

In the matter of an arbitration  
under the Rules of Arbitration  
of the Arbitration Institute of the  
Stockholm Chamber of Commerce

No: V

(116/2010)

ICC Hearing Centre  
112 avenue Kléber  
75016 Paris

Day 1  
Final Hearing

Thursday, 2nd May 2013

Before:

PROFESSOR KARL-HEINZ BÖCKSTIEGEL  
PROFESSOR SERGEI LEBEDEV  
MR DAVID R HAIGH QC

---

BETWEEN:

ANATOLIE STATI  
GABRIEL STATI  
ASCOM GROUP SA  
TERRA RAF TRANS TRADING LIMITED

Claimants

-v-

THE REPUBLIC OF KAZAKHSTAN

Respondent

---

REGINALD SMITH, KENNETH FLEURIET, KEVIN MOHR, JAMES TOHER,  
HÉLOÏSE HERVÉ, AMY ROEBUCK FREY, ALEXANDRA KOTLYACHKOVA

and  
of

VALERYA SUBOCHEVA, of King & Spalding, appeared on behalf  
the Claimants.

Norton

DR PATRICIA NACIMIENTO, MAX STEIN and SVEN LANGE, of  
Rose LLP, and JOSEPH TIRADO, of Winston & Strawn LLP,  
appeared on behalf of the Respondent.

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09:33  
2013

1

Thursday, 2nd May

2 (9.33 am)

3 THE CHAIRMAN: I think it is definitely 9.30 or later. So  
we should be comfortable to start the hearing. I will 4  
be shorter than at the other hearings because we know

5  
introductions

each other; there is no need to start a long

6 again. On the other hand, as usual, I would like to

7 especially recall the agenda, so that everybody in the

8 room is aware again of how we are going to proceed.

9 This is the SCC arbitration 116 from 2010, as you

10 know. I just say that to have it on the record. And

11 know. this is the final hearing in that case, as we all

12  
3(2)

Let me first recall the following from section

13 of Procedural Order No. 10 of 20 February 2013:

14 "On 2 and 3 May 2013, a two-day final hearing  
15 will be held at the ICC Hearing Centre. In the  
morning

16 of 2 May, the parties' technical experts, Ryder Scott

17 and GCA, will be examined, but exclusively limited to

18 the update of the Munaibay 3D information. Starting  
in

19 the afternoon of 2nd May, the parties may present

20 a first round of final oral arguments. In the morning

21 of 3 May, the parties may present a second round of

22 final oral arguments."

23 On that basis then, Procedural Order No. 11 in

24 section 3 provided the following:

25 "No new documents may be presented at the hearing

09:35  
also

using

each

Claimants;

1 unless authorised in advance by the Tribunal. This  
2 applies to documents regarding the credibility of  
3 an expert, but demonstrative exhibits may be shown  
4 documents submitted earlier in accordance with the  
5 timetable."

6 The Tribunal sets the following agenda.

7 1. Short introduction by the Chairman of the  
8 Tribunal. That is where we are right now obviously.

9 2. Opening statements of up to ten minutes by  
10 party.

11 3. Examination of the parties' technical experts,  
12 Ryder Scott and GCA, but exclusively limited to the  
13 update of the Munaibay 3D information.

14 In view of the limited time available, each party  
15 has a total of one hour for all of its following  
16 examinations:

17 (a) Claimants' experts: direct examination by  
18 cross-examination by Respondent; re-direct, if any;  
19 recross, if any.

20 (b) Respondent's experts: direct examination by  
21 Respondent; cross-examination by Claimants; re-direct,  
22 if any; recross, if any. Then

23 (c) Experts' conferencing by questions of the  
24 Tribunal only.

25 (d) Follow-up questions by the parties on the

09:36 1 questions raised by the Tribunal, if any.

2 (e) Remaining questions by the members of the  
3 Tribunal, if any.

4 The above examination shall be finished by 13h00  
5 before the lunch break.

6 4. Starting at 14h00, a first round of closing  
7 statements by the parties:

8 (a) Claimants up to 90 minutes, then we'll have a  
coffee break.

9 (b) Respondents up to 90 minutes. Then

10 5. Starting at 9.30 tomorrow 3 May, second-round  
11 closing statements by the parties, but only in  
rebuttal

12 of the other side's first-round statement.

13 Claimants, obviously Claimants up to one hour,  
then a coffee

14 break, and Respondents up to one hour.

15 Then there may be final questions of the Tribunal,  
16 and there may be a discussion of any remaining  
17 procedural issues, if any.

18 The hearing shall end no later than 13h00, an  
19 extension is not possible.

20 Now, in view of the limited time available at this  
21 hearing, the Tribunal would be grateful if the parties  
22 would not spend time on procedural battles. To help  
in

23 this regard, before we start with the parties' opening  
24 statements, the Tribunal would like to address the  
25 following procedural matters.

09:37 1 By their recent letters, the parties addressed the  
2 following issues in particular:

3 1. Regarding the testimony of Mr Wood,  
Respondent's 4 expert from GCA, taking into account -- I will read  
5 this 6 slowly, so that you don't miss it -- taking into  
7 account 8 section 3(2) of Procedural Order No. 10, and the  
9 argument submitted by the parties, and the experts'  
10 joint list of issues submitted by Respondent by its  
11 mail 12 of 30th April 2013, the Tribunal has concluded that  
13 Mr Wood can be examined at this hearing, but that the  
14 second round of post-hearing briefs provides  
15 an opportunity for the parties and their experts to  
16 submit further comments on the issues addressed.

17 2. Regarding comments on experts' reports and  
18 Claimants' objections to the second Deloitte report,  
the 19 Tribunal has taken note that at the end of their  
20 letters 21 of 24th April, the parties agree that, with their  
22 second 23 round post-hearing briefs, the parties may submit  
24 further comments, both by Ryder Scott and GCA, and by  
25 FTI and Deloitte.

26 In fact, taking into account also the Tribunal's  
27 letter of 11th September 2012, admitting such comments  
28 as well for the experts at the hearing on jurisdiction  
29 and liability, this means that comments by all the  
30 round 31 experts may be submitted with the parties' second



09:39 1 post-hearing briefs, but only in rebuttal to the  
2 previous reports by the respective experts from the  
3 other side.

hereby 4 And from all these rulings, it is obvious and  
5 confirmed by the Tribunal that these second-round  
that 6 submissions are the final round of submissions, and  
7 no further comments may be submitted thereafter,  
either 8 by the parties or by their experts.

has 9 However, in case it turns out that the Tribunal  
10 further questions to the parties, the Tribunal may  
11 address the parties during the time of its  
12 deliberations.

Tribunal 13 3. Regarding transcript corrections. The  
14 points out that corrections are only necessary insofar  
15 as the transcript is incorrect with relevance to  
16 substantial issues. Regarding the first two hearings,  
17 the parties had ample time to examine the transcripts  
18 while drafting their first round post-hearing briefs.  
19 Regarding the very short final hearing, such  
examination 20 can easily be done while drafting their second-round  
21 post-hearing briefs, which are due by 3 June 2013.

22 The Tribunal encourages the parties to agree on  
23 a timely procedure for joint corrections. If that  
24 cannot be achieved, each party may submit suggested  
25 corrections to the other side by 15th May 2013. If or



09:41 proposals,

1 insofar as the parties cannot agree on joint  
2 each party may submit, together with its second-round  
3 post-hearing brief, its suggested corrections and  
4 comments on the suggestions of the other side. The  
5 Tribunal will examine such suggestions and take them  
6 into account insofar as they are relevant for its  
7 conclusions.

view  
planning  
the  
would

8 In view of the above, an extension of the date set  
9 for the post-hearing briefs is not necessary in the  
10 of the Tribunal, but also not possible, as the  
11 of the Tribunal for its deliberations shortly after  
12 deadline for the second-round post-hearing briefs  
13 otherwise be delayed considerably.

14 This is what we address on these three procedural  
15 issues. If the parties feel that any other procedural  
16 issue has to be addressed at the beginning of this  
17 hearing, this can be done in the short opening  
18 statements which will follow now.

again in the  
it

19 Alright, that is, I am sure you will read this  
20 transcript, but especially regarding Mr Wood, we felt  
21 should be clear from the very beginning.

Claimant?

22 Alright, is there anything else you want to raise  
23 before we start with the opening statements?

24 MR SMITH: Nothing for the Claimant.

25 DR NACIMIENTO: Not from our side, thank you.

09:42 1 THE CHAIRMAN: Then we will start with the opening  
2 statements. Claimants, please.  
3 Opening statement by MR SMITH  
4 MR SMITH: Mr Chairman, members of the Tribunal, on  
behalf  
5 of the claimants we would like to thank the Tribunal  
for  
6 providing us with this opportunity to present closing  
7 oral submissions in connection with the Claimants'  
8 claims against the Republic of Kazakhstan, as well as  
9 the opportunity to address any questions that the  
10 Tribunal may have in connection with these  
proceedings.  
11 While the Tribunal has had the benefit of, I think  
12 it is fair to say, extensive written submissions by  
the  
13 parties, as well as two oral hearings in connection  
with  
14 liability, jurisdiction and damages, Claimants would  
15 hope that, through our oral closing submissions, we  
can  
16 further assist the Tribunal in its evaluation of  
17 jurisdictional liability and damages issues. That is  
at  
18 least our goal in connection with the events of today  
19 and tomorrow.  
20 Before we turn to our closing submissions, we are  
21 here this morning, as the Tribunal knows, to hear from  
22 the parties' respective technical experts on their  
23 review and interpretation of a 3D seismic survey of  
24 a portion of the contract 302 area. The purpose of  
such  
25 review and interpretation was to permit the technical

09:43  
the

1 experts an opportunity to update their evaluation of  
2 Interoil Reef prospect, which the experts initially  
3 evaluated on the basis only of available 2D seismic  
4 data.

Gaffney

5 It is noted by Respondent's technical expert  
6 Cline, in its third report, and I will quote:

7 "The 3D data provides a significant improvement in  
8 data quantity, quality and resolution at the level of  
9 the 'InterOil Reef' when compared with the legacy 2D  
10 seismic data."

report.

11 That appears at paragraph 87 of their third  
12 Ryder Scott agrees with this assessment.

their

13 As you will further hear from the Claimants in  
14 closing submissions this afternoon, the Respondent's  
15 failure to execute an addendum to extend the  
16 contract 302 area to allow Claimants to explore and  
17 develop targets within that area, including within the  
18 Interoil Reef, constituted a breach of several of its  
19 obligations under the Energy Charter Treaty.

Respondent's

that

in

extension

20 Contrary to the suggestion made in the  
21 post-hearing submission, it is not Claimants' case  
22 Respondent had unfettered discretion to execute the  
23 addendum to contract 302, once it provided TNG notice  
24 writing that the MEMR had in fact approved the  
25 request. Instead, having had TNG's extension request

09:45  
of

1 for a period of six months from October 2008 to March  
2 2009, and then advising TNG in writing, in April 2009,  
3 that the extension had been approved by the MEMR,  
4 Respondent breached its Energy Charter Treaty  
5 obligations by then refusing unreasonably, without  
6 excuse, and in bad faith, to execute the required  
7 addendum so that TNG could promptly continue its  
8 exploration activities.

Claimants

9 Hence Respondent is wrong when it argues in its  
10 post-hearing submission that the proper measure of  
11 damages as it relates to contract 302 are reliance  
12 damages, only for the expenses incurred by the  
13 with respect to contract 302 after the April 2009  
14 commitment letter.

as

15 Instead, the proper measure of damages is the loss  
16 to Claimants of their opportunity to make a commercial  
17 success of their rights to further explore and develop  
18 contract 302 based upon the extended contract; which,  
19 the Tribunal will recall, is an exploration project in  
20 which Claimants had already invested in excess of  
21 US\$50 million by the time the MEMR approved the  
22 extension request in April 2009.

international

23 Now, the availability of damages under  
24 law for the loss of an opportunity to earn profits is  
25 very well recognised. Claimants have directed the

09:46  
Capital

1 Tribunal to four principal cases: Sapphire, AIG  
2 Partners, SPP v Egypt, and Gemplus, as cases which  
3 articulate what in Claimants' view is the appropriate  
4 legal standard for assessing loss of opportunity

claims.

5 The Tribunal will find in a review of those cases  
6 that tribunals typically award two components of  
7 for loss of opportunity: (1) out-of-pocket expenses or  
8 sunk costs in connection with the opportunity; and (2)  
9 an additional amount set in the discretion of the  
10 tribunal for the loss of -- and I will quote:

damages

11 "... the opportunity of making a commercial  
12 of the project".

success

13 And that is from the SPP v Egypt case, as well as  
14 AIG Capital Partners.

15 Here, the Claimants' proof is that out-of-pocket  
16 expenses for exploration activities in connection with  
17 contract 302, excluding the estimated market value of  
18 lost profits associated with the Munaibay oil  
19 resources, are US\$31.3 million.

contingent

20 Claimants have also offered a discounted cashflow  
21 analysis for market value damages for the loss of  
22 ability to produce Munaibay oil based upon the  
23 well no. 1 discovery in the amount of US\$96.8 million.

their

Munaibay

24 Hence Claimants' contract 302 damages, before  
25 considering the loss of the opportunity as it relates

to

09:47

same

to

the

by

the

1 the Interoil Reef, are US\$128.1 million. While these  
2 damages relate to contract 302, they are not of the  
3 nature as the loss-of-opportunity damages that relate  
4 the Interoil Reef, which everyone understands had been  
5 only in the exploration phase.

6 The Claimants would ask the Tribunal to closely  
7 examine the Gemplus award for a thorough survey,  
8 articulation and application of an approach taken by  
9 that Tribunal under international law in evaluating  
10 loss-of-opportunity claims such as that relating to  
11 Interoil Reef. Gemplus contains not only a thorough  
12 analysis of the approach that tribunals have followed  
13 with respect to loss-of-opportunity claims under  
14 international law, but it also contains a very useful  
15 discussion of why Respondent states, such as the state  
16 in this case, should not be allowed to benefit from  
17 evidentiary difficulties occasioned by their own  
18 wrongdoing.

19 I will quote from the Gemplus case because I think  
20 it is very helpful. The quote is:

21 "... the tribunal is mindful of the fact that the  
22 claimant's evidential difficulties in proving their  
23 claim for loss of future profits are directly caused  
24 the breaches of the BITs by the respondent responsible  
25 for such loss. If there had been no such breaches,

09:49 1 concessionaire [or the claimant in that case] would  
have 2 had an opportunity to restore the project, as  
originally 3 envisaged; and it could then have been seen, as actual  
4 facts, whether and, if so, to what extent the restored  
5 project would have been profitable for the  
6 concessionaire and, indirectly, the claimants."

7 We believe that standard should be applied  
directly 8 in this case with respect to the Respondent's  
9 misconduct. Taking advantage of its breaches of the  
10 Energy Charter Treaty, which deprived the Claimants of  
11 the opportunity to complete exploration and  
development 12 activities on contract 302, the Respondent has gone to  
13 great efforts to present worst case hypothetical  
14 obstacles to the Claimants' ability to profitably  
15 develop the Interoil Reef, including (1) allegedly  
16 inadequate time to explore and develop the prospect  
17 under the extended contract; (2) the alleged inability  
18 to drill to the depths necessary to explore the  
of 19 prospect; and (3) the alleged presence of high levels  
20 of contaminants, in particular hydrogen sulphide, which  
21 will require expensive treatment facilities.

22 It is, of course, easy for the Respondent and its  
23 experts pessimistically to speculate on these  
obstacles, 24 since it was the actions of the Government that  
25 prevented the Claimants from proving they could be

09:50 1 overcome. Claimants submit that, given the treaty  
entitled 2 breaches committed by the Respondent, it is not  
perceived 3 to the benefit of the doubt as to any of these  
4 obstacles to exploration and development. Claimants  
5 have presented evidence both of their intention and  
6 their ability to explore and develop the Interoil  
Reef,  
7 bolstered by their proven track record of success with  
8 respect to Tolkyn and Borankol. If any relative  
9 weighting of the competing evidence is to take place  
by  
10 the Tribunal, Claimants submit that they should get  
the  
11 benefit of such weighting under the circumstances  
12 presented in this case.

13 Now, this morning again you will hear from the  
14 experts regarding their respective interpretations of  
15 this 3D seismic data relating to Interoil Reef. Since  
16 the Tribunal is no doubt far more interested in  
hearing  
17 from those experts than my summation of what I think  
18 you're going to hear, I will allow the experts to  
speak.

19 And then the Claimants will address this afternoon the  
20 implications of the examination of the 3D seismic data  
21 on their claim as it relates to loss of opportunity  
with

22 respect to the Interoil Reef. Thank you very much.  
23 THE CHAIRMAN: Thank you. We come to Respondent right  
away.

24 Opening statement by DR NACIMIENTO

25 DR NACIMIENTO: Thank you, Mr Chairman. From Respondent's



09:51

1 side, just a very few words before we turn to the  
2 experts' testimony on the Interoil Reef.

at

3 We would first like to take a step back and look  
4 the broader context, which is here, in this case,  
5 a claim for a so-called "loss of opportunity" brought  
6 the Claimants. The Republic denies these claims both  
7 a matter of law and as a matter of fact.

by

as

8 opportunity,

9 First, there is no claim for a loss of  
10 because the fundamental premise of that principle does  
11 not apply. A loss of opportunity requires that there

is

12 an opportunity at issue that the state has taken from  
13 the Claimant in a given case. However, the case as  
14 pleaded by the Claimants does not relate to  
15 an opportunity but, if at all, to claims based on  
16 a pre-contractual commitment. And this is also what

we

17 just heard being confirmed by counsel for Claimants.

18 There is no dispute between the parties that, as  
19 such, the Republic was under no obligation to extend  
20 contract 302. Claimants' complaint rather relates to  
21 an alleged bad faith refusal to conclude a contract.

In

22 other words, Claimants were never granted the  
23 opportunity they now claim to have lost. Rather, they  
24 allegedly relied upon being granted this opportunity,  
25 and found their alleged reliance being frustrated.

but

Thus, there is no loss of opportunity at issue,

09:53 1 rather only the alleged breach of reliance interest.  
expenses 2 Importantly, Claimants have never presented any  
3 that were frustrated because of their alleged reliance  
4 on the alleged promise to extend. Claimants have not  
5 presented any expenses on the 302 area after  
6 9th April 2009, when the alleged promise to extend the  
7 contract was issued.

8 Now, even if one assumed that this case related to  
fail. 9 the loss of an opportunity, Claimants' claim would

10 Before explaining the Republic's position on this in  
11 detail, it is worthwhile taking a look at the  
12 considerable change that Claimants' loss of  
opportunity 13 claim has undergone.

14 On the slide -- you have it printed out -- you  
will 15 see here excerpts from both the Statement of Claim and  
16 Claimants' opening presentation at the hearing on  
17 quantum. And as you can see, when Claimants submitted  
18 their Statement of Claim, they argued that the various  
19 risks connected to the 302 properties, most notably  
the 20 dismal geological chance of success, should be ignored  
21 in their entirety. Quite simply, Claimants wanted to  
be 22 compensated as if there was no risk of failure  
23 whatsoever. And that translated into a frankly  
24 delusional claim of 1.77 billion.

25 Since then, one and a half years have passed, and

09:54

1 the Republic, GCA and Deloitte have done an extensive  
2 analysis of the 302 properties, and in particular with  
3 regard to the so-called Interoil Reef. And apparently  
4 this has left some impression with the Claimants, who  
5 have turned back their fantastic requests. At the  
6 hearing on quantum they merely asked for the  
7 out-of-pocket expenses for the development of the 302  
8 area and for a substantial damage amount to provide  
9 compensation.

fair

10 Ironically, Claimants have supported their alleged  
11 out-of-pocket expenses with nothing but a sheet of  
12 from FTI, the numbers on which they could just have  
13 invented.

paper

14 Claimants thus have effectively given up on their  
15 previous billion dollar claim, and Respondent invites  
16 the Tribunal to draw its own conclusions, both with  
17 regard to the seriousness of that claim, and any costs  
18 to be allocated.

law.

19 Before we turn to the facts, a few words on the

rely

20 The principle of loss of opportunity that Claimants

21 on has little acceptance in arbitral jurisprudence.

22 This was stated by the Tribunal in the case Chevron v

23 Ecuador. The principle is in contradiction to the

24 general principles of burden and standard of proof.

25 Moreover, the very few tribunals that nonetheless

09:56 1 applied the principle have clearly outlined the strict  
tribunal 2 limitations of the concept. Again, the Chevron  
3 stated very clearly that the concept could only be  
4 applied in exceptional situations, in which the  
5 existence of harm cannot be disputed.

not 6 Presently, there are a multitude of reasons that  
7 only make the existence of harm disputed, but rather  
8 make the existence of harm extremely unlikely, and we  
9 will hear about this in testimony.

10 Even the cases accepting loss of opportunity in  
11 principle do not support the amount claimed by  
12 Claimants. And in particular, this amounts to the  
13 50-year old Sapphire case, on which Claimants have  
14 relied to a large extent. This is first of all  
because 15 the sole arbitrator in Sapphire relied on his powers  
ex 16 aequo et bono, which the present Tribunal undisputedly  
17 does not have. Moreover, if Claimants took Sapphire  
18 seriously, they would have to reduce their claims to  
19 a very large extent.

20 You can see it on the slide: Sapphire's own expert  
21 assessed that Sapphire would have earned 46 million in  
22 net profits from the investment if everything had gone  
23 as well as possible. The actual claim for loss of  
24 profit by the Claimant was 5 million, and thus  
25 approximately 11% of the investor's total potential

09:57 1 profit. The tribunal awarded 2 million for lost  
total 2 potential profit, which is 4.3% of the investor's  
3 potential profit. In the present case, Claimants have  
is 4 never mentioned this side of the Sapphire case, which  
5 the primary authority for the claim.

6 Just as a matter of completeness, we also want to  
7 mention that the Republic never argued that Sapphire  
was 8 the only case awarding damages for loss of  
opportunity.

9 Now, in the present case, even awarding the small  
10 fraction set out in the Sapphire award would be  
11 inappropriate, and that is because the contract 302  
area 12 is no opportunity in the first place. The Interoil  
13 Reef, which takes up by far the largest part of  
14 Claimants' contract 302 area claim, is entirely  
15 uncommercial. As GCA have shown, only a comparatively  
16 small structure can be imaged on the newly provided 3D  
17 seismic with any kind of confidence. Even  
disregarding 18 risk, this structure is entirely uncommercial, mainly  
19 due to its depth and the H2S that is to be expected in  
20 the gas stream.

21 GCA have also provided an alternative and entirely  
22 speculative Interoil Reef case just for the sake of  
23 argument. This case cannot be imaged from the 3D  
24 seismic data; it was speculated so that Deloitte could  
25 run the numbers and check for commerciality. Deloitte

9:59

1 have shown that this case is also uncommercial, no  
2 matter whether the GCoS of 5% is applied or not.

of

3 Claimants have also provided a revised valuation  
4 the contract 302 area based on the Munaibay 3D seismic  
5 data. This valuation has countless severe flaws. We  
6 cannot address all of these flaws in the course of

these

7 ten minutes. There is just one of the most striking  
8 flaws that I want to address, and this is the complete  
9 lack of independent expertise as to the costs of  
10 development. FTI admit to this lack of independent  
11 expertise, and you can see on the slides the relevant  
12 quote. FTI state unequivocally that where costs and  
13 infrastructure costs were provided by Claimants; the  
14 words "Claimants provided" could not be clearer. It  
15 could also not be clearer that this alone completely  
16 disqualifies FTI's valuation from consideration.

expertise

17 Now, that FTI uses Claimants' numbers is not  
18 surprising, as FTI does not have the relevant

necessary

19 to determine costs of wells. They do not have the  
20 expertise to determine which infrastructure is

experience

21 for the development, and they do not have the  
22 to estimate the costs of such infrastructure.

for

23 Ironically, Claimants have attacked GCA for their  
24 cost estimates, and have described them as being from  
25 a black box. GCA have provided detailed breakdowns

10:01 1 the cost estimates, as can be seen on the slide in our  
2 presentation. And here we have put up, as an example,  
3 GCA's estimates for the costs of a wellhead  
compressor.  
4 Similar sheets were provided for the costs of the  
5 contract 302 development, and for the LPG plant. And  
6 GCA have also explained the development they estimated  
7 necessary in their reports.  
8 GCA's sheets and explanations are not from a black  
9 box. Any competent development and facilities cost  
10 engineer could assess GCA's sheets and provide  
critique,  
11 if there were any. A development and facilities cost  
12 engineer could assess without problem whether the  
13 development stated by GCA was necessary. A  
development  
14 and facilities cost engineer could also state whether  
15 the costs provided were reasonable by comparing them  
to  
16 his own cost quotations. No additional detail from  
GCA  
17 would be necessary to do so.  
18 Claimants do not have a development and facilities  
19 cost engineer. It is not GCA's descriptions and  
sheets  
20 that lack detail; it is Claimants who lack an expert  
who  
21 could understand and evaluate GCA's descriptions and  
22 sheets.  
23 Before we now turn to the testimony of the  
experts,  
24 a few words about procedure are in order. Claimants'  
25 procedural conduct with regard to the 3D seismic data  
is

10:02

case

the

those

1 riddled with instances of procedural impropriety.  
2 Claimants introduced the 3D seismic data only at the  
3 hearing on quantum through the direct testimony of  
4 Mr Nowicki of Ryder Scott. They thus changed their  
5 on the Interoil Reef completely, suddenly claiming  
6 compensation for a completely new reef with a new  
7 location, new closure, new reserves estimates, a new  
8 depth estimate, and additional information on issues  
9 such as faulting. And this was one and a half years  
10 after they should have done so initially, and it made  
11 the expert analysis of the reef, and two reports of  
12 geology experts, completely obsolete.

13 Another event that Respondent would like to  
14 highlight is the recent, belated and clandestine  
15 submission of Ryder Scott's supporting documents to  
16 third report. And up to this date we haven't heard  
17 a word about this from Claimants. With the first  
18 post-hearing brief, Claimants had failed to submit  
19 documents, Respondent objected, and Claimants first  
20 provided some of those documents over the internet.

21 Importantly, Claimants provided also a list of the  
22 documents, and gave every indication that the list was  
23 complete; and in point of fact, it was not complete.  
24 Counsel for Respondent found out about this -- when it  
25 received a USB stick which contained additional



10:04 1 documents -- nearly two weeks after the submission  
not 2 deadline. And importantly, Claimants up to now have  
3 clarified that further documents had been added to the  
their 4 USB stick. And this coming from a party and from  
not 5 experts whose main attack on Respondent's expert is  
6 on substance, but on the falsely alleged lack of  
7 supporting documents.

Respondent 8 Claimants' procedural abuses have forced  
hereby 9 to raise various procedural objections which are  
10 formally upheld. Thank you.

11 THE CHAIRMAN: Thank you very much. Alright, according to  
12 the agenda, we now come to the examination of the  
13 technical experts. First the Claimants' experts. So  
14 why don't we take a five-minute break to set this up,  
15 and then we will continue. That also gives me a  
chance 16 to get something for my throat.

17 (10.05 am)

18 (A short break)

19 (10.13 am)

20 MR MICHAEL NOWICKI (called)

usual 21 THE CHAIRMAN: I am afraid I forgot to bring along the  
22 statement, I must admit. Do you have something?

23 THE WITNESS: It is on the table, yes.

kind 24 THE CHAIRMAN: Somebody took care of it. Would you be  
25 enough to read it out again to us?

10:13  
with

1 THE WITNESS: Yes. I solemnly declare upon my honour and  
2 conscience that my statement will be in accordance  
3 my sincere belief. I am aware that in my testimony  
4 I have to tell the whole truth and nothing but the  
5 truth. I am also aware that if I do not comply with  
6 this obligation, I may face severe legal consequences.

7 THE CHAIRMAN: Thank you very much. Please, go ahead.

8 Direct examination by MR TOHER

9 Q. Mr Nowicki, good morning. Can you briefly explain the  
10 objective in the interpretation of seismic reflection  
11 data?

12 A. Well, I would say that the primary objective is to  
13 define a hydrocarbon reservoir or a hydrocarbon trap.

14 Q. Can you explain to us just a little how the  
15 interpretation process works?

the  
that  
that

16 A. Well, I will give it a try. A seismic reflection  
17 surface is going to exist anywhere where there is  
18 a significant velocity and density contrast between  
19 material above that surface and the material below  
20 surface. Now, the way an event in the seismic data

and

material

21 correlates to that surface is going to appear will  
22 depend upon the degree of velocity density contrast,  
23 also on whether the upper material or the lower  
24 is the one that has the greater velocity and density.

25 Q. How does the type of geological feature being

10:14

1 interpreted affect the interpretation process?

2 A. Well, I think a seismic interpreter would be wise to  
3 always keep in mind that a knowledge of the  
4 characteristics that are typically associated with the  
5 type of geologic feature that's being interpreted is  
6 important in generating a better interpretation. For  
7 example, one would approach the problem of seismic  
8 interpretation where there is a series of layered  
9 features, such as you would see in a field like  
10 Borankol, differently than one would approach the  
11 problem if he was trying to interpret a carbonate  
12 build-up, like the Interoil Reef prospect, which is  
13 going to have more of an appearance of a body growing  
14 within the stratified section.

15 Q. You mentioned earlier the terms "seismic event",  
16 "velocity" and "density". What do you mean by those  
17 terms?

18 identifiable

A. Well, I guess I would define "event" as an  
19 feature within the seismic data that correlates to  
20 a reflection surface. And the velocity that we're  
21 referring to here is the velocity with which a seismic  
22 wave propagates through a material. And the density  
is  
23 the weight per unit volume of the material through  
which  
24 the wave propagates.

25 Q. You drew a contrast between Borankol and the Interoil

10:16

1 Reef. What is involved, generally speaking, in  
2 interpretation of a reservoir like Borankol?

top

3 A. Well, in Borankol, the reservoirs are stacked one on  
4 of another, in roughly a parallel orientation. And

it's

5 also typically the case that you don't see large

changes

6 in velocity and density as you go laterally within the  
7 productive area of reservoirs like that. So the

8 interpretation process for a field like Borankol would

9 proceed first by tying the reservoir that you want to

10 interpret to the seismic event, and then what we call

11 "picking". You pick that event on the seismic data in

and

12 your workstation in order to identify the high areas

13 the low areas and the faulted areas.

14 Now, I guess a little explanation is in order on

15 what we mean by "picking". In a seismic workstation,

16 picking involves digitising the seismic event as the

17 interpreter moves through the available seismic data.

18 And the net result is to create a digital surface that

19 represents that seismic event.

20 Now, in the case of a field like Borankol, the

21 picking process is relatively straightforward, just

22 following a consistent seismic character.

you

23 Q. What we might do is turn on that microphone next to

your

24 over there, and tip it towards you and try to raise

25 voice some. We're getting a lot of noise behind us

10:17 1 here.

2 A. Well, I am pretty close to the microphone, so I don't

3 understand why that would be the case, but okay.

4 Q. How does the interpretation process differ in the case

5 of a structure like the Interoil Reef prospective

6 reservoir?

7 A. Well, I think it differs considerably, and I think if

8 an interpreter would follow the same procedure that

they

9 would follow in a field like Borankol, they would be

10 making themselves susceptible to a number of

significant

11 interpretation pitfalls.

12 As I mentioned, a reef is going to have the

13 appearance of a body growing within the stratified

14 section. And one also has to keep in mind that

there's

15 more likely to be significant velocity and density

16 variations within a feature like a reef than in the

17 stratified section. So this kind of leads to

18 a situation where the surface of the reef is going to

be

19 interpretable based on a particular seismic character

in

20 one area; and then if the interpreter moves to another

21 area, he might have to rely on a different type of

22 character to identify the surface of the reef; and

there

23 may even be some areas where the reef surface itself

24 cannot be detected directly from the seismic data.

25 Q. We'll put up the first slide. They're in your

notebook,

10:19 1 under tab 1. Can you describe what this slide shows?  
that 2 A. Right, well, this is exhibit 2 from our report. Is  
3 a problem, that the lights went out?  
4 THE CHAIRMAN: I think it is better to keep the lights on,  
5 otherwise we can't read our own notes.  
6 A. Like I said, this is exhibit 2 from our report. And  
7 among other things, this slide illustrates the four  
pick 8 reference horizons that we pick prior to trying to  
9 the top of the reef surface, which we know is going to  
10 have a variable appearance over the area of the  
11 prospect.  
12 MR TOHER: Can we put up slide 2? What does slide 2 show?  
13 A. Okay, this slide is a schematic representation of some  
14 of the features we were trying to describe in the  
15 previous slide.  
16 DR NACIMIENTO: Counsel, can you point us to the exhibit?  
not 17 MR TOHER: Well, this is a simplified diagram and it is  
simplified 18 in the reports. If you object to using this  
19 diagram, we can go back to slide 1.  
20 DR NACIMIENTO: It is a new document?  
21 MR TOHER: Well, yes, it is.  
22 DR NACIMIENTO: We object to it.  
Take 23 MR TOHER: Okay, we'll go back to slide 1, Mr Nowicki.  
24 this one down.  
were 25 A. Basically the point of the other diagram is: if you

10:20 1 to imagine that you move to an area where the  
2 top-of-reef surface in the seismic data looks somewhat  
3 different than it does on this slide, say you were to  
4 scroll to the next line that you want to interpret,  
you  
5 would still be able to make a fairly reliable pick of  
6 the top-of-reef surface just based on your knowledge  
of  
7 the relationship of that surface to the reference  
8 horizons that were picked on the previous line. So  
9 that's basically the point.  
10 Q. And the reference horizons that you're talking about  
are  
11 identified on slide 1 as the stratified layers  
12 interrupted by reef and the drape level closure to the  
13 reef?  
14 A. Closest to the reef, yes, the red line.  
15 Q. Yes, the drape level closest to the reef?  
16 A. That's correct.  
17 Q. Since we got rid of slide 2, your interpretation  
18 previously was restricted to the 2D seismic data. How  
19 did the availability of 3D data change your  
20 interpretation of the reef?  
with  
21 A. Well, I think as everybody agrees, the data quality  
22 the 3D is a significant improvement over what we  
23 previously had with the available 2D data set. And  
that  
24 allowed us to define the surface of the reef with a  
lot  
25 more confidence than was previously the case, and it

10:22  
we

1 also allowed us to address some of the questions that  
2 had about the reef surface based on the previous 2D  
3 interpretation.

4 Q. What were the revisions to the GCoS that were actually  
5 made by Ryder Scott after interpreting the 3D data?

6 A. Okay, well, maybe taking a step backward, we used the  
7 new interpreted surface to refine our resource  
8 estimates. And also the improved data quality I guess  
9 in my opinion kind of necessitated changes to three of  
10 the factors that are considering in the GCoS estimate,  
11 just because the new data kind of drove you in that  
12 direction.

13 Our revised estimate of GCoS is now 10% for the  
14 prospect, and that is the same as GCA has presented in  
15 their base case estimate.

16 Q. Which three factors were affected?

17 A. Well, the main one is the trap factor; that had  
18 a significant change. And there also were some minor  
19 changes to the timing, migration and the source  
factors.

20 Q. Have you reviewed GCA's interpretation of the 3D data?

21 A. Yes, I have.

22 Q. What is the principal difference between Ryder Scott's  
23 approach to the seismic interpretation and what you  
24 believe to be GCA's approach?

25 A. Well, from what I read in the GCA report and the



10:23 1 documents that were provided, I don't believe that GCA  
2 picked any reference horizons to help them define the  
3 surface of the reef. Instead, they appear to have  
4 to interpret it directly from the seismic data.  
5 Q. And how is that problematic?  
6 A. Well, I mean, it's problematic because it makes you  
7 susceptible to some of the interpretation pitfalls  
8 we've just gone through.  
9 Q. GCA provides two scenarios in their report. Is that  
10 an industry standard approach to prospect evaluation?  
11 A. Well, you know, I don't think that in itself is  
12 a problem, providing two interpretation scenarios.  
13 Their two interpretation scenarios are pretty much the  
14 same everywhere except in the northern portion and the  
15 southwestern portion of their interpretation area.  
16 Now, you know, as I said, having two alternative  
17 scenarios is not of itself unusual or non-standard.  
18 I think the use of those two alternative scenarios in  
19 GCA's analysis of the prospect seems to me to be  
20 a little bit unorthodox and not in keeping with normal  
21 industry standards.  
22 Q. What is the industry norm?  
23 A. Well, the two typical geological inputs to prospect  
24 evaluation are, first of all, an estimate of the  
25 chance that the prospect is going to be successful, and  
that's

10:25        1        the GCoS estimate that you've heard a lot about. And  
range        2        the second input is going to be an estimate of the  
3        of resources that might be realised in the event that  
4        the prospect is tested successfully.  
5        Q. With respect to GCoS, what defines "success"?  
6        A. Well, success as it relates to the GCoS estimate has  
7        a very specific definition, and that definition is  
8        provided in one of the classic papers on prospect  
9        evaluation by Otis and Schneiderman which was provided  
and        10        by Ryder Scott as back-up for a third report. Otis  
11        Schneiderman define geologic success as: having  
12        a sustained flow of hydrocarbons on test.  
13        Q. Is it typical to have one GCoS estimate, or is it  
14        typical to have multiple GCoS estimates, as GCA has  
15        done?  
16        A. It's typical to have one GCoS estimate for each  
done        17        individual exploration target. GCA appears to have  
18        something a little bit unusual, in my view, that you  
19        don't typically see. They have the two interpretation  
for        20        scenarios, and they assign different GCoS estimates  
21        each scenario, and different ranges of recoverable  
22        resources.  
23        Q. When are alternative interpretations properly used?  
24        A. Well, I think if you have an alternative  
interpretation,  
25        that's more properly used in helping define your range

10:26           1           of recoverable resources for a single prospective  
                  2           target.

Reef            3        Q.   How many targets are there at issue in the Interoil  
                  4           area?

                  5        A.   There's clearly only one target: that's the Interoil  
designed        6           Reef.  And there is a specific test well that's  
                  7           to test that feature, and there's a specific location  
the             8           that has been provided in the materials that were on  
                  9           FTP site.  I think it's figure 6.1 out of the GCA  
the             10          report, that's kind of the only place where you see  
                 11          outline of the areas that they are using for the base  
                 12          case and the alternative case.  And the M3 well falls  
clear           13          within both of those polygons.  So it seems pretty  
                 14          that there is one exploration target here, and there  
                 15          should be only one GCoS estimate and one range of  
                 16          estimated resources associated with that.

                 17        Q.   Was the M3 well the exploration well that was planned  
                 18          for the reef?

                 19        A.   That's correct.

                 20        Q.   What is or how is the range of estimated recoverable  
                 21          resources ordinarily presented?

                 22        A.   Well, you would present it as low, best and high case  
                 23          estimates, if you're using a deterministic approach to  
report         24          estimating the resources; and you would typically  
                 25          a P90, a P50 and a P10 number if you are using

10:28 1 a probabilistic approach.

2 Q. What's the difference between deterministic and  
3 probabilistic approaches?

4 A. Well, with a deterministic approach for each one of  
the  
5 parameters that go into the volumetric equation, you  
6 assign a discrete value. So you are estimating a  
number  
7 for porosity, area, all that, discretely for each one  
of  
8 the cases. With a probabilistic estimate, instead you  
9 are defining a distribution curve for each one of  
those,  
10 and the results are going to be generated out of  
11 a program such as Crystal Ball.

12 Q. GCA has presented two different time interpretations  
for  
13 the reef structure. What are your general  
observations  
14 regarding GCA's interpretation of the reef structure  
in  
15 time?

16 A. Well, I think in my opinion there are problems with  
both  
17 their are base case interpretation and their  
alternative  
18 case interpretation.

19 Q. Why don't we put up slide 3?

20 A. Okay, the circled area on this particular map, which  
is  
21 figure 6.6 out of the GCA report, which represents the  
22 depth structure map for their base case, that area  
looks  
23 a little bit strange to me. The GCA interpretation of  
24 this area stops at the very highest elevation that's  
25 depicted on this map.

10:30 1 Now, to my eye, what this map is representing is  
why 2 a ridge. And the immediate thing that I question is  
3 the interpretation stops where it does at the highest  
4 point, when you're clearly still within the 3D data.  
5 Now, I've taken a look at their time surface that  
6 they provided as back-up material, and put it into the  
me 7 seismic project, and what appears to have happened to  
8 is that the GCA base case mapping in this area jumps  
9 off of the reef surface and on to one of the stratified  
had 10 layers adjacent to it. And I think that's why they  
11 a problem following the reef in this area.  
12 Q. Does the Ryder Scott interpretation continue into the  
13 northwest corner of the Interoil reef prospect past  
14 where GCA stopped the interpretation?  
almost 15 A. Yes, it does, it continues considerably further,  
16 to the limits of the 3D in that area.  
17 Q. We'll put up the next slide, slide number 4, which is  
18 figure 6.10 from the GCA report. What does this slide  
19 show?  
figure 20 A. Okay, there's two maps on this slide, and this is  
21 6.10 out of the GCA report. The top map is their  
22 alternative time interpretation; the bottom map is the  
23 alternative depth interpretation. And the circled  
area 24 on both of these maps is one of the two areas where  
25 there's a significant difference between the GCA base

10:31 1 case interpretation and their alternative case  
2 interpretation.  
3 According to the narrative that is contained in  
the  
4 GCA report about this particular figure, this is an  
area  
5 where they say they had to force -- or they use the  
term  
6 "ghost" -- the interpretation. Basically I don't see  
7 any basis or justification for doing that. In fact,  
8 I think in this area, their base case interpretation  
9 seems to be a lot more correct. It seems to be what  
10 represents the information that's in the seismic  
volume.  
11 Q. What does the term "ghost" mean?  
12 A. Well, I kind of wondered that myself. I've never  
heard  
13 the term "ghost" referred in this particular sense  
with  
14 respect to seismic data. I mean, I think if they were  
15 going to use the term, they probably should have  
defined  
16 it. So I'm not sure if there is some sort of process  
17 involved in trying to "ghost" the interpretation in  
this  
18 area as they have done, or whether this is really just  
19 a way of saying they made something up.  
20 Q. Do you think GCA fundamentally erred in its  
21 interpretation methodology?  
22 A. Well, I guess what I would say is I think that they  
have  
23 fallen into a couple of the pitfalls that they  
probably  
24 could have avoided if they would have taken the extra  
25 steps of picking reference horizons.

10:33  
contend

structure

figure

polygon

the

1 Q. In paragraph 81 of the GCA report they appear to  
2 that the 3D seismic revealed a different reef  
3 from that revealed by the 2D seismic. And I'll quote  
4 paragraph 81:  
5 "... the new 'InterOil Reef' is not a modification  
6 of the old interpretation, but a completely new and  
7 different feature that was only identified once the 3D  
8 data became available."

9 Do you agree with that contention?

10 A. No, I don't.

11 Q. We'll put up the next slide, slide 5. Slide 5 is  
12 6.1, which you referenced earlier from GCA's report.  
13 And it was apparently provided as support for the  
14 contention that the 3D data revealed a new reef. In  
15 your view, does figure 6.1 support that contention?

16 A. No, I really don't see how it would do that. I'm sure  
17 you all can read, but the blue polygon on this  
18 particular diagram is a representation of the position  
19 of the reef on the 2D interpretation. The gold  
20 represents Ascom's interpretation of the 3D data. The  
21 red polygon is GCA's base case 3D interpretation for  
22 reef. And the green polygon represents the GCA  
23 alternative 3D interpretation for the reef.

24 And to my eye, all of these polygons show  
25 an enormous amount of overlap, so I don't see how you

10:34  
this

1 can draw that conclusion that you just stated from  
2 particular map.

GCA

3 Q. Slide 5 is, as you say, a map view of the  
4 interpretations of the reef structure that exist by  
5 and Ascom. What would a vertical slice comparison of  
6 the 2D and 3D interpretations look like, looking at it  
7 from the side?

interpretation

8 A. Okay, well, I've actually done that. You can take  
9 a seismic line out of the 3D survey, and you can post  
10 the 2D interpretation and the Ryder Scott  
11 of the reef, the Gaffney Cline two alternative cases.  
12 And what you'll see if you do that is that the reef on  
13 the 3D interpretations, all of them, and the 2D  
14 interpretations, is at approximately the same depth,  
15 there is a considerable amount of overlap between all  
16 those interpretations.

and

of

new

17 So I think it's pretty clear that this is not a  
18 feature. What it is is it's the same feature whose  
19 boundaries are now better defined by more and higher  
20 quality data.

the

21 Q. We'll put up the next slide. This is figure 6.11 from  
22 the GCA report, what it calls a "cartoon", and it's  
23 a depiction of the Interoil Reef in conjunction with  
24 carbonate build-ups in Tengyz, Kashagan and  
25 Karachaganak. Do you agree that that cartoon is



10:36  
Tengyz,

1 a representative comparison between the reef and  
2 Kashagan and Karachaganak?

that

3 A. No, I don't. I think there are a number of things  
4 are distorted on this diagram, and there are some  
5 important facts that are omitted from the diagram that  
6 would give one a much clearer idea of what's going on  
7 that what this diagram appears to show.

is

8 Q. Why don't we start in the upper right corner. There  
9 a small blue section labelled "Reef". What do you  
10 understand that figure to represent?

below

11 A. Yes, I believe that is supposed to be the Artinskian  
12 which was penetrated and flow-tested in the Munaibay  
13 no. 1 well. One thing to notice, one thing that's  
14 accurately depicted here, is that that feature is  
15 the salt, so it's a sub-salt reservoir.

it's

in

16 As I mentioned, that well was flow-tested, the  
17 Munaibay no. 1 well was flow-tested. And we know the  
18 composition of the gas that came out of that reservoir  
19 based on that flow test. And that composition is  
20 similar to the Artinskian reservoir at Tolkyn, and  
21 basically trace levels of H2S and a condensate yield  
22 the order of 51 barrels per million cubic feet.

that

your

23 Q. Sticking with the diagram for the time being, below  
24 there is another blue body labelled "Reef". What's  
25 understanding of what that is?

10:37 1 A. Well, I believe that that is supposed to represent the  
scale 2 Interoil Reef prospect. Now, there's no vertical  
Artinskian 3 on this diagram, and the distance between the  
4 reservoir that was tested and the prospect is going to  
reef 5 depend to some extent on the interpretation of the  
6 surface, and also on the depth conversion methodology  
7 that somebody would use.  
8 But regardless of which interpretation you use,  
and 9 regardless of which depth conversion methodology you  
10 use, that distance is going to be approximately  
11 2,000 metres. And that's very significant because  
that 12 means that the Artinskian reservoir that was tested by  
13 the Munaibay no. 1 well is the closest pre-salt  
14 reservoir to the reef prospect, by far, for which we  
15 know the composition of the gas.  
16 Ryder Scott used the composition of the gas that  
was 17 tested in the M1 well, in the Artinskian, in addition  
to 18 the gas from Tolkyn, which is the closest producing  
19 pre-salt reservoir to the prospect, as a basis for  
20 estimating both our contaminant levels and the  
21 condensate yields that we used in our analysis.  
22 Q. Moving to the left side, which obviously is supposed  
to 23 be a representation of Tengyz, Kashagan and  
24 Karachaganak, are there distortions in those  
25 representations, in your view?

10:38  
to

1 A. The first thing that jumps out to me is there appears  
2 be an enormous distortion in the vertical relief of  
3 those features relative to the Interoil Reef. If one  
4 were to do a proper interpretation on Interoil Reef,  
5 vertical dimensions would actually be somewhat  
6 comparable.

the

7 Q. Is there a distortion at all in the distances that are  
8 represented?

actually

9 A. Well, yes. The three fields that are labelled on the  
10 top, the first of those is Tengyz, and that is

Reef.

11 located about 45 kilometres away from the Interoil

be

12 So if one were to plot this figure to scale, it would

than

13 about 20 times more distant from the Interoil Reef

about

14 is depicted on this diagram. Kashagan is located

15 140 kilometres away, so that would be approximately 65

And

16 times more distant than is depicted on the diagram.

17 Karachaganak is 625 kilometres away. So if that was

18 posted to scale, it's going to be about 285 times more

19 distant than is depicted on the diagram.

to

20 Q. What type of information guides you or would you look

be

21 in estimating the properties of the fluids that might

structure

22 contained in a prospective structure, if that

23 is tested successfully?

24 A. Well, I think the only thing that you can rely upon is

25 analogues.



10:40  
in  
fluids,  
basically  
the  
1,  
of  
in

1 Q. And what are the criteria that are most significant,  
2 your view, for a proper analogue?  
3 A. Well, with respect to things like composition of  
4 really the only one that has any significance is  
5 proximity.  
6 Q. What was Ryder Scott's estimate regarding the likely  
7 levels of contaminants like H2S in the Interoil Reef  
8 prospect?  
9 A. We're estimating trace levels of contaminants,  
10 less than 1% H2S.  
11 Q. How did you arrive at that estimate?  
12 A. By the analogy to the tested Artinskian reservoir in  
13 Munaibay no. 1 well and Tolkyn.  
14 Q. And what was Ryder Scott's estimate of the condensate  
15 yield for the Interoil Reef?  
16 A. It was 51 barrels per million cubic feet.  
17 Q. And how did you arrive at that estimate?  
18 A. Well, it's basically the same way, we use the same two  
19 analogues: the Artinskian tested by the Munaibay no.  
20 and the Artinskian dolomite at Tolkyn.  
21 Q. What is your view of GCA's methodology and estimates  
22 contaminants and condensate yield?  
23 A. Well, I don't think they really tell us specifically  
24 their reports where their estimates came from or what  
25 they were based on. But they appear to me to be

10:41

1 internally [in]consistent with anything that you would  
2 judge to be a reasonable analogue.

3 Q. In paragraph 193 of GCA's report, the issue of H2S is  
4 discussed, although it's not specifically quantified.  
5 And GCA refers to figure 6.17, which is taken from  
6 a Tristan presentation discussing the Interoil Reef  
7 prospect. And we can put that up as the next slide,  
8 which is slide 7.

9 Is there anything in figure 6.17 that is pertinent  
10 to your criticism of GCA's analogue analysis?

11 A. Well, I think this does illustrate it fairly well. In  
12 the narrative of the GCA report, they are very quick  
13 to point out that high levels of H2S that are posted on  
14 all of these offsetting fields is support for their view  
15 of they high levels of H2S in the prospect. However, what  
16 fail to mention is that each one of these fields that  
17 are posted on here has a liquid hydrocarbon to gaseous  
18 hydrocarbon ratio -- and we generally use the term  
19 "yield" to define that -- [that] is significantly  
20 higher than what they are using to estimate that factor in  
21 their report.

22 In fact, the field that is by far the closest to  
23 the Interoil prospect has a yield that's more than eight  
24 times higher than what GCA is using.

25 Also, I think they fail to mention that, if you go

10:43 1 further in this Tristan presentation, Tristan is  
2 modelling the Interoil as an oil prospect.

3 Q. Just as a correction, you did say in your answer, that  
4 GCA's estimates were not discernible as to their  
source:  
5 "Answer: ... But they appear to me to be  
internally  
6 consistent with anything that you would judge ..." --  
7 A. I meant to say "inconsistent", if I said ...

8 Q. Okay. GCA has suggested in the joint issue report  
that  
9 was filed Monday that it used an analogue for its  
10 estimation of condensate yield. Could you tell what  
11 analogue GCA used?  
12 A. Well, no, because I think that's the only place that I  
13 see that mentioned. I haven't seen that mentioned in  
14 any other reports.

15 Now, I don't see how it could be Kashagan or  
Tengyz,  
16 because the yield in those two fields is between six  
and  
17 eight times higher than the one GCA is using. And  
18 Karachaganak is a great distance away, an enormous  
19 distance, 625 kilometres, so I don't see how it would  
be  
20 in any way reasonable to use that as an analogue for  
21 this purpose.

22 Q. GCA has also referred to the Max Petroleum report that  
23 was done by Ryder Scott, and they have stated that it  
is  
24 on a nearby block. Do you agree with their use of the  
25 Max Petroleum report?





10:44        1    A. Well, I think it's incorrect for them to say that it's  
              2                    on a nearby block. In fact, the prospects that were  
              3                    evaluated in that particular report are located  
between        4                    150 and 200 kilometres away from the Interoil  
prospect.     5                    In fact, they are so distant from the prospect that  
they           6                    wouldn't even appear on the map depicted in figure  
6.17.

7    Q. Would you recommend any further 3D acquisition on the  
8                    Interoil Reef prospect?

9    A. No, I don't think so. The only place where additional  
10                   3D might be of benefit is on the south-west flank of  
the            11                   structure. And that area is off the contract 302  
              12                   licence area so, first of all, it's questionable as to  
              13                   whether the Claimant would have the right to acquire  
3D            14                   data in that area; and secondly, if they were to  
acquire      15                   it, it's also questionable who would be the primary  
              16                   beneficiary of such data, them or potentially  
              17                   a competitor.

18                   I think also of significance is that area is  
19                   significantly down-dip of the crest of the structure,  
so            20                   that's not the place where you would want to drill  
              21                   a test well.

22   Q. Would reprocessing of any of the existing 3D help?

23   A. I think that would potentially help. But I think the  
24                   biggest shortcoming that we have right now with  
respect      25                   to data that would help reprocessing is that we don't

10:46  
acquired

1 have good velocity data, and that could only be  
2 through the drilling of a well. So I'm not terribly  
3 optimistic that reprocessing the seismic data is going  
4 to help very much.

what

5 Q. What are the principal remaining concerns regarding  
6 you actually have underground in the Interoil Reef  
7 prospect?

8 A. I think the two biggest concerns are going to be the  
9 question of top seal and the question of reservoir  
10 quality at the depth of the prospect.

11 Q. How would you resolve those concerns?

of

12 A. Well, I mean, you certainly can't gain any knowledge  
13 those two factors with additional seismic data.

That's

14 going to have to come from well data. That's really  
15 only source of information that would help with those  
16 two concerns.

the

the

17 Q. So what do you think a prudent operator would do as  
18 next step, having this 3D seismic in hand?

judgment

19 A. Well, I think any prudent operator who made the  
20 that the value of the prospective prize is sufficient  
21 justify the risk of the prospect, and the cost that  
22 going to take to test the prospect, is going to go  
23 forward with drilling the test well based on the  
24 currently available data.

to

it's

25 MR TOHER: Thank you. I'll pass the witness.

10:47  
secretary

1 THE CHAIRMAN: Thank you very much. I am sure our  
2 is taking the time. Very good. Shall we move on to  
3 cross-examination, please.

4 Cross-examination by DR NACIMIENTO

5 Q. Good morning, Mr Nowicki.

6 A. Good morning.

7 Q. Is this the first arbitration in which you have given  
8 testimony as an expert?

9 A. Yes, it is the first arbitration.

10 Q. Is it correct that prior to the hearing, you agreed  
with GCA on a joint issue list?

11  
12 A. Met with them? We had a teleconference.

13 Q. And you also agreed --

14 A. Did you say "GCA" or "GCO"?

15 Q. "GCA".

16 A. Okay, yes, we did have a teleconference, correct.

17 Q. And you also agreed with GCA on a joint issue list  
18 before the quantum hearing in January?

19 A. I did participate in that.

20 Q. You did participate in drafting the list?

21 A. Well, along with Mr Latham, yes.

22 Q. Taking up a question from counsel for Claimants, could  
23 we put up figure 6.11, which you just had. Is that  
24 possible? Mr Nowicki, do you see here on the right  
the two structures?

10:49

1 A. Mm-hm.

2 Q. They are apart 2000 metres. How many years are these  
3 two structures apart?

4 A. Well, I couldn't give you years.

5 Q. Roughly.

6 A. But I know that they are of different geological ages,  
7 so I will concede that point.

8 Q. So we are speaking about millions of years?

9 A. Millions of years, yes, that would be fair.

10 Q. A few questions on closure. Is it fair to say that  
11 ideally for a reef structure, seismic data shows

closure

12 for all sides of the supposed reef?

13 A. Yes, that would be typical of that type of feature.

14 Q. Because in that case then you can demonstrate the  
15 presence of a trap?

16 A. Right. Well, you know, there are various degrees of

the

17 trap. But yes, I think I am in general agreement with  
18 your statement.

19 Q. Is it also correct to say that if there is no closure,  
20 but instead the structure opens up to one side, the  
21 hydrocarbons cannot be trapped and could migrate to

the

22 surface?

23 A. Well, that's true, but that's not going to be the way  
24 that a reef is going to exist. It's not going to just  
25 disappear.

10:50

1 Q. But it's true?

2 A. It's true.

3 Q. If we now turn to your analysis of the existence of

6,

4 closure, if I could take you in your binder, it's tab

5 that is your third report, and paragraph 11. Do you

6 have it?

7 A. I am getting there.

8 Q. In the second-to-last sentence, and I'm quoting:

9 "A single 2D line ... gives some indication of the  
10 position of the reef structure to the west of the  
11 Contract 302 area."

the

12 I am interested in "some indication". Do

13 I understand it correctly that at this position, on

14 2D data you cannot clearly demonstrate the presence of

15 closure?

16 A. You can demonstrate it on that 2D line.

17 Q. If you say there is some indication --

2D

18 A. Well, what that means is I wish there were a lot more

19 lines in that area.

20 Q. Is it fair to say, to summarise your findings, that

21 there is no conclusive proof?

22 A. No, I don't think that would be fair to say at all.

limited?

23 Q. In that case, would it then have been necessary to put

24 in some indication that your finding is somehow

my

25 A. Well, that might be the way that you read it. But in

10:52 1 mind, I know that there has to be more to that reef.  
It 2 doesn't just end where the data ends.

3 Q. Let's move on to faulting. Is it correct that if  
there 4 are faults in the top seal, that means that  
hydrocarbons 5 inside the trap may leak out and migrate to the  
surface? 6 A. I think the operative word there is "may", yes.

7 Q. Is this also the reason why, in the case of faults,  
8 cutting into a structure, the GCoS would generally be  
9 lower than without faulting?

10 A. I did observe some faulting, and that was a factor in  
my 11 GCoS estimate.

12 Q. My question was very generally on faulting. So  
generally 13 generally, if there are faults, GCoS would be  
14 lower?

15 A. That would be one factor you would consider in the  
GCoS; 16 that would drive it lower, yes.

17 Q. Thank you. If you look again at your report, have you  
there 18 stated and explained anywhere in your report that  
19 might be faults cutting through the top of the reef?

20 A. I don't think I stated that, but I did state one of  
the 21 big risks is top seal, and that is one of the factors  
22 that is included in that factor.

23 Q. Would it surprise you that nowhere in your report can  
24 the word "faulting" be found?

25 A. It wouldn't surprise me, no.

10:54

1 Q. Is there any analysis of faults based on the 3D data  
2 explained in your report?

3 A. No, there's not.

you

4 Q. I would now like to turn to the issue of depth. If

5 turn to paragraphs 12 and 13 of your report, these are  
6 your considerations regarding the depths of the top of  
7 the Interoil Reef, is that correct?

8 A. That general section of the report deals with that  
9 topic, yes.

10 Q. Is it also correct that you applied several depth  
11 conversion methods?

12 A. I reviewed several different methods. I selected one.

13 Q. If we look at your results for a moment, that's  
14 paragraph 24, and I'm quoting:

depth

15 "Exhibit No. 13 is a map showing Ryder Scott's

16 converted map to the top of the reef surface. It was  
17 constructed by multiplying the top of the reef surface  
18 in time by the 2nd order polynomial fit to the M10  
19 synthetic which we think is the depth conversion

method

20 best supported by the available data."

of

21 You think this depth conversion method, the crest

22 the top of reef surface, is predicted to be at  
23 approximately 6,500 metres. Is it a fair summary of  
24 this statement that the depth conversion method you  
25 consider to be best supported by the available data is

10:55           1           a synthetic from the M10 well?

                  2        A.   That's correct.

                  3        Q.   And is it also correct that this analysis leads to

                  4           a depth estimate of 6,500 metres for the top of the

                  5           reef?

                  6        A.   That's approximately correct, yes.

                  7        Q.   If we now look at exhibit 13 mentioned here.

                  8        THE CHAIRMAN:   Where would we find that?

                  9        DR NACIMIENTO:   Exhibit 13 of the third Ryder Scott

report.

                 10           It's tab 6 of the binder.

                 11        A.   I see it.

                 12        Q.   This is the depth map for what you consider to be the

correct?         13           best supported depth conversion method, is that

                 14        A.   That's correct.

                 15        Q.   Is it also correct that the M1 well which can be seen

in               16           the middle would have to be drilled to a depth of at

                 17           least 6,750 metres to penetrate the reef structure?

                 18        A.   Probably a little bit deeper than that, yes.

                 19        Q.   And it would be at least 750 metres more than the

depth           20           that had been planned for the M1 well, is that

correct?         21        A.   The proposed TD?   Yes.

                 22        Q.   So in other words, using this depth conversion method,

                 23           which you consider the best supported by the data, the

                 24           M1 well would not have reached the Interoil Reef?

                 25        A.   That's correct.



10:57 1 Q. Let's turn to the presence of H2S. Could you please  
2 turn to paragraph 30 of your third report? Here you  
3 deal with the possibility of the presence of H2S.  
4 A. Mm-hm.  
5 Q. I would like to focus on the last sentence of that  
6 paragraph. It reads:  
7 "Although Ryder Scott believes that there is  
8 a possibility that a successful Interoil Prospect will  
9 contain a significant level of H2S ... we believe that  
10 there is a roughly equal possibility that any  
11 encountered H2S will be relatively low (less than  
12 1%)."  
13 Is it correct that you describe here two possible  
14 outcomes: one with significant H2S of more than 1%,  
15 and one with insignificant H2S?  
16 A. That's correct.  
17 Q. Is it also correct that these two outcomes have  
18 a roughly equal chance of occurring?  
19 A. I think they would be considered to be roughly equal,  
20 yes.  
21 Q. And that means that you consider the chance of there  
22 being significant H2S of more than 1% to be roughly  
23 50%?  
24 A. I think that's correct, but you have to understand  
25 that  
26 there's more involved in it than that. But yes,  
27 that's  
28 correct.  
29 Q. Would you agree that at 1% of H2S in the gas, the H2S

10:59

1 has to be removed?

2 A. Well, I kind of see that as a dividing line. If it's  
3 below 1%, I think the process of treating it -- in any  
4 event, it has to be removed. But if it's less than

1%,

5 it's going to be able to be treated similar to the way  
6 it's treated at Tolwyn. There is a trace level of H2S  
7 in the gas at Tolwyn. If it's more than that, then,

of

8 course, more would be involved.

9 Q. Are you aware, Mr Nowicki, [of] when GCA first raised  
10 the issue of the presence of significant quantities of  
11 H2S in this arbitration?

12 A. Am I aware of when they did it?

13 Q. Yes.

14 A. Or where they did it?

15 Q. Yes.

16 A. I saw it in their reports, yes.

17 Q. Are you aware that they raised this as early as  
18 November 2011?

19 A. Yes.

20 Q. For the record, GCA mentions H2S in connection to the  
21 Interoil reef numerous times in their submission of  
22 November 2011, in paragraphs 120 and 121, in appendix  
23 III and appendix IV of their first report; and also in  
24 their second report, again for the record,  
25 paragraphs 102, 107, 108, 110, 111 and 114.

11:00 1 Mr Nowicki, if a potential investor wanted to farm  
geological 2 in the Interoil Reef, and asked you to make a  
that 3 assessment of the Interoil Reef, would you tell him  
4 you considered that there is a roughly 50% chance of  
5 significant H2S?  
6 A. I would tell him that, and I would also try to -- if  
7 I was going to select that as a possibility to model,  
8 I would try to model it consistently with all the  
9 information available from the analogue fields.  
10 Q. Is that because significant quantities of H2S will  
11 affect the cost of development, and also the operative  
12 costs, and also the volume of natural gas that can be  
13 recovered?  
14 A. I believe all of that is true, yes.  
15 Q. And if you did not tell this information to the  
16 investor, would you be withholding significant  
17 information from him?  
18 A. Well, I think my task would be to provide the investor  
scenario, 19 with what I consider to be the most reasonable  
20 and also to maybe mention the risks that were to be  
21 involved as well, yes.  
22 Q. And it's a risk, so you would agree that it's relevant  
23 and it's information that would have to be disclosed?  
24 A. Yes, I think there is both a risk and a potential  
25 benefit, if the fluids inside of the reef prospect are

11:01 1 more like the high H2S fields. So I don't have  
2 a necessary objection to somebody modelling the fluids  
3 like they are in the analogues with respect to  
ignore 4 contaminants, but I think what is incorrect is to  
5 those same analogues with respect to liquid  
6 hydrocarbons.  
7 Q. We move on. One question on the Munaibay 3 well. If  
8 you could turn to tab 10 in your binder, and that is  
the 9 third FTI report, and here please if you open page 77.  
10 Here, in paragraph 12.5, FTI discusses the  
drilling 11 schedule which was provided by you, is that correct?  
12 A. It wasn't provided by me; it was provided by Mr  
Latham.  
13 Q. It was provided by Ryder Scott?  
14 A. Ryder Scott.  
15 Q. In item (i) they state:  
be 16 "The first well is an exploratory well and should  
17 drilled to 7,500 meters ..."  
18 That is the assessment of Ryder Scott?  
19 A. I think that would be a good plan, yes.  
20 Q. Is it also the opinion of Ryder Scott that the first  
drilled 21 exploration well on the Interoil Reef should be  
22 to a depth of 7,500 metres?  
23 A. I think that would be an appropriate depth to drill  
the 24 well, yes.  
25 Q. Are you aware that the M3 well that Claimants were



11:03 1 planning was supposed to only have a depth of  
2 6,200 metres?  
3 A. 6,200 metres? Well, I don't necessarily think that  
they  
4 agree with my depth conversion methodology. And if  
they  
5 were to review it, and to believe that I'm more  
correct,  
6 then I don't see why they couldn't have amended that  
7 plan.  
8 Q. But would you agree that the Claimants had different  
9 plans than what you are now putting forward in the  
10 development plan?  
11 A. Well, I don't have any knowledge of that, I don't  
know.  
12 If you're correct in that, then that was their plan.  
13 But I haven't seen that.  
14 Q. I represent to you that this is correct. For the sake  
15 of time, this is tab 11, C-732, R-382, and it's the  
16 internal Ascom memorandum. This is where the number  
17 derives from.  
18 A. Right.  
19 Q. Mr Nowicki, before the quantum hearing, the Tribunal  
20 asked the experts for their assistance, and they asked  
21 the experts to come up with a joint issue list. Do  
you  
22 recall this?  
23 A. I do.  
24 Q. Do you also recall that GCA submitted a first draft?  
25 A. My memory is not that good. I don't remember that.

11:05

you

1 Q. I represent to you that this is the case, and I don't  
2 think that there will be any discussion on that. Do  
3 also recall that there was a conference call on  
4 18th January of 2013?

5 A. I remember the conference call. I couldn't be certain  
6 about the date.

7 Q. Do you recall that after the conference call, other  
8 versions were exchanged, versions of the joint issue  
9 list?

10 A. I am generally aware of that. That basically was  
11 something that Mr Latham was far more involved in than  
12 I was.

13 Q. I would like to submit to Mr Nowicki the joint issue  
14 list. It's the list which was submitted to the  
15 Tribunal, before the quantum hearing in January.

16 Mr Nowicki, if you take a look at the fourth page.

17 A. The one with the tab on it?

18 Q. Yes, the one with the tab, it's the one dealing with  
19 contract 302. Do you agree that this is actually the  
20 only item on the list on which there is a general  
21 agreement, and that relates to the GCoS estimate?

22 A. Yes.

23 Q. For the record, I'm quoting from the joint issue list:

do

24 "Although the experts' respective GCoS estimates  
25 not all match exactly, they are fairly close."

11:07  
remember

1                   This was just a quote. Mr Nowicki, do you

Reef

2                   the GCoS estimate provided by GCA for the Interoil

3                   in their first and second report?

4    A. I believe it was approximately in the order of 5%;

maybe

5                   4%.

6    Q. I represent to you that it was 4%.

7    A. Okay.

8    Q. Do you remember your own GCoS estimate provided in

Ryder

9                   Scott's first and second report --

10   A. Based on the 2D interpretation?

11   Q. Based on the 2D interpretation . . .I am asking for

your GCoS submitted in the first and

12                   second Ryder Scott reports.

13   A. Yes, that would have been based on the 2D

14                   interpretation, and that was 5%.

15   Q. And it's correct that you revised your GCoS estimate

for

16                   the Interoil Reef at the hearing on quantum to 9%?

17   A. Actually I revised it slightly before the hearing, but

18                   that was the first place it was presented.

19   Q. Do you recall when you revised it?

20   A. It would be a few days before the hearing.

21   Q. How many days before the hearing?

22   A. Possibly two, two or three.

23   Q. The hearing started on 28th January. Your testimony

was

24                   on Day 3 of the hearing. Can you tell us

approximately

25                   when you revised your GCoS?



11:08  
of  
weekend.

1 A. I think it would have been either -- probably Monday  
2 that week. I remember it being right after the  
3 That would be my best recollection.

4 Q. If I can refer you to your report in paragraph 7, here  
5 you say that you received the 3D data on 22nd January.

6 A. Okay, this is tab 5?

7 Q. I represent to you that this is the case. This is  
8 you wrote in your report.

9 A. Okay.

10 Q. That you received it on 22nd January. We have a  
11 from counsel for Claimants which was sent in February.  
12 Counsel for Claimants said that you received the 3D  
13 on 18th January. Which date is correct?

14 A. The date that's in my report is correct. That's when  
15 I got it. It's possible that the attorneys got it a  
16 days before I did, but . . .

17 Q. Counsel for Claimants says that you were provided on  
18 18th January with the 3D data.

19 A. Well, the date that's in the report that says when I  
20 provided is the correct date.

21 Q. So counsel for Claimants is wrong?

22 A. Well, if you say that's what they said, and that's  
23 accurate, then they are. But once again, I can't  
24 that.

25 Q. In your third report at paragraph 1, you say -- and  
this

11:09 1 is with regard to 3D interpretation, and I'm quoting:  
2 "The purpose of this effort was to update our  
3 estimate of prospective resources and the GCoS  
4 associated with the Interoil Carboniferous Reef ...  
5 Prospect which was initially evaluated by Ryder Scott  
6 based on 2D seismic data ..."

7 A. Excuse me, could you tell me where you're reading  
from?  
8 Q. It's paragraph 1, your third report, tab 6. So you're  
9 telling us here that you received the 3D data, and  
that  
10 you were interpreting the 3D data with the purpose of  
11 updating your estimate; is that correct?

12 A. That's why we went through the effort, and that's why  
we  
13 generated this report.

14 Q. It is correct then, is it not, that you had started  
the  
15 process of updating your GCoS at the same time that  
you  
16 were discussing with GCA the joint issue list?

17 A. I guess if those dates are correct, yes.

18 Q. We have established the dates. It's either on the  
18th  
19 or the 22nd that you received the 3D data. We had the  
20 conference call on 18th January. The joint issue list  
21 was submitted to the Tribunal on 25th January. And  
this  
22 is when you were in parallel discussing the joint  
issue  
23 list with GCA, and interpreting the 3D data; is that  
24 correct?

25 A. Well now, I think that you have to keep in mind that

11:11  
that

1           there was a considerable time lag between the time  
2           we had the teleconference and the time that we issued  
3           the final joint issue list; and I basically wasn't  
4           involved in that process, other than sitting in the  
5           meeting, because all of the issues on the joint issue  
6           list were basically engineering issues that Mr Latham  
7           was the one involved with. So I don't know a whole  
8           about that timeline that you're talking about.

lot

9    Q.   The only issue that is relevant in this context right  
10       now is the GCoS on the fourth page of the joint issue  
11       list which you have in front of you. And that relates  
12       to the GCoS.

13   A.   Okay.

14   Q.   In paragraph, let me rephrase it, when you were  
discussing with GCA participating in the

15       conference call, is it correct that you did not inform  
16       GCA that at the same time you were already  
interpreting

17       3D?

18   A.   I didn't inform them of that, and I had no way of  
19       knowing whether they had the 3D or not.

to

20   Q.   In paragraph 27 of your third report, with regard to  
21       your answer saying that you had no way of knowing  
22       whether GCA had the 3D or not, do you know of any  
23       statement in the first or second GCA report according  
24       which GCA had made any analysis of 3D?

you

25   A.   I don't have that good of a memory where I can tell

11:13 1 whether there was a statement to that effect or not.  
2 Q. Did you review all reports before coming to this  
3 hearing?  
4 A. I have looked at all the reports many times.  
5 Q. And in this hearing your testimony is limited to 3D  
6 only?  
7 A. Uh-huh.  
8 Q. In paragraph 27 of your third report, you state that  
in 9 the hearing you gave a preliminary update of the GCoS.  
10 A. Right.  
11 Q. Let's take a look at your testimony. It's transcript  
12 page 103, lines 11 to 13. And I'm quoting:  
13 "Answer: ... in my review of the new data, that's  
14 allowed me to revise my geologic chance of success  
15 estimate for the prospect up to 9%."  
16 A. Correct.  
17 Q. Isn't it a fact that you did not advise the Tribunal  
18 that your findings in the hearing were only  
preliminary?  
19 A. If that's a significant omission on my part,  
20 I apologise. But there certainly was not a  
significant  
21 revision to that number since that hearing.  
22 Q. Were you under time pressure in interpreting the 3D  
data  
23 before the hearing?  
24 A. I would say not, no. Keep in mind that I wasn't  
25 necessarily interpreting it; I was reviewing it, which

11:15 1 is a little bit different.

2 Q. Have you since then interpreted it or reviewed it?

3 A. Reviewed it.

the 4 Q. The result that you mention in your third report is

5 result of review, and not of interpretation --

6 A. That's interpretation.

for 7 Q. For my understanding, you had reviewed it before or

8 the quantum hearing, is that correct?

9 A. I had reviewed it, yes.

10 Q. You reviewed it, and you then interpreted it following

11 the hearing; is that correct?

12 A. That's correct.

13 Q. When did you finalise your interpretation?

14 A. I would say the interpretation was probably finalised

15 about a month before the report.

the 16 Q. So if I understand it correctly, you reviewed it for

17 quantum hearing, you continued reviewing and/or

18 interpreting it after the quantum hearing, and you

came 19 up then with a result of your interpretation for your

20 report, approximately a month before the report was

due, 21 is that correct?

22 A. Something like that. There might have been minor

23 details that were adjusted, but essentially the

24 interpretation was finished about a month before the

25 report was written.

11:16  
of

1 Q. Isn't it a fact that you did not inform the Tribunal  
2 the distinction between reviewing and interpreting?

3 A. Well, I don't know that that's my responsibility to do  
4 that. I mean, isn't that for you to ask that  
5 question,  
6 if there is a distinction of any significance?

7 Q. Would you agree with me that, if the Tribunal asks you  
8 to draft a joint issue list, they do it because they  
9 want you, as an expert, to help them understand your  
10 area of competence?

11 A. I have to admit that I don't fully understand the  
12 purpose behind the joint issue list, except to go  
13 through and try to address the issues that are listed  
14 on  
15 there  
16 the list. My input, of course, would be if I see

17 is another issue. I'm trying to be as honest as I can  
18 be. I don't know what you're driving at here.

19 Q. Is it correct that one needs time to interpret the 3D  
20 data?

21 A. Could you say that again?

22 Q. Is it correct that time is needed in order to  
23 interpret  
24 the 3D data?

25 A. Well, there certainly is time, yes, that's needed.

26 Q. How much time would you say you had to interpret?

27 A. I think it's probably in the order of a couple of  
28 months. I probably had more time if I wanted it.

29 Q. You mentioned before that you did not inform GCA that

11:18           1           you were interpreting or reviewing 3D data.  So is it  
                  2           correct that you were aware that GCA would not be  
quantum           3           prepared to reply or to address 3D issues in the  
                  4           hearing?  
                  5           A.  I have no idea about that.  
                  6           MR TOHER:  I'll object to that as mischaracterising  
                  7           testimony, and an exceedingly confusing question.  
                  8           DR NACIMIENTO:  I can rephrase.  I don't think it is a  
very             9           confusing question.  
                  10           We have established, Mr Nowicki, that you did not  
have             11           inform GCA that you were interpreting 3D data.  You  
                  12           prepared the 3D data, and some information and  
                  13           explanation on this, for the hearing.  This was part  
of               14           your direct, is that correct?  
                  15           A.  I did provide some opinion on the 3D data during the  
                  16           hearing, yes.  
                  17           Q.  And since you had not informed GCA that you were doing  
this             18           3D interpretation or reviewing, you were aware that  
                  19           would come as a surprise to them?  
                  20           A.  No, I wasn't aware of that.  
                  21           Q.  Did you expect the Tribunal to be aware of 3D?  
                  22           A.  I had no expectation of what the Tribunal knew or not.  
                  23           I had no knowledge of what data Gaffney Cline had.  
                  24           I had no idea what they were doing at the same time.  
                  25           I don't see how I could have.

11:20 1 Q. You could have, based on the joint issue list, because  
2 this is the purpose of providing the assistance  
3 requested by the Tribunal.  
4 A. If you say so.  
5 MR TOHER: Objection. I don't see that that's actually  
6 a question.  
7 DR NACIMIENTO: Mr Nowicki, you started with  
interpretation  
8 or review either on 18th or 22nd January. You  
finished  
9 then, or it was disclosed in this arbitration with  
your  
10 third report on 8th April. Do you agree then that all  
11 in all you had more time to review and interpret 3D  
than  
12 GCA had?  
13 A. Well, if they didn't have the data until a little bit  
14 later, then I had it slightly more time. But I didn't  
15 need all the time that I had.  
16 Q. Mr Nowicki, in your first report at [page] 7, you  
state:  
17 "We are independent petroleum consultants with  
18 respect to the Claimants."  
19 A. Could you tell me which tab that's on?  
20 Q. [Page] 7, first report. Tab 4.  
21 A. That's the May 15th 2011 report?  
22 Q. Yes. And here you say:  
23 "We are independent petroleum consultants with  
24 respect to the Claimants."  
25 A. I can't find where you're reading that from. It's in



11:23 1 the back of the report?  
2 Q. I might have misquoted it, and I will put the quote  
report. 3 later on the record. But I am quoting from your  
4 A. Okay.  
5 Q. I'm sorry, it's page 7, second to last paragraph.  
6 A. Okay.  
7 Q. Would you agree that the role of an expert is to  
8 independently assist the Tribunal?  
9 A. I'm really confused by that question. I mean, we're  
10 engaged by our client. I guess in this proceeding we  
11 might have that role, but I don't know if that's  
12 a general statement.  
13 Q. Do you consider yourself to be an independent expert?  
14 A. I certainly do.  
15 Q. Also in this arbitration?  
16 A. I certainly do.  
17 Q. Independent from Claimants?  
18 A. Independent from Claimants.  
19 Q. Are you aware that the fact that GCA, the Tribunal and  
20 interpreting the Respondent were not aware that you were  
21 3D data led to a considerable derailment of these  
22 proceedings, and that this is why you are sitting here  
23 again?  
24 A. Basically I have had nothing to do with that.  
25 arbitration Q. You mentioned before that this is the first

11:24

1 in which you have testified?

2 A. That's correct.

3 Q. In your CV, you state that you have experience in  
4 testifying in various arbitration proceedings.

5 A. Is it testimony, or that I participated?

6 Q. It's page 4, your CV. Here you say, under the heading  
7 "Expert testimony":

8 "... provided expert witness testimony for various  
9 arbitration hearings."

testimony

10 A. Well, I'm going to make a distinction between

11 where you actually sit and make oral testimony, and  
12 participating in the proceeding. But I certainly have  
13 participated in many arbitrations, and I have also

been

14 an expert witness in litigation.

15 Q. So this is not the first arbitration in which you have  
16 given testimony?

17 A. Well, it's my first arbitration in which I have given  
18 testimony, but it's not the first arbitration in which  
19 I have participated. And I have given expert witness  
20 testimony in litigation.

21 DR NACIMIENTO: I have no further questions.

22 THE CHAIRMAN: Thank you very much. I think it might be  
23 useful if we just take a three minute break and during  
24 that time our secretary can find out what the timing

is,

25 because we are very tight for time, as we all know,

and

11:26 1 I think it would be good for the parties to know where  
have 2 they are in their one-hour limitation. So we will  
3 a break of five minutes, thank you.  
4 (11.26 am)  
5 (A short break)  
6 (11.36 am)  
7 THE CHAIRMAN: Can we continue? The most important people  
8 are here, I see.  
9 MR TOHER: I believe so. We have no re-direct questions.  
10 THE CHAIRMAN: Well, let me just say what our secretary  
has 11 reported to me on the timing. For the introduction,  
the 12 Claimant used nine minutes of the ten. In  
examination, 13 it used 34. So Claimants have 26 minutes left. And  
36 14 Respondent used 13 minutes for their introduction and  
15 for the examination, so Respondent has 24 minutes  
left. 16 So pretty close.  
17 Now, the next question is obviously: is there any  
18 re-direct from the Claimants' side? I understand no.  
19 MR TOHER: Yes, sir. No, we have no further questions.  
20 THE CHAIRMAN: Then I take it there can also be no  
recross. 21 Thank you very much.  
22 So Mr Nowicki, for the time being, that's all you  
23 have to do for us. But please stay around because we  
24 may have the conferencing.  
25 THE WITNESS: Thank you.

11:38

1 THE CHAIRMAN: We turn to Respondent's expert.

2 DR STEPHEN WRIGHT (called)

3 MR MIKE WOOD (called)

4 THE CHAIRMAN: Alright, Dr Wright and Mr Wood, would you  
be

5 kind enough to read out this statement to us?

6 THE WITNESS: (MR WOOD) I solemnly declare upon my honour  
7 and conscience that my statement will be in accordance  
8 with my sincere belief. I am aware that in my  
testimony

9 I have to tell the truth, and nothing but the truth.

10 I am also aware that if I do not comply with this  
11 obligation, I may face severe legal consequences.

12 THE WITNESS: (DR WRIGHT) I solemnly declare upon my  
honour

13 and conscience that my statement will be in accordance  
14 with my sincere belief. I am aware that in my  
testimony

15 I have to tell the truth, and nothing but the truth.

16 I am also aware that if I do not comply with this  
17 obligation, I may face severe legal consequences.

18 THE CHAIRMAN: Thank you very much. I just noted that on  
19 this sheet, which I hadn't seen before, obviously the  
20 declaration by witnesses and by experts have been put  
21 together. But we are now even safer than before!

22 Alright, first direct, please, from Respondent's  
23 side.

24 Direct examination by DR NACIMIENTO

25 Q. Mr Wood, Dr Wright, you have submitted three expert

11:40  
testified

1 reports in this arbitration and you have also  
2 in the hearing in January. Did you have a chance to  
3 review your reports and the testimony prior to this  
4 hearing?

5 A. (By DR WRIGHT) Yes, I did.

6 A. (By MR WOOD) Yes, I did.

7 Q. Is there anything that you would like to add or to  
8 correct, Mr Wood?

9 A. (By MR WOOD) Yes, if I may, I would like to clarify  
10 a statement I made to the hearing which was in fact  
11 incorrect. I inadvertently advised that we had not  
12 provided any supporting data to my cost estimates,  
13 whereas in fact in November 2011, in support of our --  
14 MR SMITH: Mr Chairman, I am going to object to this. The  
15 testimony is expressly limited in the procedural order  
16 to the 3D seismic evaluation. This witness is now  
17 trying to correct prior testimony from a hearing not  
18 any of those issues.

19 THE CHAIRMAN: Objection accepted.

20 DR NACIMIENTO: Dr Wright?

realise

21 A. (By DR WRIGHT) I would just like to correct -- I  
22 that there is a typographic error in the report.

Tables

23 6.3 and 6.6 have, on their "gas initially in place",

the

24 GIIP, the best estimate values have been incorrectly  
25 transposed, and they are the P50 values. The correct

11:42 1 values are reported in the supporting documents that  
2 were provided with the report. The estimated ultimate  
3 recoverable values, however, are the correct values  
that  
4 we rely upon in all of our work going forward, so in  
any  
5 of the production profiles. So that's just  
6 a typographic which does not impact in any way any  
other  
7 part of our report.

8 Q. Dr Wright, as a geologist, what are you looking for  
when  
9 you get 3D seismic data of a potential prospect?

10 A. (By DR WRIGHT) Well, as with all seismic data, what  
11 we're trying to do is to understand and define the  
12 geometries in the subsurface that have the potential  
to  
13 form traps that could contain hydrocarbons. So we're  
14 looking for a geometry that could act like a  
container.

15 I suppose you could think of it almost like a bowl  
that  
16 has been turned upside down. Hydrocarbons generally  
are  
17 buoyant, so if you were to turn it upside down you  
would  
18 like to have a geometry that could contain and retain  
19 those. Likewise, you need a seal that would stop the  
20 hydrocarbons from continuing on their migration to the  
21 surface. So as an analogy, an upside[-down] bucket or  
22 a bowl might be something we could consider.

23 Now, how that forms can be multiple ways. It  
could  
24 be a structural feature, it could be a stratigraphic  
25 feature, or it could be a mixture. What we are  
looking



11:43 1 for though in the seismic data is to see if we can  
2 identify these types of geometries, and then to work  
3 from there to estimate the likelihood that that is  
4 what's going to happen.

5 Obviously 3D data provides much more dense  
6 information than a 2D grid. The principles are  
similar;  
7 the actual methods used differ because of the data  
types  
8 and the data densities.

9 So that is what we're trying to do when we get  
these  
10 types of data, and obviously, if possible, we would  
calibrate  
11 them with well data that is relevant to that seismic  
12 interpretation.

13 Q. And in this specific case, can you describe the work  
14 that you did with regard to the 3D seismic data  
provided  
15 by the Claimants?

16 A. (By DR WRIGHT) Once we received the 3D seismic data  
17 from -- I think it was the Ascom FTP site, we loaded  
it  
18 into our interpretation software, which had already  
got  
19 all of the interpretation from the 2D covering the  
same  
20 geographic area, and started to review and to consider  
21 what would be the most appropriate way to evaluate the  
22 3D data set.

23 It became apparent that this new data provided  
much  
24 better, much more information that we needed to  
25 interpret. And given that we had a very short  
timeframe



11:45           1           in which to undertake our evaluation, we had to decide  
                  2           what was the best way, what were the key issues we  
                  3           wished to address. And so we decided to focus on the  
could            4           evaluation of the time interpretation to see if we  
                  5           develop and identify traps that had the potential to  
the              6           contain hydrocarbons and to confirm the presence of  
                  7           Interoil Reef.  
can              8           Q. You have mentioned in your third report that faults  
                  9           be clearly seen on the 3D seismic data. Can you  
                 10          elaborate on that?  
                 11          A. (By DR WRIGHT) Yes. Well, part of our interpretation  
                 12          was to review sequentially our way through the data  
                 13          set -- sorry.  
                 14          Q. To assist, this is a slide from paragraph 151 of your  
                 15          third report.  
let me just explain. In this           16          A. (By DR WRIGHT) Okay, on this I think we can, first,  
the              17          slide on the left-hand side we see the preferred or  
                 18          base case GCA seismic interpretation, and two seismic  
                 19          lines that cut through that data volume that have been  
side             20          removed, taken from the 3D volume. The right-hand  
                 21          is the alternative scenario, in which we have ghosted  
or               22          forced the interpretation; I could discuss that later.  
                 23          But what is important here is that here we have on the  
                 24          left-hand side a yellow horizon, which is the GCA top  
                 25          reef time pick. There is also a red line, somewhat

11:46 1 below that, which is the reef interpretation that was  
2 provided from the FTP site at the same time as we  
3 received the seismic data.

4 But above these lines, you can see that there are  
5 a series of reflectors, at the same depth as where it  
6 says "GCA Interoil Reef", where we can see bends and  
7 breaks in the seismic data set. And these we  
interpret  
8 as faults in the zone that has to seal.

9 Now, they are common throughout this data set.  
Due

10 to the time available to us, we have not been able to  
11 make an in-depth and detailed analysis of this  
faulting.

12 But it is clear from first examination that this upper  
13 interval is heavily faulted.

14 Q. What are the consequences of faulting with regard to  
15 GCoS?

16 A. In general, faults have the potential to breach any  
17 seal, and therefore to stop the trap being effective.  
18 In this particular case, one of the issues is that the  
19 M10 well penetrates a significant thickness of the  
20 interval above the reef. And we know there that this  
21 interval is of a mixed lithology. Some of them are  
22 porous, and therefore, if you interpose them by  
23 faulting, you could provide a pathway for leaks and  
24 breaching of the top seal. So that's one of the  
factors  
25 that we had to address in the GCoS. And I think  
that's

11:48 1 a similar approach to that adopted by Ryder Scott in  
2 their assessment.

3 Q. If we turn to the models that you provided, it seems  
to  
4 me that there is some confusion, and probably you  
could  
5 explain this. You provided two alternative models:  
one  
6 base case, with a comparatively little volume; and  
7 a speculative model with larger volumes. Can you  
8 explain the difference between those models? We will  
9 hand you the slides from your third report,  
10 paragraph 81, figure 6.1.

11 A. (By DR WRIGHT) This one?

12 Q. Yes.

13 A. (By DR WRIGHT) Okay, what I was endeavouring to show  
14 here, it really is to show that there is a difference  
in  
15 the absolute position of the 2D seismic interpretation  
16 of the Interoil Reef and the subsequent  
interpretations  
17 based on the 3D seismic data.

18 There is an overlap, but there is a significant  
area  
19 that was not interpreted on the 2D that is interpreted  
20 on the 3D. And likewise there is a significant area  
21 that was interpreted using the 2D data which is no  
22 longer considered to be part of the Interoil Reef  
using  
23 the 3D data set.

24 Therefore, although they are in a similar  
geographic  
25 location, there is sufficient difference to suggest  
that

11:50  
helped

1 these are very different features that the 3D has  
2 us to identify and define.

to

3 Q. Dr Wright, I am conscious of time so I have to ask you  
4 to limit your answers as much as you can. Referring  
5 the previous testimony of Mr Nowicki, apparently there  
6 was a criticism with regard to you providing two  
7 different models. Can you explain the difference  
8 between the two models that you submitted, the  
9 speculative one and the base case?

estimate

10 A. (By DR WRIGHT) Well, I think we looked at the seismic  
11 a few moments ago. We looked at the seismic data, and  
12 we interpreted what we believed to be the best  
13 for the top of the reef feature, the Interoil Reef.  
14 This is clearly defined on some lines, and less well  
15 defined on other areas, but we made our best case  
16 estimate. There is no well control within or adjacent  
17 to the seismic volume that controls or calibrates this  
18 interpretation, so it is purely an interpretation.

Therefore,

potential

based

19 And that produced only a small closure.  
20 we looked to see if we could generate a larger  
21 trap using some of the 2D. We found that there was  
22 nothing there that we felt demonstrated any reliable  
23 closure, and therefore we tried to make a closure  
24 solely on the 3D data, and that is our alternative.  
25 Q. Dr Wright, when you say you tried to make the closure

11:51 1 based on the 3D data, can you explain this?  
2 A. (By DR WRIGHT) Well, there are areas within the data  
set  
3 where it is not absolutely categorical that you cannot  
4 have -- as Mr Nowicki said, there are subtle  
variations  
5 that we can look for. And basically, I suppose to  
say,  
6 we tried our best to make a trap that we couldn't say,  
7 "Oh, that's not there." So it is a very high-risk  
8 opportunity.  
9 Q. Is this what is meant by "ghosting", or "forcing"  
10 closure?  
11 A. (By DR WRIGHT) Yes, that's where we forced it through  
12 the data where we don't have any positive evidence  
that  
13 it is not there.  
14 Q. If we move to H2S, in GCA's cost estimates for the  
15 Interoil Reef, GCA have provided for facilities for  
the  
16 treatment of significant quantities of H2S. Why did  
you  
17 expect the presence of significant volumes of H2S in  
the  
18 Interoil Reef?  
19 A. (By DR WRIGHT) Well, we were basing them on our  
20 knowledge and understanding of the basin and analogue  
21 data. But also we looked at the depth of the  
reservoir  
22 expected at the Interoil Reef. And following the  
23 remapping, we could make, as I say, that the average  
24 depth may be 7,500 metres. We looked at the  
temperature  
25 gradient in the area, based on the well data and the

11:53 1 field temperatures, and this would suggest that you  
are 2 at a temperature there of well in excess of 150  
degrees 3 centigrade, possibly as high as 170 degrees  
centigrade.

4 The formation of hydrogen sulphide -- there are  
two 5 forms: there is one called "biogenic sulphate  
reduction" 6 and another "thermogenic sulphate reduction".  
7 Thermogenic sulphate reduction occurs in carbonate  
8 sequencers at temperatures in excess of 150 degrees.  
9 And we believe this is a key feature that makes us  
have 10 to believe, in our base case, that hydrogen sulphide  
is 11 the likely contaminant.

12 Q. Mr Wood, in that context, Claimants have argued that  
you 13 should have provided different cost estimates: one  
14 assuming significant quantities of H<sub>2</sub>S, and one not  
15 assuming such significant quantities. What is your  
view 16 on that?

17 A. (By MR WOOD) It was our view on analysis that there  
was 18 only probably a 5% chance that the reef structure  
would 19 hold low levels of hydrogen sulphide. We could have  
20 looked at a scenario with that, with H<sub>2</sub>S levels of  
21 perhaps 1%; but to counter that, we would have also  
had 22 to look at the alternative case, which, based on  
23 analogues, could have predicted H<sub>2</sub>S levels as high as  
24 20%. And in analysis, the two cases would have  
25 cancelled each other out. So we felt comfortable  
going



11:54 1 with just our base case scenario, of a mid-case  
2 assessment of around about 10% H2S.

3 Q. Thank you. Dr Wright, regarding closure to the  
4 south-west, Ryder Scott have based their closure to  
the  
5 south-west of the structure on a 2D line. What is  
your  
6 view of this approach?

7 A. (By DR WRIGHT) When you review the line -- I think we  
8 have it shown here; this is from the Ryder Scott  
9 report -- we can see that the data quality is, I would  
10 say, very poor here, and the interpretation is quite  
11 brave. It's one line. There are many other  
geometries  
12 at which this line does not provide any evidence for  
13 closure. And therefore I believe that although we can  
14 see a geometry, a nose on the 3D seismic data, the 2D  
15 provides very little evidence that this could be  
16 continued into the area outside of block 302.

17 Q. Thank you. Turning to condensate, Ryder Scott have  
also  
18 argued that you should have provided for higher  
19 condensate quantities, if you assume significant H2S  
20 quantities. In your experience, is there a typical  
21 correlation between H2S and condensate?

22 A. (By DR WRIGHT) That's not my speciality. They can be  
23 together, but there's no causal mechanism that says  
that  
24 high condensate ratios require you to have high  
hydrogen  
25 sulphide values, or vice versa.



11:56  
Scott

1 Q. What would be your specific response to this Ryder  
2 criticism?

3 A. (By DR WRIGHT) We developed our estimates for the  
4 condensate using a range of analogues, using our  
5 understanding from public domain and other data sets  
in  
6 Kazakhstan. And as pointed out by Ryder Scott, there  
is  
7 a wide range of values. But we chose a mid-case  
number  
8 that fell within the range of the analogues that we  
9 looked at. We had some, I think about 30 analogues  
published  
10 in some Kazakh material and also in internationally  
11 available documents.

12 Q. Mr Wood, in the third FTI report, FTI provided the  
cost  
13 estimate by Claimants for the infrastructure  
development  
14 of the contract 302 properties. That's paragraph  
12.10  
15 of the third FTI report. It's tab 10.

16 To save time, I represent to you that the estimate  
17 infrastructure costs were 126.9 million. Do you  
18 consider this estimate to be realistic?

19 A. (By MR WOOD) On inspection, it is totally unrealistic  
to  
20 process the expected fluids from the hydrocarbon reef.  
21 In fact, there are huge sections of the development  
plan  
22 that are simply omitted in that cost estimate.

23 Q. And assuming that there was 1% H<sub>2</sub>S in the supposed  
24 Interoil Reef gas, would you consider this estimate to  
25 be realistic?

11:58 1 A. (By MR WOOD) It is still unrealistic because, even at  
2 1%, the gas has to be processed to pipeline  
3 specification. That would involve a significant  
4 processing schematic. The processing is pretty much  
5 determined by the gas volume, not so much by the  
6 hydrogen sulphide volume. So we have in the Ryder  
Scott  
7 analysis a gas flow rate of approximately  
8 500 million cubic feet per day. The processing plant  
9 would need to be sized for that, to extract the 1%  
10 hydrogen sulphide before the gas could be sold.  
11 Q. Assuming that there was no H<sub>2</sub>S, what would be your  
12 position?  
used  
13 A. (By MR WOOD) The development plan and cost estimate  
14 by FTI omit altogether any processing facilities. We  
15 can only assume that that is on the basis that the new  
intended  
16 production from the reef prospect is planned or  
reality,  
17 to be processed in the existing facilities. In  
18 the existing facilities are not even close to the size  
19 needed to process the additional gas from the reef.  
the  
20 Q. Thank you. One last question, Dr Wright, regarding  
on  
21 joint issue list. We understand that this was based  
22 your first draft. What was the basis of the GCoS  
23 mentioned in the joint issue list?  
24 THE CHAIRMAN: Are you talking about the new one?  
25 DR NACIMIENTO: I'm sorry, I am still talking about the

12:00  
items

1 joint issue list submitted before the quantum hearing.  
2 A. (By DR WRIGHT) When I prepared the initial list of  
3 which I thought would be considered in the joint issue  
4 list, I relied upon the reports by GCA and Ryder Scott  
5 in my assessment, and comparison of the GCoS. So that  
6 would be based on the 2D seismic interpretations that  
7 were relied on by both parties in their first and  
8 supplementary reports.

or

9 Q. Were there any other numbers discussed, other than 4  
10 5, as we find them in the reports?

11 A. (By DR WRIGHT) Not for the Interoil Reef.

12 DR NACIMIENTO: I have no further questions.

from

13 THE CHAIRMAN: Thank you. We come to cross-examination  
14 the Claimants' side, please.

15 Cross-examination by MR TOHER

to

16 Q. Dr Wright, you recall that in fact you had reference  
17 the 3D seismic in your second report?

the

18 A. (By DR WRIGHT) We were aware that there was a polygon  
19 shown on the Ascom presentations for the presence of  
20 Munaibay 3D, but we had not seen any of the data or  
21 interpretations based on that seismic.

22 Q. In fact, GCA had files in its possession of jpegs and  
23 MEMR documents referring to 3D, correct?

24 A. (By DR WRIGHT) Yes. As I said, we were aware of its  
25 presence, but we had not seen the data based on that.

12:01 1 Q. Just to clarify, the production that GCA made in April  
2 of 2012 included an entire folder called "Munaibay  
3D",  
3 correct?  
4 A. (By DR WRIGHT) That was provided as part of the --  
5 that  
6 came to us. I can't remember where that came from,  
7 but  
8 that's why we were aware of the presence of that  
9 survey.  
10 Q. You state in paragraph 66 of your report, and you have  
11 your report in front of you --  
12 A. (By DR WRIGHT) Is that the third report?  
13 Q. The third report, yes, I'm sorry. You state:  
14 "Having, it appears, ignored the probability that  
15 H2S would be encountered in any well drilled to the  
16 'InterOil Reef' structure, TNG would be totally  
17 unprepared to safely drill the well and conduct a well  
18 test, should the well have intersected the reservoir."  
19 What specific information do you have about TNG's  
20 ability to safely drill an exploration well that  
21 encounters H2S?  
22 A. (By DR WRIGHT) Well, I qualify it by saying "Having  
23 ...  
24 plan,  
25 ignored the probability that H2S". If you fail to  
then that is where you risk being unprepared to safely  
drill the well. If you ignored the fact that H2S  
could

12:03

1 exist, and you have to plan, you can't just retrofit,  
2 you have to plan for that. If you haven't got that in  
3 your plan, then you are unprepared to safely drill the  
4 well, in my opinion.

5 Q. And what information do you have that TNG was in fact  
6 unprepared to encounter H2S?

7 A. (By DR WRIGHT) In my understanding, there is no  
8 discussion at all of H2S presence in their planning.

9 Q. I will point you to, in fact, your own report,  
10 paragraph 193, page 55. You state:

11 "It is well understood ... that deeper fields in  
the  
12 region are prone to H2S."

13 Correct?

14 A. (By DR WRIGHT) Yes.

15 Q. And you have no reason to believe that TNG alone among  
16 the operators in the region was unaware of this, do  
you?

17 A. (By DR WRIGHT) No.

18 Q. In fact, H2S in trace amounts had already been  
19 encountered in the Tolwyn field, correct?

20 A. (By DR WRIGHT) There are trace volumes in the Tolwyn  
21 field, yes.

22 Q. And H2S had already been encountered in the M1 well,  
23 correct?

24 A. (By DR WRIGHT) In very low percentages; I think in 0.3  
25 of 1%.

12:04  
which

1 Q. I'll point you as well to figure 6.17 on page 56,  
2 is the Tristan presentation that you have included in  
3 your report. And in that presentation, Tristan itself  
4 identified nearby fields that had relatively high H2S,  
5 correct?

6 A. (By DR WRIGHT) Absolutely.

have

7 Q. You are aware, of course, that TNG would therefore  
8 been well aware of the potential for relatively high  
9 in any exploration well in the reef, correct?

H2S

10 A. (By DR WRIGHT) They are intimating there from this  
11 there is the potential for it, certainly.

that

12 Q. The cost and installation time for equipment to handle  
13 H2S would only be incurred if H2S is actually  
14 encountered in an exploration well, correct?

15 A. (By DR WRIGHT) Well, if I may say, what I am saying is  
16 you would have to plan in the exploration well the  
17 potential to encounter H2S, so that you can safely

drill

18 the exploration well. If following that you had  
encountered H2S, then

19 obviously that has an impact on any future costs.

comment

20 I think Mr Wood is probably better qualified to

21 on what would happen following a discovery.

22 Q. Well, a prudent operator would not install costly H2S  
23 handling equipment on a suspicion that H2S exists --  
24 that is a costly H2S infrastructure -- in advance of  
25 finding out whether H2S is there, correct?

12:06  
to

1 A. (By DR WRIGHT) You would have the equipment required  
2 drill an exploration well safely, and the equipment  
3 required to safely deal with the H2S associated with  
4 that exploration phase. Obviously once you have found  
5 out whether there is H2S, then that is the next stage,  
6 so it's sequential.

content,

7 Q. You rejected the M1 well as an analogue for H2S  
8 correct?

with the

9 A. (By DR WRIGHT) The M1 well, yes. The reason for that,  
10 in my opinion, is that the depth of burial of the M1,  
11 reservoirs encountered in the M1 well, TD in at about  
12 4,700 metres, is in a zone where thermogenic sulphate  
13 reduction is not occurring, and that would explain why  
14 there is lower, rather minor levels of H2S associated  
15 gases in those reservoirs.

likely

rational

reservoir.

drilled

16 It's also at a temperature which is above the  
17 temperature where biogenic sulphate reduction is  
18 to occur. So it's in the zone where that is a  
19 explanation for why there is low H2S in that

of

20 Q. You would acknowledge, though, that the M1 well  
21 into the Artinskian dolomite sub-salt region?

22 A. (By DR WRIGHT) It's in the Artinskian, and the  
23 Artinskian is a sub-salt interval, in the definition  
24 the Caspian. There is not much salt present on block  
25 302 at that level; it's on the margins of the salt

12:07 1 basin.

field 2 Q. And you would acknowledge as well that the Tolkyn

Artinskian 3 also drilled into the sub-salt region of the

4 dolomite?

5 A. (By DR WRIGHT) It produces hydrocarbons from the

6 Artinskian dolomite, but at temperatures at which we

7 would not expect hydrogen sulphide to be accumulated.

8 Q. And you rejected the Tolkyn field entirely as any kind

9 of analogue for H<sub>2</sub>S?

10 A. (By DR WRIGHT) I, there was a, I think I am trying to

explain, there 11 is a rational reason why, at the temperatures we

expect 12 at the Interoil Reef, we would expect to find

13 thermogenic hydrogen sulphide; and at the temperatures

14 we observe in Tolkyn and at Munaibay, there is a

reason 15 why we would not expect to find thermogenic hydrogen

16 sulphide. Most -- if not all -- of the hydrogen

17 sulphide that has been reported and chemically

analysed 18 in the Caspian is thermogenic hydrogen sulphide.

19 Q. Your three analogues for H<sub>2</sub>S that you say in your

report 20 are the Kashagan, Tengyz and Karachaganak?

21 A. (By DR WRIGHT) Those are the three largest fields, but

22 there are many others in the area that have elevated

23 hydrogen sulphide levels which have similar

24 characteristics, due to the temperature of the

25 reservoirs.



12:09           1    Q.  Did you disclose the identity of any of those other  
                  2           analogues?  
                  3    A.  (By DR WRIGHT) I would, No.  We used Kashagan and  
Tengyz and  
                  4           Karachaganak as examples of that type of reservoir.  
                  5    Q.  Okay, but --  
                  6    A.  (By DR WRIGHT) But there are other analogues that you  
                  7           could also use to supplement that list.  
                  8    Q.  That you did not reveal in your report?  
                  9    A.  (By DR WRIGHT) I wouldn't say "not reveal"; we used  
that  
                 10           data, but we didn't make an exhaustive list of those.  
                 11           We felt that those first three provide sufficient  
                 12           evidence that hydrogen sulphide should be considered.  
                 13   THE CHAIRMAN:  Sorry, may I just get into this.  I didn't  
                 14           quite understand.  Beyond the three, you said there  
                 15           might have been other possible fields that you might  
                 16           have looked into.  Now my understanding is not clear.  
                 17           Did you look into those, or did you just say, "Well,  
we  
                 18           have got sufficient data from the three"?  
                 19   A.  (By DR WRIGHT) No, we have other data from other  
wells;  
                 20           we just did not report them or list them in our  
report.  
                 21   THE CHAIRMAN:  Well, I am aware you didn't report them,  
but  
                 22           did you look into them?  
                 23   A.  (By DR WRIGHT) We did look at them and use them in  
                 24           developing our opinion.  
                 25   THE CHAIRMAN:  I see, thank you.

12:10 1 MR TOHER: You were referencing depth as a key factor in  
2 H2S. The depth of the Tengyz is approximately the  
same  
3 as the Munaibay 1 well, isn't that right?  
4 A. (By DR WRIGHT) It is, the top of the reservoir is, but  
the base  
5 of the reservoir is much deeper than that. And  
6 therefore it is the temperature at some place within  
the  
7 reservoir that is the critical issue in the thermal  
8 sulphate reduction process.  
9 Q. What is the depth in Kashagan?  
10 A. (By DR WRIGHT) The reservoir must -- I think the  
column  
11 is 700 to 800 metres thick, and the reservoir is  
12 probably closer to 1,000 metres thick in that area;  
13 which is significantly greater than that at the  
14 Artinskian reservoirs at both Munaibay and Tolkyn.  
15 Q. And Karachaganak?  
16 A. (By DR WRIGHT) Karachaganak is even more than that,  
17 I think. The reservoir there is in excess of  
18 1,500 metres.  
19 Q. You did not reveal any of your analogues for your  
20 condensate yield, isn't that correct?  
21 A. (By DR WRIGHT) No, we didn't.  
22 Q. And how many of those analogues existed?  
23 A. (By DR WRIGHT) What we had done is there is a range of  
24 published information, there is a handbook or an atlas  
25 of Kazakhstan oilfields that is published and updated  
on

12:12 1 a regular basis by the MEMR, which is available to  
the 2 everybody. And we went through that and catalogued  
there. 3 ratios and rates that are shown and documented in

4 We also looked for analogue data from the public  
5 domain, in places like the Society of Petroleum  
6 Engineers reports, and built a range of numbers.  
7 I can't remember exactly, but there must be 30-40  
fields 8 at which we have got varying ranges of condensate/gas  
9 ratios.

10 Q. You didn't refer to any of those source materials in  
11 your report, correct?

12 A. (By DR WRIGHT) No.

analogue 13 Q. And you didn't refer to any single field as an  
14 for condensate yield, correct?

15 A. (By DR WRIGHT) No.

16 Q. How did you build your calculation? Did you have  
17 a spreadsheet?

18 A. (By DR WRIGHT) Yes, it was tabulated.

19 Q. Did you disclose the spreadsheet?

20 A. (By DR WRIGHT) No.

21 Q. Okay.

22 A. (By DR WRIGHT) Because that was in the public domain,  
23 I assumed anybody who was competent could also have  
24 generated the same spreadsheet. And it's a matter of  
25 opinion as to how you would use that range.

12:13  
spreadsheet

1 Q. Somebody could, of course, generate the same  
2 if they had the information that you had.

3 A. (By DR WRIGHT) I used only public domain information,  
4 all public. If you --

5 Q. Well, there's a lot of public domain information,  
right?

6 A. (By DR WRIGHT) Yes, that's right.

7 Q. And you didn't identify what of the --

8 A. (By DR WRIGHT) And I didn't identify the data that I  
was  
9 not able to call upon that is out there that I'm not  
10 aware of.

11 Q. Can you name one of your analogues for us?

12 A. (By DR WRIGHT) I looked at the Chinarevskoye field,  
13 which is operated by Zhaikmunai Gas, and that field is  
14 annually updated and worked by -- I think Ryder Scott  
is  
15 the auditor for that field at the moment.

16 Q. How distant is that from the reef?

17 A. (By DR WRIGHT) That is a significant distance away  
from  
18 the reef. That is one example. But I did use other  
19 examples. As I think was mentioned earlier, we looked  
20 at the Max Petroleum area. Again, that's not data;  
21 there is an analogue there that has been used to  
22 generate numbers. I also looked at the data that we  
had  
23 from fields slightly to the east, in the Alibekmola  
area  
24 as well.

25 Q. Max Petroleum is not drilled into a sub-salt region,  
is

12:14

1 it?

2 A. (By DR WRIGHT) No. I was using as many bits of  
3 information as possible to try and develop  
4 an understanding.

5 Q. Let's move on quickly. Do you have my binder?

6 You were aware that Total did a 3D interpretation,  
7 correct?

8 A. (By DR WRIGHT) Yes, I became aware of that, I think,  
9 after the hearing.

10 Q. Were you provided with the Total 3D interpretation?

11 A. (By DR WRIGHT) I was not provided with any of the  
12 digital data. I saw a copy of an email that intimated  
13 that, and the presentation that went with that email.

14 Q. Did you review the email and the presentation?

15 A. (By DR WRIGHT) I read the information.

16 Q. Did you rely on either of those in the preparation of  
17 your report?

18 A. (By DR WRIGHT) I was aware that they had made some  
19 comments on faulting, and I think they also make a

quote

20 on the condensate/gas ratio which I took into  
21 consideration. But I didn't use it as an individual  
22 point; it was one more point in a range of data sets  
23 information.

or

24 Q. If you would open to tab 6 in your binder. That is

the

25 Total email.

12:16           1    A.  (By DR WRIGHT) It appears to be, yes.

                 2    Q.  And you will see at the bottom of the page and also on

Reef             3    page 2 that Total estimated the top of the Interoil

                 4    to be 7,200 metres, is that right?

                 5    A.  (By DR WRIGHT) That's what it says here.

estimate        6    Q.  And that's over 1,000 metres deeper than GCA's

                 7    of 6,150 metres, is that correct?

                 8    A.  (By DR WRIGHT) It's in that order, yes.

Total          9    Q.  And at the bottom of the first page of the email,

                 10   states that this feature is very deep and drillability

                 11   should be investigated.  When Total questioned

                 12   drillability there, it was assuming a significantly

                 13   deeper well than GCA assumed, correct?

                 14   A.  (By DR WRIGHT) I think Mr Wood is probably better to

                 15   answer that question on what depth we assumed for the

                 16   well.  But the exploration well to test this feature

                 17   was, I think, estimated at -- Mike, can you remember?

                 18   A.  (By MR WOOD) If I can answer, we took an average of

Scott's         19   7,000 metres, because in our view, and in Ryder

                 20   view, the top of the reservoir was shallower than

                 21   prognosed in the Total email here.

                 22   Q.  Okay.  Please look at the second page of the Total

                 23   email.  You'll see, under the heading "Volumetrics"

                 24   there that Total estimates one TCF of gas for the

                 25   Interoil Reef, is that right?  You can see it's the

12:18 1 middle of the page, just down under "Volumetrics".  
2 A. (By DR WRIGHT) Yes, I'm just ... Yes.  
H2S 3 Q. And you see that Total also estimates 40% inerts of  
4 and CO2?  
5 A. (By DR WRIGHT) Yes, I do.  
6 Q. That's much higher than the Tengyz, Kashagan and  
7 Karachaganak analogues that you used, correct?  
we 8 A. (By DR WRIGHT) It's certainly higher than the values  
9 used, yes.  
10 Q. And if Total is incorrect, and contaminates are rather  
11 10%, as your estimate is, or nominal, as Ryder Scott's  
12 is then the 1 TCF of gas would be significantly  
13 increased in producible quantity, correct?  
inerts, 14 A. (By DR WRIGHT) It does say the gas excludes 40%  
15 if that is the case.  
correct? 16 Q. So the 1 TCF would be significantly increased,  
17 A. (By DR WRIGHT) Mm. But I also note that they do claim  
18 that their parameters are probably overly optimistic.  
19 Q. You will see also on page 2 of the email that Total's  
20 condensate estimate for the reef is 120 barrels per  
21 million cubic feet of gas, isn't that right?  
22 A. (By DR WRIGHT) That's what they're suggesting.  
23 Q. That is almost double GCA's estimate, isn't it? You  
24 would agree with that?  
25 A. (By DR WRIGHT) I am just doing the maths in my head,

12:19  
that

1 because it doesn't say what the yield is. But yes,  
2 appears to be correct at 120 barrels per million cubic  
3 feet.

correct?

4 Q. And that is almost double GCA's estimate of 57,

5 A. (By DR WRIGHT) Yes.

6 Q. Do you know what analogues Total used to derive that?

7 A. (By DR WRIGHT) No.

8 Q. You did not obviously use Tengyz as an analogue for  
9 condensate, correct?

10 A. (By DR WRIGHT) No.

11 Q. And you did not use Karachaganak or Kashagan as  
12 an analogue for condensate, correct?

13 A. (By DR WRIGHT) No.

14 Q. But you did use those three as analogues for H2S?

15 A. (By DR WRIGHT) Yes.

16 Q. Is there a reason why you rejected those as analogues  
17 for condensate?

there

18 A. (By DR WRIGHT) As I said earlier, I don't believe

19 is a causal link between H2S content and condensate  
20 yield. Just because you have a high condensate yield  
21 rate, you do not have to have a high H2S number, or  
22 vice versa. High H2S number is not related to a high  
23 condensate yield number. They are --

24 Q. Let's divorce the issues. Let's divorce H2S and  
25 condensate.



:21 1 A. (By DR WRIGHT) There is a wide range of condensate  
2 values that can be seen in Kazakhstan, ranging down to  
3 as low as 2 to 10 barrels per million. In fact, on  
the  
4 document that Ascom provided, one of their wells does  
5 show a rate of between 2.5 and 10 barrels per million.  
6 So there is a wide range of numbers. And we looked at  
7 it, we did an analysis, and we looked at the depth of  
8 the reservoir and decided to use that value.

9 In addition, the development scenarios --

10 Q. Can I interrupt for --

11 A. (By DR WRIGHT) This is important. The development  
12 scenarios that have been used for the gasfields  
involve  
13 reinjection to maximize fluid liquid production. So  
they are  
14 re-injecting gas into the reservoir to maintain  
15 reservoir pressure and maximise condensate production.

16 That is not happening -- it's not planned in  
17 anybody's development plans -- for the Interoil Reef.  
18 Therefore reservoir pressure will drop and the yields  
19 will decline. So we are calculating a life-of-field  
20 average, not an instantaneous rate at the beginning or  
21 at the end of the calculation.

22 So the different development scenarios will impact  
23 on the ultimate yield that you get from the fields.

And

24 these fields are doing gas cycling, monstrous amounts  
of gas cycling,

25 which includes lots and lots of capex, which Mr Wood  
is

12:22 1 more qualified to discuss than I am.

2 Q. None of those calculations is in your report though,

3 correct?

4 A. (By DR WRIGHT) We did not rely on gas injection,

because 5 the field was designed for gas production. That is

6 the whole premise that Ascom have been using.

7 Q. The Interoil Reef was modelled by Tristan at one point

8 as an oilfield, correct?

9 A. (By DR WRIGHT) I have not seen that information.

10 Q. Well, you refer to the Tristan presentation, correct?

11 A. (By DR WRIGHT) Yes, but again, the presentation I

think 12 may be on one slide, is it? I must admit I am

13 unfamiliar with that.

14 Q. You actually refer to other parts of the presentation

15 that you do not include in that slide. Did you review

16 the entire presentation?

17 A. (By DR WRIGHT) I did.

18 Q. And it was actually a model of an oilfield, correct?

19 A. (By DR WRIGHT) Okay, it might well be an oilfield,

yes. 20 THE CHAIRMAN: Sorry?

21 A. (By DR WRIGHT) I must admit, my memory is not good

22 enough to remember exactly that. I would appreciate

the 23 ability to check that, if that's the case.

24 MR TOHER: Do you agree with Mr Nowicki that the best way

to 25 make an analysis of condensate yield is to choose

12:23           1           an analogue as proximate as possible to the field that  
                  2           you're analysing?  
                  3        A.   (By DR WRIGHT) No, because if you're using purely  
                  4           vertical depth, the nearest reservoir is always going  
to  
                  5           be the one immediately above it. That may not be  
                  6           a suitable analogue.  
                  7        Q.   It is your contention that depth has a relationship to  
                  8           condensate yield?  
                  9        A.   (By DR WRIGHT) Pressure and depth and temperature,  
which  
                 10           are all related in this case, can have an effect on  
                 11           condensate yield. There are also other factors that  
                 12           have to be taken into account.  
                 13        Q.   Tengyz and Kashagan are commensurate in depth to the  
                 14           reef, correct?  
                 15        A.   (By DR WRIGHT) They are, in places, similar depth.  
                 16        Q.   And they have significantly higher condensate yields  
                 17           than what you have estimated, correct?  
                 18        A.   (By DR WRIGHT) They do. But as I said earlier, there  
                 19           are other fields in Kazakhstan which have lower gas  
                 20           condensate yield ratios at similar depths.  
                 21        Q.   Other fields that you did not disclose, correct, and  
                 22           that are more distant?  
                 23        A.   (By DR WRIGHT) Not necessarily more distant. I think  
we  
                 24           had the discussion that the Karachaganak field is a  
long  
                 25           way away. There are closer fields that have lower

12:25 1 contents.

2 Q. What are those closer fields?

3 A. (By DR WRIGHT) I think the Alibetmola field would be  
one  
of  
4 example. I can't remember off the top of my head all  
5 the -- that has a carboniferous aged reservoir.

6 Q. How far away is that?

7 A. (By DR WRIGHT) I'm sorry, I wouldn't like to guess at  
8 what distance, but it's certainly closer than the  
9 Karachaganak field.

10 MR TOHER: We'll pass the witness. For now, we'll pass  
the  
11 witness and I'll reserve some for later.

12 THE CHAIRMAN: Any re-direct?

13 DR NACIMIENTO: Just one question on re-direct.

14 Re-direct examination by DR NACIMIENTO

15 Q. Dr Wright, have Ryder Scott ever criticised your  
16 condensate yields before?

17 A. (By DR WRIGHT) I believe this is the first time they  
18 have raised this as an issue.

19 Q. Against this background, did you consider it necessary  
20 to revise your condensate yield in the third report?

21 A. (By DR WRIGHT) No.

22 DR NACIMIENTO: I have no further questions, thank you.

23 THE CHAIRMAN: Any recross on that?

24 MR TOHER: No, I will not, thank you.

25 THE CHAIRMAN: That then concludes the testimony to the

12:26 1 parties. We now turn to conferencing. Can we get all  
2 three experts here? I suppose we could.

Mr Wright or Mr Wood: We managed five last time.

3 DR NACIMIENTO: Could we have the time before we move on?

4 THE CHAIRMAN: She will give you the time in a minute. My  
5 own estimate is that you are both very close to the  
end  
6 of what you have anyway. But what we are doing now is  
7 not counting on you, only if you come later.

8 WITNESS CONFERENCING

9 MR MICHAEL NOWICKI

10 DR STEPHEN WRIGHT

11 MR MICHAEL WOOD

12 THE CHAIRMAN: Gentlemen, the idea is that only from the  
13 Tribunal's side we may have questions, and we would  
ask  
14 you, unless we address it first to one of you, you  
take  
15 your choice on how to respond. May I first ask my  
16 colleagues, do you have questions, David?

17 MR HAIGH: Gentlemen, I just want to get a little help  
first  
18 of all on some of the information that we've been  
19 listening to you present. Let me just ask the Gaffney  
20 Cline group first, with respect to the three large  
field  
21 comparables or analogues that have been referred to,  
22 Karachaganak, Tengyz and Kashagan, those are the three  
23 fields, I noted some reference to the distances away  
24 from the Interoil Reef location. Can you tell me if  
25 there are other differences associated with those  
three

12:28

1 large fields from the 302 property area?

2 A. (By DR WRIGHT) I think in the cartoon that was shown  
3 earlier, I tried to show that the age of the reservoir  
4 that we are predicting at the Interoil Reef is older -

-

than

5 sorry, the youngest part of the reservoir is older  
6 the other fields. Kashagan, Tengyz and Karachaganak  
7 have reservoirs that extend over a much larger time  
8 range. They range from Late Devonian up to, in some  
9 cases, the Permian Artinskian, so they are age  
10 equivalent to the reservoirs at Munaibay.

depth,

any

to

11 Whereas we know, or we believe from the M10 well  
12 data that there is no reef equivalent of the upper  
13 carboniferous age in the blocks. On that cartoon  
14 I drew, time was on the vertical axis rather than  
15 so it was trying to show age equivalence rather than  
16 sort of thickness or anything else. I was not trying  
17 imply a thickness or difference in that, I was just  
18 trying to imply an age equivalence on that part of my  
19 diagram.

effect?

20 MR HAIGH: So the Interoil reef area is younger, in

21 A. (By DR WRIGHT) No, the reservoir there would be older,  
22 or as old as the older parts of the reservoirs in the  
23 other fields.

24 MR HAIGH: So what's the potential significance of that?

25 A. (By DR WRIGHT) One thing there is again selecting the

12:30  
and

1 correct reservoir analogues. From our understanding  
2 knowledge, the older reservoirs tend to be lower  
3 quality. This may reflect their greater depth of  
4 burial, or it may be something more fundamental.

There

5 is relatively little -- it's that sort of information  
6 that we were trying to get and that's why it's not  
7 a blanket analogue, "I like this, I like this part",  
8 we select the pieces that we think are appropriate,  
9 given the specifics of the Interoil reef.

and

I'm

10 MR HAIGH: Well, I'm going to come back to that, because

analogues.

11 a little confused by the selectivity of these

element,

12 I hear that you didn't use them for purposes of  
13 condensate but you did for purposes of the H2S

14 is that correct?

the

15 A. (By DR WRIGHT) Yes, for the H2S element, I looked at

using

16 temperature that is expected at the Interoil reef,

we

17 the geothermal gradients that are established from the  
18 existing wells and fields, and that suggests that the  
19 reservoir depths that we all agree on in general, if  
20 make a temperature estimate for that, that would be in  
21 the zone where we would expect to see thermogenic  
22 sulphate reduction and therefore H2S production, and  
23 that's common in all of those fields.

comes

24 So for the fields, they have got reservoirs at or  
25 near that depth, and that's how I believe the H2S

12:31 1 into those fields.  
2 MR HAIGH: Alright. I'm going to invite Mr Nowicki to  
come  
3 into this exchange with me, if he would, but what I  
want  
4 to come back to, and I'll just post it with you, and  
we  
5 can return to this point if we can, is that I'm still  
6 a little concerned about the selectivity process that  
7 you've employed in these analogues. You have used  
them  
8 for some purposes but not other purposes, and I'll  
just  
9 park that with you for the moment if I may.  
10 Mr Nowicki, you have some concerns, as I  
understand  
11 it, with these three analogues in particular in  
relation  
12 to the Interoil reef, is that correct?  
13 A. (By MR NOWICKI) That's correct, and basically the  
14 concern is the selectivity. I believe if you're going  
15 to utilise an analogue, which I think is the only  
16 appropriate method, you've got two choices. You've  
got  
17 the Artinskian and the Munaibay 1, which is basically  
18 the same in terms of contaminants as the Artinskian at  
19 Tolkyn, or you have the closest field of the type that  
20 GCA is referring to, which is Tengyz.  
21 So basically you have the option of modelling the  
22 prospect as a low contaminant, relatively low yield  
23 feature, similar to the Artinskian, or you have the  
24 option of modelling it as a higher contaminants level  
25 feature with associated higher levels of condensate.  
So



12:33 1 I don't really see any sound theory of hydrocarbon  
2 generation or migration which is going to allow you to  
3 make anything other than one of those two choices.

4 If you're going to go beyond using an analogue,  
5 I think you're just relying on some sort of theory  
that  
6 you can't demonstrate occurs based on pointing to  
7 an analogue, so I think that that's inappropriate.

8 With respect to the cartoon, I think it's also  
fair  
9 to point out that all of the internal architecture  
that  
10 you see within the large feature on the left of that  
11 cartoon, I think that does accurately depict that you  
12 can see a lot of additional features in those type of  
13 structures, and GCA devotes about four or five pages  
of  
14 their report to describing that.

15 However, I think you have to recognise that the  
16 reason why you can see all that detail is because  
those  
17 are penetrated fields. They have a lot of wells in  
18 them, and they've got log data, core data and velocity  
19 data to calibrate your seismic data. So making that  
as  
20 a comparison to an undrilled prospect I don't think is  
21 fair.

22 MR HAIGH: Alright. I said I would park the question with  
23 you, Dr Wright. Any further comment on the  
selectivity  
24 concern that I've expressed?

25 A. (By DR WRIGHT) I think it's -- it is always -- the use

12:34 1 of analogues is one of the key issues and one of the  
2 areas always of -- "dispute" is probably too strong  
3 a word, but discussion amongst anybody who works in  
the  
4 exploration industry. It's how you select and how you  
5 try not to be biased in the selection of your  
analogues  
6 which is the issue. In my experience, now going over  
7 more years than I wish to admit to, it is the biggest  
8 challenge amongst people, and I think in essence there  
9 are data to support one way or another, you've got to  
10 select which is the one you think is appropriate.

11 My take is that when I take into account the depth  
12 of burial that is expected at the Interoil reef, and  
its  
13 location towards the margins of the play, it may well  
14 fall into a lower condensate yield area, and that's  
why  
15 we chose, having looked at the wide range, and as I  
say,  
16 there's ranges in condensate yield from 2.5 barrels  
per  
17 million standard cubic feet, which is not really  
18 a condensate field, right through to the higher values  
19 that have been quoted today, and where you put your  
20 marker in that range is -- you know, should it be  
21 halfway? Should it be where you choose? It depends  
on  
22 the value that you end up considering.

23 MR HAIGH: If this was an exact science, I would assume  
that  
24 all the geophysicists and geologists would be  
25 billionaires, right? Meaning in other words you use  
the

12:36 1 information that you think is most reliable or  
2 comparable, and you try to interpret the velocity and  
3 density information that's reflected in the graph in  
4 front of you and say this is what I think we're  
dealing  
5 with basically. Ultimately, somebody has to put their  
6 money where their mouth is and drill the hole, right?  
7 A. (By DR WRIGHT) I mean, ultimately, these are opinions  
8 and interpretations based upon the data we have, and  
as  
9 I think was said earlier today, sometimes there is no  
10 way of measuring it remotely or there is another data  
set has to  
11 be gathered to allow you to polarise your  
understanding  
12 or to decide who is correct. The question is whether  
13 the cost of doing that makes commercial sense, and as  
14 you rightly say, if we all knew the answers, we would  
15 all be very rich people, I suspect.  
16 MR HAIGH: Correct. So I take it, Dr Wright, that your  
17 perception of the Interoil reef, even with this  
18 additional 3D data that you have had a chance to look  
19 at, is that it's a very high risk prospect, is that  
20 basically it?  
high  
21 A. (By DR WRIGHT) That's right. I think it's still a  
is  
22 risk, a 10% GCoS of a relatively small feature, that  
23 reasonably well imaged on the 3D seismic data, but the  
24 larger feature, the trap risk, is high, partly due to  
25 the fact that there's not full 3D coverage over the

12:37

1 area.

2 MR HAIGH: And Mr Nowicki?

3 A. (By MR NOWICKI) If I may, before we left the previous

some

4 subject, I didn't really get a chance to respond to

Wright.

5 area where I have a slight disagreement with Dr

of

6 I think it's pretty well established that the corner

7 the basin that that prospect sits in is generally

8 regarded as an oil rich part of the basin, so if you

9 don't want to use an analogue, you at least have to

10 acknowledge that it's likely going to be towards the

11 high end of any range that you might want to estimate.

12 With respect to the question that you ask, I also

fair

13 acknowledge that the GCoS is about 10%, there is a

14 amount of risk associated with that. However, I think

15 that there is a substantial structure, I think it's

going

16 fairly well defined, and I think a company who is

17 to make the decision as to whether to go forward with

18 that prospect in addition to the risk, you're going to

19 have to make an analysis of the value of the potential

analysis

20 prize and you're also going to have to make an

21 of the cost to test the prospect.

22 For want of a better example, if you and I were to

that

23 play a game, and one of the aspects of the game is

24 you were going to win 10% of the time and lose 90% of

25 the time, and in order to play the game, you've got to

12:39  
very

game

drill

would

GCoS

\$10

of

that

1 pay \$10, just telling you that, that doesn't sound  
2 good. But if I tell you an additional piece of  
3 information, that if you win the game, you're going to  
4 win \$50,000, then I think you're going to play that  
5 every opportunity that you have a chance. So I think  
6 that's more the way that you have to look at  
7 an exploration prospect, because if people didn't  
8 prospects, because there's an element of risk, we  
9 never find any oilfields.

10 MR HAIGH: Well, let me just follow up on that, because  
11 I want to make sure we have the 10% GCoS in context.  
12 I assume that you don't wait until you've got a 50%  
13 before you drill, is that a fair comment, Dr Wright?

14 A. (By DR WRIGHT) I mean, you would do work to try and  
15 reduce the GCoS to the minimum that you can, and  
16 obviously, there's a cost benefit analysis there. As  
17 Mr Nowicki said, if, ultimately, you're asked to put  
18 on the table with a prize of \$50,000 and a 10% chance  
19 that working, that may sound attractive. If the cost  
20 was \$25, at 1 in 10, and the prize was \$100, it might  
21 not be as good. But if you had inside information,  
22 allows you to change that GCoS, things start looking  
23 more attractive.

24 So if there is additional data that could be  
25 gathered at relatively low cost, that would move your

12:40  
issue

can

to

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to

the

which

the

1 GCoS, then that would change the perception of the  
2 attractiveness of any opportunity, and that's the  
3 lots of companies will -- there is a number that you  
4 never get it less than, and it will vary from area to  
5 area, and knowledge to knowledge, but there is,  
6 I believe, still outstanding work that could be done  
7 reduce that GCoS, and part of that is the fact that  
8 south-west part of the structure is not defined in  
9 any -- well, I would say it's not defined at all, it's  
10 got one seismic line on it.

11 MR HAIGH: Would that lead you to recommend, if you were  
12 have been asked at the time, to recommend further  
13 seismic work being done?

14 A. (By DR WRIGHT) I certainly would like to see further  
15 seismic in that area.

16 A. (By MR NOWICKI) Of course, the other point that has to  
17 be made is in order to gain the rights to acquire that  
18 seismic data, and to have the rights to explore for  
19 minerals, you also have to get that licence area,  
20 you don't have. So if you're facing a situation where  
21 somebody else owns that licence, and you don't have  
22 rights to shoot additional seismic data across it,  
23 you've got as much data that you're going to get.

24 MR HAIGH: Alright. So just back to the GCoS at 10%, that  
25 isn't necessarily higher, lower or anything else, it

12:42           1           can't be qualified in terms of, say, a verbal  
                  2           description, it has to be looked at in the setting  
that             3           we're considering here, and valued against the  
potential       4           upside benefit?  
                  5        A.    (By DR WRIGHT) I think in our presentation we have  
some             6           sheets that summarise how we evaluate GCoS, and that  
                  7           gives both a quantitative and a qualitative or  
                  8           a numerical value, and also what that would equate to.  
                  9           I think it plots in the high to very high risk window,  
10             10          that is defined on our template that we've used  
                  11          globally.  
                  12                 A 10% opportunity on a global scale is a high risk  
                  13          exploration opportunity. That is my experience.  
There           14           are statistics published which would suggest about 40%  
                  15          of exploration wells have some success. But that  
would           16           mean that some of those would have had very high  
chance          17           factors when they were drilled and some would have  
lower           18           chance factors. That's an average, something around  
                  19          35-40% of exploration wells demonstrate some sort of  
                  20          success.  
                  21       MR HAIGH: Mr Nowicki, any other comment on that?  
                  22       A.    (By MR NOWICKI) The only other comment I would make is  
                  23          in the modern oil business there aren't too many very  
                  24          large prospects that have high GCoS numbers. I mean,  
                  25          that's just the way it works. The easy to find big

12:43  
find

1 fields have already been found. So if you want to  
2 a big field, you're going to, in all likelihood, have  
3 accept a fairly low GCoS number before you drill that  
4 feature.

5 MR HAIGH: Alright. Those are my questions. Thank you,  
6 Mr Chairman.

7 THE CHAIRMAN: Thank you. Professor Lebedev, do you have  
8 any questions at this stage?

9 PROFESSOR LEBEDEV: Yes, maybe one or two very general  
10 questions. Your views which you presented have been  
11 very enlightening for me, and I merely wanted to ask  
12 each of you, each expert, do you consider that  
13 investigations have been sufficient and information  
14 been sufficient which you have to make your replies to  
15 the questions which have been put before you by the  
16 parties, or you would say that still some more  
17 information, some more data would be needed for you to  
18 make your answers final, without any reservation?  
19 I said that is a very general question, and I expect  
20 a very general answer from you.

has

are

21 A. (By MR NOWICKI) In my view, the biggest factors that  
22 driving the relatively low GCoS number that we have  
23 right now are, as I mentioned, the top seal and what  
24 type of reservoir quality you're going to have. These  
25 can only be answered by drilling a well. You can



12:45 1 acquire 10 additional seismic surveys, and you're not  
2 going to have any more precise answer to those two  
3 questions.

could 4 So I believe there may be some things that you  
GCoS 5 do that would maybe make minor adjustments to that  
6 number, and make it go upwards, but I don't think  
is 7 anything that could be acquired at this point in time  
8 going to make a substantial difference in that, other  
9 than just drilling and testing the well, with the  
10 possible exception of being somebody drills an exact  
11 analogue in the adjacent block, something like that  
12 would probably give you more confidence, but you don't  
13 have any control over something like that.

lack 14 A. (By DR WRIGHT) I have to disagree. I feel that the  
issue 15 of demonstrable closure in the south-west is a key  
16 that could be addressed before you drill, and that is  
17 a key factor that could be done. With the data sets  
of 18 that are available today, then there is a little bit  
19 further work that could be done. Obviously, we had  
20 a limited timeframe in which to make our evaluations,  
21 prior to submitting the reports for this hearing, and  
22 further work could allow us to consider some of the  
Ryder 23 scenarios of the depth conversion that was done by  
24 Scott, but my main concern is that I'm still unhappy  
closure 25 about the closure -- that you can't demonstrate

12:47 1 to the south-west.

2 THE CHAIRMAN: As far as I am concerned, I must say that  
3 whatever I took down as possible questions has  
basically 4 been answered already by the explanation by the  
parties.  
5 I was indeed also very interested in GCoS, but what  
you  
6 have told my two colleagues is already helpful, and  
7 I don't think I need any more detailed answers than  
what  
8 you gave.

9 A very general simple answer, maybe too simple,  
but  
10 I am aware that depending on the field and the various  
11 factors that come in, there is no general approach on  
12 how to do this best, and obviously if you take ten  
years  
13 to research, you will get more information, but by  
that  
14 time, you may not have a chance to decide any more  
15 whether you want to do something about the field, so  
you  
16 make a choice between various factors. But  
17 nevertheless, let me ask, is there somewhere some  
18 documentation of best practices as far as these  
methods  
19 are concerned?

20 A. (By DR WRIGHT) I am certainly not aware of -- from  
field  
21 development. It's a big thing. Obviously, everybody  
22 wishes to develop a field as quickly as they can, but  
23 each on an individual, case-by-case basis, taking into  
24 account the factors that they have identified.

25 A. (By MR NOWICKI) I think I would largely agree with  
that.

12:49 1 I think that there would be some best practices  
2 established within a company, but I don't think that's  
3 an industry-wide standard.

4 THE CHAIRMAN: And these best practices, even within  
5 a company, would still depend on various conditions  
and  
6 circumstances for a given case?

7 A. (By MR NOWICKI) I believe so. I think there would be  
8 some general guidelines that would be provided, and  
9 typically a company will be set up as to where they  
have  
10 experts designated for a particular purpose. So if  
11 there was a question on how to proceed, you would  
refer  
12 that to an expert, who might have provided you with  
some  
13 guidance on that issue.

14 MR HAIGH: Just as a supplement to what each of you just  
15 addressed in terms of the Chairman's question,  
appetite  
16 for risk is a commercial consideration more than  
17 anything else, isn't it? Would that be a fair way to  
18 perceive it?

19 A. (By MR NOWICKI) I would generally agree with that.  
20 I think that's going to vary to some extent from  
company  
21 to company. Of course it's going to also depend upon  
22 your appraisal of the value of the opportunity. Even  
if  
23 somebody comes up with the exact same dollar figure,  
24 there might be other factors that drive whether  
somebody  
25 is going to want to be involved in something or not.

12:50 on  
it  
I'm  
again  
and  
anything  
that  
did  
makes

1 A. (By DR WRIGHT) I think you are right, it's very much  
2 the appetite of the individual company for risk, and  
3 may be that in one company, this may be the best  
4 opportunity, whereas in another company which may have  
5 a larger portfolio, they may say, "That's something  
6 not going to spend my money on this year", and so  
7 there will be other criteria that drive their  
8 decision-making.  
9 THE CHAIRMAN: My last question is just to make sure, on  
10 condensate ratio, I have read what you have written  
11 I have heard something this morning. Is there  
12 which either one of you would like to add as a comment  
13 to what the other side has said on this matter?  
14 A. (By DR WRIGHT) No.  
15 A. (By MR NOWICKI) I think our position has already been  
16 stated, it wouldn't be anything new. I mean, I see  
17 there is an argument to be made for a higher  
18 contaminants level, but I think you have to be  
19 consistent in terms of the analogues that you're using  
20 for both of those factors, so --  
21 THE CHAIRMAN: Yes, that's what I understood from you.  
22 A. (By MR NOWICKI) So that is basically our position.  
23 THE CHAIRMAN: And you of course have explained why you  
24 what you did.  
25 A. (By DR WRIGHT) Today hasn't provided anything that

12:52

1 me wish to change my opinion.

see

2 THE CHAIRMAN: Well, thank you. I think that then takes  
3 care of our questioning, and the conference style, I

4 that the parties have three respectively four minutes  
5 left for whatever they want to do. Do they have any  
6 follow-up questions on what we did so far?

7 MR TOHER: No, I think we've sufficiently thrashed this  
8 subject.

9 THE CHAIRMAN: Respondent?

might

10 DR NACIMIENTO: I have one follow-up question. There

11 be a misunderstanding relating to GCoS. You were both  
12 referring to a 10% GCoS. Are you referring to the  
13 identical structure when you refer to the 10% GCoS?  
14 Dr Wright, which structure are you referring to?

15 A. (By DR WRIGHT) The 10% GCoS that I am referring to is  
16 the GCA base case scenario has a 10% GCoS.

17 DR NACIMIENTO: Is that identical to the structure  
18 Mr Nowicki is talking about?

19 A. (By DR WRIGHT) The base case has a lower volume  
20 associated with it than Mr Nowicki's model, although  
21 I am speaking for him there, perhaps I shouldn't, but  
22 I don't believe they are the same features.

23 THE CHAIRMAN: That is your understanding.

24 A. (By MR NOWICKI) Well, basically my comment on that is  
25 I don't think there is any difference between the GCA

12:53 of  
1 base case and their alternative case at the location  
2 the well, so I have difficulty understanding how you  
3 could have two GCoS estimates for this single prospect  
4 that's going to be tested by a single well, that  
doesn't  
5 fit with my understanding of how the process should  
6 work. I also believe, where there's not an  
appreciable  
7 difference between the interpretation of the surface  
at  
8 that point, between GCA and Ryder Scott, the  
differences  
9 are more away from that area.

10 DR NACIMIENTO: Dr Wright, this should be the occasion to  
11 explain once again the difference between the  
12 speculative model and the 10% model.

13 A. (By DR WRIGHT) In our base case, we are assuming that  
14 the seal to the reservoir to the trap is clearly  
defined  
15 by the seismic data, and that's why we analyse that  
and  
16 come up with a 10% chance factor GCoS of that. In our  
17 speculative alternative case, we have had to, as we  
18 discussed, ghost or force the edge of the reef, and  
19 therefore we are uncertain if the seal is still  
present  
20 or effective, and so it's a difference in that, and  
that  
21 affects the geometry and the volume of hydrocarbons  
that  
22 can be trapped.

23 Now, as we're analysing in our -- the production  
24 profiles are based on the mean volumes, those are  
25 significantly different associated with each of those

12:54 1 scenarios. And that's why we want to make sure we are  
2 dealing with two separate scenarios. As Mr Nowicki  
3 said, at the well location, they may well be within  
the  
4 same feature but they have significant differences in  
5 such things as the amount of hydrocarbons that one  
might  
6 expect to find or hope to find, given success at that  
7 location.  
8 THE CHAIRMAN: Mr Nowicki, do you have any comment?  
9 A. (By MR NOWICKI) Yes, just a comment, that doesn't  
really  
10 make any sense to me because I don't understand how at  
11 the same location on the same feature one scenario  
could  
12 be -- if it's drilled, and they find hydrocarbons, how  
13 can it be successful in one scenario and not  
successful  
14 in another scenario? It either is a success or it  
15 isn't. So I think there seems to be a basic  
difference  
16 in agreement on how you evaluate GCoS for a particular  
17 prospect target.  
18 THE CHAIRMAN: I think we are aware of this.  
19 DR NACIMIENTO: I have no further questions.  
20 THE CHAIRMAN: Neither from Claimants' side?  
21 MR TOHER: No further questions, thank you.  
22 THE CHAIRMAN: Then we have finished the examination of  
the  
23 experts, I am just looking at my agenda, to make sure  
24 that -- no, there is nothing from our side, I take it,  
25 and we are close to 1.00 which shows that timing has

12:56

1           been respected by all of us.

2                   Thank you very much, gentlemen. We now have our  
3           lunch break and at 2.00 the Claimants will start with  
4           the first round closing statement.

5                   Have a good lunch.

6           (12.56 pm)

7                                   (The short adjournment)

8           (2.00 pm)

9   THE CHAIRMAN:   Alright, we resume the hearing and come to  
10           the first round closing presentation by Claimant.

11                                   Closing statement by MR FLEURIET

12   MR FLEURIET:   Members of the Tribunal, good afternoon.

13           Unfortunately the Claimants are forced to open our  
14           remarks today on the subject of procedural misconduct.

15           I am not going to spend much time on the subject.

16           Unlike Kazakhstan, Claimants are not going to be  
shrill

17           or make a number of unsubstantiated allegations. But  
18           some things have happened in this case that I believe

to

19           be unprecedented in treaty practice, or at least in my  
20           firm's long history of treaty practice; and we are  
21           approaching the point where the Tribunal will need to  
22           not only consider all the evidence but also make  
23           an award of costs.

egregious

24                   I will begin by briefly reviewing the most

this

25           instances of Kazakhstan's procedural misconduct in



14:02

forcing

Claimants

Claimants

of

1 case. Kazakhstan should be ordered to pay Claimants'  
2 costs, which have been exacerbated not only by  
3 Kazakhstan's procedural misconduct, but also by  
4 Claimants to respond to a number of frivolous factual  
5 and legal arguments that, as we now know from  
6 Kazakhstan's belated document production, Kazakhstan  
7 knew all along to be untrue.

8 First, on January 18, 2011, Kazakhstan proposed  
9 a three-month delay in the proceeding in order to  
10 satisfy what it claimed was a required cooling-off  
11 period under the ECT. That letter is at C-350, behind  
12 tab 1 of the binders we have handed out.

13 Claimants did not believe that there was such  
14 a requirement that had not been satisfied.  
15 Nevertheless, in the spirit of cooperation, and to  
16 remove any conceivable doubt about the matter,  
17 agreed to the suspension in order to satisfy ...

18 (Pause to deal with a technical issue)

19 Let me begin again with my first point, regarding  
20 procedural misconduct. First, on January 18th 2011,  
21 Kazakhstan proposed a three-month delay in the  
22 proceeding in order to satisfy what it claimed was  
23 a required cooling-off period under the ECT.

24 did not believe that there was such a requirement that  
25 had not been satisfied. Nevertheless, in the spirit

14:06 1 cooperation, and to remove any conceivable doubt about  
2 the matter, Claimants agreed to the suspension in  
order 3 to satisfy Kazakhstan's objection.

4 After the proceedings resumed, Kazakhstan  
amazingly 5 claimed in its pleadings on jurisdiction that the  
6 cooling-off period had not been satisfied. It  
maintains 7 that position even today, notwithstanding its own  
8 statement in January 2011 that a three-month  
suspension 9 would be "in satisfaction of that jurisdictional  
10 requirement". You can find that quote in the letter  
11 behind tab 1.

12 Thus Kazakhstan maintains its jurisdictional  
13 objection in bad faith and contrary to what was  
14 expressly agreed in January 2011.

15 Second, on April 2nd 2012, less than two weeks  
16 before Claimants' reply memorial was due, and in clear  
17 violation of Procedural Order No. 3, Kazakhstan  
informed 18 Claimants that it was producing 30,000 pages of  
19 documents. Those documents included some of the  
20 supporting materials to the GCA and Deloitte reports,  
21 all of which should have been produced with those  
expert 22 reports on November 21, 2011. The rest of the  
23 30,000 pages were tardy by a number of weeks. That  
24 belated document dump resulted in another delay of the  
25 proceeding and the need to stagger briefing and to  
hold

14:07 1 significantly

two hearings instead of one, both of which  
increased costs.

and

3 We have heard a lot today about the 3D seismic,  
4 Kazakhstan has tried to make a procedural mountain out  
5 of a molehill. But it was that 30,000-page document  
6 dump that had a tremendous impact on the cost and the  
7 length of this proceeding.

8  
9 rebuttal -- damages

Third, with its rejoinder on quantum, Kazakhstan  
submitted a completely new, a completely new -- not a  
report from Deloitte GmbH. And prior to its rejoinder  
on quantum, Kazakhstan's damages case was based on  
a report from Deloitte TCF, which was submitted with  
Kazakhstan's Statement of Defence. Of course,

everyone

14 at the time thought Deloitte TCF was Deloitte's branch  
15 in Kazakhstan. But Kazakhstan has refused to identify  
16 the authors of that report, and Deloitte GmbH could  
17 even locate them. So we now know Deloitte TCF could  
18 have been anyone, and that mystery may never be

not

solved.

entirety

19 Kazakhstan then purported to retract in its  
20 the damages report of Deloitte TCF in favour of the  
21 Deloitte GmbH report. It refused to present the

unknown

22 authors of the Deloitte TCF report for  
23 cross-examination, and it offered nothing in the way

of

24 an explanation other than to withdraw its reliance on  
25 that report.

14:09

2013.

on

That

counsel

knows,

valuation

5.

reports

1 Kazakhstan's unjustified submission of an entirely  
2 new damages report with its rejoinder submission  
3 required Claimants to substantially alter their  
4 preparation for the hearing on quantum in January  
5 Moreover, it forced Claimants to engage their damages  
6 experts to respond to Kazakhstan's entirely new case  
7 damages, in their post-hearing brief.

8 King & Spalding is not aware of any other treaty  
9 arbitration in which a Respondent state has sandbagged  
10 its entire case on quantum by making that case for the  
11 very first time in its rejoinder, and purporting to  
12 withdraw its first quantum report in its entirety.  
13 is truly one for the record books.

14 Fourth, in March 2013, Kazakhstan finally  
15 produced -- finally produced -- the four critical  
16 valuation and diligence reports that it and its  
17 had deliberately withheld from the Tribunal and  
18 Claimants for more than a year. As the Tribunal  
19 those reports consist of an internal KMG asset  
20 from 2008, that's behind tab 2; an independent asset  
21 valuation by the Royal Bank of Scotland, that's behind  
22 tab 3; a financial and tax due diligence report from  
23 PricewaterhouseCoopers, behind tab 4; and a legal due  
24 diligence report by Squire Sanders, that's behind tab  
25 Each of the four highly relevant contemporaneous

14:10

1 was prepared by or for Kazakhstan's state-owned gas  
2 company.

and

3 The Tribunal first ordered the production of those  
4 reports in Procedural Order No. 2 of February 2012,  
5 it repeated its production order in Procedural Order  
6 No. 3.

not

7 To date, even at this late date, Kazakhstan has  
8 offered any excuse or justification for its belated  
9 production. Nor has it offered any explanation for

its

10 180-degree about-face on its previous claim that those  
11 four reports were confidential.

disclose

12 For more than a year, Kazakhstan refused to

confidential.

13 those reports, allegedly because they were

14 They were finally produced in unredacted form with  
15 absolutely no explanation for the delay and no mention  
16 whatsoever of confidentiality.

17 Of course, we now know that Kazakhstan withheld  
18 those reports because they contradict a number of  
19 critical outcome determinative positions adopted by  
20 Kazakhstan in this proceeding. In other words,  
21 Kazakhstan was espousing important positions in this  
22 case that it knew all along to be untrue.

all

23 For example, contrary to Kazakhstan's claims  
24 regarding contract 302, RBS, PwC and Squire Sanders  
25 considered that the MEMR had extended the exploration

14:12

1 period under contract 302 and that the contract would  
2 expire in March 2011. That's in the RBS report at  
3 page 8, the PwC report at page 31 and in the Squire  
4 Sanders report at page 161.

were

5 Additionally, Squire Sanders confirmed that,  
6 contrary to Kazakhstan's submissions in this case,  
7 Ascom's ownership of KPM and Terra Raf's ownership of  
8 TNG were legal. It also confirmed that KPM and TNG  
9 legally registered, established and re-organised.

the

10 Moreover, regarding Claimants' ability to obtain  
11 export prices for gas, the KMG presentation notes the  
12 imminent agreement with KazRosGaz for TNG to export  
13 7 billion cubic metres of gas at prices "much higher  
14 than the domestic market". And RBS concluded that 80%  
15 of TNG's gas was expected to be exported. That's in  
16 RBS report at page 47.

was

17 Thus, Kazakhstan has argued critical positions in  
18 this case that it knew to be flatly contradicted by  
19 highly persuasive, contemporaneous evidence that it  
20 deliberately withholding from Claimants and the  
21 Tribunal, in direct violation of the Tribunal's  
22 procedural orders. That is highly relevant, not only

to

23 the issues the reports cover, but also to an award of  
24 costs insofar as everyone wasted considerable time and  
25 effort responding to arguments that Kazakhstan knew to

14:13        1        be false.

                 2                The examples of procedural misconduct I have just

                 3        mentioned are truly misconduct in the first degree.

probably        4        They go beyond the pale, and a few of them are

deliberate     5        without precedent in our practice. They were

                 6        acts of bad faith and, more to the point, they had

very            7        serious impacts upon the schedule, length and

complexity     8        of this proceeding. The appropriate remedy is to

award           9        Claimants their costs.

                 10                Now, what has Kazakhstan done to try to deflect

                 11        attention from its own extraordinary procedural

                 12        misconduct? Well, it's obvious. In order to deflect

                 13        attention, and as its position in this case has become

                 14        more and more desperate, Kazakhstan -- particularly,

                 15        I would say, in its post-hearing brief -- has

                 16        increasingly engaged in a smear campaign. Claimants

                 17        trust the Tribunal sees that campaign for what it is:

                 18        a tactic employed by a desperate party facing

                 19        substantial liability. But candidly, so much of

                 20        Kazakhstan's post-hearing brief reads like a

sensational    21        fiction novel that a few basic things need to be said.

                 22                In its post-hearing brief, Kazakhstan has again

made            23        baseless and inflammatory accusations against Anatolie

                 24        and Gabriel Stati. It has accused Claimants'

witnesses     25        and counsel of lying under oath. And it has claimed

14:15

1 that Claimants submitted forged or illegally obtained  
2 documents in this proceeding.

3 The problem for Kazakhstan is that its allegations  
4 are completely baseless. Its smear campaign is purely  
5 contrived. To take just one example, in its  
6 post-hearing brief, Kazakhstan asserts:

7 "It is clear from the evidence on the record that  
8 they [Anatolie and Gabriel Stati] have engaged in  
9 criminal and terrorist activities".

10 Obviously there is absolutely no such evidence in  
11 the record, and there never has been.

it

12 Because Kazakhstan's smear campaign is baseless,

13 is not worthy of a more lengthy response, so I'm not  
14 going to spend any more time on it. Claimants would

15 simply ask the Tribunal to keep in mind that

16 Kazakhstan's accusations misrepresent the evidence and  
17 are exclusively designed to detract attention from its

apparent

18 own procedural misconduct, and its increasingly

19 weak case on the merits.

of

20 I would like to start my summary now of the facts

21 this case with the most basic and telling fact in this  
22 dispute. And that is that, prior to President

23 Nazarbayev's fateful instruction of October 14th 2008,

24 Claimants and their Kazakh companies, KPM and TNG, had

25 never had a problem of any substance with the Kazakh



14:16 1 Government. Never. The contrast between the world of  
2 KPM and TNG prior to October 14th 2008 and the world  
3 after that date could not be more stark. It is black  
4 and white. Or, as the case may be, white then black.  
5 This is a case about how quickly the world can change  
6 when the autocratic ruler of a state with no rule of  
law 7 issues a personal instruction that singles out two  
8 companies for "thorough checking".  
9 I would like to begin today by briefly reviewing  
the 10 world of KPM and TNG before October 14th 2008. First,  
11 Claimants were very serious investors, and their  
12 investments in KPM and TNG were very substantial.  
13 Indeed, Claimants' investments in KPM and TNG are  
14 precisely the sort of serious transformative long-term  
15 energy investments that the ECT is designed to foster.  
16 By May 2000, Claimants held controlling stakes in  
largely 17 both KPM and TNG. Those companies had operated  
18 abandoned and unproductive oil and gasfields prior to  
19 Claimants taking over their companies. By the end of  
both 20 2004, Claimants had acquired 100% of the shares in  
21 KPM and TNG. Throughout the years, Claimants invested  
is 22 more than 1.1 billion into KPM and TNG. That figure  
23 significant, not only because of the magnitude of  
24 financial contributions Claimants made, but also  
because 25 a substantial portion was comprised of retained and

14:18

1 re-invested earnings, demonstrating Claimants'  
2 commitment to their investments.

of

3 Indeed, the sum is so large because KPM and TNG  
4 overfulfilled their contractual obligations and work  
5 programmes many times over. They invested multiples  
6 the minimums required.

its

7 That fact was recognised by the MEMR on numerous  
8 occasions, including less than six months before  
9 Kazakhstan seized the investments in July 2010. In  
10 those inspection reports from February 2010, the MEMR  
11 confirmed that KPM had exceeded its investment  
12 obligations by a factor of 6.6, and TNG had exceeded  
13 obligations by a factor of 3.4. Combined, that was in  
14 excess of \$850 million.

KPM

contract

to

had

producer.

15 Also under Claimants' ownership and management,  
16 and TNG employed nearly 1,000 Kazakh workers on  
17 a permanent basis, and up to 3,000 workers on a  
18 basis. KPM and TNG paid some US\$350 million in taxes  
19 Kazakhstan. And cumulatively, by 2008, KPM and TNG  
20 produced 23 million barrels of oil and condensate and  
21 268 billion cubic feet of gas from the Borankol and  
22 Tolkyn fields. Claimants' investments in TNG resulted  
23 in it becoming Kazakhstan's fourth largest gas

24 In this proceeding, Kazakhstan has tried to play  
25 down the significance of TNG. But Squire Sanders --

14:19           1           this is in the Squire Sanders due diligence report at  
                  2           page 32 -- specifically noted TNG's:  
rules            3           "... dominant market position and the special  
                  4           that applied to TNG with respect to anti-monopoly  
                  5           control, because of its significant market position".  
                  6           In the summer of 2008, Claimants decided to sell  
                  7           their interests in KPM and TNG, except for their  
                  8           exploration rights in the contract 302 properties. By  
                  9           September 2008, eight bidders had showed significant  
figures          10           interest. Their indicative offers ranged from  
                  11           US\$550 million to US\$1.5 billion. That range of  
of               12           is generally corroborated by all of the other indicia  
Respondent's   13           value in this case, except for the work of  
                  14           damages experts, who are the lone outlier.  
                  15           Perhaps most tellingly, prior to October 2008, KPM  
                  16           and TNG were each subject to routine inspections from  
                  17           various Kazakh agencies which never uncovered any  
                  18           significant problems with the companies' operations.  
                  19           Prior to October 2008, there was never any allegation  
                  20           that KPM or TNG operated a pipeline without the  
                  21           necessary licence. There were no major tax disputes  
                  22           with the Kazakh authorities. There was never any  
                  23           allegation of fraud or impropriety regarding share  
TNG.            24           acquisitions or registrations in relation to KPM or  
                  25           And the state had never asserted a preemptive right;

14:21

1 indeed, it had confirmed in 2007 that it did not even  
2 have one.

order

3 All of that changed drastically after Nazarbayev's  
4 order. And that is the fundamental disparity, the  
5 fundamental contrast between the world before the  
6 and after the order that Kazakhstan has failed to  
7 explain, and simply cannot explain, no matter how hard  
8 it tries.

Nazarbayev's

few

be

untenable

9 Now, before I get into the world after  
10 order, I would like to stop for a moment and make a  
11 brief remarks about Kazakhstan's case on jurisdiction.  
12 In Claimants' submission, Kazakhstan does not have and  
13 frankly never did have any serious objection to this  
14 Tribunal's jurisdiction. Its objections only need to  
15 mentioned to be rejected, as most of them are  
16 on their face.

has

17 First, Kazakhstan claimed that the Russian version  
18 of the ECT, unlike the other five official versions of  
19 the treaty, does not refer to arbitration before the  
20 Stockholm Chamber of Commerce; and that the Russian  
21 version of the ECT, rather than the other five, was  
22 controlling.

23 Let's just say that that very creative argument  
24 now been abandoned.

25 Second, and even more incredibly, as I mentioned

14:22 1 earlier, Kazakhstan maintains its claim that the  
allegedly 2 Tribunal has no jurisdiction because Claimants  
3 failed to satisfy the three-month cooling-off period,  
4 even though the parties entered into an express  
5 agreement to satisfy that requirement, which led to  
6 a delay in this proceeding.

7 Third, Kazakhstan claims that Anatolie and Gabriel  
8 Stati are not the type of investors that the ECT is  
9 meant to protect. Those claims are part and parcel of  
10 the smear campaign that I mentioned earlier. I would  
11 just say briefly that Kazakhstan's claims are nothing  
12 more than personal attacks, unsupported by any  
evidence,  
13 and they have nothing at all to do with the definition  
14 of "investor" under the ECT. Messrs Stati  
15 unquestionably meet that definition because they are  
16 Moldovan nationals that indirectly own investments in  
17 Kazakhstan.

18 I would also note that much of this smear campaign  
19 is based on the expert opinion of Ms Olcott, an  
American  
20 political science professor whom Kazakhstan has tried  
to  
21 hold out as an expert on quite literally everything,  
and  
22 who plays her assigned attack role by writing opinions  
23 based on internet blogs and gossip. Everyone  
witnessed  
24 her demeanour and was able to make a judgment about  
her  
25 credibility at the hearing.

14:23 1 Fourth, Kazakhstan claims that Ascom and Terra Raf  
2 are not proper investors under the ECT. It claims  
that 3 because Anotolie Stati enjoys dual nationalities of  
4 Moldova and Romania, both of which are contracting  
5 states to the ECT, that Ascom is owned or controlled  
by 6 a national of a third state, and therefore Kazakhstan  
7 can deny ECT benefits to it. That frankly is absurd,  
8 and there is no legal support for Kazakhstan's  
position.

9 Also, Kazakhstan has produced no evidence  
rebutting 10 Claimants' extensive evidence that Ascom carries out  
11 substantial business in Moldova, its headquarters are  
in 12 Chisinau, its key personnel and management are located  
13 there, along with hundreds of employees. Those facts  
14 establishing Ascom's significant presence in Moldova  
are 15 sufficient to end the denial of benefits analysis,  
even 16 if the Tribunal were inclined to consider it.

17 Regarding Terra Raf, Kazakhstan apparently  
maintains 18 its argument that jurisdiction cannot extend to  
19 corporate entities of Gibraltar. Claimants have fully  
20 explained why that is wrong. The UK made a signing  
21 statement that the ECT applies to Gibraltar, and that  
22 statement has never been retracted.

23 Secondly, the EU itself, of which Gibraltar is  
24 a member, is a party to the ECT. Gibraltar's status  
25 under the ECT was settled by the Petrobart tribunal,

14:25 1 whose reasoning is persuasive.

Gabriel 2 And moreover, and in any event, Anatolie and

Raf's 3 Stati indirectly owned TNG, irrespective of Terra

practical 4 status, so the issue of Terra Raf is of little

5 consequence.

6 Fifth, Kazakhstan invokes the Salini test, and

7 claims that Claimants' substantial investments in

8 Kazakhstan do not satisfy the Salini standard. The

9 Salini test is simply not relevant to an ECT

10 arbitration, as the ECT, unlike the ICSID Convention,

11 defines qualifying investments.

12 Moreover, even if Salini were relevant, which it

is 13 not, the investments in this case are a poster child

for 14 investments that satisfy the Salini criteria.

Claimants 15 invested over US\$1.1 billion in KPM and TNG. They

16 operated those companies in Kazakhstan for almost

17 a decade before Kazakhstan commenced its campaign to

18 expropriate them. They employed thousands of Kazakh

19 workers. They paid hundreds of millions of dollars in

20 taxes. And their investments entailed extraordinary

21 risk. The investments at issue here so easily satisfy

22 the Salini standard that this objection is amusing.

23 Sixth, Kazakhstan has made various claims of

24 illegality based on minute hypertechnical issues of

Kazakh 25 share registration, transfers and so forth under

14:26

and

the

has

equity

claimant

tribunals.

1 law. Claimants have shown why those claims are flatly  
2 wrong, and that has now been confirmed by the Squire  
3 Sanders due diligence, which expressly concluded that  
4 any risks regarding the purchase of shares by Ascom  
5 Terra Raf, or the establishment or re-organisation of  
6 KPM and TNG, were "minimal" and that "all registration  
7 documents meet the requirements of the laws of  
8 Kazakhstan".

9 Furthermore, all of these claims of hypertechnical  
10 illegalities were never raised prior to this case, and  
11 Kazakhstan simply cannot credibly raise them now for  
12 first time, and it is estopped from doing so.

13 Finally, and lastly on jurisdiction, Kazakhstan  
14 now claimed that Claimants are asserting claims on  
15 behalf of the Tristan noteholders. That is simply  
16 wrong. Claimants are asserting claims on their own  
17 behalf. Terra Raf and Ascom pledged their entire  
18 interests in KPM and TNG, as well as any monies they  
19 receive in relation to those investments, as security  
20 for the notes. Those pledges clearly qualify as  
21 investments under the ECT.

22 The issue of how to treat debt for which a  
23 remains liable has been considered by a number of  
24 tribunals, including the Enron and Occidental  
25 And it is settled that, insofar as a claimant remains



14:27

1 liable for the debt in question, it is entitled to  
2 recover in its own right on that debt.

its

3 Kazakhstan itself set forth the correct rule in  
4 rejoinder on quantum when it stated unequivocally that  
5 Claimants could claim enterprise value if "Claimants  
6 were themselves liable to the noteholders for such  
7 alleged damage". That's in Kazakhstan's rejoinder on  
8 quantum, paragraph 383.

remain

9 And that is precisely the case. Claimants do  
10 liable to the Tristan noteholders. Kazakhstan cannot  
11 credibly reverse its position now, irrespective of  
12 whether it characterises its position as one of  
13 jurisdiction or quantum.

of

14 And that is it, members of the Tribunal, in terms  
15 Kazakhstan's case on jurisdiction. It never amounted  
16 much, and it never got any better.

to

many

17 I would like to turn now briefly to the main facts  
18 of this dispute. We've covered these facts now so  
19 times in our briefing and in previous oral argument

that

misconduct

20 I'm sure the members of the Tribunal are already  
21 familiar with them, so I'm not going to cover all of  
22 them again. Frankly, there is so much state

that

23 at issue in this case, and so much evidence of it,

several

24 it's simply not possible to cover everything in the  
25 limited time we have today. So let me just make

14:29 1 points.

2 The first point is that the crime that was

3 ultimately used to hang KPM was a total farce. We

know 4 that, we know that without a shadow of a doubt,

because 5 it is clear that the crime was reverse engineered. In

6 their zeal to please President Nazarbayev, to whom

they 7 directly report, the financial police went about

8 everything exactly backward. And frankly, the

testimony 9 of Messrs Turganbayev and Rakhimov was a chilling

lesson 10 in how to manufacture a criminal charge by reverse

11 engineering.

12 The financial police did not go about

investigating 13 a crime in the normal proper sequence. They did not

14 first ascertain that KPM or TNG operated main

pipelines; 15 then determine that the companies did not have

licences 16 to do so; then bring charges; and then, in the context

17 of either bringing charges or prosecuting the case,

18 determine the penalty to which the state was entitled.

19 That is the way it would have happened in any

20 law-abiding jurisdiction, whether a common or civil

law 21 jurisdiction.

22 Rather, the sequence of events here was the exact

23 opposite. The financial police came up with

24 an allegation they could use by determining that KPM

and 25 TNG did not have main pipeline licences. Then within

14:30           1           a few days they confirmed that they could impose  
                  2           a devastating penalty for the allegation that they  
were             3           considering. They then and only then -- only then --  
                  4           went looking for a competent authority to say that KPM  
                  5           and TNG in fact operated main pipelines.

                  6           All the competent authorities told them the  
                  7           pipelines were not main. So they eventually, five  
                  8           months later, at the end of the process, resorted to  
                  9           their own hand-picked expert, Mr Baymaganbetov -- who  
10                I am going to call "Mr B", because I can't say his  
11                name -- to say that the pipelines in question were  
main.

                  12           In other words, the process was exactly  
                  13           totally backward. The financial police came up with  
                  14           a crime and a penalty, and they then went looking for  
                  15           someone to establish the factual basis for the crime.

                  16           This case unfortunately and sadly is essentially  
17                a case study in how to bring about a false  
prosecution.

                  18           Tellingly, no Kazakh authority ever detected the  
                  19           supposed crime in over six years of regular  
inspections     20           and monitoring. And Kazakhstan would have the  
Tribunal        21           believe that its financial police simply stumbled upon  
                  22           this crime almost by magic, immediately after  
                  23           Nazarbayev's order.

                  24           The reverse engineering process began in the  
context         25           of the November 2008 inspections by the geology

14:31

1 committee of the MEMR. Those inspection reports are  
2 C-86 and C-87, behind tabs 8 and 9.

3 The geology committee inspection lasted from  
4 November 4th to 11th 2008, and found no violations or  
5 problems with the company's operations. That's clear  
6 from a review of the inspection reports, and it's also  
7 confirmed by Squire Sanders in their due diligence, at  
8 page 95; again, that's behind tab 5.

9 Squire Sanders states:

10 "It should be noted that following the spot audit,  
11 the audit team did not issue any improvement notices  
12 concerning non-fulfilment of any conditions set forth  
13 in the licences or contracts."

in

14 Despite that clean bill of health from the MEMR,  
15 the financial police essentially took over the process  
16 and, as we've learned, insisted on adding statements into  
17 the inspection reports that the companies did not have  
18 main pipeline licences. The financial police then used  
19 that finding to proceed with manufacturing the crime.

the

and,

the

main

that

geology

20 On November 14th 2008, three days after the  
21 committee ended its inspection, the financial police  
22 insisted that management sign those inspection reports  
23 as amended, despite management protests. And then  
24 three days later, November 17th, Mr Turganbayev orders the  
25 calculation of the illegal income KPM and TNG obtained

three

14:33

1 as a result of operating a main pipeline without  
2 a licence.

have

3 Now, at the October 2012 hearing, Mr Turganbayev  
4 confirmed that the fact that the companies did not  
5 main pipeline licences was sufficient grounds for him  
6 order that calculation. That's on the transcript,  
7 Day 5, pages 93 to 96.

to

8 It did not matter at that time that no agency or  
9 authority had concluded that the companies had main  
10 pipelines. The only purported ground for ordering the  
11 calculation was that the companies did not have main  
12 pipeline licences, and that distinction was critical.

income

13 And then this is where it gets even more  
14 interesting, because Mr Turganbayev manipulated the  
15 calculation of illegal income to produce the largest  
16 number possible. He didn't ask for the amount of  
17 that KPM earned by operating a main pipeline, in other  
18 words the operator fees that KPM charged TNG. Rather  
19 instructed the tax committee to calculate the income  
20 earned by transportation and subsequent sale of its  
21 crude oil.

he

calculation,

22 Two days after Turganbayev ordered that  
23 the tax committee reported that KPM's profits for  
24 a three-year period exceeded 41 billion tenge, and  
25 sum was simply all of KPM's revenues for the three-

that

year

14:34 1 period. The calculation of KPM's sales of the end  
2 product -- the part of the instruction where  
Turganbayev 3 asked for the subsequent sale of crude oil -- was over  
4 11,000 times greater than the income derived from  
5 providing services of crude oil transport or operating  
6 a main pipeline.

7 So at that point, we're still in November 2008,  
the 8 financial police know that they can deliver crippling  
9 penalties if they can only establish that KPM and TNG  
10 operated main pipelines. And it is only after that  
11 point, it's only after they have determined that they  
12 can devastate the companies, that the financial police  
13 moves to the next step and bothers to ask a competent  
14 agency whether the companies in fact operated main  
15 pipelines.

16 But this is where the financial police then runs  
17 into a problem, because the competent agency that the  
18 financial police approaches, the MEMR, comes back and  
19 says, "No, in fact KPM's pipeline is part of its  
20 gathering system; it's not a main pipeline". But this  
report 21 is Kazakhstan, the financial police only have to  
22 to the President, so it doesn't matter that the MEMR  
23 gives them the answer they don't like. They simply  
24 declare that the MEMR is incompetent, and voilà,  
problem 25 solved.

14:36

1           Amazingly, Kazakhstan has done exactly the same  
2 thing in this case. It's claimed that the MES, the  
3 Ministry of Emergency Situations, the MEMR, KMG and  
4 every single one of the industry specialists who  
5 concluded that the pipelines were not main back in the  
6 real time, it's claimed they're all not competent  
7 either. So Kazakhstan's position in this case is  
8 reduced to: only the court or the general prosecutor  
9 could determine whether or not in fact my clients  
10 operated a main pipeline. In other words, my clients  
11 had to be hauled before a criminal court before they  
12 could get a determination as to whether or not they  
13 indeed operated a main pipeline. And how is that for  
14 the transparency required by the fair and equitable  
15 treatment standard?

the

of

reached

16           Let me turn very quickly to the judge's ruling in  
17 the case. We respectfully submit that the ruling in  
18 criminal case is both a substantive as well as  
19 a procedural denial of justice. It was, in the words  
20 the Vivendi tribunal, substantively unfair. There is  
21 simply no way that an impartial court could have  
22 the verdict it reached.

the

23           Furthermore, the domestic court verdict was also  
24 a procedural denial of justice, and that is because  
25 verdict was rendered not only against the defendant,

14:37  
And

on

if

was

heard,

civil

juridical

to

1 Mr Cornegruta, but also against the non-party, KPM.  
2 that point is simply devastating to Kazakhstan's case  
3 liability.

4 In Kazakhstan, a company cannot be charged with  
5 a crime, period. If a company is implicated, that is  
6 there is a civil claim against it, it must be brought  
7 into the suit as a civil defendant. No civil claim  
8 ever brought against KPM. Therefore, KPM did not  
9 participate in the court proceeding. KPM was not  
10 and KPM was not represented by counsel, because no  
11 claim was brought against it.

12 Nevertheless, when the verdict is rendered, the  
13 verdict is rendered not only against the party to the  
14 case, Mr Cornegruta, but also against the non-party,  
15 KPM. And the denial of KPM's right to be heard and  
16 represented by counsel, in a case that resulted in  
17 a fatal \$145 million penalty against the company, is  
18 a denial of justice under any standard. It doesn't  
19 matter whether the tribunal using the ELSI standard or  
20 something less; that is a denial of justice that  
21 shocks -- or at least surprises -- a sense of  
22 propriety.

23 Finally, let me say that, even if Kazakhstan were  
24 prevail on every other point related to the main  
25 pipeline issue, and to KPM and the trial; even if the



14:38  
wasn't

substantive

not

would

just,

KPM

over

in

concluded

in

the

1 Tribunal were to somehow find that the allegation  
2 rigged; and were also to find that, contrary to the  
3 evidence of all the experts, except for  
4 Mr Baymaganbetov, that it was a main pipeline; if they  
5 were to find that the court did not commit a  
6 denial of justice; if it were to find the court did  
7 commit a procedural denial of justice, Kazakhstan  
8 still lose on this point of liability, because the  
9 Tribunal would still need to conclude that it was  
10 that it was fair and equitable for Kazakhstan to hit  
11 with a \$145 million penalty over a failure to procure  
12 an \$80 million pipeline licence. The Tribunal would have  
13 to find that it was fair and equitable to ruin KPM  
14 the most minor administrative violation imaginable,  
15 an \$80 million licence, and one that did not harm Kazakhstan  
16 any way.

17 And that is simply not the proportionality that  
18 international law requires, as, for instance,  
19 by the recent case of Occidental v Ecuador, which is  
20 the record at R-355.

21 I would like to shift gears now and very briefly  
22 talk about TNG. Two issues I would like to cover with  
23 TNG: first, the contract 302 extension; and second,  
24 state's assertion of a preemptive right over TNG, and  
25 its defamation of Claimants in December 2008.

14:40

1           The Claimants' position with regard to the  
2 contract 302 extension is simple. Kazakhstan strung  
3 Claimants along on the issue, from October 14th 2008  
4 until April 2nd 2009. Then on April 2nd 2009,  
5 Kazakhstan affirmatively and unequivocally agreed to  
6 extend contract 302 until March 30th 2011, and to  
7 execute the necessary amendment by July 2nd 2009.  
8 Kazakhstan then reneged on that agreement and did not  
9 follow through on the formality of executing the  
10 amendment.

of  
11           The parties have submitted competing translations  
12 the MEMR April 2nd letter, but it doesn't matter, it's  
13 all beside the point, because even Respondent's  
14 translation of that letter, which is R-163,  
demonstrates  
15 a commitment. It says the MEMR:

16           "... has resolved to permit extension of the  
17 exploration period by two years until 30/3/11,  
18 contract 302 to be amended accordingly by  
19 2nd July 2009."

20           Claimants have demonstrated that that constitutes  
21 a commitment, an obligation under Kazakh law. But  
even  
22 if that were not the case, it is certainly a  
commitment  
23 for the purposes of the ECT's umbrella clause, and it  
24 certainly gave rise to a legitimate expectation for  
25 purposes of the ECT's fair and equitable treatment

14:41

1 provision.

on

2 Kazakhstan's subsequent failure to carry through

note

3 that commitment, and to amend the contract, was also

4 materially inconsistent conduct that violates the fair

5 and equitable treatment standard. And I would just

2009

6 that all three of the sophisticated independent firms

7 that performed due diligence for KazMunaiGas in mid

8 all determined that Kazakhstan had agreed to extend

9 contract 302 in April 2009. RBS states:

10 "The Tabyl licence expires on 30th March 2011."

11 That's behind tab 3 in your binders. PwC states:

MEMR

12 "TNG has already received an approval from the

2011."

13 to extend the exploration period until 30th March

14 That's behind tab 4.

15 And Squire Sanders stated:

16 "The expected expiry date of contract 302 is

17 30th March 2011."

18 That is at page 161 of the document behind tab 5.

is

19 So here again, Kazakhstan's position in this case

20 the lone outlier. Just as with the main pipeline

21 determination, where everyone except for

22 Mr Baymaganbetov and the judge considered it was not

in this

23 a main pipeline, just like Deloitte GmbH's valuation

24 case, which is the lone outlier compared to all the

here

25 other experts and contemporaneous indicia of value,

14:43

1 again, on the subject of the contract 302 extension,  
2 Kazakhstan's position in this case is again the odd  
3 duck, swimming alone on the wrong side of the pond.  
4 Either everyone else got it wrong, and Kazakhstan's  
5 position is correct, or Kazakhstan's position simply  
6 does not hold water.

7 Let me turn now to the final act I would like to  
8 discuss and remind the Tribunal of, and that's the  
9 events of December 18th 2008. That's one of the most  
10 important dates in this case. To set the stage,  
11 recall that on December 15th, the financial police had  
12 opened a criminal investigation against KPM. But on  
13 December 18th, the MEMR leaked to the Interfax news  
14 agency a claim that the state had a preemptive right  
15 over the ownership of TNG. The MEMR's leak also  
16 included scurrilous accusations of fraud and forgery  
17 that were totally unfounded and never even mentioned  
18 again, much less pursued or proven.

of  
ask  
is

19 Now, I would like to just show the Tribunal some  
20 the impact of these events of December 8th 2008, and  
21 the Tribunal first of all to turn to tab 17, which is  
22 Exhibit C-625. This is the Credit Suisse email that  
23 sent to Mr Lungu, executive vice-president of the  
24 Claimants, on the very same day that the Interfax leak  
25 is issued. We looked at this before in a previous

14:44 1 hearing, but this shows that Credit Suisse, who was in  
2 negotiations with Claimants at the time to extend  
3 a \$150 million to \$175 million line of credit,  
4 immediately picks up on this, the very same day that  
5 it's sent out on the wire, sends it to Mr Lungu; and  
of  
6 course, as a result of this, Credit Suisse backs out  
of  
7 the deal.

8 That ends up having significant consequences for  
9 Claimants later, when they are six months later forced  
10 to enter into the Laren loan transaction for emergency  
11 financing because the Credit Suisse deal did not go  
12 through in December or January as intended.

13 But secondly, I would like to then take the  
Tribunal  
14 through some of the other evidence of what immediately  
15 happened after this leak on December 18th. If the  
16 Tribunal will turn behind tab 18, Exhibit C-590, this  
is  
17 the Fitch Ratings Watch Negative report that is put  
out,  
18 in early January, again on the basis of the Interfax  
19 news leak. And we have put this before the Tribunal  
20 before, to again show the real world impact of the  
21 state's conduct. Note here that the state is  
referring  
22 not only to the preemptive rights claim of  
23 December 18th, but it's also referring to the criminal  
24 investigation against KPM.

25 Then finally, I would just ask the Tribunal to  
turn

14:46

1 behind tab 19 in their binders. This is a series of  
2 Moody's reports, that really provides a blow-by-blow  
3 account of the real world consequences of the  
4 government's mistreatment of both KPM and TNG from the  
5 perspective of the international markets.

the

6 On January 15th 2009, that's the first page behind  
7 tab 19, Moody's issues a review for the downgrade of

operations

8 Tristan debt rating. Keep in mind that Tristan is  
9 a special purpose vehicle; its own assets and

each

10 are those of KPM and TNG. So what is discussed in

assets

11 of these Moody's ratings actions are in fact the

12 and operations of KPM and TNG. And just like Fitch,

13 Moody's relies on both the criminal investigation

14 against KPM as well as the Interfax news leak against

15 TNG of December 18th. It relies on both things, just

16 like Fitch, to begin the process of downgrading the

17 companies.

follow

18 If the Tribunal will just on its own flip through  
19 the pages here, behind tab 19, it will be able to

KPM

20 the impact of the Government's actions against both

21 and TNG.

leave

22 One thing I would like to note in these Moody's  
23 reports is that in the report of March 5th. I'll

24 this to the Tribunal to read on its own time. It's

25 about three pages in here. There's a third thing that

14:48

1 happens that's noted by Moody's, and that is the  
2 criminal investigation that's launched against TNG.  
3 It's the exact same parallel criminal charge that was  
4 launched against KPM; it was launched against TNG as  
5 well. It never ended up in a court case, but on the  
6 basis of that criminal charge, on April 30th 2009, the  
7 financial police ordered the sequestration of 100% of  
8 KPM's and TNG's shares, as well as their subsoil use  
9 contracts, and all of their key property, including  
10 their pipelines.

496

the

sequestered

found

TNG

11 Those are all tab 20 in your binders. I'll leave  
12 them to the Tribunal to review on their own time, but  
13 they're Exhibits C-46, C-47, C-490, C-491, C-492, C-  
14 and C-497. Essentially, on April 30th 2009, on the  
15 basis of the criminal investigation of KPM, as well as  
16 on the basis of the same main pipeline criminal charge  
17 against TNG, the financial police sequesters all of  
18 shares, all of the assets, of both TNG and KPM, and  
19 expressly orders Claimants to refrain from any actions  
20 related to the alienation or transfer of the  
21 property. Therefore, even if Claimants could have  
22 a buyer that was not dissuaded by the Government's  
23 actions of December 2008, they were legally prevented  
24 from disposing of their shares or assets in KPM and  
25 as of the spring of 2009, as a direct result of the

14:49 1 sequestration orders.  
2 The Claimants submit that given this evidence,  
given 3 all the other evidence in the case that they have put  
in 4 terms of causation, that the causation case has been  
5 demonstrated in spades; and that even though the  
6 injuries to Claimants and their investments were  
7 numerous, there is no doubt that the state in fact  
8 caused the injuries of which Claimants have  
complained.

9 I'll now turn it over to my partner, Mr Moore, to  
10 continue.

11 Closing statement by MR MOHR

12 MR MOHR: Thank you. Mr Chairman, members of the  
Tribunal,

13 I want to spend a few minutes discussing one of the  
more 14 cynical of Kazakhstan's theories in this case, and  
15 that's its argument that its actions caused no injury  
to 16 the Claimants because the Claimants actually abandoned  
17 their investments.

18 Kazakhstan's theory is that the companies were so  
19 over-leveraged that when the financial crisis and  
20 worldwide recession occurred, the Claimants realised  
21 that their companies were doomed to fail and simply  
22 abandoned them. This argument is completely false.

23 To start with, KPM and TNG were not over-  
leveraged.

24 Kazakhstan bases this argument solely on a purported  
25 financial analysis by Professor Olcott. But she  
doesn't



14:50  
and

supported.

debt

of

time.

in

of

more

1 have the qualifications to do that kind of analysis;  
2 in fact, she actually doesn't do any analysis at all,  
3 she merely presents conclusions that are not

4 In fact, the original structure of the Tristan  
5 totalled \$420 million of principal face value on the  
6 notes, with semi-annual interest payments of just over  
7 \$22 million.

8 Now, in the abstract, those numbers don't tell us  
9 anything. But there are several metrics that are  
10 telling on this issue. And one of them, probably the  
11 most important one, is working capital, which is the  
12 current assets like cash and receivables that the  
13 companies had, minus their current liabilities, their  
14 trade payables and so forth.

15 This is a chart that shows the networking capital  
16 the two companies at several important periods of  
17 And notably these numbers come from the audited  
18 financial statements, which were audited by Deloitte  
19 2005 and 2006, and by KPMG in the years after that.

20 What we see here is: at the beginning of 2005, the  
21 two companies had over \$66 million of net working  
22 capital. But the companies at that time were just  
23 beginning to swing into full production. By the end  
24 the third quarter of 2006, before they took out the  
25 Tristan debt, that working capital had increased to

14:52 1 than \$158 million. That's a cushion of almost four  
2 times the annual interest due on the Tristan notes  
3 before they took out the debt.

4 By the end of 2006, that number had increased to  
5 \$200 million. And then at the end of 2007, it was  
6 \$222 million, which is more than five times the annual  
7 interest on the notes.

8 Now, another important metric is retained  
earnings.  
9 In the interests of time, I'm going to move past this  
10 one. I would just note that the slide that I have  
here  
11 showing retained earnings demonstrates that the  
12 company's balance sheet was progressively improving,  
and  
13 significantly improved right up to September 30th  
2008,  
14 with more than \$350 million of retained earnings in  
the  
15 balance sheet. These were profitable businesses.

16 Despite all of this, Kazakhstan still argues that  
17 the companies were in severe financial difficulty  
before  
18 October 14th 2008. And it bases this on two  
arguments.  
19 First, Kazakhstan notes that the companies had only  
20 \$9.7 million in cash and cash equivalents on hand at  
the  
21 end of September 2008. What Kazakhstan ignores is  
that  
22 the companies had \$22 million in inventory, products  
in  
23 the pipelines and storage, and \$296 million in  
accounts  
24 receivable at the end of September 2008. As I showed  
25 before, that was \$222 million of net working capital.



14:54  
exceeded

1 That is the amount by which its current assets  
2 its current liabilities.

that

3 Now, the fact that the companies' working capital  
4 was mostly in receivables rather than cash did create  
5 the possibility for cashflow problems in the event

had

6 customers began to pay late. But the companies also

It

7 what amounted to a revolving credit line with Vitol.

8 had the right to receive up to \$122 million of  
9 prepayments from Vitol secured against the oil that it  
10 was to deliver. And that credit line allowed KPM and  
11 TNG to work through any temporary cashflow issues.

value

12 Kazakhstan next bases its argument that the  
13 companies were in financial distress on the fact that  
14 the Tristan notes were trading around 65% of face  
15 on October 14th 2008. They argue that this shows that  
16 the markets expected the companies to default on that  
17 debt.

Tristan

18 But as Howard Rosen explained at the quantum  
19 hearing, that's actually not the case at all. Here is  
20 a chart showing the trading price of the Tristan notes  
21 throughout 2008. What you see here is that the  
22 debt traded very close to 100% of its face value  
23 throughout 2008, until Lehman Brothers filed for  
24 bankruptcy on September 15th 2008. The trading day  
25 immediately before that, the notes were trading at

\$95,

14:55  
declined

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longer

they

risk

in

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down

time

came

to

1 against a \$100 face value. The next day, they  
2 to \$84.50 and then kept going down.  
3 As Mr Rosen explained, that is not a reflection of  
4 the market's view of whether these notes would be  
5 in 2012, because the markets at that time were no  
6 trading on fundamentals. Investors sold securities  
7 across the board for all kinds of reasons: because  
8 needed to raise cash, because they wanted to reduce  
9 on their portfolios, or because they simply panicked  
10 the financial crisis. And because there were not a  
11 of buyers, prices for all kinds of securities went  
12 in that time period across the board.  
13 This is a chart that compares the decline in the  
14 Tristan notes in that time period -- that's the green  
15 line -- against two indices of oil and gas companies,  
16 the red and blue lines. And what you see here clearly  
17 is a similar pattern in declines in prices in that  
18 period.  
19 Now, to be sure, the decline in oil prices that  
20 with the worldwide recession did make it challenging  
21 run oil and gas companies in this time period. But  
22 again, Kazakhstan grossly exaggerates how bad that got  
23 and how long it lasted. Here is a chart showing the  
24 price of Urals crude oil from 2006 through 2012. This  
25 shows that oil prices were in the \$50 to \$80 range in

14:57  
when

attractive

back

difficult

million

1 2006 and 2007, when the Tristan debt was issued and  
2 the markets saw these companies as stable and  
3 enough to lend them \$420 million.

4 Prices shot up rapidly, starting in late 2007,  
5 peaked around \$140 in June 2008, and then crashed back  
6 just as fast, bottoming out in the 30s at the end of  
7 2008.

8 But that trough didn't last long. Prices were  
9 to \$50 within just a few months. And by the fourth  
10 quarter of 2009, prices were consistently back in that  
11 \$70 to \$80 range where they had been when the Tristan  
12 debt was taken out in the first place. So the  
13 price environment was actually quite short.

14 Also, oil and condensate is only one part of the  
15 companies' business. The companies also earned  
16 a significant part of their revenue from gas, and the  
17 average selling price of TNG's gas only declined 14%  
18 from 2008 to 2009.

19 The decline in revenues from gas sales that TNG  
20 experienced was largely caused by its decision to stop  
21 selling gas to Kemikal. TNG had sold almost \$78  
22 worth of gas to Kemikal in 2008, but Kemikal was  
23 controlled by the Kazakhstan Government, and it  
24 mysteriously declined to post bank guarantees right at  
25 the same time that Kazakhstan began its harassment

14:58

1 campaign against KPM and TNG.

the

2 I submit to you that halting sales to  
3 a state-controlled company on credit at a time when

seize

4 Government has indicated its intent to harass and

the

5 your companies was a reasonable decision to mitigate

6 harm from Kazakhstan's actions.

this

7 But regardless of whether that is attributable to  
8 Kazakhstan for purposes of state responsibility in

those

9 case -- and I submit that it is, but regardless --

in

10 lost sales did have a significant impact on liquidity

temporary.

11 2009. But the important fact is that it was

in

12 The seasonal demand for gas was guaranteed to pick up

13 the fall. And even Professor Olcott admits that

14 domestic demand for gas in Kazakhstan was rising,

export.

15 regardless of whatever possibilities existed for

broken

16 So what KPM and TNG faced in 2009 was a liquidity  
17 shortage due to temporary issues. They were not

18 companies. They still had hundreds of millions of

19 dollars in receivables to collect. They still had the

one

20 ability to produce large volumes of oil and gas. No

didn't.

21 expected oil prices to stay in the 30s, and they

work

22 There are a lot of things management can do to

23 through a temporary cash shortfall before they would

24 ever consider abandoning profitable investments,

offers

25 especially investments that had received purchase





14:59 1 up to \$1.5 billion just months before. One option is  
to 2 get more working capital. And that is exactly why the  
loan 3 Claimants revisited the idea of a short-term bridge  
4 from Credit Suisse in December 2008.

5 This Tribunal has heard much about that loan, and  
6 the fact that Credit Suisse backed out of it after the  
18th 7 MEMR leaked to the Interfax news agency on December  
that 8 2008. The only thing more I will say about that is  
9 the fact that Credit Suisse was willing to loan over  
10 \$150 million to these companies during the financial  
11 crisis shows that these companies were still  
12 fundamentally sound businesses. Credit Suisse  
13 understood the difference between a temporary  
liquidity 14 problem and fundamentally broken companies.

15 Also, the fact that the Claimants sought that  
bridge 16 loan demonstrates clearly that they had no intent to  
17 abandon their investments. They were working hard to  
18 protect them through a difficult environment.

19 When the Claimants didn't get the Credit Suisse  
20 financing as a result of Kazakhstan's actions, another  
21 option would have been for Claimants themselves to  
22 inject more equity into the companies. Mr Stati  
however 23 thought the situation with the Government was just too  
24 unstable at that time to risk increasing his  
investment. 25 And he wasn't alone. That's exactly what Credit  
Suisse

15:01  
the

2009.

temporary

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at

bump.

at

actions

and

and

1 concluded, and it's exactly what Fitch and Moody's,  
2 ratings agencies, warned the marketplace in early

3 So the final option that the Claimants had at that  
4 point in time was simply to manage through the  
5 liquidity shortage as best they could. And that's  
6 exactly what they did. The crisis came to a head in  
7 June 2009, when Tristan had to make semi-annual coupon  
8 payments on the notes of about \$22 million, and KPM  
9 TNG had to make a payment of excess profits taxes of  
10 around \$25 million. That was a big cashflow bump all  
11 one time for the companies to absorb.

12 Now, as I mentioned, under normal conditions, the  
13 companies could have used the prepayment facilities  
14 under the Vitol COMSA agreements to ride out that

15 But as facts would have it, Vitol reduced that credit  
16 line from \$120 million to \$40 million in June of 2009.  
17 That's reflected in the 2009 annual report of Tristan

18 Exhibit R-37.6. And as both Mr Stati and Mr Lungu  
19 testified, Vitol reduced that credit line because it,  
20 like Credit Suisse and like the ratings agencies,  
21 concluded that they were very alarmed about the

22 that Kazakhstan was taking against these companies,  
23 they wanted to reduce their risk as well.

24 So all of that put KPM and TNG in the lurch in  
25 June 2009. To avoid defaulting on the Tristan debt

15:03           1           to avoid missing a tax payment that would have given  
                  2           Kazakhstan its first and only legitimate tax claim  
                  3           against the companies, the Claimants had to turn to  
the  
                  4           Laren lenders, who are essentially loan sharks. And  
                  5           that transaction puts the final lie to any notion that  
                  6           the Claimants abandoned their investments in  
Kazakhstan.

                  7           Now, the transaction can seem fairly complicated,  
                  8           and I have put up a chart. You probably can't read  
it,  
                  9           so I'm going to move through it fairly quickly. But  
the  
                 10          gist of it is that the Laren lenders lent \$60 million  
to  
                 11          an SPV called "Laren". \$4.5 million of that money  
then  
                 12          went to pay arrangers' fees. \$22.5 million went to  
                 13          Montvale, which was an affiliate of the Claimants;  
that  
                 14          paid the money to KPM and TNG, who used it to pay the  
                 15          taxes that were due. And the other \$30 million went  
to  
                 16          purchase \$111 million of notes from Tristan. Tristan  
that  
                 17          used that money to pay the interest that was due at  
                 18          time in June.

                 19          And then under the terms of the transaction, Laren  
                 20          had to turn over the notes to the lenders, who are  
hedge  
                 21          funds, that have nothing to do with the Claimants.  
                 22          Under the terms of that transaction, if the deal was  
                 23          repaid within a fairly short period of time, about six  
                 24          weeks, Laren would have been able to recoup most of  
                 25          those notes. But if it wasn't repaid in a short time,

15:04           1           the Laren lenders kept them.  And that's exactly what  
                  2           happened.

drove           3           So the bottom line here is that the Claimants  
                  4           the best bargain they could to keep these companies  
fact            5           afloat, from loan sharks who took advantage of the  
                  6           that no one would lend to the Claimants on commercial  
Tristan,       7           terms after the ratings agencies had downgraded  
preemptive     8           based on the criminal investigations and the  
                  9           rights issues in January, February and March of 2009.

I'll            10           That is the exact opposite of abandonment, and  
Terra          11           tell you why: because Mr Stati personally, Ascom,  
against        12           Raf, as well as KPM and TNG, all gave guarantees  
The            13           all of their assets in support of that transaction.  
                  14           Claimants literally put all of their assets around the  
                  15           world at risk to save their investments in Kazakhstan.

of              16           It was a big bet, it worked, oil prices went up,  
                  17           local gas demand came back, and by the fourth quarter  
Tristan        18           2009 that liquidity crisis was basically over.  
                  19           paid the coupon payment on the Tristan notes in  
million         20           December 2009.  Tristan paid interest due and \$8  
that            21           in principle on the Laren debt in 2009.  But all of  
                  22           came at a high price: the issuance of \$111 million in  
                  23           new Tristan notes, and a promissory note that Ascom  
                  24           eventually had to pay off in 2012 out of the proceeds  
in              25           from the sale of a portion of its separate investment



15:06

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Iraq.  
All of that is in the record at Exhibit C-745.  
I submit to you that all of that shows that the Claimants went to great lengths to protect and sustain their investments in Kazakhstan.  
Still, Kazakhstan persists in its argument that Claimants abandoned their investments, and they point to the fact that KPM paid over \$70 million in dividends to Ascom in early 2010. According to Kazakhstan, this shows -- and I'm quoting the Respondent on page 20 of its post-hearing submission -- that:  
"The Claimants had to realise that KPM and TNG had failed because of a lack of funding, and were to ultimately face contract termination due to non-performance. Claimants simply decided to get as much money out of the country as possible and to blame the Republic for the remaining losses."  
Well, first of all, the companies hadn't failed, due to a lack of funding or otherwise. They had a cashflow problem in the summer of 2009 which they struggled through, and emerged on the other side.  
But moreover, the argument that Claimants ever lawfully expected that their subsoil contracts would be terminated is preposterous. And I submit to you that you need to look no further than the reports that the

15:07  
are  
  
interests  
  
on  
  
to  
  
money:  
  
Laren  
  
receivables

1 MEMR issued on its January 2010 inspections. Those  
2 at Exhibits C-385 and C-386.  
3 Mr Fleuriet talked about those, and in the  
4 of time I will just say those were unqualified  
5 green-light clean bills of health, no matter how  
6 Kazakhstan tries to spin those reports. And I think  
7 that you can read those for yourself, the language is  
8 the screen, and you can see that for yourselves.  
9 KPM declared those dividends in early 2010 because  
10 it was responding -- and I emphasise "responding" --  
11 the campaign of state harassment that had started in  
12 October 2008 and was approaching culmination.  
13 After the \$145 million criminal penalty was issued  
14 against KPM in September 2008, the Claimants clearly  
15 knew that any money that flowed into the bank accounts  
16 of KPM was subject to seizure. They needed that  
17 to pay interest on the Tristan loans, to repay the  
18 lenders, to keep paying KPM's employees; which, the  
19 evidence shows, they did, through using TNG's bank  
20 account.  
21 That's why the Claimants assigned KPM's  
22 to Ascom, to keep that money out of the hands of the  
23 Kazakhstan theft machine.  
24 What's more, those dividends mitigated the harm  
25 caused by Kazakhstan's illegal actions in this case.

15:09 1 And this is an important point, and one that I want to  
is 2 clear up. The Claimants' damages claim in this case  
Tolkyn 3 based solely on the DCF value of the Borankol and  
the 4 assets as of October 14th 2008. That's the value of  
not 5 future profits that those assets could have earned,  
6 the value of any of the profits that they had already  
7 earned and that were sitting in accounts receivable or  
8 the bank accounts of KPM and TNG as of that date. We  
9 have not included any claim of damages for accounts  
10 receivable or bank accounts of KPM and TNG, precisely  
11 because the Claimants ended up recovering a large  
12 portion of those receivables. So there is no  
13 double-counting in this case, by virtue of the fact  
that 14 KPM declared those dividends of accounts receivable to  
15 Ascom.

16 In fact, if KPM had not declared those dividends,  
17 and instead had collected cash that were sitting  
frozen 18 in a bank account in Kazakhstan today, the Claimants  
19 would have an additional damages claim that it has not  
20 asserted.

21 Finally, the last gasp in Respondent's abandonment  
22 argument is that Claimants physically abandoned the  
23 investments. They rely on Minister Mynbaev's  
testimony 24 that there were no senior managers there when he  
arrived 25 to seize the companies in July 2010. I submit to you



15:10 1 that that is one of the most hypocritical arguments  
that 2 I have ever heard. The senior managers fled the  
country 3 in 2009 out of fear for their safety, after they saw  
4 their friend, Mr Cornegruta, put in jail -- in jail --  
5 because of the bogus pipeline criminal prosecution.  
6 Even then, the Claimants kept management in the  
until 7 country, including Mr Calancea and Mr Condorachi,  
8 they too fled when the financial police returned in  
9 June 2010. And even then, Mr Romanosov stayed to  
10 supervise operations until he safely turned over the  
11 fields to Kazakhstan on July 22nd.  
12 The fact that Kazakhstan made it unsafe for  
13 Claimants' senior management to stay in the country is  
14 not evidence that Claimants abandoned their  
investments. 15 It is evidence of what is wrong with Kazakhstan's  
16 July 2010 valuation date, and it is evidence of  
17 Kazakhstan's liability in this case.  
18 And with that segue, I will hand it over to  
19 Mr Smith, who will address quantum.  
20 Closing statement by MR SMITH  
21 MR SMITH: Thank you, Mr Mohr. I would like to address  
22 briefly, in the time that is left today, four issues  
as 23 they relate to quantum. One is the proper valuation  
24 date. The second is why the Claimants are entitled to  
25 an award of enterprise value and not asset value. The

5:11 1 third is the valuations as they relate to Borankol,  
valuation 2 Tolkyn and the LPG facility. And lastly, the  
3 as it relates to contract 302.  
4 The Tribunal knows it is presented with two  
possible 5 and very starkly different valuation dates: one by the  
6 Claimants of October 14th 2008, when President  
7 Nazarbayev issued his instructions to his financial  
8 police to investigate my clients' Kazakh businesses,  
9 which then prompted a series of actions that promptly  
10 led to the impairment of Claimants' investments.  
11 The other is offered by Respondent as July 21,  
2010, 12 when Kazakhstan took the last action in its campaign  
to 13 divest Claimants of their investments with the seizure  
14 of both their assets and the cancellation of their  
15 subsoil use contracts.  
16 As a starting point, the parties agree that the  
quote 17 Tribunal should provide compensation -- and I will  
18 from the MTD Equity case -- that should:  
19 "... wipe out all of the consequences of the  
illegal 20 act and re-establish the situation which would, in all  
21 probability, have existed if [the treaty-breaching  
22 conduct] had not been committed".  
23 Therefore the parties are in agreement that the  
24 applicable standard under international law is full  
25 compensation to the investor for damages caused to its

15:13  
caused

with

valuation

date,

hearing

demonstrated

1 investment, regardless of whether that damage is  
2 by expropriation or other treaty-breaching conduct.

3 In order to determine the proper valuation date  
4 a goal of fully compensating the investor, the  
5 date should be set at a time that was, as noted by the  
6 Iran-US Claims Tribunal in the Sedco v Iran case, that  
7 "must discount the effect of expropriatory acts". In  
8 determining the appropriate valuation date, the Sedco  
9 tribunal noted that the most equitable date to set for  
10 valuation is the date when the host government "became  
11 the chief architect of the investors' fortunes".

12 The Iran-US Claims Tribunal noted in the Tippetts,  
13 Abbett case that in setting a valuation date, the  
14 tribunal should focus on the degree of interference by  
15 the host state with the investor's "fundamental rights  
16 of ownership"; in other words that the "deprivation is  
17 not merely ephemeral".

18 In seeking to justify its July 2010 valuation  
19 Respondent states at paragraph 1115 of its post-  
20 submission that:

21 "There is no evidence in this arbitration that any  
22 of the state's actions prior to the termination [in  
23 July 2010] caused Claimants to be deprived of these  
24 rights".

25 Truly a remarkable statement. As amply

15:14  
truth.

1 by Mr Fleuriet, nothing could be further from the

2 We would ask the Tribunal to focus on three key  
3 events that all stem directly from President  
4 Nazarbayev's October 2008 directive, that constituted  
5 a significant deprivation of Claimants' fundamental  
6 rights of ownership.

7 1. The clouding of Terra Raf's title to TNG in  
8 December 2008, including a public accusation that  
9 Mr Stati had engaged in fraud and forgery in  
connection  
10 with the share transfer.

11 2. The initiation of the criminal investigation  
of  
12 both TNG and KPM in December 2008, which presented the  
13 prospect of death penalty sanctions for both  
companies.

14 3. The attachment of the equity by the state of  
15 both TNG and KPM in April 2009, which destroyed the  
16 alienability of the Claimants' investments.

17 As Mr Fleuriet also noted, far from the story that  
18 Respondent would like you to believe, there is  
19 indisputable objective evidence, as early as  
20 January 2009, of the impairment of Claimants'  
21 investments in the eyes of public financial markets.

22 We can look at slide 29, at the Moody's 15th  
January  
23 2009 alert, which Mr Fleuriet went through. But I  
will  
24 note that if you look at that alert, it indicates that  
25 both the criminal investigation relating to the main

15:15 1 pipeline issue, as well as the cancellation of the  
2 preemptive rights waiver, are, in the views of  
Moody's, 3 alarming. And I will also quote, they have  
4 a potentially "profound negative impact on the  
company's 5 ratings."

6 It then should come as no surprise that, in light  
of 7 the state's actions taken directly in response again  
to 8 President Nazarbayev's October 2008 order, Credit  
Suisse 9 pulled out of financing in December 2008, directly in  
10 response to the public dissemination of information  
11 regarding these two actions.

12 Any question of the deprivation of Claimants'  
13 fundamental rights of ownership is also put to rest by  
14 the legal due diligence report of KMG's outside  
counsel 15 Squire Sanders. It is simply no wonder that the  
16 Respondents ignored the Tribunal's direction to  
produce 17 this diligence report until after the conclusion of  
the 18 liability and quantum hearings, and after the  
19 Respondent's witnesses and their experts were  
insulated 20 from cross-examination on those reports.

21 If you read the Squire Sanders report, it gives  
you 22 a window into how a prospective buyer -- and in this  
23 instance, a state-owned entity -- viewed the events of  
24 late 2008 and early 2009, as they affected the  
25 Claimants' fundamental rights of ownership, ie the

15:16 1 ability to use, control and dispose of their  
investments 2 without governmental interference.

3 At slide 30 you will see that in Squire Sanders'  
4 diligence reports, it notes that before KMG can  
acquire 5 TNG, the Government should enter into:

6 "... waiver of preemptive rights in respect of the  
7 closing 2003 transfer [as] a condition precedent to the  
8 of the transaction."  
9 It further notes that in advising its client,  
Squire 10 Sanders notes there is:

11 "... a significant risk related to transfer by  
Gheso 12 ... to Terra Raf ..."

13 In other words, unless the government retracted  
its 14 improper assertion of preemptive rights as to the 2003  
15 share transfer, Terra Raf could not sell its interest  
in 16 TNG.

17 The report also notes -- and this is at slide 31 -  
- 18 that before any purchase transaction could take place,  
19 there should be a:

20 "... termination of the criminal case against  
KPM's 21 [and TNG's] general director and a withdrawal of all  
22 charges as a condition to entry into the transaction".

23 The report further notes that there is exposure to  
24 KPM and TNG in connection with those proceedings of in  
25 excess of US\$1 billion. In other words, the existence

15:18

1 of the criminal proceedings initiated in December 2008  
2 against KPM and TNG is an absolute impediment to the  
3 sale of my clients' interests in their companies.

4 Were the clouding of the title of TNG in the  
5 criminal proceedings not enough to scare off potential  
6 purchasers, the legal diligence report further notes  
7 that the government's -- and I am quoting again at  
8 slide 32:

9 "The attachment of 100% of the participatory  
10 interest in KPM and TNG [in April 2009] ...  
effectively  
11 prevents the consummation of the transaction."

12 Noting that Ascom and Terra Raf, and again I am  
13 quoting:

14 "... will not be entitled to sell their  
15 participatory interest in KPM and TNG before the  
16 attachment is lifted".

17 The report notes that:

18 "Revocation of the attachment ... should be  
19 a condition to the transaction."

20 In fact, it even goes further at slide 32, noting:

21 "In effect, [KPM and TNG are] prevented from  
22 conducting [their] operations and generating revenue  
23 which will likely put [them] in default under the  
24 [Tristan] indenture and [their] other obligations to  
25 third parties."

15:19 1 So the notion put forward by the Respondent that  
2 there is no evidence in this arbitration of  
3 a fundamental deprivation of Claimant' rights until  
4 July 2010 is sheer nonsense.

KMG 5 It also bears noting that, while the state-owned  
6 may have been in a position to insist that the  
7 government "waive its retroactive assertion of  
8 preemptive rights, terminate criminal proceedings,  
lift 9 attachments", I can assure you that no other third-  
party 10 buyer of those assets would be in a position or have  
any 11 confidence that the government would accede to its  
12 requests as a condition of purchase.

13 So the Tribunal's task is then to determine, as  
14 noted by the Sedco tribunal: when did the Respondent  
15 become the "chief architect of the Claimants'  
fortunes"  
16 in connection with their investments? That clearly  
took  
17 place in October 2008 when President Nazarbayev gave  
his  
18 direction to his financial police to commence the  
19 investigation onslaught that resulted in a period of  
20 less than two months, and a public challenge to TNG's  
21 ownership rights, as well as a criminal investigation  
22 that put the management and finances of both KPM and  
TNG  
23 in significant peril.

24 In addition to the testimony that you heard from  
the  
25 Claimants on the impact of the Government's actions,  
you



15:20  
and

1 need only look to the record of the rating services  
2 how the public markets reacted to that, as well as the  
3 independent counsel that KMG, the state-owned company,  
4 was given by Squire Sanders when evaluating the  
5 state-owned company's consideration of a purchase of  
6 those entities.

2008

7 Given that the Government's actions in December  
8 unquestionably have their origin -- and this has been  
9 admitted by the Respondent -- in connection with the  
10 investigation directive of October 2008, we believe

that

11 the standard set for setting a valuation date by  
12 Professors Reisman and Sloane is very instructive.

This

13 is at slide 33:

14 "Even though a state's responsibility to pay  
15 compensation for expropriation does not ... depend on  
16 proof that the expropriation was intentional, the  
17 manifestation of that intent at some level of the  
18 state's government generally furnishes a tribunal with  
19 a useful demarcation. It enables a decision-maker not  
20 only to confirm that an expropriation has taken place  
21 but to set, based on relatively objective evidence,

the

22 moment of valuation -- typically, a point in time

before

23 the host state's conduct occasioned the depreciation

in

24 the value of the foreign investment."

25 We believe that the standard as enunciated by

15:21  
proper

1 Reisman and Sloane is directly applicable to the  
2 valuation date in this case of October 2008.

starting

3 I will turn next to enterprise value. As a  
4 point, the parties are in agreement, and it is  
5 uncontroversial under international law, that when  
6 a claimant retains responsibility for liabilities in  
7 an expropriated company, compensation should not be  
8 reduced by those liabilities.

believe

9 That fundamental proposition of international law  
10 was admitted by the Respondent in its rejoinder on  
11 quantum at paragraph 383. It's slide 34, and I  
12 it is worth noting. It states -- and this is the  
13 Respondent's words:

the

14 "To look at this from a different perspective, by  
15 not deducting the debt under the Tristan notes from  
16 asset values calculated by their expert ..."

17 THE CHAIRMAN: I am sorry, you are getting really too fast  
18 for the interpreters.

19 MR SMITH: I apologise. Again, we are reading from the  
20 Respondent's rejoinder, where they state:

expert,

21 "... by not deducting the debt under the Tristan  
22 notes from the asset values calculated by their

the

23 Claimants are essentially claiming damages that only

24 noteholders could allege to have suffered. Such

25 approach would be correct if Claimants were themselves

15:22 1 liable to the noteholders for such alleged damage."  
2 That is the standard created by the Respondent.  
3 That is the standard also enunciated in Chorzów  
Factory,  
4 as well as in the Enron v Argentina case, and  
Occidental  
5 Petroleum. And by admitting what we believe is  
6 an uncontroversial principle of international  
investment  
7 law, really the enterprise versus equity value debate  
in  
8 this case has largely become moot, because it is now  
9 very clear that Respondent is contractually obligated  
to  
10 satisfy the Tristan note obligations from the proceeds  
11 of any award in this case.  
12 There is no dispute among the parties, at least to  
13 our knowledge, that the expectation of all parties  
14 entering into the Tristan note transaction was that  
15 those notes would be repaid from the operating  
cashflows  
16 of KPM and TNG. In fact, both KPM and TNG gave note  
17 guarantees in connection with the Tristan debt.  
18 It is also critical to note that the Claimants,  
19 Ascom and Terra Raf, as the 100% owners respectively  
of  
20 KPM and TNG, also provided important additional  
security  
21 for the notes. If you'll put up slide 35, at  
22 paragraph 6 of pledge agreements that were provided  
both  
23 by Ascom and Terra Raf, note that Ascom and Terra Raf  
24 pledged their entire equity interest in KPM and TNG as  
25 security for the Tristan notes, and also pledged "all

15:24

1 ... payment or distributions of any kind" relating to  
2 those equity interests.

in

and

by

3 There is simply no question, under a plain reading  
4 of the terms of the pledge agreements, that an award  
5 this arbitration that results in a payment to Ascom  
6 Terra Raf as Claimants for the lost value of their  
7 investments in KPM and TNG will constitute a payment  
8 the Republic of Kazakhstan relating to the Claimants'  
9 equity interests that will be subject to attachment by  
10 the noteholders.

pledge

11 There is no limitation in that language, as  
12 Kazakhstan suggests, that the pledges only apply to  
13 payments made by KPM or TNG to the pledgors. The  
14 agreements very clearly state that all payments of any  
15 kind must go to the noteholders in the event of  
16 a default. If the parties had intended to limit that  
17 obligation, they clearly could have done so within the  
18 language of the agreement. They did not do so.

has

it's

19 Another point is that the sharing agreement that  
20 been discussed has nothing whatsoever to do with  
21 creating any additional liability of the Claimants to  
22 the noteholders that did not already exist under the  
23 pledge agreements. Instead, it simply acknowledged  
24 existing liability and provided a mechanism for the  
25 payment of monies owed by the Claimants to the

15:25 1 noteholders in the event of an award in this case.  
2 It also re-ordered the respective priorities of  
interests 3 payment of those proceeds to better align the  
in 4 of the Claimants and the noteholders, but it did not  
Claimants 5 any way create or expand the liability of the  
the 6 to the noteholders that didn't otherwise exist under  
7 pledge agreements.

8 There is also simply no equitable basis for the  
9 position taken by Kazakhstan in this arbitration that  
10 the amount of the Tristan note debt should be excluded  
TNG 11 from any award. It has seized the assets of KPM and  
12 without assuming any of the corresponding liabilities  
of 13 which remain the burden of the Claimants in the event  
14 an award. Allowing Kazakhstan to pay only the equity  
15 value for the assets, without assuming any of the  
16 related liabilities, would constitute an enormous and  
17 unjustified windfall for Kazakhstan.

18 However, it would be no windfall to the Claimants,  
19 by requiring Kazakhstan to pay them for the full asset  
20 value, since the Claimants remain responsible for the  
21 debt to the noteholders, as has most recently been  
22 confirmed once again in the sharing agreement.

23 The Tribunal simply shouldn't accept an invitation  
24 by Kazakhstan to conjure theories as to how the  
25 Claimants might be able to avoid their legal

15:26 1 responsibilities to the noteholders under the pledge  
2 agreements. That is not the burden of the Claimants.  
3 The Claimants have an obligation, both contractual as  
4 well as moral, to pay those debts. It has indicated  
its  
5 intention to do that yet again in the sharing  
6 agreements. And any invitation by the state, who has  
7 taken all of the assets without assuming the  
8 liabilities, that the Claimant should bear all of that  
9 responsibility for the liabilities, and the state  
should  
10 get a windfall by only paying asset value, simply has  
no  
11 equitable basis as well as no legal basis.

12 Finally, enterprise value is also the correct  
13 measure of damages under the Energy Charter Treaty.  
We  
14 have outlined that in our briefing, and I would only  
15 note that the Tribunal should look to the Energy  
Charter  
16 Treaty [definition] of "Investment" under  
17 Article 1.6(b), which very clearly defines an  
investment  
18 to include not only shares, but also a company or  
19 business enterprise. Also it distinguishes expressly  
20 within that provision between an investment in a  
company  
21 and business enterprise on the one hand, and  
investors'  
22 ownership of shares or debt of the company on the  
other.  
23 In other words, it uses the disjunctive "or".

24 Article 13.1 of the ECT very plainly states that  
the  
25 compensation in the case of a lawful expropriation

15:27  
Investment

words,

and

for

to

the

issues

facility.

differences

1 "shall amount to the fair market value of the  
2 expropriated". And the investment expropriated here  
3 clearly was the assets of KPM and TNG. In other  
4 it was not the equity simply in the companies, it was  
5 the companies themselves.

6 This reading of the ECT is confirmed in Ripinsky  
7 Williams, in their treatise "Damages in International  
8 Investment Law", where they state, at slide 38:

9 "... if a tribunal establishes that the claimant  
10 owns or controls the local subsidiary, there is room  
11 finding that the underlying business unit (as opposed  
12 the shareholding itself) is also indirectly owned by  
13 claimant and therefore constitutes its protected  
14 investment."

15 So there's simply no question, in the view of the  
16 Claimants, that they are entitled to an award of  
17 enterprise value, both under a plain reading of the  
18 Energy Charter Treaty as well as as conceded by the  
19 Respondent, because they remain responsible for the  
20 liabilities.

21 I would like to turn briefly to the valuation  
22 as they relate to Borankol, Tolkyn and the LPG  
23 As the Tribunal knows, the parties have presented two  
24 wildly varying valuations of the same three assets.  
25 Some but by no means all of those valuation

15:28 1 can be found in the different valuation assumptions.  
2 The Tribunal has had the benefit of multiple  
submissions 3 by the parties. There will be further submissions by  
4 the quantum experts on these issues. We will rely on  
5 our written submissions on the technical issues as to  
6 why the Claimants' approach is both far more robust  
and 7 far more reliable.

8 We will remind the Tribunal that it saw for the  
9 first time the Respondent's revamped valuation case  
10 when, in golf parlance, they took really the "mother  
of 11 all Mulligans" with respect to the expert opinion  
12 testimony they put in by Deloitte in connection with  
13 their rejoinder on quantum.

14 They also abused the Tribunal's invitation, in  
15 connection with their post-hearing submission, to  
16 address not just new issues, but they also addressed,  
17 for the first time in connection with the post-hearing  
18 submission in the Deloitte report, issues relating to  
19 comparable sales and comparable transactions analyses,  
20 as well as the value implied by the market price of  
21 debt. Those issues have been in the case since Day 1.  
22 They were in the case in connection with FTI's  
original 23 report on quantum. They were not responded to by  
24 Deloitte TCF. They were not responded to by Deloitte  
25 GmbH in connection with its rejoinder report. We only



15:30

1 saw for the first time their response now, after the  
2 witnesses have been insulated from cross-examination.  
3 There seems to be a trend here for the Respondent, in  
4 connection with their post-hearing submissions. So we  
5 will have to respond to their arguments now,  
6 unfortunately, in writing.

immediately

valuation

lone

7 In the limited time that I have left, I would like  
8 to take the Tribunal back to the point that we made in  
9 our opening remarks in the hearing on quantum: namely  
10 that all indicators of value for the period  
11 preceding as well as post-dating the proposed  
12 date of October 2008 served to corroborate the FTI  
13 valuation conclusions, with Deloitte remaining the  
14 outlier by a significant margin.

40.

in

this

2008,

15 While you couldn't take or wouldn't probably take  
16 any of these indicators of value alone, what they do  
17 provide the Tribunal with is very clear and very  
18 consistent guidance as to the value of these three  
19 assets, and the relative reliability of the FTI  
20 valuations versus the valuation provided by Deloitte.

21 And I will direct the Tribunal to slides 39 and  
22 One is presented graphically, the other is presented  
23 a narrative. But the bottom line to take away from  
24 is that, if the Tribunal were to look at the average  
25 indicative offers that were provided in September

15:31        1        compare those to the average transaction company and  
              2        market price comparables provided by Deloitte, compare  
              3        those to the RBS default base assessment valuation,  
and            4        compare that to the Cliffson transaction, you would  
see            5        a consistent valuation of Borankol, Tolkyn and LPG in  
              6        the aggregate in the range of slightly in excess of  
              7        \$900 million.

              8        Now, one new data point that we have, and one that  
              9        the Respondent only reluctantly produced at the 11th  
10            10        hour, is the RBS valuation. As a reminder, this  
11            11        valuation was provided in the summer of 2009 by RBS to  
the            12        KMG. Apparently, because it was uncomfortable about  
              13        adverse inferences that the Claimants intended to seek  
              14        with respect to the failure to produce this valuation,  
              15        the Respondent has now produced it. Of course, again  
it            16        has insulated its experts from cross-examination, as  
              17        well as its fact witnesses. And under those  
              18        circumstances we would request that the Tribunal give  
              19        the Respondent's counsel very little, if any, leeway  
as            20        to artistic licence in interpreting those reports.  
They           21        have had their opportunity to produce them, they chose  
              22        to produce them under the cloak of darkness at the  
11th           23        hour, they shouldn't be able to comment on them now,  
              24        without subjecting their witnesses to cross-  
examination.

would        25        Two key factors in the RBS valuations that we

15:32 1 like to draw the Tribunal's attention to: (1) contrary  
case, 2 to the position of the Respondent throughout this  
did, 3 RBS in fact assumes, just as the Claimants' experts  
volumes 4 without any question whatsoever, that 80% of the  
5 of gas that were produced by KPM and TNG would be  
again 6 exported at export prices. (2) they also assumed,  
7 without question, that the LPG plant would run  
8 principally using third-party gas in its latter years.  
9 If you look at the RBS valuation, and this is at  
10 slide 41, what you will see is a valuation between  
and 11 a default and a special case of between \$612 million  
12 \$760 million. And the difference for those valuations  
13 is that both assume export pricing for gas, but the  
for 14 special case assumes more aggressive export pricing  
with 15 gas that the Claimants would argue is more in line  
in 16 what the assumptions were in the market as reflected  
17 the Oxford Energy Institute's study as to what gas  
18 prices would be as of the October 2008 valuation date.  
19 Now, in addition, if you take, for example, the  
20 default base case of \$612 million, it is Claimants'  
21 position that an additional \$243.5 million should be  
22 added to that value, because RBS appears, based upon  
asset 23 their valuation report, to have deducted from the  
24 value approximately \$243.5 million in connection with  
25 contingent liabilities that it is the position of the

15:34

1 Claimants are the responsibility of the state as  
2 a result of its misconduct.

is

3 If you add those back into the fair market value,  
4 then what you will see is what is reflected on the bar  
5 chart at slide 39, and numerically in slide 40, which  
6 a value by RBS in its base case, not in its special  
7 case, of approximately \$855 million for the three  
8 assets.

Borankol

the

indicators

comment

and

very

excludes

second

9 Lastly, as to Borankol and Tolkyn, I would direct  
10 the Tribunal's attention to slide 42. That is simply  
11 a summation of the damages based upon the valuation  
12 performed by FTI. As to the Tolkyn field, the  
13 field, and the investment value in the LPG facility,  
14 total of that valuation is \$920,940,000. That number  
15 again is largely in alignment with the other  
16 of value.

17 I know my time is very limited. I will just  
18 very briefly on contract 302, to remind the Tribunal,  
19 when it's looking at the valuation of contract 302,  
20 looking at it in the context of what we believe is  
21 instructive law in the Gemplus case, as well as in  
22 Sapphire, SPP and AIG Partners, there are really four  
23 components of the damage claim. One is the  
24 \$31.3 million in out-of-pocket expenses -- that  
25 Munaibay Oil -- that the Claimants incurred. The

15:35

1 is the valuation by FTI of \$96.8 million; that is the  
2 estimated market value of the Munaibay Oil discovery.

3 And the last two components are the prospective  
4 valuation, which is on an unrisksed basis, and it's the  
5 middle case basis for the Interoil Reef, of  
6 \$1.498 billion as it relates to the Interoil Reef; as  
7 well as \$84.1 million as it relates to the LPG  
facility.

8 And that \$84.1 million is: if the Interoil Reef  
9 discovery had been allowed and had taken place, and if  
10 gas in fact had been produced at the levels that are  
11 anticipated by Ryder Scott, then there is no question  
12 but that the LPG facility could have been fully  
loaded.

13 And that would be a lost profits analysis of the value  
14 of the LPG facility, on top of the investment cost of  
15 \$245 million.

16 The Tribunal heard this morning from the experts,  
17 and obviously they still disagree greatly on their  
18 estimates of recoverable reserves and the cost of time  
19 to recover those reserves. With respect to the  
20 recoverable reserves, to remind the Tribunal, Ryder  
21 Scott has estimated in its middle case a recovery of  
22 approximately 1.4 trillion cubic feet of gas and  
23 51 million barrels of condensate.

24 We would note, as Mr Toher pointed out in the  
25 cross-examination with Dr Wright, that Total, when it

15:37

you

because

When

to

had

1 evaluated the same three-dimensional data, determined  
2 that the recoverable reserves were likely in the range  
3 of 1 trillion cubic feet of gas and over  
4 120 million barrels of condensate; which in fact, if  
5 were to apply the Total assumptions to the recoverable  
6 reserves, would yield a value even in excess of that  
7 which has been projected by Ryder Scott and FTI  
8 of the enhanced value of the condensate.

9 If we could look at the last slide, slide 43.  
10 evaluating the claimed damages as to contract 302, and  
11 specifically as to the Interoil Reef, we would simply  
12 like to leave the Tribunal with the following facts:  
13 that the Claimants had demonstrated their very clear  
14 intention to conduct exploration activities relating  
15 the Interoil Reef prior to the wrongful refusal of  
16 Respondent to extend the exploration contract.

17 Now, what's the evidence of that? Well, they had  
18 spent in excess of \$50 million on exploration costs as  
19 of April 2009 in connection with contract 302. They  
20 drilled several exploration wells, including the  
21 successful Munaibay 1 well. They had acquired and  
22 interpreted 3D seismic data. They had acquired a deep  
23 drilling rig. And they had clearly expressed their  
24 intention to fully explore the 302 area, including the  
25 reef prospect, in their filings with the MEMR.

15:38  
question

in

in

fully

of

provided

discretion,

of

1           But for the state's misconduct, there is no  
2           whatsoever that the Claimants intended to go forward  
3           with drilling an exploration well to explore the  
4           Interoil Reef. The Respondent now controls that  
5           opportunity, which it can either exploit on its own or  
6           market to the highest bidder once the award is issued  
7           this case. The Claimants would ask the Tribunal to  
8           exercise their discretion, which has clearly been  
9           recognised in the cases that we have cited for the  
10          Tribunal in terms of the precedent for loss of  
11          opportunity damages, to require the Respondent to  
12          compensate the Claimants for an amount that fully  
13          accounts for their loss of the opportunity to make  
14          a commercial success of the contract 302 area, which  
15          turn had the potential to enable the Claimants to  
16          load the LPG facility with gas from the Interoil Reef.  
17          That is a matter exclusively within the province  
18          the Tribunal. It is a matter that is within the  
19          Tribunal's discretion. We believe that we have  
20          the Tribunal with the tools to exercise that  
21          both in a fulsome description of the misconduct of the  
22          state, in terms of the available resources, in terms  
23          proving the Claimants' intention to exploit those  
24          resources. And therefore we would ask the Tribunal to  
25          award a very substantial portion of the prospective

15:39  
Interoil

1 value the Claimants' experts have placed on the  
2 Reef prospect as well as the LPG facility, and that is  
3 in the amount of \$1.582 billion on an unrisksed basis.  
4 Thank you very much.

5 THE CHAIRMAN: Thank you very much indeed. We now have  
6 a well deserved coffee break. Is 4.00 okay to  
continue?

7 Alright.

8 (3.40 pm)

9 (A short break)

10 (4.00 pm)

11 THE CHAIRMAN: We turn to the first round closing  
statement

12 by Respondent please.

13 Closing statement by DR NACIMIENTO

14 DR NACIMIENTO: Thank you, Mr Chairman. Obviously in the  
90

15 minutes that we have, we had to choose some  
highlights,

16 and to highlight some of the issues in this  
arbitration.

17 We will address some issues that in our view are most  
18 relevant, or where we think that we can assist the  
19 Tribunal with further explanations.

20 Claimants' case basically is that of  
21 an all-encompassing conspiracy concocted by the  
Republic

22 of Kazakhstan. Whatever happened to Claimants is  
23 caused, in their view, by the Republic. The case and  
24 the facts have developed over the life of the case,  
and

25 it's interesting to see how even circumstances  
initially



16:01

1 not linked by Claimants to the Republic are now  
2 attributed to the Republic's doing. All that these  
3 circumstances and developments have in common is that  
4 they had a severe impact on the value of KPM and TNG.

5 Claimants, and in particular Mr Stati, present  
6 themselves as experienced in the oil and gas business,  
7 with a talent to find value where others do not see  
it.

8 Actually, before coming to Kazakhstan, Claimants had  
9 never produced oil and gas themselves. They had never  
10 constructed or operated an LPG plant. They had never  
11 tried to sell hydrocarbons on the Kazakh or  
12 international market.

13 Moreover, during their presence in Kazakhstan,  
they  
14 never made a commercial discovery. They either worked  
15 on fields that had been discovered earlier, or they  
16 found uncommercial fields such as the tiny Tabyl or  
the  
17 equally uncommercial Munaibay discovery.

18 We have put up on this slide some instances  
19 reflecting Claimants' lack of experience, resulting in  
20 mismanagement. In 2008, for example, Claimants tried  
to  
21 drill the 6,000 M1 well. They now claim that with  
this  
22 well they wanted to reach the so-called Interoil Reef.  
that  
23 Regardless of whether we believe them, the fact is  
24 they failed to reach the target depth. The well  
stopped  
25 at 4,700 metres, because the drilling rig they used  
was

16:03

1 insufficient for the pressures they encountered.

2 That is remarkable because the nearby M10 well had  
3 been drilled to 5,800 metres nearly 20 years earlier.  
4 Apparently, Claimants had no experience with these  
5 depths, and failed to drill to a depth other operators  
6 had managed a long time before.

log

7 Even more interestingly, Claimants had the well  
8 for the M10 well in their possession, and thus knew  
9 high pressures were to be expected. And still they  
10 failed to be prepared for them.

that

11 Another serious example of mismanagement is  
12 Claimants' negotiations for the so-called tripartite  
13 agreement, where they promised to deliver gas volumes  
14 that they could never have produced. Whether they did  
15 so on purpose or accidentally, we do not know.

corporate

16 The markets were well aware of the way Claimants  
17 managed their business. In the summer of 2009, the  
18 ratings agency Fitch noted their worries about  
19 governance at Tristan. This statement was with regard  
20 to the very non-transparent Laren loan structure that  
21 had been implemented just shortly before. However,  
22 Fitch made clear that they had concerns about  
23 governance already before; the Laren loan had merely  
24 exacerbated existing concerns.

corporate

25 Not only did Claimants' own mismanagement cause

16:05 1 problems for KPM and TNG. The companies were hit hard  
For 2 by a series of bad economic news in 2008 and 2009.  
new 3 example, in April 2008, Claimants found out from the  
4 Miller and Lents reserve report that Ryder Scott, who  
5 had done the previous estimate, had overstated the  
6 reserves at Borankol by 300%. This is particularly  
oil 7 important as Borankol is largely oil-producing, and  
chunk 8 can be sold at much higher prices. Thus, a large  
9 of Claimants' business just vanished overnight.  
crisis. 10 Much other bad news related to the financial  
11 Claimants have admitted that many of these problems  
12 existed, but have downplayed their significance.  
13 Claimants' arguments are contradicted by the  
14 contemporaneous documents, most importantly the Price  
15 Waterhouse due diligence report. This report makes  
until 16 abundantly clear that the demise of KPM and TNG up  
17 the Laren loan had to be taken out was caused entirely  
18 by the financial crisis and Claimants' own ill-advised  
19 business decisions.  
20 Just a quick word on the disclosure of those  
did 21 documents. As I mentioned in the last hearing, KMG  
22 not agree to disclose the documents, based on  
23 confidentiality obligations. After the hearing, we  
went 24 back to them and we asked them to disclose, and they  
25 finally agreed. And this is when we in March then

16:06 1 disclosed them.

condensate 2 Let us start with the decline in oil and

quotations 3 prices in the fall of 2008. We have put two

refer 4 from the PwC report on the slide. What is noteworthy

5 here is the expression "key reason". PwC did not

6 to the inspections and investigations, nor to the

7 18th December press release. Instead, it clearly

8 identified the decline in oil and condensate prices as

9 the key reason for the decline of the companies'

10 profitability.

the 11 Another issue that the PwC report alludes to is

12 drop in demand for gas that caused problems for TNG.

13 This was largely due to Claimants losing their main

put 14 customer Kemikal at the end of 2008. Claimants have

15 some effort into blaming the Republic for this

16 development. They argue that Kemikal is somehow the

the 17 same as Timur Kulibayev, who is somehow the same as

18 Republic. Behind Kemikal falling away as a customer,

19 Claimants see the Republic targeting Claimants and

20 choking off demand.

21 The first quote from the PwC due diligence we have

22 put on the slide rebuts that argument completely. PwC

with 23 had no problem identifying that Kemikal was dealing

24 liquidity and insolvency issues of its own, and that

25 this is the reason why sales to Kemikal stopped.

16:08           1           Given that this occurred at the worst times of the  
In               2           financial crisis, this does not come as a surprise.  
  
                 3           fact, Claimants themselves admit that at the time slow  
                 4           payments and defaults cascaded through the industry.  
                 5           And frankly, this should take any of Claimants'  
                 6           allegations regarding Kemikal off the table.  
                 7           What this leaves is the fact that Claimants lost  
                 8           their largest customer at the end of 2008. And as you  
slide,           9           can see from the second quote we have put on the  
  
                 10          [they] faced a further drop in demand in March 2009.  
                 11          And again, the PwC due diligence does not refer to any  
                 12          state actions in relation to this drop.  
                 13          The report instead describes in detail the  
2009.           14          developments that led up to the Laren loan in June  
  
                 15          It mentions prominently another development that  
                 16          Claimants have failed to acknowledge in these  
see              17          proceedings. As the report makes clear, and you can  
  
                 18          this from the first quote here, the cash constraints  
in               19          the first quarter of 2009 were exacerbated greatly by  
                 20          the fact that the affiliate Montvale failed to make  
                 21          payments for the sale of oil and condensate. In  
total,          22          US\$170 million was not settled. And this was what  
made             23          the Laren loan necessary.  
  
                 24          This development was entirely of Claimants' own  
                 25          making. As the final quote on the slide shows,

16:10 1 non-payment was the result of Montvale investing funds  
2 in nonliquid assets.

The 3 These developments also had other consequences.

4 PwC report also shows that KPM and TNG had to curtail  
5 capital expenditure, precisely because of the drops in  
6 prices, in demand, and most notably because of  
Montvale 7 failing to make payment.

8 And this had far-reaching consequences. Most  
9 importantly Claimants had to stop construction of the  
10 LPG plant. Contrary to Claimants' allegations, it was  
11 not the state's actions that caused this, but these  
12 developments we just described.

13 We invite the Tribunal to review the PwC report,  
14 which is unambiguous in these matters.

KPM 15 Another important development was the fact that  
16 and TNG stopped drilling new wells. This caused them  
to 17 breach their work in progress, to which we will come  
18 back in a moment.

19 As I just said, the PwC report states a direct  
20 connection between the problems with Montvale and the  
interest 21 Laren loan. This loan became necessary to make  
22 payments on the Tristan notes, and to fulfil tax  
demands 23 which were, without question, legal. The funds in the  
24 summer of 2009 were simply not sufficient to make  
these 25 payments. Nowhere in the PwC report will you find

16:11  
state;

the

2009,

able

Overall,

more

us

1 a link of the lack of funds to any actions by the  
2 in particular, not to inspections, investigations or  
3 preemptive rights waiver.

4 And the bad news did not stop here. In April  
5 Claimants received the new Miller and Lents report.  
6 This showed a marked increase in the necessary capex,  
7 while at the same time providing for a slightly lower  
8 production profile. In other words, Claimants learned  
9 that they would have to spend massively just to be  
10 to keep production near to the previous plans.  
11 the report showed the need to invest 276.2 million  
12 than previously planned in infrastructure.

13 And the development of probable and possible  
14 reserves, we have provided the breakdown here on the  
15 slide.

16 Against this backdrop of bad news, it comes as no  
17 surprise that Claimants ultimately abandoned KPM and  
18 TNG. And there is a whole series of events that give  
19 an indication of this. We know, for example, that  
20 Mr Stati had retained counsel for pursuing arbitration  
21 as early as the beginning of 2009, long before the  
22 termination of the subsoil use contract. We also know  
23 that Ascom granted itself dividends in the amount of  
24 \$72 million at the end of 2009 and the beginning of  
25 2010.

16:13  
for

The

not

the

investigations

1           Claimants have provided a convoluted explanation  
2           these dividends in their first post-hearing brief.  
3           only thing that is clear from that explanation is that  
4           these dividends were not used to pay back the Tristan  
5           loan or to make interest payments on the Tristan loan.  
6           Rather Ascom kept the money for itself.

7           What is more, at the end of 2009, payments in the  
8           amount of \$150 million were outstanding from General  
9           Affinity and Statoil, and this was equal to granting  
10          these affiliates a loan. Claimants have to this day  
11          explained whether this loan was ever repaid.

12          Another point worth mentioning in this regard is  
13          fact that in the summer of 2010, Claimants had stopped  
14          paying wages, and that the social tensions rose.

15          Claimants have presented a markedly different  
16          causation case, of course. They claim that through  
17          inspections and investigations, as well as through the  
18          preemptive rights waiver, the Republic effectively  
19          expropriated Claimants. This causation case is belied  
20          by the evidence on the record.

21          Let's start with the inspections and  
22          which Claimants allege to have greatly interfered with  
23          day-to-day business operations, as one of their  
24          witnesses put it. Claimants have never pointed to  
25          a single action they could not perform because the



16:15 1 personnel was distracted by inspections or  
specific 2 investigations. Not once do they describe any  
3 interference.  
4 This comes as no surprise. Mr Lungu admitted  
5 explicitly that there was no direct interference with  
6 KPM and TNG's sales contract, and the very substantial  
7 quote comes from Mr Cojin, we have put that on the  
8 slide. Mr Cojin told the Tribunal that the  
inspections 9 from the financial police happened only from time to  
10 time. He also said that the financial police could  
not 11 disturb too often, and that Claimants were very busy  
12 with production; not the words of someone who was  
being 13 greatly disturbed in their daily job.  
14 We have put up quotes from the Republic's  
witnesses 15 who made clear in their testimony that the inspections  
16 and the investigations were not overly burdensome, and  
17 we have put up the quotes from Mr Rakhimov and  
18 Mr Kravchenko.  
19 So Claimants' causation case essentially boils  
down 20 to one single argument, namely that the Interfax press  
21 release caused the Credit Suisse loan to fall through,  
22 which forced Claimants to take out the Laren loan in  
23 June 2009. This argument fails for two simple  
reasons. 24 First, the Republic did not cause the Credit Suisse  
loan 25 to fall through; and second, on Claimants' own case,  
the

16:16 1 Credit Suisse loan would not have helped avert the  
2 difficult financial situation in June 2009.

failed 3 As to the first point, we note that Claimants  
4 to provide any kind of proof that it was the Interfax  
5 press item that caused the Credit Suisse loan to fall  
6 through. No witness from Credit Suisse spoke on  
behalf 7 of the Claimants to support their story, and Claimants  
8 do not even allege that they tried to obtain testimony  
9 from Credit Suisse. The only evidence they have  
10 provided is a statement by Mr Lungu, who has been  
11 discovered throughout these proceedings as misstating  
12 the truth in numerous instances, and whose testimony  
13 should be disregarded entirely.

14 It's the Republic's submission that the Credit  
15 Suisse loan fell through for the simple reason that it  
16 could not be given under the existing market  
conditions.

17 It was shortly after the Lehman crash, and we have put  
18 up a quote from Mr Rosen of FTI, who described the  
19 situation quite clearly as a freeze in the credit  
20 market. Mr Seitinger of OMV also described the  
quote 21 difficulties at the time, and we have put up this  
22 as well.

23 So if it was difficult for a large oil and gas  
24 company like OMV to obtain financing at the time, it  
25 must have been even more difficult for a rather small

16:18

1 operation such as Claimants.

Laren

2 Moreover, Claimants are also wrong in arguing that

3 the Credit Suisse loan would have helped avoid the

the

4 loan. This contention is again based only on the

5 testimony of Mr Lungu, and this testimony is, to say

that

6 least, illogical. The evidence on the record shows

lenders

7 Claimants would have needed to turn to the Laren

8 in any event, only maybe a little later.

Suisse

9 This is because the Credit Suisse loan was set to  
10 have a term of seven months. Assuming the Credit

crisis

11 loan would have been concluded in early January, it

12 would have been due for repayment in early August. In

13 that case, the funds from the Credit Suisse loan would

14 have been available for countering the liquidity

15 in June 2009. However, Claimants would already have

16 needed to refinance in August 2009. Claimants would

17 thus have needed to turn to the Laren loan sharks, as

18 they call them, in August, instead of June 2009.

looked

19 The various risk factors and problems we just

20 at are also reflected in the market reaction to

21 Claimants' sales attempt during the so-called Project

22 Zenith. In the summer of 2008, 41 companies were

23 provided with the Renaissance Capital information

24 memorandum. The Tribunal will remember that Claimants

25 attach great importance to this memorandum. However,

16:19 provided  
even  
briefly  
end  
decided  
business  
supposed  
slide.  
Munaibay

1 Claimants fail to mention that of 41 companies  
2 with it, 33 lost interest immediately, and did not  
3 provide an indicative bid, reflecting that the market  
4 was simply not interested.  
5 In the end, the only interest for some time came  
6 from Total, and from KMG EP. In addition, KNOC  
7 revisited the companies' potential during a management  
8 presentation. All of these companies decided in the  
9 not to purchase, and that for very clear commercial  
10 reasons.  
11 We will turn to Total, EP and KNOC, and we will  
12 address the assessment by KMG EP later.  
13 We heard from Mr Chagnoux from Total that Total  
14 conducted extensive due diligence but ultimately  
15 against the purchase, and that was simply because KPM  
16 and TNG were not appealing targets. In Total's view,  
17 the existing fields did not offer much potential for  
18 adding value, which is the key part of Total's  
19 approach.  
20 Moreover, the exploration licence on the 302 area  
21 was equally unattractive. Total looked at the  
22 Interoil Reef for a long time and found nothing but  
23 challenges. We have listed some of those on the  
24 Notably, Total were also disappointed with the  
25 discovery which they identified to have mediocre

16:21 1 reservoir quality.

2 Now Claimants have presented a massive conspiracy  
3 theory in which Total was discouraged from purchasing  
4 KPM and TNG during talks to Kazakh authorities. Their  
5 claim is, as so often, built on testimony of Mr Lungu.  
6 And again, the testimony of Mr Lungu is wrong.

7 As an internal email from Total's geologist,  
8 Philippe Mallard, shows, Total concluded its  
geological  
9 assessment in mid July 2009 with a clear  
recommendation  
10 not to pursue the matter further as the geological  
11 challenges were too big. You can see his unequivocal  
12 recommendation on the slide, and a few days later,  
Total  
13 officially informed Claimants of their decision and we  
14 have put this up as well.

15 Apparently, Claimants have recognised this as well  
16 and have now come up with an alternative causation  
case,  
17 in which it was the Government's interference that  
18 hindered Claimants from exploring the InterOil Reef  
and  
19 thus from proving its value to Total.

20 However, against the background of the PwC report  
21 through which we went earlier, this allegation is  
22 baseless. It was not Government interference that  
23 caused Claimants to stop exploration, it was rather  
the  
24 lack of funds caused both by the financial crisis and  
25 own mistakes.

16:22 1 It comes as no surprise that Claimants, faced with  
2 testimony simply destroying the allegation, that they  
3 now try to undermine the credibility of Mr Chagnoux.  
feelings 4 Claimants' allegation that Mr Chagnoux had hurt  
5 is rather laughable. Mr Chagnoux is a business  
6 professional of a leading company and is certainly not  
7 inclined to wilfully mislead the Tribunal. It is also  
8 no surprise that Claimants have not pointed to any  
9 evidence that would contradict Mr Chagnoux's  
testimony.

10 For quite some time in this arbitration, Claimants  
KPM 11 argued that KNOC had backed away from a purchase of  
12 and TNG after having spoken to the Kazakh authorities.  
13 Claimants based this claim again on testimony of  
14 Mr Lungu and also Mr Stati.

15 Now, with the first post-hearing brief, Claimants  
16 have silently backed away from this claim, and this  
17 comes as no surprise. Mr Stati's and Mr Lungu's  
18 testimony was contradicted in no uncertain terms by  
19 Dr Kim of KNOC, who testified and explained that there  
20 never had been actual negotiations with Claimants;  
21 rather, there had only been a management presentation  
in 22 which KNOC learned of the lack of gas contracts on the  
23 part of TNG, and this had been sufficient for KNOC to  
24 not pursue the matter any further.

25 I turn over to my colleague, Mr Tirado.

14:00

1

Closing statement by MR TIRADO

few

2

MR TIRADO: Thank you, Dr Nacimiento. We will now say a

3

words about the Claimants' lack of jurisdiction but

4

given the limitations of time, I will start by

5

reiterating that this presentation is not meant to and

So

6

cannot encompass the full position of the Republic.

7

insofar as we do not repeat jurisdictional objections

8

here, we nonetheless uphold them fully.

9

For now, we will however focus on the issue of the

10

Claimants' illegal conduct. Firstly, Claimants have

11

committed multiple serious breaches of Kazakh law in

they

12

making their investment in the Republic. As such,

13

should not be afforded protection under the ECT. The

obtain

14

most serious breaches relate to their failure to

15

relevant consents for various transfers involving TNG,

16

and failures with respect to the Republic's preemptive

17

right.

18

It is clear that Claimants did not obtain consent

19

from either the licensing authority or competent

transfers

20

authority prior to completing a total of eight

21

in TNG that its companies, including Ascom, Gheso and

22

Terra Raf, were involved in. We refer the Tribunal to

23

Exhibit R-18 in this regard.

24

The relevant law in Kazakhstan makes it clear that

53(1)

25

such consents were required. You can see Article

16:26 1 of the 1995 Law on Oil on the slide.

has 2 Professor Ilyassova, who is a Kazakh law expert,

consents 3 now explained in two sets of reports that such

4 were required and Claimants simply have no case for

apply. 5 arguing that Article 53 of the Law on Oil did not

6 Well, what's the consequence? The consequence of

transfers 7 these failures is that effectively all of the

8 were invalid. As such, in the circumstances,

Claimants 9 have never become the legal owner of TNG.

10 When the MEMR started to discover these problems,

it 11 was compelled to investigate the irregularities in the

12 ownership of TNG. It also needed to check whether or

13 not its preemptive right to purchase shares in TNG

14 applied under Article 71 of the 1996 Law on Oil. This

15 was the purpose of the MEMR's letter to TNG of

16 13th February 2007, it can be found at Exhibit C-132.

17 Given that Claimants never become the owner of

TNG, 18 due to the failure to obtain relevant consents, the

19 Republic's preemptive right clearly did apply. At

best, 20 Claimants can say that they obtained retroactive

consent 21 for the sole transfer of TNG from Gheso to Terra Raf

on 22 21st February 2007. However, this was after Article

71 23 came into force, and therefore the Republic's

preemptive 24 right applied.

25 Claimants failed to inform the MEMR that this was





16:27 1 the case. Furthermore, Claimants were not transparent  
2 about the failure to obtain consent in relation to the  
3 seven prior transfers. Claimants therefore misled the  
4 Republic in numerous serious ways. So it's quite  
simply  
5 wrong for Claimants to allege that it was being  
harassed  
6 by the Republic in relation to this issue.

7 Looking at the question of non-extension of  
contract  
8 no. 302, before going into the details of the  
Claimants'  
9 case on the non-extension of contract no. 302, the  
10 Tribunal should be aware of the nature of the claim.  
11 Effectively, Claimants are complaining of an alleged  
bad  
12 faith refusal to abide by a commitment to extend  
13 contract 302 by way of an addendum. This commitment  
was  
14 supposedly made on 9th April 2009. This was actually  
15 after contract 302 had already expired. As a result,  
16 this alleged commitment is something that occurred  
after  
17 contract 302 had expired, but before a new contract,  
18 which is the addendum, is made.

19 Claimants' complaint therefore is a breach of  
20 an alleged pre-contractual commitment. Claimants  
ignore  
21 this in their damage claim, and it is obvious that  
they  
22 do so because this has severe consequences for their  
23 case on damages.

24 In summary, there are three basic flaws on  
25 Claimants' case on contract 302. First, Claimants'  
case

16:29  
this  
letter  
even  
argument,  
Claimants  
of  
so?  
decision  
not

1 is contradicted by Claimants' other allegations in  
2 case. Second, Claimants misinterpret the MEMR's  
3 of 9th April 2009. Third, with regard to damages,  
4 under Claimants' own case, they could only demand  
5 damages for money spent in reliance on the alleged  
6 commitment.  
7 So as for the contradiction in Claimants'  
8 the Tribunal should note that on the one hand,  
9 allege that Kazakhstan operated a harassment campaign.  
10 They further allege that in December 2008, the MEMR  
11 maliciously revoked the authorisation of the transfer  
12 shares in TNG from Gheso to Terra Raf, and leaked  
13 misleading information to the press. But the question  
14 is, if any of this were true, why then would the MEMR  
15 commit itself to extend TNG's contract 302, some four  
16 months after these alleged malicious acts, when it is  
17 beyond dispute that it was under no obligation to do  
18 Turning to the second flaw on Claimants' case on  
19 contract 302, there was no commitment by the MEMR to  
20 extend contract 302, because there was never a  
21 by the MEMR as the competent body to extend the  
22 contract. There was only a decision of the expert  
23 commission. This decision, however, only has  
24 a recommendatory character. So contrary to Claimants'  
25 allegations, the MEMR's letter of 9th April 2009 was

16:31 1 a decision by the MEMR to extend contract 302, because  
2 the Ministry can only make decisions by order of the  
3 Minister. This is explained by Professor Ilyassova:  
4 "Claimants who at this point in time had operated  
5 for about ten years in Kazakhstan should have been  
aware  
6 of this."  
7 So Claimants for the first time in these  
proceedings  
8 introduced expert evidence regarding the non-extension  
9 of contract 302 with their first post-hearing brief.  
10 This final attempt to rescue their claim does not make  
11 it any more credible.  
12 The third flaw concerns Claimants' damages case  
13 which we will discuss further later on. However, what  
14 I will highlight here is that Claimants actually admit  
15 that as of their valuation date, Claimants had  
16 a contract that was set to expire on 30th March 2009  
17 with no obligation of the Republic to extend.  
18 As stated by Mr Ongarbaev, the non-extension of  
the  
19 exploration period for a contract happens quite  
20 frequently. This was never challenged by Claimants.  
21 Therefore, as of 14th October 2008, Claimants may have  
22 had hopes, but could not have the legitimate  
expectation  
23 that their contract could be extended. For this  
reason  
24 alone there is no basis for any damages for contract  
no.  
25 302.

16:32  
valuation

1 Even taking events months after Claimants'  
2 into account, no damages would be owed, even under  
3 Claimants' own case. In making their case for damages  
4 for contract 302, Claimants completely disregard their  
5 claim is one for a breach of an alleged pre-  
contractual  
6 undertaking.

7 If any damages were owed, which is disputed, of  
8 course, then this would be limited to the reliance  
9 interest, ie money spent in reliance on the alleged  
10 undertaking of 9th April 2009 that the contract would  
be  
11 extended.

12 However, Claimants have not demonstrated that any  
13 money was spent in reliance on the letter of  
14 9th April 2009. Any money spent at that time would  
also  
15 be contrary to Claimants' other allegations, for  
16 example, that Mr Stati had already decided to stop the  
17 construction of the LPG plant because he allegedly  
18 assumed that the Republic would take it away from him.  
19 In fact, any amount allegedly spent prior to  
20 9th April 2009 on exploring the contract 302  
properties  
21 was spent in the hope that TNG would discover  
22 hydrocarbons and therefore have a right to produce  
once  
23 declared commercial. It was not spent in reliance on  
24 a further extension of the exploration period to which  
25 TNG, as admitted by Claimants, was never entitled.

16:34 1 In President Voronin's letter of October 2008, he  
2 alerted President Nazarbayev to the fact that Mr Stati  
3 was, and I quote, "hiding his income from the previous  
4 activities carried out in Romania and Turkmenistan in  
5 the international offshore areas". That's on the  
slide.  
6 The letter raised suspicions of tax avoidance and  
7 highlighted other questionable aspects of Mr Stati's  
8 business projects. So after receiving this letter,  
the  
9 President simply did what you would expect him to do,  
10 having received a letter from the head of another  
11 sovereign state. He ordered the inspection of the  
12 Statis' companies.  
13 Claimants say that the financial police interfered  
14 in the inspections and investigations. There is scant  
15 credible evidence supporting this. A notable example  
of  
16 this is Claimants' allegation that following the  
MEMR's  
17 inspections of TNG and KPM in November 2008, the  
18 financial police forced the companies' representative  
to  
19 sign reports which they were unhappy with. In  
20 particular, the reports contained statements to the  
21 effect that neither KPM nor TNG held a licence to  
22 operate a trunk pipeline or, for that matter, an oil  
23 pipeline.  
24 In support of this allegation, Mr Cojin said in  
his  
25 witness statement that he was present at the  
inspection.

16:35 1           However, in the October hearing, Mr Cojin admitted  
that           2           actually, he wasn't there. Under re-direct  
examination,   3           he suddenly recalled that he was in the office at the  
                 4           time and now specifically remembers a discussion with  
                 5           the financial police about the statements. So we  
leave           6           it to the Tribunal to evaluate the reliability of this  
                 7           testimony. Suffice it to say that these statements  
and             8           reports is the basis upon which Claimants build their  
                 9           entire allegation that the criminal sentence and fine  
2008.          10          was premeditated right from the start in November

and            11           Mr Turganbayev was faced with the fact that KPM  
                 12          TNG did not have licences for the operation of trunk  
                 13          pipelines or for that matter oil pipelines. Quite  
                 14          rightly, he made the relevant enquiries of the  
                 15          authorities responsible for licensing pipelines to  
                 16          ascertain for himself which licences the companies did  
                 17          hold. He also made enquiries regarding the level of  
                 18          profit being accumulated from the operation of the  
                 19          pipelines. There was nothing remarkable about this.  
                 20          This was part of assessing whether the liability was  
                 21          criminal or civil in nature.

                 22          When Mr Turganbayev handed over the case in  
                 23          December 2008, he reported that there was not yet  
                 24          a proper and lawful assessment of whether or not KPM  
                 25          held a trunk pipeline, more proof that this was not

16:37 1 a premeditated case. Mr Rakhimov's investigation was  
2 equally as careful and procedurally proper as  
3 Turganbayev's inspections.

4 The Claimants' theory of premeditation fares no  
5 better when we consider the trial itself. Claimants  
6 assert that the Republic failed to respect due  
process.

7 We have listed on the slide here a number of the  
8 procedural features of the Cornegruta trial. These do  
9 not speak of a failure to follow due process. The  
10 Claimants' allegations are exaggerated and  
contradicted  
11 by the evidence.

12 The verdict against Mr Cornegruta was confirmed on  
13 appeal to the regional court. If they were unhappy  
with  
14 the outcome, Mr Cornegruta could have and should have  
15 appealed the decision to the Supreme Court, but he  
16 didn't. We respectfully submit that it is not for the  
17 Tribunal here to act as a judicial review body of what  
18 is wholly an issue of Kazakh national law.  
19 Nevertheless, I will briefly summarise the basis on  
20 which the judge rightly, we say, came to the finding  
21 that the KPM pipeline is a trunk one.

22 As a matter of Kazakh law and as a matter of  
common  
23 sense, the classification of a pipeline as a "trunk"  
24 must begin with a definition of "trunk pipeline". In  
25 the Law on Oil, this definition naturally needs to be



16:38

they

now know

the

set

pipeline,

all.

on

1 interpreted, which is the task that requires legal  
2 expertise. The Republic has never contended that by  
3 categorising the task as a legal one, that the judge  
4 paid no heed to technical definitions, regulations or  
5 facts. Indeed these must be taken into account as  
6 were in this case. A legal analysis was guided by the  
7 technical expertise of Mr Baymaganbetov, "Mr B" as we  
8 him, who also relied on the facts before him, namely  
9 purpose and positioning of the KPM pipeline.

10 (Pause to deal with a technical issue)

11 I was saying that the judge's legal analysis was  
12 guided by the technical expertise of Mr B, who also  
13 relied on the facts before him, namely the purpose and  
14 positioning of the KPM pipeline. The key and  
15 determinative characteristics of this pipeline were  
16 out on the slide. These all indicate that it was  
17 a trunk pipeline.

18 Ultimately, the judge was entitled to apply her  
19 discretion in reaching her decision based on her own  
20 interpretation of the law and facts. As to whether  
21 there was a licence for operating such a trunk  
22 it is agreed that KPM held no such licence. Indeed,  
23 there was no licence for oil operations, including the  
24 transportation of oil, outside the contract area at

25 By contrast, the Claimants continually fall back

16:43  
arguing

by

of

about

are

ample

proceedings

recovery

1 the conclusion that the pipeline is not trunk by  
2 that a pipeline's size and the specifications to which  
3 it was designed lead to the inevitable conclusion that  
4 it is a field pipeline. The fact is, they do not.  
5 Mr Romanosov, Claimants' own witness, testified in  
6 October that only a layman would classify a pipeline  
7 its outward appearance and thus by its size. A quote  
8 from his testimony is set out on the slide as well.  
9 Claimants' complaint with regard to the recovery  
10 the illegal income is twofold. They complain both  
11 the procedure and about the amount. Both complaints  
12 unfounded. As to procedural complaints, there is  
13 authority in Kazakh law which demonstrates that it is  
14 not strictly necessary to initiate civil proceedings.  
15 In any event, Claimants' whole non-party argument is  
16 designed to confuse. KPM suffered no disadvantage  
17 whatsoever for not being an officially named party to  
18 the proceedings.  
19 First of all, the personnel of KPM were well aware  
20 that there were proceedings against Mr Cornegruta. In  
21 fact, Mr Cornegruta was still general manager of KPM,  
22 and could thus represent the company in the  
23 himself. Moreover, it was publicly known that  
24 was being pursued. For example, Squire Sanders were  
25 perfectly aware of this fact in the summer of 2009

16:44

1 already.

pursue

2 In any event, KPM could have appealed the judgment  
3 immediately. They chose not to. The reason for this  
4 was probably that Mr Stati had already decided to  
5 arbitration in any event.

alleged

6 As to the amount recovered by the Republic, the  
7 Republic's approach is beyond criticism. Claimants'  
8 position on this issue is not completely clear.  
9 However, it seems that Claimants have relied either on  
10 a hypothetical cost of transport of all oil that ran  
11 through the pipeline, or on the actual fees for the  
12 transport of oil from TNG. This corresponds to  
13 amounts of illegal income of either US\$30,000 or  
14 US\$13,000.

the

of

be

the

15 Claimants have offered no authority for their  
16 fictitious calculation of illegal income. It thus  
17 remains completely unclear why such hypothetical sums  
18 should be at all relevant. And insofar as Claimants  
19 have relied on the transport fee paid by TNG, it is  
20 apparent that this cannot be the decisive number, as  
21 pipeline was also transporting other oil. Transport  
22 oil for TNG was not the only source of income from  
23 operation of the pipeline, and therefore this cannot  
24 the only income that is being taken into account in  
25 their calculation. Rather, all income stemming from

16:46

1 transport of oil has to be recovered, which includes  
2 income from the ultimate sale of oil.

the

3 This is also confirmed by Squire Sanders' due  
4 diligence. We have put the relevant quote on this  
5 slide. It shows that Squire Sanders found that the  
6 illegal income from the operation of the pipeline  
7 exceeded US\$80 million. This is clear support that  
8 ultimate amount recovered was correct. And that same  
9 evidence shows that the comparatively small number  
10 suggested by Claimants is incorrect.

justified

Claimants

pipeline

were

and

11 The termination of contracts 210 and 305 and  
12 subsequent transfer into trust management was  
13 and legal. First, there can be no doubt that  
14 were in continuing and serious breach of contracts 210  
15 and 305 for multiple reasons. We have already  
16 established that they had been operating a main  
17 without a licence, and were in breach of various tax  
18 laws.

19 In addition, as admitted by Mr Lungu, Claimants  
20 in breach of their minimum work programmes. Claimants  
21 initially sought to deny this during the hearing on  
22 jurisdiction and liability, by reference to inspection  
23 reports for KPM and TNG issued in February 2010. But  
24 Mr Lungu pulled the plug on this when he testified,  
25 I quote:

16:47  
in

1 "As it is known already, we did not do the capital  
2 investment programme that we had for both KPM and TNG  
3 2009."

4 This testimony can be found at the hearing on  
5 quantum, transcript Day 1, page 186, lines 10 to 18.

new

6 In addition, the PwC due diligence report proves  
7 that TNG had not met its targets for the drilling of  
8 wells since 2008. Further to these issues, various  
9 other inspections spanning the period 2001 to 2010  
10 revealed further repeated contract violations. We

refer

11 the Tribunal to Exhibit R-33 in this regard.

12 Finally, Claimants had operated the fields in such  
13 a way that the wells in the Tolkyn field had been  
14 flooded. Mr Ongarbaev has gone so far as to describe  
15 the treatment of the fields as "barbaric".

This

16 To add to these multiple serious violations,  
17 Claimants were also found to have committed further  
18 breaches during inspections in June and July 2010.

TNG,

19 is not denied by the Claimants. As to the conduct of  
20 these inspections, the Republic was not only fully  
21 entitled by law to carry out inspections of KPM and

provided

22 as previously stated, but also obliged to order the  
23 inspections. Mr Kravchenko's witness evidence

inspection,

24 several reasons for the instigation and the

25 including but not limited to a serious complaint

16:49 1 received. The key reasons are summarised on the slide  
2 you see before you now.

option 3 By the beginning of July, the Republic had no  
by 4 but to terminate contracts 210 and 305, as confirmed  
describing 5 Minister Mynbaev during his cross-examination  
6 the situation at the time. We've put the quote on the  
no 7 slide there. Quite simply the Republic was left with  
8 alternative.

TNG 9 The Republic served notices of breach on KPM and  
at 10 on 14th July 2010 in accordance with the relevant law  
11 the time, which is Subsoil Law 2010. You will see on  
12 this slide the grounds for contract termination under  
two 13 Article 72(3). Evidently, there were many more than  
14 violations. Claimants did not cure these violations  
15 within the timeframe requested, nor did they make any  
16 proposals for curing them. Instead, they simply sent  
17 a letter completely denying liability. The Republic  
18 therefore lawfully terminated the contracts in  
19 accordance with the law.

under 20 Finally, to conclude my initial presentation,  
subsoil 21 the Subsoil Law 2010, following a termination of  
into 22 use contracts, the relevant assets are transferred  
23 trust management. This temporary arrangement ensured  
24 that Claimants did not continue to reap financial  
25 benefits from the assets; as one would expect, where

16:51 1 a subsoil user is both absent and in breach of its  
benefit 2 contractual obligations. However, any financial  
3 was placed in an escrow account, which meant the  
4 Republic similarly does not benefit.

5 Following the termination, Claimants made no  
6 attempts to resolve the dispute. They could have done  
7 so, including by (i) invoking one of the resolution  
8 mechanisms in the contracts and (ii) appealing the  
9 decision in accordance with Article 73 of the Subsoil  
10 Law 2010. Instead they completely sidestepped these  
11 avenues for recourse and filed proceedings against the  
12 Republic in an international forum just five days  
after 13 the terminations.

14 With that, I will hand back over to Dr Nacimiento.

15 Closing statement by DR NACIMIENTO  
16 DR NACIMIENTO: Thank you. For the sake of time, with  
17 regard to the subjects on compliance with the ECT,  
18 I refer to our written submissions, and we turn  
directly 19 to valuation.

20 At the hearing on quantum, Claimants expended much  
21 effort on presenting Deloitte as the outlier among  
other 22 valuations. In fact, the opposite is true.  
Deloitte's 23 DCF valuation fits neatly into a series of other  
24 valuation approaches, whereas FTI's valuation lies far  
25 outside the margins of various comparison-based

16:52

1 valuations.

which

2 We summarise this in the graphic on the slide,  
3 shows values for Borankol and Tolkyn as of  
4 14th October 2008, with one exception, to which I will  
5 turn in a minute. To the right, we have FTI, who  
6 a value of US\$676 million based on their DCF analysis.  
7 The first item on the left is a comparable companies  
8 analysis provided by Deloitte GmbH as of  
9 14th October 2008, which shows a far lower amount of  
10 US\$170 million. And next to it there are comparable  
11 transactions with \$278 million.

allege

12 The third and fourth items from the left in dark  
13 green and dark red are particularly interesting.

These

14 are from a comparable transaction analysis based on  
15 numbers provided by Renaissance Capital, very close to  
16 Claimants' valuation date. You will remember that  
17 Renaissance Capital was Claimants' own investment bank  
18 whom they entrusted with the Project Zenith sales  
19 process.

Claimants'

20 The third item is based on a multiple that  
21 Renaissance stated in a public report around  
22 valuation date.

case,

23 The fourth is even more damaging to Claimants'  
24 as it's based on a multiple from a presentation that  
25 Renaissance prepared for Claimants themselves. As you



16:54           1           can see, the numbers derived from the Renaissance  
                  2           analysis are far below FTI's values.

                  3           The fifth item in green is also quite important.  
Notably         4           This is Deloitte's value of depth calculation.

                  5           this value is not limited to Borankol and Tolkyn, but  
                  6           includes the LPG plant and the 302 properties as well.  
                  7           It amounts to \$222 million. This is the result of  
                  8           a thorough and serious analysis of the value of depth  
                  9           which stands in stark contrast to FTI's value of depth  
                 10          analysis, which is frankly nonsensical and to which we  
                 11          will turn in a minute.

                 12          The status of FTI's valuation as the outlier is  
also             13          demonstrated if we look at the particular assets.

First           14          of all, we have here the contract 302 properties. FTI  
                 15          provide the prospective, that is the completely  
unrisked       16          value of more than \$1.6 billion. KMG EP, on the other  
                 17          hand, always assessed the value of the properties at  
                 18          zero, as we know from the testimony of Mr Suleymenov,  
                 19          and the fact that the 302 properties are being  
mentioned      20          in the RBS report, but no value is being assigned to  
                 21          them. The spectacular overstatement of values by FTI  
                 22          could not be illustrated more clearly.

                 23          Let's now turn to FTI's LPG plant valuation.  
                 24          Compared to other valuations, these are quite  
                 25          phenomenal. FTI suggest a fair market value of

16:55 1 \$245 million and the prospective value of \$329 million  
2 as of 14th October 2008.

3 However, in the summer of 2009, RBS only assessed  
4 a value of \$67 million. Moreover, to the left, you  
can  
5 see the value that Total assessed for the LPG plant.  
6 And as Mr Chagnoux told us, this value was zero. It  
7 speaks volumes about the credibility of FTI that they  
8 would suggest values which exceed the estimates of  
9 renowned companies such as Total, or as Claimants call  
10 them, world class advisers such as RBS, by hundreds of  
11 millions of dollars.

12 Another example of a huge disconnect between FTI  
and  
13 RBS is the Borankol field. FTI have estimated a fair  
14 market value of 197 million as of 14th October 2008.  
15 RBS did their own analysis in the summer of 2009, and  
16 ended up at a value only slightly higher than  
17 19 million. We know that because 19 million is the  
RBS  
18 estimate assuming no gas export at all. RBS did not  
19 provide a number for Borankol applying its gas export  
20 price of \$85 per thousand cubic metres. However,  
since  
21 Borankol is an oilfield, and gas sales form only a  
very  
22 small part of the Borankol business, we know that the  
23 value will have been only slightly higher.

24 The status of Claimants' valuation as the outlier  
is  
25 also confirmed by the Tolwyn valuation of the RBS

16:57

that

times

the

only

in

1 report. While the value calculated by RBS was  
2 comparatively high, this was mainly due to the fact  
3 RBS used numbers provided by Miller and Lents, which  
4 provided for very high oil and condensate ratios. We  
5 have put up a table for comparison which shows that  
6 Miller and Lents expected three times the amount of  
7 condensate that Ryder Scott had estimated, and six  
8 the amount estimated by GCA. There is thus no  
9 disagreement in this arbitration that the Miller and  
10 Lents numbers are far too high.

11 And this is important since liquids are far more  
12 valuable than gas. Claimants admit this themselves in  
13 their first post-hearing brief. The considerable  
14 importance of condensate for the Tolbyn field is also  
15 underscored by the PwC report, which analysed that in  
16 2008, two thirds of the total sales proceeds came from  
17 the sale of condensate. Taking this into account,  
18 an RBS valuation adjusted for the difference in the  
19 liquids estimate would show that FTI's valuation for  
20 Tolbyn field is overstated.

21 Against this background, the FTI valuation can  
22 be deemed the clear outlier. It's actually baseless  
23 light of all other evidence.

24 In a moment, we will look at the various flaws in  
25 FTI's analysis in more detail, and show how it came

16:59

1 about that FTI missed the mark to such an extent.

again

2 Before we do so, it's worthwhile to take a look at  
3 the Deloitte valuation, as of 21st July 2010. Unlike  
4 FTI's valuation, Deloitte's work is supported by  
5 contemporaneous evidence. On this slide, we have  
6 various valuations for Borankol and Tolkyn, now as of  
7 21st July 2010. To the far left, we have Deloitte's  
8 valuation with an enterprise value of US\$186 million.  
9 Next to that, we have comparable companies as of  
10 21st July 2010.

comparable

11 Importantly, Deloitte have prepared this

of

12 companies calculation both with the reserve estimates  
13 GCA and of Ryder Scott. These are clearly below the  
14 Deloitte value, with US\$97 million and US\$128 million  
15 respectively.

16 Next to that, we have, in light red and in green,  
17 the comparable transactions analysis, again based on  
18 reserve estimates both of GCA and Ryder Scott. The  
19 values of US\$216 million and US\$286 million are well  
20 within the value range of the Deloitte valuation. And  
21 moreover, the same goes for the proper value of debt  
22 calculation provided by Deloitte, which also stands at  
23 216 million.

24 And finally, on the far right side, we have again  
25 FTI, who provided the value based on the Cliffson

17:00

1 transaction. And as is apparent, this value is fairly  
2 unreasonable, given all the evidence to the contrary.  
3 And we will turn to the Cliffson transaction later for  
4 some more detail.

5 Turning now to the specifics of the work done by  
6 Claimants' experts, Claimants' experts have made  
7 numerous methodological mistakes that seriously  
8 compromise their work. Effectively, their expert work  
9 is unusable. Given that Claimants have the burden of  
10 proof, this fundamentally undermines their claim.

actual

11 On this slide, we have collected some of the  
12 methodological mistakes of Ryder Scott as analysed by  
13 GCA. So among other things, Ryder Scott's methodology  
14 is overly optimistic. It is not consistent with the  
15 data, and it does not take into consideration the  
16 field performance.

to

17 Moreover, with regard to Borankol, Ryder Scott  
18 assumes comparatively deep oil-water contacts, in  
19 particular in the Borankol JIA reservoir. And this  
20 means that more oil and less water can be found in the  
21 reservoir. However, Ryder Scott have only been able  
22 do so by ignoring data from the wells in the field.

decline

23 Finally, the decline in wellhead pressure at the  
24 Tolbyn field was readily apparent on all wells already  
25 by 14th October 2008. Ryder Scott ignored this

17:02           1           in order to question the need for compression. And as  
                  2           we will show in a moment, everyone, including  
Claimants       3           themselves, agreed in 2008 and 2009 that compression  
                  4           would become necessary.

                  5           Ryder Scott have come up with a development plan  
for              6           the contract 302 area which is completely unrealistic.  
                  7           This comes as no surprise, given that this is simply  
not              8           their area of expertise, and given that they have  
                  9           basically just taken up Claimants' wishes. These  
wishes          10          are naturally oriented towards maximising the claims.  
                  11          The quote on the slide summarises this very well. As  
                  12          you can see here, Ryder Scott admit that they do not  
Kazakhstan,   13          have a clue about the application process in

                  14          and that they did not take into account any of this  
for             15          their development plan. Instead, they simply relied  
on              16          what Claimants told them were Claimants' intentions.

                  17          Turning now to the work of FTI, to start, one of  
the             18          two experts, silently and without any explanation,  
                  19          disappeared after submitting two reports in this  
                  20          arbitration.

                  21          Let's take a look at the substantial mistakes.  
of              22          First of all, there is FTI's unjustifiable ignorance  
                  23          risk for the so-called prospective valuations of the  
                  24          contract 302 and the LPG plant. Providing such  
                  25          an unrisksed valuation is not in accordance with good

17:04 1 valuation practice. It is also not in accordance with  
2 the US PAP definition of "prospective value", as  
3 Mr Rosen wanted to make us believe in the quantum  
4 hearing. It is rather a transparent attempt at  
5 so-called "anchoring". FTI provide a very high number  
6 in the full knowledge that it's unsustainable. The  
7 value is meant more as a starting point of  
8 a negotiation, rather than as an actual valuation.

And 9 it is set spectacularly high in an attempt to raise  
the 10 stakes and to blow the claim out of proportion; maybe  
11 also for the benefit of the noteholders.

12 Such approach may be appropriate in a bazaar, but  
13 not in an arbitration. The prospective values should  
be 14 disregarded completely.

15 We will now briefly touch upon the most obvious  
16 mistakes in FTI's analysis. The relevant references  
are 17 on the slide. To begin with, FTI incorrectly mixed  
the 18 nominal and the real terms approach, resulting in  
19 a value overstatement of US\$379 million.

20 FTI have admitted to this serious mistake in the  
FTI 21 update note, just shortly prior to the hearing on  
22 quantum. Further, FTI arbitrarily reduced its  
inflation 23 rate assumptions to inflate asset values. This  
happened 24 with the FTI update note that I just mentioned.  
25 Apparently FTI were unhappy with having to reduce  
values

17:05 1 by 379 million, so they changed their inflation  
2 assumptions. They now assumed an inflation of 1.61%,  
3 instead of 2.82%, which is entirely unrealistic for  
4 Kazakhstan.

FTI 5 A further mistake also in their FTI update note,  
6 add almost 50 million to Claimants' claim by way of  
7 incorrect rounding. Specifically, FTI calculated  
8 a discount rate of 14.41%, which they then rounded  
down 9 to 14%, against good valuation practice.

mistakes 10 And very instructive for the sheer mass of  
11 in FTI's work is their work on the Munaibay discovery.  
12 As Deloitte have shown, FTI make several calculation  
13 mistakes and end up at a 63.8% overstatement of the  
14 estimated market value for the Munaibay oil discovery.

from 15 Another mistake: the Tribunal may also remember  
16 Mr Rosen's cross-examination that FTI assumed  
incorrect 17 administration costs with regard to the contract 302  
18 development. Mr Rosen had to admit this mistake as  
19 well.

rates 20 Another considerable mistake happened in FTI's  
21 prospective valuation of the LPG plant. FTI simply  
22 applied the same discount rate as with their other  
23 valuations, even though they applied different tax  
24 to the LPG plant. Again, that's a severe mistake, and  
25 the result is a value overstatement of US\$20.3  
million.



17:07

closed

used

is

To

1 FTI also spoilt their comparable transaction  
2 analysis, which they consider to be a reality check on  
3 their own valuation. FTI used transactions that  
4 considerably prior to the financial crisis, without  
5 adjusting for the effect of the crisis at all.

6 Again, that's a clear violation of good valuation  
7 practice and, frankly, of common sense. That is also  
8 apparent from the fact that the multiples that FTI  
9 were twice as high as those that Claimants' own  
10 investment bank, Renaissance Capital, considered  
11 appropriate at that time.

12 FTI's work on gas pricing for the 302 properties  
13 another seriously flawed item of their reports. We  
14 mention it here because it illustrates well how FTI's  
15 work is based more on fantasy than on actual facts.  
16 begin with, we need to repeat that any kind of gas  
17 production from the contract 302 properties is highly  
18 unlikely. Therefore, any work by FTI on gas pricing  
19 from the 302 properties is highly speculative in the  
20 first place.

21 Moreover, FTI's gas price assumptions are based on  
22 a draft contract that was never signed by all parties.  
23 From any conceivable point of view, the tripartite  
24 [agreement] was and has always been a non-contract.

25 Lastly, the draft tripartite agreement expressly

17:09  
Tolkyn

that

contract

limitations

not

mistakes.

for

work

cost

"we

that

1 stated that it only covered gas produced from the  
2 field. And it also provided the maximum production  
3 KazAzot and KMG NC were willing to take. FTI applied  
4 the draft tripartite agreement to the supposed  
5 amounts nonetheless, disregarding the draft  
6 limitations completely.

7 To put it in very simple words, FTI invent  
8 a spectacular value by assuming gas volumes that do  
9 exist, and by applying a sales contract to those gas  
10 quantities that never existed because it was never  
11 signed and because it never had the wording that FTI  
12 assumed.

13 I just referred to a number of very severe  
14 mistakes. There is one flaw that calls into question FTI's  
15 reliability as such. FTI, on many occasions, does not  
16 act as an independent expert, but rather as a front  
17 for Claimants to introduce their own estimates. FTI are  
18 thus giving Claimants' own estimates the appearance of  
19 independent work, where in fact no such independent  
20 work was ever done. A very good example of this is the  
21 capital expenditure estimate for the contract 302. We  
22 have put that up on the slide, and you see here quotes  
23 from the first FTI report about the different well  
24 cost estimates. As you can see, FTI used the expression  
25 "we applied" or "we have assumed". Nowhere does it say

17:10

1 these well costs have been assumed by anyone else than  
2 FTI. FTI presented the well costs as their own, thus  
3 giving them the appearance of independence.

to

4 However, at the hearing on quantum, Mr Rosen had  
5 back away from these well cost estimates when being  
6 confronted. He suddenly admitted that they had been  
7 provided by Claimants. And interestingly, the same  
8 statement can now be found in the third FTI report.

The

9 well cost estimates for the 302 area are thus nothing  
10 but Claimants' own made-for-arbitration numbers, they  
11 are no independent work, and they should be completely  
12 disregarded. This leaves Claimants actually with no  
13 independent contract 302 valuation, and therefore no  
14 proof of any damage, or any loss of opportunity for

that

15 matter.

16 On a side note, we have noted with curiosity that  
17 even after Mr Rosen had finally come clean and had  
18 admitted to the fact that he is no expert on costs,  
19 Claimants still stated in their letter to the Tribunal  
20 on 22nd April that Mr Rosen was the counterpart to  
21 Mr Wood of GCA. Claimants continue with their

attempts

22 to hide the fact that they simply have no experts on  
23 costs whatsoever.

24 The same applies to infrastructure cost estimates.  
25 Here again, FTI admitted that they had been provided

by

17:12 1 Claimants.

2 It's not only through the unsupported work of FTI  
Claimants, 3 and Ryder Scott, based on numbers provided by  
4 that Claimants inflate their claims. A considerable  
5 part of the value overstatement stems from Claimants'  
6 improper early valuation date of 14th October 2008.  
7 This date is untenable as a matter of fact and as  
8 a matter of law, and it's just designed to maximise  
the 9 claims.

10 Claimants' argument in support of that date is the  
11 contention that their date allows to ignore the  
alleged 12 value-depressing effects of the state's actions. In  
13 that regard, Claimants allude to the effects of the  
14 inspections and investigations, as well as to the  
15 preemptive rights waiver issue. However, we have just  
16 established that there were no such effects, as some  
of 17 Claimants' witnesses have admitted themselves. The  
18 choice of valuation date is thus directed solely at  
19 excluding various adverse events after the valuation  
20 date from the calculation.

21 Claimants suggest 14th October 2008 as the  
valuation 22 date arguing that on that date, an alleged state  
23 intent 24 to expropriate became manifest. However, there was no  
25 25 such state intention to expropriate, either on  
according 26 14th October or on any other date. Moreover,

17:13

1 to the international practice, the objective effect of  
2 state action, and not any alleged intent, is decisive.

of

3 We have put up on the slide a quote from the case  
4 Santa Elena v Costa Rica, which is very clear to that  
5 effect. Based on this and other case law that the  
6 Republic has referred to in its written pleadings, the  
7 valuation date must be identified at a relatively late  
8 stage, that is when the deprivation of property rights  
9 has turned out to be irreversible.

thus

10 However, on 14th October 2008, no state measures  
11 against KPM and TNG were executed. Claimants have  
12 not provided the valuation that relates to the present  
13 case in any way. A proper valuation can only be based  
14 on the date of 21st July 2010. This is the date when  
15 Claimants lost their contracts. This was the result  
16 a legal termination. There can be no doubt that this  
17 was the only moment that Claimants were allegedly  
18 deprived of rights.

of

that

19 Another instance in which Claimants' improperly  
20 early valuation date plays a role is that of monies  
21 Claimants pocketed after the valuation date when they  
22 were still running the companies. There is strong  
23 evidence which demonstrates that during this time,  
24 Claimants took out whatever they could from the  
25 companies. This may have led to negative balance

17:15  
that's

1 sheets, as Claimants and FTI emphasise. However,  
2 completely beside the point. What is crucial here are  
3 monies that Claimants, as the shareholders of TNG and  
4 KPM, siphoned off.

they  
the

5 There are two instances in which this is very  
6 obvious. In the years 2009 and 2010, KPM distributed  
7 dividends to Claimants in the amount of \$71.9 million.  
8 This was acknowledged by Mr Lungu in the hearing on  
9 quantum. In the third expert report, FTI also  
10 acknowledged that these dividends represent equity in  
11 KPM and TNG that existed prior to the 2008 valuation  
12 date. By diverting this money from the company after  
13 the valuation date, Claimants demand actually what  
14 already took. And in addition, TNG and KPM extended  
15 due date of accounts receivables due from affiliated  
16 companies, Statoil and General Affinity, in the  
17 aggregate amount of \$143.4 million.

and

18 Deloitte explain, and I quote:  
19 "As KPM and TNG were not paid, and effectively  
20 exchanged trade receivables for financing loan  
21 receivables, this transaction may have reduced KPM's  
22 TNG's operating cashflows to the benefit of related  
23 parties belonging to the wider Stati group by up to  
24 US\$143.4 million."

25 This is paragraph 81 of Deloittes' supplemental

17:17 1  
transactions

report. And there may be many more similar  
hidden in Claimants' financing structure.

is

3 I would now like to turn to another topic, which  
4 highly relevant for quantum in this case. The Tolkyn  
5 field primarily produces gas and the Interoil reef, if  
6 it existed, is assumed to do the same. Therefore, gas  
7 prices play an important role.

Tolkyn

and

10 identified,

themselves

8 Deloitte, when making their valuation of the  
9 field, looked at TNG's existing gas sales contracts  
10 looked at their historical gas sales. They  
11 and that is undisputed, that TNG had sought the gas  
12 domestically. Claimants assert that their gas was  
13 exported by others, but they agree that they  
14 never exported gas.

on

to

15 Now, Deloitte therefore assumed that it would be  
16 most probable that TNG would continue selling the gas  
17 the domestic market, with prices increasing according  
18 expected consumer price inflation.

export

19 To also allow for the less likely cases of more  
20 significant increases to domestic prices, and the  
21 of gas, Deloitte included these scenarios in their  
22 valuation, weighting them at 30% and 5% respectively.

23 The chance that Claimants would ever be exporting  
24 gas were very low. This is mostly due to Kazakhstan's  
25 situation as a land-locked country, and Gazprom's

17:18

about

that

the

what

1 position as a gas gatekeeper for Kazakh gas.  
2 Claimants ignore these limitations to export. In  
3 the hearing on quantum, we heard Mr Stati complain  
4 his companies' inability to export gas. He alleged  
5 by virtue of his companies' subsoil use contracts, the  
6 Republic had been obliged to assist him in exporting  
7 gas. He even claimed that export had been guaranteed.  
8 We invite the Tribunal to compare the wording of the  
9 provision Mr Stati refers to and to his, I would say,  
10 naive reading of this provision.

11 FTI, on the other hand, had completely disregarded  
12 existing contracts, historic sales and the limitations  
13 to export due to volumes set by Gazprom. FTI simply  
14 decided to apply the pricing mechanism of a draft  
15 tripartite agreement, and they even misapplied this  
16 pricing agreement. We have explained this entry in  
17 detail in our submission.

18 I turn over with this to Mr Tirado.

19 Closing statement by MR TIRADO

20 MR TIRADO: Thank you. Looking at the value of the  
21 contract 302 properties, it is the Republic's position  
22 that the Interoil reef is almost certainly a dry hole.  
23 So why do we say that? We can say that because of  
24 we know about the Interoil reef, in particular the  
25 implications of the 3D data.



17:20

1           The Tribunal will remember that this 3D data was  
2 available since 2009, but the Claimants chose to only  
3 introduce it for the first time at the hearing on  
4 quantum in direct testimony of Ryder Scott. In  
5 hindsight, their conduct perhaps does not come as  
6 a complete surprise. A 3D seismic made for costs of  
7 various multi-millions is not simply forgotten by  
8 a party raising significant claims related to an area  
9 covered by a 3D seismic. In fact, the 3D seismic data  
10 does not spell good news for the Claimants.

11           First of all, both parties' experts concur that in  
12 at least nine out of ten cases, drilling the Interoil  
13 reef will result in finding a dry hole. Moreover,  
14 Gaffney Cline estimate that only one of 20 cases, the  
15 Interoil reef is a large and gas-bearing structure.

16           Now, what is the cause for this tiny chance of  
17 success? Well, first of all, it is a lack of visible  
18 closure on the date. Both parties' experts concurred  
19 that the existing 3D data does not show that the  
20 structure closes, forming a trap capable of retaining  
21 hydrocarbons. Moreover, even if the structure closes,  
22 there is a strong risk that hydrocarbons have migrated  
23 to the surface through faults cutting into the reef.  
24 This is a risk that was only identified by Total when  
25 they analysed the reef in 2009.

17:22  
is

Interoil

problem

that

1            Now even disregarding all risk, the Interoil reef  
2            still worthless. This is the result of the likely  
3            presence of high quantities of H2S. There are strong  
4            indications that H2S will be in gas form in the  
5            reef, in the unlikely event that there is any.

6            Total, when doing their analysis, included this in  
7            their estimate, assuming that 40% of the supposed  
8            Interoil reef gas stream would consist of CO2 and H2S.  
9            The reason for this assumption is simple experience,  
10           showing that hydrocarbons from deep lying sub-salt  
11           reservoirs in Kazakhstan are typically rich in H2S.  
12           Just as an example, for the nearby sub-salt reservoir  
13           under exploration by Max Petroleum, Ryder Scott  
14           concurred that 25% of non-carbon gas is a necessary  
15           economic consideration.

16           In this arbitration, Ryder Scott now finally and  
17           reluctantly agree that this is a 50% chance of  
18           significant H2S, that's more than 1%, in the reef gas.

19           It has taken Ryder Scott quite a while to  
20           acknowledge this. Gaffney Cline pointed out the  
21           of H2S since their first report.

22           We also say it is also the Republic's position  
23           the LPG plant is worthless. The unfinished LPG plant  
24           has a negative value. We say that due to the lack of  
25           gas to feed into the LPG plant and significant capital

17:23

1 expenditure to furnish the construction of the plant,  
2 the value of the plant would be negative by  
3 US\$89.8 million.

the

4 Deloitte's valuation assumes a start-up date in  
5 year 2011. This is correct even if liability were  
6 hypothetically assumed. As I explained earlier, the  
7 construction of the plant was not stopped due to any  
8 misconduct on behalf of the Republic. Claimants  
9 abandoned the project due to cash constraints that are  
10 unrelated to any actions by the Republic.

11 Rather, affiliated companies failed to pay TNG at  
12 a time when Claimants' companies were already hit hard  
13 by the financial crisis, and falling prices.

demonstrates

14 In addition, already at the end of 2008, when the  
15 plant was still under construction, Total assumed that  
16 the value of the plant was negative. This

date

17 that while demothballing the plant and the start-up  
18 do play a role, one would still assume the plant to be  
19 worthless.

20 When looking at the LPG plant, it needs to be  
21 pointed out that its construction soon turned into  
22 a disaster for Claimants. This is exemplified by  
23 exploding costs, costs more than doubled from the  
24 original plan, and if one had decided to finish the  
25 construction, costs would have been more than three

17:25

1 times the anticipated costs.

LPG

2 Claimants chose to conceal this from the Tribunal,  
3 but faltered under cross-examination. In his first  
4 witness statement, Mr Lungu had stated that the LPG  
5 plant was originally intended to start operating in  
6 2009. And capital expenditure was allegedly estimated  
7 to be US\$233 million. As it turned out, the original  
8 plan had not been what Mr Lungu claimed. Under  
9 cross-examination, Mr Lungu admitted that the original  
10 plan for the LPG plant had been the so-called Ascom  
11 plant business plan, which Respondent submitted as  
12 Exhibit R-333.

decided

13 This business plan shows that in 2006, Ascom  
14 to build an LPG plant with the participation of Vitol.  
15 They intended to invest a mere US\$20 million, and  
16 assumed to have the plant up and running within the  
17 year. What we also take from their business plan is  
18 that they made this decision because they assumed to  
19 have large gas reserves in the amount of 62.3 bcm.

next

to

less

20 This business plan frankly proves that Mr Lungu  
21 misled the Tribunal when he depicted the original plan  
22 in his witness statement. Unsurprisingly, in his  
23 witness statement, Mr Lungu also omitted to say that  
24 Claimants had expected to have up to 62.3 bcm of gas  
25 be processed, but soon learned that they would have

17:26 1 than 10 bcm of gas reserve. With a plant capacity of  
2 about 2.5 bcm per year, this would mean a run-time of  
3 only four years. What is more, Claimants also misled  
4 their auditors, KPMG, by claiming that there was no  
5 delay and costs were within budget. It thus even  
found 6 its way into the KPMG vendor due diligence for Project  
7 Zenith, and thus also very likely misled potential  
8 investors.

comment 9 As for the Borankol valuation, just a brief  
10 on this, if I may. Borankol is properly valued at  
11 US\$62.8 million. Claimants have submitted  
12 a substantially overstated value based on the flawed  
13 testimony of Ryder Scott. I am now at slide 80. You  
14 will see on the slide the inexplicable bump in  
15 production that Ryder Scott assumed from  
recompletions. 16 Proper analysis shows that no such bump will occur.

17 Finally, turning to the Tolkyn field, the correct  
18 value of the Tolkyn field is US\$123.2 million.  
Deloitte 19 arrive at this value by applying the production  
profile 20 provided by Gaffney Cline, and by applying the capital  
21 expenditure provided by Gaffney Cline's field  
22 development planning and cost estimating engineer,  
Mike 23 Wood. In addition, Deloitte arrive at this value by  
24 applying gas prices that take into account TNG's  
25 existing gas sales contracts, TNG's historical gas

17:28

1 sales, and the realities of the Kazakh gas market in  
2 general. The FTI valuation, on the other hand, is  
3 inflated. The higher value that FTI assume is only  
4 partly due to the earlier valuation date.

5 Two important other factors are wrong assumptions  
6 regarding gas prices, and the disregard of the need to  
7 install compression. These are not only wrong from  
8 a 21st July 2010, but also from a 14th October 2008  
9 perspective. What we have already discussed are gas  
10 prices, and the Tolkyn field is where these wrong  
11 assumptions really kick in. I would therefore  
12 immediately turn to compression before handing over to  
13 Dr Nacimiento to complete our closing submissions.

14 This chart on slide 82 depicts the development of  
15 the wellhead pressure for every individual well on the  
16 Tolkyn field over time. The green line indicates the  
17 minimum wellhead pressure of 55 bar. In their  
18 supplemental report, Gaffney Cline explained that, if  
19 the wellhead pressure drops below 55 bar, the gas  
cannot  
20 reach the CAC pipeline, and hence the well would need  
to  
21 be shut in. The reason is that the CAC pipeline  
22 operates at a certain pressure. If gas is injected  
into  
23 this pipeline, it needs to have at least the same  
24 pressure as the operating pressure of the CAC  
pipeline.

25 Looking at the dashed line for 21st July 2010, it  
is

17:30 1           apparent that some wells were already reaching the  
declining 2           minimum wellhead pressure, and the others were  
3           in a similar manner. Assuming a similar development  
4           over time, it is apparent that most of the wells would  
5           decline below the necessary pressure in between the  
6           years 2011 and 2013, and therefore compression would  
be 7           needed.

8           Looking at the dashed line for 14th October 2008,  
9           the Tribunal will notice that the rapidly declining  
10          wellhead pressure was already apparent at Claimants'  
11          valuation date. Indeed, Gaffney Cline explicitly  
stated 12          in their third report at paragraph 36:

13                 "This plot clearly shows the dramatic rate of  
14          decline in wellhead pressure when the gas production  
was 15          increased during the second half of 2007. This  
decline 16          was established and evident on all wells by the time  
of 17          the Claimants' effective date in October 2008."

18                 With that, I pass over to Dr Nacimiento.

19                         Closing statement by MR NACIMIENTO

20 DR NACIMIENTO: Thank you. I now turn to the last issue,  
21          the issue of debt. Claimants have accumulated a  
massive 22          chunk of debt which they have added to their claim in  
23          its entirety. We are speaking about the Tristan note  
24          debt of 559 million as of 21st July 2010, tax debt of  
25          more than US\$81.2 million, and other debt of at least

17:31

1 US\$119 million.

and

2 Claimants tried to add all of this debt to their  
3 claim, by arguing that they should be awarded damages  
4 based on the enterprise value. As a matter of fact  
5 law, they can however not claim more than the equity  
6 value.

thus

7 Interestingly, Claimants have never provided the  
8 breakdown of the debt. They have never stated the  
9 equity value or made it even possible for the Tribunal  
10 to make a calculation thereof. Their entire claim  
11 remains unproven to this date, and should be dismissed  
12 entirely for this reason alone.

in

13 To begin with, there cannot be any doubt, and we  
14 understand it is undisputed, that in the end Claimants  
15 cannot keep more than the equity value of their stake  
16 KPM and TNG. Equity value refers to that part of the  
17 companies' overall cashflows that remains after the  
18 satisfaction of the debt holders' primary claims.

be

19 If there were causal breach of international law,  
20 this is the most that Claimants could expect to  
21 ultimately receive. In particular, Claimants cannot  
22 expect to receive from this arbitration what can only  
23 be the claim of the debt holders.

24 Nevertheless, Claimants argue that they have to be  
25 satisfied first with the whole enterprise value. They



17:33  
the

1 claim that they will distribute a portion thereof to  
2 Tristan noteholders. This claim is irrelevant, as we  
3 will demonstrate with the following.

4 Claimants' argument is fundamentally flawed for  
5 a total of five separate reasons. We have put them up  
6 on the slides, and they are in order.

on

7 International law does not allow bringing claims  
8 behalf of others. This applies in particular where  
9 Claimants have no conceivable damage of their own.  
10 Claimants did not remain liable towards the

noteholders.

11 Claimants did not remain liable towards other debt  
12 holders. And an award for enterprise value would  
13 unjustly enrich Claimants.

of

14 To the first argument, what Claimants are  
15 effectively doing here is bringing a claim on behalf  
16 of the noteholders. They are trying to circumvent all

the

17 hurdles that a potential claim by the noteholders

would

18 face. And these hurdles include but are not limited

to:

19 nationality requirements under the BIT, and other  
20 applicable BITs; Tristan notes fulfilling the

definition

21 of "investment" within the territory of Kazakhstan;

the

22 proof of breach of investment protection guarantees

with

23 regard to the Tristan notes; and the proof that damage  
24 has been suffered.

refer

25 That's unacceptable as a matter of law, and I

17:34 1 to our written submission for further details. In  
2 situations comparable to the one at hand, investment  
3 tribunals have repeatedly stressed this point, and  
4 again, I refer to our written submissions.

5 A further quote from investment jurisprudence.  
6 In order to demonstrate the fundamental flaw in  
7 Claimants' claim, we need to do a calculation example.  
8 As Deloitte have calculated, the enterprise value of  
9 Claimants' assets is 186 million as of 21st July 2010.  
10 million, On that date, the Tristan debt stood at US\$559  
11 today, and further debt, unspecified by Claimants as of  
12 existed as well.

13 In such situation, there is no equity value  
14 whatsoever. In such situation, awarding the  
15 enterprise value is particularly nonsensical. And that is  
16 because, if we disregard the sharing agreement for the moment,  
17 hypothetical all of the US\$186 million awarded in such a  
18 decision would go entirely to the noteholders. The  
19 whole claim would thus serve to circumvent  
20 jurisdictional and other challenges of a noteholder  
21 claim.

22 Moreover, Claimants did not remain liable towards  
23 rely the noteholders. Section 6 on which the Claimants  
24 does not include an award in Claimants' favour among  
25 the items that the noteholders can receive. Claimants'

17:36  
dividend

1 ill-conceived argument that an award would be a  
2 payment or other distribution under the shares in KPM  
3 and TNG is unsupported as a matter of wording already.  
4 The provision refers to payments of KPM and TNG alone.

the

5 And finally, a quick word about enrichment.  
6 A simple calculation example shows that, because of  
7 sharing agreement, Claimants would even be unjustly  
8 enriched if they were awarded damages based on the  
9 enterprise value. And that is because, under the  
10 sharing agreement, a hypothetical award based on the  
11 correct enterprise value of 186 million, and

incorrectly

12 not deducting the debt, would be distributed in a way  
13 that a total of US\$65.4 million would go to Claimants.  
14 And we have put up a detailed calculation on the

slide.

they

15 So even though Claimants never suffered any damage,  
16 would receive US\$65.4 million. And this is clearly  
17 an unjust enrichment.

granted

18 Claimants cannot argue that they were simply  
19 a favour by the noteholders, or that they were given  
20 an incentive for pursuing the enforcement of an award.  
21 It is rather apparent that Claimants used the  
22 uncertainty about the liability towards the

noteholders

23 in order simply to get a better deal for themselves.  
24 And such behaviour cannot be to their advantage.

Thank

25 you.

17:37  
the

rebuttal

1 THE CHAIRMAN: Thank you very much. This then concludes  
2 first round closing statements. We now have a break  
3 until tomorrow morning, 9.30, for the second-round  
4 closing statements by the parties, but only in  
5 of the other side's first-round statements, as we all  
6 know from the agenda. Each party has one hour, as we  
7 all know.

8 Alright, so I will see you tomorrow morning, 9.30,  
9 thank you.

10 (5.40 pm)

11 (Hearing adjourned until 9.30 am the following day)

12

13

14

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