

UNDER THE UNCITRAL ARBITRATION RULES (2013)

The Renco Group, Inc., and Doe Run Resources, Corp.,
Claimants,

v.

The Republic of Peru
Respondent.

PCA Case No. 2019-46

**Respondent's Submission on Costs
for the Treaty Case**

13 September 2024

A&O SHEARMAN

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I. OVERVIEW

1. Pursuant to Article 42 of the Rules of the United Nations Commission on International Trade Law (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013) (the “**UNCITRAL Rules**”), Article 10.26 of the Trade Promotion Agreement between the Republic of Peru and the United States of America, dated 12 April 2006, entered into force on 1 February 2009 (the “**Treaty**”), and paragraph 5 of Procedural Order No. 12, the Republic of Peru (“**Peru**”) hereby submits its Cost Submission for the case entitled *The Renco Group Inc. v. The Republic of Peru*, PCA Case No. 2019-46 (“**Treaty Case**”).
2. In **Section II**, Peru sets out the categories of costs it seeks to recover. In **Section III**, Peru requests that the Tribunal exercise its discretion to make an award of costs in Peru’s favor, to allow full reparation to be made to Peru in respect of the expense and burden it has suffered because of The Renco Group, Inc.’s (“**Claimant**”) meritless claims brought under the Treaty. **Section IV** contains Peru’s Request for Relief.

II. PERU’S FEES AND EXPENSES

3. Peru’s costs are divided into six categories: **(i)** Allen Overy Shearman Sterling US LLP (“**A&O Shearman**”) legal fees; **(ii)** A&O Shearman costs and related disbursements; **(iii)** Lazo & De Romaña Abogados legal costs and related disbursements; **(iv)** White & Case LLP legal costs and related disbursements; **(v)** expert fees and related disbursements; and **(vi)** institutional, Tribunal and Hearing costs covered by payments made directly to the PCA.
4. A summary of Peru’s costs is provided below.

A&O Shearman legal fees	USD 1,754,685.24
A&O Shearman costs	USD 69,572.05
Lazo & De Romaña Abogados legal fees and costs	USD 39,326.83
White & Case LLP legal fees and costs	USD 3,080,204.76
Expert fees and costs	USD 478,457.49

Institutional, Tribunal and Hearing costs covered by payments made directly to the PCA	USD 416,250.00
TOTAL	USD 5,838,496.37

5. Peru considers that the total costs enumerated herein are reasonable in all the circumstances and in the light of the procedural history of this case. Moreover, as set out in Section III below, many of the steps taken by Claimant throughout the proceedings caused Peru to incur costs that could, and would, otherwise have been avoided. This further demonstrates that the quantum of costs incurred by Peru are reasonable and should be recovered.

A. Allen Overy Shearman Sterling US LLP legal fees

6. Peru has been represented in this arbitration since 2021 by A&O Shearman. The legal fees charged by A&O Shearman were billed at conservative hourly rates and had a total hours cap. A&O Shearman's legal fees totaled USD 1,754,685.24 for the Treaty Case.
7. The legal fees incurred by Peru are reasonable having regard to the volume of evidence and substantial written submissions submitted, and in the light of the procedural history of the case since A&O Shearman began representing Peru (which involved, among other things, numerous letter exchanges regarding document production, presentation of new arguments by Claimant, and change of counsel, a two-week hearing on jurisdiction and the merits held between 5 and 15 March 2024).

B. A&O Shearman costs

8. The costs Peru incurred through A&O Shearman include, inter alia, document processing and printing, transportation costs, hotels, meals and incidental third-party expenses. These costs totaled USD 69,572.05 for the Treaty Case.

C. Lazo & De Romaña Abogados legal fees and costs

9. Peru has also been represented in this arbitration since 2021 by Lazo & De Romaña Abogados, who served as counsel to Peru in Lima, Peru on targeted legal issues. The legal fees charged by Lazo & De Romaña Abogados were billed at conservative hourly rates and had a total hours cap. Lazo & De Romaña Abogados's legal fees totaled USD 39,326.83.

10. The legal fees incurred by Peru are reasonable having regard to the volume of evidence and substantial written submissions submitted.

D. White & Case LLP legal fees and costs

11. Peru was represented by White & Case LLP in the Treaty Case from its inception through mid-2021. The legal fees charged by White & Case LLP were billed at conservative hourly rates. White & Case LLP's legal fees totaled USD 3,080,204.76 for the Treaty Case.
12. The legal fees incurred by are reasonable having regard to the substantial procedural history of the Treaty Case which dated back to the original claim Claimant filed in 2011. White & Case LLP also represented Peru in various exchanges and a bifurcated proceeding that involved substantial written submissions.

E. Expert fees and costs

13. The total fees and costs incurred by Peru with respect to expert witnesses totaled USD 478,457.49 for the Treaty Case.
14. Peru retained Oswaldo Hundskopf, a Peruvian bankruptcy law expert, to provide two expert reports. Peru retained Ada Carmen Alegre Chang, a Peruvian environmental law lawyer, who provided two expert reports. Peru retained Wim Dobbelaere, a pyrometallurgy expert, who provided two expert reports. And finally, Peru retained Isabel Kunsman, a financing and accounting expert from AlixPartners, who provided two expert reports. All Peru's experts were called to participate at the Hearing.

F. Peru's payments to the PCA

15. Peru incurred costs reflected in payments made to the Permanent Court of Arbitration. The portion of these costs allocated to the Treaty Case is USD 416,250.00.

III. PERU'S REQUEST FOR AN AWARD ON COSTS

16. Article 42 of the UNCITRAL Rules states:

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

17. As such, the UNCITRAL Rules provide specific guidance to aid tribunals in issuing cost awards. The UNCITRAL Rules provide that the “costs of the arbitration shall in principle be borne by the unsuccessful party or parties.” This standard comports with the prevailing “loser pays” or “cost follows the event” approach adopted by courts and international arbitral tribunals in most jurisdictions.
18. The Treaty in Article 10.26(1) provides limited guidance on this issue supporting the adoption of the approach under the UNCITRAL Rules.¹
19. In determining how costs should be appointed between the parties, tribunals have considered quality (and the ultimate success) of the objections or claims brought by a party, the complexity of the issues, the conduct of the parties and any special circumstances.
20. Peru therefore submits it is entitled to its costs on a full indemnity basis. An award of Peru’s costs in defending the arbitration is necessary to reinstate Peru to the position it would have been in but for Claimant presenting its meritless claims under the Treaty. As with the Contract Case, the Treaty Case is completely meritless. Claimant has completely failed to address the jurisdictional flaws of its case, and their claims on responsibility are so frivolous that they are sanctionable. Likewise, Claimants’ unreasonable and delaying conduct throughout the proceeding has unnecessarily protracted the proceedings and significantly increased costs.²
21. In light of the above, Peru should be reimbursed for all the costs incurred as a result of defending Claimants’ myriad ill-supported claims.
22. Peru reserves its right to update this submission to reflect any further costs it incurs or may have incurred in relation to these proceedings.

IV. REQUEST FOR RELIEF

23. For the foregoing reasons, Peru respectfully requests that the Tribunal grant an award pursuant to Article 42 of the UNCITRAL Rules and paragraph 5 of Procedural Order

¹ See RLA-001, Art. 10.26(1) (“A tribunal may also award costs and attorney’s fees in accordance with this Section and the applicable arbitration rules.”).

² Claimants’ actions include, among others: (i) refusing to abide by the procedural calendar in the document production phase; (ii) changing counsel, delaying the proceeding, only to continue being advised by previous counsel; (iii) presenting new arguments on jurisdiction, admissibility, and the merits *ex tempore*).

No. 12, ordering that Claimant bear the costs of this arbitration, as well as Peru's costs for legal representation, in the amount of USD 416,250.00 and USD 5,422,246.37, respectively, along with compound interest on those amounts at a market rate.

24. Further, Peru submits that it should not be liable for any of Claimants' costs.

Respectfully submitted,

A&O Shearman

Allen Overy Shearman Sterling US LLP