volatile; correct? Sorry, the

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1 A. Yes, risk analytics and  
2 deal evaluation/portfolio management systems,  
3 that's the paragraph we are getting to, that  
4 sentence?  
5 Q. Yes.  
6 A. Yes.  
7 Q. So an important part of  
8 what you do is the development of risk analytics,  
9 and that's to address the risks in the shipping  
10 market; that's correct?  
11 A. Indeed. And the tools to  
12 help our clients manage those risks.  
13 Q. And you have been making  
14 your living for the last 40 years assisting your  
15 clients in whatever aspect of the shipping  
16 industry they are involved with managing and  
17 analyzing risk; that's correct?  
18 A. Our focus in the shipping  
19 industry spans the dry bulk, tanker, container,  
20 LNG, and large parts of the ship finance industry.  
21 That is not the totality of shipping.  
22 Q. I understand. But there  
23 is certainly an important component of managing  
24 risk, analyzing risk, providing your clients with  
25 advice about risk in the shipping industry is a

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1 shipping industry generally is volatile, and the  
2 ownership is fragmented; have I got that right?  
3 A. The ownership is  
4 fragmented. There are many small owners, and  
5 charter rates and vessel values in the shipping  
6 industry are highly volatile. They move up and  
7 down quite a bit.  
8 Q. And part of the risk that  
9 needs to be managed arises from the fact that the  
10 shipping industry is a highly competitive  
11 industry; correct?  
12 A. No, sir, I am not sure  
13 I'd characterize the degree of competition as a  
14 risk. Many industries are competitive and don't  
15 show the same risk profile.  
16 The characteristics that drive  
17 shipping industry risk are the volatility of  
18 trade, changing trading patterns, changing  
19 commodities, prices, tendencies in the industry to  
20 excessive ordering driving excess supply in the  
21 markets, I would characterize those as the drivers  
22 of risk, not competition per se.  
23 Q. Well, isn't competition  
24 based, in part at least, on excess supply in the  
25 market, for example? There could be more

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1 availability of ships to transport goods than  
2 there is the need for them; isn't that fair?  
3 A. Sir, it's my  
4 understanding of competition is that it refers to  
5 competition between shipowners for business.  
6 Q. And doesn't that exist  
7 here in the shipping industry?  
8 A. You better step me back.  
9 What exactly is your question again?  
10 Q. I am talking about  
11 competition between shipowners for market, that is  
12 the import of my question.  
13 Isn't there competition  
14 between shipowners for market share, and isn't  
15 there price competition or price competition  
16 between them?  
17 A. Yes, shipowners will bid  
18 for business from charters and traders. They will  
19 often compete on price. There are other  
20 parameters under which they will compete, contract  
21 duration, quality of ship, et cetera, et cetera,  
22 et cetera, and related services. But competition  
23 for the business of moving cargo is an intrinsic  
24 part of the shipping industry, yes.  
25 Q. So would you call it a

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1 in the shipping industry; that's correct, at least  
2 that's part of what you do?  
3 A. Does your question refer  
4 to this, these proceedings, sir?  
5 Q. No, my question refers to  
6 what you do in your consulting business. You  
7 advise --  
8 A. Yes --  
9 Q. -- shipping owners,  
10 investors and financial institutions on  
11 uncertainties and risks in the shipping markets;  
12 correct?  
13 A. Yes, we advise our  
14 clients with regard to the outlook for the markets  
15 and the uncertainties in that outlook and how  
16 those uncertainties translate into the financial  
17 performance of vessels and loans.  
18 Q. If we go back up to the  
19 top paragraph, we refer to risk management  
20 services for the shipping and ship finance  
21 markets; are you with me?  
22 A. That's the second and  
23 third line of the first paragraph, yes, sir.  
24 Q. Yes. And you advise  
25 shipowners, investors and financial institutions

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1 highly competitive industry?  
2 A. I would agree that the  
3 shipping industry is highly competitive. I think  
4 the different segments of the industry will show  
5 different degrees of competition and  
6 concentration, but, on the whole, I think it's  
7 fair to characterize the shipping industry as  
8 highly competitive.  
9 Q. And there are  
10 uncertainties involved in the shipping industry;  
11 that is correct?  
12 A. Yes, sir. There are  
13 uncertainties, as I mentioned earlier, having to  
14 do with the volume of pattern of trade, the demand  
15 for ships and the supply of ships. Those factors  
16 are translated into volatile charter rates in the  
17 short term and volatile vessel values as well.  
18 Q. In the short and the long  
19 term; correct?  
20 A. The short-term  
21 volatility, if you will, has its upsides as well  
22 as its downsides. In the long-term, those tend to  
23 average out.  
24 Q. And you were retained to  
25 help manage the risks that you describe inherent

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1 on the development and execution of effective  
2 investment, chartering and risk management  
3 strategies.  
4 Now, for in -- for shipowners,  
5 the -- that's the existing shipping lines;  
6 correct?  
7 A. I don't understand your  
8 question, sir.  
9 Q. Shipowners are -- what do  
10 you mean by "shipowners"?  
11 A. Well, individuals or  
12 companies that own ships.  
13 Q. So they would be normally  
14 categorized as shipping lines?  
15 A. Not necessarily, no. No.  
16 They would be characterized as shipowners.  
17 Q. Shipowners, okay.  
18 Investors are investors in the shipping industry,  
19 or potential investors?  
20 A. Investors span --  
21 investors in shipping, they invest in many  
22 different aspects of the shipping industry, from  
23 ships to, to, shipping services, to the companies  
24 themselves that own the ships. So there are a  
25 wide range of ways to invest in shipping. They

1 could invest in securitized debt that originated  
2 against loans collateralized by ships.

3 Q. Under the heading  
4 "Experience" a little bit below, down the page,  
5 under "cycle management", what is cycle  
6 management?

7 A. The shipping industry is  
8 characterized by sharp cycles. Rates are high and  
9 then rates are low, and then rates hopefully rise  
10 again. They -- broadly, that's the cycle in the  
11 shipping business. The shipping, the success or  
12 failure of shipping investments typically is  
13 driven by the timing in the cycle. If you buy a  
14 ship at a low point in the cycle and sell it at a  
15 high point in the cycle, you can make a lot of  
16 money. Indeed, that's where great fortunes are  
17 made in shipping. Buying at a high point in the  
18 cycle and selling at a low point is a way to lose  
19 a lot of money.

20 And it's those capital gains  
21 components, cyclical components of the financial  
22 performance which are generally the difference  
23 between success and failure as a shipping investor  
24 in the business. And it's one of our roles is to  
25 help identify the timing and magnitude of cycles

1 clients timing-critical decision tools to assist  
2 them in engaging in the exercise and analysis of  
3 whether time A is a good time to buy a ship or a  
4 bad time to buy a ship; is that part of what you  
5 do? So they get the timing right?

6 A. We help our clients  
7 evaluate the market cycles and the entryway, if  
8 you will, or the type of ship or the contract that  
9 they choose to enter those cycles and understand  
10 their financial performance in those cycles.

11 What a specific investor or  
12 charter or other player in the market does depends  
13 on what they're interested in. If they need a  
14 ship to move aggregates from A to B for 50 years,  
15 they will have a different perspective from  
16 someone who might want to buy into what is  
17 perceived to be a cyclicly depressed market, so  
18 they will have different attitudes towards the  
19 opportunities.

20 Q. So the question of the  
21 timing of the purchase of either a ship or of  
22 shipping services can very much depend on the  
23 flexibility around the timing of the purchase of a  
24 ship; isn't that correct?

25 A. Again, there's, there's

1 in the market and, related to that, what might be  
2 the best type of ship or alternative financing  
3 mechanism that would give an investor access to  
4 those -- the financial gains from those market  
5 cycles.

6 Q. So, as I understand it,  
7 the timing of the purchase of a ship can be  
8 critical to whether or not you make money or lose  
9 money on the purchase of that ship; is that fair?

10 A. The timing is often a  
11 critical element. The key, though, again, there  
12 are, if you think about the various tools  
13 available to an owner or an investor, timing is  
14 one critical tool. The extent to which employment  
15 is available or confirmed for a ship is another  
16 alternative -- is a related alternative. If you  
17 buy a ship, a very expensive ship, charter it out  
18 long term, then there's, there may be relatively  
19 low risk even if the market falls.

20 So you have to think about  
21 shipping risk as in various dimensions, the  
22 timing, the employment, the degree of financing  
23 associated with a project, they all contribute to  
24 risk in different ways.

25 Q. And you provide to

1 several dimensions of shipping risk in financial  
2 performance. The timing of an investment is one,  
3 the employment of the ship is -- can mitigate that  
4 risk or not, and the extent of the financing. So  
5 timing is one important part of several factors  
6 which determine the overall performance, and it's  
7 getting that whole package right which is one of  
8 our, one of the things that we try to help our  
9 customers with.

10 Q. And you try to help them  
11 with timing-critical shipping investments; that's  
12 correct?

13 A. That's correct.

14 Q. I have read through  
15 your -- the first page and the top of the second  
16 page of your CV, and I think I have seen the word  
17 "risk" either six or seven times in that. It  
18 looks to be a significant part of what you have  
19 done and what you do. Analyzing, assessing,  
20 advising on, developing models for, all of those  
21 things around reducing risk, managing risk; is  
22 that fair?

23 A. With risk comes reward.  
24 The reason many of our clients are interested in  
25 shipping is that they see that there is an

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1 opportunity to make substantial gains, and so they  
2 seek those opportunities. At the same time, they  
3 may take risk, they do take risk associated with  
4 that, and managing that risk is critical.

5 In many of our conversations  
6 with our clients, we find that it's important to  
7 challenge our clients' assessment of risk and the  
8 risk profile because it may -- they may sometimes  
9 perceive things as more certain than they actually  
10 are.

11 Q. And you're there to  
12 identify the uncertainties and the risks  
13 associated with a particular investment; correct,  
14 at least --

15 A. As I say, the risks comes  
16 with upsides, and so our job is to help evaluate  
17 the upside potential as well as the uncertainty  
18 around that, both in the markets and in the  
19 financial performance of the markets.

20 Q. On page 45 of your CV, if  
21 you go down to -- from the "Investment and  
22 Restructuring" to "Professional Affiliations", I  
23 see that you have been an expert witness before.  
24 You have got where you refer to "Management", and  
25 it appears from your CV that you are, your only

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1 management experience is, in fact, the founder and  
2 sponsor with Peter Lorange of the Investment and  
3 Risk Management in Shipping Program for management  
4 and development; is that right?

5 A. I spend a fair amount of  
6 my time, sir, managing Marsoft and its efforts. I  
7 may have not fully expanded on those, but I find  
8 managing Marsoft to be a time-consuming part of my  
9 time. But Peter Lorange and I are very proud to  
10 have built this investment risk management program  
11 which we have developed and delivered in  
12 Switzerland for many years. And Peter Lorange and  
13 I continue to have a strong professional  
14 relationship.

15 Q. The models you developed  
16 over the years include probability of default  
17 model and loss given default model; is that right?

18 A. The output of these  
19 models is what is known in the banking industry as  
20 the probability of default and loss given default,  
21 yes.

22 Q. So you are --

23 A. Excuse me, sir, as it  
24 relates to shipping loans. I didn't mean to  
25 suggest that it relates to all sorts of debt.

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1 Q. And I understand that you  
2 have actually never been involved with the  
3 management of a shipping company; that's correct?  
4 The management, not being a board member but  
5 actual management.

6 A. No, sir, I have, as you  
7 say, been on the boards of BHC and AC One, but I  
8 have not been a line manager of a ship-owning  
9 company or a charterer.

10 Q. Have you ever been  
11 employed in any capacity by a ship-owning company?

12 A. All the time, sir. Our  
13 business is, we have been employed, been retained.

14 Q. I mean employed as  
15 distinct from retained. Employed in the shipping  
16 company.

17 A. No, we have been retained  
18 by many shipowners and continue to be retained by  
19 many shipowners. I am not a full-time employee of  
20 a ship-owning -- nor a part-time employee of a  
21 ship-owning company.

22 Q. You have never been a  
23 full-time or part-time employee of a shipping  
24 company; that's correct?

25 A. That's correct, sir.

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1 Q. You have never negotiated  
2 a contract of affreightment; that's correct?  
3 Being employed by a shipping company?

4 A. I have never negotiated a  
5 contract of affreightment, no, I have never  
6 negotiated a contract of affreightment.

7 Q. Right. And you have  
8 never actually worked as a marketing specialist in  
9 a shipping company; that's correct?

10 A. I have never been  
11 employed as a marketing specialist in a shipping  
12 company, no.

13 Q. Are you familiar with  
14 bankruptcies in the fishing -- in the shipping  
15 industry? Sorry.

16 A. Am I familiar with  
17 bankruptcies?

18 Q. Yes.

19 A. Yes, bankruptcies do  
20 occur in the shipping industry, yes.

21 Q. Do they occur commonly in  
22 the shipping industry, by your experience?

23 A. There is a lengthy  
24 discussion that we can have about how you judge  
25 the frequency of bankruptcy and default in

1 shipping --

2 Q. We can have a short  
3 discussion about that.

4 A. Yes, and I appreciate is  
5 the time.

6 Shipping is in a category of  
7 volatility that is associated with office  
8 buildings, residential, real estate.

9 Q. I am just talking about  
10 the shipping industry.

11 A. So it's in a high risk,  
12 high volatility segment of the world, and it has a  
13 relatively high level of bankruptcies commensurate  
14 with that style of business.

15 Q. So it is known in the  
16 shipping industry that shipping lines, even very  
17 large shipping lines, can go bankrupt, become  
18 insolvent, fail to meet -- to able to meet their  
19 obligations; that's right?

20 A. Shipping, shipowners may  
21 become insolvent, liner companies may become  
22 insolvent, yes, shipowners as well as commodity  
23 owners can become insolvent, yes.

24 Q. Any number of factors  
25 could contribute to the failure of a shipping

1 can be a very risky investment. One ship with  
2 little leverage with long-term employment can be a  
3 very secure investment.

4 I think it's, it's critical to  
5 look at all of these factors in judging the  
6 financial performance of a shipping investment.

7 No shipowner thinks of a  
8 single ship, sorry, only very specialized kinds of  
9 shipowners think of a single ship investment  
10 highly leveraged, et cetera, et cetera. Most  
11 shipowners will think of themselves as running a  
12 business and having a portfolio concern rather  
13 than a -- or a portfolio strategy, excuse me,  
14 rather than a single ship strategy.

15 Q. So using a portfolio  
16 strategy of multiple ships within a portfolio,  
17 the, that objective is to amortize the risk of  
18 that shipping fleet over the portfolio so that you  
19 get ups and downs and you average them out; is  
20 that a fair description?

21 A. A large fleet can provide  
22 the opportunity to diversify across multiple  
23 markets. It can provide the opportunity to be --  
24 have multiple age profiles. It can provide a  
25 number of advantages for an owner.

1 line, shipowners, any segment of the shipping  
2 industry, and some of those factors, I am going to  
3 suggest to you, could be, for example,  
4 overexpansion?

5 A. There are a number of  
6 factors which contribute to the financial  
7 performance of a shipping company. It may --  
8 there are a number of factors which may contribute  
9 to the performance of a shipping company.

10 Q. And one factor leading to  
11 potential insolvency could be overexpansion at the  
12 wrong time; would you agree with that?

13 A. It is certainly a risk in  
14 the shipping industry if an owner decides to build  
15 or buy a lot of ships at the wrong time or even  
16 one ship, one expensive ship at the wrong time,  
17 then it can cause financial difficulty, yes.

18 Q. So you buy one ship which  
19 is a very big capital investment, you buy it at  
20 the wrong time, it can lead to serious financial  
21 problems for entities involved in the shipping  
22 industry; correct?

23 A. Again, sir, there are  
24 multiple dimensions of this. It is possible one  
25 ship, highly leveraged, bought at the wrong time

1 Q. And is that  
2 diversification of the portfolio that can be one  
3 of those advantages; would you agree with that?

4 A. The extent of  
5 diversification in the shipping industry is -- or  
6 the potential for diversification as a risk  
7 mitigation tool in the shipping industry has been  
8 demonstrated not to be great, as we saw in the  
9 most recent crisis. All the markets crashed at  
10 the same time. Diversification across shipping  
11 types offered very little hedge to that cycle.

12 And changes in the sourcing of  
13 commodities, et cetera, can change the structure  
14 of the industry and change correlations  
15 dramatically, as we have seen over the past  
16 several years.

17 So, yes, diversification  
18 across ship types and ages may provide a degree of  
19 security, that's -- may provide a degree of risk  
20 mitigation. You'd have to take a look  
21 specifically at the, at what is being diversified  
22 and how to assess the potential gains from that.

23 Q. Got it. So there can  
24 be risk -- diversification of portfolio can be a  
25 positive factor in reducing risk for, say, a

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1 shipping line, but it's not a guarantee that the  
2 bottom won't fall out of the market and the  
3 company goes bankrupt; is that a fair summary?  
4 A. Diversification offers  
5 potential benefits. In itself, there is no  
6 guarantee in the shipping business, or, I believe,  
7 in any other business, that risk will be avoided.  
8 Q. Are you familiar with the  
9 bankruptcy of the Hanjin shipping lines?  
10 A. Yes, sir.  
11 Q. And was that the eighth  
12 largest shipping line in the world?  
13 A. It was the top ten, sir.  
14 I cannot honestly remember whether or not it was  
15 the eighth. It was certainly one of the largest.  
16 Hanjin is a big Korean liner company.  
17 PRESIDING ARBITRATOR:  
18 Container.  
19 THE WITNESS: Yes, exactly, it  
20 was in the container business.  
21 BY MR. NASH:  
22 Q. And it went bankrupt. It  
23 was unable to meet its obligations, and there were  
24 ships stranded, Hanjin ships were stranded around  
25 the world?

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1 that would have negotiated contracts of  
2 affreightment or other employment agreements from  
3 between Canada and the United States, no.  
4 Q. So you have never  
5 negotiated a contract from Canada, anywhere in  
6 Canada to anywhere in the United States; is that  
7 true?  
8 A. I have not had that  
9 responsibility or opportunity, no.  
10 Q. And you have never  
11 actually negotiated any contracts related to  
12 shipping as an employee of any shipping company;  
13 that's correct?  
14 A. My job as the president  
15 of Marsoft has been to ensure that we provide the  
16 kind of consulting services that our clients need  
17 to support that negotiation.  
18 Q. So that's -- the answer  
19 to my question is yes?  
20 A. We do not negotiate those  
21 contracts.  
22 Q. So the answer to my  
23 question is yes?  
24 A. We have not negotiated  
25 those contracts.

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1 A. Hanjin ships and cargo on  
2 those ships were stranded around the world. The  
3 Hanjin -- the withdrawal by the Korean government  
4 of its support for Hanjin was a traumatic event  
5 for shipping and, of course, for Hanjin, but  
6 Hanjin had enjoyed long-term support from the  
7 Korean government so that it endured even weak  
8 times in shipping. The Korean government decided  
9 it was going to focus its support elsewhere, and  
10 Hanjin was quickly eliminated from the scene.  
11 Q. It went under. Right.  
12 Now, have you ever negotiated  
13 contracts, I don't see it on your CV, for the  
14 shipment of goods from the Canadian Maritimes to  
15 New York City?  
16 A. I have never negotiated  
17 contracts for the shipment of goods from the  
18 Canadian Maritimes to New York City, no.  
19 Q. Have you ever negotiated  
20 contracts for the shipment of goods from Canada to  
21 anywhere on the East Coast in the United States?  
22 A. As an advisor --  
23 Q. As a negotiator --  
24 A. I personally have not,  
25 have never been an employee of a shipping company

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1 Q. You were instructed to  
2 conduct your analysis in this case from the  
3 vantage point of October 22nd, 2007; that's  
4 correct?  
5 A. Yes, the date of the  
6 breach, yes.  
7 Q. Do you know the date in  
8 this case when the federal Minister of Environment  
9 denied approval for the quarry?  
10 A. I am not familiar with  
11 that date, no, sir.  
12 Q. You performed your  
13 analysis in this case on the basis of information,  
14 information available to you as of October 22nd,  
15 2007; that's correct?  
16 A. Yes. We relied on  
17 information available to us as --  
18 Q. As of that date?  
19 A. Let me be more precise,  
20 sir.  
21 We were -- when we were  
22 retained to provide this analysis, we were  
23 provided a range of information, all of which  
24 dates prior to November -- excuse me,  
25 October 2007. We have, of course, as a matter of

1 business practice, skills and expertise and  
2 knowledge that we have accumulated subsequent to  
3 that date. So we have a degree of understanding  
4 of the business that I hope has grown since 2007.

5 Q. I understand. Could you  
6 turn to Tab 1, please, page 19, of your Number 1  
7 report. Tab 1 in the binder, if it's easier.  
8 Page 19, paragraph 65.

9 A. Page 19, paragraph 65.

10 Q. You say there:  
11

[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] [as read]

4 A. I see that, sir, yes.

5 Q. You made that assumption;  
6 correct?

7 A. Yes, this is -- yes.

8 Q. So have you ever heard of  
9 an EIS before, a Canadian EIS before being  
10 retained in this case?

11 A. An environmental  
12 impact -- or EIS?

13 Q. Yes, yes.

14 A. The term of trade was --  
15 certainly I had heard of environmental impact  
16 statements prior to that time. It was -- I can't  
17 recall the particular context.

18 Q. Did you know that a  
19 Canadian EIS was developed at an early development  
20 stage of a project and was to be used for  
21 conceptual purposes when you wrote this opinion?

22 A. That's one of the points  
23 that I think has been emphasized as I have been  
24 sitting in the back of the room, that this EIS was  
25 developed at an early stage of the project.

1 Q. Did you know that when  
2 you wrote your opinion?

3 A. It was clear as we read  
4 the EIS that it was early thoughts about the  
5 project. It was -- in some areas, it appeared to  
6 be inconsistent or not fully thought through, so  
7 certainly our interpretation of it is that it was  
8 at an early stage in the project.

9 Q. An early stage,  
10 conceptual stage of the development of the  
11 project; correct?

12 A. Well, conceptual, I mean,  
13 they seemed to have a very good idea about what  
14 equipment they would need, what stone they  
15 expected to pull out and that they needed a ship  
16 to run it. There were lots of details that you  
17 need to drill down in to write a real business  
18 plan, but I think the concepts were quite clear.

19 Q. You say in the  
20 second-to-last line:  
21

[REDACTED]  
22 [REDACTED] as read  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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

9 Correct?

10 A. That is my statement,  
11 sir.

12 Q. And that was what you  
13 understood you were doing?

14 A. And that was my  
15 understanding at the time, [REDACTED]  
[REDACTED]

19 Q. And your opinion was  
20 developed and was based on that assumption; that's  
21 correct?

22 A. That was the, yeah,  
23 the -- yes, we used that, that was one of the  
24 assumptions that we used, as well as there were  
25 other descriptions and other factors that [REDACTED]

1 [REDACTED]  
 2 [REDACTED]. We also looked at, of course, the Morrison  
 3 report and took that into perspective as -- took  
 4 information there.  
 5 Q. Well, just let's hold on  
 6 for a moment.  
 7 A. Sure.  
 8 Q. You are saying that [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 A. To be clear, we were  
 15 instructed to do the analysis as of October 2007  
 16 and to use the documentation available at that  
 17 time --  
 18 Q. Right. That's just my  
 19 point, yes.  
 20 A. -- to drive our analysis.  
 21 Q. Right. So the  
 22 assumptions and the only available information  
 23 that you had at that time were based upon [REDACTED]  
 24 [REDACTED]  
 25 A. As we initiated the

1 project, as I said, we had --  
 2 Q. Can you just answer my  
 3 question --  
 4 A. Sorry, excuse me.  
 5 Q. -- first, and then  
 6 provide your explanation after that.  
 7 Is that a yes or a no?  
 8 A. Could you repeat your  
 9 question, sir?  
 10 Q. Your assumption and the  
 11 analysis was driven by the fact which you assumed  
 12 [REDACTED]; is  
 13 that correct?  
 14 A. That is correct, that is  
 15 one of the assumptions in our analysis.  
 16 Q. Thank you.  
 17 If you go to page 27,  
 18 paragraph 87, in that same tab, Tab 1.  
 19 A. What was the paragraph  
 20 number?  
 21 Q. Paragraph 87.  
 22 A. Yes.  
 23 Q. You say:  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] as read]  
 5 Let's just stop there for a  
 6 moment.  
 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 [REDACTED]

16 Q. Were you aware that  
17 Auld's Cove was not in Bay of Fundy when you wrote  
18 your second report?  
19 A. Yes, sir, I had the  
20 opportunity to take a -- to look at the map and  
21 learn a little bit more about the geography of  
22 Canada and the location of these terminals.  
23 Q. When you wrote your  
24 second report, you assumed that Auld's Cove was  
25 located in Bay of Fundy; that's correct? And you

1 state that in your report; do you recall that?  
2 A. Excuse me?  
3 Q. Do you recall stating in  
4 your report that Auld's Cove was located in Bay of  
5 Fundy?  
6 A. I think we may -- if  
7 that's what we said in the report, that's what we  
8 said, yes.  
9 Q. And that was a mistake;  
10 wasn't it?  
11 A. That was a  
12 mischaracterization of where Auld's Cove is  
13 located.  
14 Q. Yes. And that would  
15 haven an effect on the -- could have an effect on  
16 the speed with which a ship could travel from its  
17 location, one in Bay of Fundy, as distinct from  
18 the open ocean in the Atlantic Ocean?  
19 A. When we took a look at  
20 the specific contracts and we analyzed the [REDACTED]  
21 [REDACTED], we took a look at  
22 the differences in location. And I apologize for  
23 the misstatement of the location of Auld's Cove,  
24 but our analysis of the [REDACTED]  
25 [REDACTED]

1 [REDACTED]

6 Q. And your calculations of  
7 speed that are referred to in your report are  
8 based on the assumption that Auld's Cove Quarry  
9 was in Bay of Fundy; that's correct?  
10 A. No.  
11 Q. When you made those  
12 calculations, did you not understand that Auld's  
13 Cove was in Bay of Fundy?  
14 A. The Canadian Coast Guard  
15 made those calculations, so we relied on  
16 information on speeds provided by the Canadian  
17 Coast Guard as they tracked the origin and  
18 destination of [REDACTED] vessel. And  
19 so we didn't calculate the speed, the Canadian  
20 Coast Guard did.  
21 Q. And when you assessed  
22 that calculation of the speed, you understood that  
23 Auld's Cove was located in Bay of Fundy; that's  
24 correct?  
25 A. Well, we assessed the, we

1 observed the speeds as calculated by the Coast  
2 Guard. We understood that they were -- that  
3 they -- that they had mapped the origin and  
4 destination correctly and the distances correctly,  
5 and satisfied ourselves and were satisfied that  
6 the Coast Guard was a reliable source of this  
7 information.  
8 Q. Did you understand the  
9 actual location of the Auld's Cove Quarry in  
10 relation to the open Atlantic Ocean, did you look  
11 at that directly yourself?  
12 A. Did I specifically look  
13 at the location of the quarry versus the Atlantic  
14 Ocean?  
15 Q. Yes.  
16 A. I have --  
17 Q. You didn't?  
18 A. Sir, I will tell you what  
19 I did. I did a Google Map and I found a little  
20 big red dot that showed where it was, and I zoomed  
21 into it a few times. It's a -- I did capture, I  
22 think, what is the sense of it, but I must say, at  
23 that, I Google Mapped it.  
24 Q. And you based your  
25 assessment of what the ship travelling from the

1 Whites Point Quarry to New York City based upon  
 2 your understanding of the ship travelling from  
 3 Auld's Cove to New York City; that's correct?  
 4 A. To be precise, we asked  
 5 for data from the Canadian Coast Guard on voyages  
 6 of [REDACTED] and speed of those voyages  
 7 and asked the Canadian Coast Guard to identify the  
 8 starting point and the ending point of those  
 9 voyages. And so as, in the table that we got from  
 10 the Canadian Coast Guard, it showed us origin,  
 11 destination, and average speed over that track,  
 12 and that's what we relied upon.  
 13 Q. And you used that average  
 14 speed over the voyage and applied it to a voyage  
 15 of a same or similar ship from Whites Point to New  
 16 York City; correct?  
 17 A. We believe that that --  
 18 that the performance of [REDACTED] is --  
 19 over that voyage from Auld's Cove is  
 20 representative of its performance of what it would  
 21 achieve from Whites Point to New York.  
 22 Q. You believe that?  
 23 A. I am sorry, yes. That  
 24 was a question.  
 25 Q. Could you turn to page 21

1 of your first report, please, at Tab 1. At the  
 2 bottom paragraph, Number 3:  
 3 [REDACTED]  
 4 [REDACTED] as read]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 Do you see that?  
 9 A. Yes.  
 10 Q. [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 A. Yes. Yes, sir.  
 16 Q. [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. I am sorry, I lost the  
 21 context a bit here. Could you explain?  
 22 Q. Looking at the line -- I  
 23 will repeat the words:  
 24 [REDACTED]  
 25 [REDACTED] as read]

1 [REDACTED]  
 2 A. Um-hmm.  
 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]  
 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]

8 Q. Right. So the baseline  
9 for the project was based on what you understand  
10 to be the best available information as of  
11 October 22nd, 2007, and you didn't take into  
12 account any subsequent knowledge after that date;  
13 that's correct?

14 A. The EIS is sometimes  
15 incomplete, sometimes required some  
16 interpretation, amazingly specific and consistent  
17 throughout, reference to [REDACTED].

19 Q. I understand that, and  
20 that's what you stayed with; that's correct?

21 A. Excuse me?

22 Q. That's what you stayed  
23 with, because that was the information available,  
24 as you understood it, as of October 22nd, 2007;  
25 that's correct?

1 [REDACTED]

5 Q. You regarded that  
6 conceptual document as the business strategy, as  
7 articulated at that time, and you stayed with that  
8 notwithstanding that there was subsequent  
9 information which advised you that that was not  
10 the plan?

11 A. I'm not -- sir, I have  
12 not been informed that that was not the plan. I  
13 see here in your reference that Paul Buxton

14 [REDACTED]

18 And if the business plan was  
19 to change, that sentence does not do it.

20 Q. Now, you stated in the --  
21 in your first report -- sorry, your second report,  
22 that [REDACTED]

23 [REDACTED]

24 do you recall that?  
25 A. Can you point me to that  
reference, please, sir?

1 Q. I can. Page 17 of your  
2 second report, Tab 2.

3 A. Tab 2?

4 Q. Yes.

5 A. What page on Tab 2?

6 Q. Page 17. You see that  
7 chart, Figure 5?

8 A. Perhaps I have not  
9 located things correctly, sir. On Tab 2 is a  
10 Figure 5.

11 Q. Figure 5, page 17.

12 A. Figure 5 on page 17, is  
13 that what we are looking at? Yes.

14 Q. Yes. Figure 5, your  
15 Figure 5, do you see that?

16 A. Yes, sir.

17 Q. Yes. And do you see that  
18 [REDACTED]

19 [REDACTED]

21 A. Yes.

22 Q. [REDACTED]

1 [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 Q. Thank you.

2 MR. NASH: Thank you,

3 Dr. Sterling. Those are my questions.

4 PRESIDING ARBITRATOR: Thank

5 you, Mr. Nash.

6 Ms. Zeman, do you want to --

7 would you redirect, please, Dr. Sterling?

8 MS. ZEMAN: Yes. May I have

9 just two minutes to gather my thoughts.

10 PRESIDING ARBITRATOR: You

11 may.

12 MS. ZEMAN: Thank you.

13 RE-EXAMINATION BY MS. ZEMAN:

14 Q. Dr. Sterling, if you

15 could turn to page 48 of your second report.

16 A. Tab 2?

17 Q. That's right.

18 Paragraph 48.

19 A. Paragraph 48.

20 Q. In your

21 cross-examination, counsel represented to you that

22 you said that Auld's Cove was in the Bay of Fundy.

23 Can you point us to the spot in this paragraph

24 where that was the case?

25 A. There's no reference to

1 the Bay of Fundy in this paragraph.

2 Q. Now, if we can turn to

3 paragraph 34 of your first report.

4 A. Page 34?

5 Q. Yes. Or paragraph 34.

6 A. Paragraph 34, sorry.

7 Q. Right. So Mr. Nash asked

8 you about your views on Mr. Rosen's treatment of

9 freight rates and suggested to you that y [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Can you just take a moment to read that paragraph

14 of your statement. And then I'd like to bring up

15 Mr. Rosen's first report, if we could, on the

16 screen, Derek.

17 I'm looking for Figure 5.4 in

18 paragraph 5.23. Keep going down. A few more.

19 5.23. Okay. Here. This page.

20 Can you read that on the

21 screen?

22 A. Yes. I can read the -- I

23 can see the bottom of the chart currently on the

24 screen. Should I see the whole?

25 Q. Yeah. We'll scroll up in

1 a moment, but if you could just take a moment to

2 read paragraph 5.23. And then if we could zoom

3 out a bit, Derek.

4 A. Yes, thank you.

5 Q. Is this Mr. Rosen's

6 opinion that you were looking at when you made

7 your comments?

8 A. Yes.

9 Q. Mr. Nash asked you a

10 series of questions about risk in shipping markets

11 and the advice that you provide to your clients

12 with respect to that risk. If a client came to

13 you with a 50-year shipping need, what would your

14 advice be to them if they were proposing to budget

15 shipping costs for their 50-year project on the

16 basis of [REDACTED]

17 A. I would advise the client

18 that they had [REDACTED]

19 [REDACTED]

20 Q. What would be your

21 alternative suggestion as a way to budget that?

22 A. And I suggest that they

23 look at the options to hedge the long term -- in

24 effect, hedge the long term requirement and that a

25 50-year life [REDACTED]

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1 [REDACTED]. Start there, keep it simple,  
2 and figure out how [REDACTED]  
3 [REDACTED]  
4 MS. ZEMAN: I have no further  
5 questions.  
6 PRESIDING ARBITRATOR: Thank  
7 you, Ms. Zeman.  
8 No further --  
9 MR. NASH: Nothing arising.  
10 PRESIDING ARBITRATOR: Okay.  
11 Questions from the tribunal?  
12 QUESTIONS FROM THE TRIBUNAL:  
13 PROFESSOR SCHWARTZ: The first  
14 question, maybe I didn't hear or understand  
15 correctly, just a comment you made en passant, but  
16 you were asked about the difference between [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 THE WITNESS: I recall a  
20 discussion around a paragraph in Paul Buxton's  
21 report, yes.  
22 PROFESSOR SCHWARTZ: Yes. I  
23 think I remember you saying you found [REDACTED]  
24 [REDACTED]  
25 THE WITNESS: I --

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1 standard deviations and how to measure (a) the  
2 uncertainty around a forecast, and we measure it  
3 both in a statistical sense, using the extent to  
4 which our most likely scenarios deviate from  
5 actual or -- and how frequently actuals deviate  
6 from our extreme high and low cases. So we try to  
7 capture confidence intervals from a scenario  
8 perspective as well as a risk perspective -- as  
9 well as, excuse me, a statistical perspective.  
10 And translating that  
11 characterization of the uncertainty to the outlook  
12 into the uncertainty of the financial performance  
13 is another key step. And for the banking sector  
14 risk, as I mentioned earlier, it's typically  
15 thought of in two -- at least two dimensions, the  
16 probability that you will fail to have sufficient  
17 cash flow to meet your debt obligations and the  
18 likelihood in that case that the value of the ship  
19 will be below the debt outstanding. So it's the  
20 translation all the way from those scenarios of  
21 future market development, the uncertainty around  
22 the scenarios, then down to the likely or to the  
23 possibility of default and the cost of that  
24 default. All of those are statistically  
25 characterized.

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1 PRESIDING ARBITRATOR: No, no.  
2 It was you found mysterious the term, as I do  
3 also, [REDACTED]  
4 PROFESSOR SCHWARTZ: Oh, okay.  
5 THE WITNESS: It was in  
6 reference to [REDACTED]. It was an  
7 odd --  
8 PROFESSOR SCHWARTZ: Oh, okay.  
9 THE WITNESS: It was not how  
10 someone -- it was not how I would have described  
11 anything. I would have used different -- I didn't  
12 understand exactly what that description meant.  
13 PROFESSOR SCHWARTZ: Okay.  
14 Thanks for clarifying that.  
15 The second question: You are  
16 advising clients about risks in the shipping  
17 industry. What sort of plus or minuses -- what  
18 sort of standard deviations do you provide to  
19 clients when you are advising them? Are you able  
20 to say, "Yeah. This is going to work out within  
21 plus or minus 5 per cent with one standard  
22 deviation or" -- is that something you typically  
23 do in the business? How does that work?  
24 THE WITNESS: Professor  
25 Schwartz, we spend a lot of time talking about

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1 PROFESSOR SCHWARTZ: Do you  
2 look back at your previous predictions, compare  
3 them with actual performance, and, in the long  
4 run, get a sense of how reliable your estimates  
5 are?  
6 THE WITNESS: Sir, we provide  
7 services to the leading shipping banks, and we  
8 have done so for 30 years. As part of that, we  
9 are scrutinized by their regulators. The  
10 performance of shipping banks has been such that  
11 they have come under particular scrutiny, and the  
12 inputs that we provide to their decision-making  
13 are part of the review process. As a matter of  
14 fact, when I get -- one of the projects we just  
15 completed before I came here was an assessment of  
16 the ECB stress scenarios and their consequences  
17 for the shipping markets. We provide historical  
18 track record of our forecast, of our base case  
19 forecast, and comparison of what we call base case  
20 to actual and high and low cases to actual and try  
21 to provide a full range and are obligated to  
22 provide a full range of transparency of our  
23 analysis to our clients and to the regulators  
24 ultimately.  
25 PROFESSOR SCHWARTZ: So this

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1 -- feel free to tell me you can't give me a  
2 meaningful answer to this, but if you are looking  
3 over shipping costs over 50 years and a client  
4 comes to you and says, "What are my shipping costs  
5 over the next 50 years on this route?" what sort  
6 of band of standard deviation around certainty am  
7 I looking at here? Like, I'm able to say, "Okay.  
8 I've got this within 25 per cent, 50 per cent".  
9 Are you able to give me any rough guidance as to  
10 what kind of precise science or guesswork is  
11 involved here?

12 THE WITNESS: First, to  
13 characterize the historical variation in the  
14 market, in the dry bulk market we have recently  
15 come out of one of the very weakest points  
16 since -- in our memory, where Panamax ships,  
17 Handymax ships were all earning about the same  
18 thing, and that was about \$5,000 a day. In 2008,  
19 I believe in June of 2008, those ships were  
20 earning \$65,000 a day -- excuse me, 50 to 60,000  
21 dollars a day. That's the historical range.  
22 That's the maximum we have to deal with.  
23 Typically, the markets will not show that much  
24 variation.

25 They might show, in our more

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1 First of all, could you  
2 explain or clarify the meaning of these terms,  
3 Panamax and Handymax? Especially -- I would have  
4 thought that they do not -- there is no necessary  
5 correlation between tonnage and the max, whatever,  
6 Panama Suez, whatever, because it's more a matter  
7 of the draft and the size, whether you can pass a  
8 canal or not. So could you clarify that,  
9 especially what Handymax means?

10 And the second question would  
11 be: I have the impression that the shipping part  
12 of our -- the case here, the shipping strikes me  
13 as a relatively cozy business.

[REDACTED]

14 THE WITNESS: Let's start with  
15 the easier one of those two questions, which is  
16 what the heck is a Handymax.

17 This is a term of art that the  
18 industry artfully uses over time. A Handymax in  
19 the good old days was worth 48,000 -- sorry, it

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1 recent analysis, plus or minus 10 to 15,000  
2 dollars a day.

3 Our -- so that's the actual  
4 historical variation. Forecasting where the  
5 markets go is, as you can imagine, a humbling  
6 exercise. We measure our precision both in the  
7 sense that the extent to which the actual markets  
8 deviate from our most likely forecasts, the next  
9 quarter, six months, nine environments hence and  
10 also to the extent to which they deviate from the  
11 range that we have indicated as a plausible range  
12 on the basis of our scenario analysis. And the  
13 analysis going out two years ahead is that --  
14 sorry, one year ahead is that we have an 80 per  
15 cent success record in finding those turning  
16 points in the market when they flip from declining  
17 to rising, but that, in terms of the point  
18 estimates of the charter rates -- and I'm sorry  
19 for all this jargon I'll throw at you, but about  
20 two-thirds of the time rates are within 30 per  
21 cent of our base case forecast.

22 PROFESSOR SCHWARTZ: Thank you  
23 very much.

24 PRESIDING ARBITRATOR: A  
25 couple of questions.

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1 was 48,000 dead weight tons. I have no idea why  
2 that was regarded as handy, but it has gear on  
3 it --

4 PRESIDING ARBITRATOR: A few  
5 hours ago, one participant -- I forgot who it was  
6 -- said Handymax means a ship which has all the  
7 loading gear on board and doesn't -- which is  
8 actually handy to load and unload; is that  
9 correct?

10 THE WITNESS: And, sir, you  
11 are absolutely right. There is a size component,  
12 and there is a gearing component. So typically  
13 ships less than, nowadays, 64,000 dead weight ton,  
14 which is called an Ultramax, just to confuse  
15 things, they have gear on them, and that gearing  
16 is -- makes it easier to load and discharge at  
17 ports which don't have cranes. And so, in that  
18 sense, they facilitate trade to areas which have  
19 less well-developed port infrastructure.

20 PRESIDING ARBITRATOR: They  
21 are called Handymax in the jargon?

22 THE WITNESS: And, again, the  
23 jargon has gone from Handymax to Supramax to  
24 Ultramax, sir. So the jargon of the trade is  
25 generally Handymax is less than 50,000 dead weight

1 ton. Supra is probably less than 60, and ultra is  
2 less than 70 dead weight tons, and they all have  
3 gear on them. And they are all, you know, as you  
4 can, imagine wonderful ships.

5 A Panamax is a ship that  
6 starts -- again, depends how old you are, but  
7 think of it now as a ship larger than 60,000 dead  
8 weight ton, now typically averaging about 85,000  
9 dead weight ton, and it's got no gear, no cranes  
10 on it. So it relies on cranes at the port or  
11 terminal to load or discharge. So you have got a  
12 bigger ship. It -- Panamax used to be defined by  
13 what was the biggest ship that could go through  
14 the Panama Canal. Then they dug a deeper Panama  
15 Canal, and so that term of the trade is obsolete  
16 is the fact. There's a whole new class of ships  
17 that will fill that gap.

18 PRESIDING ARBITRATOR: [REDACTED]

19 [REDACTED].  
20 THE WITNESS: Yes. Well,  
21 that's a very interesting question, sir. [REDACTED]  
[REDACTED]

1 [REDACTED]

20 Sorry, I could talk a lot more  
21 about this, but have I got the high points?  
22 PRESIDING ARBITRATOR: No, no.  
23 I think that was -- but it was -- I mean, for  
24 instance, during crises, I remember having read  
25 that, on the Singapore, you had 300 or several

1 hundred ships just lying there, waiting for some  
2 business to do. And the same is true even in The  
3 Hague. You see in Scheveningen, you see some  
4 ships lying out there for weeks and weeks. So  
5 they cannot just lie there in order to save a port  
6 going in.

7 Compared to that, this seems  
8 to be a pretty good business, and risks, the risks  
9 involved seem to be minimal.

10 THE WITNESS: [REDACTED]

11 [REDACTED],  
12 that trade within the United States is governed by  
13 the Jones Act, and the Jones Act is a highly  
14 restrictive and very costly trade to be engaged  
15 in. If you can start in Canada, you are no longer  
16 subject to the Jones Act. And if you can match  
17 your cargo flows down from Canada up from the US  
18 Gulf, say, or from Latin America, then you can --

19 PRESIDING ARBITRATOR: Could  
20 you, just for the record, in a few words, explain  
21 what "Jones Act" means?

22 THE WITNESS: Yes. The Jones  
23 Act restricts the carriage of goods between US  
24 harbours to US-owned, US-built, US-operated ships.  
25 US built means they are generally three times the

1 cost of something you would build in Korea. US  
2 operated means you are three or four times the  
3 cost, daily cost of the crew, than international  
4 flags. So it's a very costly operation. It is  
5 one -- we have heard complaints about that in the  
6 recent disasters in Puerto Rico, but limited trade  
7 there. So when you start with cargo originating  
8 outside the United States or you are delivering  
9 cargo that originates in the United States to,  
10 say, Canada, you are not subject to those Jones  
11 Act restrictions.

12 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] PRESIDING ARBITRATOR: Thank  
4 you very much.

5 PROFESSOR SCHWARTZ: If I  
6 could just ask you to -- I find your earlier  
7 answers very helpful, but if you could just give  
8 me a bit more precision.

9 You mentioned that about  
10 two-thirds of the time your projections were  
11 within 30 per cent of the base case forecast?

12 THE WITNESS: Yes, sir.

13 PROFESSOR SCHWARTZ: Over what  
14 period of time are those forecasts?

15 THE WITNESS: Well, we will  
16 have a forecast -- our typical forecasts range  
17 from three months out to five years out. So every  
18 quarter we will update our five-year outlook. So  
19 that confidence interval I gave you was at, I  
20 think, six months.

21 PROFESSOR SCHWARTZ: So are  
22 you ever in the business of giving 10-, 20-,  
23 50-year forecasts.

24 THE WITNESS: Well, this was  
25 an exercise in such a forecast, if you will, and

1 so you do it the best you can. You take a look at  
2 what you know of the key drivers, and you say,  
3 "This is how they look. This is how you build out  
4 an infrastructure to serve the needs". But  
5 there's certainly some intrinsic uncertainty to  
6 that style of calculation.

7 PROFESSOR SCHWARTZ: I will  
8 just pursue that a bit further. I don't have an  
9 intuition about this. If it's 50 years, does that  
10 mean the uncertainty is less because the ups and  
11 downs average it out, or is it just the sheer  
12 accumulation of time that adds more to the  
13 uncertainty band?

14 THE WITNESS: Over a 50-year  
15 span, we tend to think of technology as a huge  
16 disruptor, and industries that plan for 50 years,  
17 for example, that were planning to export crude  
18 oil from Saudi Arabia to the United States find  
19 that that market goes away, and so -- whereas we  
20 can do a -- we can run a spreadsheet with the best  
21 of them and roll out numbers for 50 years.  
22 There's always a discussion about what you do when  
23 something changes, and it's that discussion which,  
24 frankly, is sometimes the most useful thing when  
25 -- that we do for our clients.

1 PROFESSOR SCHWARTZ: Thank you  
2 very much.

3 THE WITNESS: Thank you, sir.

4 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
5 5:48 P.M.

6 PRESIDING ARBITRATOR: No  
7 follow-up questions on the part of -- no? Okay.  
8 That brings to an end your cross-examination. And  
9 thank you very much for helping here.

10 THE WITNESS: Thanks for the  
11 opportunity. I love talking about this business,  
12 so appreciate it.

13 PRESIDING ARBITRATOR: Thank  
14 you.

15 I have a question to the  
16 parties now. It's getting close to six. We are  
17 going to have Saturday -- that is tomorrow -- for  
18 the rest of the questions. Do the parties want to  
19 -- or I mean -- to examine -- that would be -- who  
20 would it be? Mr. Mike Power tonight. And that  
21 would, in all probability, mean that it would be  
22 interrupted. So...

23 MR. SPELLISCY: We actually  
24 have a scheduling issue with Mr. Power. We have a  
25 scheduling issue with Mr. Power that needs to be

1 discussed, because if we are -- we now past -- as  
2 the tribunal will recall, from Procedural Order  
3 Number 25, witnesses were to make themselves  
4 available for half a day before and half a day  
5 after. Mr. Power has a -- we are now past that  
6 for Mr. Power. He has a flight and another  
7 commitment. He has a flight at noon and another  
8 commitment that he cannot miss. So I would  
9 suggest that, if we are not beginning very, very  
10 early, that it would be more advisable to do him  
11 tonight.

12 PRESIDING ARBITRATOR: Would  
13 it make a difference for him if he had to stay  
14 another -- I assume that you are referring that he  
15 would have to stay another night. But he would  
16 have to stay another night anyway, right, because,  
17 as far as I am concerned, tonight, I really need  
18 to get out of here at seven sharp. This is the  
19 only night during the entire hearing, so...

20 MR. SPELLISCY: Mr. Power, as  
21 I understand it, cannot stay another night,  
22 Saturday night, so he is on the noon flight back  
23 to Halifax tomorrow. And I'm not sure. I think  
24 that the next flight is not available for him  
25 either. So essentially it means that it's either

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1 now or it is bright and early, and he would have  
2 to be probably on the road by, I'm guessing, you  
3 know 10:00 a.m. or earlier, 10:00 a.m., I'm  
4 guessing, to get to the airport.  
5 PRESIDING ARBITRATOR: You  
6 mean finish him at ten?  
7 MR. SPELLISCY: He would have  
8 to be completely finished at that point, maybe  
9 even a little earlier, if we don't do him tonight.  
10 PRESIDING ARBITRATOR: But  
11 what will you do if I tell you that I really need  
12 to leave here? Would you just say, "Well, Simma  
13 doesn't understand what's going on anyway, so just  
14 let's do it". Or I -- this is -- I don't mean I  
15 seriously understand everything. This is -- what  
16 is the situation?  
17 MR. SPELLISCY: Let me -- give  
18 me a minute to talk to Mr. Power --  
19 PRESIDING ARBITRATOR: Yes.  
20 MR. SPELLISCY: -- and we can  
21 see what it is. As I said, Procedural Order 25  
22 only requires half a day before and after. So he  
23 has arranged his life accordingly, so let me check  
24 in with him to see what --  
25 PRESIDING ARBITRATOR: Let me

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1 MR. NASH: Did he check with  
2 Porter?  
3 MR. SPELLISCY: I believe his  
4 ticket is on Air Canada out of Pearson.  
5 PRESIDING ARBITRATOR: You  
6 mean he would have to leave here, or be in the  
7 taxi to the airport at 9:45?  
8 MR. SPELLISCY: Yes.  
9 PRESIDING ARBITRATOR: So we  
10 would have today. Tonight, we would have quite a  
11 bit of time left, and tomorrow, if it's not -- I  
12 mean, I don't have a problem starting even at  
13 eight.  
14 MR. SPELLISCY: I have been  
15 told by Mr. Power and Mr. Ward that we can use  
16 quarry hours and start at 5:00 a.m., but that  
17 seems perhaps a little excessive. We could have  
18 an early morning start, perhaps. It depends on  
19 Mr. Nash and how much time he thinks he needs.  
20 PRESIDING ARBITRATOR:  
21 Mr. Nash, do you have an estimate?  
22 MR. NASH: If we start at  
23 8:30, he will be out of here with time to spare.  
24 PRESIDING ARBITRATOR: So  
25 including the time available tonight and then

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1 just say that I think we have reached a point  
2 where that provision of the procedural order is  
3 not applicable anymore. It's not our fault.  
4 MR. SPELLISCY: I would say  
5 that, yes, so we've made arrangements with all our  
6 other witnesses, but witnesses, of course, do have  
7 lives otherwise and have made commitments in light  
8 of that procedural order. So let me check with  
9 Mr. Power and see what his availability is.  
10 PRESIDING ARBITRATOR: Yes,  
11 please. Why don't we have a very short break  
12 until six sharp.  
13 --- Upon recess at 5:52 p.m.  
14 --- Upon resuming at 5:59 p.m.  
15 PRESIDING ARBITRATOR: So what  
16 is the situation of Mr. Power?  
17 MR. SPELLISCY: So he does  
18 have -- his flight is at noon tomorrow. When he  
19 was changing it already once from late tonight to  
20 tomorrow to make himself further available, the  
21 fights later in the afternoon were booked. And so  
22 that means, to get out to Pearson from here, I  
23 think that he probably needs to leave here by the  
24 latest at -- people will know better, but I'm  
25 saying probably 9:45 in the morning.

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1 tomorrow.  
2 MR. NASH: We don't need any  
3 tonight. If we start at 8:30 -- if we start at  
4 8:30 tomorrow, we don't need tonight. He will be  
5 finished with plenty of time.  
6 PRESIDING ARBITRATOR:  
7 Mr. Nash, for a number -- in a number of cases  
8 now, we have had -- or at least I understood you  
9 as indicating we are fine; we are going to have  
10 these two; we are going to finish, and then it  
11 took much longer. So are you really confident  
12 that -- I mean, it's -- in a way, it's in your  
13 hands; right?  
14 MR. NASH: I am confident. If  
15 we start at 8:30, he'll be easily out of here by  
16 9:45 so far as I'm concerned.  
17 MR. SPELLISCY: From my  
18 perspective, as the tribunal has seen from the  
19 letters, Mr. Power's involvement is limited here.  
20 I don't expect to have much, as well. So if we  
21 can tell him -- I mean, he will need to leave at  
22 9:45, and so that will be a hard deadline.  
23 MR. NASH: That will not be a  
24 problem.  
25 PRESIDING ARBITRATOR: Okay.

1 If that is no problem, then I would say that we  
2 end this for tonight, and tomorrow we really make  
3 every effort to be there, as already the case. We  
4 are all here at 8:30, and Mr. Power can be  
5 confident that he will catch his plane. Okay. Is  
6 that --

7 MR. SPELLISCY: This sounds  
8 fine. I will get our evening time check, so that  
9 we know where we are, from Dr. Pulkowski.

10 DR. PULKOWSKI: I suspected  
11 you would ask that, Mr. Spelliscy. The claimants  
12 have used 14 hours and 51 minutes, and the  
13 respondent has used 14 hours and 33 minutes.

14 PRESIDING ARBITRATOR: That  
15 means, too, Mr. Nash, how you want to spend the  
16 rest of your time and spend time tomorrow a bit  
17 taking from either the three hours or the other  
18 three hours.

19 MR. NASH: We fully  
20 understand.

21 PRESIDING ARBITRATOR: Thank  
22 you. Okay. Thank you very much, also, for this  
23 understanding. And then we will see each other  
24 again at 8:30 sharp tomorrow. Thank you.

25 --- Whereupon proceedings adjourned at 6:02 p.m.,

1 to be resumed on Saturday, February 24, 2018 at  
2 8:30 a.m.

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