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IN THE FEDERAL COURT OF CANADA

(TRIAL DIVISION)

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BETWEEN:

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THE HAMLET OF BAKER LAKE, et al

Plaintiffs

-and-

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THE MINISTER OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT, et al

Defendants

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Held before The Honourable Mr. Justice
P. M. Mahoney, at 330 University Avenue,
8th Floor, Toronto, Ontario,
June 4th - 8th, 1979, inclusive.

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APPEARANCES:

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A.E. Golden, Esq., for the Plaintiffs.
D. Estrin, Esq.,

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L.P. Chambers, Esq., for the Minister of
D.T. Sgayias, Esq., Indian Affairs and
Northern Development.

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Ms. Price, for Essex Minerals
Company Ltd.

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W.C. Graham, Q.C., Esq., for Pan Ocean Oil Limited,
R.W. Cosman, Esq., Cominco Ltd., and Western
Mines Ltd.

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T.G. Heintzman, Esq., for Urangesellschaft
Ms. Marvyn K. Koenigsberg, Canada Ltd. and Noranda
Exploration Co. Ltd.

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VOLUME XVI

Friday, June 8, 1979

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I N D E X O F E X H I B I T S

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>
I-14	Three photographs taken by Mr. Rota in 1977	2552

* * *

Witnesses

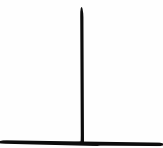
WILBUR B. GRIFFITH

Examination in Chief by Mr. Cosman	2539
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Re-Examination by Mr. Cosman	2548

DANIEL ROTA

Examination in Chief by Ms. Koenigsberg	2549
Cross-Examination by Mr. Golden	2557
Mr. Heintzman	2559

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--- Upon resuming at 9:30 A.M., on June 8, 1979.

WILBUR B. GRIFFITH, SWORN.

THE REGISTRAR: Would you state your full name, your complete address, and your occupation?

THE WITNESS: Wilbur Bruce Carleton Griffith, 3275 Bainbridge Avenue, Burnaby, British Columbia, Drill Superintendent for Cominco Limited.

EXAMINATION IN CHIEF

BY MR. COSMAN:

Q. Mr. Griffith, I understand that you have been in the mining exploration field for 32 years, is that correct?

A. That is correct.

Q. And for the last two and one-half years you have been Drill Superintendent, Exploration, with Cominco Limited?

A. Correct.

Q. What are your responsibilities in that position?

A. My responsibilities are to arrange drilling contracts, assist project geologists with the organization of their programs, write drilling agreements, inspect drilling projects, and pass my opinions as to whether they are operating efficiently or not.

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Q. I understand that for the majority of those 32 years you were an independent drilling contractor, is that correct?

A. That is correct.

5 Q. In the course of your years in the mining exploration field, have you ever witness caribou in close proximity to a drilling site?

A. Yes, I have.

10 Q. Can you describe when that occurred?

A. The first time that I witnessed caribou near an area that we were drilling was in the spring of 1952, in Manitoba. We had two 15 drill camps on the north-northwest shore of Assyan Lake, and the spring migration of caribou passed between our two camps and, consequently, our two drills.

20 Q. Can you describe the camp, first of all? You said you had two camps. Could you describe those camps and how many men worked in those camps?

A. The camps were lumber and plywood frames covered with tents and 25 tarpaulins, heated with -- I think wood stoves at that stage.

Q. How many men would there have been in those camps?

A. Approximately seven in 30 each camp, including the cook.

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Q. Where would the camps be in relation to each other: how far apart?

A. Approximately five miles apart.

Q. Where were the drill sites in relation to the camps?

A. On the easterly of the two camps. The majority of the drill sites were quite close to the camp. I would say within 2,500 feet. On the westerly camp the drill sites were wire-spread sometimes as much as five miles away.

Q. Where did you see the caribou in relation to the drill sites?

A. The caribou I saw nearest to drill sites were at our easterly drill camp. They passed within a very few feet of both the drill and the camp.

Q. Was the drill in operation?

A. Yes.

Q. What kind of drill was it?

A. It was a drill referred to in the industry as a BBS-1, manufactured by Boyles Bros. Drilling of Vancouver.

Q. Can you describe the drill and how it operates: whether it emits a noise or not?

A. It is a unit powered by a 25 horsepower gasoline engine, Wisconsin make, with a top RPM ratio of 2750 revolutions per minute, connected to a transmission and chain-drive assembly

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which, in turn, drives the drillhead, which at that stage was a gear-fed head.

Q. How high was the structure from the land?

A. The drill shack itself, approximately seven to eight feet. The tripod for hoisting up tools from the drill holes, approximately 25 feet. That varies a little with the angle of your hole you are drilling.

Q. How long was the drill in operation on a daily basis?

A. Twenty-four hours per day.

Q. And can you describe the noise that such a drill would make in its operation?

A. Well, it was a 25 horse-power gasoline engine with a straight-pipe exhaust system; no muffler. The drillhead itself is a gear-fed mechanism, and when you drill hard rock it creates a pressure and it is a high pitched whining noise that it creates.

Q. Is the noise of the drills that were used in that year -- 1952 -- different from the noise of the drills that are presently used today? How would you compare them?

A. They are similar, although most of our drills today -- or most of the contractors' drills today -- are diesel powered. The majority of them use a muffler system. The drills are predominantly but not entirely hydraulic-fed

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rather than gear-fed, and so are consequently a slightly quieter operation.

Q. You have indicated that the caribou that you witnessed came within a few feet of the drill. Was the drill in operation at that time?

A. Yes, they would come -- there were caribou passing for approximately three or four days, and they would come within a few feet of the drill shack. Some closer than others. Some appeared to be more curious than others.

Q. Did you observe how the caribou reacted, if at all, to the drilling operation?

A. If something startled them -- if a man opened the drill shack door suddenly and they were close by, they would run away perhaps 50 to 100 feet and stop, look, and then continue on their way. There was very little grazing in that area.

Q. Did the drilling operation in those locations continue in the following years?

A. It continued the following year that I was there.

Q. And can you describe the camps and the nature of the operation that following year?

A. The camps were in the same location and the caribou passed in virtually the same area.

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Q. And did you personally see the caribou that following year?

A. Yes.

Q. For how long did they pass the drilling operation?

A. Three to four days. There were more the first three days than there were on the fourth day.

Q. And did you have any occasion, apart from this occasion that you have described, to see caribou in subsequent years in close proximity to drilling sites?

A. Yes, I have seen caribou in -- I am not sure of the year. I think it was in 1962 and '63. It may have been '61 and '62. I am not sure of that. It was in the Culleton Lake area of the Northwest Territories.

Q. Can you identify where the Culleton Lake area is by reference to the map here?

A. I do not see it on the map.

Q. That is Exhibit I-8.

A. It is south of South Henik Lake. In approximately that area here.

Q. South Henik Lake is shown on the map as to the south of that lake?

A. That is correct.

Q. Is that north of the tree line?

A. The only trees there were were along a river in that area. There were some

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trees. We were close to the tree line at that particular point.

Q. Can you describe what kind of operation you had at that site of Culleton Lake?

A. We had a similar type of operation and an identical type of camp. The drills were changed by that time. They were diesel powered -- 54 horsepower diesel engines, rather than the 25 horsepower gasoline. We were drilling larger sized holes, approximately two inches in diameter, rather than one and a half. Other than that the setups were practically identical.

Q. And where did you see the caribou you referred to in relation to the drills that were in operation?

A. Again, they passed quite close to the drills and the camp areas. We had, again, two drills and two camps in that area.

Q. Can you estimate by way of feet how close they would have come to the drills and the camps?

A. Within 200 feet of the drills and within 25 feet of the camps, on occasion.

Q. How long did you see caribou on that occasion?

A. Approximately one week.

Q. And were they moving past the camp and the site for that full time?

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A. There were not as many caribou in that area as I have seen in Manitoba, but they were passing for approximately a week and in smaller groups.

Q. What time of year was that?

A. That would be the last half of May.

Q. And in which direction were the caribou moving?

A. North to northwest.

Q. And were there any other occasions on which you witnessed caribou in close proximity to your camps?

A. No.

Q. Have you personal experience in the Baker Lake area?

A. I have been in the Baker Lake area approximately three times. I think it is three times.

Q. And have you witnessed caribou on any of those occasions?

A. No, I have not.

MR. COSMAN: Thank you very much.

THE COURT: Mr. Heintzman, do you have any questions?

MR. HEINTZMAN: No questions, My Lord.

MR. CHAMBERS: No questions, My Lord.

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CROSS-EXAMINATION

BY MR. GOLDEN:

Q. You have been in mining exploration for 32 years, and the first incidents you told us about were in 1952 and again in 1953; is that correct?

A. Yes.

Q. And the next time you have described an incident involving caribou was in 1962-63. I assume that was the spring of '63?

A. Yes. I qualified that in that I am not sure whether it is 1961-62 or '63.

Q. You say you were in the Baker Lake area three times. Does that mean you were set up in drill camps three times?

A. No, I visited Baker Lake twice when I was a contractor tendering on work, and I visited a drill job in the Baker Lake area since I have worked for Cominco.

Q. Where would that be?

A. At Amer Lake.

Q. That is to the north of Baker Lake?

A. That is correct.

Q. When was the visit to Amer Lake?

A. I believe it was August, 1977.

Q. In the other years that you have worked -- and you have worked many between 1952 to the present time -- obviously, you must have

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been working somewhere.

A. Yes, I did.

Q. Were you working in the Northwest Territories?

A. On occasion.

Q. On occasion elsewhere?

A. Yes.

Q. On each occasion you have described caribou they were, I gather, on a spring migration, is that correct?

A. That is correct.

MR. GOLDEN: Thank you. No further questions.

MR. COSMAN: I have perhaps one question on Re-Examination.

RE-EXAMINATION

BY MR. COSMAN:

Q. You have described, in responding to my friend's question, a visit you had to the Baker Lake area of the Northwest Territories where Cominco was carrying on a drilling operation. How large an operation was that?

A. The contract was for 2,000 feet of drilling.

Q. Is that a large project by drilling standards?

A. No.

MR. COSMAN: Thank you very much.

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DANIEL ROTA, SWORN.

THE REGISTRAR: Would you state your name, your complete address, and your occupation?

THE WITNESS: My name is Daniel Rota, I am the Project Geologist for Urangesellschaft Canada Ltd., and I live at 292 Wright Avenue, Toronto.

EXAMINATION IN CHIEF

BY MS. KOENIGSBERG:

Q. Mr. Rota, you are 42 years of age?

A. Yes.

Q. And you were born in Paris, France?

A. Yes.

Q. You came to Canada in 1953?

A. Yes.

Q. And did you attend Laurentian University in Sudbury?

A. Yes.

Q. You received your Bachelor of Science in Geology in 1969 from that university?

A. Yes.

Q. When did you begin working for Urangesellschaft?

A. Starting in the spring of 1977.

Q. How long have you worked

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for them?

A. I have been working for them since. It is two and a half years.

Q. You work as a Geologist in the field?

A. Yes.

Q. Can you tell us where you have been working in the Northwest Territories for 1977, 1978 and 1979?

A. I have been working only on one project on the Thelon River, 300 miles east of Yellowknife.

Q. Maybe you could indicate on Exhibit I-8 where approximately you have been working.

THE COURT: It is very hard to understand unless he speaks directly to us.

THE WITNESS: The holdings start south of Gravity Lake and go as far as the Thelon Game Sanctuary.

BY MS. KOENIGSBERG:

Q. And you say you have been in the same area in the last three years?

A. Yes, the holdings have not changed very much in that time, and we have been there -- or I have been on that special campsite since 1977. It is the same campsite.

Q. What are the mining activities conducted at that site?

A. We have done extensive

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airborne surveys, and we have done lots of ground prospecting, and geochemistry, and some ground geophysics, too. Normal exploration activity.

Q. Mr. Rota, please, if you can speak as slowly as possible so the Reporter and everyone else can get down what you are saying. Beginning in 1977, for what period of time were you at this location?

A. I was there from the end of May to the end of August.

Q. And did you see any caribou?

A. Yes.

Q. And did you take any pictures of caribou?

A. Yes.

Q. I am showing you a group of three photographs. Are these the photographs which you took?

A. Yes.

Q. And where were you located when you took these photographs?

A. I was in camp, and we were on the camp described by Lake 925, west of Beverly Lake.

Q. West of Beverly Lake?

A. Beverly Lake.

MS. KOENIGSBERG: Could these three photographs be marked as the next exhibit?

MR. GOLDEN: There is a rule about photographs, My Lord. At least they should

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have been produced. I think there is a rule that they should be produced 10 days before trial -- photographs, plans, and what-not.

Without getting unduly technical about all that, at least we should see them before they are tendered.

THE COURT: Yes.

MR. GOLDEN: For what it is worth, I object to their admission on the grounds that they do not comply with the rules. But, I must say that I am not pressing it strenuously.

THE COURT: Very good. Is there any advantage in marking them separately, from your point of view?

MS. KOENIGSBERG: No. They are fairly uniform. I would think by year we could mark them.

THE COURT: Three different years.

MS. KOENIGSBERG: They are three photographs taken from approximately the same location.

THE COURT: Would you like to identify those as to what years?

MS. KOENIGSBERG: 1977, they were taken at the end of July or early August of 1977.

EXHIBIT NO. I-14: Three photographs taken by Mr. Rota in 1977.

BY MS. KOENIGSBERG:

Q. Did you see some caribou in

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the first part of the summer of 1977?

A. No. When we went, it looked like the spring migration was already through, so we started seeing caribou really towards the middle of July.

Q. About how many caribou would you estimate that you saw?

A. I saw several thousand. But the day when I saw the most is we had a herd coming north of the camp which we estimate was over 10,000. They passed through the camp from 7 o'clock to 11 o'clock in a steady stream with no breaking.

Q. In a steady stream, you said?

A. Yes.

Q. And how close would you estimate that those caribou were to the camp?

A. Those caribou were about half a mile from the camp. But one other occasion we had a smaller group which was closer to the camp. Those were the pictures I told you I was showing. Those caribou were about 200 yards from camp, and there was maybe 200 or 300, at the most.

Q. And what activities were being conducted when these caribou were within 200 or 300 feet?

A. The normal -- those caribou which came 200 feet from camp came during the day, so there was not that much activity that day because

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we just had a few people in camp doing lab work and working around the campsite, so it was really quiet. But we had about seven people in camp that day.

5 Q. And you told us you were back in the same area in 1978?

A. Yes.

10 Q. And did you see caribou at that time?

A. Yes.

15 Q. And did you take any photographs?

A. No, I didn't take any photographs.

20 Q. About how many caribou did you see in 1978?

A. Several thousand again, but it was different. We didn't have the big herd coming all at once. We had a smaller group passing by. And it lasted a lot longer. Instead of lasting maybe a matter of one week, like it was in 1977, it lasted one month and a half, on and off. They would stop and graze at the camp, and go. There was different activity.

25 Q. And during the time that they were there over a month and a half, can you tell us if there were aircraft in the area?

30 A. Well, we had an airborne survey going at that time. We also had -- we were doing fairly extensive claim staking, so we

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had two helicopters in camp and we flew them close to 600 hours, so we had lots of airborne activity.

Q. Did you have an opportunity to observe the effect of the aircraft on the caribou?

A. Yes, I have seen that. Let's say that if there is low flying, they are going to run away. But let's say if you have about 250 feet, it is not going -- apparently they are not disturbed, yes.

Q. In 1979 you were back in the same camp?

A. I spent some time at the same camp, yes.

Q. Did you see caribou at that time?

A. Yes, there were caribou this spring.

Q. That was how long ago?

A. About two weeks ago. Two or three weeks ago.

Q. How many caribou did you observe?

A. It looks like the bulk of the migration is already through, so we haven't seen that many. I would say we have seen -- I have seen myself 200 or 300, at the most, so far.

Q. Did you take some photographs this year?

A. Yes, I did.

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Q. I am showing you a group of six photographs. Would you look at them, and did you take these photographs?

A. No, those photographs I didn't take them. One of my men took them. I have the ones in my pocket. They are slides. But I was on that campsite and I saw those pictures.

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Q. And were you at this campsite when these pictures were taken?

A. Yes.

MR. GOLDEN: No.

THE COURT: I don't think so.

Too bad.

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BY MS. KOENIGSBERG:

Q. How close did the caribou come this year?

A. Within half a mile from camp.

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Q. And what kind of activities were being conducted when you were there?

A. We are setting up camp, so we have been getting equipment. We have also been moving some equipment off the ice because the ice was fairly bad, so we had to use the helicopter to swing equipment. We have been fairly active. At that time there were eight men in camp.

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Q. Have you observed the effect of the activity in the mining camp this year on the caribou?

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A. It doesn't look like it because we had one guy working on the ice, and the caribou came within 200 yards from him.

MS. KOENIGSBERG: Thank you. Those are my questions.

THE COURT: Mr. Cosman, do you have any questions?

MR. COSMAN: No, I do not, My Lord.

MR. CHAMBERS: No cross-examination, My Lord.

CROSS-EXAMINATION

BY MR. GOLDEN:

Q. Mr. Rota, I would just like to make sure that I know where the camp was. We are dealing with an area to the south and west of Dubawnt Lake and then southwest of Dubawnt Lake. Which one was it you were in, in the spring of 1977?

A. I was in the camp in '77 and '78.

Q. I see. And both the incidents you told us about in the spring of '77 and the incident you told us about in the spring of 1978 took place at which camp?

A. This camp.

Q. West of Beaverhill Lake?

A. Yes.

Q. And the first year -- I gather you had not done your airborne surveys in the first year. You did them in the second year?

Rota, cr ex
(Golden)

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A. We did airborne surveys since 1975.

Q. But in that particular area you describe a fair amount of airborne activity in 1978?

A. Yes, we had airborne activity from 1975, '77, '78, and we have not started in 1979 yet.

Q. But in 1978 you said you had 600 hours that year?

A. Yes, 1978.

Q. I gather what you are telling us is that you had a lot of activity in 1978?

A. Yes, we had lots of activity every year.

Q. Every year?

A. Yes.

Q. In the year 1979 -- you were up there a couple of weeks ago and you say the spring migration has gone through?

A. Yes, where the camp is the spring migrations seems to have come through. It is coming through -- the tail end of it.

Q. The other years what you were experiencing also was spring migration, was it?

A. Last year, in '78, the only thing we saw of spring migration was in April and it was only a few caribou at the same camp where I was this year, Cross Lake. Toward the end of May there was a few passing by Lake 9252.

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But it looks like this year the spring migration is later than it was other years.

MR. GOLDEN: Thank you. No further questions.

THE COURT: Thank you very much.

MR. HEINTZMAN: My Lord, we have no further witnesses. I would like to read from the Examinations for Discovery of three of the witnesses examined from the Plaintiffs.

If I may have permission to do so, I will read in ---

THE COURT: When you say "we" are you speaking of the mining companies?

MR. COSMAN: We also have no further witnesses.

MR. HEINTZMAN: Rather than Mr. Cosman reading part or Mr. Graham reading part, and myself reading part, with Your Lordship's permission I will just read the questions.

I will start first with the Examination of Thomas Tapatai, starting at page 2, line 13:

" Q. Mr. Tapatai, do you reside in the Hamlet of Baker Lake?

A. Yes.

Q. How long have you lived here?

A. I was in this area before there was even any houses around this area, and in fact, on the

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"island there were three buildings and the Hudson's Bay Company owned those three buildings, so I was on the island as well.

Q. What island are you referring to? Does it have a name?

A. It is here (indicating).

Q. Does it have the name Christopher Island?

A. Yes, the Hudson's Bay Company were on this island. Big Hips Island.

--- OFF RECORD DISCUSSION

THE WITNESS: I can recognize the places, but I can't see very well.

BY MR. COSMAN:

Q. Where were you born?

A. I was told that I was born in Wager Bay.

Q. Where is that? Is that shown on map 14?

A. No, it is not shown. I know where it is.

Q. Where is Wager Bay?

A. It is near the area of Repulse Bay -- Cape Fullerton, down the coast. I am sorry. It was Cape Fullerton. That is between Repulse Bay and Chesterfield. This is around this area.

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" MR. COSMAN: Did he say Wager Bay before?

--- OFF RECORD DISCUSSION

BY MR. COSMAN:

Q. What is the name of the place that you were told that you were born?

A. Cape Fullerton. Tqatiktalik.

Q. I understand the name of the place in Inuktitut is Tqatiktalik, is that right?

A. Yes.

Q. And English that is Cape Fullerton?

A. Yes.

Q. When did you come from Cape Fullerton to Baker Lake?

A. When I was a child I was in Chesterfield Inlet and from Chesterfield Inlet we moved to the Baker Lake area.

Q. And how old were you when you moved to the Baker Lake area?

A. I started remembering at the time my father passed away, and it was around that time when I started remembering.

Q. Do you know how old you were at that time; the time that your father passed away?

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" A. No, I don't remember my age.

Q. Were you a boy at that time?

A. It was during my boyhood.

Q. How old are you today, Mr. Tapatai?

A. I don't quite know how old I am, but I am pretty sure I am quite old.

Q. When you moved to the Baker Lake area, was the Hudson's Bay post on Big Hips Island at that time?

A. Yes, it was on that island, and in fact there was only one person from the Hudson's Bay post and he was part Inuit and part white."

Then, just one other question, My Lord, on page 9, starting at line 5:

Q. Are you a hunter? You are retired now, but do you do some hunting now?

A. No, I don't hunt any more. I am just one of the people who sit back."

Then the Examination of Matthew Kunungnat, starting at page 2:

" Q. What year were you born, Mr. Kunungnat?

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" A. I was born on October 20, 1938.

Q. Could you tell us where you were born, please?

A. On these two points.

Q. Indicating --

A. On Thirty Mile Lake.

Q. Indicating the east end of Thirty Mile Lake near Kazan River. And when did you come to live in the Baker Lake area?

A. 1960.

Q. Between 1938 and 1960 did you always live on the south shore of Thirty Mile Lake on the Kazan River?

A. Yes.

MR. GRAHAM: For the record, the witness has indicated on the map several places to the south of Baker Lake, generally within the area delineated by the black line on map fourteen.

I wonder if it would be satisfactory for the record if we just state that he indicated a variety of places south of Baker Lake but lying within the Baker Lake Study Area.

MR. STARKMAN: Yes, it seems that he moved to various places within that area.

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" THE WITNESS: Yes, I was in these places where I have indicated.

BY MR. GRAHAM:

Q. And were you living with your family at that time?

A. This was with my father and this is around the area of these lakes. We were at these lakes.

Q. That is a series of lakes south of Thirty Mile Lake?

A. And in the springtime we would be around the south end of one of the lakes.

Q. And in the winterime?

A. The winter season we would be on one of the other lakes fishing.

Q. Again all the lakes are just south of Thirty Mile Lake?

A. Yes, south of Thirty Mile Lake."

Then, on pages 37 to 39. This is Ms. Koenigsberg examining.

" Q. Mr. Kunungnat, you said that you were born, I believe, on Thirty Mile Lake on Kazan River, is that right?

A. Yes, in the general area of the Thirty Mile Lake -- east of Thirty Mile Lake.

Q. Would your people have

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"belonged to a group of people called the Padley people or, in Nuktitut, 'Ahearmiut'?

A. Padlermiut or Ahearmiut or Harvaqtormiut. It is either one of those three. I am not sure whether we had relations with the Padlermiut. They used to travel to our area by dog team.

Q. You mentioned the word Harvaqtormiut. I don't understand what you mean by the word Harvaqtormiut. I wanted to know if it is associated with the people referred to as Padlermiut?

MR. STARKMAN: Perhaps you could just ask him if he knows the name of the people.

MS. KOENIGSBERG: I did.

MR. STARKMAN: You gave him two or three alternatives instead of asking him.

THE WITNESS: We are referred to as Harvaqtormiut people of the Kazan River area.

BY MS. KOENIGSBERG:

Q. Would that be spelled Harvaqtormiut?

A. That is the English spelling. I am of the Harvaqtormiut.

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" Q. Do you know the name Ahearmiut?

THE INTERPRETER: When you were asking him you didn't specify Padlermiut or Ahearmiut. The Harvaqtormiut and the Padlermiut are closer to each other by dog team.

BY MS. KOENIGSBERG:

Q. Would they intermingle or intermarry?

A. I don't recall them intermarrying.

Q. Do they speak -- do the Padlermiut and the Harvaqtormiut speak in a different dialect?

A. There is a difference between the two dialects. I am speaking in my own dialect right now as I am talking to you and they have their own dialect.

THE INTERPRETER: When you referred to that question of Padlermiut and Ahearmiut, he doesn't know if they are referred to as Harvaqtormiut.

BY MS. KOENIGSBERG:

Q. How would he refer to them?

A. Padlermiut.

Q. That would refer to the people coming from the area of Padley?

A. The people from the Ahearmiut

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"are referred to as Ahearmit. There are some people from Padlermit, or from Baker Lake or ---

Q. Mr. Kunungnat, do you know where your grandfather came from?

A. He was from the Kazan River area. In fact, I even know where his grave is."

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Then --

MR. GOLDEN: I think it might be appropriate for my friend to just read the rest of that exchange. It seems to deal with the identical topic.

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MR. HEINTZMAN: What page is that?

MR. GOLDEN: At the bottom of page 38:

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" Q. Mr. Kunungnat, do you know where your grandfather came from?

A. He was from the Kazan River area. In fact I even know where his grave is.

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Q. Where is his grave?"

And so on. I do not think very far down. But he does go on further to specify that, and I think in fairness you should read it.

MR. HEINTZMAN: All right.

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" A. It is right here (indicating)

Q. You are referring to an area directly south of Kazan Falls on the Kazan River; is that correct?

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"It is on the north side?

A. Yes, north side. He wanted to be buried at the caribou crossing area. He used to hunt with the kayak. he used to hunt caribou with the kayak."

Do you want me to keep going?

MR. GOLDEN: No, that is all right.

MR. HEINTZMAN: And then the Examination of Mr. Hugh Tularialik, page 34, line 24, to page 35, line 12:

" Q. In the month of August were the caribou that you observed around the mining camp -- were they bothered? What was the reaction to the activities that were going on in the mining camp?

A. In the month of August there were about a couple of caribou that came close to the mining camp.

Q. Yes. Did they run away?

A. No, they don't run away. They just walked by.

Q. How close would that have been?

A. About from here to the RCMP station.

MR. STARKMAN: That is right on the lake. It is the building with the flag.

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" MR. GRAHAM: Between 100 and 125 yards."

Then on page 50, Examination by Ms. Koenigsberg.

"Q. You said, I believe, that your father's sister was married to Mr. Peryouar.

A. Yes.

Q. And would your father's family at the time of that marriage have come from the Garry Lake area?

A. My grandfather is a member or is a Ukkusiksalimiut from the Back River area.

Q. Do you know where your grandfather's father came from?

A. I don't.

Q. Did you ever hear any stories from your grandfather or your father that any of your relatives came from the sea coast?

A. I don't really know the history, but I am just guessing. I think my grandfather came from the Gjoa Haven area along the sea coast.

Q. And is there any reason why you think it was that area? Why do you think it was the Gjoa Haven area?

A. The reason why -- well, the reason is that he has the same dialect as the people from that area.

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" Q. Are you familiar with the people from the Gjoa Haven area with the name Nattilingnut?

A. Yes, I am familiar with the name.

Q. And is that different? Do those people speak a different dialect from the dialect spoken by your grandfather?

A. I don't quite remember my grandfather. I was still a child. The only thing I remember about my grandfather is he used to scold me. This is one of the areas why I remember my grandfather."

That concludes the reading of the Examinations.

Before I complete the case on behalf of the two companies which I act for, I have not been able to decipher this journal of Mr. Christopher and Mr. Norton. I intend to have someone either go to Winnipeg and read it, or myself go and read it. I would like to reserve my right to comment on it. Hopefully, I won't have to bring the lady back who apparently brought it, after I go out and read it.

THE COURT: Have you tried to read the photographs these copies were taken from?

MR. HEINTZMAN: I haven't read the ones that have been filed, My Lord.

THE COURT: It is hard.

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MR. HEINTZMAN: Especially the pages where they have written numbers and whatnot. I just cannot decipher what they are talking about.

Subject to that, we have no further evidence.

THE COURT: I think that is probably a fair reservation, although I must say that, of course, you were not here when she was, but I suspect when you do have a chance to go over it that it will not be necessary.

MR. GRAHAM: My Lord, I wonder if I may just broaden it. I am sure that my friend will agree to that reservation a bit.

When Mrs. Smith was here, I put it to you that we should have the right to bring her back.

THE COURT: Yes.

MR. GRAHAM: We have not had, during the course of the trial, the opportunity of not only examining this diary, but my friend -- we talked about the shelves full of volumes of diaries from the Hudson's Bay Company. I do not think there is any suggestion of that nature, but I put it to Your Lordship -- and again I hope that my friend would agree -- that if we were to find in the Hudson's Bay Archives documents which are relevant which could be proved in the same way -- Mrs. Smith would put them before Your Lordship by way of agreement of all of the parties before the Argument date, it would seem to me not to be appropriate to

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be restricted to this journal, if an accompanying journal to it had contradictory statements or something that would shed light on the evidence led in.

MR. GOLDEN: I am always anxious to try to have everyone shed light, but there is one aspect that disturbs me.

First of all, with respect to what is already an exhibit, I agree it is difficult to read. I can personally testify that even the originals are difficult to read and it is not much comfort to look at them, as opposed to the copies. The problem is in the faintness of the writing and, in fact, my impression is the Xerox brings out more contrast than the original did. It is a pale brown on a slightly paler buff.

The other problem is the unique old script used. Ms. Smith is quite expert at reading that. She, as Your Lordship observed, read it with quite a bit of -- even the parts where she read from the original script -- authority. She was the only one in the room able to do that when we were transcribing.

I have no objection of course to my friends observing it in any way and doing anything they can to help themselves understand the entire journal.

I do have objection, however, to my friends re-opening their case. The Hudson's Bay Archives have been open to archeologists and

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historians for many years. We took advantage of this, having read resource material or other material referring to it. We were aware of the resource. I just signed a cheque yesterday to our researcher who went to Winnipeg on our behalf. Even before we went to Baker Lake there were some efforts made in that regard. While we were in Baker Lake, our researcher was working in Winnipeg. My friends have had the same opportunity. Indeed, the archeological fight, as it were, is one that has been aggressively pursued by my friends. I see no basis upon which they should re-open their case in order to put in some specific documents.

Perhaps this is premature, because my friends have not really tried to re-open their case. They simply put a caution on it this morning. If there is evidence after they close their case which, with reasonable diligence, they could not have obtained during the course of preparing for trial presenting their case, then I would agree. I am not normally fussy about those things. I am sure Your Lordship will agree.

However, if that is not the case and they could have by reasonable diligence obtained that evidence beforehand, I would object to its going in at a later time.

It is just that we will not be having any formal hearings between now and the time of Argument. I presume I might see some documents flying by my desk at some point. I would

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rather not.

MR. GRAHAM: Just one quick observation, My Lord. I think in the normal circumstances my friend's observations would be correct. His memory is somewhat short on this point. He has forgotten to recall that he did not abide by the rule that would have given 10 days' notice of his intention to put those documents before Your Lordship and his intention to call that witness.

I specifically said to Your Lordship at that time that I objected to her going into the box at that time. And if he raises that suggestion, we would have been prepared. We would have examined those documents had we known that was going to be proceeded with in that way. In accordance with the Evidence Act, we would have had a look at those documents.

THE COURT: Mr. Graham, there is simply no doubt that you have the right to have this re-opened to call Mrs. Smith back and cross-examine her on the diaries that are in, and so on. There is no question on that at all. I am sure Mr. Golden is not suggesting that.

It is the aspect of introducing new documents from the Archives.

MR. GRAHAM: That is my point, My Lord. Had we been given notice that those documents were going to be coming forth -- and I think that is the purpose of the rule. If someone

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is going to put in part of a record, the purpose of the rule is to give the people on the other side the opportunity to examine the whole record and the complementary parts that have to be examined and have to come in with it. How can it stand by itself?

THE COURT: Is the whole record the entire Hudson's Bay Archives, or is the whole record that portion of the Archives dealing with the voyage in the Baker Lake area?

MR. GRAHAM: And there are other voyages into Baker Lake. We know that.

THE COURT: Apparently this was the first.

MR. GRAHAM: This is the second, My Lord.

MR. GOLDEN: No, it is the first.

MR. GRAHAM: I am sorry. There is one in 1761.

MR. GOLDEN: It didn't go into Baker Lake.

MR. GRAHAM: It didn't get to Baker Lake.

THE COURT: We don't know that. It is my impression that this was the first.

MR. GRAHAM: I am sorry. You are correct, My Lord. They went up to Chesterfield Inlet.

MR. GOLDEN: They didn't get to Baker Lake.

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MR. HEINTZMAN: Well, My Lord, if I could speak to that point, surely, anything which would shed light on the veracity of Mr. Norton's story is, of course, something that Your Lordship should pay heed to. And I am placed in the situation that I would like to put into evidence what Mr. Hearn had to say about Mr. Norton and what the editor of Mr. Hearn's journal had to say about Mr. Norton.

In effect, we are relying upon Mr. Norton's statement as being capable of belief. If Mr. Norton was the kind of person who exaggerated things ---

MR. GOLDEN: I am sure my friend is not implying that, or giving evidence at this point. I know the literature to which he is referring. There was a blood feud between Mr. Hearn and Mr. Norton.

THE COURT: Norton Moses or Norton Junior, Mr. Hearn is referring to? You will have to sort that one out too.

MR. HEINTZMAN: I believe the Norton that later became the Director or Governor of the Hudson's Bay post at Churchill is responsible for sending Mr. Hearn and he is the same Mr. Norton who was on the trip to Churchill.

THE COURT: According to Mrs. Smith, the one on the trip to Baker Lake was the son of the one who dispatched Hearn on his venture.

It is obvious you have some research

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you will have to do. It's fair enough.

MR. HEINTZMAN: I was content with not having the materials other than Samuel Hearn's journal going in as evidence. It was up to my friend to give us some advance notice that he was seeking to put that into evidence and, therefore, not only do I wish to examine the particular journal, but anything that would shed light on what that journal stands for is a matter that I would request to have reserved and, hopefully, I will be able to attend to that very quickly.

THE COURT: Certainly there is no question -- I am sorry, Mr. Golden. You wish to add something?

MR. GOLDEN: Of course, My Lord, had we put in the original journals through Mrs. Smith, we would not have been required to give any notice at all. There is a rule that requires us to give notice when we are filing copies of documents. That is in order to enable comparison, and that sort of thing.

This was, in effect, original material but we all agreed that we should not use the subpoena power to deprive the Archives of their valuable documents. It was my understanding that that was the situation.

I think we are arguing about something that may not be a problem.

THE COURT: I hope it will not be. I suspect it will not be. I think the documents

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went in under the provisions of the Evidence Act required by the corporation to be kept by its employees in the ordinary course of their business and I think my recollection of the Evidence Act is that the notice will apply to the original documents as well as to copies of them.

I think your request is certainly -- there is just no doubt because that was the arrangement last Friday when the evidence went in that if Mrs. Smith was required to be recalled, she would be, and it would be re-opened for this.

You obviously have not had a chance to seriously think about that proposition. I think that the question of putting in fresh evidence from the Archives would be one that I would leave for argument when we know the nature of that fresh evidence. The purport of it is clear. However, I am certainly willing to receive the application on that ground.

MR. COSMAN: My Lord, perhaps just one housekeeping item. As you are aware, we have not chose to prolong this trial by calling Dr. Banfield and if his Affidavit is still filed with the Court, perhaps that should be released on the same basis as my friend Mr. Golden's is released.

THE COURT: Yes. Mr. Banfield's Affidavit will be returned to the party filing it.

MR. GOLDEN: I assume my friend

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Mr. Heintzman would want to do the same with respect to Dr. McGhee.

MR. HEINTZMAN: Exactly, My Lord. The certificate of Dr. McGhee could also be released, My Lord.

THE COURT: All right.

MR. HEINTZMAN: I wonder if the Registrar could help me as to whether, when Dr. Wright was testifying, both his curriculum vitae and the conclusions on the Aberdeen site were filed?

THE COURT: Yes. I-11 was the curriculum vitae and I-12 is the extract from his report.

MR. HEINTZMAN: Thank you, My Lord.

THE COURT: Did you have something, Mr. Chambers?

MR. CHAMBERS: Yes, a little matter of housekeeping, too. It concerns our Statement of Defence. As Your Lordship observed in the course of the trial, it is confusing inasmuch as there have been three Statements of Claim. The numbers do not jibe.

So, if it is agreeable to the Court, and my learned friends, we shall file with the Court and serve solicitors for all parties our amended Statement of Defence solely to clean up this numbering business. There will be no substantive amendments.

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THE COURT: I think that would be extremely helpful for the future.

Mr. Golden, do you have any evidence in reply?

MR. GOLDEN: No evidence in reply.

THE COURT: I am not sure that we can formally close this case in dealing with Mrs. Smith. There is no evidence in reply, so that is it.

The order will go that the Plaintiffs' written argument will be filed with the Court and delivered to the Defendants, all Defendants, not later than July 20, and that the several Defendants' written arguments will be filed with the Court and delivered to the Plaintiffs and to each other not later than July 31, and subject to any application that may be brought with regard to the Hudson's Bay Company Archives in the interval, the hearing will adjourn to resume here, in Toronto, on Tuesday, August 7, at, I suppose -- 10 o'clock in the morning.

I would be willing to hear representations on that. Frankly, I would be quite happy to make it 2 o'clock in the afternoon, if that is suited to others' convenience. It is a long weekend and I hesitate to have people flying in from their summer homes or wherever else they may be enjoying that weekend to be here first thing in the morning.

MR. GRAHAM: I think there is

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good precedent for that, My Lord. The World Court sits at 2 on Monday and closes at 1 on Fridays.

THE COURT: The scope of the hearing has been rather large, but not quite the World Court. We will make it 2 o'clock in the afternoon on Tuesday.

MR. CHAMBERS: Would Your Lordship's Order also include leave to the Defendants other than mining companies to file an amended Statement of Defence?

THE COURT: Yes.

The hearing will resume on Tuesday, August 7, here in Toronto. You will have to perhaps check with the Registry here to ascertain whether it is the same courtroom or not, but that is beside the point. It is 2 o'clock in the afternoon and leave it to the Government Defendants, if I may categorize them as that, to file an amended Statment of Defence, bringing up to date the cross-references to the fresh, as amended, Statement of Claim.

MR. CHAMBERS: Thank you.

MR. GOLDEN: In housekeeping, but in view of the fact that the documents will be removed to Ottawa with the Court today, we may require certain of them that we have not been able to obtain copies of. Some of them are somewhat bulky. I wonder if Your Lordship would give leave, not only to us but to any other party, with permission of the Registrar as well, who can then

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control the matter, to release exhibits.

THE COURT: I am certainly prepared to do that. I think you should clear it through this particular Registrar, Mr. Stinson. The only priority I can see in that is that the Reporter have access to exhibits as he requires to get the transcript out. So there may be a conflict in demand in the case of some of them.

Since we are not going to have a Reporter at the Argument, I think we should take this opportunity on the record to express my own, and I am sure the appreciation of all who were on the expedition from this part of Canada to Baker Lake to the Registrar who coordinated the thing and did many, many functions which are certainly well beyond the ordinary demands of his office, and since we are all back here more or less well and healthy, he apparently did them very well indeed.

So we will now recess until August 7, 1979.

--- COURT ADJOURNED TO
August 7, 1979, at 2 p.m.

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