

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

BETWEEN:

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

- and -

GOVERNMENT OF CANADA
Respondent

TRANSCRIPT OF PROCEEDINGS
HELD BEFORE JUDGE BRUNO SIMMA (PRESIDING ARBITRATOR),
PROFESSOR DONALD McRAE, and PROFESSOR BRYAN SCHWARTZ
held at the offices of Arbitration Place,
333 Bay Street, Suite 900, Toronto, Ontario
on Saturday, February 24, 2018 at 8:32 a.m.

VOLUME 6 - FULL TRANSCRIPT {REVISED}

APPEARANCES:

Mr. Gregory Nash For the Claimants
Mr. Brent Johnston
Mr. Chris Elrick
Mr. Alex Baer
Mr. Alex Little
Mr. Randy Sutton
Mr. Frank Borowicz, Q.C.

Mr. Scott Little For the Respondents
Mr. Shane Spelliscy
Mr. Rodney Neufeld
Mr. Krista Zeman
Mr. Susanna Kam
Mr. Mark Klaver

ALSO PRESENT:

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

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1 Toronto, Ontario,
 2 --- Upon resuming on Saturday, February 24, 2018
 3 at 8:32 a.m.
 4 PRESIDING ARBITRATOR: I think, since
 5 the main actor will have to catch a plane, I think
 6 we will start right away. I think people are in
 7 place.
 8 Would you please call Mr. Power.
 9 Please take your seat.
 10 Good morning, Mr. Power.
 11 PRESIDING ARBITRATOR: Could you
 12 please read the statement you have in front of you.
 13 THE WITNESS: I solemnly declare upon
 14 my honour and conscience that I will speak the
 15 truth, the whole truth and nothing but the truth and
 16 that my statement will be in accordance with my
 17 sincere belief.
 18 AFFIRMED: MR. MICHAEL POWER
 19 PRESIDING ARBITRATOR: Thank you.
 20 I will give the floor to Ms. Zeman
 21 for direct.
 22 EXAMINATION-IN-CHIEF BY MS. ZEMAN
 23 MS. ZEMAN: Good morning, Mr. Power.
 24 A. Good morning.
 25 Q. Could you briefly describe for

1 the tribunal a bit of your background.
 2 A. My background is that I am the
 3 president of Atlantic Coast Materials LLC. I've
 4 been with the quarry at Bayside since its inception
 5 in 1998. Prior to that I was vice-president/general
 6 manager of Martin Marietta Materials Canada from
 7 1995 to 1997.
 8 Prior to that, I was the president of
 9 Construction Aggregates which was purchased by
 10 Martin Marietta in 1995.
 11 Prior to that I was involved with a
 12 construction company that designed and built the
 13 Auld's Cove quarry.
 14 Q. You have in front of you two
 15 expert opinions from SC Market Analytics; did you
 16 write anything in these SCMA opinions?
 17 A. No, I didn't.
 18 Q. In light of that, could you
 19 describe to the tribunal your role in assisting to
 20 prepare the SCMA reports?
 21 A. I was contacted by Colin
 22 Sutherland about a year ago and he asked if he could
 23 bounce some questions off me sort of as a resource,
 24 and I said "Yes."
 25 Q. Have you provided any opinion or

1 fact testimony to this tribunal?
 2 A. No, I have not.
 3 MS. ZEMAN: Thank you.
 4 MR. NASH: Good morning. We have
 5 some handouts that I'd like to give in addition to
 6 the cross-examination binders.
 7 There is an exhibit called --
 8 numbered C-0756. It is a large spreadsheet. It is
 9 a source document for the SCMA reports and we are
 10 going to give you a copy of that and then copies of
 11 some other documents that are also source documents,
 12 in loose form.
 13 PRESIDING ARBITRATOR: Thank you.
 14 CROSS-EXAMINATION BY MR. NASH:
 15 MR. NASH: Good morning, Mr. Power.
 16 A. Good morning.
 17 Q. My name is Greg Nash. I have a
 18 few questions for you this morning. I am going to
 19 get you on your way so you can make your plane.
 20 A. Thank you, I appreciate it.
 21 Q. Who wrote the SCMA reports, to
 22 your knowledge?
 23 A. To my knowledge, Colin and David.
 24 Q. Can you turn to tab 1 in the
 25 binder in front of you, which is first report.

1 Could you turn, please, to page 11.
 2 You will see that that's a chart, a
 3 graph, which shows at the bottom, across the page
 4 from left to right, a number of quarries; do you see
 5 that?
 6 A. Yes.
 7 Q. Do you see that the first three
 8 are blue?
 9 A. Right.
 10 Q. [REDACTED] ?
 11 A. That's correct.
 12 Q. Then you've got a hatched red
 13 graph, do you see that?
 14 A. Right.
 15 Q. [REDACTED] ?
 16 A. Right.
 17 Q. Now, this, you will see is a
 18 chart which shows the [REDACTED]
 19 [REDACTED]; do you
 20 see that at the very top?
 21 A. Yes.
 22 Q. And aggregate can consist in
 23 different forms of rock, that's right?
 24 A. That's correct.
 25 Q. [REDACTED]

1 [REDACTED]
 2 A. That's correct.
 3 Q. -- quarry?
 4 A. Yes.
 5 Q. [REDACTED]
 6 [REDACTED]; right?
 7 A. That's right.
 8 Q. [REDACTED];
 9 that is correct?
 10 A. That's correct.
 11 Q. [REDACTED] that's
 12 [REDACTED] right?
 13 A. Yes, it did.
 14 Q. If we keep on going across the
 15 page on this chart, you see [REDACTED]
 16 [REDACTED] do you see
 17 that?
 18 A. Yes.
 19 Q. [REDACTED]
 20 [REDACTED]; correct?
 21 A. Yes.
 22 Q. I [REDACTED]
 23 [REDACTED]
 24 A. [REDACTED].
 25

1 Q. Thank you. If you go to the next
 2 red line, [REDACTED], there?
 3 A. That's correct.
 4 Q. And then we have [REDACTED]
 5 [REDACTED]
 6 [REDACTED]; that's correct?
 7 A. That's correct.
 8 Q. Then if you go over a few, we've
 9 got [REDACTED]; do you see that?
 10 A. Uh-hmm.
 11 Q. You have to say "yes" or "no"
 12 just for the record.
 13 A. Yes.
 14 Q. [REDACTED]
 15 [REDACTED]
 16 A. I understand that it was.
 17 Q. [REDACTED];
 18 that's correct?
 19 A. That's my understanding.
 20 Q. [REDACTED]; do you see
 21 that?
 22 A. Yes.
 23 Q. And these graph lines are
 24
 25

1 intended to show [REDACTED]
 2 [REDACTED]; that's
 3 correct?
 4 A. That's my understanding.
 5 Q. Did you have anything to do with
 6 the creation of this graph?
 7 A. No, I didn't.
 8 Q. Then we go [REDACTED]
 9 [REDACTED]; do you see
 10 that?
 11 A. Yes.
 12 Q. And again, those red lines are
 13 [REDACTED]; is
 14 that right? By your read of this -- all of this
 15 we've covered in --
 16 A. Yes, they all appear to be the
 17 same colour, yes.
 18 Q. And the next line is the Whites
 19 Point Nova Scotia Quarry and that's in the hatched
 20 green line; that's correct?
 21 A. That's correct.
 22 Q. That shows the Whites Point
 23
 24
 25

1 Quarry [REDACTED]
 2 [REDACTED]
 3 A. Yes.
 4 Q. Now, of course the Whites Point
 5 Quarry [REDACTED], that's your
 6 understanding?
 7 A. That's my understanding.
 8 Q. Do you know how [REDACTED]
 9 [REDACTED]?
 10 A. I do not.
 11 Q. Were you consulted on any of the
 12 [REDACTED]?
 13 A. Basically I was asked -- I was
 14 sent a draft of this. I was asked to compare the
 15 [REDACTED].
 16 Q. So when you are pointing to
 17 "this", you are pointing to the large page in front
 18 of you which is part of R-0756?
 19 A. Yes.
 20 Q. And that shows the [REDACTED]
 21 [REDACTED]
 22
 23
 24
 25

1 A. That's correct.
 2 Q. [REDACTED]
 3 [REDACTED]
 4 A. That's correct.
 5 Q. [REDACTED]
 6 [REDACTED]
 7 [REDACTED] is that right?
 8 A. That's correct.
 9 Q. And you will see, if you go down
 10 a few lines, you've got "rock type" and the rock
 11 type going along the page from left to right,
 12 "dolomite", "granite", "trap rock", "trap rock",
 13 "trap rock", "granite", [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED] do you see that? Are you with me?
 18 A. Umm...
 19 Q. If you to go the left-hand side
 20 of the page in those columns you see the word
 21 [REDACTED]
 22 [REDACTED]
 23 A. Right.
 24 Q. Follow that [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 Q. Right. And you see --
 5 A. [REDACTED]
 6 Q. [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 MR. SPELLISCY: Sorry, I'm going to
 10 object to this line of questioning. Mr. Power has
 11 made clear that he talked about [REDACTED] and
 12 in the letter that Canada's provided, it's clear
 13 that the scope of his knowledge and the scope of his
 14 responses to Mr. Sutherland's questions, who has not
 15 been called, was on the potential source of the [REDACTED]
 16 [REDACTED].
 17 [REDACTED]
 18 As we all know, scope of cross is
 19 limited to what input Mr. Power may have had, so if
 20 he is going to be asking about the [REDACTED]
 21 [REDACTED], that's an objectionable question.
 22 MR. NASH: We will move on then. We
 23 won't waste time because Mr. Power has to catch
 24 a plane.
 25 But you will see, if you get to the

1 blue line, the first blue column [REDACTED]
 2 [REDACTED]; do you see that?
 3 A. That's correct.
 4 Q. If you follow down that column,
 5 what is provided there is under -- at about the
 6 sixth or seventh line down, it says
 7 [REDACTED]; do you see that?
 8 A. Yes, I do.
 9 Q. And that was [REDACTED]
 10 [REDACTED], approximately?
 11 A. Based on -- I'm not sure what
 12 [REDACTED]
 13 [REDACTED]
 14 Q. [REDACTED]
 15 [REDACTED]
 16 A. That's correct.
 17 Q. [REDACTED]
 18 [REDACTED]
 19 A. That's correct.
 20 Q. Then if we follow down a bit
 21 further we have [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 A. That's correct.

1 Q. I won't take you to that. That's
 2 the [REDACTED]?
 3 A. I see that, yes.
 4 Q. Were you asked to provide that?
 5 A. No, I was asked if it was a
 6 [REDACTED].
 7 Q. If that was a -- [REDACTED] was
 8 given to you and you were asked --
 9 A. It was on the sheet.
 10 Q. I see. And you were asked if it
 11 [REDACTED]?
 12 A. That's right.
 13 Q. And it was?
 14 A. In my estimation, yes.
 15 Q. If we go down to [REDACTED]
 16 [REDACTED] do you see
 17 that?
 18 A. I do.
 19 Q. And then if we go down to the
 20 next line that has a figure in it, you see for
 21 [REDACTED]; do you see that?
 22 A. Yes, I do.
 23 Q. And that was considered [REDACTED]
 24 [REDACTED]
 25 [REDACTED] that's correct?

1 A. That's correct.
 2 Q. And is that [REDACTED]
 3 [REDACTED]
 4 A. That would be [REDACTED]
 5 Q. Is everything on here [REDACTED]
 6 to your knowledge?
 7 A. To my knowledge.
 8 Q. So the figure is [REDACTED]
 9 [REDACTED] that's correct?
 10 A. That's correct.
 11 Q. [REDACTED]; right?
 12 A. In around that, yes.
 13 Q. [REDACTED]
 14 [REDACTED] that's correct?
 15 [REDACTED]
 16 A. That's correct.
 17 Q. [REDACTED]
 18 [REDACTED] correct?
 19 A. That's correct.
 20 Q. [REDACTED]
 21 [REDACTED]
 22 [REDACTED] that's correct?
 23 [REDACTED]
 24 A. [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 Q. Right. Could you turn, please,
 4 to page 13, which is a map of the region.
 5 A. Right.
 6 Q. We'll see on this map -- we'll
 7 see New York down at the bottom left; do you see
 8 that?
 9 A. Yes.
 10 Q. Do you see the blue -- going into
 11 the Bay of Fundy, [REDACTED]
 12 [REDACTED] right?
 13 A. That's correct.
 14 Q. And there is a red dot and that's
 15 [REDACTED] correct?
 16 A. Okay.
 17 Q. You understand that [REDACTED]
 18 [REDACTED] ?
 19 A. Yes, I do.
 20 Q. At least the proposed project.
 21 If we go up the southeast coast to Nova Scotia and
 22 we get to the top, we see a blue dot and that's
 23 [REDACTED]; is that right?
 24 A. It appears to be, yes.
 25 Q. Right. [REDACTED]

1 [REDACTED]
 2 [REDACTED] that's correct?
 3 A. That's correct.
 4 Q. And then if we go across to the
 5 left, [REDACTED]; do
 6 you see that?
 7 A. [REDACTED] ?
 8 Q. [REDACTED]
 9 [REDACTED]; correct?
 10 A. Right.
 11 Q. And we go straight up the line
 12 there is a red dot there; do you see that?
 13 A. [REDACTED]
 14 [REDACTED]
 15 Q. [REDACTED] ?
 16 A. There is a sort of a pink'ish
 17 one; is it that what you are referring to?
 18 Q. Right. And what quarry is that?
 19 A. [REDACTED]
 20 [REDACTED]
 21 Q. [REDACTED]
 22 [REDACTED] (indicating)?
 23 [REDACTED]
 24 A. Yes.
 25 Q. [REDACTED]

1 (indicating)?
 2 A. Yes, that would be my guess.
 3 [REDACTED],
 4 yes.
 5 Q. If we go back to this chart,
 6 [REDACTED];
 7 correct?
 8 A. Yes.
 9 Q. [REDACTED] identified by
 10 SCMA as a [REDACTED]
 11 [REDACTED] is that your understanding? I can take you
 12 back to the graph, if you want.
 13 A. I see that --
 14 MR. SPELLISCY: I think if he's
 15 asking for a comment on what SCMA identified,
 16 Mr. Power has identified he didn't author the SCMA
 17 report.
 18 MR. NASH: I would ask Mr. Spelliscy
 19 not to object --
 20 MR. SPELLISCY: I would ask Mr. Nash
 21 to ask appropriate questions and I won't have to
 22 object. Mr. Power has confirmed that he didn't
 23 author the report, so to the extent that Mr. Nash
 24 wants to question him on what he did provide. To
 25 the extent he wants to question him on opinions he

1 didn't author, pursuant to procedural order 25,
 2 clearly outside the scope of cross-examination.
 3 MR. NASH: Could you go back to page
 4 11, Mr. Power, and we'll come back to this map in
 5 due course.
 6 We went through the various quarries?
 7 A. Right.
 8 Q. You identified where they were,
 9 in Canada, you identified the graph line with the
 10 name of the quarry; do you recall that?
 11 A. Yes.
 12 Q. If you go to the far right-hand
 13 side, [REDACTED]
 14 [REDACTED]
 15 A. I see that, yes.
 16 Q. A [REDACTED]
 17 [REDACTED]
 18 A. [REDACTED], yes.
 19 Q. [REDACTED]
 20 [REDACTED]
 21 Do you see that on the map?
 22 A. I would say that it's either the
 23 one on the very top or the one that -- that one or
 24 the one --
 25 Q. The one next to it?

1 A. One of those two.
 2 Q. [REDACTED]
 3 [REDACTED] (indicating); is
 4 that correct?
 5
 6 A. Yes.
 7 Q. We'll leave this map up.
 8 [REDACTED]
 9 [REDACTED] that's
 10 correct?
 11
 12 A. According to --
 13 Q. In the graph.
 14 A. In the graph, yes.
 15 Q. Now, if we go back to the blue
 16 section, [REDACTED] if you go
 17 back down to the shipping line, the yellow line
 18 across the middle of the page, [REDACTED]
 19 [REDACTED]
 20 A. I see that.
 21 Q. Did you give that figure to
 22 either Mr. Sutherland or Mr. Chereb?
 23 A. No, I did not.
 24 Q. Were you asked --
 25 A. I was asked if it seemed

1 reasonable. It is at least, in my estimation, it is
 2 [REDACTED].
 3 Q. Further?
 4 A. Further away.
 5 Q. From the --
 6 A. From New York.
 7 Q. In terms of the distance between
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 Q. Another day. [REDACTED]
 16 [REDACTED]
 17 A. Possibly, yes.
 18 Q. When you provided your feedback
 19 on [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 A. Yes, I did?
 24 Q. Did you advise Mr. Sutherland,
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED] did you
 6 tell him, "You know something, it is probably at
 7 [REDACTED] perhaps --
 8 A. No, I didn't tell him that.
 9 Q. Were you asked by him about that?
 10 A. He asked me if these costs look
 11 reasonable and I said, "To the best of my knowledge,
 12 I would say yes."
 13 Q. And you carefully went through
 14 these figures?
 15 A. Yes, I did. My knowledge is
 16 [REDACTED].
 17 Q. [REDACTED] ?
 18 A. Yes.
 19 Q. You didn't actually do a
 20 calculation of a [REDACTED]
 21 [REDACTED]
 22 A. No, I did not.
 23 Q. Did you know if anybody did?
 24 A. Not to my knowledge.
 25 Q. If you go then over to [REDACTED]

1 [REDACTED], this is the second number 3 at the top of the
 2 blue -- the second column --
 3 A. That's right.
 4 Q. In the blue section. That's the
 5 [REDACTED].
 6 A. That's correct.
 7 Q. It's a [REDACTED], in that
 8 [REDACTED], in that
 9 range?
 10 A. Probably.
 11 Q. And then going down, we see --
 12 and they've got a number of -- we'll come back to
 13 that -- [REDACTED]; do
 14 [REDACTED]; do
 15 you see that?
 16 A. Yes, I do.
 17 Q. Did you tell Mr. Sutherland that
 18 you thought that was reasonable?
 19 A. I did, because [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 Q. So you thought the [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 A. That's correct.

1 Q. Did you do any actual formal
 2 calculation of that?
 3 A. No, I didn't.
 4 Q. Were you asked to?
 5 A. No.
 6 Q. Then if you go over to the [REDACTED]
 7 [REDACTED]
 8 [REDACTED] do you see that at the
 9 top, [REDACTED]?
 10 A. Are we talking [REDACTED]
 11 [REDACTED]?
 12 [REDACTED]
 13 Q. Sorry, [REDACTED], column 4.
 14 A. Yes.
 15 Q. Did you understand that to be
 16 principally a [REDACTED]?
 17 A. [REDACTED].
 18 Q. A [REDACTED]
 19 [REDACTED] that's correct?
 20 A. That's my understanding, yes.
 21 Q. Where do we find [REDACTED]
 22 [REDACTED]
 23 A. That would be the green spot,
 24 [REDACTED], yes.
 25 Q. [REDACTED]

1 [REDACTED]?
 2 A. That's right.
 3 Q. And the shipping cost for that
 4 shown on the chart is [REDACTED]; do you see that?
 5 A. Right.
 6 Q. Were you asked if that was a
 7 reasonable figure?
 8 A. I was.
 9 Q. And you said it was?
 10 A. I thought it was.
 11 Q. And you thought it was even,
 12 [REDACTED]?
 13 A. Right.
 14 Q. [REDACTED]
 15 [REDACTED]; how many days is that, to your
 16 understanding, to get up to there?
 17 A. From what my understanding is and
 18 what I was told by the shipping company, based on
 19 the load-out rate of -- [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 Q. About an extra day longer; that's
 23 what you were told by somebody?
 24 A. Uh-hmm.
 25 Q. So you thought that for [REDACTED]

1 [REDACTED] correct?
 2 [REDACTED]
 3 A. That's correct.
 4 Q. Did you ask anybody to verify --
 5 A. No, I didn't.
 6 Q. -- that? Did you seek
 7 independent advice from anybody, any professional?
 8 A. No.
 9 Q. Did you go to a guy like Wayne
 10 Morrison -- do you know Wayne Morrison?
 11 A. Yes, very well.
 12 Q. You've known him for many, many
 13 years?
 14 A. Yes.
 15 Q. He used to be with CSL during
 16 your time at the aggregate industry?
 17 A. Uh-hmm.
 18 Q. Did you call up Wayne Morrison
 19 and say, "Wayne, what do you think? Is the shipping
 20 cost to go from New York up to [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 Did you ask him about that?
 24 A. No, I didn't.
 25 Q. Am I to understand then that your

1 review of these figures was really principally based
 2 [REDACTED] ?
 3 A. That's correct.
 4 Q. And that you made estimations of
 5 the actual shipping costs and you thought they were
 6 sort of within a reasonable range?
 7 A. They -- these costs were there.
 8 I was asked if they looked reasonable.
 9 Q. Right. So these costs had
 10 already been slotted in for you and you didn't offer
 11 up any changes, that's correct? Do you know who
 12 slotted those costs in?
 13 A. I would assume it was Colin and
 14 David.
 15 Q. Do you know that?
 16 A. I don't know that.
 17 Q. Do you know if Jason Ward had any
 18 input into that?
 19 A. Who?
 20 Q. Sorry, Jason Ward -- sorry, James
 21 Ward.
 22 A. James Ward?
 23 Q. Yes.
 24 A. No, I don't.
 25 Q. If we go across the chart DJL

1 [REDACTED]
 2 [REDACTED]
 3 Five columns over from the left, [REDACTED].
 4 A. Yep.
 5 Q. And you thought that was
 6 reasonable, within the range?
 7 A. I'm not sure I was asked about
 8 [REDACTED].
 9 Q. Then we get to [REDACTED]
 10 [REDACTED] ?
 11 A. Right.
 12 Q. Do you see that?
 13 A. Yeah.
 14 Q. Now, where is [REDACTED] on
 15 this map?
 16 A. [REDACTED] would be the pink
 17 area.
 18 Q. It would be up here (indicating)?
 19 A. Right.
 20 Q. Up right there. So, the figure
 21 that you were provided with was [REDACTED];
 22 that's correct?
 23 A. That's correct.
 24 Q. And --
 25 A. Also [REDACTED]

1 [REDACTED]. It was just a quarry that was
 2 thought about.
 3 Q. It was a thought?
 4 A. It was a thought.
 5 Q. Right. So --
 6 A. I had no idea what -- what the
 7 load-out costs were, what the depth of water was.
 8 Q. Right. No idea how long it would
 9 take for the ship to actually go into port and load
 10 out?
 11 A. I had no idea.
 12 Q. That makes a big difference,
 13 doesn't it?
 14 A. It sure does.
 15 Q. Because a long load-out time is
 16 time for the ship, when the first ship is berthed
 17 there, just waiting to be loaded to go out?
 18 A. That's right.
 19 Q. So if you have a load-out rate
 20 that is many, many, many hours shorter, that will
 21 save you a lot of money in shipping; that's correct?
 22 A. That's correct.
 23 Q. And so going -- now, [REDACTED]
 24 [REDACTED] that's correct?

1 A. That's correct.
 2 Q. And the cost per ton, again,
 3 short ton for shipping stated in this document is
 4 [REDACTED]
 5 A. That's correct.
 6 Q. If I understand correctly then,
 7 to go here, [REDACTED]
 8 [REDACTED]; is that right?
 9 A. Again, I said it was a reasonable
 10 cost. I did not -- I did not -- I thought it was a
 11 reasonable cost.
 12 Q. You thought it was a reasonable
 13 cost. All right.
 14 [REDACTED] do you see that?
 15 A. Yes.
 16 Q. Where is [REDACTED] ?
 17 A. I would think it's the far dot on
 18 the far side.
 19 Q. Over here. Over there
 20 (indicating)?
 21 [REDACTED] that's your

1 understanding?
 2 A. Yes.
 3 Q. And then if we go to [REDACTED];
 4 [REDACTED];
 5 right there (indicating)?
 6 A. Yes.
 7 Q. And that quarry also doesn't
 8 exist and I don't even know if it was a thought in
 9 anybody's mind in 2007?
 10 A. I doubt very much it was.
 11 Q. Right. And so [REDACTED]
 12 [REDACTED]
 13 [REDACTED], correct, that's the estimate?
 14 A. That's the estimate.
 15 Q. Let's just go over to Whites
 16 Point. And the Whites Point column, number 7, it's
 17 identified as [REDACTED]; do you see that?
 18 A. I do.
 19 Q. And Whites Point is here
 20 (indicating). Do you see that?
 21 A. Right.
 22 Q. So your understanding is that the
 23 figure that was being used for shipping for Whites
 24 [REDACTED]; is that
 25 [REDACTED]

1 right?
 2 A. On this column it is, yes.
 3 Q. Yes. And was that [REDACTED] figure
 4 in this chart when you received it?
 5 A. I believe it was.
 6 Q. All right. Let's just go down to
 7 the bottom, then, of all these columns. There is a
 8 yellow line across the bottom.
 9 A. Right.
 10 Q. And that yellow line is [REDACTED]
 11 [REDACTED]
 12 [REDACTED] do you see that?
 13 A. Uh-hmm.
 14 Q. Let's go across to the blue
 15 section. [REDACTED]; do you see that?
 16 A. Yes, I do.
 17 Q. Then if you go over to Whites
 18 Point, [REDACTED]; do you see that?
 19 A. Yes, I do.
 20 Q. And that [REDACTED]
 21 [REDACTED]
 22 [REDACTED]; do you see that?
 23 A. I do.
 24 Q. Were you asked to do any kind of
 25 a calculation as to what the -- or asked to review

1 [REDACTED] for the Whites Point Quarry,
 2 [REDACTED]?
 3 A. I was asked -- I based my
 4 thoughts on the fact that it was [REDACTED],
 5 but I had no idea what the water draft was. I had
 6 no idea what the load-out rate was or anything else,
 7 but...
 8 Q. So you assumed a slower load-out
 9 rate [REDACTED]?
 10 A. That's correct.
 11 Q. And you assumed [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 A. I had no idea what their load-out
 15 --
 16 Q. Nobody told you that?
 17 A. No.
 18 Q. Has anybody ever told you that?
 19 A. No.
 20 Q. [REDACTED]
 21 [REDACTED] do I understand that?
 22 A. [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 Q. So that's an extra cost; right?
 7 A. It is and it isn't because it's
 8 based on the tides, the ship has to come, arrive and
 9 come in on the start of the high tide and it has to
 10 leave on the start of the high tide.
 11 Q. So it has to wait for the tide to
 12 be correct to get into the --
 13 A. Right.
 14 Q. -- destination; that is correct?
 15 A. That's correct.
 16 Q. [REDACTED]
 17 [REDACTED]
 18 A. That's true.
 19 Q. And if the tide isn't quite
 20 right, it has to wait for the tide on its way out to
 21 be quite right; right?
 22 A. That's right.
 23 Q. Did you know anything about the
 24 tides at Whites Point Quarry?
 25 A. No, I don't but I'm assuming that

1 they would be similar.
 2 Q. That's your assumption, yes?
 3 A. Well, the Bay of Fundy's tidal
 4 range is roughly the same.
 5 Q. But you don't know the --
 6 A. I don't know.
 7 Q. -- approach from the Bay of
 8 Fundy, out of part of the Bay of Fundy into the
 9 coast where Whites Point is located?
 10 A. No.
 11 Q. Correct? You didn't know
 12 anything about what the conditions were at that
 13 entry point?
 14 A. No, I did not.
 15 Q. If you go back to the chart on
 16 page 11. Just to put this in context, what we have
 17 is the [REDACTED],
 18 [REDACTED],
 19 that's right?
 20 A. That's correct.
 21 Q. We have [REDACTED]?
 22 [REDACTED]
 23 A. How much?
 24 Q. [REDACTED]?
 25 A. [REDACTED]?

1 Q. Yes.
 2 A. [REDACTED].
 3 Q. [REDACTED]
 4 [REDACTED]
 5 A. Then, yes.
 6 Q. And we have [REDACTED]
 7 [REDACTED]
 8 [REDACTED] do you see that?
 9 A. Yes.
 10 Q. And then we've [REDACTED]
 11 [REDACTED]; do you see that in the
 12 hashed red column?
 13 A. Yes.
 14 Q. And then we -- and they're, you
 15 know, I'm going to say in the [REDACTED]
 16 [REDACTED]; would you agree
 17 with me?
 18 A. Yes.
 19 Q. And then to the right we have
 20 [REDACTED]
 21 [REDACTED] about a couple of dollars more per
 22 ton?
 23 A. Yes.
 24 Q. Then we have Whites Point at
 25 [REDACTED]

1 [REDACTED]
 2 A. Uh-hmm.
 3 Q. -- or so?
 4 A. Yes.
 5 Q. So, for all of the other [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 A. That's correct.
 13 Q. Now, did you know anything about
 14 the Whites Point design when you were asked for your
 15 opinion on the shipping range or --
 16 A. No, I did not.
 17 Q. Did you know anything about the
 18 load-out rate?
 19 A. No, I did not.
 20 Q. Did you know that it's [REDACTED]
 21 [REDACTED]
 22 A. I heard that this week.
 23 Q. Did you know -- well, of course
 24 [REDACTED].
 25 A. Yes.

1 Q. What was that? What was the
 2 [REDACTED]?
 3 A. The [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 Q. So something around [REDACTED]
 7 [REDACTED] what you heard this week
 8 for the Whites Point?
 9 A. What I heard.
 10 Q. Now, was most of the aggregate
 11 going from [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 A. The majority of it was.
 15 Q. [REDACTED]
 16 [REDACTED]; that's right?
 17 A. In that timeframe, yes.
 18 Q. [REDACTED]
 19 [REDACTED]?
 20 A. It eventually became that.
 21 Q. In about what period?
 22 A. When it first arrived it was
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 probably [REDACTED]
 2 Q. Why is that?
 3 A. [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 Q. During the period that you were
 9 using them?
 10 A. (Witness nods head).
 11 Q. And by 2007 and 2008, as I
 12 understand it, you, [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 A. That's correct.
 16 Q. A [REDACTED]
 17 [REDACTED]
 18 A. [REDACTED].
 19 Q. And those vessels went from
 20 [REDACTED]
 21 [REDACTED]
 22 correct?
 23 A. That's correct.
 24 Q. And on s [REDACTED]
 25 [REDACTED]
 A. That's correct.

1 Q. And your understanding is it
 2 would unload about [REDACTED] correct?
 3 A. That's correct.
 4 Q. [REDACTED]
 5 [REDACTED]
 6 A. Roughly, yes.
 7 Q. And the [REDACTED]
 8 [REDACTED] correct?
 9 A. The [REDACTED]
 10 approximately -- metric tonnes.
 11 Q. Metric tonnes?
 12 A. Yes.
 13 Q. And then, [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 A. On certain trips.
 17 Q. On certain trips?
 18 A. Yes.
 19 Q. During the 2000s or most of the
 20 2000s up until 2007, there was [REDACTED]
 21 [REDACTED]
 22 MR. SPELLISCY: I'm sorry, Mr. Power
 23 is not here as a fact witness so if this relates to
 24 the scope of his input into the SCMA reports I don't
 25 see how, but otherwise this question is

1 objectionable. He's not here as a fact witness.
 2 PRESIDING ARBITRATOR: I don't know
 3 what you want to link to --
 4 MR. NASH: I would like to link the
 5 question as to where the [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 A. [REDACTED]
 9 [REDACTED] ?
 10 Q. Yes.
 11 A. Yes.
 12 Q. It was going down to the south,
 13 right?
 14 A. Yes.
 15 MR. SPELLISCY: Again, what you have
 16 in the letter, Mr. Power, that was provided to the
 17 claimants, commented on the [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 MR. NASH: I will move on.
 22 MR. SPELLISCY: I don't see how this
 23 goes to scope --
 24 MR. NASH: I have to say that's a
 25 ridiculous objection. This is a fact --

1 MR. SPELLISCY: Would you like to
 2 contest that, Mr. Nash, because I would like to
 3 address that? Because paragraph 25 of -- procedural
 4 order number 25 is clear. The objection is not
 5 ridiculous. You are limited by the procedural rules
 6 here. The procedural rule says the scope of
 7 cross-examination is limited to what the witness has
 8 said. If you wanted Mr. Power as a fact witness you
 9 could have called him, you did not, and I take
 10 offence at you calling the objection ridiculous.
 11 Move on.
 12 MR. NASH: Okay.
 13 Now, in terms of the [REDACTED]
 14 [REDACTED]
 15 [REDACTED] that's
 16 correct?
 17 A. That's correct.
 18 MR. SPELLISCY: Again, how is this
 19 within the scope of his input to the SCMA report?
 20 MR. NASH: I don't want to make any
 21 submissions on this. I don't want to waste time.
 22 We are coming short on time.
 23 If the tribunal is of Mr. Spelliscy's
 24 view, I'm not happy but I'll be content to not ask
 25 this witness, who dealt with New York Sand & Stone

1 for ten years, who knows [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 PRESIDING ARBITRATOR: Go on.
 5 MR. SPELLISCY: I'm sorry, the answer
 6 is that you can continue the question even though
 7 procedural order number 25 makes it clear that
 8 that's outside the scope of cross-examination? I'd
 9 just like clarification.
 10 PRESIDING ARBITRATOR: Let me get
 11 back to the question, to the precise question. Can
 12 you read that out, Mr. Spelliscy, the question that
 13 you reacted to?
 14 MR. SPELLISCY: "Now, in terms of the
 15 [REDACTED]
 16 [REDACTED]; that's correct?"
 17 There is nothing in what Mr. Power
 18 has provided in his input to SCMA that is on that
 19 question at all.
 20 Mr. Nash has referred to him as a
 21 witness. He is not here as a fact witness.
 22 MR. NASH: Honestly, it's fine. It's
 23 not an issue. I don't want to waste time.
 24 So, were you asked at all anything
 25

1 about plant efficiencies of these various quarries
 2 that we've spoken about in Canada?
 3 A. Plant efficiencies?
 4 Q. Yes.
 5 A. No.
 6 Q. Were you asked anything about
 7 [REDACTED]?
 8 A. I was asked if some of the costs
 9 were -- that were on this sheet were reasonable. I
 10 said "yes."
 11 Q. If we go to those costs, in the
 12 blue column, number 1 showing the [REDACTED]
 13 [REDACTED] you thought it was
 14 reasonable?
 15 A. Yes, I did.
 16 Q. And going down the various other
 17 costs, shipping is the next, then drilling,
 18 blasting, fuel, power, wear items, repairs and
 19 maintenance and supplies; were you asked whether
 20 those were reasonable?
 21 A. Yes, I was.
 22 Q. So the total variable cost of
 23 [REDACTED], you thought was reasonable?
 24 A. That's correct.
 25

1 Q. And that's based on your
 2 [REDACTED]
 3 [REDACTED]; is that right?
 4 A. Yes, that's correct.
 5 Q. Were you asked to look at the
 6 other variable costs for the other quarries that are
 7 shown here and asked whether you thought those were
 8 reasonable or not?
 9 A. I was asked to look to see if
 10 they were reasonable. And, again, I couldn't
 11 comment what it -- if they were -- if they were or
 12 not.
 13 Q. And so, if you look at the far
 14 right-hand side, close to the far right-hand side,
 15 Whites Point, [REDACTED]
 16 [REDACTED] were you asked if you thought those were
 17 reasonable?
 18 A. I believe I was.
 19 Q. And what was your response?
 20 A. I believe I said I thought they
 21 would be.
 22 Q. Did you have any material before
 23 you as to design --
 24
 25

1 A. No, nothing.
 2 Q. So you -- is this something that
 3 you would consider to sort of be rough dynamics or
 4 the ballpark figure?
 5 A. I would say it was the ballpark
 6 figure.
 7 Q. Were you asked about any of the
 8 other quarries and their variable costs?
 9 A. Not really, no.
 10 Q. Have you been to any of these
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 Q. Right. Could you turn, please,
 21 to, in the binder to tab 8. I'm sorry, 8A.
 22 A. Tab 8?
 23 Q. 8A. Sorry.
 24 PRESIDING ARBITRATOR: 8A.
 25 MR. NASH: You will see, if we are at

1 the right place, [REDACTED]
 2 A. Invoice 04039?
 3 Q. I've got 05038.
 4 Maybe it is back one page. It may be
 5 in the same tab.
 6 PRESIDING ARBITRATOR: Where do you
 7 see the "A"? I don't.
 8 MR. NASH: Tab 8A.
 9 PRESIDING ARBITRATOR: There is 8 and
 10 then there is a page 1, 2 --
 11 MR. NASH: Okay, so let's go to
 12 invoice 05038. It may be the first page there.
 13 A. The first page I have is 04039 in
 14 tab 8.
 15 Q. Let's go to the last -- do you
 16 see an invoice there [REDACTED] which is 07017?
 17 [REDACTED].
 18 A. Yes.
 19 Q. So this is an invoice dated
 20 [REDACTED], invoice 07017, and this is an
 21 invoice to [REDACTED]
 [REDACTED], and it shows that there are [REDACTED]
 [REDACTED]; do you see that?
 24 A. Right, yes.
 25 Q. So we take it then that the

1 [REDACTED]
 3 A. That's correct.
 4 Q. If you go back, I hope on page --
 5 invoice number 06033 dated [REDACTED] ?
 6 A. That's correct.
 7 Q. If you go down, you see [REDACTED] ?
 9 A. That's correct.
 10 Q. And so again, that was a
 11 [REDACTED] correct?
 13 A. Yes, [REDACTED]
 14 metric tonnes.
 15 Q. In metric tonnes?
 16 A. It was always converted to short
 17 tons for New York.
 18 Q. And the [REDACTED], is
 19 that short ton or metric?
 20 A. That's per short ton.
 21 Q. Per short ton. And then below
 22 that line there is a statement [REDACTED]
 [REDACTED] do you see that?
 24 A. Yes.
 25 Q. And that's [REDACTED] ?

1 A. That's correct.
 2 Q. So that's an [REDACTED]
 [REDACTED] that's correct?
 5 A. That's correct.
 6 Q. And that would be about [REDACTED]
 [REDACTED] ?
 8 A. In that area, yes.
 9 Q. On a [REDACTED] ?
 11 A. Right.
 12 Q. If we go a little -- you referred
 13 to an invoice and I think it's the last page in the
 14 tab, [REDACTED], invoice 09024?
 15 A. 09024, yes.
 16 Q. And that's an invoice dated
 17 [REDACTED]; do you see that?
 18 A. That's correct.
 19 Q. And do you see there below,
 20 towards the bottom where we were in the other
 21 [REDACTED]
 [REDACTED]
 23 A. That's correct.
 24 Q. And again the [REDACTED]
 [REDACTED] ?

1 A. That's correct.
 2 Q. So the [REDACTED]
 [REDACTED]
 5 A. Approximately.
 6 Q. Go over to the next tab. That's
 7 a letter [REDACTED]
 [REDACTED] do you see that?
 9 A. Yes, I do.
 10 Q. You say:
 11 [REDACTED]
 [REDACTED]
 [REDACTED] [As read.]
 19 And you give the tonnage, I think it
 20 [REDACTED]. And then you have
 21 [REDACTED]
 [REDACTED]
 24 And on the far right-hand side there is a
 [REDACTED] do you see that?

1 A. That's correct.
 2 Q. And at that time that was your
 3 understanding of what [REDACTED]
 4 [REDACTED]
 5 A. That's correct.
 6 Q. [REDACTED]; do you
 7 see that?
 8 A. That's correct.
 9 Q. [REDACTED];
 10 correct?
 11 A. That's correct.
 12 Q. Over to the next page, you state
 13 in the second line:
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED] [As read.]
 21 Do you see that?
 22 A. I do.
 23 Q. And ultimately those [REDACTED]
 24 [REDACTED] ?
 25 A. Yes.

1 Q. And this would be your standard
 2 procedure, [REDACTED]
 3 [REDACTED]
 4 A. We had a contract of
 5 [REDACTED]
 6 [REDACTED]
 7 Q. Yes.
 8 A. [REDACTED].
 9 Q. Right.
 10 A. [REDACTED]
 11 [REDACTED].
 12 Q. I see. If you go over to the
 13 next page, it should be a letter from you to [REDACTED]
 14 [REDACTED]
 15 A. That's correct.
 16 Q. And as I understand it, in this
 17 interregnum between [REDACTED]
 18 [REDACTED] is that
 19 right?
 20 A. That's correct.
 21 Q. If you go down the first page, we
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 A. I do.

1 Q. [REDACTED]
 2 [REDACTED]
 3 [REDACTED]; that's correct?
 4 A. [REDACTED]
 5 Q. [REDACTED] -- do
 6 you recall that there was any change in [REDACTED]
 7 [REDACTED]
 8 A. [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 So, the [REDACTED] I think
 17 [REDACTED].
 18 Q. If you go back to the letter of
 19 [REDACTED], you will see that there are
 20 [REDACTED]
 21 are being charged.
 22 [REDACTED] do
 23 you see that?
 24 A. Yes.
 25 Q. If you go above, you will see the

1 [REDACTED] -- well,
 2 [REDACTED]; do you see
 3 that?
 4 A. Uh-hmm.
 5 Q. I'm going to suggest to you that
 6 for the purpose of the letter of [REDACTED]
 7 [REDACTED] we can go back to
 8 the letter of [REDACTED]
 9 [REDACTED] correct?
 10 [REDACTED]
 11 A. That's correct.
 12 Q. And that's the same for [REDACTED]
 13 [REDACTED]
 14 A. That's correct.
 15 Q. And this was the [REDACTED]
 16 [REDACTED] is that right?
 17 [REDACTED]
 18 A. That's right. The week before
 19 I -- [REDACTED]
 20 [REDACTED]. He told me the
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 Q. And after it was e [REDACTED]
 2 [REDACTED]
 3 A. He came back to me and said,
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 Q. If we go over to the second page
 9 of the [REDACTED], we will see that in the
 10 middle of the page, regarding the re [REDACTED]
 11 [REDACTED] -- are you with me? Fourth paragraph
 12 down:
 13 [REDACTED]
 14 [REDACTED] [As
 15 read.]
 16 So at that point what you had was
 17 [REDACTED]
 18 [REDACTED] is that right?
 19 A. According to this, yes.
 20 Q. Does that accord with your
 21 recollection, to the best of your recollection?
 22
 23
 24
 25

1 A. At that point, yes.
 2 Q. Now, in the result, [REDACTED]
 3 [REDACTED] that's correct?
 4 A. That's correct.
 5 Q. And whereas you had been [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED] that's correct?
 10 A. That's correct.
 11 Q. [REDACTED]
 12 [REDACTED] that's correct?
 13 A. That's correct.
 14 Q. [REDACTED]
 15 [REDACTED] that's correct?
 16 A. That's correct.
 17 Q. [REDACTED]
 18 [REDACTED] that's correct?
 19 A. Somewhere in that area, to New
 20 York -- to the US destinations.
 21 Q. To US destinations but not to New
 22 York City; correct?
 23
 24
 25

1 A. Not to New York City.
 2 MR. SPELLISCY: So we are now at
 3 9:30. We are beyond the scope of -- we are now
 4 talking about [REDACTED] which is beyond the
 5 scope of what the report was.
 6 My colleague Mr. Nash had said he
 7 would be done long before. I am worried because
 8 he's got 15 minutes and we have not had a chance to
 9 ask him a few questions on re-direct, so I would do
 10 two things: request that Mr. Nash keep his questions
 11 on the scope of the report and advise us that he can
 12 finish quickly so that Canada's rights are not
 13 prejudiced.
 14 You will recall Canada wanted to do
 15 this examination last night.
 16 MR. NASH: I can short-circuit this,
 17 Mr. Spelliscy, I am finished. Over to you.
 18 PRESIDING ARBITRATOR: Thank you.
 19 Mr. Spelliscy? Oh, sorry, Ms. Zeman.
 20 I am so used to you --
 21 MS. ZEMAN: A bit of variation here.
 22 RE-EXAMINATION BY MS. ZEMAN:
 23 MS. ZEMAN: Mr. Power, Mr. Nash
 24 stated to you that Black Point was about to break
 25 ground. What is your understanding of the status of

1 that project?
 2 A. I haven't heard anything that
 3 it's about to break ground. From what I've -- the
 4 last I heard it was still on hold.
 5 Q. I'd like you to take a look at
 6 this very large sheet in front of you, which
 7 Mr. Nash asked you a series of questions about.
 8 If we look on the far right-hand
 9 side, you see that there are two columns there for
 10 Whites Point --
 11 A. That's correct.
 12 Q. -- both in green. Can you read
 13 the second cell on the left side and the right side
 14 out for the record?
 15 A. Umm...
 16 Q. So right underneath Whites Point?
 17 A. "Based on document R-0757 and
 18 latest Whites Point's costs".
 19 Q. Do you know what document R-0757
 20 is?
 21 A. No, I don't.
 22 Q. If we go down to the very bottom,
 23 those two columns, there is some text on the
 24 left-hand side; can you read that out?
 25 A. "Based on Plaintiff's costs..."

1 Q. All right. Now, you were also
 2 taken to page 11 of the first SCMA report and
 3 figure 2.
 4 A. Yes.
 5 Q. Do you know which of these two
 6 columns Mr. Sutherland used in the report here?
 7 A. I do not.
 8 Q. So then you were asked at tab 8
 9 of your binder here [REDACTED].
 10 These are some invoices.
 11 A. Uh-hmm.
 12 Q. Do these [REDACTED]
 13 [REDACTED]
 14 A. No, they did not. There was a
 15 separate invoice always with an "A" behind it.
 16 Q. Finally, Mr. Nash asked you about
 17 the reserves at the [REDACTED]
 18 [REDACTED]
 19 A. [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 MR. NASH: Sorry, I missed the last
 24 part of that.
 25 PRESIDING ARBITRATOR: Mr. Nash

1 missed the last part of --
 2 MS. ZEMAN: Of the answer or the
 3 question?
 4 MR. NASH: Of the answer.
 5 MS. ZEMAN: The answer.
 6 MR. SPELLISCY: Perhaps the reporter
 7 can read it back. It is in the LiveNote transcript.
 8 (Court reporter read back.)
 9 PRESIDING ARBITRATOR: Thank you.
 10 MS. ZEMAN: Those are all my
 11 questions.
 12 PRESIDING ARBITRATOR: Thank you very
 13 much.
 14 Mr. Nash, yes.
 15 FURTHER CROSS-EXAMINATION BY MR. NASH:
 16 MR. NASH: You say [REDACTED]
 17 [REDACTED].
 18 A. That's correct.
 19 Q. [REDACTED]
 20 [REDACTED]
 21 A. That was the rough scope of it,
 22 yes.
 23 Q. Who were you told that by?
 24 A. I believe it was the Province of
 25 New Brunswick.

1 Q. If you go back to tab 9, to the
 2 letter of [REDACTED], as I understood what you
 3 said, [REDACTED]
 4 A. That's correct.
 5 Q. [REDACTED]
 6 A. Roughly.
 7 Q. And that you were told there was
 8 [REDACTED] ?
 9 A. [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 Q. [REDACTED]
 14 [REDACTED] ?
 15 A. Yes, and those were based on
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED] ?
 19 A. Right.
 20 Q. [REDACTED]
 21 [REDACTED]
 22 A. No.
 23 Q. And notwithstanding that you had
 24 [REDACTED]
 25 [REDACTED]

1 a [REDACTED]
 2 [REDACTED]; that is correct?
 3 A. That's right.
 4 Q. [REDACTED]
 5 [REDACTED]
 6 A. Pardon?
 7 Q. Sorry. That is because [REDACTED]
 8 [REDACTED] right?
 9 A. That's right.
 10 MR. NASH: Thank you.
 11 PRESIDING ARBITRATOR: Any reaction
 12 on the part of Canada?
 13 MS. ZEMAN: No.
 14 PRESIDING ARBITRATOR: No? Okay,
 15 questions from the tribunal.
 16 QUESTIONS FROM THE ARBITRAL TRIBUNAL:
 17 PRESIDING ARBITRATOR: Just one
 18 question for you, I think we are still well within
 19 time. Please answer with "yes" or "no."
 20 When you compared the [REDACTED]
 21 [REDACTED] did
 22 you include in your judgment of reasonableness, the
 23 distances --
 24
 25

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1 THE WITNESS: The distance?
 2 PRESIDING ARBITRATOR: -- from New
 3 York? I mean, in the sense, for instance, when I
 4 compare the rates, it occurred -- [REDACTED]
 [REDACTED]
 [REDACTED] when you assessed
 8 the reasonableness, did you compare also the
 9 distance --
 10 THE WITNESS: C [REDACTED]
 [REDACTED] ?
 12 PRESIDING ARBITRATOR: Or just the
 13 transport times between themselves?
 14 THE WITNESS: Between -- I knew what
 15 [REDACTED]
 [REDACTED]
 18 PRESIDING ARBITRATOR: Okay, and with
 19 regard to the other quarries that are on that?
 20 THE WITNESS: I have an idea, that
 21 like I said, [REDACTED].
 22 Again, it depends -- just -- that's just on sailing
 23 time.
 24 PRESIDING ARBITRATOR: Okay. Thank
 25 you.

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1 PRESIDING ARBITRATOR: Okay. Thank
 2 you very much.
 3 THE WITNESS: Thank you.
 4 PRESIDING ARBITRATOR: That brings to
 5 an end your examination. I think you -- I wish you
 6 are relieved and probably in a double sense,
 7 relieved emotionally and --
 8 THE WITNESS: Thank you.
 9 PRESIDING ARBITRATOR: -- have a good
 10 flight.
 11 THE WITNESS: Thank you very much.
 12 PRESIDING ARBITRATOR: Dirk, did you
 13 want to say something or --
 14 DR. PULKOWSKI: No, I was just going
 15 to prepare the witness table for the next witness.
 16 It may be premature.
 17 PRESIDING ARBITRATOR: No, no, I
 18 think we can --
 19 MR. NASH: Could we have a 4-minute
 20 break between this witness and the next?
 21 PRESIDING ARBITRATOR: Okay, we will
 22 have a break until 9:45.
 23 MR. NASH: Thank you.
 24 --- Recess taken at 9:38 a.m.
 25 --- Upon resuming at 9:46 a.m.

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1 THE WITNESS: With load-out rates and
 2 everything else, it would be different.
 3 PRESIDING ARBITRATOR: Thank you, Mr.
 4 Power. I think --
 5 MR. SPELLISCY: We have one follow-up
 6 question from that.
 7 PRESIDING ARBITRATOR: Oh, okay.
 8 MR. NASH: No objection.
 9 PRESIDING ARBITRATOR: I'm sorry?
 10 MR. NASH: No objection.
 11 PRESIDING ARBITRATOR: Great, in the
 12 light of yesterday.
 13 FURTHER RE-EXAMINATION BY MS. ZEMAN:
 14 MS. ZEMAN: So on this chart,
 15 Mr. Power, we looked at two columns here for Whites
 16 Point; right?
 17 A. Right.
 18 Q. If we go look down at the freight
 19 rate, Mr. Nash took you to the [REDACTED] on the left,
 20 and what's the number on the right there?
 21 A. [REDACTED]
 22 Q. Do you remember which one you
 23 looked at?
 24 A. [REDACTED]
 25 MS. ZEMAN: Thank you.

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1 PRESIDING ARBITRATOR: Well, I
 2 decided that I could do without Dirk so you have --
 3 good morning, Mr. Ward.
 4 THE WITNESS: Good morning.
 5 PRESIDING ARBITRATOR: Would you be
 6 so kind and read out the statement that is in front
 7 of you?
 8 THE WITNESS: Yes. I solemnly
 9 declare upon my honour and conscience that I will
 10 speak the truth, the whole truth and nothing but the
 11 truth and that my statement will be in accordance
 12 with my sincere belief.
 13 PRESIDING ARBITRATOR: Thank you,
 14 Mr. Ward.
 15 AFFIRMED: MR. JAMES WARD
 16 PRESIDING ARBITRATOR: Ms. Zeman, you
 17 have the floor.
 18 EXAMINATION IN-CHIEF BY MS. ZEMAN:
 19 MS. ZEMAN: Good morning, Mr. Ward.
 20 A. Good morning.
 21 Q. Could you briefly describe for
 22 the tribunal a bit of your background and
 23 experience?
 24 A. Yes. Initially I was an
 25 industrial analytical chemist. My equivalent degree

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1 is in chemistry.

2 Following that I was an asphalt plant
3 foreman, quarry foreman, assistant quarry manager,
4 quarry manager. During that time I was sent to
5 Doncaster College to take engineering, mining
6 engineering, geology, surveying, to qualify for the
7 Member of the Institute of Quarrying in England. I
8 was then transferred to South Africa to work for
9 Tarmac, the same company that I was employed by in
10 England.

11 In South Africa I was a quarry
12 manager, a production manager, a technical
13 development manager for a while. They needed a
14 professional geologist and so I was asked to join
15 the South African Geological Society.

16 They didn't recognize the full
17 Doncaster College information to qualify me for
18 there. Then I had to go to the University of
19 Witwatersrand, for a year to study under a Dr. Josh
20 Lewry [phon.] on South African geology, by which
21 time I was admitted into the South African
22 Geological Society as a geologist.

23 After performing duties in South
24 Africa up till 1985 as a technical manager for the
25 company, a technical development manager where we

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1 developed into new quarries, home building, glazed,
2 bricks, ready-mix concrete, asphalt. During that
3 time, just to give you an illustration of some of my
4 roles, we had a contract just to the north of
5 Zululand to construct a road. My job was to find a
6 source of stone. There are not many quarries north
7 of Zululand and so we had to develop a quarry, had
8 to find rock, put a plant in and then put a portable
9 asphalt plant in to produce asphalt for the road.

10 So that's the kind of thing.

11 I was then transferred to the United
12 States to help them develop the company in the
13 United States as the technical development manager
14 for Tarmac Roadstone, USA.

15 I was then asked if I would run the
16 operations in Texas, the aggregate and trucking
17 operations in Texas. During that time I decided
18 it -- after 23 years with Tarmac, I would leave, so
19 I went to Phoenix to work for Blue Circle West and I
20 ran the ready-mix aggregates and trucking operations
21 in Phoenix, Arizona. They decided to sell part of
22 the company to Cemex.

23 I didn't want to work for Cemex, so I
24 was offered a position back in Atlanta with Blue
25 Circle, at which time they bought some quarries from

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1 a company called Georgia Marble.

2 I was appointed president of the
3 newly formed company Blue Circle Aggregates, and
4 asked to develop and grow the company which I did
5 over an 11-12-year period.

6 Following that, I left when -- just
7 after Lafarge bought us. I worked for Lafarge for
8 probably two years, almost three, and then decided
9 that I didn't like Lafarge and took a -- or decided
10 to leave. I left and started my own consulting
11 business.

12 I then worked for an investment
13 company to buy aggregate companies for them to
14 develop aggregate companies throughout the United
15 States.

16 I was then hired by a gentleman to
17 acquire some aggregate operations for him and then
18 once we had done that I was asked to work for him to
19 merge the aggregate operations together with what he
20 already had, run his asphalt and concrete divisions.

21 I sold his concrete division for him
22 and in 2008 when the economy deteriorated
23 dramatically I was retained for two years as a
24 consultant but no longer managed the business and
25 subsequent to that I've gone back to doing

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1 consulting and looking for opportunities to develop
2 my business.

3 Q. You have in front of you the two
4 expert opinions of SC Market Analytics; did you
5 write anything in these opinions?

6 A. I didn't write any of the
7 opinions, no.

8 Q. In light of that, can you
9 describe for the tribunal your role in preparing the
10 SCMA reports?

11 A. From time to time, Mr. Sutherland
12 would ask -- because of our relationship, he used to
13 work for Blue Circle -- to prepare information for
14 him or contribute to the information and that's
15 exactly what I did. He would outline what he wanted
16 and that's what I would carry out, or offer an
17 opinion, or whatever he needed.

18 Q. So understanding that you didn't
19 write any part of the reports and that it wouldn't
20 be appropriate to correct words that are not yours,
21 are there any corrections you'd like to make to any
22 of the analysis that you provided to Mr. Sutherland
23 and Dr. Chereb?

24 A. I did see in R-0842, that the --
25 I think [REDACTED] is the figure that's in the document,

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1 it should be [REDACTED] which is the number of hours
2 worked, it's four hours out in [REDACTED], so it is a
3 very minor change. I don't think it has any effect
4 or any material effect on any opinions that would be
5 formed.

6 MS. ZEMAN: Thank you.

7 PRESIDING ARBITRATOR: Thank you,
8 Ms. Zeman.

9 And Mr. Nash.

10 CROSS-EXAMINATION BY MR. NASH:

11 MR. NASH: There is a large document
12 that we were just referring to with Mr. Power in
13 front of you. It is Exhibit R-0756; do you see
14 that?

15 A. I do.

16 Q. I understand that you had some
17 role in creating this document; is that correct?

18 A. I contributed information to the
19 preparation of that document.

20 Q. In fact, we've distributed a
21 document which includes the whole document. And it
22 is a series of different pages and I think it's off
23 an Excel sheet.

24 In this document we see the letters
25 on the Excel form "JW" repeatedly?

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1 A. Yes.

2 Q. Was it you that actually created
3 these documents?

4 A. I contributed to them. The "JW",
5 I believe, just for clarification and to move along
6 quickly was the fact that those -- Mr. Sutherland
7 based his final documentation using those particular
8 figures.

9 There was "JW revision" and "JW the
10 original", I believe. If those are the documents
11 you are referring to.

12 Q. And "JW" the revision, did that
13 stand for your initials?

14 A. Yes.

15 Q. So, James Ward, where we see --
16 where we see a "JW" in these documents in the Excel
17 form, that would be James Ward; correct?

18 A. Yes.

19 Q. And if these copies that have
20 been produced in this hearing, in this case, have
21 the initials "JW" on them, do I understand correctly
22 that you would be the last person to deal with the
23 document; is that what -- how it happened or is it
24 that you would --

25 A. No, I would not be the last

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1 person to deal with it.

2 I would give it to Mr. Sutherland who
3 would then be the last person to deal with it.

4 Q. I see.

5 If we see the initials "JW", does
6 that mean that you are the originating author of the
7 document?

8 A. It means that it contains the
9 majority of some -- of the information that I
10 provided.

11 Q. Right. Let's just go to the
12 large first page or a portion of the first page of
13 Exhibit R-0756.

14 Can you confirm for me what parts of
15 the data in this document were contributed to or
16 provided by you?

17 A. I was asked to provide a
18 comparison of costs for the quarry, in my best
19 estimate. It was a comparison based on equivalency,
20 equivalency meaning that we wanted to try and put
21 everything on the equal basis of product mix,
22 volume -- not volumes but on utilization or sales,
23 equals production.

24 So, that is why you would probably
25 see a notation that this was in 2006, 2007, when

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1 most quarries, to our belief were sold out, and so
2 we tried to equate production with sales and there
3 was a methodology to doing the costs. If you wish,
4 I will go into the methodology because it is the
5 difference between accuracy and precision.

6 Q. Just before we go there, did you
7 have any information to verify the cost that you put
8 into this document?

9 A. Umm...

10 Q. Let me put it this way: [REDACTED]

11 [REDACTED] Are the figures that
12 we see here of those things based upon your
13 estimates?

14 A. To clarify that, since 1985
15 I have looked at a tremendous number of quarries in
16 the United States. I've been part of a very large
17 number of acquisitions and been privileged to obtain
18 an awful lot of cost data on an awful lot of
19 quarries in different operations so I am basing
20 these costs on the information that I have obtained
21 over the years in that form.

22 Q. So these costs here are what I
23 would call your experiential cost estimates; is that

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1 fair?
2 A. Based on information obtained
3 over the period, actual information on accounts.
4 Q. Over the 30 years you've been
5 involved in this?
6 A. Since -- in the United States,
7 since 1985.
8 Q. Right. So, you didn't go to any
9 of the companies that owned these -- these couple of
10 investment quarries and say to them "This is my
11 estimate; can you give me some idea if I'm in the
12 right ballpark." Do I have that right?
13 A. I did not go to the official
14 companies, no.
15 Q. Okay. Now, if you go to
16 "Variable costs" over on the left-hand column, you
17 see "wages", "stripping", "drilling", "blasting",
18 "fuel", "power", "wear items", and so on; were those
19 categories created by you?
20 A. Yes.
21 Q. Is all of the information in that
22 category across the page inputted by you? Leave
23 aside shipping for one moment.
24 A. Without looking at my computer I
25 would say "yes."

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1 and those figures would be provided by you; that's
2 correct?
3 A. Yes.
4 Q. And then we've got freight to New
5 York, and we have a line across for each of the
6 quarries. Many of the squares aren't filled in but
7 if we get over to Canada, those figures in the blue
8 section were provided by Mike Power; that's your
9 recollection?
10 A. I'm not quite sure who
11 provided -- I know they were entered finally by
12 Mr. Sutherland. The water transportation is not my
13 expertise.
14 Q. Did you take any steps -- well,
15 first of all, did you ever speak to Mr. Power?
16 A. Yes, I did.
17 Q. Did you speak to him about these
18 figures?
19 A. We had a very general
20 conversation about the figures.
21 Q. And he -- is it based upon that
22 conversation that you came to the conclusion that
23 those figures were reasonable?
24 A. No, which? The --
25 Q. Shipping?

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1 Q. Is all of the information
2 presented in this document and, again, leave aside
3 shipping, is that inputted by you to the best of
4 your recollection?
5 A. Without going back and looking at
6 every figure, it is difficult to say but I would say
7 the majority.
8 Q. Can we say the vast majority;
9 would that be fair?
10 A. Yes, or by -- I mean, what do you
11 mean by "vast majority"?
12 Q. Well, the majority could be
13 51 per cent or the majority could include 80 or
14 90 per cent. When you say it is in the 80 to 90
15 per cent range?
16 A. To help the tribunal, probably
17 75 per cent, in that order, or more.
18 Q. But at least all of those figures
19 we have across the page under the heading "Variable
20 cost" and "wages", and so on, all of that
21 information, to the best of your recollection is
22 provided by you; correct?
23 A. Yes.
24 Q. And then we have -- going down
25 again, that column, we have "Total variable costs"

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1 A. Shipping. I cannot comment
2 because I have no background to judge what he was
3 telling me, whether it would be right or wrong or
4 anything like that, and I was more interested in
5 certain aspects of his quarry.
6 Q. And did you take certain aspects
7 of his quarry, including the variable costs there
8 into account in inputting this information?
9 A. Not the transport, but the costs,
10 yes.
11 Q. The other cost --
12 A. The cost of production, yes.
13 Q. If we go to the next
14 section down, we've got freight to New York rail, we
15 have freight to New York trucking or truck,
16 including tolls; was it you that gathered the
17 information for that category of cost?
18 A. I provided some information on
19 the tolls in New York which is pasted onto one of
20 the spreadsheets. I also found the industry
21 calculation for calculating truck rates, and
22 remember, this was, for an accurate comparison,
23 rather than a precise determination.
24 Q. An accurate comparison rather
25 than a precise determination?

1 A. Yes.
 2 Q. Can you unpack that for me?
 3 A. Yes, in my -- if I put my
 4 chemistry hat on, if I may for a moment: In the days
 5 of chemistry you had a methodology to arrive at a
 6 result. The result may be 1 part per million but
 7 you may consistently arrive at 1.1 part per million.
 8 You are accurate in your work because
 9 you consistently arrive at 1.1 part per million,
 10 right? But the precision is off by the 0.1.
 11 Q. And so in a case like this, were
 12 you going with the "It's off by 0.1 but otherwise
 13 it's precise"?
 14 A. No, I was going by the accuracy
 15 of the method determining in these costs with an
 16 intent to try to obtain some precision.
 17 Q. Did you contact any of the US
 18 quarries in the New York City/New Jersey area that
 19 were actually shipping aggregate into the New York
 20 City market to see exactly what their costs were?
 21 A. I did not contact the quarries,
 22 no.
 23 Q. Can we go to page 10 of the first
 24 report. I'm sorry, you will see there -- you are in
 25 tab 1?

1 A. I'm sorry, I'm sorry.
 2 Q. That's my fault. Tab 1, page 10.
 3 Did you create the map on that page through the use
 4 of Google Earth?
 5 A. Yes, I contributed to that map.
 6 Q. When you say you contributed to
 7 it, what was your contribution?
 8 A. I took the Google Earth and took
 9 all the different aerial pictures of the quarries,
 10 identified the quarries from the information
 11 provided in MSHA of the description where the
 12 quarries are.
 13 I identified the quarries, put them
 14 on the map and then put the information in on that
 15 map.
 16 Q. We see that the quarries are
 17 different distance from New York City; do you see
 18 that?
 19 A. Yes.
 20 Q. [REDACTED];
 21 [REDACTED];
 22 do you see that?
 23 A. Yes, I do.
 24 Q. And do you see under that
 25 [REDACTED] do you see that?

1 A. I -- yes, I see.
 2 Q. And you've got [REDACTED]
 3 [REDACTED] ?
 4 [REDACTED]
 5 A. Yes.
 6 Q. Would you agree with me that
 7 delivering aggregate by truck into New York City is
 8 a very expensive proposition?
 9 A. I've heard testimony to that
 10 effect.
 11 Q. Did you take that into account in
 12 assessing the cost of actually getting aggregate
 13 into the New York City market?
 14 A. My assessment was based on the
 15 information that I provided in the document which
 16 was the theoretical trucking cost plus the tolls.
 17 Q. Theoretical trucking cost plus
 18 the tolls?
 19 A. Yes.
 20 Q. You did no actual calculation of
 21 actual trucking cost to get from one quarry to New
 22 York City or another quarry to New York City;
 23 correct?
 24 A. I have, as well as
 25 Mr. Sutherland, some knowledge of trucking costs and

1 those played a part in contributing to the trucking
 2 costs.
 3 Q. And in --
 4 A. As well as the calculation.
 5 Q. And so you actually personally
 6 went through the calculation of the cost, of
 7 trucking cost -- cost of trucking to get from these
 8 various land-based quarries in New York City for
 9 each quarry --
 10 A. No, not each quarry, no, we
 11 used -- I used a radius, zone, and in some instances
 12 from a quarry you ask for a price and they'll say,
 13 well, it's \$5 per ton to this zone or \$6 to that
 14 zone, or you can get it to a specific customer, to a
 15 specific location, but it depends, there are various
 16 ways of quoting transport costs.
 17 Q. Did you contact any of the
 18 quarries on this Google Earth map to see what they
 19 were actually experiencing as trucking cost to take
 20 in a ton or however many tons?
 21 A. Not directly to the quarries.
 22 Q. Not directly to the quarries.
 23 You did your own analysis, your own calculation of
 24 that?
 25 A. I have a lot of industry

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1 colleagues from which I'm -- I get information from,
2 which I believe would be privileged information to
3 me.

4 Q. So you relied on people who
5 aren't coming here to this tribunal; is that
6 correct?

7 A. Yes.

8 Q. And if you go to -- just
9 identifying a few more of these, we've got at the
10 top centre of the page [REDACTED]
11 [REDACTED]; do you see that?

12 A. Could you refer me to the page
13 again?

14 Q. Same page we were on. Page 10,
15 [REDACTED]

16 A. Yes, I see it. Thank you.

17 Q. And there is [REDACTED]; do you
18 see that just down --

19 A. Yes.

20 Q. And then back up, and over to the
21 right, [REDACTED]?

22 A. Yes.

23 Q. You've identified "Truck Rail
24 Water".

25 You will see that these various

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1 quarries are different distances from New York City,
2 and as I understand what you are telling me, is that
3 you used a radius which would encompass the
4 locations of all the quarries to arrive at trucking
5 costs; is that right?

6 A. Different zones?

7 Q. Different zones?

8 A. Yes.

9 Q. And you chose a zone for --

10 A. Based on distance.

11 Q. Based on distance?

12 A. But not the precise distance.

13 Q. And how many zones were involved
14 in identifying these various quarries and how far
15 they were from New York City?

16 A. It would be every five miles.

17 Q. From --

18 A. From New York. So it would be 5,
19 10, 15, 20, 25, 30, 35, 40 and so forth.

20 Q. So there are some quarries that
21 are located 20 miles from New York City?

22 A. Yes.

23 Q. And some that are located
24 90 miles from New York City?

25 A. Yes.

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1 Q. If we go back to the chart on
2 Exhibit 0756, the single page in front of you under
3 the binder, you've actually -- if we go freight to
4 New York trucking, including tolls, for all of the
5 land-based quarries servicing the New York City,
6 you've given them the same trucking rate regardless
7 of which zone they're in?

8 A. Yes, because each zone would have
9 a different cost base, due to accessibility to New
10 York. If it was close to a freeway, and this kind
11 of thing, so even though we gave the zone, the zone
12 is dependent on the accessibility to New York.

13 Q. Did you actually do an analysis
14 that does not appear here, that each quarry, within
15 a different zone would actually expect to be, the
16 cost of transportation, trucking into New York City,
17 would be X and then if you go out a further zone it
18 would be Y, and if you go a further zone it would be
19 Z and so on? Did you do that -- what I'll call a
20 more micro analysis?

21 A. In the way that you describe it,
22 yes, but the it depends on your definition of micro.

23 Q. Well, there has been nothing
24 further that we've seen that calculates trucking
25 rates --

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1 A. Yes.

2 Q. -- for each of these
3 approximately 15 quarries; right?

4 A. Yes.

5 Q. So that hasn't -- nothing's been
6 produced in that regard; that's correct?

7 A. That's correct.

8 Q. And so if you go through, then,
9 in the calculation of the lowest cost delivered to
10 the customer of combined aggregate, a calculation of
11 trucking cost for each of these quarries, no matter
12 how farther from New York City, you've identified
13 that as being the same for each one; do I have that
14 right?

15 A. That's what it appears on this
16 document, yes.

17 Q. And were you the last person to
18 enter the trucking figures for this analytical
19 purpose?

20 A. No, sir.

21 Q. There was somebody else?

22 A. Yes.

23 Q. That would be Mr. Sutherland?

24 A. Yes.

25 Q. Did you speak to him about the

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1 notion that various quarries are either nearer to or
2 farther away from New York and might then engage
3 different trucking costs to take aggregate into New
4 York City?

5 A. We did discuss that.

6 Q. And you decided just to leave it
7 at one rate right across the board?

8 A. We discussed where the locations
9 of the quarries were and how they related to New
10 York, the access there, and we decided that for
11 comparative purposes, this was sufficient.

12 Q. You just made a blanket --

13 A. That -- whether there was any
14 further discussion with other people interest from
15 Mr. Sutherland, I don't know.

16 Q. And what is the variation in
17 distance between these land-based quarries in the
18 New York City/New Jersey area, and in terms of a
19 comparative distance? Is it fair to say that there
20 would be some quarries that would be as close as 20
21 or 25 miles, to New York City, and others that might
22 be 150 or 200 miles from New York City?

23 A. In the quarries that we looked at
24 in New York, the request was to look at all the
25 quarries within a certain radius that could reach

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1 New York. I believe the first radius we took was up
2 to 35 miles. And then we said, "Well the 35-mile
3 radius is the -- there are quarries that are right
4 on that border or just outside."

5 If we then extend to 45, how would
6 the market look at the 45, so we had some at
7 35 miles and some at 45 miles. So that is the
8 distance that the quarries were looked at, anything
9 up to 35 and then just 35 to 45.

10 Q. So, there were two radii, if I
11 can put it that way?

12 A. Yes.

13 Q. One to 35 miles and one to
14 45 miles?

15 A. One to 45 miles.

16 Q. Did you actually know the
17 geographical location of all the quarries that you
18 were examining?

19 A. I found them on Google Earth from
20 the MSHA description of where the quarries were, it
21 gives you actually directions to each quarry, and so
22 it's easy to pinpoint them on a Google Earth map.

23 Q. What was the nearest quarry,
24 land-based quarry to New York City?

25 A. Without looking back I couldn't

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1 tell you at this moment.

2 Q. Could it be as close as 15 miles?

3 A. I don't think -- I don't think --
4 I don't think I remember anything as close as
5 15 miles. But then again, I'm not -- I haven't
6 measured them. And these measurements are as the
7 crow flies, not by road miles.

8 Q. I see, so they're not by --

9 A. They're zones.

10 Q. As the crow flies. So it is the
11 actual as the crow flies distance from the quarry to
12 New York City?

13 A. Yes.

14 Q. And what borough of New York
15 City?

16 A. I took the centre point of
17 Manhattan.

18 Q. Centre point of Manhattan?

19 A. Yeah.

20 Q. New York City is a big place,
21 Brooklyn is the fourth or fifth largest city in
22 United States; is that right?

23 A. Yes.

24 Q. And there are various access
25 points and traffic issues.

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1 A. Well, more precise, I zoomed in
2 on Google Earth and put the mid-point on the -- I
3 think it was the 25th Street quayside.

4 Q. So you didn't do any analysis of
5 the frequency of trip by trucks going from a certain
6 quarry into another part of New York City?

7 A. I did not.

8 Q. It was a blanket analysis; is
9 that fair?

10 A. Yeah.

11 Q. So, just going back, is it fair
12 to say that you last actually managed a quarry in
13 about 1977?

14 A. Oh, no.

15 Q. No.

16 A. No.

17 Q. Did you ever operate a quarry?

18 A. Yes.

19 Q. As a quarry operator, a person
20 who gets up early in the morning and manages all the
21 men?

22 A. Yes, I was a foreman -- I was an
23 actual foreman. I was up at 4 o'clock in the
24 morning, sometimes 24 hours a day. I was a quarry
25 manager. I was at work at 6 o'clock, 5:30, whatever

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1 it took, I operated loading machines, I operated
2 crushers, I operated -- I did every job in a quarry
3 and --
4 Q. Which quarry was that?
5 A. The ones in England. I did all
6 the jobs in England. As a foreman we are expected
7 to relieve -- and when I was a trainee quarry
8 manager we did all the different jobs in a quarry to
9 train.
10 The last time that I actually managed
11 a quarry or was responsible for working with the
12 manager to manage a quarry would be back in 2009.
13 Q. And the last time you were the
14 quarry, actual person, the quarry manager -- have
15 you read John Wall's witness statement in this case?
16 A. Yes.
17 Q. You know that he was an actual
18 operator of quarries?
19 A. Yes, yes.
20 Q. When was the last time that you
21 did that job?
22 A. It would be 1978.
23 Q. That was my understanding. So
24 it's been --
25 A. That was when I was the on-floor

Page 1932

1 your CV.
2 A. Of a quarry -- yes, but then we
3 had a quarry in Ridgeview, Durban, with a manager --
4 Q. Yes?
5 A. -- and when he was on vacation,
6 we had some problems down there, I was actually in
7 there helping to get the thing resolved. Because we
8 closed Sydenham Quarry down and we merged the
9 workforce from Sydenham to Ridgeview, during that
10 period and we had put -- increased the production at
11 Ridgeview and so my job was to help consolidate that
12 so my feet on the ground management would be 1978.
13 Q. 1978?
14 A. Yes.
15 Q. Was your last --
16 A. But I wouldn't put that in my CV,
17 but that's a lot of detail that --
18 Q. Of course. So I'm correct then
19 that your last job actually on the ground managing a
20 quarry, doing the day-to-day management of a quarry
21 was 40 years ago?
22 A. My actual experience of an
23 on-the-ground manager is 40 years ago, yes.
24 Q. So we've covered the chart which
25 was the first page of R-0756.

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1 manager.
2 Q. And that's in South Africa?
3 A. Yes.
4 Q. So you are 40 years away from
5 that direct experience of doing a John Wall job,
6 getting up in the morning and --
7 A. I think that's too strong a
8 statement to say that I'm 40 years away from being
9 hands-on in a quarry. That's wrong. If you are the
10 president of the company, you better get down and
11 dirty with the people. Some people may want to sit
12 in an office; I don't.
13 Q. Could you go to, again, in that
14 tab 1 to the last couple of pages of that tab.
15 If you go to the last page of that
16 tab, this is part of -- it is unnumbered but it is
17 part of your --
18 A. CV.
19 Q. -- CV, and if you go to the last
20 page, you will see under the third paragraph,
21 "Quarry Manager, Production Manager, Tarmac
22 Roadstone, Johannesburg, South Africa, 1976-77"?
23 A. Yes.
24 Q. I've reviewed your CV and that's
25 the last reference to that description of a job on

Page 1933

1 We will come back to it but did you
2 prepare graphs for the purpose of insertion into the
3 report?
4 A. I prepared a graph that was
5 relative to, I believe, market share based on MSHA
6 that might have gone into the report, I have
7 prepared that and sent it to Mr. Sutherland. I was
8 using MSHA data for market share. Based on MSHA
9 data.
10 Q. Could you go to page 11 of SCMA
11 report 1, which is tab 1.
12 Was the graph which is figure 2 shown
13 on that page the result of information developed by
14 you?
15 A. I would say it's based on
16 information that Mr. Sutherland had considered was
17 germane to produce in this that I contributed to
18 him, yes.
19 Q. And as I understand it, the
20 process was for you to provide information into this
21 document.
22 A. Yes.
23 Q. And I think you've said about
24 75 per cent?
25 A. Yes.

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1 Q. Approximately. And for that
2 information to be transposed and to be put in
3 graphical form in figure 2 on page 11; is that
4 right?
5 A. Yes, I contributed to that sheet,
6 and what Mr. Sutherland did with it after that, it
7 was no -- I did not contribute to.
8 Q. Did you review the graph that's
9 shown on page 11 and ask Mr. Sutherland or did
10 Mr. Sutherland ask you to verify that these costs
11 shown on this graph represented these costs, and I'm
12 pointing to the first page of 0756 at the bottom?
13 A. Yes, I was never asked to verify
14 this line here.
15 Q. Were you asked --
16 A. But --
17 Q. The bottom line calculations on
18 this document --
19 A. Yeah.
20 Q. -- are your calculations; that's
21 correct?
22 A. No.
23 Q. They are --
24 A. Because the freight and
25 everything would be -- is -- and the rest is just a

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1 simple Excel addition. It is add this and add this.
2 The calculations with the information
3 involved, no, the actual calculation by the way that
4 Excel does it, yes. So I want to exclude the
5 freight costs.
6 Q. Leaving aside the freight costs
7 --
8 A. Yeah, and --
9 Q. Leaving that aside for one
10 moment.
11 A. Yes, thank you.
12 Q. The rest of the information on
13 this chart, on this Excel sheet, resulting in the
14 costs on the bottom line for the various --
15 A. Would have a contribution from
16 me.
17 Q. And a significant contribution,
18 isn't that fair?
19 A. Yes, yes.
20 Q. And leaving aside freight costs,
21 essentially everything else; is that fair?
22 A. Yes.
23 Q. And when I say "freight costs",
24 only the oceanside freight cost because you've told
25 us that you calculated --

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1 A. Well, and the rail.
2 Q. And the rail. So you got rail
3 from somebody else?
4 A. We -- there was a long discussion
5 on rail, on what it would cost and I think we had
6 just recently done a rail study and so the
7 information came from a rail study that we'd done
8 for a different client.
9 Q. And so that's a study that hasn't
10 been produced for review by the claimants; that's
11 correct?
12 A. I don't think it would be
13 appropriate for that to be reviewed by the
14 claimants.
15 Q. Even with redactions? Okay.
16 So rail, truck, you did truck,
17 Mr. Power did ship, you've done some review of rail.
18 Leaving those comments aside, is everything else on
19 this sheet the result of your work and your input?
20 A. It as a result of my
21 contributions, yes.
22 Q. If we take these figures at the
23 bottom of the page, and just to choose a quarry,
24 let's [REDACTED], which is the fourth column on
25 the blue part of the sheet, and go down to the

Page 1937

1 [REDACTED]
2 [REDACTED]; do you see that?
3 A. Yes.
4 Q. And --
5 A. No, [REDACTED]
6 [REDACTED]
7 Q. Well, maybe I -- thank you for
8 that. I was on the wrong column.
9 If we go to the chart on page 11, we
10 have [REDACTED], it is
11 shown in red, all the Canadian quarries, existing or
12 proposed, are shown on the right-hand side. Sorry,
13 the red line, [REDACTED]
14 right to the side and your figure, as you pointed
15 out, is [REDACTED]?
16 A. Well, it's not my figure but it's
17 the figure that is in the machine because that
18 includes the freight.
19 Q. It included the freight, okay.
20 But did you ever check to see that that figure of
21 [REDACTED] was actually accurately depicted on the
22 graph?
23 A. I don't believe I did.
24 Q. Because when I look at the graph
25 it looks like [REDACTED] is being depicted at

Page 1938

1 something like [REDACTED] ?
 2 A. I can't comment.
 3 Q. Okay. Now there's a smaller
 4 version -- well, a larger version of that chart in
 5 front of you to your left. Just this one over there
 6 on the left-hand side of the table.
 7 A. Yes.
 8 Q. What has been done here is to
 9 take this graph which starts at a baseline of [REDACTED];
 10 do you see that?
 11 A. I have the graph.
 12 Q. Do you see on the -- in the -- in
 13 this chart that I'm showing you --
 14 A. Yes.
 15 Q. -- the baseline is zero?
 16 A. Yes.
 17 Q. Zero dollars.
 18 A. Yeah.
 19 Q. The one in the report for SCMA,
 20 it is [REDACTED] do you see that?
 21 A. Yes.
 22 Q. Was it your decision or somebody
 23 else's decision to start the baseline of the
 24 figure 2 at [REDACTED] and not \$0?
 25 A. It wasn't my decision. It is not

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1 my graph.
 2 Q. Did you review the final draft of
 3 the SCMA report to ensure that the figures, the
 4 numbers and everything that you had provided,
 5 including the numbers you provided were accurately
 6 depicted in the report?
 7 A. No, because I wasn't sure whether
 8 Mr. Sutherland was going to use my figures in
 9 entirety. He may have had separate information that
 10 would have flavoured the numbers that he put into
 11 the sheet.
 12 Q. Got it. But before it was signed
 13 off on, was the draft, the final draft of the report
 14 sent to you for review so that your work was
 15 accurately depicted?
 16 A. There was a draft and then there
 17 was another report. I did see a draft of the
 18 report, whether it was the final draft, I don't
 19 know.
 20 Q. So neither Mr. Sutherland or
 21 Mr. Chereb called you up and said, "Jim, we're about
 22 to sign off on this document; you've contributed a
 23 lot to the document, would you just take a look
 24 at it and see if it accords with your understanding
 25 of how the numbers were developed?" You weren't

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1 asked to do that?
 2 A. I saw a draft, I was sent a draft
 3 at some point in time and said, "This is what we are
 4 proposing to say. Would you read to it, and is it
 5 reasonable?" And that was my comment, "Yes, it
 6 looks reasonable to me."
 7 Q. And you had no changes to that
 8 draft?
 9 A. Yeah, but I don't know what
 10 version that was.
 11 Q. So the answer to my question is
 12 no, you weren't advised "Here's the final draft as
 13 we are going to present it, subject to your
 14 comments. Could you go through it and see if we've
 15 got it right?"
 16 A. I did not do that, no.
 17 Q. Would you agree with me, when the
 18 graph is depicted in the form on the sheet in front
 19 of you, the larger form which is simply a
 20 duplication of that figure 2 graph that we've looked
 21 at, that the differentiation between the lowest
 22 asserted cost producer and the highest asserted cost
 23 producer appears to be quite less?
 24 A. According to the graph, yes, it
 25 is not the same graph. This one starts at [REDACTED] as you

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1 pointed out. The other one starts at zero.
 2 Q. And the one that starts at [REDACTED]
 3 makes it appear, would you agree with me, that [REDACTED]
 4 [REDACTED]
 5 A. It's just a scale issue.
 6 Q. Yes. Do you know who chose that
 7 scale?
 8 A. I do not know who chose the
 9 scale.
 10 Q. Have you ever actually designed
 11 an aggregate crushing plant as an engineer?
 12 A. I am not a professionally
 13 registered engineer so I cannot sign off on a -- but
 14 have I contributed to a design? Yes.
 15 Q. You've contributed to a design
 16 performed by engineers?
 17 A. Yes.
 18 Q. You were never actually employed
 19 at a Tilcon quarry; that's correct?
 20 A. No. Well, no, not the -- I was
 21 just trying to think of a quarry that's been
 22 acquired by Tilcon. So therefore that would be an
 23 inaccuracy in my answer. To the best of my
 24 knowledge, I've never managed or been employed by a
 25 company that now Tilcon owns.

1 Q. And you've never been employed at
 2 a Canadian quarry at any time?
 3 A. I --
 4 Q. Employed?
 5 A. Not employed by the quarry, no.
 6 Q. Right.
 7 A. Do we have Canadian quarries,
 8 yes, that belong to Blue Circle, yes.
 9 Q. And were they oceanside quarries
 10 such as the ones that we are considering here in the
 11 Maritimes part of Canada?
 12 A. The ones in Canada, no.
 13 Q. Were you ever employed as an
 14 employee of any of the quarries or the companies
 15 that own the quarries that we have seen in
 16 New Jersey/New York?
 17 A. Well, Hamburg Quarry belonged to
 18 Blue Circle Raia and part of my job was to look at
 19 the efficiencies of Hamburg Quarry and how it
 20 related to the New York market and supplying the
 21 ready-mix operations here in New Jersey.
 22 Q. And that was in -- what city that
 23 you were involved in at the time that you were
 24 speaking of?
 25 A. Well, our base was in Atlanta,

1 but our Raia operations were based in New Jersey, in
 2 Newark.
 3 Q. You understand that the Whites
 4 Point plant was intended to produce coarse aggregate
 5 [REDACTED]
 6 A. I understand that it was going to
 7 [REDACTED] based on -- well, it
 8 depends on which report you read. [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 Q. [REDACTED]
 12 [REDACTED]
 13 A. Those are the products that are
 14 defined in the stockpiles that I understand were
 15 defined by Mr. Bickford as being the coarse
 16 fractions, yes.
 17 Q. And you are familiar with these
 18 product specifications?
 19 A. Yes.
 20 Q. And the [REDACTED]
 21 [REDACTED]
 22 [REDACTED]; is that correct?
 23 A. It means that the material passes
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 Q. So you would agree with me that a
 4 [REDACTED]?
 5 A. [REDACTED].
 6 Q. And that a given quantity of
 7 [REDACTED]
 8 [REDACTED] that's correct?
 9 A. Yes.
 10 Q. And that includes pieces of
 11 aggregate that actually range in size within
 12 accepting limits?
 13 A. Yes.
 14 Q. [REDACTED]
 15 correct?
 16 A. Yes.
 17 Q. And you saw [REDACTED]
 18 [REDACTED] that's been referred to during
 19 this proceeding?
 20 A. Yes, it was misnamed though -- in
 21 the Rev D it was misnamed.
 22 Q. [REDACTED]
 23 [REDACTED]
 24 A. The file I last saw [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 Q. You heard Mr. Bickford's evidence
 5 with respect to his vast, life-long experience in
 6 designing quarries?
 7 A. I did.
 8 Q. And you are not one of those
 9 people, that's correct? You haven't spent a
 10 lifetime designing quarries; that's correct?
 11 A. I have spent a lifetime being
 12 involved in the analyzing and looking at the design
 13 of quarries, and the resultant situation from the
 14 design of a quarry, yes.
 15 Q. You've never signed off --
 16 A. Never signed off.
 17 Q. -- as an engineer?
 18 A. No. I've signed off as the
 19 president, though, of a company authorizing payment
 20 for the design of a quarry for a capital expenditure
 21 request, so --
 22 Q. My point being --
 23 A. -- I needed to understand the
 24 design.
 25 Q. But you've never, from scratch,

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1 created a design for a quarry; that's correct?
 2 Is that correct?
 3 A. For instance, in Greytown, I
 4 designed that plant because we took the plant down
 5 in Greytown to produce aggregate to make asphalt, to
 6 produce asphalt. So, in that sense, yes, I designed
 7 that plant. Did I sign off on it? No. As I said,
 8 we needed this plant to supply rock.
 9 Q. And was that in 1976 or 1975?
 10 A. The Greytown situation was in --
 11 it was actually after that, it was in the '80s.
 12 Q. In the '80s?
 13 A. Yeah.
 14 Q. And that was the last one that
 15 you actually designed?
 16 A. No, when we --
 17 Q. I am talking about you. You.
 18 A. Me personally?
 19 Q. Yes. Designed a quarry from
 20 scratch like Mr. Bickford has for the last 45 years.
 21 A. If it was totally my work, yes.
 22 Q. That was the last one; that's
 23 correct?
 24 A. If it was totally my work.
 25 Q. Could you go to, in the binder

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1 before you, tab 13?
 2 A. 13?
 3 Q. 13. This is an exhibit to
 4 Mr. Bickford's -- one of his statements and it's
 5 from the website of AggFlow.
 6 With this in mind, had you ever used
 7 AggFlow --
 8 A. Yes.
 9 Q. -- before this --
 10 A. Yes.
 11 Q. AggFlow came out in about 1995;
 12 do you recall that?
 13 A. I don't recall exactly when it
 14 came out but --
 15 Q. Have you actually run a design of
 16 yours through an AggFlow simulation?
 17 A. Yes, I have AggFlow on my
 18 computer.
 19 Q. It is a renowned software
 20 simulation product, isn't it?
 21 A. There are opinions on that,
 22 within the industry, of the people that I'm aware
 23 of, but it is a good program.
 24 Q. It states on the first page:
 25 "AggFlow software products are

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1 used by aggregate producers,
 2 miners, equipment manufacturers,
 3 engineers and dealers to simulate
 4 aggregate and mining operations.
 5 The software enables users to
 6 build both simple and complex
 7 crushing, screening and/or
 8 washing plants on their computer
 9 screen." [As read.]
 10 You would agree with that?
 11 A. Yes.
 12 Q. If you go to the last page of
 13 that document, bottom half of the page:
 14 "Top 25 US producers use
 15 AggFlow." [As read.]
 16 A. Yes.
 17 Q. Just on that point, were you here
 18 for Mr. Fougere's evidence?
 19 A. Yes.
 20 Q. He worked for Martin Marietta?
 21 A. Yes.
 22 Q. Do you know that he's commented
 23 on the use of AggFlow by Martin Marietta in his
 24 witness statement?
 25 A. Yes.

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1 Q. And in that context, if we go to
 2 the top 25 US producers use AggFlow: Vulcan which is
 3 the largest US producer of aggregate; Martin
 4 Marietta; Old Castle Materials -- that's Tilcon;
 5 correct?
 6 A. Yes, sir.
 7 Q. Lehigh Hanson, they are shown as,
 8 I think the fourth largest aggregate producer in the
 9 US?
 10 A. I'm familiar with them.
 11 Q. And Cemex and Lafarge
 12 North America which is shown as the six.
 13 Now, AggFlow is good enough for them?
 14 A. Yes.
 15 Q. AggFlow is not good enough for
 16 you?
 17 A. Yeah, it's good enough for me.
 18 Q. Have you actually -- did you
 19 independently run Mr. Bickford's design in this
 20 case?
 21 A. No, there was no need. It --
 22 Q. Let me finish, please. Through
 23 the AggFlow program --
 24 A. No.
 25 Q. -- that had already been done by

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1 Mr. Bickford; that's correct? You understood that?
 2 A. Uh-hmm.
 3 Q. Yes?
 4 A. Yes.
 5 Q. And you understood that he was
 6 satisfied with the results for the use of this plant
 7 as designed for the purpose required by the
 8 customer; correct?
 9 A. Yes, that's what he said.
 10 Q. That's what he said. Now, did
 11 Mr. Sutherland confirm your understanding that it
 12 was appropriate to use the [REDACTED]
 13 [REDACTED], the same cost for all of the land-based
 14 quarries in New York/New Jersey area, regardless of
 15 their distance from their destination?
 16 A. Could you just rephrase the first
 17 part of your question, I apologize for asking you to
 18 do that.
 19 Q. Not at all. Did you confirm with
 20 Mr. Sutherland that it was appropriate to use a [REDACTED]
 21 [REDACTED] across the board for all
 22 quarries that were land-based in New Jersey and --
 23 A. No, I did not confirm that with
 24 Mr. Sutherland, no.
 25 Q. And I'm advised that at least one

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1 of the quarries is well over 100 miles from New York
 2 City. Do you know that?
 3 A. It could well be, yes.
 4 Q. Now, I understood you to say
 5 earlier that you did a radius distance evaluation
 6 and that it -- you did up to 35 --
 7 A. Well, depending on --
 8 Q. Just let me finish -- up to
 9 35 miles and then up to 45 miles and you stopped at
 10 45?
 11 A. Except for the quarries that
 12 might have been on rail or on water.
 13 Q. Did you understand that there are
 14 some land-based quarries that --
 15 A. I have to qualify one thing that
 16 might help you and it would certainly help me to be
 17 on the same wavelength.
 18 The quarry that you may be referring
 19 to, I think I know which one it is. The definition
 20 was within a trucking radius was a 35 and the 45,
 21 but there was also a list of quarries that were
 22 submitted, I think, by one of the gentlemen that
 23 gave testimony, said don't forget to include these
 24 so I had to go back and include those which might
 25 have contributed to some of the revisions.

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1 Q. So in your calculation or your
 2 assessment of trucking costs, you didn't actually
 3 take into account the actual driving distance;
 4 that's correct?
 5 A. No.
 6 Q. You didn't actually take into
 7 account the time involved in getting from quarry A
 8 to its destination in New York City; correct?
 9 A. Because that would have been
 10 somewhat indeterminate --
 11 Q. Is the answer "yes" or "no"?
 12 A. No, but that it would have been
 13 indeterminate.
 14 Q. So the answer to my question is
 15 you did not do an actual calculation of trucking
 16 costs from the actual destination on the route that
 17 it would take, the truck would take, into New York
 18 City; that's correct?
 19 A. I did not and I would like to
 20 qualify that answer because I would not know exactly
 21 the route. I don't know if the guy's going to go
 22 take this road or that road. Unless I drove it
 23 every day, I would not know the road conditions.
 24 Q. And the difference in time,
 25 distance, the route, the destination into New York,

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1 can all impact actual trucking costs, wouldn't you
 2 agree with me, including hourly rates for the
 3 driver, the use of the truck, the fuel cost, et
 4 cetera; would you agree with me on that?
 5 A. The trucking rates are quoted by
 6 the owner of the company or howsoever you are
 7 getting the quote from. So it becomes a fixed rate
 8 and therefore that might influence what the quote,
 9 but would not influence the actual cost.
 10 Q. I think my question has been
 11 misunderstood.
 12 You didn't take into account the
 13 time, the route, the miles, the fuel used, and time
 14 for the hourly rates for the drivers in the
 15 calculation of trucking costs from the various
 16 quarries that you've got trucking cost --
 17 (Simultaneous speakers - unclear)
 18 A. Not on an individual quarry
 19 basis, no.
 20 Q. So what I've said is correct?
 21 A. On an individual basis it is
 22 correct.
 23 Q. And you didn't contact any
 24 owners, operators on any of the quarries that have
 25 been cited here on that map that we referred to --

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1 A. No, I already mentioned that.
 2 Q. -- to confirm that your costs
 3 were even within the range of actual costs; that's
 4 correct?
 5 A. I did not contact the actual
 6 quarries, no.
 7 Q. Did you do any independent -- and
 8 I may have asked you this and if I am repeating
 9 myself, I apologize. Any independent analysis
 10 at all of the shipping rates from the various
 11 Canadian-based quarries?
 12 A. No.
 13 Q. Do you know if Mr. Sutherland
 14 did?
 15 A. I don't know. I just don't know.
 16 I don't know --
 17 Q. He's never told you that he did;
 18 correct?
 19 A. Yes. No, but he has lots of
 20 contacts that I don't know.
 21 Q. May I suggest that that's pure
 22 speculation? Is that okay? It is sheer
 23 speculation; you don't know.
 24 A. I don't know.
 25 Q. Do you know if Mr. Chereb did?

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1 the estimated cost to produce the
 2 coarse aggregates products that
 3 Whites Point plant sell.
 4 The calculations in this figure
 5 are estimates and are intended to
 6 provide graphical representation
 7 of the rough dynamics of the
 8 market, rather than represent
 9 exact calculations of a cost of
 10 each quarry." [As read.]
 11 Now, were you asked to review that
 12 statement in referencing figure 2?
 13 A. No.
 14 Q. So would you agree with the
 15 calculations that figure 2, that graph, are
 16 estimates; they are intended to provide a graphical
 17 representation of the rough dynamics in the market;
 18 would you agree with that statement?
 19 A. Yes.
 20 Q. How rough?
 21 A. Pardon?
 22 Q. How rough?
 23 A. How...?
 24 Q. Rough.
 25 A. Rough.

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1 A. No.
 2 Q. Now, at footnote 28 at the bottom
 3 of page 11 of the report, it states -- it's in
 4 reference to the chart. It states:
 5 "The estimated delivered cost to
 6 customers, including trucking
 7 delivery costs on a per ton basis
 8 to final customers which are
 9 assumed to be located in the
 10 Brooklyn Bronx area..."
 11 Just pausing there, you told me that
 12 your trucking analysis related to a point in
 13 Manhattan?
 14 A. Yes.
 15 Q. Did you have any part in writing
 16 that reference to the Brooklyn or Bronx area?
 17 A. No.
 18 Q. (Reading):
 19 "Using the estimated delivered
 20 cost to customers allows us to
 21 compare the relative costs of
 22 quarries that use different modes
 23 of transportation. For example,
 24 by water, truck and rail. The
 25 cost curve also directly compares

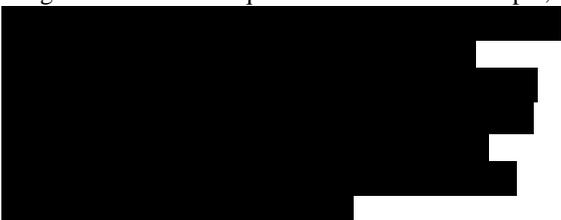
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1 Q. How rough were the dynamics?
 2 A. I would -- I couldn't -- how do I
 3 quantify that with a reference to what? In what
 4 measure do I quantify that? If you could explain to
 5 me the scale on which you want to define the
 6 roughness of that calculation, I can give you an
 7 answer.
 8 Q. You don't know how rough the
 9 dynamics were?
 10 A. No.
 11 Q. You don't know how rough the
 12 analysis was; that's correct?
 13 A. It says there it was comparative,
 14 so I don't know about the precision.
 15 Q. "Intended to provide a graphical
 16 representations of the rough dynamics of the
 17 market."
 18 A. Yes.
 19 Q. And you don't know how rough the
 20 dynamics were; that's correct?
 21 A. I can't comment. It's not my
 22 statement.
 23 Q. You were never asked to assess
 24 the roughness of the dynamics; that's correct?
 25 A. No. I can't say within

1 10 per cent or 15 per cent. I have no idea.
 2 Q. No idea. And you weren't asked
 3 to comment on that description of the depiction of
 4 the quarries and their costs in figure 2 to say "is
 5 that a correct characterization?"
 6 A. I was not asked.
 7 Q. And your understanding that the
 8 chart showing these various costs are expressed in
 9 US dollars per ton; that's correct?
 10 A. Yes.
 11 Q. And it would be incorrect to mix
 12 up currencies; correct?
 13 A. Yes.
 14 Q. And all of the figures you were
 15 working with were in Canadian dollars; that's
 16 correct -- sorry, American dollars; that's correct?
 17 A. Not all the time, no.
 18 Q. There were figures on this
 19 chart --
 20 A. In this chart, the relative costs
 21 are in US dollars, but in preparing some of my cost
 22 analysis I was working Canadian dollars and we were
 23 doing conversions.
 24 Mr. Sutherland did some conversions,
 25 did I some conversions.

1 Q. It was very important to do the
 2 correct conversions --
 3 A. Yes.
 4 Q. -- from Canadian to US so that
 5 you would actually have comparable costs?
 6 A. Yes, there were conversions
 7 provided in Mr. Rosen's analysis that we used to do
 8 conversions. That's what I was advised to do if I
 9 was doing a conversion.
 10 Q. So you used the conversion rate
 11 in Mr. Rosen's report to do the conversion from
 12 Canadian to US?
 13 A. Yes.
 14 Q. With the result --
 15 A. In that particular year.
 16 Q. In 2007?
 17 A. Yes.
 18 Q. And the -- it was important in
 19 that result to ensure that all expenses that were
 20 expressed on 0756 were in the same currency, being
 21 US dollars; that's correct?
 22 A. Yes, it would be.
 23 Q. In your analysis, when the
 24 quarries were represented as being potential or
 25 actual equivalent quarries, were you asked to

1 comment on that?
 2 A. Would you mind just repeating
 3 last part of it, please?
 4 Q. Sure. I'll take you back to
 5 figure 2 on page 11. The figure is entitled --
 6 well, it's described at the top of "New York City
 7 Aggregate Sources, Actual and Potential". Do you
 8 see that, tab 1, page 11.
 9 A. Yes. I have it.
 10 Q. And the title of the chart is:
 11 "2007 delivered cost to customers
 12 of equivalent coarse aggregate".
 13 Do you see that?
 14 A. Yes.
 15 Q. Did you understand the difference
 16 between limestone or dolomite on the one hand, and
 17 basalt and granite on the other hand for the purpose
 18 of supplying to the New York City market?
 19 A. Yes, I'm aware of the differences
 20 in that stone.
 21 Q. And you would agree that
 22 limestone and dolomite are not in the same class of
 23 rock for the use of the manufacture of asphalt in
 24 New York City?
 25 A. This was not specific to asphalt

1 so therefore I don't think it was material.
 2 Q. So that differentiation between
 3 the use of dolomite and limestone in products such
 4 as concrete for the laying of a sidewalk or the
 5 building of a building was not in your mind when the
 6 equivalency analysis between the Whites Point Quarry
 7 and other quarries was undertaken by SCMA; that's
 8 correct?
 9 A. I did not make any distinction
 10 based on end use of the product because the
 11 definition of market would change what's being used
 12 in asphalt, what was being used in concrete and one
 13 would have negated the other because of some of the
 14 density issues so...
 15 Q. If we look at the chart again and
 16 we go to the Canadian quarries and take for example,
 17 
 24 A. For concrete, yes.
 25 Q. Yes. For asphalt?

1 A. For asphalt, for base course,
 2 yes; for wearing course, no.
 3 Q. The asphalt that cars actually
 4 drive on.
 5 A. Well, that's a very thin layer on
 6 top, but no, not for the wearing course, no.
 7 Q. And a that's called skid
 8 resistant?
 9 A. Yes.
 10 Q. It's called friction rock?
 11 A. Yes.
 12 Q. And there is a Superpave Standard
 13 in the United States; right?
 14 A. For the wearing course, yes.
 15 Q. For the wearing course?
 16 A. Yes.
 17 Q. And the Superpave Standard
 18 requires the adherence to strict specifications.
 19 A. Including shape and many other
 20 parameters, yes.
 21 Q. Exactly. And granite and basalt
 22 are qualifiers for that use?
 23 A. Yes.
 24 Q. Of --
 25 A. I'm aware.

1 Q. If they are properly crushed?
 2 A. Yes.
 3 Q. Correct.
 4 A. Yes.
 5 Q. And limestone is not; correct?
 6 A. No, because of the skid
 7 resistance.
 8 Q. And did you do any analysis of
 9 the availability of what's called friction rock for
 10 supply into the New York City market as part of this
 11 analysis?
 12 A. I did not.
 13 Q. Do you know if anybody did?
 14 A. I'm not aware -- I'm not aware of
 15 what was done. The division of the different
 16 sectors to which the rock was supplied, I did not do
 17 that.
 18 Q. Did you have any knowledge of
 19 whether Corner Brook even opened up as a quarry?
 20 A. I don't -- I have no knowledge if
 21 it's been opened up, no.
 22 Q. Did you have any understanding of
 23 where Corner Brook was located --
 24 A. Yes.
 25 Q. -- in relation to Whites Point?

1 A. Yes, when I was doing my analysis
 2 I was given the location and I plotted that on...
 3 Q. And if you go down and I think
 4 you were here this morning for Mr. Power's evidence.
 5 If you go down to the shipping cost, the yellow line
 6 in the middle of the page, you saw from our
 7 discussion that [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]; would you agree with
 13 that? Or do you know?
 14 A. I don't know. I can't comment.
 15 It is beyond my expertise.
 16 Q. Did you ever ask Mr. Power "What
 17 about these rates here?" [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 A. I don't --
 22 Q. [REDACTED] Did you have any
 23 discussion about these to say, "Is that reasonable?"
 24 A. It's -- I couldn't comment.
 25 I have no -- I did not study the shipping costs.

1 Q. But you knew Mike Power was being
 2 relied upon for the assessment of reasonableness for
 3 shipping costs. Did you have any curiosity about
 4 that?
 5 A. My interest in each quarry was I
 6 went to Auld's Cove back in the '70s. I am familiar
 7 with Auld's Cove. I was more interested in his --
 8 his costs on other things and the shipping cost is
 9 beyond my expertise. I was not asked to comment on
 10 the shipping cost.
 11 Q. Do you know if anybody was
 12 assigned to verify with Mike Power what the relative
 13 shipping costs were from Canadian quarries, ocean
 14 side down to New York City?
 15 A. I don't know if anybody was or
 16 not. I'm not aware.
 17 Q. Do you know if the Belleoram
 18 quarry ever opened?
 19 A. I don't know if it opened or not.
 20 Q. And there were costs, variable
 21 costs that were identified here for the Belleoram
 22 quarry?
 23 A. Yes.
 24 Q. And did you develop those?
 25 A. Yes.

1 Q. Based on a quarry that was
 2 permitted in 2007 and never opened?
 3 A. Well, similarly with Whites
 4 Point; the costs that were developed for that but
 5 that isn't opening either.
 6 Q. That's a good point. You were
 7 developing costs for a quarry in Whites Point that
 8 was not built, that had never operated, that had not
 9 been shipped to or from, that had never employed
 10 anybody, and that had never actually published a
 11 design for the quarry plant and never published a
 12 marine terminal for the quarry plant. And you were
 13 able to ratchet back costs that you've been given in
 14 this proceeding to calculate a cost per ton of a
 15 production of aggregate at that quarry?
 16 A. You would need to understand my
 17 methodology in order to understand how that could
 18 happen.
 19 Q. So...
 20 A. Do you wish me to describe my
 21 methodology?
 22 Q. Well, if there is a short answer
 23 to that.
 24 A. There is not a short answer
 25 because it involves --

1 Q. Then we won't --
 2 A. -- in-depth analysis through
 3 Google Earth, cost analysis, measurements, a whole
 4 range of things. But I think it's important and I
 5 wish to say that it's difficult to comment upon the
 6 costs unless you understand my methodology.
 7 Q. So you were here for
 8 Mr. Fougere's evidence yesterday?
 9 A. Yes.
 10 Q. Yes. And you heard that he was
 11 employed by Martin Marietta to manage that quarry?
 12 A. Yes.
 13 Q. And you heard his evidence
 14 regarding the [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 A. I heard his comments, yes.
 18 Q. Yes. Did you make any
 19 investigation at the time you were writing or
 20 contributing to this report, investigation of the
 21 relative cost that might be -- might apply to an
 22 Auld's Cove quarry and your calculated costs for
 23 Whites Point?
 24 A. Yes.
 25 Q. And your relative cost for [REDACTED]

1 [REDACTED] looking down the page, total variable cost is
 2 [REDACTED]; do you see that?
 3 A. Yes.
 4 Q. If you go across the page to the
 5 first Whites Point line is [REDACTED]?
 6 A. Yes, I see that.
 7 Q. And then for the second line,
 8 [REDACTED]. Now, you said you made an investigation on
 9 the variable cost between these two quarries and
 10 what investigation did you make?
 11 A. Well on Whites Point we had two
 12 sets of information which is what this is referring
 13 to. [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 Q. [REDACTED]?
 17 A. Yes, we referenced the document
 18 there somewhere.
 19 Q. Yes.
 20 A. And then similarly we took some
 21 of the costs that were provided by the proponents of
 22 Whites Quarry in the last column.
 23 For the other quarry --
 24 Q. Just stopping there. That was in
 25 the EIS; right? That's what you are relying upon?

1 A. No, I think it was costs provided
 2 to go into -- some of them were to go into
 3 Mr. Rosen's spreadsheets. I mean, we compared those
 4 costs as well so I think this is a hybrid of all
 5 these costs.
 6 Q. That's your calculation of the
 7 hybrid and that has never actually been produced;
 8 that's correct?
 9 A. Well, you are comparing something
 10 that's not been produced at Whites Point, that's not
 11 been produced at a quarry that didn't open so the
 12 comparative is relative to the deposit and how it
 13 looks, and what was needed, the volumes that are
 14 going to be done, labour, et cetera, et cetera.
 15 Some of these things had some
 16 commonality and some things didn't.
 17 Q. Yes. So you've heard the
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 A. Yes.
 24 Q. [REDACTED]
 25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 And you heard that, and you heard the

9 description of how [REDACTED]

10 [REDACTED]

11 Do you think that's reasonable?

12 A. Well, there's one -- there is one

13 particular thing that's missing in this conversation

14 out of this line of questioning. That is that in

15 reference to Whites Point, and why are we trying --

16 and the same for all the other quarries, and why we

17 chose 2006, and 2007, is because that according to

18 the information that I was provided with and the

19 request for me to review was relative to a certain

20 product mix, not just the total production of the

21 quarry, but to a certain product mix that would

22 be sold to New York. Since there was no suggestion

23 of sales anywhere else other than 2 million tons

24 into New York of a certain ratio.

25 And so, the costs are based on that

1 certain ratio.

2 Q. And so your analysis, as distinct

3 from Mr. Bickford's, is that in order to produce

4 2 million marketable tons for shipment to New York

5 and New Jersey --

6 A. [REDACTED].

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 A. That is why the -- that is the

12 term -- that's why the term was used "equivalent

13 coarse aggregate".

14 Q. So your analysis that

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 that [REDACTED] the consequence of that is

19 isn't that right?

20 A. Yes, [REDACTED]

21 [REDACTED] Yes.

22 Q. Right. So your analysis

23 incorporates that yield analysis, if I can call it

24 that --

25 A. Yes.

1 Q. -- in order to calculate the

2 [REDACTED].

3 A. Yes.

4 Q. And your conclusions are based

5 upon your assumption, your conclusion, that it would

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] correct?

9 A. Yes.

10 Q. Right. And Mr. Bickford differs

11 from you on that; do you understand that?

12 A. I understand he -- I think it's

13 all in definition. In reading his statements, he is

14 referring to the production [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 That is what I was asked to look at;

19 [REDACTED]

20 [REDACTED]

21 Those two very distinct and different

22 things.

23 Q. I've got that. But your analysis

24 was conducted through your own proprietary software;

25 that's correct?

1 A. The information -- well, it's

2 Excel spreadsheet it's not proprietary.

3 Q. So it's an Excel spreadsheet. So

4 you actually took all of the inputs, put them on an

5 Excel and got your calculation, and that was it;

6 that's correct?

7 A. I created a spreadsheet that

8 would show my colleagues where each stage would

9 produce what products, what the recirculating load

10 would be which is not defined in AggFlow which is

11 something that I believe needs to be discussed

12 further. Also, it described what the [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 So he's going to take a [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 And I did not include

1 that in my calculation.
 2 Q. Instead of going through AggFlow,
 3 a recognized industry recognized software system,
 4 you used your Excel sheet?
 5 A. No, I also made my calculations
 6 based on AggFlow and the thing about the Excel
 7 spreadsheet it's like the skeleton of AggFlow. I'm
 8 showing how AggFlow, if you were to look inside the
 9 algorithms in AggFlow, you would see it uses roughly
 10 the same algorithms that is used in an Excel
 11 spreadsheet. So there is similarity there.
 12 Q. In any event, your model creates
 13 [REDACTED], correct, for its application?
 14 A. [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 Q. So, your -- but leaving that
 20 aside. Your analysis produces a [REDACTED]
 21 [REDACTED] correct?
 22 A. It produces -- well, I would like
 23 to qualify the term. It produces material that
 24 [REDACTED]
 25 [REDACTED] nd therefore, you

1 know...
 2 Q. Have you ever seen a quarry
 3 anywhere that [REDACTED]
 4 [REDACTED]
 5 A. [REDACTED]
 6 [REDACTED]
 7 Q. [REDACTED]
 8 [REDACTED]
 9 [REDACTED] ?
 10 A. [REDACTED]
 11 [REDACTED] I have never seen --
 12 Q. Have you ever seen any quarry --
 13 is the answer to my question "yes" or "no"?
 14 A. I can't answer that because
 15 [REDACTED].
 16 Q. I'm asking you a fact. The
 17 question is about a fact. Have you ever seen a
 18 quarry anywhere that [REDACTED];
 19 [REDACTED];
 20 "yes" or "no"?
 21 A. I have not seen a quarry
 22 producing that [REDACTED]
 23 [REDACTED]
 24 [REDACTED] You are asking me to compare apples and
 25 oranges.

1 Q. I'm asking a simple question:
 2 Have you ever seen any quarry operated anywhere that
 3 [REDACTED]; "yes" or "no"?
 4 [REDACTED]
 5 A. No.
 6 Q. Thank you.
 7 PRESIDING ARBITRATOR: So from your
 8 movements I take that your cross-examination is
 9 finished?
 10 MR. NASH: Those are my questions.
 11 THE WITNESS: Thank you.
 12 PRESIDING ARBITRATOR: And I give the
 13 floor to Ms. Zeman for the re-direct, please.
 14 RE-EXAMINATION BY MS. ZEMAN:
 15 MS. ZEMAN: Mr. Ward, you were asked
 16 many questions about the SCMA reports, including a
 17 number of questions on the cost curve that's in
 18 front of you.
 19 A. Yes.
 20 Q. And on the roughness of the
 21 dynamics of the market which was in a footnote in
 22 the --
 23 PRESIDING ARBITRATOR: Excuse me. It
 24 had gotten stuck, but it's moving again. Sorry.
 25 MS. ZEMAN: So you were asked a

1 number of questions on those aspects and a number of
 2 those questions you indicated you couldn't comment
 3 on; do you recall that?
 4 A. Yes.
 5 Q. Who would be able to comment on
 6 the content of the report?
 7 A. Probably only Mr. Sutherland and
 8 Mr. Chereb.
 9 Q. Mr. Nash put to you that your
 10 opinion was that [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 Could you turn to page 43 of the
 15 first SCMA report?
 16 A. Is there a tab number on --
 17 Q. Yes, that should be at tab 1.
 18 PRESIDING ARBITRATOR: And page 43.
 19 MS. ZEMAN: There's a percentage here
 20 in the table. Can you explain what that represents?
 21 A. Looking at the calculation, it
 22 shows a percentage difference in the operating hours
 23 of the quarry. At the bottom it says there [REDACTED]
 24 [REDACTED]. The difference being...
 25 Q. And do you know how that

1 percentage was being used in calculating operating
2 costs?

3 A. Yes, it was applied to the -- it
4 was applied to the operating costs for Whites Point.

5 Q. What is that percentage?

6 A. [REDACTED]

7 Q. [REDACTED] Mr. Nash asked you if you
8 understood Mr. Bickford to be satisfied with the
9 results of his AggFlow analysis.

10 What are your views on Mr. Bickford's
11 AggFlow analysis?

12 A. I believe that Mr. Bickford is
13 [REDACTED]

[REDACTED]

22 Q. And what information did you base
23 your calculations with respect to production on?

24 A. [REDACTED]

[REDACTED]

1 [REDACTED]

3 There was [REDACTED]

[REDACTED]

8 Q. And where did you get your
9 definition of the size of [REDACTED]?

10 A. [REDACTED]

16 MS. ZEMAN: Thank you, Mr. Ward.
17 PRESIDING ARBITRATOR: Thank you,
18 Ms. Zeman.

19 No comment by Mr. Nash. But I think
20 there are going to be questions from the tribunal.
21 And Mr. Schwartz?

22 QUESTIONS FROM THE ARBITRAL TRIBUNAL:

23 PROFESSOR SCHWARTZ: Thanks for
24 helping us today, sir, and if my questions are
25 beyond your expertise or too big to give a

1 meaningful answer, you'll just let us know.

2 THE WITNESS: Yes.

3 PROFESSOR SCHWARTZ: What I do want
4 to explore is this concept of rough versus exact
5 that came up during the dialogue you had today and
6 it's come up before.

7 We are confidential; everything is
8 confidential session right now; is that correct?

9 PROFESSOR SCHWARTZ: When I look, for
10 example, at paragraph 95 at tab 1, it says under
11 that assumption Whites Point means that there will
12 be [REDACTED]

[REDACTED]

15 Sorry, I'll give you a chance to
16 catch up.

17 THE WITNESS: If you could state the
18 page number again, please?

19 PROFESSOR SCHWARTZ: It's on page 33.

20 THE WITNESS: Thank you.

21 PROFESSOR SCHWARTZ: Paragraph 95.

22 THE WITNESS: Yes. I think in some
23 of those statements there you could use the word
24 "approximately" instead of "roughly". I mean, that
25 would appear to be, if I'm making just my own

1 personal comment, I don't know, but I think --

2 PROFESSOR SCHWARTZ: Just use this as
3 an example because obviously the figures of [REDACTED]

[REDACTED]

8 I am just trying to get a sense of
9 how approximate, "approximate" is.

10 THE WITNESS: Well, I think where it
11 says the -- well, it may be the [REDACTED]

12 [REDACTED] I mean, that's the level of precision I
13 think that they're talking about there with the term
14 "approximately" from my memory of some of the
15 calculations.

16 PROFESSOR SCHWARTZ: So --

17 THE WITNESS: I don't think it's

18 [REDACTED].

19 PROFESSOR SCHWARTZ: So you're saying
20 that [REDACTED]

[REDACTED]?

23 THE WITNESS: Well, yes, within --
24 yeah. That would be my interpretation, my personal
25 interpretation.

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1 PROFESSOR SCHWARTZ: Okay. I'm
2 looking at just a few paragraphs down. Paragraph
3 97.

4 THE WITNESS: Yes.

5 PROFESSOR SCHWARTZ: And there is a
6 reference that's where it starts and then if you
7 flip over the page to page 34, one-time 10 per cent
8 contingency at the startup of the capital spending.

9 THE WITNESS: Yes, sir.

10 PROFESSOR SCHWARTZ: So there when
11 you are doing estimate of a startup, there is a
12 contingency you put in in your estimates that's
13 related to what; the first what year, the first few
14 years of operation compared to other years; how does
15 that work?

16 THE WITNESS: No. What happens is
17 when you put together a quote for building a plant,
18 invariably, in my experience and talking to other
19 industry colleagues, there is a tendency to
20 understate the cost of the plant.

21 There are things that you are into
22 that you just don't see. You may find when you put
23 the foundations in you have found that the
24 groundwater is higher than what you think; that this
25 doesn't fit where you thought it would seem to fit

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1 from putting it in other plants. So there are
2 things that happen. But when you actually go to buy
3 a crusher, it may be that by the time you got around
4 from approval of the plant to actually buying the
5 crusher it's more than nuts and bolts, you might
6 need a slightly different tensile strength on
7 certain valves so they are more expensive.

8 There are many provisions in
9 designing a plant, whether it uses 5-ply conveyer
10 belt to 3-ply conveyer belt. In other words, that's
11 the thickness of the conveyer belt.

12 For the conditions you may decide
13 that well, because the rock is coming out coarser
14 and sharper, we don't want the sharpness of the rock
15 to tear the belt, so we would use a thicker belt.
16 So there are things that you may make changes to
17 that are not seen in the design stage and that
18 10 per cent contingency is there to cover those
19 expenses.

20 Plus the length of time it takes you
21 to do things. They may say, "well, we can construct
22 that plant and build it in 10 minutes" -- sorry,
23 in -- sorry, I used the term -- "in ten weeks", and
24 what happens is it takes you 14 weeks. You have all
25 those additional labour costs so those. Over

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1 expenditures would go against that contingency.

2 PROFESSOR SCHWARTZ: Okay. You are
3 doing an estimate of a startup or you're doing an
4 estimate of projected profitability or cost of a
5 plant that's been in operation for year. How much
6 of a difference am I going to see in the estimates
7 and in your confidence in those estimates between a
8 project that hasn't been in operation and a project
9 that has been in operation for a year?

10 Here it refers to 10 per cent
11 one-time contingency. Is that a reasonable sense of
12 the difference between, you know, at startup versus
13 what you know after one-year, 10 per cent?

14 THE WITNESS: It is on the total
15 expenditure of capital expenditure for buying the
16 equipment, erection and installation of electric
17 power and everything that goes into making the
18 plant. It is not necessarily relating to the
19 operating costs, the cost incurred for operating for
20 a year. It is mostly related to the actual cost of
21 buying and constructing the plant, not operating the
22 plant.

23 Did that make the distinction for
24 you, sir?

25 PROFESSOR SCHWARTZ: I understand the

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1 difference between capital costs and operating
2 costs. I'm just trying to get a general sense if
3 I'm asking an intelligible question of you're in the
4 projection business, as are some of our expert
5 witnesses, as I understand it. You might be asked
6 sometimes, as I understand it, "give me an estimate
7 of net profits of a quarry that's just starting up"
8 versus somebody says "give me an estimate of how
9 this quarry is going to work out after it's been in
10 operation for a year."

11 One world is a startup; one world's
12 been in operation for a year. Is there going to be
13 about 10 per cent a fair figure of what the
14 difference is going to be?

15 THE WITNESS: In my experience there
16 is always an understatement of the cost in the order
17 of 10, maybe 15 or even 20 per cent in the operating
18 cost for the first year because you are going
19 through an awful lot of teething troubles, setting
20 up your product mix, a lot of things you don't
21 foresee.

22 PROFESSOR SCHWARTZ: Thank you.

23 PROFESSOR McRAE: Mr. Ward, could you
24 just go back under this sheet to the last two
25 columns with both "Whites Point".

1 THE WITNESS: Yes.
 2 PROFESSOR McRAE: There are two
 3 "Whites Point" there, and at the bottom I think your
 4 attention was drawn to this, based on plaintiff's
 5 costs. So, what's the distinction between that and
 6 the other -- and by "plaintiff's costs" you mean
 7 these were the costs put forward by the proponent
 8 but on your costs based on -- or the other column
 9 based on costs put forward by the proponent?
 10 I'd like to get clarity on the
 11 difference between those two.
 12 THE WITNESS: Yes, these are based on
 13 the plaintiff's costs in the far right. My costs
 14 are based on my estimation, using my methodology to
 15 come up with what the variable costs would be for
 16 the quarries.
 17 We felt that rather than use my total
 18 estimates of the Whites Point costs, that since
 19 there were costs were provided, we would be far more
 20 accurate and better off to use what was provided
 21 where we could, and then we would -- and then if
 22 there were any changes to those costs, we would make
 23 them in light of being fair to the comparison.
 24 PROFESSOR McRAE: So the second
 25 column "7" is based on whose costs? What were the

1 costs that were used from the second column?
 2 A. I believe that those were based
 3 on the adjusted costs, based on the increased
 4 production required to produce that certain product
 5 mix for sale in New York City that were put into the
 6 Rosen final spreadsheet. In other words, they had a
 7 set of costs in the spreadsheet. [REDACTED]
 11 PROFESSOR McRAE: Thank you.
 12 PRESIDING ARBITRATOR: A couple of
 13 questions from me to Mr. Ward, and they relate to
 14 the -- even though usually I prefer sea-based
 15 questions rather than land, namely the cost of
 16 freight to New York by truck. That is something
 17 which, despite quite extensive questioning by
 18 Mr. Nash has still remained a bit of a mystery to
 19 me.
 20 How you can -- first, you
 21 described -- we looked at the Google map that's in
 22 there, there are a lot of quarries, you said there
 23 about 15 quarries in New Jersey and in order to get
 24 a hold on them you said you were drawing radiuses,
 25 radiuses?

1 THE WITNESS: Yes.
 2 PRESIDING ARBITRATOR: I can't
 3 possibly pronounce the "radii" that Mr. Nash said,
 4 so radiuses, and you said every five miles.
 5 THE WITNESS: Initially, yes.
 6 PRESIDING ARBITRATOR: Later on you
 7 said 35, 45.
 8 THE WITNESS: Yeah, initially we
 9 tried to look at the quarries in --
 10 PRESIDING ARBITRATOR: But what was
 11 the point of these radiuses if, at the end, you come
 12 up with a figure of 14.50 that you apply across the
 13 board, which means that you assume for the purposes
 14 of this sheet, you assume that the costs are \$14.50
 15 irrespective of whether the quarry is 10 kilometres
 16 from Manhattan or 100 kilometres.
 17 THE WITNESS: Because the actual
 18 definitive cost was very difficult because some of
 19 the quarries are positioned in a route whereby
 20 during the night they could achieve load-out of a
 21 concrete customer during the night when there's no
 22 traffic, whereas other quarries may not be in
 23 that -- they could either -- I let me start again.
 24 You could either load out during the
 25 night time to a concrete supplier so that you are

1 not involved in the traffic. There may be routes
 2 that a truck driver knows where he does not get
 3 involved in traffic. I don't know those routes. We
 4 don't know those routes. We don't know exactly the
 5 route the truck driver would take when -- in my
 6 experience, truck drivers will take the quickest
 7 route, not normally the shortest route, because, you
 8 know, time is money to them, and so to define the
 9 exact route, to define the exact time of day they
 10 would travel, that would give you the average speed;
 11 to define all the other things, it was very
 12 difficult. That's why we used, on one of the
 13 spreadsheets, a calculation to try and derive what
 14 the hourly rate for operation of a truck was and
 15 then try to use that in this determination and then
 16 apply that to a radius.
 17 PRESIDING ARBITRATOR: That would be
 18 my next question: How did you arrive at the [REDACTED]
 19 that you insert in the sheet? [REDACTED]
 20 THE WITNESS: Well, there would be
 21 some industry and local knowledge that I believe
 22 that I have and Mr. Sutherland had -- I gave him
 23 what industry information I had and he obviously has
 24 his own from my knowledge of Mr. Sutherland, so
 25 there was that. And then there was the calculation

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1 done on the -- I forget what spreadsheet it was,
2 what the name is, but on that spreadsheet you will
3 see that there's a calculation defining the
4 operating costs of a truck which was taken from the
5 industry.

6 PRESIDING ARBITRATOR: So the [REDACTED]
7 came, as you said, from the industry.

8 THE WITNESS: It came from
9 calculations based on industry information.

10 PRESIDING ARBITRATOR: It is still --
11 I still don't get it but probably that's my problem.

12 THE WITNESS: No, sir, it's probably
13 me that's -- in trying to come up with some kind of
14 a trucking cost --

15 PRESIDING ARBITRATOR: Because if you
16 say [REDACTED] is some kind of an estimate --

17 THE WITNESS: Yes.

18 PRESIDING ARBITRATOR: -- but an
19 estimate must be based on some experience as to what
20 the costs are. And with regard to the costs, you
21 say we cannot really calculate because it might be
22 that the costs of getting the stuff from a quarry
23 100 miles from New York compared to the costs of
24 doing the same exercise with a quarry 20 miles,
25 could be the same because the truck drivers could

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1 drive quicker; there are no toll fees to pay, et
2 cetera.

3 So, to me, I just wonder: Wouldn't it
4 have been more, how should I say, state of the art
5 to not insert anything here, because that [REDACTED] will
6 have an impact on the final cost?

7 Let me just ask the last question:
8 When you look at the last two quarries on land, the
9 last two white quarries which is [REDACTED]

10 [REDACTED], why did you not apply
11 the estimate there, there is nothing in there?

12 THE WITNESS: No, they're rail. They
13 would come in by rail, I believe. They are --

14 PRESIDING ARBITRATOR: They are in
15 the truck -- they are in the "Truck" bracket.

16 THE WITNESS: Under...?

17 PRESIDING ARBITRATOR: They are in
18 the [REDACTED] procession and suddenly there is nothing
19 there, so I wonder what was the reason for not
20 indicating a number here.

21 THE WITNESS: Well, because --

22 PRESIDING ARBITRATOR: It is not the
23 train.

24 THE WITNESS: No, if you look on the

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1 line where it says there are -- on the far left-hand
2 corner under map reference, you would see
3 "Location", "Operator", "County", "State", et
4 cetera.

5 You will see "T" equals truck, "R"
6 equals rail, "W" equals water. You will see that
7 under those two quarries in that row, it says "R"
8 meaning rail.

9 PRESIDING ARBITRATOR: So no trucks
10 are used to get the --

11 THE WITNESS: No trucks, it is all
12 rail. There would be a truck used to get it from
13 rail if the operator was not on rail.

14 PRESIDING ARBITRATOR: Okay.

15 THE WITNESS: So it signifies that it
16 was a rail market.

17 PRESIDING ARBITRATOR: Thank you,
18 sir.

19 THE WITNESS: Thank you.

20 PRESIDING ARBITRATOR: Any further...

21 Mr. Nash wants to -- and I expect for
22 Mr. Spelliscy to say, "And I agree", because then
23 you are...

24 MR. SPELLISCY: It is against my
25 nature to agree, but I won't object.

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1 PRESIDING ARBITRATOR: Thank you.
2 FURTHER CROSS-EXAMINATION BY MR. NASH:

3 MR. NASH: Just going back to a
4 question that you were asked on re-direct, if you
5 could go back to page 34 of tab 1 -- actually, I
6 apologize, this is a question arising from Professor
7 Schwartz's question to you.

8 At the very top there is a reference,
9 at the very top of page 34 there is a reference to:

10 "Capital expenditures should be
11 increased to include a one-time
12 10 per cent contingency at the
13 start of a capital spending." [As
14 read.]

15 A. Yes.

16 Q. So for example, if capital
17 spending was \$50 million you would budget for a
18 one-time 10 per cent contingency at the front end of
19 the project?

20 A. Yes, sir.

21 Q. Going back to Exhibit 0756, we
22 look at the variable cost, the cash cost, where are
23 the capital costs of building the quarry?

24 A. You would not have those in there
25 because that's a fixed cost. That would translate

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1 as a fixed cost because that would be amortization
2 of the fixed cost over a period of time, it would be
3 dependent upon the volume of the material.
4 The cash costs relate to the actual
5 cost to produce in that one piece of material.
6 Q. But the capital cost is part of
7 the cost of building and operating a quarry?
8 A. But in trying to -- I apologize
9 for interrupting you.
10 Q. So, if the capital cost of the
11 quarry is \$20 million, and the capital cost of
12 another quarry is \$100 million, there are -- that's
13 a cost, it's not a freight cost; is that correct?
14 A. It is.
15 Q. And as you said, that would be
16 depreciated over an appropriate time period;
17 correct?
18 A. Yes.
19 Q. And that would be then taking
20 into account as an expense related to depreciation
21 for the operation of the quarry over time?
22 A. Yes.
23 Q. And so the capital cost of each
24 of these quarries has not been included --
25 A. No.

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1 examination has come to an end and thanks for your
2 presence and have a safe trip to wherever.
3 THE WITNESS: Atlanta, Georgia.
4 PRESIDING ARBITRATOR: Hopefully not
5 by truck.
6 THE WITNESS: Thank you, gentlemen.
7 PRESIDING ARBITRATOR: Thank you. I
8 think now we are having our bigger coffee break and
9 I think we can be quite generous, so let's have a
10 coffee break until 11:50, 11:50 sharp.
11 --- Recess taken at 11:31 a.m.
12 --- Upon resuming at 11:52 a.m.
13 PRESIDING ARBITRATOR: If there is
14 nothing organizational to discuss, and that doesn't
15 seem to be the case, welcome, Mr. Chereb to the
16 witness stand.
17 Good morning, Mr. Chereb.
18 THE WITNESS: Good morning.
19 PRESIDING ARBITRATOR: Would you be
20 so kind and read the statement that is in front of
21 you.
22 THE WITNESS: Certainly.
23 I solemnly declare upon my honour and
24 conscience that I will speak the truth, the whole
25 truth and nothing but the truth.

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1 Q. -- for your purposes here; that's
2 correct?
3 A. Correct.
4 Q. Going back to page 33 which
5 counsel did take you to.
6 PRESIDING ARBITRATOR: 33.
7 MR. NASH: It is just a couple of
8 pages on in that binder.
9 MR. SPELLISCY: I am sorry, Mr. Nash,
10 you said, "that counsel took you to". Is this a
11 question arising out of the tribunal's questions?
12 MR. NASH: No, it is arising out of
13 counsel's.
14 MR. SPELLISCY: I think you already
15 said you didn't have any re-cross questions after we
16 sat down, so I would object to this.
17 MR. NASH: That's fine.
18 PRESIDING ARBITRATOR: That's
19 probably true, yes. So thank you.
20 Thank you, Mr. Nash.
21 MR. NASH: That's not a problem.
22 PRESIDING ARBITRATOR: I think we are
23 fine and thank you, Mr. Ward, you are relieved.
24 THE WITNESS: Thank you.
25 PRESIDING ARBITRATOR: Your

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1 PRESIDING ARBITRATOR: Thank you,
2 Mr. Chereb.
3 AFFIRMED: DR. DAVID CHEREB
4 PRESIDING ARBITRATOR: Ms. Zeman, you
5 have the floor.
6 MS. ZEMAN: Thank you.
7 EXAMINATION IN-CHIEF BY MS. ZEMAN:
8 MS. ZEMAN: Good morning, Dr. Chereb,
9 could you briefly describe your background and
10 experience for the tribunal.
11 A. I'm vice-president and chief
12 economist for SC Market Analytics. I am chief
13 economist because I have a background in economics,
14 PhD in economics.
15 Before that I worked for David Chereb
16 Group Inc. doing construction materials analysis;
17 before that with ARC America, a construction
18 products and aggregates company; before that, with
19 Getty Oil doing long-range planning; before that in
20 the Air Force doing space mission planning with the
21 Air Force, NASA and other people I won't mention.
22 Q. Are you one of the authors of the
23 SC Market Analytics reports?
24 A. Yes I am.
25 Q. Can you explain for the tribunal

1 which parts of those reports you contributed to.
 2 A. My main input is the demand
 3 dynamics. I had nothing to do with the supply side.
 4 I use that as an input to take a look at relative
 5 cost so I could figure out about impact to profit
 6 margins on price dynamics.
 7 So it is pretty much the overall
 8 economic and construction environment on the demand
 9 side.
 10 Q. Do you have any corrections to
 11 make to your reports?
 12 A. No, I don't.
 13 MS. ZEMAN: Thank you.
 14 PRESIDING ARBITRATOR: Thank you,
 15 Ms. Zeman.
 16 Mr. Nash.
 17 CROSS-EXAMINATION BY MR. NASH:
 18 MR. NASH: Mr. Chereb, do you go by
 19 "doctor" or "mister"?
 20 A. Whatever you want.
 21 Q. Your theory is that the
 22 introduction of the Whites Point aggregates into the
 23 New York City market -- actually, I'm going to stop
 24 for a minute while these binders can be distributed.
 25 So your theory is that the

1 introduction of the Whites Point stone will [REDACTED]
 2 [REDACTED]; that's
 3 [REDACTED]
 4 correct?
 5 A. Correct.
 6 Q. [REDACTED]?
 7 A. [REDACTED].
 8 Q. And so when you made that
 9 conclusion, were you aware that New York Sand &
 10 Stone [REDACTED]
 11 [REDACTED]
 12 A. Yes.
 13 Q. Were you aware that if New York
 14 Sand & Stone [REDACTED]
 15 [REDACTED]?
 16 [REDACTED]
 17 A. Probably.
 18 Q. You are not sure of that?
 19 A. Well, they could [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 Q. You've concluded that [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 A. Correct.
 2 Q. Do you remember saying that?
 3 A. Correct.
 4 Q. And that would be because on top
 5 of a [REDACTED]
 6 [REDACTED] that's
 7 correct?
 8 A. Sort of the reverse. It's the
 9 [REDACTED].
 10 Q. [REDACTED]?
 11 A. [REDACTED]. And let me
 12 [REDACTED]
 13 just say, this whole exercise really isn't about
 14 Bilcon. [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 Q. Let's just stick with my
 19 question.
 20 I understand your theory to be that
 21 when Whites Point starts to send stone to the New
 22 York harbour [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED] is that not your theory?

1 A. [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 Q. It is a very profitable market to
 8 be in; that's correct?
 9 A. Yes.
 10 Q. And you assume that other
 11 [REDACTED]
 12 [REDACTED], correct?
 13 [REDACTED]
 14 [REDACTED]
 15 A. Eventually.
 16 Q. [REDACTED]
 17 [REDACTED]
 18 A. Don't forget the [REDACTED].
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 Q. So fantastic and they can't?

1 A. [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED] hat's correct?
 12 A. That's correct now.
 13 What you're doing is saying is what
 14 is, [REDACTED].
 15 For instance, you say that's the
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED] isn't that correct?
 23 A. [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 A. Yes.
 13 Q. Yes.
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED] isn't
 19 that correct?
 20 A. Yeah, it's a great market.
 21 Q. It's a great market.
 22 And during that period when it was
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 A. Yes.
 6 Q. They did. They didn't [REDACTED]
 7 [REDACTED]
 8 [REDACTED] Isn't that
 9 correct?
 10 A. Yes. And [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 If it's a [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 Q. Right.
 24 A. But it doesn't mean --
 25 Q. Exactly right.

1 A. -- they don't know what the
 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] ; isn't that right?
 18 A. [REDACTED]
 19 [REDACTED]
 20 [REDACTED] . That's
 21 exactly right.
 22 A. [REDACTED] .
 23 Q. I'll bet it does.
 24 A. [REDACTED]
 25 [REDACTED]

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1 [REDACTED]
 2 Q. Right.
 3 A. A [REDACTED]
 4 [REDACTED]
 5 Q. Right.
 6 A. [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 Q. Right. That reflects
 11 Mr. Dooley's evidence. Were you here for that?
 12 A. But not necessarily a big quarry.
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED] Maybe in a few
 23 [REDACTED]
 24 years --
 25 Q. Isn't that all speculation? That

Page 2007

1 all speculation?
 2 When you look at the history of York
 3 Sand & Stone's [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 And so now you are speculating that
 10 in some imaginary world in the next decade that
 11 [REDACTED]
 12 [REDACTED] Is that not
 13 [REDACTED]
 14 pure speculation?
 15 A. Yes, and so is your entire
 16 50-year profit projection on a quarry that's never
 17 been built and never shipped anything to New York.
 18 Q. That's a different issue.
 19 A. No, that's pure speculation too.
 20 Q. On your theory, is it not pure
 21 speculation based on no historical evidence to that
 22 effect, this [REDACTED]
 23 [REDACTED]
 24 A. No, it's based on my experience
 25 in looking at market dynamics.

Page 2008

1 Q. Is it based on your experience in
 2 selling stone into the New York City market?
 3 A. New York City market is not that
 4 special.
 5 Q. Is the answer to my question
 6 "yes" or "no"?
 7 A. Say it again, please.
 8 Q. Is it based on your experience
 9 selling aggregate into the New York market?
 10 A. No, it's based on my general
 11 experience on how most of the markets work.
 12 Q. So you've never sold an ounce of
 13 stone or been involved in the sale of an ounce of
 14 stone into the New York market; that's correct?
 15 A. Correct, just like you.
 16 Q. Right, exactly, just like me.
 17 Quite unlike Mr. Dooley; correct?
 18 A. Yes.
 19 Q. Yes. And so your experience is,
 20 I'm going to suggest to you, based upon your resumé.
 21 If you could turn to tab 1, page 49 and go the next
 22 page over which is unnumbered after 49.
 23 A. Yes.
 24 Q. Now, this resumé is as complete
 25 as it has to be to describe your experience and

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1 qualifications with respect to any aspect of this
 2 matter in which you are involved in this; correct?
 3 A. Correct.
 4 Q. And you have -- I'm going to say
 5 it's one of the shortest resumé's I've seen.
 6 You say you presented a paper on
 7 "Does data mining improve business forecasting" at a
 8 symposium in Edinburgh in 1998; do you see that?
 9 A. Yes.
 10 Q. It is the only paper you've ever
 11 published.
 12 A. Well, I write a monthly column in
 13 a construction magazine.
 14 Q. A newsletter?
 15 A. Well, it's a monthly magazine,
 16 yeah.
 17 Q. You write a column. You don't
 18 mention that here.
 19 A. I guess not, no.
 20 Q. So you presented one paper on
 21 forecasting; is that right?
 22 A. No, I actually have several
 23 others. I didn't list them.
 24 Q. Oh, so what else have you left
 25 out of this resumé? I had understood that it was

1 complete, that it would tell us all about your
 2 qualifications and expertise for the purpose of your
 3 involvement in this proceeding?
 4 A. I'm not sure you are being
 5 serious when you ask that. Are you?
 6 Q. Do you have another resumé?
 7 A. I'm fairly old and I've done a
 8 lot of things, so this is the relevant part.
 9 Q. And so on the second bullet -- on
 10 the first bullet you have 30 years' experience
 11 forecasting North American construction materials;
 12 do you see that?
 13 A. Yes.
 14 Q. And you've got in the second
 15 bullet, you've provided a specialized economic and
 16 market forecasting services to the cement, concrete
 17 and aggregates?
 18 A. Yes.
 19 Q. So you are a forecaster?
 20 A. Yes.
 21 Q. And your forecasting is based
 22 upon your personal experience?
 23 A. Could you explain "personal
 24 experience"?
 25 Q. Well, you answered one of my

1 questions earlier saying your analysis was based on
 2 your experience?
 3 A. Yes.
 4 Q. And so your forecasting is based
 5 on your experience?
 6 A. Well, algorithms, experience,
 7 yes.
 8 Q. Algorithms?
 9 A. Yes.
 10 Q. Right. So your forecasting
 11 doesn't include going out and actually visiting
 12 quarries, understanding markets, it's algorithms; is
 13 that right?
 14 A. It's understanding markets, yes.
 15 Q. Did you go out and visit any of
 16 the many quarries that are commented on in your
 17 report?
 18 A. No, that wouldn't be appropriate.
 19 Q. It wouldn't be appropriate to
 20 actually see a quarry in operation to understand its
 21 cost, to understand its operations, to understand
 22 its delivery systems, to understand all of those
 23 things to come to your conclusions?
 24 A. No, because I'm dealing with the
 25 demand side.

1 Q. Did anyone on your team for this
 2 report go out to any number quarries in the
 3 [REDACTED] ?
 4 [REDACTED]
 5 A. Not that I'm aware of.
 6 Q. Didn't you think it was important
 7 for someone on your team to go out and see these
 8 quarries and see whether they would amount to actual
 9 or potential competitors at Whites Point?
 10 A. If it were 40 years ago, yes.
 11 But now somebody with Jim Ward and Colin
 12 Sutherland's experience and the electronic tools we
 13 have, they can get a pretty good bird's eye view
 14 from each of the quarries.
 15 Q. They can get a bird's eye view
 16 from how the crow flies; isn't that right?
 17 A. Correct.
 18 Q. From a quarry, how a crow flies
 19 from a quarry in New Jersey or New York to some part
 20 of downtown New York; that is correct?
 21 A. Yes.
 22 Q. What they didn't get from that
 23 analysis is an actual reliable, verifiable
 24 calculation of costs; would you agree with that?
 25 A. They do not have the internal

1 financial documents for these quarries.
 2 Q. They don't have any internal
 3 financial documents; is that correct?
 4 A. As far as I know.
 5 Q. [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED] that's correct?
 11 A. As far as I know.
 12 Q. You've heard that discussion this
 13 morning. You've been in the room for the discussion
 14 this morning about shipping?
 15 A. Yes.
 16 Q. And you've heard the discussion
 17 about how the cost of shipping [REDACTED]
 18 [REDACTED]; did you hear that?
 19 A. Yes.
 20 Q. And did you hear that the cost of
 21 [REDACTED]
 22 [REDACTED]
 23 A. I think I heard two different
 24 figures, but okay, yes.
 25 Q. [REDACTED] ?
 A. Yes.

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1 Q. And did you hear the discussion
2 this morning about [REDACTED] ?
3 A. Yes.
4 Q. And you heard the discussion
5 about [REDACTED] ?
6 A. Yes.
7 Q. And you saw the differences in
8 distance?
9 A. Yes.
10 Q. Didn't you take any step to
11 verify whether any of those shipping costs had any
12 reasonable basis whatsoever?
13 A. I'm not an expert in shipping and
14 I have no opinion about shipping costs.
15 Q. So you relied completely on what
16 Mike Power told Mr. Sutherland with respect to the
17 calculation of shipping costs; that's correct?
18 A. I relied on Colin Sutherland's
19 input and Jim's input, yes.
20 Q. Mike Power?
21 A. And Mike. I did not deal with
22 Mike Power very much.
23 Q. Did you know that he was even
24 being engaged for advice?
25 A. Yes.

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1 Q. And is that why his quite
2 extensive CV was put into the report, to add
3 substantiation for the quality of the report?
4 A. Well, he's knowledgeable.
5 Q. He's knowledgeable. He's
6 knowledgeable about shipping rates. He dealt with
7 them for years. He was being charged [REDACTED].
8 [REDACTED].
9 Anybody to your knowledge ask him, [REDACTED].
10 [REDACTED].
11 [REDACTED].
12 [REDACTED].
13 Do you know that?
14 A. As I said before, I had no input
15 on supply side and I have no opinion about the
16 supply side. I took it from the people on the team
17 and I accepted it as an input.
18 Q. So you relied on Mr. Sutherland;
19 that's correct.
20 A. Correct.
21 Q. And he relied on Mr. Powers;
22 that's correct?
23 A. Partly.
24 Q. And he also -- anybody else?
25 A. No, you said "rely". I mean, he

Page 2016

1 relied on him. He relied on his own experience and
2 judgment.
3 Q. His own experience shipping stone
4 [REDACTED] ?
5 A. I don't mean that. His
6 experience in the aggregates and construction
7 markets.
8 Q. Is he a shipping expert,
9 Mr. Sutherland?
10 A. No.
11 Q. I don't see anything about
12 shipping in his resumé.
13 A. Once again, I have no opinion
14 about the supply side in shipping.
15 Q. Well, you are signing onto a
16 report as a co-signatory?
17 A. Correct.
18 Q. We were told by Canada that you
19 could speak to all aspects of the report.
20 MR. SPELLISCY: Sorry, that's
21 actually -- well, to be clear, it does say that.
22 But you have Mr. Sutherland here. It seems very odd
23 to me to be cross-examining Mr. Chereb on
24 Mr. Sutherland's experience since you had the
25 opportunity to call Mr. Sutherland.

Page 2017

1 The exact language was:
2 "Mr. Sutherland co-authored and
3 developed the opinions and
4 conclusions contained in all
5 areas of the two SCMA reports".
6 [As read.]
7 And the exact language from
8 Mr. Chereb is:
9 "Dr. Chereb co-authored both
10 reports and developed the
11 opinions and conclusions
12 contained in the two SCMA expert
13 reports particularly with respect
14 to the market and pricing
15 analysis in both reports." [As
16 read.]
17 MR. NASH: So, Mr. Chereb, the letter
18 states -- I'll ask the tribunal and the witness to
19 turn to tab 3, paragraph 2:
20 "As conveyed in the parties'
21 correspondence described above,
22 Mr. Sutherland and Mr. Chereb as
23 co-signatories to the report and
24 co-owners of SCMA are able to
25 speak to all aspect of the

1 report." [As read]
 2 Now, what I think you are telling me
 3 now is that you can't speak to the shipping.
 4 MR. SPELLISCY: No, I object to that
 5 question. This is a letter saying Mr. Colin "and",
 6 conjunction, not "or", are able to speak to both
 7 aspects of the report and then it says "in
 8 particular". And if you go down, you will see
 9 exactly what we informed the claimants months ago
 10 was their roles.
 11 MR. NASH: We'll move on.
 12 So, Mr. Chereb, did you have any
 13 knowledge of what was done to support the trucking
 14 figures?
 15 A. No.
 16 Q. Did you have any knowledge of
 17 what was done to support the operating cost figures?
 18 A. No.
 19 Q. Do you have any knowledge of why
 20 the capital cost for the various quarries were left
 21 out of the analysis?
 22 A. No.
 23 Q. Did you incorporate all of the
 24 material, then, that Mr. Sutherland gave you and
 25 Mr. Ward gave you and what Mr. Power gave to

1 Mr. Sutherland regarding shipping in particular,
 2 into the report?
 3 A. Yes. My focus was: [redacted]
 4 [redacted]
 5 [redacted] That is key.
 6 Q. Sure.
 7 A. Because it says there is a lot of
 8 [redacted]
 9 [redacted]
 10 [redacted]
 11 [redacted]
 12 [redacted]
 13 [redacted]
 14 [redacted]
 15 [redacted]
 16 [redacted]
 17 [redacted]
 18 A. Absolutely.
 19 Q. And every day, that [redacted]
 20 [redacted]
 21 [redacted]
 22 [redacted]
 23 that's correct?
 24 A. Correct.
 25 Q. [redacted]

1 [redacted]
 2 [redacted] the very date of your analysis, into
 3 a [redacted].
 4 [redacted]
 5 [redacted]
 6 [redacted]
 7 [redacted]
 8 [redacted]
 9 [redacted]
 10 [redacted] out of this market.
 11 There is no basis on the history --
 12 I'm going to suggest to you -- no evidence on the
 13 record, nothing that will support the theory that
 14 that [redacted]
 15 [redacted]; you would agree with
 16 that?
 17 A. No, because you've
 18 mischaracterized it. There is a difference between
 19 [redacted]
 20 [redacted]
 21 [redacted]
 22 [redacted]
 23 [redacted]
 24 [redacted]
 25 [redacted]

1 [redacted]
 2 [redacted]
 3 Q. "Maybe", "perhaps", "in another
 4 world", in an imaginary fantasy world, maybe they
 5 would. But there is no evidence to support the fact
 6 that they will; correct?
 7 A. The quarry hasn't been built. We
 8 don't know what would happen.
 9 Q. [redacted].
 10 A. Yes.
 11 Q. [redacted]
 12 [redacted]
 13 A. Yes. As your experts have said,
 14 you thought [redacted]
 15 [redacted]
 16 [redacted].
 17 Q. They were [redacted]
 18 [redacted]. Were you aware
 19 of that?
 20 A. No.
 21 Q. Were you aware that by the time
 22 the end of [redacted] ?
 23 A. Well --

1 Q. Were you aware of that?
 2 A. I've heard that while I've been
 3 in the room.
 4 Q. Were you aware that after [REDACTED]
 [REDACTED]
 8 A. Correct.
 9 Q. Were you aware that from [REDACTED]
 [REDACTED]
 12 A. Yes.
 13 Q. Were you aware that the last
 14 [REDACTED]
 16 A. Roughly.
 17 Q. Roughly. So you were aware then
 18 that there's no [REDACTED]
 [REDACTED] you'd agree with that?
 21 A. You're making it sound as if
 22 that's forever. Why would it be forever? They
 23 could get --
 24 Q. [REDACTED].
 25 A. [REDACTED].

1 [REDACTED]
 [REDACTED]
 9 A. Right.
 10 Q. [REDACTED]
 [REDACTED]
 12 A. [REDACTED]
 [REDACTED]
 19 In other words, [REDACTED]
 [REDACTED]
 23 A. No, that's a --
 24 Q. That's a nothing?
 25 A. That's a nothing.

1 Q. That doesn't worry you?
 2 A. They've sold it. There has never
 3 been a -- what do you call it -- [REDACTED]
 [REDACTED]
 5 [REDACTED]
 [REDACTED] that's relevant.
 10 Q. Where have you seen anywhere in
 11 this record [REDACTED]
 [REDACTED] You haven't.
 13 A. You haven't.
 14 Q. It's a fantasy.
 15 A. No, no.
 16 Q. You're making it up.
 17 A. Are you kidding?
 18 [REDACTED]
 [REDACTED]
 24 Q. Do you know anything about
 25 regulatory requirements in Canada?

1 A. No.
 2 Q. Do you know anything about
 3 environmental assessment in Canada?
 4 A. No.
 5 Q. You used the EIS from 2006 as
 6 the -- one of the documents to consider in the
 7 analysis for this report; that's correct?
 8 A. Others did, yes.
 9 Q. Others did. And you oversaw?
 10 A. I saw what was happening, yes.
 11 Q. And the basis for that idea was
 12 that this early conceptual stage, environmental
 13 assessment oriented document somehow had figures in
 14 it which amounted to a business plan; isn't that the
 15 theory you understand?
 16 A. Yes.
 17 Q. And that there was another
 18 "business plan" back in 2004 that showed some other
 19 [REDACTED] You understand that that was used for the
 20 purpose of calculating the loss from Canada's
 21 standpoint?
 22 A. I understand that was an input.
 23 Q. Right. And the idea was that
 24 they were the only two contemporaneous documents at
 25 the time. Is that your understanding of why those

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1 two documents were used?
2 A. Yes.
3 Q. And is your understanding that
4 those two documents were used as the sole foundation
5 for the numbers analysis into which your report
6 feeds?
7 MR. SPELLISCY: I'm sorry, if
8 Mr. Nash is asking one of the experts for an overall
9 conclusion on the meaning and the work of Canada's
10 other experts, not his own inputs, that's an
11 inappropriate question.
12 MR. NASH: Do you have any input
13 at all into the calculated cost for the Whites Point
14 Quarry in delivering a ton of aggregate from Whites
15 Point to New York City, including the cost of
16 producing the product?
17 A. No.
18 Q. Did you take any steps to verify?
19 A. But I thought -- I thought based
20 on what your documents were, you were delivering to
21 New Jersey.
22 Q. Well, there is a component going
23 to New Jersey, you are quite right. Did you take
24 that into account?
25 A. Well, I thought the whole thing

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1 was for internal use at Clayton. That's the reason
2 you put it -- I think in the EIS you said you were
3 going to use it internally to get a secure supply
4 for New Jersey.
5 Q. Did you see the EIS? Did you
6 read it yourself?
7 A. I heard this in testimony.
8 Q. Right. So you heard that that
9 was the intent, to send it all into New Jersey?
10 A. Yes.
11 Q. Right. So you didn't read the
12 EIS?
13 A. No.
14 Q. You didn't see the references to
15 New York City?
16 A. No.
17 Q. Did you hear John Lizak's
18 testimony yesterday about getting aggregate [REDACTED]
19 [REDACTED]
20 A. Yes.
21 Q. And you've been assuming all
22 along that it was going into New Jersey?
23 A. No. You stated that in the
24 beginning in your documents early on, it's now New
25 York. I don't blame you. You wouldn't make money

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1 going into New Jersey, so you ship into New York
2 where profit margins are very good.
3 Q. So you've based that on the EIS;
4 is that correct?
5 A. No, I based it on what I've heard
6 in this courtroom.
7 Q. I see. So is it your
8 understanding today that the only plan for the
9 Claytons was to go into New Jersey?
10 A. Of course not.
11 Q. You thought they were going --
12 A. This whole thing has been about
13 New York. My analysis is about New York because we
14 were instructed New York.
15 Q. But my original question --
16 A. The plan switched.
17 Q. My original question was: Did you
18 have any input into -- did you supervise? Did you
19 coordinate the inputs of the cost of taking a ton of
20 aggregate from Whites Point to New York City or
21 New Jersey?
22 A. Let me see... for about the
23 fourth time, no, I've had no input on the supply
24 side.
25 Q. Can you go to page 11, please?

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1 A. Is this... which tab?
2 Q. First tab. Did you prepare that
3 chart?
4 A. No.
5 Q. Did you --
6 A. I had nothing to do with it.
7 Q. Did you verify any of the
8 information contained in that chart?
9 A. No.
10 Q. You relied upon Mr. Sutherland?
11 A. Correct.
12 Q. Did you have any information or
13 any input into the chart which is Exhibit -- first
14 page of Exhibit R-0756?
15 A. No.
16 Q. So your entire role, as I
17 understand it, was as a forecaster; is that right?
18 A. Forecaster and analyzer.
19 Q. And from your resumé you've
20 spoken at no conferences about aggregate production;
21 correct? You spoke of one conference in Edinburgh
22 in 1998; that wasn't about aggregate, correct?
23 A. Correct.
24 Q. You've spoken at no conferences
25 about aggregate production; correct?

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1 A. Spoken at conferences --
2 Q. Yes.
3 A. -- no, I've spoken about cement.
4 Q. Have you spoken -- well, I don't
5 see that in your CV.
6 A. That's not a daily log of my
7 life.
8 Q. Well, there could be a more
9 expansive description of what your life has been. I
10 think you told me that everything relevant to this
11 case, to explain your expertise and qualifications
12 was contained in your CV.
13 Didn't you tell me that about 15
14 minutes ago?
15 A. The relevant material is there.
16 Q. So it doesn't say that you spoke
17 at any aggregates production conference or any
18 aggregates conference at all?
19 A. No, I haven't.
20 Q. And you haven't spoken to any
21 conference about aggregates markets; correct?
22 A. Correct.
23 Q. And for the purpose of signing
24 this report, you relied on the information and
25 analysis provided by Mr. Sutherland, Mr. Ward and

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1 Mr. Power; that's correct?
2 A. Correct.
3 Q. And you relied upon that
4 information for the development of your analysis and
5 your conclusions; that's correct?
6 A. Correct.
7 Q. And you relied on the information
8 gathered to assess the rough dynamics of the market;
9 correct?
10 A. Correct.
11 Q. And in footnote 28, at the bottom
12 of that page, you see that it says:
13 "The estimated delivered cost to
14 customers includes trucking
15 delivery costs on a per ton basis
16 to final customers which are
17 assumed to be located in a
18 Brooklyn Bronx area." [As read.]
19 Did you hear the area this morning
20 from Mr. Ward that, in fact, the pinpoint that he
21 chose, I think on Google maps, was in Manhattan?
22 A. Yes.
23 Q. You would understand that it's
24 different delivering stone in a truck to Manhattan
25 than it is delivering stone by truck to Brooklyn?

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1 A. Yes, I don't know if it's minor,
2 like, 2 or 3 cents or 12 cents; I don't know.
3 Q. You have no idea?
4 A. Correct.
5 Q. You have no idea if it's
6 different delivering a ton of stone by truck to
7 Manhattan or the Bronx; correct?
8 A. Correct.
9 Q. Using the "estimated delivery
10 cost to customer," now is that estimated delivery
11 cost to customers based upon information provided to
12 Mr. Ward and Mr. Power, to your knowledge?
13 A. To my knowledge, yes.
14 Q. (Reading):
15 "It allows us to compare the
16 relative cost of quarries that
17 use different modes of
18 transportation e.g. water, truck
19 and rail. The cost curve also
20 directly compares the estimated
21 cost to produce the coarse
22 aggregate products that Whites
23 Point planned to sell." [As read.]
24 And then here comes the words, and I
25 want to ask you after I read them out whether

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1 they're -- in fact, why don't you read them out:
2 "The calculations in this
3 figure..."
4 Can you read that sentence for us,
5 please?
6 A. (Reading):
7 "The calculations in this figure
8 are estimates and are intended to
9 provide graphical representation
10 of the rough dynamics of the
11 market, rather than represent
12 exact calculations of cost of
13 each quarry." [As read.]
14 MR. NASH: Were you aware of how
15 rough the rough dynamics of the market were?
16 A. I accepted their input.
17 Q. You accepted all of their input
18 and you based your entire analysis on their input;
19 is that correct?
20 A. Correct.
21 Q. And you incorporated all of the
22 facts and assumptions which were provided by
23 Mr. Sutherland, Mr. Ward and Mr. Power for the
24 purpose of your economic modelling analysis;
25 correct?

1 A. Correct.
 2 Q. Including whether the facts were
 3 erroneous or reliable; correct?
 4 A. I trust them, just like they
 5 trust me to look at my side.
 6 Q. So, your acceptance of those
 7 facts and assumptions was based on personal trust,
 8 not on any verification on your part; correct?
 9 A. Correct.
 10 Q. Did you ask any questions of any
 11 of them about any of the specifics about how these
 12 rough dynamics were calculated?
 13 A. Well, we had discussions about
 14 this so I could understand it and look at it, or
 15 planning sessions and analysis, we discussed it.
 16 Q. But as I understand your
 17 evidence, you didn't ask them "are they reliable?"
 18 Not them personally, but the facts that they were
 19 putting in the report?
 20 A. When you trust somebody, you
 21 don't ask a question like that.
 22 Q. Your theory is that the
 23 [REDACTED]
 [REDACTED] correct?

1 A. Well, I think that one addition
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 Q. Is that your assumption for the
 8 purpose of your analysis, [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 A. [REDACTED]
 12 [REDACTED]
 13 Q. That's your theory?
 14 A. Yes.
 15 Q. Have you heard Mr. Power's
 16 evidence this morning and Mr. Dooley's evidence a
 17 few days ago?
 18 A. Well, they said some years it got
 19 as high as [REDACTED]
 20 Q. [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 Mr. Power this morning said that the
 24 [REDACTED]. Do you

1 remember that?
 2 A. Yes.
 3 Q. And so am I correct to say that
 4 your theory is that approximately [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 A. No.
 8 MR. SPELLISCY: I don't want to
 9 interrupt. Our LiveNote is frozen on this side.
 10 --- Reporter's Note: Technical issues resolved.
 11 PRESIDING ARBITRATOR: Mr. Nash, we
 12 can continue.
 13 MR. NASH: Thank you. Could you
 14 please turn to paragraph 19 of tab 1?
 15 A. It starts off "The EIS stated"?
 16 Q. I said paragraph 19. I'm sorry.
 17 Page 19.
 18 A. Oh. Yes.
 19 Q. Figure 7a on that page: "NYC
 20 Aggregates - Supplier Cost Curve Delivered to
 21 Customers"; do you see that?
 22 A. Yes, I do.
 23 Q. And which customers is that
 24 referring to?
 25 A. I'm not sure.

1 Q. So you don't know if that is the
 2 customer that ultimately purchases from the
 3 purchaser?
 4 A. No, I don't.
 5 Q. And if you look at that chart,
 6 did you have any input into the creation of that
 7 chart?
 8 A. No, I did not.
 9 Q. You relied upon the chart for
 10 your forecasting; correct?
 11 A. Correct.
 12 Q. And if you go over to the next
 13 page of the chart, New York City, figure 7b, "New
 14 York City Water Borne Suppliers Only CIF Cost Curve"
 15 and it then says "Draft"?
 16 A. Yes.
 17 Q. Is it a draft report?
 18 A. That's what that says.
 19 Q. Well, you signed it. Was it a
 20 draft when you signed it?
 21 A. Yes, I did sign it.
 22 Q. Was it a draft when you signed
 23 it?
 24 A. Well, it hasn't changed so yes,
 25 that word was there when I signed it.

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1 Q. Okay. And the figures -- the
2 chart there shows CIF cost Brooklyn Navy Yard for
3 coarse aggregate; did you have any input into that
4 chart?
5 A. No.
6 Q. Did you rely on it? Sorry, did
7 you say "no"?
8 A. I didn't get the question.
9 Q. Oh, I'm sorry. Did you rely on
10 that chart for your analysis?
11 A. Yes.
12 Q. Okay. If you could go to page
13 11, please?
14 A. Page 11.
15 Q. Page 11, figure 2.
16 A. Yes.
17 Q. Did you have any input into that
18 chart.
19 A. No.
20 Q. Did you rely on it?
21 A. Yes.
22 Q. Could you go to page 22, please?
23 A. Yes.
24 Q. Figure 8a?
25 A. Yes.

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1 "... our forecast correctly
2 anticipated declining market
3 demand for the 2006-2008 period
4 when Bilcon was anticipating
5 building volume [REDACTED]
6 through a potential new aggregate
7 source in Nova Scotia."
8 Now that's for the entire
9 New York State, isn't it?
10 A. This chart is, yes.
11 Q. So New York State is being used
12 as a proxy for New York City?
13 A. It's been used to understand what
14 was happening in the market.
15 Q. In the market generally?
16 A. In the New York State market and
17 New York City is about 60 per cent of
18 New York State.
19 Q. But New York City is in a
20 different position geographically than the rest of
21 New York State; isn't that correct?
22 A. It is part of New York State.
23 Q. It is part of New York State, but
24 it is very difficult to get access to. There are
25 tolls; there are weight restriction on trucks; there

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1 Q. Did you have any input into that
2 chart?
3 A. I created it.
4 Q. You created that chart.
5 So that chart goes to 2008; do you
6 see that?
7 A. Yes, I do.
8 Q. And there's a note there with the
9 blue dotted line "6-Aug"; what does that mean?
10 A. Oh, that was done in August of
11 2006.
12 Q. That chart was created in 2006?
13 A. 2006.
14 Q. Was that chart created for the
15 purpose of this report?
16 A. The analysis was done in
17 August 2006 and the chart, you know, we pulled it
18 out, it was done long before this whole thing
19 started. I just created it from numbers from a
20 prior forecast.
21 Q. So, that's a forecast of yours in
22 2006 for the years 2006, 2007, 2008?
23 A. Correct.
24 Q. And it states above, 'As can be
25 seen", and I'm four lines down paragraph 66:

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1 are a whole lot of things that make it more
2 difficult to get into New York City than it does in
3 other parts of the State and I'm going to suggest to
4 you that one of them, those difficulties, are what
5 makes New York City such a lucrative market for
6 aggregate. You would agree with that?
7 A. Yes. Do you understand the
8 purpose of this chart?
9 Q. Well, I think the purpose of this
10 chart is to show that, as you see in the sentence
11 above:
12 "As can be seen, our forecast
13 correctly anticipated declining
14 market demand for the 2006-2008
15 period..."
16 A. That was pretty darn good.
17 Q. Yes.
18 A. Because things were awfully good
19 in 2006 when we were doing it.
20 Q. Right.
21 A. And Dodge and New York
22 Construction Board, they weren't forecasting this.
23 Q. Right. They weren't forecasting
24 the declining market demand?
25 A. Correct.

1 Q. But you've said you're aware that
 2 the [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 A. Yes.
 6 Q. So when the market [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 A. They were just at the end.
 10 New York State -- I mean, sorry, New York City did
 11 better than a State overall, did better than the US
 12 overall, absolutely. It was --
 13 Q. You're forecasting --
 14 A. It was reasonably insulated.
 15 Q. You are forecasting a decline in
 16 the New York market and using that as a basis, as a
 17 forecasting basis to suggest that there would be a
 18 decline for New York Sand & Stone. That's correct,
 19 isn't it?
 20 A. In the -- a decline in the cement
 21 for New York City.
 22 Q. In cement for New York City?
 23 A. Right. That's what this is,
 24 cement.
 25 Q. And you concluded from that that

1 there was a part of the analysis to see, in terms of
 2 forecasting, where aggregate would go and demand for
 3 that because cement is sort of a general proxy for
 4 aggregate; correct?
 5 A. They are highly correlated.
 6 Q. They are correlated. They are
 7 used in the same product. They make concrete and so
 8 on, so there is a relationship between cement and
 9 aggregate; correct?
 10 A. Yes.
 11 Q. And you are forecasting a decline
 12 in the cement market in New York State, and your
 13 analysis is then used to suggest that there's a
 14 decline -- there's going to be declining demand for
 15 aggregates from New York Sand & Stone; that's
 16 correct?
 17 A. You mean in this period of time?
 18 Like 2008, 2010?
 19 Q. 2006, 2008, just your years?
 20 A. [REDACTED]. This
 21 [REDACTED]. This
 22 is trying to say the market got weak. The market
 23 got weak. It got weaker. [REDACTED]
 24 [REDACTED]
 25 Q. [REDACTED]

1 [REDACTED]
 2 A. Well, there was a bit of a
 3 delay --
 4 (Simultaneous speakers - unclear)
 5 A. So they were here and it took
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 A. There was a lag, sure.
 10 Q. Okay. So did you hear the
 11 evidence about that from Mr. Dooley?
 12 A. I believe so.
 13 Q. And you ignored that evidence for
 14 your purposes; correct?
 15 A. You mean -- I did this a long
 16 time ago.
 17 Q. Yes, but you just said --
 18 A. This is an independent analysis.
 19 Q. [REDACTED]
 20 [REDACTED]
 21 A. Yes.
 22 Q. And so Mr. Dooley had an
 23 explanation for that; did you hear that explanation?
 24 A. Yes, I did.
 25 Q. And did you accept the

1 explanation?
 2 A. No, I'm not satisfied with it.
 3 Q. All right.
 4 A. I looked at his chart and it went
 5 [REDACTED]
 6 [REDACTED] No, I don't accept that.
 7 [REDACTED]
 8 Q. There was dancing so you don't
 9 accept that?
 10 A. That's the way I describe it.
 11 Q. That's the way you saw it. Okay.
 12 Go to page 23 then, that chart at the top of the
 13 page.
 14 A. Yes.
 15 Q. "Cement forecast from
 16 August 2006".
 17 A. Yes.
 18 Q. And the cement, again, in those
 19 years, the forecast is that cement [REDACTED]
 20 [REDACTED]
 21 [REDACTED] do you recall that?
 22 A. Yes.
 23 Q. So that's conflicting with your
 24 forecast; would you agree in that period?
 25

1 A. Yes, yes.
2 Q. And then at the bottom, paragraph
3 68:
4 "Following a similar trend,
5 figure 9 shows that construction
6 contracts were also declining
7 from 2008 to 2011..."
8 Do you see that?
9 A. Yes. And I want to add one thing
10 about the New York Sand & Stone. That's a
11 particular seller. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 Q. Yes.
15 A. They have varied greatly from
16 year to year so that's not -- that's not the market.
17 That's an individual company.
18 Q. Your point here in paragraph 68:
19 "Following a similar trend,
20 figure 9 shows that construction
21 contracts were also declining
22 from 2008 to 2011..."
23 A. Yes.
24 Q. Now, if we look at the
25 [REDACTED], that's the red line;

1 correct?
2 A. Correct.
3 Q. In New York City; correct?
4 A. Correct.
5 Q. In the boroughs of New York.
6 And it shows that [REDACTED].
7 [REDACTED].
8 And you see it's fairly stable.
9 A. They are indexed to 100 in 2007.
10 Q. Right. And then there is a
11 slight decline in 2011; do you see that?
12 A. Yes.
13 Q. And then it starts rocketing
14 up --
15 A. Yes.
16 Q. -- to just under 190, almost
17 double?
18 A. In a great recovery.
19 Q. In a great recovery.
20 It's not what you would call a
21 declining market, is it?
22 A. Excuse me, I said declining from
23 2008 to 2011 and it declined about 10 per cent.
24 Q. About 10 per cent in the middle
25 of what everybody knows was the worst recession

1 known since 1929, it declined about 10 per cent,
2 went up in 2012 by perhaps another 10 per cent and
3 then it rocketed up from 2012 to 2017; that's what
4 that chart shows, right?
5 A. When was the peak? 2015.
6 Q. Well, I'm --
7 A. It's declining.
8 Q. You say it's still declining?
9 A. No, no, no. We all see the
10 curve.
11 Q. Yes.
12 A. And we both agree, it was a great
13 recovery.
14 Q. It's almost twice in 2017 than it
15 was back in 2011.
16 A. It's a great recovery.
17 Q. And cement and aggregate are
18 correlated; right?
19 A. Yes.
20 Q. You have increased demand from
21 [REDACTED], you would expect
22 you'd get increased demand for --
23 A. Yes, it has gone up.
24 Q. [REDACTED]
25 [REDACTED]

1 A. Yes.
2 Q. Could you turn, please, to tab 2,
3 in your rejoinder report, at page 9, paragraph 16.
4 Sorry. If you go to the bottom of paragraph 16.
5 You say:
6 "As such, while we cannot be a
7 hundred per cent certain, we are
8 highly confident that our cost
9 estimates are within pennies per
10 ton of what they were in 2007."
11 [As read.]
12 A. Yes, I see that.
13 Q. Did you write those words?
14 A. No.
15 Q. Did Mr. Sutherland write them?
16 A. Correct.
17 Q. Did you endorse them?
18 A. I didn't question them.
19 MR. NASH: Thank you, Mr. Chereb,
20 those are my questions.
21 PRESIDING ARBITRATOR: Thank you,
22 Mr. Nash.
23 MR. SPELLISCY: We will request just
24 a minute here to organize our thoughts to see if we
25 have any re-direct.

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 In other words, they are going to
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 PROFESSOR SCHWARTZ: But to be more
 15 precise, when you say [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 THE WITNESS: Yeah, you're absolutely
 19 right. It's, you know, it has to be enough to be
 20 significant, to send a [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 PROFESSOR SCHWARTZ: Okay. And
 25 elsewhere in your report, I think it's paragraph 16

1 you suggest that this [REDACTED]
 2 [REDACTED]
 3 Does your report assume that that
 4 [REDACTED]
 5 [REDACTED]
 6 how does it work?
 7 THE WITNESS: Well, we assume it's
 8 going to [REDACTED]
 9 [REDACTED]
 10 It doesn't have to if they -- we
 11 assume that [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 PROFESSOR SCHWARTZ: Your estimates
 25 seem to involve different components; some of them

1 are macro, like, what's the whole State of the New
 2 York economy, and the growth of the American
 3 economy, population growth, declining
 4 infrastructure, kind of stuff like that. It is big
 5 picture stuff that doesn't depend on actions of
 6 particular market players.
 7 Part of the estimate here seems to be
 8 based on something that depends more on professional
 9 judgment on your part rather than algorithms; right?
 10 You are trying to figure out [REDACTED]
 11 [REDACTED]
 12 THE WITNESS: You are absolutely
 13 correct. Because you are not going to get an
 14 algorithm [REDACTED]
 15 [REDACTED].
 16 First, it is absolutely true, I heard
 17 before, they [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 PROFESSOR SCHWARTZ: Okay. Now, your
 3 report suggests that you compared some [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 And you mentioned in your report you started doing
 7 [REDACTED]
 8 [REDACTED]
 9 Looking back, how have your
 10 longer-term forecasts borne out? You've given us an
 11 example of a short-term forecasts a couple of years,
 12 that bore out.
 13 THE WITNESS: Yeah.
 14 PROFESSOR SCHWARTZ: Do you have
 15 enough experience now doing medium-term, long-term
 16 forecasts to have a sense of how reliable estimates
 17 are?
 18 A. Yes. At the National and
 19 State level -- I'm going to start, like, from
 20 one-year and go out. From about one-year out, they
 21 are plus-minus 5 per cent. That is a very typical
 22 number for us.
 23 As you go out, as you might imagine,
 24 you go out 5 or 10 years, deviation gets a little
 25 larger and I would say it's within 8 or 10 per cent

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1 at the State and National level.
2 If you get down to individual
3 counties, you get more variation.
4 PROFESSOR SCHWARTZ: And longer-term
5 forecasts than that, do you do those? Do you have
6 any experience with that?
7 THE WITNESS: I've done 25-year
8 forecasts, but that is kind of uncommon.
9 In today's world, with spreadsheets,
10 you can go out 50 years. You can go out 50 years.
11 And that's what I call kind of false precision. We
12 can put decimal places to them, but typically it is
13 a 5 or 10-year forecast.
14 PROFESSOR SCHWARTZ: And again, I
15 mentioned it with a previous witness, I don't have a
16 mathematical intuition here.
17 This is a situation where the
18 predictions get less reliable over a long course of
19 time. I can imagine certain circumstances where you
20 say short-term predictions are actually less
21 reliable because there is noise, but we can get
22 long-term projections that are fairly reliable. Is
23 it your sense that as you go out more and more, the
24 predictions get less and less; you have less and
25 less confidence in a projection?

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1 THE WITNESS: Yes.
2 PROFESSOR SCHWARTZ: So I just wanted
3 to, I think perhaps you were speaking colourfully.
4 When you said your estimates were pure speculation,
5 were there certain -- you were asked as well, this
6 other estimate is you are speculating and you said
7 yes, but the other side is speculating.
8 I think you used the phrase "pure
9 speculation" maybe.
10 THE WITNESS: Well, we have two
11 stacks of papers; our papers and their papers. And
12 we put our best experience and knowledge into it and
13 try to come up with -- you know, my report would
14 look the same whether I was hired by Bilcon or
15 Canada. It's just my opinion.
16 PROFESSOR SCHWARTZ: So I'm
17 understanding, by pure speculation, you didn't mean
18 to say that -- obviously you are sending statements
19 of account when you do this; you don't send it and
20 then say yeah, but this is all pure speculation.
21 You're saying this is your best professional
22 judgment?
23 THE WITNESS: Yes.
24 PROFESSOR SCHWARTZ: Okay, thank you
25 very much.

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1 PRESIDING ARBITRATOR: Any further
2 questions from parties? Okay. Thank you. So that
3 brings an end to your witness examination. Thank
4 you very much.
5 THE WITNESS: Thank you.
6 PRESIDING ARBITRATOR: Then my
7 question would be, before we break and see each
8 other again on Monday, are there any -- maybe it
9 would be good to have a time check.
10 DR. PULKOWSKI: I would be very happy
11 to provide that, Mr. President, and perhaps
12 relatedly, based on the time remaining we may
13 consider the schedule for Monday because I don't
14 expect we will have to be here at 8:30 again, in
15 fact.
16 So on the claimants' side, the
17 claimants have used 17 hours and 54 minutes.
18 And the respondent has used 14 hours
19 and 50, 5-0 minutes.
20 PRESIDING ARBITRATOR: So, that means
21 how much time would they have left?
22 PROFESSOR McRAE: How much time do we
23 need on Monday?
24 PRESIDING ARBITRATOR: So left for
25 both Monday quantum and Wednesday closing

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1 statements?
2 DR. PULKOWSKI: Close to 10 hours for
3 both parties and both -- is that about right? Let
4 me see. Let me do a proper calculation.
5 Both days together.
6 MR. SPELLISCY: Each party?
7 DR. PULKOWSKI: No, both parties
8 together on the both days.
9 I think the question was: What's the
10 overall budget?
11 To be more specific, on the
12 claimants' side, 3 hours 6 minutes left; and the
13 respondent's side 3 hours more, essentially, 6 hours
14 and 10 minutes left.
15 PRESIDING ARBITRATOR: For both?
16 DR. PULKOWSKI: For both exercises
17 together.
18 PRESIDING ARBITRATOR: That sounds --
19 that looks like we could relax at least the morning.
20 PROFESSOR McRAE: How much time do
21 the parties need on Monday?
22 PRESIDING ARBITRATOR: Do you have
23 any estimate of how much time you are going to spend
24 on Monday? Mr. Nash?
25 MR. NASH: My estimate?

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1 PRESIDING ARBITRATOR: Estimates.
2 MR. NASH: About an hour on Monday
3 and about two hours on Wednesday.
4 PRESIDING ARBITRATOR: And Mr.
5 Spelliscy?
6 MR. SPELLISCY: My best professional
7 judgment., estimate, not speculation, which is a
8 little -- I don't have an algorithm for this. I
9 would imagine that we're -- well, we also have the
10 expert presentations by our own quantum experts
11 which are included in that half hour or included in
12 the time remaining so I would imagine half an hour
13 for our expert presentation under the procedural
14 order. I would imagine we will probably use the
15 remaining two, just over two hours for the
16 cross-examination of Mr. Rosen and three hours for
17 our closing arguments on --
18 PRESIDING ARBITRATOR: Sorry, and
19 three?
20 MR. SPELLISCY: Three hours for our
21 closing arguments on Wednesday. So I would expect,
22 like we have to date, to be right on track to use
23 our entire 21 hours.
24 PRESIDING ARBITRATOR: I think on
25 Monday we could consider to meet at like --

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1 PRESIDING ARBITRATOR: I hope you
2 found time to test that already a bit before we see
3 each other again, cabernet. (laughter)
4 MR. SCOTT LITTLE: Judge Simma --
5 PRESIDING ARBITRATOR: Yes.
6 MR. SCOTT LITTLE: I just wanted to
7 put a few things down. First off, just in light of
8 the time remaining today and the global time that
9 remains for each of the parties, we just want to
10 make note of the fact that we really don't see a
11 reason why the complete evidentiary record could not
12 have been completed today.
13 So, I'm not asking that, like,
14 changes have been made, expenses have been incurred,
15 but I just wanted to make it clear our concern over
16 the diversion from the original schedule, and in
17 case I wasn't clear enough yesterday to make that
18 request that there are cost consequences to the
19 change that has happened.
20 In light of the fact that the time
21 that the claimants do have left to conduct their
22 remaining cross-examinations, and to present their
23 closing submissions, we also want to make clear that
24 we don't consent to an extension of any time or the
25 submissions that can be made in any form, so be it

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1 DR. PULKOWSKI: I suppose, since the
2 investors experts will be cross-examined first so
3 that would probably presumably be the bigger package
4 in terms of time. We should probably have a normal
5 morning without an excessively early start so that
6 we get through by lunch time.
7 PRESIDING ARBITRATOR: What do we
8 meaning by "normal morning"?
9 MR. SPELLISCY: I'm sure if we
10 started at 9:30, which is what the original hearing
11 time was scheduled to start, with our total of three
12 hours on Monday the claimants have said one hour,
13 then I would imagine that that's fine.
14 PRESIDING ARBITRATOR: 9:30.
15 MR. SPELLISCY: 9:30 would be plenty
16 of time.
17 PRESIDING ARBITRATOR: We are going
18 to see each other again, relaxed, on Monday at
19 9:30 in another room; right? Do we know the wine?
20 DR. PULKOWSKI: It will be Cabernet
21 for the tribunal and Shiraz for the parties because
22 there are two doors to the same room.
23 PRESIDING ARBITRATOR: Okay, well ...
24 DR. PULKOWSKI: It will be an
25 interesting blend. (laughter)

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1 an extension of oral submissions or even in the form
2 of post-hearing briefs, as a supplement or a
3 replacement for oral submissions.
4 We just want to put that down on the
5 record now.
6 PRESIDING ARBITRATOR: Okay. That
7 means that you are against post-hearing briefs?
8 MR. SCOTT LITTLE: We are, yes.
9 PRESIDING ARBITRATOR: I think there
10 was also an agreement at some stage that
11 post-hearing briefs -- I think it was at the end of
12 the jurisdiction liability phase.
13 MR. SCOTT LITTLE: I believe we had
14 annotated transcripts at the end of the jurisdiction
15 liability phase, but we just want to lay down the
16 marker now that we are not consenting to
17 post-hearing briefs being a supplement or a
18 replacement for oral closing submissions.
19 PRESIDING ARBITRATOR: All right, so
20 that is clear.
21 Let me just say with regard to the --
22 this was a decision made by the tribunal, the
23 decision to spread out and change the schedule of
24 the rest of the exercise.
25 That decision was based, first, on

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1 some input by the parties and, secondly, of course,
2 we are a bit in a situation like Mr. Chereb and
3 others, that on the basis of the experience with the
4 duration of hearings, particularly the duration of
5 re-direct, et cetera, I think we could not foresee
6 that the remaining exercise would go so efficiently
7 and take relatively much less time.

8 So, for me, the expectation yesterday
9 was that we could not possibly deal with three
10 more experts and then have both the quantum
11 exercises on the same day.

12 Let me just say as far as the
13 tribunal is concerned, for the record also.

14 MR. SCOTT LITTLE: That's fine.
15 Thank you. My part was more about taking this with
16 a view to the global time that is left for the
17 parties. We think it was more than doable to have
18 the evidentiary record closed today.

19 PRESIDING ARBITRATOR: Okay. Yes,
20 Mr. Nash?

21 MR. NASH: I think Mr. Little's
22 concerns as expressed are without foundation in this
23 sense: That we aren't going to suggest that there
24 be any extra time, and we're not going to suggest
25 that there be closing post-hearing arguments. So, I

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1 hear Mr. Little putting down a marker, as he says, I
2 don't think it's necessary.

3 PRESIDING ARBITRATOR: I don't
4 understand.

5 MR. NASH: I don't think it's
6 necessary; I think we are all on the same page.

7 PRESIDING ARBITRATOR: Okay. All
8 right.

9 MR. SCOTT LITTLE: Thank you,
10 Mr. Nash.

11 PRESIDING ARBITRATOR: Thanks to both
12 of you. So we will break and see each other again
13 on Monday in Cabernet and Shiraz at 9:30.

14 --- Whereupon proceedings adjourned at 1:14 p.m., to
15 be resumed Monday, February 26, 2018 at 9:30 a.m.

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