PCA CASE Nº. 2019-47

IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE CONTRACT OF STOCK TRANSFER DATED 23 OCTOBER 1997 AND THE GUARANTY AGREEMENT DATED 21 NOVEMBER 1997

- and -

THE UNCITRAL ARBITRATION RULES 2013

-between-

1. THE RENCO GROUP, INC.
2. DOE RUN RESOURCES, CORP

-and-

ACTIVOS MINEROS S.A.C.

PROCEDURAL ORDER NO. 14

The Arbitral Tribunal

Judge Bruno Simma (Presiding Arbitrator)
Prof. Horacio Grigera Naón
Mr. J. Christopher Thomas KC

5 August 2024

1 Procedural History

1.1 Pursuant to the agreement of the Parties, the arbitration *The Renco Group, Inc. v. Republic of Peru*, PCA Case No. 2019-46 (the "**Treaty Case**") is being coordinated with this arbitration (the "**Contract Case**").

1.2 On 8 April 2024, the Tribunal issued Procedural Order No. 12 for the Treaty Case and Procedural Order No. 13 for the Contract Case (the "**Post-Hearing POs**"), making determinations and providing instructions for post-hearing matters, including the post-hearing briefs (the "**PHBs**"). The Tribunal included a list of questions to the Parties to be answered in their PHBs (the "**Questions**"), indicating the following:

> 4.2 The PHBs should focus primarily on answering the Questions appended to this Procedural Order as **Annex 2**, but the Parties may also address other matters they deem pertinent for both Cases. To that end, the Parties are free to answer the questions in whichever order they choose, but are requested to use separate headings for each question, clearly indicating which question they are replying to. Where the questions are only directed to one of the Parties, the other Party is nevertheless invited to comment, if it so wishes.
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> […]
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> 4.4 The Parties shall not submit any new evidence or legal authorities in their PHBs. They are invited to provide appropriate references to the record for each question, where necessary. If there is no record evidence to support an answer to any of the questions, this shall be noted by the Party when responding to such question(s).

1.3 On 21 June 2024, the Parties submitted their respective PHBs.

1.4 By letter dated 27 June 2024, the Tribunal granted the Parties an opportunity to respond to the opposing Party's PHB and indicated the following:

> The Tribunal notes that, contrary to paragraph 4.4 above, the Claimants submitted Exhibits 1 to 13 along with their PHB, and that the Respondents indicated in footnotes 3, 4, and 7 of their PHB their readiness to submit documents to substantiate specific points for which they allege there is no record evidence. Further, the Claimants have referred in footnote 71 to a news item and the Respondents in footnote 176 to the Public Works Information System where further documentation could be found, both of which also represent evidence that should be filed as factual exhibits if granted leave by the Tribunal.
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> Accordingly, in light of paragraph 4.4 of the Post Hearing Procedural Orders and paragraph 6.4 of Procedural Order No. 1 of both Cases, the Tribunal requests the Parties to submit any comments they may have regarding the admission of these documents into the record by Wednesday, 3 July 2024.

1.5 By respective letters dated 3 July 2024, the Parties submitted their comments on the admission of the documents.

1.6 The Claimants argued that (i) in their view, many of the Questions reflected an acknowledgment that the existing record did not provide sufficient guidance, thus, inviting the Parties to submit additional evidence, especially regarding the Missouri Litigations and the Inter-American Court of Human Rights (the "**Inter-American Court**") Judgment; and (ii) submitting the exhibits related to both matters was more convenient for the Tribunal rather than including references to the publicly available documents. They requested the Tribunal to grant leave admitting both Parties' exhibits and provide them with an opportunity to submit counter-evidence in their responses to the opposing Party's PHB.

1.7 The Respondents asserted that (i) the Claimants' exhibits violated paragraph 4.4 of the Post-Hearing POs and many of them violate the rule that "a Party cannot make new arguments in a later submission that properly should have been made part of an earlier one;" (ii) some of the documents are already in the record and need not be readmitted; and, therefore, (iii) the Claimants' conduct amounts to another instance of disregard for the procedural rules of the arbitration. Accordingly, they requested the Tribunal to refuse to admit all exhibits submitted with the Claimants' PHB and reserved their rights to object to the Claimants' "other violations" at the appropriate moment.

1.8 By letter dated 11 July 2024, the Tribunal invited the Respondents to submit any additional objections they had with respect to the Claimants' PHB.

1.9 By letter dated 15 July 2024, the Respondents (i) argued that the Claimants submitted in their PHB "new arguments that they could have submitted earlier," which "extend[ed] beyond a *direct response* to the *specific question*;"[1] (ii) clarified that except for the arguments on the substantive denial of justice Question, they did not object to arguments that directly responded to one of the Questions; and (iii) requested the Tribunal to strike the Claimants' "extemporaneous arguments" raised in their PHB (the "**Request to Strike**").

1.10 By letter dated 19 July 2024, the Claimants responded to the Respondents' Request to Strike, arguing that (i) necessarily, new points emerge, new events occur, and facts are revealed over the course of a hearing calling upon parties to react and fashion new arguments; (ii) the Tribunal permitted generous post-hearing briefing to give the Parties a full opportunity to be heard by addressing their Questions and any other pertinent matters; (iii) the same rules should apply to both Parties, who submitted new arguments and exhibits; (iv) the Tribunal should allow the Parties to submit the best information available since they were already given an equal opportunity to be heard through their responses to each other's PHBs; and (v) there is no denial of due process as the Respondents have enjoyed full opportunities to make their case.

2 Analysis

2.1 The Claimants submitted 13 exhibits with their PHB and referred to a link in a footnote of their PHB, while the Respondents indicated their readiness to submit documents in three footnotes and referred to the Public Works Information System in a footnote. The Parties disagree on whether the Claimants should have submitted the exhibits and as to their admissibility, and agree that the Respondents' documents should be admitted. Moreover, the Respondents submit that the Claimants raised extemporaneous arguments that must be stricken from the record, which the Claimants contest.

2.2 The Tribunal will address first the applicable standard to these matters and then turn to the analysis of the admissibility of the Parties' documents and the Respondents' Request to Strike.

Applicable Standard

2.3 Post-Hearing matters, including PHBs and additional evidence thereto, are governed by the Post-Hearing POs, which appended the Questions as Annex 2. Where necessary, the Tribunal will refer to other rules established in previous Procedural Orders and directions, which, as it indicated in its letter dated 7 February 2024, it intends to follow strictly.

[1] Respondents' emphasis.

2.4 Regarding the admissibility of documents, given the nature of certain Questions, the Tribunal foresaw specific instances in which there might not be record evidence to support an answer. It instructed the Parties in paragraph 4.4 of the Post-Hearing POs to simply note the absence of record evidence when responding to such questions. The Tribunal emphasizes, however, that this instruction was given only in relation to the Questions and not to other matters that the Parties wished to address in their PHBs. On that basis, the Tribunal intended to decide whether to request the production and submission of documents indicated by the Parties that were related to the Questions, pursuant to Article 27(3) of the UNCITRAL Rules and paragraph 5.3 of Procedural Order No. 1 of both Cases.

2.5 Accordingly, contrary to the Claimants' view, the Questions did not reflect "an acknowledgement that the existing record did not provide sufficient guidance for the Tribunal to complete its task," allowing the Parties to submit new evidence or legal authorities. Not only did the Tribunal expressly prohibit the submission of "any new evidence or legal authorities in their PHBs", but it also requested the Parties "to provide appropriate references to the record for each question, where necessary." Therefore, as stated in the Tribunal's letter dated 27 June 2024, the Claimants contravened the procedural rules when submitting 13 new exhibits and a link to a news item. This breach, however, does not preclude an assessment by the Tribunal of whether any documents should be produced and submitted based on what the Claimants noted in their PHB instead of the improperly submitted exhibits and news item. Against this backdrop, the Tribunal will conduct its analysis of the admissibility of documents indicated by the Parties.

2.6 Regarding the Request to Strike, the Tribunal reiterates the rule, as articulated in its letter dated 14 September 2023 and subsequently reaffirmed in Procedural Order No. 9 of the Treaty Case and Procedural Order No. 10 of the Contract Case, that "a Party cannot make new arguments in a later submission that properly should have been made part of an earlier one." In this context, concerning the PHBs, the Tribunal notes that Annex 2 of the Post-Hearing POs affirmed that the Questions were "intended to enhance the Tribunal's understanding of the dispute." These Questions invited the Parties to clarify or further develop previously submitted arguments or to provide additional details not yet in the record, as mentioned above. Furthermore, paragraph 4.2 of the Post-Hearing POs allowed the Parties to "also address other matters they deem pertinent for both Cases," which necessarily includes responding to issues that arose during the Hearing. Therefore, only arguments in the PHBs that are unrelated to the Questions or matters that arose during the Hearing, and that should have properly been made part of an earlier submission must be stricken.

2.7 The Tribunal also notes that, by its letter dated 27 June 2024, it provided the Parties with an opportunity to respond to the PHBs "in the interest of due process and to enhance its understanding of the dispute." Accordingly, any concern a Party may have regarding their ability to respond to the arguments properly raised in the opposing Party's PHB—including new arguments which both Parties contend were made[2]—has already been addressed by the Tribunal.

Admissibility of Claimants' Documents

2.8 Having considered the exhibits and news item mentioned in the Claimants' PHB and the Respondents' objections, the Tribunal makes the following determinations:

[2] Claimants' Letter dated 19 July 2024, p. 2, fn. 2. *See generally* Respondents' Letter dated 15 July 2024.

Document	Analysis	Determination
Minutes of the Extraordinary General Shareholders Meeting for Doe Run Mining S.R. Ltda. Dated October 16, 1997 (**Exhibit 1**)	The Claimants assert that this document is the one documenting the matters the Tribunal asked about in Question 3(a),[3] which the Respondents were unable to find it in their records.[4] Therefore, the Tribunal considers that the submission of the document into the record would benefit both Parties and the Tribunal's understanding of the dispute.	The Tribunal requests the submission of this document as an exhibit.
Reid, ECF No. 1322 (**Exhibit 2**)	The Claimants state that this document shows the current status of one of the Missouri Litigations (the *Reid* case), regarding which the Tribunal asked in its Question 1(a). There appears to be no record evidence on this matter and, hence, the Tribunal considers that the document should be submitted into the record.	The Tribunal requests the submission of this document as an exhibit.
Reid, ECF No. 474 (**Exhibit 3**) Reid, ECF No. 949 (**Exhibit 4**) Collins, ECF No. 1, Exs. 1&2 (**Exhibit 5**) Collins, Collins, ECF No. 296 (**Exhibit 6**)	According to the Claimants, these documents relate to Question 1(b) concerning the causes of actions of the Missouri Litigation. Nevertheless, the Respondents argue that these documents are already in the record, specifically as R-18, R-292, R-294, and R-309.[5] Although the Tribunal considers that these documents should be admitted, it invites the Claimants to first compare their documents with the already submitted exhibits, since the submission of the former would only be necessary to the extent that they are not already in the record. Since the Respondents consider that Exhibit 6 is already in the record, the Tribunal does not find it necessary to make any finding regarding the Respondents' objection to it being used to support a "tardy and baseless argument".	The Tribunal requests the submission of these documents as exhibits subject to the Claimants' review on their not duplicating exhibits already in the record.
A.A.Z.A., et al. v. Doe Run Resources Corporation, et al., Case No. 4:07-cv-01874-CDP, ECF No. 1-1 (**Exhibit 7**)	The Claimants indicate that this document relates to Question 1(e) regarding the type of contamination dealt with by the Missouri Litigation claims. The document, the Claimants quote, mentions the types of emissions in discussion in the Missouri Litigation.[6] Accordingly, the Tribunal considers that it is relevant for Question 1(e) for which there appears to be no record evidence and should be submitted into the record.	The Tribunal requests the submission of this document as an exhibit.
Reid, ECF No. 1232, Motion for Summary Judgment Under Missouri Law (**Exhibit 8**) Reid, ECF No. 1233, Memorandum in	The Claimants mention these documents as part of their answer to Question 1(e), specifically to refute that the Missouri Litigations concern contaminants other than lead. In particular, they state that these documents show that Renco and DRRC "have extensively briefed the absence of evidence supporting non-lead-based claims."[7] The Respondents object to their inclusion, arguing that they are	The Tribunal requests the submission of these documents as exhibits.

[3] Claimants' PHB, fn. 2.
[4] Respondents' PHB, ¶¶ 76-79.
[5] Respondents' Letter dated 3 July 2024, Annex A.
[6] Claimants' PHB, pp. 13-14.
[7] Claimants' PHB, p. 15.

Support re: Motion for Summary Judgment Under Missouri Law (**Exhibit 9**) Reid, ECF No. 1301, Reply to in Support of Defendants' Motion for Summary Judgment Under Missouri Law (**Exhibit 10**)	improperly used to submit a new argument over which the Tribunal lacks jurisdiction. To the extent that these documents support the context provided by the Claimants in their answer to Question 1(e) for which there is no record evidence, the Tribunal considers that the documents should be submitted into the record. The Tribunal makes no assessment on the jurisdictional issues raised by the Respondents. Also, as addressed in paragraph 2.19, the Tribunal does not consider this argument to be extemporaneous.	
Reid, ECF No. 1225-1 (Matson Rept. 12/1/20) (**Exhibit 11**) Reid, ECF No. 1225-6 (Matson Rept. 5/28/21) (**Exhibit 12**)	The Claimants refer to these documents as part of an argument unrelated to the Tribunal's Questions, *i.e.*, the standard of care relevant to the Missouri Litigations and its relation to the PAMA.[8] Since the Tribunal only provided the opportunity to indicate the absence of record evidence in relation to the Questions, these documents shall not be submitted.	The Tribunal does not request the submission of these documents.
Report No. 76/09, August 5, 2009, IACHR (**Exhibit 13**)	The Tribunal notes that, according to the descriptions provided by the Parties,[9] this document concerns the proceedings before the Inter-American Commission of Human Rights (the "**Inter-American Commission**") and not the recent Judgment by the Inter-American Court. Therefore, the document is unrelated to the Questions and shall not be submitted.	The Tribunal does not request the submission of this document.
News article dated 29 May 2024 (**Footnote 71**)	In their comments to the Inter-American Court Judgment pursuant to Question 10, the Claimants argue that "Peru has done virtually nothing to improve the plight of La Oroya and its citizens"[10] and that "even after the IACHR's March 22, 2024 decision levels of sulphur dioxide emissions exceeded limits recommended by the Inter-American Court on 39 days."[11] Hence, to the extent that the article effectively discusses the Judgment and Peru's actions afterwards, the Tribunal considers that it should be submitted.	The Tribunal requests the submission of this document as an exhibit subject to it referring the Inter-American Court Judgment.

Admissibility of Respondents' Documents

2.9 Having considered the exhibits and database mentioned in the Respondents' PHB and the Claimants' agreement to their admission, the Tribunal makes the following determinations:

8 Claimants' PHB, p. 33, fn. 33.
9 Claimants' PHB, p. 72; Respondents' Letter dated 3 July 2024, Annex A.
10 Claimants' PHB, p. 73.
11 Claimants' PHB, fn. 71.

Document	Analysis	Determination
(i) Docket Entry 1380, dated 5 September 2023, for case number 4:11-cv-00044-CDP in the Eastern District of Missouri (ii) Docket Entry 92, dated 9 January 2024, for case number 23-1625 in the United States Court of Appeals for the Eighth Circuit (iii) Docket Entry 840, dated 30 April 2024, for case number 4:15-cv-01704-RWS in the Eastern District of Missouri	According to the Respondents, these documents are all related to Question 1(a) concerning the current status of the Missouri Litigations. In particular, they relate to the status of both the *Reid* and *Collins* cases. As stated above, there appears to be no record evidence on this matter and, hence, the Tribunal considers that the documents should be submitted into the record.	The Tribunal requests the submission of these documents as exhibits.
Documents in the Public Works Information System (INFOBRAS)	In response to Question 6(f) concerning any revegetation or soil remediation since the end of the plant's operations and the liquidation of DRP, the Respondents argued that "[t]he company continues to undertake soil remediation and restoration efforts in La Oroya today" and that such activities were documented in the Public Works Information System (INFOBRAS). The Tribunal considers that the Respondents should submit documents that support their assertion within the timeframe provided in Question 6(f).	The Tribunal requests the submission of this (these) document(s) as exhibit(s).

Respondents' Request to Strike

2.10 The Tribunal will analyze each of the sections from the Claimants' PHB that the Respondents have requested to strike as follows. The Tribunal underscores that it makes no assessment on the weight or substance of any of the arguments.

a. Consent to assignments

2.11 The Respondents state that the argument related to the Claimants' alleged consent to two assignments of contractual position[12] is extemporaneous because (i) it does not directly answer Question 8; (ii) the issue was raised in document production, pre-hearing pleadings, expert reports, and at the Hearing, and the Claimants had refused to respond to it until their PHB; (iii) the Claimants had never alleged that there were documents or evidence of their consent to the assignments; (iv) the Claimants supports their arguments with allegedly misleading references

[12] Claimants' PHB, p. 5.

unrelated to the matter; and (v) the Respondents would need to present new legal authorities and an updated expert report by Dr. Varsi to rebut this new argument, which they are unable to do at this stage.[13]

2.12 The Claimants reject the argument that their argument should be stricken since (i) the Parties were not limited to the Tribunal's Questions; (ii) it was pertinent to refer to the effectiveness of the assignments vis-à-vis the Claimants' standing in the context of Question 8; (iii) it is only the Respondents who have focused on documentary evidence, rendering it unnecessary for the Claimants to prove consent; and (iv) the argument is not extemporaneous, as it finds a basis in Dr. Payet's reports and his testimony.[14]

2.13 As previously mentioned, the Tribunal must assess whether this argument and all arguments below are unrelated to the Questions or matters that arose at the Hearing and should have properly been made part of an earlier submission. Question 8 directly concerns hearing testimony from Dr. Payet, which the Claimants disputed in their PHB providing a different interpretation regarding the assignments. Therefore, the consent to assignment argument relates to a matter that arose at the Hearing and is related to Question 8. Moreover, the Respondents have an opportunity to reply to this issue in their response to the Claimants' PHB. Considering that both Parties agree that the Respondents have consistently submitted arguments and evidence on this issue, it is not clear to the Tribunal why they would only be able to respond through new legal authorities and expert reports. Hence, the Tribunal rejects the Respondents' Request to Strike regarding this argument.

b. Duties owed under Clauses 5 and 6

2.14 According to the Respondents, the argument that Activos Mineros owed duties under Clauses 5 and 6 only to the Claimants[15] is extemporaneous and contradicts the Claimants' previous position given that (i) the Claimants and Dr. Payet had previously asserted that the Clauses encompassed anyone who could be sued; and (ii) their request for relief has been limited to indemnity being owed to only Renco and DRRC and not to the Renco Consortium members and related entities and individuals. [16]

2.15 The Claimants consider that their argument is not extemporaneous because (i) the Respondents have grounded this argument in the language of the STA throughout the proceedings; (ii) their position does not differ from their prior one or the testimony at the Hearing; and (iii) their argument reflects this arbitration dealing with claims only against Renco and DRRC.[17]

2.16 In the Tribunal's view, narrowing the scope of an argument or request for relief cannot be understood as a "new argument". It recalls that paragraph 4.3 of the Post-Hearing POs requested the Parties to "include in their PHBs a final articulation of their requests for relief for each Case." Also, given that the Respondents have consistently contended that Clauses 5 and 6 of the STA do not grant a right to indemnity to the Claimants, it is not clear how an allegedly narrower argument by the Claimants affects due process or precludes the Respondents from replying in their response to the Claimants' PHB. Consequently, the Tribunal rejects the Respondents' Request to Strike regarding this argument.

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13 Respondents' Letter dated 15 July 2024, pp. 3-5, Annex A.
14 Claimants' Letter dated 19 July 2024, pp. 2-3.
15 Claimants' PHB, pp. 6-7.
16 Respondents' Letter dated 15 July 2024, pp. 5-7, Annex A.
17 Claimants' Letter dated 19 July 2024, pp. 3-4.

c. Missouri Litigations' claims on substances other than lead

2.17 The Respondents assert that the Claimants' argument that the claims in the Missouri Litigations regarding substances other than lead are deficient[18] is extemporaneous because (i) the Claimants abdicated their obligation to prove their case by not providing evidence or argument on the matter previously; (ii) they never replied to the Respondents' argument on the impossibility of foreseeing the decision in the Missouri litigations; and (iii) they ask the Tribunal to interfere with two pending domestic litigations.[19]

2.18 In the Claimants' view, the argument should not be stricken given that (i) whether the claims involve lead only or additional substances is irrelevant for purposes of the Respondents' contractual responsibility; (ii) the Tribunal asked broadly about the claims in the Missouri Litigations; and (iii) the response to the Question was based directly on the Missouri Litigations pleadings.[20]

2.19 The Claimants' argument directly answers Question 1(e). Thus, the Tribunal rejects the Respondents' Request to Strike regarding this argument.

d. Only MEM could find a PAMA breach

2.20 The Respondents affirm that the Claimants' argument that MEM was the only one that could find a breach of the PAMA[21] is extemporaneous and should be stricken because (i) it was raised for the first time in the PHB; (ii) it is not linked to the Questions; and (iii) the Respondents would not have the opportunity to present rebuttal argument, supporting authorities, or expert reports.[22]

2.21 According to the Claimants, the argument should be admitted given that (i) it is based on exhibits R-25 and R-201, which have long been in the record; (ii) Ms. Alegre was cross-examined on these exhibits and argument during the Hearing; (iii) the evidence was repeated during the closing statement; (iv) the Respondents replied to this argument in their PHB; and (iv) even if it were a new argument, the Respondents waived their complaint by allowing the evidence in the Hearing and their own briefing.[23]

2.22 The Tribunal reiterates that an argument not being directly linked to a Question is not a motive to strike. At the very least, as indicated by the Claimants, this argument was raised at the Hearing without objection from the Respondents. Further, it notes that in their PHB, the Respondents already replied to this argument and also referred to a moment at the Hearing concerning it. Therefore, the Tribunal rejects the Respondents' Request to Strike regarding this argument.

e. Request to draw adverse inferences

2.23 In the Respondents' view, the Claimants' request for the Tribunal to draw adverse inferences against them due to they not offering "*any* witness statement from any person with knowledge of Centromin's standards and practices"[24] is extemporaneous since the Claimants never made this

18 Claimants' PHB, pp. 13-16, fn. 22.
19 Respondents' Letter dated 15 July 2024, pp. 7-8, Annex A.
20 Claimants' Letter dated 19 July 2024, p. 4.
21 Claimants' PHB, pp. 19-21.
22 Respondents' Letter dated 15 July 2024, p. 8, Annex A.
23 Claimants' Letter dated 19 July 2024, pp. 4-5.
24 Claimants' PHB, fn. 48 (Claimants' emphasis).

request before, even though they knew the identity of the Respondents witnesses and experts with every submitted pleading.[25]

2.24 The Claimants reject the Respondents' position, arguing that they merely pointed out the failure to call witnesses and suggested that the Tribunal may draw adverse inferences, but that the Tribunal is free to decide on the matter.[26]

2.25 Irrespective of whether the Claimants made a "suggestion" or a "request", the Tribunal considers that it was made within the context of Questions 2(a), 4(a)-(e), and 5 related to the phrase "standards and practices" under the STA. Consequently, the Tribunal rejects the Respondents' Request to Strike regarding this argument.

f. The subrogation claim not being time-barred

2.26 The Respondents state that the Claimants' argument that their subrogation claim is not time-barred because they failed to effect payment[27] is extemporaneous since (i) it is the first time the Claimants makes this argument; (ii) it does not respond to Question 9; and (iii) the Claimants could have raised this argument in their Reply or in their Rejoinder on Jurisdiction, but did not. [28]

2.27 The Claimants posit that this is "the clearest example of Respondents exalting their view of technical rules over the truth", given that (i) the Respondents conceded the Claimants' argument; and (ii) the Claimants and Dr. Payet have long asserted that any subrogation claim is timely.[29]

2.28 The Tribunal reiterates that an argument not being directly linked to a Question is not a reason to strike. The Claimants' argument, as understood by the Parties, is that the subrogation claim is not time-barred since it arises only once a claim is paid and the claim has not yet been paid. The Respondents noted that Dr. Payet had already mentioned in his second report that subrogation operates once payment has been effected and had mentioned, albeit for other reasons, that the subrogation claim could not be time-barred. In addition, the Respondents have acknowledged that the Claimants' alleged "new argument" is "true as a matter of logic". Given such acknowledgment, even if some parts of the argument were considered new, the Tribunal does not see any detriment it would cause to the due process rights of the Respondents, who in any event have an additional opportunity to respond. Therefore, the Tribunal rejects the Respondents' Request to Strike regarding this argument.

g. MEM's influence in the bankruptcy proceedings

2.29 According to the Respondents, the Claimants' argument that MEM allegedly had an outsized and improper influence in the bankruptcy proceedings[30] is extemporaneous because (i) the Claimants had never made this argument in respect to their "substantive" denial of justice claim; and (ii) it would violate the Respondents' due process if the Claimants were allowed to merge their denial of justice claims after representing that it would not pursue their procedural denial of justice claim.[31]

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25 Respondents' Letter dated 15 July 2024, p. 8, Annex A.
26 Claimants' Letter dated 19 July 2024, p. 5.
27 Claimants' PHB, p. 64.
28 Respondents' Letter dated 15 July 2024, p. 9, Annex A.
29 Claimants' Letter dated 19 July 2024, pp. 5-6.
30 Claimants' PHB, pp. 65-66, 68.
31 Respondents' Letter dated 15 July 2024, pp. 9-10, Annex A.

2.30 The Claimants consider that, since they were only summarizing the opinions of the first expert report of Mr. Schmerler, the Respondents cannot state that they were taken by surprise.[32]

2.31 The Tribunal notes that the Claimants' argument on MEM's alleged influence was made in the context of Questions 6(a), (c)-(e). Additionally, at no point in those sections does the Claimants mention denial of justice. The Tribunal also recalls that the Claimants have raised arguments on MEM's role in the bankruptcy proceedings regarding other claims, *e.g.*, their FET claim. Finally, as pointed out by the Claimants, they directly cited Mr. Schmerler's first expert report to substantiate their argument. Thus, the Tribunal rejects the Respondents' Request to Strike regarding this argument.

h. Invocation of various judgments

2.32 The Respondents contend that the Claimants' invocation of various judgments for their denial of justice claim (*i.e.*, the 4th Transitory Administrative Contentious Court, the 8th Chamber of the Lima Superior Court, and the Supreme Court of Justice of Peru)[33] is extemporaneous, given that (i) even though the Tribunal asked in Question 7 about the judicial measures that were part of the substantive denial of justice claim, the Claimants had never mentioned the three judgments as part of it; and (ii) the Claimants merging their procedural denial of justice claims with their substantive denial of justice claim after representing that they would no longer pursue the former violates the Respondents' due process rights.[34]

2.33 In the Claimants' view, the argument is a direct response to the Tribunal's Question which also cites where in the record the Claimants' arguments against the judgments can be found.[35]

2.34 The Tribunal notes that, in their Memorial, as cited by the Respondents, and their Reply, the Claimants refers to "domestic courts",[36] "decisions upholding the MEM's […] credit",[37] "years of appeals to numerous higher courts",[38] among others. This led the Tribunal to seek clarification through Question 7 of the specific judicial measures being disputed in the substantive denial of justice claim. As recognized by both Parties, the Claimants' listing of the decisions in dispute was a direct answer to Question 7, which does not present any new information. Consequently, the Tribunal rejects the Respondents' Request to Strike regarding this argument.

h. Peru's alleged admissions before the Inter-American Commission and clean-up efforts after the Inter-American Court Judgment.

2.35 The Respondents affirm that the Claimants' argument that Peru's alleged admissions before the Inter-American Commission should be given weight[39] is extemporaneous considering that (i) Question 10 refers to the Inter-American Court' 2024 Judgment and not the 2009 report concerning proceedings before Inter-American Commission; and (ii) the Claimants makes the arguments of the 2009 report for the first time in their PHB.[40] Additionally, the Respondents consider that the Claimants' argument that Peru failed to conduct clean-up efforts[41] should also

32 Claimants' Letter dated 19 July 2024, p. 6.
33 Claimants' PHB, pp. 68-69.
34 Respondents' Letter dated 15 July 2024, pp. 10-11, Annex A.
35 Claimants' Letter dated 19 July 2024, p. 6.
36 Treaty Memorial, ¶ 290.
37 Treaty Memorial, ¶ 291.
38 Reply, ¶ 142.
39 Claimants' PHB, pp. 72-73.
40 Respondents' Letter dated 15 July 2024, p. 11, Annex A.
41 Claimants' PHB, pp. 73.

be stricken because (i) it is irrelevant to the legal issues before the Tribunal; and (ii) was never raised before.[42]

2.36 The Claimants assert that their argument on the Inter-American Court Judgement should be admitted because (i) any argument regarding the Judgment would necessarily be new as the Inter-American Court proceedings were barely mentioned in the record before the Questions; and (ii) if the Tribunal were to strike the Claimants' arguments it should also strike the Respondents'.[43] The Claimants also argue, regarding the clean-up efforts, that (i) the Tribunal is interested in this topic, as indicated in its letter of 27 June 2024; and (ii) the Respondents addressed this matter in their PHB and the Claimants are entitled to do so too.[44]

2.37 The Tribunal notes that Question 10 relates to the Judgment of the Inter-American *Court* and not the proceedings before the Inter-American *Commission*. Also, the Claimants' argument on the latter does not respond to any issue that arose during the Hearing, constituting a new argument that should have been raised in a previous submission and that must, thus, be stricken. However, the Tribunal notes that the Claimants do appear to refer to the Judgment and related matters, such as the clean-up efforts, which shall not be stricken. Hence, the Tribunal strikes the paragraphs and corresponding citations of pages 72 and 73 of the Claimants' PHB as follows:

> While little or no weight should be accorded to the IACHR decision itself~~, the Tribunal should give weight to the positions taken by Peru in the proceeding. When faced with allegations that environmental contamination in La Oroya constituted violations of the American Convention on Human Rights, Peru defended its conduct by touting the measures that had been taken by Centromin and DRP to improve the environment. Peru argued in 2009 that "in keeping with its international obligations, it has been taking progressive, consistent, cross-cutting, and multisectoral measures to bring about optimal air quality levels, to counteract the health problems of the affected population, and to monitor the activities of the Doe Run Company."[68]~~
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> ~~In the IACHR proceeding, Peru noted that water quality standards for various metals, including lead, had been brought within international standards.[69] It cited the 2008 Blacksmith report as evidence of "improvement stemming from measures taken by [DRP]."[70] It opposed the imposition of sanctions by IACHR as unwarranted. In short, Peru took positions before the IACHR directly inconsistent with the assertions made in this arbitration.~~ Peru's effort to convince this Tribunal that its standards and practices during Centromin's operations were more protective of the environment and public health are disingenuous.
>
> No one denies that the decades of Centromin's operations created a public health and environmental crisis in La Oroya, or that even after the substantial efforts made by DRP that much work remains to be done. Perhaps the most salient conclusion to be drawn from the IACHR decision is that in the 15 years since DRP ceased operations, Peru has done virtually nothing to improve the plight of La Oroya and its citizens.[71] We can all express regret at that unhappy circumstance, while acknowledging it answers none of the issues confronting this Tribunal.[45]

3 Decision

3.1 Having considered the views expressed by the Parties and for the reasons given above, the Tribunal hereby decides to:

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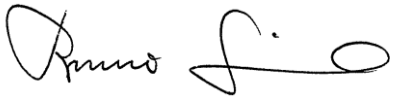
42 Respondents' Letter dated 15 July 2024, p. 11, Annex A.
43 Claimants' Letter dated 19 July 2024, p. 6.
44 Claimants' Letter dated 19 July 2024, pp. 6-7.
45 Claimants' PHB, pp. 72-73.

3.1.1. request the Parties to submit the exhibits requested by the Tribunal in paragraphs 2.8 and 2.9 by **Tuesday, 6 August 2024**; and

3.1.2. reject the Respondents' Request to Strike, except in relation to the Claimants' argument on Peru's alleged admissions before the Inter-American Commission, which shall be stricken as determined by the Tribunal in paragraph 2.37 above.

So ordered by the Tribunal.



Judge Bruno Simma
(Presiding Arbitrator)

On behalf of the Tribunal