

1 MR. THOMAS: You should have seen the long one.

2 [Laughter.]

3 PRESIDENT LAUTERPACHT: Mr. Kesler, we begin by asking you
4 please to subscribe to the declaration in front of you. Would you mind
5 reading it?

6 MR. KESLER: I solemnly declare upon my honor and
7 conscience that I shall speak the truth, the whole truth, and nothing
8 but the truth.

9 PRESIDENT LAUTERPACHT: Thank you.

10 Mr. Thomas?

11 MR. THOMAS: Thank you, Mr. President.

12 Whereupon,

13 GRANT KESLER

14 was called as a witness and, having first solemnly declared, was
15 examined and testified as follows:

16 CROSS-EXAMINATION

17 BY MR. THOMAS:

18 Q Mr. Kesler, perhaps you could put your three witness
19 statements in front of you.

20 PRESIDENT LAUTERPACHT: What did you ask him just then?

21 MR. THOMAS: I asked him to have his three witness
22 statements in front of him.

1 PRESIDENT LAUTERPACHT: Now, please, Mr. Thomas, could you
2 take pains, when referring to documents, to make sure we've got them in
3 front of us so that we can follow you more easily.

4 THE WITNESS: I certainly will. I believe that every
5 document I'll be referring to is contained--

6 PRESIDENT LAUTERPACHT: The witness statements are in here,
7 are they?

8 THE WITNESS: Yes.

9 PRESIDENT LAUTERPACHT: Thank you.

10 BY MR. THOMAS:

11 Q Mr. Kesler, maybe we could begin with a point of
12 clarification. Would you refer to Exhibit 70 of your binder which has
13 been placed beside you? Exhibit 70. We're being shown 17.

14 Do you recognize that document?

15 A It's barely readable.

16 Q It's a letter to shareholders on Metalclad Corporation
17 letterhead; is that correct?

18 A I wouldn't say so.

19 Q Is it a letter to shareholders?

20 A Those words are readable, yes.

21 Q All right. And on the bottom of the second page, would you
22 look at the second page, the bottom left-hand corner?

1 A Yes.

2 Q And it says, "Signed, Grant Kesler." Do you see that?

3 A I do.

4 Q All right. Would you go back to the first page, the second
5 full paragraph? I'm going to read it to you since I can read it. It
6 says, "Without a doubt, the most significant event to occur this past
7 year for Metalclad is the completion of the first state-of-the-art
8 hazardous waste treatment facility and confinement ever build in
9 Mexico." Do you see that?

10 A Yes.

11 Q And this document appears to us to be dated March 6, 1995.
12 Now, if you look at the second page, the 5 is written there, but it's
13 our understanding that it was dated that date. Can you confirm that?

14 A I can't.

15 Q Okay.

16 A That does seem reasonable.

17 Q Right. And if we're mistaken, would you have your counsel
18 instruct the Tribunal later on?

19 A Certainly.

20 Q All right. So two days ago, Mr. Kesler, the President
21 asked your counsel, Mr. Pearce, when Metalclad completed construction
22 of the landfill, and I take it that you would agree that since this

1 letter to shareholders dated March 6, 1995, states that it has been
2 completed prior to that time, that you would agree that the
3 construction had been completed; is that correct?

4 A No.

5 Q Okay. Let's turn, then, to exhibit--

6 A May I explain that?

7 Q You can explain it afterwards in your re-examination.

8 A Okay.

9 Q Let's take a look at Exhibit 60, then, please. This
10 document, Mr. Kesler, is a translation of an advertisement which was
11 placed in a local newspaper called El Heraldo on March 11, 1995. And
12 it's--

13 A I would disagree with that, but go ahead.

14 Q You can correct me, again, in your re-examination, if you
15 wish to. I'm instructed--and the Spanish version is right behind it--
16 that the newspaper advertisement states that El Confine, industrial
17 landfill and integral treatment of controlled waste, commenced
18 operations yesterday. So that would be a reference to March 10, 1995;
19 is that correct?

20 A Yes.

21 Q All right. Now, would you please turn to your third
22 witness statement--

1 MR. PEARCE: Mr. Chairman, may I request, please, that they
2 refer us to other than just a tab in the witness book, the precise
3 piece of evidence that they're referring to and where it is? Is it a
4 counter-memorial exhibit or some other kind?

5 MR. THOMAS: What we've done, Mr. Pearce, is a table of
6 contents--do you have it?--which has a reference to where the exhibits
7 are from. If you don't have it, I'll give you mine and that will
8 expedite things because I don't need it.

9 PRESIDENT LAUTERPACHT: Well, this one, for example, Mr.
10 Thomas, does not have a reference. This is Exhibit 60 you asked us to
11 look at, and it merely says Metalclad press release, March 11th,
12 without saying whence it was derived.

13 MR. THOMAS: Mr. President, that is from the record. We'll
14 provide the appropriate reference.

15 PRESIDENT LAUTERPACHT: It says Exhibit 96 at the top, but
16 it doesn't say Exhibit 96 to what.

17 MR. THOMAS: We'll clarify that, Mr. President.

18 BY MR. THOMAS:

19 Q Could you please turn to paragraph 40 of your third witness
20 statement?

21 PRESIDENT LAUTERPACHT: Where is that, please?

1 MR. THOMAS: This is the third statement of Mr. Kesler,
2 which was filed after the Tribunal gave him permission to do so prior
3 to the commencement of this oral hearing.

4 PRESIDENT LAUTERPACHT: But that's not included in this
5 volume?

6 MR. THOMAS: You should--it's not included, sir. Perhaps
7 Mr. Escobar could assist until the--

8 PRESIDENT LAUTERPACHT: Is that the one which is 29 July
9 '99?

10 MR. THOMAS: I believe so.

11 Yes, it is, sir. Do you have it, sir?

12 PRESIDENT LAUTERPACHT: Yes, thank you.

13 BY MR. THOMAS:

14 Q And you have it, Mr. Kesler?

15 A I do.

16 Q Would you please refer to paragraph 40 -- [tape ends.]

17 Do you have it?

18 A I do.

19 Q Yes. At the bottom of that first paragraph, you refer to a
20 1993 diary where certain events took place. Do you see that language?

21 A I do.

22 Q Yes. Did you bring your diaries to Washington, D.C.?

1 A No.

2 Q Did you rely upon them to prepare your testimony?

3 A No.

4 Q You relied upon them to prepare this testimony?

5 A Yes.

6 Q But you did not rely upon them to prepare the rest of your
7 testimony?

8 A What do you mean, the rest of my testimony?

9 Q Your other witness statements.

10 A I'm not sure that I did. I may have looked at them from
11 time to time. Indeed, I do recall that on occasion or two when trying
12 to find a date, I did refer to my diaries, yes.

13 Q All right. Thank you.

14 PRESIDENT LAUTERPACHT: Can you just tell me what paragraph
15 we're at, please?

16 MR. THOMAS: Paragraph 40.

17 BY MR. THOMAS:

18 Q Mr. Kesler, your third witness statement at paragraph 2
19 reaffirmed your earlier declarations that were provided with the
20 memorial and with the reply; is that correct?

21 A I believe so, yes.

1 Q And your view is that everything in your three statements
2 is true?

3 A Yes. You'll recall I did correct a couple of errors that
4 was made in the first declaration in the second.

5 Q Yes.

6 A But taking that into account, yes, I reaffirm all three of
7 them.

8 Q Okay. And you drafted your statements with care, I take
9 it.

10 A Reasonable care.

11 Q Well, did you draft them with care or not? This is an
12 important proceeding.

13 A I did.

14 Q You did. And did you review the statements of other
15 witnesses who provided statements on behalf of Metalclad?

16 A I did.

17 Q Did you review all of them?

18 A I believe at one time or another I did review them all.

19 Q Could you be more precise? Did you review them all or not?

20 A I believe that I did.

21 Q Okay. And to the best of your knowledge, the statements
22 that are contained in those witness statements are true?

1 A I have to let the other witnesses speak for themselves.

2 Q All right. And you reviewed the claimant's pleadings
3 before they were filed?

4 A I believe in every case I not only reviewed them, I
5 participated in the preparation of them.

6 Q So you approved of the memorial as it was filed?

7 A I did.

8 Q And you approved of the reply as it was filed?

9 A Yes, I did.

10 Q And is it your evidence that Metalclad's statements to the
11 Mexican authorities were true?

12 A Yes.

13 Q And is it your evidence that Metalclad fully disclosed the
14 nature of its difficulties in San Luis Potosi to the United States
15 Embassy?

16 A I believe we did insofar as we deemed it important. In
17 other words, there were clearly issues, things going on that weren't
18 relevant to them assisting us. So--nor were they interested in the
19 time and energy that it would have taken to go beyond the level of
20 understanding necessary to represent our interests.

21 Q All right. But you believe that you were forthcoming?

22 A I do.

1 Q And your statements to them were true?

2 A I believe so.

3 Q Yes or no?

4 A Yes, I believe they're true.

5 Q All right. And your filings with the United States
6 Securities and Exchange Commission were true and accurate?

7 A Yes, sir.

8 Q All right. And you believe that you've been forthcoming
9 with this Tribunal?

10 A I certainly do.

11 Q Just to clarify, you did sign the company's annual reports
12 filed with the SEC for the years 1991 to 1996?

13 A Not only did I sign them, but I assisted in the preparation
14 of them and take responsibility for them.

15 Q Right. Thank you.

16 Just to clarify one other point at the beginning, Mr.

17 Kesler, you have a personal financial interest in the outcome of this
18 proceeding, do you not?

19 A I certainly do.

20 Q Yes, and you have a compensation agreement with the company
21 which entitles you to a 2.25 percent percentage of any award or
22 settlement that might emanate from this proceeding?

1 A That is correct.

2 Q That's correct. I would like to discuss the origin of your
3 Mexican projects, Mr. Kesler. Would you turn to paragraph 40 of your
4 witness statement?

5 A Which one?

6 Q Your third witness statement.

7 A I have it.

8 Q And at paragraph 40, you state that your first connection
9 with Mexico came through and because of Reed Warnick. Reed Warnick is
10 a neighbor of yours in Salt Lake City, Utah?

11 A Yes, he is.

12 Q Okay. Now, I want to just review some basic dates with
13 you. You acquired control of Metalclad on February 28, 1991?

14 A I was a minority stockholder. I had a significant
15 investment in Metalclad that was effectuated either February 28 or
16 March 1, 1991, yes.

17 Q And you became president and chief executive officer of the
18 company on June 1, 1991?

19 A That's also correct.

20 Q That's correct. Now, at the same time as you became
21 involved in Metalclad--sorry, just to clarify, you were also a member

1 of the board of directors of Metalclad at that time, as soon as you
2 acquired your interest?

3 A I believe I joined the board even before my investment was
4 made in February 1991.

5 Q In fact, in February, before you acquired the interest, you
6 became a director?

7 A I believe that's correct.

8 Q That's right. Now, whilst you were becoming involved in
9 Metalclad, there was another company called Environ Technologies, Inc.,
10 which was being established around the same time. That's right?

11 A It was earlier. It began as a partnership and later
12 matured into a corporate form. But, yes, the individuals involved in
13 Environ predated my involvement in Metalclad.

14 Q It began as a partnership. Who were the members of the
15 partnership?

16 A Originally, it was Reed Warnick, Terry Douglas. I believe
17 those were the two initial partners.

18 Q Anyone else?

19 A No.

20 Q No. You weren't involved in that partnership?

1 A Later on we became involved in that partnership. Both Ron
2 Helm--I mean, Ron Robertson, excuse me, and I became partners in that
3 enterprise and then later incorporated.

4 Q Actually, in fact, the company was incorporated on May 21,
5 1991, by Mr. Warnick; isn't that the case?

6 A That's probably true.

7 Q We can confirm that. Let's take a look at Exhibit 1.

8 A Is that in--

9 Q Exhibit 1 in the large binder that I've given you.

10 A Yes, I see those articles of incorporation, and the date
11 is--

12 Q If you look at the last page--

13 A May 22nd, is that?

14 Q The last page, it's executed on May 21, 1991. Do you see
15 that, the last "in witness whereof"?

16 A Yes, and I also notice these gentlemen's wives are also
17 part of it. I neglected to mention they're also--

18 Q That's right. So the incorporating shareholders of Environ
19 Technologies on May 21, 1991, were Mr. Douglas, Mr. Warnick, and their
20 respective spouses. That's correct?

21 A Yes.

1 Q Yes. You actually became a shareholder of this company on
2 July 17, 1991; isn't that right?

3 A The company--yes, I believe you're correct, yes.

4 Q All right. Now, the purpose of Environ Technologies--I'll
5 refer to it as ETI as well--was to enter into a joint venture agreement
6 to construct a hazardous waste incinerator in San Luis Potosi; correct?

7 A That was one of the purposes, yes.

8 Q That was the first purpose.

9 A I would say that's one of the purposes. The idea from the
10 beginning was to create a business of collecting, treating, and
11 disposing of hazardous waste, and the development of an incinerator
12 certainly was one of the early technologies that we looked at, yes.

13 Q We'll get on to the subsequent technology that you became
14 involved with.

15 Now, in the end of July, July 25th and July 26th, the joint
16 venture agreement was established to create this first company, and the
17 joint venture--that's correct?

18 A Which company are you referring to?

19 Q Eco Administracion, July 25th, 26th, 1991.

20 A I assume so. Can you help me with the date there? Have
21 you got a document?

22 Q Let me just--

1 A I'm not disputing what you're saying but--

2 Q I tell you what. What I'll do, Mr. Kesler, is I'll have
3 one of my assistants make a note of that, and we'll provide a document
4 to you to confirm that. You can correct--

5 A No, I'll take your word for it.

6 Q You can correct me if I'm wrong.

7 Now, this company, as I understand it, was going to have a
8 51 percent interest held by the Mexican group of investors; is that
9 correct?

10 A I believe it started out 49 percent U.S., 51 percent
11 Mexican, yes.

12 Q Right. And the 49 percent was held by Environ
13 Technologies; is that correct?

14 A I believe that's also true.

15 Q That's right. Now, on August 11, 1991, the company was
16 incorporated; is that correct?

17 A The company, Eco--

18 Q Eco Administracion, the company contemplated by the joint
19 venture agreement--

20 A I'll accept your date.

21 Q Okay. And three months later, you and your fellow
22 shareholders in Environ Technologies, Inc., exchanged your shares in

1 ETI for Metalclad stock; is that correct? November the 20th, 1991, is
2 the date.

3 A I'll accept your date and confirm that indeed there was an
4 exchange of stock between--is it ETI and Eco Administracion?

5 Q Well, what you did was--there were four shareholders of
6 ETI: Mr. Warnick--correct?

7 A Yes.

8 Q Mr. Douglas?

9 A Yes.

10 Q Mr. Robertson?

11 A Yes.

12 Q And yourself?

13 A Yes.

14 Q And the shareholders of ETI exchanged their shares in that
15 company for shares of Metalclad stock; correct?

16 A Okay. Yes, now--you're--I'm--you're exactly correct.

17 Q That's right. And in that exchange agreement, that stock
18 exchange agreement, Metalclad ended up issuing 1,180,000 shares of its
19 stock in exchange for the shares which ETI shareholders conveyed to it;
20 correct?

21 A That is true.

1 Q And of those 1,180,000, you received 840,000 of those;
2 correct?

3 A That is correct.

4 Q Mr. Robertson received 140,000; correct?

5 A Yes, he did.

6 Q And the other two investors, Mr. Douglas and Mr. Warnick,
7 they both received 100,000 shares each; correct?

8 A That's correct, and I believe they were also issued 40,000
9 options at the same time.

10 Q Okay.

11 A I'm not positive about that, but I know it was meant to be
12 somewhat equal.

13 Q Right. Okay. Now, I checked this out by looking at one of
14 our expert's report, the expert report of Dr. Mark Zmijewski, from the
15 University of Chicago, and if you wish to verify it--I think you'll
16 probably know this off the top of your head, but if you wish to verify
17 it, it's Appendix D at page 11 to Dr. Zmijewski's report, Mr. Pearce.

18 I'm instructed that Metalclad's shares were trading at that
19 point at about \$2.87. Does that sound about right to you?

20 A I'll accept your representation.

21 Q Okay. So this exchange of shares at the then trading value
22 of Metalclad's stock was worth about \$3.4 million to the company?

1 A I would disagree.

2 Q That's incorrect?

3 A That's incorrect.

4 Q Well--

5 A It's incorrect because the shares that were issued in the
6 exchange were not free trading shares. They couldn't be sold. So
7 there was no market for those shares.

8 Q Actually, Mr. Kesler, 400,000 of those shares were put in
9 escrow; correct?

10 A I don't recall that.

11 Q Okay. Well--

12 A Four hundred thousand of--

13 Q According to the stock exchange agreement, 400,000 shares
14 of Metalclad's stock was put in escrow.

15 A I'm sorry. I don't dispute it, but I don't recall why and
16 I don't recall that fact. But the shares that were given were
17 restricted. I just wanted to make that point.

18 Q Okay. Perhaps I can refresh your memory. They were put in
19 escrow because there were some performance requirements that it was
20 necessary for the company to actually begin to construct the
21 incinerator in San Luis Potosi before those shares could be taken out
22 of escrow. Does that refresh your recollection?

1 A I'm still a little vague on it, but I accept your
2 representation on it.

3 Q Okay. Now--

4 PRESIDENT LAUTERPACHT: Mr. Thomas, I don't want to
5 interrupt the flow of your cross-examination, but I'm finding it
6 difficult to see how it relates to the issues in the case.

7 MR. THOMAS: Mr. President, I think I'm entitled to develop
8 the themes of my case by laying down certain basic facts, and I think
9 you'll see that they will begin to come together quite soon, actually.

10 PRESIDENT LAUTERPACHT: All right. Good.

11 MR. THOMAS: Thank you.

12 BY MR. THOMAS:

13 Q Now, would you look at Exhibit 63, please, Mr. Kesler, in
14 the large book of exhibits? This is a stock exchange agreement.

15 A I have it in front of me.

16 Q Yes. Could you look at the financial statement at the back
17 of that agreement that's stated to have been dated as of November 15,
18 1991.

19 A Yes.

20 Q And I see under the liability section that there's two
21 lines of particular interest. One is consulting fees due officers for
22 \$200,000. Do you see that?

1 A Yes, I see it.

2 Q And underneath that I see advances from Metalclad
3 Corporation for \$402,281.71. Do you see that?

4 A I see that.

5 Q So is it correct for us to assume that in the period
6 leading up to the acquisition of ETI by Metalclad that Metalclad was
7 advancing funds to ETI?

8 A I believe so, yes.

9 Q Right. Okay. Now, would you please refer back to Exhibit
10 2. This is a note from the company's financial statement filed with
11 the SEC for the year ending December 31, 1991. And would you look down
12 at the bottom of the page at paragraph 4?

13 A Yes.

14 Q Do you see that?

15 A I do.

16 Q Okay. And I'll just read it out. "In November 1991, the
17 company acquired 100 percent of the common stock of Environ
18 Technologies, Inc., ETI, by issuing 1.18 million shares of its common
19 stock. Subsequent to the acquisition, the name of ETI was changed to
20 Eco Metalclad, Inc." Do you see that?

21 A I do.

1 Q It then goes on to say, "The previous shareholders of EMI
2 included two shareholders of the company. Because of the related-party
3 nature of the transaction, the assets and liabilities of EMI"--that's
4 Eco Metalclad; correct?

5 A It is.

6 Q Yes. "...on the date of acquisition which were
7 insignificant have been recorded at predecessor cost." Do you see
8 that?

9 A I do.

10 Q That was a statement by Metalclad's auditors at the time?

11 A That is correct.

12 Q Okay. Now, Mr. Kesler, would you turn to paragraph 47 of
13 your third witness statement?

14 A Yes?

15 Q That paragraph of your witness statement--that's paragraph
16 47, Mr. President--involves a discussion of this ETI transaction; is
17 that correct?

18 A Yes. It refers to it, certainly, and explains it.

19 Q Right. And as I understand it, you explain that a large
20 number of Metalclad's shares that were issued to you in the ETI stock
21 exchange agreement really had nothing to do with ETI.

22 A That is absolutely correct.

1 Q That's right. In fact, you had had a dispute with the
2 company when you had acquired your shareholding interest in Metalclad;
3 is that correct--or after you acquired your share--

4 A That's--it was after I acquired my interest in the company.

5 Q Right. And you explain in the last sentence of that
6 paragraph 47 that this was a way in which the whole transaction could
7 become non-taxable; is that correct?

8 A That's exactly what I say.

9 Q So 700,000 of the 840,000 shares you received were related
10 to a separate matter that had nothing to do with ETI?

11 A That is correct.

12 Q Okay. And you explain this transaction, Mr. Kesler, by
13 saying that misrepresentations had been made to you about the company
14 prior to your purchase of your stock; is that correct?

15 A I think what I say is I was displeased with the
16 representations that were made.

17 Q Actually, you say more than that.

18 A Maybe that's a distinction without a difference, but,
19 clearly, I was not happy with what I found after I got personally
20 involved in the company.

21 Q Right. In fact, you were extremely displeased with the
22 president of the company and displeased--

1 A Enough so that I fired him, yes.

2 Q And displeased with the representations he made about the
3 company prior to your purchase of the stock?

4 A That's absolutely true.

5 Q Okay. In connection with those problems, Mr. Kesler, did
6 you retain counsel?

7 A Yes. We had counsel--yes, we did.

8 Q And did you file suit against the company?

9 A No.

10 Q You didn't?

11 A It wasn't necessary since we came to this agreement.

12 Q All right. So the decision was taken that as redress for
13 your displeasure with the misrepresentations you should be entitled to
14 an extra 700,000 shares of Metalclad--

15 A No, I didn't say misrepresentation, but without quibbling,
16 we had a dispute and it was resolved by the issuance of additional
17 shares.

18 Q Okay. Could you take a look at Tab 3, please, of the large
19 binder? This is a press release which was issued on November 26, 1991-

20 -

21 A Well, not really. What this is is an extract by Dow Jones.

22 Q Okay.

1 A Sometimes they will reproduce the entire press release, and
2 that may be the case here. Oftentimes, they will redact certain
3 portions and issue what they believe is newsworthy.

4 Q Okay.

5 A Just with that--

6 Q All right. So I'll instruct you that I've reviewed the
7 press release, and I see no mention of the fact that 700,000 of the
8 840,000 shares had--that had nothing to do with the ETI transaction was
9 disclosed in this--in what's reproduced here.

10 A I'll accept your representation.

11 Q Yes, and you're indicating that it is a possibility that it
12 might have been stated by Metalclad in the press release?

13 A Did I say that?

14 Q No. I'm asking you whether--

15 A No, I don't remember saying that.

16 Q Okay. So you didn't tell the investing public that 700,000
17 shares were related to your own separate dispute?

18 A I don't believe we ever made public reference to even the
19 settlement of the dispute, or the existence of it.

20 Q I see. Okay. Now, if you look at the end of that--the
21 second to the last page of that press release, Mr. Kesler, I'd like you
22 to refer to the last paragraph just above the summary of financial

1 information. Do you see that? It says, "Eco expects to finalize an
2 agreement in mid-December with Molten Metal Technology, Inc."

3 A I see the paragraph, yes.

4 Q Right. Regarding the licensing of its new molten metal
5 bath technology for disposing of toxic waste materials. Do you see
6 that?

7 A I do.

8 Q Right. Now, you were quite a proponent, as I understand
9 it, at the time of the apparent commercial value of Molten Metals
10 Technology?

11 A Well, along with others in the company, yes. I thought it
12 was extremely worthwhile.

13 Q Right. It was revolutionary, and the reason was that it
14 took hazardous waste and it would, through its processing, create
15 usable products; is that correct?

16 A Not in the case of a commercially operated MMT hot metal
17 bath, but the technology itself outside of a use within the hazardous
18 waste industry had that capability.

19 Q Right. Okay. Would you please refer to Tab 64 of the
20 large binder?

21 A Bear with me.

22 Q I will.

1 [Pause.]

2 THE WITNESS: Tab 64 you said?

3 BY MR. THOMAS:

4 Q Yes, I did.

5 A I have it.

6 Q Yes. This is a letter which is dated December 6, 1991, and
7 it's addressed to Engineer Jorge Hermosillo Silva. He was one of the
8 Mexican investors in Eco Administracion; correct?

9 A He was the director-general as well of Eco Administracion.

10 Q And if I turn to the second page, I see that it appears to-
11 -that's not your signature. Signed on your behalf?

12 A That was signed by my secretary on my behalf.

13 Q Okay. Now, this discusses the possibility of a
14 relationship with Molten Metal Technologies; is that correct?

15 A It does.

16 Q And I'd like to just read out paragraph 3 to the Tribunal.

17 A "It is extremely important that our agreement with MMT be
18 split into two parts: one for San Luis Potosi and one for everywhere
19 else. The reason we did not agree to give Metalclad anything except
20 San Luis Potosi is we want to keep the potential of MMT to ourselves,
21 as I believe it will have enormous value in the future."

1 Q Do I understand this to be suggesting to Mr. Hermosillo
2 that the two of you had set up a separate company that would hold the
3 rights for MMT technology outside of the Santa Maria del Rio facility?

4 A We had been talking about it.

5 Q Right.

6 A Quite frankly, this was one of our really bad ideas.

7 Q Did you seek counsel before you proposed this to Mr.
8 Hermosillo?

9 A No. None of it ever really came into fruition.

10 Q You were a practicing lawyer for some years, were you not?

11 A Yeah, 1970 to 1975.

12 Q But you've held yourself out in your second witness
13 statement as being knowledgeable about securities law matters, for
14 example?

15 A I've, because of what I do, had to maintain a pretty
16 distinct familiarity with the securities laws in what I'm doing.

17 Q Okay. And I take it that you were knowledgeable about
18 basic corporate matters as well?

19 A Yes, I would admit that, yes.

20 Q Did the question arise in your mind as to whether or not
21 there might be a question of fiduciary duty to the company, to
22 Metalclad here when you wrote this correspondence?

1 A No, not at the time I wrote this, because this was written
2 to try to encourage Mr. Hermosillo to behave himself. So there's
3 hyperbole in all of the things I say in this letter as a way to try to
4 convince him to stay with--stay the course and not be difficult.

5 Q When you use the word "hyperbole," Mr. Kesler, could you be
6 more precise? Are there mistake-lettes in this letter?

7 A No. I think it's just a matter of emphasis.

8 Q All right.

9 A I was trying to encourage Jorge to stay the course, that
10 there was great potential in the future. You know, maybe there was,
11 maybe there wasn't.

12 Q But there was great--it says, "We want to keep the
13 potential to ourselves."

14 A Well, we do, and we seriously did, yes.

15 Q But you didn't want to give it to Metalclad?

16 A We certainly wanted to reward Metalclad for what it had
17 done with respect to San Luis Potosi. But our vision of Molten Metal
18 Technology was way beyond just the use by Metalclad at the time.

19 Q And your vision extended to the idea of incorporating a
20 separate company which you and Mr. Hermosillo would control which would
21 be able to license that technology in Mexico; isn't that right?

1 A I don't know if it went that far. I don't know if our
2 thinking and our actions ever went that far. This was a bad idea. We
3 realized it at some point in time and forgot about it.

4 Now, how far we go, I don't recall, but I can tell you that
5 we never went forward along those lines.

6 Q All right. Mr. Kesler, in January of 1992, there was a
7 press conference held at the National Press Club in Washington, D.C.;
8 is that correct?

9 A There was.

10 Q That was January the 9th; correct?

11 A I'll accept your date there. I'm--

12 Q In fact--

13 A I won't dispute it.

14 Q Okay. In fact, we've--the respondent has put a transcript
15 of a videotape of that press conference on the record as well as the
16 videotape itself, which was supplied actually, I think, by Metalclad in
17 response to a request; is that correct?

18 A I'm not sure what you did, but I know it was videotaped and
19 I know we gave you a copy of it.

20 Q Right. All right, Mr. Kesler. And at that meeting in the
21 National Press Club, you announced that Metalclad had nearly obtained--

1 and I want to emphasize the word "nearly"--\$250 million in loan
2 financing from the Chase Manhattan Bank; is that right?

3 A We did.

4 Q Yes. And as events transpired, Metalclad did not pursue
5 the Chase Manhattan financing for \$250 million; is that correct?

6 A We pursued it for a while until it was clear we couldn't
7 meet the conditions of the Chase financing.

8 Q But you did announce it to the press conference on January
9 the 9th, 1992?

10 A In my opinion, we were very conservative. We indicated we
11 had a proposal for financing. Truthfully, we had a commitment for
12 financing. But we weren't able to solve all the issues required by the
13 commitment. There were conditions to the commitment that we weren't
14 able to satisfy, and so, yes, we never--we never concluded the Chase
15 Manhattan financing, but we did have a commitment for it and we did
16 announce, again, conservatively, at the press conference that we had a
17 proposal for financing.

18 Q Right. You also announced, Mr. Kesler, that up to ten
19 plants would be constructed in Mexico using Molten Metals Technology;
20 is that correct?

21 A That was the potential and that was the commitment. It was
22 a commitment for ten plants at \$25,000 per plant, which--

1 Q Twenty-five million, I think it is.

2 A I'm sorry. Thank you. Twenty-five million per plant.

3 That's where the \$250 million--

4 Q Okay.

5 A You know, Chase had done their homework on MMT and were
6 prepared to move forward. But we couldn't--we couldn't satisfy all the
7 conditions.

8 Q Right. But it was an exciting time. You were looking at
9 up to ten plants, and you were looking at the possibility of \$250
10 million in financing from Chase Manhattan. Is that correct?

11 A I would say it would be an understatement to say it was an
12 exciting time. We were heady with respect to our optimism about what
13 could be accomplished in Mexico, unrealistically so in hindsight.

14 Q Okay. In fact, the January press conference was followed
15 up with another announcement on February the 18th, 1992. This was the
16 announcement of a second Mexican project; is that correct? I'll refer
17 you to Exhibit 77. We've got these exhibits here, some additional
18 exhibits. Exhibit 77. Didn't we get them all in this book?

19 All right. I'll tell you what. I'll have to deliver that
20 exhibit to you.

21 A I'll accept your--I don't want to delay this. I'll accept
22 your representation of the date.

1 PRESIDENT LAUTERPACHT: We haven't got 77.

2 MR. THOMAS: Mr. Lauterpacht, there was a tremendous amount
3 of effort put in over the night to have these exhibits all assembled.

4 PRESIDENT LAUTERPACHT: I'm sure.

5 MR. THOMAS: We will ensure that the exhibits are complete.
6 Voila. Here we have them.

7 PRESIDENT LAUTERPACHT: Can we have them with holes next
8 time?

9 MR. THOMAS: Of course, sir.

10 BY MR. THOMAS:

11 Q If you can take a look at that, too?

12 A This is another extract, by the way.

13 Q Right. And it says at the beginning, "Metalclad
14 Corporation announced today a second joint venture to build, own, and
15 operate a state-of-the-art hazardous waste processing facility in Vera
16 Cruz, Mexico." That statement, I take it, was in your original press
17 release?

18 A I can't be sure. Some of our statements had headings and
19 some did not.

20 Q Let's drop down to the next paragraph. "The Vera Cruz
21 project solidifies Metalclad's foothold in Mexico's promising hazardous

1 waste processing industry." Do you recall whether that statement was
2 made in your press release?

3 A We were still pretty heady.

4 Q Right. Okay. Now, in fact, in April of 1992, you
5 announced a third Mexican hazardous waste project, and that was not in
6 the state of Vera Cruz. That was in the state of Tamaulipas, I
7 understand. Is that correct?

8 A I believe so.

9 MR. THOMAS: Right. And, Mr. President, I again apologize
10 for the lateness of this exhibit.

11 PRESIDENT LAUTERPACHT: Now, because they're not in--or are
12 they in the table of contents? They're not in the table of contents,
13 so we don't have a reference to their source.

14 MR. THOMAS: Mr. President, I can assure you that they are
15 taken from the record, and we will provide a fully complete table of
16 contents with all record references.

17 BY MR. THOMAS:

18 Q So this was April the 20th, 1992, the announcement of a
19 third joint venture. This time the name of the company was Eliminacion
20 de Contaminantes Industriales, S.A. de C.V. And according to this, Mr.
21 Kesler, do you see in the first paragraph it says that it's bringing

1 the number of joint venture Mexican corporations to pursue its toxic
2 and hazardous waste treatment business to three. Do you see that?

3 A I do.

4 Q Right. Okay. Now, just to confirm a couple of points,
5 both of these latter two projects were organized by Jorge Hermsillo;
6 is that correct?

7 A Let's see. 1992. He was the director-general, and I
8 believe of all three corporations.

9 Q Right.

10 A If that's what you mean.

11 Q Okay. And I just also wanted to confirm that you--it
12 turned out that your experience with Molten Metal was an unfortunate
13 experience; is that an accurate way to describe it? Their technology
14 ended up not working; is that right?

15 A I don't know if I would call it unfortunate. It was one of
16 those steps that we took that led to some pretty good things, but it is
17 true that they never achieved the ability to produce the commercial
18 operating technology that they represented that they could.

19 Q Right. If you look at Tab 66 in the large book, in fact,
20 you'll see a letter which is dated October the 28th, 1992, sent by you
21 to Mr. Ethan Jacks, who was vice president and general counsel of
22 Molten Metal Technology?

1 PRESIDENT LAUTERPACHT: What reference, please?

2 MR. THOMAS: It is Tab 66, sir.

3 THE WITNESS: Yes, I see it, and I recall the letter.

4 BY MR. THOMAS:

5 Q Right. And if you look at the bottom of page 2, I'd just
6 like to direct you to that. You set out your opinion that Molten Metal
7 has breached certain agreements, and then you say, "In addition to
8 being guilty of non-performance, we believe MMT is guilty of both
9 misrepresentations and omissions as follows: one, what was represented
10 as commercial viable technology is not." Do you see that?

11 A I see it.

12 Q "What was represented could be built in eight months or
13 less cannot." Correct?

14 A I see that as well.

15 Q "What was represented would cost one-quarter of kiln
16 technology cannot." Do you see that?

17 A I do.

18 Q So by April of--sorry. This is--yes, this is by April of
19 1992.

20 A This is October of 1992.

21 Q Yes, I'm sorry. I'm looking at your earlier statements
22 here. Go back to the bottom of page 1.

1 A Yes.

2 Q In the last sentence, it says, "By early April, it was
3 clear to all parties that MMT was not going to be able to perform as
4 the parties had contemplated." Do you see that?

5 A Yes, but that's not a reference to the three numbered
6 paragraphs below. That's--there was--at that point in time, we had
7 great confidence that Molten Metal Technology would be able to perform.
8 What we're--they kept delaying, and what we're referring to here is
9 something different than the misrepresentations referred to at the
10 bottom of the page.

11 Q Okay. And what you're saying is that by October you had
12 concluded that these three misrepresentations had been borne out in
13 fact; is that a fair statement?

14 A Yes. I'd say so.

15 Q Okay. Now, Mr. Kesler, would you turn to your first
16 witness statement that was filed in this proceeding?

17 A Sure.

18 MR. THOMAS: Mr. President, I have clean copies of these if
19 it's easier.

20 PRESIDENT LAUTERPACHT: Please.

21 MR. THOMAS: Mr. Davis is just passing those out.

22 BY MR. THOMAS:

1 Q I'd like you to take a look at the paragraph at the bottom
2 of the first page. Do you have that there?

3 A I do.

4 Q Could you read out the first two sentences to the Tribunal?

5 A "Our interest in Mexico began in the fall of 1991." Excuse
6 me. This is one of the statements I correct in the second witness
7 statement. You're aware of that?

8 Q Yes.

9 A Okay. "For the remainder of that year and 1992, we worked
10 on a project with some executives at Ford, Bacon & Davis, a German-
11 owned engineering firm, who wanted to build a hazardous waste
12 incinerator in San Luis Potosi, Mexico."

13 Q All right. And your correction was that this--your
14 interest actually began in the fall of 1990. I think you said that in
15 your--

16 A That's true.

17 Q --statement. So we'll make a--we'll change that to 1990
18 rather than 1991.

19 But, Mr. Kesler, we've just gone through the acquisition of
20 the ETI shares and Metalclad's 49 percent participation in Eco
21 Administracion; correct? We've just discussed that.

22 A Have we? I mean--

1 Q Yeah. Well, we discussed it--it took place in November of
2 1991; correct?

3 A Okay.

4 Q And then we've just looked at the announcement at the
5 National Press Club in January of 1992 where you said up to ten plants
6 would be--could be constructed in Mexico; correct?

7 A I don't know if we said that, but we had a commitment for
8 ten plants.

9 Q And in February of 1992, you announce your second joint
10 venture project in Mexico; correct?

11 A Yes.

12 Q And we just discussed your third joint venture project in
13 Mexico announced in April?

14 A Yes.

15 Q Now, Mr. Kesler, when I look at that statement that you
16 make in your witness statement, wouldn't it have been more accurate for
17 you to say that you and your fellow shareholders in Eco Administracion
18 wanted to build a hazardous waste incinerator in San Luis Potosi?
19 That's not accurate, Mr. Kesler.

20 A Now, what isn't accurate?

1 Q You say, "We worked on a project with some executive at
2 Ford, Bacon who wanted to build a hazardous waste incinerator." That
3 says the executives wanted to build a hazardous waste incinerator.

4 A No, this statement is absolutely true.

5 Q This is true. So you think that that is an accurate
6 representation of the fact that you joined with the two former
7 executives at Ford, Bacon to create Environ Technologies and become
8 shareholders in Eco Administracion; is that correct?

9 A The Ford, Bacon & Davis itself wanted to build a hazardous
10 waste incinerator in Mexico. That's what got us there.

11 Q Ford, Bacon was not involved in Eco Administracion, Mr.
12 Kesler; is that correct?

13 A They weren't involved as an owner. They were involved in
14 developing an interest to do a hazardous waste incinerator in Mexico.

15 Q Mr. Kesler, you did not disclose in this statement that you
16 were involved in the project as a shareholder, did you?

17 A This is my witness statement.

18 Q And you did not disclose that you were involved as a
19 shareholder in that company; correct?

20 A In which company? In all three?

21 Q In Environ Technologies, which became part of Eco
22 Administracion--I'm just asking you a simple question.

1 A My ownership and involvement is completely disclosed on the
2 public record and has been from day one. This is a witness statement,
3 Mr. Thomas.

4 Q Yes, Mr. Kesler, I'm asking you a simple question. I'll
5 pass on to the next one. I think you've answered the question, and
6 I'll move on.

7 Now--

8 PRESIDENT LAUTERPACHT: Mr. Thomas, when would it be
9 convenient for you to break?

10 MR. THOMAS: I can take a break now if you wish, Mr.
11 President.

12 PRESIDENT LAUTERPACHT: We'll do that, then.

13 MR. THOMAS: Thank you.

14 PRESIDENT LAUTERPACHT: We'll break for 20 minutes until
15 11:20

16 THE WITNESS: And I'm not supposed to talk to counsel or
17 anybody. Is that the rule?

18 PRESIDENT LAUTERPACHT: That's right.

19 THE WITNESS: Thank you.

20 MR. THOMAS: Or to take the materials out.

21 THE WITNESS: No, I won't touch them. I'm not even going
22 to leave.

T2A

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

[Recess.]

PRESIDENT LAUTERPACHT: We now resume the session. Please continue, Mr. Thomas.

MR. THOMAS: Thank you, Mr. President.

BY MR. THOMAS:

Q Mr. Kesler, you attended the July 6th procedural hearing, did you not?

A With this Tribune?

Q Yes.

A Yes, I did.

Q What's your understanding of the confidentiality of these proceedings?

A My understanding is that the proceedings of the Tribunal itself are confidential, but that my obligation to report to the investing public and the shareholders and institutions of Metalclad is not abated, and inasmuch as I have that obligation, I should fulfill it without revealing the deliberations of the Tribunal.

Q Okay. Who is Elgin Williams?

A Elgin is an officer of Metalclad Corporation. He's our director of investment relations.

Q And he's been attending the hearing this week?

A Parts of it, yes.

1 Q Mr. Kesler, I'm instructed that Mr. Williams is putting out
2 taped play-by-play descriptions of the proceedings and a number which
3 members of the public can phone to. Are you aware of that?

4 A No. If that's true, I'll stop it this instant.

5 Q Well, I'll give you the telephone number, Mr. Kesler. It's
6 949-719-1234.

7 PRESIDENT LAUTERPACHT: Who is this who's been doing this?

8 MR. THOMAS: Mr. Williams, a member of the Metalclad
9 delegation.

10 PRESIDENT LAUTERPACHT: I thought you said Elgin Reeves.

11 MR. THOMAS: Williams.

12 PRESIDENT LAUTERPACHT: Elgin Williams, I'm sorry.

13 THE WITNESS: That would be improper. If it's happened, I
14 apologize and I'll put a stop to it immediately.

15 BY MR. THOMAS:

16 Q Mr. Kesler, would you please turn to Tab 4 of the large
17 binder of exhibits? You testified at the outset that you were involved
18 in the preparation of the pleadings and in the--in fact, I think you
19 testified that you approved the memorial before it was filed. Do you
20 recall saying that?

21 A I did say that.

1 Q And if you look at paragraph 13, it's a discussion of your
2 first meeting with Mexican federal officials in October of 1992. Do
3 you see that?

4 A Yes.

5 Q And if you just go down about two-thirds of the way through
6 the paragraph, it says, "Metalclad officers had studied the hazardous
7 waste needs in Mexico with a view toward entering the market under
8 appropriate conditions." Do you see that sentence?

9 A Yes.

10 Q In fact, Metalclad had done much more than studied the
11 hazardous waste market, hadn't it?

12 A Yes.

13 Q It had announced three separate investment projects;
14 correct?

15 A Yes.

16 Q Mr. Kesler, your third witness statement, if you could
17 refer to that, please? I'd like you to refer to paragraph 28 of the
18 third statement. It's a discussion of your relationship with Mr. Jorge
19 Hermosillo. You testified before the break that Jorge Hermosillo was
20 the general director of the three Mexican projects; correct?

21 A Yes.

22 Q When did you first meet Mr. Hermosillo?

1 A I believe it would have been in 1990.

2 Q Okay. And if I take a look at page 28--paragraph 28,
3 rather, I see that you testified that at the beginning of your
4 relationship--and this is, I take it, through 1990 and 1991--it was
5 Jorge Hermosillo who was basically in charge of everything in Mexico.
6 Do you see that?

7 A He was the executive--

8 Q Do you see--

9 A I'm sorry.

10 Q Do you see it?

11 A I didn't see those exact words. That's why I was
12 equivocating. Where--

13 Q It's the second sentence. At the beginning of the
14 relationship, it was Jorge Hermosillo who was basically in charge of
15 everything in Mexico.

16 A I do see it.

17 Q That was your testimony. And in the last sentence, you
18 place the entire responsibility for everything done in Mexico was to be
19 done with and through Jorge Hermosillo.

20 A He was our man.

21 Q That was your testimony. Now, you go on to say, however,
22 that you had problems with Mr. Hermosillo. In paragraph 29, you say

1 that you needed to find a stronger, more capable partner than Mr.
2 Hermosillo and his associates; correct?

3 A Yes, and I think that's an understatement.

4 Q And you discovered a number of things that made us
5 uncomfortable; correct?

6 A Yes.

7 Q Now, in fact, you explicitly state later on some of the
8 things that made you uncomfortable, but could you just--for purposes of
9 clarity, you say, "Before too long..." How long? Six months? Two
10 months? Four months? How long did it take you to decide that there
11 were problems with Mr. Hermosillo?

12 A I believe we began to notice some things in the fall of
13 1991 when we introduced our first employee directly from the company
14 into Mexico. Part of that time we were relying completely upon Mr.
15 Hermosillo and his people, people he hired and people he was involved
16 with. But beginning in the fall of 1991, we sent one of our most
17 trusted people to work there and report directly to us. About that
18 point in time we started to get vibrations that not all was well.

19 Q All right. And you actually indicate that Mr. Hermosillo
20 was taking kickbacks from vendors when bills were paid. That's in
21 paragraph 29. Do you recall making that statement?

22 A I did make that statement.

1 Q And that obviously was a concern to Metalclad as well.

2 A It certainly was.

3 Q And when did you find out about the kickbacks?

4 A In a conversation with Mr. Hermosillo, when he objected to
5 the way we began to do some of our accounting, where we would pay
6 directly from corporate headquarters or through Mr. Manuel Garcia
7 Barragan, he wanted everything to go through him. And I inquired as to
8 why he was so insistent, and he said that director-generals in Mexico
9 customarily are entitled to receive a kickback when they pay a bill on
10 time or engage a vendor and make payment.

11 Q Okay. Now--

12 A So it was his own words to me that led me to believe that's
13 what he was doing.

14 Q Right. And do you recall, Mr. Kesler, when that
15 conversation took place?

16 A I don't.

17 Q 1991?

18 A No. It wouldn't be 1991. It would have been somewhat
19 later. But I'm not going to be able to tie down the exact date.

20 Q Okay. But is it fair to say that Mr. Hermosillo--you
21 considered him to be a dishonest man?

1 A Actually, he--the way he described it, that's just simply
2 the way things were done and we shouldn't take it as a badge of
3 dishonesty, and I think at first we probably agreed, hey, okay, if
4 that's what is done, that's what's done.

5 Q My question is not that. My question was: Was Mr.
6 Hermosillo dishonest?

7 A We didn't take that--

8 Q Taking kickbacks--

9 A We didn't take that statement by him or his explanation
10 that that's why he wanted money to flow through him as absolute
11 dishonesty. Indeed, the fact that he was disclosing this whole
12 arrangement to us probably made us feel like at least he was being
13 candid as opposed to trying to hide some kind of a kickback.

14 Q But you do testify that he did things that made you
15 uncomfortable?

16 A Yes, he did.

17 Q Okay. And you've also testified that you met him, you
18 think, back in 1990.

19 A Yes.

20 Q And you formally associated with him in July of 1991 when
21 you entered into the joint venture agreement?

22 A Correct.

1 Q July 25, 1991.

2 A That was the joint venture between--

3 Q Between ETI and Mr. Hermosillo's Mexican group of
4 shareholders to create Eco Administracion.

5 A Yes, that's correct.

6 Q Okay. Now, Mr. Kesler, would you refer to Exhibit 11.

7 This is an excerpt from the company's annual report for the year ending
8 December 31, 1992. At the bottom of the page of each of these pages,
9 the excerpt, page 15 I'd like you to refer to. It's the second page in
10 the exhibit. And at the top of the page, it refers to the convening of
11 the company's annual shareholders' meeting on November 13, 1992. Do
12 you see that?

13 A I do.

14 Q And I see that in the election of directors Mr. Hermosillo
15 was proposed and elected apparently on a slate. Do you see that?

16 A Yes, I do.

17 Q And he received the same number of votes as you received,
18 it looks like to me. Is that correct?

19 A I believe so.

20 Q Right. Now, why did you nominate and elect him to the
21 board of directors?

1 A Well, by November 1992, the relationship had developed to
2 the point where we wanted to limit Mr. Hermosillo's involvement in the
3 company to--

4 Q Which company?

5 A Metalclad.

6 Q In Metalclad.

7 A Or any of its subsidiaries.

8 Q He wasn't previously a director of Metalclad.

9 A No. But we wanted to limit his involvement in the
10 subsidiaries and in what they did for Metalclad to the obtaining of
11 permits and get him away from operational matters, leaving that to us
12 and to our system and the way we like to do things, and to bring him
13 onto the board was to give him a prestige and also, we hoped, a measure
14 of control over his own individual behavior.

15 Q And so, in other words, he had been acting as--he had been
16 the director-general or general director of the three companies, and
17 you wanted to get him away from the general director's responsibilities
18 into the permitting side of the business; is that right?

19 A We wanted to isolate his involvement to that of obtaining
20 permits.

21 Q Permits. Just to obtain permits. Okay.

1 Can you take a look at Exhibit 12, please? This is a
2 letter which is dated November 17, 1992, so it actually is a letter
3 subsequent to his election to the board of directors. Would you please
4 read that out to the Tribunal?

5 A Yes. "Dear Jorge: It is with great pleasure that I
6 announce to you the decision of the American group is that we cannot
7 accept your resignation as a general director of Eco Administracion"--

8 Q Excuse me. There was no "a" before "general director."
9 "As general director." Do you see that?

10 A I apologize. Do you want to read it? You'll do a better
11 job, believe me.

12 Q You go ahead and read it.

13 A All right. "It is with great pleasure that I announce to
14 you the decision of the American group is that we cannot accept your
15 resignation as general director of Eco Administracion and fully expect
16 that you will continue to work very hard until the day you die."

17 Q Please continue.

18 A "We sincerely appreciate all the work you have done and
19 things you are doing to protect our interest in Mexico. We look
20 forward to many successes together. We will try to help whenever we
21 can to the best of our ability, and we know you are doing the same. I

1 look forward to seeing you soon. Your friend, Grant S. Kesler,
2 President."

3 Q Now, Mr. Kesler, I take it you were sincere in what you
4 stated in this letter; is that correct?

5 A Absolutely. And I was also trying to be light and funny
6 with Mr. Hermosillo.

7 Q Mr. Kesler, the evidence is that during 1992 Metalclad made
8 three offers to purchase Mr. Hermosillo's shares; is that correct?

9 A I can't help you there. During 1992--

10 Q During 1992--

11 A --we made three offers?

12 Q Yes.

13 A I'm sorry.

14 Q May 19, 1992.

15 A May 1992?

16 Q May 19, 1992.

17 A You're going to have to help me here with the documents.

18 Q Have we got--we're just copying them. We'll come back to
19 this, Mr. Kesler, when we've got copies.

20 A I'm not trying to be evasive. You're just going to have to
21 help me with dates. This was a long time ago.

1 Q Sure. But Mr. Hermosillo testifies in this proceeding that
2 he didn't want to sell his shares to Metalclad. Are you aware of that?

3 A Yes.

4 Q Yes. Okay. Now, in fact, at the end of November 1992,
5 another one of the Mexican shareholders did sell his shares to
6 Metalclad; is that correct?

7 A At the end of 1992--

8 Q Yes.

9 A --one of the other Mexican shareholders--can you tell me
10 who that was?

11 Q Yes. That was Jaime de la Fuente.

12 A Okay.

13 Q If you look at Exhibit 13, you'll see the agreement between
14 Jaime de la Fuente and Metalclad--and Eco Metalclad. It's an agreement
15 which is actually--according to the last signature page, appears to
16 have been signed by you.

17 A Yes, I have it, and that's correct.

18 Q And in that agreement, Mr. de la Fuente conveyed to Eco
19 Metalclad his shares of Eco Administracion, the first investment;
20 correct?

21 A Yes.

1 Q And his shares is Descontaminadora, which was the second
2 investment?

3 A Correct, yes.

4 Q And his shares in Eliminacion, the third investment?

5 A That's also correct.

6 Q Right. And if I go back to your witness statement, your
7 third witness statement at paragraph 30, you testify that Jorge became
8 hostile and uncooperative, and you refer to the foundation documents of
9 your creating a deadlock. Do you see that in the second sentence of
10 paragraph 30 of your third statement?

11 A Yes.

12 Q Now, what you mean to say, Mr. Kesler, is that the shares
13 of the three Mexican companies were divided into two series; is that
14 right? Series A for the Mexican investors; is that correct?

15 A So far. Keep going.

16 Q And Series B for what was originally the American group,
17 what became Eco Metalclad; correct?

18 A And keep going.

19 Q Yes. And there were restrictions on the transfer of shares
20 outside of Series A to Series B?

1 A Well, if I'm not mistaken, there were also shares that were
2 held in an escrow that couldn't be voted by either party. So we built
3 in deadlock.

4 Q But if you take a look at Exhibit 39 in the large book, Mr.
5 Kesler, we've taken an excerpt from the relevant corporate document
6 which contains the restriction on transfer of shares.

7 A This is which corporation?

8 Q This is Eco Administracion.

9 A Help me with where you are.

10 Q In the middle of the page, under the title Capital Stock
11 and Shares. Do you see that? And underneath, about midway through the
12 page, it says, "The shares of the A or AA series will correspond to the
13 Mexican series and shall represent at all times that proportion of
14 capital stock that is reserved for Mexican investors. Thus, these
15 series shall only be acquired by Mexican investors, and the shares of
16 the B and BB series shall represent the remaining portion of capital
17 stock." Do you see that?

18 A I do.

19 Q All right. Now, you've testified that after Mr. de la
20 Fuente transferred his shares to Eco Metalclad, you held a meeting to
21 remove Mr. Hermosillo and replace him with a different general
22 director; correct?

1 A I did?

2 Q And--

3 A No. I'm asking: Did I?

4 Q Yes, you did. Paragraph 30 of your third witness
5 statement, in the middle of the paragraph. "When the stock had been
6 purchased"--that's a reference to Mr. de la Fuente--"we then notified
7 Mr. Hermosillo that we would be having a meeting"--

8 A I'm with you. You're correct.

9 Q --"in order to remove him and replace him with a different
10 director general." And this took place--this purchase agreement took
11 place six days after you wrote to Mr. Hermosillo that he should--he
12 would be the general director of Eco Administracion until the day he
13 died; is that correct?

14 A Yes.

15 Q You're aware, Mr. Kesler, of course, that Mr. Hermosillo
16 objected to that transfer of share; correct?

17 A He objected to the transfer of the shares from Mr. de la
18 Fuente to Metalclad.

19 Q Yes. And, in fact, he commenced a lawsuit against Mr. de
20 la Fuente in December of 1992.

21 A He did that, and also a criminal action against Manuel
22 Garcia Barragan.

1 Q Right, who was Metalclad's Mexico City legal counsel.

2 A That's correct.

3 Q And, in fact, Mr. Hermosillo also obtained an injunction
4 against the transfer of the shares; correct?

5 A No, I'm not aware of that. He may have, but I'm not aware
6 of it.

7 Q All right.

8 A You're referring to an amparo?

9 Q No. I'm talking about an injunction.

10 A I'm not familiar with that.

11 Q Fine. We'll come back to that.

12 Now, Mr. Kesler, I'd like to go back to Exhibit 11. During
13 the month of November, you elected Mr. Hermosillo as a member of the
14 board of directors of Metalclad Corporation, and I refer you to Tab 11
15 where we had the excerpts from the company's annual report. Do you see
16 that?

17 A Yes, I have it.

18 Q And as we saw before, on one page Mr. Hermosillo was listed
19 as having been elected by the shareholders. Do you recall that?

20 A Yes, I do.

21 Q And if you look at page 11, which is a listing of the
22 directors and officers of the company, his name is not there, is it?

1 A No, I think that's a list of existing directors.

2 Q Correct. No, that's the list of the directors who actually
3 served for the company. Correct?

4 A The existing, and then the next page are those proposed to
5 be directors for the next year.

6 Q All right. And would you look at the last page, page 26,
7 which is the signature page? There is no signature line for Jorge
8 Hermosillo on that--

9 A Nor should there be.

10 Q Because he was no longer a director.

11 A Because at this point in time he was not a director. This,
12 I believe, is just a report of the fact that he's going to become a
13 director.

14 Q But he didn't act as a director, did he, Mr. Kesler?

15 A Of course, he did. He came to board meetings. Of course,
16 he did.

17 Q Could you tell us what board meetings he attended?

18 A I can't, but I can remember with a degree of clarity seeing
19 him in the room. I mean, there's little doubt that--you know, we could
20 get you some minutes if you'd like, but I'm almost positive he attended
21 board meetings after his election as a director.

22 Q When was he expelled from the board, Mr. Kesler?

1 A He was never expelled. We came finally to an agreement
2 with him, I think in about May of 1993, wherein we purchased his
3 remaining shares in Mexican companies and said good-bye.

4 Q Mr. Hermosillo--his testimony is that he was ejected from
5 Eco Administracion's offices on your instructions in December of 1992.

6 A That's ridiculous.

7 Q You deny that?

8 A I--that's ridiculous. I do deny it.

9 Q All right.

10 A If you could see him, he's twice my size. That would be--
11 that's ridiculous.

12 Q No, I didn't say--I said his testimony is that you had him
13 ejected from the offices, not that you did it yourself but you had him
14 ejected from Eco Administracion. And you deny that.

15 A I absolutely deny that.

16 Q All right. But you don't deny his lawsuit against the
17 company, against Eco--

18 A I believe his lawsuit was against Mr. de la Fuente.

19 Q Would you please take a look at Exhibit 15? This is a
20 letter that your counsel, Mr. Bruce Haglund--he was counsel to
21 Metalclad Corporation?

22 A Was and is.

1 Q Was and is. And this is a letter dated February 11, 1993,
2 that is sent to Mr. Hermosillo, and it alleges various and sundry
3 allegations of improper conduct against Mr. Hermosillo. The first
4 bullet, do you see the first bullet? It says: Discussion of the
5 lawsuit filed by you against Environ Technologies, Inc., now known as
6 Eco Metalclad?

7 A I do.

8 Q And then you see: Discussion of your apparent intention to
9 subvert the business of Eco Administracion for your personal benefit.
10 Do you see that one?

11 A I do.

12 Q And discussion of the fiduciary duty you owe the company
13 with respect to the business of the company and Eco Metalclad?

14 A I see that as well.

15 Q And it goes on to invite Mr. Hermosillo to attend a meeting
16 of the board scheduled for February 22, 1993. Correct?

17 A Correct.

18 Q He did not attend that meeting, did he?

19 A I'm not sure.

20 Q Do you recall what the board did on February 22, 1993?

21 A I don't. I assume you're going to tell me we removed him,
22 but I don't recall.

1 Q Okay. Now, Mr. Kesler, you're aware that the respondent
2 has filed evidence in this proceeding of a stock exchange agreement
3 between a shareholder of Eco Administracion by the name of Lucia Ratner
4 and signed by you on behalf of Eco Metalclad?

5 A Yes.

6 Q And you're aware that Lucia Ratner is the wife of an
7 individual by the name of Humberto Rodarte Ramon?

8 A That's also correct.

9 Q And you're aware that Humberto Rodarte Ramon was a federal
10 environmental official in the state of San Luis Potosi in 1991?

11 A Through, I believe, September 1991, yes.

12 Q And you're aware that on August 11, 1991, Ms. Ratner, Mr.
13 Rodarte's wife, was made a shareholder of Eco Administracion?

14 A Yes.

15 Q And then in February of 1993, Ms. Ratner agreed to exchange
16 her shares of Eco Administracion stock for shares of Metalclad
17 Corporation stock; correct?

18 A That's correct.

19 Q And at the time that she entered into that agreement to
20 convey her shares in Eco Administracion to Eco Metalclad, her husband
21 had then taken the position of special adviser to the president of the
22 INE; correct?

1 A In February 1993, Humberto was special adviser to Sergio
2 Reyes Lujan, yes.

3 Q And the INE at the time was the relevant federal permitting
4 authority for environmental projects; correct?

5 A Yes.

6 Q Now, that agreement to exchange stock with Ms. Ratner was
7 signed by you; correct?

8 A Yes.

9 Q And that agreement contains a set of milestones whereby if
10 certain events take place, Ms. Ratner would be entitled to payments of
11 cash and/or shares of Metalclad's stock; correct?

12 A Yes.

13 Q And one of those events is the issuance of a federal permit
14 for the plant which you were planning to build at Santa Maria del Rio,
15 San Luis Potosi; correct?

16 A That is correct.

17 Q And that agreement which you entered into with Ms. Ratner
18 was dated February 24, 1993?

19 A I'll take your word for that.

20 Q And on February 26, 1993, the relevant federal permit was
21 issued by the INE; correct?

22 A I believe so.

1 Q That entitled Ms. Ratner to payment of 30,000 shares under
2 your agreement; correct?

3 A I'm going to take your word for the number. Yes.

4 Q And on April 16, 1993, you personally authorized your
5 Mexico City lawyer, Manuel Garcia Barragan, to pay Ms. Ratner an
6 additional \$10,000 in cash; correct?

7 A I did.

8 Q Now, you testify in your third witness statement, Mr.
9 Kesler, that you first met Mr. Rodarte Ramon in either February or
10 March of 1993. Is that right?

11 MR. PEARCE: Can you give us a paragraph reference, please?

12 MR. THOMAS: Paragraph 34, Mr. Pearce.

13 MR. PEARCE: Thank you.

14 BY MR. THOMAS:

15 Q Do you see that?

16 A I do.

17 Q Right. And you go on to say, Mr. Kesler, "He seemed to be
18 one of a number of federal government employees involved in the
19 promotion and development of foreign investment." Do you see that?

20 A I do.

1 Q And then you go on to say in paragraph 35, "Rodarte's
2 involvement seemed no less appropriate than that of Miguel Limon,
3 Mexican Minister of Trade." Do you see that?

4 A Yes.

5 Q Now, I'm interested, Mr. Kesler, in your use of the word
6 "seemed." Is it your testimony that until you met Mr. Rodarte in
7 February or March of 1993 that you had not previously had contact with
8 Mr. Rodarte?

9 A That's my testimony.

10 Q Is it your testimony that you had not known of Mr. Rodarte
11 in August of 1991 when his wife was made a shareholder of Eco
12 Administracion?

13 A I did not know him in August 1991, nor did I know Lucia
14 Ratner.

15 Q Now, you're aware, Mr. Kesler, that Mr. Hermosillo has
16 testified in his witness statement that he--that you were fully aware
17 that Ms. Ratner was the wife of the local SEDUE environmental official;
18 correct?

19 A I know he testified to that. It's not correct.

20 Q You're aware that Mr. Hermosillo was in Washington, D.C.,
21 yesterday available to be cross-examined?

22 A Yes.

1 Q Now, Mr. Kesler, would you look at paragraph 36 of your
2 third statement?

3 A Yes.

4 Q You testify there that the purchase of all of the Series A
5 shares of Eco Administracion, the purchase terms were identical except
6 that they vary only according to the number of shares purchased. Do
7 you see that?

8 A I do.

9 Q We already reviewed the stock exchange agreement that you
10 signed in November of 1992 with Mr. de la Fuente; correct?

11 A Yes.

12 Q And we identified that he transferred shares in the three
13 Mexican projects to Eco Metalclad; correct?

14 A Yes.

15 Q And when we compare the milestones for payments that Mr. de
16 la Fuente became entitled to, the milestones refer to the three
17 different projects; correct?

18 A Yes, they do.

19 Q And when you look at Ms. Ratner's agreement, we have the
20 same milestones; correct?

21 A We do.

1 Q However, there's a fundamental difference between the two
2 contracts, is there not?

3 A Well, I think you're going to tell me what it is. My
4 understanding is they were virtually identical with the exception of
5 the percentages. I mean, Lucia Ratner was 4 percent, somebody else was
6 some other kind of percent, and then that percentage was reflected in
7 the number of shares and compensation to be given by Metalclad.

8 Q Right. There was a fundamental difference, Mr. Kesler.
9 Mr. de la Fuente actually owned shares in the three companies that he
10 conveyed to Metalclad. Ms. Ratner only conveyed shares in Eco
11 Administracion. Correct?

12 A I'll take your word for that.

13 Q Why is it, Mr. Kesler, therefore, that Ms. Ratner became
14 entitled to the payment of cash or Metalclad stock with respect to the
15 issuance of federal permits for the other two companies?

16 A I believe all the shareholders of Eco Administracion were
17 simply treated the same. Now, I haven't gone back and reviewed each of
18 those contracts, but I can tell you that our thinking was this was part
19 of our attempt to isolate Jorge and his team and his group of people to
20 the function of permitting. And so we structured the compensation
21 relative to the success of his permitting efforts, and she simply

1 happened to be a 4 percent stakeholder that benefited from that in the
2 same way.

3 Q I see. So you thought that it was an appropriate use of
4 Metalclad resources to issue shares and cash to Ms. Ratner for matters
5 which related to companies in which she had no shareholding interest
6 prior to her conveying Eco Administracion's shares to Metalclad?

7 A Are you speaking of the two--

8 Q Yes, the two other companies.

9 A I'm not going to dispute that distinction with you. We
10 were simply trying to treat them all the same. And if she wasn't a
11 stockholder in those companies, it was simply because they were formed
12 later when we had some additional involvement in the process and not
13 when Jorge was controlling the company all by himself.

14 Q Mr. Kesler, were you--this was an important set of--these
15 were important projects for Metalclad, weren't they?

16 A They were very important.

17 Q And you took an interest in what was going on in Metalclad,
18 did you not?

19 A I certainly did.

20 Q That's right. And Eco Administracion had five Mexican
21 shareholders, did it not?

22 A I think you're right.

1 Q This was not a widely distributed group of shareholders;
2 correct?

3 A No. It was dominated really by one man, and that's the one
4 man we were relying upon and looking to for our success there. The
5 remaining four were simply associates of Mr. Hermosillo.

6 Q Right. And one of those associates happened to be Ms.
7 Ratner. Did you ever ask Mr. Hermosillo who Ms. Ratner was?

8 A I don't recall. I may have.

9 Q Ms. Ratner was not specified as one of the founding members
10 of the joint venture agreement, was she?

11 A Founding members of the joint venture agreement.

12 Q Those four Mexican signatories to the joint venture
13 agreement. She wasn't one of them.

14 A I'll take your word for that.

15 Q If you had a close interest in the company, Mr. Kesler, why
16 did you not ask about the fifth shareholder who was added when the
17 company was incorporated on August 11, 1991?

18 A We were completely relying upon Jorge. We didn't know--
19 there was one other individual, for example, that was his nephew that
20 had a few percent. It had nothing to do with the business, as far as I
21 was concerned. It was simply Jorge's decision and the fact that he

1 wanted to share his compensation with other people was completely
2 acceptable to us. We didn't care, and we didn't know who they were.

3 Q All right. Mr. Kesler, you testify in your third witness
4 statement that you entertained--you arranged a dinner for Mr. Rodarte
5 and Ms. Ratner in April of 1993; correct?

6 A I indicate that that's where I first met her, was when we
7 hosted a dinner for Humberto and his wife and his children.

8 Q Right. And--

9 A When I say hosted, I mean I asked them to go to dinner with
10 me.

11 Q Right. Now, how did that come to--how did that dinner come
12 to be arranged?

13 A I believe they were in Orange County to attend Disneyland,
14 if I'm not mistaken, and we made some contact, and I says, "Let me take
15 you to dinner."

16 Q And at this point you knew that Mr. Rodarte was working for
17 the federal government because he testifies that sometime in early 1993
18 he introduced Metalclad to the COTERIN opportunity; correct?

19 A Yes.

20 Q Now, Mr. Kesler, when you had dinner with them in April of
21 1993, did the penny drop that this Lucia Ratner who was married to this
22 individual who had introduced Metalclad to the COTERIN opportunity was

1 the same Lucia Ratner who had been one of the original shareholders in
2 Eco Administracion?

3 A I have no recollection of it. I don't remember even
4 thinking about that or thinking that.

5 Q When did you realize that?

6 A Realize what?

7 Q When did you realize that one of the original shareholders
8 in Eco Administracion was the wife of a local environmental official?

9 A Okay. At the time we made that stock exchange agreement,
10 she was not the wife of a local environmental official

11 Q No. At that time she's the wife to the special adviser to
12 the president of INE.

13 A That is correct.

14 Q Right.

15 A And we would have been aware of it at that time. When--you
16 know, in terms of when we realized that she was one of the original, I
17 think during this litigation.

18 Q Mr. Kesler, if you were aware that he was the special
19 adviser to the president of INE when he introduced you to this COTERIN
20 opportunity and you had just--and you're entering into an agreement to
21 give his wife cash and stock for federal permits, did that ever raise

1 questions in your mind that this could be a breach of the United States
2 Foreign Corrupt Practices Act?

3 A No. In fact, I was confident that there was no issue there
4 whatsoever because of the way we conducted our business and the way we
5 created our agreements in Mexico. I was absolutely certain there was
6 no--the slightest potential violation of that act.

7 Q All right. Mr. Kesler, Mr. Rodarte also had a commission
8 arranged with the vendors of COTERIN, did he not?

9 A I'm not positive. At times I believe that he did, and at
10 times it's disputed. May I just--you keep saying that he introduced us
11 to the COTERIN obligation, and I know I may have even made reference to
12 that effect. Because of these proceedings, I've talked to everybody I
13 can think of talking to about how I first met Humberto Rodarte and how
14 I first met Salvador Aldrett. And it appears that the first meeting we
15 had in February or March 1993 was the first time I met both gentlemen.
16 So you could argue one introduced me to the other or vice versa. I
17 believe the meeting really came from two of our own employees that were
18 living in San Luis Potosi that brought this to me. But it was my
19 understanding at the beginning that there was some relationship between
20 Rodarte and Aldrett wherein Aldrett would compensate Rodarte.

1 Q That's right. And, in fact, Metalclad agreed to protect
2 that commission when Mr. Rodarte went to work for Metalclad
3 subsequently; correct?

4 A Yeah, he asked us, Will you support and protect my right?
5 And we said, If you have an agreement, we'll support and protect that,
6 because we have also a relationship with Aldrett where we can use
7 influence to protect your position. Yes, we will.

8 Q Did he disclose to you that he had a commission arranged
9 with Mr. Aldrett at the time that he introduced you to the investment
10 opportunity?

11 A Quite the contrary. Mr. Aldrett claimed he had no
12 agreement with Mr. Rodarte. So for us to then promise to protect
13 Rodarte, we kind of knew it was an empty kind of promise because it was
14 all dependent upon whether or not there was an agreement. And one said
15 there was and one said there wasn't.

16 Q Mr. Kesler, I'd like you to turn to the COTERIN
17 acquisition. Would you look at--well, first of all, just establish one
18 fact. You entered into the option agreement at the end of April of
19 1993; correct?

20 A To acquire COTERIN, that is correct.

1 Q And you paid \$50,000 under the option for the right to
2 examine--do due diligence and determine whether or not you wished to
3 proceed; right?

4 A I don't recall that, but I wouldn't dispute it.

5 Q And then in September of 1993, September the 9th, 1993, the
6 option agreement was amended; correct?

7 A I believe it was.

8 Q All right. Let's take a look at Exhibit 68. Would you
9 turn to page 6, please, of Exhibit 68, Mr. Kesler?

10 A Page what?

11 Q Page 6.

12 A Yes.

13 Q Now, when you look at the bottom of the page, it's the
14 third clause. Do you see that?

15 A I do.

16 Q Now, according to this language in paragraph A, the
17 purchaser agreed that it would pay \$450,000 U.S. dollars on the date of
18 closing the transaction; correct?

19 A It appears so, yes.

20 Q And would you turn the page to Clause B, and this term was
21 not contained in the original option agreement, was it, Mr. Kesler?

22 A I believe you're right.

1 Q And it says that this is for the balance of the \$1.5
2 million that Metalclad would pay for the purchase of COTERIN; correct?
3 Is that correct?

4 A Yeah, this first page is just 500--or--

5 Q The first payment is \$450,000 when you complete--

6 A Well, this one on page 7B is \$500,000.

7 Q That's right. And that happens upon the occurrence of
8 certain events. And it says, Mr. Kesler, that it will take place
9 within 20 days following the day on which the government of the state
10 of San Luis Potosi through its current governor has authorized to
11 proceed with the construction needed for the operation of the
12 controlled confinement of hazardous waste located on the lot of land
13 geographically known as La Pedrera. Do you see that?

14 A I do.

15 Q Yes. It goes on to say about four lines down, "And that
16 the municipal permit for the building of the aforementioned confinement
17 has been obtained by COTERIN or, as the case may be, definitive
18 judgment in a writ of amparo that allows to legally proceed with the
19 building of such confinement, provided that in no event such payment
20 shall be carried out before 30 days following the date in which the
21 payment indicated in Section A above is carried out." Do you see that?

22 A I do.

1 Q Right. Now, later on in that agreement, Mr. Kesler, at
2 page 8, if you would turn to that, there's a clause under paragraph E,
3 and I'll just read that to you. It states, "The parties agree that on
4 the dates of payments of the payments indicated in Sections B, C, and D
5 will be extended an equal term to that in which by any other
6 circumstance not imputable to the beneficiary the construction of the
7 confinement indicated in Section B above is suspended by order of the
8 authority or the operation of such confinement is suspended or the
9 foregoing occurs by reason of the physical situation or situation of
10 violence of the neighbors of the location of the confinement." Is that
11 correct?

12 A Yes.

13 Q This was a new term that was added to the amended option
14 agreement as well; correct?

15 A I believe it was.

16 Q And the effect of these provisions was to make three-
17 quarters of the purchase price for COTERIN contingent upon the
18 occurrence of these events; correct?

19 A At least -- [tape ends] -- additional payments as well.

T2B 20 Q Mr. Kesler, you're aware that at paragraph 13 of his
21 witness statement Mr. Alan Borner testifies that these revised terms of
22 the option agreement were not made--were not disclosed to the board of

1 directors of Metalclad at the meeting at which the board ratified this
2 decision to proceed with the purchase? You're aware of that?

3 A I'm aware of his statement, which is nonsense.

4 Q His statement is nonsense. Okay. Well, let's take a look
5 at his statement. Actually, sorry, not his statement. Let's look at
6 your statement instead. Let's go back to your third statement at
7 paragraph--it starts at paragraph 22 in your third witness statement
8 where you discuss Mr. Borner. This is the second former director of
9 the three former directors that you discuss in its third witness
10 statement; is that right? You discuss Mr. Ron Robertson in your third
11 witness statement?

12 A I discuss Ron Robertson, I discuss Alan Borner, and I
13 discuss Jorge Hermosillo.

14 Q Right. And your evidence in your third witness statement
15 is that you had problems with all three of them; correct?

16 A Quite different kind of problems.

17 Q Well, different problems. Mr. Robertson was an irrational
18 drunk?

19 A That's absolutely the most ridiculous thing that's come out
20 of your mouth today.

21 Q Okay. Well, we'll look at him later on. Mr. Borner was
22 essentially, you say in your--

1 A It's also mean.

2 Q Well, Mr. Kesler, we'll come back to that. In your
3 statement of Mr. Borner, you say that he essentially was trying to get
4 some invoices paid to him by the company in order to get him not to
5 give testimony to the Mexican government. Do you see that in paragraph
6 27?

7 A I do.

8 Q And you say that you had a confrontation with Mr. Borner at
9 the board meeting at which the COTERIN acquisition was approved;
10 correct?

11 A I think he refers to that.

12 Q No. You refer to it in paragraph 26. Paragraph 26 says
13 there was a series of letters back and forth that led to the final
14 confrontation that occurred at a board meeting--

15 A At a board meeting.

16 Q At a board meeting.

17 A He's the one that describes it as the board meeting where
18 the COTERIN application was approved. And I think he's correct, but
19 I'm just--I want to point that out.

20 Q Okay.

21 A Because I have checked independently of this.

1 Q All right. Well, let's take a look at Exhibit 9. This is
2 the minute of the board meeting at which Mr. Borner voted against the
3 acquisition of the landfill. Now, just to refresh your memory, Mr.
4 Kesler, your testimony at paragraph 26 is that you said there was a
5 final confrontation. You explained to the board that you simply
6 couldn't justify the payments being requested by him. He took
7 exception to your position. It was at that same meeting that the board
8 voted to move forward with the acquisition of the landfill. That's
9 what your testimony is. So it was at that same meeting.

10 Do you have your witness statement in front of you, Mr.
11 Kesler?

12 A I was just checking these minutes. Just hold on a second.

13 Q Okay.

14 PRESIDENT LAUTERPACHT: Do you have a reference, please?

15 MR. THOMAS: It's Tab 9, Mr. President.

16 [Pause.]

17 THE WITNESS: That is correct, and these minutes do reflect
18 when the COTERIN acquisition was made.

19 BY MR. THOMAS:

20 Q Right. Now, would you just--keep those minutes there. I
21 just want you to refer back to your statement, paragraph 26. You're
22 saying that it was at that meeting that you had this confrontation.

1 Then you say, "As I recall, Alan abstained from that particular vote
2 and any other vote taken at the meeting in view of the tenuous
3 relationship between him and the company." That's at paragraph 26 of
4 your statement.

5 A I see it.

6 Q Do you see it? Okay. Let's take a look at that. First of
7 all, Mr. Kesler, I've read the minutes and I don't see any reference at
8 all in the minutes to any discussion of Mr. Borner's demands for
9 payment.

10 A I think that's a fair statement.

11 Q That's a fair statement? Now, let's take a look at the
12 votes. The first vote is discussed at the top of page 2, and that was
13 a vote that was in favor of a motion that was tabled to pay Mr. Ron
14 Robertson severance pay, \$230,000. Do you see that under the paragraph
15 "Resolved"?

16 A Yes.

17 Q And just above that, it says, "The following resolutions
18 were duly adopted by the unanimous vote of the board of directors." Do
19 you see that?

20 A Yes.

21 Q So Mr. Borner formed part of that unanimous vote?

1 A It would appear so. Now, Robertson wasn't at the meeting,
2 and so we're talking about unanimous of those that were there. So--

3 Q Yes.

4 A It would appear you're right and my statement may be wrong.

5 Q And if you look at annual general meeting, you're correct
6 there that with respect to a resolution on the annual general meeting,
7 Mr. Borner did abstain from that. Do you see that at the bottom of
8 page 2?

9 A Bottom of page 2?

10 Q Do you see that, annual shareholders meeting?

11 A I don't--oh, I see.

12 Q Do you see that?

13 A Messrs. Rodriguez and Borner abstaining?

14 Q Yes. So you're correct there, he abstained from that.

15 Let's look at the next page, the COTERIN acquisition. If you look at
16 the bottom of that paragraph, it describes the COTERIN acquisition. It
17 says Mr. Borner voted against the motion. So he did not abstain
18 against that, did he?

19 A I stand corrected.

20 Q Right. Now, let's look at how the COTERIN acquisition is
21 described. It says that you asked the board to ratify the acquisition
22 of 94 percent of the capital stock of COTERIN and reported that the

1 company had entered into an agreement substantially in the form
2 previously approved by the board, providing for a payment of \$500,000
3 down, three payments of \$500,000 each month commencing 30 days after
4 substantial construction of the new landfill commences, and it goes on
5 to discuss royalty payments and management contracts.

6 Mr. Kesler, there's no discussion there, is there, of the
7 contingencies which were inserted with respect to the governor's
8 support for the commencement of construction or the issuance of the
9 municipal permit or its resolution through resort to the Mexican
10 courts; correct?

11 A There's no reference in this summary, no.

12 Q No. There is no reference as well to what I would call as
13 a shorthand clause the violence of the neighbors clause that we
14 referred to previously, is there?

15 A No, there isn't.

16 Q Right.

17 MR. THOMAS: Just a moment, Mr. President. I just have to
18 consult with my colleagues.

19 [Pause.]

20 BY MR. THOMAS:

21 Q Mr. Kesler, would you please turn to pages 4 and 5 of your
22 first witness statement?

1 The very last line of page 4--do you have it in front of
2 you, Mr. Kesler?

3 A Yes.

4 Q It states, "Prior to this time"--this is speaking of a
5 period October to December 1993, so this is subsequent to the
6 acquisition of COTERIN; correct?

7 A Yes.

8 Q Yes. And you state, "Prior to this time, we had done a
9 very detailed study about the demographics of the local community so we
10 could understand the special needs that were unique to this community
11 over any other community." Do you see that?

12 A I do.

13 Q And if you go down that page, Mr. Kesler, to the paragraph
14 just above the bottom of the page with the heading "December 1993," it
15 says, "By mid-December, we felt we had about 70 percent of the adults
16 in the community fully informed and fully supportive of our project."
17 Do you see that?

18 A I do.

19 Q All right. Now, I'd like you to refer to Exhibit 32. Mr.
20 Kesler, this is a transcript of a videotape which Metalclad was kind
21 enough to provide to the respondent, and it concerns a meeting of

1 Metalclad representatives with local university professors in January
2 of 1992.

3 A The commission.

4 Q You call it the commission.

5 A The group.

6 Q The group.

7 A The committee.

8 Q We took the opportunity to videotape--to take the videotape
9 and transcribe it. We provided a copy to your counsel. Mr. Pearce is
10 free to come back and tell us whether or not we've done a proper
11 transcription. We believe we have. But I'd like to proceed on the
12 basis that the transcription reflects what was said at the committee
13 meeting.

14 Now, Mr. Kesler, just to ensure that we have the cast of
15 characters here, the Metalclad representatives appear to be primarily
16 Humberto Rodarte Ramon--correct?

17 A He is one of our representatives, yes.

18 Q And he attended this meeting. Ramon Chavez. He was a
19 landfill engineering from Harding, Lawson Associates in California;
20 correct?

21 A Yes, he worked for us.

1 Q Yes. And Mr. Lee Deets, who at that time was an officer
2 and director of Metalclad. And I'm given to understand that he was in
3 charge of the Mexican projects at the time?

4 A Pretty much, in charge of all of the pre-development and
5 development activities.

6 Q Right. Okay. Now, would you please turn to paragraph 91
7 of this transcript? It's at page 15. This is a continuation of an
8 intervention at the meeting by Humberto Rodarte, and Mr. Rodarte states
9 at paragraph 91: "Why haven't we announced as expected by everybody?
10 A great number of friends approach us here in San Luis Potosi and say,
11 Hey, it's just that we don't know anything. And then the response is
12 always the same in the sense that we have not yet been authorized to
13 inform them because it does not make sense to initiate a public
14 communication campaign on the site or in another place in the capital
15 when we don't know if we will be allowed to operate or not." Is that
16 correct? Do you see that?

17 A It appears to be, yes.

18 Q Now, I'll give you an opportunity to come back and correct
19 me, Mr. Kesler, if I have in any way misstated the transcript here.
20 But I'm going to suggest to you that the university professors who
21 participated in this videotaped meeting all expressed technical
22 concerns about the geohydrological studies that had been performed in

1 relation to the federal permits which had been issued. Does that
2 accord with your recollection?

3 A It does.

4 Q The one exception I think I would state here is an
5 individual by the name of Roberto Leyva, who appears to have acted as a
6 Chair of the proceedings. And Mr. Leyva appears to be summarizing
7 comments made by other professors, and I have been unable to discern
8 whether or not Mr. Leyva is expressing his own opinion.

9 But the other professors here--

10 A Well, Mr.--Dr. Leyva was a professor of chemistry at the
11 University of San Luis Potosi.

12 Q Yes.

13 A And part of this committee, group, commission.

14 Q Yes. And Mr. Leyva is--as I say, he appears to be acting
15 as the Chair here, but the other professors who appear at this meeting
16 are expressing concerns about the geohydrological studies that were
17 done in order for the federal environmental impact study to be issued.
18 Is that correct?

19 A Well, I was just about to agree with you until you finished
20 your statement. They had concerns about the hydrogeological studies
21 that were performed prior to our purchase of the facility that formed

1 the basis for the granting of the federal permit that was in place when
2 we made the acquisition. We had the same concerns.

3 Q Right. That's--I'm not in any way attempting to take you
4 any further from that. Their point was that the studies that were done
5 for the issuance of the federal permit--the federal environmental
6 impact study in their view were unsatisfactory. Do you agree with that
7 characterization?

8 A These were experts that were of the opinion that there
9 needed to be more of these kinds of studies done. No one challenged
10 the fact that they were adequate for the delivery of a federal permit
11 save Pedro Medellin.

12 Q Well, I'll take you to some specific statements, then, if
13 you like.

14 A Okay.

15 Q Let's first of all start with Mr. Rodarte at paragraph 138,
16 and he, of course, is a representative of the company in this meeting;
17 correct?

18 A Yes, he is at this point.

19 Q So if we turn to paragraph 138, Professor Rodarte says,
20 "Here, from my perspective, the university researchers' concern is very
21 understandable given that the information that was used in the studies
22 was not reliable and the results that the studies provided were also

1 not reliable. And apart from that, the information was incomplete
2 because more conclusive studies weren't undertaken on that
3 information." Do you see that?

4 A I do see that.

5 Q So Mr. Rodarte here is reflecting, apparently reflecting
6 his understanding of what has been discussed at the meeting at that
7 point. Do you agree with that?

8 A Yes.

9 Q And, in fact, not only Mr. Rodarte but Mr. Lee Deets
10 indicates that the studies aren't very good either. Would you please
11 refer to paragraph 82? Do you see that paragraph?

12 A Yes.

13 Q And if you go down, Mr. Kesler, if you go down about seven
14 lines and look to the far right of the page, there's a sentence which
15 begins, "I'll be the first to admit..." Do you see that?

16 A Yes.

17 Q "I'll be the first to admit"--"I'll be the very first to
18 admit that the information we have today on the hydrogeological studies
19 is very limited." Do you see that?

20 A I do.

21 Q "We believe that it's enough to get started, but only to
22 get started." Do you see that?

1 A I do.

2 Q "So we would not argue for a minute that the data and the
3 information that we have is minimal, but we think it's adequate." Do
4 you see that?

5 A Yes, I do.

6 Q Okay. Now, Mr. Kesler, this wasn't the first meeting that
7 was held between university professors and Metalclad representatives;
8 correct?

9 A What was the date of this meeting?

10 Q Well, we've been trying to figure this out from your
11 counsel. Your counsel provided some transcripts--or some summaries of
12 the minutes. One of them is dated January the 11th. I think another
13 is dated February the 2nd or 3rd. It appears to us to be at the end of
14 January.

15 A I believe this was the first meeting after the governor's
16 request that we formalize the process, but we had been meeting with the
17 university professors since October.

18 Q Okay. Well, you're saying that the governor formalized the
19 request. I'll let that stand for the minute. But when would that be,
20 then? That would be after your January 28th meeting with the governor?

21 A Yes.

22 Q Right. Okay.

1 A Well, was there a meeting--was that the first meeting in
2 January with the governor, was the 28th? Wasn't there an earlier--

3 Q The evidence is that there was a meeting held on January
4 the 28th, 1994--

5 A Right.

6 Q --with the governor, which you attended along with Mr.
7 Neveau, Mr. Rodarte, and two of your local legal counsel.

8 A Right. And was there an earlier meeting?

9 Q I'm unaware of such a meeting.

10 A Okay.

11 Q Mr. Kesler, I'd like you to turn now--anyway, you believe
12 this took place after that meeting, is that right, in early February?

13 A You know, I don't know. That's the clear answer. I don't
14 know.

15 Q Okay. Let's look at Exhibit 33. This is a document which
16 was translated from Spanish by the respondent, and it recounts
17 apparently for Mr. Luis Donaldo Colosio, the late Donaldo Colosio,
18 Metalclad's activities in the state of San Luis Potosi. Do you see the
19 title there?

20 MR. PEARCE: Is this a document in evidence?

21 MR. THOMAS: Yes, it is.

22 MR. PEARCE: And you don't have the reference?

1 MR. THOMAS: Let me see if I can find you the reference.

2 Given my--

3 ARBITRATOR CIVILETTI: Volume II.

4 THE WITNESS: I know the document. I recognize the
5 document.

6 MR. THOMAS: It's Rejoinder Volume II, Exhibit 33, Mr.
7 Pearce.

8 MR. PEARCE: Thank you.

9 BY MR. THOMAS:

10 Q Mr. Kesler, if you turn to the second page, paragraph 5,
11 the last full paragraph, it says, "As recommended by Architect Rene
12 Altamirano, General Director of Regulation of INE, and in coordination
13 with Dr. Pedro Medellin, Metalclad held a series of meetings with
14 researchers and university professors." Do you see that statement?

15 A I do.

16 Q And this document, which emanates from Metalclad, suggests
17 that the idea of consulting with university professors was recommended
18 by Mr. Altamirano, who at that time was a federal permitting official;
19 correct?

20 A That's not right. It was recommended by the governor at a
21 meeting with Rene Altamirano and Sergio Reyes Lujan in approximately
22 the first week of October 1993.

1 Q Okay. But this document doesn't say that. It says, "As
2 recommended by Architect Altamirano"; correct?

3 A Well--

4 Q Mr. Kesler, I'm just asking you whether the document says
5 what it says.

6 A The document says what it says. I was just explaining
7 where he got that idea.

8 Q Fine. Now, you'll see that there's a list of academics
9 there: Mr. David Atisha Castillo, Robert Leyva, Guillermo Labarthe,
10 Guillermo Umara. Do you see those?

11 A I do.

12 Q And down the page, over the page to Dr. Diaz-Barriga, (?)
13 Milan, Dr. Pedro Medellin.

14 A You missed a couple.

15 Q These are the names that are people who attended. They
16 attended the videotaped meeting later on with the exception of Dr.
17 Medellin.

18 A Well, but, I mean, you missed some in your--

19 Q Yes, I was identifying people who attended the subsequent
20 meeting.

21 A Okay.

1 Q Now, what I'm interested in, Mr. Kesler, is what's stated
2 at the next paragraph. It says, "Detailed design, construction, and
3 operation plans related to the controlled landfill were presented to
4 each academic. All existing doubts and objections were discussed and
5 analyzed. At the end of each interview, each professor or researcher
6 declared their satisfaction and their agreement with Metalclad's
7 projects." Do you see that?

8 A I do.

9 Q Now, Mr. Kesler, this document predates the meeting of the
10 professors that we were able to review on the videotape; correct?

11 A Right.

12 Q But at that meeting, the professors expressed their
13 concerns about the technical aspects of the site; correct?

14 A They did. Would you like me to explain the difference?

15 Q No. I'll leave that for you to deal with Mr. Pearce.

16 A Okay.

17 Q Mr. Kesler, I take it you don't dispute that there was
18 significant local opposition in San Luis Potosi in 1993?

19 A I do dispute it.

20 Q And do you dispute that there was significant local
21 opposition in 1994?

22 A I dispute that as well.

1 Q Okay.

2 A There's very little opposition even today in the community
3 affected by this hazardous waste treatment facility.

4 [Pause.]

5 BY MR. THOMAS:

6 Q Would you please refer to Exhibit 34? This is a document
7 which is entitled "A Report: Environmental Communication and Community
8 Participation in the Municipality of Guadalcazar, San Luis Potosi,
9 January to October 1994." Do you see that title?

10 A Yes.

11 Q And it appears to have been prepared by Licenciario Solomon
12 Leyva.

13 A Yes. We commissioned this study to be prepared.

14 Q And he was a consultant to you?

15 A He was a consultant to us.

16 Q Would you turn to page 8 of that document? I've
17 handwritten the... And would you please refer to the paragraph in the
18 middle of page? Do you see it says, "In January, an opinion poll was
19 realized. We detected that only 2.2 percent of the population had a
20 correct idea of what is a landfill. Only half of the population had
21 knowledge of the problem at La Pedrera, of which the great majority had
22 a very negative idea due to the social mishandling of the previous

1 owners and the political problem that demanded the closure." Do you
2 see that?

3 A I do.

4 Q All right.

5 A He's talking about a different community here, you
6 understand. This is not the 800 people that live within ten kilometers
7 around the landfill.

8 Q I understand that.

9 A This is in another side of the mountain.

10 Q This is the municipality as a whole.

11 A This is the other side of the mountain--

12 Q It's the municipality--

13 A --is what they're talking about here.

14 Q Mr. Kesler, can you refer to Exhibit 61? This is a
15 translation of a newspaper article called--a newspaper called
16 Excelsior, and it's an article dated Sunday, August the 10th, 1993. Do
17 you see that?

18 A '97.

19 Q I'm sorry, 1997. Excuse me.

20 Would you turn to page 4? This is an interview with you;
21 is that not right?

1 A The reporter interviewed me in my office prior to doing
2 this article.

3 Q Right. And at the top of the fourth page there is a
4 question which is being posed to you: "Do you feel that the Mexican
5 government deceived you?" And your answer is, "No. What happened to
6 us in Mexico happens in the United States. I can give you many
7 examples of projects we have had to cancel in Los Angeles. This type
8 of projects [sic] depends on a certain risk." Do you see that?

9 A I do.

10 Q Now, Mr. Kesler, what were those projects in Los Angeles
11 that you had to cancel?

12 A We had no projects in Los Angeles to cancel.

13 Q Well, it says--

14 A The only hazardous waste project we've ever done is in
15 Mexico.

16 Q Right. But it says, "I can give you many examples of
17 projects we have had to cancel in Los Angeles."

18 A Yeah. He's misquoted me. He's misunderstood me.

19 Q I see. He misunderstood you. You didn't have any projects
20 in the United States, did you?

21 A No. We didn't have any projects in Los Angeles, nor did we
22 have any hazardous waste treatment facilities other than in Mexico.

1 Q Anywhere except for Mexico?

2 A Other than Mexico, right.

3 Q That's right. Mr. Kesler, can you go back to your first
4 witness statement?

5 [Pause to confer.]

6 BY MR. THOMAS:

7 Q Mr. Kesler, I want to direct you to the very first page of
8 your first witness statement, and it's where you discuss how you became
9 involved in Metalclad Corporation on March the 1st. Do you see that?

10 A Yes.

11 Q And then this is the sentence, it says that Metalclad at
12 that time was more than 50 years old, had completed more than \$1
13 billion worth of environmental construction projects all over the
14 world, and had a reputation with the EPA and the Occupational Safety
15 and Health Administration and other agencies that was as perfect and
16 clean as any company in America. Do you see that?

17 A I do.

18 Q Now, I just want to confirm, Mr. Kesler, you did not intend
19 in testifying to Metalclad's experience to in any way imply that
20 Metalclad had any experience in the hazardous waste disposal business,
21 i.e., incinerating or landfilling; correct?

1 A The experience of the company was with hazardous waste from
2 day one. It happened to be limited to a certain kind of hazardous
3 waste, being asbestos, and I doubt anybody would disagree--

4 Q Sorry, Mr. Kesler. You said this experience with asbestos
5 was from day one?

6 A Yeah.

7 Q Wasn't Metalclad's original business industrial insulation?

8 A Yes.

9 Q Okay. But that's not asbestos remediation per se?

10 A Oh, no, that's--day one, it was--they were involved with
11 asbestos. They're still paying the price for it. They were involved
12 in handling materials, and from the time asbestos was declared to be a
13 carcinogen and a hazardous material, they began remediating and dealing
14 with that most egregious hazardous material. And we did it all over
15 the world. And in addition to that, we did insulation operations that
16 couldn't be more environmental.

17 The statement I made here I reaffirm as being absolutely
18 correct, indeed conservative in every respect.

19 Q But the point is, Mr. Kesler--I just want to clarify--you
20 did not intend to in any way suggest that Metalclad had experience in
21 the hazardous waste landfilling or the hazardous waste incinerating
22 business, did you?

1 A Not yet, but I would, because this is--this is the preface.
2 This is the beginning history of the company. But the fact is we had
3 tremendous experience in hazardous waste, development of hazardous
4 waste landfill and hazardous waste treatment facilities.

5 Q Okay. Now, Mr. Kesler, let's just be a little bit more
6 precise here. When you became president and chief executive officer of
7 Metalclad Corporation, you had no personal experience in hazardous
8 waste--

9 A That is true.

10 Q Mr. Robertson had no experience in hazardous waste.

11 A That is also true.

12 Q The other members of the board of directors, until Mr. Lee
13 Deets joined, had no experience in hazardous waste treatment--hazardous
14 waste--

15 A That's not true.

16 Q Okay, hazardous waste disposal.

17 A That's not true.

18 Q They had experience in asbestos abatement.

19 A That's also not true. Let me finish.

20 The original partners that we went to Mexico with, Reed
21 Warnick and Terry Douglas, had extensive experience, as did Ford, Bacon
22 & Davis that made the initial entry. They had developed billions of

1 dollars worth of incinerators around the world, one in our own backyard
2 in Utah, a \$90 million incinerator, the largest one there, the 19th
3 built in America. They had enormous experience. Reed Douglas--Reed
4 Warnick and Terry Douglas both had deep experience in this particular
5 business. And then as we developed our own team, we brought in people
6 like Mr. Deets, who had 19 years of experience. He personally
7 developed a landfill from a green field site to a major hazardous waste
8 facility.

9 So we acquired the experience. Day one, we found a very
10 clean company that had a great reputation that became, in our opinion,
11 a great financial vehicle. And then we acquired the expertise by
12 building a team of people that had had this experience that we
13 personally did not have.

14 Q Mr. Kesler, you refer to the--you used "extensive
15 experience" of both Mr. Warnick and Mr. Douglas? Is that not--is that
16 what--

17 A Yes, in association with Ford, Bacon & Davis. One was
18 general counsel, one was head of marketing for Ford, Bacon & Davis.
19 Ford, Bacon & Davis is one of the largest engineering firms in the
20 world.

21 Q Mr. Kesler, it's just a simple question.

22 A Yeah.

1 Q You referred to Mr. Warnick and Mr. Douglas, didn't you?

2 A I did.

3 Q All right. Would you please go to Exhibit 64--

4 A And what they brought.

5 Q Would you please refer to Exhibit 64, Mr. Kesler? You can
6 give your speech--

7 A I'm sorry.

8 Q --in the examination.

9 A I'll try to be--64?.

10 Q Yes. This is your letter to Jorge Hermosillo where you
11 discuss the idea of you and Mr. Hermosillo setting up this company for
12 Molten Metal Technology licensing. Now, would you look at the second
13 page?

14 A Okay.

15 Q "I've asked Manuel Garcia Barragan about the need for a
16 formal meeting"--this is paragraph 6--"and he says it's unnecessary.
17 He also says Reed and Terry should be removed as directors. I would
18 like to see that happen so that I do not have to have a further
19 involvement with them."

20 So these are the two people you've just started off by
21 listing the vast hazardous waste experience with. In December of 1991,

1 this letter says you would like--not like to have any further
2 involvement with them; correct?

3 A That's correct.

4 Q All right. Mr. Deets joined the firm as a full-time
5 employee in June of 1992; correct?

6 A I'll take your representation.

7 Q And he left as a full-time employee, he resigned in March
8 of 1994?

9 A I'll accept that as well.

10 Q And after Mr. Deets left, Mr. Neveau took over
11 responsibility for the COTERIN project?

12 A Pretty much took over responsibilities for everything in
13 Mexico after Mr. Deets left.

14 Q Mr. Neveau's previous experience was in the development of
15 shopping malls in California?

16 A Oh, that's part of it. He had an extensive background in
17 real estate development that included shopping malls and a lot of other
18 things.

19 Q No experience in hazardous waste disposal?

20 A None that I'm aware of.

21 Q No. And he did not speak Spanish, did he?

22 A He actually did speak a little bit.

1 Q Okay. I'm instructed to the contrary. Mister--

2 A We called it Dannish or Denglish.

3 Q Yes. Mr. Kesler, maybe you could refer to your third
4 witness statement. Starting at paragraph 41, this is a discussion
5 about the way in which you were able to acquire a significant block of
6 stock in Metalclad Corporation in 1991; correct?

7 A No. This group of paragraphs is relating to an attack
8 you've made on Neveau and the Glasers and the California property
9 respondent, so that's why the heading says "Neveau, the Glasers, and
10 California property"--

11 Q Well, no, Mr. Kesler. It's just a simple question. You
12 spend seven paragraphs here discussing Mr. Neveau and your own
13 involvement in arranging financing to acquire this controlling block of
14 Metalclad shares, do you not?

15 A Control only in maybe a technical legal sense. Less than
16 20 percent or 25 percent.

17 Q It went over 20 percent after you did the ETI transaction;
18 right?

19 A We were never over 50 percent, for example, so you're
20 talking about legal technicalities when you say controlling, aren't
21 you? I mean, there's a definition of a control person in the

1 securities laws. Probably we were control person, but we didn't own
2 more than whatever percent.

3 Q And in your second witness statement, Mr. Kesler, you
4 indicate that you're knowledgeable of the United States securities
5 laws.

6 A Yes.

7 Q Yes. And you would be, therefore, aware of an obligation
8 upon an officer or director of a publicly traded company to disclose to
9 the investors of that company any other positions as an officer or
10 director in another publicly traded company?

11 A Yes.

12 Q That's a well-known obligation, isn't it?

13 A Yes.

14 Q Yes. I just want to confirm, Mr. Kesler. In your
15 discussion about California Properties Fund, you do not respond to the
16 point that was made in the rejoinder, which is that from 1991 at least
17 until 1996, you never disclosed to Metalclad investors that you or Mr.
18 Neveau were involved as directors of California Properties Fund;
19 correct?

20 A True statement.

21 Q And you were aware of that obligation to disclose that to
22 investors?

1 A Obviously, I didn't even think about it with respect to
2 this one. I mean, had I thought about it, we probably would have
3 disclosed it.

4 Q But you--

5 A It's not a major--it's not--I don't think it's the least
6 bit material. If there was a requirement, it was a technical
7 requirement only. The--

8 Q Well, Mr. Kesler, let me try to place this in perspective.
9 The respondent has filed evidence in this proceeding showing that
10 California Properties Fund was in severe financial distress in the late
11 1980s and the 1990s; correct?

12 A That's why they asked me to join them, to see if I could
13 help.

14 Q Right. But did you--

15 A And I'm not--

16 Q Mr. Kesler--

17 A I would disagree with your characterization, but go ahead.

18 Q I'll direct you to language from their SEC filings if you
19 wish.

20 A And the use of "severe financial distress"?

21 Q They used words akin to "severe financial distress," and
22 after lunch I'll direct you to that, if you'd like.

1 A Okay.

2 Q But you did not see fit to disclose this to Metalclad
3 investors?

4 A I simply overlooked it. I--

5 Q Mr. Kesler, you overlooked it for five or six years.

6 A Absolutely. I mean, it was easy after the first couple of
7 years.

8 Q But each time you signed an annual report, Mr. Kesler,
9 you're affirming the truth and accuracy of the disclosure you're
10 making.

11 A You're talking about Metalclad annual reports.

12 Q Yes.

13 A See, I don't think I attended a meeting after I became the
14 president of Metalclad in California Properties Fund. I don't think I
15 went to a board meeting. I don't think I participated in any decision
16 that was made by them. I was completely inactive.

17 I can't even tell you as I sit here how long I was a board
18 member of California Properties Fund, and it was completely unrelated,
19 and I didn't see the least bit of materiality about that company, and
20 even as you brought it up today, I'm not sure I would do it any
21 differently. I'm not sure it's material. The statute, as I understand
22 it, requires you to disclose five years' employment. I was not

1 employed by California Properties Fund. I did not receive compensation
2 or benefits from them. I was not an employee.

3 Q All right. Well, let's try one other thing. With--

4 A It's no big deal.

5 Q No. Listen, these are important issues, Mr. Kesler. With
6 respect to the acquisition of control--not of control but this
7 acquisition of what you called a significant block of Metalclad shares
8 in March of 1991, the press release and your subsequent filings of
9 annual reports indicated that you beneficially held the 1 million
10 shares that you acquired; correct?

11 A I either owned actually or beneficially, yes.

12 Q But, Mr. Kesler, in your third witness statement, you're
13 now telling the Tribunal that you acquired the shares with Mr. Neveau
14 on March the 1st, 1991.

15 A What I said was is that they were originally acquired in my
16 name only with Mr. Neveau holding only a contingent and beneficial
17 interest. And it wasn't until the middle of 1993 that that contingent
18 and beneficial interest was converted to an actual stock ownership, at
19 which time we made the appropriate disclosures.

20 Q Well, let's look at your second witness statement, Mr.
21 Kesler. Would you please refer to paragraph 30 of your second witness
22 statement? You've just described the interest that Mr. Neveau had in

1 these shares, the million shares that you bought, as a contingent,
2 beneficial interest.

3 A Correct.

4 Q Your witness statement doesn't say that, Mr. Kesler. It
5 says, "Daniel Neveau and I purchased 1 million shares of Metalclad
6 Corporation at \$1.42 a share for cash."

7 A Right.

8 Q Right?

9 A Right. What we did, when the agreement went from a
10 beneficial one to an actual one and we transferred the shares, we made
11 it retroactive to the extent that we could.

12 Q At the time that Mr. Neveau held a beneficial interest, you
13 did not disclose that to Metalclad investors.

14 A We disclosed--

15 Q You said--

16 A --exactly what we--

17 Q --you had the beneficial interest.

18 A We disclosed exactly the case in both situations. When I
19 owned the shares, we disclosed that. When we owned them jointly, we
20 disclosed that.

21 Q Well, you say, according to your second witness statement,
22 Mr. Kesler, you owned them jointly as of March the 1st, 1991.

1 A We made an agreement to that effect in August of 1993 that
2 we would make it retroactive to March 1991. That's what the agreement
3 says.

4 Q Retroactive. I see.

5 Mr. Kesler, we've had some discussions about the university
6 professors who were looking at this question of the technical
7 suitability of the site and the company's technology that was, for
8 example, presented in that videotape; right? We've just had a
9 discussion about those different university professors?

10 A Yes.

11 Q Now, the purpose, I take it, was to have the university
12 professors give their seal of approval? Is that really what it was all
13 about?

14 A In part.

15 Q And I take it that the idea was that the university
16 professors would be independent; is that correct?

17 A Yes.

18 Q Okay. Now, Mr. Kesler, would you take a look at Exhibit
19 36?

20 MR. THOMAS: Mr. President, I apologize. I don't have a
21 complete translation, but I think we can muddle our way through this
22 exhibit.

1 PRESIDENT LAUTERPACHT: Let's have a look at it. Exhibit
2 36.

3 MR. THOMAS: Exhibit 36.

4 PRESIDENT LAUTERPACHT: You have an English translation of
5 relevant parts only. Is that--

6 MR. THOMAS: Yes. Unfortunately, Mr. President, there's
7 one relevant part that's missing, but I think we can figure it out.

8 BY MR. THOMAS:

9 Q This is a meeting dated March--that was held on March 7,
10 1994, by Eco Administracion, and it was at that meeting that Eco
11 Administracion changed its name, I understand, to ECOPSA. Is that
12 correct? Ecosistemas del Potosi?

13 A I haven't seen any of this before, but we did change the
14 name.

15 Q Okay. Mr. Kesler, if you look at the second page of the
16 Spanish translation at the top of the page, do you have that in front
17 of you?

18 A I'm not sure. Where it says "English translation"?

19 Q No, I'm looking at the Spanish translation. That's why I'm
20 sort of--I apologize that we have to muddle through this, but it says
21 de capital variable (?). Do you see that?

22 A Yes, I do.

1 Q Okay. And it lists members of the board of administration,
2 so that would be the board of directors of what is now ECOPSA.

3 A Uh-huh.

4 Q As los señores Grant Kesler, Dan Neveau, Luis Manuel Abella
5 Armella, Roberto Leyva Ramos. Do you see that name?

6 A Uh-huh, yes.

7 Q Now, Roberto Leyva Ramos, this was the same Roberto Leyva
8 who chaired that meeting that we talked about, about the videotape --
9 [tape ends.]

10 Okay. Well, this is what the legal instrument which was--

11 A If you represent that to be the case, I'll accept that,
12 because we certainly had discussions with Roberto as well as Luis
13 Manuel Abella.

14 Q Right. Well, let me--I'd like to actually have one of my
15 Mexican colleagues just confirm that this is, whatever it is, notarized
16 or whatever legally significant.

17 MR. PEREZCANO: Yes. It is a document pulled out from the
18 public registry of property and trade. So it is--in fact, it is issued
19 by the executive branch of San Luis Potosi.

20 MR. THOMAS: What's the name of the company?

21 MR. PEREZCANO: The name of the company is Ecosistemas del
22 Potosi.

1 MR. THOMAS: Very good.

2 BY MR. THOMAS:

3 Q So May 7, 1994, Eco Administracion is now changed into
4 ECOPSA.

5 A Yes.

6 Q And it appears that, according to this document, that
7 Roberta Leyva, the professor whom we discussed earlier, was made a
8 member of the board of directors of that company; correct?

9 A Yes.

10 Q Right. And just to confirm, ECOPSA was intended to be the
11 company that would run the landfill; correct?

12 A In some form or fashion. It may have contracted. But it
13 would be the party that would have either done it or contracted to have
14 it done.

15 MR. THOMAS: Mr. President?

16 PRESIDENT LAUTERPACHT: Yes, Mr. Thomas?

17 MR. THOMAS: You'll be delighted to hear that I think this
18 is an appropriate time--it's five minutes to 1:00 and I'd like to take
19 the break at this point, if I may, because I'll be entering into a new
20 area of discussion after the break.

21 PRESIDENT LAUTERPACHT: Well, Mr. Thomas, that's certainly
22 acceptable. But before we break, I would just like to mention a

1 certain unease which I feel. It's now something like two hours or so
2 of examination time since I raised with you the question of the
3 relevance of your examination; and you said I would see the point
4 fairly soon. And here we are at lunchtime, and I still haven't seen
5 the point. I've identified--I've tried to take careful notes. I've
6 identified two points which are material to the issues in this case,
7 but the general thrust of your examination eludes me as regards its
8 relevance.

9 I see you're raising questions about the propriety of Mr.
10 Kesler's behavior in other contexts, but I don't quite see its
11 relevance to the issues presented in this case, which is a case about
12 the application of Chapter 11 of NAFTA.

13 Now, I merely mention that to you now so that you can
14 consider my problem over lunch and perhaps respond to it in the course
15 of your examination after lunch.

16 MR. THOMAS: Mr. President, I'll be most happy to do so.
17 Perhaps, Mr. Civiletti, would you like--

18 ARBITRATOR CIVILETTI: I have a similar concern. I'm well
19 aware that the credibility of witnesses whose testimony is directly
20 relevant and material to the issues in the case is of utmost importance
21 in these proceedings or other similar type proceedings. But where the
22 issues, as one might see them, are dependent on independent facts or,

1 for example, perhaps in this case the actions of the federal
2 government, the state government, and the municipal government of
3 Mexico and the reasons, justifications, process for their decision-
4 making, and Mr. Kesler's particular credibility is not directly
5 material to those issues, then establishing or spending a great deal of
6 time establishing missteps or imprecision or inaccuracies, or worse,
7 seems to me to be, one might say, overkill.

8 MR. THOMAS: Well, obviously, Mr. President, Mr. Civiletti,
9 we'll reflect on your comments. We think that it's appropriate to view
10 the evidence in totality, that the evidence of the enterprise is highly
11 relevant to the reactions and actions taken by state, municipal, and
12 federal agencies.

13 It's appropriate for counsel to be able to examine these
14 matters not only with respect to credibility but with respect to the
15 opportunity to elicit facts which may be linked together as the
16 evidence unfolds during the course of the proceedings. And I know that
17 you don't suggest this shouldn't be done. I'm equally mindful of your
18 wish to have the cross-examination directed to issues which you
19 consider to be relevant. I think it's incumbent upon us to attempt to
20 persuade you that certain issues are relevant, even though they may not
21 appear to be relevant at the opening of the oral testimony.

1 But we'll reflect, of course, on your comments over the
2 course of the break.

3 PRESIDENT LAUTERPACHT: Well, you can be assured, Mr.
4 Thomas, that we are open-minded. We'll naturally listen to and weigh
5 with appropriate care all your arguments. But as you say, you will
6 consider it over the break, and we will resume then at 3 o'clock.

7 [Whereupon, the proceedings recessed to reconvene at 3:00
8 p.m., this same day.]

9
10

1

AFTERNOON SESSION

2

[3:05 p.m.]

3

Whereupon,

4

GRANT S. KESLER

5

resumed the stand and, having previously solemnly declared, was

6

examined and testified further as follows:

7

MR. THOMAS: Yes, thank you, Mr. President. I might just

8

ask before proceeding to questions whether Mr. Escobar could pull out

9

the witness statement of Mr. Jorge Hermosillo for your review, Mr.

10

President.

11

PRESIDENT LAUTERPACHT: Pull out the--

12

MR. THOMAS: The witness statement for Mr. Jorge

13

Hermosillo.

14

MR. ESCOBAR: Sorry. Which pleading was that attached to?

15

MR. THOMAS: It was filed with the rejoinder.

16

BY MR. THOMAS:

17

Q Mr. Kesler, I'd just like to confirm something before I go

18

into a new area of cross-examination. You're, of course, aware that

19

Metalclad has advanced the figure of \$20.5 million in expenditures

20

which were incurred in connection with the COTERIN project; is that

21

correct?

22

A Yes.

1 Q And, in fact, the company's appraiser, Mr. Nichols, who
2 provided an expert report, described the \$20.5 million expenditures as
3 being related to the brick and mortar expenses for constructing the
4 landfill; is that correct?

5 A No. It includes a lot more than that. The 20.5 includes
6 overhead, soft costs, permitting, political relations, community
7 relations, and a host of other things leading up to the construction.

8 Q And would you confirm for the Tribunal, Mr. Kesler, that
9 the 20.5 million also includes expenditures which were incurred by
10 Metalclad in respect of the three Mexican projects that we discussed
11 this morning?

12 A It does.

13 Q It does. In fact, if we were to take, for example, Mr.
14 Robertson's severance in September of 1993, the \$230,000 which were
15 paid to Mr. Robertson, that was included as a COTERIN-related
16 expenditure; correct?

17 A Well, it wasn't included as a COTERIN-related expense.
18 It's a part of the 20.5 million, as is every other salary and overhead
19 expenditure that we made during the entire period of time leading up to
20 the construction--

21 Q Right.

22 A --of the project.

1 Q And, for example, cash payments to Lucia Ratner would also
2 be included in that figure as well; correct?

3 A It would, for the same reason.

4 Q Right. All right. Mr. Kesler, I don't have in my
5 exhibits, in the book of exhibits which we prepared, I don't have Mr.
6 Hermosillo's witness statement, but I wonder--oh, sorry. It's now been
7 provided as Exhibit 69. Would you be so kind as to turn to that
8 Exhibit 69?

9 Do you have it?

10 A I do.

11 Q And if you could refer to paragraph 46 of Mr. Hermosillo's
12 witness statement? Do you have it?

13 A I do.

14 Q Now, Mr. Kesler, it's the claimant's contention in this
15 proceeding that the Mexican legal system is untransparent; is that
16 correct?

17 A Certainly parts of it.

18 Q All right. Mr. Hermosillo testifies at paragraph 46 that
19 he was asked whether Eco Administracion had obtained local
20 authorizations, and I'll read that to you. He says that he was asked
21 whether it obtained authorization from the municipality of Santa Maria
22 del Rio to construct a hazardous waste incinerator, and he testified

1 that, in fact, he first obtained authorization from the municipal
2 president of Matawala, which was the original site that he had
3 contemplated for the incinerator. Do you see that?

4 A I see that.

5 Q And then the location of the project was later changed to
6 Santa Maria del Rio in San Luis Potosi because there was better access
7 to water for the incinerator. Do you see that?

8 A Yes.

9 Q And you see that Mr. Hermosillo indicates that the
10 ayuntamiento, which is the municipal council of Santa Maria del Rio,
11 issues an authorization on September the 19th, 1992, following a
12 meeting of the cabildo held on September the 18th, 1992. Do you see
13 that?

14 A I see that.

15 Q And Mr. Hermosillo attaches as exhibits to his witness
16 statement copies of the two authorizations in Exhibit 24 and Exhibit
17 25. Do you see that referred to in his statement?

18 A I see the reference, but not the exhibit.

19 Q All right. Well, I would ask that your counsel get Volume
20 III-B of the rejoinder and obtain the full witness statement and
21 exhibits of Mr. Hermosillo.

1 MR. THOMAS: Would you be so kind as to do that, Mr. Cling?

2 It's Volume III-B, witness statements and exhibits for the rejoinder.

3 PRESIDENT LAUTERPACHT: Exhibit 24 and 25.

4 BY MR. THOMAS:

5 Q Do you have Exhibit 24, Mr. Kesler?

6 A No, I don't.

7 Q Mr. Pearce is looking for it.

8 [Pause.]

9 THE WITNESS: I have it.

10 BY MR. THOMAS:

11 Q It's addressed to Mr. J. Hermosillo. S would presumably
12 stand for Silva, which is his maternal name. Do you see that?

13 A I do.

14 Q And it's dated April the 20th, 1990.

15 A Yes.

16 Q And it states that, "In response to your letter of April
17 19th, we communicate that we have no objection to granting the
18 requested construction permit for an industrial waste incinerator,
19 taking into consideration that federal SEDUE and state SEDUE as well as
20 the governor of the state have agreed to this project." Do you see
21 that?

22 A Yes, I see it.

1 Q Would you turn to Exhibit 25? This is the translation of
2 the municipal authorization which Mr. Hermosillo obtained on behalf of
3 Eco Administracion. It's dated September the 19th, 1992. Do you see
4 the date at the bottom of the page?

5 A Yes.

6 Q And it states that, "In response to your application, allow
7 me to express to you that in the cabildo meeting that took place on
8 September the 18th, 1992, your application to install an industrial
9 waste recovering and disposal facility in the municipality was
10 assessed, taking into account the following considerations." And it
11 makes reference to the state government permit and other laws. And it
12 then goes on to say that, "You are authorized to construct"--"to carry
13 the construction and installation of your project." Do you see that?

14 A I see that.

15 Q Now, Mr. Kesler, in your first witness statement, you
16 testified that construction at the site commenced in May of 1994 and
17 proceeded without interruption. Do you recall that? That's at page 8
18 if you'd like to check it.

19 A No, that's fine.

20 Q Right. Would you please refer to Exhibit 71 of the large
21 volume? This is a translation of a document which was prepared on June
22 6, 1994. It's Exhibit 10 to the witness statement of Hermilo Mendez,

1 who provided a witness statement for the respondent in this proceeding.

2 Do you see that at the top?

3 A Yes.

4 Q Yes. And this refers to a meeting which was held between
5 representatives of the ayuntamiento of Guadalcazar and Metalclad
6 representative Mr. Solomon Leyva. Do you see Mr. Solomon Leyva's
7 notice there or mention there in the middle of the paragraph? It's
8 about almost two-thirds of the way down the paragraph.

9 A Yes.

10 Q And you testified before lunch that Solomon Leyva was a
11 consultant to Metalclad in the municipality--actually, in the state of
12 San Luis Potosi; correct?

13 A Yes.

14 Q Yes. And in this document, it states that, in the last
15 sentence, "We arrived to the conclusion that at this moment that all
16 the company operations at the La Pedrera landfill are closed [sic]
17 and further meetings will be held with the attendance of the community
18 members so that it is themselves with the ajidal (?) municipal and
19 state authorities who decide the measures to be taken in the future."

20 Do you see that?

21 A I do.

1 Q And the Spanish original has a list of the signatories from
2 the ayuntamiento who signed that document. I'll ask you to accept
3 that. Your counsel's free to challenge that assertion if he sees fit.

4 Now, would you please turn to Exhibit 48 in the large
5 volume?

6 A I have it.

7 Q Yes, this is a summary document. The original, of course,
8 is in Spanish. Again, if your counsel has any objection to the
9 translations, we'll be happy to discuss that. And this is a letter
10 which is addressed to Mr. Juan Carrera Mendoza. Do you see the
11 addressee at the top of the page?

12 A I do, but I don't recognize this. It's signed by Dan
13 Neveau, council president?

14 Q Well, that would actually be chairman of the board. That's
15 a translation--a poor translation of chairman of the board. He was
16 chairman of the board of Metalclad at the time, wasn't he?

17 A Yes, he was.

18 Q And so this is addressed, first of all, to the municipal
19 president, is it not?

20 A It appears to be.

1 Q Yes. And it is the nature of a proposal to the
2 municipality in order to try to gain acceptance of the operation of the
3 landfill. Do you agree with that characterization?

4 A Give me a second to read it, and then I'll--

5 Q Please do.

6 [Pause.]

7 THE WITNESS: When this says summary, does that mean this
8 is document is--

9 BY MR. THOMAS:

10 Q It's a longer document, and as I mentioned to you at the
11 outset, it's a summary.

12 A Do you have the other one? Do you have--

13 Q We have the other in Spanish. You don't read Spanish, do
14 you?

15 A I don't, but I'd like to see it if I could.

16 Q Perhaps Mr. Romero could find the Spanish version of the
17 document.

18 MR. PEARCE: As a point of clarification, Mr. Thomas, when
19 it says "summary," is that different than a translation of a relevant
20 portion?

21 MR. THOMAS: I'd have to look at it, Mr. Pearce. That's a
22 good question. I can't answer that. I haven't taken a look at the

1 Spanish, and I'd have to rely upon my client to tell me whether or not
2 it is a translation of a relevant portion or not.

3 What I'm most interested in doing, though, Mr. Pearce, is
4 simply exploring with the witness the fact of the letter being sent and
5 the general nature of the letter. I'm not going to hold the witness to
6 any particular substantive content of this. I'm not going to try to
7 nail him down to a particular statement.

8 THE WITNESS: All I can do is confirm that the copy that I
9 can see in Spanish is indeed on letterhead and signed--someone has
10 signed this on behalf of Dan Neveau, apparently. But that's all I can
11 tell you about it.

12 BY MR. THOMAS:

13 Q All right. We'll come back to that later on in the
14 proceedings. We'll undertake to provide a full translation of that
15 document.

16 Mr. Kesler, would you take a look at Exhibit 49? Do you
17 see that document?

18 A Yes, I see that document.

19 Q This, I believe--and, again, I'll confirm this, Mr. Pearce--
20 -is a translation of a letter from Mr. Javier Guerra to the municipal
21 president dated July 7, 1994.

22 A Do you have the original of that one?

1 Q Mr. Romero will provide that.

2 MR. THOMAS: Mr. Romero, could you provide a copy of the
3 letter dated July 7, 1994, from Javier Guerra to the municipal
4 President, Juan Carrera?

5 [Pause.]

6 BY MR. THOMAS:

7 Q Perhaps while Mr. Romero is finding the document, Mr.
8 Kesler, just to confirm, you're aware that yesterday Mr. Juan Carrera
9 was present in Washington, D.C., and available for cross-examination?

10 A I assume so. I don't have any personal knowledge of it.

11 Q Well, you were in the room when this was noted on the
12 record.

13 A Okay. I just--I don't know Mr. Carrera.

14 Q Have you met Mr. Carrera?

15 A I don't believe I have.

16 Q Had you met Mr. Ramos Torres?

17 A When I saw him, I wondered. I think I've met him before,
18 but I couldn't--I couldn't swear to it.

19 Q Okay. I'll tell you what. We'll proceed and we'll come
20 back to this, come back to the issue of Mr. Guerra's proposal.

21 Mr. Kesler, were you present for the opening of the
22 claimant's case this year--this week, rather?

1 A I've been here all week.

2 Q And do you recall Mr. Pearce asserting that the respondent
3 referred to the local community without identifying who the community
4 were and how they were to be consulted?

5 A I believe I remember something along those lines, yes.

6 Q Is it Metalclad's position that it did not know how to
7 consult the local community?

8 A Not at all.

9 Q All right. Certainly on the basis of the letter that Mr.
10 Neveau wrote to the municipal president on June 13, 1994, that would
11 indicate that Mr. Neveau realized that Juan Carrera was the municipal
12 president and, therefore, the Chair of the ayuntamiento; is that
13 correct?

14 A I suppose so.

15 Q And the letter, Mr. Guerra's letter of July 7, 1994, also
16 addressed to the municipal president, would indicate that Mr. Guerra
17 believed that he was an appropriate person to send the letter to in
18 terms of a proposal for opening up the landfill; correct?

19 A I would agree with that.

20 Q So there is nothing--Metalclad is certainly not trying to
21 contend that the company was unable to ascertain the seat of the
22 municipal government?

1 A Of course not.

2 Q And it certainly knew who the municipal president was at
3 any particular time.

4 A Of course, we did.

5 Q And it knew who the members of the ayuntamiento were?

6 A That's a fair statement.

7 Q And I take it that Metalclad does not contend in this
8 proceeding that the members of the ayuntamiento were not elected by
9 popular vote?

10 A I don't recall making any such contention.

11 Q And you would agree that the representatives that form the
12 ayuntamiento are for the purposes of Mexican law the duly elected
13 persons to govern the municipality. Would you agree with that?

14 A Absolutely.

15 Q Were you present when Mr. Ramos Torres was cross-examined?

16 A I was.

17 Q And did you understand his testimony about the
18 consultations that he as a municipal president would have with local
19 leaders of ejidos that were situated in the municipality?

20 A I was here when he did that, yes.

21 Q You have no reason to believe that he did not engage in
22 consultations with leaders of the ejidos?

1 A No. Quite the contrary. But I was struck by the location
2 of the members of the--

3 Q No, that's not the question.

4 A Okay. I agree it's not. Sorry.

5 Q And I take it you're not suggesting that the geopolitical
6 boundaries of the municipality are questionable, are they?

7 A What do you mean, "geopolitical boundaries"?

8 Q Well, the way the municipality is defined on the map for
9 the purposes of the governance of Mexico. You're not suggesting that
10 the Tribunal ought to ignore the way in which the municipality has been
11 circumscribed on the map, are you?

12 A I don't know why I would do that.

13 Q No. And, therefore, that the people who are elected to
14 represent the municipality are representing the interests of the
15 municipality within the boundaries as defined on the map; is that
16 correct?

17 A They're certainly supposed to.

18 Q Well, they are elected to represent the interests of the
19 people within that--

20 A That's their--I believe that's what they're called to do,
21 and hopefully that's what they do.

1 Q Thank you. Let's go back to Mr. Guerra's proposal. This
2 is the Spanish version that you requested.

3 A Okay.

4 PRESIDENT LAUTERPACHT: It is the proposal of 7 July; is
5 that right?

6 MR. THOMAS: That is correct, Mr. President.

7 THE WITNESS: Yes.

8 BY MR. THOMAS:

9 Q And do you--that, again, is on Metalclad letterhead?

10 A It is.

11 Q It is. And is that signed by Mr. Guerra?

12 A It's signed on his behalf.

13 Q Signed on behalf of Mr. Guerra. Now, Mr. Kesler, you're
14 aware that the proposals that were submitted by Mr. Neveau in June and
15 by Mr. Guerra in July were not accepted by the municipal president?

16 A I believe that's--this looks like more of an explanation of
17 the kind of benefits the community would receive by supporting the
18 development--

19 Q Which document--

20 A To that extent--

21 Q Which document are you referring to?

1 A The one you gave me here, Tab 49, the letter of July 7,
2 1994. It's talking about the investment, the number of jobs, the
3 benefits that the community would enjoy by supporting the project.

4 Q But you're aware that the municipal president rejected
5 these proposals--

6 A I assume so. I'm not--I can't tell you exactly what he did
7 and how he did it, but I know that the landfill's not open. So we
8 obviously didn't reach an accord.

9 Q Now, Mr. Kesler, I would like to turn to the company's
10 activities in connection with the United States Embassy during the
11 summer of 1994.

12 MR. THOMAS: Mr. President, you'll be pleased to hear that
13 we may be able to expedite the hearing even more, depending on the
14 outcome of these answers, if we are able to move through this quickly.
15 It may obviate the need to call one of the other witnesses.

16 BY MR. THOMAS:

17 Q Who is Kevin Brennan?

18 A Kevin Brennan is the head of the commercial section of the
19 U.S. Embassy in Mexico City. He's, as I understand it, technically an
20 employee of the U.S. Department of Commerce, and his role at the
21 Embassy is all commercial matters that come before the Ambassador and
22 the Embassy itself.

1 Q He formally was posted at the U.S. Embassy. He's now
2 posted in France.

3 A I'm aware of that.

4 Q Yes.

5 A I thought you were talking about 199--

6 Q I just asked who he was first.

7 A Oh, I'm sorry.

8 Q And, in fact, he was posted in Mexico City commencing in
9 August of 1994?

10 A I--

11 Q Actually, I can help you out on that, Mr. Kesler. Why
12 don't you take a look at Tab 38 of the large binder.

13 A You are correct.

14 Q Paragraph 2.

15 A Yep.

16 Q So he was minister counselor for commercial affairs of the
17 Commercial Service of the American Embassy.

18 Mr. Kesler, you're aware that the respondent requested that
19 the Commerce Department provide the opportunity to interview Mr.

20 Brennan prior to this case?

21 A Yes.

1 Q Yes. And that on April the 29th, 1999, a telephone
2 conference was held in which Mr. Pearce participated?

3 A Yes, I'm aware of that.

4 Q And Mr. Brennan was asked a number of questions about his
5 knowledge of the Metalclad matter during the course of that
6 conversation?

7 A I'll accept your representation. I wasn't on the call.

8 Q Right. Now, I'd like you to look at Tab 38 behind the
9 declaration of Mr. Kevin Brennan. This is a second declaration that
10 Mr. Brennan provided to the Tribunal. It was decided that he would not
11 participate as a witness, and so this second statement was sent. And
12 attached to it is a letter which has at the top of it the number Hugo
13 Perezcano Diaz.

14 A Uh-huh.

15 Q And that's dated May 5, 1999, in Washington, D.C. Do you
16 see that letter?

17 A I have that.

18 Q And that letter was an attempt by the Government of Mexico
19 to summarize the content of the interview with Mr. Brennan. And Mr.
20 Brennan--are you aware of the fact that Mr. Brennan was asked to review
21 this letter and to provide his comments?

22 A I believe so.

1 Q Right. Okay.

2 A I'll accept your representation to that effect.

3 Q And, in fact, if you look at Mr. Brennan's second
4 statement, which is in front of the summary provided by the Government
5 of Mexico, at paragraph 5 he says, "In general"--

6 A Is--now what?

7 Q If you look at Mr. Brennan's--

8 A This is a summary?

9 Q The summary has got Mr. Perezcano's address at the top. Go
10 ahead in the booklet--no, no. Preceding pages.

11 A I just have the two-page declaration.

12 Q Yes, that's right. That's the two-page declaration that
13 Mr. Brennan filed.

14 A Right.

15 Q That covered the letter provided by Mr. Perezcano. And if
16 you look at paragraph 5--

17 A Oh, I see. Okay.

18 Q Would you look at paragraph 5 of Mr.--

19 A Mr. Brennan.

20 Q --Brennan's statement?

21 A All right.

1 Q He says, "In general, the summary attached as Annex 2
2 accurately reflects my responses to the questions posed in the
3 interview, with the following exceptions and corrections." And then he
4 sets out some additional points, and we can come back to those as we go
5 through this.

6 What I'd like to deal with here, Mr. Brennan, is what the
7 company--

8 A I'm Kesler.

9 Q I'm sorry. Did I call you Mr. Brennan? I'm sorry.

10 A That's perfectly all right, and I don't mean to be picky.

11 Q I'm sorry, Mr. Kesler. I want to understand what it was
12 that the company did with the United States Embassy. And you're aware
13 that Ambassador Jones at one point threatened to blacklist the state of
14 San Luis Potosi, aren't you?

15 A I was there actually on that occasion.

16 Q Right. And what is the--could you just explain to the
17 Tribunal what the effect of blacklisting a state is?

18 A Well, he had proposed a press release which--

19 Q No, just what's the effect of blacklisting?

20 A I don't know.

21 Q Well--

1 A All I can tell you is what I know about it, which is the--
2 what he said it was is reflected in a copy of a press release that he
3 gave to me and said, "This is what my intention is." So I assume
4 that's what he means by blacklisting.

5 Q And was that--is it a notice to the investing public that
6 the blacklisted state is inhospitable to investment? Is that the
7 thrust of a blacklisting?

8 A Yeah, the word "blacklisting" didn't appear in the release,
9 as I recall, but it was a cautionary statement, a statement meant to
10 caution other U.S. companies considering doing business in the state of
11 San Luis Potosi, that as long as Governor Sanchez Unzueta was
12 responsible to run the state, it would probably be wise to look further
13 into the matter before making the investment because of his expressed
14 hostility to Metalclad.

15 Q Now, Mr. Jones, of course, being an Ambassador, would be
16 reliant upon the work of his officials; is that correct? He's a busy
17 man. He doesn't have time to go out and do due diligence on every
18 party that comes before the Embassy, does he?

19 A I believe that's a fair statement.

20 Q And, in fact, Mr. Brennan was the responsible official in
21 the United States Embassy; isn't that right?

22 A For a portion of the time he was, yes.

1 Q Well, for a lot of the time. From August 1994 to February
2 1999.

3 A Right.

4 Q And the company actually contacted the Embassy in June of
5 1994, didn't it?

6 A Well, even before that, actually. We maintained a contact
7 with the Embassy early on, maybe 1992.

8 Q Well, according to the chronology that the United States
9 Commerce Department prepared, which was filed with your pleadings, the
10 project, the COTERIN project, was presented to Embassy officials in
11 June of 1994.

12 A I'm not disputing that. I'm just saying we had a pre-
13 existing relationship there that predated that.

14 Q Right. And in July of 1994, the Embassy's assistance was
15 requested by Mr. Neveau. You're aware of that?

16 A Yes.

17 Q And the way in which the Embassy's chronology describes it
18 is that the Embassy was requested to help iron out potential
19 difficulties with this project. That's what the chronology says. Have
20 you read the chronology?

21 A Oh, yeah, but give me a break. It's been a while.

1 Q Now, I just want to refer, then, to a few points here to
2 confirm. Would you look at paragraph 5 now of the letter that Mr.
3 Perezcano sent to Mr. Brennan? Do you see that?

4 A I do see it.

5 Q And he confirms that you were the principal representative
6 of Metalclad with whom he dealt. And he says that he met you for the
7 first time after his arrival to post, at post in mid- to late 1994.
8 Previously, his predecessor, John Harris, had been working the case
9 prior to that time. Do you see that?

10 A I do.

11 Q And I take it you have no reason to disagree with that
12 recollection?

13 A No, I don't.

14 Q Would you go down to paragraph 13? Mr. Brennan--his
15 recollection is that at his first meeting with the company, he was
16 informed that the previous Mexican owners had contaminated the La
17 Pedrera site. Do you see that?

18 A I see that.

19 Q And our note says that he recalls that Mr. Kesler informed
20 him that Metalclad's intention was to first completely remediate the
21 site before accepting new waste. Is that what you told Mr. Brennan, or
22 is he mistaken?

1 A I believe he's mistaken. It's impossible to remediate
2 without having operations and accepting new waste.

3 Q Okay. So he's mistaken on that point. But he must be--
4 he's mistaken, therefore, on the next sentence. You believe that this
5 was further repeated to the Ambassador in several meetings. So he'd be
6 mistaken on that point as well?

7 A Yes.

8 Q Okay. And the next point at paragraph 14, you stated in
9 1994 it was your understanding there was no local opposition to the
10 site. Do you see that?

11 A I do.

12 Q And he says--we recorded you stated that Metalclad did not
13 raise this with you at the outset of your dealings with it. You
14 believed that the local opposition did not arise until much later. Do
15 you see that?

16 A I do.

17 Q Now, I just want to be perfectly fair about this. Mr.
18 Brennan wished to clarify in Point 8 of his second declaration the way
19 in which he described what we had taken down was: With respect to
20 Point 14, an accurate summary would reflect that in 1994 I was unaware
21 of any local opposition to the project. Do you see that?

22 A I do.

1 Q Okay. Is that correct that he was not made aware of local
2 opposition to the project in 1994?

3 A I take him at his word with respect to his understanding.

4 Q Well, he's being asked specifically about what the company
5 told him, and he's saying that he was unaware of any local opposition
6 to the project in 1994. You don't have any reason to disagree with
7 that?

8 A No, provided that when we say local, we're talking about
9 the communities that are impacted and affected that surround the site,
10 not the entire 26,000-member--

11 Q The entire 26,000-member municipality.

12 A Right.

13 Q But he doesn't qualify that. He just says local
14 opposition, he was not aware of that.

15 A That's correct. And that's a fair statement. Neither were
16 we.

17 Q Okay. Now, in paragraph 15 of Mr. Perezcano's letter, we
18 asked him whether he was aware that this was a new business venture for
19 Metalclad, and he responded that it was his understanding that
20 Metalclad had been in the toxic waste remediation business for some
21 time. And, of course, your evidence is that it was in the asbestos
22 business before.

1 A Asbestos is toxic waste, and we did remediate it from the
2 time it was declared toxic until the present time.

3 Q Right.

4 A That's a correct statement.

5 Q Now, would you please go to paragraph 21? And Mr. Brennan
6 was asked the question as to whether or not he had ever inquired as to
7 whether Metalclad had engaged in bribery or illegal activity, such as
8 making payments to federal officials in connection with the issuance of
9 federal permits. Do you see that?

10 A Yes.

11 Q And Mr. Brennan's response was that he put the question
12 directly to you, Mr. Kesler, and, quote, "He flatly told me"--"He told
13 me flatly that they had not made any payments to federal officials and
14 that he"--that's you, Mr. Kesler--"was fully aware of the Foreign
15 Corrupt Practices Act and that Metalclad would never violate it."

16 A That's absolutely true.

17 Q That's what you told him. Okay.

18 Now, Mr. Kesler, you'll recall that in the first round of
19 pleadings there was extensive allegations made that state officials
20 were and municipal officials were corrupted by Metalclad's would-be
21 competitor, RIMSA. Do you recall that?

22 A Yes, I do.

1 Q And you recall that specific denials were made in the
2 counter-memorial witness statements by the individuals against whom the
3 allegations were made. You recall that?

4 A I do.

5 Q Yes. And Mr. Brennan was asked about this question of
6 whether or not RIMSA was affecting this particular investment, and he
7 was asked whether or not you, Mr. Kesler, ever provided him with
8 documents that would in any way prove the connection between RIMSA and
9 the governor, for example. And his evidence is that--or his statement
10 here is that you did not provide any such documents; is that correct?

11 A That's correct.

12 Q That's correct. But, Mr. Kesler, you'll recall that in the
13 reply in an exhibit which was attached to the witness statement of Mr.
14 Brennan, there is a U.S. Government file note that records a meeting
15 that he and Ambassador Sanchez Unzueta and Ambassador Jones had in
16 October of 1996--sorry, 19--yes, 1996. Are you aware of the existence
17 of that document?

18 A No. Can you show it to me?

19 Q I'll ask Mr. Romero to get it.

20 That document--which we'll find for the record, Mr.
21 President--contains a discussion--the record of a discussion between
22 Mr. Brennan and you in the last paragraphs, and Mr. Brennan records

1 that you tell him that you expect to have documents linking the current
2 governor to RIMSA. And I think the term is "next week."

3 Would you take a look at that file note, Mr. Kesler? It's
4 at the very end of the file note that Mr. Brennan prepared.

5 PRESIDENT LAUTERPACHT: What is the precise reference?

6 MR. THOMAS: Perhaps, Mr. Pearce, could you help me out and
7 look at the cover of the binder and read out the exhibit number,
8 please, for--

9 MR. PEARCE: Mr. Kesler, here. It says it's Metalclad
10 Reply Exhibits 1 to 9, Volume 2.

11 BY MR. THOMAS:

12 Q And if you look at the very last page, Mr. Kesler, do you
13 see at the bottom a discussion of the case officer following up with
14 you?

15 A Which paragraph number is it, do you know? Is it--

16 Q If I may, I'll come around and direct you.

17 A I've found it. I've found it. It says, "He said that next
18 week he expected to have documents that would link the current governor
19 to RIMSA."

20 Q Right. And Mr. Brennan confirmed that you never did
21 actually provide any documents to him which linked the governor to
22 RIMSA, and that's correct; isn't it?

1 A That's true.

2 Q Mr. Kesler, would you please turn to paragraph 40 of the
3 letter that Mr. Perezcano sent to Mr. Brennan? Do you see that?

4 A Yes.

5 Q And it says that you--this is again Mr. Brennan--stated
6 that you were unaware that in 1990-91, while under Mexican ownership,
7 COTERIN had applied for and had been denied a municipal permit to
8 construct a hazardous waste landfill at La Pedrera. Do you see that?

9 A I see -- [tape ends.]

T3B 10 Q --would reflect my view that I am unaware of any facts
11 regarding an application by COTERIN in 1990-91 for a municipal permit
12 or a denial thereof. Do you see that?

13 A I thought you were reading from something else.

14 Q It's paragraph 11 of the second witness statement of Mr.
15 Brennan.

16 A Yes.

17 Q Okay. So he was unaware of the application for a
18 construction permit in 1990-91 by COTERIN when it was under Mexican
19 ownership.

20 I don't want to belabor the point of the company's previous
21 experience, Mr. Kesler. We covered that this morning. But I would
22 like to direct you to paragraphs 48, 49, and 50 of Mr. Brennan's--of

1 the summary of the interview with Mr. Brennan. Do you see those
2 paragraphs?

3 A I see them.

4 Q The first says, "In response to the question, Were you
5 aware that Metalclad had not previously sited a hazardous waste
6 landfill before? you replied, 'No.' In response to the question, Were
7 you aware that Metalclad had not previously constructed a hazardous
8 waste landfill? you replied, 'No.' In response to the question, Were
9 you aware that Metalclad had not previously operated a hazardous waste
10 landfill? you replied, 'No.'" Is that--

11 MR. PEARCE: Mr. Thomas, is it Mr. Kesler you're saying
12 replied no?

13 MR. THOMAS: No.

14 MR. PEARCE: You keep saying, "You replied no."

15 MR. THOMAS: I'm reading out what the letter to Mr. Brennan
16 said. And what I'm about to ask Mr. Kesler, Mr. Pearce, is:

17 BY MR. THOMAS:

18 Q Is Mr. Brennan's recollection accurate? Is it true that
19 the company did not tell him that it had not previously sited,
20 constructed, or operated a landfill before?

1 A I don't remember much discussion about it. We did give him
2 a lot of background on the company, but I don't remember any concern or
3 discussion about it.

4 Q All right. And just go up to paragraph 45, Mr. Kesler.
5 You'll see there the companies that we discussed this morning: Eco
6 Administracion, Descontaminadora, and Eliminacion. Do you see those
7 there?

8 A Yes, I do.

9 Q And our file note says that he confirmed that he had not
10 previously heard of Eco Administracion, or Descontaminadora, and he
11 testified--he thought that--I'm sorry. He didn't testify. He stated
12 that he thought that Eliminacion rang a vague bell, but he couldn't pin
13 it down. And I'll just--again, as a point of clarity, what Mr. Brennan
14 says in his second witness statement at paragraph 12 is, he says, "With
15 respect to Point 46"--which is the question of were you aware that none
16 of these projects were constructed by Metalclad, Mr. Brennan states,
17 "An accurate summary would reflect my view that I am unaware of the
18 companies cited in Point 45 and unaware of any connection between those
19 companies and Metalclad. Consequently, I am unable to confirm whether
20 Metalclad has any involvement with the companies cited." Do you see
21 that?

22 A I do.

1 Q Do you have any reason to think that Mr. Brennan's
2 recollection of being unaware of the previous three Mexican projects is
3 inaccurate?

4 A I don't.

5 Q At paragraph 51 of the letter to Mr. Brennan, he was asked
6 as to whether or not he was aware of the opposition of non-governmental
7 organizations to the landfill, and he stated that the issue had been
8 raised "once or twice." Does that accord with your recollection of
9 your contact with Mr. Brennan?

10 A I'm not--I can't dispute what he says. I don't disagree
11 with it.

12 Q All right. Now, Mr. Kesler, just to finish this point,
13 you've acknowledged after lunch that the three companies that we spent
14 so much time on this morning, that Metalclad intends to include
15 expenditures incurred with respect to those three companies in its
16 \$20.5 million expenditures; is that correct?

17 A We do.

18 Q And so, therefore, you would like to have the Tribunal
19 consider those activities involved in relation to those projects
20 insofar as they cost the company some money; is that correct?

21 A And led to the creation and construction of La Pedrera,
22 yes.

1 Q But it's correct and you do not disagree that Mr. Brennan,
2 the responsible United States Government authority, did not have these
3 three companies brought to his attention?

4 A What's the connection between--

5 Q Well, Mr. Kesler, you're now claiming a large sum of money
6 from the Government of Mexico, \$20.5 million in terms of expenditures.
7 You're rolling in these previous projects--

8 A What's that got to do with Kevin Brennan?

9 Q Well, you didn't see fit to inform him that you had three
10 previous projects in Mexico which were not completed.

11 A That had absolutely nothing to do with our contacting the
12 Embassy, our seeking their help and assistance at La Pedrera. We
13 didn't have--we didn't need his help in Vera Cruz and Tamaulipas.

14 Q Well, Mr. Kesler, you said that you told him a lot of
15 information. You didn't think that it was something that might be
16 relevant to the Embassy's consideration that your previous three
17 projects had never been completed?

18 A No. Why would I?

19 Q Well, that's fine, Mr. Kesler. If that's your evidence,
20 that's your evidence.

21 I'd like to turn to the--I'm sorry, Mr. Kesler. I don't
22 have the cite here, but I'm going to give it to your counsel. The

1 witness statement of Antonio Azuela at paragraph 40 discusses this
2 issue of experience, and I'm going to tell you, Mr. Kesler, that Mr.
3 Azuela, who was the--who is--was and is the attorney general for the
4 environment, testified that he was under the impression that Metalclad
5 was experienced in the hazardous waste disposal business, and we're
6 talking about here, again, incineration and landfilling.

7 Now, was Attorney General Azuela unreasonably interpreting
8 the company's representations to him?

9 A No. I think it's quite reasonable that he would assume
10 that we had that experience. He had a personal involvement with some
11 of the people from BFI that we brought to Mexico City. We introduced
12 them. We went through the whole résumé of BFI and our intention to
13 have them involved in operating part of the landfill.

14 Q I'm just talking about the experience, Mr. Kesler.

15 A Oh, I thought you asked me, you know, if there's something
16 wrong with Mr. Azuela's opinion about our experience. I don't think so
17 at all.

18 Q All right.

19 A He was a big supporter.

20 MR. THOMAS: Okay. I don't wish to belabor the point, Mr.
21 President, but I would like to return to the question of Mr. Rodarte
22 and Lucia Ratner.

1 BY MR. THOMAS:

2 Q Mr. Brennan notes that you made a very clear declaration
3 that the company would never violate the Foreign Corrupt Practices Act.

4 A True.

5 Q After you found out that Mr. Rodarte was married to a
6 person who had been a shareholder of yours going back to August--a
7 fellow shareholder of yours going back to August of 1991, did you
8 attempt to rescind any of your agreements with her because of their
9 possible effect under U.S. law?

10 A No. We felt there was no--there wasn't even the slightest
11 possibility of a violation of the Foreign Corrupt Practices Act with
12 respect to the whole relationship with Rodarte and his wife.

13 Q All right. Mr. Kesler, there's an issue here about the
14 question of corruption, and as was noted by Mr. Perezcano at the outset
15 of the opening, Metalclad did allege in its memorial that there were
16 acts of corruption in Mexico, didn't it?

17 A We did.

18 Q Yes. And Mr. Rodarte in particular at the end of his first
19 witness statement, he says that he was aware that your former legal
20 counsel, Mr. de la Garza, wanted \$250,000 to bribe Governor Sanchez
21 Unzueta; is that right?

22 A No, I don't remember it exactly like that.

1 Q It's at the back of his witness statement.

2 A Okay.

3 Q I think you can take that on my advice. And you're aware
4 that the respondent asked the relevant persons--

5 MR. PEARCE: I'm sorry, Mr. Thomas, to interrupt you. Did
6 you say that he said that he asked for \$250,000 to bribe the governor?

7 MR. THOMAS: Yes.

8 MR. PEARCE: I don't believe that's his statement.

9 MR. THOMAS: Well, let's take a look at his statement. Can
10 I have Mr. Rodarte's first witness statement?

11 MR. PEARCE: I believe the word is "influence."

12 MR. THOMAS: Oh. But he asked for the \$250,000?

13 MR. PEARCE: That's his testimony, that he requested
14 \$250,000 to influence the governor. "Bribe" was your word.

15 MR. THOMAS: Thank you for the--

16 THE WITNESS: Mario de la Garza--or not--what's his name?

17 BY MR. THOMAS:

18 Q Jose Mario de la Garza.

19 A De la Garza was the one asking for the \$250,000, is that
20 what you're saying?

21 Q That's what Mr. Rodarte--

22 A Right.

1 Q --alleges in his first witness statement. You understand,
2 Mr. Kesler, that we found it necessary to ask Mr. de la Garza whether
3 that allegation was true? That was as prudent thing for the Government
4 of Mexico to do, you would agree, wouldn't you?

5 A I sure would.

6 Q Yes. And you're aware that he entered a specific denial on
7 that?

8 A I am also aware of that.

9 Q And, in fact, to the contrary, he says that it was your
10 idea that this take place. You're aware of that?

11 A I'm aware of that.

12 Q Now, I'll do this very shortly. Mr. Kesler, you referred
13 to a letter which you wrote dated April 28, 1995, addressed to Rufete
14 (?) de la Garza in which Metalclad terminated them. You didn't want
15 any more of their legal services. Is that correct?

16 A Yes.

17 Q And that was actually filed with the reply, I believe.

18 MR. THOMAS: Is that right, Mr. Pearce?

19 THE WITNESS: Well, it was filed, first of all, in your
20 counter-memorial, and then we supplied in the reply the same letter but
21 with the notation of receipt by a secretary. So there are two in the
22 record.

1 BY MR. THOMAS:

2 Q You're right. And that notation in the version which you
3 provided says that it was received on April 28th at 4:00 p.m.

4 A I think it was 4:10.

5 Q 4:10.

6 [Pause.]

7 BY MR. THOMAS:

8 Q We can proceed with the question in any event. It's a very
9 simple set of questions, Mr. Kesler.

10 You signed that letter, didn't you?

11 A I signed it in person. I was there in person and signed it
12 on Friday, the--it was either the 27th or 28th. But it was a Friday
13 night. I signed it in person.

14 Q In Mexico?

15 A In Mexico, San Luis Potosi.

16 Q You're sure of that?

17 A No.

18 Q This is a significant event. You were terminating your
19 lawyers.

20 A I think so. The reason I'm saying this is because as I--
21 the last time I looked at it, I believe I saw my signature, and then
22 Dan Neveau's signature that was done by somebody else, and I recall

1 calling Dan and getting his approval to sign it. He agreed and then I
2 had somebody sign for him in the office. But I believe I signed that
3 wet ink. If you'll give me a copy, I'll sure tell you. But I hate to
4 say for sure without seeing it because you're probably going to nail me
5 somewhere.

6 Q Well, I don't even actually have to put the letter there
7 right now.

8 Mr. Neveau's account is actually very different. His
9 account in his evidence is that you were quite angry about matters and
10 that you drafted the letter to Mr. de la Garza on your way home to
11 California and that it was then transmitted to the Mexican offices for
12 a translation. And he says that it was then personally delivered that
13 day to the law offices of Mr. de la Garza.

14 Now, Mr. Kesler, the difficulty we were having--you've just
15 admitted that you signed the letter. The difficulty we had was how
16 could the letter have been signed in California, sent down to Mexico
17 for translation, and then sent over to Mr. de la Garza's office. Do
18 you recall that in your second witness statement you say that you were
19 not in San Luis Potosi for the latter part of April of 1995?

20 A I don't recall that.

21 Q Well, let's take a look. Would you turn to paragraph 67 of
22 your second witness statement, Mr. Kesler? It says, "Mr. de la Garza

1 says that we had a meeting at his office during the last days of April
2 1995. He says that at the meeting I attempted to induce him to bribe
3 Horacio Sanchez Unzueta and that with indignance he resigned the employ
4 of the company and immediately wrote a letter to the governor
5 indicating that this was the case. He claims that our own letter,
6 dated April 28, 1995, firing him was a fabrication, done after the fact
7 to make our story look consistent."

8 And if you look at paragraph 68, he says, "There was no
9 meeting"--you say, "There was no meeting with man during the last days
10 of April 1995. The last meeting any of us had, including me, occurred
11 in the first week of April, either the 4th or the 5th. It was out of
12 frustration at being unable to reach him that we finally gave up and
13 fired him on April the 28th." Now--

14 A That doesn't say what you just said, Mr. Thomas.

15 Q Well, Mr. Kesler, were you in San Luis Potosi on April the
16 28th?

17 A I think so.

18 Q Do you have your diary?

19 A I don't. But I believe I was there, and I believe I signed
20 the letter in person and that it was signed by somebody at the office
21 on behalf of Dan and delivered.

1 What I refer to in this statement is that there was no
2 meeting with de la Garza the last days. It was the first--the last
3 meeting we had with him was the 4th or 5th of April, and it was out of
4 frustration of having no contact with him that we fired him. That was
5 at least one of the reasons. And I recall being there like for a week
6 and trying to contact him with no response. And that's when the
7 frustration came and the letter went--

8 Q That's when you terminated him.

9 A But if you'll give me a copy of that letter, I'd love to
10 know if my signature's on it. I believe that it is.

11 Q Yes, we have it, and we're trying to find it.

12 A It also will indicate who typed the letter and where.

13 Q It's clearly typed in Mexico.

14 Mr. Kesler--

15 ARBITRATOR CIVILETTI: Do you have information with regard
16 to if it was delivered on Saturday, the 28th, is it?

17 MR. THOMAS: Friday, the 28th.

18 ARBITRATOR CIVILETTI: Friday, the 28th?

19 MR. THOMAS: Do I have--

20 ARBITRATOR CIVILETTI: Are you going to ask about that? Or
21 is that conceded or what?

22 MR. THOMAS: No.

1 [Pause.]

2 BY MR. THOMAS:

3 Q I'll just direct you to Mr. Neveau's statement at paragraph
4 69. It simply says at paragraph 69, "Grant drafted the letter upon his
5 return to California and had it translated in one of our Mexican
6 offices thereafter."

7 A I think Dan's wrong.

8 Q Okay. Dan's wrong--

9 A I'm sorry.

10 Q --on that point, then.

11 A But I think he is.

12 Q Okay.

13 A I'd like to see the letter, but my present recollection is
14 that I drafted it and signed it in San Luis Potosi at our offices.

15 Q Okay. So it wasn't drafted in California and sent down.
16 It was drafted in San Luis Potosi. Mr. Neveau's in error.

17 A I think so.

18 Q Right. Okay.

19 Mr. Kesler, at an appropriate time we'll--I believe it's
20 back at our American counsel's office. We'll provide a copy of the
21 original letter for your review and for the Tribunal's review.

22 [Pause.]

1 BY MR. THOMAS:

2 Q Mr. Kesler, would you refer to Exhibit 72? This is a
3 letter, again, on Metalclad Corporation letterhead; is that correct?

4 A It is.

5 Q Dated September the 9th, 1994; correct?

6 A Yes.

7 Q And it's addressed to your local counsel in the city of San
8 Luis Potosi?

9 A One of them, yes.

10 Q And it's from Mr. Neveau?

11 A It is.

12 Q And in the first paragraph, he thanks Mr. Garcia Leos for
13 sending a letter dated August the 17th, 1994, which was addressed to
14 Javier Guerra. Do you see that in the first paragraph?

15 A Yes.

16 Q Are you aware that that letter was a letter from counsel
17 which enclosed information on how to apply for a municipal permit in
18 Guadalcazar?

19 A Give me just one second.

20 [Pause.]

21 THE WITNESS: Okay. I've read it.

22 BY MR. THOMAS:

1 Q Mr. Kesler, I'm specifically interested in the second
2 paragraph whereby Mr. Neveau makes reference to the application for the
3 building license in La Pedrera.

4 A Yes.

5 Q And at this time Mr. Neveau is the chairman of the board of
6 Metalclad; is that correct?

7 A Yes.

8 Q And he is of the opinion that they should probably not
9 construct--apply for the permit. Do you see that?

10 A Apply for a building license?

11 Q Yes.

12 A Yes, I do.

13 Q And he says that Metalclad has the authority from PROFEPA.
14 That's the federal authority?

15 A I think he misspoke here. I think he really means the INE.

16 Q Okay. But from the federal authorities--

17 A Federal authority.

18 Q --to construct and maintain the project. And then he asks
19 Mr. Garcia Leos for his opinion as to whether or not the federal
20 authority supersedes the license to construct. Do you see that?

21 A Right.

1 Q Are you aware that Mr. Garcia Leos has testified in this
2 proceeding that he advised Mr. Neveau that the federal authority did
3 not supersede the municipality's jurisdiction?

4 A Yes, I'm aware of his testimony.

5 Q And you're aware that Mr. Garcia Leos' partner, Mr. de la
6 Garza, was present here yesterday and available for testimony?

7 A Yes.

8 Q Yes. [Recorded portion of Tape 3B ends here, approximately
9 20 minutes of tape blank.]

10 MR. PEARCE: Do you have a copy of the order?

11 PRESIDENT LAUTERPACHT: He's down for Tuesday, September
12 7th.

13 MR. PEARCE: He's certainly not ready for tomorrow.

14 MR. THOMAS: We have Mr. Haglund--

15 MR. PEARCE: We've got the order of witnesses, so we'll
16 respond to the order of witnesses.

17 MR. THOMAS: He's ready for Tuesday?

18 MR. PEARCE: Yeah.

19 MR. THOMAS: Yes?

20 MR. PEARCE: Yes.

21 MR. THOMAS: Okay. All right. I just wanted to make sure
22 because I have some questions about this letter, and I just want to

1 make sure I have a chance to ask them. But we'll pass on to Mr.
2 Neveau.

3 BY MR. THOMAS:

4 Q Mr. Kesler, I want to go back to the transcript of the
5 meeting with the university professors at Tab 32, and I'd like to
6 direct you to paragraph 148.

7 PRESIDENT LAUTERPACHT: What tab, please?

8 MR. THOMAS: It's Tab 32, Mr. President.

9 THE WITNESS: 148?

10 BY MR. THOMAS:

11 Q Paragraph 148. It's an intervention by Fernando Diaz-
12 Barriga. Would you just take a minute to read paragraphs 148 and 149?

13 A Sure.

14 [Pause.]

15 BY MR. THOMAS:

16 Q Have you had a chance to read those, Mr. Kesler?

17 A [No audible response.]

18 Q Okay.

19 [Pause.]

20 THE WITNESS: I've read them.

21 BY MR. THOMAS:

1 Q You see that Mr. Diaz-Barriga is expressing concern about
2 the social aspects of the opposition due to the poor management of the
3 previous transfer station and indicates that he sees it as being
4 extraordinarily difficult to change the perception of the people?

5 A I see that.

6 Q And the question I had for you, Mr. Kesler, was whether or
7 not Mr. Diaz-Barriga's comments about the social opposition to the site
8 were conveyed to you.

9 A Yes.

10 Q I'd like to just complete my cross-examination, Mr. Kesler,
11 with a few general questions about the risks. Would you agree with me,
12 Mr. Kesler, that Metalclad's business in Mexico was speculative?

13 A Yes.

14 Q And would you agree with me--

15 A Excuse me. I'm sorry. Speculative from the standpoint of
16 investment, and we so stated to people that sought to invest with us.

17 Q Right.

18 A In Mexico itself, from our perspective, it appears to be
19 not complete assurance but not speculative.

20 Q Right. But the simple question was: Was it speculative?
21 And I think your question is a qualified yes?

1 A And a qualified no. I mean, it depends on which aspect
2 you're talking about. We speak of the speculative nature for
3 investors, but Mexico, no. I felt like at least for a long time, and
4 certainly at the federal level, tremendous motivation on their part,
5 very helpful, cooperative, supportive, grateful.

6 Q So it's not speculative?

7 A And I felt like they gave--

8 Q Mr. Kesler--

9 A --a level of certitude to--

10 Q Mr. Kesler, it's a simple question--

11 A --to the project--

12 Q --and you'll have your opportunity--

13 A --that makes it non-speculative.

14 Q Okay. It's not speculative. Okay. That's all I wanted
15 you to tell me. It was a new business activity for Metalclad, though;
16 correct?

17 A A completely new line of business for Metalclad, yes.

18 Q And it was subject to all the risks inherent in commencing
19 a new business activity; correct?

20 A Yes.

21 Q And there was no guarantee that the company would be
22 successful in its incinerator or landfill operations; correct?

1 A There was no guarantee to start with, no, but later on--

2 Q And you made no assurances that it--you made no assurances
3 to your investors that it would be successful in its incinerator or
4 landfill operations, did you?

5 A That's--indeed, we warned them.

6 Q That's right. And prior to exercising the option to
7 acquire COTERIN, the company was well aware of the fact that the site
8 was contaminated; correct?

9 A I completely disagree with that. When you say the site was
10 contaminated, there are 2,200 acres, less than 1 percent--

11 Q Mr. Kesler--

12 A --have any kind of hazardous waste--

13 Q Mr. Kesler, there's 20,000 tons--

14 A --the site was not contaminated, Mr. Thomas.

15 Q Okay.

16 A I disagree with that characterization.

17 Q The site was not contaminated.

18 A No.

19 Q All right.

20 A It was a transfer station that amounted to less than 1
21 percent that had received hazardous waste. By the way, those pictures
22 you showed had nothing to do with our project. There's no barrels or

1 bags or anything else. There's nothing except a contained facility
2 with--we just happened to know inside those cells are hazardous waste
3 that needs treatment, but they certainly aren't as you depicted in your
4 photographs.

5 Q All those barrels are in that cell?

6 A How do I know that? We had--that has never been the state
7 of La Pedrera from our involvement ever. It never looked like that.

8 Q Mr. Kesler, we didn't suggest that.

9 A Well, why did you put it up?

10 Q Because it was the transfer station in 1991 with that waste
11 deposited there.

12 A We didn't own it in 1991.

13 Q You'll have your opportunity to respond to questions from
14 Mr. Pearce, which I know he will key up for you.

15 The question I had was: Were you aware at the time you
16 exercised the option that the site, the transfer station site was
17 contaminated, yes or no? Yes or no, Mr. Kesler?

18 A I can't answer that yes or no. We were aware there was
19 illegally disposed waste in the transfer station, yes, but that didn't
20 affect the entire site, not even a small part of it.

21 Q And you had a public awareness plan?

22 A We did.

1 Q And your evidence is that it was extensive.

2 A It was.

3 Q But by mid-1994, Mr. Kesler, the company had concluded that
4 it could give no assurances to investors that public opposition to the
5 landfill would not have a material adverse effect on its proposed
6 operations; is that correct?

7 A We have consistently made those kind of negative
8 disclosures to our investing public from day one and even to the
9 present day. That is the nature of the securities business. That's
10 not reflective of our belief in our work, in our effort in Mexico. Or
11 we wouldn't have done it.

12 MR. THOMAS: That concludes my questions for the time
13 being, Mr. President.

14 PRESIDENT LAUTERPACHT: Thank you, Mr. Thomas.

15 Would it suit you, Mr. Pearce if we were to break for tea
16 at this point?

17 MR. PEARCE: It would, sir.

18 PRESIDENT LAUTERPACHT: And we'll resume at about 25 to
19 5:00.

20 MR. PEARCE: Mr. President, am I free to consult my client
21 once the cross-examination has ended?

22 MR. THOMAS: [inaudible].

1 MR. PEARCE: I believe my question is to the President, Mr.
2 Thomas.

3 MR. THOMAS: Well, Mr. President, yes, Mr. Pearce objected
4 to any discussion between counsel and any of the respondent's witnesses
5 prior to re-examination.

6 MR. PEARCE: No, I didn't. Just during cross-examination.
7 Cross-examination is finished.

8 MR. PEARCE: Mr. Pearce, you did. We'll refer to the
9 transcript.

10 MR. PEARCE: Well, refer to it.

11 MR. THOMAS: Okay.

12 [Pause.]

13 PRESIDENT LAUTERPACHT: Mr. Pearce?

14 MR. PEARCE: Yes, sir?

15 PRESIDENT LAUTERPACHT: Mr. Thomas said you objected to his
16 consulting with his consulting with his witnesses prior to redirect.
17 Is that consonant with your recollection and understanding?

18 MR. PEARCE: It is not consonant with my recollection, sir.
19 I'm not saying I didn't. I might have objected to anything, but I
20 really don't remember objecting to that.

21 PRESIDENT LAUTERPACHT: Mr. Perezcano?

1 MR. PEREZCANO: Yes, Mr. President. I'll say this in
2 English to make it quick. I was warned, or my colleagues and I were
3 warned not to discuss the cross-examination with Ambassador Sanchez
4 Unzueta after the cross-examination was finished prior to lunch and
5 during lunch, and, in fact, we did not have lunch with him, did not
6 discuss it, and observed the Tribunal's direction to that respect.

7 PRESIDENT LAUTERPACHT: Well, I think, Mr. Pearce, it would
8 be better if you did not discuss the matter with your witness, and I
9 think it's better from your point of view, too. Quite apart from the
10 fact that the other side are objecting, from your point of view it
11 means that your witness is giving clean, unadulterated evidence without
12 there being any suggestion that he's been in any way influenced.

13 MR. PEARCE: I'll accept that, sir.

14 PRESIDENT LAUTERPACHT: All right. So we'll adjourn now.
15 We'll make it 20 to, shall we?

16 [Recess.]

17 PRESIDENT LAUTERPACHT: Did you want to say something, Mr.
18 Perezcano?

19 MR. PEREZCANO: [inaudible].

20 PRESIDENT LAUTERPACHT: In that case, we're ready for the
21 redirect of Mr. Kesler.

22 MR. PEARCE: Thank you, sir. I will move over there.

1 May I just make an inquiry before I move over? I believe
2 that during the course of the cross-examination by Mr. Thomas, there
3 were a number of documents that weren't specifically identified other
4 than the tab in the book to which we were referred. But we're advised
5 that we might have some sort of a guide or some document that would
6 point us towards all the documents that were referenced. My question
7 is: Do we still--will we get that and when?

8 PRESIDENT LAUTERPACHT: Well, that's a question for Mr.
9 Thomas to answer.

10 MR. THOMAS: Yes, Mr. Pearce, it's our intention to have it
11 fully typed up. It had to be amended because of the recent addition of
12 documents. But we'll have it--we'll pass it over to you tomorrow
13 morning. Would that be satisfactory? And we'll make sure that the
14 revised version is given to the Tribunal as well.

15 PRESIDENT LAUTERPACHT: Fine, and thank you so much.

16 Please proceed, Mr. Pearce, when you've crossed the room.

17 MR. PEREZCANO: Mr. President, there is one more issue. We
18 have the original of the letter that Mr. Thomas made reference,
19 addressed by Mr. Kesler to Mr. Neveau.

20 MR. PEARCE: --couldn't hear you. Would you mind, sir--
21 sorry?

1 MR. PEREZCANO: Excuse me. We have the original letter
2 that Mr. Kesler sent to Mr. Neveau to the de la Garza study, and that
3 Mr. Kesler requested to review. We have it for the review by the
4 Tribunal and by Mr. Kesler.

5 Mr. Thomas also made reference to two letters, the one
6 dated June 13, 1994, Mr. Neveau to Mr. Juan Carrera, and the one dated
7 July 7, 1994, written by Mr. Javier Guerra to Mr. Juan Carrera.

8 The references that we were going to provide the letter
9 dated June 13 is Annex 75 of the counter-memorial, and 34 of the
10 counter-reply. And the letter of July 7 is Annex or Exhibit 11-6/18-5
11 of the reply and Exhibit 7 of the rejoinder.

12 PRESIDENT LAUTERPACHT: The documents of which you now have
13 original copies, perhaps they could--

14 MR. PEREZCANO: These are not the originals. It's just the
15 reference requested by Mr. Kesler. But this, yes, is an original.

16 PRESIDENT LAUTERPACHT: --document of which we have not
17 seen copies, the one in the plastic folder. Perhaps you could arrange
18 to have that copied and have the other party and the Tribunal supplied
19 with copies. That's Item 1.

20 Item 2, as to the references you've just given, they are
21 presumably the references that would be incorporated in the document
22 that Mr. Thomas will submit tomorrow morning.

1 MR. PEREZCANO: Yes.

2 PRESIDENT LAUTERPACHT: All right. Thank you very much.

3 So I'd like to proceed now with the redirect of Mr. Kesler. In the
4 meantime, however, the respondents will no doubt be considering further
5 the hint that Mr. Thomas gave that there might be some shortening of
6 the witness list so that you can tell us at the end of the afternoon
7 how you foresee matters developing. Thank you.

8 Mr. Pearce?

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

10 REDIRECT EXAMINATION

11 BY MR. PEARCE:

12 Q Mr. Kesler, there seemed to be some difference of view
13 between you and Mr. Thomas when he was talking about the local
14 community, and you attempted to give an answer that he suggested might
15 be explored more fully during this time period. Can you tell me what
16 you--looking at this map that's been used an exhibit, can you tell me
17 and tell this Tribunal what your understanding of the local community
18 is?

19 A Well, our concern was to address the legitimate concerns of
20 the local community in the sense of negative impact from the
21 development and operation of a hazardous waste treatment facility.

1 Negative impacts include dust, spills, noise, congestion and what have
2 you.

3 Our primary concern was for the communities that surrounded
4 the La Pedrera site, which are in the north of the municipal area. In
5 the United States we'd call this a county. It's called a municipality
6 here, but it encompasses a number of micro communities throughout.

7 Now, Guadalcazar, the city of Guadalcazar, is here in the
8 south, and if you'll notice, this is Highway 57 that comes from San
9 Luis Potosi city and goes north virtually all the way to Texas. This
10 intersection goes east to Vera Cruz and the industrial cities on the
11 Gulf Coast of Mexico. Consequently, the location is ideal for that
12 reason.

13 The community, we're talking about the approximately 800
14 people that live within, say, 10 kilometers around the site. Those are
15 the people affected by dust, trucks, traffic, risk, spills, and the
16 negative impacts.

17 When they refer to a community and adverse support, the
18 people that are against it, it's our view that the entire community is
19 either indifferent or has a fairly favorable opinion about it, those
20 that are informed. And those are what every study we ever did, every
21 poll, every opinion poll we ever took reflected that, either an
22 indifference or lack of knowledge or support.

1 So the opposition that came from the municipal authorities
2 was sponsored here in the south. We could never understand it because
3 these two areas are separated by a mountain range. And this city of
4 Guadalcazar is significantly higher in elevation, so if there was
5 contamination, it wouldn't run uphill, and there were no negative
6 effects whatsoever. And the only effects were positive: jobs,
7 economic growth, taxes impact. All of the community benefits would be
8 shared by the entire community, not just the local community of La
9 Pedrera and those little micro communities around.

10 Now, there are approximately 800 adults in that area, and
11 750-plus support this project and have since 1993 and as recently as a
12 month ago have petitioned the governor of the state sitting today for
13 the opening of this landfill. They want it. They understand the
14 negative impacts, but they are so desperate for economic benefits and
15 jobs to feed their families that it's okay with them.

16 So comparing it to a community in the United States, we
17 found a highly unusual and supportive situation, not a negative one.

18 PRESIDENT LAUTERPACHT: Could you just tell us, what is the
19 distance by road, say, from Guadalcazar to La Pedrera?

20 THE WITNESS: I can tell you: 70 kilometers. And there's
21 no way to get from here to here without coming back out to Highway 57

1 north to this intersection called Entranke (ph), and then work your way
2 through to the La Pedrera site.

3 BY MR. PEARCE:

4 Q Isn't it true, Mr. Kesler, that the company, in fact, had
5 engaged in some programs for you have called the local community?

6 A Right. From the beginning, we, under Lee Deets' direction
7 and advice, did a community awareness program and a community
8 development program. It's very typical. He told us to have give-backs
9 to communities because of the negative impact and the fact that this
10 isn't a Chrysler plant but a hazardous waste treatment facility. And
11 so from the beginning we had a water delivery program. There was--
12 there is no potable water in any of these communities. The closest
13 water is down here on the west side of Highway 57 at Entranke. So we
14 bought a water truck, and each day we would take deliveries of water
15 from the well Entranke and stop at each market community and make
16 deliveries of water. We also provided medical care. We also provided
17 a significant amount of jobs during the construction of the project,
18 everybody we could employ that we could. During the pre-opening
19 activities, we instituted a training program, and preference was given
20 to the people that live around the site. And for all those jobs--and
21 this was to be a fairly labor-intensive operation because of the
22 readily available supply of labor and because of the cost of labor in

1 this area. It was going to be highly labor-intensive and provide a
2 significant amount of jobs, and we were able to train these people.
3 Even though they're poor and this is a remote area, we found some very-
4 -some incredible craftsmen. If you could ever see the work done there
5 on the bridge, you'll notice a high degree of expertise. These were
6 poor people, but they weren't--they were not incapable, and we found
7 that we had a good experience in training them to do the kinds of
8 things that would have to be done in the operational portion of the
9 landfill.

10 So for all those reasons, these people would lay down in
11 the street for us, and even at the inauguration on March 10th, you'll
12 notice from the videotape the people from this local community wanted
13 to fight the people that came and blocked the entrance. And we
14 counseled them, the people we knew: Don't engage in any violence,
15 stand back. And the woman that testified to that effect, they are our
16 supporters and always have been from the beginning. And it's the
17 people down here in Guadalcazar, that is, the community leaders, which
18 we think are highly influenced at the state, that have expressed from
19 time to time some opposition.

20 Q Let's turn for a moment to some of the issues that Mr.
21 Thomas raised concerning the Autonomous University of San Luis Potosi

1 professors and the university committee. Weren't the concerns that
2 were manifested by these university professors environmental issues?

3 A They were.

4 Q And didn't you propose to have an audit of all the
5 environmental questions at the site done?

6 A We did.

7 Q And didn't it address the issues that were raised by the
8 university committee members?

9 A They certainly did, along with all of the studies that we
10 paid for and performed during that year, also we made them aware of the
11 fact that while it was of a big concern 20, 30, 40 years ago as to
12 whether or not there would be water under a site, for example, there
13 was technology developed in the United States and other parts of the
14 world that it was no longer a concern and that you could--with today's
15 technology you could build a hazardous waste landfill on a lake and
16 that no matter what the conditions of the site would disclose through
17 the endless studies that were done, it wouldn't make any difference as
18 to whether or not this site would meet not only Mexican norms but
19 United States norms and international norms. And we built it to be a
20 showcase to that effect. We exceeded Mexican norms and built it to
21 U.S. and international standards for that reason.

1 PRESIDENT LAUTERPACHT: Just before you go on, Mr. Pearce,
2 could I just step back a moment to the earlier questions that you put
3 to Mr. Kesler regarding the relationship with the community?

4 I'm looking at the letter of 13 June 1994 from Metalclad to
5 Municipal President Carrera in which Mr. Neveau wrote about the
6 proposals of Metalclad and in which he mentioned a number of factors
7 relevant--seemingly relevant to the application or consideration of the
8 local community: clean the site with the proper infrastructure, invest
9 whatever money was needed to clean the site, clean the site meeting all
10 the requirements of the Mexican authorities, the municipality directly
11 supervise the activities in the site, to use the best technology to
12 preferentially hire residents of the nearby communities, to invite a
13 professional institution like UASLP to help in supervising the site, to
14 actively participate within the municipality in developing educational
15 and social community programs, and to train their personnel and, thus,
16 improve their living standards. That was at Tab 48 in the big volume.

17 Then at Tab 49 is the translation of a letter of 7 July
18 1994 Mr. Guerra Cisneros to Juan Carrera Mendoza, also on Metalclad
19 letterhead, with a number of proposals, not dissimilar to what I've
20 just read to you, and you probably remember them.

21 What I'd like to know from you is: Do you consider that
22 all those factors set out in those two documents are material to the

1 decision of the local authority, or is the local authority more
2 restricted in the range of considerations that it may take into account
3 in deciding yes or no to give the construction permit?

4 THE WITNESS: I believe the latter. We offered all of
5 those benefits as a matter of course because many of those are
6 automatic in a facility in other parts of the world, and it's the
7 secret to keeping long-term support of the community.

8 But when it came to the decision to give or withdraw the
9 permit, it was a more narrow criteria. Indeed, our investigation and
10 due diligence disclosed that they had no right whatsoever to withhold
11 the permit based upon any environmental ground. If they had a right
12 and a procedure for granting or withholding construction permits, it
13 only related to specified issues in the statute that had nothing to do
14 with environmental issues. It had to do with city planning. It had to
15 do with a borrow pit, for example, if you were going to take,
16 physically take material from one other part of the community and
17 transport it to your site, then our advisers, ICF Kaiser and the like,
18 said there may be a requirement for a permit to do that.

19 But as far as a construction permit to build a hazardous
20 waste landfill, the permit was issued by the federal government alone.
21 Indeed, it was one expert's opinion that we didn't even need a state
22 land-use permit, that in this area of environment, reflected by the

1 1988 law on ecology, it filled the area and took jurisdiction in that
2 area to the exclusion of the state and the local community.

3 So it explains--really, the reason for the amendment to the
4 Aldrett contract was, to the extent there was any risk at all, we
5 wanted him to share that risk. He was representing it--they don't
6 issue permits, and if they did, they would have to for the payment of a
7 few pesos. So we said, fine, take that risk with us.

8 PRESIDENT LAUTERPACHT: Well, perhaps, Mr. Pearce, either
9 in the course of redirect, but not necessarily, perhaps in the course
10 of your closing speeches, you could give us the references or remind us
11 of the references to the advice that Metalclad sought and obtained on
12 the subject just described by Mr. Kesler. I'm sorry to have
13 interrupted you.

14 MR. PEARCE: Thank you, sir. It was instructive.

15 BY MR. PEARCE:

16 Q Mr. Kesler, while we're on this notion of the local
17 construction permit, I wish to recall your attention to Counter-
18 Memorial Exhibit 3 that was used by Mr. Thomas in the course of his
19 examination, and it is the amendment agreement to the unilateral
20 promise of sale or the so-called promise agreement. And if you
21 remember, he took you through some language in that agreement that

1 dealt with what you just referred to, sharing the risk of the
2 governor's approval and the municipal license with Mr. Aldrett.

3 PRESIDENT LAUTERPACHT: Is that one of the items in the big
4 thick volume?

5 MR. PEARCE: I can't--I think it is. I just don't know
6 which one. Maybe Chris does--Mr. Thomas.

7 PRESIDENT LAUTERPACHT: Could you help, Mr. Thomas?

8 MR. THOMAS: It is, Mr. President. It's Tab 68.

9 MR. PEARCE: Thank you.

10 PRESIDENT LAUTERPACHT: Tab 68. Thanks.

11 Mr. Thomas perhaps would be ready to help whenever that
12 problem arises again of identifying documents.

13 BY MR. PEARCE:

14 Q Mr. Kesler, I want to--since I only have one copy--

15 A I recall the contract. Go ahead.

16 Q All right. On page 2 of that document, at the bottom of
17 the page, paragraph C contains the language that in the promise
18 agreement that the promisor, Mr. Salvador Aldrett Leon, undertook the
19 obligation of contributing to COTERIN the ownership of the lot of land
20 known as La Pedrera which is described in the promise agreement,
21 receiving in exchange the number of shares of capital stock of COTERIN
22 corresponding to the value of La Pedrera.

1 Now, I want to skip down on page 3, where that language
2 stopped, down to paragraph E that states that they--meaning the parties
3 to this agreement--wish to amend the promise agreement pursuant to the
4 provisions undertaken hereunder. Now it then goes directly to II where
5 it says that the promisor, Mr. Aldrett, states in paragraph A that in
6 lieu of having contributed to COTERIN the ownership of the lot of land
7 geographically identified as La Pedrera, as he obliged himself to do it
8 in the promise agreement, he sold it to the corporation at a price of a
9 million pesos, amount pending to be paid by COTERIN. Therefore, it is
10 necessary to amend the promise agreement to reflect the foregoing.

11 Is that--do you recall that language, Mr. Kesler?

12 A I do.

13 Q Do you recall if that is the reason that, in fact, the
14 amendment to the agreement was made?

15 A That's exactly the reason it was made.

16 Q But, nonetheless, in that agreement there is the language
17 that Mr. Thomas directed you toward with respect to those conditions
18 with respect to the governor and the municipality; isn't that correct?

19 A That's also correct.

20 Q I want to hand you now--

21 MR. PEARCE: I have copies for the Tribunal. I can refer
22 you, Mr. Thomas, to Rejoinder Exhibit 23.

1 BY MR. PEARCE:

2 Q Mr. Kesler, would you look at the last page of this
3 document, please?

4 MR. THOMAS: Mr. Pearce, do you have a copy for us?

5 MR. PEARCE: No. I just referred you to--it's your
6 exhibit. I just referred you to Rejoinder Exhibit 23. I think it was
7 23.

8 PRESIDENT LAUTERPACHT: Is that in the big thick book, too?

9 MR. PEARCE: I don't think it is, no.

10 Yes, it's Rejoinder Exhibit 23. It's an amendment to that
11 same agreement dated January 10, 1996.

12 BY MR. PEARCE:

13 Q Do you see that, Mr. Kesler?

14 A Yes, I do.

15 Q Would you look at the last page, please?

16 A Okay.

17 Q In the lower left-hand corner, is that your signature?

18 A It is.

19 Q And up in the final paragraph of the document, do you see a
20 date there?

21 A January 9, 1996.

22 Q Mine says January 10th. Actually, it says it's executed--

1 A I'm sorry--

2 Q You're right. It's executed on January 9th in Mexico and
3 in Newport Beach on the 10th.

4 A That's correct -- [tape ends.]

T4B 5 Q Now, are you familiar with this document, sir?

6 A Yes, I am.

7 Q And this document was yet another amendment to the main
8 agreement; is that correct?

9 A Yes, it was.

10 Q And do you recall the essence of the amendment in this
11 agreement?

12 A Well, this came 18--maybe 15 months after we purchased the
13 site and the landfill had been built. You know, you never complete
14 these things, but it was essentially ready for operation. Indeed, we
15 had--anyway, we had accomplished all of the construction and training
16 and so forth that had to precede the actual operation, and it was
17 important to us to make an arrangement with Mr. Aldrett whereby we
18 reduce some of the long-term payments in favor of other considerations
19 on his part. It was a negotiation of three or four months that led to
20 this amendment and reflected the fact that we have now completed it.

21 Q Mr. Kesler, in the document that we referred to just before
22 this one that contains the language that Mr. Thomas took you through

1 about some contingencies with respect to the governor's support and the
2 municipal--the issue of the municipal license, that language is not in
3 this agreement of January 10, '96, is it?

4 A You're exactly correct.

5 Q Why isn't it there?

6 A Because by January 10, 1996, we had received assurances
7 from the highest level of the Mexican government that our project would
8 open. And let me tell you what I mean by that. Not only had we signed
9 the Convenio with PROFEPA on November 24th, but we had been granted an
10 expansion of our permit, recognizing the created capability of the
11 treatment facility so that it was now licensed for 360,000 tons instead
12 of 36,000 per year. The federal government had lifted the seals that
13 were put in place at the time the transfer station was closed, so that
14 enabled us to then open the transfer station and begin remediation.
15 They had agreed with us that we could operate for at least five years.
16 And there was another permit given, if I'm not mistaken, at the time
17 the liner was--I'm sorry. The liner permit came after this agreement.

18 There was one other thing that we relied on, however,
19 before this agreement. In October of 1995, President Zedillo was to
20 visit the United States. We had been working with not only the embassy
21 but the Department of Commerce to try to get a message to President
22 Zedillo that we needed his help, that there was a federal versus state

1 confrontation brewing that needed his involvement in, and we were able
2 to get a commitment from the White House to take our case to Mexico,
3 and in a meeting that occurred a few days before President Zedillo's
4 visit to Washington, D.C., that fall, Mack McLarty of the White House
5 met with Luis Tellez, who was President Zedillo's chief of staff, as I
6 understand it, at the time to discuss issues that would be on the
7 agenda between the two Presidents when they met. And I understand this
8 is something that's common before two heads of state meet. We were on
9 that agenda.

10 And after the meeting, Mack McLarty came back and reported
11 to our counsel here in Washington, D.C., Senator Bayh, that he was
12 assured by Mr. Tellez that this matter would be solved and to take it
13 off the agenda. So that when the Presidents meet together, it's not
14 part of what they're going to discuss. You have my assurance, he said,
15 this is solved.

16 And for that reason, we felt like this issue of whether or
17 not we had to be prevented because of a local construction permit was
18 simply not an issue and no reason to have it in the agreement and no
19 reason to have it conditional whatsoever.

20 MR. PEARCE: That's all I have, Mr. President.

21 [Inaudible comments.]