PCA CASE No. 2019-46

IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH
THE TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF PERU
AND THE UNITED STATES OF AMERICA
- and -
THE UNCITRAL ARBITRATION RULES 2013

THE RENCO GROUP, INC.
CLAIMANT,
v.
THE REPUBLIC OF PERU
RESPONDENT.

– and –

PCA CASE No. 2019-47

IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE STOCK
TRANSFER AGREEMENT BETWEEN
EMPRESA MINERA DEL CENTRO DEL PERU S.A. AND DOE RUN PERU S.R. LTDA.,
DOE RUN RESOURCES, AND RENCO, DATED 23 OCTOBER 1997, AND
THE GUARANTY AGREEMENT BETWEEN PERU AND DOE RUN PERU S.R. LTDA,
DATED 21 NOVEMBER 1997
– and –
THE UNCITRAL ARBITRATION RULES 2013

THE RENCO GROUP, INC. AND THE DOE RUN RESOURCES, CORP.,
CLAIMANTS,
v.

THE REPUBLIC OF PERU AND ACTIVOS MINEROS S.A.C.,
RESPONDENTS.

CLAIMANTS' REJOINDER TO JURISDICTION

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The Renco Group, Inc., the claimant in the Treaty case ("Renco"), and The Renco Group, Inc., and The Doe Run Resources Corp., the claimants in the Contract case ("Renco" and "DRRC," and altogether, "Claimants"), file this Rejoinder on Jurisdiction and would show the Tribunal as follows:

INTRODUCTION

1. Respondents attack the lack of heft of Claimants' submissions as a lack of substance. Respondents attack Claimants' decision not to repeat arguments previously made as concessions. Claimants are confident, however, that the Tribunal will judge Claimants' positions on the merits, not on page count. Claimants have met their jurisdictional requirements, and this case should be decided on the merits.

2. A roadmap of the jurisdictionally based issues, and short statements of Claimants' positions, are as follows:

	No	Issue	Position
Treaty Arbitration	1.	Whether Renco has made a *prima facie* case for violation of fair and equitable treatment ("FET")?	Renco has established such a *prima facie* case. Peru violated its FET obligations on two occasions – one in connection with Peru's 2009 Extension, and a second in connection with DRP's Plan of Reorganization.
	2.	Whether Renco has made a *prima facie* case for substantial denial of justice?	Peru does not contest the Tribunal's jurisdiction to determine the merits of this claim.
	3.	Whether Renco has made a *prima facie* case for the procedural denial of justice?	Renco is no longer pursuing its procedural denial of justice claim, opting instead to focus on its substantive denial of justice claim.
	4.	Whether Renco has made a *prima facie* case for direct expropriation?	Renco agrees that, under these facts, direct expropriation did not occur, and thus Renco is no longer pursuing this claim.
	5.	Whether Renco has made a *prima facie* case for indirect expropriation?	Renco has established such a prima facie case. Peru's requirements in connection with the 2009 Extension and DRP's Plan of Reorganization amounted to indirect expropriation.

Contract Arbitration	1.	Whether Renco and DRRC have standing as a direct party of the STA to assert breach of contract claims against Activos Mineros?	Renco and DRRC are parties to the STA and therefore have standing to maintain its breach of contract claims against Activos Mineros.
	2.	Whether Renco and DRRC claims should be dismissed for failure to engage in an expert determination before filing the arbitration?	Activos Mineros has waived this objection.
	3.	Whether Renco and DRRC have standing to assert breach of contract claims against Peru under the Guaranty?	Renco and DRRC are no longer pursuing this claim; their claims for breach of contract against Activos Mineros, a named Party to the STA, are sufficient.
	4.	Alternatively, whether Renco and DRRC have standing as indirect parties of the STA to enforce the arbitration agreement of the STA?	Renco and DRRC meet the test to be considered "indirect parties" to the arbitration agreement of the STA and can enforce the arbitration agreement contained in the STA against Activos Mineros.
	5.	Whether Renco and DRRC have standing to maintain a claim for subrogation under the Peruvian Civil Code against Activos Mineros in this arbitration proceeding?	Renco and DRRC meet the test to recover under the theory of subrogation and their claims are ripe for declaratory relief.
	6.	Whether Renco and DRRC have standing to maintain claims for pre-contractual liability?	Renco and DRRC are no longer pursuing this claim.
	7.	Whether Renco and DRRC have standing to maintain claims for unjust enrichment.	Renco and DRRC have standing to assert unjust enrichment.
	8.	Whether Renco and DRRC have standing to maintain claims for contribution?	Renco and DRRC have standing to seek contribution from Activos Mineros.
Miscellaneous	1.	Whether certain negative inferences should be drawn based on Renco and DRRC's document production?	Claimants have fully complied with their obligation to produce documents and have not withheld any responsive documents from production.

THE TRIBUNAL HAS JURISDICTION OVER RENCO'S TREATY CLAIMS

3. Renco presses the following claims under the Treaty: (i) violation of fair and equitable treatment ("FET"), (ii) the substantive denial of justice, and (iii) indirect expropriation. All these causes of action are based on events occurring after the Treaty came into effect in February 2009. Peru does not contest, and thus has conceded, the Tribunal's jurisdiction

over Renco's substantive denial of justice claim.[1] Therefore, Renco will focus its Rejoinder on the Tribunal's jurisdiction over the FET and indirect expropriation claims.

A. The FET Claim

4. A FET violation requires a showing of conduct that is "unjust, arbitrary, unfair, discriminatory or in violation of due process, including conduct that frustrates an investor's 'legitimate expectations.'"[2] States do not typically admit that their actions are "unjust," "arbitrary," "unfair," "discriminatory" and the like. These determinations are based on circumstantial evidence. At this stage in the proceedings, the Tribunal need not determine whether violations have in fact occurred, but instead whether the facts alleged by Renco would be capable of constituting a FET violation of the Treaty.[3] In answering the question at this stage, the Tribunal should first evaluate whether Renco's expectations in making its investment were legitimate and reasonable in light of all the circumstances of the case, whether they derived from specific representations or assurances upon which Renco relied in making its investment, and whether they account for the State's right to regulate within its territory.[4] The Tribunal should next compare such expectations against Peru's acts and conduct that violated these expectations, and the reasons given by Peru for its misconduct.

1. Renco's legitimate expectations.

5. Admittedly, Renco's Memorial covered the waterfront of violations of FET. However, Renco will focus its arguments and evidence at the final hearing on its legitimate expectation that during the undertaking of the PAMA, DRP would be allowed to *operate*

[1] Renco reserves its substantive response to arguments made by Peru in its Rejoinder for presentation at the final hearing.
[2] *See* discussion of FET case law at pp. 75-84 of Claimant's Memorial.
[3] *See, e.g., Duke Energy Int'l Peru Invest. No. 1 v. Republic of Peru,* ICSID Case No. ARB/03/28 (Annulment Proceeding); *Ioan Micula, Viorel Micula, S.C. European Food S.A., S.C. Starmill S.R.L., S.C. Multipack S.R.L. (Claimants) v. Romania (Respondent),* ICSID Case No. ARB/05/20 (CLA-145 and CLA-146, respectively).
[4] *See* discussion of FET at pp. 275-281 of Respondent's Memorial (Treaty).

the smelters and to use *revenues from its operations* to pay for both ongoing operations and the cost of the PAMA projects. This expectation is based on clear and unequivocal written representations by Peru.

6. Supreme Decree No. 016-93-EM, which established the PAMA concept, specifically envisioned mining concessionaires *immediately* expanding the operations of the purchased facilities. To expand the operations means the operators must operate the facilities.[5]

7. The right to operate (and to increase the capacity of the production circuits) was reiterated in the Pre-Bid Question and Answers:

> **Question No. 1**
>
> Regarding the answer to Question No. 22 of the First Round of Questions, referred to items included in the investment that THE INVESTOR has to make: What is the meaning of "expansion" and which items does it include? Could CEPRI make a more exact definition?
>
> **Answer:**
>
> ***Expansion refers to the increase of the capacity of the production circuits.***[6]

8. DRP's right to operate the smelters and use the revenues to pay for the PAMA is further supported by Article 3.2 of the STA:

> It is hereby understood that THE COMPANY will not be obliged to maintain in cash the amounts contributed to increase the stock capital of THE COMPANY … *but such funds may be used for other purposes, commercial, operations or others*.[7]

Article 3.2 gave DRP the unqualified right *not* to use its capital to fund the PAMA. Without such funds, DRP, by necessity, would have to use revenues from operations. To generate

[5] Exhibit C-088.
[6] Exhibit R-201 (Emphasis added.)
[7] Exhibit C-105 (Emphasis added).

revenues, DRP would be required to operate the smelters while also executing its obligations under the PAMA.

9. The parties therefore understood and agreed upfront that none of the capital of DRP had to be earmarked for DRP's PAMA obligations or operations and, conversely, that DRP might rely completely on the revenues from its operations to fund its expenses. This was the reasonable expectation Renco relied upon that is relevant to this case.

2. Peru's conduct in, and so-called reasons for, violating Renco's legitimate expectations.

10. By 2008,[8] DRP had completed the sulfuric acid plants for the lead and zinc circuits and had only the reconfiguration of the copper circuit and the installation of the sulfuric acid plant for the copper circuit left to complete with one year to go before the PAMA deadline. However, the 2008 global financial crisis intervened, bringing DRP's progress to a screeching halt.

11. DRP made three requests for an extension for the completion of the PAMA based on an indisputable *force majeure* event.[9] The MEM rejected all three requests, usually the day after they were made.[10] With no time or money, DRP ceased operations.[11]

12. In September 2009, the Peruvian Congress intervened, granting DRP relief in the form of a 30-month extension of the PAMA,[12] a very tight window in which to complete the PAMA. DRP could not afford any outside interference if it were to meet the deadline; yet interfere is exactly what the MEM did.

[8] In 2006, the MEM granted DRP a two-year and ten-month extension to complete the PAMA, moving the end date from October 2007 to December 2009.
[9] *See* discussion in Claimant's Memorial at ¶¶93-112.
[10] *Id*.
[11] *Id*.
[12] Exhibit C-077.

13. Under an article of the legislation, entitled "Miscellaneous," the Peruvian Congress authorized the MEM to issue "supplementary" regulations to implement the law's provisions.[13] The MEM used this authority to impose an additional requirement of a Trust Account in Executive Decree No. 075-2009-EM (the "Trust").[14] This Executive Decree mandated that DRP place 100 percent of its revenues from any source into the Trust controlled by the MEM and that the funds in the Trust could *not* be used by DRP for any purpose other than the PAMA.[15]

14. The Executive Decree ran afoul of Renco's legitimate expectations. With all DRP revenues from all sources in Trust to be spent only on the PAMA, DRP would have no working capital with which to buy concentrates, pay for the labor, expenses, and general overhead for its operations, *etc*. How and when the MEM would use funds in Trust to pay for the PAMA was completely left open, presumably subject to yet further legislation. The Trust also crippled DRP's ability to obtain third party financing, as no lender would make a loan without a revenue stream from which DRP could repay the loan and/or without being secured by at least the accounts receivable from operations.[16] Thus, while the MEM's requirement of a Trust would theoretically pay for some of the cost of the PAMA, DRP would nevertheless be unable to operate the smelters to generate additional revenues to stay in business and to pay for the additional cost of the PAMA project beyond funds already in Trust.

[13] Exhibit C-077.
[14] Exhibit C-078.
[15] Exhibit C-058.
[16] *See, e.g.*, Neil Witness Stmt. at ¶¶ 51-53; Mogrovejo Witness Stmt. at ¶ 62; Sadlowski Witness Stmt. at ¶¶ 59-61.

15. In tacit recognition that the MEM had overstepped, Congress acted to lower the Trust account requirement to 20 percent of DRP's revenues.[17] However, this relief came too late for DRP to obtain financing before the expiration of its extension.[18]

16. Peru defends its actions, claiming that the Trust was a proportionate and necessary step to stop Renco from withdrawing money from DRP.[19] However, as of the 2009 Extension, DRP had not paid Renco or any Renco affiliate for inter-company services or repaid any of the debt it owed to Renco affiliates for five years;[20] and Renco was willing to cause its subsidiaries to *contribute* $31 million toward the PAMA and to *recapitalize* $156 million of DRP's debt.[21] The trust concept therefore did not address a legitimate concern or provide a legitimate solution.

17. The second violation of Renco's legitimate expectations in making its investment occurred in connection with DRP's bankruptcy. DRP submitted a (revised) Plan on May 14, 2012, that resolved in favor of the MEM all the MEM's previously stated objections.[22] All that remained was for the MEM to recommend adoption of the Plan to the Creditor's Committee. Instead, the MEM responded with even more conditions for approval, including that DRP *not* start-up the facility until all the PAMA work was completed and that DRP meet all then-current maximum allowable air quality and emissions standards were met.

18. As one reporter stated, the State was immovable on these issues:

> We have to remember that in the Doe Run Perú creditors' assembly, the previous owner, Renco Group, a corporation

[17] Exhibit C-082.
[18] *See* Neil Witness Stmt. at ¶¶ 53; Mogrovejo Witness Stmt. at ¶ 62; Sadlowski Witness Stmt. at ¶61.
[19] Respondent's Counter-Memorial (Treaty) at 281, Sec. IV(A)(5)(b).
[20] Callahan Report at ¶37.
[21] Exhibit C-111, MOU, art. 3.2 at 2-3.
[22] Exhibit C-114.

> belonging to Ira Rennert, requested eight additional years after compliance with the PAMA, in order to be able to adapt to the 2014 ECA, as a condition for the financing it would grant the Doe Run Peru to refloat the plant. Yet the minister, Jorge Merino and the State were immovable and demanded the total compliance of the MINAM standard for sulfur emissions.[23]

19. Peru deprived Renco of its legitimate expectation that DRP could use revenues from its *operations* to fund the PAMA.

20. Peru wraps itself in the cloak of the public trust in justifying its actions, contending it could no longer tolerate DRP's failure to meet Peruvian environmental standards. But this is hardly the case. Peru's imposition of a maximum yearly average of 80 µg/m for sulfur dioxide was fantasy. None of the other copper smelters in Peru could meet this standard, as sufficient technology did not exist.[24] (By comparison, Japan had the most stringent standard in the world, and it set the maximum level at 105 $\mu g/m^3$.)[25]

21. Having immovably insisted that DRP comply with an unrealistic 80 $\mu g/m^3$ standard, the MEM adopted a series of very flexible policies for others thereafter. Following closure of La Oroya, the MEM permitted mining operators to operate in disregard of the standard if they submitted a report showing that no technology exists to reduce sulfur dioxide emissions.[26]

22. This sea change in MEM's position did not go unnoticed in the Peruvian press. One news article observed:

> If the ministers Merino and Pulgar Vidal make the standard more flexible in favor of Southern Peru, this would imply a case of discrimination against Doe Run Peru …[27]

[23] Exhibit C-204.
[24] *Id.*
[25] *Id.*
[26] Exhibit C-203.
[27] Exhibit C-204.

23. Peru followed its relaxation of enforcement by instituting new legislation in 2017 that increased the minimum emissions standards for sulfur dioxide by up to 212% (from 80 $\mu g/m^3$ to 250 $\mu g/m^3$).[28] Peru's relaxation of such restrictions was intended to help attract another foreign investor to buy La Oroya. The double-standard being applied sparked the former Minister of the Environment, Manuel Pulgar Vidal, to tweet:[29]

> By modifying the ECA for Air to reopen La Oroya, @MinamPeru will put us at an encumbrance risk from both pollution and Renco arbitration.[30]

24. In short, the MEM manipulated environmental compliance as either a carrot (to attract investment) or a stick (to impose ever increasing punitive requirements) as it suited the MEM's political purposes. In the process, Peru also violated Renco's legitimate expectation that it would be treated equally under Peruvian law.

25. For these reasons, Renco has more than established its *prima facie* case that Peru has acted unjustly, arbitrarily, unfairly, and discriminatorily toward Renco.

3. Peru's argument that DRP failed because of undercapitalization rather than Peru's violation of its FET obligations does not negate Renco's prima facie case.

26. Peru repeats as often as possible its mantra that DRP failed under the weight of undercapitalization and other financial burdens created by Renco. This claim is not only inaccurate but is dispositive of nothing. Before the global recession, DRP spent more than $300 million completing every single PAMA project, except part of the last one, at a cost of three times what had been originally estimated by Centromin. At that point, Renco was willing to recapitalize DRP, if the MEM would give Claimants comfort that DRP would

[28] Exhibits C-226. C-202, C-203, C-204, C-205, C-206, C-225, C-226.
[29] *Id*.
[30] Exhibit C-225.

have reasonable time to complete the PAMA.[31] The recapitalization did not occur only because MEM refused to provide any such assurance.

27. In any event, Peru's alternative version of causation is irrelevant to the Tribunal's inquiry of whether Renco has satisfied its *prima facie* case on liability. The Tribunal need not decide now between two competing arguments for causation, but instead should evaluate only whether Renco's allegations, if true, would entitle Renco to recover under the theory alleged.

B. Indirect Expropriation Claim

28. Under Article 10.7 of the Treaty, no Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization.[32] Indirect expropriation is widely understood as interference with an investment that "deprives [the investor] of the possibility to utilize the investment in a meaningful way."[33] The key factor that typically distinguishes a direct expropriation from an indirect expropriation is the extent to which an investor maintains ownership or control over its investment: if the investment has been taken completely, the taking is usually viewed as a direct expropriation; if the investment has not been taken but the state effectively neutralizes the benefit of the investment to the investor, an indirect expropriation likely has occurred.[34]

29. By this standard, the measures taken by the Peruvian authorities in respect of DRP had the effect of depriving Renco of the use and benefit of its investment and constituted measures

[31] Exhibit C-111.
[32] *See* Claimant's Memorial at ¶¶251-253.
[33] *Id*.
[34] CLA-068, *CMS Gas Transmission Company v. the Argentine Republic* (ICSID Case No ARB/01/8) (Award) (12 May 2005), at ¶188.

having similar effect to expropriation.[35] As explained above, Peru continued imposing unreasonable requirements on DRP post-February 2009. When DRP agreed to one set of unreasonable demands, Peru upped the ante, demanding more. Eventually, Peru insisted that DRP (i) spend whatever it would take (at that point the estimate was $163 million) to complete the copper circuit reconfiguration and the sulfuric acid plant,[36] (ii) without operating the smelters to generate any revenue in the meantime,[37] (iii) with no grace if DRP did not complete the project in a very tight 20-month window,[38] and (iv) make all undefined, additional upgrades to comply with environmental standards then-in effect that were so impossible to meet that Peru relaxed them significantly in 2017.[39] With Peru unwilling to budge on any of its positions, DRP could not pay for the remaining PAMA work or its creditors, forcing the liquidation of DRP. Peru therefore engineered an indirect expropriation by destroying the value of Renco's investment.

THE TRIBUNAL HAS JURISDICTION OVER CLAIMANTS' CONTRACT CLAIM[40]

30. There are two ways under Peruvian law to be bound to a contract. The first, and most obvious, is when a party is a signatory to a contract.[41] The second is when a non-signatory is involved in the formation of the contract that contains an arbitration agreement, and the

[35] CLA-071, *Crystallex International Corporation v. Bolivarian Republic of Venezuela,* ICSID Case No. ARB(AF)/11/2 (The tribunal concluded that the conjunction and progression of acts performed by different governmental organs, starting from actions surrounding a denial of a permit, continuing with announcements that Venezuela would "take back" Las Crisinas, and ending with a repudiation of the MOC, had the effect of substantially depriving Crystallex of the economic use and enjoyment of its investment, and ultimately rendered it entirely useless, the tribunal finding and concluding that the cumulative and incremental effect of those measures was, "equivalent to […] expropriation" under the treaty.)

[36] *See* Claimants' Memorial at ¶100, Sadlowski Witness Stmt. at ¶33.

[37] *See* Claimants' Memorial at ¶108.

[38] *See* Claimants' Memorial at ¶¶115-117, Sadlowski Witness Stmt. at ¶47.

[39] *See* Claimants' Memorial at ¶145.

[40] Claimants assert contractual claims against Activos Mineros, successor-in-interest to Activos Mineros, which was a party to the STA.

[41] Payet Supp. Report at 34, ¶156.

non-signatory seeks benefits from performance of the contract.[42] Under such circumstances, the Peruvian Arbitration Act Art. 14 binds the non-signatory to the arbitration agreement contained in the contract.[43]

31. International law carries this concept further, binding a non-signatory to all the rights and duties of the contract using the same test.[44]

A. Renco and DRRC are explicit Parties to the STA.

32. The question of whether Renco and DRRC are parties to the STA is a threshold matter of jurisdiction.[45] There is no dispute that Renco and DRRC executed the document that contains the STA and the arbitration agreement. The question is whether their status as parties is limited to a single clause in the document or whether it extends to the whole of the document. The claimants' expert, Dr. José Payet, is a mergers and acquisitions expert. He states that this was a typical mergers and acquisitions transaction, in which the STA memorialized more than just the sale of stock in Metaloroya; it also documented the allocation of environmental liabilities after the sale in relation to Activos Mineros's spin-off of the La Oroya complex through a corporate reorganization. Since both transactions – the sale and the spin-off – are complementary and dependent on the other, the transactions should be viewed as "integrated."[46] As Dr. Payet explains:

> The Metaloroya Reorganization Documents and the Contract are what are called in Civil law "*contractos conexos*" or "*contratos coligados*", linked or connected contracts, which operate jointly, as a whole, to effect a certain economic, business or legal transaction. These contracts, despite being

[42] Payet Supp. Report at 34, ¶¶156-157.
[43] Third Expert Report by José Antonio Payet Puccio, November 7, 2023 ("Payet Third Report") at 3, ¶¶iv-v.
[44] *See* CLA-148, ICC Case No. 11160, Final Award, 1 November 2023 (The tribunal stated that the active participation of a party "in the negotiation, preparation and execution of the Contract, and in some respects in the performance under it, determines that the intention of the parties can be reasonably inferred as to the extension of said Contract").
[45] Claimants are pursuing contract and Civil Code claims only against Activos Mineros.
[46] Payet Third Report at 11, ¶33.

> autonomous in their existence, have a linked functionality that makes it necessary to consider them as a whole.
>
> Linked contracts "*are different and autonomous transactions, linked, however, by a so-called functional nexus; it is only the practical purpose that the parties wish to achieve that binds the related transactions together.*"[47]

33. Peru's contracts expert, Dr. Varsi, claims the STA consists of two separate contracts: the STA and the alleged guaranty agreement contained in the Additional Clause of the executed document.[48] Yet in no place does the STA make such a distinction. There is only one private document ("minuta") and one public deed ("escritura pública").[49] Both these documents are signed by all parties, including Renco and DRRC.[50] Throughout the whole STA there are several references to "this contract," *i.e.*, just one contract.[51]

34. Nor does Dr. Varsi address in either of his two reports the legal concepts of mergers and acquisitions under Peruvian law.[52] The reason is simple: he has no experience with mergers and acquisitions and is therefore unable to apply standard concepts in mergers and acquisitions law to the facts of this case.

35. In addition, Dr. Varsi has also not explained why the arbitration agreement contained in the document would only be limited to the STA and would not extend to the Additional Clause.[53]

[47] Payet Supp. Report at 8, ¶¶29-30.
[48] Peru's Rejoinder, ¶140, Varsi First Expert Report-Contract, ¶¶4.10-4.11, 5.22.
[49] Payet Third Report at 6-7.
[50] Payet Supp. Report at and 34, ¶144.
[51] C-105, Stock Transfer Agreement; Payet Third Report at 9, ¶33 and 16, ¶36.
[52] Payet Third Report at 15, ¶39.
[53] Payet Third Report at §V(a).

B. Alternatively, Renco and DRRC are Implicit Parties to the STA's Arbitration Clause.

36. Jurisdiction is not determined solely on whether Claimants were signatories to the STA. Even if Renco and DRRC were considered not to be explicit parties to the STA's arbitration agreement, the Tribunal should examine whether Renco and DRRC, as so-called non-signatories, were implicitly parties to the STA's arbitration agreement.

37. In this regard, Peru amended its Arbitration Code to mirror international law on the joinder of non-signatories to arbitration agreements. Article 14 of the Code provides that a non-signatory can be bound to arbitrate (i) when the non-signatory actively and decisively participated in the negotiation, execution, performance, or termination of the contract applying principles of good faith; and (ii) when the non-signatory claims a benefit under the contract.[54][55]

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[54] Payet Third Report at 23, ¶71.

[55] Activos Mineros attempts to set up a false dichotomy between Renco and DRRC's position in the U.S. litigation and this case. Activos Mineros claims that Renco and DRRC want to distance themselves from DRP in the U.S. litigation but associate themselves with DRP in this case. Not true. The test under Article 14 on whether a non-signatory can be bound to an arbitration clause is fundamentally different from the factors under Missouri law to "pierce the corporate veil." That Renco and DRRC negotiated the STA; offered to contribute capital to DRP as part of a request for an extension of the PAMA; and communicated directly with the MEM during DRP's bankruptcy proceedings are facts relevant to the Article 14 inquiry, but these facts are consistent with the legitimate role of a parent company and investor and have no adverse implications in the U.S. litigation. In short, neither position is incompatible with the other. To pierce the corporate veil under Missouri law, a claimant must prove three elements:

> (1) control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
>
> (2) such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and
>
> (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

Ingham v. Johnson & Johnson, 608 S.W.3d 663, 697 (Mo.App. E.D. 2020) (CLA-149). A mere identity of shareholders, directors, or officers between two corporations is insufficient to find an identity of interests between the two entities for purposes of piercing the corporate veil. *Blanks v. Fluor Corp*., 450 S.W.3d 308, 376 (Mo.App. E.D. 2014), citing *Mitchell v. K.C. Stadium Concessions, Inc.*, 865 S.W.2d 779, 784 (Mo.App. W.D. 1993) (CLA-150).

38. Although Article 14 adopts the above principles of international law to determine if a non-signatory is bound to an arbitration agreement contained in a contract, tribunals applying international law use the same test to determine if non-signatories are bound to all the terms and conditions of a contract. For instance, in *Doosan Heavy Indus. & Constr. Co. v. Damietta Int'l Port Co. and Kuwait Gulf Link Ports Int'l*, ICC Case No. 21880/ZF/AYZ,[56] the Tribunal extended its jurisdiction to determine all rights and duties under a contract to a non-signatory, Respondent 2, for the following reasons:

- Respondent 2 was the originator of the project; it created the contracting entity specifically for the project at issue.
- Respondent 2 was the beneficiary of the concession and was a party to the agreement until assigned to Respondent 1.
- Respondent 2's employees were closely involved in the negotiation process.
- There was an overlap in personnel, with individuals involved in the project acting for both Respondents.
- Several discussions in relation to the contract's performance took place between Claimant and Respondent 2 without Respondent 1 being present.
- Respondent 2 took certain strategic decisions alongside Respondent 1.

39. Renco and DRRC meet the Article 14 test. Renco and DRRC actively and decisively participated in the negotiation of the STA. During negotiations, Kenneth Buckley acted in his capacity as the Vice President of DRRC, since DRP did not then exist.[57] Dennis Sadlowski, General Counsel of Renco, was the other lead negotiator and lawyer for the deal.[58]

Likewise, "merely showing that one has absolute control of a corporation does not of itself justify piercing the corporate veil." *Id*., citing *Fairbanks v. Chambers*, 665 S.W.2d 33, 37–39 (Mo.App. W.D. 1984) (CLA-151). One seeking to pierce the corporate veil must show both complete control and improper purpose. *Id.* "Even though corporations are related, and one has complete control over the other, there can be no piercing of the corporate veil without a showing of impropriety in the establishment or use of the corporate form sought to be disregarded." *Id*.

[56] CLA-147, *Doosan Heavy Industries & Construction Co., LTD. v. Damietta International Port Company S.A.E. and Kuwait Gulf Link Ports International*, ICC Case No. 21880/ZF/AYZ, Final Award, 15 January 2018.

[57] CWS-2, Buckley Witness Stmt. at ¶8.

[58] CWS-3, Sadlowski Witness Stmt. at ¶5.

40. DRRC performed certain functions and offered the following assistance in aid of DRP's performance of the STA:

- DRRC performed services for DRP pursuant to inter-company agreements.
- In connection with DRP's efforts to obtain an extension of the PAMA from the MEM in 2009, DRRC offered to "inject US$31 million in new capital to the company in order to reduce past due obligations with mining providers."[59]
- In a 2009 draft Memorandum of Understanding, DRRC proposed to increase the capital stock of DRP by contributing $156 million and pledge collateral in support of DRP's completion of the PAMA, among other things.[60]
- During the bankruptcy proceedings, Renco and the MEM had several direct communications,[61] and Renco offered to inject $65 million into DRP as part of the restructuring plan.[62]

41. It goes without saying that Renco and DRRC expected to receive indirect benefits from the STA, indirectly, through the success of their investment, and directly from Centromin's promise to indemnify/assume liability for third party claims. Renco and DRRC would not have purchased La Oroya otherwise.[63]

42. For all these reasons, the Tribunal should find that Renco and DRRC were implicitly parties to STA arbitration agreement under Article 14.

C. Any objections to an expert determination as a condition precedent to arbitration have been waived.

43. Activos Mineros objects to jurisdiction for the failure by Renco and DRRC to obtain an expert determination. The timeline relevant to this issue is as follows:

[59] Exhibit C-55 at 90.
[60] Exhibit C-111, Draft Memorandum of Understanding between Peru, DRP, DRCL, and Doe Run Cayman Holding LLC, 27 March 2009.
[61] Exhibits C-100, C-115, C-195, C-197, and C-198.
[62] Exhibits C-195 and C-114.
[63] CWS-2, Buckley Witness Stmt. at ¶ 12.

- In August 2016, Renco and DRRC sent Activos Mineros and Peru a letter inviting them to engage in the expert process and proposing a candidate to act as the neutral expert. Neither Activos Mineros nor Peru responded.[64]
- On October 23, 2018, Renco and DRRC alleged in their Notice of Arbitration that Activos Mineros and Peru had waived the requirement of an expert determination as a condition precedent to arbitration.[65]
- On January 14, 2019, in its Response to the Notice, Peru and Activos Mineros alleged that the case was unripe because the parties had not participated in the expert procedure described in Clause 5.4 of the Contract.[66]
- On February 21, 2020, Peru and Activos Mineros requested, and subsequently obtained, a Bifurcation of Preliminary Objections. The absence of an expert determination was not one of the Preliminary Objections raised by them.[67]
- Renco and DRRC made no mention of this issue as part of its Statement of Claim filed on February 8, 2021.[68]
- Peru and Activos Mineros made no mention of this issue as part of its Counter-Memorial filed on April 1, 2022.[69]
- On October 10, 2022, Renco and DRRC requested time to be built into the arbitration schedule to allow for an expert determination.[70]
- On October 18, 2022, Peru and Activos Mineros responded, objecting to Renco and DRRC's request, and seeking to have Renco and DRRC's case dismissed with prejudice for failing to have obtained an expert determination before filing arbitration.[71]
- On October 27, 2022, Renco and DRRC withdrew their request and asserted that in any event it was Peru and Activos Mineros' burden to have obtained an expert determination, since Article 5.4 was a defense by Peru and Activos Mineros to indemnity obligations owed in Article 6.2.[72]
- On November 16, 2022, the Tribunal issued Procedural Order No. 8, in which it stated in relevant part that:

> Having considered the views expressed by the Parties in their respective communications and taking note that the Claimant's withdrawal of their request to include an independent expert determination and allocation phase in the Procedural Calendar, the

[64] Exhibit C-242, King & Spalding LLP Letter dated August 12, 2016.
[65] Claimants' Notice of Arbitration, §V.
[66] Response (to Arbitration) of the Republic of Peru and Activos Mineros at §III(A).
[67] *See generally*, Respondents' Request for Bifurcation of Preliminary Issues.
[68] *See generally,* Claimants' Statement of Claim.
[69] *See generally*, Respondents' Counter-Memorial.
[70] Exhibit C-240, Schiffer Hicks Johnson PLLC Letter dated October 10, 2022.
[71] Exhibit C-239, Allen & Overy LLP Letter dated October 18, 2022.
[72] Exhibit C-240.

> Tribunal hereby dismisses the Respondent's request for summary dismissal of the Contract Case and for the bifurcation of the proceedings. The Tribunal considers that the Respondent has not established a sufficient procedural or factual basis for summary dismissal of the Contract Case at this stage. Nor does the Tribunal consider the circumstances to have changed to such a degree that warrants the reconsideration of its decision not to bifurcate the proceedings as set forth in Procedural Order No. 3 in the Contract Case.[73]

- On September 1, 2023, Peru and Activos Mineros re-urged its objection to jurisdiction on the basis of an alleged failure by Renco and DRRC to obtain an expert determination.

44. Putting aside which party had the burden to obtain an expert determination, the foregoing timeline shows that neither side saw a necessity for a non-binding expert determination before proceeding to binding arbitration. Had Activos Mineros, it would have included this issue as one of its Preliminary Objections. It did not. Renco and DRRC raised the subject in October only because they harbored suspicions that Activos Mineros would wait until the final hearing to raise this objection, and Renco and DRRC did not want a case of this importance to be decided on a technical defect that could have been easily cured. Renco and DRRC's suspicions have proved accurate.

45. Ironically, Activos Mineros is so concerned about a surprise attack by Renco and DRRC that it has exhaustively researched Renco and DRRC's above-stated objection for it.[74] As Activos Mineros states, new objections or arguments that should have been raised earlier in the proceeding should be deemed waived, rather than risk a party's due process rights.[75] Renco and DRRC could not agree more: the time for making this objection was at the outset of this arbitration when any procedural deficiencies could have been easily cured by

[73] Procedural Order No. 8.
[74] Respondent's Rejoinder at 242, ¶¶67-68
[75] *Id.*

abating the arbitration to allow for a determination. Accordingly, Activos Mineros has waived this objection.

D. In a similar vein, Respondents' document objections are contrived.

46. Respondents claim that Claimants have purposefully withheld documents ordered to be produced. Respondents identified six requests that Claimants allegedly withheld: Request Nos. 27, 28, 30, 31, 32, and 38.

47. Respondents should double-check their facts. Claimants produced documents responsive to Request Nos. 27 and 38.[76]

48. Respondents are correct that Claimants did not produce any documents responsive to Request Nos. 28 and 30-32. Claimants collected over seven million documents including electronically stored information and scanned paper documents. They diligently searched for documents responsive to these requests but found none. Claimants submit declarations of Stephen Krchma of DRRC and Matt Davis of Schiffer Hicks Johnson PLLC in support.[77]

49. Respondents' position that Claimants should have given a written response stating that "no responsive documents exist" is unprecedented, at least in this firm's experience. The IBA Rules do not require it, nor is it common practice. If a party does not produce documents in response to a request, to which no objections were sustained, it means it could not find responsive documents after a reasonable search and inquiry. That is all the rules require, and supplementation is allowed for the very reason that sometimes parties later discover a responsive document that was missed the first time. This is exactly how Respondents handled their production to Claimants, producing only 189 documents (compared to the

[76] Declaration of Matt Davis and Declaration of Stephen Krchma.
[77] *Id*.

1,000 documents produced by Claimants).[78] Respondents did not produce documents in response to four different requests and provided no explanation for their non-production.[79]

50. In sum, Claimants submit that Respondents' willingness to mischaracterize a document production just to gain a perceived strategic advantage is indeed quite revealing – not in the way Respondents intend.

THE TRIBUNAL HAS JURISDICTION OVER RENCO AND DRRC'S PERUVIAN CIVIL CODE CLAIMS

51. Renco and DRRC have shown that Centromin assumed DRP's Article 1970 strict liability duty for the PAMA period; and that therefore recovery of damages against Renco and DRRC by the Missouri Plaintiffs for injuries arising out of the operation of the smelters during the PAMA period are debts rightfully owed by Activos Mineros. As such, Renco and DRRC have standing to bring an action against Activos Mineros under Article 1260 (subrogation).

52. Activos Mineros challenges Renco and DRRC's subrogation claim on many grounds, hoping one will stick. It is not clear that any of Activos Mineros' objections are "jurisdictional;" however, in an abundance of caution, Renco and DRRC address each of these challenges in turn.

53. Activos Mineros argues that because Renco and DRRC step into the shoes of the Missouri Plaintiffs and because the Missouri Plaintiffs do not have arbitration agreements with Activos Mineros, Renco and DRRC also do not have the right to arbitrate.

54. Activos Mineros mixes apples and oranges. The "debt" Activos Mineros owes Renco and DRRC derives from Article 1970. It gives Renco and DRRC the *substantive* right to pursue

[78] *Id*.
[79] *Id*.

a claim against Activos Mineros under Article 1260 (subrogation). Neither article of the Civil Code, however, dictates *procedurally* how such claim must be brought. And while the Missouri Plaintiffs do not have arbitration agreements with Activos Mineros, Renco and DRRC do. Therefore, the proper procedural vehicle to resolve this dispute is arbitration before this Tribunal.

55. Activos Mineros claims that the assumption of liability does not cover DRP's operations. Yet in its Pre-Bid Answers to Questions, Centromin represented as follows:

> **Question No. 41**
>
> Taking into account that CENTROMIN will assume responsibility for the existing contamination at La Oroya's smelter, and the new operator will be obligated later on to continue with the same contamination practices for a period of time, as authorized by PAMA's terms, and that the old (pre-transfer) contamination and the new (post-transfer) contamination …
>
> Would CENTROMIN accept responsibility for all the contaminated land, water, and air until the end of the period covered by the PAMA or how can it determine which part corresponds to whom?
>
> **ANSWER:**
>
> *Affirmative*, provided that Metaloroya would fulfill the PAMA's obligations which are their responsibility, otherwise Metaloroya will be responsible from the date of non-compliance of the obligation, according to the competent authority's opinion (Clauses 3.3 (5.3) and 4.2 (6.2) of the Models of the Contract).[80]

This answer shows Centromin's intent that the protections of its assumption of liability extended to smelting operations, not just to PAMA projects. There would be no reason otherwise for Centromin to agree to be liable for the new owner's "continuation" of

[80] Exhibit R-201 (emphasis added).

Centromin's "contamination practices." Activos Mineros should not be allowed to take a different position now to deny liability.

56. Activos Mineros claims that DRP's operation of the smelters was "less protective" because it increased production using "dirtier concentrates" without first completing installation of a sulfuric acid plant in each of the three circuits. This statement is wrong on any number of levels.

57. First, this position conflicts with Activos Mineros's first position that Article 5.3 does not cover third-party claims arising from DRP's operations. If Article 5.3 was only ever intended to cover PAMA projects and not operations, there is no reason for the "less protective" clause to be included in Article 5.3 at all.

58. Second, had Centromin not sold La Oroya, it would have increased production using dirtier concentrates without first installing sulfuric acid plants. This is not speculation. Both the plan to increase production and the term "dirtier concentrates" are *verbatim* from Centromin's 1997 Business Plan.[81] Employing Centromin's same logic, if Centromin would have increased production using dirtier concentrates without first installing sulfuric acid plants, then DRP's actions in following the same business plan cannot be considered "less protective."

59. Activos Mineros repeatedly claims DRP jacked-up production for profits. This hyperbole has no basis in fact. The MEM set a production limit for DRP for copper of 22,488 metric tons of concentrate per month (*i.e.*, 269,856 tons per year).[82] For calendar year 1997, DRP produced 252,437 metric tons – 17,419 metric tons less than permitted.[83] 1997 was the

[81] Exhibit R-184.
[82] Exhibit C-243, Resolución Directorial dated August 7, 1993, at ¶¶67-68.
[83] Exhibit to Expert Opinion of Gino Bianchi Mosquera (February 8, 2021), GBM-038 at 328.

peak for DRP; DRP never produced more for the remainder of its life of its 12-years of operation of La Oroya.[84]

60. Activos Mineros claims that DRP chose not to implement Project No. 1 (sulfuric acid plants) until 2006. Yet the MEM agreed to a schedule for the implementation of all 16 Projects that permitted Project No. 1 (the sulfuric acid plants) to be completed in 2006.[85] Thus, the MEM sanctioned DRP's operations of the smelters for nine years before DRP was required to complete installation of the sulfuric acid plants. Only now has Activos Mineros chosen to malign DRP for having operated the smelters in the same fashion as, and with the permission of, the MEM.

61. Finally, the MEM audited DRP's operations closely, generating reports quarterly.[86] If, as Activos Mineros now claims, DRP was "less protective of the environment," surely the MEM would have made some report. It did not comment because, as set forth in exhaustive detail in Claimants' Reply on Liability, Activos Mineros' allegations are wrong: DRP *reduced emissions,* even while increasing production.[87]

62. Undaunted, Activos Mineros' next lines of defense depend on word play. It claims that:

> Claimants' reading of excluding all operations from clause 5.3 (a) would require the Tribunal to assume that *everything* that DRP was doing at the Facility after its acquisition *is related* to DRP's PAMA. That cannot be right. Claimant's reading of Clause 5.3(a) would require the Tribunal to believe that Activos Mineros intended to assume responsibility for environmental contamination that DRP caused from its operation of the Facility, no matter how DRP operated the Facility.[88]

[84] *Id.*
[85] Exhibit C-054, Request for PAMA Modification No. 1215214, Table 2 at 5; and C-56, PAMA Modification.
[86] Audit reports referred to in G. Bianchi's report as Exhibits GBM-157, GBM-155,
[87] C-055, Doe Run Peru 2009 Extension Request at 76; *see, generally,* slides prepared by GSI and submitted as Appendix C to Supplemental Expert Report of John A. Connor, PE, PG, BCEE (April 25, 2023), and GBM-012.
[88] Respondent's Rejoinder at ¶98.

63. It is not Renco and DRRC's position that DRP could do anything it wanted; it is Renco and DRRC's position that what DRP did was covered by Article 5.3. Such a conclusion is consistent with the reality of the MEM's privatization of La Oroya. No one would have bought La Oroya without the protections afforded by Article 5.3. No one would have bought La Oroya if Centromin had disclosed its current interpretation of the scope of Article 5.3. The provision was drafted to protect the buyer, not to create easy ways for Activos Mineros to deny protection. The language of Article 5.3 must be read in its proper context.[89]

64. In the same pedantic vein, Activos Mineros nit-picks Renco and DRRC's use of the word "claims" instead of "acts":

> DRP assumes responsibility whenever claims and damages "arise directly due to acts" that are "exclusively attributable" to DRP. To argue that "exclusively attributable" modifies the term "claims" instead of the term "acts" would be to argue that "exclusively attributable" is modifying the subject of the chapeau of Clause 5.3, rather than modifying the subject of the list in which the phrase "exclusively attributable" is found. That cannot be right. This literal interpretation is clear.[90]

65. Renco and DRRC's position does not rest, and has never rested, on grammatical sleight-of-hand. To be clear, it is Renco and DRRC's position that the Missouri Plaintiffs *claims* against Activos Mineros arise out of DRP's *act* of operating the smelters.

66. Activos Mineros claims that the commercial arbitration is unripe because the Missouri Litigation has yet to be decided. That there has been no final judgment in the Missouri Litigation is irrelevant. Centromin agreed to assume the liabilities that are the subject of the claims being pursued against the Renco and DRRC, and the question of whether it must

[89] Sadlowski Witness Stmt. at 13, ¶40.
[90] Respondent's Rejoinder at ¶104.

assume responsibility for those claims is certainly ripe. Renco and DRRC have repeatedly demanded that Activos Mineros assume the defense of these claims; Activos Mineros has repeatedly refused to do so. Activos Mineros's refusal to meet its obligations means that Renco and DRRC have been saddled with defending the claims for years, incurring, every single day, the substantial cost of doing so. Indeed, a determination of which party bears the legal responsibility for damages for environmental liabilities pursuant to Sections 5 and 6 of the STA is at the core of contract claim, the subrogation claim, the contribution claim, and unjust enrichment.[91]

67. Because Renco and DRRC argue that the proper construction of those sections makes Activos Mineros responsible, while Activos Mineros denies any liability for over a decade, is a legal situation to be defined – *i.e.*, which party holds that liability.[92]

68. A declaration will have an impact on the behavior of the parties.[93] Currently, Renco and DRRC have incurred and are continuing to incur substantial expenses in the Missouri Litigation that should be reimbursed and assumed by Activos Mineros.[94] Therefore, Renco and DRRC are suffering prejudices that will be cured with a declaration.[95]

69. Moreover, this Tribunal can determine the responsibility of Activos Mineros without interfering with the competence and jurisdiction of any other organ, and without a risk of contradiction with a different ruling.[96]

70. Activos Mineros next tries to sell the notion that Article 14 (the "2008 Arbitration Act"), which became effective on September 1, 2008, is being applied retroactively.[97] It is not.

[91] Payet Third Report at 26-29, ¶¶81-96.
[92] *Id.* at ¶107.
[93] *Id.* at 114.
[94] *Id.*
[95] *Id.*
[96] *Id.* at ¶120.
[97] *Id.* at ¶55.

The Second Transitory Disposition of Legislative Decree N° 1071 states that "[u]nless otherwise agreed, in the cases in which a party had received the request for arbitration to a controversy before the entry into force of this legislative decree, the arbitration proceeding will be ruled by Law N° 26572, General Arbitration Act" [the old arbitration act].[9899] The *contrario sensu* interpretation is that if a party receives the request for arbitration after the entry into force of the 2008 Arbitration Act, the arbitration proceedings will be ruled by the 2008 Arbitration Act and not by the superseded General Arbitration Act.[100] Or as Marcial Rubio, a leading scholar on general theory of law in Peru, explains: "unless otherwise agreed, the law that will be applied to the arbitral proceeding is the one in force at the moment of receipt by a party of the request for arbitration for a controversy: if at that moment the Law N° 26572 was in force, that would be the applicable one. If, by contrast, when the mentioned request was receipt was already in force the Legislative Decree N° 1071, then it will be applicable."[101]

71. This arbitration was initiated on December 29, 2010, over two years after the effective date of Article 14, and thus falls within its ambit.

72. Citing no authority, Activos Mineros argues that Renco and DRRC are impermissibly fusing two different causes of action – strict liability and subrogation – and that the Missouri Plaintiffs' claims cannot be for activities of DRP because DRP is not a party to the U.S. litigation.[102] These arguments make no sense. On the contrary:

- DRP was subject to Article 1970 (strict liability) in the operation of the smelters for alleged damage to the local population caused by pollutants.[103]

[98] CLA-144.
[99] Payet Third Report at ¶57.
[100] *Id.* at ¶¶57-59.
[101] *Id.* at ¶58.
[102] Respondent's Rejoinder at ¶¶259-265.
[103] Claimants' Reply Brief at ¶¶17, 26.

- Centromin agreed to indemnify and retain liability for such third-party claims during the PAMA.[104]

- The Missouri Plaintiffs could have chosen to sue DRP under Article 1970 in Peru, but they chose instead to sue Renco and DRRC in the United States under Missouri law theories of derivative liability, *i.e.*, theories that would impose liability on Renco and DRRC for the alleged torts of DRP.[105]

- Thus, holding Renco and DRRC liable for the acts of DRP, for which acts Activos Mineros assumed liability, enables Renco and DRRC to recover against Activos Mineros for such liability under Article 1260.[106]

73. Activos Mineros baldly claims that a declaratory judgment would embolden Renco and DRRC to "settle the Missouri Plaintiffs' claims for the full amount."[107] A declaratory judgment would likely achieve the opposite. Activos Mineros would be heavily incentivized to cooperate with Renco and DRRC in defending and/or resolving the Missouri Litigation, since it has agreed to assume/indemnify Renco and DRRC for the full amount of such liability. Further, that circumstance should never come to pass were this Tribunal to order Activos Mineros to meet its obligations, including those under Section 8.14, which requires Peru to step in and assume the defense of claims for which it has assumed liability. Peru can and should determine its own fate by defending the claims as it promised to do.[108]

74. The other defenses of limitations and allocation of liability after the initial PAMA period expired are not jurisdictional in nature (since according to Dr. Varsi, they would apply – if at all – only to some of the claims asserted by the Missouri Plaintiffs) and should be reserved for the damages stage of the arbitration. In such events, Renco and DRRC are

[104] *Id.* at ¶17, ¶¶30-32.
[105] *Id.* at ¶17.
[106] *Id.* at ¶17.
[107] Respondent's Rejoinder at 96, ¶288.
[108] C-105 at §8.14.

entitled to contribution or reimbursement under its theories of contribution and unjust enrichment.

75. According to article 1983 of the Peruvian Civil Code:

> If several parties are responsible for the damage, they will have joint and several liability. However, the one who paid the entire compensation can file for reimbursement from the others, with the judge being responsible for setting the proportion according to the severity of the fault of each of the participants. When it is not possible to determine the degree of responsibility of each party, the distribution will be made in equal parts.[109]

76. Article 1954 of the Peruvian Civil Code states that "[a]nyone who is enriched at the expense of another is required to pay compensation to the other."[110] The key elements for this right to arise are the following: i) the enrichment of the respondent; ii) impoverishment of the claimant; iii) a causal relationship between the enrichment and impoverishment; iv) absence of a fair justification; and v) absence of any other remedy.

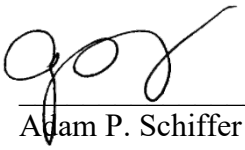
77. Renco and DRRC pass the jurisdictional hurdle for standing to seek recovery under the Peruvian Civil Code.

CONCLUSION

For the reasons set forth in Claimants' submissions and evidence, Claimants are entitled to proceed to the merits on its Treaty, Contract, and Peruvian Civil Code claims.

[109] CLA-152, Código Civil, Decreto Legislativo N° 295, Art. 1983 (2014).
[110] CLA-153, Código Civil, Decreto Legislativo N° 295, Art. 1954 (2014).

November 7, 2023.



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