

PCA Case No. 2020-11

**IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – PERU TRADE
PROMOTION AGREEMENT, ENTERED INTO FORCE ON FEBRUARY 1, 2009**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, AS REVISED IN 2013 (the “UNCITRAL Rules”)**

- between -

BACILIO AMORRORTU (USA)

(the “Claimant”)

- and -

THE REPUBLIC OF PERU

(the “Respondent” or “Peru”, and together with the Claimant, the “Parties”)

FINAL AWARD ON COSTS

The Arbitral Tribunal

Hon. Ian Binnie, CC, KC (Presiding Arbitrator)

Prof. Bernard Hanotiau

Mr. Toby Landau, KC

Secretary to the Tribunal

Mr. José Luis Aragón Cardiel

Permanent Court of Arbitration

October 25, 2022

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DEFINED TERMS

Claimant	Mr. Bacilio Amorrortu
Claimant's Submission on Costs	Claimant's Submission on Fees and Costs, dated August 26, 2022
Notice of Arbitration	Claimant's Notice of Arbitration, dated February 13, 2020
Objection 1	The Respondent's objection under Article 10.20.4 of the Treaty
Objection 4	The Respondent's objection that Mr. Amorrortu did not submit a valid waiver as required under Article 10.18.2 of the Treaty
Partial Award	The Partial Award on Jurisdiction, issued on August 5, 2022
Parties	Claimant and Respondent
PCA	Permanent Court of Arbitration
Peru or Respondent	The Republic of Peru
Respondent's Submission on Costs	Submission on Costs of the Republic of Peru, dated August 26, 2022
UNCITRAL Rules	Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2013
USPTPA or Treaty	United States-Peru Trade Promotion Agreement, entered into force on February 1, 2009

PART 1 - INTRODUCTION

A. THE PARTIES

1. The claimant is Mr. Bacilio Amorrortu (the “**Claimant**” or “**Mr. Amorrortu**”).
2. The Claimant is represented in this arbitration by:

Francisco A. Rodriguez
Rebeca E. Mosquera
Gilberto A. Guerrero-Rocca
Reed Smith LLP

3. The respondent in this arbitration is the Republic of Peru (“**Peru**” or the “**Respondent**” and, together with the Claimant, the “**Parties**”).
4. The Respondent is represented in this arbitration by:

Vanessa Rivas Plata Saldarriaga
*Presidenta de la Comisión Especial
que representa al Estado en Controversias Internacionales de Inversión*
Víctor Giancarlo Peralta Miranda
*Secretaría Técnica de la Comisión Especial
que representa al Estado en Controversias Internacionales de Inversión*

Kenneth Juan Figueroa
Ofilio J. Mayorga
Alberto Wray
Gisela Paris
José Manuel García Rebolledo
Juan Pablo Hugues
Eva Paloma Treves
Karim M’ziani
Foley Hoag LLP

B. BACKGROUND

5. The present Award is the second and final award in a dispute concerning the Respondent’s alleged frustration of the Claimant’s legitimate expectations to obtain a contract to perform oil drilling and extraction operations in oil Blocks III and IV of the Talara Basin, in the Province of Talara, Piura Region, Peru.

6. On February 13, 2020, the Claimant commenced these arbitral proceedings by serving upon the Respondent a Notice of Arbitration (the “**Notice of Arbitration**”) pursuant to Chapter 10 of the United States-Peru Trade Promotion Agreement, ratified by Peru in June 2006, signed by the United States on December 14, 2007, and entered into force on February 1, 2009 (the “**USPTPA**” or the “**Treaty**”) and Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2013 (the “**UNCITRAL Rules**”).
7. On August 5, 2022, the Tribunal issued a Partial Award on Jurisdiction (the “**Partial Award**”) in which it decided as preliminary questions two objections raised by the Respondent: (i) the Respondent’s objection under Article 10.20.4 of the Treaty (“**Objection 1**”); and (ii) the Respondent’s objection that Mr. Amorrortu did not submit a valid waiver as required under Article 10.18.2(b) of the Treaty (“**Objection 4**”). The Tribunal there dismissed Objection 1¹ and upheld, by majority, Objection 4.²
8. The dispositive part of the Partial Award reads as follows:

For the reasons outlined above, the Tribunal by majority:

- (i) finds that the Claimant has failed to comply with the requirement of Article 10.18.2(b) of the USPTPA by not providing a compliant waiver within the deadline specified in Article 10.16.4 of the USPTPA;
- (ii) finds that the Claimant has failed to establish the requirements for the Respondent’s consent to arbitrate under the USPTPA;
- (iii) rejects the Claimant’s request for leave to amend his Notice of Arbitration in order to attempt to cure his defective waiver;
- (iv) dismisses the Claimant’s claims for lack of jurisdiction; and
- (v) reserves the issue of costs pending receipt of the submissions from the Parties, after which the Tribunal will render a Final Award.³

PART 2 - PROCEDURAL HISTORY

9. For the sake of good order and ease of reference, the Tribunal reproduces below the basic details of the arbitration:

¹ Partial Award, August 5, 2022, para. 174.

² Partial Award, August 5, 2022, para. 289(i).

³ Partial Award, August 5, 2022, para. 289.

- (i) The Tribunal is composed by Prof. Bernard Hanotiau, a Belgian national (appointed by the Claimant on February 13, 2020); Mr. Toby Landau, KC, a national of the United Kingdom (appointed by the Respondent on March 21, 2020) and the Hon. Ian Binnie, CC, KC, a national of Canada (appointed as presiding arbitrator by the Parties on April 24, 2020).
 - (ii) In accordance with Section 3.1 of the Terms of Appointment, the UNCITRAL Rules govern this arbitration.
 - (iii) Pursuant to Section 6.1 of the Terms of Appointment, the legal place (or “seat”) of arbitration is Paris, France.
 - (iv) Pursuant to Section 8.1 of the Terms of Appointment, the Permanent Court of Arbitration (the “PCA”) acts as Registry in these proceedings. Mr. José Luis Aragón Cardiel, PCA Legal Counsel, was designated to act as Registrar and Secretary to the Tribunal.
 - (v) Pursuant to Section 2.1 of the Procedural Order No. 1, the languages of the arbitration are English and Spanish. In accordance with Section 2.10 thereof, this Final Award on Costs is rendered in English and accompanied by a translation into Spanish.
10. The full history of these proceedings is set forth in the Partial Award and will not be repeated here. For the sake of simplicity, the Tribunal hereby incorporates by reference Part 2 of the Partial Award and recounts here the history of these proceedings following the Partial Award.
11. By letter dated August 5, 2022, the Tribunal invited the Parties to file submissions on costs.
12. On August 26, 2022, the Claimant and the Respondent filed simultaneously their submissions on costs (respectively, the “**Claimant’s Submission on Costs**” and the “**Respondent’s Submission on Costs**”).

PART 3 - COSTS OF ARBITRATION

A. THE CLAIMANT'S POSITION

13. The Claimant quantifies its legal costs at USD 919,349.16, excluding the Claimant's portion of the fees and expenses of the Tribunal and the PCA. This amount includes USD 770,758.72 in attorney's fees and USD 148,590.44 in expenses for experts and vendors.⁴
14. The Claimant cites Articles 10.20.6 and 10.26 of the USPTPA, as well as Article 42(1) of the UNCITRAL Rules, as the relevant rules governing costs.⁵ Having regard to those provisions, the Claimant contends, first, that he is entitled to an award of his costs incurred in opposing Objection 1 under USPTPA Article 10.20.6 because, in its view, Objection 1 was "meritless" and "frivolous"⁶ and, in any event, he is the prevailing disputing party as regards that objection.⁷ In this respect, the Claimant recalls that he cautioned at the inception of the proceedings that "the only preliminary objection that should be adjudicated separately from the merits argument is [Objection 4]."⁸
15. Second, the Claimant argues that he is entitled to his reasonable costs and attorney's fees incurred in opposing the Respondent's "meritless" objections and that the Respondent is not entitled to costs.⁹
16. In this regard, while his claim was ultimately dismissed by the Tribunal, the Claimant considers that several circumstances of the case caution against the Claimant bearing the full costs of the arbitration. Recalling the findings of the tribunal in *Renco I*, the Claimant considers several factors to be dispositive. First, the Claimant argues that "Peru achieved

⁴ Claimant's Submission on Costs, para. 15.

⁵ Claimant's Submission on Costs, pp. 2-3.

⁶ Claimant's Submission on Costs, p. 3. USPTPA Article 10.20.6 provides:

When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous...

⁷ Claimant's Submission on Costs, para. 5.

⁸ Claimant's Submission on Costs, paras. 4-5; **Exhibit C-73**, Letter from Claimant in response to Peru's intent to submit jurisdictional objections, December 22, 2020.

⁹ Claimant's Submission on Costs, paras. 6-14.

a relative success.”¹⁰ In this regard, the Claimant emphasizes that of the six jurisdictional objections raised by the Respondent, only one—Objection 4—prevailed. Furthermore, the Claimant has commenced arbitration proceedings *de novo* against the Respondent. As such, the Claimant concludes that “Peru could hardly be considered a prevailing party.”¹¹

17. The Claimant further asserts that the issue of his non-compliant waiver was “inherently complex.”¹² He observes in this respect that (i) it took the Tribunal a year after the Hearing on Preliminary Objections to issue the Partial Award; and (ii) the Partial Award was subject to dissent on the issue of whether or not the Claimant could remedy his non-compliant waiver. The Claimant therefore “assum[es] ... that the Tribunal required ‘extensive and intensive deliberations,’” the standard upon which the *Renco I* tribunal departed from the general principle that the unsuccessful claimant should pay the prevailing party’s arbitration costs.¹³
18. Lastly, the Claimant requests the Tribunal to consider the fact that the Respondent did not raise its preliminary objections until more than a year after the initiation of the arbitration. The Claimant avers that it is not the first time that the Respondent engages in such behavior and submits that the Respondent’s failure to raise these objections at the outset of the proceedings caused both Parties to incur unnecessary expenses.¹⁴
19. The Claimant’s request for relief is as follows:

On the basis of the foregoing, the Claimant respectfully submits that the entirety of the costs and fees associated with Peru’s preliminary objections should be paid by Peru, and, accordingly, requests that this Tribunal:

- a. ORDER Peru to reimburse Amorrortu for the Claimant’s portion of the Tribunal’s fees and expenses, along with the PCA’s administrative fees and expenses, associated with Peru’s preliminary objections;

¹⁰ Claimant’s Submission on Costs, para. 8; **Exhibit CLA-125**, *The Renco Group, Inc. v. Republic of Peru [I]*, ICSID Case No. UNCT/13/1, Final Award, November 9, 2016, para. 31.

¹¹ Claimant’s Submission on Costs, para. 9.

¹² Claimant’s Submission on Costs, para. 10; **Exhibit CLA-125**, *The Renco Group, Inc. v. Republic of Peru [I]*, ICSID Case No. UNCT/13/1, Final Award, November 9, 2016, para. 40.

¹³ Claimant’s Submission on Costs, para. 11 (emphasis removed).

¹⁴ Claimant’s Submission on Costs, para. 13; **Exhibit CLA-125**, *The Renco Group, Inc. v. Republic of Peru [I]*, ICSID Case No. UNCT/13/1, Final Award, November 9, 2016, para. 31.

- b. ORDER Peru to reimburse Amorrortu in the amount of US \$148,590.44, representing the costs incurred in experts and vendors retained in defending against Peru's preliminary objections; and
- c. ORDER Peru to reimburse Amorrortu in the amount of US \$770,758.72, representing the attorneys' fees and expenses incurred by the Claimant in defending against Peru's preliminary objections.¹⁵

B. THE RESPONDENT'S POSITION

20. According to the Respondent, the overall total of costs it incurred in this proceeding is USD 1,677,425.53.¹⁶ This amount includes (i) costs of arbitration advanced to the PCA (USD 240,000); (ii) fees for legal representation/assistance of Lazo & de Romaña (USD 10,700.00) and Foley Hoag LLP (USD 1,320,013.50); (iii) fees for legal assistance on Peruvian law by Dr. Vizquerra (USD 71,100.00); and (iv) out-of-pocket expenses for legal representation/assistance corresponding to Foley Hoag LLP (USD 35,612.03). However, the Respondent requests reimbursement only of its advance payments of USD 240,000 and its costs and fees for legal representation and assistance in the amount of USD 1,335,955.21,¹⁷ totaling USD 1,575,955.21.
21. The Respondent submits that Article 42 of the UNCITRAL Rules establishes a clear presumption that the unsuccessful party must bear the costs of the arbitration.¹⁸ When allocating costs, the Respondent notes, arbitral tribunals have held that success in the proceedings on jurisdiction is the main circumstance relevant to determining which party bears the costs of the arbitration.¹⁹ Noting the conduct of the Parties as another relevant factor, the Respondent argues that where a claimant persists in pursuing a claim despite being made aware of jurisdictional defects, it should be ordered to make the respondent whole for the costs incurred in its defense,²⁰ particularly if it directly and unnecessarily imposed additional costs on its adversary.²¹ The Respondent cites in this regard to *Alps*

¹⁵ Claimant's Submission on Costs, para. 16.

¹⁶ Respondent's Submission on Costs, para. 4.

¹⁷ Respondent's Submission on Costs, para. 24(i)-(ii).

¹⁸ Respondent's Submission on Costs, para. 5.

¹⁹ Respondent's Submission on Costs, para. 7; *Alps Finance and Trade AG v. Slovak Republic*, UNCITRAL, Award, March 5, 2011, para. 268; *Nova Scotia Power Incorporated (Canada) v. Bolivarian Republic of Venezuela*, UNCITRAL, Costs Order, August 30, 2010, paras. 32-33; *Apotex Inc. v. United States of America*, ICSID Case No. UNCT/10/2, Award on Jurisdiction and Admissibility, June 14, 2013, paras. 339-341.

²⁰ Respondent's Submission on Costs, para. 11.

²¹ Respondent's Submission on Costs, para. 9.

Finance and Trade v. Slovakia, where the Tribunal awarded all costs of the arbitration and legal representation to the respondent where the claimant pursued its claim despite the fact that it “was made aware of the doubts and queries raised by the Respondent concerning the jurisdictional requirements set forth in” the treaty at issue.²² This was so despite the fact that the Tribunal did not accept all of the respondent’s objections.²³

22. Applying this rationale to the case at hand, the Respondent submits that the Claimant should bear Respondent’s costs in their entirety, as (i) the Respondent is the prevailing party, and (ii) the Claimant insisted in pursuing his claims despite being given a clear warning of his defective waiver.²⁴ With respect to the first point, the Respondent contends that there can be no question that it is the successful party in this arbitration: the Tribunal dismissed the Claimant’s claims in their entirety, exactly the result the Respondent was seeking with its preliminary objections.²⁵
23. As to the second point, the Respondent submits that “Claimant’s conduct throughout these proceedings ‘directly and unnecessarily’ aggravated the dispute, prolonged the proceedings, and increased Respondent’s costs of legal representation.”²⁶ According to the Respondent, the Claimant’s lack of transparency in freely disclosing the identity of his third party funder both threatened the integrity of the arbitral proceeding and unnecessarily increased the Respondent’s costs.²⁷ The Respondent further notes that the Claimant proceeded with the arbitration, rather than discontinuing the proceedings, despite being made aware that his waiver under USPTPA Article 10.18.2(b)(i) was defective. In the Respondent’s view, the Claimant could not have been unaware of the very clear and unequivocal requirement under Article 10.18.2(b)(i) of the submission of an unconditional waiver as a prerequisite to Peru’s consent to arbitrate, nor of the legal authority (*Renco I*) which was unequivocal about the consequences of presenting a defective waiver.²⁸ According to the Respondent, “Claimant’s conduct in proceeding

²² Respondent’s Submission on Costs, para. 10.

²³ Respondent’s Submission on Costs, para 10.

²⁴ Respondent’s Submission on Costs, para. 12.

²⁵ Respondent’s Submission on Costs, para. 14; *Nova Scotia Power Incorporated (Canada) v. Bolivarian Republic of Venezuela*, UNCITRAL, Costs Order, August 30, 2010, paras. 32-33.

²⁶ Respondent’s Submission on Costs, para. 16.

²⁷ Respondent’s Submission on Costs, para. 17.

²⁸ Respondent’s Submission on Costs, para. 20.

with a defective waiver in this arbitration cost Peru, the parties and the Tribunal, months, indeed years of unnecessary costs and time.”²⁹ Given that the result of the Partial Award should have been expected by the Claimant, it is he who should pay the price for pursuing his case. This applies even more so, the Respondent submits, when the costs are incurred by a sovereign State, and hence ultimately by the people of Peru.³⁰

24. The Respondent’s request for relief is as follows:

[]For the foregoing reasons, Respondent respectfully requests that, pursuant to Articles 40 to 42 of the UNCITRAL Rules, the Tribunal order Claimant to:

- (i) Reimburse Respondent’s advance payments of US\$ 240,000.00;
- (ii) Reimburse Respondent’s full costs and fees for legal representation and assistance in the amount of US\$ 1,335,955.21; and
- (iii) Compound interest at a rate that the Tribunal deems reasonable from the date of the issuance of the Tribunal’s order until the date of Claimant’s payment in full.

[]As the Tribunal is aware, Claimant has been financed by a third party funder in this arbitration. Moreover, Mr. Amorrortu is a natural person whose financial capabilities and assets have not been demonstrated in this arbitration. There thus exists a possibility that Mr. Amorrortu is unable to cover an award on costs on this arbitration. Accordingly, in order to give full effect to the Tribunal order requested above, the Republic of Peru also respectfully request that it:

- (iv) Order Mr. Amorrortu to cause his third party funder, Longford Capital Management, LP, or any of its successors or assigns, to pay the above referenced costs on behalf of Mr. Amorrortu..³¹

C. THE TRIBUNAL’S ANALYSIS

1. Relevant Provisions

25. The Treaty contains several provisions governing costs. First, USPTPA Article 10.20.6 provides:

When it decides a respondent’s objection under paragraph 4 or 5 [of Article 10.20], the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney’s fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant’s claim or the respondent’s objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

²⁹ Respondent’s Submission on Costs, para. 22.

³⁰ Respondent’s Submission on Costs, para 22.

³¹ Respondent’s Submission on Costs, paras. 24-25.

26. In turn, USPTPA Article 10.26.1 reads:

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

27. Pursuant to Article 40 of the UNCITRAL Rules, “[t]he arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.” Article 40 defines “costs of arbitration” as follows:

The term “costs” includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
- (b) The reasonable travel and other expenses incurred by the arbitrators;
- (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

28. In respect of allocation of costs, Article 42 of the UNCITRAL Rules provides:

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral 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.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

2. Allocation of the Costs of Arbitration

29. Pursuant to Article 10.26.1 of the USPTPA, the Tribunal may award costs and attorney's fees in accordance with Chapter 10, Section B of the Treaty (Investor-State Dispute Settlement) and the applicable arbitration rules (here, the UNCITRAL Rules).
30. As regards provisions governing costs in the Treaty, Article 10.20.6 grants discretion to the Tribunal to "award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing" an objection by the Respondent under paragraph 4 or 5 of Article 10.20. Thus, this provision applies directly to the allocation of costs arising in connection with the Tribunal's decision on Objection 1.
31. As regards all other costs incurred by the Parties, Article 42 of the UNCITRAL Rules prescribes the principle of "costs follow the event" in respect of all categories of costs listed in Article 40. However, Article 42 grants discretion to the Tribunal to "apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case."
32. It follows from these provisions that the Tribunal enjoys wide discretion in allocating the costs of arbitration between the Parties. However, in making such determination, the Tribunal must pay regard to several factors, including which is the overall unsuccessful party and, as regards Objection 1, which is the "prevailing disputing party" as regards such objection.
33. On August 5, 2022 the Tribunal issued its Partial Award dismissing the proceedings brought under the USPTPA for want of jurisdiction.
34. While the Tribunal rejected the Respondent's jurisdictional Objection 1 under USPTPA Article 10.20.4 (in which the Respondent contended that as a matter of law Mr. Amorrortu's claims were not claims for which an award may be made under Article 10.26) the Tribunal by majority upheld the Respondent's Objection 4 under Article 10.18.2(b) (resulting from the Claimant's failure to submit a compliant waiver within the deadline specified in Article 10.16.4). The Parties have advised the Tribunal that the

Claimant has already presented the Respondent with a new notice of arbitration with a new waiver.³²

35. The Partial Award reserved in para. 289(v) “the issue of costs pending receipt of the submissions from the Parties after which the Tribunal will render a Final Award.”
36. The Claimant’s Submission on Costs contends that as he succeeded on Objection 1 he should be awarded “reasonable costs and attorney’s fees incurred in opposing Peru’s Objection No 1.”³³ With respect to the Respondent’s Objection 4, the Claimant points out that the tribunal in *Renco I*, on whose majority decision the majority in this case relied, did not award costs against the claimant in part because the issue of the claimant’s waiver in that case was considered “inherently complex ... requiring extensive and intensive deliberations by the Tribunal over the months...”.³⁴ Moreover, the Claimant says, had the Respondent not delayed bringing Objection 4 before the Tribunal for over a year “the disputing parties could have saved time and money”.³⁵
37. The Respondent’s Submission on Costs dated August 26, 2022 contends that as “the prevailing party” it should be awarded its costs “in their entirety including legal fees plus compound interest from the day of the Tribunal’s order until the date of payment by the Claimant” at a rate “the Tribunal deems reasonable”.³⁶ The Respondent cites prior awards where, it says, full costs were awarded where the respondent had been “completely successful on a jurisdictional objection”.³⁷ Here the Claimant, by insisting on pursuing this arbitration despite being clearly alerted to the deficiency in his waiver “directly and unnecessarily imposed additional costs on the Republic”. In fact, the Claimant effectively acknowledged the non-compliant nature of his original waiver when he belatedly filed a compliant waiver months after the non-compliance had been pointed out to him. Further unnecessary costs were incurred because the Claimant should have

³² Claimant’s Submission on Costs, para. 9; Respondent’s Submission on Costs, para. 21.

³³ Claimant’s Submission on Costs, para. 5.

³⁴ Claimant’s Submission on costs, para. 8(b); **Exhibit CLA-125**, *The Renco Group, Inc. v. Republic of Peru II*, ICSID Case No. UNCT/13/1, Final Award, November 9, 2016, para. 40.

³⁵ Claimant’s Submission on Costs, para. 13.

³⁶ Respondent’s Submission on Costs, para. 1.

³⁷ Respondent’s Submission on Costs, para. 7; *Alcor Holdings Ltd. v. Czech Republic*, PCA Case No. 2018-45, Award, March 2, 2022, para. 289; *Chevron Corporation (U.S.A.) and Texaco Petroleum Corporation (U.S.A.) v. Republic of Ecuador I*, PCA Case No. 2007-02/AA277, Final Award, August 31, 2011, para. 375.

been “more cooperative and transparent” in disclosing the identity of his third party funder.³⁸ The Respondent seeks to have the Claimant ordered to “cause” his third party funder to pay the above referenced costs on his behalf.³⁹

38. In the Tribunal’s view “the circumstances of the case” warrant an apportionment. While the Claimant succeeded on Objection 1, and can thus claim a measure of divided success, the Respondent’s Objection 4 proved fatal to the present proceeding and obliged Mr. Amorrortu to start over again with a fresh notice of arbitration accompanied by a compliant waiver. Nevertheless, it must be recognized that both Parties incurred the bulk of their costs in respect of Objection 1, which, unlike Objection 4, required extensive expert evidence and analysis. While the Tribunal rejects the Claimant’s argument that he should be awarded costs on Objection 1, his success in that regard should be reflected in the award. Each Party “prevailed” in respect of one of the objections, but the award of costs must recognize that the Respondent’s success on Objection 4 was the more significant.
39. In these “circumstances of the case”, the Tribunal orders that the Claimant pay the Respondent two-thirds of its claimed costs, inclusive of the advanced payments on the costs of the arbitration as well as legal representation and assistance. The Tribunal does not have sufficient information to make any direction regarding the liability of the third party funder and therefore declines to do so.
40. The costs award will carry interest at the rate of 1 % above the 6-month LIBOR commercial lending rate for US dollars. Interest is to compound annually. The Tribunal understands that the publication of LIBOR rates may be discontinued at some point in 2023. In that event, if monies are still owed as of that date, interest will continue to accumulate at 1% above the rate last published prior to discontinuance of publication.

3. Quantification of the Costs of Arbitration

41. The Parties deposited USD 480,000 with the PCA to cover the fees and expenses of the Tribunal and the costs of registry services. These funds has been disbursed as follows:

³⁸ Respondent’s Submission on Costs, para. 17.

³⁹ Respondent’s Submission on Costs, para. 25(iv).

- (i) The fees and expenses of Prof. Bernard Hanotiau amount to USD 113,866.66 and USD 28.63, respectively.
 - (ii) The fees of Mr. Toby Landau, KC amount to USD 59,651.00.
 - (iii) The fees of the Hon. Ian Binnie, CC, KC amount to USD 136,990.00.
 - (iv) The registry fees of the PCA amount to USD 72,607.01.
 - (v) All other costs of the arbitration, including the translation of the Partial Award and this Final Award and the expenses incurred in connection with the Hearing on Preliminary Objections held on August 9, 2021 amount to USD 32,186.82.
 - (vi) The outstanding balance of the deposit amounts to USD 64,669.88.
42. In accordance with Section 11.4 of the Terms of Appointment, the Tribunal orders that the PCA reimburse half of the outstanding balance of the deposit (i.e. USD 32,334.94) to each Party.
43. Based on the above figures, the costs of arbitration comprising the items covered in Articles 40(2) (a) to (c) of the UNCITRAL Rules, total USD 415,330.12. The Respondent has effectively borne half of this amount, that is, USD 207,665.06. As directed by the Tribunal at para. 39 above, the Claimant shall reimburse two-thirds of such amount (i.e. USD 138,443.37) to the Respondent.
44. As also directed by the Tribunal at para. 39 above, the Claimant shall also reimburse to the Respondent two-thirds of its claimed costs for legal representation and assistance (i.e. USD 890,636.81).
45. Thus, the Claimant shall reimburse a total of USD 1,029,080.18 to the Respondent towards its costs in this arbitration.

PART 4 - DECISION

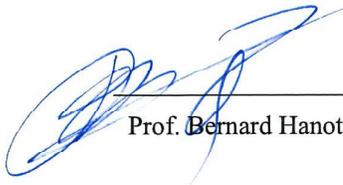
46. For the reasons outlined above, the Tribunal:

- (i) declares that the Claimant shall bear two-thirds of the costs claimed by the Respondent in connection with these proceedings;
- (ii) accordingly, orders the Claimant to reimburse USD 1,029,080.18 to the Respondent towards its costs in this arbitration, together with annually-compounded interest at the rate of 1 % above the 6-month LIBOR commercial lending rate for US dollars and, if this Award has not been fully satisfied by the Claimant as of the date of discontinuance of publication of LIBOR rates, interest will continue to accumulate at 1% above the rate last published prior to discontinuance of publication of LIBOR;
- (iii) directs the Parties to indicate no later than Wednesday, November 9, 2022 whether they wish to designate any information contained in this Final Award on Costs as confidential or protected information in accordance with the UNCITRAL Transparency Rules and Article 10.21 of the Treaty prior to the publication of this Final Award, for which purpose the Tribunal shall remain constituted; and
- (iv) dismisses all other requests for relief.

Seat of the arbitration: Paris, France

Date: October 25, 2022

The Arbitral Tribunal



Prof. Bernard Hanotiau

Mr. Toby Landau, KC

Hon. Ian Binnie, CC, KC
(Presiding Arbitrator)

Seat of the arbitration: Paris, France

Date: October 25, 2022

The Arbitral Tribunal

Prof. Bernard Hanotiau



Mr. Toby Landau, KC

Hon. Ian Binnie, CC, KC
(Presiding Arbitrator)

Seat of the arbitration: Paris, France

Date: October 25, 2022

The Arbitral Tribunal

Prof. Bernard Hanotiau

Mr. Toby Landau, KC

A handwritten signature in blue ink, appearing to read 'Ian Binnie', written over a horizontal line.

Hon. Ian Binnie, CC, KC
(Presiding Arbitrator)