

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

-----	x
In the Matter of Arbitration Between:	:
	:
THE RENCO GROUP, INC.,	:
	:
Claimants,	:
	:
and	:
	:
THE REPUBLIC OF PERÚ,	:
	:
Respondent.	:
-----	x Vol. 8

- 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

-----	x
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.	:
-----	x Vol. 8

(Continued)

HEARING ON JURISDICTION AND LIABILITY

Thursday, March 14, 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 9:00 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:**

**MR. MARTIN DOE RODRIGUEZ**  
Deputy Secretary General and Principal Legal  
Counsel

**MR. JAVIER COMPARINI CUETTO**  
Assistant Legal Counsel

**MS. MAGDALENA LEGRIS**  
Case Manager (remotely)

**Assistant to the Tribunal:**

**DR. HEINER KAHLERT**

**Realtime Stenographers:**

**MS. DAWN K. LARSON**  
Registered Diplomate Reporter (RDR)  
Certified Realtime Reporter (CRR)  
Worldwide Reporting, LLP  
529 14th Street, S.E.  
Washington, D.C. 20003  
United States of America

**MS. MARÍA ELENA DA SILVA**  
**MS. MARTA RINALDI**  
D.R. Esteno  
Colombres 566  
Buenos Aires 1218ABE  
Argentina  
(5411) 4957 0083  
info@dresteno.com.ar

**Interpreters:**

**MR. DANIEL GIGLIO**

**MS. SILVIA COLLA**

**APPEARANCES:**

**On behalf of the Claimant:**

**MR. ADAM SCHIFFER  
MR. MURRAY FOGLER  
MS. JENNIFER CORDELL  
MR. BUFORD NEELY  
Schiffer Hicks Johnson PLLC  
700 Louisiana Street  
Houston, Texas 77002  
United States of America**

**MS. SARAH WARBURG KOECHLIN  
King & Spalding  
Dallas, Texas  
United States of America**

**Claimants' Representatives:**

**MR. JOSH WEISS  
MR. ARI RENNERT  
MS. CRYSTAL SALING**

**APPEARANCES: (Continued)****On behalf of the Respondent:**

MR. DANTE AGUILAR ONOFRE  
MR. ENRIQUE JESÚS CABRERA GÓMEZ  
MR. OSCAR LECAROS JIMENEZ  
MR. ANTONIO MONTENEGRO CRIADO  
MS. VANESSA DEL CARMEN RIVAS PLATA SALDARRIAGA  
Republic of Perú

MS. GAELA K. GEHRING FLORES  
MR. PATRICK W. PEARSALL  
MR. BRIAN A. VACA  
MS. AGUSTINA ÁLVAREZ OLAIZOLA  
MR. KELBY BALLENA  
MS. INÉS HERNÁNDEZ SAMPELAYO  
MS. TATIANA OLAZÁBAL RUIZ DE VELASCO  
MR. MICHAEL RODRÍGUEZ MARTÍNEZ  
Allen & Overy  
1101 New York Avenue NW  
Washington D.C. 2005  
United States of America

MR. RICHARD ALLEMANT  
MS. VANESSA LAMAC  
MS. ROMINA GARIBALDI DEL RISCO  
Lazo Abogados  
Av. Pardo y Aliaga 699  
San Isidro 15073  
Perú

**APPEARANCES: (Continued)****Nondisputing Party:**

**MS. LISA J. GROSH  
MR. JOHN D. DALEY  
Assistant Legal Advisers  
Office of International Claims and  
Investment Disputes  
Office of the Legal Adviser  
U.S. Department of State  
Suite 203, South Building  
2430 E Street, N.W.  
Washington, D.C. 20037 2800  
United States of America**

**MR. DAVID M. BIGGE  
Chief of Investment Arbitration  
Office of International Claims and  
Investment Disputes  
Office of the Legal Adviser  
U.S. Department of State  
Suite 203, South Building  
2430 E Street, N.W.  
Washington, D.C. 20037 2800  
United States of America**

**MR. DAVID STUTE  
Attorney Adviser  
Office of International Claims and  
Investment Disputes  
Office of the Legal Adviser  
U.S. Department of State  
Suite 203, South Building  
2430 E Street, N.W.  
Washington, D.C. 20037 2800  
United States of America**

## C O N T E N T S

	PAGE
<b>WITNESSES:</b>	
<b>WIM DOBBELAERE (Continuing)</b>	
Redirect examination by Ms. Gehring Flores.....	1442
Questions from the Tribunal.....	1447
<b>ISABEL KUNSMAN SANTOS</b>	
Direct presentation.....	1467
Cross examination by Mr. Fogler.....	1486
Redirect examination by Mr. Vaca.....	1522
Questions from the Tribunal.....	1529

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

PRESIDENT SIMMA: I try to live up to the reputation as a typical German, not just be on time but even maybe a bit ahead of time.

So good morning, everybody. This is Day 8 of the Hearing in the Renco Case, and we are in the examination -- cross-examination of Mr. Dobbelaere.

WIM DOBBELAERE, RESPONDENTS' WITNESS, CALLED  
(Continuing)

PRESIDENT SIMMA: And if -- I give to floor to Ms. Gehring Flores for the redirect.

Ms. Gehring, you have the floor.

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

REDIRECT EXAMINATION

BY MS. GEHRING FLORES:

Q. Good morning, Mr. Dobbelaere.

A. Good morning. Good morning.

Q. I hope you got some rest last night.

A. Yes. Yes. It's the first time for me, but I may have been some nerve -- shown some nervousity, which is okay, but -- because...

(Interruption.)

A. Yeah. I may have felt some nervousity because I experienced some category mistakes in the questions, which I talked. But okay.



1 Q. Yeah, I'm sure the -- we had quite a dizzying  
2 display of numbers and tables and graphs yesterday, and  
3 over the years of this case, and knowing how much you've  
4 taught me about metallurgy, and how complex polymetallic  
5 smelters work, I'm pretty certain that you would love to go  
6 through every single number, and every single graph and  
7 every single table --

8 A. Yes. Absolutely.

9 Q. -- but I think we might be losing the forest  
10 through the trees.

11 A. Yes.

12 Q. So I want to go back to basics.

13 A. Okay.

14 Q. To very basic truths and facts.

15 A. Yep. Yep.

16 Q. And I'm going to ask you some questions, and I'm  
17 going to ask, as painful as this might be for you, I'm  
18 going to ask that you not use any numbers, any graphs, or  
19 any tables. I want you to answer me as simply and  
20 basically as possible.

21 A. Okay.

22 Q. Because I -- and I know you certainly don't want  
23 anyone here to lose track of the very basic truths that are  
24 going on here. So -- and I'm sure if the Tribunal wants  
25 you to go through all of the numbers and graphs, they'll

1 tell you, they'll tell you later.

2           So remember yesterday, you gave the Tribunal an  
3 analogy of a wood-burning stove?

4           A.     Yes, I did. Yeah.

5           Q.     Okay.

6           A.     I couldn't even finish the story, but okay. It  
7 was about what I think about. Right.

8           Q.     Well, I want to use that analogy with my  
9 questions for you.

10          A.     Okay.

11          Q.     And then just answer with no numbers, no tables,  
12 no nothing.

13          A.     No, no.

14          Q.     Like that, just the truth.

15                 So in your analogy, you have a neighbor who has a  
16 wood-burning stove; correct?

17          A.     Yes.

18          Q.     Okay. And if I'm understanding this right, the  
19 wood-burning stove has a chimney that sends smoke, maybe  
20 higher up out the top of the house.

21          A.     Could be, yeah.

22          Q.     And it's an old wood-burning stove.

23          A.     Yes.

24          Q.     And because of that, it sends smoke, not only out  
25 the chimney but also, maybe, out the window of the house.

1           A.     Yes.  What I wanted to say, if you -- I think  
2 people from Germany will know very well, if you then start  
3 to use waste wood, and --

4           Q.     If you?

5           A.     Start to use waste wood --

6                   (Overlapping speakers.)

7           Q.     Let me --

8           A.     You will produce more smoke and then it will come  
9 out of your house.

10          Q.     Okay.  Well, let me -- okay.  I want to walk you  
11 through this --

12          A.     Yeah, okay.

13          Q.     -- just so people understand, step by step.

14          A.     Okay.

15          Q.     Very basic.  And I'm going to go factor by  
16 factor --

17          A.     Okay.

18          Q.     -- isolating the variables.

19                   So a new neighbor comes in.  This is part of your  
20 hypothetical or your analogy.  A new neighbor comes in and  
21 promises to operate that wood stove in a cleaner way, to  
22 make it cleaner; right?  Or replace it, even, with a --

23          A.     You had agreed --

24          Q.     I haven't asked a question yet.

25          A.     Okay.  Yes.  He expected.  Yeah.

1 Q. So the new neighbor comes in, promises to make  
2 his wood-burning stove cleaner, fewer emissions. So if the  
3 new neighbor comes in and starts putting more wood into the  
4 stove, more wood -- not dirtier wood, just more. He uses  
5 clean wood. It's dry, just more.

6 What does that do to emissions?

7 A. It will smoke more.

8 Q. Okay. So more, you're saying --

9 A. More emissions, yeah.

10 Q. And more emissions. Okay. Is there  
11 anything -- if nothing else changes, he just puts more wood  
12 in, clean wood, is there anything that will make the  
13 emissions go down?

14 A. No.

15 Q. Okay. Now, let's go to the next variable. Let's  
16 say the new neighbor doesn't increase the amount of wood.

17 A. Okay.

18 Q. Okay. Just uses the same amount -- is burning  
19 the same amount --

20 A. Yes.

21 Q. -- as the old neighbor, but the new neighbor uses  
22 dirtier wood and wet.

23 What does that do to emissions?

24 A. Yeah, it would produce other type of emissions,  
25 and more, because if you take wood from an old railway, it

1 will start to emit benzene, whatever, nasty things, nasty  
2 stuff, more, and it will produce the same -- yeah, same  
3 amount of ashes, because everything you add will go to your  
4 stack, eventually out of the door.

5 Q. And in that scenario, where he's not burning more  
6 wood, it's just dirtier wood, is there anything that will  
7 make emissions go down?

8 A. No.

9 Q. Now, if the new neighbor moves in and starts  
10 burning more wood, and all of that wood is dirtier, it's  
11 the dirty wood, what happens to the emissions compared to  
12 the old neighbor's emissions?

13 A. They will very much go up, very much.

14 Q. Okay. And if nothing else changes, then is there  
15 any way -- any way with -- in the world of science, is  
16 there any way that emissions will go down?

17 A. Not to my understanding, and I'm reasoning from  
18 the source.

19 MS. GEHRING FLORES: No further questions.

20 THE WITNESS: Okay.

21 PRESIDENT SIMMA: Thank you, Ms. Gehring Flores,  
22 for this.

23 That gets us to the phase of questions from the  
24 Tribunal. And I -- okay. Mr. Thomas? Okay.

25 QUESTIONS FROM THE TRIBUNAL

1           ARBITRATOR THOMAS: You had an exchange yesterday  
2 with Mr. Weiss, and it was -- it concerned the process of  
3 concentrates being delivered to the refinery. You  
4 mentioned the sampling process that takes place --

5           THE WITNESS: Yes.

6           ARBITRATOR THOMAS: -- one scoop for the vendor,  
7 one for the purchaser, one for the lab, as I roughly  
8 understood it.

9           THE WITNESS: No. One for the purchaser, one for  
10 the vendor, and one for the witness.

11          ARBITRATOR THOMAS: Yeah, the arbitrator.

12          THE WITNESS: For the independent Party.

13          ARBITRATOR THOMAS: Right. Sorry.

14          THE WITNESS: Just in case the exchange was out  
15 of what they thought it should be, and it was mainly for  
16 precious metals, and certainly for all the other  
17 metals -- not for iron because it's not an iron factory.

18          ARBITRATOR THOMAS: Yes. Right. Okay.

19          THE WITNESS: Okay.

20          ARBITRATOR THOMAS: The question I had is this:  
21 There's been a lot of discussion about the nature of the  
22 concentrates that were used in the refinery.

23          THE WITNESS: Yes.

24          ARBITRATOR THOMAS: Can the refinery Operator  
25 know, before it processes the concentrates, what the level

1 of sulfur, for example, will be in the concentrates?

2 THE WITNESS: Yes.

3 ARBITRATOR THOMAS: Can you explain?

4 THE WITNESS: Sulfur in this type of processes is  
5 your fuel, because it's sulfur bound to the metal, and if  
6 you bring oxygen, it produces energy. So this type of  
7 smelter tries to -- if you smelt, you need a certain  
8 temperature, and the temperature -- one of the elements in  
9 the temperature is to know how much sulfur you put in.

10 That's the first thing. So sulfur -- so in this  
11 Plant, very easy, three main -- let's forget zinc now -- is  
12 lead, copper -- it's in the tables -- copper, lead, and  
13 sulfur. Yeah.

14 ARBITRATOR THOMAS: From a smelting perspective,  
15 is it desirable -- forget about the emissions control, but  
16 from the smelting perspective, is a higher sulfur content  
17 more desirable from the smelter's perspective?

18 THE WITNESS: I would say a balanced, because you  
19 are dealing with a heat balance. It's more complex than a  
20 material balance. The first thing you have to know is the  
21 material balance, and then you can go to your heat balance,  
22 and, of course, you can adjust on the road because, if  
23 there is more water, it has been raining, you will have to  
24 use more -- try to use more sulfur, or slow down your  
25 process. That's the control on the spot.

1           But up front, you know you have a -- what you  
2 call, in our case, a fabrication program. You know this  
3 month you will have to treat this type of concentrates with  
4 this composition.

5           ARBITRATOR THOMAS: Okay. The second  
6 question -- forgive me if these are very elementary, but is  
7 there a correlation between high sulfur and high lead  
8 content in the concentrate, or are those separate  
9 variables?

10          THE WITNESS: Not necessarily. There is not  
11 necessarily a direct correlation. There will be a  
12 correlation between copper and sulfur because it's copper  
13 sulfide in the pure copper concentrate, and there will be a  
14 correlation between lead and sulfur in the pure lead  
15 concentrates, because it's -- the connection is PBS.

16          So PBS is a chemical connection, but there will  
17 also come sulfur with iron, which is the "findantes," the  
18 fluxes, which are in the -- so there is no direct  
19 correlation between one of the elements. You have to add  
20 them together to check if the sulfur is consistent with  
21 what you think it is, but you can do these checks.

22          ARBITRATOR THOMAS: Okay. Now, I've gained from  
23 your Expert Reports that a key element of your Expert  
24 Reports, is your position that DRP used -- I don't know if  
25 the term is an appropriate term or not -- but the "dirtier



1 concentrates."

2 Are you -- how did you come to the conclusion  
3 that it is -- is this, in your mind, is it a question of  
4 debate, or uncertainty, or is it a fact?

5 THE WITNESS: It is absolutely not a question of  
6 debate. It is a fact, and let me tell you this:  
7 Yesterday, I've seen in this whole file -- I was looking  
8 for, where are the data. And yesterday Mr. Bruno asked us,  
9 was there a logbook. Now, if there is one logbook on which  
10 you can rely, it is the heart of a smelter. It is the  
11 department that managed the whole inputs, outputs of your  
12 smelter, because if you don't manage that well, if you  
13 don't manage well your recovery, you're dead, you're not a  
14 smelter. You're just somebody who does something.

15 So -- and Mr. Buckley on the first day, he said,  
16 "oh, these guys were doing a good work. We kept these  
17 guys." Of course, he kept the guys. If they would have  
18 told me that, oh, but when we came in we know a lot better.  
19 We have changed the whole system. They didn't change the  
20 system.

21 Now, this logbook from 1999 until the end,  
22 1997 -- I looked at 1997 -- sorry, 2007, but it was until  
23 2009, was there in an office in Lima. And this  
24 was -- there is one document which shows what they did,  
25 these people from SX-EW, how they get it out of the office

1 with the help of the Metallurgical Division at the time of  
2 the insolvency, and that they checked all the numbers that  
3 were relevant, and this was it.

4 ARBITRATOR THOMAS: And is this what you base  
5 your --

6 (Overlapping speakers.)

7 THE WITNESS: Absolutely, but I did -- and it's  
8 in my Report, page of, I think, 52, 53, my Second Report.  
9 I checked the numbers on my own. I did not use their  
10 balances. I have a table with the result of their balance,  
11 the balances from SX-EW based on the same data, and I have  
12 done for, I think, for the year '95 and 2002, I did a check  
13 and it came exactly to the same numbers, by doing the mass  
14 balance myself. I know how to do a mass balance, and, I  
15 mean, for the exercise here it was not that difficult  
16 either.

17 And then -- okay. Maybe I'll let you put another  
18 question, but when I first started this study I saw, hey,  
19 they increased the leads in the lead circuits because DRP  
20 were lead smelters and know everything, by 30 percent.

21 This is a lot, 30 percent. This is more wood in  
22 your stove. Yes. It doesn't look as if everything that  
23 happened, and especially the sudden rise in main stack can  
24 explain this only. Said this, yeah, but this is a complex  
25 smelter, I know what a complex smelter is. So I started to

1 look at the copper side.

2 Now, there are a lot of data also in the PAMA and  
3 also in the first study of Kilborn that confirm that the  
4 converters were the most polluting operation in the copper  
5 part, in terms of lead. So a lot of people who are dealing  
6 with copper concentrates, even Partelpoeg, they could have  
7 been surprised by this. I was not surprised, and  
8 I -- because I understand how their system worked.

9 And maybe I should -- with another, and just a  
10 simple way of explaining, if you put lead in a copper  
11 circuit, it is not innocence, because what is the product  
12 that you want to make? You want to make copper, pure  
13 copper, which means that all the lead has to go. It has to  
14 go out of the circuit. So if in a year you put, in total  
15 8,000 tons, or it was 7, 7,000, and then some years later  
16 you put 11,000, this is a huge increase.

17 Now, the second thing is, the system is -- you  
18 can have a very simple analogy on that system also in your  
19 copper circuit. You have, like, a sponge, which was the  
20 slag, and there can be some lead in the slag.

21 And what is the rest? I mean, in the copper  
22 circuit, you put lead in copper circuit. You have a  
23 sponge. The rest is in the air. No, it's not in the air.  
24 It's in the gas from the system. So now the sponge is  
25 2,000. Now, you put in 7,000. 5,000 goes to the gas. You

1 put in 11,000, and the sponge is still 2,000.

2           How much goes to the gas? 9,000. This is nearly  
3 double. Now, 9,000, imagine it is all going to main  
4 Cottrell, all. And this filter leaves 5 percent in the  
5 air. I imagine it could do more, but this -- I don't  
6 know -- the number was 9,000. It is 450 tons out of main  
7 stack, which is as much as the rest of the circuit, as the  
8 lead circuit, even more.

9           This is one thing, but now how many fugitives  
10 were there at the converters? Mr. Partelpoeg, he shows, I  
11 think, on his Report in 2014, on Page 7 or 8, he shows a  
12 picture from a copper converter, from his experience. You  
13 know, it is smoking like hell.

14           Now, this smoke is a lot of SO2 fugitives. And  
15 the focus was on SO2 fugitives. How many lead was in that  
16 smoke. If you look at the investigations from Kilborn, you  
17 will find how much lead was in that smoke, because it was  
18 measured in 1996, I think. It was measured, and it's a  
19 lot.

20           ARBITRATOR THOMAS: Okay.

21           THE WITNESS: So, therefore, I was very much  
22 agreeing with the number of lead emissions that came out in  
23 the study of McVehil and Monette, who is an environmental  
24 specialist. I have been -- I said yesterday, I'm not an  
25 environmental specialist. I don't care, but I know what

1 comes out of the source, and this is about what comes out  
2 at the source, and he put a number like 700, and I don't  
3 know exactly what the number, 720, or something, and  
4 Mr. Fornberg from his office in USA, the environmental  
5 specialist of DRP.

6 On coal from numbers he takes out from a  
7 classical classic smelter, he puts half of that number  
8 there, half of the number. But the classical copper  
9 smelter has a penalty on input of lead, I think as from  
10 .5 percent. We are speaking here about 3 percent, this  
11 is -- what was the number? 2.6 yesterday, I think, the  
12 lawyer said -- Mr. -- the lawyer said yesterday, the day  
13 before yesterday, we increased by .06. No, no, no. They  
14 increased by .6.

15 Okay. So they increased that. These are huge  
16 numbers. I am not interested in percentages, I am  
17 interested in absolute numbers because they drive the  
18 emissions, and it was a lot. I can tell you it was a lot.  
19 And there is a lot of evidence in the whole files that  
20 these fugitive emissions increased because there was just  
21 more in the circuit.

22 ARBITRATOR THOMAS: Okay. Let me switch  
23 subjects.

24 THE WITNESS: Okay. Thank you.

25 ARBITRATOR THOMAS: Can you go to -- have you got

1 your presentation? It's Page 18. Yeah. It's the one with  
2 the chart. Actually, it's on the screen there,  
3 Mr. Dobbelaere.

4 THE WITNESS: Yeah. Okay. Okay. Nice.

5 ARBITRATOR THOMAS: And I -- you don't need to  
6 repeat what you said yesterday.

7 THE WITNESS: No, no. I know.

8 ARBITRATOR THOMAS: But the problem for a  
9 layperson on the Tribunal is to -- and I think we'll have  
10 to hear from the Parties on this. This is such an  
11 important issue.

12 But it's the apparent collision between your  
13 analysis of the source emissions versus Mr. Connor's  
14 analysis of the air monitoring stations, and this is a, for  
15 me, a real conundrum trying to understand this apparent  
16 conflict in data.

17 THE WITNESS: Yes.

18 ARBITRATOR THOMAS: I don't want you to repeat  
19 what you said yesterday. I understand you say that the  
20 drop in emissions is -- you can't account for that, having  
21 regard to the source data, but I would just like  
22 your -- don't try to explain that. I would like you to try  
23 to just assist the Tribunal in trying to reconcile these  
24 two sources of data.

25 How is the Tribunal supposed to deal with this

1 conflict?

2 THE WITNESS: I don't really know exactly how.  
3 But if I understand your question well, but maybe I can  
4 just say that from the First Report, after the First  
5 Report, after a few months, like two months, I say this  
6 drop in SO2 is impossible, that's infeasible.

7 Since yesterday there seems to be some agreement  
8 that in the -- I don't think here it's one of the two, but  
9 it's the upper, I think. No, it's the lower, the lower  
10 one, the lower drop here, 1990 -- in 2000. It's, indeed,  
11 not a drop or not such a huge drop. Okay.

12 Because they changed the method, and they must  
13 have seen that the method of measuring was flawed, and in  
14 the 2002 Report, you can even see that Mr. Buckley doesn't  
15 even report this as an emission, lower, but still higher  
16 than Centromín, still a rise, which is logic, because it is  
17 more sulfur in the circuit.

18 And the fixing of sulfur is very low, and it  
19 stays very low. There's nothing being done about this.  
20 It's a small fixture of sulfur in the slag, and in the  
21 small, small, small acid method is there.

22 So this drop, to me, is now, after more than  
23 2.5 years, finally -- not explained, but agreed that it is  
24 not real. I'm talking about sulfur. Okay. Now, I'm  
25 talking about the first graph, which is lead. This is the

1 famous correlation.

2 Now, I cannot explain that drop in 2000 either  
3 because there are no Projects that explain such a huge drop  
4 in front of it. There are no Projects there that can  
5 explain this drop. And I have made some assumptions, but I  
6 asked for it. I asked for data to say how can this drop be  
7 there?

8 Now, there is another thing that strikes me.  
9 This is the rise in 2004, which is also not relevant. But  
10 it goes up, so it's not well explained.

11 ARBITRATOR THOMAS: Okay. Thank you very much.  
12 Oh --

13 THE WITNESS: I can only say that the  
14 common -- these numbers are tons per year, tons per year,  
15 tons of emissions per year. The measurements are flow  
16 rates, velocities in the stack, samples and concentrations  
17 in the lab. That's how. And if you multiply these two  
18 together times 365, you come to that number. I've done  
19 this 100 times in this case.

20 And the one only common factor is flow rate.  
21 Now, imagine or suppose there is a mistake in flow rate in  
22 measuring the velocity. I don't know. Then both are  
23 flawed. Nobody can explain me that. If the flow rate is  
24 wrong, was wrong in the first ones, then this drop is not  
25 explained. So I can never -- if somebody asks me, "do you



1 believe in this correlation?" No, I cannot because I  
2 am -- I am sure. I'm sure. I have no evidence that this  
3 is right, and I have more questions about it that are not  
4 answered, and I put them in my Report and there are other  
5 things that are not explained like, why does the  
6 temp -- how can you explain that the temperature drops? If  
7 you say my objective is to have more processed gases in the  
8 stack, the processed gases, they are not 70 degrees. They  
9 are like 360, 46, when they arrive in Main Cottrell. They  
10 are also measured in 1996. So this is not an explanation.

11 So at the same time, flow rate drops and  
12 temperature drops. There is nobody in the room, I think,  
13 and even outside the room that can explain me this by  
14 saying "we were just doing the same and we just managed to  
15 have a better efficiency in Cottrell." Were there works on  
16 the Cottrell? Yes. They were finished when? Somewhere at  
17 the end of 2001. Then, the works in Cottrell, there is a  
18 figure on it.

19 Mr. Connor says they -- the particulate  
20 emissions, he doesn't speak about lead emissions.  
21 Particulate emissions dropped by so many tons, I think 51,  
22 but I don't know. A number per day.

23 Now, if you look at the ratio in the stack  
24 between lead and dust, you'll never come to that drop. It  
25 is impossible. It is far away from that drop. So what

1 number should I use then? And, yeah, I mean, this is  
2 one -- and then, I mean, there is another graph of Connor  
3 who says, "we did works on the Cottrell, and everything  
4 dropped except the PM10 particles." What does that mean?

5 A Cottrell collects dust. Why can't a certain  
6 dust go up and another dust go down? How can a Cottrell  
7 separate the types of dust? I don't understand it. So  
8 there are so many things I didn't understand, and there is  
9 no explanation. There is some figures put together, some  
10 presentation, I don't know. I gave it a name, and I won't  
11 do it again. That doesn't explain it to me, and that's  
12 what I have to say.

13 ARBITRATOR THOMAS: Okay. Thank you.

14 PRESIDENT SIMMA: If I may follow up. I'm sorry.

15 ARBITRATOR GRIGERA NAÓN: Could you explain to us  
16 how these monitoring stations work and how that -- because  
17 your point is that this is the moment in which you have to  
18 test, for example, fugitive emissions, and the flow of  
19 fugitive emissions, rather than looking at what happens  
20 after.

21 Could you clarify to me how that works  
22 technically?

23 THE WITNESS: You mean what -- I was not asked to  
24 look in detail in the monitoring stations, but I can tell  
25 you something about the monitoring stations just from my

1 readings, not from evaluating them or not.

2           Yesterday, I was like driven in a corner to agree  
3 that the monitoring stations were checked by professionals.  
4 What they showed me was SO2 monitoring station in 2002  
5 checked by an American professional. Okay. Fair enough.  
6 And it was told to the public. Ms. Deborah Proctor used  
7 the data from these monitoring systems, somewhere between,  
8 I don't know, 2000-2005, and then, in the rebuttal,  
9 Claimant said, "no, no, no, you cannot use these data.  
10 They were flawed." So this is very strange to me. If, on  
11 the one hand you said they were checked by a professional,  
12 and on the other hand, if we use this, they say, "no, you  
13 cannot use these, these are flawed." This is one thing.

14           I was also asked question that, "do you have some  
15 evidence that the lead monitoring stations were flawed?" I  
16 don't know. I don't have any evidence that they were  
17 checked, as they claim, for the SO2, so how could I know?

18           What I see is that there is some reasoning that  
19 the first monitoring stations, when Centromín started, were  
20 flawed. I was not asked to look into that in detail, but,  
21 I mean, I cannot see if they were flawed or not, but I  
22 can -- I didn't look after evidence to say there were  
23 flawed because I was not asked for it. But what I have  
24 seen is that these same monitoring stations were only  
25 changed, I think, 1999. So they were good enough to use by

1 DRP at the time when they rised, but yesterday they say,  
2 "yeah, they also went up in '97." Yeah. Okay. '97 was a  
3 common year. Okay. 10 months Centromín, and two months...

4 Sorry, I cannot explain the monitoring stations  
5 into that extent, but I see things from Claimant trying to  
6 convince you with things that are like category mistakes,  
7 as far as I can judge that.

8 ARBITRATOR GRIGERA NAÓN: Thank you.

9 PRESIDENT SIMMA: I have one question, if I may.

10 THE WITNESS: Yes.

11 PRESIDENT SIMMA: And I would -- we would need  
12 the same slide, the one with the various curves. If you  
13 look at just the explanation given for the sudden drop.  
14 Okay.

15 THE WITNESS: Yes.

16 PRESIDENT SIMMA: And what you said I've also  
17 read. It was a change in the method of measure, measuring.  
18 There was a term for it, but -- which I don't have.

19 THE WITNESS: Mass balancing.

20 PRESIDENT SIMMA: Mass balancing. Okay.

21 THE WITNESS: On sulfur, yes.

22 PRESIDENT SIMMA: And you seem to be content that  
23 that -- you just said -- a few minutes ago, you said,  
24 "yeah, there was a change," et cetera, and you didn't  
25 really put the question mark on that. You seemed

1 to -- that it's possible if you change to mass balancing,  
2 this sudden drop is -- could happen, could be somehow  
3 explained.

4 Now, my question is as follows: If that change  
5 of method had occurred during the Centromín period, that is  
6 before the 1997, if they had changed, let's say, in 1990,  
7 things would also have gone down; right?

8 THE WITNESS: What I see in the PAMA -- that's  
9 what I checked, that the PAMA used mass balance to write  
10 the PAMA. And to say this is the input of my system, these  
11 are the fixed sulfur in acid, in slags, and in the residue  
12 from the zinc, this is a small number. You subtract the  
13 small number from the high number, and then you multiply it  
14 by factor of 2 -- this is chemistry -- just to have how  
15 much SO<sub>2</sub> goes into environment. And the PAMA nicely writes  
16 that this is the sum of fugitive and stack emissions  
17 because there is one equation, two variables. So still, if  
18 you do mass balance, as an operator, you can choose what  
19 you report to the authorities if you don't measure, but I  
20 can tell something I don't know -- but, if you are  
21 desperate about your measurements, which they seem to have  
22 been because they have seen that, a certain moment, and  
23 they have been asked for it in the SVS Report, in that  
24 audit from -- and also MEM has seen that something is wrong  
25 here. Then you only have mass balances, mass balance on

1 SO2, but your degree of freedom is to say, yeah, but what  
2 goes in fugitives and what goes now in stack? You can  
3 choose that. You can only eliminate that choice by  
4 measuring.

5 Now, what they did, and what you can read in the  
6 SVS Report, they did both. Maybe they changed their  
7 measuring methods because these measurements made more  
8 sense all of a sudden. They didn't make any sense if these  
9 were reported out of measurements in the Year '97, '98,  
10 '99. They really didn't make any sense because, I mean,  
11 there were so many -- the drop is the equivalent of the two  
12 Acid Plants that were installed by 2008. It's more than  
13 the sum of the two Acid Plants. This dropped together.  
14 This is just impossible. I mean, if you look at it, it  
15 doesn't take you a long time to understand this, that, if  
16 you are -- if you used to SO2 abatement and things so...

17 PRESIDENT SIMMA: So, for you, the explanation  
18 that the drop was just caused by a change in measurement,  
19 then you could have applied that method from the very  
20 beginning, et cetera. It's not just plausible, it is  
21 just -- for you, it's a satisfying explanation.

22 THE WITNESS: It is not an explanation for the  
23 reporting of 450,000 tons of SO2 emissions in the Year 1998  
24 and 1999 because this is not nature. It cannot be. It  
25 cannot be. You would have made year after year a huge

1 mistake in your input of sulfur, which for such a smelter  
2 is -- I mean, it's impossible. I mean, this would be very  
3 unprofessional to have this as an explanation.

4 For me, the explanation is in the flaw in the  
5 measurement of either the SO2 or the flow rate in the  
6 stack. That is the explanation, but nobody gives this  
7 explanation to me. It's, for me, the most plausible, that  
8 this flow rate changed. So -- but if this flow rate  
9 changed, then both figures are wrong, also the lead, and  
10 this is why I cannot agree to accept the drop in lead  
11 either because, if this is the common flaw, one, and,  
12 secondly, there is not any explanation of how this drop  
13 could occur in 2000, then this is not right, for me.

14 PRESIDENT SIMMA: Okay. Thank you very much.

15 THE WITNESS: Sorry for my excitement.

16 PRESIDENT SIMMA: Thank you very much. No, no.  
17 It was a change; right?

18 Thanks again. You are hereby released from your  
19 duties as a witness.

20 THE WITNESS: Thank you.

21 PRESIDENT SIMMA: Thank you very much for coming  
22 and presenting your views and have a good trip to wherever  
23 you want, especially to Alleppey.

24 THE WITNESS: We leave tomorrow -- no, Saturday  
25 evening.

1           PRESIDENT SIMMA: Oh. Okay. Thank you very  
2 much.

3           THE WITNESS: Thank you.

4           (Witness steps down.)

5           PRESIDENT SIMMA: Now, this gets us to the  
6 examination of the last witness, Ms. Kunsman Santos. Are  
7 we more or less ready? So let's -- if you could just guide  
8 Ms. Kunsman in to the witness stand.

9           ISABEL KUNSMAN SANTOS, RESPONDENTS' WITNESS, CALLED

10          PRESIDENT SIMMA: Okay. Let's go on.

11          Welcome, Ms. Kunsman. A particularly hearty  
12 welcome because you're the last witness, and a good  
13 morning.

14          I would like you to read the explanation that you  
15 find in front of you.

16          THE WITNESS: Thank you.

17          I solemnly declare, upon my honor and conscience,  
18 that I shall speak the truth, the whole truth, and nothing  
19 but the truth, and that my statement will be in accordance  
20 with my sincere belief.

21          PRESIDENT SIMMA: Thank you very much.

22          And I'll give the floor to Mr. Vaca to direct you  
23 for the cross.

24          THE WITNESS: Thank you.

25          PRESIDENT SIMMA: Mr. Vaca, you have the floor.



1 MR. VACA: Thank you, Mr. President, good  
2 morning, everyone.

3 Members of the Tribunal, I would like to  
4 introduce you to Perú and Activo Mineros's Expert,  
5 Ms. Isabel Kunsman. Ms. Kunsman is a financing and  
6 accounting Expert from AlixPartners, and Ms. Kunsman has  
7 submitted two Reports in these Arbitrations explaining how  
8 Doe Run Perú's own financial decisions contributed to its  
9 failure to complete the PAMA.

10 Ms. Kunsman, good morning. The floor is yours.

11 THE WITNESS: Thank you. I have prepared a  
12 presentation for the benefit of the Tribunal.

13 DIRECT PRESENTATION

14 THE WITNESS: So in this first slide, I provide a  
15 summary of my experience that I also include in my Report,  
16 and I would like to highlight that I have testified on  
17 behalf of Claimants and Respondents on nearly equal  
18 proportion.

19 So in the Reports, I was asked to opine on the  
20 effect of Renco's Financing Arrangement to finance the  
21 acquisition of Metaloroya on DRP's capitalization and  
22 liquidity. DRP's production and the outcome of its  
23 300 million Capital Investment Program, the effect of  
24 related-party agreements on DRP's liquidity, DRP's  
25 financing structure and the availability of external

1 financing, the Opinions of DRP's independent auditors, and  
2 Renco's assertion that the Global Financial Crisis of  
3 2007-2009 constitutes a force majeure condition, of course,  
4 from a financial perspective. And then I was also asked to  
5 review and respond to selected issues in Mr. Callahan's  
6 Report.

7 I have divided my presentation into  
8 five sections: The PAMA commitments, the funding of the  
9 PAMA commitments, DRP's liquidity position, and then my  
10 review of DRP's Claims on force majeure from a financial  
11 perspective, and, finally, I provide a conclusion.

12 So in 1993, Perú enacted the Environmental Mining  
13 Law. As part of this law, the Ministry of Energy and  
14 Mining issued maximum permissible levels of pollution and  
15 ambient air quality standards. I will be referring to  
16 these as the "Permissible Limits."

17 So the Environmental Mining Law required mining  
18 and metallurgical operations, like Metaloroya, in existence  
19 prior to 1994, to assess the environmental impact of their  
20 operations against the new Permissible Limits.

21 These operations had to put together an  
22 Environmental Management and Adaptation Program, known as  
23 the PAMA, with the specific Projects they would accomplish  
24 to meet these requirements. There were two set of terms,  
25 one 10 years and another five years, but the one that

1 applied to Metaloroya was within 10 years. The Facility  
2 had to conform to Perú's ambient air quality standards and  
3 maximum allowable pollution levels.

4 So fulfilling the PAMA did not entail investing a  
5 specific amount or executing specific Projects. What it  
6 meant was that, by the end of the allowable term, the  
7 Facility would need to conform to current regulatory  
8 standards.

9 So Centromín put together the specific Projects  
10 that they would complete at La Oroya Facility that they  
11 thought would fulfill the PAMA requirements. They were  
12 split into two types of projects: The Modernization and  
13 the Mitigation Projects. And I was here for the Opening  
14 Statements, and this is the same slide that you've already  
15 seen from the PAMA, the original PAMA. And as you can see,  
16 the modernization and Mitigation Projects totaled  
17 270 million that had to be spent between 1997 to 2006. Of  
18 course, this was an estimate that could change.

19 The modernization projects took place primarily  
20 during the first four years of the PAMA. 61 percent of the  
21 expected expenditures would happen in those first  
22 four years. Meanwhile, the Mitigation Projects would take  
23 place primarily in the last four years of the PAMA.

24 The reason of the timing was because, as the PAMA  
25 specifically noted, the implementation of the Mitigation

1 Projects was dependent on the implementation of the  
2 modernization Projects. It's also noteworthy that, while  
3 there were 12 Projects, it was one project, the Sulfuric  
4 Acid Plant, that took up most of the Investment,  
5 231 million, which was about 86 percent of the original  
6 PAMA.

7           And what I mean by the Sulfuric Acid Plant, my  
8 understanding is that all modernization was part of the  
9 Sulfuric Acid Plant Project in the PAMA because it needed  
10 to happen before Project 1 of the Mitigation Projects could  
11 be carried out. Okay.

12           So between 1996 and 1997, Perú prepared La Oroya  
13 Facility for privatization. So what they did is they  
14 created Metaloroya and Centromín and assigned to Metaloroya  
15 all of the modernization projects and just nine of the  
16 Mitigation Projects. So, as Claimants' Treaty Memorial  
17 states, the Government allocated the PAMA Projects between  
18 DRP, modernization and updating the Complex itself, and  
19 Centromín, remediation of existing contamination.

20           In this updated PAMA for Metaloroya, it was still  
21 the Sulfuric Acid Plant, the main Project, with 93 percent  
22 of the expenditures. The Renco Consortium, which I  
23 consider to be The Renco Group and Doe Run Resources, DRRC,  
24 won the bid to purchase Metaloroya. And in accordance with  
25 the STA, they had to make two payments: One of 121 million

1 to purchase Centromín's Shares in Metaloroya that were  
2 already issued, and then 126 million monetary contribution  
3 for the purpose of increasing the Company's stock capital.  
4 So that would be new funds.

5           DRP, which was the Company, the Project Company  
6 that the Renco Consortium created for Metaloroya, assumed  
7 the responsibility for complying with the obligations in  
8 Metaloroya's PAMA and any eventual amendments and making a  
9 120 million accelerated investment within five years of  
10 DRP's PAMA commitment.

11           As part of the implementation of the PAMA, DRP  
12 developed a 10-year Capital Investment Program of  
13 approximately 300 million designed to improve its  
14 operations and to address the environmental requirements  
15 and fulfill the Investment Commitment.

16           DRP -- well, DRRC, in its Report to Investors,  
17 made it very clear that no assurance could be given that  
18 implementation of the PAMA Projects is feasible or that  
19 their implementation will achieve compliance with  
20 applicable legal requirements by the end of the PAMA  
21 Period. So they clearly understood that the PAMA was not  
22 spending a specific amount or accomplishing specific  
23 Projects, but meeting the Permissible Limits set by the MEM  
24 as part of the law that I previously mentioned.

25           Now, as of 2009, DRP still had to invest

1 155 million or 48 percent of the USD 327 million projected  
2 to meet the emission limits. The reason why I focus on  
3 2009 is because, as the first table shows, the estimates to  
4 complete the PAMA Projects change over time, and there was  
5 an extension to complete the Sulfuric Acid Plant granted in  
6 2006 that took them all the way to October 2009.

7 In the original PAMA, the Projects were separated  
8 by modernization and mitigation. Then, in the later  
9 estimates, they were separated between Sulfuric Acid Plant  
10 and the eight other Projects. So as you can see, in the  
11 end, the original -- the estimate, as of the PAMA  
12 Extension, of 245 million was in line with the original  
13 PAMA of 249 million.

14 Based on the 2009 DRP Extension Request, as of  
15 year-end 2007, DRP had completed eight of the nine PAMA  
16 Mitigation Projects for a total investment of 67.6 million.  
17 However, the big Project that I mentioned before that  
18 encompassed 80 -- on average, 80 percent of the expected  
19 investment was still not completed. In the same 2009 DRP  
20 Extension Request, DRP noted that, although they had spent  
21 104 million on the Sulfuric Acid Plant, they still had to  
22 spend an additional 155 million to complete it. So in  
23 total, they still had to invest 48 percent of the expected  
24 investment estimate that they had at that point.

25 Now, I will move on to the funding of the PAMA

1 commitments. So the funding options available to DRP to  
2 fund the PAMA were mainly Equity Capital, which is funds  
3 from investors in exchange for the issuance of new shares,  
4 and in this case, the Investors have to be from the  
5 Consortium; and then Debt Capital, which are funds from  
6 loans or issuance of Bonds. These are typically the two  
7 sources that project companies rely on to fund large  
8 capital investments because large capital investments  
9 require a lot of funding up front and then you recover that  
10 funding, that investment and a return on that investment  
11 over time, over the life of the Project.

12 And it is -- one of the main reasons why  
13 countries privatize Projects is because private companies  
14 have easier access to equity -- raising equity and Debt  
15 Financing. It wouldn't make sense for a country to  
16 privatize a project if they could have achieved that  
17 project development themselves by just using Operating Cash  
18 Flows, which is primarily what DRP ended up doing.

19 Now, with regards to the initial Capital  
20 Commitment, as I explain in my Report, there was a circular  
21 transaction that ended up negating the 126 Monetary  
22 Contribution required by the STA with the purpose of  
23 increasing the Company's Stock Capital. So in this graph,  
24 I show, noted with one -- the circle, the blue circle with  
25 one, that DRM financed -- that DRM financed the purchase of

1 Metaloroya, primarily with a loan from Bankers Trust of  
2 225 million, a significantly smaller loan from DRRC,  
3 another company in the Renco Group, and then a minimal  
4 Capital Contribution of 2 million from DR Cayman, which is  
5 one, two, and three on my schematic. Then DRM, as Point 4  
6 shows, used the 248 Capital Contribution to transfer to  
7 DRP, and then, with that Capital Contribution, DRP, as  
8 Point 5 shows, made a new Capital Contribution to  
9 Metaloroya in exchange for newly issued Shares, and then to  
10 purchase the Metaloroya Shares from Centromín for  
11 121 million, as Point 6 shows.

12           However, that same day, Metaloroya turned around  
13 and made a loan for 125 million to DRM, and DRM -- that's  
14 Point 7 on my schematic. And DRM, in turn, that same day,  
15 used the proceeds from that loan to make a partial  
16 repayment of the Bankers Trust Loan, which is Number 8 in  
17 my schematic.

18           So, basically, DRP used the Capital Contribution  
19 to finance part of the purchase of Metaloroya. And the  
20 Renco Consortium always planned to reverse the Metaloroya  
21 Capital Contribution because, in the Credit Agreement  
22 between DRM and Bankers Trust, it specifically mentioned  
23 that the Loan would take place, and that the partial  
24 repayment of the 125 million would take place, on that same  
25 day.



1           So at the end of October -- on October 23, 1997,  
2 DRM ended up with three loans: The Bankers Trust Loan of  
3 100 million, now, because it was reduced with a Capital  
4 Contribution; the loan from DRRC of 23 million; and then  
5 the loan from Metaloroya, through DRP to DRM, of  
6 125 million, for a total of 248 million.

7           So even though the STA required the Consortium to  
8 increase the stock of capital of the Company, Metaloroya,  
9 and the premium for the issue of Shares, the contribution  
10 the Consortium made never had that effect because it was  
11 negated by the intercompany loan. So the stock capital  
12 never increased by the 126 million. In the end, it just  
13 increased by about 1.5 million, so significantly less.

14           Moreover, the STA mentioned that, within a period  
15 of five years from the date of the signing of this  
16 Contract, the Company commits to invest the amount of  
17 120 million, and that investment must be made necessarily  
18 with the contribution of the 126 million mentioned in  
19 Clause 3.3.

20           Since the Consortium never replaced that Capital  
21 Contribution that went away to pay the Banker Trust Loan,  
22 the 120 Investment Commitment for the first five years  
23 never came from that Capital Contribution. They never made  
24 an additional Capital Contribution either.

25           Now, with regards to Debt Financing, the

1 transactions the Consortium used to purchase Metaloroya  
2 ultimately exposed DRP to a heavy debt burden. So, first,  
3 in March 12, 1998, DRRC replaced the Bankers Trust Loan  
4 with the issuance of high-yield bonds to investors for  
5 248 million. That is Point 1 on the left figure.

6 DRRC, with that 248 million, made a deposit at  
7 Banco de Credito Overseas, which served -- that's Point 2.  
8 And that deposit served as collateral for a loan from Banco  
9 de Credito Overseas to DRM. That's Point 3 that shows the  
10 125 million loan. And then DRM used the funds from the  
11 125 million loan to pay the Bankers Trust Loan, as Point 4  
12 shows in the schematic, and to also pay the \$23 million  
13 loan DRRC had granted to DRM, that's Point 5.

14 So DRM's liabilities went from 248 million to  
15 just 125 million because DRM did not pay the loan DRP had  
16 given them when they first purchased Metaloroya. So DRM  
17 had a liability for 125 million, and DRP had an asset  
18 associated with that DRM liability for 125 million.

19 Then, between June 2001 and September 2002, a  
20 series of transactions occurred that converted the  
21 Metaloroya 125 million asset into a 139 million liability.

22 As I show in the figure on the right on Step 1,  
23 in June 2001, DRM merged with DRP Metaloroya. From an  
24 accounting perspective, this means that the 125 million  
25 liability was canceled by the 125 million asset. So after

1 the merger, DRP no longer had that asset, and DRM no longer  
2 had that liability.

3 Then, the Banco de Credito Overseas Loan, which  
4 is Point 4 in the schematic, was transferred to DRRC, and  
5 that's because DRM defaulted on payments on that Loan.

6 So DRRC then became the lender to DRM, and the  
7 Loan increased from 125 million in principle to 139 million  
8 Loan because there were 14 million of accrued interest. So  
9 with these transactions, DRP ended up having a loan on its  
10 books, a liability of 139 million, and the funds from that  
11 liability had not been used to implement the PAMA or to  
12 invest in Metaloroya. Those funds were the funds that the  
13 Consortium had used to purchase Metaloroya.

14 Moreover, in the issuance of the high-yield bonds  
15 that I previously mentioned, DRP and DRM -- but then, when  
16 they were merged, it was just DRP -- was the guarantor of  
17 DRRC's high-yield bond issue. What this meant was that DRP  
18 was restricted from raising new debt of its own, among  
19 other restrictions. So DRP not only had to repay the  
20 135 -- it was a little less than that actually -- a little  
21 more than that -- the \$139 million loan, but they also were  
22 guarantors to the 248 million high-yield bonds issuance.  
23 So this really restricted DRP from raising additional  
24 financing to execute the actual Projects of the smelter.

25 Further aggravating DRP's financing position,

1   DRP's management entered into seven related-party  
2   agreements that transferred liquidity from DRP to other  
3   Renco companies. Between 1998 and 2004, DRP paid  
4   \$106 million to related Parties, DRRC and DRM, which  
5   constituted over half of its Operating Income for that  
6   period.

7           As was noted during the cross of Mr. Buckley, DRM  
8   was a company with no independent operations; therefore, it  
9   isn't clear what services it provided. Moreover, under the  
10   Restructuring Plan, DRP specifically committed not to pay  
11   related Parties until Project 1, the Sulfuric Acid Plant,  
12   was completed.

13           DRM and -- sorry, DRRC specifically noted that it  
14   was dependent upon payments from DRM and DRP including  
15   loans, advances, distributions, and dividends, to meet a  
16   portion of its debt service requirement. And Mr. Callahan  
17   noted in his Report that these Agreements were necessary to  
18   keep the business growing, but there doesn't seem to be any  
19   correlation between the growth of the business and the  
20   Agreements. For example, between December 1998 to  
21   December 2004, when the intercompany Agreements were in  
22   place, DRP's net sales grew 3.8 percent annually, on a  
23   compounded annual growth rate basis.

24           Meanwhile, the price of copper grew by  
25   13.7 percent and the price of lead by about a similar

1 amount. So there doesn't seem to be a correlation between  
2 the two because, when the Agreements were no longer in  
3 place between December 2004 and December 2007, DRP's net  
4 sales grew by 37 percent on average annually while the  
5 price of copper grew by 28 percent. So these figures show  
6 that there really isn't a correlation.

7 Finally, Claimant is silent as to how the  
8 related-party agreements were replaced between 2005 and  
9 2007 to demonstrate what Mr. Callahan states, that, if the  
10 services were not provided by the related-party entities,  
11 DRP would have needed to obtain the services from third  
12 parties. I have not seen any document, any Contract  
13 replacing those services.

14 So in the end, Claimants limited DRP's options to  
15 fund the PAMA. The Equity Capital Contribution that was  
16 finally available to DRP was only 1.5 million because the  
17 Renco Consortium had used the 125 million contribution to  
18 finance the acquisition of Metaloroya. And I understand,  
19 Mr. Callahan pointed out and it also came up earlier in the  
20 Hearing, that that contribution per the STA didn't have to  
21 remain in cash, and, from a finance perspective, that makes  
22 total sense.

23 But that contribution had to increase the Equity  
24 Capital of the Company, which it didn't, as I showed  
25 before. And it was not available to DRP to pull from

1 during the first five years -- well, during any time of  
2 their investment in Metaloroya. They never had access to  
3 those funds. Once they were used to pay the Bankers Trust  
4 Loan, they were gone. So in the end, they only had  
5 1 -- 1.5 million in available equity funds.

6 Then, from a Debt Capital perspective, DRP did  
7 have revolving credit facilities between 1998 to 2006, and  
8 in 2008, between 40 and 75 million, but revolving credit  
9 facilities are used for working capital needs. So  
10 basically, for operating the Company, not for major capital  
11 investments.

12 And as I will show later, there were several  
13 indicators from bankers, auditors, and the Company's  
14 internal management that they were having difficulty to  
15 access financing.

16 Finally, on cash flows from operations, if DRM  
17 had not withdrawn the 125 million Metaloroya contribution,  
18 and if DRP had not spent 106 million in related-party  
19 agreements, DRP could have used an additional 231 million  
20 in PAMA investments, 69 percent of DRP's estimate as of  
21 1997, I believe.

22 So my Opinions on DRP's financing are consistent  
23 with the contemporaneous opinions of DRP's management and  
24 bankers. For example, in 1998, DRRC's Registration  
25 Statement noted that the financial covenants and other

1 restrictions contained in the new Revolving Credit  
2 Facilities require Doe Run and Doe Run Perú, as applicable,  
3 to meet certain financial tests and limit their ability to  
4 borrow additional funds or to dispose of assets. So DRRC  
5 was using DRP as collateral for its financing.

6 Then, in June 2000, Anna Corvalan, who was a  
7 banker at Credit Lyonnais, said that DRP pays nearly  
8 40 million each year, directly and indirectly to DRR,  
9 directly to DRM, and Banco de Credito. These payments are  
10 channeled through several agency, technical, and managerial  
11 fees, plus constant intercompany lending to DRM, although  
12 the ultimate objective is to pay for the original Cost of  
13 funding the Metaloroya purchase.

14 DRP cash flow generation cannot sustain the  
15 continuation of this money transfer. Anna Corvalan, again,  
16 in July 2000, noted: "The level of operating and interest  
17 expenses DRP is financing for the other two companies is so  
18 high that, DRP, by the end of this year, may have consumed  
19 all the cash. It is difficult to present a credit proposal  
20 with that forecast in our hands."

21 And then, in September 2000, in a memo from  
22 Mr. Buckley to Jeff Zelms, which Mr. Buckley reviewed  
23 during his testimony, during his cross, he noted: "Doe  
24 Run's business model, 100 percent Debt Financing, is  
25 flawed, at least for companies with heavy capital

1 investment requirements. DRP, for example, has financed  
2 all its purchase price, embarked on a major Capital  
3 Investment Program, and sent large intercompany payments  
4 north. That is simply not a reasonable expectation. The  
5 system isn't working."

6 "The handling of the 125 million capital has  
7 created a potentially difficult situation, where businesses  
8 are insufficiently profitable to support our debt load."

9 I will now move to DRP's liquidity position. So  
10 DRP's underperformance predated the Financial Crisis. In  
11 several years, DRP could not service the interest expense  
12 just from earnings.

13 As the first table shows, there were four years  
14 in which DRP's earnings were lower than their interest  
15 expense, so the ones that are marked with a "yes," except  
16 for 2009. So it would be 2000, 2002, 2010, and 2011 -- oh,  
17 and, 2009. Excuse me.

18 Then DRP's financial leverage, in 2001 and 2004,  
19 was more than three times the financial leverage for the  
20 other entities in DRP's competitive set. These are three  
21 mining companies that we could find that had publicly  
22 available data that were also in Perú and dealt with the  
23 same type of metals. They weren't smelters, but we just  
24 couldn't find data for a smelter in Perú that would be  
25 comparable to Metaloroya. But these are companies that



1 would have been exposed to similar risks as DRP.

2           Then DRP also lacked its competitive set in other  
3 financial and liquidity ratios. For example, DRP's current  
4 ratio, which is an entity's ability to pay current  
5 liabilities with current assets, was worse, in this case,  
6 lower than the average since 2000.

7           And then DRP's cash from operations to current  
8 liability ratio, which is used to measure an entity's  
9 ability to pay its current liabilities with cash it  
10 produces from its ongoing operating activities, was the  
11 worst, lowest, among comparable companies each year.

12           Between 1997 to 2009, DRP's auditors also noted  
13 several concerns. DRP had six unqualified opinions and six  
14 unqualified opinions with going concern.

15           So the DRP's auditors raised concerns about DRP's  
16 liquidity, high debt service, and capitalization, as early  
17 as 2001. For example, in 2001, the auditors noted: "The  
18 Company faces liquidity issues that raise substantial doubt  
19 about its ability to continue as a going concern."

20           Then, in 2004, for example, they noted: "The  
21 Company has a net capital deficiency, substantial debt  
22 service requirements, significant capital requirements  
23 under environmental commitments that raise substantial  
24 doubt about its ability to continue as a going concern."

25           In this slide, I also provide several quotes from

1 management that concur that DRP faced a liquidity crisis  
2 prior to the Global Financial Crisis.

3           Now, my review of DRP's Claims on force majeure  
4 from a finance perspective. So I was asked to evaluate,  
5 from an economic perspective, whether the Global Financial  
6 Crisis constituted a force majeure condition. Of course, I  
7 am not a lawyer, so I asked the lawyers, "well, what is the  
8 definition of 'force majeure' that I need to work with?"  
9 And they informed me that force majeure is defined as: "An  
10 event not imputable to the obligor, and consisting of an  
11 extraordinary, unforeseeable, and irresistible event that  
12 prevents the execution of an obligation or causes its  
13 partial, late, or defective fulfillment."

14           So focusing on the extraordinary and  
15 unforeseeable, as I have just noted, DRP had a history of  
16 being poorly capitalized and over-levered well before the  
17 Global Financial Crisis. DRP's high leverage made it more  
18 susceptible to adverse market conditions. And then DRP  
19 faced increased difficulty in accessing capital markets due  
20 to its weak financial position.

21           Renco, in its Pleadings, notes that the fall in  
22 the metal prices caused by the Global Financial Crisis had  
23 a great impact on DRP. However, this is contradicted by  
24 the fact that metal prices were generally higher than they  
25 were at the time Renco signed the STA. Also, in

1 October 2005, management noted that the state of base metal  
2 prices was good. And as you can see from the graph, the  
3 prices of lead, zinc, copper, and silver, during the  
4 Financial Crisis, were in line with what happened in 2005.

5 In conclusion, DRP was not adequately capitalized  
6 and began operations with no capital infusion from related  
7 Parties. The transactions used to purchase Metaloroya  
8 ultimately exposed DRP to a heavy debt burden which  
9 ultimately created a liquidity crisis. The intercompany  
10 payments further exacerbated DRP's growing liquidity  
11 crisis. DRP was particularly susceptible to the Global  
12 Financial Crisis because of its management-imposed  
13 decisions. And neither DRP's parent company nor its  
14 lenders would finance DRP, which ultimately forced DRP into  
15 bankruptcy.

16 And with that, I conclude my presentation.

17 PRESIDENT SIMMA: Thank you very much,  
18 Ms. Kunsman. That brings us to the stage of  
19 cross-examination, which is done by Mr. Fogler.

20 Mr. Fogler, you have the floor.

21 MR. FOGLER: May I request that we take our  
22 coffee break now?

23 PRESIDENT SIMMA: I think a coffee break was due  
24 at 11:00, but this would be 40 minutes earlier, but maybe  
25 we can envisage another one if the rest of the time becomes

1 too lengthy. So we have a coffee break until 10:35.

2 MR. FOGLER: Thank you.

3 THE WITNESS: Thank you.

4 (Brief recess.)

5 PRESIDENT SIMMA: So let's resume, and I give the  
6 floor to Mr. Fogler for his examination. Or not his  
7 examination, the examination of Ms. Kunsman by Mr. Fogler.

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

9 CROSS-EXAMINATION

10 BY MR. FOGLER:

11 Q. Ms. Kunsman, as a numbers person, I want to wish  
12 you a happy Pi day.

13 A. Thank you.

14 Q. It's March 14, 3.14. My daughter is a high  
15 school math teacher. It's a big deal for her.

16 (Comments off microphone.)

17 MR. FOGLER: They bring pies to class.

18 BY MR. FOGLER:

19 Q. Let's get started. I understand that, as part of  
20 your work you have reviewed and studied the Contract, the  
21 STA, between the Parties; is that correct?

22 A. No. I've looked at some specific clauses, but  
23 I'm not a lawyer; so what I've looked at has been from a  
24 finance perspective. I don't -- so, yes, so the clauses  
25 that I refer to, and I've seen others.

1 Q. All right. Well, do you understand that at issue  
2 in the arbitration that you are testifying in, is the  
3 allocation of environmental liabilities that is covered by  
4 some of the provisions of the Contract?

5 A. Yes.

6 Q. And, in particular, Articles 5 and 6, which you  
7 have read those too, have you not?

8 A. Can you please show me; so I can look at them.

9 Q. Sure. We can put them up. It's R-001.  
10 Article 5 -- or the Fifth Clause -- begins on Page 17. At  
11 the very bottom, you can see that this is the Section on  
12 the Company's responsibility in environmental matters, and  
13 it goes on at some length. And then Article 6, which  
14 starts on Page 26 deals with Centromín's responsibilities  
15 in environmental matters.

16 A. Like I said, I haven't studied them in detail,  
17 but, yeah, my understanding is that they divided the  
18 environmental responsibilities between the two.

19 Q. Right. The Contract -- and we can look at these  
20 in detail, if you wish. There is nothing in these  
21 Articles, 5 and 6, which conditions Centromín's assumption  
22 of responsibility on Metaloroya maintaining a certain  
23 amount of capital, is there?

24 A. I would need to look at them in detail.

25 Q. You're not -- at least you don't know, off the

1 top of your head, whether the Contract itself requires  
2 Metaloroya to keep a certain amount of capital in order for  
3 Centromín's assumption of responsibility to be maintained?

4 A. I don't know. That's not something I looked at.

5 Q. Okay. Do you know, then, whether any of these  
6 Articles requires Metaloroya to have a certain capital  
7 ratio in order for Centromín's assumption of responsibility  
8 to remain in effect?

9 A. I am not aware. It's not something I've looked  
10 at.

11 Q. Or whether Metaloroya needs to maintain a certain  
12 liquidity to -- or any other financial status in order for  
13 Centromín's assumption of liability to be effective?

14 A. Not that I'm aware of, but, again, I didn't study  
15 the Contract with that in mind -- well, I didn't study the  
16 Contract in detail, like I said.

17 Q. All right. Well, putting aside even the  
18 allocation of environmental responsibilities, do you know  
19 whether the Contract, as a whole, requires Metaloroya to  
20 maintain a specific level of capital?

21 A. Not that I'm aware of specifically, but it does  
22 say, as I pointed out in my presentation, that the  
23 Consortium needed to increase the stock capital and premium  
24 of the Company, Metaloroya, by a certain amount, and that  
25 that amount had to be available because it would fund the

1 accelerated Investment Commitment of 125 million during the  
2 first five years. So indirectly, from a financial  
3 perspective, it did, but, like I mentioned, it didn't have  
4 to be in cash. It just needed to be available.

5 Q. And it didn't even have to be kept in the  
6 Company. I mean, you actually put in your  
7 presentation -- let's look at the specific clause that  
8 required the payment for the increase in the stock capital.  
9 That's the Third Clause of the Contract. It's at Page 12.

10 Here you have the -- this is the -- in addition  
11 to the payment that was made to Centromín, as you described  
12 for us in your presentation, there was an issuance of new  
13 stock by Metaloroya to DRP for the \$126 million; correct?  
14 Could we go to the next page. It's in 3.3. There you go.

15 The contribution -- you quoted this in your  
16 presentation?

17 A. Yeah, that's what I'm trying to find. Yeah.

18 Q. Right.

19 A. Yeah. Okay. I'm there.

20 Q. This comprises the monetary contribution destined  
21 to increase the stock capital of the Company and the  
22 premium for the issue of Shares, and it talks about how  
23 it's going to be accounted.

24 And if we go to the last sentence of 3.3, on the  
25 next page: "It is hereby understood that the Company will

1 not be obliged to maintain in cash the amounts contributed  
2 to increase the stock capital of the Company, pursuant to  
3 numerals 3.2 and 3.3, but such funds may be used for such  
4 other purposes, commercial operations, or others."

5 A. That's what it says, yes.

6 Q. And there was no restriction in the Contract for  
7 what Metaloroya could do with that money?

8 A. From a financial perspective, there is an  
9 implicit restriction in that it had to increase the stock  
10 capital of the Company, and in making an intercompany loan,  
11 it didn't.

12 Q. Now, there's no -- just as I was asking  
13 previously about the specific allocation of environmental  
14 liabilities, there's nothing in the Contract that required  
15 Metaloroya to maintain any specific asset to liabilities  
16 ratio, was there?

17 A. Not that I'm aware of, no.

18 Q. You did refer in your presentation to the  
19 Investment Commitment --

20 A. Yes.

21 Q. -- in Article 4, the \$120 million over  
22 five years; right?

23 A. Right.

24 Q. And my understanding of your position is that  
25 that Investment Commitment, even though it specifically



1 says in the Contract is for modernization, your position is  
2 that is in addition to the modernization that is discussed  
3 in the PAMA; is that correct?

4 A. No.

5 Q. Is it your position that -- well, we know that  
6 the \$141 million modernization estimate that's given in the  
7 PAMA was prepared prior to the negotiation of the STA,  
8 don't we?

9 A. I don't know when the negotiations started for  
10 the STA, but it was prepared by Centromín.

11 Q. Is it your position that the Investment  
12 Commitment of 120 million for the first five years replaced  
13 the modernization estimate that was in the PAMA?

14 A. No.

15 Q. So, in your view, they're two separate  
16 obligations?

17 A. The 120 million is an obligation per the STA.  
18 The modernization 140 million is an estimate of Centromín  
19 of what it would take to carry out certain Projects that  
20 Centromín deem necessary to carry out in order to meet the  
21 emission levels. So the investment itself was not the  
22 commitment, the investment of the 140 million. The other  
23 one, per the STA, from a financial perspective, I see it as  
24 a commitment, and that that 120 million has to come from  
25 the initial 126 million contribution.

1 Q. Let me make sure I understand.

2 A. Okay.

3 Q. Could Metaloroya, or DRP, once it merged with  
4 Metaloroya, have used the \$120 million Investment  
5 Commitment from the STA to fund the Modernization Projects  
6 that had been listed in the PAMA?

7 A. It could.

8 Q. Okay. So there -- in that sense, there could be  
9 overlap?

10 A. Yes, there could be.

11 Q. Okay. Have you seen any communication from the  
12 MEM, the Ministry of Energy and Mines in Perú, to DRP that  
13 DRP was not keeping up with any obligation to fund  
14 Modernization Projects?

15 A. No. I haven't seen it, but I understand. And I  
16 haven't seen the Report, that there's that SVS Report, but,  
17 no, I haven't seen any.

18 Q. Okay. Well, I want to -- let's focus on what's  
19 in the Contract, then, because there is actually a specific  
20 procedure set out for verifying that DRP is complying with  
21 the obligation to fund the \$120 million modernization, or  
22 Investment Commitment; right?

23 A. I have not studied that clause. To me, that's a  
24 legal procedural issue. It's not something that I was  
25 asked to do; so...

1 Q. Well, let me show you Article 4.2 on Page 14?

2 A. Okay.

3 Q. This is the clause that discusses the Investment  
4 Commitment, and it -- in 4.2, there's a procedure set out  
5 for the Company, that being Metaloroya here, to present  
6 sworn statements from independent auditors, to Centromín,  
7 and gives Centromín the opportunity to review that. Have  
8 you ever seen any communication from Centromín that the  
9 \$120 million Investment Commitment had not been met?

10 A. You mean from Centromín or to Centromín?

11 Q. Either way.

12 A. I have not.

13 Q. Okay. And at the end of the five-year period,  
14 there was -- we can go up a little bit further. The  
15 Company is supposed to submit a report, and it's supposed  
16 to be countersigned by independent auditors to verify that  
17 the \$120 million commitment has been met.

18 Have you seen any indication in any documents  
19 that that commitment was not met?

20 A. The only Reports that I've seen on investment,  
21 the investment made, have been from the Audited Financial  
22 Statements, which sometimes on the notes contain the  
23 amount. Then on some of DRP's requests for Extensions,  
24 especially the 2009, and then I know Mr. Callahan uses some  
25 report to the communities, but I haven't seen what you're

1 telling me this Clause says. But I didn't look for it  
2 either or ask for it; so I...

3 Q. You're not aware, then, of any communication from  
4 Centromín to DRP that says: "You have not fulfilled your  
5 obligations under Clause 4 to make this \$120 million  
6 Investment Commitment"?

7 A. No, I have not.

8 Q. Now, I know you're not a technical person, and  
9 I'm not intending to ask you about the technical aspects of  
10 the PAMA.

11 A. Okay. You'll be disappointed.

12 Q. I'm not either; so we're equally in the same boat  
13 there.

14 And you're not here to offer any Opinions about  
15 the technical aspects of the PAMA, are you?

16 A. No, but in putting together my Report, I did ask  
17 some very basic questions on how the circuits fit into the  
18 PAMA, into the Sulfuric Acid Plant, but all very basic,  
19 yeah.

20 Q. What we do know is that, of the nine PAMA  
21 Projects that were assigned specifically to Metaloroya, DRP  
22 completed eight of those; right?

23 A. Correct. In the 2009 request, DRP specifically  
24 mentions that they completed eight out of the nine for 65,  
25 68 million, something like that. But, of course, as I

1 mention, that was the smaller part of the estimate, yeah.

2 Q. And the ninth, of course, being, as you say, the  
3 big one, the Sulfuric Acid Plants.

4 A. Yes.

5 Q. You know that they also completed the Plant for  
6 the zinc circuit and the Plant for the lead circuit?

7 A. I know that after 2006 they made part -- between  
8 2006 and 2009, as I mention in my presentation, they  
9 made -- they invested 104 million in the Sulfuric Acid  
10 Plant Project. I'm not sure -- I know I've seen it when  
11 reading, but I don't know. I don't remember exactly what  
12 it was. I take you at your word that maybe it was for  
13 that.

14 Q. My only point, Ms. Kunsman, is that it may be in  
15 spite of everything that you are telling us about liquidity  
16 and capitalization and ratios, DRP was able to somehow find  
17 sufficient funds to do those eight PAMA Projects; right?

18 A. Yeah. They were able to find 68 million of a  
19 total; so about 20 percent of what they expected to invest  
20 to complete those Projects.

21 Q. Well, we're going to go through some of the  
22 Financial Statements, and see exactly how much they say,  
23 through their audited financials, what they put in.

24 And you've looked at these Audited Financial  
25 Statements, haven't you?

1           A.       I have, and I put in how much they spent during  
2 the original PAMA Period. I'm not sure if I went all the  
3 way through 2009 because, after 2009, I didn't really look  
4 at much because it wasn't part of my scope of work.

5           Q.       Well, let's just take a slow stroll through the  
6 Statements.

7           A.       Okay.

8           Q.       I'm going to show you first R-74, which is an  
9 Audited Financial Statement for the year -- maybe you could  
10 blow up that middle portion so we could see.

11          A.       Yeah, I see it.

12          Q.       There we go. For the years, as of  
13 October 31, 2000, and 1999. And it's fairly typical, in  
14 accounting, for Financial Statements to present the prior  
15 year and the current year; right?

16          A.       Yeah.

17          Q.       And you probably understand that the fiscal year  
18 for the Company ended on October 31 because the acquisition  
19 was made in late October in 1997?

20          A.       Yeah.

21          Q.       Right?

22          A.       Makes sense, yeah.

23          Q.       So here, we're effectively three years into the  
24 operation by DRP; right?

25          A.       Yes.

1 Q. If we can go to the next page, just to show you,  
2 this is the actual Opinion of the auditors. And KPMG, you  
3 recognize, as a reputable international accounting firm.  
4 Just as we saw in the STA, when they're trying to certify  
5 the Investment Commitment to be made, they wanted an  
6 independent auditing firm to do that, and that's somebody  
7 like KPMG, isn't it?

8 A. There are a lot of questions there. To your  
9 first question, is KPMG a reputable auditing firm? Yes.

10 Have I seen that the STA contained a clause that  
11 said that they needed their Financial Statements audited?  
12 I haven't seen it, but I'm not surprised that it's there.  
13 It's typical, yeah.

14 Q. All right. And this -- I mean, what -- this is  
15 pretty basic for me, not for you. I mean, you deal with  
16 this all the time, but what an auditor's Report is, is the  
17 opinion on the Company's Financial Statements, and this  
18 one, if we go to the last paragraph of this, this is the  
19 Opinion. This is what would typically be called a "clean  
20 Opinion," isn't it?

21 A. Yes.

22 Q. In other words, they're saying, without  
23 qualification, we believe that the financials presented in  
24 this Report fairly and accurately present the financial  
25 picture of the Company?

1           A.     Yes.

2           Q.     Okay.  You mention notes, and after the balance  
3 sheet and income statement and the financials, the auditors  
4 include a series of notes that explain certain aspects of  
5 the Company's financials; right?

6           A.     It's not the auditors that include those notes.  
7 It's the Company that puts together those notes, and the  
8 auditors review them, but the auditor doesn't write those  
9 notes.  It's the Company.

10          Q.     There are notes on Page 18 of this Statement  
11 that, if we do the last half of the page, blow it up a  
12 little bit.  Can you scroll up just a little bit so we can  
13 see the heading.  This is "Environmental Matters," and here  
14 the Company is describing the PAMA Program and what  
15 generally needs to be done.

16                     You've looked at these notes, haven't you?

17          A.     I have.

18          Q.     Okay.  And we go to the bottom of the page, we  
19 see that the Company reports here that it had spent  
20 approximately \$18,600,000 on Projects under the PAMA?

21          A.     Cumulatively, yeah, up to that point.

22          Q.     Right.  And even though that you say the Company  
23 wrote this, the auditors test or verify so that they can  
24 say that that is fairly and accurately presenting the  
25 picture.



1           A.     Yeah.  Auditors have certain thresholds, so they  
2 may not have looked at every single item.  But, yeah.

3           Q.     As of three years into the program, three years  
4 into the operation by DRP, have you seen any finding or  
5 Directive from the MEM that DRP is not spending enough on  
6 the PAMA Projects?

7           A.     No.

8           Q.     Let's go to C-110.  And I'll tell you, this is  
9 not -- obviously not a company Financial Statement, but  
10 this is a report from the Ministry of Energy and Mines in  
11 November 2002.

12                   Have you seen this before?

13           A.     No.  Not that I recall.

14           Q.     So you may know that the MEM sends auditors out  
15 to regularly inspect certain aspects of the operations at  
16 the smelter.

17                   Did you know that?

18           A.     I'm not familiar with the details, and -- I mean,  
19 they're not auditors like KPMG, but they're -- yeah.

20           Q.     Correct.  But, if we go down to the first  
21 paragraph of this Report from the MEM, we've seen this  
22 before in the Hearing, here, it's stating that:  "With  
23 regard to the amounts committed to and programmed in their  
24 PAMA for the Year 2002, an investment of 134 percent has  
25 been carried out with regard to what was programmed."

1           You don't have any reason to dispute that, do  
2 you?

3           A.     That is what it says. I haven't performed that  
4 analysis. I wasn't asked to, so without doing the  
5 analysis, I have no reason to corroborate it or to dispute  
6 it. I don't know.

7           Q.     All right. Well, let's look at a document that I  
8 know you have seen because I think you refer to it in your  
9 Report. It's R-193, and this is the E-S-A-N, ESAN Report  
10 that was -- it's dated in February 2006. This was in  
11 connection with DRP's request for an extension of the PAMA  
12 for the Sulfuric Acid Plants.

13                    You're familiar with that?

14           A.     Yes.

15           Q.     And you understand that this Report was  
16 commissioned by the MEM to look into what had been  
17 happening up to this point in time, which was now  
18 eight years into the PAMA Period?

19           A.     Yes.

20           Q.     So let's look at Page 16, and I'm sure you're  
21 familiar with this chart because you refer to it in your  
22 Report, don't you?

23           A.     Yes.

24           Q.     And this is a report about the investments that  
25 had been made by DRP into the PAMA Projects that are listed

1 in the mitigation portion of the PAMA; correct?

2 A. Yes, in the mitigations, and these are estimates  
3 that they thought -- that DRP thought it would take to  
4 accomplish those Mitigation Projects.

5 Q. The Statement made by this ESAN entity  
6 says: "Until 2004, DRP committed to investing  
7 \$52.8 million in the execution of the PAMA. As of  
8 December 2004, the information provided by DRP indicates  
9 that they have invested \$53.1 million, complying with the  
10 agreed amount."

11 A. For mitigation, yeah.

12 Q. Right. And, again, you don't have any reason to  
13 dispute that, do you?

14 A. No. No.

15 Q. Okay. Now, I do want to point out the next  
16 sentence, just to be fair, because it states, for 2005,  
17 "DRP committed to investing 53.5 million. This amount has  
18 not been met, investing only 18.2 million." But, of  
19 course, this was in connection with the request for an  
20 extension, which ultimately was granted by the MEM. True?

21 A. The Extension for the Sulfuric Acid Plant, the  
22 May 2006 Extension.

23 Q. Are you aware that the Extension also included a  
24 number of additional Projects, that the MEM wanted DRP to  
25 commit to, to control fugitive emissions?

1           A.       I am aware. I'm not sure exactly what the  
2 Projects did, but there were additional, yeah.

3           Q.       All right. And those additional Projects, you're  
4 aware that those were funded and completed?

5           A.       It's not something that I've looked into  
6 carefully, those specific additional Projects. I'm not  
7 sure I even had the ability to break them out by year and  
8 by project. What I mean, with abilities, the information.

9           Q.       Let's look at one more, and this is C-214. This  
10 is Doe Run Financial Statements as of October 31, 2010, and  
11 2009. Just to set this in a time context, DRP is already  
12 in bankruptcy proceedings at this point.

13          A.       Yeah.

14          Q.       But let's look at Page 20. These are the notes,  
15 again, to the Financial Statements.

16                    Again, there's a discussion of the PAMA, and you  
17 see, in the second paragraph that we've highlighted, that  
18 it talks about the Cost of the modified PAMA Projects which  
19 are now expected to total \$481 million, which includes the  
20 copper modernization, the copper circuit Sulfuric Acid  
21 Plant, and the lead circuit Sulfuric Acid Plant. It then  
22 says: "Through the end of the 2010 Fiscal Year, the  
23 Company had spent \$313 million on these Projects."

24                    So my point here -- I want you to tell me if I'm  
25 wrong. Again, regardless of whether it was

1 undercapitalized or didn't have the right ratios compared  
2 to other companies, somehow, it found \$313 million to fund  
3 these Projects; right?

4 A. According to what it says there, yeah. It was  
5 mostly done through the cash flows from operations.

6 Q. Okay.

7 A. Of the -- yeah, of the Company.

8 Q. Are you aware that the Company, Renco and DRRC,  
9 in fact, at the time they made the bid and won the bid,  
10 were promised by Centromín and the Government of Perú that  
11 they could fund these Projects through cash flow from  
12 operations?

13 A. No, I'm not aware.

14 Q. Okay. We heard a lot in the Opening Statement  
15 from Respondents -- and you were here for that?

16 A. I was here for the first part, not the second  
17 part, which was -- I don't know if it was after lunch, but,  
18 at some point, it got very legal, and I got out.

19 Q. Well, maybe you weren't here for the remarks that  
20 Renco had a "pollute-and-profit playbook."

21 Do you remember those remarks?

22 A. I don't specifically.

23 Q. Okay. Let me show you -- I want to show you a  
24 quote from the Opening Statement made by the Respondents.  
25 It was stated: "The truth is that, while Renco got busy

1 extracting profit from DRP's ramped-up poisonous  
2 operations, it stalled DRP's environmental obligations."

3 That sounds pretty bad, doesn't it?

4 A. Yeah.

5 Q. But you know, since you have examined all of the  
6 Financial Statements and done a lot of other work as well,  
7 you know that not a single penny of money from DRP went to  
8 Renco, don't you?

9 A. Renco -- do you mean DRRC? Because I disagree,  
10 no, money did go.

11 Q. I mean Renco.

12 A. Renco as the --

13 Q. The Company that's here today. We have Renco and  
14 DRRC, and I'm asking you about Renco because that's the  
15 quote that we see on the screen.

16 Not a single penny went from DRP to Renco.

17 A. The analysis that I did took the information to  
18 DRM, DRRC, and DR Cayman. I don't know how Renco is  
19 defined there, and how you're defining Renco, so my  
20 analysis went to those Companies that I'm specifically  
21 mentioning.

22 Q. You understand that Renco is a separate company  
23 from DRRC?

24 A. Yes.

25 Q. And that Renco is a separate company from DRP?

1           A.     Yes.

2           Q.     And my question is very specific. I want to see  
3 if you can answer it.

4                     Do you know of any money that went from DRP to  
5 Renco?

6           A.     I have not done that analysis because I don't  
7 know the ownership structure connecting Renco, DRRC, DRP,  
8 and Renco, and DRM and Renco, and DR Cayman. I don't know  
9 how those connections are. It's not something that I was  
10 asked to analyze.

11          Q.     What you do know is that DRP never made any  
12 distributions to its Shareholders, regardless of who they  
13 are; isn't that correct?

14          A.     In the form of dividends, distributions in the  
15 form of dividends? No. But it did pay interest on a  
16 loan -- on the -- I mention it, the Banco de Credito  
17 Overseas Loan, they did pay interest on that Loan that was  
18 used eventually to pay for the purchase of DRP, and they  
19 also made the intercompany payments -- I mean the  
20 intercompany agreement payments.

21          Q.     I'm going to talk to you about those in just a  
22 second --

23          A.     Hold on. Let me finish my answer.

24          Q.     Please.

25          A.     And I also only looked through 2009, which is the

1 period that I was asked to look at. I don't know what  
2 happened after that, in terms of payments.

3 Q. At least through 2009, you know that there were  
4 no dividends or distributions made by DRP to its  
5 Shareholders, don't you?

6 A. As I just answered, there weren't any  
7 distributions in the form of dividends, but there were the  
8 intercompany agreement payments and they were payments on  
9 the Banco de Credito Loan and DRP did have a loan on its  
10 books from DRRC.

11 Q. If a company borrows money from another entity,  
12 typically it pays interest on the loan, doesn't it?

13 A. On intercompany loans, sometimes those interests  
14 are capitalized. So they're accruing, but there are no  
15 actual payments until something, some milestone is met.

16 Q. And, in fact, that happened in this case too,  
17 didn't it? There were a number of interest payments that  
18 never occurred?

19 A. Right. But the only time that interest were paid  
20 on that Loan from DRRC was through the Banco de Credito  
21 Overseas Loan between June 2001 and September 2002, but, on  
22 the loan that then DRP inherited from DRM, it increased  
23 from the 125 million to the 139 because there were some  
24 accrued interest in there as well.

25 So, no, there weren't any actual cash flows for



1 the intercompany loans that went from DRP to DRRC for those  
2 loans, between -- up to 2009, which is what I looked at.

3 Q. Ultimately, the interest payments went to the  
4 bank, didn't they?

5 A. I would assume so because they went bankrupt, but  
6 I don't know. It's not something that I looked at.

7 Q. Let's talk about your related-party transactions.  
8 There's nothing in the Stock Transfer Agreement that  
9 prohibits related-party transactions, is there?

10 A. Not that I'm aware of, but I haven't reviewed it  
11 for that.

12 Q. Okay. In fact, are you aware that, during the  
13 Bidding Process, there were questions and answers from  
14 potential bidders that are incorporated into the Contract?

15 Have you seen those?

16 A. Yeah, there were a lot. I've only reviewed a  
17 couple of -- I searched for specific words when I was  
18 looking for specific items.

19 Q. Well, let me show you one.

20 A. Okay.

21 Q. It's in R-201, Page 16. This is the second round  
22 of the bidding, and there's a question here: "There are  
23 restrictions for utilizing the cash flow contributed and  
24 generated by La Empresa" -- which I understand to mean the  
25 Company Metaloroya -- "and what it refers to, payment of

1 dividends and investment in other companies."

2 I'm not sure the translation works very well  
3 here, but the answer is: "The Contract does not establish  
4 restrictions regarding the flow generated by La Empresa or  
5 the financing of providers."

6 And you understand --

7 A. Do you think we could look at it in Spanish,  
8 because that translation is tough.

9 Q. It's tough.

10 A. Yeah. I'm not sure I understand what it says in  
11 English.

12 Q. You're going to be ahead of me because you  
13 understand it in Spanish and I don't, but let's look at it,  
14 if we can.

15 A. I'm going to take my jacket off, too.

16 Q. Make yourself comfortable.

17 A. Thank you. Okay. And I haven't seen this  
18 before.

19 Q. Give us a moment. It takes a little time because  
20 I had not queued this up on the Spanish side.

21 Does that help?

22 A. It does, yeah.

23 Q. Maybe you can help us then.

24 A. Well, I don't want to interpret. This is the  
25 first time that I see it, so...

1 Q. As far as you know, though, there are no  
2 restrictions in the Contract for how DRP is to use any  
3 money that it earns?

4 A. As far as I'm aware, no, the only restriction  
5 came with one of the Extensions, and that's why the  
6 intercompany loans ended in 2004.

7 Q. You're ahead of me, but, yes, you are correct.  
8 You noted, in your Reports, that, whatever related-party  
9 transfers had occurred, they stopped at the end of 2004?

10 A. Correct.

11 Q. I want to look at the numbers with you for these  
12 related-party transactions. We're going to look at some  
13 Financial Statements again.

14 A. Okay.

15 Q. First, let's look at IK -- those are your  
16 initials.

17 A. Yes.

18 Q. 030. And this is a Financial Statement from  
19 Arthur Andersen. It used to be a reputable accounting  
20 firm, before my town destroyed it.

21 MR. PEARSALL: Our town helped.

22 MR. FOGLER: Yes.

23 BY MR. FOGLER:

24 Q. But, anyway, at least you're familiar with this?  
25 I think this is a Financial Statement for the first year

1 ended October 31, 1998.

2 A. Correct.

3 Q. And let's go to the third page. The Income  
4 Statement. If we could blow this up. This is a fairly  
5 typical Income Statement, with income at the top and  
6 expenses at the bottom, and what we see here, the sales in  
7 1998, \$458,291,000, because that's stated in thousands of  
8 dollars; correct?

9 A. Correct.

10 Q. And the number that you have used in your Reports  
11 is this line item "Fees and commissions to related  
12 parties"; right?

13 A. I believe it is. I don't recall from memory  
14 exactly. If you want to show me from my Report, but I can  
15 take you at your word, if you want.

16 Q. Well, just for example, if you want to go to your  
17 slideshow, on Page 17.

18 A. So this is the first year.

19 Q. 20.3 is what you have.

20 A. Yes. Exactly.

21 Q. I just want you to verify.

22 A. Yeah, I couldn't remember the exact amount for  
23 that year.

24 Q. Trust but verify. Okay.

25 All right. So we also -- if we can go back to

1 the -- you made a comparison for us about how this  
2 number compared to Operating Income. So you compared the  
3 20,000 -- or 20 million to the 44 million, didn't you?

4 A. Correct.

5 Q. Okay. But, if we compare the related-party  
6 amount to the sales, the revenues, it's a much smaller  
7 percentage?

8 A. Yes.

9 Q. It's about 4.5 percent. You can do the math if  
10 you want, but I've done it.

11 A. Right. But you need the cost of sales to be able  
12 to generate those net sales, so if you didn't have the cost  
13 of sales, you wouldn't have those net sales.

14 Q. So you expressed some ignorance about what these  
15 related-party transactions were, but there is a set of  
16 notes in the Financial Statements that discuss these  
17 related-party transactions, aren't there?

18 A. There are descriptions of the Agreements for how  
19 long they were and the fixed payment.

20 Q. So let's go to Page 18 of this Exhibit IK-030.  
21 And I think you're going to have go farther down. It's two  
22 pages before this. There we go, at the bottom.

23 "Related-party transactions."

24 You've seen these before?

25 A. I have.

1 Q. And what this describes, in a series of  
2 subparagraphs, (a) through (d) that goes on to the next  
3 page, you'll see that this talks about the various  
4 Agreements that underlie the \$20 million that is in the  
5 Financial Statement?

6 A. Correct.

7 Q. And you've seen the actual Agreements, too,  
8 haven't you?

9 A. I did at some point early on.

10 Q. Okay. So let's go back to (a). "Effective  
11 October 23, 1997." That's the date that DRP actually  
12 assumed operations; correct? That's the date of the STA.

13 A. Yes.

14 Q. "Doe Run Perú entered into a technical,  
15 managerial, and professional agreement with Doe Run  
16 Resources. Pursuant to this Agreement, Doe Run Resources  
17 provided to Doe Run Perú professional staffing and  
18 equipment for performing technical, managerial, and  
19 professional services for the period from October 23, 1997,  
20 to March 8, 1998."

21 A. Yes.

22 Q. And there's the -- the agreed fee was  
23 \$3.8 million.

24 Now, if you've seen the Agreement, it actually  
25 lists a whole series of services that DRRC are going to

1 provide, things like risk management, accounting, legal,  
2 Human Resources, typical things that companies of this size  
3 need.

4 Have you seen that?

5 A. I saw the Agreement at some point.

6 Q. Okay. I mean, I know you haven't operated a  
7 smelting business; right?

8 A. Yeah.

9 Q. Have you served as -- in a capacity in a private  
10 business, financial operations, that kind of thing?

11 A. I have.

12 Q. Okay. So it wouldn't surprise you that a company  
13 that employs thousands of workers would need to have  
14 administrative and managerial services to manage employees,  
15 Government relations, insurance services, legal services,  
16 things like that?

17 A. Companies, of course, yes, they must have that,  
18 but what surprised me was that they were able to turn off  
19 these managerial Agreements in 2004 without any  
20 implications, or without Claimants providing how they  
21 replaced those Agreements.

22 And also, from the Anna Corvalan email, it  
23 surprised me that if a banker is telling you "We're not  
24 going to give you a loan because you're funneling money,"  
25 that they wouldn't provide an explanation saying: "No, no,

1 no, these are real Agreements." So I do have concern about  
2 these Agreements, as I expressed in my Report.

3 Q. Do you know what the value of the services that  
4 were actually performed was?

5 A. I do not, but based on the evidence that I've  
6 seen, it doesn't seem like they provided value, since they  
7 were able to go away without being replaced by anything  
8 else. That Mr. Callahan would have shown, or DRP would  
9 have shown to the bankers, or in the email, in the memo or  
10 an email correspondence from internal management.

11 They also mentioned these Agreements as siphoning  
12 liquidity from the Company. So based on the evidence that  
13 I've seen, I am not convinced that they provided any value.  
14 And then, especially with the DRM that, as management  
15 noted, it didn't have any employees.

16 Q. Do you know who paid Mr. Buckley and Mr. Diehl?

17 A. According to Mr. Buckley, DRM didn't have any  
18 employees on the testimony that he did in another case,  
19 in a...

20 Q. Do you have any basis to dispute how much it  
21 would cost to provide the kinds of administrative and  
22 managerial services that would be required to run a Company  
23 like DRP?

24 A. Well, I can look at the Financial Statements what  
25 it would be, but if those services were provided for a



1 certain period, and then they went away, and Mr. Callahan  
2 didn't provide how those services were replaced, and then I  
3 can say in the financials, that the income actually went up  
4 for those years, that they weren't replaced, well, it makes  
5 me think that those Agreements were not that useful in the  
6 first place. I mean, Mr. Callahan had the opportunity to  
7 present that, and he didn't.

8 Q. Well, certainly there are other explanations  
9 other than the payments that were made to fund these  
10 specific services that are listed here, because it's more  
11 than just managerial and professional services. Somebody  
12 had to sell the product; right?

13 So there are salespeople and commissions that are  
14 in the other paragraphs of the notes; correct?

15 A. In 1998, yes, but apparently in 2005 they were  
16 able to sell the products without these Agreements, and  
17 they were selling, like I showed in my presentation, that  
18 there doesn't seem to be an impact of not having the  
19 Agreements on the operations of DRP.

20 Q. Well, maybe Mr. Neil, who had been paid by DRRC,  
21 and was under one of these technical, managerial, and  
22 professional Agreements was hired directly by DRP after  
23 that point.

24 Did you consider that?

25 A. I would have only considered that if Mr. Callahan

1 had mentioned it in his Report, and he didn't.

2 Q. Okay. So you're -- without having any facts to  
3 back it up, you are casting doubt on whether the services  
4 that are specifically listed in the Audited Financial  
5 Statements were actually provided?

6 A. I am casting doubt, based on the information that  
7 I present in my Report. It's the intercompany emails, the  
8 comments from bankers, the Statements in the deposition,  
9 that DRM didn't have any employees or operations that he  
10 knew of. So it's based on a lot of evidence.

11 And, look, if Mr. Callahan, in his Report, had  
12 said "these Agreements in 2005 were replaced by these other  
13 Agreements that provided the same services," and I saw that  
14 the amounts were in line, then I would -- that would have  
15 been evidence. But he never did.

16 Q. The evidence is actually in your own analysis.  
17 If you look at your presentation, the page that I referred  
18 you to, Page 17, you show the declining amounts of the  
19 related-Party transactions, don't you?

20 A. Yes.

21 Q. And the percentage of net sales that these  
22 related-Party transactions took declines as you go from  
23 1998 to 2004?

24 A. That's incorrect. That's not net sales. That's  
25 DRP Operating Income. So there are a lot of items in

1 there. So, no, you can't make that statement.

2 Q. Well, I was, perhaps, not clear in my question,  
3 because when I was doing the comparison, I was comparing  
4 the related-Party fees to the net sales. And as we go year  
5 by year, it's first 4.5, it goes up a little, but it  
6 eventually gets down to 1.4 percent of net sales.

7 A. Where do you see that?

8 Q. Well, we can go to the Financial Statements, and  
9 just look at the comparison of \$7 million to what the  
10 overall sales were of the Company.

11 A. I did that comparison in my Report, and I didn't  
12 see any correlation and I put it in my presentation.

13 Q. Doesn't it make sense to you, Ms. Kunsman, that  
14 the declining amounts of related-Party transactions can be  
15 accounted for the fact that the Company was getting on its  
16 feet, and able to prefer more and more of the services  
17 itself; so that it didn't need to be dependent upon --

18 (Overlapping speakers.)

19 A. If that was the case, I'm surprised Mr. Callahan  
20 didn't mention it in his Report.

21 Q. Okay. Well, you're just speculating about what  
22 you think these fees really are, but you do know that the  
23 Company needed to have the services that the Financial  
24 Statements say were being provided, don't you?

25 A. I am not speculating -- and what was the second

1 part of your question?

2 Q. Well, you are speculating that the services that  
3 are specified in the footnotes to the Financial Statements  
4 are not actually being provided, aren't you?

5 A. I'm saying that those services don't appear  
6 necessary, based on the evidence that I've seen.

7 Q. Okay.

8 A. And I haven't seen any evidence to the contrary  
9 from Mr. Callahan when they had -- when he had a chance to  
10 provide it.

11 Q. I don't -- I'm not really following you.

12 I want you to tell us what evidence you have seen  
13 that Doe Run Perú did not need any technical, managerial,  
14 or professional services. And I'm talking about Human  
15 Resources, personnel, legal --

16 A. Right.

17 Q. -- insurance, all of the stuff that companies  
18 need.

19 You're telling us, this Company did not need any  
20 of those services?

21 A. They would have needed those services, but I'm  
22 not sure that this Contract was necessary to have those  
23 services, that DRP must have had them from somewhere else,  
24 because when the Contract ended, the Cost didn't increase.  
25 There wasn't any correlation with increased Costs in 2005.

1 The Contracts ended, and that's it. Nothing happened.

2 Q. Have you seen any evidence, Ms. Kunsman, that DRP  
3 was unable to pay its taxes until 2009?

4 A. I know they had several audits from SUNAT, but  
5 it's not something that I looked at in detail. It's  
6 not -- I wasn't asked to look at the tax -- and tax issues.

7 Q. Have you seen any evidence that DRP was unable to  
8 pay its vendors before 2009?

9 A. Again, I haven't, but it's not something I  
10 analyzed.

11 Q. Okay. Well, have you seen any evidence that DRP  
12 wasn't able to pay any of its obligations before 2009?

13 A. Well, they were unable to meet the PAMA  
14 obligations. They required Extensions. By 2006, they  
15 hadn't completed the Projects, and they hadn't -- I'm  
16 assuming they didn't meet the emissions standard.

17 Q. You're aware that DRP spent more on PAMA Projects  
18 in 2007 and 2008 than in all of the prior years combined?

19 A. Yeah, but it's not about the investment amount.  
20 It's about completing the Projects that you think  
21 are -- well, it's about meeting the emissions, and to meet  
22 those emissions, DRP had already said -- I mean, they  
23 changed over time, but they said, we need to complete this  
24 these Projects, and the big Project was the Sulfur Plant.

25 So whatever they spent doesn't matter.

1 It's -- you have to complete the Projects and meet the  
2 emission standards.

3 Q. Right. And up until 2009, had you seen any  
4 complaint from the MEM that they weren't doing what they  
5 were supposed to do?

6 A. Well, they had to get Extensions; so if they had  
7 been doing what they were supposed to do, they wouldn't  
8 have asked for Extensions.

9 Q. Extensions which were granted; right?

10 A. Yeah.

11 Q. In the original PAMA, the estimated Cost of the  
12 nine Projects, the Mitigation Projects, that were assigned  
13 to Metaloroya was about \$107 million?

14 A. That's right.

15 Q. And are you aware that, as a result of the  
16 investigations and consultants that had been hired by DRP,  
17 that it was determined that that cost, ultimately, was over  
18 three times that amount for -- actually, yeah, we saw from  
19 the Financial Statement that I showed you that the Cost,  
20 overall, was anticipated to be \$481 million.

21 A. Right. They realized once they started  
22 implementing the Sulfuric Acid Plant Project that they said  
23 "this is going to cost a lot more than we originally  
24 thought." Not just Centromín, but themselves.

25 Q. By the way, you're not disputing that in 2008

1 there was a Global Financial Crisis, are you?

2 A. No, I'm not.

3 Q. I mean, it was real.

4 A. It was.

5 Q. And it affected a lot of people, a lot of  
6 companies?

7 A. Absolutely. Yes.

8 Q. And you didn't say anything about this in your  
9 presentation, but you understand that the Contract itself  
10 has a specific phrase in the Force Majeure provision for  
11 extraordinary economic alterations?

12 A. I do mention it on one of my Reports, yes.

13 Q. Okay. And the Global Financial Crisis was an  
14 extraordinary economic alteration, wasn't it?

15 A. It was, yeah.

16 Q. Okay.

17 MR. FOGLER: That's all the questions I have.

18 Thank you, Ms. Kunsman.

19 THE WITNESS: You're welcome.

20 PRESIDENT SIMMA: Thank you, Mr. Fogler.

21 I give the floor to Mr. Vaca for the redirect.

22 MR. VACA: Thank you, Mr. President. If we could  
23 get -- if I could get five minutes just to gather my  
24 thoughts, that would be helpful. Thank you.

25 PRESIDENT SIMMA: Yes.

1 (Pause.)

2 PRESIDENT SIMMA: So we can resume.

3 (Overlapping speakers.)

4 PRESIDENT SIMMA: -- and the Transcript.

5 And, Mr. Vaca, you have the floor to examine  
6 Ms. Kunsman.

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

8 REDIRECT EXAMINATION

9 BY MR. VACA:

10 Q. Ms. Kunsman, you were shown one of DRP's Audited  
11 Financial Statements.

12 Do you recall what Mr. Callahan opined about  
13 those Audited Financial Statements?

14 A. That they showed how much DRP had spent at  
15 certain points. I mean, he opined a lot.

16 Q. Well, do you recall if he had any negative  
17 opinions about DRP's own Financial Statements?

18 A. No.

19 Q. I'm going to pull up -- Kelby, if you could pull  
20 up Mr. Callahan's Report. And if you could go to PDF  
21 Page 18, and I want you to zoom in, please, on  
22 Paragraph 55.

23 And if you go down to the sixth line, there's a  
24 sentence that starts with "like." And does that refresh  
25 your recollection as to what some of the thoughts that



1 Mr. Callahan had about DRP's own Financial Statements?

2 A. Yes, that they were incorrect.

3 Q. And you mentioned that KPMG is a reputable  
4 financial auditing firm. When a company's financial  
5 statements are audited by a company like KPMG, does that  
6 mean that KPMG has done a forensic accounting analysis of  
7 the Company's financials?

8 A. No.

9 MR. FOGLER: Excuse me just a minute. I don't  
10 think that's what this paragraph says. It's referring to  
11 DRRC's Registration Statements, which is an entirely  
12 different document than DRP's Financial Statements.

13 MR. VACA: Mr. President, if I may respond.

14 PRESIDENT SIMMA: Yes.

15 MR. VACA: I mean, the sentence says "the notes  
16 in the DRP Audited Financial Statements," so we know  
17 exactly what Mr. Callahan is talking about -- "had  
18 inconsistent disclosures." It's Mr. Callahan's Opinion  
19 about DRP's Financial Statements. If I may continue.

20 PRESIDENT SIMMA: Please continue.

21 MR. VACA: Thank you.

22 BY MR. VACA:

23 Q. Going back to my question, Ms. Kunsman, what's  
24 the difference between a financial audit and a financial  
25 forensic audit?

1           A.       In a financial audit for the Audited Financial  
2 Statements, you just take small samples of certain  
3 accounts, and you ensure that the Company is following  
4 certain procedures that you have on a list of questions  
5 that the auditors have, a process. They don't check  
6 everything. A forensic project would be more -- you have a  
7 very specific scope, and you look much more deeply into  
8 whatever your specific scope is.

9           Q.       Thank you.

10                   I want to change topics a bit to discuss the  
11 intercompany Agreements. And you were shown a Slide -- or  
12 shown a Slide that had a Statement made by Respondents'  
13 Counsel in the Opening about Renco profiting from Doe Run  
14 Perú.

15           A.       Right.

16           Q.       You were also here for the cross-examination of  
17 Mr. Buckley, and if you recall, Mr. Buckley was shown a  
18 memo, that was Exhibit R-85, and that memo was from  
19 Mr. Buckley to Mr. Zelms who, as you know, is the President  
20 and General Manager of Doe Run Resources Corporation.

21                   Do you recall if, in that memo and in testimony,  
22 Mr. Buckley insisted that someone in particular received  
23 the message about the liquidation crises that Doe Run Perú  
24 is facing?

25           A.       Yes. I believe the Head of Renco.

1 Q. And who was that?

2 A. I don't remember.

3 Q. Okay. Do you -- Ira Rennert?

4 A. Yes.

5 Q. And I want to continue with a few questions about  
6 these inter-Party Agreements. I'm going to show you  
7 Exhibit R-89.

8 A. Oh, yeah.

9 Q. And if we go to Page 4, if you could zoom in,  
10 Kelby, to that top portion, please. This is an email from  
11 Eric Peitz, a Doe Run Perú employee to Bruce Neil, who I  
12 think you were also here and saw was the President and  
13 General Manager at the time. And I would like you to  
14 read -- well, it's the second Number (3) in the list,  
15 because it should be (4), but the second number (3), and  
16 what that suggests to you about the effect of the  
17 intercompany payments on Doe Run Perú?

18 A. This is the email that I was referring to in my  
19 testimony to -- when I mentioned Eric, it's Eric Peitz.

20 "To complete the PAMA Projects, we will require  
21 a capital infusion of at least 15 million. The sponsors  
22 have only invested 2 million in DRP, and DRP has sent some  
23 125 million to the U.S. over a period of six years.  
24 Expectations need to be managed."

25 This just shows me that those intercompany loans

1 were just seen as just payments upstream, transfers  
2 upstream. They're not saying -- they're not described as  
3 being necessary cost, but as something superfluous, and it  
4 had a big impact on the liquidity of the Company.

5 Q. In continuing with the -- this topic of  
6 intercompany Agreements, I want to now show you  
7 Exhibit R-76, which I believe you also referenced during  
8 your cross-examination.

9 A. Yeah. This is a deposition; right? Yeah.

10 Q. Yeah. Would you like to explain to the Tribunal  
11 what this is? The deposition of who?

12 A. This is the deposition of Mr. Buckley.

13 Q. Okay. And I want to show you the second page of  
14 the PDF.

15 A. Yeah.

16 Q. And we're going to zoom into this -- to the  
17 bottom of Page 33 and the top of Page 34, and I would like  
18 you to read the question that starts with "okay."

19 A. Yeah.

20 Q. And -- sorry, Kelby, can you -- I want to see the  
21 rest -- let's start with "okay." If you could zoom out  
22 real quick just so I can see the whole thing. Okay. So  
23 let's do "okay." Through here.

24 A. This is the document that I was referring to when  
25 in my testimony I said "the deposition." It's this one.

1 Q. So some of the intercompany Agreements were with  
2 Doe Run Mining?

3 A. Correct.

4 Q. And I just -- after reviewing this portion of the  
5 deposition of Kenneth Buckley, I want to know what this  
6 suggests to you about the necessity or importance of that  
7 Agreement with Doe Run Mining, the intercompany Agreement  
8 between Doe Run Perú, where Doe Run Perú paid millions of  
9 dollars to Doe Run Mining.

10 A. Right. Right. In this exchange, for  
11 example -- okay.

12 "Q. So let me just back up and ask you a few  
13 questions about that. So, in other words, you held the  
14 position of General Manager with the Company called Doe Run  
15 mining; is that correct?"

16 And then Buckley answers: A. "Yeah, and I don't  
17 know why that was because I didn't do anything for Doe Run  
18 Mining. I was just General Manager of the Company."

19 Q. "that already tells me a little bit of this being a  
20 shell company."

21 A. "Doe Run Mining didn't really have any operations  
22 that were separate and apart from" --

23 Q. "Absolutely not. They had no operations."

24 A. "So if they had no operations, as Mr. Buckley  
25 says, I'm not sure what services they could be providing."

1 Q. "All right. And you didn't have a staff that  
2 reported to you when you were General Manager of Doe Run  
3 Mining?"

4 A. "No."

5 So from this exchange, it seems that Doe Run  
6 Mining didn't do anything, didn't provide any services.  
7 And I pointed it out, and Mr. Callahan didn't dispute it.

8 Q. Thank you, Ms. Kunsman. I just have one more  
9 question, and then I think we can all go home or wherever  
10 we want to go. You were asked about the Global Financial  
11 Crisis. In your opinion, how did Doe Run Perú set itself  
12 up to deal with that crisis compared to other companies in  
13 the sector?

14 A. Doe Run Perú prepared horribly. It came into the  
15 financial crisis with already liquidity issues, issues with  
16 accessing financing, issues with not implementing the  
17 Projects in the PAMA. So it was in a very poor position,  
18 and when I was asked if the financial crisis -- I don't  
19 recall right now exactly, but if it was a Force Majeure  
20 event -- I'm not a lawyer; so I don't know if in relation  
21 to the Contract it would be seen as such.

22 I just want to make that clear, that I'm not  
23 interpreting the Contract and saying that the Global  
24 Financial Crisis would constitute a Force Majeure event in  
25 relation to that Clause. I don't know. You can read

1 my -- of course, the Report on what I say on Force Majeure.  
2 Where the point is, that DRP coming into the crisis was  
3 coming into it very, very poorly.

4 Q. Thank you, Ms. Kunsman.

5 MR. VACA: Members of the Tribunal, we have no  
6 further questions.

7 PRESIDENT SIMMA: Thank you, Mr. Vaca.

8 That gets us to the questions from the Tribunal.  
9 No question? Oh, I have a couple of questions.

10 THE WITNESS: Okay.

11 QUESTIONS FROM THE TRIBUNAL

12 PRESIDENT SIMMA: When you look at Number -- at  
13 Page 10 of your presentation, there you look at the numbers  
14 on the costs or the spendings on modernizations and  
15 mitigation. You also -- you mentioned or emphasized that  
16 these figures were really going down considerably.

17 And my question is, do you have an idea why this  
18 was the case? I mean, from Germany, I know these figures  
19 would always go up, steeply.

20 THE WITNESS: Right.

21 PRESIDENT SIMMA: Or as far as one of my hobbies,  
22 the U.S. Navy expenses are concerned, up, up, up, they go.  
23 And here -- and maybe, I don't know how much you know, I  
24 was always a bit fascinated -- I'm fascinated by complex  
25 technical items, machines, whatever. They are -- they bore

1 names like Imperial or something; so they are custom, they  
2 are probably custom-made. There is nowhere, let's say,  
3 like John Deere, with regard to tractors.

4 That just -- so where does anybody -- maybe  
5 somebody -- where is this stuff being built? Was it built  
6 in Perú, or was it imported into the country? And then if  
7 you could say, maybe, we could draw a conclusion as to  
8 costs.

9 THE WITNESS: Right.

10 PRESIDENT SIMMA: That something would explain  
11 why the Costs of that stuff really went down that much. So  
12 that --

13 THE WITNESS: So my understanding is that, first,  
14 it's not completely clear if in the first revision, second  
15 revision, and third revision the Modernization Projects are  
16 completely included.

17 So I also understand from Perú and Counsel that,  
18 at some point DRP got a Report saying that they didn't need  
19 to modernize the circuits in order to build the Sulfuric  
20 Acid Plant as they thought they would, but then once they  
21 started really looking into the Sulfuric Acid Plant  
22 Project, they realized: "Well, no, that's not the case.  
23 We actually do need to work on the circuits before we can  
24 use and install the Sulfuric Acid Plant."

25 So it was an issue of getting the wrong advice



1 from the engineer that they hired too.

2           PRESIDENT SIMMA: Could it be the practice -- I  
3 don't know how -- say Centromín in a PAMA, if you look at  
4 the figures, that they kind of envision or prescribe in  
5 PAMA, these figures are quite specific, like 155.1 million  
6 et cetera. That goes precisely in the hundred thousands of  
7 dollars. Is there a practice that these figures are always  
8 set high; so that in the implementation of a PAMA, these  
9 figures would not just be swept away by increases?

10           THE WITNESS: No, it's actually the opposite. In  
11 the PAMA, the eight Projects that they actually completed,  
12 the estimate for those was 17 million, but they were  
13 actually completed for 67 million. So even for those  
14 Projects, the estimate in the original PAMA was quite low.

15           So it was just an issue of -- I think it was  
16 Daniel Fluor -- or I forgot the name of the Consultant, but  
17 that said, they would be able to avoid having certain  
18 equipment, but at the end once they looked into it more,  
19 and they started executing the Sulfuric Acid Plant, they  
20 realized, oh, no, we do have to go back to our original  
21 assumptions. And that's what you see at the end.

22           PRESIDENT SIMMA: And on the second part of that  
23 question, the -- behind these numbers, like, there are  
24 probably installation -- in several cases installation of  
25 modern equipment, replacement of equipment. And then my

1 question, custom-made stuff and where? You're probably not  
2 aware.

3 THE WITNESS: I don't know.

4 PRESIDENT SIMMA: I saw Mr. Weiss kind of making  
5 a body movement. I just wonder, could I ask Mr. Pearsall,  
6 could -- okay. Could Mr. Weiss just give me an answer on  
7 that? It's a technical issue. Just we heard throughout  
8 the entire case these machines mentioned with  
9 a -- sometimes with a certain pride, huge things. So may I  
10 ask?

11 MR. PEARSALL: We've met Mr. Weiss. I'm  
12 confident he will give you an answer, just as you expect.

13 PRESIDENT SIMMA: Okay, Mr. Weiss, please.

14 MR. WEISS: I'm sorry, Mr. President. Could you  
15 pose the question again?

16 PRESIDENT SIMMA: Oh. This is the -- these are  
17 questions coming from an absolute ignorant outsider, with a  
18 strange fascination for technical things, of which he  
19 doesn't understand anything.

20 MR. WEISS: You might get an equally ignorant  
21 answer.

22 (Overlapping speakers.)

23 PRESIDENT SIMMA: See, we have had photographs of  
24 the -- from the bag.

25 MR. WEISS: Baghouse.

1           PRESIDENT SIMMA:  Bags, the bags, et cetera, et  
2 cetera.  And then the most important thing going into more  
3 than 100 million, et cetera.  And my question is, where  
4 were these things produced?  Were they imported into Perú  
5 from the U.S. or Europe, or built on the spot?  That is my  
6 question.

7           MR. WEISS:  Honestly, I don't know the answer to  
8 that question.  The best I can tell you is I think both  
9 Experts would tell you -- I think Mr. Dobbelaere agreed,  
10 that, logistically, it being in the Andean Highlands in  
11 Perú, made this particularly difficult to source the  
12 equipment, source the vendors, source the Contracts, but  
13 that's really the best answer I can give you.

14           PRESIDENT SIMMA:  Okay.  I'll -- might find the  
15 answers somewhere else.  No problem.

16           THE WITNESS:  Yeah.

17           PRESIDENT SIMMA:  The other question is --

18           (Interruption.)

19           (Pause.)

20           PRESIDENT SIMMA:  Thank you.  So, my question  
21 would be as follows:  This is a question which relates to  
22 what is called the circular transactions or intercompany  
23 transactions or payments, which in a way was fascinating,  
24 at least to me.

25           And my question is, is this kind of, like, this

1 complex? It's a transaction, et cetera, back and forth, et  
2 cetera, is this is something that you encounter often under  
3 similar circumstances? And how would you -- is it  
4 something that is just to be admired or is it something  
5 that would make you suspicious, or is it just something  
6 that these people are -- that they do that, that the man on  
7 the street would simply don't understand it? And that's  
8 why we never get rich.

9 THE WITNESS: No. They are not typical in  
10 project finance. I found them very atypical, and, no, it  
11 is not something to be admired, no.

12 PRESIDENT SIMMA: Thank you very much. Thank you  
13 very much. This brings to an end your witness examination,  
14 Ms. Kunsman. Thank you very much for coming.

15 THE WITNESS: You're welcome.

16 PRESIDENT SIMMA: You are released.

17 (Witness steps down.)

18 PRESIDENT SIMMA: Okay. So the question is now,  
19 it is 12:11. Are we going to -- what are the plans  
20 for -- let me ask Parties.

21 MR. PEARSALL: Well, the Parties have conferred,  
22 and we are in agreement, I believe, that we will start our  
23 Closings tomorrow at 10:00 a.m., if that's still agreeable.

24 MR. FOGLER: Tomorrow, yes. I would lobby to  
25 start a little bit earlier, if we could, say 9:30, because

1 I think we can probably finish most, if not all, in the  
2 morning.

3 MR. PEARSALL: 9:30 is fine by us.

4 PRESIDENT SIMMA: So what do you want me to do?  
5 As far as I'm concerned, the later the better, but that is  
6 a personal weakness. Since we never know how things  
7 develop, let's let it be 9:30.

8 MR. PEARSALL: Yes. Since Mr. Schiffer and  
9 Mr. Fogler are probably going first, they want 9:30, we'll  
10 be here at 9:30, well-caffeinated.

11 PRESIDENT SIMMA: Okay.

12 MR. PEARSALL: And the only other point,  
13 Mr. President, on kind of housekeeping that I had was just  
14 I wonder if we, since we have a little bit of time, we  
15 can't have some additional clarity on the timing of when  
16 the Tribunal wants answers to our -- to their written  
17 questions, which we haven't seen yet. Recognizing  
18 Mr. Schiffer's trial schedule, we thought it would be  
19 helpful now to have just a conversation on when you would  
20 expect those, and then there are some questions that  
21 follow, based on what you might answer.

22 PRESIDENT SIMMA: Could I ask Martin, Mr. Doe.

23 Oh, you have -- let me hear you.

24 MR. SCHIFFER: Right. I'd like to see the  
25 questions first before I commit to a schedule, right,

1 because if there is one question, that is one thing, if  
2 there are 20 questions, that is quite another. We will  
3 also need time to get the Final Transcript because we have  
4 been doing is getting roughs, and then, you know, the  
5 Finals are trickling out. I mean, it is superfast, they  
6 are great, but we still need that.

7 And I just need to get through this trial because  
8 I'm number two on the docket, which means we will get  
9 reached next week. So it will take two weeks for me to  
10 finish that.

11 So I would say, let's have this table -- table  
12 this discussion until we hear the questions, and then  
13 Mr. Pearsall and we can confer, if we reach agreement on a  
14 deadline that is acceptable to the Tribunal, great. If we  
15 don't reach agreement, then we are in your hands.

16 (Tribunal conferring.)

17 PRESIDENT SIMMA: So I think that's all we need  
18 to know for the moment; right?

19 MR. PEARSALL: Sure. We can wait to see the  
20 Tribunal's questions and then come up with a deadline. I  
21 think that makes good sense.

22 Just one point on the Transcripts. It hasn't  
23 been my understanding in previous cases that we can't rely  
24 on unredacted -- on unedited transcripts for Post-Hearing  
25 Briefs. I would assume we could do the same here. But we

1 can table that issue. I just wanted to put a marker down  
2 that unedited transcripts generally are fine for purposes  
3 of Post-Hearing Briefs.

4 The last question I have is, will the Tribunal be  
5 giving us questions that it wants us to address in Closing  
6 other than the questions that it has posed throughout the  
7 last two weeks, or are we just free to present you with  
8 what we think is the most important highlights of this very  
9 informative two weeks?

10 PRESIDENT SIMMA: These are probably all the  
11 questions of interest to you; right? So I think with --

12 MR. SCHIFFER: Yes. I don't usually ask for  
13 trouble, but since we are -- I mean, that was a joke.

14 Of course, if the Tribunal wants to give us  
15 questions now, we will address them in our Oral Closing. I  
16 thought we were going to get them in written form at the  
17 end.

18 PRESIDENT SIMMA: No. You are not going to get a  
19 list of questions later to be taken up tomorrow in the  
20 concluding observations. I think what we plan is to  
21 elaborate a list of questions that would kind of direct and  
22 structure and point to certain things where we need  
23 observations to be answered in the Post-Hearing Briefs,  
24 which the Tribunal really wants and needs. Okay.

25 MR. PEARSALL: That sounds great. And based on

1 the questions and things, we will probably have comments on  
2 lengths and timing.

3 PRESIDENT SIMMA: Yeah. I thought that to do  
4 that tomorrow at the end, at the very end.

5 MR. PEARSALL: Perfect.

6 PRESIDENT SIMMA: But I think there is -- we  
7 could do it now since we have -- we have some final time,  
8 or do you think great things will happen?

9 No, I think, probably we should give it a thought  
10 among ourselves. We haven't done so. Everybody has his or  
11 her -- his own view.

12 MR. PEARSALL: Yeah. We don't have jury trials  
13 next week, but we do have people scattering across the  
14 world, so we want to make sure we are all ready to go.

15 And then the last question for me -- and then I  
16 will release everyone. Just on timing, Martin, do we have  
17 2.5 hours tomorrow?

18 SECRETARY DOE: Everybody has the maximum,  
19 2.5 hours for their Closing tomorrow.

20 MR. PEARSALL: Perfect. Thank you very much.

21 PRESIDENT SIMMA: Okay. That is enough,  
22 precisely enough, with regard to timing. Okay. So I wish  
23 you a good lunch and good preparation, and see you tomorrow  
24 at 9:30.

25 MR. SCHIFFER: Thank you.



1  
2  
3

MR. PEARSALL: Thank you.

(Whereupon, at 12:19 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