

**IN THE MATTER OF  
AN ARBITRATION UNDER THE RULES OF THE  
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW  
UNCT/13/1**

**THE RENCO GROUP, INC.**

**Claimant**

**v.**

**THE REPUBLIC OF PERU**

**Respondent**

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**Claimant's Submission On Costs**

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## I. INTRODUCTION

1. The Renco Group, Inc. (“Renco” or “Claimant”) hereby files its Cost Claim in accordance with paragraphs 191 and 195 of its Partial Award on Jurisdiction dated July 15, 2016, Article 10.26 of the US-Peru Trade Promotion Agreement (the “Treaty”) and Article 42(i) of the UNCITRAL Rules.

2. Claimant seeks reimbursement of all recoverable fees and expenses in connection with Claimant’s filing of its Memorial on Liability dated February 20, 2014, including the witness statements and expert reports filed simultaneously with Claimant’s memorial. Had Peru raised its jurisdictional waiver objection at the outset of the case, as it should have, rather than in a piecemeal fashion over a number of years, Renco would not have spent millions of dollars on a full merits submission. As set forth in more detail below, the circumstances by which Peru delayed raising its jurisdictional waiver objection, particularly considering the procedural schedule to which the parties agreed at the First Procedural Session in London, caused Renco to incur the substantial and unnecessary expense of a merits filing and should result in a shifting of those fees and costs to Respondent.

3. Beyond an order of costs against Peru with respect to Renco’s merits filing, each side should be ordered to bear the costs of their own legal representation and assistance, and each side should be ordered to bear half of the costs of the Tribunal and administering authority. Although the 2010 UNCITRAL Rules set forth a preliminary preference for the “Costs Follow the Event” Principle, tribunals have wide discretion to deviate from this principle when taking into account the circumstances of the case.

4. Here, three circumstances warrant deviating from the preliminary preference for this principle. First, Peru’s conduct during the arbitration unnecessarily increased Renco’s costs. Second, investment tribunals often have declined to apply that principle when the issues in dispute were novel and complex. The issues regarding Peru’s objection to Renco’s Reservation of Rights were novel and complex. Third, when applying the “Costs Follow the Event” Principle, tribunals consider the relative success of the parties. In the present case, while Peru prevailed on issues related to its objection to Renco’s Reservation of Rights in its waiver, Peru failed on issues related to the Scope of Preliminary Objections under Article 10.20.4, and the Tribunal did not rule on many other issues that the parties briefed.

5. In Section III below, the Tribunal will find a chart summarizing Claimant's Cost for its Merits filing and providing their grand total. Claimant certifies that the fees and expenses listed in their cost claim have been invoiced to Renco and that they have been paid in full.

## II. ANALYSIS

### A. Legal Standard

6. Article 10.26 of the Treaty provides: "A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules."

7. Article 42(1) of the UNCITRAL Rules (2010) provides:

The costs of the arbitration shall in principal be borne by the unsuccessful party or parties. However, the tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

8. The governing rules grant a tribunal wide discretion in determining how to allocate costs between the parties, in a manner that the tribunal deems most appropriate under the circumstances of the case. Commenters note that when deciding cost issues, tribunals may consider any factor that they consider relevant, and that "the arbitral tribunal enjoys substantial flexibility under the UNCITRAL Rules in apportioning the costs of the arbitration."<sup>1</sup>

9. The preliminary preference under Article 42(1) for "Costs Follow the Event" is "readily reversible when two conditions are met: (1) the arbitral tribunal has considered the 'circumstances of the case'; and (2) based on that consideration has determined that apportionment is 'reasonable.'"<sup>2</sup> The commentaries to the UNCITRAL Rules provide further:

Because the Rules leave the phrase 'circumstances of the case' undefined, the determination of whether apportionment is reasonable is subject to the arbitral tribunal's own judgment. Further, whether apportionment is reasonable is a subjective inquiry – 'reasonable' in this context means what the tribunal finds to be reasonable, not what is necessarily objectively

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<sup>1</sup> **CLA-178**, David D. Caron and Lee M. Caplan, *THE UNCITRAL ARBITRATION RULES: A COMMENTARY* at 865, 866 (2d ed. 2012).

<sup>2</sup> *Id.*

reasonable based on, for example the prevailing practice of other arbitral tribunals.<sup>3</sup>

10. For example, in *Invesmart v Czech Republic* the Tribunal dismissed all of the claimant's claims on the merits after finding that respondent did not breach the treaty. But the Tribunal ordered each party to bear its own fees and costs because respondent had engaged in "unfortunate or unwise" behavior when it approved the claimant's acquisition of a bank loan even though claimant had little experience in banking, few financial resources, and expected to receive state aid.<sup>4</sup>

11. A particularly important factor that weighs heavily in assessing costs is the conduct of the parties during the arbitration proceedings. Where one party "has acted frivolously, in bad faith or otherwise irresponsibly, arbitrators are likely to award additional, sometimes full, costs to the other party."<sup>5</sup> In exercising its discretion, a tribunal need not find bad faith. Conduct that is "irresponsible" will suffice. Or, as the commentators to the UNCITRAL Rules state, tribunals have apportioned costs for "expenses incurred as a direct result of another party's conduct that was frivolous, in bad faith *or* unnecessarily burdensome." (emphasis added).<sup>6</sup> This practice "serves the dual function of reparation and dissuasion."<sup>7</sup>

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<sup>3</sup> **CLA-178**, David D. Caron and Lee M. Caplan, *THE UNCITRAL ARBITRATION RULES: A COMMENTARY* at 866, 867 (2d ed. 2012).

<sup>4</sup> **CLA-179**, *Invesmart, B.V. v. Czech Republic*, UNCITRAL, Joint Award, June 2009, ¶ 577 (Christopher Thomas, Piero Bernardini, and Michale Pryles (Tribunal President)). In this submission, Renco cites several tribunals that operated under the 1976 UNCITRAL Rules. The 1976 UNCITRAL Rules set forth two standards of apportionment: a) a preference for "Costs Follow the Event" for arbitration costs unless circumstances justified a different apportionment, and b) no stated preference regarding how the tribunal should apportion "costs of legal representation and assistance." The 2010 UNCITRAL Rules unified these two standards by including the "legal and other costs incurred by the parties" in the definition of the "costs of the arbitration" and thereby extended the soft preference for the "Costs Follow the Event" Principle to the costs of legal representation. David D. Caron and Lee M. Caplan, *THE UNCITRAL ARBITRATION RULES: A COMMENTARY* at 867 (2d ed. 2012). These authorities nevertheless illustrate how circumstances such as the conduct of the parties, the novelty and complexity of the issues presented, and the relative success of the parties justify deviating from the "Costs Follow the Event" Principle under the UNCITRAL Rules.

<sup>5</sup> **CLA-180**, L. Nurick, "Costs in International Arbitrations," (1992) 7 ICSID Rev-Foreign Investment LJ 57, 58. **CLA-181**, Accord M. Smith "Costs in International Commercial Arbitration" (Feb./April 2001 (56 Disp. Resolution J 30, 33)).

<sup>6</sup> **CLA-178**, David D. Caron and Lee M. Caplan, *THE UNCITRAL ARBITRATION RULES: A COMMENTARY* at 872 (2d ed. 2012).

<sup>7</sup> *Id.*

12. In *Lauder v Czech Republic*, the Tribunal found that the Respondent’s conduct did not breach the treaty. Despite finding for the Respondent, however, the Tribunal ordered the parties to bear their own fees and costs, and to share the Tribunal’s fees and costs equally, because the Respondent had driven up the costs unnecessarily in the document production phase.<sup>8</sup>

13. The Iran-US Tribunal has “awarded costs against a party whose conduct, while not necessarily inappropriate, directly and unnecessarily imposed additional costs on its adversary.”<sup>9</sup> In one case, the Iran-US Tribunal ordered the claimant to pay Iran for costs because “the Respondent’s task of preparing pleadings and evidence was made more difficult by the lack of coherence in the Claimant’s written presentation of its case.”<sup>10</sup>

14. Notably, in *Zhinvali v. Georgia*, an investment tribunal operating under the ICSID Arbitration Rules awarded the claimant a substantial portion of its costs even though the tribunal dismissed the entire case on jurisdictional grounds, because the respondent raised its jurisdictional objections belatedly.<sup>11</sup> In that proceeding, the Respondent raised two jurisdictional objections with its Rejoinder instead of with its Counter-Memorial on the Merits. The Tribunal allowed the belated jurisdictional objections, ruled upon them in Georgia’s favor, and then held that Georgia should compensate Zhinvali for the harm its improper procedural behavior had caused:

The Tribunal has decided that, just as fundamental fairness required under the facts of this case that Georgia receive a hearing of its defense to the Claimant’s charges, so then fundamental fairness likewise requires that the Respondent reimburse the Claimant for attorneys’ fees and other arbitration costs which the

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<sup>8</sup> **CLA-182**, *Ronald S. Lauder v. Czech Republic* UNCITRAL Final Award, Sept. 3, 2001, ¶ 318 (Lloyd Cutler, Bohuslav Klein, Roberto Briner (Tribunal President)).

<sup>9</sup> **CLA-178**, David D. Caron and Lee M. Caplan, *THE UNCITRAL ARBITRATION RULES: A COMMENTARY* at 872 (2d ed. 2012). Investment treaty tribunals operating under the ICSID Arbitration Rules have followed this practice as well. See **CLA-183**, C. Schreuer, *THE ICSID CONVENTION: A COMMENTARY* at 1230-31 (2d ed. 2009).

<sup>10</sup> **CLA-184**, *Near East Technological Services USA, Inc. v. Islamic Republic of Iran Air Force*, Award No. 406-845-1, Jan. 9, 1988, reprinted in 21 *Iran-US CTR* 13, 19. The same concern appears to have in part motivated an investment tribunal to apportion costs against a claimant. See **CLA-185**, *Jan Oostergetel et al., v. The Slovak Republic*, UNCITRAL Ad Hoc Arbitration, Final Award, April 23, 2012, ¶ 339.

<sup>11</sup> **CLA-187**, *Zhinvali Development Limited v. Georgia*, ICSID Case No. ARB/00/1, Award, Jan. 24, 2003, ¶¶ 420-30 (Jocovides, Rubin, and Robinson (Tribunal President)).

Claimant would not have incurred but for the Respondent's irregular behavior in mounting this defense.<sup>12</sup>

That Tribunal emphasized that Georgia should pay Zhinvali for the unnecessary costs that Georgia's conduct had caused it:

Had the Respondent made its objections when it should have under Rule 41(1), the Tribunal would have suspended the proceedings on the merits under Rules 41(3) and would have ruled on the jurisdictional objections at that stage as preliminary questions, thereby obviating the considerable additional time, effort and expense that the Claimant devoted to pursuing its case on the merits and to responding to the points introduced by the Respondent in its Rejoinder of January 15, 2002 and thereafter.<sup>13</sup>

In an award issued almost 15 years ago, that tribunal awarded the claimant US\$ 597,125.09 in costs even though it dismissed all of its claims for lack of jurisdiction.<sup>14</sup>

15. In addition to party misconduct, several tribunals have cited the novelty and complexity of the issues being decided as a circumstance that mitigates against following the "Costs Follow the Event" Principle. As Caron and Caplan state in their well-known Treatise on the UNCITRAL Rules, "[t]his [novelty] factor may be particularly relevant in the context of investor-state arbitration which may present new and unsettled questions of international law."<sup>15</sup> In *Glamis Gold v. the United States*, the tribunal ordered the unsuccessful claimant to bear two-thirds of the arbitral costs and for each party to bear their own costs of representation because the "Claimant raised difficult and complicated claims based in at least one area of unsettled law, and both Parties well argued their positions with considerable legal talent and respect for one another, the process and the Tribunal."<sup>16</sup>

16. Finally, even when tribunals apply the "Costs Follow the Event" Principle, they consider the relative success of the parties instead of looking solely to the final outcome of the

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<sup>12</sup> **CLA-187**, *Zhinvali Development Limited v. Georgia*, ICSID Case No. ARB/00/1, Award, Jan. 24, 2003, ¶¶ 424 (Jocovides, Rubin, and Robinson (Tribunal President)).

<sup>13</sup> *Id.* ¶ 429.

<sup>14</sup> *Id.* ¶¶ 430, 433.

<sup>15</sup> **CLA-178**, David D. Caron and Lee M. Caplan, *THE UNCITRAL ARBITRATION RULES: A COMMENTARY* at 871 (2d ed. 2012).

<sup>16</sup> **CLA-134**, *Glamis Gold Ltd v. the United States of America*, UNCITRAL, Award, June 8, 2009 ¶ 833 (David Caron, Kenneth Hubbard, and Michal Young (Tribunal President)).

case.<sup>17</sup> For instance, in *Thunderbird v. Mexico*, the tribunal found that Mexico prevailed on the merits, but lost on jurisdictional and other issues and thus limited Mexico's costs award to 75% of the legal costs it incurred.<sup>18</sup> Similarly, in *BG Group v. Argentina*, the claimant prevailed on the merits, but the tribunal only awarded 78% of the damages it claimed and dismissed some of the claimant's claims on jurisdictional grounds.<sup>19</sup> The tribunal therefore limited the claimant's cost award to 70% of the costs it incurred.<sup>20</sup> In *ICS Inspection and Control Services v. Argentina*, the tribunal dismissed all of the claimant's claims based on one jurisdictional objection, but declined to award the Respondent all of its legal costs, in part, because the tribunal had not ruled on several issues addressed by the parties:

The Tribunal further notes that it has found for Respondent and against the Claimant on only one of the various objections to jurisdiction that were raised by the Respondent and argued by the Parties, albeit one that disposes of the entirety of the claims. The Tribunal has made no finding on these other issues and shall not presume that the Claimant's arguments were without merit and would not have succeeded. The Respondent's success has therefore not been absolute.<sup>21</sup>

**B. This Tribunal Should Award Renco the Costs it Incurred in Filing its Merits Memorial**

17. In the present case, Peru waited for more than four years to raise its objection to the reservation of rights language that Renco included with its written waiver at the outset of the proceedings on April 4, 2011.

18. Importantly, the question of raising jurisdictional objections in a timely fashion was the subject of intensive and substantial discussion between the parties and the Tribunal at the First Procedural Session held in London on July 18, 2013. In that session, Renco made it clear

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<sup>17</sup> **CLA-186**, *Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran*, Award No. 180-64-1, June 27, 1985, Separate Opinion of Judge Holtzmann, at 331 reprinted in 8 Iran-US CTR 329, 331-33.

<sup>18</sup> **CLA-019**, *International Thunderbird Gaming Corp. v. Mexico*, UNCITRAL, Award, Jan. 26, 2009, ¶¶ 219-221 (Agustin Portal Ariosa, Thomas Walde, and Albert Jan van den Berg (Tribunal President)).

<sup>19</sup> **CLA-026**, *BG Group Plc v. Argentina*, UNCITRAL, Final Award, Dec. 27, 2007, ¶ 458-60 (Alejandro Garro, Albert Jan van den Berg, Guillermo Aguilar Alvarez (Tribunal President)).

<sup>20</sup> *Id.*

<sup>21</sup> **CLA-147**, *ICS Inspection and Control Services v. Argentina*, Award on Jurisdiction, Feb. 10, 2012, ¶ 342 (Santiago Torres Bernardez, Marc Lalonde, Pierre-Marie Dupuy (Tribunal President)).



that it was willing to have a bifurcated proceeding by which all jurisdictional objections would be heard first, prior to a merits filing; or alternatively Renco was willing to have the Tribunal decide both jurisdictional objections and the merits of the case at the same time. Renco was equally clear that it was *unwilling* to agree to a schedule by which Renco would make a full merits submission to be followed only by jurisdictional submissions by Peru.

19. As counsel for Renco stated at the Preliminary Hearing:

If we are going to have jurisdictional briefing, then we need to completely redo this schedule. That is what we have been maintaining from the beginning. And Peru has not, even today, told us what type of jurisdictional objections it is even talking about. We actually have never heard from them what type – it’s really kind of a game of hide the ball, [we would] have to sit and wait, *file our memorial*, and then wait and see what they come back with, from a jurisdictional perspective, having worked so hard to hammer out a schedule...It’s just not appropriate in these circumstances, with this schedule. And if that is something that Peru insists on, we would ask at least tell us what jurisdictional objections you are talking about. And lets redo this whole schedule so that we can appropriately deal with it.<sup>22</sup>

Renco’s concern that Peru was “hiding the ball” was well founded. Indeed, it is difficult to conceive of a clearer example of “hide the ball” than refusing to disclose an objection based on one sentence in a notice of arbitration on grounds that one must review a merits memorial first.

20. Consistent with Renco’s concern which included the desire to avoid the cost of a full submission on the merits by only Claimant and potentially not by the Respondent, the parties and the Tribunal agreed to a schedule that was designed to avoid that outcome. Yet, after Renco filed its merits memorial and thereafter Peru lost its argument on the Scope of its 10.20(4) submissions, Peru claimed that new and “urgent” events in the Peruvian bankruptcy proceeding required the Tribunal to hear a streamlined jurisdictional “waiver” argument, and the Tribunal agreed. The Tribunal never reached the alleged “urgent” events transpiring in the Peruvian bankruptcy proceeding, because Peru raised for the first time in the streamlined waiver phase of the case its objection to the reservation of rights language in Renco’s written waiver that had been in place for years.

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<sup>22</sup> Transcript of First Procedural Session, July 18, 2013 at 146-148 (emphasis added).

21. On this topic, the Tribunal noted the following at paragraph 123 of its Partial Award concerning Peru's conduct:

The Tribunal has been troubled by the manner in which Peru's waiver objection has arisen in the context of this arbitration. The arbitration had already been on foot for quite some time before Peru filed its Memorial on Waiver on July 2015. By this state over four years had passed since Renco filed its Notice of Arbitration; the Tribunal had already issued Procedural Order No. 1 which recorded the agreed briefing schedule for the arbitration; *Renco had filed its Memorial on Liability*; the Parties had exchanged voluminous submissions in connection with Renco's challenge to the scope of Peru's Preliminary Objections; and the Tribunal had issued a substantive decision on December 18, 2014 in relation to the Scope of Peru's Preliminary Objections under Article 10.20(4). Clearly it would have been preferable for all concerned if Peru had raised its waiver objection in a clear and coherent manner at the very outset of these proceedings. Instead, they emerged piecemeal over a relatively lengthy period of time. This issue is considered further at paragraphs 180-183 below. (emphasis added).

22. The Tribunal noted at paragraphs 182 and 183 of its Partial Award:

Indeed, while Peru complained to Renco many years ago that it considered to Peruvian bankruptcy proceedings involving DRP violated Article 10.18(2), Peru did not raise any clear and specific objection in relation to Renco's reservation of rights until Peru filed its Comments on the submission of the United States of America on September 10, 2014. . . [and] [t]his submission was not developed in any depth until Peru filed its Memorial on Waiver in July 2015, where Renco's compliance with the formal requirements of Article 10.18(2)(6), by reason of the reservation of rights, was placed squarely in issue.<sup>23</sup>

23. The Tribunal has concluded that Peru's late raising of its waiver objection, and the circumstances in which Peru raised it, do not constitute an abuse of rights in this proceeding that would preclude Peru from asserting its waiver defense, despite the fact that the consequences might be extreme.<sup>24</sup>

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<sup>23</sup> Partial Award, July 15, 2016, ¶¶ 182, 183.

<sup>24</sup> *Id.* ¶¶ 122-125, 180-185.

24. But the question of cost allocation is an entirely different question in which the Tribunal has wide discretion to allocate costs in a fair and just manner based on the circumstances of the case. Without regard to any ultimate reason or motive that respondent may or may not have had for waiting so long to raise its waiver objection in the manner that it did, Respondent's delay unnecessarily has increased Claimant's costs substantially, for which Respondent should be accountable, particularly with respect to the costs of Renco's Merits Memorial filing.

25. Finally, it seems that Peru intends to pursue an outcome that this Tribunal has said would be unjust and that may constitute an abuse of rights. In its Partial Award, the Tribunal stated that: "[I]n its unanimous view, justice would be served if Peru accepted that time stopped running for purposes of Article 10.18(1) when Renco filed its Amended Notice of Arbitration on August 9, 2011."<sup>25</sup> By letter dated July 21, 2016, Renco advised Peru that Renco intends to commence an arbitration shortly under the Treaty, and requested that Peru advise in writing whether it accepts that time stopped running for purposes of Article 10.18(1) when Renco filed its Amended Notice of Arbitration on August 9, 2011. Renco requested a response by August 10, 2016, but Peru has not responded to date.

26. Renco reasonably concludes from Peru's silence that Peru will not agree that time stopped in 2011 for purposes of Article 10.18(1). Although it will be for a new tribunal to decide when time stopped for purposes of Article 10.18(1) and whether Peru's conduct constitutes an abuse of rights, Peru's refusal to affirmatively accept what this Tribunal has unanimously said would be just is a circumstance that this Tribunal may take into account when allocating the costs of this proceeding.

27. Because Peru improvidently delayed raising its jurisdictional waiver agreement after agreeing to a procedural schedule that was designed to prevent a one-sided merits filing, this Tribunal should award Renco the costs it incurred preparing its Memorial on Liability, and the Tribunal should decline to award Peru any costs that it incurred. For the reasons set forth below, after awarding Renco its costs for its merits filing, the Tribunal should order that each side bear its own cost for all of the remaining cost associated with this arbitration.

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<sup>25</sup> Partial Award, July 15, 2016, ¶ 188.

**C. This Tribunal Should Not Award Peru its Costs on the Basis of the “Costs Follow the Event” Principle**

**1. *This Tribunal Should Not Apply the “Costs Follow the Event” Principle to Peru’s Costs Related to the Formal Wavier Objection Because the Issues Were New, Novel, and Complex***

28. Several tribunals have declined to apply the “Costs Follow the Event” Principle when the issues in dispute were new, novel, and complex.<sup>26</sup> In its Partial Award, this Tribunal acknowledged that Peru’s Objection regarding Renco’s Reservation of Rights raised complex issues. “The issues raised by the Parties involve complex issues of interpretation of the relevant provisions of the Treaty.”<sup>27</sup> This Tribunal also acknowledged that the issue of non-compliance with the treaty’s wavier requirement was “inherently complex” and that the Tribunal found them “extremely difficult to resolve, requiring extensive and intensive deliberations by the Tribunal over many months.”<sup>28</sup>

29. In addition to being inherently complex and difficult, it was an issue of first impression. No tribunal had ruled directly on the questions with which this Tribunal wrestled in its extensive and intensive deliberations. And no prior authority had held that a party could not unilaterally cure of a formal wavier defect (as opposed to a material breach) in an investment arbitration. Indeed, in its Partial Award, this Tribunal acknowledged that Renco’s position on the question of cure was consistent with ICJ jurisprudence and declined—by only a majority of the Tribunal—to follow that ICJ jurisprudence based, at least in part, on the submissions of the United States and Peru in this arbitration—submissions that were not available to Renco when it included its reservation of rights at the outset of this arbitration.<sup>29</sup>

30. Because the issues related to Peru’s Objection to Renco’s Reservation of Rights raised new, novel, and complex issues, this Tribunal should decline to apply the “Cost Follow the Events” Principle and instead order each side to bear the costs they incurred addressing those complex issues.

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<sup>26</sup> See authorities discussed *supra* at ¶ 15.

<sup>27</sup> Partial Award, July 15, 2016, ¶ 67.

<sup>28</sup> *Id.* ¶ 124.

<sup>29</sup> *Id.* ¶¶ 155-57.

**2. This Tribunal Should Not Apply the “Costs Follow the Event” Principle Because of the Limited and Relative Success of the Parties**

31. Several tribunals have applied the “Costs Follow the Event” Principle on a relative basis.<sup>30</sup> A party will obtain an award for costs incurred regarding issues in which it prevailed, but it will not obtain an award for costs incurred regarding issues in which it did not prevail, or the Tribunal will decide not to apply the principle due to the relatively equal success of the parties or the large number of undecided issues that were briefed.<sup>31</sup>

32. In the present case, Peru has only prevailed on two issues: i) the propriety of Renco’s Reservation of Rights, and ii) whether Renco can unilaterally cure any defect in its waiver. Renco prevailed with respect to the rather extensive submissions concerning the Scope of Treaty Article 10.20(4).<sup>32</sup> And Peru raised at least eleven other objections to jurisdiction and briefed nine of them.<sup>33</sup>

33. Given the issues that Peru lost and the large number of issues that the Tribunal did not rule upon, this Tribunal should decline to apply the “Cost Follow the Events” Principle and instead order each side to bear the costs they incurred addressing those issues. At the very least, any costs award in favor of Peru should be strictly limited to costs that Peru incurred addressing the Formal Waiver issues and offset that cost against an award of costs in favor of Renco for its Merits filing and its successful 10.20(4) Scope briefing.

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<sup>30</sup> See authorities discussed *supra* at ¶ 16.

<sup>31</sup> Partial Award, July 15, 2016, ¶ 67.

<sup>32</sup> Decision with Respect to the Scope of Peru’s Preliminary Objections under Article 10.20(4) of the Treaty, December 19, 2014.

<sup>33</sup> In its Preliminary Objections, Peru argued that: a) the Stock Transfer Agreement and Guaranty do not constitute an “investment agreement” under the treaty, b) Peru is not a party to the Stock Transfer Agreement, c) Renco is not a party to the Guaranty, d) the indemnification and related obligations under the Stock Transfer Agreement run to Doe Run Peru and Doe Run Cayman, but not Renco, e) the Guaranty is void, f) Renco’s claims under the Guaranty are not ripe because it is a *fianza*, and g) Renco’s claims under the Stock Transfer Agreement are not ripe because it did not engage in a neutral-expert process. Peru’s Preliminary Objections under Article 10.20.4, Feb. 20, 2014. In its Memorial on Waiver, Peru argued that Renco committed formal and material breaches of the Treaty’ waiver requirement. Memorial on Waiver, July 10, 2015. Peru also informed the Tribunal and Renco that it would raise *ratione temporis* and limitations objections. See Peru’s Letter to the Tribunal, March 21, 2014.

### III. CLAIMANT'S COSTS

34. Set forth below is a chart detailing the costs that Renco incurred preparing its Memorial on Liability:

<b>RENCO - ENVIRONMENTAL EXPERTS</b>			
<b>Experts</b>	<b>Fees</b>	<b>Expenses</b>	<b>Total amount (US\$)</b>
Gino Bianchi Mosquera, GSI Environmental, Inc.	302,677.50	9,300.51	311,978.01
Dr. Eric Partelpoeg, EHP Consulting, Inc.	29,322.50	1,595.47	30,917.97
Dr. Rosalind A. Schoof, ENVIRON	79,683.50	5,836.97	85,520.47
Knight Piesold and Co.	1,397.50		1,397.50
<b>Total</b>			<b>\$429,813.95</b>

<b>RENCO - VENDORS</b>			
<b>Vendors</b>	<b>Fees</b>	<b>Expenses</b>	<b>Total amount (US\$)</b>
Merrill Brink International Corp.	191,834.49		191,834.49
Claudia F. Perez Translation Services	25,266.03		25,266.03
Lighthouse Data Solutions	1,291.21		1,291.21
First Clearing LLC Translations	9,072.00		9,072.00
<b>Total</b>			<b>\$227,463.73</b>

<b>RENCO - ATTORNEYS</b>			
<b>Attorneys</b>	<b>Fees</b>	<b>Expenses</b>	<b>Total amount (US\$)</b>
King & Spalding	\$3,010,649.04	168,140.91	<b>\$3,178,789.95</b>

<b>RENCO'S TOTAL FEES &amp; EXPENSES FOR MEMORIAL ON LIABILITY</b>			
			<b>Total amount (US\$)</b>
			<b>\$3,836,067.63</b>

35. Set forth below is a chart detailing the costs that Renco incurred in preparing its 10.20.4 Scope submission.

<b>RENCO - VENDORS</b>			
<b>Vendors</b>	<b>Fees</b>	<b>Expenses</b>	<b>Total amount (US\$)</b>
Merrill Brink International Corp.	11,192.89		11,192.89
Claudia F. Perez Translation Services	17,740.47		17,740.47
<b>Total</b>			<b>\$28,933.36</b>

<b>RENCO – ATTORNEYS</b>			
<b>Attorneys</b>	<b>Fees</b>	<b>Expenses</b>	<b>Total amount (US\$)</b>
King & Spalding	690,137.00	30,283.94	<b>\$720,420.94</b>

<b>RENCO’S TOTAL FEES &amp; EXPENSES FOR 10.20.4 SUBMISSION</b>	
	<b>Total amount (US\$)</b>
	<b>\$749,354.30</b>

36. Counsel for Claimants certifies that the fees and expenses comprising Claimants’ Costs were necessary for the proper conduct of this case and are reasonable and appropriate given its complex circumstances and the amount in controversy. Counsel for Claimants also represents that all of these fees and costs have been invoiced to Renco, and Renco has paid them all.

**IV. REQUEST FOR RELIEF**

37. For the reasons set forth in Section II above, Renco requests that the Tribunal render an award on costs:

- i. Ordering Peru to pay Renco US\$ 3,836,067.63 for the costs it incurred preparing its Memorial on Liability;
- ii. Ordering each side to bear all other costs of their own legal representation and assistance (*i.e.* all costs other than the \$3,836,067.63 referenced immediately above); and
- iii. Ordering each side to bear half of the costs of the Tribunal and administering authority.

38. In the alternative, if this Tribunal declines to award Renco the costs it unnecessarily incurred due to Peru's troublesome and questionable conduct, then Renco asks this Tribunal to order that each side shall bear the costs of their own legal representation and assistance, and that each side shall bear half of the costs of the Tribunal and administering authority.

39. As a second alternative, if this Tribunal decides to award Peru any of its costs, Renco requests that this Tribunal offset those costs against (i) the costs that Renco unnecessarily incurred due to Peru's delay in raising its jurisdictional waiver objection US\$ 3,836,067.36, and (ii) the costs that Renco incurred in its successful 10.20(4) submissions US\$ 749,354.30.

Dated: August 15, 2016  
New York, New York

Respectfully submitted,



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