**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.** | |
| | **Vol. 9** |

**- 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:** | |
| **THE RENCO GROUP, INC, AND DOE RUN RESOURCES CORP.,** | |
| **Claimants,** | |
| **and** | |
| **THE REPUBLIC OF PERÚ AND ACTIVOS MINEROS S.A.C.,** | |
| **Respondents.** | |
| | **Vol. 9** |

(Continued)

HEARING ON JURISDICTION AND LIABILITY

Friday, March 15, 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:** Good morning to all of you.

We have made it to the ninth and last day of the Hearing in the Renco Case, and what remains are the concluding observations by the two Parties.

Is there anything organizational that we need to discuss beforehand?

Does not seem to be the case; so why don't you start, Mr. Schiffer.

**MR. SCHIFFER:** Actually, Mr. Fogler.

**PRESIDENT SIMMA:** Ah, okay.

**CLOSING STATEMENT BY COUNSEL FOR CLAIMANTS**

**MR. FOGLER:** Mr. President, Members of the Tribunal, opposing Counsel, my initial remarks will be uncontroversial. In fact, I am confident that my colleagues will join me because I want to start by expressing some gratitude, first, of course, to the Tribunal for your attention and diligence.

Sometimes during our Hearing, the lawyers have demonstrated our zealousness, perhaps overzealousness, and it has caused you to demonstrate your patience with us, and we greatly appreciate it.

I also wish to thank the PCA and Mr. Doe, your staff, those folks behind the screens, the technical people, the servers who have brought us refreshments and

lunch. You have made us feel very comfortable and, in fact, treated us very royally and we appreciate it.

And last, but certainly not least, I want to thank the Court Reporters and the Interpreters who have been greatly challenged by our process, and they have done an extremely admirable job. So a round of applause for our Court Reporters and Interpreters.

(Applause.)

MR. FOGLER: It seems strange to me that after several years of our proceedings, and now two weeks of evidence, that I must begin by justifying why my clients even have a right to be here. They are, after all, Parties to the Contract. They signed the Contract. The Stock Transfer Agreement is one unified Agreement.

You may recall the testimony of Mr. Payet, and he described the process in Perú for making a private agreement, the "minuta," and then having the signatories to the Contract go to the Notary and engage in the formality of a public deed. And as the conclusion of the Contract itself states, the Notary advised the signatories of the purpose and intent of the Contract.

It was read by the signatories according to law, which the Notary attested, after which the contents were affirmed and ratified, and they proceeded to sign it. The signatures that follow include the signatures of Renco and

Doe Run Resources Corporation. This was not mere happenstance. It was not a coincidence that the signatories for Renco and DRRC happened to be in the same room when the Contract was signed.

In fact, this was insisted upon when the Privatization Committee made the proposal to sell Metaloroya to a private investor, there was this series of questions and answers that we have discussed throughout the case.

One of the questions asked, if we set up a subsidiary, is there a form of guarantee that the Company that won the bid will be required to sign. And the answer, the consistent answer was the winner must sign the Contract, and this was because, as we remember from other questions and answers that we have seen, the Privatization Committee wanted to make sure that the Company or consortium that won the bid was jointly and severally on the hook, liable, for the obligations of the investing Party.

And so it was in this case that Renco and DRRC became obligated under the Contract to guarantee all of the obligations of Doe Run Perú. When Mr. Varsi attempted to tell us that Renco and DRRC had no obligations, in fact, the opposite is true.

They have all of the obligations of the Contract,

and the notion that Centromín would have to sue DRP exhausts its ability to collect from DRP, and then file a separate lawsuit against Renco and DRRC in order to enforce a violation of the Contract is totally contrary to the original intent, as expressed in all of the documents leading up to the signing of the Contract.

In fact, we know that Renco and DRRC have specific rights under the Contract. Even Mr. Varsi acknowledged that there's a confidentiality provision, and Renco and DRRC would be able to enforce it, in his view, not in an arbitration, but at least he acknowledged that they had rights under the Contract.

The notion that there are two separate Contracts -- let me just show you. That this is the arbitration clause. It's broad: "Any litigation, controversy, disagreement, difference or claim that may arise between the Parties with regard to the interpretation, execution, or validity derived or in relation to this Contract."

It covers all of the Claims that could be related to this Contract, and the notion that there are actually two separate Contracts just doesn't make any sense. The Additional Clause itself, if it were to be read as a separate Agreement, doesn't contain the necessary information to tell you who it is that is the beneficiary

of the Guaranty, nor does it tell you what obligations of Doe Run Perú are being guaranteed.

The only way to make sense of the Additional Clause is to read it as part of the Contract. Just as the Parties made separate Agreements for different aspects of their deal, the sale of the initial Metaloroya stock, the issuance of new Metaloroya stock, the granting of an option to Doe Run Perú to buy a separate entity, those different Agreements were all put together in one unified deal.

Renco and DRRC are plainly Parties to the Contract.

Mr. Payet admitted, of course, that the question of whether Renco and DRRC have specific rights under Articles 5 and 6 is a more difficult question. It's obvious that Renco and DRRC are not named in Articles 5 and 6, but you have several tools to help you decide whether Renco and DRRC enjoy those benefits.

You may consider the circumstances surrounding the making of this Contract. You obviously should consider the language of the Contract itself, and you should consider good faith in the construction of the Agreement. And I'd like to talk about those three factors.

The circumstances surrounding the Contract, of course, we've heard from several Witnesses. There was an initial failed bid process in which the Privatization

Committee sought to sell all of the mining assets of Centromín, but no one would make a bid at all because of the environmental liabilities that were at issue.

In the second attempt, the privatization committee did two important things to try to attract investment. The first thing it did was isolate the different assets. And so it put the Plant at La Oroya into a separate entity, Metaloroya, and it also sought to isolate the environmental liabilities and put them into the Centromín bucket.

That was the intent, and we know that was the intent because, as Mr. Sadlowski said in his Witness Statement, the assurances and promises that were made by Centromín in this initial Bidding Process and in the making of the STA were so critical that Renco and DRRC would never have entered into the Agreement without them.

Permit me to digress just a little bit about the character and quality of the evidence that we have seen in this Hearing, since I mentioned Mr. Sadlowski.

The Claimants brought you four fact Witnesses. They are Witnesses who actively participated in and have personal knowledge about the making of this Contract, or personal knowledge about the operations of the facility under DRP's ownership or both.

You heard from two of them. These are people who

obviously cared about doing the right thing. We brought you direct evidence with people who were there.

In contrast, the Respondents brought no one who had any involvement in or personal knowledge about the making of this Contract. They brought no one to dispute the promises and assurances that were made to induce Renco and DRRC into making the bid and to DRP into entering into this Contract in the first place.

They brought no one to tell you what Centromín's operations were like during the 23 years that it operated the Plant. It is difficult to believe that the Government of Perú and Activos Mineros, the responding Parties in this Arbitration, could not find a single witness to tell you, personally, about the facts that are important in this case.

And I think the Panel can fairly infer from the absence of any witness from the Respondents, that they cannot dispute the evidence that was directly brought to you by the Claimants on a factual basis.

What the Respondents did instead, they brought two fact witness, two Government lawyers whose involvement in the events that we are talking about was minimal and late in the process. These two lawyers had nothing to say about the actual operation of the Plant, the technical aspects of any of the issues that we are here to discuss.

That left the Respondents with two tactics to try to challenge the direct factual evidence that the Claimants brought you in this Hearing. Their first tactic was to try to turn the tables, try to convince the Tribunal that the things that Centromín did to cause the problem that brings us here were really DRP's fault.

It will be interesting to count how many times in the Respondents' Closing Remarks, they use the word "poison." We heard that term constantly, that DRP was "poisoning" the atmosphere in La Oroya. This is sort of like pointing the gun at your head and saying: "Don't come any closer or I'll shoot."

Twenty-three years Centromín operated the Plant, doing the same things with less care, with less attention, with less maintenance, less investment than DRP, and, yet, we are being cast as the bad guys in this arbitration.

The other tactic, of course, they brought you Experts, not people who were there at the time, but people who come after the fact and who give their opinions about the facts, and we will have a lot to say about those Experts as we go along.

So I had digressed about the evidence, but I want to get back to this issue of Renco and DRRC and their rights under the Contract, so let's look at what the Contract says. The way the Parties set up this deal, there

were three periods of time that were at issue in the allocation of environmental liabilities. There was the period during Centromín's operations. I don't think anyone disputes that the Contract imposes all responsibility for the period prior to DRP taking over on to Centromín.

Then there's the period after the PAMA, where there's some joint responsibility to be determined in accordance with the allocation of fault. It's this middle period, the period during the PAMA, that is at issue, but it is apparent that the way the Parties structured this deal, and as Mr. Payet described it, it is a "corporate spin-off" where the Parties deliberately decided how they were going to allocate this responsibility.

And what they decided to do was, generally, Centromín had all of the responsibility during this period except for two carve-outs, and they expressed it that way: "During the period approved for the execution of Metaloroya's PAMA, Centromín will assume responsibility for any damages and Claims by third parties attributable to the activities of DRP, except for those that are in 5.3."

So, it's everything is Centromín's except for these two, and that was hammered home by the provision at the end of the Article 5, which deals with the responsibilities allocated to DRP, because it makes it clear that, other than those specifically enumerated for

DRP, the responsibilities belong to Centromín. That's the way the Parties structured this deal.

Now, these provisions in Articles 5 and 6 are not indemnity provisions, these provisions that we're looking at. They are assumptions of liability, assumptions of responsibility. As Mr. Payet told us, that word has a specific meaning in Peruvian Corporate Law. It is more than an agreement to indemnify. It is taking on itself to Centromín, taking on liabilities that it might not otherwise have.

Now, good faith. Both Mr. Payet and Mr. Varsi confirmed that Peruvian law imposes, overarching on the interpretation of all Contracts, the notion of good faith. And that requires that we look at what the situation is that confronts this Tribunal. The situation is that DRP merged with Metaloroya, but then DRP disappeared. It has been liquidated. It's no longer there.

The Party that they say has the only right to enforce the obligations of Sections 5 and 6 is gone, and, yet, the guarantors of the Contract, Renco and DRRC, are being sued in Missouri for the conduct of DRP. The very purpose of the Contract would be frustrated if Renco and DRRC were not permitted to enforce the assumption of liabilities that Centromín made in this case.

The core purpose of the whole Contract would be

frustrated if Renco and DRRC are not Parties who can enforce the assumption in Articles 5 and 6.

So we come now to these carve-outs, the two exceptions in 5.3., and I want to talk first about 5.3(b). This is the exception for a default on Metaloroya's PAMA obligations. And by the way, if this were a U.S. case, there would be no dispute that the burden of proof for proving the application of these exceptions would actually fall on the Respondents.

I don't think it really matters here because it's not going to be very controversial, but here what we have is a carve-out from the general layout of the Contract as I have described, where Centromín has accepted this responsibility but now must prove that the exception applies.

So in this section, it's interesting the English version of the Contract uses the word "default." The Spanish version, which, as the Parties have agreed, is the version that controls here. The Spanish version uses the same word for "noncompliance" that is in the Supreme Decree, the 1993 Supreme Decree that set up the PAMA in the first place. I don't think that's coincidental. I think it was done deliberately to make clear that the proof of noncompliance must refer to what the statute, the Supreme Decree requires for noncompliance.

And we know this because it's expressly stated in the questions and answers prior to the entry of the Contract.

We've looked at this several times, but it bears repeating because even though Respondents want to refer to the part of the Contract that says, "well, if there's a conflict, the Contract prevails," but here, as we saw in 5.3(b), there's no discussion in this section about who gets to declare noncompliance or when that noncompliance occurs. So the question and answer actually fills in the gap. It tells you who it is that is supposed to determine whether there's noncompliance.

It is not the lawyers for Respondents. It's not the Experts in the case, and, with all due respect, it's not even the Tribunal. What the Privatization Committee told us, prior to entering into this Contract, it is the Competent Authority that determines whether there is noncompliance. We know that the Competent Authority is MEM, the Ministry of Energy and Mines, because that's what the Supreme Decree declares. It specifically states that the Competent Authority is MEM.

That's why we brought you all of the Audit Reports, the Reports from MEM itself that charted MEM's oversight of DRP as it worked through the PAMA Period. We saw 2002 Reports, 2003 Reports, 2005 Reports. We even saw

a Report at the end of the initial PAMA Period because the Supreme Decree required that, at the end of the initial PAMA Period, the MEM had to send out an auditor to make a report about whether the PAMA Projects had been complied with. And this is a Report from MEM.

It refers to the Company that they sent out to verify whether the PAMA obligations had been fulfilled, and they specifically stated that the PAMA Projects had been fulfilled.

So, remember, the question is, has the Competent Authority declared noncompliance because our assumption of obligations occurs only after the date that that Declaration of Noncompliance has occurred.

As of January 2007, there had been no Declaration of Noncompliance. Centromín was on the hook for any damages and Claims by third parties, at least through January of 2007, but we know that the PAMA was extended.

The time to complete Project 1 and the additional Projects was extended to October 2009. By the time that the Global Financial Crisis occurred, and the time that the operations had shut down, even then, in 2009, there had been no declaration by anybody, MEM or OSINERGMIN, or any other of the other Competent Authorities that there had been noncompliance with the PAMA. And so 5.3(b) does not apply.

Turning now to 5.3(a), let's look carefully at the language because it's very carefully crafted. Again, this is a carve-out from the general liability because it says DRP is liable only in the following cases. Everything else belongs to Centromín except only in these cases. And here I want to digress just a little bit again, because the language in the first paragraph of 5.3 talks about responsibility for damages and Claims by third parties.

And even though we're going to have an opportunity to provide you with additional information about the Missouri Plaintiffs' Claims, because those are the trigger for why we are here in the first place, it's important to talk about those right now.

We've heard the Respondent say "too early. Claims aren't ripe. We don't know what those Claims are based on because the Plaintiffs in Missouri have alleged all sorts of theories, like conspiracy, and alter ego, and negligent supervision."

These theories in Missouri are specifically designed to try to hold Renco and DRRC vicariously liable for conduct of DRP. Renco and DRRC did not operate the Plant. They did not pollute. They did not poison anybody. The effort in Missouri is an attempt to impose the liability that this Contract discusses onto Renco and DRRC.

But we don't even have to get that far because

the phrase itself speaks of damages -- damages -- and there can be no mystery or confusion about the damages that the Missouri Plaintiffs are claiming in the case in Missouri. They are seeking to recover for injuries incurred allegedly as a result of exposure to contamination from the operation of the Plant. Those are the injuries, the damages that they seek. That is specifically what this Contract is designed to cover.

And, by the way, the damages that the Plaintiffs in Missouri seek are related only to lead exposure. They plead, initially, that they've been exposed to lots of different things. That happens quite frequently in U.S. litigation. You broadly allege a whole host of alternative theories, but during the lengthy -- and I do mean lengthy -- course of this litigation in Missouri, the Plaintiffs have refined their claims.

We know that because they have hired Experts to describe the basis for the suits that they have made. And their Expert, we've got Mr. Matsun's deposition, he's an environmental engineer. We've got his Report. It's in the record. He complains only about the emission of lead because it is the lead that causes the harm in the people at La Oroya; not Sulfuric Acid or sulfur dioxide. It's lead that is at issue.

It's true, we do not know the extent of the Claim

or even whether it will be successful in Missouri, but what we do know is that Renco and DRRC have spent tens of millions of dollars defending these claims. We know that the Respondents, Activos Mineros, have declined, absolutely, to assume responsibility for these Claims.

There's no dispute about those issues, and it would be a real shame if, having gone through this entire process and the two weeks of evidence here, that the Tribunal would not decide whether or not Renco and DRRC are entitled to enforce the liability that Centromín voluntarily assumed as the fundamental basis for this Agreement.

So back to 5.3(a), you'll recall from our Opening Statement that we described this as three different hurdles. That's just the way the provision is described. The first hurdle, because it says: "Those that arise directly due to acts that are not related to Metaloroya's PAMA." That's the first hurdle. Are the Claims that are being made, the damages that are being sought in Missouri, related to the PAMA or not?

The position that the Respondents have taken in this very Hearing is that pretty much everything that deals with the environmental aspect of the operations of the Plant are related to the PAMA.

This is a quote from Ms. Alegre. She says: "So

I think that Doe Run breached the PAMA because it never completed Project 1, and because it increased production without adopting the protection and prevention Measures for the environment to avoid air pollution, and this goes against the STA." It's pretty broad.

This is a quote from the Respondents' opening. "DRP's decision to increase its poisonous emissions" -- there's that word -- "was itself a breach of the PAMA."

The very gasoline cans that Ms. Proctor so vividly described in the connection with her burning house analogy, the failure to modernize, the increased production, the use of dirtier concentrates, their position is all of those are violations of the PAMA because the PAMA requires that DRP take whatever action is required, not just the Projects, not just the modernization, but every action that's required to bring it to within the permissible limits.

And, in fact, Ms. Proctor specifically says that "the Claims in Missouri are directly related to the failure to complete PAMA Project 1." The Respondents don't even get over the first hurdle.

The second of the hurdles is a phrase that we have discussed quite a bit: "Exclusively attributable to DRP." This one is pretty easy too, because every Witness

who testified about this subject has acknowledged the role that historical contamination from the Centromín period continues to play on the blood-lead levels of the people in La Oroya.

We have quarreled and quibbled about the percentage of responsibility: Is it a lot? Is it a little? There've been different percents that have been suggested, but no one has suggested that it's -- that Centromín's responsibility for the lead that remains in the soil that is still there today has zero to do with the damages that are being claimed in Missouri.

But you don't have to take my word for it because the very Party that is the Respondent in this case, Activos Mineros, has already conceded that it is responsible for a significant percent of the liability for what remains in the environment in La Oroya.

And whether you talk about the percentage of emissions over time, the concentration of lead in the soil, the health risk, again, these percentages don't really matter because as long as it's more than 0 for Centromín, it is not exclusively attributable to DRP. And as I said, there is not anyone, not Ms. Proctor, not Ms. Dobbelaere, not anybody, that claims that Centromín bears no responsibility whatsoever.

So we come to the third hurdle. Probably more

time was spent on this one than any of the others, any of the other issues in the case. That is, whether the acts were the result of DRP's use of standards and practices that were less protective of the environment or of public health than those that were pursued by Centromín until the date of execution of this Contract.

Mr. Schiffer is going to tell you a whole lot more about the technical aspects of the standards and practices. We're going to hear from him in just a few minutes, but while I'm here, I want to talk about how it is that the Tribunal is to determine whether the standards and practices were or were not less protective.

The Respondents seem to have suggested that you get to pick and choose the best part of Centromín's time versus the worst part of DRP's time. In fact, that's what Mr. Dobbelaere tried to do. He said: "I'm going to use just a short period of time when Centromín had the Plant, from '95 to '97, and I'm going to compare it to a very short time that DRP had the Plant, and that's going to be my basis for comparison." But that's not what the provision says.

It's pretty clear from the provision that it wants you to consider the entire period that Centromín operated the Plant until the date of execution of the Contract, the entire 23-year period, and compare that to

the standards and practices used by DRP during the entirety of its period.

There is a lot of controversy and dispute about some of the numbers. Mr. Schiffer is going to get into that, but there are several undeniable facts that are undisputed, that bear on this issue about whether the standards and practices were more or less protective.

For example, Mr. Buckley told us that as soon as DRP took over the operations of the Plant, they instituted a maintenance program that immediately reduced emissions because they fixed holes in ducts and flues. They instituted a worker safety program and community hygiene programs. Immediately, they hired consultants immediately to start Feasibility Studies for the PAMA Projects.

Ultimately, we know they completed eight of the nine PAMA Projects. As Ms. Kunsman told you yesterday, these eight Projects initially were estimated to cost $17 million. They ended up costing over $65 million. They were completed.

DRP recognized that fugitive emissions were a problem. When the Gradient Study came out, Mr. Neil told you how much it alarmed him, and how they wanted to take immediate steps to try to ameliorate the problem, and, in fact, as part of the PAMA Extension, additional Projects were added and additional Projects were actually completed.

We had a $120 million Investment Commitment in the STA itself, that for the first five years we were to invest in the Plant, to modernize it, to expand it, to fix problems, to plan for the future, and we did that. And, ultimately, we ended up spending $313 million -- when I say "we," I mean DRP. Not Renco or DRRC.

I mean, DRP -- forget about the issues of undercapitalization or circular transactions that Ms. Kunsman talked about, because those are immaterial. What matters is DRP was able to spend $313 million to improve the Plant.

All of these things that I have mentioned are things that DRP did but Centromín did not do. There's no dispute about those, and there's one set of data that tells the whole story that no one disputed.

We heard a number of questions throughout the course of the Hearing about what was the ultimate purpose for all of the PAMA, and for the environmental legislation. And it was to care for the children of La Oroya. That was the ultimate goal: Make the situation better for the children, and this chart from Ms. Proctor -- not from us, from Ms. Proctor -- contains information that no one in this case has challenged. These are the blood-lead levels of the children in La Oroya.

No matter what you think about the air quality

data or the stack emissions or any of the other statistical issues that Mr. Schiffer will soon be discussing, ultimately, this is the goal, and, as Ms. Proctor said, what this shows is that emissions were going down. The blood-lead level could not go down, as this chart shows, without reducing the emissions of lead. This is the proof of the pudding.

We are criticized in this arbitration for not doing it fast enough, for not going further, for not doing more, for not completing Project 1. That's not the requirement for the Standard in 5.3(a).

It doesn't require that we bring the Facility to the maximum permissible limits. It doesn't require that we bring the Facility to Mr. Dobbelaere's Umicore Standards in Europe. All it requires is that we do better -- equal to or better than what Centromín did, and there, the evidence is overwhelming. We were not perfect. But we were better, by far, than Centromín.

MR. SCHIFFER: Members of the Tribunal, I'm going to pick up a little bit where Mr. Fogler left off, but before I do, I want to address -- I'm going to start off with standards and practices, and comparing Centromín versus DRP, but I want to amend one thing that Mr. Fogler said when he said there were no Centromín people here.

And that's true. No one currently with

Centromín, but Mr. Pepe Mogrovejo was with Centromín, and if you read his Statement, what he said is that when Centromín operated the Plant, they would often be fined for violations of various codes, and they'd opted to pay the fine rather than make the fix because the fines were cheaper.

So I think that is insight into Centromín's attitude about the health, safety, and welfare of the Plant. The other point I want to make, circling back to Mr. Buckley, let's not forget that he went down to the Plant while Centromín still operating it, for due diligence. Remember, he said he was there in August or September. The handover wasn't made until the end of October to DRP.

And remember, I asked him -- this may refresh your memory, when I said, Mr. Buckley, on a scale of 1 to 5, 5 being excellent, 1 being terrible, where would you have rated the La Oroya facility? And he said: "Well, when I went down there the first time, I rated it a 2. I would have given it a 2, but when I went back, when we took over and really dug in, I downgraded that 2 to a 1."

So it's really not seriously debatable that Centromín was not doing anything. And, in fact, we know from Mr. Dobbelaere's testimony and that -- and Mr. Dobbelaere was a talker, but he said that -- he was

asked about Centromín doing absolutely nothing to control fugitive emissions, and his answer was "maybe not. I don't think so." Well, Mr. Dobbelaere, you're correct.

So what we do know -- and I hate to carry on with what Mr. Fogler was saying, but, just very quickly, we did all these Projects. You've got dozens and dozens of photographs in the record. It's Mr. Connor's interactive tool, you know, that slideshow that we prepared for his Second Report. That gives you a lot of pictures of the before and after, and you don't have to be a scientist or pyrometallurgist or a toxicologist or a lawyer to see what you see.

The other thing that is critical here in terms of standards and practices, and this wasn't really touched on in the arbitration, but this is in the record, that, yes, when -- when DRP took control of the Facility, it did increase production.

So if you look at this chart, to the right is higher production, and to the left is lower production. And then if you look on the left-hand axis, you have lower emissions at the bottom and higher emissions at the top. Well, what do you see? You see that DRP was producing more but emitting less. Now, how could that be? I mean, Mr. Dobbelaere says without a Sulfuric Acid Plant, nothing matters. Well, that's just not true.

Doing the basic maintenance, fixing the holes in the ductwork, making sure equipment is done properly, having a protocol to run things. You can run an operation more efficiently, and that's exactly what they did. And the proof is on this chart. The data on the right comes from the business records of both Companies, in terms of total production, and the blue dots come from Reports that both Parties made to the Competent Authority about their emissions.

We also know that Centromín really wants to have it both ways, and we'll come back to this in a very specific way in a minute, but you look -- this is the chart that you've seen many times over the last two weeks, and it is -- shows total production under Centromín's time and total lead production, and then you have the vertical line that says -- well, it says "total metals," but the vertical line is the handover. It's the handover from Centromín to DRP. And you don't see a ramp-up in production. You don't see significantly more lead.

Yes, there's a trend upward in production, and that's reflected in the air monitoring data. We're not running away from that. We're not saying that didn't happen. What we are saying is that the Respondents' theory of how much the fugitive emissions were is fantasy, and we'll get to that.

But this is only intended to show, for now, that we weren't doing anything that Centromín wasn't already doing. And this Slide shows you the lead went up by 0.6 percent. And compared to the overall increase in production of lead under DRP, that's less than 1 percent. And they're saying 1 percent, somehow, miraculously converts into 179 percent. I don't know how you ever get there from here, but we'll talk about that as well.

All right. So yesterday, Mr. Thomas said to Mr. Dobbelaere, "well, can you explain the conflict in the evidence between, you know, what you say is wrong and what they say is right." So I thought I would give you -- hopefully, I'm not trying your patience, but a little primer on the subject because, I think -- I will tell you that it was hard for me to get it, coming into the case. It's confusing.

So we'll start with basics. You have the main stack, which we all know is part of the Plant, and smoke comes out of the chimney. And it's mostly sulfur dioxide, but the sulfur contains other things like lead particles and whatnot. So every so often -- I'm not sure if it's hourly or -- every so often, a worker has a tool and they go up and they measure the speed of the flow and the temperature, and they take a sample, and then, from that, they can do a calculation that shows the level of sulfur

emissions. And they can also then take that sample to a lab, and the lab will tell them what percentage of that is lead.

And so that's how they're able -- and then they report this to the Government, you know, all the time, and so the sulfur and lead coming out of the main stack is monitored by the same equipment essentially, although one has to go to a lab, and one you don't have to send to a lab. Okay. So that's what's important about the left-hand side.

On the right-hand side, it's like belts and suspenders. Okay. You have your belt, which is the main stack, which you read, but it doesn't tell you -- and we'll get to this in a second. It doesn't tell you anything about fugitive emissions. And I don't need to explain that because, I think, by now we all understand fugitive emissions. But, on the right, you have air monitors, and they're located all over the place. I mean, we've -- we talked about Sindicato because it's the closest most-direct monitor to the main stack, but there are like eight others, but they're all consistent here. And so, you look at the -- and I use the monthly data, by the way, because we were criticized for using the yearly data, but the monthly data is the same trend. If you look at the one on the top, that's for Sulfuric Acid, and that is measured in the

community at the air monitoring station, and the one below is for lead. Okay. So bear with me.

So you have two separate measurements: One at the Plant, one in the community. This is important. The sulfur reading equipment, the air monitoring equipment that reads sulfur, is different from the equipment that monitors lead. Okay. And that comes from Mr. Connor's testimony and it comes from Mr. Dobbelaere's testimony. I'll give you a minute just to read it. Totally different systems. That is correct.

All right. So, whereas, on the left-hand side, you have one measurement that takes care of both readings, but, on the right-hand side, you have completely different equipment that measures one and the other. And the air importantly measures everything. You don't have to calculate fugitive emissions because, frankly, no one knows, they can only guesstimate what they are, and then, even within fugitive emissions, lead is just one component. Okay. There's lots of other components, lots of other components. So, rather than guesstimating, you could actually look at the data that shows you all of the emissions and how it's affecting the atmosphere because, at the end of the day, the reason we control emissions is so people have cleaner air to breathe. I mean, it's as simple as that.

Now, the accuracy of some of this. We were the ones to point out, initially -- not the Respondents, we did this -- that the sulfur equipment was miscalibrated. We don't have any evidence that there was bad faith in doing that, but, you know, they put this equipment in and it was calibrated so that the emissions above a certain amount wouldn't register. And so this equipment got fixed in, I believe, 2005, but, between 2000-2005, the data is not something that we are going to rely on, and we haven't. So that's -- I put a question mark by that because, you know, probably, someone could make something out of it, but we're not trying to.

But what the Respondents are trying to do is say, "well, if that's wrong, then the lead has to be wrong." I mean, that's their argument. There has been nothing in this case -- and I challenge you to do a word search through the record -- where anybody has said that the lead monitoring systems were broken, didn't work, needed replacement after 1999. We do know that the equipment that Centromín used was about -- I'm going to exaggerate -- 100 years old and was not very good, and the way they handled the samples wasn't very professional.

But we do know that, when DRP came in, in 1999, they put in new equipment, and it was monitored. It was monitored by the MEM. It was monitored by SVS. It was

monitored by McVehil Monette. I mean, all these audits and monitoring and not one criticism of that. Okay. And how do we know that we can check on that? How can we check?

It's easy, because you compare the lead coming out of the main stack over time with the air quality measured over the same time. Those two curves should be in line with each other. You shouldn't see, you know, one super high and one super low. If you see that, something's wrong. But what we see is it's a perfect nestling match. That's the objective data in the -- you don't have to do a bazillion calculations. I mean, look, I know Mr. Dobbelaere said, "look, I'm not involved in what goes on outside the Plant. I'm just an inside-the-Plant guy." And we'll get to him in a second, but this is all you need to know.

Okay. Let's get to Mr. Dobbelaere. Let me go back to set the table for this. So in the sulfur emissions, if you look at -- I guess I can't step away from the mic. If you look at the top left-hand graph, you'll see a sharp decline in sulfur emissions from 1999 to 2000; right? And Mr. Dobbelaere said that can't be right. And you know what? We agree. Mr. Connor was asked about it, and he said, "I can't explain that. I don't know why that happened."

Mr. Dobbelaere goes a step further, actually, and

says not only does the downward slope not make any sense to him, based on production, but the sharp increase slope during Centromín's ownership, between 1995 and 2007, also looks very suspect to him.

All right. So if you can't rely on the data for either -- and this is all sulfur, by the way. This has nothing to do with lead -- then this is what the graph should look like. And what you see is that sulfur emissions didn't go crazy. They didn't go through the roof of this exhibit. They stayed generally flat, and that makes sense because the production did go up but not exponentially and the Plant was run more efficiently and you had less emissions.

Now, this is our take on the evidence. Okay. I mean, I'm not here to say that anybody testified to this except Mr. Dobbelaere, if you take his analysis, the logical next step, this is what it means.

Okay. So Mr. Dobbelaere does a ton of calculations to tell you that a cat is a dog, basically.

In using his starting-off point, he used one year for Centromín, one year, 1995, which -- if you go back to this chart, look at the blue -- what doesn't -- you know those games you play in the cartoons, which -- look at the two pictures and what doesn't belong? What doesn't belong here? The air data during Centromín's time for 1994, 1995,

and 1996, it is way off. It can't be right. And we know from a lot of those contemporaneous reports that it wasn't right. Knight Piésold criticized it, and -- well, they severely criticized it, and that was done in 1996, I think. Maybe '95 or '96.

All right. So moving on. So he used one year, and, just coincidentally, Centromín's alleged best year. And then -- okay. And this is where it gets kind of interesting and, in my view, a little funny. So he says that a 30 percent increase in lead production equals -- just in fugitive emissions, which, by the way, you can't measure -- 179 percent increase in lead emissions. Okay. That's his theory. But the main stack doesn't prove that. The main-stack emissions don't prove his theory. So he came up with the idea that there had to be a hole -- I call it the "hole in the chimney" argument. I mean, you know, as a layperson, I call it the "hole in the chimney" argument. But he says a hole must have been in a duct. And according to him, that hole must have been there a really long time, blowing hurricane-force fugitive emissions out into the world, and, yet, no one noticed it.

When the MEM's people came to audit, no one noticed it, apparently. I mean, nice try, but this is fantasy. This isn't the data. This is theory stacked on theory. And this is another -- this is from Mr. Buckley,

who specifically said -- I mean, actually, Mr. Dobbelaere's theory would actually might have some credence if it were back in Centromín's time because, when Mr. Buckley got there, he did see a bunch of holes in the ductwork and, as he says, "immediately after we acquired the Complex, I had crews going around fixing the biggest issues."

So why would a company -- and you met Mr. Neil and Mr. Buckley, and I can't speak for how you view their credibility, but they seem like the nicest, most honest hardworking guys who cared that I've actually seen in litigation a long time. But that's just me and I know, you know, people will have other views.

But -- so, if they're going around fixing the holes in the ductwork on Day 1, would they really just let another hole exist without -- you know, I guess to divert -- to divert emissions from the main stack? No. There's no credibility there, and we also know, from the community Reports, and this one is from 2000, for example -- and I won't go into all the details, but Doe Run Perú is basically keeping a running tally for the community of what they're doing to improve the system, to, you know, repair leaks and holes and other things that general maintenance is supposed to do.

His calculations. You know what? I sat through his cross and I know this case and I didn't understand

80 percent of what he said. It was so confusing to me. But what we do know is he relies on mass balance, and that's his tool here. And we know that it's totally understood that, in doing a mass balance analysis and trying to come up with what you call "indeterminate losses," that it is a -- it's not an estimate. It's more like a guesstimate. I mean, it's a very general way to try to get a feel for whether you're losing metals or not losing metals. And, you know, we saw that sometimes it's negative, sometimes it's positive. I mean, you do the best you can with the data you have, and Mr. Dobbelaere said that. I agree. You do the best you can, but, at some point, you have to say, "the best I can get just isn't good enough to raise my right hand and give an opinion." And we just don't get to, you know, give an opinion as an expert just because you just have a little bit of information. You know, I think you say, "I can't give an opinion because I don't have enough information," but that didn't happen.

We know from Mr. Dobbelaere's testimony, he talked about the balances, and he admitted that there were inherent flaws in the mass balance approach, and I'll give you a moment to look at this. Again, in another place: "How does one determine what percentage of indeterminate loss are fugitives?"

"That you cannot because you can't measure."

Remember, earlier, I said that indeterminate losses is made up of a lot of things, lead being just one of them. And he admits that, I mean, as he should.

Again, another quote from Mr. Dobbelaere on the same subject: "Uncertainties in the mass balance, yes." And you have these slides so, if I go too fast, I apologize but -- and then, my personal favorite is this table, this table out of the SX-EW Report. Now, SX-EW were so-called "experts" hired by the Right Business when DRP was in bankruptcy, and why they would have them do this kind of analysis is really perplexing to me because there's nothing about the historical emissions and who did better than whom that DRP needed to know under bankruptcy. I mean, all they're worried about is how do we go forward? How do we get the money to finish the plan and go forward. So something is really fishy, frankly, about the whole Project. And SX-EW is not here to defend its work.

And, interestingly, in Mr. Dobbelaere's First Report, he really wraps his arms around the study. I mean, I -- again, you can find out for yourself. If you read the First Report, he mentions SX-EW a ton of times. He says that he agrees with their calculations, you know, SX-EW says this, they say that. And he refers to this table in that Report, and then, you saw, under cross-examination, he just totally disavowed it. He ran away from it like it

was -- had cooties. He said: "Oh, I didn't do that. I don't care about that. I'm not relying on that." And so, you know -- but it's just fun with numbers. I mean, even he says: "I've also been playing with all these numbers, but, I mean, you can prove whatever you want because it is all based on estimates on fugitives." Exactly. Exactly. You can come up with whatever you want doing this because it's all just manipulating numbers that are gross estimates of stuff. Why would you do that when you have scientific objective evidence? It makes no sense. Unless, you're trying to turn the tables, as Mr. Fogler said, like we believe Respondents have been trying to do.

All right. You'll be relieved to know that I'm off that topic, finally, and, you know, the comparison about who was better, who was worse, I think it's interesting that it's taken up 80 percent of the briefing, 80 percent of this Hearing, and, yet, it really ought not to even be relevant, not even relevant, if you apply the Contract and find that DRP was not exclusively at fault, which no witnesses said they were. No witnesses said they were. Ms. Proctor said that DRP was predominantly at fault, but she also said Centromín also bore responsibility for historical emissions after 1997. And it's in the record, but -- so all we need -- frankly, all we need is 1 percent and we're good to get over that hurdle. And the

Opinions varied widely, as Mr. Fogler said. But I won't debate and delay that.

So the Treaty case. At least in my mind -- and you know, look, I'm a trial lawyer. I know enough law to allow me to try cases. I am not a book worm. I'm not the guy that's going to read every Opinion that comes out, but, luckily, the client had King & Spalding at the time of the initial Memorial, and they have a bunch of book worms, and they researched the heck out of this. And what I picked out are two cases that both sides cite in their Briefing, both sides use them. And, to me, it helps make sense of what is a pretty amorphous standard; right? What's fair and equitable? I mean, how do you really judge that? What are the rules we use? What are the boundaries? Because it seems like it could be anything.

Well, we know from the case law that it really boils down to the Investor's legitimate expectations balanced by the principle of proportionality. In other words, the State has the right to make laws and to do things. No one is questioning that the MEM had the right to issue its Decrees, but they have to be in proportion to what the Investors' legitimate expectations were, and, on every front, that didn't happen here, on every front.

And a lot of this is going to make sense to you. And by the way, Respondents never responded to any of this.

I mean, it's like -- when we did this in the Opening, it's like they never heard it. I guess they're hoping you never heard it either.

So Renco and -- you've heard a lot about we didn't spend enough, you should have spent more, you were delaying money, whatever, but, up front, it was negotiated that Renco and DRRC did not -- did not have to seed this Company. And how do we know that? We know that from the Contract. So when it comes to Working Capital -- and Working Capital means all the money you need to run the Plant, to do the PAMA, to modernize, it makes an exception. It says: "Yeah, you can use the Capital Contribution to do that, but that obligations is subject to Numerals 3.2 and 3.3." Okay. Remember that.

And in Ms. Kunsman's slide, she doesn't have that highlighted. That part she leaves out. And if you go -- I'm sorry, I was talking about the one above. So it's the slide above with (f), it talks about the investment responsibility but then it accepts Paragraph 3.3, and the next paragraph, I apologize, is Paragraph 3.3. And it says you have no obligation to maintain capital in the account, and you can use it for anything. You can give it away to charity. They could have made a charitable contribution to the United Way with that money and they couldn't get in trouble for that. I

mean, it's -- I'm not saying that that would happen, but I'm saying that's how broad the entitlement is.

Conversely, because Renco and DRRC did not have to come in and pay a bunch of money up-front, they were going to depend on the in-country company -- in this case DRP -- to make its own way. And that's exactly what the PAMA allows because -- think about this. Okay. Think about this. Not every mining company in Perú was going to have a brand-new western investor come in. Some of them were going to continue under the ownership that they've always had. Like, for example, Southern Perú, if they had -- if they had an outside investor come in, I haven't heard about it -- but that is an example of a company that was around working. So had the MEM said to them, "hey, guys, you need to go out and get a couple hundred million dollars and put it into your company," they couldn't have done that.

So what -- the system was set up to allow you to pay as you go. Okay. And the only requirement, under the law, was you have to spend at least 1 percent of your income on PAMA Projects.

Okay. So when we get lambasted for having DRC -- yeah, DRP -- sorry -- pay its way through this, that's exactly what the legitimate expectations in this Contract were. And that's the annual investment

requirement right there. Sometimes I talk ahead of my slides. That's not a good idea.

All right. So, now, we're on Number 3, legitimate expectations that DRP would get nine years to complete nine Projects; right? I mean, that was -- going in, that was a legitimate expectation.

And here's a schedule. The schedule put the Sulfuric Acid Plants last. Okay. They put them last. DRP would have the legitimate expectation and its Investors would have the legitimate expectation that I've got nine years to spend the money with the most expensive Projects going last. And you know why they were last? Not just because of the money, because they were the hardest to do. You can't just plop in, like you said, Mr. Chairman. It's not like a John Deere tractor where you just buy one and stick it on. These are bespoke, bespoke things where you have to get someone to engineer it and then bring it in and put it in.

And in the case of the copper unit, they had to modernize the whole circuit in order to make it work. So you don't just pop these things in.

And they weren't doing the studies, by the way. I mean, they get blamed for the delay, but they had -- they had international experts advising them at all times. Before they change from one technology to the other, they

had already spent $14 million on engineering, and that's money down the drain because they couldn't use it.

Okay. This one, again, another one -- it's important. You've heard, basically, that Respondents' mantra is, "you weren't allowed to increase production and use dirtier concentrates unless and until you completed all the Sulfuric Acid Plants." I promise you, if that were true, that's something that the Government should have disclosed up front. They should have said, "you know what? We'll sell you the Plant, but we want you to maintain the production levels until you complete the Sulfuric Acid Plants. We know it's the last project, but, really, if you really want to have a business, you've got to do it first." Okay.

I mean, that's their theory, and I challenge you to look in the Contract, to look in the prebid questions and answers, to look in any document. That doesn't exist. That was never the deal. The deal was -- is that you do these Projects over a nine-year period, and, in the meantime, you expand production. It's right there. In the prebid questions and answers, essentially, one of the bidders is saying, "what do you mean by 'expansion'?" And they say it means increasing capacity of the production circuits. That's what they -- they wanted that. They wanted that.

And you look at the Contract, and, under investments, it says: "Expansion in the production capacity of the Company." Okay. That's the deal we had, not the deal they're trying to say we had. There's nothing in here that says you can't expand production capacity of the Company until you do the Sulfuric Acid Plants. Okay. If that's the deal, then they should have told us upfront that that was the deal, and we might not be sitting here because Renco and DRRC might have decided not to invest at all, given the shambles that they inherited.

What else do we know about Centromín? We know that the increase in production trend that you see before the turnover isn't by accident. Centromín, in its Business Plan, had a purposeful plan to increase production with dirtier concentrates. Okay. That's their plan that they're now blaming us for.

Had the Government meant to, you know, make sure that we kept everything the same, again, I won't beat a dead horse, but they should have told us up front, not in a litigation 14 years later. I mean, come on.

We also know that the law basically set a limit on how much more you can produce. And it said that, if you exceeded 50 percent of the capacity in the PAMA, you know, the capacity set out in the PAMA and -- that you would have to submit a new PAMA. You would have to redo it.

Well, that never happened here, and the reason it didn't happen here is because DRP's production never even came close to hitting that ceiling. And, yet, we're faulted for what we did.

I mean, this is -- honestly -- and I'll get to the Alice in Wonderland part in a bit, but it's Alice in Wonderland.

All right. So then we get to investment obligations would be suspended during major economic downturn. I won't spend a ton of time on this because I think it's really obvious. They promised us, not one place but two places in the Contract, that we would get -- that our payment obligations -- or DRP's payment obligations would be suspended in hard times, and that was not in the pro forma contract, so we know it was specifically negotiated and put into this Contract and agreed to by these Parties. We know that. You look at the Pro Forma Contract, you look at this Contract.

And you can't read this very well but, in the prebid questions and answers, Centromín initially took the position that we won't agree to that, we won't agree that economic alterations will be a force majeure event.

But you know what? They wanted to sell this Plant so badly, and they failed in 1994, they didn't get any bids, I think they were willing to agree to almost

anything to get somebody in the door. I mean, think about the deal you're getting, it's like a car salesman, "oh, you know, drive the car out today. No money down. No payments for six months." You know, whatever; right? I mean, we've all seen that kind of bait to get something sold, and, to me, all this smacks of, "we have to do anything we can to get this Project off our hands," and this is all part of it.

And we know that -- and this a slide I borrowed from the Respondents' slideshow in their Opening. I forget which number it was, but it was way back there. And all I'm going to represent here is the initial force majeure event did occur before the Treaty took effect in February '09, but DRP was seeking relief for the lingering and ongoing effects of not having money well beyond 2008, and you can see, from Respondents very own slide, that, as of March 5, 2009, they were asking for relief. So that does fall within the Treaty period. It does make this Claim relevant. And this is Respondents' slide, not mine.

All right. So that gets us to being treated the same as competitors. Okay, now, this one -- okay. This is my favorite. Okay. This is my argument I like the best. We all know that you've got to treat people fairly; right? I mean, that's life.

What did they do to us? Wait. Wait. Am I going

backwards? Bear with me a second. Where's the 80 -- okay. I'm sorry. Somehow, it got messed up.

All right, so we're supposed to be treated fairly. Well, the first thing the MINEM did is they set an air standard for sulfur dioxide. And we talked about this in the Opening. 80 $\mu g/m^3$, whatever that means. It's 80. Okay. Well, and they told us that we couldn't operate. We couldn't even work the Plant until we met that standard. In other words, we were no longer able to -- DRP was no longer able to operate and then use the money to pay for improvements. They couldn't operate at all until they met 80. But what we know then, we knew that then, that 08 was impossible, it couldn't be met. And the Technical Manager of Southern Perú, which was the chief competitor of DRP in the high Andes, said that no technology exists in the whole world for copper refineries that can guarantee compliance with the new law. Okay. That came out of a competitor's mouth.

And you know what? Of course, it's too late for DRP, they liquidated us -- DRP, but the MINEM changed the rules. They said, "you know what? Yeah, we think you're right, 80 is really tough, so why don't we amend our Decree and say you can just get there gradually. Just do your best. If you make improvement, great, if you don't make improvement, well, you're trying." That's where the

standard went to.

Now, remember, they weren't allowed -- DRP couldn't even operate unless it met 80, and now they're saying, "oh, it's okay. We were only kidding. 80 is just an aspirational goal." And then -- Well, and then you see that -- here, that the former Minister of MEM was really upset about what he thought was a double standard. And if you read this, it says: "Renco Group, a corporation belonging to Ira Rennert, requested eight additional years after compliance with the PAMA in order to be able to adopt to the 2014 ECA as a condition for the financing it would grant the Doe Run Perú to refloat the Plant." Yet, the Minister, Jorge Merino, and the State were immovable and demanded the total compliance of the MINEM standard for sulfur emissions. Okay. So that's what they said to us.

But then, they decided, when they wanted to resell the Plant, because it went on the market again -- you know, they wanted to see if they can get a new investor. They decided to loosen the standards so they could get a new investor in the door. Okay. And, yet, they sit here and they talk about poison and the children of La Oroya, which are crocodile tears, frankly, from them, given this. Crocodile tears.

So that is not being treated fairly. That is not being treated the same. That is clearly discriminatory.

So I'll actually go back because I got -- I jumped into this a little bit out of order. I'm sorry.

All right.

So the last point that we had a legitimate expectation about was what Mr. Fogler addressed, the assumption of third-party liabilities. And I won't spend any time on this because I think he covered it very well, better than I could. So I will move on.

All right. So what is Perú's positions in this case; right? They said that Renco and DRRC did not have to keep capital in the Company, but, now, they're saying, "you destroyed DRP's chances of succeeding because you didn't have a rainy day fund of capital in the Company." That's their position. Totally opposite. They say that, "oh, you could operate, you know, DRP could operate, and use the revenues from its operations to pay for its operations and pay for the PAMA."

But, as of October 2009, after the Treaty was in effect, they said, "no, you can't. You have to put 100 percent of all your money, everything you have, from any source, into a trust that the MEM will handle, and we're only going to use it to pay for PAMA Projects." Now, supposedly -- I mean, presumably, that would have led to more legislation about how they would have done that. But it cut off DRP's life -- oxygen flow. I mean, they

couldn't operate. How are they going to pay for anything without operations and money to pay for operations? So that is a complete about-face from what Perú promised when they got Renco and DRRC to make the Investment.

And they did the same thing during reorganization in August 2012. This time, they said that DRP couldn't operate at all, they couldn't do anything unless they met the 80 $\mu g/m^3$, which we just talked about. And that was, frankly, just a ploy to get them out of business. You know, "I want you to meet a standard that I know you can't meet." Okay. How are you going to do that?

And this is the -- C-78 is the 100 percent trust requirement, and they did lower it at the last two months of the deadline to 20 percent, but, by then, we -- DRP was not able to get financing. And that's in Mr. Neil's Statement.

We talked about -- we've talked about this already. This is during reorganization, R-118. I believe it's R-118. I can't really see it -- anyway, where they weren't allowed -- DRP wasn't allowed to operate at all.

And, now, they're saying that, because you followed the -- because you complied with the PAMA -- and this is Item Number 3. They're saying that, "because you complied with the PAMA and didn't do the Sulfuric Acid Plants first, we have no obligation to assume liability."

Where is that in a document?

Then, they go on -- we talked about their theory that DRP ramped up production and destroyed the ability to get third-party liability coverage. And we talked about that. How they argue that, again, that DRP breached the PAMA by failing to complete the last Sulfuric Plant because of an economic crisis. Okay. They promised DRP, in writing, several places, that, "if there's an economic crisis, we're going to suspend your obligations." But the paper trail here shows just the opposite. They said, "oh, you didn't claim it soon enough. You don't really need it," and all that other stuff, but they weren't willing to stand by their Agreement.

And then, we talked about Southern Perú being preferentially treated, and so, I just want to talk now about -- because I've touched about legitimate expectations and how Perú completely trashed them, but I need to talk about proportionality; right? Because that's important too.

We're not saying that Perú didn't have a right to issue regulations requiring things, but they couldn't be -- they couldn't be unreasonable about it. For example, in the 2006 Extension, they made a requirement that DRP do two things to ensure financial compliance with the Extension. First thing they did is they wanted 20 percent

of a certain -- based on a certain amount of money, in trust. And they wanted a guarantee from DRP that they would complete the Projects, and DRP gave them both. They got both. But then, in 2009, the MEM -- and this is -- you can find this in Mr. Isasi's Statement. I didn't ask him about it, but it's in there.

The MEM was really frustrated, they were not happy. When Congress -- when, supposedly, DRP went over their head -- over the MEM's head, and went to Congress and got a second extension in 2009, the MEM didn't give them that. It was Congress. It was an Act of Congress. But the Act of Congress told the MEM that they could add additional requirements to implement the law, and, according to Mr. Isasi, they were really frustrated about this.

Now, I can't prove that the 100 percent trust requirement was their way of sort of getting back at DRP. I have no way to know that. I mean, it kind of feels that way, but I don't know that. But what I can say is that 100 percent trust requirement was not proportional, not proportional to what they were doing and should have done. It was really designed to put DRP out of business, which, low and behold, DRP went out of business.

Now, I planned on giving this deadpan argument, so I'm sorry.

At the end, I've summed it all up in this chart that you see, the promises, and Perú's positions. Respondents not one time in this case addressed this, any of this. The change in the law on the ECA. I didn't hear anybody talk about that, and I sat every day through this Hearing. I mean, they want to pretend, I guess, it didn't happen, but there's no -- they never denied it. They never said this isn't right.

All right. Indirect expropriation. It's the same facts that apply to both under these circumstances because -- the reason for that is that DRP did go out of business. They were liquidated, and, as a result, the Investment was clearly neutralized, and that really is just an application of roughly the same kind of law to the same facts. So I'm not going to belabor that.

(Interruption.)

PRESIDENT SIMMA: Yes. I am sorry. I had the impression -- I do a correlation between the number of slides left and the time still up, and I thought that you would be very close to the end.

MR. SCHIFFER: I'm about 10 minutes away, but I know what it feels like to have to go to the restroom.

PRESIDENT SIMMA: No. No. I just wanted to explain why we are eight minutes after the -- let's say, the lunch break. So we have a lunch break right now

until -- yeah, coffee, of course. Coffee break until 11:25.

(Brief recess.)

PRESIDENT SIMMA: We are back on the record.

Mr. Schiffer, you have the floor for your --

(Overlapping speakers.)

MR. SCHIFFER: Right. I only believe have, I believe, three slides left.

So substantive denial of justice. If you're like I was when I first came into this case, I was skeptical about how you could ever meet that standard because it's a high standard. You have to show, manifestly arbitration -- or, excuse me. Manifestly arbitrary, lacking a legal basis or justification in excess of mere judicial error.

And when I read the cases that we talked about, and the testimony of Mr. Schmerler and, again, with Mr. Hundskopf, and I'll refresh your memory on those in just a second, I thought that I was going to support a theory that was to the last part, which was in excess of mere judicial error, but in my opinion, based on the testimony of Mr. Hundskopf, which admittedly is hard to decipher, I believe that the manifestly arbitrary standard also applies. So let me explain.

So in Perú, bankruptcy, the Bankruptcy Court

cannot ever determine compensation. In other words, that's only for a Judicial Court to decide.

However, a Bankruptcy Court can recognize a claim for compensation, even if the Judicial Court has not yet determined that, if the origin of the debt is clear. In other words, if there's evidence that shows clearly the origin of the debt.

In every case that Mr. Hundskopf cited, it was very clear from reading the case that it involved a Promissory Note which entitled the nondefaulting Party to seek damages or accelerate payments. They were labor cases, were under Peruvian labor law. There was a specific formula that an employee was entitled to get so much compensation by applying that formula. What we know here is the PAMA absolutely does not give the MEM a right to compensation. It only gives them two remedies. They can fine you or they can shut you down.

And, yet, in DRP's bankruptcy, it went all the way up to the highest Administrative Court. They found that the MEM had proven their entitlement to a credit based on the PAMA, based on a PAMA that did not expressly grant them that right; okay? So if the argument were just over recognition versus determination, I throw up my hands on that one. Right: I mean, that's too close to call.

But then Mr. Schmerler identified two cases by

the same Courts a few years later, where the MEM made the exact same -- took the exact same position in bankruptcy, in two bankruptcies involving mining companies that the MEM took in DRP's bankruptcy, the exact same position.

And there, the INDECOPI Courts said, you have not proven the origin, legitimacy, existence of your credit because the PAMA -- or in this case, the Mine Closing Law, which was -- I think part of the PAMA -- or at least a sister Act to it -- did not give you a right to compensation. It only gave you a right to fine or shut down an operation.

And that case was even more sort of clear because the MEM wanted a credit for the failure of the mining Company to put up a bond in a specific amount. So their failure to put up a bond that would have paid for the mine closure, the Court said, no, that's not compensation to you. You don't get it. So when I saw those cases, I thought, well, this is surely in excess of mere judicial error, I mean, this is clear cut.

Then Mr. Hundskopf came on the scene, and -- bear with me. I mean, he gives a lot of answers, speaks a lot, but -- oh, let's go back to the Standard.

So if you look at the relevant Peruvian Bankruptcy Code principle, Article 4 of Decree-Law Number 26116 requires creditors to prove the existence,

origin, legitimacy, and amount of their credit. And at first, Mr. Hundskopf tried to tell me that, oh, the reason you had different decisions here is because the law had changed. And then I said, well, yes.

He says the Decree-Law has been replaced by another one. 26116 has been replaced with another one. And then I said "but the concept remains the same. It's the same concept. Yes or no?"

And he said, yes and I'm not showing like the other four paragraphs of his answer, which to me are not germane.

And then he said the most telling thing. He said, yeah, the law didn't change substantively, but the MEM's attitude is completely different. Okay? What that says to me is when DRP was going through bankruptcy, the MEM, you know, frankly wanted to see them go into bankruptcy and fail. But now they have a different attitude. That is not the purpose of our court system.

Okay? I mean, the legislature, if they change their mind or come up with a different attitude, they're free to change the laws. But the judicial branch in any country's Government, I mean, I don't care where you are, their job is to apply the law, and the law never changed. And he says, flat out, that the reason that DRP's case was so different from the cases that came after it was a change

in attitude. All right.

To me, at least, this more than meets the requirements of a -- of substantive judicial denial of justice. And I know we're not in the causation stage here. I know that's -- if we succeed on this, we go later, but, I did want to say that we believe the record already shows that the MEM killed the May 14, 2012, Plan of Reorganization that DRP submitted, given its regulatory powers.

So we -- DRP never got a chance to actually go through the process and finish it. All right. So that's that, and now I'm going wrap it up.

I can't remember how many times I heard the word "perverse" and "poisonous" in the Respondent's Opening Statement. And, frankly, unless they're scrambling right now to word search and change, my guess is we'll hear a lot of those words shortly. But it's our position that that characterization is based on an Alice in Wonderland reality; okay? Alice in Wonderland. Because they want to say one contract is really two contracts.

All their Experts, so-called "experts" on the law say, "an extension is not an extension." They say "no default notice is a default." A "1 percent increase in lead input is equal to a 179 increase in lead fugitive emissions."

That only occurs in Alice in Wonderland. Improved air quality is not evidence of decreasing emissions. That defies the law of nature. I mean, that's natural law, but that's Alice in Wonderland for them. Decreasing blood-lead levels is not evidence of decreasing emissions. Alice in Wonderland. 42 Projects by DRP, that cost them 313 million did not control emissions. Alice in Wonderland.

I mean, the final thing I want to say is -- and this is -- as an advocate for my clients, I just don't get this. They were on the doorstep of finishing the PAMA. They were on the doorstep. The last of the Sulfuric Acid Plants was over halfway finished. They lost their shirts on this investment because the MEM came in, and after all the money they spent and all they did, took it away. And they didn't -- they weren't getting any dividends or profits.

And the money they were getting, which was less than 5 percent of sales for any prior year, was stopped altogether in 2005. They never got another dime out of that afterwards.

So -- and the money that originally went in to capitalize DRP, and then went out as a loan, that went to pay down the Bankers Trust Loan. That didn't go in anybody's pocket. So I just find it amazing that Perú

could do that, and we have no recourse. I mean, I don't understand that. That's astounding to me, astounding.

But anyway, I really appreciate the Tribunal's courtesy, and patience and time. We appreciate Counsel that's been very worthy and formidable, and on behalf of Renco and DRRC, I want to thank everyone, as Murray did, to thank everybody for their time. Thanks.

PRESIDENT SIMMA: Thank you, Mr. Schiffer. That brings to an end the -- I call it concluding observations, or really no legal difference, of the Claimant. And we are questions now. Questions? Are there questions?

ARBITRATOR THOMAS: I don't have any questions from the presentations.

PRESIDENT SIMMA: Okay. How about you.

ARBITRATOR GRIGERA NAÓN: I don't have any.

PRESIDENT SIMMA: Thank you very much.

So I ask Respondent, would you be ready to instantly, immediately go into --

(Discussion off the record.)

PRESIDENT SIMMA: Yes. So, Mr. Pearsall, you have the floor.

MR. PEARSALL: Thank you, Mr. President.

(Discussion off the record.)

PRESIDENT SIMMA: Okay. All right. So finally, Mr. Pearsall has the floor. Okay. Thank you.

CLOSING STATEMENT BY COUNSEL FOR RESPONDENTS

MR. PEARSALL: Thank you, Mr. President.

Members of the Tribunal, learned colleagues, folks watching on the live stream, good morning. Firstly, we will not attempt to improve on the eloquent gratitude expressed by Mr. Fogler. We fully echo his words and thank him for his eloquence. I just have a few preliminary remarks to make, and then you will hear from Ms. Gehring Flores on the Contract case, and then, again, from me on the Treaty case. And that will occupy our submissions.

And we are at the end of two long weeks: Two weeks of argument, two weeks of testimony, two weeks of seemingly relentless information on Peruvian bankruptcy, metallurgy, contract interpretation, smelters. We all now know what a baghouse is. On its face, it sounds like we learned a lot over the past two weeks. And this, of course, follows years of Briefing.

We have learned nothing new that helps Claimants meet their burden in this case, nothing. Did we hear any new facts or law in response to our jurisdictional objections on the Treaty case? No.

Have Claimants engaged with the correct standards, under customary international law, a standard they accept? No. Have they elaborated on what Measure they think is an indirect expropriation, or how they meet

that standard in the Treaty? No.

On the Contract case, have Claimants explained how the specific breaches in the Missouri Litigation, how those specific breaches, if found, would apply through the relevant clauses of the STA to support the declaratory relief they ask for? No.

The law, with respect, is an afterthought. These cases are not, and they never have been, about the law. They are, and always have been, about pressure and leverage, but how I can say that? It seems a bit rough to say that, after years of Briefing and two weeks of hearing.

How can I say these cases are about pressure and leverage, when we just spent two weeks together learning a lot of about smelters and emissions and health impacts and PAMA investments. It's no surprise to us that Claimants cared a lot about the environmental damage testimony we heard this week. That's central to Missouri. It's important for the Contract case, sure, but it's relatively small in comparison to the burden they have to prove on the law.

The environmental submissions were not 80 percent of our submissions, of our Briefing. So much time this past week discussing environmental issues, and, yet, Claimants have the burden to prove that Perú breached the Treaty under international law. They have a burden to

prove that Activos Mineros breached the STA, and they have a burden to demonstrate that the relief they seek under the STA is even possible. These are legal questions, legal questions, and they require application of fact to law.

I want to reinforce for you a few things, and maybe refocus our view for a moment before we get into applying fact and law.

If you look at the past two weeks, if you look at the Briefing since our Counter-Memorial, something just doesn't make sense. To use Claimants' term, something is "fishy," something is off.

Why do you bring a case and push ahead very quickly, resisting bifurcation, pushing for an aggressive briefing schedule, and then suddenly change course completely, try to slow it down, sort of change Counsel, object to your own case's jurisdiction, try to revisit the Tribunal's bifurcation Decision, which was in Claimants' favor.

Then you think better of it, you reverse that decision, and then finally and most surprisingly, don't respond to almost any of the points raised by Respondent in its hundreds and hundreds of Pages of Briefing. Does any of that make sense?

How do you respond to our Counter-Memorial with nothing, after years, and expect to carry your burden? The

answer is you don't. You don't. You don't really care. What you care about is what's happening right now in Missouri. Your Missouri Litigation is on appeal, and you're hoping for a win there.

Maybe you don't want to spend the money to put forward a well-reasoned case in your Reply. Maybe you abandon the Treaty case, sub silentio, and focus more on putting an environmental position forward that protects you in Missouri.

The only way that this entire proceeding makes any sense, based on what they've pled, and how they've behaved in the past two weeks, is to recognize what we said last week, that this is a side show in support of their litigation strategy in Missouri. This is about pressuring Perú to assist them in Missouri. And, to be clear, we've been talking a lot about it on the margins these past two weeks, but let me tell you exactly what they want from Perú. And this is not conjecture.

MR. SCHIFFER: Are you getting to settlement discussions or not?

MR. PEARSALL: No.

MR. SCHIFFER: Okay.

MR. PEARSALL: They want Perú to intervene and make arguments to the U.S. Courts that Perú, not Missouri, is the proper forum. Let me make it absolutely clear:

They want Perú to help the Missouri Claims go away.

Claimants are attempting to use these proceedings to pressure Perú to join forces with Claimant. They want Perú to join forces in Missouri and to try to get the Plaintiffs dismissed out of the United States. They want the Missouri Plaintiffs to bring their claims to Perú, to Perú, where they think those courts are more appropriate.

Think about that for a second. They are telling a U.S. court that the Courts of Perú are more appropriate to hear their defense, and they will submit to jurisdiction there and not through the United States. They wanted to friend fraud, conspiracy, and other tort claims in Perú before Peruvian Courts. They trust Peruvian Courts. These are the same Claimants that are making a denial-of-justice Claim in this proceeding.

The Republic of Perú has refused to be pressured by Claimants every time they've tried, and so we're here. So why is this pressure and leverage bad? So what? They can use these proceedings to pressure and leverage us. Why is that bad?

Well, pressure and leverage is not what this system is for, and you have to prove your case. In over 20 years in practice in International Investment Law, I've never seen a more poorly-advanced Treaty Claim. They don't cite the Treaty in response to our Counter-Memorial.

Finally at closing, they put a slide that references the Treaty up. That's the first instance that we've seen of the Treaty since our Counter-Memorial, which we filed on the 1st of April 2022.

I've also never seen such an extraordinary ask in an international arbitration, declaratory relief for harm being decided in Missouri, that is unproven, unpled, and so attenuated, that, at best, it's years -- years away. To indemnify a nonsignatory to a Contract for a series of Claims before a U.S. jury, like fraud or conspiracy, that they don't even try to read through the STA.

And they don't assist how the Tribunal on how to actually apply those Claims to the provisions of the STA. Blind. They want you blind, and they want you to give them leverage over Perú blind, unreasoned, unapplied, unpersuasive. What kind of ask is this from an international tribunal? How do you run these Claims through the applicable clauses of STA?

Well, Claimants don't show you. They don't show you, and we've had years and hundreds of thousands of pages in the record to show you, and still nothing. What did we see in response to our Counter-Memorial? Nothing.

Well, we'll show you in a moment why the STA is completely unavailable to Renco and DRRC, but, for better or worse, Claimants brought us here for their own purposes,

but now we have a job to do, and we're all here now, and we're going to see this through to the end, and over the past two years, we have been the ones pushing for these cases to conclude.

Enough is enough, and because it's time now to give this proceeding to you, the Tribunal, and we take our obligations seriously, we're going to spend the next 2.5 hours addressing you on the law, and what you heard over the past two weeks, and all the facts, nearly again, all unrebutted from our Counter-Memorial.

In short, we're going to focus the next several hours on how to write an award that fully and finally puts this side show to the end. So you'll hear from two of us. Ms. Gehring Flores will address the Contract case.

MS. GEHRING FLORES: Good morning, everyone.

On the screen, you'll see our list of jurisdictional and admissibility objections in the Contract case. We went through some of these objections in our Opening Statement, and directed the Tribunal to our Pleadings for our arguments on the remaining objections.

Everything we learned during this Hearing about jurisdiction and admissibility points, it all points in one direction. The Tribunal lacks jurisdiction over all Claims, and all of Claimant's Claims are inadmissible, in any event.

We'll start with the fact that Claimants are not STA Parties. As we explained in our Opening Statement, this fact divests this Tribunal of jurisdiction over all claims in the Contract case. Claimants argued that they are STA Parties because they have rights under the Responsibility Allocation Clauses of the STA, Clauses 6.2 and 6.3, and that they have obligations under the Renco Guaranty.

What this Hearing has confirmed is that Claimants have no rights under Clauses 6.2 and 6.3 of the STA, and that the Renco Guaranty is a separate Contract from the STA.

To start, the Renco Guaranty and the STA are separate Contracts. The STA and the Renco Guaranty have distinct causes, or causas, or legal finalities. And as Mr. Payet's own Authorities confirm, multiple Contracts exist where there are multiple cases -- sorry, causes.

Mr. Varsi confirmed in his presentation and cross-examination that the STA is a named, codified sales Contract. Its cause is the transfer of property in exchange for a price. The Renco Guaranty is another named codified surety Contract. Its cause is the guarantee of a credit from an underlying contract.

Indeed, Mr. Payet's own Authorities confirm that, under Peruvian law, guarantees have unique abstract causes,

and while a Guaranty Contract is linked to the Contract from which it is -- its secured credit arises, because its abstract cause is to secure the underlying credit, it is its own individual Contract.

Mr. Fogler mentioned that you couldn't tell who the beneficiary is of the Renco Guaranty. You can. First, the Renco Guaranty states that: "Centromín may release any of the members of the consortium from this Guaranty." That is because Centromín is the beneficiary.

Second, as Mr. Payet confirmed, linked Contracts are individual Contracts that must be read together. So if the Guaranty covers the investors' STA obligations and if the Investors' STA obligations run only to Centromín, then, obviously, Centromín is the beneficiary.

But the STA and the Renco Guaranty have separate causes should end any debate regarding Claimants' argument, but, just in case there's any doubt, DRP and Centromín's assignments of contractual positions confirm, indisputably, that Claimants are not STA Parties.

Mr. Payet confirmed that, under Peruvian law, an assignment is ineffective unless the assignor, the assignee, and the assigned Party all consent to the assignment. Because in his view, Claimants are STA Parties. Mr. Payet confirmed that Claimants were required to consent to DRP's and to Centromín's assignments.

Had Claimants not consented, the assignments would not have occurred. Well, Claimants never consented to the assignments, and that confirms, as a matter of law, that they are not STA Parties. The STA and the assignments themselves identify only the consent of the investor, the Company, and Centromín. There is no reference in either of the STA or the assignments that Claimants consented to the assignment, or that their consent is either forthcoming or expected.

There is no evidence on the record -- and I want to be clear on this -- none -- indicating that Claimants ever consented to DRP's and Centromín's assignments. And Claimants have never even argued that they did consent. They have left our arguments on the assignments unanswered.

In fact, during document production, we requested any documents containing Claimants' consent for DRP's and Centromín's assignments. The Tribunal granted our request and ordered production. Claimants failed to produce any documents demonstrating the existence of consent. They also did not provide any explanation for their failure to produce the requested documents.

I'd like to make this easy. It is undisputed Peruvian law that, if Claimants were STA Parties, their consent was required for DRP's and Centromín's assignments to be effective. It is an undisputed fact that the

evidence in the record demonstrates only the consent of the investor, the Company, and Centromín. It is an undisputed fact that there is no evidence in the record of Claimants' consent. The only possible conclusion is that Claimants are not STA Parties.

I'd also like to address arbitrator Thomas's question about the procedural steps necessary to proceed against the guarantors of the Renco Guaranty and the applicable fora. I'm paraphrasing, but Arbitrator Thomas asked whether, in the event of a breach by DRP, Activos Mineros would have to first proceed against DRP in arbitration, and thereafter proceed against the guarantors in litigation.

Mr. Varsi confirmed that that is the case.

There are two points I'd like to make.

First, the Renco Guaranty is limited in scope. The Renco Guaranty covers the Investors or DR Cayman's obligations as the Investor. Thus, if Activos Mineros were to sue DR Cayman under the Renco Guaranty, it could only bring such a claim against DR Cayman qua investor, it could not sue DRP, qua, the Company, and its obligations under the STA. For instance, under Clause 5.

Second, Mr. Varsi's explanation is that the principle of escutcheon applies to the Renco Guaranty. The principle of escutcheon under Peruvian law provides that

the creditor must first proceed against the original debtor, obtain a favorable Judgment, and attempt, but fail, to enforce the Judgment before seeking payment from the guarantor. This is not the first time Mr. Varsi explained this principle. He detailed it in his First Report, and Activos Mineros Briefed it in its Counter-Memorial.

I refer the Tribunal to the cited paragraphs for more detailed discussion.

You'll recall an extensive back and forth between Mr. Payet's cross on the phrase "assumption of responsibility." Mr. Payet argued that the phrase "assumption of responsibility" gives rise to affirmative obligations," the breach of which could result in the payment of damages under the Peruvian Civil Code.

In Mr. Payet's view, the phrase is a term of art that indicates that Centromín has incorporated all responsibility into its legal person and is, thus, liable to all parties and non-parties in the world for the relevant third-party claims. The Tribunal should reject this view for six reasons:

First, Claimants have never relied on this interpretation of the phrase "assumption of responsibility," instead, they have relied on U.S. law to support their interpretation of the phrase. The Tribunal will see this in Paragraphs 160 to 165 of Claimants'

Statement of Claim.

It's far too late to be substituting arguments after seeking to apply U.S. law throughout the written phase of this Arbitration.

Second, as was clear from Mr. Payet's testimony, he does not offer any Peruvian law supports for his interpretation of the phrase "assumption of responsibility," not one citation.

Third, Mr. Payet's interpretation would render Clauses 6.5 and 8.14 void of all utility. Mr. Payet's interpretation of "assumption of responsibility" means that Clauses 6.2 and 6.3 contain the same obligations as Clauses 6.5 and 8.14. DRP could always get identical relief under either set of provisions, according to Mr. Payet. What purpose, then, do Clauses 6.5 and 8.14 serve? None, according to Mr. Payet.

Fourth, Mr. Payet's interpretation is simply too expansive to be accepted.

Let's start from basic principles. We are talking about a contract, under the principle of privity. It only produces effects between its Parties, absent some exceptions that are not applicable here. Under Mr. Payet's interpretation, Clause 6.2 and 6.3 encompass the world, including this Tribunal, as he admitted during cross. That interpretation simply cannot be what the STA Parties agreed

to. There is no reason, other than Claimants' own self-interest, to think that Centromín opened itself up to pay everyone in the world, including this Tribunal.

Emblematic of the cynical nature of Claimants' approach was an exchange with Professor Grigera Naón, during which, Mr. Payet said that the notion that simple reorganizations might have third-party effects should be "taken with a grain of salt." This is what Claimants bring to this international proceeding, an argument based on a premise that should be taken with a grain of salt.

Fifth, Mr. Payet has already interpreted indemnity frameworks just as Activos Mineros interprets the STA's indemnity framework. During his cross, we heard about Exhibit JAP-9, an article written by Mr. Payet, in which he states that clauses and contractual indemnity frameworks have different functions.

Mr. Payet stated that the framework will include "in the first place, an enumeration of the situations that may give rise to the Seller's responsibility." That is exactly what Clauses 6.2, 6.3, 5.3, and 5.4 do. In the second place, Mr. Payet wrote: "The Contract will set out the content of the Seller's obligation to indemnify." That is exactly what Clause 6.5 does. And, third, Mr. Payet explained, the framework can also establish "a detailed procedure according to which the Buyer must notify the

Seller as soon as it becomes aware of an event that may give rise to a compensable damage and regulates the mechanisms for the defense of the Company in the case of proceedings initiated by third parties."

That is exactly what Clause 8.14 does.

Sixth, Clauses 5 and 6 themselves disprove Mr. Payet's interpretation of the phrase "assumption of responsibility." Mr. Payet argued that the phrase "assumption of responsibility" contains affirmative obligations, the breach of which could result in the payment of damages under the Peruvian Civil Code. In his view, the word "assumption" makes Clauses 6.2 and 6.3 more than an enumeration of the situations that may give rise to Centromín's indemnity and defense obligations.

But in the texts of Clause 6, that text disproves Mr. Payet's interpretation. Look at Clause 6.5. Centromín's indemnity obligation. It clearly states that Centromín will indemnify the Company for third-party claims for which it has assumed responsibility. That is indisputably a cross-reference for the assumption of responsibility in Clauses 6.2 and 6.3.

And I thank you for your patience, again, while I plow through all of these contractual provisions and spit numbers out at you.

The only consistent interpretation of this

contractual language is that Centromín has agreed to indemnify the Company. If it is responsible for a third-party claim under Clauses 6.2 and 6.3. In other words, Clauses 6.2 and 6.3 are exactly what Mr. Payet stated they are in his article, an enumeration of the situations that may give rise to Centromín's indemnity and defense obligations.

Clause 5.4(c), the expert determination process also disproves Mr. Payet's interpretation because it confirms that Clauses 5 and 6 encompass only the Company and Centromín. The expert process is conducted only between the Company, DRP, and Centromín. The Expert Decision binds only these two Parties, and Clause 5.4(c) establishes the arbitral consent of only these two Parties to initiate this very Arbitration.

In sum, there is no basis, in Peruvian law or in the STA, to interpret Clauses 6.2 and 6.3 as Mr. Payet does. Claimants have no rights whatsoever under those clauses.

We've provided the Tribunal with a written response of March 14, 2024, to the Tribunal's questions on the nonsignatory issue, and I won't repeat them here.

As we explained in our Opening Statement, Claimants do not seek declaratory relief but, instead, try to obtain a substantive advantage through the procedural

bifurcation of the damages phase. But that does not change the fact that Claimants seek damages in this proceeding. You just heard from Mr. Schiffer, just a few moments ago, he said: "I know we're not dealing with causation. That comes after. If we succeed on this, we go later."

Nevertheless, even if they did seek only declaratory relief, their Claims would be unripe, and I'll address this issue now.

Here, I want to first address the Tribunal's questions on the procedural status of the Missouri Litigations. On top of the slide, the Tribunal will see a summarized timeline of a U.S. litigation proceeding. Now, there are two Missouri class action litigations with thousands of plaintiffs in each proceeding, both are in the pretrial phases. The Collins Cases are currently in discovery. In the Collins Cases, the Court issued a new case management order late last year. It set a December 8, 2025, deadline, for the completion of discovery. Summary judgment motions are due on February 18, 2026, and pretrial motions are due on March 19, 2026. In other words, the Collins Case still will not have gone to trial two years from today.

The Reid Cases are currently in the summary judgment phase. In the Reid Cases, the Court's summary judgment Order is currently on interlocutory appeal. The

proceeding is stayed pending appeal. Oral argument in the appeal was heard in late January 2024. Because U.S. appellate courts do not advise when they will issue an opinion, we have no way of knowing when the Court will issue its ruling.

Given this information, it's no wonder that Mr. Schiffer said, during opening: "Who knows how long the Missouri Litigations will go. It could be 17 years. It could be 25 years, or it could be 35 years."

The procedural status of the Missouri Litigations tell us what I explained in Activos Mineros's Opening Statement. It is impossible for the Tribunal to know if any payment will happen at all, much less if some potential future payment might be related to a claim for which Centromín is responsible.

The Tribunal cannot know the basis of any future ruling on liability. In U.S. litigation, evidence and relevant arguments are introduced only at trial. But, in Missouri, the proceedings are in pretrial stages. The adjudicator, the jury has not been selected. The jury will only see evidence admitted into the record at trial. The jury will decide on arguments made only at trial and no pretrial evidence, argument or pleadings, are shown unless admitted at trial.

There are 14 live claims under different theories

in Missouri. We don't know for which claims Claimants might be found liable, under which theory, or based on what evidence or which arguments. Under Missouri law, the jury must find that Claimants committed fraud to pierce the corporate veil, and Claimants have presented no argument on how such a finding would be allocated to Centromín under the STA. The Tribunal cannot know if Claimants will settle rather than wait for a jury verdict. In that case, Claimants could not meet their burden of proof.

Indeed, Mr. Payet's own words show that it is impossible at this point to issue any declaratory relief. Mr. Payet states that Claimants' Claims are ripe for declaratory relief, and on what basis can he reach that conclusion? His own testimony is that he doesn't know whether any of the Claims in Missouri are Centromín's responsibility. He has not applied any of the facts of the Missouri Claims to Clauses 5 and 6. So Mr. Payet has zero basis to argue that the Tribunal has enough information to issue an award.

Mr. Payet also testified that he hasn't analyzed whether the Missouri Claims are Centromín's responsibility, and he states that it depends on factual and legal issues. We agree. It does depend on the factual and legal issues, but the Tribunal cannot know this information. It cannot know for which claims Claimants will be found liable, if

any, under which theory or based on what evidence or which arguments. There are hundreds of ways the Missouri Litigations could evolve.

Mr. Payet didn't even consider the relevant legal issues. He testified that he did not take derivative liability into account when he developed his Report. So he didn't consider whether piercing the corporate veil or agency would impact the allocation of responsibility under the STA. Instead, he testified that, if the jury were to find Claimants liable for fraud and pierce the corporate veil, the question of the STA's allocation of responsibility would be "a difficult question to answer without looking at the specifics."

Mr. Payet also stated that, if Claimants had engaged in misconduct, it could be relevant to whether the liabilities are imposed, and to the allocation of responsibility under clauses under the STA.

Mr. Payet testified that, in order for him to determine whether fraud would impact Centromín's responsibility, he would need to know the relevant legal basis. It is Claimants' burden of proof to provide you with the specifics. Let me ask the Tribunal point-blank: What have Claimants told you about the Missouri Litigations? Almost nothing. In fact, almost every real fact that you've been told about the Missouri Litigations

you've heard from us.

The Tribunal will not see, anywhere in Claimants' Pleadings, any legal explanation as to how an adverse finding of derivative or direct liability under U.S. law would be Centromín's responsibility under the STA. Not one. The Tribunal would also not see, anywhere in Claimants' Pleadings, any information on specific facts alleged in Missouri. They cannot tell you because the Missouri Litigations are, as we've explained, in pretrial phases. So there is no evidence in the record on the Missouri Litigations. And because there has been no finding of liability, there can be no argument on how specific findings interact with the STA's allocation of responsibility.

Finally, Mr. Payet testified that, under the STA, Centromín would be responsible for any settlement payment. But, in that case, Claimants could not meet their burden of proof. The settlement would disclaim all liability, so it would not be based on any evidence or liability that the Tribunal could use to run through Clauses 6.2, 5.3, 6.3, and 5.4.

Moreover, Claimants can agree to settle in exchange for a release of the phantom Claimants, bypassing jurisdictional, admissibility, and liability limitations.

In short, standing here today, the Tribunal

cannot know if any payment to the Missouri Plaintiffs would be a claim for which Centromín is responsible.

Mr. Fogler -- sorry -- Mr. Fogler said that: "The effort in Missouri is an attempt to impose liability that the STA discusses on Claimants." At least that's what the Transcript says. He also stated that only lead is at issue in the Missouri Litigations.

Now, I wanted to respond to this point very explicitly with two specific examples. First, I want to start with the factual basis of some claims. On the screen, you will see one of the Missouri Pleadings, Plaintiffs' Pleadings. Yes, the Missouri Plaintiffs filed claims for injuries due to lead and SO2, but also claims due to arsenic and other toxins. As you can see, Claimants have tried to get these other toxin claims dismissed in Missouri, but the Missouri Plaintiffs have been able to keep them in.

What happens if the Missouri Plaintiffs win but only on arsenic? How many times has the Tribunal read or heard the word "arsenic" in this proceeding? Not many. No Experts have really analyzed arsenic. How could the Tribunal issue a ruling now on how the STA allocates responsibility on arsenic based on the evidence in the record? It can't.

I want to move on to a second example, the legal

basis of some claims. Claimants assume that the Missouri Claims are based on DRP's actions that caused pollution in La Oroya. But this is not true. We've already talked about derivative and direct liability, but, putting this aside, I want to show you one claim filed in Missouri, a failure to warn claim. This a negligence claim, and a breach of the legal duty alleged by the Missouri Plaintiffs is not that Claimants' polluted but instead that Claimants breached their duty to warn the community about the impact of pollution.

What happens if Claimants are found liable in Missouri only for failing to warn the community about the impacts of pollution? Is that liability allocated to Centromín or the Company in the STA? And, if so, how? The Tribunal will not find it in Claimants' Pleadings. There is simply no evidence or analysis on this issue.

The Tribunal cannot determine if any payment would be for a claim for which Centromín is responsible. And for the reasons stated in our Opening Statement, issuing Claimants' fake declaratory relief would violate Activos Mineros's due-process rights.

Finally, Claimants subrogation claim is inadmissible because it is time-barred. Claimants' subrogation claim is based on strict liability, under Article 1970 of the Peruvian Civil Code. The Tribunal can

see this in Paragraphs 54 and 72 of Claimants' Rejoinder. Both Mr. Payet and Mr. Varsi agree on that.

If an original creditor-debtor relationship is based on strict liability under Article 1970 of the Peruvian Civil Code, a two-year prescription period applies to Claimants' subrogation claim. Claimants and Respondents agreed to set November 10, 2016, as the deadline for any prescription-period defense. Accordingly, Claimants' subrogation claim is time-barred for any claim that the Missouri Plaintiffs could have filed against Centromín by November 10, 2014.

Now, I'm going to ask the Tribunal to take out, once again, if you still have it around, your Demonstrative RD-2. And if anyone needs a new one, we have extra that aren't laminated so that you can fold them. They're travel-ready.

In this section, I'll explain how Claimants have failed to meet their burden of proving that the Missouri Claims fall within the scope of Clauses 6.2 and 6.3. Claimants have failed to prove that the Missouri Claims meet the first elements of Clauses 6.2 and 6.3. In Demonstrative RD-2, the Tribunal will see that both Clauses 6.2 and 6.3 have two elements. In this slide, I'll be talking about the elements identified with (i). These elements deal with attribution -- in other words, are the

claims at issue related to acts that are attributable to Centromín or DRP? Claimants make no arguments and present no evidence on attribution for the Missouri Claims.

Claimants argue that their STA claims fall under Clause 6.2. Their theory is that the Missouri Claims are attributable to activities of the Company, or DRP, under Clause 6.2.

Centromín's responsibility, under Clause 6.3, is limited to claims attributable to Centromín's and/or its predecessor's activities. But Claimants have filed no claims under Clause 6.3. So they provide no explanation for how the relevant claims are attributable to Centromín's or its predecessor's activities.

As a matter of fact, the Missouri Claims are necessarily based on the U.S. conduct of U.S. companies and individuals. U.S. Courts would lack jurisdiction over DRP's actions in Perú. And, as a matter of law, some claims are based on the derivative liability theories of corporate veil piercing and agency. Under Missouri law, piercing the corporate veil destroys the separate legal identity of the subsidiary, based on the parent company's full control and improper conduct. Under both theories, only the parent company is liable, and, importantly, direct liability does not pass through the Company, or DRP, at all.

Mr. Payet has not conducted any analysis on attribution. He has conducted no analysis of how derivative liability would impact the allocation of responsibility under the STA.

Mr. Payet admitted, in his Third Report and at this Hearing, that he does not know what law is being applied in the Missouri Litigations.

Finally, Mr. Payet conceded that he does not know whether the Missouri Litigations are for misconduct in the U.S. or in Perú. Accordingly, Claimants have failed to meet their burden of proof on attribution.

Even if Claimants had met their burden of proof on attribution under Clauses 6.2 and 6.3, the Missouri Claims are allocated to DRP under Clauses 5.3 and 5.4.

Before diving into the science, I want to discuss two preliminary legal matters. The first one is on Mr. Connor's "leave it better than you found it" theory. Some people call it the "camping" or "campground rule."

(Comments off microphone.)

MS. GEHRING FLORES: As the Tribunal will recall, in Mr. Connor's view, DRP acted better than Centromín because, in 2009, when DRP finally left La Oroya, it emitted fewer toxins than Centromín had. In Mr. Connor's view, this final downward trend in 2009 means that DRP acted better than Centromín. That is not the correct

standard under the STA, and I'll show you why.

The Tribunal's analysis is governed by the STA. So let me ask the Tribunal to, I guess, have your Demonstrative available. The Tribunal's task here is to, one, take a specific third-party claim or injury and, two, determine whether it is allocated to DRP or Centromín under the STA.

I'm going to start with Clause 5.4, which governs the allocation of responsibility after the PAMA Period. Under Clause 5.4, a specific third-party claim is DRP's responsibility if the injury was caused, (a), by acts that are exclusively attributable to DRP's operations after the PAMA Period, or (b), by DRP's breach of the PAMA or its obligations under Clauses 5.1, which are its PAMA obligations, and 5.2, its obligations associated with closing the Facility.

So let's assume, for the moment, that the Missouri Plaintiffs' Claims are actually limited to the two toxins that Claimants have pled in this proceeding, sulfur dioxide and lead. With that, let's assume that John Doe files a claim for sulfur dioxide or lead injury caused in December 2008. DRP will be responsible if the injury is the result of acts that are exclusively attributable to DRP's operations after the PAMA Period or its breach of the PAMA or its obligations under Clauses 5.1 and 5.2.

Because John Doe has filed a claim for an injury caused in December 2008, how well or how badly DRP left the Facility in the future, in 2009, is irrelevant to the question at issue for Clause 5.4. If it feels like you haven't heard much from Claimants regarding Clause 5.4, and how responsibility is allocated during that time period, you're correct. Claimants have failed to plead their claims or explain how they work after the PAMA Period.

The same is true under Clause 5.3(b). Again, the Tribunal's task is to, one, take a specific third-party claim or injury and, two, determine whether it's allocated to the Company or Centromín under the STA. Under Clause 5.3(b), a specific third-party claim is DRP's responsibility if the injury was caused by DRP's breach of the PAMA or its obligations in Clauses 5.1 and 5.2.

So, again, assuming that the Missouri Claims are actually limited to sulfur dioxide and lead, if John Doe files a claim for an SO2 or lead injury caused in September 1999, then the Claim is DRP's responsibility if the injury was caused by DRP's breach of the PAMA or its obligations in Clause 5.1 and 5.2.

Here, too, a claim from 1999. What happens in the future? In 2009, when DRP actually completed some of the Sulfuric Acid Plant, that claimed betterment has absolutely no bearing on the injuries that John Doe claimed

for DRP's sulfur dioxide or lead poisoning in 1999 and is, thus, irrelevant to the Tribunal's analysis under Clause 5.3(b).

Finally, the same remains true under Clause 5.3(a). The one responsibility allocation clause with which Claimants have engaged during this proceeding.

Under Clause 5.3(a), a specific third-party claim is DRP's responsibility if the injury was caused by an act that is, one, not related to the PAMA, two, exclusively attributable to DRP and, three, the result of less protective standards and practices than those of Centromín.

Again, assuming that the Missouri Claims are actually limited to SO2 and lead, let's assume that John Doe now files a claim for a sulfur dioxide or lead injury caused in September 1999. DRP is responsible if the injury is the result of acts that are not related to the PAMA, exclusively attributable to DRP, and the result of less protective standards and practices than those of Centromín. Whether the Tribunal could find that, by 2009, DRP's management of the Facility has been equally or more protective of the environment and public health than Centromín is irrelevant because John Doe's injuries and claims are from September 1999.

What the Tribunal needs to determine is whether DRP's acts that caused John Doe's injury are the result of

less protective standards and practices than those of Centromín, the actual standard expressed in the STA.

Now, I want to turn to a slide used by Mr. Schiffer in his Opening, Slide 31. Mr. Schiffer used an Activos Mineros's pleading in the bankruptcy proceeding in 2010 to argue that we had contradicted ourselves. He stated: "In the U.S., this would be considered a judicial admission that you can't ever take a contrary position to."

Now, this quote doesn't show any contradiction, but what it does show is that, when this Tribunal is analyzing whether a practice by DRP is more or less protective than one of Centromín, what happened in 1922, 1975, or 1989, is irrelevant.

The proper comparator is Centromín's standards and practices at the date of the signing of the STA, 1997.

The STA requires the Tribunal to rule based on causation. In order for Claimants' Claims to succeed, they would have to prove that John Doe's claim or injury was caused by an act that, under the elements of Clauses 5.3 and 5.4, is assigned to Centromín.

Whether the Facility, in 2009, emitted fewer toxins than it did under Centromín's management in 1997 is not pertinent to the causation analysis.

And let me pause on this. The Tribunal must apply the contractual standard that governs Claimants'

Claims, and, even if the Tribunal thinks that DRP's management of the Facility ended well, any award that relies on Claimants' "leave it better than DRP found it" theory would be a ruling ex aequo et bono."

The Tribunal must take John Doe's specific claim or injury and determine whether it is allocated to DRP or Activos Mineros under the STA.

And, I guess, before I go to the next section, I want to ask if anyone needs a break.

PRESIDENT SIMMA: Maybe somebody needs lunch, even. The time for lunch has been reached. Would that be a good place to -- if you want to add another chapter before we go, that's up to you.

MS. GEHRING FLORES: No, I think this is a good place to break.

PRESIDENT SIMMA: Okay. So we are breaking for lunch, and we will resume again at 1:45.

Thank you.

(Brief recess.)

MS. GEHRING FLORES: Thank you.

(Whereupon, at 12:43 p.m., the Hearing was adjourned until 1:45 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT SIMMA: I think we are all set.

So would you please continue the observations of

the Respondent, please?

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

We just need to wait for the tech.

(Pause.)

MS. GEHRING FLORES: Good afternoon.

So where were we?

The Tribunal must take John Doe's specific claim or injury and determine whether it is allocated to DRP or Activos Mineros under the STA.

Applying the correct standard, the Missouri Claims are DRP's responsibility under the STA, both during the PAMA Period and during the post-PAMA Period. To explain why, I'll go back in time. I'll first discuss DRP's responsibility during the Post-PAMA Period, and then I will explain DRP's responsibility during the PAMA Period.

Before doing so, I have to explain what the PAMA Period is, and what is the Post-PAMA Period. The PAMA Period ran from October 23, 1997, to January 13, 2007. Everything after January 13, 2007, is the Post-PAMA Period.

Claimants argue, repeatedly, that when they received an Extension in 2006 for Project 1, they received an Extension of the PAMA Period, and that is not true. On the screen, the Tribunal can see that the May 2006 MEM Resolution granting DRP an Extension to implement Project 1

made it clear that it was not an extension of the PAMA Period.

Ms. Alegre, the only Peruvian Environmental Law Expert proffered in this Arbitration, confirms that the extension for Project 1 was not an extension of the PAMA Period. Claimants offer no opposing Peruvian Law Expert. Instead, they marshal Mr. Connor. Mr. Connor, as the Tribunal knows, is not a Peruvian lawyer, much less a Peruvian environmental lawyer, and the MEM's Resolution speaks for itself.

With the temporal distinction out of the way, I'll turn to explaining DRP's responsibility in the Post-PAMA Period. This is governed by Clause 5.4(a) and (b), and as you'll see in demonstrative RD-2. I'll start with Clause 5.4(a), under which DRP is responsible for injuries and Claims caused by acts that are exclusively attributable to its operations after the PAMA Period.

Claimants have provided the Tribunal with almost zero information on the Missouri Litigations. To the best of Activos Mineros's ability, we can determine that at least some Missouri Plaintiffs injuries and Claims fall within the post-PAMA Period. And, as confirmed by both Ms. Schoof and Ms. Proctor, as to sulfur dioxide, the only pathway for exposure for sulfur dioxide is contemporaneous emissions. Once the SO2 emissions are stopped at the

source, the SO2 gas dissipates. SO2 does not linger in the soil in solid form, like lead.

Thus, any Missouri Claims regarding SO2 exposure cannot result from Centromín's historical operations.

Mr. Connor confirmed that SO2 does not stay in the soil. Regarding lead, the little that is known about the evolution of the Missouri Litigations related to lead exposure also points to contemporaneous emissions.

Both toxicologists, Dr. Schoof and Ms. Proctor agree that the main sources of lead exposure in La Oroya have been outdoor dust, indoor dust, air, and near surface soil, all forms of lead that are driven by contemporaneous emissions. Importantly, as you can see on the screen, the Missouri Claims are based on DRP's contemporaneous air emissions, rather than historical lead contamination of the soil.

Clause 5.4(b) also governs the post-PAMA Period. As you'll see in your demonstrative, the elements that Claimants must prove are identical to the elements of Clauses 5.3(b), which governs the PAMA Period. Under both of these provisions, DRP is responsible for the Missouri Claims caused by a breach of the PAMA. DRP failed to comply with its PAMA obligations in two respects.

First, DRP's practice of increasing production and using dirtier concentrates, without implementing any

emission mitigation measures until December 2006, was a breach of the PAMA.

The PAMA was designed to improve the functioning of the Facility, modernize it, and reduce emissions. When DRP took over the Facility, however, it did exactly the opposite. It increased emissions, and took no meaningful measures to abate that increase in emissions until it had been operating the Facility for nearly a decade.

Claimants argue that the PAMA allowed DRP to increase production with dirtier concentrates. That may be true, but only if DRP had first put in place the necessary emission mitigation measures to counteract, and not transgress, the principal purpose of the PAMA of reducing emissions.

DRP failed to implement any emissions Projects before increasing production with dirty concentrate. And DRP's emissions necessarily increased, and so DRP breached the PAMA.

Second, DRP breached the PAMA by never completing Project 1. DRP was granted two extraordinary Extensions to comply with Project 1 in 2006 and, again, in 2009, but DRP never fully completed it. The Sulfuric Acid Plant for the copper circuit, the circuit that was the most significant pollutant source of the Facility, remains, to this date, unbuilt.

I'll discuss Breach 1 in more detail later, but I want to address Breach 2 Now. To reach the sulfur dioxide limit set by the MEM, the Facilities' sulfur dioxide emissions had to be reduced by 83 percent. To that end, the PAMA recommended modernizing the Facility, replacing old equipment, and constructing two or three Sulfuric Acid Plants. The combined modernization and Sulfuric Acid Plants would allow for the capture and conversion of SO2 into Sulfuric Acid.

And since gases must be cleaned before entering the Sulfuric Acid Plant, the Sulfuric Acid Plant Project, with the modernization, results -- or resulted -- or could have resulted in reduced emissions of all toxins. This, Members of the Tribunal, was Project 1.

You have heard time and, again, how important Project 1 was to abate emissions. By now, we all know why. Project 1 was the only Project that could abate DRP's huge SO2 problem, reducing both fugitive and main-stack emissions of SO2 lead, as well, and particulate matter. This is undisputed. That Claimants failed to complete Project 1, is also undisputed.

As Mr. Neil acknowledged, a modernization program was necessary before DRP could construct the Sulfuric Acid Plants. This is confirmed by the PAMA's introduction for Project 1 and the PAMA's Investment Schedule.

The modernization was supposed to start in 2008. That's only three months after DRP entered La Oroya. Modernization itself would also have reduced emissions by, for example, eliminating the old roasters in the copper circuit, which were a major source of SO2, lead, and arsenic emissions.

As Mr. Dobbelaere explained, modernization of the Sulfuric Acid Plants was necessary to capture the 83 percent of SO2 that DRP needed under the PAMA. Much has been discussed these weeks about why Claimants failed to complete Project 1. So I'd like to walk the Tribunal through a timeline, but, I think, in the interest of time, I'm just going to focus on one element of this timeline. And that's to highlight a question that Judge Simma had.

So DRP came into the La Oroya facility in 1997. In December 1998, DRP commissioned Fluor Daniel, which is a Renco Company. They commissioned them to do a Report, and this Report scrapped the modernization recommendation of the original PAMA. Why? To save money.

So Judge Simma, you may remember when you asked Ms. Kunsman why DRP's Costs started going down, and that's because of this Fluor Daniel 1998 Report, because Fluor Daniel recommended to DRP to just not do the modernization, at all, and to tack on, somehow, just one Sulfuric Acid Plant that would supposedly take care of the 83-percent

requirement.

Now, as you know, DRP received a number of Extensions, and DRP, essentially, delayed and delayed its obligations under the PAMA. But at some point, it became increasingly -- the MEM became increasingly concerned about the serious environmental and health impacts of the DRP's smelter operations.

Contrary to Claimants' Claim that the MEM never notified DRP of its noncompliance with the PAMA, the evidence shows otherwise. In 2003 the MEM commissioned SVS to audit DRP, and after that audit, the MEM identified grave concerns about the effectiveness of Claimants' emissions Projects, ordered DRP to conduct a Health Risk Assessment, and ordered DRP to reduce fugitive emissions.

DRP, in response, hired Gradient in 2004 to conduct a preliminary Health Risk Assessment. Upon reviewing Gradient's Health Risk Assessment, Mr. Neil, as he testified said he had a wake-up call regarding the high level and toxicity of fugitive emissions at DRP's Facility.

Now, the Tribunal might think that this wake-up call would cause DRP to take immediate action, and the very least, decrease its production and use a cleaner concentrate. Instead, in February 2004, DRP requested yet another Extension, and reverted back to the original plan to do multiple Sulfuric Acid Plants. From then until the

end of the year, DRP and the MEM met repeatedly to discuss DRP's request.

In December 2004, the MEM issued Decree Number 46, which permitted Operators to request an extension for specific PAMA Projects. And, because of Decree Number 46, the MEM ordered Operators to conduct independent Human Health Risk Assessments, and that's when DRP hired Dr. Schoof and her firm, Integral, to conduct their assessment.

Two weeks before the December 31 deadline of 2005, for the submission of Extension Requests, DRP submitted its request regarding Project 1. Within less than six months, the MEM had approved DRP's request. So Mr. Neil's testimony about a late response is simply not true.

While DRP never completed Project 1, it did complete numerous Extension Requests. When DRP announced that it would fail to meet the extended deadline for Project 1, DRP was granted yet another Extension by the Peruvian Congress in 2009. DRP refused to satisfy the conditions for this additional extension, and, thus, left the Facility without completing the Sulfuric Acid Plant for the copper circuit, the most critical of the Acid Plants to reduce emissions.

Having been siphoned of cash by upstream Renco

affiliates, DRP affirmatively chose to breach its PAMA obligations by restructuring the PAMA to save money in the beginning, failing to push Project 1 forward, six years later, reverting back to the original PAMA design, and then still failing to complete Project 1. This was a choice.

Now, I'll turn to Clause 5.3 (a), the only clause that allows and requires the Tribunal to conduct a comparative analysis of DRP's management versus Centromín's management.

Even under Clause 5.3 (a), the Missouri Claims are DRP's responsibility. Claimants have failed to address at the Hearing two of the elements of Clause 5.3 (a); so I'm going to focus on the one the Tribunal heard a lot of about -- well, during the past two weeks -- whether DRP's standards and practices were less protective than those of Centromín.

DRP's acts are the result of DRP's use of standards and practices that were less protective than those of Centromín at the date of the execution of the STA. The Tribunal has heard a lot about that, about this.

Claimants must prove that they did better than Centromín, but not in the abstract. While Claimants argue that the Tribunal must determine whether DRP left the Facility better than it found it, that is the incorrect standard. The STA requires the Tribunal to determine

whether a specific Missouri Claim caused by acts that are less than, equal to, or more protective than those of Centromín at the date of execution of the STA.

If, as I stated before, a Missouri Claim is for an injury caused in September 1999, it is simply irrelevant how DRP performed in June 2009. Further, the Tribunal must compare DRP's standards to those of Centromín at the date of execution of the STA. I want to make this easy; so first, upon taking over the Facility, DRP increased production when compared to Centromín at the date of the execution of the STA.

Second, DRP used dirtier concentrates than Centromín. Third, this, as a matter of basic science, resulted in increased emissions, and, fourth, for almost an entire decade of operations, DRP did not implement any Project that could have reduced its surge of significant emissions, the emissions that it was generating. DRP's initiation of PAMA Project 1 came 10 years too late.

Any Missouri Claim caused by this conduct is the result of DRP's use of less protective standards and practices. With the same old and fuming Facility that it acquired, and without making any substantial changes to its processes or technologies, DRP increased production and introduced the smelter with dirtier concentrates.

It is an undisputed fact that DRP increased

production beyond that of Centromín. Mr. Connor himself admits this in his Reports, and Mr. Schiffer repeated the submission this morning.

Claimants have also not rebutted the fact that DRP used concentrates that had higher concentrations of lead and sulfur. In other words, dirtier concentrates.

Mr. Schiffer didn't rebut it during opening. Mr. Connor tried to minimize the use of dirtier concentrates, but Mr. Dobbelaere explained that even a 30 percent increase in dirtiness of concentrate makes a huge impact in emissions.

These practices, by definition, would result in greater emissions unless DRP first implemented emission abating measures. It did not do so.

Mr. Weiss repeated a mantra during the cross of Mr. Dobbelaere. Claimants allegedly completed 42 Projects in La Oroya. It seems like a lot, but don't be deceived. As Mr. Connor himself recognizes, 15 of those 42 Projects are not related to reducing emissions. Washing trucks, paving roads, installing closed-circuit televisions do not abate emissions.

So there are really only 27 -- well, maybe not only -- but 27 allegedly relevant Projects. Mr. Connor divides these 27 Projects into two Categories: Projects aimed at reducing main stack emissions of lead, and

Projects aimed at reducing fugitive emissions of lead. As a threshold matter, none, not one of these Projects would have an impact, any impact on SO2 because we all know that the only Project that can abate SO2 is the Sulfuric Acid Plant.

Of the Group One Projects, only one, the repairs to the main stack filter, or the main Cottrell, could have reduced main-stack emissions during the PAMA Period, but Mr. Dobbelaere has explained that this Project could have in no way compensated for the surge in emissions caused by DRP's increase in production with dirtier concentrate. Mr. Connor was unable to provide any evidence regarding what meaningful emissions reductions this Project would have.

Of the Group Two Projects, none were completed until late 2006; so they wouldn't have reduced fugitive emissions during the PAMA Period.

Claimants argue that DRP was allowed to increase production with dirtier concentrates. And I've already explained why that's not quite true, but in any event, breach is not the relevant standard for Clause 5.3 (a). Instead, breach is the relevant standard only for Clauses 5.3(b) and 5.4.

The relevant facts under 5.3(a) are the following. Without having implemented any Projects that

could meaningfully abate emissions during the PAMA Period, the only possible consequence of increasing production with dirtier concentrates, as a matter of basic science, is an increase in emissions, and emissions did increase.

This is an undeniable fact, one that was admitted by Mr. Schiffer this morning. "Yes, there's a trend upward in production, and that's reflected in the air monitoring data. We're not running away from that. We're not saying that didn't happen."

Mr. Schiffer attempts to minimize this change in air quality, this trend upward, but the La Oroya community did not experience this as a mere trend upward. As Ms. Proctor mentioned, DRP's worsening emissions were a grave problem, flagged by health workers who had been working in La Oroya in for two decades. When DRP came in, emissions increased drastically, and a problem was flagged by the 2003 SVS Report and the MEM, in its February 2003 Resolution, 20 years before this arbitration.

Remember how Mr. Fogler this morning said that there was no MEM Report or notification that DRP was noncompliant with its PAMA obligations? I urge the Tribunal to review R-314, in Spanish at PDF Page 156. In English, it's just maybe a four- or five-page document.

That is the 2003 MEM Report that Ms. Alegre reviewed with the Tribunal. DRP knew that it was worsening

the health crisis in La Oroya. In response to rising public concern, the MEM ordered the SVS study in 2003, and after that study, the MEM issued a Report and Resolution expressly notifying DRP of its concerns about DRP's increase in production and use of dirty concentrate, and the worsening air quality in La Oroya.

And, among many other requirements, the MEM ordered DRP to undertake Human Health Risk Assessments, which led to the 2004 Gradient Health Risk Assessment.

That's why Gradient did that Health Risk Assessment, because the MEM ordered DRP to do it. DRP knew, and it was warned. The consequences of DRP's increased emissions were disastrous. Blood-lead levels went up during DRP's operations.

As Ms. Proctor shows, there was no meaningful improvement between 1999 and 2007, no significant change in blood-lead levels occurred until after the furnace baghouse, like the vacuum, was in place in late December 2006, just before the January 2007 deadline.

By June 2009, far beyond the PAMA Period, DRP implemented a fraction of Project 1, but this improvement does not matter for any of the Peruvian nationals who filed the first Missouri Litigation in 2007. By then, the damage had already been done.

Over this week, you've heard different Experts

and attorneys discuss a variety of specialized scientific concepts and questions regarding the base of data from which determinations can be made regarding DRP's performance relative to Centromín's.

At one point, Professor Simma queried whether there might be a log or a logbook of some sort. Well, there is. It is the SX-EW Report. It can be found at WD-8 and WD-30. I'm showing you here on the slide -- well, and I guess, on the next slide -- what it looks like to scroll through WD-8. That is the raw data, and there's at least 160 pages of it. That's just WD-8. That is the logbook.

PRESIDENT SIMMA: Excuse me. Did you -- I see on Slide 50, just the title Page. Are you going to the -- now you're going to the content and showing us all the -- is that --

MS. GEHRING FLORES: Yeah. It's just scrolling.

(Overlapping speakers.)

MS. GEHRING FLORES: It's scrolling through. That's what it's like to scroll through the document. So that's just a video of scrolling through the document. It is 170 pages long, and about 160 pages of that is just tables of raw data, of all of the inputs that went into the La Oroya Smelter.

The SX-EW Report was created in 2012 in the context of Doe Run Perú's bankruptcy proceeding, "el

proceso concursal." Doe Run Perú's bankruptcy administrator, Right Business, commissioned SX-EW, with the support of Doe Run Perú -- and you can see this on the title page, if you like -- to create a log of raw data regarding the concentrates processed in the La Oroya Facility from 1990 to 2009. So spanning Centromín's time and DRP's time, in order to determine the contamination generated by Centromín and Doe Run Perú.

The SX-EW Report spans, like I said, many, many pages. This is the raw data that Respondents' Expert, Mr. Dobbelaere, used to form his independent assessment and opinions regarding what Doe Run Perú's emissions must have been relative to Centromín's emissions. Mr. Dobbelaere's analysis is, of course, based in the basic precept of science, that what goes into a chemical reaction must go out.

If you put more wood into a wood-burning stove, more emissions must come out. If you put more wood and dirtier wood into a wood-burning stove, more emissions that have even higher concentrations of impurities will come out.

You can apply this simple fact, this basic law of science, to a complex smelter, and experienced metallurgists do this with math. It is, essentially, a metallurgist's accounting method for identifying and

verifying each input and each output of a smelter. You heard Mr. Dobbelaere, during his cross-examination, refer to a "responsible operator."

Why would a responsible smelter operator assume that any impurities that are unaccounted for after you do a mass balance, that any of those unaccounted impurities are leaving as fugitive emissions instead of leaving as something else. Most simply, to protect the lives and health of the community around the smelter.

Please note, that Mr. Schiffer's claim that fugitive emissions cannot be monitored is categorically false. Responsible operators monitor fugitive emissions. Mr. Dobbelaere's team monitored for fugitive emissions. Other smelter operators monitor for fugitive emissions. How? By placing air monitors around the smelting facility. It's a choice, one that DRP affirmatively did not make.

So DRP only monitored the emissions coming out of its main stack. Why would you have to do mass balancing at all if you can, as Mr. Connor contends, just monitor emissions at the main stack? According to Mr. Connor, a measured number is always the best number.

Why? Because your main stack monitor might be wrong, and if your main stack monitor is wrong, you might think you're emitting 40,000 metric tons of sulfur dioxide, which is pretty horrific on its own, but you could be

emitting 80,000 metric tons of sulfur dioxide, a lethal dose.

And your air quality monitoring might be wrong. Claimants admit the failure of its SO2 monitoring. Remember? Remember that monitoring? It's capped. You saw a graph that was like a buzz cut. That was DRP's sulfur dioxide monitor. They controlled that monitor. They knew -- they knew it was capped, and they kept it that way.

Claimants this morning talked a really good game about their air monitoring for lead. Mr. Schiffer said that there is no evidence that there was anything wrong with its lead air monitoring. This is not true.

I urge you to review Exhibit GBM-58, which we're passing out now. It's a memo from August 1999, from Aaron Miller to Mr. Buckley, after DRP had installed its new air monitoring system for both sulfur dioxide and lead. Let's see what the memo says about DRP's new air monitoring system.

The stack measurements tell us that there is eight metric tons of dust emitted through the stack daily, which tells us that that there is 235 metric tons of dust being captured and recycled daily. Handling 235 metric tons of dust on a daily basis is a great potential for fugitive emissions.

Further down, the process also generates a large

amount of fugitive emissions. The impact on the community for both particulates and sulfur dioxide may be from fugitive emissions as well as emissions from the stack.

And then, following on to the next page, first of all, at Stations 1, 2, and 3, new PM10 -- that's particulate matter -- 10 monitors had been installed where there had previously been high-vol monitors. The data shown was a mixture of PM10 data and high vol data. PM10 monitors were not intended to be used for monitoring for heavy metals, and will not give reliable numbers.

Laboratory procedures for assaying the filters were not acceptable for determining the concentration of lead for each individual filter.

Yet, more misrepresentations and disinformation from Claimants. And there is no evidence in the record that DRP ever fixed the problems described by Mr. Miller in this memo. Remember, DRP installed and controlled these air quality monitors. They knew there were serious problems with this equipment, and they did nothing, for five years, with respect to the SO2 monitors, and there's no evidence that they ever addressed the problems with the lead air monitoring or the related lab procedures.

What is obvious is that this was a choice for DRP, and DRP consistently and knowingly choice to ignore the worsening health crisis it was causing in La Oroya.

The problems don't end with DRP's air quality monitoring. We know there was a problem with DRP's main stack monitor. As Mr. Dobbelaere explained to you, and Mr. Connor conceded, there was nothing that could have removed sulfur dioxide emissions from the Facility other than a Sulfuric Acid Plant.

So in the year 2000, when DRP's main stack monitor registered a sudden and impossible drop in SO2, what did DRP do? Did DRP compare the data coming out of the stack to a mass balance, see a discrepancy, and alert the MEM and the community that there was much more sulfur dioxide coming out of the facility than the monitors were showing?

No. Actually, DRP simply kept reporting the SO2 numbers from an apparently nonfunctional main stack monitor. This you saw during Mr. Buckley's testimony. I asked Mr. Buckley which numbers DRP reported. DRP reported the lower numbers from the main stack, not the higher numbers from DRP's mass balancing analysis.

DRP also reported lower numbers, much lower numbers, to the community of La Oroya in the same document that DRP falsely touted its decreased emissions to the people of La Oroya, DRP included highly misleading figures regarding its sulfur. Not sulfur dioxide, regarding its sulfur emissions.

Figures that made it seem like DRP's sulfur dioxide emissions were half of what they knew they actually were.

And all that time, Mr. Buckley, DRP, knew that they had a serious sulfur dioxide problem, if anything, this should be a cautionary tale as to exactly why a smelter operator should be performing mass balancing all the time, to make sure you're not inadvertently harming people by relying solely on monitoring equipment and certainly if you're relying on monitoring equipment that you know is registering impossibly low emissions levels.

Which brings me back to the logbook that we have in this case, the raw data that Mr. Dobbelaere used to determine DRP's emissions relative to Centromín's, by performing a mass balance. Mr. Dobbelaere cited to the SX-EW Report in both of his Expert Reports.

Mr. Connor responded by generally criticizing the SX-EW Report, claiming that it provided "not a plausible explanation for how lead losses could have increased under DRP." But never actually engaging with the raw data provided in the Report.

Now, two days ago you watched Claimants' Counsel try to cast doubt on the entire SX-EW Report, suggesting that Mr. Dobbelaere withheld certain Annexes.

Mr. Connor never mentioned this in his Second

Report. He never mentioned that there were Annexes missing from the SX-EW Report, and Claimants never requested that they be produced. What is more, Mr. Dobbelaere was not withholding anything. Mr. Dobbelaere disclosed the entirety of the SX-EW Report that he used in his analysis. He disclosed all of the raw data that he used.

Mr. Dobbelaere also disclosed the entirety of the SX-EW Report that was in Respondents' possession. This is what we have. Finally, the missing Annexes that Claimants point to, they are mass balances. If you look at that index that they kept pointing to, they're all mass balances. It's not the raw data. The mass balances that SX-EW performed with the raw data. Mr. Dobbelaere did not need those mass balances because he performed his own.

Two days ago you witnessed Claimants' blizzard of disinformation, systematically calling into doubt the facts, the math, the science at issue in this case, and, as Arbitrator Thomas pointed out, the Tribunal is, unfortunately, faced with two diverging accounts of reality.

So where does this leave us? Where does this leave the Tribunal? The answer is burden of proof.

Claimants have the burden of proof in this case, and it's curious, isn't it, that Claimants would have the burden of proving their case and, yet, they're

systematically calling into doubt all of the facts and the science that they would need to prove it. Let's play this out.

So the air monitoring data, Claimants have said here and there, basically where it's convenient for them, that the air monitoring data is unreliable. It would seem that it is unreliable, but they can't pick and choose which is unreliable and which isn't, when they themselves are calling it unreliable.

The main stack data, the monitor at the main stack, where does that stand now? If you look at Claimants' Slide 33, Claimants appear to suggest erasing all of the emissions increases that would have necessarily resulted from DRP's increase in production and use of dirtier concentrate.

But they only want to erase certain parts. You can't pick and choose. DRP cannot pick and choose. It's either one way or the other way. So no more air monitoring data, no more main stack data, and if that's the case, what do you have left?

The only objective method that exists to determine DRP's total emissions is mass balancing. But, I think we all know what Claimants think of mass balancing; so apparently that's not available either. We can't use math because math is too uncertain. Too many assumptions.

I'm sure many damages -- and analysts who use the DCF model might take issue with that.

But in any event, no more mass balancing for Claimants. And now, with Slide 33, Claimants discard even the law of conservation of mass. Somehow at a time when DRP has done absolutely nothing, nothing to decrease either fugitive or main-stack emissions, DRP magically argues that, if you burn more you can decrease emissions.

If there is nothing that you can rely on as a reliable source of information or facts or science, math, then what are Claimants left with to meet their burden of proof? Nothing.

MR. PEARSALL: So now I will continue.

PRESIDENT SIMMA: Yes, Mr. Pearsall, you continue. The chapter on the Treaty case?

MR. PEARSALL: Yes. I will now address you on the Treaty case for the hour or so that I have left.

Respondents' Counter-Memorial, let's start there. Respondents' Counter-Memorial is entirely, nearly entirely unrebutted on the Treaty case. So your path to dismissing the Treaty case is easy. Other than the substantive Denial-of-Justice Claim, which I'll address later, Claimants has opted its choice was to rely exclusively on the first Memorial for points of law, and leave unrebutted our objections, our submissions on the law, and the

evidence and the facts that we put in our Counter-Memorial.

So now that the time to present new evidence has concluded, I'm going to again tell you briefly on why all of Claimants' Treaty claims fail.

So I want to start with an overview of their Expropriation Claims and an overview of their Minimum Standard of Treatment Claims.

Starting with its Expropriation Claim, we can tell you why it fails, in three parts: First, it has failed to establish a prima facie case. It does not attempt to connect a Measure to an element of expropriation as understood by the Treaty. It just doesn't do it.

If the Claimant doesn't do that, there is no jurisdiction. Period. Second, we are confused by Claimants' resistance to engage with the Treaty. Since our unrebutted Counter-Memorial, we do not believe that we have heard Claimant even acknowledge Annex 10(b) of the Treaty, that it even exists, let alone that it applies to the case and should guide the Tribunal's analysis on indirect expropriation.

Third, there are a lot of facts and points that we raised in our Counter-Memorial that Claimant, we submit, would have to address for its Expropriation Claim to even be prima facie available. All of those points can be found at Section 4(b)(2) in our Counter-Memorial. Claimant

didn't address any of it in its Reply, nothing. It didn't address any of it in its Rejoinder on Jurisdiction, and it didn't, frankly, address any of it in the two weeks we all just spent together.

Quick overview on their Minimum Standard of Treatment Claim. You can find the Minimum Standard of Treatment obligation in Article 10.5 of the U.S.-Perú FTA. Article 10.5 expressly establishes the Minimum Standard of Treatment under customary international law. Claimant presents both a Fair and Equitable Treatment Claim and a Denial-of-Justice Claim. So I'll address what it calls the Fair and Equitable Treatment Claim first. We can tell you why this Claim fails in three points as well.

First, all of its Claims, all of its Claims are either pre-Treaty conduct or are deeply rooted in pre-Treaty conduct, and, therefore, fall outside the jurisdiction of this Tribunal. These points have gone completely unrebutted. They have not addressed straddling, and they have not put anything forward to demonstrate that most of their Claims are pre-Treaty conduct.

Second, Claimant says, in its first Memorial, that customary international law applies, and you can you that -- and that's what the Treaty says, and can you find that at Section 4(a)(1) of their Memorial. But then it

offers an incorrect standard.

Now, our Counter-Memorial makes that clear at Section 4(a)(1), and our submissions that we made in our Counter-Memorial at Section 4(a)(1), on customary international law, have gone completely unrebutted.

Third, even if we applied the standard Claimant suggests in its First Memorial -- and, again, advanced here without any citation to law or reference to the Treaty, we answered that standard comprehensively, why it doesn't meet that standard either, measure by measure. Again, since our Counter-Memorial, our arguments remain unrebutted and unanswered.

So now we'll do an overview of their -- what I'm going to call their bonus Claim, their Minimum Standard of Treatment bonus Claim. And that's what they are calling the substantive Denial-of-Justice Claim.

This is one that Claimants' Counsel told us in his opening that he wanted to keep. Well, we'll get to the evidence and their Authority, but for now let me just say one thing at the outset. It's a cause of action that doesn't exist. At least not the version Claimant is trying to make. Denial of justice is procedural, it's procedural, and where it bleeds into substance it must be attendant to gross, shocking, and systemic procedural misconduct. It's a procedural claim.

But let's say for a moment -- let's just say for a moment that it does exist, and I hope the representative from the United States doesn't jump out of his chair when I say this, but let's just assume that it exists for a minute, theoretically. Claimant still offers no standard, no customary international law standard for it, and certainly comes nowhere close to proving customary international law violations that both Parties accept govern this claim.

Members of the Tribunal, for you to decide for Claimant on the Treaty case, you'll have to do its work for it. So let's dig a little deeper, and go claim by claim, an exercise we've done in our Counter-Memorial and our Reply, but let's talk about jurisdiction first. And let's talk about jurisdiction over the Expropriation Claims, their Indirect Expropriation Claim.

So here, Claimants cite CMS Gas Transmission Company v. Argentina. That's Slide 76 of their Opening. Perú asks the Tribunal to start its analysis on expropriation by looking at our Treaty, Chapter 10 of the U.S.-Perú FTA, not the U.S.-Argentina Bilateral Investment Treaty, or a case two decades old, from 2005. Claimant does not cite the U.S.-Perú FTA in its response to our Counter-Memorial.

Let me just say that again: Claimant does not

cite the U.S.-Perú FTA in its response to our Counter-Memorial. There is not even an attempt by Claimant to explain how the alleged Measures result in a breach of the elements for an expropriation that are listed in the Treaty. The Tribunal must dismiss this case.

They don't give us a theory. They don't give us applicable Measures. They don't apply those Measures to the law. They don't even cite the Treaty. They simply did not respond to our Counter-Memorial.

Let's look at the Minimum Standard of Treatment on Jurisdiction. The Treaty's Minimum Standard of Treatment obligation is set forth in Article 10(5), which provides -- and I'm going to read Treaty text here: "Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment." Okay. Pretty standard language.

Article 10.5 further specifies that: "For greater certainty, this prescribes the customary international law Minimum Standard of Treatment, and the concept of fair and equitable treatment does not require treatment in addition to or beyond that which is required by that standard, meaning customary international law, and does not create any substantive rights." Pretty clear.

In Claimants' Opening, instead of engaging with the reasons we gave on why the broader Fair and Equitable

Treatment standard it proposes does not apply, and is not consistent with customary international law, which, of course, it did not do at all in its Reply or its Rejoinder, all Claimant did in this Hearing was offer two lines on Waste Management II and Occidental v. Ecuador. Slide 75 of Claimants' Opening, neither of which, of course, were governed by the U.S.-Perú FTA.

Now, at closing they also just introduced the phrase "legitimate expectations" from their first Memorial, as if this a phrase divorced of any special meaning in this field. Well, irrespective of the jurisprudence on legitimate expectations, the words "legitimate expectations" don't appear in the U.S. FTA -- U.S.-Perú FTA. They don't appear in Article 10.5.

They're just not there. And I'm not going do Claimants' work for it, and neither should this Tribunal. But they had our views on legitimate expectations in our Counter-Memorial, at Sections 4(a)(3) and 4(a)(1), and they chose not to respond.

Now, we also don't find it necessary to spend too much time rebutting the two sentences, the two sentences from each case that Claimant put on the screen during its Opening, but let me tell you again what you probably already know from memory. It's cite to Waste Management II. It's a partial cite. It was taken out of context.

The sentences immediately preceding Claimants' cite, which we're putting up in red, articulate the oft-cited interpretation of the Minimum Standard of Treatment by our late colleague, Professor Crawford: "The minimum standard of treatment, of fair and equitable treatment, is infringed by conduct attributable to the State" -- attributable to the State -- okay. There's an element unrebutted, unproven -- "and harmful to the Claimant if the conduct is arbitrary, grossly unfair, unjust, idiosyncratic, discriminatory, exposes the Claimant to sectional or racial prejudice, involves a lack of due process leading to an outcome which offends judicial propriety, a manifest failure of natural justice in judicial proceedings, or a complete lack of transparency and candor." They didn't quote those sentences for you, but they also didn't even try to meet that standard.

Whether this standard, the one I just showed from Waste Management II, is consistent with customary international law or whether the standard should be closer to the Neer standard, the higher standard, of outrageousness that some Tribunals have found, that's a question we don't have to address. We don't have to address, President Simma, because Claimant doesn't even come close to meeting either standard whatsoever. Again, it does not even try.

We lay out a point-by-point analysis of the Minimum Standard of Treatment in our Counter-Memorial at Sections 4(a)(1) and 4(a)(3). No rebuttal.

Let's look at the denial-of-justice claim. Based on Claimants' Memorial, their First Memorial; right? This is the one written by the book worms, at Section 4(c)(1). We think the Parties generally agree on the high standard for denial of justice under customary international law. We even heard Claimants, again, say that they do agree with the high standard of customary international law for denial of justice. However, Claimant dropped all of its allegations of violations of procedure, to their credit. They no longer allege that MEM's credit recognition was procedurally improper, or that it was denied due process, or that the Peruvian justice system is corrupt. It only thinks that the Courts got it wrong and, therefore, is only pursuing what it calls a "substantive denial-of-justice claim."

There's no such thing as "substantive denial of justice," neither Perú nor the United States think there is such a thing. And in the event the Tribunal wants to break new ground, this is not the case to do it. Claimant would still have to prove a categorical failure of the entire Peruvian judicial system, which it hasn't even attempted. Far from it. Far from it.

Claimant, right now, as we speak, is arguing before a U.S. Court that Peruvian Courts are more appropriate than the Federal Court in Missouri, including, necessarily, making representations to that Federal Court that Peruvian Courts are fair and independent. We agree. We agree. The Peruvian Courts are fair and independent, and sometimes litigants win and sometimes litigants lose. Certainly, there is no substantive denial of justice without finding judicial impropriety. And that's Professor Paulsson's view. And we'll get to some of his jurisprudence soon.

Irrespective of all of this, we would have thought, at least, at least, it settled law that Claimant cannot prevail on a denial-of-justice claim based on the misapplication or errors in law by State's judiciaries. What you see on the screen is just a handful of the legion of examples where Tribunals have found the same.

So let me now engage with the one authority that Claimant puts forward to support its substantive denial-of-justice claim.

Claimant brings you, in its Opening -- it didn't bring it up again in its Closing, but Claimant brings you Dan Cake as its single authority to support its denial-of-justice claim. Dan Cake. That alone dooms its case, as it must prove a customary international law

violation, and citing an intra-EU BIT Claim from a decade ago is not evidence of customary international law. Customary international law is evinced through State practice and opinio juris.

In Section 5(c)(2) of our Rejoinder, we explained why this case is inapposite to Claimants' Claim. Yet, Claimant failed to respond to this in writing, failed to respond to it in its submission, and brought it up again two weeks ago without any analysis or recognition whatsoever of what we said in our Rejoinder. Let me be clear, Members of the Tribunal, we have no issue with Dan Cake. I like Dan Cake. What we disagree on is the applicability of that case to this proceeding.

You know, I initially intended to wait until I discussed the Merits of Claimants' denial-of-justice claim to address Dan Cake, but I think the Decision confirms important points on the standard of denial of justice, so I just want to say a few words of it here -- about it here, since Claimant fails to do so.

Let me remind this Tribunal, again, of what happened in Dan Cake. In Dan Cake, the Claimant alleged that a refusal by the Metropolitan Court of Budapest to convene a hearing amounted to a denial of justice in breach of Article 3(1) of the intra-EU Treaty. It was a treaty between Portugal and Hungary.

The Tribunal, Messrs. Mayer, Paulsson, and Landau, applied the following test for denial of justice: Whether Hungary's entire legal system showed "a willful disregard of due process of law" and perpetrated "an act which shocked or at least surprised a sense of judicial priority."

The Tribunal found that the denial of justice standard was breached when the Metropolitan Court of Budapest violated the Claimant's right to even have a hearing. The breach was no hearing, even though Claimant was entitled to one. No hearing, no process. This was procedural. This was a procedural breach. So why was the failure of granting a hearing in violation of Hungarian law a denial of justice in Tribunal's eyes? Because Claimant was denied access to a hearing that it was otherwise entitled to. Access. The Claimant didn't get to argue its case. Hungary refused to hear Claimants' case, perhaps, because Claimant was foreign, and the court set up roadblocks to render it impossible for them to have a hearing. This, Members of the Tribunal, is what Messrs. Mayer, Paulsson, and Landau all agreed constituted "a willful disregard of due process of law," which "shocked a sense of judicial propriety."

Dan Cake, for whatever it is, it's certainly not the most famous Decision on denial of justice, maybe

Claimant could have a look at ICJ's Decision in ELSI v. Italy for that.

Dan Cake isn't even the most cited case either. It's an intra-EU BIT case. Whatever Dan Cake is, I certainly don't I think it constitutes opinio juris. But one thing that Dan Cake is, it's a procedural denial of justice case. It has not and never has been authority for something called "substantive denial of justice."

The Dan Cake Tribunal found a denial of justice as a result of a grave matter of procedural misconduct. Mayer, Paulsson, and Landau didn't even come close to doing what Claimant asks this Tribunal to do, which is decide that a domestic court was wrong on the substance, absent any showing whatsoever of gross and systemic procedural irregularities.

Let's talk a second about burden of proof. This one -- we don't understand the Claimant to contest that it bears the burden of proving every aspect of the Claim that it presents. Yet, despite all the Legal Authorities and evidence we set forth in our Counter-Memorial to rebut each of its claims, it has yet to respond, so Claimants have also not satisfied its burden of proving every aspect of its claims.

All right.

Let's keep talking a little bit more about

jurisdiction in a little bit more granularity.

The Tribunal lacks jurisdiction over Claimants' expropriation claims for failure to establish a prima facie case. I just addressed this when I explained how Claimant has failed to acknowledge even the language of the Treaty on indirect expropriation. So I'm not going to waste much more time on this point.

Claimant cannot be found to have established a prima facie case on expropriation if it doesn't even acknowledge the provisions of the Treaty that tells us how those Measures should be assessed. In every submission we've made, during our Opening, in all our submissions, we've walked you through this.

FET. We walked you through the timeline to show you how all of Claimants' Minimum Standard of Treatment Claims are based on acts and omissions that have either occurred before the Treaty entered into force or straddle the date of entry into force and are deeply rooted in pre-Treaty conduct.

We have not heard one word in their submissions, in their Pleadings, or, frankly, in the last two weeks, from Claimant or its witnesses to contest our understanding of the law. All of claims -- all their claims are rooted in pre-Treaty conduct and are, therefore, outside the jurisdiction of the Tribunal. Again, un-rebutted,

unanswered.

So, now, let's talk about another defense that we have, which is that Claimants' Claims are undermined by the fact that Renco and DRRC caused DRP to fail. Here, we have some new evidence that we were able to see over the last two weeks. So that at least gives us something to talk about.

We've been telling this Tribunal, since our Counter-Memorial, that Claimants' Minimum Standard of Treatment and indirect expropriation claim is undermined by the fact that Renco and DRRC caused DRP to fail. We told you, time and time again, that Claimant ignored our Counter-Memorial in its submissions, I've told you that about a dozen times already in my 20 minutes now, and regularly ignored evidence we presented on DRP's self-inflicted financial troubles.

So on the screen, like we showed you in our Opening, we're going to show you buckets of evidence, buckets of evidence that prove the cause of DRP's insolvency.

First, circular transactions at the outset that drained DRP of its capital and saddled it with debt.

Second, sweetheart intercompany deals that forced DRP to send millions of dollars a year to benefit upstream Renco entities.

Third, warnings that DRP executives gave about DRP's flawed business model since the 1990s.

Fourth, concerns that auditors, Financial Experts, banks, all raising the alarm that DRP's business model was fundamentally flawed.

And fifth, DRRC's own formal filings with the SEC, where DRRC was publicly disclosing, in its words, "substantial doubt" that it could continue as a going concern. It's all in the record. Claimant ignores this evidence in its written submissions, completely ignores it. They simply didn't address it. Because of that, in this Hearing, we wanted you to have the opportunity to hear from at least one of the fact witnesses about the financial concerns that DRP was facing.

So we questioned Mr. Buckley, the former President of DRP, and Mr. Buckley confirmed what the contemporaneous, the contemporaneous evidence already showed, that he and Ken Hecker, DRP's Chief Financial Officer, thought DRP's financial situation in the Year 2000 was dire, 2000.

But, more importantly, he confirmed why, why it was dire. Mr. Buckley confirmed that, in 2000, at the height of the dot-com bubble, long before the 2008 Financial Crisis, DRP was facing financial trouble. But I shouldn't be vague and call it "financial trouble," because

Mr. Buckley was clear. Mr. Buckley was clear. He confirmed DRP's debt level was the problem. DRP's financial structure was the problem. DRP's business model was the problem. And we heard Mr. Buckley proudly say that, in 2000, he was the person who knew the most about DRP, and what did he tell us in his contemporaneous Memorandum? That DRP was "severely capital-constrained," and, more importantly, he confirmed that DRP could not comply with its Investment Commitments like funding the PAMA Projects. DRP's financial state was so dire that Mr. Buckley wrote: "In all his years, he had never seen a company accomplish a similar feat like the one Doe Run was trying to manage."

Finally, at the end of Mr. Buckley's testimony, he did say that there were lead price issues at the time. We have no reason to disagree with that assertion. Lead prices were, one of the situations that DRP was facing, but I encourage you to read every page of R-85 before you start drafting this Award. We heard that the situation was so bad that Mr. Buckley wanted this message sent to Ira Rennert.

Now, you should Google Ira Rennert, the CEO of Renco. I've never met the man, personally, but, based on his Wikipedia page --

MR. SCHIFFER: I thought we were sticking to the

facts in the case.

MR. PEARSALL: He doesn't strike me as someone who you just send a memorandum to.

MR. SCHIFFER: Counsel, I thought we were sticking to the facts that are in evidence. This is not right.

MR. PEARSALL: It was -- there was lots of testimony, which you heard, that Mr. Buckley extraordinarily said that this Memorandum should be sent to Ira Rennert, the CEO of Renco. That, in Mr. Buckley's view, that it was so important that it should go to Ira Rennert, is probative. While Mr. Buckley could tell you how he felt about DRP's finances during the tenure as President, couldn't really tell you, could he, about the effects of those financial decisions ultimately on DRP.

So we're glad you got to hear from Ms. Isabel Kunsman, who explained the practical implications of those choices. And what did we learn from Ms. Kunsman? We learned that, on the STA's Closing Date, DRP took nearly the entire $126.5 million Capital Contribution it was obligated to pay under the STA and loaned it interest-free to Doe Run Mining. There is no dispute there.

We also learned that DRP made a pledge of all its assets as a guarantor of the $225 million junk bonds that were issued by DRRC. No disputes there either. And we

learned that those junk bond proceeds were used to pay off the "acquisition loan," and Doe Run Mining became, therefore, indebted to DRRC. No dispute there either. We also learned that DRP merged into Doe Run Mining. No dispute there either. But we learned that the implications of this merger, first, $125 million loan from DRP to Doe Run Mining, which was the initial Capital Investment, was, in the words of an internal DRP document, "simply eliminated."

Second, we learned that DRP became the Debtor on a $139 million debt DRM had with DRRC.

Is this normal, the Tribunal asked? Far from it. Far from it. The long-term consequences of these intercompany transactions and restructurings within Claimants' corporate structure were significant and included, first, that DRP never recovered the $125 million that Perú had required as a Capital Contribution to the working capital of the Facility. Why? Why did Perú require that? Why did Peru require that? DRP be properly capitalized. In order to meet business, regulatory, and investment needs, the PAMA.

Second, that DRP was substantially burdened and forced -- and faced onerous financial restrictions as a guarantor of hundreds of millions of dollars of junk bonds issued by DRRC.

And, third, that DRP had a sizable obligation to various upstream entities on debt originating from its own acquisition. Read Mr. Buckley's Memo. R-85. Maybe we should have laminated that one for you too, but read that Memo dated 2000. It's even clearer now with the benefit of the record in these matters 24 years later. The problem was not Perú. The problem was not the 2008 Financial Crisis. The problem was not the price of lead. The problem was DRP's business model. The problem was DRP's financial structure and the choices it made to enrich upstream companies.

And what did Claimant do, during Ms. Kunsman's testimony? We saw Claimant ask her a bunch of questions. We didn't see Claimant contest those facts. Instead, we saw Claimant ask Ms. Kunsman questions about whether all of DRP's poor financial decisions were prohibited by the STA. We're not really sure why Claimant kept asking Ms. Kunsman about the STA. It would have made more sense for Claimant to ask Ms. Kunsman about the Treaty. It's one of the bases of their FET claims, we think, but it wouldn't have accomplished much there either. The FET standard, no matter how broad Claimant wants to draw it, cannot oblige Perú to ensure that an investor's investment is protected regardless of its financial decisions.

Perú has no obligation to bail out DRP and ensure

its able to continue operating regardless of how it structures its business and regardless of whether it played a role in its own financial demise.

So I told this Tribunal, in my Opening, that I didn't have time to go through every piece of evidence. That's still true, but, as you've seen testimony this week, the financial problems were real and many, and let me quickly show the Tribunal just a few more examples, with its indulgence, from DRP's own documents, which are replete with warnings by DRP executives, auditors, financial experts, and banks.

June 2000, a bank, Credit Lyonnais, wrote to the Vice President of Finance at DRRC, and said: "DRP cash flow generation cannot sustain the continuation of this money transfer -- money transfers upstream."

That's an example from a bank, but let's look at an example from an independent auditor. 2004. KPMG. Independent auditor Reports of DRP's financials. Claimant said it's a reputable firm. We agree. KPMG highlighted that the conditions that DRP was facing as a result of its debt "indicate the existence of material uncertainties and raise substantial doubt about its ability to continue as a going concern." That's 2004.

We're supposed to believe, in 2000 and 2004, despite these independent assessments of its financial

health, that DRP was doing everything in its power to meet its PAMA investments.

And the final example I want to show you is from another DRP executive, this time its Treasurer. In 2006, DRP's Treasurer, Mr. Payet, raised concerns about DRP's financial condition. This is 2006, now. March 2006, an email from Bruce Neil attaching DRP's cash flow projections from 2006 to 2010. You heard about this in testimony. Mr. Payet sounded the alarm, saying, "please note that the cash flow is not sufficient to support PAMA. Sustaining CapEx and the reactor, we run out of money in 2007." Members of the Tribunal, these warnings went unheeded or, perhaps, Claimant didn't care because it had already gotten what it needed from DRP. Claimant continued to drain cash out of DRP and push it along the path to eventual insolvency, all before the Financial Crisis of 2008.

So from a financial perspective, how would you respond to the final question Claimant put to Ms. Kunsman about the effects of the Global Financial Crisis? Well, Ms. Kunsman told you, and now others are telling you, and DRP's own executives are telling you, that DRP was in a poor state long before the Global Financial Crisis.

But how is this an FET breach?

I'll now address why Claimants' additional treaty claims fail. Again, an indirect expropriation.

After years of Briefing, a two-week Hearing in which Claimant gave an Opening Statement, two witnesses, four Experts, our Counter-Memorial, Claimant has still not responded. We don't really understand its indirect expropriation claim. We have no response whatsoever on all the defenses we raised. We're back to where we were on April 1, 2022, when we filed our Counter-Memorial and showed that there was no prima facie case.

As we stated in our Opening, this Tribunal's job is not to choose from a series of expropriation theories and figure out how they can fit it into a theory, because Claimant has neglected to provide a well-pled theory that differentiates between theories, defines the standard for each claim, and, most importantly, demonstrates why the Measures it complains about violates the standard of the Treaty. I don't know how you can advance an indirect expropriation claim without citing Article 10(b) -- Annex 10(b).

And we invite the Tribunal to look at the table that we put on the screen in our Opening. It highlights the key factual emissions Claimant has brought forward. Claimant alleged, in its Memorial, that Perú violated 10(5) of the Treaty because its environmental obligations increased, and the MEM did not grant it multiple extensions without conditions.

That's its claim.

That MEM did not grant it multiple extensions without conditions. They say it was unfair that they only received two extraordinary extensions.

We've addressed this point. We won't repeat it. These past two weeks, all we've heard were references to suggest Claimant wishes the Tribunal to believe that DRP had a clear entitlement to have its 2009 Extension Request granted because of a force majeure event, and Claimant invokes Clause 4.3 of the STA to support this claim.

In our Counter-Memorial, at 4(a)(2)(b), we set out all the reasons why force majeure clauses of the STA do not support Claimants' Treaty Claim, and that it was not entitled to an extension in 2009. Reading Clause 4.3 of the STA does not respond to any of the points that we made in our Counter-Memorial, which are summarized on your screen, and Claimant has, once again, failed to meet its burden.

All right. Let me conclude shortly on their substantive denial-of-justice claim.

I already explained the problems with this claim, and let me expand just a little bit on some of these threshold problems. Claimant has not alleged a systemic failure of the Peruvian judicial system. They have not alleged that DRP was not afforded the right to be heard.

They have not alleged corruption, so what are they asking this Tribunal to do? They are asking this Tribunal to look at Peruvian Court Decisions on the substance and find their Decisions could only have been produced as a result of a systemic failure of the judicial system, which they have not proven.

So what did we hear during the Hearing? We heard Mr. Schmerler say that he considered a denial of justice had taken place. We were, of course, surprised to hear that statement, given that Mr. Schmerler never made that statement in either of the two Reports he submitted, so we were keen to understand why he considered the Decision to amount to a substantive denial of justice. So we questioned him on it. He has no basis. Turned out, he doesn't even know what ELSI was, or Mondev, or anything -- he's never heard of Jan Paulsson. He doesn't know what substantive denial of justice is. He doesn't consider himself a public international lawyer. He had zero basis to opine on the issue.

During Mr. Schmerler's cross-examination, he was shown several places in his Reports where he emphatically asserted that the Peruvian Bankruptcy Administrative Authority cannot, under any circumstances, determine a credit claim.

So we showed Mr. Schmerler a resolution that he

submitted with his Second Report, DS-58, from INDECOPI in 2021, which, as you can appreciate on your screen, provides the complete opposite conclusion. It states that a Peruvian Bankruptcy Administrative Authority can determine a credit claim.

On redirect, Mr. Schmerler's rebuttal was that a resolution, in Exhibit DS-37, a different resolution, supports his conclusion that the Peruvian Bankruptcy Administrative Authority cannot determine a credit claim. Further, he argued that the Resolution was mandatory precedent, and, therefore, prevails over the Opinion expressed in DS-58 that we showed him, which concluded that a Peruvian Administrative Court can determine a credit claim. Sounds complicated, doesn't it?

First and foremost, none of it matters. None of it matters. An error in law is not a denial of justice. Full stop. But this isn't even an error. Mr. Schmerler, in our view, represents DS-37, that it's a mandatory precedent, when "asalah" (phonetic) declares a mandatory precedent, it signals its exact issues that are to be treated as mandatory.

DS-37, the parts that were declared mandatory were not the parts that Mr. Schmerler relies on as authority for INDECOPI's ability to grant a credit claim.

There are additional examples in the record like

Resolution DS-58.

Look, at the end of the day, Members of the Tribunal, at best -- at best, there appears to be differences in the various INDECOPI Bankruptcy Court precedence over the scope of INDECOPI's power to determine a credit in a bankruptcy proceeding, at best. And it is not the Tribunal's role to settle the disagreement. This is not what Perú and the United States negotiated. This is not in the Treaty. This is not in the Offer to Arbitrate. That's not the obligation Perú undertook under international law. This Tribunal is not empowered or, with respect, competent, to settle unsettled Peruvian bankruptcy law.

Let me end with this. We've spent a very spirited two weeks together. I've enjoyed it, but this case has been going on for over a decade, over 280,000 pages are in the record. Mind boggling. Both Parties have spent millions and millions of dollars. And I'm sure you're all tired of the rhetoric, but these are points that are very important to Perú, and I'm compelled to make them. Perú has been forced to defend this Treaty Claim that is manifestly unproven and unpled. Activos Mineros has been forced to defend a claim under the STA that is not ripe, unavailable, and has largely been conceded in the Briefing.

Why? Leverage in Missouri, an attempt to

pressure Perú to support Renco in the Missouri Proceedings. And the PAMA unfinished.

Perú looks forward to this Tribunal's Award. If there were ever a case for costs, this one's it, but putting that aside for a moment, this is a case that needs an award with speed and clarity. Perú takes this system seriously. It hasn't withdrawn from the system. It hasn't canceled its Treaties. It doesn't rattle the sabers and spout protectionist and nationalist rhetoric.

Process matters to Perú, and so does evidence. Facts matter to Perú, and so does science. And the burden of proof matters to Perú, and so does unrebutted law.

We thank the Tribunal for its attention, and welcome its questions.

PRESIDENT SIMMA: Thank you, Mr. Pearsall. This brings to an end the Closing Statements of the Parties.

And we now have to deal with a few -- let's call them organizational -- oh yes. Oh, yeah. We can -- okay. You can. Sure.

A question, from Arbitrator Thomas.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR THOMAS: Ms. Gehring Flores, I just wanted to go -- if you could turn to Slide 25 of your slide deck.

MS. GEHRING FLORES: Yes, of course.

ARBITRATOR THOMAS: It's actually a question about U.S. law, and, Mr. Schiffer, you might want to make a note of it.

You had indicated -- you were discussing the issues of derivative liability and direct liability. And, as I understood -- I haven't checked the Transcript, but I made a note at the time -- and you can correct me if I have it wrong -- but I think you said, under both theories, only the parent company is liable and direct liability does not pass through the Company or DRP, at all. Is that the gist of what you intended to say?

MS. GEHRING FLORES: Yes. Yes.

ARBITRATOR THOMAS: Is there evidence on the record to support that statement?

MS. GEHRING FLORES: I can get you the paragraphs in our Briefs. I'm -- yes. The Missouri Court has ruled on those specific issues, so we can get you the specific cite and it is in the record.

ARBITRATOR THOMAS: Okay. And that was Judge Perry, or was it the Eastern District Court of Appeals?

MS. GEHRING FLORES: I do think it was Judge Perry in the -- no, Collins Cases, I believe.

ARBITRATOR THOMAS: Okay. Maybe you can just send the cite to Mr. Doe.

Am I too optimistic to say that you would agree with that position, Mr. Schiffer?

MR. SCHIFFER: No, because whether it's derivative or direct doesn't matter. The causation, the injury all arises from DRP's operation of the Facility. So, you know, they throw out the word "fraud" and "conspiracy." Those are all just theories to try to make Renco and DRRC liable for DRP's conduct. That's it. I mean, this is not -- in my view, not a complicated -- I mean, they try to make it sound super complicated so the Tribunal will back away and say, "oh, this is too complicated, we can't deal with this." But it's really quite simple. There's -- everything ties back to DRP's operations. That's what these Claims arise out of.

They're not claiming anything else. They're not claiming that they got hurt at a different smelter. They're claiming -- these are Peruvian people who live in La Oroya who said that the toxic -- whatever, hurt them. And I could go -- I mean, I could rebut what they said for five hours, and I won't, but I think -- does that answer your question?

ARBITRATOR THOMAS: Well, no. I understand that to be the position.

MR. SCHIFFER: Yeah. Okay.

ARBITRATOR THOMAS: So I'm not concerned about

that. So it was really this narrow question of this proposition of U.S. law, and I was wondering whether or not you had a view on that.

MR. SCHIFFER: Maybe, if I could see the slide again.

ARBITRATOR THOMAS: It's -- if you look at the -- it's Slide -- well, it's Slide 25, but the actual -- it doesn't actually carry what I have written down.

MR. SCHIFFER: Okay.

ARBITRATOR THOMAS: But I can -- if you open up Slide 25, you'll see the derivative liability/direct liability points.

MR. SCHIFFER: Okay. So --

ARBITRATOR THOMAS: And what was said by the Respondent was, under both theories, only the parent company is liable, and direct liability does not pass through to the Company or DRP, at all. Is that a proper statement of Missouri law?

MR. SCHIFFER: The parent company would be liable for the conduct of its subsidiary. So, in other words, if there's a veil pierced, then DRP and Renco become one and the same. Might as well be DRP because Renco is going to be liable for everything.

ARBITRATOR THOMAS: Okay. I think I have

sufficient clarity but if maybe, in your Post-Hearing Submission, if there's a question relating to this, you can enlarge upon it.

MR. SCHIFFER: Yeah. Absolutely.

MS. GEHRING FLORES: I can give you the cite. It's our Rejoinder at Paragraph 348, and it's Exhibit R-18, at Page 43.

ARBITRATOR THOMAS: In the Contract case, I assume.

MS. GEHRING FLORES: Yeah, I believe -- all of our exhibits are -- oh, there you go. There it is on the screen.

ARBITRATOR THOMAS: Thank you.

POST-HEARING MATTERS

PRESIDENT SIMMA: So let us turn to the organization of issues that we have to tackle or respectively decide.

The first matter would be the Transcripts, and we think that a deadline -- that four business weeks would be sufficient in that regard, but I gladly hand over to Martin in that regard.

MR. FOGLER: Sure. Just noting that Paragraph 11.2 of the Procedural Order actually already stipulates that it will be 20 business days after the close of the Hearing for the Parties to engage in the correction

of the Transcripts. So that deadline was already set out.

PRESIDENT SIMMA: That seems to be agreeable to both sides. That's fine.

Then, secondly, the issue of the Post-Hearing Brief. I think the Tribunal has already made clear that it wants Post-Hearing Briefs. My suggestion or the Tribunal's suggestion for the procedure is as follows: You are going to get from us a set of questions, of pertinent questions, and we would like you to kind of orientate or structure, whatever, your Post-Hearing Briefs along these questions, and answer the questions in the first instance.

And in the letter accompanying or in the email accompanying the list of questions, we are going to indicate a deadline which we are going to set according to how we -- what we just see as the reasonable and sufficient time span for writing the Post-Hearing Briefs. And if you have problems with this deadline, I think you should just come back and then we'll figure that out by email. Okay.

Was I clear on that? Okay.

And the only thing that remains on my list here is the Costs Statements and --

MR. PEARSALL: Sorry, Mr. President. Just on the questions or the Post-Hearing Brief, it would be helpful to us if you could direct us on two points: One, the scope of the Post-Hearing Briefs -- by that, I'll explain in a

second. And the second point is on word count. So two points:

On scope, it would be helpful if you could direct us either by letter or a new Procedural Order when you send the Post-Hearing Brief questions, that your rulings on the record, in that the record is closed, that no new information, nothing that is not already in the record were publicly available presumably in the Missouri and the very narrow new point about new information that we need to bring forward on the docket or something that might not be on the record. But no new information, no new documents, nothing new in these Post-Hearing Briefs. We are responding to the evidence that is already before you because we don't want to -- we don't want a whole new round of submissions on new information. So it would be helpful if you could direct us in a Procedural Order on that.

And then the second point is, when you give us a deadline, it would be helpful if you could give us a word-count limit as well, and that is because, at least in Respondents' view, the Post-Hearing Briefs should be narrow and limited really only to the questions and answering the questions that the Tribunal wants. It would be very unfortunate, in Respondents' view, if we have 100 Pages to submit in Post-Hearing Briefs, especially considering the uniqueness of how the submissions have played out thus far

in this case. This is not an opportunity to revisit a Reply or Rejoinder on Jurisdiction.

PRESIDENT SIMMA: The size of Applicant's Briefs, in that regard, has not been, let's say, awesome. But I am a page guy, and not word-count guy. So -- but we'll figure out what word count.

ARBITRATOR GRIGERA NAÓN: I think that he wants to make a comment.

PRESIDENT SIMMA: Yes. I give you the floor for now.

MR. SCHIFFER: No, I'm happy with that. I was just going to comment that I probably have never written 100-page anything in my life. That's all.

PRESIDENT SIMMA: So that's fortune then. So I think we are also a bit quite experienced in that regard, and I think we make a good choice.

So the Costs, I really hand that over to you because -- is there a -- I think there is no deadline, but within two months? Or would that be just excessive or?

MR. FOGLER: I think we would have to figure that out once we've set the Post-Hearing Briefs in motion since, of course, that will -- the Costs would have to follow that.

PRESIDENT SIMMA: Any remarks on the Costs matter, Mr. Pearsall?

MR. PEARSALL: Well, we just need to make sure that the -- that we make a submission on costs for these phases. We're obviously hopeful that there won't be a damages phase, but, if we end up having one, there will need to be an appreciation of cost in that phase as well. So as long as we're -- we have no problem with as short a deadline as the Tribunal is willing to give us.

MR. SCHIFFER: Yeah. I mean, I don't care how the Tribunal wants to handle it or when. I mean, my costs are pretty simple. I could tell them to you right now. And I just have to find out about King & Spalding. That's it.

PRESIDENT SIMMA: I always find the Cost Statements very interesting.

ARBITRATOR GRIGERA NAÓN: Fascinating.

PRESIDENT SIMMA: Fascinating. Impressive.

So thank you very much.

I think -- any other organizational matters that are still open? With Claimant, first?

MR. SCHIFFER: No. I think that everything that I can think of has been covered.

PRESIDENT SIMMA: Respondent.

MR. PEARSALL: Nothing. Thank you, Mr. President.

PRESIDENT SIMMA: So it's on me to --

SECRETARY DOE: Just a quick public service announcement in terms of logistics. You'll see a big shred bin in the back of the room that you can dispose of anything that you wish to, and ICSID has asked us to ask you to leave the keys to your respective breakout rooms on the table in the rooms, as you leave, there. And I think, otherwise, anything else you can just label as trash or shredding as you see fit.

PRESIDENT SIMMA: I really forget. That's why -- okay. So it remains for me to thank you. I will just refer -- reference the words -- the wording of Mr. Fogler which I like very much. I found that very elegant. I would like to thank, first, the Parties for the very, let's say, orderly, quiet, peaceful ways in which this has taken place. So thank you very much.

I would like to thank the PCA people and the ICSID people that helped this to run smoothly, the Interpreters, and the Transcript team, the interpretation team, and -- do I have to thank somebody else? My colleagues? We are the team. I know you are included in that. So thank you very much. And we will --

(Comments off microphone.)

PRESIDENT SIMMA: Oh, Court Reporter. Of course. Of course. Sorry. Yeah. Everybody. I said that already.

So have a great trip home, and we'll do our best

to deliver a speedy discussion, a speedy decision on the rest of things. Yes. Thank you.

I have never -- there was an elephant in the room, Missouri. Elephant in the room, and so I return and I look forward to learn more. May I indicate, in the work we have already done on questions, are there Missouri-related questions? Yes. So you'll get some questions, but, as you said, and I think Parties agree, this should not erupt into another round of documents that need to be replied to, et cetera, et cetera.

Thank you very much. It was a pleasure.

(Whereupon, at 3:36 p.m., the Hearing was concluded.)

**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

**Dawn K. Larson**