

IN THE HIGH COURT OF JUSTICE Claim No. CL-2008-000305 (Folio No. 267 of 2008)
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

BETWEEN:

SOCIÉTÉ GÉNÉRALE

Claimant

and

- (1) GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT A.S.**
- (2) GOLDAS KIYMETLI MADENLER TICARETI A.S.**
- (3) MEYDAN DOVIZ VE KIYMETLI MADEN TICARET A.S.**
- (4) GOLDAS LLC**

Defendants

AND BETWEEN:

SOCIÉTÉ GÉNÉRALE

Claimant

and

- (1) GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT A.S.**
- (2) GOLDART HOLDING A.S.**

Defendants

EXHIBIT SPTR3

This is the Exhibit SPTR3 referred to in the Third Witness Statement of Simon Paul Timothy Rose dated 24 October 2016 in four volumes.

**Morgan Rose Solicitors
Chancery House
53-64 Chancery Lane
WC2A 1QU
Solicitors for the Defendants**

From: Cetin Binatli
To: "florent.teboul@sgcib.com"
Subject: RE: Inquiry
Date: 10 November 2003 12:54:00
Attachments: GOLDAS MALI TABLO ENGLISH.XLS

Hi Florent,

I also would like to thank you and your colleagues for their warm and friendly approach they have shown us until date . We are very much satisfied with the relationship and would also like to develop this further .

As per your request I have attached our 3rd quarter results . Our target sales for 2004 is approximately \$200-250 million , but as you also know we also have a fully owned subsidiary (www.meydan.com.tr) which is a full member of the Istanbul Gold Exchange ,which is also licensed to import & sell gold bars to third party buyers in the Turkish market . So , we also can activate this possibility and work on a basis that we consign from you and sell to third party buyers/consumers in the Turkish market . This in return will increase our volume of business with you further . "Meydan" was ranked the 5th largest trader/importer in 2002 in the Istanbul Gold Exchange (www.iab.gov.tr/bul04.htm)

We have also started silver production and are interested in silver consignments . If you could arrange a separate line for silver we would be interested in utilizing it . Maybe something between 2-3 tons for starters would be enough .

In the meantime , we could consider hedge instruments and maybe discuss this further during my next visit to Paris , which will be on Wednesday 19th of November,2003. My flight to Paris will be arriving at 14:25 in the afternoon and I will be in Paris only for a couple of hours and will be continuing onto London at 21:45 in the evening . So , if you are available in the afternoon of the 19th (maybe 16:00) , I would like to visit you accordingly .

Looking forward to hearing from you soon.

Kind regards,

Cetin

-----Original Message-----

From: florent.teboul@sgcib.com [<mailto:florent.teboul@sgcib.com>]
Sent: Friday, November 07, 2003 6:09 PM
To: cbinatli@goldas.com
Subject: Inquiry

Hi Ceitin

First of all , I wanted to thank you for the recurring business that we are doing together now and tell you how much we appreciate it. I do hope though that this feeling is shared by you on the other side and that you are satisfied with our services. I would like to try and increase our exposure with your company and , for that purpose, I need your last update of quarterly results and obviously, next year, your annual statement. I also need to have an idea of your target sales next year and see if you may need any hedge for that. (you could buy calls and sell puts for a part of your 2004 consumption maybe, or buy calls out on the down side).

I hope I can hear from you very soon.

Regards
Florent

GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT ANONIM BIRKETI
CONSOLIDATED BALANCE SHEET AS OF SEPTEMBER 30, 2003

(MILLION TL)

LIABILITIES	CURRENT PERIOD			PREVIOUS PERIOD		
	SEPTEMBER 30, 2003			SEPTEMBER 30, 2002		
I-SHORT TERM LIABILITIES			25,525,222			42,126,569
A-Financial Liabilities		20,957,945		34,576,600		
1-Bank Loans	20,882,001			34,531,739		
2-Current Maturity Loans and Accrued Int.				44,861		
3-Other Financial Liabilities	75,944			969,628		
B-Trade Payables		4,168,862				
1-Suppliers	4,158,852					
2-Notes Payables						
3-Deposits and Guarantees Received						
4-Other Trade Payables						
5-Discounts on Notes Payable (-)						
C-Other Liabilities		106,718		71,581		
1-Due to Shareholders						
2-Due to Subsidiaries						
3-Due to Associated Companies						
4-Accrued Expenses				71,581		
5-Taxes and Other Duties Payable	91,142					
6-Postponed Payables to Governmental Agencies	11,076					
7-Other Liabilities	4,500					
8-Discounts on Notes Payable (-)						
D-Advances Taken				5,815,135		
E-Provisions for Liabilities and Expenses		301,707		693,614		
1-Provision for Taxes						
2-Provision for Other Debts and Liabilities	301,707			693,614		
II-LONG TERM FC PAYABLES			5,793,064			1,416,580
A-Financial Liabilities		2,378,997		1,062,081		
1-Bank Loans	1,684,288			492,674		
2-Bonds and Notes Issued						
3-Other Securities Issued						
4-Other Financial Liabilities	694,709			589,407		
B-Trade Liabilities						
1-Suppliers						
2-Notes Payable						
3-Deposits and Guarantees Received						
4-Postponed Payables to Governmental Agencies						
5-Discounts on Notes Payable (-)						
6-Other Long-Term Liabilities						
C-Other Long Term Payables		16,814				
D-Order Advances		2,804,109				
E-Provisions for Debt and Expense		563,344		354,499		
1-Provision for Retirement Pay	467,512			354,499		
2-Other Provision for Debt and Expense	125,832					
III-SHAREHOLDERS' EQUITY			110,766,189			82,701,300
A-Share Capital		80,000,000		26,000,000		
B-Capital Commitment (-)						
C-Share Premium		228,280		10,767,810		
D-Revaluation Fund		2,446		2,446		
1-Revaluation of Fixed Assets						
2-Revaluation of Subsidiaries	2,446			2,446		
3-Revaluation of Share in Stock Exchange						
E-Reserves		22,269,880		27,783,789		
1-Legal Reserve	2,939,697			1,923,319		
2-Statutory Reserve						
3-Special Reserve						
4-General Reserve	19,311,183			25,860,460		
5-Cost Revision Reserve						
6-Income from Sale of Fixed Assets and Investments to be Added to Share Capital						
7-Translation Gain/Loss(-) For Balance Sheet						
F-Current Period Income, net		8,304,894		18,147,276		
G-Current Period Loss (-)						
H-Accumulated Losses (-)						
TOTAL LIABILITIES	142,104,455	142,104,455	142,104,455	126,244,438	126,244,438	126,244,438

From: [Cetin Binatli](mailto:Cetin.Binatli)
To: ["aneesh.deshpande@goldart.com"](mailto:aneesh.deshpande@goldart.com)
Cc: ["florient.tebouil@goldart.com"](mailto:florient.tebouil@goldart.com)
Subject: GOLDART HOLDING A.S. 2003 CONSOLIDATED FINANCIALS
Date: 13 April 2004 09:03:00
Attachments: [2003 INGILIZCE TABLOLAR.xls](#)
[2003 INGILIZCE DIPNOTLAR.doc](#)
[2003 INGILIZCE RAPOR.doc](#)

Dear Aneesh,

Here attached is the 2003 consolidated financials for Goldart Holding A.S.

Regards,

Cetin Binatli
Director
GOLDART A.S.

24 Kayalar Sokak
34010 Merter
Istanbul
Turkey

Tl:+90-212-6374000
Fx:+90-212-6374007

From: [Cetin Binatli](#)
To: ["aneesh.deshmukde@socib.com"](#)
Cc: ["florent.teboul@socib.com"](#)
Subject: Goldart Holding A.S. - 31.12.2003 Audited Financials
Date: 30 March 2004 12:24:00
Attachments: [REMOVED BY THE EXCHANGE EMAIL SCANNING SERVICE 5CAE6CF4-4D03-48A0.txt](#)
[REMOVED BY THE EXCHANGE EMAIL SCANNING SERVICE 5CAE6CF4-4D03-48A0.txt](#)
[REMOVED BY THE EXCHANGE EMAIL SCANNING SERVICE 5CAE6CF4-4D03-48A0.txt](#)

Dear Aneesh,

Reference is made to our e-mail regarding 'Goldart Holding A.S.' financials for year end 31.12.2003 .

Please kindly take note that the financials sent are not consolidated and reflects only the Holding financials . The Group consolidated financials will be sent seperately hopefully within next week.

We apologize for any inconvenience and misunderstanding caused.

Kind regards,

Cetin Binatli
Director
GOLDAS A.S.
24 Kayalar Sokak
34010 Merter
Istanbul
Turkey

Tel:+90-212-6374000
Fax:+90-212-6374007

From: [Cetin Binatli](mailto:Cetin.Binatli)
To: ["aneesh.dashuanda@sccb.com"](mailto:aneesh.dashuanda@sccb.com)
Cc: ["florient.rebouf@sccb.com"](mailto:florient.rebouf@sccb.com)
Subject: Goldart Holding A.S. - 31.12.2003 Audited Consolidated Financials
Date: 29 March 2004 09:08:00
Attachments: [REMOVED BY THE EXCHANGE EMAIL SCANNING SERVICE SCAE6CF4 4D03 48A0.txt](#)
[REMOVED BY THE EXCHANGE EMAIL SCANNING SERVICE SCAE6CF4 4D03 48A0.txt](#)
[REMOVED BY THE EXCHANGE EMAIL SCANNING SERVICE SCAE6CF4 4D03 48A0.txt](#)

Dear Aneesh,

Attached please find 'Goldart Holding A.S.' consolidated financials for year end 31.12.2003 .

Kind regards,

Cetin Binatli
Director
GOLDAS A.S.
24 Kayalar Sokak
34010 Merter
Istanbul
Turkey

Tel:+90-212-6374000
Fax:+90-212-6374007

From: [Cetin Binatti](#)
To: ameesh.deshbande@sqcib.com
Subject: Goldas LLC
Date: 10 March 2005 09:52:39
Attachments: [AuditReportDraftDubai.doc](#)

From: [Catin Binati](#)
To: [florent.tehoud@sgcb.com](#)
Cc: ["aneesh.deshpande@sgcb.com"](#)
Subject: GOLDART HOLDING INC. AND GROUP COMPANIES
Date: 08 April 2005 10:19:44
Attachments: [Goldart OABDR.doc](#)
[Goldartdppnting.doc](#)
[GOLDART 31.12.2004 English USD.xls](#)

From: [Cem Binalli](#)
To: [ameesh.deshpande@socib.com](#)
Cc: [florent.tabouil@socib.com](#)
Subject: Meydan Precious Metals 31.12.2004 & Goldas Precious Metals 31.12.2004
Date: 11 April 2005 10:48:48
Attachments: [Meydan Kiv.Madenler 31.12.2004.XLS](#)
[Goldas Kiv.Madenler 31.12.2004.XLS](#)

From: [Cetin Binatli](#)
To: ["florent.teboul@sqr.b.com"](mailto:florent.teboul@sqr.b.com)
Subject: Fw: 31.12.05 Goldas Kıymetli Madenler Özet Mali Tablolar
Date: 26 June 2006 11:08:01
Attachments: [GOLDAS KIYMETLI.xls](#)

Florent,

Here attached are the financials for Goldas Kıymetli

cc. Ruben Teboul

-----Original Message-----

From: Murat Kosnul
To: Cetin Binatli
CC: Mehmet Yıldız
Sent: Fri Jun 23 12:09:48 2006
Subject: 31.12.05 Goldas Kıymetli Madenler Özet Mali Tablolar

From: [Catin Binatti](#)
To: ["anesh.deshpande@vqibz.com"](mailto:anesh.deshpande@vqibz.com)
Subject: GOLDAS I.L.C
Date: 18 January 2007 10:17:10
Attachments: [GOLDAS I.L.C BALANCE SHEET DRAFT 008.jpg](#)
[GOLDAS I.L.C BALANCE SHEET DRAFT 001.jpg](#)
[GOLDAS I.L.C BALANCE SHEET DRAFT 002.jpg](#)
[GOLDAS I.L.C BALANCE SHEET DRAFT 003.jpg](#)
[GOLDAS I.L.C BALANCE SHEET DRAFT 004.jpg](#)
[GOLDAS I.L.C BALANCE SHEET DRAFT 005.jpg](#)
[GOLDAS I.L.C BALANCE SHEET DRAFT 006.jpg](#)
[GOLDAS I.L.C BALANCE SHEET DRAFT 007.jpg](#)

From: [Cetin Binatli](#)
To: animesh.deshmukde@sqm.com
Subject: Meydan (prelliminary) 2006 correct version
Date: 03 April 2007 15:13:18
Attachments: [english_USD-MEYDAN.xls](#)

-----Original Message-----

From: Nasuh Gocmen
To: Cetin Binatli; Mehmet Yildiz; Enver Akarsu
CC: Sedat Yalinkaya; Kemal Ulutepe
Sent: Tue Apr 03 16:49:10 2007
Subject:

From: [Cetin Binalli](#)
To: aneesh.deshgande@sncib.com
Subject: Goldas Preliminary Figures
Date: 10 April 2007 16:42:50
Attachments: [31.12.2006.Cons.Fng.USD.xls](#)

From: [Cetin Binatti](#)
To: anesh.deshmukhi@scib.com
Subject: Goldas Consolidated Financial Statements
Date: 19 April 2007 13:44:05
Attachments: [31122006 Goldas Consolidated Financial Statements.xls](#)
[Goldas 31.12.2006 Opinion.doc](#)
[goldas consolidated footnotes usd final.doc](#)
Importance: High

From: [Cetin Binati](#)
To: ["taneesh.deshpande@socii.com"](mailto:taneesh.deshpande@socii.com)
Subject: Goldart Holding Financials (2006)
Date: 10 May 2007 10:25:33
Attachments: [GOLDARD KONSOLIDE 2006.doc](#)
[IEN SON HALL DUZELTILMIS.xls](#)

From: [Cetin Binatti](#)
To: ["aneesh.deshmukh@snrcl.com"](mailto:aneesh.deshmukh@snrcl.com)
Subject: Goldart Holding Financials 2006 (unconsolidated)
Date: 25 May 2007 14:49:07
Attachments: [GOLDART HOLDING A.S. BALANCO ENG ASSETS.PDF](#)
[GOLDART HOLDING A.S. ENG LIABILITIES.PDF](#)
[GOLDARTHOLDING A.S. STATEMENT OF INCOME.PDF](#)

From: Cetin Binatli
To: "aneesh.deshpande@sgcib.com"
Subject: FW: Goldas Figures - 2007 [NC]
Date: 07 June 2007 14:40:37
Attachments: [GOLDAS SUMMARY shipments & pricing- 2007.xls](#)

Hi Aneesh,

To simplify your needs we imported into Istanbul ;

60 tons of Gold
17 tons of Silver

Dubai imports are all done via SG.

Regards,

Cetin

From: aneesh.deshpande@sgcib.com [mailto:aneesh.deshpande@sgcib.com]
Sent: Wednesday, June 06, 2007 4:44 PM
To: Cetin Binatli
Subject: Goldas Figures - 2007 [NC]

Hi Cetin,

Please find attached as discussed.

I would appreciate if you could please update Goldas group figures for Turkey and also please provide total Goldas LLC, Dubai import figures.

Thanks and regards

Aneesh

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From: [Cetin Binatli](mailto:Cetin.Binatli)
To: ["florent.teboul@sgcib.com"](mailto:florent.teboul@sgcib.com)
Cc: ["aneesh.deshpande@sgcib.com"](mailto:aneesh.deshpande@sgcib.com)
Subject: RE: Hi mate, can you answer those questions from risk , please ? [C1]
Date: 27 November 2007 08:58:19
Attachments: [Group Companies.doc](#)

Florent,

Here is the information + answers you had requested.

Regards,

Cetin

From: florent.teboul@sgcib.com [mailto:florent.teboul@sgcib.com]
Sent: Thursday, November 22, 2007 1:21 PM
To: Cetin Binatli
Subject: Hi mate, can you answer those questions from risk , please ? [C1]

3. Can we get information on following subsidiaries :

- a. **Goldas Magazacilik**
- b. **Goldas Dis Ticaret**
- c. **Zer Pazarlama**
- d. **Berr Pazarlama**
- e. **GoldasDagitim**

1. About the accounts :

a. Is **USD Loan** (currently 10 M\$ for SG) accounted in the Balance Sheet as « **Trade Payable** » (around 88.2 M\$ as of 31/12/2006) or as « **Bank Borrowing** » (circa 27 M\$ as of 31/12/2006)?

The loan from SG is classified as Trade Payables.

b. What was the total value of **used USD Loan on 31/12/06** ?

Total USD loan utilized was approximately \$27 million

c. **How are "Trade Payables" distributed among suppliers** (type of suppliers, their proportion...)

Domestic Commercial Banks	- %2
International Commercial Banks/Suppliers	- %98

d. **Does Gold under Consignment belong to "Inventories"** (89.3 M\$ as of 31/12/2006)?

Gold under consignment is booked as inventories; reciprocal liability entry is booked under trade payables.

merci beaucoup



Florent Teboul
Head of Precious Metal Marketing - Europe
DEFI/CTY
17, cours Valmy
92987 Paris - La Defense
Tel.: 33 (0)1 42 13 90 33
Mob.: 33 (0)6 82 66 92 91
Fax: 33 (0)1 42 13 46 97
florent.teboul@sgcb.com
www.commodities.sgcb.com

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GOLDAS RETAIL STORES AND MARKETING INC.

The company's main activity is marketing and sales of jewelry, while it also owns and operates Goldas, Assortie and Danthel Retail Stores in the domestic market.

Goldas Marketing's customer portfolio is accommodating many jewelers, mainly from Mediterranean, Aegean and Marmara Regions.

Closely monitoring consumer preferences and trends in Turkey, Goldas Retail Stores sets its sales and marketing strategies accordingly. The Company targets to grow by acquisitions in foreign countries. Goldas also provides privilege of shopping in the Internet, through www.goldas.com, to its customers. The Company offers its sister company Goldas Jewelry's products for sale through this website. Goldas Retail Stores is also active in the marketing of Silver D'sign products and ChipGold gold bullion bars.

Reaching its customers through its store network, Goldas Retail Stores raise its sales volume by increasing the number of its stores.

The Group targets to reach a different market segment all over Turkey through its Assortie stores where hundreds of jewelry and accessories are offered for sale with a wide product range of necklaces, bracelets, rings, earrings, bags, hats and many more. Assortie stores, where accessory fans from cute little girls to women who give high importance to elegance can find something for themselves, offer different alternatives to accessories world with their unique concept and design style.

GOLDAS DISTRIBUTION AND MARKETING INC.

Being established on 30 September 2004, Goldas Distribution and Marketing Inc., is one of the subsidiaries of Goldart Holding, which is a specialized holding in gold business. Despite of its short history, Goldas Distribution has become a pioneer company with many achievements. The company is involved in the distribution and marketing of silver jewelry, accessories and gold bars, which are manufactured by Goldas Jewelry Inc., the leading company in its sector. With more than 80 employees, Goldas Distribution aims to become an important supplier and a strong trade partner in its sector.

GOLDAS FOREIGN TRADE INC.

Formed on 18 September 1987, Goldas Foreign Trade is involved in the export and logistics services of the Yalinkaya Holding group of companies. Goldas Foreign Trade does country and region researches mainly for the gold, diamond, precious metals and silver products in order to increase international market share and competition, attends several national and international fairs, does international market researches in order to develop and manufacture new product lines, attract new clients and provide adequate service for their continuity.

Goldas Foreign Trade exports to 45 countries on 5 continents; U.S.A., E.U., Far East, Russia, U.A.E. and South Africa.

The Company owns, Gallo Foreign Trade Inc. with 32% participation share located at the Istanbul AHL Free Zone.

ZER AND BERR MARKETING INC.

Formed under Yalinkaya Investments Holding Inc., **Zer and Berr Marketing Inc.** are the Group's small wholesalers focusing on the Turkish market. The Group has created these two different entities in order to meet different tastes and preferences of Western and Eastern parts of Turkey. The market segments differ in terms of their point of views to jewelry, income groups, education level, culture and so on. Berr Marketing, especially focuses on the eastern part, where mostly gold is preferred to silver and high carat (18-22-24 carats) of gold is preferred. However, in western and southern parts of Turkey, light gold and silver products are preferred, tourism is more active in these regions, therefore products according to tourists' tastes are taken into consideration in marketing of the products.

Both companies intend to be successful in marketing of their products other than Goldas exclusive products. Other products consists approximately 10% of the total. These companies are planning to increase the marketing of the percentage of the other products by increasing product variability and number in addition to existent marketing and sales network. Workings on the marketing strategies appropriate to these above mentioned market groups are continuing. The companies expect to accomplish this target through these strategies.

From: [Cetin Binatti](mailto:Cetin.Binatti)
To: ["florent.teboul@sgcib.com"](mailto:florent.teboul@sgcib.com)
Cc: aneesh.deshpande@sgcib.com
Subject: RE: Goldas [C1]
Date: 14 December 2007 14:50:08
Attachments: [sunilar-revanlar-CB.DOC](#)

Hi Florent,

Here are the answers to the questions.

Ciao

Cetin

From: florent.teboul@sgcib.com [mailto:florent.teboul@sgcib.com]
Sent: Thursday, December 06, 2007 1:03 PM
To: Cetin Binatti
Cc: aneesh.deshpande@sgcib.com
Subject: Fw: Goldas [C1]

Cetin

I am sorry big guy but my friends have some more questions for you (actually quite interesting I think) which will make them understand your process a bit better.
can you reply this email with the answers please

thanks a lot in advance.....

1/ Gold under consignment is be booked as inventories and reciprocal liability entry is booked under trade payables

- how could it be possible if gold under consignment is owned by SG?
- the note 12 in Goldas' financials detail the inventories:

December 31, 2006	
Raw Materials	6,471,308.-
Work in Process	13,192,619.-
Finished Goods	10,819,678.-
Merchandises	60,897,333.-
Other Inventories	91,321.-
Provision For Impairment (-)	(2,178,911.-)
Advances Given	7,032,214.-
Total	96,325,562.-

- => where is the gold under consignment?
- what was the amount of gold under consignment with SG as of December 31, 2006?
- from whom does Goldas buy the merchandises, from related companies?

2/ The international banks represent 98% of the trade payables (ie 87,880MUSD as of December 31, 2006)

- what portion is related to gold under consignment? NB: should be the same as in inventories if any gold under consignment has ever been booked
- what is SG's share (in % and amount)? how is this amount split between gold under consignment and USD loan?

- is there any underlying transactions entered with international banks other than gold under consignment or loan related to the payment of gold?
- could you also confirm that SG is not part of the "short term bank borrowings" as of December 31, 2006?

3/ Gold mine in Mali

- how will its development be financed by Goldas?

Thank you in advance for your answers.

Marie-Christine LUET
RISQ/CIB/PAR/U&R
+ 00.33.1.58.98.63.76

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1/ Gold under consignment is be booked as inventories and reciprocal liability entry is booked under trade payables

- how could it be possible if gold under consignment is owned by SG?

Due to Turkish legislations, gold under consignment is booked as Inventories under Assets in the Balance Sheet and reciprocal liability is booked as debt.

- the note 12 in Goldas' financials detail the inventories:

where is the gold under consignment?

As of December 31, 2006, gold under consignment is booked as Inventories under Assets and as debt under Liabilities.

- what was the amount of gold under consignment with SG as of December 31, 2006?

As of December 31, 2006, the amount of gold under consignment with SG is 3,000 kg.

- from whom does Goldas buy the merchandises, from related companies?

Goldas buys the merchandises mainly via related companies

2/ The international banks represent 98% of the trade payables (ie 87,880MUSD as of December 31, 2006)

- what portion is related to gold under consignment?

As of December 31, 2006, 85% of Trade Debt (87,880M USD) is gold under consignment.

- NB: should be the same as in inventories if any gold under consignment has ever been booked?

As of December 31, 2006, 87% of total inventories, and 90% of total liabilities is under consignment.

- what is SG's share (in % and amount)? how is this amount split between gold under consignment and USD loan?

As of December 31, 2006, SG's share of gold under consignment in the amount of total inventories is 67%, and SG's share in the Total liabilities is 69%. (The amount of gold under consignment is 3,000 kg.) USD loan provided by SG was approximately 8M USD as of December 31,2006

- is there any underlying transactions entered with international banks other than gold under consignment or loan related to the payment of gold?

As of December 31, 2006, there is no underlying transactions entered with International banks other than gold under consignment or loan related to the payments of gold.

- could you also confirm that SG is not part of the "short term bank borrowings" as of December 31, 2006?

SG is not a part of the "short term bank borrowings" as of December 31,2006

3/ Gold mine in Mali

- how will its development be financed by Goldas?

Our participation still continues in the field exploration. Presently work is conducted to determine total reserves + costs, and if feasible, project financing will be used as soon as it comes to the production phase, which is planned in a 3-year time period.

From: [Cetin Binatli](mailto:Cetin.Binatli)
To: ["Florent.teboul@sgcib.com"](mailto:florent.teboul@sgcib.com)
Subject: RE: Answer [NC]
Date: 15 January 2008 13:04:45

Hi Florent,

Here is the breakdown of "trade debt" (2006) \$67 million (which is consignment from banks/trading companies);

SG - %83
Mitsui - %7
Commerzbank - %4
Scotia Mocatta - %2
AGR - %2
Sojitz - %2

The approximate breakdown (2007) of production / trade (kg) is as follows;

Production - 82 tonnes (AU)
- 56 tonnes (AG)

Note: Production amounts consists of gold jewellery in all purity.

Trade - 100 tonnes (AU)
- 23 tonnes (AG)

We are not in a position to provide you the EBITDA breakdown because audit has not been conducted as yet for 2007.

Regards,

Cetin

From: florent.teboul@sgcib.com [mailto:florent.teboul@sgcib.com]
Sent: Tuesday, January 15, 2008 11:20 AM
To: Cetin Binatli
Subject: Re: Answer [NC]

I love it
they gonna look ridiculous
thanks Cetin and sorry for that

cbinatli@GOLDAS.com

15/01/08 09:58 AM

To Florent TEBOUL/decc/fr/socgen@socgen
cc

Subject Answer

Florent,

Here is the answer to one of your questions related to the breakdown % of inventories;

This answer is already in the report. With the necessary breakdown. All they have to do to find the % is the divide each breakdown with the total amount.

NOTE 12 – INVENTORIES (USD)

The breakdown of Inventories is as follows:

December 31,2006

December 31, 2005

Raw Materials

6,471,308.-

5,382,326.-

Work in Process

13,192,619.-

6,787,249.-

Finished Goods

10,819,678.-

5,725,306.-

Merchandises

60,897,333.-

21,944,263.-

Other Inventories

91,321.-

192,477.-

Provision For Impairment (-)

(2,178,911.-)

(235,323.-)

Advances Given

7,032,214.-

7,067,942.-

Total

96,325,562.-

46,864,240.-

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From: [Cetin Bilgin](mailto:Cetin.Bilgin@tebol.com)
To: Florent.feboul@sonit.com
Subject: 30.09.2007
Date: 29 February 2008 08:50:07

Hi Florent,

Mr.Edward Pinnel had requested 3rd Quarter Financial results, please forward them accordingly.

Thank you

GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT ANONIM SIRKETI

CONSOLIDATED BALANCE SHEET AS OF SEPTEMBER 30, 2007 and DECEMBER 31, 2006
(Amounts expressed in USD)

	September 30, 2007	December 31, 2006
ASSETS		
Current Assets:		
Cash and Cash Equivalents	489.780	969.592
Marketable Securities (net)	-	-
Trade Receivables (net)	1.431.761	9.900.178
Finance Lease Receivables (net)	-	-
Receivables from Related Parties (net)	91.722.522	82.394.235
Other Receivables (net)	377.450	509.732
Living Assets (net)	-	-
Inventories (net)	191.755.275	112.379.822
Receivables from Ongoing Construction Projects (net)	-	-
Deferred Tax Assets	-	-
Other Current Assets	1.775.937	1.529.630
Total Current Assets	287.552.725	207.683.189
Non-Current Assets:		
Trade Receivables (net)	16.501	16.506
Finance Lease Receivables (net)	-	-
Receivables from Related Parties (net)	-	-
Other Receivables (net)	-	-
Financial Assets (net)	-	-
Positive/Negative Goodwill (net)	36.998.005	38.745.723
Investment Properties (net)	-	-
Property, Plant and Equipment (net)	11.585.620	7.792.876
Intangible Fixed Assets (net)	657.283	231.959
Deferred Tax Assets	-	-
Other Non-Current Assets	2.025	-
Total Non-Current Assets	49.259.434	46.787.064
TOTAL ASSETS	336.812.159	254.470.253

GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT ANONIM SIRKETI

CONSOLIDATED BALANCE SHEET AS OF SEPTEMBER 30, 2007 and DECEMBER 31, 2006
(Amounts expressed in USD)

	September 30, 2007	December 31, 2006
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current Liabilities:		
Bank Borrowings (net)	36.637.077	31.903.827
Finance Lease Payables (net)	1.741.442	949.121
Other Financial Liabilities (net)	-	-
Trade Payables (net)	168.934.618	103.229.836
Due to Related Parties (net)	249.460	130.179
Advances Received	-	-
Ongoing Construction Project Payments (net)	-	-
Provisions	329.603	399.006
Deferred Tax Liabilities	-	-
Other Current Liabilities (net)	516.332	369.328
Total Current Liabilities	208.408.532	136.981.297
Non-Current Liabilities:		
Bank Borrowings (net)	128.571	389.544
Finance Lease Payables (net)	5.529.017	3.587.360
Other Financial Liabilities (net)	-	-
Trade Payables (net)	-	-
Due to Related Parties (net)	-	-
Advances Received	-	-
Provisions	590.465	327.319
Other Non-Current Liabilities (net)	-	-
Total Non-Current Liabilities	6.248.053	4.304.223
TOTAL LIABILITIES	214.656.585	141.285.520
Minority Interest	31.057	30.546
SHAREHOLDERS' EQUITY		
Share Capital	66.401.062	66.401.062
Capital Reserves	43.616.042	43.616.042
Share Premium	-	-
Revaluation Fund on Fixed Assets	-	-
Revaluation Surplus on Stock Exchange	-	-
Revaluation Differences on Equity Items	-	-
Inflation Adjustment on Equity Items	43.616.042	43.616.042
Profit Reserves	-	-
Legal Reserves	-	-
Other Reserves	-	-

Extraordinary Reserves	-	-
Net Income/Loss	8.970.330	4.319.996
Previous Years' Profit/Loss	3.137.083	(1.182.913)
Total Shareholders' Equity	122.124.517	113.154.187
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	336.812.159	254.470.253

GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT ANONIM SIRKETI

CONSOLIDATED INCOME STATEMENT

FOR THE PERIOD BETWEEN JANUARY 01 - SEPTEMBER 30, 2007 and JANUARY 01 - SEPTEMBER 30, 2006
(Amounts expressed in USD)

	January 01- September 30, 2007	January 01- September 30, 2006
OPERATING INCOME		
Sales (net)	2.650.010.287	2.151.771.731
Cost of Sales (-)	(2.632.522.471)	(2.135.236.482)
Service Income	72.690	68.992
Other Income from Operating Activities	246.111	3.582.531
GROSS OPERATING PROFIT/(LOSS)	17.806.617	20.186.772
Operating Expenses (-)	(12.327.776)	(9.293.477)
NET OPERATING PROFIT/(LOSS)	5.478.841	10.893.295
Income from Other Operations	27.806.571	16.531.463
Expenses from Other Operations (-)	(21.566.335)	(23.533.987)
Financial Expenses	(2.543.074)	(1.705.417)
OPERATING PROFIT/(LOSS)	9.176.003	2.185.354
MINORITY INTEREST	(1.159)	(2.267)
INCOME/(LOSS) BEFORE TAXATION	9.174.844	2.183.087
TAXATION	(204.514)	(74.005)
Current Period Tax Provision	(204.514)	(74.005)
Deferred Tax Provision	-	-
NET INCOME	8.970.330	2.109.082
EARNINGS PER SHARE	0,00112	0,00026

From: elodie.fleury@socgen.com
To: [Cetin Binatli](mailto:Cetin.Binatli)
Cc: ["florent.teboul@sgcib.com"](mailto:florent.teboul@sgcib.com)
Subject: RE: Gold Consignment Agreement
Date: 02 September 2003 09:38:06
Attachments: [Standard Legal Opinion \(In-house\).doc](#)

Dear Mr. Binatli,

Thank you for your prompt response.

We usually require that the legal opinion be delivered by a local law firm rather than by company counsel. We will however be satisfied with a letter from an in-house lawyer, substantially in the form of letter herein attached, together with a certified copy of Statutes/Articles of Association of your company:
(See attached file: Standard Legal Opinion (In-house).doc)

Before printing out the 2 execution copies of the Gold Consignment Agreement, please insert today's date and your company's legal designation and address details on the heading of the contract and specify at page 9 the location(s) of the branch office(s) in Turkey where you will have gold delivered by SG under this agreement.

Thank you for your co-operation,

Kind regards,

Elodie FLEURY

cbinatli@goldas.com
om To: Elodie FLEURY/fr/socgen@socgen
cc: Florent TEBOUL/decc/fr/socgen@socgen
02/09/03 08:02 Subject: RE: Gold Consignment Agreement

Dear Mr.Fleury,

Thank you for your e-mail .

We have analysed the attached agreement and agree with the terms accordingly

Just one clarification is required regarding the 10 (ii) within the conditions precedent Is this legal opinion required from a company lawyer ?

Shall we sign and return the agreement alongwith the conditions precedent ?
If so we will be sending two signed copies and would appreciate if you could return one countersigned copy to us accordingly .

Thank you in advance for your assistance .

Kind regards,

Cetin BINATLI
Director
GOLDAS A.S.
24 Kayalar Sokak
34010 Merter
Istanbul , Turkey
Tl:+90-212-6374000
Fx:+90-212-6374007

-----Original Message-----

From: elodie.fleury@socgen.com [mailto:elodie.fleury@socgen.com]
Sent: Monday, September 01, 2003 7:06 PM
To: cbinatli@goldas.com
Cc: florent.teboul@sgcib.com
Subject: Gold Consignment Agreement

Dear Sir,

My colleague, Florent Teboul, has instructed me to send you the attached Gold Consignment Agreement for your perusal:

(See attached file: GoldConsignmentGoldas(030901).doc)

Please do not hesitate to contact me should you have queries or comments on the terms thereof.

Kind regards,

Elodie FLEURY
Legal Counsel on Commodities
Tel: (33) 1 58 98 80 66
Fax: (33) 1 42 14 26 84
elodie.fleury@socgen.com

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[] 200[•]

To : Société Générale

Dear Sirs,

As qualified attorney in the State of [•] acting as in-house legal counsel for [•] (the "Company"), I am hereby delivering to you a legal opinion in connection with the Gold Consignment Agreement (the "Agreement") dated as of [•] between Société Générale and the Company.

I have examined the Agreement and such documents, instruments and certificates as I have deemed necessary or appropriate as a basis for the opinions expressed herein.

The opinions expressed herein are limited to questions under the law of the [•] as of the date of this opinion, and I do not purport to express an opinion on any question arising under the law of any other jurisdiction.

All terms defined in the Agreement and used but not defined herein have the meanings given to them in the Agreement.

In this opinion "relevant transactions" means all transactions which are governed by or envisaged under the Agreement.

Based upon the foregoing, we are of the opinion that :

1. The Company is a limited company, duly organised and validly existing under the law of [•] and has the corporate power and authority to execute the Agreement, to own its property, to conduct its business as currently conducted and to carry out all relevant transactions.
2. The Company has taken all necessary action to authorise the execution and delivery of the Agreement and all other documents to be executed and delivered by it in connection with such Agreement, the performance of its obligations under the Agreement and the carrying out of all relevant transactions.
3.
 - a) The Agreement has been duly executed and delivered by the Company and the Agreement constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its terms; and
 - b) Neither the Agreement nor any document confirming any relevant transaction carried as envisaged thereunder needs to be filed, recorded or registered with any [•] authority.
4. No authorisation, consent or approval or other action by, and no notice to or filing with, any governmental administrative or other authority or court of any relevant jurisdiction is required for the due execution, delivery and performance by the Company of the Agreement or the relevant transactions thereunder.

5. The execution and delivery of the Agreement is not subject to any tax, duty, fee or other charge, including, without limitation, any registration or transfer tax, stamp duty or similar levy, imposed by or within [•] or any political or administrative subdivision or taxing authority thereof or therein.
6. The Company is entitled to make all payments under the Agreement without any deduction or withholding in respect of any taxes in the [•].
7. A judgement entered against the Company in a court of England in connection with the Agreement will be recognised and enforced against the Company and it will not be necessary to obtain leave from a court of another jurisdiction or authority before enforcing the Agreement.

This opinion may be relied upon by Société Générale, its successors and assignees.

Yours sincerely,

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

BETWEEN:

SOCIÉTÉ GÉNÉRALE



Claimant

– and –

- (1) WÜRTEMBERGISCHE VERSICHERUNG A.G.
- (2) ROYAL & SUN ALLIANCE INSURANCE PLC
- (3) NAVIGATORS INSURANCE COMPANY
- (4) SWISS RE EUROPE S.A., UK BRANCH
- (5) GREAT LAKES REINSURANCE (UK) PLC
- (6) CAP MARINE ASSURANCES ET REASSURANCES SAS
- (7) COOPER GAY & CO LIMITED

Defendants

AMENDED DEFENCE AND COUNTERCLAIM
OF THE SEVENTH DEFENDANT ("CG") TO
THE RE-RE-RE-AMENDED PARTICULARS OF CLAIM

AMENDED DEFENCE

1. Save where otherwise indicated, references in this Amended Defence to paragraph numbers are references to the Re-Re-Re-Amended Particulars of Claim.

The parties

2. As to paragraph 1, it is admitted that the Claimant ("SG") is a company incorporated as a Société Anonyme under the laws of France, having its registered

address at 29 Boulevard Haussmann 75009 Paris. Save as aforesaid, paragraph 1 is not admitted. SG is and was at all material times an international bank with its own insurance department. It was the function of SG's insurance department to determine the insurance needs of SG and the terms upon which and price at which insurance cover in respect of SG's identified risks should be sought. SG, through its insurance department, was a sophisticated consumer of insurance products and an experienced user of insurance markets, including the London market. SG, through its insurance department, was or should have been well-versed in the key concepts applicable to business placed in the London market, including the nature and status of a warranty.

3. Paragraphs 1A to 1C are noted.
4. Save that it is admitted that each of the Second to Fifth Defendants ("the Underwriter Defendants") is an insurance company, paragraphs 2 to 6 are not admitted and paragraph 6A is noted.
5. Paragraphs 6B and 6C are admitted.

The insurance

6. As to paragraph 7:
 - 6.1 By a contract of insurance contained in or evidenced by a slip policy with unique market reference B0738MC000580B and as amended by endorsements 1 to 4, the Underwriter Defendants agreed, each for its due proportion, to insure SG for the period 2 April 2007 to 2 April 2008 in respect of all property comprising bullion, precious metals and non-precious metals in respect of which SG had the defined interest on the terms and conditions set out therein and in consideration of premium.
 - 6.2 The sum insured was USD125,000,000 any one loss, sub-limited to USD60,000,000 any one transit.
 - 6.3 The proportions set out in Appendix 1 are admitted.
 - 6.4 Paragraph 7(5) is admitted.
 - 6.5 The slip policy provided by its express terms in part as follows:

CONDITIONS: Transit coverage is extended to include:
(Continued) War risks as applicable as per Institute War Clauses:
Institute War Clauses (Cargo) 1/1/82 CL.255/256.

Institute Strikes Clause (Cargo) 1/1/83 CL. 256.
and 7 day War Risk Cancellation Clause but 48 hours
for Shipments to and from U.S.A.

Warranted all storage at LME and/or COMEX approved
warehouses.

Warranted storage of precious metals is Insured on a
pure contingency basis.

ATTACHMENT/TERMINATION OF INSURANCE

This insurance policy commences from the time subject
matter becomes the Insured's risk or the Insured
assumes interest and continues while the subject matter
is in transit or in store or during processing or
manufacturing, continues during packing, repacking,
storage, consolidation, deconsolidation, containerisation
and the preparation for distribution and redistribution
and at transhipping points or elsewhere including whilst
held as stock (at warehouse or elsewhere) and whether
or not in the course of transit and/or whilst undergoing
processing, assembly, renovation and repair and/or
whilst at exhibitions, trade fairs or similar displays, until
the Insured's risk and/or interest finally ceases...

6.6 Save as aforesaid, paragraph 7 is denied.

7. As to paragraphs 7A to 7C:

7.1 The allegations made by the Underwriter Defendants at paragraph 18(c) of their Amended Defence are noted. The Istanbul Gold Exchange is not an LME or Comex approved warehouse. In fact, the Istanbul Gold Exchange is not a warehouse at all, but a gold exchange containing (amongst other facilities) a vault for and suitable for the storage of gold bullion to which the approval procedures of the LME and/or Comex were inapplicable and irrelevant.

7.2 SG's case, as set out at paragraph 20 of its Amended Reply, is noted.

7.3 CG's case as to the proper construction of the relevant words of the policy is set out at paragraphs 25 to 26 below.

7.4 Specifically as to the particulars under paragraph 7C, CG's case is set out at paragraphs A.11 and following of the Appendix A hereto.

7.5 Save as aforesaid, paragraphs 7A to 7C are denied.

Paragraphs 8 to 29

8. As to Paragraph 8: is not admitted.
- 8.1 It is admitted that on or about 3 September 2003 SG entered into a Gold Consignment Agreement with Goldas Kuyumculuk Sanayi Ithalat Ihracat A.S.
- 8.2 On or about 14 May 2004 SG entered into a Gold Consignment Agreement with Meydan Döviz Ve Kıymetli Maden Ticaret A.S.
- 8.3 Save as aforesaid, no admissions are made.
9. As to paragraph 9:
- 9.1 It is admitted that on or about 27 April 2005 SG entered into a Bullion Consignment Agreement with Goldas Kuyumculuk Sanayi Ithalat Ihracat A.S. ("the Kuyumculuk BCA").
- 9.1A It is further admitted that on or about 27 April 2005 SG entered into separate Bullion Consignment Agreements with Goldas Kıymetli Madenler Ticareti Anonim Sirketi ("the Kıymetli BCA"), Meydan Döviz Ve Kıymetli Maden Ticaret A.S. ("the Meydan BCA") and Goldas LLC ("the Goldas LLC BCA") (referred to collectively together with the Kuyumculuk BCA as "the BCAs").
- 9.2 Save as aforesaid, no admissions are made.
10. The Kuyumculuk BCA, the Kıymetli BCA and the Meydan BCA provided by its/their express terms in part as follows:
- "8. Custody and Insurance
- (a) All Consigned Bullion will be held on consignment at the vaults of the CONSIGNEE and until purchase under Clause 4(a) or return thereof provided that:
- (i) The CONSIGNEE shall hold all Consigned Bullion in safe custody at the Location on behalf of SG.
- (ii) In respect of all Consigned Bullion, the CONSIGNEE shall at its own cost subscribe and at all times maintain Insurance naming SG as loss payee and containing terms acceptable to SG. The CONSIGNEE shall promptly inform SG of any changes made to the level or nature of such Insurance.

Annex 1 Part I

Definitions

...

"Location" means the registered office of the CONSIGNEE and any other location in Turkey as from time to time agreed in writing between SG and the CONSIGNEE;

...

10.1 It is not admitted that the vaults of the IGE were (i) the vaults of Kuyumculuk at its registered office and/or the vaults of Kiymetli at its registered office and/or the vaults of Meydan at its registered office; or (ii) a location agreed in writing between SG and Kuyumculuk and/or between SG and Kiymetli and/or between SG and Meydan.

10A. The Goldas LLC BCA contained materially identical terms save that in the definition of "Location" in Annex 1 Part 1, reference was made to "U.A.E" and not to Turkey. No admissions are made as to the facilities for the storage of gold by Goldas LLC at the Location or as to the place where gold sent to Goldas LLC was held.

11. As to paragraph 10:

11.1 The first sentence of paragraph 10 is not admitted and SG is put to strict proof of the facts and matters alleged.

11.2 It is admitted that clause 6(a) of the Kuyumculuk BCAs was in the terms quoted in paragraph 10.

11.3 Save as aforesaid, no admissions are made.

12. Paragraphs 11 to 13 are not admitted. Without prejudice to the generality of this non-admission:

12.1 The fact of each alleged delivery, its date, amount and location are not admitted. SG is put to proof.

12.2 It is not admitted that the alleged deliveries of gold were pursuant to any relevant BCA. SG is put to proof.

12.3 It is not admitted that SG had itself acquired title to any gold delivered. SG is put to proof of its acquisition of title to (or other insurable interest in) all relevant gold.

13. Save for typographical errors; it is admitted that clause 12 of the Kuyumculuk BCAs provided in part as alleged in paragraphs 14 and 16. Save as aforesaid, no admissions are made.
14. Paragraph 15 is not admitted.
15. As to paragraph 17,
 - 15.1 On 4 March 2008, at a meeting SG provided:
 - (a) To Goldas Kiymetli a Notice of Expiry of Maximum Consignment Period, seeking the immediate return of Consigned Bullion totalling 4.2MT in respect of which the Maximum Consignment Period was said to have expired.
 - (b) To Goldas Kiymetli a Notice of Default in respect of the alleged non-payment of various invoices, seeking the immediate return of Consigned Bullion totalling 5.2MT.
 - (c) To Goldas Kuyumculuk a Notice of Default in respect of the alleged non-payment of various invoices, seeking the immediate return of Consigned Bullion totalling 3.25MT.
 - 15.2 Also on 4 March 2008 and at the same meeting SG provided:
 - (a) To Meydan Doviz a Notice of Default alleging that Consigned Bullion had been removed from Meydan Doviz's vaults and seeking the immediate return of 2.35MT of gold bullion.
 - (b) To Goldas LLC a Notice of Default alleging that Consigned Bullion had been removed from Goldas LLC's vaults (in Dubai) and seeking the immediate return of 0.5MT of gold bullion.
 - 15.3 Save as aforesaid, no admissions are made.
16. As to Paragraph 18; by letters dated 20 March 2008 from SG to each of Kuyumculuk, Kiymetli, Goldas LLC and Meydan, SG demanded in the alternative to the return of Consigned Bullion, payment for such gold bullion together with interest. Save as aforesaid, paragraph 18 is not admitted.

17. As to paragraph 19:

17.1 It is denied that clause 6 of the Kuyumculuk BCA was effective to prevent a third party acting in good faith from acquiring title under the *lex situs* of the Consigned Bullion at the time of transfer to such third party, in circumstances where (as was the case under Turkish law) clause 6 was not recognised by the *lex situs* as preventing such acquisition of title.

17.2 ~~CG reserves the right, following disclosure, to allege that the Kuyumculuk (and any similar BCA with any other relevant Goldas company) was varied or amended by conduct of the parties to it or by course of dealings. CG adopts the Underwriter Defendants' pleaded case in paragraph 21 of the Underwriter Defendants' Re-Amended Defence and Counterclaim in relation to SG's knowledge of and consent to the trading pattern and the actions of the Goldas companies and the consequences thereof. In particular:~~

- (a) By and from no later than early December 2007, it was clear to SG (by at least Mr Teboul and/or Mr Deshpande) (i) that the Goldas companies were trading gold bullion supplied by SG for which no payment had yet been made and/or were putting gold bullion into the jewellery production process and/or selling the jewellery produced before paying for such gold bullion; and (ii) that in acting as aforesaid, the gold bullion delivered to the Goldas companies by SG was not being retained on consignment in accordance with the terms of the BCAs from delivery until purchase and payment.

PARTICULARS

A. The best particulars that CG can currently give as to the facts and matters relied upon are as set out below. CG reserves the right to supplement these particulars following further disclosure and/or the service of witness statements. CG relies upon the following facts and matters:

- (i) The telephone conversation between Mr Binatli and Mr Deshpande on 17 October 2007 in which the converting of gold into jewellery before the relevant Goldas companies had paid for the gold supplied by SG was discussed.
- (ii) SG's knowledge that each of the Goldas companies was accounting for the gold on consignment as assets within its

inventories; and was accounting for a mere financial liability to SG in respect of such gold within trade creditors. In this regard, CG relies upon the email from Ms Luet to Mr Merlin dated 12 November 2007; the email from Mr Merlin to Ms Luet dated 27 November 2007; the email from Ms Luet to Mr Teboul dated 6 December 2007; the telephone conversation between Mr Binatli and Mr Teboul on 14 December 2007; the email from Ms Luet to Mr Richard dated 9 January 2008; and the email from Ms Luet to Mr Francois Garbado and Mr Jean-Louis Faure dated 18 January 2008.

- (iii) The credit assessment by Ms Luet dated 15 January 2008 which stated that the gold on consignment was used by Goldas as of its delivery to make jewellery before it had been purchased from SG by Goldas.
- (iv) The meeting in Paris on 17 January 2008 attended by Mr Binatli, Mr Teboul, Mr Neviaski and Mr Varenne and the subsequent discussions within SG to ascertain whether insurance coverage existed for misappropriation by the client and the steps taken by SG to seek a specific misappropriation endorsement.
- (v) The telephone conversations between Mr Binatli and Mr Deshpande on 30 January 2008 and 1 February 2008.

B. If, contrary to CG's case in paragraph 17.3 below, the back to back transactions were subject to the terms of the relevant BCAs, then CG also relies upon the facts and matters set out as particulars of paragraph 17.3(b) below in relation to such transactions.

- (b) By continuing to deliver gold bullion to the Goldas companies from early December 2007 in those circumstances and as regards such gold bullion, SG impliedly consented to the Goldas companies dealing with the gold bullion in the aforesaid manner. Further or alternatively, insofar as necessary, the BCAs were varied or amended by the conduct of the parties and/or by this course of dealings.

17.3 In any event, any consignments of gold which were supplied and sold by SG separately from any BCA are not subject to the terms of any BCA. In particular (and without prejudice to paragraph 17.2 above):

- (a) Gold supplied and sold by SG pursuant to back to back transactions was supplied and sold separately from and not subject to the terms of any BCA.
- (b) The commercial purpose of these back to back transactions was, as SG knew, to enable the relevant Goldas company to sell or trade the gold immediately. The commercial purpose of the payment period was, as SG knew, to enable the relevant Goldas company to pay SG for the gold with the money received by the relevant Goldas company from the immediate sale of that gold.

PARTICULARS

The best particulars that CG can currently give as to the facts and matters relied upon are as set out below. CG reserves the right to supplement these particulars following further disclosure and/or the service of witness statements. CG relies upon the following facts and matters:

- (i) The descriptions of back to back transactions set out in the email from Mr Deshpande to Mr Binatli dated 1 December 2004; the email from Mr Deshpande to Mr De-Ballenx dated 23 February 2005; the emails from Mr Teboul to Mr Reynaud dated 1 July 2005 and 7 July 2005; the email from Mr Teboul to Mr Fernandez-Valdes and Mr Deshpande dated 8 July 2005; the email exchange between Mr Teboul and Mr Serge Topolanski on 13 and 14 July 2005; the email exchange between Mr Teboul and Mr Deshpande on 22 July 2005; the emails between Mr Deshpande and Mr Reynaud on 12 May 2006; the email from Mr Teboul to Mr Reynaud dated 20 March 2007; the email exchange between Mr Deshpande and Mr Teboul on 10 April 2007; Ms Delphine Metier's training notes from April 2007; the telephone conversation between Mr Deshpande and Mr Binatli on 9 August 2007; and the email from Mr Williams to Ms Florence Roussel-Pollet dated 31 August 2007.
- (ii) The email from Mr Binatli to Mr David Fernandez-Vales dated 3 January 2005 in relation to payment for a back to back transaction and the email from Mr Deshpande to Mr Binatli dated

4 October 2006 concerning the sale of back to back gold by Meydan before Meydan had paid SG for such gold.

- (iii) The credit line renewal requests dated 18 May 2006 and SG's internal corporate credit analysis circulated by Mr Philippe Merlin on 17 April 2007.
 - (iv) The telephone conversation between Mr Teboul and Mr Binatli on 1 February 2007 and 20 March 2007; and the telephone conversations between Mr Deshpande and Mr Binatli on 15, 16 and 19 March 2007, 28 March 2007, 10 May 2007, 14 June 2007, 30 January 2008 and 13 February 2008.
- (c) Consequently, and consistent with the commercial purpose of the back to back transactions, gold was supplied and sold by SG on terms whereby payment was to be made by the relevant Goldas company to SG before or upon arrival of the gold. Subsequently the terms were extended to allow the relevant Goldas company to pay for the gold within 4 days of its arrival. This period was then further extended to 10 working days from the arrival of the gold for pricing and payment. Any and all interest of SG, including title to the gold, passed immediately to the relevant Goldas company upon delivery of the gold upon its arrival, thereby enabling and/or facilitating the sale of such gold by the relevant Goldas company to a third party purchaser immediately upon arrival or prior to the deadline for pricing and payment.
- (d) These back to back transactions were inconsistent with the critical terms of the BCAs defining the consignment arrangement including in particular: (i) 'Maximum Consignment Quantity' in clause 3(a), in circumstances where back to back transactions were subject to their own quantitative limit which was separate from the limit applicable to consignments; (ii) 'Purchase Requests' in clause 4 in circumstances where back to back transactions involved a purchase when the order was placed, albeit (from a certain date) with pricing and payment up to 10 working days after delivery; (iii) clause 6 relating to title and risk; and (iv) clause 8 relating to custody and insurance.
- (e) The losses claimed by SG include gold supplied and sold to Kiymetli pursuant to back to back transactions. This gold was supplied and sold by SG separately from and not subject to the terms of the BCA

between SG and Kiymetli. The losses claimed by SG in respect of these back to back transactions are as particularised in Appendix B, together totalling some US\$226,695,499.

17.3A In any event and whether or not the back-to-back transactions were subject to the terms of the relevant BCAs, at least in regard to gold delivered pursuant to back-to-back transactions there was implied consent by SG to Kiymetli dealing with such gold and insofar as the relevant BCAs were applicable to these transactions (which is denied), they were varied or amended by conduct or course of dealing.

17.4 It is specifically denied ~~not admitted~~ that any gold bullion was misappropriated and lost within the meaning of the insurance policy written by the Underwriter Defendants.

17.5 If (which is denied) any gold bullion was misappropriated and lost within the meaning of the insurance policy written by the Underwriter Defendants, SG is put to proof of (1) the fact of such loss; (2) the quantity of gold lost; (3) the date of loss; and (4) SG's insurable interest at the date of loss.

17.6 Save as aforesaid, no admissions are made.

18. Paragraphs 20 to 27 are not admitted. SG is put to proof of all facts and matters alleged. ~~CG reserves the right to plead a positive case following disclosure.~~

19. As to paragraph 28, it is admitted that the Underwriter Defendants have not paid the amount claimed or any amount in respect of SG's claim on the policy. Save as aforesaid, no admissions are made.

20. Paragraph 29 is denied.

Cap Marine ("CM")

21. As to paragraph 30:

21.1 During the period January to March 2007, SG invited several brokers to seek terms in respect of its metals cover for the period 2 April 2007 to 2 April 2008, including Aon (who had placed the expiring cover), Glencairn and CM.

21.2 On or about 19 January 2007 CM was asked by SG's insurance department (acting by Ms Alix Engelhard) to put forward a proposal for SG's metals cover from the expiry date of the cover then in place, which was 2 April 2007.

By email dated 19 January 2007 CM thanked Ms Engelhard for her confidence and expressed the hope of being able to satisfy SG's request. In the premises:

- (a) It is denied that CM promised to obtain quotations.
- (b) It is denied that SG told CM that cover must be on the same terms as the existing Aon insurance wording; and it is denied that CM agreed or undertook to obtain quotations only on the same terms as the existing Aon insurance wording. It was implicit in SG's request to CM and/or in CM's response that CM would be approaching different underwriters from those subscribing to the expiring cover, and it was obvious that different underwriters might quote different terms from those of the expiring cover.

21.3 Save as aforesaid, no admissions are made as to (i) the time when CM was engaged by SG; (ii) the terms upon which CM was engaged by SG; or (iii) the instructions given by SG to CM.

21.4 Save as aforesaid, paragraph 30 is not admitted.

22. As to paragraphs 31 and 32, any duties owed by CM to SG were owed as a matter of French law. No admissions are made as to the scope of any duties owed by CM. Save as aforesaid, paragraphs 31 and 32 are denied.

The alleged duties owed by Cooper Gay

23. As to paragraph 33:

23.1 CM retained CG as placing broker in the circumstances set out above and in the Appendix hereto, and CG as placing broker was to act with reasonable care and skill

- (a) to obtain from the London market quotations for insurance in the circumstances set out above and in the Appendix A hereto;
- (b) to communicate the quotations for insurance obtained from the London market to CM; and
- (c) if instructed to do so, to place insurance on the terms quoted and communicated to CM.

23.2 There was no contractual engagement of CG by SG.

23.3 In performing its role as placing broker CG (as set out below and in the Appendix A hereto) did not assume any responsibility directly to SG. Nothing crossed the line directly between CG and SG in connection with the placing of the insurance.

23.4 If CG did assume or accept any responsibility directly to SG, the nature and extent of the responsibility assumed, and the scope of any duty owed to SG to act with reasonable care and skill was limited to the following specific responsibilities or duties:

- (a) To act with reasonable care and skill in obtaining quotations of available terms;
- (b) Upon instructions received, to act with reasonable care and skill in placing the cover on the terms quoted and communicated to CM.

23.5 CG did not owe any duty, whether to SG or to CM,

- (a) to ensure that the insurance met SG's needs; or
- (b) to explain or advise upon terms quoted by underwriters.

23.6 Specifically as to paragraph 33.3, neither the letter produced on 13 March 2007 nor the broker of record letter produced on 16 March 2007 supports a conclusion that CG assumed a responsibility directly to SG. The letters, which were of a type common in the market, were issued by SG to CM. Although naming CG as authorised to negotiate terms, it does not follow that CG thereby assumed a responsibility towards SG directly, simply by virtue of having received copies of the letters from CM.

23.7 Save as aforesaid, paragraph 33 is denied.

The so-called LME/Comex warranty

24. As to paragraph 34:

24.1 It is admitted that the Underwriter Defendants allege in paragraph 18(c) of their Amended Defence that the policy of insurance contains a warranty in the terms stated.

24.2 Paragraph 6.5 above is repeated.

- 24.3 Save as aforesaid, no admissions are made.
25. The warranty falls to be construed against the background of the following material facts and matters:
- 25.1 The policy was intended to cover SG for its precious metals in respect of transit and storage risks at a flat rate of premium.
- 25.2 The policy was placed against the known background of SG having an interest in gold supplied to customers in Turkey, Dubai and India.
- 25.3 The policy was placed against the known background of SG having suffered a loss of aluminium (i.e. a non-precious metal) from a non-LME approved warehouse in Italy in 2002.
- 25.4 The reference to LME and/or Comex approval was intended to be a convenient means of describing minimum standards of security required to be applicable, but the chosen point of reference was not intended to render the policy unworkable or to deprive SG of the cover it had purchased.
- 25.5 There are no LME warehouses approved for the storage of gold (or other precious metals), and there are no Comex warehouses approved for the storage of gold (or other precious metals) outside the USA. In particular, there are no such LME or Comex approved warehouses in Turkey, Dubai or India (being the countries specifically identified in the presentation file as those to which SG regularly supplied customers with gold). The LME is not a market on which precious metals are or can be traded; and the LME does not grant approval for warehouses or vaults for the storage of such precious metals. Whilst Comex (being the division of the New York Mercantile Exchange Inc. responsible for the trading of gold futures and options contracts) approves vaults and depositories (but not warehouses) for the storage of gold, it is and was at all material times a requirement of the Comex Rules that only facilities located within a 150 mile radius of New York can be licensed to store gold for delivery under contracts traded on Comex – see 'Chapter 113 – Gold Futures, Rule 113.05 – Licensed Depositories for Gold' in the Nymex Rulebook, being the Rulebook applicable to the Comex division of the New York Mercantile Exchange Group Inc..
- 25.6 The wording of the warranty was proposed by Mr Morris of Württ to Mr Glover of CG, and was subsequently extended to include reference to Comex, in circumstances where Mr Glover did not appreciate and, on the

Underwriter Defendants' case, Mr Morris did not appreciate the facts and matters set out in paragraph 25.5 above.

- 25.7 The policy was not and was not intended to be an open cover, whereby declarations had to be made before precious metals storage risks were covered.
- 25.8 It was not the intention that SG should be deprived of storage cover unless and until SG had gained a special acceptance for the proposed storage location.
- 25.9 It was not the intention that SG should have to gain special acceptance by the placing of an endorsement for every storage of precious metals in the areas in which SG's precious metals business was known to be undertaken; still less that SG should have to pay an additional premium for such storage cover, in addition to the flat rate annual premium for which the policy provided.
- 25.10 It was not the intention that SG should be precluded from having the insured gold stored in secured vaults which are routinely used for and eminently suitable for the storage of gold bullion and/or which have a level of security at least equivalent to that in LME or Comex approved warehouses.
26. Against this background, on its true construction:
- 26.1 The warranty cannot sensibly be construed as if it were intended to apply and did apply in relation to the storage of precious metals at storage facilities in respect of which the procedures for the obtaining of LME approval and/or Comex approval were inapplicable and irrelevant and accordingly for which LME and/or Comex approval could not be given.
- 26.2 To that extent, therefore, CG adopts SG's case that the warranty as to storage in LME/Comex approved warehouses cannot apply to the storage of the gold bullion the subject of the present claim and, in effect, can only apply as regards the storage of non-precious metals.
- 26.3 Alternatively, if it is necessary to give some sensible meaning and effect to the warranty as regards the storage of precious metals, as well as non-precious metals, then CG will contend, if necessary, that in circumstances where the procedures for the obtaining of LME and/or Comex approval were inapplicable and irrelevant, the warranty was complied with where:

- (a) precious metals were stored at warehouses or in vaults with a level and degree of security at least equivalent to that applicable at LME or Comex approved warehouses; or
 - (b) precious metals were stored at warehouses or in vaults operated by an institution equivalent to the LME or Comex and with a level and degree of security at least equivalent to that applicable at LME or Comex approved warehouses.
27. Further or alternatively and in any event, the warranty was not a promissory warranty but defined/delimited the scope of the insurance, such that a breach of warranty did not relieve the Underwriter Defendants of liability in respect of unrelated covered losses.
28. As to paragraph 35:
- 28.1 No admissions are made as to
- (a) where any gold was delivered by SG or stored;
 - (b) any misappropriation(s) of any gold, nor as to the location(s) from which any misappropriation(s) occurred;
 - (c) whether any gold which was misappropriated was, at the time of misappropriation, being stored or within storage within the meaning of the Policy.
- 28.2 In the case of gold taken to and/or allegedly misappropriated at/from the IGE, any such gold was not being stored or within storage within the meaning of the Policy. CG relies on the following facts and matters:
- (a) According to the Kuyumculuk BCA, gold was only to be stored at the vaults of Kuyumculuk at its registered address or at another location agreed in writing with SG. The IGE does not appear to have been a place permitted for storage by Kuyumculuk under the Kuyumculuk BCA or by Kiymetli or Meydan under the relevant BCA. ~~On disclosure, CG reserves the right to rely on any similar provisions within any BCA concluded between SG and the other Goldas companies.~~
 - (b) It is a requirement of Turkish law that all gold imported into Turkey must be delivered to and recorded at the IGE within 3 days of importation – see Article 7(a) of Decree No. 32 (Decree on the

Protection of the Value of the Turkish Currency) issued under Law No. 1567 of 20 February 1930 on the Protection of the Value of the Turkish Currency; and Article 42 (within Section 5) of the Regulation of the Istanbul Gold Exchange (published in the Official Gazette no. 23741 dated 30 June 1999 and as amended by the Official Gazette dated 29.07.1999, No. 23770).

- (c) According to Appendix 3 of SG's Re-Re-Amended Particulars of Claim, allegedly misappropriated gold, in respect of which information is said to have been obtained from the IGE, is said to have been transferred to the third party on the same date on which it was transferred into the IGE or within only 1-2 trading days thereafter.
- (d) In these circumstances, any gold delivered to the IGE for the purposes of compliance with Turkish law and then apparently transferred almost immediately to third parties was not being stored or within storage within the meaning of the Policy whilst at the IGE.

28.3 On its true construction, as set out in paragraphs 25 to 26 above, the warranty is not applicable to the gold in respect of which SG has made its claim under the policy written by the Underwriter Defendants.

28.4 SG does not have a properly pleaded case as to the location or locations at which any particular quantity of gold is said to have been delivered or stored or at which it is said to have been located when misappropriated and lost. The reference to "other vaults" in the first sentence of paragraph 35 is embarrassing as being too vague, and it is unclear how much (if any) gold is said to have been delivered to, stored at and/or misappropriated from the vaults of the Istanbul Gold Exchange ("IGE").

28.5 If relevant, the vaults of the IGE were not LME or Comex approved warehouses. However, the vaults of the IGE were not susceptible to LME and/or Comex approval and/or were vaults with a level and degree of security at least equivalent to that applicable at LME or Comex approved warehouses and/or were established and managed by the IGE itself, which is and was an institution equivalent to the LME or Comex. In each or any of these premises, any storage of SG's gold in the vaults of the IGE did not constitute a breach of warranty.

28.6 If relevant, the locations identified in Endorsement No. 1 dated 18 October 2007 were not LME or Comex approved. However, the vaults or equivalent

facilities at the locations identified in Endorsement No. 1 were vaults or facilities with a level and degree of security at least equivalent to that applicable at LME or Comex approved warehouses. Further, those locations had been specifically approved by the Underwriter Defendants as acceptable for the storage of SG's gold on the basis of the survey report of International Adjusting Services dated 26 September 2007. In each or any of these premises, any storage of SG's gold at any of those locations did not constitute a breach of warranty.

28.7 No admissions are made as to or in relation to any relevant locations (if any) in Dubai or elsewhere.

28.8 Save as aforesaid and save that it is admitted that the Underwriter Defendants' case is that there has been a breach or breaches of the LME/Comex approved warranty, paragraph 35 is denied.

29. It is admitted that, save for minor typographical errors, paragraph 5B(c) of the Underwriters' Amended Defence provides as set out in paragraph 36.

The so-called contingency warranty

30. As to paragraph 37:

30.1 It is admitted that the Underwriter Defendants allege in paragraph 19 of their Amended Defence that the policy of insurance contains a warranty in the terms stated; and paragraph 6.5 above is repeated.

30.2 Gold bullion is a form of precious metal and it is admitted that the term set out in paragraph 6.5 above was applicable to the storage of gold bullion.

30.3 Save as aforesaid, no admissions are made.

31. As to paragraphs 38 and 39:

31.1 Save for minor typographical errors, it is admitted (i) that paragraph 19 of the Underwriter Defendants' Amended Defence advances the allegation set out in paragraph 38; and (ii) that paragraph 39 summarises the gist of paragraphs 19(a) and 19(b) of the Underwriter Defendants' Amended Defence.

- 31.2 The Underwriter Defendants' Defence relies on a local Turkish policy or policies insuring certain Goldas companies written by Genel Sigorta A.S. which is/are said to have been cancelled on 19 November 2007.
- 31.3 By a letter dated 2 April 2008, Genel Sigorta A.S. informed SG that the insurance policies with numbers 840-0001-2012774, 840-0001-2012882 and 840-0001-2012846 issued in favour of respectively Kiymetli, Kuyumculuk and Meydan had been cancelled as of 19 November 2007 "on the Insured's request". ~~Prior to disclosure, n~~ No admissions are made as to the effective cancellation of any local Turkish policy, nor as to the reasons for any such cancellation or the circumstances of any such cancellation or the involvement of SG therein or the knowledge of SG thereof. It is further not admitted that no new or alternative policy was taken out.
- 31.4 Further, in the event of purported cancellation of any local Turkish policy written by Genel Sigorta A.S., such purported cancellation was ineffective as against SG as a matter of Turkish law in the face of the loss payee provision contained therein in the absence of consent by SG to such cancellation.
- (a) As a matter of Turkish law, a loss payee has the status of a creditor secured with a pledge, thereby preventing the insurer and the named insured(s) from terminating the policy without the loss payee's knowledge and consent – see Turkish Civil Code, Articles 939-961; Turkish Commercial Code, Articles 1269-1270; Decision of the Supreme Court of Appeals, 11th Chamber dated 8 May 2006, Nos. 2005/5330E and 2006/5249K.
- (b) Further or alternatively, as a matter of Turkish law the loss payable clause in the policy/ies written by Genel Sigorta A.S. as insurer for the relevant Goldas company/ies as insured constituted a third party beneficiary agreement in favour of SG, in circumstances where, as loss payee, SG had the status of a creditor secured with a pledge. The naming of SG as loss payee put SG in the position whereby Genel Sigorta A.S. could not be released from its obligations under the policy/ies by the relevant Goldas company/ies without SG's consent – see Article 111 of the Turkish Law of Obligations.
- 31.5 In any event, there was no breach of the so-called warranty for the reasons set out in paragraph 32 below.
- 31.6 Save as aforesaid, paragraphs 38 and 39 are denied.

32. As to the case advanced by the Underwriter Defendants in paragraph 19 of their Amended Defence:
- 32.1 The so-called contingency warranty is very general in its terms. Consequently, it cannot and does not bear the narrow meaning alleged in paragraph 19 of the Underwriter Defendants' Amended Defence; and there is no relevant custom or practice of the market establishing any such narrow meaning or informing the meaning of the words used.
- 32.2 If (which is not admitted) the facts alleged in paragraph 19(a) of the Underwriter Defendants' Amended Defence are true, neither those facts nor the additional allegation advanced in paragraph 19(b) of the Amended Defence would constitute a breach of so-called warranty.
- (a) As to the facts alleged in paragraph 19(a) of the Underwriter Defendants' Amended Defence, even if (which is not admitted) the provision required the existence of a primary policy at all, there was no breach in circumstances where a primary policy was cancelled retrospectively, alternatively was cancelled retrospectively without the knowledge or consent of SG.
- (b) As to the facts alleged in paragraph 19(b), the fact that the primary insurance policy would not be expected to cover the deliberate act of the primary insured (viz. the relevant Goldas company/ies) cannot sensibly amount to a breach of warranty.
33. Further or alternatively, the Underwriter Defendants must prove and/or SG must prove against CG that
- 33.1 the relevant gold was actually being stored and in storage for the purposes of the policy (and for these purposes, paragraph 28.2 is repeated as regards any gold taken to and/or allegedly misappropriated at or from the IGE); and
- 33.2 the relevant gold was being stored at one of the locations which were the subject of the local Turkish policies which are alleged to have been cancelled. This fact is not admitted.
34. In any event, even if (contrary to the foregoing) there was a breach of warranty in regard to the storage of precious metals at the addresses referred to in Endorsement No. 1 (being the risk addresses to which the local Turkish policies related), any such breach does not relieve the Underwriter Defendants of liability in

respect of unrelated covered losses occurring elsewhere. The warranty was not a promissory warranty but defined/delimited the scope of the insurance, such that a breach of warranty did not relieve the Underwriter Defendants of liability in respect of unrelated covered losses.

The alleged misrepresentations and non-disclosure

34.A It is admitted that paragraph 39.1 summarises the gist of paragraph 2E of the Underwriter Defendants' Re-Amended Defence and Counterclaim.

34.B It is admitted that paragraph 39.2 summarises the gist of paragraph 2H of the Underwriter Defendants' Re-Amended Defence and Counterclaim.

34.C In paragraph 2F of the Underwriter Defendants' Re-Amended Defence and Counterclaim, the Underwriter Defendants allege a failure to disclose certain material facts and matters prior to the conclusion of the Policy. In paragraph 2G, the Underwriter Defendants allege materiality and actual inducement of each of the Underwriter Defendants' underwriters in respect of the alleged misrepresentations and alleged non-disclosures in paragraphs 2E and 2F. In paragraph 2I, the Underwriter Defendants allege their entitlement to avoid the Policy and thereby avoid. In paragraph 2J, the Underwriter Defendants advance a case of material non-disclosure and/or implied misrepresentation inducing the underwriting of endorsements 0001 to 0004 to the Policy by the First and/or Second Defendants and entitling the Underwriter Defendants to avoid the endorsements. Save as aforesaid, paragraphs 39.1 to 39.3 are denied.

The alleged breaches of duty by CM and CG

SG's case regarding the so-called LME/Comex and contingency warranties

35. Paragraph 40 is denied. More particularly, it is denied that, on the premises set out in paragraph 40 or upon any other premises, CG was in breach of any duty owed to SG, whether as alleged or at all. Without prejudice to the generality of the denial or to the burden of proof (which rests on SG), CG's case is as set out below. For the avoidance of doubt, CG does not plead to SG's case against CM.

36. Paragraph 40.1 is denied.

36.1 CG was not instructed to obtain insurance for storage of precious metals on the same terms as the previous year.

- 36.2 CG did not represent that it could or, having been instructed to place cover, that it had obtained insurance for storage of precious metals (or non-precious metals) on the same terms as the previous year.
- 36.3 Inclusion of the so-called LME/Comex approved warranty: CG placed cover on terms which included the so-called LME/Comex approved warranty in the following circumstances and for the following reasons:
- (a) After several meetings and discussions with the proposed lead underwriter at Württ, CG did obtain a quotation for the proposed storage and transit cover, which was subsequently amended in accordance with further instructions received from CM. CG kept CM informed at every stage in the process of obtaining and revising the quotation from Württ – paragraphs A.5 to A.20 of the Appendix A hereto are repeated.
 - (b) The term “*warranted all storage at LME approved warehouses*” was a term which the lead underwriter required to be included as part of the quotation on offer. It formed part of the quotation provided by the lead underwriter on 13 March 2007 (and subsequently by other underwriters) but (at the request of CM on behalf of SG on 15 March 2007) was amended to refer to storage in Comex approved warehouses.
 - (c) On 13 March 2007 and again on 16 March 2007 CG communicated the underwriters’ quotation to CM, including in particular the terms of the warranty, and did so accurately and/or faithfully – paragraphs A.11 to A.19 of the Appendix A hereto are repeated. Further, the terms, including in particular the terms of this warranty, were accurately and/or faithfully communicated to CM on 26 March 2007 and 28 March 2007 (in the form of the slip) and on 19 April 2007 (in the cover note).
- 36.4 Inclusion of the so-called contingency warranty: CG placed cover on terms which included the so-called contingency warranty in the following circumstances and for the following reasons:
- (a) The initial instructions given by GSG to CM were to seek a competitive quotation or quotations in the London market in respect of SG’s metals stock and transit cover on the basis of the presentation file dated 30 January 2007 provided by CM to CG on 31 January 2007 – paragraph A.3 of the Appendix A hereto is repeated.

- (b) The presentation file was explicit in stating that, in regard to precious metals, the policy was covering and was to cover storage and transit of gold and silver on a contingency basis with the primary policy being subscribed by SG's clients – paragraph A.3 of the Appendix A hereto is repeated.
- (c) CG was subsequently instructed by CM explicitly that the storage of precious metals was to be insured on a contingency basis only. Specifically:
 - (i) On 15 March 2007, Mr Jugé instructed Mr Glover that "*Regarding storage, SG agreed [sic] to insert a clause stating that all storage of Precious Metal are insured on contingency basis only.*" – paragraph A.15 of the Appendix A hereto is repeated.
 - (ii) Later on 15 March 2007 Mr Glover sought to clarify whether his instructions were to seek to insure storage of precious metals on a contingency basis or not to insure such storage at all – paragraph A.16 of the Appendix A hereto is repeated.
 - (iii) On 16 March 2007 Mr Jugé confirmed to Mr Glover that the basis on which SG sought cover was that storage cover for precious metals was to be "*on a contingency basis only*" – paragraph A.17 of the Appendix A hereto is repeated.
- (d) On 16 March 2007, Mr Glover informed Mr Jugé that he had \$80m support for the risk on terms which included that storage of precious metals was to be on a contingency basis – paragraph A.19 of the Appendix A hereto is repeated.
- (e) On 21 March 2007, Mr Glover was given a firm order, which he properly understood as being an instruction to bind the cover on the terms previously communicated by him to Mr Jugé – paragraph A.22 of the Appendix A hereto is repeated.
- (f) On 28 March 2007, Mr Glover informed Mr Jugé that the cover had been bound and provided to him a copy of the slip (as he had also done on 26 March, when the cover was substantially but not fully bound), which made clear that the terms included the warranty that storage of precious metals was insured on a pure contingency basis – paragraph A.26 of the Appendix A hereto is repeated.

- (g) On 19 April 2007, CG sent a cover note to CM which explicitly drew attention to the existence of both warranties, which were clearly set out in the cover note. The cover note was sent under cover of the letter dated 19 April 2007 referred to in paragraph A.29 of Appendix A.

36.5 As to the second sentence of paragraph 40.1:

- (a) Prior to receiving instructions to place cover, CG advised CM (on behalf of SG) that the cover available through CG was on terms which included both the so-called LME/Comex approved warranty and the contingency warranty.
- (b) Upon effecting cover, CG informed CM (on behalf of SG) that the terms of cover placed included both the so-called LME/Comex approved warranty and the contingency warranty. CG did so by providing to CM
 - (i) on each of 26 March and 28 March 2007, a copy of the slip containing both warranties; and
 - (ii) on 19 April 2007, a cover note which expressly drew attention to the existence of the warranties and advised that CM should check that SG was in a position to comply with the warranties exactly and should advise CG immediately if any terms did not meet SG's requirements. The cover note was provided to CM under cover of the letter referred to at paragraph A.29 of Appendix A.
- (c) Save as aforesaid, it was no part of CG's role or responsibility to give any advice to SG. CG did not have any contact with SG at any time material to the placing of the Policy, any endorsements to the Policy or the excess layer policy. CG's contact in relation to SG's insurance cover was with CM. It was CM which liaised with the SG insurance department in relation to its requirements and instructions.
- (d) SG never sought advice from CG in relation to its insurance needs or the terms on offer from the London market through CM and CG.

37. Paragraph 40.2 is denied.

37.1 Paragraphs 2 and 21.1 above and A.1 of the Appendix A hereto are repeated.

37.2 At all times, SG instructed CM as to its insurance needs, and CM instructed CG as to the cover to be obtained, including providing detailed instructions as to the target pricing and other terms which CG must secure, if CG was to be instructed to place the cover (in preference to other brokers with whom SG was also dealing).

37.3 CG did not owe any duty or duty of care to SG to ensure that the insurance reflected SG's needs. CG did not assume any such responsibility to SG. CG was never invited or required to form any evaluation of SG's insurance needs and CG was in no position to do so. CG was given instructions as to SG's requirements and expectations; and it was for CG to comply with those instructions, which CG did.

37.4 Paragraphs A.28 to A.30 of the Appendix A hereto are repeated. Having told CM (on behalf of SG) the terms on which cover had been placed and having invited CM (on behalf of SG) to check that those terms of cover were consistent with SG's insurance requirements and/or CM having sent the cover note to SG, if the terms of cover were inadequate for SG's needs, it was for SG (through CM) to inform CG of that fact, which SG (through CM) did not.

38. Paragraph 40.3 is denied.

38.1 CG had no obligation to explain to SG any exclusions from or limitations on cover. SG looked first to its internal insurance department and secondly to CM for advice and explanation, but not to CG. CG assumed no such responsibility to SG.

38.2 CG's point of contact was Mr Jugé at CM, to whom CG accurately and/or faithfully communicated the terms of cover which underwriters had quoted and by which underwriters were prepared to be bound. CM was an experienced and professional producing broker, and Mr Jugé was well-versed in the concept of a warranty in London market policies. Mr Jugé did not require or expect CG to advise on or explain the terms of cover quoted, and Mr Jugé never asked Mr Glover to do so, whether specifically in relation to the LME/Comex warranty or any other terms.

38.3 Paragraphs A.28 to A.30 of the Appendix A hereto are repeated. Having sent a cover note and covering letter to CM in those terms and/or CM having sent a cover note in those terms to SG, it was for SG (or CM on SG's behalf)

to request an explanation of the meaning of the warranties, if CM or SG was in any doubt as to their meaning or as to SG's ability to comply with them.

38.4 As to the allegation relating to English law becoming the governing law of the policy, paragraph A.23 of the Appendix A hereto is repeated. In the premises, CG properly communicated to CM the proposed change to English law and jurisdiction, and properly complied with the instructions subsequently received from CM.

38.5 If French law had remained the governing law of the policy, the so-called LME/Comex and contingency warranties would have been construed as "conditions de garantie". Accordingly, it is denied that any failure by CG to explain the warranties as a matter of English law is of any relevance.

39. Paragraph 40.4 is denied. The terms of the slip policy reflected the terms offered by the Underwriter Defendants and, upon instructions received from CM, bound by CG. Nothing about the endorsements gives rise to the estoppel alleged by the Underwriter Defendants.

40. Paragraph 41 is denied. CG did not, by its actions, create the risk of the litigation which has occurred.

40.1 In the case of the so-called LME/Comex warranty, it was a term quoted by underwriters, which formed part of the terms reported by CG to CM as being available and upon which CG was instructed by CM to place the cover.

40.2 In the case of the so-called contingency warranty, SG through CM expressly required and instructed that the storage of precious metals should be insured only on a contingency basis. It was.

SG's case regarding the alleged misrepresentations in paragraph 2E of the Underwriter Defendants' Re-Amended Defence and Counterclaim

40.A It is denied that each or any of the representations of fact alleged at paragraph 2E of the Underwriter Defendants' Re-Amended Defence were made to the Underwriter Defendants, whether by the documents relied upon by the Underwriter Defendants or otherwise; and/or that if made (contrary to the foregoing) each or any of such representations were material and/or were relied upon by any of the Underwriter Defendants in the alleged manner when underwriting the risk.

40.B Without prejudice to the generality of the foregoing denial, the document headed "LME Policy .. Precious metals – exposure 2006" (hereafter, the "2006 exposures

information") represented only part of the information presented regarding the nature and extent of the storage and transit risks being proposed for insurance -- see paragraphs A.3 to A.18 of Appendix A (including in particular the fact that the presentation file dated 30 January 2007 expressly referred to storage at customers' premises and to three customers in Turkey).

40.C The so-called LME/Comex approved warranty was not imposed by Mr Morris in the context of a discussion about storage being only at refineries and was not presented to or agreed by the following market on that basis. CG will say that the so-called LME/Comex approved warranty is inconsistent with the misrepresentations now being alleged by the Underwriter Defendants at paragraph 2E of the Underwriter Defendants' Re-Amended Defence and Counterclaim.

40.D Further or alternatively and specifically as regards the Third Defendant, on or about 12 March 2007 Mr Mummery, the Third Defendant's underwriter, received from Mr Daniel Smith of Aon a document headed "Soc Gen 2007 Renewal 2005/2006 Exposures" in circumstances where Aon was then also actively seeking market support for the placement of SG's precious and non-precious metals cover from the 2 April 2007 renewal date. The Aon document read in part as follows:

<u>*Locations</u>	<u>Average Exposures</u>
<u>Gold</u>	
<u>Turkey</u>	<u>US\$78,111,884</u>
<u>Dubai</u>	<u>US\$6,754,811</u>
<u>India</u>	<u>US\$2,345,426</u>
<u>South Africa</u>	<u>US\$41,617,226</u>
<u>Switzerland</u>	<u>US\$47,567,002</u>

In the premises, (1) Mr Mummery cannot have understood the information presented by CG as representing that there had been (and was intended to be) no storage by SG of gold at customers' premises; and/or (2) Mr Mummery cannot have relied upon the representations alleged to have been made by the information provided by CG in circumstances where he had also received the information provided by Aon and referred to above in respect of the same risk.

40.E As to paragraphs 41.1(a) to (d), no admissions are made as to the alleged or any breaches of duty by CM.

40.F As to paragraphs 41.1(e) and (f), it is denied that CG was in breach of duty whether as alleged or at all. Without prejudice to the generality of the foregoing denial:

- (1) The representations of fact that are alleged at paragraph 2E of the Underwriter Defendants' Re-Amended Defence and Counterclaim to have been made in the 2006 exposures information are denied.
- (2) Even if (which is denied) the 2006 exposures information represented and was to be understood as representing the actual position in 2006 as alleged by the Underwriter Defendants, the representations alleged in paragraphs 2E(ii) and (iii) of the Re-Amended Defence and Counterclaim are specifically denied, namely the alleged representations that no storage of precious metals at the premises of customers had taken place in 2007 (up to the date when the policy was concluded) and that no such storage was intended by SG to take place during the period of the insurance contract.
- (3) CG presented to the Underwriter Defendants the same information which CM on behalf of SG had provided to CG for that purpose. CG did so in circumstances where (A) there were no inconsistencies or anomalies between the representations in the 2006 exposures information and the information referred to in paragraphs 41.1(e)(i), (ii) and/or (iii); and/or (B) if (which is denied) any inconsistencies or anomalies existed, this was not reasonably obvious or reasonably apparent to CG or was not such as to require CG to query, clarify, confirm or draw attention to the information or any alleged inconsistencies or anomalies therein.

40.G Further or alternatively, the Underwriter Defendants have affirmed the Policy with knowledge of the fact that there was storage of precious metals at the premises of clients in 2006 and 2007. CG relies upon and repeats paragraphs 6.5(d)(v) and 6.5(e)(vii)-(x) of SG's Re-Re-Amended Reply to the Underwriter Defendants' Defence. In the premises, any breach of duty by CG (which is denied) has not caused SG any loss.

SG's case regarding the alleged misrepresentation in paragraph 2H of the Underwriter Defendants' Re-Amended Defence and Counterclaim

40.H As to paragraph 41.2 it is denied that CG acted in breach of duty whether as alleged or at all. Without prejudice to the generality of the foregoing denial:

- (1) It is denied that Mr Glover represented to Mr Mummery that all storage of precious and non-precious metals was (and would continue to be) at LME or COMEX warehouses. Mr Glover informed Mr Mummery of the terms of the so-called LME/Comex approved warranty for which the lead underwriter had stipulated. This was not a representation of fact capable of inducing the

Underwriter Defendants to enter into the Policy and (if inaccurate, which it was not) capable of giving rise to any right of avoidance.

- (2) The premise upon which the allegations advanced in paragraph 41.2 rests is therefore false.
- (3) If, contrary to the foregoing, Mr Glover did represent as a matter of fact that all storage of precious metals was (and would continue to be) at LME or Comex warehouses, such representation was not material or inducing in that, on SG's case, all storage of precious metals was (and would continue to be) in vaults designed and suitable for the storage of gold, whereas LME warehouses were and are not designed for or secure for the purpose and there were and are no Comex approved warehouses for the storage of gold (or other precious metals) outside the USA.
- (4) No admissions are made as to the alleged breach of duty by CM.

SG's case regarding the alleged non-disclosure

40.I No admissions are made as regards the alleged non-disclosures and/or their alleged materiality and/or the alleged inducing effect thereof and/or any entitlement of any of the Underwriter Defendants to avoid the policy by reason thereof.

40.J As to paragraph 41.3(a), the allegations of breach of duty by CM are not admitted.

40.K As to paragraph 41.3(b), it is denied that CG was obliged to enquire as to, or to advise SG or CM that it was (or might be) necessary to disclose the facts and matters relied upon.

- (1) If (which is not admitted) it was necessary for SG to disclose the facts and matters relied upon, it was for CM, as producing broker, to enquire as to and advise SG that it was or might be necessary for SG to disclose the material facts and matters relied upon.
- (2) It was CM which had access to and discussion with SG regarding the presentation of the risk and the preparation of the presentation file. CG's knowledge of the risk derived from the information provided by CM.
- (3) CG did not have and was not required to have sufficiently detailed information or knowledge about the precise nature of SG's gold trading activities to be in a position to enquire about or to advise SG or CM in

relation to the very specific facts and matters relied upon as being allegedly material to disclose.

- (4) In particular, CG did not know and had no means of knowing the facts and matters set out in paragraph 2F of the Underwriter Defendants' Re-Amended Defence and Counterclaim and could not reasonably be expected to enquire about or advise that it was necessary to disclose such facts and matters. CG had no knowledge in relation to Goldas, transactions in Turkey or any of the other facts and matters relied upon by the Underwriter Defendants beyond the information in the presentation file dated 30 January 2007 provided by CM to CG on 31 January 2007 and subsequent information provided by CM to CG, which CG presented to the Underwriter Defendants.

The Claimant's alleged loss

41. As to paragraph 42, it is denied that any breach of duty on the part of CG (which is denied) has caused SG to suffer the alleged or any loss and damage. Without prejudice to the generality of this denial or to the burden of proof (which rests on SG), CG's case is as set out below.
42. As to paragraph 42.1, it is denied that the Underwriter Defendants would have written the insurance without the so-called LME/Comex warranty being included. No admissions are made as to whether (and, if so, on what terms) the Underwriter Defendants would have written the insurance without the so-called contingency warranty, in circumstances where that basis of cover was requested by CM on behalf of SG and was confirmed by CM to CG as being the basis upon which SG sought cover for the storage of precious metals. If the Underwriter Defendants would have written the insurance without the inclusion of the warranties, it follows that the Underwriter Defendants would not be able to rely upon the alleged breaches of warranty, which *ex hypothesi* would not form part of the contract of insurance.
43. As to paragraph 42.2:
- 43.1 The first sentence is not admitted.
- 43.2 As to the second sentence, it is not admitted (1) that the Claimant would have acted as alleged; and (2) that similar insurance would have been available elsewhere (or on what terms as to premium or otherwise) without such terms. The Claimant is put to strict proof of the availability of alternative

cover which was similar in scope (including scope of available indemnity) but without the terms complained of.

44. Paragraph 42.3 is denied. The Underwriter Defendants' estoppel argument is not a defence to SG's claim against them, and in any event (1) it is denied that there was anything negligent about the preparation of the endorsements; and (2) if the preparation of the endorsements was somehow negligent, the losses claimed are too remote to be recoverable.
45. It is denied that SG is entitled to the amount claimed in paragraph 42.4 or to any amount. Without prejudice to the generality of the foregoing denial or to the burden of proof (which rests on SG) and prior to disclosure, CG's case is as set out in paragraphs 46 to 47 below.
46. In paragraphs 15 to 17 of their Amended Defence, the Underwriter Defendants have alleged that at the time of the alleged misappropriation(s) of gold, SG did not have title to the gold misappropriated as a matter of Turkish law (being the law applicable to all questions of title to gold stored in Turkey). Further or alternatively, in paragraph 21 of their Amended Defence, the Underwriter Defendants allege (in relation to the 11.85MT of gold bullion allegedly lost on the Istanbul Gold Exchange) that SG knew of and consented to the trading pattern of the Goldas companies. These allegations have been adopted and particularised by CG in paragraph 17 above. In the premises:
- 46.1 ~~If the Underwriter Defendants' allegations or any of them are upheld, then~~ SG has not suffered a loss which would have been covered by the insurance, even without the warranties about which SG complains; and if (which is denied) CG has breached any duty owed to SG, any such breach has not caused SG any loss.
- 46.2 The Underwriter Defendants would have declined SG's claim on the insurance and litigation against the Underwriter Defendants would have taken place, even apart from any issues in relation to the warranties about which SG complains.

~~CG reserves the right to plead a positive case of its own following disclosure in relation to SG's knowledge of the actions of the Goldas companies and the consequences thereof; and/or the effect of Turkish or other relevant foreign law.~~

47. Further or alternatively:

47.A Goldas was the subject of a specific broke for the purposes of the placement of Endorsement No. 1 in July to October 2007, by which SG sought specific cover for an insured amount of up to US\$200m in respect of gold consigned to Goldas in Turkey for storage at named premises. The placing of Endorsement No. 1 was the occasion when the Goldas risk fell to be evaluated on a specific facultative basis by the Underwriter Defendants, when full and proper disclosure had to be given by SG (or full information provided by SG to CM to provide to CG), and when, had full and proper disclosure been given by SG (or full information been provided by SG to CM to provide to CG), the Goldas risk would and should have been evaluated in its widest and most complete sense.

47.B In that context, SG knew at the time of the placement of Endorsement No. 1

- (1) that the coverage provided by the policy was contingent in respect of the storage of precious metals and specifically sought the placement of cover in respect of the gold consigned to Goldas at the named premises on a contingency basis;
- (2) that Goldas had placed named perils insurance which only applied at the premises named in the relevant policies, in respect of which SG was named as loss payee;
- (3) that the insurance policy contained the so-called LME/Comex warranty and that specific consent was required to the storage of gold at Goldas' premises if such premises were not LME or Comex approved;
- (4) that the named premises of Goldas were not LME or Comex approved;
- (5) that some of the gold consigned to the Goldas companies was kept at the IGE;
- (6) that at least the gold provided to Goldas companies pursuant to so-called back-to-back transactions never left the IGE;
- (7) that there was no insurance in respect of gold kept at the IGE by which any relevant Goldas company was insured or in which SG itself was interested, whether as an assured or as a loss payee;
- (8) generally of the nature and extent of its gold trading business with the Goldas companies, including in relation to the back-to-back transactions.

47.C In the premises, any negligence or breach of duty by CG (which is denied) was not causative of any of SG's alleged loss of insurance indemnity in respect of which SG claims. SG ought to have instructed CM and/or CG to place an endorsement which specifically insured SG in respect of all gold consigned to Goldas, whether relating to the Goldas premises named in Endorsement No. 1 or relating to gold kept by relevant Goldas companies at the IGE. If SG had sought such cover and provided full and proper placing information in respect of it, then (assuming cover would have been available, which is SG's case) SG would have been covered in respect of any misappropriation(s) of gold consigned to Goldas, whether the gold was misappropriated at/from the IGE or at/from either of the identified locations. The failure of SG to give instructions for the placing of any such endorsement (and to provide all associated placing information) has eclipsed any prior negligence or breach of duty by CG in the placing of the policy and is the true cause of SG's loss of insurance indemnity for which SG seeks to claim in this action.

47.D Further or alternatively, in paragraphs 22-24 and 26-27 SG claims in respect of 0.8MT of gold consigned to Kuyumculuk and 2.575MT consigned to Kiyemetli. SG's case as to the precise location of such gold at the time of the alleged misappropriation is not clear. If and to the extent that such gold was stored in either of the locations referred to in Endorsement No. 1, any negligence or breach of duty by CG (which is denied) was not causative of SG's loss in respect of such gold.

47.D.1 By Endorsement No. 1, it was agreed that there was cover in respect of storage at the identified locations even though they were not LME or Comex approved.

47.D.2 Endorsement No. 1 was placed by CG on the instructions of CM, communicating instructions it had received from SG. Further, the endorsement was placed using information provided by CM for the purposes of broking the endorsement.

47.D.3 In response to the Underwriter Defendants' assertion of a right to avoid Endorsement No. 1 for material non-disclosure (see Amended Defence, paragraphs 26-31), SG has now stated (in its Amended Reply at paragraph 35) that the parties have agreed that Endorsement No. 1 should be treated as a nullity *ab initio*. No admissions are made as to the Underwriter Defendants' entitlement to avoid Endorsement No. 1 and/or the basis of any agreement by SG to accept the same.

47.D.4 If Endorsement No. 1 had been and remained in full force and effect, SG would have been covered in respect of any misappropriation(s) of gold stored at either of the identified locations.

47.D.5 The agreement of SG to treat Endorsement No. 1 as a nullity *ab initio* and/or the failure of SG to make full disclosure for the purposes of the placing of Endorsement No. 1 have eclipsed any negligence or breach of duty by CG in the placing of the Policy and are the true cause of SG's loss of insurance indemnity in respect of gold stored at either of the identified locations.

47.E Further or alternatively, if the Underwriter Defendants are entitled to avoid the Policy on any of the grounds alleged in paragraphs 2E and/or 2F of the Underwriter Defendants' Re-Amended Defence and Counterclaim, then on the premises set out above that CG is not liable for any such avoidance, any negligence or breach of duty by CG in relation to the warranties (which is denied) was not causative of any of SG's alleged loss of insurance indemnity in respect of which SG claims.

48. Further or in the further alternative, any damages recoverable in respect of any liability of CG to SG (which is denied) fall to be reduced by SG's contributory negligence, to such extent as the Court thinks just and equitable having regard to SG's share in the responsibility for the damage pursuant to section 1(1) of the Law Reform (Contributory Negligence) Act 1945. The particulars set out below are without prejudice to CG's primary case herein as set out above.

PARTICULARS

48.1 At all material times, SG maintained an internal insurance department, to (amongst other functions) determine the insurance needs of SG and the terms upon which insurance cover should be sought and placed. M. Pascal Richard was the Group Head for non-life insurance. SG, through its insurance department, was a sophisticated consumer of insurance products and an experienced user of insurance markets, including the London market. SG, through its insurance department, was or should have been well-versed in the key concepts applicable to business placed in the London market, including the nature and status of a warranty.

48.2 During the period January to March 2007, SG invited several brokers to seek terms in respect of its metals cover for the period 2 April 2007 to 2 April 2008, including Aon (who had placed the expiring cover), Glencairn and CM.

It was the role and responsibility of SG's insurance department to instruct those brokers as to SG's insurance needs, and to receive and evaluate the terms which each such broker indicated could be obtained. It was then for SG's insurance department to decide which quotation was most consistent with SG's insurance needs in the obtaining of insurance cover. SG's insurance department gave instructions for the placing of cover and only the brokers who were instructed to place cover received any remuneration.

- 48.3 SG alone had knowledge of its bullion consignment arrangements, including in particular the Kuyumculuk BCA and any other BCAs with other Goldas companies on materially similar terms. Such knowledge included (i) the locations at which gold bullion was to be stored; (ii) whether they were LME or Comex approved; and (iii) the terms of the insurance cover which had been effected by SG's consignee(s). Further, SG had the means of ascertaining whether gold bullion was in fact being stored at other locations and whether insurance cover had in fact been transacted and was in fact being maintained in force in respect of SG's interest in consigned gold. By contrast, the brokers engaged by or on behalf of SG, including in particular CG, were not informed of SG's bullion consignment arrangements with customers nor of the terms of any such arrangements, and had no means of ascertaining the existence or terms of any such arrangements nor the manner in which gold consignments were in fact being operated by SG or by its consignees.
- 48.4 Further or alternatively, on a date which is not known to CG prior to disclosure, SG engaged CM to act as its producing broker and agent. As set out in paragraph 36.3 above, Mr Glover of CG communicated to Mr Jugé of CM on several occasions the fact that the lead underwriter was quoting on terms which included the words "*Warranted all storage at LME/Comex approved warehouses*".
- 48.5 If those words bear the meaning alleged by the Underwriter Defendants, Ms. Engelhard and/or M. Richard and/or other responsible parties within the SG insurance department ought to have appreciated but failed to appreciate (i) that those words bore the alleged meaning – i.e. that "*all storage*" under the policy meant all storage of all types of metal, alternatively (ii) that there was a risk of those words bearing that meaning; and (iii) that, with the alleged meaning, the warranty was unsuitable for and/or incompatible with SG's insurance needs. Further or alternatively, if and insofar as there was any doubt about the scope or meaning of the warranty and/or the unsuitability for

or incompatibility with SG's insurance needs, it was for M. Richard and/or Ms. Engelhard to instruct Mr Jugé of CM to instruct Mr Glover to seek clarification and/or amendment of the proposed warranty from the lead underwriter.

48.6 As regards the so-called contingency warranty, as set out in paragraph 36.3(c) above, CG (i) sought and placed cover on terms which included the words "*Warranted storage of precious metals is insured on a pure contingency basis*" because of the instructions given to CG by CM; and (ii) kept CM informed at all material times of the terms of cover being quoted by the lead underwriter and the other underwriters with whom CG was in discussion and negotiation. If a contingency basis of cover for the storage of precious metals was inconsistent with SG's insurance needs, it was for SG by its insurance department to realise that fact and to give appropriate instructions to CG (through CM) as placing broker – particularly where SG was in the position to know and/or to ascertain what primary insurance cover was in place in respect of the precious metals in which SG was interested. Paragraph 48.3 above is repeated. Consequently, SG was at fault in failing to realise that fact and in failing to give appropriate instructions to CG (through CM).

48.7 Further or alternatively, paragraphs A.24 and A.26 to A.31 of the Appendix hereto are repeated. SG by its insurance department was at fault in failing to check the slip and/or cover note carefully; and/or in failing to request advice regarding the warranties; and/or in failing to inform CG (through CM) that cover which included the warranties did not meet SG's insurance needs.

48.7A Further or alternatively, from about 14 June 2007 at the latest, SG knew that there was no insurance cover in force in respect of SG's interest in any gold delivered to and kept at the IGE. Specifically, SG knew that (i) the Goldas companies did not have any insurance cover in respect of gold delivered to and kept at the IGE; (ii) the IGE itself had an all risks insurance policy in respect of the precious metals within the safe deposit of the IGE; (iii) neither the Goldas companies nor SG had any interest in the IGE insurance policy, whether as an insured party, a loss payee or otherwise; and (iv) at least the gold supplied pursuant to back to back transactions was never taken by Goldas out of the IGE but was simply sold there. If (contrary to CG's primary case) gold taken to and/or allegedly misappropriated at/from the IGE was being stored or was within storage within the meaning of the Policy, from the time SG knew that there was no

insurance cover in force in respect of SG's interest in any such gold, SG was at fault in failing to realise that the contingency basis of coverage for the storage of precious metals was or might be inconsistent with SG's insurance needs and/or in failing to seek advice from CM and/or in failing to inform CG (through CM) that cover which included the so-called contingency warranty did not meet SG's insurance needs.

48.7B Further or alternatively, if (which is denied) CG is found liable to SG for the breach of duty alleged in paragraph 41.1(e) and/or (f) of the Re-Re-Amended Particulars of Claim in relation to the misrepresentation case in paragraph 2E of the Underwriter Defendants' Re-Amended Defence and Counterclaim, any damages recoverable fall to be reduced by SG's contributory negligence in that

- (i) the document containing the misrepresentation was (a) prepared by SG's agent, CM; and/or (b) provided to CG by SG's agent, CM; and/or
- (ii) the document containing the misrepresentation had been provided by CM to SG itself (by the email from Mr Jugé of CM to Ms Engelhard of SG on 16 February 2007) and SG had itself failed (a) to ascertain that the document prepared by CM contained the alleged inaccuracies and misrepresentations; and/or (b) to correct the alleged inaccuracies and misrepresentations in the document prepared by CM.

48.8 Further or alternatively, in the course of the discussions which led to Endorsement No. 1;

- (a) ~~¶~~The importance of the client insurance policy was repeatedly emphasised to SG in circumstances where SG's cover was on a contingency basis – see email from Mr Jugé to Ms Engelhard dated 24 August 2007; email from Mr Jugé to Ms Engelhard dated 28 August 2007; email from Mr Jugé to Ms Engelhard dated 30 August 2007; email from Ms Ducamp to Ms Engelhard dated 28 September 2007; and email from Ms Ducamp to Ms Engelhard dated 2 October 2007.
- (b) SG was made aware of the significance of obtaining specific consent to the storage of gold insofar as such gold was stored at non LME/Comex approved warehouses.

In the premises, SG was well aware of the implications of the cover being on a contingency basis and of the so-called LME/Comex warranty and was at

fault in failing (i) to request further advice or clarification, if such was required, regarding the basis of the cover; and/or (ii) to inform CG (through CM) that cover on this basis did not meet SG's insurance needs; and/or (iii) to request CG (through CM) to obtain amended terms of insurance; and/or (iv), as regards paragraph 48.8(a) above, to ensure that proper primary insurance in respect of gold bullion in which SG was interested was in place when and to the extent that it was required to be in place; and/or (v) as regards paragraph 48.8(b) above, of the need for specific consent to the storage of gold at Goldas' premises and/or the IGE since such premises were not LME or Comex approved.

48.8A Further or alternatively, in the course of the placement of Endorsement No. 1, SG was at fault (i) generally in not giving full and proper disclosure in relation to the gold consigned to Goldas; and/or (ii) more specifically in not giving full and proper disclosure in respect of gold kept by relevant Goldas companies at the IGE. If SG had provided such full and proper disclosure, SG would have been covered in respect of any misappropriation(s) of gold consigned to Goldas, whether the misappropriation was at/from the IGE or at/from either of the identified locations, assuming, as is SG's case, that any such cover was available.

48.9 Further or alternatively, paragraph 47 above is repeated. SG was at fault in agreeing to treat Endorsement No. 1 as a nullity *ab initio* and/or in failing to make full disclosure for the purposes of the placing of Endorsement No. 1.

49. Paragraph 42.5 is denied. Paragraph 46.2 above is repeated. Furthermore, CG will rely on paragraph 47E above as a further basis on which the litigation would have taken place irrespective of any breach of duty by CG.

49.A As to paragraph 42.6, save that it is denied that the misrepresentations alleged in paragraph 2E and/or 2H of the Underwriter Defendants' Re-Amended Defence and Counterclaim were made and even if such misrepresentations were made there was no inducement or reliance and save that paragraph 42.6(d) is denied, no admissions are made as to paragraph 42.6.

49.B As to paragraph 42.7, save that paragraphs 42.7(a) and (b) are not admitted, paragraph 42.7 is denied.

Further claim

50. Paragraph 43 is denied.

51. By a letter of undertaking dated 12 March 2008, SG agreed to guarantee or indemnify CG in relation to the placing of the insurance, subject only to CG having faithfully conveyed the instructions of SG to underwriters and underwriters' responses.
52. The letter of undertaking, which was written in French and signed by M. Pascal Richard, the Group Head of Non-Life Insurance at SG, provided by its express terms in part (and in working translation) as follows:

"Société Générale undertakes to guarantee Cap Marine/Cooper Gay, their directors and employees against any actions in the event that their liability is put in issue [sic: "mise en cause"] by the insurers and/or any other person or entity with an interest in bringing an action, and, consequently, to indemnify them against all losses and/or judgments [sic: "sentences"] of any nature which may be suffered by Cap Marine/Cooper Gay, their directors and/or employees, with the following restrictions:

...

2 - For actions prior to 19 February, this guarantee is extended to all aspects of the placement, subject to the faithful transmission of the requests of SG and the responses of insurers;

3 - for other actions undertaken after 10 March 2008 within the context of the broking mandate given by SG, the guarantee shall apply, provided that Cap Marine/Cooper Gay have acted in the interests of Société Générale or have not committed gross misconduct in the exercise of their mandate.

In any case [sic: "En tout état de cause"], if the liability of Cap Marine/Cooper Gay were to be established [sic: "devait être avérée"], such liability would be limited to the limit of indemnity [sic: "aux capitaux garantis"] in the respective professional civil liability [sic: "RC" = *responsabilité civile*] policies of each broker."

For the avoidance of doubt, CG reserves the right to rely upon the original French text as necessary hereafter.

53. On its true construction, the letter of undertaking constitutes a binding promise or obligation of SG made/owed to CG as a matter of French law, which is enforceable by CG and/or in respect of the non-performance or breach of which CG is entitled to claim damages. The extent of SG's obligation thereunder is as follows:
- 53.1 In relation to actions prior to 19 February 2008 (which covers the actions of CG in respect of which SG seeks to claim), to guarantee or indemnify CG against all liability in respect of the placing of the risk, subject only to CG having faithfully conveyed the requests of SG to underwriters, and the responses of underwriters, which CG did as set out above.

- 53.2 In any case where the liability of CG is established (i.e. where CG did not faithfully transmit the requests of SG to underwriters and/or underwriters' responses), such liability is to be limited to the amount of CG's E&O cover.
- 53.3 Further or alternatively, as regards the position of SG itself vis-à-vis CG, the letter of undertaking constitutes a waiver of SG's rights to claim against CG, whether complete or partial.
54. In support of paragraph 53 above, CG relies upon the following articles of the French Civil Code and Commercial Code and relevant case law relating thereto:
- 54.1 The principles of interpretation of contracts set out in Articles 1156 to 1164 of the French Civil Code (i.e. Title II Section V – Of the Interpretation of Agreements).
- 54.2 Articles 1101, 1103, 1108, 1126, 1134, 1142, 1147-1150, 1341 of the French Civil Code.
- 54.3 Article L 110-3 of the Commercial Code.
55. In the premises, in consequence of the letter of undertaking and its legal effect, any claim by SG against CG has been waived, alternatively fails for circuitry of action, alternatively has been waived or fails for circuitry to the extent of the amount claimed by SG in excess of the limit of CG's liability insurance. Alternatively, CG is entitled to set-off the amounts counter-claimed hereunder in respect of SG's liability to indemnify CG for any liability CG may be found to be under.
56. SG's claim for interest (as set out in the prayer) is denied.
57. Save as expressly admitted or not admitted, each and every allegation in the Re-Re-Amended Particulars of Claim is denied, as if the same were each set out and separately denied.
58. In the premises, SG is not entitled to the relief claimed or to any relief against CG.

PARTICULARS OF COUNTERCLAIM

59. Paragraphs 51 to 55 above are repeated.
60. If, contrary to CG's Defence, CG is liable to SG herein, SG is obliged to indemnify CG in respect of such liability in full alternatively to the extent of any liability in excess of the limit of CG's applicable professional indemnity insurance cover.

61. If and to the extent that SG fails to indemnify CG in respect of any liability to SG herein in full alternatively to the extent of any liability in excess of CG's applicable professional indemnity insurance cover, SG has acted in breach of promise and CG is entitled to and hereby claims damages in the like amount for breach of promise. Further or alternatively, CG is entitled to and hereby claims damages in the amount of any interest which CG is held liable to pay SG.
62. Further, CG is entitled to and hereby counterclaims interest at such rate and for such period as the Court considers appropriate pursuant to section 35A of the Senior Courts Act 1981.

AND THE SEVENTH DEFENDANT COUNTERCLAIMS:

- (1) An indemnity in respect of any liability the Seventh Defendant may be found to be under to the Claimant.
- (2) Alternatively, damages.
- (3) Alternatively, a declaration that the amount of any liability of the Seventh Defendant to the Claimant is limited to the sum insured under the Seventh Defendant's applicable professional indemnity insurance cover.
- (4) Interest pursuant to section 35A of the Senior Courts Act 1981.

ALISTAIR SCHAFF Q.C.

ANDREW WALES

ALISTAIR SCHAFF Q.C.

ANDREW WALES

SARAH COWEY

STATEMENT OF TRUTH:

The Seventh Defendant believes that the facts stated in this Amended Defence and Counterclaim are true.

Signed:



Name: Stephen Netherway

Position: Partner; CMS Cameron McKenna LLP, Solicitors for the Seventh Defendant

Date: 27 May 2011

SERVED on the 12th of March 2010 by CMS Cameron McKenna LLP (Ref: SXN/SGR) of 1st Floor, 100 Leadenhall Street, London EC3A 3BP, Solicitors for the Seventh Defendant.

RE-SERVED on the 27th of May 2011 by CMS Cameron McKenna LLP (Ref: SXN/SGR) of 1st Floor, 100 Leadenhall Street, London EC3A 3BP, Solicitors for the Seventh Defendant.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

No. 2009 Folio 307

St. Dunstan's House
Friday, 8th October 2010

Before:
MR. JUSTICE CHRISTOPHER CLARKE

BETWEEN:

SOCIETE GENERALE

Claimant

- and -

WURTTEMBERGISCHE VERSICHERUNG & Ors.

Defendant

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MR. C. MOGER QC and MR. GUNNING (instructed by Clifford Chance) appeared on behalf of the Claimant.

MR. D. KENDRICK QC and MR. S. KERR (instructed by Clyde & Co.) appeared on behalf of First to Fifth Defendants.

MR. T. ADAM QC and MR. T. KENNEFICK (instructed by Barlow Lyde & Gilbert) appeared on behalf of the Sixth Defendant.

MR. A. SCHAFF QC and MR. A. WALES (instructed by CMS Cameron McKenna) appeared on behalf of the Seventh Defendant.

PROCEEDINGS

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NB: THIS TRANSCRIPT WAS PRODUCED WITHOUT REFERENCE TO DOCUMENTS AND FROM A POOR RECORDING. DUE TO THE ACOUSTICS OF THE COURT MR. JUSTICE CLARKE WAS DIFFICULT TO HEAR)

1 MR. JUSTICE CLARKE: We have with us this morning Madam Justice Cornelius
2 from the High Court of Barbados, who ... what we do.

3
4 MR. MOGER: My Lord, I hope she will find the argument before your Lordship
5 entertaining, although I am bound to say almost everything in the agenda is
6 agreed.

7
8 MR. JUSTICE CLARKE: Yes.

9
10 MR. MOGER: My Lord, I appear with Mr. Gunning for the Claimants, Societe
11 Generale, the First to the Fifth Defendants, underwriters, are represented by
12 my friends Mr. Kendrick and Mr. Kerr, Cap Marine, the Sixth Defendant, who
13 is the French broker, is represented by my friends Mr. Adam and
14 Mr. Kennefick, and Cooper Gay by my friends Mr. Schaff and Mr. Wales. My
15 Lord, I hope your Lordship has had an opportunity to look at the skeleton
16 arguments.

17
18 MR. JUSTICE CLARKE: Yes.

19
20 MR. MOGER: This is the third CMC in the proceedings, and it concerns two
21 matters, a request by the Claimants for an extension of time for the completion
22 of its disclosure obligations, and consequential development of the trial
23 timetable, first set in May. My Lord, may I make it clear at the outset that the
24 Claimants are very sorry that they have found it impossible to comply with the
25 provisional timetable set by the court on 27th May and are forced to ask for a
26 delay of their trial as a consequence. But may I say that I am glad to say that
27 there is little disagreement about either aspect of the application before your
28 Lordship.

29
30 MR. JUSTICE CLARKE: Just before you go any further, I have read the witness
31 statements about the thousands of documents and the 455 lever arch files, and
32 I quite follow the difficulty of tracing documents from a morass of what may
33 be relevant or irrelevant. When we get the trial, has anybody any idea as to
34 how many of them are actually going to be needed and if so for what purpose?
35 I am aware of the issues, but I could not quite understand why such an amount
36 of time

37
38 MR. MOGER: My Lord, there was a lengthy argument before Mr. Justice
39 Tomlinson (as he then was) in July, in which those instructing me and then
40 counsel Mr. Morpus, who is unfortunately not able to be here, argued for a
41 much more restricted disclosure but were unsuccessful. I am not seeking to
42 revisit that.

43

1 MR. JUSTICE CLARKE: No.

2

3 MR. MOGER: I cannot answer the question of how much of the 100,000 plus
4 pages of documents now will ultimately be of value. Your Lordship sees that
5 there are a number of defences. Two of them have to do simply with the
6 construction of the policy.

7

8 MR. JUSTICE CLARKE: That may not require a document at all ... the policy.

9

10 MR. MOGER: It requires a bit of evidence about market understanding in the
11 specie market about locations for the storage of bullion, but, essentially, it is a
12 short issue, and there is a rectification question on the back of that which
13 requires another bit of evidence about the placement of the risk. In addition,
14 among other defences, the underwriters have run a case that the course of
15 dealing between Goldas and Societe Generale between 1st August 2003, when
16 their relationship began, and February 2008, when the balloon went up,
17 amounted to a variation of the contract terms upon which Goldas were sent the
18 gold as consignees, such that Societe Generale knew and consented to a
19 practice that Goldas sold the gold before paying for it, and therefore consented
20 to an arrangement which deprived them of possession.

21

22 MR. JUSTICE CLARKE: I can see that that is a fact and document relatively
23 intensive, but the essential question – I am not sure how many of these
24 transactions there were, whether 15 tons worth, I do not know how many there
25 are?

26

27 MR. MOGER: There were thousands over that period.

28

29 MR. JUSTICE CLARKE: Right.

30

31 MR. MOGER: Over a thousand transactions at least over that period.

32

33 MR. JUSTICE CLARKE: Right.

34

35 MR. MOGER: And the documents have been disclosed about those.

36

37 MR. JUSTICE CLARKE: Yes.

38

39 MR. MOGER: They formed a large part of the of tranche two that was delivered on
40 17th September, and it was an examination of those, together with all the
41 e-mail traffic, conversations, and other things between the parties over that
42 period that the underwriters in particular wanted to see with a view to building
43 up this case. What joy they have got out of it, or not, I am afraid I do not

1 know, and I do not suppose they do because they have only had that material
2 since 17th September, and they had a very large volume of material on 13th
3 August as well. They are probably still wading through it, and it may be unfair
4 to ask them at this stage how much is going to be needed at the trial.

5
6 MR. JUSTICE CLARKE: Obviously, one will need whatever the contractual
7 documents are, and the consignment documents.

8
9 MR. MOGER: Yes.

10
11 MR. JUSTICE CLARKE: And any documents that indicate that the gold has
12 passed on without payment.

13
14 MR. MOGER: Yes.

15
16 MR. JUSTICE CLARKE: But beyond that, having no knowledge of the case, it
17 seems to me that ----

18
19 MR. MOGER: Mr. Kendrick persuaded the judge on 2nd July that it was only by an
20 analysis of the whole history of dealing that he would be able to make a case,
21 inferentially, possibly, that it must have been clear to Societe Generale what
22 was going on.

23
24 MR. JUSTICE CLARKE: You may be right on that, but whether that involves
25 looking at a thousand transactions at the trial ----

26
27 MR. MOGER: Speaking for myself, my Lord, and assuming I am still alive, in
28 2012 when this trial is scheduled to start, I rather hope it does not, and I am
29 sure any judge faced with it will likewise be keen not to have hundreds and
30 hundreds of files.

31
32 MR. JUSTICE CLARKE: Something must be done to prevent it.

33
34 MR. MOGER: Yes. But we are not quite at that stage at the moment.

35
36 MR. JUSTICE CLARKE: No, I follow that.

37
38 MR. MOGER: There is one further development that your Lordship will have
39 picked up arising out of the disclosure that has so far happened, and that is that
40 my friend, Mr. Kendrick, for the underwriters, has indicated that
41 notwithstanding the early stage at which his examination of the documents has
42 reached he is likely to wish to amend his defence to plead misrepresentation
43 and non disclosure in relation to the placement.

1
2 MR. JUSTICE CLARKE: Right.
3
4 MR. MOGER: Reference is made to moral hazard and the presentation of the risk
5 about gold not being fairly made, but we do not, beyond that, know anything
6 about it.
7
8 MR. JUSTICE CLARKE: No.
9
10 MR. MOGER: But one can see that that is likely to give rise, possibly, to further
11 factual exploration.
12
13 MR. JUSTICE CLARKE: Yes, but it has to be manageable.
14
15 MR. MOGER: One hopes so.
16
17 MR. JUSTICE CLARKE: One hopes. It is a question of what or was not said and
18 what should have been said.
19
20 MR. MOGER: One hopes so, and the case on moral compass, it appears, is to be
21 based upon what is disclosed so far.
22
23 MR. JUSTICE CLARKE: Right.
24
25 MR. MOGER: But, of course, I have no doubt it will be supplemented by anything
26 that may in the future be disclosed.
27
28 MR. JUSTICE CLARKE: Yes.
29
30 MR. MOGER: That has the capacity to cause some hiccup in this morning's
31 progress of the action, but we are proposing a timetable which takes that into
32 account and we hope accommodates it. It may of course involve some
33 consideration of the situation with the brokers as well, depending on how the
34 case is put.
35
36 MR. JUSTICE CLARKE: That is all manageable, but you have got this what I call
37 the 'morass' problem of dealing with the documents. Anyway, you can, in
38 parallel with that, really have any number of quotations of non disclosure and
39 misrepresentation ... against the brokers without including the timetable.
40
41 MR. MOGER: That is our hope. Apart from the caveat that we need to build a
42 degree of flexibility in, and we do not want to be in the position of trying to

1 vacate a trial date a second time, the parties are broadly agreed about the
2 necessity of the case to go off until 2012.

3
4 MR. JUSTICE CLARKE: It seems to me a trial date should be fixed upon the
5 footing that when it has been fixed it is immutable, short of nuclear
6 catastrophe, that it will take place on that date in whatever state of readiness
7 the parties are.

8
9 MR. MOGER: Well, my Lord, with respect, I do not disagree with that. That is a
10 reason for ----

11
12 MR. JUSTICE CLARKE: For a later date.

13
14 MR. MOGER: -- for a later not a sooner date.

15
16 MR. JUSTICE CLARKE: Yes.

17
18 MR. MOGER: But the differences between us, in the great scheme of things, are
19 marginal. So, my Lord, that is where we are at the moment. There is an
20 application against me, put in two different ways, in respect of the costs of
21 today's CMC.

22
23 MR. JUSTICE CLARKE: Yes.

24
25 MR. MOGER: For that reason, I hope your Lordship will allow me to open the
26 case, the history of it, why we are here where we are, in a degree of more
27 detail than would otherwise be necessary, if we could go straight to the
28 timetable questions.

29
30 MR. JUSTICE CLARKE: Right.

31
32 MR. MOGER: Can I go straight to the procedural history in my skeleton on p.2?

33
34 MR. JUSTICE CLARKE: Yes.

35
36 MR. MOGER: The proceedings began, my Lord, against underwriters alone in
37 March 2009, and brokers were added in November 2009. Separate
38 proceedings were brought against the brokers, and then at the first CMC before
39 Mr. Justice David Steel on 7th December they were consolidated with the
40 present action and a single set of pleadings was directed.

41
42 MR. JUSTICE CLARKE: Yes.

1 MR. MOGER: I just want to interpose some detail between para.7 and 8 of my
2 skeleton. At a very early stage Clifford Chance had embarked on an exercise
3 to recover documents from Societe Generale. They began that exercise in
4 February 2009, before they had begun proceedings against the underwriters.

5
6 MR. JUSTICE CLARKE: Yes.

7
8 MR. MOGER: Then on 1st December 2009, in advance of 7th December CMC, they
9 served a schedule outlining their disclosure intentions. Essentially, that
10 focused on an electronic search of e-mails, and archived e-mails, and the
11 database of one of the two systems used by Societe Generale, in relation to 33,
12 I think it was, identified individuals, two key people for the placement and two
13 key people for the relationship with Goldas, and then 28 more peripheral
14 people. They set, and explained in their document of 1st December, they set
15 their search by reference to 35 key words, and they chose as the date of the
16 search, the date parameters of the search, a search beginning on 1st January
17 2005 and ending on 18th February 2008. The reason they chose that was that
18 the bullion consignment agreements with Goldas, under which the particular
19 consignments were sent to Goldas, were made under new agreements with the
20 Goldas Group which were dated April 2005. So they started their search some
21 months before that with a view to capturing the leader to those re-negotiated
22 terms.

23
24 MR. JUSTICE CLARKE: Yes.

25
26 MR. MOGER: 18th February was taken as the end date because that was when it
27 became known the gold was missing.

28
29 MR. JUSTICE CLARKE: Yes.

30
31 MR. MOGER: Mr. Justice David Steel made it plain in December that the parties
32 should get on with disclosure and the pleading hiatus caused by the
33 introduction of the brokers should not interrupt progress, and Clifford Chance
34 did that. Under their exercise described in their schedule they produced in
35 excess of three million documents, which they reduced by the key words 'date
36 search' down to hundreds of thousands, and then further reduced to 42,000
37 odd prior to review for relevance by solicitors, and that was achieved by May
38 of this year.

39
40 MR. JUSTICE CLARKE: Yes.

41
42 MR. MOGER: In mid March of this year, nearly four months after the December
43 schedule had been circulated to the parties, the underwriters' solicitors, Clyde

1 & Co., raised questions about the approach that had been taken by Clifford
2 Chance, and subsequently the brokers' solicitors also joined that
3 correspondence. Of course, the brokers had been engaged during the interval
4 from the December 2009 period up to March in dealing with their pleadings,
5 so theirs was at a very early stage of the action. There was considerable
6 correspondence before the adjourned CMC which was listed for 27th May
7 about the shortcomings of the Clifford Chance approach. Some adjustments
8 were accepted, for example, Clifford Chance accepted that it was too early to
9 stop the search on the day the gold was discovered to be missing and extended
10 it to 17th April 2008. But they resisted taking the search back to the beginning
11 of the relationship in 2003, and they resisted general searches, other than for
12 specific categories of documents, after April 2008, and they resisted a wide
13 extension of their searches to cover all the backup documents in the thousand
14 odd trades in the whole interval, between 2003 and 2008.

15
16 MR. JUSTICE CLARKE: Yes.

17
18 MR. MOGER: The case came before Mr. Justice Tomlinson on 27th May with
19 those disagreements between the parties unresolved. At that hearing, on behalf
20 of the Claimants, I proposed that the disclosure be given in two tranches, the
21 first tranche the documents generated by the exercise we had started and
22 described in December 2009, because on no view would that be wasted.

23
24 MR. JUSTICE CLARKE: No.

25
26 MR. MOGER: Then I proposed a second tranche for documents that would either
27 be the product of an agreement between the parties for further disclosure
28 searches or would be ordered by the court, because Mr. Justice Tomlinson at
29 the hearing on 27th May laid down a timetable for the resolution of those
30 disagreements to culminate in the hearing on 2nd July. I proposed dates for the
31 first tranche of 16th July, which those instructing me were confident they could
32 achieve, because at that stage all that was required was the lawyers' analysis of
33 the 42,000 documents, the relevance, and I proposed 17th September for the
34 second tranche. That was to assist in setting a timetable and was on the
35 assumption, of course, that what was ordered on 2nd July would be
36 manageable.

37
38 At that hearing the underwriters had proposed in their case management
39 information sheet that it might be better for the court on 27th May only to make
40 a timetable for disclosure orders rather than for the whole trial. At the hearing
41 I think all the other parties, and in fact ultimately my recollection is
42 Mr. Kendrick as well, agreed that it would be a useful discipline to set a trial
43 date, which was set for October 2011, and develop a timetable on the

1 assumption that the disclosure exercise would not disrupt it, and that led to the
2 order which is at tab 20 – if I may ask your Lordship to look at it – in the
3 bundle marked 27th May 2010.

4
5 MR. JUSTICE CLARKE: Yes.

6
7 MR. MOGER: It is at p.246(a). The order was ultimately drawn up on 14th June, as
8 one sees at the top. In para.1 the judge gave directions, set out a very crisp
9 timetable to lead to the hearing on 2nd July. Then at para.2, over the page, he
10 said:

11
12 “The trial of the action is to be fixed to start on 17th October 2011 with
13 a time estimate of eight weeks. The action is to proceed on the basis of
14 the following provisional timetable subject to possible review at 2nd
15 July 2010 hearing in the light of the court’s ruling on disclosure”.

16
17 Then he set out standard disclosure, and your Lordship sees in (a) Societe
18 Generale’s first tranche 16th July, second 17th September. First tranche to
19 include all the disclosable documents located as a result of the searches
20 identified in the disclosure dated 1st December. The second tranche, any
21 further disclosure it has agreed, or does agree to give further disclosure
22 required by the court. Then set out in (b) some provisions for the Defendants,
23 essentially, to give disclosure by 16th July, except in the case of Cooper Gay,
24 who were the English brokers, who were given until 30th July, and a second
25 tranche again on 17th September. Your Lordship sees at 5 that it was at that
26 hearing that a further CMC was fixed for date in the first two weeks of
27 October 2010 with a time estimate of half a day, which is what brings us
28 before your Lordship.

29
30 MR. JUSTICE CLARKE: Yes.

31
32 MR. MOGER: So, my Lord, as we have seen in that order the judge made a
33 provisional timetable and expressed that it was subject to possible review on
34 2nd July. But, unfortunately, on 2nd July the judge expressed the view, early on
35 the hearing, which is set out at para.9 of my skeleton:

36
37 “I am not going to consider the trial date today. I am certainly not
38 going to put off the trial date having fixed it only a month ago on the
39 basis it already appears undoable. It might have to be revisited in
40 September/October. I simply do not know. But I am certainly not
41 going to have a counsel in despair today. Mr. Morfus may come back
42 in September or October and say the scale of what I have been required

1 to do has proved to be so appalling that now is the time to reconsider
2 the trial date but that is not today”.

3
4 MR. JUSTICE CLARKE: And low and behold that which he forecast has come to
5 pass.

6
7 MR. MOGER: It was not just he who forecast it, it was the result of – we have
8 been saying that in argument before him and in correspondence. But, my
9 Lord, the judge was not impressed by the Claimants’ arguments about the
10 parameter of the search and he expanded the dates back to 1st August 2003 and
11 forward to 2010, he included all the trading records, which my friend,
12 Mr. Kendrick, wanted to see in relation to his course of dealing defence, and
13 increased the number of employees, all of them areas that had been contested
14 by Clifford Chance. Notwithstanding the fact that it was a CMC, he ordered
15 Clifford Chance to pay 50% of the costs of the CMC on account of his being
16 unimpressed with the line they had taken on dates.

17
18 MR. JUSTICE CLARKE: When you say the line on dates, do you mean dates as to
19 disclosure?

20
21 MR. MOGER: Yes. Can I ask you to look at that because there are a couple of
22 passages in the transcript that I would be glad to show your Lordship? That is
23 at tab 5 in the bundle for today. If we go in that tab, tab 5, to p.305, he says
24 this at line 32:

25
26 “I do think there is some force in the suggestion that the Claimants
27 have stuck to a particular stance in relation to the ambit of their
28 disclosure, which I myself have described earlier today as being
29 unrealistic, that is to say their attitude to the earlier period of 2003 to
30 2005. That should be marked by some order as to costs”.

31
32 And the order which attracted him initially, and which he ultimately made, was
33 an order for 50% of the costs. Can I ask you, my Lord, to go, while we are
34 there, back in the transcript to p.248? One of the arguments that arose at the
35 hearing before the judge was a criticism by the Defendants of the essentially
36 electronic nature of their disclosure searches, particularly the focus of that on
37 the e-mail tracking. Various points were made, one of which was that there
38 could be a danger that documents held electronically would not thereby be
39 thrown up, and another was that obviously manuscript documents, notes and
40 annotations, and so on, would not be discovered. It was not as if Clifford
41 Chance were not looking for hard copy documents, not prepared to look for
42 any hard copy documents, but they did say, and sought to argue, that the
43 approach they had taken, which was to focus, particularly in the case of the

1 group of employees on the SGCIB system, to focus on e-mails, would be very
2 likely to throw up, as it has, documents other than just the e-mails. The judge
3 at the bottom of p.248, having made a ruling about the 2005/2004 period, said
4 at line 40:

5
6 “What at the moment I am minded to do, subject to anything further
7 you have to say on the categories, I am at the moment not minded to be
8 prescriptive now as to how they should go about conducting their
9 search”.

10
11 And Mr. Kendrick made the point at line 14 that that cannot catch internal
12 notes. Mr. Kendrick was concerned that the judge’s approach might amount to
13 a vindication of the Societe Generale point, and the judge said this at line 21:

14
15 “I want to make it very clear I am not vindicating the approach. I hope
16 I made that clear earlier. It seems to me that if it becomes apparent to
17 them while conducting it the way they wish they are not in fact
18 capturing the sort of documents you have just described it is incumbent
19 upon them to do more. I am certainly not ruling that the approach they
20 propose to adopt is adequate. All I am saying is that for the moment
21 let them go about it that way and if it becomes apparent either to them
22 or to you that it is not adequate then either they must do more or you
23 must ask them to do more and if that fails you will have to come back.
24 I hope I have made it sufficiently clear. You can report to whoever is
25 hearing it my view, that they should receive little sympathy for any
26 suggestion it is not going to be easy to do it within the time frame
27 because it may have been easier had they started from now”.

28
29 The reason I have asked your Lordship to look at that is that I wanted to make
30 it plain that to the extent that the judge was saying “my view to be conveyed to
31 a later court is there should be no sympathy for an issue arising later in respect
32 time” was confined to the way the search was done. He was not saying: “I am
33 ordering a second tranche on 17th September and no court should entertain
34 sympathetically an argument that it is impossible to do it”.

35
36 MR. JUSTICE CLARKE: By simply saying if you do it one way now and then it
37 transpires that you should have done it another way, in particular the way that
38 the Defendants suggested you should have done it, you could say it has taken
39 you longer when it could have taken you less before.

40
41 MR. MOGER: Exactly.

1 MR. JUSTICE CLARKE: But was there any discussion before the learned judge
2 about whether or not in the light, forget about the manner of searching for the
3 documents, that in the light of the quantity of documents which would be
4 involved, he having acceded to the Defendants' submissions, whether or not
5 the date previously fixed upon the footing of a different set of documents was
6 any longer realistic?
7

8 MR. MOGER: My Lord, what happened was this, and if you look at the passage in
9 the – can I just conclude the point I was on before dealing with that.
10

11 MR. JUSTICE CLARKE: Yes.
12

13 MR. MOGER: The point I was on I made because if your Lordship would be so
14 kind as to look at Mr. Kendrick's skeleton, para.5(5) on p.3, in the last
15 sentence he refers to the judge's indication:
16

17 "…the court will have little sympathy to a subsequent argument by
18 Society Generale that it should have more time for additional
19 disclosure".
20

21 and Mr. Kendrick might inadvertently have given your Lordship the
22 impression that that applied to the general point rather than to the specific
23 point, and it did not, it relied only to the specific point.
24

25 MR. JUSTICE CLARKE: Very well.
26

27 MR. MOGER: My Lord, can I come to the point your Lordship asked about. What
28 happened is set out in para.14 and following of my skeleton.
29

30 MR. JUSTICE CLARKE: Yes.
31

32 MR. MOGER: We had warned of the difficulty that this would cause in
33 correspondence before the hearing, and the first document is to be found in our
34 letter of 9th June 2010, which is in volume A of 2nd July hearing bundle, tab 9,
35 p.37.
36

37 MR. JUSTICE CLARKE: Yes.
38

39 MR. MOGER: This letter attempts to reduce the number of points in dispute. This
40 is between 27th May and 2nd July hearing. They say at the end of the first
41 paragraph:
42

1 “This letter attempts to reduce the number of points in dispute
2 pertaining to Soc Gen’s schedule of disclosure. The temporal scope of
3 disclosure...”
4

5 Then they set out what the work has involved so far:
6

7 “1st January to 17th April three million documents. 210 reviewed for
8 relevance. The process has taken a team of paralegals 14 months. If
9 they were simply to expand its search to run for two years prior to 1st
10 January until approximately two years after 17th April, as suggested by
11 the defendants, they would be faced with a massive amount of extra
12 data, the review of which would take a huge amount of time at great
13 expense, inevitably resulting in significant slippage of the timetable
14 ordered at the CMC since it would not be possible to provide such
15 disclosure by 17th September and a trial date would be wholly
16 unrealistic of October”
17

18 Then in the next bundle, 2nd July hearing, there was witness statement
19 evidence before the judge on an application from all parties, and the evidence
20 for the Claimants came in the form of two witness statements, the first of them
21 from Mr. S..., who is at tab 24 in volume B.
22

23 MR. JUSTICE CLARKE: I am afraid to say that these bundles are beginning to ...
24 as many documents in order to ensure that the lever arch does not work.
25

26 MR. MOGER: I am very sorry to hear that, my Lord.
27

28 MR. JUSTICE CLARKE: It happens all the time.
29

30 MR. MOGER: I know. It is para.10, first of all, on p.86 of the bundle.
31

32 MR. JUSTICE CLARKE: Yes.
33

34 MR. MOGER: Epiq, which is an independent firm handling the documents, has
35 calculated the number of documents retrieved from the production database
36 created between 1st January 2003 and 21st December 2004 is 98,000, and then
37 he sets out what would need to happen to that. Then four lines up from the
38 bottom:
39

40 “With regard to Soc Gen’s experience, and based on practical
41 assessment, I believe a first level review in respect of 98,000
42 documents would take approximately six months to complete. It
43 would not have been possible to complete this exercise by 17th

1 September, the date by which it was currently suggested they give the
2 second tranche of disclosure”.

3
4 Then at 11:

5
6 “The sixth defendant has also requested continuous disclosure for the
7 period after 17th April 2008. Epiq has calculated the documents
8 retrieved from the 32 employees existing during that period until
9 December 2009 is 33,000...” (*that is not, of course, to 2010*) “... and
10 that would take two months to complete”.

11
12 Filtering out privileged documents, he says at the end, would take a
13 considerable period of time. Then at p.89, para.17:

14
15 “Epiq has calculated that the number of documents that relate to these
16 two individuals...”

17
18 That is the ... proposal that more extensive searches should focus on the two
19 individuals, Mr. Teboul and Mr. Deshpande, who manage the relationship with
20 Goldas, and this is the resulting calculation:

21
22 “The number of documents relating to those two individuals for the
23 period 1st January 2003 and 31st December 2003 is 14,500. If they
24 were ordered to search this number of documents for relevance
25 I believe that a first level review in respect of the 14,000 would take
26 approximately one month. I believe this quantity of documents
27 provides Soc Gen with a realistic chance of providing its second
28 tranche of disclosure by 17th September”.

29
30 Then, finally, para.22 on p.91:

31
32 “I believe that if Soc Gen were ordered by the court to undertake a first
33 level review of all the disputed key words...”

34
35 So that is date, people and now key words:

36
37 “...it would be unable to produce the second tranche of disclosure by
38 17th September”.

39
40 In his skeleton, which unfortunately is not in the bundle, Mr. Morpus made the
41 written submission set out at 14(c) in my skeleton.
42

1 “Soc Gen has proposed additional areas of disclosure that would
2 enable it to meet that timetable. However, the defendants have to be
3 realistic. If every one of their requests were agreed to or ordered then
4 Soc Gen would not be able to meet 17th September deadline. In
5 relation to one request alone, 2003/2004 documents, Soc Gen estimates
6 that full disclosure will take around six months”.

7
8 My Lord, we then got to the ..., and for that we need to go to the present
9 bundle, tab 5, again. May I ask you to look at Mr. Morpus’ opening
10 submissions in tab 5, p.205, line 32. My Lord, what we have tried to offer is
11 what we believe is achievable by 17th September:

12
13
14 “It is said by Mr. Schaff, that is for Cooper Gay, that this is some *in*
15 *terrorem* threat that my clients are making to your Lordship. It is not
16 intended as that, it is intended to say some things are achievable and
17 some are not. My clients are very keen to hold the trial date, which
18 I understand has now been fixed for 17th October. The reality is that
19 what they have offered to date to the defendants is what they believe
20 can be achieved, and if there is an extensive widening of the thing, to
21 go away and do a lot of their tasks on their own, it is going to take
22 months to do, and regrettably if there is any widening it is likely the
23 trial date is going to have to be revisited and the whole timetable”.

24
25 Mr. Kendrick then began his submissions on p.206, because he was making
26 the running in relation to the time date, and at p.208, line 12, we have the
27 passage from the judge, which I set out in my skeleton earlier:

28
29 “Can I say straightaway I am not going to consider the trial date today?
30 I am certainly not going to put off the trial date having fixed it only a
31 month ago on the basis it already appears undoable. It might have to
32 be revisited in September/October. I simply do not know. But I am
33 certainly not going to have a counsel of despair today. Mr. Morfus
34 may come back in September or October and say the scale of what
35 I have been required to do has proved to be so appalling that now is the
36 time to reconsider the trial date but that is not today”.

37
38 That rather puts an end to any sensible application to the judge to extend the
39 time date in relation to the disclosure, notwithstanding the fact he had said in
40 his order before that the trial date might be reviewed in the light of the
41 disclosure.

42
43 MR. JUSTICE CLARKE: The trial date then was October 2011.

1
2 MR. MOGER: Exactly.

3
4 MR. JUSTICE CLARKE: I can see that it was scarcely encouraging, but in fact
5 although 2011 was at the time some way off, 17th September was not very far
6 away.

7
8 MR. MOGER: No, no, no.

9
10 MR. JUSTICE CLARKE: In fact, it would have been possible to say forget about
11 the trial date for the moment, the actual physical problem is producing these
12 documents.

13
14 MR. MOGER: There was much evidence about the physical problem. We looked
15 at six months, and two months, and so on.

16
17 MR. JUSTICE CLARKE: Yes. What happened was that you said: "I warn you it
18 was going to take a long time", Mr. Morpus said: "This is not an *in terrorem*
19 threat, it is going to take a long time", the judge said: "I am not going to think
20 about changing the trial date and the idea of changing the disclosure date ..."

21
22 MR. MOGER: Exactly. Lastly, at p.237, Mr. Morpus returned, at line 26:

23
24 "The concern which Soc Gen has at the moment, I understand that your
25 Lordship does not want to request a trial date at the moment, is that if
26 we are ordered to go away and do all this wide ranging disclosure the
27 defendants want it is fairly inevitable that we will be coming back in
28 September and saying: we are terribly sorry, we have done our best, it
29 just was not achievable, and that is likely to have an impact on the trial
30 date".

31
32 I should perhaps deal with one comment that was made in one of my learned
33 friend's skeletons, which is that we effectively committed that we would do all
34 this disclosure by 17th September. That is not what we did at the last CMC.
35 The order from the last CMC expressly recognises the timetables may well
36 have to be changed in the light of whatever orders are made today. We did not
37 say we would be able to comply with any order by 17th September because that
38 was not our position, indeed it could not have been any rational position until
39 one knew what one was going to be ordered to do.

40
41 MR. JUSTICE CLARKE: Yes.

1 MR. MOGER: So I think your Lordship is right, it was not just the trial date that
2 was not revisited, but it was left at the hearing of 2nd July that the judge took
3 the attitude: “Whatever I order you will have to do it and you may have to
4 come back in September or October and say it was not possible and you need
5 further time”, and that is exactly what has happened, and it was not for want of
6 our making a claim to the judge that the extensions he was contemplating
7 would have that effect.

8
9 MR. JUSTICE CLARKE: You say, effectively, you had to ... in terms of costs, ...
10 lose it on the point as to how far discovery went. Well, there we are, that is
11 past history, that is it.

12
13 MR. MOGER: Yes.

14
15 MR. JUSTICE CLARKE: But discovery having been ordered on an extensive
16 scale, more than you suggest should be given, and you having said: “I warn
17 you that this may take a very time long”, it is not appropriate that you should
18 have to bear the costs of extending the time necessary to give the more
19 extensive disclosure that the Defendants asked for in the first place.

20
21 MR. MOGER: That is exactly what we say. We also say it is recognised on all
22 sides that we do need until December to conduct these searches, and it is
23 recognised on all sides the trial has to go off until 2012, and there are some
24 minute differences ----

25
26 MR. JUSTICE CLARKE: You cannot have it both ways. If you ask for ... agreed
27 you need for the production thereof.

28
29 MR. MOGER: Yes. My Lord, we do say that. There is a wrinkle, however, and
30 that is – it is a wrinkle which has nothing to do with that general point, it is a
31 wrinkle which has to do with tranche one.

32
33 MR. JUSTICE CLARKE: Yes, there is a different point on tranche one.

34
35 MR. MOGER: Tranche one we did not deliver by 16th July.

36
37 MR. JUSTICE CLARKE: No, you did not.

38
39 MR. MOGER: And nor did we say anything about it at all at the hearing of 2nd
40 July. When we delivered it, it was a list on 6th August with copies on 13th
41 August. What we delivered was a list of 1,474 pages long.

42
43 MR. JUSTICE CLARKE: A list that long?

1
2 MR. MOGER: Yes. We listed 25,259 electronic documents, 3,111 audio
3 recordings, and 33 hard copy categories of documents, 21 of which are files,
4 and I am indebted to Mr. Schaff for setting out at para.9 of his skeleton that
5 that consists of 108,612 pages of documents and 114 hours of audio files. Can
6 I hand to your Lordship, just by way of a specimen, I have not brought the
7 document as a whole to court, a specimen of the various sections of the list.
8 The top page is the list, a specimen page, the documents, as you see in the left
9 hand column, beginning with document 23,845 of the electronic documents
10 disclosed.

11
12 MR. JUSTICE CLARKE: Sorry, what am I looking at?

13
14 MR. MOGER: You are looking at pages extracted from the list.

15
16 MR. JUSTICE CLARKE: I cannot find the number you are talking about.

17
18 MR. MOGER: The top left hand corner.

19
20 MR. JUSTICE CLARKE: Oh, I see.

21
22 MR. MOGER: Those are the numbers of the documents disclosed.

23
24 MR. JUSTICE CLARKE: Yes.

25
26 MR. MOGER: And your Lordship sees that they have been disclosed in
27 chronological order with a description of the document, author, recipient,
28 copied parties, and a statement whether it was redacted or not.

29
30 MR. JUSTICE CLARKE: Yes.

31
32 MR. MOGER: And your Lordship sees that although many of the document types
33 are e-mail, also many of them are electronic documents and not e-mails. As to
34 the column of redactions, some of the documents, for instance, below half
35 way, are redacted. That was the exercise that undid Clifford Chance because
36 they were not prepared for the amount of work needed to redact the
37 confidential client information about people other than Goldas. The second
38 page is just a specimen of the audio disclosure, which gave rise, as your
39 Lordship knows, to 114 hours of tapes. The third page is essentially the major
40 part of the first 30 of 33 of the hard copy documents, of which your Lordship
41 sees numbers 1 to 21 are files.

42
43 MR. JUSTICE CLARKE: Yes.

1
2 MR. MOGER: My Lord, can I ask you now to look at some correspondence about
3 our failure to comply with the 16th July date, and that involves looking in the
4 present file at tab 3.

5
6 MR. JUSTICE CLARKE: Yes.

7
8 MR. MOGER: There are two sorts of page numbers, 2 bottom right hand corner, 57
9 in the middle, is a letter from Clifford Chance of 15th July. This was the day
10 before disclosure was required. They there say for the first time:

11
12 “Societe Generale will not be in a position to provide the defendants
13 with a complete first tranche disclosure on 16th July. Already reviewed
14 210,000 at its first level review. In addition to the temporal progress
15 and reviewing 24,000 of its documents in the second level lawyer
16 review remain approximately 17,500 documents left at second level
17 review before complete disclosure of the first tranche can be provided.
18 We estimate we can finish a review of these remaining documents by
19 Friday 6th August and provide the defendants with inspection of
20 documents that have been reviewed in database order, that is based on
21 the reference code once uploaded on to the hosted database.
22 Consequently, disclosure of these documents tomorrow will be of very
23 limited benefit as opposed to providing one complete tranche of
24 disclosure which will be ordered chronologically and make more
25 sense. We regret it has not been able to meet the 16th July deadline and
26 we assure you we are trying to move the review along as swiftly as
27 possible by allocating as much resource as we can while not
28 compromising the consistency of the review. However, an enormous
29 redaction exercise has had to be carried out of the documents so that
30 Soc Gen remains in compliance with its procedural obligations under
31 French bank secrecy legislation and this has taken much longer than we
32 anticipated. Given the detailed preparation invested in the 2nd July
33 disclosure hearing valuable time has been lost which had originally
34 been attributed to the review exercise”.

35
36 Then in the middle of the page they say this:

37
38 “We should also say at this point that given the need for a three week
39 extension to complete the first tranche review, and given the significant
40 additional disclosure now required for its second tranche, we do not
41 consider the date of 17th September to provide the second tranche will
42 prove to be realistic. A date closer to December gives Soc Gen a fair
43 chance of meeting the deadline for its second tranche”.

1
2 That led to understandable protests and demands for a detailed explanation,
3 and if I may ask your Lordship to look on to p.82 in the middle numbering and
4 27 in the bottom right hand numbering. Clifford Chance wrote again on 19th
5 July:

6
7 “We fully acknowledge Soc Gen has failed to meet the deadline of 16th
8 July for its first tranche of disclosure and the defendants are entitled to
9 an explanation. We sought to provide that and we set out more detail
10 below. Before 27th May CMC the first level review by paralegals had
11 been completed, the second level review had just begun, that of 42,000
12 documents. However, our time estimate was found out to be overly
13 optimistic and failed to take account of the true complexity of the
14 exercise and the amount of time that would be involved in reviewing
15 each document. For example, many of the e-mails attach spreadsheets
16 listing the trading dates for many of Soc Gen’s clients. The date of
17 clients other than Goldas has to be redacted. Consequently, each
18 spreadsheet had to be separately considered and marked up for
19 redaction. Preparation for and attendance at the hearing on 2nd July
20 also delayed the review. A hint of the scale of the work involved for
21 2nd July was given by Mr. Schaff when he mentioned a cost estimate
22 for his client of over £100,000”.

23
24 Cheap by comparison with his schedule today.

25
26 “Both the redaction exercise and the 2nd July hearing have caused a
27 significant delay. Realising that the schedules for the second level
28 review were slipping we tried expanding the team further to speed up
29 the second level review to meet 16th July deadline. What we found is
30 expanding the team to include lawyers not otherwise involved with the
31 case led to the process become more inefficient as it has taken a long
32 time to instruct other lawyers in the complexity of the case to review
33 the work has been carried out to ensure a consistent approach is taken
34 and nothing is missed. There is a critical mass of the team size beyond
35 which it becomes too unwieldy and inefficient to manage”.

36
37 My Lord, I should say the evidence is six to eight solicitors are dedicated to
38 this disclosure exercise.

39
40 “The result is that the second level review is taking much longer than
41 we anticipated in May. Last week it became clear, despite our efforts,
42 not all the documents could be lawyer reviewed by 16th July deadline.
43 As set out in our letter of 15th July, the nature of the review is that

1 batches of documents have been provided to lawyers for review neither
2 in chronological order nor organised by reference to pleaded issues”.

3
4 Then towards the bottom of the page:

5
6 “We do not think this is an efficient and cost effective way for the
7 defendants to be required to carry out a review of Soc Gen’s first
8 tranche of disclosure. Instead of splitting tranche 1 into A and B
9 tranches we therefore decided to provide with you one complete
10 tranche on 6th August. This has been done with the best of intentions
11 and without meaning any discourtesy or intending any convenience to
12 the defendants”.

13
14 Then over the page at 11, once again reiterating that the September 2000
15 deadline is wholly unrealistic. We were conscious of the disruption, of course,
16 that this must have caused to the plans of the Defendants but, nonetheless, we
17 still received a very unsympathetic attitude and we were accused of treating
18 compliance with the court orders as optional. We responded again, p.98, on
19 30th July. It was said, and said with a degree of force:

20
21 “You have waited until 15th July to tell us. You must have known.
22 Why didn’t you say at 2nd July hearing?”

23
24 Then we said this:

25
26 “Regarding the first tranche, we set out the explanation. In the run up
27 to 2nd July hearing, with the focus on the issues to be argued at that
28 hearing, we remained of the view we could meet the target of 16th July.
29 We believed once it had passed all the lawyers would be able to devote
30 their time. Accordingly, we thought there was no need to raise any
31 issue regarding the first tranche of disclosure for 2nd July hearing.
32 With the benefit of hindsight we do appreciate that that was overly
33 optimistic. As it transpired, the exercise was more complicated and
34 more time consuming than we had envisaged. Our time estimate,
35 proved to be undeliverable, became apparent to us following 2nd July
36 hearing. As explained previously, it was only in the week before 16th
37 July deadline that despite our efforts to review the documents as
38 quickly as we could we appreciated we were not going to be able to
39 review them all by 16th July even if we were reviewed them round the
40 clock. We considered the options available and concluded the most
41 sensible option was to provide you with one complete tranche. We
42 have done our best to comply with 16th July deadline but it has simply
43 been impossible. We accept this is far from ideal. We hope that the

1 defendants will be more sympathetic to this explanation once they have
2 received the first tranche of Soc Gen disclosure”.

3
4 It was by then being suggested by the Defendants that we all go back into
5 court again at the beginning of September to give the court a progress report.
6 Then at para.7 we say:

7
8 “We see no benefit of convening a CMC in early September 2010
9 since inevitably we will not have a firm view as to how long a review
10 of the documents will take. We are of the view it is pointless to seek a
11 CMC in early September, precisely when Soc Gen is seeking to devote
12 all its time to progressing a second tranche. Such an approach will
13 only cause further expense to the parties and delay the delivery of the
14 second tranche of Soc Gen’s disclosure”.

15
16 The application had been made informally to the court and the Defendants
17 asked Lord Justice Tomlinson, as he then was, to reveal it. At p.102 of the
18 bundle the court responded on 4th August in an e-mail:

19
20 “Thank you for your e-mails. Referred to Lord Justice Tomlinson and
21 Mrs. Justice Gloster. Mrs. Justice Gloster has directed the matter
22 should remain listed for 8th October as the timetable was always tight.
23 The judge sees little point in scheduling another CMC for September
24 and has asked me to inform Clifford Chance. In spite what it says in
25 your letter, you remain expected to work towards tranche two
26 disclosure by 17th September. There is no reason why you should not
27 give a substantial part of tranche two by 17th September, or shortly
28 thereafter”.

29
30 That is what we were doing anyway, that is what we did, and that is what led
31 to the disclosure of tranche two. Tranche two, the first part, there is much still
32 to do, my Lord, but the first part, on 17th September we delivered list number
33 2. It was 51 pages long, it contained 8000 odd copy documents and 50 files of
34 documents which related to litigation Soc Gen has instituted in Turkey and
35 Dubai against Goldas. Soc Gen has expended, as those 50 files will now bring
36 home to the Defendants, a considerable amount of time and treasure in
37 pursuing Goldas in Dubai and in Turkey.

38
39 MR. JUSTICE CLARKE: In what language are those?

40
41 MR. MOGER: I imagine the court documents are in Turkish, my Lord. In
42 relation to the bulk of disclosure, notwithstanding Societe Generale is a
43 French bank, the language of exchange with Goldas was English.

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MR. JUSTICE CLARKE: Right.

MR. MOGER: Although there are French documents, and we have supplied translations. We have verified the translations and we have supplied them, and in relation to some Turkish documents also we have supplied some translations. (After a pause) Oh, I am told we have not supplied translations in French. I am so sorry.

MR. KENDRICK: We have not seen them.

MR. MOGER: Oh, I am sorry. I think where we have had translations we have given them is the story.

MR. JUSTICE CLARKE: Right.

MR. MOGER: That litigation has led nowhere.

MR. JUSTICE CLARKE: Sorry, I did not hear you.

MR. MOGER: Led nowhere.

MR. JUSTICE CLARKE: Led nowhere.

MR. MOGER: There were criminal proceedings, a criminal complaint was made, taken no further by the Turkish authorities, and the civil action was proceeded with. There is now an action by Goldas against Soc Gen on the grounds that its complaints were defamatory of Goldas. The documents in relation to that are currently being produced, and will be produced as part of our rolling disclosure.

My Lord, can I take your Lordship to para.15 of the skeleton, which sets out some of the results of the order that has been made, because, as I told your Lordship, dates were expanded, people were expanded, and key words were expanded. All this is set out in Mr. Gilbert's affidavit. I do not need to go to it because none of this is in issue. But at 15, as examples, the expansion of the key word search, I told you originally 35, and 76 further key words were added. Produced for review were 130,000 documents, 91 of which have ended up being disclosed. There were two further key words we omitted by mistake in that first tranche and they produced another 1,500 documents, which are currently being reviewed to see if any of those are disclosable. Expanding the date rate has led to a recovery of a further nearly 90,000 documents, and the review of that is

1 under way. The back office documents led to documents that have now
2 been disclosed, that is the 8,000 hard copy documents, and then the
3 retrieval of the Turkish and Dubai proceedings I have already told your
4 Lordship about.

5
6 It is our evidence that with tranche one and the first delivery of tranche
7 two on 17th September, Societe Generale is confident that the vast
8 majority of documents had already been disclosed. Certainly all the
9 trading documents my friend wanted have been disclosed to look into his
10 course of dealing point. But, of course, we have not finished, and there is
11 a very large volume still to do. Societe Generale's best estimate is they
12 need until 24th December to produce copies. That means a list on 17th
13 December and copies on 24th December. But there is a hope that
14 although, for example, the date range has thrown up nearly 90,000
15 documents, there is a hope that ultimately a small proportion of those (if
16 any) will be disclosable, and our proposal is that between now and
17 December we provide rolling disclosure as soon as documents are
18 identified that need to be disclosed, so that whatever remains of the
19 iceberg will be melted before we get to the end of December.

20
21 MR. JUSTICE CLARKE: If you provide rolling disclosure are you able to provide
22 it in chronological order, or in that database order, which appears to be no
23 order at all so far as anybody ----

24
25 MR. MOGER: I think that will depend on categories.

26
27 MR. JUSTICE CLARKE: Right.

28
29 MR. MOGER: I think if categories and files are produced they will be in useful
30 order. I think the examination of 87,000 documents from the database may be
31 more difficult. But, my Lord, our plan is, and this is not contentious, to have
32 eroded whatever remains of what we hope will be by far the smaller part of
33 relevant disclosure before we get to December, so that by December we will
34 get to ..., and Mr. Gilbert's evidence about this is in affidavit.

35
36 I have shown your Lordship some letters where we said 17th September.
37 Frankly, it is not going to be possible and the trial will have to go off. What
38 we did on 23rd September was to send to the Defendants a letter with an
39 explanation of where we got to. I need not show your Lordship the letter. The
40 reference is p.138 of tab 3, and that included the schedule at tab 4 of today's
41 bundle. This is in two parts. The first part, Part A on p.180, deals with the
42 expanded parameters of the search. We say this Part A sets out the expanded
43 parameters of the search Soc Gen has been ordered to carry out and the status

1 of the searches that have been conducted to date. Part B at p.182 sets out
2 categories of documents that Soc Gen has been ordered to provide and
3 confirms the status of such categories. What it does, by reference to the July
4 order, 2nd July, paragraph by paragraph, is set out the category sought, the
5 relevant material (if anywhere) in the first tranche, relevant searches already
6 conducted and material provided in the second tranche, further searches being
7 conducted which it is believed might contain any documents in this category
8 (if exist). That was designed to demonstrate where we are and where we are
9 going, and it is hoped will provide a useful tool for the Defendants going
10 forward, because we will be able to say, by reference to the schedule, search
11 for that nothing, or search for that further material, and they will be able to see
12 how things are progressing.

13
14 My Lord, Mr. Gilbert asks for an extension for completion of disclosure until
15 24th December. May I ask your Lordship now just to go to the end of my
16 skeleton? Before we come to the timetable I just want to make some general
17 points. It is accepted on all sides that disclosure has to go back to December.
18 That is really a recognition of the enormity of the task. Time will tell how
19 valuable that will be, but on any view an enormous amount of work, useful
20 work, has been done to date. We did not delay starting, we have not slackened
21 our effort, and we have produced enormous disclosure, and on all sides it is
22 recognised that we need more.

23
24 When going to the timetable, there are necessarily contingencies to be taken
25 into account. We have already referred to my friend's application for an
26 amendment. What is broadly agreed between the parties is that if disclosure
27 ends in December, just before Christmas, witness statements of fact should go
28 back to the end of July. There is a wrinkle on that, but most parties agree the
29 end of July, and Mr. Schaff looks as though he is no longer over enthusiastic
30 about quibbling about it. That is a longer extension for the witness statements
31 than the extension required for disclosure, and that is a reflection of the fact
32 that the witnesses are going to have to consider this material.

33
34 MR. JUSTICE CLARKE: Yes.

35
36 MR. MOGER: My Lord, the other general point is that in the previous directions
37 an eight month interval between the end of witness statements of fact and the
38 trial timetable was allowed, which was a realistic one. If the trial is to start on
39 6th February that will have been reduced by other a month, and whatever this
40 case teaches us it teaches us that compressing timetables is not wise,
41 particularly when, as your Lordship has said, anything short of a nuclear
42 catastrophe will be needed, nothing short of a nuclear catastrophe will be

1 needed if we are going to move the timetable. Can I ask you now to go to the
2 draft order, and I hope your Lordship has a version of the draft order.

3
4 MR. JUSTICE CLARKE: Yes. I have got the latest version.

5
6 MR. MOGER: Does it have footnotes?

7
8 MR. JUSTICE CLARKE: Yes.

9
10 MR. MOGER: Good. Can I go through it with you then? Item 1: The trial is re-
11 fixed to start. No problem. The parties, other than underwriters, agreed 17th
12 April. Can I ask your Lordship to look at Cap Marine's skeleton at para.21 on
13 p.9?

14
15 "It is not straightforward to assess the appropriate trial start date when
16 such a large unknown has recently been introduced to the equation".

17
18 That unknown is the anticipated but not yet developed amendment.

19
20 "On balance Cap Marine submits it would be better to build in some
21 extra time now, suggests a preferred start date of 17th April. There will
22 be new areas of expertise. Item 2: It is highly unlikely to be moved for
23 a second time".

24
25 He anticipates your Lordship on nuclear war.

26
27 "Item 3: An April date would also be likely to allow enough breathing
28 space to create an opportunity for mediation or some other form of
29 ADR".

30
31 No one is suggesting an adjournment or a stay, but it has always been raised
32 and discussed and kept in the back of everyone's mind that that is a possibility,
33 and it would be a useful extra bit of slack for that. And then he predicts a
34 longer trial. One of the difficulties about fixing a trial date is that if you took
35 eight months from the end of witness statements in July one would arrive in
36 March, but that would take the trial date over the vacation. So, Mr. Kendrick
37 says, let us take 6th February because that gives you eight weeks up to the end
38 of term. We say it is not sensible to compress the trial date, let us start at the
39 beginning of the next term. It is true that the next term will be interrupted after
40 six weeks by the Whitsun vacation, (a) shorter, and (b) may be a useful time
41 for written submissions, or something of that sort, but neither is perfect and we
42 say not a compelling reason to have an earlier date.

1 MR. JUSTICE CLARKE: Yes.

2
3 MR. MOGER: Now, if you look at Mr. Kendrick's skeleton on this, if one goes to
4 para.16. In para.16 he sets out his timetable leading to the trial on 6th
5 February, and your Lordship sees that he is contemplating, as everybody is,
6 experts' reports concluding on 9th December, and then the trial starting, over
7 the page, on 6th February. Then in the last paragraph he mentions the need to
8 amend its defence. He says:

9
10 "Even assuming an amendment to plead avoidance it is ... argue the
11 aspect or not would add appreciably to the trial length or affect the start
12 date. It is unnecessary to build in a contingency".

13
14 There is nothing really in the nature of a decent argument why compressing
15 the time between witness statements and the trial would be a good idea, and, in
16 our respectful submission, there is no benefit in it, there is a risk. My Lord, to
17 an extent, subsequent paragraphs of the order are dependent on that. But
18 essentially there is agreement that leads through to expert supplemental reports
19 being on 9th December. So that would be the scenario that the court was faced
20 with, the evidence would be in finally just under two months, with Christmas
21 in the middle, before the trial began.

22
23 Can I go to the second paragraph of the order? The competition here is
24 between 17th December for lists, which is what we propose, and 10th December
25 for lists, which is what all the other parties propose. Their anxiety is that if we
26 give a list on 17th December with a disclosure statement, and actually disclose
27 copies seven days later, on 24th December, it will be difficult to upload the
28 documents before Christmas. I mean Christmas this year.

29
30 MR. JUSTICE CLARKE: Sorry, just tutor me a little more in relation to that. You
31 give a physical list ----

32
33 MR. MOGER: We give a disclosure statement and a physical list on 17th, seven
34 days later we give electronic copies and hard copies of documents.

35
36 MR. JUSTICE CLARKE: Right. Uploading the electronic copies, provided
37 electronically seven days later.

38
39 MR. MOGER: So they say. My Lord, our submission is that it is really unlikely to
40 be helpful to compress what has been a torturous process by a further week
41 when the people carrying out that process say they think they need until 24th
42 December to do it.

1 MR. JUSTICE CLARKE: Wait a moment. If you produced a list by 17th
2 December will you not also have it in electronic form by 17th December?

3
4 MR. MOGER: The documents themselves will be partly electronic and partly hard
5 copy, perhaps.

6
7 MR. JUSTICE CLARKE: You can only upload something which is electronic.

8
9 MR. MOGER: We are talking about the documents themselves. If they are all
10 available electronically it may very well be possible to give them – we do not
11 have to wait seven days – it may very well be possible. But there is a further
12 point, my Lord, and what we are actually talking about is what remains of
13 disclosure after rolling disclosure. It is not that they are going to receive
14 100,000 on that date, and we just say it is not sensible to compress that further.

15
16 The third paragraph deals with the CMC. The competing contentions are the
17 last week of February 2011, that is our proposal, and the week beginning 28th
18 March 2011, and that is Cooper Gay. What they ask for is extra time to
19 analyse disclosure. We say, and it is a matter for the court, we are concerned
20 about a number of things. Most of the disclosure they will have had for very
21 much longer than the period December onwards. It is much better not to
22 crowd the witness statements and have a hearing which results in – there may
23 be further applications for specific disclosure on that occasion, who knows.
24 That crowds the witness statements at the end of July by an order that we
25 search for further documents, or that they do, and that disclosure be given. For
26 that reason, we say that the February CMC is a preferable date. Signed
27 statements of fact, everybody but Cooper Gay is contending for 29th July –
28 (after a pause) – and Cooper Gay now agree. Thank you.

29
30 Experts reports are agreed for 28th October, number 5. My Lord, there are a
31 category of experts already, five categories of experts already, and there may
32 be more. The meeting of experts is, we suggest, 11th November, Cooper Gay
33 want a week later. The joint memoranda, Cap Marine, who propose a meeting
34 on 11th, want a joint memoranda on 18th. Everybody else thinks that an
35 interval of 14 days between the meeting and the memoranda is more realistic,
36 and I respectfully suggest it is. Number 8, supplementals by 9th December is
37 agreed. Progress monitoring date, everybody except Cap Marine suggest 9th
38 December. Cap Marine suggest 20th January. We do not, for our part, see any
39 useful reason to delay monitoring, but it is a matter entirely for your Lordship.

40
41 Then preparation of trial bundles. The current order is not later than eight
42 weeks before the trial. Cooper Gay and Cap Marine, who subscribe now to a
43 trial date of 17th April, propose 27th January for the bundles. That is just a

1 month and a half after the experts' reports and 11 weeks before trial. My
2 Lord, it is a matter for the court, I am certainly not going to stand here as an
3 advocate who may be appearing at the trial to say I am happy to have the
4 bundles later rather than earlier. The earlier they are available the better. The
5 question is: what is realistic?
6

7 MR. JUSTICE CLARKE: You can start preparing the bundles at the beginning of
8 next year.
9

10 MR. MOGER: Exactly. I am not wishing to resist an earlier disclosure of bundles;
11 it is merely a question of what is sensible.
12

13 MR. JUSTICE CLARKE: I agree.
14

15 MR. MOGER: Para.11, pre-trial review. Societe Generale and underwriters
16 propose 16th December, Cooper Gay say they either go for the date proposed
17 by Soc Gen, or even January, and Cap Marine say 6th or 13th February. Expert
18 evidence will have been complete in December, on December 9th, and your
19 Lordship may think that a pre-trial review before Christmas, providing an early
20 opportunity to identify continuing problems would be a good idea, but it is
21 entirely a matter for you. Then para.12: save as verified this order and so on.
22

23 MR. JUSTICE CLARKE: Yes.
24

25 MR. MOGER: Lastly, costs, and perhaps I will deal with that, to the extent I have
26 not already dealt with it, later.
27

28 MR. JUSTICE CLARKE: Yes. The parity of the argument in this case is costs.
29

30 MR. MOGER: My Lord, I am afraid it is.
31

32 MR. JUSTICE CLARKE: Yes.
33

34 MR. KENDRICK: My Lord, I suppose it is me, if I am next to go.
35

36 MR. JUSTICE CLARKE: Yes.
37

38 MR. KENDRICK: My Lord, what would you like me to deal with first, the trial
39 date or the extensive argument of costs?
40

41 MR. JUSTICE CLARKE: Whatever you want.
42

1 MR. KENDRICK: Well, can we get the trial date out of the way, my Lord, because
2 I am in a minority of one on this.
3
4 MR. JUSTICE CLARKE: Right.
5
6 MR. KENDRICK: I am going to be short on this. Basically, underwriters want to
7 get on with this case and get to trial as soon as reasonably possible. It is a very
8 large figure that is being claimed against them. Whatever our views on the
9 prospects auditors have to know, reinsurers have to know. We would like to
10 know where we stand on this very large claim.
11
12 MR. JUSTICE CLARKE: There is no year end which will be affected according to
13 which of the two trial dates you have.
14
15 MR. KENDRICK: Maybe not, but we would still like to know as soon as possible
16 where we stand and get on with it.
17
18 MR. JUSTICE CLARKE: Yes.
19
20 MR. KENDRICK: All parties agree witness statements by the end of July. All
21 parties agree that the expert phase should be completed by the service of
22 supplemental reports on 9th December.
23
24 MR. JUSTICE CLARKE: Yes.
25
26 MR. KENDRICK: So that leaves two months to trial on February 6th, and that date
27 has the virtue of being able to bring the case to finish in one term. We submit
28 it is a reasonable period to fix. The other trial date being mooted, of course, is
29 17th April. The two reasons, as I understand it, are while 17th April is
30 preferable, first, it will allow for float for slippage. In my submission, if this
31 case teaches us anything it is that if we allow slippage it will occur. It is a self
32 fulfilling prophecy. We have already picked generous times for witness, and
33 for experts, and the float is there. For example, there is three months between
34 the witness reports and the expert reports. The expert reports are on the
35 knowledge in the market of things like that the IGE vaults, and it is hard to see
36 that the expert reports are going to need, in truth, three months, witness reports
37 and expert reports. The second reason is that we are likely to amend.
38
39 MR. JUSTICE CLARKE: Have you any idea, perhaps you cannot tell me, but have
40 you any idea as to when you may be in a position to decide whether you want
41 to amend?
42

1 MR. KENDRICK: Yes, my Lord. We hope that we will have a draft in circulation
2 in December, or certainly in January.
3
4 MR. JUSTICE CLARKE: Right.
5
6 MR. KENDRICK: The date on which we serve the draft amendment is actually
7 dependent upon the disclosure being largely complete.
8
9 MR. JUSTICE CLARKE: Right.
10
11 MR. KENDRICK: And taking Soc Gen at its word, if the disclosure will be rolling
12 in November and completed in December we would expect to be in circulation
13 in that period.
14
15 MR. JUSTICE CLARKE: Thank you.
16
17 MR. KENDRICK: And permission therefore to amend, if it was in dispute, or any
18 consequential effects if it is allowed, could be dealt with in the CMC at late
19 February.
20
21 MR. JUSTICE CLARKE: Right.
22
23 MR. KENDRICK: Along with other matters, such as any outstanding specific
24 disclosure request from outside. So, my Lord, against that background, that is
25 all I wish to say against the trial date of February.
26
27 MR. JUSTICE CLARKE: Thank you.
28
29 MR. KENDRICK: My Lord, can I then perhaps turn to what really quite a long
30 time has been spent on today, and that is costs, and give you the background of
31 costs. My Lord, I am going to be much shorter on this. What I am seeking are
32 two things, costs thrown away by the first tranche coming late, and mutiny in
33 the ranks that ----
34
35 MR. JUSTICE CLARKE: Mutiny?
36
37 MR. KENDRICK: Mutiny in the ranks, my Lord, from the persons who were told
38 to wait, not go on holiday, and then to wait further because the documents had
39 not come in.
40
41 MR. JUSTICE CLARKE: I can fully understand that and sympathise with you, but
42 just help me. I quite see the point of saying: we were preparing for them and
43 then out of the blue the first tranche did not come and that is something for

1 which the Claimants should pay. But what costs are we actually talking
2 about? I can see the intense frustration of putting off holidays, but when the
3 costs judge comes to assess the costs what are actually the costs thrown away?
4

5 MR. KENDRICK: They are going to be matters such as people have been cleared
6 from their diaries, taken out of case number A, put on to case number B, and
7 then twiddling their thumbs on case number B.
8

9 MR. JUSTICE CLARKE: Right.
10

11 MR. KENDRICK: And people being hired in, such as translators for particular
12 days, and then they having to be paid off and having done no work. It is not
13 going to be a huge amount.
14

15 MR. JUSTICE CLARKE: No.
16

17 MR. KENDRICK: In the scheme of things they claim £500 million.
18

19 MR. JUSTICE CLARKE: Yes.
20

21 MR. KENDRICK: We are talking nickels and dimes here.
22

23 MR. JUSTICE CLARKE: But you can use up the people who might have been
24 doing this on something else.
25

26 MR. KENDRICK: In some cases, translators for example. Secondly, there is the
27 costs of the hearing today.
28

29 MR. JUSTICE CLARKE: Right.
30

31 MR. KENDRICK: Why is this CMC being – why are we here at all? Answer: to
32 reset the trial date.
33

34 MR. JUSTICE CLARKE: Yes.
35

36 MR. KENDRICK: And that is linked into the disclosure. My Lord, this stems from
37 an unrealistic approach to disclosure by Soc Gen, and indeed by asking in May
38 for this trial date of October 2011 when they knew of the full extent of the
39 disclosure request against them.
40

41 My Lord, if I may start with the unrealistic, or unreasonable, approach point.
42 The story starts prior to service of the claim form, let alone the service of the
43 defence, because it was at this early point that Clifford Chance drew up their

1 schedule of disclosure, and this is what became what we now know as tranche
2 one. This was their electronic documents, etc. They hung on to that and
3 served it in December 2009, and in December 2009, just to remind you, my
4 Lord, of the dates, we were just about to have the CMC before Mr. Justice
5 David Steel and the brokers are being joined. One of them had not formerly
6 been served yet. So we wait then for the defences from the brokers. I consider
7 those and then say in the light of the pleadings there is much, much more
8 needed.

9
10 We served a very detailed letter in March, and that is the letter that gets much
11 discussed at the hearing in May, and indeed it is the basis of the applications in
12 July. I am not going to take you through it, my Lord, in any detail, but can
13 I ask you to pick up the bundle that is called 'Bundle for CMC 27th May 2010'.
14 There are two documents there. They are at tab 24, and in that tab p.261.

15
16 MR. JUSTICE CLARKE: Yes.

17
18 MR. KENDRICK: This now is our letter of 25th March, which was written very
19 shortly after the defences had been served by the two brokers. We refer to the
20 electronic aspect. At p.263 we refer to the temporal aspect, the scope of the
21 search. Then at p.265 we refer to the broad categories of document which we
22 seek from Soc Gen. None of these are on the electronic schedule, which is
23 basically a search of e-mail accounts. You will see, my Lord, if you look at
24 p.266, that they are very basic documents, contractual notices, purchase orders,
25 requests for shipments, certificates of quantity, documentation, customs
26 documentation, shipping documents, delivery orders, forwarders certificates of
27 shipment, packing lists, invoices and receipts. Essentially, this is an insurance,
28 of course, on specie, on gold, it is not an insurance on traders or their profits,
29 or credit risks, and we have got a very keen interest in where is the gold?
30 Where is it being put? What do you know about it? Do you really think that
31 there is half a billion dollars of gold in Turkey? For what purpose is it staying
32 there? So there is a lot of disclosure along those lines.

33
34 MR. JUSTICE CLARKE: Yes.

35
36 MR. KENDRICK: My Lord, in the same bundle we then have a hearing that is
37 coming before Mr. Justice Tomlinson in May, and we get no answer to that
38 letter until very shortly before the CMC, and it basically says: you are not
39 going to get this. At p.184, my Lord, in that bundle, at tab 13, you see our
40 case management information sheet for that CMC.

41
42 MR. JUSTICE CLARKE: Yes.

1 MR. KENDRICK: If you go to p.185, my Lord, there is a question about: is
2 specific disclosure required? We say that we do not think it is sensible to have
3 two tranches. We are not sure what the second tranche is even going to be on
4 Soc Gen's case. Then we say at item number 3 that we have given them
5 comments and we have still not received a response. Then at item 4 we say:

6
7 "Any major issues for the scope of disclosure should be identified and
8 resolved at the CMC, for example, the claimants' disclosure schedule
9 produced a search for documents between January 2005 and February
10 2008, whereas all of the defendants' ... issues the searches start in 2003
11 and continue beyond the proposed cut off of 2008".

12
13 If, for example, my Lord, just say beyond the cut off, we want to know what
14 Goldas said, and it emerges that Goldas said that: "You well knew, Soc Gen,
15 that we were doing this. You did not really think that we had \$500 million
16 dollars of gold bars". Then we go on to number 5:

17
18 "If the major issues of the scope of the proposed second tranche of
19 disclosure cannot be resolved prior to the restored CMC then it may be
20 sensible for the pre-trial timetable not to provide the steps beyond
21 disclosure as these issues will substantially shape the very substantial
22 disclosure exercise which ... the starting trial. If the court is minded to
23 lay down a timetable at the trial then the defendants insist that
24 allowance will need to be made in the timetable for the application for
25 specific disclosure for the search and for progress to be monitored".

26
27 So that was the background just before 27th May hearing, and, as I mentioned,
28 Soc Gen did give a reply to our letter, which basically said there is a great deal
29 between us that is in dispute here, we do not think we are entitled.

30
31 At the hearing Soc Gen said: "There is not enough time to give you this
32 disclosure" and the hearing indeed started late anyway due to someone before
33 it overrunning. The judge there set the trial date at the request of Soc Gen,
34 who well knew there was a big issue regarding disclosure, and it had the
35 detailed categories from us in that letter. They also knew, because obviously
36 we got into disclosure a little bit, the initial indications from the judge on 27th
37 May about the temporal search going back to 2003, and the period afterwards,
38 were not booked. He was saying, on the face of it, it looks like the Defendants
39 have a point here. It is at this stage that he said: "I will fix the trial date if Soc
40 Gen want me so to do but I am going to be very unimpressed if later on,
41 because of this application, which Soc Gen know about, they come back and
42 say we need more time and the trial date needs to go back". It is that to which
43 we were alluding in our skeleton.

1
2 MR. JUSTICE CLARKE: Can you show me the passage in the argument where the
3 judge ----
4
5 MR. KENDRICK: I do not think we have got a transcript of 27th May. (After a
6 pause) It may be that those next to me can show you. Certainly I think
7 Mr. Moger and I are saying it is not in the bundle. I think that is certainly
8 right. I refer to this in my skeleton at p.3.
9
10 MR. JUSTICE CLARKE: Just a moment. I was shown by Mr. Moger what
11 appears to be a transcript.
12
13 MR. KENDRICK: That was July, my Lord. That is the second hearing.
14
15 MR. JUSTICE CLARKE: Oh, I see.
16
17 MR. KENDRICK: The point that I am making in p.3 of my skeleton is that the
18 judge indicated at the hearing on 27th May. On 27th May – I think those beside
19 me may have a transcript. I do not have a transcript, and it is not in the bundle.
20
21 MR. SCHAFF: My Lord, I am so sorry to interrupt. I seem to be the only person
22 who has had a look at the transcript. It does exist. I have got it.
23
24 MR. JUSTICE CLARKE: What does it say?
25
26 MR. SCHAFF: My Lord, I cannot pretend to give your Lordship a full and
27 complete account of it, but I did have a look at it upon seeing what was said in
28 Mr. Kendrick's skeleton yesterday, and I brought along only a couple of pages.
29 It does seem to me, on looking at those pages, that what Mr. Kendrick says in
30 his skeleton might be an optimistic account of the argument. It is difficult
31 when one is the only person in the room with the document in front of one, but
32 can I read you a short extract?
33
34 MR. JUSTICE CLARKE: You are the only person who has got a transcript ...
35 purposes.
36
37 MR. SCHAFF: My Lord, I wholly resent the description.
38
39 MR. JUSTICE CLARKE: You know what I mean.
40
41 MR. SCHAFF: Of course. My Lord, my solicitors provided me with an electronic
42 version of the transcript soon after the hearing and I look through it this
43 morning on my computer and found it.

1
2 MR. JUSTICE CLARKE: Well, there you are.

3
4 MR. SCHAFF: Anyway, there was this interchange – I was going to pass this over
5 to Mr. Moger so he could make of it what he will – there is this interchange
6 between Mr. Moger and Mr. Justice Tomlinson at the 27th May CMC, which is
7 the one at issue:

8
9 “MR. JUSTICE TOMLINSON: The next point then is whether – I do
10 not think anyone is suggesting this – you have not yet committed
11 yourself, have you, to giving disclosure by 17th September, in the event
12 that you have got to give considerably more disclosure than you are
13 planning to give.

14
15 MR. MOGER: No.

16
17 MR. JUSTICE TOMLINSON: On the other hand you might be
18 directed to do that by the middle of September.

19
20 MR. MOGER: On the other hand we might be.

21
22 MR. JUSTICE TOMLINSON: If you did not give disclosure by 17th
23 September I would then be a little bit worried about having a trial a
24 year later.

25
26 MR. MOGER: My Lord, yes, but it would be an issue that could be
27 resolved this September rather than closer to the trial.

28
29 MR. JUSTICE TOMLINSON: Exactly.”

30
31 My Lord, for what that is worth.

32
33 MR. MOGER: I am very happy for your Lordship to see that. I seem to have
34 expressed myself in my customary felicity.

35
36 MR. SCHAFF: I think it is the felicity of Mr. Justice Tomlinson that really
37 impressed by learned friend, my Lord, for what it is worth.

38
39 MR. JUSTICE CLARKE: Thank you so much.

40
41 MR. KENDRICK: My Lord, I cannot say that there was not another passage 150
42 pages later on in which the point was expressed in different terms.
43

1 MR. JUSTICE CLARKE: Yes.

2

3 MR. KENDRICK: But that is, it seems to me, an exchange which is relevant to the
4 argument developed this morning.

5

6 MR. JUSTICE CLARKE: All right.

7

8 MR. KENDRICK: There it is, my Lord. Furthermore, the judge said, to deal with
9 disclosure, in the sense that he said: "I am going to defer matters to 2nd July for
10 these outstanding issues" where we were largely successful ... the costs order.
11 The judge, having set the trial date at Soc Gen's behest one month earlier,
12 while adjourning the disclosure aspect, was unimpressed with the argument
13 that disclosure should not be ordered because it would affect the trial date,
14 because this was an argument that was being deployed, and on that, my Lord,
15 I do have a transcript.

16

17 MR. JUSTICE CLARKE: Yes.

18

19 MR. KENDRICK: Can I show you that, my Lord, at 207 to 208. I introduced the
20 case by saying there are three big points, one being 2003 to 2005, the second
21 being is e-mail enough, and then the third point is:

22

23 "There is a clash in the level of costs and the impact on the trial date,
24 discretion or proportionality. They say it is too late now to stop the
25 e-mail based approach disclosure, the additional documents will take
26 too long to search for and we may well miss the trial date. We do say
27 that Soc Gen took a wrong headed approach at the outset, contrary to
28 the CPR, and we say, despite my friend's opening comments, that they
29 have compound it by not telling us what they are actually doing".

30

31 This was that they had just started on that process of disclosure.

32

33 "This is no reason for refusing disclosure. We must say if we do not
34 believe the evidence shows a convincing case they will miss the trial
35 date if extra disclosure is ordered. If the choice in support of the case
36 were between putting the trial date back by a few months, from
37 October to January, or losing what could be very important disclosure,
38 the disclosure should win. The trial date was only fixed last month and
39 they took a risk that they may have to disclose the 2003 and 2004
40 documents. They should not be allowed to say: we have approached
41 disclosure our way, it is too late to change, and now look at the trial
42 date we have just had fixed".

43

1 Then the answer comes:
2

3 “MR. JUSTICE TOMLINSON: Can I say straightaway I am not going
4 to consider the trial date today. I am certainly not going to put off the
5 trial date having fixed it only a month ago on the basis it already
6 appears undoable. It might have to be revisited in September/October.
7 I simply do not know. But I am certainly not going to have a counsel
8 in despair today”.

9
10 So it was not as if I were saying that the trial date is fixed ... and they have got
11 to do their best in between, I was recognising there could be a quid pro quo, as
12 you pointed out, my Lord: if you are asking for a lot of disclosure the trial date
13 may have to go back. That is why I wanted to show you this passage, my
14 Lord, where I took that on the chin, as it were, at the outset. You will see, my
15 Lord, how the trial date has been deployed. It has been deployed; it is a
16 tactical answer to disclosure. What was being said by Soc Gen is: “The trial
17 date is fixed now, we had that fixed in May, and we had that fixed on the basis
18 of knowing what the position was, that you were making these applications,
19 but now it is too late and therefore the disclosure should be cut down”. The
20 judge was having none of that, he said: “I am not going to consider the trial
21 date. It may be revisited if the scale of disclosure is immense”.

22
23 That really, I would suggest, is something that Soc Gen have brought upon
24 themselves, a clear eyed view and knowledge of what the disclosure was, went
25 for the trial date, fixed the timetable in consequence knowing of the disclosure
26 application, they were not able to deploy the trial date as an answer to
27 disclosure, but they tried, and so now we have to revisit the timetable and set it
28 all again. That is the purpose of today, the sole purpose of today, and that is
29 something that, in my submission, that Soc Gen should pay for. That is how
30 I put the matter on costs.

31
32 My Lord, I just have a little word on disclosure. Obviously, there is a huge
33 amount of gold bars that have been lost. Most of it was traded by Goldas on
34 an exchange, a reputable exchange in Turkey known as the IGE, the
35 International Gold Exchange. Each gold bar has a unique number, and it was
36 sold, and the gold was traded, as the records show, to reputable third parties.
37 HSBC might be an example. So Soc Gen knows where the gold went and who
38 got it, not in all cases but in most cases, so why has it not got it back? The
39 answer is because under Turkish law it has not got property.

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41 MR. JUSTICE CLARKE: It has not got what?

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43 MR. KENDRICK: Property.

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MR. JUSTICE CLARKE: Right.

MR. KENDRICK: That then raises the next question: surely you must have explored what the position is on property before going into this scale of dealings? What is Soc Gen's position? Is it that it was a bolt from the blue? This is a point that the judge raised at 2nd July hearing itself. If I can go back to that transcript, my Lord, p.231 in the transcript.

MR. JUSTICE CLARKE: Yes.

MR. KENDRICK: Between line 13 to line 28:

“MR. JUSTICE TOMLINSON: But your case is presumably...”

and of course I am going to produce what is really a parody of it:

“... that it came as a bolt from the blue to discover that Goldas had sold half a billion dollars worth of gold without having paid for it.

MR. MORPUS: Yes, my Lord.

MR. JUSTICE TOMLINSON: On the face of it, that is a fairly interesting proposition, because one would expect a major bank like this to have in place all sorts of procedures and checks and balances which would be designed to stop something like that happening. So the starting point has to be, does it not, that you have got an awful lot of explaining to do as to how on earth this situation came about. If it said this all happened out of having the first idea people are going to want to have a look at the documents to see how all these transactions were handled from day one to see how on earth you could ever have got yourself into this position”.

And that, my Lord, in a nutshell, is the substance of the disclosure applications being made by my clients, it is to understand the process, its insistence, and how it came about that this could happen, with respect, and you do not get that from the e-mail traffic between a trader necessarily at all.

Just on the e-mails, and I have seen a fair bit of this disclosure already, I think be very careful on counting pages of documents because you know how it is with an e-mail, you have an e-mail with one line at the top and you have all the five pages of e-mails underneath, three or four which will be confidentiality notices: If you are not intended sender of this etc.

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MR. JUSTICE CLARKE: Yes.

MR. KENDRICK: But there is, undoubtedly, and I am not trying to minimise this, a great deal of disclosure.

MR. JUSTICE CLARKE: Yes.

MR. KENDRICK: Therefore, my Lord, it is important to know about the start of the relationship, how it developed, and also at the end of the relationship what Goldas were saying, why it was that the Criminal Department of Turkey decided there was no case to answer, and why it is that Goldas are still trading. There they are, and indeed they have, on the face it, the impudence to sue for defamation. Equally, there are things that we are quite interested to know, whose property had passed to Goldas? So, my Lord, there is a lot of disclosure that is here that has not been asked for just because it occurs to us it would be nice to have, but surely it is necessary to understand what has gone on here. Against that background, my Lord, we say they, knowingly, fixed the timetable appreciating our disclosure application, they thought they could beat it, and they thought they could use the very date of the trial to help them beat it. Now, that comes with a costs consequence, I would submit, when they find they are wrong.

My Lord, the only other thing I would ask for, and this is not in my skeleton, it is only a point of detail, it is a small point, is that we are promised rolling disclosure, and if I may just make a point here, Clifford Chance's recent disclosure, recent correspondence, has been entirely reasonable, I would like to make that point now. I would not say it necessarily about the past, but certainly that is the position for the last week or two. I am not therefore being disparaging about their attitude to disclosure in the future, but it would be helpful to have a progress letter, say on 10th November, where we either get with it a lot of documents, if we do not already have them, or get told things are on course or they are not on course.

MR. JUSTICE CLARKE: Right.

MR. KENDRICK: Rather than having it just a day or two just before the disclosure date. As I say, that is not made in any hostile way, it just would be sensible, it seems to me. My Lord, apart from that, I do not think I need to address you about any points of detail on the dates.

MR. JUSTICE CLARKE: No, you do not. Thank you.

1 MR. ADAM: My Lord, there are three areas in which I can make some
2 submissions. The first is the reasons why an April trial and not a February
3 trial, the second is some nuts and bolts points on the timetable, and the third is
4 costs.

5
6 MR. JUSTICE CLARKE: Yes.

7
8 MR. ADAM: Your Lordship having heard from Mr. Kendrick, who I think is the
9 only supporter of a February trial, if you are nevertheless currently inclined
10 towards April rather than February then I need not take up your time with the
11 first point.

12
13 MR. JUSTICE CLARKE: I am currently inclined towards April.

14
15 MR. ADAM: I am grateful. My Lord, can I deal with one or two nuts and bolts
16 points on the draft order, if your Lordship still has that somewhere in the rather

17 -----

18
19 MR. JUSTICE CLARKE: Yes.

20
21 MR. ADAM: My Lord, the provision on Christmas Eve, or 17th December, of the
22 electronic documents, this is a purely practical point. If, as your Lordship has
23 already observed, Soc Gen are willing to provide a list on 17th December then
24 the documents must already, certainly so far as they are electronic, have been
25 assembled already by 17th December in such a form as they could be burned
26 onto CD or DVD and provided. We do not see any difficulty, if you are ready
27 to provide a list on 17th December, with being able to provide the electronic
28 documents, at any rate, also on 17th December. If they want to save the hard
29 copy documents for Christmas Eve then we will accept that, but the point of
30 asking for the electronic documents, the DVD, on 17th December is to enable
31 those who understand these things to get busy with the process of uploading it
32 onto a database, and if that could be done before Christmas then it would give
33 a clean start in the New Year for the analysis of the disclosure, and that is why
34 we ask for it. Mr. Moger says there is no point in compressing our time for it,
35 but if you look at it through the other end of the telescope our time for
36 consideration of the disclosure will be compressed if this is left until the New
37 Year.

38
39 My Lord, the next point I would like to pick up is at para.7, which is the date
40 for the joint memoranda. My Lord, we suggested having only a week between
41 the meetings and the memoranda rather than two weeks. My Lord, the reason
42 for that is twofold. The first is, as your Lordship will no doubt recall from the
43 experience of being asked when at the Bar to settle a note of a conference after

1 the conference has taken place, the sooner one tries to record the events of a
2 meeting after the meeting the better the purpose is served and things tend to be
3 more accurate. Secondly, these documents are supposed to list the points upon
4 which the experts have agreed, the points upon which they disagree, and the
5 reasons therefore. That should not be a lengthy exercise. One does not want
6 these documents effectively to be drafted by lawyers as weapons of war.
7 There should be something that the experts are capable of producing. If they
8 know going into their meetings that within a week of the meeting they are
9 going to have to produce a memoranda crisply recording these points I think it
10 may focus minds of experts both before and afterwards, and that certainly has
11 been my experience. That is why we have suggested a shorter time at para.7.

12
13 Para.9, progress monitoring. My Lord, if the trial is 17th April a progress
14 monitoring exercise on 9th December, I would respectfully suggest, would
15 produce a rather limited and uninformative picture of where progress is,
16 because there will no doubt still be quite a lot to do. So I would have thought
17 postponing it until the New Year is sensible. Para.10, the preparation of trial
18 bundles. Yes, that is early, but this is going to be a large bundle and early
19 bundles are a consummation devoutly to be wished by all those conducting
20 substantial litigation. As your Lordship has already observed, this is over a
21 year after, 13 months after completion of disclosure, so we do not think that
22 that is an impossible task. Then para.11, the pre-trial review. Similarly, if the
23 trial is to be in April a pre-trial review before Christmas seems rather
24 premature. There will be more to review, as it were, on 6th February than there
25 will be on 16th December. So we would suggest that date. My Lord, those are
26 the nuts and bolts.

27
28 Lastly, could I address your Lordship briefly on the question of costs? I am
29 not going to add anything on the question of costs of today.

30
31 MR. JUSTICE CLARKE: I need to know what you are asking for.

32
33 MR. ADAM: My Lord, if there are costs going for today then we will gratefully
34 receive some.

35
36 MR. JUSTICE CLARKE: I am sure you will, but I need to know what your
37 application is.

38
39 MR. ADAM: Well, my Lord, I do therefore align myself with Mr. Kendrick and
40 Mr. Schaff and make the application for today. My Lord, in terms of
41 submissions, I only have submissions on the nickels and dimes point, as
42 Mr. Kendrick characterised it. My Lord, there is no doubt the costs were
43 wasted as a result of Soc Gen's failure to face up at an earlier stage, a much

1 earlier stage, to the fact that its disclosure exercise had gone off the rails and
2 that 17th July was a deadline that was going to be missed. Now, that was
3 announced to us on 15th July, but it must have been apparent well in advance
4 of that, and one can make that good simply by recalling the terms of the letter
5 of that date, of 15th July, which your Lordship has already been shown, in
6 which Clifford Chance announced that there were still 17,500 documents
7 which required lawyer level review. My Lord, one does not wake up on the
8 morning of 15th July and suddenly notice that there are 17,500 documents to
9 go, especially when that represents, as the letter tells us, over 40% of the total
10 corpus that was being reviewed. It must have been known well in advance of
11 15th July that the number of documents still remaining to be reviewed was
12 greater than the time available in which to review them, and it must have been
13 known at 2nd July hearing, which had taken place only two weeks before, at
14 which point there would have been more than 17,500 documents still to
15 review, because the two weeks intervening had been spent frantically
16 reviewing, so say it was at least 20,000.

17
18 There was no mention whatsoever before or during 2nd July hearing that there
19 were difficulties with tranche one. There was a great deal of discussion about
20 the difficulties of tranche two, and your Lordship has already been taken
21 through that, but there was no mention in relation to tranche one. Now, either
22 somebody took a somewhat optimistic view on or in advance of 2nd July that it
23 was going to be possible to review 20,000 plus documents in two weeks,
24 because that was all that there was to go, and that is what the correspondence
25 has suggested, or else simply took a rather cynical decision that for tactical
26 purposes it would be better not to inform the Defendants, or indeed the court,
27 that the timetable which Soc Gen had volunteered in late May was known
28 already to be unworkable. Now, your Lordship will form your own view as to
29 which possibility is correct, but for my purposes it is irrelevant. Given the
30 lateness of the notice that we were given, and the resulting waste of costs,
31 whatever the reason for the lateness of the notice, Soc Gen should be obliged
32 to pay those costs resulting, and the appropriate order would be in the form
33 suggested at para.11 of Mr. Kendrick's skeleton argument, which is: "Costs of
34 and caused by the Claimants breach of the order that the first tranche of its
35 disclosure be provided..."

36
37 MR. JUSTICE CLARKE: That is confusing. "Costs of and caused by the
38 breach..."

39
40 MR. ADAM: Yes.

41
42 MR. JUSTICE CLARKE: Costs wasted by the failure to comply
43

1 MR. ADAM: My Lord, I would be perfectly happy with costs wasted by the failure
2 to comply or the breach. I am grateful.
3
4 MR. JUSTICE CLARKE: Thank you very much. Yes, Mr. Schaff.
5
6 MR. SCHAFF: My Lord, nuts and bolts of the order first of all.
7
8 MR. JUSTICE CLARKE: Yes.
9
10 MR. SCHAFF: My Lord, 17th April, I have got nothing to add to where we are on
11 that.
12
13 MR. JUSTICE CLARKE: Right.
14
15 MR. SCHAFF: My Lord, para.2, like Mr. Adam, we would want to have the
16 electronic materials provided and not merely listed on 17th December. I have
17 got nothing to add on that.
18
19 MR. JUSTICE CLARKE: Yes.
20
21 MR. SCHAFF: My Lord, para.3, we, for our part, would see more sense in having
22 the CMC towards the end of March rather than the end of February. The
23 reason for that, my Lord, is that, firstly, it will enable there to have been a time
24 to digest amendments which are flying around in relation to new allegations, in
25 so far as they are, and I see, it slightly surprised me, the suggestion that they
26 might filter down to the brokers. We will have to wait and see how that
27 happens, but if they do then that is obviously a reason for having a chance to
28 consider those. Secondly, and probably more fundamentally, we need time to
29 digest the disclosure in case we are minded, in the light of disclosure, to want
30 to amend, for example, our defence to adopt rather more positively than we
31 have done thus far the sort of points that are pleaded positively by the insurers
32 in relation to the insured or non insured loss. Frankly, bringing the CMC on
33 sooner, before the disclosure review has been completed, is not going to
34 enable, for example, specific disclosure issues necessarily to be flushed out by
35 that time. If we have the CMC at the end of February in reality people are
36 going to have to avert to what sort of applications they are going to make by
37 the middle of February to give people a chance to deal with all those
38 applications sensibly, and so you are really only allowing yourself six weeks,
39 or thereabouts, in the New Year. That is why we have gone for the end of
40 March. It seems to us more sensible.
41
42 MR. JUSTICE CLARKE: Right.
43

1 MR. SCHAFF: My Lord, it is a matter for your Lordship, but that is the only point.

2
3 MR. JUSTICE CLARKE: Yes.

4
5 MR. SCHAFF: 29th July for witness statements, that is fine. My Lord, experts'
6 reports, we had put a slightly later date for the meeting of the experts, we said
7 18th November. There are at least four disciplines of expert evidence.

8
9 MR. JUSTICE CLARKE: Can you just remind me, there is Turkish law ----

10
11 MR. SCHAFF: Turkish law, French law, broking law ----

12
13 MR. JUSTICE CLARKE: Oh, French broking law.

14
15 MR. SCHAFF: French broking law and also, I think I am right in saying, French
16 law of construction on the construction of this waiver that both the brokers rely
17 on.

18
19 MR. JUSTICE CLARKE: Yes.

20
21 MR. SCHAFF: There may also be some underwriting specie evidence as well. So
22 there is quite a lot of people to get together, not always at the same time, which
23 is why we had perhaps pushed that back a little bit. 14 days for everyone to
24 meet may be tight bearing in mind everyone has got to digest the experts'
25 reports in the first place as well. Again, I am not going to press this too hard,
26 my Lord, but if we can push that back to 18th November, joint memos 14 days
27 thereafter. It might be said even that the supplementary experts' reports could
28 go back to 16th December rather than 9th December. That is the sort of leeway
29 that one might want to play around with. I am not pressing this too far, but
30 those are the sort of considerations that might arise. Progress monitoring, like
31 Mr. Adam, we say it makes sense to have that in January. We say bundles
32 sooner rather than later. Pre-trial review definitely in the early part of 2012
33 rather than the end of 2011 to have any meaningful opportunity to have
34 digested what has gone on so far as the experts' reports and the supplemental
35 experts' reports are concerned. We say January, my learned friend, Mr. Adam,
36 says February. We do not have a particularly strong view about that, but
37 certainly it should be January and not December. My Lord, those are the nuts
38 and bolts.

39
40 MR. JUSTICE CLARKE: Thank you.

41
42 MR. SCHAFF: My Lord, so far as costs, can I just make a couple of very short
43 points, because your Lordship has the point already.

1
2 MR. JUSTICE CLARKE: Yes.

3
4 MR. SCHAFF: The money really is in turning up today.

5
6 MR. JUSTICE CLARKE: There are a lot of people here.

7
8 MR. SCHAFF: A lot of people today. My Lord, to state the obvious, this is
9 expensive litigation.

10
11 MR. JUSTICE CLARKE: Yes.

12
13 MR. SCHAFF: There are a lot of case handlers. Every time one turns up for a
14 CMC one has to prepare for it, one has to correspond, one has to do case
15 management information sheets, one has to do skeletons, and one has to take
16 them seriously. This is *a fortiori* because of course we are amending the
17 timetable, subject to your Lordship's concurrence, and so this is not something
18 that we would, as it were, take lightly. There is a lot of effort on all sides, and
19 I do not suppose I am just speaking on our side, and a lot of costs.

20
21 My Lord, we are here today for one reason and for one reason only. The
22 reason we are here is because the timetable has had to be changed,
23 notwithstanding the fact that it was set on 27th May and reconfirmed on 2nd
24 July, because was not provided in accordance with the timetable. That is the
25 only reason why we are here. My Lord, my learned friend, Mr. Moger, said
26 that his clients did not delay in starting their disclosure. They did, with
27 respect, delay in starting the disclosure on a proper basis, the proper basis
28 having been clarified by Mr. Justice Tomlinson (as he then was) on 2nd July.
29 They took the risk that the exercise that they had started precipitously would
30 prove wrong, and indeed it did prove wrong.

31
32 My Lord, on 27th May, before 27th May, in the case management information
33 sheet, and in Clifford Chance's correspondence before that, they proposed two
34 tranches, and they proposed the dates of those two tranches, and they proposed
35 the second date for the tranche knowing and specifically recognising that the
36 second tranche would cover that disclosure that was to be provided over and
37 above that which they were already putting together either by further
38 agreement or pursuant to the order of the court. At the hearing of 2nd July, and
39 your Lordship has seen some of the transcript, there was, as my learned friend,
40 Mr. Kendrick, had said, and as we said at the time, a bit of an *in terrorem*
41 submission based along the lines of: "Well, we have got a trial date, we do not
42 want to lose it, and if you make us provide anymore than we are prepared to

1 provide at the moment we will not be able to meet that trial date” and
2 Mr. Justice Tomlinson would have none of that.

3
4 But, conspicuously, the one thing that was not done on 2nd July hearing was to
5 say to Mr. Justice Tomlinson: “Having ruled against us it is necessary to revise
6 the timetable for the giving of disclosure and in consequence it would have
7 been inevitable to revise the trial timetable”. No submission was made at that
8 hearing either that the first tranche would not meet its date of 16th July or that
9 in the light of the order that was being made as to the scope of disclosure it
10 was necessary to put the September date back to December. If it had been, my
11 Lord, if that had been the submission that was made, and if that had been the
12 subject of analysis and the date had duly been put back, as inevitably one
13 suspects it would have to be, and if the same sort of submissions that are being
14 made now would have been made then, then we would not have been here
15 today. We would have had a CMC, as was originally envisaged when this
16 CMC was fixed, after the completion of the second tranche of disclosure,
17 because this date in October was set at the May CMC on the assumption that
18 effectively the date for the second tranche would have passed and we would be
19 there dealing with points which might have arisen on the second tranche of
20 disclosure. We have come back today because those dates were not amended
21 at the time and it has been necessary to revise the timetable.

22
23 The last point that I want to make on this, my Lord, my learned friend,
24 Mr. Moger, showed you one side of the correspondence that followed from the
25 Clifford Chance letter of 15th July, where they advised, one day before the first
26 tranche was due: “We are not going to make the first tranche and we are not
27 going to make the second tranche and we are going to need to go back to
28 December”. My Lord, your Lordship is not going to thank me, I suspect, at
29 12.40 to go through all the subsequent correspondence, but I can tell your
30 Lordship that what happened immediately from all three of the Defendants’
31 solicitors, Barlow Lyde & Gilbert, Mr. Adam’s solicitors, Clyde & Co.,
32 Mr. Kendrick’s solicitors, CMS Cameron McKenna for my clients, we all
33 wrote back on 16th July and we said, apart from protesting on what we
34 described in various languages ‘unilateral non compliance with the order’, we
35 said: “This is going to have a major affect on the trial timetable. The trial
36 timetable is no longer achievable. The court needs to be brought up to date.
37 The court needs to be told because the October 2011 date is no longer
38 achievable”.

39
40 Now, that spawned a lot of correspondence, which I can summarise in this
41 way. Clifford Chance, and their then case handlers, and I endorse what my
42 learned friend, Mr. Kendrick, has said himself, that things appear to be moving
43 more, if I can say so, progressively in recent weeks, but the immediate reaction

1 was to try and justify the position that had been reached without any
2 recognition that the effect of non compliance to date, non compliance within
3 the September deadline, was going to derail the timetable. We kept saying we
4 are going to have to go back to court, and we tried in fact to bring the matter
5 back to court both in July and indeed in September but were unable to do so.
6 It was only, in fact, on 30th September, in a letter your Lordship I do not think
7 has seen, that Clifford Chance acknowledged for the first time that because of
8 the delays in disclosure it was going to be necessary to revisit the trial
9 timetable, and proposed for the first time that the trial go back to 2012. Until
10 that point one of the concerns that my clients had, and I do not know whether
11 I speak for the other Defendants, but I certainly speak for my clients, was that
12 Clifford Chance and their clients appeared to be envisaging maintaining the
13 existing trial timetable, going forward to a trial in October 2011, but curtailing
14 the amount of time which my clients would have for reviewing the very
15 voluminous disclosure, and it was not until, in fact, 30th September that we
16 appreciated that the trial was going to be unnecessarily adjourned.

17
18 Now, all that spawned quite a bit of correspondence, quite a bit of effort, quite
19 a bit of work on our side. When the scales finally dropped and we realised
20 that, yes, it was agreed that the trial was going to have to go back, of course
21 then we go into the second phase of trying to work out consequential
22 directions, we have had a week and a half of correspondence, we have had
23 skeleton arguments, we have had revised case management information sheets,
24 and the reality of this case, my Lord, is that we are at a CMC prematurely, in
25 the light of where we have got to in disclosure, which has been occasioned by
26 slippage of the Claimants' fault and not the Defendants' fault. My Lord, it is
27 very tempting, I know, to say it is a CMC, it is very tempting to say, as my
28 learned friend, Mr. Moger says: "We told you so, we told you so, we told you
29 so", and of course there is an element of truth in that, but the reality of it is that
30 his clients started from the wrong position, put forward a timetable, which on
31 his own analysis was doomed if a correct view of his clients' disclosure
32 obligations had been taken, and, with respect, it is not to put the boot in to say
33 that his clients, not my clients, must bear the financial consequences of this.

34
35 So, my Lord, that is the reason why, leaving aside the nuts and bolts of costs
36 wasted by not complying, which in a sense is obvious, if I may respectfully
37 say so, although fairly *de minimis* in the scale of things, today we say we
38 should have the costs of turning up on a CMC which had matters been dealt
39 with properly the next CMC would have been in January or February or March
40 of next year. My Lord, that is my submission.

41
42 MR. JUSTICE CLARKE: Thank you.

1 MR. MOGER: My Lord, may I deal with one or two points before I come to costs,
2 and that is that if your Lordship wants a list of experts you will find that in the
3 order.

4

5 MR. JUSTICE CLARKE: Good.

6

7 MR. MOGER: Secondly, my instructions in relation to the step between an
8 electronic list and the electronic CD with the document copies of them, is that
9 there is an interval between those two.

10

11 MR. JUSTICE CLARKE: Sorry, the interval between what?

12

13 MR. MOGER: Between the producing of a list and ----

14

15 MR. JUSTICE CLARKE: A physical list?

16

17 MR. MOGER: Yes, but a physical list which is rendered electronically, even if it is
18 rendered electronically, the list, the step between that and the production of
19 documents in electronic form on the CD as copies. I hope, as I have said to
20 your Lordship earlier, that we will be dealing with the tiny tail end of
21 undisclosed documents by December, and I am certainly prepared on behalf of
22 Societe Generale to give a best endeavours to produce the copy documents
23 electronically (if any) that are outstanding on or with the list on 17th December,
24 but I cannot tell your Lordship that there is no step required between that list
25 on 17th and the production of copies by electronic means. I am afraid I am not
26 qualified to explore the explanation for that in detail. Those are my
27 instructions.

28

29 MR. JUSTICE CLARKE: Yes.

30

31 MR. MOGER: Can I now deal with the suggestion that Mr. Kendrick made for a
32 progress letter on 10th November. I accept that suggestion.

33

34 MR. JUSTICE CLARKE: Yes.

35

36 MR. MOGER: Can I now deal with costs, and deal first of all with 16th July/6th
37 August. As I understand it, what is actually sought is an order for costs caused
38 by late notification of non compliance with 16th July. Of course, I do not want
39 to minimise the irritation and disruption it must have caused the Defendants
40 who had teams in place ready to receive documents on 16th July, with summer
41 holidays coming up, when they did not receive them until August. But that is
42 not a proper basis for an order for costs to be paid by Societe Generale to the
43 parties represented by the Defendants in this case. As I understand it, it comes

1 down to the costs that are thrown away are the incidental expenses on the
2 translators, and the like, rather than on solicitors twiddling their thumbs,
3 because solicitors twiddling their thumbs, if they are not employed on other
4 work for other clients which is remunerative, are certainly not going to be
5 charged to the clients for whom they are doing no work. It would be wholly
6 disproportionate, in my respectful submission, all other things being equal, it
7 would be wholly disproportionate to order a taxation of the expenditure on lost
8 expenses, third party expenses like translators, there being no material before
9 the court to demonstrate there is anything of significance other than nickels
10 and dimes in this case.

11
12 My friend, I think it was Mr. Adam, invited you to infer that the problem had
13 been known about at the hearing of 2nd July. In my respectful submission, that
14 is not a proper submission. The only evidence in the form of correspondence
15 is they did not know about it on 2nd July, were overly optimistic, and accept
16 that they were overly optimistic. What would have resulted if they had? They
17 would have applied for extra time, and what extra costs would have been
18 incurred?

19
20 May I know deal with the costs of today? I do not want to fight old battles,
21 particularly when they are battles, and I understand why he goes back to it, that
22 Mr. Kendrick one on 2nd July in relation to the orders that were sought on that
23 occasion. What he says is: “Why are we here at all?” and the answer, he says,
24 is: “We are here because of the disclosure failings of Societe Generale”, and
25 Mr. Schaff said we did not delay starting the disclosure, we delayed starting
26 the disclosure properly. The problem with that submission is that the work we
27 did in accordance with 1st December 2009 schedule of work was all valuable
28 work which needed to be done anyway, and anyway took more than 14 months
29 to do, and that got us into the difficulty in August. That is not work that is of
30 no value, it is not work that is wasted, it was not time that was wasted, it was
31 work that had to be done. The sole consequence of a more accurate
32 appreciation of the task in hand, despite the fact that the judge was this on 2nd
33 July, the sole consequence is that proper disclosure has taken, as it always
34 would have taken, longer than 17th December to provide.

35
36 My Lord, my friend, Mr. Kendrick, at the hearing on 27th May – you see this
37 from his case management information sheet in the first volume, which I think
38 I asked your Lordship to look at, the 27th May bundle tab 13, p.135 – said at
39 (v), having argued in (i) that it was not sensible to have two tranches, which
40 the court otherwise accepted it was, at (v) said:

1 “If major issues as to the scope of the proposed second tranche of
2 disclosure cannot be resolved then it may be sensible for the pre-trial
3 timetable not to provide for steps beyond disclosure”.

4
5 That is a perfectly understandable position. At the hearing it was thought more
6 constructive to provide for discipline purposes a trial date at which all parties
7 would aim. That is why everything was provisional, because there were these
8 outstanding issues. That was intended to be a constructive proposal, and
9 October 2011 was intended to be a realistic shot at it. In May 2010 it was not
10 known to what extent issues of disclosure would be resolved. Mr. Kendrick
11 was claiming disclosure in the enormous way he has claimed it now, and it is
12 perfectly true we resisted, and it is perfectly true that the judge thought we
13 were unreasonable as to some part of that resistance and ordered us to pay
14 costs. But if he had his way and there had been no timetable, what would now
15 be being said?

16
17 In May a CMC for today was proposed, partly because disclosure was
18 unresolved, and partly because the timetable was provisional, and in the
19 passage my friend handed up to you about the transcript of that day, I see that
20 there was actually contemplated a return at this date to revisited the
21 timetabling. So throughout this has been a provisional matter which the
22 parties, particularly my clients, have sought to deal with in a constructive way,
23 and it is a bit rich now to be told that provision that was made in May, the
24 CMC today, is provision that would never have been necessary, and all the
25 costs have been thrown away, merely because our work on disclosure would
26 take longer than we then hoped.

27
28 My Lord, I have no other submissions to make.

29
30 MR. JUSTICE CLARKE: Thank you very much.

31
32 (For Judgment, see separate transcript)

IN THE HIGH COURT OF JUSTICE
COMMERCIAL COURT
ROYAL COURTS OF JUSTICE

Claim No 2009 Folio 307

B E T W E E N

SOCIÉTÉ GÉNÉRALE

Claimant

- and -

- (1) WÜRTTEMBERGISCHE VERSICHERUNG-AG
- (2) ROYAL & SUN ALLIANCE INSURANCE PLC¹
- (3) NAVIGATORS INSURANCE COMPANY
- (4) SWISS REINSURANCE COMPANY RE EUROPE SA, UK LTD BRANCH¹
- (5) GREAT LAKES REINSURANCE (UK) PLC
- (6) CAP MARINE ASSURANCE ET REASSURANCES SAS¹
- (7) COOPER GAY & CO LIMITED¹

Defendants

RE⁵-RE⁴-RE³-RE²-AMENDED¹ PARTICULARS OF CLAIM

The Parties

(1) The Claimant

1. The Claimant is a company incorporated under the laws of France whose principal place of business is located at Tour Societe Generale, 17 cours Valmy, 92987 Paris La Defense 7, France.

1A Paragraphs marked with superscript ¹ were inserted by the Amended Particulars of Claim dated 1 April.

1B Paragraphs marked with a superscript ² were inserted by the Re-Amended Particulars of claim dated 8 July 2009.

1C Paragraphs marked with a superscript ³ were inserted by the Re-Re-Amended Particulars of claim dated 18th November 2009.

1D Paragraphs marked with a superscript ⁴ were inserted by the Re-Re-Re-Amended Particulars of claim dated 1 April 2011.

1E. Paragraphs marked with a superscript ⁵ were inserted by the Re-Re-Re-Re-Amended Particulars of claim dated 10 February 2012.

(2) **The Underwriter³ Defendants**

2. The First Defendant is a company incorporated under the laws of Germany. The address of the First Defendant is c/o Wurttembergische UK Limited, 37/39 Lime Street, London, EC3M 7AY.

3. The Second Defendant is an insurance company incorporated under the laws of England and Wales. The registered address of the Second Defendant is ~~RSARoyal & Sun Alliance Insurance Group PLC, 9th Floor, One Plantation Place, 30 Fenchurch Street, London, EC3M 3BDPLC, St. Mark's Court, Chart Way, Horsham, West Sussex RH12 1XL.~~¹

4. The Third Defendant is the UK branch of an insurance company incorporated under the laws of the United States of America. The address of the Third Defendant is Navigators Insurance Company, Suite 974, Lloyd's, One Lime Street, London, EC3M 7HA.

5. The Fourth Defendant is an insurance company incorporated under the laws of England and Wales. The registered address of the Fourth Defendant is 30 St. Mary Axe, London, EC3A 8EP.

6. The Fifth Defendant is an insurance company incorporated under the laws of England and Wales. The registered address of the Fifth Defendant is Plantation Place, 30 Fenchurch Street, London, EC3M 3AJ.

6A The First to Fifth Defendants are referred to collectively herein as the "Underwriter Defendants".¹

(3) **The Broker Defendants¹**

6B The Sixth Defendant ("Cap Marine") is an insurance broker incorporated under the laws of France. The registered office of the Sixth Defendant is 4/12 Bd des Belges - BP 10, 76000 Rouen Cedex.¹

6C The Seventh Defendant ("Cooper Gay" - together with Cap Marine, the "Broker Defendants") is an insurance broker incorporated under the laws of England and Wales. The registered office of the Seventh Defendant is 52 Leadenhall Street, London, EC3A 2EB.¹

The Insurance

7. Each Underwriter¹ Defendant agreed to insure the Claimant to the extent of its subscription to a document reference number MC000580B which evidenced the following material terms of the insurance agreement (the "Insurance"):

- (1) The Insurance covers "all property belonging to [the Claimant] comprising of: Bullion";
- (2) The Insurance is for "all Risks of Physical Loss";
- (3) Together, the Underwriter³ Defendants agreed to insure the Claimant's property up to the sum of US\$ 125,000,000 any one loss;
- (4) The obligations of each of the Underwriter³ Defendants are limited to the extent of their individual subscriptions in accordance with the percentages assumed by each of the Underwriter¹ Defendants as set out in Appendix 1 to these Re-¹Re¹-Re¹-Re²-Amended¹ Particulars of Claim and from the dates set out in Appendix 1 to these Re-³Re¹-Re³-Re²-Amended¹ Particulars of Claim; and
- (5) Bullion and Precious Metals are covered for the period 2 April 2007 to 2 April 2008 and the territorial limits of this cover are "anywhere in the World in Transit or at rest".

7A The Underwriter¹ Defendants have asserted in their Re-³Re⁴-Amended Defence (at paragraph 18(c)) that "the² insurance contains a clear warranty" that all storage would be at LME and/or COMEX approved warehouses and that the Istanbul Gold Exchange was not an LME and/or COMEX approved warehouse. Document MC000580B contains the words:

"Warranted all storage at LME and/or COMEX approved warehouses."²

7B In its Re-³Re-⁴Amended Reply, the Claimant has advanced its primary case which is that on its proper meaning this provision is to be construed as confined to storage of non precious metals.¹

7C If which is denied those words are to be construed as applying to cover for the storage of gold bullion their inclusion in Document MC000580B did not reflect the true agreement of the parties and their continuing intention and was the result of a mistake by them such that the Claimant is entitled to and claims that the document be rectified so that the words read:

"Warranted all storage of non-precious metals at LME and/or COMEX warehouses."²

Particulars

- (a) On 13 March 2007 at a meeting between John Glover of Cooper Gay & Co Ltd for the Claimant and Richard Morris of the First Defendant, as the prospective lead underwriter of the Insurance. Mr Morris offered to the Claimant cover on the terms of a document titled "SOCIETE GENERALE SPECIE 12 MONTHS AT 2ND April, 2007 TERMS (the "Terms") as amended and initialled by him to

indicate his refusal to offer rates for cover for storage of non-precious metals in non-LME approved warehouses and his requirement that the Claimant warrant that all non-precious metals be stored at LME approved warehouses, such offer to remain open for 14 days,

- (b) The Claimant considered the cover offered and requested that cover for the storage of non-precious metals be extended to COMEX approved warehouses,
- (c) On 16 March 2007 at a further meeting between Mr Glover and Mr Morris, Mr Morris agreed to the Claimant's request and signified his agreement to provide cover to the Claimant on the basis of a warranty from the Claimant of storage of non-precious metals in LME and COMEX approved warehouses by initialling a revised version of the Terms,
- (d) That remained the agreement and the continuing intention of the parties at all times thereafter and if and to the extent that that agreement and continuing intention was not reflected in the words used in Document MC000508B that was the result of the parties mistake,
- (e) The signing of Document MC000508B by the other Underwriter³ Defendants signified their agreement to be bound by the terms agreed between the Claimant and the First Defendant.²

Relationship between the Claimant and the Goldas group of companies

- 8. In 2003 the Claimant entered into a contractual relationship with the Turkish company Goldas Kuyumculuk Sanayi Ithalat Thracat A.S. ("Kuyumculuk") and a number of the companies in the Kuyumculuk group under which the Claimant provided these group companies with gold bullion on a consignment basis.
- 9. Over the years the relationship between the Claimant and the companies in Kuyumculuk's group progressed, and on 27 April 2005 the Claimant entered into a series of Bullion Consignment Agreements ("BCAs") in substantially the same form with:
 - 9.1 Kuyumculuk;
 - 9.2 Goldas Kiyetli Madenler Ticareti Anonim Sirketi ("Kiyetli");
 - 9.3 Meydan Doviz ve Kiyetli Maden Ticaret A.S. ("Meydan"); and
 - 9.4 Goldas LLC (together with Kuyumculuk, Kiyetli and Meydan, the "Goldas Companies").

Chronology

- 10. For several years the Claimant delivered gold bullion to the Goldas Companies in accordance with the terms of the BCAs and the Goldas Companies paid for this gold bullion also in accordance with the terms of the BCAs. The BCAs provide that title to all

gold bullion delivered under the terms of the BCAs was to remain with the Claimant until the Claimant received the purchase price:

"6. Title and Risk

(a) Title to all consigned Bullion shall remain with SG until the date of receipt of the Purchase Price whereupon title to that part of the Consigned Bullion purchased by the CONSIGNEE will vest in the CONSIGNEE" (Clause 6(a) of the BCAs).

11. Between 7 December 2007 and 18 February 2008 the Claimant delivered a number of shipments of gold bullion to the various Goldas Companies. A summary of the relevant deliveries is set out in Appendix 2 to these Re¹-Re¹-Re¹-Re¹-Amended¹ Particulars of Claim. The total amount of gold delivered via these shipments was 15.725 MT.
12. Between ~~4~~ 11³ February 2008 and 18 February 2008, Kiymetli and Kuyumculuk agreed to purchase 4.425 MT of the gold bullion delivered to them. Kiymetli and Kuyumculuk agreed to pay for this gold bullion between 15 and 20 February 2008.
13. Kiymetli and Kuyumculuk failed to pay for the 4.425 MT of gold bullion referred to in paragraph 12 (above) on the date upon which payment was due and thereafter have failed to pay the sums due.
14. Clause 12 of the BCAs provides that:

"12. Default

(a) The following events shall be events of default (each an "Event of Default"):

(i) The CONSIGNEE fails to pay any amount when due under this Agreement"

15. An Event of Default occurred when Kiymetli and Kuyumculuk failed to pay the sums due for the 4.425 MT of gold referred to in paragraph 12 (above).
16. Clause 12 of the BCAs further provides:

"(b) In the event of the occurrence of an Event of Default, SG, may, forthwith or at anytime thereafter (without prejudice to any other rights which SG may have under this Agreement) by notice in writing to the CONSIGNEE:

(ii) demand immediate payment of any outstanding amounts due but not payable; and/or

(iii) demand the return at the cost of the CONSIGNEE of all Consigned Bullion."

17. Written demands for the immediate payment of the sums owed in respect of the 4.425 MT of gold bullion and return of all other gold bullion on consignment to Kuyumculuk and Kiymetli were made (in accordance with Clause 12(b)(ii) and (iii) of the BCAs) on 4 March 2008 but no payment has been made and none of the gold bullion has been returned.

18. Written demands for the return of all other gold bullion delivered to the Goldas Companies on consignment were made (in accordance with Clause 12(b)(ii) and (iii) of the BCAs) on ~~30~~ 4⁵ March 2008 but the Goldas Companies have failed to return any gold bullion to the Claimant.
19. Pursuant to Clause 6 of the BCAs, the Claimant retained title to all gold bullion delivered to the Goldas Companies. On 11 March 2008, the Claimant discovered that its gold bullion has been misappropriated and lost within the meaning of the Insurance in the circumstances set out below.

Particulars of loss

- (1) ~~11.85~~ 12.85⁵ *MT of gold bullion sold on the Istanbul Gold Exchange*
20. Of the 15.725 MT of gold bullion delivered to the Goldas Companies, ~~11.85~~ 12.85⁵ MT was wrongfully delivered by Meydan, Kiymelti and Kuyumculuk to third parties by means of transactions on the Istanbul Gold Exchange ("IGE") entered into without the consent of the Claimant whose property it was (and was thereby misappropriated and lost within the meaning of the Insurance).
21. Each misappropriation caused the Claimant a separate loss within the meaning of the Insurance. Each separate disposal and the loss caused to the Claimant is set out in Appendix 3 to these ~~Re-¹Re-²Re-³Re-⁴~~ Amended¹ Particulars of Claim. The Claimant's losses in respect thereof have been calculated by using the second fix by the LMBA on the date these losses became known to the Claimant; 11 March 2008.
- (2) ~~0.8~~ 0.3³ *MT of gold bullion on consignment to Kuyumculuk*
22. Of the 4.05 MT of gold bullion that was delivered to Kuyumculuk but not paid for, ~~3.25~~ 3.75⁵ MT was wrongfully delivered by Kuyumculuk to third parties as described in paragraphs 20 and 21 hereof.
23. The remaining ~~0.8~~ 0.3⁶ MT of gold bullion, which is the property of the Claimant, has been wrongfully disposed of or otherwise misappropriated by Kuyumculuk and lost by the Claimant within the meaning of the Insurance. The best particulars that the claimant can give is that Kuyumculuk failed to return the gold bullion to the Claimant as lawfully demanded by the Claimant's letter of 4 March 2008 and has subsequently refused to reveal to the Claimants its whereabouts or fate. Further, the gold bullion was not to be found in Kuyumculuk's vaults at an inspection of the vaults on 1 April 2008.
24. By wrongfully disposing of the Claimant's gold bullion without the consent of the Claimant instead of storing it in their vaults, Kuyumculuk has caused a loss to the Claimant within the meaning of the Insurance. The Claimant's loss in respect thereof has been calculated by using the second fix by the LMBA on the date the losses became known to the Claimant; 11 March 2008, as detailed in Appendix 4.
- (3) *0.5 MT of gold bullion on consignment to Goldas LLC*

25. On 22 January 2008, 0.5 MT of gold bullion delivered to Goldas LLC was wrongfully delivered to third parties by Goldas LLC without the consent of the Claimant whose property it was (and was thereby misappropriated and lost within the meaning of the Insurance). The Claimant's loss in respect thereof has been calculated by using the second fix by the LMBA on the date the losses became known to the Claimant; 11 March 2008, as detailed in Appendix 4.
- (4) ~~1.575~~ 2.075⁵ MTs of gold bullion on consignment to Kiymetli
26. Of the 8.825 MT of gold bullion that was delivered to Kiymetli, ~~6.25~~ 6.75⁵ MT was wrongfully delivered by Kiymetli to third parties as described in paragraphs 20 and 21 hereof.
27. The remaining ~~1.575~~ 2.075⁵ MT of gold bullion, which is the property of the Claimant, has been wrongfully disposed of or otherwise misappropriated by Kiymetli and lost by the claimant within the meaning of the Insurance. The best particulars that the Claimant can give is that Kiymetli failed to return the gold bullion to the Claimant as lawfully demanded by the Claimant's letter of 4 March 2008 and has subsequently refused to reveal to the Claimant its whereabouts or⁴ fate. The Claimant's loss in respect thereof has been calculated by using the second fix by the LMBA on the date the losses became known to the Claimant; ³11 March 2008, as detailed in Appendix 4.

Breach of the Insurance

28. On 27 May 2008, in accordance with terms of the Insurance, the Claimant made a claim under the Insurance in respect of the losses of its gold bullion. Wrongfully, and in breach of the terms of the Insurance, the Underwriter³ Defendants have failed or refused to pay to the Claimant the sums due to it under the Insurance as set out in Appendix 3 and Appendix 4 to indemnify it for its losses thereunder.

Interest

29. The Claimant is entitled to and seeks interest upon the amount due under the unpaid Insurance Claim, for such period and at such rate as the Court considers just, pursuant to Section 35A of the Supreme Court Act 1981.

The Claim against the Broker Defendants³

The duties owed by the Broker Defendants³

30. During the period January 2007 to March 2007 Cap Marine agreed to obtain insurance for the Claimant. The Claimant's instructions to Cap Marine were to seek quotations for and (if instructed by the Claimant) to obtain a stock and transit insurance policy for the Claimant's precious and non precious metals businesses for the insurance year running from 2 April 2007 to 2 April 2008 on the same terms as the previous year (except as to premium or any other variations agreed to by the Claimant) (the "Instructions").¹

31. Under the agreement Cap Marine owed the Claimant the following express (alternatively implied) duties:

31.1 to comply with the Instructions;

31.2 to arrange insurance that reflected the needs of the Claimant;

31.3 to explain to the Claimant any exclusions from or limitations on cover contained in the Insurance, or any variations to the previous year's insurance; and

31.4 to avoid exposing the Claimant to an unnecessary risk of litigation (bv, in particular, ensuring that the policy wording was not ambiguous).¹

32. Cap Marine also owed a duty of care to the Claimant to exercise skill and care and in accordance with the proper professional standards of an insurance broker. As part of that duty Cap Marine owed the Claimant tortious duties to the same effect as the contractual duties set out in paragraph 31 above.¹

33. On behalf of the Claimant, Cap Marine instructed Cooper Gay as placing broker to obtain from the London insurance market quotations for the Insurance in accordance with the Instructions and (if instructed) to place it in the market. Cooper Gay owed a duty of care to the Claimant to act with skill and care and in accordance with the proper professional standards of an insurance broker, and as part of that duty owed the Claimant duties to the same effect as those set out in paragraph 31 above. Cooper Gay owed the Claimant a duty of care for the following reasons:-

33.1 By acting as the Claimant's placing broker in negotiating and agreeing the terms of the Insurance it assumed a responsibility to the Claimant to apply its specialist skill and knowledge properly to effect the Insurance on behalf of the Claimant.

33.2 Moreover, it was reasonably foreseeable that the Claimant would suffer loss and damage if Cooper Gay did not properly effect the Insurance, there was a relationship of proximity between the Claimant and Cooper Gay, and it is fair just and reasonable that such a duty should exist.

33.3 The Claimant relies further upon the fact that Cooper Gay sought and obtained from the Claimant a letter of appointment dated 13 March 2007 and a broker of record letter dated 16 March 2007.³

LME/COMEX warranty³

34. As explained in paragraph 7A above, the Underwriter Defendants allege in paragraph 18(c) of their Re-⁵Re¹-Amended Defence that the Insurance contains a warranty that states:

"Warranted all storage at LME and/or COMEX approved warehouses" (the "LME/COMEX Warranty").³

35. It is common ground between the Underwriter Defendants and the Claimant that the Istanbul Gold Exchange ("IGE") vault and other vaults in which the 15.725 MT of gold was stored located³ (the "Gold") were not LME or COMEX approved warehouses. Since the Gold was misappropriated from non LME or COMEX approved warehouses, the Underwriter Defendants allege that the Claimant's claim is not covered by the terms of the Insurance.³

36. Further, in paragraph 5B(e) of their Re-⁵Re⁴-Amended Defence, the Underwriter Defendants claim that:

" Endorsement 1 to 4 inclusive extended cover to storage of gold alone in Turkey and in India. In each case there was a survey by Cunningham Lindsey of the premises intended for storage and then an endorsement was prepared by the brokers and scratched by the Defendants which stated "Noted locations are not LME or COMEX approved but agreed hereunder. All the other terms, clauses and conditions remain unaltered". This wording is only explicable on the basis that the "All storage" warranty would have applied but for the special agreement. In the premises, if which is denied the "All storage" warranty had been in any way ambiguous, the parties, from the date of the first endorsement, proceeded on the mutual basis that it had an agreed meaning and applied to all storage, including in particular, storage of gold, from which the Claimants are now estopped from resiling."³

Contingency Warranty³

37. In paragraph 19 of their Re-⁵Re⁴-Amended Defence, the Underwriter Defendants claim that the Insurance contains a warranty applicable to the storage of bullion that states:

"Warranted storage of precious metals is insured on a pure contingency basis" (the "Contingency Warranty").³

38. The Underwriter Defendants claim that the Contingency Warranty:

"required that a principal policy be in place covering the loss at the place of storage, to the intent that if this principal policy should fail to pay an insured and covered loss, (for example due to the insolvency of the insurer) the Defendants' insurance would respond, subject to its terms and conditions"³

39. The Underwriter Defendants claim that the Contingency Warranty was not complied with since either the local Turkish policy that was in place was cancelled through no fault of the Claimant (the argument raised in paragraph 19(a) of the Re-⁵Re⁴-Amended Defence) or the local Turkish policies could not respond to any theft by the Goldas Companies (the argument raised in paragraph 19(b) of the Re-⁵Re⁴-Amended Defence).³

The alleged misrepresentations⁴

39.1 At paragraph 2E of their Re-⁵Re-⁴-Amended Defence the Underwriter Defendants claim that the Claimant represented by the terms of the presentation documents which were shown to the Underwriter Defendants during placement, (i) that, in 2006, there had been

no storage of precious metals at the premises of customers and/or (ii) that no such storage had taken place in 2007 (up to the date that the insurance contract was concluded) and/or (iii) that no such storage was intended by the Claimant to take place during the period of the Insurance¹.

39.2 At paragraph 2H of their Re-³Re-Amended Defence the Underwriter Defendants allege that Mr Glover of Cooper Gay orally represented to Mr Mummery of the Third Defendant that all storage of precious and non-precious metals was and would continue to be at LME or COMEX warehouses¹.

The alleged non-disclosure¹

39.3 At paragraphs 2F to 2J of their Re-³Re-Amended Defence the Underwriter Defendants claim that the Claimant failed to disclose prior to the conclusion of the Insurance and the endorsements thereto various matters which are alleged to have been material facts¹.

The Broker Defendants' breaches of duty

LME/COMEX Warranty and Contingency Warranty¹

40. If the Underwriter Defendants are correct as to the existence and effect of the LME/COMEX Warranty and the Contingency Warranty, or in their contention that the Claimant is estopped from disputing the Underwriter Defendants' case in relation to the LME/COMEX Warranty, the Broker Defendants were in breach of their duties to the Claimant, as follows:-

40.1 The Broker Defendants failed to comply with the Instructions, in particular by failing to obtain insurance for storage of precious metals on the same terms as the previous year. The Claimant was not advised about nor asked to agree to a variation of those terms to include the LME/COMEX Warranty or the Contingency Warranty in relation to the storage of precious metals.

40.2 By agreeing to include the warranties the Broker Defendants failed to obtain insurance that reflected the needs of the Claimant.

40.3 The Broker Defendants failed to explain the warranties and the change of governing law from French law to English law to the Claimant.

40.4 The Broker Defendants failed to prepare endorsements to the Insurance that accurately reflected that the LME/COMEX Warranty only applied to non-precious metals.¹

41. Moreover, if it is found that the wording of the Insurance is ambiguous or unclear, the Broker Defendants have breached their duty to avoid exposing the Claimant to the unnecessary risk of litigation.¹

Alleged misrepresentations¹

41.1 If the Underwriter Defendants are correct that the presentation documents shown to the Underwriter Defendants during placement contained the representations of fact that are

alleged at paragraph 2E of the Underwriter Defendants' Re-'Re- Amended Defence or that those facts were otherwise represented to the Underwriter Defendants, the Broker Defendants were in breach of duty as follows:-

(a) Cap Marine was in breach of duty by drawing up the document headed "LME Policy ... Precious metals- exposure 2006" without any or any adequate regard to its accuracy or the impression that it might create on the Underwriter Defendants. In particular,

(i) on or about 13 February 2007 Cap Marine drew up, and Mr Jugé of Cap Marine provided to Mr Glover of Cooper Gay, the document headed 'LME Policy ... Precious metals- exposure 2006' referred to at paragraph 2E of the Defence and Counterclaim;

(ii) the Underwriter Defendants appear to allege that the effect of that document was to represent that (i) there was no storage by the Claimant of gold at customers' premises in 2006/2007 and (ii) the only storage of gold by the Claimant was at refiners in South Africa and Switzerland. If the document did contain such representations those representations did not emanate from information supplied to Cap Marine by the Claimant;

(iii) on or about 7 March 2006, in connection with the placement of the insurance contract for the year commencing 2006, Alix Engelhard of the Claimant emailed Nicolas Jugé of Cap Marine providing a volumetric analysis for precious metals which amongst other things identified that substantial quantities of gold were held at customers' premises;

(iv) on or about 19 January 2007 Ms Engelhard invited Mr Jugé to place the 2007 renewal and asked Mr Jugé to send her an indication of his requirements so that she could investigate the options;

(v) on or about 25 January 2007 Mr Jugé emailed Ms Engelhard to ask for (unspecified) statistical data and the list of the daily storage sites. By email dated 30 January 2007 Mr Jugé asked for updated statistics for the past three years, volumetric analysis of precious metals insured in transit and distribution of the values/volumes by geographical area and a declaration of the inventories for the non-precious metals;

(vi) on or about 30 January 2007 Mr Jugé drew up a presentation file which contained information from the 2006 renewal making clear that the Claimant held substantial quantities of gold at customers' premises;

(vii) by an email dated 8 February 2007 Ms Engelhard provided Mr Jugé with a volumetric analysis for precious metals. The analysis read (materially) as follows:

"GOLD:

A: REFINERIES:

1. South Africa: Total ounces: 1 773 849.45 ozs or 55.45 Tons
2. Switzerland: Refinery i. Total Ounces: 2 001 854.86 ozs or 62.58 Tons
ii. 25 592.00 ozs or 800 Kgs

B: Purchases from MINES for Refining at South African Refinery;

- Mine 1. Total Ounces: 267 634 ozs or 8.32 tons
Mine 2. Total Ounces: 47 924.41 ozs or 1.49 tons
Mine 3. Total Ounces: 1 564 100 ozs or 48.65 tons

C. Shipments made to CLIENTS per Destination

1. Turkey: Istanbul: Total Ounces: 3 329 329.25 ozs or 104.075 Tons
2. UAE: Dubai: Total Ounces: 287 910 ozs or 9 tons
3. England: London: 353 886.199 ozs or 11 Tons
4. India: a. Bangalore: 74 376.75 ozs or 2.325 Tons
b. Chennai : 9 597 ozs or 300 Kgs
c. New Delhi : 15 995 ozs or 500 Kgs"

- (viii) the Claimant did not state to Mr Jugé, and Mr Jugé could not reasonably have understood that information to mean, that (i) there was no storage by the Claimant of gold at customers' premises (ii) the only storage of gold by the Claimant was at refiners in South Africa and Switzerland or (iii) that the Claimant was not intending to store gold at customers' premises for the period of the Insurance.
- (b) Cap Marine was in breach of duty by failing to draw the making of the alleged representations to the attention of the Claimant. Mr Jugé forwarded the document "LME Policy ... Precious metals- exposure 2006" to Ms Engelhard on 16 February 2007 without:
- (i) indicating that he had made any change to the information supplied by Ms Engelhard on 8 February 2007; and
- (ii) without stating that he was by that document representing that, in 2006, there had been no storage of precious metals at the premises of customers and/or that no such storage had taken place in 2007 (up to the date that the insurance contract was concluded) and/or that no such storage was intended by the Claimant to take place during the period of the Insurance;
- (c) Cap Marine was in breach of duty by failing specifically to enquire of the Claimant whether there had been no storage by the Claimant of gold at customers' premises in 2006/2007 and/or whether storage at customers' premises was intended for the period of the Insurance either
- (i) when drawing up the document headed "LME Policy ... Precious metals- exposure 2006"; or

- (ii) when passing that document to Mr Glover or
 - (iii) following Mr Jugé being specifically advised by Ms Engelhard by email on 15 March 2007 that the Claimant needed a storage guarantee at the client and at the refiner;
- (d) Cap Marine was in breach of duty by failing to correct the representations allegedly made in the presentation documents notwithstanding that
- (i) Mr Jugé had been specifically advised by Ms Engelhard by telephone on 14 March 2007 and by email on 15 March 2007 that the Claimant needed a storage guarantee at the client and
 - (ii) it appears from a handwritten entry on a hardcopy of an email sent by Mr Glover on 15 March 2007 (Cap Marine hard copy disclosure page 4724) that Mr Jugé believed that the full quantity of gold that had been shipped would be held on storage;
- (e) Cooper Gay was in breach of duty by failing to query, clarify or confirm whether the representations of fact that are alleged at paragraph 2E of the Re-⁵Re-Amended Defence and Counterclaim to have been made in the document headed "LME Policy ... Precious metals- exposure 2006" were true in circumstances where those representations:
- (i) were inconsistent with the information provided by the Claimant for 2005 which was available in the placing information provided to Mr Glover by Mr Jugé;
 - (ii) did not reflect the information provided by Ms Engelhard on 8 February 2007 which had been forwarded to Mr Glover by Mr Jugé by email on 8 February 2007;
 - (iii) were inconsistent with the specific advice to Mr Glover by Mr Jugé on or about 15 March 2007 that the Claimant did require cover for the storage of precious metals;
- (f) Cooper Gay was in breach of duty by failing to draw to the attention of Cap Marine or of the Claimant to the anomalies in the document headed "LME Policy ... Precious metals- exposure 2006" identified at paragraph 41.1(e) above¹.

41.2 If the Underwriter Defendants are correct that Mr Glover represented to Mr Mummy that all storage of precious and non-precious metals was (and would continue to be) at LME or COMEX warehouses;

- (a) Cooper Gay was in breach of duty by failing to obtain clear authority from the Claimant and/or Cap Marine to make the alleged representation;
- (b) Cooper Gay was in breach of duty by failing to recognise that the Claimant could not have been storing precious metals at LME or COMEX warehouses, given that

precious metals cannot be stored at LME warehouses and the information supplied by the Claimant showed no storage of gold in the United States of America;

(c) Cooper Gay was in breach of duty by failing to enquire whether the Claimant was intending to store precious metals at LME or COMEX warehouses;

(c) Cap Marine is liable for the failings of Cooper Gay pursuant to Article 1384 of the French Civil Code and Article L. 511-1 of the French Insurance Code. ¹

Alleged non-disclosure¹

41.3 If, which is denied, there was any material non-disclosure of the matters alleged at paragraph 2F of the Re-³Re-Amended Defence of the Underwriter Defendants or at all, that non-disclosure was caused by the breach of duty of the Broker Defendants as follows:-

(a) Cap Marine failed to enquire as to, or to advise the Claimant that it was (or might be) necessary for the Claimant to disclose, the following matters:

(i) the identity, location and number of the customers to whom gold was consigned;

(ii) information in relation to the quantity and value of gold on consignment of the type set out at paragraphs 2F(d)-(f) of the Re-⁵Re-Amended Defence and Counterclaim;

(iii) the terms upon which gold was consigned to the Claimant's customers and/or any variation thereof;

(iv) information as to where precisely gold that was consigned to the Claimant's customers was (or might be) stored and any steps made by the Claimant to ensure that the gold was stored there;

(v) any inspections or audits that the Claimant was carrying out on the location of gold consigned to the Claimant's customers;

(vi) any steps that the Claimant was taking to require segregation of gold delivered on consignment;

(vii) the net profits of the Claimant's customers;

(viii) whether the Claimant had required any of the Claimant's customers to provide letters of credit or security over their assets;

(ix) the manner in which the Claimant's customers were dealing with gold consigned to them by the Claimant;

(x) the existence and form of any lending from the Claimant to its customers;

- (b) Cooper Gay failed to enquire, or to advise the Claimant or Cap Marine that it was (or might be) necessary for the Claimant to disclose, the following matters:
- (i) the identity, location and number of the customers to whom gold was consigned;
 - (ii) information in relation to the quantity and value of gold on consignment of the type set out at paragraphs 2F(d)-(f) of the Re-⁵Re-Amended Defence and Counterclaim;
 - (iii) the terms upon which gold was consigned to the Claimant's customers and/or any variation thereof;
 - (iv) information as to where precisely gold that was consigned to the Claimant's customers was (or might be) stored and any steps made by the Claimant to ensure that the gold was stored there;
 - (v) any inspections or audits that the Claimant was carrying out on the location of gold consigned to the Claimant's customers;
 - (vi) any steps that the Claimant was taking to require segregation of gold delivered on consignment;
 - (vii) the net profits of the Claimant's customers;
 - (viii) whether the Claimant had required any of the Claimant's customers to provide letters of credit or security over their assets;
 - (ix) the manner in which the Claimant's customers were dealing with gold consigned to them by the Claimant;
 - (x) the existence and form of any lending from the Claimant to its customers;⁴

The Claimant's Loss

42. By reason of the breaches of duty set out in paragraphs 40 and 41 above, if the Underwriter Defendants are correct in their contentions, the Claimant has suffered loss and damage as follows:-

42.1 If the LME/COMEX Warranty and Contingency Warranty had not been included in the Insurance, or did not have the effect for which the Underwriter Defendants contend, the Underwriter Defendants would not be in a position to rely upon those warranties by way of defence to the claim made against them by the Claimant.

42.2 If the Broker Defendants had properly explained to the Claimant the nature and effect of the warranties, the Claimant would not have entered into the Insurance containing those terms. The Claimant would either have procured the removal of those terms from the Insurance, or effected similar insurance elsewhere without such terms.

- 42.3 If the endorsements had not been prepared in the way that they were, the Underwriter Defendants would not have been able to advance their estoppel argument by way of a defence to the Claimant's claim.
- 42.4 Accordingly, the Claimant claims from the Broker Defendants the amount by which its recovery under the Insurance from the Underwriter Defendants is reduced (if at all) as a result of the Broker Defendants breaches of duty. The amount claimed from the Broker Defendants is therefore up to USD 487,970,625 plus interest.
- 42.5 Further, to the extent that the wording of the Insurance is ambiguous, that has caused the Claimant to have to issue these proceedings against the Underwriter Defendants, and has enabled the Underwriter Defendants to run the defences set out above. Accordingly, the costs of proceeding against the Underwriter Defendants have been caused by the Broker Defendants' breaches of duty, and the Claimant is entitled to recover those costs from the Broker Defendants by way of damages.³
- 42.6 If the Underwriter Defendants are correct in their contention that there were misrepresentations as alleged at paragraph 2E and/or 2H of the Re-³Re-Amended Defence of the Underwriter Defendants and if as a result the Underwriter Defendants (or any of them) are found entitled to avoid the Insurance or any endorsement thereto, the Broker Defendants breaches of duty set out at paragraphs 41.1 and 41.2 above have caused the Claimant to suffer loss and damage.
- (a) if the Broker Defendants or either of them had sought the Claimant's instructions as to whether no gold was stored at customers' premises in 2006 or 2007, the Claimant would have advised the Broker Defendants that gold was stored at customers' premises and would have provided such further information in relation to that storage as was sought;
- (b) if the Broker Defendants (or either of them) had sought the Claimant's instructions as to whether it stored precious metals in LME or COMEX warehouses, the Claimant would have advised the Broker Defendants that it did not;
- (c) if the Broker Defendants had not made the representations of fact alleged at paragraphs 2E and/or 2H of the Re-³Re-Amended Defence of the Underwriter Defendants, the Underwriter Defendants:
- (i) would have agreed to accept the Insurance, alternatively other insurers would have done so on the same terms;
- (ii) would not have been able to avoid the Insurance whether as alleged or at all;
- (d) accordingly, if the Underwriter Defendants (or any of them) are found entitled to avoid the Insurance or any endorsement thereto whether as alleged at paragraph 2I and/or 2J, the Broker Defendants' breach of duty will have deprived the Claimant of the full benefit of the Insurance (or equivalent insurance) and the Claimant will be entitled to and claims to recover as damages the sums which it would otherwise have been entitled to claim under the Insurance.⁴

42.7 If the Underwriter Defendants are correct in their contention that there was material non-disclosure of the matters alleged at paragraph 2F of the Re-³Re-Amended Defence of the Underwriter Defendants and if as a result the Underwriter Defendants (or any of them) are found entitled to avoid the Insurance or any endorsement thereto, the Broker Defendants breaches of duty set out at paragraph 41.3 above have caused the Claimant to suffer loss and damage,

- (a) if the Broker Defendants had advised the Claimant of the matters set out at paragraph 41.3 above, the Claimant would (to the extent that the matters were known to the Claimant and/or true) have disclosed the matters set out at paragraph 2F of the Underwriter Defendants' Re-³Re-Amended Defence;
- (b) if there had been disclosure of those same matters, the Underwriter Defendants:
 - (i) would have agreed to accept the Insurance, alternatively other insurers would have done so on the same terms;
 - (ii) would not have been able to avoid the Insurance whether as alleged or at all;
- (c) accordingly, if the Underwriter Defendants (or any of them) are found entitled to avoid the Insurance or any endorsement thereto whether as alleged at paragraph 2I and/or 2J of the Re-³Re-Amended Defence of the Underwriter Defendants, the Broker Defendants' breach of duty will have deprived the Claimant of the full benefit of the Insurance (or equivalent insurance) and the Claimant will be entitled to and claims to recover as damages the sums which it would otherwise have been entitled to claim under the Insurance.⁴

Further Claim

43. The Broker Defendants are not entitled to rely upon the letter of 12 March 2008 as a defence to the Claimant's claim as set out in paragraphs 30 to 42.5 above and the Claimant is not acting in breach of any duty undertaken in the letter in bringing this proceeding,

AND THE CLAIMANT CLAIMS

- (1) A declaration that the Underwriter³ Defendants are in breach of contract by refusing to pay the monies owed to the Claimant for claims made under the Insurance.
- (2) US\$ 487,970,625 as the sum due under the Insurance as set out in Appendix 3 and Appendix 4.
- (3) Alternatively, damages for breach of the Insurance.
- (3A) Rectification of the Insurance by adding the words in bold below:
*Warranted all storage of non precious metals at LME and/or COMEX approved warehouses.*²

- (3B) Alternatively to (1) – (3) above damages up to US\$ 487,970,625 from Cap Marine for breach of duty.¹
- (3C) Alternatively to (1) – (3) above damages up to US\$ 487,970,625 from Cooper Gay for breach of duty.¹
- (3D) A declaration that the Broker Defendants are not entitled to rely upon the letter of 12 March 2008 as a defence to the Claimant's claim as set out in paragraphs 30 to 42.5 above and the Claimant is not acting in breach of any duty undertaken in the letter in bringing this proceeding.
- (4) Interest on all sums owed at the rate the Court sees fit pursuant to Section 35A of the Supreme Court Act 1981.
- (5) Costs.

CHRISTOPHER MOGER QC²

GUY MORPUSS QC³

DENIS BROCK

RICHARD BOYNTON

ALEXANDER GUNNING⁴

ALEXANDER GUNNING⁵

RANGAN CHATTERJEE⁶

Statement of truth

The Claimant believes that the facts stated in these Re-'Re'-Re'-Re'-Amended' particulars of claim are true.

I am duly authorised by the Claimant to sign this Re-'Re'-Re'-Re'-Amended' statement.

Full name: Dominique Gilbert



Position or office held: Directeur des Affaires Contentieuses, Société Générale

Date of Re-'Re'-Re'-Re'-Amended' Particulars of Claim: 10 February 2012

Name of the Claimant's Solicitor's Firm: Clifford Chance LLP

Served by
Clifford Chance LLP
10 Upper Bank Street
Canary Wharf
E14 5JJ

Ref: RMB/70-40353181/DGHB
Tel: 020 7006 1000
Fax: 020 7006 5555
DX: 149120 Canary Wharf 3

Solicitors for the Claimant

Appendix 1 - Underwriter Defendants' Subscription

Name of Defendant	Subscription	Date of Scratch
Württembergische Versicherung-AG	20%	22 March 2007
Royal & Sun Alliance	32%	22 March 2007
Navigators Insurance Company	20%	22 March 2007
Swiss Reinsurance Company UK LTD	18%	26 March 2007
Great Lakes Reinsurance (UK) PLC	10%	26 March 2007

Appendix 2 - Gold delivered to the Goldas Companies

Counterparty	Date of delivery	Amount of gold delivered (kg)
Kuyumculuk	10 December 2007	300
Kuyumculuk	14 December 2007	500
Kuyumculuk	7 January 2008	1000
Kuyumculuk	9 January 2008	450
Kuyumculuk	28 January 2008	500
Kuyumculuk	1 February 2008	500
Kuyumculuk	13 February 2008	300
Kuyumculuk	18 February 2008	500
Kiymetli	7 December 2007	500
Kiymetli	25 January 2008	500
Kiymetli	4 February 2008	550
Kiymetli	6 February 2008	525
Kiymetli	8 February 2008	1000
Kiymetli	11 February 2008	1550
Kiymetli	13 February 2008	700
Kiymetli	14 ³¹ February 2008	1000
Kiymetli	15 February 2008	1000
Kiymetli	18 February 2008	1500
Meydan	14 January 2008	450
Meydan	18 January 2008	500
Meydan	21 January 2008	400
Meydan	6 February 2008	500
Meydan	8 February 2008	500
Goldas LLC	19 ⁸ January 2008	500

Meydan Doviz ve Kıymetli Mad. Tic AS

Loss N°	Bank Ref N°	Shipment Date	Gold Exchange Ref N°	Date transferred into Gold Exchange	Date transferred to Counterparty	Bar Ser N° From	Bar Ser N° To	Quantity (kg)	Value of Loss (USD \$78.00/oz)	Impact on Golds quantity (kg)	Counterparty transferred to	
1	1935	11/01/2008	210870	14/01/2008		16436	16387	450		450	-	
2			211253		14/01/2008	16436	16486	29	899,878.70	-29	HSBC	
3			214734		17/01/2008	16467	16489	3	93,060.90	-3	Baymonte Kıymetli Madenler AS	
4			214736		17/01/2008	16470	16491	22	882,666.60	-22	HSBC	
5			212323		15/01/2008	16492	16503	12	372,363.60	-12	T Garanti Bankası	
6			212324		15/01/2008	16504	16528	25	773,757.50	-25	Aycaz Doviz	
7			213067		16/01/2008	16742	16816	75	2,327,272.50	-75	Leo Kıymetli Madenler Tic AS	
8			214733		17/01/2008	16817	16837	21	651,636.30	-21	Baymonte Kıymetli Madenler AS	
9			212501		16/01/2008	16838	16857	50	1,551,515.00	-50	Troy Kıymetli Maden Ticareti AS serial number 16528-16741	
				No information provided by the Gold Exchange as to transfers in respect of these serial numbers by Meydan								
						16529	16741	213	6,508,453.90	-213		
10	1938	16/01/2008	215784	18/01/2008		17368	17867	800		500	-	
11			215787		18/01/2008	17388	17437	50	1,551,515.00	-50	Goldak Kıymetli	
12			?		?	17438	17787	350	10,860,603.00	-350	HSBC - see note 1	
			218051		18/01/2008	17768	17987	100	3,103,030.00	-100	Atalay Kıymetli Madenler AS	
13	1942	18/01/2008	216333	21/01/2008		24251	24650	400		400	-	
14			217517		22/01/2008	24251	24300	50	1,551,515.00	-50	Atalay Kıymetli Madenler AS	
15			217928		22/01/2008	24326	24403	78	2,420,363.40	-78	Baymonte Kıymetli Madenler AS	
16			218665		22/01/2008	24404	24425	22	682,566.60	-22	Tis Bankası	
17			218965		23/01/2008	24426	24545	120	3,723,636.00	-120	Leo Kıymetli Madenler Tic AS	
18			218969		23/01/2008	24548	24550	5	155,151.50	-5	HSBC	
19			218508		22/01/2008	24551	24800	50	1,551,515.00	-50	Tis Bankası	
20			218324		22/01/2008	24801	24650	80	1,551,515.00	-80	Atalay Kıymetli Madenler AS serial no 24301-24325	
				No information provided by the Gold Exchange as to transfers in respect of these serial numbers by Meydan								
						24301	24325	25	776,757.50	-25		
21	1954	04/02/2008	242937	06/02/2008		22368	22887	500		500	-	
22			244749		07/02/2008	22368	22437	50	1,551,515.00	-50	Atalay Kıymetli Madenler AS	
23			245452		07/02/2008	22438	22537	100	3,103,030.00	-100	Tis Bankası	
			245454		07/22/2008	22538	22887	350	10,960,603.00	-350	HSBC	
24	1967	08/02/2008	246655	08/02/2008		35751	36250	500		500	-	
25			246754		08/02/2008	35751	36150	400	12,412,120.00	-400	HSBC	
26			246756		08/02/2008	36151	36200	50	1,551,515.00	-50	HSBC	
			246778		08/02/2008	36201	36250	50	1,551,515.00	-50	Aycaz Doviz	
Total Meydan									72,921,205.00			

NOTE 1 This transaction was not included in the information provided by the Gold Exchange but certainly occurred given the subsequent transaction on 22 January 2008 under which HSBC transferred 400 bars including sn 17438 to 17787 out of the Exchange

Amended Appendix 4

Loss N°		Bank Ref N°	Shipment Date	Bar Ser N° From	Bar Ser N° To	Quantity (kg)	Value of Loss (USD 970.00/oz)
127	<i>Goldas LLC</i>	1944	21.01.2008	SK 17888	SK 18387	500	
					Total	500	15,515,150.00
128	<i>Goldas Kuyumculuk</i>	1916	10.12.2007	SK 07688	SK 08187	300 (Note 1)	9,309,090.00
		1919	14.12.2007	SK 09488	SK 09987	500	15,515,150.00
				Total	800	24,824,240.00	
				Total	300	9,309,090.00	
129	<i>Goldas Kiymetli</i>	1962	04.02.2008	AJ 32754	AJ 34250	600 (Note 2)	15,515,150.00
		1963	04.02.2008	AB 69401	AB 69450	50	1,559,178.00
		1965	06.02.2008	SK 22888	SK 23387	500	15,515,150.00
		1966	06.02.2008	OTM 048629	OTM 048653	25	779,589.00
		1913	07.12.2007	SK 06488	SK 07487	500 (Note 3)	15,515,150.00
		1968	08.02.2008	AJ 34251	AJ 35250	1000	31,030,300.00
					Total	2675	78,814,617.00
			Total	2075	64,399,367.00		
			Total Quantity		3875		
			Total USD			120,253,907.00	
			Total Quantity		2875		
			Total USD			89,223,607.00	

Note 1: Although 500 bars were delivered to Goldas Companies under this shipment, SG's claim only relates to 300 of these bars. 200 were paid for.

Note 2: Although 1500 bars were delivered to Goldas Companies under this shipment, SG's claim only relates to 500 of these bars. 1000 were paid for.

Note 3: Although 1000 bars were delivered to Goldas Companies under this shipment, SG's claim only relates to 500 of these bars. 500 were paid for.

THE HIGH COURT OF JUSTICE
COMMERCIAL COURT
ROYAL COURTS OF JUSTICE

Claim No 2009 Folio 307

B E T W E E N

SOCIÉTÉ GÉNÉRALE

Claimant

- and -

- (1) WÜRTTEMBERGISCHE
VERSICHERUNG-AG
- (2) ROYAL & SUN ALLIANCE
INSURANCE PLC¹
- (3) NAVIGATORS INSURANCE
COMPANY
- (4) SWISS REINSURANCE
COMPANYRE EUROPE SA, UK
LTD BRANCH¹
- (5) GREAT LAKES REINSURANCE
(UK) PLC
- (6) CAP MARINE ASSURANCE ET
REASSURANCES SAS¹
- (7) COOPER GAY & CO LIMITED¹

Defendants

RE-¹RE¹-RE¹-RE²-AMENDED¹
PARTICULARS OF CLAIM

Clifford Chance LLP
10 Upper Bank Street
Canary Wharf
E14 5JJ
70-0353181

Ref: RMB/70-40353181/DGHB

Tel: 020 7006 1000

Fax: 020 7006 5555

DX: 149120 Canary Wharf 3

Solicitors for the Claimant

From: sandrine.rignault@sgcib.com on behalf of par-cty-bo-shipment@sgcib.com
To: [Cetin Binatli](mailto:Cetin.Binatli)
Subject: Re:Documentation- 500 Kgs - Goldas Kuyumculuk - Lot °241 - 3 month consignment [C1]
Date: 12 December 2007 11:01:56
Attachments: [3843_001.tif](#)

Hello,

please find attached the documentation for the shipment ref 1919 :

(See attached file: 3843_001.tif)

Kind regards
Sandrine Rignault

cbinatli@GOLDAS.c
om
10/12/07 01:39 PM

To
Aneesh
DESHPANDE/fr/socgen@socgen
cc
PAR-CTY-BO-shipment@socgen,
Sarah
FISCHER/fr/socgen@socgen
Subject
Re: New Shipment - 500 Kgs
- Goldas Kuyumculuk - Lot °
241 - 3 month consignment
[C1]

Confirmed

Thank you

----- Original Message -----

From: aneesh.deshpande@sgcib.com <aneesh.deshpande@sgcib.com>
To: Cetin Binatli
Cc: par-cty-bo-shipment@sgcib.com <par-cty-bo-shipment@sgcib.com>;
sarah.fischer@sgcib.com <sarah.fischer@sgcib.com>
Sent: Mon Dec 10 14:30:11 2007

Subject: New Shipment - 500 Kgs - Goldas Kuyumculuk - Lot °241 - 3 month consignment [C1]

Hi Cetin,

We confirm shipment on - 12/12/07 (Wednesday) - 500 Kgs of Gold Kilo bars min 995 purity on a 3 months consignment basis to GOLDAS KUYUMCULUK, Istanbul

The metal will arrive at ISTANBUL latest by 13/12/07 (Thursday) and delivery will be made on 14/12/2007 - FRIDAY.

The terms are as follows:

Quantity: 500 Kgs (or 15 995.00 ozs) Gold Kilo bars min 995 purity
Date of shipment: 12/12/07 - WEDNESDAY
Premium: US\$ 0.75 per Tr. Oz.
Terms: Interest of 0.50% per annum for 3 months payable to SG
Delivery date: 14/12/07 - FRIDAY

PS NOTE: LAST DATE OF PRICING of Balance 500 Kgs remaining under Ref° 1860 (against which the above shipment is provided) is: 14/12/2007
LAST DATE OF PAYMENT: 18/12/2007

Please note: We will be shipping this metal out of South Africa
Please note the Reference no° for this shipment is 1919.

Appreciate your confirmation of the above terms at your earliest.

Thanks and best wishes

Aneesh

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Gizlilik Uyarisi: Bu mesajdaki bilgi sadece yukarida ismi belirtilen sahis(lar) ve/veya kurulus(lar) için ismi yazili alicinin dikkatine gönderilmiştir. Haberlesmenin/mesajın içeriğindeki bilgiler kontrol edilmemis olabilir. Alıcı sahis(lar), kurulus (lar) ve/veya üçüncü sahislar bu metinde bahsedilen bilgilerin tamamen dogru oldugu kanaatine varmamalıdır. Bu elektronik haberlesmenin içerdigi bilgilerden

**SCHEDULE 1 -
SHIPMENT CONFIRMATION NOTICE REF1919**

To: GOLDAS KUYUMCULUK SAN ITH IHR, ISTANBUL, TURKEY

Copy : CETIN BINATLI

Date: 12/12/2007

Dear Sirs,

Re: our delivery and sale agreement (the Agreement)

1. We refer to Clause 4 of the Agreement. Terms defined in the Agreement have the same meanings in this Notice.

2. We hereby confirm your request by Reuter's Dealing service and telephone for a Shipment to be made according to the following specifications:

- (a) Form: Kg (G)
- (b) Assayed Fineness: 0.9950
- (c) Quantity: 500.000 (15 995.000 troy ounces)
- (d) Location: GOLDAS KUYUMCULUK SAN ITH IHR, ISTANBUL, TURKEY
24 KAYALAR SOKAK 34010 MERTER ISTANBUL
- (e) Proposed Delivery Date: 14/12/2007
- (f) Premium :US\$ 0.750
- (g) Fee (for non-purchase , should this be the case - See Clause 7.3) : 2.00 %
- (h) Shipment Value : US\$ 12 843 985.00

3. We confirm that the matters represented and warranted in Clause 10 of the Agreement are true and accurate on the date of this Notice as if made with reference to the facts and circumstances now prevailing.

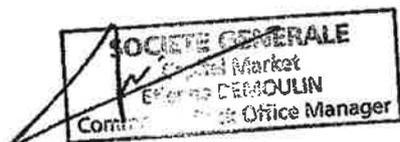
4. We declare that no Event of Default has occurred and is continuing or would result from the Shipment referred to in this Notice.

Yours faithfully,

For and on behalf of **SOCIETE GENERALE**

Name : Etienne DEMOULIN

Title : Commodities Back-Office Manager



SOCIETE GENERALE
Corporate & Investment Banking

Date : 12/12/2007
To : GOLDAS KUYUMCULUK SAN ITH IHR, ISTANBUL, TURKEY
Attention : CETIN BINATLI
Re. : Physical Bullion Transaction - Consignment
Our-Contract-Nbr. : 1919
Your_Ref. : Email dated 10/12/2007

INVOICE

We hereby confirm the following terms :

Shipment_Date 12/12/2007
Seller SOCIETE GENERALE PARIS
Buyer GOLDAS KUYUMCULUK SAN ITH IHR, ISTANBUL,
TURKEY
Commodity_Type Kg (G) GOLD ONE KILO BARS 995
Quantity 15 995. Fine troy ounces
500. KGS NETT WEIGHT
Fineness 0.9950
Form One kilo gold bars 995 PURITY (500. pcs),
Ex RAND REFINERY
Delivery_date 14/12/2007
Place_of_delivery Vault to Vault, ISTANBUL, TURKEY using BRAMBLES
SECURITIES SERV
Flight_details KL 592 on 12/12/2007 connecting
KL 1617 on 13/12/2007 connecting
AWB 074 2321 9615
Bar Numbers SK09488 TO SK09987
Box Numbers CB045413 TO CB045432
Price USD 803.00 per TR OZ
Total_amount_due CIF USD 12 843 985.00
Settlement_date 20/12/2007

Payment Details : SOCIETE GENERALE NEW YORK
FAV SOCIETE GENERALE PARIS
A/C 00187011
Ref OPER/FIC/CTY – Delphine METIER

SOCIETE_GENERALE_ADDRESS : SOCIETE GENERALE
17 COURS VALMY
92987 PARIS LA DEFENSE CEDEX -

Sincerely yours.

E DEMOLLIN



PLEASE CONFIRM BY RETURN FAX-(+33 1 46 92 46 57)

074 JNB 2321-9615

074 2321-9615

Shipper's Name and Address EUJ51899X 64S INTERNATIONAL LTD A/C SOCIETE GENERALE, TOUR SOCIETE GENERALE, 17 COURS VALMY, 92987 PARIS, LA DEFENSE CEDEX, FRANCE.		Shipper's Account Number		Not negotiable Air Waybill K L M CARGO Issued by 1117 XL SCHIPHOL AIRPORT THE NETHERLANDS created with COMPU-CLEARING	
Consignee's Name and Address GOLDAS KUYUMCULUK SANAYI (TIRAKAT) IHRACAT AS 24 KAYALIK SOKAK, 34010 MERTER, ISTANBUL, TURKEY CTC MR CETIN BINALTI PHONE 90 212 637 4000		Consignee's Account Number		Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity. It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.	
Issuing Carrier's Agent Name and City ROHLIG GRINDROD (PTY) LTD NGUNI DRIVE LONGMEADOW BUSINESS PARK WEST		Account Number 40250778		Reference Number UNKNOWN SHIPPER NOO	
Agent's IATA Code 77-4 7751 2000		Account Number		CTC: MR CETIN BINALTI TEL: 90 212 637 4000 FAX: 90 212 637 4007 KLM REF: 40099381	
Airport of Departure (Addr. of First Carrier) and Requested Routing JOHANNESBURG JNB		Reference Number JAMBX0014573		Optional Shipping Information	
to By First Carrier Routing and Destination AMS KI		Requested Flight / Date IST KL		Declared Value for Carriage NVD	
Airport of Destination ISTANBUL		Requested Flight / Date KI 592 / 12KL1617/13		Declared Value for Customs NCV	
Handling Information AS ADDR 20 BOXES LABELLED AND MARKED ***** PLEASE NOTIFY CONSIGNEE IMM ON ARRIVAL. ***** HIGH VALUE CARGO MUST FLY AS BOOKED *****		Amount of Insurance N I L		INSURANCE - If Carrier offers insurance, and such insurance is requested in accordance with the conditions thereof, indicate amount to be insured in figures in box marked "Amount of Insurance".	
No of Pieces RCP 20		Gross Weight 510.0		Rate Class 200%	
Chargesible Weight 510.0		Rate 104.00		Total 53040.00	
Nature and Quantity of Goods (incl. Dimensions or Volume) 500 GOLD KILO BARS CB45413 - CB45432 20p 15x12x7 Volume Wt. 4.2		Prepaid 53040.00		Other Charges MSC 2759.10 MUC 489.60 VCC 74.62	
Total Other Charges Due Agent 3323.32		Total Other Charges Due Carrier		Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations. DANIRI LEKWANE ROHLIG GRINDROD (PTY) LTD	
Total Prepaid 56363.32		Total Collect		Signature of Shipper or his Agent	
Currency Conversion Rates		Charges in Best Currency		Executed on (Date) at (Place) 12/12/07 JOHANNESBURG	
For Carrier's Use only at Destination		Charges at Destination		Signature of Issuing Carrier or its Agent 074 2321-9615	



rand refinery limited

Reg. No. 1920/006598/06

P.O. Box 565, Germiston, 1400
Refinery Rd, Industries West
Germiston, 1401
Telephone: (+27) (11) 418-9000
Telefax: (+27) (11) 418-9248
E-mail: gold@gold.co.za
www.randrefinery.com

Small Bar Schedule

Product: 9950 KILOBAR

Box Number	From Bar Number	To Bar Number
CB045413	SK09488	SK09512
CB045414	SK09513	SK09537
CB045415	SK09538	SK09562
CB045416	SK09563	SK09587
CB045417	SK09588	SK09612
CB045418	SK09613	SK09637
CB045419	SK09638	SK09662
CB045420	SK09663	SK09687
CB045421	SK09688	SK09712
CB045422	SK09713	SK09737
CB045423	SK09738	SK09762
CB045424	SK09763	SK09787
CB045425	SK09788	SK09812
CB045426	SK09813	SK09837
CB045427	SK09838	SK09862
CB045428	SK09863	SK09887
CB045429	SK09888	SK09912
CB045430	SK09913	SK09937
CB045431	SK09938	SK09962
CB045432	SK09963	SK09987

500 Bars packed into 20 boxes.

From: jacob.jesudasan@sgcib.com
To: Cetin Binatli
Subject: RE: Invoices (Urgent)
Date: 27 October 2003 12:06:14

Fine then the invoices would be sent out today.

Regards

Jacob

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Hi Jacob ,

Yes its fine , the other docs are o.k.

Thanks ...

Cetin

-----Original Message-----

From: jacob.jesudasan@sgcib.com [<mailto:jacob.jesudasan@sgcib.com>]
Sent: Monday, October 27, 2003 2:05 PM
To: cbinatli@goldas.com
Subject: RE: Invoices (Urgent)

HI Cetin,

Is it fine enough if I send you the just the original of invoices.
Hope other docs are fine in it. Kindly confirm

Regards

Jacob

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| cbinatli@GOLDAS.c|
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| 24/10/03 05:05 PM|
| Please respond to|
| cbinatli |
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| |
| To: Jacob JESUDASAN/fr/socgen@socgen
| |
| cc: Aneesh DESHPANDE/fr/socgen@socgen
| |
| Subject: RE: Invoices
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Hi Jacob,

Just would like to remind you that we are also in need of the original invoice for invoice no.792 for \$1.499.531,25 (attached copy) .

Could you please kindly arrange to send it to my attention via courier .

Thank you.

Cetin Binatli

-----Original Message-----

From: jacob.jesudasan@sgcib.com [mailto:jacob.jesudasan@sgcib.com]
Sent: Friday, October 24, 2003 11:16 AM
To: cbinatli@goldas.com
Subject: RE: Invoices

Thanks for the confirmation.

Have a nice weekend .

Regards

Jacob

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cbinatli@GOLDAS.c|
om |
|
24/10/03 09:12 AM|
Please respond to|
cbinatli |
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>

|
| To: Aneesh DESHPANDE/fr/socgen@socgen
| cc: Jacob JESUDASAN/fr/socgen@socgen
| Subject: RE: Invoices
|

>

Hi Aneesh ,

Just received them now . Thanks .

Have a nice weekend .

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [mailto:aneesh.deshpande@sgcib.com]
Sent: Friday, October 24, 2003 9:55 AM
To: cbinatli@goldas.com
Cc: jacob.jesudasan@sgcib.com
Subject: Re: Invoices

Hi Cetin,

Regret not reverting to you earlier.

The Original Invoices were sent to you by DHL on 24/10/03.

Could you please advise me, if by the end of you day if you receive the Invoices or not. If not then we will send them again.

Thanks and regards

Aneesh

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cbinatli@GOLDAS.c|
om |

24/10/03 08:29 |
Please respond to|
cbinatli |

>

To: Aneesh DESHPANDE/fr/socgen@socgen

cc: Jacob JESUDASAN/fr/socgen@socgen

Subject: Invoices

>

Hi Aneesh ,

Have you any news regarding the invoices I requested ? If they have been sent can you pls check with which courier service , AWB no. , and the name of the person from Goldas that has collected it ? Because it seems we have not received it , well at least I have not received them .

Thanks

Cetin Binatli

GOLDAS A.S.

From: Cetin Binatli
To: "jacob.jesudasan@sgcib.com"
Subject: RE: Invoices (Urgent)
Date: 27 October 2003 12:03:00

Hi Jacob ,

Yes its fine , the other docs are o.k.

Thanks ...

Cetin

-----Original Message-----

From: jacob.jesudasan@sgcib.com [<mailto:jacob.jesudasan@sgcib.com>]
Sent: Monday, October 27, 2003 2:05 PM
To: cbinatli@goldas.com
Subject: RE: Invoices (Urgent)

HI Cetin,

Is it fine enough if I send you the just the original of invoices.
Hope other docs are fine in it. Kindly confirm

Regards

Jacob

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cbinatli@GOLDAS.c
om |
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27/10/03 12:55 PM|
Please respond to|
cbinatli |
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>----->
To: Jacob JESUDASAN/fr/socgen@socgen | | |
cc: | | |
Subject: RE: Invoices (Urgent) | | |
>----->

Hi Jacob,

Please make sure that they are stated as "invoice" and not "proforma invoice" . The invoices you sent me earlier unfortunately is not acceptable to the customs because they are stated as "proforma invoices" and not as "invoice". Could you also re-send the invoices 125kg Invoice No.778 dated 09.10.03 \$1.487.535.- & 100kg Invoice No.789 dated 15.10.03 \$1.199.625.- again as stating "invoice" alongwith invoice no.792 for \$1.499.531,25 .

Sorry for the inconvenience caused .

Kind regards,

Cetin Binatli

-----Original Message-----

From: jacob.jesudasan@sgcib.com [<mailto:jacob.jesudasan@sgcib.com>]
Sent: Friday, October 24, 2003 6:29 PM
To: cbinatli@goldas.com
Subject: RE: Invoices

Hi Cetin,
I received your mail just 10 minutes too late for the courier person has already left.
But it would leave from our office surely Monday morning.

Have a nice weekend.

Regards

Jacob

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|      |      | cbinatli@GOLDAS.c
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|      |
|      | To:   Jacob JESUDASAN/fr/socgen@socgen
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|      | cc:   Aneesh DESHPANDE/fr/socgen@socgen
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|      | Subject: RE: Invoices
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Hi Jacob,

Just would like to remind you that we are also in need of the original invoice for invoice no.792 for \$1.499.531,25 (attached copy) .

Could you please kindly arrange to send it to my attention via courier .

Thank you.

Cetin Binatli

-----Original Message-----

From: jacob.jesudasan@sgcib.com [mailto:jacob.jesudasan@sgcib.com]

Sent: Friday, October 24, 2003 11:16 AM

To: cbinatli@goldas.com

Subject: RE: Invoices

Thanks for the confirmation.

Have a nice weekend .

Regards

Jacob

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|      |      | cbinatli@GOLDAS.c|
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|      | To:   Aneesh DESHPANDE/fr/socgen@socgen
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|      | cc:   Jacob JESUDASAN/fr/socgen@socgen
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|      | Subject: RE: Invoices
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Hi Aneesh ,

Just received them now . Thanks .

Have a nice weekend .

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [mailto:aneesh.deshpande@sgcib.com]
Sent: Friday, October 24, 2003 9:55 AM
To: cbinatli@goldas.com
Cc: jacob.jesudasan@sgcib.com
Subject: Re: Invoices

Hi Cetin,

Regret not reverting to you earlier.

The Original Invoices were sent to you by DHL on 24/10/03.

Could you please advise me, if by the end of you day if you receive the Invoices or not. If not then we will send them again.

Thanks and regards

Aneesh

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| To: Aneesh DESHPANDE/fr/socgen@socgen
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| cc: Jacob JESUDASAN/fr/socgen@socgen
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| Subject: Invoices
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Hi Aneesh ,

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Thanks

Cetin Binatli

GOLDAS A.S.

The sender's email address has changed to
firstname.lastname@ sgcib.com. You may want to update your
personal address book. Please see <http://www.sgcib.com> for more
information.

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L'adresse mail de votre correspondant a change en prenom.nom@ sgcib.com.
Il est recommande de mettre a jour votre carnet d'adresse
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But it would leave from our office surely Monday morning.

Have a nice weekend.

Regards

Jacob

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|      To:   Jacob JESUDASAN/fr/socgen@socgen
|
|      cc:   Aneesh DESHPANDE/fr/socgen@socgen
|
|      Subject: RE: Invoices
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Hi Jacob,

Just would like to remind you that we are also in need of the original invoice for invoice no.792 for \$1.499.531,25 (attached copy) .

Could you please kindly arrange to send it to my attention via courier .

Thank you.

Cetin Binatli

-----Original Message-----

From: jacob.jesudasan@sgcib.com [mailto:jacob.jesudasan@sgcib.com]
Sent: Friday, October 24, 2003 11:16 AM
To: cbinatli@goldas.com
Subject: RE: Invoices

Thanks for the confirmation.

Cetin Binatli

GOLDAS A.S.

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From: Cetin Binatli
To: "jacob.jesudasan@sgcib.com"
Bcc: "aneesh.deshpande@sgcib.com"
Subject: RE: Invoices (Urgent)
Date: 27 October 2003 11:54:00

Hi Jacob,

Please make sure that they are stated as "invoice" and not "proforma invoice" . The invoices you sent me earlier unfortunately is not acceptable to the customs because they are stated as "proforma invoices" and not as "invoice". Could you also re-send the invoices 125kg Invoice No.778 dated 09.10.03 \$1.487.535.- & 100kg Invoice No.789 dated 15.10.03 \$1.199.625.- again as stating "invoice" alongwith invoice no.792 for \$1.499.531,25 .

Sorry for the inconvenience caused .

Kind regards,

Cetin Binatli

-----Original Message-----

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Sent: Friday, October 24, 2003 6:29 PM
To: cbinatli@goldas.com
Subject: RE: Invoices

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Jacob

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| 24/10/03 05:05 PM|
| Please respond to|
| cbinatli |
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|>
| To: Jacob JESUDASAN/fr/socgen@socgen |
| cc: Aneesh DESHPANDE/fr/socgen@socgen |
| Subject: RE: Invoices |
|>

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To: cbinatli@goldas.com

Subject: RE: Invoices

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| To: Aneesh DESHPANDE/fr/socgen@socgen

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| cc: Jacob JESUDASAN/fr/socgen@socgen

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| Subject: RE: Invoices

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Hi Aneesh ,

Just received them now . Thanks .

Have a nice weekend .

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [<mailto:aneesh.deshpande@sgcib.com>]

Sent: Friday, October 24, 2003 9:55 AM

To: cbinatli@goldas.com

Cc: jacob.jesudasan@sgcib.com

Subject: Re: Invoices

Hi Cetin,

Regret not reverting to you earlier.

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Thanks and regards

Aneesh

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Cetin Binatli

GOLDAS A.S.

The sender's email address has changed to
firstname.lastname@ sgcib.com. You may want to update your
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responsabilite au titre de ce message s'il a ete altere, modifie

Regards

Jacob

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| 24/10/03 09:12 AM|
| Please respond to|
| cbinatli |
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| To: Aneesh DESHPANDE/fr/socgen@socgen
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| cc: Jacob JESUDASAN/fr/socgen@socgen
| |
| Subject: RE: Invoices
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----->

Hi Aneesh ,

Just received them now . Thanks .

Have a nice weekend .

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [<mailto:aneesh.deshpande@sgcib.com>]
Sent: Friday, October 24, 2003 9:55 AM
To: cbinatli@goldas.com
Cc: jacob.jesudasan@sgcib.com
Subject: Re: Invoices

Hi Cetin,

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From: Cetin Binatli
To: "jacob.jesudasan@sgcib.com"
Cc: "aneesh.deshpande@sgcib.com"
Subject: RE: Invoices
Date: 24 October 2003 16:05:00
Attachments: C:\Program Files\RightFax\RFaxGate\INAee746716-f772-4a93-b48b-195bc33e3fba.tif

Hi Jacob,

Just would like to remind you that we are also in need of the original invoice for invoice no.792 for \$1.499.531,25 (attached copy) .

Could you please kindly arrange to send it to my attention via courier .

Thank you.

Cetin Binatli

-----Original Message-----

From: jacob.jesudasan@sgcib.com [mailto:jacob.jesudasan@sgcib.com]
Sent: Friday, October 24, 2003 11:16 AM
To: cbinatli@goldas.com
Subject: RE: Invoices

Thanks for the confirmation.

Have a nice weekend .

Regards

Jacob

>----->
| cbinatli@GOLDAS.c|
| om |
| |
| 24/10/03 09:12 AM|
| Please respond to|
| cbinatli |
| |
>----->

>----->
| To: Aneesh DESHPANDE/fr/socgen@socgen |
| cc: Jacob JESUDASAN/fr/socgen@socgen |
| Subject: RE: Invoices |
>----->

Hi Aneesh ,

Just received them now . Thanks .

Have a nice weekend .

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [mailto:aneesh.deshpande@sgcib.com]

Sent: Friday, October 24, 2003 9:55 AM

To: cbinatli@goldas.com

Cc: jacob.jesudasan@sgcib.com

Subject: Re: Invoices

Hi Cetin,

Regret not reverting to you earlier.

The Original Invoices were sent to you by DHL on 24/10/03.

Could you please advise me, if by the end of you day if you receive the Invoices or not. If not then we will send them again.

Thanks and regards

Aneesh

```
|----->
|      |
|      | cbinatli@GOLDAS.c
|      | om
|      | |
|      | 24/10/03 08:29 |
|      | Please respond to|
|      | cbinatli      |
|----->
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>

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|-----|
|
| To:   Aneesh DESHPANDE/fr/socgen@socgen
|
| cc:   Jacob JESUDASAN/fr/socgen@socgen
|
| Subject: Invoices
|
|-----
|-----|
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>

Hi Aneesh ,

Have you any news regarding the invoices I requested ? If they have been sent can you pls check with which courier service , AWB no. , and the name of the person from Goldas that has collected it ? Because it seems we have not received it , well at least I have not received them .

Thanks

Cetin Binatli

GOLDAS A.S.

The sender's email address has changed to
firstname.lastname@sgcib.com. You may want to update your
personal address book. Please see <http://www.sgcib.com> for more
information.

**

This message and any attachments (the "message") are confidential
and intended solely for the addressee(s). Any unauthorised use or
dissemination is prohibited. E-mails are susceptible to alteration.
Neither SOCIETE GENERALE nor any of its subsidiaries or affiliates
shall be liable for the message if altered, changed or falsified.

L'adresse mail de votre correspondant a change en prenom.nom@sgcib.com.
Il est recommande de mettre a jour votre carnet d'adresse
personnel.Pour plus d'informations, aller sur <http://www.sgcib.com>

**

Ce message et toutes les pieces jointes (ci-apres le "message")
sont confidentiels et etablis a l'intention exclusive de ses
destinataires. Toute utilisation ou diffusion non autorisee est
interdite. Tout message electronique est susceptible d'alteration.
La SOCIETE GENERALE et ses filiales declinent toute
responsabilite au titre de ce message s'il a ete altere, modifie
ou falsifie.

Invoices or not. If not then we will send them again.

Thanks and regards

Aneesh

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|----->
|      |
|      | cbinatli@GOLDAS.c
|      | om      |
|      |      |
|      | 24/10/03 08:29 |
|      | Please respond to|
|      | cbinatli      |
|      |      |
|----->
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|
|
| { To: Aneesh DESHPANDE/fr/socgen@socgen
|
| cc: Jacob JESUDASAN/fr/socgen@socgen
|
| Subject: Invoices
|
|
|
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|-----
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```

Hi Aneesh ,

Have you any news regarding the invoices I requested ? If they have been sent can you pls check with which courier service , AWB no. , and the name of the person from Goldas that has collected it ? Because it seems we have not received it , well at least I have not received them .

Thanks

Cetin Binatli

GOLDAS A.S.

The sender's email address has changed to
firstname.lastname@ sgcib.com. You may want to update your
personal address book. Please see <http://www.sgcib.com> for more
information.

**

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Neither SOCIETE GENERALE nor any of its subsidiaries or affiliates
shall be liable for the message if altered, changed or falsified.

L'adresse mail de votre correspondant a change en prenom.nom@ sgcib.com.
Il est recommande de mettre a jour votre carnet d'adresse
personnel.Pour plus d'informations, aller sur <http://www.sgcib.com>

**

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ou falsifie.

The sender's email address has changed to
firstname.lastname@ sgcib.com. You may want to update your
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Cetin Binatli

GOLDAS A.S.

The sender's email address has changed to
firstname.lastname@sgcib.com. You may want to update your
personal address book. Please see <http://www.sgcib.com> for more
information.

**

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L'adresse mail de votre correspondant a change en prenom.nom@sgcib.com.
Il est recommande de mettre a jour votre carnet d'adresse
personnel. Pour plus d'informations, aller sur <http://www.sgcib.com>

**

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interdite. Tout message electronique est susceptible d'alteration.
La SOCIETE GENERALE et ses filiales declinent toute
responsabilite au titre de ce message s'il a ete altere, modifie
ou falsifie.

**SCHEDULE 1 -
SHIPMENT CONFIRMATION NOTICE**

To: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY

Copy : CETIN BINATLI

Date: 20/10/2003

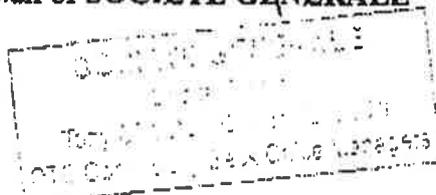
Dear Sirs,

Re: our delivery and sale agreement (the Agreement)

1. We refer to Clause 4 of the Agreement. Terms defined in the Agreement have the same meanings in this Notice.
2. We hereby confirm your request by Reuter's Dealing service and telephone for a Shipment to be made according to the following specifications:
 - (a) Form: Kg (G)
 - (b) Assayed Fineness: 0.995
 - (c) Quantity: 125 (3 998.750 troy ounces)
 - (d) Location: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 - (e) Proposed Delivery Date: 21/10/2003
 - (f) Premium :US\$ 0.9
 - (g) Fee (for non-purchase , should this be the case - See Clause 7.3) : 2.00 %
 - (h) Shipment Value : US\$ 1 499 531.25
3. We confirm that the matters represented and warranted in Clause 10 of the Agreement are true and accurate on the date of this Notice as if made with reference to the facts and circumstances now prevailing.
4. We declare that no Event of Default has occurred and is continuing or would result from the Shipment referred to in this Notice.

Yours faithfully,

For and on behalf of SOCIETE GENERALE





Date : 20/10/2003
 To : GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 Attention : --
 Copy : CETIN BINATLI
 Re. : Physical Bullion Transaction - Consignment
 Our-Contract-Nbr. : 792
 Your_Ref. : TELECON 17/10/03

PROFORMA_INVOICE

We hereby confirm the following terms :

Trade_Date : 20/10/2003
 Seller : SOCIETE GENERALE PARIS
 Buyer : GOLDAS AS, ISTANBUL , ISTANBUL, TURKEY
 Commodity_Type : Kg (G) GOLD CIF
 Quantity : 3 998.750 Fine_troy_ounces(NETT WEIGHT 125 KGS)
 Fineness : 0.995
 Form : KILO BARS(125), Ex RAND REFINERY
 Delivery_date : 21/10/2003
 Place_of_delivery : Vault to Vault, ISTANBUL, TURKEY using BRAMBLES
 SECURITIES SERV
 Flight_details : LX 289 on 20/10/03 connecting
 LX 1804 on 21/10/03
 AWB 724 3982 8924

BAR NUMBERS : 15470 - 15494
 TBB Numbers : 17581 - 175585
 Price : USD 375.00 PER TR. OZ
 Total_amount_due : CIF USD 1 499 531.25
 Settlement_date : 27/10/2003

Payment Details : SOCIETE GENERALE NEW YORK
 FAV SOCIETE GENERALE PARIS
 A/C 00187011 ref OPER/CTY/COT/BAC

SOCIETE_GENERALE_ADDRESS : SOCIETE GENERALE
 OPER/CTY/COT/BAC
 17 COURS VALMY
 92987 PARIS LA DEFENSE CEDEX -

Sincerely yours.

O. LE-RHUN

PACKING LISTS FOR KILOBARS (9950)

RD 4822 REF - 910 - A



Date : 20 OCTOBER 2003
 To : SOCIETE GENERALE
 Attention : JACOB JESUDASAN / ANEESH DESHPANDE
 Fax : 0933 142 13 4697

PACKING DETAILS FOR YOUR SHIPMENT OF:

125 KILOBARS (9950)

Box No	From Bar Number		To Bar Number
--------	-----------------	--	---------------

CB	17581	SK	15470	15494
CB	17582	SK	15486	15519
CB	17583	SK	15520	15544
CB	17584	SK	15545	15589
CB	17585	SK	15570	15594

PACKING LIST CREATED BY:

CONFIRMED BY:

BOET JACOBS

CRAIG M. KING

BOET JACOBS

EXPORT CO-ORDINATOR

DESPATCH SUPERVISOR

724 JNB 39828924 724 39828924

Shipper's Name and Address SECURICOR INTL VALS TRANSPORT UNIT 8, BLACKBURN TRADINS ESTATE NORTHUMBERLAND CLOSE STANWELL, MIDDX TW18 7LN	Shipper's Account Number Not negotiable 56494	Air Waybill Issued by SWISS INTERNATIONAL AIR LINES LTD POSTFACH BASEL 4002, SWITZERLAND
--	--	---

Consignee's Name and Address SANTARANS BEYNEMLI E NAKLIVET VE TURIZM A.S. ALATURK HAVALIM ANI C TERMINALI 4 A, 34800 YESI KOY-ISTANBUL, TURKIYE	It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.
--	---

Issuing Carrier's Agent Name and City ROHLIG-GRINDROD (PTY) LTD. 21 POMONA ROAD, POMONA EXT. KEMPTON PARK, R.S.A. Agents IATA Code: 77-4-7751 2000	Accounting Information NOTIFY: GOLDAS KUYUNCULUK SANAYI ITHALAT IHRACAT A.S. 24 KAYALOAR SOKAK, 34010 NERTER, ISTANBUL TEL: +90 212 637 4000
--	--

Airport of Departure (Addr. of First Carrier) and Requested Routing JOHANNESBURG JNB/ZRH/IST/	Reference Number KNOWN SHIPPER - LRO073	Optional Shipping Information Declared Value for Carriage: NVD Declared Value for Customs: NCV	Currency: ZAR
Airport of Destination ISTANBUL	Requested Flight/Date X289 / 20 X1804 / 21	Amount of Insurance NTI	Insurance - If Carrier offers insurance, and such insurance is requested in accordance with the conditions thereof, indicate amount to be insured in figure in box marked "Amount of Insurance".

Handling Information
AS ADDRESSED, 5 BOXES LABELLED AND SEALED****
PLEASE NOTIFY CONSIGNEE UPON ARRIVAL
******* VALIABLE CARGO MUST FLY AS BOOKED *******

No of Pieces RCP	Gross Weight	Rate Class	Commodity Item Number	Chargeable		Rate	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)
				Weight	Charge			
5	127,4	K 3	280%	120,0	59,50	7626,24	GOLD BARS CB 17501 - 17505	
5	127,4					7626,24	(15x 12x 7) 3	

Prepaid: 7626,24 Valuation Charge Tax Total Other Charges Due Agent: 439,44 Total Other Charges Due Carrier: 8065,68	Other Charges FBC 84,72 SCC 84,72 MDC 250,00 Shipper certifies that the particulars on this form herein are correct and that insofar as any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations. DANIEL LEKWANE FOR ROHLIG-GRINDROD (PTY) LTD. AS AGENT FOR THE CARRIER
---	---

TIME **10:20:07**
 DATE **20/10/2003** JOHANNESBURG
 Signature of Issuing Carrier or its Agent

Formavia ORIGINAL 3 (FOR SHIPPER)

From: [Cetin Binatli](#)
To: "aneesh.deshpande@sqcib.com"
Cc: "jacob.iesudasan@sqcib.com"
Subject: Original Invoices
Date: 20 October 2003 09:50:00

Hi Aneesh,

Hope you had a nice weekend .

Just came back from London and as usual documents have piled up on my desk .

My customs people have informed me that they are missing the original invoices of the below detailed deliveries ;

125kg Invoice No.778 dated 09.10.03 \$1.487.535.-

&

100kg Invoice No.789 dated 15.10.03 \$1.199.625.-

You may have send these already but seems that they cannot trace them . Could you please arrange for another original signed copy yo be sent out to my attention .

Sorry for the inconvenience caused .

Kind regards,

Cetin BINATLI
GOLDAS A.S.

**SCHEDULE 1 -
SHIPMENT CONFIRMATION NOTICE**

To: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY

Copy : CETIN BINATLI

Date: 15/10/2003

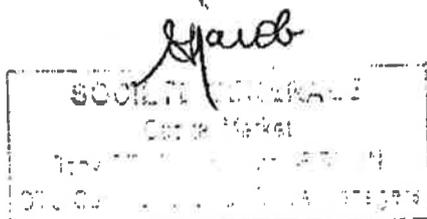
Dear Sirs,

Re: our delivery and sale agreement (the Agreement)

1. We refer to Clause 4 of the Agreement. Terms defined in the Agreement have the same meanings in this Notice.
2. We hereby confirm your request by Reuter's Dealing service and telephone for a Shipment to be made according to the following specifications:
 - (a) Form: Kg (G)
 - (b) Assayed Fineness: 0.995
 - (c) Quantity: 100 (3 199.000 troy ounces)
 - (d) Location: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 - (e) Proposed Delivery Date: 16/10/2003
 - (f) Premium :US\$ 0.9
 - (g) Fee (for non-purchase , should this be the case - See Clause 7.3) : 2.00 %
 - (h) Shipment Value : US\$ 1 199 625.00
3. We confirm that the matters represented and warranted in Clause 10 of the Agreement are true and accurate on the date of this Notice as if made with reference to the facts and circumstances now prevailing.
4. We declare that no Event of Default has occurred and is continuing or would result from the Shipment referred to in this Notice.

Yours faithfully,

For and on behalf of **SOCIETE GENERALE**





Date : 15/10/2003
 To : GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 Attention : --
 Copy : CETIN BINATLI
 Re. : Physical Bullion Transaction - Consignment
 Our-Contract-Nbr. : 789
 Your_Ref. : E-MAIL DTD 13/10/03

PROFORMA_INVOICE

We hereby confirm the following terms :

Trade_Date : 15/10/2003
 Seller : SOCIETE GENERALE PARIS
 Buyer : GOLDAS AS, ISTANBUL , ISTANBUL, TURKEY
 Commodity_Type : Kg (G) GOLD CIF
 Quantity : 3 199.000 Fine_troy_ounces
 Fineness : 0.995
 Form : Ten-Tola_bars (100), Ex METALOR NEUCHATEL
 Delivery_date : 16/10/2003
 Place_of_delivery : Vault to Vault, ISTANBUL, TURKEY using by BRAMBLES
 Flight_details : SECURITIES SERV
 LX 1804 on 15/10/03 connecting

AWB 724 3647 0943

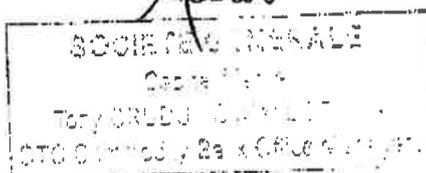
BAR NUMBERS : 430501 - 430600
 TBB Numbers : 21 - 24
 Price : USD 375.00 PER TR. OZ.
 Total_amount_due : CIF USD 1 199 625.00
 Settlement_date : 22/10/2003

Payment Details : SOCIETE GENERALE NEW YORK
 FAV SOCIETE GENERALE PARIS
 A/C 00187011 ref OPER/CTY/COT/BAC

SOCIETE_GENERALE_ADDRESS : SOCIETE GENERALE
 OPER/CTY/COT/BAC
 17 COURS VALMY
 92987 PARIS LA DEFENSE CEDEX -

Sincerely yours.

O. LE-RHUN



METALOR[®]

No de commande : 124062

Article :200000048 (LBSA9)

No colis	Poids brut du colis	Contenu du colis	Poids net	Titre	No lingots	
21	25 492.8 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 430501	à D 430525
22	25 492.5 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 430526	à D 430550
23	25 494.8 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 430551	à D 430575
24	25 494.0 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 430576	à D 430600

Total poids net : 100'000.0 g Au 995.0

99'500.0 g. Au fin



Date : 09/10/2003
 To : GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 Attention : --
 Copy : CETIN BINATLI
 Re. : Physical Bullion Transaction - Consignment
 Our-Contract-Nbr. : 778
 Your_Ref. : E-mail dtd 07/10/03

PROFORMA_INVOICE

We hereby confirm the following terms :

Trade_Date : 09/10/2003
 Seller : SOCIETE GENERALE PARIS
 Buyer : GOLDAS AS, ISTANBUL , ISTANBUL, TURKEY
 Commodity_Type : Kg (G) GOLD CIF
 Quantity : 3 998.750 Fine_troy_ounces(NETT WEIGHT 125 KGS)
 Fineness : 0.995
 Form : KILO BARS (125), Ex METALOR NEUCHATEL
 Delivery_date : 10/10/2003
 Place_of_delivery : Vault to Vault, ISTANBUL, TURKEY using BRAMBLES
 SECURITIES SERV
 Flight_details : LX 1804 on 09/10/03
 AWB 724 3647 0206

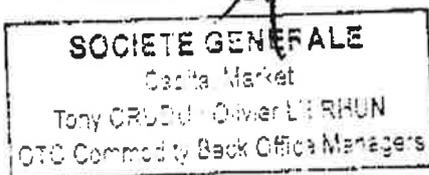
BOX NUMBER : 3 AND 7 - 10
 TBB Numbers : 414801 - 414825 AND 422851 - 422950
 Price : USD 372.00 PER TR. OZ.
 Total_amount_due : CIF USD 1 487 535.00
 Settlement_date : 16/10/2003

Payment Details : SOCIETE GENERALE NEW YORK
 FAV SOCIETE GENERALE PARIS
 A/C 00187011 ref OPER/CTY/COT/BAC

SOCIETE_GENERALE_ADDRESS : SOCIETE GENERALE
 OPER/CTY/COT/BAC
 17 COURS VALMY
 92987 PARIS LA DEFENSE CEDEX -

Sincerely yours.

O. LE-RHUN



**SCHEDULE 1 -
SHIPMENT CONFIRMATION NOTICE**

To: **GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY**

Copy : **CETIN BENATLI**

Date: 09/10/2003

Dear Sirs,

Re: our delivery and sale agreement (the Agreement)

1. We refer to Clause 4 of the Agreement. Terms defined in the Agreement have the same meanings in this Notice.

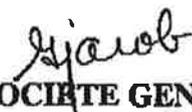
2. We hereby confirm your request by Reuter's Dealing service and telephone for a Shipment to be made according to the following specifications:

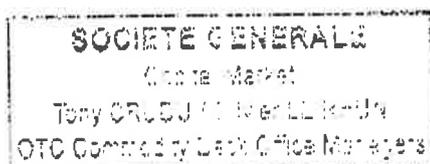
- (a) Form: Kg (G)
- (b) Assayed Fineness: 0.995
- (c) Quantity: 125 (3 998.750 troy ounces)
- (d) Location: **GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY**
- (e) Proposed Delivery Date: 10/10/2003
- (f) Premium :US\$ 0.9
- (g) Fee (for non-purchase , should this be the case - See Clause 7.3) : 2.00 %
- (h) Shipment Value : US\$ 1 487 535.00

3. We confirm that the matters represented and warranted in Clause 10 of the Agreement are true and accurate on the date of this Notice as if made with reference to the facts and circumstances now prevailing.

4. We declare that no Event of Default has occurred and is continuing or would result from the Shipment referred to in this Notice.

Yours faithfully,


For and on behalf of **SOCIETE GENERALE**



724 ZRH 3647 0206

724-3647 0206

Shipper's Name and Address SECURICOR INT. VALUABLES TRANS LTD. 1ST FLOOR, UNIT 8 BLACKBURN TRADING ESTATE NORTHUMBERLAND CLOSE STANWELL TEL: 0044 1 784 250 527		Shipper's Account Number Not Negotiable Air Waybill SWISS INTERNATIONAL AIR LINE Issued by P.O. BOX 4002 BASEL SWITZERLAND																																			
Consignee's Name and Address GOLDAS KUYUMCULUK SANAYI ITHALAT TERACAT A.S. 24 KAYALAR SOKAK 34010 MERTER, ISTANBUL TURKEY TEL: 0090 212 637 4000		Consignee's Account Number It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage and subject to the conditions of contract on the reverse hereof. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.																																			
Issuing Carrier's Agent Name and City SWISS WORLDCARGO EXPORT ZUERICH FLUGHAFEN		Accounting Information REF: EUL11638U																																			
Agent's IATA Code 81-4-4561/8004		Account No.																																			
Airport of Departure (Addr. of First Carrier) and Requested Routing ZURICH		Reference Number ZRH5487																																			
To By First Carrier IST LX		Declared Value for Carriage NVD																																			
Airport of Destination ISTANBUL		Declared Value for Customs NCV																																			
Requested Flight Data LX1804/09		Amount of Insurance XXX																																			
Handling Information DOC. ATT. TO AWB: NIL 5 BOXES																																					
<table border="1"> <thead> <tr> <th>No of Pieces PCP</th> <th>Gross Weight</th> <th>Rate Class</th> <th>Chargeable Weight</th> <th>Rate / Charge</th> <th>Total</th> <th>Nature and Quantity of Goods (incl. Dimensions or Volume)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>127.5K</td> <td>B200</td> <td>127.5</td> <td>130.00</td> <td>130.00</td> <td rowspan="2"> GOLDBARS NET WEIGHT: 125KG *VAL * VAL* </td> </tr> <tr> <td></td> <td></td> <td>K200</td> <td>127.5</td> <td>7.30</td> <td>930.75</td> </tr> <tr> <td colspan="7"> ** VALUABLE CARGO ** **SPECIAL SUPERVISION REQUESTED** </td> </tr> <tr> <td>5</td> <td>127.5</td> <td></td> <td></td> <td></td> <td>1060.75</td> <td> VAL VOLUME: 0.000 </td> </tr> </tbody> </table>				No of Pieces PCP	Gross Weight	Rate Class	Chargeable Weight	Rate / Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)	5	127.5K	B200	127.5	130.00	130.00	GOLDBARS NET WEIGHT: 125KG *VAL * VAL*			K200	127.5	7.30	930.75	** VALUABLE CARGO ** **SPECIAL SUPERVISION REQUESTED**							5	127.5				1060.75	VAL VOLUME: 0.000
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** VALUABLE CARGO ** **SPECIAL SUPERVISION REQUESTED**																																					
5	127.5				1060.75	VAL VOLUME: 0.000																															
Prepaid 1060.75		Other Charges CHA 157.00 SCC 31.90 MYC 19.15																																			
Valuation Charge MUC 115.00																																					
Total Other Charges Due Agent 157.00		Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignments consists of dangerous goods, each part is properly described by name and in its proper condition for carriage by air according to the applicable International Goods Regulations.																																			
Total Other Charges Due Carrier 166.05																																					
Total Prepaid 1383.80		Signature of Shipper or his Agent FOR: SECURICOR INT. VALUABLES TRANS LTD 																																			
Currency Conversion Rates CC Charges in Dest. Currency 08 OCT 2003		Signature of Issuing Carrier or its Agent ZURICH BRIGITTE MATHIS at Issue																																			
For Carrier's Use only at Destination Charges at Destination Total Collect Charges 724-3647 0206																																					

ORIGINAL 3 (FOR SHIPPER)

SECURICOR INT. VALUABLES TRANS LTD. 1ST FLOOR, UNIT 8, BLACKBURN TRADING ESTATE, NORTHUMBERLAND CLOSE, STANWELL, HERTS, AL11 1AB, UK

S.3 NR.737

SWISS WORLD CARGO 001 564 54 64

09.10.2003 12:48

From: Cetin Binatli
To: "jacob.jesudasan@sgcib.com"
Subject: RE: Final invoice for trade date 02/10/03 for val dt 03/10/03
Date: 06 October 2003 07:53:00

Hi Jacob ,

I have received the invoice and it is o.k. Can you please forward the original by courier .

Can you also please correct the spelling of my surname in your database as "BINATLI" and not "BENATLI"

Thank you.

Regards,

Cetin

-----Original Message-----

From: jacob.jesudasan@sgcib.com [mailto:jacob.jesudasan@sgcib.com]

Sent: Friday, October 03, 2003 1:11 PM

To: cbinatli@goldas.com

Subject: RE: Final invoice for trade date 02/10/03 for val dt 03/10/03

Hi Cetin,

I have forwarded you the invoices for the shipment of 150 Kgs.

Kindly confirm its receipt and let me know whether its fine si that

I can forward it to you by Courier.

Thanking you in anticipation

Regards

Jacob

The sender's email address has changed to
firstname.lastname@sgcib.com. You may want to update your
personal address book. Please see <http://www.sgcib.com> for more
information.

**

This message and any attachments (the "message") are confidential
and intended solely for the addressee(s). Any unauthorised use or
dissemination is prohibited. E-mails are susceptible to alteration.
Neither SOCIETE GENERALE nor any of its subsidiaries or affiliates
shall be liable for the message if altered, changed or falsified.

L'adresse mail de votre correspondant a change en prenom.nom@sgcib.com.
Il est recommande de mettre a jour votre carnet d'adresse
personnel.Pour plus d'informations, aller sur <http://www.sgcib.com>

**

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sont confidentiels et etablis a l'intention exclusive de ses
destinataires. Toute utilisation ou diffusion non autorisee est
interdite. Tout message electronique est susceptible d'alteration.



Date : 03/10/2003
 To : GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 Attention : --
 Copy : CETIN BENATLI
 Re. : Physical Bullion Transaction - Consignment
 Our-Contract-Nbr. : 770
 Your_Ref. : E-MAIL DTD 02/10/03

INVOICE

We hereby confirm the following terms :

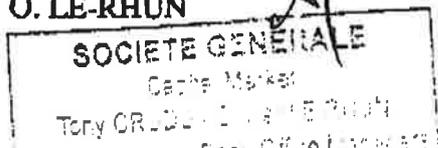
Trade_Date	03/10/2003
Seller	SOCIETE GENERALE PARIS
Buyer	GOLDAS KUYUMCULUK SANYI ITHALAT IHRACAT A.S, ISTANBUL , TURKEY
Commodity_Type	Kg (G) GOLD CIF
Quantity	4 798.500 Fine_troy_ounces(NETT WEIGHT 150 KGS)
Fineness	0.995
Form	KILO BARS (150), Ex METALOR NEUCHATEL
Delivery_date	06/10/2003
Place_of_delivery	Vault to Vault, ISTANBUL, TURKEY using BRAMBLES SECURITIES SERV
Flight_details	LX 1804 on 06/10/03
	AWB 724 3231 4575
BAR NUMBERS	422701 - 422850
TBB Numbers	1 - 6
Price	USD 385.00 PER TR. OZ.
Total_amount_due	CIF USD 1 847 422.50
Settlement_date	10/10/2003

Payment Details : SOCIETE GENERALE NEW YORK
 FAV SOCIETE GENERALE PARIS
 A/C 00187011 ref OPER/CTY/COT/BAC

SOCIETE_GENERALE_ADDRESS : SOCIETE GENERALE
 OPER/CTY/COT/BAC
 17 COURS VALMY
 92987 PARIS LA DEFENSE CEDEX -

Sincerely yours.

O. LE-RHUN



**SCHEDULE 1 -
SHIPMENT CONFIRMATION NOTICE**

To: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY

Copy : CETIN BENATLI

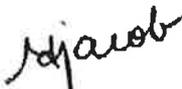
Date: 03/10/2003

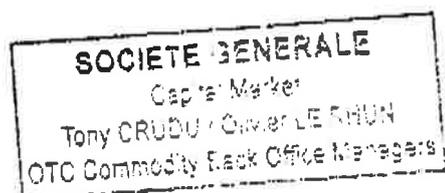
Dear Sirs,

Re: our delivery and sale agreement (the Agreement)

1. We refer to Clause 4 of the Agreement. Terms defined in the Agreement have the same meanings in this Notice.
2. We hereby confirm your request by Reuter's Dealing service and telephone for a Shipment to be made according to the following specifications:
 - (a) Form: Kg (G)
 - (b) Assayed Fineness: 0.995
 - (c) Quantity: 150 (4 798.500 troy ounces)
 - (d) Location: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 - (e) Proposed Delivery Date: 06/10/2003
 - (f) Premium :US\$ 0.85
 - (g) Fee (for non-purchase , should this be the case - See Clause 7.3) : 2.00 %
 - (h) Shipment Value : US\$ 1 847 422.50
3. We confirm that the matters represented and warranted in Clause 10 of the Agreement are true and accurate on the date of this Notice as if made with reference to the facts and circumstances now prevailing.
4. We declare that no Event of Default has occurred and is continuing or would result from the Shipment referred to in this Notice.

Yours faithfully,


For and on behalf of **SOCIETE GENERALE**



METALOR®

No de commande : 116321

Article : 200000048 (LBSA9)

No colis	Poids brut du colis	Contenu du colis	Poids net	Titre	No lingots	
1	25'491.8 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422701	à D 422725
2	25'523.8 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422726	à D 422750
3	25'496.1 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422751	à D 422775
4	25'498.9 g.	29 Lingots par colis de	25'000.0 g.	Au 995.0	D 422776	à D 422800
5	25'494.6 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422801	à D 422825
6	25'494.8 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422826	à D 422850
Total poids net :			150'000.0 g.	Au 995.0		
			149'250.0 g.	Au fin		

Tax émis par: 33(0)1 42 13 44 18 OPER/CTY/MAR/BAC Le 03/10/03 12:06 AA NORM Pg: 3/4
02/10 '03 17:24 FAX +41 32 7 208 602 METALOR SA NE DA
003

3. OKT. 2003 8:25 | SWISS WORLD CARGO 021 564 54 64

NR.610

S.1

724-3231 4575

724 ZRH 3231 4575

Shipper's Name and Address SECURICOR INTL. VALS TRANSPORT BLACKBURN IND EST STANWELL MIDDX TW19 7LN A/C SOCIETE GENERALE 17 COURS VALMY LA DEFENSE CEDER		Shipper's Account Number Not Registered Air Waybill Issued by SWISS INTERNATIONAL AIR LINE P.O. BOX 4002 BASEL SWITZERLAND	
Consignee's Name and Address GOLDAS KUYUMCULAR SANAYI ITHALAT IHRCAT A.S. 24 KAYALAR SOKAK 34010 MERTER ISTANBUL / TURKEY		Consignee's Account Number It is agreed that the goods described herein are consigned in apparent good order and condition (except as noted) by carrier and SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE CARRIER DEEMS BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.	
Issuing Carrier's Name and City SWISS WORLDCARGO EXPORT ZUERICH FLUGHAFEN		Accounting Information TEL: 0090 212 637 4000 FAX: 0090 212 637 4007	
Agency IATA Code 81-4-4561/8004		Account No.	
Airport of Departure (Code of Air Carrier) and Requested Routing ZURICH		Reference Number ZRH5422	
To IST		Declared Value for Carriage NOV	
By Air Carrier LX		Declared Value for Customs NOV	
Airport of Destination ISTANBUL		Amount of Insurance XXX	
Reference File/Date LX1804706		Insurance of other items insured, not over insured is provided or guaranteed very the respective third party insurer to be insured at expense of local period "Amount of Insurance"	
Handling Information DOC. ATT. TO AWB: PROFORMA INVOICE			
SC			
No of Pieces 6	Gross Weight 160.5K	Rate 130.00	Nature and Quantity of Goods (Net, Dimensions or Volume) GOLD BARS NET WEIGHT: 150 KGS *** VAL *** VAL ***
		Charge 7.30	
REFERENZ NO.: EUL11531U			
** VALUABLE CARGO ** **SPECIAL SUPERVISION REQUESTED**			
6	160.5	1301.65	VAL VOLUME: 0.000
Prepaid 1301.65		Other Charges CHA 157.00 SCC 40.15 MYC 24.10	
Valuation Charge MJC 115.00			
Total Other Charges Due Agent 157.00		Shipper warrants that the particulars on this form hereof are correct and that insofar as any part of the consignment consists of dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations.	
Total Other Charges Due Carrier 179.25			
Total Prepaid 1637.90		FOR: SECURICOR INTL. VALS TRANSPORT Signature of Shipper or his Agent	
Currency Conversion Rates 02 OCT 2003		ZURICH ANDREA TRUDEL	
Charges of Destination 724-3231 4575		Signature of Issuing Carrier or his Agent	

Att: Jacob
 Zeydi Jamal

From: jacob.jesudasan@sgcib.com
To: Cetin Binatti
Subject: RE: Final invoice for trade date 02/10/03 for val dt 03/10/03
Date: 03 October 2003 11:07:59

Hi Cetin,
I have forwarded you the invoices for the shipment of 150 Kgs.
Kindly confirm its receipt and let me know whether its fine si that
I can forward it to you by Courier.

Thanking you in anticipation

Regards

Jacob

The sender's email address has changed to
firstname.lastname@sgcib.com. You may want to update your
personal address book. Please see <http://www.sgcib.com> for more
information.

**

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and intended solely for the addressee(s). Any unauthorised use or
dissemination is prohibited. E-mails are susceptible to alteration.
Neither SOCIETE GENERALE nor any of its subsidiaries or affiliates
shall be liable for the message if altered, changed or falsified.

L'adresse mail de votre correspondant a change en prenom.nom@sgcib.com.
Il est recommande de mettre a jour votre carnet d'adresse
personnel. Pour plus d'informations, aller sur <http://www.sgcib.com>

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La SOCIETE GENERALE et ses filiales declinent toute
responsabilite au titre de ce message s'il a ete altere, modifie
ou falsifie.

Jacob

The sender's email address has changed to
firstname.lastname@ sgcib.com. You may want to update your
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interdite. Tout message electronique est susceptible d'alteration.

From: jacob.jesudasan@sgcib.com
To: [Cetin Binatl](#)
Subject: RE: FW: 300kg shipment
Date: 16 September 2003 11:19:20

Hello Sir,
I have faxed you the documents for shipment of 300 Kgs.
Kindly let me know if the invoice is fine for your customs purpose
and in turn I could forward you the originals through DHL

Thanking you in advance

Regards

Jacob

The sender's email address has changed to
firstname.lastname@sgcib.com. You may want to update your
personal address book. Please see <http://www.sgcib.com> for more
information.

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responsabilite au titre de ce message s'il a ete altere, modifie
ou falsifie.



Date : 16/09/2003
 To : GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 Attention : --
 Copy : CETIN BENATLI
 Re. : Physical Bullion Transaction - Consignment
 Our-Contract-Nbr. : 767
 Your_Ref. : E-MAIL DTD 12/09/03

INVOICE

We hereby confirm the following terms :

Trade_Date	16/09/2003
Seller	SOCIETE GENERALE PARIS
Buyer	GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT A.S., ISTANBUL, TURKEY
Commodity_Type	Kg (G) GOLD CIF
Quantity	9 644.400 Fine_troy_ounces (NET WEIGHT 300 KGS)
Fineness	0.995
Form	KILO BARS (300), Ex METALOR NEUCHATEL
Delivery_date	17/09/2003
Place_of_delivery	Vault to Vault, ISTANBUL, TURKEY using BRAMBLES SECURITIES SERV
Flight_details	LX 1804 on 16/09/03 AWB 724 3231 2420
BAR NUMBERS	422001 - 422200 AND 420401 - 420500
TBB Numbers	1 - 8 AND 17- 20
Price	USD 375.00 PER TR. OZ.
Total_amount_due	CIF USD 3 598 875.00
Settlement_date	23/09/2003

Payment Details : SOCIETE GENERALE NEW YORK
 FAV SOCIETE GENERALE PARIS
 A/C 00187011 ref OPER/CTY/COT/BAC

SOCIETE_GENERALE_ADDRESS : SOCIETE GENERALE
 OPER/CTY/COT/BAC
 17 COURS VALMY
 92987 PARIS LA DEFENSE CEDEX -

Sincerely yours.

O. LE RHUN *Spécial*
 SOCIETE GENERALE
 Operteur de Marché
 Tony GRUBB
 OTC Opérateur de Marché

**SCHEDULE 1 -
SHIPMENT CONFIRMATION NOTICE**

To: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY

Copy : CETIN BENATLI

Date: 16/09/2003

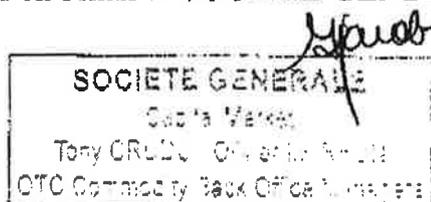
Dear Sirs,

Re: our delivery and sale agreement (the Agreement)

1. We refer to Clause 4 of the Agreement. Terms defined in the Agreement have the same meanings in this Notice.
2. We hereby confirm your request by Reuter's Dealing service and telephone for a Shipment to be made according to the following specifications:
 - (a) Form: Kg (G)
 - (b) Assayed Fineness: 0.995
 - (c) Quantity: 300 (9 597.000 troy ounces)
 - (d) Location: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 - (e) Proposed Delivery Date: 17/09/2003
 - (f) Premium :US\$ 0.85
 - (g) Fee (for non-purchase , should this be the case - See Clause 7.3) : 2.00 %
 - (h) Shipment Value : US\$ 3 598 875.00
3. We confirm that the matters represented and warranted in Clause 10 of the Agreement are true and accurate on the date of this Notice as if made with reference to the facts and circumstances now prevailing.
4. We declare that no Event of Default has occurred and is continuing or would result from the Shipment referred to in this Notice.

Yours faithfully,

For and on behalf of **SOCIETE GENERALE**



SWISS WORLD CARGO 001 564 54 64

NR.224 724 3231 2420

16. SEP. 2003 10:41
724 ZRH 3231 2420

Shipper's Name and Address SECURICOR INT. VALUABLES TRANS LTD. 1ST FLOOR, UNIT 8 BLACKBURN TRADING ESTATE NORTHUMBERLAND CLOSE STANWELL TEL: 0044 1 784 250 527		Shipper's Account Number Not Negotiable Air Waybill SWISS INTERNATIONAL AIR LINE based by P.O. BOX 4002 BASEL SWITZERLAND																																										
Consignee's Name and Address GOLDAS KUYUMCULUK SANAYI ITHALAT THEACAT A.S., 24 KAYALAR SOKAK B4010 MERTER, ISTANBUL TURKEY TEL: 0090 212 637 4000		Consignee's Account Number It is agreed that the goods described herein are accepted in conformity good order and condition subject to the conditions of contract and subject to the conditions of contract on the reverse hereof. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.																																										
Issuing Carrier's Agent Name and City SWISS WORLDCARGO EXPORT ZUERICH FLUGHAFEN		Accounting Information																																										
Agency IATA Code 81-4-4561/8004		Account No.																																										
Agent of Departure (Address of First Carrier) and Registered Office ZURICH		Reference Number ZRH5204																																										
To IST LX		Declared Value for Carriage NVD																																										
Airport of Destination ISTANBUL		Declared Value for Customs NCV																																										
Requested Flight/Date LX1804/16		Amount of Insurance KXX																																										
Handling Information ADDE - 12 BOXES		Insurance - if carrier offers insurance, and such insurance is requested in accordance with the conditions thereof, liability amount to be insured in figures as per marked "Nett of Insured".																																										
<table border="1"> <thead> <tr> <th>No of Pieces</th> <th>Gross Weight</th> <th>Net Class</th> <th>Chargeable Weight</th> <th>Rate</th> <th>Charge</th> <th>Total</th> <th>Nature and Quantity of Goods (incl. Dimensions or Volume)</th> </tr> </thead> <tbody> <tr> <td>12</td> <td>306.0K</td> <td>S B200</td> <td>306.0</td> <td>130.00</td> <td></td> <td>130.00</td> <td rowspan="2"> GOLDBARS NET WEIGHT: 300KGS ***VAL***VAL***VAL </td> </tr> <tr> <td></td> <td></td> <td>B K200</td> <td>306.0</td> <td>7.30</td> <td></td> <td>2233.80</td> </tr> <tr> <td colspan="7"> ** VALUABLE CARGO ** **SPECIAL SUPERVISION REQUESTED** </td> <td></td> </tr> <tr> <td>12</td> <td>306.0</td> <td></td> <td></td> <td></td> <td></td> <td>2363.80</td> <td> VAL VOLUME: 0.000 </td> </tr> </tbody> </table>		No of Pieces	Gross Weight	Net Class	Chargeable Weight	Rate	Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)	12	306.0K	S B200	306.0	130.00		130.00	GOLDBARS NET WEIGHT: 300KGS ***VAL***VAL***VAL			B K200	306.0	7.30		2233.80	** VALUABLE CARGO ** **SPECIAL SUPERVISION REQUESTED**								12	306.0					2363.80	VAL VOLUME: 0.000				
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Weight Charge Collect		MIC 135.00																																										
Volume Charge Tax																																												
Total Other Charges Due Agent 181.00		Shipper certifies that the particulars on the face hereof are correct and that neither he nor any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations.																																										
Total Other Charges Due Carrier 257.40		FOR: SECURICOR INT. VALUABLES TRANS LTD Signature of Shipper or its Agent																																										
Total Freight 2802.20		Signature of Issuing Carrier or its Agent ANDREA TRUDEL 724-3231 2420																																										
Currency Conversion Ratio		Date of Issue 12 SEP 2003																																										
CC Charges in Desc. Currency		Location ZURICH																																										
For Carrier's Use only at Destination		Escrowed on (date) at (place)																																										
Changes at Destination		Total Collect charges																																										

ORIGINAL 3 (FOR SHIPPER)

METALOR®

No de commande : 116281

Article :200000948 (LBSA9)

No colis	Poids brut du colis	Contenu du colis	Poids net	Titre	No lingots	
1	25'503.5 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422001	à D 422025
2	25'493.1 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422026	à D 422050
3	25'492.0 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422051	à D 422075
4	25'490.6 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422076	à D 422100
5	25'494.5 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422101	à D 422125
6	25'502.6 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422126	à D 422150
7	25'493.5 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422151	à D 422175
8	25'492.1 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 422176	à D 422200

Total poids net : 200'000.0 g. Au 995.0

199'000.0 g. Au fin

Tax émis par : 33(0) 1 42 13 44 18 OPER/CIT/MOR/BAC Le 16/09/03 12:09 24 NORM Pg: 4/5
15/09 '03 15:14 FAX -41 32 7 206 602 METALOR SA NE DA 003/006

METALOR[®]

No de commande : 113545

Article : 20000048 (LBSA9)

No colis	Poids brut du colis	Contenu du colis	Poids net	Titre	No lingots	
17	25'493.7 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420401	à D 420425
18	25'497.9 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420426	à D 420450
19	25'499.2 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420451	à D 420475
20	25'500.0 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420476	à D 420500
Total poids net :			100'000.0 g	Au 995.0		
			99'500.0 g.	Au fin		

Fax émis par : 33(0)1 42 13 44 18 OPER/CTR/MAR/BAC Le 16/09/03 12:09 34 NORM Pg : 5/5
15/09 '03 15:16 FAX +41 32 7 206 602 METALOR SA NE DA 007/008

From: Cetin Binatli
To: "aneesh.deshpande@sgcib.com"
Cc: "florent.teboul@sgcib.com"
Subject: RE: Order of 300kg
Date: 12 September 2003 14:06:00

Hi Aneesh,

We can confirm the below detailed shipment .

Pls kindly provide us via fax with the invoice & AWB when available (original via DHL)

Thank you and have a nice weekend.

Kind regards,

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [mailto:aneesh.deshpande@sgcib.com]
Sent: Friday, September 12, 2003 4:01 PM
To: cbinatli@goldas.com
Cc: florent.teboul@sgcib.com
Subject: Re: Order of 300kg

Hi Cetin,

I can now confirm shipment on Tuesday with Arrival on Tuesday afternoon. I am afraid I was unable to get an earlier schedule for you. Clearance and delivery will take place on Wednesday.

Premium for 300Kgs One Kilo Bars remains the same as last time i.e. USD0.85 per Tr. Oz.
Rate of Interest is also the same i.e. 0.50% pa

Please confirm your agreement.

Best wishes

Aneesh

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To: Aneesh DESHPANDE/fr/socgen@socgen
cc:
Subject: Order of 300kg

Hi Aneesh,

We would like to order ;

Quantity:300kg

Purity:995

Type: 1 kg bars

Term: 1 month

Delivery date:15 September,2003 Monday or 16 September,2003 Tuesday

Please confirm premium + interest rate + delivery date at your earliest convenience.

Kind regards,

Cetin BINATLI

Director

GOLDAS A.S.

24 Kayalar Sokak

34010 Merter

Istanbul

TURKEY

www.goldas.com <<http://www.goldas.com/>>

TI:+90-212-6374000

Fx:+90-212-6374007

The sender's email address has changed to
firstname.lastname@sgcib.com. You may want to update your
personal address book. Please see <http://www.sgcib.com> for more
information.

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Purity:995

Type: 1 kg bars

Term: 1 month

Delivery date:15 September,2003 Monday or 16 September,2003 Tuesday

Please confirm premium + interest rate + delivery date at your earliest convenience.

Kind regards,

Cetin BINATLI

Director

GOLDAS A.S.

24 Kayalar Sokak

34010 Merter

Istanbul

TURKEY

www.goldas.com <<http://www.goldas.com/>>

From: Cetin Binatli
To: "aneesh.deshpande@sgcib.com"
Subject: Order of 300kg
Date: 12 September 2003 09:54:00

Hi Aneesh,

We would like to order ;

Quantity:300kg

Purity:995

Type: 1 kg bars

Term: 1 month

Delivery date:15 September,2003 Monday or 16 September,2003 Tuesday

Please confirm premium + interest rate + delivery date at your earliest convenience.

Kind regards,

Cetin BINATLI
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GOLDAS A.S.
24 Kayalar Sokak
34010 Merter
Istanbul
TURKEY
www.goldas.com <<http://www.goldas.com/>>
Tl:+90-212-6374000
Fx:+90-212-6374007

Thanking you in advance.
Regards

Jacob

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| cbinatli@GOLDAS.c|
| om |
| |
| 09/09/03 03:06 PM|
| Please respond to|
| cbinatli |
| |
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>

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| |
| To: Aneesh DESHPANDE/fr/socgen@socgen
| |
| cc: Jacob JESUDASAN/fr/socgen@socgen
| |
| Subject: FW: FW: 200kg shipment
| |
| |

>

Hi Aneesh ,

Thank you for the amended invoice . Can you send the original via DHL
asap.

In the meantime we have been informed that the gold has already arrived in
Istanbul ? We will clear it from customs tomorrow morning . This is no
problem , but I believe you have been informed incorrectly .

Thank you again for your assistance and have a nice day .

Regards,

Cetin

-----Original Message-----

From: Cetin Binatly [mailto:cbinatli@goldas.com]
Sent: Tuesday, September 09, 2003 2:33 PM
To: aneesh.deshpande@sgcib.com
Cc: jacob.jesudasan@sgcib.com
Subject: RE: FW: 200kg shipment

Hi Aneesh ,

Thank you for the documents you have faxed .

Just one correction needed regarding the full name of the buyer . Can you please correct it as "Goldas Kuyumculuk Sanayi Ithalat Ihracat A.S." which is the full title of the company . This may cause some problems in customs clearance .

Just one slight correction also on my surname which should read as "BINATLI"

Thank you for your assistance , I look forward to receiving the corrected invoice asap .

Regards,

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [<mailto:aneesh.deshpande@sgcib.com>]
Sent: Tuesday, September 09, 2003 2:04 PM
To: cbinatli@goldas.com
Cc: jacob.jesudasan@sgcib.com
Subject: RE: FW: 200kg shipment

Hi Cetin,

The shipment left today and will be in Istanbul tonight.
Clearance and delivery will take place tomorrow.

Meanwhile, Invoice has been faxed to you. Please provide us your approval so that we can have the original sent out to you by courier asap.

Regards

Aneesh

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firstname.lastname@ sgcib.com. You may want to update your
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Il est recommande de mettre a jour votre carnet d'adresse

From: Cetin Binatli
To: "aneesh.deshpande@sgcib.com"
Cc: "jacob.jesudasan@sgcib.com"
Subject: FW: FW: 200kg shipment
Date: 09 September 2003 14:06:00

Hi Aneesh ,

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Regards,

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responsabilite au titre de ce message s'il a ete altere, modifie
ou falsifie.

From: aneesh.deshpande@sqcib.com
To: [Cetin Binatli](#)
Subject: RE: FW: 200kg shipment
Date: 09 September 2003 14:01:08

Hi Cetin,

If you would like to commence pricing for the 200Kgs you can go -ahead.

Please let me know your preference. Do you prefer to wait till the metal arrives at your vault or you prefer to start pricing as soon as the metal is shipped??

Regards

Aneesh

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To: cbinatli@goldas.com

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ou falsifie.



Date : 09/09/2003
 To : GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 Attention : --
 Copy : CETIN BINATLI
 Re. : Physical Bullion Transaction - Consignment
 Our-Contract-Nbr. : 763
 Your_Ref. : E-MAIL DTD 05/09/2003

PROFORMA_INVOICE AMMENDED

We hereby confirm the following terms :

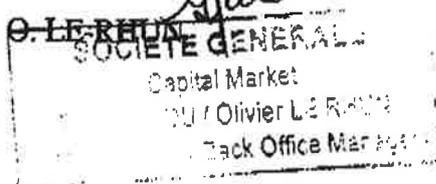
Trade_Date : 09/09/2003
 Seller : SOCIETE GENERALE PARIS
 Buyer : GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT
 A.S, ISTANBUL , ISTANBUL, TURKEY
 Commodity_Type : Kg (G) GOLD CIF
 Quantity : 6 398.000 Fine_troy_ounces(NET WEIGHT 199.00 KGS)
 Fineness : 0.995
 Form : KILO BARS (200), Ex METALOR NEUCHATEL
 Delivery_date : 09/09/2003
 Place_of_delivery : Vault to Vault, ISTANBUL, TURKEY using BRAMBLES
 SECURITIES SERV
 Flight_details : LX 1804 on 09/09/03
 AWB 724 3231 1941

BAR NUMBERS : 420201 - 420400
 TBB Numbers : BOX NUMBERS 9 -16
 Price : USD 381.00 PER TR. OZ.
 Total_amount_due : CIF USD 2 437 638.00
 Settlement_date : 16/09/2003

Payment Details : SOCIETE GENERALE NEW YORK
 FAV SOCIETE GENERALE PARIS
 A/C 00187011 ref OPER/CTY/COT/BAC

SOCIETE_GENERALE_ADDRESS : SOCIETE GENERALE
 OPER/CTY/COT/BAC
 17 COURS VALMY
 92987 PARIS LA DEFENSE CEDEX -

Sincerely yours,



From: Cetin Binatli
To: "aneesh.deshpande@sgcib.com"
Cc: "jacob.jesudasan@sgcib.com"
Subject: RE: FW: 200kg shipment
Date: 09 September 2003 12:32:00

Hi Aneesh ,

Thank you for the documents you have faxed .

Just one correction needed regarding the full name of the buyer . Can you please correct it as "Goldas Kuyumculuk Sanayi Ithalat Ihracat A.S." which is the full title of the company . This may cause some problems in customs clearance .

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Cetin

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Regards

Aneesh

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**SCHEDULE J -
SHIPMENT CONFIRMATION NOTICE**

To: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY

Copy : CETIN BENATLI

Date: 09/09/2003

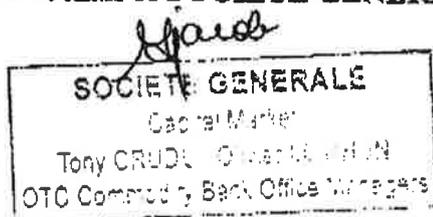
Dear Sirs,

Re: our delivery and sale agreement (the Agreement)

1. We refer to Clause 4 of the Agreement. Terms defined in the Agreement have the same meanings in this Notice.
2. We hereby confirm your request by Reuter's Dealing service and telephone for a Shipment to be made according to the following specifications:
 - (a) Form: Kg (G)
 - (b) Assayed Fineness: 0.995
 - (c) Quantity: 200 (6 398.000 troy ounces)
 - (d) Location: GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 - (e) Proposed Delivery Date: 09/09/2003
 - (f) Premium :US\$ 0.85
 - (g) Fee (for non-purchase , should this be the case - See Clause 7.3) : 2.00 %
 - (h) Shipment Value : US\$ 2 437 638.00
3. We confirm that the matters represented and warranted in Clause 10 of the Agreement are true and accurate on the date of this Notice as if made with reference to the facts and circumstances now prevailing.
4. We declare that no Event of Default has occurred and is continuing or would result from the Shipment referred to in this Notice.

Yours faithfully,

For and on behalf of **SOCIETE GENERALE**





Date : 09/09/2003
 To : GOLDAS AS, ISTANBUL, ISTANBUL, TURKEY
 Attention : --
 Copy : CETIN BENATLI
 Re. : Physical Bullion Transaction - Consignment
 Our-Contract-Nbr. : 763
 Your_Ref. : E-MAIL DTD 05/09/2003

PROFORMA_INVOICE

We hereby confirm the following terms :

Trade_Date : 09/09/2003
 Seller : SOCIETE GENERALE PARIS
 Buyer : GOLDAS AS, ISTANBUL , ISTANBUL, TURKEY
 Commodity_Type : Kg (G) GOLD CIF
 Quantity : 6 398.000 Fine_troy_ounces(NET WEIGHT 199.00 KGS)
 Fineness : 0.995
 Form : KILO BARS (200), Ex METALOR NEUCHATEL
 Delivery_date : 09/09/2003
 Place_of_delivery : Vault to Vault, ISTANBUL,TURKEY using BRAMBLES
 SECURITIES SERV
 Flight_details : LX 1804 on 09/09/03
 AWB 724 3231 1941

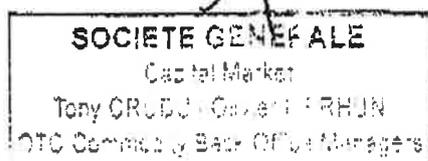
BAR NUMBERS : 420201 - 420400
 TBB Numbers : BOX NUMBERS 9 -16
 Price : USD 381.00 PER TR. OZ.
 Total_amount_due : CIF USD 2 437 638.00
 Settlement_date : 16/09/2003

Payment Details : SOCIETE GENERALE NEW YORK
 FAV SOCIETE GENERALE PARIS
 A/C 00187011 ref OPER/CTY/COT/BAC

SOCIETE_GENERALE_ADDRESS : SOCIETE GENERALE
 OPER/CTY/COT/BAC
 17 COURS VALMY
 92987 PARIS LA DEFENSE CEDEX -

Sincerely yours.

O. LE-RHUN *Yau*



09/09 '03 09:39 FAX 0181 5649890

SECURICOR INTERNATIONAL

001

NR. 078

S.1/1

9. SEP. 2003 10:24

SWISS WORLD CARGO 001 564 54 64

For the first time

724-3231 1941

724 ZRH 3231 1941

Shipper's Name and Address SECURICOR INTL. VALS TRANSPORT BLACKBURN IND EST - STANWELL MIDDX TW19 7LN A/C SOCIETE GENERALE 17 COURS VALMY LA DEFENSE CEDEX		Shipper's Account Number		Net Weight Air Waybill		SWISS INTERNATIONAL AIR LINE F.O. BOX 4002 BASEL SWITZERLAND	
Consignee's Name and Address GOLDAS 24 KAYALAR SOKAK 34010 MERTER ISTANBUL TURKEY TEL: 90 212 537 4000		Consignee's Account Number		Copies 1, 2 and 3 of this Air Waybill are original and have the same validity It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage and SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE, THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.			
Issuing Carrier's Agent Name and City SWISS WORLDCARGO EXPORT ZUERICH FLUGHAFEN		Accounting Information REF.NO.: EUL110830		Agency CHF			
Agent's IATA Code 81-4-4561/8004		Account No.		Reference Number ZRH4902		Optional Shipping Information	
Airport of Departure (Name of First Carrier) and Requested Routing ZURICH		To		By		Declared Value for Carriage NVD	
To IST		By LX		Declared Value for Customs NCV		Amount of Insurance XXX	
Airport of Destination ISTANBUL		Requested Flight/Date LX1804/09		Insurance - if carrier does not insure, not such insurance is required in accordance with the conditions stated, unless amount to be insured is figured in box marked "Amount of Insurance"			
Handling Information DOC. ATT. TO AWB: INVOICE							
SCI							
No of Pieces 8	Gross Weight 218.3	Rate Class B200	Diagonals Weight 218.5	Rate / Charge 130.00	Total 130.00	Nature and Quantity of Goods (incl. Dimensions or Volume) GOLDBARS NET WEIGHT: 200 kgs ***VAL***VAL***	
		R200	218.5	7.30	1595.05		
** VALUABLE CARGO ** **SPECIAL SUPERVISION REQUESTED**						VAL VOLUME: 0.000	
8	218.3				1725.05		
Prepaid		Collect		Other Charges			
1725.05				CHA 169.00 SCC 54.65 MYC 32.90			
Valuation Charge				MUC 115.00			
Total Other Charges Due Agent				169.00			
Total Other Charges Due Carrier				202.45			
Total Prepaid				2096.50			
Carrier's Declaration Name		CC Charges in Dest. Currency		08 SEP 2003		ZURICH	
For Carrier's Use only at Destination		Change of Destination		Total Charges Charge		Signature of Shipper or his Agent MARIA RITSCH 724-3231 1941	

Altin Sacab
 Rgdi. Janic

METALOR[®]

No de commande : 113545

Article :200000048 (LBSA9)

No colis	Poids brut du colis	Contenu du colis	Poids net	Titre	No lingots	
9	25'495.0 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420201	à D 420225
10	25'500.6 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420226	à D 420250
11	25'498.5 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420251	à D 420275
12	25'514.8 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420276	à D 420300
13	25'509.9 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420301	à D 420325
14	25'509.2 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420326	à D 420350
15	25'495.9 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420351	à D 420375
16	25'497.9 g.	25 Lingots par colis de	25'000.0 g.	Au 995.0	D 420376	à D 420400

Total poids net : 200'000.0 g. Au 995.0

199'000.0 g. Au fin

Tax émis par: 33(0)1 42 13 44 18 OPER/CIT/MAR/BAC le 09/09/03 13:08 24 NORM Pg: 4/4
 05/09 '03 17:35 FAX +41 32 7 206 602 METALOR SA NE DA
 05/09/03 17:35 FAX +41 32 7 206 602 METALOR SA NE DA
 05/09/03 17:35 FAX +41 32 7 206 602 METALOR SA NE DA

0004

From: aneesh_deshpande@sgcib.com
To: Cetin Binatli
Cc: "jacob.iesudasan@sgcib.com"
Subject: RE: FW: 200kg shipment
Date: 09 September 2003 12:00:55

Hi Cetin,

The shipment left today and will be in Istanbul tonight.
Clearance and delivery will take place tomorrow.

Meanwhile, Invoice has been faxed to you. Please provide us your approval
so that we can have the original sent out to you
by courier asap.

Regards

Aneesh

The sender's email address has changed to
firstname.lastname@sgcib.com. You may want to update your
personal address book. Please see <http://www.sgcib.com> for more
information.

**

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and intended solely for the addressee(s). Any unauthorised use or
dissemination is prohibited. E-mails are susceptible to alteration.
Neither SOCIETE GENERALE nor any of its subsidiaries or affiliates
shall be liable for the message if altered, changed or falsified.

L'adresse mail de votre correspondant a change en prenom.nom@sgcib.com.
Il est recommande de mettre a jour votre carnet d'adresse
personnel. Pour plus d'informations, aller sur <http://www.sgcib.com>

**

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destinataires. Toute utilisation ou diffusion non autorisee est
interdite. Tout message electronique est susceptible d'alteration.
La SOCIETE GENERALE et ses filiales declinent toute
responsabilite au titre de ce message s'il a ete altere, modifie
ou falsifie.

a fax copy of the invoice (original signed via DHL courier) and a copy of the AWB also via fax , before the arrival of the gold on Wednesday .

If you could please send a copy of these documents to fax no.
+90-212-6374007
or +90-212-6374008 .

Thank you.

Cetin

-----Original Message-----

From: Cetin Binatly [<mailto:cbinatli@goldas.com>]
Sent: Friday, September 05, 2003 5:58 PM
To: aneesh.deshpande@sgcib.com
Cc: florent.teboul@sgcib.com
Subject: RE: 200kg shipment

Hi Aneesh,

Address is ;

24 Kayalar Sokak
34010 Merter
Istanbul

Kind regards,

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [<mailto:aneesh.deshpande@sgcib.com>]
Sent: Friday, September 05, 2003 5:34 PM
To: cbinatli@goldas.com
Cc: florent.teboul@sgcib.com
Subject: 200kg shipment

Hi Cetin,

Many thanks for your order.

Would appreciate if you could please advise us your complete address where the Kilo Bars are to be delivered in Istanbul.
We need to advise our shippers.

Thanks and kind regards

Aneesh

----- Forwarded by Aneesh DESHPANDE/fr/socgen on 05/09/03 16:31 -----

```
|-----+----->
|      | Florent TEBOUL |
|      |                 |
|      | 05/09/03 16:23 |
|      |                 |
|-----+----->
```

>

Cetin BINATLI
Director
GOLDAS A.S.
24 Kayalar Sokak
34010 Merter
Istanbul
TURKEY
www.goldas.com <<http://www.goldas.com/>>
Tl:+90-212-6374000
Fx:+90-212-6374007

(See attached file: C.htm)

The sender's email address has changed to
firstname.lastname@ sgcib.com. You may want to update your
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Hi Aneesh,

Address is ;

24 Kayalar Sokak
34010 Merter
Istanbul

Kind regards,

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [<mailto:aneesh.deshpande@sgcib.com>]

Sent: Friday, September 05, 2003 5:34 PM

To: cbinatli@goldas.com

Cc: florent.teboul@sgcib.com

Subject: 200kg shipment

Hi Cetin,

Many thanks for your order.

Would appreciate if you could please advise us your complete address where the Kilo Bars are to be delivered in Istanbul.

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Thanks and kind regards

Aneesh

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|----->
|      |      Florent TEBOUL | |
|      |      |              |
|      |      05/09/03 16:23 |
|      |      |              |
|----->
```

>

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|
|
| To:   Aneesh DESHPANDE/fr/socgen@socgen
|
| cc:
|
| Subject: 200kg shipment
|
```

>

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----- Forwarded by Florent TEBOUL/decc/fr/socgen on 05/09/03 16:24 -----

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----->
|      cbinatli@GOLDAS.c|
|      om                |
|      05/09/03 16:20   |
|      Please respond to|
|      cbinatli         |
|                       |
----->
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>

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|
|      To:   Florent TEBOUL/decc/fr/socgen@socgen
|
|      cc:
|
|      Subject: 200kg shipment
|
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>

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|
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```

Hi Florent ,

We confirm deal done today over the phone with below details ;

Quantity:200kg
Purity:995
Premium:0.85/ounce
Interest Rate:%0.5 p.a.
Term: 1 month
Delivery date:10 September,2003 Wednesday (Istanbul)

Please confirm flight details at your earliest convenience.

Kind regards,

Cetin BINATLI
Director
GOLDAS A.S.
24 Kayalar Sokak
34010 Merter
Istanbul
TURKEY
www.goldas.com <<http://www.goldas.com/>>
Tl:+90-212-6374000
Fx:+90-212-6374007

(See attached file: C.htm)

From: Cetin Binatli
To: "aneesh.deshpande@sgcib.com"
Cc: "florent.teboul@sgcib.com"
Subject: FW: 200kg shipment
Date: 08 September 2003 07:08:00

Hi Aneesh ,

In order to arrange for clearance of the goods from customs , we would need a fax copy of the invoice (original signed via DHL courier) and a copy of the AWB also via fax , before the arrival of the gold on Wednesday .

If you could please send a copy of these documents to fax no.+90-212-6374007 or +90-212-6374008 .

Thank you.

Cetin

-----Original Message-----

From: Cetin Binatly [<mailto:cbinatli@goldas.com>]
Sent: Friday, September 05, 2003 5:58 PM
To: aneesh.deshpande@sgcib.com
Cc: florent.teboul@sgcib.com
Subject: RE: 200kg shipment

Hi Aneesh,

Address is ;

24 Kayalar Sokak
34010 Merter
Istanbul

Kind regards,

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [<mailto:aneesh.deshpande@sgcib.com>]
Sent: Friday, September 05, 2003 5:34 PM
To: cbinatli@goldas.com
Cc: florent.teboul@sgcib.com
Subject: 200kg shipment

Hi Cetin,

Many thanks for your order.

Would appreciate if you could please advise us your complete address where the Kilo Bars are to be delivered in Istanbul.
We need to advise our shippers.

Thanks and kind regards

Aneesh

----- Forwarded by Aneesh DESHPANDE/fr/socgen on 05/09/03 16:31 -----

|-----+----->

Florent TEBOUL |
05/09/03 16:23 |

To: Aneesh DESHPANDE/fr/socgen@socgen
cc:
Subject: 200kg shipment

----- Forwarded by Florent TEBOUL/decc/fr/socgen on 05/09/03 16:24 -----

cbinatli@GOLDAS.c|
om |
05/09/03 16:20 |
Please respond to|
cbinatli |

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cc:
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GOLDAS A.S.
24 Kayalar Sokak
34010 Merter
Istanbul
TURKEY
www.goldas.com <<http://www.goldas.com/>>
Tl:+90-212-6374000

From: [Cetin Binatli](#)
To: "aneesh.deshpande@sgcib.com"
Cc: "florent.teboul@sgcib.com"
Subject: RE: 200kg shipment
Date: 05 September 2003 15:57:00

Hi Aneesh,

Address is ;

24 Kayalar Sokak
34010 Merter
Istanbul

Kind regards,

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [<mailto:aneesh.deshpande@sgcib.com>]
Sent: Friday, September 05, 2003 5:34 PM
To: cbinatli@goldas.com
Cc: florent.teboul@sgcib.com
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|   | Florent TEBOUL |
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|   | 05/09/03 16:23 |
|   | |
|----->
>-----|
| To:   Aneesh DESHPANDE/fr/socgen@socgen |
| cc:   |
| Subject: 200kg shipment |
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|   | cbinatli@GOLDAS.c|
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Tl:+90-212-6374000
Fx:+90-212-6374007

(See attached file: C.htm)

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firstname.lastname@sgcib.com. You may want to update your
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From: Cetin Binatli
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Date: 05 September 2003 15:57:00

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34010 Merter
Istanbul

Kind regards,

Cetin

-----Original Message-----

From: aneesh.deshpande@sgcib.com [mailto:aneesh.deshpande@sgcib.com]
Sent: Friday, September 05, 2003 5:34 PM
To: cbinatli@goldas.com
Cc: florent.teboul@sgcib.com
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|   | Florent TEBOUL |
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| To:   Aneesh DESHPANDE/fr/socgen@socgen
| cc:
| Subject: 200kg shipment
|----->
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(See attached file: C.htm)

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From: aneesh.deshpande@sgcib.com
To: [Cetin Binatli](mailto:Cetin_Binatli)
Cc: ["florent.teboul@sgcib.com"](mailto:florent.teboul@sgcib.com)
Subject: 200kg shipment
Date: 05 September 2003 15:31:31
Attachments: [C.htm](#)

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|      |               |
|----->
|-----|
|      | To:   Aneesh DESHPANDE/fr/socgen@socgen      |
|      | cc:                                     |
|      | Subject: 200kg shipment                    |
|-----|
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|      | cbinatli       |
|      |               |
|----->
|-----|
|      | To:   Florent TEBOUL/decc/fr/socgen@socgen  |
|      | cc:                                     |
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Cetin BINATLI
Director
GOLDAS A.S.
24 Kayalar Sokak
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Istanbul
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Tl:+90-212-6374000
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ou falsifie.

From: [Cetin Binatli](#)
To: ["florent.teboul@socgen.com"](mailto:florent.teboul@socgen.com)
Subject: 200kg shipment
Date: 05 September 2003 15:20:00

Hi Florent ,

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Interest Rate:%0.5 p.a.
Term: 1 month
Delivery date:10 September,2003 Wednesday (Istanbul)

Please confirm flight details at your earliest convenience.

Kind regards,

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