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P R O C E E D I N G S

PRESIDENT McRAE: Counsel, are we ready to start?

MR. DÍAZ-CANDIA: Correct.

PRESIDENT McRAE: I declare the Hearing resumed.

Before we start, I want to ask the Parties if there are any procedural matters they wish to raise at this stage?

Mr. Díaz-Candia?

MR. DÍAZ-CANDIA: Good morning, no procedural matters but just to let counsel for Perú--and you know we have asked [REDACTED] to be here around noon. Witnesses for tomorrow, [REDACTED] and [REDACTED] are also in D.C. today. If for any reason you believe that they would be needed today, let us know in advance, so we can tell them to dress up and come here. Same with Mr. [REDACTED], if you think you're going to need him before noon, we'll call him but give us some leeway for that.

Other than that, that's it. We're ready to proceed.

1 PRESIDENT McRAE: Thank you.

2 MR. GRANÉ LABAT: We appreciate the courtesy
3 of letting us know, we will coordinate. We believe
4 that we will be able to stick to the agreed schedule.
5 If that's to change, we will give you advanced notice.
6 So, thank you very much.

7 PRESIDENT McRAE: Thank you.

8 I should say that the sartorial standard is
9 being set by the Tribunal this morning, so feel free
10 to take your jackets off, depending on whether you
11 find it cool or hot in this room. Outside, clearly
12 you would be, but inside it depends on people's
13 personal thermometer.

14 Then, I think we move to the examination of
15 the first witness, Mr. [REDACTED]. So, if you could take
16 the Witness position here.

17 [REDACTED], CLAIMANT'S WITNESS, CALLED

18 PRESIDENT McRAE: Good morning, Mr. [REDACTED].
19 Thank you very much for coming and giving your
20 testimony. You probably are aware the process is that
21 you will make an initial statement yourself, and then
22 you will be subject to cross-examination by counsel

1 for the Respondent, and after that, your counsel will
2 be given an opportunity to recross, and there may be
3 questions from the Tribunal as well.

4 Perhaps we could start with your making the
5 Declaration which I believe should be in front of you.
6 I understand that you are going to be speaking in
7 English.

8 THE WITNESS: Yes.

9 PRESIDENT McRAE: And just a reminder that I
10 gave yesterday, try and remember that it's being
11 interpreted and therefore to speak at a speed that
12 enables the Interpreters to work effectively.

13 THE WITNESS: Okay. Thank you, your Honor.

14 I solemnly declare upon my honor and
15 conscience that I shall speak the truth, the whole
16 truth, and nothing but the truth.

17 PRESIDENT McRAE: Thank you.

18 Counsel, you want to introduce the Witness?

19 MR. DÍAZ-CANDIA: Yes, Thank you,

20 Mr. President.

21 [REDACTED] has informed us that he doesn't
22 have a general statement to make. I'm just going to

1 ask him a couple of questions for direct and then
2 we'll cede the Witness to opposing counsel.

3 DIRECT EXAMINATION

4 BY MR. DÍAZ-CANDIA:

5 Q. Good morning, Mr. [REDACTED]. Can you please
6 state your full name for the record.

7 A. [REDACTED].

8 Q. On your table, you have two Witness
9 Statements. Can you please confirm that those are
10 your statements and that the signature that appears at
11 end of each of those is yours?

12 A. Yes.

13 Q. Is there anything you would like to correct
14 from those statements?

15 A. No.

16 Q. Okay. Mr. [REDACTED], in those statements,
17 specifically in Paragraph 37 of your First Statement
18 and Paragraph 16 also of that same statement, you
19 mentioned [REDACTED], a company in Dubai. Can
20 you please explain to the Tribunal what was the
21 relationship between Kaloti Metals and that Company.

22 And a point of order, I'm going to ask you

1 the questions and then Perú is going to ask you
2 questions. When you answer, please look at the
3 Tribunal and answer to the Tribunal.

4 Go ahead. What was the relationship between
5 Kaloti Metals in Miami and [REDACTED] in Dubai?

6 A. The relationship was strictly business
7 Transaction.

8 [REDACTED] is a customer of mine who I
9 sell all the precious metal to them, and I am not part
10 of that company, and it's not a sister company.
11 Kaloti Miami is completely independent entity. I have
12 no--nothing to do with [REDACTED] except
13 business Transactions. The Company in Miami, it's
14 been created by me, and I am the sole manager and
15 making all the decision for that Company, from A to Z.

16 That's basically the relationship.

17 Q. Okay. But just to clarify a point, and this
18 goes to Professor Knieper's question of yesterday.
19 When you referred to yourself, you mean as corporate
20 officer of Kaloti Metals?

21 A. Yes.

22 Q. Mr. [REDACTED], when did you believe,

1 understand, or feel that the Five Shipments of gold
2 that were initially immobilized by SUNAT in 2013 and
3 '14 were lost?

4 A. From the beginning, we keep hoping that we
5 would recover the shipments. We have hired different
6 attorneys' firms to help us to do the best to try to
7 release those shipment, to get them back, and get back
8 on the track.

9 We kept working and hoping it's going to
10 happen, this year and next year. We didn't lose hope
11 in the beginning. At the end, in 2018, November 2018,
12 when we lost the hope, we could not continue.

13 Creditor knocking on our door. They
14 need--they need us to pay the balance of the loan and
15 all the invoices that's pending, and we could not do
16 that. For that reason and also, the Kaloti
17 international had sent me an advice and no longer can
18 extend any business Transaction with us, and they're
19 going to close the door. And that's when I lost hope,
20 and we shut the doors.

21 Q. That included also your hope of getting the
22 gold back, or not? Specifically, with the Five

1 Shipments. When did you lose hope that they were
2 going to be returned?

3 A. I kept hoping from that time they
4 immobilized the shipment until 2018, when 2018
5 happened, I gave you the reason, and that's when we
6 shut down, we closed the doors.

7 Q. Thank you very much, Mr. [REDACTED].

8 MR. DÍAZ-CANDIA: And, with that, we yield
9 the Witnesses--the Witness to Perú's counsel.

10 PRESIDENT McRAE: Thank you.

11 Mr. Grané, or whoever is going to do the
12 cross-examination?

13 MR. GRANÉ LABAT: Yes, thank you very much,
14 Mr. President. And my colleagues Álvaro Nistal and
15 Katelyn Horne will be conducting the cross-examination
16 in conformity with Paragraph 25 of the PO.

17 Thank you.

18 CROSS-EXAMINATION

19 BY MR. NISTAL:

20 Q. Good morning, Mr. [REDACTED].

21 A. Good morning.

22 Q. My name is Álvaro Nistal, and I represent

1 the Republic of Perú in this Arbitration. My
2 colleague Katelyn Horne and I will ask you some
3 questions in relation to your testimony.

4 Before we start, I would like to discuss a
5 few ground rules with you. As the lawyers of Perú, we
6 are entitled to choose which questions we ask you as
7 long as they are related, of course, to your testimony
8 or to your credibility. We will ask you many
9 questions that can be answered with a "yes" or "no".
10 These often are questions simply for you to confirm
11 that the statement is said in a document or to confirm
12 the content of a paragraph, things like that. These
13 types of questions, if you can answer with a "yes" or
14 "no", we would appreciate it, because we have a lot of
15 questions and we do need to get through the different
16 lines of questionings that we have.

17 A. Um-hmm.

18 Q. And I should mention that your lawyers and
19 the Tribunal can later give you an opportunity to
20 expand on any of your answers, if you wish or if they
21 consider it appropriate.

22 Do you agree with these rules?

1 A. Yes.

2 Q. Thank you.

3 My following questions seek to confirm that
4 the content of your Witness Statements reflects your
5 own recollection of the facts and that you were not
6 told what to say or what evidence to present.

7 You have testified that you have personal
8 and direct knowledge of the facts explained in your
9 Witness Statements; is that correct?

10 A. Yes.

11 Q. In your Witness Statements, you cite a
12 number of documents in order to prove your testimony.
13 Can you confirm that you chose those documents and
14 that you have read and understood those documents
15 cited in your testimony?

16 A. Yes.

17 Q. A number of the documents that you cite,
18 many of the documents related to the Five Shipments as
19 well as communications between Kaloti, yourself, and
20 the Suppliers are only in the Spanish language.

21 Are you able to read Spanish?

22 A. No.

1 MR. NISTAL: Let's please display on the
2 screen Paragraph 20 of Mr. [REDACTED] First Witness
3 Statement.

4 BY MR. NISTAL:

5 Q. [REDACTED], in this paragraph, you state
6 that, in 2012, you learned about Decreto Supremo 45
7 2010 PCM, and you also learned about the plans and
8 regulatory framework that Perú had put in place, and
9 you cite Exhibit C-44 which Claimant has submitted in
10 this Arbitration only in Spanish.

11 Have you read and understood this exhibit or
12 you are citing it without knowing its content?

13 A. I--I do. It was in Spanish, it was
14 translated in English, and that's while ago. I don't
15 remember exactly what the context of those
16 documentation.

17 Q. At the end of Paragraph 37, you cite another
18 document in Spanish. It's Exhibit C-37.

19 I'm just asking you because Claimant has not
20 submitted a translation, and you have referred to a
21 translation, so you were provided the translation, and
22 it was not submitted in this Arbitration, I assume?

1 A. I'm sure I'm provided with the
2 transportation (sic). I would not sign if I didn't
3 provide. But, like I told you, it's in Spanish and if
4 you show it to me in English, I would be able to tell
5 you more.

6 Q. That would be difficult because Claimant has
7 only submitted it in Spanish, but we will figure it
8 out.

9 I've seen a few emails between you and
10 Alfredo Chamy Roman in Spanish, did you write those
11 emails or did you get someone to write them for you?

12 A. I don't remember. That was--we're talking
13 about 7, 8 years ago.

14 Q. But you would remember if you were able to
15 write in Spanish or not.

16 A. No, I do not write in Spanish.

17 Q. Okay. Are you of the view that the
18 testimony contained in your Witness Statements is
19 complete and accurate?

20 A. Yes.

21 Q. Thank you, Mr. [REDACTED].

22 I will ask you now a number of questions to

1 confirm your role and authority in Kaloti Metals. You
2 have testified that you have been, I quote, "have been
3 the one and only Manager and officer with full
4 cooperate responsibility--corporate authority to
5 manage and bind the Claimant in this Arbitration since
6 its inception and until today." Is that correct?

7 A. Yes.

8 Q. Do you consider that the factual arguments
9 that Claimant has made in relation to this dispute in
10 the present arbitration are accurate?

11 A. Yes.

12 Q. So, you have supervised to a certain extent
13 the factual arguments made by Claimant in this
14 Arbitration?

15 A. Explain this to me again, please.

16 Q. You just said that you considered that the
17 factual arguments--I'm not asking you about legal
18 theories because I understand that you're not a
19 lawyer. I'm talking about the account of the facts
20 told by your lawyers in this Arbitration, in the
21 pleadings on behalf of Kaloti Metals. You have said
22 that they are accurate, that you consider that they

1 are accurate. So, I'm asking you whether you had any
2 role in the supervision of those factual statements,
3 whether you provide them, whether you reviewed them--

4 A. If they indicated it's accurate, I agree
5 with them.

6 Q. Okay. So, you did supervise them in some
7 way? I'm not saying that you told them what to say.
8 I'm just saying you're aware of what they wrote and
9 you had a role in informing them about the facts?

10 A. Absolutely.

11 If--whatever I remember from that time. I
12 don't know exactly what section or what pages you are
13 talking about.

14 Q. No. Of course, of course, of course.

15 A. In general, I'm agreeable with my lawyer.

16 Q. Of course. And if I ask you a question
17 about the specific fact, I will direct you to that
18 specific paragraph, and I will not try to trick you in
19 any way, just so that we are clear, Mr. [REDACTED].

20 A. Okay.

21 Q. I will now ask you a number of questions
22 about the due diligence that you alleged to have

1 conducted on Perú's regulatory framework. In
2 Paragraph 26 of your Witness Statement, you testified
3 that Perú was more attractive to you than all other
4 Latin American countries, among other reasons, because
5 it had a stable regulatory framework that included,
6 for example, the Trade Promotion Agreement between
7 Perú and the United States; is that correct?

8 A. Correct.

9 Q. And you also have testified that, in 2012,
10 you learned about the Legal and Regulatory Framework
11 concerning precious metals in Perú and that you met
12 with local lawyers in Lima who explained to you the
13 regulatory environment in the gold market; is that
14 correct?

15 A. Yes.

16 Q. And in Paragraph 19 of your Second Witness
17 Statement, you allege that Kaloti Metals purchased the
18 Five Shipments, I quote, "in good faith after
19 sufficient due diligence and in full compliance with
20 Peruvian laws and regulations."

21 A. Yes.

22 Q. You stand by that testimony.

1 A. Yes.

2 MR. NISTAL: Let's now display on the screen
3 Paragraph 98 of Claimant's Reply, which starts at the
4 bottom of Page 40 of the PDF.

5 BY MR. NISTAL:

6 Q. Mr. [REDACTED], in this paragraph, Claimant
7 alleges that Kaloti, I quote, "qualified as a
8 good-faith purchaser of the gold seized by Perú."

9 Do you see that?

10 A. Yes.

11 Q. Then, in the paragraph in the following
12 page, which is 99--the Paragraph 99 of the Reply,
13 Claimant explains why it considers to be a good-faith
14 purchaser. And, in the fourth bullet point, Claimant
15 states that: "Kaloti had a strong
16 Anti-Money-Laundering Program and that Kaloti
17 conducted extensive due diligence specifically on the
18 Sellers of the gold."

19 Do you see that?

20 A. Yes.

21 Q. And in the fifth bullet point, Claimant
22 states that Kaloti "reviewed and confirmed the

1 documentation regarding the origin of the gold before
2 the relevant purchases," meaning before the Five
3 Shipments.

4 Do you see that?

5 A. Yes.

6 REALTIME STENOGRAPHER: Could the Witness
7 keep up your voice.

8 MR. NISTAL: Let's now display on the screen
9 Paragraph 89 of Claimant's Reply, which is in Page 38
10 of the PDF.

11

12 BY MR. NISTAL

13 Q. Mr. [REDACTED], the last part of the first
14 sentence of this paragraph in that last part, Kaloti
15 Metals refers to Article 11 of the Legislative Decree
16 1107, and it states that this Decree "delineates the
17 process to verify the origin of the gold."

18 Do you see that?

19 A. I see it.

20 Q. And, in the parenthetical, at the end of
21 that sentence, Claimant alleges that Kaloti not only
22 complied with that obligation to verify the origin of

1 the gold but, in fact, went beyond the obligations set
2 out in Article 11. Do you agree with that?

3 A. Yes.

4 MR. NISTAL: Let's now please display
5 Article 11 of the Legislative Decree 1107, which, for
6 the record, is in Page 5 of Exhibit R-49.

7 BY MR. NISTAL:

8 Q. We will make it bigger, Mr. [REDACTED], so that
9 we can all read it.

10 A. Okay.

11 Q. Mr. [REDACTED], pursuant to the first sentence
12 of Article 11, "all purchasers of mining
13 products...must verify the origin of such products."

14 Do you see that?

15 A. Yes.

16 Q. And pursuant to the same first sentence of
17 Article 11, "all purchasers of mining products must
18 request the documents proving the origin of such
19 mining products."

20 Do you see that?

21 A. Yes.

22 Q. Then, paragraphs (a) to (c) of Article 11

1 specify the minimum data that the purchaser of mineral
2 products must verify in relation to those mineral
3 products.

4 Do you see that sentence that say: "The
5 minimum data to be verified will be the following."

6 A. I see it.

7 Q. And as set out in points (a) and (c) of
8 Article 11, that minimum data that the purchaser must
9 verify includes (1) the unit Code of the mining
10 concession, (2) the validity of the Concession, (3)
11 the relevant exploitation authorization, (4) the
12 waybills concerning the transport of the mineral
13 products, and (5) the identity of the carrier of the
14 mineral products.

15 Do you agree that all of that forms part of
16 the minimum documentation that purchasers must verify
17 when they buy mineral products in Perú?

18 MR. DÍAZ-CANDIA: Objection, Mr. President.
19 This is calling for a legal conclusion. Mr. [REDACTED] is
20 a witness of fact, not a lawyer. He was advised on
21 law by his lawyers in Perú and in Miami at the time
22 were not us. I don't understand why he's being asked

1 to read laws and come to legal conclusions. He's a
2 witness of fact.

3 MR. NISTAL: Mr. President and Members of
4 the Tribunal, you have seen that Mr. [REDACTED] has
5 testified that he has personal knowledge of everything
6 that he said in his Witness Statement. He has made
7 very strong statements such as Kaloti complied with
8 all laws and regulations. He also has testified that
9 he met with the lawyers and learned about the
10 regulatory framework, and that he learned and that he
11 studied by himself the regulatory framework. We need
12 to be able to test those statements. Otherwise, he
13 would be protected, immune from saying anything in
14 relation to law.

15 PRESIDENT McRAE: I think if you ask him
16 what his legal obligations are, you are going too far.
17 If you ask him whether he sees that and understands it
18 and whether they complied with it, it seems to me
19 that's a perfectly factual matter. But going as far
20 as saying "do you understand that that's your
21 obligation" strikes me as really requesting a legal
22 conclusion.

1 MR. NISTAL: Understood.

2 So, just so that it's clear, I can confirm
3 with him what the Article says?

4 PRESIDENT McRAE: Yes, of course.

5 BY MR. NISTAL:

6 Q. So, we saw that the minimum data to be
7 verified in (a) to (b) to (c) included the unique
8 Concession Code, its validity, the exploitation
9 authorization, waybills for transport of the mineral
10 products, and the identity of the carrier.

11 Do you see that in Article 11?

12 A. Yes, I see it.

13 Q. Thank you.

14 MR. NISTAL: Let's now please display on the
15 screen Annex 2 to Procedural Order No. 2, and in
16 particular Perú's Document Production Request No. 8,
17 which is in Page 33 of the PDF.

18 BY MR. NISTAL:

19 Q. Mr. [REDACTED], on the table--in the table on
20 the screen, when the table on the screen sets out the
21 documents that Perú requested from Claimant during the
22 document-production phase of this Arbitration. And as

1 you can see on the left column, Perú requested that
2 Claimant produce, I quote, "documents between 2012 and
3 January 2014 exchanged between Kaloti and the
4 Suppliers to show that Kaloti verified the lawful
5 origin of the gold contained in each of the Five
6 Shipments, and the chain of transport of such
7 shipments, prior to the alleged purchase of the Five
8 Shipments."

9 Do you see that request that I just read?

10 A. Yes.

11 Q. And the third column on the right contains
12 Claimant's Response to Perú's Document Production
13 Request No. 8, and as you can see, Claimant stated
14 that it would produce to Perú "responsive documents in
15 its possession, custody, or control." Correct?

16 A. Yes.

17 Q. Thank you, Mr. [REDACTED].

18 I will now ask you a number of questions
19 regarding Shipment 3.

20 Mr. [REDACTED], despite Claimant's commitment to
21 comply with Perú's Document Production No. 8, as far
22 as you're aware, Claimant has not produced any

1 responsive communication between Kaloti and [REDACTED]

2 [REDACTED]; correct?

3 A. What do you mean?

4 Q. So, you saw that we had requested exchange
5 of communications between 2012 and 2014 in relation to
6 the verification of the gold--

7 A. Who you request it from?

8 Q. We requested it from Claimant.

9 A. Um-hmm.

10 Q. And Claimant answered that they would
11 produce it. I'm asking you if you're aware of any of
12 such communications.

13 A. I will leave it to Mr. Hernando to answer
14 that because whatever you ask for, you ask our firm
15 and our attorneys, so it's not me.

16 Q. Okay. So, you're not aware at least.

17 A. I'm not--I'm not aware of what your request
18 from the attorney.

19 Q. Okay. Let me put it to you differently:
20 Can you point me--based on your knowledge of the
21 documents of the case, can you point me to any
22 communication between [REDACTED] and Kaloti, prior to

1 the alleged purchase of the documents? Any
2 communications, any.

3 A. Remember, again, I don't do all the
4 communication with the Suppliers.

5 Q. --

6 (Overlapping speakers.)

7 Q. I'm not talking about the communication sent
8 by you. I'm talking about any communication by any
9 member of Kaloti, between Kaloti--

10 A. I'm sure we have communication, but you're
11 talking about 10 years ago. I don't know what you're
12 getting into, but there is communication with every
13 customer, with every Suppliers.

14 Q. Kaloti--this is important because Claimant
15 says there are communications. We say there aren't.
16 I've reviewed the entire record, and there are not.
17 So, I'm asking you whether you are able to show me the
18 communication.

19 A. As I told you, I'm not personally in direct
20 with all the Suppliers. If you want, we can get you
21 all the documentation. It happened at that time. But
22 you're telling me 10 years ago, if you remember the

1 documentation and the conversation happened with the
2 Suppliers, I don't remember that.

3 Q. Um-hmm, okay.

4 Do you recall if your lawyers asked you to
5 provide them the documents that you see in Request
6 No. 8?

7 A. I don't recall.

8 Q. You don't recall that they requested of you
9 those documents.

10 A. I don't recall.

11 Q. Thank you.

12 MR. NISTAL: Let's now please display
13 Exhibit R-132. And let's please start with the cover
14 page.

15 BY MR. NISTAL:

16 Q. Before we move to this document, Mr. [REDACTED],
17 you do remember that you complied with all Peruvian
18 laws and regulations because you said it in your
19 Witness Statement.

20 A. Yes, we did.

21 Q. But you don't recall which documents--

22 MR. DÍAZ-CANDIA: Again, Mr. President, this

1 is a legal conclusion. I mean. He can ask about
2 specific obligations of fact, and he'll be glad to
3 answer.

4 PRESIDENT McRAE: He can ask him what was
5 said in his Witness Statement.

6 MR. DÍAZ-CANDIA: Correct. Okay.
7 Understood.

8 PRESIDENT McRAE: Thank you.

9 Mr. Nistal?

10 BY MR. NISTAL:

11 Q. So, you do remember that you complied with
12 all of your obligations under Peruvian law?

13 A. To the best of my knowledge.

14 Q. To the best of your knowledge, or you do
15 remember it?

16 A. To the best of my knowledge, that we have a
17 system we follow. The due diligence, the Compliance
18 Department, the Compliance Officer, they have a list
19 of all the required documents one by one. All these
20 requirement being checked and signed at the end by the
21 Compliance Officer.

22 Q. But 10 years later, as you said, now you

1 really don't know which documents were provided,
2 reviewed, or received in relation to any--

3 (Overlapping speakers.)

4 A. How do I know? We have over 250 Suppliers.
5 How do I remember all these documents?

6 Q. Correct.

7 So, actually, when you said that you
8 complied with Peruvian laws and regulations, in
9 reality, it's not a certain--

10 (Overlapping speakers.)

11 A. According to our program, AML Program, which
12 is a very strong program, it's put together with long
13 period of time through two attorneys firms. And it's
14 very, very expensive program. We invested a lot of
15 money in that program. We invested a lot of money to
16 be member with the World-Check, which is we check
17 every company for criminal activity, every Shareholder
18 for criminal activity.

19 And our program was passed, and our program
20 was audited every year, every single year--

21 (Overlapping speakers.)

22 Q. Mr. [REDACTED]--

1 PRESIDENT McRAE: Please, let him finish his
2 statement before you ask your next question.

3 MR. NISTAL: I think we are going beyond my
4 question, but my question was exclusively whether he
5 remembered the documents, and I was trying to sort out
6 whether he's saying that he remembers--he has a strong
7 Compliance Program, which is one thing, or he
8 remembers that he complied with Perú's obligations.
9 Which is a very different thing. I will stop, but I
10 don't want this to be a 15 minute presentation about
11 his Compliance Program.

12 PRESIDENT McRAE: I understand that, I think
13 if you--the more precise your question, the more easy
14 it is to control the answer.

15 MR. DÍAZ-CANDIA: Can Mr. █████ finish?

16 PRESIDENT McRAE: Can you finish what you
17 were saying, Mr. █████?

18 THE WITNESS: Oh, just--I just want to
19 emphasize that we did our homework. We have an audit,
20 compliance audit statement from big firm in New York
21 coming down to Miami, investigate our Compliance
22 Program, and we have passed every single year with

1 satisfaction. And you come in and tell me otherwise
2 about our compliance? That's not fair.

3 PRESIDENT McRAE: Mr. [REDACTED], I just have to
4 ask you to make sure that you do limit what you say to
5 the question asked. You will have an opportunity of
6 elaborating later on when your counsel asks you to
7 recross, but just try and answer the question as it's
8 asked.

9 THE WITNESS: Okay.

10 BY MR. NISTAL:

11 Q. So, Mr. [REDACTED], you have testified that
12 Perú--sorry, that Kaloti complied with its Peruvian
13 law obligations, that Kaloti complied with its due
14 diligence, sufficient due diligence, you said. You
15 also have testified, and I can take you to your
16 Witness Statement, that the Suppliers and Kaloti
17 provided all of the documentation required to SUNAT.
18 And you also have testified that Perú initiated,
19 nonetheless, scam proceedings and that SUNAT acted
20 unreasonably.

21 So, what I'm asking you is: Do you know
22 that you submitted those documents--and therefore, I

1 can ask you about the documents?--or do you think, on
2 the basis of what were the practices of Kaloti at the
3 time, that probably the documents were submitted?
4 Because it's two different things.

5 A. From our Compliance Department, they were in
6 touch with the Suppliers to collect all these
7 documents, and it's been sent as far as I know, all of
8 it was sent to SUNAT as requested.

9 Q. Mr. [REDACTED], this is an exhibit submitted by
10 Claimant, the one that you see on the screen. The
11 cover page indicates that the exhibit contains the
12 due-diligence files prepared by Kaloti in relation to
13 [REDACTED].

14 Do you see that?

15 A. Yes.

16 Q. That's a document submitted by Claimant, by
17 your company.

18 For your convenience, we have printed a copy
19 of this document, and my colleague will provide it to
20 you. We also have more copies in case the Tribunal
21 would like to have a copy, too. And, of course, our
22 colleagues.

1 MR. DÍAZ-CANDIA: Yes, we would appreciate a
2 copy, please.

3 (Pause.)

4 BY MR. NISTAL:

5 Q. Mr. ██████, Exhibit C-132, which, as we
6 said, contains the due-diligence files prepared by KML
7 of ██████--I should say this is the English
8 translation. There is also Spanish translation which
9 contains, in addition to what you see, two IDs, just
10 so that I'm not accused of being in any way
11 misleading. That's the only difference between the
12 Spanish version and the English version. So, I'm
13 asking you, Exhibit C-132 does not contain any waybill
14 concerning the transport of Shipment 3 from its
15 extraction point to Kaloti's Lima facilities; correct?

16 A. Rephrase your question again.

17 Q. Mr. ██████, Exhibit C-132 does not contain
18 any waybill concerning the transport of Shipment 3
19 from its extraction point to Kaloti's Lima facilities;
20 correct?

21 A. I don't know. I don't remember.

22 Q. Eh, no, I'm not asking you to remember,

1 Mr. [REDACTED]. I'm asking you to skim through the
2 document and confirm whether you see a waybill.

3 A. Okay.

4 Q. Do you see a waybill in that document,
5 Mr. [REDACTED]?

6 A. Yes.

7 Q. Can you point me to the waybill.

8 (Witness reviews document.)

9 A. So many pages. Which one are you referring
10 to?

11 Q. Sorry, Mr. [REDACTED], there are only three
12 documents in this exhibit. I can--if you want, I can
13 tell you, there are no waybills, but I need you to
14 confirm it. There is Original Decision of the
15 Regional Director of Mining. There is--well, the
16 first document is a National Registry of Declaration
17 of Commitment, the second document is the Resolution
18 of the Regional Director, and the third document is
19 the tax registration of SUNAT of the Company, [REDACTED]
20 [REDACTED].

21 MR. DÍAZ-CANDIA: If we may, Mr. President,
22 we also see in the case bundle for this exhibit, for

1 instance--

2 (Overlapping speakers.)

3 MR. NISTAL: Mr. President, if he's going to
4 show to a waybill that would be completely
5 inappropriate, so--

6 (Overlapping speakers.)

7 MR. DÍAZ-CANDIA: We're talking about what
8 you printed and gave to him is incomplete. There's a
9 Registro Nacional de Declaración de Compromisos, that
10 is not here.

11 (Overlapping speakers.)

12 PRESIDENT McRAE: You are going to have to
13 wait until each other finishes. You're going to drive
14 our poor Court Reporter crazy if you both speak at the
15 same time.

16 MR. DÍAZ-CANDIA: If we can go to the case
17 bundle and show the Tribunal that that's not here?

18 MR. NISTAL: Mr. Hernando, let's try to be
19 civilized and let's try to solve it.

20 If you turn the cover page, the first
21 document, it says "National Registry of Declaration of
22 Commitments."

1 MR. DÍAZ-CANDIA: Yes.

2 MR. NISTAL: Is that--

3 MR. DÍAZ-CANDIA: No.

4 MR. NISTAL: What is the document you're
5 talking about?

6 MR. DÍAZ-CANDIA: The document in the case
7 bundle, and please refer to it if you want, it's
8 Registo Nacional Declaración de Compromisos, and it
9 contains a number of--it's Page 9 of this exhibit in
10 the case bundle in Spanish.

11 MR. NISTAL: Okay. Do you want to show that
12 document to the--

13 MR. DÍAZ-CANDIA: No, I just want to make
14 clear that you gave him an incomplete document, for
15 the record.

16 MR. NISTAL: Correct.

17 BY MR. NISTAL:

18 Q. So, let me reformulate. The Spanish version
19 contains Registry of Declarations, a few pages long,
20 and two IDs. This English version--

21 MR. DÍAZ-CANDIA: Mr. President, I think the
22 Witness should be able to take up the complete

1 document that is in the case bundle.

2 MR. NISTAL: That's absolutely fine, that's
3 absolutely fine. Let's use the Spanish version, then.

4 PRESIDENT McRAE: I'm starting to get lost.

5 The point is that this is not the same as
6 the Spanish version, there are things in the Spanish
7 version that are not here, and that's the point that
8 you're raising. Is that, Mr. Díaz-Candia?

9 MR. DÍAZ-CANDIA: We raised the point and
10 Mr. Nistal considered the point. Yes.

11 MR. NISTAL: Correct. So--

12 PRESIDENT McRAE: And so, you're suggesting
13 now we give the Spanish version to the--

14 MR. NISTAL: Let me explain, Mr. President.
15 Let me explain, this document was submitted by
16 Claimant. The Spanish version contains a number of
17 documents, the English version contains a translation
18 of only part of those documents.

19 Now, I'm asking Mr. [REDACTED] whether the
20 English version contains a waybill. It does not. The
21 Spanish version does not contain a waybill. The point
22 that Mr. Hernando has mentioned is that there is

1 another document, which is not a waybill, that is in
2 the Spanish version. Given that Mr. [REDACTED] has said
3 before that he doesn't read Spanish, I have to show
4 him the English version, but I'm happy to show him the
5 Spanish version and ask the exact same question.

6 PRESIDENT McRAE: Is that what you want,
7 Mr. Díaz-Candia? I understand your point, this is not
8 complete, and we've got that, but in terms of the
9 questioning of Mr. [REDACTED], what--do you want the
10 Spanish version to be put to him as well?

11 MR. DÍAZ-CANDIA: Not for this very
12 particular document, but he should be able, when he's
13 asked questions about these documents to see the
14 entire document, even in Spanish, if that's possible.
15 And then, he can answer the question, which is part of
16 the facts of what the file contains or not. That's
17 undisputed. The file is there.

18 PRESIDENT McRAE: Did you say you had the
19 Spanish version?

20 MR. NISTAL: Yeah, it's on the screen.

21 BY MR. NISTAL:

22 Q. Okay. Mr. [REDACTED], did you want to skip

1 through that and see whether you see a waybill? I
2 think it's going to be more burdensome for you, but if
3 you are willing to accept that there is no waybill,
4 that would shorten significantly the task.

5 A. This is the--the waybill is part of the
6 Spanish version?

7 Q. The waybill is not in the Spanish version.
8 The waybill is not in the English version.

9 A. Can you explain to me, sir--

10 MR. DÍAZ-CANDIA: Can you explain to
11 Mr. [REDACTED]--

12 PRESIDENT McRAE: Can you let counsel
13 question the witness?

14 MR. DÍAZ-CANDIA: I apologize.

15 PRESIDENT McRAE: You will have an
16 opportunity later on. If you have an objection you
17 can raise it, but...

18 THE WITNESS: I don't see a waybill.

19 BY MR. NISTAL:

20 Q. You don't see a waybill?

21 A. No.

22 Q. Thank you.

1 Mr. [REDACTED] for--let's go to Page 5 of the
2 PDF, and let's go back to the English version.

3 As you can see, this is a resolution issued
4 by the regional Government of ICA on 5 February 2013;
5 correct?

6 A. That's what it says.

7 Q. And, as you can see, the resolution concerns
8 the mine Virgen del Carmen 2010; correct?

9 A. Yes.

10 Q. This is the mine from which [REDACTED]
11 claimed to have extracted the gold in Shipment 3;
12 correct?

13 A. I believe so.

14 I mean, this is Chinese to me now. I mean,
15 this is something it happened in 2013. You're asking
16 me a lot of things that happened 10 years ago, and I'm
17 not in the Compliance Department, so whatever you're
18 coming to get your point across, it's--I don't
19 remember all this. You've got to ask the Compliance
20 Officer, not me.

21 Q. Mr. [REDACTED], I'm asking you because you have
22 made very serious accusations in your Witness

1 Statement, and you have stated in no uncertain terms
2 that you complied with due-diligence obligations and
3 that you complied with Peruvian law. You also have
4 said that you have personal and direct knowledge of
5 the facts contained in your Witness Statement, so the
6 Tribunal is entitled to accept that your evidence
7 forms part of the evidence of the record. Now, I am
8 entitled to test it. If you tell me that you don't
9 remember anything about what you said in your Witness
10 Statement, it's fine, then your testimony about that
11 will have the value that the Tribunal decides.

12 A. I said I don't remember every page and every
13 document that you present to me right now, and you
14 tell me if this is right or wrong, and I have to give
15 you an answer. I can't give you right or wrong,
16 because I was not there and this is the first time for
17 me, personally, to see this document.

18 Q. Okay. Do you know which mine was the gold
19 from Shipment 3 from?

20 A. It's again you are asking me about 10 years
21 ago. I don't remember.

22 We have over 250 Suppliers. Do I have to

1 remember all the mines for every Suppliers?

2 Q. If you're going to allege that you complied
3 with your obligations, yes. But let me continue with
4 the questions: Do you know the mines of any of the
5 Five Shipments? Do you recall the mines from which
6 they came from?

7 A. I don't recall the names, no.

8 Q. No. Do you remember the owners of the Five
9 Shipments, the owners of the--the Suppliers, the
10 Shareholders?

11 A. I might know [REDACTED] as David Miranda.

12 Q. David?

13 A. Yes.

14 Q. Let's go to Page 9 of the PDF, please.

15 As you can see, Article 1 orders that the
16 name of the mine "Virgen del Carmen 2010" be changed
17 to "Emanuel I"; correct?

18 A. I see the documents, yes.

19 Q. Article 2 grants the title of the mining
20 Concession "Emanuel I" to an individual called Manuel
21 Valdiviezo Guevara; correct?

22 A. That's what it says.

1 Q. And to your knowledge, Manuel Valdiviezo
2 Guevara was not part of [REDACTED]; correct?

3 A. I don't know.

4 Q. Have you ever met Manuel Valdiviezo Guevara?

5 A. I don't believe so.

6 Q. Let's see Article 3 of the Resolution which
7 is in Page 10. I'm going to read this Article for
8 you, and you can confirm if I misread it: "The
9 Concession title does not in itself authorize
10 exploration and exploitation mining activities, but
11 the Concessionaire must first manage the approval of
12 the National Institute of Culture of the declarations,
13 authorizations or certificates that are necessary for
14 the exercise of mining activities."

15 We have the environmental certification
16 issued by the competent environmental authority,
17 subject to the rules of citizen participation."

18 (c) Obtain permission for the use of land
19 through the prior agreement with the owner of the
20 surface land or completion of the administrative
21 easement procedure, in accordance with the regulations
22 on the matter."

1 (d), Obtain the other licenses, permits and
2 authorizations required by current legislation
3 according to the nature and location of the activities
4 to be developed."

5 This is what Article 3 says; correct,
6 Mr. [REDACTED]?

7 A. I see that, yeah.

8 Q. Let's now go to Article 6 on Page 11 of the
9 PDF.

10 "The present title does not confer the right
11 to carry out mining exploration or exploitation
12 activities without prior environmental certification
13 contained in the resolution issued by the respective
14 competent authorities."

15 It says that; correct?

16 A. (No answer.)

17 Q. So, Mr. [REDACTED]--

18 REALTIME STENOGRAPHER: I don't have an
19 answer there.

20 THE WITNESS: Yes. That's what you're
21 reading.

22 BY MR. NISTAL

1 Q. So, Mr. [REDACTED], this Resolution, which
2 Claimant itself has submitted in this Arbitration made
3 perfectly clear that, in order for gold to be
4 extracted from the mine, Mr. Guevara would first have
5 to obtain a series of permits and authorizations. And
6 yet, Kaloti did not verify that Mr. Guevara had
7 obtained any of these authorizations before allegedly
8 buying Shipment 3; correct?

9 A. That's what you say.

10 Q. You have--I think you have answered part of
11 my question, Mr. [REDACTED], that that's what it says, but
12 I'm asking the second part, to be completely
13 transparent, is whether Kaloti verified that these
14 authorizations, mining exploitations, permits, where
15 Kaloti verified that [REDACTED] or Mr. Guevara had
16 these exploitation and mining permits?

17 A. We go back to the same story and the same
18 thing. I'm not in the Compliance Department. We have
19 17 different people working in the Company, so many
20 departments, and you're putting all this information
21 on the table and you expect me to remember everything.
22 I cannot answer you. We have other people, they can

1 testify, you can ask the Compliance Officer, the other
2 department to provide you with all answers. I'm not
3 going to say "yes" or "no." I cannot give you any
4 answers.

5 Q. That will be enough. You cannot give me any
6 answers as to whether or not Kaloti verified the
7 permits or the exploitation--the environment permits
8 or the exploitation permits. Is that the answer you
9 give me?

10 A. I do remember that every Supplier passed our
11 program and passed our due diligence, and we accept
12 them because they pass. We have many Suppliers did
13 not pass our program because their documentation is
14 not completed. We have a huge file of rejected
15 Suppliers. If this Supplier passed our program, that
16 we are behind them.

17 Q. Okay. But you're unable to show me any
18 document on the record? You have access to the entire
19 record. You're unable to show me the Environmental
20 Permits and the exploitation permits?

21 A. I cannot show you.

22 Q. Okay. Perhaps--

1 A. As a general manager of the business, I
2 cannot go to every document and pull it out and show
3 it to you. I can't. It's--it's not possible.

4 Q. So, you don't have personal and direct
5 knowledge of these statements that you made in your
6 Witness Statement, Mr. [REDACTED]?

7 A. I do, but you asked me about particular
8 documents in here, which is I cannot remember all the
9 documentation for the compliance, for the Suppliers,
10 for the name, for the name of the Company. The
11 discussion happened 10 years ago, that doesn't--it's
12 impossible.

13 MR. NISTAL: Let's now display on the screen
14 Exhibit R-224. And let's go to the page--let's go to
15 the last paragraph of Page 4.

16 BY MR. NISTAL:

17 Q. Mr. [REDACTED], the document on the screen is a
18 court decision dated 9 September 2014 that ordered the
19 initiation of Criminal Proceedings against [REDACTED]
20 [REDACTED]. The paragraph on the screen states that on
21 10 June 2014--that is after Kaloti allegedly purchased
22 Shipment 3--the Regional Directorate of Energy and

1 Mines of ICA determined, upon review of the mine and
2 cadastre system that, I quote, "the holder of the
3 mining concession 'Emanuel I' formally Virgen del
4 Carmen 2010 is Mr. Manuel Valdiviezo Guevara, and that
5 to date, the granting of the authorization to start or
6 restart operations is currently being processed,
7 evaluated, formalized. Therefore, the aforementioned
8 Concession does not have an authorization for the
9 exploration, exploitation, and/or commercialization of
10 minerals."

11 MR. DÍAZ-CANDIA: Can we ask how this is
12 related to his Witness Statement, please? This is not
13 an exhibit to his Witness Statement and he doesn't
14 make reference to this particular document.

15 PRESIDENT McRAE: I don't think he's asked
16 the question yet.

17 MR. DÍAZ-CANDIA: Did you ask a question?

18 MR. NISTAL: And if I could please not be
19 interrupted constantly, that will be very helpful.

20 MR. DÍAZ-CANDIA: I'm sorry, we will make as
21 many objections as we like. We don't want to please
22 you with that.

1 BY MR. NISTAL:

2 Q. Mr. [REDACTED], the extract that I just read
3 confirms that the mine from which [REDACTED] claims
4 to have extracted the gold in Shipment 3 did not have
5 an authorization for the exploitation--exploration,
6 exploitation, and/or commercialization of minerals;
7 correct?

8 A. That's what you're reading.

9 Q. And assuming that Kaloti had obtained or
10 requested the authorization that we saw earlier in
11 Article 11 of Legislative Decree 1107, Kaloti would
12 have found out that, they would have known, that [REDACTED]
13 [REDACTED] did not have the permits to exploit gold?

14 A. The same answer I gave you before.

15 Q. It's a different question, Mr. [REDACTED]. What
16 I'm asking you is, if Kaloti had requested the
17 Environmental Permits and exploitation certifications,
18 Kaloti would have known that [REDACTED] didn't have
19 them; correct?

20 A. You got to ask the right person. You are
21 going--you're going back again to the same
22 documentation. I cannot recall. I have no idea where

1 you got this documentation and the declaration and I
2 can't answer those questions. We have the Compliance
3 Officer is going to be here, maybe tomorrow, and you
4 can ask him those types of questions. I'm not in that
5 department.

6 Q. I'm going to skip a number of questions,
7 Mr. [REDACTED], because I assume that the answer will be
8 that you don't know.

9 MR. NISTAL: Let's now display Exhibit C-9
10 on the screen.

11 BY MR. NISTAL:

12 Q. Sorry, just to confirm, you said that the
13 right person to ask these questions would be [REDACTED]
14 [REDACTED]?

15 A. He's in the Compliance Department. He will
16 probably have better memory because he was involved in
17 that department, and possibly he can answer your
18 questions.

19 Q. But perhaps he can't.

20 A. I can't talk on his behalf. I'm just
21 telling you what it is.

22 Q. Now, I'm asking you whether you think that

1 your Compliance Officer will be able to confirm
2 whether Kaloti complied with its compliance
3 obligations?

4 A. Absolutely.

5 Q. Thank you.

6 Mr. [REDACTED], you testified that all the
7 Suppliers provided all the required documentation to
8 SUNAT; correct?

9 A. I believe so.

10 Q. Let's please go to Page 19 of the PDF.

11 Mr. [REDACTED], this is the waybills that we
12 were looking in other documents, these documents is
13 the exhibit, the documents that [REDACTED] provided
14 to SUNAT.

15 In particular, this is one of the waybills
16 that [REDACTED] submitted to SUNAT. It proffers to
17 cover the transport of Shipment 3 from [REDACTED]
18 offices in Lima to the offices that Kaloti rented from
19 the company Hermes also in Lima. And as you can see,
20 the boxes concerning the identity of the carrier of
21 the gold are blank; correct?

22 A. Okay.

1 Q. Mr. [REDACTED], we need an affirmative or
2 negative answer.

3 A. Yeah, I see that.

4 Q. Okay. And, as we saw earlier, when we were
5 reading Article 11 of the Legislative Decree 1107,
6 Kaloti was required to review--obtain and review
7 documentation and information regarding the identity
8 of the carrier that transported the gold. You
9 remember that?

10 A. Okay.

11 Q. So, if this document was submitted to SUNAT
12 after the purchase, you cannot possibly have reviewed
13 the identity of the carrier?

14 A. According to what you said. I don't know if
15 there is any other document to show that. It has to
16 be some documentation when you deliver precious metal,
17 it's expensive shipment to SUNAT. It has to be a
18 carrier who have documentation been signed.

19 Q. I know what were the obligations. What I'm
20 asking is whether, on the basis of this document we
21 can conclude that they were not met. So, I'm asking
22 you if this document was submitted to SUNAT, and it's

1 in the box of the carrier? Kaloti cannot have
2 reviewed that information.

3 MR. DÍAZ-CANDIA: Again, Mr. President, that
4 calls for an assumption, a speculation and conclusion.
5 It doesn't relate to what this document says or not.
6 What this document doesn't have, he's asking the
7 Witness to come to a conclusion on inferences, not to
8 questions of fact.

9 PRESIDENT McRAE: As I understand, he's
10 asking the Witness on the basis of the documents he's
11 put in front of the Witness. I would simply say to
12 counsel that you should let him answer the question
13 before you ask some entry part because that's where
14 the confusion started, I think. You asked a question
15 and before he answered, and you added an "isn't it
16 correct that", and that probably made it more
17 difficult for the Witness to answer. But I think it's
18 legitimate to ask on the basis of this. But I think
19 the questions have to be clear and simple for the
20 Witness, otherwise we're going to get the vague
21 response that he doesn't remember. And I understand
22 that he doesn't remember. I don't remember lots of

1 things as well. So, I think that you probably have to
2 be a little more restricted in what you ask each time.

3 MR. NISTAL: Thank you for the guidance,
4 Mr. President. I will try.

5 BY MR. NISTAL:

6 Q. Mr. [REDACTED], you have confirmed that this
7 guide--that this waybill that was submitted by [REDACTED]
8 [REDACTED] to SUNAT has the boxes concerning the identity
9 of the carrier empty; correct?

10 A. That's what I see now, but it's in Spanish.

11 Q. In any language, the box is empty,
12 Mr. [REDACTED]; correct?

13 A. The box you highlighted is empty, yes.

14 Q. Thank you.

15 Do we agree that the waybills that were sent
16 to SUNAT were sent after Kaloti purchased the
17 shipments?

18 A. I don't understand.

19 Q. The question is simple.

20 A. Yeah?

21 Q. You bought the shipments, and then they were
22 exported. Then SUNAT requested information. I'm

1 asking you: That waybill, which you have submitted
2 Claimant, was sent to SUNAT after Kaloti had already
3 entered into its alleged--after it had allegedly
4 bought Shipment 3; correct?

5 A. You're talking about after SUNAT immobilized
6 the shipment?

7 Q. Yeah, let's simplify it. SUNAT immobilized
8 the shipments after you had bought them; correct?

9 A. Right.

10 Q. Right. This waybill was sent to SUNAT after
11 the Immobilization of Shipment 3.

12 A. From? Who sent it?

13 Q. [REDACTED] sent it to SUNAT after the
14 Immobilization of Shipment 3. So my question is:
15 This waybill was sent to SUNAT after you bought
16 Shipment 3; correct?

17 A. How do I know. How do I know when they sent
18 it to SUNAT?

19 Q. You have testified--

20 A. I understand, but you're talking about
21 particular time before or after. How do I know it's
22 before and after? You go in a circle. You're not

1 giving me direct questions so I can answer you. You
2 try to trap me with questions before so I can say
3 "yes" or "no" and give you the wrong answer, but
4 you're not directly giving me a question. You are
5 going in circle.

6 Q. Okay. Let me try it a different way.

7 MR. DÍAZ-CANDIA: Mr. [REDACTED], we advise you
8 not to argue with opposing counsel. We will make the
9 objections and the Tribunal can also.

10 BY MR. NISTAL:

11 Q. Let me ask you differently: If this waybill
12 had been sent by [REDACTED] to SUNAT after the
13 Immobilization of Shipment 3, that waybill would have
14 been sent to SUNAT after Kaloti purchased Shipment 3;
15 correct?

16 A. I can't give you any answer. I don't know.

17 MR. NISTAL: Mr. President, I think I'm
18 trying to be very clear, and I'm not getting any
19 answer. I mean--

20 PRESIDENT McRAE: I think you've been
21 entirely clear, and he says he doesn't know. You can
22 draw whatever conclusions you like about that.

1 MR. NISTAL: Okay.

2 PRESIDENT McRAE: But I'm not sure you can
3 get much further than "I don't know."

4 MR. NISTAL: Okay.

5 BY MR. NISTAL:

6 Q. Let's now show the signature box. The
7 signature box is blank, too; correct?

8 A. I see stamp on the left side with signature.

9 Q. Yes. That's the stamp of [REDACTED], and
10 on the right what it says "I received," that's blank;
11 correct?

12 A. Okay, yes.

13 Q. Let's go to the next page, which is Page 20
14 of the PDF.

15 Mr. [REDACTED], this waybill is supposed to
16 cover the transport of Shipment 3 from the facilities
17 of Hermes to the airport facilities operated by the
18 company Talma. The boxes concerning the identity of
19 the carrier are blank; correct?

20 A. Yes.

21 Q. And the signature box for the recipient of
22 Shipment 3 of Talma's facilities is blank, too;

1 correct?

2 A. Yes.

3 Q. Let's try this one if I have more luck.

4 Would you agree that if SUNAT received this document,
5 it would consider that it's not a complete document?

6 A. But it is being stamped and signed by [REDACTED]
7 [REDACTED] representatives.

8 Q. Sure. That's the sender, the recipient has
9 not signed, and if we go--

10 MR. NISTAL: Can we show again the boxes of
11 the identity.

12 BY MR. NISTAL:

13 Q. Would you agree that SUNAT would consider
14 that the boxes concerning the identity of the carrier
15 are incomplete?

16 MR. DÍAZ-CANDIA: Mr. President, this is not
17 a question of fact. The Witness cannot tell them what
18 SUNAT would do or not do. That's simply not a
19 question of fact. That is a conclusion, and he's
20 asking the Witness for an opinion.

21 PRESIDENT McRAE: If you ask him would
22 anyone assume that form is incomplete, that--

1 MR. DÍAZ-CANDIA: He specifically asked what
2 SUNAT would conclude from seeing this document.

3 MR. NISTAL: Okay. Let me--let's--
4 (Overlapping speakers.)

5 BY MR. NISTAL:

6 Q. Would anyone conclude that this waybill is
7 incomplete? Or at least the boxes concerning the
8 transport?

9 A. It depends what SUNAT's required.

10 Q. Let's go to the following page, please.

11 Mr. [REDACTED], this waybill is supposed to cover the
12 transport of Shipment 3 from the "Emanuel I" mine in
13 the ICA region to [REDACTED] offices in Lima.

14 Can you scroll down.

15 And in this one, all of the signature boxes
16 are blank; correct?

17 A. Yes.

18 Q. In your experience in the mining
19 industry--which I understand you have very extensive
20 experience--unsigned and incomplete documents are
21 adequate proof of due diligence?

22 A. Can you scroll--in the beginning, in the

1 front?

2 Where this shipment came from? Because I
3 can't--I can't read it. It's not--

4 Q. It came from the ICA region, and it's
5 supposed to be delivered in [REDACTED] offices in
6 Lima.

7 A. Okay.

8 Q. Now, who signed the document? That we don't
9 know. Or who completed the document, because there is
10 no signature. So, I repeat my question: Based on
11 your extensive experience in the mining industry, do
12 documents that are incomplete that do not allow to
13 identify the identity of the carrier of the gold that
14 transported the gold and that are not signed are good
15 evidence of due diligence and chain of transport?

16 A. But this is in the form of invoice; correct?
17 This is in the form of invoice?

18 Q. No, it is not a form of invoice. It's--

19 A. It says the boxes and the price, and it's
20 30--the weight of the shipment. This is a form of an
21 invoice. I don't know if there is another attached
22 document as a Bill of Lading or relating to identified

1 signature. I don't know. You just shown me one, and
2 I'm not sure--

3 (Overlapping speakers.)

4 Q. I'm asking you a general question. Forget
5 about this document.

6 In your opinion, documents unsigned that do
7 not contain the identity of the carrier, are they
8 optimal to prove the transport of the gold from one
9 point to another?

10 A. If there is no other documents attached to
11 this, I will agree with you, but I don't know what
12 else is--

13 Q. No, I'm asking you whether they are optimal.
14 You need to say whether they are optimal or they are
15 not.

16 A. This is an invoice. This is not a
17 transportation document to be signed, and it's not a
18 Bill of Lading to be signed. It's just an invoice.
19 An invoice cannot be signed. It has the confirmation
20 of the Company. That's good enough. This invoice is
21 legitimate. It doesn't have to be signed by anybody.
22 But Bill of Lading has to be signed for the receiver.

1 Q. Mr. [REDACTED], you just told me that you don't
2 even know what document is that, and now you're saying
3 that it's legitimate?

4 A. I'm saying invoices are legitimate with the
5 name of the Company on it, in general.

6 Q. This document is not an invoice, Mr. [REDACTED],
7 it's a Guía de Remisión, and that's a waybill. The
8 purpose of the document is to prove that it was--that
9 the gold was transported from one point to another.
10 It is crucial. Because otherwise, the gold could come
11 from illegal sources. It's important to indicate the
12 name of the transport company because that's what
13 allows the State to know whether the gold actually
14 comes from the mine or comes from an illegal source.
15 But anyway, let's move to a different question.

16 I will now ask you a number of questions
17 regarding Shipments 5 and 4 which Claimants alleges to
18 have both from the company [REDACTED]. We saw earlier that
19 Claimant committed to comply with Perú's Document
20 Production No. 8, and I will ask you again: Are you
21 aware of any communication between Kaloti and [REDACTED]
22 proving that Kaloti verified the origin of the

1 Shipments 4 and 5 before its alleged purchase of these
2 shipments?

3 A. According to our program, we verify
4 everything. We go by the list of things we require,
5 and we do our due diligence in the right manner.

6 Q. Um-hmm.

7 A. For all the customers.

8 Q. Let me ask you another question, Mr. [REDACTED]:
9 When you went to the Perú courts, did you have a
10 similar way of presenting evidence or would you just
11 say "we complied with everything but you will not
12 present documents"?

13 A. When we went to the courts for that
14 Immobilization--

15 Q. Um-hmm?

16 A. --I was not allowed. I was not part of the
17 Immobilization.

18 Q. I'm going to ask again, then. Are you aware
19 of a specific communication--any--you can show me any
20 in the entire record of your Claimant--I assume that
21 you prepared for this Hearing--any communication
22 between [REDACTED] and Kaloti concerning any aspect of the

1 origin of the gold?

2 If you're aware, tell me. If you're not
3 aware you tell me.

4 A. I'm not involved in that department. I have
5 told you. I don't remember. I can't tell you "yes"
6 or "no."

7 Q. That will be--that will be enough.

8 (Pause.)

9 Q. Mr. ██████████, have other shipments of gold of
10 Kaloti been seized by authorities?

11 A. No.

12 Q. So, these are the only Five Shipments in the
13 entire history of Kaloti that were seized?

14 A. Yes.

15 Q. And yet you don't remember anything about
16 it?

17 A. About what?

18 Q. About the documents, the reasons, the
19 underlying reasons for a SUNAT to immobilize the
20 documents?

21 A. There are so many documents, there are so
22 many things going on at that time. That's 10 years

1 ago.

2 Q. Did you coordinate with your lawyers in Perú
3 in order to lift these Immobilizations?

4 A. Yes.

5 Q. And you did that through communications, I
6 assume.

7 A. With the attorney.

8 Q. And you provided them the documents?

9 A. I assume.

10 MR. DÍAZ-CANDIA: That's privileged
11 communications with his lawyers. That should not be
12 part of the line of questioning. Whatever Mr. [REDACTED]
13 did with his lawyers in Perú does not--that's
14 protected under the attorney-client privilege.

15 MR. NISTAL: I'm not talking about the
16 content of the document, just the existents of the
17 documents.

18 MR. DÍAZ-CANDIA: You said what he delivered
19 to the Peruvian lawyer. That is attorney-client
20 privilege.

21 PRESIDENT McRAE: Do you want to pursue
22 this?

1 MR. NISTAL: I don't need to pursue it,
2 Mr. President, without considering the objection.

3 BY MR. NISTAL:

4 Q. Let's please display Paragraph 44--45 of
5 your First Witness Statement. Mr. [REDACTED], there you
6 allege that, after Perú seized the gold from KML in
7 2013 and 2014, it put out sham investigations about
8 money-laundering.

9 Do you see that serious accusation that you
10 made there?

11 A. Yes.

12 MR. NISTAL: Let's now please display on the
13 screen Paragraph 49 of Claimant's Memorial, which is
14 on Page 32 of the PDF.

15 BY MR. NISTAL

16 Q. Mr. [REDACTED], in this paragraph, Claimant
17 alleges that the initial seizing of the Five
18 Shipments, I quote, "was carried out with the excuse
19 of investigating the origin of the gold purchased by
20 KML and in other cases based on Anti-Money Laundering
21 Investigations against third parties."

22 Do you see that accusation, there, too?

1 A. Yes.

2 Q. It's similar to the one you make; correct?

3 (No answer.)

4 Q. Mr. [REDACTED], do you agree that it's similar--

5 A. I'm reading and comparing if it's similar,

6 so...

7 (Witness reviews document.)

8 Q. It is not a very important point,

9 Mr. [REDACTED]. I just wanted to get to the point that

10 both of you were challenging the legitimacy of the

11 investigation. And I think that's clear; correct?

12 A. Yes.

13 MR. NISTAL: Let's now please display the

14 fourth bullet point of this Paragraph 49, which is

15 Page 34 of the PDF.

16 THE WITNESS: Are you talking about the

17 Witness Statement now?

18 BY MR. NISTAL

19 Q. No, it's the one that you will see on the

20 screen, Mr. [REDACTED].

21 A. Okay.

22 Q. We will take you to it.

1 A. Okay.

2 Q. Mr. [REDACTED], in the paragraph that we see on
3 the screen, Claimant alleges that Shipment 4 was
4 immobilized based on a preliminary investigation by
5 Perú against a third party called Alberto Miranda.
6 Claimant also states that Alberto Miranda was
7 unrelated to Kaloti and that, to the best of Kaloti's
8 knowledge and belief, Mr. Alberto Miranda also was
9 unrelated to [REDACTED].

10 Do you see that?

11 A. Um-hmm.

12 REALTIME STENOGRAPHER: Is that a "yes"?

13 THE WITNESS: Yes, sorry.

14 BY MR. NISTAL

15 Q. And that's one of the basis on which a
16 Claimant complains or suggests that the proceedings or
17 the investigations are illegitimate. Do you agree
18 with Claimant's statement that Alberto Miranda was
19 unrelated to both Kaloti and [REDACTED]?

20 A. I don't remember the first name, but Miranda
21 was the owner of [REDACTED]. Which first name I don't
22 remember, but Miranda or Miranda--part of the family

1 or whatever, they take title of the--represent and own

2 [REDACTED]. At that time I remember that.

3 Q. There were a lot of Mirandas.

4 Do you remember how many individuals of the
5 Miranda family did you deal with?

6 A. Did we deal with?

7 Q. Yes.

8 A. I remember one.

9 Q. And that one, what was his name?

10 A. [REDACTED], [REDACTED].

11 Q. [REDACTED]?

12 A. I don't remember the first name, but he goes
13 by "[REDACTED]."

14 We met with him regarding the seized
15 material, and we talked about it, how we are going to
16 release it, how we're going to talk about it. I
17 remember him. But I don't remember if there is any
18 other first name, but his name is "[REDACTED]."

19 Q. Okay. It might be [REDACTED], but
20 we will see.

21 Anyway, this is a serious accusation.
22 Claimant is saying, and you said that you supervised

1 Claimant's arguments and that you agreed with the
2 factual statements, here Claimant is accusing Perú of
3 initiating an investigation of seizing your alleged
4 gold on the basis of an investigation completely
5 unrelated to Kaloti and to--even to [REDACTED]. That's a
6 strong statement.

7 Do you agree?

8 A. I agree.

9 Q. Okay. So, I assume that if Alberto Miranda
10 was unrelated to [REDACTED] and to Kaloti, Kaloti would not
11 have conducted any due diligence on Alberto Miranda.

12 A. Why not?

13 Q. Do you conduct due diligence on random
14 people?

15 A. No, we conduct the search on the Shareholder
16 and the company.

17 Q. Right. So, here the paragraph is saying
18 that Alberto Miranda is unrelated to Kaloti and
19 unrelated to [REDACTED]. My question is: If he was
20 unrelated to [REDACTED] and to Kaloti, Kaloti would not
21 have conducted due diligence on Alberto Miranda.

22 Let me rephrase.

1 Did you have a practice to conduct due
2 diligence on people who were entirely unrelated to you
3 and to your Suppliers?

4 A. If they don't provide that name, we don't do
5 it.

6 MR. NISTAL: Okay. Let's please display on
7 the screen Exhibit C-168.

8 BY MR. NISTAL:

9 Q. Mr. ██████, as the cover page indicates,
10 Exhibit C-168 contains the Terms and Conditions for
11 bullion trading and related transactions between
12 Kaloti and ██████; correct?

13 A. Yes.

14 MR. NISTAL: Let's now display Page 3 of the
15 PDF.

16 BY MR. NISTAL:

17 Q. Mr. ██████, the Trading Terms between Kaloti
18 and ██████ were signed by Alberto Miranda on
19 29 October 2013 in his capacity as General Manager of
20 ██████; correct?

21 A. Yes.

22 MR. NISTAL: Let's now display Exhibit

1 C-131.

2 BY MR. NISTAL:

3 Q. Mr. [REDACTED], as the cover page indicates,
4 Exhibit C-131 contains the due-diligence files
5 prepared by Kaloti in relation to [REDACTED]. Let's go to
6 Page 4 of the PDF.

7 Mr. [REDACTED], here again, Mr. Alberto Miranda
8 appears as General Manager of [REDACTED]; correct?

9 A. Um-hmm, yes.

10 Q. And the following box specifies that Alberto
11 Miranda was also one of the two owners of [REDACTED].

12 Do you see that?

13 A. Yes.

14 Q. And the other owner was also a member of the
15 Miranda family; correct?

16 A. One of them.

17 Q. Yeah, the first one being Alberto Miranda,
18 the second one being a Yamilia Miranda.

19 A. It doesn't say "Miranda."

20 Q. Do you see it now?

21 A. This one over here?

22 Q. It's the same person. She's called "Yamilia

1 Alessandra Miranda Villegas."

2 A. Oh, that's the full name.

3 Q. Yeah, that's the full name. In Perú we have
4 quite long names.

5 Therefore, contrary to what Claimant argued
6 in the Memorial, Alberto Miranda was closely related
7 to both [REDACTED] and Kaloti. He was the General Manager
8 and the Shareholder of [REDACTED]?

9 A. How do you say he was related to Kaloti?

10 Q. Because he signed the Trading Agreements
11 with you and then he sold you hundreds of kilograms of
12 gold.

13 A. Related in business to Kaloti, business
14 Transactions?

15 Q. Yeah.

16 A. Okay.

17 Q. Can we go back to the pleading.

18 Based on what we just saw, that's a false
19 statement--correct?--what you see there. When
20 Claimant argues: "This temporary Immobilization was
21 initiated on 7 January 2014, based on a Preliminary
22 Investigation by Perú against a third party (unrelated

1 to Kaloti or, to the best of Kaloti's knowledge and
2 belief, ██████), Alberto Miranda." That's plainly a
3 false statement; correct?

4 A. I don't know.

5 Q. Mr. ██████, we just saw, you confirmed that
6 Mr. Miranda is the General Manager and Shareholder of
7 the Company, and now you are seeing a statement by the
8 Company that you managed of the pleading that you
9 supervised that says that ██████, that Alberto Miranda
10 is unrelated to Kaloti and to ██████. I'm asking you:
11 Is that a false statement?

12 A. I don't recall. I need to take a look one
13 more time about the names. The names with the
14 Shareholder like you indicated before because there
15 are so many Mirandas, I...

16 Q. Okay. Let's go back to Exhibit--let's start
17 with Exhibit C-168.

18 BY MR. NISTAL:

19 Q. Do you see there Alberto David Miranda
20 Pando?

21 A. Um-hmm.

22 Q. General Manager?

1 A. Right.

2 Q. That's the same person that you were
3 mentioning before; correct?

4 A. Right.

5 MR. NISTAL: Let's now go to Exhibit--there
6 appears to be a technical problem, Mr. [REDACTED], so we
7 are--

8 REALTIME STENOGRAPHER: When we get to a
9 convenient moment, can we take a break?

10 MR. NISTAL: Let's continue. Let's display
11 again on the screen Exhibit C-131.

12 BY MR. NISTAL

13 Q. Do you see there Alberto David Miranda
14 Pando, the same one that signed the Trading Terms?

15 A. Miranda Pando Alberto, okay, that's the same
16 name.

17 Q. Yeah. So, can we go back--

18 A. He's the legal representative.

19 Q. Well, he's the legal representative, but if
20 you scroll down, he's the General Manager, and he's
21 also a partner. Do you see?

22 A. Partner.

1 Q. He's owner.

2 A. Right.

3 Q. Right.

4 MR. NISTAL: So, let's go back now to the
5 pleading, please.

6 BY MR. NISTAL

7 Q. So, here we have Claimant making a very
8 serious accusation. You confirmed earlier that it was
9 a very serious accusation. And the accusation was
10 that Perú somehow initiates proceedings to take the
11 gold of Kaloti Metals by investigating people that are
12 completely unrelated to Kaloti and to [REDACTED]. Do you
13 agree that, at least in relation to this point, that
14 the accusation is false?

15 A. Unrelated to Kaloti. I cannot talk on the
16 behalf of [REDACTED].

17 Q. I just showed you the corporate documents of
18 [REDACTED], Mr. [REDACTED], and you saw that he's the General
19 Manager and the owner, and these are your
20 due-diligence documents.

21 A. Okay.

22 Q. So, would you agree that Alberto Miranda

1 was, indeed, related to [REDACTED] and to Kaloti in a
2 commercial Transaction--

3 A. Yes, yes.

4 Q. And--and, therefore, that statement on the
5 screen is false.

6 Mr. [REDACTED], do you agree that that statement
7 is false?

8 A. I'm reading.

9 (Witness reviews document.)

10 A. I believe so.

11 Q. Thank you.

12 PRESIDENT McRAE: Mr. Nistal, before you go
13 any further, we are probably getting close to the time
14 when we should be taking a break, so as soon as you
15 get to a point where it's convenient to take that
16 break, we should do that.

17 MR. NISTAL: I will do that. And if you
18 prefer to take the break now, I can do it, too, but I
19 think this line will take me about 10 minutes.

20 PRESIDENT McRAE: Why don't you continue
21 with that line, and we will take the break in 10
22 minutes.

1 MR. NISTAL: Thank you.

2 BY MR. NISTAL:

3 Q. So, if, as we just confirmed, Alberto
4 Miranda was one of the owners and the General Manager
5 of [REDACTED], Kaloti should have conducted background
6 checks on Alberto Miranda; correct?

7 A. Should be, yeah, yeah.

8 Q. Are you able to show me any documents
9 showing that that due diligence was conducted?

10 A. I don't have any document to show you right
11 now.

12 Q. No.

13 A. But it has to be done. It must have done.

14 Q. If it wasn't done, it would be a breach of
15 your Compliance Program; correct?

16 A. I cannot answer that question. It should be
17 done, but there is--there is a question need to be
18 asked to the Compliance Department to see what
19 measurement they took for that particular name and
20 particular company.

21 Q. What kind of due diligence would you conduct
22 on the owner or Manager of a company to which you're

1 going to buy hundreds of kilograms of gold and silver?

2 What kind of checks?

3 A. The same as everybody else.

4 Q. Sure. Just give me, please examples.

5 A. All the Suppliers, we check the source of
6 gold, we check the legality of the company. We check
7 if the company are legal and registered in the mine of
8 Registry in Perú. All those Five Shipment, the
9 Company has a permit.

10 Q. I cannot allow that. I'm asking you--

11 (Overlapping speakers.)

12 Q. I'm asking what due diligence you would
13 conduct on the individual. I'm asking you--

14 A. It has to be registered in that Registry of
15 mine in Perú.

16 Q. Alberto Miranda needed to be registered--

17 A. No, [REDACTED].

18 Q. No, that's why I'm stopping you. I'm asking
19 you what kind of due diligence would you conduct on
20 the Owners--

21 A. We go to the--

22 PRESIDENT McRAE: We must have one person

1 speaking at a time.

2 BY MR. NISTAL:

3 Q. Let me finish the question, Mr. [REDACTED]. I'm
4 not interested in the due diligence that you conduct
5 on the legal entity. I'm interested in knowing what
6 kind of screening would you conduct on a very specific
7 individual, any--actually on any Shareholder, would
8 you--let me finish, please. Would you check criminal
9 records, would you look for adverse media attention,
10 what kind of investigation would you do when a general
11 manager comes to you and wants to buy hundreds of
12 kilograms of gold, what kind of screening would you
13 conduct on that specific individual?

14 A. They go through our extensive software, the
15 World-Check, that can detect any criminal act for any
16 individual and any company, and we have a copy of
17 that. We do the due diligence through this, through
18 Googling the name as well, Googling the Company, and
19 we searched their background, valid passport, valid
20 ID, no criminal act, and we do the same thing for the
21 Company. That's in general we do it for everybody.
22 It's not for [REDACTED] or it's for

1 somebody--anybody else. This is a system we have to
2 follow.

3 Q. Thank you.

4 Would you also check whether he holds
5 positions in other companies?

6 A. If it shows that in the search, we look at
7 it.

8 Q. If he held positions in other companies
9 owned by notorious criminals, would that be an alarm?

10 A. Would that be what?

11 Q. An alarm. Would that be a red flag. So, if
12 one of your Suppliers is the director of another
13 company and that other company is owned by a notorious
14 criminal

15 A. During screening we do look for red flags,
16 um-hmm.

17 Q. Thank you.

18 MR. NISTAL: Let's please display on the
19 screen Exhibit 326, R-326.

20 BY MR. NISTAL:

21 Q. Mr. [REDACTED], the document on the screen is
22 the Corporate Registration of the Company "Business

1 Investments." This is a document publicly available
2 in Perú. It was publicly available in Perú in 2013.

3 Let's please go to Page 4.

4 As you can see, the first Board of Directors
5 of this company was attended by Alberto Miranda as
6 Director and by [REDACTED] as President;
7 correct?

8 A. Yes.

9 Q. So, Alberto Miranda and [REDACTED]
10 had a corporate link, a corporate relationship. They
11 were in the same company?

12 A. According to this document, yeah.

13 Q. Yeah.

14 I assume that you know that [REDACTED]

15 [REDACTED] is the notorious [REDACTED].

16 A. We didn't know then. We heard the news

17 after the Immobilization. We didn't know who is [REDACTED]

18 [REDACTED] at that time. The name never rang the bell.

19 Q. But you did conduct an analysis of the gold
20 market; correct?

21 A. Yes.

22 Q. And you didn't know that the most famous

1 illegal miner of the country was [REDACTED]?

2 A. Yeah, but he wasn't listed with [REDACTED]. If
3 you're talking about [REDACTED], and he's talking about
4 partner of David Miranda, Alberto David, he wasn't
5 list on that company.

6 Q. Okay. So, you know now who [REDACTED]
7 is?

8 A. We know after.

9 Q. Yeah, okay.

10 MR. NISTAL: Let's display Exhibit R-151.

11 BY MR. NISTAL:

12 Q. When did you find out who [REDACTED] was?

13 A. It was in the news, all over the newspaper.

14 Q. When? Can you remember?

15 A. Right--right after the Immobilization.

16 Q. Uh-huh.

17 Mr. [REDACTED], as you can see from the heading
18 on the first paragraph, this document is a statement
19 that Alberto Miranda gave on 4 June 2014 before Perú's
20 police and a number of judicial entities. Let's
21 please go to Alberto Miranda's response to Question 71
22 in Page 2 of the PDF.

1 A. Who gave who this document?

2 Q. This is a statement that Alberto Miranda
3 gave before the police of Perú and other authorities.
4 It's a declaration of Alberto Miranda, the Owner and
5 Manager of [REDACTED].

6 A. He gave it to the Police Department?

7 Q. Yes.

8 A. Okay.

9 Q. Question 71, Mr. [REDACTED], Alberto Miranda was
10 asked whether he or anyone in his family had been
11 investigated for any crime related to illegal
12 drug-trafficking; correct?

13 A. Yes.

14 Q. And Alberto Miranda responded that his
15 cousin, [REDACTED] or [REDACTED], two
16 cousins and Alberto Miranda himself had been
17 investigated and incarcerated for several years in
18 relation to illicit drug-trafficking and
19 money-laundering; correct?

20 A. That's what the Report says.

21 Q. So, we have seen that the Founder and
22 General Manager of [REDACTED] had been incarcerated for

1 illicit drug-trafficking and money-laundering. And
2 you said before that you checked the criminal records
3 with these through what you called "World-Check." Did
4 you--when you found out that he had been in prison for
5 drug-trafficking and money-laundering were you not
6 concerned?

7 A. You're talking about David Miranda?

8 Q. Alberto Miranda.

9 A. But you said that Report was sent to the
10 police from David Miranda.

11 Q. Yeah, in that report--we can put it back if
12 you want. In that Report, Alberto Miranda says that
13 he, himself, spent 36 months in prison for illegal
14 drug-trafficking and money-laundering.

15 A. But if that went to the Police Department,
16 how are we supposed to know that?

17 Q. No, he had been in prison from 1990 to 2009.
18 But let's check it. It's in response to Question 71.

19 "In '99--in 1999, my cousin [REDACTED]
20 was investigated for illicit drug-trafficking. I,
21 too, was incarcerated for 36 months in the Castro
22 prison from 1999 to 2009 for the same crimes, that is,

1 TID," which is illicit drug-trafficking, "and
2 money-laundering."

3 A. That's his cousin.

4 Q. No, that's him, "I, I, too, was
5 incarcerated."

6 A. Um-hmm.

7 Q. So, now that we have seen this, my question
8 is: When you conducted your due diligence, which you
9 said that you do for all of them, and you saw that he
10 had been three years in prison with his cousin [REDACTED]
11 [REDACTED]--or perhaps you didn't see it, but at least
12 himself--for drug-trafficking and money-laundering, do
13 you consider that that was a red flag?

14 A. I considered it red flag, but it wasn't--it
15 wasn't published at that time.

16 Q. But--

17 A. It wasn't--it didn't show in the system, it
18 didn't show in the World-Check, it didn't show in
19 Google, it didn't show anywhere.

20 Q. But you just tell me that your World-Check
21 confirms criminal activity.

22 A. But it's not there. We have a clear

1 World-Check for that name.

2 Q. Can you show me that clear World-Check?

3 A. We will check it out. I will send it.

4 Q. No, can you show me now?

5 A. I don't have it now. I don't have the
6 documentation.

7 Q. Okay. Do you rely on World-Check alone for
8 criminal records, or do you also liaise with local
9 lawyers in Perú?

10 A. We rely on World-Check, Google. And if the
11 Company in a gray area, and we're not sure whether to
12 accept it or not, we send the file to the attorneys,
13 and the attorneys will make the determination.

14 Q. Anybody who spends time in prison should
15 appear in your records?

16 A. Should be, but it's not in our record.

17 Q. Um-hmm.

18 A. And also, David Miranda's name--"Miranda" is
19 a very popular name in Latin America.

20 Q. So, we have seen that Alberto Miranda
21 responded that his cousin [REDACTED] and two other
22 cousins and Alberto Miranda himself have been

1 investigated and incarcerated for several years in
2 relation to illicit drug-trafficking and
3 money-laundering. And you have said that this did not
4 arise in your World-Check checks.

5 Now, you do confirm that you now know that
6 [REDACTED] --who [REDACTED] is, and you agreed
7 that it's a notorious and well-known criminal.

8 A. Yes, afterward, yes.

9 Q. Okay. So--and you agree that the Owner of
10 [REDACTED] had corporate and family links with [REDACTED]
11 [REDACTED]. We have seen it. They spent years in
12 prison. They shared the Company.

13 A. Yes.

14 Q. So, you agreed that they--now, with what you
15 know now--[REDACTED] was not a reputable gold supplier.

16 A. You can't say that because of his cousin.

17 Q. No, not because of his cousin, because he
18 spent 36 months in prison himself.

19 A. It's not to our knowledge--it didn't show in
20 the database.

21 Q. I'm asking about it now, with the benefit of
22 hindsight, do you still believe that [REDACTED] was a

1 reputable Supplier?

2 A. If we detect that at that time, I agree with
3 you, it would be a red flag.

4 Q. No, I'm asking you, because just a few
5 moments ago, after all of this happened, you keep
6 alleging in your Witness Statements that all four
7 Suppliers were reputable gold Suppliers, and Perú
8 keeps submitting this information in the pleadings
9 showing that they committed all sort of crimes.

10 A. Yes.

11 Q. And we keep receiving the same Witness
12 Statement saying that they are reputable gold
13 Suppliers, so I want to understand what's your
14 standard of "reputable" is.

15 A. According to our knowledge, our study and
16 our program, we did not see any red flag for all these
17 five Suppliers.

18 MR. NISTAL: I think we can do a break now.

19 PRESIDENT McRAE: Thank you very much.

20 So, we will take 15 minutes' break, and
21 return at 11:30.

22 Mr. [REDACTED], because you are still under

1 cross-examination, unfortunately you are unable to
2 speak with members of your team--in fact, desirable
3 not to speak to anyone about the case.

4 THE WITNESS: Okay.

5 PRESIDENT McRAE: You can obviously get
6 coffee, and maybe someone could provide some for you.
7 But unfortunately until we resume, until you have
8 finished your testimony, we will have to keep you
9 under that condition.

10 THE WITNESS: Thank you.

11 MR. DÍAZ-CANDIA: Mr. President, I believe
12 there is even a separate room for him?

13 PRESIDENT McRAE: Is there a separate room
14 for him?

15 SECRETARY KETTLEWELL: Yes.

16 PRESIDENT McRAE: Do you know the separate
17 room?

18 SECRETARY KETTLEWELL: No.

19 PRESIDENT McRAE: She will take you to the
20 separate room.

21 MR. DÍAZ-CANDIA: Okay, is there coffee
22 there?

1 Mr. ██████, maybe you can get some coffee or
2 whatever you want and then move to the other room, and
3 Ms. Kettlewell will show you.

4 (Recess.)

5 PRESIDENT McRAE: I think we can now resume.

6 So, Mr. Nistal, whenever you're ready.

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

8 Let's please display on the screen
9 Exhibit C-30.

10 BY MR. NISTAL:

11 Q. Mr. ██████, as you can see on the screen,
12 this document is entitled "KML Transaction summary of
13 all purchases between 2012 and 2018." Correct?

14 PRESIDENT McRAE: Mr. ██████, can you put
15 your microphone on?

16 THE WITNESS: I said "yes."

17 BY MR. NISTAL:

18 Q. Now, let's please go to Page 5 of the PDF.

19 Mr. ██████, this page confirms that Kaloti
20 traded more than 1,100 kilograms of gold for a company
21 called "Comercializadora Minerales Rivero S.A.C.";
22 correct?

1 A. Yes.

2 Q. Can we show the date, please. Just to
3 confirm that this was--this was in 2013; correct?

4 A. Yes.

5 Q. And the same page, the fifth row starting
6 from the bottom shows that Kaloti Metals traded more
7 than 200 kilograms of gold for a company called
8 Empresa Nueva Arica; correct?

9 A. Yes.

10 Q. This company, Nueva Arica was also managed
11 by a relative of [REDACTED] called Juan Francisco
12 Miranda; correct?

13 A. I don't remember.

14 MR. NISTAL: Let's please display on the
15 screen Exhibit R-362, which is the Corporate
16 Registration of the Company Nueva Arica, and let's go
17 to Page 7 of the PDF.

18

19 BY MR. NISTAL

20 Q. Mr. [REDACTED], as you can see on 22 April 2013,
21 Juan Francisco Miranda was appointed General Manager
22 of the Company Nueva Arica; correct?

1 A. Yes.

2 Q. Now, let's please display again the
3 statement of Alberto Miranda, which is Exhibit R-151.
4 And let's go to Question 69 which is on Page 2 of the
5 PDF.

6 Mr. [REDACTED], as you can see, Alberto Miranda
7 was asked whether he knew [REDACTED] and Juan
8 Francisco Miranda, to which Alberto Miranda responded
9 that both [REDACTED] and Juan Francisco
10 Miranda were his cousins; correct?

11 A. Yes.

12 Q. So, if Juan Francisco Miranda and [REDACTED]
13 [REDACTED] were cousins of Alberto Miranda, then we
14 can conclude that Juan Francisco Miranda was cousin
15 with [REDACTED], [REDACTED].

16 A. Okay.

17 Q. So, let me go back to my previous question:
18 The Company Nueva Arica was managed by a relative of
19 [REDACTED] called Juan Francisco Miranda; correct?

20 A. Yes.

21 Q. Mr. [REDACTED], we will now play an extract of a
22 reportage that was broadcasted in Perú's national

1 television in January 2014, the same month that Kaloti
2 claims to have bought Shipments 4 and 5 from [REDACTED]
3 [REDACTED] cousin, Alberto Miranda.

4 A. I'm sorry, what's the date on this?

5 Q. The date is 20 January 2014.

6 And let's play the video in Exhibit R-75
7 from minute 5:15 to minute 7:40.

8 (Video played.)

9 MR. NISTAL: Let's now please display the
10 Transcript of the video we just saw as it will be
11 easier to discuss its content. The Transcript is
12 Exhibit R-375, and let's go to the last paragraph of
13 Page 2 of the PDF.

14 BY MR. NISTAL:

15 Q. Mr. [REDACTED], this is the Transcript of the
16 video we just saw. And as we just saw in the video,
17 and as you can see in the Transcript, in January 2014,
18 Perú's media referred to [REDACTED] as, I
19 quote, "the main financier and at the same time the
20 presumed collector of gold from the black market."
21 Correct?

22 A. Yes.

1 Q. Let's now go to the next page, which is
2 Page 3 of the PDF.

3 Mr. [REDACTED], as you can see in the third and
4 fourth paragraphs, [REDACTED] own lawyer
5 confirmed on national television that [REDACTED]
6 was the individual who had made the main contribution
7 to constitute Comercializadora Rivero de Minerales;
8 correct?

9 A. Yes.

10 Q. And you confirmed earlier that Kaloti had
11 traded more than 1,100 kilograms of gold for
12 Comercializadora Rivero de Minerales in 2013; correct?

13 A. Yes.

14 Q. And as you can see in the fifth and sixth
15 paragraphs of the page on the screen, [REDACTED]
16 lawyer also said that [REDACTED] had, as a
17 practice, to have his children, other relatives, or
18 people linked to him to appear as legal owners in
19 [REDACTED] companies; correct?

20 A. Correct.

21 Q. So, would you agree with this statement: In
22 2013, Kaloti traded more than 1,300 kilograms of gold

1 for various companies owned or managed by close
2 relatives of [REDACTED], and even for a company
3 that was directly financed by him?

4 A. That video in January 2000--January 20th.

5 Q. January 2014.

6 A. What day?

7 Q. The twentieth of January.

8 A. That's after the fact of the Immobilization.

9 Q. That is not my question, Mr. [REDACTED]. You're
10 right, that is after. My question is whether, as a
11 matter of fact, in 2013, Kaloti traded more than
12 1,300 kilograms of gold for various companies owned or
13 managed by close relatives of [REDACTED] and even
14 for a company that was directly financed by [REDACTED]
15 [REDACTED].

16 A. Yes.

17 Q. That's a true statement.

18 A. That's the time when we realized that [REDACTED]
19 [REDACTED] is [REDACTED]. We didn't know who's [REDACTED]
20 [REDACTED] at that time.

21 Q. Can I please--

22 A. So--but that's why that video came after the

1 Immobilization.

2 Q. I agree, I understand that, Mr. [REDACTED].

3 A. Um-hmm.

4 Q. But I need to reiterate my question. As a
5 matter of fact, I'm not asking you whether you knew it
6 or not. I'm asking, as a matter of fact, in 2013,
7 Kaloti traded more than 1,300 kilograms of gold for
8 various companies--

9 A. Yes, yes, we did.

10 Q. Let me finish the question, please.

11 In 2013, Kaloti traded more than
12 1,300 kilograms of gold for various companies owned or
13 managed by close relatives of [REDACTED] and even
14 for a company that was directly financed by him. Is
15 that a true statement?

16 A. Without knowing, yes.

17 Q. Thank you.

18 So, you said that you knew, by the time this
19 news came out, you already knew that [REDACTED]
20 had--

21 A. When the news came out, we knew--we knew.
22 We read the news.

1 Q. Okay. Mr. [REDACTED], in Paragraph 30 of your
2 First Witness Statement, you state that Kaloti
3 conducted exhaustive due diligence and diligent "know
4 your customer" client and compliance investigations on
5 the Suppliers of the Five Shipments, including by
6 confirming that these Suppliers and their Shareholders
7 and officers had not been exposed by negative media
8 coverage. And in order to support that statement, you
9 cite Exhibit C-33. Is that correct?

10 A. What is C-33?

11 Q. I'm just getting there, but if you want to
12 check your First Witness Statement, Paragraph 30, I
13 just want you to confirm that you made that statement
14 and that you cited that exhibit.

15 A. Okay.

16 Q. I mean, if you trust me--

17 A. If that's what I have here, yes.

18 MR. NISTAL: Okay. So, let's please display
19 Exhibit C-33 on the screen.

20 BY MR. NISTAL:

21 Q. So, as you can see this is the compliance
22 department periodic review of Suppliers of Kaloti.

1 And I will provide the general description of this
2 document, and you can correct me if I'm wrong.

3 MR. NISTAL: Perhaps you can scroll so that
4 Mr. [REDACTED] can see them. A bit lower so that
5 Mr. [REDACTED] can see it.

6 BY MR. NISTAL:

7 Q. As I said, I will provide the general
8 description of documents contained in this exhibit and
9 I ask you to please confirm whether you agree with
10 that description.

11 A. Yes.

12 Q. I will then ask you more questions.

13 The exhibit contains three one-page forms
14 entitled "Certification of Periodic Review." They all
15 have the letterhead of Kaloti Metals. They purport to
16 show that Kaloti Metals conducted a review of the
17 Suppliers [REDACTED], [REDACTED], and [REDACTED], and of the
18 principal-agents--and of the principals and agents of
19 these three Suppliers. And according to the forms,
20 the review was conducted using the compliance tool
21 called "World-Check."

22 Mr. [REDACTED], do you agree with this general

1 description so that we can then start asking
2 questions?

3 A. Yes.

4 Q. So, you cited this exhibit to support your
5 allegation that Kaloti had carried out compliance on
6 the Suppliers before purchasing the gold but, if we go
7 to the dates--let's start with the first one, so this
8 one is dated 7 February 2014.

9 A. Yes.

10 Q. This is the one concerning [REDACTED].

11 A. Um-hmm.

12 Q. So, it postdates both the purchase and the
13 Immobilization of Shipment 1 supplied by [REDACTED];
14 correct?

15 Sorry, the first one is of [REDACTED].

16 Sorry, my bad.

17 So, the question stands. It's from
18 7 February 2014.

19 A. Um-hmm.

20 Q. And you bought--well, you allegedly bought
21 the Shipments 4 and 5 in January, so this postdates
22 the purchase; correct?

1 A. Yes.

2 Q. So, you cannot prove that you conducted due
3 diligence before buying--

4 (Overlapping speakers.)

5 A. No, that's not the due-diligent time. This
6 is the time of the Compliance Officer hand us--that he
7 reviewed the file for that particular Suppliers. That
8 does not mean we did that in February.

9 Q. Where in the document does it say the actual
10 date of the due diligence? Because I assume that
11 that's incredibly important.

12 A. I don't know. There is time when they
13 apply, and we give them the time. We ask for all the
14 documentation, we review all the documentation, and
15 whether we approve them or disapprove them. This does
16 not indicate that it was approved on February 7th.

17 Q. So, that date, according to you, is to
18 inform you that the check was done.

19 A. Yes.

20 When he get to that--to that notification,
21 it could be later after--so--

22 (Overlapping speakers.)?

1 A. The due diligence, it takes from one week to
2 five weeks. It takes time.

3 Q. I understand, but if what you're telling me
4 is that this date is the date on which you were
5 notified of the due diligence, you are telling me that
6 you were notified of the due diligence weeks after the
7 purchase?

8 A. No. That's when he gave us or we put this
9 in the file, and the time he put this in the file, the
10 due diligence take long time.

11 Q. Okay. Can you show me a document of when
12 was the due diligence conducted?

13 A. Well, we have to show you when they send the
14 documentation.

15 Q. Yeah, I don't know, because--
16 (Overlapping speakers.)

17 A. --the Suppliers. I don't carry files of
18 thousands of pages with me. But I'm telling you the
19 procedure we use.

20 Q. I understand that, Mr. [REDACTED], but in your
21 Witness Statement, you used this document to prove
22 that you had conducted due diligence on the Suppliers

1 before the purchase. You agree that we have no way of
2 knowing when if, according to you, that date doesn't
3 reflect the date of the due diligence, then we have no
4 way of knowing when the due diligence was conducted.
5 Would you agree at least to that point?

6 A. I agree that we will start way before that
7 date. The last thing that the Compliance Officer,
8 when he completed everything, he put this--that could
9 be from a month before he completed that due diligence
10 or a week before or two weeks. There is no way of
11 knowing. This is not the time he completed the due
12 diligence.

13 Q. Okay. Let's do some hypothetical.

14 You conducted due diligence of a company,
15 and the following day, after conducting the due
16 diligence or one week later, that company appears in
17 all the news for financing terrorism and for
18 conducting illegal activities all around the world.
19 Two weeks later, you sign this and you put it in your
20 files saying that the Company's fully compliant.
21 That's how you operated?

22 A. That's not how we operate.

1 Q. No?

2 A. The Supplier can be approved in advance, and
3 this can be put in the file when he get the time to
4 write it down.

5 Q. Okay.

6 A. And approve it.

7 MR. NISTAL: Let's please read the text in
8 "acceptable." Let's actually scroll up. Scroll up,
9 yep.

10 Actually, no. Let's go to [REDACTED]. [REDACTED]
11 [REDACTED], scroll down, you see that box, "ACCOUNT
12 STATUS PURSUANT TO THIS REVIEW," "INACTIVE."
13

14 BY MR. NISTAL

15 Q. So, if what you're telling me is true, you
16 conducted due diligence on an inactive company?

17 A. That's after the fact. After the fact
18 because it was seized. We put it in inactive file.

19 Q. But you're telling me that the date and the
20 information contained therein refers to--

21 A. No, this is way before--three months after.

22 Q. And the other one is a month after?

1 A. Less than that, a month after, but this--it
2 was active, and it was inactive because of his
3 Immobilization. We cannot do business with him
4 anymore, so we put him in an inactive file.

5 Q. Okay. So, if it's active, you can do
6 business.

7 A. If he's active?

8 Q. Yes.

9 A. No. After Immobilization we cannot do
10 business with them because we know what's going to
11 happen.

12 (Overlapping speakers.)

13 Q. Okay. So, let's go back to [REDACTED], please.
14 Scroll down.

15 Here, it clicks active, and this is after
16 the Immobilization, so what you just told me is
17 contradictory.

18 A. This is within the time limit, but again you
19 got to check with the Compliance Officer. I did not
20 write this. You are asking me personally. I did not
21 write this, but these reports can come after. Or,
22 when there is Immobilization later on, the file goes

1 to inactive customer.

2 Q. Did you review this document in person?

3 A. 10 years later, I don't remember.

4 Q. You don't know whether you reviewed it or
5 not.

6 A. I don't remember.

7 Q. But you do cite it in your Witness Statement
8 as evidence of your allegations.

9 A. It depends on what and what time and when.

10 Q. Okay. In any event, this document doesn't
11 contain any World-Check for one of the Suppliers,
12 [REDACTED]; correct?

13 You can scroll a bit.

14 This is the first page, [REDACTED].

15 This is the second one, [REDACTED].

16 This is the third one, [REDACTED].

17 And that's it.

18 It doesn't contain any evidence that you
19 conducted any sort of World-Check review on [REDACTED];
20 correct?

21 [REDACTED] is the entity owned by Alfredo Chamy.

22 A. I don't see it. I believe we had it. We

1 should have it. It could be in the office in Lima
2 when we closed the business. We lost a lot of
3 documentation there. We don't know, if we gave you
4 three out of four, that mean we doing it for every
5 customer. If one is not here, it's possible it got
6 lost in Perú in the office when we closed down.

7 Q. Mr. [REDACTED], according to your Compliance
8 Manual, according to U.S. law and according to
9 Peruvian law, you have an obligation to keep all
10 related compliance documents for at least seven years.
11 So, that means that by the time you closed the office
12 in Perú, you still should have kept all of these
13 documents.

14 MR. DÍAZ-CANDIA: The Witness is being asked
15 about what the law says.

16 MR. NISTAL: Let's please display on the
17 screen C-25. And let's go to Section--let's go to
18 Section 9 of the Manual entitled "record-keeping" in
19 Page 15 of Exhibit C-25.

20 BY MR. NISTAL:

21 Q. Mr. [REDACTED], in this section--this section
22 provides that, I quote, "in accordance with best

1 practices as well as U.S. Federal Regulations, all
2 documentation required under KML's Manual will be
3 retained for a period of at least seven years";
4 correct?

5 A. Yes.

6 Q. And the same section also states that this
7 obligation of Kaloti to keep records "covers
8 documentation and/or correspondence regarding KML
9 account opening and any and all compliance-related
10 documents"; correct?

11 A. Yes.

12 Q. So, by failing to keep records of Claimant's
13 alleged verifications or due diligence, you breached
14 both U.S. law and this Compliance Manual; correct?

15 A. Not correct, because this is document it's
16 been written in the office by the Compliance Officer.
17 It's not documentation searching for legality or
18 illegality of gold. This is interior report from the
19 compliance that he's been approved or disapproved. If
20 this is being sent to you and by mistake he didn't get
21 it or we still have it, I have to check. But we have
22 all the documentation for every customer, for every

1 Suppliers.

2 Q. Mr. [REDACTED], I'm asking you because we asked
3 for that documentation and it was not provided to us,
4 and you're telling me that it was lost. My question
5 is: According to your own Compliance Manual, U.S.
6 Federal Regulations require you to keep all
7 compliance-related documents. I hope we agree that
8 World-Check report is a compliance document.

9 So, my question is: If you didn't keep a
10 copy of this, you breached your Compliance Manual and,
11 according to what it says on the screen, U.S. Federal
12 Regulations; correct?

13 A. No, we didn't break any law. Give me a
14 time, I will advise some colleague in Miami to look
15 for it, and I will present it to you tomorrow or after
16 tomorrow. It's there, but for some reason you didn't
17 get it or some reason it got lost, we have it on a
18 digital file. If it's not actually paper, it should
19 be on digital file. I need time. I will try to get
20 it for you before--before the Arbitration is over.

21 MR. DÍAZ-CANDIA: We will also like to note
22 for the record that it's not clear, and the Witness

1 has not said whether that document that Mr. Nistal is
2 claiming is missing is specifically covered by this
3 paragraph. That's a legal conclusion also that the
4 Witness is not in a position to make.

5 PRESIDENT McRAE: That's a matter you should
6 be raising in your Closing Statement. It's not a
7 matter you should be interrupting the
8 cross-examination for. I understand your point, but I
9 think it's not the appropriate time to make it.

10 BY MR. NISTAL:

11 Q. Thank you, Mr. [REDACTED].

12 MR. NISTAL: Let's please display on the
13 screen Page 121 of Claimant's Memorial.

14 BY MR. NISTAL:

15 Q. Mr. [REDACTED], as you can see in the table on
16 the screen, this is a pleading submitted by Claimant,
17 by Kaloti. Claimant has argued in this Arbitration
18 that Shipment 4 was immobilized by SUNAT on
19 9 January 2014; correct?

20 A. I believe so.

21 Q. And it also says that Shipment 4 contained
22 approximately 126 kilograms of gold.

1 Do you see that?

2 A. Yes.

3 Q. Yes.

4 Now, on that same date, there is no action
5 by SUNAT in relation to Shipment 5; correct?

6 A. What do you mean "no action"?

7 Q. In the table--

8 A. Um-hmm.

9 Q. --Claimant did not record any action
10 whatsoever, no event in relation to Shipment 5 for the
11 date 9 January 2014.

12 A. Right. It's blank.

13 MR. NISTAL: Correct.

14 Let's please display Exhibit C-158 on the
15 screen, and in particular let's start with Page 20.

16 Well, actually, let's start with the cover
17 page, Page 2, please.

18 BY MR. NISTAL:

19 Q. Mr. [REDACTED], do you recognize this document?

20 A. Yes, I see the letterhead, yeah.

21 Q. Yeah. It's a Notice of Intent to submit a
22 claim to arbitration under the Perú-U.S. Trade

1 Promotion Agreement--

2 A. Yes.

3 Q. --correct? It is not a letter. It's a
4 Notice of Intent; correct?

5 A. Yes.

6 Q. Thank you.

7 Let's go to Page 20.

8 That is your signature, Mr. [REDACTED]; correct?

9 A. Yes.

10 MR. NISTAL: Let's now display Paragraph 50,
11 which is in Page 11 of the PDF. Let's try to capture
12 the entirety of Paragraph 50 on the screen, if we can,
13 so that Mr. [REDACTED] can read it.

14 Ah, there. Perfect.

15 BY MR. NISTAL:

16 Q. Mr. [REDACTED], in this paragraph, Claimant, in
17 this document signed by you, stated: "Due to the fact
18 that the day before SUNAT had immobilized the export
19 of the gold corresponding to Purchase No. 4 purchased
20 from the same Supplier, Kaloti decided to await the
21 outcome of the Immobilization of Purchase No. 4 before
22 proceeding with the export of the ore from Purchase

1 No. 5."

2 A. Yes.

3 Q. So, here you're saying that you decided to
4 hold the export of Shipment 5 because the previous day
5 SUNAT had immobilized Shipment 4; correct?

6 A. Correct.

7 Q. And we just saw that Shipment 4 had been
8 immobilized on 9 January 2014; correct?

9 A. Um-hmm.

10 REALTIME STENOGRAPHER: Is that a "yes"?

11 THE WITNESS: Yes, sorry.

12 BY MR. NISTAL:

13 Q. Mr. [REDACTED], Claimant has argued in this
14 Arbitration that, according to a representative of
15 [REDACTED], Shipment 5 was not exported as a result of an
16 intervention of SUNAT that took place on
17 9 January 2014. And you just confirmed that
18 Shipment 4 was immobilized by SUNAT on that date,
19 4 January 2013. You also confirmed that in the table
20 of Claimant no action was recorded in relation to
21 Shipment 5 on January 2014. So, let's try to put
22 together the table that we saw in the Memorial of this

1 Arbitration and this statement that you see on the
2 screen.

3 Would you agree with me that, in light of
4 what Claimant itself said in the paragraph on the
5 screen, it is clear that what [REDACTED] representative
6 meant is that Shipment 5 was not exported as a result
7 of SUNAT Immobilization of Shipment 4 on 9 January
8 2014; correct?

9 A. No. It's many reasons, it's not the only
10 reason, because No. 4 was immobilized it. That's not
11 the only reason. The other reason is we have advice
12 from the airport from Talma that SUNAT--that the
13 shipment we have in the premises of Hermes will not be
14 able to ship it for--we don't know the reason, so we
15 didn't check it. That's the reason we stopped the
16 shipping of No. 5.

17 Q. Mr. [REDACTED], let's read again the paragraph
18 on the screen: "Due to the fact that the previous day
19 SUNAT had immobilized the export of the gold
20 corresponding to Purchase No. 4 purchased from the
21 same Supplier," here, we're talking about [REDACTED],
22 "Kaloti decided to wait for the outcome of the

1 Immobilization of Purchase No. 4 before proceeding to"
2 the export--"to export the ore of Purchase No. 5."

3 A. Yeah, I'm waiting for the outcome.

4 Q. Yeah. So, essentially--

5 A. We don't know what the outcome.

6 Q. Let me--I think we can probably agree on
7 this.

8 Shipment 4 was immobilized on 9 January.
9 You have Shipment 5 in Hermes' facilities and you
10 said--you thought or decided "well, I'm not going to
11 export Shipment 5 now because they just immobilized
12 Shipment 4. I'm going to wait. Let's see what
13 happens with that, and then I will decide whether I
14 export Shipment 5."

15 A. And then, at the same time, we received
16 information from Talma--

17 Q. Mr. [REDACTED], I at least need you to confirm
18 whether what I just said is part, at least, of what--

19 A. I said to wait for the outcome of Shipment
20 No. 4.

21 Q. It's going to take a long time, Mr. [REDACTED].
22 We need to do it in structure. I'm going to start

1 again because I want you to say whether you agree or
2 not with this first part, then we can talk about that
3 second part that you want to talk about.

4 You had received Shipments 4 and 5 in the
5 facilities of Hermes. You transported Shipment 4 to
6 the facilities of Talma. On 9 January, as we just
7 saw, [REDACTED] immobilized Shipment 4.

8 Because Shipment 4 had been immobilized, as
9 this says, Kaloti decided to wait for the outcome of
10 the immobilization of Shipment 4--

11 A. Correct.

12 Q. --before proceeding to export the ore from
13 Shipment 5.

14 Do you agree, then, with this first part of
15 the statement? Then we can get into the reasons.

16 A. First part, I agree with that.

17 Q. Thank you.

18 Now, you had something else to say.

19 A. The outcome--it could varies. What's the
20 outcome? What's going to happen with Shipment No. 4?
21 And also, we could not ship Shipment No. 5 because
22 Shipment No. 5 came two, three days later after

1 Shipment No. 4. So, we have it--we have mobilized in
2 SUNAT Shipment No. 4 and No. 5 came later.

3 First, how we going to send Shipment No. 5
4 if we couldn't do it? Talma advised us, and we have
5 it in writing, I believe, that SUNAT advised this
6 shipment, it's going to remain in Hermes, cannot be
7 shipped. I couldn't ship it.

8 Q. Okay. Can we agree at least that SUNAT did
9 not immobilize Shipment No. 5 on January 2014?

10 A. He immobilized it after. I don't know the
11 date, but he immobilized it in the premises from our
12 vault in Hermes.

13 Q. In Hermes. So, we have at least agreed that
14 that SUNAT did not immobilize Shipment 5 on
15 January 2014. Can you confirm that?

16 A. Yes.

17 Q. We also have agreed that whatever
18 Immobilization took place, took place in the
19 facilities of Hermes; correct?

20 A. Yes.

21 Q. Thank you.

22 A. Just curious, what happened to Shipment

1 No. 5 now?

2 Q. Mr. [REDACTED], I'm sorry but this is not the
3 time to have a conversation.

4 A. I know, but I believe you sent it back to
5 [REDACTED] --

6 (Overlapping speakers.)

7 PRESIDENT McRAE: Stop speaking because
8 nothing is going into the record.

9 Now, if this was an elaboration of the
10 point, it's legitimate, but if it's simply arguing
11 with counsel, then I think you have to leave those
12 points for your counsel to make.

13 (Overlapping speakers.)

14 MR. DÍAZ-CANDIA: Mr. [REDACTED], let me advise
15 you to not argue with the lawyers for Perú. Let us do
16 that. I understand your emotions and what Perú put
17 you through, but let us fight with them. You just
18 answer the questions with the facts you know.

19 MR. NISTAL: We will continue with this line
20 of questions.

21 BY MR. NISTAL:

22 Q. We saw, Mr. [REDACTED], that this Notice of

1 Intent is dated 3 May 2016.

2 Now, I can take you to each of the
3 paragraphs. It will take time, but if you are willing
4 to accept my proposition and Claimant can rebut it, we
5 can move faster.

6 In the First Notice of Intent now on the
7 screen, Claimant identified the exact date on which
8 SUNAT immobilized Shipments 1 to 4 and even the
9 specific number of the relevant SUNAT Immobilization
10 Certificates for the Immobilization of these four
11 shipments. And you can see this in Paragraph 22
12 concerning Shipment 1, in Paragraph 33 concerning
13 Shipment 2, Paragraph 40 concerning Shipment 3, and
14 Paragraph 47 concerning Shipment 4. And here comes my
15 question.

16 MR. DÍAZ-CANDIA: Wait. You asked us if we
17 agree? We do not agree that this is the First Notice
18 of Intent, so you're characterizing the document in a
19 matter that the document doesn't say.

20 PRESIDENT McRAE: Mr. Díaz-Candia, it's not
21 a question to you about whether you agree, we
22 understand that. The question is being put to

1 Mr. [REDACTED] and he can answer.

2 MR. DÍAZ-CANDIA: But he asked us if we
3 agree with his characterization of what the document
4 says. This document doesn't say--

5 PRESIDENT McRAE: You could make that point
6 through either redirect or in Closing Statement, but
7 we can't interrupt the cross-examination with a
8 dialogue between the lawyers.

9 MR. NISTAL: Thank you, Mr. President.

10 The fact that it's a Notice of Dispute has
11 already been confirmed by the Witness.

12 BY MR. NISTAL:

13 Q. And here comes my question: Unlike for the
14 other four shipments, the First Notice of Intent does
15 not say anywhere that SUNAT immobilized Shipment 5.
16 And here, perhaps you want to open the document on
17 your screen or we can scroll it, we can proceed
18 however you want. This is--what is the number? This
19 is Exhibit C-168.

20 MR. DÍAZ-CANDIA: 58.

21 MR. NISTAL: 58, sorry.

22 Perhaps a bit--you can show him the

1 paragraph--the section related to Section 2,
2 Shipment 5.

3 You can go slower so that the Tribunal and
4 Mr. [REDACTED] can see that there is a section for each of
5 the shipments. You can get there the "IMMOBILIZATION
6 AND STATE SEIZURE." Okay. There. Scroll down.
7 That's the table, keep going.

8 You can stop there for a second.

9 BY MR. NISTAL:

10 Q. You see that's the Paragraph 22 I referred
11 to before. This is the section regarding Shipment 1.
12 And then the paragraph says: "The export of shipment
13 to Miami was scheduled on 27 November 2014, all the
14 documentation required for the logistical and customs
15 procedure was in place. Upon presentation of the
16 shipment for export, the shipments owned by Kaloti
17 were immobilized by SUNAT." And then you have the
18 specific Certificates of Immobilization.

19 Now, let's keep going.

20 In 33, you have the same information in
21 relation to Shipment 2, I suppose. Two. Okay? Let's
22 continue.

1 This is Shipment 3, and there you have all
2 the information, the date, the certificates,
3 everything in relation to Shipment 3.

4 If we keep going, you have four, No. 4, same
5 thing, certificates, dates, all the information.

6 Now, let's keep going until we get to
7 Shipment No. 5. You have seen this paragraph before.
8 It says: "Kaloti decided to wait for the outcome of
9 the Immobilization of Purchase No. 4 before proceeding
10 to the export of the ore from Purchase No. 5."

11 Let's keep going.

12 A. Yeah, that's--yeah.

13 Q. Yeah. Okay.

14 Now, I insist, if you want to have control
15 of the document, you can do it. At the same time, I'm
16 not misrepresenting anything. I'm just asking
17 you--and let me go back to my question.

18 Unlike for the other four shipments, the
19 First Notice of Intent does not say that SUNAT
20 immobilized Shipment 5.

21 A. But it was. It was immobilized.

22 Q. Mr. [REDACTED], that is not my question. My

1 question is whether in this First Notice of Dispute
2 that you sent to the State complaining about the State
3 Measures, you alleged that Shipment 5 had been
4 immobilized. You didn't; correct?

5 A. According to this, it's not included.

6 Q. Okay.

7 Unlike for the other four shipments,
8 Claimant has not submitted in this Arbitration any
9 SUNAT Immobilization Certificate concerning
10 Shipment 5.

11 Let me rephrase: Are you aware of any
12 Certificates of Immobilization by SUNAT regarding
13 Shipment 5?

14 A. There is no certification of any shipment
15 from SUNAT. I was not included.

16 Q. That's enough for me. Thank you.

17 A. We were not part of the immobilization. We
18 were not part of the Court order. We were not part of
19 anything.

20 Q. I agree.

21 Unlike for the other four shipments, neither
22 you nor Claimant have submitted any communication from

1 SUNAT concerning the alleged Immobilization of
2 Shipment 5. Like, for the other ones we saw
3 communications between the Suppliers and SUNAT. For
4 this one, there is no communication whatsoever;
5 correct?

6 A. I don't remember. We went to SUNAT a few
7 times.

8 Q. Let me rephrase it.

9 A. To discuss--to discuss all the shipments,
10 include No. 5.

11 That we even asked SUNAT representative if
12 we can export No. 5. He said it's not for me to
13 decide.

14 Q. Thank you, Mr. [REDACTED].

15 A. We tried to export Shipment No. 5.

16 Also, how you going to export Shipment No. 5
17 and the previous Five Shipments being immobilized?
18 It's the same Supplier that you mobilize 4. What's
19 going to happen to 5? We couldn't even export it
20 because of the information we received from Talma and
21 from the airport services through SUNAT. That we
22 could not export No. 5.

1 Q. Talma is a private company; correct,

2 Mr. [REDACTED]?

3 A. Yeah, but Talma, that's where [REDACTED] pick up
4 the shipment from, from Talma.

5 Q. Thank you.

6 I will--I mean I really would like an
7 answer, Mr. [REDACTED]. If you cannot give to me I will
8 jump--

9 (Overlapping speakers.)

10 Q. Unlike for the other four shipments, you're
11 not aware of any communication from SUNAT concerning
12 the alleged Immobilization of Shipment 5--you cannot
13 show us the document?

14 A. No. There was some discussion. When we
15 went to SUNAT to discuss all the mobilization of the
16 shipment and No. 5. If we can export No. 5.

17 Q. Thank you, Mr. [REDACTED].

18 I'm going to jump this.

19 MR. NISTAL: Let's now please display
20 Paragraph 52 of the First Notice of Intent.

21 BY MR. NISTAL:

22 Q. Mr. [REDACTED], in this Paragraph 52, Claimant

1 explained that the gold in Shipment 5 was seized on
2 18 June 2014 by the Civil Court of Lima in the context
3 of judicial process initiated by the Supplier [REDACTED];
4 correct?

5 A. Yes.

6 Q. And this judicial process was initiated by
7 [REDACTED] because Kaloti Metals had failed to pay for the
8 gold contained in Shipment 5; correct?

9 A. I believe so.

10 MR. NISTAL: Let's now display Paragraph 51
11 of the First Notice of Dispute.

12 BY MR. NISTAL:

13 Q. Mr. [REDACTED], in this paragraph, Claimant
14 explained that, in March 2015, Shipment 5 was seized
15 as a result of an Order of the Prosecutor's Office in
16 charge of money-laundering and loss of ownership
17 crimes, but this Order was later revoked; correct?

18 A. I don't remember.

19 Q. Oh, it's written there. You signed this
20 document, I'm just asking you to confirm that that's
21 what the document--Paragraph 51 says.

22 A. The Order was revoked?

1 Q. Mr. [REDACTED], you need to look at the screen
2 or at me, but you cannot get instructions from your
3 client.

4 MR. DÍAZ-CANDIA: He's not looking at us.
5 He's look at the screen.

6 THE WITNESS: I'm looking at the screen.

7 Okay.

8 BY MR. NISTAL:

9 Q. So, do you agree that Claimant explained,
10 just so that it's clear on the record, that, in March
11 2015, Shipment 5 was seized and as a result of an
12 Order of the Prosecutor's Office in charge of
13 money-laundering and loss of ownership crimes, but
14 this Order was later revoked; correct?

15 A. Yes.

16 MR. NISTAL: Let's now display the table in
17 Page 14.

18 BY MR. NISTAL:

19 Q. Mr. [REDACTED], this table, which was included
20 in Claimant's First Notice of Intent of 3 May 2016,
21 indicates that the only measure that was in place in
22 relation to Shipment 5 as of that date, as of the date

1 of 3 May 2016, was a measure ordered by the Civil
2 Courts of Perú; correct?

3 A. Yes.

4 Q. And, according to the table, unlike the
5 other four shipments as of the date of the First
6 Notice of Intent, Shipment 5 was not subject to any
7 Order by Perú's Criminal Courts; correct?

8 A. Correct.

9 Q. And, as of today, the only State Measures
10 that remains in place in relation to Shipment 5 is the
11 Civil Attachment issued in the proceedings that [REDACTED]
12 initiated against Kaloti; correct?

13 A. Yes.

14 Q. Thank you, Mr. [REDACTED].

15 MR. NISTAL: Mr. President, I have no
16 further questions.

17 Now my colleague Katelyn Horne.

18 Can we please have a few minutes just to
19 change?

20 PRESIDENT McRAE: You're changing counsel
21 now, as I understood?

22 MR. NISTAL: Yes, correct.

1 PRESIDENT McRAE: So, you can have a few
2 minutes.

3 THE WITNESS: Excuse me. I need a couple of
4 minutes. I'll be right back.

5 PRESIDENT McRAE: Sure. Under the same
6 restrictions.

7 (Brief recess.)

8 PRESIDENT McRAE: Just before we start, can
9 I just ask a question of the Respondent. It's just
10 about timing. By now, according to the original plan,
11 we should be having the Tribunal questions. In other
12 words, we were finished with cross-examination and
13 finished redirect. This is not a problem. Just a
14 sense of where we're going because we will have to
15 take a lunch break at some point in time.

16 Do you have any idea of when we--how long
17 this will take?

18 MS. HORNE: Mr. President, we anticipate
19 being able to wrap up the cross-examination before
20 lunchtime, but, of course, we're unable to anticipate
21 with any certainty.

22 PRESIDENT McRAE: Okay, thank you.

1 Please proceed.

2 BY MS. HORNE:

3 Q. Good afternoon, Mr. [REDACTED]. My name is
4 Katelyn Horne, I'm going to continue with some
5 questions today. If you agree, we will establish the
6 same ground rules that you had with Mr. Nistal. In
7 particular, it's going to be very important that we
8 try not to speak over each other for the sake of the
9 Court Reporters.

10 You testified in your Witness Statement that
11 you founded Kaloti International Corporation, which is
12 in the business of food distribution; is that correct?

13 A. Correct.

14 Q. So you have been in the food distribution
15 industry for about 40 years.

16 A. Yes.

17 Q. You also testified that you've been in the
18 real estate business for many years; is that correct?

19 A. Correct.

20 Q. You didn't enter into the business of
21 trading precious metals until about 2010; is that
22 right?

1 A. Yes.

2 Q. And you entered into that business because
3 your extended family is in that business; is that
4 right?

5 A. No.

6 Q. Your extended family is not in that
7 business?

8 A. They are in that business, but it's not with
9 the business I initiate. I initiated this business on
10 my own.

11 Q. Can you please turn to Paragraph 12 of your
12 First Witness Statement. You state there: "I founded
13 KML because I had heard and learned about the business
14 of precious metals, especially from my cousin [REDACTED]
15 [REDACTED]." Is that right?

16 A. Yes.

17 Q. So, your cousin [REDACTED] was in the
18 precious metals and gold-trading business; is that
19 right?

20 A. Yes.

21 Q. In fact, your cousin [REDACTED] is
22 President of [REDACTED] International.

1 A. Yes.

2 Q. And there are various Kaloti companies that
3 form part of the [REDACTED]; is that
4 correct?

5 A. Yes, I believe so.

6 Q. And your cousin, [REDACTED], indicated to
7 you that his company would buy gold from a company
8 that you started; is that correct?

9 A. Yes. We had some discussion that I am
10 interested to look into opening a new company in Miami
11 for precious metal, and I got his feedback. He told
12 me this is a good idea because the need for precious
13 metal in Dubai market is big.

14 Q. So, in light of the feedback you received
15 from your cousin, you decided to open Kaloti?

16 A. Yes.

17 Q. You took out a loan from [REDACTED] to
18 start the business; is that correct?

19 A. No.

20 Q. If we could turn to Paragraph 14 of your
21 First Witness Statement. In the second sentence you
22 say: "I also obtained financing for KML through debt

1 from [REDACTED] International." Is that
2 correct?

3 A. Yes.

4 Q. So you did, in fact, obtain financing from
5 [REDACTED] International?

6 A. Financing on short term.

7 Q. Okay. You also asked some of your relatives
8 to join you as equity shareholders in Kaloti; is that
9 correct?

10 A. I asked them to, yes.

11 Q. In particular, you invited [REDACTED], who
12 is [REDACTED] son, to be a business partner; is that
13 correct?

14 A. Correct.

15 Q. Is [REDACTED] a director of [REDACTED]
16 [REDACTED]?

17 A. He's--I know he's a shareholder, a minor
18 shareholder.

19 MS. HORNE: If we could please display
20 Exhibit R-63.

21 BY MS. HORNE

22 Q. Mr. [REDACTED], you will see at the top, that

1 this is an overview for [REDACTED]

2 International.

3 Do you see that?

4 A. Um-hmm, yes.

5 Q. And if we scroll to the bottom of that page,
6 does it indicate there that [REDACTED] is a director
7 of [REDACTED] International?

8 A. As of this statement, yes.

9 Q. And you also invited [REDACTED] who is
10 the son-in-law of [REDACTED] to be a business
11 partner with you; is that correct?

12 A. Yes.

13 Q. Is he the Managing Director and Chief
14 Executive Officer of [REDACTED]?

15 A. I don't know his exact position, but he's a
16 Shareholder, minor shareholder.

17 MS. HORNE: If we could display again the
18 same document.

19 BY MS. HORNE

20 Q. And if we scroll to the bottom of the page,
21 does it indicate there that [REDACTED] is the
22 Managing Director and Chief Executive Officer of

1 [REDACTED]?

2 A. Okay, yes.

3 Q. You testified this morning that you
4 considered that Kaloti Miami, your company, was a
5 "independent entity from [REDACTED]
6 [REDACTED]"; is that correct?

7 A. Correct.

8 Q. To your knowledge, did [REDACTED]
9 [REDACTED] consider your company to be a branch of that
10 group?

11 A. I don't believe so, but that's their
12 decision to decide, not mine.

13 MS. HORNE: If we could please display
14 Exhibit R-109.

15 BY MS. HORNE:

16 Q. At the top of this document, you will see
17 this is a web archive of an online site for "Kaloti
18 Precious Metals" dated 14 March 2014.

19 Do you see that?

20 A. Yes.

21 Q. And in the third paragraph, do you see that
22 it reads: "Between 2007 and 2012, Kaloti opened

1 subsidiaries in Hong Kong, Istanbul, Singapore, and
2 Suriname, as well as an associate branch in Miami."

3 A. What's the date you said?

4 Q. We can scroll to the top. It's
5 14 March 2014.

6 A. Okay. 2014.

7 Q. So, do you see there that this website from
8 Kaloti Precious Metals indicates an associated branch
9 in Miami?

10 A. Associated, I was a good Supplier for them.

11 Q. So, for the record, you see there that
12 Kaloti Precious Metals indicates an associated branch
13 in Miami as of 2014?

14 A. That's what it says.

15 MS. HORNE: If we could turn now to Exhibit
16 R-265.

17 BY MS. HORNE:

18 Q. You will see at the top of the screen that
19 this is a Linked-In profile for Kaloti Precious
20 Metals.

21 Do you see that?

22 A. Yes.

1 Q. If we can scroll to Page 2 of the PDF, and
2 zoom in at the bottom, this indicates locations for
3 Kaloti Precious Metals, one of which is Kaloti Metals
4 & Logistics, associate office. Do you see that?

5 A. Yes.

6 Q. Based on these documents, would you say that
7 [REDACTED] or Kaloti Precious Metals or the
8 [REDACTED] more broadly considered your company to
9 be a branch?

10 A. That's their decision. I'm not a member of
11 [REDACTED]. I'm not a shareholder, whatever
12 they say, it has nothing to do with me. This is my
13 business, it's my company, I found it. Like any other
14 five businesses I have in the past from scratch. I
15 got their help to be able to purchase my gold and to
16 be able to give me short-term line of credit to pay
17 them back the gold.

18 Q. Thank you for that, but just to ensure we
19 have an answer to my question on the record, based on
20 the documents I have shown you, would you say that the
21 [REDACTED] advertised you as a branch?

22 A. It says "associated."

1 Q. Would you say that the [REDACTED]
2 [REDACTED] advertised you as an associate branch?

3 A. That's what they indicated.

4 Q. Mr. [REDACTED], you also testified that you
5 asked [REDACTED] to provide a letter confirming
6 that it intended to buy gold from Kaloti; is that
7 correct?

8 A. Yes. That's for the 45 tons. Yes.

9 Q. Your plan was to buy gold mined in Perú and
10 other countries and sell that gold to [REDACTED]
11 [REDACTED]; is that correct?

12 A. Yes.

13 Q. You determined your sales targets based on
14 the amount of gold that [REDACTED] wished to
15 buy; is that right?

16 A. No. It's determined on my performance in
17 2013. What I achieved in 2013 gave me the knowledge
18 to know that I am going to expand the business, and
19 I'm going to go behind the 2013, so I have to get
20 some--it's one way to get Suppliers, and another way
21 to sell the precious metal. I have to balance it.

22 Q. But you took into account--

1 A. So, I took that to verify if I go to
2 45--45 tons of gold, you will be able to support me
3 and to take my product.

4 Q. So, you took into account the amount that
5 [REDACTED] was willing to pay?

6 A. Yes.

7 Q. You always determined your Purchase Price
8 for the gold that you bought based on the resale price
9 that [REDACTED] was going to pay; is that
10 correct?

11 A. No. The gold price is the gold price.

12 The markup for the gold is the Commission we
13 make, but the gold price--it depends on the daily
14 basis. It changed from one hour to another, so when
15 the Supplier fixed the price of gold, I fixed the
16 price of gold at the same time somewhere else.

17 Q. But you were taking into account the price
18 that would be paid by [REDACTED] when it
19 rebought--when it bought the gold from you; is that
20 correct?

21 A. Absolutely.

22 Q. And you testified that the vast majority of

1 gold purchased by Kaloti was then resold to [REDACTED]

2 [REDACTED]; is that correct?

3 A. Yes.

4 Q. You had access to financing from [REDACTED]

5 [REDACTED]?

6 A. The line of credit.

7 Q. And you have testified--

8 A. On short term.

9 Q. You've testified that [REDACTED] was
10 Kaloti's main source of financing; is that correct?

11 A. I'm not sure, but I was very, very good
12 Supplier for them.

13 MS. HORNE: Could we turn to Paragraph 29 of
14 the Second Witness Statement.

15 BY MS. HORNE:

16 Q. There, you will see, beginning on the second
17 line, the main source of KML's financing was [REDACTED]

18 [REDACTED] Dubai.

19 Do you see that?

20 A. Yes.

21 Q. So [REDACTED] was the main source of
22 financing.

1 A. Yes.

2 Q. And, as we confirmed earlier, you asked
3 [REDACTED] to provide a letter confirming that
4 it intended to buy jewelry from you; is that correct?

5 A. Yes.

6 MS. HORNE: We will display that Exhibit on
7 the screen, it's Exhibit C-47. We will scroll to the
8 second page.

9 BY MS. HORNE:

10 Q. Is this the letter that you requested from
11 [REDACTED]?

12 A. Yes.

13 Q. At the bottom of the letter, the stamp and
14 signature line indicate that the letter is from [REDACTED]
15 [REDACTED] DMCC; is that correct?

16 A. Yes.

17 Q. But, if we look at the top left-hand corner,
18 that's letterhead from Kaloti Precious Metals; is that
19 correct?

20 A. Yes.

21 Q. Is that a separate company within the Kaloti
22 family of companies?

1 A. No. That's the same--same company. It's

2 [REDACTED].

3 Q. It's the same company with two different
4 names?

5 A. It's the [REDACTED]. They have Kaloti
6 Precious Metal and that's a sister company of Kaloti
7 International.

8 Q. So, this is a letter from the [REDACTED]
9 more broadly?

10 A. Yes.

11 Q. You used this letter to market Kaloti to
12 potential Suppliers of gold; isn't that right?

13 A. Yes. When I have been asked. When I have
14 been asked for that, to make sure--some of the
15 Suppliers, they want some kind of confident to do
16 business with us, and they request some of that. Most
17 of our Supplier, they don't know where we sell the
18 gold to. We sell it to the United States as well. We
19 do some business in the local market selling gold as
20 well. I don't have to be committed to them if I don't
21 have the line of credit.

22 Q. But you provided this letter to certain

1 companies when you were asked?

2 A. Yes.

3 Q. Besides this letter, did you or Kaloti
4 advertise its relationship to the [REDACTED] in
5 other ways?

6 A. Rephrase the question, please.

7 Q. We have this letter indicating that you were
8 being financed and you were selling gold to the [REDACTED]
9 [REDACTED].

10 A. Right.

11 Q. Other than this letter, was there anything
12 else you did to show your relationship to the [REDACTED]
13 [REDACTED]?

14 A. No, we had previous agreement when I started
15 the business that I will be able to supply them with
16 the gold, and we have an agreement, and that's why I
17 started the business. We started the business on very
18 small scale.

19 Q. But I think we're getting away from the
20 question.

21 Did you advertise in other ways that you
22 were connected with the [REDACTED], that you were

1 selling to the [REDACTED]? Did you advertise
2 publicly?

3 A. I don't believe so, but if I have been asked
4 by a certain customer, I will say yes.

5 Q. If you've been asked by certain customers,
6 then you would indicate your relationship?

7 A. Yes.

8 MS. HORNE: Let's turn now to Exhibit C-26.

9 BY MS. HORNE

10 Q. The title page of this document indicates
11 that it contains documents related to the
12 International Gold and Silver Symposium; is that
13 right?

14 A. Yes.

15 Q. Did you attend this symposium in Perú in
16 2014?

17 A. Yes.

18 Q. Let's turn to the first page of the exhibit.
19 Is this a picture from the symposium?

20 A. Yes.

21 Q. And is that you in the picture second from
22 the left?

1 A. Yes.

2 Q. And the women in this picture are wearing
3 dress with your company's logo; correct?

4 A. Yes.

5 Q. Kaloti Metals & Logistics.

6 A. Correct.

7 Q. And behind them, on the top right-hand

8 corner of your screen, is there a sign for the [REDACTED]

9 [REDACTED] ?

10 A. Yes.

11 Q. Let's turn now to PDF Page 5 of the exhibit.

12 That's another angle showing the sign for

13 the [REDACTED]; is that correct?

14 A. Correct.

15 Q. And if we scroll down just in front of that,

16 we can see part of your logo on the table; is that

17 correct?

18 A. Yes.

19 Q. So, this is an instance in which you were

20 publicly advertising your connection to the [REDACTED]

21 [REDACTED] ?

22 A. Yes.

1 We have transactions with the--they purchase
2 over 90 percent of my gold.

3 Q. And you testified just a few minutes ago
4 that you did secure financing from [REDACTED] ?

5 A. Arm's length financing. Short, 24-, 48-hour
6 financing, revolving line of credit. As of today, we
7 are getting 10 kilos of gold, I request loan of
8 10 kilos of gold from them. I get the money tomorrow
9 morning, I send the 10 kilos of gold the next day,
10 it's short, revolving line of credit.

11 Q. That's very helpful. So, in practice,
12 you're receiving the money, you're transferring the
13 gold, and then your practice, I believe you've
14 testified, was to transfer the money that you had
15 received from [REDACTED] to the Suppliers as
16 quickly as possible?

17 A. Yes.

18 Q. You're aware, Mr. [REDACTED], that banks often
19 screen for red flags of money-laundering and other
20 illegal activity; is that right?

21 A. Yes.

22 MS. HORNE: Let's turn to Exhibit C-34.

1 BY MS. HORNE

2 Q. The first page of the exhibit indicates it's
3 a presentation provided by outside counsel to Kaloti
4 staff; is that correct?

5 A. Yes.

6 Q. And it indicates that this is AML training.
7 AML stands for anti-money-laundering; is that correct?

8 A. Yes.

9 Q. Let's turn to Page 8 of the PDF.
10 The title of the slide reads: "Recent
11 Problems at Financial Institutions."

12 Do you see that?

13 A. Yes.

14 Q. And the text of the presentation reads:
15 "Therefore banks' tolerance levels for business that
16 operate in areas that create AML flags, such as
17 products, customers, and geographic locations, are
18 relatively low."

19 Do you see that?

20 A. Yes.

21 Q. So, Kaloti had received training on banks'
22 tolerance for red flags and potential action taken in

1 response thereto?

2 A. Yes.

3 Q. And Kaloti experienced first-hand that banks
4 will take action in response to red flags for
5 money-laundering; isn't that correct?

6 A. Yes.

7 Q. Kaloti held an account with JPMorgan in
8 2012; is that right?

9 A. I believe so. I remember, yeah.

10 MS. HORNE: We can display AS-61. This is
11 Kaloti's 2012 Balance Sheet, and we will turn to PDF
12 Page 10.

13 BY MS. HORNE:

14 Q. You will see at the top, it lists bank and
15 cash, and the first line is JPMorgan.

16 Do you see that?

17 A. Yes.

18 Q. So this indicates that Kaloti had an account
19 with JPMorgan at that time; is that correct?

20 A. 2012?

21 Q. In 2012, yes.

22 A. Yes.

1 Q. Okay. Do you know why the bank account with
2 JPMorgan was closed?

3 A. I don't know.

4 MS. HORNE: Let's turn to Exhibit R-260.

5 BY MS. HORNE

6 Q. So, as shown on the top of the screen, this
7 is an English translation of a press article entitled
8 "Suspicious payments from U.S. gold collector to
9 Peruvian companies investigated for laundering and
10 illegal mining."

11 Do you see that?

12 A. Yes.

13 What's the date on that?

14 Q. We will scroll in to the top.

15 A. That's September 21, 2020.

16 Q. Um-hmm.

17 Let's turn to PDF Page 3 of the document.

18 The second-to-last paragraph reads: "In
19 February 2013, JPMorgan Chase Financial Compliance
20 Officers reported several transactions as high risk to
21 the U.S. Treasury Department's Financial Intelligence
22 Unit (FinCen), which investigates financial data

1 related to alleged money-laundering or terrorist
2 operations."

3 Do you see that?

4 A. Yes.

5 Q. And above that, is that image of you?

6 A. Yes.

7 Q. So, the final paragraph on that page states:

8 "In the Suspicious Activity Report (SAR), JPMorgan
9 Chase warns about the financial conduct shown by
10 [REDACTED], but also the relationship with
11 its Consortium Kaloti Metals & Logistics (KML), which
12 presented transfers to 'shell companies' as well as
13 bank accounts that showed 'exit and entry of money
14 that flowed to areas considered high risk' as a
15 characteristic."

16 Do you see that?

17 A. Yes.

18 Q. So, the article there is referring to [REDACTED]
19 [REDACTED] and its relationship to your company

20 Kaloti; is that correct?

21 A. Kind. They show both transactions, yes.

22 Q. So, we zoom in here, it is indicating [REDACTED]

1 [REDACTED] but also the relationship with its
2 Consortium Kaloti Metals & Logistics; is that correct?

3 A. Yes.

4 Q. Now, we will turn to PDF Page 4. This
5 contains a screen-shot of JPMorgan's Suspicious
6 Activity Report.

7 In the middle, that screen-shot reads: "A
8 review of Kaloti Metals & Logistics' account indicated
9 a roughly one-to-one credit-to-debit wire ratio of
10 369 million to 370 million. This gives the appearance
11 that Kaloti Metals & Logistics' account was acting as
12 a pass-through account by adding an additional and
13 seemingly unnecessary layer in the movement of funds."

14 Do you see that?

15 A. Um-hmm, yes.

16 Q. And are you aware that in banking practice a
17 pass-through account is considered to be a potential
18 indicator of money-laundering?

19 A. That's to your standard. Suspicious Report
20 is not money-laundering. Suspect. There is a suspect
21 report, we do that--we do suspect report for our
22 client as well. We send it to the Department in

1 charge.

2 All this Suspicious Report, they don't
3 see--they see something they don't like, they send
4 report. You pay \$9,000 cash to the bank, and they
5 send Suspicious Report. That doesn't mean that your
6 \$9,000 is money-laundering.

7 Q. So, your position is that this Report really
8 doesn't mean anything.

9 A. No, it doesn't mean anything because, they
10 have to show the evidence of the money-laundering.

11 Q. JPMorgan's assessment of suspicious activity
12 doesn't mean anything.

13 A. That's why it's called "suspicious."

14 Q. Um-hmm.

15 A. When you're suspect, you're not guilty.

16 Q. Does this refresh your recollection as to
17 why the account with JPMorgan was closed?

18 A. They don't tell us. I don't know.

19 Q. To recall, the article indicates that the
20 Suspicious Activity Report by JPMorgan was issued in
21 February 2013; is that correct?

22 A. I believe so. I didn't see the date.

1 Q. It's shown on your screen here, PDF--

2 A. Right.

3 Q. So, it indicates that the Suspicious
4 Activity Report was issued in February 2013; is that
5 correct?

6 A. Yes.

7 Q. That's before any of the Five Shipments at
8 issue in this case were immobilized; is that correct?

9 A. I believe so.

10 Q. And even though various banks continued to
11 close their accounts with Kaloti after this date,
12 Kaloti still had access to bank accounts from 2012
13 through 2018; is that correct?

14 A. Not much. We end up with one or two banks.

15 Q. To confirm, you did have access to bank
16 accounts through 2018; correct?

17 A. Yes. Juggling around from one bank to
18 another.

19 Q. We covered earlier that you founded Kaloti
20 International Corporation in 1984; that's right?

21 A. Correct.

22 Q. So, you're very familiar with what it takes

1 to start a business?

2 A. Correct.

3 Q. You've testified that you built several
4 businesses from the ground up.

5 A. Correct.

6 Q. It requires a great deal of planning; right?

7 A. Yes.

8 Q. Often financing?

9 A. Correct.

10 Q. It requires compliance with local regulatory
11 requirements?

12 A. Correct.

13 Q. And that can include the preparation of
14 legal documents; right?

15 A. Correct.

16 Q. Including the hiring of counsel.

17 A. Correct.

18 Q. You've stated that you decided to
19 incorporate [REDACTED] when it became clear to
20 you that Kaloti was no longer viable; that's correct?

21 A. Not correct.

22 Q. Let's turn to your First Witness Statement

1 at Paragraph 10.

2 There, you state, and I quote: "In 2018,
3 when it became clear to me that the Republic of Perú
4 had caused KML to become permanently unviable as a
5 business, I founded [REDACTED]."

6 Is that correct?

7 A. Yes.

8 [REDACTED] was established in
9 September 2018. As you know from the name, it's not a
10 precious metal business. That's for my real estate.
11 I have it, but there was no transaction in that
12 business when we decide we had no hope to continue
13 with Kaloti Metals, I used that name, that "[REDACTED]
14 [REDACTED]," to open a new business from scratch.

15 Q. Let's turn to the specific language of your
16 Witness Statement because I think there may be a
17 discrepancy, and again I will read: "In 2018, when it
18 became clear to me that the Republic of Perú had
19 caused KML to become permanently unviable as a
20 business (as I further explain, below), I founded
21 [REDACTED]."

22 So you wish to revise your testimony.

1 A. No. I did found [REDACTED], but I'm
2 talking about the business--the corporation started in
3 September 2018, not in November 2018.

4 Q. I think there is a discrepancy here. You're
5 Witness Statement indicates that you founded it when
6 it became clear to you that Kaloti was no longer
7 viable. Your testimony now appears to be--and you can
8 correct me if I'm wrong--that you, in fact, founded
9 [REDACTED] before that, and that you only used it
10 when Kaloti became unviable. So, please clarify.

11 A. No.
12 The LLC was established before we shut down
13 Kaloti Metals. It was before, two months before.
14 When I realized I want to open my own business, a
15 separate business, with this, get my experience from
16 Kaloti Metals, I have some experience with 10 years, I
17 opened--I used that LLC to start the new business from
18 [REDACTED], from scratch.

19 Q. So, your testimony is now that you already
20 founded [REDACTED].

21 A. Yeah, before.

22 Q. And then you decided to use it for a

1 different purpose.

2 A. Exactly.

3 Q. Do you see that that's inconsistent with
4 your Witness Statement?

5 A. No. It's the same. I found Kaloti-- [REDACTED]
6 [REDACTED] in 2018. I used that company.

7 (Pause.)

8 Q. I just want to make sure we resolve what
9 seems to me to be a discrepancy and that we have clear
10 what your position is.

11 You previously stated it is not correct that
12 you decided to incorporate [REDACTED] when it
13 became clear to you that Kaloti was unviable; is that
14 right?

15 A. Repeat the question again?

16 Q. Sure.

17 So, I read to you the text of your Witness
18 Statement.

19 A. Um-hmm.

20 Q. I said: It shows from your Witness
21 Statement you've testified that you founded [REDACTED]
22 [REDACTED] when it became clear to you that Kaloti was

1 no longer viable.

2 A. I used the company [REDACTED]. I
3 used--the company was exist before. It's not I went
4 and I got a new company to replace Kaloti Metals. It
5 was there before.

6 Q. I think I understand--

7 A. Two months before--

8 Q. --the new testimony.

9 A. Yeah. I just used it, there was no
10 transaction for that business, and can you tell from
11 the name [REDACTED]. The name really
12 has nothing to do with the precious metal business,
13 but since it was already established, I used that
14 company to start the new corporation.

15 Q. So, we now have testimony different from
16 your Witness Statement that you first started [REDACTED]

17 [REDACTED] --

18 A. It's not. I use it in 2018, but previously
19 was established. The business was established. The
20 LLC was there. I just used the LLC in 2018 to start
21 from scratch [REDACTED].

22 Q. So, at the time that you incorporated [REDACTED]

1 [REDACTED], which you testified was in September of
2 2018, it's your position now that you had no idea that
3 Kaloti was unviable?

4 A. No, I didn't know.

5 Q. You didn't know.

6 A. I had no idea. I told you. I initiated
7 that business, I initiated that LLC because of real
8 estate transactions. And it was there, there was no
9 transaction in that LLC, so I said this is a good
10 opportunity to use that name to start a new business
11 after--after I realized I have no hope--no hope--to
12 recover the Immobilization of gold.

13 And after the refinery pulled the plug and
14 closed my account and no business, and I said--I had
15 the experience. I have--I started very good business
16 with KML.

17 Q. Okay.

18 A. I want to continue this business.

19 Q. Okay. You've testified that the operations
20 of [REDACTED] are similar to but smaller than
21 those of Kaloti; correct?

22 A. Yes.

1 Q. And you've testified that [REDACTED]
2 inherited certain physical assets from Kaloti;
3 correct?

4 A. Very small. Very small. It's not even
5 considered. It's 10-years old computers and stuff
6 they left the office with the filing, with everything,
7 and just--I throw away everything I don't need. I use
8 whatever I can. I added more asset to the business,
9 and I started from scratch. But it's--nothing there
10 was worth--worth inheriting, and I don't want to
11 inherit anything from KML because of the media. I
12 don't want to have anything to do with KML. KML was
13 destroyed by the media.

14 Q. You didn't want to have anything-- [REDACTED]
15 [REDACTED], you didn't want [REDACTED] to have
16 anything to do with KML. That's your testimony?

17 A. Exactly.

18 Q. [REDACTED] had the same business
19 address as Kaloti, didn't it?

20 A. They left everything. We left everything to
21 [REDACTED]. We signed a new Rent Agreement with
22 the landlord.

1 Q. I'm talking about a business

2 agreement--business address in Miami.

3 A. Yes.

4 Q. [REDACTED] had the same business

5 address.

6 A. The same. The same. It's vacant, and we
7 rented--I rented for [REDACTED], and we signed a
8 new lease at that time.

9 Q. Okay, so you didn't want them to have
10 anything to do with each other but they would have the
11 same business address?

12 A. Yeah. There is nothing wrong with that.

13 Q. Okay. And [REDACTED] employed the same
14 individuals that had been employed by Kaloti; right?

15 A. Yeah. I called two of the employee, I told
16 them--they had the experience as well, I told them if
17 they can join me with the new business, and we only
18 started with three of us. Just two people and myself,
19 much, much smaller business than Kaloti Metals.

20 Q. That included your Head Trader Ms. [REDACTED];
21 right?

22 A. Yes.

1 Q. You brought her from Kaloti over to [REDACTED]

2 [REDACTED]

3 A. Yes.

4 Q. Okay.

5 MS. HORNE: Let's turn to your Second
6 Witness Statement at Paragraph 5.

7 BY MS. HORNE

8 Q. You state there that: "[REDACTED] did
9 not inherit or take Suppliers (Sellers) of gold from
10 Kaloti Metals & Logistics, as can be confirmed by
11 comparing the list of Suppliers contained in Exhibit
12 C-30 (corresponding to KML), and Exhibit C-134
13 (corresponding to [REDACTED])."

14 Is that right?

15 A. Yes.

16 As I told you, we started from scratch, and
17 most of our customers were local at that time from
18 Miami and South Florida, and there was some smaller
19 customers as jewelry and jewelry stores and stuff that
20 they have confidence in me and they know me, and we
21 brought them on board.

22 Q. Okay.

1 A. As a Peruvian customer, we haven't done any
2 business with Perú.

3 MS. HORNE: Just as a point of order here,
4 Mr. President, I don't think we will be able to
5 conclude before the lunch break. I would be happy to
6 finish this line, which should only take five or 10
7 more minutes and then conclude, but I'm in your hands.

8 PRESIDENT McRAE: I think you should
9 conclude that line as long as our Court Reporter can
10 last for another five to 10 minutes.

11 REALTIME STENOGRAPHER: Yes. But I'm
12 getting hungry.

13 PRESIDENT McRAE: Okay. Let's finish that
14 and then have lunch.

15 MS. HORNE: We're grateful. Thank you,
16 David.

17 BY MS. HORNE:

18 Q. So, let's turn now to the documents that you
19 referenced here in your Witness Statement. We will
20 begin with Exhibit C-30.

21 A. Which statement?

22 Q. Paragraph 5 of your Second Witness

1 Statement. We just had looked at that together.

2 A. Okay.

3 Q. And you saw this earlier today, it's the
4 complete transaction summary for Kaloti; is that
5 correct?

6 A. Yes.

7 Q. Let's turn to Page 11 of the PDF. The
8 fourth entry--I'm sorry, at the top here, this
9 indicates transactions since 2015 for Kaloti; is that
10 correct?

11 A. Okay, yes.

12 Q. And the fourth entry from the top reads:
13 "Agroindustrial El Corazon S.A."

14 Do you see that?

15 A. Yes.

16 Q. So, this indicates that Kaloti bought gold
17 from this company Agroindustrial in 2015; is that
18 correct?

19 A. Yes.

20 Q. Let's turn now to Page 14 of the PDF. This
21 shows Kaloti's transactions in 2016.

22 Do you see that?

1 A. Yes.

2 Q. And again, we see this time the third entry
3 from the top, the same company, Agroindustrial.

4 Do you see that?

5 A. Yes.

6 Q. Now, let's turn to Page 17 of the PDF
7 showing transactions in 2017. Again, we see
8 Agroindustrial's name third from the top; is that
9 correct?

10 A. Yes.

11 Q. So, this transaction history confirms that
12 Agroindustrial sold to [REDACTED] in 2015, 2016,
13 and 2017; is that right?

14 A. Correct.

15 Q. Let's turn now to Page 20 of the PDF.

16 This is a 2018 transaction. And again, you
17 see Agroindustrial listed third from the top; is that
18 correct?

19 A. Yes.

20 Q. So, it again sold to Kaloti in 2018; is that
21 correct?

22 A. Yes.

1 Q. So, now let's turn to Exhibit C-134, which
2 you also cited in your Witness Statement.

3 This is a list of [REDACTED] Suppliers
4 from 2019 and 2020.

5 Do you see that?

6 A. Yes.

7 Q. Let's turn to the first page.

8 This provides name and Code Number for
9 Suppliers of [REDACTED]; is that correct?

10 A. '19 to '20, yes.

11 Q. The second name on this page is
12 Agroindustrial el Corazon S.A.

13 Do you see that?

14 A. Yes.

15 Q. So, this means that this company sold to
16 Kaloti in 2015, 2016, 2017, 2018, and then sold to
17 [REDACTED] in 2019 and '20?

18 A. As I indicated earlier, we have few
19 customers believe in us and stay with us, few, but
20 three or four. And a lot of those customers--some of
21 those customers from U.S. market.

22 Q. So, if we can return to Paragraph 5 of your

1 Witness Statement, Mr. [REDACTED], you say there--and it's
2 highlighted: "[REDACTED] did not inherit or take
3 any suppliers...of gold from Kaloti Metals &
4 Logistics." In light of the evidence we have just
5 seen, do you wish to revise that testimony?

6 A. Yes. Few.

7 Q. So, you concede that [REDACTED] did
8 inherit or take several Suppliers from Kaloti?

9 A. Yes.

10 Q. Thank you, Mr. [REDACTED].

11 MS. HORNE: Mr. President, this would be a
12 good time to conclude for now.

13 PRESIDENT McRAE: All right. We will take a
14 break for an hour for lunch, which will take us to
15 around 2:20.

16 And again, Mr. [REDACTED], I'm afraid during the
17 lunch, you're in the same situation--same isolation
18 until we return.

19 So, we will return at 2:20.

20 (Whereupon, at 1:19 p.m., the Hearing was
21 adjourned until 2:20 p.m., the same day.)

22 AFTERNOON SESSION

1 PRESIDENT McRAE: I think we're ready to
2 resume.

3 Ms. Horne, when you are ready.

4 MS. HORNE: Thank you, Mr. President.

5 CONTINUED CROSS-EXAMINATION

6 BY MS. HORNE:

7 Q. Mr. [REDACTED], we will begin by turning back to
8 your First Witness Statement at Paragraph 56.

9 Here, you state in the second sentence:

10 "The main reason for the revenue decline was because
11 Perú, at the time since 2013, effectively blocked the
12 equivalent of USD 16 million for KML in cash," and
13 then, you continue by saying: "Creditors (including
14 [REDACTED] Dubai) started knocking on our
15 doors." Is that correct?

16 A. Yes.

17 Q. This morning, during your direct testimony I
18 think you may have said "creditor", singular. Was it
19 only one creditor that came knocking?

20 A. There was other small creditors, Suppliers,
21 shipping company, rent, they were knocking on our door
22 as well.

1 Q. Now, the only loan that Kaloti held on its
2 Balance Sheets at the end of 2018 was owed to [REDACTED]
3 [REDACTED]; is that correct?

4 A. Yes.

5 Q. Have you provided any letters, documents, or
6 other evidence suggesting that other creditors came
7 knocking in November of 2018?

8 A. No. It's--it's not much of amount compared
9 to [REDACTED].

10 Q. Okay. So, when you say that creditors came
11 knocking, what you mean is [REDACTED], your
12 cousin's company, came knocking; is that right?

13 A. [REDACTED], yes.

14 Q. Let's turn to your Second Witness Statement
15 at Paragraph 21.

16 You testify there in the first sentence
17 that: "The Financial Statements of KML were always
18 prepared diligently in accordance with all applicable
19 laws, regulations, and accounting principles." Is
20 that correct?

21 A. Yes.

22 Q. You've also testified that you closed the

1 operations of Kaloti on November 30th, 2018; correct?

2 A. Yes.

3 Q. And you say that you decided to write off
4 the value of the inventory of the Five Shipments on
5 that date, November 30, 2018; is that correct?

6 A. We closed the books. We closed the
7 Transaction, closed the software. We closed
8 everything for KML.

9 The write-off, I leave it to my accountant.
10 My accountant will determine what's the best time for
11 that time to write off the inventory because it has a
12 lot to do with taxation and technical accounting. I'm
13 not--I'm not an accountant to discuss this.

14 Q. So, is it your testimony, then, that you
15 don't know whether the gold was formally written off
16 in November of 2018?

17 A. I don't know. It depends how you say
18 "written off."

19 We close our book. We have no transaction.
20 We have no business. We close our doors. Everything
21 being given to the accountant and the accountant took
22 it from that time. Technicality, I'm not aware of it,

1 but I know that we no more--no longer in business.

2 Q. You testified this morning on direct that
3 you were involved in every aspect of the business
4 "from A to Z." Is that correct?

5 A. Supervising, yes.

6 Q. And in that context, you would make
7 significant business decisions, such as a decision to
8 write off the gold?

9 A. I leave it to the accountant to decide that.

10 Q. You leave it to the accountant to decide
11 that, or you make the Decision?

12 A. No. We--I told you, it's technical issue
13 over here. It's an accountant issue. The accountant
14 will decide what's the best for the Company and when
15 to write it off, when to write it off with a
16 taxation--I'm not an accountant, so the Decision made
17 by my accountant.

18 Q. You're not an accountant, but you have
19 testified, and it's shown on your screen, that the
20 Financial Statements were always prepared diligently
21 in accordance with all applicable laws, regulations,
22 and accounting principles; is that correct?

1 A. Yes. Certified accountant.

2 Q. Let's turn, then, to AS-66.

3 The cover page of this document indicates
4 that it is KML's 2018 Balance Sheet; correct?

5 A. Yes.

6 Q. And this is one of those documents that, as
7 you testified, would have been prepared diligently and
8 in accordance with all laws; is that correct?

9 A. Yes.

10 Q. So, it's your testimony that this Balance
11 Sheet is accurate.

12 A. Yes, I believe so.

13 Q. If we can scroll to the first page of the
14 Balance Sheet. Mr. [REDACTED], if you will review that as
15 it comes on the screen. Have you had an opportunity
16 to review that?

17 A. Yes.

18 Q. And if we'll scroll now to the next page, if
19 you will take a look at that as well.

20 A. Oh, yes.

21 Q. And at the top of that page, there is a
22 category marked "inventory".

1 A. Yes.

2 Q. And the first row indicates gold. And the
3 amount is approximately 12.698 million; is that
4 correct?

5 A. Yes.

6 Q. That represents the Five Shipments of gold;
7 is that correct?

8 A. Yes.

9 Q. So, having reviewed this document, can you
10 show us, Mr. [REDACTED], where it indicates that the value
11 of the gold was written off.

12 A. What's the date of that shipment, of
13 that--December?

14 Q. The date at the top is 31 December 2018. As
15 you've testified, this is an accurate Financial
16 Statement for Kaloti as of the end of December 2018.

17 And I will repeat for the record my
18 question: Having reviewed this document, can you show
19 us where it indicates that the value of the gold was
20 written off?

21 A. I--I, again--I don't know. This is all
22 numbers for the accountant. The accountant will

1 handle this. It's a big firm in Miami, and they--we
2 supply them with all our software, our detail of
3 expense and revenue, and everything, and they will
4 compose all this. You cannot ask me. This is an
5 accountant issue. I don't know.

6 Q. So, the answer is: You can't identify where
7 on this document it shows that the value of the gold
8 was written off?

9 A. No, I don't know.

10 Q. You don't know.

11 A. I know that was--that was the total, the
12 inventory, because we didn't have any inventory at
13 that time. The total inventory for the five
14 immobilized shipments, I know that far.

15 Q. Mr. [REDACTED], it's been part of your testimony
16 that the write-off of the value of the inventory
17 caused the Company to close, to collapse, I believe,
18 because it had negative equity; is that correct?

19 MR. DÍAZ-CANDIA: Can you please show the
20 Witness where he said that?

21 BY MS. HORNE:

22 Q. In Paragraph 57 of your First Witness

1 Statement, you indicate there, and I quote: "I was
2 finally forced by the ruinous financial situation, and
3 reputational harm, caused by Perú to close all
4 operations of KML on November 30, 2018." Is that
5 correct?

6 A. Yeah, close the whole operation. Doesn't
7 say anything about the write-off inventory.

8 Q. And then, we'll turn to Paragraph 23 of your
9 Second Witness Statement.

10 A. Okay.

11 Q. You say there: "I strongly believe that my
12 decision not to write off the seized gold inventory by
13 November 30, 2018, was reasonable because," and then
14 you continue.

15 I understand from that statement you to be
16 saying that you made a decision to write off the gold
17 as of November 30, 2018; is that a correct
18 understanding?

19 A. That's--that's not correct, no.

20 Q. You state you made a decision not to write
21 off the seized inventory until that date.

22 A. But you just showed me the statement for

1 December 2018. It was in the inventory, the inventory
2 was there.

3 Q. Let's first just establish if you've
4 testified--I want to understand what your testimony
5 is. Did you decide to write off the gold, the value
6 of the gold, as of 30 November 2018?

7 A. I did not decide that. A decision for my
8 accountant. It's an accountant calculation, the
9 taxation, and to write it off, not to write it off.
10 It's not up to me. It's up to the accountant, the
11 best of his decision to advise me for the write-off.

12 Q. Do you wish to revise your testimony to
13 indicate that you did not decide to write off the gold
14 as of 30 November 2018?

15 A. Show me where I said that, please?

16 Q. It's highlighted on the screen. It
17 discussed the decision not to write off until a
18 particular date. If helpful, we can also go to
19 Claimant's Submissions in the case which indicate that
20 a decision to write off was made. I'm happy to take
21 you there as well, if helpful.

22 Mr. [REDACTED], did you write the statement

1 that's on the screen?

2 A. Yes, I did.

3 Q. And what do you understand that first
4 highlighted part to mean?

5 A. I understand that what it--it says that
6 "strongly believe" that's my Decision not to write off
7 the seized gold inventory by November 2028. Until
8 2028, when KML could not longer operate, probability
9 to receive inventory back from Perú, was considered
10 high. Moreover, Perú never demonstrate to us that the
11 gold was from illegal act.

12 REALTIME STENOGRAPHER: I'm not
13 understanding.

14 BY MS. HORNE:

15 Q. Illicit origin.

16 A. Illicit.

17 Q. So, I think then, my understanding of your
18 testimony, Mr. [REDACTED], is that you never made a
19 decision to write off the value of the inventory; is
20 that correct?

21 A. Yes.

22 ARBITRATOR KNIEPER: You wanted to take

1 Mr. ██████ to the paragraph in the submission. Take
2 me to that also, if you don't want to take Mr. ██████,
3 so I understand it better.

4 MS. HORNE: Certainly, Professor Knieper.
5 If we could turn to Claimant's Memorial, if we will
6 turn to Paragraph 163.

7 In the middle of the paragraph there, the
8 sentence submitted by Claimant reads: "KML's equity
9 turned to negative USD 13 million on that date, and
10 KML became de facto bankrupt after having to write off
11 its inventory."

12 ARBITRATOR KNIEPER: Thank you.

13 BY MS. HORNE:

14 Q. So I understand, Mr. ██████, we're going to
15 correct that statement to indicate that there was no
16 decision by you to write off that inventory?

17 A. Not by me, no.

18 Q. Is it your understanding, Mr. ██████, that,
19 as displayed on the screen from that quote from the
20 Memorial, that KML's equity turned negative or would
21 have turned negative if a write-off had been made?

22 A. Can you rephrase that?

1 Q. So, the first part of the sentence says:

2 "KML's equity turned negative."

3 A. Right.

4 Q. "after having to write off its inventory."

5 I know you've now testified that no decision
6 to write off was made. So, let's consider now if one
7 had been made, to write off as of 30 November.

8 A. Um-hmm.

9 Q. The sentence states that KML would have
10 become de facto bankrupt because its equity turned
11 negative; is that correct?

12 A. Correct.

13 Q. Is that your understanding as well?

14 A. Yes.

15 Q. Based on your understanding as the sole
16 manager of the Company, would Kaloti's Net Equity have
17 become negative if the gold had been written off
18 earlier, say, in November of 2017?

19 A. We couldn't write it off. We kept hoping
20 this inventory is going to be returned. That's the
21 only time we lost hope is in 2018. November 2018, we
22 realized we couldn't continue. But we fight--we

1 fought all the time, tried to get this inventory back
2 and get back on a track with the business. But when
3 we couldn't, this is the time when we could not
4 continue. We lost hope.

5 Q. I'm not quite sure that quite answered my
6 question, which was, if the value of the gold had been
7 written off earlier, a year earlier, say, based on
8 your understanding as the Manager of the Company,
9 would equity have become negative at that point?

10 A. At that point it would become negative, yes.

11 Q. In 2017? Same in early 2018; is that right?

12 I'm sorry, I apologize, I don't think we got
13 an answer on the record.

14 So, in 2017, the equity would have become
15 negative, if you had written off.

16 A. I don't have all the numbers in front of me,
17 so I really cannot answer you. We will struggle every
18 year, the business going down and dimming and dimming
19 until 2018 when we could not continue. If it was
20 written off in 2017, I don't know.

21 Q. You don't know.

22 Well, we can provide the numbers for you, so

1 this is AS-65. The cover page indicates that it's
2 Kaloti's 2017 balance sheet.

3 And on the first page there is an entry
4 entitled "EQUITY AND LIABILITIES," and if we'll scroll
5 in a bit more, at the bottom there of that entry, it
6 says "Net Equity."

7 And the corresponding number is 597,286.

8 Do you see that?

9 A. Net Equity, yes.

10 Q. So, as of the end of 2017, Kaloti's Net
11 Equity was \$597,000; is that correct?

12 A. Yes.

13 Q. So, if you had written off the value of the
14 gold at this time, would Kaloti's Net Equity have
15 become negative?

16 A. It's accounting--accounting information. I
17 cannot give you any answer on this. I have no idea.

18 Q. Okay. Well, I don't think it's terribly
19 complicated, so I will take you to the next page. At
20 the top here, this is the same entry that we reviewed
21 for 2018. The inventory is at the top. And the Five
22 Shipments of gold are shown there. And you see that

1 number representing over \$13 million; is that correct?

2 A. Yes.

3 Q. So, \$13 million is more than \$597,000;
4 correct?

5 A. Yes.

6 Q. So, understanding that the net equity was
7 \$597,000, if you had written off \$13 million of
8 inventory, your Net Equity would have become negative;
9 is that correct?

10 A. Correct. But we were still in business at
11 that time.

12 Q. Thank you, Mr. [REDACTED].

13 A. We were still operating.

14 Q. And, finally, has Kaloti ever been declared
15 legally insolvent?

16 A. Yes. 2018.

17 Q. Can you point me to the evidence to suggest
18 that that's the case?

19 A. We have no transaction. We closed the
20 business.

21 Q. I asked--and I'll be happy to repeat the
22 question. I asked if Kaloti had ever been declared

1 legally insolvent. That would involve documentation
2 showing legally it was insolvent, bankruptcy
3 documents, et cetera.

4 A. No, we just closed the doors.

5 Q. So, it has never been declared legally
6 insolvent?

7 A. To us, but it's not something we have to get
8 a second opinion or approval from some other
9 department to come and indicate that. For us, we
10 could not continue the business.

11 Q. I think I understand. We have on the record
12 Kaloti was never declared legally insolvent; is that
13 correct?

14 A. That's your opinion.

15 MS. HORNE: I think that's an adequate--

16 (Pause.)

17 BY MS. HORNE:

18 Q. One follow-up question to that, Mr. [REDACTED].
19 If we'll return back to Claimant's Memorial--this is
20 the same paragraph that we previously displayed--I
21 know you indicated previously it was my opinion that
22 you had never been declared legally insolvent, but the

1 submission from Claimant says, and I quote: "KML
2 became de facto bankrupt." Is that correct?

3 A. We didn't file for bankruptcy.

4 Q. Thank you very much, Mr. [REDACTED].

5 MS. HORNE: Mr. President, that concludes my
6 questions.

7 PRESIDENT McRAE: Thank you.

8 Now, let's turn to the Claimants. Do you
9 wish to redirect?

10 MR. DÍAZ-CANDIA: Yes, Mr. President, and it
11 should be brief.

12 REDIRECT EXAMINATION

13 BY MR. DÍAZ-CANDIA:

14 Q. [REDACTED], Ms. Horne asked you about the
15 closures of certain bank accounts of Kaloti Metals.
16 Then she asked you about a specific account with
17 JPMorgan Chase.

18 Do you remember and can tell the Tribunal if
19 that account was closed unilaterally by the bank or it
20 was closed by a decision of Kaloti?

21 A. If I remember correctly, we had some issue
22 with a speedy wire transfer, and charges was very,

1 very expensive, and a couple of wire transfers didn't
2 go through until the next day or the day after. It
3 created big issue. I believe correctly with that--

4 Q. Speak to the Tribunal.

5 A. --with the Suppliers. And we decide--we
6 decide to close the bank account for JPMorgan.

7 Q. Thank you, Mr. [REDACTED].

8 Then, Ms. Horne asked you a series of
9 questions of the relationship of [REDACTED],
10 Kaloti Metals, and then [REDACTED]. Can you
11 clarify for the record how much gold has [REDACTED]
12 [REDACTED] sold to [REDACTED] to buy?

13 A. [REDACTED] --how much--we-- [REDACTED]
14 [REDACTED] was doing business in the United States of
15 America, and refinery in Texas.

16 Q. Okay. But did that company, [REDACTED]
17 [REDACTED], ever sold gold to [REDACTED] Dubai?

18 A. No. We completely separated this from KML
19 and [REDACTED] Dubai.

20 Q. Thank you, Mr. [REDACTED].

21 And then I think one last question. You
22 stated in your Witness Statements and Ms. Horne also

1 asked you a question about this. You said that [REDACTED]
2 [REDACTED] did not inherit any clients from Kaloti
3 Metals. Then she showed you that, in fact, there was
4 an overlap. I think she identified one. What do you
5 mean by the word "inherit"?

6 A. Inherit, it's to takeover what's left over,
7 assets and customer and money--whatever left from
8 Kaloti Metals, I believe. That's "inherit."

9 And as I indicate, I don't want to inherit
10 anything from them. After the media coverage and
11 after all the problem Kaloti Metals went through, I
12 just want to start separate from anybody else. We
13 started. We have couple of customer still after us,
14 and we convinced them to do business with us, and we
15 accept them. We have the small jewelry stores in
16 South Florida doing some business with us on very,
17 very small scale.

18 Q. Thank you, Mr. [REDACTED].

19 MR. DÍAZ-CANDIA: That concludes the
20 redirect. We yield the Witness.

21 PRESIDENT McRAE: Thank you.

22 There is no request from the--

1 MS. HORNE: No, thank you, Mr. President.

2 PRESIDENT McRAE: Okay. Thank you very
3 much.

4 Do either of my colleagues have any
5 questions?

6 QUESTIONS FROM THE TRIBUNAL

7 ARBITRATOR KNIEPER: I have a question, one
8 is actually a follow-up question to what you discussed
9 with Ms. Horne about the issue, and that is not a
10 legal question at all, about being legally insolvent
11 or not. Remember that was the last question that you
12 discussed with Ms. Horne. And I read in your Second
13 Witness Statement in Paragraph 20, that KML, as of
14 today, an entity in legally good standing with the
15 State of Florida, United States.

16 Do you maintain this statement?

17 THE WITNESS: What statement?

18 ARBITRATOR KNIEPER: This is your statement.
19 You say there in Paragraph 20 of your Second Witness
20 Statement--

21 THE WITNESS: I'm sorry, yes, I understood
22 the question now. Yes, yes.

1 Kaloti is still an active LLC in the State
2 of Florida.

3 ARBITRATOR KNIEPER: An active LLC meaning
4 not legally insolvent and still doing business?

5 THE WITNESS: No, it's not doing business.

6 An active as register, register LLC in the
7 State of Florida, with no transaction, with no
8 business, zero business. Since November 2018, no
9 transaction whatsoever. No employees.

10 ARBITRATOR KNIEPER: Okay. Thank you. That
11 answers this question. And then I have another
12 question, and the question stems from the First Expert
13 Report of Secretariat, and the Experts say in the
14 Report that they took instructions from the Claimant,
15 which means from you, on text, and they described the
16 operations of KML. And this is the sentence, and I
17 wanted you to confirm or not confirm whether this is a
18 correct sentence. It says in Paragraph 6.78:
19 "Claimant's business operation is limited to purchase
20 and sale of the already mined gold for future mining
21 from approved supply and authorized commodity
22 traders/Sellers."

1 Is that a correct statement of the activity
2 of KML?

3 THE WITNESS: Yes.

4 ARBITRATOR KNIEPER: Thank you. That's all.

5 PRESIDENT McRAE: Well, thank you very much,
6 Mr. [REDACTED]. I think we've come to the end of your
7 witness testimony, so you're free to go and free to
8 speak to whoever you would like from now on.

9 THE WITNESS: Okay. Thank you.

10 PRESIDENT McRAE: Thank you.

11 (Witness steps down.)

12 PRESIDENT McRAE: We will take a couple of
13 minutes for the next witness to be brought.

14 (Brief recess.)

15 [REDACTED], CLAIMANT'S WITNESS, CALLED

16 PRESIDENT McRAE: We are ready to resume.

17 Good afternoon, Mr. [REDACTED].

18 THE WITNESS: Good afternoon. Buenos días.

19 PRESIDENT McRAE: Are you planning to give
20 your testimony in English or in Spanish?

21 THE WITNESS: In English.

22 PRESIDENT McRAE: Okay. Then you probably

1 understand the system, that you will be invited to
2 make an initial statement. You'll be cross-examined
3 by the counsel for the Respondent, and then maybe
4 re-examined by counsel for the Claimant. Please
5 remember, because it is being interpreted, to speak to
6 facilitate the interpretation, not make it more
7 difficult for the Interpreters.

8 THE WITNESS: Understood.

9 PRESIDENT McRAE: And also, where we have
10 stenographers recording the Hearing, but they can't
11 record if people speak over each other. So, if you've
12 been asked a question, wait until the question is
13 ended before you give the response.

14 So, you should have in front you a written
15 Declaration, which I would ask you to read out.

16 THE WITNESS: I solemnly declare upon my
17 honor and conscience that I shall speak the truth, the
18 whole truth, and nothing but the truth.

19 PRESIDENT McRAE: Thank you.

20 Mr. Díaz-Candia?

21 MR. DÍAZ-CANDIA: Thank you, Mr. President.

22 We have also been informed that Mr. [REDACTED]

1 doesn't have an opening statement. I'm going to ask
2 him a few questions and then yield the Witness to
3 Perú.

4 PRESIDENT McRAE: Go ahead.

5 DIRECT EXAMINATION

6 BY MR. DÍAZ-CANDIA:

7 Q. Mr. [REDACTED], can you please state your full
8 name for the record.

9 A. [REDACTED].

10 Q. On the table over there, you have your
11 Witness Statement. It's called "first," but it's the
12 only one you gave. Can you take a look at it and
13 confirm that that is your statement and that the
14 signature that appears at the end is yours?

15 A. I can confirm this is my statement, and that
16 is my signature.

17 Q. Thank you, Mr. [REDACTED].

18 When did you start working in the sales area
19 for Kaloti Metals & Logistics?

20 A. That was in January 2011.

21 Q. And until what time did you work at Kaloti
22 Metals and what positions did you hold at the Company?

1 A. I worked at Kaloti Metals until the end of
2 2018. And, in my time there, positions held included
3 initially Physical Operations Manager, and later at
4 the end of that term, General Manager.

5 Q. Did you ever work for [REDACTED]
6 Dubai?

7 A. No.

8 Q. Did anyone, any person or any company ever
9 tell you that they would not sell gold to Kaloti
10 Metals because of information or investigations
11 related to [REDACTED] ?

12 A. No. To the best of my recollection, that
13 was never brought up by any of the Suppliers.

14 Q. Thank you, Mr. [REDACTED].

15 MR. DÍAZ-CANDIA: Your witness.

16 PRESIDENT McRAE: Please go ahead.

17 MR. GRANÉ LABAT: Mr. President, my
18 colleague, Ms. Andrea Mauri, will conduct the
19 cross-examination.

20 MS. MAURI: Thank you, Mr. President.

21 CROSS-EXAMINATION

22 BY MS. MAURI:

1 Q. Good afternoon, Mr. [REDACTED].

2 A. Good afternoon.

3 Q. My name is Andrea Mauri, and I represent the
4 Republic of Perú in this Arbitration. I'm going to be
5 asking you some questions regarding your experience at
6 Kaloti Metals & Logistics and your knowledge of
7 certain matters that are relevant to the case.

8 A. Understood, Andrea, thank you.

9 Q. In your Witness Statement, you cite a number
10 of exhibits to support your testimony. Did you review
11 those documents at the time of the events that you
12 describe in your Witness Statement?

13 A. Surely. I'm familiar with the documents.

14 Q. But did you review them at the time of the
15 events that took place that you describe in your
16 Witness Statement?

17 A. I would like to clarify that some of those
18 documents are in the years after 2016, statements like
19 that, so anything relevant at the current time, yes.

20 Q. Some of the exhibits you cite in your
21 Witness Statement are in Spanish. Could you please
22 confirm that you can read and understand Spanish?

1 A. Yes, sí (in Spanish) I can confirm that I
2 can speak and write in Spanish.

3 (Overlapping interpretation with speaker.)

4 Q. We would need you to repeat the answer,
5 Mr. [REDACTED].

6 A. To the question regarding my ability to
7 speak and write in Spanish?

8 Q. Exactly.

9 A. Yes. I can speak and write in Spanish.

10 Q. Have you also read the relevant sections of
11 the pleadings that the Parties filed in this
12 Arbitration?

13 A. I familiarized myself with some of the
14 documents available on the ICSID website.

15 Q. And are you aware of the arguments that the
16 Parties presented yesterday in this Hearing or of the
17 content of Mr. [REDACTED] oral testimony?

18 A. Only familiar with, again, what's on that
19 website, what I read just in general about the case.

20 Q. Yeah--that's not my question.

21 A. Can you rephrase the question?

22 Q. My question is: If you are aware of the

1 arguments that the Parties presented yesterday in this
2 Hearing or the content of Mr. [REDACTED] oral testimony?

3 A. No.

4 Q. Thank you, Mr. [REDACTED].

5 Now I would like to ask you some questions
6 about your background and your employment history.

7 A. Okay.

8 Q. According to Paragraph 6 of your Witness
9 Statement, you were introduced to [REDACTED] in 2010;
10 correct?

11 A. Yes.

12 Q. You met Mr. [REDACTED] through his daughter;
13 correct?

14 A. Yes.

15 Q. And you later married Mr. [REDACTED] daughter;
16 correct?

17 A. Correct.

18 Q. So, you're currently [REDACTED]
19 son-in-law; correct?

20 A. Correct.

21 Q. You've testified that, after meeting
22 Mr. [REDACTED] in 2010, you joined Kaloti as Physical

1 Operations Manager in 2011; correct?

2 A. Correct.

3 Q. Before joining Kaloti, you didn't have any
4 professional experience in the trade of gold, did you?

5 A. Can you repeat the question?

6 Q. Before joining Kaloti, you didn't have any
7 professional experience in the trade of gold, did you?

8 A. Correct.

9 Q. Did you have experience or you didn't?

10 A. Correct, I did not have experience.

11 Q. When you became--when did you become General
12 Manager of Kaloti?

13 A. In the Year 2015.

14 Q. Can you briefly tell us which were your
15 duties and responsibilities during the time you worked
16 at Kaloti?

17 A. Gladly.

18 My role as Physical Operations Manager or
19 General Manager? To clarify.

20 Q. Both. Both roles.

21 A. Okay.

22 During my time, then, at Kaloti Metals &

1 Logistics, I was responsible for a wide range of
2 activities from day-to-day operation of the business
3 in Miami, Florida, ranging from customer development
4 to fire-assay lab oversight, melting and smelting
5 precious metals, distribution of fine gold to local
6 jewelry manufacturers, managerial activities. In
7 short, that's--

8 (Overlapping speakers.)

9 Q. Did you receive any money-laundering or
10 compliance training during your time at Kaloti?

11 A. Yes.

12 Q. What sort of compliance training did you
13 receive?

14 A. So, when I came to a compliance trainer for
15 the general staff and not the point of Compliance
16 Officer, you could say that everybody plays a role in
17 compliance and AML. So, part of that when it comes to
18 training was an annual AML training that the staff was
19 all privy to, and that helped us in our day-to-day,
20 that we had our checks and balances and that gave us a
21 higher level of awareness of what to keep an eye out
22 for.

1 Q. Okay.

2 Were you in charge of the daily management
3 of the Company's gold Suppliers?

4 A. In my role as Physical Operations Manager
5 and General Manager, I did have interactions with the
6 Suppliers, yeah.

7 Q. Gold Suppliers, was my question.

8 Did you remember approximately how many
9 Suppliers did Kaloti have around 2014?

10 A. Off the top of my head, I don't have an
11 exact number, but I do know that the exact number of
12 Suppliers is contained in the reference material of
13 the statement.

14 Q. So, you don't have a number in mind that you
15 can give to us, like 100, 200--

16 A. I mean, if you want me to take a second, I
17 can look it up and count for you.

18 (Overlapping speakers.)

19 REALTIME STENOGRAPHER: You're overlapping.
20 One at a time.

21 Q. So, Mr. [REDACTED], to make sure that the Court
22 Reporters are able to follow our conversation, I

1 would--I'm going to try not to interrupt you, but
2 please don't interrupt me as well.

3 A. Gladly, yes, okay.

4 Q. So, I was asking you if you, more or less,
5 have an idea about the number of Suppliers that you
6 had back in 2014.

7 A. Just give me a moment. I can look it up
8 here, in the record.

9 Q. Okay.

10 A. Okay.

11 MR. DÍAZ-CANDIA: May we point the Witness
12 to a particular document, or do you prefer not?

13 MS. MAURI: I was just hoping that we could
14 get a broad number like, I don't know, 100, 200,
15 something like that to get more or less an idea. I
16 don't know if that would be possible.

17 THE WITNESS: I'm really interested in,
18 like, sharing the truth and the facts, so I wouldn't
19 be comfortable ball-parking a number for you.

20 BY MS. MAURI:

21 Q. Okay. That's fine. I understand.

22 So, did the Suppliers, the gold Suppliers,

1 also contact other members of the Company, such as

2 [REDACTED]?

3 A. So, the gold Suppliers had different
4 interactions with different members of the staff. If
5 it was for compliance; right? It was Mr. [REDACTED].
6 General operations was myself. If it was related to
7 the price of metal it was another employee of the
8 Company, so depending on the case, on the reason, on
9 the language that they spoke.

10 Q. And the--

11 A. There was no one that wasn't accessible if
12 need be.

13 Q. So, for example, applications by new
14 Suppliers, terminations of contracts, this sort of
15 relationships, who would be handling that in your
16 company?

17 A. Can you repeat the question?

18 Q. Yes.

19 My question is: For example, applications
20 from new Suppliers to start dealing with Kaloti, or
21 notice the divisions by current Suppliers to stop
22 dealing with Kaloti. This sort of positions and

1 relationships, who was the one dealing with them?

2 A. Okay. I'm going to go ahead and break that
3 out a little bit.

4 Q. Okay.

5 A. Your first question was regarding opening an
6 account or a new account?

7 Q. Um-hmm.

8 A. So, those kind of inquiries would be
9 directed to Mr. [REDACTED], the Compliance Officer.
10 And then, if you go ahead and restate the second
11 question again?

12 Q. The second question--the second question was
13 termination of relationships or any sort of issues
14 that could come up during a commercial relationship
15 with a Supplier, this sort of relationships, who was
16 the one handling them?

17 A. So difficult topics, I guess?

18 Q. For example.

19 A. Depending on the situation, if I had to do
20 with the terminating account, could have been with
21 myself, it could have been with Mr. [REDACTED], if it had
22 to do with like the physical metals, probably with me.

1 Q. Now, I would like to move to a different
2 topic and discuss the events that, according to your
3 Witness Statement, took place between late
4 November 2013 and early 2014. At Paragraph 14 of your
5 Witness Statement, you mentioned that the Peruvian
6 Government seized several shipments of gold in 2013
7 and 2014, which Kaloti had allegedly purchased; yes?
8 Is that correct?

9 A. Which paragraph?

10 Q. 14.

11 A. So, I'd need you to rephrase the question
12 that includes "allegedly," because here it says
13 "purchased."

14 Q. I wasn't quoting literally. I was just
15 asking you if, in your Witness Statement, you referred
16 to events including the fact that the Peruvian
17 Government seized several shipments of gold in 2013
18 and 2014. We can leave it there, if you feel more
19 comfortable.

20 A. Yes, that's included in my statement.

21 Q. Were those shipments going to be exported to
22 Kaloti?

1 A. The shipments were in the process--

2 REALTIME STENOGRAPHER: Keep your voice up,
3 please.

4 THE WITNESS: Will do.

5 BY MS. MAURI:

6 Q. And these Immobilizations, do they concern
7 shipments from [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
8 that, in particular, were immobilized between 29
9 November 2013 and 10 January 2014? Do you know that?

10 A. Yes.

11 Q. Then at Paragraph 15 of your Witness
12 Statement, you testified that, in January 2014, and
13 now I quote, "a prominent news report came out in a
14 highly circulated newspaper called 'El Comercio.'"
15 correct?

16 A. Yeah. That was devastating to the business.

17 Q. You also stated that, after this Press
18 Release came out, all Suppliers of gold called you
19 with concerns, and some of them even halted their
20 commitments to Kaloti; is that correct?

21 A. The last part? Some of them? Their
22 commitment?

1 Q. And some of them halted their deliveries
2 with Kaloti, or their commitments with Kaloti?

3 A. Affirmative, yeah.

4 Q. Let's please display on the screen Exhibit
5 C-162 this is the press report published by El
6 Comercio on 8 January 2014 that you cite in your
7 Witness Statement. If we go to Page 2, you can see
8 that the title of this press report is "customs seized
9 half a ton of illegal gold worth USD 18 million."

10 Do you see that?

11 A. Yes, I do see that.

12 Q. So, if we go to the fifth paragraph of this
13 page, it lists certain exporters, including [REDACTED].

14 Do you see that?

15 A. Yes, I see that.

16 Q. As we just--as we have just discussed,
17 [REDACTED] supplied one of the immobilized shipments to
18 Kaloti; correct?

19 A. Yes.

20 Q. The following paragraph then mentions that
21 those companies, and I quote, "did not support the
22 legal origin, possession, and purchase" of the gold.

1 Do you see that?

2 A. I see that it says that. I don't agree with
3 the statement.

4 Q. I'm only asking you if you see that in the
5 document--

6 A. So, yes, I do see that.

7 Q. --that we are displaying.

8 If we scroll to Page 3, Paragraph 2, of the
9 press report, it states that the seized gold was to be
10 exported to, among others, Kaloti; correct?

11 A. Yes, I see that.

12 Q. And, as we have seen, Kaloti was, indeed,
13 the recipient of at least a shipment of gold from
14 [REDACTED]; right?

15 A. Yes.

16 Q. That I'm asking you. I'm asking you that.
17 It's not in the Press Release. So, what I'm asking
18 you is: Kaloti was going to be the recipient of at
19 least a shipment of gold from [REDACTED]; right?

20 A. Yes.

21 Q. That's the only reference to Kaloti in this
22 press report; correct?

1 A. There was enough, yes.

2 Q. Let's, please, display on the screen Exhibit
3 R-108.

4 This is a press article that The Guardian
5 issued on 25th February 2014. Page 1 of this press
6 article reports on a meeting that Mr. [REDACTED]
7 held with auditors from Ernst & Young Dubai. [REDACTED]
8 [REDACTED] is one of the equity-holders of Claimants in
9 this Arbitration; correct?

10 A. Correct.

11 Q. Then, the fourth paragraph of this first
12 page, it indicates that Ernst & Young had been hired
13 to audit, and I quote, "[REDACTED] family business [REDACTED]
14 [REDACTED], Dubai's largest gold refinery."

15 Do you see that?

16 A. I see that.

17 Q. The Guardian then reports, in the sixth
18 paragraph, that according to the Minutes of the Ernst
19 & Young inspectors, [REDACTED] said that: "It's
20 normal to receive silver coated gold bars especially
21 from Morocco due to the gold export limits imposed by
22 the Moroccan customs."

1 Do you see that?

2 A. I see that it says that, yes.

3 Q. Let's please scroll to the following page.

4 The first paragraph explains that: "The Moroccan
5 Suppliers had brought the shipment in by hand and were
6 paid in cash at Kaloti's office. The shipment had
7 left North Africa incorrectly labeled silver, and was
8 properly accepted at Dubai airport customs as gold.
9 It sounded like a smuggling scam."

10 Do you see that?

11 A. I do see that, yes.

12 Q. Then a few paragraphs below, in a
13 paragraph--this is Paragraph 4th after "serious," the
14 article reports that there were other serious
15 shortcomings. Kaloti records showed more than a
16 thousand transactions with customers, without having
17 to provide paperwork and being paid cash for gold.

18 Do you see that?

19 A. I do see that, yes.

20 Q. Mr. [REDACTED], you've testified earlier today
21 that you received anti-money-laundering and compliance
22 training; right?

1 A. Correct.

2 Q. As part of that compliance training, were
3 you made aware of the red flags in gold trading, which
4 are like the main red flags in gold-trading?

5 A. Yes.

6 Q. And potentially large cash transactions can
7 be a red flag; correct?

8 A. Yes.

9 Q. And when cash transactions are unavoidable,
10 these purchases are to be supported by verifiable
11 documentation; correct?

12 A. Yes.

13 Q. Now I would like to show you--I would like
14 to show you Exhibit R-197. This is the "OECD Due
15 Diligence Guidance for Responsible Supply Chains of
16 Minerals from Conflict-Affected and High-Risk Areas."
17 Were you familiar with this guidance?

18 A. Sure.

19 Q. You will see, if we go to Page 75,
20 Paragraph 3, you will see that the OECD guidance
21 clearly recommend to make and receive payments for
22 gold through official banking channels and to avoid

1 cash purchases where possible.

2 Do you see that?

3 MR. DÍAZ-CANDIA: Excuse me, Mr. President.
4 We allowed this line of questioning as part of his
5 background and training as she asked the Witness, but
6 his written statement has nothing to do with
7 compliance procedures within Kaloti. His Witness
8 Statement is very clear, and their cross-examination
9 should refer to the Witness Statement.

10 PRESIDENT McRAE: Can you respond?

11 MS. MAURI: The Witness has testified that
12 he was given anti-money-laundering and compliance
13 training, and he has just confirmed that he's also
14 familiar with this document. I'm trying to establish
15 a point regarding certain red flags that the
16 Witness--I would like to know if the Witness was aware
17 and basically explore this line of questioning.

18 PRESIDENT McRAE: As long as it's linked to
19 the extent of the training that he had, it seems to me
20 it arises out of the Witness Statement, but going
21 further into the implications of that and about the
22 case doesn't arise from his Witness Statement, that

1 would be a limit on what you could ask.

2 MR. DÍAZ-CANDIA: Thank you.

3 MS. MAURI: Thank you.

4 BY MS. MAURI:

5 Q. So, Mr. [REDACTED], I was asking you if you
6 were familiar with the OECD guidelines, and then I was
7 going to ask you if you were aware that the OECD
8 guidelines actually recommend not to--to avoid cash
9 transactions and to try to support cash purchases when
10 these are not avoidable. Are you aware of that?

11 A. So, when it comes to cash in the
12 precious-metals industry, when possible, to be
13 avoided, but different countries have different
14 business norms, expectations, and best practices that
15 they follow, so I would say that it really depends on
16 the nature of the business as far as this highlighted
17 cash question.

18 Q. When you say that it depends on the nature
19 of the business, you mean within the trade-of-gold
20 business?

21 A. Correct.

22 Q. So, what does that--I mean, what does

1 that--I mean, what are the reasons that would make you
2 change--

3 (Overlapping speakers.)

4 Q. In which reasons it would be justified to
5 take large transactions?

6 A. So, to answer your question, I'm going to
7 use an analogy; right? Some countries and
8 cultures--right?--prefer to meet face-to-face. Some
9 are more distant when it comes to interactions. Some
10 folks shake hands, some folks bow. And then, when it
11 comes to the precious-metals industry, you have the
12 same unique variations when it comes to standards,
13 customs, acceptable practices, et cetera.

14 Q. Okay. And in those cases, do you agree
15 that, if cash purchases cannot be avoided, the Company
16 should ensure that these are supported by verifiable
17 documentation?

18 MR. DÍAZ-CANDIA: I'm sorry, Mr. President,
19 but this is speculation, opinion unrelated to his
20 Witness Statement.

21 MS. MAURI: It's not opinion. I'm asking
22 about what he knows. I'm asking about his

1 money-laundering and compliance training, and this is
2 part of what this money-laundering and compliance
3 training could have involved, so that's what I'm
4 trying to clarify with this Witness, his knowledge
5 about anti-money-laundering and compliance.

6 MR. DÍAZ-CANDIA: She's putting a completely
7 hypothetical situation that is not derived from his
8 Witness Statement, and asking the Witness for his
9 opinion.

10 MR. GRANÉ LABAT: If I may just intervene
11 very briefly, Mr. President, we have been very patient
12 both yesterday and today, but it's gotten to the point
13 that we have to register our objection at Claimant's
14 counsel's constant interruptions trying to guide the
15 Witnesses, trying to present Rebuttal Arguments. The
16 questions that are being asked are within the scope of
17 what PO contemplates as being appropriate questions.
18 We would request, Mr. President, that we are allowed
19 to conduct the cross-examinations the best way we see
20 fit. If Claimant's counsel has objections, either
21 they can be raised on redirect or at closing.

22 Thank you.

1 PRESIDENT McRAE: I think that it is
2 certainly appropriate to let counsel for the
3 Respondent continue the cross-examination, given that
4 this Witness has asserted that he has training and
5 expertise in money-laundering matters, so I think we
6 should allow it to continue. As was pointed out by
7 Mr. Grané, you do have the opportunity later on to
8 take it in a different direction either through your
9 redirect or through your Closing Statement.

10 MR. DÍAZ-CANDIA: Thank you, Mr. President.

11 Also--

12 PRESIDENT McRAE: There's a limit, I think,
13 to the extent to which we can go into this because we
14 are going quite a long way into, what is essentially,
15 his background in money-laundering. So, with that in
16 mind, please continue.

17 MR. DÍAZ-CANDIA: I just wanted to say for
18 the record, that Mr. Grané should be prepared to be
19 highly frustrated with--we will continue to make as
20 many objections as we see fit.

21 PRESIDENT McRAE: I think that both of you
22 have made your positions clear on how you view it, and

1 I think we should proceed in light of that.

2 Please go ahead.

3 BY MS. MAURI:

4 Q. So, Mr. [REDACTED], if we go to the article by
5 The Guardian that we were looking at earlier today,
6 this was Exhibit R-108, and if we scroll to Page 3,
7 the fourth paragraph notes: "As well inspectors also
8 found evidence of Kaloti's transactions with Suppliers
9 from Sudan, a country linked to conflict gold in the
10 past. Instead of showing heightened vigilance, Kaloti
11 staff were happy to offer cash in hand in exchange for
12 gold hand-delivered and originating from artisanal,
13 small-scale mines."

14 Do you see that?

15 A. I want to confirm and reiterate for the
16 record, I'm not a Compliance Officer; okay? I did
17 receive compliance training that was relevant to my
18 scope within the business. Such fine detailed
19 intricacies particularly regarding cash, which was not
20 something I partook in, cash transactions makes my
21 comments more, again, speculative, what would be the
22 best practice and reading maybe the OECD to you to

1 answer your questions, but I would hate to
2 misrepresent my depth of knowledge when it comes to
3 the level of AML compliance understanding on a topic
4 that I was trained in five and 10 years ago.

5 Q. I understand that. I appreciate that.

6 So, what we have seen in this press article
7 from The Guardian we have been looking at now, we have
8 seen that by February 2014, which is when this article
9 was published, there was at least one press article,
10 this one by The Guardian, on the public domain that
11 reported that the [REDACTED] had committed at least
12 three irregularities: Buying gold incorrectly labeled
13 as "silver," which the article we've seen that
14 qualifies as a smuggling scam; buying gold in cash,
15 despite the international guidelines recommendations;
16 and buying gold from countries linked to conflict
17 gold, which is the one that we are just seeing now,
18 without showing any sort of enhanced vigilance. Is
19 that correct?

20 A. So, in the article from The Guardian that
21 you just mentioned, again, I was aware of it when it
22 came out, surely, and so, I was aware of it when it

1 came out. I, again, can't really speak to the depth
2 of compliance knowledge that you're asking me to.

3 Q. Um-hmm.

4 A. If I'm not mistaken, nothing in the end came
5 of it, of the allegations in the journal and--

6 (Overlapping speakers.)

7 A. One second, and it's about the [REDACTED],
8 not Kaloti Metals & Logistics, different--whole
9 different entity.

10 BY MS. MAURI:

11 Q. Okay. So, my question was this information
12 was in the public domain by 2014. I understand that
13 you agree with me that it was in the public domain;
14 right?

15 A. Correct, yeah, it was published in The
16 Guardian.

17 Q. Okay. And this press article, if you look
18 at it, it refers to the [REDACTED] or Kaloti, and
19 that's in abstract; is that correct? Is that the way
20 that the article refers to the "refining" in Dubai, to
21 the company?

22 A. Yeah. I believe the shortened version of

1 just Kaloti references the Kaloti Precious Metals in
2 Dubai, yeah, [REDACTED].

3 Q. Mr. [REDACTED], you've stated you were aware of
4 this article. Were you aware that, around the same
5 time, all the media outlets published articles with
6 similar content?

7 A. Yeah. I think that's standard practice in
8 journalism with press releases.

9 Q. So, for example, were you aware that there
10 was another Press Release issued also on
11 25th January 2014 from the BBC?

12 A. I would need to see it.

13 Q. Of course. This is Exhibit R-122. The
14 paragraph above indicates: "Dubai's biggest gold
15 refiner committed serious breaches of the rules
16 designed to stop gold mined in conflict zones."

17 Do you see that?

18 A. I do see that.

19 Before you go on, if I'm not mistaken, this
20 is in regards to the same topic of the previous
21 article.

22 Q. It's in regards to the same topic, yes.

1 A. Yes.

2 Q. So, then if you scroll to Page 2, the BBC
3 report indicates that the Audit found Kaloti had
4 breached a number of international rules for the
5 responsible sourcing of gold.

6 Do you see that?

7 A. Yes.

8 Q. So, these two articles that we have just
9 seen, these were issued over a month after the El
10 Comercio article; correct?

11 A. Yes.

12 Q. And, Mr. [REDACTED], which media outlet do you
13 think is more prominent? On the one hand, El
14 Comercio, or, on the other hand, BBC and The Guardian?

15 A. If you could be more specific regarding the
16 demographic. So, if you're in the U.K., surely The
17 Guardian, right?

18 Q. I mean "worldwide."

19 A. Can you repeat the question?

20 Q. I mean "worldwide."

21 A. So, your question is worldwide, who has more
22 readers?

1 Q. Which one is more prominent.

2 A. I can speculate, if you like.

3 Q. Yeah, please do.

4 A. Okay. I'm sure that the more well-known,
5 Guardian--right?--website has more traffic than El
6 Comercio's website.

7 Q. Okay. So, we've seen that--well, actually
8 this Report that I showed you, it also referred to
9 Kaloti as I have just read to you. We can put it on
10 the screen again.

11 A. To be clear, Kaloti there is shortened--

12 Q. Each for the [REDACTED].

13 A. Correct.

14 Q. Yes. So, we agree that both Reports
15 referred to both [REDACTED] or shortened for [REDACTED]
16 [REDACTED], they only used "Kaloti"; is that correct?

17 A. Sure.

18 Q. So, it would not be unreasonable for
19 Claimant Suppliers or clients to associate Kaloti with
20 [REDACTED]--would it?--in these press releases.

21 A. I don't want to speculate on their behalf.

22 Q. Okay. Well, we can go to Exhibit R-145.

1 One of the notable clients that you
2 mentioned in your Witness Statement is Mr. Chamy.
3 He's representative of the Chamy International Group
4 you say in your Witness Statement.

5 A. Sure, yes.

6 Q. This resolution that I'm showing you on the
7 screen is a resolution issued by the Peruvian courts
8 in the Criminal Proceeding filed against Mr. Chamy.
9 And if you go to Page 9 of the resolution, you will
10 see that it refers to a statement by Mr. Chamy, who
11 testified that "his role in the Company was to make
12 contact with the Kaloti Metals & Logistics refinery,
13 located in Miami and Dubai."

14 So, Mr. [REDACTED], here it seems that
15 Mr. Chamy was conflating the Claimant in this
16 Arbitration with other companies of the [REDACTED],
17 wasn't he?

18 A. It definitely looks like he was confused in
19 that sentence, second point under the--

20 Q. Can you repeat that, please?

21 A. In that sentence, it looks like he was
22 confused. He was probably under duress when he made

1 that.

2 Q. Okay. So, now, I would like to focus on one
3 of the statements you make in your Witness Statement
4 which is that after January 2014, the Suppliers called
5 you and begun to halt deliveries; correct? That's,
6 again, Paragraph 15 of your Witness Statement.

7 A. So, in Paragraph 15? Yeah.

8 Q. Yes.

9 A. I received many phone calls.

10 Q. And a few paragraphs down in your Witness
11 Statement, you list a few notable clients; correct?

12 A. Yes.

13 Q. And these clients, including the notable
14 ones, did they contact you when that happened? Did
15 they only contact you when that happened?

16 A. Yeah.

17 If I was the only one, gosh, I mean, again,
18 depending on what they're calling for, they can speak
19 to any of the employees; right? But these accounts
20 mentioned here, as well as more that I couldn't
21 remember being so long ago, definitely did have these
22 conversations with me.

1 Q. Did they call anyone else in the Company to
2 let them know that they were ceasing the operations
3 with Kaloti, any of all your Suppliers?

4 A. Can you rephrase the question?

5 Q. Did any of these Suppliers that were
6 concerned about--you mentioned in your Witness
7 Statement that they were concerned about the
8 Immobilizations under the El Comercio article, did
9 these Suppliers call someone else, Mr. [REDACTED],
10 Mr. [REDACTED], Mr. [REDACTED], or only you?

11 A. It's possible. It's possible, but in my
12 statement I remember the conversations I had with
13 them.

14 Q. And did the Suppliers email anyone in Kaloti
15 to let them know that they had desired to cease their
16 relationship with Kaloti?

17 A. So, when it comes to the email
18 communications from these and many more, Suppliers
19 regarding closing their accounts, all of these
20 customers preferred to communicate, again going back
21 to cultural norms, over the phone. They want to hear
22 a voice, they want to talk to you. But also, if I can

1 add, another reason why the Suppliers don't like to
2 put such concrete Terms in writing is for fear of that
3 being used in retribution in the future; right? It's
4 everything settles, the dust settles in a couple of
5 months. They're ready to jump back on with Kaloti
6 Metals, to have that in writing to be used against
7 them for, you know, maybe to their detriments: "I was
8 paying you minus 1 percent, I can't do that anymore."

9 It's really protecting themselves against
10 that. And possibly when these conversations happened,
11 maybe they had positions with Kaloti and didn't want
12 to shake the tree, if that's--I'm not sure if that's
13 the right phrase, "shake the tree." They don't want
14 to put their interests at risk by having something as
15 formal and concrete as an email.

16 Q. Among these Suppliers that you've mentioned
17 that hold positions in Kaloti, was the Darsahn
18 Group one of them?

19 A. I don't recall.

20 Q. But you do recall that the Darsahn Group
21 called you and told you that they were forced to stop
22 dealing with Kaloti? You provide quite amount of

1 detail about Darsahn's position to cease dealing with
2 Kaloti. You don't remember if they had a position?

3 A. So, having a position is something
4 completely different.

5 Q. Um-hmm.

6 A. When it comes to having this kind of a
7 conversation, positions are based on your metal
8 balances in your account, your dollar margin in your
9 account. Pretty much, it's banking Accounts Payable.
10 It's their balances. So, if you're asking me if I
11 remember what Darsahn's balance was on the day that he
12 called, no, I do not recall.

13 Q. Okay. So, going back to these calls that
14 you received from your Witness Statement during that
15 time and you mentioned it in your Witness Statement,
16 you've said that the Suppliers were afraid of
17 retribution, and they wouldn't put that in writing.
18 So, are you telling us that all the Suppliers that you
19 say that were concerned about these events, none of
20 them sent a notice of termination, a letter letting
21 you know that they were terminating, suspending,
22 ceasing their operations with Kaloti? None of them?

1 A. Again, they don't want to burn that bridge.

2 Q. Okay. And did you make any notes of these
3 calls?

4 A. In what regard?

5 Q. In regard of what the Suppliers were telling
6 you the reasons, for example, as I was saying you've
7 been quite specific for the reasons for them to stop
8 dealing with Kaloti. Did you write--did you make any
9 notes regarding those conversations with the
10 Suppliers?

11 A. I likely doodled, but those situations in
12 particular, like some other ones about this case, are
13 just burned in my memory.

14 Q. Okay. So, aside from any notes from your
15 calls, did you draft an internal memorandum? Did you
16 prepare any sort of analyses? Did you draft any sort
17 of document after these terminations to reflect what
18 was happening?

19 A. So, after these conversations, typically, I
20 would be sweating, and then I would go from my office
21 probably, say, [REDACTED], we need to talk, walk over to his
22 office where then we'd discuss.

1 Q. And nothing in writing?

2 A. No, not that I recall.

3 Q. So, it is fair to say that there is no
4 documentary evidence, apart from your testimony,
5 regarding these calls?

6 A. Yeah. Again, I'm here to tell the truth.
7 I've sworn. These conversations are, again, etched,
8 burned in my memory, and yes.

9 Q. So, again, then there is no documentary
10 evidence of these calls and conversations?

11 A. So, after each one of these and other
12 conversations, I did not make myself like a letter.

13 Q. Not only after these conversations. I'm
14 just asking you to confirm that there is no
15 documentary evidence of the Supplier's decisions and
16 at the same time the internal reactions to those
17 decisions. There isn't any; right?

18 A. Correct.

19 Q. Okay. So, Mr. [REDACTED], didn't you have any
20 contracts with your Suppliers?

21 A. With the word "contract," right? When it
22 comes to legal terms like that, I'm not really

1 well-versed--

2 (Overlapping speakers.)

3 A. --so, if you could elaborate.

4 Q. Any sort of agreement to negotiate with
5 them, which is agreements, trade agreements?

6 A. So, to name a few, I think you just did.

7 There were multiple different Terms and
8 Agreements and whatnot for each individual Supplier.

9 Q. And still the Suppliers did not notify their
10 intention to terminate those agreements.

11 A. I don't think it was in anyone's interest
12 for them to put that in Notice format. We didn't want
13 it to happen, and I don't think they wanted to put it
14 in concrete Terms.

15 Q. So, at Paragraph 19 of your Witness
16 Statement, you discussed the conversations that you
17 had with some of Kaloti's notable clients. For
18 example, if we turn to Darsahn, you say that's
19 Paragraph 19(b). You say: "Two companies of the
20 group known as Darsahn International, a large Seller
21 of gold in Perú, ceased their dealings and sales of
22 gold to KML after 2014."

1 And do you remember if Darsahn supplied gold
2 to Kaloti only in 2013?

3 A. So, for that I would like to refer to the
4 account statements.

5 Q. Of course. We can display on the screen
6 Exhibit C-30. You cite this exhibit in your Witness
7 Statement.

8 A. Correct.

9 Q. This is Kaloti's transaction history.

10 If we scroll to Page 5, you will see that
11 the transactions--you'll see transactions that took
12 place in 2013.

13 And then, you can see two entries. The
14 first one is Darsahn International Inc., which a loan
15 traded at 1,586 kilos of gold with Kaloti in 2013;
16 correct?

17 ARBITRATOR KNIEPER: Not kilos, grams.

18 MS. MAURI: What I have read out are kilos,
19 so the document is expressed in--

20 ARBITRATOR KNIEPER: I want simply to
21 correct, it's not 1,500 kilogram, but 1,500 grams, I
22 believe.

1 MS. MAURI: 1,500 kilograms. Can I see?
2 The document, it expresses the quantities in grams.

3 ARBITRATOR KNIEPER: In grams, yes.

4 MS. MAURI: Yes, but I've made a conversion,
5 and I'm referring to the kilos.

6 ARBITRATOR KNIEPER: Okay. Thank you.

7 Excuse me.

8 BY MS. MAURI:

9 Q. So, Mr. [REDACTED], do you see that?

10 A. Yeah, I see the highlighted entries.

11 Q. And you see the entry I was referring to,
12 Darsahn International Inc. trading 1,500 kilos?

13 A. I do.

14 Q. Then another company identified as Darsahn 2
15 traded no less than 5,300 kilos of gold with Kaloti
16 also in 2013; correct?

17 A. I see that line.

18 Q. Therefore, according to these two entries
19 alone, in 2013, Darsahn International traded with
20 Kaloti almost 7,000 kilos of gold; correct?

21 A. Sure, yes.

22 Q. So, now I would like to display on the

1 screen Exhibit C-43. This is a transaction summary of
2 Kaloti's purchases. It shows Kaloti's purchases in
3 Perú. If we go to Page 2. You'll see there that the
4 overall amount gross weight traded in 2013 was 40,900
5 kilos.

6 A. Can you highlight it?

7 Q. Again, this is in grams. I'm referring to
8 it in kilos.

9 A. Okay. And the question was?

10 Q. The question was if you see this.

11 A. I do see this.

12 Q. This amount.

13 A. Yes.

14 Q. Okay. So, if my math is wrong, I'm sure
15 counsel for Claimants will correct me, but almost
16 7 kilos of gold traded with Darsahn in 2013 seems to
17 be about 46 percent of all the gold that Kaloti
18 transacted in Perú in 2013.

19 It is fair to say that Darsahn was a very
20 significant and important client of Kaloti; right?

21 A. Would you rephrase the question? Because I
22 heard 7 kilos, and I just want to make sure the

1 record.

2 Q. 7,000 kilos.

3 A. Okay. So, 7,000 kilos, you're asking me if
4 half of the volume--

5 Q. I'm letting you know--I made the math. I'm
6 not asking you to do it. What I've said is that if
7 I'm wrong, counsel for Claimant will correct me.

8 A. Okay.

9 Q. But what I was saying is that 7,000 kilos
10 traded with Darsahn in 2013 seems to be about
11 46 percent of all the gold that Kaloti transacted in
12 Perú in 2013. These are the maths, I'm asking you to
13 do.

14 What my question was: So, it's fair to say
15 that Darsahn was a very significant and important
16 client of Kaloti?

17 A. With 46 percent of Perú's volume,
18 absolutely.

19 Q. Okay. So, when Mr. Chamy, who you say was
20 Darsahn representative, when he called you, that must
21 have been a shock to the Company, wasn't it?

22 A. Again, that cold sweat, yes.

1 Q. And after he called, did you let [REDACTED]
2 that Darsahn was no longer willing to conduct business
3 with Kaloti?

4 A. Yeah, after each and every one of those, I
5 had that cold sweat moment, and then [REDACTED], we need to
6 talk, go to his office, and we'd discuss.

7 Q. So, after Darsahn's termination, who you
8 just confirmed was a notable and important Supplier
9 for Kaloti, after you learned from that, what you did
10 was shout to [REDACTED] office and then what? You
11 didn't--again, didn't draft any legal memorandum,
12 didn't draft any analyses of how could have, I don't
13 know, impacted your production or trading during that
14 following year?

15 A. You previously mentioned 46 percent, let's
16 round up to 50, so I think it's fair to say that we
17 didn't need an analysis to know that 50 percent was a
18 big portion.

19 Q. Okay. So, basically what you're telling me
20 like you effectively did not produce any written
21 documents to confirm that situation?

22 A. To confirm what situation?

1 Q. What has happened, what just happened at
2 that time, and I guess, the estimations that you could
3 have towards the future.

4 A. Previously, I mentioned the same thing.

5 Q. Um-hmm.

6 A. We did not produce artifacts for the
7 customers calling or Suppliers calling, saying that
8 they were going to cease.

9 Q. Okay. So, if we move to Paragraph 19(b) of
10 your Witness Statement, you mention, and now I quote,
11 that their representative, Mr. Chamy, "explained to me
12 that he no longer wanted to sell to KML due to
13 concerns after hearing about KML's gold
14 Immobilizations"; correct?

15 A. Correct.

16 Q. Mr. [REDACTED], Mr. Chamy was also a
17 shareholder in [REDACTED], wasn't he?

18 A. Yeah, if I'm not mistaken.

19 Q. When did Mr. Chamy called you to let you
20 know that no longer wanted to sell to KML?

21 A. The exact date, time, I couldn't honestly
22 give you those coordinates; right?

1 Q. Do you remember at least the month? The
2 day?

3 A. It was after the--

4 Q. El Comercio article?

5 A. I can't recall.

6 Q. You can't recall.

7 Was it after the Immobilizations?

8 A. Affirmative.

9 Q. Yes? Okay.

10 So, we were saying that Mr. Chamy called and
11 you told you--I'm going to cite it again. He told you
12 that he no longer wanted to sell to KML due to
13 concerns after hearing about KML's gold
14 Immobilizations; right?

15 A. Yeah.

16 He heard about obviously his, but that there
17 was more--more involved.

18 Q. So, I would like to understand that.

19 So, Mr. Chamy heard about his own
20 Immobilization.

21 A. Naturally.

22 Q. And still he calls you and tells you that he

1 has heard about the Immobilizations in the press
2 article, which I guess, was she concerned about the
3 press article having his gold demobilized?

4 A. I can't, again, recall if it was--the date,
5 the time. You asked me if it was before, during,
6 after the article. Memory doesn't serve me that well.

7 Q. But that's what you claim in your Witness
8 Statement, isn't it? You claimed that, after seeing
9 the article in El Comercio, the Suppliers called you
10 and started expressing their concerns, and you
11 mentioned that Mr. Chamy tells you that he has heard
12 about the Immobilizations and he can no longer
13 continue working with you.

14 A. So, yeah--to clarify, yeah.

15 Q. Is that correct?

16 A. Yeah.

17 Q. So, Mr. Chamy gets his own gold immobilized
18 because he's not able to establish the origin of the
19 gold, and he blames you?

20 A. I can't--I can't speak to why it was
21 immobilized or who he blames.

22 Q. Okay. But he blamed you; right?

1 A. Again--

2 Q. I understand from your Witness Statement
3 that he can no longer keep risking his reputation,
4 so--and that's why he ceases to deal with you?

5 A. I mean, it's about the risk to have anything
6 else seized. I don't know about blame or his
7 feelings--I can't speak to that.

8 Q. Okay. So, Mr. [REDACTED], are you suggesting
9 that the Darsahn International Group did not want to
10 continue dealing with Kaloti but it kept trading gold
11 with other companies?

12 A. From what I remember--all right?--I think
13 all of the companies that had their materials seized
14 remained active.

15 Q. "Remained active"?

16 A. Yeah.

17 Q. Okay.

18 MS. MAURI: So, let's please display on the
19 screen Exhibit R-356.

20 BY MS. MAURI

21 Q. This is the corporation registration of
22 Darsahn International, which we obtained from the

1 Peruvian Public Registry. Let's please go to Page 3
2 of this document. As you will see on this page,
3 Darsahn international was dissolved in 2014.

4 Do you see that?

5 A. Yes, yes.

6 Q. In particular, Darsahn was dissolved on
7 8 May 2014.

8 Do you see the date?

9 A. Yeah.

10 Q. Okay. Therefore, rather than stop selling
11 all to Kaloti due to the press releases or the
12 Immobilizations, it seems that Darsahn ceased all
13 business activities in 2014. Am I right?

14 A. So, you showed me that they ceased their
15 business activities in the eighth month of that year,
16 but really the impact--

17 Q. In May, excuse me. In May.

18 A. Oh.

19 Q. It's 8 May 2014.

20 A. Okay. In 2014.

21 Q. Um-hmm.

22 A. But I just wanted to--really the bigger

1 impact that we felt as a company, maybe Darsahn didn't
2 have an ongoing business, but it was the missed
3 opportunity--right?--for KML to gain new business
4 based on what these conversations were with Suppliers
5 at the time, but after that, it was kind of a
6 hot-button topic for business development.

7 Q. So, just to make sure I understand what
8 you're telling us. You just claimed that the damages
9 that Kaloti suffered weren't that much the fact that
10 the Suppliers stopped dealing with you but the fact
11 that you couldn't get new Suppliers? Is that right?

12 A. I want to make sure that I'm expressing
13 myself to the best of my ability.

14 Q. Sure.

15 A. I didn't want to conflate that Darsahn
16 closing in the middle of 2014 with any other efforts
17 of Kaloti to remain in business.

18 PRESIDENT McRAE: Ms. Mauri, could I ask you
19 a question about timing because we should--probably
20 we've been going for an hour-and-a-half, I think
21 almost, so we should be thinking of taking a break
22 now. Is this a convenient time to do that?

1 MS. MAURI: I'm going to ask one last
2 question to the Witness regarding this point.

3 PRESIDENT McRAE: Sure, sure. Go ahead.

4 BY MS. MAURI:

5 Q. So, Mr. [REDACTED], just to confirm that we
6 agree on this. We agree that, in 2014, Darsahn got
7 dissolved and didn't trade with any other companies;
8 correct?

9 A. Yeah, you clarified that for me.

10 Q. Great. Thank you.

11 PRESIDENT McRAE: All right. We will take a
12 break for 15 minutes.

13 Mr. [REDACTED], because you're giving
14 testimony, you are unable to make any contact during
15 the break with members of the Claimant's team or
16 really you should be isolated for that time. I
17 believe there is a place that you'll be taken by the
18 Secretariat, and so you can get coffee or whatever
19 refreshment you would like.

20 THE WITNESS: Thank you. Understood.

21 PRESIDENT McRAE: We'll return, then, it's
22 4:00, we'll return at 4:15.

1 (Recess.)

2 PRESIDENT McRAE: I think we're ready to
3 continue.

4 Ms. Mauri, when you are ready.

5 MS. MAURI: Thank you, Mr. President.

6 BY MS. MAURI:

7 Q. Mr. [REDACTED], you mentioned at Paragraph 16
8 of your Witness Statement that, "to the best of my
9 knowledge and belief, the Suppliers of the Five
10 Shipments of KML's gold that Perú seized remained
11 active doing business in Perú but they did not sell
12 gold to KML after 2014." Those included [REDACTED]
13 [REDACTED] and [REDACTED].

14 Is that right?

15 A. Yeah, Point 16.

16 Q. Okay. So, Mr. [REDACTED], I would like to
17 display on the screen what you'll see is [REDACTED]
18 Cumulative Export Report. I'm going to let you know
19 the exhibit number now, 343, R-343.

20 So, as you see there, that's [REDACTED]
21 Cumulative Export Report.

22 This Cumulative Export Report, it was

1 downloaded from SUNAT's website, and it lists all
2 exports that a particular company conducted during
3 that relevant period.

4 What you're seeing on the screen is
5 Year 2013. So, if we scroll down, you will see that
6 [REDACTED] conducted several exports in 2013, but then if
7 we move to the following page, you will see that it
8 states "no records found."

9 So, this means that [REDACTED] did not register
10 any exports in 2014.

11 Do you see that?

12 A. Yeah.

13 Q. And if you scroll down, you will see that no
14 other exports were conducted in the following years.

15 Do you see that?

16 A. Sure.

17 Q. So, Mr. [REDACTED], it seems that [REDACTED]
18 stopped all export activities in 2014; correct?

19 A. Sure does.

20 Q. So it didn't just stop exporting gold to
21 Kaloti, did it?

22 A. This is the same company you showed me

1 earlier that--

2 Q. It's a different company. Earlier I showed
3 you Darsahn, now I'm showing you [REDACTED].

4 A. Okay. Is that a similar situation?

5 Q. I'm asking you.

6 A. If they closed, I'm sure you have the
7 record.

8 Q. I'm showing you that they didn't make any
9 exports.

10 A. Confirmed.

11 Q. Okay.

12 So, Mr. [REDACTED], in addition to [REDACTED] and
13 Darsahn International, Axbridge Gold Corporation and
14 Titanium Gold Enterprise were also part of the
15 companies owned or controlled by Mr. Chamy; correct?

16 A. Yeah.

17 Q. So, Mr. [REDACTED], I can represent to you that
18 the situation with Titanium and Axbridge was exactly
19 the same, and that they did not continue operating in
20 2014. However, you don't have to take my word for it,
21 and I can show you the evidence on the record. Would
22 you like me to show you the evidence on the record or

1 should we move to the next question?

2 A. It just depends on the question, I guess.

3 Q. I'm going to show you so you can review the
4 documents and confirm.

5 Let's please display Exhibit R-346.

6 This is the Corporation Registration of
7 Titanium Gold Enterprise. Let's please scroll to
8 Page 3 of the PDF.

9 As you will see on this page, Titanium Gold
10 Enterprises was also dissolved in 2014.

11 Do you see that?

12 A. Yeah.

13 Q. Okay. Now, I would like to show you Exhibit
14 R-361. This is the Cumulative Export Report of
15 Axbridge Gold Corporation.

16 So, again, we see Axbridge exported in 2013,
17 and then if we scroll down, you will see that Axbridge
18 did not export in 2014.

19 Do you see that?

20 A. Yeah.

21 Q. Do you know how much of Kaloti's gold trade
22 did the transactions with these four Suppliers--so

1 these were Darsahn, [REDACTED] Titanium, and Axbridge.
2 So--I'll repeat the question. Do you know how much of
3 Kaloti's gold trade did these transactions represent
4 in 2013, the one with these four Suppliers? Do you
5 have any idea?

6 A. Again, I know it's in the reference
7 material, so I wouldn't want to misquote.

8 Q. Of course. This is in Exhibit C-30. You
9 can review it and make the math. I can also represent
10 to you that the Transactions with these companies
11 amounted to 9,623 kilos, and again counsel for
12 Claimant may correct me if I'm wrong. I can also
13 represent to you that the decline in the volumes of
14 gold that Kaloti traded from 2013 to 2014 is
15 11,000 kilos, 11,376 kilos. That's also in C-13, and
16 you could also review that, if you make the
17 math--C-30, sorry. In the interest of time, I'm not
18 asking you to do this math and I'm sure, again, that
19 if I'm mistaken, Claimant's counsel will let us know.
20 But Mr. [REDACTED]--

21 MR. DÍAZ-CANDIA: Just to say, we don't
22 know, we're not confirming or denying.

1 MS. MAURI: That's fine.

2 MR. DÍAZ-CANDIA: We're not objecting.

3 MS. MAURI: I understand that if you don't
4 agree, you can make him some questions in redirect.

5 MR. DÍAZ-CANDIA: The point is that we're
6 not doing the math now, so I'm not objecting to
7 anything, but just...

8 MS. MAURI: Okay.

9 BY MS. MAURI:

10 Q. So, Mr. [REDACTED], would you be surprised if I
11 tell you that almost 85 percent of Kaloti's declining
12 volumes in 2014 could be because of the fact that the
13 companies owned or controlled by Mr. Chamy ceased
14 operations in 2014?

15 A. With all those figures that you mentioned,
16 would you--I don't believe the actual production of
17 the country changed year-over-year by a significant
18 figure. Do you have that information?

19 Q. The production of the--

20 A. Yeah.

21 Q. I'm focusing on Kaloti's trade.

22 A. Okay.

1 Q. So, I'm focusing on the decline that there
2 was between 2013 and 2014.

3 A. Okay. So, what's the question?

4 Q. So, my question is: If you were aware that
5 85 percent of these declining volumes could be because
6 of the fact that the companies owned or controlled by
7 Mr. Chamy ceased operations in 2014? I'm just asking
8 you if you would be surprised or you wouldn't.

9 A. If I would be surprised--you are going to
10 have to rephrase it because it's just--I'm not really
11 understanding.

12 Q. Were you aware of this fact when you
13 prepared your Witness Statement?

14 A. That Darsahn and companies--

15 (Overlapping speakers.)

16 Q. That--were you aware of the fact that the
17 companies owned or controlled by Mr. Chamy, which
18 ceased operations in 2014 amounted to--the volume that
19 they were trading with you amounted to almost
20 85 percent of Kaloti's declining volumes in 2014?

21 A. So, I was aware that it was a significant
22 portion of our business, yes.

1 Q. Okay. So, you've also--so, just to be
2 clear, we agree that these four companies ceased
3 operations in 2014; right?

4 A. From the records you showed me?

5 Q. Yeah.

6 A. Yes.

7 Q. Okay. So, you have also testified that
8 another client that ceased doing business with Kaloti
9 after the Immobilizations and the Press Release was
10 Bolivian River Gold, to which you refer as BRG. This
11 is at Paragraph 98 of your Witness Statement.

12 In particular, you declared that BRG called
13 you and told you that, in spite of their personal
14 desire to continue working with KML, they could not
15 risk tarnishing their reputation in the gold industry
16 after the aforementioned events in Perú involving KML;
17 is that right?

18 A. Right.

19 Q. Okay. And then, you mentioned yet another
20 Supplier in your Witness Statement, which is
21 Clearprocess, and you also argue that Clearprocess, an
22 Ecuadorian mining company, ceased their sales to KML

1 in or around 2014; correct?

2 A. Can you repeat that?

3 Q. I'm just asking you to confirm that you
4 mentioned at Paragraph 19 of your Witness Statement
5 that Clearprocess, CP, an Ecuadorian mining company,
6 ceased their sales to KML in or around 2015.

7 A. '15, yeah.

8 Q. So, I would like to focus on Clearprocess
9 now and to look at the beginning of Kaloti's business
10 relationship with Clearprocess.

11 You mentioned at Paragraph 30 of your
12 Witness Statement that Kaloti was run by the book. I
13 understand that, before it started trading gold with
14 Clearprocess, Kaloti conducted an exhaustive due
15 diligence on the Supplier and on the origin of the
16 gold that Clearprocess was trading; am I right?

17 A. Yeah, for every--all the gold that we
18 transacted in with Clearprocess directly or other
19 Suppliers, yeah.

20 Q. And are you aware if Kaloti also conducted a
21 periodic review of their Suppliers every, I don't know
22 how often?

1 A. So, yeah. There's different--from the AML
2 training, there was different parts of the AML
3 Program, and then they run in parallel, different time
4 frequencies and different on-boarding.

5 Q. So, there is a continuous review; can we say
6 that?

7 A. Yeah.

8 Q. Okay. So--and I understand that this
9 continuous review was also conducted with regard to
10 Clearprocess, as with all of your Suppliers?

11 A. Yeah. We applied the same stringent AML
12 practices for all the Suppliers.

13 Q. Okay. Thank you.

14 And Kaloti started trading with Clearprocess
15 in 2014. I am going to show you the exhibit before I
16 ask you to confirm this. This is C-0030.

17 So, according to Pages 1 and 7 of this
18 document, Clearprocess did not supply gold to Kaloti
19 in 2011, 2012, and 2013. You could check that if you
20 want to, that's in your laptop as well, but if you go
21 to Page 8, it shows that in 2014, Clearprocess
22 supplied 115.4 kilos--we're going to show you. There

1 they are. So, 115.4 kilos. That's the first entry?

2 A. Yeah.

3 Q. And then, there is another entry that states
4 356.3 kilos. Am I right?

5 A. I see those two lines.

6 Q. So, considering that the Immobilizations and
7 the press releases took place between November 2013
8 and early January 2014, this means that Clearprocess
9 actually began trading with Kaloti after those events;
10 correct?

11 A. That was a long road to negotiation.
12 They've been--I think they were in business for quite
13 a while before that.

14 Q. I'm just asking you to confirm whether
15 that's correct or not.

16 A. If?

17 Q. If they started trading with Kaloti in 2014
18 after the Immobilizations and the Press Release from
19 El Comercio that you discuss in your Witness
20 Statement.

21 A. Yes.

22 Q. Okay.

1 So, let's--I would like to look now at the
2 gold that Clearprocess supplied to Kaloti in 2015.
3 That's Page 10 of the Transaction history. It shows
4 that Kaloti--that Clearprocess supplied 267 kilos, and
5 then 1,102 kilos; is that correct?

6 A. Yeah.

7 Q. Therefore, according to the quantities that
8 we've seen, Clearprocess traded roughly 470 in 2014,
9 and then it traded around 1,370 in 2015.

10 So, the amount of gold that it traded in
11 2015 is actually three times higher than in 2014; am I
12 right?

13 A. Yeah.

14 Q. Okay. So, despite the Immobilizations and
15 the press articles, in 2015, Clearprocess increased
16 the amount of gold supplied to Kaloti; right?

17 A. Yes.

18 Q. And then, according to Paragraph 19(c) of
19 your Witness Statement, the Clearprocess
20 representative told you, and I quote, "that he became
21 aware of newspaper headlines regarding the events
22 involving KML in Perú and did not want to sully

1 Clearprocess's image." Is that correct?

2 A. Uh-huh.

3 Q. Yes, please, Mr. [REDACTED], could you say
4 "yes" or "no" for the record.

5 A. Yes.

6 Q. You also testified that Clearprocess
7 representatives told you that, and again I quote, "he
8 could not continue assuming a reputational risk unless
9 KML was expressly cleared of wrongdoing by Peruvian
10 authorities." Yes?

11 A. Yes.

12 Q. Therefore, according to your testimony, this
13 was the reason why Clearprocess did not supply gold to
14 Kaloti from 2016 onwards?

15 A. Correct.

16 Q. Okay. Now, let's display on the screen
17 Exhibit R-277.

18 This is a Press Release issued by the
19 Ecuadorian Prosecutor's Office in 2016 which is
20 entitled "the route of the gold commercialized by
21 Spartan and Clearprocess registers alleged anomalies."

22 Do you see that?

1 A. Yes.

2 Q. The first paragraph of this Press Release
3 mentions that two companies captured more than
4 50 percent of the profits of the sale of gold in
5 Ecuador.

6 Do you see that?

7 A. Yes.

8 Q. And then the paragraph below indicates that
9 these two companies were Clearprocess and Spartan;
10 correct?

11 A. Yes.

12 Q. If you scroll to Page 2, 3rd paragraph, the
13 Press Release states that the Prosecutor's Office was
14 following a money-laundering investigation against
15 these companies; correct?

16 A. Yep.

17 Q. Were you aware of this investigation?

18 A. After the fact.

19 Q. After the fact?

20 A. Yeah.

21 Q. So, you--didn't any red flags about these
22 activities come up during your continuous

1 due-diligence review?

2 A. So, when it comes to the continuous
3 due-diligence review, the way that it's executed, et
4 cetera, and if you scroll up for a moment--continue,
5 sorry, to the image. From what--you know, memory, one
6 of the checkpoints is that ARCOM, and that's where the
7 Suppliers--where the origin of the gold is verified to
8 the country, something like that; right? That's where
9 they input into like an online portal where the gold
10 is from, et cetera, and that's one of the bigger--I
11 remember that as a checkpoint, it comes with every
12 shipment that you buy that also gets reviewed--

13 Q. I understand that. I understand you're
14 explaining to me how it works; right?

15 A. Yeah.

16 Q. My question was whether any red flags
17 regarding Clearprocess came up during the time that
18 you were trading with them.

19 A. Oh, no.

20 Q. "No".

21 A. No, all the gold that we bought was duly
22 registered.

1 Q. Okay. But then, they suddenly got involved
2 in a money-laundering investigation, and you hadn't
3 identified any red flags regarding Clearprocess
4 before?

5 A. What year was the investigation?

6 Q. The investigation came to light in 2016.

7 A. We didn't do business with them in 2016.

8 Q. Yeah. I'm asking about the previous years.

9 A. So, while we did--again, like when we were
10 doing business with them? I don't know what they did
11 after, but while we were doing business, everything
12 was definitely--

13 (Overlapping speakers.)

14 A. --within the scope.

15 Q. You've mentioned that all the gold that they
16 bought was duly registered. What does that mean?

17 A. Since you didn't want the explanation, but,
18 you know, in ARCOM, No. 6, Point No. 6, from my
19 memory; right? That was one of the
20 Ecuadorian-provided tools to the mining industry where
21 they would communicate, I guess, log all the metal
22 transactions in the country. So, that was like the

1 audit mechanism, if I'm not mistaken, for the
2 Ecuadorian Government, that's how they gave the green
3 light; right? If you buying something, you have to
4 make sure it's--

5 Q. It's registered there.

6 A. It's on ARCOM, and they do all their
7 back-end work. Yeah.

8 Q. But I guess--did you conduct any additional
9 due diligence? Aside from that registry?

10 A. So, I personally wasn't the Compliance
11 Officer.

12 Q. I understand. I'm asking about the usual
13 practice.

14 A. So, yeah, general business practice and,
15 specifically here, ongoing due diligence was a big
16 part of the Company practice.

17 Q. Okay. So, Mr. [REDACTED], now I would like to
18 show you a paragraph of this Press Release that is
19 only--before we move to that, the paragraph below
20 indicates that these two companies, as we have seen,
21 were Clearprocess and Spartan. Was Spartan a Supplier
22 of Kaloti as well? I think you mention it in your

1 Witness Statement.

2 A. I did mention it, right, them by name, but
3 we never were able to do business with them.

4 Q. You were not able to do business with them?

5 A. No.

6 Q. Okay. While you were trying to do business
7 with them, did you become aware of this investigation?

8 A. I don't recall.

9 Q. You don't recall that.

10 A. No.

11 Q. So, still--now I would like to show you a
12 paragraph of this Press Release. This is only in
13 Spanish, Mr. [REDACTED], but you've confirmed that you
14 can read Spanish; correct?

15 A. I can read Spanish. It might take me a
16 little bit longer but I will work my way through it.

17 Q. Okay.

18 MS. MAURI: I understand that it can be
19 provided for you with the translation.

20 MR. GRANÉ LABAT: It's on the screen.

21 MS. MAURI: But the screen is in Spanish.

22 The translation--

1 THE WITNESS: Generally, yeah?

2 BY MS. MAURI:

3 Q. Yeah.

4 So, this is at the last paragraph of Page 3
5 of this Press Release we were looking at.

6 A. Okay.

7 Q. The Prosecutor informed that there are six
8 individuals that--

9 A. Go ahead in Spanish.

10 Q. And the people that had been detained
11 include Shareholders of the companies involved,
12 Spartan and Clearprocess, and the investigation will
13 come to an end on September 14th, upon completing
14 90 days of information provided to the Prosecutor's
15 Office.

16 So, it is possible that this investigation
17 was actually a reason why Clearprocess did not
18 continue to supply gold to Kaloti from 2016?

19 A. That wasn't the reason they expressed to me.

20 Q. And Mr. [REDACTED], I would like to show you
21 now Exhibit R-273. If you go to Page 2, to the 2nd
22 paragraph from the bottom, you'll see that this Press

1 Release also refers to the investigation against
2 Clearprocess and Spartan.

3 Do you see that?

4 A. Yes.

5 Q. And, in particular, that paragraph states,
6 and I quote: "Since 2013, the companies Spartan del
7 Ecuador S.A. and Clearprocess S.A. Ltd., became in a
8 short period of time the biggest gold exporters in the
9 country, to American companies such as," and it
10 mentions Kaloti Metals & Logistics, and then it
11 states: "According to what Fuentes has said, quoted
12 by the official website of El Telégrafo, the gold
13 allegedly came from illegal mining in Perú." Still,
14 Mr. [REDACTED], did you confirm that the gold had illegal
15 origin? Because it seems it came from Perú.

16 A. So, again, while we were doing business with
17 them, all the gold was appropriately compliant with
18 anti-money-laundering and Kaloti Metals executed their
19 AML Program against the Supplier, yes.

20 Q. And Mr. [REDACTED], with the information that
21 you have now, would you still consider these companies
22 to be reputable Suppliers?

1 A. How did this end?

2 Q. This is my question.

3 A. This case?

4 Q. It doesn't really matter. I mean, I have
5 given you a lot of information, and if you have more,
6 I mean, you can do your own assessment with your
7 information.

8 A. Okay.

9 To answer that question, I would like to see
10 how that resulted because I have seen plenty of media
11 articles that don't align with...

12 Q. So, are you happy to answer my question only
13 on the basis of what you have seen? Would you be
14 happy to sell them gold considering what we have seen
15 so far on the basis of what I have shown you?

16 A. Can you just rephrase from the top the
17 question?

18 Q. Mr. [REDACTED], based on the information that
19 you have seen so far, regardless of the result, if
20 these companies offer to sell gold to Kaloti, you, as
21 General Manager, would you recommend that Kaloti trade
22 gold with these companies?

1 A. So, let me just elaborate on your example.
2 If one of these companies were to approach Kaloti
3 Metals to open an account today, they would not pass
4 the AML Program today, based on what you have shown
5 me.

6 Q. Okay. And based on what I have showed you,
7 you mentioned--just to go back to your Witness
8 Statement--you mentioned that these companies ceased
9 exporting--trading gold with Kaloti because of the
10 Immobilizations and the Press Release. And that these
11 events caused you to lose clients such as this one
12 that we have seen, Clearprocess.

13 Considering this information, shouldn't
14 Kaloti be the one that is interested in cutting ties
15 with them?

16 A. If anything remotely close to what you
17 showed me would have occurred during our time doing
18 business together, would've--it's binary, it's yes,
19 no. No.

20 Q. Okay. Thank you, Mr. [REDACTED].

21 MS. MAURI: I have no further questions.

22 PRESIDENT McRAE: Thank you.

1 Does the Claimant have some redirect
2 questions?

3 MR. DÍAZ-CANDIA: Yes, briefly,
4 Mr. President. Yes.

5 REDIRECT EXAMINATION

6 MR. DÍAZ-CANDIA: Mr. [REDACTED], in response
7 to one of the question from Ms. Mauri, she asked you
8 about the contracts that you had for these--the
9 specific Five Shipments of gold that were Immobilized
10 by Perú, and you said that you couldn't qualify what a
11 contract is, I think that is what I understood. But
12 what, to the best of your knowledge, did Kaloti have
13 specifically about these Five Shipments?

14 MS. MAURI: Excuse me, Mr. President. I
15 haven't asked that question to the Witness. What I
16 have asked you was whether Kaloti used to have
17 contracts or agreements with its Suppliers. That was
18 in the context of the calls you were getting at that
19 time. But I wasn't replying--I wasn't referring to
20 the four Suppliers whose gold got immobilized in this
21 arbitration in particular. I was just asking about
22 Kaloti's general practice.

1 PRESIDENT McRAE: Does that clarification
2 make any difference to your question?

3 MR. DÍAZ-CANDIA: No, Mr. President, no.
4 She asked about contracts and also stated that Kaloti
5 didn't have contracts for the Suppliers, she asked a
6 question about contracts of this Witness, so I think
7 this is fair game.

8 PRESIDENT McRAE: Go ahead. You can
9 continue.

10 BY MR. DÍAZ-CANDIA:

11 Q. So, without giving a legal answer about what
12 a contract is, can you please tell us what, to the
13 best of your knowledge, you have about this
14 particular--what Kaloti had about these particular
15 Five Shipments with the four providers?

16 A. Okay. So, yeah, I'm not going to define
17 again what a Contract is, but for each Supplier we
18 would have various Terms and Conditions that were
19 overarching for the account, what they include like in
20 Perú with these four Suppliers, Five Shipments, what
21 was covered in the Contract like the way that it
22 worked, is we had an office in Hermes, like this city

1 block, armed, giant-walled facility, we had an office
2 in there, and then the customers they would come,
3 their metal would be moved from where it was to the
4 facility. And then in the office we'd inspect it, we
5 would like take ownership of it, we'd prepare it, we'd
6 analyze it, but all those steps I'd say--and depending
7 if the price was locked or not, what else is part of
8 like the--da da da--how it will eventually be settled,
9 the price, the purity--right?--like assessing the
10 purity, all of those things are covered under, like,
11 those documents that I guess I would call a contract.
12 It's Terms and Conditions, there's like a Trading
13 Agreement, a few different documents for each Supplier
14 that kind of explained the business process.

15 Q. Did that include invoices for each shipment?

16 MS. MAURI: Excuse me, Mr. President, this
17 is not related to any of my questions at all. And
18 it's also leading.

19 MR. DÍAZ-CANDIA: The question is whether
20 the documents that he mentioned, and he mentioned
21 documents specifically relating to the Five Shipments,
22 included invoices or not.

1 MS. MAURI: That's not related to any of my
2 questions. The documents, he just mentioned them now.

3 PRESIDENT McRAE: Are you trying to
4 establish the content of these contracts?

5 MR. DÍAZ-CANDIA: He mentioned documents,
6 specific documents about the Five Shipments.

7 PRESIDENT McRAE: I spoke over you. Sorry.
8 Please go ahead.

9 MR. DÍAZ-CANDIA: Here mentioned that Kaloti
10 Metals had documents specifically referring to these
11 Five Shipments. I just want to know what those
12 documents were that he mentioned in response to the
13 question, and if those included invoices or not.

14 PRESIDENT McRAE: My recollection of the
15 discussion we heard was not really about the content
16 of the documents. It was about whether the Contracts
17 existed. He's established the contracts do exist, as
18 far as I'm concerned. He said they did have
19 contracts. Do we need to know the content of those
20 Contracts?

21 I'm not sure.

22 MR. DÍAZ-CANDIA: No, I'm not meaning the

1 general context of the Trade Agreement or the General
2 Terms and Conditions. I'm going to try to go to the
3 specific Five Shipments. But we can continue without
4 that, if you don't feel that's--

5 PRESIDENT McRAE: I don't think you should
6 pursue that. We're getting beyond what the
7 cross-examination was about.

8 MR. DÍAZ-CANDIA: Very well.

9 BY MR. DÍAZ-CANDIA:

10 Q. In one of your questions--in one of your
11 answers to Ms. Mauri, Mr. [REDACTED], when she asked you
12 about the relevance of losing business from I think it
13 was either--I believe it was [REDACTED], but one of the
14 four Suppliers of the Five Shipments, then you said
15 you believed that the gold supply in the Peruvian
16 market or the total production of the country, if I
17 remember what you said, did not decrease. Why did you
18 say that, what is the relevance of that statement?

19 A. I kind of stopped short because I don't want
20 to answer a different question, I guess, but I just
21 wanted to attest from like that time period,
22 attributed 46 percent of one Supplier was the volume

1 from Perú for that year, and then that Supplier
2 doesn't exist anymore because they closed the
3 business. And your question was kind of forcing me to
4 say that, okay, we had lost business because they
5 didn't--because they closed their business. But I
6 wanted to explain myself a little bit more, but I
7 didn't think it was--this is my first time here.

8 So, what I was trying to say is the output
9 of Perú in the global market was--there's no
10 significant material change year over year. I think
11 they remained the sixth largest Supplier in that time
12 period or producer of gold in the world. So, just
13 because one entity doesn't exist anymore doesn't
14 equate to Kaloti Metals's lost opportunity, I guess.

15 That's what I was going to elaborate on.

16 Q. Thank you.

17 Ms. Mauri asked you a number of questions
18 about Clearprocess and Spartan. Was any of the gold
19 delivered by those companies to Kaloti ever questioned
20 by authorities in Ecuador? I believe Spartan is maybe
21 from Chile. I don't know if you can correct me on
22 that or not, from any government, including the

1 Government of the United States, any gold delivered to
2 Kaloti by Spartan and Clearprocess ever questioned by
3 a government authority, including the United States?

4 A. No. Never.

5 And again, during the time that we were
6 doing business, all the gold they supplied was, like,
7 from the ground and through the whole supply chain
8 accounted for.

9 Q. And can you reconfirm what you said at the
10 beginning, that the only shipments that were ever
11 questioned by the Peruvian Government were these very
12 specific Five Shipments?

13 A. Yeah. Correct.

14 MS. MAURI: Mr. President, he's asking
15 leading questions to the Witness.

16 MR. DÍAZ-CANDIA: I will ask differently.

17 PRESIDENT McRAE: No problem with leading
18 questions. They are straightforward issues on the
19 Five Shipments. We've heard testimony on that several
20 times. But I think you ought to phrase your questions
21 in a way that gives the Witness the opportunity to
22 make his choice.

1 MR. DÍAZ-CANDIA: Absolutely. I'll
2 rephrase.

3 BY MR. DÍAZ-CANDIA:

4 Q. What, to your recollection, which gold from
5 2012 until 2018 was immobilized/questioned by the
6 Peruvian Government?

7 A. So, in our time doing business, the only
8 time we had, something like that, even minimal, the
9 significance of that, any questions, conversations,
10 inquiries about the Providence of any gold that is
11 solely restricted to those, like, it was not ever any
12 doubts about--or questions--about our other business
13 dealings.

14 Q. Thank you.

15 MR. DÍAZ-CANDIA: No further questions.

16 PRESIDENT McRAE: Thank you.

17 Do you wish to recross?

18 MS. MAURI: No, thank you, Mr. President.

19 PRESIDENT McRAE: Thank you very much.

20 Do you have any questions?

21 ARBITRATOR KNIEPER: May I?

22 QUESTIONS FROM THE TRIBUNAL

1 ARBITRATOR KNIEPER: Thank you very much.

2 I have one question to you, and then I may
3 have a question which is, you know, not appropriate.
4 The moment I ask this question, and anybody here in
5 the room says it is an inappropriate question, I'm
6 very happy to say you are right, but still perhaps I
7 ask the question because it's on my head. And since
8 at one point in time the Tribunal has to find a
9 decision, this question is there, and it should be
10 answered at one point in time.

11 So, the first question is--

12 THE WITNESS: I will wait before I answer.

13 ARBITRATOR KNIEPER: It will be a question
14 to you, but in a formal way because you're sitting
15 there.

16 THE WITNESS: Yes.

17 ARBITRATOR KNIEPER: It could have been a
18 question also to Mr. [REDACTED]. So, the first question
19 is relatively easy and straightforward.

20 Is there a contradiction between two
21 paragraphs in your written report, and I'm talking
22 about Paragraphs 17 and 22. 22 is also quoted in the

1 Claimant's--yes, in the Claimant's Counter-Memorial in
2 Paragraph 455, and there is only a typographical error
3 because you refer to Paragraph 21, where, in reality,
4 it's 22 of the Witness Statement.

5 In Paragraph 22, you say: "To the best of
6 my recollection, no Supplier (Seller) of gold ever
7 expressed to me concerns about investigations, media
8 articles, or allegations different from the ones
9 involving KML's gold specifically in Perú." And I
10 emphasize "Perú" because that might then solve the
11 contradiction, but I'm not sure.

12 And, in 17, you say: "Suppliers (Sellers of
13 gold) and traders, in Perú and other countries, were
14 specifically concerned about possible 'investigations'
15 against KML. The initial wave of concerns included
16 our Suppliers' doubts as to whether KML would be able
17 to continue paying them promptly, with attractive
18 prices," et cetera. And I have scribbled in the
19 margin, that is a contradiction to Paragraph 22. Am I
20 right?

21 THE WITNESS: May I clarify? Yes? Okay,
22 no, I wanted to make sure I could answer without

1 objections.

2 (Overlapping speakers.)

3 THE WITNESS: I wouldn't call that a
4 contradiction at all, and I would like to elaborate, I
5 guess. Maybe the choice of words wasn't the best or
6 like the tense I used, but in Paragraph 22, I'm more
7 focused on saying that that situation was the only
8 thing the folks were asking about.

9 And then, in Paragraph 17, da da da da da.

10 (Witness reading to himself.)

11 THE WITNESS: --it's referencing the same
12 event, and the same situation.

13 ARBITRATOR KNIEPER: Yes. But in 17 you say
14 no concern, and in 22 you say concern--no, that's
15 wrong. In 17 you say concerned, 22 no concern. That
16 is where I--

17 THE WITNESS: Except for that situation.

18 ARBITRATOR KNIEPER: Except for what
19 situation?

20 THE WITNESS: The media, the seizure, et
21 cetera. That's why I said no concern except for that.

22 ARBITRATOR KNIEPER: Yes, but in 17 you say

1 there was no concern.

2 THE WITNESS: May I? I'm sorry, if I'm not.

3 ARBITRATOR KNIEPER: Why don't you read it
4 again.

5 THE WITNESS: Sure.

6 PRESIDENT McRAE: Can I just ask, when you
7 say "exception," are you referring in 22 to the words
8 different from the ones involving KML's gold
9 specifically in Perú? Is that what you mean when you
10 say there's an "exception"?

11 Have a look at it.

12 THE WITNESS: So, 17--right?--"Suppliers
13 (Sellers of gold) and traders, in Perú and other
14 countries, were specifically concerned about possible
15 'investigations' against KML. The initial wave of
16 concern included our suppliers' doubts as to whether
17 KML would be able to continue paying them promptly,
18 with attractive prices, as was KML's business
19 practice."

20 So, in this one, I'm saying that they were
21 concerned about the situation.

22 ARBITRATOR KNIEPER: Right.

1 THE WITNESS: Cool.

2 If you don't mind, I'm going to read the
3 same. So, 22: "To the best of my recollection, no
4 Supplier (Seller) of gold ever expressed to me
5 concerns about investigations, media articles, or
6 allegations different or apart from the ones involving
7 KML's gold specifically in Perú."

8 At that time when I read it, it's still the
9 same. Like referencing the same event.

10 So, besides that event, they had no
11 concerns. I definitely used the wrong tense, yeah.
12 But, yeah, like apart from that situation, there was
13 no concern. That's Paragraph 22.

14 Does that make sense?

15 ARBITRATOR KNIEPER: It certainly makes
16 sense to you and to others, but not to me.

17 THE WITNESS: I'm sorry. Except for that,
18 no concerns.

19 ARBITRATOR KNIEPER: I'm sorry about that.
20 It doesn't make sense to me. But anyway--

21 THE WITNESS: That was the intention.

22 ARBITRATOR KNIEPER: Now comes the question,

1 and be careful to interrupt me as soon as I deviate
2 from normal practice.

3 MR. DÍAZ-CANDIA: We will be very polite.

4 ARBITRATOR KNIEPER: Because it is very
5 much--it has been discussed yesterday and today, and I
6 read the submissions, but especially after also your
7 Witness Statement. I'm tormented by this thought all
8 the time. We're talking about hundreds, if not
9 thousands of transactions over the years in Perú.
10 Let's forget about all the other countries, in Perú,
11 hundreds, if not thousands. We were talking about
12 several hundreds of Suppliers of gold in Perú;
13 correct?

14 THE WITNESS: Yeah. Yeah.

15 ARBITRATOR KNIEPER: We were talking about
16 that to you and Mr. [REDACTED], that's what we were
17 talking about. And then we are also talking about
18 five lots of gold. You called it "shipments."
19 Chipmunks, shipments.

20 And as I said, these Five Shipments stand
21 out because they were seized four or five--that's a
22 different level of questioning. They were seized.

1 Several thousand others were not seized. That is so
2 far we agree. Is that so?

3 THE WITNESS: Yes, yes, agreed.

4 ARBITRATOR KNIEPER: That is what happened
5 in 2012, 2013 until 2018. That is what happened.

6 Now, that is a very isolated number of
7 shipments which seized among a thousand others, and I
8 asked myself, how can I, being an arbitrator, come to
9 a conclusion eventually that this is a discrimination
10 against the Buyer, for instance? Because at
11 least--and I don't say that now because I've made up
12 my mind at all, formally all these seizures were not
13 directed against the Buyer, meaning the Claimant in
14 this case, but against the Suppliers, but not against
15 the Suppliers in general but only for Five Shipments.
16 And I repeat that because this is how it turns around
17 in my head.

18 Now, have you ever tried to find out why
19 these shipments and not 5,677 others or you simply
20 took it as kismet? These were the shipments, the
21 unhappy ones, and all the others went through without
22 problems. Is that a question?

1 Do you object to the question, or would you
2 object to the question? I'm absolutely ready to
3 withdraw it.

4 MR. GRANÉ LABAT: We have no objection at
5 all, Professor Knieper. Thank you.

6 MR. DÍAZ-CANDIA: I have a question just to
7 understand where this may be coming from or not. And
8 because you referred to what has been discussed here.
9 Yesterday--I don't want to tell him specifics of what
10 happened, but--

11 THE WITNESS: Should I step out?

12 MR. DÍAZ-CANDIA: No.

13 THE WITNESS: Okay.

14 MR. DÍAZ-CANDIA: Or do you want him to step
15 out?

16 ARBITRATOR KNIEPER: No, I have the
17 impression--you're confronted with three Professors,
18 and now I have more of an impression that I'm in a
19 seminar, and I want to know the truth. That is what
20 you do in seminars, and that's what we should do also,
21 if possible, in arbitration.

22 MR. DÍAZ-CANDIA: But my question is, does

1 this relate to the comparison of 70 million, which was
2 the value of the gold, against the 1.3 billion that
3 Kaloti traded in 2013? Is that where you're going
4 with the question?

5 ARBITRATOR KNIEPER: No. The question is
6 more general. It's the question to say, if you talk
7 about sums, we also have to talk about the sums, this
8 discrepancy between 70 million and more than a
9 billion. If we talk about contracts, transactions, we
10 talk about five against several thousands. When we
11 talk about Suppliers, we talk about four against
12 hundreds.

13 MR. DÍAZ-CANDIA: Yes.

14 ARBITRATOR KNIEPER: So, there is a very
15 isolated event in the business life of KML, and this
16 event is overshadowed by hundreds or thousands of
17 transactions which an enormous amount of money being
18 involved, enormous amount of Suppliers being involved,
19 and I want to know how this relates, five against
20 thousands, to a possible interpretation of the Terms
21 of the TPA.

22 When you say, "objection, Mr. Knieper,

1 because that's a legal question, you must not ask it,"
2 I'm with you. This is my problem.

3 MR. DÍAZ-CANDIA: No, I understand, but I
4 think--let me ask you again very respectfully. Is the
5 point of comparing 17 million to 1.3 billion also?

6 ARBITRATOR KNIEPER: Also, yes. Also.

7 MR. DÍAZ-CANDIA: Okay. If that's the
8 question, he can answer, but more to the
9 discrimination issue, I very respectfully, I think
10 that's more of a legal question. But if he can
11 explain and that would satisfy you the difference
12 between the 70 million that was the value of this
13 gold, against the 1.3 billion in 2013, then go ahead.

14 THE WITNESS: I would love to.

15 So, I think there is a couple of baseline
16 things to know, and then like not what the competing
17 forces were.

18 First, gold's been extracted out of the
19 ground for since the beginning of time. That being
20 said, operating a mine, initiating that process, et
21 cetera, is an arduous process that requires a lot of
22 capital, it requires a lot of red tape, even like

1 environmental impact, rehabilitation. Has to be
2 solidified with the Government; right?

3 Now, in this specific case, I don't have the
4 details in the top-of-mind, but those places where the
5 gold comes from, that go through all these processes
6 and approved by the State, very easily after the
7 seizures were still producing the same legitimate gold
8 before, during, and after those events that took
9 place.

10 So, like how is it that a tiny fraction is
11 an issue, but the rest is not, is a fantastic
12 question, and one that I ask myself. That's where the
13 whole competing interests part, I think, comes in,
14 where--why were these flagged; right? If the
15 Providence--on the documents, on the seizure,
16 Immobilization documents, it is says, hey, we stopped
17 these to make sure that the tributary stuff and the
18 export stuff is in line.

19 MR. DÍAZ-CANDIA: I don't think he
20 understood the issue.

21 THE WITNESS: No?

22 MR. DÍAZ-CANDIA: But I don't want to stop

1 him from saying whatever he wants to say.

2 PRESIDENT McRAE: I don't think we should
3 interrupt the Witness.

4 ARBITRATOR KNIEPER: In addition, I have the
5 impression I follow. I mean, perhaps it doesn't see
6 on my face, but I have the impression I follow.

7 MR. DÍAZ-CANDIA: But what I asked him, with
8 your permission, is how 17 million compares to
9 1.3 billion.

10 ARBITRATOR KNIEPER: But that is your
11 question. My question was a little bit different.

12 THE WITNESS: So, in like those competing
13 forces, what would cause like these specific? In that
14 time frame--right?--from 2014, if you look back 10
15 years--right?--the price of that commodity of an ounce
16 of gold and it takes up so little space; right?
17 Tripled in value. There is more companies like being
18 registered to do this, and that culminates with kind
19 of like this price peak, Kaloti came into the market
20 with a completely different strategy, a completely
21 different like perspective on the market instead of
22 doing like almost a price-fixing where you guys sell

1 to me, I'm the only one and I'm your only choice and
2 I'm only going to pay you that. The market kind of
3 opened up, a lot more mines became viable when the
4 price passed \$1,000 an ounce, which was like a year or
5 two prior. And then those things all lined up, then
6 Kaloti came into the market. There was a lot of
7 attention on us for taking a nice chunk and full
8 intention like intentions to take a quarter of the
9 country's business compared to the incumbents.

10 Again, we're very by the book. I don't want
11 to speculate. I think the World Bank--it's in my
12 statement--has put out some material on corruption in
13 the SUNAT. I think that came out two months before
14 the seizure. So, like, new player into the, like,
15 building a strong business on the ground in Perú,
16 coupled with things that we would never participate
17 in, put us in a peculiar situation, that doesn't
18 really align with the fact that very likely those
19 places are still producing the same legitimate gold as
20 being exported out of the country in the same manner
21 as before. It's just timing, market conditions, wrong
22 place wrong time kind of situation.

1 Like, that's my personal perspective. It's
2 not something that I could say that's what it was, but
3 all things remaining the same, they're still the sixth
4 largest producer of gold in the country. They, as a
5 country, have their checks and balances for how that's
6 extracted, how it's commercialized, how that's traded.
7 Those things remain unchanged.

8 So, if you ask me like what makes those
9 different, I would say that it was the starts aligned
10 for us in those respects--right?--those outside
11 uncontrollables.

12 ARBITRATOR KNIEPER: Thank you very much.

13 THE WITNESS: Of course.

14 ARBITRATOR KNIEPER: And thank you for your
15 indulgence.

16 PRESIDENT McREA: Thank you very much. I
17 must admit I wish I had been in a seminar with
18 Professor Knieper as a student, but thank you very
19 much for your testimony, Mr. [REDACTED]. And that brings
20 an end to the process for today.

21 (Witness steps down.)

22 PRESIDENT McRAE: We are starting

1 tomorrow--before we do that, do either Party have any
2 issues they wish to raise at the present time?

3 MR. DÍAZ-CANDIA: No, just to let you know
4 that Ms. [REDACTED] is here if you want to start, if not,
5 we'll start tomorrow.

6 PRESIDENT McRAE: Nothing we will raise, so
7 we will suspend the Hearing at the moment and start
8 again tomorrow at 9:30 again, and I think it's the
9 Witness is Ms. [REDACTED].

10 Nothing further? So, the Hearing is
11 suspended.

12 (Whereupon, at 5:14 p.m., the Hearing was
13 adjourned until 9:30 a.m. the following day.)

POST-HEARING REVISIONS
CERTIFICATE OF REPORTER

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

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



DAVID A. KASDAN