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## **Risk Analysis Update** **TSX:GBU**

November 22, 2005

### **Highlights**

- Third Quarter Victories of Strategic Litigations involving Alburnus Maior
- Third Quarter Update on archaeological discharge certificate annulment
- Update on EIA procedure
- Update on Gabriel's Involuntary Resettlement
- Quarter saw the Romanian Government making negative statements regarding the beneficiary impact of Gabriel's Rosia Montana mine development
- Quarter saw the Hungarian Government making its strongest statement ever against Gabriel's Rosia Montana mine development
- Update on Gabriel's Propaganda Machine aka 'Broad Communication Program covering Television, Print and Billboards'
- Discussion and Analysis

### **Third Quarter Victories of Strategic Litigations involving Alburnus Maior**

#### **1. Suspension of the environmental permit for Gabriel's Rosia Montana Exploration Project (39 Drilling Points)**

In November 2005, Alba-Iulia's Court of Appeal suspended the environmental permit granted to Gabriel for 39 drilling points at Rosia Montana. The sentence passed is irrevocable. During the Court's debate, Alburnus Maior was able to prove that the environmental permit granted for the exploration project would give rise to significant and irreparable damages. These include the deforestation of large areas, the draining of important aquifers as well as posing foreseeable risks to the local population and to an area of archaeological importance.

#### **2. Rejection of Gabriel's appeal filed against the suspension of the Urbanistic Certificate**

Gabriel appealed the suspension of the Urbanistic Certificate; claiming that they had been given an unfair trial and that "... it is certain that Rosia Montana Gold Corporation S.A. is prejudiced by the suspension of the Urbanistic Certificate... .The suspension gives rise to

our impossibility to continue operational and financial procedures. According to Law 50/1991 the Urbanistic Certificate is a necessary and mandatory document for the issuing of any kind of authorisation necessary for the implementation of our activities...”<sup>1</sup>

The appeal was rejected by Alba-Iulia’s Court of Appeal on 2 November 2005. This now makes the suspension irrevocable.

Since the initial suspension dated June 2005, Alburnus Maior and the Centre for Legal Resources (CRJ)<sup>2</sup> have, via a juridical executor, notified the relevant authorities of the court’s verdict and its binding nature.

### **3. Alburnus Maior, the Otus Association for Environmental Protection and CRJ have secured a legal victory to gain access to Gabriel’s Bucium Exploration Licence**

The Bucium Exploration License (No. 218/ 6.04.1999) granted to Gabriel was classified by Romania’s National Agency for Mineral Resources; making it impossible for members of the public to gain access to this document. In October 2005, the Mures Court of Appeal obliged the Alba Iulia Environmental Protection Agency (EPA) to communicate the requested information to the plaintiffs. The verdict was unsuccessfully appealed by Alba Iulia’s EPA which will now have to communicate the license via a juridical executor to the plaintiffs.

Once in receipt of the license, the plaintiffs intend to publish and challenge it in court.

### **4. Gabriel has abandoned a court action regarding [www.rosiamontana.org](http://www.rosiamontana.org) that aimed to restrain Alburnus Maior from using ‘Rosia Montana’ as a domain name**

In April 2004 Gabriel initiated a legal action against Alburnus Maior for using [www.rosiamontana.org](http://www.rosiamontana.org); claiming amongst others that the name ‘Rosia Montana’ belongs to Gabriel and that the website was disseminating ‘false’ and ‘misleading’ information. Gabriel asked the court to pronounce a decision obliging Alburnus Maior to cease using the internet domain name [www.rosiamontana.org](http://www.rosiamontana.org); to pay damages in the amount of 1 million Lei for each day of delay; to oblige Alburnus Maior to publish the court’s decision in a national daily newspaper with a large circulation and to pay the charges incurred in the solving of this lawsuit.

Alburnus Maior, legally assisted by CRJ, has now filed an appeal claiming that the court should first have decided whether Gabriel committed an abuse in initiating this court case. Alburnus Maior claims that Gabriel’s motivation for initiating this court case had been to denigrate the NGO and the contents of [www.rosiamontana.org](http://www.rosiamontana.org)

### **5. Toulouse University II Le Mirail and France’s National Centre of Scientific Research have no author rights over the report entitled ‘Ancient Gold Mines of Dacia’**

In September 2003 [www.rosiamontana.org](http://www.rosiamontana.org) posted a report entitled ‘Ancient Gold Mines of Dacia’, which amongst others highlighted the unique archaeological importance of the so-called Cirnic Massif. Cirnic has been protected under Law 5/2000 and in order for Gabriel to

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<sup>1</sup> ‘Motive de Recurs’ File no 2637/2005, Musat & Associates, page 9 ; 2005.

<sup>2</sup> [www.crj.ro](http://www.crj.ro)

exploit it, an important archaeological research program was initiated by Romania's Ministry for Culture and the Cults. Toulouse University II Le Mirail and France's National Centre of Scientific Research have consequently been researching the massif for Gabriel since 2000. In 2004 these two institutions took Alburnus Maior to court for posting 'Ancient Gold Mines of Dacia' on [www.rosiamontana.org](http://www.rosiamontana.org); claiming that their author's right had been violated and that their study "was destined to serve private interests and not to be presented to the larger public."<sup>3</sup>

Alburnus Maior, legally assisted by CRJ, was able to successfully prove that the plaintiffs do not have author's rights over 'Ancient Gold Mines of Dacia'. The case, after many appeals made by the plaintiff, was irrevocably settled by Romania's Supreme Court.

Access 'Ancient Gold Mines of Dacia' on [www.rosiamontana.org](http://www.rosiamontana.org) to admire Cirnic's unique archaeological importance.

## **6. Two Gabriel employees were proven guilty for gravely insulting and for threatening the life of Alburnus Maior's legal councilor**

In April 2005 Alburnus Maior's legal councilor was gravely insulted and threatened with death by two Gabriel employees. This occurred 24 hours after Richard Hill, Gabriel's General Manager at the time, rallied employees to take action against the opposition; because "NGO's who attack the Rosia Montana Project have to be shown and the whole world needs to be explained that they do not represent you...They are very well organized and use any means to oppose the project. The evil will triumph if people of good faith do not take action...."<sup>4</sup>

In November 2004, the Tribunal at Alba Iulia passed its final verdict; criminally charging the two employees for gravely insulting and for threatening the life of Alburnus Maior's legal councilor.

## **Third Quarter Update on archaeological discharge certificate annulment**

Alburnus Maior is aware of Gabriel's and the Ministry of Culture's appeal against the annulment of the archaeological discharge certificate No.4/2004 (DC 4/2004). Independently of both these appeals, DC 4/2004 is suspended until an irrevocable decision has been reached. Law 5/2000 protected Cirnic as a cultural monument of national interest. Discharge Certificate No.4/2004 lifted this protection status for the whole massif, with the exception of a small zone in the south-eastern part called 'Piatra Corbului', which remained protected.

The result of the Court of Appeal's annulment of DC 4/2004 is that the Cirnic Massif as a whole (= Cirnic Pit) is again under the protected status of a cultural monument of national interest. According to article 11 of Romania's mining law (85/2003) "carrying out mining activities on lands on which are located historical, cultural and religious monuments, archaeological sites of important interest and natural reservations ... is strictly forbidden."<sup>5</sup>

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<sup>3</sup> « Cerere de Chemare in Judecata » - Dossar No. 528/2004, Av. Stancu Christian ; page 4, 2004.

<sup>4</sup> « Unirea » Daily Newspaper, 11. April 2005 ; page 6-7 ; [www.ziarulunirea.ro](http://www.ziarulunirea.ro) and 'Din discutiile Directorului General al RMGC cu localnicii din Rosia Montana' ; « Ziarul de Apuseni » page 5, [www.ziaruldeapuseni.ro/continut.php?job=articol&idmenu=454&sitelanguage=ro](http://www.ziaruldeapuseni.ro/continut.php?job=articol&idmenu=454&sitelanguage=ro).

<sup>5</sup> Download the English version of Romania's mining law from [www.namr.ro](http://www.namr.ro)

Since Cirnic contains the highest reserves of gold its exploitation is central to the project's feasibility.

Law 5/2000 protects all of Rosia Montana's Roman mine galleries as well as the old Roman administrative centre of 'Alburnus Maior'. Gabriel's mine proposal essentially covers all this area; an area far larger than just Cirnic. It would be misleading to state that the court's decision regarding DC 4/2004 is preventing Gabriel from continuing an archaeological discharge program for the remaining areas. Alburnus Maior on the other hand remains free to legally challenge any of these additional discharge certificates. No construction permit may be granted without all the area under the footprint of the proposed mine having been archaeologically discharged.

### **Update on EIA procedure**

In July 2005 Alburnus Maior and CRJ formulated a so-called 'Communication' to the Aarhus Compliance Committee (ACC).

Romania deposited its instrument of ratification of the Aarhus Convention on access to information, public participation and access to Justice on environmental matters on 11. July 2000. It entered into force on 30 October 2001.

In October 2005, ACC determined on a preliminary basis the communication to be admissible. According to the communication Romania's ministry for the Environment has grossly violated art. 6 of the Aarhus Convention during the Rosia Montana EIA scoping stage. The decision has been communicated to Romania's ministry for Environment on 27. October 2005, which will now have to reply to an interrogatory.

Gabriel claims that the third and last step of the EIA process is well underway. However, at this stage, the EIA process is invalid further to the suspension of the urbanism certificate (see above); a mandatory prerequisite for initiating and carrying out permitting procedures.<sup>6</sup>

The EIA is more than just a "three step" procedure. After the submission of the EIA report by the project sponsor, starts the so-called 'Analysis of the EIA Report's Quality'. It is a complex and long step that includes i.e. public consultations both in Romania and abroad, analysis of the EIA report by various technical committees in Romania and abroad as well as obtaining the consent from various Ministries and Government Agencies on punctual aspects (Agriculture, Health, Transport, Tourism, Culture, etc).

Importantly, at the end of the EIA procedure the competent authority has three choices:<sup>7</sup>

- a.) To approve the environmental license
- b.) Not to approve the environmental license
- c.) To request the project owner to revise and resubmit the EIA report

Finally, for mining projects of the size as proposed by Gabriel, the environmental license is issued via a governmental decision. Whilst from a procedural point of view such decisions tend to take time; it is possible that the government may decide to never issue it.

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<sup>6</sup> Also see Gabriel's press releases for 2003 and 2004, explaining that EIA process can not be launched until the urbanism certificate is obtained.

<sup>7</sup> See 'PHARE Manual for the Rosia Montana EIA Procedure' on <http://www.rosiamontana.org/documents/pdf/manualphare.pdf>

### **Update on Gabriel's Involuntary Resettlement**

Alburnus Maior is an association consisting of property owners from Rosia Montana; who oppose Gabriel's development on social, environmental, cultural and economic grounds. In addition, the Orthodox, Roman-Catholic, Protestant and Unitarian churches count amongst Rosia Montana's single largest property owners; with a total of nine churches and ten cemeteries being directly impacted by Gabriel's proposal. During the course of 2003 all of these institutions made official statements as to why their properties are not for sale.

According to Article 22 (f.) of Romania's mining law (85/2003)<sup>8</sup>, a mining activity may not commence without "the agreement of the landowner or land administrator on the access to areas needed to carrying out mining activities provided in the annual exploitation plan."

The acquisition of surface rights is presented by Gabriel as a mere formality. Importantly, it is misleading for Gabriel to state that the receipt of the EIA approval would have an impact on the property rights acquisition. The two issues are independent and the permitting process has no consequence on the property rights. Land ownership rights are guaranteed by Art. 44 of the Romanian Constitution.

### **Quarter saw the Romanian Government making negative statements regarding the beneficiary impact of Gabriel's Rosia Montana mine development**

In late autumn 2005, Codrut Seres, Romania's minister for commerce and economy under whose portfolio enters the mining sector, published an opinion piece in 'Jurnalul National'; a main Romanian daily newspaper. According to Mr Seres, "I don't think there exists something more post-communist than the view of a mono-industrial town ravaged by the 'new capitalist system'...We are confronted by a very big prejudice, with a feeling of decadence that will be very difficult for us to get rid off. Every town where there was for example a large industrial plant looks back at the period when it had its highlight as the 'Golden Area'. It's like nothing else could revive that town; except for the revival of that very plant. With the gold mines at Rosia Montana it is the same. In a report about developing the Rosia Montana area I read that 'any initiative related to the revival of this lucrative activity finds great support from the local authorities and the majority of the population.' ... The solution to mono-industrialism is multi-development. When an industrial plant is built it suddenly solves all problems. When it disappears; all problems suddenly resurface. Ten of small businesses are a formula of healthy development; this because it is not fatally dependent on any of its components. ... I am not blaming the people living in these mono-industrial towns. ... I know the state will have an essential role in the revival of these areas. I nonetheless would like to highlight that more important than state action is the change in the general attitude of the locals of these areas."<sup>9</sup>

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<sup>8</sup> Download the English version of Romania's mining law from [www.namr.ro](http://www.namr.ro)

<sup>9</sup> The full opinion piece in its original Romanian version can be accessed on [http://www.jurnalul.ro/articol\\_39867/de\\_la\\_extractia\\_de\\_aur\\_la\\_culesul\\_fructelor\\_de\\_padure.html](http://www.jurnalul.ro/articol_39867/de_la_extractia_de_aur_la_culesul_fructelor_de_padure.html)

### **Quarter saw the Hungarian Government making its strongest statement ever against Gabriel's Rosia Montana mine development**

According to the Romanian daily newspaper 'Cotidianul'<sup>10</sup>; Miklos Persanyi declared the following during an official visit to Bucharest in October 2005: "It is of the highest priority for the Hungarian Government that the Rosia Montana gold mine investment is never realized. This is how one would be able to prevent pollution risks. The Rosia Montana project given its sheer size could not only affect the immediate area, but, in the event of a spill, would also affect the Tisa Basin [...]."

### **Update on Gabriel's Propaganda Machine aka 'Broad Communication Program covering Television, Print and Billboards'**

Since 2002 Gabriel spent considerable sums on its propaganda campaign. It employs a senior Press officer on a full time basis with a local weekly publication "Ziarul de Apuseni", sponsors a wide variety of local and central newspapers, as well as televised news clippings. Gabriel has also organized frequent 'technical' seminars and press conferences in expensive hotels around the country. Yet, all these efforts have been unsuccessful in convincing Romania's public about the merits of the project. Gabriel states that "For many years, public disclosure on the Rosia Montana project has been a monologue conducted by certain NGO's and others opposed to the project." This is in contradiction with the multitude of articles, publicity contracts and paid advertisements published by Gabriel in Romania's press since 2002. According to media polls (i.e. ZIUA, OTV), the percentage of Romanians opposed to Gabriel's project varies between 95% and 98%.

## **Discussion and Analysis**

### **Overview**

Since the project's inception in 1997, Gabriel published numerous reports; including quarterly and annual, to announce the 'significant progresses achieved' in environmental permitting, village relocation, the archaeological discharge program, feasibility, resource estimates and claiming wide support from Romanian authorities and villagers. The first "gold" was to be exploited in 2004. It has now been postponed to 2009. At this stage Gabriel has spent nearly \$ 200 millions of investors' money without tangible results. Any enthusiastic management team introduced by Gabriel so far has been unsuccessful in meeting the challenge of implementing ever new time tables. Given the project's endemic problems, this is unlikely to change.

In October 2004 Alburnus Maior released "*Anticipating Surprise – Assessing Risk*"<sup>11</sup> an investor's guide to TSX:GBU. This document still provides a solid base of the endemic problems and risks associated with the development of Gabriel's mine proposal *per se*. The concerns raised in the 'Key Issues' section below strictly refer to Gabriel's Third Quarter Report 2005 (the "Report").

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<sup>10</sup> <http://www.cotidianul.ro/index.php?id=2488&art=4948>

<sup>11</sup> Download from [http://www.rosiamontana.org/documents/pdf/GBU\\_risk\\_assessment.pdf](http://www.rosiamontana.org/documents/pdf/GBU_risk_assessment.pdf)

## Key Issues

1. According to the Report, the investment banking consultant assessing the financial feasibility of the project will not be paid in cash but in shares. Such arrangement constitutes a sure incentive for the financial analyst determining whether the project is bankable to come up with an attractive financial rate of return. This contravenes the most basic ethical principles in the profession and may well deprive investors from obtaining an objective assessment of the project's feasibility.

2. The Report states that it does not expect significant changes in the financial results compared to the previous analysis dated 2003 (FRR 14.6 with 100% equity financed)<sup>12</sup> and based on a gold price at US \$300/ounce. Gabriel however states that higher capital and operating costs than previously estimated will be offset by the increased revenues derived from higher gold prices (470 USD/oz). Whilst the higher capital and operating costs are something real; Gabriel's conclusion that these can be off-set by a higher gold price is speculative and presents a serious risk to the feasibility of mine proposal.

3. Gabriel's immediate financial survival depends on companies exercising outstanding warrants.

Newmont has the single largest amount of warrants to exercise; holding 15,000,000 units of Gabriel at a price of Cdn\$1.65 per unit. Each whole common share purchase warrant entitles Newmont to acquire one common share of Gabriel at a price of Cdn\$2.00 at any time on or before December 31, 2005. The common shares comprised in the units represent 10.2% of Gabriel's issued and outstanding common shares. If Newmont exercises its warrants, then this is in contradiction with: "Toronto, Ontario, September 8, 2005 ... Gabriel confirms that it is not engaged in any form of discussions with Newmont. ... signed by "Alan R. Hill."<sup>13</sup> And with: "We've taken the 'For Sale' sign off of this Company," said Alan R. Hill, President and Chief Executive Officer of Gabriel Resources and Rosia Montana Gold Corporation.<sup>14</sup>

In the event that Gabriel is obliged to sell more of its outstanding shares on the market to continue finance its operations, the percentage of equity funds that would remain available for financing the mine proposal would be dramatically reduced. Gabriel might have no alternative but to call on commercial loans from banks. Contrary to Gabriel's assumption of being able to "obtain commercial loans on reasonable financial terms", responsible financing institutions do not offer advantageous terms for project financing to a mining proposal as speculative, risky and controversial as that of Gabriel. The IFC's – a lender of last resort - decision in October 2002 not to finance Gabriel as well as the company's financial situation since shows more than just Gabriel inability to secure commercial loans for such unstable project.

**For copies of court decisions, discharge certificates, maps of the project and discharged areas etc; please contact [alburnusmaior@ngo.ro](mailto:alburnusmaior@ngo.ro) and Tel: +40 (0)740 342 104.**

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<sup>12</sup> See 'Gabriel Resources Annual Information Form', page 14 ; 1. April 2004.

<sup>13</sup> [http://www.gabrielresources.com/s/News-2005.asp?ReportID=117006&\\_Type=News-Releases-2005&\\_Title=Media-Reports](http://www.gabrielresources.com/s/News-2005.asp?ReportID=117006&_Type=News-Releases-2005&_Title=Media-Reports)

<sup>14</sup> [http://www.gabrielresources.com/s/News-2005.asp?ReportID=116875&\\_Type=News-Releases-2005&\\_Title=INFORMATION-RELEASE-Gabriels-New-CEO-Cites-Rosia-Montanans-Economic-and-Envi...](http://www.gabrielresources.com/s/News-2005.asp?ReportID=116875&_Type=News-Releases-2005&_Title=INFORMATION-RELEASE-Gabriels-New-CEO-Cites-Rosia-Montanans-Economic-and-Envi...)