

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. 3

- 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, :
 :
 and :
 :
 THE REPUBLIC OF PERÚ AND :
 ACTIVOS MINEROS S.A.C., :
 :
 Respondents. :
 ----- x Vol. 3

(Continued)

HEARING ON JURISDICTION AND LIABILITY

Thursday, March 7, 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

ALSO PRESENT:

Registry, Permanent Court of Arbitration:

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P R O C E E D I N G S

PRESIDENT SIMMA: I think we are all set.

Good morning to everybody. I open Day 3 of the Hearing in our Renco Case, and I see that Mr. Shinno is already present here.

GUILLERMO SHINNO HUAMANI, RESPONDENT'S WITNESS, CALLED

PRESIDENT SIMMA: Mr. Shinno, welcome. Good morning to you.

Can you understand me? Can you hear me?

THE WITNESS: I can understand a bit. Thank you very much. Good morning, but I need translation, please. I am only hearing English.

PRESIDENT SIMMA: So this will be in Spanish. All right.

Good morning, Mr. Shinno.

THE WITNESS: Good morning.

PRESIDENT SIMMA: Okay. I go back to English for good reasons. You should have in front of you a Declaration, which I would like you to read out. So, please.

THE WITNESS: I solemnly declare, upon my honor and conscience, that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT SIMMA: Thank you very much. If the Parties have nothing, I give the floor to Mr. Pearsall for

1 Direct. Your Witness.

2 MR. PEARSALL: Good morning, Mr. President.
3 Thank you very much. The Direct will be conducted by my
4 associate Brian Vaca.

5 PRESIDENT SIMMA: The usual problem, my problem
6 with names. So you are...

7 MR. PEARSALL: Brian Vaca.

8 PRESIDENT SIMMA: Brian Vaca. Okay.

9 Mr. Vaca, you have the floor.

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

11 DIRECT EXAMINATION

12 BY MR. VACA:

13 Q. Mr. Shinno, good morning.

14 A. Good morning.

15 Q. My name is Brian Vaca, and I am part of the team,
16 legal team representing Perú in this arbitration, and I
17 will be asking you some questions and then Counsel for
18 Claimant will also be asking you some questions.

19 I would like to -- the Statement that you
20 presented on March 8, 2022, would you like to make any
21 changes?

22 A. Yes. I would like to say something. In part of
23 my Statement, I am saying that I am not a public servant.
24 I am not an attorney, but I continue to chair a State-run
25 electricity company, and I am the President of the Board,

1 and I attend meetings of the Board twice a month. I
2 thought that that was not being a public servant, but
3 Counsel told me that those positions are also positions as
4 a public servant, and I wanted to be as specific about
5 that.

6 Q. Thank you, Mr. Shinno.

7 And what documents have you reviewed to prepare
8 for this Hearing?

9 A. Mainly all of the Minutes of the Meeting of
10 Creditors, and that is the part that I had to see as part
11 of this process.

12 Q. And what is your current position?

13 A. I continue to be the President of this Company in
14 Arequipa. I am the General Manager of a group of local
15 mining companies.

16 Q. Would you please explain what positions you have
17 had for the Peruvian State?

18 A. I started in 1994-1995, with an electrical
19 transmission company that was State-run. That company was
20 later on privatized. And then I moved on as a General
21 Manager of OSINERG that then became OSINERGMIN. That is
22 the body that supervises hydrocarbons, electricity, and
23 mining companies. This is all related to the environment,
24 but, in particular, occupational safety and the
25 environment.

1 And since 2001-2011, I was with OSINERG,
2 OSINERGMIN, and in 2007, OSINERG became OSINERGMIN because
3 they started to oversee the mining sector in 2007, and then
4 I became the overseer of the mining activity with
5 OSINERGMIN in 2011, and that is when I moved on to the
6 Mining and Energy Ministry as the Director. In early
7 February 2012, I was appointed Vice Minister for Mines
8 within the Ministry of Energy and Mines, and I was there
9 until January 31, 2017.

10 In spite of leaving my position as a Vice
11 Minister, I remained with the Ministry for a little bit as
12 the President of the Meeting of Creditors for Doe Run, and
13 after that I left the Ministry.

14 Q. And for your Statement in this Arbitration, did
15 you focus on a specific point in time?

16 A. Mainly during my period as Vice Minister, that
17 was five years from 2012 to the period when I continued as
18 President of the Meeting of Creditors, and that was
19 August 2017.

20 Q. And in the other positions that you had for Perú
21 between 2001 and 2011, did you come to work together -- or
22 did you come to meet Doe Run, any official from Doe Run and
23 anyone related to La Oroya?

24 A. Well, I started in 2007 to have contact with them
25 because we oversaw all of the mining and metallurgical

1 operations for them to comply with environmental protection
2 regulations as well as health and safety at work.

3 Q. Did you review any of the documents or facts
4 whereby you had meetings with Doe Run between 2001 and
5 2011, when you were with OSINERGMIN, to prepare your
6 Statement?

7 (Overlapping speakers and interpretation.)

8 MR. SCHIFFER: -- any of this is covered --

9 (Interruption.)

10 MR. SCHIFFER: Okay. I don't believe that any of
11 this is covered in the Witness Statement. The Witness
12 Statement just talks about his role in the Creditors'
13 Committee, and there's no evidence he gave about his
14 interaction with Doe Run Perú back in 2007. So this is
15 beyond the Witness Statement.

16 MR. VACA: Mr. President, that's kind of -- I can
17 repeat the question. We're not getting into substance of
18 what he did.

19 PRESIDENT SIMMA: Continue.

20 MR. VACA: The -- yeah.

21 BY MR. VACA:

22 Q. Let me reiterate my question, and my question is
23 whether you reviewed any of the facts or documents showing
24 any meetings with Doe Run when you were with OSINERGMIN
25 between 2001 and 2011 to prepare your Statement?

1 A. Not for my Statement.

2 Q. Thank you very much, Mr. Shinno.

3 MR. VACA: Mr. President, we tender the Witness.

4 PRESIDENT SIMMA: Thank you, Mr. Vaca.

5 And I turn to Mr. Schiffer for your

6 cross-examination.

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

8 CROSS-EXAMINATION

9 BY MR. SCHIFFER:

10 Q. Good morning, Mr. Shinno.

11 A. Good morning.

12 Q. So how much interaction -- and I don't want to
13 get into the substance of your interaction, but how much
14 interaction did your department, OSINERGMIN -- I'm sure I'm
15 butchering that name, but how much interaction did your
16 group have with Doe Run Perú while you were a part of that
17 group?

18 A. It was quite frequent and a lot because we had
19 constant oversight of the activities at La Oroya.

20 Q. Right. Isn't it true that you had someone out
21 there every day?

22 A. We had, during a specific period of time.
23 Indeed, we hired an overseeing company for them to be
24 constantly overseeing and permanently overseeing the
25 operations at La Oroya.

1 Q. Right. Okay. And we've already established that
2 your Witness Statement doesn't cover any of the substance
3 of that time period?

4 A. No.

5 Q. So, now, let's talk about what your Witness
6 Statement does cover, and that's your work on the Creditors
7 Committee. Okay?

8 A. Correct.

9 Q. So I believe, if I read your Witness Statement
10 correctly -- and correct me if I'm wrong -- that your
11 position is that the MEM didn't make any unilateral
12 decisions. Everything was put to the Creditors Committee
13 and they voted on it.

14 A. The MEM always had a position as another creditor
15 within the Board.

16 Q. Right. And so it's your position that the MEM
17 never exercised its unilateral judgment on matters
18 pertaining to Doe Run Perú? That was always done by the
19 group?

20 A. I don't understand unilateral decision because
21 the representative of the Ministry with the Board of
22 Creditors, any decision that had to be made, indeed, was
23 seen in this case with the Minister of Energy and Mines
24 with the Vice Minister to see what the best position would
25 be for the Ministry as another creditor within the Board.

1 Q. Right. But you knew that you were just one vote
2 out of the Creditors?

3 A. Correct. We were just another vote of about -- a
4 little bit more than 30 percent.

5 Q. Sure. And so anything of importance that the MEM
6 received from Doe Run Perú, like a Plan of Reorganization,
7 you would, of course, present that to all the Creditors for
8 a vote, wouldn't you?

9 A. No. When the Board of Creditors started, the
10 Company that was going through a restructuring process
11 presented to the Board of Creditors, the Creditors
12 each -- each creditor reviewed the plan, analyzed it, and
13 voted it in favor or against it. So that was the process.

14 Q. Right. And so you knew that any Plan of
15 Reorganization would have to go before the Board of
16 Creditors for a vote; correct?

17 A. Correct. Everything that came from the Company
18 during the bankruptcy process had to be decided by the
19 Board of Creditors.

20 Q. Thank you.

21 So I'm going to now hand you hard copies in
22 Spanish of three exhibits I want to discuss with you. That
23 way -- I'm going to put the English on the screen, but that
24 way you have access to the entire document. And they are
25 C-114, R-111, and R-107.

1 MR. SCHIFFER: Do you want a spare copy? I have
2 a spare.

3 MR. PEARSALL: Sure.

4 BY MR. SCHIFFER:

5 Q. So, B.B., if you could please put just the first
6 page of C-114 on the screen in English.

7 Mr. Shinno, do you recognize C-114?

8 A. I have seen this.

9 Q. So this is not the first version of a Plan of
10 Reorganization that Doe Run Perú submitted to try to get
11 out of the bankruptcy and stay in control of the Company;
12 right?

13 A. They presented a Reorganization Plan. There were
14 some minor changes, but it was basically the same.

15 Q. Well, okay. So -- but, right now, I'm just
16 asking, they submitted a plan early in 2012; right? The
17 first plan.

18 A. Correct.

19 Q. Then they revised it once; right? In March.

20 A. Yes. Correct.

21 Q. And then they revised it again in May.

22 A. I do not recall whether there was any other
23 review or revision. I remember that they presented a plan
24 that was revised and then it was observed by the MEM.
25 There was -- a new plan was recommended, even though the

1 modifications were minor, and that was also reviewed. I do
2 not recall the exact dates and -- because this did not show
3 the observations by the MEM.

4 Q. Well, for example, when -- were you here when the
5 Parties gave Opening Statements?

6 A. When?

7 Q. Never mind. You would remember if you were here.

8 I'm going to represent to you that one of the
9 things that Perú's lawyer said about the Plan of
10 Reorganization is that Doe Run Perú was demanding indemnity
11 in the Plan of Reorganization as a condition to the Plan of
12 Reorganization for third-party claims from Centromín.

13 Do you remember that being one of the provisions
14 in one of the early Plans of Reorganization?

15 A. The observations by the MEM back then had to do
16 with the planned content, that had to do with financing,
17 but, mainly, there were other aspects, consideration that
18 Doe Run was including for the Government so that this plan
19 would be feasible. There were two variables that were
20 connected, but one had to do with the Government and the
21 other one had to do with the Decision by the Board. And
22 also, the observation by the State was to have to change
23 the Environmental Regulations that Doe Run had. The State
24 had to be responsible, given third-party claims that Renco
25 had already back then in the U.S. I do not recall what the

1 third variable or the third condition that Doe Run was
2 imposing. So these were the main observations by the MEM.
3 Therefore, in the case of the Peruvian State, they could
4 not accept, and, for the Reorganization Plan, as a Board of
5 Creditors or as a creditor, a plan that was conditioned to
6 these variables could not be accepted.

7 Q. Okay. Well, with respect to the indemnification,
8 would you please look at the May 14 Plan and tell me if
9 there's any statement in there where Doe Run Perú is
10 seeking indemnification.

11 I mean, there isn't, is there?

12 A. It's not in the restructuring or Reorganization
13 Plan. It is in different documents, different documents
14 that Doe Run gave to the Ministry of Energy and Mines.

15 Q. But that was in an earlier version of the plan,
16 and then they revised the plan and they took out that
17 demand, didn't they?

18 A. I do not recall. The consideration for the State
19 to be -- to assume responsibility, liability for
20 third-party claims was always there. Now, the fact that it
21 is part of the Restructuring Plan, that was -- that had to
22 do with Glenco's--and Renco's financing, but all of this
23 was conditioned to -- I do not recall the legal term, but
24 there were some conditions. Those conditions, indeed,
25 referred to the documents that were with the MEM.

1 Q. Okay. Well, I haven't seen that. Now, maybe it
2 exists. Did you review that document that you're
3 referring -- because it's not in the plan; right? A
4 request for indemnification was taken out of the Plan of
5 Reorganization, wasn't it?

6 A. I have reviewed -- I am not saying that I didn't
7 look into the Reorganization Plan, but I mainly saw the
8 Minutes of the Board of Creditors, and that includes the
9 Opinions of the Ministry and other companies and, in
10 particular, the Ministry because we had a representative.
11 The representative heard these considerations presented by
12 Doe Run so that the plan would be feasible.

13 Q. Okay. We're going to get into the Minutes in
14 just a little bit, but, right now, tell me -- and feel free
15 to look through it, if you want. Tell me if there is a
16 provision in there where Doe Run Perú says that, "as a
17 condition to the reorganization, you have to indemnify us"?

18 A. No. I do not recall. I do not recall having
19 that in the plan, not in the plan, no.

20 Q. Right. Right. Okay. So -- and we can look on
21 our own to see what the earlier version did. But now, I
22 want to turn to Exhibit R-111, which was the MEM's response
23 to this plan. And I want to go through this letter pretty
24 carefully. So if we could just blow up the top. Okay.

25 And in the first paragraph -- have you seen this

1 letter before, sir?

2 A. Yes.

3 Q. Okay. And it's from the MEM to the Chairman and
4 CEO of Renco Group. It says "Ira Leon Rennert"; right?

5 You need to answer verbally, sir.

6 A. Correct.

7 Q. Okay. So let's just go through it paragraph by
8 paragraph. It says: "As you are well aware, on May 25,
9 2012, the Meeting of Creditors of Doe Run Perú in
10 liquidation, approved the Operational Liquidation Agreement
11 and named Right Business the Liquidator."

12 And then it said -- let's move down to the word
13 "THE LIQUIDATOR" in all caps. Yeah, that sentence, B.B.
14 "The Liquidator must evaluate if the conditions for
15 reversing the decision on the fate of Doe Run Perú exist
16 based on the viability of restructuring."

17 So am I correct in understanding that, if there
18 was a Plan of Reorganization, that Doe Run Perú was
19 proposing that it was a Liquidator that would have to pass
20 judgment on it as well as the Creditors Committee?

21 A. Yes. It says that the Liquidator needs to assess
22 whether there are conditions to be able to reverse to
23 restructuring because from restructuring they move to
24 liquidation. That's what it says.

25 Q. Right. So let's go down to the next paragraph.

1 And you say that: "It is important to note that previous
2 to the signing of the liquidators agreement." So before
3 that happened, before May 25, "the Company, Doe Run Perú,
4 submitted a proposal for restructuring on May 14, 2012."

5 A. Correct.

6 Q. And that's the plan that we just looked at,
7 C-114.

8 A. Correct.

9 Q. Okay. Now, let's move on. It says: "The
10 Ministry of Energy and Mines have disclosed some
11 observations on the same in a meeting held in its offices
12 with authorized representatives of The Renco Group, Doe Run
13 Cayman, and Doe Run Perú"; right?

14 A. Correct.

15 Q. So you discussed -- somebody from MEM discussed
16 the contents of the May 14, 2012, Plan of Reorganization
17 with, basically, Doe Run Perú and its parent companies?

18 A. Yes. Correct.

19 Q. And then you go on to say -- the Company goes on
20 to say: "We understand that the proposal was submitted
21 with the idea that the Meeting of Creditors could consider
22 returning to the possibility of restructuring through a
23 change of direction."

24 Do you see that?

25 A. Yes.

1 Q. So they submitted this plan to you and they
2 wanted to have that then submitted to the Creditors for
3 consideration?

4 A. Any plan had to be presented. Any and every plan
5 had to be presented to the Board of Creditors. Correct.

6 Q. We'll get to that part.

7 So let's keep moving down. Let's go to the next
8 paragraph. And I'm just going to paraphrase this one so we
9 don't take a lot of time. But, basically, you're telling
10 them that, well, the Company is already in liquidation.
11 That was approved earlier; right?

12 A. True.

13 Q. Okay. So then you go down and talk about the
14 reasons that the May 14 Plan of Reorganization is
15 unacceptable to the MEM; correct?

16 A. Correct.

17 Q. And we'll read all of them, but I'm not going to
18 ask you questions about all of them.

19 So the first one has to do with Doe Run Perú
20 seeking relief in the court system on the MEM's claimed
21 credit of 163 million; right?

22 A. Correct.

23 Q. Okay. Because Doe Run Perú didn't want to
24 abandon their legal rights?

25 A. That was Doe Run's claim, correct.

1 Q. Right. Let's move down to Point 2.

2 So you knew that, in the Plan of Reorganization,
3 Renco was going to essentially lend enough money to Doe Run
4 Perú that it could complete the Sulfuric Acid Project;
5 correct?

6 A. Correct. About \$60 million.

7 Q. Right. Well, that was just a line of credit. I
8 mean, that was just the initial money that was going in.
9 It was a revolving line of credit?

10 A. I do not recall whether it was a line of credit
11 or a contribution, but I think it was around \$200 million
12 between Renco and the Renco Group.

13 Q. Okay. Thank you. That's where I was getting.
14 And -- but the Ministry's objection was that there wasn't a
15 firm guarantee that the Project would be done by a
16 deadline, you know, like a hard stop; right?

17 That's how the Ministry saw it.

18 A. That is correct.

19 Q. And then, under the next paragraph, it says
20 that -- another objection -- I'm sorry, B.B. Yeah, right
21 there. With the bold. I'll paraphrase this, and tell me
22 if I get it right. That the MEM objected to a provision in
23 the plan, that would give Doe Run Perú the right to suspend
24 money going into the Project in the event of a severe
25 economic downturn; right?

1 A. Correct.

2 Q. Yeah. Okay. Are you -- did you ever know that,
3 when Renco and DRRC made this investment, that one of the
4 rights they had was that the subsidiary DRP could suspend
5 payment in the event of economic downturns? Did you ever
6 know that?

7 A. I am recalling that. Yes, there were several
8 variables, additional variables, that led the Ministry to
9 believe that the plan was not viable, and this was one of
10 them.

11 Q. Well, but I'm talking about -- did you ever look
12 at the original STA and the facts surrounding the STA as
13 part of the -- well, as part of the Ministry's review of
14 this plan?

15 A. Personally, I did not review the STA.

16 Q. Do you know if anybody involved in this issue at
17 the MEM did?

18 A. Counsel with the Ministry must have reviewed it
19 but not personally because that is a contract that was
20 entered into 1997, and I started to work with the Ministry
21 in August 2011.

22 Q. Okay. Well, I won't ask you about it then
23 because it doesn't sound like you have any personal
24 knowledge. So let's go to Point 3.

25 In Point 3 -- and feel free to look at all the

1 subpoints -- but essentially what the MEM is telling Doe
2 Run Perú is they are not allowed to start up the Facility
3 unless it could meet all then-current environmental
4 standards?

5 A. Correct.

6 Q. But at the same time, you're telling them that
7 they have to start up within three months; right?

8 Let's go down the letter. I think it's up
9 higher. There it is, Clause 4.1. No, that's not it
10 either. I'm sorry. The other way, B.B. Sorry. Okay.
11 I'll come back to that.

12 All right. So then let's go down to the bottom
13 of the letter. Okay. So the MEM is saying that your plan
14 is unacceptable and we're not going to support it; right?

15 A. That is correct.

16 Q. And, of course, you knew that you had an
17 obligation to present this for vote of all the creditors
18 because you couldn't make a unilateral decision for
19 everybody on the Creditors Committee; right?

20 A. Everything that had to be a decision made by the
21 Board, well, we were one more vote within the Committee of
22 Creditors, just one more vote.

23 Q. Right. So let's look at the May 25 Minutes that
24 I gave you. R-107. And I challenge you to find anywhere
25 within these Minutes where the May 14, 2012 Plan of

1 Reorganization is presented to the Board and voted on by
2 the Board.

3 We can do a word search if you want us to. I'm
4 going to represent to you it's not in there; didn't happen.

5 A. This was the Minutes in which the Liquidator was
6 appointed. I think there were three companies; one of them
7 was chosen, and that company then submitted a liquidation
8 plan.

9 Q. Right. But it doesn't reflect that the May 14
10 Plan of Reorganization was presented and voted on or
11 discussed or even considered; correct?

12 A. That is correct, but there are other Minutes, as
13 well.

14 Q. Well, okay. Well, then I challenge you to show
15 me any other Minutes that we have in the record. And if
16 you want, I believe we have -- we have to go -- we have to
17 go to the slide from the Opening now and look at every
18 document. I mean, I'm going to -- I'm going to represent
19 to you that I've looked at all the Minutes of the Meetings,
20 and there is no discussion of this Plan of Reorganization
21 anywhere.

22 You said you reviewed the Minutes before you came
23 in here; right?

24 Did you remember seeing it anywhere?

25 A. I do.

1 Q. Where?

2 A. It is in one of my annexes to my Statement. I
3 recall that in January 2012, there was Minutes that a
4 Restructuring Plan was submitted. I don't know if it was
5 before Right Business was the Liquidator, appointed as
6 Liquidator, and Doe Run had presented already the
7 Restructuring Plan.

8 Let's recall that the idea, first, was to
9 restructure things and a plan was presented, and then in
10 the Minutes there were some observations, and then I recall
11 that I had read that the Meeting of Creditors had appointed
12 Apoyo Consultoría, a very prestigious consulting company in
13 Perú, to assist in the review of that plan. And Apoyo also
14 ended up concluding that the plan was not viable as
15 submitted.

16 Q. Right. And so maybe I'm just stupid, but how can
17 the Board of Creditors consider a May 14 plan in January of
18 2012?

19 A. I recall in January 2012, restructuring was dealt
20 with. There was a period of time that was provided. I
21 need help to locate it. And they took some time -- the
22 Restructuring Plan had been submitted a few days before.
23 They took some time to review it. And Apoyo was a
24 consulting firm, and it provided its opinion, and it said
25 that the plan was not viable.

1 And then the different creditors put that to a
2 vote. And in this case, they decided to reject the plan
3 and that is why they went to the liquidation stage of the
4 proceedings.

5 Q. Sir, I'm going to submit that the MEM never
6 presented the May 14, 2012, Plan of Reorganization to the
7 Creditors Committee, and I challenge you or Counsel to
8 prove me wrong on that.

9 MR. PEARSALL: Can we just ask in the form a
10 question, Mr. President, rather than repeated challenges.
11 That would be helpful, I think, for the witness.

12 THE WITNESS: If you allow me to add something,
13 it's not that the Ministry submitted the Restructuring Plan
14 to the Board of Creditors. Doe Run itself presented, to
15 the Board, the Restructuring Plan.

16 I don't know if I have that here with me. Just
17 one moment. I could look at the annex to my Witness
18 Statement. It's R-146. On 30 March 2012, Doe Run Perú
19 submitted its restructuring plan to the consideration of
20 the Board of Creditors, and that was a meeting that was
21 going to be held in April 2012. R-146.

22 BY MR. SCHIFFER:

23 Q. Okay. And I may be dumb, but May 14 is after
24 March and April; right?

25 A. That is correct.

1 Q. So how could the May 14 Plan have been presented
2 to the Board of Creditors in March or April?

3 A. It was submitted to the Board, the Restructuring
4 Plan, before. The Company submitted the Restructuring Plan
5 before.

6 Q. So you're saying this version, the May 14
7 version, are you claiming that this version was
8 somehow -- the date was changed to May 14 when it -- and
9 when there were no changes?

10 You know that there were modifications made to
11 the March plan, and that's why they submitted a new plan in
12 May?

13 A. No. The 4 May meeting was held to choose a new
14 Liquidator. That is why three companies were invited to
15 it. Each of the companies presented, and then Right
16 Business submitted a liquidation plan. That was the one
17 chosen, Right Business was.

18 This meeting was not to assess the Restructuring
19 Plan proposed by Doe Run Perú. That happened in other
20 meetings in April, for example, from what I'm reading here.

21 Q. Right. So I agree that earlier versions of Doe
22 Run Perú's Restructuring Plan was presented to the Board
23 and voted on. I agree with you, but then they revised it
24 again to meet all the objections, and they submitted it to
25 the MEM on May 14, as we've seen from the MEM's letter,

1 which we just reviewed?

2 A. Again, the MEM did not submit the Restructuring
3 Plan, and the Board of Creditors -- we can look at it. We
4 can look at the order of business, and here it says
5 "Appointment of the Liquidator" and also the signature of
6 the agreement. So 4 May, that Meeting was not there to
7 review the Restructuring Plan submitted by Doe Run.

8 Q. But wasn't it a fact -- let's go back to your
9 letter, and then I'm going to -- I don't want to spend much
10 more time on this.

11 Can we go back to the letter we were reviewing,
12 B.B.? R-117, I think -- or R-111. Let's just look at
13 first paragraph. Doesn't the MEM acknowledge that the
14 Liquidator has the right to evaluate a new restructuring
15 that Doe Run Perú was offering?

16 A. Please repeat the question.

17 Q. Yeah. Isn't it true that the Liquidator and the
18 Board of Creditors, for that matter, should consider any
19 revisions that Doe Run Perú makes to the Plan of
20 Reorganization, to be fair?

21 A. And that's what happened. I don't see here in
22 this meeting, but the new Liquidator, Right Business,
23 reviewed the Restructuring Plan submitted by Doe Run, and
24 it considered that that plan was not viable. Not only
25 Apoyo did that in other meetings, but Right Business, the

1 Liquidator, concluded that that plan was not viable.

2 Q. Right. And that would have been minuted, and
3 that was an earlier version of the plan; right?

4 A. That should be in, as said, the Minutes of the
5 Meeting that had been before. Well, no. The plan is
6 submitted, it is reviewed, and then a decision is made.

7 Q. Okay. But this is my last question: Any review
8 and decision taken on the May 14 plan should be reflected
9 in Minutes of the Creditors, and it should be in the
10 record; right?

11 A. That is the way it should be.

12 Q. Okay.

13 MR. SCHIFFER: No further questions.

14 PRESIDENT SIMMA: Thank you, Mr. Schiffer.

15 Mr. Vaca.

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

17 REDIRECT EXAMINATION

18 BY MR. VACA:

19 Q. Mr. Shinno, in connection with the Restructuring
20 Plan of 14 May of 2012, C-114, you were just shown it, did
21 the MEM prohibit DRP, in your understanding, to submit the
22 plan to the Board of Creditors or it said that it wasn't in
23 agreement with the plan?

24 A. It told them that it wasn't in agreement with the
25 plan.

1 MR. VACA: No further questions.

2 PRESIDENT SIMMA: I have a technical, small
3 problem. Mr. Vaca, you speak very loud and you are close
4 to the mike. Just an example to follow. It is just that
5 my -- at least, in my case, the English translation is a
6 bit low and a bit in the back and hard to understand. So
7 if I may ask you to behave badly and get away from the
8 mike, then maybe we maybe get the English better.

9 MR. VACA: Absolutely.

10 MR. PEARSALL: He likes to hear himself speak.

11 Do you want us to repeat the question back and
12 forth?

13 PRESIDENT SIMMA: Yes, please.

14 BY MR. VACA:

15 Q. I'm going to ask the question again. In
16 connection with the Restructuring Plan of 14
17 May 2012 -- I'm going to start again.

18 Sir, in connection with the Restructuring Plan of
19 14 May 2012, C-114, which you were just shown it, did the
20 MEM, in your understanding, prohibit Doe Run Perú to submit
21 that Restructuring Plan to the Board of Creditors, or did
22 it say that it did not agree with the plan?

23 A. The MEM said that it did not agree with the plan.

24 MR. VACA: Thank you very much. No further
25 questions.

1 PRESIDENT SIMMA: Mr. Vaca.

2 Question to my colleagues. We are not going to
3 have -- sorry -- I have learned a bit from yesterday. We
4 are not going to have second rounds, if that's fine with
5 both sides.

6 So questions to my colleagues whether they want
7 to ask. No? Chris? Okay.

8 QUESTIONS FROM THE TRIBUNAL

9 ARBITRATOR THOMAS: Mr. Shinno, could you explain
10 to the Tribunal, to the best of your ability, precisely how
11 the Board of Creditors related to the Liquidator after the
12 appointment of the Liquidator?

13 THE WITNESS: Let's see. The Board of
14 Creditors -- well, always the Board of Creditors is
15 independent. Its decisions are taken by a majority of the
16 members, the Creditors.

17 In this case, any decision, any submission, any
18 proposal made initially by DRP or by the
19 Liquidator -- there were a number of liquidators -- had to
20 be approved and reviewed by each one of the members of the
21 Board.

22 Additionally, of course, we had, apart from Board
23 meetings, coordination meetings with the Liquidator.
24 Initially Doe Run had meetings with the different creditors
25 to be able to make the Board meeting more efficient.

1 So there were prior meetings to review documents.
2 There were technical committees, for example, and those
3 people interested in participating in them were invited to
4 attend those meetings to "make time" and to have a better
5 decision made at the Board meeting. That is how the
6 creditors related to the Liquidator or to the Company.

7 ARBITRATOR THOMAS: If I may, you just said
8 "additionally, of course, we had, apart from board
9 meetings, coordination meetings."

10 Can you tell me who the "we" is? Is "we" a
11 reference to MEM, or is it a reference to the body of
12 creditors?

13 THE WITNESS: To the body of creditors.

14 ARBITRATOR THOMAS: Thank you. Just let me
15 reread your answer.

16 Thank you very much.

17 PRESIDENT SIMMA: Thank you. That brings to an
18 end the witness examination of Mr. Shinno.

19 Mr. Shinno, thanks for appearing. Thanks for
20 your cooperation. You are hereby released and to total
21 freedom. Thank you very much.

22 THE WITNESS: Thank you very much, Mr. President.
23 Greetings to everyone here, and my thanks to all. Thanks.

24 (Witness steps down.)

25 PRESIDENT SIMMA: Okay. So we'll have a short

1 break until Mr. Payet is ready.

2 MR. FOGLER: Mr. Payet is here.

3 PRESIDENT SIMMA: Oh, that's you. So if -- why
4 don't you just take a seat.

5 MR. PEARSALL: If we could just take 5 to
6 10 minutes so I can gather my team for Mr. Payet. We
7 finished a little earlier with Mr. Shinno than I realized.

8 PRESIDENT SIMMA: That's fine. Wherever you have
9 a better seat. You stay.

10 (Brief recess.)

11 PRESIDENT SIMMA: I apologize, but I should have
12 been a bit quicker this morning. Before we turn from the
13 fact Witnesses to the Experts and to Mr. Payet, I have a
14 question to the Parties, which is a legal question, which I
15 would get rid of and leave to you.

16 It's a question that relates to the Contract
17 case, and the question is whether it is the view of both
18 Parties that the Arbitration Agreement with regard to
19 jurisdiction and scope is governed by Peruvian law. I got
20 to this question because in two paragraphs in the Statement
21 of Claim, this is said also by the Claimant. The
22 paragraphs are the paragraphs 124 and 135 of the Statement
23 of Claim.

24 So the legal question, which I leave to you, I
25 mean -- and let's not go into a discussion right away.

1 That would be too disruptive, but it will come up with a
2 view. So whether Arbitration Agreement is governed by
3 Peruvian law, a point on which both sides agree.

4 So -- okay. I think -- thank you very much.

5 JOSÉ ANTONIO PAYET PUCCIO, CLAIMANTS' WITNESS, CALLED

6 PRESIDENT SIMMA: Thank you, Mr. Payet, for your
7 further extension of patience with me.

8 Mr. Payet, you should have the Declaration in
9 front of you, and I would like you to read that out for us.

10 THE WITNESS: I solemnly declare, upon my honor
11 and conscience, that I shall speak the truth, the whole
12 truth, and nothing but the truth, and that my statement
13 will be in accordance with my sincere belief.

14 (Interruption.)

15 PRESIDENT SIMMA: Thank you. I'm sorry, but I'm
16 used -- from some other type of microphone, that at least
17 the presiding arbitrator can just keep it red, and that was
18 easier for me to follow. I'm sorry. So you'll have to
19 live with that also. Thank you.

20 So who would direct, please?

21 MR. FOGLER: I will.

22 PRESIDENT SIMMA: Okay. Mr. Schiffer. Oh. I'm
23 sorry.

24 MR. FOGLER: That's okay. I have a favor to ask,
25 initially. Mr. Payet has brought with him his Witness

1 Statements, but in addition he has a binder that has a copy
2 of the Contract, the STA and the Bidding Documents that he
3 would like to have handy to refer to in the event of
4 questions, and I know that, typically, they're just
5 permitted to have the Witness Statements themselves.

6 (Interruption.)

7 PRESIDENT SIMMA: I call on the author of PO10.

8 SECRETARY DOE: I think we should hear from the
9 Respondent first.

10 PRESIDENT SIMMA: Okay. First, Mr. Pearsall and
11 then -- or Mr. Rodriguez. Whoever wants it.

12 MR. RODRÍGUEZ: We have no problem with that.

13 PRESIDENT SIMMA: No problem? Great.

14 MR. FOGLER: Thank you.

15 PRESIDENT SIMMA: Thank you.

16 DIRECT EXAMINATION

17 BY MR. FOGLER:

18 Q. Mr. Payet, the Tribunal has your Reports, your
19 background information. I'd like to start by having you
20 tell us what part of your personal background and
21 experience do you believe is most relevant for the issues
22 that we're going to be discussing.

23 A. Well, I practiced M&A law for almost 30 years.

24 Q. When you say "M&A," please describe more
25 particularly.

1 A. I mean mergers and acquisitions, purchases and
2 sales of companies. This is an M&A deal; so I think that's
3 the most relevant experience that I have.

4 Q. All right. So you cover quite a number of issues
5 in your various Reports, and we can't cover all of them. I
6 want to talk to you about two or three this morning. The
7 first one that I'd like to cover with you is the question
8 of whether Renco and DRRC are Parties to the Contract.

9 All right?

10 A. Yes.

11 Q. So let's start with something that may be too
12 basic, but I would like to hear from you, initially, what
13 is a contract under Peruvian law?

14 A. Well, a contract under Peruvian law is an
15 agreement. It's an expression of will of an agreement that
16 has as its object, as its -- as what it does to create,
17 regulate, modify, or terminate juridical relations. That's
18 the definition in the Peruvian Civil Code. So the contract
19 is the agreement, the juridical relation is the link of
20 rights and obligations created, modified, or terminated by
21 the Contract.

22 Q. Can there be more than one juridical agreement in
23 a Contract?

24 A. Yes. I've explained in my Reports that contracts
25 can be very simple or can be very complex; so if I go and

1 buy, you know, an apple from the supermarket, that's a very
2 simple contract, two parties, one juridical relation.

3 But if, let's say, if I'm building a power plant,
4 maybe that's a more complex contract with many parties and
5 different relations. If I'm doing an M&A deal, that's
6 typically a complex contract with different parties and
7 different relations.

8 Q. In this Contract, the STA, did Renco and DRRC
9 sign the Contract?

10 A. Yes, they did.

11 Q. Is that important?

12 A. That is important because in this case the
13 Contract is written, and it's written through the highest
14 formality that we have in Peruvian law, which is a public
15 deed for a contract. So that's a type of document that is
16 issued and signed before a Notary. That's a civil law
17 Notary, a civil law Notary doesn't just certify the
18 signature but the whole act in the public deed.

19 And you see there who goes before the Notary,
20 what we call "los comparecientes," and the Notary
21 identifies each and which quality they participate, and
22 then the Notary explains the document to them, and says "do
23 you agree with this," and they say "we agree" and then they
24 sign. Renco and DRRC signed the document in the same way
25 that any other -- of the other Parties of the Agreement.

1 Q. Let's examine a couple of the provisions of the
2 Contract and of the Notaries' actions, and let's look at
3 the STA, R-001, at Pages 4 and 5. There's an initial
4 certification from the Notary. And if -- I've tried to put
5 both the English and the Spanish versions up here so you
6 can refer to either, but what is it that we're looking at
7 here?

8 A. Well, that's the introductory part of the deed,
9 where the Notary is enumerating the persons that are, let's
10 say, before him, "comparecientes," and in what condition,
11 what legal condition they appear.

12 And then it says that all them, all the
13 "comparecientes," that includes DRP, Centromín, Renco, DRR,
14 Metaloroya, and it says they're all, you know, of legal
15 age, they are -- they understand Spanish, and I've
16 identified them with capacity, liberty, and knowledge, to
17 obligate themselves to contract, to enter into a Contract
18 of which I give faith, and they deliver to me a "minuta,"
19 which is a private document, is the one that the Notary
20 uses to make the deed, duly signed and authorized; so that
21 I put it into the public deed.

22 Q. Now, let's go to the end of the Contract where
23 there's a conclusion at Page 71 and Page 72. And let's
24 look at it.

25 A. Yes. That is the conclusion of the public deed.

1 You know, this is very formal. You can see it's a
2 contracting process that is very formal, and the Notary is
3 certifying who are the Parties, and whether the Parties are
4 conscious that they are entering into a contract, and then
5 it says, in the end, formalize the instrument, I instructed
6 the signatories of its object and results, what they are
7 contracting about, and what's the effect of what they are
8 doing.

9 Q. And when it refers in that initial sentence you
10 were just looking at, the English version says "Grantors."
11 You translated it from the Spanish as "Parties."

12 Who are they referring to?

13 A. They're referring to -- they're the signatories.
14 They are the persons that have come before the Notary to
15 issue this deed of Contract.

16 Q. In this case, when the Parties appeared before
17 this Notary, who were those Parties who the Notary is
18 discussing in this conclusion?

19 A. The persons that he refers to here are the same
20 persons that are in the introduction, are the same, they're
21 what we call the "Otogantes." And here is after, you know,
22 he's reading all the documents, he basically is saying, did
23 he say when they sign, is he saying, do you understand,
24 they -- have you read all the instrument, but has
25 it -- read all the Contract, and then you say, if you

1 agree, and you sign. So after this, they should come the
2 signatures in the deed.

3 Q. It goes on to say "after which the contents
4 thereof were affirmed and ratified, and they proceeded
5 to" -- it goes to the next page --

6 A. To sign, yes.

7 Q. -- "they proceeded to sign" -- can we pull up
8 that part? There we go. To "sign it before me, to which I
9 attest."

10 And, again, who are the Parties who are
11 certifying that they are signing this document?

12 A. The Notary is certifying that the person that are
13 signing are the same persons that he identified in the
14 introduction to the deed.

15 Q. Name them.

16 A. Oh, the names are there, Polo Robilliard. You
17 know, it's each and every one of them.

18 Q. Okay. So if you want to pull out your copy of
19 the actual STA, can you name the actual signatories, the
20 people who the Notary is attesting signing the Contract?

21 A. Yes, of course. It's in the Deed. It's -- so it
22 is assigned, Jeffrey Zelms, in representation of Doe Run
23 Perú and Doe Run Resources, Jorge Merino, in representation
24 of Metaloroya, Marvin M. Koenig, in representation of
25 Renco, and -- yeah, that's it.

1 Q. So what do these actions that we've looked at, at
2 the beginning of the public deed and at the end of the
3 public deed, what do they tell us about the participation
4 of Renco and DRRC in this Contract?

5 A. Well, I believe that Renco and DRRC are Parties
6 to the Contract. Okay? "Parties" is a concept of -- that
7 has to do with two things. Okay? A party is a person that
8 declares their will to enter into the Contract. It's part
9 of that information. Remember what a Contract is, is a
10 declaration of will that constitutes an agreement. So a
11 party is one of the persons that is, let's say, a party of
12 that. Okay?

13 But the other element, which is also very
14 important, is that declaration of will creates or modifies
15 this legal relation. In this legal relation, a party needs
16 to have rights or obligations. So a party cannot just be a
17 witness. No. A party has to acquire rights and/or
18 obligations in the legal relation that is created by the
19 Contract, and I believe that in the case of Renco and DRR,
20 it's both.

21 You know, Renco and DRR signed the document and
22 declared their will, and the other Parties declared their
23 will at the same time with -- it's not that they don't know
24 that Renco and DRR, they are all declaring their will in
25 the same instrument. And the other thing that is important

1 is, do Renco and DRR acquire rights and obligations from
2 this Contract?

3 For me, it's very clear that they do because, in
4 the additional clause, they say that they guarantee the
5 obligations of DRP, by which they are acquiring
6 obligations. So they're not witnesses. They are Parties
7 to the Contract.

8 Q. The Respondents say that this additional clause
9 is a separate Contract, and that Renco and DRRC are not
10 Parties to the main part of the Contract.

11 What do you say about that?

12 A. Well, I think that's an artificial distinction,
13 that this is one Contract, one complex Contract with
14 different Parties and different legal relations. There are
15 many reasons why that is that way.

16 Q. Can we look at the additional clause? It's at
17 Page 66 and 67 of the STA. It's Exhibit -- same Exhibit,
18 R-001. It's at Page -- I have the -- 66 is the PDF Page,
19 not the -- it should be at the very bottom, "Additional
20 Clause." You're too far. It's two pages above. Now,
21 you've gone too far. There we go. There we go. We're
22 getting there. That's it. At very bottom, "Additional
23 Clause." And it goes on to the next page.

24 "The Consortium composed by the Doe Run Resources
25 Corporation and The Renco Group, Inc. guarantee compliance

1 with the obligations contracted by the Investor, Doe Run
2 Perú." All right. Now you've seen this, obviously --

3 A. Yes.

4 Q. -- and commented on in your Report.

5 Why do you believe that this additional clause
6 does not stand alone as a separate Contract?

7 A. I mean, first, I think that first if you read it,
8 you are going to realize it's part of the same Contract.
9 For example, it says that they signed -- Doe Run and Renco
10 signed, to guarantee the compliance of the obligations of
11 the Investor, Doe Run Perú, therefore, they signed this
12 Contract. So I've -- I understand that Respondents argue
13 that when they say "this Contract," they're saying this
14 individual separate Guaranty Contract.

15 If that were the case, then which obligations
16 would it guarantee? The only way to understand that it has
17 content, obligatory content, and is not a circular
18 reference, is that when it says "this Contract" it's the
19 STA Contract. There you know which obligations they are
20 guaranteeing or, for example, Mr. Fogler, a "fianza," which
21 is what I understand Respondent say this is, an independent
22 "fianza," and in the "fianza" is a contract where the
23 beneficiary is a party. If this were an independent
24 contract, where is the beneficiary? It's not a party to
25 this clause. It would be crazy.

1 Q. Is there any reference in this additional clause
2 to who the beneficiary is of the guarantee?

3 A. Because this is part of the STA, and there's one
4 Contract, there is a very clear reference when it says "el
5 presente contrato," when it says "el presente contrato,"
6 it's referring to the whole complex Contract, STA,
7 therefore, we all understand that the obligations that are
8 guaranteed are the obligations in the STA, and that the
9 beneficiary is the creditor of those obligations.

10 But if you treated this as an independent
11 contract, you wouldn't understand that. It would be a
12 circular reference. Imagine a guarantee that says, I
13 hereby guarantee the obligations under this guaranty.
14 What's the legal effect of that?

15 Q. Could the Parties have decided to put the
16 Guaranty in a separate instrument if they had chosen to?

17 A. Yes, of course. For example, the Perú Guaranty.
18 You know, there's a Perú Guaranty, the Republic of Perú
19 guarantees the obligations of Centromín. They do that.
20 Not in an additional clause. They do that in a separate
21 Contract or Guaranty. So it's not that Perú did not know
22 that you can issue a separate contract with a guarantee.

23 It's interesting, if I may. If you go to the
24 Bidding Documents, which are interesting, is -- in the
25 Bidding Documents, the Government of Perú told the bidders

1 two times that they have to sign this Contract, the STA.
2 The bidders were asking, is there a form of guarantee that
3 I should sign to grant the Guarantee? And the Government
4 tells them, two times, you have to sign the Contract.

5 Q. Let's look at that. It's R-200, at Page 31,
6 Question 70. Is this what you're referring to?

7 A. Yeah. So some bidder is asking -- you know,
8 because Section 2.2(d) of the Bidding Documents say that a
9 subsidiary of the consortium is going to execute the
10 Purchase Agreement. So they are asking: "Okay. So how
11 will -- is there a form so that we can issue our corporate
12 guarantee?" And the Government says: "No, you have to
13 sign the Contract. We don't want a separate guarantee. We
14 want you to be in the Contract."

15 Q. Is there a reference in the Contract itself to
16 the importance of these questions and answers that occurred
17 in the bidding round leading up to the Contract?

18 A. Yes. As is common in Perú, privatization
19 agreements of the time, the Contract says that the Bidding
20 Documents, the bid conditions and the Q&A during the
21 bidding process, is to be taken into account to interpret
22 the Agreement.

23 Q. So if there's any question about whether the
24 Guarantors are to sign a contract, can we look at this
25 question and others that are in the questions and answers?

1 A. Yes. You should do. Yes. You should do.

2 Q. And why is it important that Perú insisted that
3 Renco and DRRC sign this Stock Transfer Agreement? What
4 does that tell us about whether those two entities are
5 Parties to the Contract?

6 A. Well, number one, I think it's -- what it shows
7 is that it's very clear that Perú did not want a separate
8 Guaranty Agreement and wanted DRR and Renco in this
9 Agreement. Okay. That's very clear. They wanted them to
10 do what they did, which was, enter into the complex
11 Agreement with all the other Parties of the Agreement. But
12 the other thing that is important, if I understand your
13 question, is what's the effect?

14 So for example, if you ask me: Are the Bidding
15 Documents to be taken into account to interpret the
16 Agreement? And I say, "yes, because that's in Section 18
17 of the STA." Okay. Now, if you say that the "cláusula
18 adicional" is a separate contract, then would you use the
19 Bidding Documents to interpret those are not? You wouldn't
20 know because you would have no rules of interpretation for
21 the separate additional clause contract or the applicable
22 law as the President asked in the introduction. The
23 Contract says this Contract is subject to Peruvian law.
24 But, if the additional clause is a separate contract, is it
25 subject to Peruvian law? Maybe subject to, you know, New

1 York law, maybe. I don't know. We would have to get into
2 a private international law discussion.

3 So I think that -- it doesn't make sense to
4 consider this as an independent contract. It's
5 part -- it's part of the single complex contract that is
6 very common in M&A transactions. This is not a weird
7 situation where you have different Parties in a complex
8 agreement.

9 Q. Let's move now to a more difficult question, and
10 that is, what rights, if any, do Renco and DRRC have in
11 Sections 5 and 6 of the STA?

12 And before we do that, let's take a step back,
13 and I want you to explain how this Contract came into
14 being. What happened, for example, the first time Perú
15 attempted to attract private investment to buy these
16 assets?

17 A. Well, the history in Perú, there's a very good
18 practice in the privatization agency in Proinversión. That
19 is, when they finish a privatization deal, they write a
20 White Book, and the White Book is kind of the post-mortem
21 of the process. And --

22 Q. Do they do that here? Did they write a White
23 Book?

24 A. Yes, they did it, yes. And to write my First
25 Report, I read the White Book of the privatization of

1 Centromín and there's a unified privatization of Centromín
2 and there's a White Book of the fraction privatization. So
3 what did Perú did? In the early '90s, when we started
4 privatizations, the Government tried to sell Centromín as a
5 whole. Centromín was the former Cerro de Pasco
6 Corporation, U.S. corporation, they have been nationalized
7 in the '70s. They had many things. It had railroads,
8 different things.

9 Q. Mr. Payet. I'm going to ask for the benefit of
10 the Translator that you slow down.

11 A. Okay.

12 Q. And I think that -- I'm not listening to the
13 translation, and I understand you perfectly well, but I
14 want to give them a break. So let's -- and I'm sorry to
15 interrupt you, but go ahead with your discussion of the
16 first round of privatization.

17 A. Okay. So the Government tried to sell Centromín
18 as a whole, as a whole single entity. They hired the Chase
19 Manhattan Bank and went out for -- in a rush, and they
20 didn't receive one offer, not one. It was deserted. And
21 Centromín had very good assets, for example, Antamina,
22 which is, I think, the richest copper mine in Perú, was
23 part of Centromín. It was just a resource, it was not
24 developed, but it was there, and not one bidder.

25 And then they changed their advisors and hired

1 Credit Suisse First Boston. And what the First Boston told
2 them, after speaking to, you know, investors, they told
3 them it's too complex and it's too risky. And one of the
4 most risky things that investors didn't want to come in was
5 the environmental problems including the environmental
6 problems in La Oroya, which were already very, very
7 serious. So what the Government did, (in Spanish), with
8 the advice of Credit Suisse, is they did what private
9 companies do; you have to create an SPV, you have to
10 segment the assets, you have to keep the liabilities, and
11 design a clean vehicle, if you want to sell it to an
12 investor.

13 Q. SPV meaning a special-purpose vehicle?

14 A. Yes, a corporation. And you use (in Spanish) to
15 do that. So that's what it did. There's a resolution of
16 the Peruvian Privatization Committee saying: "We are
17 changing the model for Centromín. Now we're going to
18 create independent units. We're going to create SPVs,
19 we're going to do spin-offs," and that's what they did.

20 In this transaction -- and that's why I say in my
21 reports, you cannot see this transaction just looking at
22 the STA like it was the only document of the transaction.
23 This is a corporate reorganization. At the same time
24 they're selling the shares of Metaloroya, Metaloroya is
25 receiving -- it's an empty shell. It's receiving what is

1 coming from Centromín, and that is why the allocation in 5
2 and 6 of risks is so important. Because, when you do a
3 corporate reorganization and you split a company, you have
4 to decide which assets and liabilities are in this bucket
5 and which assets and liabilities are in this other bucket,
6 and that's structural. That's part of the transaction.
7 And so -- so that's what they did in this case.

8 Q. How did the history that you've just described,
9 with the failed first effort and the environmental
10 liability issue that on arose in that first effort, how did
11 they decide to deal with that in Sections 5 and 6?

12 A. Well, it's interesting because it's a very
13 interesting story, and the documents tell the story. So if
14 you look at the Centromín separate privatization White
15 Book, and it's quoted in my Reports, it's very clear that
16 they have identified the problem, so -- because their
17 advisors told them, and so it's written in the Report. The
18 problem was environmental liabilities. And we need
19 to -- and they say the allocation of liabilities -- and
20 that's in the White Book. The allocation of liabilities is
21 going to be in the corporate documents. Okay.

22 So they decided to do an allocation where
23 the -- let's say the "old liabilities" were going to be
24 kept by Centromín and the new liabilities supposedly were
25 going to be taken over by the Investor. They put

1 that -- when they issued the Bidding Documents, the first
2 Contract -- the Bidding Documents contain, as an appendix,
3 the STA. The first draft of the STA that they sent, there
4 are provisions there about allocation of liability, but
5 it's not as it ended, you know, the way it was designed
6 initially it was like the whole staff is kept by Centromín
7 but all the new staff is going to the Investor.

8 During the bidding process -- in Perú, it's very
9 common that, during the bidding process, there's this Q&A,
10 and investors in their questions are saying things that
11 worry them. If you look at all the questions, there are
12 many questions saying, "please, take this guarantee out,"
13 and things like that. And so it's a negotiation process.

14 So there's a second version that comes out, and
15 the second version is better for the Investor, and then
16 there's a final executed document that is better for the
17 Investor. More liabilities are kept by Centromín including
18 future liabilities, which was not in the beginning, and
19 less liabilities for the Investor.

20 Q. Just as in the first failed round, were there
21 questions posed to the Peruvian authorities to the
22 privatization committee that expressed concern about the
23 environmental liabilities at La Oroya?

24 A. Yes. There were several questions about the
25 environmental -- I mean, you look at the documents from the

1 beginning. It's very clear that environmental risk was in
2 the center, was the real issue from a contractual-risk
3 perspective. It was the real issue. So there are many
4 questions about risk and risk allocation, and, essentially,
5 I think, the Government is trying to calm the Investor
6 saying this is going to be reflected in the documents, all
7 liabilities are going to be kept by Centromín. As long as
8 the Investor complies with the PAMA, they're going to be
9 safe.

10 They broke the PAMA in two. You know, the PAMA,
11 which is the environmental program, to come from a no
12 environmental standards regime that we had in Perú in the
13 '80s to a normal environmental standard regime we were
14 trying to put in place in the '90s, 2000s. The PAMA is,
15 you know, the roadmap to get there.

16 Centromín had a PAMA for all Centromín, and they
17 separated the PAMA for La Oroya and they -- the PAMA of
18 La Oroya was separated in two parts: PAMA de La Oroya of
19 Metaloroya and PAMA de La Oroya of Centromín because
20 Centromín retained things like cleanup obligations,
21 third-party claims, that had already been in court and that
22 were going to be in court in the future as part of the
23 allocation.

24 Q. I want to talk now about two concepts that are in
25 Sections 5 and 6, and I want you to explain, under Peruvian

1 law, what the difference is between assumption of liability
2 on the one hand and indemnity on the other hand.

3 A. Yes. Yes. I mean, 5 and 6 are sections that, if
4 you read them and you have been a practitioner like I have
5 been for many years, you realize that they have been very,
6 very carefully crafted. They were carefully crafted.
7 They're trying to cut a thin line and establish these
8 buckets of liability; past liabilities, 100 percent on
9 Centromín; liabilities during the PAMA, Centromín's except
10 if Metaloroya breaches the PAMA; and then future after the
11 PAMA, then it's Centromín, only the ones they cause, and
12 Metaloroya, the ones they cause. So that's the allocation.

13 Now, the important thing here is the way the
14 Contract is constructed because, since the White
15 Book -- okay, since the White Book, the Government is
16 speaking about liability allocation, allocation of
17 liability. It's not speaking only about indemnity. It is
18 speaking about allocation of liability. So, for example,
19 in, let's say -- 6.2, during the period approval for the
20 execution of the PAMA of Metaloroya, Centromín assumes the
21 responsibility for any losses, damages, or claims of third
22 party attributable to the activities of the Company, of
23 Metaloroya. They're speaking of the future. Okay.

24 Q. So I want to ask you, does this framing, this
25 word "assume," does it have a particular meaning under the

1 Peruvian Companies Act?

2 A. Well, to assume means to take upon oneself
3 something. That's the, you know, dictionary meaning.
4 Okay. If you assume an obligation, then you take it upon
5 yourself to comply with the obligation. So, for me -- and
6 I know that's not the position that Activos Mineros has in
7 this case. For me, assuming has a meaning, has a content.
8 Assuming doesn't just mean -- it's not like a definition in
9 a contract. Sometimes you have a definition because (in
10 Spanish) this is only for the operation of an indemnity,
11 express-indemnity provision.

12 I don't agree with that, because I think that
13 "asume" has a meaning. It's not that -- 6.2 has a
14 normative content. It's not just like a definition in a
15 contract. So when they say "asume" it means they take it
16 upon themselves. They become the debtor in the juridical
17 obligation. They take upon themselves the contingency.
18 They become responsible for this. That's what it means,
19 and that's the effect. In corporate organizations -- and
20 that's why I say this is very important to understand the
21 corporate side of this, the Corporate Law side of this.

22 In a corporate organization, when you split a
23 company, you have to allocate liabilities, and the Peruvian
24 Companies Act says that, in an "escisión," which is a type
25 of company split, in a corporate split, a spin-off, what

1 you transfer -- you do not transfer assets individually or
2 obligations individually because this is a restructuring.
3 So you transfer things as a block. This is why we call it
4 a "bloque patrimonial," patrimonial block, "sucesión
5 universal", called in some other jurisdictions. So
6 all -- because that's the only way you can restructure
7 companies. It would be too complex not to do it that way.

8 So you transfer a block, and, when you do that,
9 that transfers the assets and liabilities. They get
10 transferred. And you're asking about the Peruvian
11 Companies Act, for example. The Peruvian Companies Act in
12 Section -- I think it's 370 -- 278, it says the effect of
13 the transfer of a patrimonial block in a spin-off, and it
14 says: "As of the Effective Date of the spin-off, the
15 receiving company assumes the obligations included in the
16 patrimonial block which cease automatically for the
17 transfer order." That's the effect.

18 Now, I have to say, this transaction was done in
19 October 23, 1997. That is before the current Companies Act
20 in Perú. The moment this was done, there was no general
21 corporate regulation such as Section 278, but there was a
22 special provision in the Privatization Act. Privatization
23 had a special regulation, in a legitimate Decree 674. And
24 Section 10 of that Decree authorized State-owned companies
25 to be reorganized according to the dictates of COPIC, which

1 was the ruling entity of the organization, which is what
2 happened with Centromín. So if you read the STA, it's
3 going to say in the precedence, "according to Section 10,
4 Metaloroya -- Centromín was reorganized." So they had a
5 legal basis to do that.

6 So that's why what I mean it's important.
7 "Assuming" is not just the definition for the
8 cross-indemnity provision. "Assuming" means taking upon
9 themselves, become the debtor in the juridical obligation,
10 or assume the future contingencies.

11 Q. So knowing that Centromín assumes who can enforce
12 that obligation that Centromín, as you put it, took upon
13 itself?

14 A. That's a -- I'm going to admit, that's a
15 difficult question. Okay. For me, I think it's clear that
16 this is one agreement. Very clear that Renco and DRR are
17 Parties to the Agreement, I would say no doubt about it.

18 But who can enforce 5 and 6 requires more complex
19 analysis. Okay. So, for example, Metaloroya has an
20 express indemnity provision in 5 and 6. Centromín has an
21 express indemnity provision in 5 and 6. They have
22 cross-indemnity provisions. So then you say, okay, if they
23 do not assume, then you can, you know --

24 (Interruption.)

25 A. You can -- I have the Spanish word -- you can use

1 your cross-indemnity provision.

2 Now, I think that for your question, there are
3 two levels of analysis. Okay. The first level of analysis
4 is does "assume" -- Centromín was suing for damages. That
5 wording --

6 Q. The wording we have on the screen, the 6.2?

7 A. Yeah. Will assume responsibilities for any
8 damages in claims by third parties.

9 Q. Not all of us speak Spanish, so I'm trying to
10 make the record clear.

11 A. I'm sorry. I'm sorry. Yep. Okay. So that
12 wording, does that wording in this Agreement have normative
13 content? Does that have legal effects, or is it just like
14 a definition, like the definition of whatever definition
15 you include in your agreement? Working capital, that
16 definition is just the definition.

17 There is going to be another provision that has a
18 normative content, or this has normative, just 6.2, when it
19 says "Centromín shall assume all" or 5.9, for example, when
20 it says "all the rest remains with Centromín," all the rest
21 remains with Centromín. Does it mean something from a
22 legal point of view for a contractual point of view? For
23 me, of course, it does.

24 This is the central point of reallocation in this
25 transaction, of course it does. What does it mean? It

1 means that it is theirs. What are the consequences that it
2 is theirs? And there you have to look at criteria
3 for -- to interpret contracts. Okay? And especially good
4 faith. I mean, good faith is, I would say, the main
5 criteria to interpret contracts in Perú. It is in 168 of
6 the Civil Code. When it says -- you look at the wording
7 and good faith, and it's in the special provisions of our
8 contracts reiterated.

9 Q. Well, let's -- before we get to good faith,
10 though, are there questions and answers during the bidding
11 process that give us guidance about who might have the
12 ability to enforce Centromín's assumption of
13 responsibility?

14 A. Well, it is interesting, yes. And it's
15 interesting. There is one question that I think is -- I
16 don't have all the Q&A in my mind, but one question that,
17 for me, it is relevant is, I think, Number 13.

18 Q. Yes. Let's look at -- it is in R-200 at Page 8.
19 It is Question 13. All right.

20 So the question here that is being asked by one
21 of the potential bidders is: "In accordance with Clause 6,
22 Centromín assumes responsibility for the technical
23 abandonment of the slag and arsenic deposits," et cetera.
24 "We request that you point out how is Centromín to fulfill
25 such obligations."

1 And why is the answer here -- the answer
2 is: "Centromín has set established a fund to finance the
3 execution of obligations of environmental remedying
4 referred to in Clause 6 under the terms of the PAMA of
5 La Oroya. Inasmuch as Centromín maintains this
6 responsibility towards third parties, including
7 Environmental Authorities, control by la Empresa is not
8 necessary."

9 Why is that significant to you?

10 A. It is significant for two reasons. One is that
11 it says Centromín has established the fund to finance the
12 execution of the remediation obligation, the environmental
13 obligations, which this is -- I need to use this to
14 interpret the Agreement.

15 So, for me, "asume" is not just rhetorical.
16 Really, "asume" means "pay." It means go and pay. And
17 they are telling the Investors we are -- we will have the
18 money to go and pay, number one.

19 And the second is -- because the bidder is
20 asking, will we have to do it and you reimburse us? And
21 they are saying, no, no, no. This has effect to vis-à-vis
22 third parties. "asume" corporate organization. Exactly.
23 So that's why I mean, this is important to understand 5 and
24 6, what the meaning of "asume" is in all over 5 and 6.

25 Q. We know that Renco and DRRC are not named in

1 Sections 5 and 6?

2 A. Yeah. They are not.

3 Q. Do you believe that Renco and DRRC have rights
4 under 5 and 6?

5 A. Yes. Yes.

6 Q. Why is that?

7 A. I think there are two levels of that, where they
8 have contractual rights as creditors or whether they have
9 no contractual rights, like everybody else. I think they
10 have contractual rights as creditors because I think that's
11 the correct construction of the Contract. Okay?

12 One thing that is important to understand is that
13 in Perú, as is common in civil law countries, you don't
14 need an express provision to be able to enforce a right and
15 seek specific performance nor to have a right to get
16 indemnified if somebody breaches an obligation with respect
17 to you.

18 Section 1219 of the Peruvian Civil Code says that
19 the effect of an obligation is to give the creditor right
20 to enforce specific performance, indemnification, all that.
21 So the question then is from a contractual perspective,
22 number one, does "asume" have some normative content and
23 what does it mean?

24 So, for me, it has normative content. It is not
25 just a definition. The normative contents means they have

1 to go and pay. And if they have a claim, they have to
2 defend because that's what you do when you are the
3 obligated party. Okay?

4 Now, the second is, who can enforce that? Who is
5 the creditor of that right? Who holds the right vis-à-vis
6 that obligation? And, number one, I think that Renco and
7 DRR have a contractual right, and, for that, I think good
8 faith, as I was mentioning, is very important, okay, is
9 very important.

10 Because, I mean, contracts get constructed and
11 interpreted on the basis of what they say, on the basis of
12 the context in which they were entered, on the basis of the
13 purpose that they want to achieve, on the basis of the
14 whole documentation of the transaction.

15 I have explained in my reports why I think that
16 all those point to Renco and DRR have rights. Okay.

17 Q. Well, let's put this in a real context,
18 Mr. Payet. What is the situation that Renco and DRRC find
19 themselves to be in, right now, that's relevant to their
20 rights under 5 and 6?

21 A. Yes. That's the crux of it. Okay. I think that
22 we have a situation -- there is a situation. Okay. There
23 is a critical situation. That's the impression that I
24 have. What is the situation? It is that after the STA was
25 executed, Metaloroya was created, that was transferred,

1 et cetera, then Metaloroya, who is the titleholder to the
2 cross-indemnity division, was merged into Doe Run Perú.

3 Doe Run Perú, that is the investor, acquirer of
4 the shares in this Contract, has been put into
5 receivership. Then Renco and DRR have been sued in
6 Missouri for damages that I understand -- part of the
7 discussions surely in this case -- may be included in what
8 Centromín assumed under 6.2 of the Contract.

9 Q. Okay.

10 A. Now --

11 Q. So if we assume that the Claims in Missouri are
12 asserting that the Plaintiffs, these citizens of La Oroya,
13 have been injured as a result of the conduct of what was
14 then Metaloroya, then DRP, is that a liability that
15 Centromín assumed under this Contract?

16 A. Well, the conditions for a liability to fall in
17 the lap of Centromín are clearly established in the STA.
18 So essentially for Claims referred to things that happened
19 during the period of the PAMA, which is what I call the
20 "second bucket," for those, unless those were caused
21 because Metaloroya breached the PAMA or
22 established -- those were the conditions that are in 5.3 of
23 the Agreement. Unless you're in that exception, those fall
24 into Centromín.

25 So let's -- for the purposes of analysis,

1 somebody falls -- something falls in Centromín.

2 For me, the question is, let's imagine that there
3 is a situation and, according to -- if I read the
4 contract -- if I read 5 and 6, it would fall in Centromín.
5 So it's something that Centromín assumed.

6 For me, the question would be, Mr. Fogler, okay,
7 so in the situation one has where Metaloroya merged into
8 DRP, DRP is being liquidated, and Renco and DRR are being
9 sued. How is the environmental risk that the Parties
10 foresaw since the White Book during the privatization
11 process? How is that going to be allocated? Is it going
12 to be allocated according to 5 and 6, which is Centromín
13 holds the risk? Or for some reason you're going to
14 allocate it to the buyer, which supposedly was covered.

15 So, for me, good faith, good faith is the key for
16 this. The concept of good faith has many concepts in Civil
17 Law, but one of the most important is good faith should be
18 read to interpret agreements. And how do you interpret
19 agreements in light of good faith? As good-faith parties
20 would do it; objectively.

21 So, for example, in this situation, what does 5
22 and 6 mean? Does -- do 5 and 6 mean that you enforce the
23 risk allocation that was done since the White Book all
24 along the Q&A until they executed the Agreement, or you
25 forget about that and say, "Okay. We are sorry," this

1 falls into the lap of Renco and DRR.

2 And I believe that the way this was
3 structured -- because I'm not saying invent the Contract.
4 I'm saying read the Contract in light of good faith and in
5 light of the situation as part of a corporate
6 restructuring, done to isolate the risk from the buyer and
7 give them a clean vehicle to come into Perú and invest in a
8 highly risky asset as La Oroya.

9 So do we do that or we forget about 5 and 6, and
10 we forget about the White Book, and we forget about the
11 Q&A? And, for me, good-faith interpretation of the
12 Contract would mean saying Renco and DRR are Parties to
13 this Agreement because they are clearly Parties, and 5 and
14 6 was done to protect them.

15 5 and 6 doesn't even say Doe Run Perú. It says
16 Metaloroya. Metaloroya is the target company. This is
17 obviously not done to benefit Metaloroya. This is done to
18 protect the buyers. Even DRP, when it was incorporated had
19 PEN 5,000 of capital. It was a shell. The day this was
20 executed, Renco injected \$130 million to pay for the --

21 PRESIDENT SIMMA: Mr. Payet, sorry for
22 interrupting you, but it is difficult to wait for a stop
23 between what you say. And be more --

24 I have not forgotten about the coffee break, of
25 course, and we are 20 minutes late with it. So question:

1 How much -- I do a little planning. How much and what
2 time?

3 MR. FOGLER: I think I have used up my
4 45 minutes. I have more to go, but I'm happy to abide by
5 the rules.

6 MR. PEARSALL: Yeah, Mr. President, Claimant has
7 used 51 minutes, so we have given them some grace, but I
8 think the Direct Examination, at this point, should end.

9 PRESIDENT SIMMA: Okay. Yeah. Okay. So time is
10 up.

11 So we will have a coffee break now.

12 And, of course, after the coffee break, my guess
13 is that your examination will be -- will have to be
14 interrupted by lunch or-- I don't know.

15 MR. PEARSALL: We don't want anyone hungry. That
16 will be fine.

17 PRESIDENT SIMMA: I used "assumes" in the other
18 sense of that word.

19 MR. PEARSALL: We'll look for a reasonable
20 stopping point, no doubt.

21 PRESIDENT SIMMA: Okay. Thank you very much.

22 So we have a coffee break now until 11:38.

23 (Brief recess.)

24 PRESIDENT SIMMA: It looks like we can continue.
25 Everybody seems to be in place. Is that the case? Yes?

1 Fine. Thank you.

2 So I give the floor to Mr. Rodriguez for the
3 examination.

4 MR. RODRÍGUEZ: Thank you, Mr. President.

5 CROSS-EXAMINATION

6 BY MR. RODRÍGUEZ:

7 Q. Mr. Payet, good morning.

8 A. Good morning.

9 Q. My name is Michael Rodriguez, and I represent
10 Activos Mineros and Perú, and I'll be conducting your
11 cross-examination today.

12 I'm going to start off with some housekeeping,
13 some preliminary issues and preliminary questions, if
14 that's okay with you.

15 You submitted three Reports in this proceeding;
16 right?

17 A. Yes.

18 Q. And you have those there with you?

19 A. Yes, I have.

20 Q. Just a bit of housekeeping. Those are clean;
21 correct?

22 They don't have your notes?

23 A. No.

24 Q. Okay. And you drafted those Reports in Spanish?

25 A. I drafted the first two in Spanish and the third,

1 I think, in English.

2 Q. Okay. Now, a couple of things I want to ask you,
3 if you don't understand a question that I ask, please let
4 me know and I'll be happy to rephrase it. And if you need
5 a break at any time, please let me know, and we'll
6 accommodate you.

7 A. Thank you.

8 Q. And I know a couple of people have said it
9 before, but if we could ensure that we don't talk over each
10 other for the Interpreters, that would make their lives a
11 lot easier.

12 So I'm going to ask you a couple of basic civil
13 law concepts for questions on those concepts, and touch a
14 couple of points that you mentioned in your presentation,
15 if that's okay with you?

16 A. Yes.

17 Q. Great. Would you agree that it is possible,
18 under Peruvian law, for multiple contracts to be
19 memorialized in one document?

20 A. Yes.

21 Q. Under Peruvian law, some contracts are codified,
22 or "típicos"; correct?

23 A. Yes.

24 Q. And some contracts are not codified, they're
25 "atípicos"?

1 A. Yes.

2 Q. And codified contracts, are those regulated by
3 particular articles of the Civil Code; correct?

4 A. Civil Code and other laws.

5 Q. Okay. And each codified contract has a unique
6 abstract cause; correct?

7 A. Not necessarily.

8 Q. Okay. Can you give me an example of a nominated
9 contract that might have more than one abstract cause?

10 Sorry, a codified contract?

11 A. So for example, "compraventa."

12 Q. Umm-hmm. That's a sales contract; correct?

13 A. Yes. No, I'm sorry, I can't give you an example.
14 I don't have it in my mind. I have it -- is hard to give
15 you an example of that.

16 Q. Okay. But you understand the concept of abstract
17 cause?

18 A. Yes, abstract as opposed to "causa concreta"
19 "finalidad"

20 Q. Correct.

21 A. Yes.

22 Q. So would you agree if I said, for a sales
23 contract, for instance, the abstract cause is the purchase
24 of a good in exchange for a payment?

25 A. Yeah. It's a concept that is kind of

1 tautological.

2 Q. Yes. Is that a yes?

3 A. Yeah. Probably, yes.

4 Q. Okay. Thanks. Now, in your Direct Presentation,
5 you discussed a couple of questions and answers in the
6 Bidding Terms; correct?

7 A. Yes.

8 Q. And you mentioned that there's a clause in the
9 STA that explains that you should interpret the STA in
10 accordance with the Bidding Terms; correct?

11 A. Yes.

12 Q. And that's Clause 18; correct?

13 A. It's Clause 18, I think, 18.

14 (Overlapping speakers.)

15 Q. We can pull it up. Yes.

16 A. Yeah, because it's 18-something -- because 18
17 says a lot of things.

18 Q. Sure. Kelby, can you pull it up? R-001.

19 A. Do you mind if I use my -- no?

20 Q. Go ahead.

21 A. Okay.

22 Q. And could you go to Clause 18?

23 A. 18.1.

24 Q. Yes. We're getting there. Give us a second,
25 please. Thank you.

1 It should be PDF 65. And you said it would be
2 18.1; correct?

3 A. Yeah, but interpretation and using the Bidding
4 Documents.

5 Q. And in 18.1(a), it says that the answers to the
6 consultations, you know, it identifies the answers to the
7 consultations as one of those mechanisms of interpretation;
8 correct?

9 A. Yes.

10 Q. Okay. And in 18(c), it says that, if there is
11 any discrepancy between the bidding conditions and the
12 Contract, the Contract will prevail; correct?

13 A. Yes.

14 Q. Okay. Since you discussed some of those answers
15 in questions, I'm going to take you to R-201, which is the
16 document that contains "las consultas y las respuestas,"
17 the answers and questions?

18 A. Okay.

19 Q. And I'm going to take you to Question 42.

20 A. Yes.

21 Q. We might have the --

22 A. This is 42 of the second round, I think. Is that
23 two rounds?

24 Q. Yes.

25 A. So there are two 42s?

1 Q. Yes.

2 A. Okay. Yes. Yes.

3 (Comments off microphone.)

4 Q. We're getting it up. Apologies. There you go.
5 Consultation 42 discusses the release of
6 responsibility; correct?

7 A. Yes.

8 Q. And in the answer, Centromín answered that it
9 would relieve Metaloroya of responsibility for third-party
10 claims that correspond to Centromín; correct?

11 A. Yes.

12 Q. It doesn't identify anyone else that it would
13 release; correct?

14 A. No, because the bidder only asked about
15 Metaloroya.

16 Q. Correct.

17 A. So they asked, how do you limit Metaloroya? And
18 they say we don't limit Metaloroya. They didn't ask about
19 the Shareholders of Metaloroya.

20 Q. Is there any other question where a bidder asks
21 about indemnifying anyone other than Metaloroya?

22 A. Not that I recall, but for completeness, you
23 know, this Consultation Number 42, if you look at the first
24 paragraph of the answer, it is very important because
25 it not -- it doesn't refer to Metaloroya. They were asked

1 about Metaloroya, but they say -- the question is "assuming
2 that the owners of Metaloroya comply with the PAMA, and
3 adopt all measures against contamination, and somebody
4 files a claim, how do you propose to protect Metaloroya"
5 and Centromín says two things.

6 The first thing that it says is positive. It
7 says: "Centromín has implemented the La Oroya
8 organization, and created the provision of funds necessary
9 to comply with the environmental remediation. These will
10 guarantee Centromín's compliance with its obligations."

11 And then it says: "In addition" -- if you want
12 to look at the Spanish version -- it says "beyond
13 that" -- "besides that, in addition, then we will relieve
14 Metaloroya." So I think that the reading is not that
15 Centromín is -- the Government is saying, by the way, only
16 Metaloroya is being protected. They are saying something
17 very different here.

18 PRESIDENT SIMMA: Just ask whether the
19 interpretation can cope with that speed.

20 THE WITNESS: I'm sorry, Mr. President. I'm
21 going to make a real effort to slow down.

22 PRESIDENT SIMMA: No, but this time, both of you
23 are very quick speakers; so please consider the poor --

24 MR. RODRÍGUEZ: We will --

25 (Interruption.)

1 BY MR. RODRÍGUEZ:

2 Q. You reference the first paragraph of the answer;
3 correct?

4 A. Yes.

5 Q. How is that first paragraph discussing the
6 provision of funds to comply with remediation relevant to
7 the allocation of responsibility for third-party claims?

8 A. Because it's the same. It refers to the same
9 clause in the Agreement, 5 and 6, and if you see the
10 allocation of liability had, like, two parts: One was the
11 remediation Part, and the other was the third-party claims,
12 and both are kind of coordinated in 5 and 6.

13 Q. And the remediation Part is in 5(1) and 6(1)?

14 A. I'm not sure of the numbers. They are in
15 different numbers, sure.

16 Q. Okay. Are there -- those remediation
17 obligations, do they have indemnity obligations?

18 A. Well, indemnity is in 1219 of the Peruvian Civil
19 Code. It's all over the Civil Code. So if you do not
20 comply with an obligation, and that creates damage to your
21 creditor, they have a right to be indemnified as a matter
22 of law.

23 Q. As a matter of the Civil Code?

24 A. Yes, of the Civil Code. Yes.

25 Q. So that would be an extracontractual claim?

1 A. No.

2 Q. No? Contractual.

3 A. It's a section of obligation that is contractual.

4 Q. Okay. Excellent.

5 So I'm going to ask you, now, a couple of
6 questions about your Reports and the documents that you
7 reviewed for those Reports.

8 You've listed documents that you rely on in your
9 Reports in Annexes at the end of your Reports; correct?

10 A. Yes.

11 Q. And you've also cited documents that you rely on
12 in your footnotes; correct?

13 A. Yes.

14 Q. Did you rely on any documents that you did not
15 cite in either your annexes or your footnotes?

16 A. I don't think so. I mean, I don't think so.
17 Something could have slipped. My general knowledge that I
18 read something, like, for example, when I'm explaining the
19 privatization process, part of it is my experience in this
20 earlier document.

21 Q. That's fine. All right. Thank you.

22 So Claimants submit a claim for breach of the STA
23 by Activos Mineros in this Arbitration; correct?

24 A. Yeah. That's my understanding.

25 Q. And that claim is based on the litigations filed

1 in Missouri; correct?

2 A. That's -- I don't want to characterize the
3 Claims, Claims made by Claimants because that's not part of
4 my expertise.

5 Q. Sure. Sure. But did you reach conclusions on
6 whether those Claims were viable or not under Peruvian law?

7 A. Yes. Yes. And on the terms written in my
8 Report. Yes.

9 Q. Okay. Sure. So you have at least a reasonable
10 understanding of the Claims in order to be able to reach
11 the conclusions; correct?

12 A. General understanding.

13 Q. Okay. Did you reach any conclusions on whether
14 Activos Mineros breached the STA?

15 A. Yes. I put it in my conclusions, but let me
16 explain you one way in which I think Activos Mineros is in
17 breach of the STA. The STA says that Centromín assumes
18 third-party claims originating in the period of the PAMA on
19 certain conditions.

20 So if, let's say the Missouri Claims, which are
21 third-party claims, fall into that, right now Activos
22 Mineros is not in compliance with their obligation to
23 assume those claims because they are not defending the
24 Claims. They haven't paid the Claims. They're doing
25 nothing with respect to the Claims.

1 Q. Okay. Okay. Now you just said "so let's say the
2 Claims in Missouri are Centromín's responsibility."

3 A. Yes.

4 Q. Okay. And in your direct examination, you stated
5 that you understand that the Missouri Claims are
6 Centromín's responsibility?

7 A. Let me put it this way to avoid any confusion.

8 Q. Sure.

9 A. I have not examined the Missouri Claims.

10 Q. Okay.

11 A. Okay. And the allocation of liability in 5
12 and 6, and what falls in the lap of Activos Mineros and for
13 what falls in the lap of the buyers, let's say, that
14 depends on conditions set forth very clearly in 5 and 6.

15 So for example, one of the conditions for Claims
16 related to the PAMA Period, for example, one of the
17 conditions -- I mean, the general rule is Centromín assumes
18 all, but there's, like, exceptions that are, for example,
19 damages attributable to Metaloroya, which are due to the
20 fact that Metaloroya did not comply with the PAMA, for
21 example. Okay. I have not certified whether Metaloroya
22 has complied or not with the PAMA.

23 I have not examined the causal relation of the
24 Missouri Claims, so I can speak about the categories. I
25 can speak about what the Contract means for me, but I

1 cannot -- so that's why I say "let's say" because I have
2 not done a factual analysis of what really happened in
3 La Oroya.

4 Q. Thank you. So to be clear, you don't take a
5 position, then, on whether the Missouri Claims do or do not
6 fall within Centromín's responsibility under the STA?

7 A. Yeah. Factually, I haven't done the analysis,
8 and whether they are in one side or the other depends on
9 facts as well as law.

10 Q. Okay.

11 A. Okay.

12 Q. So that's a yes?

13 A. It's a yes on the basis of my qualification.

14 Q. Sure.

15 A. Just to clarify; okay? Because, for example, you
16 asked about the breach, whether they're in breach. Okay?
17 So, yeah, there's a factual analysis about whether the
18 Claim refers to a situation, and then you would have to
19 determine in which lap it falls.

20 Q. Right.

21 A. So that type of analysis, that requires factual
22 basis, I haven't done.

23 Q. Thank you. I appreciate that.

24 So I'm going take you through a couple of
25 paragraphs in your Reports.

1 A. Yeah.

2 Q. So I'm going to start with your First Report,
3 Paragraph 193, and we'll get it up on the screen.

4 Let me know when we're done reviewing.

5 A. 193?

6 Q. Yes.

7 A. Yes. Yes.

8 Q. I'm going to read the last sentence, and let me
9 know, for the record, let me know if I read it correctly.
10 "Therefore, regardless of the entity sued before U.S.
11 courts, Activos Mineros is responsible for the liabilities
12 at issue, and Renco and DRR are entitled to request that
13 Activos Mineros and Perú face such risk, and compensate
14 them for the damage suffered in the case of failure to
15 comply with such obligation." Correct?

16 A. Yes.

17 Q. The obligation you're referring to there is the
18 obligation to compensate?

19 A. It's -- let me read it again. Yes. It says
20 "faced risk and compensate them for the damage suffered in
21 case of failure to comply with such obligation." Face such
22 risk and compensate. So what -- can I explain what it
23 means?

24 Q. Of course.

25 A. Okay. So what I'm saying is essentially what we

1 just discussed; okay? That is, there's this allocation in
2 the Agreement. If there's a claim in Missouri that,
3 according to that allocation, it has been assumed by
4 Centromín, then Activos Mineros has the obligation
5 to -- the obligations derived in good-faith from the
6 assumption, meaning, in my opinion, including going and
7 defending and facing the Claims.

8 So if they don't do that, they will be in breach
9 of their obligation, and under Section 1219 of the Civil
10 Code, the creditor -- in this case, Renco and DRR -- would
11 have the right to enforce and the right to collect any
12 damages.

13 Q. The reason I'm asking, because the phrase
14 "Activos Mineros is responsible for the liabilities at
15 issue," isn't in -- you're not saying if they are?

16 A. Yeah, but I'm speaking about liabilities that
17 Centromín kept. Those are the liabilities at issue.

18 (Interruption.)

19 A. When I say the liabilities at issue, you have to
20 read two lines before, which is the liabilities that
21 Centromín kept responsibility for. Those are the
22 liabilities at issue, of course, if they don't face them,
23 they're in breach of the Agreement.

24 Q. Okay.

25 A. I'm not saying whether, factually, you know, the

1 Claim of Mr. Rodríguez, or Mr. González, or Mr. Payet falls
2 in one --

3 PRESIDENT SIMMA: Sorry. But can you, again,
4 limit your rate of fire.

5 THE WITNESS: Yes. Yes.

6 BY MR. RODRÍGUEZ:

7 Q. Okay. I'm going to take you to a couple of other
8 paragraphs, first Paragraph 89 of your Second Report.

9 A. Yes. It's the First Report again?

10 Q. Second Report.

11 A. Oh, sorry. Yes. Yes.

12 Q. All right. And I'm going to read the last two
13 sentences. "It is a factual reality that, despite
14 Centromín's responsibility, Renco and DRR have been sued in
15 the Missouri Litigation. If they were to pay any
16 compensation as a product of those litigations, they will
17 be paying for a liability that is not theirs, or at least
18 not exclusively theirs." Correct?

19 A. Yes.

20 Q. So that is also not in the conditional; correct?

21 A. That is not in a conditional. Yes. It says,
22 "not exclusively theirs." Okay. But -- so I'm not
23 referring to all -- there, I am assuming that at least one
24 of the Missouri Litigations falls into the lap of
25 Centromín.

1 Q. Sure. Since you didn't review the documents,
2 what are you basing that assumption on?

3 A. Just on the conversations I had with Counsel for
4 Plaintiffs that -- in general. But there's no specific
5 allocation for that.

6 Q. Okay.

7 A. No specific support of that factual claim.

8 Q. Sure. What specifically were you told about the
9 Missouri Litigations?

10 A. Really, I haven't been told a lot about the
11 Missouri Litigations. It's just that the -- there are
12 litigations that are basically what it says in the Report,
13 that there are litigations by -- I'm not sure who is
14 representing them, but supposedly the interested Parties in
15 the end are people from La Oroya that allegedly suffered
16 damages as a result of contamination related to the
17 refinery there.

18 Q. Okay.

19 A. But I haven't -- really haven't a specific data
20 about that.

21 Q. Sure.

22 A. So that's why, in the Reports, I've tried to
23 speak of categories, not of specific, and you point out
24 this phrase does not have a specific function of support on
25 the factual part.

1 Q. Okay. I appreciate that.

2 I'm going to take you to Paragraph 109 of your
3 Second Report.

4 A. Yes.

5 Q. Please take a look and let me know when you're
6 done.

7 A. Okay. Yes.

8 Q. There we go. The second sentence I'm going to
9 read for the record, and let me know if I've read it
10 correctly.

11 A. Okay.

12 Q. "Therefore, Activos Mineros is liable for the
13 PAMA Assumed liabilities. Thus, the debt that Renco and
14 DRR would eventually pay to the Missouri" -- I think you
15 mean "Plaintiffs" there -- "as part of the PAMA Assumed
16 Liabilities corresponds to an obligation of Activos
17 Mineros"; correct?

18 A. Yes.

19 Q. Is that in the conditional?

20 A. No.

21 Q. Okay.

22 A. But you have to read the definition of "PAMA
23 Assumed Liabilities." PAMA Assumed Liabilities make
24 reference to the liabilities that, under the Contract,
25 belong to Centromín. So in a sense, it's like a

1 tautological paragraph.

2 Q. That conclusion? Okay.

3 A. Because it's referring to the PAMA Assumed
4 Liabilities. So what I'm saying there is, if there
5 something that falls into the lap of Centromín, meaning it
6 is a PAMA Assumed Liability, and they don't face it, then
7 they're in breach.

8 Q. Okay. I'm going to take you to one more
9 paragraph.

10 A. Okay.

11 Q. This is going back to your First Report,
12 Paragraph 227.

13 A. 227.

14 Q. Yes. I'm going to read it out loud, and let me
15 know if I've read it correctly. "In this sense, in light
16 of Peruvian law, as an additional remedy, Renco and DRR
17 would have the right to be compensated as a consequence of
18 the litigation initiated in the United States of America by
19 means of a subrogation claim."

20 Did I read that correctly?

21 A. Yes.

22 Q. That's also not in the conditional; correct?

23 A. Yeah, but, that paragraph, you have to put it, I
24 think, in context because it says "in this sense," so it's
25 like a conclusion of a reasoning that comes before.

1 So -- because I'm just speaking about subrogation. You
2 know, subrogation assumes that the obligation that you're
3 paying is somebody else's obligation. So I'm just saying
4 here that if -- under the conditions whether it's an
5 addition and an obligation of Centromín if Renco and DRR
6 pay, then they have the right to subrogate.

7 Q. I'm going to ask two final questions on this
8 topic, and then I'll just move on. You don't know whether
9 any of the Claims in Missouri are actually Centromín's
10 responsibility under the STA; correct?

11 A. Correct.

12 Q. And there is nowhere in your Reports where you
13 applied any of the facts of the Missouri Claims to
14 Clauses 5 and 6 of the STA; correct?

15 A. Correct.

16 Q. I'm going to take you now to Paragraph 14 of your
17 Second Report. Let me know when you're done reviewing.

18 A. Yes.

19 Q. There you state that: "The Plaintiffs in the
20 Missouri Litigations have based their Claim on Article 1970
21 of the Peruvian Civil Code"; correct?

22 A. Yes. Yes.

23 Q. And as a consequence, you conclude that the risk
24 holder would be liable under the theory of strict
25 liability; correct?

1 A. Yes.

2 Q. Later on in your Report, you conclude that that
3 risk holder is Activos Mineros; correct?

4 A. Yes.

5 Q. Okay.

6 I'm going to take you to Paragraph 68 of this
7 Second Report.

8 MR. RODRÍGUEZ: For Members of the Tribunal and
9 the Interpreters, the relevant sentences are absent from
10 the English translation. So we will switch to Spanish, and
11 we will discuss the Spanish version of Mr. Payet's Report.

12 BY MR. RODRÍGUEZ:

13 Q. Let me know when you're ready.

14 A. I'm ready.

15 Q. Excellent. I'm going to read the second-to-last
16 sentence.

17 A. Umm-hmm.

18 Q. Starting with "he sido": "I've been informed
19 that the Claimants in the Missouri Litigations base their
20 Claim on Article 1970 of the Civil Code of Perú."

21 Did I read that correctly?

22 A. Yes.

23 Q. And then you continue: "I haven't analyzed the
24 substance of the Missouri Litigations, but, assuming that
25 basis, the risk holder is the one that needs to compensate

1 the damages that had been generated there"; correct?

2 A. Correct.

3 Q. We'll switch back to English now.

4 When you say you had been informed, who informed
5 you?

6 A. I'm not totally sure at the moment, but I think
7 it was a conversation with Adam in my office.

8 Q. And based on that assumption, you state that the
9 risk holder is responsible under strict liability?

10 A. Yes and no.

11 Q. Okay.

12 A. I'm sorry for that, but -- I mean, from a
13 Peruvian law perspective, the holder of -- the refinery
14 would be a risky good for the purposes of 1970 of the
15 Peruvian Civil Code. And pursuant to the reasons explained
16 in my Report, I believe that the holder of the risk of harm
17 derived from the operation of the refinery during the
18 relevant period was Centromín/Activos Mineros.

19 Now, this -- the relation to this, to the
20 Missouri Claims, is this factual thing that I assume that
21 they -- that Renco had been sued under 1970, but,
22 regardless of that, that's the situation. It's a risky
23 good. The holder is a risk. It's strictly liable under
24 Peruvian law.

25 Q. Got it. Just so that the Transcript is clear, I

1 think what you're saying -- and correct me if I'm
2 wrong -- is that, under Article 1970 of the Peruvian Civil
3 Code, the holder of the risk is the responsible Party for
4 any injury?

5 A. Yes.

6 Q. And you're differentiating that from the factual
7 situation here?

8 A. No. I'm not differentiating it. I'm just saying
9 that my assumption of that discussion to this case -- of
10 the relevance of that discussion to this case is that the
11 Plaintiffs in Missouri have used 1970.

12 Q. Got it.

13 And you submitted this Second Report with
14 Claimants' second pleading; correct?

15 A. I don't recall that. I mean, we have to look at
16 the timing, but I think that -- I'm not sure. I think it
17 was presented with the second Rejoinder.

18 Q. I can represent to you that this is the May 1
19 Report, and you submitted it with their second pleading.

20 And I'm going to take you to Paragraph 27 of
21 Claimants' Reply. Please take a look at Paragraph 27.

22 A. Okay. Yep.

23 Q. At the time you submitted your Report, were you
24 not aware that the Missouri Court was not going to apply
25 Peruvian law?

1 A. No, I was not aware.

2 Q. I'm going to take you to Paragraph 125 of your
3 Third Report. Okay. By this time, you switched from
4 Article 1970 is the basis of the Missouri Claims to "I
5 don't know the law that's being applied in
6 Missouri"; correct?

7 A. No. I think you're not characterizing this
8 correctly. I mean, there are many issues. My reasoning is
9 there are many issues in the Missouri Litigation. And
10 right here, what I'm speaking about is time bar, statute of
11 limitations. So, I mean, maybe it would say "I do not have
12 the knowledge of the applicable law determined in the
13 Missouri Trials for its statute of limitation." Because
14 that's the issue I'm discussing. I'm not discussing the
15 basis of liability, but a statute of limitations. What I'm
16 saying is that the statute of limitations to be considered
17 for this purpose would be the Missouri statute of
18 limitations and not the Peruvian statute of limitations.

19 Q. Got it. Have the Missouri Plaintiffs filed
20 claims in Missouri under Article 1970 of the Peruvian Civil
21 Code?

22 A. I don't know.

23 Q. Thank you.

24 Now, you said your assumption that they had was
25 relevant to the discussion of strict liability in this

1 case; correct?

2 A. Yes.

3 Q. I'm going to ask you to read Paragraph 124 of
4 your Third Report.

5 A. Yep.

6 Q. In the second-to-last sentence, you say,
7 "nevertheless, according to Respondents, Peruvian law is
8 not applicable to the original Claim"; correct?

9 A. Yes.

10 Q. You're referring, when you say "original Claim,"
11 to the Missouri Plaintiffs' Claims; correct?

12 A. Yes. Yes. Yes.

13 Q. So by this point, you had read our explanation
14 that the Missouri Plaintiffs are filing claims under U.S.
15 law; is that correct?

16 A. Yes. Yes.

17 Q. And given the relevance, as you say, to
18 your -- to the application of strict liability in this case
19 of your assumption, did you not think of clarifying which
20 law was the basis of the Missouri Plaintiffs' Claims with
21 Claimants' Counsel?

22 A. No. No. I assumed this to be -- factually
23 correct, and I put it expressly as an assumption. At
24 least, I don't recall having had the discussion with
25 Plaintiffs' Counsel about this.

1 Q. But, by this point, you were aware, we were
2 saying, that Article 1970?

3 A. Yeah.

4 Q. And you were aware that which -- the basis of the
5 Claims was relevant to your analysis?

6 A. Yes.

7 Q. Okay.

8 A. It's not determinant for the analysis. Okay.
9 But it's relevant. It's relevant for this case.

10 Q. Okay. In your discussions in which you obtained
11 information on the Missouri Claims, did Claimants' Counsel
12 ever tell you whether the Missouri Plaintiffs were trying
13 to establish derivative liability?

14 A. Could you explain a little bit what you mean by
15 "derivative liability."

16 Q. Figures like piercing the corporate veil or
17 agency?

18 A. Yes.

19 Q. They had?

20 A. Yes.

21 Q. Okay. Did you take that into your assumptions,
22 as you say?

23 A. I'm not sure there is any, you know, part of the
24 Report that is based on that being the case or not being
25 the case.

1 Q. Right.

2 A. So maybe if you explained what you think the
3 relevance of that is, I could give you an explanation.

4 Q. Did you ever consider whether, for
5 instance -- you're talking about -- you spoke about
6 interpreting the Contract in good faith; correct?

7 A. Yes. Yes.

8 Q. Are you aware that Claimants are facing claims
9 under the theory of piercing the corporate veil under U.S.
10 law?

11 A. Yes.

12 Q. And are you aware that the Missouri Plaintiffs
13 would have to prove fraud or improper conduct on their
14 behalf?

15 A. No.

16 Q. No. So you never took that into account when
17 analyzing whether a good-faith interpretation of Clauses 5
18 and 6 would allow Claimants, if they are -- if they are
19 found to have committed fraud, to take advantage of any
20 indemnity obligation?

21 A. I think that has no logical connection; the two
22 points have no logical connection. They are not -- one
23 thing is in one area, and the other is in another area.

24 Q. Okay.

25 A. What I'm saying is, in order to properly

1 construct this Contract, you need to use good faith as a
2 criteria for interpretation, and that will take you to the
3 position that certain liabilities fall on the lap of
4 Centromín.

5 Now, if those liabilities were caused by bad
6 conduct of the Plaintiffs, it could be relevant to whether
7 the liabilities are imposed, and it could be relevant of
8 whether the conditions of 5 and 6 are comprised. Such as,
9 for example, compliance with the PAMA. But, you know, 5
10 and 6 don't have -- unless you're condemned by piercing
11 your corporate veil, it doesn't say that. What it says is
12 compliance with the PAMA, environmental practices.

13 Q. Okay. Can I work with you through a couple of
14 things that you said?

15 A. Sure.

16 Q. Great. Let's assume that the Plaintiffs are
17 found responsible in Missouri, and let's assume that they
18 are found responsible under the piercing corporate veil
19 theory.

20 A. Yes.

21 Q. Which means that the jury must have found
22 improper conduct or fraud. Let's assume that, under
23 Clauses 5 and 6 of the STA, the allegations made by the
24 Plaintiffs in Missouri are Centromín's responsibility.
25 Given that the jury must have found fraud or improper

1 conduct on behalf of Claimants, would you, in this
2 hypothetical, consider that Claimants could nevertheless
3 obtain indemnity and defense from Centromín?

4 A. I think it's a difficult question to answer
5 without looking at the specifics. In general, what I think
6 is that, you know, the effect of 5 and 6 -- okay, the
7 effect of 5 and 6, for me, is an allocation of liability.
8 Okay. So it's -- once you determine which liabilities are
9 aware, then that's the way it is. That's the consequence
10 of the allocation. It's like a transfer of an asset. You
11 transfer it, that's it. That's the effect. So -- and
12 that's what I mean, that these two points have -- it's very
13 difficult to see the logical connection between those,
14 because it's not that, oh, you're a bad guy, then you don't
15 get -- then we're going to disregard the Corporate Law and
16 contractual liability allocation made in the Agreement.

17 Q. Okay. Do you think the contracting Parties
18 contemplated providing indemnities to someone who had
19 committed fraud?

20 A. I think that the Parties contemplated isolating
21 the purchaser of the environmental risk to the degree
22 established in 5 and 6.

23 Q. Does that include fraud, in your opinion?

24 A. That includes claims, damages, originating in the
25 PAMA Period, unless the exceptions in 5(3) apply. I think

1 you're -- as a Peruvian lawyer, I think you are mixing two
2 things that have nothing to do.

3 Q. So a party found responsible of having committed
4 fraud could nevertheless get whatever it has to pay in
5 Missouri paid by Centromín; correct?

6 A. You would need to look at the Contract, and then
7 you would need to tell me what is the basis of -- what
8 legal basis are you using to say that, you know, if there
9 is fraud, whatever, then they do not -- because the effect
10 of this -- this is not only an indemnity provision. You
11 know, this is an allocation of obligations provision. So
12 the effect that this has -- imagine, what you're saying,
13 imagine that there's a merger. Okay. We merge two
14 companies. We split a company and transfer a factory to
15 another company.

16 And then this new company behaves badly. Are you
17 going to say we're going to disregard the transfer because
18 they -- no. You cannot disregard the transfer.

19 Q. Okay. So just a couple of seconds ago, you said
20 "it depends" -- right? -- on the basis?

21 A. Yeah. Because you have -- I mean, that's why I'm
22 saying, if you explain to me what type of reasoning you're
23 using to try to put together these two things that, for me,
24 are totally unconnected from a logical point of view, if
25 you explain your legal basis, maybe -- maybe, you know. I

1 cannot find the connection.

2 Q. Fair enough.

3 In your direct examination, you also spoke about
4 reading the STA in connection with the restructuring
5 documents; correct?

6 A. Yes.

7 Q. Can you remind us how you defined a "contract" in
8 your direct examination?

9 A. It's an agreement between two or more parties to
10 create, modify, or amend juridical relations.

11 Q. The reason you say, in your Report, that you
12 should read the restructuring documents together with the
13 STA is because, according to you, they are linked
14 contracts; correct?

15 A. Yes.

16 Q. I'm going to ask you -- I'm going to turn to
17 Paragraph 29 of your Second Report.

18 A. Yeah.

19 Q. There, you talk about linked contracts or, in
20 Spanish, "contratos coligados."

21 A. Yes.

22 Q. Okay. You also refer to them as -- again, in
23 Spanish -- "contratos conexos"; correct?

24 A. Yes.

25 Q. But they're the same thing?

1 A. "contratos conexos" or "contratos coligados" is
2 the same thing.

3 Q. And you explained that these linked contracts
4 should be read together; correct?

5 A. Yes.

6 Q. And in Paragraph 30 and 29 -- but we can go to
7 30 -- you explain that each of the Contracts are,
8 nevertheless, autonomous and individual; correct?

9 A. Yes.

10 Q. And then in Paragraph 31, you make the point that
11 these Contracts are linked functionally; correct?

12 A. Yes.

13 Q. So just to summarize -- let me know if you agree
14 with me -- linked contracts are each an individual
15 contract, nevertheless, they should be read together
16 because they are functionally linked; is that correct?

17 A. Yes.

18 Q. Okay. The reason I ask, relates to Paragraph 32
19 of Claimants' Rejoinder. We'll show you that now. Sorry.
20 It goes through the next page, so we want you to be able to
21 read it all.

22 A. Yes.

23 Q. Claimants are using your linked contracts' theory
24 to argue that they are parties of the STA; correct?

25 A. Well, it says what it says. And I will not --

1 Q. I'm asking you what it says.

2 A. I can read it for you.

3 Q. Does the heading say "Renco and DRRC are explicit
4 Parties to the STA"?

5 A. Yes. And I agree that they are Parties to the
6 STA.

7 Q. I understand.

8 And they are supporting this argument using your
9 linked contracts' theory; correct?

10 A. I'm not sure they're using it to support, but
11 it's not an argument to support. It shouldn't be an
12 argument to support because it is the same contract, not
13 linked contracts.

14 Q. Got it. Following up on what you just mentioned,
15 if the Renco Guaranty and the STA were linked
16 Contracts -- and I know that's not your argument --

17 A. Yes.

18 Q. -- they would be individual contracts?

19 A. Yes. That would have to be read together.

20 Q. Sure.

21 A. And you would need to understand what that means
22 and what the effects of that are. But they are not --

23 (Interruption.)

24 A. They are not linked contracts; they are the same
25 contract.

1 Q. I'm going to take you to JAP-73. We'll start
2 with the title page so that you know what document I'm
3 referring to before we get into it.

4 A. Yes.

5 Q. This is a workbook by Walter Humberto Vasquez
6 Rebaza; correct?

7 A. Yes.

8 Q. And you cited it to support your argument that
9 the restructuring documents and the Contract are linked
10 contracts?

11 A. Could you reference, please.

12 Q. Sure.

13 A. I have to see how the quote is used.

14 Q. Sure. Paragraphs 29 through, roughly, 31 of your
15 Second Report.

16 A. Second Report?

17 Q. Yes.

18 A. Second Report. Yes. Okay. Okay. Yes.

19 Q. I'm going to take you to the top of Page 11 of
20 this Authority, the first paragraph. Take a look. In the
21 parenthetical, the authority states that each contract in
22 the group has its own identity distinct from that of other
23 members of the group; correct?

24 A. Yes.

25 Q. And that supports your position that each

1 contract in a linked contract group is individual; correct?

2 A. Yes.

3 Q. And now we're going to show you the bottom of
4 Page 12.

5 A. Yeah.

6 Q. And this supports the argument that you make,
7 that many times in a complex economic program, Parties turn
8 to multiple contracts to execute that economic program;
9 correct?

10 A. Well, yeah. It's a statement of Mr. Vásquez that
11 I haven't quoted, but that's what he's saying.

12 Q. Right. But you would agree with this?

13 A. Not necessarily. I mean, linked contracts are an
14 institution, so may exist. Also, you have complex
15 contracts. That is an institution that exists. It is not
16 that one is, you know, better than the other, one is more
17 prevalent than the other.

18 Q. So sometimes to execute a complex unitary
19 program, parties can do it through a, as you say -- and
20 correct me if I'm wrong -- unitary complex contract, and
21 other times they can do it through linked contracts;
22 correct?

23 A. Yes. Yes. I'll give you an example.

24 Q. Sure.

25 A. Okay. For example, the Guaranty of Perú is a

1 linked contract to the STA. The additional clause is part
2 of the STA.

3 Q. Okay.

4 A. And that is because the Parties wanted to do it
5 that way.

6 Q. I'm going to take you to Page 13. And in the
7 first paragraph, it describes what linked contracts are;
8 correct?

9 A. I don't think they have a definition. I don't
10 see the definition here.

11 Q. Okay.

12 A. I think it is speaking about classification.

13 Q. Okay.

14 A. Typology.

15 Q. Let me read one sentence. Let me know if this
16 supports your interpretation of "linked contracts." "In
17 this hypothesis, a legal transaction (contract) acts or is
18 intended to act on the legal relationship arising from
19 another legal transaction (contract)."

20 A. I have to confess, I don't totally understand
21 what he's saying there.

22 Q. Okay. We will go to the next paragraph. It
23 says: "In our view, functional linking can be divided into
24 two subcategories: (a) abstract linking and (b) concrete
25 linking"; is that correct?

1 A. That's what he's saying.

2 Q. Okay. And we are going to take you to Page 28
3 now, which, Kelby, is JAP -- sorry, is PDF 32.

4 The second to last or the last complete paragraph
5 talks about the abstract cause that we initially spoke
6 about; correct?

7 A. Yes.

8 Q. And it states: "The abstract cause or economic
9 social function is that constant and invariable
10 functionality of the contractual regulation that does not
11 take into account the concrete context or the specific
12 practical purposes pursued, even when they have been
13 assumed by both Parties"; is that correct?

14 A. Yes. That's a definition of "abstract cause."

15 Q. And you agreed earlier that each codified
16 contract has its own abstract cause; correct?

17 A. And it is kind of a tautological concept in that
18 they also have a concrete clause.

19 Q. Sure. We're going to go back to Page 13, and I'm
20 going to read the last paragraph out loud: "Abstract
21 linking brings together those groupings of contracts that
22 are linked in the abstract, that is, by their inherent
23 nature or by their abstract function (abstract cause) that
24 one of them performs in relation to the other. This is the
25 type of linking present between guarantee contracts

1 (personal or property) and the contracts from which the
2 secured credit arises."

3 Did I read that correctly?

4 A. Yes.

5 Q. Okay. Now, in your Third Report, in Paragraph 42
6 of your Third Report. We will pull it up.

7 A. Paragraph?

8 Q. 42. Actually, we can just show the two pages
9 starting on 42. You can review Paragraph 42 and the
10 subsequent paragraphs.

11 A. Umm-hmm.

12 Q. Here is your argument --

13 A. Yeah.

14 Q. -- that this Contract is, in your -- your
15 position is that it is one contract because they have one
16 cause; correct?

17 A. It is one contract because the Parties wanted it
18 that way and agreed to it that way.

19 Q. Okay.

20 Kelby, please zoom in on Paragraph 45.

21 I'm going to read the paragraph. Sorry, I mean
22 Paragraph 43. Apologies. "Francesco Misiano, a very
23 influential Italian civil jurist, explains how to
24 differentiate when Parties entered into two contracts or
25 one complex contract."

1 He explains that -- and I'll be switching to
2 Spanish now -- "the criterion to be used even in the case
3 in which the will of the Parties offers Judgment, elements
4 is as stated after the discussions in this connection the
5 cause considering as a codified element that individualizes
6 the Contract and it is a simple criterion because whenever
7 there is one sole cause, even complex, there will be unity
8 of contracts."

9 "But when there is plurality of cause, there will
10 be plurality of contracts, and it continues as it is much
11 more frequent, these are causes that are related to so many
12 other contracts that will be plurality. These nominated
13 contracts are finally plurality of nominated contracts and
14 non-nominated contracts."

15 Did I read that correctly?

16 A. Yeah.

17 Q. Okay. And in Paragraph 46, your conclusion isn't
18 that this Contract is one contract because the Parties
19 wanted it to be so. It is because you say it has one
20 cause?

21 A. Yes. And because the Parties wanted to do it
22 that way because that's what, you know, the Q&A tells us
23 and what the documents tell us about how the Contract was
24 entered into.

25 Q. That's not what you say in this paragraph.

1 A. No. It doesn't exclude the addition that I'm
2 making. It says here that they had one finality.

3 Q. Okay. I'm going to go back one to Paragraph 45.
4 You quote the Peruvian Supreme Court?

5 A. Umm-hmm. Yeah.

6 Q. And the Peruvian Supreme Court, in this quote,
7 distinguishes between simple contracts that have one legal
8 relationship and complex contracts that are made of
9 multiple legal relationships; is that correct?

10 A. It doesn't speak of multiple juridical relations.
11 It says: "Complex contracts when different factors diverge
12 and divergence and multiply different contractual forms,
13 but when only in one document." It is not correct to say
14 that it is one contract per juridical relation. That is
15 not correct.

16 Q. And a complex contract -- your position is that a
17 complex contract is one contract that contains multiple
18 juridical relationships; correct?

19 A. Yes.

20 Q. And you cited the Supreme Court Decision for this
21 proposition; is that correct?

22 A. Yes. Yes.

23 Q. We are going to pull up that decision now. That
24 is JAP-111. We'll go to the pin cite now.

25 A. Just to -- you know for clarity's sake, I'm

1 mentioning here is that in Peruvian law, the category of
2 complex contracts is recognized.

3 Q. Okay. Sorry about that.

4 A. No problem.

5 Q. You quote the sixth paragraph, the paragraph that
6 starts with "Sixth" in your Reports; correct?

7 A. Yes. Yes.

8 Q. And I'm going to start on the first part of the
9 paragraph, and I'm going to read it out loud where it
10 says: "On the subject."

11 "On the subject, it should be noted that
12 contracts are classified by their complexity to simple
13 contracts when there is only one legal relationship and
14 complex contracts when there are diverse and different
15 factors that can motivate different forms of the Contract
16 but within the same document, that is, when several
17 contracts are grouped together but contained in one."

18 Is that correct?

19 A. That's what it says. Yes.

20 Q. And that's the part that you quoted?

21 A. Yes.

22 Q. And then the following sentence you did not
23 quote; is that correct?

24 A. Yes.

25 Q. And it says: "Inside the latter type of

1 contracts, we find contextual contracts (the figure of
2 which has been maintained by the appellant) in which having
3 absolute autonomy between them, they are found in the same
4 document but none of them influences another, i.e., they
5 are independent of the other, each having its own legal
6 rules."

7 Is that correct?

8 A. Yeah. That's what it says. Yes.

9 Q. Okay. Thank you.

10 MR. RODRÍGUEZ: I think we can take our lunch
11 break now, if that's okay with the Tribunal.

12 PRESIDENT SIMMA: I really think that lunch break
13 is highly deserved. This was a difficult exchange but
14 impressive, of course.

15 Okay. So how much more time will you need after
16 the lunch break?

17 MR. RODRÍGUEZ: I think I'll need most of the
18 rest of the afternoon with Mr. Payet.

19 PRESIDENT SIMMA: You will?

20 MR. RODRÍGUEZ: I think I'll need most of the
21 rest of the afternoon with Mr. Payet.

22 PRESIDENT SIMMA: Okay. Thank you very much.

23 Let's meet again at 5 to 2:00. 5 to 2:00.

24 MR. PEARSALL: Mr. President, one little bit of
25 housekeeping, the, you know, unfortunate consequence of

1 Mr. Payet bridging the lunch gap means that Mr. Payet will
2 be dining alone today. If you can instruct the witness
3 that he's not to speak to anyone during this time, that
4 would be helpful.

5 PRESIDENT SIMMA: I was going to tell you that
6 you are probably going to be the only person here. You
7 have a free lunch in the sense of not being bothered by
8 legal, you know, just stemming from that great exchange you
9 had. So enjoy your free lunch, free of any legal.

10 THE WITNESS: I will do that, Mr. President.

11 PRESIDENT SIMMA: And you know what it means,
12 legally speaking?

13 THE WITNESS: Absolutely.

14 PRESIDENT SIMMA: Okay. Thank you.

15 MR. FOGLER: Mr. President, we have already
16 advised our witness that he is going to be isolated and
17 that we are not going to speak with him about any of the
18 issues. So he is already aware of that.

19 PRESIDENT SIMMA: I just thought that "free
20 lunch" would sound a little bit better than "isolated."

21 MR. FOGLER: Indeed.

22 PRESIDENT SIMMA: Okay. Have a good lunch.

23 (Whereupon, at 12:51 p.m., the Hearing was
24 adjourned until 1:55 p.m., the same day.)

25 AFTERNOON SESSION

1 PRESIDENT SIMMA: Good afternoon. I think we are
2 ready to continue the examination of Mr. Payet, and I give
3 the floor to Mr. Rodriguez for -- what is it? The rest of
4 the afternoon.

5 MR. RODRÍGUEZ: We'll do our best to make sure it
6 is not too extensive.

7 PRESIDENT SIMMA: You have the floor now.

8 MR. RODRÍGUEZ: Thank you, Mr. President.

9 BY MR. RODRÍGUEZ:

10 Q. Mr. Payet, we are going to show you Article 1435
11 of the Peruvian Civil Code on the screen. Please review it
12 and let me know when you're done.

13 A. Yes.

14 Q. This Article governs the assignment of
15 contractual positions in a contract; correct?

16 A. Yes.

17 Q. And an assignment of contractual position under
18 Peruvian law is when an original Party to that contract
19 transfers its position as Party to a third party to that
20 contract; correct?

21 A. Yes.

22 Q. If I could have you focus on the last paragraph.
23 I'm going to read it, and I'm going to ask you if I've read
24 it correctly. "If the agreement of the assigned Party had
25 been provided prior to the Agreement between the assignor

1 and the assignee, the Contract shall only be effective from
2 the moment that said Agreement has been communicated to the
3 assigned Party, in writing, of a certain date."

4 Did I read that correctly?

5 A. Yes.

6 Q. You would agree that the last paragraph
7 identifies three different subjects?

8 A. Yes.

9 Q. The first one is the "assigned party"; correct?

10 A. Yes.

11 Q. I'm going to switch to Spanish just to confirm
12 that we understand who those Parties are.

13 A. Okay.

14 Q. That party is "el cedido" (in Spanish); correct?

15 A. "El cedido" (No translation.)

16 Q. So the assigned Party is the original Contracting
17 Party who remains in the original Contract; correct?

18 A. Yes. Yes.

19 Q. The next Party it identifies is the assignor;
20 correct?

21 A. Yes.

22 Q. In Spanish, the assignor is the "Cedente";
23 correct?

24 A. Yes.

25 Q. And that is the Party who transfers its

1 contractual provision to a third party; correct?

2 A. Yes.

3 Q. And the last Party identified is the assignee;
4 correct?

5 A. Yes.

6 Q. In Spanish, that Party is "el Cesionario";
7 correct?

8 A. Sí. Yes.

9 Q. And that is the Party that is not a party to the
10 original Contract, who replaces the assignor; correct?

11 A. Yes.

12 Q. And the consent of the assignor, the assignee,
13 and the assigned Party are all necessary for an assignment
14 of contractual position to exist; correct?

15 A. Yes.

16 Q. And if the consent of one of them does not exist,
17 the assignment does not exist; correct?

18 A. Yes. It can have effects, let's say, between the
19 assignor and the assignee, obligatory effects, maybe, but
20 you would need the consent of the other party to make it
21 effective.

22 Q. Of the party that remains in the Contract?

23 A. Yes. Yes.

24 Q. Now, I understand your position to be that there
25 are five Parties to the STA, and I'll list them, and let me

1 know if I have them right.

2 A. Yes.

3 Q. The Party identified as Centromín?

4 A. Yes.

5 Q. The Party identified as the Investor, the Party
6 as identified as the "Company"?

7 A. Yes.

8 Q. "Renco" and "DRRC"; is that correct?

9 A. Yes.

10 Q. Okay.

11 A. Yes.

12 Q. And you're aware that DRP assigned its
13 contractual position in the STA as "investor" to another
14 Renco Group entity in 2001; is that correct?

15 A. Yes.

16 Q. For purposes of that assignment, under your
17 theory, DRP was the assignor; correct?

18 A. Yes.

19 Q. And the other Renco Group entity, which I can
20 represent is DR Cayman --

21 A. Yes.

22 Q. -- was the assignee; correct?

23 A. Yes.

24 Q. And under your theory, the assigned Parties were
25 Renco, DRR, the Company, and Centromín; correct?

1 A. Yes.

2 Q. And if Claimants were Parties to the STA, that
3 assignment would not exist without their consent; correct?

4 A. Yes.

5 Q. And you're aware that Centromín assigned its
6 contractual position in the STA to Activos Mineros in 2007;
7 correct?

8 A. Yes.

9 Q. For purposes of this assignment, under your
10 theory, Centromín was the assignor; correct?

11 A. Yes.

12 Q. And Activos Mineros was the assignee?

13 A. Yes.

14 Q. And the assigned Parties were Renco, DRR, the
15 Company, and the Investor; correct?

16 A. Yes. Yes.

17 Q. And if Claimants were Parties to the STA, the
18 assignment would not exist without their consent; correct?

19 A. Yes. I would like to clarify that the assignment
20 does exist.

21 Q. Okay.

22 A. The assignment Agreement does exist. I think
23 what -- once you say is whether it's effective --

24 Q. Okay.

25 A. -- from a legal point of view.

1 Q. Okay.

2 A. There is a document and a Contract called
3 "assignment," and has been done and signed by the entities
4 that you referred to. You're speaking about, let's say,
5 validity of --

6 Q. Okay.

7 A. -- the Agreement.

8 Q. Thank --

9 A. Or effectiveness of the Agreement.

10 Q. Thank you.

11 For -- I understand the distinction under law.
12 For practical purposes, the effect of whether it's a
13 question of validity or ineffectiveness, in both
14 circumstances, is that it doesn't happen; correct? The
15 assignment? The Party's -- Party position isn't
16 transferred?

17 A. As a full assignment, it wouldn't be effective.

18 Q. Okay. You're aware that both Activos Mineros and
19 Dr. Varsi argue that there is no evidence of Claimants'
20 consent to either of these assignments; correct?

21 A. I haven't seen the -- you know, the -- I don't
22 recall the argument made in a document, but if you tell me
23 that's the case, well, that should be the case.

24 Q. Okay. And since you don't recall the argument
25 made in the document, you never addressed this argument in

1 your Reports; correct?

2 A. The -- I'm not -- I don't think I discussed that
3 point. I don't think so.

4 Q. Okay. Great.

5 A. Maybe it is in some paragraph, but I'm not sure.

6 Q. Okay.

7 A. What I can tell you is --

8 Q. To the --

9 A. -- and I think it is in some paragraph in the
10 Report, but what I can tell you is they should have
11 intervened. From my point of view, they should have
12 intervened because they were parties.

13 Q. But from a legal point of view, if --

14 A. That vitiates the -- let's say the assignments
15 have a problem.

16 Q. Sure. Has anyone ever alleged, to the best of
17 your knowledge, that these assignments are not effective?

18 A. Not to my knowledge.

19 Q. If they were, Activos Mineros would not be a
20 contracting party; is that correct?

21 A. Not necessarily. I mean, the relationship
22 between Activos Mineros and Centromín is more complex than
23 just an assignment because it's a relation created by
24 public law. There are special decrees and rules for that.

25 Q. Okay.

1 A. So I've made no analysis and Opinion of that in
2 my Report, but I can tell you it's not just a contractual
3 assignment.

4 Q. Okay. I'm going to take you to Exhibit R-284,
5 which is Centromín's assignment of its contractual
6 position.

7 A. Umm-hmm.

8 Q. I'm going to take you to Clause 3 and zoom in.
9 And I'm going to read Clause 3.1. Let me know if I've read
10 it correctly.

11 A. Umm-hmm.

12 Q. "By means of this document, and in accordance
13 with the provisions of Articles 1435, 1439 of the Civil
14 Code, Centromín assigns its contractual position in the
15 Share Transfer Contract to Activos Mineros. Therefore,
16 Activos Mineros assumes the rights and obligations that
17 correspond to Centromín in the abovementioned Contract."

18 Is that correct?

19 A. Yes.

20 Q. And in Clause 3.3, it says: "In accordance with
21 the provisions of Clause 10 of the Share Transfer Contract,
22 Doe Run Perú, the Company, and Doe Run Cayman, Limited, the
23 Investor, have granted their consent in advance for
24 Centromín to be able to assign its contractual position
25 when it deems it appropriate. As a result, the

1 intervention of the Company and the Investor in this
2 Contract are not necessary."

3 Is that correct?

4 A. Yes. That's what it says.

5 Q. There is nowhere in this document that discusses
6 Renco or DRRC's consent, is there?

7 A. No. And -- yes. You're correct. The thing that
8 you see and -- is that, if you look at the STA, the STA has
9 some provisions, including the authorization for
10 assignment, which I think is Section 10 -- that do not
11 mention DRR and Renco as Parties. And from my point of
12 view, that's a defect in the Contract. It's an
13 inconsistency in the Contract.

14 Contracts are never perfect. In my 30 years of
15 experience, I've never written a perfect contract, I've
16 never seen a perfect contract. Normally, people don't
17 realize that because contracts are not litigated, but when
18 they're litigated, you know, the defects of the Contracts
19 come up.

20 If you see the original form of STA, which was
21 attached to the bidding documents; okay? -- to the original
22 bidding documents, it did not have an additional provision,
23 and it did not have Renco and DRR as Parties of that
24 Agreement. That happened afterwards. It happened during
25 the Q&A. At some point in time, the Government says Renco

1 and DRR have to be Parties of the Agreement, have to sign
2 the STA.

3 So in order to make them Parties of the STA, they
4 put the additional clause into the Agreement, but they
5 didn't change all the Agreement. So there's a -- there are
6 inconsistencies, for example, this question of assignment
7 of contractual position.

8 Q. Renco is a sophisticated Party; correct?

9 A. Yes.

10 Q. And so is DRRC; correct?

11 A. Yes.

12 Q. Is it your testimony that they forgot to insert
13 themselves in Clause 10 of the STA?

14 A. I don't know.

15 Q. Okay. Now, you're talking about an imperfection
16 in the Contract.

17 A. Yes.

18 Q. Is it your testimony that it's a mere
19 imperfection that Renco and DRRC are not present in
20 Clause 10 of the STA?

21 A. No. What I'm trying to explain is why there's
22 these inconsistencies in the Agreement.

23 Q. What about here? Is there an inconsistency here,
24 in that Renco and DRRC are not mentioned?

25 A. From my view, them being Parties, they should

1 be -- I mean, they could grant their authorization in other
2 document, or in another moment, but they should grant
3 authorization.

4 Q. You haven't seen any such document?

5 A. I haven't seen any such document.

6 Q. I'm going to show you Exhibit R-4. I'll
7 represent to you that that's DRP's assignment of
8 contractual position. This is Clause 1.3 of DRP's
9 assignment of contractual position. In the first
10 paragraph, it identifies Centromín, the Investor, and the
11 Company as Parties to the STA; correct?

12 A. It says it was signed by Centromín, Doe Run as
13 Investor, and Metaloroya as the Company receiving the
14 investment.

15 Q. It said was entered into; correct?

16 A. It says the Contract was entered into
17 by -- et cetera.

18 Q. And the next paragraph talks about the consent;
19 correct?

20 A. Yes.

21 Q. Consent for assignment of contractual position?

22 A. Yes.

23 Q. And it only identifies Centromín and Doe Run Perú
24 as granting that consent; correct?

25 A. Yes.

1 Q. There's nowhere in this document that identifies
2 Renco or DRRC's consent, is there?

3 A. It only mentions Centromín.

4 Q. And Doe Run Perú?

5 A. No. Centromín granted Doe Run Perú the consent.

6 Q. You're right.

7 A. So it only mentions --

8 (Interruption.)

9 A. Centromín. It doesn't, for example, mention
10 Metaloroya.

11 Q. That's, I think, one of those imperfections you
12 were talking about.

13 (Overlapping speakers.)

14 (Interruption.)

15 Q. I think that's one of those imperfections you
16 mentioned?

17 A. Contracts are imperfect.

18 Q. But we know from Clause 10 that the Company did
19 provide its consent in -- ahead of time?

20 A. Yeah, I don't have it in my mind, but if you say
21 that it is in 10, it should be in 10. We can look at 10,
22 but yeah.

23 Q. Yeah, feel free.

24 A. Yeah, for the purpose of the argument, yes.

25 Yes. There it is.

1 Q. Okay.

2 A. The Investor and the Company authorized
3 Centromín, and the opposite also, yes.

4 Q. Right.

5 A. Correct.

6 Q. Okay. Now, the STA is a Share Purchase Contract;
7 correct?

8 A. No. It's much more than that.

9 Q. Okay. Well, it's, at minimum, a Share Purchase
10 Contract?

11 A. It's a complex Contract. It has many other
12 things.

13 Q. Okay. Now, let me to take you to Paragraph 15 of
14 your First Report.

15 A. Yes.

16 Q. How do you describe -- well, let me correct this.
17 In the first sentence, you address that the
18 assumption and distribution of risks between the Parties to
19 a Share Purchase Contract is essential; correct?

20 A. I haven't said it's essential. I have
21 said -- yeah, sorry, essential. I would say the essential
22 part, because you could have a contract without that, but
23 it's not normal.

24 Q. Sure. Right. So the reason you explain this is
25 because, at least, in part, the STA is a Share Purchase

1 Contract, even if it has other attributes?

2 A. It's a -- it's an M&A Contract. Okay? Because
3 in an M&A deal, what you're transferring in the end is an
4 enterprise, and you can just use different ways to transfer
5 it. For example, just to clarify why I'm insisting on
6 this, what is more important in the STA? The transfer of
7 Shares or the issuance of new Shares?

8 Q. Okay.

9 A. Because it's not only a transfer of Share. It's
10 not only a sale. It's an investment of Doe Run into
11 La Oroya, into Metaloroya, and that's \$126 million. So
12 which was more important? The transfer or the issuance of
13 new Shares? And the issuance of new Shares is not a
14 transfer of Shares. The counterparty of Doe Run in the
15 issuance of new Shares is not Centromín, it's Metaloroya.
16 So it's more complex. It's much more complex.

17 Q. Okay. How about this? We can agree that in this
18 Contract the assumption and distribution of risks is an
19 important part of this Contract?

20 A. Yes.

21 Q. Okay. That is the function of Clauses 5 and 6 of
22 the STA?

23 A. Yes. Probably there is more clauses, but that's
24 the crux of it.

25 Q. Now, in your direct examination you talked about

1 the concept of assumption of liabilities; correct?

2 A. Yes.

3 Q. Okay. I'm going to take you to the paragraphs
4 where you discuss the concept of assumption of liability.
5 It's Page 42.

6 A. Yes, yes. I'm looking at that.

7 Q. That's -- just for the record, Paragraph 15 of
8 your First Report -- sorry, Paragraph 154 and the following
9 of your First Report.

10 In Paragraph 155, you explain that Clauses 5
11 and 6 don't establish a compensation clause in favor of any
12 individual, in particular; correct?

13 A. Yes, that's what it says.

14 Q. And, instead, what these clauses do, according to
15 you, is determine that Centromín will maintain in its
16 equities the liabilities described in Clauses 5 and 6;
17 correct?

18 A. Yes.

19 Q. And that is the assumption of liability that you
20 were talking about; correct?

21 A. It's not only that. It's all the liabilities
22 in 5 and 6, which include the old liabilities, the PAMA
23 liabilities, and the post-PAMA liabilities. Some of them
24 are future; so maybe "retained" is not exactly the word,
25 because some that are retained and some are just, you know,

1 assumed. But that's the effect. That's the idea, yes.

2 Q. Okay. And this assumption of liability is
3 specific to Clauses 6.2, 6.3, 5.3, and 5.4; correct?

4 Take your time to review.

5 A. So it's Clause 5.1.

6 Q. Okay.

7 A. 5.1 is because it's referred to in the other
8 clauses, you know. It's -- but it's 5.1, 5.2, 5.3, 5.4,
9 all the 5s. And then 6, 6.1, et cetera. Yep, all the way
10 to 6.5.

11 Q. I just want to make sure that I understand.

12 You're including Clause 6.5 in your assumption of
13 liability?

14 A. 6.5 is the part of the cross-indemnity provision.
15 Okay? That's all this -- if you want to speak strictly
16 where -- which clauses create -- I think 6.5 and the mirror
17 are like ancillary provisions. They're not the main.
18 Okay? The main is the assumption, and the assumption is
19 done, essentially, in, I would say, it's the introduction
20 to 5, La Empresa assumed responsibility, the Company
21 assumes liability, only in the following aspects.

22 And then for 6, which is Centromín, it's starting
23 with 6.1, Centromín assumes the responsibility of the
24 following aspects -- and then it goes. This Part that is
25 remediation, and the other part is third-party Claims, and

1 the responsibility before third parties.

2 Q. Okay. You would agree that Clause 6.5 contains
3 an indemnity obligation that is --

4 A. Yes.

5 Q. -- limited to the Company; correct?

6 A. Yes.

7 Q. Okay. So Claimants are not alleging a breach of
8 Clause 6.5; correct?

9 A. Not that I know of.

10 Q. So the indemnity obligation has to come from
11 something other than Clause 6.5; correct?

12 A. Yes.

13 Q. And that is in Clauses 6.2 and 6.3; correct?

14 A. It's in the provisions in the Contract plus the
15 Civil Code.

16 Q. Okay. And they're also alleging a breach of a
17 defense obligation; correct?

18 A. Yes.

19 Q. And you understand that, under Clause 8.14, there
20 is a defense clause in the Contract; correct?

21 A. Yes.

22 Q. But that clause is limited to the Company or the
23 Investor; correct?

24 A. Yes.

25 Q. So they're not alleging a breach of Clause 8.14;

1 correct?

2 A. I cannot certify what they are alleging. My
3 understanding is they are -- I'm not alleging that --
4 (Overlapping speakers.)

5 Q. Okay. Where does the defense obligation that
6 they are alleging arise from, in your view?

7 A. From the assumption of liability.

8 Q. Okay.

9 A. When you assume a liability, you take it upon
10 yourself to comply with that obligation. When you assume a
11 claim, because it is not only says "liabilities" but it
12 also says "third-party claims," what is the meaning of
13 "assumed claim" if it's not going and defending the Claim
14 because you have to go -- it becomes your own. And that's
15 why good faith is important, because when you read the
16 Contract, and the Contract says "assume" you have to
17 determine what "assume" means in good faith.

18 Q. Okay. So I just want to summarize to make sure
19 that I understand the position. There is a way of getting
20 indemnity and defense from Centromín that does not go
21 through Clause 6.5 and 8.14?

22 A. Yes.

23 Q. And to get that, you would have to go through
24 Clause 6.2 and 6.3, if it's a third-party claim?

25 A. You have -- I think that there are two -- let's

1 say 6.2, 6.3, et cetera, 5, 5.1, 5.9, et cetera, those make
2 the allocation of liabilities. Okay? And the allocation
3 of liabilities has effect for me. They have effect, and
4 one of effects that they have is that they make
5 Centromín/Activos Mineros liable for those
6 responsibilities. Liable for those responsibilities, it
7 makes them the debtor to the third-party Claimant.

8 So when it does that, you have to determine, from
9 a construction point of view, what is the effect of that?
10 What does that mean "to assume"? So you could say "to
11 assume" means nothing. "To assume" is not to assume. It's
12 only like a definition for the purposes of a
13 cross-indemnity provision. Okay? So that's the end.
14 That's the utility of "assumption."

15 I don't agree with that. I say, to assume is to
16 assume. It's to take upon yourself, to make yourself
17 responsible for that. Does that include defense? In my
18 opinion, yes. If you assumed a claim, then you have to go
19 and defend it, because that's, in good faith, the
20 consequence of assuming a claim.

21 Q. Okay. Thank you.

22 Just so that I understand, when you say "a
23 definition," right? If you interpret the "assumption of
24 liability" as a definition, is what you mean -- and correct
25 me if I'm wrong -- that it is merely just identifying or

1 enumerating the situations in which one Party or another is
2 responsible?

3 A. Yes. You could say -- instead of assumption, you
4 could call it bucket 1, bucket 2, bucket 3, and then
5 indemnity.

6 Q. Right.

7 A. If you get sued by bucket 1, we'll pay it.

8 Q. Right. And that is not the way that you
9 interpret these clauses?

10 A. No, no. That is not the way I interpret.

11 (Interruption.)

12 Q. You interpret these clauses?

13 A. No, I don't interpret them like that.

14 Q. Okay. So there is one way to obtain indemnity,
15 which is through the assumption of liabilities in
16 Clauses 6.2, 6.3, as you interpret them, and the Civil
17 Code?

18 A. Yes, or to seek enforcement.

19 Q. Right. And another way is Clause 6.5 and 8.14,
20 but that's limited to the Company; correct?

21 A. I don't know if it's another way or if it has a
22 different nature. What I would say is that, in the case of
23 Renco and DRR, I agree that there's no express
24 cross-indemnity provision and there's no express defense
25 clause. I agree with that.

1 Q. I'm going to pull up Paragraph 166 of Claimants'
2 Statement of Claim. I'm going to read, starting at the
3 second sentence which begins with "the plain text." That
4 might be the third sentence. "The plain text of Clause 6
5 establishes that Centromín undertook two different and
6 somewhat overlapping types of obligations with respect to
7 potential third-party damages and claims. An assumption of
8 liability for third-party damages and claims, regardless of
9 which entity associated with the Renco Consortium the
10 third-party should decide to sue, and, two, an obligation
11 to indemnify the Company, i.e., Metaloroya or DRP after the
12 merger of Metaloroya and DRP for any damages, liabilities,
13 or obligations arising from such claims. Centromín's
14 assumption of liability for third-party damages and claims
15 under Clauses 6.2 and 6.3 extends to anyone who could be
16 sued by a third party for damages falling within the scope
17 of the assumption of liability."

18 Did I read that correctly?

19 A. Yes.

20 Q. Do you agree with that interpretation?

21 A. Yeah, in general, I agree. I mean, it's not my
22 wording, and maybe there are nuances, but, yes, I mean, for
23 me, the concept is, in Sections 5 and 6, you have an
24 assumption of liability which is the liability allocation,
25 and that has certain effects that authorizes Renco and DRR

1 to enforce against Activos Mineros/Centromín or to seek
2 indemnity for noncompliance of those obligations. And on
3 the other hand, there is also a clause that is 6.5 that has
4 an express obligation to indemnify.

5 Q. Okay. And going back to Paragraphs 155 and
6 subsequent paragraphs of your Report -- and you can take a
7 look.

8 Do you cite any authority of Peruvian law to
9 support your reading of the phrase "assumption of
10 liability" or "assumption of responsibility"?

11 A. No, I don't.

12 Q. Okay. I'm going to take you to Dr. Varsi's First
13 Report, and we're going to look at Paragraphs 5.67 and
14 5.68.

15 Give them a look and let me know when you're
16 done, please.

17 A. You want me to read 6.7 and 6.8 or only just 6.7?

18 Q. Yes. Both, just for your context.

19 A. Yes, I've read it.

20 Q. And, obviously, Dr. Varsi disagrees with your
21 interpretation of Clause 6 and 5; correct?

22 A. No. No-no. I think he half-agrees and has a
23 minor discrepancy.

24 Q. Okay. Let's go point by point and see where the
25 disagreement is.

1 A. Yeah, so for example, he says Clauses 6.2 and 6.3
2 of the Contract are responsibility distribution clauses and
3 not indemnity and defense clauses. I agree with that
4 totally. That's the same thing I'm saying.

5 Q. He disagrees with you on whether those clauses
6 merely enumerate responsibility that are then triggered
7 by --

8 A. No-no.

9 Q. Sorry, can I finish?

10 A. Yes. I'm very sorry.

11 Q. Is it your testimony that Dr. Varsi interprets
12 Clause 6.2 and 6.3 in the same way that you do?

13 A. Well, let -- if I may try to explain where I
14 think is the difference and why I think that my position is
15 the correct one.

16 Q. I'm happy for you to do it. I just want to work
17 through the clauses first, if that's okay.

18 A. Yes.

19 Q. Okay.

20 A. So what would be your question?

21 Q. So under Paragraph 5.68, Clauses 6.2 and 6.3
22 distribute responsibility; correct?

23 A. According to 5.67, that's what he says, and I
24 agree with that.

25 Q. Yes. Okay.

1 And Dr. Varsi says that Clauses 6.5 and 8.14
2 contain the relevant indemnity and defense obligations;
3 correct?

4 A. He said that they contain -- yeah, indemnity of
5 defense -- I would not say he says the word "relevant."

6 Q. Okay. So let me read the last sentence in
7 Paragraph 5.68. "Clauses 6.5 and 8.14 are limited to the
8 Company and do not cover Renco and DRR. By virtue of a
9 systematic interpretation of Clauses 6.2 and 6.3, it should
10 be concluded that, as with 6.5 and 8.14, those clauses are
11 also limited to the Company."

12 A. Yes. I don't agree with that.

13 Q. Correct. He, in these paragraphs, is identifying
14 clauses that have different functions; correct?

15 A. He is making an argument that I think is not
16 correct.

17 Q. I promise we will get to -- I will let you answer
18 why you think it's incorrect. I just want to establish
19 what the difference is first, and then you can explain why
20 you disagree with him.

21 A. Okay. So what is your question?

22 Q. He does not consider that Clauses 6.2 and 6.3
23 contain an assumption of liability as you have defined it;
24 correct?

25 A. No, I think that is not correct. He says 6.2 and

1 6.3 are responsibility distribution clauses and not
2 indemnity or defense clauses. That's the same thing I'm
3 saying. He's saying -- I am saying those are
4 responsibility distribution clauses.

5 Q. Where do you think the disagreement is then?

6 A. Okay. The disagreement is that what Mr. Varsi
7 says is this: There is no figure of assumption of
8 liability clauses in Perú. So he says it is the Parties
9 that must shape the obligations arising from said clauses.

10 So what he's saying is, if you say, "I assume a
11 liability," and you don't put more things into more wording
12 into that provision, then it's not effective. And
13 that -- I think that's plain wrong, plain wrong. If a
14 party says in a contract, "I assume a liability," and
15 you're the interpreter, you have to think that they did it
16 for a purpose, and you have to try to understand it. If
17 there's a gap in the Contract, you have to fill it. That's
18 good-faith interpretation. You cannot just say, "oh, no, I
19 would need three more paragraphs to try to understand
20 this," and that's what he's saying. He's taking effect out
21 of that because it's not more detailed, and that's plain
22 incorrect for me.

23 Q. Okay. Thank you.

24 I'm going to show you Paragraphs 5.70 through
25 5.72 now. Please review them and let me know when you're

1 done.

2 A. Could I see 69? Because he says, "this
3 interpretation would leave it meaningless," but I don't
4 know what interpretation he is speaking of.

5 Q. Yes. Of course.

6 A. Okay. Yeah. Okay. Could I please read the
7 before one?

8 Q. Of course. Sure.

9 A. Okay. Yes. Yes.

10 Q. Let's go back to the following page.

11 A. Yes.

12 Q. I just want to be clear that Dr. Varsi interprets
13 Clauses 6.2 and 6.3 as merely enumerating the situations of
14 responsibility, and the consequences of that responsibility
15 are identified in 6.5 and 6.3.

16 A. So that's why I say he thinks there are
17 definitions.

18 Q. If you want --

19 A. The assumption provisions in the Contract are
20 definitions.

21 Q. I'm happy to use that term.

22 So under Dr. Varsi's theory, Clauses 6.2 and 6.3
23 merely allocate responsibility or identify the situations
24 in which -- let's say enumerate, if that's
25 easier -- enumerate the situations in which Centromín is

1 responsible and the Company is responsible, but not -- but
2 don't contain any indemnity or defense obligations absent
3 6.5 and 8.14; is that correct?

4 A. Let me -- let me try to phrase it in my own
5 words. Okay.

6 First of all, I think he doesn't have it totally
7 clear in the Report. I respect very much Dr. Varsi. He's
8 a friend, we will have lunch when we go to Lima, but I have
9 to say that I don't -- I think he's a little contradictory
10 here. Okay. Because there's, I think -- could you go up a
11 little bit.

12 Q. Sure.

13 A. In this. Yeah. 67, 5.67, please. Okay.
14 Because, look at this. Clauses 6.2 and 6.3 of the Contract
15 are responsibility distribution clauses and not indemnity
16 or defense clauses. That doesn't mean they are
17 definitions. He said they're responsibility distribution
18 clauses, it means they allocate responsibility. They said
19 what belongs to whom and what belongs to whom.

20 Q. Okay.

21 A. Okay. That has effects in the legal world. That
22 has legal effects.

23 Q. Okay.

24 A. It makes one Party obligated for something. So
25 when you say he says this is just "definitions,"

1 which -- that is not the case because, if there are
2 responsibility distribution clauses, they have effects,
3 which is what I say. They're assumption of liability
4 provisions. Okay.

5 So what I think is the difference is that what he
6 says is they cannot work by themselves. That's what he's
7 saying. They cannot work by themselves. You need to
8 have -- as he says here -- it is the Parties that must
9 shape the obligations arising from said clauses. I don't
10 agree with that. I say -- that's why I said it's difficult
11 to read 5 and 6. It's not easy. For interpreter, very
12 difficult, but you have to derive a meaning from that.

13 So if party says, "I assume liability," it's not
14 the same as saying, "bucket 1 is composed by these
15 liabilities." It's not the same.

16 If they say it's assumed liability, that has
17 normative content that creates obligations, and you need to
18 determine which those obligations are. So Varsi says they
19 don't work alone, they need, you know, 6.5 and 8.14 to
20 work. I don't agree with that, because the fact that you
21 have 6.5 and 8.14 does not abrogate your legal rights.
22 That cannot be interpreted "contrato conexo." You cannot
23 say that if I grant a right to you, I'm taking one from
24 Patrick. That's not a valid argument in law.

25 So if they have 6.5 and 8.14, good. Does that

1 abrogate 1219 of the Civil Code for anybody else that is a
2 party to this Agreement? No.

3 Q. Okay. So if I understood you correctly, the
4 disagreement is that you read Clauses 6.2 and 6.3 as the
5 assumption of liability as you have defined it; whereas,
6 Dr. Varsi reads them as just the definition as you have
7 defined it or enumerating?

8 A. No. No. Because I'm reading his Report, and
9 he's saying 6.2 and 6.3 of the Contract are responsibility
10 distribution clauses. And that, for me, means they're
11 assumption of liability clauses, and they have a legal
12 meaning and effect. The thing is, what he says after, for
13 me, is not correct, that he says they cannot work by
14 themselves. They need a procedure. They need an express
15 indemnity, and the fact that you have an express indemnity
16 for Peter means that you are not liable to John. That's
17 not correct.

18 Q. Okay. I'm going to represent to you that Activos
19 Mineros's position is that Clauses 6.2 and 6.3 merely
20 identify the situations which would be -- I'm just
21 representing to you our position --

22 A. Okay sure.

23 Q. -- would be Centromín's responsibility and which
24 ones would not. And I'm going to represent to you that
25 Activos Mineros's position is that the first consequence of

1 that allocation is found in Clause 6.5. And I'm going to
2 represent to you that the second consequence is found in
3 18.14, according to Activos Mineros. Okay.

4 That position you disagree with?

5 A. Yes.

6 Q. Okay. We're going to show you Exhibit JAP-9.
7 This is an article written by you on contracts, Share
8 Purchase Agreements; correct?

9 A. Yes.

10 Q. And in this article, you discuss some clauses
11 that allocate risk; correct?

12 A. Yes. Please take me to it.

13 Q. Sure. Well, for instance --
14 (Overlapping speakers.)

15 Q. Please read the introductory paragraph. Go back
16 to the first page.

17 A. Yes. Correct.

18 Q. Okay. And one of those types of clauses,
19 according to the first paragraph, is, for instance, a
20 representation of warranties; correct?

21 A. Yes. Yes.

22 Q. And another type of clause is an indemnity clause
23 according, according to --

24 (Interruption.)

25 Q. The indemnity clause.

1 A. Yes.

2 Q. I think we should just ensure that we don't talk
3 over each other for the Interpreters.

4 I'm going to take you to Page 92.

5 Do you see the heading where it talks about
6 "obligation to indemnify and limits on responsibility"?

7 A. Yes. Yes. Yes. Yes.

8 Q. We're going to discuss this section, but, before
9 we do, do you want to take a guess at -- to whether you
10 describe "indemnity frameworks" as you're doing now, or as
11 Activos Mineros's interprets Clauses 5 and 6?

12 A. I don't want to speculate.

13 Q. Great.

14 A. Could you just take me to the text?

15 Q. Sure. So I'm going to read from the beginning.

16 A. Okay.

17 Q. And I'll ask if I read it correctly.

18 "The regulation of the seller's obligations to
19 indemnify and the limits on its responsibility is one of
20 the central aspects of the Contract for the sale of
21 companies."

22 Did I read that correctly?

23 A. Yes.

24 Q. "As we have seen, the Contract of the sale
25 essentially fulfills a function of risk allocation between

1 the buyer and seller. Through the regulation of the
2 situations in which -- that are the seller's responsibility
3 and the establishment of monetary and temporal limits to
4 its responsibility, this Clause becomes one of the basic
5 pieces of such assignment to the point where it could
6 render illusory the protection that the buyer seeks through
7 the representations and warranties clauses"; correct?

8 A. Yes.

9 Q. I'll continue. "For this reason, this Clause is
10 often one of the most negotiated clauses in the sales
11 contract, and its content will ultimately be the closing
12 point of the risk allocation agreement between the buyer
13 and seller. As noted in comments to the American Bar
14 Association's Model Stock Purchase Agreement, the conflict
15 between the buyer's desire for protection and the seller's
16 desire not to have ongoing responsibility for a business
17 that no longer belongs to him often results in intense
18 negotiation."

19 So far, correct?

20 A. Yes.

21 Q. Okay. "As such, there is no such thing as a
22 standard set of indemnification clauses. However, there is
23 a standard set of issues that must be addressed in the
24 indemnification clauses of a contract of sale"; correct?

25 A. Yes.

1 Q. "Normally, the Contract of sale will contain an
2 exhaustive regulation of seller's responsibility and the
3 limits to it"; correct?

4 A. Yes.

5 Q. "This regulation will include, in the first
6 place, an enumeration of the situations that may give rise
7 to the seller's responsibility"; is that correct?

8 A. Yes. That is correct.

9 Q. And in the next sentence, you identify some
10 examples of that enumeration; correct?

11 A. Yes.

12 Q. And you continue -- I'm going to jump to the
13 second paragraph that starts with the word "second."

14 "Second, the Contract will set out the content of
15 the seller's obligation to indemnify." And you explain
16 some -- you elaborate on that; correct?

17 A. Yes.

18 Q. And then it says: "However, the Parties may
19 foresee that, from the occurrence of a third-party claim
20 that may give rise" -- and I'll continue. It's at the
21 bottom -- "to an indemnifiable injury, the seller shall
22 bear the Costs of the Company's defense. In this regard,
23 and also taking into account the seller's interest in
24 having an adequate defense of the Company against a claim
25 that may give rise to compensation, the Contract often

1 establishes a detailed procedure according to which the
2 buyer must notify the seller as soon as it becomes aware of
3 an event that may give rise to a compensable damage and
4 regulates the mechanisms for the defense of the Company in
5 the case of proceedings initiated by third parties."

6 Did I read that correctly?

7 A. Yes.

8 Q. And so, here, you're describing clauses with
9 three different functions, are you not?

10 A. Yes. I'm describing the typical STA.

11 Q. Okay.

12 A. Could we read the last part of the article?

13 Q. Which part specifically?

14 A. Where I speak about good faith.

15 Q. Do you have a specific page in mind?

16 A. The last two pages, or last three pages.

17 Q. Why don't we do this, you know, Claimants'
18 Counsel can discuss that with you if they want on redirect.

19 A. Okay. But just let me comment what you just read
20 because I think context is important for this.

21 Q. Okay.

22 A. And it's a big difference between what we have in
23 the STA, and that's why I said it's not a Share Purchase
24 Agreement only or mainly. Okay. I'm speaking there, and
25 you'll see I quoted the ABA, that is the Model Stock

1 Purchase Agreement. It is a typical U.S.-style SPA, where
2 you have -- what you tried to do is eliminate all law and
3 regulating the Contract. That's why you have the sole
4 remedy clause. And you have the structure where you have
5 reps and warranties and then you have express indemnity
6 because that's the U.S. structure that was, you know,
7 applied everywhere, and we apply it in Perú, and you apply
8 it in many places.

9 But there are two things that one needs to bear
10 in mind. Number one, that the legal rules are different.
11 Okay. So for example, when I put the sole remedy clause,
12 meaning there is no liability whatsoever for anything
13 except what is expressly stated in this agreement -- there
14 is no sole liability provision in the STA, by the way.
15 When I do that, I have to tell my client, "Listen, client,
16 this has a limit in Peruvian law because we cannot go
17 against mandatory provisions. For example, if there is
18 gross negligence, you're going to be liable." Okay. You
19 cannot contract against good faith. It's mandatory in
20 Perú. So that's the first thing I tell them, is we have to
21 be careful of the legal rule.

22 And second, we have the good-faith mandate, which
23 is in the last part of the article, so we should not
24 contract like we were in a vacuum or that we were
25 contracting Delaware or in New York.

1 So that, I think, is an important concept. And
2 the second concept, if you allow me please, is that -- and
3 that's something I have tried to highlight, that this is
4 not just a Sale Purchase Agreement. The Company is being
5 spun off Centromín. At the same time, if you read the Deed
6 of Transfer to Metaloroya, you're going to see that it's
7 conditioned on the STA being closed. If you read the STA,
8 you're going to see all the cross-references because it's
9 the same transaction, and that means that this is not only
10 indemnity. There has to be allocation of assets, rights,
11 and obligations, as part of that transaction. That's why
12 I'm emphasizing that the STA is a very complex contract.
13 It's not only a Share Transfer Agreement.

14 Q. I'm just going to ask you a couple of final
15 questions on this point. And we're going to go back to
16 your First Report, Paragraph 155-157.

17 A. Yes.

18 Q. So -- and I want to focus on Paragraph 156.

19 A. Yes.

20 Q. Based on your interpretation of the notion of an
21 assumption of liability --

22 A. Yes.

23 Q. -- you state that Centromín would be responsible
24 to the Contracting Parties and any third parties; correct?

25 A. What I'm saying there is that the liabilities

1 that, according to the provisions of the Contract, need to
2 be assumed by Centromín, need to be assumed fully,
3 including in the case of third-party claims.

4 Q. So if the Tribunal were sued for something that,
5 under the Contract, were Centromín's responsibility, the
6 Members of the Tribunal could sue Centromín for indemnity;
7 correct?

8 A. I don't understand how the Members of the
9 Tribunal could be sued for that.

10 Q. Let's say they are, and let's say they lose.
11 Under your interpretation, they could sue
12 Centromín to obtain indemnity?

13 A. The indemnity allocation provisions refer to
14 damages attributable to Metaloroya. So that's a start of
15 it.

16 So I don't understand how the Tribunal could be
17 sued for environmental damage attributable but -- to
18 Metaloroya. It's something that I don't understand. But
19 let's imagine Renco is sued for that.

20 Q. My question was about the Tribunal. Let's
21 assume -- it's a hypothetical -- they are sued for damages
22 that, under Clauses 5 and 6 of the STA, are Centromín's
23 responsibility.

24 A. Yes.

25 Q. And they lose. They could sue Centromín for

1 indemnity; correct?

2 A. Not for indemnity. I'm not saying here
3 indemnity. What I'm saying is that, whether against third
4 parties or against the Parties themselves, the general rule
5 is that environmental liabilities must be fully assumed by
6 Centromín. I'm not saying indemnity. I'm saying "fully
7 assumed." And let me explain a little bit my reasoning.
8 Okay.

9 Q. Before you do, the Members of the Tribunal could
10 sue Centromín and obtain compensation?

11 A. It's not compensation. Let's let me -- could I
12 explain?

13 Q. I just want to make sure I know your answer
14 before you explain.

15 Whatever it is that they could obtain, it's money
16 from Centromín?

17 A. Yes. Yes.

18 Q. And they could do that?

19 A. Yes.

20 Q. Okay.

21 A. Can I explain?

22 Q. You can explain.

23 A. Okay. So the assumption of liability means that
24 Centromín becomes responsible. Okay. And this is done,
25 remember, in -- the Contract is regulating the allocation

1 of responsibilities between Centromín and Metaloroya
2 pursuant to the spin-off. Okay. So in a spin-off, in a
3 corporate spin-off -- speaking about Corporate Law. In a
4 corporate spin-off, the patrimonial block is transferred
5 with effects, with general effects. Okay. As I explained
6 in the direct, that's very clearly stated in the Peruvian
7 Foreign Companies Act in 278, or the Peruvian Foreign
8 Companies Act. It wasn't stated in the law at that time
9 because the law that was regulating this was the Special
10 Privatization Act that had three lines about
11 reorganizations. It just habilitated State-owned companies
12 to be reorganized under the dictates of COPIC, which was
13 the entity. So, for me, this is not just a quota. It
14 creates a transfer of the obligation.

15 Now, a transfer of the obligation, of the debtor
16 part in the obligation can have -- has different types of
17 effects. For example, absolutely you have an effect for
18 Centromín that becomes liable. It has an effect for the
19 other Parties here, whoever they are, the Parties of this
20 Contract, because they can sue if they have express
21 indemnity, or whatever, or they can sue for performance
22 under 1219 of the Civil Code. And if they are not parties,
23 they would be paying somebody else's obligation, and you
24 will have to get into the analysis of whether they have
25 subrogation rights, whether they have just restitution,

1 whether they are co-liable and can access contribution.
2 That's the type of reasoning you would have to get. And
3 the reason for that is that this is not only a Sale
4 Purchase Agreement, this is a complex transaction that
5 includes a spin-off.

6 Now, my limit is I don't think it has a
7 liberatory effect vis-à-vis Metaloroya. So I don't think
8 that the Metaloroya Claimant could not sue Metaloroya.
9 Okay. I think they can sue.

10 In Perú, in a current spin-off, they cannot sue.
11 They could not -- if this was a spin-off, under the
12 Peruvian Companies Act today, they wouldn't be able to sue
13 Metaloroya because the liabilities would have been
14 transferred to Centromín. That's my reasoning.

15 Q. I appreciate that.

16 I'm going to take you to Paragraph 197 of your
17 First Report. Starting at Paragraph 197, in this section,
18 you argue that, if Renco and DRR are considered to not be
19 Parties to the Contract, they would, nevertheless, be
20 third-party beneficiaries; correct?

21 A. Yes.

22 Q. And that's a specific figure under Peruvian law;
23 correct?

24 A. Yes.

25 Q. It is a third party that the Parties to the

1 Contract have chosen to obtain some benefit from the
2 Contract?

3 A. Yes.

4 Q. If Clauses 6.2 and 6.3 encompass all third
5 parties, why would Renco and DRR need to be third-party
6 beneficiaries to obtain anything from those clauses?

7 A. Now, that -- that's neither way -- you have to
8 read the Reports. What I'm saying, if they are not parties
9 and would not be recognized in Parties, then they would be
10 third-party beneficiaries. The arguments -- there are
11 several arguments that I make in my Report. So --

12 Q. But if Clauses 6.2 and 6.3 -- if anyone can
13 claim -- any third party can claim -- right? -- under
14 Clauses 6.2 and 6.3, what is the purpose of Renco and DRR
15 being third-party beneficiaries?

16 A. Oh, oh, oh, yeah. Let me explain. It's
17 different if you are a party or you are a third-party
18 beneficiary, which is -- you have kind of the same rights
19 like you're a party. You're a creditor, than if you're a
20 third party. I speak about creditor because it's clear.
21 You're in the juridical relation in the active position.

22 So if you're a creditor, you have a package of
23 rights that is different than the rights that a third party
24 has. Okay. So for example, a creditor can seek
25 performance under 1219. So if you are a third party, you

1 cannot seek -- you can seek maybe subrogation, but you
2 cannot enforce. So that's a big difference.

3 If they're third-party beneficiaries, they could
4 directly claim, like, go and defend, go and pay.

5 Q. Okay. So entities that are not third-party
6 beneficiaries and are not parties couldn't file a
7 contractual claim; correct?

8 A. Not -- it's -- let's speak about noncontractual.
9 Like they could file a subrogation claim, for example.

10 Q. Okay. But not a breach-of-contract claim?

11 A. Not a breach of contract.

12 Q. Okay. Let's talk about subrogation then. I'm
13 going to show you Paragraph 91 of your Third Report. In
14 the second sentence, you say: "It is true that, if the
15 subrogation was configured, Renco and DRR will enter into
16 the position of the creditor, which are the Missouri
17 Claimants, vis-à-vis the debtor, which is Activos Mineros."
18 Correct?

19 A. Yes.

20 Q. Okay. I want to break this down into its parts
21 with you, please. So the first thing you need for
22 subrogation is an original debtor-creditor relationship;
23 correct?

24 A. Yes.

25 Q. And in your view, that original creditor-debtor

1 relationship would be between Activos Mineros and the
2 Missouri Plaintiffs; correct?

3 A. Yes.

4 Q. In your view that debtor-creditor relationship is
5 based on Article 1970 of the Peruvian Civil Code; correct?

6 A. No. You explained to me that that's not the
7 basis.

8 Q. So if the Missouri Claimant --

9 A. It is whatever basis -- I'm sorry. I forgot.

10 Q. If the Missouri Plaintiffs have not filed a claim
11 against the defendants in the United States under
12 Article 1970, then is it your testimony that Article 1970
13 cannot be the basis of the original creditor-debtor
14 relationship?

15 A. No. No. I'm saying -- you phrase your question
16 and you said that this is based in 1970, but now I -- I
17 understand the basis of the Missouri Claims is not 1970
18 for...

19 (Interruption.)

20 A. -- is not the basis of the claims in Missouri.

21 Q. Okay.

22 A. Now, if you look at Sections 5 and 6 of the STA,
23 they do not speak of 1970. They do not speak about what
24 the legal basis is for a claim of liability against
25 Metaloroya or against Centromín. No, they speak about the

1 timing and whether there was compliance with the PAMA,
2 noncompliance. Those are the critical aspects to determine
3 where you fall in 5 and 6.

4 So if the -- "if" some of the claims in Missouri
5 or all the Claims in Missouri, whatever, are, let's say,
6 things that are under 6.2, 5.9, et cetera, have been
7 assumed by Centromín, Centromín did not assume them, saying
8 the Missouri Claim, Centromín should say third-party claims
9 for damages attributable to Metaloroya within this
10 framework of time and upon this condition. But if it
11 overlaps with what is happening in Missouri, then those
12 Claims have been assumed by Centromín. Those liabilities
13 have been assumed by Centromín.

14 So it's part of 5 and 6 and Centromín has assumed
15 them as a matter of 5 and 6, and my thesis also on the
16 spin-off of Metaloroya are part of the transaction that
17 this documents regulate.

18 So that's basically my point. If those
19 liabilities belong from the point of view of Peruvian law,
20 of what we're reading disagreement in light of Peruvian law
21 and belong to Centromín, and for some reason they got sued,
22 Renco paid that, then they would have a right to subrogate
23 because those liabilities correspond to Centromín...

24 (Interruption.)

25 A. And Activos Mineros.

1 Q. Let me ask you another "if" question then.

2 A. Yes.

3 Q. If the Missouri Plaintiffs Claims are not based
4 on Article 1970, then Article 1970 cannot be the basis of
5 the creditor-debtor relationship between Activos Mineros
6 and the Missouri Plaintiffs; correct?

7 A. I'm not sure of that, okay, because -- let me try
8 to explain my thinking. Okay.

9 Here we have substantive and we have procedural,
10 okay, and those are different levels. So when I'm speaking
11 Centromín is liable for this or Metaloroya is liable for
12 that, I'm speaking substantive and I'm speaking regardless
13 of the cause of actions or the legal basis. Okay.

14 So if for some reason Missouri law is applicable
15 to this situation, to this, you know, environmental
16 situation damages or the Peruvian law is applicable, and if
17 it's Peruvian law, if it's 1969 or 1970, from the point of
18 view of 5 and 6 is irrelevant. It covers all, whatever the
19 jurisdiction, whatever the legal basis. It doesn't matter.

20 What matters is when did it happen and did they
21 comply with the PAMA. That's everything that matters. So
22 I'm not so sure what the answer would be to your question
23 because it doesn't depend on where they are suing, what is
24 the basis of the lawsuit. It doesn't depend on that for
25 the operation of 5 and 6.

1 Q. I understand what you're saying and -- correct me
2 if I'm wrong -- is that under 5 and 6, whatever liability
3 Centromín retained, it retained; correct?

4 A. Yes. It is what it is.

5 Q. Got it. But in order to know what specifically
6 the basis of the original creditor-debtor relationships
7 that you and I just discussed, between Activos Mineros and
8 Centromín, we would have to know what the Missouri
9 Plaintiffs are filing under.

10 Is that your testimony?

11 A. No. No. So it doesn't -- the point I'm trying
12 to make is it doesn't matter.

13 Q. Okay.

14 A. It doesn't matter what the legal basis for the
15 Claim is because we're speaking about subrogation.

16 Q. Yes.

17 A. So, I mean, I go to whatever -- to whatever
18 country, to China and pay your obligation under Chinese
19 laws because I'm getting sued in Perú for that, and then I
20 subrogate against you.

21 Q. So if the Missouri Claims are based on U.S. law,
22 Article 1970 may still be the basis of the relationship
23 between Activos Mineros and Centromín; correct?

24 A. I sincerely do not understand the relevance of
25 1970 to this question. Why are you establishing --

1 Q. Let's turn to Paragraph 72 of Claimants'
2 Rejoinder. Please read Paragraph 72. We'll get the second
3 page up in a second.

4 A. Yes. Yes. I've read it.

5 Q. In those four bullet points, what Claimants are
6 saying is that -- one of the things -- is that irrespective
7 of the basis of the Missouri Plaintiffs' Claims, the basis
8 of the relationship between Activos Mineros and the
9 Missouri Plaintiffs is Article 1970; correct?

10 A. I'll try to explain what I understand of this. I
11 mean, I'm not competent to really interpret what the
12 Claimants are trying to say in this document, but, for me,
13 it makes sense. Okay.

14 And the reason it makes sense is that 5 and 6,
15 you know, say that -- if you read 5 and 6, it says that
16 liability of Centromín assume are for damages, loss, and
17 third-party claims attributable to Metaloroya, Centromín,
18 or their predecessors. Okay.

19 So if you want -- so if -- if Renco is getting
20 sued for something that is not attributable to Metaloroya,
21 you can say that is not under 5 and 6. Okay.

22 So what -- but -- and there again substance and
23 procedure. I mean, as you know, damages -- physically,
24 let's say, physically or economically are, you know -- have
25 a dimension, physical or economic dimension, and that's

1 okay. The kid got sick. Yeah. Okay. And that -- you
2 could, you know, trace it to the operation of the refinery.
3 Okay.

4 Now, if you take that to the legal level, the
5 juridical level, you're going to say, "Okay. That
6 relation -- the damage, whatever, can have -- you know, it
7 may be subject to U.S. law, to Peruvian law, whoever." No.
8 Alter ego whatever, you can file in whatever jurisdictions
9 and multiple possibilities. Okay. But it's the same and
10 it's one indemnification, one loss, okay, one, let's say,
11 liability.

12 Q. Yeah.

13 A. Okay. So within that complex reality, 5 and 6
14 say attributable to Metaloroya. So, okay, it needs to be
15 attributable to Metaloroya. One of the ways it can be
16 attributable to Metaloroya is because Metaloroya operates a
17 refinery in Perú, and we have 1970 in Perú, that
18 establishes strict liability for...

19 (Interruption.)

20 A. For risky goods and activities.

21 Q. Okay. So now that you've seen this, I want to
22 back up one moment and just run through the subrogation
23 syllogism. So there must be an original creditor-debtor
24 relationship?

25 A. Yes.

1 Q. In this case the relevant creditor-debtor
2 relationship would be between Activos Mineros and the
3 Missouri Plaintiffs; correct?

4 A. Yes.

5 Q. And under Claimants' theory, the basis of that is
6 Article 1970; correct?

7 A. From what I've read in the paragraph that you
8 showed me -- I haven't read the whole brief. I'm not
9 competent, you know, to analyze the whole -- I haven't done
10 that.

11 Q. Let's assume --

12 A. Yes.

13 Q. Okay.

14 A. It is better you assume with the question.

15 Q. Yes. That's fair.

16 In that case, if Claimants would be third parties
17 to this creditor-debtor relationship; correct?

18 A. Yeah, Claimants here?

19 Q. Claimants here. Yes. And if they were to pay
20 compensation to the Missouri Plaintiffs as a result of
21 losing the litigations in Missouri, they would step into
22 the shoes of the Missouri Plaintiffs in that
23 creditor-debtor relationship?

24 A. Yes. It wouldn't only be because of losing.
25 They could just pay, they could settle, you know, but they

1 would be paying the obligation of Centromín Activos Mineros
2 to those Claimants, yes. So they would be subrogating the
3 position of those Claimants, yes.

4 Q. And they would be the new creditors in that
5 original creditor-debtor relationship; correct?

6 A. Yes.

7 Q. When this occurs under Peruvian law, the rights,
8 actions, and guarantees of the original creditor are
9 transferred to the new creditor; correct?

10 A. Yes.

11 Q. And in this case those would be the rights,
12 actions, and guarantees of the Missouri Plaintiffs,
13 vis-à-vis Centromín, or Activos Mineros, based on
14 Article 1970 of the Peruvian Civil Code; correct? Again,
15 assuming that that is the basis.

16 A. Assuming that that is what plaintiffs are saying
17 in their Brief, let's say, because, conceptually, it could
18 be many other things.

19 Q. Sure.

20 A. It could be 1969. It could be whatever.

21 Q. But let's assume that's what they are saying.

22 A. Yeah.

23 Q. Then it would be the rights, actions, and
24 guarantees from that original creditor relationship?

25 A. Yeah, but -- I mean, that's why I'm asking about

1 1970 so much because really the issue is not the legal
2 basis under the provisional code, but whether what
3 "attributable" means in the Contract.

4 Q. I'm asking because they are making the point, and
5 so I want to work through it.

6 A. Yeah, but -- we have a little difference of
7 opinion.

8 Q. I'm sure. But let's just -- again, assume that
9 the argument is that the basis of the creditor-debtor
10 relationship is Article 1970. Let's assume.

11 A. Okay. You assume. I don't know if that
12 assumption -- you know, corresponds to reality.

13 Q. Okay. I can represent to you that that is what
14 they are claiming.

15 A. Because the concept here, from a Peruvian law
16 perspective, is, okay, does it -- if the legal basis is,
17 you know, total Missouri law, it doesn't matter. It is the
18 same. What we need to see is if this is attributable to
19 Metaloroya.

20 Q. Sure. Let me try it this way. Whatever the
21 legal basis is of that original debtor-creditor
22 relationship, when a new creditor relate -- replaces --

23 A. Yes.

24 Q. -- the original creditor, the rights, actions,
25 and guarantees arising out of that original debtor-creditor

1 relationship are transferred to the new creditor; correct?

2 A. Yes.

3 Q. And that creditor-debtor relationship remains
4 unchanged other than the change in the identity of the
5 creditor; correct?

6 A. Yes.

7 Q. And the limitations of that original
8 creditor-debtor relationship are also transferred?

9 A. Yes. But they do not -- that doesn't abrogate
10 all the rest of the Agreements I may have with the Party
11 against whom I'm subrogating.

12 Q. Sure. But the limitations --

13 A. It doesn't delete all the rest of world.

14 Q. -- the limitations are transferred, though?

15 A. What type of limitations?

16 Q. Prescription periods.

17 A. Prescription periods would be transferred, yes.

18 Q. So if Claimants' argument is that Article 1970 of
19 the Peruvian Civil Code is the basis of the creditor-debtor
20 relationship, then the applicable prescription period would
21 be the period applicable to Article 1970 under Peruvian
22 law?

23 A. No. Sorry. Sorry. That's not the case. Let me
24 go back. I think we're speaking on different wavelengths.
25 What I'm saying, again, is doesn't matter what the legal

1 basis of the claim is. In this case, my understanding,
2 from what we discussed earlier, is that 1970 is not the
3 Claim, the basis of the Claim. So it's not the basis of
4 the debtor-creditor relationship in the original Claim.
5 It's whatever they are saying in Missouri.

6 The issue, under Peruvian law, is whether it is
7 attributable to Metaloroya, because that is the condition
8 set forth Section 5 and 6 for the assumption of liability.
9 That's what Tribunal here needs to read in the agreement
10 and interpret in light of Peruvian law. So that's why I
11 don't understand what the relevance of 1979 here is.

12 1970 -- if you're saying 1970 is because we want
13 to determine whether it's attributable to Metaloroya, so we
14 need to see whether, if it would have been filed in Perú
15 court, if it had been claimed against Metaloroya, and then
16 you are invoking 1970, and that doesn't make 1970 the basis
17 of the original Claimant, which you will subrogate.

18 Q. That's why I'm asking you to assume that that is
19 the basis.

20 If that is the basis, then the applicable
21 prescription period is -- to the subrogation claim is the
22 one that applies under Peruvian law to Article 1970; is
23 that correct?

24 A. Just to understand, so you're saying, for me, to
25 assume that when the Plaintiffs in Missouri are suing

1 Renco, they are suing Renco under Article 1970 of the
2 Peruvian Civil Code?

3 Q. No, Mr. Payet. I thought you testified that it
4 doesn't matter what they are suing them under.

5 A. It doesn't matter. Right. Exactly.

6 Q. Right.

7 A. So what I'm saying is, for the purposes of
8 statute of limitation, which is you're speaking -- okay.
9 We're speaking about statute of limitations. In the case
10 of subrogation, it is the statute of limitations of the
11 original claim.

12 Q. The original claim by the Missouri Plaintiffs?

13 A. Yes.

14 Q. Against the Claimants?

15 A. Against the Claimants, yes.

16 Q. They are not third parties to that relationship,
17 are they?

18 A. They are not third parties to that procedural
19 relation, but we have an agreement under corporate
20 restructuring where Centromín assumed that -- let's,
21 hypothetically, assume that liability provided that the
22 conditions in 6.2 are complied with.

23 Q. Let me take you to an Authority you submitted,
24 JAP-92. I'm going to take you to Paragraph 158.

25 A. Is it a report or --

1 Q. It is an Authority.

2 A. Okay.

3 Q. I'm going to -- 159 is fine. I'm going to ask
4 you to review the top left quote by Diez-Picazo.

5 A. Yes.

6 Q. We'll switch over to the English version.
7 Apologies for that. There he saying that subrogation
8 produces a transfer -- right? -- of the ownership of the
9 credit.

10 A. Yes.

11 Q. And in the next paragraph, the Authority states
12 that it's important to remember that subrogation can't
13 imply a worsening of the legal situation of the passive
14 subject, which would be the debtor; correct?

15 A. Yes.

16 Q. And if we go up to the top right, that's a quote
17 by Vecchio, and it states that all of the limitations of
18 the original creditor-debtor relationship transfer as well;
19 correct?

20 A. Yes.

21 Q. Including the prescription period; correct?

22 A. Yes. Correct.

23 Q. So if the basis of an original debtor-creditor
24 relationship is Article 1970, then the prescription period
25 that applies to the new creditor is the one that

1 is -- applies to Article 1970?

2 A. Yes. Let's put a hypothetical. Somebody is run
3 over by a car. That is a risky good and you pay, and there
4 is no doubt that that happened in Lima, Perú. It is 1970,
5 yes. It would be the two-year period for 1970.

6 MR. RODRÍGUEZ: Thank you. No further questions.

7 PRESIDENT SIMMA: Thank you, Mr. Rodriguez.

8 May I suggest we have the coffee break now and we
9 go into redirect afterwards?

10 MR. FOGLER: That's fine.

11 PRESIDENT SIMMA: You would probably prefer that
12 too, instead of your performance being broken up. Okay.
13 So we have a coffee break until 35, 3:35.

14 (Brief recess.)

15 PRESIDENT SIMMA: Before I give the floor to
16 Mr. Fogler, just -- we have a request. In the morning, a
17 mention was made of the English version of your Report, and
18 some text was missing in the English version. That was
19 before.

20 MR. RODRÍGUEZ: Yes. It was the part of
21 Paragraph 68 in his Second Report is missing from the
22 English translation.

23 PRESIDENT SIMMA: So we would like to have a new
24 version of that Report, red line, containing every word
25 that you have in the Spanish version.

1 THE WITNESS: Okay. Okay. Mr. President, I'll
2 make sure that it's properly translated.

3 PRESIDENT SIMMA: Okay.

4 MR. SCHIFFER: We will handle it. Jen will
5 handle it.

6 PRESIDENT SIMMA: Okay. Good.

7 Okay. So then the floor goes to Mr. Fogler.

8 MR. FOGLER: Thank you, Mr. President.

9 PRESIDENT SIMMA: For redirect. You have the
10 floor.

11 REDIRECT EXAMINATION

12 BY MR. FOGLER:

13 Q. We heard some hypothetical questions asking you
14 to make some assumptions, and I want to do the same,
15 Mr. Payet. And I want to also warn you to slow down for
16 the Interpreter and the Court Reporter. I think you have
17 sped up even in the afternoon, so just take your time. I
18 think we'll be done in 10 minutes or less.

19 You've told us that you haven't studied the
20 Claims of the Missouri Plaintiffs, but I want you to make
21 this assumption: I want you to assume that the Plaintiffs
22 in Missouri are citizens of La Oroya, Perú, who are
23 claiming to have sustained damages as a result of
24 environmental exposure to the operations of DRP's Plant.
25 Okay.

1 Is that -- are those damages, that I have asked
2 you to assume, are they covered by Articles 5 and 6 of the
3 Contract?

4 A. Yes. I'll switch and move this.

5 MR. SCHIFFER: Here, let me help.

6 (Comments off microphone.)

7 PRESIDENT SIMMA: Does everybody who wants to
8 watch Mr. Payet speaking need to --

9 THE WITNESS: I've watched Respondent's Counsel a
10 lot, so I'll rest a little bit of them.

11 PRESIDENT SIMMA: I imagine I would too.

12 THE WITNESS: Okay. Yes. The Section 5 and 6
13 are referred to damages caused by environmental issues,
14 either derived from Centromín's action, their predecessors,
15 or DRP, in La Oroya. So if that is what the Missouri
16 Claimants are claiming, it would be overlapping. It would
17 overlap.

18 BY MR. FOGLER:

19 Q. Okay. Would it matter to you, as far as the
20 application of Articles 5 and 6, what law applied to the
21 damages claimed by the Plaintiffs in that situation?

22 A. No. What would matter to me, I think, from a
23 contractual perspective, reading the Contract, is whether
24 those damages would be attributable to actions -- not even
25 to actions -- attributable to DRP -- I'm sorry, to

1 Metaloroya, Centromín, or their predecessors. And those
2 three, if either, it would determine in which bucket they
3 fall, but that's the coverage of the provision.

4 Q. Would it matter what the nature of the claim was;
5 that is, whether it was Article 1970 under Perú or some
6 tort law in Missouri, or some other law? Would it matter
7 what the nature of the claim was?

8 A. In my opinion, no, it wouldn't matter. But I
9 have to say that that is -- you will have to interpret what
10 "attributable" in the Contract means, because it says
11 "attributable to Metaloroya." But it would -- for me, and
12 from my point of view, that "attributable" doesn't require
13 some specific type of legal basis.

14 Q. Now, I want you to assume that those allegations
15 that I've asked you to assume -- that these citizens of
16 La Oroya are claiming injuries as a result of environmental
17 exposure to the operations of DRP's Plant, now I want you
18 to assume that they are seeking to hold Renco and DRRC
19 liable for those damages. Is that covered by Articles 5
20 and 6 of the Contract?

21 A. They are covered as long as those damages are
22 attributable to Metaloroya, Centromín, or the predecessors.

23 Q. And if they are attributable to Metaloroya, or,
24 now, DRP, who does the Contract say has assumed that
25 liability?

1 A. Well, the general rule for -- there's three times
2 since -- three time buckets in the provisions. So it's
3 pre-STA liabilities is 100 percent Centromín, PAMA
4 liabilities that are 100 percent Centromín except if
5 Metaloroya breached the PAMA, et cetera, and then future
6 liabilities after the end of the PAMA that are basically
7 Metaloroya's except -- so that's the allocation.

8 So it would depend on which of these buckets they
9 fall, but, if they were, like, in Bucket 1 or Bucket 2,
10 they would be basically Centromín's.

11 Q. And if they were Centromín's, or Activos
12 Mineros's, if Activos Mineros had refused to accept
13 responsibility, would that be a breach of the Contract?

14 A. Yes, it would be a breach.

15 Q. All right. Now, are you suggesting that that
16 responsibility is limitless? Are you suggesting that
17 Centromín or Activos Mineros assumes all liability of
18 Metaloroya?

19 Let me ask a hypothetical. I'm going to change
20 what I asked you before. I want you to assume that there
21 is a citizen of La Oroya who is hit by a truck owned by
22 DRP. Clearly not an environmental obligation.

23 Is that covered by Articles 5 and 6?

24 A. I haven't analyzed the hypothetical of the truck,
25 okay, and I'm looking at the provision. I would think that

1 a nonenvironmental claim would not be covered, okay,
2 because, you know, all 5 and 6 are related to
3 environmental, and I think that, even though it doesn't
4 say, you know, environmental claims directly, in 5.3, I
5 think that's the meaning of the provision.

6 Q. What is the title of the fifth clause of the
7 Contract?

8 A. It says "environmental," but, under Section 18,
9 titles are not determinant of construction.

10 Q. Well, but it also says, does it not, if you look
11 at the sentence prior to 5.1, "the Company assumes
12 responsibility only for the following," what?

13 A. Yeah. That's it. You're correct.

14 Q. Environmental matters?

15 A. Environmental matters, yes.

16 Q. And the same is true with respect to --

17 A. Yes.

18 Q. -- Centromín?

19 A. Yes, you're correct.

20 Q. All right.

21 A. Yes.

22 Q. One more hypothetical, one more assumption. We
23 know that Mr. Varsi says that the Renco DRRC Guaranty is in
24 a separate contract, separate from the rest of the STA.
25 Even if it were -- and I know that's not your opinion, but,

1 even if it were, would Renco and DRRC have any rights under
2 Articles 5 and 6 of the STA?

3 A. Yes. If they were not Parties. I think the way
4 I've analyzed this is -- other Parties to the Contract, to
5 the STA, I'd say yes. Number second question, do
6 they derive any rights from 5 and 6, so, in that sense,
7 would they be, like, Parties to 5 and 6? That's the
8 second -- a little more difficult question.

9 So the hypothetical, I think, you're asking is,
10 let's imagine that they are Parties to the Contract and not
11 Parties to 5 and 6, or they're just like any third party.

12 Q. I'm trying to imagine what Mr. Varsi's construct
13 is, but I want you to assume that the guarantee obligation
14 that Renco and DRRC have assumed is in a separate contract.

15 A. Yeah. Okay. Yes, so I would say they are not
16 Parties to the STA. I would say let's imagine that, if you
17 read the STA, interpret the STA, you cannot derive any
18 rights directly to them, like they are not a third-party
19 beneficiary. Let's hypothesize that. They are like a
20 third party. They would not derive contractual rights, but
21 they would, let's say -- for example, they would have a
22 right to subrogate if they pay, either because they would
23 just be like -- they would not have any liability because
24 it's been assumed by Centromín, but they're being sued so
25 they have an interest and they can pay and they can

1 subrogate or because they could be joint and severely
2 liable. I mean, it is possible that Centromín, at the same
3 time with them, is liable for this situation, and they
4 could have contribution rights under the 1983 of the
5 Peruvian Civil Code. That's what I mean in -- that
6 contracts do not have effect only vis-à-vis the Parties.
7 Contracts have effect with respect to third parties, not
8 full effects, but they have some effects.

9 MR. FOGLER: I'll pass the Witness. Thank you.

10 PRESIDENT SIMMA: Passing the Witness to somebody
11 not familiar with Texan law or whatever means you have
12 ended the --

13 MR. FOGLER: That concludes my questions,
14 Mr. President.

15 PRESIDENT SIMMA: That I can understand. Thank
16 you. Thank you. That concludes Mr. Fogler's redirect.

17 And we are, I think, not supposed -- not to have
18 a second round here. But -- yeah. Questions from
19 colleagues?

20 You go first.

21 QUESTIONS FROM THE TRIBUNAL

22 ARBITRATOR GRIGERA NAÓN: Dr. Payet, you have
23 used the term "spin-off" and "split up."

24 (Interruption.)

25 ARBITRATOR GRIGERA NAÓN: Okay. You have used

1 the terms "split up" and "spin-offs." When I read the
2 Peruvian corporations law, they have specific regime. And
3 then you have Article 391, which is considered to be simple
4 reorganization where there are transfers of the patrimonial
5 blocks, which if you allow me to put in a different way,
6 clusters of price and obligations.

7 Now, if you go to what we read as a spin-off or
8 split-up, really in this law, there are certain formalities
9 that to be fulfilled, which are very detailed. You have
10 special balances, special balance sheet, you need to comply
11 with certain formalities like "escritura publica" (in
12 Spanish), a public deed, but you also need to Gazette it.
13 You need to make publications. To which external of these
14 applies to this simple organization? Was it fulfilled in
15 this case?

16 THE WITNESS: Yes, Professor Grigera Naón. This
17 transaction was done before the current Companies Act
18 coming into force. Okay. The legal basis for this
19 transaction, from the reorganization point of view, was
20 Section 10 of the Privatization Act of 674. That
21 essentially says the SOEs can be reorganized, merged,
22 split, "escisión," according to the dictates of the
23 Company. That's everything it says.

24 In the Q&A one of the bidders asked -- this is in
25 Question 14. Okay. It asked, it is important for tax

1 purposes, which is the nature of assets contribution that
2 Centromín will do in order to establish if the operation
3 responds to a division splitting or to an economic unit
4 transfer.

5 And CEPRI says it is not an "escisión," but what
6 is known as simple reorganization, this consists in
7 Centromín segregating a part of its patrimony that
8 corresponds to the Metaloroya complex and aeropuerto,
9 contributing it to Metaloroya, receiving and keeping in its
10 assets, as an asset, the shares. That's what it is.

11 There is -- if I look at -- the Companies Act,
12 the Perú Companies Act was approved by Congress like three
13 weeks after the STA. So people knew what it was going
14 to -- so when they said "reorganise simple," they were
15 speaking about something that not in the current Companies
16 Act but was going to be in the future Companies Act.

17 So how it works now, where it is properly
18 regulated in detail you have the merger, and then you have
19 two types of transactions, the "escisión" and the
20 "reorganización simple". The "escisión" is a transaction
21 where the Company takes a patrimonial block, transfers it
22 to another entity or new entity, and then the shares this
23 entity issues are not to transferring company but to the
24 Shareholder of the transferring company.

25 This "escisión" is regulated like a merger, as

1 you described, and there needs to be publications in the
2 Official Register so that people can oppose. So creditors,
3 for example, can oppose. If they don't oppose, they get
4 transferred as a matter of law, and that's it, and they
5 cannot claim against the original company. And then
6 there's another "reorganización simple", which is simply
7 you mentioned 291, I think, or 391.

8 ARBITRATOR GRIGERA NAÓN: 391.

9 THE WITNESS: You had the exact number. Yeah.
10 And that's a simpler transaction, that there are no
11 publications, but it is still the transfer of a patrimonial
12 block. Okay. So it's the cluster. If you look at that
13 deed, it doesn't say. The Corporate deed doesn't say
14 "reorganización simple". It says "capital increase of
15 Metaloroya."

16 So it's something that was done with two lines of
17 legal habilitation in the Privatization Act. And I believe
18 that the corporate documents, the reorganización documents
19 should be read with the STA because when -- in the Q&A when
20 the bidders are asking the CORPRI about the allocation,
21 CORPRI says this is going to be -- I don't remember exactly
22 question. I think it is 114.

23 It says, "The allocation is going to be in the
24 Contract." So for me you need to read both because 5 and 6
25 are the allocation. That is not in the corporate -- it is

1 not in the Shareholder minutes. It's not in the capital
2 increase. It is in the Contract. But if you read both,
3 then you understand. That's the way it was done.

4 ARBITRATOR GRIGERA NAÓN: Yes. That's maybe the
5 way it was done, but this has an impact on the third
6 parties, on the rest of the world. So what you say sounds
7 appropriate in between Parties, but what about the rest of
8 the world?

9 And then you always have the question: If you
10 have to do certain things in respect of the rest of the
11 world, those things have a constitutive effect, even inter
12 partes, and not just for these transactions to be effective
13 against the rest of the world.

14 THE WITNESS: Yes. And exactly. And there are
15 two things I think regarding that. One is that this was
16 done in the '90s. It was done in the mid-'90s, and within
17 the framework of privatization, Perú privatization, as in
18 many other places is like a vertical, very authoritative
19 process where you had the Company that had displaced all
20 the corporate organs of the Companies. So the provision
21 plan approved by a CORPRI was like the law. It was in the
22 '90s.

23 And the second thing, let's say, today in Perú,
24 if you do an "escisión" under the law, pursuant to 278, I
25 think is, then it's going to have effect towards the

1 creditors, and the creditors are going to suffer the change
2 of their debtor, even if they don't want, if they didn't
3 oppose.

4 And so I believe, in this case, that cannot be
5 sustained, and that's why I think that the transfer could
6 not have a liberatory effect vis-à-vis, Metaloroya. It
7 could not be adverse to the creditor. The creditor could
8 sue anybody.

9 ARBITRATOR GRIGERA NAÓN: Even in the case of
10 391? Even in the case of simple reorganization?

11 THE WITNESS: Right now in Perú, in the simple
12 reorganization, there is kind of debate even though it is
13 being revised now, the Company said -- it has been revised
14 now, the Company said, but there has always been a
15 discussion about the difference between "escisión" and a
16 simple reorganization. And very clear in the "escisión"
17 has a party effect. I would say in the "reorganización
18 simple" you have to take it with a grain of salt about the
19 third-party effects because somebody can raise their hand
20 and say: "What do you mean that now you're my debtor and I
21 didn't even know about it?"

22 ARBITRATOR GRIGERA NAÓN: This is a little
23 quicksand scenario.

24 THE WITNESS: Yes. Yes.

25 ARBITRATOR GRIGERA NAÓN: Under Peruvian law.

1 THE WITNESS: Yes, that is part of what is being
2 revised in the new Companies Act to make it clear because
3 the law, as you read, says block of patrimonial, "el
4 patromonial bloc."

5 ARBITRATOR GRIGERA NAÓN: Which it creates an
6 obligation.

7 THE WITNESS: Rights and obligations. In one
8 act. In one act.

9 ARBITRATOR GRIGERA NAÓN: Thank you very much.

10 THE WITNESS: Thank you, Professor.

11 ARBITRATOR THOMAS: I'll start off with an easy
12 question. You'll recall your testimony about the White
13 Book and about the history of this particular
14 privatization, and I had a very simple question which was
15 this.

16 You spent some time talking about the fact that
17 Clause 18 of the STA permits the Interpreter to refer to
18 the bidding conditions and the bidding documents. But you
19 also spent some time discussing the failed prior attempt to
20 sell the asset.

21 The question I have is this: Under Clause 18 of
22 the STA, would it be permissible, not only to consider the
23 bidding documents, but also the earlier failed
24 privatization to which you had spent a devoted a fair
25 amount of attention?

1 THE WITNESS: Yes. I think that there are two
2 levels on which the bid and the auction can be considered.
3 What 18(1) says is that -- it's like a special status, I
4 would say, for the purposes of contract interpretation, to
5 the Bidding Documents and to the Q&A. And that is referred
6 to the bidding documents and the Q&A to the privatization
7 of Metaloroya of this, not the earlier one.

8 ARBITRATOR THOMAS: Okay.

9 THE WITNESS: And it gives a special status to
10 them, to the point where it says if there would exist a
11 disconformity within those documents and the Contract, the
12 Contract will prevail which is that, there is not
13 only -- there is semi-part of the Contract. It is the
14 Contract prevails, but it is like contractualized, in a
15 sense.

16 The earlier privatization I mentioned because I
17 considered as a factual matter that the context in which
18 this transaction was done, is important to know what had
19 happened, that the Government could not sell the integrated
20 operation because of the liabilities.

21 ARBITRATOR THOMAS: I understand that. My
22 question was a very narrow question.

23 THE WITNESS: Yeah.

24 ARBITRATOR THOMAS: As a question of
25 interpretation and having regard to Clause 18, do I take

1 that into consideration?

2 THE WITNESS: Yes. I believe -- and I've said
3 that in my Reports -- that in order to construct a
4 contract, to interpret a contract, one needs to look at the
5 historical situation when the Contract was entered, in
6 order to determine what was the interest that the Parties
7 were trying to protect, and what they were trying to
8 achieve through the Contract, what the function of the
9 Contract was.

10 ARBITRATOR THOMAS: Okay. Second question. I'm
11 going to attempt to summarize for you what I understood to
12 be your argument, but I don't want to engage in a long
13 debate. I just want you to tell me whether I'm close to a
14 very, very simple summary of one of the key points you were
15 making or not. Okay.

16 What I was trying to understand is, that there
17 was some discussion about the relationship between
18 Clause 6.5 and 8.14.

19 THE WITNESS: 8.14.

20 ARBITRATOR THOMAS: And the fact that they were
21 worded very specifically and had a narrowness, in terms of
22 Parties which had been mentioned in them, to which they
23 were available.

24 And as I understood your basic argument, you made
25 a great deal about the buckets of responsibility, and your

1 point was that an assumption of responsibility, with the
2 emphasis of the word on "assumed," meant that this was of
3 significance as a matter of law. I understand that point.

4 Do I understand you correctly to be saying that
5 the references to indemnification and the references to
6 defense of claims is something that could be extracted
7 by -- from the application of the Peruvian Civil Code for
8 those Parties that are not mentioned in those two clauses?
9 Is that the gist of your argument?

10 THE WITNESS: Yes, that is.

11 ARBITRATOR THOMAS: Okay. That's all I need to
12 know.

13 Thank you.

14 PRESIDENT SIMMA: Thank you.

15 Do the Parties want to tackle this? No. It
16 doesn't seem to be the case.

17 So that brings your Expert examination to an end.
18 Thank you very much, Mr. Payet.

19 THE WITNESS: Thank you, Mr. President. It has
20 been a pleasure. Thank you very much.

21 PRESIDENT SIMMA: You are released from, and I
22 think without further ado, I think we should get into the
23 next phase. Mr. Pearsall?

24 MR. PEARSALL: Yes, Mr. President. It is around
25 4:05 right now. And with the goal of hopefully not

1 sequestering Dr. Varsi overnight, what we thought we would
2 do is start his Direct first thing tomorrow morning and,
3 instead, take the remainder of the time to answer the
4 President's question with regard to law. And we can have a
5 back-and-forth on that right now so that you're satisfied
6 with that overnight, and then Dr. Varsi wouldn't need to be
7 sequestered overnight. That is our proposal.

8 PRESIDENT SIMMA: Is your answer on the question
9 of the law, is that going to be -- is that going to take a
10 little time? No, I'm a bit worried that, if we are
11 generous with closing in the afternoon then we might run
12 out of time, and there is no possibility for us to put
13 something at the end of next week.

14 And so I would -- I mean, I don't know. I would,
15 in the opposite, be ready and have an hour or something, if
16 that would help bringing a part of the exercise to an end
17 today. So like the direct of Mr. Varsi. Could we do that?

18 MR. PEARSALL: So our direct of Dr. Varsi will
19 likely take the 45 minutes allotted, similar to the direct
20 of Mr. Payet. These are long directs, which will take us
21 up to 5:00 p.m., which is fine. He will then need to be
22 sequestered overnight, if that's the Tribunal's wish,
23 that's fine. We can absolutely do that. I just thought --

24 PRESIDENT SIMMA: That would help us. Okay. So
25 that means -- you could also, let's say, defer the answer

1 on the question of what law rules the Arbitration Agreement
2 to a later stage.

3 MR. PEARSALL: For us, it's a very simple answer.
4 I don't think it would take more than two minutes.

5 PRESIDENT SIMMA: Okay. Good. All right.

6 MR. SCHIFFER: Yeah, so, as the Tribunal knows,
7 that I wasn't the original Counsel, I did not prepare the
8 original Statement of Claim. And so I have to -- and there
9 is so much paper in this case, I can't remember the
10 paragraphs you've cited, and I don't have it with me today.
11 So I was going to go back to the hotel tonight and look at
12 that issue.

13 I also agree that it shouldn't be a protracted
14 discussion. I think it will be simple, but I need to see
15 what was said before. So no two lawyers ever see the same
16 case the same way. So I just need to figure that out.

17 PRESIDENT SIMMA: Should we then have your two
18 views at the same time?

19 MR. PEARSALL: However you'd like to do it,
20 Mr. President. We can either present them to you, you
21 know, tomorrow or whenever you want, and hopefully we'll
22 agree, or we could even discuss between the two of us and
23 maybe present a joint view.

24 I almost wore an orange tie today, so maybe we're
25 getting on the same wavelength, Adam and I.

1 PRESIDENT SIMMA: That would be a very good idea,
2 and thanks for that friendliness incorporation. And I
3 think Mr. Varsi, Dr. Varsi, if you are able.

4 MR. PEARSALL: We can go right into it.

5 PRESIDENT SIMMA: Okay. Let's start immediately.

6 (Brief recess.)

7 ENRIQUE VARSİ ROSPIGLIOS, RESPONDENTS' WITNESS, CALLED

8 PRESIDENT SIMMA: Good afternoon, Mr. Varsi. I
9 don't have to explain what's happening here. You have been
10 present. I just bid you a good afternoon.

11 Can you hear me now?

12 (Comments off microphone.)

13 PRESIDENT SIMMA: So this is going to be in
14 Spanish. So good afternoon, once again. Would you please
15 read the Declaration that you find in front of you.

16 THE WITNESS: Thank you very much, Mr. President.

17 Expert Declaration: I solemnly declare, upon my
18 honor and conscience, that I shall speak the truth, all the
19 truth, and nothing but the truth, and that my statement
20 shall be in accordance with my sincere belief.

21 PRESIDENT SIMMA: Thank you very much.

22 Direct is going to be Mr. Rodriguez?

23 MR. RODRÍGUEZ: Yes, Mr. President.

24 PRESIDENT SIMMA: Okay. You have the floor.

25 DIRECT EXAMINATION

1 BY MR. RODRÍGUEZ:

2 Q. Mr. Varsi, good afternoon.

3 A. Good afternoon.

4 Q. I understand that you have a presentation that
5 you will give to the Tribunal; correct?

6 A. Yes.

7 Q. Before you do so, I'm going to ask you if you --

8 A. No translation.

9 MR. RODRÍGUEZ: I believe Mr. Varsi is not
10 getting the Spanish interpretation.

11 (Interruption.)

12 BY MR. RODRÍGUEZ:

13 Q. Are you hearing me in Spanish now, Mr. Varsi?

14 A. That's right.

15 Q. So I'll start again.

16 I understand that you will be giving a
17 presentation to the Tribunal. Is that -- my understanding
18 correct?

19 A. Yes, that is correct.

20 Q. Before you start, I want to ask you if you have
21 any corrections or amendments to your Report that you would
22 like to provide?

23 A. Yes. Thank you very much. In connection with
24 the presentation made by my colleague, Mr. Payet, he
25 identified a phrase in one of my Reports in which I made

1 reference to this Contract, and he thinks that that phrase
2 is contract, which is a phrase out of the Contract, means
3 that I assumed the position, that that is just one
4 Contract. That is not my position. My position is that
5 these are two different Contracts, and that that phrase may
6 be interpreted in one way or another. That's the only
7 clarification I wanted to make.

8 PRESIDENT SIMMA: Before you continue, I'm
9 experiencing the same problem I had in the morning for some
10 time, which means the very clear strong voice of Mr. Varsi
11 is great, but the English translation is kind of hidden
12 behind, and quite -- it's quite a bit of mumbling. So I
13 would be glad if that could be -- I remember that in the
14 morning, the person in charge really changed it, then it
15 was nice and clear. But maybe it has to do with the
16 position, vis-à-vis, the microphone or something.

17 MR. SCHIFFER: I think if he sits a little
18 farther away from the microphone, it'll be better.

19 THE INTERPRETER: Mr. President, this is the
20 Interpreter, I think the Technician should be called upon.

21 Mr. President, this is the Interpreter,
22 if -- please the Technician could be called upon. I think
23 it's an issue with your console.

24 Mr. President. Great. So it was just a volume
25 issue. Great. Thank you.

1 PRESIDENT SIMMA: Thank you. Okay.

2 Once again, back to Mr. Rodriguez.

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

4 BY MR. RODRÍGUEZ:

5 Q. Mr. Varsi, if that's your only correction, you
6 can begin your presentation.

7 A. Thank you very much.

8 DIRECT PRESENTATION

9 THE WITNESS: Mr. President, members of the
10 Tribunal, Counsel for Claimants, Counsel for the State of
11 Perú, I would like to begin my presentation. My
12 presentation is going to be a 35 or 40-minute presentation.
13 I'm going to basically put to you my position in my
14 capacity as an Expert.

15 The first issue I wanted to deal with has to do
16 with the fact that R-1 contains two Contracts. A Transfer
17 Agreement, which is a Purchase and Sale Agreement and a
18 Guaranty Agreement, which is exactly that, a guarantee.
19 The Transfer Agreement and Renco's Guaranty and DRR's
20 Guaranty, these are two different Contracts. In Peruvian
21 law, there is a clear distinction between a document and
22 the legal transaction that is behind that document. This
23 under Article 225 of our 1984 Civil Code.

24 A document may contain more than one act or legal
25 effect, and, consequently, may contain more than one

1 contract. A public deed is a document, therefore, it may
2 contain more than one contract. The fact that the SCA,
3 R-1, and Renco's and DRR Guaranty, R-1, the Annex R-1, the
4 fact that these two things are in a single document does
5 not entail that these things are one single Contract.

6 Mr. Payet incorrectly indicates that Annex R-1
7 only contains one Contract because there is a single cause.
8 R-1, in my opinion, contains two individual Contracts.
9 Each one with its own purpose, and I will demonstrate this
10 as follows.

11 When we have a plurality of causes, we have
12 plurality of contracts. In Perú, contracts have a
13 structure: The Parties to the Contract, the purpose of
14 Contract, and the cause of the Contract. The number of
15 causes indicates the number of contracts, and you can see
16 here the relevant paragraphs of my Report.

17 Next.

18 Along the same lines, the number of causes
19 indicates the number of contracts. The Legal Authorities
20 cited by Mr. Payet in his Third Report so indicate. I'm
21 making reference to the sources that were put to you by
22 him. In connection with Clauses 1 to 19 of R-1, I agree
23 with the conclusion reached by Mr. Payet in Paragraph 46 of
24 his Third Report.

25 The cause is to try and attain the simple

1 reorganization of the transfer of Metaloroya to private
2 Parties. You will see here the reference to the relevant
3 paragraphs. The Guaranty of Renco and DRR has a different
4 cause and a different purpose. It's a different Contract.

5 Each codified Contract has its own cause. In
6 Perú, it is clearly established that there are
7 contracts -- and that are in accordance -- that are
8 presented in accordance with the law and that are codified.
9 They're codified in the Civil Code, or in any other legal
10 provision that governs the subject matter. Each one of
11 these codified contracts has its own finality and its own
12 cause.

13 And here you see a citation by Mr. Gutiérrez
14 Camacho that was cited by Mr. Payet. And these -- this
15 reaffirms our position. Each one of these Contracts, which
16 is codified, is unitary in nature. And I'm citing
17 Mr. Payet's reference. R-2 contains two codified
18 Contracts. First, the Transfer Agreement, and that is
19 regulated by the 1984 Civil Code. It is a purchase and
20 sale codified Contract.

21 It has an abstract cause, which is a transfer of
22 property in consideration for a price, and it has a
23 specific, concrete cause, which is a transfer -- assets of
24 the Company and to allow for private investment. The
25 Guaranty -- in this case the Guaranty of Renco and DRR,

1 that is an autonomous Contract, independent Contract. It
2 is regulated by the Civil Code. It's a codified Contract.

3 It has an abstract cause which is to ensure the
4 performance of the obligations by the debtor, and it has a
5 specific cause, which is the finality of the Guaranty which
6 is to ensure a credit. Now, the Guaranty of Renco and DRR
7 is accessory to the Transfer Contract, that is the purpose.

8 The finality of the Guaranty to provide support;
9 right? So it is accessory to a main Contract. That will
10 live, per se, but the accessory Contract depends on the
11 existence of the main Contract. It will provide assurance
12 to the main Contract; right?

13 Okay. Not all contracts require guarantees.
14 This depends on the will of the Parties. So here we are
15 talking about the accessory nature of the guaranty, that is
16 the finality of the guaranty. This is an individual
17 contract, a sole contract. It has its own cause just like
18 the Transfer Agreement has its own cause.

19 This accessory nature entails that something is
20 wrong in the main contract, then the guaranty will also be
21 impacted because it will not have enough efficacy to go
22 ahead if the Contract is declared null and void, for
23 example. The Contract continues if the accessory guaranty
24 fails. Professor Ribaza has been cited by Mr. Payet, has
25 spoken about this. Professor Payet fails to explain why

1 the additional clause is not a Guaranty Agreement. If we
2 look at it, naked eye, it is.

3 In his Third Report, Mr. Payet says that this is,
4 allegedly, an independent Guaranty. I have never heard
5 that in my professional career. Under Peruvian law, a
6 guaranty is a contract, it is a codified contract, and I
7 make reference here to Article 1868 of the Civil Code.
8 Mr. Payet fails to explain why he considers that DRR's and
9 Renco's Guaranty is not a guarantee, per se.

10 The definition is perfectly well there, in
11 connection with the cause and the objective, which is to
12 provide a guarantee under Peruvian law. And under any law,
13 I believe, logically speaking, an act with legal affects
14 that meets the definition of a codified contract, well,
15 that means that that Contract is codified. So if it meets
16 the definition of a guarantee, it is a guarantee. Now,
17 DRR's and Renco's guarantee and the transfer Contract, well
18 these are linked contracts.

19 In Perú, this is not something new, this issue of
20 linkage of contracts. This issue has been developed for a
21 long time, specifically when it comes to these very complex
22 and complicated contracts. Now, Claimants, in their Reply
23 at Paragraph -- in their Rejoinder at Paragraph 32, well,
24 the Claimants say that there are specific Parties to the
25 Contract on the basis of the idea of linked contracts.

1 Linked contracts have to do with the legal transaction that
2 comes from another contract. There are different causes;
3 right? And that is what gives rise to this linkage, so
4 linked contracts are connected.

5 They are related because they have a certain
6 functionality, but they maintain their individuality. This
7 is a basic characteristic of the linkage nature of these.
8 Prof. Vásquez Rebaza has indicated that the kind of link
9 present in guarantee contracts and those that come from a
10 guaranteed credit. Morales Servia, another professor from
11 Perú, who also identifies the guarantee as one of the
12 transactions that is an accessory to the principle
13 contract.

14 This is a linked contract, but an individual
15 contract in nature. And Mr. Payet says this. The fact
16 that the guarantee and the Transfer Agreement are linked
17 contracts confirms my position.

18 The assignment of the contractual position of DRP
19 and Centromín confirm the existence of two contracts.

20 The term itself, "assignment of a contractual
21 position," entails that those that need to participate in
22 that assignment are the Parties themselves, and only the
23 Parties. This clearly leads it to establish that, since
24 the Claimants were not Parties to these Contracts for the
25 assignment of contractual position, that cannot be alleged.

1 The lack of consent of Renco and DRR, in
2 contention with the contractual position of Renco and DRR,
3 well, show that these are not Parties to the Contract.
4 They are only Parties to the Guaranty Agreement. And let
5 me cite Article 1435 of the Civil Code. Mr. President, I'm
6 not going to read it. I'm going to move on, because of
7 time, to the next slide.

8 So the position, the contractual position of DRP
9 and Centromín confirm the existence of two contracts.

10 Now, I wouldn't want to hypothesize too much, but
11 let's assume that Renco and DRR are Parties to the Contract
12 of transfer. They would be two assignees. That did not
13 happen. Their consent would be necessary. It wasn't
14 necessary -- it was not necessary because there were two
15 assignments of the contractual position. The assignment of
16 the contractual position of Centromín only shows the
17 existence of the consent of the Company and Centromín, the
18 only two Parties that have the power to intervene in that
19 exercise of assignment of contractual position. I have
20 seen no document that contains the consent of the
21 Claimants.

22 If they were Parties to the Transfer Agreement,
23 the contractual position assignment of Centromín would not
24 be valid. The same happens with the assignment of the
25 contractual position vis-à-vis DRP and the Investor. The

1 Claimants are not -- not signatories to the Arbitration
2 Agreement. Let us look at the some basic principles
3 related to Article 14 of the Arbitration Law that deals
4 with non-signatory Parties. Article 14 provides two
5 different assumptions whereby the arbitral agreement may be
6 extended.

7 First, the determinant and active participation
8 in the negotiation, making, performance, and termination of
9 the Contract. And this is active and determinant in
10 nature. It has to be.

11 Second, the will to derive rights or benefits
12 from the Contract.

13 Article 14 indicates that consent is the guiding
14 criteria that determines the subjective spoke of the
15 Agreement. The consent will be tacit when it is borne of
16 certain conduct from one of the Parties. And this is
17 something that is related, of course, to the provisions of
18 Article 14.

19 So for consent to exist in an arbitral agreement,
20 we have to look at these two assumptions. And also we have
21 to look at the principle of good faith. This is the
22 guiding principle of all contractual law. That is why
23 Article 14 of the Arbitration Act does not equate a
24 participation in the negotiation with consent. It requires
25 that the consent to submit to arbitration must abide by the

1 law. So, of course, the Arbitration Agreement in Perú is a
2 contract. Since it's a contract, it requires the will of
3 the Parties.

4 As Mr. Bullard has indicated, and I have taken
5 this from Professor Payet annexes, a third party cannot
6 meddle in an arbitral agreement without the consent of
7 those who participated in it. Article 14 cannot be applied
8 retroactively to the Arbitration Agreement. In its Reply,
9 the Claimants say that they are nonsignatory parties
10 because they actively and decisively negotiated the
11 Transfer Agreement. In 1997 -- this is the old law, and,
12 of course, it governed back then when this Contract was
13 entered into -- well, the law in 1997 required
14 by -- required that the arbitral agreement be made in
15 writing. It was an "ad solemnitatem" requirement. It was
16 a requirement set forth in the law. This was a requirement
17 set forth by the law for the clause, the arbitration
18 clause, to be valid. The position of the Claimants entails
19 that the common will of Activos Mineros and the Claimants,
20 well, that existed in 1997.

21 In spite of the fact that, in 1997, there was a
22 certain formality that had to be abided by, but the
23 Claimants never did that. This reasoning would lead us to
24 apply Article 14 retroactively on the basis of a legal
25 relationship that, in 1997, required for this formality to

1 be complied with -- that is to say that the Arbitration
2 Agreement be made in writing.

3 Article 14 cannot be applied retroactively
4 because of a constitutional law principle, which is
5 enshrined in Article 103 and in Article 3 of the
6 preliminary title of the Civil Code.

7 Now, to apply the Arbitration Law, which is the
8 current law that Mr. Payet tries to use, this -- to apply
9 this to an act with legal effects, this would create a
10 legal impossibility. So since there is no linkage between
11 Renco and DRR to the Arbitration Agreement, we are not
12 faced with a current legal situation that can be impacted
13 by that Article.

14 Mr. Payet has cited interesting provisions. He
15 made reference to our dear Prof. Marcial Rubio, and this
16 leads me to talk about the second transitory provision of
17 the current Arbitration Law which has a very specific scope
18 of application.

19 This is there to apply the law in time in
20 connection with several assumptions. So let us look at the
21 second transitory provision. It says: "Except by
22 agreement to the contrary, in cases before the entry into
23 force of this legislative degree, if a party had received
24 an application to submit the dispute arbitration, the
25 arbitration proceedings will be governed by 26512." And

1 the second transitory provision regulates that the
2 procedural rules apply to an arbitration. This is a
3 substantial issue that had to be taken into account. These
4 are procedural and operational regulations. They apply to
5 a process before the change, and then they continue after
6 the change.

7 The second temporary provision is not in
8 connection with Article 14 because Article 14 has to do
9 with the substance. This is not a procedural clause to be
10 applied to the proceeding. And because of the Constitution
11 and to support my position, that recognizes the principle
12 of the intangible nature of the Contracts.

13 MR. RODRÍGUEZ: Mr. Varsi, if I could ask you to
14 slow down so that the Interpreters can properly interpret,
15 I would appreciate that.

16 THE WITNESS: I apologize. I think I got lost.
17 I need a couple of seconds to go back.

18 So I was saying that this provision, Number 14,
19 Article 14 of the Arbitration Law does not refer -- does
20 not refer to a procedural issue, rather, a substantive
21 issue. And because of the Constitution, there is a
22 principle that is governed there, and that is the
23 intangible nature of the Contract. The Contract is a law
24 between the Parties and no rule may change the contents of
25 the Agreement between the Parties.

1 So we are going to get to the conclusion in the
2 Constitution. Our Political Constitution recognizes that
3 the freedom to contract requires that the Parties may
4 freely agree based on the term and the terms of the
5 Contract. And the Contract terms may not be modified by
6 laws or other provisions of any sort. So here there -- you
7 don't need to discuss my position. Here, I am applying the
8 principles under my Constitution, and, as an example here,
9 I referred to the Arbitration Law that differentiates
10 between substantive issues, Article 2 that refers to the
11 Arbitral Convention, and also the title Number 4 that
12 refers exactly to that, to the various procedural acts to
13 the arbitral proceedings as anything that is included in
14 the arbitration laws agreed in this case.

15 So Article 14 only governs the Article -- Title 4
16 of the arbitral law. The general Arbitration Law does not
17 allow for the extension of the arbitral clause requested by
18 the Claimants because of two situations. From the legal
19 standpoint, it was not possible to extend this arbitral
20 clause under the law in force because this required the
21 existence of an Arbitration Agreement. I have not seen any
22 evidence indicating that, under the general Arbitration
23 Law, there was a possibility to extend the 1997 Law and,
24 much less, under the situation that is here presented by
25 Claimants. And if there is, from the factual point of

1 view, that this law did not allow for the constructive
2 consent, the Claimants could not have had this applied in
3 actual life.

4 If Article 14 was to be applied, the Claimants
5 would not be nonsignatory Parties because of their
6 participation in the negotiation of the STA. So here, I am
7 talking about the first assumption under Article 14, to be
8 able to transfer to third parties that are nonsignatories.

9 Under Article 14, you need more than a mere
10 participation in the negotiations to also apply an arbitral
11 clause to a nonsignatory party. A good-faith
12 interpretation of the circumstances should also show
13 express consent.

14 Article 14 of the Arbitration Law does not
15 account for participation in the negotiation as being the
16 same as consent. The participation of the Claimants in the
17 negotiation of the Contract does not show express consent.
18 DRP was an important part of the negotiation and
19 contracting. The DRR and Renco could not consider DRP as a
20 mere legal instrument because DRP is Party to the Contract.
21 So this would not be logical.

22 DRP existed during the negotiations and
23 participated in the negotiations. The mere participation
24 by headquarters in the negotiation of a contract is a
25 current occurrence, something that happens every day. No

1 one is denying that, therefore, it cannot take us to the
2 conclusion that this is automatically granting consent to
3 arbitration.

4 If Article 14 was to be applied, Claimants would
5 not be nonsignatory parties due to their participation in
6 the negotiation, and here I include two references. And
7 these are Paragraphed from Professor Payet.

8 And in my opinion, according to my knowledge this
9 would not apply. If Article 14 was to be applied -- and I
10 continue with the same assumption, the Claimants would not
11 be nonsignatory parties because of their participation in
12 the negotiation.

13 First, because the participation in the public
14 bid with several other parties could not be equal to a
15 determinative participation, and that is to be active and
16 determinative participation under arbitration law.

17 And second, we do not know who presented the
18 questions that are cited by Professor Payet to inform his
19 position, and there has been no evidence as to the consent
20 to arbitration by Activos Mineros in connection with Renco
21 and DRR.

22 And now we move on to the performance. So
23 Claimants would not be nonsignatory parties in the
24 performance of the STA. The Claimants would not be
25 nonsignatory parties based on their argument in connection

1 with their participating in the performance of the Contract
2 and this because the evidence presented by Claimants do not
3 show express consent. The evidence presented by Claimants
4 showed that the parent companies helped their subsidiaries,
5 that is an independent subject of the law to comply with
6 their contract obligations.

7 There is no evidence that the Claimants de facto
8 replaced DRP in the Contract relation, and there is no
9 evidence that there is confusion as to who was operating
10 La Oroya. There is no indicia of the consent by Activos
11 Mineros based on the documents that I have reviewed.

12 Members of the Tribunal, I cannot confirm the
13 consent in the participation, so if Article 14 was to be
14 applied, Claimants would not be nonsignatory parties for
15 their attempt to derive or obtain rights from transfer
16 contract, and this is the second subject under the
17 contract. So this alleged transfer of rights or
18 acquisition of rights is something that I would like to
19 analyze.

20 The second path to apply Article 14 also requires
21 the existence of consent determined by the principle of
22 good faith. Article 14 only allows to apply the Arbitral
23 Convention because it does not convey terms or rights from
24 the underlying contracts to new subjects, only the ones
25 that have been part of arbitral clause as Parties to a

1 contract by means of the second way to apply or to acquire
2 contract rights by means of extending the Contract. The
3 arbitration Convention may request that application under
4 Article 14. And now we're going to see how this is
5 implemented.

6 Now, first, the Contract or its rights are
7 granted by means of a legal concept, an institution of the
8 law. And, second, the Convention is also applied by means
9 of Article 14.

10 In Perú, the authorities have identified the
11 typical cases in which this Arbitral Convention is applied.
12 Because of this intent to obtain the rights, we have the
13 third Party beneficiary. We have, also, the assignment of
14 rights. We have the lifting of the veil, and we also have
15 the assignment of rights.

16 We even, at Article 14, there would be, in a way,
17 to apply the theory of the lifting of the veil for cases
18 that are very specific. So once again, we are going to
19 back to Professor Bullard, a third party may not be a party
20 to a contract relationship if Article 14 is not complied
21 with.

22 So this Arbitral Convention cannot be applied to
23 just a mere party that is requesting a contract law. The
24 obligation of a contract right, because consent would be
25 assumed, given good faith. So we should also imagine that

1 that happens, so that would be contrary to the principle of
2 the freedom to enter into a contract, and the principle of
3 good faith.

4 Subrogation would be time-barred. I believe that
5 here that Professor Payet here, in my opinion, corrected
6 this assumption. And this Claim -- and this Claim had
7 already -- it was already time-barred because, as we saw in
8 the alleged case, that there was an act, the act of
9 subrogation.

10 This would be in the same position as the
11 creditors. So we assumed that position. The position of
12 the creditor with the same rights, with the same
13 obligations, and also with the same limitations.

14 As part of the limitations, we have the
15 limitation that is imposed by the statute of limitations.
16 So the original debtor-creditor relationship is based on
17 strict liability, according to them, and Article 70. And
18 given -- if their assumption is true by means of
19 subrogation, Claimants would become new creditors given the
20 assets. I am presenting their position.

21 And, however, as I have already mentioned, in
22 case of a subrogation, the objective aspects of a
23 creditor-debtor relationship, the original one suffers no
24 changes. There is just a replacement. And the rights and
25 the actions of the previous creditor are transferred to the

1 new creditor, but also the aspects of the objective aspect,
2 that is to say, the statute of limitations.

3 The Claim for subrogation has a specific statute
4 of limitations that is applied, that is applied to the
5 original creditor and debtor relationship. That is to say,
6 the alleged subrogation that would be operating in
7 connection with this Contract.

8 In that case, the statute of limitations,
9 according to our own Civil Code and, in principle, would be
10 the one regulating all of this would be two years,
11 two years that is to be applied to this extracontractual
12 liabilities. So this subrogation Claim would be
13 time-barred because it is based on damages that the
14 Claimants could in Missouri could have presented against
15 Activos Mineros.

16 I thank you -- and this would have been before
17 November 2004. I thank you all, Members of the Tribunal,
18 President, for the attention.

19 PRESIDENT SIMMA: Thank you very much, Mr. Varsi.

20 If I understand our agreement, nothing more is
21 going to happen. That is, we are going to have the
22 examination proper tomorrow. I mean, I leave that to you,
23 but I think -- if you think it would make sense to, at
24 least, exercise part of what you have in mind, you can do
25 so. And I think, as far as I understand, my word that we

1 could go on until like 5:30. Or -- but I'm in your hands.
2 You are the master.

3 MR. FOGLER: I'm confident that it will take more
4 than 15 minutes for me to cross-examine Mr. Varsi. I'm
5 happy to go to 5:30, if you wish, but I am doubtful that we
6 will conclude by then, but I will do whatever the Panel
7 wishes.

8 PRESIDENT SIMMA: Okay. I think it's just going
9 to be one solid unit if we do it tomorrow and start sharp
10 at 9:30.

11 MR. FOGLER: That's fine.

12 PRESIDENT SIMMA: That means that, Mr. Varsi, you
13 will have to spend the rest of today and into your night,
14 et cetera, not discussing the case. It should be possible
15 for you. I guess. Thank you.

16 Any housekeeping?

17 MR. PEARSALL: Two quick housekeeping points.
18 One, we will get you English translations of those slides
19 by tomorrow. Apologies for not having them today.

20 And, second, our witness Ada, is on her way. I'm
21 not sure if she will be available -- if her flight will get
22 in time tomorrow if she's called, so she's not set to go
23 until probably -- yeah, Alegre -- late until the afternoon
24 on Friday. But we had assumed she would start on Monday,
25 but if we're ahead of schedule, we'll see how much we get

1 through. She might not be available tomorrow. So I just
2 wanted to alert Tribunal to that.

3 (Comments off microphone.)

4 MR. PEARSALL: We have two more before. I'm just
5 forecasting it. And if Mr. Doe could just give us the time
6 for today, that would be great.

7 PRESIDENT SIMMA: Okay. So this concludes
8 today's work. Thank you very much, and see you all
9 tomorrow at 9:30 sharp. Thank you very much.

10 SECRETARY DOE: If I can offer the time totals
11 thus far: The total for the Claimant is 4 hours
12 26 minutes, and the total for the Respondent is 10 hours
13 3 minutes. That does include those times from Day 1, and I
14 can separate out the time for today if you give me a moment
15 to do the math.

16 (Comments off microphone.)

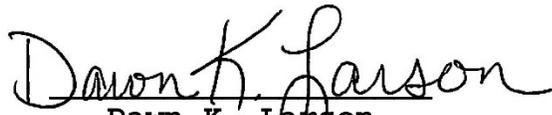
17 (Whereupon, at 4:47 p.m., the Hearing was
18 adjourned until 9:30 a.m. the following day.)

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