

**Luncheon Briefing
Cosmos Club
February 7, 2007
by**

**Richard B. Ness
President Director
PT Newmont Minahasa Raya**

Co-sponsored by the US-ASEAN Business Council

Richard B. (Rick) Ness visited the United States for the first time since his indictment and trial for pollution caused to Buyat Bay in North Sulawesi by Newmont Mining's gold operations. PT Newmont Minahasa Raya started operations in 1996 and operated the mine until the end of August 2004. It is alleged in the Indonesian Government's indictment that Mr. Ness and his company criminally engaged in acts resulting in environmental pollution because Buyat Bay ostensibly was contaminated with arsenic and mercury causing harm to local residents. Mr. Ness' trial in Manado began on August 5, 2005 and is now in its final phases. During Mr. Ness' visit to Washington, he briefed business organizations, the media, U.S. government officials and the U.S. Congress on the progress of his case.

After an introduction by US-ASEAN Business Council President Matt Daley, Mr. Ness observed that "never in his adult life" would he have thought that he would become the focal point of national news coverage or be accused of "horrible crimes against the people you have considered your friends and colleagues and who you have spent considerable time trying to help." He then explained the genesis of the complaints, dating back to allegations made in the local press in 1995, statements in ensuing years by NGOs which proved to be baseless,

training of local Indonesian activists in Berkeley, California, by an international environmental organization, and publication in 2001 of a booklet accusing Newmont of having caused Minamata disease, later refuted by the Minamata Institute of Japan.

Other allegations of physical harm, malnutrition, and contamination of fish life in the bay were widely disseminated. Tests alleging mercury contamination turned out to be false pursuant to World Health Organization and Australian scientific monitoring and testing. In December 2004, the civil complaint of villagers was withdrawn, stating their accusations against the company were "baseless." That same month Newmont won its *habeas corpus* appeal in a Jakarta court which also ruled that the police investigation was illegal. In February 2005, a prominent accuser formally withdrew her police complaint and retracted previous statements.

Other benchmarks in the case included the filing of a \$133 million civil suit in March 2005 by the Ministry of Environment, the Supreme Court's invalidation of a lower court decision upholding Newmont's *habeas corpus* rights, comprehensive testing by the Ministry of Health finding no evidence of health problems caused by heavy metal contamination, and a court decision supporting Newmont's defamation suit

against a local NGO leader. The current trial in Manado has featured testimony and scientific evidence that no pollution has occurred as alleged. In fact, Buyat Bay is being promoted by the provincial government and Garuda airlines as a tourist attraction for scuba divers. Mr. Ness concluded that “the people of Buyat Bay are still fishing,” a fish processing plant is being built, and tourism is increasing, all of which could not occur if there were contamination of the bay.

Mr. Ness then explained the implications of the Buyat Bay case for investment in Indonesia. Industries, not just mining companies, are following his case very closely. “The case has drawn a lot of interest because it really gets down to protection of human rights and the rule of law” which are prerequisites for investment. His hope not only is for complete exoneration by the Manado court, which he has found very fair and thorough, but also investigation and prosecution of those who have pressed the false accusations, manipulated evidence and stimulated the public hue and cry against Newmont.

Rick Ness’s son, Eric, was called to the podium to explain his efforts to support his father’s case by setting up a web site (richardness.org) and a blog to illuminate the details of the court case.

The discussion brought out the following points:

- Mr. Ness’ objectives in popularizing his case is to show “undisputedly” that Buyat Bay is clean and safe,

together with establishing a case against the people who have manipulated allegations against him and his company.

- Foreign anti-mining activists were involved in stimulating allegations at an early stage, before 2004. The court case resulted from a small group of individuals belonging to the local branch of an Indonesian environmental organization, with the involvement of “a couple of national level people who were basically unfamiliar with [the details of] the case.”
- A new and fair mining law is badly needed to promote transparency and to safeguard the interests of the public and all parties engaged in mining in Indonesia. Until there is a new law, international companies will hold back from significant investments.
- As to the role of the media, the press initially enthusiastically aired “alarmist reports” but as the trial has proceeded, the media has become “more understanding” as the true evidence has unfolded.
- Asked why the trial is continuing in light of the fact that the allegations have been found to be untrue, it is necessary for a court to render a judicial decision in a criminal case. There is no way for the court to simply dismiss the charges. A decision by the court in Manado is expected in 6 to 8 weeks.