

PCA CASE No. 2019-47

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH
THE STOCK TRANSFER AGREEMENT BETWEEN
EMPRESA MINERA DEL CENTRO DEL PERU S.A. AND DOE RUN PERU S.R. LTDA.,
DOE RUN RESOURCES, AND RENCO, DATED 23 OCTOBER 1997, AND
THE GUARANTY AGREEMENT BETWEEN PERU AND DOE RUN PERU S.R. LTDA,
DATED 21 NOVEMBER 1997**

– and –

THE UNCITRAL ARBITRATION RULES 2013

**THE RENCO GROUP, INC. AND
DOE RUN RESOURCES, CORP.**

CLAIMANTS,

v.

**THE REPUBLIC OF PERU AND
ACTIVOS MINEROS S.A.C.**

RESPONDENTS.

CLAIMANTS' STATEMENT OF CLAIM

KING & SPALDING LLP
1185 Avenue of the Americas
New York, New York 10036-4003
(212) 556-2100
(212) 556-2222 (Facsimile)

Counsel for Claimants

February 8, 2021

TABLE OF CONTENTS

- I INTRODUCTION4
- II FACTUAL BACKGROUND.....11
 - A. From 1922 to 1997, Peru Created One of the World’s Most Polluted Sites: The La Oroya Complex11
 - B. During the Early 1990s, Peru Failed to Privatize Centromin because of the La Oroya Complex’s Environmental Legacy and Obsolete Condition15
 - C. Peru’s Privatization Efforts were Hampered by its Adoption of New Environmental Standards Aimed at Remediating Decades of Contamination17
 - D. Peru and Centromin Revised their Privatization Strategy in the Second Bidding Process by Making Clear that They Would Retain and Assume Liability for Third-Party Claims Relating to Environmental Contamination and Remediate the Areas around the La Oroya Complex.....23
 - E. The Renco Consortium Purchased the La Oroya Complex from Centromin on October 23, 1997, with a Guaranty Agreement from Peru for All of Centromin’s Contractual Obligations26
 - F. Under the STA and the Guaranty Agreement, Centromin and Peru Retained and Assumed Liability for Third-Party Claims and Damages relating to Environmental Contamination and Committed to Perform Centromin’s PAMA Obligations and Remediate the Areas Around the Complex30
 - 1. Key Language of the STA related to Liability for Third-Party Claims and Damages.....30
 - 2. Key Language of the STA related to Centromin and Peru’s Obligations to Remediate and Perform Centromin’s PAMA Obligations.....38
 - G. Peru and Centromin Failed to Comply with Their Obligation to Retain and Assume Liability for Third-Party Claims and Damages relating to Environmental Contamination.....38
 - 1. Over 3,700 Peruvian Residents Have Filed Third-Party Claims for Personal Injury against Renco and Its Affiliates, Officers, and Directors for Harm Alleged to Have Been Suffered from the La Oroya Complex’s Operations38

2.	Peru and Activos Mineros Have Refused to Assume Any Liability for Third-Party Claims Asserted against the Renco Defendants ...	40
H.	Peru and Centromin Failed to Comply with their Obligation to Remediate Areas Contaminated by the Complex’s Operations.....	53
1.	Remediation of the Soil Was Important to the Health of the Population	54
2.	The MEM Allowed Centromin to Defer Its Remediation Obligations	55
3.	Peru’s and Centromin’s Failure to Remediate Has Impacted Both the Health of the Citizens of La Oroya and the Interests of the Renco Defendants, Including Renco and DRR.....	60
III	THIS TRIBUNAL HAS JURISDICTION OVER CLAIMANTS’ CLAIMS.....	62
A.	Renco and DRR Are Parties to the STA.....	62
B.	Alternatively, Renco and DRR are Parties to the STA’s Arbitration Clause	64
C.	Peru is a Party to the STA’s Arbitration Clause	66
D.	The STA’s Arbitration Clause is Broad and Covers Claimants’ Non-Contractual Claims under Peruvian and Customary International Law	67
1.	The STA’s arbitration clause is broad	67
2.	The STA’s arbitration clause covers Claimants’ claims under Peruvian and customary international law	69
IV	LEGAL ARGUMENT	71
A.	Respondents’ Refusal to Accept Liability for the Claims in the St. Louis Lawsuits Breaches the STA and the Guaranty Agreement.....	72
1.	The Law Applicable to Renco’s Claims for Breach of the STA and the Guaranty Agreement	72
2.	Centromin and Peru Are Liable for Third-Party Claims Relating to Environmental Contamination	76
a.	Pursuant to Clauses 5 and 6 of the STA, Centromin and Peru (through the Guaranty Agreement) Retained and Assumed Liability for the Lion’s Share of Third-Party Claims Relating to Environmental Contamination	76
b.	Renco Would Not Have Invested in DRP and the Complex without the Broad Commitment from Centromin and Peru to	

	Retain and Assume Liability for Third-Party Environmental Contamination Claims	84
3.	Peru and Centromin Have Breached the STA and the Guaranty Agreement by Failing to Assume Liability for the Claims Asserted in the St. Louis Lawsuits.....	90
	a. The Claims Asserted in the St. Louis Lawsuits Fall within the Scope of Centromin’s Assumption of Liability	90
	b. Activos Mineros’ Arguments in Refusing to Assume Liability for the Claims Asserted in the St. Louis Lawsuits Are Meritless.....	93
B.	Respondents’ Failure to Remediate the Soil in and around La Oroya Breaches the STA and the Guaranty Agreement	99
C.	In the Alternative to their Breach-of-Contract Claims, Claimants Assert Claims under the Peruvian Civil Code for Pre-Contractual Liability, Subrogation, Contribution, and Unjust Enrichment	99
D.	Peru Breached its Obligations to Renco and DRR under Customary International Law by Failing to Honor its Promises that it Would Retain and Assume All Liability for Third-Party Claims	110
V	CONCLUSION.....	112

I INTRODUCTION

1. This dispute arises from the Republic of Peru's ("Peru" or the "Government") sale in 1997 of its State-owned smelting and refining complex in La Oroya, Peru (the "La Oroya Complex", "CMLO" or the "Complex") to a consortium led by Claimant The Renco Group, Inc. ("Renco"), and Respondents Peru's and Activos Mineros S.A.C.'s ("Activos Mineros" or "AMSAC") subsequent refusal to honor their contractual and legal commitment to retain past responsibility and assume future liability for third-party claims of injury from environmental contamination at the Complex (including their failure to remediate the soil which would have mitigated these damages).

2. When Peru declared in late 1991 that it would promote private investment and privatize its mining sector, there was little reaction from the investment community. Peru's first effort to sell its State-owned mining operations in 1994 failed—without prospective investors submitting even a single bid—in large part because of the substantial risk of liability associated with third-party claims from injury resulting from 75 years of historical environmental contamination and dilapidated existing infrastructure that continued to pollute. As Peru later reported in an official White Paper, the smelting and mining complex in La Oroya was particularly problematic because of its visually obvious and well-known environmental problems.¹

3. Undeterred in its desire to sell the La Oroya Complex and other mining operations held by State-owned *Empresa Minera del Centro del Peru* ("Centromin," now Activos Mineros), Peru revised its privatization strategy in 1996. The stated goal of this second attempt was that private investors would undertake to modernize the infrastructure at the Complex with projects

¹ **Exhibit C-012**, Government of Peru, White Paper concerning the Fractional Privatization of Centromin, 1999 at 6 (*hereinafter* "1999 White Paper"). *See also* **Exhibit C-003**, Corinne Schmidt, *How Brown Was My Valley*, NEWSWEEK, April 18, 1994 (*hereinafter* "Apr. 18, 1994 NEWSWEEK") ("Richard Kamp figured he had seen the worst wastelands the mining industry was able to create. But that was before the American environmentalist – a specialist on the U.S.-Mexican border area – laid eyes on La Oroya, home to Centromin, Peru's biggest state-owned mining company. Last month, as his car rattled toward the town through hills that once were green, Kamp fell silent. Dusted with a whitish powder, the barren hills looked like bleached skulls. Blackened slag lay in heaps on the roadsides. At La Oroya, Kamp found a dingy cluster of buildings under wheezing smelter smokestacks. Pipes poking out of the Mantaro River's banks sent raw waste cascading into the river below. 'This,' he said, 'is a vision from hell.'")

that would reduce its environmental impact over time pursuant to a *Programa de Adecuación y Manejo Ambiental*, or Environmental Remediation and Management Program (the “PAMA”) while Peru and Centromin would remediate the existing environmental contamination and also would retain and assume broad liability for claims brought by third parties for activities occurring both before and after the sale.²

4. Learning from the unsuccessful first bidding round, Respondents had understood that assuming liability for third-party claims relating to activities in the La Oroya Complex was key to successfully privatizing it. Thus, they made express and consistent representations to that effect throughout the bidding process. For example, Peru advised prospective investors during a written question and answer period conducted prior to the sale that Centromin (and Peru through a guaranty) would accept responsibility for all the contamination and related claims until the end of the period allowed for the investor to modernize the smelting Complex outlined in the PAMA, only with a few limited exceptions. Centromin’s and Peru’s answers to investors’ questions not only constituted formal inducement to enter into a contract, they also were expressly incorporated into the contract that the parties ultimately signed, as set forth below.

5. After Peru held a second public auction for the Complex on April 14, 1997, Renco and its affiliate Doe Run Resources Corporation (“DRR”) (together, the “Renco Consortium”) were awarded the right to negotiate a Stock Transfer Agreement (“STA”) to acquire the La Oroya Complex.³ Peru required that the Renco Consortium create a local Peruvian entity as the acquisition vehicle, which it did in the form of Doe Run Peru S.R. Ltda. (“Doe Run Peru” or “DRP”). The Renco Consortium negotiated the STA with State-owned Centromin, and the parties executed the STA on October 23, 1997, as well as a Guaranty issued by the Republic of Peru on

² **Exhibit C-012**, 1999 White Paper at 62 (explaining that under the new privatization strategy formulated in 1996, Centromin, as seller would retain responsibility “to remediate the environmental problems accumulated in the past, as well as the claims of third parties in relation to environmental liabilities....”).

³ **Exhibit C-001**, 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., October 23, 1997 (*hereinafter* the “Stock Transfer Agreement” or “STA”).

November 21, 1997,⁴ by which Peru guaranteed all of Centromin’s “representations, securities, guaranties and obligations” under the STA.

6. The basic bargain was simple: the Renco Consortium agreed to invest in DRP, for DRP to modernize the La Oroya Complex and improve its condition. In return, Peru and Centromin agreed to retain and assume broad and exclusive liability for third-party claims for historical impacts arising from Centromin’s operations, and—recognizing the poor state of the Complex and the enormous work required to upgrade it—for future contamination that the Complex would cause while the Renco Consortium worked to modernize the Complex under the PAMA.⁵ In addition, Peru and Centromin agreed to remediate the existing soil contamination.⁶ Moreover, the parties agreed in the STA that after the PAMA period expired, liability for third-party claims would be apportioned between Centromin and DRP depending on the extent to which the claim arose from the operation of the Complex before the period approved for completing the PAMA modernization projects expired (Centromin’s/Peru’s liability), or from its operation after the PAMA period expired (DRP’s liability).⁷ DRP did not operate the Complex after June 3, 2009.

7. Beginning in 2007, U.S.-based plaintiffs’ personal-injury lawyers commenced lawsuits in the United States on behalf of plaintiffs who claim to be Peruvian citizens and residents of the town of La Oroya against Claimant, the other member of the Renco Consortium (DRR), companies associated with the Renco Consortium, and certain of their officers and directors. The initial lawsuits were filed in Missouri state court in St. Louis, but were removed to, and consolidated in, the federal district court for the Eastern District of Missouri (the “St. Louis Lawsuits”). These plaintiffs’ lawyers sought out and amassed a large number of plaintiffs seeking to sign up as many clients as possible in La Oroya and across the region. As a result, there are currently more than 3,700 individual plaintiffs with pending lawsuits against Claimants and its

⁴ **Exhibit C-002**, Guaranty Agreement between the Republic of Peru and Doe Run Per S.R. Ltda., November 21, 1997 (*hereinafter* the “Guaranty Agreement”).

⁵ **Exhibit C-001**, Stock Transfer Agreement, Clauses 5.5 and 5.9 at 23-25 (placing all liability for third-party claims arising prior to execution of the Stock Transfer Agreement on Centromin). *Id.* Clause 6.2 at 27 (placing all liability for third-party claims arising during the PAMA period of modernization on Centromin, with narrow exceptions not applicable here).

⁶ *Id.* Clause 6.1(C) at 26.

⁷ *Id.* Clause 6.3 at 27. *Id.* Clause 5.4 at 22-23.

affiliates. The claims in each lawsuit are virtually identical. The St. Louis plaintiffs claim various mental and physical health effects from exposure to lead and other potentially toxic substances emitted from the Complex.

8. The third-party claims asserted in the St. Louis Lawsuits (including millions of dollars of legal fees associated with the claims that continue to mount) are exactly the type of third-party claims for which Peru and Centromin assumed liability in the STA. Indeed, the STA’s language cannot be clearer. In Clause 6.2 of the STA, Centromin unequivocally committed to “assume liability for any damages and claims by third parties that are attributable to the activities of the Company [DRP], or Centromin and/or its predecessors.”⁸

9. Yet Respondents have refused—and continue to refuse—to comply with their obligations under the STA and the Guaranty Agreement and assume such liability, despite repeated requests by Claimants to do so. This refusal to assume liability for the claims asserted in the St. Louis Lawsuits constitutes a material breach of their obligations under the STA and the Guaranty Agreement.

10. Respondents’ actions (and inactions) regarding the St. Louis Lawsuits shake the core of the deal struck between the parties—that in order for the Renco Consortium to agree to invest and modernize the conditions in La Oroya, Centromin and Peru must bear the risk of third-party claims arising from historical operations, as well as future operations for as long as activities under PAMA continued (except for a narrow set of exceptions). This was a key component of the overall transaction: without Peru’s and Centromin’s assumption of liability for third-party claims, the Renco Consortium would not have invested in the La Oroya Complex.

11. Yet, once the risk of third-party claims materialized in the St. Louis Lawsuits, Respondents entirely reneged on their contractual and legal obligations and representations, and they refused to assume any responsibility for those Lawsuits—a refusal that continues to this date as the St. Louis Lawsuits advance their course. Thus, Centromin (now Activos Mineros) and Peru are in breach of the STA, the Guaranty Agreement, and Peruvian law.

⁸ *Id.*, Clause 6.2.

12. In the alternative, if this Tribunal were to decide that Respondents' actions do not constitute a breach of the STA and the Guaranty Agreement, Claimants assert claims against Respondents for pre-contractual liability, subrogation, contribution, and unjust enrichment under the Peruvian civil code of 1984 (the "Civil Code"). In addition, Peru's inducement of Claimants to make its investment based on the multiple promises and representations by Respondents that Centromin would retain and assume any environmental liability relating to the La Oroya site (with the exceptions provided for in the STA, which do not apply in this case) constitutes a breach of the minimum standard of treatment under customary international law.

13. Claimants' alternative claims for pre-contractual liability, subrogation, contribution and unjust enrichment under the Peruvian Civil Code, and their customary international law claim, fall within the scope of the broad arbitration agreement. Even if this Tribunal were to find that Renco and DRR were not parties to the STA, which they clearly were, they are still parties to the STA's arbitration agreement under the blackletter legal doctrine of separability. Moreover, under the Peruvian Arbitration Act, an arbitration provision extends not only to the formal parties to a contract but also to the parties who played a decisive role in negotiating and executing the arbitration provision, as well as those who derive benefits from the contract to which the arbitration provision belongs. Therefore, because Renco and DRR played a decisive role in negotiating the STA and its arbitration provision, and they are beneficiaries of Centromin's broad assumption of liability for third-party claims as set forth in the STA, they can avail themselves of the STA's arbitration provision. Thus, this Tribunal has jurisdiction over this dispute, and this international arbitration is the proper forum to adjudicate these claims.

14. In conclusion, it would be a travesty of justice to allow Peru and Centromin freely to turn their backs on the claims in the St. Louis Lawsuits and bear no responsibility for them, despite having repeatedly and unambiguously committed to assume precisely that liability, and having received the benefit of the Renco Consortium's investments to modernize the Complex. If that result were allowed to stand, Peru and Centromin would receive an unjustified windfall while the Renco Consortium would ultimately be encumbered with the very environmental liabilities that it so carefully and purposefully allocated to Peru and Centromin in the STA and Guaranty Agreement.

* * *

15. To support their claims, Claimants submit the following expert reports with the Memorial:

- Expert Report of Professor José Antonio Payet Puccio, expert on Peruvian Law. Professor Payet is a preeminent Peruvian law lawyer and scholar. He is one of the founding partners of the law firm Payet, Rey, Cauvi, Pérez in Lima and Law Professor of the Universidad Católica del Perú on Peruvian law. Professor Payet opines on matters of contract interpretation, as well as Claimants' other claims under the Peruvian Civil Code.
- Expert Report prepared by Rosalind A. Schoof. Dr. Schoof is a Principal of Ramboll US Consulting, Inc. and holds a Ph.D. in toxicology from the University of Cincinnati. She has more than 30 years of experience in assessing human health effects and exposures from chemical substances in the natural and built environment, and in products and foods. Dr. Schoof focuses on the 2005 and 2008 human health risk assessments for the Complex and the surrounding communities conducted for DRP and the Peruvian Ministry of Energy and Mines ("MEM").
- Expert Report of Gino Bianchi-Mosquera. Dr. Bianchi is the Vice President and Principal Geochemist at GSI Environmental Inc. A PhD in Environmental Science and Engineering from University of California, Los Angeles, he has more than 30 years of experience directing and conducting environmental projects in the United States, Canada and Latin America. Dr. Bianchi's report evaluates certain conditions, standards and practices associated with the operation of La Oroya Complex prior to, during and after DRP's ownership and operation and their impact in the environment and public health.
- Expert Report of John A. Connor. Mr. Connor has more than 40 years of experience in forensic analysis of environment impacts, human health risk assessment, risk mitigation measures, effects of air emissions and remediation of environmental pollution issues for projects. Mr. Connor obtained an M.S. in Civil Engineering from Stanford University. Mr. Connor's report evaluates the health and environmental benefits of projects completed by DRP at the Complex and in the surrounding communities, the standards and practices employed by DRP and the

relevance of the alleged exposures and damages for the third-party claims to the operation of DRP, as well as those of Cerro de Pasco and Centromin.

16. In addition, Claimants submit in support of the facts presented in this Memorial, the following witness statements:

- Witness Statement of José Mogrovejo Castillo, former Director of Environmental Affairs and Vice President of Environmental Affairs of DRP. Mr. Mogrovejo's written statement discusses the environmental practices and regulations applicable to the La Oroya Complex and the facts surrounding his role overseeing the implementation of the La Oroya PAMA projects, environmental policy, community projects and relations, the blood lead levels reduction program at La Oroya, and its receivership of Right Business.
- Witness Statement of Kenneth Buckley, former President and General Manager of DRP. Mr. Buckley's witness statement addresses the facts surrounding the negotiation of the STA and DRP's efforts to address the environmental and public health issues relating to the operation of the La Oroya Complex, including the discussions that DRP had with representatives of Peru and Centromin relating to these issues.
- Witness Statement of Dennis A. Sadlowski, former Vice President of Law for Renco. Mr. Sadlowski's witness statement describes his participation in the negotiations of the STA, and it presents an overview of the representations, assurances, and obligations assumed by Centromin under the STA and its responsibility for third-party claims and remediation of historical environmental problems as a condition for the purchase of the Complex.

II FACTUAL BACKGROUND

A. FROM 1922 TO 1997, PERU CREATED ONE OF THE WORLD'S MOST POLLUTED SITES: THE LA OROYA COMPLEX

17. The town of La Oroya is located in the central Andean highlands of Peru, at an elevation of 3,750 meters above sea level. It lies at the confluence of the Mantaro and Yauli rivers, 180 km northeast of Lima in the department of Junín.⁹

18. In 1922, the privately-owned Cerro de Pasco Copper Corporation established the La Oroya Complex for copper smelting and refining. Cerro de Pasco added a lead smelter and refinery in 1928, a sulfuric acid plant in 1939, a silver refinery in 1950, and a zinc refinery in 1952. As a result, the Complex comprises four key circuits (collectively the “Circuits”). These circuits are a copper smelter and refinery (the “Copper Circuit”); a lead smelter and refinery (the “Lead Circuit”); an anode residue plant and silver refinery (the “Precious Metals Circuit”); and a zinc roasting plant and a leaching and purification plant and refinery (the “Zinc Circuit”).¹⁰ The Complex also includes numerous other facilities designed to process by-products released during the smelting process, including sulfuric acid plants, an oxygen plant, and several pilot plants to recover minor metallic by-products.

⁹ Expert Report of Dr. Gino Bianchi-Mosquera, Environmental Issues Associated with the La Oroya Metallurgical Complex, Junin, Peru, February 8, 2021, at 8 (*hereinafter* “Bianchi Expert Report”).

¹⁰ The documents reference three or four circuits because the Precious Metals Circuit is a smaller circuit with limited environmental impacts; **Exhibit C-020**, Centromin, Environmental Impact Program, La Oroya Metallurgical Complex, January 13, 1997, § 3.1 at 63 (*hereinafter* “PAMA Operative Version”); *see also* Bianchi Expert Report at 7.

19. The following diagram shows the main facilities in each circuit and the interrelationships between the four Circuits.

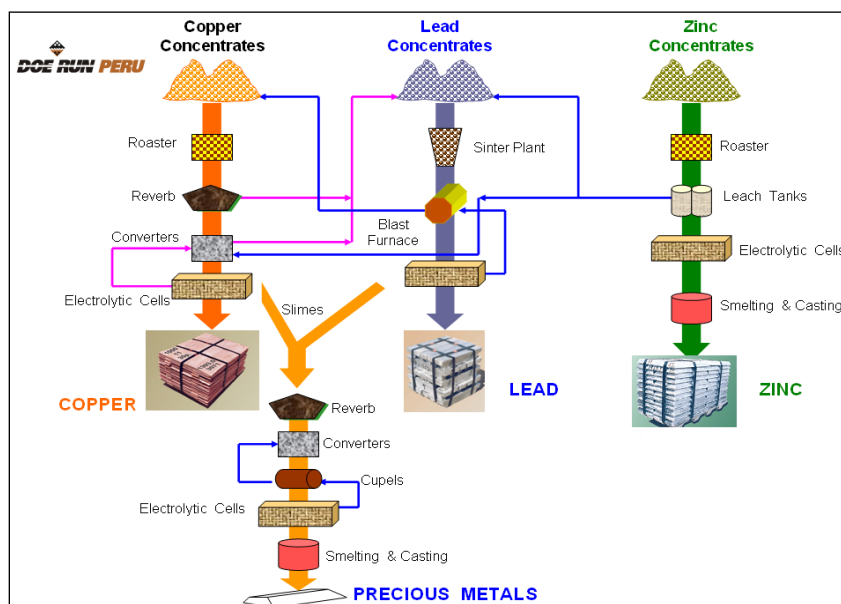


Figure 1. Diagram of the Complex's Four Integrated Circuits¹¹

20. Because smelters process concentrates to create a pure ore by burning-off and/or separating out unwanted impurities, it is very difficult to control emissions of such substances.¹² This is true of any smelter, but the La Oroya Complex faces particular challenges in this regard because the integrated smelting processes are among the most complex in the world. Indeed, the La Oroya Complex is one of only four smelting facilities worldwide capable of recovering numerous metals and by-products from complex, poly-metallic concentrates with high levels of impurities.¹³ While most smelters recover only one or two metals and a few by-products from a “clean” concentrate (*i.e.*, a concentrate with a high level of the target metal and a low level of impurities), the La Oroya Complex recovers 11 metals (copper, zinc, silver, lead, cadmium,

¹¹ **Exhibit C-021**, J. Carlos Huyhua, General Manager, Doe Run Peru, *Business in the Central Highlands of Peru (La Oroya): Future Potential in the National and World Context, and Business Potential in the 21st Century*, November 29, 2007 at 16 (*hereinafter* “2007 Huyhua Report”).

¹² Concentrate is produced at the mine by finely grinding the raw ore extracted from the ground and removing the gangue (waste), thus “concentrating” the metal components of the ore.

¹³ **Exhibit C-020**, PAMA Operative Version, § 3.0 at 18. The other three international complexes with comparable technology for poly-metallic mineral processing are: Union Minere Group Hoboken in Belgium, Boliden Minerals Roonskar in Sweden, and Dowa Mining in Japan.

indium, bismuth, gold, selenium, tellurium, and antimony) and numerous by-products (e.g., zinc sulfate, copper sulfate, sulfuric acid, arsenic trioxide, zinc dust, zinc-silver concentrates) from the poly-metallic concentrates produced by the central Andean mines.¹⁴

21. The composition of the concentrates processed at the Complex has major implications for its design and operation and for its potential environmental impacts. The Complex's four Circuits (copper, lead, precious metals, and zinc) are integrated to allow by-products and intermediary substances produced during the processing of concentrates in one circuit to be further processed and refined in the other circuits, thus maximizing the recovery of valuable metals.¹⁵ At the same time, the concentrates contain high levels of other substances that either lack economic value or that cannot be fully recovered, including sulfur, arsenic, and cadmium. Thus, the process of isolating and refining the target metals creates significant quantities of by-products, which contain substances that may be harmful to the environment and human health.

22. From 1922 through the 1990s, Peru's mining sector operated with little or no regulatory oversight. Mining companies were not required to control their emissions, nor were they required to remediate their environmental impacts.¹⁶ Peru's only environmental regulation was the General Law of Water, enacted in 1969 (47 years after the Complex was founded), which established environmental quality standards (*Estándares de Calidad Ambiental* or "ECAs") for

¹⁴ *Id.*, § 3.1 at 63.

¹⁵ **Exhibit C-088**, Offering Memorandum, La Oroya Metallurgical Complex, October 1996, at 3: ("La Oroya has been customized over the past 70 years to provide for the recovery of byproducts from polymetallic concentrates, which are often difficult or uneconomic to treat in standard metallurgical facilities. The integration of its three main circuits, in particular, has facilitated the treatment of complex feeds to produce five metals of marketable quality and to allow for the substantial recovery of twelve by-products.").

¹⁶ **Exhibit C-024**, World Bank, *Wealth and Sustainability: The Environmental and Social Dimensions of the Mining Sector in Peru*, December 1, 2005 at 63-4: ("The regulatory framework prior to the 1990's did not include any mechanisms that would require companies to comply with environmental or social standards or with the remediation/compensation of environmental degradation Thus, the reforms to the institutional and legal framework governing protection of the environment in the 1990's has contributed to a gradual change in the behavior of mining companies ... which have taken concrete steps and invested substantial sums to improve their environmental performance. [I]t is worth recognizing that in the past 10 years or so, the regulatory landscape for addressing and promoting environmental compliance has improved considerably.") (*hereinafter* "2005 World Bank Report"). *See also* Bianchi Expert Report at 2, 4-5 ("Throughout almost the entire period [from 1922-1997], Peru lacked meaningful environmental laws and regulations.").

water bodies.¹⁷ ECAs are generally applicable standards establishing the level of a particular contaminant present in a receiving body (*e.g.*, a river or the ambient air) that is considered by the Peruvian Government not to pose a threat to human health or the environment. But the Peruvian Government generally either failed to enforce the ECAs established by the General Law of Water or imposed nominal penalties on companies that breached the ECAs through their liquid effluent discharges.¹⁸

23. In 1973, the Peruvian Government created the MEM, which nationalized the Complex, among other things.¹⁹ Shortly thereafter, the Government created Centromin, a State-owned entity, to acquire the Complex.²⁰ On March 18, 1975, Peru enacted a decree affirming that Centromin was wholly owned by the State and requiring that it “act in harmony with the policy, objectives, and goals approved by the MEM in conformity with the National Development Plan.”²¹

¹⁷ Witness Statement of José Mogrovejo Castillo, Former Vice-President of Environmental Affairs for Doe Run Peru, dated February 11, 2021, Memorial Annex-B ¶ 11 (*hereinafter* “Mogrovejo Witness Stmt.”)

¹⁸ Mogrovejo Witness Stmt. ¶ 11.

¹⁹ **Exhibit C-022**, Presidential Decree No. 20492 concerning Nationalizing the Cerro Mines, December 24, 1973 (*hereinafter* “Decree No. 20492”). As Dr. Bianchi explains, “one of the stated reasons for the military’s 1974 nationalization of the CMLO was that [Cerro de Pasco Corporation] had not addressed the contamination” caused by historical operations, “and also had not made changes to facility operations to avoid the contamination that for years it recognized was caused by CMLO operations.” Bianchi Expert Report at 22. However, the Peruvian Government also failed to address these problems. *See id.* (“Despite this history, ... significant emissions continued unabated during the period of Centromin’s ownership and operation of the CMLO. Rather than take steps to address these impacts, Centromin continued with [Cerro de Pasco’s] practice of making annual compensation payments, cash payments, purchasing affected land, and providing land elsewhere in exchange for affected land. At the same time, ... Centromin failed to undertake actions necessary to remediate historic contamination from the CMLO.”) (citations omitted).

²⁰ *Id.*

²¹ **Exhibit C-023**, Organic Law No. 21117 concerning Centromin, March 18, 1975 (*hereinafter* “Law No. 21117”). The 1975 Organic Law also provided that Centromin’s purposes included “[p]erforming the activities intrinsic to the mining industry as approved by the State,” and “assuring the operativity and success of its activity in accordance with the basic principle that State entrepreneurial activity is a fundamental component of the mining industry’s development which contributes to the economic development of the country[.]”

B. DURING THE EARLY 1990S, PERU FAILED TO PRIVATIZE CENTROMIN BECAUSE OF THE LA OROYA COMPLEX’S ENVIRONMENTAL LEGACY AND OBSOLETE CONDITION

24. In November 1991, the Peruvian Government issued Legislative Decree 708, declaring the promotion of private investment in the mining sector in the national interest and eliminating the exclusive rights that previously had been granted to State-owned mining companies.²² As the Peruvian Government later explained in its official 1999 White Paper:

Since 1960 the governing criterion was that the best way to promote the economic growth and redistribute their benefits was through the state intervention that allocated resources according to the criteria set by centralized planning.

In contrast, in 1990, the implementation of a set of policies aimed at reducing the economic role of the State as well as to increase private sector activity assumes even greater importance.

From that time on, there was a significant change in the role of the State starting to create the necessary conditions to attract foreign investment and, in parallel, to design a privatization policy aimed at ensuring that the private sector is the dynamic engine of the economy.²³

25. A 1992 Resolution included Centromin in the privatization process.²⁴ Peru created a Special Privatization Committee to oversee Centromin’s privatization, including the sale of the La Oroya Complex (*Comité Especial de Privatización* or “CEPRI”).²⁵ In April 1994, Peru’s Privatization Committee attempted to sell Centromin to private investors.²⁶ At the time, Centromin owned the La Oroya Complex, as well as several mines and related infrastructure.

²² **Exhibit C-025**, Legislative Decree No. 708 concerning promoting investments in the Mining Sector, November 6, 1991 at 1 (*hereinafter* “Decree No. 708”).

²³ **Exhibit C-012**, 1999 White Paper at 18.

²⁴ **Exhibit C-026**, Supreme Resolution No. 102-92-PCM concerning privatization of Centromin, February 21, 1992 at 1 (*hereinafter* “Resolution No. 102-92”).

²⁵ **Exhibit C-004**, White Paper concerning the Privatization of Metaloroya, 1997 (*hereinafter* “1997 White Paper”).

²⁶ **Exhibit C-029**, B.S. Gentry and L.O. Fernandez, *Mexican Steel*, in PRIVATE CAPITAL FLOWS AND THE ENVIRONMENT: LESSONS FROM LATIN AMERICA 188 (Bradford S. Gentry ed., Edward Elgar Publishing 1998) 213 (“[A] total of 28 companies, among them several important firms from Canada,

26. Peru's first effort to privatize Centromin failed.²⁷ As Peru later explained in its 1997 and 1999 White Papers, no foreign (or domestic) investor even submitted a bid to purchase Centromin, in part because the liability associated with environmental contamination claims was too great, and the scope and complexity of Centromin's operations, with its obsolete facilities and equipment, made it too daunting to attempt to modernize.²⁸

27. Peru considered shutting down the Complex in part because of its environmental problems.²⁹ But Peru ultimately decided that it needed the Complex to continue operating because it played a crucial role in the social and economic development of the region.³⁰ The Complex was a major employer and provider of health care and educational services for the local population.³¹ It also was the only facility in the region able to process the complex poly-metallic concentrates produced at surrounding mines, meaning that the mines—which were themselves a crucial source of employment—would have difficulty selling their ores if the Complex were closed. In the end, Peru's determination that it needed to “maintain ... continuity” of Centromin's operations prevailed, and Peru made the continued operation of the La Oroya Complex a fundamental objective of its privatization strategy.³²

England, Japan and China, signed up to participate in the auction [of Centromin]. However, despite the initial interest, during the first call for bids in April 1994, none of the companies submitted a proposal and the auction had to be declared a failure.”) (*hereinafter* “*Mexican Steel*”).

²⁷ **Exhibit C-029**, *Mexican Steel* at 213; **Exhibit C-012**, 1999 White Paper at 20 (explaining that “in spite of the interest shown until the last moment by some of the most important companies, there was no concrete proposal during the auction on May 10, 1994”). *See also* Witness Statement of Dennis Sadlowski, Former Vice-President of Law for Doe Run Peru, February 15, 2021 ¶¶ 10, 15-18. (*hereinafter* “Sadlowski Witness Stmt.”).

²⁸ **Exhibit C-004**, 1997 White Paper at 6, 20 (“[T]he main aspects which led to the possible investors rejecting [the purchase of Centromin] were: the size of the Company, the complexity of its operations, the accumulated environmental liabilities and the social setting.”).

²⁹ *Id.* at 19.

³⁰ **Exhibit C-020**, PAMA Operative Version at 20 (“The importance of the Metallurgic Complex for the social and economic development of the region makes it unlikely that its operations will cease in the long or medium term.”).

³¹ *See* **Exhibit C-004**, 1997 White Paper at 35; **Exhibit C-012**, 1999 White Paper at 62-3.

³² **Exhibit C-012**, 1999 White Paper at 32, 36.

C. PERU'S PRIVATIZATION EFFORTS WERE HAMPERED BY ITS ADOPTION OF NEW ENVIRONMENTAL STANDARDS AIMED AT REMEDIATING DECADES OF CONTAMINATION

28. Peru's attempt to privatize the La Oroya Complex was further complicated by the fact that Peru simultaneously was rolling out new environmental standards, after years of contamination, minimal regulations, and ineffective enforcement, to address the obsolete condition and environmental legacy of facilities such as the La Oroya Complex, caused by Peru's general failure to maintain or modernize them.

29. In September 1990, Peru enacted a new Environmental and Natural Resources Code. The new Code imposed several general requirements on mining and metallurgical companies, including obligations to include in their facilities equipment for control of contaminants and to treat wastewaters used in the processing of minerals.³³

30. Then, in June 1993, the Peruvian Government issued Regulations for Environmental Protection in Mining and Metallurgy.³⁴

31. The new environmental regulations required, among other things, companies with existing operations to engage in a preliminary environmental study (*Evaluación Ambiental Preliminar*) to identify the environmental problems generated by their operations;³⁵ and then to submit for approval by the MEM the PAMA consisting of projects intended to reduce pollutants and to bring their operations into compliance with the various environmental standards issued by the Peruvian Government.³⁶ Under the new regulations, a company performing PAMA projects is deemed to be in compliance with the applicable environmental standards during the period approved to complete the PAMA projects.³⁷ The objective of the PAMA is to ultimately bring the

³³ **Exhibit C-027**, Legislative Decree No. 613 concerning the Environmental and Natural Resources Code, September 9, 1990, arts. 65 and 66 at 16 (*hereinafter* "Decree No. 613").

³⁴ **Exhibit C-028**, Supreme Decree No. 016-93-EM concerning Regulations for Environmental Protection in Mining and Metallurgy, April 28, 1993, art. 5 at 5 (*hereinafter* "Decree No. 016-93").

³⁵ *Id.*, Interim Provision 2(a) at 14. *See also* Mogrovejo Witness Stmt. ¶¶ 16-19.

³⁶ *Id.*, Interim Provision 2(b) at 15. *See also* Mogrovejo Witness Stmt. ¶¶ 16-19; Bianchi Expert Report at 4-5, 22-24.

³⁷ Mogrovejo Witness Stmt. ¶¶ 17-19; Bianchi Expert Report at 4-5.

company into compliance with the applicable standards by the end of the period approved for completing the PAMA.³⁸

32. In accordance with the 1993 environmental regulations, Centromin conducted a preliminary evaluation of the environmental situation at the La Oroya Complex in 1994. In March 1995, Centromin submitted the results in the form of a preliminary environmental assessment (the “Preliminary Environmental Assessment” or “EVAP”).³⁹

33. Centromin’s EVAP highlighted a number of significant issues, including substantial lead, arsenic, and other heavy metal contamination of nearby rivers through leakage and direct discharges from the plant,⁴⁰ as well as particulate emissions of lead and other heavy metals throughout the plant.⁴¹ According to the EVAP, 95.7% of the liquid effluents tested at 49 monitoring points in the Complex exceeded the maximum permissible limit (*Limite Máximo Permissible* or “LMP”) for lead, while 58.7% exceeded the LMP for arsenic and 45.7% exceeded the LMP for cadmium.⁴² The EVAP also recognized severe air contamination from three sources: the main chimney or stack, secondary chimneys or stacks, and fugitive emissions.⁴³ In this context, the EVAP noted that the pervasive lead contamination was “extremely dangerous” and “deserv[ed] greater attention.”⁴⁴

34. The MEM approved the EVAP on July 31, 1995, and gave Centromin until August 30, 1996 to submit its PAMA, which would detail the proposed projects to address the

³⁸ **Exhibit C-028**, Decree No. 016-93-EM, art. 9 at 6. *See also Exhibit C-024*, 2005 World Bank Report at 88. *See also* Mogrovejo Witness Stmt. ¶¶ 16-19; Bianchi Expert Report at 22-24 (“Based on the EVAP, the facilities were then required to prepare and submit for approval a PAMA, identifying specific environmental projects and investments to be implemented, which were intended to bring the facility into compliance with the new environmental requirements over a period of years.”).

³⁹ **Exhibit C-030**, Centromin, *Preliminary Environmental Evaluation (“EVAP”) Monitoring Report on Water and Air Quality and Emissions (March 1994 to February 1995)*, March 1995 (*hereinafter* “1995 Centromin Report”); **Exhibit C-031**, Centromin, *Preliminary Environmental Evaluation (“EVAP”) Monitoring Report of Gaseous Emissions and Environmental Air Quality*, March 1995 (*hereinafter* “1995 Centromin Gaseous Emissions and Environmental Air Quality Report”).

⁴⁰ *Id.* at 20, 24-5.

⁴¹ **Exhibit C-031**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 2, 4-5.

⁴² **Exhibit C-030**, 1995 Centromin Water, Air Quality, and Emissions Report at 20.

⁴³ **Exhibit C-031**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 2.

⁴⁴ **Exhibit C-030**, 1995 Centromin Water, Air Quality, and Emissions Report at 13.

environmental problems identified in the EVAP, and ultimately bring the Complex into compliance with the environmental standards (LMPs and ECAs) issued by the MEM.⁴⁵

35. In January 1996, the MEM issued a resolution establishing LMPs for liquid effluent discharges from mining and metallurgical facilities.⁴⁶ Unlike ECAs, which establish the level of a particular contaminant that may be present in a receiving body (*e.g.*, a river or the ambient air), LMPs set limits (usually expressed as a concentration) on the amount of a particular contaminant that may be contained in the discharges or emissions from a facility.⁴⁷ In July 1996, the MEM issued another resolution, this time establishing LMPs for air emissions from mining and metallurgical facilities, as well as ECAs for ambient air in areas affected by such facilities.⁴⁸ For example, the LMP for lead air emissions under the MEM's July 1996 standards was 25 $\mu\text{g}/\text{m}^3$,⁴⁹ while the ECA for SO_2 in the ambient air was a maximum daily average of 572 $\mu\text{g}/\text{m}^3$ and a maximum annual average of 172 $\mu\text{g}/\text{m}^3$.⁵⁰

36. At the time, the La Oroya Complex did not comply with—and was far from being able to comply with—most of the new LMPs and ECAs that the MEM issued.⁵¹ As Dr. Bianchi explains, during Centromin's operation of the Complex:

...air emissions from the CMLO exceeded both Peruvian and international standards; large volumes of highly polluted liquid effluents were discharged

⁴⁵ **Exhibit C-013**, Centromin Preliminary PAMA, § 1.1. at 12 (“After all *Evaluación Ambiental Preliminar* observations were acquitted; with documents presented to the Ministry of Energy, Environmental Affairs General Office on the 31 of July 1995. A date for the submission of PAMA was set, August 30, 1996”).

⁴⁶ **Exhibit C-032**, Ministerial Resolution No. 011-96-EM/VMM approving permissible exposure for liquid effluents for mining-metallurgy activities, January 13, 1996 (*hereinafter* “Resolution No. 011-96”).

⁴⁷ ECAs are sometimes referred to as “LMPs” for air quality or water quality. However, Claimants use the term “LMPs” in this Statement of Claim only to refer to the maximum permissible limits on the emissions and discharges from a facility.

⁴⁸ **Exhibit C-033**, Ministerial Resolution No. 315-96-EM-VMM approving permissible exposure limits of elements and compounds present in Gaseous Emissions from mining-metallurgy units, July 19, 1996 (*hereinafter* “Resolution No. 315-96”).

⁴⁹ *Id.*, art. 4 at 2.

⁵⁰ *Id.*, Annex 3 at 6.

⁵¹ *See e.g.*, Bianchi Expert Report at 3, 24-28; Mogrovejo Witness Stmt. ¶¶ 16-19.

routinely to the Mantaro and Yauli Rivers; as much as 40 percent of the slag generated at the facility was discharged into the Mantaro River; handling of arsenic trioxide was inadequate; arsenic trioxide deposits were improperly sited and leaching into the Mantaro River; and zinc ferrite wastes were improperly stored in deposits that failed to meet environmental requirements.⁵²

37. After the MEM approved Centromin’s EVAP for the La Oroya Complex, the Special Privatization Committee retained Knight Piésold, a U.S. environmental consulting group, to provide an independent environmental evaluation of the Complex,⁵³ and assess proposed PAMA projects in light of the stated goal of the PAMA to ultimately bring the Complex into compliance with Peru’s new environmental standards (LMPs and ECAs) for mining and metallurgical facilities.

38. Given the absence of good data and engineering studies, Knight Piésold considered it too early to list specific actions required for compliance, noting that the project lacked “a comprehensive survey of the complete La Oroya works”⁵⁴ and an evaluation of human health related effects.⁵⁵

39. Knight Piésold also noted that discharges from the Complex into the surrounding rivers significantly exceeded Peruvian legal limits for lead and arsenic, among other contaminants⁵⁶ and questioned whether “an older facility” like the La Oroya Complex would ever be able to comply with the ECA issued by the MEM in July 1996.⁵⁷ In short, the report concluded there was no simple remedy to the existing air quality problem and any solution would require “detailed engineering evaluation beyond the scope of the present evaluation.”⁵⁸ In addition, the report concluded that the implementation of adequate controls to meet standards might take in

⁵² Bianchi Expert Report at 3.

⁵³ **Exhibit C-014**, Knight Piésold Report for Centromin.

⁵⁴ *Id.* at 34.

⁵⁵ *Id.* at 37, 56.

⁵⁶ *Id.* at 38-39.

⁵⁷ *Id.* at 2, 27-8, 32, 33.

⁵⁸ *Id.* at 33.

excess of the 10 year implementation schedule⁵⁹ and that flexibility in the implementation and application of new standards would be necessary if La Oroya is to continue as an economically viable operation.⁶⁰

40. In late 1996, Centromin submitted for approval by the MEM a final PAMA for the La Oroya Complex, setting forth sixteen environmental projects that Centromin deemed sufficient to bring the Complex into compliance with the LMPs and ECAs in existence as of 1996.⁶¹ The MEM approved the PAMA for the La Oroya Complex on January 13, 1997.⁶²

41. Despite Knight Piésold's warning that compliance with air emissions standards likely would require more than 10 years,⁶³ the MEM granted only 10 years for all of the La Oroya PAMA projects to be completed, including those related to air emissions.⁶⁴ The final PAMA estimated that the total cost to complete the sixteen projects would be US\$ 129 million.⁶⁵

42. The sixteen PAMA projects were intended to address four categories of environmental impacts:⁶⁶ (i) air emissions and air quality affected by the facility's processes for smelting and refining concentrates that generate SO₂, (ii) soil remediation and rehabilitation of the area around the Complex that was damaged by the facility's air emissions from 1922 to 1997,⁶⁷

⁵⁹ *Id.* at 33.

⁶⁰ *Id.* at 33.

⁶¹ *See generally* **Exhibit C-020**, PAMA Operative Version at 24, 167-71, 279.

⁶² **Exhibit C-020**, PAMA Operative Version; **Exhibit C-004**, 1997 White Paper, at 38-9.

⁶³ **Exhibit C-014**, Knight Piésold Report for Centromin at 33 ("Implementation of adequate controls to meet standards may take "in excess of the ten-year implementation schedule being considered by the Peruvian Ministry").

⁶⁴ **Exhibit C-034**, Memorandum, No. 1020-96-EM/DGAA from J. Mogrovejo (Doe Run Peru) to Director General of Mining (Ministry of Energy & Mines), December 27, 1996 (*hereinafter* "Memorandum No. 1020-96").

⁶⁵ **Exhibit C-020**, PAMA Operative Version at 20-26, 149. *See also* Bianchi Expert Report at 32.

⁶⁶ These projects were later divided between Centromin and Doe Run Peru, with Centromin retaining the soil remediation and rehabilitation projects and some of the slag management projects. *See, e.g.*, Bianchi Expert Report at 24-27.

⁶⁷ In actuality, the area impacted by the Complex's operations was significantly larger than stated in the PAMA and exceeded 500,000 hectares. *See* Bianchi Expert Report at 21, 79. According to the PAMA, SO₂ and heavy metals contained in the "smoke" emitted from the Complex had damaged in excess of 14,000 hectares. The PAMA also stated that although the vegetation had redeveloped on a portion of this land following Cerro de Pasco's installation of electrostatic precipitators to control particulate

(iii) control of liquid effluents due to severe water contamination in the area around the Complex⁶⁸, and (iv) management of slag and other waste deposits due to the inadequate disposal and storage of certain by-products, which were leaching or spilling into the surrounding rivers.⁶⁹

43. Centromin's PAMA for the Complex was at best a very basic plan, prepared using preliminary data and designs.⁷⁰ Thus, significant revisions and expansions of the PAMA's scope, and drastic increases in the level of investment, were required to address the numerous environmental impacts resulting from the Complex's operations.⁷¹

emissions, almost 4,000 hectares remained severely impacted. **Exhibit C-020**, PAMA Operative Version at 207. However, limiting the impacted area to 4,000 hectares was an error. As there had been no remediation done on the extensive area impacted by the Complex's operations, that land continued to have high levels of heavy metal contaminants, as later studies conducted on behalf of the Peruvian Government confirm. *See* Bianchi Expert Report at 19-94. These contaminated soils, which have not been remediated and persist today, continue to contribute to exposures to lead and other heavy metals and pose ongoing risks to human health in the areas surrounding the Complex. *See* Expert Report of John A. Connor, P.E., P.G., BCEE, February 8, 2021, at 22-28 (*hereinafter* "Connor Expert Report"); Expert Report of Rosalind A. Schoof, PhD, DABT, February 3, 2021, at 24-27 (*hereinafter* "Schoof Expert Report").

⁶⁸ *See generally* **Exhibit C-020**, PAMA Operative Version at 68, 74, 88-96, 183-184, 218

⁶⁹ *Id.* at 91-95.

⁷⁰ *Compare* **Exhibit C-020**, PAMA Operative Version at 160, Project No. 8 (projecting construction of an industrial wastewater treatment plant over two years at a cost of US \$2.5 million), *with* **Exhibit C-018**, Doe Run Peru 2009 Extension Request at 17-21 (discussing actual industrial wastewater treatment plant constructed by DRP after reengineering at a cost US \$ 38.58 million, or 15 times the cost projected in the PAMA).

⁷¹ As Knight Piésold later pointed out, other missing items included disposal of hazardous wastes other than arsenic, zinc, copper and slags, such as explosives or chemicals used in smelting, a contingency plan if a project was less successful than anticipated, monitoring programs for vegetation, and mitigation of health issues. *See* **Exhibit C-035**, Letter from K. Dwyer (Knight Piésold) to D. L. Vornberg (Doe Run Peru), *Technical and Regulatory Review of Commitments Outlined in the December La Oroya PAMA*, August 29, 1997 at 7-8 (*hereinafter* "Knight Piésold PAMA Review").

D. PERU AND CENTROMIN REVISED THEIR PRIVATIZATION STRATEGY IN THE SECOND BIDDING PROCESS BY MAKING CLEAR THAT THEY WOULD RETAIN AND ASSUME LIABILITY FOR THIRD-PARTY CLAIMS RELATING TO ENVIRONMENTAL CONTAMINATION AND REMEDIATE THE AREAS AROUND THE LA OROYA COMPLEX

44. In September 1996, Peru created a new legal entity, *Empresa Metalúrgica La Oroya S.A.* (“Metaloroya”), and made it the owner of the La Oroya Complex, thus segregating the Complex from Centromin’s other business operations.⁷²

45. On January 27, 1997, two weeks after the MEM approved the PAMA,⁷³ the Special Privatization Committee announced International Public Tender No. PRI-16-97 and invited private investors to bid for Metaloroya, the company that owned the Complex.⁷⁴ The bidders included, among others, *Servicios Industriales Peñoles S.A. de C.V.* (“Peñoles”) from Mexico and the Renco Consortium.⁷⁵

46. After failing to privatize Centromin in 1994, the Peruvian Government adopted a new privatization strategy: Centromin itself (and not the prospective new investor) would retain the responsibility for remediating the contaminated soil in this area and liability for potential third-party claims relating to environmental contamination. As Peru explained in its 1999 White Paper, under this new privatization strategy, Centromin, as the seller, would retain responsibility “to remediate the environmental problems accumulated in the past, as well as the claims of third parties in relation to environmental liabilities,” while the purchaser of the Complex would take responsibility for designing, constructing, and implementing environmental projects that would upgrade and modernize the Complex in order to ultimately bring it into compliance with Peru’s environmental standards.⁷⁶

⁷² **Exhibit C-004**, 1997 White Paper at 21.

⁷³ *See supra* ¶ 40.

⁷⁴ **Exhibit C-004**, 1997 White Paper at 50-51.

⁷⁵ *Id.* at 51.

⁷⁶ **Exhibit C-012**, 1999 White Paper at 62. As part of this process, Peru hired a market consultant, who surveyed potential investors and found that they were overwhelmingly concerned with the existence of problems arising from the environmental, labor and social liabilities. Peru followed all of the consultant’s recommendations, including “creat[ing] an environmental fund to finance the clean-up tasks and resolution of the problems identified in an Environmental Study,” “[having a] recognized international consultant prepare an environmental study to identify the environmental liabilities of each

47. In February and March 1997, Centromin answered questions from the bidders, and published two rounds of bidders' questions and official answers about the Complex and the bidding and acquisition process.⁷⁷ The STA that the parties ultimately executed considered these consultations to be of "supplemental validity,"⁷⁸ and Centromin's answers to the bidders' questions provide guidance as to how Centromin understood its contractual and PAMA obligations.

48. In the second round of consultations published on March 26, 1997, Centromin confirmed its commitment to assume liability for third-party environmental claims. According to Mr. Sadlowski, "Centromin's response to Question 41 ... is quite clear"⁷⁹ in this regard:

QUESTION No. 41

Taking into account that CENTROMIN will assume responsibility for the existing contamination at La Oroya's Smelter, and the new operator will be obligated later on to continue with the same contamination practices for a period of time, as authorized by the terms of the PAMA...

Would CENTROMIN accept responsibility for all the contaminated land, water, and air until the end of the period covered by the PAMA or how can it determine which part corresponds to whom?

ANSWER

Affirmative, provided that METALOROYA complies with the PAMA's obligations that are its responsibility, otherwise, METALOROYA will be responsible from the date of non-compliance

unit," and "designat[ing] the entity to take care of the claims of third parties for damages related to environmental practices before the transfer date." *Id.* at 35. In addition, Peru was advised to "establish the guidelines on the attention to the claims, verify its source and determination of compensation." *Id.* See also Bianchi Expert Report at 94-111 (discussing Centromin's "obligation to remediate impacts caused by historical and ongoing emissions from the [Complex] that occurred during DRP's execution of its PAMA").

⁷⁷ **Exhibit C-036**, Centromin, Public International Bidding PRI-16-97 - First Round of Consultations and Answers, February 27, 1997 (*hereinafter* "Consultation Round 1"); **Exhibit C-005**, Centromin, Public International Bidding PRI-16-97 - Second Round of Consultations and Answers, March 26, 1997 (*hereinafter* "Consultation Round 2").

⁷⁸ See **Exhibit C-001**, Stock Transfer Agreement, Clause 18.1(A) at 64.

⁷⁹ Sadlowski Witness Stmt. ¶ 24.

with the obligation, in accordance with the competent authority's opinion [Clauses 3.3. (5.3) and 4.2 (6.2) of the Models of the Contract].⁸⁰

49. Clause 3 of the Model Contract, which formed part of the bid documents of International Public Tender No. PRI-16-97 for Metaloroya, states that Metaloroya would assume liability for third-party environmental claims only in very specific circumstances.⁸¹ Clause 4.2 establishes that Centromin would assume liability for all other third-party environmental claims, including all claims based on existing contamination prior to the adoption of the PAMA in January 1997.⁸²

50. During the second round of consultations, Centromin also confirmed that it had set aside monies to finance its remediation obligations, ensuring, in its view, that it would comply with said obligations,⁸³ while adding that Metaloroya would be held harmless from Centromin's remediation obligations and from all third-party claims that were Centromin's responsibility:

QUESTION No. 42

Assuming that the new owners of Metaloroya comply with the PAMA's terms and adopt measures against contamination to comply with National and International Norms, but CENTROMIN fails to remediate the existing environmental obstacles (pre-transfer) and some legal entity (domestic or foreign) presents a claim before a national or international court...

How does CENTROMIN propose to hold METALOROYA harmless?

ANSWER

⁸⁰ **Exhibit C-005**, Consultation Round 2, Question No. 41 (emphasis added).

⁸¹ **Exhibit C-058**, Model Contract, Capital Increase and Share Subscription Contract of Empresa Metalúrgica La Oroya S.A., February 6, 1997, Clause 4.2.

⁸² *Id.*, Clauses 3 and 4.2.

⁸³ **Exhibit C-005**, Consultation Round 2, Question No. 42. *See also* **Exhibit C-036**, Consultation Round 1, Answer to Question 13 at 57. The bidders had initially proposed assuming Centromin's PAMA obligations and then obtaining compensation from Centromin upon completion. Centromin refused this option, instead assuring the bidders, including the Renco Consortium, of its intent to remediate and assume all of its PAMA obligations through the creation of a fund: "CENTROMIN has ... established a fund to finance the execution of obligations of environmental remedying referred to in Clause Six under the terms of the PAMA of La Oroya. Inasmuch as CENTROMIN maintains this responsibility towards third parties, including environmental authorities, control by La Empresa is not necessary."

CENTROMIN has ordered the organization of and provided the funds to comply with the environmental remediations for which it is responsible, thereby guaranteeing their compliance.

In addition, METALOROYA will be held harmless from such remediations and from third-party claims that are CENTROMIN's responsibility by signing the contract.⁸⁴

51. In sum, the questions from potential investors during the two rounds of bidders' questions—and the responses that the bidders were given—made four points clear: (1) investors would not purchase the La Oroya Complex if they were saddled with the Complex's environmental legacy; (2) investors would not be required to assume liability for third-party claims that arose from the operation of the Complex before or during the modernization and upgrade; (3) Centromin would need to remediate the soil around La Oroya; and (4) Peru would have to guarantee all of Centromin's obligations.

E. THE RENCO CONSORTIUM PURCHASED THE LA OROYA COMPLEX FROM CENTROMIN ON OCTOBER 23, 1997, WITH A GUARANTY AGREEMENT FROM PERU FOR ALL OF CENTROMIN'S CONTRACTUAL OBLIGATIONS

52. The auction of the shares in Metaloroya, which owned the La Oroya Complex, took place on April 14, 1997.⁸⁵ The bid initially was awarded to Peñoles, but Peñoles withdrew its bid on July 9, 1997 (forfeiting its bid bond).⁸⁶ On July 10, 1997, the Special Privatization Committee notified the Renco Consortium, the runner-up bidder, that Peñoles had withdrawn its bid,⁸⁷ and the Renco Consortium agreed to enter into negotiations with the Committee to acquire Metaloroya through a STA. As required in the bidding conditions, the Renco Consortium also agreed to establish DRP, a Peruvian subsidiary, to own and operate the Complex.⁸⁸

⁸⁴ *Id.*, Question No. 42 (emphasis added).

⁸⁵ **Exhibit C-004**, 1997 White Paper at 51.

⁸⁶ *Id.* at 51. *See also* Sadlowski Witness Stmt. ¶¶ 16-17.

⁸⁷ *Id.* at 52. *See also* Sadlowski Witness Stmt. ¶ 17.

⁸⁸ **Exhibit C-005**, Consultation Round 2, Question Consultation No. 7 at 5 (“If the bidder that is Awarded the Bid or the subsidiary to which it transfers said award, is not Peruvian, and there is an intent to acquire shares that CENTROMIN possesses in the COMPANY, one or the other must establish a Peruvian subsidiary in order to execute the contract...”); **Exhibit C-037**, Deed of Incorporation for Doe Run Peru, S.A., September 8, 1997 (*hereinafter* “DRP Incorporation”). *See also* Witness Statement of

53. The negotiations leading to the execution of the STA involved Renco, DRR, and the Peruvian Government, in addition to DRP and Centromin.⁸⁹ Dennis Sadlowski, the Vice-President of Law for Renco from 1996 to February 2020, oversaw and participated in the negotiations for the STA, directing the Renco Consortium’s strategy.⁹⁰ He testified that throughout the negotiations with Centromin and the Special Privatization Committee, the Renco Consortium made it “absolutely clear” that it would not purchase the Complex without Centromin retaining responsibility for any third-party claims related to historical environmental contamination in and around the Complex, as well as contamination occurring during the term of the PAMA.⁹¹ In addition, the Renco Consortium advised Centromin that for a purchase of Metaloroya to occur, Centromin would have to retain liability and undertake the responsibility for remediation of the historical contamination in and around La Oroya.⁹² Like Mr. Buckley, Mr. Sadlowski confirms that Centromin and the Special Privatization Committee agreed to these conditions.⁹³ Mr. Sadlowski adds that Juan Carlos Barcellos, the President of Peru’s Special Privatization Committee, expressly assured the Renco Consortium that Centromin’s assumption of liability would protect not just DRP, but would also extend to Renco, DRR, and any other parent entity of DRP, which the contract expressly provides (as set forth in Section II.F below):

Juan Carlos Barcellos and others from Centromin/CEPRI also assured us that this protection would extend to Renco, Doe Run Resources, and any parent entity. Craig Johnson and Raul Ferrero, at my direction, discussed this with Centromin/CEPRI representatives and were unequivocal that this protection had to extend to the Renco Consortium members and any related parties. I don’t recall specifically who said it, but the response was that under Peruvian law, a parent or affiliate cannot be held liable for the acts of a subsidiary, so we should not be concerned about parent or related entity liability for third-party claims. We advised them we were concerned about, among other things, potential lawsuits against Renco and others in the United States, or elsewhere, and that without such protection we would not

Kenneth Buckley, Former President and General Manager for Doe Run Peru, dated November 18, 2020, at ¶ 8. (*hereinafter* “Buckley Witness Stmt.”); Sadlowski Witness Stmt. ¶¶ 7-8.

⁸⁹ See Buckley Witness Stmt. ¶¶ 8-9.

⁹⁰ Sadlowski Witness Stmt. ¶¶ 4-5.

⁹¹ *Id.* ¶¶ 8-10, 23.

⁹² *Id.* ¶¶ 8-10, 21-22.

⁹³ *Id.* ¶¶ 23-26.

go forward with the deal. It was a challenge to explain to the government why such a clause would be necessary, given their background in Peruvian law. Nevertheless, and to ensure that the necessary clarification was there, Centromin agreed to draft 6.2 and 6.3 of the STA broadly, so that they encompassed claims against parent entities, or other third parties.⁹⁴

54. Kenneth Buckley, who served as President and General Manager of DRP from September 1997 to September 2003, was involved in the negotiation of the STA.⁹⁵ During those negotiations, a meeting took place at which Mr. Buckley informed Mr. Barcellos, and Jorge Merino, the General Manager of Centromin who later became Minister of Energy and Mines, that the Renco Consortium would “walk” unless Centromin agreed to retain and assume liability for all third-party claims relating to historical environmental contamination and to remediate the areas in and around the town of La Oroya.⁹⁶ Mr. Buckley insisted that those key terms were a “deal-breaker.”⁹⁷ After consulting with his colleagues, Mr. Merino said that Centromin would agree to assume liability for past harm and harm that occurred while DRP was upgrading the outdated facility to control its emissions, and to remediate the town and surrounding areas.⁹⁸

55. According to Mr. Buckley, DRP and Renco also made clear during the negotiations with the Government that “it was important that Centromin carry out its cleanup of the town and surrounding areas at the same time that Doe Run Peru was upgrading the Complex in order to reduce future emissions levels. We knew that the accumulated historical contamination posed a significant health risk for the local population, and we would never have accepted that Centromin start cleaning up the town only after Doe Run Peru had completed all of its PAMA projects.”⁹⁹

56. On October 16, 1997, one week before Centromin and DRP entered into the STA,¹⁰⁰ the MEM issued Directorial Resolution 334-97-EM/DGM, which allocated certain PAMA

⁹⁴ *Id.* ¶ 25.

⁹⁵ Buckley Witness Stmt. ¶ 3.

⁹⁶ *Id.* ¶¶ 11-12.

⁹⁷ *Id.* ¶ 12.

⁹⁸ *Id.*

⁹⁹ *Id.* ¶ 13.

¹⁰⁰ *See infra* ¶ 57.

projects to Metaloroya (which would be merged into DRP in December 1997)¹⁰¹ and certain projects to Centromin.¹⁰² DRP would be in charge of modernizing and updating the La Oroya Complex, while Centromin would be responsible for remediating the existing contamination and the contamination that would continue to emanate from the Complex during the 10 year period that DRP would be working to complete its PAMA projects.¹⁰³

57. On October 23, 1997, Centromin and DRP, Renco and DRR entered into the STA.¹⁰⁴ Under the Agreement, DRP acquired 99.98% of the outstanding shares of Metaloroya in return for two purchase price payments to Centromin in the total amount of US\$ 121,440,608.¹⁰⁵ In addition, DRP made a separate capital contribution of US\$ 126,481,383.24 to Metaloroya on October 23, 1997.¹⁰⁶

¹⁰¹ See *infra* ¶ 59.

¹⁰² **Exhibit C-015**, Resolution No. 334-97; **Exhibit C-016** September 19, 1997 Letter at 9-12; **Exhibit C-001**, Stock Transfer Agreement, Clause 5, preamble.

¹⁰³ See **Exhibit C-012**, 1999 White Paper at 12; **Exhibit C-001**, Stock Transfer Agreement, arts. 5, 6 at 16-28. See also Buckley Witness Stmt. ¶¶ 11-12; Mogrovejo Witness Stmt. ¶ 23. The PAMA projects that Centromin retained included the rehabilitation of La Oroya (Project No. 4), the closure of the copper/lead slag deposit (Project No. 13), the closure of the zinc ferrite deposit (Project No. 15), and part of the closure of the arsenic trioxide deposit (Project No. 14) (see **Exhibit C-016**, September 19, 1997 Letter at 11-12; **Exhibit C-015**, Resolution No. 334-97; and **Exhibit C-020**, PAMA Operative Version at 147). DRP had the option of taking over PAMA Projects No. 13 and No. 15 and of continuing to use them by undertaking certain required upgrades. DRP exercised this option in 2000, completing the first upgrade in 2002 and the second in 2004 (see **Exhibit C-056**, Directorial Resolution No. 178-99-EM/DG concerning the amendment of the action and investment schedule of the PAMA, October 19, 1999). In 2001, the Ministry of Energy & Mines modified the PAMA and DRP officially took over Project No. 15 (see **Exhibit C-057**, Directorial Resolution No. 133-2001-EM-DGAA concerning modifying the PAMA for La Oroya Metallurgical Complex, April 10, 2001 at 2-4).

¹⁰⁴ **Exhibit C-001**, Stock Transfer Agreement, Preamble at 2-3. Jeffery L. Zelms signed the Stock Transfer Agreement on behalf of the Doe Run Resources Corporation, Marvin M. Koenig on behalf of the Renco Group, Cesar Polo Robillard on behalf of Centromin and Jorge Merino Tafur on behalf of Metaloroya.

¹⁰⁵ **Exhibit C-001**, Stock Transfer Agreement, arts. 1.2, 1.3 at 9-10; **Exhibit C-004**, 1997 White Paper at 13. See also Sadlowski Witness Stmt. ¶ 18.

¹⁰⁶ **Exhibit C-004**, 1997 White Paper at 13; **Exhibit C-001**, Stock Transfer Agreement, Clauses 3.2, 3.4 at 11-12. See also Sadlowski Witness Stmt. ¶ 18.

58. On November 21, 1997, Peru and DRP entered into a Guaranty Agreement pursuant to which Peru guaranteed the representations, securities, guaranties, and obligations undertaken by Centromin in the STA.¹⁰⁷

59. On December 30, 1997, Metaloroya merged into DRP following approval from the Peruvian Government.¹⁰⁸

F. UNDER THE STA AND THE GUARANTY AGREEMENT, CENTROMIN AND PERU RETAINED AND ASSUMED LIABILITY FOR THIRD-PARTY CLAIMS AND DAMAGES RELATING TO ENVIRONMENTAL CONTAMINATION AND COMMITTED TO PERFORM CENTROMIN'S PAMA OBLIGATIONS AND REMEDIATE THE AREAS AROUND THE COMPLEX

1. Key Language of the STA related to Liability for Third-Party Claims and Damages

60. Centromin agreed in the STA to retain and assume full liability for third-party claims relating to environmental contamination under virtually all circumstances, if such claims arose in relation to the operation of the La Oroya Complex prior to its sale by Peru or during the period approved for performing the PAMA projects to slowly bring the Complex into compliance with applicable emissions standards.¹⁰⁹ If a third-party claim were to arise after the period approved for completing the PAMA projects, then liability would be apportioned between Centromin/Peru and DRP.¹¹⁰

61. Clauses 5 and 6 of the STA allocate responsibility for environmental matters between Centromin and “the Company.” When the Agreement was signed, the “Company” referred to Metaloroya. Because Metaloroya was merged into DRP in December 1997,¹¹¹ references to “the Company” in the STA actually refer to DRP. Therefore, for present purposes, this Statement of Claim will refer to DRP when the STA refers to “the Company.”

¹⁰⁷ **Exhibit C-002**, Guaranty Agreement, Art. 2.1.

¹⁰⁸ *See Exhibit C-038*, Modification of the Contract to Transfer Shares, Increase Company Capital and Subscription of Shares of Metaloroya S.A., signed by DRP and Centromin, December 17, 1999 at 7.

¹⁰⁹ *See* Buckley Witness Stmt. ¶¶ 11-12; Sadlowski Witness Stmt. ¶¶ 9-12, 23-25, 28.

¹¹⁰ *See Id.*; Sadlowski Witness Stmt. ¶¶ 9-12, 23-25.

¹¹¹ *See supra* ¶ 59.

62. The scope of Centromin’s liability for third-party claims and damages is addressed in Clauses 5.9, 6.2, and 6.3 of the STA. Clause 5.9 expressly provides that “[a]ll other liabilities [*i.e.*, all environmental liabilities not specifically allocated to DRP under Clause 5] shall correspond to Centromin in accordance with the Sixth Clause.”¹¹²

63. Clause 6.2 of the STA specifies that Centromin assumes liability for any third-party environmental damages and claims arising during the PAMA period that are attributable to the activities of DRP or Centromin and/or Centromin’s predecessors, “except for the damages and third-party claims that are [DRP]’s responsibility in accordance with [Clause] 5.3.”¹¹³ This provision is broad and focuses on Centromin’s retaining and assuming of any liability for claims attributable to *activities* of Centromin and DRP—rather than on insulating a particular entity (*e.g.*, Metaloroya or anyone else) from liability for a particular type of claim. Clause 6.2 provides:

During the period approved for the execution of Metaloroya’s PAMA, Centromin will assume liability for any damages and claims by third parties that are attributable to the activities of the Company, of Centromin and/or its predecessors, except for the damages and third party claims that are the Company’s responsibility in accordance with Numeral 5.3.¹¹⁴

64. Clause 6.3 of the STA contains similar language regarding third-party claims and damages arising after the expiration of the PAMA’s legal term:

After the expiration of the legal term of Metaloroya’s PAMA, Centromin will assume liability for any damages and third-party claims attributable to Centromin’s and/or its predecessors’ activities except for the damages and third-party claims for which [DRP] is liable in accordance with [Clause] 5.4.

In the case that damages may be attributable to Centromin and [DRP], the provisions set forth in [Clause] 5.4C shall apply.¹¹⁵

¹¹² **Exhibit C-001**, Stock Transfer Agreement, Clause 5.9.

¹¹³ *Id.*, Clause 6.2.

¹¹⁴ *Id.*

¹¹⁵ *Id.*, Clause 6.3.

65. Under the first paragraph of Clause 6.3, Centromin is solely liable for any third-party damages and claims arising after the PAMA period that are attributable to the operation of the Complex by Centromin and Cerro de Pasco during the 75-year period prior to its acquisition by DRP. Under the second paragraph of Clause 6.3, Centromin is proportionately liable with DRP for any damages and claims arising after the PAMA period to the extent that DRP is not liable for the third-party's loss under paragraph (C) of Clause 5.4.

66. In sum, pursuant to the STA, Centromin retained and assumed *all* liability for *all* third-party claims and damages arising out of the environmental contamination at the La Oroya Complex, except for the very limited circumstances set out in Clauses 5.3 and 5.4.

67. Moreover, the Peruvian Government guaranteed *all of Centromin's contractual obligations* under the Agreement: “[b]y reason of Supreme Decree No. 042-97-PCM approved on September 19, 1997 in accordance with Decree No. 25570 and Act No. 26438, and the corresponding [G]uaranty [C]ontract entered into under that decree, the Government of Peru is obliged to guarantee all of the obligations of Centromin under this contract, and said [G]uaranty shall survive the transfer of any of the rights and obligations of Centromin and any liquidation of Centromin.”¹¹⁶ As noted above, Peru and DRP subsequently entered into a Guaranty Agreement, pursuant to which Peru guaranteed the representations, securities, guarantees, and obligations undertaken by Centromin in the STA.¹¹⁷

68. Centromin and DRP agreed that DRP “assumes the responsibility *only* for [the] ... environmental matters” listed in Clause 5 of the STA.¹¹⁸ Clauses 5.1 and 5.2 of the Agreement provide that DRP is responsible for complying with Metaloroya's PAMA obligations and potential future situations if DRP decided to assume certain of Centromin's PAMA obligations (such as the closure of the zinc ferrite deposits). Clauses 5.3 and 5.4 then set forth the narrow universe of third-party environmental damages and claims for which DRP is liable, while Clause 5.9 expressly

¹¹⁶ *Id.*, Clause 10.

¹¹⁷ *See supra* ¶ 58.

¹¹⁸ **Exhibit C-001**, Stock Transfer Agreement, Clause 5 at 17 (emphasis added). Clauses 5.1 and 5.2 of the Agreement provide that DRP is responsible for complying with Metaloroya's PAMA obligations and potential future situations in which DRP decided to assume certain of Centromin's PAMA obligations, such as the closure of the zinc ferrite deposits.

provides that “[a]ll other liabilities shall correspond to Centromin in accordance with the Sixth Clause.”¹¹⁹ Clauses 6.2 and 6.3 confirm that Centromin retains and assumes liability for all third-party claims and damages that DRP did not assume, which includes all third-party damages and claims arising prior to, during, and after the PAMA period, except for the narrow categories of damages and claims for which DRP is liable under Clauses 5.3 and 5.4.¹²⁰

69. Clause 5.3 of the STA specifies the limited circumstances in which DRP is liable for third-party environmental damages and claims arising during the period approved for completing the PAMA projects:

During the period approved for the execution of Metaloroya’s PAMA, [DRP] will assume liability for damages and claims by third parties attributable to it from the date of the signing of this contract, *only in the following cases*:

A) Those that arise directly due to acts that are *not related to Metaloroya’s PAMA* which are *exclusively attributable* to [DRP] *but only insofar as said acts were the result of [DRP]’s use of standards and practices that were less protective of the environment or of public health than those that were pursued by Centromin until the date of execution of this contract.* [...]

B) Those that *result directly from a default* on the Metaloroya’s PAMA obligations on the part of [DRP] or of the obligations established by means of this contract in [Clauses] 5.1 and 5.2.¹²¹

70. Under Clause 5.3, DRP is liable for third-party damages and claims arising during the time period to complete the PAMA projects only in either of two narrow circumstances. First, where the damages and claims arise directly due to acts that (1) are not related to the PAMA, and (2) are exclusively attributable to DRP, and (3) were the result of DRP’s use of standards and practices that were less protective of the environment or of the public health than those applied by Centromin. Second, where damages and claims arise directly from a default by DRP on the performance of its PAMA obligations or the additional obligations specified in Clauses 5.1 and

¹¹⁹ *Id.*, Clause 5.9.

¹²⁰ *Id.*, Clauses 6.2 and 6.3.

¹²¹ *Id.*, Clause 5.3 at 21-22 (emphasis added).

5.2, which relate to DRP's operation and maintenance of certain deposit areas and its closing and dismantling of the smelting and refining facilities at the end of their operational life.

71. Clause 5.4 of the STA specifies the narrow scope of DRP's liability for third-party environmental damages and claims arising after the expiration of the legal term of Metaloroya's PAMA:

After the expiration of the legal term of Metaloroya's PAMA, [DRP] will assume liability for damages and third-party claims in the following manner:

A) Those that result directly from acts that are *solely attributable to its operations after that period*.

B) Those that *result directly from a default* on the Metaloroya's PAMA obligations on the part of [DRP] or of the obligations established by means of this contract in [Clauses] 5.1 and 5.2.

C) Should the damages be attributable to Centromin and to [DRP], [DRP] will assume liability proportionately to its contribution to the damage.¹²²

72. Under paragraphs (A) and (B) of Clause 5.4, DRP is *solely* liable for third-party damages and claims arising after the PAMA period *if and only if* they result directly from (1) "acts that are solely attributable to its operations after that period" or (2) a default by DRP on the performance of its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2. In addition, under paragraph (C), DRP is "proportionately" liable for damages and claims arising after the PAMA period to the extent that DRP contributes to the third-party's loss through its operations after that period, or by defaulting on its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2.¹²³

73. In addition, for the avoidance of doubt, Clause 5.5 of the STA provides that "[DRP] *will not have [now] nor will it assume any liability for damages or for third-party claims* attributable to Centromin insofar as the same were the result of Centromin's operations or those

¹²² *Id.*, Clause 5.4 at 22-23 (emphasis added).

¹²³ *Id.*, Clause 5.4(C) at 23. Clauses 5.1 and 5.2 relate to certain mineral deposits and outline closing and dismantling at the end of the operational life.

of its predecessors up to the execution of this contract or are due to a default on the part of Centromin with regards to its obligations that are specified in [Clause] 6.1 [*i.e.*, Centromin’s PAMA obligations and its obligation to remediate the area around the Complex].”¹²⁴

74. It made sense for Peru to retain and assume broad liability for third-party claims: Centromin and Cerro de Pasco had been operating the Complex for 75 years without environmental regulation and without investing in necessary technological upgrades.¹²⁵ Massive quantities of lead and other heavy metals had been emitted from the Complex during the 75 years that preceded its sale to DRP, “contaminating land for miles around” the facility.¹²⁶ Indeed, these lead emissions, which exceeded 311,000 tons, accounted for approximately 98 percent of the lead emitted during the entirety of the Complex’s operations, as shown in Figure 2 and Figure 3 below.¹²⁷

¹²⁴ *Id.*, Clause 5.5 at 23-4 (emphasis added).

¹²⁵ *See* Section II.A. *See also* Bianchi Expert Report at 7, 18-22; Sadlowski Witness Stmt. ¶ 14; Buckley Witness Stmt. ¶¶ 10-11.

¹²⁶ Bianchi Expert Report at 78-81; Connor Expert Report at 21-22.

¹²⁷ Bianchi Expert Report at 78-81; Connor Expert Report at 21-22 & Exhibit 7.

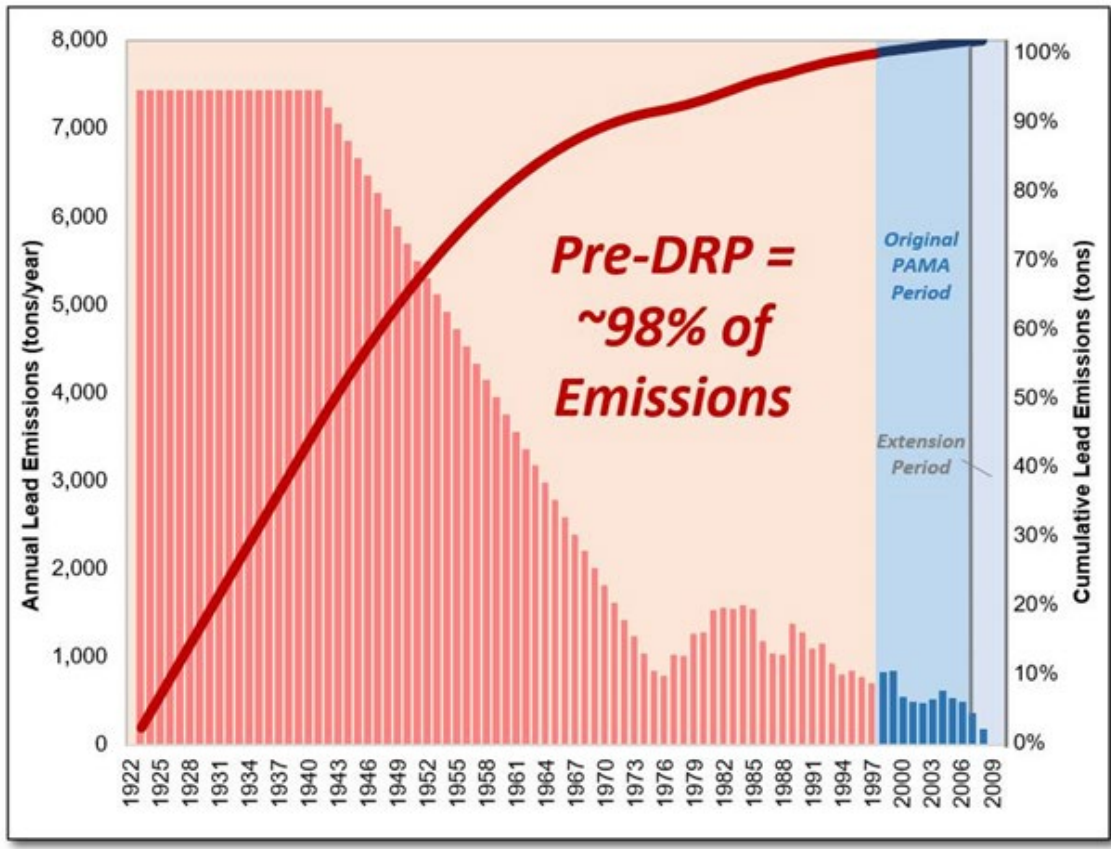


Figure 3. Cumulative lead emissions over time under Cerro de Pasco, Centromin and DRP.¹²⁹

75. No investor had been willing to assume liability for third-party claims arising from the environmental contamination that existed and that would continue to accumulate while the PAMA projects would be carried out.¹³⁰ The Renco Consortium had only agreed to take on the financial responsibility of modernizing the Complex if its members (Renco and DRR) and related entities were fully protected from liability for third-party damages attributable to the operation of the Complex while carrying out the upgrades, and remained protected from liability for third-party

¹²⁹ Bianchi Expert Report at 77, Exhibit 6.2.

¹³⁰ See Sadlowski Witness Stmt. ¶¶ 14-15.

damages attributable to residual contamination afterwards.¹³¹ That is precisely what the STA accomplished.¹³²

2. Key Language of the STA related to Centromin and Peru’s Obligations to Remediate and Perform Centromin’s PAMA Obligations

76. The STA confirmed Centromin’s commitments to remediate the contamination at the La Oroya Complex, pursuant to PAMA Project No. 4 (Rehabilitation of La Oroya) that the MEM had allocated to Centromin under Directorial Resolution 334-97-EM/DGM.¹³³

77. Clause 6.1 of the Agreement provides that “Centromin assumes responsibility [for] [c]ompliance with the obligations contained in Centromin’s PAMA according to its eventual amendments approved by the relevant authority and the legal applicable requirements in force.”¹³⁴ In addition, Clause 6.1(C) provides that “Centromin assumes responsibility [for] ... [r]emediation of the areas affected by gaseous and particles emissions from the smelting and refining operations that have produced up until the date of the execution of this contract and of additional emissions during the period that is provided for in the law for Metaloroya’s PAMA.”¹³⁵ As noted above, Clause 5.5 of the STA provides that DRP would not assume any liability if Centromin or Peru defaulted on their obligations under Clause 6.1.¹³⁶

G. PERU AND CENTROMIN FAILED TO COMPLY WITH THEIR OBLIGATION TO RETAIN AND ASSUME LIABILITY FOR THIRD-PARTY CLAIMS AND DAMAGES RELATING TO ENVIRONMENTAL CONTAMINATION

1. Over 3,700 Peruvian Residents Have Filed Third-Party Claims for Personal Injury against Renco and Its Affiliates, Officers,

¹³¹ See Sections II.D., E. See also Sadlowski Witness Stmt. ¶¶ 25-36.

¹³² See Sections II.F.

¹³³ See *supra* ¶ 56.

¹³⁴ **Exhibit C-001**, Stock Transfer Agreement, Clause 6.1 at 25.

¹³⁵ *Id.*, Clause 6.1(C) at 26. Centromin’s agreement to remediate the areas that Centromin had contaminated excluded only “those areas which are the responsibility of [Doe Run Peru] in accordance with the fifth [C]ause” of the Stock Transfer Agreement. This did not impose any obligation on Doe Run Peru to remediate areas contaminated by Centromin.

¹³⁶ See *supra* ¶ 73.

and Directors for Harm Alleged to Have Been Suffered from the La Oroya Complex's Operations

78. On October 4, 2007, a group of plaintiffs from La Oroya filed lawsuits in St. Louis, Missouri, U.S.A., against Claimants and its affiliates, asserting various personal injury claims relating to alleged lead exposure and environmental contamination from the Complex. The plaintiffs voluntarily withdrew the lawsuits after the defendants removed the lawsuits to federal court. In August and December 2008, the same attorneys filed new lawsuits, which are comprised of 11 cases on behalf of 36 minor plaintiffs. Then, in 2012 and 2013, the attorneys filed additional lawsuits on behalf of 933 new plaintiffs. In 2015, another group of U.S.-based lawyers began filing lawsuits on behalf of over 1,000 additional individual plaintiffs. In total, there are now over 3,700 individuals making claims for personal injury against Claimants and its affiliates in the St. Louis Lawsuits. All of these plaintiffs are alleged to be Peruvian citizens and claim to be present or former residents of the area in and around La Oroya.

79. The St. Louis Lawsuits were filed in the Circuit Court of the State of Missouri, Twenty-Second Judicial Circuit, City of St. Louis, but have all been removed to the United States District Court for the Eastern District of Missouri, Eastern Division. The allegations in each lawsuit are virtually identical, stating “[t]his is an action to seek recovery from Defendants for injuries, damages and losses suffered by each and every minor plaintiff named herein, who were minors at the time of their initial exposures and injuries as a result of exposure to the release of lead and other toxic substances ... in the region of La Oroya, Peru.”¹³⁷

80. The plaintiffs seek damages for alleged personal injuries and punitive damages. They claim various cognitive effects from lead exposure, including decreased intellectual ability and academic performance, behavioral issues (like ADHD, impulsivity, and irritability), as well as various physical health effects, such as intermittent headaches, muscle and bone weakness and pain, abdominal pain, short stature, balance issues, hypertension, and lethargy. Additionally, the plaintiffs claim that they are at an elevated risk of developing renal disease, hypertension, and cancer in the future because of their exposure to lead and arsenic from the Complex. The St. Louis

¹³⁷ **Exhibit C-039**, Petition for Damages and Demand for Jury Trial, *Sister Kate Reid and Megan Heeney (Next Friends) v. Doe Run Resources Corporation et. al.*, No. 0822-CC08086 (Mo. Cir. Aug. 7, 2008), 2008 WL 3538410 at ¶ 1 (*hereinafter* “Missouri Complaint”).

Lawsuits name as defendants Renco and DRR, as well as their affiliated companies DR Acquisition Corp. and Renco Holdings, Inc., and directors and officers Marvin K. Kaiser, Albert Bruce Neil, Jeffery L. Zelms, Theodore P. Fox III, Daniel L. Vornberg, Jerry Pyatt, and Ira L. Rennert (collectively, the “Renco Defendants”). The plaintiffs did not bring claims against Centromin’s successor, Activos Mineros, or against the Republic of Peru, or DRP, and instead chose to sue DRP’s U.S.-based affiliates in the courts of the United States.

2. Peru and Activos Mineros Have Refused to Assume Any Liability for Third-Party Claims Asserted against the Renco Defendants

81. Activos Mineros and Peru have refused to assume any liability for the claims in the St. Louis Lawsuits.¹³⁸

82. On October 12, 2010, after receiving a decision in St. Louis that the Twenty-Second Judicial Circuit was the proper venue for the St. Louis Lawsuits, counsel for the Renco Defendants wrote to Activos Mineros, the Peruvian MEM, and the Peruvian Ministry of Economy & Finance (“MEF”) to request that they honor their contractual obligations to assume liability for the St. Louis Lawsuits and release, protect and hold harmless the Renco Defendants from those third-party claims.¹³⁹ At that time, the Renco Defendants had removed the cases to federal court, but no other procedural steps had occurred.¹⁴⁰ In addition, only thirty-six plaintiffs were involved as of that date, as opposed to the more than 3,700 to date.¹⁴¹

83. As the Renco Defendants indicated in their letter of October 12, 2010, Centromin (now Activos Mineros) “agreed to assume liability ‘for any damages and claims by third parties that are attributable to the activities of [DRP], of Centromin and/or its predecessors, except for the damages and third-party claims that are [DRP’s] responsibility in accordance with numeral 5.3’

¹³⁸ Sadlowski Witness Stmt. ¶¶ 38-40.

¹³⁹ **Exhibit C-040**, Letter from King & Spalding to P. Sanchez Gamarra (Ministry of Energy & Mines) *et al.*, October 12, 2010 (*hereinafter* “October 12, 2010 Letter”).

¹⁴⁰ Sadlowski Witness Stmt. ¶ 37.

¹⁴¹ **Exhibit C-041**, Letter from King & Spalding to White & Case (attaching Petition for Damages – Personal Injury dated July 12, 2013), August 15, 2013 (*hereinafter* August 15, 2013 Letter); *See also* Sadlowski Witness Stmt. ¶ 39.

([STA] Art. 6.2).”¹⁴² The Renco Defendants noted that “[g]iven the substantial environmental contamination in the area that had resulted from Centromin’s 23-year operation of the La Oroya Complex (together with the preceding 52-year operation by the Cerro de Pasco Corporation), Doe Run Peru, D[oe] R[un] Resources and Renco relied upon Centromin’s broad assumption of liability for third-party claims and the Republic’s related guarantee of this obligation.”¹⁴³

84. The Renco Defendants reiterated their requests to Activos Mineros, the Peruvian MEM, the Peruvian MEF, and their attorneys White & Case in numerous letters from November 2010 to June 2013.¹⁴⁴

85. To date, Peru has not responded to any of these letters in writing. Activos Mineros did respond, but it refused to appear and defend the St. Louis Lawsuits or to accept or assume any responsibility or liability.¹⁴⁵ Activos Mineros, acting as successor-in-interest to Centromin, raised the following four arguments in defense of its refusal to accept responsibility for the St. Louis Lawsuits:

- (i) Activos Mineros had not received notice from DRP, as required under Clause 8.14 of the STA.

¹⁴² **Exhibit C-040**, October 12, 2010 Letter at 2-3.

¹⁴³ *Id.* at 3.

¹⁴⁴ *See, e.g.*, **Exhibit C-042**, Letter from J. Carlos Huyhua (Doe Run Peru) to V. Carlos Estrella (*Activos Mineros*), November 11, 2010 (*hereinafter* “November 11, 2010 Letter”); **Exhibit C-043**, Letter from King & Spalding to P. Sanchez Gamarra (Ministry of Energy & Mines) *et al.*, December 14, 2010 (*hereinafter* “December 14, 2010 Letter”); **Exhibit C-044**, Letter from King & Spalding to V. Carlos Estrella (*Activos Mineros*), February 18, 2011 (*hereinafter* “February 18, 2011 Letter”); **Exhibit C-045**, Letter from King & Spalding to White & Case, July 12, 2011 (*hereinafter* “July 12, 2011 Letter”); **Exhibit C-046**, Letter from King & Spalding to White & Case, January 27, 2012 (*hereinafter* “January 27, 2012 Letter”); **Exhibit C-047**, Letter from King & Spalding to White & Case, March 20, 2012 (*hereinafter* “March 20, 2012 Letter”); **Exhibit C-048**, Letter from King & Spalding to White & Case, July 18, 2012 (*hereinafter* “July 18, 2012 Letter”); **Exhibit C-049**, Letter from King & Spalding to White & Case, August 9, 2012 (*hereinafter* “August 9, 2012 Letter”); **Exhibit C-050**, Letter from King & Spalding to White & Case, November 16, 2012 (*hereinafter* “November 16, 2012 Letter”); **Exhibit C-051**, Letter from E. G. Kehoe (King & Spalding) to J.C. Hamilton (White & Case), January 17, 2013 (*hereinafter* “January 17, 2013 Letter”); **Exhibit C-052**, Letter from E. G. Kehoe (King & Spalding) to J.C. Hamilton (White & Case), June 21, 2013 (*hereinafter* “June 21, 2013 Letter”).

¹⁴⁵ *See, e.g.*, **Exhibit C-053**, Letter from V. Carlos Estrella (*Activos Mineros*) to King & Spalding, November 5, 2010 (*hereinafter* “November 5, 2010 Letter”); **Exhibit C-054**, Letter from V. Carlos Estrella (*Activos Mineros*) to J. Carlos Huyhua (Doe Run Peru), November 26, 2010 (*hereinafter* “November 26, 2010 Letter”); **Exhibit C-055**, Letter from V. Carlos Estrella (*Activos Mineros*) to King & Spalding, January 21, 2011 (*hereinafter* “January 21, 2011 Letter”).

- (ii) Notice had not been given in a timely manner.
- (iii) Activos Mineros was only liable to DRP for third-party claims, not DRP's affiliates.
- (iv) DRP had engaged in practices and standards less protective of the environment than those engaged in by Centromin, and therefore DRP, not Centromin, was liable for all of the third-party harm.¹⁴⁶

None of these excuses have merit.

86. With respect to the notice **arguments (i) and (ii)** above, the Renco Defendants stated in a letter of November 11, 2010 that King & Spalding, which had provided notice to Activos Mineros previously, was “fully authorized by Renco and its affiliates to represent their position and interests concerning rights and obligations arising under the Stock Transfer Agreement.”¹⁴⁷ The Renco Defendants further stated that the St. Louis Lawsuits had only recently commenced in the proper venue, and regardless, Activos Mineros and Peru had been put on notice of the St. Louis Lawsuits when they were first filed (before they had even been withdrawn and re-filed), as shown by the October 31, 2007 letter from Jorge del Castillo Galvez to the U.S. Ambassador referencing the claims asserted in the St. Louis Lawsuits.¹⁴⁸

87. With respect to the allegation that Activos Mineros was only liable to DRP for third-party claims, and not to DRP's affiliates (**argument (iii)** above), the Renco Defendants noted in a letter of December 14, 2010 that Centromin's and Peru's assumption of liability was a “fundamental premise for the substantial investment in Peru” and Clause 6.2 required Centromin (now Activos Mineros) and Peru to assume “liability for any damages and claims by third parties that are attributable to the activities of [DRP], of Centromin and/or its predecessors” with limited exceptions.¹⁴⁹ Activos Mineros' narrow reading of the STA would impermissibly give no meaning to, *inter alia*, Clauses 6.2. and 6.3. of the STA by which Centromin (and Peru through its guaranty) retained and assumed liability in all third-party claims, except those which DRP expressly accepted. Thus, Peru's and Activos Mineros' assumption and retention of liability for claims and

¹⁴⁶ *Id.*; **Exhibit C-054**, November 26, 2010 Letter; **Exhibit C-055**, January 21, 2011 Letter.

¹⁴⁷ **Exhibit C-042**, Letter, November 11, 2010.

¹⁴⁸ **Exhibit C-011**, Letter from Mr. Jorge del Castillo to Ambassador Michael McKinley, October 31, 2007.

¹⁴⁹ **Exhibit C-043**, December 14, 2010 Letter at 2.

damages by third parties was not – and was never intended to be – limited to those claims that third parties might bring against only DRP.¹⁵⁰

88. Finally, Activos Mineros provided no support for its allegation that DRP had engaged in standards and practices less protective of the environment than those of Centromin (**argument (iv)** above).¹⁵¹ To the contrary, DRP’s standards and practices were significantly more protective than those of Centromin, as the expert reports submitted by Dr. Bianchi and Mr. Connor make clear.¹⁵² As they explain, and as discussed in greater detail below, DRP implemented a host of facility improvements and pollution control projects that drastically reduced air emissions of lead and other contaminants, the discharges of contaminated liquid effluents, and other environmental impacts resulting from the Complex’s operations.

89. **Reductions in Air Emissions and Improvements to Air Quality.** Under Centromin, air emissions from the Complex were “high” and “exceed[ed] generally accepted international standards.”¹⁵³ These airborne emissions resulted in “exceedingly high” ambient air concentrations of pollutants in La Oroya and impacted soils surrounding the facility.¹⁵⁴ In fact, prior to DRP’s acquisition, more than 950 tons of SO₂ per day and 10 tons of particulate matter were emitted from the Complex’s main stack every day, including approximately 2.5 tons of lead, 1.4 tons of arsenic, 0.8 tons of zinc, 0.3 tons of antimony, 0.07 tons of cadmium, as well as other

¹⁵⁰ The Renco Defendants also indicated in their December 14, 2010 letter that DRP would be required to indemnify its parent entities and affiliates against any judgment entered against them and any ongoing costs incurred in the St. Louis Lawsuits. Therefore, even if Peru’s and Activos Mineros’ liability for third-party claims ran only in favor of Doe Run Peru (which is not the case), Doe Run Peru’s liability to its parent entities and affiliates for these claims would make Peru and Activos Mineros ultimately liable to the Renco Defendants.

¹⁵¹ Moreover, the comparison between the standards and practices of Centromin and Doe Run Peru only is relevant under Clause 5.3 of the Stock Transfer Agreement, if the third-party claims and damages are attributable to business operations “not related to Metaloroya’s PAMA.” This is not the case here, as Doe Run Peru did not engage in any business operations unrelated to its PAMA while it was working to complete the PAMA projects.

¹⁵² Bianchi Expert Report at 3, 33-61 (concluding that “By any appropriate metric, DRP used standards and practices that were significantly more protective of the environment and public health than those that were pursued by Centromin.”); Connor Expert Report at 3, 9-20 (concluding that “Throughout the full period of its operations, DRP applied standards and practices that were more protective than those of its predecessor, Centromin.”).

¹⁵³ *Id.* at 34.

¹⁵⁴ *Id.* at 34.

metals.¹⁵⁵ Stated differently, this translates to approximately 913 tons of lead emitted into the environment each year, 511 tons of arsenic, 292 tons of zinc, 110 tons of antimony, and 26 tons of cadmium.¹⁵⁶ Indeed, noting the Complex’s “wheezing smelter smokestacks,” media reports described the area under Centromin as a “vision from hell.”¹⁵⁷

90. Upon taking ownership of the Complex, DRP implemented a wide range of facility improvements, process controls, pollution controls to reduce both fugitive and main-stack emissions and to improve air quality impacted by the facility’s operations.¹⁵⁸ These included, among other things, major repairs to the facility’s main electrostatic precipitator, baghouses and other existing pollution control devices; extensive capital repairs to the facility’s large flues and ducts, which capture gases and convey them to the pollution control devices; upgrades to the air quality monitoring network surrounding the Complex; installation of CCTV systems to monitor and correct fugitive emission events; implementation of a “Supplemental Control System” to halt facility operations during adverse weather conditions to improve air quality; the enclosure of facility processes like the lead blast furnaces and the construction of new high-efficiency baghouses to reduce fugitive lead emissions; and the construction of new state-of-the-art sulfuric acid plants to control SO₂ and particulate emissions.¹⁵⁹

91. Collectively, DRP’s completion of these improvement projects, both PAMA and non-PAMA, significantly reduced air emissions from the Complex. This, in turn, resulted in substantial improvements in air quality in La Oroya and the surrounding areas. This is depicted in Figure 4 below, which shows reductions in main stack emissions for both lead and arsenic over the course of DRP’s operation of the Complex, as well as corresponding improvements in air quality in La Oroya Antigua for lead and arsenic.¹⁶⁰

¹⁵⁵ *Id.* at 34.

¹⁵⁶ *Id.*

¹⁵⁷ **Exhibit C-003**, Corinne Schmidt, How Brown Was My Valley, NEWSWEEK, April 18, 1994.

¹⁵⁸ Bianchi Expert Report at 33-61.

¹⁵⁹ *Id.* See also Connor Expert Report at 10-13.

¹⁶⁰ Connor Expert Report at 13. See also Bianchi Expert Report at 66-68.

Main Stack Emission Reductions and Corresponding Air Quality Improvements at Sindicato: *Lead and Arsenic*

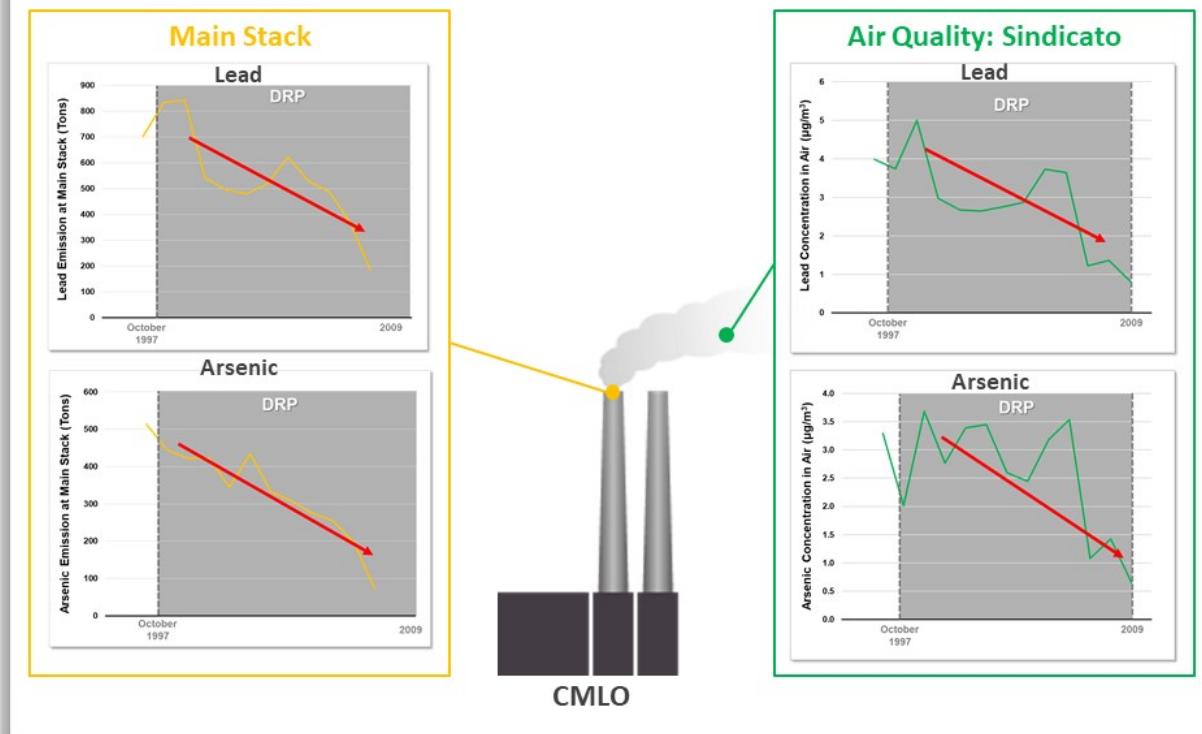


Figure 4. Main Stack Arsenic and Lead Emission Reductions and Corresponding Air Quality Improvements at Sindicato de Obreros Air Monitoring Station¹⁶¹

92. **Reductions in Effluent Discharges and Improvements to Water Quality.** Under Centromin, there were significant water quality issues at the Complex related to industrial and sewage effluent discharges, as well as run-off from the smelter and refinery complexes and waste storage locations.¹⁶² Dr. Bianchi explains that under Centromin:

- The Complex discharged approximately 49,000 liters per minute (L/m) of industrial liquid waste into the Yauli and Mantaro Rivers. This is equivalent to 20 million

¹⁶¹ *Id.* at 13, Exhibit 3.

¹⁶² Bianchi Expert Report at 49.

gallons per day or the volume of water needed to fill 30 Olympic-sized swimming pools every day.

- There were 40 individual discharge points into the Mantaro and Yauli Rivers from the Complex's operations.
- Leachate containing arsenic and other heavy metals seeped from solid waste storage locations immediately adjacent to the Mantaro River.
- The Complex contributed an estimated average of more than 380 kg/day of arsenic, 145 kg/day of cadmium, and 740 kg/day of lead to the Mantaro watershed.
- Raw sewage from the city of La Oroya and Centromin's industrial and housing complexes was discharged directly into the Yauli and Mantaro Rivers.¹⁶³

93. DRP addressed these issues by implementing numerous projects to reduce water discharges from the Complex and improve water quality. These projects included, among other things, the construction of a new treatment system to eliminate ferrous acid discharges from the Complex's refinery to the Yauli River; the construction of an new industrial wastewater treatment system to treat industrial and contaminated stormwater discharges from the Complex; the installation of new stormwater controls; and the construction of three new sewage treatment plants to provide, for the first time, treatment of raw sewage that had been discharged into the Mantaro River.¹⁶⁴

94. As with the air projects described above, these projects by DRP significantly reduced effluent discharges from the Complex and improved water quality in the surrounding rivers relative to Centromin. Figure 5 below shows the decrease in liquid effluents discharged from the Complex during DRP' ownership. Figure 6 below shows the significant decrease in the concentrations of lead in effluent discharged to the Mantaro River. As is evident, DRP's efforts marked a substantial improvement.

¹⁶³ *Id.* at 49.

¹⁶⁴ *Id.* at 49-54.

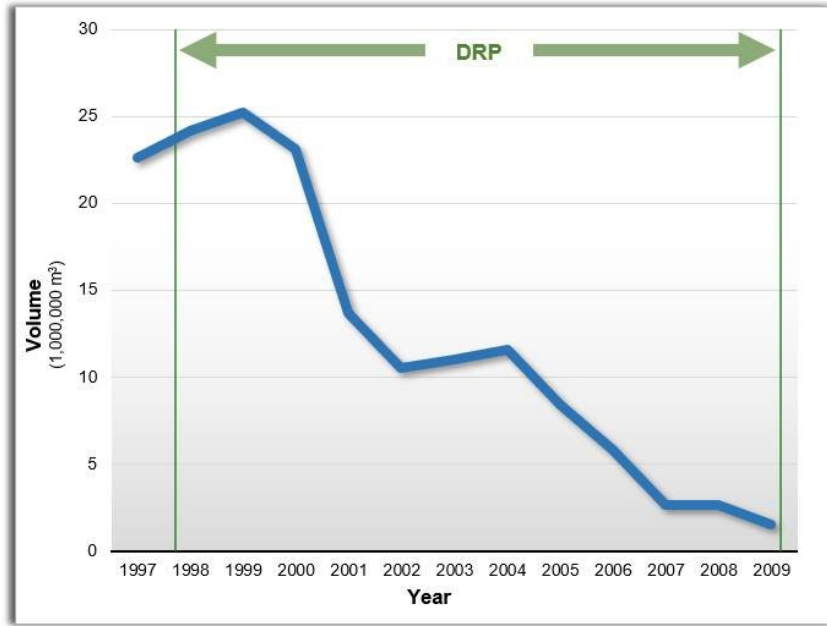


Figure 5. Decrease in volume of effluent discharged to the Mantaro River.¹⁶⁵

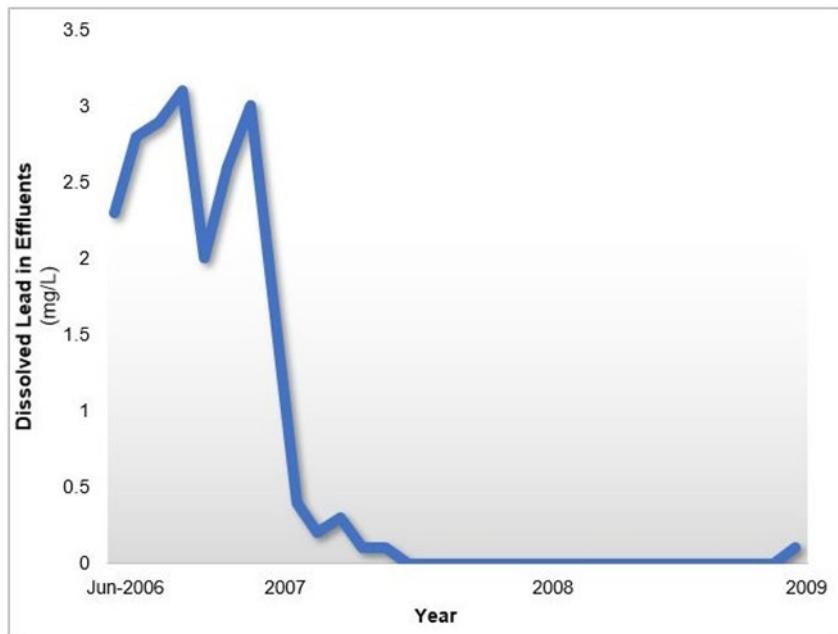


Figure 6. Decrease in dissolved lead in effluent discharged to the Mantaro River¹⁶⁶

¹⁶⁵ *Id.* at 72, Exhibit 5.41.

¹⁶⁶ *Id.* at 73, Exhibit 5.42.

95. **Improvements in Solid and Hazardous Waste Handling.** Under Centromin, solid waste generated by the Complex was transported and stored under precarious conditions at different disposal areas adjacent to the Mantaro River. These practices resulted in significant releases to the environment, which have been documented by Centromin and its consultants.¹⁶⁷ As Dr. Bianchi explains:

- Slag from the copper and lead smelting operations, as well as waste from their granulation, were transported via cable car to the Huanchan storage area facility. Approximately 40 percent of the copper and lead slags were discharged directly into the Mantaro River.
- Slag was stored in an unlined pond with an earthen dike adjacent to the Mantaro River. Zinc ferrites from the zinc circuit were stored in a separate unlined pond adjacent to the slag pond. Neither disposal facility met existing siting requirements established by Peru's 1990 Environmental Code (*Código del Medio Ambiente*).
- Arsenic trioxide from the copper smelter was transported by train to the Vado facility. Rainwater infiltrating and percolating through the deposit likely leached arsenic into the Mantaro River. Further, arsenic trioxide had previously been stored in separate disposal facility, which was located in a flood plain adjacent to the Mantaro River and covered with a thin layer of gravel. As a result, the deposit was at risk of catastrophic failure and likely leached arsenic into the Mantaro River.
- There were no landfills or garbage collection services. Instead, refuse and domestic waste generated at the Complex and Centromin's housing was placed in an area adjacent to the Mantaro River without any form of containment or engineered control.¹⁶⁸

96. Again, DRP implemented a range of projects to improve solid waste disposal practices and impacts to the environment by the complex. These included the construction of a new slag granulation and slag conveyance system; environmental modifications to the Huanchan

¹⁶⁷ *Id.* at 55.

¹⁶⁸ *Id.* at 54-58 (citations omitted).

slag deposit; the construction of a new and properly designed zinc ferrite storage facility; the construction of a new state-of-the-art arsenic trioxide disposal facility, as well as a new and safe transportation system to move this hazardous substance from the Complex to the disposal facility; and the construction of the region's first sanitary landfill for domestic solid waste.¹⁶⁹

97. And, as above, DRP's efforts significantly reduced environmental impacts from the Complex's operations. As Dr. Bianchi explains, these solid waste handling projects resulted in improvements:

- The volume of water used for slag granulation was reduced by 88 percent, which reduced the water content of the slag sent to the Huanchan slag storage area. In addition, the new slag conveyance and distribution system ensured that none of the slag transported by the cable car system to the slag storage area fell into the Mantaro River.
- Zinc ferrite paste was no longer subject to spillage or leakage during transport to the zinc ferrites storage area because DRP increased the moisture content of the paste and improved the design of the dump truck hoppers. In addition, DRP's repair of old runoff channels and installation of new ones improved the stability of the ferrite storage area.
- DRP implemented an arsenic trioxide waste management system that complied with USEPA standards and eliminated effluent discharges from the Vado facility to the Mantaro River. The project included the construction of two pits lined with waterproof layers.
- The Cochabamba landfill received all the domestic waste generated at DRP's housing complex in La Oroya. At the completion of the project, the landfill had an estimated life expectancy of 16 years.¹⁷⁰

¹⁶⁹ *Id.* at 55-58.

¹⁷⁰ *Id.* at 74.

98. **Efforts to Improve Worker and Community Health.** Finally, DRP implemented a host of projects and community programs to improve worker and community health, and to reduce and mitigate exposures to lead and other heavy metals.

99. At the facility, these efforts included providing workers appropriate protective equipment; constructing worker change houses and industrial laundry facilities to prevent workers from exposing their families and other members of the community to lead on their clothing (known as “take home lead”); providing worker hygiene training; constructing new worker washrooms and dining facilities to reduce exposures; and providing workers with medical checkups and blood lead level monitoring.¹⁷¹ Collectively, these efforts reduced worker blood lead levels by more than 40%, as shown below in Figure 7 below.

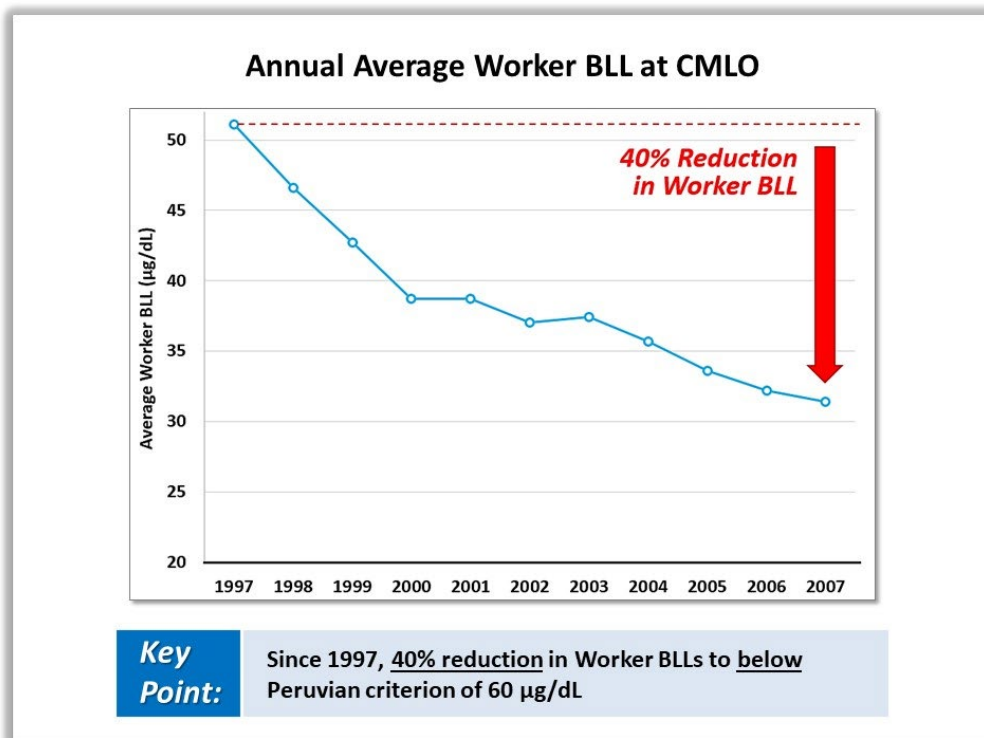


Figure 7. Annual Average Worker BLL at CMLO, 1997 – 2008¹⁷²

¹⁷¹ Connor Expert Report at 13-15; Bianchi Expert Report at 59-61.

¹⁷² *Id.* at 15, Exhibit 4.

100. DRP’s efforts to reduce exposures and improve the health of the community were even more impressive. As Dr. Bianchi and Mr. Connor explain, these efforts included providing health awareness and education; constructing public hygiene facilities in the community; providing sweeper trucks and dust removal programs to remove contaminated dusts from surfaces; paving areas of exposed soil to reduce children’s exposures; renovating homes to limit exposures to accumulated lead and metals; renovating schools to provide showers and hygiene facilities; establishing school lunch programs to improve nutrition, which also reduces the effects of lead exposures; establishing the Cuna Jardin Day School in Casaracra to treat and educate children with the highest blood lead levels; and conducting the first extensive blood lead testing program in the community, to name a few.¹⁷³

101. As Dr. Schoof explains, the breadth of these “community interventions in La Oroya was impressive” and “went far beyond the terms of the PAMA in pursuing numerous, diverse actions to attempt to reduce the potential impacts of emissions to the residents.”¹⁷⁴ Collectively, these and other efforts by DRP drastically reduced exposures in the community, reducing the average blood lead level of children in La Oroya Antigua by 55% between 1999 and 2007, as shown below in Figure 8.

¹⁷³ *Id.* at 15-18; Bianchi Expert Report at 59-61; Schoof Expert Report at 22-23.

¹⁷⁴ Schoof Expert Report at 22.

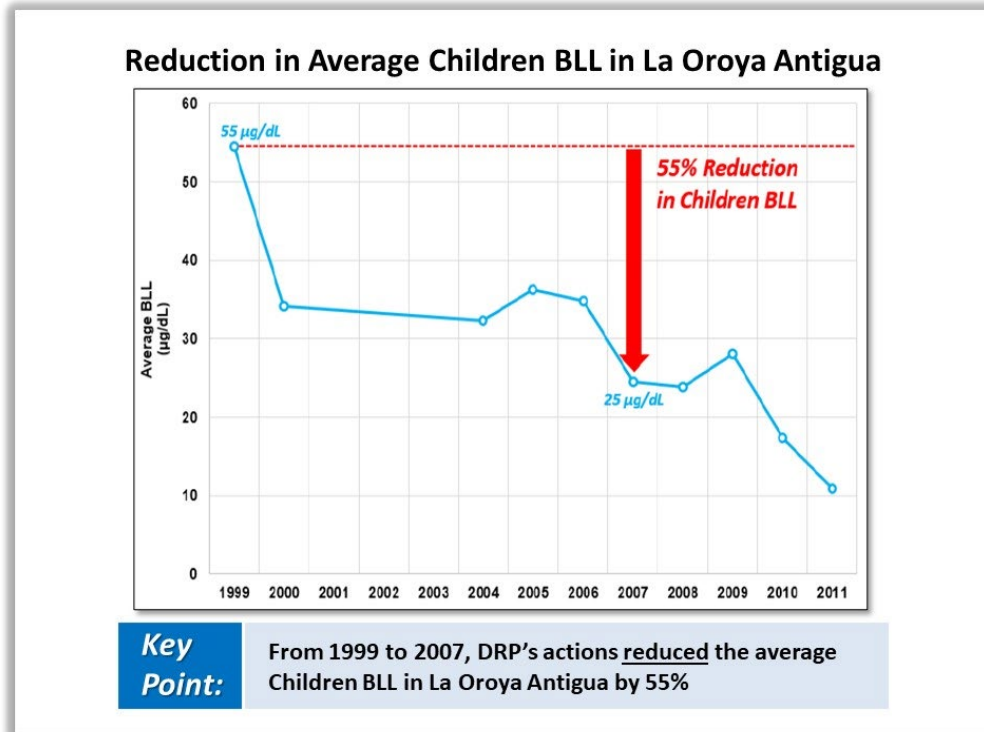


Figure 8. Reduction in Average BLL for Children under 6 Years Old in La Oroya Antigua¹⁷⁵

102. Not surprisingly, given these facts, in its January 21, 2011 letter, Activos Mineros backed away from its standards and practices allegation and, instead, alleged that “the [Stock Transfer] Agreement assigns the responsibility for damages and claims for third parties to Doe Run Peru after January 13, 2007, and not to Activos Mineros. The complaints filed in Missouri, seek damages for alleged harms that occurred both before and after January 13, 2007.”¹⁷⁶ But the fact that the claims were filed and/or arose after January 13, 2007 does not excuse Activos Mineros and Peru from liability under the STA. Even if the period to complete the PAMA projects had expired by January 2007 (which it did not, given the extensions),¹⁷⁷ Activos Mineros and Peru are

¹⁷⁵ Connor Expert Report at 19, Exhibit 5.

¹⁷⁶ **Exhibit C-055**, January 21, 2011 Letter at 2.

¹⁷⁷ Connor Expert Report at 3-4, 29-32 (explaining that, regardless of the Peruvian Government’s assertions, the “decision to modify DRP’s PAMA and extend the PAMA deadlines for Project No. 1 was the functional equivalent of an extension of the PAMA term”).

still liable for contamination that occurred during the PAMA period. This is true even if the claims themselves were filed or arose after that period.¹⁷⁸

103. To date, neither Peru nor Activos Mineros has joined the St. Louis Lawsuits or indicated any willingness to do so. Nor have they compensated the Renco Defendants for their losses in connection with the St. Louis Lawsuits where legal fees and expert expenses incurred are already in the tens of millions of U.S. dollars and these fees and expenses will continue to mount. Only 16 individual plaintiff cases are at an advanced stage, focused on expert discovery, and moving toward trials. Due to the death of the plaintiffs' primarily standard of care/liability expert, completion of discovery has been delayed until June 4, 2021. Thereafter, a certain number of these 16 lawsuits will be prepared for trial. However, the thousands of remaining lawsuits are still only in the initial stages of litigation.

H. PERU AND CENTROMIN FAILED TO COMPLY WITH THEIR OBLIGATION TO REMEDIATE AREAS CONTAMINATED BY THE COMPLEX'S OPERATIONS

104. Despite their promises and guaranties, neither Centromin nor Peru made any meaningful effort to remediate the area surrounding the Complex.¹⁷⁹ This failure caused, and continues to cause, pervasive environmental contamination in and around La Oroya, which continues to contribute substantially to exposures of La Oroya area residents to lead and other metals.¹⁸⁰ This failure to remediate also directly harms the Renco Defendants through the St. Louis

¹⁷⁸ See *supra* ¶ 5.

¹⁷⁹ Buckley Witness Stmt. ¶¶ 10-14 (discussing pre-acquisition negotiations with Peru and stating “[n]o one from the [Peruvian G]overnment or Centromin ... ever suggested in any way that Centromin would not promptly undertake remediation efforts. Had they said that Centromin would delay its remediation obligations for any significant period of time, we would not have gone through with the purchase.”).

¹⁸⁰ Schoof Expert Report at 9, 24 (concluding that “Prior Complex operations by Cerro de Pasco and Centromin created pervasive environmental contamination in the region of La Oroya that I believe has continued to contribute substantially to exposures of La Oroya residents to lead and other metals throughout the time DRP operated the Complex,” and that “[i]n this manner, reservoirs of metals from historical sources continue to circulate throughout La Oroya.”); Connor Expert Report at 3, 22-28 (concluding that “Soil contamination, which persists due to Centromin’s failure to remediate, continues to contribute to elevated [blood lead levels] in residents of the area surrounding the [Complex],” and that “Residents of La Oroya will continue to be exposed to soils containing elevated concentrations of lead and arsenic, primarily as a result of historical operations, until Centromin, or its successor organization AMSAC, fulfills their obligation to remediate these impacted areas.”). See also Buckley Witness Stmt. ¶ 19 (discussing MEM’s April 2000 decision to approve “a request by Centromin to postpone much of its clean-up work” and observing that “MEM’s decision ... meant that for at least

Lawsuits because they are now defending claims arising out of exposures to lead that Centromin and Peru should have remediated.

1. Remediation of the Soil Was Important to the Health of the Population

105. After 75 years of uninterrupted contamination, even the initial studies Centromin conducted in its Preliminary Environmental Assessment showed elevated levels of lead (up to 1% Pb in some areas), arsenic and other contaminants in the soil around the Complex.¹⁸¹ Based on this limited data, the Knight Piésold report that Centromin commissioned estimated that surface soil metal concentrations were the following: “Arsenic 840 mg/kg, Lead 1338 mg/kg, Cadmium 50 mg/kg. For comparison, ‘acceptable’ levels of metals in soils for residential and agricultural areas according to U.S. and other international guidelines are on the order of 2 to 50 mg/kg for arsenic, 50 to 500 mg/kg for lead, and one to 25 mg/kg for cadmium.”¹⁸² Subsequent and more detailed sampling has revealed much higher levels of contamination, often exceeding 5,000 mg/kg.¹⁸³

106. Lead from the historical operation of the Complex made its way into the soil, homes and streets of La Oroya. This historical lead deposition has been shown to contribute to elevated blood lead levels in the community.¹⁸⁴ In 1999, an NGO study found average blood lead levels

seven more years, the local community would continue to be exposed to the high concentrations of lead and other contaminants that had accumulated in the soil over the past 75 years,....”).

¹⁸¹ **Exhibit C-014**, Knight Piésold Report to Centromin at 37 (“If it is assumed that deposition rates of this magnitude have occurred over a period of 60 years, and the deposited metals are mixed uniformly through the uppermost 10 cm of expose[d] soil, estimated surface soil metal concentrations are: Arsenic 840 mg/kg, Lead 1338 mg/kg, Cadmium 50 mg/kg.”).

¹⁸² *Id.* at 37.

¹⁸³ Bianchi Expert Report at 103.

¹⁸⁴ Schoof Expert Report at 13-21, 24-27. *See also* **Exhibit C-019**, Doe Run Peru Request No. 1453558, Annex VI at 6-7; **Exhibit C-059**, Doe Run Peru, *Report to Our Communities Advances, La Oroya, Province of Yauli, Junín Peru, 1998-2002* at 75-76 (*hereinafter* “1998-2002 DRP Report”) (“The study conducted by Doe Run Peru identified La Oroya’s sources of lead exposure as the lead deposited in the soil during the Smelter’s 80 years of operations (an environmental liability), the prevalent use of 84-octane gasoline, the Metallurgical Complex’s current emissions (which will be controlled with the implementation of the PAMA), as well as paint, play dough, toys, solder, etc.”); **Exhibit C-060**, AMEC International (Chile) S.A., *Report on Doe Run Peru’s Proposed La Oroya Bankable Feasibility Study for PAMA Projects and a Modernization Program*, July 11, 2006 at 8-9 (*hereinafter* “2006 AMEC Report”). *See generally* **Exhibit C-061**, *Dirección General de Salud Ambiental* (“DIGESA”), Study

around the Complex at rates that exceeded the U.S. CDC levels of concern, and stated that lead exposure posed a risk to the local population.¹⁸⁵ This study and follow-up studies confirmed that historical lead deposited in the soil contributed significantly to the elevated blood lead levels in La Oroya,¹⁸⁶ and has become an increasingly important contributor as DRP reduced heavy metal emissions from the plant.¹⁸⁷

2. The MEM Allowed Centromin to Defer Its Remediation Obligations

107. Given this,¹⁸⁸ Centromin was to immediately commence its cleanup efforts under the timetable of actions and associated investments proposed by Centromin and approved by the MEM.¹⁸⁹ This included commencing the study described in PAMA Project No. 4 (intended to delimit the area impacted by the Complex's operations and to identify future corrective actions)—to be completed by 2002,¹⁹⁰ as well as preliminary soil-stabilization work, which Centromin was

of Blood Lead Levels in a Selected Population of La Oroya, November 23-30, 1999 (*hereinafter* “1999 DIGESA Study”).

¹⁸⁵ See **Exhibit C-061**, 1999 DIGESA Study; see **Exhibit C-019**, Doe Run Peru Request No. 1453558, Annex VI at 9-10, 14, 19. See also Buckley Witness Stmt. ¶ 19.

¹⁸⁶ See **Exhibit C-059**, 1998-2002 DRP Report at 75-76. See also **Exhibit C-061**, 1999 DIGESA Study at 21; **Exhibit C-019**, Doe Run Peru Request No. 1453558, Annex VI at 9-10, 14, 19.

¹⁸⁷ See generally **Exhibit C-062**, Integral Consulting Inc., *Complementary Human Health Risk Assessment, La Oroya Metallurgical Complex*, November 21, 2008, Conclusions at 7-1 to 7-8 (*hereinafter* “2008 Integral Report”). See also **Exhibit C-063**, Centers for Disease Control and Prevention, *Development of an Integrated Intervention Plan to Reduce Exposure to Lead and Other Contaminants in the Mining Center of La Oroya, Peru*, May 2005 at 12-13 (recommending “implement[ing] interventions ... demonstrated scientifically to reduce lead exposure from historical soil contamination”) (*hereinafter* “2005 CDC Report”); **Exhibit C-064**, Integral Consulting Inc., *Human Health Risk Assessment Report, La Oroya Metallurgical Complex*, December 2, 2005 at xxxvi (“While lead emissions will also be greatly reduced, blood lead levels are still predicted to exceed health-based goals in 2011. This is due to the fact that dust and soil in La Oroya will still have high residual concentrations of lead from historical emissions. For that reason, Integral recommends continuing and expanding many of the community-based programs that help to reduce lead exposures and the associated health burden.”) (*hereinafter* “2005 Integral Report”).

¹⁸⁸ See Buckley Witness Stmt. ¶¶ 13-15.

¹⁸⁹ See *Id.*

¹⁹⁰ See Bianchi Expert Report at 2, 25-26.

scheduled to complete by the end of 1997.¹⁹¹ The remediation was to be completed by 2005.¹⁹² However, Centromin did not commence the study or any remediation work in 1997.¹⁹³

108. DRP tried to convince Centromin to meet its remediation obligations. In late 1997, with the deadline for Centromin to complete its initial soil-stabilization work fast approaching, DRP's then President and General Manager, Ken Buckley, contacted Centromin to find out why it had not commenced the initial phases of rehabilitation.¹⁹⁴ Centromin's then head (and subsequent Minister of Energy & Mines from 2011 to 2014), Jorge Merino Tafur, explained that Centromin lacked the finances needed to perform the remediation.¹⁹⁵ DRP then held a series of fruitless meetings over the next two years trying to get Centromin and Peru to commence work.¹⁹⁶ Finally, on October 21, 1999, Mr. Buckley wrote a letter informing Centromin that it urgently needed to undertake its rehabilitation obligations.¹⁹⁷ He noted in this respect that contamination in the soil gave rise to certain third-party claims brought by local farming communities.¹⁹⁸ To DRP's knowledge, Centromin did not respond.¹⁹⁹

109. Faced with this pressure to begin work (and apparently lacking the finances to do so, given the disappearance of the monies purportedly set aside for remediation),²⁰⁰ Centromin requested that the MEM defer Centromin's remediation obligations and excuse its missed deadlines.²⁰¹ On April 17, 2000, the MEM granted Centromin's request that PAMA No. 4 be

¹⁹¹ **Exhibit C-020**, PAMA Operative Version at 1-13, 207-17. A slightly amended PAMA may have moved the dike completion date to 1998. **Exhibit C-035**, Knight Piésold PAMA Review at 21. *See also* Buckley Witness Stmt. ¶ 16.

¹⁹² **Exhibit C-015**, Resolution No. 334-97 at 4. *See also* **Exhibit C-017**, Resolution No. 082-2000 at Table 1 (showing PAMA schedule for Centromin's projects).

¹⁹³ Buckley Witness Stmt. ¶¶ 15-18.

¹⁹⁴ *Id.* ¶ 16.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* ¶ 17.

¹⁹⁷ *Id.* ¶ 18.

¹⁹⁸ *See Id.* ¶¶ 17-18.

¹⁹⁹ *See Id.* ¶ 18.

²⁰⁰ *See supra* ¶ 50.

²⁰¹ Buckley Witness Stmt. ¶ 19.

extended and modified, passing a resolution that approved a revised schedule for the remediation work, claiming that it would be “a futile investment to re-vegetate the areas around the La Oroya Metallurgical Complex when the SO₂ emissions in the smelter have yet to be controlled.”²⁰² Thus, the MEM allowed Centromin to “reprogram” its required PAMA investments for the rehabilitation work such that “basic physical stabilization activities would be carried out between 2000 and 2003 and the maintenance and monitoring of those activities would be conducted between 2004 and 2006.”²⁰³ The MEM added that “[r]e-vegetation of the areas affected by smoke from the La Oroya smelter would be carried out as part of the Plan for closing the affected areas and would commence in 2007, after the La Oroya smelter controls SO₂ emissions, and would conclude in 2010.”²⁰⁴

110. The MEM’s attempt to relieve Centromin and Peru of their obligation to remediate the contaminated soil was inconsistent with Centromin’s obligation under Section 6.1 of the STA. Nevertheless, the MEM’s decision to grant this request—and to delay critically important remediation work—is notable in several respects.

111. First, SO₂ emissions were not the primary problem. When the MEM granted Centromin’s extension request in 2000, “[t]he urgency of the lead exposure problem should have become even more obvious to the [Peruvian G]overnment and Centromin, when the Peruvian Ministry of Health [(“MINS”)] reported the results of a study showing elevated blood-lead levels in the population of La Oroya.”²⁰⁵ This study specifically stated that “proximity to contaminated soil and dust” was a primary pathway for lead exposure in the community, explaining that “the most common mode of lead transmission is present in the recreational areas of the children, as children tend to place their fingers and objects into their mouth.”²⁰⁶ As Mr. Buckley points out,

²⁰² **Exhibit C-017**, Resolution No. 082-2000 at 4.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Buckley Witness Stmt. ¶ 19.

²⁰⁶ **Exhibit C-061**, 1999 DIGESA Study, at 18-19 (“Children and persons with low economic resources are the vulnerable populations, more susceptible to suffer health issues as they are exposed to high levels (by living or working in highly contaminated environments), an inadequate nutrition low in nutrients, with access to a limited supply of water, in proximity to contaminated soil and dust (the most common mode of lead transmission is present in the recreational areas of the children, as children tend to place their fingers and objects into their mouth), in addition to the infrequent washing of hands, all of which facilitate the entry and accretion of lead in the organism.”); *see also id.* at 33 (explaining that “Based on results obtained in the evaluation of air and water quality, conducted by DIGESA, in the La

the MEM's "decision to postpone the clean-up work meant that for at least seven more years, the local community would continue to be exposed to the high concentrations of lead and other contaminants that had accumulated in the soil over the past 75 years."²⁰⁷

112. Second, the Peruvian Government benefited from the decision to defer Centromin's remediation obligations. Because Peru had guaranteed Centromin's compliance with its PAMA obligations, Peru had an obligation to undertake and complete the remediation obligations under Centromin's PAMA that Centromin failed to meet. Thus, by extending and "reprogramming" the PAMA obligations of Centromin, a State-owned company, the MEM, an agency of the Peruvian State, delayed Centromin's compliance with such obligations, and, in the process, purported to excuse a default that the Peruvian Government would have been required to remedy under its STA and Guaranty Agreement.²⁰⁸

113. Third, the stated basis for the decision by the MEM (that re-vegetation and soil-stabilization efforts would have been "futile" until SO₂ emissions were reduced) did not justify the wholesale delay of Centromin's remediation work. For example, Centromin was obligated under the PAMA to conduct a "Study of the Area Affected by Smoke" from the Complex.²⁰⁹ This study, the PAMA explained, was necessary to "establish the condition of the affected areas," to "establish[] control points for air and land quality monitoring," and to provide critical "information that [would] allow [Centromin] to outline measures to rehabilitate the study area and other appropriate zones."²¹⁰ Although ongoing SO₂ emissions did not impact Centromin's ability to

Oroya Metallurgical Plant, it is estimated that the soil is also contaminated with lead particles, among other chemical substances....").

²⁰⁷ Buckley Witness Stmt. ¶ 19. *See also* Bianchi Expert Report at 97-98 (explaining that the decision to defer remediation by Centromin was not reasonable or technically justified); *id.* at 111-120 (explaining that "Centromin's decision to delay remediation of areas impacted with lead and other heavy metals [has] extend[ed] the exposure of residents to elevated concentrations of these chemicals" and "increased the potential exposure to lead and other heavy metals by residents living and/or working in the affected areas").

²⁰⁸ *See Exhibit C-001*, Stock Transfer Agreement, Clause 6 at 25-28.

²⁰⁹ **Exhibit C-020**, PAMA Operative Version, § 1.1 at 207-17. *See also* Bianchi Expert Report at 98 (discussing the "requirement to conduct a study to define and characterize the extent and degree of contamination from historic operations of the CMLO.").

²¹⁰ *Id.*, § 1.1(d) at 209.

undertake this study—and to develop the information that was needed for the remediation work—the MEM deferred these PAMA obligations.

114. As Dr. Gino Bianchi explains, “Centromin’s rationale to delay implementation of PAMA Project No. 4, which MEM adopted, was not reasonable or justified under the circumstances.”²¹¹ For one, “given historic emissions, detailed site characterization studies [were] necessary to identify those areas that require immediate action to mitigate exposures to lead and other heavy metals.”²¹² For example, “site characterization studies might identify high soil lead concentrations in areas used by children (e.g., a school playground), which would warrant immediate remediation despite ongoing emissions.”²¹³ Indeed, a 2006 study conducted for the Peruvian Government found exactly that, noting that “few efforts were observed that are directed towards controlling exposures of children to contaminated soil,” and that “greatly expanded efforts need[ed] to be made.”²¹⁴ Moreover, “the stated need to control SO₂ emissions failed to address changes in facility emissions, and thus the area of impact, over time.”²¹⁵ As the area impacted by aerial emissions had decreased over time, “there were areas beyond the reach of ongoing emissions that contained (and still contain) high concentrations of lead and other heavy metals in the soil that could have been studied and remediated notwithstanding ongoing emissions at the time.”²¹⁶

115. Yet, as discussed in greater detail below, Centromin (now Activos Mineros) did not conduct even basic studies to characterize the extent of contaminated soils obtained surrounding the Complex until 2009, more than 12 years after the PAMA was approved.²¹⁷ And, since that time, it has failed to implement even remotely adequate and effective soil remediation programs.

²¹¹ Bianchi Expert Report at 97.

²¹² *Id.* at 98.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ See **Exhibit C-065**, Activos Mineros S.A.C., *Remediation of Contaminated Soil as Recommended by the Study Prepared by MWH*, May 10, 2010 (*hereinafter* “2010 Activos Mineros Report”). See also Buckley Witness Stmt. ¶ 16 (stating “[d]uring the entire six-year period that I ran DRP’s operations, Centromin never did any clean-up of the town or surrounding area.”); Mogrovejo Witness Stmt. ¶ 24 n. 7; Bianchi Expert Report at 103-107.

As Dr. Bianchi explains, these soil remediation programs were developed based on inadequate information, relying on studies that cannot possibly provide the resolution needed to effectively address the problem of contaminated soils.²¹⁸ Further, the remediation program that has been developed is “incomplete and inconsistent with” both the (inadequate) study on which remediation program was based and “industry practice.”²¹⁹ Finally, even the remediation work included in the plan is “inadequate and incomplete.”²²⁰ In fact, as of the date of this submission, “AMSAC has at most remediated only less than 34 percent of impacted soils in the La Oroya area”²²¹ And even “this percentage grossly overestimates the actual progress because it is based on an incorrect calculation of the total area that requires remediation.”²²²

3. Peru’s and Centromin’s Failure to Remediate Has Impacted Both the Health of the Citizens of La Oroya and the Interests of the Renco Defendants, Including Renco and DRR

116. Peru’s and Centromin’s failure to remediate has impacted La Oroya, whose citizens continue to be exposed to historical contamination from the Complex. That failure also has proved deeply prejudicial to Claimants, who purchased the Complex. Because over 3,700 residents of La Oroya have filed U.S. third-party claims against Renco, DRR, officers of each company, and other related entities for harm alleged to have been suffered from the Complex’s operations,²²³ Claimants are now confronting the very risk that the parties to the STA expressly allocated to Centromin and Peru—namely, the risk of third-party claims arising from environmental harms caused by Cerro de Pasco’s operations from 1922 to 1973 and Centromin’s operations from 1974 to 1997, and from any alleged harms caused by DRP’s continuing operation of the Complex during the PAMA period.

117. MEM itself has recognized that soils contaminated by historic operations constitute an important exposure pathway, explaining that residents’ exposure to high lead levels would

²¹⁸ Bianchi Expert Report at 97-101.

²¹⁹ *Id.* at 101-111.

²²⁰ *Id.* at 100-111.

²²¹ *Id.* at 3, 98-101.

²²² *Id.* at 3.

²²³ *See supra* Section II.G.1.

continue despite the reduction in emissions that DRP achieved because “the dust and soil in La Oroya [would] still have high residual concentrations of lead from historical emissions.”²²⁴ The MEM’s conclusion corroborated the finding of Integral, the independent expert that DRP previously had retained with the MEM’s support.²²⁵ Integral’s “Human Health Risk Assessment Report” noted that “[w]hile lead emissions will also be greatly reduced, blood lead levels are still predicted to exceed health-based goals in 2011. *This is due to the fact that dust and soil in La Oroya will still have high residual concentrations of lead from historical emissions.*”²²⁶ In March 2009, Activos Mineros’ consultant GWI stated that “there is a significant probability (between 24 and 96 percent) that a child will have blood lead levels above 10 µg/dL in all the communities of interest evaluated, based only on exposure to the contaminated soils.”²²⁷

118. These elevated blood lead levels and other heavy metal contamination underpin the third-party allegations in the St. Louis Lawsuits. There is no dispute that the plaintiffs have been exposed and have blood lead concentrations directly attributable to historical emissions, either directly from the Complex’ operation prior to DRP’s acquisition of the Complex or as a result of residual lead concentrations in the soil. Of course, these exposures could have been significantly reduced had Peru followed through on the remediation work that it committed to perform.²²⁸ This

²²⁴ **Exhibit C-066**, Executive Order No. 157-2006-MEM/AAM concerning Doe Run Peru’s Request for Extraordinary Extension of the “Sulfuric Acid Plants” Project, February 17, 2006 at 12 (*hereinafter* “Order No. 157-2006”).

²²⁵ Schoof Expert Report at 9-10.

²²⁶ **Exhibit C-064**, 2005 Integral Report at xxxvi (emphasis added).

²²⁷ Schoof Expert Report, at 26 (quoting the findings of the GWI study); *see also id.* at 24 (“Even Activos Mineros’ (the state-owned successor to Centromin) own consultants concluded in a May 13, 2009 presentation made by Todd Hamilton of GWI that soil alone would cause a high prevalence of elevated blood lead levels in the children of La Oroya.”).

²²⁸ *Id.* at 2 (“Historical contamination of soil and settled dust by prior Cerro de Pasco and Centromin operations continues to contribute substantially to exposures of La Oroya residents. Centromin should have investigated the magnitude and extent of contamination of soil and settled dust early during the PAMA period. The results of that investigation would have supported the development and implementation of corrective actions to reduce exposures to the existing contaminated soil and settled dust. Centromin’s lack of action to implement corrective actions has prolonged the exposure of children and other community members to lead and other metals.”). *See generally* **Exhibit C-019**, Doe Run Peru Request No. 1453558, Annex VI.

is particularly true given that DRP dramatically reduced lead emissions from the Complex.²²⁹ As Dr. Rosalind Schoof found in her 2008 Health and Human Risk Assessment (the “2008 HHRA”), the health risk from historic contamination remained high, even though DRP had made substantial progress reducing emissions. As Dr. Schoof explains, “without remediation of the soil, a reduction in Complex emissions would not be accompanied by proportional reductions in settled dust lead concentrations due to the reservoirs of lead in settled dust from prior emissions. Thus, future declines in blood lead levels were predicted to be limited by the reservoirs of lead in settled dust and soil from prior Complex operations.”²³⁰

III THIS TRIBUNAL HAS JURISDICTION OVER CLAIMANTS’ CLAIMS

119. This Tribunal has jurisdiction over Claimants’ claims because Renco and DRR are parties to the STA (A). Alternatively, Renco and DRR are parties to the STA’s arbitration clause (B), as is Peru (C). In any event, regardless of whether Claimants are parties to the STA, or just to the STA’s arbitration clause, the Tribunal has jurisdiction over Claimants’ contractual claims, as well as its non-contractual claims under Peruvian and customary international law, because of the broad scope of the STA’s arbitration clause (D).

A. RENCO AND DRR ARE PARTIES TO THE STA

120. Renco and DRR executed the STA and are parties to that agreement.²³¹ The STA’s title page (page 1) lists both “the Doe Run Resources Corporation and the Renco Group, Inc.” as parties to the agreement.²³² The second page of the STA lists Jeffrey L. Zelms as the person acting on behalf of DRR via a specific power of attorney and the third page of the STA lists Marvin M.

²²⁹ **Exhibit C-018**, Doe Run Peru 2009 Extension Request at 76 (noting a “[r]eduction of lead emission by 68%, achieving the MPL in 2006.”).

²³⁰ Schoof Expert Report at 24 (discussing the findings of her 2008 HHRA).

²³¹ Despite being a party to the STA, DRP is not a party to these proceedings because Renco and DRR do not control DRP. In 2010, DRP was forced into bankruptcy. Since then, it has been controlled by the Peruvian bankruptcy liquidator. See Transcript of June 13, 2020 Hearing on Bifurcation, pp. 240:21-241:15 (Kehoe) (“When Renco refiled its case, originally it filed it with Doe Run Peru... But as time went on, Renco became very concerned 1 about losing control of DRP, and that's actually exactly what happened. DRP is now in bankruptcy, and the liquidator--MEM is the largest creditor for all the reasons we just discussed, and the liquidator has taken complete control over DRP, so Renco has lost 100 percent control over DRP.”)

²³² **Exhibit C-001**, Stock Transfer Agreement, at 1.

Koenig as the person acting on behalf of Renco via a different and specific power of attorney.²³³ Mr. Zelms and Mr. Koenig executed the STA on behalf of DRR and Renco respectively on page 67 of the STA.

121. Claimants' Peruvian law expert, Professor Payet, confirms that Renco and DRR are parties to the STA. He explains that under Peruvian law, there are two requirements to be considered a party to a contract, namely (i) evidence of consent, and (ii) the existence of rights or obligations under the contract. Professor Payet concludes that Claimants satisfy both requirements in respect of the STA:

Regarding the first requirement - to provide consent for the formation of the Contract - Renco and DRR clearly participated in the conclusion of the Contract, expressly giving their consent. Mr. Jeffrey L. Zelms appeared before the Notary Public (Dr. Aníbal Corvetto Romero), on behalf of DRR, and Mr. Marvin N. Koenig did so on behalf of Renco. In both cases, the data in the corresponding powers-of-attorney appear in the public deed. Both representatives were instructed on the content of the Contract by the Notary Public and duly signed it.

Regarding the second requirement, Renco and DRR clearly assumed rights and obligations that are the object of the Contract, while guaranteeing compliance with DRP's obligations under it.²³⁴

122. Peru previously has argued that Renco is not a party to the STA because it received a release of its obligation to guarantee DRP's obligations under the STA a few weeks after the STA entered into effect.²³⁵ Professor Payet explains that Peru's argument is incorrect because Renco retained its contractual rights, despite the release: "Centromin released Renco from the obligations assumed in the Contract, but not from the acquired rights, such as those stipulated in the Clauses Five and Six of the Contract."²³⁶

²³³ *Id.* at 2-3.

²³⁴ Payet Opinion ¶¶ 124-125.

²³⁵ **Exhibit C-089**, Peru's Reply on its Preliminary Obligation under Article 10.20.4, Oct. 27, 2015 at ¶ 53.

²³⁶ Payet Opinion ¶ 132.

B. ALTERNATIVELY, RENCO AND DRR ARE PARTIES TO THE STA'S ARBITRATION CLAUSE

123. Assuming *arguendo* that the Tribunal finds that Renco and DRR are not parties to the STA (which they are), Claimants are nonetheless parties to the STA's arbitration clause for the following reasons: the doctrine of separability; Article 14 of the Peruvian Arbitration Act; and the intention of the parties to the transaction by which the Renco Consortium purchased the La Oroya Complex from Centromin.

124. First, Renco and DRR are parties to the STA's arbitration clause, even if they are no longer parties to the STA, due to the separability doctrine. The separability doctrine exists under the law of the contract (Peruvian law) and the *lex arbitri* (English law).²³⁷ It is also a well-recognized general principle of international arbitration.²³⁸ Pursuant to the separability doctrine, an arbitration clause contained in a contract is treated as a separate agreement from the contract itself. This means that if a person ceases to be a party to the contract, he or she does not cease to be a party to the contract's arbitration clause.

125. Applying the separability doctrine to this case, the STA's arbitration clause should be treated as a separate agreement from the STA. Since Renco and DRR were parties to the STA when it entered into effect, they also were, and continue to be, parties to the separate arbitration agreement in the STA, even if they subsequently ceased to be parties to the STA.

126. Second, Renco and DRR are parties to the STA's arbitration clause, even if they are determined to no longer be parties to the STA, pursuant to Article 14 of the Peruvian

²³⁷ **CLA-012**, Decreto Legislativo que norma el arbitraje, DL N° 1071 (*hereinafter* "Peruvian Arbitration Act") at Art. 41(2); **CLA-013**, The English Arbitration Act § 7.

²³⁸ **CLA-014**, Gary Born, *International Commercial Arbitration* § 3.02 (3rd ed. 2020) ("it is now clear that the separability presumption can be regarded as a general principle of international arbitration law, reflected in international arbitration conventions, national arbitration legislation and judicial decisions, institutional arbitration rules and arbitral awards. Although there are some differences in application of the presumption, it is universally affirmed and its existence and importance are virtually never questioned."); **CLA-009**, *Duke Energy Int'l Peru Invs. No. 1, Ltd v. Peru*, Decision on Annulment in ICSID Case No. ARB/03/28, March 1, 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-015**, *Plama Consortium Ltd v. Bulgaria*, Decision on Jurisdiction in ICSID Case No. ARB/03/24, February 8, 2005 ¶ 212 ("the nowadays generally accepted principle of the separability (autonomy) of the arbitration clause.").

Arbitration Act. Under Article 14, an arbitration clause in a contract is extended to parties that actively and decisively participate in the negotiation of that contract:

Article 14: Extension of the Arbitration Agreement

The arbitration agreement extends to those whose consent to submit to arbitration, according to good faith, is determined by their active and decisive participation in the negotiation, conclusion, execution or termination of the contract that includes the arbitration agreement or to which the agreement is related. It also extends to those who seek to derive rights or benefits from the contract, according to its terms.²³⁹

127. It is undisputed that Renco and DRR actively and decisively participated in the negotiation of the STA and Guaranty, as explained above.²⁴⁰ In fact, Claimants led that negotiation. In addition, Renco and DRR have rights under the STA. Under Article 14 of the Peruvian Arbitration Act, those facts alone are sufficient to make Renco and DRR parties to the STA's arbitration clause, and such provision applies to arbitrations seated outside of Peru.

128. Third and finally, Renco and DRR are parties to the STA's arbitration clause, even if they are no longer parties to the STA, because that was the intention of the parties to the transaction by which the Renco Consortium purchased the La Oroya Complex from Centromin. The basic bargain of the STA and Guaranty as a global transaction involving foreign investment was that Renco and DRR would invest in DRP to allow DRP to upgrade the facilities and improve the conditions of the La Oroya Complex. In exchange, Peru and Centromin would retain and assume all liability for third-party claims relating to activities of Centromin or of DRP prior to and during the PAMA period. This allocation of risks is clear from the wording of the STA, its negotiating history, the bidding terms and clarifying answers, and the entire context of the bidding process—including the fact that Peru's first attempt to sell La Oroya to the private sector did not

²³⁹ **CLA-012**, Peruvian Arbitration Act, Article 14; *see also id.*, Article 1.2, Scope of Application: (“2. The rules contained in numerals 1, 2, 3, 5 and 6 of article 8, in articles 13, 14, 16, 45, numeral 4 of article 48, 74, 75, 76, 77 and 78 of this Decree Legislative, they will apply even when the place of arbitration is outside Peru.”).

²⁴⁰ *See supra* ¶ 13.

attract any investors because the bidding terms lacked sufficient protections against third-party claims.

129. In short, the parties to the transaction intended to protect Renco and DRR from potential third-party claims. Professor Payet confirms this position in his expert report, noting that the objective was to protect the consortium purchasing La Oroya: “the objective sought is clearly beyond that and is the protection of the buying investor group.”²⁴¹ It follows that Claimants should be considered parties to the STA’s arbitration clause, if only to assert their rights against Respondents in the event that they refused to retain and assume liability for third-party claims, which is precisely what occurred here.

C. PERU IS A PARTY TO THE STA’S ARBITRATION CLAUSE

130. Although Peru did not execute the STA, it issued a formal Guaranty. Renco and DRR relied upon that Guaranty when they executed the STA and caused DRP to execute the STA. In the Guaranty, Peru agreed to arbitrate disputes related to the Guaranty by applying the STA’s arbitration clause: “Any litigation, dispute, controversy, difference or claim that may originate from or is related to this Guaranty Agreement will be resolved by applying the provisions set forth in Clause Twelfth of the Stock Transfer, Capital Increase, and Stock Subscription Contract referred to numeral 1.1 hereof.”²⁴²

131. The STA and the Guaranty are inseparable parts of the same transaction. The Guaranty was part of the bargain: DRP and the Renco Consortium would not enter into the STA without Peru’s guarantee of Centromin’s obligations under the STA, and the Guaranty would not exist without the STA. The STA itself recognizes this fundamental inseparability, and incorporates the Guaranty signed by the Vice Minister of Mining as part of its terms: “[b]y reason of Supreme Decree No. 042-97-PCM approved on September 19, 1997 in accordance with Decree No. 25570 and Act No. 26438, and the corresponding [G]uaranty [C]ontract entered into under that decree, the Government of Peru is obliged to guarantee all of the obligations of Centromin under this contract.”²⁴³ Since the Guaranty’s arbitration clause refers back to the STA’s arbitration clause,

²⁴¹ Payet ¶ 158.

²⁴² **Exhibit C-002**, Guaranty Agreement.

²⁴³ **Exhibit C-001**, Stock Transfer Agreement, Clause 10 at 57-58.

Peru is a party to the latter. Therefore, the Tribunal has jurisdiction over Peru to hear claims relating to the Guaranty.

D. THE STA’S ARBITRATION CLAUSE IS BROAD AND COVERS CLAIMANTS’ NON-CONTRACTUAL CLAIMS UNDER PERUVIAN AND CUSTOMARY INTERNATIONAL LAW

1. The STA’s arbitration clause is broad

132. The STA’s arbitration clause covers all claims, under any theory of law, which are related to the STA:

Any litigation, controversy, disagreement, difference or claim that may arise between the parties with regard to the interpretation, 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....²⁴⁴

133. The STA is governed by Peruvian law.²⁴⁵ Under Peruvian law, the phrase “in relation to” in an arbitration clause is interpreted to include all claims, including non-contractual claims, that have a factual relationship with the contract. One of the leading authorities on Peruvian arbitration law states the following in that regard: “if the parties to an arbitration agreement decided to submit to arbitration ‘all claims or controversies derived or related to this legal act’ that is understood to include extra-contractual claims derived from that legal act.”²⁴⁶

134. There also is a “pro arbitration” rule of construction in Peruvian law. Arbitration clauses are interpreted broadly under Peruvian law to include claims (and not to exclude claims), because it is assumed that parties to an arbitration agreement intended for the arbitration to resolve

²⁴⁴ *Id.*, Clause 12 (emphasis added)

²⁴⁵ **Exhibit C-001**, Stock Transfer Agreement, Clause 11.

²⁴⁶ **CLA-018**, Barchi Velaochaga, Luciano. *Algunas consideraciones sobre el convenio arbitral en el Decreto Legislativo No. 1071*. Tratado de Derecho Arbitral, Tomo II, El Convenio Arbitral. Lima, 2011, at 695 (“In our opinion, if the parties decide in the Arbitration Agreement to submit to arbitration ‘any litigation or controversy derived from or related to this legal act’, they are compromising the extra-contractual issues arising from said legal act.”)

all disputes related to a subject matter, instead of having some disputes resolved in arbitration and other related disputes resolved in litigation.²⁴⁷

135. English law (the *lex arbitri*) is similar. In 2007, the English Court of Appeal adopted a “pro arbitration” rule of construction in *Fiona Trust*, such that arbitration agreements are to be interpreted broadly to include claims and clear wording is required to exclude claims.

[o]rdinary business men would be surprised at the nice distinctions drawn in the cases and the time taken up by argument in debating whether a particular case falls within one set of words or another very similar set of words. If business men go to the trouble of agreeing that their disputes be heard in the courts of a particular country or by a tribunal of their choice they do not expect (at any rate when they are making the contract in the first place) that time and expense will be taken in lengthy argument about the nature of particular causes of action and whether any particular cause of action comes within the meaning of the particular phrase they have chosen in their arbitration clause. If any business man did want to exclude disputes about the validity of a contract, it would be comparatively simple to say so...

[T]he construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any

²⁴⁷ **CLA-019**, Soto Coaguila, Carlos. *Comentarios al artículo 13 de la Ley de Arbitraje*. Comentarios a la Ley Peruana de Arbitraje. Tomo I, 2010 at 167 (“Article 13.1. of the arbitration law, when referring to arbitrable disputes, indicates that such disputes may arise from a specific contractual or other legal relationship. A correct interpretation indicates that the new Law is referring to the fact that the legal relationship can be 'contractual' or 'non-contractual' (...) In the case of a legal relationship of contractual source, if the arbitration agreement is not clear, in accordance with the favor arbitri principle enshrined in the new law, 'all' the disputes arising from the contractual legal relationship must be considered, which must include, also, non-contractual issues derived from said contractual legal relationship, such as pre-contractual liability, unjust enrichment or undue payment...Is it convenient to agree that all controversies be submitted to arbitration or only some? If the parties decide to submit certain disputes to the jurisdiction of an arbitral tribunal, they should bear in mind that disputes almost always arise accompanied by other related disputes. For example, if the parties agreed that only issues related to the termination of the contract will be submitted to arbitration, what will happen when one party breaches the termination of the contract and the other demands arbitration? Can you also sue for compensation for contractual damages? The defendant is likely to argue that the damages award is not arbitrable. In this case, it will be up to the arbitral tribunal to decide whether said matter is within its competence or not. However, we consider that in application of the favor arbitri principle, and taking into account that one of the effects of the contractual resolution is precisely damages, there is no obstacle for the arbitral tribunal to hear such matter.”).

dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal.²⁴⁸

136. Interpreting the phrase “in relation to” broadly to include non-contractual claims is also the general rule of construction found in international arbitration throughout the world. As Gary Born states in his treatise:

Courts in almost all jurisdictions have concluded that the phrase ‘related to’ extends the arbitration clause to a broad range of disputes. Although formulations vary, [US and other courts] have repeatedly concluded that the ‘relating to’ formula encompasses non-contractual, as well as contractual, claims and that ‘it reaches any disputes that ‘touch’ or have a factual relationship to the parties’ contract.²⁴⁹

137. In sum, the STA’s arbitration clause is a broad dispute resolution provision that covers Claimants’ non-contractual claims.

2. The STA’s arbitration clause covers Claimants’ claims under Peruvian and customary international law

138. The STA concerns the La Oroya Complex and the STA’s arbitration clause is broad, as noted above. Thus, in this arbitration, Renco and DRR may assert claims under the Peruvian Civil Code against Activos Mineros, as long as those claims relate to the Complex. Renco’s and DRR’s subrogation, contribution, and unjust enrichment claims under the Peruvian Civil Code concern liability related to the La Oroya Complex. As a result, these claims fall within the scope of the STA’s arbitration clause and the Tribunal has jurisdiction over them.

²⁴⁸ **CLA-020**, *Fiona Trust & Holding Corporation & ors v Yuri Privalov & ors* [2007] EWCA Civ 20. In addition, the pre-*Fiona Trust* case law made plain that “in relation to” was to be interpreted broadly. *See, e.g., CLA-021*, *El Nasharty v J Sainsbury plc* [2003] EWHC 2195 (Comm): (“[c]learly the use of the phrase “in relation to” connotes a wider scope of arbitration clause than one which is limited to disputes arising under a contract such as whether there has been a breach of contract or not. “In relation to” includes disputes which whilst not arising under the contract, are related to or connected with it.”)

²⁴⁹ **CLA-022**, Born, *International Commercial Arbitration* 1093 (First Edition 2009).

139. Likewise, Renco and DRR may assert claims under customary international law against Peru,²⁵⁰ as long as those claims relate to the STA and the Guaranty.²⁵¹ Specifically, the STA’s arbitration clause covers, and this Tribunal possesses jurisdiction over, Claimants’ claims that Peru breached its obligations under the minimum standard of treatment under customary international law.²⁵²

140. This conclusion is consistent with the long-standing practice of tribunals, when faced with “internationalized” contracts, to permit claims under both domestic and international law. According to Pierre-Yves Tschanz, “[i]n the transnational arbitral context, the standing of the foreign investor to assert claims under international law is generally recognized, even when international law is not the *lex contractus*.”²⁵³ In other words, although it is common ground that the STA is governed by Peruvian law, this Tribunal’s jurisdiction extends to deciding whether Peru’s conduct relating to the STA and the Guaranty violates customary international law.

141. On this point, Professor Schreuer explains that the application of international law in these circumstances does not arise from choice-of-law analysis; rather, it is required by the very nature of foreign investment, even *outside* the context of a specific investment treaty:

The mandatory rules of international law, which provide an international minimum standard of protection for aliens, exist independently of any choice of law made for a specific transaction. They constitute a framework of public order within which such transactions operate. Their obligatory nature is not open to the disposition of the parties. This assertion is quite different from questions of applicable law under the conflict of law.

²⁵⁰ **CLA-023**, Statute of the International Court of Justice art. 38(1).

²⁵¹ The Guaranty’s arbitration clause also is broad and not limited to claims for breach of the Guaranty. The scope of the Guaranty’s arbitration clause includes: “Any litigation, dispute, controversy, difference or claim that may originate from or is related to this Guaranty...” Like the STA, the Guaranty uses the phrase “or is related to.” As a result, the scope of the Guaranty’s arbitration clause includes any claim under any source or theory of law, as long as the claim is related to the Guaranty. *See Exhibit C-002*, Guaranty Agreement (emphasis added).

²⁵² **CLA-024**, James Crawford, Brownlie’s Principles of Public International Law 608 (8th ed. 2012): (“[T]here are now two discrete streams of authority [for the customary minimum standard of protection under international law]—one based on the practice and jurisprudence of diplomatic protection, the other based on the generic standards in over 2,000 BITs, as applied in some 300 reported or unreported tribunal decisions.”)

²⁵³ **CLA-029**, Pierre-Yves Tschanz, *The Contribution of the Aminoil Award to the Law of State Contracts*, 18 INT’L LAW 245, 264 (1984).

International law does not thereby become the law applicable to the contract. The transaction remains governed by the domestic legal system chose by the parties. However, this choice is checked by the application of a number of mandatory international rules such as the prohibition of denial of justice, the discriminatory taking of property, or the arbitrary repudiation of contractual undertakings.²⁵⁴

142. Peru promised Claimants, both orally and in writing, that Centromin and Peru would assume and retain liability for all third-party claims relating to the Complex, except those that DRP expressly agreed to assume. Claimants relied upon those promises, and Peru's Guaranty, when investing in Peru.²⁵⁵ It follows that Claimants' claims that Peru breached its obligations under the minimum standard of treatment under customary international law by failing to honor and give effect to the representations concerning third-party claims relate to the STA, in respect of retaining and assuming liability for third-party claims, and the Guaranty. Thus, these claims fall within the scope of the STA's arbitration clause and, consequently, within this Tribunal's jurisdiction.

IV LEGAL ARGUMENT

143. Respondents breached the STA and the Guaranty Agreement by (i) refusing to assume liability for the claims asserted in the St. Louis Lawsuits, despite their duty to do so under these contracts; and (ii) failing to remediate the soil in and around La Oroya (A). In addition, or alternatively, Respondents are responsible for compensating Claimants for its damages arising out of the third-party claims in the St. Louis Lawsuits pursuant to the Peruvian Civil Code sections providing for claims for pre-contractual liability, subrogation, contribution, and unjust enrichment (B). In any event, Peru breached its obligations toward Claimants under Customary International Law (C).

²⁵⁴ CLA-030, Christoph Schreuer, THE ICSID CONVENTION: A COMMENTARY 587 (2d ed., 2009) ¶ 333 (emphasis added).

²⁵⁵ Sadlowski Witness Stmt. at ¶¶ 11, 21; Buckley Witness Stmt. at ¶¶ 12-14.

A. RESPONDENTS' REFUSAL TO ACCEPT LIABILITY FOR THE CLAIMS IN THE ST. LOUIS LAWSUITS BREACHES THE STA AND THE GUARANTY AGREEMENT

1. The Law Applicable to Renco's Claims for Breach of the STA and the Guaranty Agreement

144. The Peruvian Civil Code requires the STA and the Guaranty Agreement to be interpreted in accordance with (i) their plain terms; (ii) the parties' shared intentions judged at the time the agreements were concluded; and (iii) the principle of good faith. The most relevant provisions of the Civil Code on contractual interpretation state as follows:

Article 168. A legal act [including contracts] shall be interpreted in accordance with what has been stated in them in accordance with the principle of good faith.²⁵⁶

Article 169. The clauses of the legal acts are to be construed by reference to each other, attributing the meaning resulting from the entirety of the clauses wherever doubt arises.²⁵⁷

Article 170. Expressions that have various meanings should be understood as the most fitting for the nature and purpose of the act.²⁵⁸

Article 1362. Contracts shall be negotiated, executed and performed according to the rules of good faith and according to the common intention of the parties.²⁵⁹

²⁵⁶ **Exhibit C-075**, Peruvian Civil Code, July 24, 1984 (*hereinafter* "Civil Code"), art. 168 ("The legal act should be interpreted according to what has been expressed therein, and the principle of good faith."). Similarly, Article 57 of the Peruvian Commercial Code stipulates that contracts shall be performed and complied with according to the terms in which they were drafted. *See Exhibit C-076*, Peruvian Commercial Code, February 15, 1902 (*hereinafter* "Commercial Code"), art. 57.

²⁵⁷ **Exhibit C-075**, Civil Code, art. 169 ("The clauses of the legal acts are to be construed by reference to each other, attributing the meaning resulting from the entirety of the clauses wherever doubt arises.").

²⁵⁸ *Id.*, art. 170 ("Expressions that have various meanings should be understood as the most fitting for the nature and purpose of the act.").

²⁵⁹ *Id.*, art. 1362 (stating that "contracts should be negotiated, signed and executed according to the rules of good faith and a shared intention between the parties"). Article 57 of the Peruvian Commercial Code also refers to the principle of good faith in contractual interpretation. *See Exhibit C-076*, Commercial Code, art. 57 ("Principle of Good Faith: Commercial contracts will be executed and complied in good faith, according to the terms in which they were made and drafted, without distorting with arbitrary interpretations the straightforward, proper, and normal meaning of the spoken or written words, or

Article 1361. It shall be presumed that the statement contained in the contract corresponds to the common intention of the parties and the party who denies such coincidence shall prove this.²⁶⁰

145. Under Article 168, the language of the contract is the “starting point” to interpret it and determine its meaning.²⁶¹ But, as Professor Payet explains, it is “*only* the starting point and the interpretation should not remain at that level.”²⁶²

146. Peruvian law also requires the STA and the Guaranty Agreement to be construed in accordance with the “common intention of the parties” at the time of their conclusion.²⁶³ Specifically, contractual provisions must be interpreted both “systematically” and “functionally.”

147. The “systematic interpretation” under Article 169 of the Civil Code requires consistency both among the different parts of a single contract²⁶⁴ (STA) and between several

minimizing the effects that naturally derive from the manner that the contractors may have explained their will and contracted their obligations.”). Although the Peruvian Commercial Code is not directly applicable to civil contracts, Lohmann considers the drafting of Article 57 “*may very well be used for civil acts.*” See **CLA-031**, Juan Guillermo Lohmann Luca de Tena, *EL NEGOCIO JURÍDICO* 199 (1st ed. 1986) (*hereinafter* “Lohmann, JURÍDICO”).

²⁶⁰ *Id.*, art. 1361 (“It is presumed that the declaration expressed in the contract corresponds to the shared will of the parties, and whosoever denies such concurrence, should prove otherwise.”).

²⁶¹ Payet Opinion ¶ 40.

²⁶² *Id.* ¶ 41 (emphasis added).

²⁶³ See **Exhibit C-075**, Civil Code, art. 1362.

²⁶⁴ For a systematic interpretation of the STA one should take into account all the provisions in the Contract, its Annexes, the Bidding Conditions and the Answers to Consultations circulated by CEPRI-CENTROMIN. For example, the STA states:

(“EIGHTEENTH CLAUSE - CONTRACT INTERPRETATION:

18.1 In the interpretation of this contract and in what is not expressly stipulated therein, the parties will acknowledge supplemental validity to the following documents:

(A) The answers to the consultations with official character, circulated by CEPRI-CENTROMIN among those pre-qualified bidders; and

(B) The bidding conditions of the international public bidding No. PRI-16-97 for the promotion of private investment in the company.

(C) If there were a controversy between the bidding conditions and the contract, the latter shall prevail.”)

Exhibit C-001, Stock Transfer Agreement, Clause 18.1 at 64.

related contracts that are part of a single transaction²⁶⁵ (STA and Guaranty Agreement). In this way, contractual terms must be ascribed meanings that make sense in light of the other provisions contained within the same instrument and related contract provisions.²⁶⁶ As Professor Payet explains, “[t]his is another way of approaching the common intention of the parties, since contracts, especially the most complex ones, must have an internal logic. Thus, the interpretation of an unclear clause should not be done in isolation from the rest of the contractual clauses, but in a manner that is coherent with the whole.”²⁶⁷

148. A “functional interpretation” under Article 170 of the Civil Code requires that in circumstances in which contract terms are subject to more than one interpretation, they shall be interpreted in a manner that accords with the contract’s ultimate purpose and function.²⁶⁸ Professor Payet explains that this interpretation “resorts to the subjective cause or purpose of the agreement – ‘the practical reason of the agreement’... to understand its legal consequences.”²⁶⁹

149. Finally, the principle of good faith in Peruvian law “is, without a doubt, the basis upon which all the elements and criteria an interpreter should consider for its task.”²⁷⁰ It requires the STA and the Guaranty Agreement to be interpreted “in a reasonable manner, taking into consideration the circumstances of the case, on the basis of which the parties have reasonably placed their trust.”²⁷¹ Professor Payet explains that the good faith principle, as applied to the

²⁶⁵ **CLA-032**, Gastón Fernández Cruz, *Introducción al estudio de la interpretación en el Código Civil peruano in*, ESTUDIOS SOBRE EL CONTRATO EN GENERA: POR LOS SESENTA AÑOS DEL CÓDIGO CIVIL ITALIANO 265 (1942-2002) (Leysser L. León, ed. & trans., Ara Editores, 2d ed. 2004) (selected excerpts) (*hereinafter* “Fernandez Cruz, *Codigo Civil*”). at 265. In this case, the Guaranty Contract is inextricably linked to the Stock Transfer Agreement and as a result, they should be interpreted together.

²⁶⁶ **Exhibit C-075**, Civil Code, art. 169 (“The clauses of the legal acts are to be construed by reference to each other, attributing the meaning resulting from the entirety of the clauses wherever doubt arises.”).

²⁶⁷ Payet Opinion ¶ 48.

²⁶⁸ **Exhibit C-075**, Civil Code, art. 170 (“Expressions that have various meanings should be understood as the most fitting for the nature and purpose of the act.”).

²⁶⁹ Payet Opinion ¶ 51.

²⁷⁰ **CLA-031**, Lohmann, JURÍDICO at 196-97 (“On this pillar lie, undoubtedly, all the elements and criteria that the interpreter must take into consideration in his work.”).

²⁷¹ **CLA-032**, Fernandez Cruz, *Codigo Civil*. See also **CLA-031**, Lohmann, JURÍDICO at 197 (“[I]t starts based on the premise that the agent, under legitimate use of the autonomous will, establishes a precept of a responsible, sincere and non-misleading conduct, and that the recipient of the declaration shall receive it trusting in this conduct of the declarant. On the agent’s part, he must, in turn, trust in the

interpretation of contracts, is multifaceted. In a first aspect the good faith principle “has an objective basis and seeks to determine the meaning of the contract on the basis of the ideal pattern of a contracting party in good faith.”²⁷² In addition, the good faith principle requires discarding any opportunistic or malicious interpretations of the contract: “interpretation, according to good faith, also allows us to set aside malicious or opportunistic readings or interpretations of the contract which, although they may have a literal basis on the text, deviate from the parameters of correctness and reasonableness that must prevail in the circumstances.”²⁷³

150. In ascertaining the “common intention of the parties,” in accordance with the good faith principle, the parties’ conduct before, during and after the execution of the contract is highly relevant under Peruvian law, including through the analysis of negotiation documents, correspondence and drafts. Professor Payet confirms:

Based on the principle of good faith, the interpreter must resort to the acts of the parties during the previous, current, or subsequent stage to the conclusion of the contract, capable of generating confidence from the other party about the meaning of this, to give them decisive effects in interpretation, in order to protect the confidence instilled. To do this, it is necessary to attend to the behaviors and statements before and after the signing of the contract. If the parties, through conduct or statements, generated confidence from the other party, they cannot subsequently defraud that legitimate confidence and deviate from the previous conduct.²⁷⁴

good faith of the recipient of the declaration, and properly understand it, without twisting its meaning.”). See also **CLA-033**, Fernando De Trazegnies Granda, *La verdad construida. Algunas reflexiones heterodoxas sobre la Interpretación Legal*, in *TRATADO DE LA INTERPRETACIÓN DEL CONTRATO EN AMÉRICA LATINA: VOLUME III* 1618 (Carlos Alberto Soto Coaguila, ed., 2007) (*hereinafter* “Trazegnies, *La verdad construida*”) (“[G]ood faith, understood as the proper representation each party exercises from its own point of view facing the other, is a general principle of Law that cannot be eluded in any of the legal relationships, whatever the branch of Law or the type of relationship formed or to be formed.”).

²⁷² Payet Opinion ¶ 53.

²⁷³ *Id.* ¶ 56.

²⁷⁴ *Id.* ¶ 55.

In sum, the Civil Code requires a global or integral analysis of the contract that relies on the entire “context”²⁷⁵ of the transaction and the various “interests at play.”²⁷⁶

2. Centromin and Peru Are Liable for Third-Party Claims Relating to Environmental Contamination

- a. *Pursuant to Clauses 5 and 6 of the STA, Centromin and Peru (through the Guaranty Agreement) Retained and Assumed Liability for the Lion’s Share of Third-Party Claims Relating to Environmental Contamination*

151. By the express terms of the STA, Centromin and Peru (through the Guaranty Agreement) agreed to retain and assume liability for third-party environmental damages and claims arising before, during, and after the PAMA period, whether asserted against DRP, Renco, DRR, or any other entity or person. The key features of the liability regime for third-party damages and claims relating to environmental contamination are as follows:

152. **Centromin’s Retention and Assumption of Liability:** Under the STA, Centromin expressly agreed both (1) to retain liability for third-party damages and claims attributable to its own or Cerro de Pasco’s operation of the Complex prior to the execution of the STA and (2) to assume liability for third-party damages and claims attributable to DRP’s operation of the Complex after the execution of the STA.²⁷⁷

153. Under Clause 5.5 of the STA, the parties agreed that DRP “will not have nor will it assume any liability for damages or for third-party claims attributable to Centromin insofar as the same were the result of Centromin’s operations or those of its predecessors up to the execution of this Contract.” And Clause 5.9 provides that liability for any third-party damages and claims not assumed by DRP under Clause 5 “shall correspond to Centromin in accordance with the Sixth Clause.” Centromin thus agreed under the STA to retain the liability that it already held for third-party damages and claims attributable to (1) its own operation of the Complex from 1973 to October 23, 1997 and (2) Cerro de Pasco’s operation of the Complex from 1922 to 1973.

²⁷⁵ *Id.* ¶ 46.

²⁷⁶ *Id.* ¶ 47.

²⁷⁷ **Exhibit C-001**, Stock Transfer Agreement, Clauses 6.2, 6.3 at 27.

154. Importantly, in addition to retaining the third-party liability that it held prior to the execution of the STA, Centromin agreed in Clauses 6.2 and 6.3 of the STA to “assume” liability for third-party damages and claims attributable to DRP’s operation of the Complex after the execution of the STA. In particular, Centromin agreed to assume liability for all third-party damages and claims attributable to DRP’s operation of the Complex during the period approved by the MEM for the performance of DRP’s PAMA projects (initially 10 years), subject to very narrow exceptions not applicable here.²⁷⁸ Centromin thus accepted legal responsibility for third-party damages and claims attributable to the operation of the Complex during the PAMA period, just as if it continued to own the Complex during this period.

155. **The Extremely Broad Scope of Centromin’s Liability for Third-Party Damages and Claims Arising During the PAMA Period:** Under Clause 6.2 of the STA, Centromin agreed to assume liability for the vast majority of third-party damages and claims arising during the PAMA period, when DRP would be upgrading the Complex to improve its environmental performance and to bring it into compliance with the environmental standards Peru established in 1996.²⁷⁹ In particular, Centromin agreed to “assume liability for any damages and claims by third parties that are attributable to the activities of the Company [*i.e.*, Metaloroya or DRP, after the merger of Metaloroya and DRP in December 1997], of Centromin and/or its predecessors, except for the damages and third-party claims” for which DRP is liable under Clause 5.3.²⁸⁰ Clause 6.2 provides in full:

During the period approved for the execution of Metaloroya’s PAMA, Centromin will assume liability for any damages and claims by third parties that are attributable to the activities of the Company, of Centromin and/or its predecessors, except for the damages and third party claims that are the Company’s responsibility in accordance with Numeral 5.3.

156. Clause 5.3 narrowly circumscribes DRP’s liability for third-party damages and claims arising during the PAMA period to: (1) damages and claims that are “exclusively attributable” to DRP, “but only insofar” as they are attributable both to business operations of DRP

²⁷⁸ *Id.*

²⁷⁹ *Id.*, Clause 6.2 at 27.

²⁸⁰ *Id.*

“not related” to the PAMA and to its use of standards and practices that are “less protective of the environment or of the public health than those applied by Centromin”; and (2) damages and claims that arise directly from a default by DRP on the performance of its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2 of the STA (which are not relevant here as they relate to DRP’s operation and maintenance of certain deposit areas and its closing and dismantling of the smelting and refining facilities at the end of their operational life).²⁸¹

157. Under no circumstances or scenario would Renco, DRR or anyone else be liable for third-party claims arising from operations in the Complex prior to execution of the STA or after the STA was signed. Liability was contained within Centromin and Peru (in the vast majority of the circumstances) and DRP (in certain narrow circumstances). This was the basic allocation of risks between the parties in the STA and the overall transaction.

158. Centromin is thus liable under Clause 6.2 of the STA for **all** third-party environmental damages and claims arising during the period approved to complete the PAMA projects except to the extent that Centromin can establish that:

- (1) the damages and claims are “exclusively attributable” to DRP’s operation of the Complex after the execution of the STA; **and**
- (2) the damages and claims are attributable to business operations of DRP “not related” to its PAMA; **and**
- (3) the damages and claims arise directly from DRP’s use of standards and practices that are “less protective of the environment or of the public health than those applied by Centromin”;

²⁸¹ Clause 5.3 of the Stock Transfer Agreement provides that: (“During the period approved for the execution of Metaloroya’s PAMA, the Company will assume liability for damages and claims by third parties attributable to it from the date of the signing of this contract, **only in the following cases**:

A) Those that arise directly due to acts that are not related to Metaloroya’s PAMA which are **exclusively attributable** to the Company but only insofar as said acts were the result of the company’s use of standards and practices that were **less protective** of the environment or of public health than those that were pursued by Centromin until the date of execution of this contract....

B) Those that **result directly from a default on the Metaloroya’s PAMA obligations** on the part of the Company or of the obligations established by means of this contract in numerals 5.1 and 5.2.”)

Id., Clause 5.3 at 21-22 (emphasis added).

or, in the alternative, Centromin must establish that:

- (1) DRP defaulted on its PAMA obligations or on the obligations specified in Clauses 5.1 and 5.2 of the STA; **and**
- (2) the damages and claims arise directly from such default.

159. **Centromin’s Liability for Third-Party Damages and Claims Arising After the Expiration of the PAMA Period:** Clause 6.3 of the STA provides that (1) Centromin assumes sole liability for any damages and claims arising after the expiration of the PAMA period that are attributable to Centromin and/or Cerro de Pasco’s operation of the Complex prior to the execution of the STA, and (2) Centromin assumes proportionate liability for any damages and claims arising after the expiration of the PAMA period to the extent that DRP is not liable for such damages and claims under Clause 5.4.

160. Clause 5.4 specifies the scope of DRP’s liability for third-party damages and claims arising after the expiration of the time approved for completing the PAMA projects. Under Clauses 5.4(A) and (B), DRP assumes **sole** liability for third-party damages and claims arising after the PAMA period if and only if they result directly from (1) “acts that are solely attributable to its operations **after** that period” or (2) a default by DRP on the performance of its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2. Under Clause 5.4(C), DRP assumes “proportionat[e]” liability for damages and claims arising after the PAMA period to the extent that DRP’s operations after the PAMA expired contributed to the third-party’s damage. DRP did not operate the Complex after the PAMA period expired, and thus can have no proportionate liability under Clause 5.4.

161. **Centromin’s Obligation to Cover All Losses Falling Within the Scope of Its Assumption of Liability, Regardless of Which Entity Associated With the Renco Consortium a Third-Party Might Choose to Sue:** DRP and the Renco Consortium insisted that Centromin agree in Clauses 6.2 and 6.3 to “assume liability for any damages and claims by third parties” relating to environmental contamination, in addition to its obligation under Clause 6.5 to “indemnify [the Company] for any damages, liabilities or obligations” arising from such claims.²⁸²

²⁸² See Sadlowski Witness Stmt. ¶¶ 10-11.

An “assumption of liability” is different from, and broader than, and subsumes within it, an obligation to indemnify.²⁸³ 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.²⁸⁴

162. The decision of the United States Court of Appeals for the Third Circuit in *Caldwell Trucking v. Rexon Technology Corp.* illustrates this distinction. In *Caldwell*, the defendant Pullman sold all of the stock of its subsidiary Rexon pursuant to a stock purchase agreement.²⁸⁵ Section 1.05 ... of the agreement provided that Pullman “agrees to assume and become liable for, and to pay, perform and discharge and to indemnify [Rexon] and to hold [Rexon] harmless from and against any and all liabilities and obligations ... arising out of or relating to ... any actual or alleged violation of or non-compliance by [Rexon] with any Environmental Laws as of or prior to the Closing Date.”²⁸⁶ Several years after the sale, the plaintiff Caldwell Trucking, which was not a party to the stock purchase agreement or even related to any of the parties to the agreement, entered into a consent decree requiring it to reimburse the U.S. federal and state Governments for the costs of remediating the contamination present on its property.²⁸⁷ Caldwell then sought contribution directly from Pullman on the ground that (1) Rexon was liable for part of the remediation costs and (2) Pullman had agreed in the stock purchase agreement to assume Rexon’s liability for this type of environmental claim.²⁸⁸

163. The Court of Appeals for the Third Circuit upheld Caldwell’s claim, rejecting Pullman’s argument that it had agreed only to indemnify Rexon rather than to assume its liability

²⁸³ See, e.g., **CLA-034**, *Caldwell Trucking PRP v. Rexon Technology Corp.*, 421 F.3d 234, 243 (3d Cir. 2005); **CLA-035**, *Lee-Thomas, Inc. v. Hallmark Cards, Inc.*, 275 F.3d 702, 706 (8th Cir. 2002); **CLA-036**, *Davis Oil Co. v. TS, Inc.*, 145 F.3d 305, 316-17 (5th Cir. 1998); **CLA-027**, *Thrifty Rent-A-Car System, Inc. v. Toye*, 1994 U.S. App. LEXIS 8034, at *14-19 (10th Cir. Apr. 19, 1994); **CLA-028**, *Bouton v. Litton Industries Inc.*, 423 F.2d 643, 651 (3d Cir. 1970).

²⁸⁴ *Id.* at 243-44; **CLA-028**, *Bouton*, 423 F.2d at 651.

²⁸⁵ *Id.* at 240.

²⁸⁶ *Id.* at 241-42.

²⁸⁷ *Id.* at 240.

²⁸⁸ *Id.* at 240-41.

for the contamination.²⁸⁹ The Court noted that under New Jersey law, which governed the stock purchase agreement, “courts should interpret a contract considering the objective intent manifested in the language of the contract in light of the circumstances surrounding the transaction.”²⁹⁰ The corollary of this rather universal tenet of contract interpretation is found in, for example, Peru’s bedrock principle of good faith, which requires that contracts be interpreted under Peruvian law “in a reasonable manner, taking into account the circumstances of the case, [circumstances] on which the parties have reasonably placed their trust.”²⁹¹ Applying this type of rule of interpretation, the Court in *Caldwell* concluded that Section 1.05 “has a more expansive scope than a mere indemnification provision” because it provided that Pullman would “assume” any liabilities arising from Rexion’s violation of Environmental Laws, in addition to requiring Pullman to “indemnify” Rexion for such liabilities.²⁹² Accordingly, even though Pullman did not agree to indemnify Caldwell by name in the stock purchase agreement (or anyone other than Rexion for that matter), Pullman was obligated to compensate Caldwell for its losses resulting from its settlement with the U.S. federal and state Governments, to the extent such losses fell within the scope of Pullman’s assumption of liability.²⁹³

164. A party that assumes a liability also undertakes to conduct litigation on behalf of the party whose liability it has assumed. As held by the Court of Appeals for the Third Circuit in *Bouton v. Litton Industries, Inc.* (applying New York contract interpretation principles), “one who assumes a liability, as distinguished from one agrees to indemnify against it, takes the obligation of the transferor unto himself, *including the obligation to conduct litigation.*”²⁹⁴ At a minimum, therefore, a party who assumes a liability is obligated to cover the litigation costs of anyone who is sued for damages falling within the scope of the assumption of liability.

²⁸⁹ *Id.* at 243-44.

²⁹⁰ *Id.*

²⁹¹ **CLA-032**, Fernández Cruz, *Código Civil* at 841.

²⁹² **CLA-034**, *Caldwell Trucking*, 421 F.3d at 243-44.

²⁹³ *Id.*

²⁹⁴ **CLA-028**, *Bouton*, 423 F.2d at 651 (emphasis added). *See also* **CLA-035**, *Lee-Thomas*, 275 F.3d at 706 (affirming the district court’s decision that an assumption of liability clause obligated a party to pay attorneys’ fees and expenses).

165. Although the Court of Appeals for the Third Circuit applied New Jersey and New York contract interpretation principles in the *Caldwell Trucking* and *Bouton* cases, respectively, application of Peruvian contract interpretation principles to Clause 6 of the STA leads to the same result.

166. As discussed above, the Peruvian Civil Code requires that an agreement be interpreted in accordance with (i) its plain terms, (ii) the principle of good faith, and (iii) the parties' shared intentions at the time the agreement was concluded.²⁹⁵ Centromin agreed in Clauses 6.2 and 6.3 to "assume liability for any damages and claims by third parties" relating to environmental contamination, in addition to agreeing in Clause 6.5 to "indemnify [the Company] for any damages, liabilities or obligations" arising from such claims. Thus, the plain text of Clause 6 establishes that Centromin undertook two different and somewhat overlapping types of obligations with respect to potential third-party damages and claims: (1) an assumption of liability for third-party damages and claims, regardless of which entity associated with the Renco Consortium the third-party should decide to sue; and (2) an obligation to indemnify the "Company" (*i.e.*, Metaloroya or DRP, after the merger of Metaloroya and DRP) for any damages, liabilities or obligations arising from such claims. Centromin's assumption of liability for third-party damages and claims under Clauses 6.2 and 6.3 extends to anyone who could be sued by a third-party for damages falling within the scope of the assumption of liability; especially anyone associated with the Renco Consortium considering the context of the privatization and Renco's investment in La Oroya. This was the basic bargain that the parties struck.

167. Professor Payet confirms that Centromin's assumption of liability for conduct attributable to it is not restricted vis-à-vis any particular third-party:

Centromin's declarations assuming liability for damages, losses and claims of third parties for environmental matters are not limited by its terms to one or more specific persons. The assumption of liability focuses on the liability towards third parties and, with respect to them, Centromin declares that it 'assumes it'; that is, it is Centromin's own liability. Therefore, if the damages or claims of third parties are related to activities attributable to Centromin, regardless of the entity sued for said damages or claims, in light

²⁹⁵ Exhibit C-075, Civil Code, art. 168, 1361-1362.

of clauses 6.2 and 6.3 of the Contract, the liability lies with Centromin (and Activos Mineros).²⁹⁶

168. The key, operative wording of Clause focuses on “*activities*” causing harm “*attributable*” to Centromin. If third-party claims arise from “activities” “attributable to Centromin,” per Clause 6.2, “Centromin will assume liability.” Clause 6.2 does not restrict that assumption of liability to third-party claims filed only against DRP/Metaloroya.

169. Claimants’ interpretation of Clauses 6.2 and 6.3 accords not only with the plain text of the STA, but also with the evidence of the parties’ common intention at the time the agreement was concluded. Given that Centromin and Cerro de Pasco’s operation of the Complex for 75 years had created an extensive environmental legacy with an outdated facility,²⁹⁷ the negotiators for DRP and the Renco Consortium made clear to Centromin and the Government that they were only willing to assume responsibility for modernizing the Complex if Centromin and Peru agreed to assume liability for third-party damages and claims attributable to the operation of the Complex while DRP was carrying out the upgrades.²⁹⁸ This was a fundamental premise upon which the deal was struck, and this protection is precisely what Clauses 6.2 and 6.3 of the STA accomplished.

170. Moreover, Renco’s interpretation of these clauses also accords with the principle of good faith, because it prevents Centromin and Peru from escaping their liability for third-party damages and claims based on the mere happenstance that the Plaintiffs in the St. Louis Lawsuits have chosen to sue Renco and certain persons and companies associated with Renco, but not DRP.

171. In addition to agreeing that Centromin would retain and assume liability for the vast majority of third-party damages and claims relating to environmental contamination, the parties also provided for two other distinct and ancillary protections: Centromin agreed in Clause 6.5 to indemnify the “Company” (*i.e.*, Metaloroya or, after the merger, DRP) for any damages, liabilities

²⁹⁶ Payet Opinion ¶ 151.

²⁹⁷ See Section II.A. See also Sadlowski Witness Stmt. ¶¶ 14-15

²⁹⁸ See Sadlowski Witness Stmt. ¶¶ 10-11. See also sub-section b. below; Buckley Witness Stmt. ¶¶ 11-12.

or obligations arising from third-party claims, and it agreed in Clause 8.14 to defend the “Company” or the “Investor” (*i.e.*, DRP) from such claims.²⁹⁹

172. It is difficult to imagine a more robust package of assurances and protections from third-party environmental damages and claims than those encompassed in the STA.

- b. *Renco Would Not Have Invested in DRP and the Complex without the Broad Commitment from Centromin and Peru to Retain and Assume Liability for Third-Party Environmental Contamination Claims*

173. As discussed above, the Peruvian Civil Code requires that contracts be interpreted in good faith and in accordance with the “common intention of the parties” at the time of their conclusion.³⁰⁰ Here, it is clear that the common intention of the parties was for Peru and Centromin to assume liability for third-party claims, and a good faith interpretation of the contracts would require Peru and/or Centromin to step in and defend DRP and any affiliates, or any other third-party exposed to liability for contamination from operations of the Complex.

174. To ensure the plain terms of the STA and the Guaranty Agreement are construed in good faith and in accordance with the parties’ common intention, it is important—and required by Peruvian law—to understand the context surrounding Renco’s decision to invest in Peru.³⁰¹ This context includes Peru’s numerous assurances that it would retain and assume liability for third-party environmental damages and claims, and that together with Centromin, it would remediate the contamination caused by multiple decades of operations by Centromin and its predecessor, Cerro de Pasco.³⁰² The contemporaneous evidence and circumstances surrounding Centromin’s privatization demonstrate that no investor (including Renco) would risk investing in the La Oroya Complex without Centromin and Peru’s retention and assumption of liability for third-party claims relating to environmental contamination.³⁰³ The STA and the Guaranty Agreement must be interpreted with this context in mind to give effect to the promises, assurances, and obligations

²⁹⁹ **Exhibit C-001**, Stock Transfer Agreement, Clauses 6.5, 8.14 at 45-46.

³⁰⁰ **Exhibit C-075**, Civil Code, art. 1362 (“The contracts should be negotiated, signed and executed according to the rules of good faith and a shared intention between the parties.”).

³⁰¹ Payet Opinion ¶ 47.

³⁰² Sadlowski Witness Stmt. ¶¶ 11, 23-36.

³⁰³ *Id.* ¶¶ 15-17.

which functioned as the essential precondition to the Renco Consortium’s decision to invest in Peru.

175. As set forth in detail in Section II.A above, from 1922 until 1997, Peru allowed La Oroya to become one of the world’s most polluted sites. From the beginning of the twentieth century until the early 1990s, Peru’s mining sector operated with little or no regulatory oversight.³⁰⁴ The resulting environmental impact was devastating, and Centromin’s operation of the Complex became the epitome of what some described as Peru’s “openly hostile” approach to environmental concerns.³⁰⁵ The Peruvian Government publicly recognized that the Complex was one of the worst polluters in the country.³⁰⁶ Thus, the operation of the Complex severely polluted the soil, waters and air of La Oroya with heavy metals and other noxious and toxic emissions and effluents for more than seven decades.³⁰⁷ Although it was unclear exactly what needed to be done to improve the Complex’s environmental performance, the risk of claims by people living near the smelting operations was clearly significant.³⁰⁸

176. Given this context, it is unsurprising that environmental liabilities, potential claims by third parties, and remediation were at the forefront of investors’ concerns.³⁰⁹ Indeed, this is one of the main reasons that when Peru attempted to sell La Oroya in the first bidding process without assuming liability for third-party claims, it did not even receive a single bid.³¹⁰ As the Peruvian Government conceded in its 1999 White Paper prepared by its Special Privatization Committee,

³⁰⁴ **Exhibit C-024**, 2005 World Bank Report at 63-64 (“The regulatory framework prior to the 1990’s did not include any mechanisms that would require companies to comply with environmental or social standards or with the remediation/compensation of environmental degradation Thus, the reforms to the institutional and legal framework governing protection of the environment in the 1990’s has contributed to a gradual change in the behavior of mining companies ... which have taken concrete steps and invested substantial sums to improve their environmental performance. [I]t is worth recognizing that in the past 10 years or so, the regulatory landscape for addressing and promoting environmental compliance has improved considerably.”). *See also* Bianchi Expert Report at 4-5.

³⁰⁵ **Exhibit C-003**, Apr. 18, 1994 NEWSWEEK.

³⁰⁶ **Exhibit C-004**, 1997 White Paper at 19.

³⁰⁷ *See* Section II.A. *See also* Sadlowski Witness Stmt. ¶ 14.

³⁰⁸ *See* Mogrovejo Witness Stmt. ¶ 12.

³⁰⁹ *See* Sadlowski Witness Stmt. ¶¶ 15-16.

³¹⁰ **Exhibit C-012**, 1999 White Paper at 20 (explaining that “there was no concrete proposal during the auction on May 10, 1994”). *See also* Sadlowski Witness Stmt. ¶ 16.

Peru's first privatization effort failed largely because no investor was willing to assume responsibility or liability for the "accumulated environmental problems" caused by the operation of the La Oroya Complex over the previous seven decades.³¹¹

177. Learning from its failure to attract any interest whatsoever from foreign investors in the first privatization effort, Peru entirely revamped Centromin's privatization strategy to induce foreign investment in the Complex by giving foreign investors assurances and comfort that Peru would retain responsibility for "*claims of third parties in relation to environmental liabilities*,"³¹² in addition to remediating "*the environmental problems accumulated in the past*,"³¹³ including the creation of a special fund for such purposes.

178. Thereafter, and pursuant to its revised privatization strategy, Peru made numerous representations and assurances during two consultation rounds in February and March 1997, further promising prospective foreign investors that Centromin would remediate the contaminated soil surrounding the La Oroya Complex and assume liability for third-party claims relating to environmental contamination.³¹⁴ During the second round of consultations, Centromin assured foreign investors, including the Renco Consortium, that Centromin both would remediate the accumulated contamination and retain and assume liability for third-party claims relating to environmental contamination:³¹⁵

Question No. 41. *Taking into account that CENTROMIN will assume responsibility for the existing contamination at La Oroya's Smelter, and the new operator will be obligated later on to continue with the same contamination practices for a period of time, as authorized by PAMA's terms ... Would CENTROMIN accept responsibility for all the contaminated*

³¹¹ *Id.* at 6 (stating that "[t]he main problems perceived by potential investors... were: "... [t]he accumulated environmental liabilities, [t]he low level of reserves in the mines, [l]ittle interest in the La Oroya Smelter, [t]he obsolescence of the equipment, [t]he complex nature of the commitments in the social environment"). See also **Exhibit C-004**, 1997 White Paper at 20 (noting that "the main aspects which led to the possible investors rejecting its presentation [the sale of Centromin were: the size of the Company, the complexity of its operations, the accumulated environmental liabilities and the social setting").

³¹² *Id.* at 62 (emphasis added).

³¹³ *Id.* at 62 (emphasis added).

³¹⁴ **Exhibit C-036**, Consultation Round 1; **Exhibit C-005**, Consultation Round 2.

³¹⁵ **Exhibit C-005**, Consultation Round 2.

land, water and air until the end of the period covered by the PAMA or how can it determine which part corresponds to whom?

Answer. Affirmative, provided that METALOROYA would fulfill the PAMA's obligations which are their responsibility, otherwise, METALOROYA will be responsible from the date of non-compliance of the obligation, according to the competent authority's opinion (Clauses 3.3. (5.3) and 4.2 (6.2) of the Models of the Contract).³¹⁶

179. Centromin also reassured prospective investors that it had established a fund to finance its environmental liabilities and obligations, which would ensure its compliance with these fundamental obligations.³¹⁷

180. Both the model share transfer agreement and final STA signed by Centromin and DRP (with the intervention of Renco and DRR) declare these consultations to be of "supplemental validity."³¹⁸ Under Peruvian law, both Peru's representations during the consultations and the draft agreements are relevant and probative when determining the common intentions of the parties.³¹⁹ In other words, the STA requires that its wording be interpreted in a manner consistent with the consultations.

181. Not content with the explicit promises already provided by the Peruvian Government, the Renco Consortium requested and received a specific guaranty from the Government, to assure itself that the obligations and commitments that Centromin would

³¹⁶ *Id.*, Question 41 (emphasis added).

³¹⁷ *Id.*, Question 42.

³¹⁸ **Exhibit C-001**, Stock Transfer Agreement, Clause 18.1 at 64.

³¹⁹ See **CLA-031**, Lohmann, JURÍDICO at 199 ("To specify the agent's intention based on that stated or expressed, one must value his entire behavior, even subsequent to the conclusion of the act. An entire behavior that, undoubtedly, is not solely [a behavior] prior or subsequent to the expression of will, but also the coetaneous conduct through which the will with greater or lesser fidelity materializes and is made evident—express itself, according to the article."). See also **CLA-032**, Fernández Cruz, Código Civil at 813.

undertake in the STA were backed by the full force of the State.³²⁰ This guarantee was an essential precondition for the Renco Consortium’s decision to invest in Peru.³²¹ As Mr. Sadlowski testifies:

Throughout the negotiations, we communicated to Centromin and CEPRI representatives that we would not proceed with the purchase unless, among other things:

- (i) Centromin retained the liability, and undertook the responsibility, for remediation of the historical contamination in and around La Oroya;
- (ii) Centromin retained and assumed liability for any and all third-party claims related to the environmental condition at La Oroya (including, of course, claims against the entities conducting the negotiations—Renco and Doe Run Resources); and
- (iii) the Peruvian government guaranteed Centromin’s declarations, guarantees, and obligations under the agreement.³²²

182. The essential character of this character to the Renco Consortium’s decision to invest in Peru and the representations made by Centromin are confirmed by Mr. Buckley:

We made it very clear to Mr. Barcellos that the Renco Consortium would “walk” (i.e., we would not agree to acquire the Complex) unless Centromin agreed (1) to retain and assume liability for all third party claims relating to historical contamination and (2) to remediate the areas in and around the town of La Oroya. While we were making these points to Mr. Barcellos, Mr. Merino joined the meeting. At that point, I personally reiterated the same points for the benefit of Mr. Merino and told him that this was a “deal-breaker” if they did not agree to these key terms. Mr. Merino said that he needed to caucus with his colleagues. When they came back into the room, Mr. Merino said that Centromin would agree to assume liability for past harm and harm that occurred while DRP was upgrading the outdated facility to control its emissions, and to remediate the town and surrounding areas.³²³

³²⁰ Sadlowski Witness Stmt. ¶¶ 11, 21, 26-28.

³²¹ *Id.* ¶ 11 (“Peru’s Guaranty of Centromin’s representations, assurances and obligations was also a key condition insisted upon by Renco and Doe Run Resources and without which, we never would have executed the [Stock Transfer Agreement].”).

³²² *Id.* ¶ 21.

³²³ Buckley Witness Stmt. ¶ 12.

183. President Fujimori himself issued a Supreme Decree resolving that the “Peruvian State” would enter into a contract with DRP guaranteeing the “*declarations, assurances, guarantees and obligations assumed by [Centromin]*” in the STA.³²⁴ The Supreme Decree recognized that pursuant to Peruvian law, the Peruvian State was authorized to grant by contract to foreign investors investing in State companies “*the assurances and guarantees that are considered necessary to protect their acquisitions and investments.*”³²⁵

184. That is exactly what transpired. Subsequent to the STA’s execution, Peru guaranteed all of the “*representations, securities, guarantees and obligations*” Centromin had assumed in the STA:

The STATE hereby guarantees THE INVESTORS the representations, securities, guarantees and obligations assumed by the TRANSFEROR [Centromin] under the Stock Transfer Capital Increase and Stock Subscription Contract ...³²⁶

185. Peru’s obligations under the Guaranty Agreement remain in force “*as long as THE TRANSFEROR has pending obligations pursuant to*” the STA.³²⁷ Through its execution of the Guaranty Agreement, therefore, Peru gave concrete contractual assurances that it would guarantee the “*representations, securities, guarantees and obligations*” assumed by Centromin in the STA. The Renco Consortium reasonably relied upon these assurances when deciding to invest in Peru.³²⁸

186. If, through this international arbitration (the forum that the parties chose to resolve disputes) Peru and Centromin are successful in avoiding their liability for third-party claims, Respondents will success in a tremendous windfall by improperly shifting to investors obligations that Peru and Centromin clearly understand and agreed would be theirs.

³²⁴ **Exhibit C-077**, Decree No. 042-07.

³²⁵ *Id.*

³²⁶ **Exhibit C-002**, Guaranty Agreement, art. 2.1 at 2.

³²⁷ *Id.*, art. 4 at 3.

³²⁸ Sadlowski Witness Stmt. ¶¶ 11, 26-28.

3. Peru and Centromin Have Breached the STA and the Guaranty Agreement by Failing to Assume Liability for the Claims Asserted in the St. Louis Lawsuits

187. Peru and Centromin have failed to comply with their obligation under Clauses 5.9, 6.2 and 6.3 of the STA to assume liability for the claims asserted in the St. Louis Lawsuits, despite their duty to do so. In addition, they have failed to comply with their obligation under Clause 6.1 to remediate the areas around the Complex.³²⁹

188. As described above, over 3,700 plaintiffs, all of whom claim to be Peruvian citizens and one-time residents of La Oroya or the surrounding area, have lawsuits pending against Claimants and its affiliates and officers and directors in the Eastern District of Missouri.³³⁰ The plaintiffs “*seek recovery from Defendants [Renco, Doe Run Resources, Doe Run Acquisition Corp., and Renco Holdings, Inc.] for injuries, damages and losses suffered by each and every minor plaintiff ... who were minors at the time of their initial exposures and injuries as a result of exposure to the release of lead and other toxic substances ... in the region of La Oroya, Peru.*”³³¹ In short, the St. Louis Lawsuits are *precisely* the type of third-party environmental claims that Respondents understood they needed to retain and assume in any sale transaction to an investor and which Respondents did, in fact, retain and assume in order to consummate the deal.³³²

a. *The Claims Asserted in the St. Louis Lawsuits Fall within the Scope of Centromin’s Assumption of Liability*

189. The essence of the bargain that Centromin/Peru and the Renco Consortium struck was that Centromin (now Activos Mineros) and Peru bore the risk for third-party claims except in a few isolated circumstances that do not apply here. Having retained and assumed liability for all third-party claims except for those expressly delegated to DRP, the question becomes: which of Peru/Centromin or DRP is liable to third-parties (to the extent liability exists) for claims of injury

³²⁹ For a detailed discussion of Peru and Centromin’s breach of their contractual obligation to remediate the areas around the Complex, see Section II.H *supra*.

³³⁰ **Exhibit C-078**, Letter from King & Spalding to White & Case, August 15, 2013 (*hereinafter* “August 15, 2013 Letter”).

³³¹ *Id.*, para. 1 of attached pleading.

³³² Sadlowski Witness Stmt. ¶¶ 25-38.

resulting from operations of the Complex? Specifically, who bears liability for the claims asserted in the St. Louis Lawsuits, if successful?

190. Unequivocally, Centromin and Peru do. Consistent with the parties' overall risk allocation in the transaction, Clause 6.2 of the STA assigns liability to Centromin for third-party claims "attributable to the activities" of Centromin and DRP, except for the few exceptions under Clause 5.3. The evidence establishes that DRP is not liable under Clause 5.3 for claims asserted in the St. Louis Lawsuits that arose during the PAMA period (and thus Peru and Centromin are) because:

- (1) Dr. Schoof's expert report and Mr. Connor's expert report establish that the claims asserted in the St. Louis Lawsuits are not "exclusively attributable" to DRP's operation of the Complex;³³³
- (2) Mr. Mogrovejo's witness statement establishes that DRP did not engage in any business operations during the PAMA period that were "not related" to its PAMA;³³⁴
- (3) Dr. Bianchi's expert report and Mr. Connor's expert report establish that DRP did not engage in standards and practices that were "less protective of

³³³ Schoof Expert Report at 2 ("Cerro de Pasco's and Centromin's prior operation of the La Oroya Complex created pervasive environmental contamination in the region of La Oroya that continued to contribute substantially to exposures of La Oroya residents to lead and other metals after 1997, and continue to the present time. Any environmental exposure that occurred between 1997 and the present cannot be exclusively attributed to DRP. Historical contamination of soil and settled dust by prior Cerro de Pasco and Centromin operations continues to contribute substantially to exposures of La Oroya residents."); Connor Expert Report at 21-27 ("The results of these various studies demonstrate that exposure to lead and arsenic cannot be exclusively attributed to DRP for any time period. Rather, soils contaminated due to historical operations prior to DRP's acquisition of the facility have always contributed to exposure and will continue to do so, until AMSAC fulfills its obligation to remediate."). *See also* Bianchi Expert Report at 120 ("Based on my review of available documents and my own observations from several visits to La Oroya and surrounding communities, I conclude that AMSAC's (*i.e.*, Centromin's) failure to undertake adequate remedial measures has increased the potential exposure to lead and other heavy metals by residents living and/or working in the affected areas.").

³³⁴ Mogrovejo Witness Stmt. ¶ 38 (noting that "Doe Run Peru had not expanded operations, created any new metallurgic processes, or created any new business opportunities at the Complex, as it had focused its resources on getting the smelter it inherited from Centromin up to speed.").

the environment or of public health than those that were pursued by Centromin ...”;³³⁵ and

- (4) DRP did not default on its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2 of the STA.³³⁶

191. Because DRP is not liable under Clause 5.3 for claims asserted in the St. Louis Lawsuits for alleged injuries that arose *prior* to completion of all of the PAMA projects, all such claims fall within the scope of Centromin and Peru’s assumption of liability under Clauses 5.9 and 6.2.

192. Centromin and Peru’s liability for the claims asserted in the St. Louis Lawsuits is governed by Clause 6.3 of the STA to the extent the underlying damage and claims arose *after* the PAMA period. Clause 6.3 provides that even after the PAMA period expires, Centromin will continue to “assume liability for any damages and claims attributable to Centromin’s and/or its predecessors’ activities,” except if DRP is liable under Clause 5.4. Again, neither of the limited exceptions under Clause 5.4 applies in this case. In particular, (1) the Plaintiffs’ damages cannot be “solely attributable to [DRP’s] operations after the [PAMA] period” because DRP stopped operating the Complex in June 2009, four months before the PAMA period expired in October 2009; and (2) DRP did not default on its PAMA obligations.³³⁷ Because the narrow exception in

³³⁵ Bianchi Expert Report at 32-33 (“By any appropriate metric, DRP used standards and practices that were significantly more protective of the environment and public health than those that were pursued by Centromin.”); Connor Expert Report at 3, 9-20 (“Throughout the full period of its operations, DRP applied standards and practices that were more protective than those of its predecessor, Centromin, including implementation of both PAMA and non-PAMA projects on the CLMO and in the surrounding communities. These projects had significant benefits to health and welfare, including reductions in the [blood lead levels] of plant workers, local residents, and their children.”). *See also* Schoof Expert Report 2, 22-23 (“Actions taken by DRP resulted in significant reductions in community exposures to lead and other chemicals emitted from the Complex. Since acquiring the Complex in 1997, DRP undertook multiple actions to reduce emissions from the Complex, and to characterize emissions and monitor air concentrations in the community. In addition, DRP undertook and supported numerous actions in the community designed to reduce exposures to Complex emissions and to mitigate the risk for adverse health impacts in the surrounding community.”)

³³⁶ **Exhibit C-018**, July 2009 Extension Request.

³³⁷ Right Business, the liquidator appointed by Doe Run Peru’s creditors in July 2012, has restarted the operation of the Complex’s lead and Zinc Circuits, with MEM’s approval. However, because the Renco Defendants have not had any ability to influence or control Doe Run Peru’s management since the

Clause 5.4 does not apply, “all other liabilities shall correspond to Centromin in accordance with the Sixth Clause” pursuant to Clause 5.9.

193. In sum, no matter how the claims asserted in the St. Louis Lawsuits are characterized, the STA’s comprehensive allocation of liability regime between Peru and Centromin on the one hand, and DRP on the other, requires Centromin and Peru to assume liability for those claims under these circumstances.³³⁸ Peru’s and Centromin’s wrongful attempt to shift the risk of third-party environmental claims and damages to the Renco Consortium members and related entities and individuals is particularly egregious in light of the fact that no investor (including Renco) was willing to assume responsibility for accumulated environmental harms, as evidenced by the fact that Peru did not receive a single bid in its first privatization effort. Peru restructured its entire privatization strategy and provided to the Renco Consortium an abundance of broad and unambiguous assurances in relation to environmental liabilities in order to entice Renco to invest. In light of the foregoing, Peru’s failure to assume liability now for these third-party environmental claims — the sacrosanct basis of the parties’ agreement — can only be characterized as the hallmark of bad faith.

b. *Activos Mineros’ Arguments in Refusing to Assume Liability for the Claims Asserted in the St. Louis Lawsuits Are Meritless*

194. As explained above,³³⁹ Renco and its affiliates repeatedly wrote to Centromin (now Activos Mineros), the MEM and the MEF, urging them to honor their contractual obligations to assume liability in relation to the St. Louis Lawsuits, and requesting that they defend the St. Louis Lawsuits and release, protect and hold harmless Renco and its affiliates from those third-party claims.³⁴⁰ Rather than comply with their contractual obligations, however, Activos Mineros has

appointment of Right Business, it is inconceivable that they could be held liable for any alleged harms attributable to Right Business’ operation of the Complex.

³³⁸ **Exhibit C-075**, Civil Code, art. 168.

³³⁹ See Section II.G.

³⁴⁰ See, e.g., **Exhibit C-040**, October 12, 2010 Letter, **Exhibit C-042**, Letter from J. Carlos Huyhua (Doe Run Peru) to V. Carlos Estrella (*Activos Mineros*), November 11, 2010 (*hereinafter* “November 11, 2010 Letter”), **Exhibit C-043**, December 14, 2010 Letter, **Exhibit C-044**, February 18, 2011 Letter, **Exhibit-056**, July 12, 2011 Letter, **Exhibit C-046**, January 27, 2012 Letter, **Exhibit C-047**, March 20, 2012 Letter, **Exhibit C-048**, July 18, 2012 Letter, **Exhibit C-049**, August 9, 2012 Letter, **Exhibit C-**

refused to accept or to assume any responsibility or liability for the claims asserted in the St. Louis Lawsuits,³⁴¹ while the Peruvian Government has ignored entirely Renco's requests to date.

195. When refusing to comply with its obligations, Activos Mineros suggested that it was not required to assume liability for the claims asserted in the St. Louis Lawsuits because the Plaintiffs had named as defendants, entities and individuals associated with Renco, but not DRP itself.³⁴²

196. This argument must fail because it is contrary to (1) the plain terms of Clauses 5.9, 6.2 and 6.3 of the STA, pursuant to which Centromin agreed to take onto itself the liability of anyone who could potentially be sued for damages relating to environmental contamination caused by the Complex's operations, and (2) the objective intention of Peru and Centromin to protect those associated with the Renco Consortium and DRP from liability for third-party environmental claims in order to induce and entice Claimant to invest in the Complex.

197. Specifically, Respondents' interpretation of these provisions (most notably Clause 6.2) that excludes Renco and DRR from the scope of Centromin's assumption of liability would run against basic Peruvian legal principles of contract interpretation. First, it would not comport with a textual reading because it would read into that provision a limitation that does not exist: a limitation on the party vis-à-vis whom Centromin assumes liability. Clause 6.2 focuses on "activities" for which Centromin "assume[s] liability," not particular *entities* that Centromin insulates from liability. Because Renco and DRR are parties to the STA and are not excluded from Centromin's assumption of liability in Clauses 5 and 6 (and specifically 6.2), Renco and DRR are protected from liability by these provisions and are entitled to enforce them against Centromin.

198. Second, Respondents' interpretation is contrary to the intent of the parties and the objective and function of that provision and the STA as a whole, and the entire transaction

050, November 16, 2012 Letter, **Exhibit C-051**, January 17, 2013 Letter; **Exhibit C-052**, June 21, 2013 Letter.

³⁴¹ See, e.g., **Exhibit C-054**, November 26, 2010 Letter; **Exhibit C-055**, January 21, 2011 Letter.

³⁴² **Exhibit C-054**, November 26, 2010 Letter ("[W]e see that Doe Run Peru SRL is not a party to the process originating the lawsuits. Given the fact that the Agreement refers solely to Metaloroya (now Doe Run Peru SRL), and not to the companies that are the defendants, we request you to clarify the grounds on which you claim that the indemnity clause applies to such companies."). See also **Exhibit C-055**, January 21, 2011 Letter.

(including the Guaranty). From the outset, the intent of the parties was to assign the risk of third-party claims arising from Centromin’s activities, and from actions attributable to Centromin, to Centromin itself – not to Metaloroya (or Renco, or DRR). As Professor Payet explains: “although the clause refers to the allocation of risks between Centromin and Metaloroya, the function of the clause is not exhausted in these two companies, but rather seeks to implement a risk allocation that is made for the benefit of the winning investors of the bidding process.”³⁴³

199. Finally, excluding Renco and DRR from the scope of Clause 6.2 would defy the Peruvian bedrock principle of good faith, and would be contrary to a wholistic and contextual interpretation of the entire STA and the Guaranty. As Professor Payet puts it: “Clauses Five and Six therefore establish the assignment to Centromin of certain responsibilities, risks and claims of third parties. This is done by assigning passives, liabilities, and contingencies between Centromin and Metaloroya, but the objective sought is clearly beyond that and is the protection of the buying investor group.”³⁴⁴

200. A reading of the STA that excludes Renco and DRR from Centromin’s assumption of liability in Clauses 5 and 6 would effectuate the type of “malicious and opportunistic interpretation” that the principle of good faith seeks to avoid.³⁴⁵ As fairness and common sense dictate, and as explained by Professor Payet and as the *Caldwell* and *Bouton* cases illustrate, a party that agrees to assume a liability is obligated to cover the losses (including the litigation costs) of anyone who is sued for damages falling within the scope of the liability which such party has assumed.³⁴⁶

201. Activos Mineros’ argument also must fail because Centromin and Peru are also obligated to indemnify DRP under Clauses 6.5 and 8.14 of the STA, and DRP is itself obligated to indemnify the Renco Defendants for any judgment entered against them in the St. Louis Lawsuits, as well as for any costs incurred in relation to the St. Louis Lawsuits. As a result of their indemnity agreement, the Renco Defendants notified DRP of the St. Louis Lawsuits. DRP, in turn,

³⁴³ Payet Opinion ¶ 157.

³⁴⁴ *Id.* ¶ 158.

³⁴⁵ *Id.* ¶ 56.

³⁴⁶ *Id.* ¶¶ 193-198, 211-220; **CLA-034**, *Caldwell Trucking*, 421 F.3d at 243-44; **CLA-028**, *Bouton*, 423 F.2d at 651.

notified Centromin and Peru. As the St. Louis Lawsuits allege both acts and facts “*included within the responsibilities, declaration and guarantees offered by Centromin.*”³⁴⁷ Centromin (now Activos Mineros) was required under Clause 8.14 “*to immediately assume those obligations as soon as it [was] notified.*”

202. That was the deal agreed between the parties, and Peru’s promises to that end were as frequent as they were concrete. They included, *inter alia*, numerous representations that Centromin and Peru would assume liability for remediation and third-party claims and damages during the Consultation Rounds in February and March 1997,³⁴⁸ the broad assumption of liability contained in the finally-executed STA, and Peru’s personal and specific guaranty that “[t]he STATE hereby guarantees THE INVESTORS the representations, securities, guarantees and obligations assumed by the TRANSFEROR [Centromin]” under the STA, which unambiguously included Centromin’s responsibility for environmental matters.³⁴⁹

203. Moreover, when the terms of the STA are read in light of circumstances surrounding the execution of the STA and the parties’ objective intention, the conclusion that the parties understood and intended for Claimants to be protected from the St. Louis Lawsuits is unassailable. There is no rational reason that the Renco Consortium would want Centromin and Peru’s agreement to assume liability for third-party claims to extend only to DRP. And the STA cannot be read to eliminate protections that Claimants and other Defendants in the St. Louis Lawsuits clearly would have wanted, because:

- The STA is granted by Centromin in favor of DRP “with intervention of” ... “the Doe Run Resources Corporation and the Renco Group, Inc.,” who are named Defendants in the U.S. Litigation.³⁵⁰

³⁴⁷ **Exhibit C-001**, Stock Transfer Agreement, Clauses 8.14 at 45-46.

³⁴⁸ **Exhibit C-036**, Consultation Round 1; **Exhibit C-005**, Consultation Round 2.

³⁴⁹ **Exhibit C-002**, Guaranty Agreement, art. 2.1 at 2.

³⁵⁰ **Exhibit C-001**, Stock Transfer Agreement, Title page. *See also, id.* at 1 (similarly noting that the Stock Transfer Agreement is granted by Centromin “in favor of” Doe Run Peru “with intervention of” ... “the Doe Run Resources Corporation and the Renco Group, Inc.”).

- Representatives of the Defendants in the St. Louis Lawsuits signed to the STA.³⁵¹
- The STA expressly recognizes that DRP is “an indirect wholly owned subsidiary” of DRR, a named Defendant in the St. Louis Lawsuits.³⁵²
- The Renco Consortium won the public bidding process for Centromin and thereafter formed the locally incorporated investment vehicle (DRP) to comply with the bidding conditions. The Consortium thereafter “assigned its rights to the INVESTOR [DRP],” as was required by the bidding conditions.³⁵³
- DRR and Renco warranted DRP’s compliance with the investment requirements set forth in the STA.³⁵⁴
- Representatives of DRR and Renco specifically bargained for and conditioned entering into the STA upon such protection.³⁵⁵

204. The intent of the parties in Clauses 5 and 6 of the STA (and in particular 6.2) was to allocate to Centromin (and Peru) the risk of third-party claims arising from “activities” “attributable to” Centromin and DRP for everything other than that which DRP assumed. The broad wording focusing on Centromin’s assumption of liability for “activities” “attributable to” it and DRP is consistent with the overwhelming pre-STA and post-STA evidence showing that the intent of the parties was for Centromin to retain and assume this risk—and from the Renco Consortium to be free from it.

205. It is clear from the foregoing that the foreign investors comprising the Renco Consortium are parties to the STA and the Guaranty Agreement, and the protections which form the cornerstone of the parties’ agreement, including Centromin’s obligation to assume liability for the claims asserted in the St. Louis Lawsuits, extend at minimum to the Renco Consortium and those individuals associated with it. It would be grossly unjust – and inconsistent with the bargain, including STA Article 6 – if Peru and Centromin were able to evade the obligations they assumed

³⁵¹ Specifically, Jeffery Zelms signed the Stock Transfer Agreement on behalf of DRP and DRC, while Marvin Koenig signed the Stock Transfer Agreement on behalf of the Renco Group Inc. *See Id.* at 66-67.

³⁵² *Id.* at 4.

³⁵³ *Id.*, § VIII at 7.

³⁵⁴ *Id.*, Clause 18.5 at 65-66.

³⁵⁵ Sadlowski Witness Stmt. ¶¶ 9-11; Buckley Witness Stmt. ¶¶ 11-12.

in the STA because the Consortium members, rather than DRP, are named Defendants in the St. Louis Lawsuits. This conclusion is particularly compelling given that Peru mandated that the Renco Consortium create DRP as a local Peruvian enterprise to comply with the bidding conditions.³⁵⁶

206. The consequences of Activos Mineros' argument, if taken to its logical conclusion, would be perverse. On the one hand, Peru and Centromin, as the parties who unquestionably assumed responsibility for the vast majority of third-party environmental claims and damages, would receive an unjustified windfall at the expense of the foreign investor. On the other hand, the Renco Consortium members (and related entities), the parties that invested to modernize the Complex on the essential precondition that Peru and Centromin would be allocated liability for claims just like those at issue in the St. Louis Lawsuits, would be saddled with the very environmental liabilities which they so carefully and purposefully allocated to Peru and Centromin in the STA and Guaranty Agreement. Such an absurd result cannot stand.

207. Peru argued in the prior arbitration that Renco and DRR are not parties to the STA and thus have no rights under that agreement. That is wrong because even if this Tribunal were to rule that Renco and DRR are not parties to the STA, they would still be able to enforce their rights under the STA as third-party beneficiaries. As Professor Payet explains in his expert report, under Peruvian law, third-party contract rights are created when the following four elements are satisfied: i) there is a contract agreed with the intent to create a right in favor of a person, ii) that person is a not a party to the contract, iii) it is in the interest of the stipulator to grant the right at issue, and iv) the right arises from the contract.³⁵⁷ If the Tribunal were to conclude that Renco and DRP are not parties to the STA then the second element would be satisfied. Further, the other elements would be satisfied because a) clauses 5 and 6 are intended to benefit Renco and DRP for all of the reasons set forth above; b) it was in Centromin's interest to agree to grant these rights to Renco and DRP because they were a sine qua non of the transaction, and c) these rights arise directly under clauses 5 and 6 of the STA.³⁵⁸

³⁵⁶ See *supra* ¶ 5.

³⁵⁷ Payet Opinion ¶ 201.

³⁵⁸ Payet Opinion ¶ 197-210.

B. RESPONDENTS' FAILURE TO REMEDIATE THE SOIL IN AND AROUND LA OROYA BREACHES THE STA AND THE GUARANTY AGREEMENT

208. Under the STA, Centromin was obligated to remediate areas contaminated by the Complex's operations at and around the La Oroya site, including remediating contaminated soil under Section 6.1 of the STA. But, as explained in detail above, Centromin failed to do so, with Peru's explicit approval. Thus, Centromin/Activos Mineros breached the STA and Peru breached the Guaranty Agreement.

209. In conclusion, Respondents breached the STA and the Guaranty Agreement by (i) improperly refusing to assume liability and responsibility for the third-party claims in the St. Louis Lawsuits; and (ii) failing to comply with their remediation obligations to Claimants' detriment.

C. IN THE ALTERNATIVE TO THEIR BREACH-OF-CONTRACT CLAIMS, CLAIMANTS ASSERT CLAIMS UNDER THE PERUVIAN CIVIL CODE FOR PRE-CONTRACTUAL LIABILITY, SUBROGATION, CONTRIBUTION, AND UNJUST ENRICHMENT

210. Alternatively, Respondents are responsible for compensating Claimants for damages arising out of the third-party claims in the St. Louis Lawsuits under the Peruvian Civil Code sections providing for claims for subrogation, contribution, and unjust enrichment. If Renco and DRR prevail on their contract claim, then its pre-contractual liability, subrogation, contribution, and unjust enrichment claims are moot. But if Renco and DRR's contract claim fails (which, respectfully, they should not), then Renco and DRR assert claims of pre-contractual liability, subrogation, contribution and unjust enrichment under the Civil Code. Renco and DRR's claims for pre-contractual liability, subrogation, contribution, and unjust enrichment do not depend on having any legal rights under the STA.

211. With respect to pre-contractual liability, under Peruvian law, Renco and DRR are entitled to compensation from Peru and Activos Mineros/Centromin for any damages suffered in connection with the St. Louis Lawsuits, because Peru and Centromin created the legitimate expectation that the Renco Consortium would be protected from third-party claims such as those asserted in the St. Louis Lawsuits. They refused, however, to assume responsibility for such claims. The Peruvian Civil Code requires parties to negotiate contracts in good faith.³⁵⁹

³⁵⁹ Payet Opinion ¶ 214.

Negotiating in good faith requires a “duty to speak clearly” so each party can negotiate and generate reasonable trust and legitimate confidence in the counterparty which the counterparty may not subsequently betray.³⁶⁰ In this case, Peru and Centromin breached their duty to negotiate in good faith by creating the reasonable expectation by the Renco Consortium during the bidding process and the STA negotiations that Centromin would retain and assume liability for third-party claims, but then refusing to do so. Moreover, the principle of good faith includes the doctrine that nobody can act against his or her own actions. This doctrine (which, in general terms, is the civil law equivalent of the common law doctrine of estoppel) requires a party to act consistently and applies in the context of contract negotiation.³⁶¹ Professor Payet concludes: “any reasonable person in the position of Renco and DRR would have deposited the same confidence. Thus, Peru and Centromin cannot deviate from that appearance.”³⁶² He continues: “any reasonable investor, on the basis of [Peru and Centromin’s] declarations, would have considered itself protected” from third-party environmental claims.³⁶³ Thus, Renco and DRR are entitled to compensation from Peru and Centromin/Activos Mineros based on their pre-contractual breaches of the duty to negotiate in good faith.³⁶⁴

212. With respect to subrogation, the Peruvian Civil Code allows a third party covering the liability of a debtor to file a subrogation claim to recover the amounts paid.³⁶⁵ As Professor Payet explains, the legal requirements for this action are that the entity that covers the liability be a third party; and that such entity have a legitimate interest.³⁶⁶ A legitimate interest is a reason or duty to cover the liability in question and to make a payment or to avoid being prejudiced by the lack of payment. If these two criteria are met, the third party covering the debtor’s payment will

³⁶⁰ *Id.* ¶ 214, 215.

³⁶¹ *Id.* ¶¶ 216, 217.

³⁶² *Id.* ¶ 218.

³⁶³ *Id.* ¶ 215.

³⁶⁴ *Id.* ¶ 220.

³⁶⁵ **Exhibit C-075**, Peruvian Civil Code Art. 1260.2 (“The subrogation operates as a matter of course in favor of the person that, for having a legitimate interest, fulfills the obligation.”).

³⁶⁶ Payet Opinion ¶ 225.

possess all rights, actions, and guarantees that the original debtor had, including the right to file a claim to recover any amounts paid, which the debtor is obligated to pay.³⁶⁷

213. In this case, Renco and DRR are being sued in the United States for personal injury claims. Clauses 5 and 6 of the STA make clear that Centromin assumed liability for the harm for which Renco is being sued in the St. Louis Lawsuits. Therefore, if the St. Louis Court were to find Renco and DRR liable vis-à-vis the St. Louis Plaintiffs, Renco in effect would be assuming Centromin's liability under Clauses 5 and 6 of the STA (and Peru's liability under the STA). Accordingly, the two conditions for a subrogation claim under Peruvian law would be met: Renco and DRR would be third parties covering the debt of Centromin; and Renco would have a legitimate interest as it would have been found liable by a court in the United States. Thus, in that event, Renco and DRR "would have the legitimate right to file a subrogation action and demand Activos Mineros the restitution of the payment made."³⁶⁸

214. Although the jury in St. Louis Lawsuits has not yet decided on the Plaintiffs' claim, Renco and DRR are nevertheless entitled to declaratory relief in anticipation of any such adverse ruling.³⁶⁹ Professor Payet further explains: "In my opinion, there is no restriction concerning the timing of this claim. The lack of a final decision in the litigation in the U.S. ordering payment of compensation does not preclude Renco and DRR from seeking a declaratory judgement of their right to subrogate against Activos Mineros and Peru, in case they are ordered to pay."³⁷⁰

215. With respect to contribution, the Peruvian Civil Code, like most (if not all) major legal systems, contains a legal rule apportioning liability among joint tortfeasors. Specifically, article 1983 regulates the payment of compensation in the case of multiple tortfeasors. In that circumstance, the tortfeasors are jointly and severally liable. If the victim obtains full compensation from any of the tortfeasors, then those who paid can claim reimbursement from the other tortfeasors in proportion to their liability. If a different division of liability cannot be determined, then the jointly-and-severally-liable tortfeasors will equally responsible:

³⁶⁷ *Id.* ¶ 226.

³⁶⁸ *Id.* ¶ 230.

³⁶⁹ *Id.* ¶ 231.

³⁷⁰ *Id.* ¶ 232.

If various persons are responsible for the damage, they will be jointly and severally liable. If one pays all of the damage, then they can claim against the others and the judge will apportion liability according to the gravity of fault of each of the participants. When it is not possible to determine the degree of responsibility of each, the division of liability will be in equal parts.³⁷¹

Legal authorities regarding Article 1983 (*i.e.*, *doctrina*) confirms that the joint tortfeasors do not have to have acted together. It is enough that both of their actions caused the conditions that caused the injuries to third parties.³⁷²

216. In the United States, Renco and DRR are being sued for personal injury claims by third parties, who allege that they have suffered injuries resulting from exposures to lead, arsenic, and other substances emitted from the Complex. Putting the contractual allocation of liability under the STA to one side, Centromin/Activos Mineros' conduct created the vast majority (if not all) of the conditions that factually caused the alleged injuries.

217. As discussed above, the Complex commenced operation in 1922. Following Peru's nationalization of the facility in 1974, the Complex was owned and operated by Centromin, which continued to operate the facility for the next 23 years, until it was acquired by Renco in October 1997. Thus, DRP operated the Complex for only 12 out of the 86 years that it was in operation.³⁷³

218. During the period from 1922 through October 1997, Centromin and its predecessor emitted extraordinary quantities of lead and other contaminants from the Complex. These emissions impacted an enormous area surrounding the Complex, covering an area of 500,000 to

³⁷¹ **Exhibit C-075**, Peruvian Civil Code art. 1983 (“Si varios son responsables del daño, responderán solidariamente. Empero, aquel que pago la totalidad de la indemnización puede repetir contra los otros, correspondiendo al juez fijar la proporción según la gravedad de la falta de cada uno de los participantes. Cuando no sea posible discriminar el grado de responsabilidad de cada uno, la repartición se hará por partes iguales.”)

³⁷² **CLA-017**, Jose Barreto Bravo and Nelwin Castro Jrigoso. “*Comentarios al artículo 1983. Código Civil Comentado por los 100 mejores especialistas*” (2003) at p. 190 (“With regard to the requirement of charging the damages to more than one person, it is worth mentioning that this is strictly related to the actions or omissions of the tortfeasors. Some scholars consider that the actions of the tortfeasors must occur together. However, it is considered that the correct thesis is that the actions of the tortfeasors do not need to happen in a single moment, as it is perfectly possible that these persons have caused damages acting each on its own, not even knowing each other.”)

³⁷³ Bianchi Expert Report at 75, Exhibit 6.1.

800,000 hectares.³⁷⁴ According to a 1926 report, the presence of lead and arsenic in appreciable quantities in the pastures and soil caused livestock disease and mortality up to about 40 km from the Complex.³⁷⁵ A 1934 report found the extent of impacted areas extended 60 km from the facility.³⁷⁶

219. The widespread environmental impacts caused by the historical operations of the Complex were well known to the communities surrounding the Complex and became a national concern for the Government of Peru from the earliest days. By 1924, just two years after the Complex commenced operations, 30 different communities had filed claims seeking compensation for damages caused by emissions from the facility. During the first five years of the Complex's operation, Peru's President Leguia addressed environmental problems associated with the smelter's operations in at least four separate speeches to the Peruvian National Congress.³⁷⁷

220. The amount of lead emitted from the Complex prior to its acquisition in 1997 dwarfs emissions during the period after its sale. As Dr. Bianchi conservatively estimates, Centromin and its predecessor emitted more than 311,000 tons of lead from the Complex into the environment during the period from 1922 to 1997.³⁷⁸ These historical emissions comprise 98 percent of the lead that has been emitted from the Complex during its operational life.³⁷⁹ Further, as studies commissioned by Activos Mineros confirm, these historical lead emissions persist today and remain concentrated in the uppermost layers of impacted soils.³⁸⁰

221. These historical emissions create a "reservoir" of lead and other metals in soils and homes that results in ongoing exposures in the communities surrounding the Complex, and will continue to do so unless and until Activos Mineros fulfills its obligation to fully and effectively remediate contaminated soils.³⁸¹ This was confirmed by a study conducted by a Panel of Experts

³⁷⁴ *Id.* at 21.

³⁷⁵ *Id.* at 19.

³⁷⁶ *Id.* at 20.

³⁷⁷ *Id.*

³⁷⁸ *Id.* at 76-78; Connor Expert Report at 21-22.

³⁷⁹ *Id.* at 78; Connor Expert Report at 21-22.

³⁸⁰ *Id.* at 79-94.

³⁸¹ Connor Expert Report at 22-23.

selected by the Peruvian Government in 2006 to evaluate the contamination. As the Expert Panel explained, in La Oroya “over 80 years of uncontrolled emissions creat[ed] heavy metal reservoirs throughout the study area.”³⁸² These reservoirs of lead, the Expert Panel explained, impact the community in a variety of ways, including through direct contact with contaminated soils, the resuspension of contaminated dusts, and “extremely high dust lead loadings” and “dangerously high floor dust lead loadings” in La Oroya homes, which cannot be effectively cleaned due to the materials used in their construction.³⁸³ Thus, the Expert Panel found: “Expanded efforts need to be made immediately to prevent exposure from lead-contaminated soil,” as this is “a critical [source] for some of the children with very high blood lead.”³⁸⁴

222. As Dr. Bianchi explains, however, Centromin’s and Activos Mineros’ remediation efforts were unreasonably delayed and remain woefully “inadequate and incomplete.”³⁸⁵ To begin, Centromin unreasonably deferred its remediation obligations, failing to undertake critical steps to identify and remediate historically impacted areas, including those that “that require[d] immediate action to mitigate exposures to lead and other heavy metals.”³⁸⁶ This decision directly impeded efforts to prevent exposures to the residents of La Oroya to lead and other heavy metals.

³⁸² **Exhibit C-090**, Expert Comments on Exceptional Fulfillment Extension Request for the Sulfuric Acid Plant Project of La Oroya Metallurgical Complex PAMA, May 10, 2006, at 14 (*hereinafter* “Expert Panel Report”). *See also* Connor Expert Report at 24 (discussing the Expert Panel Report); Schoof Expert Report at 25.

³⁸³ *E.g., Id.* at 16-17, 22-24, 25-26.

³⁸⁴ *Id.* at 24.

³⁸⁵ Bianchi Expert Report at 100.

³⁸⁶ *Id.* at 98. *See also* Schoof Expert Report at 27 (concluding that emissions from the facility during DRP’s operations “should not have prevented Centromin from investigating the magnitude of historical contamination, and developing and implementing corrective actions to reduce exposures to the existing contaminated soil and settled dust. Corrective actions could have included remediating the most contaminated areas (for example by removal, paving, or capping) and reducing windblown soil and dust (for example by implementing vegetation planting programs). Such corrective actions could have reduced the contribution of historical contamination to exposures.”). *See also* **Exhibit C-090**, Expert Panel Report at 24 (recommending a “comprehensive area-wide soil lead assessment be performed in the near future to identify ‘hot spots’ of exposure to children,” which “would serve as a useful guide in developing a remediation plan for the entire area”); *Id.*, Appx. C at 28 (“It is very important that a comprehensive area-wide soil lead assessment be performed in the near future... This would help identify “hot spots” of exposure to children and would serve as a useful guide in developing a remediation plan for the entire area.”).

223. According to the Expert Panel: “Few efforts were observed that are directed towards controlling exposures of children to contaminated soil. Greatly expanded efforts need to be made immediately to prevent exposure from lead-contaminated soil. This source is thought to be a critical one for some of the children with high blood lead.”³⁸⁷ Moreover, “[n]o soil remediation activities were observed in the community.”³⁸⁸ And, even as late as 2006, the Expert Panel found: “Little is known about the soil lead levels throughout La Oroya and the surrounding communities,” and that an “area-wide soil lead survey” was “urgently needed to determine hot spots of contamination and develop and implement appropriate control measures.”³⁸⁹

224. Despite this warning, Activos Mineros did not even solicit bids to undertake the “urgently needed” area-wide lead study until August 2007, more than 11 years after the Centromin PAMA was approved and more than a year after the Expert Panel submitted its report.³⁹⁰ Ultimately, Activos Mineros selected a consortium of firms led by an environmental consulting company, Ground Water International (GWI), to conduct the study, which did not complete its work until 2009, almost three years to the day after the Expert Panel’s report.³⁹¹

225. Although the Peruvian Government has refused to make the results of the GWI study publicly available,³⁹² the limited information that has been released confirms what Claimants knew from the very beginning—historical operations of the Complex had contaminated an enormous area surrounding the facility with lead and heavy metals, and these contaminated soils were a significant source of exposure to lead in the community that desperately needed to be remediated. As Dr. Bianchi explains, the GWI study found that lead emitted from the Complex had impacted soils across as much as 280,000 hectares.³⁹³ Further, according to GWI, this lead is

³⁸⁷ **Exhibit C-090**, Expert Panel Report at Appx. C, at 23.

³⁸⁸ *Id.* at 14.

³⁸⁹ *Id.* at 17, Appx. C at 28.

³⁹⁰ Bianchi Expert Report at 82 (“In August 2007, 11 years after the Centromin PAMA had been approved, AMSAC issued a bid to select a firm that would, in part, determine the extent of soil contamination due to emissions from the CMLO.”).

³⁹¹ *Id.*

³⁹² *Id.* at 82-84.

³⁹³ *Id.* at 83.

concentrated in the upper 10 cm of soil, where it poses a direct risk of exposure to residents of La Oroya.³⁹⁴

226. GWI emphasized the risks this contaminated soil posed to the health La Oroya's residents. Indeed, GWI found there was up to a 96% probability that children would have a blood lead level greater than 10 µg/dL *based on soil exposure alone*.³⁹⁵ As the Peruvian Government's consultant put it: "Risks to human health due to soils contaminated ... are unacceptable."³⁹⁶

227. Yet, even armed with this knowledge, Activos Mineros has failed to undertake an adequate soil remediation program. As Dr. Bianchi explains, Activos Mineros utilized the GWI study to develop its remediation plan, but the GWI study was never intended to be used in this way and it was not adequate for this purpose.³⁹⁷ This is because sampling densities were far too low (approximately 1 sampling location every 800 hectares, or about 1 sample in 1,500 football fields) to adequately characterize the contamination and support focused remediation of critical areas.³⁹⁸ Thus, the GWI study cannot possibly identify the scope and extent of contaminated soils in the La Oroya area with sufficient specificity to develop effective remediation projects.

228. But even if this were not the case, Activos Mineros' remediation program has been poorly conceived and even more poorly implemented. As Dr. Bianchi explains, the areas targeted for remediation are inadequately identified; the remediation plan fails to take account of (and is apparently inconsistent with) Peru's published soil remediation criteria, which would require much

³⁹⁴ *Id.* at 84-90.

³⁹⁵ *Id.* at 84; Schoof Expert Report at 26.

³⁹⁶ *Id.* at 111 (emphasis in GWI study).

³⁹⁷ *Id.* at 82-100. As Dr. Bianchi explains, the GWI study was intended merely to delineate the extent of impacted areas, not to identify the lateral and vertical extent of soils to be remediated with sufficient resolution to develop an adequate remediation plan. *Id.* This is why the GWI study itself recognized that an adequate soil remediation plan would require environmental impact studies, detailed design evaluations, and feasibility studies. *Id.* at 82.

³⁹⁸ *Id.* at 98-100. Notably, the GWI study is not consistent with Peru's Soil Sampling Guide, which Dr. Bianchi explains "clearly differentiates between characterization sampling (*i.e.*, to identify the presence of contamination) and detailed sampling (*i.e.*, to determine the lateral and vertical extent of contaminated soil to be remediated)." Bianchi Expert Report at 98 ("If AMSAC had followed the Soil Sampling Guide to sample an area as large as 240,000 ha, it would have had to sample thousands of locations just to characterize a site that large. In fact, for detailed sampling (*i.e.*, for remediation purposes) the same Guide requires approximately 17 times more samples than for characterization sampling.") *Id.* See also *id.* at 98, 99.

greater levels of remediation across a much larger area; and many areas requiring remediation have never been addressed.³⁹⁹

229. Furthermore, even if Activos Mineros' plan were adequate (which it is not), Activos Mineros has not completed much of the remediation work it identified as necessary. "MEM's evaluation of remediation progress in La Oroya in 2016 determined that Activos Mineros had only remediated 22 percent of the areas requiring remediation. A subsequent evaluation conducted by MEM in 2019 determined that Activos Mineros had still only remediated 34 percent of the total area requiring remediation."⁴⁰⁰ And even this "grossly overestimates the actual progress because it is based on an incorrect calculation of the total area that requires remediation", as Dr. Bianchi explains.⁴⁰¹ In short, "24 years have elapsed since the PAMA was approved in 1997 and still only a minimal amount of remediation has occurred."⁴⁰²

230. As a direct result, individuals residing in the La Oroya area continue to be exposed to the enormous quantities of lead and other metals emitted from the Complex by Centromin and its predecessor.⁴⁰³ As Dr. Schoof and Mr. Connor explain, soil contamination—which persists due to Centromin's and Activos Mineros' failure to remediate—continues to contribute to elevated blood lead levels in residents of the area surrounding the Complex.⁴⁰⁴ As Dr. Schoof explains:

Blood lead data reported through 2014, which includes older children and children residing in outlying communities, who are expected to have lower blood lead levels, still show more than 50% of the children tested have blood lead levels greater than 10 µg/dL. Even as recently as 2018 and 2019, about 20% of children have blood lead levels greater than 10 µg/dL. Since these studies included children up to 12 years of age and children living in

³⁹⁹ *Id.* at 98-111.

⁴⁰⁰ *Id.* at 100.

⁴⁰¹ *Id.* at 3.

⁴⁰² *Id.* at 100.

⁴⁰³ Connor Expert Report at 21-28; Schoof Expert Report at 24-27.

⁴⁰⁴ *Id.* at 22-24; Schoof Expert Report at 24 ("Prior Complex operations by Cerro de Pasco and Centromin created pervasive environmental contamination in the region of La Oroya that I believe has continued to contribute substantially to exposures of La Oroya residents to lead and other metals throughout the time DRP operated the Complex. These contributions are due both to direct contact with the soil, as well as to the contribution of historically contaminated soils to the metals in outdoor and indoor dust and in food.").

outlying communities, it is likely that children less than 6 years old living in La Oroya Antigua have significantly higher blood lead levels. Notably, as this sampling was conducted during 2018 and 2019, none of the children sampled who were less than 6 years old could have been exposed to active emissions from the facility when it was operated by DRP, as those operations ceased in 2009. This means that any exposures resulted from sources other than active emissions by DRP.⁴⁰⁵

231. Centromin/Activos Mineros' historical liability did not pass to either Metaloroya (*i.e.*, the company that was sold under the STA, which later merged with DRP) much less did that liability pass to Renco or the subsidiary that Renco created to acquire the shares in Metaloroya (*i.e.*, DRP). As Claimants' legal expert Professor Payet explains, the sale transaction that transpired under the STA was designed so that all of the historical liabilities would remain with Centromin.⁴⁰⁶ Specifically, Centromin created a new company (*i.e.*, Metaloroya) and then placed the assets to be sold (bid) into that company. But Centromin did not place any of the historical liabilities into Metaloroya. This is critical. Those liabilities remained with Centromin. The legal effect of that corporate transaction is distinct from the contractual allocation of liabilities under the STA, which allocated to Centromin all liability for third-party claims arising out of pre-STA conduct and conditions as well as most of the liability for third-party claims arising out of post-STA conduct and conditions until DRP completed the PAMA.⁴⁰⁷

232. Not only is Centromin (and Peru) responsible for all of the third-party injuries at issue in the St. Louis Lawsuits because its own conduct caused those alleged injuries, Centromin is responsible for all of those alleged third-party injuries because its conduct was much more harmful to the environment and extensive in time than DRP's. Centromin's pre-STA conduct

⁴⁰⁵ Schoof Expert Report at 24. *See also* Connor Expert Report at ¶¶ 25-28 (explaining that 30 to 50 percent of the children in La Oroya Antigua have persistent blood lead levels between 10 and 19 µg/dL, which is termed Level II by the Peruvian health authorities).

⁴⁰⁶ Payet Opinion ¶ 146 ("Clauses Five and Six of the Contract are clearly risk allocation clauses -*risk allocation provisions* in the language of John C. Coates. It is enough to read the Contract and the questions and answers of the tender to perceive that the risk that concerned the parties was the environmental risk, including the necessary investments to complete the PAMA and the potential claims of third parties for damages related to environmental liabilities. Clauses Five and Six, as well as the segmentation of Centromin and the creation of Metaloroya, were instruments to allocate this risk between the parties.") (Internal citations omitted.)

⁴⁰⁷ *Id.*

created one of the most polluted industrial sites in the entire world. After DRP acquired the complex, it focused on improving the environmental and safety conditions and spent tens of millions of dollars doing so. In contrast, Centromin failed to implement any of its own remediation obligations under the STA.

233. Thus, under Article 1983, this Tribunal should declare that Centromin is liable to Renco and DRR for the vast majority (if not all) of the liability that has arisen and may arise in the future in the St. Louis Lawsuits.

234. With respect to unjust enrichment, the Peruvian Civil Code recognizes in Article 1954 that: “whoever enriches himself unduly at the expense of another person is obligated to indemnify him.”⁴⁰⁸ Professor Payet explains that the requirements for an unjust enrichment claim are: “(i) the enrichment of the respondent, (ii) impoverishment of the claimant, (iii) a causal relationship between enrichment and impoverishment, (iv) absence of a fair justification, and (v) absence of any other remedy.”⁴⁰⁹

235. In this case, were this Tribunal to find that Renco and DRR are not parties to the STA, and were this Tribunal to reject Claimants’ claim for subrogation and contribution, the conditions for an unjust enrichment claim would be met—if the St. Louis Court were to find Renco and/or DRR liable for the claims asserted in that forum.

236. Because Centromin assumed liability for precisely those claims in the STA, and because Peru induced Renco to invest in the La Oroya complex on the representation that the Renco Consortium would not be held liable for personal injury claims caused by activities attributable to Centromin, in the event of an outcome unfavorable to Renco and DRR in the St. Louis Lawsuits, Centromin and Peru would be unjustly enriched. Centromin and Peru would avoid the liability that they represented and agreed they would bear; Renco and DRR, on the other hand, would suffer a loss; there would be a direct nexus between Peru and Centromin’s enrichment and Renco and DRR’s loss and no other legal remedy available.⁴¹⁰

⁴⁰⁸ **Exhibit C-075**, Art. 1954 of the Peruvian Civil Code.

⁴⁰⁹ Payet Opinion ¶ 244.

⁴¹⁰ *Id.* ¶¶ 246-253.

237. Renco and DRR therefore seek a declaration from this Tribunal that, if the either are found liable for damages arising from the personal injury claims asserted in the St. Louis Lawsuits, and if Claimants' contract claims in this arbitration fail, Renco and DRR are entitled to restitution of any amounts that they might pay in satisfaction of the judgment in the St. Louis Lawsuits pursuant to the doctrines of subrogation, contribution and/or unjust enrichment as provided for under Peruvian law.⁴¹¹

D. PERU BREACHED ITS OBLIGATIONS TO RENCO AND DRR UNDER CUSTOMARY INTERNATIONAL LAW BY FAILING TO HONOR ITS PROMISES THAT IT WOULD RETAIN AND ASSUME ALL LIABILITY FOR THIRD-PARTY CLAIMS

238. The minimum standard under customary international law protects an foreign alien's legitimate expectations, and estoppel is a general principle of law that is widely recognized under international law. As the Tribunal in the arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom explained:

Estoppel is a general principle of law that serves to ensure, in the words of Lord McNair' that international jurisprudence has a place for some recognition of the principle that a State cannot blow hot and cold—*allegans contraia non audiendus est.*' The principle setms from the general requirement that States act in their mutual relations in good faith and is designed to protect the legitimate expectations of a State that acts in reliance upon the representations of another.⁴¹²

239. That Tribunal cited several legal authorities, including several PCIJ and ICJ judgments, and held that estoppel under international law extends to promises regarding future actions: "Additionally—and in contrast to at least some forms of estoppel in municipal law—the principle in international law does not distinguish between representations as to existing facts and those regarding promises of future action or declarations of law."⁴¹³ Thus, that Tribunal held that the elements of estoppel under international law are:

⁴¹¹ *Id.* ¶ 254.

⁴¹² **CLA-016**, *Chagos Marine Protected Area* (Republic of Mauritius v. United Kingdom), Award of 18 March 2015 (International Law Reports (ILR), Vol. 162, p. 249, para. 435.

⁴¹³ *Id.* ¶¶ 436-37 (citing, *inter alia*, *Temple of Preah Vihear (Cambodia v. Thailand)*, *Judgment of*

(a) a State has made clear and consistent representations, by word, conduct, or silence; (b) such representations were made through an agent authorized to speak for the State with respect to the matter in question; (c) the State invoking estoppel was induced by such representations to act to its detriment, to suffer a prejudice, or to convey a benefit upon the representing State ; and (d) such reliance was legitimate, as the representation was one on which that State was entitled to rely.⁴¹⁴

240. In the present case, Peru repeatedly promised Renco and DRR during the negotiation of the STA, and the Renco Consortium would not have entered into the STA absent such promises, that Centromin and Peru would retain and assume all liability for third-party claims arising out of the conditions at the La Oroya Complex. As set forth above, these representations, both oral by states representatives throughout the negotiation of the STA and, in writing, in connection with written questions by bidders and answers by Centromin, and in the STA itself, were statements of the Peruvian government officials. They were made as part of the sale process of Metaloroya via Peru's special committee to oversee Centromin's privatization, including the sale of the La Oroya Complex (CEPRI). And Peru guaranteed the Centromin's obligation to retain and assume all third-party liabilities in the Guaranty.

241. Centromin and Peru have breached those contractual obligations, but Renco's and DRR's claim against Peru for estoppel under international law does not depend on whether Peru breached its contractual obligations under the Guaranty. It is a very well-established rule of international law that an act of state can violate an obligation under international law even if that same act does not violate a contract that also applies. As stated in Article 3 of the ILC Articles on State Responsibility: "the characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law."⁴¹⁵

15 June 1962, Separate Opinion of Vice President Alfaro, I.C.J. Reports 1962, at 39; *see also ibid.*, Separate Opinion of Sir Gerald Fitzmaurice, I.C.J. Reports 1962, at 52, 62), Payment of Various Serbian Loans Issued in France, Judgment of 12 July 1929, P.C.I.J. Series A, Nos. 20/21, at 5, 39.)

⁴¹⁴ *Id.* at 249, ¶ 435.

⁴¹⁵ **CLA-025**, ILC Articles on State Responsibility art. 3; *see also*, **CLA-026**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentina*, Case No. ARB/97/3, Decision on Annulment, July 3, 2002, at ¶¶ 93-97.

242. The overall context of the transaction further reaffirms that these representations were of vital and *sine qua non* importance to the Renco Consortium of those representations without which it would not have invested in Peru. The La Oroya Complex was a massive, state-owned set of facilities that was one of the most polluted industrial sites in the entire world. No one even submitted a bid when Peru first offered it for privatization because of the obvious and significant environmental liabilities. Peru could not persuade anyone to buy and invest in the La Oroya Complex without agreeing and assuring those investors both that (a) the state and state-owned companies would assume responsibility for third-party claims, and (b) that the state and state-owned companies would insure that the investors would not be left with that liability.

243. In addition to the bidding terms, answers to bidder questions, and the larger context, Peru also made this representation to the Renco Consortium when the MEM issued a formal Resolution Directorial approving the allocation of environmental liability between Centromin, Metaloroya, and DRP.⁴¹⁶

244. Finally, there cannot be any serious dispute that the Renco Consortium relied upon these representations when it agreed to invest in this Complex in Peru. Indeed, Peru cannot legitimately dispute this.

245. Thus, Peru's failure to honor its clear representations to the Renco Consortium that Centromin would retain and assume liability for third-party claims violate Peru's obligations under international law even if they do not violate the STA or the Guaranty. As a result, Claimants are entitled to compensation from Peru.

V CONCLUSION

246. For the reasons set forth herein, Claimant requests an award, *inter alia*, granting it the following relief:

- A declaration that Peru and Centromin/Activos Mineros breached the STA and/or the Guaranty Agreement by failing to assume liability for third-party claims and damages for which they are responsible and by refusing to defend

⁴¹⁶ Resolution Directorial No. 334-97-EM/DGM, Oct. 16, 1997.

and indemnify the Renco Consortium members and related entities and individuals in the personal injury St. Louis Lawsuits.

- A declaration that Peru and Centromin/Activos Mineros breached the STA and/or the Guaranty Agreement by failing to remediate the soil in and around La Oroya.
- In the alternative, a declaration that, if Claimants are found liable and are ordered to pay damages in the St. Louis Lawsuits, Claimants are entitled to recover from Respondents all the amounts that Claimants may, or may be forced to, pay as damages in satisfaction of any judgment in the St. Louis Lawsuits, under the Peruvian legal theories of subrogation, contribution, and/or unjust enrichment.
- A declaration that Peru has violated international law by failing to honor its representations to the Renco Consortium that Centromin would retain and assume liability for third-party claims and entitle Claimants to compensation.
- Awarding Claimants all costs of this proceeding, including Claimants' attorneys' fees, expert fees, and expenses.
- Pursuant to Section 2 of Procedural Order No. 4 dated September 17, 2020, Claimant expressly reserves its right until the damages phase of this proceeding to seek an award of compensation for any and all damages it has suffered and will suffer resulting from Respondents' breaches of contract, any and all damages under Peruvian law and customary international law and an award of pre-and-post award interest until the date of Peru's final satisfaction of the award, compounded quarterly, and any other form of recoverable damages or relief to be developed and quantified in the course of the damages phase.

Dated: New York, New York
February 8, 2021



KING & SPALDING LLP

Edward G. Kehoe
Henry G. Burnett
Isabel Fernández de la Cuesta
Cedric Soule
Renzo Seminario Cordova
1185 Avenue of the Americas
New York, N.Y. 10036-4003
(212) 556-2100

David H. Weiss
Luisa Gutiérrez Quintero
1100 Louisiana, Suite 4000
Houston, TX 77002
(713) 751-3205

Aloysius Llamzon
1700 Pennsylvania Avenue, NW
2nd Floor
Washington, D.C. 20006
(202) 737 0500

Counsel for Claimants