

UNDER THE UNCITRAL ARBITRATION RULES (2013)

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

v.

Activos Mineros S.A.C.
Respondent.

PCA Case No. 2019-47

**Respondent's Submission on Costs
for the Contract 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**”) and paragraph 5 of Procedural Order No. 13, Activos Mineros hereby submits its Cost Submission for the case entitled *The Renco Group Inc., and Doe Run Resources, Corp. v. Activos Mineros S.A.C.*, PCA Case No. 2019-47 (“**Contract Case**”).
2. In **Section II**, Activos Mineros sets out the categories of costs it seeks to recover. In **Section III**, Activos Mineros requests that the Tribunal exercise its discretion to make an award of costs in Activos Mineros’s favor, to allow full reparation to be made to Activos Mineros in respect of the expense and burden it has suffered as a result of The Renco Group, Inc.’s and Doe Run Resources, Corp.’s (“**Claimants**”) meritless claims brought under the Contract of Stock Transfer for 99.93% shares of Metaloroya executed on 23 October 1997 by Centromín, DRP, and Metaloroya (“**STA**”). **Section IV** contains Activos Mineros’s Request for Relief.

II. ACTIVOS MINEROS’S FEES AND EXPENSES

3. Activos Mineros’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 Activos Mineros’s costs is provided below.

A&O Shearman legal fees	USD 2,443,126.35
A&O Shearman costs	USD 96,868.28
Lazo & De Romaña Abogados legal fees and costs	USD 54,756.50
White & Case LLP legal fees and costs	USD 1,320,087.76

Expert fees and costs	USD 963,656.92
Institutional, Tribunal and Hearing costs covered by payments made directly to the PCA	USD 416,250.00
TOTAL	USD 5,294,745.81

5. The total costs enumerated herein are reasonable in all 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 Claimants throughout the proceedings caused Activos Mineros to incur costs that could, and would, otherwise have been avoided. This further demonstrates that the quantum of costs incurred by Activos Mineros is reasonable and should be recovered.

6.

A. A&O Shearman legal fees

7. Activos Mineros 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 for the Contract Case totaled USD 2,443,126.35.

8. The legal fees incurred by Activos Mineros 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 Activos Mineros (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

9. The costs incurred by Activos Mineros through A&O Shearman include, inter alia, document processing and printing, transportation costs, hotels, meals and incidental third-party expenses. These costs totaled USD 96,868.28 for the Contract Case.

C. Lazo & De Romaña Abogados legal fees and costs

10. Activos Mineros has also been represented in this arbitration since 2021 by Lazo & De Romaña Abogados, who served as counsel to Activos Mineros 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 54,756.50 for the Contract Case.
11. The legal fees incurred by Activos Mineros are reasonable having regard to the volume of evidence and substantial written submissions submitted.

D. White & Case LLP legal fees and costs

12. Activos Mineros was represented by White & Case LLP in the Contract 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 1,320,087.76 for the Contract Case.
13. The legal fees incurred by Activos Mineros are reasonable having regard to the substantial procedural history of the case, which dated back to the original claim Claimants filed in 2011. White & Case LLP also represented Activos Mineros in various exchanges and a bifurcated proceeding that involved substantial written submissions.

E. Expert fees and costs

14. The total fees and costs incurred by Activos Mineros with respect to expert witnesses totaled USD 963,656.92.
15. Activos Mineros retained Enrique Varsi, a Peruvian contract law expert, to provide two expert reports. Activos Mineros retained Ada Carmen Alegre Chang, a Peruvian environmental law lawyer, who provided two expert reports. Activos Mineros retained Wim Dobbelaere, a pyrometallurgy expert, who provided two expert reports. Activos Mineros retained Deborah Proctor, a toxicology expert, to provide two expert reports. And finally, Activos Mineros retained Isabel Kunsman, a financing and accounting expert from AlixPartners, who provided two expert reports. All of Activos Mineros's experts were called to participate at the hearing.

F. Activos Mineros's payments to the PCA

16. Activos Mineros incurred costs reflected in payments made to the Permanent Court of Arbitration. The portion of these costs allocated to the Contract Case is USD 416,250.00.

III. ACTIVOS MINEROS'S REQUEST FOR AN AWARD ON COSTS

17. 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.

18. 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.
19. The STA is silent on this issue, supporting the adoption of the approach under the UNCITRAL Rules.¹
20. 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.
21. Activos Mineros is entitled to its costs on a full indemnity basis. An award of Activos Mineros's costs in defending the arbitration is necessary to reinstate Activos Mineros to the position it would have been in but for Claimants presenting their meritless claims. The Contract Case is so frivolous that Activos Mineros was forced to present over 20 objections to jurisdiction and admissibility. Likewise, Claimants' case on liability was so baseless that they dropped their minimum standard of treatment and Peruvian-law pre-contractual liability claims and have wholly refused to substantiate their contribution and unjust enrichment claims. On all matters, Activos Mineros expended numerous hours and large

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.”).

sums responding to Claimants' case, only to have many of its responses ignored by Claimants.² Finally, Claimants' unreasonable and delaying conduct throughout the proceeding has unnecessarily protracted the proceedings and significantly increased costs.³

22. Considering the above, Activos Mineros should be reimbursed for all the costs incurred as a result of defending Claimants' myriad frivolous claims.

IV. ACTIVOS MINEROS RESERVES ITS RIGHT TO UPDATE THIS SUBMISSION TO REFLECT ANY FURTHER COSTS IT INCURS OR MAY HAVE INCURRED IN RELATION TO THESE PROCEEDINGS.REQUEST FOR RELIEF

23. For the foregoing reasons, Activos Mineros respectfully requests that the Tribunal grant an award pursuant to Article 42 of the UNCITRAL Rules and paragraph 5 of Procedural Order No. 13, ordering that Claimants bear the costs of this arbitration, as well as Activos Mineros's costs for legal representation, in the amount of USD 416,250.00 and USD 4,878,495.81, respectively, along with compound interest on those amounts at a market rate.
24. Further, Activos Mineros submits that it should not be liable for any of Claimants' costs.

Respectfully submitted,

A&O Shearman

Allen Overy Shearman Sterling US LLP

² See generally Contract Rejoinder (identifying all the arguments to which Claimants failed to reply).

³ 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*.).