

EXPERTS WITH IMPACT

in Mining Valuations and Disputes



“
Mr. Nicholson was able to present complicated issues that impacted the assessment (both written and oral) in an articulate manner. He came across as independent and composed under extensive cross-examination from a team led by an experienced Queen's Counsel.”



James Nicholson

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When our client entered arbitration over a troubled mine expansion project in Africa we used our extensive valuation expertise to provide an independent assessment of the lost profits resulting from the delay.

In 2010 our client engaged a contractor to expand significantly the capacity of its dredge mine in Southern Africa. The project ran into difficulties: parts of the plant were defective and the commissioning of the plant was delayed by about a year.

The contractor brought an arbitration after the mine owner withheld full payment in respect of the expansion works. Our client submitted a counter-claim for its lost profits resulting from the delay and, advised by Three Crowns and Shearman & Sterling, appointed us to provide an independent assessment of the amount of these lost profits.

Our team of experts from our London and Paris offices, compared the position in which our client would have been had the delays not taken place (the 'but for scenario') with the situation in which the client actually found itself.

Lost profits arising from lost production in the mining industry are unusual in that lost production is in certain circumstances recovered at the end of the mine's life. So losses arise from the timing difference in production, rather than production being lost altogether.

FTI Consulting developed a financial model to assess our client's losses, taking account of:

- the amount of various minerals that could be extracted from each tonne of ore mined, which depended on the area being mined and the efficiency of the mining plant

- declines in mineral prices over time, which meant that our client eventually sold the minerals extracted at a lower price than it could have achieved but for the delays
- the effect of increased production volumes, representing a significant proportion of the total market, on selling prices
- the effect of increased production volumes on the mine's costs, which required us to identify the extent of the mine's fixed and variable costs;
- the effect of the expansion on the client's working capital requirements
- the tax implications of the delay and any eventual award.

We concluded that our client suffered significant losses due to the delay of about \$80m, and provided written and oral evidence to an ICC tribunal in London. We supported our client through the arbitration by reviewing disclosure relevant to our work, liaising with experts in other disciplines to ensure that we had all the evidence required to prepare a robust loss assessment, and explaining the financial implications of the operational information available.

IMPACT

On the basis of our evidence, the ICC tribunal determined that our client had suffered significant losses. It allowed for these losses to be set off against the withheld payment up to the maximum amount permitted in the contract between the parties.

About FTI Consulting

FTI Consulting is an independent global business advisory firm dedicated to helping organisations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centres throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities.