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INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES

ICSID Case No ARB/16/8

between

ZBIGNIEW PIOTR GROT AND OTHERS

Claimants

- v -

REPUBLIC OF MOLDOVA

Respondent

The Arbitral Tribunal

The Hon L Yves Fortier CC, OQ, QC - Arbitrator

Professor Dr Rolf Knieper - Arbitrator

Professor Philippe Sands - President

HEARING

VIENNA, AUSTRIA

Monday, 11 December 2017

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1 continue throughout. 7
09:32

2 I just wonder whether by way of beginning

3 both parties could introduce themselves so we know

4 who each person is. We have then got a number of

5 administrative issues in the case ICSID No Arb/16/8

6 of Zbigniew Piotr Grot and Others v the Republic of

7 Moldova, and I will just go very briefly through

8 those issues and see if we can sort out housekeeping

9 matters. I know both sides will have issues you

10 want to raise. We want to move fast with those.

11 We are eager to hear your openings, both

12 of you, and very eager, just to give you a sense of

13 our thinking, to try to make sure that we can, in

14 the course of today, complete both parties' openings

15 and the examination of Mr Grot and Mr Beril, so that

16 we are on time for tomorrow. We will therefore want

17 to be as tight as we can on the timetabling so that

18 we can do that, so that we are in good shape

19 tomorrow to move on to our legal experts and then

20 our agricultural experts. With your support we feel

21 it is do-able.

22 If I could begin by inviting the Claimant

23 to introduce your team?

24 **MR WELLS:** Good morning, President Sands,

25 Professor Knieper, Mr Fortier, we are very honoured

6

1 (9.31 am Monday, December 11, 2017)

2 **THE PRESIDENT:** Good morning. Welcome to

3 Vienna. It is lovely to be in this fine city. It

4 is 9.30. We have a tight schedule ahead of us over

5 the next three days, so we propose to proceed with

6 an iron fist but fairly, fully respecting the

7 quality of arms between the parties at all times

8 Welcome all of you. Thank you for being

9 here on time. My name is Philippe Sands. I have

10 the privilege and honour to chair these proceedings.

11 I am sitting with, to my right, the Honourable Yves

12 Fortier, and to my left, Professor Rolf Knieper, and

13 to my left, our secretary, Frauke Nitschke, who has

14 prepared these proceedings magnificently.

15 We are deeply grateful for having this

16 very nice space. Thank you for making this space

17 available.

18 We are at your service for the next three

19 days to proceed fairly and expeditiously and in

20 accordance with the timetable that we worked out,

21 very graciously, with the input of both sides. We

22 would like to begin by expressing our thanks to both

23 parties and to their counsel for the very

24 sympathetic and collegial way in which we have

25 proceeded and expressed the hope that that may

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09:34

1 to be here today before this prestigious Tribunal,

2 and I would also like to give the Claimants' thanks

3 to ICSID, in particular, and Ms Nitschke. It has

4 been an impressive team really, all the work they

5 have put in it is amazing. Also before I introduce

6 our team I would like to send a very sincere thank

7 you to Schönherr, in particular, for opening their

8 doors and having us here in Vienna.

9 Let me just introduce very briefly the

10 Claimants' legal team. My name is Todd Wells. I am

11 the lead counsel on the team. Next to me is my law

12 partner, the better half of Gleason Wells, Mr Ted

13 Gleason. Next to him is Mr Coren Hinkle, also one

14 of our law partners, and then going down the line we

15 have Mr Andrew Astuno, then Ms Giedre Stasiunaite,

16 and then lastly we have Ms Lucia Craciuneanu. Last

17 but not least, of course, is our client, Mr Grot.

18 Thank you.

19 **THE PRESIDENT:** Excellent. Just so that

20 we know who is in the room, could you introduce –

21 **MR WELLS:** The two other gentlemen are the

22 Moldovan legal experts. First is Mr Roger Gladei,

23 and then his colleague, Mr Dan Nicoara.

24 **THE PRESIDENT:** Thank you. Respondent?

25 **MR KOPECKY:** Good morning. I second

1 Claimants' appreciation of the ICSID service, and we
2 are equally happy to all have you here in our
3 office.
4 To introduce our team, my name is
5 Leon Kopecky. To my right is Victoria Pernt. Then
6 Anissa Achabou, Felix Schneider, our Moldovan
7 colleague, Andrian Guzun, then our legal expert
8 Professor Viorel Rusu and our quantum expert
9 Mr Michael Peer with his assistant Martin Kozak.
10 **THE PRESIDENT:** Could you go a little more
11 slowly, because you had yours in order so we could
12 go down our list. This order is slightly different
13 so our brains are adjusting. Maybe go down the
14 table that you have.
15 **MR KOPECKY:** We made the mistake of
16 putting them in alphabetical order. First,
17 Leon Kopecky, Victoria Pernt, Anissa Achabou,
18 Felix Schneider, Andrian Guzun, Professor Viorel
19 Rusu, Michael Peer, Martin Kozak.
20 **THE PRESIDENT:** Ms Anna Cusnir, one of the
21 issues on my list, is not with us for the best of
22 reasons but is joining us telephonically? Is that
23 still the case or not?
24 **MR KOPECKY:** Indeed. Ms Anna Cusnir is
25 on. I do not know if she can say anything but,

9
09:36

1 have done, reserving your position no doubt, but you
2 understand that that is the decision we have taken.
3 So we will start after the openings with Mr Grot and
4 then we will move to Mr Beril? Is that understood,
5 Claimant?
6 **MR WELLS:** Yes, understood.
7 **MR KOPECKY:** Respondent understood and
8 agreed.
9 **THE PRESIDENT:** I would also like to
10 introduce at the far left hand corner, my assistant,
11 Ms Lea Main-Klingst, who is attending as an observer
12 in the absence of Mr Kraven, who is slightly in
13 advance of Ms Cusnir in having had a baby last week
14 and I have dispensed him from the need to attend and
15 I hope you will understand that. Also welcoming, of
16 course, our interpreters and our court reporters, to
17 whom we extend our appreciation.
18 If I could move on to a number of issues
19 surrounding supporting documentation and legal
20 authorities, which is an outstanding issue, we have
21 received Claimants' documents, as Respondent will
22 know, on December 6, including ten authorities, and
23 those ten authorities have been admitted into the
24 record pursuant to paragraph 7 of Procedural Order
25 No 6.

11
09:39

1 Anna, could you confirm that you are on?
2 **THE PRESIDENT:** We hear something.
3 **MR KOPECKY:** Yes. Ms Cusnir is on.
4 **THE PRESIDENT:** You are very welcome with
5 us.
6 I have a number of issues which we have
7 discussed in advance. We just want to go through
8 those. Can I just confirm that Claimant and
9 Respondent are obviously happy with having Ms Cusnir
10 on by telephone? We have discussed that before.
11 **MR WELLS:** Claimants are satisfied with
12 that, yes.
13 **THE PRESIDENT:** The second issue is the
14 presence of Mr Grot. We understand very much the
15 positions taken by both sides, and of course we have
16 taken account of the views, and we thought we would
17 best communicate a decision in advance of what we
18 were inclined to do, or what we had decided to allow
19 both sides a chance to prepare over the weekend and
20 not be hit by a sudden inversion of the order. We
21 understand very much the position taken, but equally
22 we are in the presence of rule 32, so there is a
23 slight problematic, and we have therefore decided to
24 invert the order to at least partly dispense with an
25 issue. Are both parties understanding of what we

10
09:38

1 There are two documents, CL-91, and
2 CL-100, which the Claimants themselves have agreed
3 not to reference, so these are struck from the
4 record. We are left with CL-81, which has made an
5 appearance, we have noted, in the hyperlinked index
6 for the first time.
7 In light of paragraph 7 of
8 Procedural Order No 6, which provides that, "any
9 authorities submitted after the December 7 deadline
10 shall not be admitted", we would like to invite
11 Respondent to state whether it agrees to the late
12 introduction of CL-81, and what your position is,
13 Mr Kopecky, on the presence of CL-81 in the
14 hyperlinked index.
15 **MR KOPECKY:** If you just give me 30
16 seconds to look at the exhibit.
17 **THE PRESIDENT:** I think it is
18 Professor Dolzer. To help you, we are not sure at
19 the end of the day how much will turn on it, but it
20 is for you to express your view.
21 **MR KOPECKY:** We do not mind
22 Professor Dolzer being on.
23 **THE PRESIDENT:** Professor Dolzer will no
24 doubt learn in due course that he has not been
25 objected to. Thank you. That document, CL-81, is

12
09:41

1 in. 13
09:42

2 The next issue, missing originals, which

3 as you know we had decided to reserve what to do

4 about these. Pursuant to our letter of November 21

5 and the Respondent's request at paragraph 3 of your

6 Rejoinder that the Tribunal declare inadmissible the

7 English translations which are currently on the

8 record, as I have it, as C-071, C-076, C-083 and

9 C-89, the Tribunal had reserved its view on the

10 admissibility of these documents.

11 With regard to C-89a, we note that the

12 Claimants have filed this on December 6, so late

13 last week. Could we invite the Respondent to

14 express a view on C-89a, but in the absence of any

15 objection we would admit that document into the

16 record? If I could just hear from the Respondent on

17 C-89?

18 **MR KOPECKY:** No objection.

19 **THE PRESIDENT:** Thank you very much. That

20 leaves C-71, C-76 and C-83. We have an English

21 translation on file, but the originals appear to be

22 missing. Our view – we discussed this yesterday –

23 is to remain seized of the matter, that there will

24 be no reference to those documents, but Claimants

25 may seek leave to file the originals if they have

1 issues which may arise out of REX-3. I think we 15
09:46

2 want to be very strict about how that 20 minutes is

3 used. It is your entitlement to use it, but if you

4 could identify when you turn to this matter during

5 the openings so that Ms Nitschke can make sure that

6 those 20 minutes are allocated to that issue and not

7 to any other. We trust you on it, but we want to be

8 correct and fair in all the circumstances. When

9 that issue comes up in the opening you might want to

10 use the words, or some variation, "we are now

11 turning to REX-3" and Ms Nitschke will then know to

12 allocate time for that separately.

13 **MR WELLS:** When you refer to the opening,

14 are you referring to when Mr Grot testifies?

15 **THE PRESIDENT:** No, the opening this

16 morning. We have given you 20 extra minutes to deal

17 with that, and you are free to use that. Query

18 whether you instead want to use it during

19 examination of Mr Grot. It is not how we understood

20 it, but it may be that that is how –

21 **MR WELLS:** I misunderstood. I was

22 thinking of his testimony. I was thinking of his

23 testimony. I thought it was an additional five

24 minutes that was provided.

25 **THE PRESIDENT:** That is in addition to the

1 them, and that we will remain seized of the matter 14
09:44

2 during the course of the hearing, so that if they

3 come up we can then deal with it at that moment, but

4 our inclination is that, absent the originals, we

5 would not be inclined to admit them. Claimant, any

6 response?

7 **MR WELLS:** Yes. In regards to 71 and 76,

8 no comment on those two. However, for 83a, one of

9 the things we would like to do is perhaps the

10 Tribunal could reserve its judgment on that until

11 Mr Grot testifies later today. We would like to try

12 to authenticate the document through his testimony.

13 **THE PRESIDENT:** Respondent, you have heard

14 what has been said. They would like to reserve a

15 position on 83a. It may be that Mr Grot will

16 address it in some way. We would like to hear from

17 you on that.

18 **MR KOPECKY:** I think that is what the

19 Tribunal did, to keep this issue open, and we agree

20 with that.

21 **THE PRESIDENT:** Thank you, both sides.

22 The sixth point, a point of clarification

23 in relation to additional time to address REX-3.

24 Paragraph 10 of Procedural Order No 6 granted to the

25 Claimants an additional 20 minutes to address any

1 20 minutes you have for your opening 16
09:47

2 **MR WELLS:** I was just checking on that,

3 yes.

4 **THE PRESIDENT:** So you will tell us?

5 **MR WELLS:** Yes.

6 **THE PRESIDENT:** I turn now to the issue of

7 outstanding requests. There is a request from the

8 Respondent in relation to the disclosure of third

9 party funding arrangements. We have taken very

10 careful note of the request of December 8, 2017

11 which limited Respondent's November 29 request to

12 only relate to third party funding. We note that

13 there has been a response from that and the

14 identification of one third party funder but, having

15 carefully read it, we have noted there is

16 a reference to possibly other, one or more other

17 third party funders, because there is a reference to

18 "funders" in the plural.

19 I am going to invite both parties to

20 address this matter very briefly, but I thought it

21 may be helpful. We have discussed it. We have to

22 say that, having regard to the totality of this

23 case, the issues raised, the amounts in issue, the

24 way the arguments have gone that far, it is not

25 immediately apparent to the Tribunal that there is a

17
09:48

1 great deal to be gained by a long and lengthy
2 discussion about third party funding, so our
3 inclination is not to make a whole lot of this
4 beyond what we have, but we would like to hear from
5 the parties on it and perhaps the Respondent could
6 go first on this issue.

7 **MR KOPECKY:** Thank you, Mr President
8 Regarding that request, Respondent stands
9 by its observations on record. Third party funding
10 is a serious issue and Respondent's concerns are
11 with the transparency and integrity of these
12 proceedings. The Respondent believes that this can
13 be guaranteed only if the Tribunal is given evidence
14 of the so far unclear nature and form of third party
15 funding. However, as we have just heard, if the
16 Tribunal is satisfied with what is on record and
17 sees no issue, then Respondent is ready to withdraw
18 its request.

19 **THE PRESIDENT:** Just to be clear, I was
20 very careful, I did not say we don't see an issue,
21 but we are expressing a query as to whether, given
22 the amounts in issue in this case and the totality
23 of this case, there is much to be gained by
24 expending a lot of time on the issue. We are not
25 expressing a view on the merits of your application:

19
09:51

1 the totality of the circumstances of this case
2 I included the fact that in our thinking, since
3 Moldova has not contributed to the costs, it is
4 perhaps not unreasonable for the Claimant to have
5 looked elsewhere to top up funds. I wonder whether
6 we can close this with your submissions on this
7 issue?

8 **MR KOPECKY:** We can, Mr President. We
9 consider this explanation, just the previous one,
10 given in good faith and therefore we withdraw the
11 request.

12 **THE PRESIDENT:** Heard with much
13 appreciation.

14 We have on our issue of outstanding
15 matters the Respondent, the possibility for the
16 Respondent to get additional time to address the
17 Claimants' amended request for relief. We note that
18 on 8 December the Respondent reserved its rights to
19 address various issues, including Respondent's
20 request that Claimants' claims including its now
21 modified be dismissed in their entirety with costs,
22 issues relating to allocation of damages on which
23 you have reserved right during the course of this
24 hearing Claimants' modified requests for costs on
25 which you have also reserved rights, and the fact

18
09:50

1 We are wanting to hold it in abeyance unless it
2 becomes a material issue at some point. That is
3 really what I am inelegantly trying to communicate.

4 **MR KOPECKY:** In that case we propose to
5 hear from the Claimants on this issue and, based on
6 our explanations which did away with two-thirds of
7 our previous request, we may be able to withdraw
8 without further reference.

9 **THE PRESIDENT:** Very good. Claimant?
10 **MR WELLS:** As noted in the response from
11 the Claimants on the third party funding issue,
12 third party funding was not contemplated when this
13 case began. It was purely in response to the
14 nonpayment issue with the Respondent. In fact,
15 currently there is an outstanding payment due which
16 Claimants are expecting to pay, hopefully within the
17 week actually, so I do want to provide additional
18 clarification on that as well. We have disclosed
19 the existing third party funder; there are no others
20 at this time, and to the extent that it is necessary
21 to continue paying the cost of the Respondent, it
22 may be necessary to obtain other funding.

23 **THE PRESIDENT:** Thank you for that
24 clarification. That, I think, takes us a little
25 about it further. Indeed, when I made reference to

20
09:52

1 that there are now two Claimants who failed to
2 submit a request for relief on which you have also
3 reserved rights.

4 Our inclination is to allow you a little
5 extra time to address those matters during the
6 opening statements, if you wish to use it. We
7 wonder whether you want additional time to address
8 those matters, also with experts as and when they
9 come up over the next two or three days.

10 **MR KOPECKY:** Indeed, Mr President. We do
11 not intend to address this in the opening because we
12 do not yet know what is forthcoming, but we would
13 like some additional time for our expert and maybe
14 five or ten minutes in closing for this.

15 **THE PRESIDENT:** Claimant?
16 **MR WELLS:** That is an acceptable proposal
17 for the Claimant.

18 **THE PRESIDENT:** Very fine. Let us then
19 decide, subject to the views of my colleagues, that
20 you will have an extra five to ten minutes in the
21 course of the closing to address those matters

22 Excellent. We are bang on time. We are
23 five minutes early. Let us press on. We are very
24 excited to hear your openings. Let us proceed
25 unless the parties have any other housekeeping

1 issues which they want to address before we proceed? 21
09:53

2 **MR KOPECKY:** We do, Mr President.

3 Mr President, before the hearing, counsel

4 for Claimant approached us with the request to

5 provide additional support for the KPMG report, and

6 we have produced this. In the course of the

7 production we noticed there were two mistakes in the

8 KPMG report with regard to the exchange rate and

9 depreciation. KPMG therefore prepared an errata

10 sheet which we would like to circulate and introduce

11 to the record. It is ten pages, but it is only ten

12 pages because that one number concerned figures in

13 most of the tables. We highlighted in red wherever

14 that figure influenced other numbers and in fact it

15 is all about two numbers. We would like to seek

16 Claimants' view on that and whether we can introduce

17 this.

18 **THE PRESIDENT:** Has Claimant had a copy of

19 this?

20 **MR KOPECKY:** We just got it so we would

21 like to give it to Claimant first before we give it

22 to the Tribunal, if this is acceptable.

23 **THE PRESIDENT:** Is this going to be

24 addressed in the openings at all?

25 **MR KOPECKY:** No.

1 modifications, we would have perhaps additional time 23
09:55

2 to address them.

3 **MR KOPECKY:** That is absolutely agreed.

4 **THE PRESIDENT:** What we would be therefore

5 inclined to do is to say to the extent that you do

6 not address that in your opening you will have

7 additional time. No doubt you will be able to flag

8 the issue in your opening, you will have additional

9 time to address it once you have had an opportunity.

10 We are not going to deal with this in terms of any

11 of the experts today, we will get into that tomorrow

12 and the day after, so we will make sure you have

13 additional time, if necessary, to address any change

14 which is made, including in your questioning of the

15 relevant expert and, if necessary, in your closings.

16 Is that satisfactory?

17 **MR ASTUNO:** That is amenable. We were

18 just thinking that perhaps we would have additional

19 time for closing, if indeed that is the case.

20 **THE PRESIDENT:** I did say that.

21 **MR ASTUNO:** Thank you.

22 **THE PRESIDENT:** Are you comfortable with

23 that, Respondent?

24 **MR KOPECKY:** Yes.

25 **THE PRESIDENT:** Any other issues fro

1 **THE PRESIDENT:** Was it going to be 22
09:54

2 addressed in your opening, because you need a moment

3 obviously to have a look at it.

4 **MR ASTUNO:** Was depreciation an additional

5 change? What was the second modification?

6 **MR KOPECKY:** To be honest, I would like to

7 refer to Michael Peer to answer this, as he would be

8 better placed.

9 **MR ASTUNO:** I heard there was an exchange

10 rate change and depreciation

11 **MR KOPECKY:** Depreciation Capex to use in

12 the calculation, correct.

13 **MR ASTUNO:** Just those two issues?

14 **MR KOPECKY:** Those two issues and we are

15 happy to give the report to you right now for your

16 review.

17 **MR ASTUNO:** I think it is perhaps a bit

18 untimely to review an expert report before opening

19 statements begin. I will say that those two issues

20 are part of the substance of my opening remarks. In

21 good faith, if we accept those are indeed the only

22 modifications in this report, I am willing to

23 overlook that portion of my opening remarks.

24 However, we would like to reserve the right that if

25 that indeed is not the case and there are additional

1 Respondent? 24
09:57

2 **MR KOPECKY:** That is fine.

3 **THE PRESIDENT:** And from Claimant?

4 **MR ASTUNO:** Mr President, it is related

5 somewhat. Our local agricultural experts are

6 prepared to produce revised tables that were part of

7 their original reports. Rather, they are

8 supplemental tables, and we think that based on this

9 current request we would ask Respondent to allow

10 Claimants to produce these updated tables in the

11 form of exhibits as part of these expert testimonies

12 tomorrow.

13 **THE PRESIDENT:** Does the supplemental area

14 go beyond the change that we have just been alerted

15 to, or is it simply related to these two numerical

16 changes?

17 **MR ASTUNO:** It is in response to the issue

18 that were addressed in Procedural Order No 6. The

19 untimeliness of Respondent's expert quantum report

20 has created an issue for Claimants to then go out

21 and respond properly. These two tables are in

22 direct response to the essence of Mr Peer's report.

23 The timeliness that we had to deal with in that

24 sense, we think this request is proper.

25 **THE PRESIDENT:** Respondent?

1 **MR KOPECKY:** I think this issue has been 25
2 dispensed with and we do not object to the 09:58
3 additional time already given to address the alleged
4 new issues in Michael Peer's report. However,
5 anything that goes beyond a mathematical error would
6 be a new additional submission and we would object
7 to that, because what we just circulated is an
8 erratum on a calculation. It is a typo in
9 mathematical terms, whereas those sound like new
10 issues and that is not the same thing in
11 Respondent's view.
12 **THE PRESIDENT:** We have heard both
13 parties. Can I suggest that the way we proceed,
14 unless you have anything more you want to address,
15 my inclination, subject to my colleagues, would be
16 to say we will discuss this in the first coffee
17 break as to the best way to deal with this, and we
18 will assume we are not going to deal with this
19 before the first break, so it gives us a chance to,
20 without delaying. Have we got all the information
21 we need from you?
22 **MR ASTUNO:** One final point of
23 clarification. It is, of course, in light of the
24 timeliness of the submission of the expert report,
25 it is not necessarily a new issue -- in fact, it is

1 have a conversation amongst ourselves and we will 27
2 come back to try to find and share wisdom and you 10:00
3 will bear with us. Thank you very much.
4 If I could ask one question. Mr Fortier
5 has alerted us to one possibility. Just to be clear
6 for us as we reflect in the coffee break, do the two
7 proposed possible potential supplemental reports
8 address an errata that was addressed in the errata
9 document that has now been submitted, or is it
10 something beyond that?
11 **MR ASTUNO:** Mr President, would you mind
12 if we took a minute to confer? I am noticing, in
13 looking at this report, that it appears at first
14 glance that there is new information that is not
15 just the depreciation issue and the change in
16 exchange rate that was earlier discussed. I am
17 seeing reference to updated yield figures, revenue
18 assessments, substantive changes that go beyond what
19 my understanding of the originally described
20 changes.
21 **MR KOPECKY:** Yes, I had said this was on
22 request of Claimants who asked for further
23 clarifications, so we provided those.
24 **THE PRESIDENT:** Again, I have not had a
25 chance to look at this document. I wonder rather

1 not a new issue at all -- it is in direct response 26
2 to the issues that Claimants now had to respond to 09:59
3 as of three weeks ago.
4 **THE PRESIDENT:** I do recall that in
5 Procedural Order No 6 we reserved the possibility
6 that you would have an opportunity to make further
7 submissions or introduce possibly further materials
8 in relation to that timeliness issue, but we did not
9 actually take a decision on it.
10 **MR KOPECKY:** If I recall, it related to
11 quantum and not to agriculture.
12 **MR ASTUNO:** It is all interrelated. The
13 agricultural expert's report is the basis for the
14 quantum valuation because the Claimant is a farmer.
15 This is precisely a valuation issue.
16 **THE PRESIDENT:** Your submission is this
17 could be characterised both as a matter on
18 agricultural issues which goes to quantum and
19 therefore is a quantum issue.
20 **MR ASTUNO:** Mr President, it is by all
21 means a quantum issue.
22 **MR KOPECKY:** Respondent is confused at
23 this stage. Maybe we defer to the Tribunal's wisdom
24 on this.
25 **THE PRESIDENT:** Let us during the break

1 than conferring on it now, let's put a big reserve 28
2 around this and we will have a look at it in the 10:02
3 break, rather than spend time on it now, and you
4 will have a chance also in the break to confer on
5 it, and we will hear from you when we give our
6 response.
7 Just to be clear on my question, are the
8 two supplemental proposed reports short?
9 **MR ASTUNO:** To be clear, they are tables,
10 so one paragraph each. They are merely supplemental
11 tables to tables that already existed in the
12 agricultural expert's report.
13 **THE PRESIDENT:** And they are intended to
14 deal with the views of Mr Peer?
15 **MR ASTUNO:** That is right, in direct
16 response to the views that he expressed in his
17 report, which we are preparing to respond to in our
18 opening today, and not to a new revised report that
19 was just handed to us potentially minutes before we
20 deliver those remarks.
21 **THE PRESIDENT:** Let's proceed to the
22 openings. We have taken note of everything. You
23 will not get to this issue, if I have understood
24 correctly, before the coffee break. We will have a
25 look at what we have during the coffee break and

<p>1 briefly return to this in due course. Is that a 2 satisfactory way to proceed? Claimant? 3 MR ASTUNO: Yes. I think at this point we 4 will proceed with our opening remarks as planned in 5 direct response to the original report, and then 6 during the break we can assess the contents of this 7 supplemental report, if that is okay? 8 THE PRESIDENT: That is fine with the 9 Tribunal. Respondent? 10 MR KOPECKY: No problem with that. We, 11 however, would ask that if this is submitted in the 12 record we get a copy today so that our experts can 13 prepare for their Wednesday testimony. 14 THE PRESIDENT: Absolutely. One thing 15 I hope both sides realise is that each party is 16 strongly committed to equality of arms and both 17 parties having a full and fair opportunity to 18 address the issues they want to address in the 19 course of these hearings. That will be the guidance 20 for both parties as to how we proceed. If you feel 21 you need to have the opportunity to address 22 something we want to hear from you on that. You 23 should at no point feel you have not been given an 24 adequate opportunity to address existing material 25 or, if it is admitted, new material. That is</p>	<p>29 10:03</p> <p>1 anyone on your side who speaks Spanish and who can 2 have a quick look at the totality, and perhaps in 3 conference with the other side over the lunch break 4 to see if there are any problems with translation of 5 the relevant passage? My experience with these 6 case, both formally as counsel and now sitting as 7 Arbitrator, is invariably you end up focusing on a 8 single line of an arbitral award on which it would 9 be extraordinary if a huge amount turned. In those 10 circumstances could you, over the lunch break 11 perhaps, see whether you can reach agreement on the 12 translation, whether it is accurate to your 13 satisfaction and proceed on that basis? 14 MR GLEASON: Yes. I speak some Spanish. 15 The only problem is I not call myself fluent in 16 legal Spanish, which is the problem. I will confer 17 with the other side over the coffee or lunch break 18 and see if we can resolve the issue. We just did 19 want the Tribunal to hold the Respondent to the same 20 standard that they have been holding us to 21 throughout these proceedings concerning the entirety 22 of our evidentiary and legal submission. There have 23 been various complaints raised throughout concerning 24 translations and other issues and we do want to 25 raise this issue as it does seem, especially</p>
<p>30 10:05</p> <p>1 something we are strongly attached to. 2 Very good. 3 MR WELLS: One last item in housekeeping. 4 Claimants do have one objection to a legal authority 5 that was submitted with the Rejoinder, RL-21, and it 6 is Cervin v Costa Rica, and the objection is that it 7 was submitted in Spanish only. 8 THE PRESIDENT: Duly noted. Which case is 9 that? 10 MR WELLS: RL-21, Cervin v Costa Rica. 11 THE PRESIDENT: Is that because it only 12 exists in Spanish, if I could ask the Respondent? 13 MR KOPECKY: It does only exist in 14 Spanish. We translated in the footnote the relevant 15 part, so it is on record, but we did not provide the 16 entire award which is 186 pages in English, because 17 that would be prohibitive. 18 THE PRESIDENT: Could you remind me, 19 Claimants or Respondent, under which arbitral 20 proceedings that award came down? 21 MR KOPECKY: ICSID. 22 THE PRESIDENT: As an ICSID Tribunal, it 23 is a little difficult for one ICSID Tribunal to say 24 we are not going to have regard to another one. 25 Could we proceed like this: Do you have</p>	<p>32 10:07</p> <p>1 considering the timing, to be somewhat relevant to 2 us from our perspective. 3 THE PRESIDENT: Heard and understood. 4 Ms Nitschke reminds me that, under PO1, 5 for translation purposes it is sufficient to 6 translate relevant parts or extracts rather than the 7 whole. We are not going to put it to you to 8 translate the whole thing obviously, but equally the 9 Claimant is entitled, given language differences and 10 assuring the need for equality on these kinds of 11 issues, to have an opportunity to review that. 12 MR GLEASON: My response to that would be 13 that this is a case and cases need to be interpreted 14 in context. A simple translation of one line or a 15 few sentences from a case does not give us a full 16 understanding of what the case stands for, 17 especially when the case is trying to be compared to 18 the case in front of the Tribunal today. That is 19 why we find it to be problematic. 20 THE PRESIDENT: That is a fair point, but 21 if we can proceed on this good faith approach and 22 you have a look at it. If the entirety of this case 23 turns on a single line or paragraph of an earlier 24 award, then we have a bigger issue to address. I do 25 not want to pre-empt that issue, but I would be</p>

1 somewhat surprised if that is the case. Let's
2 proceed on that basis. 33 10:08

3 **MR WELLS:** As we are about to begin the
4 opening statement, we have a number of printouts
5 here. We just need to distribute them prior to the
6 opening.

7 **THE PRESIDENT:** We are eager for your
8 distribution.

9 While those are being distributed, you
10 will be aware, and I think that should now be clear,
11 that we have read everything. As I said during the
12 pre-hearing telephone conference what we would find
13 especially helpful from both sides is really homing
14 in on the areas you believe us to be troubled by or
15 wanting elaboration on.

16 I come from a legal tradition in which it
17 is the role of the Tribunal to indicate to a party
18 when it has heard sufficient on a particular point.
19 We recognise the need for you to make your case as
20 you want your case, but certainly in days when
21 I used to be counsel in ICSID proceedings -- I am no
22 more -- but also in domestic proceedings I as
23 counsel found it very helpful to get an indication
24 from the Tribunal that we understood the point and
25 it was time to move on to your next point. We are

1 Claimants' timeline? And Respondent will no doubt 35 10:11
2 in due course tell us why that timeline is
3 terrifically correct or hopelessly wrong.
4 CH-3, statement of Rosietici village
5 cadastral.

6 **MR GLEASON:** That would be our entire
7 opening presentation for your benefit. Yes.

8 **THE PRESIDENT:** That is your slides.
9 CH-3, Claimants' opening and slides. Excellent.
10 CH-4?

11 **MR GLEASON:** Then we have given you two
12 demonstratives which we have marked as 1 and 2

13 **THE PRESIDENT:** CH-4 and 5?

14 **MR GLEASON:** One of those is a chart which
15 corroborates the statements of witnesses who have
16 not been designated to give testimony in this
17 proceeding.

18 **THE PRESIDENT:** We have called that CH-4.
19 **MR GLEASON:** The last exhibit would be
20 "Statistical calculations concerning leases which
21 are allegedly unsigned" and there will be some
22 explanation about this one during the opening
23 statement.

24 **THE PRESIDENT:** We are going to invert
25 your order. CH-4, Claimants' signed leases

1 very conscious that we want to stick to your 34 10:10
2 timetabling and we will, if necessary, indicate to
3 you that we have understood a particular point.
4 Please move on to the next one. It does not mean
5 that we are against you on that particular point, it
6 does not mean we are with you on that particular
7 point, but we have understood the issue and you
8 should feel able to move on, but we have read
9 everything.

10 We have read everything. We have read the
11 pleadings, we have read the exhibits, we have read
12 the reports, we have read the witness statements.
13 We are generally familiar with the authorities, and
14 you can proceed on that basis. Homing in on the
15 points of difference between the parties we will
16 find extremely helpful.

17 Now what are you giving out to us?
18 **MR GLEASON:** What we are giving you here
19 is a succinct summary of the Claimants' views on the
20 issues, a two-page document.

21 **THE PRESIDENT:** That is CH-1, Succinct
22 summary.

23 **MR GLEASON:** We have also given you the
24 requested timeline.

25 **THE PRESIDENT:** CH-2. That is the

1 demonstrative. CH-5 corroboration of witnesses, not 36 10:13
2 designated. You should have five documents.
3 With that, can we move to opening?
4 **MR GLEASON:** Yes.
5 **THE PRESIDENT:** The PowerPoint is CH-3.
6 **MR KOPECKY:** If I may address a request to
7 Claimants. We have Anna Cusnir joining remotely.
8 She obviously cannot be given this in paper.
9 I understand that we agreed it will be uploaded on
10 the Box today afternoon. However, can you send it
11 to her by email so that she can also follow this
12 presentation on her screen?

13 **MR GLEASON:** Of course we have it in
14 electronic form. We are happy to give it to her

15 **THE PRESIDENT:** Can one of your colleagues
16 email it to her now? Then Ms Cusnir will be able to
17 see what we are seeing on her computer.

18 **MR GLEASON:** Okay. One moment please.
19 **THE PRESIDENT:** While we are you waiting
20 to start, we appreciate that PO6, and possibly also
21 PO1, indicates the questions from the Tribunal in
22 general will come only at the end, but I hope you
23 will bear with us, it won't be taken out of your
24 time, but if either of my colleagues feel at
25 particular moments, just to be helpful to the

1 Tribunal, they want to come in on a particular
2 question rather than delay it for two or three days
3 or at the end of the hearing, I hope you will be
4 comfortable with us doing that. It may be that my
5 colleagues may want to come in at a particular
6 moment, that will not be deducted from your times in
7 opening. You are comfortable with that?
8 **MR WELLS:** Yes, Mr President.
9 **MR KOPECKY:** Yes, of course.
10 **MR GLEASON:** Could we make one last
11 request concerning timing? We are going to be
12 passing the chord back and forth between different
13 parts of the opening. Can we ask, because technical
14 issues can be a little funny, that that time not be
15 deducted from our presentation time?
16 **THE PRESIDENT:** I think you can assume
17 that the Tribunal will have a degree of flexibility.
18 Subject to that, we will stick to timing, and just
19 in the terms of the totality of your opening that is
20 about to begin, you have been allocated a particular
21 amount of time. I am pretty brutal, as you have
22 heard, about timings. I do not allow slippage, but
23 I hear you on that particular point.
24 Opening Submission by Claimant.
25 **MR WELLS:** Thank you. This is a story of

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10:16

1 Rosietici cadastral, a statement made by him on
2 4 September 2013 in a criminal investigation that
3 was suddenly closed for no reason whatsoever.
4 "As a specialist cadastral engineer with
5 13 years' of experience, it is my professional
6 opinion that this criminal and fraudulent scheme has
7 been conceived with a sole purpose for taking
8 possession of landowners' plots of lands by
9 Bio-Alianta SRL and bankrupting the previous lessee,
10 Laguardia. The final aim was to take over the plots
11 of land". That is one of the Respondent's own
12 public officials.
13 This hearing is the conclusion of seven
14 years of battles by Laguardia and Mr Grot to recoup
15 farming investment. Claimants' opening is split
16 into three parts:
17 First, Mr Gleason will focus the
18 Tribunal's attention on many of the key facts in
19 this case, what really happened here. Second,
20 Mr Hinkle will focus the Tribunal's attention on
21 relevant Moldovan law, and third, Mr Astuno will
22 focus the Tribunal's attention on the damages. With
23 that, I will hand the baton to Mr Gleason.
24 **MR GLEASON:** Thank you, Mr Wells.
25 I am going to discuss the key disputed

39
10:19

1 a man born on a farm, who built a successful farm in
2 Poland. Our client, Mr Zbigniew Piotr Grot, a
3 farmer, a man we affectionately call Ziggy, but of
4 course Mr Grot in those proceedings. A Colorado
5 resident, Mr Grot took his love of farming to
6 Moldova, where his company Laguardia first invested
7 in a challenging environment in the southern part of
8 Moldova, Stefan Voda.
9 After obtaining profitable yields in some
10 fields that had been unused for as many as ten
11 years, he took that initial investment and moved on
12 to the northern part of Moldova, the Floresti
13 district, deepening the farming investment by
14 obtaining over 1,500 leases across three villages.
15 We will hear a lot about those villages in these
16 proceedings.
17 Despite initially welcoming Laguardia to
18 Floresti and helping Laguardia set up its farming
19 investment, the actions and omissions of some of
20 those same Moldovan public officials alone, but also
21 in conjunction with and at the behest of a violent
22 local competitor, Bio-Alianta, destroyed that
23 farming investment.
24 This case can be summed up by the
25 statement you see in front of you. This is a

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10:17

1 points in this matter. Unfortunately there are
2 many, so I will take significant time to go through
3 24. I will walk you through the outline and then we
4 will jump into how Mr Grot and the Claimants set up
5 the investment. We will first talk about how the
6 investment was set up, the legitimate expectations
7 which were created in Floresti and Moldova more
8 generally, how the investment was properly
9 established in Floresti, we will spend some
10 significant time discussing the attributable acts
11 and omissions in this case of the Respondent State,
12 we will talk about how these attributable acts and
13 omissions do breach international obligations found
14 under the BIT, we will also have to spend some time
15 addressing Respondent's argument concerning
16 Claimants' efforts to seek correction, and finally,
17 time permitting, we will discuss the situation in
18 Rosietici.
19 If I may begin, I will begin by discussing
20 the Claimants' efforts to set up the investment.
21 Mr Grot is a farmer with years of
22 experience and successful high-yield modern forge
23 projects. As the record clearly demonstrates, and
24 you will see throughout these slides, there are
25 continuous and consistent references to the record.

40
10:20

<p>1 I am not going to stop and go to each one, however 2 if the Tribunal has a question on any of those, 3 please do not hesitate, but in this particular case 4 we see that Mr Grot had successfully farmed in 5 Poland. We see that through the letters of 6 recommendation from local officials in Poland, the 7 statements of accountants in Poland showing that he 8 made at the time over 500,000 USD per year in Poland 9 if we do the conversion. We also see that in the 10 witness statements.</p> <p>11 Mr Grot decided to attack a new 12 opportunity, in this case in Moldova. In going into 13 Moldova, he did engage in proper and adequate due 14 diligence in setting up the investment. Despite 15 Respondent's allegations, Mr Grot did consult with 16 relevant professionals, including an attorney who 17 had over 20 years' experience in advising commercial 18 parties and foreign investors. Mr Grot also 19 purchased an already established company, ICS 20 Laguardia SRL, to be the operating company and the 21 investment vehicle in this case.</p> <p>22 In expanding the investment to Floresti 23 after the first successful year in Stefan Voda on 24 250 ha with good results, Mr Grot engaged in 25 additional due diligence. Now, on this particular</p>	<p>1 Additionally, in expanding the investment 2 to Floresti, Mr Grot properly engaged with the 3 relevant parties, the landowners and local officials 4 concerning expanding the investment to Floresti, and 5 this was expanding to a larger farming operation, a 6 2830 ha farm. He consulted with landowners. He 7 consulted with the Floresti district president, 8 Ruslan Zelenenco, the Vice-President, Sergiu Rusu, 9 the local mayors, the local cadastral agents. He 10 followed the advice of local agricultural experts, 11 some of whom like Mr Ion Tugui, were recommended to 12 him by local officials like Mr Rusu, and Mr Grot 13 used the government-approved lease template to enter 14 into these contracts with the landowners. Through 15 this process legitimate expectations were created, 16 which leads me to my second point.</p> <p>17 MR FORTIER: How long was this setting up 18 of the investment? Can you give us some references 19 to dates? Just the setting up of the investment 20 before you come to the legitimate expectations? 21 MR GLEASON: Absolutely. Are you 22 referring to the general setting up of the 23 investment or the expansion to Floresti? 24 MR FORTIER: I suppose it includes the 25 expansion, but I would like to have bookends here,</p>
<p>1 point I would like to stop for a moment and address 2 Respondent's request for an adverse inference 3 concerning Claimants' alleged inability -- the 4 Claimant did not unfortunately produce the 5 Stefan Voda contract which was requested in this 6 case, that is clear from the record -- but the 7 argument that there should be an adverse inference 8 concerning Claimants' Stefan Voda operations and in 9 essence there is no proof on the record concerning 10 his operations or the success of his operations 11 should be rejected. First and foremost, Claimants 12 did diligently search for these records. 13 Unfortunately they could not be located as a lot of 14 time has passed.</p> <p>15 But perhaps more importantly Respondent on 16 this point does ignore the factual record. There 17 are significant accounting and financial records 18 submitted in this case, exhibits 1 and 2 attached to 19 the Deloitte report, CEX-1, which demonstrate the 20 level of activity in Stefan Voda in 2009 and 2010. 21 This point was in fact verified by Respondent's 22 quantum expert, Michael Peer at REX-3. Table 2 in 23 that report actually calculates a profit for Mr Grot 24 and Claimants' Stefan Voda operations in 2009 and 25 2010.</p>	<p>1 because you say this is item 1 of 3, setting up the 2 investment, right?</p> <p>3 MR GLEASON: 1 of 3? I do not understand. 4 MR FORTIER: At the outset you said there 5 were three principal issues that you were going to 6 address. 7 MR GLEASON: I said more than three, I am 8 sorry. 9 MR FORTIER: Then I misunderstood you. 10 I thought you said that there were three principal 11 issues and you were dealing, first, with setting up 12 the investment, you would come late to the 13 legitimate expectations, and then to the investments 14 properly established in Floresti. 15 MR GLEASON: That was the first line of my 16 outline. But yes, I understand your question, 17 absolutely. 18 MR FORTIER: I want some dates. 19 MR GLEASON: Sure. It was in the mid 20 2000s when Mr Grot was first introduced to the 21 opportunities in Moldova, and I would have to look 22 at the witness statement of Mr Grot to figure out 23 which year that was exactly, but it was in the mid 24 2000s. In 2008 he did actually visit Moldova, and 25 it was at this time that he purchased the operating</p>

1 company, ICS Laguardia SRL. 45
 2 After that point it went into 2009 and he 10:26
 3 slowly entered into the Moldovan market by engaging
 4 in the first year of operations on a smaller farm in
 5 the Stefan Voda district, which is in southern
 6 Moldova. After having a successful year in
 7 Stefan Voda, opportunities were a bit limited in
 8 that district and he was looking to expand the
 9 investment to the Floresti district which began in
 10 about spring/summer of 2010 when he began looking at
 11 those opportunities.
 12 It was in the summer of 2010 that he was
 13 invited by the Vice-President of Floresti district,
 14 Sergiu Rusu, who he had met through a business
 15 contact. Sergiu Rusu is a person who is
 16 Vice-President. His role in part was to attract
 17 foreign investment to Floresti. Mr Rusu invites
 18 Mr Grot to Floresti in the summer of 2010, many
 19 meetings are held in the various village halls of
 20 the three villages at issue in this case, and the
 21 parties all agree that they want to move forward on
 22 this project. The lease registration process takes
 23 a few months, over the late summer and early fall,
 24 expanding into the late fall of 2010.
 25 Does that help?

1 in this case concerns oral representations and 47
 2 actions of local officials concerning and relating 10:29
 3 to the investment in this case. I would like to
 4 walk the Tribunal through some of those oral
 5 representations and actions, if I may be permitted.
 6 Vice-President Rusu, who we have already
 7 discussed in this case-- again, he was responsible
 8 for attracting foreign investment to Floresti -- he
 9 assured Mr Grot that he would assist in organising
 10 meetings and in fact did organise meetings relating
 11 to the lease execution and registration procedure.
 12 Vice-President Rusu and the local mayors
 13 generally guided the Claimants through the local
 14 framework and generally approved Laguardia's
 15 operations. The cadastral agents in each village--
 16 these are landownership specialists in each
 17 village -- assisted the landowners and Laguardia in
 18 this case by assisting with the process, confirming
 19 the identity of the landowners, assisting the
 20 landowners to fill in the details of the lease
 21 documents.
 22 **MR FORTIER:** We are strictly in the
 23 Floresti district?
 24 **MR GLEASON:** Yes. We are now in 2010.
 25 **MR FORTIER:** Vice-President Rusu is the

1 **MR FORTIER:** Yes. It does. Carry on. 46
 2 **MR GLEASON:** Thank you very much. 10:28
 3 **PROFESSOR KNIEPER:** A little bit more
 4 precise. The meetings were in September. Is that
 5 correct?
 6 **MR GLEASON:** The meetings, I believe, were
 7 at the very earliest late August, but yes, the
 8 majority were in September, if my memory serves me
 9 correctly on the record.
 10 **MR FORTIER:** Of 2010?
 11 **MR GLEASON:** Of 2010, yes.
 12 **PROFESSOR KNIEPER:** Thank you.
 13 **MR GLEASON:** I am going to review the
 14 record at some point and if I have made a mistake
 15 I will correct myself later. There are a lot of
 16 facts.
 17 I would like to get back into my second
 18 overall point which is concerning legitimate
 19 expectations and what legitimate expectations were
 20 created in this case. There are two categories:
 21 The first would be the reliance on the specific host
 22 state conduct, and the second would be concerning
 23 the predictable and stable and legal administrative
 24 framework in Moldova.
 25 The specific host state conduct at issue

1 district Vice-President 48
 2 **MR GLEASON:** That is right. 10:30
 3 **MR FORTIER:** So we are very much at the
 4 local level.
 5 **MR GLEASON:** The regional level, I would
 6 say, because the local level I would argue would be
 7 the villages. Mr Rusu is a level above the local
 8 mayors and cadastral agents.
 9 Additionally these cadastral agents signed
 10 and stamped the leases and, very importantly, they
 11 entered each lease into the lease registry in each
 12 village.
 13 **PROFESSOR KNIEPER:** You said that the
 14 cadastral agents signed the leases. That cannot be?
 15 **MR GLEASON:** They put their stamp on it
 16 with an official signature. We can look at the
 17 lease documents, if you wish.
 18 **PROFESSOR KNIEPER:** But the leases are
 19 signed in the sense of signing a contract by the
 20 landowners and by Mr Grot or Laguardia.
 21 **MR GLEASON:** Sure.
 22 **PROFESSOR KNIEPER:** When you said that the
 23 cadastral agents helped to have these signatures
 24 coming through, it is a different thing from saying
 25 they signed the lease contract themselves.

1 **MR GLEASON:** I think we are talking about 49
2 two different procedures. You are absolutely 10:31
3 correct, that the signature for executing the
4 contract should be between the landowners and the
5 investor, in this case Mr Grot and his company.
6 **PROFESSOR KNIEPER:** That is not the role
7 of the cadastral agent.
8 **MR GLEASON:** I agree.
9 **PROFESSOR KNIEPER:** How would you qualify
10 the role of the cadastral agent when he helps
11 Mr Grot to have the landowner sign a contract and he
12 gets a little payment for that? Is that not so?
13 **MR GLEASON:** There was a small payment in
14 this case for the assistance.
15 **PROFESSOR KNIEPER:** In which role does the
16 cadastral agent work under these circumstances? The
17 cadastral agent helping Mr Grot to have leases
18 signed, is that still a role of public authority or
19 is it an agent for Mr Grot?
20 **MR GLEASON:** I would like to confer on
21 that question with my colleague for one second.
22 Before I do, I would like to clarify the signature
23 that I am talking about. What I am talking about is
24 a stamp on the actual lease document itself, the
25 official stamp of city hall, and a signature of the

1 cadastral agent, and this represents registration 50
2 after the cadastral agent has performed his duty to 10:32
3 check the leases and register the leases. That is
4 the signature that I am referring to. I am not
5 making any sort of allegation that the cadastral
6 agent had an obligation to execute the lease
7 contract for either private party.
8 Now if I may have a moment to confer on
9 the role of the cadastral agent, my colleague, Coren
10 Hinkle, is a little more well versed on the Moldovan
11 issues here.
12 **THE PRESIDENT:** Why don't we park that and
13 after the break you can come back on that?
14 **PROFESSOR KNIEPER:** Just a little about it
15 on this question, because to be clear from the
16 beginning, or to find your understanding or to see
17 whether I have the same understanding as you have,
18 I have the understanding of the whole proceedings.
19 There are three levels: there is the level of two
20 contracting parties, the Claimants and the
21 landowners, and they sign private contracts
22 **MR GLEASON:** Yes.
23 **PROFESSOR KNIEPER:** Then there is another
24 level which also concerned a private party that
25 signs also, that is Bio-Alianta.

1 **MR GLEASON:** I have not got to them yet. 51
2 **PROFESSOR KNIEPER:** Then there is the 10:34
3 public law level, and this is the process of
4 cadastral agents putting the seal and executing the
5 registration. When you consult during the coffee
6 break I want to have these two spheres clearer in my
7 mind. We have a sphere of private contracts, and we
8 have a sphere of public authority, a registration
9 official who registers a contract.
10 My initial question was when the cadastral
11 agent helps Mr Grot, that these leases are signed by
12 the landowners, in what capacity do they work? Do
13 they work in a public law capacity in expressing
14 sovereign authority of the State, or are they just
15 private agents of Mr Grot helping to execute private
16 contracts? Do you understand?
17 **MR GLEASON:** I understand very clearly
18 your question. On the second part of your question
19 we will come back to you. I want to very much
20 clarify that the signature I was referring to, which
21 seemed to incite this question, was not a signature
22 in any private capacity of a cadastral agent. It
23 was a signature in a public capacity in the process
24 of registering the leases. I am sorry if I created
25 the confusion for you.

1 **THE PRESIDENT:** You can continue. We have 52
2 understood. 10:35
3 **MR GLEASON:** I would like to lead into the
4 next point on this signature because it was at this
5 point, as this process was going on, as the leases
6 were executed but also registered via public law
7 procedures, it was a process that took time. There
8 were over 1500 leases to be executed and registered
9 here. We are in a farming context and
10 President Zelenenco, Vice-President Rusu, the
11 mayors, they assured the Claimants that the process
12 was moving along without issue, both on the public
13 and private side, and it was okay to begin farming.
14 I would like to highlight that point that there were
15 statements made by these public officials that it
16 was okay to begin farming as the registration
17 process was moving forward.
18 That leads me into my second point on
19 legitimate expectations which is concerning a
20 predictable legal and administrative framework which
21 meets certain minimum standards, including
22 consistency, transparency and decision-making. This
23 stable and predictable legal and administrative
24 framework was central to the decision-making process
25 to invest, first in Moldova, and later in the

1 Floresti district. 53
10:37

2 I would like to briefly go through the

3 legitimate and reasonable expectations that

4 Claimants had concerning this.

5 **THE PRESIDENT:** Speaking for myself, I am

6 really familiar with this argument. You can save

7 yourself time and go to the issues that you need.

8 This argument we are very fully appraised of.

9 **MR GLEASON:** Fantastic. I would like to

10 connect one point, if I may, on this. I would like

11 to connect that last point concerning this slide,

12 No 12, the last point I made about specific host

13 state conduct. President Zelenenco, President Rusu

14 and the mayors, assuring Claimants that it was okay

15 to move along and begin farming.

16 I would like to connect that with some

17 points on slide 15. It was very reasonable for

18 Claimants in this case to expect that if there was

19 any alleged problems or perceived problems with the

20 lease process or the lease execution and

21 registration process found by the mayors in the

22 cadastrals, that they would be notified and

23 permitted to fix any errors, and that both local and

24 international due process norms would be followed.

25 I highlight that because we will discuss that.

1 business perspective the work had begun. The 55
10:39

2 necessary equipment had been imported, the employees

3 had been hired in the local Floresti district, the

4 consultants had been engaged, the farming operations

5 had begun in earnest.

6 I would like to go into a little more

7 detail concerning the first two points on this

8 slide, the execution of the leases and the

9 registration of the leases.

10 Everything was moving along just fine

11 until strange events began occurring in Floresti, as

12 this Tribunal is very well aware. In the winter of

13 2011, a local third party competitor, Bio-Alianta,

14 shows up and starts giving sugar to local

15 landowners. I want to be clear that any alleged

16 complaints concerning these leases from local

17 landowners followed these events and were baseless.

18 It was around this time that local officials began

19 to work in concert with this local third party

20 competitor to take the leased lands from Laguardia

21 and give them to Bio-Alianta.

22 I would like to move on and discuss the

23 signature of the leases between Laguardia SRL and

24 the landowners in this case. I am on slide 19,

25 page 10.

1 **MR FORTIER:** When you say slide 15, you 54
10:38

2 are referring to page 15?

3 **MR GLEASON:** We are looking at the

4 printout I apologise. There are slide numbers and

5 page numbers.

6 **THE PRESIDENT:** The numbers are at the

7 bottom right-hand corner of each slide.

8 **MR GLEASON:** They are. On the printout

9 there is a number of each page

10 **MR FORTIER:** It is slightly confusing.

11 **THE PRESIDENT:** What you might just say is

12 slide 15 on page 8.

13 **MR GLEASON:** I will have to look at the

14 hard copy, then.

15 I would like to talk about how the

16 investment was properly established in Floresti.

17 That is a point of some dispute between the parties.

18 There is a few points I would like to make. The

19 first is how the grand majority of leases were in

20 fact in a private law context validly executed.

21 This is clear from the record.

22 I would secondly like to discuss how the

23 leases were in fact checked for compliance by local

24 mayors and cadastrals and registered in a public

25 context in all three villages, and from a practical

1 I would like to turn the Tribunal's 56
10:40

2 attention to demonstrative exhibit CH-4. The

3 Respondent in this case argues that many leases were

4 not signed by the landowners. They argued this on a

5 few occasions. On the slide you can see some

6 citations to the Rejoinder in this particular case.

7 That is what is represented on the slide.

8 The Claimants would like to point out to

9 the Tribunal (slide 20) that the majority of the

10 Laguardia leases were in fact signed by the

11 landowners. If we look at the statistics on

12 Claimants' demonstrative exhibit 2, we can see that

13 in all three villages over 90 per cent of the leases

14 actually contained the signature of both Laguardia

15 and the landowners.

16 Claimants took a conservative approach to

17 calculating this number. There are various

18 documents that from Claimants' perspective were

19 signed by the parties, which Respondent would surely

20 disagree with, and we understand that our numbers

21 probably do not add up to your number, but in

22 Claimants' actual analysis of these lease documents

23 many of them contain handwritten names which could

24 be considered signatures in the signature block, but

25 another block for holder of the lease was not

1 actually signed by that same party, so we did not
2 count those leases which did not contain the double
3 signature, just to be conservative on our estimate
4 here. Even being conservative, we can see that over
5 90 per cent of the leases were signed taking all
6 three villages into consideration.
7 I would like to also further point out
8 that whether the leases are signed is only an issue
9 concerning the Cosernita lease. It was only
10 Disposition 1-A which stated that a great majority
11 were not signed by the landowners. The Respondent
12 tried to subtly change the argument at this point
13 now saying that many lease agreements were not
14 signed, and they are trying to use this as a general
15 argument attacking all of the Laguardia SRL leases.
16 Throughout this process of attacking the
17 Laguardia leases, it never once has been
18 demonstrated by the Respondent why certain unsigned
19 leases would provide grounds for retroactive refusal
20 and simultaneous deletion of other leases which were
21 properly executed. There has never been any
22 explanation of why some leases that allegedly
23 contain problems would affect other leases which do
24 not contain the same problems. No attempt to
25 explain that has been provided.

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10:42

1 to be assent.
2 **PROFESSOR KNIEPER:** We have a disagreement
3 on that point.
4 Then I want to come back to the signature
5 problem. I want to take you to Claimants' memorial,
6 paragraph 281. There you see "Respondent's own
7 cadastrals were responsible for filling out the
8 leases and then registering them", and this is my
9 big question that I have.
10 You put two things together which are
11 strictly separated. There is a private negotiation
12 and execution of a contract in written form, and
13 then you have a registration. One part of this
14 activity is private law and the other part is public
15 law. A cadastral in my evaluation of the files, of
16 the law and Mr Gladei's and Mr Rusu's expert
17 opinions, I have not heard any point why a cadastral
18 agent would be responsible for having a private
19 contract signed? If not, he is engaged by one of
20 the parties to do that as an agent and being paid
21 for it. If not, I remain confused for the totality
22 of the hearing if we do not really differentiate
23 between these two spheres: a private contract signed
24 by private people, helped by perhaps cadastral
25 agents, who when they help act as private

59
10:44

1 **PROFESSOR KNIEPER:** I want to get this
2 straight in my head. I come back to the leases and
3 to the signatures and to the registration because
4 you go too quickly for my brain.
5 These are distinct matters. Do we agree
6 that a non-signed lease is a non-valid lease?
7 **MR GLEASON:** No, we do not.
8 **PROFESSOR KNIEPER:** But leases in
9 agricultural land have to be executed in written
10 form and, according to Moldovan law, written form is
11 respected when the document is signed by both
12 parties. That is your legal expert, and that is the
13 Civil Code of Moldova.
14 There is a certain disagreement between
15 the two of us whether the signature has to be done
16 at the same moment, but there is no doubt under
17 Moldovan law, as I see it, that they have to be
18 signed. Any non-signed contract which needs a
19 written form is a non-valid contract under Moldovan
20 law.
21 **MR GLEASON:** I believe there is a dispute
22 about that point. If I may explain myself?
23 **PROFESSOR KNIEPER:** I thought we were in
24 agreement on that?
25 **MR GLEASON:** No, we agree that there needs

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10:43

1 representatives of one party, and the public part of
2 this whole process, which is stamping and
3 registration.
4 **MR GLEASON:** I do not think there is any
5 reason that you cannot make that distinction under
6 these facts.
7 **PROFESSOR KNIEPER:** Well, you don't do it
8 and then I am confused.
9 **MR GLEASON:** I apologise for not doing
10 that. Perhaps it is a difference in legal approach.
11 There are two separate acts here: one is execution
12 of a lease which you are correct in stating is a
13 private law act. The other is registration of the
14 act.
15 **PROFESSOR KNIEPER:** Why do you say
16 cadastrals were responsible for filling out the
17 forms?
18 **MR GLEASON:** Because there was agreement
19 between Claimants and the local officials in this
20 case that they set the expectation that they would
21 assist in these circumstances.
22 **PROFESSOR KNIEPER:** In a private capacity?
23 If you say that, I am absolutely happy. If you say,
24 Mr Grot had a private contract with the cadastral
25 agents to help him with the lease agreements and

60
10:46

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10:47

1 they were paid a little token money, but at least
2 they were paid for that, that is the private sphere
3 of this whole business and not the public sphere.
4 Are we in agreement? Then I would be satisfied and
5 back on track.

6 **MR GLEASON:** I would agree to the extent
7 that there was an element of private contracting in
8 this case, but I would not agree that that does not
9 continue to create legitimate expectations moving
10 back to that argument.

11 **PROFESSOR KNIEPER:** That is a different
12 sphere. I am strictly talking about these two
13 spheres of a private contract and a demonstration of
14 public authority when stamping and registering.
15 I think we have to distinguish these two spheres
16 completely, and at least in your paragraphs where
17 you do the same thing. This is misleading to me.

18 **THE PRESIDENT:** The point has been made,
19 we will no doubt come back to this and we will have
20 legal experts when we will have an opportunity to
21 address this issue. Let's move on. I am conscious
22 of time.

23 **MR GLEASON:** Thank you. It still remains
24 confusing from the Claimants' perspective, at least,
25 despite the Tribunal's questions on this issue, why

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10:50

1 actually what happened. It was a retroactive
2 refusal and simultaneous deletion of these lease
3 registration records. If it sounds strange, it is
4 because it was strange. It was an extraordinary
5 procedure which was not supported by Moldovan law,
6 as will be addressed by the Moldovan legal expert,
7 Roger Gladei, in this case.

8 One last point on this issue. Any time to
9 make an argument concerning alleged problems with
10 singled-out leases was prior to registration, not
11 the retroactive refusal and simultaneous deletion of
12 the lease registrations by mayoral disposition.
13 That as well was not supported by Moldovan law.

14 I would also like to move into the public
15 law context for a moment, if I may be permitted,
16 moving to slide 25, page 13. Respondent argues that
17 there is nothing on record showing that the
18 Laguardia leases were checked for compliance, but
19 that directly ignores the Moldovan law cited by
20 Claimants' expert, Roger Gladei, in his First
21 Report, CEX-1. This perhaps will help answer some
22 of your questions, Mr Knieper, and this is
23 concerning the registration process and the role of
24 cadastral or registrar in this registration process.

25 The record demonstrates that the Laguardia

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10:48

1 certain leases which were perhaps allegedly
2 containing problems, whether they were unsigned or
3 whether they contained some of the other problems
4 alleged by Respondent, why those leases which
5 contained these problems themselves, for example, a
6 lease which was unsigned or a lease which was signed
7 by somebody other than the entitled landowner, or
8 leases with the ratios additions and pencil use or
9 lacking in official stamp of Laguardia, why those
10 leases with those problems would affect other leases
11 which did not have or share the same problems.

12 That is a very important point from our
13 perspective. I would like to highlight that. What
14 Respondent tries to do, moving to my next slide --
15 slide 23, page 12 of the printed copy -- is that
16 this argument is misguided and should be rejected if
17 certain leases, even if they did have certain
18 problems, unsigned, whatever the case was, that was
19 not a reason to retroactively refuse and
20 simultaneously delete all of the leases, that was
21 clearly not supported by Moldovan law.

22 I must apologise, I keep saying
23 "retroactively refuse" and "simultaneously delete
24 the lease registrations". I know that is a lot to
25 say, but there is no better way to say it. That is

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10:51

1 leases were checked for compliance. I have
2 highlighted some passages from Mr Gladei's First
3 Report. You can see that it says, "the authorised
4 person who is the cadastral shall use the Registry
5 as evidence of documents that came in and went out
6 of the mayor's office, and is obliged to verify the
7 completeness of the documents, verify the
8 correctness of the contents of the documents".

9 If I may move along, section 17 of the
10 same regulations states that "upon substantive
11 examination of the documents, the cadastral, the
12 authorised person, shall verify compliance with
13 legislation and, if finding authenticity of the
14 documents, completeness of the information contained
15 therein, and compliance of the form and content of
16 the documents, make the record into the registry".

17 If I may briefly summarise the role of the
18 registrar in registering, the registrar uses the
19 registry as evidence of the documents, shall verify
20 and check compliance and, if finding compliance of
21 the form and the contents of the documents make the
22 record into the Registry. Thus, despite
23 Respondent's arguments that there is nothing on
24 record demonstrating that the mayors or cadastrals
25 checked Laguardia's leases for compliance, that

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10:52

1 ignores the record itself. The registration of the
2 leases themselves are evidence that the registrars
3 or cadastrals checked the documents for compliance
4 and that the mayoral offices in each village
5 actually found compliance.

6 Similarly, there are two court decisions
7 from the Floresti District Court in 2013 and 2014
8 taking the same position, that the leases were
9 properly reviewed, for example, using Respondent's
10 language "checked for compliance" and ultimately
11 registered.

12 **MR FORTIER:** Where are those references?
13 **MR GLEASON:** To the District Court
14 decisions? The 2013 decision is C-43, and the 2014
15 decision is R-6. Specifically the findings for C-43
16 are page 10, and for R-6 are on page 7, if that
17 helps the Tribunal.

18 **PROFESSOR KNIEPER:** In that context I have
19 another question concerning the timeline. You say
20 in your submissions, and you said that already
21 today, that from January --

22 Let's go back to the timeline. Meetings
23 in September, then an extended process of signatures
24 which lasted until December, and then finally
25 registration in February, and you ask yourself in

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10:55

1 orders from above to terminate --

2 **PROFESSOR KNIEPER:** That was later. I am
3 talking about your submission that in January these
4 mayors received orders not to register, and at the
5 same time you say the conspiracy between the
6 Respondent, the mayors and the competitor already
7 was on in January, and then, despite the conspiracy,
8 they signed and they register these agreements.
9 I do not find the logic behind your submission.

10 **MR GLEASON:** We do not have the detailed
11 thoughts of the mayors. We don't know exactly when
12 the orders were given, but we do know that the
13 orders were given. It was stated by the Mayor in a
14 statement under oath.

15 **PROFESSOR KNIEPER:** That was after the
16 registration. She talks about orders to
17 de-register. I am talking about January, before the
18 initial registration took place. You say in your
19 submission that the mayors got orders already in
20 January before any registration had taken place not
21 to register.

22 **MR GLEASON:** I would like to find the
23 statement of the mayor, if I may, because I am not
24 sure we have the same understanding on that.

25 **THE PRESIDENT:** Can we do this in order?

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10:54

1 your submissions why it took so long for the
2 cadastral agents to register. The answer that you
3 give is that the competitor started to distribute
4 sugar, and the other reason was that the mayors got
5 orders from above not to register.

6 The question which I have is why if the
7 mayors got orders from above, and when the
8 conspiracy already started in January, why should
9 they go through this mess of registering 1500 lease
10 agreements and then deregister them two or three
11 weeks later? Have they simply refused to register?
12 Do you have an explanation for that?

13 **MR GLEASON:** Unfortunately we have not had
14 an opportunity to hear from any of the mayors or
15 cadastrals in this case, and it is impossible to
16 know what was going through their heads without
17 being able to speak to them.

18 **PROFESSOR KNIEPER:** But how do you know
19 there were orders from above to the mayors that they
20 should not register?

21 **MR GLEASON:** I was going to get to that
22 later. It is on the record. In was given in an
23 ex parte injunction proceeding concerning the
24 Varvareuca injunction requested by Bio-Alianta.
25 Mayor Nina Ivanec, stated that she had received

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10:57

1 You are taking us through a timeline.

2 **MR GLEASON:** I would like to continue with
3 that, if I may. It is an important question --

4 **THE PRESIDENT:** It is up to you, but do
5 not re-do it later.

6 **MR GLEASON:** I will get to it later. I am
7 going to come back to that point. That is a really
8 important point.

9 **THE PRESIDENT:** We can park that issue.
10 You are going to deal with it.

11 **PROFESSOR KNIEPER:** It is in your reply,
12 paragraph 513, if you want to look it up

13 **MR GLEASON:** I have it in my presentation
14 prepared already. I will get to that. I am glad
15 you recognise the mayor's statement in this context.
16 Perhaps we have a difference in understanding
17 concerning the context in which it was given, but we
18 will talk about it.

19 I am not sure I can give you an answer
20 concerning what was going through the minds of
21 people at this time in Moldova, why the leases were
22 registered and then retroactively refused and
23 simultaneously deleted for the record. That is a
24 mystery, it really is, but it was extraordinary in a
25 legal procedure, that much is clear.

1 I would like to move on. Professor Sands, 69
 2 may I have a timing update? 10:58
 3 **THE PRESIDENT:** All of the questions which
 4 are coming from the Tribunal will not be taken from
 5 your time. Ms Nitschke, roughly how much time has
 6 been used on their own time.
 7 **THE SECRETARY:** About 25 minutes.
 8 **THE PRESIDENT:** Just to highlight a
 9 concern, I have calculated that your total
 10 PowerPoint is 88 pages. You are now at about 16 and
 11 you have used on 90 minutes almost a third. Again,
 12 you can assume we have read the detail, we really
 13 have read the detail. We want to get to these kinds
 14 of issues, which is why the questions are helpful.
 15 So don't worry, but charge ahead.
 16 **MR GLEASON:** I would just ask that the
 17 entirety of the PowerPoint presentation be taken
 18 into consideration by the Tribunal. I am sure you
 19 will.
 20 **THE PRESIDENT:** Can I check, because it
 21 will apply equally to the Respondent, I do not know
 22 if you have a PowerPoint, but for my part
 23 absolutely. This is, I am assuming, not new legal
 24 argument. It is in response to our invitation in
 25 the course of the pre-hearing conference that you

1 on this point: there was a pattern of state conduct 71
 2 and I would like to walk this Tribunal through the 11:00
 3 pattern which occurred in this case.
 4 The pattern begins with the already
 5 discussed delay in registering the leases. It is an
 6 unexplained delay in registration. The leases in
 7 their grand majority were validly executed and
 8 compliant with Moldovan law. Nonetheless,
 9 Respondent will argue that there were no delays,
 10 that the documentary evidence on record shows that
 11 they were only filed on the day of actual
 12 registration. The references that Respondent uses
 13 to make this argument are taken from court
 14 proceedings where the Claimant was actually not
 15 present, so the statement of the mayor was actually
 16 taken at face value in the documents which are cited
 17 by Respondent on this particular point.
 18 There are other points on the record which
 19 show that there were unexplained delays concerning
 20 registration of the leases. We cannot explain why.
 21 We don't know why. It was strange. It was a long
 22 and unexplained delay. It was, according to
 23 Igor Bugai, a systematic and unreasonable delay
 24 approval of lease. Alexei Bugai confirms that he
 25 was concerned about delay. He inquired and he could

1 present to us and we have the totality and that will 70
 2 go for both sides. Are you comfortable with that? 10:59
 3 **MR KOPECKY:** On the premise, of course.
 4 **THE PRESIDENT:** You can assume it is in,
 5 we have it. We will go over it. You do not need to
 6 take us through each line. You will never get
 7 through the additional 72 pages of 140 plus slides
 8 that you need to get through in the time. Do not
 9 worry about it. We have it. We are on top of it.
 10 **MR GLEASON:** Great. I would like to move
 11 to slide 36, which is on page 18 of the printed copy
 12 of the PowerPoint presentation. There is a real key
 13 dispute about the attributable acts and omissions of
 14 the Respondent in this case.
 15 **MR FORTIER:** Very key.
 16 **MR GLEASON:** It is very key, thank you.
 17 The Respondent focuses almost exclusively on the
 18 dispositions in this case as being the attributable
 19 act that we need to analyse, but there are many more
 20 acts and omissions of local officials which need to
 21 be attributed to Respondent in this case. In fact,
 22 there was a pattern of state conduct. In its
 23 Rejoinder, the Respondent states that Claimants
 24 merely allege, but neither explain nor prove, a
 25 pattern of state conduct. But the record is clear

1 not get a response from Mayor Ivanec concerning the 72
 2 lease registration process. There were strange 11:01
 3 events occurring at this time.
 4 That is just the beginning of this
 5 pattern. The pattern becomes much more serious very
 6 shortly afterwards. Prior to, and in addition to
 7 the dispositions, which were the focus of majority
 8 of Respondent's pleadings on attribution, the record
 9 clearly shows that the mayors attempted to terminate
 10 the private lease rights between Laguardia and the
 11 landowners. Again, this is prior to the
 12 disposition.
 13 This brings me back to the quotation
 14 concerning the orders from above. We see that
 15 statement from Mayor Nina Ivanec, 15 April, talking
 16 with president of the Floresti District, "he told me
 17 that there is a company, Bio-Alianta, but the
 18 contracts, the Laguardia leases, should be
 19 terminated". That was a statement given under oath
 20 granted in April 2011, but referring back to this
 21 time period, the time period concerning the
 22 registration of the leases.
 23 If I may be permitted, what did the Mayor
 24 Nina Ivanec do after receiving these orders from
 25 above? She attempted to illegally and unilaterally

1 terminate the private lease interests in this case. 73
2 We see that in exhibit C-95. C-95 is our illegal, 11:03
3 unilateral lease termination notifications signed by
4 some Varvareuca landowners, signed and stamped by
5 the Varvareuca mayor. These took place on,
6 I believe, 15 February 2011, so when did Mayor
7 Nina Ivanes receive the orders from above? We don't
8 know, but we can reasonably believe it was prior to
9 these lease termination notifications being signed
10 We know that the same happened in
11 Cosemita. We saw notations in the Cosemita land
12 registry indicating that the Laguardia leases had
13 been terminated between 1 and 3 February 2011,
14 despite the leases having been registered on
15 7 February 2011. Now perhaps in the written
16 pleadings this point was maybe not highlighted as
17 much as it should have been, but it is clearly on
18 the record that the mayors in both villages
19 attempted to illegally and unilaterally terminate
20 the leases.
21 **PROFESSOR KNIEPER:** Can you go to
22 paragraph 313 in your Reply? There you give an
23 explanation and you don't say it is strange; there
24 you say they received before the registration, we
25 are talking about before the registration. You say

1 the initial registration process was slow because 74
2 they got orders from above not to register. 11:04
3 **MR GLEASON:** We say it is likely.
4 **PROFESSOR KNIEPER:** You say that in your
5 later submission.
6 **MR GLEASON:** We say it is "likely". We
7 don't say that we know. We say this is "likely"
8 because the mayors had received orders from above.
9 We do know that they received orders from above.
10 Unfortunately it is going to be impossible for us to
11 know when those orders were received. I cannot
12 answer that question.
13 **MR FORTIER:** But you have heard many times
14 that the orders from above. Have you come to them
15 or were you coming to them on slide 42? Shall we go
16 through it together? Talking with the President of
17 the Floresti District, he told me there is a
18 company, Bio-Alianta, but the other contracts,
19 Laguardia SRL, should be terminated. From the
20 perspective of the Claimants, this is evidence of
21 the order from above?
22 **MR GLEASON:** Yes. This is a statement
23 given under oath in a court proceeding.
24 **MR FORTIER:** So that is the statement from
25 above?

1 **MR GLEASON:** That is the statement of the 75
2 mayor saying, "I received orders from above". 11:05
3 **MR FORTIER:** The person above is the
4 President of the Floresti District, Ruslan
5 Zelenenco. Does it go above Mr Zelenenco?
6 **MR GLEASON:** We believe it does. We will
7 be addressing that later today.
8 After the orders from above were issued,
9 the mayors in both villages endeavoured to illegally
10 and unilaterally terminate the private lease rights
11 of Laguardia with the landowners in each village.
12 This despite, very clearly under Moldovan law, such
13 mayors not having any authority to terminate
14 contracts between private parties, as very clearly
15 stated in the First Expert Report submitted by
16 Roger Gladei, paragraph 58.
17 Also this point was stated again in
18 Mr Gladei's Second Report, CEX-4, paragraph 31, and
19 was agreed upon by Professor Rusu at paragraphs 13
20 and 14, the issue of validity of agreements is one
21 to be resolved by the parties themselves, and in the
22 case of a dispute by a court, the city hall may not
23 assess the validity of a lease agreement. In other
24 words, the mayors had no business being involved in
25 the termination of private lease rights as stated by

1 Article 1 of the Civil Code of Moldova that there is 76
2 a fundamental civil law principle of prohibition to 11:07
3 interfere with private affairs as cited by Claimants
4 expert report, No 4, the Second Report of
5 Roger Gladei, paragraph 31.5.
6 **PROFESSOR KNIEPER:** Can we go for a second
7 to your exhibit 95, which you have just mentioned.
8 You see that the mayor terminated the lease
9 agreement, but here I read in the translation --
10 I don't know whether it is a court translation -- it
11 is a termination announcement of 11 February 2011,
12 and here in my text I read that that "the lessor",
13 which means landowner terminates the agreement, not
14 the mayor.
15 **MR GLEASON:** If you could scroll down in
16 that document and look at the actual documents
17 themselves.
18 **PROFESSOR KNIEPER:** I do not have the
19 Romanian. I just took the translation. I see the
20 signature of the lessor and then I see the mayor's
21 signature also, but the declaration is definitely
22 from the landowner and not from the mayor.
23 **MR GLEASON:** There was a signature of the
24 mayor under colour of authority in this case
25 supporting this declaration from --

<p>1 PROFESSOR KNIEPER: The termination was 2 expressed by the landowner and not by the mayor. 3 MR GLEASON: The terms of the lease for 4 termination – 5 PROFESSOR KNIEPER: It might be legally, 6 he might not be entitled to terminate, but the 7 declaration was done by the landowner and not by the 8 mayor. 9 MR GLEASON: And supported by the mayor. 10 PROFESSOR KNIEPER: That is a different 11 matter, but we are still in private/public law. A 12 landowner tried to terminate the lease contract. Is 13 that correct or not? 14 MR GLEASON: Not appropriately, but the 15 allegations show that there are these requests from 16 some landowners. 17 PROFESSOR KNIEPER: You want to say it is 18 not correct what I say, that the landowners tried to 19 terminate the lease agreements? 20 MR GLEASON: Some of them may have, yes. 21 The documents speak for themselves. They do 22 PROFESSOR KNIEPER: It seems not to, 23 because I understand it differently from you. 24 I understand this is an expression of will, to 25 terminate a private agreement by a private</p>	<p>77 11:08</p> <p>1 unilateral agreement, and by court decision, and 2 none of those circumstances exist here. Zero. So 3 it is unclear why the mayor was getting involved in 4 this private relationship 5 THE PRESIDENT: On exhibit C-95, the first 6 page is the number C-95. You then have an English 7 translation and you have then got a huge number of 8 pages down of original language text. Is the 9 translation of page 2 of this document, signature of 10 the lessor, is that the fifth page down, just to be 11 clear? 12 MR GLEASON: I guess that would be the 13 first of those many, many documents. 14 THE PRESIDENT: If we look at that 15 original language text, just going down, the bit 16 where it says "the Varvareuca official, Ms Ivanes, 17 NF ..." on page 5, is that the bit immediately above 18 the date, 11/02/2011? 19 MR GLEASON: That is right, and 20 unfortunately on some of these copies the stamp is 21 faded. 22 THE PRESIDENT: Whose signature on the 23 right-hand side? 24 MR GLEASON: That is Mayor Nina Ivanes. 25 THE PRESIDENT: Your position is, if I</p> <p>79 11:10</p>
<p>1 landowner, vis-à-vis a private contracting party. 2 That is what I read. Then we have a confirmation by 3 the mayor, but the declaration is definitely to my 4 understanding from the landowner and not from the 5 mayor. 6 MR GLEASON: If we can turn back to slide 7 46, page 23 of the written presentation, there is a 8 fundamental civil law principle of prohibition of 9 interfering with private affairs, so the mayor has 10 absolutely no business putting any name, signature 11 or any other act under the colour of authority, 12 under any termination notification filed by 13 landowners in this case. They had no business doing 14 this, absolutely none under the law, and it was an 15 act under the colour of authority. That is the 16 Claimants' position on that particular point. 17 If I may point out, I also point out that 18 the termination of a lease was not to be done 19 unilaterally by landowners. The terms for 20 termination of a lease are very clear in this case. 21 The lease contract terminates in very limited cases, 22 expiration of a contract, a declaration of 23 invalidity which comes from the court, not the 24 landowners, cancellation of the contract, and 25 cancellation would be by mutual agreement, not</p>	<p>78 11:09</p> <p>1 have understood, that a request for termination has 2 come in by the private lessor, that it has then been 3 signed and, in effect, approved by the mayor, and 4 that is an act the mayor was not authorised to do? 5 MR GLEASON: That is absolutely correct. 6 THE PRESIDENT: Please proceed. 7 MR GLEASON: Again, there is no reason for 8 the lessees at that point to even have complaints 9 THE PRESIDENT: Signed by the lessor and 10 the mayor. 11 MR GLEASON: Signed by the lessor and the 12 mayor, that is right. There are some concerns that 13 Claimants have concerning the authenticity of some 14 of the signatures of lessors, but we are not going 15 to get into that right now. 16 I would like to highlight that Claimants 17 could not possibly have been in breach of the 18 contract as lessors claimed under these lease 19 termination notifications, as the preparatory works 20 had taken place and Claimants' payment obligations 21 were not due for another ten months. It was all 22 very mysterious. I very much understand your 23 confusion on the point because it was a mysterious 24 thing. If you are confused about what was going on 25 now, imagine how Mr Grot felt in 2011.</p> <p>80 11:12</p>

1 **THE PRESIDENT:** How many pages have we got 81
2 here? It is like hundreds of pages. How do you 11:13
3 explain that on the same day hundreds of private
4 lessors all make an application unilaterally to the
5 mayor's office?
6 **MR GLEASON:** This is why we have some
7 concerns about the authenticity of these documents.
8 **THE PRESIDENT:** It may not be only or at
9 all a matter of authenticity. The question is what
10 propels hundreds of individual lessors on the same
11 day to make an application for termination? One
12 interpretation -- I am not saying it is my view --
13 is that one could infer from that that someone was
14 organising something somewhere?
15 **MR GLEASON:** That is a very reasonable
16 inference.
17 **THE PRESIDENT:** I'm not saying it is my
18 view, but it is striking that you have one page of
19 translation, they are all in identical terms, and
20 there are then hundreds of pages of signed lessor
21 and mayorally signed documents. They are all signed
22 by the mayor. On a single day -- they are all dated
23 11 February -- the mayor receives hundreds of pieces
24 of paper and she signs all of them.
25 **MR GLEASON:** And stamps all of them. We

1 Claimant first found out that these hundreds of 83
2 documents had been signed? 11:16
3 **MR GLEASON:** Some time later.
4 **THE PRESIDENT:** What do you mean?
5 **MR GLEASON:** We don't know for Cosernita,
6 it is not clear. We know that it was not at any
7 time in the month, or even months following these
8 documents being signed. If we look at C-95, we can
9 see that these terminations, signed on
10 11 February 2011, were not sent until 15 March 2011,
11 so over a month later, and this is for Varvareuca,
12 this is after the date of the disposition in
13 Varvareuca, which we will turn to shortly.
14 **THE PRESIDENT:** This is the page 3. It is
15 called "Petit Paquet Recommande". So it is a
16 registered letter that has gone to ICS Laguardia in
17 Chisinau.
18 **MR GLEASON:** And that is on 15 March 2011,
19 and if you look down, I am sorry it is in Romanian,
20 we didn't translate this part, but page 4 is a
21 "return to sender" notice dated I believe 24 March
22 **THE PRESIDENT:** That is page 4 on the
23 documents. Obviously Respondent will have a chance
24 to address this. You say this never arrived
25 **MR GLEASON:** They were never delivered

1 have the originals if you would like to see them. 82
2 I would also like to point out, staying on 11:14
3 these termination notifications for a moment, there
4 is no timely notice of these unlawful attempts to
5 terminate Laguardia's leases provided to Claimants
6 at any time. They were never communicated in a
7 timely fashion to the Claimants. Nothing on record
8 shows that the termination notifications from
9 Cosernita were ever even communicated to Claimants
10 prior to the lease registry dated 12 October 2012
11 being communicated to the Claimants a year and a
12 half later.
13 **THE PRESIDENT:** Just to be clear, what
14 notice was the Claimant given before
15 11 February 2011 as to the transmission to the
16 mayor's office of all these documents?
17 **MR GLEASON:** Nothing.
18 **THE PRESIDENT:** What is your submission on
19 the opportunity that was given to the Claimant to
20 have an opportunity to respond to the mayor's
21 imminent signature of all of these documents?
22 **MR GLEASON:** There was absolutely no
23 communication, no opportunity. This was happening
24 behind closed doors.
25 **THE PRESIDENT:** When do you say the

1 **THE PRESIDENT:** How did you get hold of 84
2 this? Could you remind us? 11:17
3 **MR GLEASON:** We would have to ask Mr Grot
4 and perhaps his employees who were working for him
5 at that time, but he does have them now, that is
6 clear. The point is that there is no timely notice
7 whatsoever concerning these illegal lease
8 notifications. The focus was on the written
9 pleadings by Respondent, all on the dispositions --
10 **PROFESSOR KNIEPER:** Did the Claimants have
11 any contact with his contractual parties at all?
12 **MR GLEASON:** Yes, there were a variety of
13 meetings held.
14 **PROFESSOR KNIEPER:** Because in principle
15 it would have been the obligation of the two
16 contracting parties to talk about culmination of a
17 contract.
18 **MR GLEASON:** Yes.
19 **PROFESSOR KNIEPER:** Did they ever have
20 contact? The question is did the Claimant ever
21 contact any of the landowners?
22 **MR GLEASON:** Concerning these
23 terminations?
24 **PROFESSOR KNIEPER:** Anything?
25 **MR GLEASON:** Yes, absolutely.

1 **PROFESSOR KNIEPER:** Or did you simply rely 85
2 on the mayors and the cadastral agents? 11:18

3 **MR GLEASON:** No, absolutely not. There
4 were multiple meetings held throughout the fall of
5 2010?

6 **PROFESSOR KNIEPER:** And then no more
7 contact?

8 **MR GLEASON:** Farming started, so they were
9 on the landowners' land and presumably there was
10 day-to-day contact concerning the farming
11 operations.

12 To focus this back on the actual
13 termination process, no, the Claimants did not
14 discuss termination of these leases with the
15 landowners because they were never informed of the
16 alleged terminations of the landowners. But, yes,
17 there was contact. This was an ongoing farming
18 operation in small villages. People see each other,
19 people live next to each other, people talk to each
20 other.

21 **PROFESSOR KNIEPER:** And they talk about
22 many things but not about the termination and the
23 intention to terminate these contracts?

24 **MR GLEASON:** That never came up. It was
25 very strange and mysterious. The private lease

1 of Cosernita. 87
2 The exact same thing happened in 11:21
3 Varvareuca. Again, there was no notification of
4 Disposition 1-A in Cosernita, no notification of
5 Disposition 2 in Varvareuca, and while the Claimants
6 had not even been notified of these dispositions,
7 they were used by the local third party competitor,
8 Bio-Alianta, in court proceedings to obtain ex parte
9 injunctions.

10 The Respondent argues that the injunctions
11 obtained by Bio-Alianta had nothing to do with
12 dispositions. They say that at multiple points in
13 their Rejoinder, but that simply ignores the record.
14 Slide 54. We see that Disposition 2, we see the
15 complaint filed by Bio-Alianta for this ex parte
16 injunction, which says "the copy of Disposition 2 is
17 attached". It was attached to the complaint. The
18 ex parte injunction was clearly based on the
19 disposition which had not even been communicated to
20 Laguardia.

21 The same goes for Cosernita. Now
22 Respondent argues that C-97 and C-33, Bio-Alianta's
23 Statement of Claim for the ex parte injunction along
24 with the ex parte injunction itself, do not mention
25 Disposition 1-A. This ignores C-105, which is the

1 termination notifications were not admissible. 86
2 **THE PRESIDENT:** Please continue. 11:19

3 **MR GLEASON:** I would like to also
4 communicate to the Tribunal that while this was not
5 being communicated to Laguardia, it was being
6 communicated to the local third party competitor,
7 Bio-Alianta. This is concerning both the lease
8 terminations and the famous dispositions, which we
9 will get to next.

10 How do we know there was ongoing
11 communication? Slide 51, page 26 of the printed
12 copy. During this process of Laguardia having their
13 leases illegally and unilaterally terminated, whilst
14 this was not being communicated to Laguardia, there
15 were ongoing communications with the third party
16 competitor.

17 We need to look at the dispositions. We
18 will now turn to the famous dispositions, which have
19 been subject of much of the conversation in this
20 dispute. We look at Disposition 1-A. We know that
21 that was, like the terminations, not immediately
22 provided to Laguardia SRL, and immediately used in
23 Floresti District Court by the local competitor
24 before Laguardia had even received proper
25 notification of this document created by the mayor

1 order from the court cancelling the injunction which 88
2 shows that the representative of Bio-Alianta, Oleg 11:22
3 Utica, used the mayor's disposition to argue that
4 registration of Laguardia's leases was forbidden.
5 Thus, Disposition 1-A was very clearly used if we
6 look at the record to obtain the ex parte injunction
7 in Cosernita.

8 So, again, to summarise on this point,
9 Disposition 1-A is issued in Cosernita.
10 Disposition 2 is issued in Varvareuca.
11 No notification of Disposition 1-A or
12 Disposition 2 is given to Laguardia. At the same
13 time, Bio-Alianta has copies of these dispositions
14 in their hands and they go to the local court to
15 obtain ex parte injunctions against Laguardia
16 blocking them from accessing their validly-leased
17 lands.

18 I would like to point the Tribunal's
19 attention to slide 60. Slide 60 is on page 30 of
20 the printed copy. Slide 60 demonstrates that, even
21 before the injunctions were in place, the mayors in
22 these villages were blocking Laguardia from
23 accessing the leased lands.

24 If we look at C-101, which is a statement
25 of Ion Tugui, attached to minutes of a court

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11:24

1 hearing, a statement given in the context of a court
2 hearing, where he says, "For more than a month, the
3 mayor does not allow us; he refuses to grant us the
4 contracts so we can't do the land work". In other
5 words, we don't have access to our leased lands; we
6 can't perform our farming practices or operations.
7 This statement was given on 8 April 2011.
8 The Cosemita injunction was not granted
9 until 24 March 2011. The Varvareuca injunction was
10 12 March 2011. Again, 8 April 2011, Ion Tugui is
11 saying we haven't been working the lands for more
12 than a month, so in other words, stretching back to
13 the very latest, early March, more likely
14 late February. So there was absolutely no access to
15 the land. This is just another part of the pattern
16 of state conduct which exists in this case.
17 By this point there was an unexplained
18 delay in the registration of the leases. There was
19 an unlawful attempt to terminate the lease rights
20 between Laguardia and the landowners under the
21 colour of authority of the mayor. There were
22 dispositions issued, illegally, retroactively
23 refusing and simultaneously deleting Laguardia's
24 leases from the lease registries. Laguardia had
25 been blocked from accessing the lands despite no

90
11:25

1 injunctions being in place, despite not having been
2 notified about any attempts to terminate their
3 leases, despite not having any notice of these
4 dispositions which affect their rights, and the
5 dispositions do affect rights. That is addressed in
6 the slide, as well as Claimants' pleadings, although
7 I may have to leave that point behind in the
8 interests of time today.
9 The investment by this point has been
10 compromised and that extends to the remaining
11 village of Rosietici, and I will address that at the
12 end of my presentation. Yet the pattern of state
13 conduct continued. It did not end there.
14 There was a meeting in late March 2011 –
15 **THE PRESIDENT:** I think we are quite
16 behind on time.
17 **MR GLEASON:** I am quite comfortable with
18 where I am on timing. If I may just highlight a few
19 more points on the pattern of state conduct,
20 Claimants really feel this is an important point
21 which affects many of the other arguments at issue
22 in this case.
23 **THE PRESIDENT:** I want to make sure you
24 can get through this.
25 **PROFESSOR KNIEPER:** I want to take you in

91
11:26

1 your Reply to paragraph 405, where you say, "the
2 Claimants allege (you allege) that the Mayor went to
3 the fields alongside local villagers and Bio-Alianta
4 to prevent ICS Laguardia SRL from accessing its
5 leased lands". But there you say it is not the
6 mayor alone; it is also the landowners who block
7 access to the land. Is that what you say?
8 **MR GLEASON:** The reference that you are
9 referring to actually happens later, and that is
10 after the ex parte injunctions had been cancelled
11 and before separate injunctions had been put in
12 place. It is not clear exactly who was present on
13 those occasions, but what is clear is that the mayor
14 was present and representatives of the third party
15 company were present and that threats were made by
16 the mayor towards Laguardia SRL's employees.
17 **PROFESSOR KNIEPER:** In my understanding it
18 is different when somebody says a mayor accompanies
19 landowners who want to block access to their land
20 from saying the mayor goes and blocks access to the
21 land. Would you see there is a difference in saying
22 that?
23 **MR GLEASON:** There is a difference between
24 saying the mayor goes with landowners and that the
25 mayor goes alone? Was that your question?

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11:28

1 **PROFESSOR KNIEPER:** The initial question
2 is if the landowners go to block access to their
3 land which they have leased out and/or accompanied
4 by the mayor, is a different statement from saying
5 the mayor blocks access to the land. You would not
6 see a difference?
7 **MR GLEASON:** I would see a difference here
8 clearly. There are different people involved?
9 **PROFESSOR KNIEPER:** I had the impression
10 when I read this that you wanted to say that the
11 mayor was present when the villagers went to block
12 access to this land. This is what I read.
13 **MR GLEASON:** If I could clarify that
14 point, the mayor was perhaps alongside some
15 landowners, but also alongside Bio-Alianta and not
16 just there as support, but actively preventing
17 Laguardia from exercising valid private rights.
18 That is the statement.
19 **PROFESSOR KNIEPER:** Thank you.
20 **MR GLEASON:** I would like to highlight the
21 meeting between Mr Grot and Mr Ruslan Zelenenco
22 in late March where the officials who had invited
23 him to the district, helped him set up the
24 investment, told them that the decision has been
25 made to support Bio-Alianta, there is nothing they

1 can do. The statement from Mayor Nina Ivanec that
2 the orders had come from above, which we have
3 already discussed, that statement was also made to
4 Mr Alexei Bugai in a different context. We know
5 that there was a failure to return leases and copies
6 of the registries, undermining transparency
7 concerning Laguardia's ability to evaluate their
8 rights and adjudicate their rights, and also
9 violation of the regulations on keeping agricultural
10 lease agreements. We know that the local mayors
11 generally supported Bio-Alianta, we see that in the
12 statement that we have already addressed of
13 Ms Nina Ivanec, we see that in Mayor Ianco
14 Jucareș(?) we have been discussing, blocking
15 Laguardia and standing alongside Bio-Alianta,
16 threatening Laguardia employees, despite injunctions
17 having been removed.
18 The pattern continues. Mr Fortier asked
19 earlier was the pattern limited to local officials
20 and the answer to that question is no. The pattern
21 continues up to a national level. There is a summer
22 2011 meeting where the Deputy Minister of
23 Agriculture and Food Industry says I am going to
24 need a bribe in order to give you any assistance on
25 this particular matter. There is a general failure

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11:29

1 of the central Government to respond in any
2 meaningful fashion on the various attempts of
3 Laguardia to request assistance and involvement.
4 The pattern continued throughout 2012.
5 I am not going to go through all of these points in
6 the interests of time. As you can see, there are
7 quite a few points that constitute the pattern of
8 state conduct. It is extensive and it continues
9 into 2013 and it perhaps gets worse in 2013.
10 These are the dying days of Laguardia's
11 mitigation efforts after the events of 2011.
12 Mr Grot has already left, fled, for security reasons
13 from Moldova, but nonetheless the coordination
14 between the local government and Bio-Alianta
15 continues, the local prosecutor Lilia Mitu, who
16 co-ordinates with Bio-Alianta to attack the
17 remaining Laguardia leases in Rosietici, and it was
18 under pressure from Lilia Mitu, and a
19 State Chancellery representative that the mayor's
20 office illegally terminated Laguardia's
21 registrations and attempted to legally register
22 Bio-Alianta's leases one more time in a different
23 village now.
24 Evidence on this point is particularly
25 strong because these are C-58 and C-59b are

94
11:30

1 statements of the local mayor and the local
2 cadastral which are given in 2013, so
3 contemporaneous statements in the context of a
4 criminal investigation in that district at that
5 time, and they are striking statements and I invite
6 the Tribunal, who I am sure has read these
7 statements, to read them once more.
8 There were additional events in 2013 --
9 I am not going into those events -- and the pattern
10 continued in 2014 with the unexplained closure of
11 Artur Sircu's investigation into the intervention
12 and activity in Rosietici without any reasoning or
13 notification. If I may also point to exhibit C-88
14 which is another striking exhibit showing the level
15 of government support for this local third party
16 competitor. It is an interesting and perhaps
17 disturbing read and I invite the Tribunal to read
18 that exhibit once more.
19 I would like to move on to my next point,
20 unless the Tribunal has other questions concerning
21 the pattern of state conduct which exists in this
22 case?
23 **THE PRESIDENT:** We will just take a
24 ten-minute break to allow the court reporters a
25 break. We are now at 11.30. We will start at 11.40

95
11:32

1 even if people are not in the room.
2 (Short break from 11.33 to 11.42 am)
3 **THE PRESIDENT:** Please continue.
4 **MR GLEASON:** Thank you for that
5 well-appreciated short break.
6 I would like to just before we continue
7 come back to the point concerning signatures on the
8 leases or, more accurately, the lack of signature on
9 certain leases. If I have misspoken on Moldovan
10 law, I do apologise. We would like to reserve the
11 chance for our legal expert, Mr Roger Gladei, to
12 address that issue in more detail tomorrow.
13 **THE PRESIDENT:** We have had a chance to
14 talk about the issues that came up about new
15 documents. The Tribunal's decision is that subject
16 without having seen them to the point that the two
17 additional supplementals are indeed responsive to
18 the report of Mr Peer, they are admitted and you may
19 address them, subject to the opportunity for
20 Respondent to have an opportunity to respond to
21 them. Thank you.
22 **MR GLEASON:** On that signature issue
23 I would like to make one final point. This
24 discussion about unsigned leases really only affects
25 a very small minority of the leases. Claimants

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11:33

<p>1 could take a hardline position that 99 per cent of 2 these documents do contain writing in the signature 3 block. Our calculation on the demonstrative 4 exhibit, CH-4, takes an approach which is perhaps a 5 bit more agreeable perhaps than the preferred 6 approach of the Respondent, and is a little more 7 conservative in discussing what a signature is. Our 8 legal expert may address that in a little more 9 detail tomorrow. But this question about signature 10 of leases is really only affecting a small minority 11 of the over 1500 leases at issue in this case. 12 I would like to make that point clear. 13 I would like to move on to my next point. 14 Just before the break we discussed the acts and 15 omissions attributable to the Respondent in this 16 case and discussed how it did constitute a pattern 17 of state conduct. The attributable acts and 18 omissions breach international obligations found 19 under the US-Moldova BIT in this case. This is 20 because the attributable acts and omissions 21 implicate the overall process of decision-making of 22 the Respondent towards Claimants' investments in 23 this case. The Respondent is clearly responsible 24 for the acts and omissions of local and national 25 authorities acting pursuant to their authority, but</p>	<p>97 11:44</p> <p>1 administrative faults made by local mayors in 2 interpreting the local Moldovan law, Respondent's 3 characterisation of the facts as such should very 4 much be rejected. 5 I would like to spend a few moments 6 discussing the role of the mayors in this case, 7 because that has become an issue that is disputed 8 between the parties. Respondent attempts to 9 downplay the role of mayors throughout the 10 Rejoinder. They actually claim that Claimants 11 attempt to inflate the role of the mayors by citing 12 a vague proposition in a brochure financed by two 13 regional organisations not representing the official 14 opinion of either, and that the Claimants cites no 15 Moldovan law on this issue. 16 Well, to the contrary, Moldovan law 17 requires the mayors to carry out the constitution 18 and Moldovan legislation and its preventions 19 protecting foreign investment as stated very clearly 20 in the first expert report of Claimants, 21 Roger Gladei's First Report. Also, very 22 importantly, Moldovan law requires mayors to carry 23 out international law. Respondent's arguments that 24 Claimants do not cite to Moldovan law for this 25 proposition and this proposition is not supported by</p> <p>99 11:47</p>
<p>98 11:46</p> <p>1 also very importantly in this case acting under the 2 colour of authority, which includes all of the above 3 allegations. As the Tribunal is well aware, the 4 obligations in this case are determined by the BIT 5 and Claimants do stand behind the BIT breaches 6 alleged in the written pleadings and will not 7 restate those here today. 8 I would like to discuss the Respondent's 9 approach to focusing only on the dispositions in 10 this case. Despite their attempts to focus only on 11 the dispositions, we are very concerned about the 12 overall process of Respondents' decision-making, and 13 it does rise to the level of violating international 14 obligations or international delict in this case. 15 This is not, despite Respondent's best 16 attempts to describe it as so, this is not a case 17 concerning a single aberrant decision of a low level 18 local official, but rather there is a pattern of 19 state conduct in this case. Respondents, as the 20 record shows, public officials repeatedly worked 21 with, and on behalf of Bio-Alianta, the local third 22 party competitor, to illegally interfere with the 23 Claimants' investment to destroy their private 24 contract rights in violation of the BIT. This is 25 not a case of simple errors or mistakes or trivial</p>	<p>100 11:48</p> <p>1 Moldovan law is a bald-faced misstatement of 2 Claimants' submissions. 3 I turn the Tribunal's attention to 4 section 6 of Mr Gladei's Second Report, CEX-4, at 5 paragraph 28, which says that the mayor is the head 6 of local public administration. In 28.2.1, "the 7 Mayor has the obligation to comply with 8 international treaties to which the Republic of 9 Moldova is a party". This was cited by the 10 Claimants on multiple occasions in the Reply. Those 11 citations are on the slide. 12 Additionally, the Respondent goes to great 13 lengths to discredit the 131-page reports of the EU 14 and the Council of Europe to highly respected 15 international organisations, by describing it as "a 16 brochure financed by two regional organisations". 17 This is a report, whether the official opinion of 18 these organisations or not, which is very much in 19 accordance with the Moldovan legal principles and 20 cites the same legal principles that Claimants' 21 legal experts also cites concerning the role of 22 mayors in the Republic of Moldova. 23 Claimants do not try to inflate the role 24 of the mayors, they cite the actual law concerning 25 the role of the mayors, and we would like to point</p>

1 out one last point that the citation, 101
 2 Professor Rusu's report, does not directly address 11:49
 3 this issue in any way, so Tribunal should disregard
 4 Respondent's attempts to distance itself from the
 5 acts of local mayors in this case
 6 **MR FORTIER:** What is, in your own words,
 7 very briefly, the position of the mayors in this
 8 case? What is it?
 9 **MR GLEASON:** They were important players
 10 concerning the acts and omissions which breach
 11 international treaty obligations in this case. They
 12 have significant authority in Moldova and they have
 13 the obligation to uphold international treaties,
 14 they breached that obligation in the context of the
 15 US-Moldova BIT in this case. I would also like to
 16 highlight that the Claimants' allegations do not
 17 focus solely on the mayors
 18 **MR FORTIER:** I know, but I am focusing on
 19 the mayors.
 20 **MR GLEASON:** Even if we do focus solely on
 21 the mayors, acts of the mayors by themselves could
 22 rise to the level of breaching BIT obligations, as
 23 stated by Moldovan law.
 24 Which leads me to my next argument-- can
 25 I get a time update?

1 not, by themselves, rise to the level of a breach of 103
 2 international obligations. 11:52
 3 Third, therefore the only way for
 4 Claimants to have BIT claims based on the
 5 dispositions is that they actually challenge the
 6 dispositions through local procedures and the
 7 challenge did not actually resolve but compounded or
 8 made the problem worse. The reasoning that
 9 Respondent bases its argument on is that these local
 10 acts by themselves do not represent the overall
 11 process of the state's decision-making towards the
 12 Claimants' investment. This argument must fail for
 13 both factual and legal reasons.
 14 As we have already discussed, the case is
 15 not about the single aberrant act of a low level
 16 official. First and foremost, as Mr Fortier just
 17 asked, what is the role of mayors? Mayors are not
 18 equivalent to low level clerks, but rather had
 19 significant authority in the Republic of Moldova,
 20 and additionally it is not only about the mayors;
 21 there are other local, regional and even national
 22 officials implicated in this case.
 23 The Respondent also ignores the other
 24 attributable acts and omissions committed by the
 25 local, regional and national authorities pursuant to

1 **THE SECRETARY:** 48. 102
 2 **MR GLEASON:** -- which is concerning 11:51
 3 Respondent's arguments addressing Claimants' efforts
 4 to seek correction, a large part of Respondent's
 5 pleadings, a large part or element of its defence is
 6 based on the idea that Claimants should not prevail
 7 on its BIT claims since they failed to seek
 8 corrections of the dispositions, and this argument
 9 focuses only on the dispositions and relies on the
 10 allegation that the dispositions were single
 11 aberrant acts of low level officials or trivial
 12 administrative faults and there are a plethora of
 13 citations to the record concerning Respondent's
 14 argument on that point.
 15 Respondent essentially advocates that the
 16 only path for Claimants to address was through the
 17 administrative courts no matter what. This argument
 18 is based on erroneous assumptions.
 19 The first erroneous assumption is that the
 20 only acts and omissions of the Respondent implicated
 21 by Claimants' BIT claims are the dispositions. That
 22 is not the case.
 23 The second is that, as such, the
 24 dispositions were single, aberrant acts of low level
 25 officials, or trivial administrative faults that do

1 or under the colour of authority. It is clear from 104
 2 the record that the rule of law, at least in the 11:53
 3 context of Claimants' investment in Floresti, faced
 4 serious difficulties in 2011 and the years
 5 thereafter and, as demonstrated through the
 6 Claimants' pleadings, a pattern of state conduct
 7 does exist. Thus, the overall process of
 8 Respondent's decision-making towards the Claimants'
 9 investment rises to the level of violating
 10 international obligations or international delict
 11 The Claimants are not in any way seizing
 12 on low level act of maladministration as an excuse
 13 to abandon the investment and bring BIT claims
 14 similar to some of the cases that Respondent cites
 15 in support of its argument, and those cases are
 16 distinguishable from the case in front of the
 17 Tribunal today. The investment in this case was
 18 very clearly not abandoned after the dispositions.
 19 There was in fact years of litigation following the
 20 dispositions alongside mitigation efforts under very
 21 difficult circumstances
 22 Even taken at face value, the Respondent's
 23 argument concerning seeking correction should fail.
 24 The Claimants have demonstrated that this case is
 25 not about single aberrant acts of low level

<p>1 officials or trivial administrative faults, but a 2 pattern of state conduct. The factual premise upon 3 which Respondent's arguments is based does not exist 4 in this case. Additionally the Claimants did pursue 5 local remedies as addressed in section 7K of the 6 Reply, which I will not rehash for the Tribunal here 7 today. That is outlined in some detail in the 8 written pleadings, so we won't address that again. 9 I would like to, before moving on to my 10 next point, just test the Respondent's argument on 11 this issue. I would ask what would Laguardia's 12 attempt at Administrative Court actually have looked 13 like in this case? How was the Administrative Court 14 equipped to handle a holistic attack on investment 15 beyond just the dispositions? Would we have had 16 multiple lawsuits for each act or omission 17 attributable to the Respondent in this case? It is 18 not clear. Would the mayoral lease terminations and 19 statements from the mayors, would those not have 20 been used to defend against Laguardia's claims 21 attacking the dispositions? If we look closely at 22 the record we see that is exactly what happened in 23 some of the cases which did occur in this case, at 24 the Balti Court of Appeals concerning the Varvareuca 25 disposition, and at Chisinau Economic Court</p>	<p>105 11:54</p> <p>1 in response to Claimants' reply argument concerning 2 Administrative Court judges' discretion. 3 This is an attempt of the Respondent to 4 twist Claimants' words. Actually the Reply of 5 Claimants clearly said that "judges have discretion 6 to stay or suspend administrative acts", and 7 Professor Rusu actually agrees with this. There is 8 no real dispute on this point. He says that 9 suspension by Administrative Court of the effects of 10 the challenge administrative act is not automatic, 11 it should be requested by the Claimant, and 12 paragraph 70, judge's decision on granting 13 suspension is discretionary, not arbitrary. The 14 judge may not arbitrarily deny a request for 15 suspension, but the grounds in paragraph 33.3 of 16 Mr Gladei's Second Expert Report are met. Clearly 17 we have agreement between the experts concerning 18 Administrative Court authority discretion on 19 challenges and suspending administrative acts. 20 But if we dig a little bit further we 21 start to see that the Respondent's arguments 22 concerning administrative suspension of dispositions 23 is incoherent with the totality of their arguments. 24 On the one hand, in the Counter-Memorial they state 25 that all the Claimants had to do in this case was</p> <p>107 11:57</p>
<p>1 concerning the Cosemita disposition. Both of these 2 courts found that the SRL Laguardia leases were not 3 registered, citing the disposition, but also 4 referencing the unilateral mayoral terminations of 5 the contracts and also statements of the mayors in 6 those cases. 7 Another important question for the 8 Tribunal to address in engaging in this 9 hypothetical: would local officials have even 10 honoured Administrative Court decisions? In this 11 case there is evidence demonstrating an 12 unwillingness of local mayors to follow court 13 decisions in the context of ignoring the 14 cancellation of ex parte injunctions. Remember, 15 Bio-Alianta obtained ex parte injunctions blocking 16 Laguardia from its leased fields. Those injunctions 17 were cancelled, but that did not matter to the 18 Cosemita mayor, for example, as we see various 19 citations to the record on that point. 20 My last point here is don't administrative 21 judges actually have discretion and, as such, 22 shouldn't we ask yourselves how that discretion 23 would have been used? Respondent says a party may 24 request suspension of a challenged administrative 25 act which cannot arbitrarily be denied, and that is</p>	<p>106 11:55</p> <p>1 challenge the dispositions in Administrative Court. 2 The dispositions could be challenged on the merits 3 with suspensive effects. In other words, if the 4 Claimants had merely gone to local 5 Administrative Court, we would not be here today. 6 The problem would have been solved. That is the 7 thrust of the argument. 8 On the other hand, the Respondent's expert 9 agrees that the Administrative Court judges have 10 discretion concerning stay or suspension of an 11 administrative act, and that for discretion to be 12 exercised in favour of suspension, that the decision 13 would need to be based in part on strong doubts on 14 the presumption of legality of the contested 15 administrative act. That is the standard stated in 16 Mr Gladei's report and agreed upon by Mr Rusu. 17 At the same time, the Respondent argues 18 that the dispositions were a reasonable 19 interpretation of Moldovan law (paragraph 41 and 20 paragraph 50 of Professor Rusu's First Report). 21 So which is it? All the Claimants had to 22 do was challenge the dispositions in 23 Administrative Court, and there are strong doubts on 24 the presumption of legality of the contested 25 administrative acts; in other words, the</p> <p>108 11:58</p>

1 dispositions. Or, on the other hand, if the
2 dispositions are a reasonable interpretation of
3 Moldovan law, then any attempt to suspend the
4 administrative acts would have likely failed. The
5 arguments are not coherent and this demonstrates a
6 lack of strength of these arguments in this case.
7 Fortunately this Tribunal is not required
8 to engage in the speculation. It is an interesting
9 exercise to test the strength of their arguments,
10 but it is not required because there is neither a
11 requirement to pursue a local remedy, nor a
12 requirement to seek correction under the BIT. And
13 to find so would be to do by the back door that
14 which the BIT and ICSID convention expressly
15 excluded by the front door, and that is not my
16 language but the language of the Helnan ad hoc
17 Annulment Committee from 2010 which is cited by the
18 Respondents.
19 We see that nationals and companies of
20 neither party have access to binding international
21 arbitration without first resorting to domestic
22 courts. The BIT cannot be clearer on this point.
23 Local remedies are not needed and to impose such a
24 requirement as a constitutive element – Claimants
25 are not confused about the jurisdictional versus

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11:59

1 unique circumstances which are distinguishable from
2 the case in front of the Tribunal today, and
3 Claimants' request that this attempt be rejected.
4 To summarise my arguments on the
5 requirement or lack of a requirement to seek
6 correction, the idea that the dispositions were
7 based on a reasonable interpretation of law is
8 misguided. It ignores relevant factual context and
9 it should be rejected. The argument that the
10 illegal acts in this case are limited to simple
11 aberrant acts of low level officials or trivial
12 administrative faults, ignores the pattern of state
13 conduct in this case. It also ignores the role of
14 the mayors under Moldovan law and it should be
15 rejected.
16 The notion that the illegal acts would
17 have been corrected by the administrative courts in
18 this case had different procedures been followed by
19 the Claimants is highly speculative and should be
20 rejected. The Respondent ultimately ignores the
21 myriad attempts that Claimants did engage in to seek
22 correction and remedies in this case. Thus,
23 Respondents' arguments on this point should fail.
24 If I may, may I please have a time update?
25 **THE SECRETARY:** One hour.

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12:01

1 substantive nature of Respondent's arguments– but
2 to impose a requirement to seek local remedy as a
3 constitutive or substantive element of Claimants'
4 claims without first resorting to domestic courts
5 would render the language of the BIT and the Letter
6 of Submittal meaningless in this particular case.
7 If I can cite just another quote from
8 Helnan, which I think is very instructive in this
9 particular instance, it says that "it would empty
10 the development of investment arbitration of much of
11 its force and effect if, despite a clear intention
12 of state parties not to require the pursuit of local
13 remedies as a precondition to arbitration, such
14 requirement to be read back in as part of the
15 substantive cause of action".
16 One more case cited by Respondent, it is
17 the ECE case, which says, "Where recourse to the
18 local courts has been held to be relevant to the
19 question of breach, that does not make it into a
20 mandatory precondition for the admissibility of the
21 claim before an investment Tribunal, nor into a
22 constitutive requirement for the claim".
23 So what Respondent really tries to do here
24 is they try to create a general rule from a
25 patchwork of disparate cases based on factually

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12:00

1 **MR GLEASON:** There is a brief argument
2 made by the Respondent concerning the idea that
3 Claimants could still enforce their lease rights
4 against Bio-Alianta and thus the dispositions did
5 not affect Claimants' rights in this case, so there
6 is no causation. It is this argument concerning bad
7 faith third parties. I would like to very briefly
8 address that argument and point out another
9 inconsistency in Respondent's pleadings.
10 The situation concerning Claimants'
11 ability to enforce the lease rights against
12 Bio-Alianta, and the argument here is that even if
13 the dispositions – if I can take a step back.
14 The Respondent's arguments on bad faith
15 third parties is that even if the dispositions did
16 take away enforceability of the lease rights against
17 third parties, it did not matter in this case
18 because Claimants could still have enforced those
19 private lease rights against Bio-Alianta because
20 Bio-Alianta was a bad faith third party.
21 We need to analyse the situation through
22 the lens of what the Claimants knew in 2011, not
23 what everybody knows today in 2017. What Claimants
24 repeatedly say is that Bio-Alianta was working in
25 concert with local authorities. The attempt to

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12:03

<p>1 raise this argument that Claimants' right were not 2 affected and there was no causation in this case 3 because Claimants could have enforced their rights 4 still against Bio-Alianta is another speculative 5 argument which tries to set up an impossible 6 situation for the Claimants. They say that 7 Laguardia failed to plead that Bio-Alianta acted in 8 bad faith. They could have made that argument and 9 still enforced their lease rights. We see that at 10 various points of the Rejoinder, at the executive 11 summary, paragraph 83, paragraph 305.</p> <p>12 If we again put ourselves in this position 13 of Laguardia in 2011, we have to think that 14 Bio-Alianta would have likely argued that they were 15 unaware of any existing rights. They would have 16 argued that at the time their leases were 17 registered, the Laguardia leases were terminated by 18 the mayors and not registered as a result of the 19 dispositions, so there is no way they could be 20 considered a bad faith third party, and again they 21 would have cited various pieces of the evidentiary 22 record on file in this case. For example, the 23 mayoral lease terminations, the retroactive refusal 24 and simultaneous deletion of Laguardia's leases via 25 the dispositions, and also the lease registries</p>	<p>1 attempted to talk to Bio-Alianta about the conflict 2 they threatened his life and the security of his 3 family in Colorado.</p> <p>4 Respondents tried to hold this against the 5 Claimants stating that the case was dismissed 6 without prejudice. He could have fulfilled the 7 requirements, in other words, engaged in amicable 8 dispute resolution with Bio-Alianta, a party that 9 had threatened his life previously, and then refilled 10 their claim. They did not.</p> <p>11 This line of reasoning ignores very 12 important facts. By this time it was December 2012, 13 two farming seasons had been lost, the investment 14 had been destroyed, Mr Grot had been forced to leave 15 Moldova by this point and to wind up his mitigation 16 efforts while he was facing serious personal 17 security threats.</p> <p>18 Respondent says that they are not trying 19 to impose exhaustion of remedies on the Claimants 20 but they keep arguing that facts surround 21 registration are irrelevant. Mr Grot should have 22 returned again and again to court to continue to 23 enforce his rights even when being threatened with 24 death, and this misguided logic should be rejected 25 by the Tribunal.</p>
<p>1 themselves.</p> <p>2 We also know that Bio-Alianta's argument 3 that they were not acting in bad faith probably 4 would have been supported by the local authorities. 5 I cite once again to the now famous statement 6 of Mayor Nina Ivanec (exhibit C-94), where she says 7 that she was instructed from above to terminate the 8 Laguardia leases for the benefit of Bio-Alianta.</p> <p>9 The Respondent further argues that all the 10 Claimants had to do was try to sue. All they had to 11 do was sue the lessors and sue the third parties. 12 They also identify the parties agree that Claimants 13 did attempt to enforce their leases against 14 Bio-Alianta and the lessors, and the case was 15 dismissed in 2012. The judge required the Claimants 16 to attempt to engage in amicable dispute resolution 17 procedures with Bio-Alianta before proceeding to 18 evaluate the claims.</p> <p>19 Now this ignored the futility argument 20 raised by Laguardia in this case. This ignored the 21 other ongoing cases between these parties. This 22 ignored the parallel State Chancellery proceedings, 23 and it also ignores a very important fact that 24 I would like to highlight. Claimants would like to 25 remind this Tribunal that when Mr Grot previously</p>	<p>1 I have one last point I would like to make 2 before handing the baton on to my colleague, Coren 3 Hinkle, who will discuss issues relating to Moldovan 4 law, who is more versed in these issues than I am, 5 and that is the situation in Rosietici. There are a 6 couple of points I would like to make on this.</p> <p>7 First and foremost, the damages and the 8 loss of the investment in Rosietici can be traced 9 back to Disposition 2 in Varvareuca. How? Well, 10 because after the second disposition over two-thirds 11 of the investment had been destroyed by that point. 12 All attempts after this point were survival or 13 mitigation efforts, and instead of focusing on 14 harvesting in Rosietici, Claimants had to 15 drastically change plans, change the remaining 16 operations as they were trying to pick up the pieces 17 of the broken investment in the other villages.</p> <p>18 That is demonstrated by the record. By 19 August 2011, just a few months later, Claimants had 20 entered into new arrangements with the third party, 21 been growing different crops under servicing 22 agreements. It was a totally different plan. And 23 to be clear, had the intervention in the other two 24 villages never taken place, there would have been 25 absolutely no reason to enter into these</p>

1 negotiations with a new third party. The change of 117
2 plans, negotiations, would not have taken 12:09
3 application, but they were forced into this
4 mitigation situation as a consequence of the
5 government's intervention in the other villages.
6 The last point I will make is that the
7 Rosietici leases were not properly terminated. The
8 Respondent tried to say that the Claimants should
9 not be able to claim a fourth year of damages for
10 Rosietici because the leases were properly
11 terminated in that village. That is not clear from
12 the record. It ignores C-88, which again is a very
13 interesting exhibit -- it is the information note of
14 prosecutor Artur Sircu -- where he calls into
15 question the validity of the lease termination
16 notifications filed in bulk, much like the lease
17 termination notifications we have addressed in
18 Varvareuca. Filed in bulk, all at one time, 340
19 persons allegedly signed and submitted these lease
20 notification terminations on one day.
21 On investigating this, the prosecutor
22 found that 38 of these notifications had been signed
23 by dead people and 44 had been signed by people who
24 were abroad at that time, and thus the prosecutor
25 concluded that the documents were suspected to be

1 Again, just by way of introduction, my 119
2 name is Coren Hinkle, I will be discussing some of 12:13
3 the relevant legal matters. While we certainly do
4 defer to the expertise of the Moldovan legal
5 experts, including Professor Rusu, but most
6 assuredly Mr Rod Gladei, I will do my best to
7 attempt to summarise some of the more pertinent
8 Moldovan legal issues today.
9 Fortunately, Mr Gleason covered many of
10 them, so I am going to attempt to address directly
11 just a handful of the issues that are relevant that
12 are in dispute here. I do have an outline. The
13 Tribunal may review the outline -- I am sure they
14 will -- but it is outlining some of the issues that
15 I intend to discuss. There are a number of disputed
16 issues specifically. I intend to hone in on issue
17 no 1, which is the reasonableness of the
18 Respondent's assertion that the city hall's action
19 was reasonable, and that this must be taken in light
20 of all of the state conduct that has been exhibited
21 towards Laguardia, and also take in the context that
22 in order to justify those dispositions, the city
23 hall had to do two things: they had to redefine the
24 term "refuse", and then ignore the term "only if".
25 It is also of note that the lack of

1 counterfeit. These lease terminations notifications 118
2 were suspected to be counterfeited. Which brings us 12:10
3 back to that interesting question: how could all of
4 these documents been filed in one day by such a
5 large group of people? I think we have some insight
6 by looking at this exhibit here.
7 The attempt to exclude the fourth year of
8 losses ignores Claimants' ex ante approach to
9 damages, which will be addressed in more detail by
10 Andrew Astuno.
11 With that I will pass the baton to
12 Mr Hinkle, who will discuss the legal issues
13 concerning Moldovan law in this particular case. If
14 we may have a moment to change the chord.
15 **THE PRESIDENT:** 21 minutes left for the
16 next two sections, so you will be tight.
17 **MR FORTIER:** Which one of the many papers
18 should we look at now? The Moldovan legal matters?
19 **MR HINKLE:** Yes. Just one quick point of
20 clarification. You said that there were 21 minutes
21 left for the next two sections. That does not
22 include the 20-minute additional time for --
23 **THE PRESIDENT:** Correct. 20 minutes for
24 Mr Peer.
25 **MR HINKLE:** Thank you.

1 reasonableness is evident by the undue pressure from 120
2 the higher officials, as well as evidence of 12:15
3 collusion with Bio-Alianta, and that really
4 indicates the motive that was supplied by the mayors
5 for a lack of reasonableness. So in order for it to
6 be a reasonable action, the motive must be innocent,
7 it must be a mistake, and in this case it clearly
8 was not.
9 The next disputed issue that I am going to
10 try to focus on is whether or not the dispositions
11 did satisfy the Moldovan requirements for a valid
12 disposition. On its face this may not necessarily
13 be all that relevant to the outcome of these
14 proceedings, the problem is that the invalidity of
15 these dispositions again go to the motive of the
16 mayors in trying to stop Laguardia's business
17 operations in overlooking any known problems or
18 obligations to issue a valid disposition, and that
19 again goes to the mayor's motive.
20 There are some uncontested issues as well,
21 but Mr Gleason has covered most of them so let me
22 focus on one. This was addressed a little earlier
23 by the Tribunal, and this is slide 5, page 3. This
24 is the Moldovan law on one termination of a lease
25 agreement is acceptable. There are only two

1 circumstances where this is acceptable, and the 121
2 first is where there is the mutual agreement of the 12:16
3 parties. Clearly that was not the case here. The
4 second time is if there is a court judgment. That
5 as well was not at play here.
6 These issues are essential in
7 understanding how Moldova not only violated its own
8 laws, its own obligations to its domestic code, but
9 also international obligations as well. Mr Gleason
10 addressed that the disposition was one of a series
11 of acts of state conduct that was taken by
12 Respondent's officials at many different levels.
13 You will hear testimony in the next couple of days
14 that it was not only at the lower level, the village
15 level, but it was also at the regional level and in
16 addition it may have even been at the highest level
17 of government within Moldova itself.
18 Claimants' leases were private party
19 agreements and they became effective upon a
20 conclusion of those agreements. Their validity has
21 never been disputed according to Moldovan law.
22 Now, Respondent assumes, or asserts, that
23 the genesis of the challenge to the disposition was
24 made by Moldova itself, but this is certainly not
25 the case, because in both Floresti court decisions,

1 collectively indicate what the mayor's motive truly 123
2 was. 12:20
3 First, in issuing the dispositions, the
4 mayor had to redefine a commonly used term "refuse",
5 and then they had to ignore the term "only if" in
6 section 20 of the regulations on keeping registers,
7 and that limited the mayor's power exclusively.
8 Respondent also provides no evidence of how the
9 mayors arrived at their alleged interpretation.
10 This is pure attorney speculation. Further, the
11 chancellor, the Floresti court twice determined
12 that the dispositions were ungrounded and again
13 lacked any legal basis.
14 What does that mean? That means that in
15 their view the dispositions could not be reasonable.
16 We also have to look at the totality of
17 the mayor's action in this situation to determine
18 whether or not the action was reasonable. So what
19 do we have? We have an ungrounded disposition
20 determined by the courts. We have improper or
21 potentially illegal terminations. We have a failure
22 to send the disposition from mandatory review to the
23 chancellor. We have a failure to include the means
24 of how to appeal the disposition itself, a crucial
25 due process right, and then we have all of the other

1 in 2013 -- 122
2 **THE PRESIDENT:** We are missing in our 12:18
3 bundle these slides. We don't need them now, but at
4 the lunch break if we could have them, that would be
5 great. Slide 7 and no doubt slide 8, because we
6 jump from 6-9. (Pause) We have it.
7 **MR HINKLE:** Despite Respondent's assertion
8 that Respondent itself, Moldova, initiated the
9 challenge to the legality of the disposition, both
10 Floresti court decisions, and you can review the
11 citations themselves on the slide -- Respondent's
12 exhibit 6, pages 5 and 6 and then also Claimants'
13 exhibit 43 on page 7 -- both indicate that Laguardia
14 itself and its request sent to the chancellor was
15 the genesis of review of those dispositions and this
16 is well within its right and evidence that Laguardia
17 was in fact attempting to challenge the validity of
18 these dispositions.
19 There were three times when the
20 dispositions were reviewed and the conclusion was
21 the same each time, that the dispositions were
22 unfounded and that they lacked any legal basis.
23 While Respondent maintains that Disposition 1-A was
24 a result of a reasonable interpretation of the law,
25 this cannot be true for four different reasons that

1 evidence of collusion and co-operation and 124
2 instructions from higher above that Mr Gleason 12:21
3 addressed in his part of the report. All of this
4 indicates what the mayor's true motive actually was.
5 We can skip over slide 10 -- the Tribunal
6 is certainly welcome to address it -- but
7 essentially many of the same arguments that
8 Respondent has raised in this proceeding regarding
9 the compulsory elements to a lease that were
10 allegedly not included in the lease itself when they
11 were registered, those arguments were all raised to
12 both Floresti District Courts in 2013 and 2014, and
13 the Floresti Courts both times refused to adopt
14 those as a basis for refusal of registration.
15 While each argument was presented to the
16 court, and again the court refused to adopt those
17 arguments that Respondent asserted here today and
18 that Moldova asserted at that time, which was that
19 the compulsory elements were not in the lease, these
20 allegations that the compulsory elements were not in
21 the lease, the court still found that the
22 dispositions were adopted without any legal basis.
23 Principles of administrative certainty that are
24 enshrined both in international law as well as in
25 Moldovan law, which you will hear from Mr Gladei

1 later, prohibit the mayor from unilaterally
2 unwinding private lease agreements.
3 In his report, Mr Gladei confirms that
4 Disposition 2 would have been subject to the same
5 findings and conditions under Disposition 1-A.
6 Thus, to ensure the principles of certainty and
7 consistency in Moldovan law, the Floresti District
8 Court decisions relating to Disposition 1-A would
9 apply to Disposition 2 as well. In the same vein,
10 because an international tribunals such as this, may
11 not act as Courts of Appeal for the application of
12 domestic Moldovan law, but the Floresti District
13 Court decisions are conclusive on the legality of
14 groundlessness of the dispositions as well as
15 groundlessness of the alleged justifications for
16 those dispositions.
17 Under Moldovan law a valid agreement is
18 concluded upon the agreement of the essential terms
19 under Article 6(3) of the Law on Lease Agricultures
20 and that provides those terms for that agreement.
21 Mr Gladei has reviewed the leases, and he has
22 determined that in his mind they were all in fact
23 valid. While there are a few deviations, those
24 deviations were necessary due to the conditions on
25 the ground in Moldova. The fact that there are no

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12:23

1 issue here.
2 **MR FORTIER:** Don't waste your time! Go
3 on.
4 **MR HINKLE:** There is a specific procedure
5 for registering a lease. Once the agreements are
6 concluded, they are reviewed, stamped and provided a
7 specific registration number. Once that happens,
8 the mayor has one opportunity to refuse that lease.
9 If the mayor chooses not to refuse that lease, his
10 power ends there and the District Court decisions in
11 2013, as well as the decision in 2014, are
12 conclusive on this fact.
13 The Moldovan courts confirmed that the
14 registration procedure did occur, and that the
15 leases were in fact registered, and they also
16 confirmed that the power to refuse registration
17 stops upon that registration itself. Respondent's
18 legal experts suggested that the mayor adopted a
19 contorted definition of the term "refuse" to attempt
20 to justify those dispositions. That justification
21 has no support in the legal record, does not exist
22 in Moldovan law, and requires the Tribunal to
23 suspend its own understanding of linguistic terms.
24 Claimants submit, and the Moldovan courts
25 agree, that the plain language of section 20 of the

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12:26

1 street names, there are no physical addresses, but
2 there are plots of land and there are specific
3 owners in the registry that are registered that own
4 those plots of land, so reference to these elements
5 of the leases themselves do satisfy the validity
6 requirement and I would invite the Tribunal to
7 review Mr Gladei's First Report which addresses the
8 validity very thoroughly.
9 The experts agree that the issues of
10 validity, including the dispute over the essential
11 terms, are to be resolved by the parties in court,
12 and that is the parties to the lease agreement, not
13 the parties here today.
14 **MR FORTIER:** I think we are missing page 8
15 also.
16 **THE SECRETARY:** I think it is after 4.
17 **MR FORTIER:** Because of the numbering,
18 which is somewhat inexact, at the appropriate
19 moment, not while you are using your precious time,
20 if the Claimant could give us another set of these
21 slides.
22 **MR HINKLE:** Certainly. This morning we
23 did request copies of these to be provided to
24 Schönherr's administrative staff and they have
25 provided these copies. We do apologise for any

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12:24

1 regulation is unambiguous. Specifically the term
2 "refuse" that Respondent relies upon can only have
3 one meaning. A refusal of anything must happen
4 before the completion of that act. By way of
5 example: a marriage contract. One signs a marriage
6 contract. Once it is signed they cannot refuse to
7 re-sign it. Temporally that is impossible.
8 Moreover, Respondent cites no authority
9 that the term "ex post refusal" exists anywhere in
10 Moldovan law. Additionally, the term "only if"
11 clearly expresses a mandatory exclusion for all
12 other bases except those provided in section 20.
13 Redefining express terms in the law is not
14 a justification for expanding mayoral power.
15 Rather, it is evidence of the unreasonable extent
16 that the mayors went to to contort themselves and
17 their justification in order to commit their
18 overreach in this matter.
19 In Respondent's expert's treatise, he
20 expresses the view that public officials can only do
21 what the law provides. An ex post refusal is not
22 provided, yet in his report he suggest that the
23 mayors had the power to retroactively refuse
24 registration, despite clear language to the
25 contrary.

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12:28

1 It is also of note that in the same 129
2 writing he acknowledges that any doubt in applying 12:29
3 an administrative sanction should favour the
4 individual instead of the State, so any doubt on
5 these dispositions should be found to be exercised
6 in favour of Laguardia rather than the State.
7 As Mr Gleason noticed, the dispositions
8 not only revoke registration, but deleted the entire
9 record from the registry. Respondents assert that
10 the City Hall had the power to do that in order to
11 effectuate changes in individual lines of data, and
12 that is the important part. The power to correct
13 under Moldovan law only applies to individual lines
14 of data; it does not apply to the entirety of the
15 object of the registration under this provision.
16 Moreover, the law specifically requires that
17 corrections must be initiated by the data supplier,
18 and in this case that would be Laguardia
19 **THE PRESIDENT:** Just to say you have about
20 seven minutes left for the totality between the two
21 of you, so a lot of this material is in the
22 pleadings and we are aware of all of these points
23 you are making, so don't feel you need to take us
24 through all of the material because we have read all
25 of this material.

1 refusing it. 131
2 12:32
3 Moldovan court decisions provide clear
4 evidence that the dispositions facilitated the
5 taking of Claimants' investments. They were
6 ungrounded and the Tribunal need only look to the
7 effects of those dispositions. However, the mayor's
8 illegal conduct went well beyond just the
9 dispositions and was a pattern of state conduct. As
10 I have said earlier, they redefined the terms, they
11 registered the leases before the disposition took
12 effect, they failed to send them for review, they
13 discriminated against Laguardia in favour of
14 Bio-Alianta, they improperly terminated the leases,
15 the high-ranking officials pressured the mayors, and
16 then the mayors physically joined Bio-Alianta and
17 some of the landowners in the fields to physically
18 block Claimant from accessing those lands.
19 In addition to the domestic obligations
20 that the mayors were obligated to provide, which are
21 that a disposition must contain the means of appeal,
22 not just that there is some vague right to appeal in
23 the law, but the means of exactly how to appeal, and
24 that was omitted entirely from the dispositions
25 themselves, and that is addressed fairly thoroughly
in the pleadings.

1 **MR HINKLE:** Let me make one final point. 130
2 12:30
3 There is a stark difference in how the
4 city halls treated Laguardia versus Bio-Alianta, and
5 this is evidenced in the record. With regard to
6 Laguardia, the mayors exceeded their authority and
7 took extraordinary measures to refuse Laguardia's
8 leases after registration when no law permits them
9 the power to do that.
10 Let me contrast that with how they treated
11 Bio-Alianta. The mayors in that case did have a
12 genuine basis to refuse all of Bio-Alianta's leases,
13 because one basis of refusal under section 20 is if
14 the land is already leased, or if the possessor does
15 not have the right to lease that land. As
16 Respondent has already conceded, refusal of
17 Claimants' registration does not invalidate
18 Laguardia's leases and they have not been challenged
19 in any court since. So because the dispositions
20 were not communicated to Laguardia after
21 Bio-Alianta's leases were registered, the mayor had
22 a basis to refuse Bio-Alianta's leases, but chose
23 not to excise that power. So on the one hand we
24 have the mayors with a valid reason to refuse
25 registration choosing not to excise it, and then
with Laguardia not having any basis for refusal,

1 In sum, the leases were validly concluded, 132
2 12:33
3 properly registered under Moldovan law, and the
4 Respondent's consistent holistic attacks on
5 Laguardia show a pattern of state conduct that also
6 shows the mayors' true and actual motive, and that
7 was not that it was reasonable. They had to
8 redefine the term "refuse", they had to ignore the
9 term "only if", and they had to issue dispositions
10 that were well outside of their power, so it could
11 not be innocently reasonable.
12 Thank you.
13 **THE PRESIDENT:** Mr Hinkle, thank you for
14 your efficient submissions. We have your slides and
15 we can take note of those as well and we have all
16 the material in the pleadings. Ms Nitschke, how
17 much time do we have to deal with damages in general
18 before 20 minutes max on Mr Peer?
19 **THE SECRETARY:** Four minutes and 12
20 seconds.
21 **THE PRESIDENT:** Four minutes and 12
22 seconds on damages in general and then 20 minutes on
23 Mr Peer.
24 **MR ASTUNO:** I have done a comparative
25 analysis in nature and I want the Tribunal to
understand that if I went through the entirety of my

1 presentation I can assure you that at least four 133
2 minutes of it would be limited to analysis of the 12:34
3 Claimants' expert report, but I want you to
4 understand that it is interspersed with a
5 comparative analysis of Respondent's expert report,
6 so I would propose continuing, as I normally would,
7 and exhausting my time, and also assuring you that I
8 believe at least four of those minutes would be
9 exclusively limited to material you would say for
10 the Claimants' expert. If that is amenable, I would
11 like to proceed.
12 **THE PRESIDENT:** Let's hear you. I am sure
13 Mr Kopecky will jump in if you stray in some way.
14 I have Mr Peer's report in front of me and
15 I appreciate that there is commingling of all these
16 issues. We will adopt a reasonably flexible
17 attitude.
18 **MR KOPECKY:** I do jump in and state that
19 the Tribunal should be the judge of the
20 admissibility of further pleadings.
21 **THE PRESIDENT:** Thank you for your
22 flexibility.
23 **MR ASTUNO:** May I also clarify that the
24 entirety of my PowerPoint provided was 26 slides.
25 **THE PRESIDENT:** Over 13 pages. That is

1 appropriate. 135
2 That is precisely what both parties have 12:38
3 submitted in this instance.
4 While Respondent made a brief argument in
5 its Rejoinder that a claim for lost profits based on
6 discounted cash flow is groundless, the facts in
7 this case clearly suggest that Mr Grot had a proven
8 track record of profitability and success, and
9 Laguardia's overall technical sophistication and
10 modern approach to farming practices and prior
11 success indicate that a forward-looking lost profits
12 analysis is entirely appropriate.
13 As the Tribunal analyses the various
14 quantum issues in this matter, it is important to
15 call in mind once more again that this is truly
16 supported by the factual record, that being that
17 Laguardia was a modern high-yield farming operator.
18 Of course, to first value a company, you must truly
19 understand that company. The specific details of
20 that company inform in honest and an objective
21 valuation analysis.
22 The details of this company and the
23 factual record make it clear that it truly was
24 modern in terms of its business practices. It was
25 technologically sophisticated. If you look at the

1 what I have. 134
2 **MR ASTUNO:** Yes, that would make sense. 12:35
3 I would like to begin my comments this
4 morning by highlighting the fact – this all
5 pertains to quantum analysis – that both parties in
6 this matter have conducted a forward-looking DCF
7 analysis, discounted cash flow analysis.
8 This is very explainable and justified
9 upon a review of the factual record in the matter.
10 Laguardia, led by a career farming expert, Mr Grot,
11 with nearly a decade of prior agricultural
12 experience in Europe, in success wherever he
13 basically went, as of 2010 was at the forefront of
14 expanding its already profitable enterprises in
15 sophisticated farming practices into the Floresti
16 region of Moldova.
17 I remind the Tribunal again that its prior
18 business activities in the Stefan Voda region in
19 2009 and the first part of 2010 were profitable in
20 nature. I would also like to highlight the fact
21 that agriculture in its nature is a de-risked
22 commodities industry, and legal principles are on
23 point that would suggest that in this type of
24 context, in an agricultural or commodities case, a
25 forward-looking damages evaluation methodology is

1 evidentiary record, Ion Tugui, for example, in his 136
2 witness statements notes that soil was processed by 12:39
3 Laguardia with both pesticides and fertilizers,
4 which was by no means the average regional practice.
5 Moreover, Mr Beril, who we will hear from
6 later today, was the President of the Stefan Voda
7 District, he will testify and consistent with his
8 witness statement that Mr Grot far exceeded the
9 average farming yields of what he was used to seeing
10 in Moldova, again evidencing Laguardia's successful
11 modern high-yield approach to farming.
12 Laguardia's revenues, in particular
13 yields, would have been much higher than average,
14 and that is the fundamental issue in dispute between
15 the two parties as it pertains to quantum.
16 Respondent, through its expert report, has tried to
17 incorrectly assert the exact opposite, that being
18 that Laguardia's revenues, in particular yields,
19 would have been just that, average figures.
20 I would now like to briefly mention who
21 Claimants' damages experts are. Claimants' local
22 agricultural experts, Dr Andrei Gumovschi and
23 Dr Mihail Rurac, both PhD--
24 **THE PRESIDENT:** We know them.
25 **MR ASTUNO:** I mention them again to

1 mention that their report indicates the modern high
2 yield approach that Laguardia took to its business
3 practices into farming was by no means an average
4 business practice. The report also highlights the
5 fact that Laguardia, as part of its business model,
6 used fertilizers and soil protectants in an
7 above-average manner. Ultimately, our valuation
8 expert, Mr Lars Wiechen, prepared a report on the
9 basis of the information provided to him in our
10 local expert's report.

11 Turning to that report again, this combs
12 through the most significant issue in dispute
13 between the parties as it pertains to quantum, that
14 being the calculation of Laguardia's gross margin.
15 To understand that calculation, which this Tribunal
16 has seen many times before, you would multiply crop
17 prices times yields equaling revenue, minus direct
18 costs.

19 I would now like to evaluate these three
20 variables in some brief detail to reassure the
21 Tribunal that the methodology the Claimants took to
22 the calculation of these data inputs was entirely
23 reliable and I would then contrast it to what the
24 Respondent has done in this matter.

25 **THE PRESIDENT:** And I hope you will,

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12:40

1 producer in Moldova, I direct your attention to
2 point No 4, again that Mr Peer has taken that
3 quantification of cost without any adjustments
4 whatsoever.

5 The computation of prices, while there was
6 some discussion as to an issue over inflation, we
7 believe that that has been correctly addressed in
8 the supplemental report provided today, but if there
9 is any remaining doubt, the issue of inflation
10 should be resolved in favour of Claimants, that
11 being that the local prices should indicate that a
12 local inflation rate should apply.

13 Now coming to the crux of the matter,
14 yields. Yields is the fundamental issue in dispute.
15 It is the one variable that in Claimants'
16 perspective most significantly contrasts the quantum
17 evaluation approach that we have taken in comparison
18 to Respondents.

19 Again, I would remind this Tribunal that
20 because of Laguardia's higher cost structure to pay
21 for its quality fertilizers and soil protectants
22 used in above-average amounts, this would naturally
23 imply that it should expect to have higher yields.
24 Indeed, the usage of quality fertilizers, the usage
25 of soil protectants, the usage of modern farming

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12:43

1 I have the report in front of me, and I do not see
2 it in your presentation, respond to what Mr Peer
3 says, because that is really what your 20 minutes is
4 about, and I don't see that anything here addresses
5 that issue.

6 **MR ASTUNO:** I will get there within a
7 minute. This slide indicates the direct costs as to
8 what they relate to, was used by both the Respondent
9 and the Claimants in this matter. I just want to
10 highlight that the operating costs that Mr Peer
11 applied were unchanged from those calculations
12 provided by the local experts in this matter.

13 It was a conservative computation of costs
14 moreover, meaning that in all reality these costs
15 were probably going to be higher, and again
16 I believe that is relevant when we address the
17 assumptions that Respondent's quantum expert has
18 made. Again, we believe that the accurate cost
19 structure would have been higher in this matter, but
20 our experts erred on the side of caution.

21 The main takeaways regarding direct costs
22 in addition to the fact that its cost structure
23 indicated that it was indeed a high-yield farming
24 producer, which would have a cost structure that
25 would being higher than that of an average-level

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12:42

1 equipment, leads to more generous, more increased
2 yield output, and our experts will confirm this and
3 we think basic literature reports on agricultural
4 science, which we will soon cite as well, confirm
5 this proposition.

6 Our experts, and this pertains to the
7 supplemental charts that will be prepared and
8 produced tomorrow, indicate and they will testify
9 that the local producer does not even apply
10 fertilizers on several of the crops that are at
11 issue here. Moreover, our local experts have
12 prepared evaluations of the costs and the yields of
13 average producers as it pertains to the effect of
14 the usage of soil protectants, and again it is quite
15 obvious that, because Laguardia's approach in using
16 these inputs, if you will, sets it apart from the
17 average practice, its yields therefore are above
18 average.

19 The proposition, while I know it is a
20 general one, we believe it needs to be cited. The
21 proposition that the average Moldova producer does
22 not use fertilizers, does not use soil protectants
23 at recommended levels is well documented. We refer
24 to several studies, including a country report
25 offered by the World Bank that precisely indicates

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12:44

<p>1 as such. 141 12:46</p> <p>2 Again, turning to the importance of 3 focusing on company-specific information when 4 conducting evaluation, we think it is very important 5 to highlight the fact that Claimants' quantum 6 experts generated their yield output data from a 7 reputable state-owned agriculture testing centre in 8 Moldova known as the Visoca State Testing Centre, 9 and this was an approach that was entirely different 10 than Mr Peer took, so I believe it is worthwhile to 11 provide some overview as to why this truly was a 12 reliable comparison in terms of data.</p> <p>13 This centre is located in general 14 proximity to these farmlands in Floresti. There are 15 similar soil characteristics between this centre and 16 the soil that Laguardia was using for its farm 17 activities. Moreover, similar technological 18 approaches were used in the use of fertilizers 19 namely, and modern equipment However, this centre 20 does not use pesticides or soil protectants which 21 Laguardia does use, and again we believe this is an 22 indication that the yields ultimately were 23 calculated by our expert were too conservative in 24 keeping with the conservative calculation in the 25 benchmarking of the cost structure.</p>	<p>1 for a high yield producer that requires additional 143 12:49</p> <p>2 and above-average cost outlays to pay for 3 fertilizers, soil protectants, modern equipment and 4 machinery. Despite that, Respondent's methodology 5 for calculating yields was based on average, 6 regional and national data for four of the five 7 crops at issue. You can see that in the original 8 report at least for corn, sunflower, autumn wheat 9 and canola, regional averages are applied as if 10 Laguardia would have been achieving those same 11 yields. We believe that this was an entirely 12 inappropriate assessment given that Laguardia was 13 not an average producer. It did not have the 14 characteristics of an average producer that would be 15 producing such yields.</p> <p>16 I would also like to note that in the 17 supplemental report which was handed to me just 18 minutes before opening statements began, it does 19 appear that for corn there was a revision in 20 Mr Peer's insertion of yields, but it is still an 21 average metric. It is not a localised study. The 22 yield that he has updated does not in any way refer 23 to a company of the characteristics and the cost 24 structure and the overall reasonable expectations of 25 a high yield producer. There really is no</p>
<p>1 On the whole we believe that a thorough 142 12:47</p> <p>2 review of the local agriculture expert report that 3 was used then by our quantum expert indicates that a 4 reliable and objective study was done. However, as 5 we turn to the Respondent's valuation methodology, 6 we note that there was an unfounded assessment, that 7 the entire essence of our expert's calculations were 8 "based on the author's personal experience". There 9 was no citation next to this comment, there was no 10 justification for this comment, and it is important 11 to point out to this Tribunal that it is indeed not 12 the case, that our experts were not using personal 13 impressions, the calculations that they conducted 14 had nothing to do with their personal or biased 15 opinions; rather, they have taken objective criteria 16 from the Visoca State Centre as it pertains to 17 yields and they have conducted an objective and fair 18 analysis as to what the corresponding costs would be 19 for a company operating in the same way that 20 Laguardia was.</p> <p>21 Mr Peer, however, has done something 22 entirely different. While, again, let's remind the 23 Tribunal of the fact that the cost structure that 24 Respondent has imported into its valuation 25 methodology is the exact same as the cost structure</p>	<p>1 substantive change in what was handed to me, but we 144 12:50</p> <p>2 of course are going to evaluate that with our expert 3 and we are very confident that those discrepancies 4 will be fully fleshed out when the experts begin 5 their testimony here.</p> <p>6 It should be mentioned that averages are 7 unreliable, and that is because average reported 8 yields are not the real average in Moldova. This 9 information was already provided to Mr Peer in the 10 local expert's report which he relied upon but, more 11 importantly, any independent investigation, any act 12 upon one's curiosity, if this indeed is the case, 13 quickly concludes that, yes, averages are 14 unreliable. We refer to multiple studies, including 15 a 2015 World Bank report that makes it quite clear 16 that the agriculture sector in Moldova is guilty of 17 the trend of underreporting, so to speak. One of 18 the main incentives would be to save money on one's 19 tax liability.</p> <p>20 This underreporting of yields is further 21 corroborated by a June 2011 interview with the then 22 Moldovan Prime Minister, Vlad Filat, noting that 23 sugarbeet tax revenue is believed to be much lower 24 than what it truly should be, given this trend of 25 underreporting data. Still, in light of this</p>

1 obvious evidence that Mr Peer had access to, and in 145
2 light of the obvious fact that averages really are 12:51
3 not reliable averages, he still inserts this as
4 though Laguardia would be achieving such yields.
5 Using this assumption that Laguardia had
6 the cost structure of a high yield producer with an
7 above-average cost structure, against the assumption
8 that it would only achieve the averages that are
9 publicly reported, means that the company would have
10 been operating with negative earnings immediately as
11 of 2011. I would note that in the supplemental
12 report that was provided to me this morning, I had
13 confirmed that even with the minor adjustment to the
14 corn input, we still have the exact same situation,
15 that being that revenues do not equal costs.
16 We should certainly take a step back and
17 analyse what this means. This would mean that
18 Mr Grot, for the first time in his long and
19 successful career as a farming investor and
20 innovator, would have been losing money, and, more
21 importantly, it assumes that he would have refused
22 to make any adjustments in his future cost
23 structure, despite the fact that he would have been
24 losing money for the first time in his career. We
25 believe that is quite an astounding assumption to

1 make, especially considering the prior profitable 146
2 experience that Mr Grot had, namely in Moldova in 12:53
3 2010.
4 On the whole, we believe that the picking
5 and choosing, so to speak, of high costs but average
6 yields, indicates some very powerful revelations.
7 1. Respondent's quantum analysis fails to
8 recognise that a producer with average yields has
9 dramatically lower costs than what was assumed to be
10 the case for Laguardia, and that Laguardia would
11 have had dramatically higher yields under its cost
12 structure.
13 There is also a blatant failure under
14 these assumptions that average data really is not
15 reliable. In other words, average means something
16 less, at least as it pertains to what is reported in
17 Moldova.
18 This is no more than a biased exercise in
19 picking and choosing which does not accurately
20 reflect the valuation potential of Laguardia on the
21 date of the government's intervention.
22 There are other valuation issues that will
23 be addressed by our experts, including the fact that
24 Laguardia is entitled to both its initial investment
25 costs in addition to forward-looking lost profits.

1 There was a change that Claimants made in 147
2 terms of the networking capital input, and that was 12:55
3 addressed correctly by Mr Peer. This input now has
4 been updated and we recognise that that is a
5 necessary part of the DCF calculation, and updated
6 figures will be provided and explained by our expert
7 when he testifies.
8 The discount rate Claimants will argue in
9 this case should equal the weighted-average cost of
10 capital, and we believe we have sound and
11 fundamental accounting and legal justification for
12 that.
13 Other valuation issues that occur, and
14 this is notwithstanding the review of what was sent
15 over earlier this morning, but there seems to have
16 been a misapplication of the depreciation variable
17 in Respondent's quantum analysis. There also
18 appears to be an illogical assessment of a tax
19 liability on Laguardia, despite its negative
20 earnings. Respondent's initial report inputs a tax
21 liability charge against Laguardia, again despite
22 its negative earnings, which seems to defy
23 accounting and tax logic.
24 Claimants will make the case that the
25 prejudgment interest rate that is appropriate in

1 this matter should be the weighted-average cost of 148
2 capital again equal to the discount rate and we 12:56
3 believe that at a bare minimum Respondent's
4 sovereign borrowing rate should be applied.
5 The investment after all was in Moldova,
6 it was not in the US, and therefore a US risk-free
7 treasury bond rate does not seem to make much sense
8 As I close my remarks here, and just
9 quickly looking at how much time might be available,
10 I would say that Respondent said at best, in
11 Respondent's Rejoinder at paragraph 333 they note
12 correctly, and this is part of their damages
13 analysis, that a farming business heavily depends on
14 the quality and features of the particular farmland.
15 That is absolutely true. In other words, any
16 objective business valuation should take into
17 account the specific and unique circumstances that
18 make that company different from any other average
19 or industry competitor.
20 That is exactly what Claimants have
21 endeavoured to do in this case. There is a footnote
22 that they cite to this comment, that being that our
23 agricultural experts conducted assessments of the
24 localised and unique soil and climate conditions,
25 and again we stand behind that approach.

1 Taking a local company-specific 149
2 methodology to this overall valuation question 12:57
3 absolutely is much more reliable and much more sound
4 in nature than relying upon average data, especially
5 when that average data reflects producers and
6 companies that are fundamentally different from what
7 Laguardia and what Mr Grot had in place.
8 Our final remarks here regarding quantum
9 will be a restatement of what was submitted in our
10 request for allocation of costs and damages in this
11 matter, that being that the initial investment costs
12 as paid for by Mr Grot should be refunded to him
13 individually, and that also being that the future
14 lost profits in this matter should be returned to
15 Laguardia USA as the parent company of the local
16 investment vehicle, and ultimately Mr Grot, as the
17 sole shareholder of the parent company. This also
18 goes without saying, of course, that Respondent's
19 advanced arbitration fees should be reimbursed
20 entirely to Mr Grot, who has paid for them
21 personally.
22 On this note, and if there are any
23 questions I am happy to entertain them, but
24 Claimants wish to express their thanks to this
25 Tribunal for its sincere attention, not just to the

1 I also understood that it would be circulated now, 151
2 not tomorrow during the examination, so we would 13:01
3 kindly ask that this data be sent to us now.
4 **THE PRESIDENT:** Claimant?
5 **MR GLEASON:** No problem.
6 **MR KOPECKY:** Also please send it to
7 Ms Cusnir.
8 **THE PRESIDENT:** By the end of the lunch
9 break let's submit those two "supplemental" reports.
10 Can I ask that you also email to
11 Ms Nitschke the slides so that she has a set also,
12 and the supplemental report so she has everything?
13 We want to send all of that to Mr Craven.
14 I think this allows us to take a 45-minute
15 break for lunch which gives our court reporters a
16 chance.
17 **MR KOPECKY:** We only spoke of the
18 agricultural experts. I understand there will be
19 some updates on the quantum numbers as well?
20 **MR ASTUNO:** Yes.
21 **MR KOPECKY:** We would also like to have
22 that now, if possible.
23 **MR ASTUNO:** Mr Wiechen is in the process
24 of finalising that, because he is not set to testify
25 until Wednesday morning, so I do not believe we can

1 quantum issue, but every issue that has been put 150
2 forth this morning such that Mr Grot, after seven 12:59
3 years, can finally see to it that his rights are
4 vindicated.
5 **THE PRESIDENT:** Thank you. That completes
6 Claimants' opening arguments. We are about 50
7 minutes behind schedule. The responsibility is ours
8 and ours alone on the Tribunal. We are very
9 grateful for your efficiency. The Respondent is of
10 course allocated its full 90 minutes or up to 90
11 minutes.
12 In terms of planning going forward for the
13 rest of the day, it would help me if I could have a
14 sense of how long the Respondent believes it may
15 need for the cross-examination of Mr Grot and
16 Mr Beril? I am wondering whether we start now? The
17 timetable would have us going to 13.35.
18 **MR KOPECKY:** We do not mind starting now.
19 We would ask for a coffee break in the middle.
20 (Short discussion on timing)
21 I have one point of order. We heard this
22 morning that there would be new data from the
23 agricultural experts and maybe from the quantum
24 experts. I understand it was admitted on condition
25 that it is responsive to Mr Peer's report. However,

1 give you a final analysis, but we know that there 152
2 will be one. 13:02
3 **THE PRESIDENT:** Are you able to provide
4 that material tomorrow? What I think we would not
5 want to have is that he provides his updated figures
6 in the course of his cross-examination because that
7 would leave Respondent in the unhappy position of
8 not having had time to prepare the material he is
9 going to provide, and I think in the interests of
10 balance and equality of arms ...
11 **MR ASTUNO:** Absolutely. I will call
12 Mr Wiechen at lunch and ask if he can complete that
13 analysis by tomorrow.
14 **THE PRESIDENT:** Thank you. It is now
15 exactly one o'clock. We will come back at 13.45.
16 You will then have up to 90 minutes to do your
17 opening. Depending on the needs of the court
18 reporters, we will then have another short break.
19 We will then go into Mr Grot and Mr Beril.
20 Can you give us an indication of what you
21 are imagining for cross-examination? This does not
22 bind you. It is only for the purposes of planning
23 our hope that we can finish today. We are all
24 available to go longer today in order to accommodate
25 that.

1 **MR KOPECKY:** 90 minutes for Mr Grot. 30 153
2 minutes for Mr Beril. 13:04
3 **THE PRESIDENT:** That is very helpful.
4 I think we can easily finish them both in the course
5 of today. Don't feel rushed in relation to your
6 opening. You have 90 minutes allocated to you.
7 There may be questions. You are entitled to your 90
8 minutes. Thank you to the Claimants for completing
9 their submissions. We break now and we are back at
10 quarter to two.
11 (Luncheon adjournment from 1.04 pm to 1.47 pm)
12 **THE PRESIDENT:** Please begin.
13 Opening Submission by Respondent
14 **MR KOPECKY:** Thank you, Mr President.
15 Dear Mr President, members of the Tribunal, esteemed
16 colleagues, ladies and gentlemen, as Claimants had
17 promised at the outset of their opening, Claimants
18 told us a story. That story is largely unproven.
19 The impugned acts are overwhelmingly not those of
20 the state, and for its most part, Claimants' story
21 is not even central to their claims. Claimants say
22 that the alleged taking occurred at the time of the
23 dispositions. Claimants calculate their quantum
24 accordingly.
25 Instead of commenting on Claimants' story

1 documents on record, and Respondents hope that at 155
2 least some contradictions will be resolved in this 13:50
3 hearing, and Respondent may give the timetable
4 another try in its closing.
5 Let me turn to what Respondents consider
6 to be the essential issues here. There are four of
7 them.
8 1. Claimants were not diligent in
9 establishing their investment.
10 2. Claimants were not diligent in
11 managing their investment.
12 3. Claimants seek to pin their failures
13 on Respondent.
14 4. Respondent is not responsible.
15 Claimants were not diligent in
16 establishing their investment.
17 Had Claimants been diligent, they would
18 have ensured that, 1, there was an informed business
19 plan for the project; 2, that the team entrusted
20 with the project was competent; 3, that
21 responsibilities were clearly assigned and
22 fulfilled; 4, that their lease agreements were
23 compliant with the law; 5, that the lease agreements
24 were valid, indeed signed and enforceable under law;
25 and 6 and final, that Claimants had the farming

1 point by point, I will do what the Tribunal 154
2 encouraged the parties to do: focus on the essential 13:49
3 issues in dispute, working with the evidence that is
4 actually on record, and for the rest I respectfully
5 point to Respondents' written submissions.
6 Please don't be alarmed by the size of the
7 printout in front of you; it is mostly one statement
8 per page, each with a reference to a supporting
9 exhibit, and because it is rather interactive,
10 I would direct your attention to the screens rather
11 than the printout.
12 Our point is the Tribunal encouraged the
13 parties to prepare a timetable, and here I must
14 disappoint. The information the Claimants put on
15 record is contradictory, and preparing a timetable
16 on the relevant facts became impossible. It is
17 unclear, for example, even from Claimants' own
18 timetable, when the leases were signed. It says
19 autumn, autumn 2010, and since we before heard the
20 termination of the leases on a single day is
21 mysterious, I would like to point to Claimants'
22 submission that in two of the villages also a
23 signature occurred on one single day. It is also
24 unclear when Claimants' works actually started.
25 Witnesses contradict themselves, each other and the

1 right to connected plots. This is an important 156
2 issue, which I will revisit later. 13:51
3 Claimants would have ensured there was an
4 informed business decision for the project but they
5 only submit what they wanted to achieve. First
6 witness statement Grot, paragraph 18 "I was aware
7 of some farming projects by British investors in the
8 Ukraine and how they had later gone public with
9 their businesses. This long-term view was an
10 important part of my investment in Moldova". But
11 Claimants never submitted how they intended to
12 achieve it. There is no business plan on the
13 record, no offtake agreements, nothing.
14 Had Claimants been diligent the team
15 entrusted with the project would have been
16 competent, yet Mr Grot's team consisted of
17 acquaintances he made by chance in Moldova shortly
18 before. First statement Grot, paragraph 10: "While
19 working in Stefan Voda, I was leaving my hotel one
20 day and I heard a group of gentlemen speaking
21 Polish. I introduced myself to them and I met a
22 gentleman named Igor Bugai, and he gave me his
23 business card".
24 It was these acquaintances that Mr Grot
25 entrusted with establishing his business. Witness

1 statement Bugai, paragraph 1. "My name is
2 Alexei Bugai. I have a higher degree in Journalism
3 and Philology with a focus on the management of
4 international investments. Mr Zbigniew Grot hired
5 me to be Laguardia's administrator for a period of
6 one year starting in March 2010 until March 2011.
7 It happened after Mr Grot met my father Igor Bugai
8 by chance".
9 Yet Mr Grot's and Mr Bugai's co-operation
10 was a very short one. Witness statement Bugai,
11 paragraph 10. "In March 2011, Mr Grot and I decided
12 that it would be better for me to move on from
13 Laguardia, as we had a difference of opinion
14 concerning the methods that we should use to fight
15 back and regain the leases and other further
16 operation of Laguardia".
17 While Mr Bugai was made responsible for
18 establishing Mr Grot's business, first statement
19 Bugai, paragraph 2: "I was responsible for the
20 entire process of registration", the actual task of
21 establishing the business was outsourced to
22 officials and civil servants, and referencing his
23 first witness statement, paragraphs 12 and 14,
24 "Mr Grot outsourced marketing and PR for his farming
25 project, negotiating the leases with the land

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13:53

1 were not outsourced within Claimants' own team.
2 Example 1, the question who should execute the
3 leases on behalf of Laguardia. Mr Bugai, as
4 administrator, was responsible for the entire
5 process. Witness statement Bugai, paragraph 2:
6 "I was responsible for the entire process of
7 registration".
8 Mr Bugai understood that Mr Grot would
9 enter into the lease agreements. Witness statement
10 Bugai, paragraph 2: "Mr Grot, with Mr Rusu's help
11 and expertise, started to meet with the local
12 landowners and enter into the lease agreements with
13 them".
14 This is Mr Grot's signature on record;
15 CWS-1, first witness statement of Mr Grot, on
16 page 22.
17 Mr Grot on the other hand had tasked
18 Mr Bugai to sign the leases. Witness statement
19 Grot, paragraph 15: "Mr Bugai went to the mayor's
20 offices to sign the completed leases".
21 This is Mr Bugai's signature on record,
22 CWS-13, his signed witness statement, page 8. Yet
23 most signatures on the signed leases -- and I am
24 referring only to the leases that were signed by
25 Laguardia, that Claimants submitted for Cosemita

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13:55

1 owners, obtaining their consent and even filling out
2 those thousands of leases".
3 Yet government officials may only
4 discharge the responsibility that were given to them
5 by law. Second Report Mr Gladei, paragraph 7: "The
6 public administration authorities shall discharge
7 their attributions only in case the established
8 facts and the applicable law give the right to do
9 this thing". We had this during Claimants' opening.
10 No piece of law entitles those officials
11 to execute the responsibilities Mr Grot sought to
12 outsource.
13 Mr Bugai only got involved once all the
14 leases were completed. Witness statement Grot.
15 Paragraph 15: "Once the leases had been filled out
16 by the cadastral agents and signed by the
17 landowners, Mr Alexei Bugai, who I had hired as an
18 administrator for ICS Laguardia SRL, was told that
19 they were complete and Mr Bugai went to the mayor's
20 offices to sign the completed leases". The whole
21 process wasn't even supervised by Laguardia.
22 Had Claimants been diligent, they would
23 have ensured that responsibilities were clearly
24 assigned and fulfilled, yet there is no clear
25 distribution even of those responsibilities that

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13:54

1 look neither like Mr Grot nor like Mr Bugai's, and
2 I direct your attention to exhibit C-27 and the
3 interactive slide show on the screen. All those are
4 exhibit C-27. None of those look like the signature
5 of Mr Grot or that of Mr Bugai.
6 Indeed, Respondent noted as much in its
7 Counter-Memorial, Counter-Memorial paragraph 127E.
8 So Mr Grot amended his testimony accordingly, second
9 witness statement Grot, paragraph 5: "These leases
10 would have been signed either by Mr Alexei Bugai,
11 Mr Ion Tugui, myself or Mr Dariusz Kozak". As did
12 Mr Bugai; he too amended his testimony. This is the
13 red line of CWS-5 versus CWS-13, the two witness
14 statements of Mr Bugai on record, where in
15 paragraph 2 he added the language, "There were over
16 a thousand leases and I remember signing many of
17 them. However, many others may have been signed by
18 other people working for Laguardia".
19 Example 2. Who should fill out the leases
20 of Laguardia? Mr Bugai understood that Mr Grot
21 filled out the lease templates, together with the
22 landowners. Witness statement Bugai, paragraph 3
23 "Then Mr Grot together with each individual
24 landowner filled out a generic lease agreement
25 template", and I repeat, with each individual

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13:57

<p>1 landowner.</p> <p>2 Mr Grot, on the other hand, tasked the</p> <p>3 cadastral agents with that responsibility, second</p> <p>4 statement Grot, paragraph 3: "The plan was for the</p> <p>5 cadastrals to hold the leases, to fill out the</p> <p>6 relevant details for each lease and to watch the</p> <p>7 landowners sign the leases in their office".</p> <p>8 This outsourcing and failure to clearly</p> <p>9 assign responsibilities had one serious consequence:</p> <p>10 those responsibilities were not fulfilled.</p> <p>11 For example, some leases are signed but</p> <p>12 not stamped by Laguardia (exhibit R-18). Other</p> <p>13 leases are stamped but not signed on behalf of</p> <p>14 Laguardia (exhibit R-17).</p> <p>15 Yet others are neither stamped nor signed</p> <p>16 (R-20).</p> <p>17 Had Claimants been diligent, they would</p> <p>18 have ensured the lease agreements were compliant</p> <p>19 with the law. Claimants submit that they had an</p> <p>20 expert attorney at their side for the establishment</p> <p>21 of their investment, including the leases. Second</p> <p>22 statement Grot, paragraph 6: "The entire investment</p> <p>23 is exactly what Mr Levintsa handles as an attorney</p> <p>24 in Moldova. Mr Levintsa handled the leases in</p> <p>25 Floresti", yet Mr Levintsa's attribution is entirely</p>	<p>161 13:59</p> <p>1 will insist, "only if ... the documents submitted</p> <p>2 contain erasures, completions, deleted words or</p> <p>3 other corrections" or in point (e), much more</p> <p>4 importantly, "the required signatures or seals are</p> <p>5 missing".</p> <p>6 Had Claimants been diligent, they would</p> <p>7 have ensured that the lease agreements were valid,</p> <p>8 signed and enforceable. Yet Claimants' leases were</p> <p>9 invalid, many were not signed even by Laguardia</p> <p>10 (exhibit R-20), and many of them were not even</p> <p>11 signed by the landowners (exhibit R-14). For those</p> <p>12 land plots Claimants never obtained farming rights.</p> <p>13 As was rightly said today, an unsigned lease is an</p> <p>14 invalid lease.</p> <p>15 But for Claimants, as we heard today, and</p> <p>16 as we read in their submissions, it was irrelevant</p> <p>17 to timely sign and register all their leases.</p> <p>18 Claimants' Reply, paragraphs 168 and 169. "Work may</p> <p>19 have begun before every last lease was signed,</p> <p>20 however, this is irrelevant". 169: "Claimants also</p> <p>21 admit that work began before the leases were</p> <p>22 registered in any of the villages. Again, this is</p> <p>23 irrelevant".</p> <p>24 Had Claimants been diligent in</p> <p>25 establishing their investment, they would have</p> <p>163 14:02</p>
<p>1 unclear. He certainly did not ensure that the</p> <p>2 leases were compliant with the law, since, as</p> <p>3 Mr Gladei confirms, Claimants' leases were not</p> <p>4 (First Report of Gladei, paragraph 33). "The lease</p> <p>5 agreements do not contain the mandatory reference to</p> <p>6 the residence of the lessor". Paragraph 33.2:</p> <p>7 "[They] do not contain the mandatory reference to</p> <p>8 the document certifying the ownership".</p> <p>9 Paragraph 33.3: "[They] do not contain mandatory</p> <p>10 reference to the liability of the parties".</p> <p>11 As just shown, many leases were not signed</p> <p>12 or stamped, and others were actually signed by</p> <p>13 persons other than the landowners. If we look at</p> <p>14 contract No 40, a Varvareuca lease of 1 September</p> <p>15 2010, in the name of a certain Blaniu Petru</p> <p>16 Nicolae, and compare this to the contemporaneous</p> <p>17 register extract, exhibit R-19, we see that for the</p> <p>18 land plot in question, 108078 the registered owner</p> <p>19 was Bodron Nicolai Procopi. That is not the same</p> <p>20 person. Yet other leases contain erasures (exhibit</p> <p>21 R-16), and all those non-compliances entitle the</p> <p>22 Mayor to refuse registration, according to</p> <p>23 Claimants' legal expert, expert report Gladei,</p> <p>24 paragraph 24: "The mayor's office has the right to</p> <p>25 refuse to register the lease if", or as Claimants</p> <p>162 14:00</p>	<p>1 ensured that they had farming rights to connected</p> <p>2 plots of land.</p> <p>3 This is very important. The success of</p> <p>4 Mr Grot's project depended on farming rights to</p> <p>5 connected plots of land. "Mr Rusu had picked these</p> <p>6 lands because they were large unused connected plots</p> <p>7 of land where Laguardia could do high-technology</p> <p>8 farming".</p> <p>9 Yet Claimants did not prove that all lease</p> <p>10 agreements they sought to conclude would establish</p> <p>11 connected plots of land, and the burden for this is</p> <p>12 on them. They didn't prove that they verified this</p> <p>13 fact at the time. They didn't prove that it still</p> <p>14 would have been the case without all the lease</p> <p>15 agreements that remained unsigned and invalid, and</p> <p>16 I am not talking erasures or pencil use; I am</p> <p>17 talking unsigned or invalid. But unless that is</p> <p>18 verified, industrial farming is impossible.</p> <p>19 This is a satellite image that Claimants</p> <p>20 put in their Memorial, page 90. I am only using</p> <p>21 this as an example to visualise the issue. This is</p> <p>22 not the actual land in question. This is in the</p> <p>23 vicinity. It is in the Ghindesti Floresti region</p> <p>24 but it does not display the landplots in question.</p> <p>25 So say you want to lease that big green</p> <p>164 14:03</p>

1 area right of the red circle. You need to obtain a
2 valid lease with each individual landowner who owns
3 this field. Those people probably reside in those
4 houses around there. If you do not do that, the
5 area lease will have a lot of holes. I apologise
6 for the artistic value, but the white line would be
7 Respondent's suggested line that the high-technology
8 harvester would have to take to actually do any
9 farming while avoiding trespassing on unsigned
10 leases, therefore unleased lands.
11 All this means that Claimants were not
12 diligent in establishing their investment.
13 The second issue: Claimants were not
14 diligent in managing their investment. Had
15 Claimants been diligent, they would have enforced
16 their lease rights. In particular, Claimants would
17 have challenged the dispositions and sought relief
18 in court, not by politicians. They would have sued
19 Bio-Alianta and the landowners following the
20 applicable procedure, and they would have
21 complied with their obligations under the leases --
22 **THE PRESIDENT:** Just as you are jumping
23 between two areas, just coming back to something we
24 had earlier this morning, exhibit C-95, what is your
25 clients' explanation for what caused hundreds of

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14:05

1 relevance for not extending the leases to a fourth
2 year. That means that the leases would have
3 terminated in the third year, but the exact
4 relevance is unclear to us. Finally, I think it is
5 worth pointing out that a mayor of a small village
6 is not a lawyer, so he may well sign off on things
7 that he would not be entitled to sign, but the legal
8 nature of the signature is entirely unclear.
9 **THE PRESIDENT:** But what steps have you
10 taken -- you are Moldova, so you have the ability to
11 find out what happened. What steps have you taken
12 to find out what happened that caused these farmers
13 to act as they did in very large numbers?
14 **MR KOPECKY:** Mr President, we have been
15 unable to find this out. We have inquired but have
16 been unable to find this out.
17 **THE PRESIDENT:** Would you accept that it
18 is curious, in the least -- there may be many
19 explanations, and inferences can be drawn in many
20 directions, but would you accept that it is odd for
21 so large a number of people to engage in the very
22 same act on the same day?
23 **MR KOPECKY:** Well, frankly, I would accept
24 the word "many". I would not accept the word
25 "strange" because it is not odd that villagers that

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14:07

1 farmers to seek, if you like, deregistration of the
2 leases? What is your account, and what is the
3 evidence supporting that account, that caused them
4 to come together to sign the documents they did, and
5 then presumably go to the Mayor and get the Mayor to
6 also sign those documents? What happened?
7 **MR KOPECKY:** Mr President, here I can only
8 speculate but I will use the same circumstantial
9 evidence that Claimants use when they say all the
10 leases were probably signed on the same day. These
11 people are in contact, they are very close
12 neighbours, they live together, most of them don't
13 have jobs -- this is speculation but this is a very
14 poor country and a very poor area, and they probably
15 talk a lot, so they probably got together and
16 discussed it, but on the exhibit itself, first, the
17 nature of the mayor's signature is unclear. It can
18 be a confirmation of receipt. We don't know what it
19 means. That signature doesn't produce any legal
20 effect from the Mayor. We don't know what it does.
21 Respondents do not argue that the leases were in
22 fact terminated on the basis of those cancellation
23 notices, and even Disposition 2 in that village was
24 not based on those notifications.
25 So the notifications were of sole

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14:06

1 have lived together for generations come together
2 and discuss their situation. They discuss their
3 situation and say "Let's sign leases with somebody",
4 and they may well meet and discuss the situation and
5 say "Well, we are not happy, we are not getting
6 paid" or anything else -- this is just
7 speculation -- meet together, find the courage and
8 all write to the mayor. This does not strike me as
9 particularly odd. It would strike me as odd if all
10 the tenants in that building over there terminated
11 their leases at once because they are not talking to
12 each other but we are talking about small villages,
13 connected over generations, in rural Moldova, and
14 their community means something. I think --
15 **THE PRESIDENT:** That is speculation. We
16 don't have any evidence before us to support any of
17 that?
18 **MR KOPECKY:** No.
19 **THE PRESIDENT:** Thank you.
20 **MR KOPECKY:** My last point is that I point
21 out that had Claimants been diligent, they would
22 have enforced their lease rights. As a first step,
23 Claimants would have challenged the dispositions and
24 sought relief in court, not by politicians.
25 Claimants submit that they did not

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14:09

1 challenge the dispositions because they did not know 169
 2 how, when or where (Claimants' Memorial, 14:10
 3 paragraph 76: "Claimants did not know how, when, or
 4 where to challenge the dispositions, because
 5 Respondent did not provide the information in
 6 violation of Moldovan law". However, both
 7 dispositions informed Claimants of their right
 8 (exhibit C-31, page 3): "Laguardia has the right to
 9 challenge it" -- the disposition -- "in accordance
 10 to the legal provisions in force".
 11 Exhibit C-48. Disposition 2. "Laguardia
 12 has the right to challenge it in accordance to the
 13 legal provisions in force, and would have certainly
 14 been diligent to inquire how, when or where to
 15 challenge the dispositions". And not to forget that
 16 Claimants had an experienced attorney engaged at the
 17 time including for the leases in Floresti. Second
 18 statement Grot, paragraph 6: "Laguardia's attorney
 19 during this entire process of setting up the
 20 investment was Mr Victor Levintsa. "The entire
 21 investment is exactly what Mr Levintsa handles as an
 22 attorney in Moldova", and indeed, Mr Levintsa
 23 handled the leases in Floresti
 24 Claimants wanted to fight the dispositions
 25 immediately, and were looking for a litigation

1 meet with the President of Floresti District, 171
 2 Ruslan Zelenenco". 14:12
 3 Mr Grot sought to challenge a legal
 4 decision in the political forum, second statement
 5 Grot, paragraph 7: "We complained to everybody that
 6 we could in the government".
 7 Exhibit C-77: "As a result of the
 8 accident and divergences created, ICS Laguardia SRL,
 9 through the administrator Zbigniew Piotr Grot
 10 desires to be analysed this situation. Mr
 11 Prime Minister, Vlad Filat, with all due respect
 12 I am asking permission from an official meeting with
 13 you".
 14 Had Claimants been diligent they would
 15 have enforced their rights and sued Bio-Alianta and
 16 the landowners following the applicable procedure.
 17 And Claimants did finally attempt to sue the
 18 landowners and Bio-Alianta. Exhibit C-123. They
 19 brought a request against Bio-Alianta and the
 20 defendants - 526 landowners from Cosernita and the
 21 City Hall of Cosernita village. Yet without
 22 justification Claimants failed to comply with the
 23 applicable procedure.
 24 And the court found that the reasons given
 25 by the Claimants' representative, namely that there

1 attorney (second statement Grot, paragraph 7): 170
 2 "I needed to find a litigation attorney to handle 14:11
 3 the situation. I wanted to fight immediately". And
 4 Claimants did find a litigation attorney, Mr Garmas,
 5 in time, and Mr Garmas confirmed that Claimants
 6 could still challenge the dispositions at the time.
 7 Exhibit C-126, a witness transcript from the
 8 Varvareuca injunction hearing, in April 2011, where
 9 he, as a representative of Laguardia, put on record:
 10 "We did not challenge the Mayor's office acts, we
 11 have time for this". Claimants never challenged.
 12 Claimants' Reply, paragraph 470: "The only action
 13 Claimants did not take was the immediate challenge
 14 of the disposition in the local administrative
 15 courts".
 16 So instead of seeking relief in court,
 17 Claimants submit that upon receiving the
 18 dispositions they addressed the government.
 19 Claimants memorial, paragraph 186, "After the
 20 Dispositions in Cosernita and Varvareuca initially
 21 deprived Claimants of their investments, Mr Grot
 22 began to seek assistance from various levels of the
 23 Moldovan government", and CWS-1, paragraphs 30 and
 24 31: "After returning urgently to Moldova, at the end
 25 of March 2011 I went along with my local counsel to

1 were several litigations against the defendant in 172
 2 question, and for this reason the Claimants 14:14
 3 considered that it is not necessary to submit such
 4 prior requests -- cannot be considered a well
 5 founded reason for not taking into account the
 6 provisions of the law regarding prior procedure
 7 before submitting such claims.
 8 And for that failure their claim could not
 9 proceed. It was dismissed without prejudice. We
 10 heard that today. We also heard that the Claimants
 11 were entitled to comply, and refile
 12 **MR FORTIER:** Counsel, what would have been
 13 the applicable procedure? You say Claimants failed
 14 to comply with the applicable procedure. What would
 15 have been the applicable procedure?
 16 **MR KOPECKY:** It is our understanding there
 17 is a settlement procedure before you can escalate
 18 matters to court. That is very common. I think it
 19 can be found on several of the contracts on record,
 20 including Claimants' contracts with I think
 21 Bicoli-Agro -- I am not certain but the contracts
 22 they signed with other third parties contained this
 23 mandatory pre-trial procedure where after you can go
 24 to court.
 25 **MR FORTIER:** Is that after the issue of

1 the disposition? 173
2 **MR SOFER:** I beg your pardon? 14:15
3 **MR FORTIER:** Is that after the issuance of
4 the disposition?
5 **MR KOPECKY:** Yes. The Zahar agreement
6 I think is 2012. So that is a very common procedure
7 in Moldova.
8 To take you back to exhibit C-123, the
9 court clearly said that "ICS Laguardia SRL [was]
10 entitled to address the parties a prior request for
11 all the claims submitted and, in the event that he
12 will not be satisfied with the decisions taken or
13 will not receive an answer within the time limit, he
14 will be entitled to address to the Court a writ of
15 summons".
16 Claimants never did.
17 Under Moldovan law parties have to comply
18 with procedural rules, and Claimants scream
19 discrimination and arbitrariness but this applies
20 equally to all parties in all instances. C-44: For
21 his failure to comply with procedural rules, the
22 Cosernita mayor's appeal was rejected, even at the
23 level of the Supreme Court. As we know, the
24 Cosernita mayor filed an appeal against the court
25 order, I believe it was the one setting aside the

1 leases but Claimants breached their lease agreements 175
2 before the dispositions were even issued. We 14:18
3 already saw C-95, "the lessee breached the terms of
4 the Agreement and the lessee breached the
5 requirements for the technological use/work of the
6 land". And Claimants continued breaching their
7 agreements thereafter. Exhibit C-60
8 **THE PRESIDENT:** I am sorry, what was the
9 breach here?
10 **MR KOPECKY:** The alleged breach was -- it
11 appears to have been non-payment and the requirement
12 for technological use of the land. I can only take
13 it at face value. It is the will of the landowners
14 expressed here in exhibit C-95. We have not been
15 able to interview them. But they weren't happy.
16 And on 13 February 2013, C-60, the
17 prosecutor writes: "But till the moment the
18 enterprise you manage did not pay the agricultural
19 land rental payment for the year 2012, so you
20 gathered a back payment of 850,000 MDL".
21 **PROFESSOR KNIEPER:** What is that in euros?
22 **MR KOPECKY:** I think it is 1220.
23 Now Claimants seek to pin their failures
24 on Respondent. In their Reply Memorial,
25 paragraph 392, they submit that they lost their

1 disposition, but failed to set forth the grounds for 174
2 appeal. 14:16
3 The court informed the appellant, the
4 mayor, about the necessity to review the appeal to
5 make it well grounded. Finally the Supreme Court
6 considered that the Balti Court of Appeal was right
7 when ordering to send Cosernita mayor's appeal back
8 as the appellants failed to comply with court
9 instructions. The law treats all the same.
10 Claimants did not manage the litigation diligently.
11 Exhibit C-50: "With the participation of
12 plaintiff's representative in the absence of the
13 defendant's representative". Plaintiff here was
14 Bio-Alianta, the defendant was Laguardia.
15 "The defendant's representative in the
16 person of the lawyer Alina Balan being repeatedly
17 summoned in the legal manner, in hearing session did
18 not appeared" -- and that sounds a bit like Master
19 Yoda but I believe it is clear. They failed to
20 appear in court repeatedly. Exhibit C-112: "ICS
21 Laguardia SRL did not show up at the term fixed for
22 the appeal and the court ordered the examination in
23 its absence".
24 Had Claimants been diligent they would
25 have complied with their obligations under the

1 entire investment due to and at the time of the 176
2 dispositions. 392: "The time of the taking is the 14:19
3 date of the dispositions". Relating to Cosernita,
4 it was the date of Disposition 1-A,
5 20 February 2011. In Varvareuca the date of taking
6 was the date of Disposition 2, 10 March 2011, and
7 also in Rosietici the date of taking was
8 10 March 2011.
9 But Respondent is not responsible.
10 Respondent did not violate its international law
11 obligations nor cause the damage claimed, and this
12 includes the dispositions, which were based on a
13 reasonable reading of the law.
14 First Report Rusu, paragraphs 31 through
15 50: "I analyse the two elements of the Mayor's
16 dispositions separately", to refuse registration of
17 the lease agreements and to delete the entries.
18 Paragraph 41: "Dispositions 1-A and 2 were a
19 product of a reasonable interpretation of Moldovan
20 law to the extent that they provided for the refusal
21 of registration of agricultural leases". Paragraph
22 50: "also the second disposition" -- the order
23 contained therein -- "in both Dispositions 1-A and
24 2, i.e. to delete registration of the lease
25 agreements concerned ... was a product of reasonable

<p>1 interpretation of Moldovan law'. 2 PROFESSOR KNIEPER: Will you come to the 3 point where you discuss the decision of the 4 State Chancellery which characterises the 5 disposition A-1, only one, as illegal, and also the 6 Floresti court? 7 MR KOPECKY: Professor Knieper, we will 8 come to that, but I think it is a question best 9 asked to the legal expert, because he will be able 10 to give you the correct information. We don't want 11 to engage in further speculation. 12 But further to this, the dispositions were 13 indeed never found illegal by the Court of Appeal or 14 by the Supreme Court. First expert report Rusu, 15 paragraph 28: "The Floresti District Court set 16 aside Disposition 1-A. "Cosernita mayor failed to 17 file a reasoned appeal", and in the end the 18 Supreme Court of Justice, which did not hear the 19 merits of the case because "the scope of its review 20 was only the Balti Court of Appeal's decision on 21 return of the unreasoned appeal". So, if any, there 22 was a decision on the merits by the Floresti 23 District Court, which will be analysed by our legal 24 experts. 25 Therefore our legal expert concluded that</p>	<p>1 enforced against the lessor". 2 Claimants could equally enforce their 3 leases against Bio-Alianta. Second Report Rusu, 4 paragraph 10: "Regardless of the registration of 5 the lease, it is enforceable against third parties 6 acting in bad faith. "Registration of a lease does 7 not automatically make it opposable (enforceable) 8 against third parties". 9 Indeed, in the injunction and in the 10 decision cancelling the injunction the reasoning 11 does not mention registration. If you look at 12 exhibit C-105 -- and I will walk you through it -- 13 the court finds a preventive measure can be 14 cancelled at the defendant's request. The court 15 further finds that landowners from Cosernita village 16 concluded leases with Laguardia. The lessee worked 17 a part of the lands, about 140 hectares, from 680, 18 and the landowners signed new lease contracts with 19 Bio-Alianta, who requested the court to declare the 20 contracts signed by ICS Laguardia with the owners 21 from Cosernita voided, and requested preventative 22 measures. 23 But Bio-Alianta did not mention any 24 particular reason for the annulment of the 25 contracts, and therefore the court considered that</p>
<p>1 even the Floresti District Court has not 2 subjected -- I am sorry, I am misquoting. 3 The Floresti District Court judgment of 4 24 July 2014 has not been subject to review by 5 superior courts on the merits. That was my 6 statement. I apologise. 7 PROFESSOR KNIEPER: The question comes to 8 my head, given this procedural situation, it is the 9 decision of the Floresti court which entered into 10 force. That was a final and binding decision. 11 MR KOPECKY: That is correct. In any 12 event, dispositions were not challenged by Claimants 13 in court. Claimants never challenged them in court. 14 They admit as much in Memorial paragraph 470. "The 15 only action Claimants did not take was the immediate 16 challenge of the disposition in the local 17 administrative courts". 18 And in any event to that, the dispositions 19 did not prevent the enforcement of Claimants' rights 20 against Bio-Alianta. 21 Claimants could enforce their rights 22 against the landowners regardless of registration. 23 First Report Rusu, paragraph 12. "Unregistered 24 leases remain valid (if the case)", meaning if they 25 are indeed valid, "under civil law, and can be</p>	<p>1 the seizure measure was inappropriate as it would 2 impede Laguardia from the agricultural work and 3 cause it unfounded prejudice as its lease contracts 4 with the owners had not been terminated, and 5 therefore the court decided to cancel the preventive 6 measure in favour of Bio-Alianta. So to annul 7 Bio-Alianta's injunctions, only Claimants' 8 contractual rights under the law against the 9 landowners were considered, not the registration. 10 Finally, the other impugned conduct that 11 Claimants complain about is neither attributable nor 12 is it proven. It is not attributable. Claimants 13 allege no failure of Respondent's laws or its 14 judiciary to the extent that it was even ceased. 15 Claimants claim damage allegedly caused by 16 Bio-Alianta. However, Bio-Alianta is not 17 attributable to Respondent. 18 The other impugned conduct is not proven 19 either. Claimants did not prove they were induced 20 to invest by any alleged assurances of Respondent 21 and did not prove any of its alleged conspiracies. 22 Claimants' failure to seek correction is 23 relevant on the merits. Claimants agree that not 24 every unlawful act or decision constitutes a BIT 25 breach, and failure to seek correction may be</p>

1 considered by the Tribunal. Claimants' Reply, 181
 2 paragraph 56: "Host states can make administrative 14:27
 3 mistakes without violating the BIT; and tribunals
 4 may consider the availability and efficacy of local
 5 remedies when determining whether there was a
 6 violation of the BIT. Claimants do not reject
 7 either of these positions generally. However, the
 8 circumstances are different here".
 9 Respondents submit that the circumstances
 10 are not different here, and there is no reason why
 11 this principle should not apply in this case
 12 Respondent agrees with Claimants to the
 13 extent that Claimants' failure to seek correction
 14 does not make their claim inadmissible, and that is
 15 the working and operation of Article II(3)(b) of the
 16 BIT. But Claimants' failure remains indicative of
 17 the absence of a BIT breach, and as for that
 18 failure, no BIT breach can be established, in its
 19 decisive elements, decided case law is similar
 20 enough to this case to permit the Tribunal to
 21 consider Claimants' failure to seek correction in
 22 their evaluation of whether the BIT had been
 23 breached, and those elements are: Claimants impugn
 24 particularly low level governmental acts. Those
 25 acts were based on a reasonable interpretation of

1 Rosietici alone would have been profitable even if 183
 2 the operations in Cosernita and Varvareuca were shut 14:29
 3 down and even if Claimants had not adapted to the
 4 fact.
 5 This is Claimants' case, and Claimants'
 6 quantum expert. We do not endorse those figures,
 7 but let's look at them. Claimants' expert report
 8 sets out in tables 7, (a), (b) and (c) among others
 9 the indirect and depreciation expenses for the
 10 farming operations in all three villages for the
 11 years 2011, 2012, 2013 and 2014.
 12 If we look at the yellow highlighted
 13 numbers in table 7(a), which are the indirect costs
 14 in Cosernita, we arrive at certain numbers, which
 15 now fly into the slides. Then if we look at those
 16 figures for Varvareuca, table 7(b), those again are
 17 the indirect costs and the depreciation expenses for
 18 operations in Varvareuca on Claimants' case.
 19 **MR FORTIER:** What are you telling us here?
 20 **MR KOPECKY:** The next slide will say it
 21 all.
 22 **MR FORTIER:** I am ready!
 23 **MR KOPECKY:** So if we add the indirect
 24 costs and the depreciation expenses, we arrive at
 25 total figures of between 85,000 and 133,000 per year

1 the law. First Report Rusu, paragraphs 31, 41 and 182
 2 50. Those acts were open to a direct challenge in 14:28
 3 court. First Report Rusu paragraph 67; Second
 4 Report Rusu, paragraph 68. Those challenges would
 5 not have been futile. Indeed, the district court
 6 seized to review the dispositions' interpretation of
 7 the law did not endorse it (C-043)
 8 Claimants had legal representation at the
 9 time (Second statement Grot, paragraph 6 and 9),
 10 lawyers who were aware of the dispositions but held
 11 off challenging them, C-126, pages 3 and 4. Yet
 12 Claimants never challenged the dispositions.
 13 Finally, or semi-finally, to be precise,
 14 even if all were true, Respondent did not cause
 15 Claimants damage.
 16 In Cosernita and Varvareuca the farming
 17 rights to those lands were derived from valid lease
 18 contracts to the extent those contracts were valid,
 19 and Claimants could enforce their rights against
 20 landowners regardless of registration (expert report
 21 Rusu, paragraph 12) and Claimants could enforce
 22 their rights against Bio-Alianta as well regardless
 23 of registration (Second Report Rusu, paragraphs 10
 24 and 11).
 25 As regards Rosietici, the operations in

1 in indirect costs and deprecation expenses, and if 184
 2 we then subtract this from the EBIT, in that last 14:31
 3 remaining village of Rosietici, which on Claimants'
 4 case is between 353 and 401,000, we still arrive at
 5 a positive number. And please don't make me speak
 6 about numbers any further, because I am a lawyer,
 7 and we have many experts who will hopefully explain
 8 those numbers, but to me 353 minus 85 is a positive
 9 number and it means that there was no survival mode
 10 There may have been an impact, but the operations in
 11 Rosietici alone could have borne all alleged
 12 indirect costs and depreciation expenses, on
 13 Claimants' case, which is not admitted or accepted,
 14 but, on their case, Rosietici would have pulled it
 15 off alone.
 16 Finally, Respondent did not cause
 17 Claimants damage, which damage is in any event
 18 excessive. We will hear much more on this from the
 19 quantum experts on Wednesday, but to summarise lost
 20 profits cannot be based on DCF absent a proven
 21 record of earnings. Claimants request pre-award
 22 interest more than double the alleged actual damage.
 23 The quantification blindly relies on the
 24 agricultural expert report to be updated without any
 25 apparent reasonability check by the quantum expert.

<p>1 The damage is based on at least partially invalid 2 leases in a four-year lease term, although only 3 three years had been agreed, and the presumed 4 performance of Claimants' business would have 5 exceeded the next comparable business more than two 6 times, and I'm not saying average, I am saying the 7 next best business would have been exceeded more 8 than two times.</p> <p>9 Nevertheless, Claimants' high-tech farming 10 business operations appear to be less 11 capital-intensive than other comparable businesses. 12 And finally, Claimants claim the full value of 13 assets which they still control.</p> <p>14 Under those assumptions, corrected, 15 Claimants' damage amounts to nil.</p> <p>16 Mr President, members of the Tribunal, 17 Respondent just outlined why it is not responsible 18 for the damage Claimants claim. Because Claimants 19 were not diligent in establishing their investment, 20 they were not diligent in managing their investment, 21 and however Claimants seek to pin their failures on 22 Respondent, Respondent is not responsible</p> <p>23 Thank you.</p> <p>24 THE PRESIDENT: Thank you. Does that 25 conclude your opening argument?</p>	<p>185 14:32</p> <p>1 speak, the Claimants, will have 15 minutes of direct 2 examination, which will start now, and you will then 3 be made available to the Respondent, and then the 4 Claimant will have an opportunity to come back to 5 you with further questions, but only in relation to 6 matters raised by the Respondent in its 7 cross-examination.</p> <p>8 MR GROT: Your honour, before Mr Wells 9 asks me questions, I think I owe you some 10 information, because to listen, the lawyers, I am 11 sitting, and there are two different scenarios, so 12 I think I will help you a lot.</p> <p>13 This land which I took in Moldova was 14 three years unused --</p> <p>15 THE PRESIDENT: I think there is a 16 procedure that is agreed as between the parties. 17 I hope you will have the chance to say --</p> <p>18 MR GROT: I apologise.</p> <p>19 THE PRESIDENT: No need for an apology at 20 all. I express the hope that you will have the 21 chance during the course of the direct and the cross 22 to address all of the matters you want, and I am 23 sure also my colleagues will have questions, and 24 part of this is to allow you to say what it is you 25 want to say to clarify your witness statement.</p>
<p>1 MR KOPECKY: Yes, it does.</p> <p>2 THE PRESIDENT: Thank you. We will then 3 move to the first of our witnesses. Let's just take 4 a 5-minute break so we can get the courtroom ready 5 to hear from Mr Grot. There will be, in accordance 6 with our conversation, 15 minutes of direct to begin 7 with, and then we hand him over to your side, 8 Mr Kopecky. Very good. Back at twenty to three. 9 (Short break from 2.35 pm to 2.45 pm) 10 ZBIGNIEW PIOTR GROT</p> <p>11 THE PRESIDENT: Mr Grot, welcome to 12 Vienna. I think Ms Nitschke has already explained 13 to you that you are appearing as a witness in these 14 proceedings, not only as Claimant, and that before 15 you are given an opportunity under direct 16 examination and then cross-examination, and then 17 re-direct, you have to make a statement, and I think 18 you have that statement in front of you. I would be 19 very grateful if you could just read for the record 20 aloud that statement.</p> <p>21 MR GROT: I solemnly declare upon my 22 honour and conscience that I shall speak the truth, 23 the whole truth and nothing but the truth.</p> <p>24 THE PRESIDENT: Thank you very much. 25 I think we have now agreed that your side, so to</p>	<p>186 14:34</p> <p>1 MR GROT: Thank you.</p> <p>2 THE PRESIDENT: So have no worries. You 3 will hopefully be able to say everything you want to 4 say. Mr Wells?</p> <p>5 Examination by Claimants</p> <p>6 MR WELLS: Mr Grot, could you finish the 7 last sentence, the point you were about to make?</p> <p>8 MR GROT: The land which I took, the three 9 villages, was unused for three years. This was 10 vacant land, unfarmed, unseeded, unprocessed for 11 three years.</p> <p>12 THE PRESIDENT: I think it is traditional, 13 just for the record, if you could take him to his 14 witness statement, and then clarify that these are 15 indeed his witness statements, it is indeed his 16 signature, and invite him to say whether there are 17 any corrections he would wish to make to the 18 documents that are before him, just for the sake of 19 good housekeeping. We can then move on</p> <p>20 MR WELLS: Yes, Mr President. 21 Mr Grot, I am showing you on the screen 22 CWS-1, witness statement of Zbigniew Piotr Grot. Do 23 you remember this?</p> <p>24 MR GROT: Yes.</p> <p>25 MR WELLS: This front page? You have seen</p>

1 this? 189
 2 MR GROT: Yes. No 1. 14:51
 3 MR WELLS: I am going to briefly take you
 4 through it --
 5 THE PRESIDENT: If you could take him to
 6 his signature and ask whether there are any
 7 corrections to this document?
 8 MR WELLS: Okay. Here is the end of the
 9 witness statement, Mr Grot. Is that your signature?
 10 MR GROT: Yes.
 11 MR WELLS: It looks like you have dated
 12 it. What is the date?
 13 MR GROT: It looks like January 11, 2017.
 14 MR WELLS: Are there any corrections you
 15 would like to make to the witness statement?
 16 MR GROT: During the opening statement of
 17 Moldova there was a picture, you know --
 18 THE PRESIDENT: Sorry, Mr Grot. At this
 19 point, is there anything in this witness statement
 20 that needs to be corrected? Does it accurately
 21 reflect your views?
 22 MR GROT: Yes. This is accurate.
 23 THE PRESIDENT: Good. If we could do the
 24 same for the second witness statement, just for the
 25 sake of good housekeeping, just to make sure it is

1 beginning that it was a translation, a translation 191
 2 from Romanian into English. 14:54
 3 MR GROT: Yes.
 4 MR WELLS: Are you aware of where is the
 5 Romanian version of this letter?
 6 MR GROT: I never thought about that, but
 7 there is probably in the translation office,
 8 translator office, we could find a copy. But
 9 I don't remember.
 10 MR WELLS: Have you attempted to look for
 11 this?
 12 MR GROT: This issue came to me today, to
 13 my attention, so for what reason am I supposed to
 14 look for?
 15 MR WELLS: During the production of
 16 documents in this case, not from a request from the
 17 Respondent but during the submission of documents in
 18 this case by the Claimants, this is one of the
 19 documents that was submitted, and one of the
 20 requirements in Procedural Order No 1 is to provide
 21 an original version of the document. So this is
 22 translated into English.
 23 MR GROT: Yes.
 24 MR WELLS: We need to identify if this is
 25 your letter and whether or not it was possible to

1 indeed your statement that we are looking at. That 190
 2 is all this is about. It is just a formality. 14:52
 3 MR WELLS: Here is CWS-12, second witness
 4 statement of Zbigniew Piotr Grot.
 5 MR GROT: Yes.
 6 MR WELLS: Is that your signature there?
 7 MR GROT: Yes.
 8 THE PRESIDENT: Does this reflect an
 9 accurate statement of your views?
 10 MR GROT: Yes.
 11 THE PRESIDENT: Thank you. Over to you,
 12 Mr Wells.
 13 MR WELLS: Thank you. Mr Grot, I have on
 14 the screen C-083. Earlier today there was some
 15 discussion during the housekeeping about the
 16 admissibility of this particular exhibit. I would
 17 like to take you through it and show you this
 18 briefly, and note at the top right corner it states
 19 "Translation from Romanian into English". You will
 20 see that this is in the English language, this
 21 letter. I will just go through it briefly here.
 22 You will see at the end it states "Zbigniew Grot".
 23 You see the Laguardia stamp. Is this your letter?
 24 MR GROT: Yes.
 25 MR WELLS: At the top it stated at the

1 locate the original Romanian version of this letter. 192
 2 MR GROT: I was trying to find at home, 14:56
 3 I was unable, and I never thought this would be so
 4 important. By the way, you know, actually this
 5 letter could be written from the very beginning in
 6 English, though the version of Romanian, this letter
 7 I was writing, I hire some Romanian translator in
 8 Colorado Springs to do that, because I got a
 9 telephone call from Moldova, from anti-corruption
 10 department, Mr Lilian Pintia, he called me and he
 11 asked me to contact US Embassy to write the letter,
 12 and themselves, I mean the anti-corruption and US
 13 Embassy, those guys were trying to resolve the
 14 problem, you know, the criminal problem --
 15 MR WELLS: Do you speak Romanian?
 16 MR GROT: No.
 17 MR WELLS: Who wrote it?
 18 MR GROT: The guy who does translation,
 19 I did in my language and we translated to -- the
 20 Romanian guy, he did writing. I was dictating him,
 21 do this, do this, do that, so when he accomplished
 22 the Romanian language, then we translated to
 23 English, and the Romanian was sent to those three
 24 people.
 25 MR WELLS: But to be clear, you could not

1 locate the original version of this? 193
2 **MR GROT:** No. 14:57
3 **MR WELLS:** In response to Mr Grot's
4 testimony, the Claimants would request that this
5 exhibit be admitted into evidence, after
6 authentication.
7 **MR FORTIER:** Mr Grot, you have explained
8 how the document actually saw the light of day. You
9 dictated in English to a Romanian translator.
10 **MR GROT:** Exactly.
11 **MR FORTIER:** The letter that is here in
12 our book, is that correct, that is before you?
13 **MR GROT:** Yes.
14 **MR FORTIER:** And that letter was
15 translated into Romanian?
16 **MR GROT:** Yes.
17 **MR WELLS:** The Claimants would request
18 again that this particular exhibit be admitted into
19 evidence.
20 **THE PRESIDENT:** Give us one minute. We
21 will confer.
22 (The Tribunal conferred off the record)
23 **THE PRESIDENT:** The Tribunal's position is
24 that we are happy to allow this to be admitted into
25 evidence, but we express no view as to its weight or

1 Laguardia's ability to make a profit in Stefan Voda, 195
2 and that can be found on page 31 of the Rejoinder. 15:01
3 What type of contracts did Laguardia enter into to
4 perform farming in Stefan Voda?
5 **MR GROT:** I sign a contract, a lease
6 contract, for one season for 250 ha.
7 **MR WELLS:** We have heard a lot about
8 leases, over 1,500 leases. How many leases were in
9 Stefan Voda?
10 **MR GROT:** One.
11 **MR WELLS:** Did you make an attempt to
12 locate that one lease?
13 **MR GROT:** Yes.
14 **MR WELLS:** What happened? Could you find
15 it?
16 **MR GROT:** Mr Wells, you know, seven years
17 ago if I had knowledge I will go to court, I will
18 hire a person to hold those documents. We
19 transferred from one place to another place,
20 impossible to find
21 **MR WELLS:** Who looked for that lease?
22 **MR GROT:** Well, we checked, because the
23 lease is supposed to be in the CPA office, the
24 bookkeeper's office, and she said she does not have
25 it there.

1 authority or probative value, but subject to that, 194
2 it is admitted into evidence. 14:59
3 **MR WELLS:** Thank you, Mr President.
4 Mr Grot, with the ten minutes or so that
5 we have remaining in your direct examination,
6 I would like to have questions related to REX-3, the
7 expert report on damages from Mr Michael Peer.
8 Mr Peer's report refers to certain profits
9 obtained by Laguardia in Stefan Voda district, where
10 Laguardia first began farming in Moldova. To be
11 clear, could you just clarify, when was it that
12 Laguardia first entered Moldova? What year? In the
13 Stefan Voda district?
14 **MR GROT:** 2008.
15 **MR WELLS:** After that first year you
16 engaged in farming operations. How successful were
17 you with the operations in Stefan Voda?
18 **MR GROT:** I was happy, and there was, you
19 know, nice profit for this kind of investment. It
20 was only 250 ha, and in the similar situation as
21 Floresti, the land was unused for 5 or 6 years,
22 prior to my investment
23 **MR WELLS:** The Respondent has requested
24 that the Tribunal make what is called a negative
25 inference for the fact that especially regarding

1 **MR WELLS:** And she could not locate it? 196
2 **MR GROT:** No. 15:02
3 **MR WELLS:** You have referred to this lease
4 as a servicing contract in your witness statement
5 and pleadings. Since it is missing, can you
6 describe the terms of the contract? The basic
7 terms?
8 **MR GROT:** The basic terms is I am taking
9 land for one year and I am paying a return for the
10 lease. I remember I think we pay like 8,000 USD for
11 the 250 ha for one farming season.
12 **MR WELLS:** Moving on to the next question
13 relating to Mr Peer's expert report, the report
14 incorporates, as we heard earlier in the opening
15 statements, what is called "average yields" as part
16 of the calculation. I would like to talk about the
17 differences between Laguardia's approach to farming
18 in comparison to normal Moldovan farming. How did
19 your equipment compare?
20 **MR GROT:** Prior to my investment in
21 Moldova, there were some modern farms in Moldova.
22 On average, small farms, because there was 50 ha, 70
23 ha, 30 ha. There was old from the other system,
24 I mean the communist system, farm equipment, which
25 was old equipment, so you can't compete. This is

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15:04

1 apple and orange different.
2 **MR WELLS:** What about your use of
3 fertilizers?
4 **MR GROT:** We use a technology. In my
5 business in Poland I use some professor from a
6 Polish university to help me figure the right
7 technology for the right culture. I was trying to
8 use my data, my information, from my experience
9 here, you know, in Moldova, to use a proper amount
10 of fertilizers per hectare, to use a chemical
11 treatment, so actually I was doing western
12 technology in farming.
13 **MR WELLS:** And that was different from
14 what was normal?
15 **MR GROT:** Definitely. There were even
16 jokes at that time, everything in Moldova is organic
17 because there are no fertilizers, no chemicals --
18 which is good for customers, this is good, healthy
19 food -- but you cannot yield a high result.
20 **MR WELLS:** Can you give a more specific
21 example, like something like ploughing differences?
22 **MR GROT:** Our technology, for example, no
23 plough technology, which some people do it like this
24 today in Moldova, no plough, which means using,
25 instead of ploughing the land and making even, you

199
15:07

1 operation. That is at section 3.3 of the report,
2 starting at page 9. Did Laguardia have different
3 business divisions?
4 **THE PRESIDENT:** I can allow Mr Grot to
5 answer this question, but we are out of time at that
6 point. Pleas do answer that question, Mr Grot.
7 Take as long as you need to answer.
8 **MR GROT:** You asked me about other?
9 **MR WELLS:** So the question relates to --
10 Mr Peer's report refers to different business
11 divisions that Laguardia had.
12 **MR GROT:** No, this is untrue.
13 **MR WELLS:** So what was Laguardia's
14 business?
15 **MR GROT:** Farming.
16 **MR WELLS:** What exactly does that
17 constitute? Presumably what we just talked about,
18 growing crops, but anything else?
19 **MR GROT:** Growing crops. At this stage of
20 business the plan was to grow a crop.
21 **MR WELLS:** Nothing else, such as selling
22 equipment?
23 **MR GROT:** No, absolutely not.
24 **MR WELLS:** Thank you. No further
25 questions.

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15:05

1 go straight with the planter, so actually there is
2 some kind of disc, which is like knives, cutting the
3 groove and placing the seed, so modern technology is
4 very important, you know? Because, for example, to
5 seed a winter wheat, each seed must be in a certain
6 depth in the soil, so our technology allowed us to
7 plant every single seed on the same level. The old
8 technology, one seed is 7cms, one is 3cms, one is on
9 top, so this is the type of difference in
10 technology.
11 **MR WELLS:** Getting back to Mr Peer's
12 report again, and what we saw earlier, references in
13 the opening to negative profits, all four years were
14 addressed in the report, if Laguardia had
15 experienced high costs and low yields in such a way
16 that it resulted in negative profits, or no profits
17 rather, is that something that your business could
18 easily have adjusted? What could you have done?
19 **MR GROT:** Definitely, right away, to fix
20 that because you could switch culture and some other
21 stuff. But, you know, how could you survive four
22 years with no profits, right?
23 **MR WELLS:** Thank you. Another thing that
24 is addressed in Mr Peer's report is reference to
25 business divisions involved in Laguardia's farming

200
15:08

1 **PROFESSOR KNIEPER:** One very technical
2 question. I am sure it is easy to answer.
3 In your first witness statement,
4 paragraph 24, you say that you went back to the
5 United States in December 2011, but I am sure it is
6 2010. Is that correct? Did you mean 2010? That is
7 a typo?
8 **MR GROT:** Yes, I went back home for
9 Christmas.
10 **PROFESSOR KNIEPER:** In 2010?
11 **MR GROT:** 2010.
12 **PROFESSOR KNIEPER:** Not in 2011?
13 **MR GROT:** Well, I went back in 2011.
14 Every winter, after season.
15 **PROFESSOR KNIEPER:** You say here
16 in December 2011. What do you mean by that? Did
17 you mean December 2010 or 2011? You say now 2011.
18 **MR GROT:** No. I said, your Honour, I went
19 back to the United States every end of December for
20 Christmas, 2010, 2011, 2012.
21 **THE PRESIDENT:** I think I can clarify.
22 You say here, "with the leases signed and initial
23 operations frozen for winter, in late December 2011
24 I travelled back to the United States". We think
25 you probably meant to write "December 2010"?

1 **MR GROT:** Yes. 201
15:11

2 **PROFESSOR KNIEPER:** The other question

3 that I have before we start cross-examination is

4 I want to come back to this lease contract in

5 Stefan Voda. You said there was only one landowner.

6 Was that a private landowner?

7 **MR GROT:** It looks like one owner of the

8 land, yes.

9 **PROFESSOR KNIEPER:** If you say there was

10 only one –

11 **MR GROT:** Only one, definitely. I do not

12 know if he was subleasing or this was his land, I do

13 not know.

14 **PROFESSOR KNIEPER:** Did you have this

15 lease registered with the mayor's office in

16 Stefan Voda?

17 **MR GROT:** No, your Honour. This piece of

18 land was in a different country, we could say that.

19 Pridnestrovie Nistria. So this was on the border.

20 There was Stefan Voda and part of the land was the

21 other side. It is like an independent country, I

22 don't know how to figure that Nistria area with

23 Tiraspol. The landowner took care of that. He took

24 the lease, I paid the money and there was no issue

25 **PROFESSOR KNIEPER:** But you did not bother

1 District. 203
15:16

2 **MR GROT:** Yes.

3 **MR KOPECKY:** And to farm that land you had

4 to lease that land. Am I right?

5 **MR GROT:** Yes.

6 **MR KOPECKY:** So the leases were the very

7 core of your investment?

8 **MR GROT:** Yes.

9 **MR KOPECKY:** And you planned to lease

10 about 3000 ha?

11 **MR GROT:** Yes.

12 **MR KOPECKY:** That is how much all those

13 leases together would have covered?

14 **MR GROT:** Yes.

15 **MR KOPECKY:** Industrial farming of large

16 plots is, as we heard, more profitable than farming

17 small fields. Is that right?

18 **MR GROT:** Yes.

19 **MR KOPECKY:** So it is important that the

20 field that you are farming is one connected plot,

21 rather than many small ones. Is that correct?

22 **MR GROT:** Yes.

23 **MR KOPECKY:** Mr Grot, when you worked in

24 Stefan Voda, which for the record is not in

25 Transnistria but it is indeed on the border, you met

1 to have it registered for the validity of this lease 202
15:12

2 contract? You simply concluded a private contract

3 and you worked this land.

4 **MR GROT:** Yes.

5 **PROFESSOR KNIEPER:** Thank you.

6 **THE PRESIDENT:** Mr Kopecky?

7 Cross-examination by Respondent

8 **MR KOPECKY:** Good afternoon, Mr Grot.

9 Welcome to Vienna and welcome to our office. My

10 name is Leon Kopecky and, as you know, I repeat the

11 Republic of Moldova in these proceedings. If I may

12 I will ask you a few questions with regard to your

13 witness statements.

14 We have already established that the

15 signatures on your witness statements were indeed

16 yours. I would like to take you to exhibit C-125,

17 which will appear on the screen. Looking at the

18 original, at the bottom of those pages, every page

19 is signed, but whether that is your signature?

20 **MR GROT:** This is my signature?

21 **MR KOPECKY:** Mr Grot, as you certainly

22 know, these proceedings relate to your investment in

23 Moldova and in particular the farming operations you

24 sought to establish in Floresti. Your idea was to

25 industrially farm land in three villages in Floresti

1 Mr Igor Bugai. Is that right? 204
15:17

2 **MR GROT:** Yes.

3 **MR KOPECKY:** Is Mr Bugai also a farmer?

4 **MR GROT:** No.

5 **MR KOPECKY:** Mr Bugai speaks Polish?

6 **MR GROT:** Yes.

7 **MR KOPECKY:** He invited you to Floresti to

8 look at some farmland?

9 **MR GROT:** No.

10 **MR KOPECKY:** He didn't invite you?

11 **MR GROT:** Do I have a chance to explain

12 how this happened?

13 **MR KOPECKY:** Go ahead.

14 **MR GROT:** When I met Mr Bugai we exchanged

15 telephone numbers. He went back home. I went back

16 to work. The conclusion of our meeting was "we will

17 be in touch". And then one day I don't remember,

18 I called him or he called me, and let's go for a

19 meeting, so we met together and he said "Ziggy",

20 because I share my thoughts with him, and herein

21 Stefan Voda it is a difficult time, there is not

22 enough land for expansion for us, and he said,

23 "Ziggy, I have a friend in Floresti, he is

24 Vice-President of the Floresti region", and he said

25 "I spoke with Mr Rusu and there is a vacant land.

1 They are looking for a farmer to lease the land",
 2 because the structure of Moldova, after the system
 3 collapsed, Mr Kopecky, I try to help you because
 4 I was there for four years. I want to assure you
 5 that the old pieces, old villages which we took as a
 6 lease, this is one huge piece, because this is old
 7 farm cohorts. Under the Soviet Union there was
 8 government-owned farms, so when the system collapsed
 9 they cut only on paper – okay, they issue title to
 10 you, 2 ha, 2 ha, 2 ha, 2 ha, so there are 500 owners
 11 but still one piece of land, so I don't have to jump
 12 over one piece to get to another piece. This was a
 13 huge, huge farm.
 14 So Mr Bugai, he arranged a meeting with
 15 Mr Rusu. We travelled together to Floresti and we
 16 spoke with Mr Rusu, and, you know, he hugged me like
 17 that. He said, "Ziggy, you are from Heaven. There
 18 are three years unused land. The people wait for
 19 the bread". So actually the payment for the lease
 20 every year is 300-kilo of wheat, 100-kilo of
 21 sunflower, 50 or 80-kilo of corn. The people, they
 22 raise their chickens, milk cows, so they are waiting
 23 for the payment, but for three years none, zero.
 24 Then I am in the picture and Mr Rusu is
 25 telling me, "Hey, next year, in May, there is an

205
 15:18

1 running the operation. Is that correct?
 2 **MR GROT:** Yes.
 3 **MR KOPECKY:** That means that you were also
 4 responsible for signing and registering the many
 5 leases that we just discussed?
 6 **MR GROT:** Before I answer this I want to
 7 clarify some stuff which I think will be helpful for
 8 all. I hired Mr Bugai as an administrator.
 9 Actually, I was doing the work, but at that time
 10 I applied for legal residency in Moldova and
 11 actually I can't be as a legal administrator on
 12 paper. The prior administrator, I discovered, in
 13 the CPA office was stealing money from the accounts,
 14 so I was desperate to switch the person who is
 15 controlling the account. I think this was
 16 unpleasant for some people from Moldova. He was
 17 stealing my administrators, so this was the reason
 18 why I switched to Mr Bugai.
 19 Later on I took responsibility -- I mean,
 20 they place me, Mr Levintsa, as administrator, when
 21 I received what I call the green card in Moldova.
 22 So this was legal for me to be administrator.
 23 **MR KOPECKY:** I understand the
 24 administrator now. I want to understand the
 25 registering of the leases, because if you were the

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 15:22

1 election in Moldova". For us it would be great to
 2 prove to people: hey we, the administration of the
 3 region, were doing stuff, the land is occupied,
 4 income is coming, so Mr Kopecky, from your
 5 statement, I took this, I went there, I was crying
 6 "Give me the land, please". I was fighting. No.
 7 It is the opposite way. The people, local politics,
 8 they need me and they invited me there, so let's
 9 start from this point.
 10 This is nothing, you know, like I was hey,
 11 I want a big business here, you know, so I move to
 12 Floresti from Stefan Voda, and there is opportunity,
 13 there is vacant land, but if we take a lease and we
 14 started our farming, so there was no competition,
 15 zero, none.
 16 **MR KOPECKY:** Thank you. Going back to
 17 Mr Bugai, because I want to understand the
 18 relationship, Mr Alexei Bugai is the son of
 19 Mr Igor Bugai?
 20 **MR GROT:** Yes.
 21 **MR KOPECKY:** You engaged this Alexei as
 22 administrator of Laguardia?
 23 **MR GROT:** Yes.
 24 **MR KOPECKY:** In your first witness
 25 statement you say that you, Mr Grot, was the man

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 15:20

1 man running the operation, I wonder what was
 2 Mr Bugai's role, because Mr Bugai says that he was
 3 responsible?
 4 **MR GROT:** Mr Kopecky, to sign at that time
 5 any documents you have to be, there are two persons:
 6 administrator or a CPA. I can't sign at that time
 7 in a legal way. I don't know why the law is like
 8 that. I don't know if this is against the law.
 9 I was told I can't sign this document
 10 **MR KOPECKY:** But you testified that you
 11 did sign some of the documents?
 12 **MR GROT:** I did sign, yes.
 13 **MR KOPECKY:** Because it was so complicated
 14 and specific under law, you entrusted Mr Bugai, and
 15 at that time you deemed him to be a competent
 16 administrator?
 17 **MR GROT:** Mr Kopecky, before I answer this
 18 I try to help you more. This is not a situation
 19 like I am coming to this store and I am asking give
 20 me one kilo of apples. I am meeting the people in
 21 villages, people farming, the landowners.
 22 **THE PRESIDENT:** Mr Grot, I do not want to
 23 interrupt you unduly, but we are under some
 24 constraints of time and I think it would be helpful,
 25 we want to make sure you have a chance to say

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 15:24

<p>1 everything you want to say, but if you could answer 2 the questions as briefly as possible otherwise we 3 will get into difficulty of time, and I think it is 4 only fair to you and to the Respondent to make sure 5 questions go shortly and answers go shortly.</p> <p>6 MR GROT: Your Honour, I have a question 7 to you. When would be my time? Because I think 8 this is very important for you to make --</p> <p>9 THE PRESIDENT: We have had a statement 10 from you. We may well have questions for you and 11 that will be an occasion, but if you could keep your 12 answers to Mr Kopecky short and tight, thank you.</p> <p>13 MR KOPECKY: Thank you. I wonder, did 14 Mr Bugai exercise his responsibilities diligently? 15 Or, to put it more simply, did Mr Bugai do a good 16 job?</p> <p>17 MR GROT: I could say yes. I was happy 18 with that.</p> <p>19 MR KOPECKY: Are all the leases signed on 20 behalf of Laguardia?</p> <p>21 MR GROT: I think this is a difficult 22 question. We are talking about 1300 leases, and you 23 ask me, well, you want to show me unsigned, so 24 I could prove, yes, this is unsigned. I thought 25 everything was signed to my knowledge</p>	<p>1 then is arrival of a problem and from this point you 2 are leading the case. But there was no problem. 3 I left to the United States for Christmas, beautiful 4 Christmas in Colorado. In 2010 I was happy, 5 everything was going in a perfect direction and 6 I was waiting to return in spring to continue my 7 business.</p> <p>8 MR KOPECKY: But we agree that those 9 leases and others were not signed?</p> <p>10 MR GROT: Yes.</p> <p>11 MR KOPECKY: And those that were signed 12 were not all signed by the administrator, 13 Alexei Bugai. As you say in your witness statement, 14 no.2, paragraph 5, the leases were signed by one of 15 four persons, which was, either yourself, Mr Bugai, 16 Mr Tugui or Mr Kozak, and not the one we have in the 17 room, another one. Did all these people sign as 18 Mr Administrator Alexei Bugai?</p> <p>19 MR GROT: At that time every person -- 20 Bugai, Tugui and Kozak -- those guys were in 21 possession of a power of attorney from Laguardia to 22 represent the interests of Laguardia.</p> <p>23 MR KOPECKY: I see, and that was approved 24 because those leases still had the stamp of 25 Laguardia? The leases had a stamp? The round stamp</p>
<p>1 in December 2010 when I left back home for 2 Christmas.</p> <p>3 MR KOPECKY: It is because you say in your 4 first statement that Mr Bugai signed all the leases</p> <p>5 MR GROT: If I signed this, it does mean 6 I said that.</p> <p>7 MR KOPECKY: But can we agree that many 8 leases were not signed on behalf of Laguardia?</p> <p>9 MR GROT: Well, if you prove, if you show 10 me unsigned leases, yes, I could say that</p> <p>11 MR KOPECKY: Then let's have a look at 12 exhibit R-17. Is this lease signed on behalf of 13 Laguardia?</p> <p>14 MR GROT: No, it is not signed, no</p> <p>15 MR KOPECKY: Let's have a look at R-20.</p> <p>16 MR GROT: No.</p> <p>17 MR KOPECKY: Let's have a look at R-21.</p> <p>18 MR GROT: You could see in this case, this 19 is a simple thing. Sometimes people were forgetting 20 to do things. He places a stamp and he forgot to 21 sign. So you got a seal, right? So an accident. 22 During the business sometimes you get two pieces 23 together. If this is the point -- I mean, there was 24 no problem with leases, Mr Kopecky, until the leases 25 were deleted and Bio-Alianta was registered. So</p>	<p>1 of Laguardia.</p> <p>2 MR GROT: Yes.</p> <p>3 MR KOPECKY: If I could take you to 4 exhibit R-18, can we agree that the stamp does not 5 have a sign of Laguardia?</p> <p>6 MR GROT: Yes.</p> <p>7 MR KOPECKY: So, sir, would it be fair to 8 say that not all steps in the process were free of 9 mistakes?</p> <p>10 MR GROT: Well, that would be speculation, 11 but I could say that all leases were registered, so 12 let's say in the process of registration, the person 13 who registered the lease, you know, like I register 14 a car in Colorado, I have to pay the fee. I pay the 15 fee to register.</p> <p>16 MR KOPECKY: Yes, Mr Grot, but if you buy 17 the car you do not buy it off the authority, you buy 18 it off the dealer. I am asking about the lease with 19 the villager.</p> <p>20 MR GROT: The fee, the person who 21 registers, the Mayor City Hall, you could say that, 22 he checks all the leases before they register, 23 right, so probably the question is more proper to 24 the mayor of the village, or cadastral engineer, not 25 to me.</p>

1 **MR KOPECKY:** It was their responsibility? 213
15:31

2 **MR GROT:** No, not responsibility. When

3 I went to Floresti, villagers, landowners, mayors,

4 head of region, they actually -- at the first stage

5 there was a handshaking agreement. They said,

6 "Ziggy, after meeting, we are so happy, go to work

7 and we will start a process, preparation. All

8 leases, we will help you". So not like I came to

9 Floresti and I was running, like you showed me the

10 picture, run from one person. Remember the thing,

11 there are 350 people, landowners. These people are

12 very poor people and I am not sure if this will be

13 offensive -- this is very, like farmers --

14 I apologise if I use the term "primitive", but let's

15 say in a village like that everything which is said

16 by the mayor is done. If the mayor said: "Hey

17 guys, sign those leases", it is done. So this is

18 the kind of organisation, not like I was running

19 from one place to another to another.

20 **MR KOPECKY:** That was Mr Bugai, right?

21 That was his job?

22 **MR GROT:** Yes.

23 **MR KOPECKY:** But we see that he made

24 mistakes, so it seems he was not really as diligent.

25 **MR GROT:** Mr Kopecky, if this will make

1 C-125, we are going to look at the English 215
15:34

2 translation this time, pg.4, of the original

3 translation. You testified at this hearing as a

4 representative of Laguardia SRL, Z Grot? Take all

5 the time you need.

6 **MR GROT:** What is the question?

7 **MR KOPECKY:** The question is if you

8 testified at this hearing as a representative of

9 Laguardia?

10 **MR GROT:** When this hearing took place?

11 **MR KOPECKY:** 7 and 8 April 2011, so about

12 a month after the dispositions

13 **MR GROT:** Yes.

14 **MR KOPECKY:** You testified at the hearing

15 as a representative of Laguardia.

16 **MR GROT:** Yes.

17 **MR KOPECKY:** If we turn to page 3 of the

18 document, page 7 of the transcript, when you were

19 asked, you said "all the contracts were signed by

20 me". Is that correct?

21 **MR GROT:** Yes.

22 **MR KOPECKY:** So at the time you remembered

23 that you personally signed those leases?

24 **MR GROT:** Okay. Remember one thing: we

25 are in Moldova 2010, right?

1 you happy, I will say yes, he made mistakes. As a 214
15:33

2 human, we are making mistakes

3 **MR KOPECKY:** I agree. We all do.

4 **MR GROT:** Yes.

5 **MR KOPECKY:** So, moving on, Mr Grot, and

6 I am about halfway through

7 **MR GROT:** That is nice!

8 **MR KOPECKY:** We already had that statement

9 where you said in your second witness statement,

10 "the leases would have been signed either by

11 Mr Alexei Bugai, Mr Ion Tugui, myself or

12 Mr Darek Kozak". (Paragraph 5, second witness

13 statement). You also say it has been a long time

14 since those events occurred

15 **MR GROT:** Almost ten years.

16 **MR KOPECKY:** Indeed. You say you cannot

17 exactly remember who signed which lease when. After

18 ten years I do understand that

19 **MR GROT:** Yes.

20 **MR KOPECKY:** You would have known at that

21 time, ten years ago you would have known who signed

22 which lease?

23 **MR GROT:** Probably, yes. At that time,

24 yes.

25 **MR KOPECKY:** If I can take you to exhibit

1 **MR KOPECKY:** 11, but yes, at that time. 216
15:37

2 **MR GROT:** I got a lawyer, Mr Garmas, he

3 speaks Russian, and there is translator to Romanian.

4 My Russian is not perfect so I don't remember,

5 Mr Kopecky, what is that

6 **MR KOPECKY:** We can look at the Romanian

7 original.

8 **MR GROT:** Okay, but we do not have my

9 actual voice with Mr Garmas' conversation in

10 Russian, right, we don't?

11 **MR KOPECKY:** But I understand that you too

12 rely and your lawyers rely on cotemporaneous court

13 documents and emphasise how important it is what is

14 said in court. When you sign something --

15 **MR GROT:** If I said so, if I signed, yes.

16 So it could happen.

17 **MR KOPECKY:** May I now take you to exhibit

18 C-27, which are the leases that Laguardia signed in

19 Cosemita? If we look at the signature page of the

20 first lease, is that your signature?

21 **MR GROT:** No.

22 **MR KOPECKY:** If we move to page 4 which is

23 the signature page of the second lease, exhibit

24 C-27, is that your signature?

25 **MR GROT:** No.

<p>1 MR KOPECKY: If I ask you to confirm that 2 also the next few signatures resembling the first 3 two are not yours, you could confirm that none of 4 those signatures under the respective signature page 5 of those leases are yours? 6 MR GROT: No, these are not mine. 7 MR KOPECKY: So most of the leases were 8 not signed by you? 9 MR GROT: I saw three leases. 10 MR KOPECKY: Shall we go on? 11 MR GROT: Up to you. No, if this is not 12 signed, it is not signed, but what is the point? He 13 is a representative of Laguardia. 14 MR KOPECKY: Yes, of course, but you told 15 the court and signed the minutes -- 16 MR GROT: I don't remember what I said. 17 I spoke with a Russian lawyer. My Russian is 50/50, 18 and I can't remember ten years ago what Garmas 19 lawyer asked me, what I responded, what was 20 translated. Maybe this is a mistake because I don't 21 want to mislead people. So I don't know. I don't 22 remember this moment when I said yes, I did sign all 23 leases. This is ten years ago. Like I said, there 24 was three people to the judge, there was four 25 people: Ziggy Grot, Mr Garmas, translator and the</p>	<p>1 between us, even lawyer maybe, I did say something, 2 but you are asking me who physically took the leases 3 from Cosernita to Floresti? 4 MR KOPECKY: No, I am asking you if 5 Mr Levintsa handled the leases in Floresti as you 6 testified. 7 MR GROT: Can you explain to me "handle"? 8 MR KOPECKY: If you can explain what you 9 see on the screen. "Mr Levintsa handled the import 10 of equipment, corporate matters for ICS Laguardia 11 SRL, the leases in Floresti ... He is experienced in 12 all kinds of commercial matters". I ask you what 13 you meant by "handle". 14 MR GROT: Let me explain. I don't 15 remember where we got examples of Moldovan lease 16 I went to Mr Levintsa, he checked the lease and he 17 said, "Yes, this is the lease which we are supposed 18 to use", and I went to a print shop, I ordered 5000 19 copies and period. This is the Levintsa part. He 20 reviewed the lease, if this is a proper lease for 21 this kind of business, so this is his involvement. 22 Maybe my language is not perfect, but this is what 23 I mean. 24 MR KOPECKY: Because if I look at that, 25 you say that, "Mr Levintsa handled this entire</p>
<p>1 judge, and the person who filed the report, five 2 people involved to produce your statement. So I 3 don't know. My answer is I don't know. 4 MR KOPECKY: Mr Grot, you are not a 5 lawyer, are you? 6 MR GROT: No, I am not a lawyer. 7 MR KOPECKY: Have you studied Moldovan 8 law? 9 MR GROT: No. 10 MR KOPECKY: To set up your investment you 11 hired an attorney, Mr Victor Levintsa. 12 MR GROT: Yes. 13 MR KOPECKY: And he specialises in 14 investments like yours in Moldova 15 MR GROT: He was recommended to me in 16 Warsaw, Poland. He speaks English and so this is 17 one of the reasons why I chose Mr Levintsa 18 MR KOPECKY: He also handled the leases in 19 Floresti, correct? 20 MR GROT: No. 21 MR KOPECKY: Mr Grot, in your second 22 statement, paragraph 6 -- 23 MR GROT: Mr Kopecky, I want to help you 24 right now. As you know, my language, English, is 25 not perfect. Maybe there is a misunderstanding</p>	<p>1 process of setting up the investment", right? 2 "Laguardia's attorney during this entire process of 3 setting up the investment was Mr Victor Levintsa". 4 But he was not the one who represented you in the 5 local court. That was Mr Garmas, correct? 6 MR GROT: Yes. 7 MR KOPECKY: Because you wanted a 8 litigation attorney for that 9 MR GROT: Mr Kopecky, I think this is an 10 excellent time to inform the Tribunal why I chose 11 Mr Garmas. I went to Chisinau, I went to 12 Mr Nagacevski. I think the first three lawyers in 13 Moldova, Nagacevski name, I was interested to hire 14 him. He was recommended by some person and in two 15 days he called me, "Ziggy, I apologise, I can't take 16 this case". Victor Levintsa -- maybe this would be 17 funny, I don't know why -- he said, "Ziggy, this is 18 130 kilometres, I don't want to drive there". So 19 later on I discovered there were a lot of people 20 when they heard Bio-Alianta they turned back. They 21 turned back because they're a smelly thing. 22 MR KOPECKY: When you found Mr Garmas to 23 deal with the dispositions, his advice was to first 24 focus on the injunctions that had been issued 25 against Laguardia, correct?</p>

<p>1 MR GROT: Yes. 221 15:44</p> <p>2 MR KOPECKY: And you trusted his advice?</p> <p>3 MR GROT: Mr Kopecky, I wish that time</p> <p>4 I could hire you. You are a lawyer in Moldova, so</p> <p>5 you could help me. You could save my life. I hired</p> <p>6 Mr Garmas, yes, because there was no choice for me.</p> <p>7 MR KOPECKY: I would have been useless.</p> <p>8 I don't speak any Romanian.</p> <p>9 MR GROT: But according to your knowledge,</p> <p>10 what is Ziggy supposed to do? Today from the ten</p> <p>11 years, you know, at that time I needed a good lawyer</p> <p>12 there, but there was a strange situation.</p> <p>13 MR KOPECKY: Moving back to the</p> <p>14 agriculture, you said that you wanted to lease about</p> <p>15 3000 ha, and for that you needed about 1,000 leases.</p> <p>16 MR GROT: Everything between the villages</p> <p>17 there was about a thousand.</p> <p>18 MR KOPECKY: I am not quite sure but there</p> <p>19 were four digits.</p> <p>20 MR GROT: That is okay.</p> <p>21 MR KOPECKY: To fill out the leases you</p> <p>22 needed the data on the landowners and the plots,</p> <p>23 correct?</p> <p>24 MR GROT: Yes.</p> <p>25 MR KOPECKY: Cadastral agents have access</p>	<p>1 MR GROT: This is on the record. I don't 223 15:47</p> <p>2 know how much is the fee, if this was six lei.</p> <p>3 Because, like I said, if we register a car, there is</p> <p>4 a registration fee. If we register a lease, there</p> <p>5 is a registration fee. Lease: registration fee. So</p> <p>6 we received the invoice from the village, from the</p> <p>7 mayor, and we wire-transfer the money for the</p> <p>8 registration leases.</p> <p>9 MR KOPECKY: So the money was paid only</p> <p>10 for the registration?</p> <p>11 MR GROT: For registration of those</p> <p>12 leases.</p> <p>13 MR KOPECKY: Because if we look at</p> <p>14 paragraph 14 of your first witness statement, you</p> <p>15 say that, "the cadastral agents were paid a small</p> <p>16 fee of about six lei per lease for this service" and</p> <p>17 the registration fee was also paid for each lease.</p> <p>18 MR GROT: I don't know what this means,</p> <p>19 but I remember I was not so enthusiastic to spend a</p> <p>20 lot of money, so we paid I think six lei per lease.</p> <p>21 So I don't know, maybe I mislead, or I did some</p> <p>22 improper term to my lawyer, and this is the result</p> <p>23 of that, but I remember exactly, we paid that</p> <p>24 registration fee. Period.</p> <p>25 MR KOPECKY: So they did the filling out</p>
<p>1 to that data, right? 222 15:45</p> <p>2 MR GROT: Yes.</p> <p>3 MR KOPECKY: So you asked them to help you</p> <p>4 fill out the leases?</p> <p>5 MR GROT: During the meeting with</p> <p>6 villagers and mayor and the director of the Floresti</p> <p>7 region, I remember exactly that day in Varvareuca</p> <p>8 Mr Zelenenco I met the head of the region for the</p> <p>9 first time, and I asked even, "Who is this guy?"</p> <p>10 "Oh, this is the head of the region of Floresti".</p> <p>11 He assured me, "Ziggy, we need you here. We will</p> <p>12 try to do our best to help you", so actually the</p> <p>13 people from the office, from Zelenenco and Rusu,</p> <p>14 they asked each village to help because, you are</p> <p>15 right, the data is there. So we brought the leases,</p> <p>16 copies -- and this is not my request, Mr Kopecky,</p> <p>17 I was not looking for a favour -- this is the head</p> <p>18 of the region directed the guy: "Hey, listen, this</p> <p>19 guy is going to plough the land to produce bread and</p> <p>20 you must help them to prepare that". So this is the</p> <p>21 scenario. I have never been to the cadastral office</p> <p>22 and asked, "Hey, listen, can you?" No.</p> <p>23 MR KOPECKY: But you say you paid them a</p> <p>24 small fee for the service of about six lei per</p> <p>25 lease, correct?</p>	<p>1 of over 1000 leases for you for free? 224 15:49</p> <p>2 MR GROT: There is nothing free. I was</p> <p>3 working on the field.</p> <p>4 MR KOPECKY: No. I am speaking about the</p> <p>5 cadastral agents, because they imported a lot of</p> <p>6 data into a thousand leases</p> <p>7 MR GROT: Mr Kopecky, I don't know. Maybe</p> <p>8 we are supposed to ask the mayor how this happened,</p> <p>9 but they tried to help me. They tried to bring me</p> <p>10 there because they need me, so I don't know. How</p> <p>11 about if people are doing favours to others, I don't</p> <p>12 know, so everything must be paid. They ask me to</p> <p>13 take the land to produce bread because people are</p> <p>14 hungry.</p> <p>15 MR KOPECKY: I understand, but they filled</p> <p>16 out the leases. Did you supervise them while they</p> <p>17 were doing it? Did Mr Bugai supervise them?</p> <p>18 MR GROT: Yes. I mean, who supervised?</p> <p>19 MR KOPECKY: They were filling out a</p> <p>20 thousand-plus leases.</p> <p>21 MR GROT: Mr Kopecky, there was no need.</p> <p>22 They call us when the leases were ready to sign</p> <p>23 MR KOPECKY: Yes, but the leases have</p> <p>24 mistakes, so I wonder if somebody checked if they</p> <p>25 actually did a good job?</p>

1 **MR GROT:** Mr Kopecky, I am not a lawyer, 225
15:50
2 and I think this is offensive to the intelligence of
3 these people. You are digging some stuff, leases,
4 leases. Listen, you know, at that time ten years
5 ago I was thinking how to plough the land, how to
6 seed the wheat, and you are trying to make a story
7 one signature or two signatures?
8 **MR KOPECKY:** A couple of hundred,
9 actually.
10 **MR GROT:** That is okay, but if you want to
11 ask me a nice question so I could help you, I could
12 give you some idea about what happened to Laguardia.
13 I know you are escaping from this issue
14 **MR KOPECKY:** I will try to ask nicer, but
15 I am doing my best
16 **MR GROT:** I know you get hired by people,
17 by Moldova, but I want to just remind you that time
18 when I was working in Moldova, the Prime Minister is
19 in the jail right now for nine years. The other guy
20 who was involved in Bio-Alianta, Mr Platon(?), is in
21 the jail.
22 **MR KOPECKY:** I will not be the last one
23 asking questions. After this will be what is called
24 a re-direct –
25 **THE PRESIDENT:** Why don't we proceed with

1 **MR GROT:** Because they will receive the 227
15:52
2 payment.
3 **MR KOPECKY:** But they received that
4 nonetheless.
5 **MR GROT:** And village taxes, so it was a
6 three-way street.
7 **MR KOPECKY:** But the landowners received a
8 fixed amount, no matter if the land produced zero or
9 one hundred percent?
10 **MR GROT:** Hmm mm.
11 **MR KOPECKY:** Because you say in your first
12 witness statement that the mayors asked to you start
13 farming right away from the beginning.
14 **MR GROT:** Yes.
15 **MR KOPECKY:** And in your second witness
16 statement you say you were instructed by the
17 district president and Vice-President also to start
18 farming right away?
19 **MR GROT:** Yes.
20 **MR KOPECKY:** Did you get that in writing?
21 **MR GROT:** Mr Kopecky, I don't know how to
22 answer. Listen, I am 65 years of age and I left
23 Poland under a communist system and I feel free.
24 I could say everything which I want to say it. What
25 was the point?

1 the questions. You have been very helpful in giving 226
15:51
2 short, succinct answers. We very much appreciate
3 that. Carry on exactly as you have been doing.
4 **MR KOPECKY:** Coming back to the farming,
5 you wanted to launch quite a big operation. Is that
6 right?
7 **MR GROT:** At that time I used to own 500
8 ha in Poland, so my next step, because I was
9 successful in Poland, and it is impossible in Poland
10 to get more land so, yes. This is a normal thing.
11 Progress. You are growing, right?
12 **MR KOPECKY:** And you knew that the lives
13 of the people there relied on that farming?
14 **MR GROT:** Yes.
15 **MR KOPECKY:** Under your leases the
16 landowners were to be paid a certain fixed amount?
17 **MR GROT:** Yes.
18 **MR KOPECKY:** That fixed amount was owed
19 regardless of how good the harvest was.
20 **MR GROT:** You are right, yes.
21 **MR KOPECKY:** Am I right in assuming that
22 any efforts to increase the harvest would only
23 benefit Laguardia?
24 **MR GROT:** And landowners.
25 **MR KOPECKY:** How?

1 **THE PRESIDENT:** Briefly. 228
15:53
2 **MR KOPECKY:** Did you receive the
3 instruction "please start farming" from the mayor or
4 the President in writing, or not?
5 **MR GROT:** Mr Kopecky, maybe Zbigniew Grot
6 is naive. I am Christian. I believe in God. To me
7 a handshake means a lot. For western civilisation,
8 to us you could challenge in the court a handshaking
9 agreement. This is the United States of America.
10 At that time ten years ago Mr Rusu said, "Ziggy, you
11 are from the Heaven. We need you. Mr Zelenenco,
12 each villager – Ziggy, bravo". So you are asking
13 me I was supposed to ask for a piece of paper,
14 right? No.
15 **MR KOPECKY:** I am trying to understand one
16 thing. The villagers and the politicians would not
17 have benefited from any extra harvest because they
18 were paid the same if you worked or not, if the
19 harvest was good or bad.
20 **MR GROT:** But what is the point?
21 **THE PRESIDENT:** Just to be clear,
22 presumably some of the villagers were involved in
23 the harvesting of the crop? Who did the harvesting
24 of the crop?
25 **MR GROT:** No. Bio-Alianta took

1 everything. 229
15:55

2 **THE PRESIDENT:** But under your proposal?

3 **MR GROT:** No, everything will be cropped

4 by me, harvested by me.

5 **THE PRESIDENT:** But who would do actually

6 all of the work? You were going to do all of the

7 work personally?

8 **MR GROT:** Laguardia.

9 **THE PRESIDENT:** And you would not do any

10 of the work with any of the local inhabitants of the

11 villages?

12 **MR GROT:** We would hire some local people,

13 local farmers operating tractors and combines and

14 some other stuff, yes.

15 **THE PRESIDENT:** So is it the case that the

16 more successful the farm, the more you would hire

17 people?

18 **MR GROT:** Of course, because our dream was

19 to hire 50 local people to build a business on a

20 high scale.

21 **MR KOPECKY:** I would like to make

22 reference to a statement submitted by Mr Tugui. He

23 worked on establishing this project. He was your

24 right-hand man, Mr Tugui?

25 **MR GROT:** Yes.

1 each village mayor, they asked us to start as soon 231
15:57

2 as possible. Remember, this is the end of August.

3 This is September, October, November, and winter, so

4 there is no time to play. To me I don't pay any

5 attention to details, who said what, if the mayor

6 asked me or the President Iurie Leanca ask me.

7 I don't pay attention. I know one thing: next day

8 we get a tractor and start ploughing the land.

9 And by the way, Mr Kopecky, I would like

10 to let you know, Mr Tugui I used the term "my right

11 hand". I think this would be very important for

12 your Honours too. Mr Tugui was appointed to me by

13 Mr Rusu. Mr Rusu was at that time the

14 Vice-President of the Floresti region. Mr Rusu and

15 Mr Tugui, this is a member of the PLMD Party, which

16 head of the party at that time was Mr Vlad Filat,

17 Prime Minister, and there is a third guy, Mr Tapu,

18 he is a congressman, so today I am looking seven or

19 ten years back, so I am not sure if Mr Tugui was

20 helping me or he was against me, I don't know.

21 I left Moldova, and this is the truth, because the

22 story is rumours. They are talking a story –

23 **THE PRESIDENT:** Let's go back to

24 Mr Kopecky's questions.

25 **MR KOPECKY:** I only have one last issue,

1 **MR KOPECKY:** And he also submitted a 230
15:56

2 witness statement in this arbitration?

3 **MR GROT:** Yes.

4 **MR KOPECKY:** Because he explains that

5 farming was started early because Laguardia, because

6 you were interested in processing the lands as soon

7 as possible?

8 **THE PRESIDENT:** Could you take us to the

9 paragraph and the witness statement, and could you

10 for the benefit of the witness put that paragraph on

11 the screen?

12 **MR KOPECKY:** Yes. It is paragraph 4, last

13 sentence.

14 "The work had to start immediately after

15 signing the contracts as we were interested in

16 processing the lands as soon as possible in order to

17 obtain a proper harvest".

18 **MR GROT:** So what is your question?

19 **MR KOPECKY:** Is that a correct

20 understanding of your business plan?

21 **MR GROT:** This is his statement.

22 **MR KOPECKY:** But is it correct? Did he

23 understand it correctly?

24 **MR GROT:** I am not going to agree with

25 that, because I remember exactly during the meetings

1 Rosietici. In Rosietici you did not pay the 232
15:59

2 landowners in December 2012, did you?

3 **MR GROT:** One second, please.

4 **MR KOPECKY:** All the time.

5 **MR GROT:** Mr Kopecky, there was problem.

6 We asked for an extension and actually, in spring

7 2012, we approached people, we did an announcement

8 on the monitor, we invited people to be paid. There

9 was delay, you are right, absolutely, but some

10 people took the payment and they returned it back.

11 **MR KOPECKY:** I understand, but I am

12 talking about December 2012 when you did not pay.

13 If I may take you to exhibit C-60a, I understand

14 that these people you did not pay included 119

15 pensioners who had no other source of income. We

16 will come to this exhibit. It is C-60a.

17 **MR GROT:** This is 2011?

18 **MR KOPECKY:** December 2012. If I can take

19 you to C-72a, which is dated August 2013, that is a

20 decision on the outstanding payment in Rosietici.

21 If we scroll through it, we see that the amounts are

22 in the region of 400 to 4000 lei

23 **MR GROT:** Hmm mm.

24 **MR KOPECKY:** And that would be about 25 to

25 250 USD per landowner.

1 **MR GROT:** Yes. 233
16:01

2 **MR KOPECKY:** You offered to make those

3 payments several months later.

4 **MR GROT:** Yes.

5 **MR KOPECKY:** Did you offer interest?

6 **MR GROT:** Mr Kopecky, 2012, December,

7 I escaped Moldova, I was scared to death, and there

8 was end of story. My dream was killed. I wanted to

9 see my son, I wanted to see my family. Period.

10 Mr Utica, during the process in the court, he

11 informed me, "Ziggy, this is very powerful people.

12 Bio-Alianta. They could kill one person a year and

13 ---

14 **THE PRESIDENT:** Could you answer the

15 question.

16 **MR KOPECKY:** I hate to interrupt but I

17 asked whether you offered these 119 pensioners and

18 the other people you owed money, whether you offered

19 them --

20 **MR GROT:** I don't remember.

21 **MR KOPECKY:** Because if I take you to

22 exhibit C-67a, you offered rent payment for 2012.

23 It deals with rent payment but it does not mention

24 interest. This is your invitation to the landowners

25 to pay.

1 operations than actually taking out a loan 235
16:03

2 and paying your obligations under the contract?

3 **MR GROT:** Mr Kopecky, at that time I was

4 not interest about Moldova, period.

5 **MR KOPECKY:** But you had a valid contract

6 with villagers who you failed to pay, so even if you

7 were not interested in them any more, you still had

8 to fulfil your --

9 **MR GROT:** Mr Kopecky, when I went for a

10 meeting with Bio-Alianta --

11 **MR KOPECKY:** 119 pensioners. I understand

12 it was stressful, but I am talking about these

13 people in --

14 **MR GROT:** But this is connected together.

15 **MR KOPECKY:** But these people were waiting

16 for your money and you didn't give them any money.

17 **MR GROT:** Yes. There was delay. There

18 was delay on the payment, yes.

19 **MR KOPECKY:** Mr Grot, you claim that the

20 Republic of Moldova took from you three years of

21 farming for which you ask 14 million USD in this

22 arbitration, give or take?

23 **MR GROT:** Yes.

24 **MR KOPECKY:** If everything worked out the

25 way you planned, how much would one villager or the

1 **MR GROT:** Mr Kopecky, everything which 234
16:02

2 happened after the end of December 2012, if

3 something happened in Moldova there was my

4 representative and there was no Grot any more.

5 There was no Zbigniew Grot.

6 **MR KOPECKY:** But my point is these

7 villagers had to bear the shortfall because you did

8 not pay them, and later when you offered to pay them

9 you didn't offer them interest, so they gave you a

10 short term loan effectively.

11 **MR GROT:** Mr Kopecky, this land was unused

12 three years prior to when I took the land.

13 **MR KOPECKY:** I am talking about December

14 2012.

15 **MR GROT:** One more time. In 2012 I left

16 Moldova for good. I don't know what happened, if my

17 guy, the administrator offered them interest or not.

18 I don't know.

19 **MR KOPECKY:** But, Mr Grot, you could have

20 taken out a loan in December to pay those villagers

21 who had nothing else to live on.

22 **MR GROT:** So what do you want to hear from

23 me now?

24 **MR KOPECKY:** I want to hear whether you

25 considered it cheaper for them to finance your

1 villagers in aggregate receive for leasing to you 236
16:04

2 their land?

3 **MR GROT:** They would receive the amount

4 which we agreed to pay and this is a Moldovan

5 standard. It is nothing like I was cheating on

6 people. This is standard. The people say, "I give

7 you my land, you have to pay me back, 100-kilo, 250

8 of corn". This is the landowners request.

9 **MR KOPECKY:** We can agree that what you

10 just mentioned is several orders of magnitude less

11 than 14 million USD.

12 **MR GROT:** Mr Kopecky, you could ask those

13 questions of our expert.

14 **MR KOPECKY:** We will.

15 **MR GROT:** I think you could save time in

16 this moment. I am not an expert. I am not a

17 lawyer.

18 **MR KOPECKY:** Thank you, Mr Grot. I have

19 no further questions. You have been extremely

20 helpful to us.

21 **THE PRESIDENT:** Thank you, Mr Kopecky.

22 Thank you, Mr Grot. Mr Wells, do you have any

23 questions by way of re-direct on the matters

24 addressed by Mr Kopecky?

25 Re-examination by Claimants

1 **MR WELLS:** Thank you, Mr President. 237
2 Mr Grot, there was a lot of discussion during your 16:06
3 examination regarding words like, "we" or "you",
4 "us", or at one point there was discussion about you
5 as a representative for Laguardia. When you say
6 things in your witness statement like "I signed the
7 leases", are you referring to you personally, or do
8 you mean Laguardia signed?
9 **MR GROT:** Yes. This is my company. I.
10 **MR WELLS:** So would you say that the
11 confusion -- there seems to be a lot of confusion
12 over who signed which leases -- so when you said
13 things like "me", "we", that is not you personally,
14 it is the business?
15 **MR GROT:** Mr Wells, I think you are right,
16 but I would like to let you know that this is ten
17 years ago, no 1. No 2, I think there is in the file
18 information, for the last eight years I am taking
19 every day seven pills, some kind of medication,
20 which has side-effects. You are missing the point
21 I took medicine half an hour ago and I am asking
22 myself why did I do that? So there is some kind of
23 problem sometimes, you know. Time. Time.
24 **MR WELLS:** One of the other questions
25 I had or points I just raised was when you said that

1 I am not ready, I don't have equipment for 239
2 sugarbeet, so Moldova-Zahar pressed on me. They 16:09
3 asked me, "Hey, we will help you. We will buy the
4 planters, we will buy sprayers", and later on it
5 never happened, so they signed with us contracts, so
6 they provided to us a service. They planted the
7 seeds and they sprayed the land, and everything was
8 delayed like three or four weeks. As a result of
9 that from 1000 hectares we were supposed to get a
10 crop like 30,000 metric tons. We got 3,000 --
11 **THE PRESIDENT:** Mr Wells asked you a
12 simple question: why were they not paid?
13 **MR GROT:** Because there was problem with
14 the crop.
15 **MR WELLS:** What were the terms of the
16 lease? When were you supposed to pay, and how?
17 **MR GROT:** Well, actually the end of year,
18 at the end of the season. I'm not sure, we have got
19 Professor Rusu and Mr Gladei, we could see what is
20 the flexibility on payment. What time, from where
21 to where.
22 **MR WELLS:** In general how did it work?
23 **MR GROT:** When you collected the crop, you
24 are selling the crop, you get money or you get the
25 physical item like sugar beets or wheat, so you are

1 you acted as a representative of Laguardia, was that 238
2 being made in a technical legal sense or just in 16:07
3 general, you as an owner of Laguardia?
4 **MR GROT:** No. There was a situation,
5 I was travelling back to Poland, I was travelling
6 back to the United States, so we have to handle
7 stuff, you know. So we went to notary in Floresti
8 and I signed a power of attorney for Darek Kozak,
9 Ion Tugui, so he was representing the interests of
10 Laguardia at that time.
11 **MR WELLS:** So some of these mistakes that
12 were discussed, also, are you aware of how many
13 mistakes were made?
14 **MR GROT:** No.
15 **MR WELLS:** In terms of the Rosietici rent
16 payments, why were they not paid?
17 **MR GROT:** To people.
18 **MR WELLS:** Which was one of the last
19 issues which were addressed, the Rosietici rent
20 payments. Why were they not paid?
21 **MR GROT:** This is related to other
22 business which was contracted with Moldova-Zahar.
23 We planted 500 ha or 400 ha of sugarbeet on the
24 land, and Moldova-Zahar -- actually our agreement
25 I was not ready to sign the lease because I said

1 giving to people after the harvest. 240
2 **MR WELLS:** So there was a problem with the 16:10
3 harvest?
4 **MR GROT:** Yes.
5 **MR WELLS:** Professor Knieper asked you a
6 question earlier in your testimony about the
7 Stefan Voda lease. He asked about whether you
8 registered the lease. Are you aware of whether it
9 was required to be registered, that particular type
10 of lease?
11 **MR GROT:** I think the next witness,
12 Mr Beril, because he was in this region, you could
13 ask if this is required, because I was new in
14 Moldova and today, I know, I am supposed to go here,
15 there, ask, you know, but there was no need. I got
16 one contract for 250 and there is one guy telling me
17 "Hey, go ahead, do your job, pay for the lease".
18 And I got piece of paper and that was it. There was
19 no question.
20 **MR WELLS:** There was the discussion of the
21 six lei per lease payment. Was that a bribe?
22 **MR GROT:** What?
23 **MR WELLS:** Was that some kind of a bribe?
24 **MR GROT:** No, absolutely not.
25 **MR WELLS:** What was it for?

1 **MR GROT:** This is for registration of 241
2 those leases. I think this is Moldova law. You 16:12
3 have to pay to register. They place the stamp. You
4 have to pay to the mayor's office or a cadastral
5 office.
6 **MR WELLS:** Based on what you know, that
7 six lei per lease payment was required by law?
8 **MR GROT:** Yes.
9 **THE PRESIDENT:** What are we looking at
10 here?
11 **MR WELLS:** This is exhibit C-125, an
12 exhibit which was used in part of the
13 cross-examination by the Respondent's counsel. At
14 the beginning of that cross-examination, Mr Grot,
15 you were asked if the signature on the page, and
16 I can't remember which page it was, was your
17 signature. Do you see your signature on any of
18 these pages?
19 **MR GROT:** No.
20 **MR WELLS:** I believe it was on here.
21 There it is.
22 **MR GROT:** Yes.
23 **MR WELLS:** Do you understand what this
24 document says?
25 **MR GROT:** No.

1 for agricultural leasing purposes 243
2 **MR GROT:** Yes. 16:16
3 **MR WELLS:** And that was the purpose of his
4 engagement?
5 **MR GROT:** Yes.
6 **MR WELLS:** When the injunctions that were
7 issued against your company in favour of Bio-Alianta
8 were issued by the Floresti court, did you have
9 knowledge of the dispositions that they used to
10 obtain those injunctions?
11 **MR GROT:** No.
12 **MR WELLS:** So the mayor's office had not
13 given you copies of those dispositions?
14 **MR GROT:** No. I remember this was
15 probably summer, we went with Mr Tugui to the
16 mayor's office, Cosemita, and we asked because we
17 want to do some legal work and he was running from
18 us, the mayor of the village. He was hiding.
19 **MR WELLS:** Because he still had not given
20 you the decision?
21 **MR GROT:** Because we called and we said we
22 need a copy.
23 **MR WELLS:** And he would not give you the
24 copy?
25 **MR GROT:** No.

1 **MR WELLS:** Do you know what language this 242
2 is? 16:15
3 **MR GROT:** I have no idea.
4 **MR WELLS:** Mr Kopecky also showed you
5 various leases which contained what he described as
6 mistakes from Laguardia. How many of those leases
7 did he actually show you?
8 **MR GROT:** Two or three.
9 **MR WELLS:** Beyond those leases which he
10 actually showed you, would you say that there are on
11 your knowledge more mistakes?
12 **MR GROT:** I don't know.
13 **MR WELLS:** Among the people who signed the
14 leases, so that would be Mr Bugai, Mr Kozak,
15 Mr Tugui, they all had authority?
16 **MR GROT:** Yes.
17 **MR WELLS:** These were your employees?
18 **MR GROT:** Yes.
19 **MR WELLS:** And they all had the authority
20 to use the stamp of the company?
21 **MR GROT:** Yes.
22 **MR WELLS:** Just staying on the lease for
23 one more minute, Mr Levintsa, your attorney,
24 reviewed the template lease, and according to your
25 testimony determined that it was a sufficient lease

1 **MR WELLS:** We can stop there. Thank you. 244
2 **THE PRESIDENT:** Thank you very much. Do 16:17
3 my colleagues have any questions?
4 **MR KOPECKY:** Mr President, may I have two
5 questions in re-cross?
6 **THE PRESIDENT:** Are they brief?
7 **MR KOPECKY:** Very.
8 **THE PRESIDENT:** Please proceed.
9 Further cross-examination by Respondent
10 **MR KOPECKY:** If I could ask my colleagues
11 to pull up C-125, page 2 of the document, which is a
12 translation, under the heading "PG1" it says, "The
13 representative of Laguardia SRL, V Garmas, explains
14 the Court". So, Mr Grot, you are represented by the
15 attorney Garmas in this hearing.
16 **MR GROT:** I don't remember, but if this
17 document proves that, this is true
18 **MR KOPECKY:** The second question I had is
19 to your representation since when have you been the
20 administrator of Laguardia SRL?
21 **MR GROT:** You would have to check the
22 record. I don't remember.
23 **MR KOPECKY:** Could it be March 2011?
24 **MR GROT:** Mr Kopecky, if you are in
25 possession of this information, share it with me.

1 I don't remember it. 245
16:19
2 **MR KOPECKY:** I am not. That is why I am
3 asking.
4 **MR GROT:** I don't remember.
5 **MR KOPECKY:** Thank you. That is all.
6 **THE PRESIDENT:** Excellent. Which of my
7 colleagues would like to go first?
8 Questions by the Arbitral Tribunal
9 **MR FORTIER:** Mr Grot, in paragraph 7 of
10 your second witness statement, CWS-12, you say in
11 the middle of that paragraph, "It was very clear
12 that somebody at a high level in the government had
13 decided that Bio-Alianta would take over these
14 lands".
15 I have two or three questions to ask you
16 about that sentence but, before I do, could you tell
17 the Tribunal what you know about Bio-Alianta? Who
18 are they? What were they doing in Moldova? What
19 did you learn about them at the time?
20 **MR GROT:** Your honour, this is a great
21 question. Thank you for asking me. Bio-Alianta,
22 there is one person, Mr Viroel, he is acting as the
23 owner, but he is my knowledge, because I was there
24 four years. Everything which happened to me, my
25 opinion is he is only a face of some big people.

1 land when they took the land. 247
16:23
2 Your Honour, I don't know how to say that.
3 I am 65 and I have got a son, I have got a baby, and
4 Mr Viroel, he told me like that: "Be quiet. If you
5 want to see your son, your family, be quiet, and
6 even if you leave Moldova, we can find you there".
7 Mr Kopecky asked me a lot of questions, and at this
8 point I was done. I was done. I was thinking how
9 to secure my investment, because I spent a lot of
10 money and I escaped from Moldova.
11 If you ask me directly, your Honour, my
12 knowledge, there are two people behind Bio-Alianta
13 and Autotehnica. There is Mr Filat and Mr Platon(.)
14 There is two people. This is my knowledge from
15 speaking to people, doing some homework on the
16 internet. One of these gentlemen is nine years in
17 the jail time and the other one is 19.
18 **MR FORTIER:** You said in answer to a
19 question from counsel for the Respondent that the
20 Bio-Alianta were very powerful people. Do you
21 remember that?
22 **MR GROT:** Yes. Your Honour, this was told
23 by Bio-Alianta's lawyer to me on the steps of the
24 court when we walked out from the court after
25 the injunction decision. He spoke English to me and

1 Who is behind would be difficult to 246
16:21
2 figure. Probably I thought, I asked my lawyers and
3 I laughed, you know, and I don't know why we in the
4 21st century don't have the power or the instrument
5 to do an investigation to ask Moldova, it is so
6 simple to figure who is who, because your Honour,
7 when I got the problem, beginning of the problem,
8 I went to Causeni, which is near Stefan Voda, and
9 I met the major of the Moldova customs, I met the
10 guy before and we got some kind of friendly
11 relation, so I went there and I was actually crying
12 and I said: "Alexander, I have a problem here and
13 there", and so he checked in the system, "I don't
14 care if this is legal or illegal", and the customs
15 file record Bio-Alianta brought to Moldova on 4/2010
16 a lot of farming equipment, tractors, combines, and
17 on one end this receiver is Bio-Alianta and the
18 sender to Moldova is an offshore company. So,
19 common sense, I work all my life with my hands and
20 if I have got a little bit of money invested I never
21 established any offshore, so an offshore company was
22 established by serious, serious people, and at the
23 same time I would like to let you know, your Honour,
24 during the meeting with Bio-Alianta I went there and
25 I thought they would pay me my investment in the

1 he said, "Ziggy, I am advising you not to fight. 248
16:25
2 These are powerful people". At the same time, your
3 Honour, I would like to let you know, Mr Utica,
4 I don't know how he is related to US aid, actually
5 my money as a taxpayer, we are helping Moldova, US
6 aid. He is some kind of boss managing the US aid.
7 So I asked lawyers in Moldova how could you get a
8 job like that. Well, special connections. So
9 I know, your Honour, it is difficult for us. I am
10 40 years in the United States. Our life is
11 different. There it is different.
12 **MR FORTIER:** Why did you leave Moldova?
13 **MR GROT:** Why? I told you, your Honour,
14 I wanted to see my son, and I want to raise my son,
15 because at that time he was ten years of age.
16 **MR FORTIER:** What made you leave Moldova?
17 **MR GROT:** Leave Moldova and go back to the
18 States?
19 **MR FORTIER:** Yes. What made you leave?
20 **MR GROT:** I was scared to death and
21 actually I don't care any more about business. So
22 after the business meeting with Bio-Alianta, where
23 he is telling me, "Hey, Mr Grot", because we asked I
24 think for some kind of money because I invested to
25 the land, and he said hey, listen, so I said hey,

1 Mr Viroel, I will go from here to US Embassy and I
2 will ask for assistance and help, and to that he
3 said, "hey, be careful, be careful".
4 So listen, there were a lot of incidents,
5 your Honour. There were people killed and
6 I witnessed on the field on the farm an A-47
7 shooting. So I know this is a beautiful job for
8 lawyers, for Mr Kopecky, for Mr Wells, but I was
9 there for four years, and you know I am driving the
10 car which was stopped and you hear A-47, because
11 there was some kind of disagreement so this made me
12 run because I want to raise my son. I have got two
13 adults, my second marriage, my first wife passed
14 away, and I have a ten years baby.
15 **MR FORTIER:** In the paragraph to which
16 I directed your attention earlier, which I think is
17 still on the screen, you wrote, "it was very clear
18 that somebody at a high level" -- "very clear", you
19 say -- "that somebody at a high level in the
20 government had decided that Bio-Alianta would take
21 over these lands".
22 On what basis do you assert, do you affirm
23 that somebody at a high level of the government had
24 decided that your lands, the land that you had
25 rented, that you had leased, would be taken over by

249
16:27

1 heavy people because Mr Zelenenco stated that.
2 **MR FORTIER:** It is on that basis that you
3 made an assertion that it was very clear that
4 somebody at a high level in the government had
5 decided that Bio-Alianta would take over those
6 lands?
7 **MR GROT:** Yes.
8 **MR FORTIER:** At the commencement of your
9 evidence you were asked by Mr Wells if your witness
10 statements contained the truth, and you said yes.
11 I ask you the same question in respect of exhibit
12 C-83, the letter that you wrote in English, and
13 which was translated in Romanian for transmission to
14 Moldova. You are familiar with that statement?
15 **MR GROT:** Yes.
16 **MR FORTIER:** Is everything in that letter
17 that you have written the truth?
18 **MR GROT:** Yes.
19 **MR FORTIER:** Thank you. No more
20 questions.
21 **PROFESSOR KNIEPER:** Perhaps we can pick up
22 more or less on your leaving the country or coming
23 back. Were you aware that when you went to Colorado
24 in December 2010 when the leases were not yet
25 registered, and you started to plough the land, as

251
16:31

1 Bio-Alianta?
2 **MR GROT:** Your Honour, when I returned
3 back to Moldova in the spring of 2011, we went for a
4 meeting to Mr Zelenenco. He is head of the region,
5 director. Three months before that, or four months
6 before that, Mr Zelenenco is supporting Laguardia,
7 and now I came to the office to ask Mr Zelenenco
8 what happened between October, September and today.
9 What happened? Mr Rusu at that time he is back from
10 me, he don't want to talk to me. Mr Zelenenco and
11 I don't remember exactly who asked, or maybe to go
12 and ask Mr Zelenenco why you supported Bio-Alianta
13 to lease the land? Instead of answering that,
14 Mr Zelenenco pointed to Mr Tugui, because
15 Mr Zelenenco was from a different party than
16 Mr Tugui and Mr Rusu, so Mr Zelenenco he pointed the
17 congressman Tapu. He said, "Mr Tugui, yes,
18 I supported Bio-Alianta, but your Tapu supported
19 them too". This is my conclusion, my thought.
20 Mr Zelenenco, director of the region, he is saying
21 in front of me the congressman, or how you call it,
22 senator or representative of Parliament, supported
23 Bio-Alianta. What was the interest of private party
24 business Bio-Alianta with landowners? This is my
25 conclusion, why I said this is heavy support from

250
16:28

1 you say, that there were difficulties?
2 **MR GROT:** Your Honour, the best of my
3 memory, when I was leaving in 2010 I remember the
4 leases were accomplished ready for registration,
5 I left with this knowledge.
6 **PROFESSOR KNIEPER:** Then did you hear in
7 January that there was a distribution of sugar by
8 Bio-Alianta?
9 **MR GROT:** Your Honour, in January I did
10 receive a telephone call. Actually this call was
11 directed by Mr Rusu. Physically Mr Tugui called me
12 and he said, "Ziggy, have you to come back to
13 Moldova because there is problem. There is people
14 trying to take your land".
15 **PROFESSOR KNIEPER:** The crucial period was
16 really around between the beginning of February to
17 20 February, the crucial period for at least
18 Disposition 1-A. Why did you not come back?
19 Because in your witness statement you say, "I was in
20 a hurry to fight and come back", but why did you
21 wait until the end of March to come back, because
22 then everything had already happened?
23 **MR GROT:** Your Honour, No 1, there was
24 some family issue, because, you know, I can't
25 explain it right now, but at the same time

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16:33

1 I thought -- before I left, I was invited to
2 Floresti by Mr Rusu, Mr Zelenenco, and I got the
3 full support of these people, so I asked Mr Tugui,
4 I said, "Well, listen, I'm not sure if this is the
5 truth even, because I left with assurance, hey,
6 everything is okay, we ploughed the land, we planted
7 some part of the winter wheat, and I was preparing
8 myself for, you know, heavy work in spring, but the
9 main thing, to answer you, your Honour, there was a
10 family problem and I was unable to jump on the plane
11 right away and come back to Moldova.
12 **PROFESSOR KNIEPER:** Is it possible that
13 you have not received these dispositions because you
14 were simply not in Moldova?
15 **MR GROT:** No, this is not truth, your
16 Honour.
17 **PROFESSOR KNIEPER:** I ask the question.
18 I don't want to insinuate that is the way it is.
19 I simply want to ask the question you were not in
20 Moldova when the disposition was first delivered,
21 and you were not in Moldova when the injunctions
22 were put in place, right?
23 **MR GROT:** No. I think in March/April
24 I was in Moldova.
25 **PROFESSOR KNIEPER:** You were in Moldova,

253
16:35

1 **PROFESSOR KNIEPER:** That we have heard
2 already, but you tell now that you were already
3 threatened to be killed in March 2011 and you stayed
4 on until December 2012.
5 **MR GROT:** Well, 2011, this was not
6 addressed like to me directly. He stated, you know,
7 "this is powerful people". He didn't say they could
8 kill you. "They could kill someone and they will
9 survive", but this happened next year with
10 Bio-Alianta's owner, which he pointed to me like
11 that, "hey, be careful".
12 **PROFESSOR KNIEPER:** Thank you. There is
13 another little question that I have. That concerns
14 your dealings with Zahar and Bicoli Agro. You have
15 said in your witness statement that you signed the
16 leases to these two companies, to Zahar in 2011 and
17 to Bicoli Agro in 2013. Did you ask the landowners
18 whether it was okay to sign the leases?
19 **MR GROT:** Your Honour, the lease which was
20 signed to Bicoli Agro was after my departure and
21 I left a power of attorney. To be honest with you,
22 I can't answer. Like I said, Grot was gone from
23 Moldova and I was not interested, so Igor Tcaci was
24 administrator and what he did he did, but without
25 me, something like that, I can say. I think this is

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16:38

1 if I remember your witness statement right, when the
2 injunction was lifted, but not when it was first
3 rendered?
4 **MR GROT:** We get at that time the physical
5 address of Laguardia in Chisinau. If there is any
6 mail their people will be calling me, "hey, here is
7 the letter", or decision, and "Come on, take this",
8 but there was none. And to be honest, even today it
9 is difficult for me to understand what this means --
10 injunction disposition -- I have no idea. Like
11 I said, at that time I needed a good lawyer after,
12 but it is difficult for me to explain even why I did
13 a step like that. You are in a new country, you do
14 not know the language, you don't know the law, and
15 people try to scare you, so you are running from
16 wall to wall.
17 **PROFESSOR KNIEPER:** Were you scared
18 already in March 2011?
19 **MR GROT:** In 2011, during the court in
20 Floresti, the injunction -- I am pronouncing it
21 properly? After the court we stepped outside and
22 Mr Utica, the lawyer for Bio-Alianta, he said,
23 "Ziggy, be careful, this is powerful people", and he
24 said they could kill a person one per year and this
25 will be okay.

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16:36

1 a proper statement because I left in December --
2 **PROFESSOR KNIEPER:** 2012.
3 **MR GROT:** And I said, "Goodbye, Moldova.
4 No more".
5 **PROFESSOR KNIEPER:** This is it?
6 **MR GROT:** Yes. And I left a power of
7 attorney because there was a lot of equipment
8 **PROFESSOR KNIEPER:** So you don't know
9 whether this assignment went through the approval
10 process with the landowners?
11 **MR GROT:** No, I have no idea.
12 **PROFESSOR KNIEPER:** And you were not
13 interested to know?
14 **MR GROT:** No.
15 **PROFESSOR KNIEPER:** The last part of the
16 question, if you say you don't know the details of
17 having to pay this and that, I had the impression
18 from what I read that you paid the agents six lei
19 per contract for helping you to fill it out and then
20 you paid an additional official fee of registration.
21 Is that a good understanding?
22 **MR GROT:** Your Honour, I think this is the
23 negative side of my quality of language. Yes,
24 I paid six lei for registration of those leases.
25 **PROFESSOR KNIEPER:** And then you paid in

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16:40

<p>1 addition a registration fee for the leases? 2 MR GROT: No. I paid a registration fee. 3 Not an addition. I paid once. Once. We received 4 the invoice from the village cadastral office and 5 wire-transferred money on the village cadastral 6 office account. 7 PROFESSOR KNIEPER: So what you have said 8 in your written statement is not completely – you 9 simply did not make the difference? Because there 10 you say you paid two things: a registration fee plus 11 a token fee for the agents, because they had – 12 MR GROT: It is different, your Honour. 13 Like I said, this is my statement, and maybe there 14 is some kind of discrepancy between me and my 15 lawyers preparing that, my quality of language, 16 maybe there is misunderstanding or something, but 17 one more time: I paid a one-time registration fee to 18 the cadastral office in each village. 19 PROFESSOR KNIEPER: Thank you very much. 20 THE PRESIDENT: Just one question, 21 Mr Grot. You have described the circumstances in 22 which you left Moldova. You decided you had had 23 enough and you would go back to the United States. 24 At that point did you reflect on the possibility of 25 continuing with legal proceedings in Moldova? After</p>	<p>1 MR GROT: Yes. 2 THE PRESIDENT: Are you saying that the 3 advice you received was that you did not need to 4 take any further steps in Moldova? 5 MR GROT: Well, advice of lawyers, 6 Moldovan lawyers, I asked good lawyers to represent 7 my case. They were not interested because when the 8 Bio-Alianta appeared the name, they said well, no, 9 no, no, no. So anyway, I tried with Mr Garmas one 10 more time. I don't know if these people were 11 helping me or not, or these people were against me, 12 because I know in the United States I could go to 13 your office, to a lawyer and he will explain to me 14 what option I got here. So I remember I went with 15 Mr Garmas. He is a lawyer in Moldova. He was doing 16 some construction at home and I called him, hey, we 17 have a court date. So he stepped with me to court 18 in short pants. This is the kind of representation 19 where I could go. I asked people for help 20 THE PRESIDENT: Were you surprised? You 21 didn't do badly in the courts of Moldova. 22 MR GROT: Well, your Honour, listen. When 23 I turned to Soroca, I went to the process in the 24 Moldova court, Floresti, and I was losing 25 everything. When I went with the same papers to the</p>
<p>1 all, you had had a certain success in the courts of 2 Moldova. Why did you not proceed with legal 3 proceedings in Moldova? 4 I appreciate that you wanted to leave but 5 you could have instructed a lawyer who was there to 6 continue on your behalf with you at a distance, 7 safely away in the United States on your account. 8 Why did you not do that? 9 MR GROT: Your Honour, this is a great 10 question. I went, one more time, to Mr Nagacevschi, 11 who is a good lawyer, and he advised me – because 12 he had documents in the file – here are the 13 requests to the Prime Minister or to the Ministry of 14 Finance or the Ministry of Justice, and he said, 15 "Ziggy, go back home. It is not worth it to spend 16 time". This is the statement of the Moldova lawyer. 17 He said, "there is no way, it doesn't make any sense 18 to waste time. You got BIT, only one chance". So 19 this is advice of Mr Nagacevschi, and he started the 20 process of arbitration BIT. He wrote the first 21 documents. So actually I am in front of the lawyer, 22 I am asking what to do, and he said hey, do this. 23 THE PRESIDENT: Are you saying that 24 already in 2012 you had looked at the BIT and you 25 had taken legal advice on the BIT?</p>	<p>1 Chancellery office and they took the case, they went 2 the same pathway. They got lucky because there was 3 no way, because this is a simple thing. I don't 4 know if this is offensive or not. In Moldova this 5 is public information how much you have to pay to 6 get a good judgment in the court. 7 THE PRESIDENT: Is what you are telling us 8 that the courts of Moldova only came up with decent 9 judgments when the application was made by the 10 Chancellery on behalf of the government? 11 MR GROT: Yes. 12 THE PRESIDENT: And your testimony to us 13 is that you were under the impression at that point 14 in 2012 you could not get justice in the courts of 15 Moldova. 16 MR GROT: Exactly. 17 THE PRESIDENT: And this is based on what 18 your then lawyers told you at the time? 19 MR GROT: Yes. 20 THE PRESIDENT: So you simply decided to 21 leave. 22 MR GROT: Exactly. 23 THE PRESIDENT: Because you were 24 frightened? 25 MR GROT: Yes, sir.</p>

<p>1 THE PRESIDENT: Thank you. I have no 2 further questions. I do not know if there are any 3 more questions in addition to those that we have 4 asked? 5 MR GLEASON: If I may be permitted on a 6 couple of points? 7 Re-examination by Claimants 8 MR GLEASON: Mr Grot, was the agreement 9 with Moldova-Zahar an assignment agreement? Did you 10 assign your leases to Moldova-Zahar? 11 MR GROT: No. 12 MR GLEASON: What was it? Just briefly? 13 What kind of agreement was it? 14 MR GROT: There was a contract to produce 15 sugar beet? 16 MR GLEASON: Could it be accurately 17 described as a servicing agreement? 18 MR GROT: Yes. 19 MR GLEASON: That was in 2011? 20 MR GROT: Yes. 21 MR GLEASON: In 2013 did you assign your 22 leases to Bicoli Agro? 23 MR GROT: No. 24 MR GLEASON: You did not? 25 MR GROT: No.</p>	<p>261 16:47</p>	<p>1 Disposition 1-A was illegal? 2 MR GROT: We would have to check the 3 record. 4 MR GLEASON: Was it after you left 5 Moldova? 6 MR GROT: I think so. 7 MR GLEASON: I just wanted to make this 8 point clear to make sure the record was clear. This 9 was in 2013? 10 MR GROT: Yes, so I was gone from Moldova 11 MR GLEASON: So any successful results 12 concerning the State Chancellery's challenge of your 13 dispositions did not happen until 2013? 14 MR GROT: Yes. 15 MR GLEASON: By this point what was the 16 status of your investment? Was it in good shape? 17 MR GROT: I don't know how to answer that. 18 MR GLEASON: Honestly. 19 MR GROT: Honestly? For many years I am 20 working with my family, my brothers, my sister. 21 When this happened they actually turned from me, 22 because there was some kind of family money 23 investment, you know, and so the situation was 24 terrible. 25 MR GLEASON: Terrible. You would describe</p>	<p>263 16:49</p>
<p>1 MR GLEASON: Can I perhaps show you the 2 agreement? 3 MR GROT: I don't remember. If I did 4 I did at the request of Igor Tcaci. 5 MR GLEASON: Where were you in 2012? 6 MR GROT: In Colorado Springs. 7 MR GLEASON: So you weren't aware of the 8 nature of that agreement with Bicoli Agro? 9 MR GROT: No. 10 MR GLEASON: That was your administrator 11 who was handling that issue? 12 MR GROT: Yes. 13 MR GLEASON: So as far as you are aware if 14 the Bicoli Agro is an assignment, that is the only 15 assignment of the Rosietici leases? 16 MR GROT: Yes. 17 MR GLEASON: I would like to ask more 18 question concerning the courts of Moldova. 19 Concerning Disposition 1-A, there was some 20 significant litigation concerning that disposition, 21 correct, by the State Chancellery? 22 MR GROT: Yes. 23 MR GLEASON: When was the first decision 24 of the State Chancellery issued in favour of your 25 position? In other words, saying that</p>	<p>262 16:48</p>	<p>1 the situation concerning the investment at the time 2 the disposition was cancelled in 2013 to be 3 terrible? 4 MR GROT: Plus my health condition at the 5 same time. 6 MR GLEASON: Your health was 7 deteriorating. Do you know when Disposition 1-A was 8 finally cancelled by the Moldova court system? 9 MR GROT: No. 10 MR GLEASON: Are you aware of the Supreme 11 Court decision? 12 MR GROT: Yes. 13 MR GLEASON: You do not remember exactly 14 when that was? 15 MR GROT: No, I do not remember the day, 16 but I think 13 or 14. 17 MR GLEASON: I am going to try to refresh 18 your recollection, if I may. I am going to pull up 19 the actual document. It is on the record. 20 (Exhibit C-44 displayed) 21 We are just trying to get the date of this 22 document. Just go to the first page. 23 MR GROT: January 21, 2015. 24 MR GLEASON: And that is a decision from 25 the Supreme Court concerning Disposition 1-A in</p>	<p>264 16:50</p>

1 Cosernita? 265
16:53
2 **MR GROT:** Yes.
3 **MR GLEASON:** What was the status of your
4 investment by this point?
5 **MR GROT:** Disaster.
6 **MR GLEASON:** Even worse?
7 **MR GROT:** Yes.
8 Questions by the Arbitral Tribunal
9 **PROFESSOR KNIEPER:** Since we are already
10 at C-44, can we see C-42? That is the decision of
11 the State Chancellery, and if you have a look at the
12 date it says May 2012, not 2013. You said it was
13 2013.
14 **MR GLEASON:** We were discussing the court
15 decisions, not the –
16 **PROFESSOR KNIEPER:** But this was the first
17 step of declaring the Disposition 1-A illegal. At
18 that time you were still in Moldova, right,
19 in May 2012?
20 **MR GROT:** Yes.
21 **PROFESSOR KNIEPER:** So you received
22 certainly the decision of the State Chancellery
23 declaring the Disposition 1-A illegal, even if you
24 don't know what disposition or injunction means, but
25 you were aware that you had a success with the

1 you have had a decent day in court. You have had 267
16:57
2 questions from your own side, you have had questions
3 from Mr Kopecky, you have had questions from us.
4 You are now released. You are free to continue in
5 this room. I thank you very much. I wish you a
6 good stay on behalf of the Tribunal in Vienna.
7 I hope it is not too stressful for you to sit
8 through the rest of these proceedings and we will no
9 doubt see you over the next couple of days.
10 **MR GROT:** Thank you.
11 **THE PRESIDENT:** We will take a break and
12 then take Mr Beril.
13 (Short break from 4.58 pm to 5.11 pm)
14 VALERIU BERIL
15 (through the interpreters)
16 **THE PRESIDENT:** Good afternoon, Mr Beril.
17 Are you able to understand me in your own language?
18 **MR BERIL:** Yes.
19 **THE PRESIDENT:** You are appearing as a
20 witness and I would ask you to read out the oath
21 which is in front of you which indicates the
22 solemnity and the truth of what you will say.
23 **MR BERIL:** I solemnly declare on my honour
24 and conscience that I will tell you the truth, the
25 whole truth and nothing but the truth.

1 State Chancellery? 266
16:55
2 **MR GROT:** It is hard to remember, but at
3 that time I was there, I was in Moldova.
4 **MR GLEASON:** This is a writ of summons.
5 It is essentially a complaint filed by the
6 State Chancellery.
7 **THE PRESIDENT:** I think we can come back
8 to that with our legal experts. There will be
9 questions about the consequence of this. This
10 probably is not the moment.
11 **MR GLEASON:** I want to make clear this is
12 not a court decision.
13 **THE PRESIDENT:** Let's come back to this
14 with our legal experts. We have plenty of wonderful
15 legal experts with us and I think that is the point
16 to address what this is, what its consequence was,
17 and what effect, if any, it had on the legal
18 conditions governing the circumstances. We have
19 just Mr Grot, you have established the point that he
20 was present at the time this came down. What its
21 consequences are I think are not for Mr Grot.
22 I think that concludes our examination of
23 Mr Grot. I hope you feel, Mr Grot, that you have
24 had an opportunity to say probably not everything
25 you wanted to say, but sufficient to make you feel

1 **THE PRESIDENT:** Thank you very much, 268
17:14
2 Mr Beril. My name is Professor Philippe Sands.
3 I am a professor at the University of London. To my
4 left is Professor Knieper, and to my right is
5 Mr Yves Fortier. We are the Arbitrators in this
6 case. You are going to have a short number of
7 questions right now from Mr Wells and then
8 Mr Kopecky will cross-examine you, and Mr Wells will
9 then have a chance briefly to respond to anything
10 Mr Kopecky has said. It may be that members of the
11 Arbitral Tribunal will also have some questions.
12 Mr Wells.
13 Examination by Claimants
14 **MR WELLS:** Thank you, Mr President.
15 Mr Beril, can you just take a look at what you see
16 on the screen here and actually the document in
17 front of you? I would like to ask you to confirm
18 that this is your witness statement and that it is
19 correct?
20 **MR BERIL:** Yes, yes. It is in English.
21 If I could have it in Romanian? Yes, it is in
22 Romanian now. Yes, I stand by what is in this
23 statement.
24 **MR WELLS:** Is this your signature here?
25 **MR BERIL:** Yes, it is.

1 **MR WELLS:** Is this correct to the best of ²⁶⁹
2 your knowledge? _{17:15}

3 **MR BERIL:** Yes.

4 **MR WELLS:** Mr Beril, in your witness
5 statement it states that you were the President in
6 the Stefan Voda District in 2008. What was the
7 total time period you were President in the
8 Stefan Voda District?

9 **MR BERIL:** I was the President between
10 June 2007 and July 2011.

11 **MR WELLS:** You were President in
12 Stefan Voda District when Laguardia entered. There
13 was a contract for Laguardia to farm in the
14 Stefan Voda District. Are you familiar with the
15 contract? Do you know anything about it?

16 **MR BERIL:** I have known Mr Grot from
17 Mr Mirhot. He had a contract with somebody to use
18 and to process the land, but it is not my duty to
19 know these sort of things. That was not within my
20 scope because the contracts were not monitored by
21 the President of the district.

22 **MR WELLS:** Do you know if it was the type
23 of contract that would need to be registered in
24 local land records?

25 **MR BERIL:** From what I saw, the contract

1 country with many, many problems and any witness ²⁷¹
2 statement could have some consequences. I did feel _{17:20}
3 some pressure.

4 **MR WELLS:** So based on your change in
5 circumstances with your new position involved in
6 Romania, could you say whether, based on that change
7 of circumstances, there was any high level support
8 for the deregistration of the leases in Floresti?

9 **MR BERIL:** No. In Floresti I have just
10 been there once and I saw the land of Mr Grot but
11 I had nothing to do with Floresti, either with the
12 village or with the area. I knew what the situation
13 was there and that was that.

14 **MR WELLS:** An expert report was submitted
15 by the Respondent in this case related to the
16 calculation of damages for Laguardia. For the one
17 year that Laguardia was in your district, in
18 Stefan Voda District, can you give the Tribunal an
19 idea of how successful that operation was? Are you
20 aware of any profits that were made?

21 **MR BERIL:** Everything connected with
22 Laguardia's activity in Stefan Voda, they were the
23 lands, they had something that still needed to be
24 registered. I don't know whether they had losses or
25 not. I do not have this sort of information, but

1 was between Laguardia and the landowner who offered ²⁷⁰
2 the lease, because this land had been left to rot _{17:18}
3 for about 6-7 years, and all the agronomists were
4 saying that it would be impossible to get any yield
5 on that particular land.

6 **MR WELLS:** Mr Beril, since the time you
7 submitted your witness statement in this case, have
8 you had a change in circumstances such as a new job?
9 Have you moved? What are you doing now?

10 **MR BERIL:** Yes. I have been recently
11 appointed a counselor to a senator in Romania.

12 **THE INTERPRETER:** I could not catch the
13 name of the Minister.

14 **MR BERIL:** Ion Hadârca.

15 **THE PRESIDENT:** In which Parliament? Did
16 you say in the Romanian Parliament, or in the
17 Moldova Parliament?

18 **MR BERIL:** In the Romanian Parliament.

19 **MR WELLS:** Were you concerned about
20 submitting a witness statement in this case?

21 **MR BERIL:** No.

22 **MR WELLS:** Were you concerned about your
23 safety or your business? Any of your business
24 interests?

25 **MR BERIL:** The Republic of Moldova is a

1 all I know is that anybody who was part of this ²⁷²
2 work, in particular the agronomists, did not advise _{17:22}
3 Laguardia to start working these fields. However,
4 he, with his technology, proved that the land could
5 be processed and could have some high yields.

6 **MR WELLS:** So are you saying that it was a
7 successful operation?

8 **MR BERIL:** Yes. Yes, indeed, a successful
9 operation.

10 **THE PRESIDENT:** I think that is the five
11 minutes, I am afraid. I am going to hand over to
12 Mr Kopecky.

13 Cross-examination by Respondent

14 **MR KOPECKY:** Mr President, thank you very
15 much. Subject to any Tribunal questions, we have no
16 questions of this witness.

17 **THE PRESIDENT:** I then ask my
18 distinguished co-arbitrators whether they have any
19 questions for this witness? (Pause)

20 Questions by the Arbitral Tribunal

21 **THE PRESIDENT:** If you could just have a
22 look at your witness statement, paragraph 5, you say
23 in paragraph 5 that you called Mr Stefan Chitoroaga,
24 who was the vice Minister. When did that happen and
25 can you tell us a little bit more about your

1 conversation with the vice Minister in the
2 Minister of Agriculture?
3 **MR BERIL:** I had a preliminary discussion
4 with Mr Grot when I asked him, I don't remember the
5 date exactly, I was asking him how things were going
6 in Floresti and saying that we were really sorry
7 that he left Stefan Voda because we really thought
8 he was an economic player that was very good for our
9 area. Then he told me that he had very big
10 problems, including the issues of contract, that
11 I thought they were illegal as well.
12 So then I called the vice Minister to give
13 him a hearing so that he could present his case.
14 I asked him to help him to sort out things with the
15 legal division of the Ministry of Agriculture so
16 things could run smoothly. I do confirm that that
17 was the case. He gave me some times when he could
18 meet with the Laguardia people so they could settle
19 the issues and clarify everything.
20 **THE PRESIDENT:** As far as you know that
21 did not happen? Things were not settled? Things
22 were not clarified? What do you know from your own
23 personal experience about what happened next?
24 **MR BERIL:** All I know is that after all
25 this situation Mr Grot and Laguardia and the

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17:24

1 administrators of Laguardia had a signed contract in
2 several areas in order to process land plots in
3 Floresti which were then replaced by other
4 contracts, and I wondered at the time whether those
5 other contracts were registered and signed at the
6 town hall. I always thought they were signed and
7 registered. And then I said go to the legal
8 department of the Ministry of Agriculture and see
9 what happened, because it is not possible to replace
10 one contract with another three year old contract
11 which is valid. It has to be according to the law.
12 It cannot just be replaced.
13 And I understand he had this appointment,
14 and they had a meeting, they had a discussion, but
15 the result of the discussions, I had a telephone
16 conversation with him and asked him, and somebody
17 told me that some legal representatives of the
18 Ministry of Agriculture and Food somewhat asked that
19 he should be paid, and I thought that was not right,
20 that was illegal. I actually felt quite embarrassed
21 by this.
22 **THE PRESIDENT:** When you mentioned that
23 the leases were replaced by another company, do you
24 know the name of that other company which got leases
25 for those agricultural lands?

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17:26

1 **MR BERIL:** No, I don't know everything.
2 I understand it is a company that was around in the
3 area. That is why I didn't mention it here.
4 I understand it is something like Bio-Alianta or
5 something similar.
6 **THE PRESIDENT:** Did it mean anything to
7 you, that company? Was it well known? What can you
8 tell us about that company?
9 **MR BERIL:** I know that Bio-Alianta was
10 doing something with chemicals, other stuff,
11 something like agro and chemical areas, from what
12 I know. I don't know what they are doing now.
13 **THE PRESIDENT:** Mr Grot told us that he
14 had been told that it was a powerful company. From
15 your own knowledge, do you know whether that is an
16 accurate characterisation of Bio-Alianta? Did it
17 have certain powers? Important people behind it?
18 **MR BERIL:** Yes. The company is well known
19 in the Republic of Moldova, but it has to be found
20 out with documents who is behind this company.
21 Sometimes in the Republic of Moldova there is a
22 front man but then actually there is a lot of other
23 people behind, maybe people in government who are
24 very powerful. Very influential
25 **THE PRESIDENT:** Do you have any knowledge

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17:28

1 as to who is behind this company?
2 **MR BERIL:** I don't know. If I had enough
3 time I might have found out, if I would have known
4 about this question.
5 **THE PRESIDENT:** Do you recall whether in
6 the summer of 2011, maybe in July 2011, you had a
7 conversation with Mr Grot in which you described to
8 him the knowledge of the Prime Minister of Moldova
9 in relation to his case? Do you have any memory of
10 such a conversation with Mr Grot?
11 **MR BERIL:** I did have a chat about it with
12 Mr Grot but I certainly did not have any leeway to
13 discuss this with the Prime Minister, and that is
14 why I advised him to go to the Ministry of
15 Agriculture, because I thought they had the
16 competence to give advice on these issues. But to
17 tell you here today that things are like this or
18 like that, I could not quite tell you, because this
19 is what happened in our country. There are all
20 sorts of things with Ministers, Vice-Ministers, who
21 had the companies, and they acted often through
22 those companies. This is a situation that persists
23 even today.
24 **THE PRESIDENT:** Could you please put upon
25 the screen paragraph 8 of Mr Grot's second

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17:30

1 statement? In the third line of that paragraph it 277
2 says, "Mr Valeriu Beril had high level connections 17:32
3 in his position with the government and even he
4 later told me in July 2011 that the Prime Minister
5 himself was aware of what was going on and that
6 nothing would be done to look into the matter".
7 Do you remember that conversation with
8 Mr Grot?
9 **MR BERIL:** Well, what can I say? The
10 Prime Minister should know -- should have known what
11 the situation was, but that is why I said, in the
12 Republic of Moldova, a very small country,
13 everything is known really. It is a small country.
14 In particular with an investor coming from the
15 United States. We really don't have that many US
16 investors in Moldova.
17 **THE PRESIDENT:** But the form of words that
18 Mr Grot uses in his second witness statement is very
19 clear. He doesn't say that the Prime Minister
20 should have known. He says that you said the
21 Prime Minister himself was aware of what was going
22 on. Is that accurate?
23 **MR BERIL:** In the Republic of Moldova the
24 Prime Minister has all the time information
25 regarding the foreign investment, let alone

1 investors from the United States. He must have 278
2 known what the situation was. Same with 17:34
3 Prime Minister today, whoever the Prime Minister is.
4 They have to know the situation with foreign
5 investors.
6 **THE PRESIDENT:** When you say he had to
7 know, did you at the time back in 2011 have
8 conversations with --
9 **MR BERIL:** He was obliged to know. It was
10 his duty to know.
11 **THE PRESIDENT:** What I am asking is
12 whether in 2011 you had any conversations with any
13 person. Mr Grot says you had "high level"
14 connections in the position of government. You have
15 told us yourself you were able to introduce him to
16 the Vice-Minister of Agriculture. Did you have
17 conversations with anybody about the knowledge or
18 involvement of the Prime Minister?
19 **MR BERIL:** I had asked the Vice-Minister,
20 Mr Chitoroaga, asked him if he could not solve the
21 things by himself, to report the issue to the
22 Prime Minister. It was his duty to do so.
23 **THE PRESIDENT:** And did the Vice-Minister
24 tell you that he knew about this story?
25 **MR BERIL:** He said that in principle he

1 will report what was being discussed. 279
2 **THE PRESIDENT:** That wasn't my question. 17:36
3 My question was whether Mr Chitoroaga had told you
4 that the Prime Minister -- did the Vice-Minister
5 tell you that the Prime Minister already knew about
6 this story?
7 **MR BERIL:** The Vice-Minister told me that
8 he would report to him. I could not supervise this.
9 I asked Mr Grot to go again to the Ministry of
10 Agriculture so that everything would be sorted out,
11 but I don't know more than that. I am convinced
12 somewhat that Mr Stefan Chitoroaga, the
13 Vice-Minister of Agriculture, would have brought
14 this to the attention of the Prime Minister.
15 **THE PRESIDENT:** One other question in
16 relation to farming issues. I am not a farmer. You
17 were the President of Stefan Voda. Do you know a
18 little bit about how farmers make decisions?
19 **MR BERIL:** The district Stefan Voda is an
20 area of agriculture. 70 per cent of the Republic of
21 Moldova -- 70 per cent of our GDP is from products
22 in agriculture. We live from agriculture.
23 **THE PRESIDENT:** I am just curious to know
24 about the following situation, with your expertise,
25 with your human experience. In 2010 hundreds of

1 farmers in the district of Floresti sign a lease 280
2 with Mr Grot or with Laguardia. A few months later, 17:38
3 on 11 February 2011, hundreds of farmers sign the
4 same document purporting to terminate those leases.
5 I was struck by those documents and I thought it
6 strange that hundreds of farmers on the same day
7 would sign the same piece of paper terminating the
8 lease. Assuming that is what has happened, could
9 you explain to us how it could be that so many
10 farmers would come together and do exactly the same
11 thing on the same day? I am just curious, in the
12 farming community, to understand in the context of
13 Moldova of one village or one town, how that could
14 happen?
15 **MR BERIL:** I was not there present, but
16 I will try to answer your question. In my opinion,
17 first of all, the lease contract, the three year
18 lease contracts are registered in the town hall,
19 which is a public state institution. The town hall
20 has a contract. One copy stays with the town hall,
21 and one copy goes to the economic player, and one
22 stays with the landowner. It is not possible that
23 in a short period, while the first contract is
24 force, to have another contract issued on the same
25 land. This is illegal. It can happen only when the

1 Mayor is under the influence of somebody who would
2 then gather everybody, tell them -- give them a
3 story line, and then have other contracts
4 **THE PRESIDENT:** Do you think that is what
5 happened in this case? I appreciate you were not
6 there so what you say is of limited probative value
7 but, just on the basis of what you know, is that
8 what happened, do you believe, in this case?
9 **MR BERIL:** I think there is no other way.
10 I think that must have happened. I can't think of
11 any other way. But it is illegal.
12 **THE PRESIDENT:** Can I ask you to put up
13 exhibit C-95, page 5? Could you take a moment to
14 read this document? You probably have never seen it
15 before.
16 **MR BERIL:** Yes, I can see it. It is in
17 Russian. First of all, this is illegal. It is not
18 written in the language of the state.
19 **THE PRESIDENT:** Just read the whole
20 thing -- I am assuming you speak Russian, do you?
21 **MR BERIL:** Yes.
22 **THE PRESIDENT:** Let's analyse it. First
23 could you tell us what it says?
24 **MR BERIL:** Well, it says -- it is a notice
25 advising a person, a given person, I don't know to

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1 non compliance, and the technological procedure for
2 processing the land has not been done. But I have
3 seen the technical installations, I have seen the
4 tractors, the equipment, that were imported by
5 Mr Grot. We never had this sort of technology in
6 Moldova at the time.
7 **THE PRESIDENT:** Just below the signature
8 of the individual lessor there is another line
9 signed by the person who we believe to be the mayor
10 of Floresti. What does that say? What has the
11 Mayor of Floresti signed?
12 **MR BERIL:** It is written that there is a
13 confirmation -- it is like a confirmation of the
14 mayor of the village of Varvareuca, Mrs Ivanes. It
15 is "I confirm". It is a confirmation of this
16 particular notification.
17 **THE PRESIDENT:** Why would she sign this
18 document?
19 **MR BERIL:** I don't think that the Mayor
20 has to sign a document like this
21 **THE PRESIDENT:** So why did the Mayor sign
22 the document?
23 **MR BERIL:** I told you, she must have been
24 under somebody's influence, because while I had
25 different jobs and functions it is for the first

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1 whom it is addressed, Laguardia or Bugai, that the
2 lease contract is being annulled. This is very
3 unusual.
4 **THE PRESIDENT:** You said it was in
5 Russian, but why is it in Russian and what is wrong
6 with it being in Russian?
7 **MR BERIL:** A notice, a notification, of
8 contract termination, resilience, is not done like
9 this. The lessee has to be present and it has to be
10 well-grounded. There have to be some reasons behind
11 it. Maybe the lessee didn't pay what he had to pay,
12 maybe he did not follow the contractual obligation.
13 I don't know what else it could be
14 **THE PRESIDENT:** One thing we have been
15 confused about, if you look at the date it says
16 11/02/2011. Do you see that?
17 **MR BERIL:** Yes.
18 **THE PRESIDENT:** If you could read the line
19 immediately above, could you translate what that
20 line says?
21 **MR BERIL:** Sorry, the person who signed,
22 Poslaro Bos Stefan(,) there is a series of numbers,
23 the data from his passport, ID code, and it says the
24 lessee did not comply with the conditions of the
25 contract, but it didn't mention what exactly was

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1 time that I see such a notice. I have never seen
2 anything like this before. This is not like a
3 document, an official document.
4 **THE PRESIDENT:** And the Mayor signs 560
5 more of these documents on the same day. What is
6 going on here?
7 **MR BERIL:** This means that the Mayor had
8 to gather all these people who had to sign,
9 Mr Bugai, Mr Grot from Laguardia should have been
10 invited together, and they should have resolved the
11 issue, but not to issue like this a document saying
12 things that are totally unclear.
13 **THE PRESIDENT:** And every single one of
14 these documents in the typed-up part appears to be
15 identical. Who do you think would who have prepared
16 this document? Would the farmers have all typed up
17 exactly the same document? Would they all speak
18 Russian? Would they all have type writers or
19 computers?
20 **MR BERIL:** I don't think so. I told you,
21 there must have been some influence. All those
22 notices would have been photocopied, the people, the
23 persons would have been summoned to come, or maybe
24 they were visited, something was maybe told to them,
25 "Look, the Mayor signed; now you have to sign".

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<p>1 Probably that is how things went. 285 17:47</p> <p>2 THE PRESIDENT: Thank you.</p> <p>3 MR FORTIER: Mr President, just following</p> <p>4 your questions, Mr Beril, you met Mr Zbigniew Grot</p> <p>5 in 2008. That is almost ten years ago.</p> <p>6 MR BERIL: Yes.</p> <p>7 MR FORTIER: Do you consider Mr Grot a</p> <p>8 friend?</p> <p>9 MR BERIL: I consider him a friend because</p> <p>10 he invested money in the Republic of Moldova.</p> <p>11 Unfortunately he had a lot to suffer because of</p> <p>12 that. I know him. I would not quite say he is a</p> <p>13 friend.</p> <p>14 MR FORTIER: But you kept in touch with</p> <p>15 him for the last ten years?</p> <p>16 MR BERIL: Yes. Sometimes we saw each</p> <p>17 other. Once I talked to him over the phone</p> <p>18 MR FORTIER: Would you describe Mr Grot as</p> <p>19 an honest man?</p> <p>20 MR BERIL: I would confirm that Mr Grot is</p> <p>21 an honest person, and a man who would come to help</p> <p>22 the economy, lots of people, and I saw his business</p> <p>23 in Poland, how he was running his business in</p> <p>24 Poland. If the truth be told, your honours, I have</p> <p>25 to say I was sometimes surprised that people like</p>	<p>1 will hear in the morning our legal experts, which 287 17:51</p> <p>2 provides also an opportunity to tease out more of</p> <p>3 these issues, and in the afternoon we will hear the</p> <p>4 Claimants' agricultural experts. We have two people</p> <p>5 in the morning and one person divided in two in the</p> <p>6 afternoon, so I don't think we have any constraints</p> <p>7 or pressures of time tomorrow, so I would hope we</p> <p>8 are able to finish at 5.30 pm. I have an</p> <p>9 appointment at 6 pm so it would be excellent if we</p> <p>10 could, but I don't envisage any difficulty at all.</p> <p>11 I wish both sides, unless there are any</p> <p>12 closing housekeeping matters, a fine evening in this</p> <p>13 fine city. Thank you very much indeed.</p> <p>14 (The hearing was adjourned at 5.52 pm)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 Mr Grot who come to help us, to teach us, and of 286 17:49</p> <p>2 course to do his own business, and I am really sorry</p> <p>3 for what happened.</p> <p>4 MR FORTIER: Thank you very much.</p> <p>5 THE PRESIDENT: Mr Wells?</p> <p>6 MR WELLS: Nothing further, Mr President</p> <p>7 THE PRESIDENT: Thank you. Mr Beril,</p> <p>8 thank you very much for coming all this way to see</p> <p>9 us. The Tribunal very much appreciates that you</p> <p>10 have given this matter your time, and we appreciate</p> <p>11 and have listened attentively to everything you have</p> <p>12 said to us.</p> <p>13 You are now released. We now wish you a</p> <p>14 wonderful evening in Vienna and a safe trip back to</p> <p>15 your home in Moldova, or Romania where you may now</p> <p>16 be living.</p> <p>17 MR BERIL: I thank you for listening to</p> <p>18 what I had to say. Please take into account what</p> <p>19 I said, that I said it out of honesty. I have no</p> <p>20 particular interest to say.</p> <p>21 THE PRESIDENT: Thank you. We are now at</p> <p>22 the end of our first day. I am very grateful to my</p> <p>23 colleagues but also mostly to counsel. We are</p> <p>24 pretty much on time.</p> <p>25 We will resume tomorrow at 9.30 am, and we</p>	

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