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

In the Matter of Arbitration Between:	
THE RENCO GROUP, INC.,	
Claimants,	
and	
THE REPUBLIC OF PERÚ,	
Respondent.	
	Vol. 1

- 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

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. 1

(Continued)

HEARING ON JURISDICTION AND LIABILITY

Tuesday, March 5, 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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Deputy Secretary General and Principal Legal Counsel

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Assistant Legal Counsel

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C O N T E N T S

PAGE

P R O C E E D I N G S

PRESIDENT SIMMA: So let me open the -- in a way, Super Tuesday of this case; right? The Hearing in the two cases that I don't have to read out. Let me introduce, first of all the Tribunal. I'm Bruno Simma, this is Professor Grigera Naón. This is Chris Thomas, and we have Martin Doe from the PCA, Heiner Kahlert, the Tribunal -- assistant to the Tribunal, Javier Comparini -- who is where? -- in the very back, who is an assistant to Martin Doe. So that far about the Tribunal. Have I forgotten anybody? I think the Tribunal...

So may I ask the representatives of the Parties to briefly introduce their teams.

MR. SCHIFFER: Yes, Mr. Chairman.

PRESIDENT SIMMA: Mr. Schiffer, you have the floor.

MR. SCHIFFER: Yeah, my name is Adam Schiffer, and with me is my colleague, Murray Fogler. Josh Weiss is also Counsel in the case. He's the in-house -- the General Counsel of Renco and also an officer of DRRC. Sarah Warburg-Koechlin is sitting here as an advisor to me in this case. She is at the law firm of King & Spalding. Jenn Cordell and B.B. Neely. Jenn is our legal assistant, and B.B. runs -- he's the wizard behind the screen. He runs pretty much everything that you'll see.

And then Gino Bianchi is an Expert at GSI; Jen Grundy is also an Expert at GSI; John Connor is the lead Expert at GSI, who will be testifying in the case; and José Mogrovejo is a former both Centromín and DRP representative who is here at the Hearing, and he's submitted a Witness Statement, which I'll mention in a minute.

PRESIDENT SIMMA: I remember that there was a request by yourself to include Mr. Rennert?

MR. SCHIFFER: Yes. We're sad to say that he actually could not make it down here from New York this morning.

PRESIDENT SIMMA: Okay.

MR. SCHIFFER: So he will -- I don't know if he'll be attending, but we'll let the Tribunal know and the other side, in advance, on if and when he'll attend.

PRESIDENT SIMMA: Okay. Thank you.

May I ask Respondent to do the same, introduce your team, please?

MR. PEARSALL: Absolutely. Good morning. Let me start with the Respondent representatives, some of whom are in the room and others who are watching on the live stream.

We have Vanessa Rivas Plata, who is the President of the Special Commission for Perú. She's watching remotely. We have Enrique Jesús Cabrera Gómez, who is here with us, I think, in the room or will be shortly; Antonio

Montenegro Criado, who's the Director of Activos Mineros; Dante Aguilar Onofre, who's the director of the private investment section of Activos Mineros; and Oscar Lecaros Jimenez, the Legal Director of Activos Mineros.

And then on Counsel, I'm Patrick Pearsall. Good morning. To my left is Gaela Gehring Flores, Brian Vaca, Michael Rodríguez, Augustina Álvarez Olaizola, and to her left is Inés Hernández-Sampelayo, and Kelby Ballena. And we also have a few Experts in the room: Richard Allemant, Vanessa Lamac. Oh, no, these are Counsel for Lazo, our local counsel: Richard Allemant, Vanessa Lamac, Romina Garibaldi Del Risco; and then our Experts, Wim Dobbelaere and Isabel Kunsman.

PRESIDENT SIMMA: Okay. Thank you very much.

Let me just add that I also -- glad to see Mr. Bigge, again, here in the room from the State Department. We have seen quite a bit of each other in The Hague, but it's good to see you on your own ground; so to say.

So let me then ask, are there any organizational questions that need to be solved, to at least mention before we start with the session? Anything organizational, any problem?

MR. SCHIFFER: Nothing from Claimant.

(Comments off microphone.)

PRESIDENT SIMMA: Nothing from Claimant.

How about Respondent?

MR. PEARSALL: No, nothing from Respondent.

PRESIDENT SIMMA: Thank you very much.

So without further ado, Mr. Schiffer. You have the floor.

(Interruption.)

PRESIDENT SIMMA: The hearing is a problem; so you were obviously addressing me, but away from the mike. So if you could just, if the people speaking could more or less look at the -- not look at the mike, but have the mike next to them, that would help here. Thank you very much.

All right. Mr. Schiffer, go ahead.

MR. SCHIFFER: Good morning, everybody. It's been a long road for us to get here today.

OPENING STATEMENT BY COUNSEL FOR CLAIMANTS

MR. SCHIFFER: The arbitration, or sister arbitration to this case, have been pending for 14 years. The Missouri Litigation, I'm sure the Tribunal has read a lot about the Missouri Litigation, but we've been fighting that for 17 years, and so we are very grateful to have our day in court. And this is the Final Hearing. I know that there has been a lot said about, well, all the facts are in the Briefs, do we even really need a hearing? What's the big deal?

It's a huge deal, at least for lawyers who are common law lawyers, because it's only through cross-examination of witnesses that we feel like you can get to the heart of the truth, that you can evaluate the credibility of what someone is saying, you can test it, and you can see if it holds together, and we are very excited for our chance to do that with their witnesses, but one thing I need to say up front is that this is not a fair battle on witnesses.

We have brought forth, for example, in the negotiation and execution of the STA or the Contract, however we want to call it -- we brought forth the two people who were involved, heavily, in identifying the Project, negotiating the STA and documenting it, and those people are Mr. Sadlowski and Mr. Buckley.

In terms of the hot issue in this case, where everyone has spent a lot of money briefing, the standards and practices of both Companies, we have designated and submitted a Witness Statement from José Mogrovejo, who was there not only for DRP when it was running the Facility but also prior to that for Centromín. So he is very familiar with both Parties' standards and practices. So that's our side.

On their side -- and believe me, they use a lot of words and a lot of Briefs, but they cannot brief this.

They have not designated one person who was there at the initiation of this Agreement. They have not designated anybody who can speak to Centromín's standards and practices, not one person. They didn't even call -- they're not even calling Mr. Mogrovejo to testify on cross-examination. They're not calling him at all.

Instead, what they're doing in this case, they've hired an expert or two, who through very complicated analyses, which we'll get into next week, which we believe don't hold together, they're going to say, Oh, yes, but through all of our calculations, we believe that Centromín operated the Facility better.

Why do that when you can just bring someone to the witness stand who can actually say what they did and how they did it. But that'll be for the Tribunal to decide.

This case for us is truly about promises made and promises broken, and I know that that's probably a trial lawyer saying to a jury, but I believe that these kind of themes resonate with everybody, no matter whether you're high judge, arbitrator, jury, facts are facts and sentiments are sentiments.

So before I jump into that, I want to show you a slide. And you've seen this before. This is an article written in 1994 by, I believe, a Newsweek correspondent who

went down to La Oroya, and basically said it was an awful, awful place, one of the most polluted places on earth. And we have mentioned this twice already in our Briefing, once in our Memorial, and then another in our Rejoinder, and you're probably wondering, why is Schiffer showing me this yet again? Well, for two reasons.

One is, I can't overstate how bad this place was, and what a tall task it was for DRP to go in there and do what it did. The Respondents try to minimize that, but -- and I'll talk about this in a minute. It was an enormous undertaking. And the other thing that struck me when I read it was that the language is fairly poetic, you know, it's written by someone who knows how to write well.

And if you'll indulge me a second, it reminded me when I was in college over 40 years ago of a book I read -- and it's a book written by Friedrich Engels, of Marx and Engels, Karl Marx and Friedrich Engels -- and he was writing about the condition of the working class in England in 1844, 1844. Almost identical prose, almost identical description of the way it was out there. So that was the tall order.

And by the way, let me get this straight: We are not ever going to say, oh, we were tricked into buying this facility and we thought it was so much better than it was. We were sophisticated buyers. We knew what we were getting

into, and we were able to handle this. In fact, if you look at the top of this slide, you'll see the total number of Projects that DRP completed, the amount of money it spent completing those Projects. And none of this should be in controversy. And then below that, is sort of what I call "the proof in the pudding." So what I do mean?

You'll see a lot of tables, a lot of graphs, a lot of fighting over a lot of things, but these are the only two tables that are not "calculated." In other words, this is just objective data that is plotted. That's it. No one -- no one, you know, deducted something or added something or multiplied anything.

So the left-hand Slide is the air quality readings from Sindicato, which is a main air monitoring station. I think it may even be the closest one to the Facility. And you see that there are two ways that emissions are measured, or that air quality is measured.

So you have the emissions from the Facility that are measured, and those emissions show what's going out into the atmosphere through a main stack, and they're measured for lead, arsenic, other things, and then, of course, we know that there are these things called fugitive emissions. I've sure you've read about that, and those are the emissions that seep out, that aren't necessarily can be captured by a reading, necessarily, but they go into the

atmosphere.

So the top line in gray shows the main stack emissions from the chimney over time, and then the bottom line shows air quality readings from Sindicato over the same period of time. And you'll notice that the trends are the same, and that makes perfect sense, because just think about this: If you have more lead emissions going into the air, and it doesn't matter whether it's main stack or fugitive. It doesn't matter because it's all going into the air.

And if someone in La Oroya is breathing it; so is the air monitor that's locating there, and it's measuring the content. And if the content is high, that's not good. It means people are going to have lead in their blood, and that's ultimately what they are trying to not have happen. And if the readings improve, then blood levels will drop, which is what you want to have happen.

So the chart on the left shows that both main stack emission data and air quality data are trending downward all throughout the operation of DRP.

The table on the right is actually a table that is in Ms. Deborah Proctor's Report. And Deborah Proctor is an Expert for the Respondents. She's not our Expert, and she includes this Report in her -- this chart in her Report. And we were surprised to see it in her Report

because it makes our point for us. You look at the blood levels out there at La Oroya, and it is a very consistent decrease from the time DRP took over until we were no longer in charge of the Plant.

So really what you're going to see in this hearing is a lot of bare-knuckle fighting where the Respondents want to run away from this objective data and rely on calculations that we will get into with their Experts, and all the while ignoring this objective data. I mean this could be -- this could literally be the only two slides that I show you today and I could sit down, but, of course, I'm a lawyer and I won't.

Do you have any questions, Mr. Chairman? Oh, no, okay. I thought, maybe -- okay. So I'll move on.

So I mentioned the promises that were made and broken. I want to set the scene for that. When we came in to make the investment with Perú, we weren't the first time that they had tried to find someone to sell it to. In May of 1994 was the first time that Perú tried to privatize La Oroya, and it used investment bankers, and it went out worldwide and contacted all the major players in smelting.

They all came out and looked at it. Apparently there was interest, but no one would make a bid because nobody wanted to be subject to third-party liabilities for the pollution out there.

Now, we don't have in the record exactly what it looked like in those pro forma Contracts, or what was discussed, necessarily, but we do know that that attempt at privatization failed because of third-party liability Claims. Okay. Just so Perú is now wanting to privatize, but they know they can't just go back out into the market with the same package that they had before. They had to do something else, and they actually did a lot of something else. So let's look at that.

Hopefully, this isn't too small to see. One of the things they promised us was that we wouldn't have to commit capital to DRP's PAMA Projects. Now, you're probably sitting there going, what? Huh? The other side has been saying just the opposite. How could this be, Schiffer? Well, let's look at the Contract. The Contract, the STA, which is RC-105, has two critical components.

One is in Section 4.3(f), and the other is in Section 3.3, and I've put the operative provisions in this Slide and highlighted.

So let's start with the top. It says "working capital resulting from the contributions to the equity. The investment must be made, necessarily, with the contribution stated."

Okay. So right there, and then you go, okay, well, that means you've got to use the contribution to

perform the PAMA and the other investments that DRP had. But keep reading. It says: "Without prejudice to what is established in the last paragraph of Numeral 3.3."

And what we have there is that the Company will not be obliged, the "DRP will not be obliged to maintain, in cash, the amounts contributed to increase the stock capital in the Company."

Now, I want to show you one other slide before I discuss this more. The next Slide is the pro forma Contract that everyone got with the bid, and if you look at the pro forma section that I just read to you, it says only: "The investment must necessarily be made with the contribution indicated."

In other words, the pro forma said that the Company in-country, the subsidiary that's in-country, would have to use the capital that the Investor spent on them for its investments, and investments include PAMA Projects. So how did this language convert back to this?

Well, we'll never know from Perú because they haven't designated anybody to talk about it, but it makes perfect sense, and the only reason this could be is because Renco and DRC were completely up front about how they planned to finance this transaction. They were completely up front with the fact that they were going to borrow money, use it to put into DRP's treasury, and then DRP was

going to immediately send it out so that loan could be paid off and then they would have a note.

And Perú -- now, remember, Perú -- it's not like it has a lot of leverage in this situation, but they agreed to this. They agreed to what we did, and it's in the Contract. All right.

So what other promises? The next promise is sort of an obvious one. But that DRP could pay for both its operations and the PAMA Projects out of revenues received from its operations.

And we know -- I know the Tribunal is probably more familiar with this, or as familiar with this than anybody, but the 1993 Law that established the PAMA program, at least in one part, says the: "The annual investments approved by the competent Authority for the Plans applicable to each production unit, which must be carried out, shall in no case be less than 1 percent of the value of annual sales." I submit that the only way you could have annual sales is if you're operating.

Third promise, that DRP would be given nine years -- it's a 10-year PAMA, but Centromín ate up one of those years. They would be given nine years to complete what was then identified for them as nine Projects, and the most expensive Project and most complicated Projects, the Sulfuric Acid Plants would be done last.

This is a schedule that GSI has prepared using the base documents that are set out in red underneath the table, and there's a couple of important things about this.

You'll see how the Projects -- the number of the Project means nothing. It is an identification of what they are, but in terms of how they are to be done, they mean nothing. So the first Projects that had to be done right away were water-related, and, in fact, the big problem, the immediate problem for the people of La Oroya was that all of the effluent, untreated effluent from the Plant was just being dumped into the river, the river that they washed in, they drank, they washed their clothes in, and so that was dire.

And so the first Projects were designed to curb the environmental disaster of the water. So that was the priority.

The next was solid waste. There were giant slag heaps. Slag is a solid byproduct that comes out of the process when you're trying to make copper or lead or zinc, and they are big piles, with heavy metals in them. And we know that La Oroya -- the soil there, the soil content is packed with lead, packed with lead. Over 75 years of operation where nothing was treated coming out of there. And so that was the second priority.

The third priority, after the first two were

finished, was air, which is what we are arguing about in this case, and air was to be done last. And it also made sense to do air last because the most complicated Projects were the Sulfur Acid Plants.

Those required a lot of engineering, a lot of effort to procure the materials -- you know, this is a remote area of world -- and then a lot of effort to build them and make them work. So that was at the end for a reason, for several reasons. But we were told -- we were given the Schedule. We weren't -- you know, we weren't asked. They were -- said: "Here is the schedule, execute it." And we did.

The other promise they made to us was that we could increase production before completing all the PAMA Projects. And what I do mean by that? Well, if you look at the questions and answers -- and there were two sets of them. This is from R-201. Question 1 that was asked was -- the first round of questions refer to items included in the investment that the investor has to make: What is the meaning of expansion, and which items does it include?

And the answer is: "Expansion refers to the increase of the capacity of the production circuits." And that's part of the Contract, by the way, because the Contract includes the pre-bid question and answers as part of the Contract. But we don't have to rely on that because

we actually have a provision in the Contract, the next slide, from the STA.

Section 4.5 defines "investments" to include "expansion in the production capacity of the Company," DRP. Okay. And I'll come back to what Respondents' position on all this is now after I go through all the promises. But these were all the promises and our expectations that we had up front, and it's all in black and white. You don't have to take anybody's word for it.

The next was that DRP would have a hiatus, or their duty to pay for Projects would be suspended during major economic upheaval. And we've been through a couple: The 2001 upheaval, the 2008 upheaval. So let's look at that.

The Contract itself talks about this in two places. The first is the Force Majeure provision, Clause 15, and it includes as part of what a force majeure event is, extraordinary economic alterations.

And then that provision is adopted as part of the investment obligation of DRP, and it says "the period foreseen in Numeral 4.1" -- and that would be the investment obligation -- "will be suspended if, in the course of executing the investment commitment, force majeure should occur."

This is an unusual provision. I've been doing

this a long time, and I've seen hundreds of these privileges. This is the first time I've ever seen one with an economic event being a force majeure. And, in fact, let's look at the background of this. Again, we don't have anybody from Perú to tell us about it, but we have some documents.

Their pro forma Contract that they sent out to everybody for the bidding says only what's on the screen, 4.3: "The period provided for in Number 4.1 shall be suspended if, in the course of execution of the investment commitment, an unforeseen event or force majeure occurs in accordance with provisions of Article 1315 of the Civil Code." All right.

So that -- and I represent to you that there's nothing in there that's going to allow for economic events. And then we also have questions and answers regarding this provision before the STA was executed. Now, this I know you can't read; so I will read it to you because we had to get it small to fit on the Slide.

It says -- the first part that I've highlighted says -- it's a question: "If the Company cannot make a profit due to increased costs, lower prices, or other economic reasons which would constitute an act of God or force majeure, or economic force majeure, the Investor should not be required to make contributions in that type

of situation until the economy has improved."

And Perú's answer then was: "Centromín considers that clause of the Contract is sufficient," in other words, no, we won't do it. But, yet, they did do it. They did do it in our Contract.

So what I'm saying is, is that the STA was obviously heavily negotiated, and Perú at that time was willing to give significant concessions to get somebody to take the Plant over, and that makes sense. You know, if you don't have a lot of firepower or market power, you know you can't make a lot of demands on people. So let's look at another promise.

That -- that DRP would be treated the same as its competitors. Now, that is not in the Contract. That is not something in writing that DRP got at the time, but, come on, it's common sense. It's international law. The Treaty that came into effect in February of 2009 between the U.S. and Perú codified what was already in the law. And I believe even Respondents have said the same.

So we did have -- we had the right to expect to be treated fairly. Okay? That's really all they were looking for, treated the same. And the Treaty -- I won't belabor this because I know the Tribunal could probably quote this without looking at it, but the Treaty is standard of most Bilateral Investment Treaties, and it says

the same thing. And then, finally, the big one was Centromín would assume third-party liabilities during the PAMA. Okay. That was the big one.

Had we not gotten this provision, we would have walked the deal. It's in Mr. Sadlowski's Statement. That is in Mr. Buckley's Statement. This was critical. Of all the other things that Perú conceded, this was super important. And this provision was the reason they couldn't sell the Facility the first time around because they weren't -- apparently they weren't offering it then. So this is a big deal to us. Okay. And we'll come back to this in a minute.

Okay. Now let's look at Perú's positions on all these promises. I'm sorry. I still have another slide on this.

So the question and answers in the prebid also make it clear that Perú accepts responsibility for all the contaminated land, water, and air until the end of the period covered by the PAMA. And the only caveat to that is the caveat we have in the Contract which is, you know, 5.3(a), which we're going to cover, and 5.3(b), which we're going to cover. So this was comforting. This was comforting then.

So here's Perú's position now. Remember, I said that they told us that we didn't have to maintain any

particular capital contribution in DRP. Well, I don't have to cite anything because you're going to hear it from the Respondents over and over and over again in this case that, by failing to keep 163 or $156 million in DRP, that we are responsible for everything bad that ever happened. As a matter of fact, I'm sure you'll hear that in their Opening Statement.

Number two, as of October 28, 2009, DRP could not use revenues to pay for its operations. And let me show you that. So in connection with the 2009 Extension, I think the Tribunal will recall that there was -- DRP was asking for an extension to finish the Facility because of force majeure and Centromín, or the MEM was saying, "no, you can't get an extension, we can't give you one," and then eventually Congress in, I believe, September of 2009 said, "okay, okay, you can get an extension of 30 months. 10 months to get financing and then 20 months to build the plant." So that's in September.

And then the law also said, "and we'll allow the MEM to issue other rules for you to abide by as part of getting this done." So what the MEM did is they came in and they said, "okay, we want DRP to put 100 percent of all of its revenues or money that it gets from anywhere else, and we want that to be held in trust, and the MEM will control the Trust and pay for PAMA Projects."

Well, the problem with that is, how are you going to operate? You have no money to operate. And so, in fact, they had no money to operate, and that is contrary to the promise that they had which was, you can self-fund the PAMA through operations and sale of product. I mean, that's in the law. It's in all the promises they made to us and, now, in connection with the second extension, they have completely gone about-face on that. But that's not the only time they went about-face on that issue because, during the reorganization of trying to get the bankruptcy court to allow DRP to resume ownership and operation of the plant, it submitted several plans for reorganization, and the MEM or MINAM, whatever acronym was in charge of Perú then, rejected the first version and they rejected the second version, and they had issues. And so DRP came back and said: "We'll concede to all your issues. Here's a revised plan of May 14, 2012." In response to that, Perú: "Oh, my gosh. They've agreed to everything we've asked for. Let's come up with something else." And then they come up with this provision that says, "you cannot operate the Facility at all. You can't turn on any switches until after you've finished the Sulfuric Acid Plant and done everything necessary, undefined, to bring the plant up to code so that it can meet then-current environmental standards." Well, there was a catch, even there.

So first of all, this position was absolutely contrary to the initial promise that you can operate the plant and then use revenues to pay for all this, but it gets -- it's actually worse. Now, let me jump to that and come back. So the reason it's worse is they were imposing on us the standard that was 80 micrograms/cubic meter, which means nothing to any of us -- okay -- unless you're an environmental scientist this means nothing, but I do want you to focus on the 80. Okay. 80 daily, that's important. And what the MINAM said is that: "DRP, you have got to meet that standard, and we are not going to let you turn on any switches until you meet it."

Well, the catch was that the standard was impossible to meet. And don't take our word for it; this is an article written the same time by the General Manager -- Technical Manager of Southern Perú. And Southern Perú is not just a location, it's actually a company. It's a company that's in the same business as DRP. And what they said was just what we knew, which was: "No technology exists in the whole world" -- now that's pretty big -- "for copper refineries that can guarantee compliance" with the new Environmental Law, when they're referring to the 80 micrograms.

So what did Perú do? And by now, now we're heading into a period where DRP has been liquidated. It no

longer exists. So what they did is they passed another law in 2013 where they said, "yeah, I know that 80 is pretty tough. We know no one can meet it. So what we're going to do is just use your best efforts. You're not going to get in trouble if you just do what you can do, do your best." And the law says, "gradual and progressive reductions."

Now, when DRP asked for help on that, they said, "no, you've got to meet 80 micrograms/cubic meter. No, not 81, not 82; you've got to meet 80."

What else do we know? Well, we know that, when that happened, some of the former Ministers apparently weren't happy with the current Ministers. In this article, C-204, they said that Renco Group, belonging to Ari Rennert, "requested eight additional years, after compliance with the PAMA, in order to be able to adapt 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 MINAM standard for sulfur emissions." Just what I've told you. Then, he goes on to say: "If the Ministers Merino and Pulgar Vidal make the standard more flexible in favor of Southern Perú, this would imply a case of discrimination." And they did make the standard more flexible in favor of Southern Perú. Not only that, it gets worse, it gets much worse.

In 2017, remember -- by the way, let me back up on this. I'm sure that Perú is going to get up here and they're going to wrap themselves in environment and, you know, "we were so worried about the environment that we did things we didn't want to do. We let DRP use us and abuse us because we're so worried about the environment."

Well, maybe, maybe not, because, in 2017, what they did is they completely reengineered the sulfur standard and increased it by over 200 percent. And the reason they did it was to attract another investor. Okay. Think about that. Their environmental standards are flexible depending on what they want to do. If they want to get another investor in, they'll change them. It's just mind boggling to me that that could happen for that reason. And I think that casts substantial doubt on the credibility of the battle cry that I've seen all throughout their Briefing and that I predict they'll get up here and say the same thing. That's my prediction, unless they're rewriting their outline right now, which, I don't know, maybe they are.

So let's go back because I skipped ahead because I got carried away with this one. All right. Remember, DRP was allowed to do the Sulfuric Acid Plants last, under the Schedule. Well, what the Experts for Perú are saying in this case is that DRP is liable and

broke -- broke -- violated the PAMA by not doing the Sulfuric Acid Plants first before it increased operation. And we'll get to the increased operation in a minute.

So basically, they're saying, "you complied with the PAMA, therefore you violated it." I mean, again, it makes no sense to me either, but that's really their argument.

They say that they have no duty to indemnify or assume liability for the Missouri cases because -- I know you've seen this many times in our Briefing -- because DRP ramped up production without having done the Sulfuric Acid Plants, which is really the same thing as what we just covered, but the ramp up is something that's important that we're going to talk to in a minute.

And I didn't put slides in here because I think everyone can remember this pretty well, but, in connection with DRP's request for an extension in 2009, they very much said that, "look, we've been hurt by the worldwide economic crisis. Our bank Paribas line of credit has been taken away. Metal prices have gone through the floor. We can't afford to pay for concentrates." And Perú basically gave them the cold shoulder and said: "No, no. You can't rely on that. We don't think you -- we don't think you raised it in time. You didn't raise it in time because sometime earlier, you said, 'yeah, we'll get it done,' and you

should have said 'no, no, we can't get it done,' but because you said that you don't get the benefit."

Again, it makes no sense. Now, granted, after all that, we did get an -- DRP did get an extension, so, you know, that's not -- but it just goes to show you their attitude and how they promise one thing to get you in the door but, once you're in, it just -- I guess we're starting from scratch all over again.

We've talked about Southern Perú, and that's where I went offtrack. And I'll now skip these slides which we've already reviewed.

And then, of course, we know that, for 17 years, Perú has unequivocally, categorically denied any responsibility whatsoever for the Missouri Claims that we have been fighting at great expense for 17 years in Missouri. So this chart, really -- and I won't spend time on this because you all have a hard copy, but all this does is compare each promise to each broken promise by Perú. And if the Tribunal wants me to stay on this for a while, I will, otherwise, I'm happy to move on.

Mr. Chairman, would you like me to move on, or do you want --

PRESIDENT SIMMA: Yes.

MR. SCHIFFER: I'll move on or just read it? Okay. I'll move on. So this is something you can read on

your own. I've already explained it.

So where were we? I've already shown you the slide that shows that DRP spent $28 million -- excuse me, 28 projects, $313 million, and improved air quality greatly, improved blood-lead levels greatly. And again, like I said, if that's all I said in this case, that would be enough. But here's what -- graphically what happened. So through different amendments of the PAMA obligations, DRP voluntarily took on more and more projects that cost more money. And again, we're not making any claims against Perú for telling us that all this would cost 100 million when it cost 463 million, so over four times the original estimate, but we're not making a claim on that. Because, look, we're big boys. You know, we went in there, eyes open, we wanted to make it work, we wanted to make it better. But the point is that a lot of this increase was done because DRP wanted to make it better, safer, healthier. So when we -- when they're vilified for being, you know, Yankee carpetbaggers coming down south to just raid Perú, that just doesn't comport with the facts. This is one of them.

Let's talk about the last project that they're complaining about and that led to why we're here.

So the last project was three Sulfuric Acid Plants, one for the zinc circuit, one for the lead circuit,

and one for the copper circuit. The zinc circuit was finished even before the end of the original PAMA Period at a cost of $5.5 million roughly. The lead circuit was completed in 2008 within the second extended time for almost $50 million. The third circuit was a mammoth undertaking because, not only after they studied the issue and redesigned it, not only did they have to build a Sulfuric Acid Plant, they also had to essentially rebuild the entirety of the copper circuit line. So if they were trying to cut corners or be carpetbaggers, they would have just said, "hey, let's just build the plant and let's not worry about reconfiguring the circuit, and if it's not great, well, that's not our problem." No. That's not what they did.

I mean, they actually took great care to make sure that this was done right, and they got pretty far. As you can see here, they were 55 percent finished with the Sulfuric Acid Plant and 51 percent completed with the ISASMELT furnace, which I call the process of getting the thing to the plant when the Project stopped, when the music stopped.

That's pretty good, especially when you had, not one, but two economic crises. You had the 2001 economic crises, which they never sought an extension for, and that one was -- remember that one? That was the tech bubble

pop. And then, of course, the 2008 one, which, most recently, we've all suffered from it, one way or another. That was the global economic crisis that very much hurt the mining industry worldwide.

So now, I'm going to move on to the Contract case. And we have to -- this is kind of funny, but first thing I have to argue is that we should be here. I have to argue that we should be in front of you on this case, which is -- I laugh at that because we are in front of you on this case.

So are we Parties to the STA? Absolutely. Absolutely. The STA says that the consortium composed by the Doe Run Resources Corporation and the Renco Group warrants the compliance with the obligations contracted by the Investor. That's an obligation. They weren't just merely signatories to some public version of an agreement or whatever Perú is trying to say. They were meaningful participants in this Agreement. It is true that Renco was released from its Guaranty almost immediately, but DRRC was never released from a Guaranty. And if they didn't want Renco to be a Party to the STA, they could have done what Perú did.

Perú entered into a separate contract, not this one. They entered into a separate contract guaranteeing Centromín's compliance. So they knew how to do it. They

knew how to have a separate contract, but they didn't do it with Renco. Renco is in this thing. So how we cannot have any benefits whatsoever under the STA, to me, just -- I mean, I'm not a Peruvian law expert, and you'll hear from them, but it's mind boggling. It defies common sense. World's upside down.

All right. So let's say -- let's just assume that Renco and DRRC are not Parties to a contract that says, essentially, that they're Parties and that they have obligations. Okay. Let's say that. Well, under a Peruvian Arbitration Law, Article 14, a non-Party is allowed to obtain the benefit of an Arbitration Agreement in a contract if that Party is close enough to that contract to allow it to get the benefits. And there's a standard, which I've quoted up here, and it says: "Actively and decisively participated in the negotiation, execution, performance, or termination of the Contract applying principles of good faith."

I just don't see how this can be argued any other way. DRP didn't exist when this business opportunity came along. It was formed really at Perú's request to have an in-country subsidiary own the Project. And it did. And it was arms-length and all that stuff happened, for sure. But, before DRP was formed, it was Renco and DRRC that identified the opportunity, that met with Government

officials, that negotiated the STA, that signed the STA, and that guaranteed performance of DRP's obligations under the STA.

When things got tough in 2009, when the Global Financial Crisis was kicking everyone's butt, it was -- it was DRRC that stepped up with -- and I'm going to show this in a little bit -- an MoU, which is Exhibit C-74. And we'll get to that in a minute. And that was a proposal that DRP and DRRC made to Perú that said that DRRC would put in 156 million, would recapitalize DRP with 156 million and would add 31 million in fresh capital if Perú would give them a 30-month extension. Well, Perú refused to give a 30-month extension, although, ironically, later, Congress made them give a 30-month extension. But that's what they were dealing with.

In any event, it should be indisputable that Renco and DRRC are close enough to these transactions that they should be allowed the benefit of the arbitration provision. And final point is they claim a benefit under the STA, and that goes without saying.

So let's look at substantive claims under the Contract. The first is this assumption of liability by Centromín. Now, I know a lot has been said that a lot of the Contract provisions identify only DRP as the Party to whom a duty runs, and I think that that would be -- you'll

see probably 50 slides or more on that in my opponent's presentation. I'm exaggerating the 50, but something like that.

Well, 6.2, I challenge anybody to say that that identifies any particular Party to the Contract that it runs to, because it doesn't. It's broad. It's meant to be broad. It's supposed to be broad because no one was going to come into this Project and then later have Centromín say, "oh, you weren't the right Party. I know that I promised you to assume the liability but I'm going to rely on a technicality now." No one would have done this deal, and this language is broad for a reason, for that protection.

And there are only two exceptions. I know you've read -- I mean, I think the Parties have spent more time talking about these exceptions than anything else in this case, and we are equally to blame. But let's dig down into this. Under 5.3(a), there are three hurdles that Respondents have to overcome before they can deny liability to Renco and DRRC. And I'm going to go through each one of them. And here, I've just listed them out. One is third-party claims that arise directly due to acts that are not related to DRP's PAMA.

Remember, this is where they go in there and they say, "operations of the facility are not related to the

PAMA, therefore, nothing is covered," which, again, makes no sense. But to that point, you wouldn't have the third hurdle if they were correct about that. And just think about that. The third hurdle says acts and practices were less protective of the environment. That goes directly to operations. So anyway, that's a lawyer's debate.

Let's look at the second hurdle. Which acts that are exclusively attributable to DRP. And then, finally, which acts were the results of DRP's use of standards and practices that were "less protective of the environment or of public health than those that were" preserved -- I'm sorry, it should be "observed," I thought I caught all the typos but that one we didn't catch -- "by Centromín until the date of the execution of the Contract." Okay. So let's talk about the hurdles.

First hurdle, Activos Mineros contends that the third-party claims are not directly related to the PAMA. Well, they don't get to frame the Missouri Plaintiffs' claims. The Missouri Plaintiffs get to frame their claims, and the Missouri Plaintiffs have framed their claims as violations -- alleged violations by -- well, they claim that we're the ones that had the violations, but really it has to do with what DRP was doing, but they say that they didn't do the fugitive emissions PAMA Projects fast enough. So remember that timeline that showed the water, solid,

air. The Projects addressing fugitive emissions were at the back end of the PAMA. They're at the end. And then, as part of the 2006 Extension, DRP had identified 12 other fugitive emissions Projects that they thought should be included, and they were, and they did them. So at all times, DRP completely complied with the schedule of the PAMA as it was amended. Okay. At all times.

But what the Experts are saying in the Missouri case is, "ah, should have done them sooner."

Here's another excerpt from the Plaintiffs' Expert, Jack Matson, and this one is pretty good. It says -- in his Report, R-165, it says: "Had Defendants acted in accordance with its CSRs, and the legally binding PAMA agreement, these Projects would have been given high priority shortly after the purchase of the smelter." So what he's saying is that, you had these PAMA Projects, and, yeah, yeah, we know that there's a schedule, but you should have looked at that and said, "huh, we're not going to follow this schedule. We're going to do these Projects first instead of first project that we're supposed to do." That's their claim.

And, again, you don't have to take our word for it because Respondents' Expert, Deborah Proctor, pretty much gives up the ghost on this. This is in a report, and I highlighted the sentence in a report at Page 9. It just

doesn't get any more plain. "I understand the Missouri Plaintiffs' claims are directly related to DRP's failure to complete the PAMA Project 1."

If I slipped her a note to say that, I don't think she would have said it as well. I don't know why we're even discussing 5.3(a) frankly, because if you don't find that the claims are directly related to DRP's failure to complete the PAMA, then you don't have to look at any other hurdle. The analysis is done, but we don't know what you're thinking or what you're going to be writing, so we'll keep moving on.

This one has become my personal favorite. And that is that the acts have to be exclusively attributable to DRP. So in other words, the idea is that the pollution that the Missouri Plaintiffs are claiming harmed them are only attributable to DRP. Now, what the Missouri Plaintiffs say is, "well, we've only sued as of 1997. Okay. So we're not suing before 1997." And in 1998 -- so it's not even 1997 -- end of 1997, DRP took over and operated.

Well, but, an injury -- there's not a hermetical seal that goes up around La Oroya as of the turnover of the plant; right? It's the same air. It's the same people. It's the same plant, and it all is mixed together. And, in fact, Activos Mineros, when it suited their interest,

admitted that, admitted that they bore substantial responsibility for pollution that occurred after DRP took ownership. In a bankruptcy filing back in 2010, they were seeking a credit against DRP for $10 million, and the first thing that's important about this pleading -- and it's a pleading that they filed in court. So in the U.S., this would be considered a judicial admission that you can't ever take a contrary position to. But I know we're not in U.S. courts and we'll have to rely on international law, but -- so they quote the language of 5.3(a) and (b) here, in the first slide, and I won't read it because we all know now what those say.

Then, they go through a series of calculations. And we don't agree with their calculations, but the point is what they're saying is that the emission factor, so that's air quality, they believe that Centromín had 84 percent of that responsibility, 84, and that DRP had 16 percent. And then, they factor in soil, and they factor in other stuff, and they make the percentages a little bit better for them -- actually, a lot better for them, but the point here is that, when it suited their interest, they were saying that the claims of the Missouri Plaintiffs were not exclusively -- now, granted, they weren't talking about Missouri Plaintiffs, but what they're saying is that the pollution was not exclusively DRP's pollution. It also was

a lot of their pollution.

And let me demonstrate this, because I know -- this may be confusing.

Next slide.

I think this will help. So this facility has been operating since 1922, and not under Centromín the whole time. It was private. I believe Centromín has operated the plant only about 23 years before they sold. 98 percent of the pollution in La Oroya occurred before 1997 and 2 percent has occurred since. So it makes sense that any child or adult breathing the air or digging the soil or drinking the water out there is going -- that that -- that the fault for any of that lead that's in there is going to be a mix. It's not just going to be DRP's lead; it's going to be both. And to drive that point home, some of the Missouri Plaintiffs were born before DRP ever took ownership. Huh? How can they claim their damages -- how do you do that?

How do you say, "well, yes, I was affected by lead from the time I was born, and I was five years old when DRP took ownership, but I'm going to claim that all my illness came from DRP." Really? Anyway, they can't show this point and the analysis can stop there as well.

So let's go to the final point. The final hurdle is standards and practices. So what were Centromín's

standards and practices? Well, as I led off, we don't really know because they don't have anybody to tell us, but we have some information. We know that the PAMA originally was developed by Centromín and it was imposed on Centromín for the year -- for the 10 months that they owned the facility in 1997. How many Projects did they do? Zero. How many Projects were they supposed to do? Oh, about six or seven, and I have to look at the schedule to tell you exactly. All right. So they did nothing. Of course, they didn't spend any money on PAMA Projects because they didn't do any.

Mr. Buckley will testify in this Hearing, and he will talk about these other issues. When he went down to the site, he never saw any worker protection. Workers didn't wear protective equipment. Workers didn't wash their hands before they ate. Workers didn't shower before they went home or change their clothes. I mean, these are all like basic things to help reduce lead in the air.

DRP did an outreach program to the community, and as part of that, they built or refurbished 17 schools, three playgrounds, a medical clinic, a laundry, and a public dining facility. They rebuilt the main highway, the only highway going in and out of La Oroya, at a cost of 600,000.

So what did Centromín do? They didn't do any of

those things, certainly not in 1996 and '97, except they did fail to perform the PAMA that they were supposed to do, which was remediate the soil. So we know they didn't do that.

But, yet, they are sitting here saying that we were much worse than they were. And who says that? They hired an expert to do calculations based on two other Experts, okay, who are not here. They are not designated. They are not going to testify, and he says: "Well, I rely on one Report, which relies on yet another Report of people who are not here, but yet I'm going to say this is so much worse." That's impossible, and I'll show you right now why.

If you look to the graph on the right, this is a graph that we took from Dr. Alegre's -- that's one of their Experts -- Report. And it shows cumulative -- the blue line shows cumulative production from the facility, and then the -- I believe -- it is hard to see, but the red line, or orange -- anyway, the other lines -- yeah, the orange line shows production of lead. So let's look.

They say, "We ramped up production." Okay. Remember that, that we ramped up production. So look at the trend. You can tell me easily when the trend started. Well, the trend started to increase production in roughly the mid-'90s, and Centromín owned the facility there and it

grew about 5 percent a year.

After they sold the plant to DRP, the same trend continued. It didn't spike. It continued growing at about 5 percent a year until a few years later when it started to decrease. That is not ramping up production. And under the Contract, DRP was expressly allowed to increase production.

Now, our opponents also make -- they love to use the word "dirty concentrates" because, as a layperson, I hear the word "dirty," I think, oh, that's bad. Dirty is bad. Clean is good and dirty is bad.

But, first of all, let's talk about what we're talking about. We're talking about polymetallics. So when you go into a mine and chop off a big chunk of rock, there is stuff in it. There might be gold. There is going to be lead. There is going to be arsenic. There is going to be cadmium and other things. So you grind it up, and you ship it to the smelter. And this is one of the only polymetallic smelters in the world that has the ability to, not just produce one product, but can take that and produce zinc, lead, copper, several products. You get what you get.

I mean, the mine concentrate -- you don't go out into the market. It is not like picking tomatoes and you say: "Oh, I like this tomato. I'll take this one." You

get what you get. The concentrate comes in and you use it.

But, interestingly, the left slide is from Centromín's 1996 Business Plan and what they say -- and I don't suppose we can highlight it now, B.B. But it says on Point 2: "The treatment of dirty concentrates is profitable for La Oroya and should continue after privatization." And, yet, they are saying that we are at fault for ramping up production, which this chart clearly shows we didn't, and for using dirty concentrates, which you get what you get; but, nonetheless, that was their strategy that we inherited.

Now, let's look at the concentrate issue. Thank you, B.B. We never exceeded the production capacity of the units ever. They make that claim, and Mr. Dobbelaere makes that claim. He must not mean what he says, I guess, but we were always well under the production capacity of the unit. These are documents in the record. This was an exhibit, actually, that I attached to our last Rejoinder. It was a new document. It was the only new document we submitted then.

Nothing more needs to be said about that.

Now, let's talk about the "dirty concentrates," these polymetallics. We will show that during Centromín's time, 1990-1997, that the lead content that was estimated -- because you can't -- you can't get an exact

number. You just have to estimate it. So assuming their estimates are right -- and we have no idea if they were or not. There is no one here to tell us, as I've said several times.

The lead concentrate was 1.8. Okay? So now let's look at DRP to 1997 to 2009. Lead concentrate went up .06 percent, and they are saying that that .06 percent resulted in massive, massive amounts of lead emissions coming out of the plant. Okay. That's their theory, and I'm going to get in to that with Mr. Dobbelaere. I can't wait to meet the man and question him about this, but for now -- because it's a complicated subject, so it's going to take a while for us to talk.

But for now we just went through his Report, and we looked at all the places where he said how much worse it was for us. And he's all over the map. In one place he says 137 percent. Another place he says 179 percent. Another place he says 73 percent. Another place he does -- the other Expert that we will never see here used 55 percent.

I mean, I'm all for ranges, but, come on. I mean, this is like an eighth grader doing math projects, just whatever answer: Oh, how about this? How about this? That is not scientific. That is not something that should be allowed before a tribunal.

And, again, I won't belabor this, all they are trying to do is to run away from the objective evidence I showed you from the beginning.

All right. So we covered 5.3(a) and now I'm going to go to 5.3(b), which is the other section. And they did not brief this argument until the Rejoinder. Their initial memorial -- their initial counter-memorial didn't address this, but then they did later. So what does 5.3(b) say? It says that anything that results directly from a default on the PAMA on the part of company of its obligations. Okay. So that would be a default, and that would be a reason for Centromín not to assume liability.

So what do we have here? So the 1993 law that established the concept of the PAMA and set out the rules of the road, had many different sections. These aren't really important, but I brought them out just so the Tribunal could get a sense of what the different topics were. But what is important is the penalties. Okay?

And Article 47 goes into finds essentially. And Article 48 is important because what it essentially says is: "We can fine you for an issue, but if you don't fix the issue over time and we think it's a big enough deal, then we are going to shut you down until you fix it. And if you don't fix it then, then we are going to shut you down permanently." So that's a default. A default would

be you don't fix a problem that they think is a problem and they shut you down.

Now in Mr. Mogrovejo's Statement, he talks about fines when Centromín owned the plant, and he says that when Centromín owned the plant, they made a business decision to pay fines rather than to fix problems. It was just cheaper and easier. So fines aren't something that -- it is not a material breach of a contract because, I mean, Centromín's attitude is: "We will just pay the fine. No big deal."

You need more than that. You need something that will cause the MEM to shut you down, and that never happened, not once.

They say -- okay. Then they start making stuff up. They start saying: "Well, you were undercapitalized, and that's got to be a breach of the Contract." Well, is it? We know that it's not because we already looked at this provision that says it is not. But let's go back to the facts.

We have an expert, Mr. Bryan Callahan, who, among other things, said that DRP was in complete compliance with its financial obligations, and, in fact, was ahead of its financial obligations, heading into the end of the original PAMA deadline. They have chosen not to call Mr. Callahan to testify.

Now, I understand from the Procedural Order that

that does not mean that they agree with what he says, but how does the Tribunal deal with what he says if they haven't called him here to be cross-examined so you can judge his credibility?

Frankly, that concerns me because that's the only way you can test. In the common law system, the only way you can test the truth of the something is through cross-examination and looking people in the eye, but they have deprived us of that ability. So I just point that out.

We have covered this. We have already covered the fact that in 2009, notwithstanding that we didn't have any obligation, we were willing to -- because we wanted to save the Project for DRP. We didn't want DRP to lose this Project, so we were willing to put in whatever money it took if we could get a 30-month extension. They denied it to us. Now, Congress later gave it to us. It was just a three-ring circus.

Now, this is one of my personal favorites about Respondents here. A lot of things they claim we breached --

How we doing on time, Mr. Chairman? Are we still good?

PRESIDENT SIMMA: It's fine.

MR. SCHIFFER: Okay. A lot of the things they

said we breached were things that we brought up in connection with our request for an extension in 2005 and again in 2008 and '09. Both extensions were granted. Okay. And, yet, they are coming in here pointing to those things and saying: "Aha, you were in breach of the PAMA in 2005 because you wouldn't have gotten it done in time."

But how can they say that when they granted us an extension? Isn't that waiver? Isn't that estoppel? I mean, how can you come in and argue that you breached something that you have excused and extended?

Anyway, I found that, personally, very curious that that is a large part of their case, but they are not even right about the reasons. The reason we didn't finish the Sulfuric Acid Plants on time is not because we were trying to save money or trying to do something else. It was because the original design was wrong. The original design called for the use of CMT furnace.

Now, I don't know what that means, and only a technical polymetallurgist can love that kind of stuff, but all we need to know is the name. Okay? CMT furnace. Well, in 2003 when Mr. Neil, the then-incoming President of DRP, started to work earnestly on this Project -- actually some studies had been done before then, but that was his A Number 1 project. He sent a team of technical people to Chile, which was running a smelter there that was pretty

similar, and what they discovered was that the CMT furnace didn't work, and, in fact, they took it out. They discontinued using it.

So that sent DRP back to the drawing board. They had to start back at square one. And that takes time. You can't just pull -- you don't pull designs like this off the shelf. This facility has been in operation since 1922. A lot of companies would have just shut it down and started over. So it was a massive rebuild, in essence.

And what DRP discovered was that they had to use a different technology, the ISASMELT process, which I've highlighted, which required not only a sulfuric acid plant but an entire reconfiguration of the process and in the process.

And the cost of this thing went through the roof from what it was estimated originally. And I won't throw out numbers because I can't remember them exactly off the top of my head, but they are in the record. So, in sum, 5.3 does not apply here.

All right. Subrogation. So if everything I have said for the last hour fails, you say: "Yeah, Schiffer, nice try. We don't buy any of it," there is subrogation, which, if that's not a head shot, I don't know what a head shot is.

So under Perúvian law, you don't have to be a

party contract. There is no privity required. If you, in essence, pay the debt of another, you can recover the debt from that other. And there's more to it, and this analysis, by the way, is captured almost verbatim from our Rejoinder. So this is probably nothing new to you, but there are several articles under the Peruvian law that apply here. There is Article 1970, which holds owners of smelters, for example, liable for any injuries sustained by people from the Facility; right?

I mean, if something is considered dangerous -- and that can be not only physically dangerous but, you know, contamination, airborne things, then there can be liability.

And for the first 23 years of its existence -- or 22 years -- I think it is 23 -- Centromín was clearly operating under that Article. Then they contractually agreed to remain liable under that Article, subject to some other qualifications which we have already covered. They would continue to remain liable under there for Claims.

And what we know is the Missouri Plaintiffs' Claims arise out of the operation of the smelter and they say it is because we didn't do the PAMA Projects fast enough. Those are Claims that Centromín, now Activos Mineros, is responsible for and has to take on. And Article 1260 gives us that right.

I mean, again, this to me is -- I mean, in the U.S. we would say "head shot" just as a way of saying that it would be an easy kill, whatever. In other cultures I don't know with what a similar euphemism would be.

But now the declaratory judgment aspect of this. I didn't put a slide in here, but that's a big battle whether Tribunals should even address this issue or, I guess, say we can't, save it for another day.

And, of course, Perú would love nothing better for the Tribunal to say save it for another day, which means 17 years. Could end up being 25 years which could end up being 35 years, which who knows how long it'll go, without anything being resolved. So I guess delay is their friend.

I know delay is their friend, but I think the Tribunal knows enough in this case to make a declaration to say that: "We interpret these provisions based on the facts and such. And we believe under certain circumstances or whatever, that Activos Mineros would be responsible to take its share of damages, whatever they turn out to be." You -- we don't have to have a number. We just have to have a scheme, a framework of understanding.

And where that leads, I can't say. It would be speculating. I think it would lead to good things. I think it would be something that would happen. That is

just my speculation.

Okay. Now, finally -- and I have covered all the facts and arguments, so I'm just going to go through the Treaty case very quickly. And that is not to say that we don't think it is critical or that we put it last because it is not important.

But I have been talking for a long time, at least for me. I'm not used to -- I don't give very lengthy arguments, so I'm wrapping up, and hopefully you'll appreciate that sense of efficiency that I think I have.

All right. Treaty case.

Fair and equitable treatment, and I don't have to educate the Tribunal on any of this, but I want to focus on two cases that both sides cite in their Briefing that are important.

First one is Waste Management and the other is the Occidental-Ecuador Case. Waste Management, the sentence that I wanted to highlight is -- it says that: "It is relevant that the treatment is in breach of representations made by the Host State which were reasonably relied on by the Claimant." Okay. The other is: "The principle of proportionality required that administrative goal be balanced against the Claimant's own interests and against the true nature and effect of the conduct being censured."

So I already covered the legitimate expectations that we had when I put up that list of promises, and I also put up a list of the way Perú broke those promises. Now, legally, not all of that is covered by the Treaty case because I know that the Treaty was enacted in February 2009 and that event that happened before that aren't covered; too bad, too sad. I get that.

But there are two things that happened after 2009 that fall directly into this category and meet both tests that I've cited. The first is the MEM's Decree in October 2009 requiring DRP to put 100 percent of its revenues in trust.

As I've already explained, that violated DRP's reasonable and legitimate expectation that it could operate the Facility and use the revenues for both its operations and the PAMA. Moreover, we know that it was an overreaction, an unproportional response by the MEM because the MEM admitted it two months before the deadline. It was too late for us to do anything.

They amended their requirement to say: "Oh, it's okay. You only have to put 20 percent in because we know we have made it impossible for you to get financing." But they didn't extend the 10-month deadline to get financing, so we were out of luck anyway.

The second way that they have violated their fair

and equitable treatment duty is in connection with the bankruptcy, and we will also cover this a little bit under denial of justice, but they instituted a command that DRP would not be allowed to operate the Facility at all, zero, couldn't do anything, couldn't turn the lights on, until it complied with all the PAMA obligations that remained and did whatever it took to meet a standard that we all know is impossible to meet, can't meet it.

But that's what they -- okay, can't meet it, but I can't operate until I meet it.

That was completely unproportional, and we know that because they didn't apply that rule to anybody else. They didn't apply that rule to Southern Perú. So those are just two examples after 2009 that are clearly proof of violations of fair and equitable treatment.

Indirect expropriation. Because we are seeking indirect expropriation, the same facts apply because the definition under CMS Transmission -- CMS Gas Transmission is if the investment has been taken but the State -- excuse me: "If the investment has not been taken, but the State effectively neutralizes the benefit of the investment to the Investor, an indirect expropriation likely has occurred." Well, yeah, they made it so DRP couldn't operate the facility and, as a result, the DRP lost the facility. It went to a liquidator.

Okay. Substantive denial of justice. When I first came into this case, I thought to myself: "Boy, that's a tall order. I mean, who's ever wanted a substantive denial-of-justice claim?" And I looked at the facts and I thought, We're keeping this one. And, you know, I dropped a bunch of claims, but we're keeping this one, and the reason we're keeping it is because, in my judgment, we're right.

And that is, first of all, "the principle of international law is denial of justice exists when a court's Decision is manifestly arbitrary, lacking a legal basis or justification, or in excess of mere judicial error." I don't have proof that the courts were plotted to violate the law and do bad things to DRP. I don't have any proof. There is nobody -- no judge that going to testify here.

But I'm also not seeking an appeal, which is what they say we're doing because the answer is actually pretty simple. Under Peruvian Bankruptcy Law, before you can ask for a credit in any amount -- let's just forget what the amount is -- you have to have something in writing or in the law that entitles you to that credit.

For example, if I have a Contract that says that if you default on this Contract, I'm entitled to damages. So you can go into bankruptcy court and show them the

Contract and say: "I want to credit for whatever damages, you know, that the bankruptcy court can reasonably estimate." I want a credit for that in bankruptcy, and they will be recognized for that. Okay. They will be recognized.

If I'm an employee and I'm fired from my job under Perú, I'm entitled to compensation. Well, that is laid out clearly in the statute that says you get a compensation based on X, Y, and Z factors.

There was nothing in the PAMA, which is what Centromín's bankruptcy claim was based on, that allowed for compensation or damages. They had two rights: They could fine you or they could shut you down, but there was nothing that allowed them to make the Claim they made.

Now, we can say: "Oh, just a mistake," you know, "Oh, just a mistake." We know it is not a mistake because after this case, two other cases went through the system where the MEM made a claim for credit against a bankrupt mining company. And the facts were even better there because the Claim related to a bond for 10 million that the operator is supposed to post to pay for Closing costs and they didn't. And in both cases the same court said: "We are going to deny you a credit because there is nothing in the PAMA that gives you a right to compensation."

I can't wait to meet Dr. Hundskopf -- good

Peruvian name -- and to talk to him about his cases, and I hope -- and this is a challenge to him, and I put it in writing. I really hope he will be familiar with all the case law that is cited by both him and his counterpart, Dr. Schmerler. We are going to talk about that.

So, in conclusion -- don't need to do tricky calculations. The objective data is clear: DRP did its job and it would have finished job if Perú had let it.

Thank you for your time and patience with me.

PRESIDENT SIMMA: Thank you very much, Mr. Schiffer. By now you have exhausted about half the time --

MR. SCHIFFER: Yes, on purpose.

PRESIDENT SIMMA: -- that you have been assigned to. My question is, after the coffee break, what is going to follow from your side?

MR. SCHIFFER: Nothing.

PRESIDENT SIMMA: Nothing. Okay. So could we just, before we go into the break, discuss how we could best cope or deal with that situation? I think there are two possibilities.

The first one is then, we sit around until -- the Tribunal, I mean, until 1:45, and then see how much time the Respondent takes. Not very attractive.

The other alternative would be, a question from

me to you, would you be in a position to start in the morning after a break, which you can claim for good reason, and then we finish -- we come to an earlier end in the afternoon and meet our partners or go shopping or something? That would be very much preferred, much as by my wife. So what do you think?

MR. PEARSALL: Absolutely. Well, firstly, thank you to our learned colleagues on the other side for their efficiency. And I do think it makes a lot of sense to take advantage of it. We are prepared to start this morning. What we would propose, Mr. President; is that we have a short break, 20 minutes maybe, just to organize our thoughts a bit.

PRESIDENT SIMMA: We have a coffee break now, so which is 15 minutes, but if you say I would like to have half an hour, that would be fine, of course.

MR. PEARSALL: That's fine. Just to -- we would probably propose maybe an hour until lunch. So we start, we take a small break now, and then we go for about an hour, and then we break for lunch, and then we can come back and finish the other side. We have a pretty obvious breaking point.

PRESIDENT SIMMA: Under circumstances, you do it the way you prefer, and I think we can agree to that, whatever. Yes.

MR. PEARSALL: We don't want the Tribunal or our learned friends on the other side angry because they are hungry during our presentations. So we would propose a short break now, the coffee break is fine.

PRESIDENT SIMMA: Okay.

MR. PEARSALL: Then come back, present about an hour, and then break for lunch and then do the remainder after lunch. Does that work?

PRESIDENT SIMMA: That is a very good solution. So I suggest that we break now, let's say until 11:20, and then go as you suggest. Thank you very much.

(Brief recess.)

PRESIDENT SIMMA: So, Mr. Pearsall, if you are ready, we are.

MR. PEARSALL: Thank you.

(Interruption.)

(Discussion off the record.)

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

OPENING STATEMENT BY COUNSEL FOR RESPONDENTS

MR. PEARSALL: Good morning. Good morning, Members of the Tribunal, learned colleagues, folks watching on the live stream. My name is Patrick Pearsall, and together with my team, we represent Perú and Activos Mineros in these arbitrations.

Before we get to the substance on our submissions on the facts and the law, I want to say a few words on what this case is about, and I'll be followed by my partner, Gaela Gehring Flores, who will offer a summary of the salient facts to both cases, and Ms. Gehring Flores will continue to discuss our positions in the Contract case, more specifically the reasons why there is no jurisdiction over Claimant's Claims, and why all of their claims are inadmissible.

(Comments off microphone.)

MR. PEARSALL: We've sent them electronically. If you'd like hard copies, we can provide them after the break. But they will be on the screen.

ARBITRATOR GRIGERA NAÓN: Okay.

MR. PEARSALL: Ms. Gehring Flores will also make submissions to you on why, in the event the Tribunal does find it has jurisdiction over the Contract claims. The Tribunal should find that Activos Mineros did not breach the STA, and is not liable under Peruvian law.

Then you'll hear again from me, and I'll present our position on the Treaty case, and, more specifically, why there's no jurisdiction over all but one of their claims, and in the event the Tribunal does find it has jurisdiction, why the Tribunal should find that Perú did not breach the U.S.-Perú FTA. So that's the next

2.5 hours.

We'll take a break after the facts for lunch, and we'll come back and present the Contract and the Treaty case, but before we get into the facts and the law, and our more substantive presentations, I want to start with an existential question -- an existential question: What are the Contract and Treaty cases about?

They are about pressure and leverage, pressure and leverage. We are here to defend two arbitrations, one under the U.S.-Perú FTA and another under the STA. One might think, therefore, that these cases are about whether Perú breached the FTA under international law, and whether Activos Mineros breached the STA under Peruvian law.

They are not -- they are not. These arbitrations are about pressure and leverage, not law. With respect, they are a sideshow. Claimants are using these proceedings to pressure Perú and to gain leverage for a weak position in a Missouri Litigation brought against Renco.

They want Perú to assist them in Missouri, and if it doesn't, to ensure Claimants don't pay a dime for the actions and the decisions they made in the United States. That is why they are so thin on the law, which we will get to, and we have repeatedly raised this point with the Tribunal. This is all about Missouri. They ask for a declaratory relief. If the Tribunal were to give them

declaratory relief, Mr. Schiffer says "we can't speculate what would happen."

Here's what would happen. Claimants would settle with the Missouri Plaintiffs for the full amount with no Decision on Liability. They would not be paying a dime. Why wouldn't they settle? But we don't know the facts of that proceeding. We don't know whether the Missouri Plaintiffs will prevail, in truth, Claimants are asking this Tribunal to give it a free pass, blind, blind in a parallel proceeding with no visibility on the facts.

Indeed, Claimants' position in these proceedings are rife with inconsistencies with its positions there, as will become evident this week. Claimants have stated that "a Declaration by this Tribunal that Respondents are liable for the amounts paid by Claimants would 'force Respondents to engage with Claimants in resolving the Missouri Litigation and participate with Claimants in a trial and appeal of those cases '." And that's at Paragraph 40 of their Reply; pressure, pressure plain and simple. So why is that pressure a problem?

Well, throughout this week we will highlight all of the difficulties with this approach, not just difficulties, impossibilities. We are talking about gaps on top of gaps in causation. No wonder Claimants have repeatedly tried to time these proceedings to better align

with their position in Missouri.

"All" of Claimants' claims fail on their own, but regardless, they're not even ripe.

Claimants can't and, therefore, don't offer any submissions on how the Missouri breaches, if found, would run through the indemnity provisions of the STA. How can they? That proceeding has not even gone to trial.

We will go through this in painstaking detail when Ms. Gehring Flores discusses the Contract claims, but suffice to say for now that the FTA and STA are misfit tools for Claimants. They simply can't do what Claimants want them to do on these facts.

Someone likely convinced Claimants that this process could be used to defend them in a separate proceeding that has yet to take place, a proceeding under U.S. law, a proceeding on different and, yet, unknown facts, a proceeding that will likely be heard by a jury in Missouri, and that they could time the system here to exert maximum leverage against Perú.

Well, we're not party to those proceedings, and neither is DRP, and we're here now, years before Claimants know the full accounting in the United States from their conduct, with no evidence substantiating their FTA or STA claims, skeletal submissions, at best, on the law, on the eve of a dismissal, years of litigation, and hundreds of

thousands of pages of Pleadings amounting to, frankly, nothing. It's no wonder they couldn't muster arguments in response to our Counter-Memorial, nothing comes from nothing.

So before I hand it over to Ms. Gehring Flores, let me just say a few words about Renco itself and its operations in La Oroya.

The smelting and refining complex in La Oroya is just one of many of Renco's pollute-and-profit Projects. Renco is a serial polluter. It has a well-established history of purchasing failing companies, using old equipment, causing significant environmental and public harms, stripping those companies of their assets, extracting what it can as quickly as it can and walking away. The playbook is simple, and has made Mr. Rennert a lot of money.

Claimants transfer assets from a newly-acquired company to a holding Company, Renco. Then, they pay out dividends to their Shareholders, acquire the company, strip it bare, run it full throttle, enrich Renco as quickly as possible, and ultimately put the Company in bankruptcy, and walk away as it burns to the ground.

There are a few examples on the screen for the appreciation of the Tribunal. The evidence in the record is -- well, it's exhaustive. Renco is a serial polluter.

It does it in Missouri, it did it in Utah, and in the specific contexts of Renco's operations in La Oroya, the strategy of maximizing production while minimizing Capital Expenditures on environmental remediation has had catastrophic consequences, catastrophic consequences for the people, the people of La Oroya. We didn't hear a lot about the people in Mr. Schiffer's presentation.

From the beginning, Renco focused on the profits by ramping up production, by funneling them to Renco-affiliated entities, and, thus, the Facility was left with no capital to spend on the environmental Projects necessary to address the toxic emissions emptying out of aging equipment at full capacity. The people of La Oroya were poisoned. That is inconvertibly true.

Also true is that the Facility was sold in 1997 to DRP with the express goal of environmental remediation. That remediation was never Renco's goal, and it wasn't even on the agenda, as you will see this week.

So here we are in an arbitration where Claimants have yet to acknowledge the existence of most of Respondent's' arguments, our evidence, no engagement, no meaningful engagement at all with the law, and Claimants continue to ignore the most basic principles of treaty interpretation, international law, contract interpretation, burden of proof, and, frankly, candor.

Claimants have wasted over a decade of Perú's time, and have caused Perú significant prejudice and harm. Perú knows that this arbitration is meritless, and is being brought as a pressure tactic. We know it. But because Perú is committed to its international obligations, Perú has dedicated the time and the effort to address all -- all of Claimants' allegations, no matter how meritless.

Perú has expended enormous resources doing this, good-faith participation in this system has been met with silence.

We respectfully urge the Tribunal to reject Claimants' claims in their entirety and award Perú and Activos Mineros full costs and attorneys' fees.

And with that Opening Statement, let me turn it over to my colleague Ms. Gehring Flores, who will walk you through the facts.

PRESIDENT SIMMA: Thank you. Ms. Flores, you have the floor.

MS. GEHRING FLORES: Thank you. Good morning.

I'm Gaela Gehring Flores of Allen & Overy, for Respondents.

In the most basic terms, Doe Run Perú's obligation was to stop, or at least reduce, the poisoning of the La Oroya community. The La Oroya Facility dates back to 1922, quite a while ago. It's a smelting complex

that smelts multiple metals. The smelting process necessarily produces emissions that are toxic to human beings, poison. In this case, you will hear much about two of the many poisons that the smelters emit: Sulfur dioxide and lead.

It is also important to understand how these poisons leave a smelting facility. These poisons can leave the Facility in solid, liquid, or gas form. For purposes of this case, we're going to focus on solid or particulate matter, or dust, and gas.

When a smelter processes metal concentrates, gas and particulate matter escape the smelting process and are either, A, captured and passed through filters, and eventually exiting through the main stack. They're called main stack emissions, or, (b), they're not captured and flow unfiltered into the air, or these are called fugitive emissions.

The Facility measures main stack emissions but not fugitive emissions. Decades of these poisonous emissions caused a public health crisis in La Oroya, and Perú sought to address this crisis in the early 1990s, when it began implementing numerous environmental reforms aimed at protecting the environment and human health.

One of those reforms was the 1993 Environmental Law, which required existing smelters to undertake

environmental assessments. Smelting facilities were also required to develop environmental remediation programs, known by the Spanish acronym PAMA. PAMAs gave smelting facilities 10 years, just 10 years, to comply with emissions and air quality limits.

The La Oroya PAMA was established in January of 1997. The PAMA does not contemplate or allow an increase in the amount of poison leaving the Facility. Instead, after DRP purchased the Facility, the PAMA required it to implement improvements to diminish the poison level.

With this objective in mind, the PAMA required DRP to complete nine Projects, and modernize the decades-old smelting equipment at the Facility, one of the most significant sources of fugitive emissions at an estimated total cost of $270 million, 129 million for implementing PAMA Projects and 141 million for modernizing the Facility.

One of the DRP's PAMA Projects was Project 1. And that required the construction of Sulfuric Acid Plants and the modernization of an existing acid plant for the zinc circuit.

Now, Project 1 was the one Project that would enable DRP to comply with maximum permitted emissions levels by aggressively decreasing both its fugitive emissions and main stack emissions of SO2 and lead, among

other poisons. For context, the PAMA estimated that the Sulfuric Acid Plant would represent 85 percent, 85 percent of the total PAMA investment. Everything had to be completed within the statutory 10-year time frame.

While Centromín had used the earnings from its operations to gradually implement some of these new technologies to reduce emissions, it couldn't address the public health crisis in La Oroya in a 10-year time frame. And so Perú sought the assistance and significant funding of the private sector.

You heard Mr. Schiffer comment today about how DRP could just use its earnings to maybe slowly go about complying with its PAMA obligations. That certainly wasn't the idea of Perú at the time, and it's certainly not the idea of the PAMA, and it's certainly not its obligations under the PAMA.

Centromín could have done that itself.

To that end, Perú decided to privatize the Facility. It created Metaloroya, which would serve as an investment vehicle to own and operate the Facility. In March of 1997, Perú launched a tender process for the sale and privatization of Metaloroya. During this process, the PAMA, together with its supporting documentation, was shared with potential buyers. Bidders were required to demonstrate financial and technical capacity to implement

the PAMA in the strict 10-year period.

Claimants represented that they were up to the task. They represented, among other things, that they knew how smelting facilities like La Oroya worked, and they had decades of experience complying with strict environmental and health regulations and requirements in the United States.

Given Claimants' experience, their representations, and the information at their disposal, they were keenly aware, and I think Mr. Schiffer repeated this many times this morning -- of the task that they would face if they invested in the La Oroya Facility.

Claimants were declared the winners of the Tender in July 1997. As required, Renco and DRRC then established DRP, or Doe Run Perú, a Peruvian subsidiary, to execute the Contract and acquire Metaloroya. In September 1997, Renco and DRRC assigned their rights as the winners of the Tender to DRP. A week later, Centromín authorized the execution of the Sales Contract with DRP.

On October 23, 1997, the Sales Contract, or the Share Transfer Agreement, or as we call it, the STA, was executed. The STA was executed by three entities: DRP, Metaloroya, and Centromín. As contracting Parties, the STA provides these entities defined terms. DRP is defined as the Investor. Metaloroya is defined as the Company, and

Centromín is defined as "Centromín." As an aside, DRP merged with Metaloroya in December 1997; so we will refer to the Company and DRP interchangeably.

Under the STA, the $247 million acquisition price for the Company consisted of, A, a $121 million payment of Centromín's Shares in the Company; and, B, a $126.5 million capital contribution to the Company. The STA also contains an environmental risk allocation framework, which allocates responsibility for specific environmental matters between Centromín and the Company.

We'll discuss this framework in more detail later. For now, it's important to remember that the framework allocates responsibility for certain PAMA tasks and for certain third-party claims. In the same document containing the STA, as permitted under Peruvian law, Renco, DRRC, and Centromín executed a separate surety Contract, the Renco Guaranty. Under the Renco Guaranty, Renco and DRRC guaranteed the Investors' compliance, DRP's compliance, with its STA obligations.

From the outset, Claimants made decisions that prevented DRP from meeting its obligation to eliminate or reduce the poison leaving the Facility. This misconduct took various forms. On the day DRP purchased the facility, Renco forced DRP to take nearly the entire $126.5 million capital contribution it was obligated to pay under the STA

and gave it to Doe Run Mining, another Renco entity, in an interest-free 125 million loan.

This diverted funds that were contractually intended to fund DRP's environment and investment obligations over the first five years of the PAMA, first five years.

DRP was well aware of the consequences of its undercapitalization. As you'll see on the screen, DRP's Treasurer, Eric Peitz, testified in a deposition in the Missouri Litigations, that the undercapitalization of DRP from the outset contributed to its ultimate bankruptcy.

The warnings were legion. From DRP executives, auditors, Financial Experts, and banks, all alerting stakeholders that DRP's business model was fundamentally flawed, and threatened DRP's ability to meet its obligations. Those warnings, unfortunately, were correct.

Ms. Kunsman, Perú's finance and accounting Expert will be here next week -- she's actually here now -- and will explain the consequences of these maneuvers. Claimants assert that it would have been impossible for DRP to make things worse in La Oroya. I mean, when you see the pictures, how could it, how could DRP make things worse? Well, this is how.

DRP, now purposefully stripped of cash, ramped up its production, pushing the Facility's capacity to its

maximum. At the same time, DRP introduced into the smelter cheaper and dirtier concentrates, concentrates that contained high levels of lead and sulfur. In short, DRP pushed decades-old equipment in need of replacement to their maximum capacity while feeding in more toxic concentrates drastically increasing the Facility's poisonous emissions, certainly not reducing them. Some things in this case might be complicated, and this is not one of them. The rate and amount of lead and sulfur processed in the Facility determined the level of poisonous emissions. More lead and sulfur processing meant more lead and SO2 emissions, in this case, as contemporaneous reports confirm, a lot more. As Mr. Dobbelaere, Perú's metallurgical Expert, explains, just with respect to lead, the production of refined lead hit the Facility's record with DRP's production increase in 1997. From then on, DRP went on to break its own production record every year from 1998 to 2000.

With affirmative choice, DRP turned its PAMA obligations on its head. Instead of decreasing the Facility's poisoning of La Oroya, DRP increased the amount of poison that it pushed over La Oroya every day. This necessarily made La Oroya's health crisis exponentially worse. Emissions of lead and sulfur dioxide surged.

I'd like to pause here to point out a basic rule

of physics and chemistry that's actually very relevant to this case. It's the law of conservation of mass. It's a law that has existed since, maybe, the late 1700s, and it dictates that mass is neither created nor destroyed in chemical reactions. In other words, mass might change form in a chemical reaction, but it just can't disappear. In this case, it means that what goes into the Facility must come out. It's that simple. This brings me to mass balancing, a scientific name for a simple mathematical equation. By subtracting the known outputs from the Facility, meaning the final processed products of copper, lead, zinc, maybe silver and gold, which the Facility did make as well, and known waste products -- by subtracting those known outputs from inputs from whatever they were putting in, we can determine the quantity of substances lost during the production process and assess the amount of stack and fugitive emissions. Mass balancing is at the heart of a material mystery in Claimants' case because, while Claimants have conceded what went into the Facility, starting with the Year 2000, they have been unable to account for what came out, particularly in the form of emissions.

DRP's self-inflicted undercapitalization led it to never complete PAMA Project 1, the construction of Sulfuric Acid Plants.

In February 2004, DRP requested from the MEM an extension of five years to complete Project 1. At this point, DRP had barely done anything to implement Project 1, and DRP was well aware that the PAMA deadline was non-renewable. Claimants argue that DRP had to make this extension request because DRP somehow only just discovered that the fugitive emissions that the Facility was notorious for were a problem.

DRP also claims that the PAMA was flawed and had underestimated the fugitive emissions problem. Both allegations are false. And, if anything, DRP's extension request showed that poisonous fugitive emissions were continuing to uncontrollably flow out of the Facility, and DRP had done nothing about it.

Although the MEM had no obligation to grant DRP's extension request to complete Project 1 after the PAMA deadline, the MEM was under pressure because it didn't want to shut down the Facility and it was facing public criticism because DRP had performed very poorly. The MEM wanted to find a solution for La Oroya. It, therefore, issued Supreme Decree Number 046-2004.

(Comments off microphone.)

MS. GEHRING FLORES: So the MEM issued Supreme Decree Number 046-2004 of December 23, 2004, which allowed mining and metallurgy facilities to apply for extensions to

complete certain PAMA Projects beyond the PAMA deadline. This was not, however, an extension of the PAMA itself. DRP's 10-year PAMA Period was never extended, nor could it be legally extended. The language of the Decree is clear.

On December 15, 2005, with only one year left in its PAMA deadline and pursuant to this new Supreme Decree, DRP formally submitted an extension request. Strangely enough, in its request, DRP changed its mind about its own plan to build only one Sulfuric Acid Plant, as it had decided in 1998, and went back to the idea of building three as the PAMA and its advisors had originally proposed. Eight years after DRP took over the Facility, Project 1, the most important project, was back to square one.

The MEM carefully analyzed DRP's request, after months of Experts' analyses, which involved hiring consultants from the World Bank, MEM approved DRP's extension request. DRP had to finish Project 1 by October 31, 2009. The Experts advised, however, that, because of DRP's previous misconduct and financial practices, the extension should be subject to the completion of certain obligations, both environmental and financial.

Further, the MEM made clear in its Resolution that this extension to complete Project 1 was final and nonrenewable. Just with respect to the PAMA Period and the

standards, the emissions standards that are applicable to DRP during the PAMA Period, during the PAMA Period -- and you heard Mr. Schiffer mentioned standards that were stricter in 2009. Please note that, during the PAMA Period, DRP was subject to a Stability Agreement, which meant that the emissions standards it was subject to were essentially frozen. They were the 1996 standards. But, after January 2007, which was the PAMA deadline that expired, then DRP was subject to all contemporaneous standards at the time.

Now, Mr. Schiffer made much talk about a company called Southern Perú. It's mentioned once in the expropriation section, in Footnote 195 of Claimants' first Memorial. I just want to note that this mention in their Memorial -- and it was never mentioned again -- there's been no link made between Southern Perú and their claims whatsoever. After the extension was granted in 2006, DRP completed four projects for which it had previously missed deadlines. Not surprisingly, however, DRP made little progress in relation to Project 1, the most important one, and faced fines for not doing so.

Even after getting a final and extraordinary extension to complete Project 1, DRP remained in default. The situation raised concerns at the MEM. DRP assured, nonetheless, in letters to the MEM in December 2008 and

January 2009, that, despite the global crisis characterized by an international fall in metal prices, it remained committed to completing the PAMA.

Only a few weeks later, however, in March 2009, DRP made a complete about-face. It, again, wrote to the MEM, but this time alleging that the fall in metal prices did have an impact on the Company, which deprived it of resources to complete the PAMA. This sudden change by DRP was unrelated to metal prices. On February 13, 2009, a syndicate of banks wrote to DRP notifying the Company that it would not renew its line of credit unless it proved that it had enough liquidity to operate and to complete Project 1 or obtained another extension. Because it could not renew its revolving credit and it had no money, self-inflicted, DRP requested yet another extension from the MEM. Otherwise, DRP threatened again to shut down the Facility.

The MEM had no legal authority to grant another extension, however, it made several efforts to find a solution including trying to facilitate an agreement between DRP and 15 of its mineral concentrate suppliers, by which they agreed to give DRP a line of credit that would enable DRP to complete Project 1 by the legally-mandated deadline. But DRP's Shareholders rejected this Agreement. Among other reasons for the rejection, Claimants explain

plainly and simply that, if the Agreement went through and DRP went bankrupt, another Renco-related entity, DRCL, would have no voting rights in the bankruptcy proceedings because it would have waived its right to assert a claim as creditor of DRP before the suppliers.

And here, we, again, see Claimants' profit-and-pollute playbook. Claimants were not committed to keeping the Company afloat. Claimants were not committed to completing the PAMA, but they sure were committed to draining DRP until the bitter end.

Having rejected the one option available to it, DRP defaulted on its payment obligations to its suppliers. And on June 3, 2009, DRP ceased operations at the Facility. DRP kept, however, pushing for an extension and made two further requests to the MEM, one in June 2009 and another in July of 2009. In this latter request, DRP raised, for the first time, force majeure under the STA. Months after the onset of the 2008 Financial Crisis and five months since the bank syndicate imposed its new conditions, the MEM rejected both requests. It was legally empowered to do no such thing, and DRP's pretext and unwillingness to find solutions was unacceptable.

Claimants' response is a diversion. They desperately tried to focus the Tribunal's attention on DRP completing the other eight PAMA Projects. It sounds

impressive; right? Eight out of nine. But don't let this deceive you. As Mr. Dobbelaere explains, PAMA Project 1 had an outsized importance for reducing the poisonous emissions of the smelting facility. The only way, in fact, to meaningfully reduce the Facility's fugitive emissions that it was notorious for and sulfur dioxide and lead emissions was to modernize the Facility and build PAMA Project 1's Sulfuric Acid Plants. But, as early as 1998, DRP had rejected the modernization plan and delayed the implementation of Project 1.

It was only in December 2006, one month before the PAMA deadline of January 2007 expired, that DRP completed any measures that would meaningfully abate emissions, with the addition of bag houses for lead furnaces. And while the bag houses could improve lead and particulate emissions, they would do nothing to address sulfur dioxide emissions. The impact of DRP's refusal to fully implement PAMA Project 1 far outweighs the completion of the remaining eight.

Claimants argue that DRP achieved a sudden exponential decrease in main stack sulfur dioxide and lead emissions in 2000. This is curious. And Claimants have used this sudden drop in main-stack emissions to claim that DRP achieved an overall drop in all emissions, both main-stack and fugitive. There is no explanation for this

drop.

Claimants' emissions reduction claims are false. For some context, I will focus for the moment only on sulfur dioxide. As I mentioned previously, DRP did nothing to abate its uncontrolled sulfur dioxide emissions until it completed a fraction of the Sulfuric Acid Plant Project in 2009. That's after the PAMA Period.

How then could DRP have achieved any drop in sulfur dioxide emissions in the Year 2000, nine years earlier? The simple answer is: They couldn't. Nothing short of magic could have achieved this. For two years, through Expert Reports, document requests, and written submissions, Respondents and Mr. Dobbelaere have repeatedly asked Claimants to explain this mystery, and Claimants have refused to provide any logical or scientific response. Claimants very recently submitted a document, the SVS Report, making the claim that the SVS Report provided the answer to DRP's professed drop in main-stack emissions.

The Tribunal will have the opportunity to hear from Mr. Dobbelaere next week regarding the SVS Report and the unexplained disappearance of Claimants' emissions, but, until then, I urge the Tribunal to pay close attention to Claimants' characterizations of the manufactured 2000 drop in emissions and the SVS Report, if they care to bring it up, and just how far they stretch logic and reality because

the SVS Report and its related documents do divulge many things, but the SVS Report certainly does not and cannot do what Claimants assert.

In case you're wondering why this purported 2000 emissions drop is material to this case, it is because Claimants use this fabrication to argue that DRP had the same or lower emissions than Centromín. And according to Claimants' tortured reading of the SVA, the Contract, this means that Activos Mineros must be responsible for and indemnify Claimants for the Missouri Litigation Claims. That's why they need this drop.

In another gambit to claim that DRP had the same or lower emissions than Centromín, Claimants rely on averages. Average main-stack emissions, figures over a decade-long period or more. This is an absurd reference point. Those carefully crafted diagonal red lines that you see cannot magically disappear the increased lead and sulfur that DRP was actually pumping from the Facility. These averages, and certainly the graphic that you saw this morning taking the total, I guess, atomic weight of the past emissions for maybe 70 years and comparing it to 12, it's quite absurd and it ignores the immediate impact of poisonous emissions.

Take a look at the first graphic on the top left with respect to lead from the main stack. And look at the

spike that proceeds this fabricated dip in 2000. See that big dip? That DRP may have achieved some reduction in lead emissions in December 2006 ignores the immediate impact of the surge of poison that DRP dropped on La Oroya from 1997 to 2006. Look at that spike at the very beginning. That's poison. That's a surge of poison going out to the La Oroya community. Do you think they care about this red line? Do you think that the people who were exposed during that spike care where the other end of the red line is? Immediate impact of poison matters.

Just take a look at the arsenic graph on the bottom right. That's interesting. The red line there is also ridiculous. If someone takes one gram of arsenic every month for 10 years, it's not the same as if that same person takes 120 grams of arsenic in one month. The total might be the same, but the effects on human health, I assure you, are completely different. Averages over time, particularly long periods of time, cannot quantify toxicological harm. And you can hear more about that from our Expert, Deborah Proctor.

Nevertheless, Perú gave DRP a second lifeline to complete Project 1. The Peruvian Government appointed a Technical Commission to analyze the possibility of granting another extension to DRP. The Commission concluded that DRP would need 20 more months to finish Project 1, plus

some additional time to secure financing. Shortly after the Commission issued this Report, the Peruvian Congress debated passing a new law to grant DRP this extension. The debate record shows that Peruvian Congressmen were deeply critical of DRP.

On September 25, 2009, the Peruvian Congress passed Law Number 29140, which granted DRP a 30-month extension to complete Project 1 and instructed the MEM to issue complementary regulations and implement the law. As explained by Perú's Expert, Ms. Ada Alegre, DRP was the only company in the country that enjoyed an additional five years and four months beyond the 10-year period to complete its PAMA. The only one.

Claimants allege in the Treaty case that Perú's conduct towards DRP's repeated failures to complete the PAMA was unreasonable. It clearly wasn't. Notwithstanding Perú's extraordinary support, DRP was unwilling to agree to the extension unless the MEM succumbed to DRP's terms. DRP's bullish behavior could not be accepted.

DRP remained in a state of paralysis, both with respect to its operations and its progress toward Project 1. Claimants' financial mismanagement of DRP and DRP's poor planning drove DRP into bankruptcy. Renco alleges that the Global Financial Crisis and the denial of its PAMA extension requests purportedly drove DRP into bankruptcy in

2009. This is just not true.

There are several buckets of evidence that prove the cause of DRP's demise: The circular transitions at the outset that drained DRP of its capital and ultimately saddled it with debt; the intercompany deals that forced DRP to send millions of dollars a year to benefit upstream Renco entities; the warnings that DRP executives gave about DRP's flawed business model since the late 1990s; the concerns auditors, Financial Experts, and banks raised alerting stakeholders that DRP's business model was fundamentally flawed; DRP's own formal filings with the SEC where DRP was publicly disclosing substantial doubt that it could continue as a going concern. All of this was evident well before the financial crisis of 2008.

It was Renco that stopped DRP from meeting its environmental and investment obligations, and it was Renco that stripped and then siphoned cash from DRP, driving DRP into bankruptcy, not the financial crisis, not Perú.

In light of DRP's precarious position, on February 18, 2010, a DRP supplier, Cormin, requested bankruptcy proceedings be commenced against DRP before the Perú's Bankruptcy Commission. In Perú it is called INDECOPI.

According to Cormin, DRP owed Cormin $24 million for missed payments under the Supply Agreements between DRP

and Cormin. This ultimately resulted in INDECOPI declaring DRP in bankruptcy in July 2010.

With the bankruptcy proceeding of DRP underway, the MEM filed a request for INDECOPI to recognize a $163 million debt related to DRP's failure to complete the PAMA. That, undisputedly, was DRP's responsibility. Although the INDECOPI Bankruptcy Commission denied MEM's initial credit request, on November 18, 2011, the highest administrative body in bankruptcy proceedings in Perú, INDECOPI Chamber 1, overturned the Decision and recognized the MEM's credit claim against DRP.

INDECOPI Chamber 1 reasoned that the credit invoked by the MEM is valid in accordance with Peruvian Bankruptcy Law. The MEM's right to obtain from DRP its promise to perform its obligations were stipulated in the PAMA, a decision the INDECOPI is empowered to make under Peruvian law as Professor Hundskopf will explain.

Despite DRP's repeated challenges before Peruvian Courts, the validity of the MEM's credit against DRP was properly upheld in each proceeding, and, notably, Claimant does not claim that DRP or any of the other Renco subsidiaries were denied an opportunity to be heard in any of the local proceedings. Once The Board of Creditors was established, the Board convened and followed procedure pursuant to Peruvian Bankruptcy Law.

With respect to the restructuring plans proposed by DRP, 99.8 percent of the Board of Creditors, which included the MEM, voted in favor of restructuring and giving DRP an opportunity to present the plan. DRP, however, sent restructuring plans that were unviable.

The issues with DRP's restructuring plan were raised in multiple Board of Creditors' meetings, notably DRP's condition for financing the Project required Perú to assume -- and I'm not joking -- without limitation responsibility for third-party claims relating to damages caused by environmental contamination.

The MEM and other creditors clarified that such assignment of liability was regulated by the STA Contract and should not be part of the restructuring plan. DRP's conditions were so problematic that one creditor noted DRP's conditions for financing the Project amounted to blackmail, or "chantaje" (in Spanish) and were utterly unacceptable. Another party that took issue with DRP's restructuring plan noted that DRP's restructuring plan would result in sulfur dioxide and lead emissions beyond the acceptable standards under Peruvian law.

Notwithstanding the various flaws in DRP's restructuring plan, the Board of Creditors gave DRP multiple opportunities for DRP to present a reasonable one. DRP was unable and unwilling to present a plan that would

ensure compliance with Peruvian environmental standards and remove unacceptable terms where it sought to shift responsibility for third-party claims. As such, in April 2012, the majority of creditors voted to place DRP into operational liquidation.

While this was taking place in Perú, Peruvian nationals filed class-action lawsuits against Claimants, their sister companies and directors in the U.S. state of Missouri. I will go into the details of the Missouri Litigations later, but for now there are a few points for the Tribunal to consider.

First, no one that has ever been the Investor, the Company, or Centromín under the STA is a party to the Missouri Litigations.

Second, the Missouri Plaintiffs are suing the Renco Defendants for their conduct in the U.S. for breach of U.S. law, including conspiracy, negligence, direct-participation liability, and strict liability.

Third, the Missouri Plaintiffs present those claims against the Renco Defendants under theories of derivative liability and direct liability. In the Contract Case, Claimants argue that Activos Mineros has breached the STA by not defending and indemnifying the Renco Defendants for the Missouri Claims. In the alternative, Claimants present duplicative noncontractual claims against Activos

Mineros. One of them you heard a bit about this morning, the Subrogation Claim.

Claimants argue, in essence, that the STA's allocation of responsibility for third-party claims makes Activos Mineros responsible for the Missouri Claims. Claimants also assert that they have rights under this allocation of responsibility; therefore, it is important to understand the environmental risk allocation framework of the STA.

Now, I know I've been talking a bit, but I want the Tribunal to take a deep breath because we are going to dive into the Contract and into contractual interpretation. It will be a deep dive but a necessary one. You probably notice that Claimants didn't really talk about it.

Understanding the framework will allow us to, one, identify who is encompassed by the framework and, two, identify the situations for which the framework allocates responsibility to one entity, another entity, to no entity, or to both entities. Understanding these two issues is necessary to rule on justification, admissibility, and liability. We are handing to the Tribunal -- or we just did -- Respondent's Demonstrative RD-2, which is displayed on your screens as well, and will help understand the framework. I will now interpret the framework to identify who it encompasses.

Clauses 5, 6, and 8.14 and -- and please excuse all the numbers, but they are going to come up a lot. So Clauses 5, 6, and 8.14 -- 8.14 is on the back of your demonstrative -- make up the environmental risk allocation framework. The framework is composed by a series of clauses that operate as interlocking links in a chain. Through this structure, the FTA allocates responsibility for environmental matters between the Company and Centromín and establishes the consequences of this allocation.

Clause 5 identifies the matters for which the STA assigns responsibility to the company and its consequences. On the slide is a graphical representation of how Clause 5 operates. The first link in the chain starts with Clauses 5.1 and 5.2 of the framework, under which the Company is responsible for certain remediation tasks, including complying with the PAMA, and the company is DRP here.

Under Clauses 5.3, 5.4, and 5.5, the STA allocates responsibility to the company, or DRP, for certain injuries and Claims by third parties. Clause 5.4(c) also includes a dispute-resolution mechanism accessible only to the company, DRP, and Centromín for disputes on allocation matters.

The second link, Clause 5.8, establishes the consequence of that responsibility allocation. The

Company, DRP, is to indemnify Centromín against third-party claims that, under the framework, are the Company's responsibility. Clauses 6 and 8.14 are the analog of Clause 5, but for Centromín, instead of the Company.

On the slide is a graphical representation of how Clause 6 operates. Under the first link, Clause 6.1 identifies the remediation matters for which Centromín is responsible, and Clauses 6.2 and 6.3 identify the third-party injuries and Claims for which Centromín is responsible under the STA.

The second link, Clause 6.5, sets the first consequence of that allocation of responsibility. It requires Centromín to indemnify the Company against third-party claims that are Centromín's responsibility under the framework.

The third link, Clause 8.14, sets the second consequence of the allocation. It requires Centromín to defend the Company against a suit that is Centromín's responsibility so long as it receives notice of the suit or claim within a reasonable time.

As an aside, the Tribunal will see that Clause 8.14 also provides a right to be defended to the investor. That is because Clause 8.14 includes Centromín's defense obligation, not only for its responsibilities under Clause 6, but also for other duties in the Contract which

Centromín does owe to the investor.

The consequence of this links in a chain structure is that Clauses 5 and Clauses 6 and 8.14 respectively must be read in a manner that provides consistency among them, a systematic interpretation.

Under Clauses 6.5 and 8.14, the consequences of Centromín's responsibility run only to the Company. The only interpretation of Clauses 6.2 and 6.3 that is consistent with Clauses 6.5 and 8.14 is the one that concludes that the former, like the latter, are limited to the Company and Centromín. The same thing is true for the third-party claims for which the Company is responsible. The Company only owes an indemnity obligation to Centromín.

And again, apologies for throwing all the numbers around. I know it's a lot, but the message is just the Company and Centromín are here. There is nobody else.

Having identified the Parties to the environmental risk allocation framework, I now want to turn to its content. In other words, I want to explain how Clauses 5 and 6 work in unison to identify the third-party claims for which the Company and Centromín are responsible. And we invite the Tribunal to keep following along with our Demonstrative.

Clauses 6.2 and 5.3 allocate responsibilities for third-party injuries and claims during the period approved

for the execution of the PAMA. Clause 6.2 identifies the third-party claims for which Centromín is responsible. That responsibility requires establishing two elements. First, the Party invoking Clause 6.2 must prove that the damages and Claims by third parties are attributable to the activities of the Company, DRP, of Centromín and/or its predecessors.

Second, the Claims must not be encompassed by Clause 5.3. So you have to see what Clause 5.3 says; right? 5.3 provides two scenarios under which responsibilities for a third-party claim are allocated to the Company, Scenario A identified in 5.3(a). And you'll note that the Claimants this morning kind of skipped over all the previous stuff. They kind of went straight to 5.3(a).

But 5.3(a) requires establishing three elements that the third-party claim must arise directly due to acts that are not related to the PAMA, that are exclusively attributable to the Company, or DRP, and that are 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.

You have read these phrases. You have heard these phrases: "Not related to the PAMA, exclusively attributable, less or more protective than." This

Clause 5.3(a) is why. Claimants have the burden to establish these elements to prove that the STA assigns Centromín responsibility for the Missouri Claims. You will surely hear this phrase, these phrases, many more times over the next 10 days. So I thank the Tribunal for its patience and attention while I continue.

Scenario (b), from Clause 5.3(b) requires establishing one of two elements: That the Claims result directly from a default on the PAMA or that the Claims result from a default of the obligations established in Clauses 5.1 and 5.2.

We don't believe the first point is in dispute. For the second point, in this case, only Clause 5.1 is relevant, which states that DRP must comply with the obligations contained in its PAMA with regard to the effluents emissions and waste generated by the smelting and refining facilities. The PAMA's primary goal is clear: Reduce poisonous emissions.

As such, the Company is responsible for third-party claims if they result directly from a default of the obligations established in Numeral 5.1, which include a default on the PAMA's primary goal of reducing emissions for the period after the expiration of the term of the PAMA. The STA allocates responsibility for third-party claims between Centromín and the company in

Clauses 6.3 and 5.4.

So we are now after the PAMA Period, which in this case is January 2007. Under Clause 6.3, Centromín is responsible for third-party claims that meet two elements: First, the Claim or damage must be attributable to Centromín's and/or its predecessor's activities.

We ask the Tribunal to note the distinction between the first element of Clause 6.2 and the first element of 6.3. Under 6.2, the Claim or damage can also be attributable to the activities of the Company. Under 6.3, the Claim or damage must be attributable only to the activities of Centromín or its predecessors.

The Claims must not be encompassed by Clause 5.4. Under Clause 5.4, the Company is responsible for third-party claims under two scenarios. Scenario A, 5.4(a), the Company is responsible for damages and Claims by third parties that result directly from acts that are exclusively attributable to its operations after that period.

Clause 5.4(b) requires establishing the same two elements identified in Clause 5.3(b). And with that, we have conducted today's initial-- sorry to say "initial" -- but initial interpretation of Clauses 5 and 6. I ask the Tribunal to keep Demonstrative RD-2 close by because we will be using it multiple times over the course

of the Hearing.

And now, I hope we can all come up for some air and we can take our lunch break, and then we will continue.

PRESIDENT SIMMA: Thank you very much for this presentation. Thank you also for the particularly travel-friendly format of these things. I just tried to forward them and would have caused another little accident, but it certainly is going to be very helpful. So that's obvious.

So we are going to have our lunch break, which will last one hour, right. And after the lunch break, you will have around 1.5 hours left. Okay. So let's have a good lunch and let's meet again at 1:35. Thank you.

MS. GEHRING FLORES: Thank you.

(Whereupon, at 12:35 p.m., the Hearing was

AFTERNOON SESSION

PRESIDENT SIMMA: All right. We are all set. I hope you had a good lunch.

(Interruption.)

PRESIDENT SIMMA: I hope you had a good lunch. We are all set. And you have the floor, Madam.

MS. GEHRING FLORES: Thank you, Judge Simma.

So I will continue. Just to get an idea of what the rest of the day looks like, I'm going to continue with our case on the Contract, and then my partner Patrick

Pearsall will follow me with the Treaty case, and then we'll conclude.

So let me, now, turn to our arguments on the Contract case. My presentation will be divided into three parts: Jurisdiction, Admissibility and Liability. Unfortunately, given time constraints, I can't address each one of our over 20 jurisdictional and admissibility objections today. That would probably try your patience a bit too much, but -- nor can I address every reason why the Contract case fails. For those matters, I can't address today I refer the Tribunal to our written submissions.

With that said, I'll start by explaining why the Tribunal lacks jurisdiction over the Contract case. Activos Mineros has identified numerous jurisdictional flaws in the Contract case. On the slide, the Tribunal can see all of those flaws. Today, I will address just three.

The first jurisdictional flaw is that Claimants are not STA Parties. The fact that Claimants are not STA Parties divests this Tribunal of jurisdiction over all claims in the Contract case. That's so for two reasons. First, the arbitral clause textually limits its scope of application to disputes between the STA Parties.

Second, as a result of the principle of privity, Claimants lack any right under the STA, including the right to arbitrate. The slide on the screen addresses the first

reason, and contains the text of the STA Arbitral Clause. As the Tribunal can see, the STA Arbitral Clause encompasses only disputes between the Parties.

The phrase "between the Parties" refers to the Parties to the STA. Claimants have never disagreed with this interpretation of the STA Arbitral Clause. So the Tribunal must determine whether Claimants are STA Parties, pursuant to a textual, contextual, and good-faith interpretation of the STA, they are not. Accordingly, the Tribunal lacks jurisdiction over all claims.

Turning first to a textual interpretation, the heading of the STA identifies and defines the "STA Parties." As the Tribunal can see on the screen, the heading identifies Centromín, DRP, and Metaloroya. It also identifies these entities with defined terms, as we discuss previously; Centromín is Centromín. The Investor is the DRP, the Company is Metaloroya. The heading does not reference Claimants. They're nowhere, and the STA does not provide them any defined terms either.

The Tribunal can also systematically or contextually interpret the STA. A contextual interpretation involves interpreting one part of a Contract harmoniously with the remaining parts. A contextual interpretation confirms our textual interpretation.

To start, the identification of entities in the

heading is important because other portions of the STA confirm that the heading identifies the STA Parties. For instance, the background section of the Contract case on the Contract states: "By virtue of the above background, the corporations appearing in the heading enter into this Contract."

Likewise, Clause 13.1 confirms that the domiciles of the STA Parties are those identified in the heading. Other STA Parties, other STA clauses also support this reading. In fact, Claimants are absent throughout the whole of the STA Contract. Only the Investor, the Company, and Centromín are referenced as having rights and obligations in the STA. This context confirms that Claimants are not STA Parties. I'll discuss a couple of representative examples here.

For instance, Clause 10 of the STA contains the consent of each STA Party to the counterparty's assignment of its contractual position. Under Peruvian law, every contractual party must consent to its counterparty's assignment of its contractual position. Only the Investor, the Company, and Centromín provide consent, and, likewise, their consent extends only to Centromín, the Company, and the Investor.

If Claimants were STA Parties you would expect them to include their consent here as the other parties do.

You would also expect Claimants' counterparty's consent to extend to Claimants. But none of this occurs. Clauses 7 and 8 contain the STA Party's representations and warranties.

As the Tribunal is aware, representation and warranties clauses are extremely important in the context of complex corporate acquisitions, such as the privatization of Metaloroya. But only the Investor, Centromín, and the Company provide representations and warranties. If Claimants were STA Parties, you would expect them to also provide representations and warranties, but they do not. Claimants view the STA quite differently. They argue that they have rights under Clauses 6.2 and 6.3 of the STA, and that they have obligations under the separate Renco Guarantee. This, in their view, makes them STA Parties.

As we explain in the Pleadings, that is not what Peruvian law provides, but in any event, Claimants don't have rights or guarantees under the STA. To start, Claimants have no rights under Clauses 6.2 and 6.3. As I explained earlier, Clauses 6.2 and 6.3 identify the third-party claims for which Centromín is responsible, in turn, Clauses 6.5 and 8.14 establish the consequences of Centromín's responsibility, meaning, if you're responsible, then indemnity and defense obligations that run only to the

Company.

Because Centromín does not owe indemnity and defense to anyone else, the STA's allocation of responsibility is also self-contained to Centromín and the Company. There's no one else there.

In conclusion, a systematic interpretation of the STA demonstrates that Claimants derive no rights from Clauses 6.2 and 6.3. And I'd like to ask the Tribunal to please observe the screen here, as the present slide contains transitions that are visually illustrative.

Instead of reading the clauses as links in a chain, Claimants argue that the STA establishes alternate routes for indemnity and defense relief. The first route goes only through Clause 6.2 and Clause 6.3. Claimants argue that those clauses contain three implicit rights, implicit rights of indemnity, reimbursement of costs, and defense and litigation.

I say "implicit" as is clear from Demonstrative RD-2. Those words appear nowhere in these clauses. Claimants also argue that they have rights under Clauses 6.2 and 6.3. Claimants reach this conclusion by claiming that Clauses 6.2 and 6.3 encompass Metaloroya or anyone else. In other words, all STA Parties and all third parties in the world, everyone. Based on these two premises, Claimants conclude that the first avenue provides

everyone, Party or not, with indemnity, costs, and defense rights.

The second route goes only through Clauses 6.5 and 8.14, the explicit indemnity and defense clauses. Under these clauses, Centromín, A, owes only indemnity and defense duties, and, b, owes these duties only to the Company.

Claimants' alternate routes theory is unviable for numerous reasons. First, it is based on the application of the concept of assumption of liability under the law of certain U.S. states, but Oklahoma law does not govern this STA.

Second, under Peruvian law, there is no analogous assumption of liability concept. Instead, clauses that establish indemnity and defense obligations do so explicitly.

Third, Claimants' premise that Clauses 6.2 and 6.3 encompass anyone who could be sued, Contracting Party or not, is simply perverse. It is imperative that the Tribunal remember this premise. We'll come back to it multiple times today.

Finally, Claimants' reading would render Clauses 6.5 and 8.14 void of all utility, because in Claimants' reading, Clauses 6.2 and 6.3 include all of the rights of the former clauses, and they also encompass the

Company. You could just delete Clauses 6.5 and 8.14, and it wouldn't alter the STA at all, under Claimants reading.

We explain these and other reasons in detail in Paragraphs 490 to 510 of our Counter-Memorial. The conclusion, however, is that Claimants' reading of Clauses 6.2 and 6.3 is untenable. And, in fact, another clause also confirms our interpretation, Clause 5.4(c).

Under Clause 5.4(c), certain disputes relating to the allocation of responsibility must be resolved by Expert determination. Clause 5.4(c) confirms that the function of Clauses 6.2 and 6.3 is only to allocate responsibility. The expert process does not address indemnity, costs, or defense obligations, because those clauses do not contain such rights.

Clause 5.4(c) confirms that the allocation of responsibility encompasses only the Company and Centromín. The Expert process is conducted only between the Company 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 arbitration.

There is no basis in Peruvian law or in the STA to interpret Clauses 6.2 and 6.3, as Claimants do. Claimants have no rights under those clauses. Claimants also argue that they have obligations under the Renco Guaranty.

Now, as a threshold matter, Renco was released from the Guaranty obligation; so currently only DRRC has any obligation. In any event, the Renco Guaranty and the STA are separate Contracts. Claimants cannot rely on obligations under one contract to claim Contracting Party status in the other.

To start, both Claimants and Activos Mineros agree that, under Peruvian law, multiple contracts can be memorialized in the same document. So the question facing the Tribunal here is this: In this case, are the STA and the Renco Guaranty one or two Contracts? The answer is they are two. Activos Mineros identifies all the reasons why in its Pleadings.

For today, I'll focus just on one. Each Contract is a name-codified Contract. Under Peruvian law, each name-codified contract is a distinct contract, and each is governed by a particular section of the Peruvian Civil Code. In this case, the STA is a sales Contract governed by Articles 1529 to 1601.

The Renco Guaranty, on the other hand, is a surety Contract, governed by Articles 1868 to 1905. Under Peruvian law, each name-codified contract has a unique cause, or "causa," in Spanish. The cause of a contract under Peruvian law is the legal finality of that given contract. Under Peruvian law, distinct contracts exist

when distinct causes exist.

The cause of the STA is to transfer Metaloroya to DRP to allow for private investment. The cause of the Renco Guaranty is to guarantee DRP's obligations that run to Centromín. Under Peruvian law, the STA and the Renco Guaranty are distinct Contracts.

Now, Mr. Schiffer pointed out this morning that he's not a Peruvian Law Expert. Clearly not. He mentioned that it would be mind boggling, and the world would be upside down if these were two Contracts.

I trust I don't need to remind the Tribunal that this Contract is governed by Peruvian law, but we cited in Paragraph 470 of our Counter-Memorial a U.S. case that came to the same conclusion. So this is not mind boggling or upside down, even in the United States, which appears to be Mr. Schiffer's true north in this international and Peruvian proceeding.

So far we have applied canons of construction and Peruvian law principles to interpret the STA and the Renco Guaranty, but we could also interpret them by relying in good faith on conduct before, during, and after the life of the Contract.

In our Pleadings, we have shown how documentary evidence confirms both our textual and systematic interpretations of the STA, and that the STA and the Renco

Guaranty are two distinct Contracts. On this slide, we've included a list of those documents. I won't have time to discuss all of them today, but I do want to focus on one, DRP's assignment of contractual position.

In 2001, DRP assigned its Party status in the STA as the investor to another Renco Group entity, DR Cayman. The assignment Contract between DRP and DR Cayman is a private internal Renco Group document. Only DRP and DR Cayman executed the assignment.

As you will see on the screen, in Clause 1.2 of the assignment, DRP and DR Cayman recognize that, even though Claimants were the winners of the Public Tender, they assigned their rights as winners to DRP. Included in those rights is, of course, the right to execute the STA. Also, in Clause 1.3, DRP and DR Cayman identify only three STA Parties: Centromín, the Investor, and the Company.

In sum, Claimants are not STA Parties under any true interpretation of the STA. Consequently, the Tribunal lacks jurisdiction over Claimants' claims.

In the alternative, Claimants argue that they would be nonsignatories to the STA Arbitral Clause. That's incorrect. Claimants originally raised three bases for their nonsignatory theory. I will be addressing their only remaining argument based on Article 14 of the Peruvian Arbitration Act.

Article 14 of the Peruvian Arbitration Act states: "The Arbitration Agreement extends to those whose consent to submit to arbitration, according to good faith, is determined by their active and decisive participation in the negotiation, conclusion, execution, or termination of the Contract, that includes the Arbitration Agreement or to which the Agreement is related. It also extends to those who seek to derive rights or benefits from the Contract, according to its terms."

As can be seen from the blue dividing line here, Article 14 provides two avenues for the extension of arbitral clauses to nonsignatories. The first avenue extends the Arbitral Clause when implicit consent is determined by active and decisive participation in negotiations or other facets of contractual life. It is, essentially, the group of companies doctrine.

The second avenue extends arbitration clauses to those who derive benefits from the underlying contract. As we explain in our Pleadings, under both avenues, implicit arbitral consent must be present, and under both avenues, its presence is determined in good faith based on conduct.

In practice, Article 14 simply brought into Peruvian law preexisting principles in international arbitration. So the Tribunal will be familiar with the relevant concepts. Claimants' theory fails for various

reasons. First, Article 14 does not apply to the STA arbitral clause. Claimants' argument is based on their participation in the negotiations for the STA. That asterisk indicates that Claimants have attempted to impermissibly add additional jurisdictional theories in their Rejoinder on Jurisdiction. I'll address this later.

Based on Claimants' only admissible argument, their implicit consent must have existed at the time of execution of the STA, which is 1997. However, there is no evidence that Peruvian law in 1997 allowed the extension of arbitral clauses. Moreover, there's no evidence that Peruvian law in 1997 permitted extension under Claimants' theory, which is an extremely expansive interpretation of the group of companies doctrine.

So Claimants seek an ex post facto application of Article 14, which came into force in 2008, to create consent in 1997. But the Peruvian constitution and the Civil Code preclude the retroactive creation of new legal relationships and situations where none previously existed.

Claimants argue in the Rejoinder on Jurisdiction that under the second transitional provision of the Peruvian Arbitration Act, Article 14 applies to arbitrations initiated after it entered into force in 2008.

On the screen, the Tribunal can see the quoted second transitional provision. Its purpose is to identify

which law governs a proceeding started before the entry into force of the Peruvian Arbitration Act, and it remains in process afterwards. The second transitional provision regulates what happens procedurally, inside an arbitration, not what happened 20 years before an arbitration. That is why it refers to "actuaciones arbitrales," which means arbitral proceedings.

We know this for various reasons. First, the very Legal Authority cited by Claimants disproves their argument. This can be found in JAP-112. And that confirms that the second transitional provision refers to the Peruvian Arbitrations Act's provisions on arbitral procedure.

Second, under Article 62 of the Peruvian Constitution, the freedom to contract guarantees that the Parties can validly agree, according to the rules in force at the time of the Contract. The contractual terms cannot be modified by laws or other provisions of any kind. And irrespective of when a contract is executed, arbitral procedure can easily be governed by the rules applicable on the date of its initiation. But it is quite another thing to create consent, ex post facto, by legal fiat.

The second problem is that, even if Article 14 could be applied ex post facto, which it can't, Claimants have not established the existence of any of its three

elements: Extension under either avenue of Article 14 requires proving the relevant conduct, that the relevant conduct demonstrates, in good faith, the nonsignatories' implicit consent, and the consent of the signatory to arbitrate with the nonsignatory.

Claimants, instead, reduce the extension analysis to one element. In their view, participation in the relevant conduct axiomatically results in implicit consent and in a counterparty's consent. It is unsupported, and incredibly -- and it's an incredibly expansive interpretation of the group of companies doctrine.

On the first element, Claimants have not demonstrated that only they actively and decisively participated in the negotiations. I use the phrase "only they" because that's the premise of Claimants' argument. The Tribunal can find this argument in Paragraph 46 of Claimants' Reply and Paragraph 39 of the Rejoinder on Jurisdiction. In both places, Claimants argue that they actively and decisively participated in the STA's negotiations, precisely because DRP did not exist.

But as the quoted text shows, this new story conflicts with Claimants' original version of the negotiations, in which Kenneth Buckley participated as DRP's President. It also conflicts with Mr. Buckley's account of the facts. In short, Claimants fabricate, post

hoc, conduct to justify their argument.

Perhaps because Claimants claim that Article 14 contains one element, they never actually explain how their conduct demonstrates their implicit consent or Activos Mineros's consent. In any event, the evidence confirms that neither the Claimants nor Activos Mineros, their supposed arbitral clause counterparty, consented to arbitrate with each other.

We have listed some of that evidence in this slide, and we refer the Tribunal to our written submissions for complete explanation of the available evidence. As the Tribunal knows, Claimants' Rejoinder on Jurisdiction included many tardy arguments.

Jurisdictional arguments were interwoven with liability arguments, and, as a result, we failed to identify two of those arguments that Claimants could have presented earlier but failed to do so. We apologize for the oversight, and Activos Mineros hopes that the Tribunal will strike these arguments as inadmissible, but Professor Varsi will be addressing the many problems with these tardy arguments later in the proceeding.

Claimants are not nonsignatories. Claimants have acted exactly like parent companies often do. We have made this point in Paragraph 196 of our Rejoinder, and Claimants helpfully make the same point in Footnote 55 of the

Rejoinder on Jurisdiction. The Tribunal should not extend the STA Arbitral Clause to a parent company acting as a parent company normally does. Such an interpretation would bind every parent company and eliminate the legal personhood of every subsidiary. Peruvian law doesn't provide for that.

The Tribunal will recall that Claimants also filed claims on behalf of other defendants in the Missouri Litigations. We call these the "Phantom Claimants" and Claimants cannot claim on their behalf.

In Claimants' Statement of Claim, they ask the Tribunal to declare a breach of STA because Activos Mineros has refused to indemnify and defend every defendant in the Missouri Litigations, and there are many. That includes other entities in the Renco Group and individual directors. Claimants provide zero jurisdictional basis for these Claims. Activos Mineros objected in its Counter-Memorial, and Claimants have not provided any response.

Therefore, I would normally refuse to address the argument, but I want to show the Tribunal two things. First, Claimants' original basis for liability in their Statement of Claim. The Phantom Claimants are third parties; so the Phantom Claimants' claims are based on the interpretation that Clauses 6.2 and 6.3 encompass third parties, everyone, which we already discussed.

In short, the phantom Claimants are the real-world consequence of Claimants' perverse interpretation.

Second, Claimants have silently dropped that premise in Paragraph 181 of their Reply, Claimants now say that Clauses 5 and 6 encompass only the STA Parties. So does Professor Payet, their Expert. That change means that, even if there were jurisdiction over the phantom Claimants' Claims, there is no liability basis for those claims. Earlier, I asked the Tribunal to remember Claimants' perverse interpretation of Clauses 6.2 and 6.3.

Now, I'm going to ask the Tribunal to also remember that Claimants have since dropped that interpretation. It will be relevant twice more today, including on our next objection.

The final jurisdictional objection I'll address today relates to the Peruvian law Claims. The STA Arbitral Clause encompasses disputes between the Parties with regard to the interpretation, execution, or validity, derived or in relation to this Contract.

Claimants argue that their Peruvian law Claims are related to the STA. This is incorrect. To explain why this is so, I need to explain how Claimants theory operates. As a preliminary matter, Claimants have never explained how their claims of contribution and unjust

enrichment operate under this theory. They are inadequately articulated as we have said in our Rejoinder; so I won't address those Claims here today.

I will address only Claimants' subrogation Claim, which you heard about this morning. Claimants' liability syllogism for subrogation has five steps. First, before the STA was executed, Centromín was subject to a strict liability duty to everyone under Article 1970 of the Peruvian Civil Code, including the Missouri Plaintiffs.

Second, Claimants say once the STA was executed, somehow Centromín retained responsibility during the PAMA Period under Clause 6.2. The retention of responsibility is also a jurisdictional hook because, in Claimants' view, it makes their subrogation Claim related to the STA and, thus, within the scope of the STA Arbitral Clause.

Third, Claimants assert that they have rights because of their perverse theory of Clause 6.2 that gives rights to third parties, everyone.

Fourth, Claimants argue that, as a result, they step into the shoes of the Missouri Plaintiffs, and sue Activos Mineros via a subrogation claim and can recover any amounts paid.

And, fifth, Claimants can do all of this without privity of contract because they are nonsignatories, per Article 14 of the Peruvian Arbitration act. The Tribunal

can find these arguments in Paragraph 17-34 of Claimants' Reply.

How could this possibly work? How? It doesn't. But the reason Claimants must jump through so many hoops is because they're trying to get relief that is duplicative of their contract claims. You heard that very clearly this morning. That is why Claimants' Peruvian law Claims are not related to the STA. The STA Arbitral Clause cannot be read in good faith as a tool to bypass the STA Parties' intricately-designed risk allocation framework. I'll simply read Paragraph 225 of our Rejoinder.

The STA Parties painstakingly devised an elaborate framework to regulate indemnity. Everyone, Claimants, Respondents, and the Tribunal knows that the Claimants' subrogation Claim is an attempt to obtain de facto indemnity in case their contractual indemnity Claims fail.

However, if Claimants are not STA Parties, and if, given the principle of privity, they are not encompassed by Clauses 5 and 6, there is simply no good-faith basis to conclude that the STA Parties intended the STA Arbitral Clause to permit Claimants to bypass their lack of indemnity rights under the STA by filing a subrogation claim in arbitration.

In the following slides, I'll show the Claimants'

subrogation Claim is merely a method to bypass their exclusion from the STA. In particular, Clauses 5 and 6. Under Claimants' theory, they are nonsignatories. They are encompassed by Clause 6.2, and the Missouri Plaintiffs' Claims are Activos Mineros's responsibility under the STA.

In that hypothetical case, Claimants win on the contractual indemnity Claim, they don't need the subrogation Claim. Importantly, this requires accepting Claimants' prior premise that Clause 6.2 encompasses all third parties, everyone in the world.

Now, let's assume that Claimants are nonsignatories, but they are excluded from Clause 6.2, under our interpretation and under Claimants now interpretation. In this hypothetical, Claimants' contractual indemnity Claim fails, but so does their subrogation Claim. Why? Because they are excluded now from Clause 6.2.

For the avoidance of any doubt, the same pattern applies if Claimants were STA Parties. Their subrogation Claim is completely duplicative of their contractual indemnity Claim.

To conclude our arguments on jurisdiction, I thought I'd leave on the screen the quote I just read. Yes, the phrase "related to" is generally understood broadly in the context of arbitral clauses, but I have

never seen it read so broadly that it allows a Tribunal to, in essence, rewrite the substantive provisions of a Contract to allow what the contracting Parties excluded, never.

Here, if Claimants' contract Claim fails, that is because the STA Parties designed the environmental risk allocation framework in that way, either because Claimants are not STA Parties or because they are not encompassed by Clauses 5 and 6. The phrase "related to" cannot be read in good faith to give Claimants the exact remedy from which the STA Parties chose to exclude them.

Those are the jurisdictional objections I'll address today, and I refer the Tribunal to our written submissions for our arguments on the remaining ones.

With that, I will turn to our objections on admissibility. Unless someone would like a break. I know this is a lot.

(Comments off microphone.)

(Interruption.)

PRESIDENT SIMMA: This is going to be long? It is too early for a coffee break. We might still break up at some moment, but let's go on.

MS. GEHRING FLORES: Okay. In short, well, I guess I'm an optimist.

All of Claimant's Claims are inadmissible for the

reasons listed on the screen. Today, I will discuss one objection, that Claimant's Claims are unripe. Claimants must pay the Missouri Plaintiffs to have a chance of succeeding on their contractual indemnity claim and their Peruvian law claims on liability.

This is undisputed. Claimants have tried to get around this problem by bifurcating the damages phase of the Contract case from the liability phase. They now say that the Tribunal's partial award on jurisdiction and liability would only be a declaratory award. But that's not true. First, Claimants do not seek declaratory relief. English and Peruvian law both understand that declaratory relief is a pronouncement that does not include a command to take action. Executory relief, on the other hand, is made up of a pronouncement and a command act. For instance, for specific performance of a contract or to pay compensation. Here, Claimants seek executory relief. Damages are bifurcated, but that does not change the nature of Claimants' request. They want damages.

The Tribunal's partial award on jurisdiction and liability will be incorporated into the Final Award on jurisdiction, liability, and damages. This Tribunal, at Claimants' request under this case number, will order Activos Mineros to pay compensation if it finds Activos Mineros responsible. The procedural bifurcation of the

Contract case cannot give Claimants the substantive advantage of not having to establish responsibility now. That includes establishing the existence of an already-made payment.

Claimants provide no response to our argument, and neither can Prof. Payet. This all begs the question: Why file unripe claims? For the reasons Mr. Pearsall explained earlier and Claimants have admitted, Claimants want the Tribunal to de facto force Perú to intervene in the Missouri Litigations or to be Claimants' litigation insurance.

Second, even if Claimants sought declaratory relief, it would be unavailable under English law because the claims are too speculative. Claimants have never rebutted Activos Mineros's position on the applicability or the substance of English law, the law of the arbitral seat here. They just assume that Peruvian law governs. Dr. Payet acts as if Peruvian law applied, but he doesn't opine on whether it governs.

Mr. Schiffer just said this morning that he can't predict what would happen in the Missouri Litigations. He said: "I would be speculating." That is exactly our point. Claimants' claims are too speculative. Claimants' incorrect assumption is that, if they pay the Missouri Plaintiffs, Centromín would axiomatically be responsible

under Clause 6.2. That assumption is based on the also incorrect premise that payment would be, by definition, for claims that would be Centromín's responsibility.

The reality is that there are many reasons why, even if Claimants are found liable in Missouri and ordered to pay damages, Centromín would not be responsible, and it is impossible for the Tribunal to know if any payment would be for a claim for which Centromín is responsible.

We've explained this in our two Pleadings, and Claimants have never responded. At this point, I would like to ask the Tribunal to take out Demonstrative RD-2. The Tribunal will have to take the facts from the Missouri Claims and determine if the STA allocates those claims under clauses 6.2, 5.3, 6.3, and 5.4, and, if so, how? Centromín may be responsible. The Company may be responsible. Both may be responsible, or neither may be responsible. All are possibilities.

With due respect, Tribunal, it's not possible at this moment, certainly not possible for you to conduct that analysis. Why? To start, you cannot know the basis of any future ruling on liability in the U.S. courts. In U.S. litigation, evidence and relevant arguments are introduced only at trial, but in Missouri the proceedings are in their pretrial stages. The adjudicator, the jury hasn't 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.

Additionally, you cannot know if Claimants will settle rather than wait for a jury verdict. In that case, Claimants couldn't meet their burden of proof here. The settlement would disclaim all liability, so it will 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, which are necessary. Moreover, Claimants can agree to settle in exchange for a release of the phantom Claimants, bypassing jurisdictional, admissibility, and liability limitations. Again, we've pointed this out in our written submissions, and Claimants have never responded.

If the Tribunal doesn't know how the Missouri Litigations will evolve, neither does Activos Mineros. Mr. Schiffer stood here this morning and told you that the Missouri Claims are about DRP not finishing the PAMA. That's just not true. There are 14 live claims under different theories. We don't know for which claims Claimants will be found liable, under which theory, or based on what evidence or which arguments. Because there are hundreds of ways the Missouri Litigations could evolve, it's impossible for Activos Mineros to adequately present defenses to an unknown future.

Some claims argue that the Claimants breached their duty to warn under U.S. law. If Claimants are found liable only for not warning Peruvians of pollution, but not polluting itself, how is that liability encompassed in the framework of the STA? How?

Is a duty to warn, under U.S. law, about finishing the PAMA? What if the Missouri Plaintiffs win only on arsenic poisoning? How many times has that word even popped up in Claimants' Pleadings?

Other claims are based on a piercing-the-corporate-veil theory. Under Missouri law, the jury must find that the Claimants committed fraud to pierce the corporate veil. In that case, we would argue that the STA Parties certainly didn't agree to indemnify Claimants further fraud.

And I'm not sure fraud is about completing the PAMA either. We have listed a few other possible defenses, but we cannot predict with 100 percent certainty which scenarios will come to be. Issuing Claimants' fake declaratory relief would violate Activos Mineros's due-process rights and, again, Claimants have never contested this.

In sum, Claimants do not seek declaratory relief, and, even if they did, their claims are too speculative to be ripe.

Now, I'll move on to our full liability arguments. First, I'll address the reasons the Peruvian law claims are meritless. There are two reasons the Peruvian law claims are meritless: First, Claimants fail to meet their burden of proof; second, they are meritless based on an analysis of their elements. I'm going to address one matter today, Claimants' failure to prove the existence of strict liability. We refer the Tribunal to our written submissions for our remaining arguments on Claimants' burden of proof and elements analysis.

As we discussed, Claimants' Peruvian law claim theory is based on a purported strict liability duty under Article 1970 of the Peruvian Civil Code. Accordingly, for all three Peruvian law claims, Claimants must establish the existence of, one, a dangerous activity or good; two, an injury; and, three, causation.

Claimants have failed to meet their burden of proof on all three elements. They simply ignore the second and third elements of injury and causation, but Claimants must prove their existence in this proceeding. They cannot rely on the Missouri Plaintiffs' arguments and evidence on U.S. law as a substitute.

And Claimants affirmatively argue against the existence of the first element. Claimants do. A dangerous activity, that element. In Footnote 15 of the Reply. So

by definition, Claimants cannot meet their burden of proof. You might ask, why would Claimants refuse to argue the existence of an element they must prove here? We did some digging and, sure enough, Claimants affirmatively argue in the Missouri Litigations that operating the Facility is not a risky or dangerous activity for purposes of Article 1970 of the Peruvian Code. So Claimants are playing one set of proceedings off the other. Claimants refuse to argue in these arbitrations the existence of the first element of the strict liability claim because, in case Peruvian law is applied in the Missouri Litigations, they don't want to get caught by the Missouri Plaintiffs.

Yes, Claimants still want this Tribunal to rule their way on the Peruvian law claims. Yes. Well, Claimants have simply failed to meet their burden of proof on strict liability and they must live with the consequences of filing unripe claims.

And I refer the Tribunal to our written submissions for our remaining arguments on Peruvian law claims.

The STA claims fall outside the scope of Centromín's responsibility under Clause 6.2. Again, I ask the Tribunal to take out Demonstrative RD-2 and review Clause 6.2. Claimants argue that their STA claims fall under Clause 6.2. Their theory is that Missouri Claims are

attributable to activities of the Company, or DRP, under Clause 6.2, but they're not. As a matter of fact, the Missouri Claims are based on the U.S. conduct of U.S. companies and individuals.

As we explain in our Pleadings, U.S. courts would lack jurisdiction over DRP's actions in Perú. On the screen, we can see that the Judge presiding over the Reid Cases has already ruled that the misconduct occurred in the United States -- in the United States, as a matter of law. Claimants have offered no explanation for how any claim is legally attributable to the activities of DRP. Some claims are based on derivative liability, 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, DRP, at all.

As the same Judge held, direct liability rests on a defendant's own wrongful conduct acting in its own name.

The STA claims also fall outside the scope of Clause 6.3, the clause allocating responsibility after the expiration of the PAMA Period. Claimants refuse to admit it, but some of the injuries complained of in Missouri must be taking place after the PAMA Period.

As Demonstrative RD-2 shows, Centromín's responsibility under Clause 6.3 is limited to claims attributable to Centromín's and/or its predecessor's activities. Centromín is not responsible for activities attributable to the activities of the Company, DRP. Because Claimants do not explain how Missouri Claims are encompassed by Clauses 6.2 or 6.3, they have failed to meet their burden of proof, and, even if the Tribunal could reach the opposite conclusion, the record evidence shows that the Missouri Plaintiffs' claims have been allocated to the Company, DRP, under Clauses 5.3 and 5.4.

The Missouri Claims relate to the Facility's emissions after DRP acquired it in October 1997. As the Tribunal can see in Demonstrative RD-2, the STA Parties expressly allocated responsibility for those claims in two time periods. 6.2 and 5.3 allocate responsibility during the PAMA Period. That ended in January 2007. Clauses 6.3 and 5.4 allocate responsibility for claims in the post-PAMA Period, January 2007 onwards. Because Claimants have failed to meet their burden of proof on Activos Mineros's responsibility under 6.3 for the post-PAMA Period, I will focus on DRP's allocated responsibility for the PAMA Period. The Missouri Plaintiffs' claims satisfy both scenarios A and B under Clause 5.3.

Starting with Scenario A, as a threshold matter,

as Activos Mineros explains in its written submission, the phrase "exclusively attributable" modifies the word "acts." Here, the Missouri Claims are due to acts that are exclusively attributable to DRP. Causation is key for a finding of liability under the Missouri Claims. As a matter of Missouri and New York law, Claimants can only be liable for injuries caused by them. Accordingly, if the Missouri Claims were based on Centromín's acts, they would fail. Claimants cannot be held liable for injuries caused by Centromín's acts. Therefore, as you can see on the screen, the Missouri Claims are expressly limited to injuries caused by the Facility's operation after DRP acquired it.

Moreover, the Missouri Claims are based on DRP's contemporaneous air emissions rather than historical lead contamination in the soil. That is why the U.S. Appellate Court with jurisdiction has expressly held that the Missouri Claims do not relate to the practices of Centromín.

Moreover, DRP's acts are not related to the PAMA. DRP's decision to increase production with dirty concentrates has nothing to do with the PAMA. Perú privatized the La Oroya Facility with the clear objective and mandate of reducing the Facility's poisoning of La Oroya through uncontrolled emissions. Increasing

production with dirty concentrate was a business operations decision that DRP knew would increase the poisonous emissions engulfing La Oroya. It has no relation to the PAMA, rather, it contradicts the PAMA's most fundamental purpose.

Claimants themselves conceded, in their Contract Memorial, that DRP would be liable if the damages and claims were attributable to the operation of the complex and business operations of DRP, not related to its PAMA. Claimants now argue that everything DRP did, including knowingly worsening their toxic emissions, is somehow related to the PAMA, and that's simply absurd.

Finally, with respect to the less-protective standards and practices elements, Activos Mineros has shown that the Missouri Claims result from DRP's reckless operation of the Facility. DRP's ramped-up production of dirty concentrate without any emissions mitigation measures until December 2006 necessarily led to increased poisonous emissions. Claimants have no credible answer to this. Claimants can show no evidence that DRP took measures to reduce emissions in the earliest days of their operations. None of the Measures DRP supposedly implemented could have achieved that.

Claimants further assert that DRP performed better than Centromín simply because they did some of the

PAMA Projects. That had to be better; right? This is another absurdity.

First, DRP never completed the PAMA. The little that DRP did to control emissions was performed in late 2006, and then, after DRP had already defaulted on its PAMA obligations in mid-2009, these partial Measures were implemented long after DRP had made the decision in 1997 to increase emissions. There can be no doubt that DRP's standards and practices were less protective than those of Centromín. Even if DRP is not responsible for the Missouri Claims during the PAMA Period under Clause 5.3(a), it certainly would be under 5.3(b). That DRP never completed PAMA Project 1 is undisputed, and that failure is necessarily a default on DRP's PAMA obligations.

Moreover, DRP's decision to increase its poisonous emissions was itself a breach of the PAMA. Let me be clear on this point: DRP had the option -- they had the option to increase production. Sure, they could do it, but, if it did so, it had the obligation to first take measures to assure that it wasn't increasing the emissions impacting La Oroya. If not, DRP would face the consequences of its decision to increase emissions. Under applicable Peruvian law, that would be fines and penalties or the closure of the Facility. And under the STA, that means that DRP would be contractually responsible for

potential third-party claims like the ones filed in Missouri.

If Claimants truly believed that the STA's allocation of responsibility clauses contain implicit indemnity and defense obligations that encompass anyone who could be sued, then they should be filing claims against DRP, not Activos Mineros. Claimants allege that the Missouri Claims result from Centromín's operations and failure to implement PAMA Project 4, which involved revegetating, not remediating, contaminated soil near the Facility.

Both of Claimants' allegations are false. First, Claimants have failed to provide the necessary information about the Missouri Plaintiffs, their claims, or their claimed injuries. Claimants' submissions are based on insufficient and generalized assertions and fail to provide any serious response to the evidence demonstrating that the Missouri Plaintiffs' claims involved injuries resulting from contemporaneous, not historical, emissions.

As to sulfur dioxide, the only pathway for exposure to sulfur dioxide is contemporaneous emissions. Sulfur dioxide is essentially a tear gas, and the impact is suffered in the moment of exposure. Once the SO2 or sulfur dioxide emissions are stopped at the source, the SO2 gas dissipates. Unlike lead, SO2 does not linger in the soil

in solid form. Thus, any Missouri Claims regarding SO2 exposure cannot result from Centromín's historical operations nor are they related to Centromín's revegetation obligations.

And as to lead, the little that is known right now regarding the evolution of the Missouri Claims related to lead also point to contemporaneous emissions, even the evidence provided by Claimants' Expert toxicologist, Dr. Schoof, demonstrates that the principle pathways for 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.

To all of this, Claimants paint a hero's portrait for DRP's actions in La Oroya. But, from 1997 to December 2006, not one of DRP's dollars spent went toward any project that could neutralize DRP's surge in sulfur dioxide and lead emissions, much less improve emissions. These heroic claims regarding its investments and community programs are, at best, green washing. To put this in context, and I think as we heard from Mr. Schiffer today, Mr. Buckley, President and General Manager of DRP from 1997 to 2003, touted DRP's community programs. Among the things Mr. Buckley highlights is that DRP stopped workers from eating on the job and built showers and required that workers shower and change their boots.

But, as the U.S. Centers for Disease Control concluded, when it conducted a study of lead contamination in La Oroya while DRP was operating, any of the benefits from these sorts of programs are dwarfed by the fact that they would be unnecessary if DRP did its one job: Control emissions. No shower can protect you from uncontrolled emissions.

Let me show you one more example of DRP's self-professed heroic efforts in La Oroya. When Dr. Schoof visited La Oroya in 2005, the team made sure to wear masks and other protective equipment to minimize exposure to DRP's toxic emissions dust.

I ask you to contrast that photo with the one that is now on your monitors. This photo from Claimants' toxicology Expert Report shows a DRP-sponsored community street cleaning program in action. These are the people of La Oroya cleaning DRP's lead-laden dust with no personal protective equipment, no apparent safety measures whatsoever. Claimants' efforts to spin a PR campaign out of DRP's disregard for the health and safety of the citizens of La Oroya speaks for itself.

For the reasons I've discussed today and the numerous others we will detail -- we have already detailed in our Pleadings, the Tribunal lacks jurisdiction over Claimants' contract case. Claimants' claims are all

inadmissible, and, in any event, Claimants' claims are meritless.

And with that, I turn to my colleague, Mr. Pearsall.

PRESIDENT SIMMA: Thank you, Madam Gehring Flores, and I give the floor to Mr. Pearsall.

MR. PEARSALL: Thank you, Mr. President.

We have about 27 or 28 minutes left. Shall I just proceed and go through?

PRESIDENT SIMMA: Yes.

MR. PEARSALL: Okay. Thank you very much.

Well, I'm back. That was a lot, a lot of detail, and it's a lot of detail because, as I said, we take our obligation to provide the Tribunal with law and fact very seriously. And happily, my submissions on the Treaty case are going to be a little less complex.

So in our Counter-Memorial, we demonstrated why almost all of Renco's claims are outside of the Tribunal's jurisdiction. The first jurisdictional objection -- so let's start there -- is for failure to establish a prima facie expropriation claim. And the second objection is for lack of jurisdiction ratione temporis. Okay.

So Claimants completely, completely failed in their Reply to address these objections. Leaving aside their baffling objection to their own jurisdiction in the

Contract case and then subsequent reversal, instead of mounting a defense in its reply as one might expect, Renco probably figured it was best to put all its arguments in the Rejoinder on Jurisdiction. Fine. Gamesmanship aside, let's look what they said. Let's look what they said there.

Claimants said they do not "want to repeat arguments previously made." That's their Rejoinder on Jurisdiction, Paragraph 1.

Well, this badly misses the point. In our Counter-Memorial, we raised jurisdictional objections that were based on the evidence and the arguments that Claimant had made. If Claimant would have repeated its previously made arguments, Claimant would not have responded to our jurisdictional objections. But Claimants didn't even do that. They simply did not respond at all. Claimants have not, because they cannot, sufficiently rebut our jurisdictional objections. We don't want them to repeat their arguments, as I'm sure the Tribunal does not want them to repeat their arguments.

Instead, they have an obligation to answer our objections. As they haven't, our objection should be sustained. Time and the facts are what they are, and any attempt to respond now would be procedurally improper, but on the screen for the benefit of the Tribunal are the

claims that must be dismissed for failure to establish a prima facie case or are outside the temporal scope of the Treaty.

So let's start with our submissions on Claimants' failure to state a prima facie case for indirect expropriation. In our Counter-Memorial, we highlighted how Claimants' shifting expropriation references are both inconsistent and vague. Claimant has made no real attempt to provide details or cure the deficiencies that we pointed out in our Counter-Memorial. Instead -- instead, it offers two, two paragraphs in its Rejoinder on Jurisdiction. The first paragraph allegedly addresses the standard, vaguely explaining to the Tribunal how direct and indirect expropriation differ. Okay.

The second paragraph purports to address the Measures, but Claimant simply restates its conclusions without any application or meaningful explanation to rebut the evidence that we set forth, evidence that we believe proves their allegations are replete with omissions, unresponsive, unpersuasive.

We still don't know, sitting here today, which Measures relate to, one, the direct expropriation claim which Claimant now admits that has no basis; two, the so-called "creeping expropriation," which Claimant seem now to have totally abandoned; or, three, the indirect

expropriation, which we think Claimant maintains based on its submissions this morning, but we remain unclear what Measures it thinks satisfies this standard.

In the face of these vagaries, let's get a bit more granular for a minute. You don't have to look to CMS, as Mr. Schiffer directed us, for the standard of indirect expropriation. That's in an Argentina BIT. The Treaty that we have here, Annex 10-B, lays the elements out and that law matters, so these elements are on the screen.

In establishing a claim for expropriation, Claimant must, one, explain why its claim of indirect expropriation is the "rare circumstance" that would constitute an indirect expropriation.

Two, it must put forth a prima facie case of discrimination in accordance with the basic investment treaty jurisprudence.

And three, articulate how Perú's regulatory actions were not designed and applied to protect legitimate public-welfare objectives such as public health, safety, and the environment.

Claimant has made no attempt, none, to engage with the Treaty or demonstrate how its expropriation claim satisfies these elements. Rare circumstances? Silence. Discrimination? Silence. Legitimate public-welfare objectives such as public health, safety, and the

environment? Silence, silence, silence. So much for expropriation.

So let's turn to FET. All Claimants' alleged FET Claims should be dismissed for lack of jurisdiction ratione temporis. You heard again this morning that Claimants agree that the Tribunal lacks jurisdiction over claims of Treaty breaches based on acts or omissions that predate the Treaty's entry into force on 1 February 2009. We agree on that. We may agree on another point as well.

Our points on Section 3(b) of our Counter-Memorial on the applicable law in situations where the alleged State conduct straddles the entry into force of a treaty, I don't know if we agree on that because those points have gone completely unrebutted. Where a State's acts are rooted in pre-treaty conduct, they fall outside the Tribunal's jurisdiction ratione temporis.

So let's look at the Measures that Claimants' Claims violate the FET standard and plot them on a quick timeline.

The Treaty entered into force 1 February 2009. Any claim for a breach of the Treaty based on acts or omissions that occurred before that date are outside the jurisdiction of the Tribunal.

Likewise, when faced with the situation in which the alleged State conduct straddles the entry into force of

the Treaty, State acts that are rooted in pre-treaty conduct also fall outside the Tribunal's jurisdiction. So here are the six measures that Claimant alleges amounts to a violation of FET. We will take them one by one.

The first two are, one, the expansion quote of DRP's undertaking to improve the Complex environmental performance and, two, the expansion of "the cost and complexity of DRP's environmental obligations." So the expansion of scope and cost.

Claimant claims these Measures were contrary to their expectations in 1997. Taking Claimant at its word, these violations occurred before the Treaty entered into force during the five-year period after DRP's acquisition of the Complex.

Is Claimant really now alleging that it did not understand the cost, the complexity, and the scope of the undertaking of its environmental obligations that could expand until 2009? No?

You heard this morning they went in with eyes open, to use Mr. Schiffer's words, they were "big boys." Regardless, on Claimants' own submission, these Claims are pre-treaty conduct, and, therefore, outside the jurisdiction of the Tribunal.

The third measure, this is MEM's "extracting of concessions from DRP as a precondition to granting an

extension." This is the third measure they say breaches their -- breaches FET.

Claimants' allegations, firstly, presuppose an unproven right to an extension; unproven, unevidenced. The facts, however, are that DRP was aware of the PAMA deadline from the moment it committed in 1997. That deadline was reinforced by DRP on multiple occasions, including when DRP received the extraordinary 2006 Extension. And that's worth a moment. They received an extension. This fact is not part of their FET fairness analysis. In addition to presupposing a right to an extension, they also need to argue that that right was unconditional. Again, unproven, unevidenced.

Claimants' Memorial characterizes the extraordinary MEM 2006 Extension as "draconian" for providing only a limited extension and including numerous conditions. Whatever Claimant thinks about the 2006 Extension, let's all agree that it occurred before February 1, 2009. Its third Claim is pre-treaty conduct and, therefore, outside the jurisdiction of this Tribunal.

The next three measures Claimant alleges amount to an FET violation are: One, MEM's alleged "undermining of the 30-month extension granted by Congress;" two, the alleged rejection of DRP's 2009 Request; and, three, the Board of Creditors rejection of DRP's restructuring plans

which asked for a full pass on its PAMA obligations.

While these events as alleged occur after the entry into force of the Treaty, we agree. They are all still rooted in pre-treaty conduct. These acts and facts are based on the same acts and the same facts we just discussed which were evident before 2009. No extension guarantees, no guarantees for extensions without conditions, and certainly no guarantees that it would have an insufficient restructuring plan approved. In any event, unproven, unevidenced.

Since 1997 and before the Treaty entered into force, MEM was clear and the DRP understood, among other things: One, there was no entitlement to extensions of the PAMA; two, in the extraordinary event that there would be an extension, MEM could impose conditions; and, three, the cost, complexity, and undertaking of DRP to improve the Complex's environmental performance could change.

And a bonus, a creditors committee -- by the way, that is not the State -- their rejection of DRP's Restructuring Plan, which effectively asked to set aside the entirety of the 1997 PAMA, was unacceptable. That's what the unrebutted record provides. All claims rooted in pre-treaty conduct and, therefore, outside the jurisdiction of the Tribunal.

But let's assume for a minute that the Tribunal

has Jurisdiction over Claimant's Claims. They still not -- they still have not, because they simply cannot, demonstrate that Perú violated its obligations under the Treaty. Claimant has alleged that we violated three obligations under two separate Articles of the Treaty.

First, Article 10.5, which requires Perú to afford Claimant the Minimum Standard of Treatment under customary international law, including, as part of that standard, not to deny the Claimant justice; and, second, Article 10.7 which protects Claimants from illegal expropriation.

Claimants have, in some instances, not even offered any evidence to substantiate their Claims. And in other instances, invents Claims that are simply manifestly, manifestly without legal merit on the evidence they put forward. Let's discuss them.

Claimants alleged in its Memorial that Perú violated 10.5 of the Treaty because its environmental obligations increased and MEM did not grant it multiple extensions without conditions. That's the Claim.

On its face -- on its face, these alleged acts do not rise to the level of a breach of the Minimum Standard of Treatment under customary international law. They just don't, but more to the point, Claimants don't even engage with that standard. A violation of customary international

law is necessary to prove a claim under Article 10(5) of the U.S.-Perú FTA.

Claimants do not attempt to demonstrate how they meet this standard, and even if the Tribunal were to accept Claimants' recitation of its own standard, a standard not found in the Treaty, they still have not proved that Perú has violated Article 105.

Indeed, we put forward submissions on a point-by-point analysis why we didn't breach Article 10(5) under Claimants' own articulated standard, and that's in Section 4(a)(2) of our Counter-Memorial, and a summary of that is on the screen.

Claimants offered no response, none. That column is not blank because we forgot to fill it in. The truth is that, while Renco got busy extracting profit from DRP's ramped-up poisonous operations, it stalled DRP's environmental investment obligations.

Perú had no obligation, none, to accommodate DRP's repeated and extra-legal requests to delay execution of its environmental obligations that it agreed to in 1997, refusing to let DRP off the hook from its environmental obligations. That is not arbitrary. That is not unreasonable, and refusing to let DRP out of its own agreement to remediate the conditions at La Oroya, that is not shocking. That is not outrageous.

The conditions that Perú placed on DRP -- on DRP's continued operations at La Oroya -- were fair and equitable and a response and a consequence to Renco's abject failure and unwillingness from the inception of its investment to honor its environmental obligations. Nothing in Perú's conduct violated the customary international law standard or Claimants' own purported standard.

In these 2.5 hours, there is clearly not enough time to go over every fact that was omitted or skewed in Claimants' attempt to stitch together claims, but for the sake of time, I want to highlight just a few facts that were omitted.

As I've said, to support its fair and equitable treatment indirect expropriation claim, Claimant needs the Tribunal to believe a couple things. It needs the Tribunal to believe that DRP was entitled to an unlimited and unconditional extension to complete its environmental obligations that it expressly promised to perform in 1997. And that those were part -- that was part of the bargain when it purchased the Facility in 1997.

But what does the evidence show? The evidence shows that DRP knew from 1997 that it had to improve the Facility and that it was going to be a difficult undertaking. DRP knew the price of compliance could change. DRP knew compliance with Perú's environmental

obligations was mandatory. DRP knew that the PAMA deadline was fixed, and DRP knew that it had no entitlement to any extensions and certainly had no entitlement to an unconditional extension.

All of the bidders for the Facility in 1997, every single one of them, including Renco and DRRC, were provided with thorough documentation related to the facility, prepared not only by governmental agencies but also by external advisors specifically retained to assess the PAMA. Bidders were permitted and encouraged to visit the Facility as Claimant did ask questions on the relevant documentation and carry out due diligence by themselves or allow third parties to do it on their behalf.

So did DRP know what they were agreeing to in 1997? They sure did. That is not our position. That is theirs. You heard from Mr. Schiffer this morning: "We knew what we were getting into." "We are sophisticated buyers." That alone should destroy most of their FET Claim.

As Clause 7 of the STA, they memorialized it. DRP confirmed that it had conducted sufficient due diligence to understand the extent of its environmental responsibilities under the PAMA and the potential risks.

DRP's own representatives involved in the acquisition of the Facility acknowledged that immediate

action at La Oroya was needed and that DRP was responsible for minimizing pollution, even if it went beyond its PAMA obligations.

And that's not just something they were telling Perú to win the bid. In May of 1998, DRRC said the same to U.S. regulators. What did Mr. Schiffer call it this morning? A judicial admission? Well, they submitted a Securities and Exchange Commission form, S7, this is at Respondent's 94, detailing their understanding of the obligations that DRP had just assumed under the STA and the PAMA.

DRRC acknowledge in that document the environmental programs that the DRP has agreed to implement. DRRC told U.S. regulators that DRP "advised the MEM that it intended to seek changes in certain PAMA Projects that it believes will more effectively achieve compliance." Great.

But they also said to the U.S. regulators, there can be no assurance that the MEM was going to approve these changes to the PAMA or that implementation of these changes were not going to increase costs.

What they told U.S. regulators in 1998 about what they understood the deal was and the framework was should be what they are held to here. The vast majority of Claimant's Claims are unevidenced, where they do put

forward facts to support a claim, they are mischaracterized and omitted.

Let me turn quickly to the establishment of the prima facie indirect expropriation Claim. Through no fault of my learned colleague across, Claimants' Memorial was quite ambitious on expropriation. Spending 11 pages in its argument, Claimants first offered the Tribunal a veritable buffet of expropriation theories, no theory too exotic. However, in this feast, the Claimant has failed, even today, to provide the basic fare of a well-fed investment treaty claim.

Namely, it has failed to, one, distinguish between the theories; two, articulate between the standard for each claim; and three, and, most importantly, show why the Measures it complains about amounted to a breach of a standard for that claim.

It is not Perú's job, and, frankly, not the Tribunal's job, to sort through a bunch of diffuse expropriation claims for Claimant.

Nevertheless, Perú spent time and considerable money trying to parse these alleged Claims and point out deficiencies. Our Counter-Memorial is replete with examples of these omissions, and the mischaracterizations that Claimants alleges support its differentiated expropriation claims on overlapping theories of liability.

We assumed a standard and tried to sort it out. Measure by measure we meticulously took Claimants' argument apart and pointed out flaws in the law, flaws in the factual predicates. We have heard no response. I'm sure we may hear one over the next two weeks. We didn't hear one this morning, but that is, perhaps, why Claimant is so interested in a Post-Hearing Brief.

Again, we don't know. We don't know. All we do know is, as I stand here today, that we have put forward 19 Pages of argument rebutting Claimants' inchoate expropriation claims in our Counter-Memorial, only to be met by silence and then two paragraphs.

So we will do Claimants' work for it and look at the indirect expropriation case. I think it centers on three alleged Measures, and it's on the screen.

First, that the MEM denied DRP's request for an extension of time to complete the Sulfuric Acid Plant; second, that MEM put forward a "bogus" credit claim against DRP; and, third, that MEM's supposed removal of DRP's management, really what happened was a trustee was appointed, and the opposition to DRP's restructuring plan. Those, we think, are the three measures that they are alleging were expropriatory.

There are so many flaws that it would be impossible to cover all of them with the available time, so

for the convenience of the Tribunal, we invite you to look at the table on the screen, which highlights some of key factual omissions and mischaracterizations.

These omissions and mischaracterizations include ignoring the fact that it was never entitled and it knew it was never entitled to an extension or entitled to decisions that drove it into bankruptcy.

But let's look at the first column. Let's look at that final column. That final column looks like it's half-finished again; it is not. It's not. It accurately reflects Claimants' response to our Counter-Memorial Section 4(b)(2). They don't even attempt to show how the elements of indirect expropriation, elements they accept, are met. The final Claim that Claimant alleges is that it has suffered a denial of justice at the hands of Peruvian Courts.

In our Counter-Memorial, we explained the applicable legal standard for denial of justice and the factual and legal reasons why each of Claimants' assertions fail.

In its Reply, Claimant accepted -- Claimant accepted the customary international law standard for denial of justice. Customary international law imposes a very high standard for denial of justice, one that rests on the categorical failure of a State's entire domestic legal

system and exhibits a failure on the part of the State judiciary as a whole to accord basic foundational tenets of justice of.

As the Tribunal can appreciate from the table on the slide, on the screen, after we explained the standard and provided a detailed analysis that demonstrated Claimants' allegations of procedural misconduct were all unsubstantiated, and Claimants' Rejoinder on Jurisdiction, to its credit, it dropped all of its denial-of-justice claims on this basis.

As such, Claimants' only remaining denial-of-justice claim is based on the Merits Decision of the Courts of Perú and whether the Courts properly recognized MEM's credit against the bankrupt DRP. Claimant no longer -- no longer alleges a procedural denial of justice. The only claim Claimant now alleges is one of substantive denial of justice.

We would have thought it is now settled law that Claimants cannot prevail on a denial-of-justice claim based on the misapplication or errors in law by a State's judiciary.

Yet, Claimant is asking this Tribunal to put itself above the Peruvian Supreme Court judges and determine whether Peruvian Courts misapplied Peruvian law. Neither the Treaty nor customary international law provides

the Tribunal with that authority, but let's get a bit closer.

Claimant alleges that INDECOPI's bankruptcy commission granted MEM's credit in breach of Peruvian Bankruptcy Law. Claimant does not explain how this alleged measure, even if proven, would amount to a denial of justice under the very applicable standard that it accepts. They don't even attempt to show you how that works. But there are four reasons why Claimants' denial-of-justice claim fails.

First, there is no such thing as substantive denial of justice. Neither the Treaty Parties think there is, and in any event, the Tribunal, if it wants to break new ground, Claimants would still have to prove a categorical failure of the Peruvian justice system, unevidenced, not one submission on the alleged categorical systemic failure of the Peruvian justice system to meet the Minimum Standard of Treatment under customary international law.

What they do -- Claimants quote Dan Cake -- Dan Cake is the case they cite. That was a Mayer, Paulsson, and Landau Tribunal. Not one of those can be described as great embracers of substantial denial of justice. What are the facts of that case?

The facts of that case was a party that was put

into insolvency was denied the right to a hearing. They weren't even allowed to present their case. That's what that case is about. That's the only case they cite. Do they cite Mondev? Do they cite Azinian? Do they cite ELSI? No.

Second, it's not the first time Claimant, through its affiliates DRP or DRCL, have attempted to persuade an independent adjudicator to overturn a decision of INDECOPI. Having attempted through six years of Pleadings and Hearings in Perú, Claimant now brings its arguments to this Tribunal.

Does Claimant allege that it was not given an opportunity to be heard in Perú? No. Does Claimant allege that the courts of Perú were closed to it because it was a foreign national? Nope.

Does the Claimant allege that the courts of Perú are corrupt or somehow lacking independence? Of course not. You heard that this morning.

Claimant simply wants a different result on the merits. Claimant encourages this Tribunal to second-guess Perú's administrative and judicial courts, reexamine the evidence, reevaluate the Peruvian law on the substance to keep its appeal alive.

Third, in any event, INDECOPI's approvals of the MEM credit were reasonable and appropriate. Full stop.

Fourth, again Claimant makes no effort to claim due process violations, DRP had every opportunity to question INDECOPI's decisions and did so repeatedly. DRP exercised its right, with Counsel, to present arguments regarding the recognition of MEM's credit on every occasion.

And for those reasons, we would respectfully request the Tribunal rule in our favor. I only have a few minutes left. So let me end, not by talking about Claimant, but by talking about Perú.

Perú is here because it takes its obligations very seriously. It is here because it believes in the peaceful settlement of disputes consistent with the rule of law. It is here because it the language of a contract matters. It believes that the standards it negotiated in its Treaty with the United States matters.

It believes the right to regulate environmental remediation for the benefit of its people matters, and importantly, it believes this system matters and what you do as arbitrators matter.

This system gives the Investor a right to pursue adjudication, and if properly pled, and the burden of proof properly distinguished, discharged, hold the State accountable for violations of law.

What it is not -- what it is not is a cynical

tool. It is not a way to pressure a State to act in a parallel proceeding. It is not a covert way to take a weak position from a domestic court into a litigation leverage. They have attempted to accuse Perú of misconduct under International and Peruvian law to obtain a more favorable result in a tort case in Missouri that is years from completion.

And we are confident that, at conclusion of these two weeks, just as we were confident in the conclusion of our written submissions, that the Tribunal will see these cases for what they are and agree that Claimant has not even come close to meeting its burden.

Thank you for your attention.

PRESIDENT SIMMA: Thank you. Before we conclude, may I ask my colleagues if they would have any questions at the moment? Not at the moment.

That concludes a very good first day, I think. We are going to start tomorrow at 9:30, and I think that there a provision of Martin Doe, and we have a list of the -- I have it before me -- I have a list of the witnesses and Experts and the sequence in which the order in which they are supposed to testify. And our PO10 says that we should have a look at who will be testifying, who of these people will testify tomorrow, how far we might get.

Martin, do you have any? So who is going to be before us with certainty? I have the first, Bruce Neil, Kenneth Buckley, Juan Felipe Guillermo Isasi Cayo, Guillermo Shinno Haumani. So how far are we going to get? Do we have any idea?

MR. SCHIFFER: Well, I can't speak for Respondents. They tend to take a little bit more time than we do. I assume we can complete all four witnesses tomorrow.

PRESIDENT SIMMA: I'm sorry?

MR. SCHIFFER: I would assume we can complete all four of the fact witnesses tomorrow.

MS. GEHRING FLORES: I think I would agree with that, with that assumption. Again, I don't know how long opposing Counsel plans to spend with our witnesses.

PRESIDENT SIMMA: Just to have an idea. Because the only problem that we face in PO10 or that we think is that there shouldn't be a division of examination, let's say, overnight from one day to the other.

MS. GEHRING FLORES: Correct. I believe that the PO asks for the Parties to endeavor, I guess, to end by the end of the day. I should certainly hope that that will be possible tomorrow, but that -- since our witnesses will be in the afternoon tomorrow, presumably, that whether they can end with Mr. Shinno is in their camp, essentially.

MR. SCHIFFER: Obviously, if Mr. Shinno comes on with only 40 minutes left in the day, that is one thing. I think we'll have to play it by ear, because I, you know, even though we're efficient, I know the Tribunal doesn't want us to rush just to meet a timetable, because that wouldn't be right either.

PRESIDENT SIMMA: There won't be any rush. We looked at that. Okay. I think that's as concrete as we can become tonight. So have a good rest of the day, and we will see each other tomorrow morning.

MS. GEHRING FLORES: Mr. President, I just had one other housekeeping matter. I just wanted to note, I believe three of the four witnesses that we would endeavor to be crossing tomorrow are doing so remotely. They are testifying remotely, and I just wanted to make sure that everyone had made appropriate provisions for that. Okay.

PRESIDENT SIMMA: Did you want to say something? Okay. So everything will be in place and we hope for the best. Why not?

MS. GEHRING FLORES: Yes.

MR. SCHIFFER: Excuse me. You said three -- there is one live witness? Who is the live witness?

MS. GEHRING FLORES: Mr. Shinno.

MR. SCHIFFER: Okay. He's here. Great. Thanks.

MS. GEHRING FLORES: Yes.

PRESIDENT SIMMA: Thanks again.

MS. GEHRING FLORES: Thank you.

PRESIDENT SIMMA: Hasta manana.

(Whereupon, at 3:21 p.m., the Hearing was adjourned until 9:30 a.m. the following day.)

POST-HEARING REVISIONS

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby attest that the foregoing English-speaking proceedings, after agreed-upon revisions submitted by the Parties, were revised and re-submitted to the Parties per their instructions.

I further certify that I am neither counsel for, related to, nor employed by any of the Parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

Dawn K. Larson