



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV- 24-00732478-00CL

DATE: May 15, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: SOCIEDAD AEROPORTUARIA KUNTUR WASI S.A
v.
THE REPUBLIC OF PERU

BEFORE: JUSTICE DIETRICH, J.

PARTICIPANT INFORMATION

For Applicant:

Name of Person Appearing	Name of Party	Contact Info
Chris Hunter	Lawyers for the Applicant, Sociedad Areoportuaria Kuntur Wasi S.A	ckhunter@torys.com
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For Respondent:

Name of Person Appearing	Name of Party	Contact Info
	Lawyer for the Respondent,	

For Other:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE: JANE DIETRICH.

Introduction

[1] Sociedad Aeroportuaria Kuntur Wasi S.A. (“**Kuntar Wasi**”) seeks recognition of an international arbitral award in the amount of US \$91,205,056 plus interest (the “**Award**”) as a judgment of this Court.

[2] The Award was issued by an arbitral tribunal of the International Centre for Settlement of Investment Disputes (“**ICSID**”) against the Republic of Peru (“**Peru**”).

[3] The respondent, Peru, did not appear and the application is not opposed.

[4] Terms used and not otherwise defined herein have the meaning provided for in the factum of Kuntur Wasi filed on this application.

Background

[5] Kuntur Wasi is a special purpose company organized under the laws of Peru.

[6] Peru is a foreign state within the meaning of the *State Immunity Act*, R.S.C. 1985, c. S-18.

[7] ICSID was established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**Convention**”), which Canada is party to.

[8] Kuntur Wasi and Corporación América filed a Request for Arbitration with ICSID on June 21, 2018.

[9] Peru participated fully in the arbitral proceeding, including filing written submissions, evidence, and making oral submissions at the hearing.

[10] The Tribunal issued a Decision on Jurisdiction, Liability and Certain Aspects of Quantum on August 11, 2023 (the “**Decision**”).

[11] The Decision is attached to the Award and incorporated by reference. The Award also addressed additional issues relating to the quantum of Kuntur Wasi’s damages. The Tribunal ordered Peru to pay Kuntur Wasi US \$91,205,056, plus additional interest to the day of payment at the rate established in the Award, compounded annually. The Tribunal further ordered that interest be calculated based on the average US dollar lending rate in July of each year based on the average rate for the preceding 12 months.

[12] The Award became due and payable on May 9, 2024. The time to file any annulment request expired on September 6, 2024. Peru did not seek to annul the Award.

[13] To date, Peru has not paid Kuntur Wasi any amount in connection with the Award.

[14] Peru was validly served with the Notice of Application. Kuntur Wasi served the Notice Application (including a translation into Spanish) on Peru in accordance with the *State Immunity Act*. On behalf of the Deputy Minister, Global Affairs Canada has confirmed that the Notice of Application was transmitted to the appropriate Peruvian authority on January 24,

2025. Kuntur Wasi also provided a courtesy copy of the Notice of Application to Peru's arbitration counsel (who confirmed that they would provide the Notice to Peru) as well as a copy of Justice Osborne's endorsement scheduling the hearing date. Peru did not serve a Notice of Appearance nor has it otherwise indicated any intention to participate in the proceeding. It did not appear today.

Issue

[15] The only issue to be determined is whether the Award should be recognized.

Analysis

[16] The Court is mandated by the *Settlement of International Investment Disputes Act*, 1999, S.O. 1999, c. 12, Sched. D (the "**Act**") to recognize the Award upon presentation of a certified copy thereof. A certified copy of the Award certified by ICSID is appended to the Notice of Application.

[17] Article 54 of the Convention provides that each Contracting State "shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State."

[18] Ontario has implemented the Convention domestically through the Act. The Act adopts the mandatory obligation in Article 54 of the Convention to recognize an ICSID award. The purpose of the Act is set out at s. 3 "to implement the provisions of the Convention concerning the jurisdiction and powers of the Superior Court of Justice with respect to the recognition and enforcement of awards."

[19] Section 6 of the Act provides that an ICSID Award "shall" be registered on production of a certified copy of the award and, once registered, "has the same effect, and all proceedings may be taken to enforce it, as if it were a final judgment" of the Court.

[20] Section 8 of the Act confirms that an ICSID award is final and binding and not subject to appeal, review, setting aside or any other remedy except as provided for in the Convention.

[21] Peru did not seek to annul the Award and the deadline for doing so has passed.

[22] The Court is required to recognize the Award in the circumstances.

Disposition

[23] Fixing costs is a discretionary decision under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. In exercising my discretion, I may consider the result in the proceeding, any

offer to settle or to contribute made in writing, and the factors listed in Rule 57.01. These factors include but are not limited to: (i) the result in the proceeding; (ii) the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer; (iii) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed; (iv) the amount claimed and the amount recovered in the proceeding; (v) the complexity of the proceeding; (vi) the importance of the issues; and (vii) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding. Rule 57.01(1)(f) provides that the court may also consider “any other matter relevant to the question of costs.”

[24] In exercising my discretion to fix costs, I must consider what is fair and reasonable for the unsuccessful party to pay in this proceeding and balance the compensation of the successful party with the goal of fostering access to justice: *Boucher v Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.) at paras. 26 and 37.

[25] In this case, I see no reason to depart from the standard of partial indemnity costs and accordingly, I fix the costs of the application in the amount of \$18,215.40, inclusive of disbursements and Harmonized Sales Tax.

[26] Order to go in the form signed by me this day.

May 15, 2025

A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line.

Justice J. Dietrich