

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL
 CONSTITUTED IN ACCORDANCE WITH THE TRADE PROMOTION
 AGREEMENT BETWEEN THE REPUBLIC OF PERÚ AND THE UNITED
 STATES OF AMERICA AND THE UNCITRAL RBITRATION RULES 2013

PCA Case No. 2019-46

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 In the Matter of Arbitration Between: :
 :
 THE RENCO GROUP, INC., :
 :
 Claimants, :
 :
 and :
 :
 THE REPUBLIC OF PERÚ, :
 :
 Respondent. :
 ----- x Vol. 2

- AND -

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL
 CONSTITUTED IN ACCORDANCE WITH THE CONTRACT OF STOCK
 TRANSFER BETWEEN EMPRESA MINERA DEL CENTRO DEL PERU S.A.
 AND DOE RUN PERU S.R. LTDA, DOE RUN RESOURCES, AND RENCO,
 DATED 23 OCTOBER 1997, AND THE GUARANTY AGREEMENT BETWEEN
 PERU AND DOE RUN PERU S.R. LTDA, DATED 21 NOVEMBER 1997 AND
 THE UNCITRAL ARBITRATION RULES 2013

PCA Case No. 2019-47

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 In the Matter of Arbitration Between: :
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 THE RENCO GROUP, INC, AND :
 DOE RUN RESOURCES CORP., :
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 Claimants, :
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 and :
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 THE REPUBLIC OF PERÚ AND :
 ACTIVOS MINEROS S.A.C., :
 :
 Respondents. :
 ----- x Vol. 2

(Continued)

HEARING ON JURISDICTION AND LIABILITY

Wednesday, March 6, 2024

The World Bank Group
1225 Connecticut Avenue, N.W.
C Building
Conference Room C1 450
Washington, D.C. 20036

The hearing in the above-entitled matter came on
at 9:30 a.m. before:

JUDGE BRUNO SIMMA, President of the Tribunal

DR. HORACIO GRIGERA NAÓN, Co Arbitrator

MR. J. CHRISTOPHER THOMAS KC, Co Arbitrator

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Registry, Permanent Court of Arbitration:

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P R O C E E D I N G S

1
2 PRESIDENT SIMMA: This is the second day what I'm
3 going to call the Renco Hearing, and we start examining
4 Witnesses and Experts, and the first Witness on my list is
5 Mr. Bruce Neil. And the first Witness is going to be
6 Mr. Bruce Neil, and I guess that he will be -- he will
7 appear...

8 MR. SCHIFFER: Mr. Neil will appear by video.

9 PRESIDENT SIMMA: Ah, by video. Okay.

10 MR. SCHIFFER: Right.

11 PRESIDENT SIMMA: And you will have the
12 Declaration on the screen; right?

13 SECRETARY DOE: Yes. I think we can admit
14 Mr. Bruce Neil from the waiting room. I assume he's
15 waiting in the waiting room now.

16 (Discussion off the record.)

17 PRESIDENT SIMMA: Okay. I see Mr. Bruce Neil on
18 the screen.

19 BRUCE NEIL, CLAIMANTS' WITNESS, CALLED

20 PRESIDENT SIMMA: Good morning, sir.

21 THE WITNESS: Good morning.

22 PRESIDENT SIMMA: I don't think I have to explain
23 what this is going to be about. So you are supposed to
24 declare an oath, and we will put the text of this either
25 electronically or physically in front of you.

1 already introduced yourself.

2 How old of a man are you, sir?

3 A. I'm 77 years old.

4 Q. And roughly how long have you been retired?

5 A. So I'm -- 78 years old, born in 1945.

6 Q. Okay.

7 A. I retired in 2012, 12 years.

8 Q. From what company?

9 A. From Doe Run Resources.

10 Q. Okay. So we're going to talk about your time
11 when you were the President or General Manager of Doe Run
12 Perú from 2003 to 2006. Okay?

13 A. Yes.

14 Q. What would you say were your -- I'm going to pick
15 a number -- three accomplishments while you were the
16 President that you're most proud of?

17 A. I'm most proud of the Projects that the technical
18 people and Project Engineers were able to accomplish in
19 improving the environment, and for the -- the operations.

20 I am proud of the accomplishment of having an
21 extension granted for the work of the PAMA, and I'm proud
22 of all of the work that was done by, again, the employees
23 of Doe Run Perú, and meeting the challenges and taking care
24 of young people and the work that was done to help with the
25 health situation in the City of La Oroya.

1 Q. And, as President, what were your goals at the
2 time? In other words, in running the business, what were
3 your goals?

4 A. My goals at the time were to complete the PAMA as
5 required by the PAMA law, and to make the necessary
6 improvements that we determined were essential for better
7 ventilation, less emissions from the smelter, which were
8 certainly a problem for the public health.

9 Q. At any time, did Renco or DRRC hinder or prevent
10 you from trying to accomplish your goals?

11 A. No.

12 MR. SCHIFFER: We'll pass the Witness at this
13 time.

14 (Comments off microphone.)

15 MR. SCHIFFER: We're passing. We're finished.

16 PRESIDENT SIMMA: Thank you, Mr. Schiffer.

17 So your examination is probably going to be done
18 by Mr. Pearsall; so you have the floor.

19 MR. PEARSALL: It's actually going to be done by
20 my colleague, Ms. Gehring Flores.

21 PRESIDENT SIMMA: Okay. Yes.

22 MR. PEARSALL: Thank you, Mr. President.

23 PRESIDENT SIMMA: Your colleague is Mr.?

24 MR. PEARSALL: Ms. Gehring Flores.

25 PRESIDENT SIMMA: Oh, sorry, I looked at the

1 person next.

2 (Overlapping speakers.)

3 MS. GEHRING FLORES: I moved.

4 PRESIDENT SIMMA: Okay. You have the floor.

5 MS. GEHRING FLORES: Thank you, Mr. President.

6 CROSS-EXAMINATION

7 BY MS. GEHRING FLORES:

8 Q. Mr. Neil, good morning.

9 A. Good morning.

10 PRESIDENT SIMMA: Could you -- sorry. Do me a
11 favor, probably also to Mr. Neil, and get the mike a bit
12 more in front of you.

13 MS. GEHRING FLORES: Oh, sure.

14 BY MS. GEHRING FLORES:

15 Q. Good morning Mr. Neil.

16 A. Good morning.

17 Q. I am Gaela Gehring Flores, and I'm one of the
18 attorneys representing Perú and Activos Mineros in these
19 arbitration proceedings. I'm going to ask you some
20 questions that relate to the Witness Statement that you
21 submitted in this Arbitration proceeding, and if at any
22 time you need some clarification, or if at any time you
23 need a break, just let me know.

24 A. Okay.

25 Q. And you've, I believe, already been told that

1 there is a simultaneous interpretation going on; is that
2 right?

3 A. Yes. I was earlier asked to pause
4 before -- between you asking the question and my
5 responding.

6 Q. That's right. And we've got absolutely excellent
7 interpreters here, but they are human. So it would be very
8 nice to them to make sure that we don't overlap and that we
9 both speak very clearly. So thank you.

10 Mr. Neil, I understand that you got your degree
11 in metallurgical engineering in 1967; is that correct?

12 A. Yes, that is correct.

13 Q. And you worked as a metallurgical engineer at a
14 number of smelting and refining facilities for your entire
15 45-year career; is that right?

16 A. Yes, that is true.

17 Q. Starting in the '60s, I think in 1969, you
18 started working at Noranda in Canada? Is -- am I
19 pronouncing that correct? It is Noranda?

20 A. The pronunciation was Noranda.

21 Q. Okay. Noranda. Is that where you first started
22 working, Mr. Neil?

23 A. Yes.

24 Q. And you became the plant manager at Noranda?

25 A. No. I was a technical assistant, which was an

1 engineering position, a first engineering position.

2 Q. You were at Noranda for quite some time; right?
3 You were there until 1992?

4 A. The -- Noranda had several smelters. I worked at
5 the Rouyn-Noranda Horne Smelter, I transferred to Brunswick
6 Mining and Smelting, which was a lead smelter and lead
7 refinery, and at that plant I became the plant manager.

8 Q. Okay. Understood. Thank you.
9 Did any of the Noranda facilities where you
10 worked have a copper circuit?

11 A. The Horne Smelter had a copper refinery -- sorry,
12 a copper smelter, not a refinery.

13 Q. And am I correct in understanding that Noranda
14 would have utilized a Noranda furnace in its copper
15 circuit?

16 A. Not at that time.

17 Q. When would they have started implementing a
18 Noranda furnace?

19 A. Perhaps six or seven years after I left.

20 Q. But you're familiar with the Noranda furnace
21 technology, I imagine?

22 A. I worked on a -- it was called a pilot, a pilot
23 plant, an initial plant, proving the process. I have
24 not -- I've not seen or worked at a plant that had one,
25 that had the one that was initially installed around 1980,

1 1979.

2 Q. Is it fair to say that the Noranda furnace is
3 similar in technology to a CMT furnace?

4 A. When you -- did you say CMT?

5 Q. Yes, I did, Mr. Neil.

6 A. I'm not aware.

7 Q. And -- but at the La Oroya smelting facility, you
8 think -- I believe, in your Witness Statement in
9 Paragraph 16 talk about sending a team to Chile. And
10 during your team's visit to Chile, were they checking out a
11 CMT furnace?

12 A. They were checking out a -- my understanding,
13 they were checking out a furnace that was a reverberatory
14 furnace that smelted copper concentrates or roasting feed,
15 and produced a liquid called matte, and they had a -- they
16 employed the same type of burners, oxygen-enriched burners,
17 that the La Oroya reverb employed.

18 Q. Thank you for that clarification.

19 When the team went to Chile, is it your
20 understanding that they found out that a CMT furnace was
21 defective in any way?

22 A. They went -- you're asking me if the furnace was
23 defective. I'm not sure if I understand the question.
24 I've misinterpreted the question?

25 Q. No, no, not at all. I just think maybe there

1 might be a misunderstanding because Counsel for Renco and
2 DRRC yesterday mentioned that when your team went to Chile,
3 they found out that the CMT furnace wouldn't work. There
4 was something wrong with it.

5 A. Okay. My understanding, they went to -- the
6 group of technical people went to Chile to visit this
7 operation with the intention of understanding how that
8 furnace, that they had worked with an acid plant that
9 was -- and had been installed on that furnace to produce
10 SO2.

11 And what they returned to La Oroya with was the
12 belief that the acid plant attached to that furnace would
13 not allow La Oroya to meet -- if we install a similar
14 operation on our reverb furnace, we would not be able to
15 meet the -- what's called the LMPs, "limite," limits of the
16 environment. That was part of the PAMA requirements, PAMA
17 goals, and that it would -- if we did that, we would not be
18 able to achieve -- there would be too much SO2 escaping; so
19 it would not work for us. And, therefore, we were unable
20 to go ahead with the original plan.

21 Q. When you say "original plan," Mr. Neil, do you
22 mean DRP's plan to constructed only one Sulfuric Acid
23 Plant; is that correct?

24 A. Yes. Sorry. That is correct.

25 (Overlapping speakers.)

1 Q. Okay. As opposed to the three Sulfuric Acid
2 Plants that the PAMA first suggested; is that right?

3 A. My understanding of the PAMA, as proposed by
4 Centromín, was that there would be two acid plants
5 required, and that the Doe Run initial view of this after
6 their initial view was that it could be done with one; and
7 as a result of the visit to Chile, the team believed that
8 one or two, neither plant would work, and there had to be
9 three acid plants, one for each of the circuits.

10 Q. And that conclusion wasn't because there was some
11 sort of inherent defect in the CMT furnace technology;
12 right? Maybe -- let me restate the question.

13 A. I'm still not understanding the CMT technology
14 because -- I'm not sure why, but I don't understand that
15 furnace that you're referring to was called "CMT."

16 Q. Yeah. I think it might just be a
17 misunderstanding with Counsel. But it --

18 MR. SCHIFFER: Can -- I'm sorry, can I help.
19 Because he knows it as the El Teniente.

20 MS. GEHRING FLORES: El Teniente.

21 (Overlapping speakers.)

22 MR. SCHIFFER: Yes, that's how he knows it.

23 BY MS. GEHRING FLORES:

24 Q. Yes, the El Teniente. The El Teniente furnace--

25 A. Yes.

1 Q. -- it's my understanding that that -- that is a
2 CMT-style furnace, but maybe you just refer to it as
3 El Teniente, which is another brand like Noranda, CMT,
4 El Teniente. It's my understanding that Noranda, CMT, and
5 El Teniente all have similar technology; is that correct?

6 A. I could not answer that question. I'm sorry.

7 Q. Okay. But in any event, as your Witness
8 Statement says, after the team went to Chile, they came
9 back and told you that one Sulfuric Acid Plant isn't going
10 to be enough; correct?

11 A. They said that the recovery of SO₂, of sulfur as
12 SO₂ from that furnace, would not allow us to meet
13 the -- when we combined that with other operations, we
14 would not be able to meet the requirements for the limits,
15 which were -- was for one of the requirements of the PAMA.

16 Q. If you stuck with just one Sulfuric Acid Plant;
17 right?

18 A. Yes.

19 Q. In the late 1990s, you started working for the
20 lead smelting facility in Glover, Missouri; is that
21 correct?

22 A. Yes.

23 Q. And Doe Run would acquire that facility in 1998?

24 A. That is correct.

25 Q. And given your experience, Mr. Neil, I imagine

1 you have an intimate understanding of smelting operations;
2 is that right?

3 A. I had a good understanding of the operations of
4 the lead smelting, yes.

5 Q. Of lead smelting? Is that what you said?

6 A. Yes.

7 Q. Okay. Up to that point in your career when you
8 were now at the Doe Run, Glover, Missouri, facility, had
9 you had any experience with copper smelting?

10 A. My experience with the copper smelting was
11 between 1969 and 1972.

12 Q. Going back to your many years of experience,
13 being a metallurgical engineer, would you say that from the
14 moment -- you could explain the smelting process, from the
15 moment the concentrate is fed into the plant to the moment
16 the desired metal output is achieved?

17 A. Yes.

18 Q. And you're also familiar with the different types
19 of emissions at smelting facilities; correct?

20 A. Yes.

21 Q. Is it fair to say that emissions can be divided
22 into two main categories: The first being main stack, or
23 stack emissions, and the second being fugitive emissions?

24 A. There are emissions that are captured in
25 ventilation systems, and the emissions that are not

1 captured in the ventilation systems can escape, and
2 generally are called -- are what you said.

3 Q. Meaning fugitive emissions?

4 A. Yes. They're fugitive that they were not
5 captured by the ventilation systems.

6 Q. Okay. Is it okay if I refer to the emissions
7 that are captured by ventilation systems as "main-stack
8 emissions"? Or would you prefer that I say "filtered
9 emissions"?

10 A. No, there generally are several
11 ventilation-capturing devices and, therefore, perhaps, more
12 than one stack or perhaps one stack.

13 Q. Okay. So would it be -- so I'll call them
14 "ventilation emissions"?

15 A. Stack emissions is fine.

16 Q. Stack emissions. Okay. And "stack emissions"
17 assumes emissions that are captured and sent first through
18 a filter and then leave the Plant through a stack; is that
19 correct?

20 A. Yes, it is. It is correct.

21 Q. Okay. And at the La Oroya Plant, the filter that
22 the gases or that the emissions would flow through was
23 called the "Cottrell filter"?

24 A. Yes.

25 Q. So going back to your experience at the Glover

1 Smelter in Missouri, that Smelter is one of 10 Doe Run
2 smelting -- or was one of 10 Doe Run smelting facilities in
3 Missouri; is that correct?

4 A. Doe Run had a smelter in -- a lead smelter in
5 Herculaneum and a lead smelter in Glover. Both of these
6 were primary smelters, and a secondary lead smelter mainly
7 treating, processing batteries and other lead secondaries.
8 Three; three products, three smelters.

9 Q. Did your work at the Grover Smelter, Mr. Neil,
10 involve working with the Herculaneum Smelter?

11 A. No.

12 Q. But I understand that the Herculaneum Smelter had
13 a Sulfuric Acid Plant; correct?

14 A. Yes.

15 Q. But the Glover Facility did not?

16 A. That is correct.

17 Q. The Noranda Facility that you worked at, that had
18 a Sulfuric Acid Plant; correct?

19 A. When I worked at the Noranda Plant, there was no
20 Sulfuric Acid Plant. That was built years after I left.

21 Q. When was the first time you, in your career,
22 started -- were working at a smelting facility with a
23 Sulfuric Acid Plant?

24 A. That was in 1972, when I went to the Brunswick
25 Mining and Smelting Operation.

1 Q. So you're familiar with the technology involved
2 in Sulfuric Acid Plants; is that correct?

3 A. I have a familiarity, yes, that is correct.

4 Q. And you're familiar with the purpose of a
5 Sulfuric Acid Plant; is that right, Mr. Neil?

6 A. Yes.

7 Q. Because, I think for most people, the idea that
8 you would want to create a Sulfuric Acid Plant is a little
9 odd. And I only learned on this case that the purpose of a
10 Sulfuric Acid Plant is to ultimately capture sulfur dioxide
11 emissions so that they don't go out into the atmosphere or
12 into the air, so you capture those sulfur dioxide emissions
13 and you then clean or scrub those gases, the sulfur dioxide
14 gas, of its particulate matter, and then convert it into
15 sulfuric acid. Is my understanding correct? It might be
16 very simple.

17 A. That's my understanding as well.

18 Q. Okay. Good. It's taken awhile for me to learn
19 this.

20 And sulfur dioxide emissions, especially when
21 involving a copper-smelting process, can have particulate
22 matter -- is that correct? -- in them.

23 They're traveling with the sulfur dioxide; is
24 that right?

25 A. Yes.

1 Q. Okay.

2 A. Unless -- you're talking about before the acid
3 plant; correct?

4 Q. Right, before the acid plant and before the
5 scrubbers because, from what I understand, the scrubbers
6 scrub out the great majority of the particulate matter; is
7 that right?

8 A. That is correct.

9 Q. Okay. And that particulate matter can contain
10 lead?

11 A. Yes, that is correct.

12 Q. Okay. So one of the purposes of a Sulfuric Acid
13 Plant is to capture sulfur dioxide emissions that would
14 just otherwise go out into the open air and also capture or
15 filter or scrub away lead that might be in the particulate
16 matter in the sulfur dioxide; is that correct?

17 A. Yes, that is correct.

18 Q. Okay. And when I say "capture SO₂ or sulfur
19 dioxide emissions," that essentially means capturing
20 fugitive emissions; correct?

21 A. No. By my definition, it does not do that. It
22 captures the emissions which are captured by the
23 ventilation system; whereas, the fugitives are the ones
24 which evade, if you like, or are not able to be captured by
25 the ventilation system.

1 Q. So are you telling me, Mr. Neil, that a Sulfuric
2 Acid Plant would only be designed to capture the sulfur
3 dioxide that would have gone through a stack -- that would
4 have gone through a filter in a stack?

5 A. The acid plant will capture -- will process the
6 gases that have gone through the ductwork, and the acid
7 plant will capture the particulates that are in those gases
8 and will convert the SO₂ -- scrub, convert -- the sulfur in
9 the SO₂ that's contained in those gases.

10 Q. It's your understanding, Mr. Neil, that, at the
11 La Oroya, DRP's La Oroya Facility, on the copper circuit,
12 the copper circuit has converter furnaces; correct? There
13 are a number of different types of furnaces. From I
14 understand, it -- roasters, then there's -- is it the
15 reverb furnace that's next, Mr. Neil?

16 A. Yes.

17 Q. Roasters, reverb, then the converter furnace; is
18 that correct?

19 A. Yes, that is correct.

20 Q. And there are -- at the La Oroya Facility, there
21 were six converters; correct?

22 A. I believe there were. There were several
23 converters. Yes. Converter furnaces.

24 Q. Okay. And from what I understand, there's a
25 blowing process and a casting process with converters; is

1 that right?

2 A. The converter furnaces are rotary furnaces. They
3 can be rotated, turned, and allow air to blow into them and
4 that converts the matte product from the reverb -- the
5 matte product into a copper product, and then the copper
6 product is treated in a similar furnace to remove the last
7 of the oxygen, and then there's a casting process from that
8 last furnace.

9 Q. And during this casting process -- and I'm
10 focused on the converters. During the casting
11 process -- you said that they are rotary
12 furnaces -- those furnaces emit smoke out into the air; is
13 that right?

14 A. They emit smoke that -- smoke, gases, that go
15 through a hood, hooding process, the hood, and then into
16 ductwork which is then gone to the Cottrell unit,
17 electrostatic Cottrell unit, which captures dust
18 particulates, and then that gas, after the dust has been
19 captured, goes to the stack.

20 Q. Mr. Neil, I'm going to put on the screen Mr. Wim
21 Dobbelaere's First Expert Report. At Paragraph 292,
22 there's a photo there. We'll get there.

23 Can you see that on your screen, Mr. Neil?

24 A. Yes.

25 Q. So I think you were telling me that -- or it

1 sounds like you're telling me that all of the gases from
2 the converters were captured and directed to filters and
3 then left the Facility out the main stack; is that correct?

4 A. The hood that covers the converter, because it
5 rotates -- it's a converter, rotating converter -- the hood
6 that sits on that, there is a gap, a small gap around
7 the -- between the hood and the machine, and so definitely
8 there are some gases which evade the suction in the hood.
9 And when the converter rotates out and the gases are
10 stopped blowing in, then there is some -- there is fumes
11 from the hot liquid that evade the ventilation. And what
12 we're seeing is this is the top of the -- I believe this is
13 the top of the copper converter aisle, and at this time
14 there's -- you can see the dust and the fumes escaping from
15 the building.

16 Q. And like we mentioned before, there are a number
17 of converters in this area in the copper circuit; correct,
18 Mr. Neil?

19 A. Yes. Yes.

20 Q. So at almost any given point in time, at least
21 one converter could be in -- could be rotating at a point
22 and smoke is escaping; correct?

23 A. Normally, there would be one or more converters
24 in position, and there could be -- there could be some
25 gases escaping. Absolutely.

1 Q. Okay. And correct me if I'm wrong, but the
2 Sulfuric Acid Plant Project at La Oroya was meant to
3 capture these gases as well as the gases that were being
4 directed to the main stack; is that right?

5 A. The PAMA was meant to capture the gases that had
6 the bulk of the SO₂. Okay. And those gases are from each
7 of the furnaces in the system, which is the roasters, the
8 reverb, and the converters. The majority of the sulfur is
9 in the roasters and in the reverb.

10 Q. So it's your testimony, Mr. Neil, that DRP was
11 planning to allow these emissions, which I do believe are
12 fugitive emissions. Am I right there? Are those fugitive
13 emissions?

14 A. I would call those "fugitive emissions," yes.

15 Q. Okay. So is it your testimony, Mr. Neil, that
16 DRP was not planning on a sulfuric acid and modernization
17 design to minimize and capture these fugitive emissions?

18 A. The PAMA Project was designed to capture SO₂, and
19 it was designed to limit the SO₂ emissions to a certain
20 maximum point. It was also designed to capture the
21 gases -- to capture the emissions that were contained in
22 those gases and SO₂. The purpose of the Acid Plant was to
23 improve the recovery of SO₂ by a large amount and also to
24 improve the recovery of emissions which initially we
25 would -- before the Acid Plant, would have gone through the

1 Cottrell, and after the Acid Plant would go through the
2 Acid Plant where the emissions would be captured. So there
3 would be a large improvement. But the Acid Plant was there
4 to capture the bulk of the SO₂, which was from the roasters
5 and the reverbs.

6 Q. And so you're saying that this smoke or these
7 fugitive emissions from the converters wouldn't have any
8 SO₂?

9 A. I wouldn't be able to say that, no. There would
10 be some SO₂.

11 Q. Okay. So those fugitive emissions have SO₂;
12 correct?

13 (Overlapping speakers.)

14 Q. Excuse me. Go ahead.

15 A. Those emissions would have some SO₂, yes.

16 Q. They would also have particulate matter in the
17 form of lead as well; correct?

18 A. There would be some lead, yes, from those
19 emissions.

20 Q. And you might know that because the smoke is a
21 little bit black or gray; correct?

22 A. I would know that because that appears to be
23 high-temperature gases containing SO₂, some SO₂, yes.

24 Q. I'd like to turn you to the PAMA.

25 You're familiar with the PAMA; correct, Mr. Neil?

1 A. Yes.

2 Q. And I imagine, before you became General Manager
3 and eventually President of Doe Run Perú, you studied the
4 PAMA.

5 A. Yes.

6 Q. Let's go to PDF Page 165 of 299.

7 So can you see that on your screen, Mr. Neil?

8 A. It needs to be expanded for me to see clearly.

9 Q. I can say that this is showing the part of the
10 PAMA which is entitled "5.4.1 Project Number 1, New
11 Sulfuric Acid Plants."

12 Can you see that, Mr. Neil?

13 A. Yes.

14 Q. Now, I want to turn to Page 169, PDF Page 169,
15 which is in this part of the PAMA.

16 You can see there this section that's entitled
17 "modernization with new technologies." Underneath that, it
18 says: "The Project" -- and I'll represent that it's
19 talking about the Sulfuric Acid Plant Project -- "requires
20 the previous modernization of three circuits as detailed as
21 follows."

22 Mr. Neil, is it your understanding that, before
23 Doe Run Perú could commence work on the Sulfuric Acid
24 Project, it needed to previously modernize the smelting
25 circuits?

1 A. This -- the document that we're looking at?

2 Q. The PAMA, yes.

3 A. Can you tell -- can you tell me what this is from
4 again? I'm sorry.

5 Q. It's the PAMA. This is the --

6 A. I think --

7 (Overlapping speakers.)

8 Q. This is the Sulfuric Acid Plant part of the PAMA.

9 A. So this is a 1997 document or 1996 document?

10 Q. Yes. 1997, yes.

11 Were you familiar with the 1997 PAMA, Mr. Neil,
12 when you started at Doe Run Perú?

13 A. I was -- I started in March of 2003, and, until I
14 was appointed General Manager in September, I studied the
15 PAMA. I studied the business, the recoveries, the Plant,
16 the manpower technologies. I studied the business.

17 Q. Right. And you were certainly familiar with the
18 Sulfuric Acid Plant Project of the PAMA; correct?

19 A. Yes.

20 Q. And you understood that, in order to start the
21 Sulfuric Acid Plant -- actually, let me go back a second.

22 Let's just focus on the copper circuit. The
23 copper circuit at DRP's Smelting Facility in Perú had very
24 old equipment, from what I understand; is that correct?

25 A. That's correct.

1 Q. And the PAMA, I believe, here is suggesting that
2 it needed to be modernized.

3 It needed to be replaced; is that right? Was
4 that your understanding?

5 A. My understanding was that there were a belief
6 system in Doe Run from 1998, that we could combine
7 the -- we could combine the three circuits, zinc, lead, and
8 copper, into one -- gases to go -- to mix and produce acid.

9 Q. Yes.

10 A. And we determined that -- and we determined that
11 that was not possible. We could not collect enough of
12 the -- we could not reconvert enough of the SO2 into
13 sulfuric acid to meet the requirements of the PAMA, and
14 there were what was called PANCAs (phonetic) and LMPs. We
15 could not meet the LMPs. We could not recover a sufficient
16 amount of SO2.

17 Q. And after that --

18 A. And after that, in order to do that, we would
19 have to convert the -- we would have to convert the three
20 systems, zinc, copper, and lead, each into its own separate
21 Sulfuric Acid Plants. That meant there would be two new
22 Sulfuric Acid Plants, one for copper and one for lead,
23 which did not have an SO2 recovery. And at the time, the
24 zinc Sulfuric Acid Plant hadn't been running for many
25 years, and it would -- we had to put new -- basically, new

1 equipment in that for it to meet the standards.

2 Q. Okay. Let me take you to PDF Page 152 of the
3 PAMA. If we could turn that, yeah, and expand it a little
4 bit. Okay.

5 So this is the schedule -- the investment
6 schedule for Project Number 1, the Sulfuric Acid Plant
7 Project. You can see, on the very first line, the very
8 first row is labeled "Sulfuric Acid Plant from" -- I
9 think -- I believe that means "copper circuit," because it
10 says "circ, CU."

11 "CU" is the periodic table indication for copper;
12 right, Mr. Neil?

13 A. Yes -- yes.

14 Q. Okay. And then beneath that, for the next row,
15 is Sulfuric Acid Plant from PB, circuit PB, lead, and
16 circuit ZN, zinc; is that correct?

17 A. Yes.

18 Q. Okay. So on the top row, with reference to the
19 copper circuit, you can see that this is the original 1997
20 PAMA. The original 1997 PAMA suggested that investments
21 start for the copper circuit for the Sulfuric Acid Plant in
22 the Year 2003; is that right?

23 A. Yes.

24 Q. And again, another investment in 2004; is that
25 correct?

1 A. Yes.

2 Q. And this is in thousands of U.S. dollars, so in
3 2003 it was contemplated that DRP would invest 20 million,
4 and in 2004 around 21 million; is that correct?

5 A. Yeah. My recollection is that the PAMA required
6 the work on the Acid Plant to start in 2003.

7 Q. Okay.

8 A. And that's -- that could be what this is.

9 Q. And that's work on the Sulfuric Acid Plant part,
10 in particular.

11 Now, let me take you to the very next page, which
12 is PDF --

13 MR. SCHIFFER: I'm sorry. Was that a question or
14 just a statement?

15 MS. GEHRING FLORES: I honestly don't remember
16 what I said.

17 BY MS. GEHRING FLORES:

18 Q. But let me take you to the very next page, which
19 is, again, the investment schedule. This is the next table
20 for the investment schedule for the Sulfuric Acid Plant
21 Project.

22 Now, I understand that this is the modernization
23 part that needs to happen. And you just talked about the
24 fact that you had come to the conclusion, after the team
25 came back from Chile, that you needed to construct

1 three -- you needed to have three Sulfuric Acid Plants, not
2 just one; correct?

3 This was in 2003 you that made that decision?

4 A. Yeah, by the end of 2003, that is correct.

5 Q. Okay. And looking at the original PAMA from
6 1997 -- and this is the modernization aspect of
7 it -- there's -- the first row says "copper circuit," the
8 second row says "lead circuit," and the third row says
9 "zinc circuit."

10 And you can see the investment, or the suggested
11 investment, that is listed there. Starting with the first
12 row, copper circuit, in 1998, that is \$776,000; correct?

13 A. That is correct.

14 Q. And then in 1999, 37 -- over \$37 million;
15 correct?

16 A. I'm not sure where you are.

17 Q. In the next --

18 A. Oh, 19 --

19 Q. Yeah, 1999.

20 A. I'm struggling because I don't recognize the
21 table.

22 Q. I guess -- whether you recognize it or not,
23 Mr. Neil, I'm representing to you that this is the
24 investment schedule in the PAMA. This is the next page in
25 the PAMA.

1 Would you agree that, at least, I'm reading it
2 correctly, that that first row says that in 1998 and 1999
3 and in the year 2000, the suggestion from the PAMA is that
4 DRP would be investing -- would be investing millions, if
5 not hundreds of thousands of dollars in those years for the
6 copper circuit.

7 Am I reading that correctly?

8 A. What year is this again? 1998? This was a 1998
9 document or a 1997 document?

10 Q. This is the PAMA. This is the 1997 PAMA.

11 A. My understanding of the PAMA, the information
12 that I have seen is that the PAMA had nine Projects and the
13 total expected expenditure was \$108 million --

14 Q. I guess my question --

15 A. -- over ten years.

16 Q. Okay.

17 A. And I'm looking at something that says -- I'm not
18 sure if you have -- I guess you had the numbers 140 and
19 149, and that is 270 million.

20 (Overlapping speakers.)

21 Q. I'm not asking that question.

22 MR. SCHIFFER: I just -- is he allowed to finish
23 his answer before the next question?

24 MS. GEHRING FLORES: I'm just asking that he
25 answer my question.

1 BY MS. GEHRING FLORES:

2 Q. I just asked Mr. Neil -- am I reading the table
3 correctly? Did those -- on the first row for 1998, 1999,
4 and 2000, does this table contemplate that DRP is to start
5 investing in the modernization of the copper circuit in
6 1998, 1999, and 2000. Is that correct?

7 A. That's what this chart says.

8 Q. Okay. If you were to read these two tables
9 together, would it be fair to say that DRP would have to
10 start modernization of the copper circuit well before it
11 started investing in the Sulfuric Acid Plant?

12 A. Yes. This is 1999. You would spend \$37 million
13 on the copper circuit, and that as well for the 2003.

14 Q. And correct me if I'm wrong, Mr. Neil, but from
15 what I understand, you needed to know what equipment was
16 going to be in the copper circuit before designing and
17 constructing the Sulfuric Acid Plant; is that correct?

18 A. It is correct that you would design a Sulfuric
19 Acid Plant according to the technology that you were using
20 or going to use to smelt the material, yes.

21 Q. And I believe Counsel for Renco and DRRC said
22 yesterday you can't just buy copper smelting technology off
23 a shelf, something like that. That is not -- you know,
24 that is not just something that you can go out and buy
25 right away.

1 Do you agree with that?

2 A. I would agree with that.

3 Q. So you would need -- in order to complete your
4 Sulfuric Acid Plant Project, you would first need to know
5 what copper smelting equipment is being hooked up to that
6 Sulfuric Acid Plant first, and you would need to purchase
7 it; correct?

8 A. Yes. You would need to decide the technology,
9 smelting technology you are going to use --

10 Q. So any delay -- excuse me.

11 A. -- and be able to --

12 Q. Sorry. I'll let you finish.

13 A. And then you would be able to design your acid
14 plant for that technology.

15 Q. So any delay in the modernization part of this
16 Project would cause a delay in the design and construction
17 of the Sulfuric Acid Plant; correct?

18 A. I'm sorry. Could you repeat the question?

19 Q. Any delay in starting the modernization phase of
20 the copper circuit would necessarily delay the design and
21 construction of the Sulfuric Acid Plant; correct?

22 A. The design of the Sulfuric Acid Plant depends on
23 the technology that you use, that's correct. You cannot
24 design -- you cannot design an acid plant until you have
25 decided or designed your smelting technology, yes.

1 Q. Mr. Neil, have you ever worked at a smelter that
2 didn't have fugitive emissions?

3 A. I would like you to repeat that please.

4 Q. Have you ever worked at a smelter or smelting
5 facility that did not have fugitive emissions?

6 A. There were always some fugitive emissions.

7 Q. I think we have talked a bit about what you
8 studied about the La Oroya smelting facility before you
9 went down to Perú as General Manager of that facility; is
10 that correct?

11 A. I spent five or six months in Perú studying the
12 operation, visiting the operation, yes.

13 Q. Okay. And you reviewed the 1997 PAMA, I
14 understand?

15 A. I believe I had read all the documents that
16 pertained to the PAMA.

17 Q. Okay. Did you read any of the documents that
18 were issued to the bidders for the La Oroya Facility during
19 Perú's tender process?

20 A. I believe that I did not read any of the
21 documents.

22 Q. So you were never shown the Knight Piésold
23 Report, for instance?

24 Are you familiar with that Report, Mr. Neil?

25 A. Not by the name, no.

1 Q. Okay. But you did review the PAMA.

2 Let's go to Page 1 -- PDF Page 169. I'm going to
3 show you the PAMA again. I'm sure it is your favorite
4 document by now. I might have the wrong page. Oh, excuse
5 me. I guess it is PDF Page 87. All right.

6 So we've talked a bit about the different sorts
7 of emissions, one of them being fugitive emissions, and
8 here in the PAMA I'm showing you the section that is
9 entitled "fugitive emissions," and underneath it talks
10 about the copper smelter.

11 It says -- if the translation were a little bit
12 better, I think it would say: "Fugitive emissions from the
13 copper smelter are produced in the preparation plant as
14 materials are taken outside the area of the collection
15 hoods. This usually occurs when the capacity of the
16 extractors are exceeded." And I could keep going on,
17 but...

18 Did I read that correctly, Mr. Neil?

19 A. Yes.

20 Q. I can represent to you that this section goes on
21 for another page.

22 I understand that in December -- no, sorry,
23 excuse me -- February 2004 you wrote to the MEM requesting
24 an extension of time to complete certain PAMA Projects; is
25 that right?

1 A. In February of 2004.

2 Q. Yeah. And in that Extension Request, you
3 mentioned that the PAMA did not address fugitive emissions;
4 is that right?

5 A. Yes. Yes, that is correct. And I believe I
6 described some of the fugitive emissions at the time.

7 Q. Had you not seen this part of the PAMA when you
8 wrote that Extension Request, Mr. Neil?

9 A. Would you repeat the question please.

10 Q. Had you not seen this part of the PAMA, the part
11 that is entitled "Fugitive Emissions"?

12 Had you not seen this part of the PAMA when you
13 wrote your Extension Request in February of 2004?

14 A. I believe that I read the fugitive -- I'm sorry.
15 I'm getting a feedback. Maybe I'm speaking too close or
16 something.

17 Q. We can hear you okay.

18 A. I believe I had all of the -- I'm getting
19 feedback again.

20 Q. Please proceed.

21 A. I believe that I had read the PAMA documents.
22 The -- in 2003, the Gradient people had done a study in the
23 plant and had determined that fugitives
24 were -- particularly with lead was talking about at the
25 time -- but fugitive emissions did not disperse as stack

1 emissions did, and, therefore, the effect of the fugitives
2 was -- on a gram-per-gram basis was seven times the effect
3 for health in the community.

4 And that point caused us to put all of our focus
5 really on minimizing the fugitives, whether they were from
6 lower-level stack emissions, from building emissions, or
7 whether they were from ground-level emissions, blowing of
8 dust or tracking of vehicles, that sort of thing.

9 Q. Mr. Neil, did the Gradient -- the 2004 Gradient
10 Study, the one that you're referring to that talked about
11 the high level of toxicity of fugitive emissions, did that
12 significantly change your understanding of fugitive
13 emissions, at the time?

14 A. The seven times the impact number was -- it did
15 significantly change my view. It was an eye-opening
16 number.

17 Normally, the dust which are collected are more
18 concentrated than the fugitives because that is -- you're
19 gathering all of those and you're putting them into a
20 system, which then you are cleaning gases with an
21 electrostatic precipitator or a baghouse type of collection
22 system, and you recycle all of that material. And then the
23 amount that may pass through the ventilation system is a
24 relatively small number compared to what's collected in the
25 ventilation systems.

1 And my belief was that the fugitive numbers were
2 relatively low, and with this seven times effect was an
3 eye-opener. There is no doubt about that in my mind. So
4 we -- we immediately started paving. We immediately
5 started -- there's a list of projects, you've seen them
6 all: Baghouses, sealing of buildings.

7 Q. And one of the Projects to address fugitive
8 emissions in the PAMA was Project
9 Number 1 -- correct? -- was Project Number 1 or the
10 Sulfuric Acid Project. Correct?

11 A. When you say "Project Number 1," the acid plant,
12 you mean the PAMA Project -- the Acid Plant Project?

13 Q. Yes. Correct.

14 A. Which we had referred to it as Project Number 9
15 because it was the last one that we completed, but, yes, it
16 was the acid plant for the PAMA.

17 Q. And that was one of the Projects that was
18 designed to address fugitive emissions; correct?

19 A. It was designed to -- the acid plant really was
20 designed to minimize the stack emissions, which included
21 particulates and included the -- it included the SO₂, of
22 course. And the fugitives that it would collect would be
23 from changes made to the technology of the circuits that
24 you were, you know, you were using to smelt the
25 concentrates.

1 Q. After the Gradient Study of 2004 and after you
2 had come to the new understanding that fugitive emissions
3 were particularly toxic, you turned to Projects that would
4 address fugitive emissions.

5 Is that your testimony?

6 A. Yes. There were a number of Projects that were
7 done, listed in the February document, February 2004
8 document, and I believe there were some more that were done
9 afterwards, but, yes.

10 Q. And replacement of the very old copper circuit
11 furnaces, whether it's the roasters or the reverb
12 furnace -- or the reverb furnace or the converter, that in
13 itself wouldn't help address fugitive emissions, Mr. Neil?

14 Is that what you're telling me?

15 A. The copper modernization project that was
16 included in the PAMA extension increased the quality of
17 matte, which reduced the amount of sulfur that would go
18 through to the converters. So that in itself was a major
19 reduction of converting -- converting fugitive emissions
20 that you saw in the photograph that you showed us.

21 Q. Right. So once DRP would modernize the copper
22 circuit processing equipment, you probably wouldn't see
23 those clouds of smoke coming from -- coming from the
24 converter area of the copper circuit; right?

25 A. Definitely. There would have been a major

1 improvement, yes.

2 Q. In Paragraph 14 of your Witness Statement, you
3 say that shortly after your arrival at Doe Run Perú, you
4 felt DRP needed to prioritize reducing fugitive emissions.
5 I guess I just wanted to focus on that word "felt."

6 Was there something significant that happened to
7 give you that feeling Mr. Neil?

8 A. I don't recall my words.

9 Q. Okay. Could you pull up Paragraph 14 of
10 Mr. Neil's Witness Statement, please. So "faced with the
11 situation above, DRP felt that it needed to prioritize
12 reducing fugitive emissions (gases and suspended particles)
13 and addressing public health issues related to lead and
14 other heavy metals."

15 Did I read that correctly, Mr. Neil?

16 MR. SCHIFFER: May we see the paragraph above?

17 MS. GEHRING FLORES: Sure. Could you zoom out.

18 THE WITNESS: Yes, you read that correctly.

19 BY MS. GEHRING FLORES:

20 Q. Okay.

21 A. So I'm referring to the -- am I referring to the
22 gradient?

23 Q. No. If you want to read the paragraph
24 beforehand, please go ahead.

25 A. Can you also -- can you go to Paragraph 12.

1 Q. Yes.

2 A. Okay.

3 Q. So, yeah, I was just trying to -- go ahead.

4 A. Go ahead.

5 Q. I was just trying to get an idea of -- if you
6 could go back down to 14 -- why you, all of a sudden, got
7 this feeling that DRP needed to prioritize reducing
8 fugitive emissions?

9 A. I believe the situation above that I was
10 referring to, the Gradient Study that had put a number,
11 this seven times, and it had laid out a list of areas that
12 they thought of fugitives that needed to be addressed.

13 And also I believe it was mentioned that, with
14 young children, soils, cleaning, hygiene, but touching
15 soils, touching anything that might have lead on it was a
16 possible exposure, what they referred to as one of the
17 "pathways" or exposure to lead.

18 And at the time we were washing streets, we were,
19 perhaps, sweeping, but we were definitely washing streets
20 and areas in the city, and that the soil in the city needed
21 to be removed, replaced, and that was -- that part of the
22 cleaning of the whole area was Centromín's responsibility.

23 That's why we had spoke to Centromín. And all of
24 that we needed to double down on focusing on minimizing the
25 amount of fugitive emissions by whatever means, and so we

1 adjusted our priorities to do those things.

2 Q. And those community projects like sweeping in the
3 streets and washing the streets, hygiene programs, those
4 are all exposure reduction programs; right, Mr. Neil?

5 Those aren't emissions reduction programs;
6 correct?

7 A. Yes.

8 Q. Okay.

9 A. As are reducing all of the exposures from
10 low-level dust, road dust, dust under a truck, dust from
11 wind blowing, let's say a stockpile of material, fugitive
12 emissions, whether from copper or lead or one of the
13 processes in the lead smelter. We had a number of
14 projects: Ventilation, baghouses, sealing up of some
15 buildings.

16 Q. So baghouses, yes. I understand baghouses would
17 reduce lead emissions; correct? From just distinguishing
18 from the source of the emission, which is the DRP La Oroya
19 Facility, versus where the emissions are landing in
20 La Oroya. So I'm focus on the source.

21 So --

22 A. Internal to -- inside our fence line, yeah, is
23 what I meant. Sorry for over speaking.

24 Q. No. It's okay.

25 So the Projects in the communities would not have

1 reduced emissions that are coming out of DRP's facility; is
2 that correct?

3 A. Correct.

4 Q. Yeah. And you did mention the baghouse project,
5 which would have reduced, among other particulate matter,
6 lead emissions coming from the La Oroya DRP facility; is
7 that correct?

8 A. Yes. We built some relatively small baghouses to
9 capture dust from individual sources, individual furnaces
10 in different parts of the plant that had not been
11 adequately ventilated, in our view.

12 Q. Baghouses don't remove sulfur dioxide; right?

13 A. Correct.

14 Q. And the baghouses -- the baghouse project was
15 completed in 2006; correct?

16 A. The baghouses I'm referring to are baghouses that
17 we identified in 2003 as -- and 2004 -- as leading to
18 low-level emissions in the plant and which were, for one
19 reason or another, did not have a ventilation system or a
20 specific ventilation system adequate.

21 We could see emissions and we -- and lead
22 operations, and one example is the dross plant. And we
23 listed some of these items to the MEM, and they were added
24 to our, you know, list of things that we would do in the
25 meantime. We're talking 2004, '05, perhaps '06.

1 Q. Yeah. Maybe completed in -- maybe all of that
2 was completed in December of 2006, perhaps?

3 A. Yes. Completed by then.

4 PRESIDENT SIMMA: Excuse me, Ms. Gehring. Would
5 it interrupt the flow, the natural flow, of your
6 examination if you had a coffee break now, or would you say
7 it would be better to have it a few minutes later? Because
8 time has come, and of course this is a -- quite a strenuous
9 exercise, at least for the two of you.

10 MS. GEHRING FLORES: Yes. A coffee break would
11 be great.

12 PRESIDENT SIMMA: Is that okay?

13 MS. GEHRING FLORES: Yes.

14 PRESIDENT SIMMA: All right. So we have a coffee
15 break until 11:15.

16 Mr. Neil, you are to be sequestered. Is that the
17 word? So don't speak to -- okay. Why don't you say
18 precisely what Mr. Neil is not supposed to do?

19 SECRETARY DOE: Sure. Mr. Neil, you are just
20 asked not to speak to anybody about this case there while
21 we take a quick break and resume your examination.

22 PRESIDENT SIMMA: Okay.

23 THE WITNESS: That's fine.

24 PRESIDENT SIMMA: Thank you. Okay.

25 (Brief recess.)

1 PRESIDENT SIMMA: Let us continue the exam, and
2 Ms. Gehring Flores, you have the floor again. If you're
3 ready.

4 MS. GEHRING FLORES: Yes, thank you,
5 Mr. President.

6 BY MS. GEHRING FLORES:

7 Q. Mr. Neil, I'm going to show you again the photo
8 of the fugitive emissions coming off of the copper
9 converters. Can you see that on your screen?

10 A. Yes, I can see it.

11 Q. This situation -- this fugitive emissions
12 situation would not have changed until the copper circuit
13 modernization was complete; correct?

14 A. That is correct.

15 Q. So the fugitive emissions coming off of the
16 copper converters that were there during your time at DRP
17 were also there during Mr. Buckley's time; correct?

18 A. I would think so.

19 Q. And just for clarification, Mr. Buckley was your
20 predecessor as General Manager and President of DRP?

21 A. That is correct.

22 Q. So in 2004, you testified that you had a "wake-up
23 call" with respect to the toxicity of fugitive emissions;
24 is that correct?

25 A. The toxicity of lead contained in fugitive

1 emissions, yes.

2 Q. Were you not concerned about sulfur dioxide
3 fugitive emissions, Mr. Neil?

4 A. The fugitive emissions that you see in this
5 photograph are intermittent, and some of the lead
6 fugitives' low levels were much more steady than with the
7 SO2. Certainly, lead is a health concern. It's chronic.
8 It's a chronic situation. The SO2 can have an impact on
9 some people more than others, perhaps, but it's a -- it
10 really clears up where lead is chronic. It takes a long
11 time for it to be completely gone from your exposure.

12 Q. I certainly understand that lead even after, say,
13 the DRP smelting facility closed down, lead would stick
14 around in dust and even soil, eventually, for many years.
15 Is that what you're saying?

16 Even after a facility closes down, lead will be
17 an issue.

18 Is that what you were talking about there?

19 A. It wasn't -- no, it wasn't what I was talking
20 about. I was talking about the health implications.

21 Q. Okay. I mean, I guess, I'm -- sorry, go ahead.
22 (Overlapping speakers.)

23 A. What you said about lead in -- lead that is in
24 soil, it doesn't -- it doesn't -- I don't want to say
25 degrade. It doesn't go away.

1 Q. Right.

2 A. It doesn't -- there is not a, like, a -- in the
3 soil, it's there for a long time. That's correct.

4 Q. And, in contrast, SO₂ dissipates; correct? SO₂
5 or sulfur dioxide doesn't stick around like lead.

6 Is that what -- is that the distinction that you
7 were making?

8 A. The distinction I was making was the impact on
9 the person's health, with respect to lead, is a more
10 critical issue than an exposure to SO₂.

11 Q. SO₂ only dissipates if the source that is
12 emitting the SO₂ stops; correct? Otherwise, you just have
13 a constantly refreshed supply of SO₂.

14 Am I correct on that?

15 A. SO₂ disperses in the air.

16 Q. And if you have a source of SO₂ to constantly
17 refresh the SO₂ in the air, is the SO₂ going to dissipate?

18 A. If you have a constant source of SO₂, then you
19 would have a constant -- you would have a constant level of
20 SO₂.

21 Q. Okay. And understanding kind of the difference
22 between SO₂ and lead, lead sticks around, SO₂ doesn't as
23 long as the source is shut off -- understanding that
24 difference, are you telling me that you think it would be
25 recommendable to stick your face in a source that's

1 emitting SO2 and take a deep breath?

2 A. No, that's not something you should do.

3 Q. Okay. So SO2 does have serious effects on human
4 health; correct?

5 A. My understanding is that lead has a more serious
6 effect than SO2. SO2 is something that can certainly give
7 you a sore throat. If you were a person who had asthmatic
8 conditions, then it's -- then it could be more -- certainly
9 more serious than someone who doesn't. But SO2 -- it
10 doesn't have the last -- it doesn't have the effect that
11 lead can have, and once you're exposed to lead, it takes a
12 while for the body to not have lead in it.

13 Q. So are you telling me that DRP's attitude to SO2
14 is that it just really wasn't a concern?

15 A. No, that was not the -- that was not the concern.

16 Q. And you would be concerned as --

17 (Overlapping speakers.)

18 A. SO2 -- a steady dose of SO2, is -- we tried not
19 to have that. There were programs where -- where you would
20 have the likelihood of a thermal inversion, for example.
21 Then the Plant would be shut down, according to a protocol,
22 and would stay down for the hours that that protocol
23 required for the thermal inversion. This was a program
24 that had been initiated by Mr. Buckley before I was there.

25 Q. But, again, Mr. Neil, you were concerned, then,

1 about the amount of SO2 that the DRP facility was emitting;
2 is that correct?

3 A. We were concerned about all of our emissions.

4 Q. And I understand you were talking about a process
5 to shut down the Plant and, I guess, we'll talk about that
6 in a second, but there's only one sort of project that will
7 actually remove SO2 from the plant's emissions.

8 Am I right?

9 A. We're talking about the acid plant construction
10 and building; correct?

11 Q. Is that your answer?

12 A. Yes.

13 Q. Okay. So only a Sulfuric Acid Plant could
14 actually remove SO2 from DRP's emissions; correct?

15 A. None of the other Projects removed SO2, only the
16 Sulfuric Acid Plant.

17 (Overlapping speakers.)

18 Q. There is no filter that can remove SO2; correct?

19 A. I'm only aware of the chemical processes, no
20 filter.

21 Q. And by "chemical processes," that would be a
22 Sulfuric Acid Plant; is that right?

23 A. Yes.

24 Q. And speaking about the program where you would
25 shut down the Facility at different times, particularly

1 during inversions where I understand the weather
2 changes -- and not only the fugitive emissions, but
3 emissions from the main stack can be highly impactful on
4 the La Oroya community.

5 Is that what you're referring to about the
6 shutdown -- the shutdown programs?

7 A. The shutdown program was a program to minimize
8 the impact of the high-level emissions, the main stack,
9 primarily.

10 Q. Now, DRP's production during your tenure as
11 General Manager and President of DRP, and Mr. Buckley's
12 tenure as General Manager and President of DRP, DRP's
13 production stayed relatively constant; correct?

14 A. It stayed relatively constant during my time
15 at -- in Doe Run, at Doe Run Perú.

16 Q. Did it go down?

17 A. It stayed relatively constant.

18 Q. If you were to do an average, a yearly average,
19 would those data points ever go down?

20 A. I don't have the numbers in front of me.
21 The -- I would say, generally, the production was fairly
22 consistent.

23 Q. Okay. So with the shutdown program, if you did
24 shut down the smelting facility at different times, you
25 would make up for it after you shut down; right?

1 That's the only way for your production to remain
2 generally consistent; correct?

3 A. Our -- I can't speak for all the time that
4 Mr. Buckley was there, but my recollection is the numbers
5 did not change all that much, certainly while I was there.

6 Q. Going back to 2004, when you had the wake-up call
7 with respect to fugitive emissions, Mr. Neil, and their
8 highly toxic impact on the community, once you had that
9 wake-up call, why didn't you reduce the amount of inputs,
10 or your production, if you had such a wake-up call?

11 A. I believed at the time that if we identified each
12 of the sources of the fugitive emissions and prioritized
13 them, that we could make an impact very quickly on
14 those -- on the fugitive emissions.

15 It would mean that we would have to move some
16 people who were working on -- on the Projects to -- I'm
17 talking technical people, to make sure we understood what
18 the amount of the emissions was, the measuring of it, and
19 developing solutions and implementing those solutions,
20 whether it was an engineering solution or whether it was
21 building something, paving, washing vehicles, whatever the
22 solution was, changing some of our protocols, that we would
23 do that, and that we would have an impact.

24 Q. But just to be clear, Mr. -- I'm sorry.

25 A. And so we -- a number of these --

1 (Overlapping speakers.)

2 Q. Go ahead.

3 A. And we did make a difference.

4 Q. But just to be clear, Mr. Neil, you never decided
5 to reduce your production during that
6 time -- correct? -- after your wake-up call?

7 A. We did not reduce our production, that
8 I -- that's my recollection.

9 Q. Okay. Thank you, Mr. Neil.

10 MS. GEHRING FLORES: No further questions.

11 PRESIDENT SIMMA: Thank you, Ms. Gehring.

12 No further questions on your part?

13 MR. SCHIFFER: So I'm prepared to do redirect,
14 except that I need to gather some questions from my group
15 and consider them. I won't be -- I'm not very long; so
16 could we have a -- I'm sorry to do this, but may we have a,
17 like, a 10-minute break, and then I'll do the redirect?

18 PRESIDENT SIMMA: That's fine.

19 MR. SCHIFFER: Okay. Because I don't want to get
20 in trouble with anybody. So I want to make sure I've got
21 everyone's input.

22 (Overlapping speakers.)

23 PRESIDENT SIMMA: No, no. That's fine.

24 MR. SCHIFFER: Okay. Thank you.

25 (Brief recess.)

1 PRESIDENT SIMMA: So, Mr. Neil, it's another
2 break, right? So don't talk to anybody. And, Mr. Neil, I
3 was going to tell you that for the 10 minutes that it will
4 take Claimant to gather some questions, you're, again,
5 supposed not to talk to anybody about the case.

6 THE WITNESS: That's fine. I won't talk to
7 anyone.

8 PRESIDENT SIMMA: Thank you.

9 (Brief recess.)

10 PRESIDENT SIMMA: I think we are ready for the
11 redirect.

12 Mr. Schiffer, you have the floor, sir.

13 MR. SCHIFFER: Thank you, Mr. Chairman.

14 REDIRECT EXAMINATION

15 BY MR. SCHIFFER:

16 Q. Hello, again, Mr. Neil.

17 A. Hello, Adam.

18 Q. The Expert for the Respondents in this case, I'm
19 going to represent to you, has suggested that there was a
20 hole or holes in the ductwork of the Facility that allowed
21 fugitive emissions -- the emissions to be diverted from the
22 main stack into fugitive emissions. That's his hypothesis.

23 You look puzzled. Did -- under your watch, did
24 DRP ever do that, try to divert emissions from the main
25 stack?

1 A. There was never any attempt to divert emissions
2 from the main stack.

3 Q. And if there -- I'm sorry.

4 A. If there was a leak of some kind, then there
5 would be --

6 (Overlapping speakers.)

7 MS. GEHRING FLORES: Excuse me, Mr. Neil, just
8 one moment.

9 I don't believe I asked any questions about that.

10 MR. SCHIFFER: She asked 100 questions about the
11 detailed operations of the Plant, and I am just following
12 up on that.

13 MS. GEHRING FLORES: That -- this idea of there
14 being a hole never came up.

15 PRESIDENT SIMMA: May I try to help out?

16 MS. GEHRING FLORES: Yes.

17 PRESIDENT SIMMA: What I heard was not the word
18 "hole." It was the word "gap." And Mr. Neil spoke about a
19 gap between the machine and the hood while we saw the
20 pictures. So maybe this is -- so "gap" instead of a
21 "hole." Maybe that helps.

22 MR. SCHIFFER: It's just words. Yeah.

23 MS. GEHRING FLORES: Well, I honestly don't think
24 that that's what we're discussing, but please go ahead and
25 it should be noted that I did not ask any questions about

1 this.

2 As Mr. Schiffer notes, I asked many questions
3 about the operations. I did not ask any questions about a
4 hole that DRP would have punched in -- no, I did not.

5 PRESIDENT SIMMA: I did not want to imply that
6 you asked a question in that regard, but Mr. Neil described
7 the -- how emissions got into the air, fugitive, probably.
8 And one of the examples or the example that I remember was
9 the one where he said there is this -- what he called a
10 "gap," through which -- and I think that's probably what we
11 saw on the photograph also -- right? -- this kind of thing
12 coming out of that -- from under the hood. So that's what
13 I meant. So I did not want to imply that you asked a
14 question in that regard, just that the topic came up.

15 BY MR. SCHIFFER:

16 Q. Mr. Neil, under your management, was there
17 maintenance performed daily, weekly on the Facility?

18 A. Yes.

19 Q. If there was a gap that was blowing considerable
20 emissions within the Plant, is that something you think you
21 would have been aware of?

22 A. Yes.

23 Q. And under your watch, would you just have let it
24 go and let it keep pumping out emissions?

25 A. Of course not.

1 Q. "Of course not."

2 Were there also audits done by third parties in
3 the Plant while you were there?

4 A. We had audits done, yes.

5 Q. And who did those audits, if you can remember?

6 A. We had audits done by people that were brought in
7 to examine what we were doing in the Plant, Gradient, a
8 company called Gradient. A company called Integral did a
9 health survey and worked in the Plant.

10 Q. Okay. So a lot of -- not just DRP people were in
11 the Plant, but there were quite a number of interested
12 strangers in the Plant as well. Is that what you're trying
13 to tell us?

14 A. Definitely, there were some, yes.

15 Q. Okay. I want to shift gears and talk about
16 fugitive emissions with respect to the amended PAMA in
17 2006. Okay?

18 A. Yeah.

19 Q. When did you first bring the subject to the MEM
20 that there needed to be additional fugitive emissions
21 projects?

22 A. I know that I wrote a letter in February of 2004.
23 We had brought in, in 2003, Gradient to come in and help us
24 understand some issues, and we had some internal
25 discussions at the time. It would have been October 2003,

1 perhaps September of 2003, that we needed to better
2 understand fugitives in the Plant, that, perhaps, they
3 were -- perhaps, they were impacting the health of the kids
4 in La Oroya. And it wasn't until we received the Report at
5 the beginning of 2004 that we had learned the impact of
6 the -- of that. Dan Vanberg, I had asked him to come and
7 have a look at -- he was an environmental VP from the U.S.,
8 but I asked him to have a look at some of the issues
9 that -- some issues, environmental issues, and during that
10 visit we had discussions about -- discussions about that.
11 I don't know that we talked immediately to MEM, but we were
12 collecting some information internally to try to identify
13 the extent of the emissions.

14 Q. But, in February 2004, you did bring all this to
15 the MEM's attention?

16 A. Yes.

17 Q. And you did ask for an extension to add
18 additional projects to address, specifically, fugitive
19 emissions?

20 A. Yes.

21 MS. GEHRING FLORES: Would Counsel please refrain
22 from leading the Witness quite so much?

23 MR. SCHIFFER: I'm just summing up what he's
24 already said, which is acceptable, in any court of law, at
25 least.

1 BY MR. SCHIFFER:

2 Q. So, Mr. Neil, I'm sorry, before we were
3 interrupted.

4 You -- what was MEM's response to your request
5 for an extension to add fugitive emissions projects to the
6 PAMA in 2004?

7 A. We did not receive -- we did not receive a
8 response from MEM, in that -- well, not a direct response
9 in the form of a letter. Nevertheless, we did start on the
10 Projects that we had said that we were intended to do.

11 Q. Okay. You're jumping ahead of me a little bit.
12 Did the MEM, once they got your study and your
13 letter, did they say, "absolutely. Let's get on this right
14 away"?

15 A. I don't recall that. We certainly did not
16 receive a response to the letter indicating what our
17 intentions were going forward.

18 Q. Right. And --

19 A. And then --

20 Q. If I say to you that you made a request for an
21 extension in 2004, but we -- it's in the record that you
22 didn't get an extension until 2006, how would you judge the
23 MEM's response?

24 A. Well, it was late.

25 Q. Okay. And I believe you've already testified

1 that you didn't wait on the MEM to start these Projects?

2 A. That is correct.

3 Q. Now, can we pull up -- I'm sorry, do you mind
4 pulling up the PAMA that you showed him and especially the
5 fugitive emissions section. Yeah. R-87 -- I'm sorry,
6 Page 87.

7 MS. GEHRING FLORES: I believe your hot-seat
8 operator has it.

9 MR. SCHIFFER: I know, but I'm asking if you
10 could do that.

11 MS. GEHRING FLORES: I don't know if we have
12 control over it.

13 MR. SCHIFFER: Okay. If we could go to Page 87.

14 BY MR. SCHIFFER:

15 Q. So did -- you studied the PAMA, obviously, when
16 you came on board. You testified to that.

17 Were you aware -- why did you need to add
18 projects to the PAMA and to try to do it in 2004 if the
19 PAMA addressed fugitive emissions?

20 Why would there be a need to add 12 projects?

21 A. Well, my conclusion was that the fugitive
22 emissions were not seen as being one of the Projects that
23 had to be included in the PAMA.

24 Q. Okay. Thank you.

25 A. And it was not included.

1 (Comments off microphone.)

2 Q. And in the Report, are you aware that this
3 discussion -- they're not about projects, they're just
4 about sources of emissions by Centromín?

5 A. Yes.

6 Q. Okay. Let's go to Mr. -- the Expert Report with
7 the picture of the smoke, please. And you were shown this
8 several times. I'm going to show it to you yet again.

9 The equipment that was in the Facility when this
10 picture was taken, do you know how old it was?

11 I mean, in other words, was it there when
12 Centromín was operating the Plant, to your knowledge?

13 A. It would have been there.

14 Q. Right.

15 A. Yes.

16 Q. And so what would you have expected to see, had
17 this picture been taken, let's say, in 1995?

18 A. I would have expected at least the same.

19 Q. Why do you say "at least the same"?

20 A. The smelter was old, the building -- the
21 equipment was older. I know that the maintenance that
22 Mr. Buckley had carried out on his watch, and what we were
23 doing is that we were trying to keep up with -- stay ahead
24 if we could, but try to keep up with the needs, of leaks,
25 of keeping the equipment running. And I had monthly

1 reports on what people were doing and maintenance, so I
2 thought that we were doing well mechanically keeping
3 everything running, and I cannot speak for -- I can't speak
4 for what Mr. Buckley found when he got there.

5 Q. Right. We'll talk to him next.

6 Mr. Neil, it has been a pleasure talking to you.
7 I have no further questions of you. Thank you so much.

8 PRESIDENT SIMMA: Thank you, Mr. Schiffer.

9 Mrs. Gehring, do you want to ask a question or
10 somehow respond to that, give it a second opportunity?

11 MS. GEHRING FLORES: Just one.

12 PRESIDENT SIMMA: Sorry?

13 MS. GEHRING FLORES: Just one.

14 PRESIDENT SIMMA: Okay.

15 RE-CROSS-EXAMINATION

16 BY MS. GEHRING FLORES:

17 Q. Mr. Neil, the processing equipment that you
18 inherited from Centromín, as you mentioned, was old;
19 correct?

20 A. That is correct.

21 Q. Did that equipment get older or younger during
22 DRP's tenure?

23 A. There were some changes made to equipment,
24 particularly the Cottrell, but I would say that the
25 equipment got older.

1 MS. GEHRING FLORES: No further questions.

2 THE WITNESS: Okay. Thank you.

3 PRESIDENT SIMMA: Okay. Any --

4 MR. SCHIFFER: No, sir.

5 PRESIDENT SIMMA: Let me ask my colleagues
6 whether they have questions at this stage.

7 ARBITRATOR GRIGERA NAÓN: I have one.

8 QUESTIONS FROM THE TRIBUNAL

9 ARBITRATOR GRIGERA NAÓN: One question, sir.

10 You were shown a page of the PAMA, I think it was
11 Page 87, and there is a reference there to fugitive
12 emissions. One of them that concerns sulfur dioxide, and
13 the other one that concerns lead. In the case of lead,
14 there is a reference to recordations, recording. I don't
15 see the same wording when it refers to SO₂, to sulfur
16 dioxide emissions.

17 My question is: When the PAMA -- that portion of
18 the PAMA came to life, was there any way of recording,
19 quantifying dioxide emissions, sulfur dioxide emissions,
20 and is there a difference between the possibility of
21 recording lead emissions, as it is suggested in that page?

22 Am I being clear in my question?

23 THE WITNESS: I know there were sampling stations
24 established very close -- where the people lived and in an
25 area north and south of the smelter, so there was -- those

1 sample stations were being monitored at all times. I
2 cannot recall whether they were monitoring SO2, but I
3 believe that they were monitoring SO2 and that we had both
4 lead information and SO2.

5 The PAMA required a -- the ECAs were the level of
6 contaminant in the air; whereas, the LMPs were the tons of
7 emissions or pounds of emissions over a period of time, as
8 measured. So I believe there were measurements taken of
9 both.

10 ARBITRATOR GRIGERA NAÓN: Thank you.

11 PRESIDENT SIMMA: May I just ask one or two
12 questions depending on your answer, Mr. Neil.

13 I remember that either you said or it was said
14 that the PAMA did not contain, did not deal with fugitive
15 emissions. And then you were shown -- I think it might
16 have been the Page 87 in that document -- where you have
17 paragraphs on emission, SO2, and lead, so I wondered
18 why -- could it be that -- if you look at these texts on
19 Page 87, they read like a page out of a textbook. I would
20 have expected that PAMA is about requirements, that if you
21 want to work there, you have to establish certain things, I
22 require certain measures that you take.

23 But the text there on Page 87 just says what
24 usually happens there is some bad things get out of the
25 machine and so on and so on, and so it is really more of a

1 description for a layman, and even I could understand it,
2 essentially.

3 So my question would be, is that the reason there
4 might be -- a little leading -- is that the reason why you
5 thought there wasn't anything, let's say, relevant on
6 fugitive emissions in the PAMA?

7 Maybe I'll add my second question right away
8 because it -- I get back, once again, to that gap.

9 When you were asked how the fugitive
10 emissions -- how do they -- where and when and how do they
11 get out of the plant into the atmosphere? You described,
12 and one of your descriptions was about the converter
13 machine, a hood about the converter machine, the fact that
14 the converter machine was kind of a turnable in order
15 to -- it had to do with blowing air. So it all sounds
16 interesting stuff. And then you said, to this gap there
17 will be -- let's say, emissions cans escape.

18 My question in that regard is, is that -- was
19 that at the time the state of the art, the standard in the
20 industry?

21 Are such gaps a thing that cannot be avoided, or
22 was it just that the old stuff that you found there
23 was -- had these, let's say, shortcomings?

24 I hope I made myself clear.

25 **THE WITNESS:** I'll speak to the -- if I answer

1 your question, you can stop me, but the issue with the
2 converters, those converters and the hoods were very
3 similar to what I saw in 1970 in the copper smelt in
4 Canada. They were probably a little larger, maybe more
5 effective than they were 50 years ago.

6 My understanding of the technology now is that
7 people are putting a large -- a hood over a hood, like
8 something that collects -- it's a bigger area. It collects
9 what the main hood doesn't collect.

10 But the converters are very similar. The new
11 technology may have a -- the second hood which could be
12 lighter weight and then can sit closer because it can be
13 lowered down, moved. I think that is a technology change
14 that has been introduced. So that's one thing.

15 Another is that, I guess, that's the major thing,
16 the question on the hood, and there on the gap. The reason
17 you leave a gap is because these things weigh tens of tons,
18 more than 100 tons, and if something is moving and steel
19 strikes steel and it weighs 100 tons, it wrecks it. So
20 then you damage the hood. You have to -- you can't use the
21 converter the way you were doing it before. So there you
22 need to have a gap.

23 The other question -- your first question -- did
24 I answer your second question about the hooding and the
25 technology?

1 I think there is some newer technologies that are
2 more efficient and there are -- and the hood design has
3 changed so that there is more collection of what's called
4 "fugitives." Okay? Fugitive is basically what evades,
5 what gets away from your intended collection.

6 If you were trying to collect the gases to go to
7 an acid plant or the SO₂, you need to have as tight a gap
8 as you can. So there's a few, though, that you collect all
9 the sulfur. The problem is if you bring in a lot of
10 external air, then the SO₂ level is lower and the
11 technology that we use for acid plants does not work. You
12 have to have a certain kind of critical level of SO₂ in
13 order for the conversion, and all of that that was talked
14 about of SO₂, in order to make the acid plant technology
15 function.

16 In the case of a converter, it could be fairly
17 low, so you would combine it with something else that was
18 higher SO₂ to meet that level. So you can't have a lot of
19 trapped air getting in, and it's a little bit of a balance.

20 On the first question of the fugitives and the
21 debate about what "fugitive" means, it is what evades the
22 collection system. And if you were able to collect all of
23 it, then none of it evades. If you're not able to collect
24 all of it because you want a certain SO₂, then what
25 evades -- you have to find another way to capture it.

1 You could capture it by sealing a building,
2 cooling the air, putting bag houses on all the ventilation,
3 and then you still will have some dust getting out. And in
4 Perú, there were skylights, sky openings for fresh air to
5 get in because it would be too hot.

6 So those openings allow things to escape, dust to
7 escape. Once it's in the air, and it settles and blows
8 around. And once it's in the air at a low level, then it
9 was those fugitives were going according to the wind. And
10 if the wind took them into the town, that was that way. If
11 they took them the other way, it was the other direction,
12 it was the other way.

13 So those fugitives will be estimated. How many
14 fugitives were escaping from each building and each area
15 and from handling of vehicles, we realized that we had to
16 do many more Projects than were on the list of the PAMA.
17 So we initiated those and started those.

18 As we sealed buildings, it meant we had to have
19 more fresh air going into the building, so we needed bag
20 houses to collect all those, all that air.

21 PRESIDENT SIMMA: Thank you very much. Thank you
22 very much, Mr. Neil. Thank you. Thanks for your answer.

23 There is a question now by Mr. Thomas.

24 ARBITRATOR THOMAS: Thank you, Mr. Neil.

25 This is just a clarification of a statement that

1 you made earlier in response to a question from
2 Mr. Schiffer, and it concerned the request that you sent in
3 2004 to MEM. And you were asked about the response, and I
4 made a note of how you answered that question which
5 was -- you said that "there was no response from MEM in the
6 form of a letter."

7 And the question I had was, was there any kind of
8 oral response? Did you have meetings with MEM, or was this
9 entirely conducted through correspondence?

10 THE WITNESS: We met regularly with MEM. That
11 is -- that was -- that is true. I cannot tell you the
12 meetings that we had because I can't recall them, sir, but
13 I know that throughout my term in Doe Run Perú and somewhat
14 afterwards that we regularly met.

15 My experience with written communication with MEM
16 was that that was assurance that the information that we
17 had or were seeking was passed on, and we received a
18 written response for, I would say, all the time. I was not
19 given a response. I can only speculate why they chose not
20 to respond to that letter, but we did not get a response to
21 that letter until the December when the MEM issued a letter
22 saying that there was a law in place now and that all the
23 terms of the law which was -- which we used to make -- we
24 used that letter to form the basis of our formal request a
25 year later for the extension.

1 ARBITRATOR THOMAS: Thank you.

2 PRESIDENT SIMMA: Thank you. I think that brings
3 to an end the cross-examination of Mr. Neil.

4 Mr. Neil, thank you very much for your answers,
5 your patience, and the precision of your answers. You are
6 hereby released, and, in a sense, a free man again.

7 Thank you very much.

8 THE WITNESS: Thank you.

9 (Witness steps down.)

10 PRESIDENT SIMMA: Now, the question is, we
11 have -- according to our time schedule, we have half an
12 hour left, so should we go into the next examination?

13 My guess is that it will take a few minutes to
14 have the next witness set up, if I may say, or should we
15 just have an earlier lunch break, combined with the hope
16 that the food will be warm. It is not earlier.

17 MR. PEARSALL: In our view, Mr. President,
18 subject to the logistics, I think there is sufficient time
19 for, at least, the direct, and then we can take our lunch
20 break and then have the cross.

21 PRESIDENT SIMMA: Okay. All right. Good. All
22 right.

23 Thanks, Mr. Neil.

24 And we get the next witness ready.

25 MR. SCHIFFER: So the next witness is also by

1 video, and that is Ken Buckley, so I guess we need to
2 switch over to his feed, which is, fortunately, out of my
3 hands.

4 (Brief recess.)

5 KENNETH BUCKLEY, CLAIMANTS' WITNESS, CALLED

6 PRESIDENT SIMMA: Hello, Mr. Buckley. Thanks for
7 appearing in front of us. You should have in front of you
8 a declaration which I would like you to read out slowly.

9 THE WITNESS: I'm sorry. I'm having a problem.

10 SECRETARY DOE: Mr. Buckley, you should,
11 hopefully, see a small document.

12 THE WITNESS: Hold on a minute. I've got the
13 tech coming back.

14 (Comments off microphone.)

15 THE WITNESS: Okay. My tech is just helping out.
16 Yes, I'll read it.

17 I solemnly declare, upon my honor and conscience,
18 that I will speak the truth, the whole truth, and nothing
19 but the truth. There is no unauthorized person present in
20 this room with me, and I cannot communicate with anyone
21 else during my testimony.

22 PRESIDENT SIMMA: Thank you, Mr. Buckley.

23 And I'll give the floor to Mr. Schiffer for what
24 we call the "direct," you are being directed.

25 Mr. Schiffer, you have the floor.

1 MR. SCHIFFER: Thanks.

2 DIRECT EXAMINATION

3 BY MR. SCHIFFER:

4 Q. Hello, Mr. Buckley.

5 A. Good morning.

6 Q. How old of a man are you, sir?

7 A. 85.

8 Q. And I know you retired. How long have you been
9 retired?

10 A. 20 years this year.

11 Q. And from what company did you retire?

12 A. Well, it was from Doe Run Perú/Doe Run Resources.

13 Q. Okay. I want to talk to you about your
14 involvement with the Facility in Perú.

15 When was your first -- when did you first lay
16 eyes on the -- what's been referred to as the "CMLO" or the
17 La Oroya smelter?

18 A. That would be late August, early September of
19 1997.

20 Q. What was your purpose in going down and looking
21 at it?

22 A. The purpose was that we had been given the bid.
23 Originally, it had gone to the Mexicans, but they declined
24 to go forward. We were the next, and I was asked to go
25 down with a small Doe Run team to take a look at the

1 Facility.

2 Q. And on a scale of, let's say, 1 to 5 -- 1 being
3 not good at all and 5 being very good -- how would you
4 describe the efforts that Centromín was making, in the time
5 you visited, to control emissions?

6 A. When I first went there, I think it was a 2, but
7 then, when we visited again, it was a 1, as we got more
8 information.

9 Q. And if you could just briefly explain what you
10 saw that makes you say it was a 2 and then a 1.

11 A. Well, I got more -- I was able to get into the
12 Plant and take a look more closely. There was
13 obviously -- there was a very much lack of maintenance.
14 There was a very large hole in the gas-handling ductwork.
15 It appeared that the dust collectors were not working, the
16 bag houses, and the electrostatic precipitators were not
17 working. And there was, you know, some nasty-looking
18 liquids pouring out of the Plant into the river nearby.
19 And we did a walk around, what I would describe as old
20 La Oroya, and it was obvious -- I mean, it was very
21 contaminated.

22 And there was one incident that caught my mind.
23 There was a bulldozer operator operating and pushing -- it
24 was at the arsenic stockpile. He had a hardhat on, but he
25 had no, what I would call, special breathing equipment

1 protection. He appeared to be in his street clothes. It
2 did not strike me as an operation that was, you know, on
3 top of their employee safety and health.

4 Q. And that leads into my next question: When you
5 went down for your initial site visit, did you see workers
6 in the Plant?

7 A. Yeah, obviously, we went through the Plant.
8 The -- yeah, we visited all areas of the Plant, obviously.
9 We were on the -- I would call, the initial due-diligence
10 search.

11 Q. Right.

12 A. And -- yeah, there was -- you know, we saw,
13 again, workers, operators in various toxic parts of the
14 Plant -- lead, cadmium, and I spoke about arsenic too had
15 less than efficient breathing protection. Let's put it
16 that way.

17 Q. When you became the General Manager/President of
18 Doe Run Perú, did you take any immediate actions to try to
19 fix the obvious problems that you have explained to us?

20 A. Yes. Of course.

21 Q. Can you tell us what you did?

22 A. Well, yeah. First thing we did was I brought out
23 to Perú from the States, going by mental health people and
24 put them to work organizing proper protection for our
25 employees, breathing apparatus, in terms of half masks,

1 full masks, whatever was required. I informed people that
2 they had to be in compliance with U.S. OSHA regulations
3 regarding protection, breathing protection.

4 Q. Okay.

5 A. We also then organized a -- well, several crews.
6 We put to work repairing, where necessary, replacing the
7 ductwork which was the cause of a lot of the emissions that
8 were coming from the operation. And so the initial stages
9 was to, you know -- patch what we had, repair what we had,
10 and get the emissions under control as best we could with
11 equipment that was already in place, again, simultaneously
12 working on our worker protection. Those were things I
13 remember I think we did immediately we moved in. And I
14 remember I told the Manager of Operations to get that
15 awful-looking liquid pouring out of the Plant stopped,
16 which he did.

17 Q. And was there someone that you appointed within
18 DRP, Doe Run Perú, to manage the PAMA Projects, to be the
19 person directly involved under you?

20 A. Oh, oh, oh, yeah. I think I appointed Dr. Juan
21 Carlos Huyhua as the Operations Manager.

22 Q. And how about José Mogrovejo? Was he someone --

23 A. Oh, he didn't come on until maybe a year after we
24 started up there. I was using a very competent
25 environmental guy from the States. His name was Dan

1 Vanberg. I had a lot of confidence in Dan. He'd worked
2 with me on several projects before. And I also had brought
3 down with me, on a permanent basis, a gentleman called Tony
4 Worcester as the Technical Manager. He also had worked
5 with me on several projects. And those were people I had
6 great confidence in, and those people, in those first
7 months, they were basically on a permanent basis in
8 La Oroya.

9 Q. And while you were in charge, were the PAMA
10 Projects being conducted according to the schedule of the
11 PAMA?

12 A. Yeah. I mean, the PAMA was modified
13 periodically, but only with the blessing of Ministry of
14 Energy and Mines, and, to my knowledge, when I retired, we
15 were in compliance with the PAMA and always had been. And
16 over the years, Ministry of Energy and Mines would send
17 their people in to audit what we were telling them was
18 correct and would sign off on the various projects that we
19 completed.

20 Q. You left Doe Run Perú in 2005, the end of 2005?

21 A. No. I retired in January 2004.

22 Q. Okay. Oh, that's right. I'm sorry. And would
23 you say you left the Facility better or worse than when you
24 got it?

25 A. Much better.

1 Q. Okay.

2 MR. SCHIFFER: We're finished with our direct.

3 PRESIDENT SIMMA: Thank you, Mr. Schiffer.

4 So we only have a few minutes until the lunch
5 break, so I think this is a good moment to stop.

6 So Mr. Buckley, you are supposed not to speak
7 about that case with anybody around you, and I hope that,
8 even though without talking about the case, you will have a
9 good lunch, if at your end it's the time for lunch. So
10 we'll see each other again at 1:35. At 1:35. Let's make
11 it 1:45, 1:45. Thank you.

12 THE WITNESS: Thank you.

13 (Whereupon, at 12:35 p.m., the Hearing was
14 adjourned until 1:45 p.m., the same day.)

15 AFTERNOON SESSION

16 PRESIDENT SIMMA: Okay. So let's have Mr. --

17 MR. PEARSALL: Before the Witness arrives,
18 Mr. President, just two housekeeping issues, if I may.

19 PRESIDENT SIMMA: Please.

20 MR. PEARSALL: The first is, we are going to show
21 Mr. Buckley a handful of documents. If it's helpful to the
22 Witness, we're happy to have someone in the room with him
23 for technical assistance.

24 MR. SCHIFFER: There is somebody in the room with
25 him for assistance.

1 MR. PEARSALL: Excellent. And then the second
2 point is, the principal examination will be conducted by my
3 associate, Mr. Brian Vaca, and after he'll be followed by
4 my partner, Gaela Gehring Flores, who will ask Mr. Buckley
5 just some questions solely on the newly admitted SVS
6 Report.

7 PRESIDENT SIMMA: I didn't understand the last
8 word you said were --

9 (Overlapping speakers.)

10 MR. PEARSALL: She will conduct -- she will
11 conduct a brief examination solely on the SVS Report; so
12 the scope is completely different.

13 PRESIDENT SIMMA: Ah, okay. Okay.

14 MR. PEARSALL: Okay?

15 (Interruption.)

16 MR. SCHIFFER: I have one question.

17 MR. PEARSALL: And if the Witness could be
18 excused, just until we finish.

19 MR. SCHIFFER: Yeah, yeah. Yes, I agree. If we
20 can put him back in the waiting room. Hang on.

21 (Comments off microphone.)

22 MR. SCHIFFER: Mr. Chairman, I have a point of
23 clarification. Typically, cross-examination needs to be at
24 least loosely tailored to the Witness's Statement and to
25 his personal knowledge, and I just -- I don't know what the

1 rule is for this. For example, the SVS Report -- he can
2 ask him if he's seen it, but if he hasn't seen it, you
3 know, I don't know what the point of the questions would
4 be. But I just want clarification before we get into it.
5 That's all.

6 MR. PEARSALL: Sure. The SVS Report was drafted
7 during his tenure. It was recently introduced; so it
8 wasn't part of his Witness Statement. We just have a few
9 questions on it.

10 MR. SCHIFFER: Again, if he's familiar with it,
11 then fine.

12 (Interruption.)

13 PRESIDENT SIMMA: Renco I; right? It was in the
14 Renco I case?

15 MR. PEARSALL: It was recently introduced. It
16 was part of the discussion that the Parties had with the
17 Tribunal last month about new documents coming in, and it
18 was drafted during his tenure. Obviously, we'll ask him
19 about whether he has knowledge of it, and we'll go from
20 there.

21 MR. SCHIFFER: Yeah. Of course. If he has
22 knowledge of it, I have no problem. If he doesn't, then I
23 have an issue.

24 PRESIDENT SIMMA: "Miremos."

25 MR. PEARSALL: Okay. Thank you.

1 MS. GEHRING FLORES: One more point,
2 Mr. President. Sorry. But you were right, that the SVS
3 Report was part of the Renco I record.

4 PRESIDENT SIMMA: Yeah.

5 (Comments off microphone.)

6 PRESIDENT SIMMA: All right. Okay. Now, were we
7 on -- okay. So it's all there. So we just continue being
8 on.

9 So, Mr. Buckley, and the question you wanted to
10 ask was the one that we discussed; right? It is not
11 something that you want to reengage in.

12 MR. SCHIFFER: No. No. No. No, sir.

13 PRESIDENT SIMMA: No? Okay. So -- okay. Thank
14 you, Mr. Buckley. Thanks for being back. Can you
15 understand me? So we don't hear you.

16 (Comments off microphone.)

17 PRESIDENT SIMMA: I hear you, but not
18 Mr. Buckley.

19 THE WITNESS: Can you hear me?

20 PRESIDENT SIMMA: Okay. Yes, Mr. Buckley. Thank
21 you. We're fine now.

22 Mr. Buckley, you are now going to be
23 cross-examined -- by Mr. Vaca?

24 MR. VACA: Mr. President, my name is Brian Vaca.

25 PRESIDENT SIMMA: Brian --

1 MR. VACA: Vaca.

2 PRESIDENT SIMMA: Vaca. You have the floor.

3 MR. VACA: Thank you, Mr. President.

4 CROSS-EXAMINATION

5 BY MR. VACA:

6 Q. Hi, Mr. Buckley, my name is Brian Vaca, and
7 together with my colleagues, we represent The Republic of
8 Perú and Activos Mineros in these arbitrations.

9 Can you hear me well?

10 A. Yes, I can hear you very well. Thank you.

11 Q. Great. I will be asking you some questions today
12 about the testimony that you submitted in this Arbitration,
13 and a few documents where you are referenced, and if at any
14 point during this examination you need a restroom break,
15 please let us know and we can take a pause. We do really
16 appreciate you being here today, Mr. Buckley.

17 And, given that I'll be asking you some questions
18 that will probably be in your testimony, you can have, if
19 it's easier for you -- you, of course, can have your
20 written testimony in front of you. If you're ready to
21 begin --

22 A. I do have it.

23 Q. Apologies. But...

24 A. I say, I do have the testimony in front of me.

25 Q. Great. So if you're ready to begin, we'll

1 proceed. Mr. Buckley, I would like to start by asking some
2 basic questions about your experience before joining Doe
3 Run Resources Corporation.

4 Before you joined, you had, at that point, many
5 years of experience as a metallurgist; right?

6 A. Yes.

7 Q. In fact, just to -- I guess, just to name one
8 example, from 1964 to 1977, you worked in the mining and
9 metallurgical industry -- and I believe you referenced in
10 Zambia, Uganda, and Botswana; right?

11 A. That is correct.

12 Q. Okay. And just to jump, I guess, about a decade
13 after that; so we said that experience was from 1964 to
14 1977. So in -- a decade later, about 1986, that's where
15 you joined Doe Run Resources Corporation?

16 A. That is correct.

17 Q. Okay. And you held various managerial positions
18 for about a decade; right? From 1986 to about 1997?

19 A. Correct.

20 Q. And, I guess, we can say that your experience at
21 that point was so great that, by 1995, Doe Run Resources
22 appointed you as Vice President of Smelting; is that right?

23 A. Correct.

24 Q. And about two years later -- so, now, we're in
25 September 1997 -- you began serving as the President and

1 General Manager of Doe Run Perú; right?

2 A. No, it was in the October.

3 Q. Mr. Buckley --

4 A. I'm just trying to correct. September, October.
5 If my memory serves me right, it was after we had completed
6 the purchase of what was then Metaloroya, and I was
7 appointed a General Manager, and then several months later
8 I was appointed President.

9 Q. Okay. Sorry, because just in your Witness
10 Statement you mentioned from September 1997 until
11 September 2003, and that's in Paragraph 3, that you served
12 as President and General Manager.

13 So are you making a correction? It's not
14 September 1997 that you served as President and General
15 Manager? It's instead October 1997?

16 A. Ah, memory plays tricks. Let's leave what it is
17 in my testimony. I'm 85. When I did the testimony that
18 was, I think, 10 years ago, that was probably more
19 accurate.

20 Q. That's okay, Mr. Buckley. I just want to make
21 sure I have the dates right. Thank you. And as President
22 and General Manager of Doe Run Perú, would you say you were
23 the highest-ranking executive in Doe Run Perú?

24 A. Yes.

25 Q. And during your years -- or during your role as

1 President and General Manager of Doe Run Perú, you were
2 responsible for reporting to Jeff Zelms; right?

3 A. Correct.

4 Q. Jeff Zelms was your direct boss, you would say,
5 at that time?

6 A. Correct. Correct.

7 Q. And Jeff Zelms -- he was the President of Doe Run
8 Resources Corporation at that time?

9 A. Correct.

10 Q. Would you say, Mr. Buckley, that while you were
11 President, you were President and General Manager of Doe
12 Run Perú, you were in charge of Doe Run Perú?

13 A. Correct. Yes.

14 Q. I'm going to ask you a few questions,
15 Mr. Buckley, that relate to your direct testimony just
16 about an hour ago. Just to confirm, I believe you said
17 that in late August 1997, you went down to Perú to visit
18 the Facility; is that right?

19 A. Memory serves me, yes.

20 Q. And you went down to -- is it fair to say you
21 went down to perform due diligence of the Facility?

22 A. I don't remember whether it was August or
23 September, but whatever is in my testimony is probably the
24 accurate version, but we went down to do due diligence,
25 yes.

1 Q. And from those visits, from those initial -- I'll
2 call it the initial visits to La Oroya, with all the
3 experience that you had at that time, you would say at that
4 moment it was obvious that the Facility needed vast
5 improvement; right?

6 A. Yes.

7 Q. Okay. And I believe in your direct testimony you
8 said you visited all areas of the plant -- right? -- when
9 you went?

10 A. Yes.

11 Q. Mr. Buckley, I'd like to shift gears just for a
12 little bit. I'd like to talk about certain obligations DRP
13 had under the Stock Transfer Agreement or the STA.

14 Are you familiar with that document?

15 A. I was not involved in any way in that Stock
16 Transfer arrangement. That was handled, really, by Renco
17 people. I was directly involved in due diligence of the
18 La Oroya Plant and the surrounding, let's say, properties.

19 Q. Understood, Mr. Buckley. I can promise, I'm not
20 going to ask you detailed questions about the Contract,
21 but, I guess, just to understand a little bit about how
22 much you knew about the Agreement, outlined in the STA, do
23 you know that that -- the STA that was signed on
24 October 23, 1997?

25 A. I don't recall. I'm sorry. I don't recall.

1 Q. It's okay, Mr. Buckley. We can move to the next
2 question.

3 I guess the important part here is we -- I just
4 want to make sure you know that part of the Agreement in
5 the purchase was that DRP had to make a capital
6 contribution of approximately \$125 million.

7 Are you aware of that?

8 A. Yes.

9 Q. Okay. And now I want to discuss what was done
10 with that capital contribution.

11 You're aware -- I assume you're aware, given that
12 you were President and General Manager of Doe Run Perú at
13 the time, that on the day DRP purchased the Facility, DRP
14 took \$125 million of that capital contribution and lent it
15 to Doe Run Mining in an interest-free loan.

16 Are you familiar with that?

17 A. I must be honest with you, I don't recall the
18 details. I'm thinking, because every -- no. This is
19 27 years ago. I'm having trouble recalling those details.
20 I'm sorry.

21 Q. It's okay, Mr. Buckley. I guess I'm just asking
22 the question and, of course, I can appreciate that it was a
23 long time ago, but given that it was \$125 million, and you
24 were President and the General Manager of this Company, I
25 just want to know if you knew that those \$125 million did

1 not stay in the Company? Were you aware?

2 A. Oh, yes. Yes, I was aware of that.

3 Q. Mr. Buckley, while you were President and General
4 Manager of Doe Run Resources, did you ever think that
5 decision to take those \$125 million out of Company would
6 generate financial problems for DRP?

7 A. No, I did not.

8 I -- frankly, had confidence in our owners,
9 Renco, that they knew what they were doing, and, of course,
10 I had great confidence in Doe Run Resources in the States.
11 So, no, I don't believe at the time it made any strong
12 impact on me. And that's as I recall.

13 Q. Okay. Mr. Buckley, and that's your -- what you
14 recall was your position the entire time you were President
15 and General Manager of Doe Run Resources?

16 A. Ah, I don't recall a time when I felt that those
17 funds were impacted impacting us to do what we
18 wanted to -- you know, what we had to do. I really didn't
19 factor it into my thinking. We were, you know, obliged to
20 carry out our obligations with -- from, let's say, our own
21 resources. So the 125 million never really factored into
22 my thinking. I just felt we had to complete our
23 obligations from our own resources, and that was the
24 understanding when we took over La Oroya. I mean, that is
25 how I thought.

1 Q. Understood, Mr. Buckley. So I guess, just so I
2 can make sure it's clear, that answer that you just
3 gave applies for the entire time you were General Manager
4 and President of Doe Run Resources, meaning that what you
5 just expressed, those were your feelings from 1997 through
6 when you finished, which I believe you said in your direct
7 testimony was 2004?

8 A. Yes, indeed. I don't recall any time when I was
9 a President and General Manager that that became a major
10 issue for me. I don't recall any time that I felt that was
11 impacting us. It just didn't register into my thinking. I
12 never at any time thought about that. I was more
13 concentrating on, you know, meeting our obligations from
14 our own resources, that that was my focus.

15 Q. Okay, Mr. Buckley. Thank you for that answer.

16 I want to show you Exhibit R-85. My colleague is
17 going to put it on the screen, and I would just like you to
18 confirm when you're able to see the document.

19 A. Oh, yes, I remember this document.

20 Q. Okay. So, Mr. Buckley, this is a memo from you
21 to Jeff Zelms.

22 Do you see that?

23 A. Yes, indeed.

24 Q. And as we discussed earlier, Jeff Zelms was your
25 direct boss at the time. He was the President of Doe Run

1 Resources; right?

2 A. Correct.

3 Q. Okay. And the date of this memo is
4 September 4, 2000.

5 Do you see that, Mr. Buckley?

6 A. I do.

7 Q. And in this memo -- I'll ask my colleague to
8 scroll down just a little bit to "current status"; so that
9 we can see the first paragraph of "current status."

10 A. I -- it's coming up.

11 Q. Okay. And in this memo, Mr. Buckley, you're
12 sharing with the President in -- of Doe Run Resources that
13 you believed Doe Run Resources was facing a liquidity
14 crisis problem; right?

15 A. Yes.

16 Q. Okay. Let's look at what else you said in this
17 memo, Mr. Buckley.

18 If we go to Page 3 of the memo. And we'll make
19 the text larger, Mr. Buckley.

20 A. Thank you.

21 Q. So at the top, if you can see, there's a -- I
22 guess, we can call it a section called "issues."

23 Do you see that on the top left?

24 A. Well, I see: "The time for business as usual."
25 Is that the one?

1 Q. Yeah. That section. I'm just mentioning that
2 there's a title that's underlined. It says "issues,"
3 before the bullets.

4 A. Yes, I see that.

5 Q. Okay. And if we look at the third bullet,
6 Mr. Buckley, I want to read one thing that you said here.
7 In the third bullet, you said: "Doe Run's troubles are
8 largely an issue of financial structure."

9 Do you -- it's the first sentence.

10 Do you see that, Mr. Buckley?

11 A. I do.

12 Q. Okay. And a few lines below in the same bullet,
13 it starts at the fourth line of the third bullet. I'm
14 going to read something else that you said. It said -- you
15 said: "The problem is that, in aggregate, our businesses
16 are insufficiently profitable to support our debt load,
17 particularly in this business environment."

18 Did I read that correctly, Mr. Buckley?

19 A. Yeah, but for whatever reason I can't read it
20 anymore, but I can hear you. Okay. I got -- all right.

21 Q. Okay, Mr. Buckley. So I'll move to the next
22 paragraph.

23 In the fourth bullet, you then said -- and I'm
24 quoting here: "Doe Run is severely capital-constrained,
25 and unable to fund numerous high-return Projects now

1 available."

2 That's what you said there; right?

3 A. Yes.

4 Q. And just to confirm, you use the word "severely"
5 to characterize how capital-constrained Doe Run was; right?

6 A. Correct.

7 Q. Okay. And if we go down two more bullets. This
8 would be the sixth bullet on the document. And apologies,
9 my colleague will pull it back up, Mr. Buckley. Just --

10 A. Okay.

11 Q. So we're at the sixth bullet. And in the sixth
12 bullet, you said: "Larger revolvers and/or additional
13 borrowings, if available, would only delay the inevitable.
14 Our debt level is the problem."

15 Did I read that correctly, Mr. Buckley?

16 A. Yes.

17 Q. And I apologize in advance because we're going to
18 read just a few more, where there are two more bullets I
19 would like to read, I would like you to confirm.

20 At -- in the seventh bullet, the first sentence
21 you say: "All the above illustrate that Doe Run's business
22 model, 100 percent debt financing, is flawed, at least for
23 companies with heavy capital investment requirements."

24 Did I read that correctly, Mr. Buckley?

25 A. Yes.

1 Q. So I'm going to ask you again, and, I guess, I'll
2 rephrase it a bit. Mr. Buckley, at this time in September
3 of 2000, when you sent this memo to your direct boss,
4 Mr. Jeff Zelms, it was your opinion that the financial
5 structure and the business model of Doe Run was not
6 working; right?

7 A. That is what we said at that time.

8 Q. Correct. In September 2000; right?

9 A. Yep.

10 Q. And, in fact, at that time, Mr. Buckley, I think
11 your beliefs were so strong about how flawed Doe Run's
12 business model was that you said in this memo you were
13 "unaware of any company, in any industry, that had managed
14 a similar feat to the one Doe Run was trying to manage";
15 right?

16 A. Yes.

17 Q. And, in fact, your -- I would say your beliefs
18 were so strong at that time that you raised this issue, not
19 only to your boss, Jeff Zelms, but you recommended that he
20 present it to the CEO of the Renco Group, Mr. Ari Rennert;
21 right?

22 A. Yes.

23 Q. And I would add, I guess, one more point here is
24 that, to confirm, that you thought the issues with the
25 business model were so flawed that your last message in

1 this memo -- so if we go to the final page -- to your
2 superior was -- and I'm reading from the memo, the final
3 line -- that you urged to "create a sense of urgency as to
4 addressing all of the above, develop an aggressive work
5 plan with strict accountabilities and deadlines."

6 Did I read that correctly, Mr. Buckley?

7 A. Yes.

8 Q. So, Mr. Buckley, I'm trying to put myself back in
9 this time, in the year 2000. I think we discussed a little
10 earlier that you were the boss in Perú -- right? -- for Doe
11 Run? Meaning you --

12 A. Correct.

13 Q. You were the person that knew the most about what
14 was happening with Doe Run Perú at that time, meaning if
15 anyone's opinion about how Doe Run Perú was doing was
16 important, it was probably yours; right?

17 A. Yes.

18 Q. And just to be clear, Mr. Buckley, in this memo
19 where you're expressing to Jeff Zelms the liquidity
20 problem, nowhere did you mention any Peruvian State entity,
21 like the MEM, being the problem; right?

22 A. You're going to have to repeat that. I'm sorry.

23 Q. Apologies.

24 That here you're expressing the financial issues
25 that Doe Run Perú is facing; right? In this memo?

1 A. Yes. Yes.

2 Q. At no point in this memo do you mention that part
3 of the problem was some act of the MEM, the Ministry of
4 Energy and Mines of Perú.

5 A. Well, this was -- can I comment?

6 Q. You can answer, Mr. Buckley.

7 (Overlapping speakers.)

8 A. Well, this was a memo written by myself and the
9 chief financial person for Doe Run Perú, a Mr. Ken Hecker.
10 And this memo, I felt, it was -- it was our responsibility
11 to inform both Doe Run Resources and, through them, Renco
12 of our thoughts. And this memo was written when there was
13 a metal price collapse. I think, if my memory serves me,
14 middle to the end of '99, and that put enormous stress
15 on -- well, frankly, the whole of the mining industry.

16 I felt we had a responsibility to give our
17 thoughts and recommendations to the people we work for. I
18 think not to have done so would have been a dereliction of
19 our responsibilities. It so happened that after we wrote
20 this letter, there was a significant decrease in the
21 funding we were sending to the United States, and as it
22 turned out, the -- we went forward.

23 We were able to meet our obligations, and
24 particularly with regards to the PAMA, and just as I've
25 said, and we got support in terms of -- you know, I call it

1 financial release from sending money to the United States.
2 And that helped. So all my thoughts of local doom and
3 gloom did not come to happen because we certainly went on
4 for another -- until I retired, which was in January of
5 2004, and were able to meet our obligations.

6 So, yes, we wrote the letter, a memo. I felt at
7 the time there was a necessity to do -- let them know our
8 thoughts, but maybe our gloom and doom, you see, was a
9 little overwritten. But that's my response to this letter,
10 memo.

11 Q. Thank you, Mr. Buckley.

12 Mr. Buckley, you understand this Hearing is being
13 broadcast publicly; right?

14 A. I beg your pardon?

15 Q. So yeah, we took documents off the screen, but
16 can you see us, or can you see me and hear me, Mr. Buckley?

17 A. I can see you, yes. I can see you, sir, yes.

18 Q. Okay. Great. Yeah, we took the documents off
19 the screen. So they're -- I'll just move on to one more
20 topic. I just want to make sure, Mr. Buckley, you
21 understand this Hearing is being broadcast publicly; right?

22 A. Public, you meaning -- no, I don't know what that
23 means.

24 Q. Meaning that, you know, people in every state in
25 the United States and outside of the United States can view

1 this testimony.

2 A. I didn't until you just told me.

3 Q. Oh, well, I'll just represent to you that this is
4 a public hearing, just for your awareness.

5 Mr. Buckley, while you were President of Doe Run
6 Perú, did Renco and Doe Run Resources control the decisions
7 that Doe Run Perú made?

8 MR. SCHIFFER: Mr. Chairman, this is not relevant
9 to our case, it is a central issue in the litigation, and
10 what Counsel is now trying to do is to build a record, in
11 litigation, which it has nothing to do with this case, and
12 I think it is really below the belt, actually. So I object
13 to this line of questioning.

14 (Comments off microphone.)

15 PRESIDENT SIMMA: I was asking Perú for a view on
16 that matter before we three congregate. Okay.

17 MR. VACA: Thank you, Mr. President.

18 BY MR. VACA:

19 Q. The questions I am about to ask actually relate
20 to the Contract case. They are unrelated to the other
21 litigations that are happening at the same time. These are
22 questions that are relevant for the Contract case -- the
23 Contract Arbitration. Apologies.

24 MR. SCHIFFER: Mr. Chairman, I would like him to
25 at least preview with the Tribunal what those questions are

1 because whether Renco controls DRP is not an issue in this
2 case. That's not a legal -- there's nothing in the
3 Contract and the legal standard for indirect Parties
4 doesn't require any showing like that, and I just -- this
5 is really inappropriate. I mean, you know -- he even said,
6 "you know this is being publicized" -- you know -- "being
7 aired to everyone in the world," meaning the Plaintiffs'
8 lawyers in the litigation. This, if anything, it should
9 not be public if he wants to pursue an irrelevant line of
10 question that has nothing to do with this case, and
11 that -- frankly, shame on them.

12 PRESIDENT SIMMA: Could I ask Mr. Vaca to kind of
13 indicate where the Contract questions will be --

14 SECRETARY DOE: Should we put Mr. Buckley in the
15 waiting room?

16 PRESIDENT SIMMA: Yes.

17 SECRETARY DOE: Mr. Buckley, we're going to put
18 you back into a breakout room just to pause while we sort
19 this out. Just so you know that. Great.

20 I think he should be back in the breakout room
21 there.

22 MR. VACA: Just thank you to Mr. Schiffer for the
23 objection. I do think it's important to address this
24 issue, Mr. President.

25 The questions we are going to ask are relevant

1 for jurisdictional issues, primarily whether Doe Run
2 Resources and Renco were nonsignatories. So that's the
3 point of the questions.

4 MR. SCHIFFER: May I please respond to that?

5 PRESIDENT SIMMA: Sorry?

6 MR. SCHIFFER: May I please respond to that?

7 That is ridiculous. The document speaks for
8 itself. He says whether they are signatories or
9 nonsignatories? They did sign -- the document shows they
10 signed it. So what does that have to do with the issues in
11 this case?

12 MR. VACA: Apologies, Mr. President.

13 PRESIDENT SIMMA: Go ahead.

14 MR. VACA: No, Mr. President, I mean -- I believe
15 one of the first things in the Opening that Mr. Schiffer
16 said was the documents are the documents, but we need to
17 cross-examine witnesses to understand the case, and it's
18 our position that those questions will be relevant.
19 Everyone knows what the documents say. We need to know
20 what was happening at that time, and we believe that will
21 be helpful for the Tribunal for this issue.

22 MR. SCHIFFER: Mr. Chairman, if he wants to ask
23 if Renco and DRRC signed the Agreement, I have no problem
24 with that question. But the question of control has
25 nothing to do with that.

1 PRESIDENT SIMMA: Mr. Vaca, when you say "were
2 signatories or not," do you mean that in the formal sense
3 that were -- put their names under the document, or did you
4 use that expression in a wider -- can you explain and then
5 maybe we can decide there.

6 MR. VACA: Thank you, Mr. President.

7 No, it does not relate to whether they signed the
8 document. I mean, one of Claimants' -- one of the
9 objections was that they were not signatories, and
10 Claimants are claiming that they are -- they should be
11 allowed to be in this Arbitration because they are
12 nonsignatories and want to bring them in through certain
13 theories, and we believe there are questions that we can
14 ask that will help the Tribunal evaluate whether they meet
15 the requirements to qualify as a nonsignatory.

16 MR. SCHIFFER: Just one more thing. If he wants
17 to go through the elements that are relevant in Perú, I
18 have no problem with that. But the control, that's a hot
19 button. That is not part of the Peruvian law, and that is
20 very much at issue in the United States.

21 PRESIDENT SIMMA: Okay. I think we can now get
22 together and make a decision.

23 (Tribunal conferring.)

24 PRESIDENT SIMMA: We are going to take this out
25 of the room for a few minutes. We'll be back as soon as

1 possible.

2 (Tribunal conferring outside the room.)

3 PRESIDENT SIMMA: My two colleagues are going to
4 explain our point of view on that matter. So, Chris, you
5 go first.

6 ARBITRATOR THOMAS: Speaking personally, the
7 issue of control as a question of U.S. law is not of
8 particular interest. However, it is the case that
9 Mr. Buckley had interactions with the other companies which
10 are either participating in this directly or not, and it is
11 a fair avenue of questioning to discuss his interactions
12 with those other entities insofar as it fell within his
13 area of responsibility. So, in principle, there
14 is -- there are a series of issues which arose on the facts
15 which is fair game for Counsel to pursue, but I would
16 suggest that it would be easier if we attempt to avoid any
17 trespassing on questions of control as it's understood
18 under the law of Missouri, which is, frankly, not of
19 particular interest, at least to me. I'm speaking entirely
20 on my own behalf.

21 ARBITRATOR GRIGERA NAÓN: And at the end of the
22 day, this is an issue of the scope of the Arbitration
23 Clause. It's a fair field that can be explored, so I think
24 that those questions are proper.

25 PRESIDENT SIMMA: And my question to you,

1 Mr. Schiffer, is, do you want us to go into private
2 session?

3 MR. SCHIFFER: No. I mean, if the questions are
4 aimed at what your Co-arbitrators have said, then I have no
5 problem with those questions. What triggered me was this
6 sort of, you're -- you know the world is watching this and,
7 you know -- and then getting to the Missouri Litigation
8 elements, which is exactly what that was. So if he stays
9 away from that and asks questions that are relevant to this
10 case about -- just like you said, we have no problem with
11 that and never did.

12 PRESIDENT SIMMA: Okay.

13 (Comments off microphone.)

14 PRESIDENT SIMMA: Okay. So we stay in the
15 public.

16 MR. SCHIFFER: I mean, I may change my mind as
17 the questions continue, but I'll make my objection. Thank
18 you.

19 PRESIDENT SIMMA: Okay.

20 Mr. Vaca, you are back. The floor is yours,
21 again.

22 (Comments off microphone.)

23 PRESIDENT SIMMA: That's a good idea. Yeah. Can
24 we get Mr. Buckley back?

25 SECRETARY DOE: In a few seconds.

1 PRESIDENT SIMMA: So as soon as he is ready, we
2 are ready.

3 SECRETARY DOE: Mr. Buckley, we can hear you, but
4 we can't see you right now. I think you've got a prompt on
5 your screen. Yeah. Great, we can see you as well.

6 PRESIDENT SIMMA: Can you say a few words,
7 Mr. Buckley? Can you hear us?

8 THE WITNESS: I can see you.

9 PRESIDENT SIMMA: Okay. Fine. All right. So we
10 are back in business, and Mr. Vaca will ask you the next
11 question.

12 MR. VACA: Thank you, Mr. President.

13 BY MR. VACA:

14 Q. Mr. Buckley, I just have a few questions. While
15 you were President and General Manager of Doe Run Perú,
16 would you say that Doe Run Perú complied with its
17 obligations under the Stock Transfer Agreement?

18 A. I don't recall all the Stock Transfer Agreement.
19 I really don't. I am sorry. I can't answer that question.
20 I don't know.

21 Q. That's okay, Mr. Buckley. We can move to the
22 next question.

23 Just regarding day-to-day operations of Doe Run
24 Perú, while you were President of Doe Run Perú, neither
25 Renco nor Doe Run Resources ever managed those day-to-day

1 operations -- right? -- of Doe Run Perú?

2 A. No. They did not.

3 Q. And while you were President of Doe Run Perú, did
4 you consider Doe Run Perú an independent company?

5 MR. SCHIFFER: I'm sorry, I mean, it's almost
6 like he wasn't listening to what the directive was. I
7 mean, none of this is related to our theory of an indirect
8 Party. The elements are clear, and this all goes to the
9 issue of piercing the corporate veil in the U.S. These are
10 all questions under Missouri law.

11 PRESIDENT SIMMA: Without knowing what the next
12 question will be, but then Mr. Buckley will have to be
13 secluded -- excluded again. Then we can decide whether it
14 really aims at this. So Mr. -- how can we kind of get
15 Mr. Buckley --

16 SECRETARY DOE: Mr. Buckley, we're going to put
17 you, once again, in that breakout room there for a few
18 minutes while we sort this out.

19 There. I believe he's in the breakout room.

20 PRESIDENT SIMMA: Will you go into the direction
21 that Mr. Schiffer does not want you to move, or what is the
22 direction away from the control issue here?

23 MR. VACA: Absolutely not, Mr. President. We
24 just have one more question and it relates to compliance
25 with its obligations, to Doe Run Perú's compliance with its

1 obligations.

2 PRESIDENT SIMMA: Could we have that question?

3 ARBITRATOR GRIGERA NAÓN: Why not?

4 PRESIDENT SIMMA: Could we hear it.

5 MR. VACA: Absolutely. Yeah. The question is,
6 did Claimants, The Renco Group, and Doe Run Resources, ever
7 step in to comply with Doe Run Perú's obligations in its
8 place while he was President.

9 MR. SCHIFFER: I have no problem with that
10 question. It doesn't make any sense to me, but, sure, have
11 at it.

12 PRESIDENT SIMMA: Okay. They say that movement
13 and mobility is important, so let's hope that the Witness
14 shares that view.

15 Can we get him back.

16 (Comments off microphone.)

17 PRESIDENT SIMMA: So the question of the
18 independent from Renco is not going to be repeated here.

19 (Comments off microphone.)

20 MR. VACA: If it's okay, Mr. President, I'll
21 answer your question. We won't ask the question again.
22 It's already answered and in the record.

23 PRESIDENT SIMMA: Okay.

24 MR. VACA: Thank you.

25 PRESIDENT SIMMA: While we are waiting, a

1 question to Transcript, because this is very tactful, you
2 say "comments off microphone." Just yesterday, I spilled
3 my coffee over my beautiful suit, and I might have -- I
4 don't know whether I was quite explicative or not,
5 but -- did you take that out of the record?

6 (Comments off microphone.)

7 PRESIDENT SIMMA: So, Mr. Buckley, are you ready
8 for the next question?

9 THE WITNESS: I am. Thank you.

10 PRESIDENT SIMMA: Mr. Vaca.

11 MR. VACA: Thank you, Mr. President.

12 BY MR. VACA:

13 Q. Welcome back, Mr. Buckley. I just have one more
14 question. While you were President of Doe Run Perú, did
15 The Renco Group or Doe Run Resources ever step in to comply
16 with Doe Run Perú's obligations in Perú?

17 A. If you mean to directly step in, no, they never
18 did.

19 Q. Thank you so much for your time, Mr. Buckley.

20 MR. VACA: Members of the Tribunal, those are all
21 the questions that I have. Now my colleague, Gaela Gehring
22 Flores will continue with some additional questions for
23 Mr. Buckley.

24 PRESIDENT SIMMA: Yes. I'm sure I caught the
25 name correctly, but whoever is mentioned has the floor now.

1 Oh, it's you. Okay. Gaela. Gaela. Yeah. Okay.

2 Ms. Gehring, you have the floor.

3 MS. GEHRING FLORES: Thank you, Judge Simma.

4 BY MS. GEHRING FLORES:

5 Q. Hello, Mr. Buckley.

6 Can you see me?

7 A. I can see you fine.

8 Q. I'm going to ask you some questions dealing with
9 Doe Run Perú's sulfur dioxide emissions reporting during
10 the time that you were General Manager and President of Doe
11 Run Perú.

12 A. Okay.

13 Q. Mr. Buckley, you were General Manager and
14 President of Doe Run Perú until September 2003; correct?

15 A. Yes.

16 Q. In your Witness Statement at Paragraph 10, you
17 say that the La Oroya Complex was in such bad shape from a
18 maintenance point of view that just fixing some things cut
19 down the pollution by 20 percent.

20 Is that your understanding?

21 A. If that's what I wrote, that's what my
22 understanding would be.

23 Q. And Doe Run Perú, while you were General Manager
24 and President, had a system for measuring sulfur dioxide
25 emissions from the main stack; is that correct?

1 A. Yes, we must -- yes, we did. I'm trying to
2 remember back. It's a long, long time ago.

3 Q. Understood. And Doe Run Perú would report the
4 results of those sulfur dioxide measurements of the main
5 stack to the MEM; correct?

6 A. We reported all sorts of things to MEM. I have
7 no doubt that it was one of them.

8 Q. Do you have any reason to think that you didn't
9 report your sulfur dioxide emissions?

10 A. No. No. No. No.

11 Q. Okay.

12 A. No. No. No. No. I'm sure we did it.

13 Q. Okay. And do you recall you also reported your
14 progress on emissions reductions to the La Oroya community.

15 Do you remember that?

16 A. Well, yes, Dr. Huyhua would do that on a regular
17 basis.

18 Q. And I think, in 2002, toward the end of your
19 tenure as General Manager and President, you submitted a
20 rather large report to the La Oroya community. I'm going
21 to pull it up on the screen for you.

22 Could we pull up Exhibit C-47 from the Treaty
23 case. And just the -- yeah.

24 Do you see that on your screen, Mr. Buckley?

25 A. Yeah, what we did -- we did a lot of

1 communication with the communities, yeah. You know, we
2 tried very hard to communicate to the communities what we
3 were doing. I see this. I'm sure, you know, we did it,
4 yeah.

5 Q. And you happen to figure quite prominently in
6 this particular Report. Could you go to Page 7, PDF Page 7
7 of 302.

8 Is that you, Mr. Buckley?

9 A. A very young me, yes.

10 Q. And I think, in this Report, this may have been
11 your last Report to the community because I believe in this
12 Report you were explaining that Mr. Neil was about to come
13 in as General Manager of Doe Run Perú.

14 Do you remember that?

15 A. Okay. No, I don't remember this, not with any
16 detail. No way. I know we did communications and I don't
17 remember this at all.

18 Q. Could we go to Page 10 of 302.

19 Here, we have a chart or a table that is
20 reporting to the La Oroya community on a number of things,
21 and my colleague, Kelby Ballena, had highlighted the row on
22 sulfur released.

23 Is that -- would that be a way that you were
24 reporting to the community about your emissions progress?

25 A. Well, what would happen is, you know, Dr. Huyhua

1 and his people would put together this information, and
2 that would be part of the Report, and I would see it before
3 it was published, obviously, but I -- yeah, there is no
4 reason to think other than this is the information we would
5 have given the community, certainly by the looks of it.

6 Q. And, Mr. Buckley, with all of your experience as
7 a metallurgist, I imagine you're quite familiar with the
8 concept of "mass balancing"; is that right?

9 A. I'm sorry? Say it again.

10 Q. Mass balancing?

11 A. Oh, yeah. Yeah.

12 Q. And am I correct that mass balancing is something
13 that you do from Day 1 in metallurgy school?

14 A. Well, I'm not sure we did it at La Oroya, to tell
15 you the truth. I don't remember. I'm sorry. I don't
16 remember.

17 Q. I'm going to show you -- but you do know how to
18 do mass balancing, Mr. Buckley; correct?

19 A. Yes.

20 Q. Now, I'm going to show you Exhibit R-314.

21 Yeah, English please.

22 So this is a report that Counsel for Renco and
23 DRRC recently admitted onto the record. We call it the
24 "SVS Report." It happens to be dated June 2003, and I'm
25 not sure if you recall the Report itself.

1 A. No, I don't.

2 Q. Excuse me. Actually, the actual SVS Report in
3 Spanish. Yeah.

4 Excuse me, we had the wrong document on the
5 screen. Okay.

6 So here, it is a report done by SVS Ingenieros
7 and Golder Associates, and it's a report that was issued in
8 June 2003. And the lawyers for Renco and DRRC in this
9 proceeding have submitted that this Report has something to
10 do with DRP's sulfur dioxide emissions reporting at the
11 time, when you were General Manager and President.

12 So I'd like to go to Annex 3 of this Report.
13 We'll get there. Okay. So here is Annex 3, and in Spanish
14 it says, "Balance Anual de Azufre," which, I represent to
15 you, means "annual sulfur balance."

16 Mr. Buckley, like we established, you are
17 familiar with the concept of mass balancing; correct?

18 A. Correct.

19 Q. And presumably, this Annex is establishing that
20 it is an exercise in balancing a particular element,
21 sulfur; is that right?

22 A. Correct.

23 Q. And mass balancing is important in metallurgy and
24 in metallurgical operations to check for the efficiency of
25 the Facility and for metal recoveries; right?

1 A. Yes, it is.

2 Q. Because mass balancing allows you to account for
3 the metals and other substances that you might be losing in
4 your process; is that right?

5 A. Recovery calculations, yes.

6 Q. And if you're losing metals, then that could be
7 costly for your operations; is that correct?

8 A. Yes.

9 Q. You might be throwing money out the window?

10 A. Could be.

11 Q. And for that reason, I imagine, at Doe Run Perú,
12 you would have your staff doing mass balancing on a
13 relatively constant basis; is that true?

14 A. Well, they would be doing calculations on the
15 recovery of metals. Remember, this was a polymetallic
16 operation, so there was multiple metals and materials
17 involved. So, yeah, there would be ongoing calculations on
18 recovery of all the various metals. Now, whether you would
19 call it a "mass balance" every time, I'm not sure you would
20 do that. But, yes, they constantly are looking at
21 recoveries of the various metals in a very complex
22 polymetallic operation.

23 Q. Is there something else that you -- sorry. Go
24 ahead.

25 A. I'm sorry. I should -- go ahead.

1 Q. No, I just wondered -- is there something else
2 that you would call it when you're trying to account for
3 your inputs and outputs?

4 Would you call it something else other than "mass
5 balancing"?

6 A. Well, yeah. You know, we -- the term "mass
7 balancing" was not used. I know what the concept is, but
8 we didn't use mass balance on every metal or every
9 substance. We would calculate the recovery from what goes
10 in and comes out.

11 Q. Okay.

12 A. Now, this would be done by a metallurgist at
13 La Oroya, and these would be reported to Dr. Huyhua, and he
14 would be reporting to me and to other senior people once a
15 month for reports on -- you know, he would not report
16 every, you know, month on recoveries. Really, that would
17 only be a recovery when it was outside the norm. Remember,
18 there's been a plant there in La Oroya since the '30s. So
19 there was a lot of background information that they could
20 compare with. So -- but to say mass balance, that would
21 not be a term that would be widely used.

22 Q. Okay.

23 A. "Metal recoveries" would be the term that would
24 be used, or, as you put on the screen, sulfur --

25 Q. Okay.

1 A. -- recovery.

2 Q. And if you were doing a sulfur balance or a
3 sulfur recovery calculation, you might be doing that for
4 emissions standards reasons; right?

5 A. Yeah. I mean, they would be -- it's normal in
6 any smelting operation to have what's called "stack
7 testing." That is when you actually go up the stack and
8 you actually measure what is going out the stack.

9 Now, I don't recall how often that would be done
10 at La Oroya, but we would be able to calculate how much
11 sulfur was going into the Plant and we would be able to
12 estimate, you know, what sulfur was leaving the Plant,
13 certainly, through the stack.

14 Q. So if one reason to do a sulfur or a metals
15 balance or a metal recoveries balance might be to check
16 your profit margins, another reason might be to check your
17 emissions levels; is that right?

18 A. No. That's not right. When we bought
19 concentrates -- let me rephrase that. When we bought
20 concentrates, as I said, this is a polymetallic material
21 containing various metals. The purchase of those
22 concentrates relates to the recovery of each of the
23 particular metals of which there will be multiple. It is
24 those recoveries that have to be followed because that
25 impacts on what we pay for the concentrates and the

1 recovery.

2 The Business Plan for La Oroya was that there
3 would be these multiple metals, and we would be saying a
4 recovery of 75 percent, but we would be hopefully able to
5 do 80 or more than 75, and that becomes free metal to the
6 Company. So those are the calculations you have to do
7 and -- so that you know the complications.

8 Q. Mr. Buckley, if I could just stop you there
9 because I just want to go back to the -- my emissions
10 question. And I just want to clarify.

11 So is it your testimony that you would never do a
12 mass balance calculation in order to check --

13 A. I didn't say that.

14 Q. -- in order to check, verify your emissions
15 level?

16 A. Those would be verified towards the end of my
17 term, so to speak. There was -- we were particularly
18 interested in sulfur dioxide because we had a consultant
19 company working on the design of an acid plant for the
20 sulfur dioxide, and we need to know how much dioxide there
21 was and what was the strength because the strength decides
22 how and how you build a Sulfuric Acid Plant. So, yes,
23 there would be mass balances done. I'm sure the
24 consultants did that because they would probably need that
25 information and input in terms of designing the Acid Plant.

1 But to ask me if I saw the mass balances done,
2 no, I would not. Dr. Huyhua would, and the consultants
3 building the Acid Plant would. But to ask me, personally,
4 did I do mass balances, the answer is no. I don't know. I
5 wasn't running La Oroya, per se.

6 Q. So Mr. Huyhua would be doing mass balancing for
7 emissions purposes then; is that right?

8 A. You're asking me about 27 years ago.

9 Q. Someone --

10 A. To ask me that kind of detail.

11 Q. Someone was doing it.

12 A. I've got to be honest with you; I really don't
13 remember who would be doing it, but I am sure they were
14 done. They would be done as a routine. I mean, I would
15 not be saying to them: "Have you done mass balancing this
16 week or next week?" No.

17 I mean, it would be -- if it is considered part
18 of running the operation, then it would be necessary and
19 they would do it. But to say they would do it all the
20 time, no. No, that's not correct.

21 Q. Maybe one reason you would want to do it
22 consistently would be to alert the La Oroya community in
23 case you had an unexpected release of sulfur dioxide?

24 Would you do it for that reason?

25 A. No.

1 Q. No?

2 A. No. No. Let me answer that question.

3 Q. Okay.

4 A. Dr. Huyhua was-- we did have monitors for sulfur
5 dioxide in the town, and if you've been to La Oroya, you
6 will know that it's at 12,000 feet, and it lies in a vault
7 between two mountains or a circle of mountains. And in
8 certain weather conditions you get an inversion, and the
9 sulfur dioxide comes down into the town.

10 What Dr. Huyhua did -- I thought it was quite
11 brilliant, frankly. He hooked in the monitors into a
12 weather prediction situation, I will call it, and when the
13 gas would come down into the town, we shut down various
14 parts of the operation to -- so it would not be an impact
15 on the town until that inversion lifted and we were able to
16 go back to normal operations.

17 That is how we were handling sulfur dioxide
18 during my time.

19 Q. So you -- DRP, during your tenure as General
20 Manager and President, was concerned with sulfur dioxide
21 emissions and the effect on the La Oroya community?

22 A. Yes.

23 Q. Okay. Let's go to Annex 3 of the SVS Report,
24 R-314. Right. And let's go to -- let's flip two pages
25 down. Okay.

1 So I'm at Page -- PDF Page 150 of R-314, and,
2 again, this is in the sulfur balance, the Annual Sulfur
3 Balance. Here we've got years 2000, 2001, and 2002.

4 Do you recognize this as a sulfur balance,
5 Mr. Buckley?

6 A. Well, you know, it certainly looks like one.

7 Q. Okay. And I'd like to --

8 A. Yeah. I mean, yeah, I can see. It's a sulfur
9 balance, and we were totally aware of problems with sulfur
10 dioxide, and that is why we hired consultants very much
11 when straight after we took over La Oroya and we put them
12 to work on looking at building acid plants to deal with the
13 sulfur issue. I mean, we brought them on board, basically,
14 right out of the blocks.

15 So we knew there was a sulfur -- I mean, you keep
16 asking me, but I'm telling you that we absolutely knew
17 there was a sulfur dioxide problem and resolved to solve
18 it, and that was part of the PAMA.

19 Q. I think it's maybe about seven rows down. In
20 Spanish, it says "SO2 al ambiente, metric tons per day," so
21 sulfur dioxide to the environment, metric tons per day.

22 Could you highlight that, Kelby, please.

23 We'll get it done so you can see what numbers I'm
24 focusing on in that row. So it's the --

25 A. I cannot see.

1 Q. Yeah, we're going to get it bigger. Okay. There
2 we go.

3 So there's the part of the screen that says "SO2
4 al ambiente."

5 You can get rid of that and then just highlight
6 that row. There you go.

7 A. I see it. I see it.

8 Q. Okay. And then I'd like to focus on the last two
9 columns of this sulfur balance.

10 A. Okay.

11 Q. The first of the last two says "SO2, al
12 ambiente," so sulfur dioxide to the environment, "pruebas
13 de control". I understand that to mean "you're sampling."
14 That's what you measured in the main stack. And then --

15 (Overlapping speakers.)

16 A. You're asking me details I don't -- I can't
17 remember or -- I mean, I don't recall seeing this document.
18 I mean, we know we had an issue with sulfur dioxide. We
19 were trying to solve --

20 Q. I'm actually not asking that question,
21 Mr. Buckley. I'm just going to ask you some things --

22 A. I don't know what question you're asking.

23 Q. I will get to it, I promise.

24 A. I don't know what question.

25 Q. Okay. So, in the last column, it says: "Sulfur

1 dioxide to the environment calculated."

2 Would you assume if you're doing a sulfur
3 dioxide -- sorry, sulfur balance, that last calculated
4 number is from a mass balance?

5 Just in your experience in metallurgy, that last
6 number would be calculated from a mass balance as opposed
7 to measured in the main stack?

8 A. You know, I don't remember this Report, but it is
9 possible. I won't go any further than that.

10 Q. Okay. And I think we can see that the SO2
11 associated with the calculated amount, with the mass
12 balanced amount, that is 99.6. That is actually 95 percent
13 of the number that is in the third-from-the-last column,
14 which is 1,041.7.

15 And do you understand, Mr. Buckley, that, as a
16 general matter, DRP assumed that 95 percent of the sulfur
17 dioxide in the facility was going out the main stack?

18 A. Well, that's -- I mean, I find that high, seeing
19 as we already were collecting sulfur dioxide to feed the
20 acid plant -- the acid plant, but if that's the numbers,
21 that's the numbers.

22 Q. Okay. So when DRP would report sulfur dioxide
23 emissions numbers to the MEM, do you know if -- do you know
24 that DRP would report them on an annual basis, so metric
25 tons per year?

1 A. I don't remember.

2 Q. Okay.

3 A. I'm sure we did, but I don't remember.

4 Q. I can show you a document in a moment that will
5 show you that they did.

6 A. Okay. If you say they did, they did. I'm sure
7 we did, but I don't remember.

8 Q. And I'm basically going to compare what you
9 reported to these calculations. So in order --
10 Mr. Buckley, in order to turn those figures, which are
11 per-day figures, into annual figures, I'm just going to
12 multiply both of them by 365, the number of days in the
13 year. And I'm just blowing this up so you can see it
14 better.

15 Okay.

16 A. Can I comment?

17 Q. 878 times 365 equals 320,470 metric tons a year,
18 and 989.6 times 365 is 361,204 metric tons per year.

19 So I'm just showing you that I'm getting an
20 annual number as opposed to a daily number.

21 Do you see that?

22 A. I see that. You're coming up with these numbers.
23 There is no way, you know, I can remember this report, and
24 let me just point something out.

25 You seem to be assuming that I personally sent

1 this information to MEM. This was accomplished by the
2 environmental people -- I can name them -- that would give
3 these reports to MEM, but I would not be, as President and
4 General Manager, responsible for issuing these kinds of
5 reports to MEM. This would be done by our environmental
6 people.

7 So you're talking about reports which I may well
8 have seen, but I don't remember, but the reports would go
9 directly from, let's say, from our environmental people
10 directly to MEM, and they would be discussions there.

11 Q. Understood. But, Mr. Buckley, I just -- one more
12 question about these.

13 Do you know if Doe Run Perú was reporting to the
14 MEM its mass balancing calculations of sulfur dioxide, or
15 what was being measured at the main stack?

16 Are you aware?

17 A. I haven't got the slightest idea.

18 Q. Okay. Let me ask you, maybe, a more simple
19 question. The mass balancing number, the calculated number
20 to the far right, that's larger than the measured number;
21 correct?

22 A. That's what you're showing.

23 Q. Yeah. About 41,000 tons larger.

24 And I understand that you don't remember this
25 report. I'm asking you about this report because the

1 lawyers for Renco and DRRC have represented that, starting
2 around 1999, Doe Run Perú started reporting to the MEM the
3 mass balancing number and not -- not the number that was
4 coming out of the sampling of the main stack.

5 Do you know anything about that?

6 A. I don't recall. I really don't recall.

7 Q. Okay. Well, we can go look and see in another
8 document what was reported, but if you had a choice between
9 these two numbers, which one -- as President and General
10 Manager -- which one would you report to the MEM?

11 The larger number or the smaller number?

12 A. Both.

13 Q. Sorry? I didn't hear you. Both. Okay.

14 A. Both numbers.

15 Q. Okay. Let's go to Exhibit 11 from Wim
16 Dobbelaere's Report, Appendix B, Page 39, which I can
17 represent to you is a very, very tiny, tiny table. Well,
18 not tiny, but it has tiny, tiny numbers on it. We'll blow
19 it up in just a moment.

20 And these are sulfur dioxide figures that Doe Run
21 Perú reported annually to the MEM. And you'll see in the
22 row for the year 2000, all the way to the right, is 317,465
23 metric tons of sulfur dioxide.

24 Do you see that, Mr. Buckley?

25 A. Yes.

1 Q. And if you -- if we take that figure and we look
2 at the calculated figure and the measured figure in
3 the -- in Annex 3 of the SVS Report, it would look like Doe
4 Run Perú is reporting the smaller number, the number that
5 was measured at the main stack; is that right?

6 MR. SCHIFFER: Can I have a clarification?
7 Because it looks like the time periods are different. One
8 is from October 23, 1997, and I'm not even sure what time
9 period you're referencing on the table.

10 MS. GEHRING FLORES: Well, both are -- one is a
11 document that is reporting all of Doe Run Perú's sulfur
12 dioxide annual reporting for the year 2000.

13 MR. SCHIFFER: How do you know that?

14 MS. GEHRING FLORES: Because that's what the
15 document is. And we could -- we could have -- if you wish,
16 we could break and you can look at the document. It has
17 been in the record for quite some time.

18 MR. SCHIFFER: Yeah, I'm looking at the document,
19 and I don't think they match. Go ahead.

20 MS. GEHRING FLORES: Okay.

21 BY MS. GEHRING FLORES:

22 Q. But it does look like, in the year 2000, Doe Run
23 Perú reported a number that is certainly closer to the
24 smaller number. 317,000 is closer to 320,000; is that
25 correct? Mr. Buckley?

1 A. Oh, you're talking to me. I didn't know who you
2 were talking to.

3 Q. Yes. Yes. Sorry. Yes.

4 A. Yeah, I mean, it is less than that and close to
5 that number. Okay.

6 Q. And maybe, just to spare you the exercise so that
7 we don't have to do this for every year, just -- can you
8 take a guess -- can you take a guess -- Mr. Buckley, can
9 you take a guess at the other years of 2001 and 2002 if Doe
10 Run had a choice between reporting the smaller number or
11 the larger number?

12 Which one did they report?

13 A. Well, they looked very much like they took with
14 the lower number.

15 Q. Okay. Yes. Yes. And I can --

16 A. You asked me -- you asked me what I would
17 publish. You should know that these reports, I did not
18 personally go through these reports to do them. I mean,
19 that was not something I would do. That would be left with
20 the environmental people and would be led in those years by
21 Giko Poppimorioco (phonetic.)

22 I did not personally send these reports myself
23 after viewing them. They were done by my environmental
24 personnel. That is just the way it was, rightly or
25 wrongly.

1 Q. Okay. So rightly or wrongly, and -- again,
2 Mr. Buckley, so I don't have to drag you through all the
3 numbers, I'll represent to you -- and we can show it up on
4 the screen, that in each a --

5 A. I'm sure you're right.

6 Q. -- that in the next year. We can just do it so
7 people can see it. So there is 2001 -- and there is 2002.

8 A. Okay.

9 Q. Okay. And --

10 A. All right. You have made your point. Okay?

11 PRESIDENT SIMMA: Mr. Buckley. I'm sorry. I'm
12 sorry for interrupting you, but we have to have a
13 transcript. And that will be impossible if what you are
14 saying overlaps. So would both Ms. Gehring and you, just
15 wait until the other person is finished so we have a clear
16 distinction and can say who said what. Thank you.

17 THE WITNESS: Okay.

18 BY MS. GEHRING FLORES:

19 Q. Thank you, Mr. Buckley. Did you want to finish?

20 A. No. I'm done.

21 Q. Now, I do understand that you had other staff who
22 may have been reporting these numbers, and maybe there was
23 just some confusion on the part of Renco and DRRC's lawyers
24 with respect to what numbers were being reported, but I did
25 want to take you back to that -- the report that you were

1 in, in 2002. It is Exhibit C-47 from the Treaty case.
2 Let's go back to Page 7 of 302. Sorry. And now Page 10 of
3 302.

4 And going back to that second-to-last row called
5 "Sulfur Released," and in that row, I assume you're
6 reporting the amount of sulfur that is leaving the La Oroya
7 Facility since 1997, 1997-2002.

8 Is that what you understand that to be?

9 A. Yes.

10 Q. Now, Mr. Buckley, sulfur itself is a solid at
11 room temperature.

12 Am I right on that?

13 A. Yes.

14 Q. Would sulfur leave the La Oroya facility in solid
15 form?

16 A. No. This would be in SO₂, sulfur dioxide, but
17 calculated as sulfur.

18 Q. And I've learned quite a bit about chemistry and
19 metallurgy over the past couple of years. I certainly
20 don't know as much as you do, but if you take sulfur, a
21 number, you know, let's just say one sulfur and that sulfur
22 binds to two oxygens, that becomes sulfur dioxide; right?

23 A. Correct.

24 Q. Do you know what the molecular or atomic weight
25 of sulfur dioxide is, as opposed to sulfur?

1 A. I have forgotten all that I did so many years
2 ago. I'd have to look it up.

3 Q. Can I represent to you that it is just multiplied
4 by 2?

5 A. I beg your pardon?

6 Q. That you just multiply by 2? To go from sulfur
7 to sulfur dioxide, the molecular weight is multiplied by 2?

8 A. You're probably right. I just don't actually
9 remember.

10 Q. Okay. Just for the record, the atomic weight of
11 sulfur is 32. The atomic weight of oxygen is 16.

12 A. Okay.

13 Q. So if you combine one sulfur with two oxygens,
14 you've got 32 plus 32, which would equal 64, just doubling
15 the weight?

16 A. Okay. All right.

17 Q. So first I just want to multiply -- and I'm
18 focusing on the years 2000, 2001, 2002. I'm just
19 multiplying those by 2 because this is saying "sulfur
20 released." It is not saying "sulfur dioxide released";
21 right?

22 A. Correct.

23 Q. Okay. So let's multiply by 2 and figure out what
24 the sulfur dioxide release might be. Those are those
25 figures. And using DRP's own mass balancing estimates of

1 what's leaving the main stack, I'm now going to multiply
2 that or take 95 percent of those figures. And there you
3 get a result. And let's look at the year 2000, which is
4 361,203.

5 And now I'd like to compare that to Annex 3 of
6 the SVS Report in the year 2000. So it would seem in the
7 year 2000, in this Report that DRP sent out to the
8 community about sulfur leaving the Facility, which you
9 would need to convert to sulfur dioxide, because, as we
10 discussed, sulfur doesn't leave the Facility in powder
11 form. It leaves it in sulfur dioxide form. So converted
12 it to sulfur dioxide, and that number, 361,203, looks very
13 close to what was in the SVS Report for the mass balanced
14 calculation of 361,204; is that right?

15 A. It would appear so.

16 Q. Right. So in the year 2000 -- and, again, these
17 mass balance numbers, these sulfur balanced numbers come
18 from DRP. This is from your Report to the community. So
19 DRP, it looks like, was definitely doing its own sulfur
20 balance calculation.

21 Now, Mr. Buckley, if you -- as President and
22 General Manager of DRP -- if you saw in the year 2000 is
23 that there was a 41,000-metric-ton discrepancy between what
24 you were measuring at the main stack, what you thought was
25 coming out of the main stack, and the mass balance

1 calculation, you would be concerned; right?

2 A. Well, I certainly don't remember seeing those
3 numbers.

4 Q. But if you had, if you had seen them, you would
5 be concerned; right?

6 A. Well, I would be asking questions about the
7 calculations.

8 Q. If the calculations were correct, would you have
9 to assume that you were emitting 41,000 metric tons of
10 fugitive emissions?

11 A. I would most certainly be asking questions why
12 was the discrepancy, yes.

13 Q. But as a metallurgist, if the calculations were
14 correct, would you have to assume that you have over 40,000
15 metric tons of fugitive emissions?

16 A. I would most certainly have to give it
17 consideration. That's for sure.

18 Q. Right. Because those 41 -- those 41,000 metric
19 tons are going somewhere. They can't disappear. That's
20 the whole point of a mass balance; right?

21 A. That is correct.

22 Q. And if you have that level, you know, 41,000
23 metric tons of fugitive emissions leaving the plant, that
24 would be concerning because fugitive emissions are
25 particularly toxic to the La Oroya community; correct?

1 A. It would be a concern, that's correct.

2 MS. GEHRING FLORES: No further questions.

3 PRESIDENT SIMMA: Thank you very much,
4 Ms. Gehring Flores. Can I give the floor to -- actually,
5 would that be a good time for the coffee break, which is
6 overdue anyway?

7 MR. SCHIFFER: Yeah.

8 PRESIDENT SIMMA: So we'll have a coffee break
9 until 3:35, with the usual admonition.

10 (Comments off microphone.)

11 PRESIDENT SIMMA: We are going to meet again at
12 3:45. That is where I was. 15:45.

13 MR. PEARSALL: Before we break and after the
14 witness is excused, we have just one housekeeping matter to
15 put on the record with the President's indulgence. So once
16 the witness is excused.

17 PRESIDENT SIMMA: Oh, without Mr. --

18 SECRETARY DOE: He's already in the waiting room.

19 MR. PEARSALL: Thank you. So I'm sure that this
20 was not my colleague's intention, but sometimes having a
21 detailed explanation for the basis of an objection can
22 signal to a witness how they should adjust their testimony.

23 And, again, I'm sure that is not Mr. Schiffer's
24 intention, but he did it several times, and I think we got
25 where we needed to in the end.

1 But just going forward, I think it would be best,
2 if we are going to have a lengthy objection, that the
3 witness be excused or protected from hearing the
4 explanation for the basis of that objection. And we will,
5 of course, abide by the same rule.

6 PRESIDENT SIMMA: Okay. All right.

7 MR. SCHIFFER: First, I mean, you can tell
8 Mr. Buckley doesn't -- you don't coach Mr. Buckley, but,
9 fine. I mean, but I will try to do better, and that's all
10 I can say. Yeah.

11 PRESIDENT SIMMA: Okay. Thank you.

12 Now, it is 45 sharp.

13 (Brief recess.)

14 PRESIDENT SIMMA: And a question or a point
15 raised by Mr. Schiffer.

16 MR. SCHIFFER: Yeah, I just have a question about
17 time, especially with Experts. If I save time with one
18 Expert, could I use that time with another Expert? Because
19 not all the Experts are created equally, and some will need
20 more time than 45 minutes and some less time. And I
21 don't -- I won't violate the overall time rules, but if we
22 could, you know, borrow time from one and use it with
23 another, that would be helpful. And obviously, I bring
24 that up now; so the other side has the same opportunity.

25 PRESIDENT SIMMA: Can I have -- Mr. Pearsall, do

1 you have a view on that?

2 MR. PEARSALL: Yes, so our understanding of the
3 Procedural Order is that there's an overall chess clock, an
4 overall clock of time, which we can use however we see fit
5 in presenting our case, as long as we stay within the time
6 limit set by the Tribunal.

7 Now, that's our understanding. If Mr. Schiffer
8 is suggesting that he be permitted to do a presentation
9 with his Expert or something along -- long like that, I
10 think the Tribunal has already been aware of our objections
11 to that, but as long as we're within the chess clock or the
12 overall time that has been allotted to each side by the
13 Tribunal, we're fine with however anyone wants to divide
14 that time.

15 PRESIDENT SIMMA: Yeah, since you're the author
16 of PO10, I guess, so you have the floor, sir.

17 SECRETARY DOE: Sure. I guess that's just the
18 clarification, is this seeking to make exception to what is
19 the 45-minute maximum for the direct examination or
20 presentation of an expert, that is in Paragraph 9.4 of the
21 Procedural Order, or is it more generally?

22 MR. SCHIFFER: It is, first of all, not to expand
23 any time, even for Experts. But if I do one Expert, let's
24 say, in 15 minutes, can I take the remainder of that time
25 that otherwise I could spend with that Expert and use it

1 with another Expert? Because not all the Experts are
2 created equally. And some are actually more -- have to
3 cover more ground than others.

4 SECRETARY DOE: So as I heard it, that falls into
5 the overall concept of the chess clock that Mr. Pearsall
6 has just set out, as long as it -- it isn't suggesting,
7 then, we will have a presentation of an hour and 15 minutes
8 in direct of a further Expert. As long as that's not
9 what's in question, then, then I think it is, indeed, part
10 of the chess clock that the time is used in whichever way
11 either side wishes to use it.

12 MR. SCHIFFER: Yeah. I'm not making myself
13 clear. So are you saying that even if I don't violate the
14 overall -- I have 22.5 hours. And even if I stay well
15 within that, I can't do one witness shorter and then add
16 that time to another Expert?

17 SECRETARY DOE: I really think you're going to
18 have to say, are you speaking specifically about direct
19 examination, or are you talking about --

20 (Overlapping speakers.)

21 MR. SCHIFFER: Yes. Direct. Direct. So, I
22 mean, I'll be -- I won't be coy. So, like, Dr. Schmerler,
23 our bankruptcy Expert, he really is a single-issue Expert,
24 everything he said is in the record. I don't need to spend
25 45 minutes with him, but Mr. Connor, who covers a very, you

1 know, critical environmental issues, he'll be hard pressed
2 to present what we want to present on direct in 45 minutes.

3 And so I would -- you know, even in an hour with
4 him would be helpful. And I'm not saying that I'm going to
5 go over -- I'm just borrowing time from one Expert, and
6 trying to use it with the other. That's all I'm saying.

7 SECRETARY DOE: I mean, I think that's a question
8 for the Tribunal and, perhaps, for Respondent.

9 MR. PEARSALL: Yes. We -- I mean, with respect,
10 I'm sorry that Mr. Connor will be hard-pressed, but the
11 Tribunal should not alter its Procedural Order, which is
12 very clear and negotiated, and subject to a significant
13 correspondence between the Parties at 9.4, where it says no
14 direct examination shall exceed 45 minutes.

15 MS. GEHRING FLORES: And if I might add, Claimant
16 has already attempted to go over the 45 minutes with their
17 Experts with their letters to the Tribunal when they
18 submitted the SVS Report. So this is just a second attempt
19 to breach that rule.

20 MR. SCHIFFER: The 45 minutes -- I don't recall
21 that ever being negotiated. I recall that was just what
22 the Procedural Order says, and I've already said everything
23 else, but I don't understand this over 45 minutes because
24 we submitted a letter. But ...

25 PRESIDENT SIMMA: It's in PO10. And Parties have

1 agreed to that, and I think that's the end of the matter;
2 right?

3 (Comments off microphone.)

4 PRESIDENT SIMMA: Yeah. Okay. Can we, then,
5 resume?

6 MR. SCHIFFER: Yes.

7 PRESIDENT SIMMA: Okay. Would Mr. -- can
8 Mr. Buckley be called back, please.

9 Welcome back, Mr. Buckley. Let's see if
10 you -- do you hear us? Do you hear me?

11 THE WITNESS: I can hear you fine.

12 PRESIDENT SIMMA: Oh, and we hear you. Fine.

13 (Overlapping speakers.)

14 PRESIDENT SIMMA: So I give the floor to
15 Mr. Schiffer for the redirect.

16 MR. SCHIFFER: We have no redirect.

17 PRESIDENT SIMMA: You have no redirect?

18 MR. SCHIFFER: We have no further questions of
19 this Witness.

20 PRESIDENT SIMMA: That probably means that you
21 are not going to have any further questions either; is that
22 correct?

23 MR. VACA: That's correct, Mr. President.

24 PRESIDENT SIMMA: So question to my colleagues?

25 ARBITRATOR GRIGERA NAÓN: No.

1 ARBITRATOR THOMAS: No.

2 PRESIDENT SIMMA: No questions.

3 Mr. Buckley, that means that your examination has
4 come to an end. Thank you very much for making you
5 available, and have a nice -- I don't precisely know where
6 you are, if you are --

7 THE WITNESS: South Carolina, sir.

8 South Carolina, sir.

9 PRESIDENT SIMMA: Oh, South Carolina. Okay. So
10 have a great evening. Thank you very much.

11 THE WITNESS: Thank you. Thank you.

12 (Witness steps down.)

13 PRESIDENT SIMMA: Okay. That means -- sorry, you
14 want to say something? That means that we have one hour, a
15 bit more than one hour left, which is a lot of time. So we
16 should, I think, proceed and start the examination of
17 Mr. Juan Felipe Guillermo Isasi Cayo.

18 SECRETARY DOE: Mr. Isasi Cayo is in the waiting
19 room; so we can already bring him in and see if can get
20 started right away.

21 (Comments off microphone.)

22 JUAN FELIPE GUILLERMO ISASI CAYO,

23 RESPONDENT'S WITNESS, CALLED

24 SECRETARY DOE: And he will be testifying in
25 Spanish, as I understand it; so ...

1 PRESIDENT SIMMA: Okay. Good morning, Mr. Isasi
2 Cayo. Can you hear us?

3 THE WITNESS: Yes, I can.

4 PRESIDENT SIMMA: Good morning, rather, good
5 afternoon here.

6 THE WITNESS: Good afternoon, sir.

7 (Comments off microphone.)

8 MR. PEARSALL: Yes, Mr. President.

9 PRESIDENT SIMMA: Interpretation ready?
10 Transcript ready?

11 MR. PEARSALL: My associate, Augustina Álvarez
12 Olaizola, will present in Spanish.

13 PRESIDENT SIMMA: Oh, it's going to be -- it will
14 be in Spanish?

15 MR. PEARSALL: Sí.

16 PRESIDENT SIMMA: Can we have the -- can I -- the
17 channel. The --

18 THE WITNESS: Good afternoon Mr. President.

19 THE INTERPRETER: Can you hear the Interpreters?

20 PRESIDENT SIMMA: I give the floor to
21 Mr. Pearsall for the direct. Mr. Guillermo Isasi, welcome,
22 thanks for appearing before us. You should have a
23 Declaration in front of you. Would you please read slowly.

24 THE WITNESS: I solemnly declare, on my honor and
25 conscience, that I shall speak the truth, the whole truth,

1 and nothing but the truth. There is no person present in
2 this room with me that is unauthorized, and I cannot
3 communicate with any unauthorized person.

4 PRESIDENT SIMMA: Thank you very much, Mr. Isasi.
5 Now --

6 THE WITNESS: I'm turning myself on off, sir.
7 I'm turning myself on off.

8 PRESIDENT SIMMA: So who is going to do the --

9 MS. ÁLVAREZ OLAIZOLA: Me.

10 PRESIDENT SIMMA: And me is ...

11 MS. ÁLVAREZ OLAIZOLA: Augustina Álvarez
12 Olaizola.

13 PRESIDENT SIMMA: Okay. So I give the floor to
14 Dr. -- and you have the floor, Madam.

15 MS. ÁLVAREZ OLAIZOLA: Gracias. Thank you. Just
16 a housekeeping matter before we conduct the direct
17 examination. Mr. Isasi has a hearing problem; so I'm going
18 to please ask everybody to speak very slowly; so that the
19 translation is clear and it's slow for him as well. Also,
20 Mr. Isasi at this time is in a room in the Lazo law firm
21 offices, which is the law firm that represents Perú in
22 Lima. There's nobody there in the room, but there may be a
23 technological issue and there may be somebody there
24 assisting him in that regard.

25 DIRECT EXAMINATION

1 BY MS. ÁLVAREZ OLAIZOLA:

2 Q. Mr. Isasi, can you hear me?

3 A. Yes, I can hear you. Good afternoon.

4 Q. Good afternoon, sir. You have before you a copy
5 of your Witness Statement?

6 A. Yes. I have a copy of my Witness Statement, and
7 I also have a sheet of paper with the corrections that I
8 need to make, because there are some substantial issues
9 that I wanted to correct.

10 Q. Okay. I wanted to ask you if you had any kind of
11 correction that you wanted to make of your Statement. And
12 please proceed.

13 A. At Page 13, we find the first mistake. Excuse
14 me. It is Page 8, Paragraph 13. At Footnote Number 13, at
15 Page 8, like I said, reference is made there to Claimants'
16 Exhibit -- rather, Respondents' Exhibit, which is the 2004
17 Decree 046. But the correct reference is to Article 6 and
18 not to Article 2.1.2 and 2.4. Article 6.

19 The second mistake that I would like to correct
20 is at Footnote Number 32 at Page 13. Reference is made
21 there to R-216, Exhibit R-216. This is a letter from Doe
22 Run to MEM of 24 December 2008, but the Exhibit Number is
23 not R-216 but 192, R-192.

24 Q. Very well. Thank you, Mr. Isasi. I have no
25 further questions.

1 A. There is an additional mistake that I just
2 noticed now, and I don't know whether there is in the
3 English version, but in the Spanish version at Page 5,
4 Paragraph 22, it reads the initial deadline was
5 January 13, 2007. It is referring to PAMA, and it should
6 say that the initial term expired on January 13; so that is
7 understood from the context, but I don't know whether in
8 the English version the mistake is there.

9 Q. No, we do not see the mistake in English. This
10 is a typographical error, a clerical error in the Spanish
11 version.

12 A. Thank you very much. I'm ready, then.

13 Q. Thank you.

14 PRESIDENT SIMMA: Pronounce your name relatively
15 correctly without the phone. So thank you very much.

16 MS. ÁLVAREZ OLAIZOLA: It was perfectly well
17 pronounced, and we have not received the documents from the
18 other Party, as the document that will be used for the
19 cross-examination of Mr. Isasi.

20 PRESIDENT SIMMA: Problem?

21 MR. SCHIFFER: No, not really. I can begin, and
22 I don't know that I'll actually need to reference any
23 documents. But we do have some that I have on standby;
24 so ...

25 PRESIDENT SIMMA: All right.

1 MS. ÁLVAREZ OLAIZOLA: Thank you very much.

2 PRESIDENT SIMMA: All right. So we start. Okay.
3 The floor.

4 CROSS-EXAMINATION

5 BY MR. SCHIFFER:

6 Q. Good afternoon, Mr. Isasi.

7 You were a senior official at the MEM in the
8 2004-2006 time frame; correct?

9 A. 2004, July 2004 to 2007, I was the General
10 Director of the Legal Department, and as of 2007 to
11 May 2009, I was Mining Vice Minister.

12 Q. Okay. But you were -- as the Head of Legal, you
13 were involved in the overall decision-making that the
14 management -- senior management of MEM were taking at that
15 time? That's a question.

16 A. Of course. Yes.

17 Q. Okay. You understood that in dealing with Doe
18 Run Perú, that they asked for more time, beginning in 2004,
19 to not only finish, design, and construction of the
20 Sulfuric Acid Plants, but also to add 12 Projects to
21 address fugitive emissions?

22 A. Yes.

23 Q. And it was clear to the MEM at that time that,
24 given the necessary -- or the suggested redesign of the
25 Sulfuric Acid Plants, that it was highly unlikely that Doe

1 Run Perú would actually be able to complete everything
2 under the PAMA, as it then existed, by the end of 2007?

3 A. In late 2007, January 13, 2007, that was the
4 expiration for the PAMA.

5 Q. Right. And so you believed it was highly
6 unlikely, given the information that Doe Run Perú gave you
7 that they would be able to complete the PAMA by that date?

8 A. That was stated by Doe Run, requesting an
9 extension that was not protected under the law. Law
10 established that the term under Supreme Decree 016 was
11 10 years -- that is to say, it expired on January 13, 2007.

12 Q. Right. Exactly. And so the senior members of
13 the MEM, of which you were one, were at a crossroads. You
14 could either let them fail and close their facility, or you
15 could grant an extension; correct?

16 A. That is correct. There was a dilemma, because
17 the law would not allow us to grant an extension, given the
18 reiterated breaches of Doe Run based in connection with the
19 obligations that meant that they could not comply with the
20 final deadline.

21 Therefore, the State was at this juncture, either
22 the law was going to apply, this is, Supreme Decree 016,
23 and there was going to be sanctioning period, and then they
24 shut down of the Plant, of the Facility, and the La Oroya
25 population would have been impacted because they were

1 highly reliant on the economic dynamic created by Doe Run
2 in La Oroya.

3 So -- or a new provision had to be passed and
4 that was another possibility that was analyzed, but this
5 would impact, also, the population in connection with
6 allowing them some sort of continuity in terms of the
7 pollution and the damage to the population.

8 Therefore, as part of that juncture, there was a
9 consultation, a generalized consultation within the
10 community and public opinion. There was a very strong
11 opposition by environmental organizations, and the one
12 Huancayo Archbishop, and, in general, the public opinion
13 thought that Doe Run was a company that consistently
14 breached their environmental obligations. Therefore, as
15 part of that dialogue, we were at that juncture. We -- at
16 some point in time --

17 Q. Excuse me, sir. Excuse me. I'm going to try to
18 ask really simple questions, and if you -- if I could ask
19 for your agreement to answer as simply as you can. Is that
20 okay?

21 Do you agree to try to do that?

22 A. Agreed.

23 Q. Okay. My point -- the only point I'm trying to
24 make right now is that the fate of Doe Run Perú was really
25 up to the MEM in 2004 and 2005. You could either tell

1 them, no, you don't get any extra time because the PAMA
2 expires, and that's -- you won't finish what you need to
3 do, or you could grant an extension once the law passed,
4 for exceptional circumstances. Those were your options;
5 right?

6 A. That is correct, but your question, or, rather,
7 your suggestion that this was dependent on MEM. But before
8 that it was dependent on Doe Run complying with their
9 commitments in due course, and not having to face this
10 juncture.

11 Q. Well, we'll get to that in just a minute, I
12 promise. But the MEM would be the final decider of whether
13 exceptional circumstances existed in order for Doe Run Perú
14 to get an extension or not; true?

15 A. The MEM, the Ministry of Energy and Mines, not
16 only MEM, but also by means of a dialogue, given the breach
17 situation created by Doe Run, had to pass a special rule to
18 avoid the closing, the shutting down of La Oroya. That is
19 my answer.

20 Q. Yeah, but that's not my question, sir.

21 A. You are taking me to a question. You are
22 inducing me to -- yes, I hear you. Okay. I listen to you.

23 Q. That's my -- yeah. That's -- so my question is
24 different. My question is that, for example, when Doe Run
25 Perú submitted their, in essence, application for all the

1 reasons they needed an extension, the MEM could have said,
2 no, you're not going to get that extension. They had that
3 power. Is that true?

4 A. Of course. We were protected by the law.

5 Q. Right. Okay. So that's that question.

6 Now, in your Witness Statement, and as you're
7 trying to say here, you believed at the time that Doe Run
8 Perú had breached its obligations under the PAMA; right?

9 A. Exactly.

10 Q. That --

11 A. That was -- that was the version that we took
12 from the relevant technical authorities, as a Legal Advisor
13 that started to work in 2004, July 2004 in the Ministry of
14 Energy and Mines had not checked those facts, but that was
15 the information I received from the relevant technical
16 officials with the Ministry.

17 Q. Right. I understand that you, yourself, didn't
18 make first-hand judgments on whether Doe Run Perú complied
19 or didn't comply, that you were getting information from
20 the technical arm of the MEM. I understand that.

21 Did I say that correctly?

22 A. That is correct.

23 Q. Yes. Okay. So when it came time to put this to
24 a vote of the MEM, did you personally advocate to grant the
25 Extension or not to grant the Extension?

1 A. I was a strong supporter of the Extension. I was
2 a very strong supporter of the Extension against the
3 environmental organizations that were clearly opposing the
4 granting of an extension against the law, and I also tried
5 to convince the Huancayo Archbishop who was a great leader
6 of the opposition, those who opposed the Extension. I
7 asked the Minister to call the Archbishop. He visited us.
8 We explained the situation in which the country was, and he
9 did not make any favorable or negative comment, but he
10 listened attentively.

11 Q. Okay. I appreciate that.

12 So when the Extension was granted, you were aware
13 that new deadlines were imposed on Doe Run Perú to finish
14 the Sulfuric Acid Plants and to do the other Projects;
15 right?

16 A. I don't think I understand the question.

17 Q. The 2006 Extension did exactly that; it extended
18 the time in which Doe Run Perú could finish the Sulfuric
19 Acid Plants that were in the PAMA; correct?

20 A. The specific -- yes, the Sulfuric Acid Plant was
21 a very specific plant, but for that we needed to promote a
22 dialogue nationally and also with the Congress of the
23 Republic to persuade --

24 Q. I'm sorry. Mr. Isasi --

25 A. No, let me explain. Let me explain my point of

1 view.

2 Q. Well, sir --

3 (Overlapping speakers.)

4 MR. SCHIFFER: I'm just asking a simple question,
5 and, you know, I just asked him if it extended the
6 deadlines. That's all I've asked him, and the answer, I
7 think, is, "yes it did," or "I don't know," or "no, it
8 didn't."

9 MS. ÁLVAREZ OLAIZOLA: Can you let the Witness
10 finish the answer?

11 MR. SCHIFFER: Not when the Witness is going off
12 on a tangent.

13 PRESIDENT SIMMA: Maybe the Witness could try to
14 answer with "yes" or "no" to the question, and then
15 continue and give his explanation.

16 MS. ÁLVAREZ OLAIZOLA: I think that that is what
17 he was trying to do.

18 MR. SCHIFFER: Can I try my question again?

19 BY MR. SCHIFFER:

20 Q. Okay. My question is simply, did you understand
21 that the 2006 Extension did just that; it extended the
22 deadlines for DRP to complete the Sulfuric Acid Plants?

23 A. Yes, indeed, but, to that end, it was necessary
24 to pass a new law -- that is, Decree 046 -- that had
25 conditions, included or provided for conditions to grant

1 that extension, and it was necessary to convince Congress
2 and also public opinion as well as the La Oroya population
3 for that.

4 Q. Right. But -- so -- and as head of Legal and
5 being a lawyer, isn't it fair to say that all the things,
6 that the technical people believed were breaches of the
7 PAMA by Doe Run Perú prior to the Extension, were forgiven
8 when they were given the right to continue building the
9 Sulfuric Acid Plants within an extended time?

10 A. No, it did not constitute any form of
11 forgiveness. It was just a moratorium granted on an
12 exceptional and non-extendable basis. It was just granted
13 for one time for the construction of the Sulfuric Acid
14 Plants. Just for that. It did not imply an extension of
15 the environmental obligations nor the PAMA obligations. In
16 particular, the Ministerial Resolution granting the
17 Extension states that. It also states that the Extension
18 will not affect the Contract relationship that Doe Run had
19 with Centromín and other actors because this is an
20 independent area from the legal obligations.

21 Q. Well, the Extension applied only to the Sulfuric
22 Acid Plants and the Fugitive Emissions Projects because
23 everything else had been completed by then.

24 You understood that.

25 A. Based on Report 118, that was the basis for the

1 approval of the Extension, the Ministerial Resolution, the
2 specific project in -- also, in keeping with Decree 046,
3 was the construction of three Sulfuric Acid Plants only.
4 That was a very specific project.

5 Q. Right.

6 A. But, in addition to that -- in addition to that,
7 Supreme Decree 046 and the Ministerial Resolution approving
8 the Extension established certain conditions, certain
9 supplementary and additional obligations that had to be met
10 as an offset to neutralize the negative effect that the
11 Extension had on the population for three years.

12 Q. Sir, we'll talk about what happened going
13 forward. Right now, all I care about is looking backward
14 in time.

15 So in 2006, when the MEM decided to grant the
16 Extension, the reason no other projects were included is
17 because they were completed.

18 A. The reason why no other project was included is
19 that the Supreme Decree 046 left the possibility open for
20 the administered party (Doe Run in this case) to take the
21 initiative to request an extension for the Projects for
22 their choosing. And they are the ones who requested the
23 Extension solely for the Sulfuric Acid Plant, restructuring
24 it from a single plant into three separate plants.

25 Q. Okay. Let me try it a different way.

1 So the Extension only applied to Project number
2 1, which you understand, I'm sure, is the Sulfuric Acid
3 Plants.

4 Is it your position that any other projects were
5 in breach at that time?

6 A. I have not said that.

7 Q. Right.

8 A. I said that the Extension requested was for the
9 Sulfuric Acid Plant and that the conditions to grant that
10 extension were some additional complementary projects,
11 among which, I understand based on Doe Run's request, was
12 also to solve the issue of the fugitive emissions that had
13 not been solved for many years now, as well as other health
14 obligations--

15 Q. Sir, if I could ask a simple question. Okay. I
16 mean, the simple question is: Is it or was it the MEM's
17 position that any other project, other than Project 1, was
18 in breach? Simply, that's my only question right now.

19 A. I cannot tell you by heart whether that was MEM's
20 position. I am answering from what I remember, that the
21 request was only in connection with the Sulfuric Acid
22 Plants and that that Extension as suggested by Doe Run,
23 also included fugitive emissions that had not been
24 resolved, and also other conditions that had been imposed
25 by the authority as a sort of neutralization of the

1 negative effects, or the negative externalities, that the
2 potential Extension was producing.

3 Q. Okay. I'm going to ask you a hypothetical
4 question then. If Doe Run Perú were in breach of any other
5 projects in 2006 other than Sulfuric Acid Plants, you would
6 agree that the MEM would either have to shut down the Plant
7 or decide to let them move on, because the Extension didn't
8 apply to anything else; right?

9 A. That is not precisely what happened.

10 Q. Hypothetically, sir. Hypothetically. Okay? You
11 said you don't know, so I'm asking hypothetically, as the
12 Chief Lawyer for the MEM, if a breach occurs and an
13 extension is not granted to give them more time, then your
14 choice was to shut them down; right?

15 A. Your question is not accurate because your
16 hypothesis is not telling me whether it is referring to a
17 PAMA's obligation or a non-PAMA obligation.

18 Q. Okay. Fair enough. A PAMA -- I'm referring to a
19 PAMA obligation. Okay. I'll clarify.

20 Hypothetically, if DRP was in breach of a project
21 that was not extended and it was a PAMA Project that it was
22 in breach of hypothetically, then the MEM's choice was to
23 shut down the Plant under the PAMA law; correct?

24 A. Not necessarily. Supreme Decree 016 established
25 some procedures and also there was a gradient for those

1 sanctions depending on the breach. So based on the
2 severity of the breach, some sanctions may have been
3 imposed, and then grant some periods to bring the situation
4 to where it was expected to be. And if it was severe,
5 there could be a temporary suspension of the activities.
6 And, finally, if the issue was severe enough, the Plant
7 would be shut down.

8 But the Plant is not shut down in all of the
9 breach cases.

10 Q. Right. And thank you for clarifying that.

11 So if a breach is considered to be minor, then
12 you'll impose a fine; right?

13 A. Not myself. That would be the body that is in
14 charge of the regulation.

15 Q. Right. But the MEM -- if the breach were
16 considered by the MEM to be minor, they would issue a fine.
17 Not you personally, but your organization.

18 A. No. The Ministry of Energy and Mines had the
19 power to oversee up to specific point in time. After that,
20 this jurisdiction was moved on to OSINERGMIN, that is
21 separate from the Ministry of Energy and Mines,
22 specifically to grant further security to mining investment
23 so that the mining policy is not mixed with the control,
24 supervision, and oversight of the mining companies.

25 Q. Okay. Well, in 2004, '05, and '06, and earlier,

1 it was the MEM that was, in essence, calling the shots on
2 La Oroya; right?

3 A. I understand, based on what I mentioned in my
4 statement, in connection with the technical staff, that,
5 indeed, while the Ministry of Energy and Mines was
6 overseeing this, there were some breaches and there were
7 some sanctions that were imposed and, in some cases, only
8 some corrective measures and, in other cases, some
9 extensions were granted within the terms under Decree 016.

10 Q. Okay. My question is really simply this -- okay.
11 Very simple question -- if the MEM considered a breach to
12 be minor, it would fine the Facility? And let's not even
13 make it about Doe Run Perú. Let's just say anybody.

14 Generally speaking, if a breach is considered
15 minor, then the MEM, or whatever body within the
16 Government, would issue a fine.

17 True or false?

18 A. Yes, based on the severity of the breach.

19 Q. Right. So if -- and let's not make this about
20 Doe Run Perú. Let's just make it about any smelter in
21 Perú.

22 If the company paid the fine, then the matter was
23 over, for that violation?

24 A. You are now asking me a legal question as an
25 expert, but I am a witness based on my tenure at the

1 Ministry. The Expert charges certain fees. The Witness,
2 like me, works for free. So if you want to ask me
3 something about a specific situation, I'll be happy to
4 answer, but then I will be charging you the fees as an
5 expert.

6 Q. Okay. Well, what's your rate?

7 You don't have to answer that.

8 A. \$350 an hour.

9 Q. Okay. We'll see. We may get there.

10 I'm asking you based on your experience and being
11 a Chief Legal Officer at the MEM. I'm not asking you to
12 make any interpretation that you haven't considered before.

13 So my question is: Was it the MEM's policy that,
14 once a minor breach occurred and a fine was issued and
15 paid, that the matter was closed?

16 A. No, no. The matter is not closed. If the breach
17 persists, you can impose a second fine. And if it
18 continues to persist, then you can have a temporary
19 cessation of activities, and then you can go even to a
20 shutdown.

21 Q. Right.

22 A. That's why I'm saying you were putting a
23 hypothetical to me. But it's quite a complex matter in
24 accordance with the situation in each case.

25 Q. Okay. But now I'm going to bring it back to Doe

1 Run Perú.

2 Did the MEM ever, before -- well, in
3 2006 -- really, did the MEM ever shut down Doe Run Perú?
4 Did it ever take the action that it would take for severe
5 breaches?

6 A. What year you said?

7 Q. Any year, until June 2009 when they stopped
8 operating.

9 A. But you were asking before the Extension or after
10 the Extension?

11 Q. I don't -- it doesn't matter. I mean, at any
12 point in time, from October 22 --

13 A. Okay. It doesn't matter. It doesn't matter,
14 you're saying. Okay.

15 In my statement, I have made reference to the
16 fact that I became aware of a number of penalties that were
17 imposed on Doe Run because of breaches.

18 Q. Yeah. Right. My question was: Did the MEM ever
19 exercise its option, in the event of a material breach, to
20 shut down the operations? Did that ever happen? That's my
21 question. That's all I'm asking.

22 A. Not that I am aware of. I'm not aware of the
23 fact that the Plant was shut down by the Ministry, at least
24 I don't have that kind of knowledge. I started working in
25 2004. Before that, I don't know what happened.

1 Q. Okay. Thank you.

2 I'm going to -- I have just a few more questions
3 for you, so please bear with me.

4 And this may require me to pay your fee, so I'm
5 going to ask you this.

6 As a lawyer, do you believe that, in this case,
7 Perú can claim breaches by DRP that occurred before the
8 Extension they were given in 2006? In other words, if you
9 agree that they had more time and they can go forward, do
10 you think you still reserve the right to go back and say,
11 "oh, but, back in 2000, you know, we fined you for X, Y,
12 and Z, and that's a breach of the PAMA"? And I'll pay your
13 fee for that.

14 A. I cannot provide advice to Doe Run. I can
15 provide advice to any other company, with pleasure, but not
16 Doe Run.

17 Q. Okay.

18 A. In answer to your question, I understand that you
19 are asking whether Doe Run was imposed a penalty beforehand
20 because of breaches. Is that what you're asking? Is that
21 the question you're asking?

22 Q. No. No. Not at all. Not at all.

23 If -- let's use a simple hypothetical. If you
24 owe me a contractual duty and you fail to perform and I
25 say, "you know what, I'm going to let you -- I'm going to

1 give you another chance," and we're going to agree that you
2 have more time, do I have the right to go back after that
3 and say, "oh, but you didn't perform -- when I granted you
4 that -- more time, I still think I can make a claim that
5 you breached your agreement, even though we agreed to
6 change it"? I'd like, you know, the MEM's former Chief
7 Officer to tell me, you know, what he thinks about that.

8 A. I am going to answer, but the way you have
9 phrased your question -- well, I'm going to ask you to
10 please allow me to explain, if you agree. I'm not going to
11 go long. I'm not going to go on for five minutes, but, you
12 know, just about.

13 You have asked a question that mixes up two
14 things: Contractual regulations that are born of a Share
15 Transfer Agreement where the Parties have come to
16 compulsory agreements because, in that Contract, they have
17 included obligations, and those obligations effect those
18 Contracting Parties, and not third parties. That STA that
19 Metaloroya entered into with Centromín, in 1997, if memory
20 serves, was governed by Article 62 of the Constitution of
21 Perú that states that contracts are governed by the laws
22 that are current at the time the Contract was executed.

23 No administrative act or no law that was passed
24 later on will modify contractual relationships or the
25 obligations or anything related to that contractual

1 relationship. So Doe Run had a contractual obligation that
2 entails a meeting of the minds of the Parties, but, as the
3 holder of the mining activity, it had other legal
4 obligations. It had to comply with administrative
5 regulations, mining regulations, environmental and mining
6 regulations, tax obligations. It had occupational safety
7 regulations that it had to abide by. All of the
8 regulations that existed in connection with the PAMA and in
9 connection with administrative law, did not have any impact
10 whatsoever on the contractual relations. I can explain
11 further, if you wish. If you pay attention to what I'm
12 saying, sir.

13 Therefore, we have two different things, two
14 different independent things. There may be related
15 obligations, but the logical thing is that, under a
16 contract, the Parties may say, "okay, you have engaged to
17 do something," for example, to comply with the PAMA. Okay.
18 You can do that. It's an obligation. You're going to
19 commit to paying your taxes. Okay. That's an obligation.
20 But those are obligations that are governed by the Civil
21 Code and by contractual regulations. Environmental
22 Regulations, under the PAMA, under Supreme Decree 046, all
23 of those things are governed by administrative law, and
24 they do not have an impact on the Extension granted. They
25 do not have an impact on the terms provided for in the

1 Agreement.

2 That is why in the Ministerial Resolution and in
3 the August law -- was stated that, in accordance with
4 Article 62 of the Constitution, the modification of terms
5 and the extensions of terms did not have an impact on
6 contractual relations or contractual terms or on the
7 obligations of the Parties that were borne of a contract
8 that was executed.

9 Q. Are you finished your answer, sir?

10 A. I have, yes.

11 Q. Thank you.

12 I'm going to get to the STA in a second, but,
13 right now, do you remember what my question was?

14 I'll try it again. It's just a simple
15 hypothetical. We're just dealing with you and me. So
16 we're in Perú, and we make an agreement that you're going
17 to deliver a brief to me by tomorrow, but you come to me
18 today and you say, "I can't get it done by tomorrow," and
19 so I say, "okay, I'll agree that you can get it to me next
20 Wednesday." And you either do or don't get it done by next
21 Wednesday, but can I go back and say, "well, because you
22 didn't give it to me tomorrow, that you breached our
23 agreement," even though I agreed to give you more time?
24 Just hypothetically, you and me. We're not talking about
25 anybody else.

1 MS. ÁLVAREZ OLAIZOLA: I'm sorry to interrupt,
2 but I think this is the third time that a question is posed
3 that is hypothetical in nature. I think that the question
4 was asked and answered.

5 MR. SCHIFFER: Right. Okay. You know what? I
6 won't ask it again then. I mean, if you -- okay.

7 BY MR. SCHIFFER:

8 Q. Let's take a look at -- have you reviewed the STA
9 as part of your job as the Chief Legal Officer of the MEM?

10 A. Back then -- well, let's see. I was not a party,
11 neither was I an advisor to that Contract because the
12 Contract was executed in 1997, and I was not a public
13 servant at all back then.

14 Q. Right. That's not my question. Sir, that's not
15 my question.

16 A. But I'm trying to answer your question correctly.

17 Q. Well, no. No.

18 A. I'm trying to establish some issues in the sense
19 that I would not have been able to analyze the Contract in
20 detail. I had to look at the Contract, at one point in
21 time, yes, when granting the Extension under Supreme
22 Decree 046.

23 Q. Okay. So let's look at the STA. I think we're
24 going to put it on the screen, hopefully. We can use
25 C-105, B.B.

1 (Comments off microphone.)

2 MS. ÁLVAREZ OLAIZOLA: We don't have control.

3 MR. SCHIFFER: Well, we can't -- perfect. Thank
4 you.

5 BY MR. SCHIFFER:

6 Q. Let's go to Article --

7 A. My video turned off. Just a moment.

8 Q. All right. I have just a few questions about
9 this. First, let's go to Clause 5.1. And if we could put
10 up the Spanish version, B.B., so the Translator doesn't
11 have to translate this. Okay.

12 Mr. Isasi, I believe you said, in your prior
13 answer, that the PAMA amendment would not change --

14 A. I can't see. I can't see anything. I can't --

15 Q. All right. Blow up the Spanish version, B.B.
16 Take the English off, please.

17 Can you see that, sir?

18 A. I can't see it fully because it's too big, and
19 then I also see your boxes here with your faces, so I can't
20 see the whole thing. It's covered.

21 Q. So let's go back to the English and I'll have it
22 translated. Okay. I'm going to read the English version.
23 And I'm not going to read the whole paragraph. I'm just
24 going to read the pertinent part, and it will just be
25 interpreted for you.

1 So, 5.1: "Compliance with the obligations
2 contained in Metaloroya's PAMA and its eventual amendments
3 approved pursuant to the legal provisions," and then, which
4 have -- or will be issued, et cetera.

5 So -- and we can go up -- B.B., let's go up to
6 5.1, to the top, because I believe it's obligations. Yeah,
7 prior page.

8 A. I'm not understanding what you're saying. You
9 read really quickly, and I'm not understanding.

10 Q. Okay. I'll read it again more slowly. But can
11 we look at the top -- B.B., can we just get the heading
12 before we read. Can you blow up the heading. Yeah, right
13 there.

14 Okay. So this is the fifth clause, and this is
15 entitled "the Company's responsibility in environmental
16 matters."

17 Do you see that?

18 A. I do.

19 Q. Okay. Now, let's go to -- back to where I was
20 reading, and I'll read it again. I'll try to do it more
21 slowly. 5.1: "Compliance" --

22 A. Please read the whole thing too. Just read the
23 whole thing, not just part of it.

24 Q. I'm only going to ask you -- I mean, if you want
25 to look at whole thing, we'll show you the whole thing.

1 Do you read English, sir?

2 A. I do not.

3 Q. Okay.

4 A. That is why I'm being deposed in Spanish.

5 Q. Okay. That's fine, but I just was curious if you
6 read English. Okay.

7 So: "Compliance with the obligations contained
8 in Metaloroya's PAMA and its eventual amendments." Okay.
9 I'm going to stop reading there, if you want to read more,
10 we'll put up the Spanish version, which you say you can't
11 see, so that's a bit of a problem. But I only want to ask
12 you about this.

13 Will you agree to answer my one question about
14 this?

15 A. No. I do not have the elements of judgment to
16 provide an answer in connection with an interpretation of a
17 contract. If you would like to ask me about the
18 interpretation of a contract, well, that would require, as
19 I said, to provide all of the information and for me to
20 have enough time to conduct the necessary examination of
21 the Contract and to issue the corresponding report with the
22 relevant invoice for my professional services.

23 Q. But you don't even know what my question is.

24 A. But you're asking -- but you're asking whether I
25 am willing to answer a question about contract

1 interpretation, and I'm saying that I am not. It is not
2 within my purview to do that. That is why you have hired
3 experts.

4 Q. Okay. Well, I'm going to ask my question, and
5 you can refuse to answer it. Okay?

6 My question is: Do you agree that the
7 contractual obligation that Doe Run Perú took on in the STA
8 contemplated complying with the PAMA and its amendments as
9 amended, that was actually contemplated in the Agreement?

10 "Yes," "no," or "I refuse to answer."

11 A. You can commit to complying with tax obligations
12 or administrative obligations, yes. But that is a
13 commitment entered into between the Parties. So the answer
14 is yes. Yes, there is a commitment by Doe Run to comply
15 with environmental laws, with the PAMA, and with the
16 modifications of the PAMA.

17 Q. So getting back to --

18 A. If it doesn't do so, there will be a breach of
19 contract and, also, from the administrative law viewpoint,
20 it would be breaching the law. And these are two different
21 penalties that this entails. The consequences of not
22 complying with this clause are governed by this Contract.
23 If there is a breach of the Environmental Law and with the
24 Extensions of an administrative act, that is governed by
25 the Regulations of SD-46 and the other regulations that

1 modify it.

2 Q. Okay. Mr. Isasi, I raise the white flag. I'm
3 giving up on this line of questions.

4 I have one more question for you.

5 You mention, at Paragraph 22 of your Witness
6 Statement, that fugitive emissions presented a problem with
7 a relatively simple solution that did not justify an
8 additional period of five years.

9 Did I read that right?

10 A. No. You haven't read it exactly as it is. What
11 I'm saying there is that the Competent Authorities from the
12 MEM -- the Competent Authorities, the Technical Competent
13 Authorities allegedly knew that Doe Run's justification was
14 not substantiated in reality because fugitive emissions
15 presented a problem that was quite easily solved that did
16 not really justify such a long period of time, five years.

17 Q. Okay. So if it was so easy to solve, why hadn't
18 Centromín solved it in the 23 years that it operated the
19 Plant?

20 A. I don't know.

21 Q. Okay.

22 MR. SCHIFFER: No further questions.

23 THE WITNESS: You would have to ask Mr. Mogrovejo
24 who was responsible for environmental issues at the time,
25 and I think that now he works for Doe Run.

1 BY MR. SCHIFFER:

2 Q. Right. I would love to ask him but he hasn't
3 been called to testify by the other side. So I'm sorry.

4 PRESIDENT SIMMA: Right. So that brings an end
5 to the cross-examination and I give the floor back to
6 Ms. Álvarez Olaizola.

7 MS. ÁLVAREZ OLAIZOLA: That's correct,
8 Mr. President. We have no further questions.

9 PRESIDENT SIMMA: Questions to my colleagues? Do
10 you want to? No questions?

11 That gets me to -- to thank you, Mr. Isasi, for
12 having appeared and having answered the questions and
13 explaining the problems. The situation reminded me a bit
14 of certain things as on television happening in Congress in
15 the presence of three university presidents, so it's -- but
16 you did fine, and thank you. You are released now as a
17 witness. Thank you for appearing. Bye-bye.

18 THE WITNESS: Thank you for your attention.
19 Thank you for your patience as well. Good evening.

20 PRESIDENT SIMMA: Thank you very much.

21 (Witness steps down.)

22 PRESIDENT SIMMA: Okay. It is now -- we have
23 eight minutes left and that probably doesn't justify to
24 call the next person for examination.

25 MR. PEARSALL: No, it doesn't, in our view,

1 Mr. President. The eight minutes perhaps, though, gives us
2 enough time to inquire from Mr. Doe what the current chess
3 clock reads.

4 SECRETARY DOE: Sure. Yes. The tallies thus far
5 are 2 hours 48 minutes have been used by the Claimant, and
6 6 hours 45 minutes by the Respondent.

7 MR. PEARSALL: Thank you, Mr. Doe. If going
8 forward -- we don't need to do it today, but, if going
9 forward, we could break it out without the Openings, which
10 aren't included in that other kind of time block, that
11 would also be helpful, just to keep for accounting purposes
12 of the witnesses.

13 MR. SCHIFFER: Excuse me. That's part of the
14 22.5 hours.

15 SECRETARY DOE: That was my understanding as
16 well, that the 22.5 hours included the Opening Statements.

17 MR. SCHIFFER: Yeah, it includes everything.

18 MR. PEARSALL: Yes. You're exactly right.

19 SECRETARY DOE: But I'd be happy to break it down
20 as the Parties wish.

21 MR. PEARSALL: That would be helpful for us
22 internally. But I appreciate that.

23 SECRETARY DOE: Okay.

24 PRESIDENT SIMMA: So the usual look at tomorrow's
25 program that we are supposed to do, knowing by heart PO 10.

1 So the next witness will be Mr. Guillermo Shinno Huamani,
2 and then we have Mr. José Antonio Payet Puccio, Enrique
3 Varsi Rospigliosi. So at least the sequence -- that the
4 order is fine. And we will probably see how far we get;
5 right?

6 MR. SCHIFFER: My best guess, given the ebb and
7 flow, is that we will definitely get to -- well, I won't be
8 long with Mr. Shinno, and, if they do what they did with
9 Mr. Isasi, then we'll be done within an hour, I think. And
10 that will leave the whole day for the contract Experts,
11 which, my guess is, will take some time.

12 PRESIDENT SIMMA: Okay. That's all we can, more
13 or less, hope for, expect for tomorrow. Martin.

14 SECRETARY DOE: Just in the meantime, I did the
15 quick math and it's 1 hour 29 minutes used today by the
16 Claimant on examinations, and 4 hours 2 minutes used today
17 for examination by the Respondent.

18 MR. PEARSALL: Thank you, Mr. Doe.

19 PRESIDENT SIMMA: So, thank you very much. And
20 we see each other tomorrow again at 9:30 for the
21 continuation of this exercise. Thank you.

22 MR. SCHIFFER: Thank you.

23 MR. PEARSALL: Thank you, Mr. President.

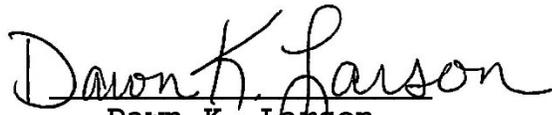
24 (Whereupon, at 4:56 p.m., the Hearing was
25 adjourned until 9:30 a.m. the following day.)

POST-HEARING REVISIONS

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby attest that the foregoing English-speaking proceedings, after agreed-upon revisions submitted by the Parties, were revised and re-submitted to the Parties per their instructions.

I further certify that I am neither counsel for, related to, nor employed by any of the Parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.


Dawn K. Larson