

PCA Case No. 2016-13

UNDER THE RULES OF ARBITRATION OF THE UNITED
NATIONS COMMISSION ON INTERNATIONAL TRADE LAW AND
CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE
AGREEMENT

BETWEEN:

RESOLUTE FOREST PRODUCTS INC.,
Claimant/Investor

- and -

GOVERNMENT OF CANADA
Respondent/Party

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE JUDGE JAMES CRAWFORD, DEAN RONALD CASS,
PROFESSOR CÉLINE LÉVESQUE,
held via Arbitration Place Virtual
on Wednesday, November 11, 2020, at 8:10 a.m. EST

RESTRICTED ACCESS - VOLUME 3

REVISED TRANSCRIPT

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1 Arbitration Place Virtual

2 --- Upon resuming on Wednesday, November 11, 2020,

3 at 8:10 a.m. EST

4 JUDGE CRAWFORD: Sorry for the
5 slight delay in starting.

6 This morning we are to hear
7 the oral evidence of Ernst & Young being given by
8 Alex Morrison, who, at the relevant times, was
9 responsible for the Ernst & Young report
10 commissioned by Resolute into the subject matter
11 of this dispute.

12 Welcome, Mr. Morrison.

13 MR. MORRISON: Good morning.

14 JUDGE CRAWFORD: You were sent
15 a declaration for an expert witness.

16 MR. MORRISON: Yes.

17 JUDGE CRAWFORD: Could you
18 make that declaration, please.

19 MR. MORRISON: Yes.

20 I solemnly declare upon my
21 honour and conscience that I shall speak the
22 truth, the whole truth and nothing but the truth,
23 and that my statement will be in accordance with
24 my sincere belief. No one else is present in the
25 room where I am testifying. I do not have any

1 notes or annotations on any hard copy or
2 electronic copies except notes, annotations
3 prepared to facilitate my initial presentation to
4 the Tribunal. I confirm that I am not receiving
5 communications of any sort during my testimony
6 other than my participation in the main hearing
7 room in Zoom.

8 EXPERT WITNESS: ALEX MORRISON

9 JUDGE CRAWFORD: Thank you.

10 THE WITNESS: That's it, yeah,
11 okay. Thank you.

12 JUDGE CRAWFORD: I think
13 that's it.

14 You have given evidence by
15 video link before; have you?

16 THE WITNESS: I have, yes.

17 JUDGE CRAWFORD: Yes, so you
18 are familiar with the procedure.

19 THE WITNESS: Yes.

20 JUDGE CRAWFORD: If you have
21 any difficulties, disconnects, the PCA staff or
22 the Arbitration Place staff will be on hand to
23 help try and get you reconnected as soon as
24 possible. We have had a few minor problems in
25 that regard. But they were minor problems, and I

1 hope they won't recur.

2 The Tribunal has read your
3 witness statements and paid careful attention to
4 them, but we now give the opportunity to the
5 respondent to cross-examine you on those reports.
6 In cross-examination, you can refer to the reports
7 and physically refer to particular paragraphs if
8 you need to read them, we have access to the
9 reports. Or you can answer in general terms.
10 It's a matter of your choice.

11 So counsel for the respondent.

12 THE WITNESS: Okay.

13 JUDGE CRAWFORD: We start with
14 your presentation, Mr. Morrison.

15 THE WITNESS: Okay. Thank
16 you.

17 PRESENTATION BY MR. MORRISON:

18 THE WITNESS: There is a short
19 PowerPoint that I will walk through. I won't read
20 it out, but I will walk through some of the
21 points, if that's okay.

22 JUDGE CRAWFORD: Yes.

23 THE WITNESS: If we just put
24 that up on the screen, please.

25 Okay. Good morning, everyone.

1 If we could please turn to
2 page 2, I will just give a very short background
3 preamble before I go into the findings of the
4 report.

5 As everyone knows, NewPage
6 Port Hawkesbury Corp. filed for creditor
7 protection under the Company Creditor Arrangement
8 Act, or the CCAA, in 2011. And the CCAA is a
9 federal statute in Canada that facilitates
10 restructurings of larger organizations. It's very
11 similar or akin to Chapter 11 of the
12 U.S. Bankruptcy Code.

13 When the company filed for
14 creditor protection, it had minimal cash
15 resources; and, as a result, it had to idle its
16 operations, call that a hot idle in that it did so
17 in a way to try and preserve the machinery and
18 equipment and the operations so that it could
19 potentially sell the business as a going concern.

20 Through the restructuring
21 process, the province of Nova Scotia funded
22 approximately \$15 million to fund the hot idling
23 of the mill through advances. And there was
24 another 19 million, roughly, of advances done
25 under the forestry infrastructure program to fund

1 the woodlands operations to effectively preserve
2 the woodland operations so that if the mill was
3 sold, that would be preserved as well as an input
4 into the mill.

5 Through the CCAA process, a
6 court-approved sale and investment solicitation
7 process, which we call a SISP, was conducted, and
8 that was a standard SISP that you typically see in
9 most CCAAs or many CCAAs. And Pacific West
10 Commercial Corp. was the successful bidder through
11 the SISP process, and it required that a plan of
12 arrangement under the CCAA be implemented to
13 facilitate the purchase of Port Hawkesbury.

14 If I could please flip to
15 page 3. The implementation of the plan of
16 arrangement put forward by Pacific West -- Western
17 was conditional on a number of factors, which were
18 outlined in the plan of arrangement and the plan
19 sponsorship agreement. I won't go through the
20 details of those. Those are set out in the
21 PowerPoint as well as in our report and other
22 materials before the Tribunal.

23 But just as a point around
24 these measures which involved support coming in
25 from the province of Nova Scotia, these measures

1 were provided in the context of the stated goal of
2 the province to help the mill become the
3 lowest-cost and most competitive producer of
4 supercalendered paper.

5 If we flip to page 4, our
6 scope or our mandate was to review other CCAA
7 filings that occurred in Canada over a ten-year
8 period -- approximate ten-year period to review if
9 any other insolvent entities received similar type
10 of support or government assistance to restructure
11 their affairs under the same context.

12 Our focus was around the
13 companies who filed for CCAA creditor protection
14 because in the context of filing for CCAA, the
15 corporation and its board of directors needs to
16 declare that it is an insolvent entity. So it's a
17 mandatory requirement to declare you're insolvent
18 and that you are effectively unable to meet your
19 debts as they become due any longer and that,
20 absent court protection, that the corporation
21 would no longer be able to continue to exist and
22 would be liquidated.

23 So our focus was on those
24 companies who had filed for CCAA protection
25 similar to what NewPage Port Hawkesbury had done.

1 And what we did was we looked at a ten-year
2 window, approximately. That's when the
3 Superintendent of Bankruptcy in Canada began
4 publishing a complete list of all CCAA filings
5 that occurred in Canada and gave us a
6 comprehensive list, a full population to review
7 over that ten-year window of time.

8 As we went through the
9 process, we classified certain industries that we
10 did not do a detailed review on, companies in
11 those industries, because, in our view, it was --
12 we had never seen any form of government
13 involvement in those type of industries in terms
14 of any form of assistance, you know, in our
15 experience. And these are things like oil and gas
16 companies or real estate developers where, if a
17 company is insolvent, doesn't survive. And,
18 ultimately, there's a buyer for those assets, and
19 the business effectively continues on through
20 another party who come in and acquire the
21 business.

22 But there's no prospect or
23 no -- in our view, no history of ever seeing any
24 government support in those particular industries.

25 So what that gave us was a

1 population -- if you flip to page 5 -- sorry,
2 page 6 -- of 174 cases that we reviewed through a
3 detailed exhaustive review of going into the
4 website, case website that's maintained by the
5 court-appointed monitor that's appointed to
6 oversee the restructuring and, as part of that
7 process, is required to keep a case study or,
8 sorry, a case website that maintains all the
9 materials related to the filing, whether it be
10 court motion materials or Monitor reports updating
11 the Court. And it gives an exhaustive,
12 comprehensive review of what happened in the case.

13 So what we did is went through
14 all 174 cases in detail to review all the
15 documents and assess where there may have been
16 government assistance in each of those particular
17 filings.

18 Now, if I could ask of you to
19 please flip back to page 5 of the PowerPoint.

20 And we'll note, as I mentioned
21 before, we only looked at companies who had filed
22 for CCAA proceedings because they were similar to
23 what NewPage Port Hawkesbury -- the context of
24 what they were dealing with, that they were
25 insolvent, had declared they were insolvent.

1 We did not look at situations
2 where the government may have assisted financially
3 challenged businesses outside of a formal
4 insolvency process. One, because there is no
5 master list of any of those type of situations, so
6 there wasn't a comprehensive list to review; and,
7 secondly, it didn't really fit the criteria that
8 the company had made the declaration that it was
9 insolvent.

10 We know that there are
11 examples such as the automotive sector bailout
12 that was done by North American governments to
13 support the automobile industry. We distinguished
14 that from NewPage Port Hawkesbury and many of the
15 other CCAA cases in that the automotive sector
16 support, particularly General Motors and Chrysler,
17 were driven by a unique set of circumstances
18 around the credit crisis, the contraction of
19 credit availability for consumers and the fact
20 that the demand for automotive products was
21 basically cut in half in a very short period of
22 time because of the impact of the credit crisis
23 which created a ripple effect to the OEMs as well
24 as suppliers into the OEMs.

25 And that was a unique set of

1 circumstances that required an integrated North
2 American support for the industry in its entirety,
3 and it involved multi levels of government from
4 the US, Canada, and the Province of Ontario to
5 provide that support. And so it was very much a
6 unique set of circumstances. And the support that
7 was provided was not to make GM and Chrysler the
8 low-cost producer or the most competitive producer
9 in North America. It was to ensure survivability
10 and a chance to reposition the business.

11 Now, if I flip back to page 6
12 on the PowerPoint, as I mentioned, we reviewed 174
13 cases in total in detail. Of those 174 cases,
14 there were 117 cases where we saw no form of
15 government assistance at all. It doesn't mean
16 that government entities or government -- levels
17 of government weren't creditors of the debtor
18 company who filed for creditor protection. It
19 just means they didn't do anything unique around
20 the restructuring.

21 There were another 36 cases
22 where we actually couldn't find the Monitor's
23 website. It was no longer available to us in a
24 public forum. So what we did was additional
25 research through the Internet to assess what

1 happened to each of those 36 cases.

2 Most of those 36 cases were
3 situations where it was a US- or a foreign-led
4 restructuring where there was a Canadian
5 recognition order and Canadian ancillary
6 proceeding, so it wasn't really a Canadian
7 restructuring. Or it was situations where there
8 was an asset sale or a liquidation of the business
9 that didn't survive.

10 So what we did do is identify
11 21 cases where there appeared to be some form of
12 government support in different forms. And then
13 we analyzed those in depth, which is set out in
14 our report. And of those 21 cases, we identify 8
15 that were more comparable to NewPage Port
16 Hawkesbury, although not to the same degree. And
17 the ones that we thought were probably the most
18 comparable were the two large steel companies that
19 were restructured in Ontario in the 2015, '16
20 period of time. And those were U.S. Steel Canada
21 and Essar Steel/Algoma.

22 And if I flip to page 7 on the
23 PowerPoint, just to give a bit of background on
24 the U.S. Steel and Algoma, the type of government
25 support they received during their restructuring

1 process, on page 7, I talk about Stelco -- and,
2 again, these were two out of the three major
3 integrated steel companies in Canada who were
4 going through restructuring at the same time.

5 In the Stelco case, I acted as
6 the court-appointed monitor, so very familiar with
7 the detail of the government involvement in that
8 case. And in that situation, Stelco was a company
9 that was -- had shrunk its operations quite
10 significantly over a 20-year period of time, and
11 what had occurred was that there was a massive
12 number of retirees relative to active workers left
13 working in the steel mill, roughly a 10 to 1
14 ratio. And the real challenge faced by Stelco was
15 that it was burdened by legacy costs on pension
16 and retiree benefits that it could no longer
17 support.

18 So through that restructuring,
19 a sale process was run very similar to what was
20 done with NewPage Port Hawkesbury. A buyer came
21 forward through a planned support arrangement,
22 very similar to what Pacific Western did, and part
23 of the conditionality of their planned support
24 arrangement was that they were not prepared to
25 continue on to fund the legacy costs related to

1 retirees. So there was an option for Stelco that
2 one way it could deal with that issue was
3 basically to cancel the retiree benefits under the
4 restructuring, which it could have done, which
5 would have had significant consequences for --
6 social consequences for the communities where
7 Stelco operated given the volume of retirees.

8 So that was one option, but
9 rather than doing that, there was a workout
10 arranged with the province where the province
11 worked with Stelco and with the purchaser to
12 change regulations around the pension funding to
13 provide more relief and to cap out the liability
14 required by the new purchaser in terms of funding
15 into that pension plan going forward.

16 The province also provided a
17 form of loan support around directing the funding
18 going into the post-retirement benefit plans for
19 the retirees so that the retirees' benefits would
20 be weaned off over time as opposed to being cut
21 off dramatically on the implementation of the
22 restructuring. So it was a way to reduce the
23 burden on the retirees.

24 There was no funding put into
25 the mill operations or the operations itself.

1 There was an environmental relief that was
2 provided by the province to the purchaser to
3 reduce any environmental obligations that it might
4 assume as the new purchaser, but in terms of
5 getting that, the purchaser had to pay a fee to
6 the province in order to get that.

7 The province did, in fact,
8 have a claim against U.S. Steel, and it -- in that
9 case, it agreed to defer that claim and not take
10 compensation because it was being shared in a pool
11 with all the other unsecured creditors; so in
12 order to support the unsecured creditors
13 supporting the plan, the province agreed that it
14 would not elect to receive a distribution under
15 its claim.

16 In the Algoma case, on page 8,
17 very similar circumstances. Some differences, but
18 the most significant difference was there was some
19 form of monetary assistance provided by the
20 federal and provincial governments through
21 repayable loans that was provided when the company
22 exited its restructuring process and with the new
23 bidder in place. And those were based on
24 pre-existing loan programs that were in place
25 prior to the CCAA that were suspended when the

1 company went into CCAA because the province was
2 concerned about risk of failure and was
3 reactivated once the company came out of
4 restructuring.

5 There was some additional
6 grants and loans also provided, in part, as part
7 of a comprehensive package provided by the federal
8 government to the integrated steel businesses in
9 Canada as a result of tariffs that were
10 implemented by the US on Canadian steel imports
11 during the middle of the Algoma restructuring
12 process. So there was some additional support,
13 but it was industry-wide support.

14 You know, I think, as a, you
15 know, a general comment on both steel companies,
16 although there was support given to them through
17 the province, and the federal government in the
18 case of Algoma, to help them get through
19 restructuring and to be a viable entity coming
20 through the process, there was no capital invested
21 really to give them a sustainable cost-competitive
22 advantage. Neither one of them are, you know, in
23 that situation.

24 So I flip to page 9 just in
25 terms of concluding comments and comparison to the

1 steel restructurings and some of the other
2 restructurings that we did see. The fundamental
3 difference in the NewPage Port Hawkesbury case was
4 the stated goal of the province of Nova Scotia
5 that it was going to assist NewPage Port
6 Hawkesbury to become not just competitive and
7 sustainable but to help the mill become the
8 most -- sorry, the lowest-cost and most
9 competitive producer of supercalendered paper. We
10 haven't seen that in other cases. That is a
11 unique situation. And, typically, we see, as I
12 mentioned, companies get some form of government
13 assistance, when they do get it, to allow it to
14 survive and sustain but not to receive a
15 competitive advantage.

16 So I conclude on page 10, each
17 measure that the province provided to NewPage Port
18 Hawkesbury was not unique in its own right. We
19 have seen elements of that in various different
20 restructurings. But what was different in the
21 case of NewPage Port Hawkesbury was the fact that
22 there was a comprehensive package including
23 interim funding, which is very unusual to keep a
24 going-concern process in place while a
25 restructuring occurs. Usually, it is done through

1 the form of third-party financing called DIP
2 financing where security is provided to a lender.
3 It's very unusual to see governments involved in
4 that. And it was also done through forgivable
5 loans on exit of the CCAA as well as the
6 electricity rate reductions that were put in
7 place.

8 It's the context of the
9 presence of the comprehensiveness of the package
10 of support provided and the fact that the goal was
11 to create a low-cost and most competitive producer
12 of supercalendered paper that makes, you know, the
13 situation unique compared to any other CCAA case
14 we've seen.

15 And those conclude my
16 comments.

17 JUDGE CRAWFORD: Thank you
18 very much, Mr. Morrison.

19 Does the claimant have any
20 questions arising from Mr. Morrison's report so
21 far?

22 MR. FELDMAN: The claimant,
23 no, Judge Crawford. Thank you.

24 JUDGE CRAWFORD: Respondent?
25 You can save your questions for the

1 cross-examination if you'd prefer. Respondent's
2 counsel. Sorry we cannot hear you.

3 MS. OUELLET: Can you hear me
4 now?

5 JUDGE CRAWFORD: Yes.

6 MS. OUELLET: Good. Thank
7 you. I'm sorry for the -- for the glitch. It
8 seems to be a recurring theme in the morning.

9 CROSS-EXAMINATION BY MS. OUELLET:

10 Q. Good morning,
11 Mr. Morrison. My name is Annie Ouellet, and I am
12 a member of Canada's legal team in this
13 arbitration.

14 A. Good morning.

15 Q. As you can imagine, I
16 will ask you a few questions about your expert
17 report, but before we start, I would like to
18 confirm that you have access to your report and to
19 the documents that were included in the list we
20 sent to Resolute's counsel last week.

21 A. I do have copies, yes.

22 Q. So when we use additional
23 documents --

24 JUDGE CRAWFORD: You don't
25 have to do your full cross-examination at this

1 stage. I was asking if you had questions arising
2 from what the witness has said.

3 MS. OUELLET: No, as you can
4 see, we were ready to jump right in.

5 JUDGE CRAWFORD: Okay.
6 Counsel for claimant -- for respondent.

7 MS. OUELLET: Okay, so I will
8 just continue, then, if that's okay.

9 BY MS. OUELLET:

10 Q. So when we use additional
11 documents, we will ensure that they show up on
12 your screen. I will try and direct you as clearly
13 as possible to the relevant documents, but don't
14 hesitate if you have any questions.

15 And just before we start:
16 It's important that you answer my questions. And
17 so if your answer is a yes or a no, I would
18 appreciate if you could start that way so we have
19 a clear record.

20 If you could turn to
21 Appendix A of your expert report, and that's your
22 statement of qualifications.

23 A. Yes.

24 Q. You say that you have
25 approximately 30 years of professional experience;

1 correct?

2 A. Correct.

3 Q. But in the preparation of
4 your report, you limited your review to CCAA cases
5 that took place since mid-2009; correct?

6 A. That's correct.

7 Q. And that's the mandate
8 you were given by claimant's counsel; correct?

9 A. That's correct.

10 Q. As you mention in your
11 statement of qualifications, you are a chartered
12 insolvency restructuring practitioner; correct?

13 A. Yes.

14 Q. And you have experience
15 acting as a court-appointed monitor; is that
16 correct?

17 A. Yes, that's correct.

18 Q. If you -- we will now
19 show you Exhibit R-026, the Notice of Application
20 in Chambers before the Supreme Court of Nova
21 Scotia in the matter of a Plan of Compromise Or
22 Arrangement of NewPage Port Hawkesbury dated
23 September 6th, 2011.

24 A. Yes.

25 Q. And we will show you

1 page 3. Do you see the name of your firm as the
2 proposed Monitor?

3 A. Yes, we were the Monitor
4 of NewPage, that's correct.

5 Q. So under the CCAA, one of
6 the duties of the Monitor is to advise the Court
7 on the reasonableness and fairness of any
8 compromise or arrangement that is proposed between
9 the company and its creditors; correct?

10 A. That's correct.

11 Q. So we will now show you
12 Exhibit R-453, and that's a report of the Monitor
13 dated September 6th, 2012.

14 We will go to paragraphs 33
15 and 34, and I will just read their content for the
16 record. So paragraph 33 reads:

17 "The Monitor is of the
18 view that the amended and
19 restated plan is fair and
20 reasonable as between the
21 applicant's creditors and
22 the applicant." [as read]

23 And then at paragraph 34, you
24 can read:

25 "The Monitor is not aware

1 of any opposition to the
2 sanction of the amended
3 and restated plan."[as
4 read]

5 Do you see those statements?

6 A. Yes.

7 Q. Based on your experience,
8 would you agree that Canadian courts supervising
9 CCAA proceedings are required to determine whether
10 a plan of compromise or arrangement is fair and
11 reasonable and whether it is in the public
12 interest?

13 A. Yes.

14 Q. So if the Supreme Court
15 of Nova Scotia approved the plan of compromise or
16 arrangement, it is because it reached the
17 conclusion that the plan was fair and reasonable
18 and that it was in the public interest; correct?

19 A. Correct, yes.

20 Q. If I can take you to
21 Appendix B to your expert report, and that's the
22 Statement of Limiting Conditions. We will show
23 you the document on the screen as well.

24 At paragraph 2, you explain
25 that your report does not constitute and does not

1 include any legal opinion or legal advice;
2 correct?

3 A. That's correct.

4 Q. So you are in no way
5 providing an opinion as to whether Canada breached
6 its NAFTA obligations in this case; correct?

7 A. That's correct.

8 Q. So if we could turn to
9 paragraph 5 of your report, you identified two
10 factors that, according to you, make the PHP case
11 unique, and you alluded to those factors in your
12 presentation.

13 So the first factor is the
14 stated goal of the GNS to help the mill become the
15 lowest-cost and most competitive producer of SC
16 paper, and the second factor is the
17 comprehensiveness of government assistance;
18 correct?

19 A. Correct.

20 Q. Those are the two
21 factors -- can you hear me?

22 A. Yes, I can hear you.

23 Q. So those are the two
24 factors you mention at paragraph 5 of your expert
25 report as distinguishing the PHP case from the

1 other cases you reviewed; correct?

2 A. Yes.

3 Q. So on the first element,
4 the stated goal of the Government of Nova Scotia
5 is also a point that you make at paragraphs 85 and
6 89 of your report; correct?

7 A. That's correct, yes.

8 Q. And if you can turn to
9 paragraph 85. At that paragraph, you quote a
10 document, and the reference is in Footnote 33.

11 A. Yes.

12 Q. And that document is a
13 press release from the premier's office dated
14 August 20th, 2012; correct?

15 A. I will have to
16 double-check, but I believe that's the case.

17 Q. And, in fact, I will just
18 note for the Tribunal, there's no reference to an
19 exhibit number in the report, but it's Exhibit
20 R-055.

21 So the only document referred
22 in that footnote is the press release; correct?

23 A. Correct.

24 Q. And, okay, so the sole
25 document you cite to support the statement that

1 the stated goal of the GNS was to help the mill
2 become the lowest-cost and most competitive
3 producer of SC paper; right?

4 A. Yes.

5 Q. If we can turn to
6 paragraph 31 of your report, you explain that:

7 "The times that a
8 Canadian or US government
9 has employed financial
10 measures to save a
11 business entity from
12 liquidation and then
13 promote that company into
14 a competitively
15 advantageous position in
16 its market through
17 measures are so rare that
18 PHP's government-funded
19 resuscitation would
20 appear unique." [as read]

21 Is that correct?

22 A. Just give me a second to
23 read it, please.

24 Yes.

25 Q. And at Footnote 18, you

1 cite to the claimant's memorial dated
2 December 28th, 2019. I think the year should be
3 2018. So you cite to the claimant's memorial to
4 support your statement; correct?

5 A. Yes.

6 Q. And you do not cite any
7 other documents to support that statement;
8 correct?

9 A. Correct.

10 Q. And do you remember what
11 is the content of that paragraph of Resolute's
12 memorial?

13 A. No. I'd have to refresh
14 my memory and read it.

15 Q. If we could move to the
16 second element now that, according to you,
17 distinguishes the PHP case from the other CCAA
18 cases where you have identified government
19 assistance, and that's, according to you, the
20 comprehensiveness of the government assistance
21 provided to PHP, that's a point that you make at
22 paragraph 5 that we already looked at and
23 paragraph 86 of your report; correct?

24 A. Yes.

25 Q. In those two paragraphs,

1 you refer to interim funding; right?

2 A. Yes.

3 Q. And you use that
4 expression to refer to the hot idle funding and to
5 funding under the forestry infrastructure fund;
6 correct?

7 A. Correct.

8 Q. And these measures --

9 JUDGE CRAWFORD: Ms. Ouellet,
10 could I ask you to speak up? You are slightly
11 difficult to hear.

12 MS. OUELLET: Okay.

13 JUDGE CRAWFORD: Can you speak
14 up, please?

15 MS. OUELLET: Thank you.

16 BY MS. OUELLET:

17 Q. And you discuss those two
18 measures in different sections of your report; is
19 that right?

20 A. Yes.

21 Q. And those two measures
22 are listed in the chart that is found at Appendix
23 H of your report and that chart is entitled --
24 --- Reporter appeals

25 Q. I was just asking if you

1 discuss those two items in different sections of
2 your report; correct? So the hot idle funding and
3 the funding under the forestry infrastructure
4 fund, you discuss in different spots of your
5 report; right?

6 A. Yes.

7 Q. And they're also listed
8 in Appendix H, the summary of comparable cases;
9 correct?

10 A. Yes, yes.

11 Q. So were you provided with
12 a copy of the Tribunal's decision on jurisdiction
13 and admissibility dated January 30th, 2018, when
14 you were preparing your report?

15 A. I don't recall.

16 Q. Were you aware that the
17 Tribunal found that the hot idle funding and the
18 funding under the forestry infrastructure fund
19 were outside of its jurisdiction?

20 A. I understand generally
21 that that is the case. I have not read the
22 material related to that.

23 Q. And is there any
24 particular reason why those measures would be
25 included in your report given that they're outside

1 of the Tribunal's jurisdiction?

2 A. The reason why we
3 considered that was, again, we were looking at all
4 CCAA cases that had filed in Canada over that
5 ten-year window period of time, and we looked at
6 all forms of government assistance, whether to the
7 debtor or to the purchaser of the company, through
8 the insolvency process to assess government's
9 involvement or assistance provided during the
10 restructuring process.

11 The interim funding is a key
12 element of any company going through restructuring
13 in order to -- liquidity is kind of the key of any
14 restructuring, that you have to have liquidity,
15 you have to have cash in order to bridge yourself
16 to completing a restructuring or a sale process.
17 So we had to consider that as part of the package
18 of items that were available to NewPage Port
19 Hawkesbury as it went through its restructuring
20 process. And it is very unusual in terms of what
21 you typically see in a CCAA process. In
22 virtually, you know, all cases, not every case,
23 but almost all cases, interim funding is provided
24 through what's called a debtor-in-possession
25 credit facility, or a DIP facility, which is court

1 approved, and it provides security to the DIP
2 lender on the assets of the debtor company to fund
3 the restructuring costs.

4 So it was very unique in
5 NewPage Port Hawkesbury's circumstances that the,
6 that the funding was provided on an -- effectively
7 on a non-recourse basis through the form of the
8 advances provided by Nova Scotia. So we thought
9 it was an important element to consider relative
10 to all other CCAA cases that we've seen.

11 Q. And I read your report,
12 so I understand that that's your -- that's your
13 view, but just to confirm, you were not aware that
14 those two measures were judged by the Tribunal to
15 be outside of its jurisdiction; right?

16 A. I don't believe, when we
17 prepared the report, we were aware of that.

18 Q. So if we can stay on
19 Appendix H for a little bit. I would like to talk
20 about the measures that are listed under the
21 heading "Funding on Emergence for CCAA".

22 The first measure listed is a
23 land purchase for 20 million; correct?

24 A. That's correct.

25 Q. And you discuss that

1 agreement briefly at paragraph 25 of your report;
2 is that right?

3 A. Sorry, just give me a
4 second to look.

5 Yes.

6 Q. Were you provided with a
7 copy of the land purchase agreement between the
8 GNS and PHP?

9 A. No.

10 Q. So the only information
11 you have is the amount of the transaction;
12 correct?

13 A. Correct.

14 Q. And would a transaction
15 done at fair market value be captured by your
16 analysis as government assistance?

17 A. I think -- I think it is,
18 and, you know, the reason would be that the
19 transaction may be at fair market value and it may
20 represent fair value for that asset, but what it
21 does generate by being able to complete a sale of
22 timberland assets, which is very much a non-liquid
23 asset, is it generates cash that is available to
24 the company as it comes out of the restructuring,
25 it creates liquidity for the business.

1 I have had to sell timberland
2 assets in the past for other insolvent forestry
3 companies, and selling timberland assets,
4 particularly in a market downturn environment,
5 is -- the value is there, it's ultimately a
6 valuable resource, but the time it takes to
7 actually sell that land in the kind of quantum
8 that you are dealing with, it takes a fair amount
9 of time, and liquidity is key, as I mentioned.
10 When you restructure a business, having liquidity,
11 having cash flow is critical, whether it's coming
12 out of the restructuring or during the
13 restructuring.

14 So the fact it was made
15 available, it may have been fair market value, but
16 it is a benefit to NewPage Port Hawkesbury in
17 terms of being able to generate liquidity out of a
18 non-liquid asset.

19 Q. Moving to the last column
20 of the chart, the one that's entitled "Other", the
21 first measure you list is a reduced electricity
22 rate agreement; correct?

23 A. That's correct.

24 Q. Are you aware that a
25 World Trade Organization panel made a decision in

1 a dispute relating to countervailing measures on
2 supercalendered paper from Canada and that in its
3 decision, the WTO panel dealt with the electricity
4 rate paid by PHP?

5 A. I am generally aware of
6 it, but I have not read the decision.

7 Q. We can bring one of the
8 paragraphs of the panel report on your screen.
9 It's paragraph 7.77. Or maybe we can't pull it
10 up. Chris, can you pull that up? Exhibit R-238.
11 There it is. It's a long one.

12 But somewhere in there, you
13 will find a statement by the WTO panel, a finding
14 that the rates paid by PHP resulted from
15 negotiations based on market considerations.

16 So a market-based rate paid by
17 one private party to another private party does
18 not constitute government assistance; correct?

19 A. I don't have any context
20 for this paragraph in terms of what's, you know,
21 all the elements to it, so I don't know enough
22 around this issue to be able to comment on that.

23 Q. Moving on to another
24 element mentioned in Appendix H to your report,
25 the payments made by the GNS under the outreach

1 agreement to, in your words, support sustainable
2 harvesting and forest land management. You
3 referred to annual payments of 3.8 million;
4 correct?

5 A. Yes.

6 Q. So is it your view that a
7 government paying a private company for services
8 it would otherwise have to procure elsewhere is,
9 in fact, giving financial assistance to that
10 company?

11 A. No, I think on its own,
12 it's, it's not an unusual circumstance to see for
13 forestry businesses having this type of
14 arrangement. So on its own, in isolation, it is
15 not unique or unusual. Again, we looked at it as
16 the package of -- the whole package that was made
17 available, and this was one element of it, but
18 there's nothing unique or special about it.

19 Q. Thank you.

20 Were you provided with a copy
21 of Resolute's memorials when you were preparing
22 your report?

23 A. To be honest -- to be
24 honest, I don't recall. It was about a year ago
25 that we drafted the report, so to be honest, I

1 don't recall. I think we probably were, but I
2 don't recall.

3 Q. The answer to my next
4 question will probably be no, but do you remember
5 seeing a reference to a water permit in Resolute's
6 pleadings? And that's another -- that's another
7 item listed at Appendix H of your report. It's
8 the last one in the "Other" category.

9 A. I don't recall it from
10 Resolute's pleadings. I think we took that from
11 one of the Monitor reports listing out what was
12 being negotiated, as I recall, but I don't
13 remember exactly.

14 Q. Your report does not
15 present a total quantum of the financial
16 assistance provided by the GNS to PHP; correct?

17 A. That's correct.

18 Q. Are you aware that the
19 Nova Scotia Jobs Fund was used to finance some of
20 the measures at issue in this case?

21 A. Yes.

22 Q. And are you aware that
23 the GNS, the Government of Nova Scotia, provided
24 financial assistance to Resolute's Bowater mill?

25 A. I am not aware of the

1 details, but I understand that there was some
2 support given to the Bowater Mersey mill.

3 Q. Okay, and please rest
4 assured, I won't ask you to get into the details,
5 but I would just like to turn quickly to Exhibit
6 R-149. It's [REDACTED]

9 I will just ask you to have a
10 quick look at [REDACTED]

12 You should be able to see

13 [REDACTED]

16 A. I see them, but I have no
17 context for this document. I don't know any of
18 the details behind it.

19 Q. Understood.

20 And we will take you now to [REDACTED]

1 [REDACTED]

[REDACTED].

3 Do you see [REDACTED]

[REDACTED]

5 A. Sorry. You have to

6 scroll it up a little bit higher just so --

7 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [as read]

15 So do you see [REDACTED]

[REDACTED]

17 A. I do, yes.

18 Q. Are you aware that the

19 GNS was using two general programs, the Large Land

20 Purchase Program and the Forestry Transition Land

21 Acquisition Program, to buy land that it wanted to

22 protect as Crown lands?

23 A. Sorry. Could you repeat

24 the question?

25 Q. Were you aware that the

1 Government of Nova Scotia was using two general
2 programs, and those programs were named the Large
3 Land Purchase Program and the Forestry Transition
4 Land Acquisition Program, to buy land that it
5 wanted to protect as Crown lands?

6 A. Generally, but I am not
7 aware of the details of the acts themselves.

8 Q. Are you aware that
9 Resolute also secured a discounted electricity
10 rate for its Bowater Mersey mill in November of
11 2011?

12 A. No. I am not aware of
13 much of the details around Bowater Mersey.

14 Q. If you could go to -- I
15 think we were still at Appendix H. In the "Other"
16 column, you list the forest utilization and
17 license agreement; correct? The second to last
18 item.

19 A. Yes.

20 Q. Are you aware that other
21 companies entered into similar agreements with the
22 Government of Nova Scotia?

23 A. Yes. Forestry companies
24 typically have those type of license arrangements
25 on cutting timber on Crown land.

1 Q. If you could go to
2 paragraph 59 of your report. You explain that
3 Appendix H, which we've discussed a bit already,
4 to your report is a chart summarizing the nature
5 of government assistance in the remaining GA --
6 and that stands for "government assistance" --
7 CCAA cases that EY considered more comparable to
8 the PHP case; correct?

9 A. Yes.

10 Q. And how many cases do you
11 summarize in Appendix H?

12 A. Eight cases.

13 Q. So it's more than one;
14 correct?

15 A. Correct.

16 Q. If you could go to
17 paragraph 76 of your report, you write that -- and
18 I will read it. It's mostly for the record so the
19 transcript makes sense to anyone who will read it
20 and wasn't here today.

21 So at paragraph 76 of your
22 report, you write that:

23 "In large industrial
24 companies that offer
25 significant regional

1 employment, governments
2 have provided both
3 monetary and non-monetary
4 assistance to a purchaser
5 to complete a transaction
6 and continue the business
7 as a going concern." [as
8 read]

9 Correct?

10 A. Yes.

11 Q. And I think this morning,
12 in your presentation, you referred to that point
13 when you were discussing the case of Steelco; is
14 that correct?

15 A. Stelco, yes.

16 Q. Oh, sorry.

17 While you were preparing your
18 report, were you provided with any documents about
19 the economic impact of the closure of the Port
20 Hawkesbury mill in terms of either job losses or
21 consequences for the local and regional economy?

22 A. No.

23 Q. Do you know how many
24 people were employed at the Port Hawkesbury mill?

25 A. No. I have seen

1 references, I think, in some of the Monitor
2 reports, but I can't recall specifically how many.

3 Q. At paragraph 25 of your
4 report, you note that the implementation of the
5 plan of arrangement was conditional upon a number
6 of factors, and one of those factors was that the
7 plan sponsors would ask PWCC enter into certain
8 agreements with the Government of Nova Scotia.
9 And you then list a series of agreements,
10 including the outreach agreement, a FULA, the
11 letter of offer in connection with the provision
12 of certain financial assistance and the land
13 purchase agreement; correct?

14 A. Yes.

15 Q. So in order for the mill
16 to emerge from the CCAA proceedings, PWCC had to
17 enter into the agreements you list at
18 paragraph 25; correct?

19 A. That's correct.

20 Q. At paragraph 78 of your
21 report, you note that:

22 "Monetary assistance is
23 usually in the form of
24 loans or grants to the
25 debtor/purchaser upon

1 exit of the CCAA
2 proceedings." [as read]

3 Correct?

4 A. Sorry. Which paragraph
5 was that again?

6 Q. 78.

7 A. 78. Yes.

8 Q. Many of the measures you
9 list in Appendix H to your report with respect to
10 the PHP case fall into those two categories;
11 correct?

12 A. Sorry, I apologize.
13 Sorry. Could you repeat the question?

14 Q. So we were at
15 paragraph 78 of your report where you note that
16 monetary assistance, usually in the form of loans
17 or grants.

18 And my question was: Many of
19 the measures you list in Appendix H to your report
20 fall into those two categories; correct?

21 A. Yes.

22 Q. Paragraph 81 of your
23 report, you distinguish the Algoma case from what
24 happened in relation to PHP by using two factors.

25 The first one is the extremely

1 difficult environment that Algoma was operating in
2 given the application of US tariffs on Canadian
3 steel, and the second factor is the fact that the
4 government assistance was not unique to Algoma and
5 was provided to other steel companies; correct?

6 A. Correct.

7 Q. When you were preparing
8 your report, did you do any research on the state
9 of the SC paper industry?

10 A. No. No.

11 Q. Did you know that there
12 were three paper mills in Nova Scotia, so
13 Resolute's Bowater Mersey mill, Port Hawkesbury,
14 and Northern Pulp?

15 A. Well, I am aware of the
16 three mills, yes. They are not all
17 supercalendered paper, but I am aware of the three
18 mills.

19 Q. My question was about the
20 three paper mills, so...

21 And did you know that those
22 three mills all received financial assistance that
23 was funded by the Nova Scotia Jobs Fund?

24 A. I don't know the details
25 of that.

1 Q. Well, we already
2 discussed that point with respect to Port
3 Hawkesbury and Bowater Mersey, but we will take
4 you to Exhibit R-191. It's the 2017-2018 Annual
5 Report of the Nova Scotia Jobs Fund. And starting
6 at page 9, you will see a description of the
7 Fund's portfolio. I will take you to pages 13 and
8 14.

9 Do you see the references to
10 Northern Pulp on those pages? So it starts at the
11 bottom of page 13 and goes to the top of page 14.
12 You will see a few entries actually about that
13 mill.

14 A. Yes, I see the names
15 here, yes.

16 Q. Paragraph 84 of your
17 report, you write that:

18 "In a very few instances,
19 monetary assistance was
20 provided to assist in the
21 modernization of the
22 mills and improve
23 efficiencies." [as read]

24 Correct?

25 A. Yes.

1 Q. That's what happened in
2 PHP's case; correct?

3 A. That is one of the
4 measures, yes.

5 Q. And --

6 A. I think the difference
7 would be, as I mentioned in my presentation, in
8 most cases, the government support that we have
9 seen in CCAA cases -- and Paper Excellence and
10 Mersey were not CCAA cases, although I believe
11 Paper Excellence did file CCAA about six months
12 ago. In most of these cases, the government's
13 support that's provided is enough to save the
14 business in terms of being able to survive and to
15 come out of restructuring and to try to reposition
16 for the longer term, but they don't come out of
17 CCAA as being the low-cost producer, so I think
18 that's the uniqueness of the NewPage situation.

19 Q. And still at
20 paragraph 84, you write that:

21 "Monetary assistance to
22 assist with the
23 modernization of mills
24 and efficiency
25 improvements was

1 generally provided in
2 conjunction with
3 pre-existing government
4 programs or industry-wide
5 programs."[as read]

6 Right?

7 A. Correct, yes.

8 Q. And given what we
9 discussed earlier, the fact that the same programs
10 were used to provide financial assistance to other
11 mills, this is what happened in PHP's case;
12 correct?

13 A. Yes. As it relates to
14 the capital investments, yes.

15 MS. OUELLET: Thank you. That
16 was my last question. Thank you for your time
17 today.

18 THE WITNESS: Thank you.

19 JUDGE CRAWFORD: We have
20 cross-examination of the witness -- sorry, a
21 re-examination of the witness.

22 MR. FELDMAN: I have a number
23 of questions, Judge Crawford. If you are ready
24 for me to proceed?

25 JUDGE CRAWFORD: Yes.

1 MR. FELDMAN: Thank you very
2 much.

3 RE-EXAMINATION BY MR. FELDMAN:

4 Q. Mr. Morrison, good
5 morning.

6 A. Morning.

7 Q. You were asked about why
8 you didn't benefit in this analysis from your 30
9 years of experience but why you started only in
10 2009.

11 Could you explain, again,
12 please, why your analysis was limited to the
13 period from 2009 forward and not back through your
14 entire experience as a court-appointed monitor?

15 A. What we wanted to do is
16 have a complete population of CCAA cases reviewed
17 to ensure completeness of our study. And prior to
18 2009, the insolvency laws in Canada, CCAA and
19 bankruptcy are regulated by the Superintendent of
20 Bankruptcy, which is a federal agency, part of the
21 federal government. And the Superintendent of
22 Bankruptcy did not publish a comprehensive list of
23 CCAA filings until 2009. That's when it began
24 publishing a public list.

25 So we went back to the

1 beginning of that list being made available and
2 did a review of all cases that showed up on that
3 list from 2009 onwards. And we thought that gave,
4 you know, a ten-year -- ten-plus-year window, so
5 we thought it was a pretty good sample of recent
6 activity, so we thought it was a representative
7 sample that would be helpful in terms of giving
8 perspective.

9 Q. And from your personal
10 experience and recollection, you've defined here
11 the Port Hawkesbury experiences as unique dating
12 from 2009.

13 In your personal experience,
14 going back through all of your career, did you see
15 anything, can you recall anything similar?

16 A. I don't recall anything
17 similar from my personal experience, no.

18 MS. OUELLET: I am sorry to
19 object, but I don't think that's in the report.
20 You are submitting new evidence. It wasn't in
21 your presentation.

22 MR. FELDMAN: But you asked
23 this question. My question is based on your
24 question.

25 MS. OUELLET: My question was

1 very narrow. I will just note that we might
2 object to that question and the response later on.

3 MR. FELDMAN: I am just noting
4 that the question was about your years of
5 experience, but that's fine.

6 BY MR. FELDMAN:

7 Q. Part of your mandate as a
8 monitor is to consider what's fair and reasonable,
9 but for whom do you make that judgment as to
10 what's fair and reasonable?

11 A. Well, as a monitor,
12 you're an officer of the Court, so we play a
13 role -- our principal role is to be the eyes and
14 ears for the Court, to make recommendations to the
15 judge overseeing the restructuring process and
16 ultimately to make a recommendation to the judge
17 if we believe the plan that's put forward is fair
18 and reasonable.

19 Ultimately, for a plan to be
20 fair and reasonable, it has to be supported by the
21 financial creditors who have to agree to the plan.
22 So the Court ultimately has to sanction the plan
23 as fair and reasonable, but it never gets to the
24 Court to sanction as fair and reasonable unless
25 the financial creditors approve the plan through a

1 vote. And if it's not approved by the creditors,
2 the plan cannot go forward.

3 Q. To your knowledge, was
4 Resolute a creditor of NewPage Port Hawkesbury?

5 A. I don't know. I don't
6 know that.

7 Q. So you don't know whether
8 the judgment of fair and reasonable would have
9 included Resolute?

10 A. I am not aware, no.

11 Q. And when you consider
12 what's fair and reasonable, are international
13 obligations part of that consideration?

14 A. No, I mean, I think when
15 we review a plan and make a recommendation on the
16 plan, we are making it on what's available to the
17 company to restructure its business. We don't get
18 into, you know, international-related issues, we
19 just don't -- we are not aware of all those, so we
20 focus on what's available in front of us and what
21 is available to restructure the business.

22 Q. And the audience are the
23 creditors?

24 A. The creditors, yes.

25 Q. The ones who have

1 interest?

2 A. Yes.

3 Q. So is government help a
4 good thing or a bad thing in this process, from
5 your perspective as a monitor?

6 A. From the perspective of a
7 monitor, any assistance to restructure the
8 business is welcomed and is helpful to reposition
9 the business. So we would say it's generally a
10 positive.

11 Q. And are you obliged at
12 all as a monitor to make a judgment about any of
13 the government assistance? Whether it's a subsidy
14 or takes some other form, do you judge the
15 government assistance at all or do you welcome
16 government assistance because it helps the
17 creditors?

18 A. The latter. We don't
19 judge it. Ultimately, it's the package that's
20 available to assist the creditors and the
21 organization to restructure is how we look at it.

22 Q. You were asked about the
23 WTO decision concerning the electricity agreement
24 and whether it was a subsidy, and a
25 counteravailable subsidy at that. You said you

1 didn't read the WTO report.

2 A. No, I did not.

3 Q. Do you know anything
4 about the criteria for determining whether there's
5 a counteravailable subsidy under the WTO?

6 A. No, I don't.

7 Q. Do you know anything
8 about the terms "entrustment and direction" at the
9 WTO?

10 A. No.

11 Q. So you don't know any --
12 do you know anything about the criteria used to
13 determine, at the WTO, whether the electricity
14 deal in this case was a transaction between
15 private parties, was a market transaction?

16 A. No, I don't.

17 DEAN CASS: Mr. Feldman,
18 pardon me for interrupting. On my screen, I have
19 lost the Tribunal president, and I just wanted to
20 make sure he was there to hear the interchange
21 between you and the witness.

22 MR. FELDMAN: Thank you. I
23 have lost him too.

24 MS. D'AMOUR: He is
25 reconnecting.

1 DEAN CASS: We may have to go
2 back and reprise the last few minutes of your
3 interchange with the witness.

4 MR. FELDMAN: Thank you.

5 Judge Crawford, you have
6 returned. The question that Dean Cass has asked
7 is whether you were able to hear the last
8 interchange or whether we lost you.

9 JUDGE CRAWFORD: You lost me.
10 I am sorry about that. Could I ask you to repeat
11 the last interchange?

12 MR. FELDMAN: Yes. Thank you.

13 BY MR. FELDMAN:

14 Q. Mr. Morrison, just to go
15 back, did you have any knowledge of the terms
16 "entrustment and direction" and what they mean in
17 the context of the WTO?

18 A. No, I don't.

19 DEAN CASS: I think,
20 Mr. Feldman, that it may go back to your questions
21 about what fair and reasonable comprehends and
22 whether it includes international obligations. I
23 think that may be where we lost the Tribunal
24 president.

25 MR. FELDMAN: You have a

1 better sense of where we got lost than I. Thank
2 you.

3 BY MR. FELDMAN:

4 Q. I was asking you,
5 Mr. Morrison, as to the criteria of fair and
6 reasonable, to whom is it to be determined whether
7 the workout agreement is fair and reasonable?

8 A. Well, in the first
9 instance, the financial creditors, the creditors
10 of the estate have to approve a plan of
11 arrangement, so you have to have a vote. The
12 creditors have to approve the plan of arrangement.
13 It never gets to the court until the creditors
14 first approve it. So we have to recommend the
15 plan of arrangement to the creditors, who vote on
16 the plan in first instance, and then to the Court
17 ultimately.

18 Q. So it's the creditors who
19 are the people for whom the judgment is made as to
20 whether it's fair and reasonable?

21 A. In first instance, yes.
22 We also recommend to the Court that it's fair and
23 reasonable, but we have to make a recommendation
24 to the creditors in the first instance.

25 Q. And do you know whether

1 Resolute was a creditor?

2 A. I don't, no. I don't
3 know.

4 Q. So you don't know whether
5 this plan of arrangement was considered fair and
6 reasonable with respect to Resolute?

7 A. No, I am not aware.

8 Q. Are there any
9 international obligations considered when you
10 examine a plan for it being fair and reasonable?

11 A. No.

12 Q. So whatever obligations
13 there may be of the government with respect to its
14 international obligations, that's not part of the
15 determination that a plan of arrangement is fair
16 and reasonable; is that right?

17 A. That's correct.

18 Q. I hope I have now covered
19 the ground that we lost.

20 JUDGE CRAWFORD: Thank you for
21 that.

22 MR. FELDMAN: No, thank you
23 for the opportunity to go back.

24 BY MR. FELDMAN:

25 Q. So I was also asking with

1 respect to the WTO decision, are you familiar at
2 all with any of the criteria that would have been
3 used by a WTO panel to determine whether the
4 electricity deal in this case was a market
5 transaction?

6 A. No, I am not.

7 Q. And whether, therefore,
8 it was strictly between private parties?

9 A. I am not aware, no.

10 Q. Are you aware whether
11 there was government involvement in this
12 electricity agreement?

13 A. No, just I have read
14 material indicating it was, but I am not aware of
15 the details.

16 Q. You said that this
17 agreement was unique, and counsel for respondent
18 seemed to emphasize each of the elements as not
19 being unique. So could you explain, again, why
20 you conclude it's unique if each of the elements
21 is not?

22 A. Well, I think what we
23 see -- again, when we say "unique", we are
24 comparing it to other CCAA cases that have
25 occurred in Canada over that ten-year period of

1 time and from the perspective of we see pieces of
2 elements that have been -- that we observe in
3 other CCAA cases or know in other CCAA cases, but
4 we haven't seen the package of all the elements
5 together in any other CCAA case with a
6 comprehensiveness of the financial support through
7 the process from the interim financing or what we
8 call DIP financing usually, to the exit financing
9 support to the electricity deal. Ultimately, that
10 package is unique compared to what we have seen in
11 other cases.

12 And the other element to it is
13 the goal of creating a low-cost producer is not
14 competitive -- most competitive business coming
15 out of the restructuring is not something we have
16 seen in other CCAA cases.

17 Q. You were asked whether
18 you added up all of the value involved here and
19 you said you hadn't. Was there a reason not to or
20 a reason that you should have?

21 A. Well, I am not sure
22 adding up the value really is the issue. I think
23 what we were trying to do is understand the
24 components of government assistance and what it
25 all entailed as a comprehensive package. The

1 quantum, you know, it may differ from -- you can't
2 really compare one CCAA filing to another CCAA
3 filing on pure quantum because you have to take
4 into account the size of the organization, the
5 level of debt, so there's a whole variety of
6 factors that you have to compare to make it apples
7 to apples. So we looked at the characteristics as
8 opposed to quantifying.

9 Q. And you were asked about
10 the public interest and that the public interest
11 is part of your consideration in approving a plan.

12 What public is that that
13 you're making that determination about?

14 A. Well, as I mentioned, in
15 the first instance, when we recommend a plan --
16 and the Monitor has to make a recommendation to
17 the creditors, so we make a recommendation to the
18 creditors that we think this is the best outcome
19 that the creditors can obtain versus any other
20 alternative, so there's that recommendation.

21 We also recommend to the Court
22 that the plan is fair and reasonable and that it's
23 in the best interest of the stakeholders of the
24 company. So we look at all the stakeholders. So
25 it's the financial creditors, it's the employees,

1 the communities, everything that's kind of tied to
2 the business.

3 So to the extent you have a
4 going concern, apples to -- you know, again, if
5 you had a going-concern transaction that helps
6 preserve value and -- in a business in a
7 community, that's an element that we take into
8 account when we make our recommendation. But,
9 ultimately, it has to meet the threshold test of
10 satisfying the creditors in a first instance.

11 Q. And a broader market, is
12 that part of your consideration?

13 A. Sorry. Could you
14 rephrase the question?

15 Q. I am sorry.

16 In determining the public
17 interest and what's fair and reasonable, do you
18 consider the competitors, the market involved in
19 the industry?

20 A. No, no.

21 MR. FELDMAN: I don't believe
22 I have any other questions, Judge Crawford. I
23 might be grateful for 60 seconds to check with my
24 colleagues, but if you deny it, I won't be
25 aggrieved.

1 JUDGE CRAWFORD: I won't deny
2 it, it would be tasked to do so.

3 While you are checking with
4 your colleagues, can I check with my colleagues.
5 Do either of you have any questions to ask of this
6 witness?

7 DEAN CASS: I will have just
8 one, Mr. President.

9 JUDGE CRAWFORD: Perhaps ask
10 it now.

11 DEAN CASS: All right.

12 QUESTIONS FROM THE TRIBUNAL:

13 DEAN CASS: You were talking
14 about the unusualness of the package when you look
15 at all the elements. If you take out the hot idle
16 and the temporary or transitional elements, do you
17 still reach the same conclusion?

18 THE WITNESS: I think we would
19 probably reach the same conclusion. There was
20 a -- you know, the objective of creating a
21 low-cost producer, again, is very unique. It's
22 not something that we have seen in other CCAA
23 cases. And then the rest of the package, it's
24 hard to break it up into components. You have to
25 kind of look at the totality of the package. It

1 was certainly significant in terms of the package
2 of support that was provided on the exit of the
3 restructuring, and we combine it up with the
4 interim financing and the electricity arrangement.
5 You kind of look at it as an entire package, but
6 it would still be significant if it excluded the
7 interim financing as well.

8 DEAN CASS: Thank you.

9 MR. FELDMAN: Judge Crawford,
10 I have no further questions, but I don't want to
11 prevent Dean Lévesque from asking if she has any.

12 JUDGE CRAWFORD: She is about
13 to tell us whether you are going to prevent her or
14 not. Do you have any questions?

15 PROFESSOR LÉVESQUE: No, I am
16 fine, thank you.

17 JUDGE CRAWFORD: The answer is
18 you are not engaged in a preventative action.

19 Thank you very much for that
20 evidence.

21 THE WITNESS: Thank you.

22 JUDGE CRAWFORD: Which has
23 been illuminating. A person in your situation of
24 financial assessor, so to speak, of a company in
25 this sort of difficulty has a delicate task

1 because there are lots of factors to be taken into
2 account, including immediate concerns about
3 unemployment and so on.

4 Would it be fair to say that
5 you give the impression that you treat those
6 issues as essentially financial issues to be
7 resolved in the context of assessing the profit
8 and loss of the company, the value of its assets
9 and not as a broad-ranging public interest
10 inquiry?

11 THE WITNESS: In terms of the
12 employees?

13 JUDGE CRAWFORD: The employees
14 are one of the factors to be taken into account.
15 There are other community interests which would be
16 affected by the company going out of business.

17 THE WITNESS: As a general
18 approach, when we deal with restructurings of
19 businesses, firstly, a going-concern outcome where
20 we preserve the business, if it can be preserved,
21 usually produces the best value for the financial
22 creditors, so we always, you know, try to go a
23 going-concern route if we can. And then there's
24 obviously all the other benefits to the employees
25 and the communities, which are an important part

1 of trying to save a business, if you can -- if you
2 can save it.

3 Not every business can be
4 saved, and sometimes it's impossible to do so, and
5 companies going through liquidation through CCAA
6 or other means -- which is always a difficult
7 process to go through, but sometimes that's just
8 the nature of, you know, the fact that businesses,
9 over time, some don't survive and have to be
10 liquidated in an orderly fashion. But always the
11 preference is to try for going-concern outcome if
12 you can do it.

13 JUDGE CRAWFORD: What you are
14 saying is that it doesn't really matter, your
15 terms of reference are to some extent limited
16 because you have to take those factors into
17 account in the event that they are important --

18 THE WITNESS: Yes.

19 JUDGE CRAWFORD: -- in
20 determining what the outcome should be, and the
21 other factors could be taken into account as
22 appropriate in a case-to-case basis.

23 THE WITNESS: Yes.

24 JUDGE CRAWFORD: Is that a
25 fair summary?

1 THE WITNESS: That's correct.

2 JUDGE CRAWFORD: Thank you.

3 Well, if no one else has any
4 questions to ask, I think we can treat that as the
5 end of this testimony, and we will therefore have
6 a break.

7 The next event is the evidence
8 of Mr. Hausman starting at 3:30. The time now is
9 3:30. Mr. Hausman is going to start late. I
10 think we should abbreviate our lunch hour, just go
11 straight on. Let's have a five-minute coffee
12 break, and we will start with Mr. Hausman at the
13 end of the coffee break.

14 So we will resume at half
15 past -- we will resume at 3:30. It will allow a
16 short coffee break.

17 MR. FELDMAN: Thank you,
18 Judge.

19 --- Upon recess at 9:25 a.m. EST

20 --- Upon resuming at 9:36 a.m. EST

21 JUDGE CRAWFORD: Well, good
22 afternoon, everyone. I suppose it's not afternoon
23 your time; is it? So good morning.

24 The next stage of the process
25 is the evidence of Professor Jerry Hausman, who

1 gave evidence before the Tribunal at the
2 jurisdictional phase and is now giving different
3 evidence to the Tribunal on the merits phase. He
4 has been examined by counsel for the respondent.
5 He is now to be cross-examined by counsel for the
6 respondent. The cross-examination is to last, I
7 think, an hour, two hours. Two hours plus a
8 30-minute break. But he has to make his
9 presentation first, so it's two hours 15 minutes,
10 a 30-minute break and then redirect for half an
11 hour, approximately. It may go a bit longer.

12 The first thing, however, is
13 Mr. Hausman's presentation. Is Mr. Hausman there?
14 Hello. You are on mute, Mr. Hausman.

15 MR. HAUSMAN: Sorry, somebody
16 put me on mute. Okay. Sorry about that.

17 JUDGE CRAWFORD: You are off
18 mute now.

19 MR. HAUSMAN: Yes.

20 JUDGE CRAWFORD: You have in
21 front of you a declaration for expert witness.
22 Could you make that declaration, please?

23 MR. HAUSMAN: I solemnly
24 declare upon my honour and conscience that I shall
25 speak the truth, the whole truth and nothing but

1 the truth, and that my statement will be in
2 accordance with my sincere belief. No one else is
3 present in the room where I am testifying. I did
4 not have any notes or annotations on any hard copy
5 or electronic documents except notes and
6 annotations prepared to facilitate my initial
7 presentation to the Tribunal. I confirm that I am
8 not receiving communications of any sort during my
9 testimony other than my participation in the main
10 hearing room in Zoom.

11 EXPERT WITNESS: JERRY HAUSMAN

12 JUDGE CRAWFORD: Thank you,
13 Professor Hausman. Can I ask you to make your
14 presentation first?

15 THE WITNESS: Yes.

16 Okay. So I am going to mainly
17 be presenting from some slides, which I hope are
18 in front of you.

19 And so the first slide --

20 MR. NEUFELD: Sorry to
21 interrupt, Professor Hausman, but it's Counsel for
22 Canada here, I am just wondering whether we are in
23 restricted access mode right now. I think that's
24 what the procedural order requires. I am just
25 asking for confirmation from Arbitration Place.

1 MS. D'AMOUR: We aren't, but I
2 can remove everyone if need be. Should I do that
3 now?

4 MR. NEUFELD: Yes, this should
5 all be in restricted access.

6 MS. D'AMOUR: No problem.

7 MR. NEUFELD: Thanks. Sorry
8 for the interruption.

9 --- Whereupon Restricted Transcript Commences
10 PRESENTATION BY MR. HAUSMAN:

11 THE WITNESS: Okay. So Slide
12 Number 1. I am Jerry Hausman. I am a professor
13 of economics at MIT. I testified in the earlier
14 proceeding. And I have been an economist at MIT
15 for about 42 years, and I have won all sorts of
16 awards. And I worked in the paper industry
17 starting in the early 1990s, both for large
18 printers like R.R. Donnelley and also for paper
19 companies, the predecessor of Resolute, for
20 instance.

21 Okay, turn to Slide 2, please.

22 The assignment and summary --
23 excuse me?

24 The assignment and summary of
25 what I did was I calculated damages related to

1 Resolute's three mills, Laurentide, Kénogami and
2 Dolbeau, as a result of PHP's reopening and
3 re-entry into North American supercalendered paper
4 market.

5 Okay. So I am taking as a
6 given, and Dr. Kaplan will talk about this
7 tomorrow, that PHP's reopening was due to actions
8 by the Nova Scotian government. I don't have
9 anything to say about that today.

10 My analysis is based on what's
11 called a but-for world, the SC paper market that
12 would have existed but for PHP's -- I am going to
13 call Port Hawkesbury that. I am sure everybody's
14 familiar with it -- reopening and introduction of
15 [REDACTED] 360,000 metric tons of increased SC paper
16 capacity.

17 Everyone, including myself,
18 believes it's 360, but [REDACTED]
[REDACTED]. I will get back to that later.

20 The capacity added by PHP
21 caused damages of about 163 million to Resolute's
22 three SCP mills.

23 Okay, so I have two reports.
24 My first report was I calculated the -- well, to
25 start with, I have two approaches to calculating

1 damages. So the first is I calculated the prices
2 Resolute expected before PHP entered the market
3 using the year-to-year price changes based on the
4 RISI October 2011 price forecast. So this is the
5 last forecast I could find before it was known
6 that PHP was going to re-enter the market, which
7 they did the next year.

8 Then what I did was I compared
9 the expected year-to-year price changes from RISI
10 with the actual year-to-year price changes
11 observed by Resolute. This is my first approach,
12 which is called the forecasting approach.

13 To check these numbers and
14 give an alternative estimate, I applied an
15 economic approach.

16 The economic approach uses a
17 formula which is found in every intermediate,
18 advanced microeconomic textbook, and it says that,
19 if supply increases for a given price elasticity,
20 how much will price change? No one in this
21 proceeding on the other side objected to the use
22 of that formula. It's very well known.

23 So what I did was I used
24 econometrics and estimated a price elasticity of
25 minus 2.1 using the average price changes from

1 2013 to 2017. PHP really entered for good in
2 2013. They started in October the previous year,
3 but they really got going in 2013.

4 That was the extent of my data
5 when I wrote my report, up to 2017.

6 Based upon the estimated price
7 elasticity and the new capacity for PHP, I
8 estimated the effect on prices.

9 Okay, Slide 4, please.

10 Okay, now, PHP's additional 20
11 to 25 percent of capacity will lead to lower
12 prices for SCA and SCB because these prices are
13 close together over time and customers switch
14 between grades depending on the relative prices.

15 That's well known in the
16 industry. The 20 percent is a lower bound,
17 that -- there are all sorts of estimates of
18 capacity, but 20 percent is -- I saw one that was
19 19 percent, but it's, these figures need to be
20 revised. So 20 percent is a lower bound. And
21 then 25 percent was pretty much what it was in
22 2017, the last year of my data. So I just used
23 and said between 20 and 25 percent.

24 Now, Resolute is affected by
25 PHP's capacity and lower prices even though

1 Resolute produced a significant amount of SCB.

2 I will show you an econometric
3 test later, but it's well known that SCA and SCB
4 prices track each other very closely. The gap is
5 usually very small. And, actually, [REDACTED]
[REDACTED]

[REDACTED] I don't think there's any argument about
8 that.

9 Coated mechanical customers,
10 CM4 and CM5, may switch because coated mechanical
11 has a higher price than SCA by about 5 percent.
12 When the price gap between these products widens,
13 marginal customers may shift because the higher
14 coated mechanical quality is no longer worth the
15 extra price. However, this does not put coated
16 mechanical in the same market as supercalendered
17 paper. Econometric analysis finds they're in
18 different markets, as I discuss later.

19 In terms of geographic market,
20 the Pöyry reply report agrees that North America
21 is the correct geographic market, and I quote, "We
22 agree with Dr. Kaplan when he states that the
23 relevant SC paper market is a North American
24 market".

25 Slide 5, please.

1 I then move on to my reply
2 report. And a very unexpected event happened. SC
3 paper prices went up significantly in 2018 even as
4 demand did not grow or capacity did not shrink.
5 What happened were there was a closure of plants,
6 as I discuss in my reply report, to some extent in
7 North America and, more importantly, also to some
8 extent in Europe.

9 To incorporate the 2018 data,
10 I adjusted to apply a three-year average to avoid
11 an overstatement. I should point out, that only
12 affects my future damages, not the past damages.
13 The past damages are for 2013 to 2017 and don't
14 depend on the 2018 data at all.

15 I apply a but-for world
16 methodology, but Pöyry and Mr. Steger did not do
17 so. Instead, they considered the evolution of SC
18 paper prices during the damages period in terms of
19 shifts of demand and supply, e.g., shift in demand
20 from coated paper to SC paper.

21 However, to my way of
22 thinking, they did not answer the fundamental
23 question for a damage estimation. Given
24 everything that happened, given economic growth,
25 factory costs and exchange rates during the damage

1 period, which, of course, are out of control of
2 pretty much everybody, what would SC prices have
3 been if PHP had not reopened?

4 So I would just like to
5 re-emphasize that that's what I am doing, is I am
6 trying to estimate what Resolute's mills' profits
7 would have been, how much higher they would have
8 been if PHP had not reopened.

9 Okay, now, if you turn to the
10 next slide, please, which is Slide 6, you will see
11 that [REDACTED]

[REDACTED]

14 Unfortunately, you can see [REDACTED]

[REDACTED]

20 However, [REDACTED]

1 So as I said at the beginning,
2 I used two approaches, the forecasting approach
3 and the economic approach.

4 The forecasting approach,
5 using data to account for the 2018 price increase,
6 finds that damages from the reopening were in the
7 range of 103 to 149 million, and you can see the
8 average of that is 126 million.

9 The economic approach, I
10 applied [REDACTED], although
11 I don't think that's a well-founded number, but I
12 did it just to be conservative. And when you do
13 it, it changes the price elasticity to minus 1.5.
14 And using this approach, damages were in the range
15 of 90 million to 153 million, so the average is
16 121.5 million.

17 So the forecasting approach
18 gets an average of 126 million. The economic
19 approach, which is a totally different approach,
20 as based on fundamental microeconomics, gets an
21 average of 141.5.

22 In terms of my experience in
23 estimating damages over the years, those two
24 numbers are pretty close to each other. You can't
25 expect them to be the same, but given the range of

1 uncertainty, they are pretty close.

2 And I'd like to emphasize that
3 the large majority of damages are past damages.
4 Only about 23 percent of estimated damages are
5 discounted future damages.

6 I am well aware that when you
7 do future damages, they're inherently more
8 uncertain. Of course, I use a pretty high
9 discount rate to take that into account. But I
10 assume that the plants, the Resolute plants, will
11 be open until at least 2028 based on their
12 documents and their planning. But 23 percent is
13 future damages, and 77 percent is past damages.

14 Okay, if you turn to Slide 9,
15 then, you will see I just break it out by mill.
16 So Laurentide, for instance, is ■■■ million. There
17 are no future damages because it's closed. But
18 you get ■■■ million.

19 And so, on Dolbeau, it's ■■■,
20 ■■■ million. Future damages are ■■■■. You get ■■■■

21 Kénogami is ■■■. Future is ■■■.
22 And total is ■■■■

23 So the bottom line is past
24 damages are 97.6, just about \$100 million. Future
25 damages are 28.7. And the total is 126.4.

1 Okay, now I'd like to respond
2 to some rejoinders.

3 Canada, Mr. Steger and Pöyry
4 put in rejoinder reports, which I haven't had a
5 chance to respond to, so I am going to here.

6 Mr. Steger says that the 2018
7 Resolute prices show Resolute is better off with
8 PHP, but Steger -- Mr. Steger did not evaluate the
9 but-for world. Resolute would have been even
10 better off but for PHP because without that
11 capacity, prices would have been even higher.

12 The elasticity change from
13 minus 2.1 to minus 1.5 in the reply report
14 accounts for [REDACTED]

[REDACTED] So I just took the econometrics that
16 I had done. [REDACTED]. And
17 from the formula, you get -- it's a little bit
18 more than minus 1.5, but it rounds to minus 1.5.

19 Okay, my response to the Pöyry
20 rejoinder. Pöyry is wrong to state that I did no
21 analysis for elasticity estimates. I said in my
22 opening report I provide elasticities over -- that
23 I -- excuse me. I said in my opening report that
24 I did econometric analysis and then took an
25 average of the elasticities and got minus 2.1.

1 However, in my reply, I am using 1.5. And I point
2 out that I am using elasticities over five to six
3 years, which are an average of Pöyry's short- and
4 long-run elasticities. They did both short-run
5 and long-run in Table 2-2 of the rejoinder, and it
6 turns out that the average of those two is minus
7 1.44, which, note, is very close to my minus 1.35.

8 If the right elasticity were
9 minus 1.44, damages would be slightly higher.

10 Okay, now I am going to do
11 some new econometrics.

12 Pöyry mentions a demand shift
13 from coated mechanical to SCA -- I am on Slide
14 12 -- which would have increased SCA prices.

15 Coated mechanical and SCA are,
16 however, not in the same market. As I said
17 before, SCA and SCB, the prices track each other.
18 And if you look at the price changes, the
19 correlation of the price changes is █████, which,
20 of course, is very close to 1, which is the
21 maximum. However, the correlation of SCA and
22 lightweight coated mechanical prices is only █████
23 And the reason I use changes is you need to
24 account for unit roots in the data and
25 co-integration. There was a Nobel Prize given in

1 economics in 2003, and you can't look just at the
2 regular correlation.

3 Now, of course, I know the
4 correlation doesn't necessarily prove they're in
5 the same market, but we also know that there's
6 customer switching and, you know, if you look at
7 Resolute documents, they are usually discussed
8 together.

9 However, we do know that a
10 correlation as low as [REDACTED] is too low for them to
11 be in the same market. So I am not saying that
12 people don't switch from coated mechanical to SCA
13 or SCA+, but they are not in the same market,
14 given econometrics. Also, if you used anti-trust
15 market definition perspective, we know that coated
16 mechanical prices do not constrain the prices for
17 supercalendered-A. So, in other words, if a
18 hypothetical monopolist raised the prices for SCA,
19 not enough people would switch to coated
20 mechanical to defeat the price increase. So based
21 on both the econometrics and the hypothetical
22 monopolist test of anti-trust, which I should say
23 is used in Canada, the EU, the US, everywhere
24 else, they are not in the same market.

25 Next slide, 13.

1 Pöyry states that Hausman and
2 Kaplan reports are consistent with [REDACTED]

5 But, in my view, they do not
6 answer the fundamental question: With [REDACTED]
7 360,000 metric tons less supply on the market,
8 would the SC paper prices have been higher?

9 I think from an economic point
10 of view, which, of course, is what I am, an
11 economist, there is no doubt that if you increase
12 capacity or supply by 20 to 25 percent, it's going
13 to lead to lower prices, especially in an industry
14 such as we are talking about here, the use of
15 printing paper, which has been declining for the
16 last, at least ten years, as people switch to
17 iPads, electronics and various other online ways
18 rather than things like magazines and all.

19 We know that magazines are in
20 a tough situation. We know that inserts in
21 newspapers, which is a big use of supercalendered
22 paper, they have gone way down. You know,
23 companies like Valassis and Newsroom are in much
24 tougher shape now because, for instance, even last
25 week, Salt Lake City, which is a major US city and

1 in pretty good shape economically, both of their
2 newspapers closed and went online. So they have
3 no newspapers left, which means there will be no
4 inserts on Saturdays, which is a way of life in
5 the United States, you know, for the things on
6 sale at the supermarket.

7 Okay, and then lastly, what I
8 want to do is to answer the Tribunal Question 27:

9 "To what degree can
10 conclusions regarding the
11 quantum of damages be
12 predicated on economic
13 models or anecdotal
14 evidence? What degree of
15 confidence must attach to
16 calculations based on
17 future harm." [as read]

18 Okay, so my answer -- look at
19 the last slide, 15 -- is economic models provide
20 the correct framework. Economics states that an
21 increase of 20-25 percent of market capacity will
22 eventually affect price. And economic models
23 allow quantification using the but-for world.

24 Now, I am the first to admit
25 that there is inherent uncertainty. If there

1 Q. Hello, Dr. Hausman. It's
2 a pleasure to see you again even if through a
3 camera lens. The last time that we saw each other
4 would have been in Toronto at the jurisdictional
5 hearing.

6 A. Yes, I would much rather
7 be in Toronto given my --

8 Q. -- I was going to say, I
9 think that's where we all expected to be now for
10 this hearing. It's a little bit odd doing it this
11 way. And who could have guessed that you would be
12 in California, I would be in Ottawa and the
13 US-Canada border would be closed between us? We
14 are certainly living in a bizarre world right now;
15 aren't we?

16 A. Hope for the vaccine.
17 That's all I can say.

18 Q. And I heard good news
19 yesterday, that Pfizer is close. That's what I
20 heard, at least.

21 Thank you for your
22 presentation today. My goal, as I am sure you
23 realize, is to ask some questions of you and get
24 further clarity on your chosen model.

25 Have you been watching the

1 testimony to date --

2 A. No, I have not.

3 Q. -- in this hearing?

4 A. No.

5 Q. Okay. To let you know,
6 for the most part, the witnesses have preferred,
7 when we refer to a document, for that document
8 just to go up on the screen before you rather than
9 you having to fumble and open things. Is that
10 something that you would like to do --

11 A. No, I would rather open a
12 document. I have them all available.

13 Q. Okay. It's okay.

14 A. Once you say it, I can
15 just -- you know, they are in the order you sent
16 them, so I should be able to do it without any
17 problem.

18 Q. Okay. I mean, if it
19 takes time, it takes time, that's all right.

20 Now, you have your --

21 DEAN CASS: Mr. Neufeld, if I
22 might just say, from the standpoint of at least
23 some of the Tribunal members, I would love to see
24 the documents, so to the extent --

25 MR. NEUFELD: Okay. We can do

1 that too. We can do both. That's fantastic.

2 Thank you.

3 BY MR. NEUFELD:

4 Q. You filed three expert
5 reports, as you said, right? And sometimes I get
6 confused because Hausman 1, as we call it here, is
7 the jurisdictional report; right?

8 A. Yes.

9 Q. And Hausman 2 and 3 are
10 part of the merits. So if I sort of slip or say
11 it that way or anything, we all know what we are
12 talking about when I say Hausman 1, 2 or 3. And
13 you have those reports with you, I take it?

14 A. I don't have Number 1. I
15 could find it on my computer. But I have Number 2
16 and 3.

17 Q. Okay. Well, if we need
18 to, that's something we could put up on the screen
19 for you to see.

20 A. Okay.

21 Q. Likewise, I may refer to
22 the jurisdictional hearing transcripts and things
23 that you said there. So I suspect that's probably
24 not something you have on your shelf either; is
25 it? But that's -- again, it's something that we

1 can put up on the screen and you can read, if we
2 need to. Look, a lot of these things you will
3 probably just remember because you wrote them or
4 you said them.

5 So we will proceed. We can
6 pause when we get there, when we get to those
7 moments.

8 Okay, shall we begin?

9 A. Sure.

10 Q. Great. You know what, I
11 should also give you -- because you have -- I
12 assume that you have probably seen other testimony
13 up until now. So there's a common script that
14 comes from every lawyer who takes this seat and
15 says, you know, let's do our best not to talk over
16 each other. We want -- what we are looking for is
17 clear answers. If I have a question, what I'd
18 request is that you answer with a yes or no. Of
19 course, you have all the -- I will give you all
20 the opportunity you need to provide an
21 explanation. But the only way the court reporter
22 is going to get things down is if we don't talk
23 over each other, but that should -- that's been
24 the standard plea from all counsel, and I take it
25 you have no problem with that.

1 A. No.

2 Q. All right, let's begin
3 now.

4 There's no need, I think, to
5 spend much time on your background because these
6 questions were put to you at the jurisdiction
7 hearing already. You will recall that, I am sure,
8 from my colleague, Ms. Wates, at the time?

9 A. Yes.

10 Q. She notes that your
11 expertise lies in econometrics and applied
12 microeconomics; right?

13 A. That's true.

14 Q. And I believe we learned
15 about your theorem, the variance with a difference
16 is a difference with a variance; did I get that
17 right?

18 A. Hey, you just got a
19 passing grade in my course. Way to go.

20 Q. Is that all it takes?
21 Sign me up. I think I would like that. The
22 problem --

23 A. I didn't say you were
24 going to get a PhD. I just said you got a passing
25 grade in my course. You have many other courses

1 to pass.

2 Q. The problem is I have to
3 understand it too; right? I can't just sort of
4 spout it like that and pretend I understand it.

5 A. Yeah.

6 Q. I think we just found the
7 weak link in my degree.

8 You were also asked about your
9 medals, the first medal, for example, and you
10 confirmed that you worked as a consultant for
11 Abitibi Bowater, for Georgia Pacific, and
12 International Paper, but mostly or all in the area
13 of mergers and acquisitions; right? Not in paper
14 sales, as you said, I think?

15 A. Well, not in paper sales.
16 For -- yeah, I think that's very much true.

17 Q. And have you acted as an
18 expert before a court or a tribunal?

19 A. Excuse me?

20 Q. Have you acted as an
21 expert, like you are now, before a court or a
22 tribunal?

23 A. Yes.

24 Q. Which cases have you
25 appeared in before?

1 A. Well, I have been
2 involved in many cases. The one case in the paper
3 industry was when the FTC sued to stop
4 R.R. Donnelley, which was the largest printer,
5 buying Meredith/Burda. And I became very familiar
6 with offset and gravure printing. And that was
7 heard before a federal district judge and then
8 before an administrative law judge.

9 Q. Okay.

10 A. That's the only time I
11 have testified in a case involving paper, the
12 merger that -- FTC tried to stop it, but we won.
13 But in terms of damages, overall, in court, you
14 know, I have probably done it about ten times and
15 in arbitration, maybe three or four times. Maybe
16 two times.

17 Q. Were they always mergers
18 and acquisitions cases?

19 A. Oh, no. The
20 arbitrations, like, once Chevron, you know, a very
21 large oil company, they were building a new plant,
22 and they took out a new technology, and they took
23 out insurance with Lloyd's of London. And then
24 when the plant didn't work, there was a dispute
25 about whether the insurance covered it. And there

1 were hearings held in London, which is also a nice
2 place to go and which I hope to return to, and I
3 worked for counsel for Chevron. And, you know,
4 Lloyd's didn't want to pay, but in the end, after
5 I testified, they settled.

6 So there have been a number of
7 cases like that that weren't mergers and
8 acquisitions.

9 And then in terms of damages
10 overall, I mean, I have done a lot of patent
11 cases. I have done other cases. Right now, I am
12 acting for a group of merchants in the United
13 States that are suing the credit card companies,
14 which has also happened in Canada a couple years
15 ago.

16 I have also worked -- I think
17 we -- yeah, it went to court once in Canada. It
18 was about airline reservation systems. That was a
19 while ago.

20 Q. And you are hired, I am
21 presuming, as an econometrics expert. That's why
22 you are acting in these cases; is that right?

23 A. Usually in
24 microeconomics. The cases are usually about
25 microeconomics. As I say, one of my expertise is

1 applied microeconomics. I often use econometrics,
2 like I did here, but that's very rarely the focus
3 of my testimony.

4 Q. I see.

5 A. The one place where we
6 use econometrics perhaps more are in price-fixing
7 cases. If you're estimating damages, then you
8 pretty -- you know, especially if defendants have
9 pleaded guilty to price-fixing, which often
10 happens in the US, then, you know, the focus is on
11 econometrics. But, otherwise, like the credit
12 card cases I just discussed, that really has to do
13 with applied microeconomics. In other words,
14 does -- do these Visa and MasterCard -- same in
15 Canada -- have the ability to control prices and
16 set monopoly prices or at least prices above the
17 competitive level. You know, and that Visa and
18 MasterCard case have been litigated for at least
19 the last 25 years now, so...

20 Q. Thanks.

21 All right. Let's focus now on
22 the paper side of things. And in preparation of
23 your reports in this case, your -- I guess the
24 last two reports, did you talk to any Resolute
25 officials?

1 A. Yeah, I did. Just mainly
2 once to get some information. ████████████████████

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5 Resolute official, you know, to be able to
6 unscramble that, so -- in my damages --

7 Q. Do you remember who that
8 was?

9 A. No, I am sorry, I don't.
10 That was about almost two years ago now. Probably
11 just a few years ago. So I don't, I really don't
12 remember.

13 And then I may have had one
14 other call, but, again, it was when I was writing
15 my first report, and it was sufficiently long ago.

16 I do remember talking to them
17 and asking how they treated SC paper versus coated
18 mechanical. And then he said that they treated
19 SCA and SCB in the same segment, so they treated
20 them together, you know, they told me the prices
21 tracked each other, which I knew. But they are a
22 very large producer of coated mechanical. I think
23 their plant, if I remember right, is in Catawba,
24 which I think may be South Carolina. I'm not
25 sure. They may be --

1 Q. That's a bit of a sore
2 point in this case, Dr. Hausman, because we asked
3 for a lot of documents around Catawba, and your
4 client didn't give them and the Tribunal refused
5 them. So that's a bit of a sore point for you to
6 raise Catawba.

7 A. Okay. Well, anyway, they
8 said they treated in a different segment. And
9 just to make sure everybody feels bad, I asked for
10 documents from PHP, how much they were actually
11 producing. They are in Nova Scotia. We could
12 have gotten them. I must have asked for them a
13 half-dozen times. I have never seen it --

14 Q. Who did you ask them
15 from?

16 A. Excuse me, I have never
17 seen any -- and then you can ask me -- and, you
18 know, [REDACTED]
19 based, you know, on some rather ropy assumptions,
20 in my view. So, as I sit here today, I still
21 don't understand why we didn't get discovery from
22 PHP, but I will leave that to you lawyers to fight
23 it out.

24 Q. You realize they are not
25 a party in this case.

1 A. Okay, that's what I mean.
2 It's a legal question. But in the United States,
3 I think I would have had the PHP documents mainly
4 because this is in an arbitration, it's different.
5 But the whole thing -- the whole question is, if
6 they hadn't reopened, what would prices have done?
7 And to this --

8 Q. We will get to that. I
9 am just, I just --

10 A. Let me finish, please --

11 Q. I just hope you
12 understand that we don't control PHP.

13 A. Okay. That's fine. I
14 take your word.

15 Q. So in performing your
16 analysis, you say at paragraph 14 of your second
17 report that, in performing your analysis, you
18 looked at some opinions reflected in witness
19 statements, you had you, or your staff under your
20 direction, review pleadings, looked at industry
21 pricing, forecasting data, detailed pricings,
22 volume, cost data, all on the Kénogami, Dolbeau,
23 Laurentide mills; do you remember writing that?

24 A. I am getting it right
25 now. You said paragraph 14 of the reply report?

1 Q. That's right.

2 A. My paragraph 14 doesn't
3 quite say that. Just a second. My paragraph --

4 Q. It's up on the screen if
5 you see it there.

6 A. Okay, are you sure that's
7 not the original report? Excuse me.

8 Q. Sorry. That is. You
9 know what, I am mistaken. That is your first --
10 your Report 2, not your reply, so I'll call it
11 Hausman 2. I knew we would get into this problem,
12 and that's why I said right from the start that we
13 will call it Hausman 1, 2 and 3. This is Hausman
14 2.

15 A. Well, you scared me
16 because it's very early here in California.

17 Q. I know. You had to get
18 up very early. It was earlier --

19 A. I thought maybe I hadn't
20 woken up yet. But, yeah, I see that now,
21 "Information Replied Upon".

22 Q. You didn't say in that
23 that you spoke to people at Resolute. You did
24 that after, presumably, you wrote this?

25 A. I don't remember. I am

1 sorry.

2 Q. Okay. That's okay.

3 Do you remember speaking to
4 Breen Blaine?

5 A. No. I don't -- I don't
6 remember one way or the other.

7 Q. You don't remember any of
8 their names?

9 A. No. I am very bad on
10 names. I always tell people I have had over a
11 thousand students, and I can't remember people's
12 names. I am sure Dean Cass is in a similar
13 position. I do remember a few, like Ben Bernanke.
14 He was a great student. Of course, went on to run
15 the world at the fed. But by and large, I am not
16 very good at names.

17 Q. So you wouldn't know
18 whether any of the people that you spoke to that
19 are witnesses in this case for Resolute?

20 A. I have no idea. Sorry.

21 Q. No idea.

22 A. To actually give you a
23 full answer, I don't even know who the witnesses
24 in the case are. I read the Canadian witnesses'
25 declaration but not the Resolute.

1 Q. I see. Okay. Thank you.

2 So it may seem like eons ago
3 now that we were talking about jurisdiction in
4 this case and the very different world that we
5 referred to earlier, but you do recall that you
6 submitted a report in that case, and it analyzed
7 whether Resolute could have reasonably known that
8 it was injured by the Nova Scotia measures before
9 December 20th, 2012; do you recall that?

10 A. Yeah, I found that. It's
11 now on my -- I have two computers in front of me.
12 It's on my screen.

13 Q. Okay, good. So that
14 study was an econometric analysis using a
15 technique called "regression analysis"; is that
16 right?

17 A. Yes.

18 Q. And you undertook that
19 study to see what the price of SC paper was in
20 2012 compared to 2013?

21 A. As I remember, yes.

22 Q. And to measure PHP's
23 effect on the prices, your jurisdictional report
24 relied on RISI's price index for SCA paper; is
25 that right?

1 A. That sounds correct.

2 Q. You didn't use forecasted
3 prices on that one, you used actual prices; right?

4 A. Right, because I had
5 actual prices.

6 Q. Okay. And the type of
7 paper that you looked at was SCA paper in
8 particular?

9 A. Okay. Everything you
10 say, I am just going to take your word for it.
11 You don't want me to spend --

12 Q. Okay. I like that. Do
13 you want to drop your claim as well and drop your
14 damages assessment?

15 A. Not unless you invite me
16 to come to Toronto.

17 Q. I could talk to the Prime
18 Minister perhaps.

19 But you recall, though, that
20 during the -- your cross-examination on
21 jurisdictional phase, Mrs. Wates put the question
22 to you in cross-examination. She asked you why
23 you used the SCA paper index, why SCA when
24 Laurentide, Resolute's mill, produces SCB; do you
25 remember that exchange?

1 A. No.

2 Q. Do you want me to call up
3 the jurisdiction transcript so you can see what
4 you said?

5 A. Sure.

6 Q. Would you be happy if I
7 read it? I could read it to you, we can call it
8 up, you can do both.

9 A. Call it up, please. I
10 want to see the context.

11 Q. Okay.

12 There.

13 So you responded that you used
14 the SCA price index because, and these are your
15 words:

16 "I was looking at the
17 effect of Port
18 Hawkesbury, and I
19 expected if there was an
20 effect, they will find it
21 in SCA because that's
22 what Port Hawkesbury
23 makes the most production
24 of." [as read]

25 A. I said that, yes. Port

1 Hawkesbury also, as I understand it, makes SCB,
2 but, as I say, the majority is SCA.

3 Q. Right. And are you still
4 of the view that the price effects would be more
5 obvious for SCA than for SCB?

6 A. Umm, well, they move
7 together, so I think you could find them in
8 either. You know, the gap never is more than a
9 percent or two. As I said, [REDACTED]

[REDACTED] It's well known. So if you
11 were going to use a price index, I think you could
12 find it in either. But as I said here, since PHP
13 makes more SCA, that's why I used it.

14 Q. Right, right.

15 And then on redirect,
16 Mr. Feldman asked you to clarify that very point.
17 So that's at page 90 of the same transcript. And
18 you said:

19 "And so SCA, you know, to
20 some extent, it's

21 brighter -- "[as read]

22 Some of what you said today in
23 your presentation:

24 " -- it's brighter, it's
25 more pleasing to the eye,

1 but that's as far as it
2 goes. And so I thought
3 it was better to look at
4 SCA at least for the RISI
5 data, which is where I
6 would have expected Port
7 Hawkesbury to have the
8 biggest effect since
9 that's mainly what they
10 produce."[as read]

11 Are you still of that view
12 today?

13 A. Yeah, I stand by that
14 answer, but as I say, you know, SCA and SCB go
15 together. I don't think there's any argument in
16 this case, and if you look at the correlation of
17 the price changes, you know, which I mention, it's
18 ■■■ -- 1.0 is a maximum, so ■■■ is not even
19 significantly different than 1, so that just says
20 they move together one for one. But what I
21 said --

22 Q. Sure, they move together.
23 You said bigger.

24 A. No, no, no.

25 Q. You said the word

1 "bigger".

2 A. You promised you weren't
3 going to interrupt me.

4 Q. Oh, I am sorry. You are
5 right. You go ahead. I am sorry. I apologize.

6 A. So I should have maybe
7 said "the biggest effect" because I think there
8 would be a similar effect.

9 But it is mainly what they
10 produce. But the prices, you know, correlation of
11 the price change of █████ is extraordinarily high.

12 Q. And the price effects
13 vary according to the SC grade, though. You said
14 that before, and you maintain that statement?

15 A. Yeah, I think they would,
16 but they would be very similar to each other.
17 They wouldn't be exactly the same. The
18 correlation's only █████. If it were 1, it would
19 be exactly the same.

20 Q. Okay.

21 Your report at jurisdiction
22 also looked at other effects. It looked not just
23 at prices. But it also looked at Resolute's
24 finances and Resolute's volumes; isn't that right,
25 you recall that?

1 A. Well, that sounds
2 correct, yes.

3 Q. Okay. After reviewing --
4 I know that report was a long time ago. After
5 reviewing Resolute's mill data and quarterly
6 earning reports and calls, your view -- it's at
7 paragraph 29 of that report, if you want to see
8 it -- your view was that Resolute experienced
9 stable economic performance in 2012.

10 A. Let me just get there,
11 please.

12 Q. Sure. And then you
13 continue on, it's 29 through 31 that I am looking
14 at here, so it's stable economic performance in
15 2012.

16 A. I see that.

17 Q. And then afterwards, at
18 31, you say uneven financial performance
19 afterwards.

20 A. Yes.

21 I do say, though, that, in
22 paragraph --

23 Q. I didn't ask you a
24 question yet.

25 A. Oh, I am sorry. Okay.

1 My fault.

2 Q. It's all right.

3 All right. I would --

4 JUDGE CRAWFORD: Mr. Neufeld,
5 he is allowed to expand on his answer within
6 reason.

7 MR. NEUFELD: He sure is.

8 BY MR. NEUFELD:

9 Q. If you want to say
10 something, go ahead.

11 A. Yeah, I was just putting
12 this in context. In paragraph 31, I said:

13 "Subsequent financial
14 performance was uneven --
15 "[as read]

16 Which you quoted, but you
17 didn't finish it off, which I would want to do in
18 the sentence:

19 " -- so the company could
20 not have ruled out a
21 recovery indicating that
22 ordinary market
23 fluctuations, rather than
24 PHP, was the cause of any
25 changes in financial

1 performance -- "[as
2 read].

3 Q. Okay.

4 A. " -- as seen in
5 Resolute's contribution
6 margin in Figure 5 above,
7 2013 results were
8 positive but mixed." [as
9 read]

10 So when something changes for
11 just one quarter or, you know, one small period of
12 time, if you are running a company -- I have
13 taught MBA students for many years -- you know,
14 the problem always is, is that a permanent change
15 or is it just a market fluctuation for one
16 quarter? And you really can't tell, usually.

17 Q. Understood, understood.
18 Okay, thanks.

19 Can we look at Mr. Steger's
20 first report at page 6. There's a table in there
21 that I would like to refer you to.

22 So Mr. Steger here summarizes
23 Resolute's net profits; do you see that?

24 A. Yes.

25 Q. Okay. And in 2010,

1 Resolute's three supercalendered paper mills [REDACTED]

[REDACTED]; do you see that?

3 A. Yes.

4 Q. And in 2011, it's

5 [REDACTED]; right?

6 A. Yes.

7 Q. And in 2012, when PHP now

8 is in hot idle, it's not producing paper, you see

9 [REDACTED] doesn't it?

10 A. Yes.

11 Q. So that's when you

12 described the finances, the profits at Resolute as

13 stable is when [REDACTED]

14 with PHP out of the market?

15 A. Yeah, there is an

16 explanation, though, which is given. So 2010, you

17 don't expect it to be very high because that was

18 just coming out of the great recession, which, of

19 course, at the time, I thought was the worst

20 recession we were going to see in our lifetime.

21 Q. It may not be.

22 A. Little did I know about

23 the virus.

24 2011, you know, things had

25 gotten pretty good. The economy had gotten pretty

1 good. But in 2012, the main reason [REDACTED]
[REDACTED] But if you
3 look at the double asterisk, it says, "includes
4 losses from restarted operations during the year",
5 so that was sort of a special thing that they
6 restarted and they took a loss. I mean, that's
7 not uncommon. So I would call that an
8 extraordinary event, and you will note, that's the
9 only one that has a double asterisks in
10 Mr. Steger's --

11 Q. Yeah, I think that's
12 right. And if you look -- I mean, we could. We
13 don't need to go there, but looking at the
14 schedules that Mr. Steger's put in at
15 Schedule 12L, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] doesn't it? I mean, [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Is that --
22 that's the way you would see it, I guess, eh?

23 A. Yes.

24 Q. I mean, on a very rough
25 calculation, [REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] --

5 A. I didn't follow your

6 arithmetic totally, but [REDACTED]

[REDACTED]

8 Q. Okay. So you're

9 viewing -- anyway, [REDACTED] is what you view as sort

10 of stable prices?

11 A. Well, that was a good,

12 that was a good year, yeah.

13 Q. Oh, that would be a good

14 year. Okay.

15 Now, can we look at C-238,

16 please?

17 A. Okay. C-238, that

18 doesn't seem to be in the documents I was given.

19 Q. Uh-oh. And here I

20 thought we provided just about every document

21 there was.

22 A. I did too, I have to

23 admit, but they are in alphabetical order, and I

24 have C-236, 237 and C-242.

25 Q. Well, we can put it on

1 the screen. If you are not comfortable with that,
2 then we can figure out another way, but there
3 isn't very much to look at in it.

4 A. Okay, sure.

5 Q. You can see there, you
6 can see it on the screen now, and it's [REDACTED]

8 So on page 5, there's [REDACTED]. Do you see that?

10 A. Yes.

11 Q. And you can see [REDACTED]
[REDACTED]

13 A. Yes.

14 Q. So there's [REDACTED] --
[REDACTED]

16 A. Yes.

17 Q. -- do you agree?

18 A. I agree.

19 Q. [REDACTED]
[REDACTED]

22 A. Yes.

23 Q. In fact, I think it was
24 described yesterday. You wouldn't have heard
25 because you weren't listening to the testimony,

1 but [REDACTED] --

2 A. I would agree.

3 Q. Okay. Let's go back to
4 Mr. Steger's report now. And we are going to look
5 at [REDACTED]

6 You see there [REDACTED]
[REDACTED]

8 A. Yes.

9 Q. You'd say that [REDACTED]
[REDACTED]

11 A. Yes.

12 Q. And you'd have to agree,
13 wouldn't you, that there was enough room in the SC
14 paper market for both PHP and Resolute in [REDACTED]?

15 A. There's always enough
16 room, but that's not the question at issue, in my
17 mind. The question at issue, in my mind, if Port
18 Hawkesbury [REDACTED] and
19 hadn't been open and there had been a, let's say,
20 22 percent less capacity, Resolute would have made
21 even higher profits. I mean, that's really what's
22 going on, and that's the but-for world. So I am
23 not disagreeing that they had a pretty good year,
24 but they would have had an even better year. You
25 know, the paper industry has its ups and downs

1 over time. Things are not getting better, but,
2 yeah, they did well, but without one of their
3 largest competitors, what would have happened?

4 So think back to the North
5 American car market. If Toyota disappears one
6 year, you know, 2014, would General Motors and
7 Chrysler and Nissan all have done better? Yes, of
8 course. They made profits and Toyota made
9 profits, but without Toyota -- I am just assuming
10 Toyota. I think they are bigger in Canada than in
11 the US -- but, you know, 20 percent, people would
12 have done better.

13 So, in my mind, and, you know,
14 you may disagree -- in my mind, that is the
15 question on the table. Sure they did well, but if
16 Port Hawkesbury hadn't reopened, would they have
17 done even better? And that's what I tried to
18 estimate in terms of damages.

19 Q. Right. And better than
20 what you viewed as stable profits in 2012 or 2011?
21 We were talking about [REDACTED] was a
22 pretty good year. [REDACTED] is a heck of a lot
23 better. Now you are telling me they should have
24 made more money than that, still, is what you are
25 saying?

1 A. Yeah, in Canada and the
2 US, last I knew, there's no rule against making
3 money -- well, unless you are monopolists, which
4 these guys aren't. In 2014, 2015, those were
5 pretty good years for the US economy, as we know.
6 You know, we had the recovery starting and
7 president -- we had President Obama, and I forget
8 who you had. Mahoney maybe was his name? I'm not
9 sure. But anyway, the North American economy was
10 doing pretty well, so, of course, [REDACTED]

11 Q. Okay.

12 A. You can see, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17 Q. That's not that far off
18 that stable pricing that you were looking at. I
19 mean, you know, [REDACTED]
[REDACTED]

21 A. You can characterize it,
22 you know, however you want. I am just trying to
23 give you the economic fact --

24 Q. Sure.

25 A. -- that in industries

1 like paper, we know that the profits tend to
2 bounce up and down, and we know that, for
3 instance, 2015, the recovery really got going in
4 the US and so -- in North America, I should say,
5 and [REDACTED]

6 Q. I'd like to take you to a
7 new exhibit now that changes tact a little bit,
8 C-244. I am not sure this is in your bundle
9 either, to tell you the truth.

10 A. No, I have it. I am
11 opening it now.

12 Q. Oh, you do. Okay, very
13 good. Very good.

14 So this is the press release
15 issued by Resolute Forest Products on July 6th,
16 2018; do you see that?

17 A. Yes.

18 Q. So it provides that:
19 "Resolute Forest Products
20 is pleased to announce
21 that the United States
22 Department of Commerce is
23 formally revoking the
24 countervailing duty order
25 on supercalendered paper

1 from Canada, retroactive
2 to August 3, 2015.
3 Collection of cash
4 deposits on imports of SC
5 paper from Canada will
6 cease, and all cash
7 deposits that have been
8 collected from importers
9 of record since August 3,
10 2015, will be returned
11 with interest.

12 Resolute's cash deposits
13 as of June 30th, 2018,
14 total 60 million. The
15 company will also receive
16 accumulated interest on
17 these deposits."[as read]

18 Now, this isn't considered
19 profits, I think you'd probably agree with that,
20 as it's just the repayment of tariffs from a
21 process, a gruelling process that we all went
22 through. Canada fought and won. But you would
23 agree that Resolute is \$60 million richer today,
24 actually 60-million-plus-interest richer given the
25 repayment of these tariffs; correct?

1 A. Yes. Although, if the
2 tariffs hadn't been there, their profits probably
3 would have been different. In other words, if
4 they -- I wasn't part of this ITC proceedings. I
5 don't know the details, but if the tariffs hadn't
6 been implemented, the economic outcome would have
7 been different because the prices would have been
8 lower.

9 Q. Okay. Thanks.

10 All right, another -- the
11 third indicator that we said -- you can take that
12 down, Chris. Thanks.

13 The third indicator that you
14 looked at in the jurisdictional phase was volumes;
15 right?

16 A. Yes.

17 Q. So could we turn to
18 Attachment 4 of Hausman 1, so your jurisdictional
19 report, Hausman 1, Attachment 4, page 47. It's
20 the very last page of the report.

21 So this is the data that you
22 looked at to consider Resolute's volumes sold in
23 2013 as compared to 2012; correct?

24 A. Looks like it, yes.

25 Q. So if you compare, if you

1 look at January 2012 and you look to January 2013,

2 the comparator -- so you consider, for example,

3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12 Q. Okay.

13 A. [REDACTED]

[REDACTED] we know the economics of how this industry

15 works. If you run a mill, you want to run it full

16 out or as close to full out as you can. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

15 Q. Let's look a little
16 closer at quantity, then.

17 Chris, could you call up
18 Schedule 11 of Mr. Steger's first report?

19 JUDGE CRAWFORD: Mr. Neufeld,
20 there's scheduled to be a half an hour break in
21 this testimony. I will leave it to you to judge
22 within the next five minutes what would be a good
23 moment for you to break?

24 MR. NEUFELD: We can break
25 right now. There's no, you know, nothing -- if we

1 break now, that's just fine by me.

2 THE WITNESS: Excuse me,

3 Mr. Crawford, is there any reason to break?

4 Because we have only be going, you know, for an

5 hour. I would just as well keep going.

6 JUDGE CRAWFORD: Well, I am

7 very happy to keep going. I was really concerned

8 to ensure that you are feeling up to the race.

9 THE WITNESS: Yeah, no, let's
10 keep going, please.

11 JUDGE CRAWFORD: Okay.

12 THE WITNESS: I will tell you
13 if I need a break.

14 JUDGE CRAWFORD: Right, thank
15 you.

16 MR. NEUFELD: I am in your
17 hands.

18 JUDGE CRAWFORD: No, we will
19 continue.

20 MR. NEUFELD: Okay, thank you.

21 BY MR. NEUFELD:

22 Q. Okay. So here, we have
23 Schedule 11 in Mr. Steger's report. [REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 Can you blow it up a little

3 bit more again, Chris? It's pretty small.

4 Okay, perfect. Let's look at

5 Kénogami, then. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

1 [REDACTED]

[REDACTED]

3 Q. Okay. And then look at
4 imports in 2010. [REDACTED]

[REDACTED]

6 A. Yes.

7 Q. Now, those imports are
8 made up almost exclusively of SCA paper; right,
9 it's SCA+, SCA++?

10 A. That's my knowledge.

11 Q. [REDACTED]

[REDACTED]

[REDACTED]

14 A. No. Imports are sort of
15 the residual supply for North America. They go up
16 and down. You know, there's a certain demand
17 given prices and given the state of the economy,
18 and they tend to go up and down as residual
19 supply.

20 Q. Okay, because I am a
21 little surprised because at Footnote 11 of your
22 third report, you say that there is a limited role
23 of imports in the SC paper market.

24 A. Yeah, that's my view,
25 they are a residual supply. They don't set the

1 price. They take the price which is set in the
2 North American market because it's a separate
3 market. And then they are a residual supply that,
4 you know, if they can profitably fill some unmet
5 demand, they will do it, but it has to be
6 profitable. It depends on the currencies and
7 various other things.

8 Q. Yeah, but, Dr. Hausman,
9 the residual supply is [REDACTED] metric tons in
10 2010, right? Or [REDACTED] in 2011. [REDACTED] And
11 how big is PHP's supply?

12 A. 360, give or take.

13 Q. Right. So that's
14 capacity, right, 360 --

15 A. Yes.

16 Q. -- [REDACTED]
[REDACTED] -- okay.

18 A. Wait a minute. Even
19 before there was, you know, without PHP -- could
20 you move this -- people's faces are in front of
21 this. You know, show me 2011.

22 Q. Sure.

23 A. So in terms of 2011 --
24 and then show me 2012. So you can see that, you
25 know, that, between 2011 and 2012, when PHP was

1 closed in 2012, [REDACTED] and

2 then in 2013, if I am looking at this right --

3 Q. Yeah.

4 A. -- when PHP reopened,

5 [REDACTED] if I am reading this right --

6 Q. Right.

7 A. -- [REDACTED]

8 Q. No, that's absolutely

9 right.

10 And then [REDACTED]

[REDACTED] in 2014; don't they, [REDACTED]

12 A. Yeah, it depends on

13 currency, and, as I say, they are the residual

14 supply.

15 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] right?

24 A. Yes. People said that

25 was a horrible year for the SC paper market. I

1 remember reading that.

2 Q. That's when PHP was out
3 of the market, though; right?

4 A. Yes.

5 Q. So PHP supply is not in
6 there, and that was the horrible year for, for
7 paper suppliers, including Resolute; right?

8 A. Yeah, it was a bad year.

9 Q. So then in 2013, PHP
10 re-emerges, and [REDACTED]
[REDACTED]; do you see that?

12 A. Yeah, we know from the
13 chart in my paper that you showed me a few minutes
14 ago that [REDACTED]
[REDACTED]

[REDACTED] the
17 economy, I think, was improving in 2013, so if
18 anything, that's a plus. [REDACTED]

19 So it's not surprising. [REDACTED]
[REDACTED] You know, so that's
21 nothing out of the ordinary.

22 Q. Are you aware that RISI,
23 the forecaster that you rely on for your damages
24 assessment, [REDACTED]
[REDACTED]

1 A. No, I don't remember
2 that.

3 Q. Okay. We can look at it,
4 we can, so --

5 A. No, I'll take -- yeah, I
6 will take your word for it. I am sure you are
7 quoting it correctly.

8 Q. It still may be
9 worthwhile actually looking to it because it
10 provides a little bit more information than that
11 and a little bit more context, which I think the
12 Tribunal will appreciate.

13 So R-235 is the RISI report.
14 Do you recognize this? Do you know what this is?

15 A. Oh, yeah, I read that
16 before.

17 Q. I don't think you are
18 audible there. We didn't hear what you said,
19 Dr. Hausman.

20 A. I don't think that's me;
21 is it? Oh, okay.

22 Q. No, there are sirens
23 behind me here. I think it's here.

24 So you recognize what this
25 document is?

1 A. Yes.

2 Q. Okay. It's similar to
3 the document that you rely on for your -- where
4 you found your own forecast for this -- for your
5 damage assessment?

6 A. As I remember, yes.

7 Q. All right, can we flip to
8 page 66, please. The last paragraph, the first
9 sentence of it.

10 A. Sorry, you said page 66.
11 My document says it only has 57 pages. Could
12 you -- in fact, my document says it has 26 pages.

13 Q. That's interesting. Is
14 that R-235?

15 A. Yes. It's [REDACTED]
[REDACTED]

17 Q. Right. And [REDACTED]
[REDACTED]

19 A. That's my understanding.
20 It says R-235 just like yours
21 does, right in the upper right corner.

22 Q. Right. And it's -- so
23 these are -- they have produced -- RISI produces
24 these products on a yearly basis; don't they?

25 A. Yes, that's my memory.

1 Just, I mean, I just don't
2 know where you are. That's all.

3 Q. Oh, I see. So it
4 starts -- your document starts at page 57 and then
5 it runs from there, so I am just wanting you to go
6 to page 67 of the actual document.

7 A. Oh, okay, sorry.

8 Q. It sounds to me like you
9 haven't seen this document before.

10 A. No, I thought I had. I
11 mean, I have seen a heck of a lot of documents.
12 But, okay, so you're saying it's --

13 Q. Let's just park this for
14 a second.

15 Chris, can you call up R-470,
16 please?

17 Do you have R-470 in your
18 binder there, Dr. Hausman?

19 A. Let me see. Yes, I will
20 pull it up. Okay. Yeah, this is --

21 Q. You recognize this --

22 A. This is the one I
23 depended on, as I remember, October 2011.

24 Q. Okay. Okay. So this is
25 the five-year forecast that you rely on for your

1 damages assessment; is that right --

2 A. Yeah, it's one that I
3 could find, which is the last one before PHP
4 re-entered, or it was known that they were going
5 to re-enter.

6 Q. It's a 2011 report, and
7 from that 2011 report, you assess damages starting
8 in 2013; isn't that right?

9 A. That's right.

10 Q. Well, all future damages
11 from 2013 through to 2028, you assess on the basis
12 of that 2011 forecast; correct?

13 A. That's one of the ways I
14 do it. That's what I called the forecasting
15 approach. But I also used the second way called
16 the economic approach, which I discussed in my
17 slides and in both my reports, which we would call
18 Hausman 2 and Hausman 3.

19 Q. I was getting worried
20 that you didn't recognize these documents because
21 it seemed to be what you were relying on for your
22 entire damages assessment. Now, the one I had
23 just referred you to was the November issue
24 from -- well, let's go back to it, Chris. It's
25 235, so that would be [REDACTED]

1 [REDACTED] come with these
2 commentaries.

3 A. Right.

4 Q. And the commentaries are
5 somewhat helpful. They are a little opaque when
6 it comes to all of the assumptions they rely on,
7 but there are some helpful bits. And on page 66,
8 the last paragraph of the first sentence --

9 A. Okay, let me get there,
10 please. Page 66.

11 Q. [REDACTED]

12 [REDACTED]
13 A. Okay, wait a minute, I am
14 still not -- just a second. Oh, yeah, yeah, I
15 think we finally -- yeah, I am with you. I am
16 sorry about that.

17 Q. Okay, great.

18 So there you see what I was
19 saying about [REDACTED]

[REDACTED] --

21 A. Yeah, as it says here,

22 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] And --

1 Q. Because --

2 A. -- [REDACTED]

[REDACTED]

[REDACTED]

5 Q. Flip to the next page,

6 Chris, page 67.

7 There, you see [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [as

17 read]

18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 A. Yeah, that's his opinion.

23 Q. And his opinion is that

24 [REDACTED]

[REDACTED]

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[REDACTED]

A. Yes, I think -- yeah,
okay.

Q. Okay. So, a slow pace
for secular decline doesn't suggest massive
overcapacity; does it?

A. Well, the way the
industry works is it declines, and then the
high-cost mill ends up shutting down, and that
gets equilibrium back, supply and demand. I mean,
Dr. Kaplan will talk about that tomorrow, but
during the period that I calculate damages, as I
remember, one plant closed. I think it was
Madison, but I am not sure. It's probably
mentioned in a footnote in my testimony. But,
yeah, you have this secular decline. Since you
need to pretty much -- to remain economic, produce
near full out, something has to give when you have
overcapacity. And the way it works typically, not
always but typically, is that the high-cost
producer will shut down, and then the price goes
down to the -- what -- pretty close to the cash
cost sometimes received and goes a little bit
below the real time. The cash cost is the next
highest-cost producer. You have a classic supply

1 curve in this industry, upward sloping. The
2 difference is that it has step functions. And, of
3 course, what happened was when PHP came and
4 shifted its supply curve to the right because it
5 added, you know, just call it 360,000, you know,
6 [REDACTED], but it
7 shifted to the right, and that's going to lead to
8 lower prices.

9 Q. Okay, but --

10 A. That's a fundamental
11 supply and demand, and that's the basis of my
12 so-called economic approach to calculating
13 damages.

14 Q. And you mentioned Madison
15 closing. That's in 2016 they shut. This comes in
16 2013, and there's no capacity shutting down until
17 2016; you'd agree with that?

18 A. Well, I don't know
19 whether there was other capacity shutting down or
20 not, but I do remember Madison shut. I am just
21 saying, you know, that's how the industry works.
22 Sometimes people might keep producing, you know,
23 hoping that things will get better or at least not
24 get as, you know, not turn out as bad as they
25 might, but that's the general idea.

1 Q. Chris, can you turn to
2 page 69, please, the same report?

3 There's the first, first
4 paragraph there.

5 A. Just a second, I would
6 like to get there.

7 Q. Sure.

8 A. [REDACTED] I am
9 there, yes.

10 Q. It says:

11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [as read]

21

[REDACTED]

22

Now, you will recall

23

Dr. Kaplan makes great fun of Mr. Suhonen or Pöyry

24

for using the word "demand", but [REDACTED]

[REDACTED]

1 But if you look at the price
2 changes as I did and do an econometric test, you
3 know they are in separate markets, but it's
4 certainly not an island. And what's not discussed
5 here is what was happening to consumption of
6 coated mechanical in Europe. It may have been
7 dropping off, and so they may have shifted some to
8 the US, to North America.

9 Q. Okay, now, let's look
10 at --

11 JUDGE CRAWFORD: I think,
12 Mr. Neufeld, I think we have probably come to a
13 point where a half an hour break would be welcome.

14 MR. NEUFELD: Absolutely.

15 THE WITNESS: I would still
16 like to keep going and just finish my cross off if
17 that's okay with the Tribunal.

18 JUDGE CRAWFORD: If you are
19 feeling fully up to it.

20 THE WITNESS: Yeah, let's keep
21 going.

22 JUDGE CRAWFORD: It will take
23 another hour.

24 THE WITNESS: Yes, that's
25 fine.

1 --- Reporter appeals

2 JUDGE CRAWFORD: Yes, I think
3 that we have got to take account of people. Let's
4 have a 15-minute break. So we will start again in
5 15 minutes.

6 --- Upon recess at 11:02 a.m. EST

7 --- Upon resuming at 11:17 a.m. EST

8 JUDGE CRAWFORD: I'm having
9 some difficulty keeping account of time because
10 I'm working in three time zones at once, but I
11 think since we are all here, we might as well work
12 out the right time to start or to restart. So,
13 Rodney, over to you, sir, to continue with your
14 cross-examination. You have got about 20 minutes
15 left?

16 MR. NEUFELD: Is that all I
17 have left? Okay.

18 JUDGE CRAWFORD: No. I'm
19 sorry. I am asking for confirmation. I'm not
20 sure about that figure.

21 MR. NEUFELD: Do you want me
22 to proceed, and then we will figure out how much
23 time is left, or would you like to get a handle on
24 that first?

25 MS. AMBAST: Sorry, this is

1 the Tribunal secretary. I have the
2 cross-examination having run for about just under
3 an hour, so around 59 minutes.

4 JUDGE CRAWFORD: Right. That
5 gives you another hour.

6 MR. NEUFELD: Okay. Thank
7 you.

8 JUDGE CRAWFORD: Not including
9 redirect.

10 MR. NEUFELD: Right. I'm not
11 sure I will need an hour, but let's see. Just to
12 confirm, we are in restricted access again,
13 Heather, or not Heather?

14 MR. TRISTAN: Hi, yes, we are.
15 This is Eric Tristan. I'm covering for Heather.

16 MR. NEUFELD: So you have got
17 to take people out of the room that shouldn't be
18 here. We see our own folks in the room who
19 wouldn't normally be allowed to see restricted
20 access information, and they are in the room. So
21 I don't think -- do you have a list of who is on?
22 You will see Xs next to their name.

23 MR. TRISTAN: Sorry, one
24 moment.

25 MR. NEUFELD: Thanks.

1 DEAN CASS: The other thing we
2 will have to do is take Dr. Hausman off of mute as
3 well when we get to the Q&A.

4 MR. NEUFELD: Yes, thank you.
5 Good eye.

6 In terms of the -- what was I
7 going to say?

8 So, Dr. Hausman, I think you
9 are still muted.

10 MR. TRISTAN: So everyone with
11 an X is now in the waiting room.

12 THE WITNESS: I'm unmuted now.
13 That's fine.

14 BY MR. NEUFELD:

15 Q. Great. Okay. So I think
16 we were about to go to Exhibit R-482.

17 A. Okay. Just a second,
18 please. 482, I will have to find that. Okay. I
19 am there.

20

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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9 Q. Thanks.

10 Okay. In any event, this
11 whole discussion was about volumes, and your
12 damages model, of course, doesn't consider volumes
13 at all, does it?

14 A. No. It's based on
15 prices. I mean, it --

16 Q. Right. You --

17 A. -- the volumes come into
18 it because, in the but-for world, the supply curve
19 would have been to the left-hand side, so there
20 would have been higher prices. But in terms of
21 estimating damages, no. Both the forecasting
22 approach and the economic approach calculate what
23 happens to prices.

24 Q. Yeah. Because you don't
25 consider Resolute's lost quantities via lost

1 shipments or market share at all; right? You
2 don't consider any of that?

3 A. No, I don't.

4 Q. Okay.

5 A. I looked at that, but
6 decided not to use it, so...

7 Q. Okay. So it was a
8 conscious decision not to use it?

9 A. Yes. It's a very
10 complicated story about what was going on, and I
11 wasn't able to separate things out sufficiently in
12 my mind.

13 Q. I see.

14 Chris, you can pull down the
15 slide.

16 You also don't perform --
17 well, you said that, in your presentation, you
18 perform an econometrics analysis in your second
19 report, but it was really for -- it wasn't to
20 arrive at the damages loss, was it? There, you
21 were using RISI percentages of change and then --
22 and deducting, deducting from the, the expected
23 prices what Resolute's actual prices were. So you
24 are not using an econometrics analysis in that, in
25 that part of your report, are you?

1 A. Well, that's not quite
2 right. I'm not, you know, exactly sure what you
3 are saying, but I use two approaches, which I
4 emphasize. The first is the one you just
5 described. That's the forecasting approach. I
6 used the RISI prices.

7 But the second approach is
8 what I call the economic approach, and that's an
9 the economic formula, and I do use econometrics
10 because I have to estimate what the price
11 elasticity is, which I do in the first report and
12 in the second report. That's using econometrics,
13 and I explain what I did in the report.

14 And, you know, my final
15 damages, they are pretty close to each other. You
16 know, if you look at the mean 126 million, and
17 that's forecasting approach; and the economic
18 approach is 122. So, you know, they are pretty
19 close.

20 I would emphasize that I am
21 using two approaches, not just one. I mean, you
22 seem to want to emphasize the forecasting
23 approach, and that's up to you. But the economic
24 approach directly answers the but-for world
25 question because it says: Without the capacity,

1 what would have happened to price? And as I say,
2 I use a well-accepted formula that's been used for
3 over 100 years, which describes or predicts the
4 change in price given the change in capacity or
5 change in quantity.

6 But the one thing I need is
7 the price -- the market price elasticity, and I
8 do, as I describe in my first report, use
9 econometrics to get that.

10 Q. Okay. But you also have
11 a preferred approach that you -- and that's why I
12 keep referring to the forecasting mode approach,
13 because you call that your preferred number. I
14 mean, that's the number that the claimant puts
15 out. That's your preferred approach?

16 A. My preferred approach is
17 actually the economic approach, but the claimant
18 does put out the forecasting approach. But as I
19 say, you know, they are close enough to each other
20 that it doesn't matter. I may have called it my
21 preferred approach. I don't know. But since I am
22 an economist, I like the economic approach.

23 Q. I see, because you did
24 call it your preferred -- but we can come to that.
25 Before getting there, I want to figure out what

1 you didn't do, and then we will figure out what
2 you did do. So let's take this in order.

3 You decided that -- we covered
4 this already that you didn't look at lost
5 shipments. You didn't look at finances. You did
6 that in jurisdiction, but you didn't do that here;
7 correct?

8 A. Yes.

9 Q. Okay. And then you also
10 don't calculate any loss of Resolute's assets, its
11 mills, for example. That doesn't form part of
12 either of your approaches; correct?

13 A. That's correct.

14 Q. And nowhere do you
15 compare the benefits that PHP receives from the
16 Government of Nova Scotia in the terms of
17 subsidies and compare that to what Resolute
18 receives in subsidies from Quebec. You don't do
19 that anywhere either; right?

20 A. That's completely and
21 utterly outside my bailiwick. I was afraid you
22 were going to bring this up. But I purposely left
23 that to other people. I know there was some
24 power, and I know there was some forest. You
25 know, I could give you the broad categories. But

1 I never looked into the details whatsoever. You
2 know, to compare Quebec with Nova Scotia, I
3 probably could do a better job with Ontario
4 because of the hockey teams. But I -- you know,
5 the -- I keep waiting for the Canadiens to win the
6 Stanley Cup again. There's a story behind that.
7 I predicted a long time ago they wouldn't win for
8 ten years to Mr. Molson. It's turned out to be
9 closer to 30 years, or 25 years.

10 But, anyway, what Nova Scotia
11 gave and how it compares to other provinces, I
12 really have no educated opinion on. I'm one of
13 the few economists you will meet who actually will
14 admit ignorance, so...

15 Q. Very good. I'm happy to
16 hear that we have hockey in common.

17 You don't quantify damage
18 based on the allegation of predatory pricing by
19 PHP?

20 A. No. Didn't look at that
21 at all.

22 Q. So since we are on it,
23 let's call up R-415, please, Chris. 415, you
24 can -- I will give you a second to get it
25 yourself, Dr. Hausman. It's [REDACTED]

1 [REDACTED] Do you see that?

2 A. Yes.

3 Q. Okay. So if we look at
4 page 7, you will see on page 7 [REDACTED]

[REDACTED]
[REDACTED] do you see that?

7 A. You are going a bit too
8 fast for me. Page 7.

9 Q. Page 7, bottom left.
10 [REDACTED].

11 A. Just a second. [REDACTED]
[REDACTED] Yeah, I am there. Thanks.

13 Q. Okay. So it says:

14 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] "[as read]

21 [REDACTED]
22 right? [REDACTED] [REDACTED]
[REDACTED]

24 A. Right.

25 Q. So the question is: [REDACTED]

1 [REDACTED]

[REDACTED], isn't

3 it?

4 A. That sounds like it, yup.

5 Q. Okay. And then, if we

6 keep reading:

7 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [as

23 read]

24 [REDACTED]

[REDACTED] PHP isn't exhibiting any type of

1 predatory behaviour, wouldn't you?

2 A. Well, to an economist,
3 predatory behaviour has a particular definition.
4 Predatory pricing is pricing below average
5 variable cost. It's actually below marginal cost,
6 but the way that it's usually applied is average
7 variable cost. And I have no idea what PHP's
8 costs were. I mean, I presume they were above,
9 [REDACTED], but we don't
10 really have the documents to do that. But the
11 other question really is -- and this, again, I
12 don't really have knowledge on -- without the
13 various subsidies, if they were subsidies that
14 Nova Scotia gave them, if they have been producing
15 at -- without subsidized costs, would their price
16 have been below that cost? Because we know that
17 PHP was uneconomic. I have been to Nova Scotia,
18 but it's pretty far from anywhere. I think I took
19 a boat, as I remember, from Maine. And so they
20 have high transportation costs, much higher than
21 Quebec, for instance, to the main US markets. And
22 so, you know, when you talk about predation, as I
23 said, I really didn't look into that. What is the
24 base of predation? Is it actual costs? Is it
25 subsidized costs? I leave that for you lawyers to

1 investigate.

2 Q. Thank you. Thank you.

3 All right. Well, let's turn
4 to the RISI forecast, then, that you used for your
5 forecasting model.

6 You say in your second -- you
7 can take this down, Chris.

8 You say in your second report,
9 Hausman 2, at paragraph 9, that RISI is an
10 authority on paper prices. Before this
11 arbitration, were you familiar with RISI already?

12 A. Yeah. When I worked for
13 Donnelley after the merger, I actually did
14 consulting for them on other things as well. It
15 wasn't litigation, but it was just consulting. As
16 I remember, they actually used RISI, and I may
17 have also been familiar with it from the various
18 mergers that I worked in. But, yeah, I had heard
19 of them.

20 Q. And yet you were
21 familiar, as well, with their forecasts or just
22 that they have good price data --

23 A. I don't remember. I'm
24 sorry.

25 Q. So they provide a

1 two-year forecast, and then they also provide this
2 five-year forecast that you relied on. So you're
3 not familiar with those different products that
4 they have?

5 A. I don't remember, no.

6 Q. Okay. And you -- did you
7 look for other forecasts out there? This was the
8 one -- this was the one you used?

9 A. Well, yeah. As I
10 remember -- this is two years ago -- this is the
11 one that was done, you know, before knowledge of
12 whether PHP was going to reopen. And RISI also,
13 in my view -- other people may have different
14 views -- is sort of one of the more authoritative
15 sources. You know, in other words, people use
16 RISI prices, I think, more than anybody else's,
17 but I could be wrong about that.

18 Q. Actuals or forecasted or
19 both?

20 A. I think both, actually.

21 Q. Well --

22 A. In other words, if you
23 look at, if you look at the, if you look at the
24 Resolute documents, I think RISI is most often
25 referred to. But, you know, you could show me

1 differently.

2 Q. Well, that's sort of
3 where we are going to go, actually, because you
4 said at paragraph 24 of your statement that -- and
5 these are your words -- Resolute relies on the
6 RISI price forecasts for what they expect markets
7 to be.

8 A. They don't always agree.
9 I mean, sometimes they say this is what RISI said,
10 but we are going to, you know, assume prices are
11 going to be flat. I mean, I have seen that many a
12 time in the Resolute documents. But who they are
13 referring to is typically or usually or most often
14 RISI, in my memory.

15 Q. Right. And you mean this
16 is in their, sort of, day-to-day business?

17 A. Yeah.

18 Q. And they rely on these
19 forecasts.

20 So it's your review of the
21 documents that leads to that conclusion, or did
22 you speak to somebody about it?

23 A. It was mainly the review
24 of the documents and my background knowledge of
25 the industry.

1 Q. Because you do note at
2 Footnote 25 of your witness statement, you say:
3 "Resolute had some
4 internal forecasts with
5 constant prices for all
6 of the paper products.
7 However, RISI prices are
8 a better indicator of the
9 market. RISI is accepted
10 as the industry standard
11 on pricing in the SCP
12 market." [as read]

13 So I'd like to take you to
14 those --

15 A. Okay. I will take your
16 word for it. I don't see that footnote, but sure.

17 Q. Okay. We will come back
18 to the exact words, because I will break it up for
19 you. I mean, I read out your whole footnote
20 there, so...

21 The first question is: It's
22 your expert opinion that RISI is the industry
23 standard on pricing, or is it your opinion based
24 on what you learned from Resolute?

25 A. I can't really separate

1 things out that way. I mean, you know I worked
2 for other printers. I've worked for Chemcore, and
3 so on, you know, the very large printer. I worked
4 for Abitibi. I worked for Resolute. I worked for
5 printers like Donnelley. And my overall memory is
6 RISI was most often referred to.

7 Q. All right. And then,
8 second, you note that --

9 A. I will give you an
10 example. I will give you an example.

11 Q. Sure.

12 A. When Donnelley signs a
13 contract with a customer, it's often a multiyear
14 contract. You know, this is back in the days I
15 consulted for them. And so they wanted to have
16 some idea of what's going to happen to paper
17 prices. Sometimes it it's a cost plus contract.
18 Sometimes it's not. But they want to know what's
19 going to happen to paper prices going forward.
20 And my memory is, when I consulted for Donnelley,
21 they most often used RISI. This is RR Donnelley,
22 the very large printing company. It used to be
23 much larger, of course.

24 Q. This footnote says --

25 A. What page is the footnote

1 on? I just want to get there.

2 Q. So we were at page --
3 paragraph 24 of your second witness statement and
4 then Footnote 25 --

5 A. That must be much earlier
6 in the document, sorry.

7 Q. Is it?

8 A. Yeah. It should be.
9 Footnote 25 does not read what you say, if we are
10 looking at the reply. Are you looking at the
11 opening? I may have confused matters.

12 Q. Yeah. I am looking at
13 your second report. There we go again --

14 A. Oh, yeah, my second
15 report in my merit.

16 Q. The second, H2. I will
17 call it Hausman 2. I knew this would happen.
18 That's why I said what I said at the beginning.

19 A. I'm sorry. Yeah, I
20 understand. I just got confused. That first
21 report was so long ago I put it out of my mind.
22 Okay. So it's Footnote 25. Let me just find
23 that.

24 Q. Okay.

25 A. Yeah. I see it now.

1 Thanks.

2 Q. Okay. And then we are on
3 to the second part of that footnote where you said
4 there's some internal forecasting by Resolute. Do
5 you know what document you are referring to there?
6 Because there's nothing cited?

7 A. No, I'm sorry. I forget.
8 But I can remember one thing where they were
9 looking at things, saying, you know, RISI expects
10 prices to go up a bit I think it was around 2013.
11 But, you know, we're keeping them constant.

12 Q. Do you remember who
13 brought the document to your attention?

14 A. No. I mean, I was
15 working with Dr. Kaplan and his associates, and
16 one of them did, I presume.

17 Q. Okay. Well, let's call
18 up C-180. Maybe this will jog your memory.

19 A. Sure. Let me get it,
20 please.

21 Q. Okay. Sure, sure.

22 C-180. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1

[REDACTED]

11

[REDACTED]

21

[REDACTED]

1

[REDACTED]

11

[REDACTED]

22

[REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11 [REDACTED]

12 Q. Well, we can see some of
13 those examples, then. If we would call up R-377,
14 Chris.

15 A. Okay. Let me find that,
16 please.

17 Q. Sure.

18 A. R-377.

19 Q. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

16

Q. Let's go to 486.

17

A. 486.

18

[REDACTED]

[REDACTED]

1

[REDACTED]

11

[REDACTED]

20

[REDACTED]

1

[REDACTED]

11

[REDACTED]

21

[REDACTED]

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[REDACTED]

21

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

11

[REDACTED]

17

Q. Okay. All right -- also

18

you can take this down, Chris.

19

In any event, you rely --

20

let's go back to the basis of the forecasting

21

approach that you see. You rely on RISI's 2011

22

five-year forecast to arrive at your damages.

23

And we've already talked about

24

the fact that -- why you did that. You relied on

25

that one because it was before, before there was

1 any question about PHP's return. We discussed
2 that already; right? And we discussed that you
3 are using those 2011 percentages forecasts out
4 from 2011 to determine what damages would be all
5 the way out to 2028. Well --

6 A. Well, not, not -- excuse
7 me for interrupting.

8 Q. No. That's -- please
9 interrupt me, because I think I know exactly what
10 you are going to say, and I should have corrected
11 myself too, so go ahead.

12 A. That's not really quite
13 accurate. I mean, Number 1, I don't look at the
14 price forecast. I look at the change in prices in
15 the forecast.

16 Q. Right.

17 A. I emphasize that in my
18 testimony.

19 But, secondly, once I get to
20 -- in my first report, I think it's 2018, I am not
21 really using those forecasts anymore out to 2028.
22 I'm just saying, if I remember correctly, that
23 profits will fall by [REDACTED] per year, and then
24 I discount those back.

25 So I really am only using the

1 RISI forecast, as I remember, for four or five
2 years.

3 Q. Okay. Okay. And if
4 that -- and then the forecast -- at the end of the
5 time you use the forecast, that's where you apply
6 a [REDACTED] from the price that you landed on
7 based on the last percentage change out of RISI;
8 correct?

9 A. No. I don't think that's
10 correct either. I thought that I have profits
11 going down by [REDACTED] a year.

12 Q. You do. But what's your
13 upper -- how do you determine that upper amount of
14 profits? Is it not based on the last number that
15 you reached based on the forecasted amounts, the
16 forecasted percentages out of RISI?

17 A. Yeah.

18 Q. Again, what do you deduct
19 that from? Right. So everything is based --
20 everything comes after RISI?

21 A. In the forecasting
22 approach. Not the economic approach, but, yes,
23 the forecasting approach.

24 Q. Right.

25 A. Everything comes back to

1 the price changes in RISI.

2 Q. Right. Okay. Right.

3 And did you consider the
4 assumptions that RISI used when it made those,
5 those forecasted changes, price changes?

6 A. As I remember, I did.
7 You know, as I sit here, I can't remember
8 everything, but yes.

9 Q. So, like, the GDP and
10 foreign exchange and demand and quantity of
11 imports, all these issues, you looked at those
12 numbers -- I mean, you are looking at this in
13 2015; right? You are looking back to a report
14 that's written in 2011. So you can tell at that
15 point what's right and wrong in that report;
16 correct?

17 A. No. I -- no. That's --
18 see, I disagree with you and your witnesses on
19 that.

20 Let's just take one element.
21 It's well nigh impossible to forecast foreign
22 exchange rates. I have had so many students, and
23 there is just thousands of papers, but foreign
24 exchange rates, like the Euro dollar, is well
25 known to be very close to around a walk. You

1 really can't predict it very well. And so it's
2 just not right to say, in 2015, well, they got it
3 wrong in 2011. Everybody probably got it wrong in
4 2011 except the one lucky trader. So what are you
5 going to do? The reason I didn't build an
6 econometric model -- I am an econometrician -- is
7 I know that you can't really forecast exchange
8 rates at all well. I am just picking out one
9 variable, and there are a lot of other variables
10 you have to do. So I don't think, in 2015, you
11 can say, well, they got it wrong. Well, yeah.
12 Things change, but also PHP was in the market with
13 its 360,000 tonnes. So it's incorrect -- and I
14 actually want to emphasize this. It's incorrect
15 in 2015 to say, well, they got it wrong in 2011.
16 What we want to know is: What was the forecast in
17 2011? They were doing the best they can. They
18 seemed to be reputable, and that's what I am
19 using. You can't say I'm going to recalibrate in
20 2015. You know, that's like waiting until the
21 Toronto Raptors -- you know, you want to predict
22 how many points they are going to win or lose by.
23 If you wait until halftime, well, now you have a
24 lot more information than you had at the beginning
25 of the game, so...

1 Q. But you do have an
2 opportunity to look at --

3 A. So I outright reject this
4 idea of saying 2015, look how wrong they got it.
5 Yeah. Well, the world changed. What do you
6 expect?

7 Q. Right. But doesn't that
8 just mean that the prediction on prices was wrong?

9 A. No. The prediction might
10 have been right, because PHP entered the market.
11 They did not have PHP coming in. So somebody
12 comes in, and they have 20 percent to 25 percent
13 of capacity, things are going to change. I want
14 the prediction without PHP, so that's my whole
15 point. You can't -- unless you can run a
16 controlled experiment, which, of course, you
17 can't, here was the world without PHP. Here is
18 the world without PHP in 2015. You can't really
19 tell. It's just sort of, you know, hindsight bias
20 or Monday morning quarterbacking, whatever you
21 want to call it. But, you know, you want to see
22 what people thought in 2011 without PHP, not what
23 actually happened once PHP came in, once currency
24 rates changed, et cetera, et cetera, et cetera.

25 Q. Hmm. And you wouldn't --

1 even if it's the assumption underlying the
2 prediction and you know that assumption to be
3 false, that wouldn't stop you from relying on that
4 price forecast?

5 A. What assumption to be
6 false? I'm sorry.

7 Q. Well, I mean, you said
8 foreign exchange. I mean, we know that foreign
9 exchange rates were drastically different and that
10 the assumption of foreign exchange was one thing
11 for the price forecast. So we know that, in
12 reality, it was something totally different. We
13 know that to be false. But you still say it's
14 right to rely on the forecast even though we know
15 that the assumption was false?

16 A. Yeah. Let's say I built
17 an econometric model hypothetically.

18 Q. But you could have;
19 right?

20 A. But only used data until
21 the end of 2011 because -- and then I would make a
22 forecast. I make a forecast for 2015, and maybe I
23 assume the foreign exchange. My model doesn't
24 assume. My model says that foreign exchange will
25 be pretty much constant. If it's around a walk,

1 that's not a bad assumption, but the foreign
2 exchange rate changes by a lot. Now, my results
3 are going to be different from what my model
4 predicted. But, as I said, you can't really
5 predict foreign exchange at all well, so what do
6 you want? You know, that's one of the reasons you
7 don't do an econometric model here.

8 What I'm saying is RISI, in
9 2011, said we make some assumptions, and this is
10 what we think is going to happen. The world, you
11 know, didn't turn out that way. And, in
12 particular, PHP, with 20 to 25 percent of the
13 market, completely changed things.

14 I mean, you can't argue --
15 well, a lawyer can argue anything, but an
16 economist can't argue that, when somebody comes in
17 and adds 20 to 25 percent capacity, that it's not
18 going to have a big effect. You know, that's
19 supply and demand. That's supply and demand. You
20 shift the supply curve to the right. You know, we
21 can argue about how big an effect it will have.
22 It depends on the price elasticity in the economic
23 approach. But we know it's going to have an
24 effect. And, in fact, you know, [REDACTED]

[REDACTED]

1 [REDACTED]

2 Q. Your comment makes me
3 think of what President Truman had to say about
4 economists. Have you heard that one before? Can
5 you please give me a one-handed economist?

6 A. Yeah. Right. I will
7 give you an even better one.

8 So George Bernard Shaw, who
9 is, you know, a very famous author said, "You can
10 teach a parrot to be an economist so long as it
11 knows how to say 'supply and demand.'" And when I
12 read people's testimony and they don't take supply
13 and demand into account, I'm very dubious. So I
14 have always thought that's better than President
15 Truman, but pick your favourite.

16 Q. I thought, I thought
17 Bernard Shaw's comment was to say, "Please don't.
18 If you don't know what you are talking about,
19 don't take supply and demand. Don't use those
20 word." But you are saying quite the opposite. As
21 long as I don't use the words, you are going to
22 find fault with what I am doing?

23 A. Supply and demand, you
24 know, rule the world as do economists -- as a
25 joke.

1 Q. All right. Well, the
2 Pöyry report [REDACTED] If we
3 can call up page 44 of the first Pöyry report,
4 Table 7-1.

5 A. You are much too fast for
6 me. I have to go and find it.

7 Q. No. I just mentioned it.

8 A. It's the first Pöyry
9 report. There's only one Pöyry report in this, so
10 I take it that's the one you are talking about.
11 Okay. And what page?

12 Q. Okay. So these are --
13 this is --

14 A. No. You have to tell me
15 what page? Page 44, I'm sorry.

16 Q. Page 44, yeah. It's on
17 the screen if you want to see it on the screen.

18 A. No. I will do my own.

19 Q. Okay.

20 A. Just a second.

21 Thirty-four, I am almost there. What page am I
22 on? Okay. I'm on 44, and a review of the Hausman
23 report. And you want Table 7-1?

24 Q. Okay?

25 A. Okay. I'm there.

1 A. Yeah.

2 Q. So you keep on

3 emphasizing the --

4 A. Well --

5 Q. [REDACTED]

8 A. Okay. [REDACTED]

11 A. Yeah, yeah. Yes.

12 Q. [REDACTED]

17 A. [REDACTED]

18 Q. And did you look at these
19 assumptions before you decided to rely on the RISI
20 forecast?

21 A. Yeah. Again, this is,
22 you know, what actually happened. And, you know,
23 it's very difficult to predict what's going on.
24 I'm just saying, what did they know as of 2011?

25 [REDACTED]

1

2 [REDACTED]
3 [REDACTED]
4 [REDACTED] But I'm saying
4 they did the best job they could to forecast. You
5 know, I don't see Pöyry coming out with an
6 econometric model. I know they have had them
7 before and said, if you have an econometric model,
8 this is what you would have forecast. You know,
9 so, I agree, you know, that they weren't spot on,
10 but, you know --

11 Q. Would you agree that they
12 are optimistic?

13 A. -- that's life in the
14 forecasting business.

15 Q. That's right.

16 JUDGE CRAWFORD: Mr. Neufeld,
17 can we just work out where we are going for the
18 rest of the day?

19 MR. NEUFELD: Sure. I
20 think -- sorry, go ahead, Judge Crawford.

21 JUDGE CRAWFORD: You have got
22 about 20 minutes left --

23 MR. NEUFELD: I won't need --
24 I think if we would stop all of our side bars on
25 presidents and authors and things, we should

1 probably be able to wrap this up pretty quickly.

2 JUDGE CRAWFORD: Well, a

3 sartorially modest ten minutes.

4 MR. NEUFELD: Okay. Very

5 good.

6 BY MR. NEUFELD:

7 Q. Let's talk about the

8 numbers because I am more than confused about the

9 damages -- you can take that down, Chris --

10 damages figure in this case.

11 I have seen that it's just

12 gone up and down like a Yo-Yo. It started in the

13 Notice of Arbitration at \$70 million. That was

14 the figure that the claimant used. Were you

15 involved in that assessment of \$70 million? That

16 would have been 2015.

17 A. That one, I am not. I

18 didn't even know about this arbitration in 2015,

19 I'm quite sure.

20 Q. Right. Then relying on

21 your second report, the claimant's memorial takes

22 your damages, so from between 163 and 201 million,

23 so that was the 163 that you put into the

24 beginning of your presentation today; right?

25 That's where we started the presentation.

1 Now, that's cited in the
2 memorial, and that's the damages amount that the
3 claimant relies on, 163 million as of the time of
4 the claimant's memorial.

5 A. Okay. I will take your
6 word for it.

7 Q. Okay. And then
8 presumably they cite to 163 and not to 201 because
9 you say in your report, at paragraph 48, that this
10 is your more conservative and your final damages
11 calculation?

12 A. This is in my second
13 report, the first report -- the first damage
14 report?

15 Q. That's right.

16 A. Yeah. I vaguely remember
17 saying that.

18 Q. Okay. And why did you
19 select the lower number?

20 A. To be conservative. I
21 always try to be conservative in these matters.

22 Q. Okay.

23 A. I'm the first to admit
24 there's a lot of uncertainty, so you do the best
25 you can. Then I usually say, you know, I'll give

1 a conservative number. I give the range so people
2 can do whatever they want. But, you know, I don't
3 speak for the lawyers. I just speak for what I
4 do.

5 Q. Great.

6 Now, in the reply memorial at
7 paragraph 368, the claimant argues that you showed
8 that Resolute had incurred between 91 and
9 137 million dollars.

10 A. Okay.

11 Q. Do you know where that
12 number comes from?

13 A. No. Whatever they are
14 claiming -- I do say on page 8 of the slides, they
15 were in the range, using a forecasting approach,
16 of 103 to 149, and the economic approach is 90 to
17 153. So those, as it were, are the numbers on the
18 table. Exactly where the lawyers got their
19 numbers from -- they didn't ask me --

20 Q. So lawyers --

21 A. Excuse me. They didn't
22 ask me --

23 Q. So the lawyers. --

24 A. They didn't ask me to
25 review anything. So they say what they say.

1 Q. Okay. Because the
2 numbers they picked, they didn't relate to
3 anything in your report. That's what I was
4 wondering, and whether they maybe -- maybe there
5 was another damages report or another analysis
6 that --

7 A. Well, you'll have to ask
8 them under cross-examination where they got their
9 numbers from.

10 Q. I would love to. Okay.
11 So ultimately now the request for relief that the
12 claimant is asking for is the \$103 million figure,
13 which is the lower part of your preferred range in
14 your forecasting amount.

15 A. Yeah.

16 Q. So you say 103 to 148;
17 right? So their relief is based on that figure,
18 so that's what they are relying on.

19 A. Right.

20 Q. They are not relying on
21 your economics approach. They are relying on your
22 forecasting approach and that number?

23 A. Yeah. But the economics
24 approach comes to very similar. It's lower bound.
25 Its lower amount is 90 million, so 10 percent

1 difference. But the means of both of them are
2 very close. But, yeah, again, you know, the
3 lawyers say what the lawyers say.

4 Q. And actually they rely on
5 the lower one, presumably because that's the more
6 conservative approach. You don't say that in your
7 report, and they don't say that, but I am assuming
8 that?

9 A. Well, I don't make
10 assumptions for lawyers, but, you know, I'm not
11 saying I disagree.

12 Q. You aim high; they go
13 low. Is that what you are saying?

14 A. No. I always, as I say,
15 try to be conservative. I am not arguing. I am
16 not disagreeing.

17 Q. Neither am I, but I am
18 enjoying this.

19 So then during the hearing,
20 the claimant said \$216 million. Any idea where
21 that comes from?

22 A. No idea under creation,
23 as my dear mother used to say where --

24 Q. Because I was really
25 hoping that, in your presentation today, you would

1 clear that up. I made a pitch for it when I made
2 my opening argument, but here with are. Okay.

3 So we are stuck with your
4 preferred range in your final report, because
5 that's what the lawyers rely on, of 103 to 148.
6 And you arrive at that range, we discussed,
7 because you've corrected an assumption that you
8 made based on the ■ percent decrement; correct?

9 A. Yeah. There was this
10 anomalous event. No one, I think, expected prices
11 to go up like they did in 2018. You know, prices
12 had been going down for 20 years. They would
13 occasionally blip up, but continue down. But they
14 went up a lot in 2018. And so, yeah, I am, again,
15 I am an economist. I am willing to say I am
16 wrong. I am an academic. If I were a Washington
17 economist, I would never admit I was wrong on or
18 an Ottawa economist. But I admit, you know, I
19 didn't foresee this anomalous event, so I tried to
20 correct for it.

21 Q. It's hard to predict the
22 future?

23 A. Absolutely.

24 Q. Yeah. And then 2019,
25 prices go up again. So you would have to correct

1 again, would you?

2 A. Well, you know, I -- if I
3 had those prices, yeah, I might take that into
4 account. That doesn't affect -- you know, as I
5 said, 77 percent of the damages are past damages.
6 Okay? And 23 percent are future damages. You
7 know, it's very difficult to predict future
8 damages. We had this anomalous event. Now we
9 have the pandemic. Prices are coming down. You
10 know, the economies of both Canada and the US are
11 in horrible shape. So, you know, trying to
12 predict out to 2028, I'm the first to say, is very
13 difficult. I mean, who, who, who, what economist
14 would have predicted the pandemic? I mean, some,
15 you know, predicted the Recession of 2009-2010.
16 One guy at NYU sort of made a career of it. He
17 got one prediction right, but every prediction
18 since then has pretty much been wrong. But I know
19 no one who predicted the pandemic. I mean, it's
20 horrible. It's ruined our lives. You know, we
21 got to have a vaccine, but no one predicted it.

22 Q. I hear ya.

23 All right. Well, let's close
24 off. You can educate me a little bit. You said I
25 have my MBA already, but I have my doubts on

1 elasticity.

2 These are the numbers. I saw
3 in your in H2, so the first report of your
4 damages, H2, you used elasticity kind of as a
5 sanity check; right? You're going back to sort of
6 double-check your numbers based on -- in that
7 case, do you recall the elasticity figure you
8 used?

9 A. Yeah. Minus 2.1. I
10 don't see it as a sanity check. I see it as
11 alternative way. So I as I said, as an economist,
12 I would have preferred the economic approach. But
13 when you end up with similar numbers, given the
14 inherent uncertainty, it seems to me that should
15 give you some confidence.

16 Q. I see. And you call that
17 relatively elastic?

18 A. Yeah. Pretty much things
19 above 1 are called relatively elastic -- minus 1.
20 You know, there's always a thing between negative
21 elasticities and positive. But if a magnitude is
22 above 1, which minus 2.1 is, it's considered to be
23 relatively elastic.

24 Q. Perhaps Dean Cass
25 remembers putting the question to you at

1 jurisdiction. He asked -- it was about
2 cross-price elasticities, but you responded they
3 were very high. And this is a lawyer parsing
4 words here, but I just want to know whether very
5 high and relatively elastic are in the same world
6 or not?

7 A. Yeah, no. I think there
8 is a confusion here. Minus 2.1 is a market
9 elasticity. I remember Dean Cass' question to be
10 the cross-price elasticities between SCA and SCB.
11 Those are not the market elasticity. Completely
12 different. That's product elasticities. And we
13 know those are going to be much higher. And when
14 we look at the price correlation or price changes
15 of [REDACTED] very close to 1, it's just another
16 demonstration.

17 So I think you and Dean Cass
18 aren't quite on the same page. Hopefully I have
19 now put you on the same page. One is a market
20 elasticity.

21 So here's the thing. We have
22 two cement companies in Toronto. And at least in
23 the United States, it's -- you know, there are
24 standards for cement. The cross-price elasticity
25 between those two cement companies is

1 extraordinarily high. You know, if one of them
2 tries to price 10 percent more, it's going to lose
3 a heck of a lot of business. But the market
4 elasticity for cement, if you put all of the
5 cement companies together in Toronto, is actually
6 rather low compared to that, because you got to
7 use cement. I mean, there are very few
8 substitutes.

9 I think the market demand
10 elasticity for cement, if I remember right, is
11 about minus .3. I would guess the firm price
12 elasticities are probably around minus 10.

13 Q. You just went and took
14 away my MBA. You gave it to me at the beginning
15 of the chat, and now you take it away again.

16 A. I know. I am a hard
17 taskmaster.

18 Q. Let's call up Steger 2,
19 at page 13, because this is -- this table shows
20 all the elasticities, not cross-price
21 elasticities, just the elasticities you use in
22 your report.

23 A. Which one? Is this the
24 rejoinder report of Steger?

25 Q. That's right.

1 A. Okay. What page are you
2 on?

3 Q. I'm on page 13, table B.

4 A. Okay. Thank you.

5 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] --

9 A. Well, that follows, that
10 follows [REDACTED]

[REDACTED]. So that
12 follows from the formula. That's not me changing
13 my mind. It just follows from the formula.

14 Q. Okay. And if you applied
15 the 2.1 -- the negative 2.1 price elasticity
16 assumption in that scenario, what would the
17 damages look like?

18 A. Well, if you use 360 and
19 2.1, you know, it's go together -- I don't know,
20 but I don't think they change a lot, but you can't
21 use [REDACTED] and 2.1. That's not, that's not what you
22 can do. I was going to say that's not kosher,
23 but, you know, whatever you want to say.

24 JUDGE CRAWFORD: Mr. Neufeld,
25 your time for the cross-examination has expired

1 unless there was a particular point you want to
2 finish with.

3 MR. NEUFELD: We can leave it
4 there, Judge Crawford. Can you give me just two
5 minutes to confer, and I will come back? Would
6 that be okay or?

7 JUDGE CRAWFORD: Yes. You
8 have two minutes. Two minutes.

9 MR. NEUFELD: Thank you.

10 BY MR. NEUFELD:

11 Q. Dr. Hausman, you did ask
12 to look at the 360. Let's just flip to the next
13 table and end with the next table, then, so you
14 can see what the changes in price elasticities do
15 on your number.

16 So if you apply the 2.1 -- so
17 you are saying that [REDACTED]

[REDACTED]

[REDACTED]

20 A. He didn't force my hand.
21 I just wanted to see what happened. And, again, I
22 always like to be conservative, and [REDACTED]

[REDACTED]

24 Q. This is what --

25 A. I am not sure he has a

1 good basis for it, but, you know, that's what he
2 wants to use.

3 Q. Okay. So here's your
4 price elasticity of 2.1 applied to the 360,000
5 metric tons. And do you see what that does to the
6 damages equation?

7 A. Where are you? Sorry.

8 Q. What you have on this
9 table -- sorry, it's the next table, so table C.

10 A. Yeah, I am on table C.

11 Q. Okay. And you have here
12 a table of price elasticity from negative 1 to
13 negative 2, negative 2.1, negative 3, and negative
14 4?

15 A. I don't know where the
16 negative 3 and 4 come from.

17 Q. They are just examples.
18 Now, negative 1.5 is what you are now relying on?

19 A. Yes.

20 Q. Correct?

21 A. Yes.

22 Q. So in a situation of
23 360,000 metric tons, your damages amounts are
24 going up considerably; correct?

25 A. But that -- the 360 and

1 the 1.5 are inconsistent with each other. I would
2 say you shouldn't do that.

3 Q. So you should use the
4 2.1?

5 A. No. You should use [REDACTED]
6 and 1.5.

7 Q. But I don't understand
8 what price elasticity you would use on the
9 quantity of 360,000 metric tons, then.

10 A. Oh, there, I guess you'd
11 use 2, or 2.1.

12 Q. Okay. And you see the
13 damages that that spits out?

14 A. Yeah.

15 Q. A fair bit different?

16 A. Yeah.

17 Q. A fair bit lower?

18 A. Yeah. That's what you
19 would expect, yeah.

20 Q. So there are swings of
21 tens of millions of dollars in this slight
22 variation of this assumption?

23 A. Yes. But you have to
24 estimate that using econometrics. You do the best
25 you can. No one says anybody knows that number

1 for sure. You know, if you go back and look at
2 the ITC, they thought -- they got very different
3 numbers, and Mr. Kaplan got a different number,
4 and the staff got a different number. I don't
5 know where they were getting their numbers from.
6 I, at least, estimate mine using econometrics.
7 That's all I can say.

8 MR. NEUFELD: Well, thank you.
9 Thank you very much for your time today. I had a
10 lot of fun talking with you. I would sign up for
11 your course any day to get an MBA. And I promise
12 you I would do the work and not attend like a
13 lawyer, but like a good student.

14 THE WITNESS: Sounds good to
15 me.

16 MR. NEUFELD: Thank you very
17 much.

18 THE WITNESS: You're welcome.

19 MR. NEUFELD: Thank you, Judge
20 Crawford.

21 JUDGE CRAWFORD: Thank you
22 very much, Mr. Neufeld, and thanks also to
23 Professor Hausman for his entertaining testimony.
24 But we now have the opportunity to give the
25 lawyers on the other side the chance to see if

1 they can make an impact. So claimants.

2 MR. FELDMAN: I may proceed,
3 Judge Crawford? I have a handful of questions on
4 redirect.

5 JUDGE CRAWFORD: Yes.

6 MR. FELDMAN: Thank you very
7 much.

8 RE-EXAMINATION BY MR. FELDMAN:

9 Q. Professor Hausman, it's
10 still morning for you. We are just past noon
11 here. So good morning and good afternoon.

12 Could you please explain
13 again, because I am not sure it's entirely clear,
14 what you mean by "residual supply" when you refer
15 to the offshore imports?

16 A. Yeah. You have a certain
17 amount of North American supply. There's very
18 little exported from North America to other
19 countries. And so they are going to produce, if
20 it's economic, well, pretty much close to their
21 capacity, and then the residual supply comes from
22 overseas, mainly Europe. You see this in a lot of
23 markets. You know, you will have lower cost
24 producers. They produce what they can produce,
25 and then you'll have what's often called the

1 competitive fringe. And they, you know, depending
2 on the price, will produce more or less. That's
3 what I mean. It's the well-known concept in
4 antitrust and industrial organization.

5 Q. So respondent's counsel
6 seemed to ask you a number of questions suggesting
7 that these offshore European imports displace
8 Resolute's supply and take sales and market share
9 away from Resolute. Is that what you find? Is
10 that would should be understood by this residual
11 supply?

12 A. No. I don't think that
13 happens. Resolute, if they have mills open, they
14 pretty much -- I mean, not 100 percent capacity,
15 but they pretty much produce as much as they can.

16 Q. And, therefore, sell it.
17 They don't lose sales to the European imports; is
18 that right?

19 A. I don't think they do.
20 Not much.

21 Q. And this determination
22 you make is on the basis of the volumes in the
23 market, not on price; is that right?

24 A. Yes. The Europeans are
25 responding to price in part. But, yes, I agree.

1 Q. To what extent does your
2 econometrics analysis depend on numbers from RISI?

3 A. Not at all. Well, let me
4 just think. My econometric, no, I don't think, I
5 don't think it depends on RISI at all. I would
6 have to go back and check, but I don't think so.

7 Q. But the forecast does
8 rely on RISI?

9 A. It depends on changes in
10 the forecast year to year of RISI, yes.

11 Q. Yet the forecast results
12 and the econometrics analysis come very close to
13 one another, I think you said; is that right?

14 A. Yeah. I mean in this
15 type of, you know, forecasting business, the
16 forecasting approach, you know, the mean, is like
17 126. In the economic approach, the mean is 121.5.
18 So in this business of trying to forecast and all,
19 I think that's pretty close.

20 Q. You've relied on a range
21 of estimates and --

22 PROFESSOR LÉVESQUE:

23 Mr. Feldman, I'm sorry to interrupt, but I think
24 the president has left for a second, so if you
25 could wait.

1 MR. FELDMAN: Thank you. I
2 didn't -- I wasn't looking.

3 PROFESSOR LÉVESQUE: So we
4 will wait a minute.

5 MR. FELDMAN: The second time
6 you got me. Thank you.

7 Do you know at what point I
8 lost him?

9 DEAN CASS: I think it was
10 just a moment ago.

11 PROFESSOR LÉVESQUE: It was
12 very brief. Yeah, it was very brief.

13 MR. FELDMAN: Thank you.

14 Judge Crawford, we have you
15 back?

16 JUDGE CRAWFORD: Proceed.

17 MR. FELDMAN: Okay. Thank
18 you.

19 BY MR. FELDMAN:

20 Q. I was just starting to
21 ask that you, Professor Hausman, have offered us a
22 range of estimates and from conservative to less
23 conservative. I want to clarify that our
24 understanding that the conservative estimates are
25 driven by your reluctant adoption of [REDACTED]

1

2 [REDACTED]
3 [REDACTED]
4 [REDACTED] without any authority or references to
5 the source or origin for that number. Is that is
6 what drives your conservative estimate?

7 A. I will let you lawyers
8 argue about whether it has a basis, but it does
9 change things by about a little over 10 percent.
10 The lower bound goes from 103 million to 90
11 million.

12 Q. Now, you've talked a lot
13 about uncertainty and difficulty of forecasting,
14 but given the record, as you know it, do you have
15 any uncertainty as to whether there are damages in
16 this case, meaning that the presence of the Port
17 Hawkesbury volumes in the market created damages
18 for Resolute?

19 A. No, I have none
20 whatsoever. If you add 20 to 25 percent capacity
21 to a market, you will have an effect on prices.
22 That will affect Resolute.

23 MR. NEUFELD: Judge Crawford,
24 just to intervene here, sorry, I mean, it's fine.
25 I don't object to the answer being given. We have
heard it many times. But if counsel could try to

1 remain from terribly leading questions like that.

2 This is a re-examination. It's his job to ask

3 open-ended questions and not leading questions.

4 JUDGE CRAWFORD: Well, I think

5 what is a leading question is different than in

6 cross-examination than in direct examination.

7 Please try to avoid too much leading, I will say.

8 BY MR. FELDMAN:

9 Q. Professor Hausman, if
10 prices go up, are damages mitigated?

11 A. No. If prices go up,
12 they would have gone up even more without the 20
13 to 25 percent. So that's the idea of the but-for
14 world. You can say here's, you know, here's what
15 happened. Demand increased for whatever reason,
16 but prices would have gone up even more.

17 MR. FELDMAN: That's all I
18 have, Judge Crawford.

19 Professor Hausman, thank you
20 very much.

21 THE WITNESS: You're welcome.

22 JUDGE CRAWFORD: You saved
23 considerable time from a strict schedule. So
24 grateful to you.

25 Grateful to you, Professor

1 Hausman, for your testimony, which has been
2 illuminating. That concludes the hearing for
3 today.

4 Tomorrow we start at 9
5 o'clock -- 8 o'clock eastern standard time with
6 the expert presentation of Seth Kaplan. And most
7 of the rest of the day is spent on examination of
8 Mr. Kaplan.

9 DEAN CASS: Mr. Chairman,
10 before we wrap up, might I just put a brief
11 question to Professor Hausman?

12 JUDGE CRAWFORD: Yes, of
13 course.

14 QUESTIONS BY THE TRIBUNAL:

15 DEAN CASS: Thank you. I did
16 note, by the way, that with the cement example,
17 you gave a concrete instance of what you were
18 talking about there, so I appreciate that.

19 The question I had: You had a
20 reference to the different transportation costs
21 from different parts of Canada. Could you say a
22 word about the role transportation costs play in
23 the impact of European imports to the North
24 American market?

25 THE WITNESS: Yeah. I'm not

1 absolutely sure on this, but I'm pretty sure. The
2 stuff from Europe comes by container, and so it's
3 not going to be particularly expensive. I mean,
4 you are in no hurry to ship it, so you just send
5 it by shipping container.

6 But Nova Scotia I don't think
7 it goes by container. I think you have to ship it
8 by truck, and you have to pay wages and all that
9 type of stuff. So I actually think that Nova
10 Scotia may be -- it's certainly -- I don't think's
11 an advantage to Europe, but it may be at a
12 disadvantage.

13 JUDGE CRAWFORD: Thank you.

14 THE WITNESS: You're welcome.

15 PROFESSOR LÉVESQUE: I have
16 one question as well if we can spare a few
17 minutes.

18 JUDGE CRAWFORD: Yes, of
19 course.

20 THE WITNESS: Sure.

21 PROFESSOR LÉVESQUE: Thank
22 you. In preparation for this hearing, I also
23 reviewed my notes from the jurisdictional hearing.
24 And when you testified on August 15th, 2017 -- I
25 know it's a while back -- you made some comments

1 that I would like to put back to you and maybe
2 have you comment on them.

3 THE WITNESS: Sure.

4 PROFESSOR LÉVESQUE: Back
5 then, of course, the questions were different. As
6 you'll remember, it was about uncertainty in the
7 market after the re-entry.

8 But so I will just read you
9 the quote:

10 "So, you know, US
11 government supported all
12 sorts of enterprises in
13 the last administration,
14 battery plants, solar
15 plants. And, you know,
16 the Republicans like to
17 say those all went bust.
18 They just wouldn't make a
19 profit. So government
20 support is not sufficient
21 to make a company
22 successful." [as read]

23 So that's the first bit, and I
24 will put on the next page another bit to you:

25 "You know, again, when

1 you look at this, there's
2 all this uncertainty. So
3 there's lots of paper
4 plants in Quebec. And so
5 who is to say that those
6 paper plants couldn't
7 have gone to the Quebec
8 government or the
9 Hydro-Quebec and say,
10 'We're amongst your best
11 customers. We need a
12 special tariff from you,
13 or we are going to go out
14 of business and you're
15 not going to sell us
16 electricity.' So all I'm
17 trying to say is there's
18 always a lot of
19 uncertainty going
20 forward. The Nova Scotia
21 government gave a special
22 electricity rate to Port
23 Hawkesbury." [as read]
24 And then it continues.
25 So I would like you to comment

1 on these two statements of yours.

2 THE WITNESS: Sure. I will go
3 in reverse order, if that's okay.

4 So the second one is almost
5 all businesses like subsidies. If you can lower
6 your costs, it has a good effect on you. And I
7 think I said in the hearing, if I remember right,
8 that Alcan, which is a very large aluminum company
9 -- it's now part of Rio Tinto -- got special
10 rates, and so, you know, you are going to try for
11 it. What's legal and illegal under NAFTA, I have
12 no idea. Okay? So I tried to say at the
13 beginning that's not my area of expertise.

14 PROFESSOR LÉVESQUE:
15 Understood.

16 THE WITNESS: That's my
17 second.

18 The first one about the
19 battery plants and all, what I was trying to say
20 there is, you know, subsidies aren't sufficient.
21 If you have a new technology, that battery company
22 came out of MIT where it was the engineers, and
23 the technology just didn't work. So they got a
24 subsidy. And what I am trying to say is that may
25 not be sufficient to be a success, especially for

1 new technologies.

2 Now, since then, Elon Musk of
3 Tesla has come up with a different technology that
4 seems to work very well, and he is an
5 extraordinarily successful guy. But so subsidies
6 by themselves are not enough. You need to have
7 technology as well.

8 PROFESSOR LÉVESQUE: Thank you
9 for clarifying.

10 THE WITNESS: You're welcome.

11 JUDGE CRAWFORD: Any further
12 questions from my colleagues? It seems not.

13 I was about to say that we
14 start again tomorrow morning with Seth Kaplan
15 giving evidence as from eight o'clock your time,
16 2 p.m. our time. He will be followed by Timo
17 Suhonen after the break. So two witnesses due for
18 tomorrow, and we have a slightly earlier finish as
19 a result.

20 Thank you very much.

21 MR. NEUFELD: Thank you, Judge
22 Crawford.

23 THE WITNESS: Thank you.

24 MR. FELDMAN: Thank you, Deans
25 Lévesque and Cass.

1 --- Whereupon matter adjourned at 12:39 p.m., to
2 be resumed Thursday, November 12, 2020, at 8:00
3 a.m. EST

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