

In the matter of an arbitration
under the Rules of Arbitration of
the International Centre for
Settlement of Investment Disputes

Case No. ARB/21/51

The International Dispute
Resolution Centre (IDRC)
1 Paternoster Lane
LONDON, EC4M 7BQ

Day 2
Hearing on the Merits

Friday, 2nd February 2024

Before:

PROFESSOR GABRIELLE KAUFMANN-KOHLER
MR STEPHEN L DRYMER
PROFESSOR PHILIPPE SANDS

DISCOVERY GLOBAL LLC

Claimant

-v-

SLOVAK REPUBLIC

Respondent

Secretary to the Tribunal: JARA MÍNGUEZ ALMEIDA

Assistant to the Tribunal: MAGNUS JESKO LANGER

Transcript produced by Anne-Marie Stallard
and Emma Lovell

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FOR RESPONDENT

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09:30 1 Friday, 2 February 2024
 2 (9.30 am)
 3 THE PRESIDENT: Good morning, everyone. I hope everyone is
 4 doing fine, and we are ready for Day 2 of this hearing.
 5 MR ALEXANDER FRASER (called)
 6 THE PRESIDENT: Mr Fraser, are you ready as well?
 7 MR FRASER: I am.
 8 THE PRESIDENT: Yes, I can see that.
 9 For the record, can you confirm to us that you are
 10 Alexander Fraser?
 11 MR FRASER: I am.
 12 THE PRESIDENT: You should switch your microphone on and
 13 then leave it on so you don't have to think about it.
 14 You are CFO of Discovery Global.
 15 MR FRASER: That's correct.
 16 THE PRESIDENT: You have provided us with two written
 17 statements, the first one was dated 30 September 2022,
 18 the second one 18 September 2023; is that right?
 19 MR FRASER: That's correct.
 20 THE PRESIDENT: You have your witness statements with you
 21 there in unannotated copies; excellent.
 22 You are heard as a witness in this arbitration, as
 23 you know, and you are under a duty to tell us the truth.
 24 Can you please confirm this by reading the witness
 25 declaration into the record.

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09:33 1 other things outside the oil and gas sector. I actually
 2 now run a farm down in the West Country which
 3 I inherited a while ago.
 4 Q. When did you last practise law?
 5 A. 1993.
 6 Q. And at the time were you barred in the United Kingdom?
 7 A. I was -- I qualified as -- I was admitted to the English
 8 Bar and then qualified as a solicitor.
 9 Q. Thank you.
 10 When was the last time you spoke to Mr Crow, either
 11 in person or by phone?
 12 A. Probably in the -- well, in the last couple of weeks,
 13 I would say.
 14 Q. And prior to that, when was the last time you'd spoken
 15 to him?
 16 A. We've had a few conversations over the last couple of
 17 years.
 18 Q. And when was the last time Mr Lewis spoke to Mr Crow, if
 19 you know?
 20 A. I don't know the answer to that question.
 21 Q. Do you know if he has had any contact with him in the
 22 last six months?
 23 A. I know they're working on another project in America
 24 today.
 25 Q. And is that in the oil and gas industry?

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09:32 1 MR FRASER: I solemnly declare upon my honour and conscience
 2 that I shall speak the truth, the whole truth, and
 3 nothing but the truth.
 4 THE PRESIDENT: Thank you. So now you know you will be
 5 asked a few introductory questions by Claimant, and then
 6 we'll turn to Respondent.
 7 Mr Tushingham.
 8 (9.32 am)
 9 Direct examination by MR TUSHINGHAM
 10 Q. Mr Fraser, do you have any corrections to make to either
 11 of your witness statements?
 12 A. I do not.
 13 MR TUSHINGHAM: Thank you. I will now turn the floor to
 14 Mr Alexander.
 15 (9.33 am)
 16 Cross-examination by MR ALEXANDER
 17 Q. Thank you, Madam President.
 18 Mr Fraser, it's a pleasure to meet you, sir. My
 19 name is David Alexander and I will be asking you
 20 questions today.
 21 Could you tell me first, where are you employed
 22 today?
 23 A. Where am I employed today?
 24 Q. Yes.
 25 A. I am no longer employed by Discovery Global. I'm doing

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09:34 1 A. It is, yes.
 2 Q. And they're working together in business on that?
 3 A. To the best of my knowledge.
 4 Q. When you went into the Slovakia project, did you have
 5 any prior experience on oil and gas regulatory matters
 6 in Slovakia?
 7 A. Not on -- I didn't have experience on regulatory matters
 8 on oil and gas in Slovakia. I'd seen similar processes
 9 in Poland.
 10 Q. So when you went on board with Mr Lewis, I understand it
 11 was originally as a part-time basis; was that on
 12 a part-time basis?
 13 A. That's correct. While I was exiting my previous
 14 company, I was on a part-time basis with Discovery and
 15 then it became full-time as my last job -- previous job
 16 concluded.
 17 Q. And when did you assume the title as chief financial
 18 officer?
 19 A. I would say I was an acting or temporary chief financial
 20 officer in late 2014, informal, if you like, and it
 21 became a formal position in the first quarter, I would
 22 say March 2015.
 23 Q. And could you tell us generally what your duties were as
 24 chief financial officer?
 25 A. My duties were to supervise the fundraising activities,

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09:36 1 working with Mike Lewis, and also to look after the --
2 to run the accounting for the joint venture in Poland --
3 sorry, in Slovakia. We also had operations in Poland at
4 that time, which were winding down. And that was about
5 it.
6 Q. Did you have any responsibility for monitoring
7 regulatory or legal matters?
8 A. Not at that stage I did not, no.
9 Q. Did you assume those responsibilities later?
10 A. Once I became full-time, I started to take over the
11 responsibility for, I would say for the higher legal
12 matters in Bratislava, initially, and the permitting
13 side in the eastern part of the country was looked after
14 more by the local -- by the team there.
15 Q. So your duties in that regard would have been assumed
16 roughly in July 2015?
17 A. Yes.
18 Q. When you came into that role, supervising matters in
19 Bratislava, legal matters, did you have an opportunity
20 to review the due diligence work that had preceded the
21 original investment back in March of 2014?
22 A. I had an opportunity to look through it, but the deal
23 had been done by that stage. So there wasn't much
24 I could -- you know, there wasn't -- I probably had
25 a quick look at it but I didn't spend a lot of time

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09:38 1 looking at it.
2 Q. Did you see materials concerning the overall regulatory
3 environment of Slovakia?
4 A. Could you be a bit more precise, please? What do you
5 mean by regulatory environment?
6 Q. Well, for example the Geology Act?
7 A. I was -- I understood specific areas of the Geology Act,
8 what was involved in licensing, for example.
9 Q. Do you recall seeing at that time the material that was
10 projected yesterday on the AOG slides concerning
11 Article 29(3); does that ring any bells?
12 A. I became aware of Article 29(3) in, I would say,
13 probably mid- or late 2015.
14 Q. And just so we're clear on that, Article 29(3) is the
15 provision requiring -- in fact, maybe to be fair we
16 ought to put it up on the screen. Could I ask you to
17 pull up R-42, please. And if we could scroll to
18 Article 29, and (3). There we are. Thank you.
19 Let me know when you have had a chance to take
20 a look. (Pause)
21 A. Okay.
22 Q. You may have heard this referred to as the "permission
23 and notice provision"?
24 A. I haven't, no.
25 Q. You haven't?

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09:40 1 A. No.
2 Q. So in mid-2015, shortly after you came on board, your
3 testimony is you did become aware of this? 29(3).
4 A. Let me clarify that. I wasn't aware of that specific
5 provision. I was aware of Article 29 being a route to
6 acquire compulsory access. But that particular
7 subparagraph I was not aware of.
8 Q. And that, of course, you're referring to 29(4), the
9 following provision?
10 A. Mm-hm.
11 Q. Right. Do you recall when you first became aware of
12 29(3), the permission and notice provision?
13 A. I don't recall when, no.
14 Q. But you're confident you have seen it sometime in 2015?
15 A. I can't say that I saw that particular one in 2015. As
16 I say, the day-to-day permitting was handled by other
17 members of the team, including our Czech country
18 manager, who was very experienced, and he was very much
19 our go-to person for all things permitting, very
20 conscientious, and he held our hand to make sure we
21 complied with all aspects of the permitting side,
22 including 29(3).
23 Q. And could you identify that person by name, please?
24 A. Stanislav Benada.
25 Q. And was he Slovak?

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09:42 1 A. He is a Czech.
2 Q. Had he had prior experience in the Slovak regulatory
3 environment, do you know?
4 A. He did. He's got 30 years' experience in the Czech,
5 Czechoslovak oil and gas sector. He spent 20 years
6 working for MND, which is a large Czech oil and gas
7 company, and he was country manager for Alpine Oil & Gas
8 since 2006.
9 Q. Before entering sites that were identified for
10 exploration activities, were you aware that there was
11 a requirement under Slovak law to obtain permission of
12 landowner and give them notice?
13 A. Well, we couldn't enter a site until we had an agreement
14 with the landowner to acquire a lease over the site.
15 Q. And what about access to sites?
16 A. Access is just as important as the location itself, so
17 we would do the same investigations on how to get to the
18 location, as to ensuring that we had the rights to
19 operate on the location.
20 Q. And did you participate in the investigation of the
21 Smilno site, as you say, on the just-as-important issue
22 of access?
23 A. I did not, no. That was handled by the local guys,
24 which was Stanislav, Ron Crow, and some of our Polish
25 team, Maciej Karabin and -- well, Maciej Karabin.

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09:44 1 Q. Now, if I could ask you to turn to your witness
2 statement for a moment at paragraph 35, and I'm going to
3 be asking you about the top of page 13.
4 Now, you are referring here, are you not, to access
5 to the Smilno drilling site; correct?
6 A. Correct.
7 Q. And you testify there:
8 "It was our understanding ..."
9 And let me just pause there. When you refer to "our
10 understanding", who is that?
11 A. The company, I would say, so that's Mike Lewis, Ron
12 Crow, me, Stanislav, and others.
13 Q. And the persons you've just mentioned, they were really
14 the top leadership of the company; correct?
15 A. Yes.
16 Q. Now, did you have the understanding yourself that the
17 road was a public road and that no permission was
18 required from any person to use the road; was that your
19 understanding?
20 A. That was our understanding, that's correct.
21 Q. Not quite my question. Was that your understanding?
22 A. That was my understanding.
23 Q. And tell me, sir, how you came to that understanding.
24 A. There were internal reports and also updates which
25 formed the basis of updates circulated to the JV

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09:46 1 partners, which included an update on matters like
2 securing the location, permitting, access to the
3 location and other matters, such as dealings with
4 contractors. And those reports discussed the progress
5 that was being made on securing the location at Smilno
6 and also the access road.
7 Q. Do you remember reading a report that said specifically
8 that no permission was required from any person?
9 A. Yes, I do. Yes.
10 Q. And do you know if that report is in this record?
11 A. I don't know offhand.
12 Q. Did you have any discussions with Mr Benada about his
13 availability to testify in these proceedings?
14 A. Yes, I did.
15 Q. And he was not available?
16 A. We asked if he would be willing to testify and he said
17 that he was not willing; he had found the whole process
18 too painful.
19 Q. Well, I'll try to make sure today I don't give you the
20 same experience, sir.
21 And do you recall the explanation for what you
22 assert was a report that said no permission was
23 required?
24 A. The explanation was that the road was a public road, was
25 publicly accessible. And there had been conversations

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09:47 1 with the mayor and also with the farm which farmed all
2 the land round about; they would have been the main user
3 of the road. But the mayor told us that the road was
4 publicly accessible.
5 Q. Alright.
6 Now, if possible, Mr Fraser, I'd like to ask you
7 when you are identifying "us" or "we" --
8 A. Sorry.
9 Q. -- that you be as precise as possible, because as you
10 know that -- and this is no criticism -- but your
11 witness statement often says "we", and of course we have
12 no idea who that is.
13 A. Mm-hm.
14 Q. So could I ask you to answer that question again with
15 specifically who the persons are that were involved?
16 A. Sorry, could you repeat the question, then?
17 Q. "And there had been conversations with the mayor and
18 also with the farm..."
19 Did you have any conversations with the mayor?
20 A. I did not. Ron Crow did, Maciej did, and Stanislav
21 Benada did.
22 Q. Did you read reports of their conversation with the
23 mayor?
24 A. I read an internal report that said that they had met
25 with the mayor in June or July of 2015.

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09:49 1 Q. All three of them?
2 A. Yes.
3 Q. And did you have any conversation with Mr Crow about his
4 availability to testify?
5 A. I did not, no.
6 Q. Do you know if Mr Lewis did?
7 A. I don't know.
8 Q. Alright. And you mentioned another gentlemen, Mr -- is
9 it Karabin?
10 A. Karabin, yes.
11 Q. Did you have any conversations with him about his
12 ability to testify?
13 A. I did not.
14 Q. Do you know if Mr Lewis did?
15 A. I don't know.
16 Q. So what do you recall that the internal report to which
17 you've referred said?
18 A. The internal report said that there had been a meeting
19 in Smilno with the mayor, between the mayor, Stanislav
20 Benada, Maciej Karabin, and a representative of the
21 farm, and they had discussed the use of the road, and
22 subsequently Ron reported to the company --
23 Q. That's Mr Crow?
24 A. Mr Crow, sorry, reported that the road was publicly
25 accessible as a result of that.

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09:50 1 Q. Did he say anything more about the reasoning provided by
2 the mayor?
3 A. No, he did not. We were told simply that --
4 Q. Excuse me, that's an answer to my question. You don't
5 need to go on beyond just answering the question, if
6 that's alright.
7 And would it be fair to say that there was no
8 discussion in the internal report to which you've
9 referred -- well, let's back up. There was discussion
10 about historical use of what you've referred to as
11 "the road"?
12 A. That's correct. There was discussion about the
13 historical use, yes.
14 MR DRYMER: Pardon me for interrupting, I don't like doing
15 this. You asked the witness a few minutes ago whether
16 he remembers reading a report, he said yes. You asked
17 him if he knows whether the report is in the record, he
18 said he did not know. Do you know whether that report
19 is in the record?
20 MR ALEXANDER: I don't know what report he is referring to.
21 MR DRYMER: Okay, very good.
22 THE PRESIDENT: And while we are interrupting, at what time
23 does this conversation of your three colleagues take
24 place?
25 A. In June 2015.

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09:53 1 site? On the issue of access, road access?
2 A. I'm aware that there were several meetings with the
3 mayor during 2015, when this particular location was
4 discussed. I believe -- I'm not sure whether he
5 suggested we look somewhere in that part of that area
6 around the farm, adjacent to Smilno. Or it's possible
7 we said this is where we would like to go --
8 Q. Excuse me, Mr Fraser, is this a conversation you had
9 with the mayor?
10 A. I'm saying what I was aware of. I didn't have the
11 conversation, but I was aware of that. I'm aware that
12 there were a number of conversations with the mayor.
13 Q. Right. And these conversations you're describing now,
14 were they reported to you in any written form?
15 A. They were. There were updates, I mean, two or three,
16 I don't recall, during 2015, during that time from May
17 to September, say, when we were told about conversations
18 with the mayor about going to drill at Smilno.
19 Q. Let me ask you; if I could ask that R-155 be put up.
20 Can you see that alright, Mr Fraser?
21 A. Yes.
22 Q. I notice that at the very top of the page your name
23 appears. But it appears to be an email from Mr Sýkora,
24 who I understand to be an attorney; is that correct?
25 A. That's correct.

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09:51 1 THE PRESIDENT: 2015?
2 A. Yes, June or July. And it will have been reported,
3 I'm pretty sure it was reported to the joint venture
4 partners in a follow-up report to partners.
5 THE PRESIDENT: Am I not mistaken that in May 2016 your
6 lawyer writes to the mayor specifically asking the same
7 question?
8 A. Asking -- he asked for a declaration, if you like, that
9 the road was publicly accessible at that point,
10 a declaration that he could show to people.
11 But we were told in 2015 that the road was publicly
12 accessible.
13 THE PRESIDENT: Thank you.
14 Apologies.
15 MR ALEXANDER: Thank you, Madam President.
16 That actually is a helpful segue to what I wanted to
17 ask you.
18 You remember, of course, the May communication.
19 We'll get to it in a moment, but you understand what
20 Madam President is asking about. That was a letter by
21 Mr Sýkora to the mayor; is that correct?
22 A. That's correct.
23 Q. And other than the internal report to which you've
24 referred, and the May letter, are you aware of any other
25 documents that were considered before AOG entered the

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09:54 1 Q. He was representing AOG.
2 A. Mm-hm.
3 Q. And that is the email address of the mayor I take it,
4 "smilno2001"?
5 A. I assume.
6 Q. Do you know why your name appears at the top of that?
7 A. I don't know. It's possible that he sent me the email
8 as an attachment and then when I opened it and printed
9 it off, it came up like that. I don't know.
10 Q. Yes, I sort of assumed the same thing, but hard to know.
11 A little unusual in presentation.
12 So let's back up for a second before we get into the
13 letter. Prior to this time, prior to May, are you aware
14 of any documents in the record that refer specifically
15 to the statutory phrase, "public special purpose road"?
16 A. I'm not aware of any documents on the record, no.
17 Q. And were you familiar with that phrase prior to 17 May,
18 "public special purpose road"?
19 A. I became aware of that phrase, I would say, during that
20 spring of 2016, sometime early 2016.
21 Q. And -- but prior to the spring of 2016, you had never
22 been aware of the statutory phrase, "public special
23 purpose road"?
24 A. That's correct. We just thought the road was publicly
25 accessible.

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09:56 1 Q. So let's go, then, back in time to December 2015, before
2 you entered the site. At that time the only discussion
3 you had had was whether the road was public, but there
4 had been no discussion about whether it was a public
5 special purpose road; correct?
6 A. I wasn't party to any discussions like that. I'm not
7 aware that anyone else was.
8 Q. You don't recall any reports or memoranda of any sort
9 referring to the issue of public special purpose road?
10 A. That's correct. We simply understood it was publicly
11 accessible.
12 Q. And you came to learn that there was a specific
13 statutory provision, as you've just noted. How did you
14 learn that, public special purpose road?
15 A. I believe that I would have had that explained to me by
16 Matej Sýkora.
17 Q. Okay, now what firm what Matej Sýkora with?
18 A. He had his own firm of lawyers called Sýkora
19 & Associates.
20 Q. By whom was he engaged?
21 A. By Alpine.
22 Q. And what was his instruction? What was he asked to
23 provide counsel on?
24 MR TUSHINGHAM: Apologies. The question was:
25 "And what was his instruction? What was he asked to

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09:58 1 provide counsel on?"
2 And that would be protected by privilege, and so we
3 would object to this line of questioning.
4 THE PRESIDENT: Yes. You can say whether you want to answer
5 this question or not. The Tribunal has no problem with
6 your answering it.
7 MR ALEXANDER: Madam President, if I may, I was not
8 intending to ask for the actual communications, but
9 I was only inquiring as to the nature of the engagement.
10 THE PRESIDENT: Yes, but depending on what the nature of the
11 engagement is, it may cover the actual questions asked,
12 and they may be privileged.
13 So why don't you try to answer. Why did you retain
14 Mr Sýkora, in general terms?
15 A. We retained him -- we retained Mr Sýkora because he
16 was -- the lawyer we'd been working with until then, who
17 we continued to work with, was Pavol Vargaštok, whose
18 English was not as good. So Matej had a good profile,
19 he was active in the region, he seemed to have good
20 experience, and so we engaged him to work alongside
21 Pavol Vargaštok.
22 THE PRESIDENT: When did you retain him?
23 A. Who, Matej Sýkora?
24 THE PRESIDENT: Yes.
25 A. I would say in April, possibly.

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09:59 1 THE PRESIDENT: 2016?
2 A. 2016, yes. March, April, I don't recall now. But
3 probably March.
4 MR ALEXANDER: Madam President, I --
5 THE PRESIDENT: No, I was wondering where his office is, but
6 I see it's not in Bratislava. So it is in a region
7 where Smilno is located.
8 A. Correct.
9 (Pause for a fire alarm test)
10 THE PRESIDENT: I think we're allowed to take action again.
11 Good, so please take action.
12 MR ALEXANDER: Thank you, Madam President.
13 So to return, Mr Fraser, you had earlier said that
14 local matters involving permitting were handled by
15 Mr Benada, even legal matters; is that correct?
16 A. I would say Mr Benada with -- together with Mr Crow and
17 Maciej Karabin.
18 Q. And in this particular situation where Mr Sýkora was
19 involved, you were copied, you assume, by reason of the
20 presence of your name on the email, you had become
21 involved in that particular work; is that correct?
22 A. That's correct. I mean, once the road was blocked
23 in January, I started to take a more active interest in
24 this issue, and I was struggling to -- he would be able
25 to work satisfactorily with Pavol Vargaštok because of

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10:02 1 the language issue and I was recommended Matej Sýkora by
2 somebody so we brought him on board as well.
3 Q. Now, Mr Fraser, I don't have the pleasure of knowing
4 Mr Sýkora, but I was struck in reading this note by the
5 particular language that was used. Well, first, the
6 simple point:
7 "As a follow-up to our phone call ..."
8 Were you on a phone call between Mr Sýkora and the
9 mayor?
10 A. No, I was not.
11 Q. And you did not see any note of that phone call other
12 than this email; is that fair?
13 A. That's fair, yes.
14 Q. So as I read this, I found myself sort of curious about
15 the language used:
16 "... I would like to ask you for information on the
17 nature of the road, specified in the attachment to this
18 e-mail."
19 Now, the attachment I gather was some sort of land
20 record; is that right? If you know.
21 A. I don't know what the attachment was. It looks like
22 it's a Word document.
23 Q. Do you remember what the attachment was?
24 A. It's possible that it was some advice from him to me on
25 the status of the road.

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10:03 1 Q. Right, which would have been shared with the mayor; is
 2 that correct?
 3 A. That's what it looks like, that's correct.
 4 Q. Now, without first speaking to the President, I'm not
 5 going to ask you this question, but, Madam President,
 6 I would like to inquire about that and request that it
 7 be produced because it's obviously been disclosed
 8 outside of the privilege.
 9 THE PRESIDENT: You want to ask questions or you want to ask
 10 for production?
 11 MR ALEXANDER: I would first like to have production, and
 12 then I would like to ask some questions. But I could
 13 perhaps ask a few preliminary questions about it even
 14 before I have, if the Tribunal would be so inclined.
 15 THE PRESIDENT: Yes, maybe you do so and then of course
 16 we will give the floor to your opponents to see what
 17 they think about it, yes.
 18 MR ALEXANDER: Of course, thank you very much.
 19 MR TUSHINGHAM: Can we just take a moment to confer amongst
 20 ourselves? I just want to ask a question.
 21 THE PRESIDENT: Can we hear the preliminary questions, or
 22 not?
 23 MR DRYMER: There's no application pending at the moment.
 24 MR TUSHINGHAM: I have no objection, then, to him asking
 25 preliminary questions.

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10:07 1 recall when exactly, he would have explained to me about
 2 public special purpose road; he discussed it.
 3 Q. Now, the language that I mentioned before, that I was
 4 intrigued by, suggests that this is a new conversation
 5 between Mr Sýkora and the mayor; would you agree with
 6 me?
 7 Let me be a little more precise. There's no
 8 suggestion in his introduction that they had been --
 9 other than the immediate -- other than the phone call,
 10 there's no suggestion that this had been a topic on the
 11 table for a significant period of time; would you agree?
 12 A. Are you talking about between Mr Sýkora and the mayor?
 13 Q. Yes.
 14 A. I mean, I can't comment on that.
 15 Q. So then he proceeds to say:
 16 "We would like to express our opinion that the road
 17 in question is a public special purpose road ..."
 18 Do you see that?
 19 A. Mm-hm.
 20 Q. And that was outlined in more detail in the attached
 21 memorandum, as you recall?
 22 A. I -- I'm honest -- I don't recall what -- sorry, I don't
 23 recall the content of the memorandum, but I expect it
 24 would have just covered questions like that.
 25 Q. Do you recall how long the memorandum was?

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10:05 1 THE PRESIDENT: You can still, then, if needed, object to
 2 a specific question; right?
 3 MR TUSHINGHAM: Yes. Yes. (Pause)
 4 MR ALEXANDER: I'm trying to think how to do this carefully.
 5 I guess just for purposes of really the record here,
 6 to give you a fair sense of what I would inquire about,
 7 I'll ask them and understand that you obviously then
 8 may -- you will have your role to perform, I understand
 9 that.
 10 Mr Fraser, I infer from your testimony and the
 11 subject matter of this letter that the content of the
 12 attachment concerned Mr Sýkora's analysis of the public
 13 service -- I'm sorry, public special purpose road
 14 question; is that correct?
 15 A. I would think that's correct, yes.
 16 Q. So the material was provided -- and do you recall that
 17 it included an analysis of the statute?
 18 A. I don't recall, no.
 19 Q. But you are quite sure that this was the first time --
 20 the first timeframe that you had heard this phrase,
 21 "public special purpose road", the statutory phrase?
 22 A. I would say I first got involved with the road issues in
 23 January/February of 2016. We engaged Matej Sýkora
 24 shortly afterwards, and at some point between the
 25 beginning of his engagement and this date, I don't

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10:09 1 A. I don't, no. Like I say, I'm guessing a page or two.
 2 Q. Now, in response, if we could turn to Exhibit R-156.
 3 MR DRYMER: Before you do, may I ask one quick question.
 4 MR ALEXANDER: Of course.
 5 MR DRYMER: Just to pin this down so there's no
 6 misunderstanding on the record. In response to
 7 Mr Alexander's first question about the attachment a few
 8 minutes ago, he asked:
 9 "Do you remember what the attachment was?"
 10 And your answer was:
 11 "It's possible that it was some advice from him to
 12 me on the status of the road."
 13 Do you remember whether that's what the attachment
 14 was?
 15 A. I don't remember. I'm just going on what the attachment
 16 says -- what it says in the attachment there.
 17 Oh, sorry, do I recall what the question -- what the
 18 advice was?
 19 MR DRYMER: No, do you recall whether or not, I suppose is
 20 the question, the attachment to this email, R-155, was
 21 advice from Mr Sýkora to you, writ large?
 22 A. I don't recall. I'm just going on how the document is
 23 described there. It's possible that it was a memorandum
 24 in Slovak, because he would have communicated with the
 25 mayor in Slovak. But I honestly don't recall.

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10:10 1 THE PRESIDENT: I understood you before to say yes, it was
2 an analysis of his -- of Sýkora's understanding of the
3 concept of public special purpose road. Or was that not
4 an assertion but more a maybe?
5 A. Correct, more a maybe. I don't recall the attachment.
6 I don't recall the contents of the attachment. But
7 looking at the title there, that's what it looks like it
8 was.
9 MR DRYMER: May I ask one or two further questions? Again,
10 just to be certain.
11 Do you recall receiving -- you, or the company
12 receiving advice from Mr Sýkora on the nature of
13 the road?
14 A. Yes, we did.
15 MR DRYMER: Do you recall whether that advice was the
16 attachment to this email?
17 A. I don't recall that, no.
18 MR DRYMER: Alright, thank you.
19 Excuse me for the interruption.
20 MR ALEXANDER: That's quite alright.
21 Mr Fraser, I think if we could now pull up R-156.
22 Now, this is dated 6 June 2016, if my memory serves
23 me well, roughly three weeks after the question.
24 You have had a chance to read this letter recently,
25 have you?

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10:13 1 accessible.
2 Q. And by May of 2016, you had decided that an alternative
3 approach to the public road concept might be helpful;
4 correct?
5 A. I wouldn't describe it as an alternative approach.
6 I would describe it as an additional approach. But yes,
7 we did think that we needed to do something else.
8 Q. Alright. Well, let's take a look, if we can, at some of
9 the events from the time that are documented, which may
10 be helpful.
11 Could we pull up, please, C-105. I'll ask you if
12 you recognise that document, Mr Fraser. This is a
13 purchase contract concerning -- if we have the right
14 document here, I think we do -- the 1/700th share in the
15 road purchase.
16 A. Yes.
17 Q. Do you recall that transaction?
18 A. Mm-hm.
19 Q. Was that a "Yes"?
20 A. Yes, sorry.
21 Q. And how did that particular transaction come into
22 discussion? This is dated 17 December 2015.
23 A. That transaction came about because we were already
24 blocked on the road at Smilno, from about the middle
25 of December, and our lawyer considered that one of the

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10:11 1 A. Yes.
2 Q. And the statutory phrase "public special purpose road"
3 does not appear in his response, does it, sir?
4 A. It does not.
5 Q. Did you have any further conversation personally with
6 the mayor about his choice of words and the lack of any
7 reference to "public special purpose road"?
8 A. I didn't have any conversations myself with the mayor
9 about this. I'm sure that Mr Sýkora would have done.
10 Well, I imagine he would have done.
11 Q. He reported in his response here -- well, I'll ask it
12 this way. Did you understand him to be describing the
13 historical uses of the road?
14 A. Yes, I did.
15 Q. And he noted in particular:
16 "the Village of Smilno is not the owner of the above
17 mentioned field track."
18 Is that right?
19 A. That's correct.
20 Q. Now, the topic of special public -- I'll call it PSPR,
21 that seems to work better. You know what I'm referring
22 to when I say that. That topic had arisen after there
23 had been problems in blockages of the road; is that
24 correct?
25 A. That's correct. We understood the road was publicly

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10:15 1 reasons, one of the grounds on which we were being
2 blocked was that we were -- or that it would strengthen
3 our position if we could also buy a share in the road in
4 addition to our existing rights.
5 Q. And that transaction went forward pursuant to this
6 contract; correct?
7 A. It never actually went forward. It was blocked. But
8 the contract was signed.
9 Q. It was declared null and void by the court; correct?
10 A. That's correct.
11 Q. And that null and void judgment by the court resulted
12 from a recognition of claim by AOG, did it not?
13 Yes or no?
14 A. Sorry. That is correct. We decided it was no longer
15 worth contesting that claim.
16 Q. And I'll confess that in the US that is referred to as
17 a "confession of judgment"; do you have something
18 comparable to that in the UK?
19 A. I'm not aware of that phrase. I've heard of people just
20 saying we can concede, concede the claim, but ...
21 Q. And the claim was conceded in its entirety at a much
22 later point in time; correct?
23 A. Correct. In June. We applied to concede the claim
24 in June.
25 Q. So in December when this transaction was executed by the

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10:17 1 parties, the intention was to transfer an interest in
 2 the road in order to establish access rights to the
 3 road; correct?
 4 A. Yes, additional access rights, if you like.
 5 Q. Now, take a look if you would, please, at R-036. Do you
 6 recognise this document, sir? My understanding is that
 7 it is the demand letter served by AOG's lawyer upon
 8 Ms Varjanová, calling upon her to move her vehicle.
 9 A. Mm-hm. Yes.
 10 Q. Do you recall that?
 11 A. I've seen the document, yes.
 12 Q. Now, as you look at this, if you scroll down beyond the
 13 demand to move it within three days, you can see there
 14 the basis for the demand, can you not? (Pause)
 15 A. Yes, I can see that.
 16 Q. And the basis for the demand is the purported rights of
 17 AOG as a co-owner of the property; correct?
 18 A. Correct. That's what it says, yes.
 19 Q. And it is true, isn't it, Mr Fraser, that there is no
 20 reference to any right other than the claimed right as
 21 a co-owner? Yes or no?
 22 A. Yes. That's what it says there.
 23 Q. Alright. And then shortly after that, AOG repeatedly,
 24 or even up to that point, AOG had been repeatedly moving
 25 her car from the access road; correct?

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10:19 1 A. We had moved it a number of times. I mean, we
 2 understood the road was publicly accessible. We were
 3 not relying just on our right as a co-owner.
 4 Q. But in the demand it quite explicitly was reliant on the
 5 status as co-owner and nothing else; correct?
 6 A. Correct. The demand says that. But we had
 7 conversations with the mayor, for example, who said: you
 8 have a right --
 9 Q. Excuse me, Mr Fraser, I really would appreciate --
 10 A. Sorry.
 11 Q. Our time is really quite truncated.
 12 Now, after that, you had also gone to the police;
 13 correct?
 14 A. That's correct.
 15 Q. Based upon her interference with your right as
 16 a co-owner, and that is how it was described to the
 17 police, is it not?
 18 A. I can't say.
 19 Q. Well, let's take a look at the -- next at the AOG report
 20 to its partners in C-120. Next page, please.
 21 A. Sorry, what date is this report?
 22 Q. This report is dated on the first page, 21 January 2016,
 23 "Status Update and Activity Summary"?
 24 A. Yes.
 25 Q. Alright. Now, I want to call your attention to the

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10:21 1 paragraph in particular under "Issues" and I'll give you
 2 a moment to read that. (Pause)
 3 Could I ask you to read the sentence, for the
 4 record, beginning with the word "We". It's about six
 5 lines down?
 6 A. "We are working with our attorney, security,
 7 construction company and the local police to repeatedly
 8 remove the vehicle."
 9 Q. And the next sentence.
 10 A. "She has legal right to park her car on the road."
 11 Q. And then there is an assertion of privilege.
 12 Just for purposes of our record, Madam President,
 13 I'm going to try -- and forgive my cumbersome approach
 14 to this, but it's a little tricky sometimes to set the
 15 stage properly.
 16 So it would appear that the sentence that has been
 17 blocked relates to the prior sentence. Do you happen to
 18 recall that?
 19 MR TUSHINGHAM: Sorry, can I just take a moment.
 20 That trespasses on the legal advice that was
 21 provided, that has been redacted. So asking for him to
 22 comment on the relationship between one sentence and
 23 then -- the redacted advice would be covered by
 24 privilege. So we would object to that question.
 25 THE PRESIDENT: So the redacted sentence refers to legal

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10:23 1 advice given about her right to park?
 2 MR TUSHINGHAM: Sorry, no, that's not what I said. But
 3 asking for him to comment on --
 4 THE PRESIDENT: No, I understand what you said. I'm just
 5 asking a little further, because when I saw that I was
 6 somehow annoyed because I would very much like to
 7 understand what is in this sentence, right. But of
 8 course if there is a legal privilege invoked, then
 9 that's it.
 10 But you're saying this is redacted because of
 11 attorney-client privilege being invoked here?
 12 MR TUSHINGHAM: That is my understanding, and that this
 13 document was then, of course, shared with the joint
 14 venture partners who had a common interest in that
 15 advice, given that they were AOG's joint venture
 16 partners. So that's my understanding of why the
 17 document has been -- that sentence has been redacted.
 18 THE PRESIDENT: Thank you.
 19 Mr Alexander, where do we go from here?
 20 MR ALEXANDER: Well, let me ask another question.
 21 I understand the position and we may have a further
 22 conversation about that at an appropriate point, but
 23 I don't want to take too much of my time on it at this
 24 point, if that's alright with the President.
 25 THE PRESIDENT: Yes, sure.

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10:24 1 MR ALEXANDER: Mr Fraser, the word in the prior sentence,
 2 that the vehicle had been repeatedly removed, was that
 3 consistent with your understanding?
 4 A. I certainly understand that it was removed more than
 5 once, yes.
 6 Q. Alright.
 7 THE PRESIDENT: You said "a number of times" before, in --
 8 I mean, verbatim.
 9 A. Yes.
 10 MR ALEXANDER: Right. And on the comment:
 11 "She has legal right to park her car on the road."
 12 Am I correct that you're going to assert privilege
 13 for any further discussion about that point?
 14 A. I don't know what the redacted words are. So I ...
 15 I'm not sure what the argument is about.
 16 Q. I understand.
 17 THE PRESIDENT: Can I just ask a question? I really didn't
 18 understand this passage because, on the one hand you say
 19 you removed the car, and on the other hand you say she
 20 has a right to be there. So what is it? Why did you
 21 remove the car if you are aware that she has a right to
 22 park?
 23 A. It's not -- I will be honest, it's not 100% clear to me.
 24 We were told we were allowed to remove the car.
 25 I believe we were authorised by the mayor and the police

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10:25 1 to remove the car. So she may have had a right to park
 2 the car but not block the road. I don't know, it's not
 3 totally clear, I agree.
 4 MR DRYMER: Had you seen this document before this
 5 arbitration?
 6 A. Yes, I had. Yes.
 7 MR DRYMER: Okay. Because -- and I'm staying away from
 8 anything to do with privilege, but a minute ago you
 9 said:
 10 "I don't know what the redacted words are."
 11 A. Mm.
 12 MR DRYMER: Presumably, I don't know if you recall the
 13 redacted words, but you would have seen the redacted
 14 words?
 15 A. I would have seen them, that's right.
 16 MR DRYMER: Very good. Thank you.
 17 MR ALEXANDER: I am going to move on to another document.
 18 Could I ask that C-125, please, be pulled up.
 19 Now, you do recall, Mr Fraser, that after the
 20 repeated removal of her car from property of which she
 21 was a co-owner, she filed a lawsuit against AOG; do you
 22 recall that?
 23 A. Yes, I do.
 24 Q. And that lawsuit led to a ruling, the issuance of
 25 a preliminary measure ruling, which enjoined AOG from

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10:27 1 that precise conduct; would you agree?
 2 A. It enjoined us from going through with the purchase of
 3 the share in the road, yes.
 4 Q. Well, when I used the phrase "precise conduct", I meant
 5 from moving the car.
 6 A. Is that what the injunction says? I can't -- I'm not --
 7 I can't recall completely.
 8 Q. Well, let's scroll down. Do you see the language --
 9 I'm sorry, I missed it there. That was my mistake.
 10 Do you see in the paragraph four lines down from the
 11 top:
 12 "The first defendant [that is AOG, of course] is
 13 obliged to refrain from using the real property..."
 14 And you understand that real property is the field
 15 track which is co-owned by Ms Varjanová, and purportedly
 16 co-owned by, at the time, AOG?
 17 A. Yes, I do understand that.
 18 Q. Alright. So it's a dispute between two landowners of
 19 the property?
 20 A. Mm-hm.
 21 Q. Yes?
 22 A. Yes.
 23 Q. And the court enjoined you both from using the track and
 24 enjoined you from removing things placed by the
 25 plaintiff on the property; correct?

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10:29 1 A. Yes, that's what it says.
 2 Q. And on the next page, do you see, about probably 15
 3 lines down, the language that begins:
 4 "The plaintiff was never offered the 1/700th
 5 share..."
 6 Do you see that?
 7 A. Yes, I see.
 8 Q. "... was never offered the 1/700th share in common
 9 property, which was acquired by the first defendant upon
 10 the purchase contract ... despite the fact that, as
 11 a co-owner, she has a legal pre-emptive right to
 12 purchase such a co share in common property."
 13 When did you first become aware, sir, that she
 14 had -- that all co-owners had a preemption right to
 15 purchase the offer pursuant to the purchase contract?
 16 A. I think I became aware in January 2016, probably when
 17 the injunction was issued. Or, actually, the injunction
 18 was issued in February. So I think I became aware about
 19 that time.
 20 Q. Shortly after her application for injunction was filed
 21 you became aware of it; correct?
 22 A. Yes. Yes.
 23 Q. Alright.
 24 And AOG appealed -- oh, I'm sorry. I wanted to
 25 cover one more point. On page 3, please.

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10:31 1 As part of its consideration of the application, the
2 court notes -- do you see the paragraph 3 there that is
3 discussed? It's a little more than halfway down the
4 page:
5 "An employee of the first defendant ..."
6 That again is AOG; do you see that?
7 A. "An employee ..."
8 Sorry, is that in the third paragraph, is it?
9 Q. Yes, do you see that:
10 "An employee of the --"
11 A. Yes, I see. Yes.
12 Q. Do you know that name?
13 A. Yes.
14 Q. And he was employed by AOG?
15 A. Correct.
16 Q. And this relates to the investigation file of the police
17 department; do you see that?
18 A. I see, yes.
19 Q. Now that includes, as I understand it, Mr Jackiewicz's
20 report that the vehicle was blocking access, and that he
21 "cut the anchor chains using lever shears and moved the
22 vehicle off the road"; do you see that?
23 A. I see that, yes.
24 Q. Did you authorise that to be done, to remove the car
25 from her own property?

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10:32 1 A. I did not.
2 Q. Do you know who did?
3 A. I don't, no.
4 Q. Did you voice any objection to that after you learned it
5 had been done?
6 A. I didn't. I mean, as I say, we had been told -- we had
7 previously been asked -- authorised to remove cars from
8 the road by the mayor.
9 Q. And there is no documentary evidence of that in the
10 record, would you agree?
11 A. I think that's correct.
12 Q. Alright. Then if we could go to the next page. Now, do
13 you see the paragraph 3.3?
14 A. Mm-hm.
15 Q. That is this court's listing of the number of co-owners
16 of the property who had filed something with the court,
17 and in 4 you can see that the court describes it as
18 these co-owners:
19 "... stating that they have no reservations and
20 agree that the co-owner - the plaintiff, [may] use the
21 said property to park the motor vehicle that she uses."
22 Do you see that?
23 A. Yes, I can see that.
24 Q. And they go on to say that:
25 "... they have not given their consent to any

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10:34 1 co-owner to remove or relocate [the] parked motor
2 vehicle ..."
3 Do you see that?
4 A. Yes, I can see that.
5 Q. Alright. Now, if we could go ...
6 Before we turn to it, do you have any recollection
7 of the court expressing concern about the use of
8 self-help?
9 A. No, I don't.
10 PROFESSOR SANDS: Can I just come in here? It's just
11 a quick question that cuts across. You've mentioned
12 many times in the course of this morning, and also in
13 your first and second witness statements, recourse to
14 the mayor, and I'm just curious: on what basis did you
15 proceed in that way? I mean, was it on the -- and,
16 again, I'm conscious, I don't want to pry into legal
17 advice or anything, but why did you keep going to the
18 mayor for assistance and advice?
19 And I ask that question because I spend half the
20 year living in a small village in which there are many
21 issues involving the mayor. I think we're all aware of
22 that kind of relationship. So why did you keep going to
23 the mayor on these issues?
24 A. The mayor was supportive. He was keen to see activity
25 in the village. He had -- he gave us the assurance that

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10:35 1 we could use the road in the first place, so when we
2 later had problems, we did try and involve the mayor,
3 yes.
4 PROFESSOR SANDS: On what basis does a mayor have a right to
5 determine who can and cannot use a particular road?
6 A. He represents -- I mean, I think our thinking was that
7 he represents the -- with his council, he represents the
8 village, and he can speak for his council. So we
9 assumed on that basis -- we knew the council didn't own
10 the road, but we assumed that his statements were --
11 gave us the authority -- were good enough for us, if you
12 like.
13 PROFESSOR SANDS: Even when it became clear that his views
14 were not in, shall we say, coherence with some of the
15 residents of the village?
16 A. I would say that our feeling, that it was a very small
17 number of residents who were not supportive, and that
18 the majority of the village we felt, we understood, was
19 very keen to see us come and commence operations in the
20 village. They were very keen to see us, you know,
21 explore.
22 So I think we felt that, yes, that the mayor gave us
23 comfort and authority, and we thought we had the support
24 of the rest of the village.
25 PROFESSOR SANDS: And what was the nature of the

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10:37 1 relationship with the mayor or the council? I mean,
2 were agreements entered into with the mayor or the
3 council? Were there any financial transactions with the
4 mayor or the council?
5 A. No financial transactions. We presented to the council,
6 we presented to a public meeting at their request. We
7 did support the odd initiative of the village, which
8 was, for example, we sponsored a football club. I think
9 there was something else, the Christmas party, something
10 like that.
11 We were keen to show that we were willing to put
12 some money into the village. At that stage it was just
13 small gestures. But, you know, we understood that as
14 an oil company you need to give something back and we
15 were keen to demonstrate that, and that would have been
16 part of the dialogue with the mayor.
17 PROFESSOR SANDS: And did you personally meet with the
18 mayor?
19 A. I did, yes.
20 PROFESSOR SANDS: On how many occasions? Approximately;
21 I mean, it's a long time ago.
22 A. I would say, four or five? At that stage, most of the
23 conversations were actually in Slovak, so it tended to
24 be my Polish or Czech colleagues who would have the
25 conversation.

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10:38 1 I didn't realise he spoke as good English as he
2 seems to.
3 PROFESSOR SANDS: And on the basis of your personal
4 engagements with the mayor, did you form a view as to
5 what motivated his support of this project?
6 A. He was, I believe, very keen to see investment come into
7 the region. They were losing their young, the young
8 were leaving the region, they were going to Germany, to
9 western Slovakia. There was a big concern about the
10 region dying, and he wanted to see any foreign investor
11 come in. I think there was a lot of people who knew
12 about the historic oil exploration, you know, they knew
13 where they were, they knew there had been interest in
14 the past, and the people we spoke to were keen to see
15 that looked at again.
16 PROFESSOR SANDS: Thank you very much.
17 MR DRYMER: May I follow up.
18 Not at all surprisingly, Professor Sands has put his
19 finger on, I think, an important issue. He asked you
20 why did you -- again, you, writ large -- repeatedly go
21 to the mayor with respect to the question of access and
22 the road. And I understood you to say that you believed
23 that he was able to speak for the council and the
24 village.
25 A. Mm.

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10:40 1 MR DRYMER: Did I hear you correctly?
2 A. Correct, yes.
3 MR DRYMER: What I'd like to know is, did you believe he was
4 able to speak for council and village as to the desires
5 of the village, or -- and/or that he was able to
6 pronounce on the legal status of the road? They're two
7 different things.
8 A. Mm. We believed he could -- we believed he advised us
9 on the legal status of the road, that the advice he gave
10 us, that it was a publicly accessible road, was advice
11 we relied on. It's true he was not a lawyer.
12 We knew that he was personally supportive of our
13 activities in the village, but at the same time he made
14 clear he didn't want to speak for the village as
15 a whole. He believed the village was supportive, but
16 he said: you're going to have to go and convince them;
17 I'm not going to do it for you.
18 MR DRYMER: Alright. Thank you. I'll leave it there.
19 Thank you very much.
20 MR ALEXANDER: Mr Fraser, just following up to the
21 Tribunal's questions, you do recall, however, that when
22 he responded to Mr Sýkora's letter, he offered no
23 comment on the statutory public PSPR issue; correct?
24 A. That's correct, yes.
25 Q. And if I could ask you now to look at R-150. This, as

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10:41 1 you will see at the top, appears to be a report of the
2 District Prosecutor's Office in the nature of a police
3 report, District Police Department. Do you recall that
4 AOG had filed a criminal complaint against Ms Varjanová?
5 A. There were a number of complaints going in both
6 directions. I recall that. The details of the
7 individual complaints I must admit I don't recall.
8 Q. So let's take a look. I won't take the time to walk
9 through that point. The document, of course, will
10 indicate, as I suggested, that it was a criminal
11 complaint by AOG, so I'm just going to move on to that.
12 Would you agree -- and take whatever time you need,
13 because this is an important point, Mr Fraser -- that
14 the claim allegedly infringed upon in this criminal
15 complaint is solely that of a co-owner, and there's no
16 reference to any public right infringement? As I say,
17 take whatever time you need. (Pause)
18 A. Yes, I can see that.
19 Q. Alright. And then if we could turn down further on the
20 page, please. Over on page 2, if you could take a look
21 at the third paragraph and read that, please, for the
22 record, beginning with "Only ..."
23 A. "Only the relevant court is competent to resolve the
24 property relationship and to decide on legitimacy of
25 entitlements of the specific persons to the specific

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10:44 1 parcels of land. Moreover, only the court is competent
2 to uphold the validity or existence of the lease
3 agreements."
4 Q. Do you remember being advised that that was the response
5 of the police department to your complaint?
6 A. I don't remember the specific details of the response.
7 I think I remember that it was -- that they were not
8 helpful.
9 Q. Well, you do remember that AOG had filed a criminal
10 complaint --
11 A. Mm.
12 Q. -- based on its co-owner status, against another
13 co-owner; correct?
14 A. Yes.
15 Q. It was a classic land dispute, a civil land dispute;
16 correct?
17 A. Mm, yes.
18 Q. And a few days later -- actually a few days previously,
19 Ms Varjanová had filed a complaint and sought
20 an injunction, and then, a few weeks later, that
21 injunction was granted; correct?
22 A. That's correct.
23 Q. And it's also true that AOG, in contrast, did not file
24 for any affirmative relief or any injunction. Isn't
25 that true?

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10:45 1 A. That's true.
2 Q. And in fact --
3 A. Well, sorry, we did challenge the injunction, obviously.
4 Q. Yes, you filed an opposition to the injunction, and
5 we'll come to that in a minute. But on the question of
6 whether AOG had any right, co-owner, public, PSPR, Cesty
7 Smilno, AOG waited seven, eight months before it ever
8 asked a court to decide the question; correct?
9 A. Are you referring to the hearing -- our appeal against
10 the injunction?
11 Q. Actually I'm referring to the fact that in December of
12 2016, after all the road blockages, after all the
13 protests, after all the criminal filings, the first time
14 AOG filed any affirmative relief was in December in
15 which it sought an injunction, expressly premised upon
16 the PSPR theory?
17 A. That's correct. We had relied on publicly accessible,
18 initially.
19 Q. Well, in fact, we just looked at documents which make it
20 clear that you did not rely on publicly accessible
21 originally in the complaint you filed with the police.
22 It was limited to co-owner status on the 1/700th;
23 correct?
24 A. That's correct, but it didn't mean we abandoned our view
25 about public accessibility.

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10:47 1 Q. But it is clear that although you say now you didn't
2 abandon it, you didn't do anything about it,
3 affirmatively, until December of 2016.
4 A. Yes, that's correct.
5 Q. The only thing you did was to continue to try to have
6 protesters arrested while they were on the co-owned land
7 owned by Ms Varjanová and other residents of Smilno.
8 A. I mean, in June, for example, we were told by the police
9 to have the car towed. So there was a lot of ambiguity
10 about -- we were getting mixed messages from the
11 authorities about it.
12 Q. Mr Fraser, again, our time is limited. I think it's
13 fair for me to ask -- I won't interrupt you, but I think
14 it's fair for me to ask you a question and you to answer
15 that question.
16 I'm going to repeat the question: after the police
17 said only a court can decide this dispute, you opposed
18 her injunction in the Court of Appeals, and the Court of
19 Appeals affirmed the injunction; correct?
20 A. That's correct.
21 Q. And that injunction remained in place for the balance of
22 2016 and beyond; correct?
23 A. That is correct.
24 Q. And the only time AOG took affirmative action to
25 establish its right was when it filed a complaint

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10:49 1 in December of 2016 after her injunction had been in
2 place throughout that period; correct?
3 A. You're talking about affirmative action through the
4 courts?
5 Q. Yes.
6 A. We had conversations with the police before then.
7 Q. Yes, I understand. But that's why I asked the question
8 the way I did.
9 A. Mm-hm.
10 Q. So is our record clear that you did nothing in the
11 courts until December 2016?
12 A. That is correct.
13 Q. And I'd like to put before you what was filed at that
14 time. If I could call up R-059. Do you have that
15 document before you, sir?
16 A. Yes.
17 Q. And do you see the date on that document?
18 A. I do. That's March 2017.
19 Q. Right. And it refers somewhere in the text, in
20 paragraph 8, I will represent to you, and you're welcome
21 to pull it up, but just in the interests of time:
22 "By request of 2 December 2016, the claimant ..."
23 You are the claimant in this action; correct?
24 A. Mm-hm.
25 Q. You:

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10:50 1 "... sought an injunction ordering the
 2 respondents... to refrain from, including via third
 3 parties, any actions leading to restriction of the
 4 claimant's access and access of persons authorized by
 5 the claimant ..."
 6 You recall that being the purpose of the injunction
 7 you sought?
 8 A. I do.
 9 Q. And on page 3, if we can turn to that, it says, just
 10 before paragraph 9 -- actually, about 10 lines up:
 11 "The claimant justified its request ... by the fact
 12 that the claimant was the entity authorized to carry out
 13 [the] geological survey ..."
 14 And then the court noted that:
 15 "The last blocking had occurred on
 16 15-17 November 2016..."
 17 And then if we could turn to page -- I'm sorry,
 18 paragraph 11. I'd ask you to read that if you would,
 19 please.
 20 A. "In the request for interim injunction as well as in the
 21 appeal, the claimant supports its statements on the
 22 right to pass through the access field road by foot and
 23 motor vehicles also by the fact that the access field
 24 road is a public special purpose road."
 25 Q. This was the first time you asked a court to consider

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10:52 1 the theory upon which you had been relying since May of
 2 2016; is that correct?
 3 A. That's correct.
 4 Q. And the court denied your request for an injunction, did
 5 it not? Both in the Court of First Instance and in the
 6 Court of Appeals?
 7 A. That's correct.
 8 Q. And in your witness statement, your two witness
 9 statements submitted to the Tribunal, you made no
 10 mention of this application and this ruling, did you?
 11 A. I did not, no.
 12 Q. And you never told the police about it either, did you,
 13 sir?
 14 A. I'm sorry, told the police about the -- about this court
 15 process?
 16 Q. Yes. Yes or no?
 17 A. No, we did not. No.
 18 Q. And you never told any of the ministries you contacted
 19 from time to time about this ruling, did you, sir?
 20 A. I don't believe we did.
 21 Q. Now, Mr Fraser, this ruling raised two, I would submit
 22 respectfully, insurmountable problems to your use of the
 23 PSPR theory that is at the heart of this case, didn't
 24 it, sir?
 25 A. Sorry, you're saying it raised two obstacles, did you

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10:53 1 say?
 2 Q. Yes. Number one, it denied the injunction.
 3 A. Yes.
 4 Q. And it also said that the PSPR theory that you were
 5 proposing failed to take account of the rule that a user
 6 pursuant to a PSPR theory must accept the road as it is.
 7 You remember that, don't you?
 8 A. I don't remember it now, but it's in the judgment, is
 9 it?
 10 Q. Yes, it is.
 11 Look at paragraph 13, if you would, please. The
 12 underlining is, I believe, in the original of the court.
 13 Could you read, just for our record, beginning with the
 14 word "Users ..."
 15 A. "Users must adjust themselves to the construction
 16 condition and transportation-technical condition of the
 17 roads ..."
 18 Q. Now, Mr Fraser, that was a huge problem for AOG, wasn't
 19 it, sir?
 20 A. At this point, which is early 2017, we had adopted
 21 a slightly different strategy, so we were a lot less
 22 focused on the judicial process with the road at this
 23 stage.
 24 Q. But you still were relying on law, were you not, in your
 25 activities at the site?

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10:55 1 A. Of course we were relying on the law. But we were by
 2 then in dialogue with the activists behind this lawsuit,
 3 or this litigation, and our understanding was that if we
 4 could reach an accommodation with them, then they would
 5 no longer block our access along the road.
 6 Q. And we're going to come to that in some detail,
 7 Mr Fraser. But for now I want to just understand, first
 8 of all, would you agree, Mr Fraser, that it would be
 9 fair to bring to the Tribunal's attention a ruling
 10 directly on the issue of the PSPR theory, since it is at
 11 the heart of your claims here?
 12 A. We didn't -- we didn't think it was relevant by then,
 13 because, as I say, the debate had moved on.
 14 Q. So your testimony to the Tribunal is the fact that
 15 a court made the ruling it did about the -- your failure
 16 to carry your burden of proof on the establishment of
 17 the PSPR theory, you didn't think that was worth --
 18 I'll move on.
 19 MR DRYMER: May I ask a question before you do, sir?
 20 If I understand your testimony, Mr Fraser, you say
 21 the debate had moved on, or circumstances had moved on,
 22 because you were in discussions with the activists,
 23 I think you said a moment ago; is that correct?
 24 A. That's correct, yes.
 25 MR DRYMER: And you were in discussion with the activists

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10:57 1 about removing their blockage.
2 A. Mm-hm, correct.
3 MR DRYMER: Okay. My question has nothing to do with that
4 particularly.
5 Did you, again the company, or you personally,
6 understand that discussions with the activists, as you
7 call them, could resolve the particular question of
8 having to use the road in the conditions in which it was
9 at the time? In other words, could the activists allow
10 you to gravel the road? Was that your understanding?
11 A. We -- our understanding was that if the activists could
12 be placated, that they would have no objection to our
13 using the road, and I'm sure that that would have
14 included upgrading or maintaining the road if required.
15 MR DRYMER: And I don't know what your answer will be, but
16 was it the company's understanding, as far as you're
17 aware, that with, let's say, the blessing of the
18 activists, of the local community to upgrade the road to
19 the extent required for proper access, that that would
20 resolve the issue that Mr Alexander pointed you to,
21 where the court seems to have said: as a PSPR you must
22 respect the conditions of the road as you find them?
23 Again, I mean this goes -- excuse me for not just
24 interrupting your answer, but for complicating the
25 question. This goes to the dichotomy that we were

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10:59 1 discussing a moment ago between the politics of the law,
2 if you will.
3 A. Mm, mm. Yes.
4 I mean, I would first of all distinguish between the
5 activists and the local community.
6 MR DRYMER: Yes, fair enough.
7 A. We did not see them as the same at all. They were quite
8 distinct entities, groups of people. But yes, we
9 thought that if we could address them on the concerns
10 which they were very vocal about, they assured us that
11 they would then -- they would let us have a clear path
12 at that point.
13 So maintaining the road I think was a detail in that
14 bigger picture, I would say.
15 MR DRYMER: Thank you. That's helpful.
16 MR ALEXANDER: Mr Fraser it is, as you suggest, important to
17 pay attention to the chronology here. We circulated
18 a demonstrative exhibit.
19 Madam President, we may be continuing to move
20 through some other documents as I use this, and
21 I wonder, would it be helpful if I gave you a copy of
22 this, and the witness, so that we could have them both
23 at hand? I think it might be easier to read documents
24 and put it in this chronology.
25 THE PRESIDENT: That's certainly fine.

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11:00 1 We have been going for an hour and a half now, so
2 I'm wondering whether this would not be a good moment to
3 have a break before you are going into these questions;
4 does that make sense?
5 MR ALEXANDER: That's fine, Madam President, thank you.
6 MR TUSHINGHAM: Madam President, just one question: would we
7 be able to see a copy of that chronology before the
8 break, just so that we are able to --
9 MR ALEXANDER: It's been circulated.
10 THE PRESIDENT: I understand that it must have been
11 circulated because that's the rule, right?
12 MR ALEXANDER: Yes.
13 MR TUSHINGHAM: Please forgive me, I thought this was a new
14 document.
15 MR DRYMER: What's the document, just for my information?
16 Which demonstrative?
17 MS LUO: It's RD-1.
18 THE PRESIDENT: We're going into a break now, Mr Fraser.
19 Please do not speak to anyone because you are on the
20 witness stand.
21 Good, thank you.
22 (11.01 am)
23 (A short break)
24 (11.20 am)
25

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11:21 1 THE PRESIDENT: So before we start, we just received
2 an email.
3 MR TUSHINGHAM: Yes.
4 THE PRESIDENT: Can you just explain what it is, and the
5 context?
6 MR TUSHINGHAM: Yes, Madam President. So it relates to the
7 cross-examination that Mr Alexander was pursuing in
8 relation to Exhibit R-155. During the course of the
9 break, we obviously checked whether the attachment that
10 was being referred to was within the legal team's
11 possession, and it was discovered that it was. The
12 explanation for why it wasn't originally disclosed in
13 response to Slovakia's production request was because
14 a number of documents were sent, they were originally in
15 Slovak, were sent to interpreters in order to conduct
16 a review as to the relevance of those documents.
17 This document was unfortunately by human error
18 missed from that set, and so therefore it wasn't picked
19 up in the disclosure review exercise.
20 We don't have an original -- an English translation
21 now, but we're obtaining one, and so therefore we've
22 given it to you as soon as we're able to find out the
23 position.
24 So we apologise for the error that originally
25 occurred, but that's the explanation.

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11:22 1 THE PRESIDENT: No, we appreciate the explanation and the
 2 fact that you're submitting it.
 3 MR DRYMER: So it's not privileged?
 4 MR TUSHINGHAM: And it's not a privileged document, no.
 5 THE PRESIDENT: Thank you.
 6 MR DRYMER: Mr Alexander, did you note this?
 7 MR PEKAR: Sorry, I was explaining to Mr Alexander the
 8 content of the document.
 9 THE PRESIDENT: Are there any comments you wish to make now,
 10 or later, on the document?
 11 MR ALEXANDER: Yes, Madam President. I don't speak Slovak
 12 so I would like to read it, and that does raise the
 13 question of timing, and our time.
 14 THE PRESIDENT: Yes.
 15 MR ALEXANDER: With the Tribunal's indulgence, I want to
 16 just confirm that we would be permitted -- we have
 17 2.5 hours for each witness, estimated. It may be
 18 appropriate, given the pace, for which I accept
 19 responsibility, that we re-adjust that somewhat. Would
 20 that be acceptable to you?
 21 THE PRESIDENT: No, the Tribunal's view is that you're not
 22 held to the time estimate. You're held to the total
 23 time allocated over the entire hearing.
 24 MR ALEXANDER: Yes.
 25 THE PRESIDENT: Obviously if we can stick to about the times

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11:25 1 conversation can go smoothly.
 2 MR ANWAY: We are preparing the translation.
 3 MR DRYMER: Fine; I didn't know if it was on you or the
 4 other side.
 5 MR ANWAY: I didn't know either, but we're doing it anyway.
 6 MR DRYMER: Very good, thank you.
 7 MR TUSHINGHAM: As soon as we receive the translation we
 8 will send that through, and we hope that that will be
 9 able to be done as soon as possible.
 10 THE PRESIDENT: So we will soon have two translations, if
 11 I understand it correctly. So we couldn't wish for
 12 more.
 13 Good. That's fine.
 14 MR ALEXANDER: May I proceed?
 15 THE PRESIDENT: Yes please.
 16 MR ALEXANDER: Thank you, Madam President.
 17 Mr Fraser, you may recall I had earlier asked some
 18 questions about whether the Court of Appeals' decision
 19 on your injunction application against Ms Varjanová and
 20 four or five other parties, whether it created some
 21 insurmountable problems. I probably should have said
 22 "serious issues for AOG going forward"; do you recall
 23 that?
 24 A. Yes.
 25 Q. I wanted to address one other matter that was raised in

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11:24 1 indicated, that allows us to follow the sequence of
 2 witnesses as they are organised for each day.
 3 MR ALEXANDER: Of course.
 4 THE PRESIDENT: But we have some flexibility, so that is not
 5 a problem.
 6 The question I was asking myself is if you need to
 7 have a translation, and then you may still have
 8 additional questions for Mr Fraser. That might have to
 9 be after the lunch break, which would imply that
 10 Mr Fraser remains sequestered during the lunch break.
 11 That's the only timing issue I really see.
 12 MR ALEXANDER: Thank you, Madam President. Yes, based upon
 13 the preliminary description I've received, I will want
 14 to ask some questions for it.
 15 THE PRESIDENT: Fine. So let's proceed now with the other
 16 questions, and then we'll revert and see what time we
 17 get to it.
 18 MR ALEXANDER: Yes, thank you, Madam President.
 19 MR DRYMER: May I just raise a practical point. You're
 20 going to, Mr Alexander, have, if not a translation, at
 21 least a fair description of the document. I just want
 22 to be certain that if and when you put questions to any
 23 English-speaking witness, whichever witness that might
 24 be, that the witness also has access to some form of
 25 English description or translation so that the

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11:26 1 the court's decision, and if we could pull that up
 2 again. Maybe it's already up. That's R-59, yes.
 3 Do you recall the court's discussion about the
 4 constitutional rights of Ms Varjanová and the other
 5 landowners?
 6 A. I do.
 7 Q. And do you recall the court's conclusion that the
 8 impairment of her rights to usual -- the impairment of
 9 usual ownership rights could only occur in the event
 10 compensation was paid, and that there was no evidence of
 11 record that compensation had been offered; do you recall
 12 that discussion?
 13 A. I'm sorry, is this in the first decision for
 14 an injunction, or in the appeal?
 15 Q. This is in the appeal.
 16 A. This is in the appeal. Right.
 17 Q. Do you remember that?
 18 A. I don't recall that.
 19 Q. Well, in fairness, let me find it for you. If we could
 20 look at page 7, paragraph 28.
 21 A. Page 7 of my first witness statement?
 22 Q. I beg your pardon?
 23 A. Page 7 of my witness statement?
 24 Q. No. No. This is of the exhibit on the screen, R-59.
 25 A. Okay. Yes.

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11:28 1 Q. I'll point you to two or three sections of this
2 discussion about constitutional impairment. About ten
3 lines down from the top, there is a sentence that begins
4 "With regard ..."
5 "With regard to the above, we can conclude that the
6 only interpretation conformable with the Constitution is
7 that the land owner should consent to such a restriction
8 of ownership right. In addition to consent of the owner
9 that is necessary, existence of an irreplaceable
10 necessity to communicate ... is a precondition for
11 private land use by the public."
12 And then further down, do you see the line, maybe 12
13 lines up, after the notation:
14 "... a publicly accessible public special purpose
15 road may be established also against the land owner's
16 will only if compensation ... is provided to the land
17 owner."
18 Do you see that? That's the point I'm identifying.
19 A. Sorry, where is that?
20 Q. It's a little bit up from 29:
21 "... a publicly accessible public special purpose
22 road ..."
23 Do you see that?
24 A. Sorry. I see, yes.
25 Q. Yes. Do you recall being made aware of the fact that

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11:29 1 the court had said any such statute would need to be
2 construed in a way that if there was a forced
3 restriction, compensation would have to be paid?
4 A. I don't recall that. This was in March 2017, and we
5 were not focused on judicial processes by now.
6 Q. Alright.
7 Before we broke I also mentioned that I wanted to
8 spend some time talking about the chronology of events
9 in 2016, and I've placed before you, and circulated to
10 the Tribunal and your counsel, two documents. One is
11 Respondent's demonstrative number 1 (RD-1), and I'd like
12 to ask you a few questions about that first; do you have
13 that before you?
14 A. This is the -- not the timeline, but AOG's changing
15 justifications?
16 Q. No, it is the timeline.
17 A. The timeline, okay.
18 Q. Now, we talked earlier this morning about the regional
19 court having issued an injunction against AOG and third
20 persons acting under its authority, in February,
21 18 February 2016; do you recall that discussion?
22 A. I do.
23 Q. And that injunction stayed in place, was not vacated or
24 otherwise modified, to the end of 2016 and beyond; do
25 you recall that discussion?

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11:31 1 A. Yes.
2 Q. And you were -- you being AOG, and you personally, were
3 aware that that injunction remained in place; correct?
4 A. That's correct.
5 Q. And while that injunction was in place, and you had
6 unsuccessfully appealed it, AOG repeatedly violated the
7 injunction, did it not? It entered the land from which
8 it had been enjoined. That's true, isn't it?
9 A. Well, we maintain that Cesty Smilno entered the land.
10 Q. I understand what your theory was. But what I'm asking
11 about is the court's order. The court's order never
12 changed, did it?
13 A. Correct.
14 Q. You developed what might charitably be called a new
15 argument, but the court's order never changed, did it?
16 A. That's correct.
17 Q. And while the court's order was in place, and AOG had
18 not sought any affirmative action on its new arguments,
19 you repeatedly entered the site; correct?
20 A. Cesty Smilno entered the site, yes.
21 Q. Well, Cesty Smilno was a subsidiary of AOG, was it not?
22 A. Yes.
23 Q. Perhaps this is as good a time as any to talk about
24 Cesty Smilno.
25 It had been created shortly after the court had

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11:34 1 enjoined AOG when its 1/700th share transfer scheme
2 failed; correct?
3 A. That is correct.
4 Q. And it was incorporated, and the transaction was put
5 together for the express purpose of circumventing the
6 injunction?
7 A. Our understanding was that Cesty Smilno was not bound by
8 the injunction.
9 Q. That's not my question. AOG was bound by the
10 injunction; correct?
11 A. Correct.
12 Q. At all times to the end of 2016 and beyond; correct?
13 A. That's correct.
14 Q. AOG caused the creation of Cesty Smilno; correct?
15 A. It did.
16 Q. It was a subsidiary of AOG; correct?
17 A. It was.
18 Q. It had no assets of its own, did it, sir?
19 A. Very small.
20 Q. It had no employees?
21 A. That's correct.
22 Q. It was -- it took direction entirely from AOG; correct?
23 A. It had the same direction as AOG, in the sense of the
24 same managers, that's correct.
25 Q. Mr Fraser, I mean this with respect, but do we really

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11:35 1 need to take time here talking about whether AOG
2 controlled Cesty Smilno? There's no question about
3 that, is there?
4 A. I agree. Cesty Smilno --
5 Q. That's all I need: you agree that it took direction from
6 AOG and AOG alone; correct?
7 A. Or let's say it acted in collaboration with AOG.
8 Q. Well, it had no persons controlling it other than AOG,
9 did it?
10 A. The same as people controlled AOG, yes.
11 Q. Exactly. It had no directors and officers of its own,
12 did it, sir?
13 A. They were the same -- they were some of the same
14 individuals as --
15 Q. Right, it was its alter ego, we all know what that
16 means?
17 A. Mm-hm.
18 Q. You agree with that, don't you?
19 A. As I say, it had the same -- some of the same management
20 as AOG.
21 Q. Well, was there any management that wasn't AOG?
22 A. I don't believe so. It had one outside shareholder.
23 Q. And that outside shareholder was the party who, at AOG's
24 suggestion, had contributed its share in the road for
25 the purpose of circumventing the injunction. That's

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11:36 1 rather obvious, isn't it, Mr Fraser?
2 A. I mean, we were -- we -- the structure involving Cesty
3 Smilno, yes, it was a way to enable us to carry on
4 operations which were not in breach of the injunction,
5 that's what we understood.
6 Q. But if AOG instructed Cesty Smilno, its 100% owned
7 subsidiary, to pick up heavy equipment and move it
8 across the road --
9 A. Mm.
10 Q. -- you don't contend, do you, that that's not the action
11 of AOG, do you, sir?
12 A. I mean, that's a legal question. I'm --
13 Q. No, I'm not talking about law at this point.
14 I'm talking about factually --
15 A. Mm.
16 Q. -- if somebody in management, in AOG, picks up the
17 phone, there's no one on the other end of the line. All
18 they have to do is take the phone and turn it over here.
19 Isn't that right?
20 A. That's correct. But, as I say, our understanding was
21 that it was not in breach of the injunction.
22 Q. We'll get to that. But factually, I just want to be
23 clear that Cesty Smilno had no personnel, or mechanisms
24 of operation, other than what were instructed by AOG;
25 isn't that right?

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11:38 1 A. That's correct.
2 Q. Okay. So all AOG actually did was to tell people who
3 were bringing equipment over to the road: come on
4 through. That's all that happened, isn't it?
5 A. Cesty Smilno issued authorisations to people to come
6 onto the road.
7 Q. As a wholly owned subsidiary of AOG. Alright. Well,
8 I think we have what we need there, don't we. But you
9 will concede, won't you, Mr Fraser, that Cesty Smilno
10 had no independence whatsoever from AOG?
11 A. It obviously pursued -- it pursued a -- the same
12 objectives as AOG, I agree.
13 Q. Alright. Now given that, it's also true, isn't it, that
14 AOG never went to the court on an affirmative action to
15 try to legitimise what was going on with Cesty Smilno.
16 All it did was to argue to the police that somehow this
17 changed everything. The rationale had changed. Yes?
18 A. That's correct. And we understood that it had changed.
19 Q. And the net effect of all this was that a share transfer
20 that had only days before been found unlawful, to which
21 AOG ultimately confessed judgment, or recognised the
22 claim, another share transfer was made to Cesty Smilno,
23 which AOG still controlled and instructed, and that's
24 how the road was used by Cesty Smilno; correct?
25 A. That's correct.

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11:39 1 Q. And that was, if you look at the other demonstrative
2 I've left there on your table, "AOG's changing
3 justifications to access the road"; do you see that
4 document?
5 A. Yes.
6 THE PRESIDENT: For the transcript, we should say it's
7 page 109 of Respondent's opening presentation.
8 MR ALEXANDER: Thank you, Madam President. I apologise.
9 I should try to do better on that.
10 So that was what you discussed in your own witness
11 statement; correct?
12 A. Correct.
13 Q. And later in -- actually, in early 2017, Cesty Smilno
14 also applied for an injunction against Ms Varjanová and
15 other citizens; correct?
16 A. That's correct.
17 Q. But that was not put into the record of this proceeding;
18 is that right?
19 A. For the same reason as the other one. It was not put
20 into the record, that's correct.
21 Q. So at the same time that the Cesty Smilno share transfer
22 scheme was developed, there was also, as we've talked
23 about this morning, in May of 2016, there was discussion
24 between Mr Sýkora and the mayor, which I refer to here
25 as the public special purpose road scheme, and we

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11:41 1 discussed earlier this morning that the regional court
2 later denied your request for an injunction on the basis
3 of that theory, and that was affirmed; correct?
4 A. Mm-hm. Yes.
5 Q. So as we look back in time, there were three separate
6 rationales employed by AOG to legitimise its access to
7 the road; correct?
8 A. I would add a fourth rationale, which is before the
9 transfer scheme, that the road was publicly accessible.
10 It's on that basis that we entered the road initially.
11 Q. Right. But that's the same rationale as the third
12 point, isn't it? The public special purpose road
13 scheme?
14 A. I'm not a Slovak lawyer. All we knew was that we had
15 been -- we believed on good authority, understood that
16 the road was publicly accessible.
17 Q. But bearing in mind what the police were interested in
18 was in a land dispute, they wanted, as we saw earlier,
19 they made the point: only a court can decide this. No
20 court ever found in favour of AOG on any theory it
21 proffered to justify its access to the road. That
22 didn't happen. No court ever did that, did they, sir?
23 A. That's correct.
24 Q. So if we go back in time, every time, on the timeline
25 I have put before you as Respondent's demonstrative

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11:43 1 number 1 (RD-1), every time AOG entered the site or
2 upgraded the site to a condition improved beyond how it
3 was first presented, every time any of that activity
4 occurred, we now know that AOG was never able to sustain
5 any position for lawful entitlement to that access and,
6 to the contrary, it did so in violation of a pending
7 court injunction. Isn't that true?
8 A. We don't accept that. I don't accept that. Because we
9 were attempting to enter the road in June on the basis
10 of Cesty Smilno's authorisation, which I -- which we've
11 already discussed. And I would also remind you that the
12 police actually authorised us to remove vehicles when we
13 attempted to get on the location in June. So we had,
14 you know, we thought good indications that we were
15 entitled to use the road.
16 Q. Despite the fact that you were subject to a court
17 injunction which you don't dispute?
18 A. Despite the fact that AOG was subject to a court
19 injunction, yes.
20 Q. And your position is, as we've described before, that
21 Cesty Smilno, even though it was 100% owned by AOG, and
22 directed and instructed by AOG, and serving its purposes
23 in its use of the road, your position is you had a good
24 faith basis; is that correct?
25 A. That was our understanding, yes.

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11:45 1 MR ALEXANDER: May I have a moment, Madam President?
2 (Pause).
3 MR TUSHINGHAM: Please forgive me for interrupting, but
4 we've just sent you -- you should be receiving shortly
5 an English translation of the document. I just wanted
6 to let you know that's the case.
7 MR ALEXANDER: Thank you.
8 THE PRESIDENT: Thank you.
9 (Pause)
10 MR ALEXANDER: Mr Fraser, in connection with the Cesty
11 Smilno scheme, it is true, isn't it, the co-owners were
12 not offered the share that was transferred to Cesty
13 Smilno?
14 A. That is correct, and we were advised that it was not
15 necessary.
16 Q. And you assert good faith because of your reliance on
17 that advice; is that your testimony?
18 A. Yes, our understanding was that -- our understanding was
19 that it was not necessary.
20 Q. But you nevertheless claim privilege over the matter on
21 which you claim legal advice; is that right?
22 A. I believe that's right, yes.
23 Q. Now, I want to return to your witness statement at
24 paragraph 45, if we can, please.
25 Mr Fraser, I want to focus in particular for

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11:48 1 a moment on the events of mid-June. That was a period
2 of substantial difficulty for AOG, to put it mildly;
3 would you agree?
4 A. We were trying to drill on Smilno.
5 Q. And you were strapped financially at the time; correct?
6 A. No, that's not correct.
7 Q. That's not correct?
8 A. No.
9 Q. You had been working for more than two years to obtain
10 external financing; correct?
11 A. Correct.
12 Q. And despite those efforts, you had been unsuccessful
13 with the exception of the Akard commitment to fund;
14 correct?
15 A. We had secured the Akard funding at the end of 2015;
16 that's correct.
17 Q. Now, when you say "secured", we need to clarify that to
18 some extent, don't we, sir: there was a commitment by
19 Akard to fund, but the extent of that commitment had not
20 yet been funded; correct?
21 A. Not -- the full extent had not been funded, but
22 a significant amount of funds were being disbursed
23 during that year.
24 Q. And there were substantial problems during that year in
25 their making funding in response to cash calls; correct?

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11:49 1 A. I don't recall that. They continued to fund us up until
 2 the end of 2016.
 3 Q. You don't recall that. Well, we'll come back to that in
 4 a moment. But you don't recall difficulties from Akard
 5 funding in the latter part of 2016?
 6 A. At the end of 2016 there were difficulties, possibly
 7 coming up to the end of the year. But the -- not during
 8 the middle of the year, to my recollection.
 9 Q. Mr Fraser, it is true that in the early stages of the
 10 search for finance, you were looking for between
 11 \$15 million and \$30 million, correct? US?
 12 A. That's correct. At that stage we were looking to
 13 finance both Poland -- Polish activities and Slovak
 14 activities.
 15 Q. And at the time of mid- -- well, let's see. In the end
 16 of 2015, you'd received a commitment to fund by Akard,
 17 but they had only funded by that point in time
 18 1.9 million; correct?
 19 A. By the end of 2016, that's correct.
 20 Q. Right. And later in that year their funding problems
 21 became severe enough that you actually were not being
 22 paid; correct?
 23 A. By the end of 2016, they would -- they were -- they
 24 refused to continue to fund us because of the
 25 difficulties we were facing in Slovakia.

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11:52 1 A. The settlement was, we would repay that money if and
 2 when we came into funds in the future. There was no
 3 immediate obligation to repay under that settlement.
 4 Q. But you released them from any obligation to fund
 5 further?
 6 A. They had --
 7 Q. Is that true?
 8 A. Well --
 9 Q. Is that true?
 10 A. They were in default. So we defaulted them out of the
 11 agreement.
 12 Q. And they were released from the obligation to fund any
 13 further, isn't that correct?
 14 A. Well, once they're in default, they're released. That's
 15 right.
 16 Q. And they released you from all potential counterclaims?
 17 A. So they assert. They had no potential counterclaims as
 18 far as we were concerned.
 19 Q. And at that point in -- but, wait. They had no
 20 potential counterclaims but you agreed to pay back the
 21 money?
 22 A. We agreed if at some point in the future we had the
 23 funds, we would repay them.
 24 Q. And when that release was signed, you had no other
 25 external financing in place; correct? You were net zero

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11:51 1 Q. Right. But there's no evidence in the record that they
 2 did it on that basis, is there, sir?
 3 A. I believe the --
 4 Q. Could you answer that question first, "yes" or "no"?
 5 A. I thought that there were -- I think the answer is "no",
 6 because if I'm not mistaken there are -- there is -- we
 7 served a notice of default on Akard for failing to fund
 8 at the end of 2016, or early 2017.
 9 Q. You served a notice of default on them?
 10 A. Yes.
 11 Q. And they threatened you with counterclaims?
 12 A. They did, yes.
 13 Q. Yes. Including a threat of an internal investigation of
 14 possible violations of the Federal Corrupt Practices Act
 15 by AOG; correct?
 16 A. That's what they said, yes.
 17 Q. Yes. And as a result of settling those claims, it's
 18 true, isn't it, that you agreed to pay back all the
 19 money that they had funded you?
 20 A. We did agree that.
 21 Q. And that settlement put very extreme pressure on AOG,
 22 did it not?
 23 A. No, not at all.
 24 Q. You had no funding -- you had no external funding at the
 25 time; correct?

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11:53 1 external financing?
 2 A. That's correct.
 3 Q. And Mr Lewis had made it absolutely clear that he didn't
 4 want to fund anymore, didn't he?
 5 A. He had made it -- his strong preference was to fund --
 6 was to co-fund, was to have someone else come in. He
 7 didn't want to fund the business on his own, which is
 8 very common for the oil industry.
 9 Q. And towards the time period we're talking about, he'd
 10 made it clear that he was not going to fund further,
 11 isn't it?
 12 A. He -- are you talking about early 2017?
 13 Q. Yes.
 14 A. He -- what we were seeking to do in early 2017 was bring
 15 in another investor for part of our commitment, and
 16 I expect that Mike would have funded a piece at that
 17 point.
 18 Q. But that never happened?
 19 A. That did not happen, that's correct.
 20 Q. Now let's go back to 2016, in June. You were anxious,
 21 notwithstanding the injunction, to just go ahead;
 22 correct?
 23 A. Correct. One issue was the licence was -- the licences
 24 were coming up for renewal, so we were keen to have some
 25 activity before the renewal.

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11:55 1 Q. And by going ahead notwithstanding the injunction, you
2 took a number of aggressive steps; would you agree, sir?
3 A. I wouldn't agree that, no.
4 Q. Well, you upgraded the road; correct?
5 A. We did.
6 Q. You continued to bring materials to the site over
7 the road; correct?
8 A. Correct. We upgraded the road and brought materials on
9 using a local contractor and with, so far as we were
10 aware, the blessing of the mining authority, which came
11 out and inspected our activities on the road.
12 Q. But you had an injunction against you from using
13 the road; correct?
14 A. AOG did.
15 Q. Yes.
16 A. Not Cesty Smilno.
17 Q. Right. But Cesty Smilno didn't upgrade the road, did
18 they, sir?
19 A. A contractor upgraded the road.
20 Q. Right, and who engaged the contractor, sir?
21 A. I can't recall offhand. I mean, AOG will have paid the
22 bills for the contractor, that is true.
23 Q. And there is no evidence in this record that Cesty
24 Smilno ever engaged anybody, is there?
25 A. That's correct.

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11:56 1 Q. Everybody who used the road was engaged by AOG, to the
2 best of your knowledge, isn't that correct? And all of
3 this happened while the injunction remained in place;
4 isn't that right?
5 A. My recollection is that when the contractor entered onto
6 the road, it had -- it was with an authorisation from
7 Cesty Smilno.
8 As I say, the mining authority were aware, the
9 police were aware. No one attempted to stop us.
10 Q. Just the same plan: just go ahead?
11 A. Well, the only person who had an issue was Ms Varjanová.
12 The locals in the village were perfectly happy with the
13 work being done to the road.
14 Q. Mr Fraser, you sued several other villagers for blocking
15 access to the road, didn't you, sir?
16 A. I don't believe any of the others were from the village.
17 They were from some way away. I think the only person
18 on the -- in those proceedings who is from the village
19 is Ms Varjanová, to the best of my knowledge.
20 Q. Mr Fraser, you are familiar with the petition activity
21 that occurred in the village, are you not?
22 A. Yes.
23 Q. And the petition was signed by a majority of the
24 inhabitants of the community, was it not?
25 A. I believe it was signed by about 300 people.

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11:57 1 Q. And that was the majority of the known residents of the
2 community, wasn't it?
3 A. I am not sure it's a majority, actually. The population
4 of the village is about 700. I can also say that
5 I looked down that list of names on the petition and
6 a number of those people actually signed consents for us
7 to -- for AOG or Cesty Smilno to use that road, a number
8 of people on that petition.
9 Q. Right, and there's no evidence of that on the record, is
10 there?
11 A. I can assure you that --
12 Q. And that wasn't in your witness statement, was it, sir?
13 A. No.
14 Q. Mr Fraser, after the petition activity by over 300
15 people from the village of Smilno, the petition was
16 presented to the council of the village, was it not?
17 A. I believe it was, yes.
18 Q. And the council passed a resolution in response to that.
19 Isn't that correct?
20 A. Can you remind me of the resolution, please?
21 Q. I can. (Pause)
22 Let's start with R-109.
23 Before we get into the documents on this point,
24 Mr Fraser, you've made the statement repeatedly in your
25 various witness statements that there was a very small

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11:59 1 minority of the village that was opposed to your
2 operations; correct?
3 A. Yes.
4 Q. And you did that based largely on reports from your team
5 on the ground, did you not?
6 A. And what I saw with my own eyes as well.
7 Q. And you did see the petition materials with your own
8 eyes?
9 A. I did not see them at the time. I heard about them, but
10 I didn't see them.
11 Q. Right. Were you receiving reports on this issue from
12 Mr Crow?
13 A. From one of my colleagues I received reports on it, yes.
14 Probably from Maciej Karabin.
15 Q. You don't remember?
16 A. I don't remember who from, no.
17 Q. So in this petition activity there were four members of
18 the committee; do you recall that?
19 A. Yes.
20 Q. And two were affiliated with the municipality itself.
21 So you had before you the presentation of the sheets of
22 the petition, and then there was activity, 341
23 signatures of the citizens of Smilno, and then there was
24 a resolution presented to the council; do you recall
25 that?

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12:01 1 A. I do.
2 Q. And the council took action on it; do you recall that?
3 A. I don't, to be honest.
4 Q. Let's take a look at R-015.
5 You recall, do you not, Mr Fraser, that the petition
6 was opposed to the operations of AOG in Smilno; do you
7 recall that?
8 A. I do. Could we see the wording of the petition, please?
9 Q. Yes, we can. But before we do that, let's look at the
10 votes taken by the municipal council; do you see that?
11 I think it was a ... there were four votes of the
12 council in favour, zero against, and one abstention; do
13 you recall that?
14 A. Yes.
15 Q. Alright, now let's go back to the language of the
16 petition. R-107.
17 Can I trouble you to read for the record the
18 petition language at the top, please?
19 A. Mm-hm:
20 "We, the undersigned residents, disagree with the
21 activities related to exploration area 'Svidník - Oil
22 and Combustible Natural Gas' that with their
23 consequences have an impact on the environment in
24 municipality Smilno.
25 We therefore request that the Municipal Council of

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12:02 1 Smilno and the mayor of Smilno express their disapproval
2 of exploration area 'Svidník - Oil and Flammable Natural
3 Gas' as well as all of the geological works in the
4 exploration area and related activities that intervene
5 in or have an impact on the environment in Smilno."
6 Q. Do you recall the vote we just looked at, which was four
7 in favour, one abstention, and as I recall, the mayor
8 did not vote; correct?
9 A. Mm-hm. That's correct.
10 Q. We'll hear from him later, but do you recall his
11 position essentially being that it was his
12 responsibility to remain neutral?
13 A. Yes, I recall that.
14 PROFESSOR SANDS: Sorry, could you just tell us what it is
15 they were voting for, because it didn't say it on the
16 document you showed us.
17 MR ALEXANDER: The language of the petition itself.
18 PROFESSOR SANDS: Thank you.
19 MR ALEXANDER: To be clear, Mr Fraser, our case is not that
20 this was a legally binding event. It was intended as
21 an expression of interest and concern about the
22 activities of AOG. You understood that, didn't you?
23 A. Mm-hm. Yes.
24 Q. And I raise it because, as we said before, you and
25 another AOG witness, Mr Lewis, have taken the position

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12:04 1 that there was a very, very small minority. And earlier
2 today in your testimony you said that Ms Varjanová was
3 the only person who was opposed to the activities of
4 Smilno; correct? You said that earlier?
5 A. I think I said she was the only person that I was aware
6 of who was included, from Smilno, who was in the
7 legal -- in the lawsuit.
8 Q. I see. But you would agree that there was a substantial
9 show of concern and opposition to AOG's activities by
10 virtue of this petition activity?
11 A. I agree that the petition activity -- the petition has
12 a lot of names on it. We don't know how the petition
13 was obtained. And when it came actually to
14 demonstrations or any activity against our activities at
15 Smilno, there were very few residents of Smilno who were
16 participating in that.
17 Q. How many people showed up for the demonstration in
18 Prešov?
19 A. I don't recall precisely. I was there. But my
20 recollection is it may have been -- it may have been --
21 I really don't actually recall. 50 or more, certainly.
22 Q. You don't remember 200 being the number associated with
23 that demonstration?
24 A. I don't recall.
25 Q. Alright.

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12:06 1 Back to the June timeframe, I'd like to pull up
2 R-122. This is a 14 June 2016 memorandum from
3 Mr Benada; is that correct?
4 A. Benada. That's correct.
5 Q. To you, with a copy to Mr Lewis and Mr Karabin. This is
6 a communication among the four top management people in
7 the company; correct?
8 A. That's correct.
9 Q. And it was at this point in time ... just a moment,
10 please.
11 May I have a moment, Madam President?
12 THE PRESIDENT: Sure.
13 (Pause)
14 MR ALEXANDER: Let's turn to page 3, please, of this
15 document, R-122. Do you see a discussion concerning
16 White & Case?
17 A. Yes.
18 Q. It was at this point in time that AOG had begun to
19 consider a potential treaty claim; correct?
20 A. Not at all, no.
21 Q. Isn't that what's being discussed in this memorandum?
22 A. Well, there is a comment there about a description of
23 a conversation with White & Case. I had been asked
24 to -- I'd been asked just to find out -- sorry. I'll
25 take a step back.

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12:08 1 There was some concern as the licences were being
2 renewed that there might be opposition from these
3 activists who were becoming so very vocal, and there was
4 a concern that our licences might not be renewed.
5 Q. But they were renewed.
6 A. They were renewed, but we didn't know that at this
7 point. This was in June.
8 So we did, just as a precautionary measure, just
9 think about, because we had an investor after all at
10 that point, think about whether or not we should -- what
11 any recourse by way of arbitration might be. That line
12 of inquiry was nothing more than that conversation with
13 White & Case and it went nowhere and was dropped. And
14 the licences were renewed shortly thereafter.
15 Q. Let's talk about another event that was in the backdrop
16 to the June events. The Court of Appeals had found that
17 AOG had acted with mala fide in its conduct and
18 relationship to the local community; correct?
19 A. Are you talking about the appeal against the injunction?
20 Q. Yes.
21 A. They didn't use the words "mala fide", did they?
22 Q. Yes. Let's turn to R-63, page 6.
23 MR DRYMER: May I close R-122?
24 MR ALEXANDER: Yes, you may.
25 I'm referring in particular to the third paragraph.

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12:10 1 Could you read that, please, sir, beginning with "As
2 to..."?
3 A. The third paragraph begins "Defendant 1"?
4 Q. Yes. That's AOG.
5 A. So "Defendant 1", you want me to start there?
6 "Defendant 1"?
7 Q. That's fine.
8 A. "Defendant 1 must have expected from the very beginning
9 that a legal construct allowing it to carry out
10 geological exploration on a third party land through
11 a (already invalid) purchase of a tiny co-ownership
12 interest may fail. As to whether Defendant 1 acted in
13 good faith, it can be reliably stated that the conduct
14 of Defendant lacked elementary caution. Defendant 1
15 could have been well aware that purchase of a minuscule
16 co-ownership interest without respecting the pre-emption
17 right is very close to violation of ownership rights.
18 It is evident that business activities of Defendant 1
19 were based, from the very beginning, on mala fide manner
20 of communication with owners of the affected land. From
21 such a point of view, the conduct of Defendant 1 lacks
22 any bona fide trait."
23 Q. And after that finding was made, it is true, isn't it,
24 that AOG submitted its recognition of claim?
25 A. It is true. We --

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12:11 1 Q. That's all I need.
2 A. It's true.
3 Q. You submitted a recognition of claim, and the effect of
4 that was a declaration by the court that the 1/700th
5 share transfer scheme was null and void; correct?
6 A. That's correct. We conceded the claim in order to have
7 the interim injunction lifted.
8 Q. But that didn't happen, did it, sir? That injunction
9 was never lifted, was it?
10 A. It was in 2017, finally.
11 Q. After all the relevant events had transpired and you had
12 been consistently going and using the land in violation
13 of the injunction. We've already established that.
14 But what else was happening, Mr Fraser? There was
15 another -- the share transfer scheme was the foundation
16 of Cesty Smilno, as we've already covered; correct?
17 A. Yes.
18 Q. And we already covered the fact that there was no offer
19 of a preemption right as part of that scheme, although
20 that conduct had previously been found unlawful;
21 correct?
22 A. We understood -- it's correct that there was no offer of
23 a preemption right, because we understood it was not
24 required.
25 Q. And later you proceeded to argue the Cesty Smilno scheme

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12:13 1 and the PSPR scheme to police, to the prosecutor, to
2 various governmental authorities, despite the fact that
3 those cases were never prosecuted for a judicial
4 determination until many months later; correct?
5 A. Our objective was to get the interim injunction lifted.
6 That was our priority. That's why we conceded the
7 claim, or dropped the case -- sorry, the claim. Yes.
8 Q. So if you look again, Mr Fraser, at the document marked
9 "AOG's changing justifications to access the road". Do
10 you have that in front of you?
11 A. I do.
12 Q. It is true, isn't it, that these schemes occurred over
13 a chronology of time? Is that right? In other words,
14 the 1/700th share transfer scheme came first?
15 A. As I say, we -- as I've said -- I meant to say earlier,
16 we originally accessed the road on the basis that it was
17 publicly accessible.
18 Q. But no document that you submitted to court is
19 consistent with that statement, is it, sir?
20 A. I believe there's a memorandum, or a record of a meeting
21 with the mayor in 2015, where we discussed the use of
22 the road.
23 Q. You may recall my question was directed to submissions
24 to a court.
25 A. I apologise. There are no submissions to the court,

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12:15 1 that's correct.
 2 Q. And the Cesty Smilno share transfer scheme came within
 3 days of the court's ruling on the first scheme, correct?
 4 A. It came shortly afterwards, correct.
 5 Q. And it also involved a share transfer, correct?
 6 A. It did.
 7 Q. And then the public special purpose road scheme, we saw
 8 earlier, began with the discussion with the mayor. You
 9 will recall Mr Sýkora's letter to the mayor?
 10 A. Mm-hm.
 11 Q. And with that --
 12 A. My recollection is that with Mr Sýkora we were
 13 discussing public special purpose road at about the same
 14 time as we started the Cesty Smilno structure.
 15 MR ALEXANDER: Madam President, I wonder if this might be --
 16 I apologise for taking a break prematurely, but I wonder
 17 if this might be an opportune time to look at that
 18 translation and then I could perhaps streamline what
 19 I have left at the same time, which might have value.
 20 THE PRESIDENT: How much time do you need for that?
 21 MR ALEXANDER: Would 15 minutes be acceptable?
 22 THE PRESIDENT: Yes.
 23 MR ALEXANDER: Thank you.
 24 THE PRESIDENT: What we might then do is shorten the lunch
 25 break somewhat? So we will not take the lunch break

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12:16 1 now. I don't think that is your suggestion, right?
 2 Then we try and wrap up the examination of Mr Fraser
 3 before the lunch break. I'm not sure if that will be
 4 possible, because it also depends on re-direct and
 5 Tribunal questions. But we'll go as far as we can.
 6 MR ALEXANDER: Just to be fair, I'm not sure that I will be
 7 able to wrap up before lunch with Mr Fraser, but
 8 I realise that --
 9 THE PRESIDENT: That confirms my doubt then. My doubt was
 10 on other grounds, but it reinforces it.
 11 Let's take 15 minutes now.
 12 MR ALEXANDER: Thank you very much.
 13 THE PRESIDENT: And, Mr Fraser, you know you are still under
 14 the same admonition.
 15 (12.17 pm)
 16 (A short break)
 17 (12.35 pm)
 18 THE PRESIDENT: We understand now that the new version of
 19 R-155 with attachment, and specifically the translation
 20 as it was provided by the Claimants but then with the
 21 correction by Mr Pekar, will be filed by the Respondent
 22 as new Exhibit R-155A; is that fine?
 23 MR TUSHINGHAM: That is acceptable to the Claimant, yes.
 24 THE PRESIDENT: Good.
 25 MR ALEXANDER: Yes, Madam President.

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12:36 1 THE PRESIDENT: So, Mr Alexander, whenever you are ready,
 2 you can proceed with your questions.
 3 MR ALEXANDER: Alright.
 4 Thank you, Madam President, thank you,
 5 Mr Tushingham; glad we were able to get that worked out,
 6 thank you.
 7 Mr Fraser, on the screen momentarily we will have
 8 the new Exhibit R-155A, the revised exhibit that just
 9 reflects the agreement of counsel and Madam President's
 10 comment.
 11 I'm just going to wait for the document. (Pause)
 12 Madam President, I understand the document is going
 13 to be available momentarily. Alright. Thank you.
 14 Mr Fraser, just to explain what has transpired here.
 15 This is the attachment to the earlier Exhibit 155, which
 16 you will recall was the letter from Mr Sýkora to the
 17 mayor.
 18 A. Mm-hm.
 19 Q. And these documents were attached to it, and I want to
 20 give you a fair moment here to read them both.
 21 A. Mm-hm.
 22 Q. And when you have had a chance to do that let me know
 23 because I will have a few more questions for you.
 24 (Pause)
 25 A. Can I page down? (Pause)

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12:39 1 Okay.
 2 Q. Mr Fraser, does seeing these documents refresh your
 3 recollection at all about whether you saw the attachment
 4 before, the actual material?
 5 A. I don't believe I did see these attachments before.
 6 Q. Alright. Bearing that in mind, would you agree that
 7 these appear to be a letter from Alpine to the mayor?
 8 That one, of course, is -- there is a signature line for
 9 Mr Benada; do you see that document?
 10 A. If you could scroll up, please.
 11 Yes, I see.
 12 Q. Alright. And you have had an opportunity to read that?
 13 A. I have.
 14 Q. And in that letter, Mr Benada has asked three specific
 15 questions:
 16 "(i) Is the aforementioned field road a public or
 17 non-public special purpose road?
 18 (ii) Is the Town of Smilno the owner of the
 19 above-mentioned special purpose road?
 20 Who [is responsible for] the management and
 21 maintenance of this special purpose road?"
 22 Do you see those questions?
 23 A. Yes, I do.
 24 Q. And then the second portion of the attachment is what
 25 I understand to be a draft letter proposed for signature

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12:41 1 by Mr Baran, which draft, as part of the attachment, was
2 forwarded by Mr Sýkora to the mayor, and it proposes
3 a draft response to the draft letter; do you see that?
4 A. I do.
5 Q. Now, if you would turn, please, to 156, R-156, which
6 should be coming up momentarily.
7 I'm sorry, I may not have spoken clearly enough.
8 We're trying to pull up R-156. (Pause)
9 Alright, now we took a look at this before, but now
10 that we have the benefit of what the attachment
11 included -- and if we could just trouble you to scroll
12 down so the witness can see that that is the entirety of
13 the substance, anyway, of the letter.
14 So this is Mayor Baran's actual response, is my
15 understanding; do you agree?
16 A. Yes.
17 Q. Now, it's apparent from that response that the mayor
18 responded only to the second of the three draft
19 questions; would you agree?
20 A. Is the second one about who is the owner of the track?
21 Q. Yes:
22 "The [town] of Smilno is not the owner of the above
23 mentioned [special purpose road]."
24 A. Mm, he's only responded directly to the second one,
25 I agree.

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12:44 1 Q. Yes. And he did not ever use the phrase "public special
2 purpose road" in his response, did he, sir?
3 A. He did not.
4 Q. And there is no response to either the first or the
5 third questions drafted for him by Mr Sýkora; would you
6 agree with that?
7 A. I would think that the first question is meant to be
8 a response to his other two questions.
9 PROFESSOR SANDS: Could I just ask, just in relation to this
10 document and the previous one that we just looked at,
11 R-155A, I think it is, R-155A has the first page, which
12 is the request. And the second page, I assume, is
13 drafted by AOG. Am I right in thinking it's drafted by
14 AOG and is the response that was requested?
15 MR ALEXANDER: That's my understanding.
16 PROFESSOR SANDS: Is that correct?
17 MR TUSHINGHAM: I don't know the answer to that question,
18 I am afraid.
19 PROFESSOR SANDS: It's just that in relation to the answers
20 to your questions, and I assume you're getting there,
21 it's the relationship between the answer that was hoped
22 for, on the one hand, and the answer that emerged, on
23 the other.
24 But we don't know what the second page is; is that
25 right?

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12:45 1 MR TUSHINGHAM: I don't know the answer to that question.
2 MR DRYMER: Because the witness I believe said he hadn't
3 seen these at the time.
4 PROFESSOR SANDS: Yes.
5 MR ALEXANDER: I thought he'd said he doesn't recall now
6 having seen them.
7 MR DRYMER: I don't mean to put words in anybody's mouth.
8 Maybe you want to clarify that so that I'm not mistaken.
9 THE PRESIDENT: And you will correct me: you said you
10 believe you have not seen them?
11 A. Correct.
12 MR DRYMER: Very good. Thank you, Madam.
13 MR ALEXANDER: Mr Fraser, you may recall we looked at your
14 name at the top of the email?
15 A. Mm.
16 Q. And -- is that a "Yes"?
17 A. Yes, sorry.
18 Q. And your conclusion from that was that -- and you
19 recalled being copied on the email; correct?
20 A. I don't recall being copied on the email, in that my
21 name is not in the CC line.
22 Q. Mm-hm.
23 A. I -- it's possible that he may have sent me the email
24 afterwards, similar to a BCC, I guess.
25 Q. But you don't dispute that you were in the loop on this

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12:46 1 discussion?
2 A. I don't believe -- I believe I was in the loop.
3 Certainly I was well aware when the letter came back
4 from the mayor.
5 Q. And there's, I believe, agreement by counsel in our
6 submission of this new exhibit, that both of these --
7 both the questions and what appears to be a draft
8 response for the town of Smilno were the attachment?
9 MR TUSHINGHAM: Oh, I'm sorry. We are talking at
10 cross-purposes. We accept that that was the attachment
11 to the email.
12 MR ALEXANDER: Yes.
13 MR TUSHINGHAM: And forgive me if we've misunderstood that,
14 you've misunderstood what I said. But I think I may
15 have misunderstood your original question, or
16 Professor Sands' question, which was: do we know that
17 AOG drafted that? And I don't know the answer to that
18 question. But of course we accept that this was the
19 attachment to the email from Mr Sýkora.
20 PROFESSOR SANDS: I mean, it gives the impression of being
21 the hoped-for answer. Am I wrong? Because it sets out
22 three questions.
23 MR TUSHINGHAM: It gives that impression. Yes, we're not
24 going to quarrel with that.
25 PROFESSOR SANDS: I'm not pushing in any direction; I'm just

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12:47 1 trying to work out what these documents are. I have no
2 view one way or the other. But on a first reading
3 I wondered whether it was the actual answer given by the
4 mayor, but it was undated, and now having looked at it
5 in comparison to 156, that appears to be not the case.
6 MR TUSHINGHAM: The only point I would make is if you go
7 back to the email from Mr Sýkora it does refer to
8 a telephone call that had taken place between the mayor
9 and Mr Sýkora. So it is possible that the draft
10 reflected that conversation.
11 Now, I am simply speculating there. I don't know.
12 We may have to explore with the mayor.
13 THE PRESIDENT: It seems to me that the position is
14 relatively clear and we can move on.
15 MR ALEXANDER: Thank you.
16 MR DRYMER: Who was giving instructions to Mr Sýkora at that
17 time on behalf of the company?
18 A. Me. I was.
19 MR DRYMER: Okay. Thank you.
20 MR ALEXANDER: Could we pull up Mr Fraser's witness
21 statement at paragraph 55.
22 MR DRYMER: First witness statement?
23 MR ALEXANDER: Yes. (Pause)
24 Let me know when you have had a chance to finish
25 reading 55.

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12:50 1 A. Okay.
2 Q. Mr Fraser, this was not the only report that you had
3 concerning the events of the timeframe you're describing
4 here in 55; correct? This was not the only report you
5 had?
6 A. I received reports from a number of people.
7 Q. Alright.
8 Now -- if you will bear with me one moment,
9 Madam President. (Pause)
10 I'd like you to look now at C-161, and, Mr Fraser,
11 I'd like you to bear in mind that I'm only talking about
12 what's in the record, alright?
13 A. Mm-hm.
14 Q. So it's way too late to be introducing matters not in
15 the record, so I want to focus on what's in the record;
16 okay?
17 Now, this is a report from the attorney for both AOG
18 and Cesty Smilno; correct?
19 A. Correct.
20 Q. And it, by its label, purports to be a report of the
21 three days, the 16th through the 18th; would you agree?
22 A. I would agree.
23 Q. But as I read it, it appears that Mr Vargaeštok from the
24 Slamka firm was present only on the 17th and the 18th,
25 but was there for what appears to be 11 hours each day;

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12:52 1 do you agree?
2 A. 11 hours on the 17th, certainly.
3 Q. And then on the 18th between 8.00 and 7.00?
4 A. Right.
5 Q. Right, so 11 hours each day. And did you ask him to
6 make this report to you?
7 A. I did.
8 Q. And what was your reason for requesting this report?
9 A. I specifically wanted a record of the intervention of
10 the prosecutor.
11 Q. And there was, however, additional information provided
12 by Mr Vargaeštok, correct, AOG's attorney?
13 A. Do you mean in that statement?
14 Q. Yes.
15 A. Yes.
16 Q. He reviewed the events that he'd observed that were
17 significant to him; is that fair?
18 A. I think that's fair, yes.
19 Q. It includes reports of protester activity and location
20 of that activity.
21 A. Could I see the second page, please?
22 Q. Certainly.
23 A. Yes, I agree.
24 Q. And he discusses the arguments that he purports to have
25 made to the prosecutor; do you see that?

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12:54 1 A. I see that.
2 Q. And the location of the police and various activities.
3 A. Yes.
4 Q. There is no mention of anything to do with the Crow
5 incident, is there, sir?
6 A. No, there is not.
7 Q. And are you aware of any other documents in this record
8 that describe anything concerning the Crow incident from
9 anybody else there? Just, is it in the record?
10 A. And the Crow incident being?
11 Q. What you described in paragraph 55 of your witness
12 statement.
13 A. Him being struck. You're saying, sorry, the question
14 is?
15 Q. Are there any other documents in the record that relate
16 to this, other than the report of Mr Vargaeštok?
17 A. I believe there may be a photograph or two.
18 Q. And those are the photographs we've seen of Mr Crow in
19 the wheelchair, and Mr Crow standing near the
20 automobile?
21 A. That's correct.
22 Q. And that's all you're aware of? Documents in the
23 record.
24 A. When you say "the record", do you mean --
25 Q. Of this proceeding.

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12:56 1 A. Of these proceedings. That's all I'm aware of, yes.
2 MR DRYMER: Excuse me, I believe you were in the room during
3 the opening statements?
4 A. Mm.
5 MR DRYMER: So you saw part of a video that was presented;
6 you're aware of the video?
7 A. Yes.
8 MR DRYMER: I consider that a document in the record.
9 Perhaps I misunderstood.
10 MR ALEXANDER: We do too. I appreciate the clarification.
11 MR DRYMER: Thank you. Thank you.
12 A. Yes.
13 MR ALEXANDER: Now, Mr Fraser, I would like you to turn to
14 C-340. Let me know when you have had a moment to review
15 this.
16 A. Okay.
17 Q. This was a meeting you had requested; is that right?
18 A. Yes, I think that's right.
19 Q. And you attended this meeting?
20 A. I attended it, yes.
21 Q. Was the discussion in Slovak?
22 A. It was in Slovak, yes.
23 Q. And did you -- you, I assume, did not have
24 a contemporaneous translator with you?
25 A. I think I did have a contemporaneous translator.

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12:59 1 there to mention the possibility of litigation.
2 Obviously it wouldn't have been couched in that language
3 in a conversation with the police officers, but we may
4 have mentioned the possibility of litigation.
5 I think we had at least one lawyer present with us,
6 if not two.
7 Q. But it was clear and unambiguous that you threatened
8 Mr Cicvara with litigation, correct? There was no doubt
9 about that in your mind?
10 A. I think we indicated that we could take him to court,
11 yes.
12 Q. Well, the words you chose to Mr Lewis, the CEO, to
13 express what happened at the meeting.
14 A. Mm-hm.
15 Q. You said:
16 "We threatened them with litigation ..."
17 That's what happened, isn't it?
18 A. Well, you don't always use the same language across the
19 table as you do in an internal communication.
20 Q. I understand, but you don't have any memory of what
21 language was spoken across the table in Slovak?
22 A. I do not.
23 Q. You are essentially speculating on that point, aren't
24 you?
25 A. I'm not speculating, no. I was being -- I was aware of

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12:57 1 Q. A colleague?
2 A. I don't recall. It could have been a colleague or it
3 could have been a professional interpreter.
4 Q. Alright. But do you believe this is a fair and accurate
5 statement of the conversation as translated to you?
6 A. Yes, I agree.
7 Q. And this, of course, was an email to the CEO and you
8 drafted the email?
9 A. Correct.
10 Q. Now, calling your attention -- your purpose in going to
11 this meeting was to seek agreement that there could be
12 a special purpose road involved in Smilno; correct?
13 A. That's correct, essentially, yes.
14 Q. And he was unwilling to agree with that suggestion;
15 correct?
16 A. That's correct.
17 Q. And you wrote:
18 "We threatened them with litigation ..."
19 Were you the speaker on that?
20 A. I might have been. I don't recall.
21 Q. You don't recall.
22 Was that something that you had pre-cleared with
23 Mr Lewis, that if things didn't go well, you would
24 threaten them with litigation?
25 A. I'm sure that I had his authority. I mean, I put it

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13:00 1 the content of the discussion.
2 Q. Now, in the next paragraph you wrote:
3 "We have decided to try and fence the whole track if
4 possible."
5 "The whole track" meaning the access road?
6 A. That's correct. That's what that refers to, yes.
7 Q. And if that's not possible, you wrote:
8 "... we will put a gate across the entrance to the
9 track."
10 Correct?
11 A. That's what I say there, yes.
12 Q. And that work would start:
13 "... tomorrow, and on fencing the track next
14 week..."
15 That suggests there already were contractors who had
16 been engaged to do the work.
17 A. Well, there were contractors engaged to come and fence
18 the location, so I think the thought there was that
19 after they'd finished fencing the location, they would
20 then be instructed to fence the track.
21 Q. Alright.
22 A. As it happens, we didn't fence the track. It was
23 an idea and it was dropped.
24 Q. Whose idea was it?
25 A. I expect that it came about in discussions with someone

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13:02 1 in our legal team, and probably including the farm as
2 well, the main interested party.
3 But I think we probably then revisited it with the
4 farm and it was dropped as a result of that.
5 Q. But there's no indication of that in this document, is
6 there?
7 A. No.
8 Q. Is there any other email that would corroborate what
9 you're saying now, that you're aware of?
10 A. There are other emails referring to contacts with the
11 farm. But I don't think there's any emails referring to
12 the farm, for example discussing this with us.
13 Q. Or the plan, as you've just described, to drop the
14 fencing idea.
15 A. Well, that's -- that is the only reference so far as
16 I'm aware to the fencing idea, and we dropped it,
17 I believe the next day.
18 MR DRYMER: Excuse me, who was involved in the decision to
19 drop it?
20 A. I think that we just had a meeting with the -- with
21 a number of police officers with our -- two of our legal
22 advisors present, and we had felt that we were -- we had
23 felt that at some point -- we felt that they would agree
24 with us on the special purpose road issue. We were very
25 frustrated that that had not happened. And in the

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13:03 1 discussion afterwards, I think the suggestion came up:
2 well, could we look at fencing the road, has anyone
3 thought about that. And there would have been some kind
4 of conversation with the farm to see what their reaction
5 was, and then it was dropped. It was never pursued
6 after that.
7 MR DRYMER: Thank you.
8 MR ALEXANDER: You agree it would have been fairly difficult
9 to track the entire -- I'm sorry, to fence the entire
10 track and maintain a position that it was a public road;
11 you would agree with that, wouldn't you, sir?
12 A. That could have been one of the reasons why we dropped
13 it. I don't recall.
14 Q. Now, the very last line:
15 "How are you getting on with Akard?"
16 That's a reference to the funder that we discussed
17 earlier, and by this time the picture was quite grim
18 there, was it not?
19 A. I think that they may have been -- I don't recall when
20 they got behind on their payments, but it was perhaps
21 around this time. I don't recall now.
22 Q. Well, they certainly had already received the notice of
23 default by this point in time?
24 A. No, they had not. That came in December.
25 Late December.

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13:04 1 Q. Let's pull up R-142, please.
2 Now, there are a number of questions I have for you
3 on this document, Mr Fraser. This is labelled in the
4 "Regarding" line as a "Notice of Default"; correct?
5 A. Yes.
6 Q. And it's a lengthy letter written by Mr Lewis, and sent
7 to the principals of Akard and one of the funders who
8 apparently was part of the Akard group; is that your
9 understanding?
10 A. Yes.
11 Q. And this is the first time that Mr Lewis had put them on
12 formal notice -- agreed? -- of default?
13 A. Yes, I agree.
14 Q. But there had been a number of discussions as a run-up
15 to this notice which had raised significant concerns
16 about the status of their ability to continue to fund;
17 do you agree?
18 A. I think that -- I -- I believe that's right, yes.
19 Q. Now, Mr Lewis was reporting here that in the second
20 paragraph:
21 "We believe that all of the efforts in 2016 have
22 paved the way for operations to re-commence
23 in January/February 2017."
24 And then Mr Lewis went on to note that his funding
25 arrangement was exclusive with Akard; do you recall that

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13:07 1 discussion?
2 A. Yes.
3 Q. One of the real challenges that AOG was facing at this
4 time was that it had an exclusive relationship with
5 Akard, and could not seek external funding elsewhere;
6 correct?
7 A. We were committed to working with Akard exclusively.
8 Q. And Akard was in arrears on its funding obligations to
9 the tune of almost \$190,000, according to Mr Lewis'
10 letter.
11 A. That's correct.
12 Q. And that arrearage related to cash calls that had been
13 made for the period, if you look at page 5 of 5, for the
14 period from 23 October to 29 October. Mr Lewis was
15 essentially providing a running balance of the defaulted
16 amounts that were overdue; agree?
17 A. Yes, I agree.
18 Q. And as the CFO, had you helped him prepare this table of
19 arrearages?
20 A. Yes, I would have done.
21 Q. Did you draft the letter?
22 A. No. Well, sorry, I don't recall, to be precise. But it
23 may have been a joint effort. I don't recall who took
24 the lead on it.
25 Q. But did you understand Mr Lewis' sentence at the

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13:09 1 beginning of paragraph 2, "We believe that all of the
2 efforts in 2016 have paved the way ...", to suggest that
3 it was the capital challenges that AOG was then facing
4 because of these arrearages that were causing the delay?
5 A. No, they were withholding money because they were
6 concerned about the delays in our operations.
7 Q. But when we review the exchange of documents, such
8 a statement is not present in any of the documents, is
9 it?
10 A. Could we go back to the first page, please?
11 Q. I may have misunderstood your answer, Mr Fraser. Your
12 point is that there may have been delays in the
13 operations --
14 A. Period.
15 Q. -- period?
16 A. Yes.
17 Q. Okay.
18 So now let's look at the status of the funding at
19 that point in time. What was their total commitment at
20 that point in time?
21 A. Just under -- they committed under the agreement to just
22 under \$4 million.
23 Q. And at that point in time, at the top of page 2, they
24 have advanced approximately 1.95 million; correct?
25 A. That's correct.

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13:11 1 Q. And at that time you had had to defer salary; correct?
2 A. Yes.
3 Q. And Mr Lewis reports that he had as well. 90,000 and
4 210,000 respectively, for a total of 300,000; correct?
5 A. That's correct.
6 Q. Had Mr Benada's salary also been deferred?
7 A. No.
8 Q. So you were the only two?
9 A. Correct.
10 Q. And the second paragraph also notes that a number of
11 Alpine invoices had remained unpaid. Was that your
12 understanding?
13 A. Yes, that must be correct.
14 Q. And the original understanding with Akard had been that
15 there would be a formal second-stage agreement; do you
16 remember that?
17 A. Yes, I do.
18 Q. I may be wrong, but I've understood it that there was
19 sort of a letter of intent in the original stages of the
20 deal, but it was contemplated that there would be
21 a formal funding arrangement?
22 A. Well, there was something called an initial funding
23 agreement, which was intended to be replaced by a more
24 substantial document, and that didn't happen.
25 Q. That never happened?

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13:12 1 A. Correct.
2 Q. And despite repeated efforts on AOG's part, both you and
3 Mr Lewis, they never were in a position, or apparently
4 willing, to proceed to that next step of formalising the
5 agreement; correct?
6 A. I don't recall why they delayed -- why that side was
7 delayed. But I do recall that the delays in our
8 operations was a factor for them.
9 Q. And that reluctance to complete the formal agreement
10 that had been contemplated had led to some significant
11 tension in the relationship; correct?
12 A. I think that's right, yes.
13 Q. He had noted there had been disagreements and confusion
14 as to responsibilities. That's in the bottom of the
15 third paragraph. And that as a result the relationship
16 had been severely strained. Is that consistent with
17 your recollection?
18 A. I'm sorry, which page are you on?
19 Q. I'm on page 2, third paragraph, under the section
20 "Formalizing the agreement".
21 A. Yes, I would agree.
22 Q. Now, on page 3, Mr Lewis wrote that:
23 "As communicated regularly throughout 2016, Alpine
24 experienced significant operational delays in Slovakia
25 due to protester activities and their legal challenges."

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13:14 1 Do you see that?
2 A. Yes.
3 Q. Had you told Akard that the protesters had been
4 successful in their legal challenges?
5 A. I am sure they would have had a good understanding of
6 the overall picture, so they would have known about the
7 injunction, I expect.
8 Q. But I think I need to understand why you're sure,
9 because did you forward to them the detail on the
10 various court actions that had been proceeding in 2016
11 and early 2017?
12 A. Well, here we're talking about late 2016, or mid-2016.
13 I mean, Mike had the relationship with Akard so he
14 maintained most of the dialogue with them. I supplied
15 some financial information. But I was involved in some
16 conversations with them, and to the best of my knowledge
17 they were well aware of all the issues we were facing.
18 Q. Do you think they were well aware that throughout 2016
19 you were conducting operations without compliance with
20 an injunction?
21 A. I think they would have been aware of the existence of
22 the injunction, and they would have been aware that we
23 were looking to find means of drilling on that location.
24 Q. Despite the injunction?
25 A. Without being caught by the injunction.

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13:16 1 Q. Mm-hm.
 2 Now, the particularly challenging news at a meeting
 3 on December 1 was Akard's disclosure that Akard/CVP had
 4 not invested any of its own funds. Were you aware of
 5 that before that disclosure to you?
 6 A. Could you show me that in the letter, please?
 7 Q. Yes, I'm sorry. It's right underneath the
 8 "December 2016 Proposals".
 9 A. We were aware that Akard was a consortium of investors,
 10 so I think we assumed that they would procure funds to
 11 invest, and they might not necessarily come from Akard
 12 LLC, but they might come from co-investors.
 13 Q. But you were not, prior to this December 1 meeting
 14 that's being described here, you were not aware at that
 15 point that all the investment were from third parties
 16 and that these third parties were done?
 17 A. I believe that -- Mike and -- sorry. My -- I think that
 18 Mike was closer to Akard than I was, so he will have had
 19 a better understanding of the dialogue with them. But
 20 I think we simply -- we regard them as an investor with
 21 a co-investor, and we didn't differentiate between funds
 22 that came from them or from a co-investor brought in
 23 alongside them.
 24 Q. But what the news was here was there wasn't going to be
 25 any more funding from Akard?

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13:21 1 Q. Yes. They certainly did. But I mean, they hadn't
 2 responded to his proposal on refunding only a portion of
 3 the money.
 4 A. No, I believe they demanded the payment of the balance.
 5 Q. And given the challenges that the cash shortfall had
 6 created at the time, Discovery actually made a proposal
 7 to Akard to acquire AOG; correct?
 8 A. To acquire Alpine ... yes, that's correct.
 9 Q. But Akard didn't respond to that proposal either?
 10 A. Correct.
 11 Q. So in the next paragraph, Mr Lewis goes on to report
 12 that Discovery Group was in a critical position;
 13 correct?
 14 A. Yes.
 15 Q. And as CFO, did you share the view that Discovery was in
 16 a critical condition -- position?
 17 A. We were short of funds, yes. At that point.
 18 Q. Right. But my specific question is: did you agree with
 19 Mr Lewis that the position had become critical?
 20 A. Yes, I do. Yes.
 21 Q. And that was made critical by the fact that under the
 22 notice of default section, in the second paragraph,
 23 Discovery noted that it has "no alternative sources of
 24 capital in place"; correct?
 25 A. We didn't -- that's correct. We had no other investors

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13:19 1 A. That's correct. And that was due to the delays in
 2 operations.
 3 Q. And they had forwarded earlier in December, I assume,
 4 but correct me if I am wrong, but there was a -- in
 5 response to some earlier negotiations there was
 6 a partial payment against the arrearage on the cash
 7 calls of \$25,000; do you recall that?
 8 This is at the bottom of page 3.
 9 A. Yes, I recall that.
 10 Q. But that shortly after wiring the money, they made
 11 demand to return it. They being Akard.
 12 A. That's correct.
 13 Q. And despite the fact that AOG, if you go to the top of
 14 page 4, was, and I quote:
 15 "... extremely short on funds because of Akard/CVP's
 16 failure to meet cash calls, DG [Discovery Group] once
 17 again accommodated Akard/CVP and agreed to refund the
 18 [money]."
 19 Correct?
 20 A. Yes.
 21 Q. And at that time Discovery Group reported that it had
 22 only 10,000 available to refund, so noted that the
 23 balance of \$14,800-and-miscellaneous would need to be
 24 deferred, and there was no response from Akard; correct?
 25 A. They responded to this notice, yes.

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13:24 1 lined up.
 2 Q. And then he concludes in the final paragraph beginning
 3 on that page, that it has no other alternatives other
 4 than to send the notice of default, making specific
 5 demand for the payments.
 6 And then in the final paragraph, after the table
 7 that you indicate you helped prepare, he wrote:
 8 "If [Discovery] finds itself obliged to enforce
 9 a default against [Akard], it intends to immediately
 10 seek alternative sources of funding with a view to
 11 ensuring the continuation of its operations."
 12 But then he writes:
 13 "Although it is not legally obliged to do so,
 14 [Discovery] will also seek to ensure, but without legal
 15 obligation on its part, that [Akard] ultimately received
 16 the return of its \$1.95 Million investment."
 17 A. That's what it says, yes.
 18 Q. And it was prepared to return the money, notwithstanding
 19 Akard's persistent default on funding its obligations;
 20 correct? That's what it says.
 21 A. That's correct. I think that Mike was keen to avoid
 22 a big legal battle at that point with Akard.
 23 Q. And it's clear that a potential legal battle was
 24 brewing; correct?
 25 A. If we had -- it could have been brewing, I don't know.

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13:25 1 We obviously resolved the situation with Akard, reached
 2 a compromise. But Mike was happy to offer to make them
 3 whole if and when he was in funds to do so.
 4 Q. And if we step back from the minutiae a second, Akard is
 5 delinquent on funding. No other alternative sources are
 6 available. He's not prepared to invest anymore, and
 7 he's offering out of the gate to return their funds;
 8 correct?
 9 A. He's offering to return them if and when, if you like.
 10 Q. If and when.
 11 And the reason he's doing that is because he wanted
 12 to avoid litigation. What claims had they threatened at
 13 that point in time?
 14 A. I don't believe they had threatened any claims. They
 15 did reply to their notice of default. But I don't think
 16 they -- they had not threatened any claims.
 17 Q. Well, that reply is at R-143. We'll take a moment to
 18 look at that right now. And I'm going to wrap up after
 19 that, Madam President, just to keep you posted where we
 20 are.
 21 THE PRESIDENT: I think everybody is hungry, yes.
 22 MR ALEXANDER: I know, and I am too! I apologise for going
 23 over.
 24 I'm not going to take the time, because we're all
 25 hungry, to read through this in any detail. The

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13:27 1 document is clear on its face.
 2 But the one point I did want to note is the
 3 suggestion over on page 2, whether DG had made certain
 4 representations. It was a strong response that there
 5 had been no default and, in fact, it was AOG that was in
 6 default. That was the gist of it; correct?
 7 A. I think that's correct, yes.
 8 Q. Right. And there was a suggestion that "whether
 9 DG/Alpine has complied fully with all laws and
 10 regulations, including the Foreign Corrupt Practices
 11 Act" needed to be investigated further; do you see that?
 12 A. I see, yes.
 13 Q. And after this exchange of letters, the net result was
 14 a settlement agreement. They were released fully from
 15 all funding obligations. Discovery was released from
 16 all claims, including those that had been threatened
 17 from this letter. And it agreed to refund almost
 18 \$2 million, everything they'd put into it, if and when.
 19 If and when AOG had the ability to do so; correct?
 20 A. That's correct. There was no firm agreement to refund,
 21 but it was -- it was, yes, if I had the funds -- in fact
 22 in the previous letter he says "without legal
 23 obligation".
 24 Q. And ... may I have a moment, Madam President? (Pause)
 25 Is it true, Mr Fraser, that after this release of

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13:29 1 Akard from funding obligations, AOG never obtained any
 2 additional external financing?
 3 A. Not from any third party investors, that's correct.
 4 Q. And Mr Lewis made it clear, both to you and to the other
 5 JV partners, that he was not going to be contributing
 6 any further funds; correct?
 7 A. That's correct.
 8 Q. Including even payments towards the licence; is that
 9 correct?
 10 A. I forget what he actually said, but he did make some
 11 more payments into the company, towards licences, for
 12 example.
 13 Q. And then on 3 October 2017, that would be C-382. If we
 14 could turn to page 3, at the bottom of that page.
 15 This begins a discussion of the withdrawal of one or
 16 all parties -- it reports a discussion of that, and
 17 I note that Mr Lewis was himself the secretary of the
 18 meeting. Does that mean he kept these minutes?
 19 A. He would have kept them. If that's what it says, he
 20 kept the minutes, yes.
 21 Q. Yes. It says under item 1(b) on the first page:
 22 "Michael Lewis agreed to be the Secretary for the
 23 meeting."
 24 So back to page 3, under the heading "Legal and
 25 financial consequences relative to", the joint operating

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13:32 1 agreement, and then under the Slovak law section, do you
 2 see that?
 3 A. Yes.
 4 Q. You are reported to have said in the last sentence of
 5 that section:
 6 "Alex said that he feels that it could be a long
 7 process, but that he felt we will ultimately prevail."
 8 Was that an accurate record of what you had said at
 9 that meeting?
 10 A. I expect it was, if it's in the minutes, yes.
 11 Q. And then when I read Mr Lewis' report, he sounded
 12 decidedly more pessimistic; do you agree?
 13 A. Yes.
 14 Q. And he wrote that:
 15 "... AOG doesn't have the funding in-place to
 16 continue to battle, or for arbitration, suggesting that
 17 Alpine doesn't have the horsepower or appetite for it.
 18 Alpine suggested that it would like to reduce to a 5%
 19 interest in the project and stay involved to the extent
 20 desired by the partners ..."
 21 That's over on page 4.
 22 Then he noted in conclusion:
 23 "... Alpine was going to [need] to seek additional
 24 funding ... keep the partners informed ... But Alpine
 25 didn't feel that it would be able to pay its share of

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13:33 1 the licence fee."
2 Is that consistent with your recollection of
3 Mr Lewis' assessment of the situation?
4 A. Yes. I mean yes, because it was dependent on
5 Mike Lewis' support at that point.
6 Q. Because it was dependent on Mike Lewis' --
7 A. Well, because the only source of funding --
8 Q. Was Mike Lewis?
9 A. Yes.
10 Q. And without any external financing and without Mike
11 Lewis' financing, it was game over at that point;
12 correct?
13 A. We carried on for a period of time. But we struggled to
14 raise any external finance. So at that point it was
15 game over.
16 MR ALEXANDER: Thank you, Mr Fraser.
17 Madam President, that concludes my
18 cross-examination.
19 THE PRESIDENT: Thank you.
20 So I suggest we take the lunch break now, and then
21 move on to re-direct examination and Tribunal questions.
22 Mr Fraser, during the lunch you continue to be
23 sequestered, so I'm sure the Claimant will arrange for
24 you to have lunch somewhere, but on your own,
25 unfortunately.

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13:34 1 Should we be back at -- well, what do you want,
2 2.15, 2.30?
3 MR ALEXANDER: Yes, Madam President.
4 THE PRESIDENT: Yes, but it was an alternative.
5 MR ALEXANDER: I was distracted, I apologise.
6 MR TUSHINGHAM: Could we say 2.20 as a compromise?
7 THE PRESIDENT: We can say that, yes, absolutely.
8 So 2.20.
9 MR ALEXANDER: Thank you. Thank you, Mr Fraser.
10 (1.35 pm)
11 (Adjourned until 2.20 pm)
12 (2.24 pm)
13 THE PRESIDENT: Fine, I think we're ready to resume.
14 Mr Fraser, I hope everybody had a good lunch, and you
15 too.
16 Mr Tushingham, I think it's your turn.
17 Re-direct examination by MR TUSHINGHAM
18 Q. Thank you, Madam President. I just have a few short
19 questions by way of re-examination of Mr Fraser.
20 Do you recall that Mr Alexander asked you some
21 questions early on in your testimony about whether you
22 understood that the road was a public road?
23 A. Yes.
24 Q. And you referred to an internal report about
25 a conversation with the mayor in June or July of 2015;

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14:24 1 do you recall that?
2 A. I do.
3 Q. And you were asked whether you knew whether that report
4 was in the record?
5 A. Yes.
6 Q. And your answer was "I don't know".
7 Could I show you, or could you please be shown,
8 document C-281. Do you see that this is an email from
9 Mr Lewis dated 5 August 2015 in which you are copied?
10 A. Mm-hm, yes.
11 Q. Could you please turn to page number 2. And do you see
12 the section -- the sentences beginning:
13 "Smilno location ..."
14 And then the following paragraph. Could you just
15 read that to yourself. (Pause)
16 A. Yes.
17 Q. Was that the internal report that you were referring to
18 in your witness statement?
19 A. Yes, that's correct.
20 MR TUSHINGHAM: I have no further questions to ask by way of
21 re-examination, so I am now in the Tribunal's hands.
22 THE PRESIDENT: Thank you. This refers to the actual
23 drilling site, or does it include the road?
24 A. It refers to both. The third-last paragraph says
25 "Smilno location", and that's the discussion of the well

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14:26 1 location.
2 THE PRESIDENT: And then it goes on.
3 A. Correct -- and then the next paragraph:
4 "Access road is a public road."
5 THE PRESIDENT: Thank you.
6 No further questions.
7 MR TUSHINGHAM: No further questions.
8 THE PRESIDENT: Do my colleagues have questions? Yes,
9 please.
10 MR DRYMER: Shall I begin?
11 THE PRESIDENT: Yes, please.
12 (2.26 pm)
13 Questions from THE TRIBUNAL
14 MR DRYMER: In no particular order, but I will start now on
15 a related point, if I may. I didn't know that you were
16 going to take us here, Mr Tushingham, but I'm glad you
17 did.
18 At paragraph 9 of your second witness statement --
19 sir, could I ask you to pull that up for the witness.
20 I'm sorry, I don't know the gentleman's name. Thank
21 you. Let me go there now.
22 I'll ask you just to read the paragraph to yourself
23 just for a moment, sir; you don't need to read it out
24 loud. (Pause)
25 A. Okay, yes.

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14:27 1 MR DRYMER: Thank you. You reference a meeting on-site.
2 You mention two agreements:
3 "It was agreed that there was no issue about using
4 the Road ..."
5 And:
6 "It was also agreed that the Road needed to be
7 adjusted to reflect [certain] coordinates ..."
8 And at the end you say:
9 "A minute of the meeting was signed by all parties."
10 You refer us to Exhibit C-280. Could I ask that be
11 shown? Thank you.
12 Is this the minute you're referring to? And let me
13 ask a more fulsome question so that you understand.
14 I don't see reference to agreement on either of those
15 points in there. I don't know if maybe you'll tell
16 me -- well, you read it otherwise?
17 A. I agree with you. I think what we recorded it was -- it
18 says there a minute of the agreement. It's not actually
19 the agreement itself. And my understanding is it was
20 a verbal agreement and this is just a note of the
21 points. But it doesn't say "agreed". I agree with you.
22 MR DRYMER: Okay, and just to be clear, counsel, I've
23 looked, I can't do more, at the Slovak version. I don't
24 read Slovak. It doesn't appear to say anything more
25 than this, but if I'm wrong, please correct me and

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14:29 1 correct the record.
2 MR TUSHINGHAM: Mr Drymer, do you see in this document C-280
3 it refers to:
4 "... location of the access road on Parcel Type C,
5 Serial No. 945 (unrecorded ownership sheet - built-up
6 area (road))."
7 MR DRYMER: Yes.
8 MR TUSHINGHAM: If it assists you to look at the title deed
9 of that parcel, that is at C-139, and that may explain
10 what these minutes are about.
11 So do you see in this document --
12 MR DRYMER: Alright. I was going to say you're welcome to
13 argue that in due course. But now that it's up I'll
14 look at it, sure. (Pause)
15 Sorry, you're ahead of me and I'm slow to catch up.
16 Are you suggesting that this helps me find reference to
17 these two agreements?
18 MR TUSHINGHAM: No. It may be we can deal with this in due
19 course. It was just to help you with your effort to
20 understand what was being referred to in these minutes.
21 MR DRYMER: Ah, I understand. It refers to this.
22 MR TUSHINGHAM: Exactly.
23 MR DRYMER: Well, this is a reference to correcting the
24 coordinates in the cadastral register, I imagine?
25 MR TUSHINGHAM: Sorry, the document on the screen at C-139?

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14:31 1 MR DRYMER: Yes.
2 MR TUSHINGHAM: No, this is, as I understand it, an extract
3 from the Land Registry in respect of plot number C, and
4 the way of using the plot numbered 22, that is where it
5 says:
6 "Land, on which an engineering structure is built -
7 road, local and special-purpose road ..."
8 MR DRYMER: I see.
9 MR TUSHINGHAM: And that is the parcel that's referred to in
10 these minutes at C-280.
11 MR DRYMER: I see.
12 Alright, well, I'm going to leave it there, well,
13 unless the witness has something he would like to add.
14 No. Alright, and I'll look forward to further
15 explanations in due course.
16 Thanks. A couple of other questions, if I may.
17 At paragraph 42 of your second witness statement,
18 this is a discussion regarding financing and Romgaz's
19 conduct, and JKX's notice of its intention to withdraw.
20 The notice from JKX is -- help me with the
21 exhibit number -- 185. Could I ask that that be pulled
22 up, please. (C-185).
23 Could you scroll down to the last paragraph of the
24 JKX email. Right, there it is.
25 Yes. You may or may not know the answer to this

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14:33 1 question because I'm going to ask you what the sender
2 meant. But the second to last paragraph, first sentence
3 reads:
4 "For your information, the JKX Hungary assets are
5 also up for sale."
6 Now, I look at that and it suggests to me that JKX
7 might have been exiting a number of its investments for
8 reasons wholly unrelated to any act or conduct by the
9 Republic of Slovakia or, in fact, any facts related to
10 Slovakia. They had their own reasons to divest.
11 What do these words mean to you? Why would he be
12 telling you that he is exiting Hungary as well as
13 Slovakia?
14 A. I would think just in the interests of openness that he
15 would mention that, I think. We had a very good
16 relationship with JKX. It was a very, very open
17 relationship. So I expect he was just being complete.
18 MR DRYMER: Okay. Thank you.
19 If I could ask you, please, to turn to your first
20 witness statement, paragraph 99. And I hope I've got
21 that right. I'll tell you in one sec. Yes.
22 Paragraph 99, on the second page at page 36, there's
23 a sentence, the second line:
24 "... Mr Harakal, told us unofficially that the
25 outcome of the process had already been decided by his

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14:35 1 superiors in Bratislava. He did not say what the
2 outcome would be, nor did we ask."
3 I have a question mark next to "nor did we ask".
4 Why wouldn't you have asked? Why didn't you ask?
5 A. In hindsight it would have been a good thing to ask. At
6 the time it was a meeting in Slovak where I was
7 an observer rather than a participant, and I didn't
8 really feel I could kind of -- I didn't really want to
9 be the foreigner butting in on a conversation between
10 a Slovak official and our Slovak colleagues. But it
11 would have been a good idea to ask, I will accept that.
12 MR DRYMER: Thank you. It's true I'd forgotten, actually,
13 your testimony earlier, that these meetings were taking
14 place in Slovak, and you were hearing part of it live,
15 but probably not all of it live.
16 A. Yes. Yes.
17 MR DRYMER: At the very outset of Mr Alexander's examination
18 this morning, he asked you several questions about your
19 role with Discovery, and Alpine, with the companies, if
20 you will, and you describe how your role evolved a bit
21 over time.
22 That reminded me of points that had occurred to me
23 as I was reading your witness statements, before
24 listening to you and meeting you today, which is that it
25 seems to me -- and please correct me if this is wrong,

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14:36 1 but it seems to me that your role evolved eventually so
2 as to encompass virtually every facet of this project,
3 from the legal to the financial, technical, operational.
4 Beyond, if you will, the sort of limited description
5 that Mr Alexander suggested to you this morning, is that
6 a correct impression that I would have had? You seem
7 almost to have been the chief operating -- well, forget
8 the titles: the operating mind of the project on the
9 ground?
10 A. I would say I would more or less agree with that, save
11 for technical. I didn't really have any input on the
12 technical side.
13 But certainly finance, legal and PR, I got involved
14 in the PR --
15 MR DRYMER: PR, the political side, exactly.
16 A. Yes, yes, all those aspects.
17 MR DRYMER: And I recall from your witness statement your
18 description of your previous activities. So what I want
19 to ask is: is this, however you would characterise it,
20 this expanded role with Discovery in this project, was
21 it something you had experienced in past employment
22 opportunities, or past projects?
23 A. Not exactly, but I would say there's something similar,
24 in a sense, in that my previous company, where we were
25 exploring in Poland --

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14:38 1 MR DRYMER: Yes.
2 A. -- we were again a very small operation, I actually had
3 a colleague who was in charge of legal affairs, but
4 I did have in the distant past some legal experience.
5 So there I was involved as chief financial officer
6 but had some input on the legal side and a little bit on
7 the PR side, just because we were a small team.
8 MR DRYMER: I understand. And I think you've put your
9 finger on, at least from a definitional standpoint,
10 which doesn't mean much, that this is a big role for
11 a CFO, if you will, in a traditional description of
12 one's functions?
13 A. Yes.
14 MR DRYMER: And I believe, Madam President, and sir, that
15 those are my questions. Thank you very much.
16 PROFESSOR SANDS: Hello, and thank you very much for being
17 with us.
18 I'm just following on actually from Mr Drymer's last
19 question, just against the background of the
20 conversations we've been having over the course of
21 today, and this dispute at this single site, the Smilno
22 site. Just stepping back now with the passage of time,
23 would you say it's a fair characterisation that the
24 heart of this dispute was one concerning the use of
25 a plot of land, and competing views as to who had rights

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14:39 1 over that plot of land, the characterisation of the
2 thing called a track or a road or whatever it may be?
3 I mean, how would you characterise the heart of the
4 issue on this particular site?
5 A. It's true we had competing views about the nature of the
6 plot of land. I mean, actually, I think I would
7 probably -- to a small degree, because I think to all
8 intents and purposes, in our perception, this road was
9 used as a road. The only entity that's ever been
10 stopped from using it was Alpine Oil & Gas. So as far
11 as we could see, it was a road, it was a right of way.
12 So I don't feel that others saw it as anything
13 different than a road. Our view was that the --
14 dressing it up as a piece of private agricultural land
15 was a convenient legal fiction, and it didn't reflect
16 the realities.
17 So I would say that it was more about -- it was more
18 about whether -- it was more about, for us, a very small
19 group of individuals stopping people coming in and doing
20 something different, if you like, in the area.
21 PROFESSOR SANDS: That view -- and I'm being very careful
22 not to express a view as to what this thing was --
23 you've articulated the view from your perspective as CFO
24 of Discovery. But, of course, others held a different
25 view and it wasn't just a few individuals: it was also,

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14:41 1 apparently, the local police, more than one Slovak
2 court. Against that background, did it not give you
3 pause for thought as to whether the characterisation
4 that you've put on that space is the correct one?
5 You seem to be saying, if I've understood you
6 correctly, that all those other folks just got it wrong
7 in their characterisation. Is that your position?
8 A. I would say that we got mixed signals from the police.
9 Sometimes they said "Remove the car"; sometimes they
10 didn't. So far as the courts were concerned, it's true
11 that we met a brick wall with the injunction, and the
12 refusal of the injunction.
13 I think for us what defines the environment a lot
14 was the PR aspect, and I would say that the people who
15 were opposed to us were very effective communicators,
16 very good, and I have to acknowledge that. And they
17 were very good at creating an atmosphere -- we became
18 famous in Slovakia, actually. We could go to a meeting
19 in Bratislava in the ministries and they would say: oh,
20 we've heard all about you, don't worry, you're famous,
21 you know, you're on the national news. We were a small
22 company in a distant part of Slovakia, and yet we were
23 very famous because these activists would go and -- you
24 know, they would lobby in Bratislava, they would disrupt
25 ministerial meetings, their Facebook posts were

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14:43 1 aggressive, both against us and against the government.
2 So for us it was -- I think we -- we did wonder if
3 the position of the courts was also affected by the
4 atmosphere, by the public atmosphere.
5 And the police, yes, I mean, my impression was there
6 were policeman we could speak to who said: of course
7 it's a road. But the ones that counted, they were not
8 prepared to take that view.
9 PROFESSOR SANDS: And you mentioned the courts. What was
10 your reaction to the decisions of the two court
11 decisions in relation to the injunction?
12 A. We were appalled. You know, we thought it was
13 absolutely ridiculous that an asset which is worth
14 €100 -- we paid €100, I'm sure much more than anyone
15 locally would have paid for a 1/700th share in that
16 road. They wouldn't have probably paid €10. That that
17 asset could be protected by an interim injunction, to
18 us, was absolutely a perversion of justice. It was
19 very, very oppressive, we considered, and we were very
20 surprised that it wasn't reversed on appeal.
21 So, yes, we found -- and then -- it was impressive.
22 It took a month to obtain that injunction, a month to
23 hear an appeal on it, which was rejected, and then we
24 applied to -- because the only way we could see getting
25 ourselves out of this injunction mess was to concede the

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14:45 1 claim. It took four months to close that claim, for
2 judgment to be issued on that, and it took another,
3 whatever, six months after that before the injunction
4 was finally lifted. So it felt like the system was
5 rigged against us.
6 PROFESSOR SANDS: I understand that's your perspective.
7 I mean, you've got a legal background, so you have some
8 knowledge of how these things are done. One of the
9 things that is quite striking for me is when you were
10 discussing earlier the preparation of the report on the
11 status of the road and so on and so forth, there doesn't
12 appear to have been, prior to your acquisition,
13 a detailed due diligence on exactly these kinds of
14 issues.
15 I mean, one knows -- I live in a small village in
16 France, and every time you've got to do some activity,
17 you need some sort of permissions, and the amount of
18 time you spend on finding out in advance and getting
19 legal advice on what you can do and what you can't do.
20 And yet here you're talking about a significant
21 investment, and yet there doesn't appear to have been --
22 and we heard from your counsel in effect
23 a confirmation -- a really detailed due diligence in
24 relation to these kinds of issues of ownership, of
25 access, of rights, in advance of investing and of

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14:46 1 getting involved really actively in the project.
2 I'm just wondering whether you might observe whether
3 that's a fair characterisation and whether now, with the
4 benefit of hindsight, you might not have taken steps
5 earlier to inform yourselves on the regulatory and legal
6 situation in Slovakia.
7 A. Mike and I have worked together in Poland, where we had
8 drilled a number of wells there. Ron Crow had also
9 worked in Poland and Hungary. We had -- we took comfort
10 also from Stanislav Benada's experience, he was, you
11 know, a veteran of the Czechoslovak oil industry.
12 There is some oil and gas activity across the Czech
13 Republic and Slovakia -- not a lot, but there is some --
14 and we weren't aware of any of these kinds of issues
15 being problematic; we perceived it as
16 an investor-friendly country, like Poland, for example.
17 That's true, the Polish oil and gas sector is much
18 larger, but the land ownership issues are pretty
19 similar.
20 So, I think a small company is probably not going to
21 invest a lot of money in legal due diligence before
22 an acquisition into these sorts of issues, I would say.
23 And when it got nearer the time of actually looking at
24 specific locations, you know, we did all that was
25 required in terms of leasing the location itself, for

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14:48 1 example, for which we used lawyers.
 2 The road at Smilno, I think we relied on the
 3 statements we had from the mayor and the farm.
 4 PROFESSOR SANDS: Okay. Thank you very much.
 5 THE PRESIDENT: Just following up on your role. We've
 6 already discussed the fact that your role was beyond the
 7 responsibilities of a CFO, as it is usually understood
 8 in a company, and it encompassed a lot that I would have
 9 thought was in the CEO's attributions, and I was
 10 wondering how the tasks were apportioned between
 11 yourself and Mr Lewis?
 12 A. I would say that Mike Lewis was very much in charge. It
 13 was his company. And to the extent that I got involved
 14 in, for example, meetings with government officials,
 15 that would be in consultation with him. It might be
 16 because he was in another country at the time. But any
 17 important meeting, I mean a meeting with the minister,
 18 Mike would come over.
 19 I saw myself as supporting him in areas like public
 20 or government relations, or public relations, I manage
 21 a lot of it myself, reporting back to him. But
 22 government relations was at the end of the day his
 23 responsibility and I would support him.
 24 THE PRESIDENT: In your witness statement, it's the first
 25 one, in paragraph 92 on page 32, 33. If someone could

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14:50 1 pull this up. You say that early 2017 you started
 2 engaging with the activists.
 3 A. Mm.
 4 THE PRESIDENT: And actually it was quite a productive
 5 engagement, if I understand well. Why did you not do
 6 this earlier? Did it occur to you later that maybe it
 7 would have been a better approach to engage with them,
 8 rather than have these confrontations?
 9 A. There actually had been quite a lot of engagement with
 10 activists from the outset. But it's just that it went
 11 into a -- on a more serious level, if you like, at this
 12 stage, but --
 13 THE PRESIDENT: Just to be clear, I understood you before to
 14 say you are making a distinction between the activists
 15 and the local residents of the village?
 16 A. Yes. Yes, very much so. Yes.
 17 THE PRESIDENT: So where do you classify Ms Varjanová, for
 18 instance?
 19 A. So we would say -- she's a resident of Smilno, but she's
 20 one of the small group of activists. There were
 21 probably a couple at each location, roughly.
 22 THE PRESIDENT: And these activists, what do they -- I mean,
 23 usually, at least the way I understand it, activists
 24 promote a cause, right, like protection of the
 25 environment, of human rights, whatever. What was their

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14:51 1 fight about?
 2 A. Essentially it was -- for them it would be put on
 3 an environmental level. It was that: you're going to
 4 harm the environment. And there was really almost
 5 nothing we could say that we found that could make them
 6 comfortable on that.
 7 I would say that, just going back, if I may, to your
 8 previous question?
 9 THE PRESIDENT: Yes.
 10 A. Stanislav Benada had discussions with VLK, which is the
 11 organisation behind them, from early 2015 onwards, or
 12 even 2014. There was quite a bit of -- there were
 13 various conversations between Ms Varjanová and AOG
 14 representatives, including Stanislav and Mike Lewis,
 15 in December 2015.
 16 We knew quite a few of these people a bit, and they
 17 were always very hostile to us, and Ms Varjanová was
 18 very hostile to us. So we felt we would have liked to
 19 engage with them, but we felt that it was always used
 20 against us.
 21 THE PRESIDENT: So why did it change in 2017?
 22 A. I suppose a slightly different approach, which was that
 23 we had someone who had been helping us since the
 24 beginning of 2016 who was very local, quite well
 25 connected locally, who was -- I would describe him as

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14:53 1 a local fixer, if you like, helped set things up, set up
 2 meetings and so forth, and he knew one of the activists.
 3 I had known him for quite a long time. And when he
 4 started working for us he said, you know: do you want me
 5 to say anything to Mr Ferko and we thought we had
 6 nothing to lose and -- he was quite a smart chap. He
 7 was able to create the right conditions for a dialogue.
 8 I was a new face in terms of meeting the activists,
 9 so I could go along and slightly say: this is a new
 10 person, you can say things to me, whatever, which you
 11 haven't said already, or I'll give it a different
 12 hearing. So that helped. And I was very receptive to
 13 them. I went there were two colleagues, Peter being one
 14 and another colleague, Igor Melus.
 15 I tried to, you know, just tried to -- it was like,
 16 you know, sort of trying to think, bit like being on
 17 a psychiatrist's couch or something, you just want to
 18 let it all hang out. But at the end of the day it
 19 didn't really change anything. You know, it didn't
 20 actually remove the hostility.
 21 THE PRESIDENT: Did it not change when you offered to do the
 22 preliminary EIAs?
 23 A. I wouldn't say so, no. We made a lot of propositions,
 24 concessions, we said: before we submit the preliminary
 25 EIA application, we'll show it to you, you can comment

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14:55 1 on it, so ask us all the questions you want, we will
2 tell you about the drilling mud -- they were very
3 concerned that the drilling mud contained toxic
4 chemicals, which it didn't. So we addressed all these
5 issues, many of which would have been addressed in the
6 past, but we did it again.
7 But at the end of the day, when we filed these
8 preliminary EIA applications, okay, they objected to
9 them, as Ms Varjanová said in her witness statement, but
10 the dialogue on other channels continued, you know, the
11 opposition through other channels.
12 When we went to -- I tried to get a new location
13 next to Smilno at a place called Šarišské Cierne, which
14 is described in here. But again, the same activists
15 were then lobbying people in Šarišské Cierne to create
16 opposition. Nothing had really changed, that was our
17 perception, despite us making all the right noises and
18 being as conciliatory and as accommodating as possible.
19 It didn't make any difference.
20 THE PRESIDENT: Then I have another question. You were here
21 yesterday and you have seen the video of the incident
22 with Ron Crow.
23 A. Yes.
24 THE PRESIDENT: It's on the record under R-37.
25 A. Mm.

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14:56 1 THE PRESIDENT: I didn't really understand: what happened
2 there?
3 A. Well --
4 THE PRESIDENT: I mean, it looked faked, frankly. I mean,
5 at least that's what I see, but then, what was the
6 purpose of this scene? I mean, how did you understand
7 this? Had you seen the video before?
8 A. I've seen the video before because it was in at the
9 Respondent's --
10 THE PRESIDENT: Because it was in the record; you had not
11 seen anything before.
12 A. True. I had not seen it before this arbitration.
13 THE PRESIDENT: But the incident had been reported to you at
14 the time?
15 A. Yes. Yes. And obviously Ron went to the local hospital
16 and had his leg put in a cast or -- you know, in a cast.
17 What I heard at the time was that he had been
18 knocked, exactly what I've put in my witness statement.
19 THE PRESIDENT: Yes.
20 A. He was struck by a car. No damage. Some bruising.
21 THE PRESIDENT: Yes, but one doesn't put on a cast for
22 bruising.
23 A. Yes. I mean, I have asked him again and he said: well,
24 you know, I was in shock when it happened and later on
25 in the day it started -- it got stiff, it stiffened up,

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14:57 1 and so that's when I went to the hospital.
2 But, yes.
3 PROFESSOR SANDS: Just one follow-up actually, if I may.
4 THE PRESIDENT: Yes, sure.
5 PROFESSOR SANDS: Just a follow-up, just in response to the
6 questions from the President.
7 You come across as very balanced and very
8 reasonable, I have to say. That's a positive. That's
9 very positive. You don't display anger about the
10 activists, as you call them, or local residents or
11 property owners, however one characterises them.
12 A. Mm.
13 PROFESSOR SANDS: In those circumstances, looking at that
14 type of reaction from a local community which, for right
15 or for wrong, doesn't want oil exploration on the edges
16 of its village, which seems to be what it's about, what
17 is a state to do? I mean, that's an expression of
18 a democratic society; the days where a state can just
19 impose its will or a company can come in and say: this
20 is what we're going to do.
21 And you're obviously very experienced in that, you
22 have been involved in this world, you know this is what
23 happens. What is a state to do in those circumstances?
24 Because effectively you've got stiff opposition, it may
25 be a small number of people or a large number of people,

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14:59 1 but there's opposition. And in those circumstances is
2 it unreasonable what the outcome was, in the face of
3 such opposition? I mean, reasonable people may disagree
4 on what's desirable or not. But, actually, is it so
5 problematic?
6 A. I mean, the opposition was as small as it was
7 determined. That's the thing. It was very small, but
8 they made up for that by their resourcefulness and being
9 very, very committed.
10 I know that there's a petition with
11 300-and-something signatures on it. We question how all
12 those signatures were arrived at, but that's probably
13 a separate matter.
14 We also know that our time in the village -- we
15 spent a lot of time in Smilno. I lived there for
16 a couple of weeks at a time in that hotel. My
17 colleagues did as well. We knew a lot of people there.
18 I mean, I would say I don't think I met anyone who was
19 opposed to us in the village apart from Ms Varjanová and
20 her brother. All the other people who came in, who were
21 there, they were brought in from outside.
22 When we tried to drill in -- and if you look at the
23 photograph of the protesters, there's 23 of them out of
24 a village of, you know -- of whom only a small --
25 a number of those, not all, a number are from Smilno.

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15:00 1 The same thing when we were on the location
 2 in November, the same number of protesters, half of them
 3 came in a coach, in an minibus from a village called
 4 Pakostov an hour away, and this little group was able to
 5 disrupt operations wherever we went.
 6 So, is that representative of the community, or is
 7 that just, you know, are they holding the community to
 8 ransom? I'm not sure which is the answer.
 9 PROFESSOR SANDS: But I'm asking a slightly different
 10 question. I'm asking about the responsibility of the
 11 state. Because these proceedings are not about the
 12 town, they're not about the individuals. It's about
 13 Slovakia. What is a state to do in those circumstances?
 14 I mean, you are familiar in the UK with similar
 15 situations in relation to coal mining in Cumbria or the
 16 government's decision to issue new oil and gas licences.
 17 There won't be millions on the streets, but there will
 18 be a number of people who will feel very strongly about
 19 it who will make a lot of noise about it and it will end
 20 up going to the courts and the courts will end up taking
 21 decisions, and some people will like whatever they
 22 decide and some people won't.
 23 That, at a time in which the environment is of
 24 greater consciousness, is an issue which all democratic
 25 states face. So is it your position that the state

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15:01 1 somehow behaved unreasonably in failing to allow you to
 2 proceed?
 3 A. We think the state was captured, in a sense, by this
 4 small group, and was -- it was a coalition government,
 5 so the parties were slightly jockeying for influence
 6 between themselves. Probably no one wanted to -- if you
 7 put your hand up on behalf of a foreign investor you're
 8 going to be outflanked by somebody who is speaking up
 9 for the little Slovak guy.
 10 So it was much more convenient to support, you know,
 11 the local Slovak -- I mean, call them community or --
 12 PROFESSOR SANDS: You don't get to vote in Slovak elections?
 13 A. Exactly. Yes. And that's what we feel happened at the
 14 Ministry of Agriculture and the Ministry of Environment,
 15 and we had a great relationship with the Ministry of the
 16 Environment at a working level. Stanislav had known
 17 these ladies, Ms Mat'ová and Ms Janova, he had known
 18 them for more than 10 years. You know, he would go in
 19 there a lot and we'd discuss a lot of issues with them.
 20 Same thing with the mining authority or other
 21 authorities. It was easy to build a good relationship
 22 at a working level, and we felt that we were very
 23 welcome from the point of view of the operational people
 24 in the Ministry of Environment. The problems started
 25 when it went higher up and it became political, and

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15:03 1 that's where we were sacrificed to political
 2 considerations.
 3 PROFESSOR SANDS: But aren't you describing something that
 4 happens in pretty much every country? You've observed
 5 the debate on fracking in the United Kingdom; the
 6 investors who were behind that would have gone to
 7 various people and got the thumbs up and the green light
 8 and it would have been authorised, and then it goes
 9 higher up and the authorisation is overturned. Isn't
 10 that just the nature of modern, democratic society?
 11 A. I think to a degree yes, but you still need to follow
 12 your own rules, and that's why we would say we were let
 13 down, is that they stopped following their own rules or
 14 they interpreted them in a way that was prejudicial or
 15 biased or arbitrary. That's our complaint, really, is
 16 that we were forced out by a misapplication of the
 17 rules.
 18 PROFESSOR SANDS: Thank you very much.
 19 MR DRYMER: I have one follow-up and then I have a question
 20 that I forgot to put to you earlier. If you will
 21 indulge me.
 22 First of all, let me echo, I think you heard me say
 23 off-mic, I too consider you a forthright, calm witness,
 24 which is much appreciated.
 25 I understand exactly what you've just explained to

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15:04 1 Professor Sands regarding your sense of grievance, just
 2 to use that word, with respect to the political
 3 authorities at a state level.
 4 Do you say the same thing still with respect to the
 5 courts? In other words, do you believe the courts were
 6 prejudiced against you, discriminated against you,
 7 acted -- I'm not putting legal meaning to any of these
 8 words. Do you think the courts were influenced by
 9 political considerations?
 10 A. If I'm honestly speaking -- sorry --
 11 MR DRYMER: Of course you are honestly speaking.
 12 A. I'm always honestly speaking.
 13 MR DRYMER: We take that for granted here.
 14 A. Sincerely. But the answer is yes, I do, actually.
 15 I think the prevailing political environment was
 16 sufficiently strong that that or some similar influence,
 17 that it put pressure on the courts. I do feel that.
 18 MR DRYMER: Okay. I'll leave it there. That was the
 19 follow-up.
 20 Now, the question I forgot to ask you was this.
 21 Perhaps I missed something, and if you can tell me it's
 22 been answered or if counsel can correct me, so much the
 23 better.
 24 But you will recall the long discussion with
 25 Mr Alexander which led to counsel agreeing to file the

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15:06 1 missing attachment --
 2 A. Yes.
 3 MR DRYMER: -- to your lawyer's letter to you.
 4 A. Yes.
 5 MR DRYMER: That whole discussion was premised on the idea
 6 that -- you alluded to written advice that you received
 7 from Mr Sýkora, right. It turns out, it seems, that the
 8 attachment to the letter was not such written advice to
 9 the company from Mr Sýkora.
 10 A. Mm.
 11 MR DRYMER: So I'd like to ask: do you recall whether or not
 12 you received written advice from Mr Sýkora on the
 13 question of the status of the road?
 14 A. We received various bits of written advice from him,
 15 including on the -- on how best to go forward, one of
 16 which resulted in the Cesty Smilno approach. I believe
 17 we did also -- I believe there will have been something
 18 covering the status of the road, but I can't
 19 specifically remember it now. But I believe there was.
 20 MR DRYMER: Fine. And I gather, then -- correct me if I am
 21 wrong, you've just answered my second question, which
 22 would have been: do you recall whether that advice is in
 23 the record? And I think you said you don't recall.
 24 A. Well, I suspect it's not on the record, I suspect it
 25 will have been -- sorry, in the bundle for the

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15:20 1 THE PRESIDENT: Amongst other titles.
 2 You have provided us two written statements, the
 3 first one says 30 September 2022 on the front page but
 4 was -- but the signature page says 30 December 2022. Is
 5 that right?
 6 MR LEWIS: Yes, ma'am.
 7 THE PRESIDENT: Yes, it does.
 8 And the second statement says 15 September 2023 on
 9 the first page and it was signed on the 16th.
 10 MR LEWIS: Yes, ma'am.
 11 THE PRESIDENT: Okay. You're heard as a witness. As
 12 a witness you are under a duty to tell us the truth.
 13 Can you please confirm -- you should have on the table
 14 a witness declaration. Here it is, yes. Can you please
 15 read it into the record.
 16 MR LEWIS: I solemnly declare that upon my honour and
 17 conscience I shall speak the truth, the whole truth, and
 18 nothing but the truth.
 19 THE PRESIDENT: Thank you. So we shall first have questions
 20 from your counsel, and then we'll turn to the Slovak
 21 Republic's counsel.
 22 (3.21 pm)
 23 Direct examination by MR TUSHINGHAM
 24 Q. Thank you, Madam President.
 25 Mr Lewis, I understand that you wish to make one

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15:07 1 arbitration?
 2 MR DRYMER: Yes, excuse me, I mean that.
 3 A. I imagine it will have been treated as privilege but
 4 I'm not 100% sure.
 5 MR DRYMER: Fair enough.
 6 Thank you. Those are my questions, Madam President.
 7 THE PRESIDENT: Thank you. I think I have no further
 8 questions. This was a long examination, Mr Fraser.
 9 Thank you very much for your assistance.
 10 MR FRASER: Thank you very much.
 11 THE PRESIDENT: Should we take a -- not too long a break,
 12 maybe, so we may have another one later -- a ten-minute
 13 break now and then we'll hear Mr Lewis?
 14 MR TUSHINGHAM: That's fine by us. Thank you.
 15 (3.08 pm)
 16 (A short break)
 17 (3.19 pm)
 18 THE PRESIDENT: Fine, I think everybody is back and we are
 19 ready to resume.
 20 MR MICHAEL LEWIS (called)
 21 THE PRESIDENT: Can you please confirm to us, sir, that you
 22 are Michael Lewis?
 23 MR LEWIS: I am.
 24 THE PRESIDENT: You are President/CEO of Discovery Global?
 25 MR LEWIS: I am.

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15:21 1 correction to paragraph 32 of your first witness
 2 statement. Could you please be shown that paragraph.
 3 The first witness statement of Mr Lewis. I think that's
 4 the second witness statement. It's the first witness
 5 statement. Specifically, I think, page 13.
 6 Paragraph 32, yes. Mr Lewis, could you please
 7 explain the correction you wish to make to this
 8 paragraph?
 9 A. Yes. It's actually on the next page. The ending
 10 sentence, I would like to strike that, please.
 11 Q. So you would like to strike the sentence that begins
 12 "This includes ..."?
 13 A. Yes, sir.
 14 Q. Do you have any other corrections you wish to make to
 15 either of your witness statements?
 16 A. I don't.
 17 MR TUSHINGHAM: Thank you. Could you please now answer any
 18 questions that Mr Alexander will have for you.
 19 (3.22 pm)
 20 Cross-examination by MR ALEXANDER
 21 Q. My name is David Alexander. I'm going to be asking you
 22 questions on behalf of the Slovak Republic; a pleasure
 23 to meet you, sir.
 24 A. Thank you. Same.
 25 Q. Mr Lewis, I read with interest about the early stages of

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15:22 1 your career in your witness statement, and I thought it
 2 was interesting that you would be describing some soft
 3 market conditions that you experienced early in your
 4 career. Tell me, sir, why you thought that was relevant
 5 to this proceeding? I don't disagree: I'm just curious
 6 what your view is.
 7 A. The oil price does impact activities. In 1986 I was
 8 newly out of a boom, and it hit me the hardest, and
 9 I think that that is something, as a responsible oil
 10 person, that you keep in mind all the time so that
 11 you're able to react and spend your money wisely.
 12 Q. And in that particular market, what sort of -- do you
 13 have a rough memory of what the percentage drop in the
 14 market was?
 15 A. The percentage drop was roughly not too dissimilar to
 16 what we experienced during this project. From about
 17 \$100 -- I think, yes, it made \$100 down to -- well, no,
 18 that's not true. I remember selling oil for \$5.85 at
 19 one point in that particular bust, so that was much more
 20 extreme, but it's similar to this.
 21 Q. Mm-hm. This decline, I guess it peaked shortly after
 22 your purchase at about 107; does that ring a bell?
 23 A. I believe that's correct.
 24 Q. And dropped below 30?
 25 A. It dropped below 30, correct.

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15:24 1 Q. And could we pull up C-41, please.
 2 Madam President, this is a graph that was submitted
 3 by the Claimant. It is one of those exhibits that might
 4 have some continuing relevance to questions as we move
 5 through and, with your permission, I'd like to hand the
 6 witness a copy of their exhibit, just so it will be
 7 handy for him, and I won't put too much burden on the
 8 person having to operate the exhibits.
 9 Would it be helpful if I handed you one as well?
 10 THE PRESIDENT: Yes please. (Handed).
 11 MR ALEXANDER: Interestingly, as we look at C-41, we can see
 12 that the dip lasted a long time, and then the pandemic
 13 came along. With some improvement during a stretch in
 14 2018.
 15 A. Yes.
 16 Q. A fair characterisation?
 17 A. Yes.
 18 Q. Not very precise, but in the ballpark.
 19 In your early experience of a soft market, what
 20 happens to oil exploration during a decline that steep?
 21 A. Well, first I would not characterise this as a soft --
 22 or, sorry, the prior event as a soft market. That was
 23 a devastating period of time when not only the oil
 24 business cratered but the real estate business cratered
 25 and several other industries all cratered at the same

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15:27 1 time. So that is hardly a comparison to what happened
 2 historically here, except in the oil business.
 3 But the response to -- I'm sorry, could you repeat
 4 the question?
 5 Q. What happens to oil exploration when you get this kind
 6 of bottom fallout?
 7 A. Obviously in the one that we're referencing in 1986, it
 8 was a terrible time. This one did not have those
 9 devastating effects. People continued to explore. The
 10 shale gas market slowed down dramatically because the
 11 costs there are so high.
 12 But the type of exploration we were doing here, so
 13 long as we could lower the costs substantially, which
 14 you typically can do in an environment like this, we had
 15 every expectation that we would be able to overcome this
 16 oil price and still make the project profitable, even if
 17 it took a while to rebound.
 18 Q. You, of course, testified in your own statement that you
 19 had read Mr Fraser's statement and thought that it was
 20 true and accurate; do you recall that?
 21 A. Yes, sir.
 22 Q. Look if you would -- well, I'll tell you what. In the
 23 interests of time, and I'm happy to pull it up if you'd
 24 find it necessary, but it's a short sentence I wanted to
 25 read to you, so you let me know if you'd like to have it

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15:28 1 pulled up.
 2 A. Yes, sir.
 3 Q. He's talking about the decline in the 2014-2015 and
 4 beyond. He says -- he describes the prices first, and
 5 then he says:
 6 "Against this backdrop, from August 2014 onwards it
 7 gradually became much more difficult to raise equity
 8 capital in the oil and gas sector, as investor sentiment
 9 deteriorated."
 10 Do you agree with that?
 11 A. It did deteriorate during that period of time, yes.
 12 Q. Right. And you agree it became much more difficult to
 13 raise equity capital?
 14 A. As a general rule, yes. Yes.
 15 Q. The reason I ask is, you obviously have had a very
 16 successful career, you were a pioneer in fracking, as
 17 I understand it, and through that experience put your
 18 name on the map in the United States, and then were
 19 invited to continue in Europe; correct?
 20 A. Yes, sir.
 21 Q. And you had built up a remarkable network of contacts in
 22 the industry, including the investor network?
 23 A. I had some contacts in the investor network. Most of my
 24 relationships were technical, though.
 25 Q. But in any event, in this market, after having purchased

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15:30 1 AOG in March of 2014, you went to work on raising
2 external financing immediately; fair?
3 A. Not really. We -- I fully intended to investigate this
4 project to determine what the upside of it actually was.
5 As I entered the project, I had some basic
6 understanding of the potential, some great enthusiasm
7 about the area, but until I got in and really plugged in
8 at the data, I thought it would be better to have
9 someone alongside us, to help defray the costs, lower
10 the risks for me, if it was easy to do.
11 And so we surfaced that to a few people, Alex in
12 particular surfaced that to a few people, to see if we
13 could get someone to come alongside us, understanding
14 that it was early days, that the work had not been done
15 to really identify prospects to the point of being ready
16 to drill, but that they would come alongside and help us
17 develop this play.
18 Q. You engaged some financial advisors; correct?
19 A. Yes.
20 Q. And whom did you engage?
21 A. Jean-Michel was a friend of Alex's. I don't remember
22 the name of his company but we engaged with them.
23 Q. Do you remember the deal essentially that was involved
24 there? Clermont Energy? Does that ring a bell?
25 A. Clermont, that's correct --

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15:32 1 Q. And -- I'm sorry, go ahead.
2 A. Umm ...
3 Q. Well, that's alright.
4 A. I don't really ... I'm sorry.
5 Q. Let's put it in a point of time first. That agreement
6 is R-123, if I could ask you to bring that up.
7 You may want to take a moment and look at that.
8 A. Is there a way to make that bigger, please? The old
9 eyes. Okay.
10 MR TUSHINGHAM: Sorry, if I may just -- please forgive me
11 for interrupting. Mr Lewis, there is also a screen to
12 your right.
13 A. That one's actually easier to see, so thank you.
14 MR ALEXANDER: So my first -- and, again, if you need more
15 time to read, just let me know. It's not a race.
16 A. I'm fine so far.
17 Q. Okay. This transaction with Clermont envisioned raising
18 15-30 million; do you see that?
19 A. Yes, sir.
20 Q. And that was for exploration projects in both Poland and
21 Slovakia; correct?
22 A. Yes.
23 Q. And how long was Clermont Energy in the picture for you?
24 A. I am not sure how we terminated that arrangement. But
25 certainly -- certainly for a year or so.

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15:34 1 Q. And they brought some potential investors to the table
2 for discussions?
3 A. Yes. That's my recollection.
4 Q. And it is true that despite strong efforts, the investor
5 sentiment remained in the tank and you got no takers;
6 right?
7 A. Well, I wouldn't characterise this as an all-out effort.
8 Again, we were looking for someone to come alongside us.
9 It wasn't an investment in a well, like many investors
10 were used to. It was an unusual project requiring
11 really someone that was in the business that wanted to
12 participate in the development of the projects.
13 So it was a difficult funding effort anyway, and
14 then the fact that it was early days. So I wasn't
15 surprised that it was difficult. It would have been
16 wonderful to have someone come along with a big bag of
17 money and fund, but I was perfectly willing to go ahead
18 without it.
19 Q. But you did make it clear to Mr Fraser when he came on
20 board, and this became part of his major work, didn't
21 it, trying to find financing?
22 A. It was part of it. I wouldn't characterise that as his
23 major position, no.
24 Q. He was CFO, but I understand he had a broad variety of
25 other duties. But you asked him to -- you made clear to

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15:35 1 him that you did not want to finance this by yourself?
2 A. I think I was pretty clear that I would prefer to have
3 someone come alongside us and help fund the project.
4 That's my recollection, anyway.
5 Q. Were you also at the time personally funding exploration
6 in Poland?
7 A. I was.
8 Q. And as events evolved, you continued to have some drain
9 in the Poland ventures, which also impacted your
10 capacity to invest in the Slovak ventures; correct?
11 A. Yes, the Polish activities did cost, but they were --
12 the people, the office, the software, everything was
13 also used for the Slovakia project. So it really wasn't
14 that much of an extra cost to continue funding the
15 Polish effort while doing the Slovakian one. And the
16 geology is very similar, so the people that I had on
17 board I was doing a lot of training and trying to
18 educate these guys, so it was good for them anyway.
19 Q. So if you could turn to paragraph 34 of your witness
20 statement. That's your first witness statement.
21 A. Okay.
22 Q. And you will see about four lines down the sentence
23 begins "My expectation ...". If you can just read that
24 to yourself. (Pause)
25 A. Yes.

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15:38 1 Q. So the model that you had in mind was that you would
 2 invest in the cost of the first three wells, and your
 3 business model anticipated that revenues generated from
 4 that would then become the funding source for any
 5 further drilling?
 6 A. Well, this is the model that I typically had been using
 7 and continue to use, where I would fund the start-up of
 8 a programme, and then, as it further developed,
 9 hopefully the project would then fund itself. So it's
 10 not unusual for me to think like that.
 11 Q. Would it be fair to say that in that model, early
 12 results can be pretty significant for the outcome of the
 13 project?
 14 A. Of course they can. Yes.
 15 Q. And if you had -- let's go back to the question of your
 16 willingness to finance personally. What amount did you
 17 have in mind to finance for the first three wells?
 18 A. If I recall, something like a couple million was my
 19 expectation.
 20 Q. And what were you estimating the per-well cost to be for
 21 the first three wells?
 22 A. Roughly a million to a million-two (1.2 million).
 23 Q. In the --
 24 A. Excuse me, that's for 100%. Our net would have been
 25 500 or so per well.

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15:42 1 the Carpathians. Could you ...
 2 Q. Maybe I've forgotten where it was. Where were your
 3 estimates from?
 4 A. Northern Poland, I believe, is where I quoted.
 5 Q. Do you remember saying that they could be as high as --
 6 somebody quoted you a number, sort of an almost
 7 ridiculous number of as high as 50 million?
 8 A. Yes, and that may sound ridiculous because we were so
 9 successful in getting it down, but there are -- anyway,
 10 yes. Yes, I recall.
 11 Q. But as things developed in Slovakia, the costs you were
 12 having to incur personally substantially exceeded your
 13 initial ballpark for 2 million.
 14 A. Well, unfortunately we weren't drilling. So it was just
 15 overhead costs. I had anticipated that that would
 16 continue for some period of time until the drilling
 17 started. But obviously it extended for a much longer
 18 period.
 19 Q. Now, given the extension of time and the lack of
 20 progress you were making, did you ever reconsider the
 21 approach that you had in mind, which was to continue to
 22 look for external financing?
 23 A. Reconsider? For sure. As it became more difficult, the
 24 prospect of outside financing became more attractive.
 25 Q. The -- your interest in outside financing became more

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15:40 1 Q. Now, back to the Clermont Energy, that's R-123 again,
 2 you earlier noted that you were contemplating financing
 3 at 15-30 million, and you were contemplating how many
 4 wells in Poland and Slovakia?
 5 A. I'm sorry, I don't recall. I think I read three,
 6 a minute ago.
 7 Q. Yes. In the first paragraph under the "Proposed
 8 transaction", if we could highlight the first sentence.
 9 Again, you can read it to yourself, but:
 10 "... in order to fund the development of up to three
 11 oil and gas exploration projects ... [in] Poland and
 12 Slovakia..."
 13 A. That sentence ... must not be the right one. (Pause)
 14 Q. It's three lines down under "Proposed transaction" on
 15 the right-hand side of the page is the part I'm calling
 16 attention to.
 17 A. That is three projects. That would not be wells.
 18 Q. I see. And how many wells were you contemplating?
 19 A. I don't remember. There were several in Poland, and
 20 then several in Slovakia.
 21 Q. You had mentioned also in your witness statement that in
 22 your early activity in Poland, you'd gotten some very
 23 high estimates for the cost of drilling in the
 24 Carpathians; do you recall that testimony?
 25 A. I don't believe I mentioned any very high estimates in

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15:44 1 attractive?
 2 A. Yes, sir. Yes, sir.
 3 Q. Right. Now, with Clermont, they were not able to bring
 4 anything ultimately to the table; correct? Actual
 5 funding?
 6 A. Yes, that's correct.
 7 Q. Who did you go to next? Does the name Gulf Shores ring
 8 a bell?
 9 A. I believe Gulf Shores came out of the Clermont
 10 relationship.
 11 Q. That's what it looked like to me but it wasn't said
 12 quite explicitly, but that was all part of Clermont.
 13 But you also had a preliminary agreement of some sort
 14 with Gulf Shores?
 15 A. Again, I'm pretty sure that came out of the Clermont
 16 introduction.
 17 Q. Mm-hm. Did Gulf Shores succeed in bringing anything to
 18 the table?
 19 A. No, they didn't.
 20 Q. And when did you begin discussions with Akard?
 21 A. Sometime in 2015.
 22 Q. The agreement is dated 23 October 2015; does that help
 23 at all?
 24 A. Thank you. Yes, it does. It would have been shortly
 25 before that.

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15:45 1 Q. Alright. And did you know the people involved with
2 Akard from your prior experience?
3 A. I did not, no.
4 Q. How did they come to you?
5 A. I believe it was a friend at church. I'm -- I'm not
6 certain.
7 Q. So could we bring up C-282, please. Take a moment and
8 look at that, and you can ask for the next page whenever
9 you're ready. I just want to give you a moment to have
10 a look.
11 A. Okay. (Pause)
12 Okay.
13 Q. What was the deal with Akard?
14 A. That they would fund our operations for a few wells.
15 I believe it was three or two. And that we would
16 ultimately put the Alpine asset in a newco, a new
17 corporation that we would split 50/50.
18 Q. And as I recall, there was a series of steps in the
19 financing. Depending upon how things went in option 1,
20 they had an option to go to a second position; do you
21 remember that as well?
22 A. Yes, sir, I do.
23 Q. So with Akard there were significant problems getting
24 the deal even documented, weren't there?
25 A. The particular individual was a difficult person, so.

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15:47 1 He meant well, and it was just very precise in the way
2 he wanted the numbers and the charts and the verbiage to
3 be, because he was a real estate guy and I'm not a real
4 estate person, but apparently they're more precise than
5 we are in the oil and gas business.
6 So yes, it did take some time to do that.
7 Q. To borrow one of my favourite Texas phrases, was it his
8 first rodeo?
9 A. I believe it was.
10 Q. Yes. And I'm sure he did some diligence about you and
11 AOG. You probably did a little diligence about him?
12 A. I did some. The way he met me -- I wish I could recall
13 how -- that person apparently talked me up pretty good,
14 because he really didn't ever question our technical
15 abilities and, I mean, as far as that was concerned, we
16 never really discussed that further.
17 Q. So the full farmout -- I guess it was a farmout
18 agreement that was contemplated for the first layer, for
19 first option -- that never actually got documented?
20 A. No, I don't believe it did.
21 Q. And did that lack of documentation create any problems
22 for your relationship going forward?
23 A. The problems existed before the lack of documentation,
24 which is why that never occurred.
25 Q. So how far into the deal were you on -- what month were

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15:49 1 you in when things started to come off the rails?
2 A. It was late 2015, because I remember talking to him
3 while I was skiing. So it must have been December 2015.
4 Q. Were you skiing in the High Tatras, I hope?
5 A. No, sir, I was not.
6 Q. It's a lovely area!
7 You put in, I should say you loaned about 2 million
8 from January 2013 through to September 2015 into the
9 project; correct?
10 A. I don't know if it's a loan or investment. I didn't
11 characterise it really any way on purpose. It was money
12 the company needed. It's my company. I funded it. But
13 yes, I haven't looked at those numbers. 2 million
14 sounds about right, though.
15 Q. But I do want to pay attention to how the money went in.
16 How did it go in?
17 A. My money was in whenever it was needed. Which is
18 a practice that I have with my businesses. I don't like
19 to fund too much in advance. And at this point in time
20 when we did this transaction, I know that the 230 came
21 in, and I am pretty sure that the next tranche as well
22 came in.
23 Q. You're referring now to Akard's contribution?
24 A. Correct, because that's the only other funding that came
25 in.

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15:51 1 Q. I was referring actually to your funding.
2 A. Okay. Well, mine just came in as it was needed, as it
3 always has been.
4 Q. To borrow an analogy back to those real estate guys, you
5 were the construction lender?
6 A. I don't know the real estate business well enough to say
7 that.
8 Q. You were!
9 A. Okay!
10 Q. Take a look at C-142 -- sorry, R-142. So this was a --
11 and again, this is a lengthy letter, you might remember
12 this letter. January 2, it was your notice of default
13 to Akard.
14 On the first page of that letter you say -- do you
15 see there at the "Background", down at the bottom:
16 "I loaned about \$2.0 Million from January 2013
17 through September 2015 to pay for almost all of DG's
18 share of the geological and geophysical work required to
19 progress the Alpine project in Slovakia."
20 Was that a true statement?
21 A. I assume so, because I wrote it.
22 Q. Alright. And when you loaned money to the company, did
23 you execute promissory notes? I mean did the company?
24 A. I don't remember any of that. I don't remember. It
25 wasn't something I would have worried about.

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15:53 1 Q. You were essentially loaning to your own company, so
2 formalities weren't too important?
3 A. I would say I was investing in my own company. Whether
4 it was a loan or treated that way for tax purposes or
5 not, that's beyond my pay scale.
6 Q. So as you sit here today, you don't know whether this
7 statement that you loaned money was the case, or some
8 other structure might have been used; you just don't
9 have any memory of it?
10 A. The loan language, I'm not certain about that. I may
11 have been advised to say it that way. I don't know.
12 But in my mind all along it was an investment, and
13 if I could treat it as a loan and get it back from
14 an investor group, then wonderful. But it was what it
15 was.
16 Q. So in terms of the mechanics of how you would advance
17 funds, did you advance it from another company, or did
18 you advance it from your own resources?
19 A. Hm. I have a number of sources I could have used.
20 Q. But you don't have any memory of it?
21 A. I don't remember one way or the other, no.
22 Q. But basically people on the ground had been given the
23 project, as cash needs came along would send you
24 an email?
25 A. It wasn't quite that informal, no.

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15:56 1 Q. Now. Same question for Akard.
2 A. I don't believe there's anything in these documents, no.
3 Q. Do you recall how much your total personal investment
4 was to the Polish projects that were being developed at
5 the same time you were working in Slovakia?
6 A. I remember around 2017 that I was at 6-point-something
7 million in all of these projects to Discovery. But
8 I don't remember a breakdown per project.
9 Q. Okay. Did you have some good fortune in Poland? Did
10 you generate some producing wells that you were able to
11 move into production? On the projects that were the
12 subject originally of the deal with ...
13 A. The project with the Polish oil and gas company did not
14 go well in the end, so no, we did not. We were not
15 successful there.
16 Our own little project there, the drop in oil and
17 gas prices made that subeconomic. So I had to drop
18 that.
19 So overall, there was no return to that investment,
20 to date.
21 Q. Now, you had made, as you earlier noted, and I read with
22 interest your discussion of your experience in fracking,
23 you had made a substantial contribution to that work and
24 received substantial rewards as a result; is that fair?
25 A. Yes.

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15:55 1 Q. Okay. Tell me how it was, please.
2 A. I'm pretty sure that in every case Alex would have been
3 the one that was telling me the need and I was working
4 out payment with him. Or through him.
5 Q. And did you sometimes mix the sources of the funds,
6 sometimes from your personal account, sometimes from
7 another business?
8 A. Well, let's make sure we're talking about the same
9 thing --
10 Q. I'm talking about the 2 million that you said you
11 loaned.
12 A. Alright, but it doesn't say -- what I would have done,
13 any transaction that I would have made would have been
14 to Discovery first, and then Discovery would have
15 disseminated that to Alpine as needed. As long as we're
16 saying that, please rephrase, or please ask me again.
17 Q. Well, is there any evidence in the record that you
18 advanced funds to Discovery as opposed to AOG, that
19 you're aware of?
20 A. I don't think I ever advanced funds to Alpine.
21 Q. My question, though, was a little different.
22 A. Okay.
23 Q. Is there any evidence in the record of the entity to
24 whom you advanced funds?
25 A. I don't believe there is.

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15:58 1 Q. And you're probably tempted to be modest, but you're
2 allowed to brag when somebody asks you a question that
3 calls for immodesty.
4 So when you say your name was put on the map in
5 connection with fracking in the US, what do you mean by
6 that?
7 A. I was the team leader and the geologist and the main
8 technician for, or technical person for the development
9 of fracking and horizontal wells, while I was with Lyco
10 Energy. We started the Bakken play up in Montana,
11 North Dakota, which ended up being a world-class field.
12 At the same time we were doing that, the Barnett shale
13 play in Texas was happening, and neither of us knew what
14 the other was doing. We thought we were the only ones,
15 but turns out we weren't.
16 But that project developed for several years while
17 I was with Lyco and then I did that on my own for
18 several years after that. The result was I was swamped
19 with speaking engagements and all sorts of things. So
20 it was a very fun time. A very good part of my career.
21 Q. And you met some folks there who knocked on your door
22 later about going to Europe?
23 A. No. I got a phone call from -- I believe from London,
24 from a guy that used to come to Dallas quite often. And
25 he had heard of me from somewhere, and invited me to go

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16:00 1 to Europe.
2 Q. And you said yes?
3 A. After some struggling with the decision, yes, I did say
4 yes.
5 Q. And when was that?
6 A. 2007.
7 Q. And was your work in -- your initial work in Europe, was
8 that conventional drilling, or was that for what we've
9 been loosely describing as fracking?
10 A. The first that we did, that I did, was with 3Legs, and
11 that was horizontal wells with fracks in a gas play in
12 northern Poland.
13 Q. And that was successful?
14 A. I thought it was successful. ConocoPhillips with all
15 their overhead did not.
16 Q. And you were invited to speak in a conference in
17 south-eastern Poland a few years into that work?
18 A. Actually, near the beginning, I believe it might even
19 have been 2007, yes, in Czarna.
20 Q. And how far is that from Slovakia?
21 A. Very close. Maybe 40 miles, 30 miles.
22 Q. And did you meet some folks from Slovakia there?
23 A. I did not. Not that I knew of.
24 Q. And what did you speak on at the conference?
25 A. I spoke on the potential of the Carpathians and -- but

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16:04 1 Q. You are aware that several EU Member States at one time
2 or another had fracking bans imposed?
3 A. Later, after I had done the work in northern Poland,
4 yes.
5 Q. And what timeframe was that, that it became a hotbed of
6 activity in Europe?
7 A. I don't remember, but I would assume it's 2013,
8 something like that, and onward.
9 Q. Shortly before your acquisition of AOG?
10 A. It may have been.
11 Q. Now, you've testified, as had Mr Fraser, that you had no
12 plans for fracking in Slovakia; correct?
13 A. We had no plans for any what is called unconventional
14 activities, whatsoever.
15 Q. And would you agree with me, sir, that there was nothing
16 in your licence agreements or any other documentation
17 with Slovakia that would have precluded your use of
18 those activities?
19 A. That's true.
20 Q. And when you arrived in Slovakia, a lot of activist
21 attention was focused on the question of whether that
22 was your plan for Slovakia; correct?
23 A. Well, to be clear, there were only three or four
24 activists that were asking any questions of us at all.
25 And we made it clear every single time that there was

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16:02 1 mostly on the aspects of horizontal drilling and
2 fracking and horizontal wells.
3 Q. Right. And by that point in your career that was really
4 your primary area of expertise. That's not to take away
5 anything from your other knowledge, but that's where you
6 had been focusing for some time?
7 A. I had a long career in conventional -- now it's called
8 conventional -- vertical well drilling, that was also
9 very successful. But certainly the horizontal and
10 fracking was an important part of my career, and
11 an important aspect of why I went to Europe.
12 Q. And do you recall both in the United States and in
13 Europe that there was a fair amount of controversy from
14 environmental groups, for example, around fracking?
15 A. Yes, I do.
16 Q. And you had a fair amount of exposure to environmental
17 groups, protest activities, litigation. You'd had that
18 rodeo too?
19 A. No, sir, I hadn't.
20 Q. You had not?
21 A. No.
22 Q. So had any of the projects you'd been involved with had
23 any controversy associated with them?
24 A. "Controversy" is a very broad word. If you mean on the
25 scale of demonstrations, I don't believe so, no.

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16:06 1 not only no intention on our part, but there was no
2 reservoir for which that technology would be applied.
3 Q. Now, you have made the statement that there were three
4 or four activists that you were dealing with; did I hear
5 that right?
6 A. As far as people that we were talking -- that I was
7 talking to, at town hall meetings, things like that, it
8 was really just two or three, maybe four.
9 Q. Do you remember a press conference that was held in
10 Prešov?
11 A. I do.
12 Q. And there was quite a large number of people there,
13 wasn't there?
14 A. I'm sorry, it was a room full of press, if that's what
15 you mean?
16 MR DRYMER: Are they people?!
17 A. Yes, sir. I'm sorry! I'm sorry, yes, you're right.
18 MR ALEXANDER: That was fairly early on in your work in
19 Slovakia; correct?
20 A. I don't recall that being early on. Certainly we had --
21 well, it was late 2015, I believe? Something like that.
22 Q. Do you recall the petition activity undertaken, for
23 example, in Smilno?
24 A. I remember hearing about it. Alex was responsible for
25 that. So I would hear from him, but I wasn't actively

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16:08 1 involved in that.
2 Q. Mr Lewis, you and I have the pleasure, as do all of the
3 professionals in this room, of working and living in
4 democratic societies. Correct?
5 A. Yes, sir.
6 Q. And you accept that in democratic societies,
7 particularly in the EU, the state is expected to make
8 room for, tolerate, even protect the right of protest.
9 A. I can't comment on that. I don't know.
10 Q. Well, certainly in the United States you're familiar
11 with protests from time to time?
12 A. I am, but I have never looked into the legality of it,
13 so ...
14 Q. Well, you remember hearing about the first amendment?
15 A. Of course, yes.
16 Q. The right to free speech, assembly, and the right to
17 petition the government?
18 A. Yes, sir.
19 Q. You wouldn't be surprised to know that there are
20 comparable protections in the EU legal order, would you?
21 A. I would not be surprised.
22 Q. And you accept the fact that the state cannot take any
23 action to stop people from exercising those rights?
24 A. Again, this is not something that I can comment on.
25 I don't feel comfortable.

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16:11 1 A. Yes, sir. Yes, thank you for clarifying.
2 MR DRYMER: Well, that's my question. I'm not sure what
3 Mr Alexander wanted, but that's what I'm interested in.
4 Thank you.
5 MR ALEXANDER: Well, thank you, because you said it much
6 better than I did. That's what I was trying to get to.
7 MR DRYMER: I don't think so, but thank you.
8 MR ALEXANDER: Before you purchased AOG, you met with the
9 folks at San Leon?
10 A. I did.
11 Q. And were they forthright in explaining to you what their
12 perception was of the environment in the various
13 locations where you planned projects?
14 A. In hindsight, no.
15 Q. Did you discuss with them whether there were any
16 organised environmental groups?
17 Does the name VLK ring any bells?
18 A. That name did -- I did not know that name at the time.
19 I learned that later. I don't believe they disclosed
20 anything of the sort, as I was looking into that
21 project.
22 Q. Did you inquire about anything like that?
23 A. I inquired about their experience working with the
24 Ministry, their experience running the seismic, and they
25 told me they had never had a problem. So to that

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16:10 1 Q. I don't think there's any controversy about that right
2 in this case, but I just wanted to make sure that you
3 appreciated that there is a right for citizens to
4 organise and be heard on matters of public interest; you
5 understand that?
6 A. I would assume that's the case.
7 Q. And having done business in the EU, you are, of course,
8 familiar with the EU legal order's tolerance for public
9 participation in the environmental impact assessment
10 process. You're not a stranger to that, are you?
11 A. Although I bore the brunt of that activity, I am no
12 expert in the process itself.
13 Q. Do you accept for purposes of our discussion that the EU
14 and Slovak legal order accept the right of citizens to
15 be heard during that process?
16 A. Again, I can't comment. That's not something I am
17 an expert on at all.
18 MR DRYMER: Whatever may have been the legal situation --
19 nobody's asking you whether you have an appreciation as
20 a lawyer or a constitutional scholar, or professor of
21 international law -- when you invested, did you
22 understand that it was possible that there might be
23 community expressions of positions around the location
24 of your wells, around the fact that you were drilling at
25 all for oil?

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16:13 1 extent, I was comfortable.
2 Q. And how long after -- so, let's be clear. I just want
3 to make sure. Your testimony is that before you
4 invested you had no understanding of organised
5 environmental groups active in the area?
6 A. I had no knowledge of specific organised groups, if
7 that's what you're asking?
8 Q. Okay.
9 A. No, I did not.
10 Q. What about the general presence of groups or people of
11 environmental interest -- environmental causes; were you
12 aware of that?
13 A. I am not sure what scope we're talking about. Inside
14 Slovakia? Inside that area?
15 Q. In the area of your concessions.
16 A. Please ask the question again?
17 Q. Before you invested --
18 A. Yes, sir.
19 Q. -- did you have any understanding of whether there were
20 active environmental groups in the areas of your
21 concession who might have interest in your plans?
22 A. I don't believe I did.
23 Q. And tell us if you would, please, whether that's the
24 kind of inquiry you would ordinarily make before
25 investing in a new geographic area?

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16:15 1 A. I thought that the questions I had asked about, had they
2 had any problems working through the seismic, which is
3 quite intensive on the ground, they would have had to
4 relate with a lot of people, and the fact that that
5 operation went smoothly, that they didn't come forward
6 with any difficulties there, and then had gotten ready
7 to drill a well and hadn't run into problems there, told
8 me that it wasn't a problem there. That's really all
9 I knew at the time.
10 MR DRYMER: I don't want to interrupt again, but I'm going
11 to ask a similar question to what I asked a moment ago,
12 because I'm not sure if you are answering a question
13 regarding an awareness of specific groups and specific
14 protests, or whether you're saying that you never
15 contemplated the possibility that members of the
16 community might express concerns related to
17 environmental issues at your concession sites.
18 A. Certainly I considered it a possibility. With all of
19 the noise around the oil business at that time, I wanted
20 to make sure that when we went into this project, that
21 we took a proactive view as to what we were doing and
22 what our goals were, what our intentions were, so we
23 didn't have the kind of demonstrations that ultimately
24 we did have. Thank you.
25 MR ALEXANDER: You are familiar generally with the events of

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16:16 1 2016 at Smilno, are you not?
2 A. Most of them, yes.
3 Q. And you talked about them in your witness statement over
4 several pages. In most of those reports, you're
5 reporting on information you learned from your
6 colleagues on the ground in Slovakia; is that fair?
7 A. Much of this, yes.
8 Q. And did you, in connection with this arbitration, ask
9 any of these colleagues if they would be available to
10 come testify about the events that they observed on
11 a first-hand basis?
12 A. Yes, I did.
13 Q. And to whom did you speak?
14 A. Ron Crow, Maciej Karabin.
15 Q. I'm just interested, not in what they would have said or
16 what you even talked about, but did you ask them, did
17 you ask Mr Crow if he could come?
18 A. I asked him if he was available to do so if needed.
19 Q. And did you ask Mr Karabin?
20 A. The same question, yes.
21 Q. And did they both say yes, they would be willing to come
22 if needed?
23 A. Ron said yes, Maciej said probably not, because he has
24 a full-time job that would have conflicted.
25 Q. Who else did you ask that question to?

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16:18 1 A. Personally, I think that's it. I may have asked Marek
2 Jackiewicz, another geologist that worked for us during
3 that time. But I knew he couldn't because he has also
4 a full-time job that would have prevented him to.
5 I think that's it.
6 Q. Did you explore with them whether they could get leave
7 for a couple of days to travel or appear by video? Did
8 you explore any of those options with them?
9 A. No, sir, I did not.
10 Q. Did you -- do you know whether any of your other
11 colleagues asked if, for example did Mr Fraser ask if
12 someone could come and testify?
13 A. I know that he called Stanislav Benada, who was
14 unwilling to come. I don't recall if there was anyone
15 else.
16 Q. Did he tell you whether he'd explored with Mr Benada the
17 possibility of travel for a couple of days,
18 reimbursement for costs, or appearing by video?
19 A. Yes, he did.
20 Q. And what did Mr Benada say?
21 A. He had no interest.
22 MR DRYMER: May I ask a question, counsel? Did you put
23 those questions to Mr Fraser himself, that specific
24 question?
25 MR ALEXANDER: With respect to Benada, yes.

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16:20 1 MR DRYMER: Right. I'm not sure I recall these specifics.
2 The record is what it is. I just want to be clear.
3 I just wondered whether you're asking about details --
4 MR ALEXANDER: You're correct. I did not ask about those
5 details.
6 MR DRYMER: Right. So I suggest that he would have been the
7 better witness to get that evidence from about his
8 conversation with Mr Benada.
9 But, anyway, that is what it is.
10 MR ALEXANDER: So in 2016 over the course of that year, and
11 having spent a lot of time with Mr Fraser on it I don't
12 intend to replough the ground, but you were aware
13 generally that there were protests --
14 A. Yes.
15 Q. -- at Smilno? You were aware there was litigation going
16 on?
17 A. Yes.
18 Q. And you were aware that there were interactions with the
19 police where people were making complaints to the police
20 about your activities and vice versa?
21 A. Yes.
22 Q. And at the end of 2016 you had suffered a number of
23 adverse rulings from -- in litigation; is that true?
24 A. A number of them. I'm aware -- from litigation I think
25 there's only one that I'm aware of.

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16:22 1 Q. You have before you a demonstrative exhibit that shows
 2 a timeline; do you see that there, sir?
 3 A. Yes, sir.
 4 Q. Were you aware that an injunction had been obtained by
 5 Ms Varjanová and had been affirmed by the Court of
 6 Appeals? Were you aware of that?
 7 A. I was aware of the injunction, yes.
 8 Q. Were you aware that it was in place from February of
 9 2016 through the end of the year and beyond?
 10 A. At the time I really let Alex handle that. I wasn't
 11 keeping track of that. I knew that it had happened, but
 12 I did not know whether it was still active or not.
 13 Q. If you had known that AOG was entering the access road
 14 in breach of an injunction, as CEO would you have put
 15 a stop to that?
 16 A. I can't just answer that "yes" or "no". I would have to
 17 know the facts behind the situation. I mean, on the
 18 surface of it, it sounds pretty cut and dried. But
 19 I would have to understand what was behind it all.
 20 Q. What's the cut-and-dried answer to the question whether
 21 you would have approved of violations of an injunction?
 22 A. Provided there are no extenuating circumstances, I would
 23 obviously want to obey the law.
 24 Q. Were you aware that AOG had asserted that the road in
 25 question was a public special purpose road, and that

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16:26 1 a bell?
 2 A. That looks correct.
 3 Q. And then there was some improvement through the balance
 4 of that year; do you see that?
 5 A. I see that the oil price stabilised around \$50, which
 6 was the most important aspect of it, yes.
 7 Q. Now, was the price level in 2016 impacting at all your
 8 ability to attract external investors?
 9 A. I'm sure.
 10 Q. And do you think if prospective investors had conducted
 11 an appropriate due diligence process and learned that
 12 you had been enjoined from accessing drilling sites, and
 13 had unsuccessfully litigated your theories of access to
 14 the drilling site, do you think that would have
 15 an impact on investors?
 16 A. I ... that's a lot of speculation.
 17 Q. No, it's actually not, Mr Lewis. The fact that those
 18 injunctions were in place, and that you did not have
 19 success in establishing any legal entitlement to the
 20 access road, that's not in -- that evidence is before
 21 this Tribunal. So let's assume that's the case.
 22 Do you think if investors had asked you or
 23 Mr Fraser, "How are things going with that protest group
 24 I hear you've been working with?", do you think that the
 25 news of those injunctions would have impacted potential

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16:24 1 that statutory basis was an attempt to justify its use
 2 of the road? Were you aware of any of that?
 3 A. I know I was told that it was a public road and that we
 4 were able to use it, and that was what our counsel told
 5 me. So that's what I relied upon.
 6 Q. Were you told that up until December of 2016, AOG and
 7 its subsidiaries had never taken any legal action
 8 affirmatively to stop protester blockings of the access
 9 road?
 10 A. No.
 11 Q. Were you aware that litigation was filed in December
 12 and January of 2017 on behalf of both AOG and
 13 a subsidiary called Cesty Smilno, but that the
 14 applications for injunction were refused in both cases;
 15 were you aware of that?
 16 A. Not specifically. I knew that Cesty Smilno existed;
 17 that Alex was investigating that as an option to being
 18 able to use the road that the protesters were blocking.
 19 But, again, I did not get into the details of that.
 20 Q. So in that same period of time, if we look at C-41,
 21 which I think you still have before you, it's the graph
 22 of the -- this is your exhibit. Do you see that there?
 23 So if we look at 2016, the period of 2016, that
 24 appears, until the pandemic, it looks like the first
 25 quarter of 2016 is as low as it got; does that ring

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16:28 1 investors in?
 2 A. I think that any investor is going to trust that the
 3 operator is doing whatever is necessary to remedy the
 4 situation and would have assumed that was the case, as
 5 I did with Alex. Things like that happen, you deal with
 6 them, you fix them and you move on, and most investors
 7 that would be interested in a project like this would
 8 understand that those things happen.
 9 Q. And they'd be more interested in the technical merit of
 10 the project?
 11 A. I'm not sure what you're asking me. I'm sorry.
 12 Q. Well, it's not a sophisticated question, because I'm not
 13 an oil guy. But I assume investors know something about
 14 the business, and what they're really interested in is
 15 the technical merit of the prospect, a picture for the
 16 project?
 17 A. Well, most investors are actually interested in the
 18 financial merit, rather than the technical. The
 19 technical needs to be right so that they can rely on the
 20 financial.
 21 Q. Right. Okay. And that's the sense in which the low oil
 22 price can have impact on their perception of the
 23 financial merit.
 24 A. Yes, true.
 25 Q. Yes, okay.

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16:30 1 MR DRYMER: Wouldn't they be interested in a very
 2 unsophisticated question: whether or not you can
 3 actually get access to the location where you say
 4 there's a lot of oil at a good price?
 5 A. Certainly. Certainly, and as I had every expectation
 6 that the problem would be resolved when Alex first told
 7 me about it.
 8 MR DRYMER: Remind me again when -- I wanted to call him
 9 Alex, but when Mr Fraser --
 10 A. Sorry.
 11 MR DRYMER: No, no, don't be, you may call him Alex. When
 12 Mr Fraser first told you about the problem of access to
 13 the site.
 14 A. Do I recall when?
 15 MR DRYMER: Yes.
 16 A. I'm sure that it was right about the time that it
 17 happened, so I would assume February of 2016.
 18 MR DRYMER: Right. And you were aware that it went to more
 19 than one instance of the local courts, more than one
 20 level of the Slovak courts? You don't recall knowing
 21 that?
 22 A. No, sir, I don't think I was involved in knowing that.
 23 MR DRYMER: Okay. And when you say that -- look, this is
 24 not your first rodeo, right --
 25 A. Right.

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16:31 1 MR DRYMER: -- in the oil and gas business. It's not mine
 2 either, but I have a completely different approach.
 3 I'm like the guy who watches the guys ride the bull.
 4 You're riding the bull.
 5 A. Yes, sir.
 6 MR DRYMER: I understand that investors by their nature hope
 7 and expect that the operator will overcome problems.
 8 But surely there are certain problems which an investor
 9 can understand may be insurmountable. There might be
 10 laws or regulations in place that are insurmountable and
 11 can't simply be overcome even by the most savvy
 12 operator. Is that ...?
 13 A. That's absolutely correct. Thank you.
 14 MR DRYMER: What's your sense about whether the investors
 15 you were speaking to may have thought, had they been
 16 told -- had they been told -- that two levels of courts
 17 had said: you cannot access the Smilno site unless the
 18 people living there allow you?
 19 A. Again, I would have wanted to know some more background
 20 to the issue, because I did not. I would certainly have
 21 told them it existed, but at the same time I would have
 22 had an expectation of a solution before I told them.
 23 MR DRYMER: Okay.
 24 A. So since I didn't know, I therefore didn't have the
 25 solution either.

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16:32 1 MR DRYMER: Fair enough.
 2 A. I hope that answers your question.
 3 MR DRYMER: Thank you. Thank you.
 4 MR ALEXANDER: Mr Lewis, do you remember, towards the end of
 5 the fourth quarter of 2016 and going into 2017, having
 6 the discussion about the possibility of talking to the
 7 key activists to see if you could find any common ground
 8 with them?
 9 A. I remember that that's what Alex suggested. At that
 10 point in time, I was getting pretty fed up. But he
 11 believed he could make some headway by doing that.
 12 Q. And if you turn now to paragraph 83 on page 29 of your
 13 witness statement.
 14 A. Yes, sir.
 15 Q. Third line down, towards the middle of the page:
 16 "I agreed with Alex Fraser that it seemed that we
 17 had little choice ..."
 18 Let me just stop there for a second.
 19 A. I'm sorry, I've got to stop you: which paragraph,
 20 please?
 21 Q. It's -- you see the page 29?
 22 A. Yes.
 23 Q. Three lines down:
 24 "I agreed with Alex Fraser ..."
 25 A. Yes, sir.

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16:34 1 Q. "... that it seemed that we had little choice but to
 2 talk to the key activists to see if we could find any
 3 common ground with them."
 4 Do you see that?
 5 A. Yes, sir.
 6 Q. And you confirmed that. You agreed with that?
 7 A. Yes, sir.
 8 Q. So the phrase "it seemed that we had little choice" sort
 9 of intrigued me. It sounded like you were reluctant.
 10 Were you reluctant?
 11 A. I was to the point of wondering whether it was time to
 12 exit the programme, because of all the hurdles that had
 13 come up, and this seemed the last possibility, and it's
 14 not something that I thought would work. I didn't trust
 15 the activists at all. They had disrupted our meetings
 16 on numerous occasions, there was no interest seen in
 17 them of what the truth was, or ... all they wanted was
 18 to stir up the public, so I didn't see how this would
 19 lead anywhere different than that.
 20 But nevertheless, because Alex felt that way,
 21 I wanted to support him in that effort.
 22 Q. And you were soon pleasantly surprised by the results of
 23 the first meeting, were you not?
 24 A. I would say no to that question. Because the
 25 introduction of the requirement for an EIA was something

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16:35 1 that I did not ever think we could get through.
 2 Q. So you were concerned about the introduction of the
 3 requirement for an EIA?
 4 A. I was very concerned, yes.
 5 Q. Alright. So let's look, if you would, please, at
 6 Exhibit R-117.
 7 I understand this to be an email from Mr Fraser
 8 dated 5 February 2017, with a long list of addressees.
 9 I wonder if we could trouble you just briefly to ask you
 10 to identify the roles of each of these people?
 11 A. Dáša was our PR person out of, I believe, Bratislava.
 12 Andrea Bacová. I don't think I know Andrea.
 13 Katarina had attended a meeting with the minister
 14 with us, so I think she was a lawyer. Viktor certainly
 15 was.
 16 Vladimír Miškovec. I feel like I should know
 17 Vladimír, but it's not coming to me.
 18 And then Matej Sýkora had also been an attorney for
 19 us, a lawyer for us.
 20 Q. And the CCs were to Mr Benada, he was in a management
 21 role in Slovakia on the ground; correct?
 22 A. He helped us a great deal, yes.
 23 Q. What was his actual title; do you remember?
 24 A. He was a consultant. I don't know that he ever had
 25 a title per se.

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16:38 1 Q. Alright. Could you go on? We're almost through there?
 2 A. Imelus was an engineer who did work for us.
 3 Peter Zdinak. Sorry, it's been too long, I don't
 4 remember Peter.
 5 Maciej of course I remember, he worked for us as
 6 a geologist and engineer.
 7 Q. Now, the subject is "Meeting with Ferko". Do you know
 8 who Ferko is?
 9 A. Yes, I do.
 10 Q. Who was he?
 11 A. A local.
 12 Q. Was he an activist?
 13 A. I try not to characterise him as that, but I suppose he
 14 probably was.
 15 PROFESSOR SANDS: Can I just ask, what do you mean by
 16 "an activist"?
 17 A. I'm sorry, yeah, that's --
 18 PROFESSOR SANDS: It has a very --
 19 A. I like the guy a lot.
 20 PROFESSOR SANDS: It has a rather pejorative tone?
 21 A. I'm sorry, yeah, I like the guy a lot.
 22 PROFESSOR SANDS: And I am just wondering why you keep using
 23 that phrase?
 24 A. Which phrase, I'm sorry?
 25 PROFESSOR SANDS: Activist.

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16:39 1 A. Oh, I didn't realise I was.
 2 Because the activists, to me, had been so
 3 unreasonable. When people got unreasonable, I guess
 4 that's the term that I used.
 5 People that --
 6 PROFESSOR SANDS: So it does have a pejorative element?
 7 A. It does for me, yes, sir. Because --
 8 PROFESSOR SANDS: And what are the characteristics of
 9 an activist? What makes someone unreasonable?
 10 MR DRYMER: Don't say he has a beard!
 11 PROFESSOR SANDS: Or that he cares about the environment.
 12 A. It is -- I mean, anybody that cares about the
 13 environment is -- I mean, I love talking about the
 14 environment, because we do so much to protect it and
 15 I'm so interested in it myself.
 16 It's the people that really don't care what your
 17 answer is, they're just there to make noise and get
 18 angry and stir people up that are the problem for me,
 19 and that's what I -- I term those as activists.
 20 PROFESSOR SANDS: So there's a sense that they don't have
 21 a genuine commitment to the cause they espouse, or, in
 22 the case of Ms Varjanová, who seems to have been
 23 a particularly -- a bee in the bonnet for your side of
 24 things, what's the problem with her? She lives there.
 25 A. I'm sorry?

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16:40 1 PROFESSOR SANDS: She lives there.
 2 A. Yes, and on numerous occasions I tried to discuss the
 3 project with her, and all she would ever say to me was
 4 "Go home". There was no discussing with her. So --
 5 I mean, I respect that she didn't want me there, but to
 6 stir people up on the basis that we were somehow
 7 polluting the water, no. That was just a means to her
 8 end, in my opinion.
 9 PROFESSOR SANDS: And so was her expression of view
 10 illegitimate?
 11 A. I think she mischaracterised our operations on several
 12 occasions, yes.
 13 PROFESSOR SANDS: Thank you.
 14 MR DRYMER: Let me follow up on that if I may. By doing
 15 that now I won't come back to it later.
 16 An expression I suggest most people in the room
 17 understand is NIMBY, "not in my back yard". It's
 18 an expression that I haven't read anywhere in any of the
 19 pleadings.
 20 But when you say that Ms Varjanová, by way of
 21 example, may have been using environmental concerns as
 22 a pretext, or to put it in Professor Sands' words, may
 23 not have actually felt an adherence to the views that
 24 she's expounding, and she told you just to go home, are
 25 you saying they just didn't want it next to their

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16:42 1 village? I mean, what motivation do you ascribe to her?
 2 A. She owned a ski resort 2 kilometres away, rather close,
 3 and she had a ski resort with a spa pool there, and some
 4 lodging. So of course her tourist trade, I'm sure she
 5 felt that it would be impacted by our operations. At
 6 least that's the way I explained it to myself. Because
 7 that's the only thing that makes sense to me.
 8 But the other aspect of that is the publicity that
 9 would come from her activities couldn't hurt the ski
 10 resort either. So ... but those are purely my opinions.
 11 MR DRYMER: Well, I'm only asking your opinion, of course.
 12 And what about the activists who come from other
 13 villages?
 14 A. I'm sorry, what's the question?
 15 MR DRYMER: Well, excuse me, what motivated activists; what
 16 about the people that you would consider activists that
 17 didn't live right next to the Smilno site; what's your
 18 opinion about their motivations for doing so?
 19 A. Again, when I tried to address their supposed concerns,
 20 they talked over my answers. They weren't the least bit
 21 interested in the facts. In our town meetings, when we
 22 would talk about the chemistry and the drilling mud,
 23 we'd get three words out and they would talk over us.
 24 I mean, they just never had given us any inkling that
 25 they were really there to address environmental

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16:44 1 concerns. There was something political going on, in my
 2 opinion. That's the only way I can explain it.
 3 MR DRYMER: Very good. Thank you.
 4 PROFESSOR SANDS: Just to be clear about that, why isn't the
 5 question of environmental amenity and landscape
 6 an environmental concern? I mean, if you ran a ski
 7 resort, would you feel relaxed about someone putting
 8 an oil rig right outside your ski resort?
 9 A. No, and I -- I can sympathise with her, I absolutely
 10 can. I know that the impact of what we were doing would
 11 not have affected much of the scenery, but it would have
 12 to some extent, of course. So yes, I can understand her
 13 position.
 14 What I take issue with is the means that she used to
 15 address that. It was just not truthful.
 16 PROFESSOR SANDS: Parking her car.
 17 A. Well, that too, yes.
 18 PROFESSOR SANDS: But don't you have a sort of grudging
 19 admiration for her? That actually, here is someone who
 20 is a local resident, who we were told owned part of the
 21 land, had a business, she was defending her interests.
 22 What's wrong with that?
 23 A. Again, if she had done that honestly, I would have no
 24 problem with that, and I addressed that in many other
 25 places as well. It's a common thing. And it's

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16:45 1 an unfortunate thing that oilfield machinery is
 2 unsightly, no matter how you dress it up.
 3 But had she gone about it, look, I -- that that's
 4 all it was, I'd have been: fine, I'm sorry, you know,
 5 we'll do what we can to help you. And we probably would
 6 have. I do a lot of things in communities when I drill
 7 and complete wells. I want people to be happy, and us
 8 to be part of that community.
 9 But she never gave us a chance to go there, so ...
 10 PROFESSOR SANDS: Because she just didn't want you there.
 11 A. She just did not want us there. Yes, sir.
 12 MR ALEXANDER: Mr Lewis, my colleagues have reminded me I am
 13 taking too much time. So I'm going to try to speed up.
 14 MR DRYMER: It's not entirely your fault.
 15 MR ALEXANDER: Well, no, no, but I'm going to try to speed
 16 up so we might be able to finish with you this evening.
 17 A. Yes, sir.
 18 Q. So with that goal in mind, I appreciate your succinct
 19 answer to a few questions here.
 20 Take a look again at R-117. You've seen this
 21 before. It was -- you were copied on it, and some of
 22 the follow-on correspondence. Did you have a chance to
 23 look at it in preparing for your testimony here today?
 24 A. I have seen this, yes.
 25 Q. And the first thing Mr Fraser writes:

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16:47 1 "This meeting seems to have been surprisingly
 2 productive."
 3 And his sentence after, indicating who was there --
 4 well, first of all, did you learn why he was surprised
 5 that Lukacs, Sabo and Barthus from VLK showed up? Did
 6 you understand why he was surprised?
 7 A. I think he had arranged the meeting with Ferko and
 8 Andrejco, and the fact that they showed up was the
 9 surprise.
 10 Q. And you knew by this point that VLK was an environmental
 11 activist group?
 12 A. Oh, yes, sir.
 13 Q. And did you share his view that it was a positive sign
 14 that they had showed up and wanted to talk about their
 15 concerns?
 16 A. No, sir. I did not.
 17 Q. You did not think that was positive?
 18 A. No, because their actions at too many locations had been
 19 disruptive and problematic.
 20 Q. Alright.
 21 And you -- I don't mean to diminish any of this
 22 email, I think it's all important, but in the interests
 23 of time I am going to move on quickly to the comment
 24 about Mr Lukacs who:
 25 "... said he considered the issue was not so much

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16:48 1 about environmental impact but more about local politics
2 and acceptance ... having previously had doubts about
3 whether to attend the meeting, having heard the
4 discussion he was glad he [did]."
5 Did that give you any hope that there might be
6 something positive come out of this?
7 A. I don't believe so. The man had been so disingenuous so
8 many times, I really did not trust it.
9 Q. And as you read on further, Mr Fraser identified that:
10 "The most important element in promoting trust would
11 be to comply voluntarily with the preliminary
12 environmental procedure for all wells."
13 And he said that was "doable"; do you see that?
14 A. Yes.
15 Q. I have gathered from your prior answers that that did
16 not probably thrill you either?
17 A. It did not.
18 Q. Did you let Mr Fraser know that you did not approve of
19 that?
20 A. Yes, I did. Excuse me, it wasn't that I didn't approve;
21 I just did not like it.
22 Q. Alright. Were you willing to support it?
23 A. To an extent, yes.
24 Q. But only to an extent?
25 A. Yes, sir.

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16:51 1 Smilno, and in the latter part of these meetings that
2 you had unsuccessfully applied for an injunction in your
3 own interests. I'll represent that to you.
4 In view of that, you really didn't have any choice
5 but to meet with them; wouldn't that be fair to say?
6 A. That's the way Alex viewed it, and the way he explained
7 it to me that made sense, yes.
8 Q. And if you would look, please, at C-166.
9 A. And, if I may, certainly that wasn't the only option
10 available to us, but it seemed by far the best one at
11 the time.
12 Q. Now, C-166 is before you, and I'd like you to look at
13 the first paragraph in particular, and within that first
14 paragraph I'm particularly interested in discussing with
15 you, six lines down, the sentence that begins:
16 "On the basis that ..."
17 And I'll represent to you that this was a draft of
18 the press release dated February 2017. C-166.
19 A. Yes, sir.
20 Q. Do you see that language?
21 A. Yes, sir.
22 Q. And now if you would turn to 171, C-171, you will see
23 that the language I highlighted, or rather that our
24 assistant highlighted, is not in that version, 171. The
25 language to the effect that "VLK and the local community

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16:49 1 Q. So, again, rushing through this, big picture, you no
2 doubt learned that further meetings were held?
3 A. Yes, sir.
4 Q. Including with Ms Varjanová?
5 A. I was not aware of that.
6 Q. Did you ever tell Mr Fraser to stop these meetings, they
7 weren't going anywhere?
8 A. Not at this time, no.
9 Q. Did you understand that Mr Fraser at one point proposed
10 the possibility of getting together, trying to find
11 common ground, listen to their concerns, and document
12 all of that in a joint press release? Did you become
13 aware of that?
14 A. I did, and Alex also expressed concern about their true
15 intent, but told me that he was willing to take the risk
16 to go along with it because it really was our last
17 opportunity.
18 Q. And in fact at that point, you were low on funding;
19 correct?
20 A. Well, the company was being funded as needed, and I was
21 funding as little as I needed to. It isn't that the
22 money wasn't there; it's just I didn't want to spend any
23 more than we had to.
24 Q. And I'll represent to you that the evidence in the case
25 is that you were still the subject of an injunction at

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16:53 1 will accept the outcome ... without filing an objection
2 or appeal"; do you see that?
3 A. I remember Alex commenting about this and saying, that
4 takes the teeth out of it, that makes them totally
5 unaccountable. But, again he said "I don't see that we
6 have any choice", so he suggested that we go with it,
7 and I said okay.
8 Q. So would you agree, sir, that, rather than view it as
9 taking the teeth out of it, the activists were making
10 clear to you that they were going to have the right to
11 participate in the environmental impact assessment
12 process, because, after all, that was their number one
13 priority going into the discussions?
14 A. We had given them numerous opportunities to participate,
15 and in every case they caused disruption, delay for no
16 reason. I was under no pretext that this was going to
17 be any different. And Alex felt a little more
18 optimistic than I did, but it was -- I felt that it was
19 very doubtful that they would be willing to go along
20 with whatever we presented without causing political --
21 making it a political tool instead of allowing us to
22 continue.
23 Q. It is true, isn't it, Mr Lewis, that since the date of
24 this agreement there's never been another protest at any
25 of the three sites that were involved in the

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16:55 1 activists -- with the activists that you were meeting
2 with?
3 A. I don't know the answer to that.
4 Q. It's also true that there's never been another road
5 blockage at any of the sites; were you aware of that?
6 A. I don't know that we've tried to do anything that they
7 would have blocked us. So it's -- I guess the answer
8 would be yes, on that basis.
9 Q. You authorised Alex to release this press release;
10 correct?
11 A. I did.
12 Q. And you're not aware of any document where the activists
13 or anybody in the community or any governmental agency
14 forfeited it or otherwise waived their right to
15 participate in the environmental impact assessment;
16 you're not aware of any such thing, are you?
17 A. No, I'm not.
18 Q. And Alex never told you that that was the deal: that
19 they weren't going to have anything to say in the
20 environmental impact assessment process?
21 A. No, he made it very clear that they had promised to not
22 disrupt our operations going forward. But then soon
23 thereafter started disrupting our negotiations, and
24 therefore we came to the place where it was just not
25 worth going forward anymore.

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16:59 1 too quickly, but these are minutes of the operating
2 committee of 3 October 2017. You are the secretary of
3 the meeting. And they're signed by all three JV
4 partners.
5 I want to call your attention to the third paragraph
6 on page 3 and under "The Slovak law", and in particular
7 the sentence that reads:
8 "Alex said that he feels that it could be a long
9 process, but that he felt we will ultimately prevail."
10 Do you see that?
11 A. No, sir, I don't, sorry.
12 Q. Okay, it's page 3, paragraph 3 at the bottom of the
13 page.
14 A. Oh, I'm sorry. Yes, I see.
15 Q. Yes, I didn't say that very clearly?
16 A. Okay.
17 Q. Alright, and then "JKX said ..." and then the next
18 sentence:
19 "Alex said that he feels that it could be a long
20 process, but that he felt we will ultimately prevail."
21 Did you understand him to be talking about the
22 environmental impact assessment process?
23 A. Sitting here today, I cannot tell you one way or the
24 other.
25 Q. There was a tone of some optimism in the comment; would

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16:56 1 Q. Well, let's try to be a little clearer about what was
2 the subject of the agreement. I'll represent to you
3 that there's nothing in this document that could be
4 construed as a forfeiture of their right to participate
5 in the assessment process, because it was a guaranteed
6 right under the law. But they did, as I understand it,
7 commit not to disrupt work sites, block things, that
8 sort of thing. Does that refresh your recollection at
9 all about what the agreement was?
10 A. Certainly implied in the agreement was that they would
11 be working with us on the EIA to make sure that they
12 understood and did not see any problems with our
13 operations. But in fact we got more of the same when we
14 started submitting documents. They objected and
15 disrupted and caused all sorts of difficulties that were
16 non-rational. Which was not the spirit of the
17 agreement.
18 Q. So would you agree that none of the other governmental
19 agencies or institutional commenters on the
20 environmental review process had ever made any
21 commitment that they could not participate in the
22 assessment process?
23 A. I'm aware of none.
24 Q. I'm going to ask you to take a look at C-382. And if we
25 could go to the third page. This is -- I probably moved

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17:00 1 you agree with that?
2 A. I would agree with that.
3 Q. And then turn, if you would, to:
4 "Mike Lewis (Alpine) stated that AOG doesn't have
5 the funding in-place to continue to battle, or for
6 arbitration, suggesting that Alpine doesn't have the
7 horsepower or appetite for it."
8 Do you agree that's what you communicated to the JV
9 partners at that meeting?
10 A. Yes, it is.
11 Q. And that you proposed to reduce your interest to 5%, and
12 stay involved -- you can scroll the page for him,
13 please. And then the final note was:
14 "But Alpine didn't feel that it would be able to pay
15 its share of the license fee."
16 Is that an accurate report of your views expressed
17 at that meeting?
18 A. It is.
19 Q. Right. You had concluded at that point that you were
20 going to wrap it up, hadn't you, sir?
21 A. I was fed up, yes, sir.
22 MR ALEXANDER: Alright. That concludes my examination.
23 THE PRESIDENT: Thank you.
24 We have been going for a long stretch, and
25 I apologise to the court reporter, because it is, in

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17:01 1 addition, getting late in the day. So I suggest we take
 2 a short break now, and then wrap up this examination; is
 3 that fine, Mr Tushingham?
 4 MR TUSHINGHAM: Sure, of course, Madam President. I can
 5 tell you now that I don't have any re-examination, if
 6 that assists you.
 7 THE PRESIDENT: Fine, that is good. But that is not yet the
 8 last word, in the sense that we're not all going home
 9 right now, because the Tribunal may have a few
 10 questions.
 11 MR TUSHINGHAM: Yes, of course.
 12 THE PRESIDENT: So, Mr Lewis, while you are on the witness
 13 stand you cannot communicate with anyone. But you can
 14 have a coffee or whatever you wish, of course.
 15 MR LEWIS: Yes, ma'am.
 16 THE PRESIDENT: Let's take 15 minutes and resume at 5.15.
 17 (5.02 pm)
 18 (A short break)
 19 (5.16 pm)
 20 THE PRESIDENT: So I see everybody is ready for the last
 21 stretch of the day.
 22 Do you confirm that you have no re-direct questions?
 23 MR TUSHINGHAM: I have no re-direct.
 24 THE PRESIDENT: Good. Fine.
 25 So do my colleagues have questions for Mr Lewis?

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17:18 1 you, nor Mr Fraser, had first-hand evidence?
 2 A. I left that up to counsel, that decision. After asking
 3 him one time and relaying that to counsel, I don't think
 4 I've asked it again.
 5 MR DRYMER: Excuse me. Counsel, object to my question, if
 6 an objection is appropriate.
 7 I don't understand what you relayed to your counsel.
 8 You said you relayed it to them once and then you left
 9 it. What did you relay to them?
 10 A. I related that Ron had said he would be available if
 11 needed.
 12 MR DRYMER: Very good. Thank you.
 13 You said something very early in your testimony
 14 today, which I found -- well, I found a lot of your
 15 testimony very interesting, and all of it very helpful,
 16 but this is something I hadn't quite considered nor
 17 taken from your written evidence.
 18 You alluded to the fact that this was a difficult
 19 funding effort -- these are my words now -- by virtue of
 20 the fact that this was at the early stage, and it was
 21 the funding of a project rather than a particular well.
 22 A. Yes, sir.
 23 MR DRYMER: My apologies to all if I missed this distinction
 24 in the written materials. Could you elaborate shortly
 25 on why this was difficult, and what you mean as to this

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17:17 1 PROFESSOR SANDS: I don't.
 2 THE PRESIDENT: No. Do you?
 3 MR DRYMER: I have a couple, if I may. (Pause)
 4 (5.17 pm)
 5 Questions from THE TRIBUNAL
 6 MR DRYMER: Hello again, Mr Lewis.
 7 A. Hello, sir.
 8 MR DRYMER: I've got a couple of questions for you. Some
 9 are particularly related to statements that you made in
 10 writing and some are related to your statements made
 11 orally today.
 12 A. Yes, sir.
 13 MR DRYMER: Let me begin by following up on a question that
 14 Mr Alexander put to you in respect of Mr Crow. I want
 15 to be sure I've understood correctly, and please don't
 16 hesitate to correct me, I'm not here to put words in
 17 your mouth; I want to be sure I've understood your
 18 testimony.
 19 I don't have a transcript reference, but I noted
 20 down that you said that Mr Crow told you that he would
 21 be available to testify if needed; is that correct?
 22 A. Yes. Yes, he did.
 23 MR DRYMER: At any point in time did you, or your lawyers on
 24 your behalf, tell Mr Crow that his testimony would be
 25 helpful in respect of matters of which he, and neither

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17:20 1 being a particular funding effort rather than a typical
 2 funding effort?
 3 A. When I typically go to sources for funding, I'm prepared
 4 with prospects, places to drill, expectations of cash
 5 flow and all those things, and I just was not prepared
 6 at the time that Gulf Shores, for instance, was brought
 7 on board, or even the initial period there where
 8 Clermont was looking for people for us.
 9 So, I mean, I had a general idea, I could wave my
 10 arms, but I didn't have anything that specifically
 11 I could point to that I would typically have in
 12 a package for an investor. So that made it difficult
 13 for Clermont, it made it difficult for us to relay what
 14 I expected the potential to be. And the cash flow to
 15 look like.
 16 MR DRYMER: Okay. And I wonder whether this might actually
 17 relate to my next question. Whether it does or doesn't
 18 is irrelevant because I'm going to ask the question
 19 anyways.
 20 You said at some point that -- this I can point to
 21 a transcript reference (page 167, line 16), it's at
 22 15.51, if counsel wants to look at it. You said "My
 23 dollars were --"
 24 "My money was ... [wherever] it was needed."
 25 Something like that.

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17:21 1 A. Yes, sir.
2 MR DRYMER: "I don't like to fund too much in advance."
3 A. Yes, sir.
4 MR DRYMER: Do you recall that?
5 A. Yes, sir.
6 MR DRYMER: Now, let me put to you two propositions which
7 I understand are suggested by the Republic in these
8 proceedings: that, first of all, your Slovak operations
9 were effectively living hand to mouth and were
10 eventually starved of cash. And the second one is that
11 your unwillingness to fund in advance resulted in
12 a lack, or an insufficient technical and legal due
13 diligence. My understanding is these are elements of
14 the case brought here with the defence.
15 Have you got any comment about that and how that
16 might relate to your willingness or unwillingness to
17 fund too much in advance?
18 A. Yes, sir.
19 MR DRYMER: Go ahead.
20 A. Thank you for bringing that up.
21 At no time did I starve the company for cash: we
22 always paid our bills, we always knew that salaries,
23 et cetera, would be paid. This company has always paid
24 its bills.
25 But I'm not going to pile up a million dollars in

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17:24 1 it was a no-brainer to me that stepping across the line
2 was going to be the same kind of geology, and
3 expectations of -- not the same, but very close to the
4 performance that we had seen there, and the expectations
5 I had there, had I been allowed to drill there.
6 I didn't describe -- and please stop me if I get too
7 long-winded here, I tend to do that -- but the Polish
8 oil and gas company had lifted their skirts, as it were,
9 for us to go into their data room and evaluate all of
10 their fields, so we had access to data that
11 theoretically no one in the world other than us had.
12 And that gave us an insight as to how to predict these
13 reservoirs and what to expect at this project.
14 So, again, it was a very easy thing for me to get
15 into and feel very comfortable doing.
16 MR DRYMER: What about the concept of legal due diligence?
17 Was that related in any way to funding, cash, or ...
18 A. No, sir. No. No, sir. I asked the questions that
19 I thought I should ask, that I felt I needed to ask with
20 regard to this project, and San Leon indicated they did
21 not have any legal problems that would be an obstruction
22 to us; in fact, had proceeded and been successful in
23 their seismic and initial operations toward drilling.
24 So I had no indication, and I thought I'd asked the
25 right questions, I had no indication from them that

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17:23 1 the bank just so that everybody can look at it. I mean,
2 there was always the money available to do what we were
3 doing and never a spectre of running out in that regard.
4 What I talked to Romgaz in that last exhibit about,
5 what I relayed to Akard in that communication there, was
6 that: without your funding, the vacancy that your
7 funding provides means I have to kick in. Alpine itself
8 is going to run out of money. I'm going to have to
9 fund, is the inference.
10 I didn't follow in with that each time, which is why
11 I think it's been interpreted that way. But I never had
12 any intention of leaving the company without funds to
13 pay its bills and do what I had approved to do.
14 MR DRYMER: What about the issue of insufficient due
15 diligence? That's my understanding of one aspect of the
16 defence's case. Have you got anything to say about that
17 and how it may or may not relate to an unwillingness to
18 fund too much in advance?
19 A. May I ask, are you talking at the beginning of the
20 project?
21 MR DRYMER: Yes, at the time you invested. Excuse me.
22 I should have been precise, and thank you for clarifying
23 that.
24 A. Yes, sir. The work that we had done in southern Poland
25 prepared me for what the expectations were in Slovakia;

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17:26 1 there was a problem.
2 MR DRYMER: Right, very good. Thank you.
3 Two more questions, and these relate specifically to
4 statements in your first witness statement. Sir, could
5 I ask you, please, to put that -- or you've got that in
6 front of you, I believe?
7 A. Yes, sir.
8 MR DRYMER: Could you take a look at paragraph 89 of your
9 first witness statement?
10 A. Yes, sir.
11 MR DRYMER: And here you say:
12 "... JKX informed us of its intention to withdraw
13 from the project."
14 A. Yes, sir.
15 MR DRYMER: And you referred to Exhibit C-185. There
16 I would like that put on the screen for the witness's
17 benefit, please.
18 A. Looks like the computer is having a problem.
19 MR DRYMER: There we go. No problem that can't be overcome,
20 right, by a savvy operator such as our technician here!
21 A. Could you hit the "No" button please, so that I can read
22 underneath it. There we go.
23 MR DRYMER: Now let me look for it. There it is.
24 A. Excuse me, there's a window.
25 MR DRYMER: Oh, can you not see? I'm sorry. (Pause)

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17:27 1 What about on the small screen?
 2 A. Okay, go ahead.
 3 MR DRYMER: This is, you see at the bottom there, it's
 4 an email from Mr Wayland at JKX to Mr Fraser and
 5 Mr Crow, and I don't think you're -- oh,
 6 "mike@discovery", I guess that's you?
 7 A. Yes, sir.
 8 MR DRYMER: And here's where JKX is telling you, "We're
 9 going to withdraw".
 10 At the bottom, second to last paragraph, it reads:
 11 "For your information, the JKX Hungary assets are
 12 also up for sale."
 13 This is a question I asked your friend and colleague
 14 earlier -- you don't know this because you weren't
 15 here -- and I put this same proposition to you. I read
 16 this, it arguably looks like JKX is exiting a number of
 17 jurisdictions, not only Slovakia. Therefore, maybe they
 18 had reasons that had nothing to do with Slovakia for
 19 selling its various Central European interests. Do you
 20 know, do you have anything to say about that? Do you
 21 know whether they had their own reasons to divest?
 22 A. Yes. Ritchie, I know Ritchie, the gentleman who wrote
 23 this, Mr Wayland, I know him quite well. We went out to
 24 dinner just after this email came in, and he expounded
 25 on the difficulties that they were having. They were in

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17:29 1 financial trouble that had nothing to do with Slovakia
 2 and were -- he wanted me to come look at several of
 3 their assets to see if I was interested, and indeed
 4 I did look at several of them. They were offloading
 5 most everything at that point.
 6 MR DRYMER: Okay. That's helpful. I don't know about
 7 everything, but I read it this way too. They had
 8 financial problems unique to them that had nothing to do
 9 with the activists in Slovakia?
 10 A. No, sir.
 11 MR DRYMER: Is my understanding correct?
 12 A. That's correct, yes, sir.
 13 MR DRYMER: Or at least that was your understanding?
 14 A. Yes, sir.
 15 MR DRYMER: Thank you. Yes, paragraph 93 of your witness
 16 statement, your first witness statement.
 17 A. Yes, sir.
 18 MR DRYMER: And this, madame, is my last question.
 19 The first sentence is very straightforward:
 20 "The introduction of the new preliminary EIA
 21 requirement into our licence was the final straw ..."
 22 I'm trying to understand "final straw". Is this the
 23 point in time, or is it not the point in time, when
 24 Discovery first came to the conclusion that due to the
 25 conduct of the Slovak Republic, it would -- you would

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17:30 1 cease your activities in Slovakia?
 2 A. I was certainly teetering on that already. But --
 3 MR DRYMER: And that's what I'm trying to explore.
 4 A. Yes, sir. This act here by the government was
 5 a complete violation of law, in our opinion -- according
 6 to Alex, I should say -- because they changed our
 7 licence, changed the terms of our licence, and again
 8 I'm relying on Alex's interpretation, but according to
 9 him, it was a violation of what they were allowed to do.
 10 MR DRYMER: Until that point you were still committed to
 11 continuing to invest in Slovakia?
 12 A. And I did, yes, sir. Yes.
 13 MR DRYMER: Thank you. Thank you very much.
 14 A. Thank you.
 15 THE PRESIDENT: I was somewhat surprised when I was looking
 16 at some of the documents, like the Opcom committee, or
 17 the Opcom meetings, about the complaints about the MT
 18 survey that were not fully interpreted. Some complaints
 19 as well about the seismic data.
 20 And then I was surprised that at the same time you
 21 are planning on drilling two wells in very short time at
 22 the end of 2014, and then two again in Q1 of 2015, and
 23 I wasn't really -- and I don't see really a drilling
 24 plan. So what was your way of operating in these sites?
 25 A. Firstly, with the seismic and the MT, I don't remember

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17:32 1 any complaints. There was -- there's always room for
 2 seismic to be better and, I mean, everyone complains
 3 that: we wish it was better.
 4 But the MT work, that was a technology that
 5 I included at the permission of the operating committee
 6 that I'm very familiar with, it has done me a lot of
 7 good, that was a way to go quickly to an interpretation
 8 and get justification for drilling a location.
 9 And now I forgot your last question, I'm sorry.
 10 THE PRESIDENT: No. It's not a mainstream tool, you
 11 acknowledged at some point, the MT data?
 12 A. Yes ma'am. It's a technology that only a very few
 13 people know about. I have used it extensively and
 14 I know where it works, where it doesn't work. I use it
 15 on all my projects. I've got a project at south Texas
 16 right now that it is the fundamental tool, because it
 17 works so well in that shale sand environment like this.
 18 THE PRESIDENT: And it works whatever the depths?
 19 A. Down to about 15,000 feet, which is fine for this
 20 project and the other one. Yes, ma'am.
 21 And I did not answer your last question because
 22 I can't remember it.
 23 THE PRESIDENT: No, the last question was that, for
 24 instance, in September 2014 you say: by the end of the
 25 year we will have drilled two wells. And then a little

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17:34 1 later you say, when you do the February 2015 meeting,
2 you prepared -- you have prepared a budget for 2015, and
3 one sees that you have two wells in Q1 2015, all of
4 which didn't materialise. So I was not sure how the
5 operation worked or how it was planned.
6 A. Yes, ma'am.
7 We had a -- first of all, it took longer for the
8 partners to get their AFEs signed than we had hoped.
9 That was two or three months' difference.
10 As far as getting the wells drilled though, it was
11 this process of finding the right location, and as we
12 dealt with the issues of getting rights of way and
13 permissions and things like that, that took longer than
14 I expected, and our engineer as well. So it did slow
15 the process down.
16 But I'm trying to remember when the ...
17 THE PRESIDENT: We can go to the documents, but I don't
18 think that is the purpose now. I'd just like to
19 understand in general how you're running your
20 operations.
21 A. Ah, well I typically -- thank you, now I understand.
22 In all the projects, at least in the last many
23 years, I try to get into a place where I can drill
24 a well as quickly as possible, because where a major
25 company might go about studying the entire project and

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17:38 1 built the location. We had already spent the initial,
2 I don't remember how much, but let's say €50,000,
3 something like that, to build the location, so I hate to
4 leave a location and, you know, have to reclaim it.
5 That's a larger waste of money than I would like to
6 have --
7 THE PRESIDENT: It depends how much time you save and how
8 much production you can get out of the well in the end;
9 right?
10 A. Yes, and that was our first gas well. The others were
11 oil.
12 THE PRESIDENT: Yes, that was a question too, because at
13 some time in your witness statement you say that you
14 will prioritise gas, and then you insist for months and
15 months on Smilno, which is precisely an oil well.
16 A. No, ma'am. Smilno was a gas well.
17 THE PRESIDENT: No, you would -- you would prioritise oil,
18 and Smilno was a gas well.
19 A. The advantage of oil wells is you don't need the gas
20 pipeline infrastructure.
21 THE PRESIDENT: Yes.
22 A. So the quickest way to get cash flow is to go to an oil
23 well.
24 But the big elephant for this project is the gas,
25 because at that time, anyway, the gas price was nothing

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17:36 1 decide, you know, on various aspects where the best
2 possible place is, I think that's a waste of time. If
3 I can find a place that is quality and will provide both
4 some cash flow but, more importantly, the proof of
5 concept, then that's what I seek to do. It makes
6 everything profoundly easier.
7 So when I was pushing to drill as many wells as
8 possible, that was the point: let's get some wells
9 drilled, let's get happy and move on.
10 THE PRESIDENT: I was asking myself why you kept on trying
11 accessing the Smilno location when obviously there were
12 difficulties, not speaking of the reasons for the
13 difficulties, but just the fact. And at the same time
14 you had a good relationship with the State Forestry, as
15 we read. A lot of land within your contract areas was
16 state land, and could you not have found another
17 location, especially considering your method of drilling
18 has been quick wells?
19 A. It takes some time to get to the point where partners
20 and we are all agreeing that this is the place to drill.
21 But it also takes time to get the governmental processes
22 so that we can get the mining documents done et cetera.
23 Contracting a rig, contracting the other services,
24 getting them in the right place.
25 The reason I kept going on Smilno is because we had

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17:39 1 but looking fantastic.
2 So I really truly thought that the gas well was the
3 ticket, and pushed in that regard.
4 THE PRESIDENT: But there was no pipeline close by, so it
5 would --
6 A. There is -- I'm sorry.
7 THE PRESIDENT: So you have to build the pipeline to join
8 another pipeline?
9 A. Yes, ma'am, but the pipeline that we could connect to
10 was between 9 and 15 kilometres away, not so far, and
11 that was doable, in my view. And once we had a test, it
12 would have made a lot of difference in that regard.
13 THE PRESIDENT: You are a very successful businessman, and
14 we've read about this, and it was mentioned today as
15 well, and this was obviously not a success.
16 A. Yes, ma'am.
17 THE PRESIDENT: What was the reason? Was it because of the
18 activists? How do you explain it? If we take now a big
19 picture view?
20 A. I'm not preaching my case when I say that it was
21 ultimately the governmental blockage that caused me to
22 change my mind. When that EIA came down, I --
23 everything that Alex and I have talked about, and
24 others, Ritchie Wayland and others, there are so many
25 ways for people like the activists to insert political

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17:40 1 agendas into the EIA process. We felt that it just was
2 never going to come to an end.
3 THE PRESIDENT: So you considered that it was the EIA that
4 was really the nail in the coffin?
5 A. That was the nail in the coffin. Yes ma'am.
6 THE PRESIDENT: Mm-hm. And that was the preliminary EIA
7 that you offered, or was it the full EIA?
8 A. Well, every indication was, and I don't remember if this
9 is an official correspondence, but every indication was
10 that once we did the preliminary, the full EIA was going
11 to be required. Which takes at least two years, and ...
12 THE PRESIDENT: Well, it depends on the outcome of the
13 preliminary EIA.
14 A. If I'm ...
15 THE PRESIDENT: Well, we can check that.
16 A. I think we got to the end of one of those. I'm tired,
17 I don't remember. But I think we got to the end of one
18 of those and we were told that we had to go to the
19 formal EIA. I may be mistaken, but I know that I felt
20 that that's where we would end up.
21 THE PRESIDENT: Mm-hm. And so what's the effect on all this
22 of Ms Varjanová's car blocking the road? Is this part
23 of the issue, or ...?
24 A. Well, because the police didn't do anything about it, we
25 certainly weren't going to, you know, exacerbate the

Page 225

17:44 1 never an end to how much you can do. You have to at
2 some point say: okay, we've done enough, let's go.
3 THE PRESIDENT: Fine. No further questions from anyone.
4 Mr Lewis, thank you very much for your help.
5 MR LEWIS: Thank you.
6 THE PRESIDENT: That brings us to -- you can --
7 A. Okay.
8 THE PRESIDENT: -- whatever. You don't have to sit there
9 while we close for the day.
10 Tomorrow we have quite a large number of witnesses.
11 I assume this is because the examinations will be
12 relatively condensed. Is that the plan? Yes? Good.
13 It would be good if we can get through them
14 tomorrow.
15 MR TUSHINGHAM: We will try our best.
16 THE PRESIDENT: Yes.
17 MR TUSHINGHAM: I think obviously we had originally
18 anticipated -- well, exactly. We're going to try our
19 best to finish by the end of tomorrow.
20 THE PRESIDENT: Good. Excellent.
21 Anything to be raised before we close for the day?
22 No?
23 MR TUSHINGHAM: Nothing from our side.
24 THE PRESIDENT: No. Good.
25 Then have a good evening, everyone.

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17:42 1 problem by doing something crazy. We were trying to
2 live under the law. And there just wasn't any way
3 around that without governmental help.
4 So it was very frustrating. It was a very simple
5 thing for the police to enforce what I understood to be
6 the law, that she was blocking a public road. And she
7 had no real reason to do that other than to block us.
8 So it was pretty cut and dry for me.
9 I hope that made sense.
10 THE PRESIDENT: Yes. You said before that you thought the
11 engagement with the what you call activists could not be
12 productive because they were not really listening.
13 Would more engagement with the local population have
14 helped? Or do you feel it wasn't -- it would not be
15 fruitful, or you have done as much as you could?
16 A. We did a lot, despite the allegations otherwise. We did
17 a lot of community effort in Smilno. I personally was
18 involved in several social events. I was in the
19 restaurant, visiting with people as much as I could, and
20 I -- honestly, there were only very, very few that
21 objected to our operations.
22 There were Ms Varjanová, for the reasons we've said.
23 But the rest, the two or three other real active
24 activists were not even from Smilno.
25 So there was no way to fight that. And there's

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17:45 1 (5.45 pm)
2 (The hearing adjourned until 9.30 am the following day)
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