

PCA CASE NO. 2019-47

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

**The Renco Group, Inc. and
Doe Run Resources Corporation,**

CLAIMANTS

v.

**Activos Mineros and
The Republic of Peru,**

RESPONDENTS

CLAIMANTS' RESPONSE TO RESPONDENTS' REQUEST FOR BIFURCATION

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I. Introduction and Summary Overview

1. The Tribunal respectfully should deny Respondents’ request to bifurcate three issues from the other substantive issues in this contract-based arbitration.

2. The Renco Group, Inc. (“Renco”) and Doe Run Resources Corporation (“Doe Run Resources”) assert claims in this arbitration for breach of a stock transfer agreement (the “Stock Transfer Agreement”), pursuant to which they acquired the La Oroya Complex from Empresa Minera del Centro del Peru (“Centromin”), Peru’s largest State-owned mining company, as well as a guaranty agreement (the “Guaranty Agreement”), pursuant to which Peru guaranteed Centromin’s obligations under the Stock Transfer Agreement.¹ In particular, Claimants claim that Peru and Activos Mineros (Centromin’s successor) breached, *inter alia*, Article 6 of the Stock Transfer Agreement, which requires Respondents to “assume liability” for third-party damages and claims relating to environmental contamination caused by the operation of the La Oroya Complex.² Claimants also assert claims against Respondents under the Peruvian Civil Code for contribution and unjust enrichment, which the broad arbitration clause in the Stock Transfer Agreement captures.³

3. The three closely-related objections that Respondents seek to have resolved are: First, that Renco and Doe Run Resources “are not parties to the [Stock Transfer Agreement] or the Guaranty, the instruments under which they allege to have brought this case and the source of the rights that they allege to have been breached.”⁴ Second, that the Respondents purportedly have not “consented” to arbitrate this dispute with Claimants. And, third, that Claimants “have no rights

¹ Claimants’ Notice of Arbitration, October 23, 2018 (“Claimants’ Notice of Arbitration”), ¶¶ 48-58; **Exhibit C-1**, Contract of Stock Transfer between Empresa Minera del Centro del Peru S.A., Doe Run Peru S.R.LTDA., The Doe Run Resources Corporation, and The Renco Group, Inc., dated October 23, 1997 (“Stock Transfer Agreement”); **Exhibit C-2**, Guaranty Agreement between the Republic of Peru and Doe Run S.R.LTDA., dated November 21, 1997, (“Guaranty Agreement”).

² Claimants’ Notice of Arbitration, ¶¶ 48-58.

³ *Id.* at ¶¶ 59-60.

⁴ Respondents’ Request for Bifurcation of Preliminary Issues, February 21, 2020 (“Respondents’ Request for Bifurcation”) ¶ 4.

under the indemnity (or any other) provisions” of the Stock Transfer Agreement.⁵ Under accepted standards, none of these three issues should be bifurcated from the merits of this arbitration.

4. It is common ground between the parties that the bifurcation of a respondent’s objections is not proper unless a tribunal determines that: (1) the objections are substantial; and (2) the potential benefits of efficiency in a bifurcated arbitration outweigh any risks of delay or wasted expense; and (3) the objections are not intertwined with the merits.⁶

5. As briefly summarized here, and as explained more fully below, although failure to satisfy any one of these factors militates against bifurcation, Respondents’ request for bifurcation fails to satisfy all three.

6. First, Respondents’ three contractual objections are not “substantial,” in that they lack meaningful merit. For example, Respondents argue that Claimants are not parties to the Stock Transfer Agreement or the Guaranty Agreement and have no rights thereunder, notwithstanding that authorized executives from both Claimant companies executed the Stock Transfer Agreement and that the Guaranty Agreement expressly recognizes, confirms and records that Claimants won the bid for company that owned the La Oroya Complex and established Doe Run Peru as a vehicle to acquire that company’s shares from Centromin, as part of the stock transfer transaction. Similarly, Respondents claim that they did not consent to arbitrate this dispute, notwithstanding that Respondent Activos Mineros executed the Stock Transfer Agreement (containing the arbitration clause), and Peru signed the Guaranty Agreement that expressly incorporates the arbitration clause contained within the Stock Transfer Agreement.

7. Second, bifurcation of Respondents’ contractual objections would result in significant procedural inefficiencies, without offering any meaningful benefits. This is the case even if the Tribunal were to uphold one or more of the objections, because the Tribunal still would retain jurisdiction over Claimants’ claims under the Peruvian Civil Code for contribution and unjust enrichment, which fall within the broad arbitration clause in the Stock Transfer Agreement. The Tribunal therefore will need to address and decide the liability of Respondents under the Peruvian Civil Code for third-party damages and claims relating to environmental contamination caused by

⁵ *Id.*

⁶ *See* Respondents’ Request for Bifurcation, ¶¶ 22-28.

its operation of the La Oroya Complex prior to Claimants' acquisition of the Complex and/or by its refusal to assume liability for the third-party damages and claims in accordance with, among others, Article 6 of the Stock Transfer Agreement. As a result, bifurcation would not offer any meaningful benefits in terms of efficiency.

8. Third, Respondents' objections not only are "intertwined" with the merits, two of its three objections actually are merits arguments themselves, as Respondents admit. Specifically, to the extent the Tribunal were to look beyond the fact that Claimants signed the Stock Transfer Agreement, to determine substantively whether they are "parties" to that contract, that analysis would be a merits analysis, as Respondents acknowledge at page 9 of their Answer to the Request for Arbitration. Similarly, the differing interpretations by the parties of various provisions of the Stock Transfer Agreement concerning Respondent's liability for the claims by the plaintiffs in the St. Louis litigation (including Article 6 of the Stock Transfer Agreement) is not only a merits question, it is one of the ultimate merits issues in this case. Here again, Respondents described this issue as a "merits" issue in their Response to the Request for Arbitration.

9. Although Respondents' second objection—namely, that they have not consented to arbitrate this dispute with Claimants under the Stock Transfer Agreement or the Guaranty Agreement—relates to the Tribunal's jurisdiction, Respondents ground this objection in their claim that Claimants are not parties to the Stock Transfer Agreement, which as mentioned immediately above is a pure merits question. Thus, Respondents' argument that it did not agree to arbitrate is, by definition, intertwined with the merits.

10. Finally, Respondents' contention that the procedural history of *Renco I* supports their request for bifurcation is based on several factual mischaracterizations. Notably, *Renco* did not agree to have the "contractual issues" decided in the mandatory preliminary phase of *Renco I*, which Peru had initiated under Article 10.20(4) of the U.S.-Peru Trade Promotion Agreement (the "Treaty"). That article—which has no parallel provision in the UNCITRAL Rules governing these proceedings—requires a tribunal constituted under the Treaty to address and decide any objection for failure to state a viable legal claim as a preliminary matter.

11. *Renco* argued in *Renco I* that the tribunal must dismiss Peru's preliminary objection under Article 10.20(4) of the Treaty and decide the contractual issues later, during the merits phase of the proceedings, because, *inter alia*, fundamental principles of Peruvian contract law required it to

take into account extrinsic evidence when interpreting the Stock Transfer Agreement and the Guaranty Agreement and when determining the rights and obligations of Claimants thereunder. Renco's position in *Renco I* thus fully accords with Claimants' position in this arbitration that the Tribunal should deny Respondents' request for bifurcation and address all of the merits issues together, in a unitary proceeding.

II. The Contracts Upon Which This Arbitration Is Based

12. On July 10, 1997, Peru's Special Privatization Committee notified the consortium formed by Renco and its affiliate Doe Run Resources (the "Renco Consortium") that it had been awarded the bid for the shares of Empresa Metalurgica La Oroya S.A. ("Metaloroya"), a subsidiary of Centromin and the owner of the La Oroya Complex, and the Renco Consortium agreed to enter into negotiations with Peru's Special Privatization Committee to acquire Metaloroya through a Stock Transfer Agreement.⁷ As required in the bidding conditions, the Renco Consortium also agreed to establish Doe Run Peru S.R. Ltda. ("Doe Run Peru"), a Peruvian acquisition vehicle, to acquire the shares of Metaloroya.⁸

13. On October 23, 1997, Doe Run Peru, Renco and Doe Run Resources entered into the Stock Transfer Agreement with Centromin and Metaloroya, and authorized executives from the companies executed the agreement. The Stock Transfer Agreement was signed by (among others) Jeffrey L. Zelms, "representing Doe Run Peru Sociedad de Responsabilidad Limitada and The Doe Run Resources Corporation," and Marvin M. Koenig executed the contract, "representing Renco Group, Inc."⁹

14. Clause 12 of the Stock Transfer Agreement, entitled "Arbitration," contains a broad agreement by the parties to submit "any" dispute between them "derived or in relation to this Contract" to arbitration under the UNCITRAL Rules.¹⁰ It provides in pertinent part as follows:

Any litigation, controversy, disagreement, difference or claim that may arise between the parties with regard to the interpretation,

⁷ **Exhibit C-4**, 1997 White Paper, at 52.

⁸ **Exhibit C-5**, Second Round of Consultations and Answers, March 26, 1997, Question Consultation No. 7 at 5.

⁹ **Exhibit C-1**, Stock Transfer Agreement, at 67.

¹⁰ *Id.* at 59.

execution or validity derived or in relation to this Contract that cannot be resolved by mutual agreement between them, will be submitted to legal arbitration of international character under the rules and procedures as established by UNCITRAL.

15. Clauses 6.2 and 6.3 of the Stock Transfer Agreement provide that Centromin “will assume liability for any damages and claims by third parties” relating to environmental contamination caused by the operation of the La Oroya Complex (except in limited circumstances), irrespective of which member of the Renco Consortium or affiliated company or individual may be sued.¹¹ Clauses 6.2 and 6.3 are directly relevant to the ultimate decision on the merits that this Tribunal is being asked to make, because Claimants contend that Activos Mineros (Centromin’s successor) and Peru (by virtue of the Guaranty Agreement) breached Clauses 6.2 and 6.3 (among other provisions of the Stock Transfer Agreement) by failing to accept responsibility and liability for several third-party lawsuits brought against Claimants and certain of their affiliates and officers.¹² The lawsuits, which have been commenced on behalf of over 4,000 Peruvian plaintiffs, currently are pending in the federal district court in St. Louis, Missouri and seek to hold the defendants liable for personal injuries, damages and losses allegedly suffered as a result of environmental impacts that have permeated the region of La Oroya for almost a century (the “St. Louis Lawsuits”).

16. The Stock Transfer Agreement also includes an “Additional Clause” providing that “[t]he Consortium composed by The Doe Run Resources Corporation and The Renco Group, Inc., warrants the compliance with the obligations contracted by the Investor, Doe Run Peru S.R.LTDA., therefore this contract is subscribed by The Doe Run Resources Corporation . . . and The Renco Group, Inc.”¹³

17. On November 21, 1997, Peru and Doe Run Peru entered into the Guaranty Agreement, by which Peru agreed to guarantee all of the “representations, assurances, guaranties and obligations assumed by [Centromin]” under the Stock Transfer Agreement.¹⁴ Clause 2.2 provides further that Peru “hereby acknowledges and guaranties that . . . the bid was awarded to the consortium formed

¹¹ *Id.* at 27.

¹² See Claimants’ Notice of Arbitration, ¶¶ 42-47.

¹³ **Exhibit C-1**, Stock Transfer Agreement, at 65-66.

¹⁴ **Exhibit C-2**, Guaranty Agreement, at 2.

by THE RENCO GROUP INC. and THE DOE RUN RESOURCES CORP.” and that “pursuant to the bidding conditions of the aforementioned International Public Bidding, the members of the winning consortium assigned their rights in favor of [Doe Run Peru] so that it would sign the [Stock Transfer Agreement].”¹⁵ Clause 3 provides that “any” dispute that “may originate from or is related to this Guaranty Agreement” will be resolved by arbitration in accordance with Clause 12 of the Stock Transfer Agreement, quoted in relevant part above.¹⁶

III. The Factors Relevant to Bifurcation

18. Article 17.1 of the UNCITRAL Rules grants a tribunal discretion to conduct the arbitration “in such manner as it considers appropriate,” while urging that, “in exercising its discretion,” the tribunal “shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties’ dispute.”¹⁷

19. Article 23.3 of the UNCITRAL Rules grants a tribunal discretion to rule on a challenge to its jurisdiction “either as a preliminary question or in an award on the merits.”¹⁸ Article 23.3 does not create a presumption that a tribunal will address a challenge to its jurisdiction as a preliminary question, in contrast to the 1976 version of the UNCITRAL Rules, which contained such a presumption.¹⁹

20. Notably, the question of bifurcation normally arises with respect to jurisdictional issues, whereas here, as noted above and addressed more fully below, two of the issues that Respondents seek to bifurcate are merits questions, not jurisdictional. Nevertheless, it seems well settled that even with a jurisdictional objection, a tribunal should refuse to bifurcate as a preliminary question “when doing so is unlikely to bring about increased efficiency in the proceedings.”²⁰ As the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ UNCITRAL Rules, Art. 17.1.

¹⁸ UNCITRAL Rules, Art. 23.3.

¹⁹ UNCITRAL Rules (1976), Art. 21(4).

²⁰ **RLA-35**, *Glamis Gold, Ltd. v. United States*, UNCITRAL, Procedural Order No. 2 (Revised), May 31, 2005, ¶ 12(c).

Tribunal noted in the *Glamis Gold* case, tribunals generally consider the following three factors in deciding whether to bifurcate a jurisdictional objection:

(1) whether the objection is substantial inasmuch as the preliminary consideration of a frivolous objection to jurisdiction is very unlikely to reduce the costs of, or time required for, the proceeding; (2) whether the objection to jurisdiction if granted results in a material reduction of the proceedings at the next phase (in other words, the tribunal should consider whether the costs and time required of a preliminary proceedings, even if the objecting party is successful, will be justified in terms of the reduction in costs at the subsequent phase of proceedings); and (3) whether bifurcation is impractical in that the jurisdictional issue identified is so intertwined with the merits that it is very unlikely that there will be any savings in time or cost.²¹

21. When considering these three factors, tribunals generally are guided by the overarching principles of fairness and procedural efficiency.²² To determine whether bifurcation of a jurisdictional objection would promote fairness and procedural efficiency, a tribunal should evaluate the amount and type of evidence that would be necessary during each phase of a bifurcated proceeding and the degree of overlap in evidence between the phases.²³ Tribunals often decline to

²¹ *Id.* See further, e.g., **RLA-57**, *Glencore Finance (Bermuda) Limited v. The Plurinational State of Bolivia*, PCA Case No. 2016-39, Procedural Order No. 2: Decision on Bifurcation, January 31, 2018, paras. 39-40; **RLA-48**, *Philip Morris Asia Limited v. The Commonwealth of Australia*, PCA Case No. 2012-12, Procedural Order No. 8, Regarding Bifurcation of the Procedure, April 14, 2014, ¶ 109; **RLA-55**, *Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India*, PCA Case No. 2016-7, Procedural Order No. 4, Decision on Respondent's Application for Bifurcation, April 18, 2017, ¶ 76; **CLA-1**, *Michael Balantine and Lisa Balantine v. Dominican Republic*, PCA Case No. 2016-17, Procedural Order No. 2, April 21, 2017, ¶ 18; **CLA-11**, *AIY Ltd. v. Czech Republic*, ICSID Case No. UNCT/15/1, Procedural Order No. 2 – Decision on Bifurcation, October 5, 2015, ¶¶ 56-58.

²² **CLA-2**, *Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Decision on Bifurcation, January 21, 2015, paras. 76 (tribunals should not be placed in a straightjacket and consider only the *Glamis Gold* factors, but must also have regard for procedural fairness and efficiency), 78, 83 (rejecting bifurcation because it would not promote procedural fairness or efficiency); see also, e.g., **RLA-60**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, Decision on Bifurcation, June 28, 2018, ¶ 50 (in applying the three-part test, a tribunal should determine what will best serve the parties and the sound administration of justice with respect to procedural efficiency); **RLA-57**, *Glencore Finance (Bermuda) Limited v. The Plurinational State of Bolivia*, *Procedural Order No. 2, Decision on Bifurcation*, January 31, 2018, ¶ 38 (overarching principles of procedural fairness and efficiency should guide Tribunal's decision to bifurcate, having regard to the totality of circumstances).

²³ See **CLA-3**, Thomas J. Tallerico and J. Adam Behrendt, *The Use of Bifurcation and Direct Testimony in International Commercial Proceedings*, p. 298.

bifurcate a jurisdictional objection on the ground that any possible prejudice to a respondent can be compensated through a costs award if the objection is ultimately successful.²⁴

22. Tribunals consider the same three factors in deciding whether to bifurcate an issue other than a jurisdictional objection.²⁵ For example, tribunals occasionally bifurcate liability from damages.²⁶ However, it is exceedingly rare for a tribunal to bifurcate a specific liability issue from the other liability issues arising in the arbitration, given that (1) a decision on a bifurcated liability issue will rarely obviate the need for further proceedings on the other liability issues and (2) liability issues often are intertwined with one another, such that the same evidence and arguments are relevant to multiple issues.²⁷

IV. Applying the Three Factor Test to Respondents' Request for Bifurcation Results in a Denial of That Request

A. Respondents' Contractual Objections Lack "Substance"

23. As set forth above, the Tribunal's first consideration is "whether the objection is substantial inasmuch as the preliminary consideration of a frivolous objection to jurisdiction is very unlikely

²⁴ **RLA-55**, *Cairn Energy PLC and Cairn UK Holdings Limited, v. The Republic of India*, Procedural Order No. 4, Decision on the Respondent's Application for Bifurcation, April 19, 2017, ¶ 76; **RLA-60**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, Decision on Bifurcation, June 28, 2018, ¶ 50

²⁵ **CLA-4**, *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, July 30, 2010, paras. 272-275 (bifurcating the merits phase from the damages phase); **RLA-57**, *Glencore Finance (Bermuda) Limited v. The Plurinational State of Bolivia*, Procedural Order No. 2, Decision on Bifurcation, January 31, 2018, ¶ 56 (rejecting bifurcation of jurisdiction but bifurcating damages to a second phase).

²⁶ See **CLA-5**, *International Commercial Arbitration (Second Edition)* (Born; Jan 2014), p. 2244 (quantification of damages is more suitable for bifurcation than other issues); **CLA-6**, *Redfern and Hunter on International Arbitration (Sixth Edition)* (Nigel, Partasides, Redfern, et al.; Sep 2015), p. 370 (whether to bifurcate merits from quantum is a question that often arises).

²⁷ See **CLA-6**, *Redfern and Hunter on International Arbitration (Sixth Edition)* (Nigel, Partasides, Redfern, et al.; Sep 2015) ("It is rarer for an arbitral tribunal to separate issues where there is no clear dividing line—to say, in effect, 'there are only a limited number of issues on which we wish to hear evidence and argument from the parties, and these are as follows'. This course should not be attempted lightly. Before an arbitral tribunal can safely isolate some of the issues for its attention, it must be satisfied that it has been adequately informed of all of the issues that are relevant or likely to be relevant to its decision. This stage is not likely to be reached until the written phase of the proceedings is under way.").

to reduce the costs of, or time required for, the proceeding.”²⁸ As set forth below, each of the three issues that Respondents seek to bifurcate is not “substantial” under this standard.

1. Respondents’ First Objection (That Claimants Are Not Parties to the Stock Transfer Agreement or the Guaranty Agreement) Lacks Substance

24. Respondents’ first objection, that Claimants are not parties to the Stock Purchase Agreement, lacks substance because Respondents do not deny that the agreement was executed by Jeffrey L. Zelms, “representing Doe Run Peru Sociedad de Responsabilidad Limitada and The Doe Run Resources Corporation,” and Marvin M. Koenig, “representing Renco Group, Inc.”²⁹ Claimants also are named on the cover page of the Stock Transfer Agreement and in its preamble. The agreement also includes an “Additional Clause” providing that “[t]he Consortium composed by The Doe Run Resources Corporation and The Renco Group, Inc., warrants the compliance with the obligations contracted by the Investor, Doe Run Peru S.R.LTDA., therefore this contract is subscribed by The Doe Run Resources Corporation . . . and The Renco Group, Inc.”³⁰

25. The Guaranty Agreement, by which Peru guaranteed all of the “representations, assurances, guaranties and obligations assumed by [Centromin]” (and Activos Mineros, as successor to Centromin) under the Stock Transfer Agreement, also expressly references Renco and Doe Run Resources. Clause 2.2 of the Guaranty Agreement provides that “THE STATE hereby acknowledges and guarantees that . . . the bid was awarded to the consortium formed by THE RENCO GROUP INC. and THE DOE RUN RESOURCES CORP.” and that “pursuant to the bidding conditions of the aforementioned International Public Bidding, the members of the winning consortium assigned their rights in favor of THE INVESTOR [Doe Run Peru] so that it could sign the contract referred to in numeral 1.1 hereof.”³¹

26. The Stock Transfer Agreement and the Guaranty Agreement both expressly recognize, confirm and record that Renco and Doe Run Resources won the bid for Metaloroya and established

²⁸ **RLA-35**, *Glamis Gold, Ltd. v. United States*, UNCITRAL, Procedural Order No. 2 (Revised), May 31, 2005, ¶ 12(c).

²⁹ **Exhibit C-1**, Stock Transfer Agreement, at 67.

³⁰ *Id.* at 1, 7, 65-66.

³¹ **Exhibit C-2**, Guaranty Agreement, Clause 2.2.

Doe Run Peru as a vehicle to acquire its shares from Centromin, as part of the stock transfer transaction.³² As signatories to the Stock Transfer Agreement, Claimants have the rights and obligations set out in the terms of that agreement, including the unequivocal right to arbitrate under Clause 12. Moreover, contrary to Respondents’ assertion in their Request for Bifurcation, the fact that Peru’s Special Privatization Committee agreed to release Renco from specific liabilities found in the Additional Clause does not deprive Claimants of their rights under the Stock Transfer Agreement.³³ As explained below, the opposite is true: Claimants continue to have enforceable rights to arbitrate this dispute under Clause 12, and the right to have Respondents declared liable for the outcome of the St. Louis Lawsuits (including attorney fees and costs that currently are mounting) under, *inter alia*, Article 6 of the Stock Transfer Agreement. Finally, Peru (as the guarantor of Centromin’s obligations) was not required to give its consent to Doe Run Peru’s assignment of its rights under the Guaranty Agreement to Doe Run Cayman Ltd., as Respondents now claim.³⁴

27. At a minimum, Claimants are beneficiaries of the Guaranty Agreement. Peru agreed in the Guaranty Agreement to guarantee all of Centromin’s obligations under the Stock Transfer Agreement, including its obligation under Article 6 to “assume liability” for third-party damages and claims related to environmental contamination, irrespective of which member of the Renco Consortium or affiliated company or individual was sued. Clauses 6.2 and 6.3 of the Stock Transfer Agreement (among other provisions of the agreement) plainly obligate Centromin to assume

³² **Exhibit C-1**, Stock Transfer Agreement, at 6-7; **Exhibit C-3**, Guaranty Agreement, Clause 2.2.

³³ See Respondents’ Request for Bifurcation, ¶ 31. A letter dated October 27, 1997 from Centromin to Renco states as follows: “In reply to your request dated October 24, 1997, we hereby inform you that the Special Privatization Committee of Centromin Peru S.A. (CEPRI) has agreed to give its consent to free THE RENCO GROUP INC. from the responsibility regarding the obligations pending execution generated by the [Stock Transfer Agreement], signed on October 23, 1997, and assumed by virtue of the additional clause of said document.” This letter confirms that the release of Renco’s obligation under the Additional Clause did not cause it to surrender its rights under the Stock Transfer Agreement. **Exhibit C-6**, Letter from Centromin to Renco dated October 27, 1997.

³⁴ See Respondents’ Request for Bifurcation, ¶ 35. Under Peruvian law, a guarantor assigning its obligations under the guarantee to a third party must obtain consent from the beneficiary of the guarantee. By contrast, a beneficiary assigning its rights under the guarantee does not need to obtain consent from the guarantor. **CLA-7**, Revista Jurídica del Perú, 94 GACETA JURÍDICA 426 (2008) (“according to article 1439 of the [Peruvian] Civil Code, guarantees granted by third parties do not pass to the assignee without the guarantor’s consent”); cf. **Exhibit C-1**, Stock Transfer Agreement, Clause 10 (“The Investor and the Company grant their approval, in advance, to the substitution of the contractual position derived from this contract or the assignment of the rights and/or obligations that might originate from it that Centromin might fulfill and Centromin grants the corresponding rights and approvals to the Investor and the Company, subject to applicable law and this contract in Numeral 7.2 above”).

liability for third-party damages and claims asserted against Claimants (both signatories to the Stock Transfer Agreement). Because Peru expressly guaranteed this “obligation” in the Guaranty Agreement, and because it also expressly acknowledged in the Guaranty Agreement that Renco and Doe Run Resources had been awarded the bid for Metaloroya and had established Doe Run Peru as part of the stock transfer transaction, Renco and Doe Run Resources are, at a minimum, third-party beneficiaries of Peru’s guarantee in the Guaranty Agreement.

2. Respondents’ Second Objection (That They Did Not Consent to Arbitrate This Dispute) Lacks Substance

28. The second issue that Respondents wish to bifurcate is their claim that they have not “consented” to arbitrate this dispute with Claimants on the alleged basis that “Claimants are not parties to either the [Stock Transfer Agreement] or the Guaranty, including the arbitration provisions therein,” and “Peru is not a party to the [Stock Transfer Agreement] and Activos Mineros is not a party to the Guaranty, including the arbitration provisions therein.”³⁵ This claim similarly lacks substance.

29. First, as addressed above, Renco, Doe Run Resources and Centromin (Activos Mineros’ predecessor) all signed the Stock Transfer Agreement, which requires in its Clause 12 that “any” dispute between the parties “derived or in relation to this Contract” be resolved by arbitration under the UNCITRAL Rules. This arbitration clause unambiguously binds each of the signatories to the Stock Transfer Agreement, and its broad substantive scope encompasses not only Claimants’ claims for breach of the Stock Transfer Agreement and the Guaranty Agreement, but also their claims under the Peruvian Civil Code for contribution and unjust enrichment (all of which plainly “relate to” the Stock Transfer Agreement).

30. Second, Peru (the only party to this arbitration that is not a signatory to the Stock Transfer Agreement) importantly signed the Guaranty Agreement, which requires in its Clause 3 that “any” dispute that “may originate from or is related to this Guaranty Agreement” be resolved “by applying the provisions set forth in Clause Twelfth of the [Stock Transfer Agreement].”³⁶ As discussed above, Renco and Doe Run Resources are parties to the Guaranty Agreement or, at a

³⁵ Respondents’ Request for Bifurcation, ¶ 4.

³⁶ Exhibit C-2, Guaranty Agreement, at 2. See also Exhibit C-1, Stock Transfer Agreement, at 59.

minimum, third-party beneficiaries thereof. Clause 3 of the Guaranty Agreement and Clause 12 of the Stock Transfer Agreement thus plainly together bind Peru with respect to Renco's and Doe Run Resources' claim against Peru for breach of the Guaranty Agreement.

31. Activos Mineros and Peru thus have consented to arbitrate this dispute with Claimants, including not only Claimants' claims for breach of the Stock Transfer Agreement and the Guaranty Agreement, but also their claims under the Peruvian Civil Code for contribution and unjust enrichment, because Claimants advance these latter claims "in relation to" the Stock Transfer Agreement. Indeed, Respondents' jurisdictional objection must fail even assuming, *arguendo*, that Claimants never had (or no longer have) any substantive rights under the Stock Transfer Agreement or the Guaranty Agreement (which is incorrect).³⁷ Under the separability doctrine, which is accepted in Peruvian law, the arbitration clauses in the Stock Transfer Agreement and the Guaranty Agreement are deemed separate from the substantive clauses in those agreements.³⁸ As a consequence, the broad arbitration clauses bind Respondents with respect to Claimants' claims under the Peruvian Civil Code for contribution and unjust enrichment, irrespective of whether Claimants have substantive rights under the agreements (which they do).

3. Respondents' Third Objection (That Claimants Do Not Have Any Substantive Rights Under the Stock Transfer Agreement) Lacks Substance

32. Respondents' third objection (that Claimants "have no rights under the indemnity (or any other) provisions" of the Stock Transfer Agreement) lacks substance because Article 6 of the Stock

³⁷ As already noted, Respondents contend (erroneously) that Renco surrendered its rights under the Stock Transfer Agreement when it was "released" from its obligations under the Additional Clause a mere four days after the contract was signed. *See* Respondents' Request for Bifurcation, ¶ 31. Respondents likewise contend (erroneously) that the Guaranty Agreement was rendered "null and void" when Doe Run Peru assigned its rights thereunder to Doe Run Cayman, without the consent of Peru. *See id.* at ¶ 35. Neither of these contentions has any merit, but even if they did, the broad arbitration clauses in the Stock Transfer Agreement and the Guaranty Agreement would still bind Activos Mineros and Peru with respect to any claims asserted by Renco and Doe Run Resources.

³⁸ *See* CLA-8, International Commercial Arbitration (Second Edition) (Born; Jan 2014), p. 350 ("separability presumption is one of the conceptual and practical cornerstones of international arbitration"), p. 389 (stating that Peru has adopted the separability doctrine (citing Grigera Naón, Arbitration and Latin America: Progress and Setbacks, 21 Arb. Int'l 127, 149 (2005) (citing, among others, Peruvian Arbitration Law, Art. 41(2))); *see further*, e.g., CLA-9, *Duke Energy Int'l Peru Invs. No. 1, Ltd. v. Republic of Peru*, Decision on Annulment in ICSID Case No. ARB/03/28 of 1 March 2011, ¶ 131 ("The separability of an arbitration agreement from the contract of which it forms part is a general principle of international arbitration law today."); CLA-10, *Exclusive Agent v. Manufacturer*, Final Award, ICC Case No. 8938, 1996, Yearbook Commercial Arbitration 1999 - Volume XXIVa (Van den Berg (ed.); Jan 1999), p. 175.

Transfer Agreement grants Claimants important rights with respect to third-party damages and claims relating to environmental contamination caused by the operation of the La Oroya Complex.³⁹

33. Article 6 of the Stock Transfer Agreement obligates Respondents to “assume liability” for third-party damages and claims relating to environmental contamination, irrespective of which member of the Renco Consortium or affiliated company or individual is sued. As Renco and Doe Run Resources noted and supported in their Notice of Arbitration:

An “assumption of liability” is different from, and broader than, an obligation to indemnify. A party that agrees to assume a liability takes that liability upon itself and is obligated to cover the losses (including the litigation costs) of anyone who is sued for damages falling within the scope of the liability the party has assumed. Because Renco and Doe Run Resources are the subject of the Lawsuits, Activos Mineros has an obligation to indemnify Renco and Doe Run Resources.⁴⁰

34. Respondents’ claimed disagreement with Claimants’ interpretation of the Stock Transfer Agreement is not a legitimate reason to bifurcate this merits issue from the other aspects of Claimants’ case.

B. Bifurcation of Respondents’ Contractual Objections Would Result in Significant Procedural Inefficiencies

35. The second factor that tribunals consider in a bifurcation assessment is “whether the objection to jurisdiction if granted results in a material reduction of the proceedings at the next phase (in other words, the tribunal should consider whether the costs and time required of a preliminary proceedings, even if the objecting party is successful, will be justified in terms of the reduction in costs at the subsequent phase of proceedings).”⁴¹

36. Consistent with the foregoing, Respondents acknowledge in their Request for Bifurcation that bifurcation is “intended to facilitate the efficient resolution of disputes” and is appropriate

³⁹ Respondents’ Request for Bifurcation, ¶ 4.

⁴⁰ Claimants’ Notice of Arbitration, ¶ 48.

⁴¹ **RLA-35**, *Glamis Gold, Ltd. v. United States*, UNCITRAL, Procedural Order No. 2 (Revised), May 31, 2005, ¶ 12(c).

only if “the potential benefits of efficiency outweigh any risks of delay or wasted expense” and a decision granting the objections would result in a “material reduction of the proceedings at the next phase.”⁴²

37. As addressed immediately below, bifurcation of one or more of the three issues that Respondents wish to bifurcate would not facilitate the efficient resolution of this case because: (1) it would require the Tribunal to hear extensive legal and factual issues during the preliminary phase of the proceedings; (2) it would prolong these proceedings and exponentially increase the parties’ costs; and (3) even if Respondents’ objections to the viability of Claimants’ contractual claims had merit (they do not), a decision granting the objections would not result in a reduction of the proceedings in the next phase because the Tribunal still would need to address and decide Claimants’ claims under the Peruvian Civil Code for contribution and unjust enrichment.

1. Bifurcation Would Require the Tribunal to Hear Extensive Legal and Factual Issues During the Preliminary Phase

38. Fundamental principles of Peruvian contract law require a court or tribunal to consider extrinsic evidence when interpreting a contract and when determining the rights and obligations of both signatories and non-signatories to the contract.⁴³ In particular, a court or tribunal engaged in these inquiries must look to, *inter alia*, the context in which the contract was negotiated and signed and other available evidence with respect to the common intention of the parties, including contemporaneous correspondence, drafts, and the testimony of fact witnesses who participated in the negotiations.⁴⁴

39. During the time that Peru was seeking investors to buy the La Oroya Complex, Peru’s Special Privatization Committee and Centromin formally provided written answers to various questions that prospective investors posed. In at least one formal response, Peru acknowledge that Centromin would retain liability for third-party claims.⁴⁵ Clause 18.1 of the Stock Transfer Agreement expressly incorporates these official statements into the Stock Transfer Agreement,

⁴² Respondents’ Request for Bifurcation, ¶¶ 4, 27, 28.

⁴³ See **Exhibit C-7**, Legal Expert Report of Dr. Fernando de Trazegnies, April 14, 2015, § 4.1 at 12-14.

⁴⁴ *Id.*

⁴⁵ See **Exhibit C-5**, Second Round of Consultations and Answers, March 26, 1997, Question 41 at 41.

providing that “supplemental validity” shall be accorded to both (1) “the answers to consultations with official character circulated by [Peru’s Special Privatization Committee and Centromin] among those prequalified bidders” and (2) “the bidding conditions of the International Public Bidding No. PRI-16-97 for the promotion of private investment in [Metaloroya].”⁴⁶

40. If the Tribunal were to bifurcate Peru’s contractual objections, the foregoing principles of Peruvian contract law and Clause 18.1 of the Stock Transfer Agreement would require it to hear evidence on the context in which the Stock Transfer Agreement and the Guaranty Agreement were negotiated and signed, including the following matters (among others):

- i. Peru’s privatization process for the La Oroya Complex, including why Peru’s initial privatization round failed;⁴⁷
- ii. the steps that Peru took in the second privatization round to attract investors, which included answering questions from bidders and publishing two rounds of bidders’ questions and official answers;⁴⁸
- iii. the negotiating history of the Stock Transfer Agreement and the Guaranty Agreement, including correspondence, drafts, and oral discussions among the negotiators;⁴⁹ and
- iv. whether Renco and Doe Run Resources would have agreed to proceed with the transaction without the critically important commitments by Centromin and Peru as to potential third-party claims.⁵⁰

41. Respondents contend in their Request for Bifurcation that the Tribunal can decide their contractual objections without addressing any of these matters and without “ventur[ing] beyond the four corners” of the Stock Transfer Agreement and the Guaranty Agreement.⁵¹ Respondents also contend that their objections implicate only “limited facts based on the face of the

⁴⁶ **Exhibit C-1**, Stock Transfer Agreement, at 64.

⁴⁷ Claimants’ Notice of Arbitration, ¶ 15.

⁴⁸ *Id.* at ¶ 18, 21.

⁴⁹ *See, e.g., Exhibit C-7*, Legal Expert Report of Dr. Fernando de Trazegnies, April 14, 2015, § 4.3, at 16, § 5.3, at 18 (referring to negotiations in analyzing the Stock Transfer Agreement).

⁵⁰ Claimants’ Notice of Arbitration, at ¶ 28.

⁵¹ Respondents’ Request for Bifurcation, ¶¶ 18, 36, 41-42.

instruments.”⁵² In support of these contentions, Respondents quote from Peru’s pleadings in the Article 10.20(4) phase of *Renco I*, which themselves quote from the opinion of Peru’s legal expert, Carlos Cárdenas Quirós.⁵³

42. Respondents’ contractual objections fly squarely in the face of the “four corners” of the Stock Transfer Agreement, which Claimants signed, and the Guaranty Agreement, which expressly references them and incorporates the contract’s arbitration clause by reference. In any event, to the extent that Claimants’ rights and obligations under the Stock Transfer Agreement and the Guaranty Agreement may be unclear (they are not), Respondents’ contention that the Tribunal can determine Claimants’ rights and obligations based solely “on the face of the instruments” and without looking beyond their “four corners” is plainly contrary to fundamental principles of Peruvian contract law and, indeed, of the civil law generally. It also is plainly contrary to Clause 18.1 of the Stock Transfer Agreement, which requires a tribunal interpreting the agreement to give “supplemental validity” to both Peru’s answers to bidders’ questions and the official bidding conditions.⁵⁴ In any event, if the Tribunal were to bifurcate Respondents’ contractual objections, it nonetheless would need to hear both Claimants’ and Respondents’ expert evidence on these legal issues during the preliminary phase of the proceedings, which would not lead to efficiencies.

2. Bifurcation Would Prolong these Proceedings and Increase the Parties’ Costs

43. If the Tribunal were to bifurcate Respondents’ contractual objections, the lengthy preliminary phase of the proceedings likely would be followed by an equally lengthy second phase addressing the remaining merits issues arising in this case. The remaining issues would include: (1) the scope of the liabilities that Respondents assumed; (2) whether the third-party damages and claims asserted in the St. Louis Lawsuits fall within the scope of those liabilities; and (3) the quantum of Claimants’ legal costs in defending the St. Louis Lawsuits and of any damages or settlement amounts paid by Claimants to the plaintiffs in those lawsuits.⁵⁵

⁵² *Id.* at ¶ 36.

⁵³ *Id.* at ¶¶ 32, 34.

⁵⁴ **Exhibit C-1**, Stock Transfer Agreement, at 64.

⁵⁵ *See* Claimants’ Notice of Arbitration, ¶¶ 42-54.

44. Just as with a potential preliminary phase, the likely second phase of the proceedings would involve legal and factual submissions by the parties (including witness statements and expert evidence), document production, and an evidentiary hearing. Organizing the proceedings in this repetitive manner would likely double the amount of time that it would take for this case to be resolved and would exponentially increase the parties' costs.

C. Respondents' Contractual Objections Are Intertwined With the Merits

45. The third and final factor that tribunals consider when deciding whether to bifurcate an objection is whether the objection is "so intertwined with the merits" that bifurcation would be unlikely to produce any savings in time or cost.⁵⁶ Respondents acknowledge that bifurcation is appropriate only if "the objections are not intertwined with the merits."⁵⁷ Like the prior two factors, this factor weighs heavily against bifurcation of Respondents' contractual objections.

1. Respondents' First Objection Is Closely Intertwined With the Merits Because It Constitutes a Merits Argument

46. Respondents' first contractual objection (that Claimants are not parties to the Stock Transfer Agreement or the Guaranty Agreement) is not only closely "intertwined with the merits," it actually constitutes a merits argument. The "merits" nature of this objection is clear because, to the extent that the Tribunal looks beyond the fact that Claimants are signatories to the Stock Transfer Agreement, Respondents' objection calls upon the Tribunal to determine the existence, nature and scope of Claimants' substantive rights under the Stock Transfer Agreement and the Guaranty Agreement. Indeed, Respondents themselves characterize this objection as a "merits" defense in their Response to Claimants' Notice of Arbitration.⁵⁸ Because Respondents' first

⁵⁶ **RLA-35**, *Glamis Gold, Ltd. v. United States*, UNCITRAL, Procedural Order No. 2 (Revised), May 31, 2005, ¶ 12(c).

⁵⁷ Respondents' Request for Bifurcation, ¶ 42. *See also id.* at ¶ 4 (bifurcation "is appropriate where the objections . . . raise issues not intertwined with the merits"), ¶ 22 ("factors considered by tribunals with respect to bifurcation include whether the objections are . . . intertwined with the merits"), ¶ 27 ("This factor is satisfied where the preliminary objection can 'be examined without prejudging or entering the merits.'") (quoting *Phillip Morris v. Australia*, PCA Case No. 2012-12, Procedural Order No. 8 regarding Bifurcation of the Procedure, April 14, 2014, ¶ 109).

⁵⁸ *See* Response of the Republic of Peru and Activos Mineros, January 14, 2019, at 9. Under the heading "Merits" and the sub-heading "Claimants Fail To Establish A Valid Legal Relationship Among The Parties" in their Response to Claimants' Notice of Arbitration, Respondents include the following argument: "Renco and [Doe Run Resources] are not parties to the [Stock Transfer Agreement] and have no rights thereunder." *Id.* This "Merits" argument is Respondents' first contractual objection.

objection is a merits argument (and therefore more than “intertwined” with the merits), bifurcation of this objection would be inappropriate.

2. Respondents’ Second Objection Is Closely Intertwined With Their Merits Arguments

47. Respondents’ second objection (that they have not “consented” to arbitrate this dispute with Claimants) normally would constitute a jurisdictional objection, but it is closely intertwined with the merits because the legal and factual issues raised by this objection overlap substantially with the legal and factual issues that Respondents raise in their first objection, which (as already explained) constitutes a classic merits argument. In short, to decide its jurisdiction over this dispute, the Tribunal will have to hear legal and factual issues directly relevant to the merits, including (1) the legal significance of the fact that Claimants signed the Stock Transfer Agreement, (2) Claimants’ rights under the Guaranty Agreement, and (3) the negotiating history of both the Stock Transfer Agreement and the Guaranty Agreement. Because these issues relate not only to the Tribunal’s jurisdiction but also to the ultimate merits of Claimants’ claims for breach of the Stock Transfer Agreement and the Guaranty Agreement, the Tribunal should address them with the other merits issues in this case, in a unitary proceeding.

3. Respondents’ Third Objection Is Closely Intertwined With the Merits Because It Constitutes a Merits Argument and Cannot Be Considered Separately From Another Merits Issue

48. Like Respondents’ first objection, their third objection (that Claimants have no substantive rights under the Stock Transfer Agreement) constitutes a quintessential merits argument because it calls upon this Tribunal to determine the existence, nature and scope of Claimants’ substantive rights under the Stock Transfer Agreement and the Guaranty Agreement, including their right to hold Respondents ultimately liable for the outcome of the St. Louis Lawsuits (and legal costs). Tellingly, in their Response to Claimants’ Notice of Arbitration, Respondents describe their third objection as a “merits” defense.⁵⁹ Because this objection is a merits argument, bifurcation of the objection would be inappropriate.

⁵⁹ See Response of the Republic of Peru and Activos Mineros, January 14, 2019, at 9. Under the heading “Merits” and the sub-heading “Claimants Fail To Establish A Valid Legal Relationship Among The Parties” in their Response to Claimants’ Notice of Arbitration, Respondents include the following arguments:

49. Finally, even if Respondents' third objection were not itself a merits argument (it plainly is), this objection is closely intertwined with another merits issue in the case.

50. As discussed above, Respondents' third objection is that Renco and Doe Run Resources purportedly do not have any substantive rights under the Stock Transfer Agreement. This objection raises the question whether Centromin's assumption of liability for third-party damages and claims in Article 6 of the Stock Transfer Agreement encompasses third-party damages and claims asserted against Renco and Doe Run Resources (*i.e.*, who is a beneficiary of Centromin's assumption of liability?). Renco and Doe Run Resources claim in this arbitration that they are beneficiaries of Respondents' assumption of liability; Respondents disagree with that interpretation.⁶⁰

51. The question of who is a beneficiary of Respondents' assumption of liability is closely intertwined with the substantive scope of Respondents' assumption of liability (*i.e.*, what are the types of third-party damages and claims for which Respondents agreed to assume liability?), because both questions turn on the meaning of the Stock Transfer Agreement, including Clauses 6.2 and 6.3, and on the common intention of the parties in entering into the contract. As with the first question, a dispute exists between the parties with respect to the second question: Claimants claim that Respondents' assumption of liability encompasses the third-party damages and claims asserted in the St. Louis Lawsuits, while Respondents argue that it does not.⁶¹

52. Claimants respectfully submit that the first question (who is a beneficiary of Respondents' assumption of liability?) cannot be considered separately from the second question (what are the types of third-party damages and claims for which Respondents agreed to assume liability?),

"Renco and [Doe Run Resources] are not parties to the [Stock Transfer Agreement] and have no rights thereunder."

"The rights invoked by Claimants in Articles 6.2, 6.3 and 6.5 of the [Stock Transfer Agreement] run to the 'Investor,' or to 'Company.' Neither Renco nor [Doe Run Resources] are the 'Investor' or the 'Company' under the [Stock Transfer Agreement], and the 'Investor' and the 'Company' are not parties in the [St. Louis Lawsuits]."

"Similarly, Renco and [Doe Run Resources] are not parties to the Guaranty and have no rights thereunder."

Id. These "Merits" arguments are identical to Respondents' first and third contractual objections.

⁶⁰ Claimants' Notice of Arbitration, ¶ 48; Response of the Republic of Peru and Activos Mineros, January 14, 2019, at 9.

⁶¹ Claimants' Notice of Arbitration, ¶¶ 49-54; Response of the Republic of Peru and Activos Mineros, January 14, 2019, at 9.

because the same contractual language and the same extrinsic evidence will be relevant to the Tribunal’s resolution of both questions under Peruvian law. Rather than bifurcate Respondents’ objections and hear these contractual issues in a piecemeal fashion, the Tribunal should address all of the merits issues together, in a unitary proceeding.

V. Respondents Mischaracterize the Procedural History of *Renco I*

53. Respondents’ assertion that Renco “agreed” to have the “contractual issues” decided as a preliminary question in *Renco I* is factually incorrect.⁶²

54. Peru asserted its preliminary contractual objection in *Renco I* under Article 10.20(4) of the Treaty, which requires a tribunal constituted under the Treaty to hear and decide an objection for failure to state a viable legal claim as a preliminary question and to assume the truth of the claimant’s factual allegations in deciding the objection.⁶³ Although Renco agreed in *Renco I* that Article 10.20(4) of the Treaty required the tribunal to hear and decide Peru’s preliminary objection for failure to state a viable legal claim for breach of the Stock Transfer Agreement, Renco argued that the tribunal must dismiss that objection and decide the contractual issues raised by the objection later, during the merits phase of the proceedings, because:

- fundamental principles of Peruvian contract law and Clause 18.1 of the Stock Transfer Agreement required that the tribunal take into account extrinsic evidence when interpreting the Stock Transfer Agreement and the Guaranty Agreement and when determining the rights and obligations of Renco and Doe Run Resources thereunder;
- Renco’s factual allegations and the extrinsic evidence that it submitted with its Memorial on Liability supported its interpretation of the Stock Transfer Agreement and the Guaranty Agreement and established that Renco and Doe Run Resources

⁶² Respondents’ Request for Bifurcation, ¶ 4. *See also id.* at ¶¶ 13, 20, 30, 46.

⁶³ The first paragraph of Article 10.20(4) of the Treaty provides as follows:

Without prejudice to a tribunal’s authority to address other objections as a preliminary question, such as an objection that a dispute is not within the tribunal’s competence, a tribunal shall address and decide as a preliminary question any objection that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26.

Exhibit C-8, U-S Peru Trade Promotion Agreement (“Treaty”). Article 10.20(4) thus requires a tribunal constituted under the Treaty to address and decide any objection for failure to state a viable legal claim as a preliminary matter. Subparagraph (c) of Article 10.20(4) further requires the tribunal, in deciding such an objection as a preliminary matter, to “assume to be true claimant’s factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim.”

were, in fact, parties to those agreements or, at the very least, third-party beneficiaries thereof; and

- Article 10.20(4) required the tribunal to assume the truth of Renco’s factual allegations in deciding Peru’s objections.⁶⁴

55. Contrary to Respondents’ argument here, the contractual issues did not receive “in-depth treatment” during the preliminary phase of *Renco I*.⁶⁵ This is because the relevant inquiry under Article 10.20(4) was only whether Renco had stated a viable legal claim, not whether it could prove its claim. By contrast, bifurcation of Respondents’ contractual objections in the present arbitration would require the parties to submit all of their evidence with respect to the contractual issues raised by Respondents’ objections, and it would require the Tribunal to hear and decide extensive factual and legal issues.

56. Also meritless is Peru’s assertion that it “established” in the preliminary phase of *Renco I* that Renco’s claims for breach of the Stock Transfer Agreement and the Guaranty Agreement should be dismissed.⁶⁶ First, the tribunal never even held a hearing on—much less decided—Peru’s preliminary objection in *Renco I*, because Peru requested that the tribunal first address its completely unrelated waiver objection on an urgent basis under Article 23(3) of the UNCITRAL Rules.⁶⁷ Second, Peru’s preliminary objection in *Renco I* (like Respondents’ objections in the present proceedings) was meritless because it ignored the plain language of the Stock Transfer Agreement and the Guaranty Agreement, contravened fundamental principles of Peruvian contract law, and conflicted with Renco’s factual allegations, which the *Renco I* tribunal was required to assume to be true.

57. The procedural history of *Renco I* thus clearly demonstrates that, far from “agreeing” that the “contractual issues” should be decided as a preliminary question, Renco argued (just as it does in the present proceedings) that the contractual issues must be decided later, during the merits phase of the proceedings.

⁶⁴ **Exhibit C-9**, Renco’s Opposition to Peru’s 10.20(4) Objection, April 17, 2015, ¶¶ 59-98.

⁶⁵ Respondents’ Request for Bifurcation, ¶ 14. *See also id.* at ¶¶ 36, 47.

⁶⁶ *Id.* at ¶¶ 32-34.

⁶⁷ **Exhibit C-10**, Letter from White & Case to Tribunal, April 29, 2015, at 4-7.

VI. Relief Sought

58. For the foregoing reasons, Claimants respectfully request that the Tribunal issue an order granting the following relief:

- i. Denying Respondents' request for bifurcation of their contractual objections; and
- ii. Ordering Respondents to pay Claimants' costs (including legal fees) in connection with responding to the request for bifurcation.

March 20, 2020

Respectfully submitted,



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