

PCA CASE N° 2019-46

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE
TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF PERÚ AND THE
UNITED STATES OF AMERICA**

- and -

THE UNCITRAL ARBITRATION RULES 2013

-between-

THE RENCO GROUP, INC.

-and-

THE REPUBLIC OF PERU

PROCEDURAL ORDER NO. 3

The Arbitral Tribunal

Judge Bruno Simma (Presiding Arbitrator)
Prof. Horacio Grigera Naón
Mr. J. Christopher Thomas QC

17 September 2020

1 Procedural History

- 1.1 Pursuant to the agreement of the Parties, this arbitration is being coordinated with *The Renco Group, Inc. and Doe Run Resources Corp. v. Republic of Peru and Activos Mineros S.A.C.*, PCA Case No. 2019-47 (the “**Contract Case**”).
- 1.2 On 30 June 2020, the Tribunal rendered its Decision on Expedited Preliminary Objections dismissing the Respondent’s Article 10.20.5 objections in this arbitration.
- 1.3 On 29 July 2020, the Tribunal issued Procedural Order No. 3 (Decision on Bifurcation) in the Contract Case and invited the parties to confer regarding the further timetable for the proceedings for both arbitrations.
- 1.4 On 18 August 2020, the Respondents informed that the Parties had agreed only that the two cases would have parallel schedules with filing dates two weeks apart and concurrent hearings.
- 1.5 By letter dated 20 August 2020, the Claimants submitted their proposal for the timetable of the proceedings in both cases. Additionally, the Claimants requested that the Tribunal only address jurisdiction and liability in the present phase, and bifurcate quantum into a separate phase to avoid incurring unnecessary costs.
- 1.6 By letter dated 21 August 2020, the Respondents confirmed that the Parties had agreed to parallel timetables for the cases and hearings to be held around October 2022. However, the Respondents insisted on a single phase and proposed a different schedule. The Respondents further requested that the Tribunal deny the Claimant’s bifurcation request. The Respondents also requested a decision on an early document production phase, including in particular with respect to documents relating to the St. Louis lawsuits.
- 1.7 By letter dated 27 August 2020, the Claimants replied to the Respondents’ letter.
- 1.8 By letter dated 31 August 2020, the Respondents submitted a further reply of their own.

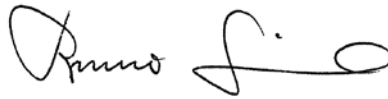
2 Bifurcation

- 2.1 The Claimants request that the present phase of both the Contract Case and this case address issues of jurisdiction and liability only, and that quantum issues be bifurcated to a separate phase, in the event that the Claimants prevail on jurisdiction and liability. The Respondent opposes this request.
- 2.2 The Tribunal accepts the Claimants’ proposed bifurcation. The Tribunal considers that the various issues to be decided on jurisdiction and liability are *prima facie* serious and substantial and stand to dispose of, or at least significantly narrow, the issues to be decided in respect of remedies even if the Claimants should prevail.
- 2.3 Moreover, the Tribunal recalls the concern expressed regarding the volume of evidence from and relating to the St. Louis lawsuits that might have to be brought into the record of these proceedings, and the Respondent’s warning in this regard. Bifurcation appears to be an efficient way to circumscribe the amount of evidence from those proceedings which needs to be produced at this stage of these proceedings, and to narrow it for any subsequent phase of proceedings on remedies, if any. It also thereby obviates the need for the contested preliminary document production phase requested by the Respondent.

3 Procedural Calendar

- 3.1 The procedural calendar for the arbitration adopted by the Tribunal is set forth in **Annex 1** to this Procedural Order.
- 3.2 On or before the date of the deadline for any written submission, the Party in question shall send the submission to the Tribunal, PCA, and opposing counsel, by e-mail or secure file-sharing platform, in accordance with the Terms of Appointment, in accordance with the rules and definitions set forth in Procedural Order No. 1.

So ordered by the Tribunal.



Judge Bruno Simma
(Presiding Arbitrator)

On behalf of the Tribunal

Annex 1: Procedural Calendar

<u>Event</u>	<u>Date</u>
Preliminary Document Production	N/A (Denied)
Claimant's Memorial	Thursday, 25 January 2021
Respondent's Counter-Memorial	Monday, 26 July 2021
Non-Disputing State Party Submission	Friday, 1 October 2021
Potential Document Production Phase	26 July-31 October 2021
Claimant's Reply on Liability and Response on Jurisdiction	Thursday, 25 November 2021
Respondent's Rejoinder on Liability and Reply on Jurisdiction	Monday, 25 April 2022
Claimant's Rejoinder on Jurisdiction	Monday, 25 July 2022
Hearing	October 2022