

**IN THE MATTER OF
AN ARBITRATION UNDER THE RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
UNCT/13/1**

THE RENCO GROUP, INC.

CLAIMANT,

v.

THE REPUBLIC OF PERU

RESPONDENT.

CLAIMANT'S MEMORIAL ON LIABILITY

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY OVERVIEW.....	1
II.	FACTUAL BACKGROUND.....	9
A.	From 1922 to 1997, Peru Created One of the World’s Most Polluted Sites: The La Oroya Complex	9
1.	In the 1970s, Peru Expropriated the Decades-Old La Oroya Complex.....	11
2.	Peru’s Mining Sector Operated with Little or No Regulatory Oversight.....	12
B.	During the Early 1990s, Peru Was Unable to Privatize Centromin as a Whole, because of the La Oroya Complex’s Environmental Legacies and Obsolete Condition	13
1.	Peru’s Attempt to Auction Centromin to Foreign Investors Failed Because of Potential Investors’ Concerns about Environmental Liability and the Costs of Upgrading the Complex	14
2.	Peru Revised Its Privatization “Strategy” Such That Peru Would Sell the Complex but Retain Liability for Environmental Remediation and Third-Party Claims Relating to Environmental Contamination.....	15
3.	Peru Adopted Measures Intended to Eventually Bring the Complex into Compliance with New Environmental Standards.....	16
a.	Centromin’s Preliminary Environmental Evaluation of the La Oroya Complex Highlighted Significant Environmental Issues.....	17
b.	Peru’s Independent Environmental Expert Advised that Ten Years Was Not Sufficient to Meet the New Air Quality Standards, Recommended Flexibility in Implementation of the PAMA and Recommended Setting Reasonable Goals	19
c.	The La Oroya PAMA Provided Ten Years to Complete 16 Projects, but Did Not Address Key Problems such as Lead Emissions	21
C.	In the Second Bidding Process, Peru and Centromin Made Clear that They Would Remediate the Areas around the La Oroya Complex and Retain	

	and Assume Liability for Third-Party Claims Relating to Environmental Contamination.....	27
D.	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	28
E.	With the Stock Transfer Agreement and the Guaranty Agreement, Centromin and Peru Retained and Assumed Liability for Third-Party Damages and Claims relating to Environmental Contamination.....	30
	1. Key Terms of the Stock Transfer Agreement related to Liability for Third-Party Claims.....	30
	2. Approximately 1,000 Residents of La Oroya Have Filed U.S. Third-Party Claims against Renco and Its Affiliates, Officers and Directors for Harm Alleged to Have Been Suffered from the La Oroya Complex’s Operations	35
	3. Activos Mineros and Peru Have Refused to Assume Any Liability for Damages and Third-Party Claims Asserted against the Renco Defendants	36
F.	Centromin and Peru Committed to Perform Centromin’s PAMA Obligations and to Remediate the Areas around the Complex; and They Have Not Done So	41
	1. Key Stock Transfer Agreement Terms related to Centromin and Peru’s Obligation to Remediate and Perform Centromin’s PAMA Obligations.....	41
	2. Peru and Centromin Failed to Comply with Their Obligation to Remediate Areas Contaminated by the Complex’s Operations.....	44
	a. Remediation of the Soil Was Important to the Health of the Population	44
	b. The Ministry of Energy & Mines Allowed Centromin to Defer Its Remediation Obligations	46
	c. Peru and Centromin’s Failure to Remediate Has Impacted Both the Health of the Citizens of La Oroya and Renco’s Interests.....	50
G.	As It Learned More about What Really Needed to Be Done, Doe Run Peru Significantly Expanded Its Efforts, Engaged in Numerous Complementary Projects to Address Public Health Issues, and Focused on Helping the Local Population	51

1.	Doe Run Peru Expanded Its PAMA Obligations.....	52
2.	Doe Run Peru Identified Lead Contamination as a Public Health Risk and Engaged in Numerous Activities Outside the Scope of the PAMA to Address It	53
3.	Doe Run Peru Engaged in Numerous Additional Social and Public Health Projects to Help the Community	58
H.	In 2006, the Ministry of Energy & Mines and Doe Run Peru Agreed, as Did the Ministry’s Independent Outside Consultant, that an Extension of Time for Doe Run Peru to Complete the Sulfuric Acid Plants Project Was Necessary	59
1.	The Ministry of Energy & Mines Granted Doe Run Peru an Extension to Complete the Sulfuric Acid Plants PAMA Project to Address Lead Contamination and Other Environmental Concerns.....	59
2.	The Ministry of Energy & Mines’ Extension Imposed Onerous Conditions and Significantly Expanded the Cost and Complexity of Doe Run Peru’s PAMA Obligations, While Granting Only an Additional Two Years and Ten Months.....	63
I.	By December 2008, Doe Run Peru Had Completed All PAMA Projects Except One of the Three Sulfuric Acid Plants, and Had Dramatically Reduced the Complex’s Environmental Impacts.....	71
J.	In 2009, Peru Treated Doe Run Peru Unfairly and Inequitably by Granting – and Then Undermining – Its Extension of Time to Finish the Sulfuric Acid Plant Project for the Copper Circuit.....	79
1.	The Global Financial Crisis Prevented Doe Run Peru from Finishing the Copper Circuit Sulfuric Acid Plant Project by the October 2009 Deadline	79
2.	The Peruvian Congress Granted Doe Run Peru’s <i>Force Majeure</i> Request for a 30-Month Extension, and the Ministry of Energy & Mines Thereafter Undermined the Extension.....	86
K.	Peru Caused Renco to Lose Control of Its Investments through the Bankruptcy Process and Then Reopened the Complex	89
1.	Peru Became Doe Run Peru’s Largest Creditor by Asserting a Meritless Claim Based on the Cost of Completing the Sulfuric Acid Plant Project	89

2.	Through the Bankruptcy Process, Peru Promptly Helped to Defeat Doe Run Peru’s Proposed Restructuring Plans and Then Allowed the Liquidator to Reopen the Complex.....	93
L.	For the Past Three Years, Despite No Evidence of Wrongdoing, Baseless Criminal Charges Have Been Pursued against Renco Officers.....	98
III.	THE TRIBUNAL HAS JURISDICTION OVER THIS DISPUTE	100
A.	The Tribunal Has Jurisdiction over Renco’s Claims that Peru Has Breached an “Investment Agreement”	102
B.	The Tribunal Has Jurisdiction Over Renco’s Claims that Peru Has Breached Section A of the Treaty.....	105
IV.	LEGAL ARGUMENT	106
A.	Peru’s Refusal to Assume Liability for the Claims in the St. Louis Lawsuits Violates the Treaty because It Breaches the Guaranty Agreement and the Stock Transfer Agreement, which Together Constitute an Investment Agreement.....	106
1.	The Law Applicable to Renco’s Claims for Breach of the Guaranty Agreement and the Stock Transfer Agreement.....	106
2.	Centromin and Peru Are Liable for Third-Party Claims Relating to Environmental Contamination.....	110
a.	Pursuant to Clauses 5 and 6 of the Stock Transfer Agreement, Centromin and Peru (through the Guaranty Agreement) Retained and Assumed Liability for the Lion’s Share of Third-Party Claims Relating to Environmental Contamination.....	110
b.	Renco Would Not Have Invested in Doe Run Peru and the Complex without the Broad Commitment from Centromin and Peru to Retain and Assume Liability for Third-Party Environmental Contamination Claims.....	117
3.	Peru and Centromin Have Breached the Stock Transfer Agreement and the Guaranty Agreement by Failing to Assume Liability for the Claims Asserted in the St. Louis Lawsuits	122
a.	The Claims Asserted in the St. Louis Lawsuits Fall within the Scope of Centromin’s Assumption of Liability	122
b.	Activos Mineros’ Arguments in Refusing to Assume Liability for the Claims Asserted in the St. Louis Lawsuits Are Meritless.....	124

B.	Peru’s Refusal to Assume Liability for the Claims in the St. Louis Lawsuits Violates the Treaty’s Fair and Equitable Treatment Standard	129
1.	The Content of the Fair and Equitable Treatment Standard under Customary International Law	129
2.	Peru Has Breached the Treaty’s Fair and Equitable Treatment Standard by Failing to Assume Liability for the Claims in the St. Louis Lawsuits	133
C.	Peru’s Pattern of Mistreatment of Doe Run Peru In Connection With Extension Requests to Complete the Remainder of Its Ninth and Final PAMA Project, Based on Economic <i>force Majeure</i> , and of Doe Run Peru’s Proposed Restructuring Plans, Violated the Treaty’s Fair and Equitable Treatment Standard and Its Protection of Investment Agreements	136
1.	Peru’s Pattern of Mistreatment of Doe Run Peru In Connection with the Economic <i>Force Majeure</i> Extension Requests and Proposed Restructuring Plans from Doe Run Peru Violated Article 10.5’s Guarantees of Fair and Equitable Treatment	136
a.	The Ministry of Energy & Mines’ Pattern of Mistreatment of Doe Run Peru in Connection With the Extension Requests and Proposed Restructuring Plans from Doe Run Peru Was Grossly Unfair and Arbitrary.....	137
(i)	Peru’s Own Environmental Consultant Recognized that Achieving Compliance with Peru’s Existing SO ₂ Standards Would Take More Than Ten Years	142
(ii)	Doe Run Peru’s Undertaking to Improve the Environmental Performance of the Complex and the Health of the Local Population Was Radically Transformed During the Period from 1997 to 2009	142
(iii)	Doe Run Peru’s Actual Investments in Its PAMA Projects Exceeded the Required Investment by Over US\$ 200 Million	144
(iv)	The Global Financial Crisis and Steep Decline in World Metals Prices Constituted an “Extraordinary Economic Alteration” Excusing Doe Run Peru’s Inability to Finish the Copper Circuit Sub-Project	145
(v)	Peru Sought to Extract Concessions from Doe Run Peru as Conditions to Granting the PAMA	

	Extension to Which Doe Run Peru Was Clearly Entitled under the Economic <i>Force Majeure</i> Clause in the Stock Transfer Agreement	146
(vi)	By Imposing the Trust Account Requirement <i>inter alia</i> , the Ministry of Energy & Mines Violated Peruvian Law	148
(vii)	Peru’s Unfair Treatment of Doe Run Peru Continued with the Ministry of Energy & Mines’ Insistence on an Unreasonably Short Period to Foreclose on Doe Run Peru’s Proposed Asset Guarantees.....	149
(viii)	Peru’s Pattern of Mistreatment Included Efforts to Control the Bankruptcy Proceeding by Asserting a Bogus US\$ 163 Million Credit	150
(ix)	Peru’s Pattern of Unfair Treatment Continued with Its Refusal to Approve Doe Run Peru’s Restructuring Plans	151
b.	The Ministry of Energy & Mines’ Pattern of Mistreatment of the Extension Requests and Proposed Restructuring Plans from Doe Run Peru Frustrated Renco’s Legitimate Expectations	152
c.	The Ministry of Energy & Mines’ Pattern of Mistreatment of the Extension Requests and Proposed Restructuring Plans from Doe Run Peru Involved a Complete Lack of Transparency and Candor	155
d.	The Ministry of Energy & Mines’ Imposition of the Trust Account Requirement, and Other Erroneous Conditions, Was Not a Proportionate Response.....	158
e.	The Ministry of Energy & Mines’ Undermining of the Extension Was Inconsistent with the Actions of Congress and the Technical Commission.....	160
f.	Peru Coerced and Harassed Renco	161
2.	The Ministry of Energy & Mines’ Pattern of Mistreatment of Doe Run Peru In Connection with its Requests for an Extension of Time based upon Economic <i>Force Majeure</i> and of Doe Run Peru’s Proposed Restructuring Plans Violated the Treaty Because It	

	Breached the Guaranty Agreement and the Stock Transfer Agreement, which Together Constitute an Investment Agreement.....	161
D.	Peru’s Discriminatory Treatment of Doe Run Peru’s Extension Requests Violated Article 10.3 of the Treaty	163
	1. Peru Treated Doe Run Peru’s Extension Requests Less Favorably Than It Treated Centromin’s Extension Request.....	163
	2. Peru’s Differential Treatment of Doe Run Peru’s and Centromin’s Extension Requests Lacked Any Rational Basis	166
	3. Doe Run Peru and Centromin Were in Like Circumstances	167
E.	Peru’s Conduct Caused Renco to Lose Control Over Doe Run Peru And Violated Article 10.7 of the Treaty	168
	1. The Legal Standards for Direct and Indirect Expropriation	169
	2. Peru Expropriated Renco’s Investments.....	171
	3. Peru’s Expropriation of Renco’s Investments Was Unlawful	172
	a. Peru’s Expropriation of Doe Run Peru Was Not “For a Public Purpose”	173
	b. Peru’s Expropriation of Doe Run Peru Was Discriminatory.....	176
	c. Peru Has Not Compensated Renco for the Investments It Expropriated.....	176
	d. Peru’s Expropriation of Doe Run Peru Was Not in Accordance with Due Process of Law and Article 10.5	177
V.	CONCLUSION.....	180

GLOSSARY OF TERMS

Activos Mineros	Successor to Centromin; legal entity organized under the laws of Peru and wholly owned by the Government of Peru
<i>Acción Contencioso Administrativa</i>	Judicial challenge; action Doe Run Peru brought challenging claim brought by Ministry of Energy & Mines for US\$ 163 million and the INDECOPI resolution approving the claim
<i>Auto de Apertura de Instrucción</i>	Criminal case brought against Ira L. Rennert and A. Bruce Neil in the 39th Criminal Court of Lima; also referred to as Auto de Apertura
<i>Cerro de Pasco Copper Corporation</i>	Privately-owned corporation that founded the La Oroya Complex in 1922
Circuit(s)	The four circuits in the La Oroya Complex used for smelting and refining copper, lead, precious metals, and zinc
Civil Code	Peruvian Civil Code of 1984
<i>Cobriza</i>	A copper and silver mine owned and operated by Doe Run Peru, purchased from the Government in 1998, and one of the principal concentrate sources to the La Oroya Complex
<i>Comite Especial de Privatización</i>	Special privatization committee; also referred to as CEPRI
Commercial Code	Peruvian Commercial Code of 1902
Company	Metaloroya or Doe Run Peru, after the merger of Metaloroya and Doe Run Peru
Copper Circuit	Copper smelter and refinery at La Oroya Complex; one of four circuits at the Complex; completion of sulfuric acid plant for this circuit was Doe Run Peru's final PAMA project
<i>Consejo Nacional del Ambiente</i>	National Environmental Council; Peruvian governmental body which oversees national environmental policy
<i>Consorcio Minero S.A.</i>	Supplier of concentrates to Doe Run Peru; subsidiary of Trafigura, a multinational commodity trading company; also referred to as "Cormín"

<i>Dirección General de Salud Ambiental</i>	General Directorate of Environmental Health; technical arm of the Peruvian Ministry of Health, also referred to as “DIGESA”
<i>Dictamen Pericial Contable</i>	Accounting Expert Report
Doe Run Resources Corporation	Mining and smelting company based in St. Louis, Missouri; wholly-owned subsidiary of Renco and affiliate of Doe Run Peru; also referred to as “DRR” or “DRRC”
Doe Run Cayman Holdings	Holding company incorporated under the laws of Missouri; wholly-owned subsidiary of Renco; also referred to as “DRH”
Doe Run Cayman Limited	Holding company incorporated under the laws of the Cayman Islands; wholly-owned subsidiary of Renco and affiliate of Doe Run Peru; also referred to as “DRCL”
Doe Run Peru	Mining and smelting company incorporated under the laws of Peru in September 1997 in order to acquire Metaloroya; owner and operator of the La Oroya Complex from 1997 to the present and owner of <i>Cobrizo</i> ; wholly-owned subsidiary of Renco; also referred to as “DRP” or the “Company”
<i>Empresa Metalúrgica La Oroya S.A.</i>	Company incorporated by the Government of Peru in September 1996 in order to hold the Complex and to segregate it from Centromin’s other business operations; acquired by Doe Run Peru on October 23, 1997, pursuant to the Stock Transfer Agreement; merged into Doe Run Peru in December 1997; also referred to as “Metaloroya” or the “Company”
<i>Excepción de Naturaleza de Acción</i>	Motion to dismiss
<i>Estándar de Calidad Ambiental</i>	Ambient quality standard; environmental standard issued by the Government of Peru establishing the level of a particular contaminant present in a receiving body (<i>e.g.</i> , air, water, soil) that is considered by the Government not to pose a threat to human health or the environment; also referred to as “ECA”

<i>Evaluación Ambiental Preliminar</i>	Preliminary environmental assessment; environmental assessment carried out prior to the preparation of a PAMA; required under Peru’s 1993 Regulations for Environmental Protection in Mining and Metallurgy; also referred to as “EVAP” or the “Preliminary Environmental Assessment”
<i>Falsa Declaración en Proceso Administrativo</i>	False declaration in an administrative proceeding
<i>Fiscalías Provinciales Penales de Lima</i>	General Prosecutor’s Office in Lima, Peru
Guaranty Agreement	Guaranty Agreement between the Republic of Peru and Doe Run Peru S.R. Ltda., dated November 21, 1997
INDECOPI Bankruptcy Proceedings	Liquidation proceedings of Doe Run Peru initiated in early 2010 by Cormín; bankruptcy proceedings were overseen by the Peruvian governmental body, INDECOPI; also referred to as the “Bankruptcy”
<i>Insolvencia Fraudulenta</i>	Fraudulent bankruptcy
<i>Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual</i>	Peruvian governmental agency which oversees bankruptcy proceedings; also referred to as “INDECOPI”
Intercompany Note	Interest-bearing promissory note issued by Doe Run Peru
Junín	Department in which the town of La Oroya is located
La Oroya	Town located in the central Andean highlands of Peru
La Oroya Complex	Smelting and refining complex in La Oroya, Peru; also referred to as the “Complex”

<i>Limite Máximo Permissible</i>	Maximum permissible limit; environmental standard issued by the Government of Peru establishing a limit (usually expressed as a concentration) on the amount of a particular contaminant that may be contained in the air emissions or liquid effluent discharges from a facility; also referred to as “LMP”
MEM Action	Judicial challenge by Doe Run Peru requesting annulment of an INDECOPI resolution which had approved the MEM credit claim for US\$ 163 million; judicial challenge was brought in form of an <i>acción contencioso administrativa</i>
MEM Credit	Claim for US\$ 163 million filed in the INDECOPI Bankruptcy Proceedings against Doe Run Peru by the Ministry of Energy & Mines
MEM Trust	Proposed trust controlled by the Ministry of Energy & Mines via a Supreme Decree issued on October 27, 2009 that required Doe Run Peru to channel 100 percent of its revenues from any source into a Ministry-controlled trust
Metaloroya	Company incorporated by the Government of Peru in September 1996 in order to hold the Complex and to segregate it from Centromin’s other business operations; acquired by Doe Run Peru on October 23, 1997, pursuant to the Stock Transfer Agreement; merged into Doe Run Peru in December 1997; also referred to as the “Company”
<i>Ministerio de Energía y Minas del Perú</i>	Peruvian Ministry of Energy & Mines; also referred to as the “Ministry,” “MEM” and “MINEM”
<i>Nulidad</i>	Nullity request
<i>Ministerio de Salud</i>	Peruvian Ministry of Health; also referred to as “MINSA” or “DIGESA”
<i>Organismo de Evaluación y Fiscalización Ambiental</i>	Agency for Environmental Control and Assessment; Peru’s environmental enforcement agency
<i>Organismo Supervisor de la Inversión en Energía y Minería</i>	Supervising Body of Investments in Energy and Mining; Peruvian regulatory body; also referred to as “OSINERGMIN”

Preliminary Environmental Assessment	Environmental assessment carried out by Centromin prior to the preparation of a PAMA; required under Peru’s 1993 Regulations for Environmental Protection in Mining and Metallurgy; also referred to as “EVAP” or “ <i>Evaluación Ambiental Preliminar</i> ”
<i>Programa de Adecuación y Manejo Ambiental</i>	Environmental Remediation and Management Program; program consisting of projects intended to reduce pollutants and to bring a facility into compliance with the LMPs and ECAs issued by the Government of Peru; required under Peru’s 1993 Regulations for Environmental Protection in Mining and Metallurgy; also referred to as “PAMA”
<i>Peñoles</i>	<i>Servicios Industriales Peñoles S.A. de C.V.</i> ; mining and smelting company based in Mexico; awarded the bid for Metaloroya in April 1997 but withdrew its bid in July 1997
Renco	The Renco Group, Inc.; investment company based in New York City; 100 percent shareholder of Doe Run Peru, Doe Run Resources, and Doe Run Cayman Limited
Renco Consortium	Consortium formed by Renco and Doe Run Resources in April 1997 in order to bid for Metaloroya
Renco Defendants	Renco, Doe Run Resources, Doe Run Acquisition Corp., Renco Holdings, Inc., and directors and officers Marvin K. Kaiser, Albert Bruce Neil, Jeffery L. Zelms, Theodore P. Fox III, Daniel L. Vornberg, and Ira L. Rennert
Right Business S.A.	Peruvian liquidator in charge of liquidation of Doe Run Peru assets in the INDECOPI Bankruptcy Proceedings
<i>Sociedad de Estudios y Representaciones Mineras S.R. Ltda.</i>	Independent environmental auditor in Peru
Special Privatization Committee	Governmental entity tasked with privatizing <i>Empresa Metalúrgica La Oroya S.A.</i> ; also referred to as “CEPRI”

Stock Transfer Agreement	Contract of Stock Transfer, Capital Stock Increase and Subscription of Empresa Metalurgica La Oroya S.A., dated October 23, 1997, between Centromin and DRP, with the intervention of Metaloroya, Doe Run Resources, and Renco; also referred to as the “STA”
St. Louis Lawsuits	Personal injury lawsuits filed against the Renco Defendants in St. Louis, Missouri, alleging harms arising from the operation of the Complex
Sulfur Dioxide	Gas generated during the smelting process when sulfur-containing concentrates are heated and oxidized; also referred to as “SO ₂ ”
Technical Commission	Technical Commission assembled by the Government of Peru in 2009 to consider whether an extension was to complete the final sulfuric acid plants project at the La Oroya Complex was justified; included a representative for the La Oroya Complex worker as well as officials from (i) the Ministry of Energy & Mines, (ii) <i>Organismo Supervisor de la Inversión en Energía y Minería</i> ; and (iii) the local Government of Junín Department
<i>Trafigura Beheer B.V.</i>	Multinational commodity trading company headquartered in Switzerland; owner of Cormin
Treaty	Trade Promotion Agreement, U.S.-Peru, Apr. 12, 2006, 121 Stat. 1455; also referred to as the Treaty” or the “TPA”
Zinc Circuit	Zinc roasting plant, leaching and purification plant and refinery at the La Oroya Complex; one of four circuits at the Complex.

LIST OF ACRONYMS

CDC	United States Center for Disease Control and Prevention
CAFTA-DR	Dominican Republic-Central American Free Trade Agreement, U.S.-Guat.-El Sal.-Hond.-Nicar.-Costa Rica-Dom. Rep., Aug. 5, 2004, 119 Stat. 462
Centromin	<i>Empresa Minera del Centro del Perú</i>
CEPRI	<i>Comité Especial de Privatización</i>
CMLO	<i>Complejo Metalúrgico La Oroya</i>
CONAM	<i>Consejo Nacional del Ambiente</i>
COPRI	<i>Comisión de Promoción de la Inversión Privada</i>
Cormín	<i>Consorcio Minero S.A.</i>
DIGESA	<i>Dirección General de Salud Ambiental</i>
DRAC	Doe Run Acquisition Corporation
DRR	Doe Run Resources Corporation
DRCL	Doe Run Cayman Limited
DRH	Doe Run Cayman Holdings
DRM	Doe Run Mining S.R. Ltda.
DRP	Doe Run Peru
EASA	Environmental Administrative Stability Agreement
ECA	<i>Estándar de Calidad Ambiental</i>
EIA	Environmental Impact Assessment
EPA	United States Environmental Protection Agency
EVAP	<i>Evaluación Ambiental Preliminar</i>
INDECOPI	<i>Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual</i>

LMP	<i>Limite Máximo Permisible</i>
MEF	<i>Ministerio de Economía y Finanzas del Perú</i>
MEM	<i>Ministerio de Energía y Minas del Perú</i>
Metaloroya	<i>Empresa Metalúrgica La Oroya S.A.</i>
MINEM	<i>Ministerio de Energía y Minas del Perú</i>
MINSA	<i>Ministerio de Salud del Perú</i>
MOU	Memorandum of Understanding between Peru, Doe Run Peru, Doe Run Cayman Ltd., and Doe Run Cayman Holdings LLC, dated March 27, 2009
NAFTA	North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 107 Stat. 2057
NO _x	Nitrogen Oxide
OEFA	<i>Organismo de Evaluación y Fiscalización Ambiental</i>
OSINERGMIN	<i>Organismo Supervisor de la Inversión en Energía y Minería</i>
PAMA	<i>Programa de Adecuación y Manejo Ambiental</i>
SEREMINER	<i>Sociedad de Estudios y Representaciones Mineras S.R. Ltda.</i>
SO ₂	Sulfur Dioxide
STA	Stock Transfer Agreement
TPA	United States-Peru Trade Promotion Agreement, signed on April 12, 2006, and entered into force on February 1, 2009
UNES	<i>Consortio Unión para el Desarrollo Sustentable de la Provincia de Yauli, La Oroya</i>

LIST OF KEY INDIVIDUALS

Gino Bianchi-Mosquera	Vice President and Principal Geochemist, GSI Environmental Inc.
Antonio Brack	Peruvian Minister of the Environment
Kenneth Buckley	Former General Manager and President of Doe Run Peru
José Mogrovejo Castillo	Former Vice-President of Environmental Affairs for Doe Run Peru
Jorge del Castillo Galvez	Government Representative, Congressman and former Prime Minister of Peru
Leoncio Paredes Caceres	Twelfth Provincial Criminal Prosecutor in Lima, Peru
A. Bruce Neil	Former President and Chief Executive Officer of Doe Run Resources
Martha Flores	39th Criminal Court of Lima Judge
Theodore P. Fox III	Chief Financial Officer of Doe Run Resources / Officer of Doe Run Cayman
Juan Carlos Huyhua	Former General Manager of Doe Run Peru
Marvin K. Kaiser	Former Chief Financial Officer, Executive Vice President and Chief Administrative Officer of the Doe Run Resources Corporation
Eric Partelpoeg	Principal, EHP Consulting, Inc.
Ira L. Rennert	Founder of Renco
Dennis A. Sadlowski	Vice President of Law for Renco
Pedro Sanchez	Former Minister of Energy & Mines
Rosalind A. Schoof	Principal, ENVIRON International Corporation; Toxicology Expert
Jorge Merino Tafur	Former head of Centromin and Minister of Energy & Mines
Daniel L. Vornberg	Former Vice President of Environmental Division for Doe Run Resources

Jeffery L. Zelms

Former President of Doe Run Resources

I. INTRODUCTION AND SUMMARY OVERVIEW

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.’

“How Brown Was My Valley,” Newsweek, April 18, 1994¹

1. This investment dispute arises from the Republic of Peru’s sale in 1997 of its State-owned smelting and refining complex in La Oroya, Peru (the “La Oroya Complex” or the “Complex”) to a consortium led by Claimant The Renco Group, Inc., and Respondent Peru’s (i) subsequent refusal to honor its contractual and legal commitment to assume responsibility and liability for third-party claims of injury from environmental contamination at the Complex (including failure to remediate the soil which would have mitigated these damages), and (ii) pattern of mistreatment of Claimant and its investments relating to the Complex when Claimant’s locally-incorporated subsidiary requested a reasonably—and contractually permitted—extension of time to complete the final environmental modernization project.

Peru’s Refusal to Assume Liability for Third-Party Claims

2. When the Republic of 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

¹ **Exhibit C-005**, Corinne Schmidt, *How Brown Was My Valley*, NEWSWEEK, April 18, 1994 (*hereinafter* “Apr. 18, 1994 NEWSWEEK”).

of liability associated with third-party claims from injury resulting from seventy-five 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,² as depicted in the 1994 NEWSWEEK article quoted above.

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”), Peru revised its privatization strategy in 1996, with the stated goal that private investors would undertake to modernize the infrastructure at the Complex with projects that would reduce its environmental impact over time pursuant to a *Programa de Adecuacion y Manejo Ambiental*, or Environmental Remediation and Management Program (the “PAMA”). Under the revised privatization strategy, Peru would retain and assume responsibility to remediate the existing environmental contamination and also retain and assume broad liability for claims of third parties arising both before and after the sale.³ 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, with limited exceptions.

4. After Peru held a second public auction for the Complex on April 14, 1997, Claimant and its affiliate Doe Run Resources Corporation (the “Renco Consortium”) were awarded the right to negotiate a Stock Transfer Agreement to acquire the La Oroya Complex.⁴ 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 Stock Transfer Agreement with State-owned Centromin, and the

² **Exhibit C-006**, Government of Peru, White Paper concerning the Fractional Privatization of Centromin, 1999 at 6 (*hereinafter* “1999 White Paper”).

³ **Exhibit C-006**, 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....”).

⁴ **Exhibit C-002**, 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”).

parties executed the Stock Transfer Agreement on October 23, 1997 as well as a Guaranty issued by the Republic of Peru (“Peru” or the “Government”) on November 21, 1997,⁵ by which Peru guaranteed all of Centromin’s “representations, securities, guaranties and obligations” under the Stock Transfer Agreement.

5. Consistent with the legitimate expectations that Centromin and Peru established with prospective investors through Peru’s revised privatization strategy, Centromin (and Peru through the Guaranty Agreement) agreed to remediate existing contamination in the soil,⁶ and Centromin/Peru assumed broad and exclusive liability (with narrow exceptions not applicable here) for claims by third parties arising from all past environmental contamination as well as future contamination that the Complex would cause while Doe Run Peru worked to modernize the Complex during the period approved by the Government for the performance of its PAMA projects.⁷ The Stock Transfer Agreement provides further that after the PAMA period expires, liability for third-party claims is apportioned between Centromin and Doe Run Peru 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 (Doe Run Peru’s liability).⁸ Doe Run Peru did not operate the Complex after the period for completing the PAMA expired.

6. In 2008, 2012 and 2013, U.S.-based plaintiffs’ personal-injury lawyers commenced a total of 22 lawsuits in the United States on behalf of nearly 1,000 plaintiffs who claim to be Peruvian citizens and residents of the town of La Oroya, against Claimant, the other member of the Renco Consortium (Doe Run Resources), companies associated with the Renco Consortium, and certain of their officers and directors.⁹ The lawsuits ultimately were

⁵ **Exhibit C-003**, Guaranty Agreement between the Republic of Peru and Doe Run Per S.R. Ltda., November 21, 1997 (*hereinafter* the “Guaranty Agreement”).

⁶ **Exhibit C-002**, Stock Transfer Agreement, Clause 6.1(C) at 26.

⁷ **Exhibit C-002**, 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).

⁸ **Exhibit C-002**, Stock Transfer Agreement, Clause 6.3 at 27. *Id.* Clause 5.4 at 22-23.

⁹ The US personal injury lawyers filed eleven lawsuits in 2008, six in 2012 and five in 2013 on behalf of the approximately 967 plaintiffs.

consolidated in the federal district court for the Eastern District of Missouri (the “St. Louis Lawsuits”). The claims in each lawsuit are virtually identical, with each plaintiff alleging that he/she has suffered personal injuries as a result of exposure to lead and other potentially toxic substances from the Complex.

7. Having induced Claimant to invest in the Complex with the promise and contractual commitment to assume liability for third-party claims of the type asserted in the St. Louis Lawsuits (including the associated and mounting legal fees), Respondent now ignores its obligation and refuses to do so, despite repeated requests by Claimant.

8. Respondent’s refusal to assume liability for the St. Louis Lawsuits constitutes a breach of its obligations under the United States-Republic of Peru Trade Promotion Agreement that was signed on April 12, 2006 and entered into force on February 1, 2009,¹⁰ because this conduct breaches Respondent’s obligations under the Guaranty Agreement and the Stock Transfer Agreement, which together constitute an “investment agreement” under, *inter alia*, Treaty Article 10.28 and Annex 10-H. Through this same improper conduct Respondent also breached its obligations under the Treaty to provide fair and equitable treatment to Claimant and its investment under Article 10.5., with respect to third party claims.

Peru Pursued A Pattern Of Mistreatment Of Doe Run Peru In Connection With Its PAMA Projects And Extension Requests

9. In addition to refusing to assume liability for the St. Louis Lawsuits, Peru pursued a pattern of unfair treatment of Doe Run Peru in connection with Doe Run Peru’s PAMA projects and requests for extensions which also constitutes a breach of Peru’s obligations under the Treaty and resulted in substantial losses, including loss of control over its investments.

10. Peru has not disputed that the PAMA approved by Peru’s Ministry of Energy and Mines (the “Ministry of Energy & Mines” or the “Ministry”) prior to Doe Run Peru’s acquisition of the Complex grossly underestimated the scope of work that needed to be done at the Complex, and the time and cost of completing the PAMA projects.¹¹ An outside environmental consultant

¹⁰ **CLA-001**, Trade Promotion Agreement, U.S.-Peru, Apr. 12, 2006, 121 Stat. 1455 (*hereinafter* the “Treaty” or the “TPA”).

¹¹ **Exhibit C-007**, Centromin, Environmental Impact Program, La Oroya Metallurgical Complex, August 1996 (*hereinafter* “Centromin Preliminary PAMA”).

that Centromin retained in 1996 concluded that completion of the PAMA would take “in excess of the ten year implementation schedule being considered by the Ministry” and that “considerable flexibility in the implementation and application of the new standards will be necessary.”¹² It was against this backdrop, and after assurances of flexibility by Peru, that the Renco Consortium agreed to enter into the Stock Transfer Agreement.

11. The Government allocated the PAMA projects between Doe Run Peru (modernization and updating the Complex itself) and Centromin (remediation of existing contamination).¹³ However, Peru treated Centromin more favorably than Doe Run Peru by deferring Centromin’s remediation obligations far into the future while mistreating Doe Run Peru, despite the fact that Doe Run Peru went well above and beyond its obligations under the Stock Transfer Agreement and PAMA.¹⁴ At the same time it was working on its PAMA modernization projects, Doe Run Peru focused intensely on public health issues, primarily blood-lead levels, and on helping the local communities.¹⁵ However, when Doe Run Peru requested a four-year extension in 2006 to finish the sulfuric acid plant project, the Ministry of Energy & Mines gave it only two years and ten months despite the opinion of its own consultants that more time likely was needed.¹⁶ The Ministry of Energy & Mines also unilaterally foisted many additional projects and onerous conditions upon Doe Run Peru, significantly expanding the complexity (and cost) of the work that Doe Run Peru was required to perform within the timeframe.¹⁷ Despite this, by the end of 2008, Doe Run Peru had completed all of its PAMA

¹² **Exhibit C-008**, Knight Piésold, Environmental Evaluation of La Oroya Metallurgical Complex, September 18, 1996 at 33 (*hereinafter* “Knight Piésold Report for Centromin”).

¹³ **Exhibit C-009**, Directorial Resolution No. 334-97-EM/DGM concerning the split of PAMA for the La Oroya Metallurgical Complex, October 16, 1997 (*hereinafter* “Resolution No. 334-97”); **Exhibit C-010**, Letter from Centromin to Ministry of Energy & Mines, September 19, 1997 at 9-12 (*hereinafter* “September 19, 1997 Letter”); **Exhibit C-002**, Stock Transfer Agreement, Clause 5, preamble. *See also* Witness Statement of Mr. Kenneth Buckley, Former General Manager and President of Doe Run Peru, dated February 10, 2014, Memorial Annex-A at ¶¶ 11-13 (*hereinafter* “Buckley Witness Stmt.”).

¹⁴ **Exhibit C-011**, Directorial Resolution No. 082-2000-EM-DGAA concerning Centromin’s request for the modification of the PAMA for La Oroya Metallurgical Complex, April 17, 2000 at 4 (*hereinafter* “Resolution No. 082-2000”).

¹⁵ Buckley Witness Stmt. at ¶¶ 22-24.

¹⁶ **Exhibit C-012**, S. Clark, E. Partelpoeg, James W.S. Young, *Expert Comments on Exceptional Fulfillment Extension Request for the Sulfuric Acid Plant Project of La Oroya Metallurgical Complex PAMA*, May 10, 2006 at 15 (*hereinafter* “2006 Clark et al, Review of PAMA Projects”).

¹⁷ **Exhibit C-013**, Ministry of Energy & Mines Report No. 118-2006-MEM-AAM/AA/RC/FV/AL/HS/PR/AV/FO/CC, *Request for Exceptional Extension of the Sulfuric Acid Plants*

projects except for the sulfuric acid plant project, which was over 50 percent completed even though it had been totally redesigned in 2006.¹⁸ Doe Run Peru already had spent over US\$ 300 million (three times the approximate US\$ 107 million estimated by Centromin) on its PAMA projects and additional projects to benefit the community.¹⁹

12. At the end of 2008, the global financial crisis severely impacted Doe Run Peru and its ability to operate, and essentially wiped out the profits of the Cobriza mine which constituted Doe Run Peru's main source of funding for the PAMA projects. Doe Run Peru lost its US\$ 75 million credit facility and its lenders refused to extend credit without an official statement by the Government extending time for Doe Run Peru to complete the remainder of its final PAMA modernization project (the sulfuric acid plant). Although the financial crisis clearly constituted an economic *force majeure* condition which was specifically negotiated and warranted an extension under the Stock Transfer Agreement, Peru continued its harsh treatment by repeatedly denying Doe Run Peru's extension requests.²⁰ The Government also demanded concessions from Doe Run Peru in exchange for the extension, while refusing to sign a Memorandum of Understanding that the parties had negotiated,²¹ or provide information to Doe Run Peru regarding the length of any extension.

13. At the same time these demands were being made by Peru, Government officials were making public statements that Doe Run Peru would receive only a three-month extension or no extension at all, and President Garcia, seeing Doe Run Peru's precarious state, passed an

Project in the Adaptation and Environmental Management Program of the Metallurgical Complex of La Oroya, of Doe Run Peru S.R.L., May 25, 2006 (hereinafter "Report No. 118-2006").

¹⁸ **Exhibit C-014**, Doe Run Peru, *Request for Extension of Deadline to Complete the Copper Circuit Sulfuric Acid Plant Project Based on Act of God or Force Majeure Grounds*, July 8, 2009 at 14-71 (hereinafter "Doe Run Peru 2009 Extension Request"); **Exhibit C-015**, Memorandum No. 732-2002-EM-DGM-DFM/MA from V. Lozada Garcia (Ministry of Energy & Mines) to Director General of Doe Run Peru concerning fulfillment of recommendations and measures for the control of the environment, December 10, 2002 at 3 (hereinafter "Memorandum No. 732-2002").

¹⁹ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 5.

²⁰ **Exhibit C-002**, Stock Transfer Agreement, Clause 15 at 61.

²¹ **Exhibit C-016**, Memorandum of Understanding between Peru, Doe Run Peru, Doe Run Cayman Ltd., and Doe Run Cayman Holdings LLC, March 27, 2009 (hereinafter the "MOU").

Emergency Decree in May 2009 restricting participation of related creditors in bankruptcy proceedings.²²

14. In July 2009, after having been forced shut down the Complex the month prior due to the Government's refusal to grant the extension, Doe Run Peru submitted a final, comprehensive request for an extension.²³ The Government formed a technical commission to study Doe Run Peru's request (the "Technical Commission").²⁴ On September 12, 2009, more than six months after Doe Run Peru's initial request, the Government's Technical Commission recommended that Doe Run Peru be given a significant extension to obtain financing, restart the Complex and complete the remainder of the sulfuric acid plant.²⁵ On September 26, 2009, Congress passed a law granting Doe Run Peru a 30-month extension (ten months to obtain financing and restart the Complex, and twenty months after that to complete the remainder of the final PAMA project – until March 27, 2012).²⁶

15. The Ministry of Energy & Mines, however, acted quickly to undermine the extension by having a Supreme Decree issued on October 27, 2009 which imposed onerous regulations, including requiring Doe Run Peru to channel 100 percent of its revenues from any

²² **Exhibit C-017**, *Government to extend for three more months term for Doe Run to complete the PAMA*, EL COMERCIO, April 4, 2009 (*hereinafter* "Apr. 4, 2009 EL COMERCIO"); **Exhibit C-018**, *Peru shall not grant any more term extensions to Doe Run for Environmental plan*, MINES AND COMMUNITIES, May 20, 2009 (*hereinafter* "May 20, 2009 MINES AND COMMUNITIES"); **Exhibit C-019**, Emergency Decree No. 061-2009 concerning the participation of creditors in preventive bankruptcy, May 27, 2009 (*hereinafter* "Emergency Decree No. 061-2009").

²³ *See generally* **Exhibit C-014**, Doe Run Peru 2009 Extension Request. *See also* Witness Statement of Mr. A. Bruce Neil, Former President and Chief Executive Officer of Doe Run Resources, dated February 18, 2014, Memorial Annex-C at ¶ 45 (*hereinafter* "Neil Witness Stmt."); Witness Statement of Mr. Dennis A. Sadlowski, dated February 19, 2014, Memorial Annex-D at ¶¶ 60-61 (*hereinafter* "Sادلowski Witness Stmt."); Expert Report of Mr. Eric Partelpoeg, EHP Consulting, Inc., *Review of La Oroya Smelter*, dated February 18, 2014, Memorial Annex-F, § 8.4 at 27 (*hereinafter* "Expert Report of Partelpoeg").

²⁴ **Exhibit C-020**, Supreme Resolution No. 209-2009-PCM concerning creation of the La Oroya Technical Commission, August 19, 2009 (*hereinafter* "Resolution No. 209-2009"). *See also* Neil Witness Stmt. at ¶ 46; Sadlowski Witness Stmt. at ¶ 62.

²⁵ **Exhibit C-021**, La Oroya Technical Commission, Executive Summary, September 12, 2009 (bringing the time for completion of the SO₂ plants to Doe Run Peru's initial estimate of five years) (*hereinafter* "2009 Technical Commission Report"). **Exhibit C-022**, Letter from B. Neil (Doe Run Peru) to M. Chappuis (Ministry of Energy & Mines), PAMA for the Metallurgical Complex of La Oroya 2004-2011 Period, February 17, 2004 at 1 (*hereinafter* "Doe Run Peru Request No. 1453558"). *See also* Neil Witness Stmt. at ¶ 47; Sadlowski Witness Stmt. at ¶ 63.

²⁶ **Exhibit C-023**, Law No. 29410 Extending the Term for the Financing and Culmination of the "Sulfuric Acid Plant and Modification of the Copper Circuit" Project at the Metallurgical Complex of La Oroya, March 27, 2012 (*hereinafter* "Law No. 29410").

source into a trust controlled by the Ministry (the “MEM Trust”). The Supreme Decree made the extension that Doe Run Peru had received worthless, because Doe Run Peru could not obtain financing to complete the remainder of the final PAMA project if it did not have any cash flow from which to repay its creditors.²⁷ Finally, less than two months before Doe Run Peru was to have obtained financing and restarted the Complex pursuant to the extension that the Ministry undermined, the Ministry issued an amended decree reducing the 100 percent trust requirement to 20 percent.²⁸ However, this was too little too late, because it was not possible for Doe Run Peru to obtain financing and restart the Complex in less than two months.

16. After Doe Run Peru was forced into bankruptcy due to the Government’s actions in 2010, Peru continued its campaign against Doe Run Peru. The Ministry of Energy & Mines improperly injected itself into the bankruptcy proceedings by asserting a bogus claim of US\$ 163 million (the “MEM Credit”) alleging that US\$163 million would be required to finish the final sulfuric acid plant, and that this amount was a bankruptcy “credit” running from Doe Run Peru to the Ministry.²⁹

17. Using the bogus MEM Credit, the Ministry of Energy & Mines ensured that the committee of creditors in the bankruptcy rejected Doe Run Peru’s restructuring plans, even though the plans provided for US\$ 200 million in financing, payment of creditors, completion of the final PAMA project and survival of Doe Run Peru.³⁰ In opposing Doe Run Peru’s plans of restructuring, the Ministry steadfastly refused to permit Doe Run Peru to operate the Complex while completing the final PAMA project, and demanded that Doe Run Peru comply with all *current* environmental regulations, including the 80 µg/m³ SO₂ standard (one of the lowest in the

²⁷ Sadlowski Witness Stmt. at ¶¶ 64-68.

²⁸ See **Exhibit C-024**, Supreme Decree No. 032-2010-EM, Amending Supreme Decree No. 075-2009-EM, which regulated Law No. 29410, that granted an additional term for financing of the “Sulfuric Acid Plant and Modification of the Copper Circuit” Project of the La Oroya Metallurgy Complex, El Peruano, June 11, 2010 (*hereinafter* “Supreme Decree No. 032-2010”). See also Neil Witness Stmt. at ¶ 53; Sadlowski Witness Stmt. at ¶¶ 79-81.

²⁹ **Exhibit C-025**, Ministry of Energy & Mines Claim Request to INDECOPI, September 14, 2010 (*hereinafter* “2010 MEM Request to INDECOPI”). See also Sadlowski Witness Stmt. at ¶¶ 82-84.

³⁰ **Exhibit C-026**, Doe Run Peru, *Restructuring Plan*, May 14, 2012 (*hereinafter* “2012 DRP Restructuring Plan”).

world) on the day that Doe Run Peru restarts operations.³¹ These demands were inconsistent with (i) the letter and spirit of the original PAMA, (ii) the terms and context of the Stock Transfer Agreement and Guaranty, which included an agreement that Doe Run Peru would be operating the Complex while completing its PAMA projects, and that by the end of the PAMA period the Complex would be in compliance with the environmental standards in place at the time the Stock Transfer Agreement was executed in 1997 (and that Doe Run Peru would be given additional time like all other companies to reach current standards to the extent they were different), and (iii) the 2006 and 2009 PAMA extensions.

18. Peru's pattern of grossly arbitrary and unfair treatment of Doe Run Peru in connection with its extension requests resulted in substantial losses, including Claimant's total loss of control over its investments, and constitutes multiple violations of the Treaty.

II. FACTUAL BACKGROUND

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

19. 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, 185 km northeast of Lima in the department of Junín.

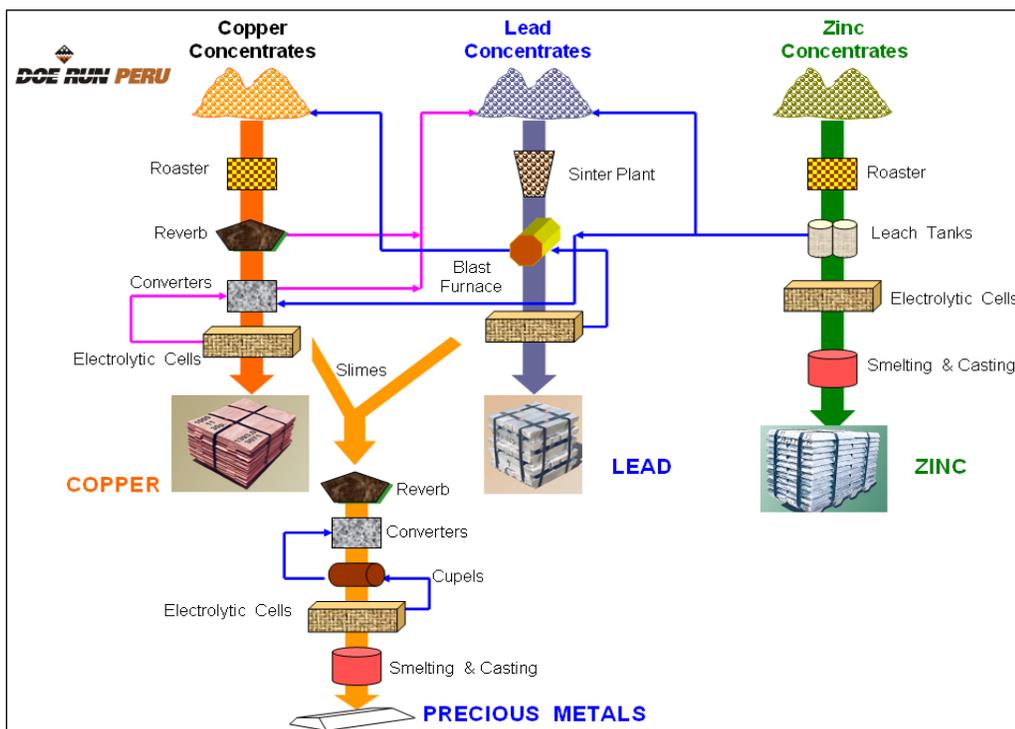
20. In 1922, the privately owned Cerro de Pasco Copper Corporation established the La Oroya Complex for copper smelting and refining. Cerro de Pasco added a lead smelter and refinery in 1928, a sulfuric acid plant in 1939, a silver refinery in 1950, and a zinc refinery in 1952. As a result, the Complex comprises four key circuits. These circuits are the copper smelter and refinery (the "Copper Circuit"); the lead smelter and refinery (the "Lead Circuit"); an anode residue plant and silver refinery (the "Precious Metals Circuit"); and zinc roasting plant, leaching and purification plant and refinery (the "Zinc Circuit," and collectively the "Circuits").³² The Complex also includes numerous other facilities designed to process by-

³¹ **Exhibit C-027**, Letter from M. del Rosario Patiño (Ministry of Energy & Mines) to I. L. Rennert (Renco), June 26, 2012 (*hereinafter* "June 26, 2012 Letter").

³² The documents reference three to four circuits, as the Precious Metals Circuit is a smaller circuit with limited environmental impacts; **Exhibit C-028**, Centromin, Environmental Impact Program, La Oroya Metallurgical Complex, January 13, 1997, § 3.1 at 63 (*hereinafter* "PAMA Operative Version").

products released during the smelting process, including sulfuric acid plants, an oxygen plant, and several pilot plants to recover minor metallic by-products.

21. 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 Circuits³³

22. 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.³⁴ 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

³³ **Exhibit C-029**, 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").

³⁴ 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.

impurities.³⁵ 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, 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.³⁶

23. 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 so as 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. 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 substantial quantities of by-products, which contain substances that may be harmful to the environment and human health.

1. In the 1970s, Peru Expropriated the Decades-Old La Oroya Complex

24. In 1968, a military dictatorship overthrew Peru’s elected Government; and, in 1973 the new Government created the Ministry of Energy & Mines which nationalized, among other things, the Complex.³⁷ Shortly thereafter, the Government created Centromin, a State-owned entity, to acquire and hold the Complex, which it did.³⁸ On March 18, 1975, Peru enacted another decree affirming that Centromin was wholly owned by the State and requiring that it “act

³⁵ **Exhibit C-028**, 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.

³⁶ **Exhibit C-028**, PAMA Operative Version, § 3.1 at 63.

³⁷ **Exhibit C-030**, Presidential Decree No. 20492 concerning Nationalizing the Cerro Mines, December 24, 1973 (*hereinafter* “Decree No. 20492”).

³⁸ **Exhibit C-030**, Decree No. 20492.

in harmony with the policy, objectives, and goals approved by the Ministry of Energy and Mines in conformity with the National Development Plan.”³⁹

2. Peru’s Mining Sector Operated with Little or No Regulatory Oversight

25. 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.⁴⁰ Peru’s only environmental regulation was the General Law of Water, enacted in 1969 (47 years after the Complex was founded), which established ambient quality standards (*Estándares de Calidad Ambiental* or “ECAs”) for water bodies.⁴¹ 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 only nominal penalties on companies that caused violations of the ECAs through their liquid effluent discharges.⁴²

³⁹ **Exhibit C-031**, 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[.]”

⁴⁰ **Exhibit C-032**, 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* Expert Report of Mr. Gino Bianchi Mosquera, GSI Environmental Inc., *Environmental Issues Associated with the La Oroya Metallurgical Complex, Junin, Peru*, dated February 18, 2014, (*hereinafter* “Bianchi Expert Report”).

⁴¹ Witness Statement of José Mogrovejo Castillo, Former Vice-President of Environmental Affairs for Doe Run Peru, dated February 19, 2014, Memorial Annex-B at ¶ 11 (*hereinafter* “Mogrovejo Witness Stmt.”)

⁴² Bianchi Expert Report at ¶ 5; Mogrovejo Witness Stmt. at ¶ 11.

B. DURING THE EARLY 1990S, PERU WAS UNABLE TO PRIVATIZE CENTROMIN AS A WHOLE, BECAUSE OF THE LA OROYA COMPLEX’S ENVIRONMENTAL LEGACIES AND OBSOLETE CONDITION

26. 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.⁴³ 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.⁴⁴

27. A 1992 Resolution included Centromin in the privatization process.⁴⁵ Peru created a special committee to oversee Centromin’s privatization (*Comité Especial de Privatización*), including the sale of the La Oroya Complex (the “Special Privatization Committee” or “CEPRI”).⁴⁶ At the same time, the Peruvian Government began to implement a modern environmental legal framework.

28. The new Environmental and Natural Resources Code (enacted in September 1990) imposed several general requirements on mining and metallurgical companies, including

⁴³ **Exhibit C-033**, Legislative Decree No. 708 concerning promoting investments in the Mining Sector, November 6, 1991 at 1 (*hereinafter* “Decree No. 708”).

⁴⁴ **Exhibit C-006**, 1999 White Paper at 18.

⁴⁵ **Exhibit C-034**, Supreme Resolution No. 102-92-PCM concerning privatization of Centromin, February 21, 1992 at 1 (*hereinafter* “Resolution No. 102-92”).

⁴⁶ **Exhibit C-035**, White Paper concerning the Privatization of Metaloroya, 1997 (*hereinafter* “1997 White Paper”).

obligations to include in their facilities equipment for control of contaminants and to treat wastewaters used in the processing of minerals.⁴⁷ In June 1993, the Peruvian Government issued Regulations for Environmental Protection in Mining and Metallurgy.⁴⁸ Article 5 of the Regulations provided that companies operating in the sector would be “liable for any emissions, discharges and disposal of waste to the environment occurring as a result of processes carried out at their installations,” and it obligated them “to avoid and prevent any elements and/or substances from surpassing the maximum allowable levels” to be issued by the Ministry of Energy & Mines.

1. Peru’s Attempt to Auction Centromin to Foreign Investors Failed Because of Potential Investors’ Concerns about Environmental Liability and the Costs of Upgrading the Complex

29. In April 1994, Peru’s Privatization Committee attempted to sell Centromin to private investors.⁴⁹ At the time, Centromin owned the La Oroya Complex, as well as several mines and related infrastructure.

30. Peru’s first effort to privatize Centromin failed.⁵⁰ 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.⁵¹

⁴⁷ **Exhibit C-036**, Legislative Decree No. 613 concerning the Environmental and Natural Resources Code, September 9, 1990, arts. 65 and 66 at 16 (*hereinafter* “Decree No. 613”).

⁴⁸ **Exhibit C-037**, 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”).

⁴⁹ **Exhibit C-038**, 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, 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*”).

⁵⁰ **Exhibit C-038**, *Mexican Steel* at 213; **Exhibit C-006**, 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* Sadlowski Witness Stmt. at ¶¶ 10, 15-18.

⁵¹ **Exhibit C-035**, 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.”).

31. Peru considered simply shutting down the Complex in part because of its environmental problems,⁵² but Peru decided that it needed the Complex to continue operating because it played a crucial role in the social and economic development of the region.⁵³ The Complex was a major employer and provider of health care and educational services for the local population.⁵⁴ 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. Ultimately, 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.⁵⁵

2. Peru Revised Its Privatization “Strategy” Such That Peru Would Sell the Complex but Retain Liability for Environmental Remediation and Third-Party Claims Relating to Environmental Contamination

32. Under Peru’s revised strategy, Peru began to implement measures to address potential investors’ concerns with the La Oroya Complex, noting overwhelming market concern with “the existence of problems arising from the environmental, labor and social liabilities.”⁵⁶ As Peru explained in its 1999 White Paper, under the 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,” 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.⁵⁷

⁵² **Exhibit C-035**, 1997 White Paper at 19.

⁵³ **Exhibit C-028**, 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.”).

⁵⁴ See **Exhibit C-035**, 1997 White Paper at 35; **Exhibit C-006**, 1999 White Paper at 62-3.

⁵⁵ **Exhibit C-006**, 1999 White Paper at 32, 36.

⁵⁶ **Exhibit C-006**, 1999 White Paper at 34-5.

⁵⁷ **Exhibit C-006**, 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

3. Peru Adopted Measures Intended to Eventually Bring the Complex into Compliance with New Environmental Standards

33. 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, accompanied by a general failure to maintain or modernize the Complex.

34. In view of the obsolete condition and environmental legacy of facilities such as the La Oroya Complex, Peru's new environmental regulations provided a transitional regime applicable to companies with existing operations.⁵⁸ This regime required companies with existing operations to engage in a preliminary environmental study (*Evaluación Ambiental Preliminar*) to identify the environmental problems generated by their operations,⁵⁹ and then to submit for approval by the Ministry of Energy & Mines a PAMA proposing projects intended to reduce pollutants and to bring their operations into compliance with the LMPs and ECAs issued by the Peruvian Government.⁶⁰

35. Under these regulations, a company performing PAMA projects is deemed to be in compliance with the applicable environmental standards (LMPs and ECAs) during the period approved to complete the PAMA projects.⁶¹ The objective of the PAMA is to ultimately bring the company into compliance with the applicable standards by the end of the period approved for completing the PAMA.⁶²

identified in an Environmental Study,” “[having a] recognized international consultant prepare an environmental study to identify the environmental liabilities of each 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.*

⁵⁸ See e.g., Bianchi Expert Report at 6; Expert Report of Partelpoeg, February 18, 2014, § 2 at 25.

⁵⁹ **Exhibit C-037**, Decree No. 016-93-EM, Interim Provision 2(a) at 14. See also Mogrovejo Witness Stmt. at ¶¶ 16-19.

⁶⁰ **Exhibit C-037**, Decree No. 016-93-EM, Interim Provision 2(b) at 15. See also Mogrovejo Witness Stmt. at ¶¶ 16-19.

⁶¹ Mogrovejo Witness Stmt. at ¶¶ 17-18; Bianchi Expert Report at 6.

⁶² **Exhibit C-037**, Decree No. 016-93-EM, art. 9 at 6. See also **Exhibit C-032**, 2005 World Bank Report at 88. See also Mogrovejo Witness Stmt. at ¶¶ 16-19.

a. *Centromin's Preliminary Environmental Evaluation of the La Oroya Complex Highlighted Significant Environmental Issues*

36. In accordance with the 1993 environmental regulations, Centromin conducted a preliminary evaluation of the environmental situation at the La Oroya Complex in 1994, and submitted its results in the form of a preliminary environmental assessment (*Evaluación Ambiental Preliminar*) in March 1995 (the "Preliminary Environmental Assessment" or "EVAP").⁶³

37. Centromin's Preliminary Environmental Assessment 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,⁶⁴ particulate emissions of lead and other heavy metals throughout the plant.⁶⁵ According to the Preliminary Environmental Assessment, 95.7 percent of the liquid effluents tested at 49 monitoring points in the Complex exceeded the LMP for lead, while 58.7 percent exceeded the LMP for arsenic and 45.7 percent exceeded the LMP for cadmium.⁶⁶ The Preliminary Environmental Assessment also recognized severe air contamination from three sources: the main chimney or stack, secondary chimneys or stacks and fugitive emissions.⁶⁷ In this context, Preliminary Environmental Assessment noted that the pervasive lead contamination was "extremely dangerous" and "deserv[ed] greater attention."⁶⁸

38. Though an important starting point, the Preliminary Environmental Assessment was an exploratory and incomplete study of the environmental issues at the Complex. The treatment of fugitive emissions highlights these limitations. Fugitive emissions are airborne substances that result from smelting operations and which escape from buildings or machinery

⁶³ **Exhibit C-039**, 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-040**, 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").

⁶⁴ **Exhibit C-039**, 1995 Centromin Water, Air Quality, and Emissions Report at 20, 24-5.

⁶⁵ **Exhibit C-040**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 2, 4-5.

⁶⁶ **Exhibit C-039**, 1995 Centromin Water, Air Quality, and Emissions Report at 20.

⁶⁷ **Exhibit C-040**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 2.

⁶⁸ **Exhibit C-039**, 1995 Centromin Water, Air Quality, and Emissions Report at 13.

into the environment.⁶⁹ While the Preliminary Environmental Assessment noted that “these emissions have important negative effects; they can influence soil and liquid effluents, thus aggravating the contamination of these two other environmental factors,”⁷⁰ it did not quantify their contribution to contamination or propose any solutions to the problem. It instead merely commented that fugitive emissions are difficult to quantify due to their irregularity and rapid general dispersion,⁷¹ and listed some sources of fugitive emissions containing lead particulates in the various circuits. For example, the Copper Circuit had fugitive emissions from insufficient extractors and inadequate ventilation, with significant levels of copper and lead in the ambient air.⁷² The Lead Circuit, in turn, showed elevated lead levels,⁷³ while the Zinc Circuit had visible amounts of ‘flying dust’ with significant concentrations of lead,⁷⁴ and the Precious Metals Circuit had significant escapes of gas with the ventilation systems showing notable deficiencies, facilitating abundant, diffuse emissions.⁷⁵

39. Notwithstanding the Preliminary Environmental Assessment’s limitations, the Ministry of Energy & Mines approved it on July 31, 1995, and gave Centromin until August 30, 1996 to submit its PAMA that would detail the proposed projects to address the environmental problems identified in the Preliminary Environmental Assessment, and ultimately bring the Complex into compliance with the LMPs and ECAs issued by the Ministry.⁷⁶

40. In January 1996, the Ministry of Energy & Mines issued a resolution establishing maximum permissible levels (*Limites Máximos Permisibles* or “LMPs”) for liquid effluent discharges from mining and metallurgical facilities.⁷⁷ Unlike ECAs, which establish the level of

⁶⁹ See **Exhibit C-040**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 2.

⁷⁰ **Exhibit C-039**, 1995 Centromin Water, Air Quality, and Emissions Report at 2, 21.

⁷¹ **Exhibit C-040**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 2.

⁷² **Exhibit C-040**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 6.

⁷³ **Exhibit C-040**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 7-8.

⁷⁴ **Exhibit C-040**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 8-9.

⁷⁵ **Exhibit C-040**, 1995 Centromin Gaseous Emissions and Environmental Air Quality Report at 9-10.

⁷⁶ **Exhibit C-007**, 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”).

⁷⁷ **Exhibit C-041**, 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”).

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.⁷⁸ In July 1996, the Ministry 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.⁷⁹ For example, the LMP for lead air emissions under the Ministry’s July 1996 standards was 25 $\mu\text{g}/\text{m}^3$,⁸⁰ 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 $\mu\text{g}/\text{m}^3$.⁸¹ 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 Ministry issued.⁸²

41. 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.⁸³

b. *Peru’s Independent Environmental Expert Advised that Ten Years Was Not Sufficient to Meet the New Air Quality Standards, Recommended Flexibility in Implementation of the PAMA and Recommended Setting Reasonable Goals*

42. After the Ministry of Energy & Mines approved the Preliminary Environmental Assessment, Peru’s Privatization Committee in charge of privatizing the Complex retained Knight Piésold, a U.S. environmental consulting group, to provide an independent environmental evaluation of the Complex,⁸⁴ and assess the proposed PAMA projects in light of the stated goal

⁷⁸ ECAs are sometimes referred to as “LMPs” for air quality or water quality. However, Claimant uses the term “LMPs” in this Memorial only to refer to the maximum permissible limits on the emissions and discharges from a facility.

⁷⁹ **Exhibit C-042**, 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”).

⁸⁰ **Exhibit C-042**, Resolution No. 315-96, art. 4 at 2.

⁸¹ **Exhibit C-042**, Resolution No. 315-96, Annex 3 at 6.

⁸² *See e.g.*, Bianchi Expert Report at 6; Mogrovejo Witness Stmt. at ¶¶ 16-19. *See also* Expert Report of Partelpoeg, February 18, 2014, §§ 2.1, 5.5, 8.1 at 2, 15, 20-21.

⁸³ **Exhibit C-035**, 1997 White Paper at 21.

⁸⁴ **Exhibit C-008**, Knight Piésold Report for Centromin.

of the PAMA to ultimately bring the Complex into compliance with Peru’s new LMPs and ECAs for mining and metallurgical facilities.

43. Given the absence of good data and engineering studies, Knight Piésold considered it too early to list specific actions required for compliance for the following reasons:

- (i) “Any proposed change at one production facility will have implications for other parts of the plant.”⁸⁵
- (ii) The project lacked “a comprehensive survey of the complete La Oroya works. The survey should estimate pollutant emissions from all operations, including fugitive sources.”⁸⁶
- (iii) The project lacked an evaluation of human health related effects. “Soil sampling and remediation was limited,”⁸⁷ which presented potential risks because “arsenic, cadmium, and lead concentrations in some La Oroya soils probably exceed generally acceptable levels”⁸⁸ and these “elevated lead and arsenic levels in soils of La Oroya residential areas could constitute a concern to local residents.”⁸⁹

44. Knight Piésold also noted that discharges from the Complex into the surrounding rivers significantly exceeded Peruvian legal limits for lead and arsenic, among other contaminants.⁹⁰ Knight Piésold then questioned whether “an older facility” like the La Oroya Complex would ever be able to comply with the ECA issued by the Ministry of Energy & Mines in July 1996 for SO₂ in ambient air affected by mining and metallurgical facilities (572 µg/m³ daily average and 172 µg/m³ annual average).⁹¹ Knight Piésold noted that “achievement of this level of control at La Oroya cannot be expected except by multiple process changes and/or major modifications to much of the smelter.”⁹²

⁸⁵ **Exhibit C-008**, Knight Piésold Report for Centromin at 34.

⁸⁶ **Exhibit C-008**, Knight Piésold Report for Centromin at 34.

⁸⁷ **Exhibit C-008**, Knight Piésold Report for Centromin at 56.

⁸⁸ **Exhibit C-008**, Knight Piésold Report for Centromin at 37.

⁸⁹ **Exhibit C-008**, Knight Piésold Report for Centromin at 56.

⁹⁰ **Exhibit C-008**, Knight Piésold Report for Centromin at 38-39.

⁹¹ **Exhibit C-008**, Knight Piésold Report for Centromin at 27-8, 32.

⁹² **Exhibit C-008**, Knight Piésold Report for Centromin at 2, 33.

45. In short, Knight Piésold advised in its 1996 report to the Peruvian Government that:

- (i) There was no simple remedy to the existing air quality problem, which extended to lead, SO₂ and other particulate emissions.⁹³
- (ii) Any solution would require “detailed engineering evaluation beyond the scope of the present evaluation.”⁹⁴
- (iii) Implementation of adequate controls to meet standards may take “in excess of the ten year implementation schedule being considered by the Peruvian Ministry.”⁹⁵
- (iv) “Considerable flexibility in the implementation and application of new standards will be necessary if La Oroya is to continue as an economically viable operation.”⁹⁶
- (v) “Continued long-term operation of the smelter and progress on privatization can be achieved only if La Oroya is subject to realistic requirements to gradually reduce emissions.”⁹⁷

c. *The La Oroya PAMA Provided Ten Years to Complete 16 Projects, but Did Not Address Key Problems such as Lead Emissions*

46. In late 1996, Centromin submitted for approval by the Ministry of Energy & Mines a final PAMA setting forth sixteen environmental projects that Centromin deemed sufficient to bring the Complex into compliance with the LMPs and ECAs in existence as of 1996.⁹⁸

47. The Ministry approved the PAMA for the La Oroya Complex on January 13, 1997.⁹⁹

⁹³ **Exhibit C-008**, Knight Piésold Report for Centromin at 33.

⁹⁴ **Exhibit C-008**, Knight Piésold Report for Centromin at 33.

⁹⁵ **Exhibit C-008**, Knight Piésold Report for Centromin at 33.

⁹⁶ **Exhibit C-008**, Knight Piésold Report for Centromin at 33.

⁹⁷ **Exhibit C-008**, Knight Piésold Report for Centromin at 33.

⁹⁸ *See generally* **Exhibit C-028**, PAMA Operative Version at 24, 167-71, 279.

⁹⁹ **Exhibit C-028**, PAMA Operative Version; **Exhibit C-035**, 1997 White Paper, at 38-9.

48. Despite Knight Piésold’s warning that compliance with air emissions standards likely would require more than ten years,¹⁰⁰ the Ministry of Energy & Mines granted only ten years to complete all PAMA projects, including those related to air emissions.¹⁰¹ The Ministry understood, however, that this completion date was “arbitrary” and “without any reference to how long it would actually take to meet emissions levels at a facility.”¹⁰² The final PAMA estimated that the total cost to complete the sixteen projects would be US\$ 129 million.¹⁰³

49. Broadly speaking, the sixteen PAMA projects were intended to address four basic categories of environmental impacts: (i) air emissions and air quality, (ii) soil remediation and rehabilitation, (iii) control of liquid effluents, and (iv) management of slag and other waste deposits (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).

- i. **Air Emissions and Air Quality:** The facility’s processes for smelting and refining ore generate SO₂ (as sulfur-containing compounds are heated and oxidized) and particulate matter, including lead, arsenic and other heavy metals. The PAMA included several projects intended to reduce (but not eliminate) these emissions. PAMA Project No. 1 required construction of two sulfuric acid plants—one for the Copper Circuit and one for the Lead and Zinc Circuits—which would reduce SO₂ emissions by capturing SO₂ and converting it into sulfuric acid, which could then be commercially sold or safely stored.¹⁰⁴ These proposed acid plants represented the majority of the anticipated cost of the PAMA—US\$ 90

¹⁰⁰ **Exhibit C-008**, 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”).

¹⁰¹ **Exhibit C-043**, 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”).

¹⁰² Mogrovejo Witness Stmt. at ¶ 36 n. 18 (At the time, Mr. Mogrovejo was MEM’s General Director of Environmental Affairs. He notes in this regard that “MEM recognized this [that it was arbitrary] at the time. For example, I recall that one MEM official mentioned that similar updates in Chile took up to twenty years.”).

¹⁰³ **Exhibit C-028**, PAMA Operative Version at 20-26.

¹⁰⁴ **Exhibit C-028**, PAMA Operative Version at 157, 168-70.

million of the estimated US\$ 129 million—and were to be completed last according to the terms of the PAMA.¹⁰⁵ The PAMA also included a project to reduce previously uncontrolled particulate emissions from the Coke Plant (PAMA Project No. 2),¹⁰⁶ as well as a project intended to reduce nitrogen oxide (NOx) emissions from the Copper Circuit (PAMA Project No. 3).¹⁰⁷

- ii. **Soil Remediation and Rehabilitation:** The PAMA also explained that the facility’s air emissions from 1922 to 1997 had proved damaging to a large area around the Complex. Under the new privatization strategy adopted by the Peruvian Government after the failure of the 1994 auction, Centromin itself (*not* the prospective new investor) would retain the responsibility for remediating the contaminated soil in this area. According to the PAMA, SO₂ and heavy metals contained in the “smoke” emitted from the Complex had damaged in excess of 14,000 hectares.¹⁰⁸ Although the vegetation had redeveloped on a portion of this land following Cerro de Pasco’s installation of electrostatic precipitators to control particulate emissions, almost 4,000 hectares remained severely impacted.¹⁰⁹ Because the scope and extent of the contamination from Centromin’s operations remained largely unknown, however, PAMA Project No. 4 required Centromin to undertake studies to “delimit” and “[d]etermine the area of impact.”¹¹⁰ As the PAMA explained, this “affected area delimitation project” was “aimed at determining the area

¹⁰⁵ **Exhibit C-028**, PAMA Operative Version at 156; **Exhibit C-044**, Letter from K. Buckley (Doe Run Peru) to Director General of Mining (Ministry of Energy & Mines), December 15, 1998, Table 2 at 5 (*hereinafter* “Request for PAMA Modification No. 1215214”). The original PAMA schedule called for this project to be completed last, with construction beginning in 2003 and finishing in 2006.

¹⁰⁶ **Exhibit C-028**, PAMA Operative Version at 157, 197-203.

¹⁰⁷ **Exhibit C-028**, PAMA Operative Version at 158, 204-5.

¹⁰⁸ **Exhibit C-028**, PAMA Operative Version at 207.

¹⁰⁹ **Exhibit C-028**, PAMA Operative Version at 207. Limiting the impacted area to 4,000 hectares was an error. As there had been no remediation done on the 14,000 hectares, that land continued to have high levels of heavy metal contaminants.

¹¹⁰ **Exhibit C-028**, PAMA Operative Version at 158, 205-7.

damaged by smoke [gases and suspended particles containing lead, arsenic, cadmium, and other hazardous materials], conducting studies to establish the condition of the affected areas regarding flora, fauna, soils, water, etc., as well as establishing control points for air and land quality monitoring”¹¹¹ The PAMA anticipated that these initial characterization studies would “supply valuable information that will allow us [Centromin] to outline measures to rehabilitate the study area and other appropriate zones”¹¹² and to “plan the actions to be taken to restore the damaged areas.”¹¹³ The project also included a number of shorter-term measures intended to control erosion in soil that had been denuded by the Complex’s emissions, including dike building, gully modification, terraces, and rehabilitation of soil and re-vegetation.¹¹⁴

- iii. **Control of Liquid Effluents:** The PAMA included several projects designed to address severe water contamination in the area around the Complex. At the time, water used in the lead smelting process and copper refining processes, as well as raw sewage, ran untreated into the surrounding rivers.¹¹⁵ Project No. 5 required the construction of a copper refinery water treatment plant to treat contaminated water being discharged directly to the Yauli River.¹¹⁶ Project No. 6 required completion of a smelter cooling water recirculating system.¹¹⁷ Project No. 7 called for improved handling and disposal of acid solutions in the fragmenting process at the silver refinery.¹¹⁸ Project No. 8 called for the construction of an industrial liquid effluent plant to treat effluents from the

¹¹¹ **Exhibit C-028**, PAMA Operative Version at 209.

¹¹² **Exhibit C-028**, PAMA Operative Version at 209.

¹¹³ **Exhibit C-028**, PAMA Operative Version at 158.

¹¹⁴ *See generally* **Exhibit C-028**, PAMA Operative Version at 207-17.

¹¹⁵ *See generally* **Exhibit C-028**, PAMA Operative Version at 68, 74, 88-96, 183-184, 218.

¹¹⁶ **Exhibit C-028**, PAMA Operative Version at 158, 218-26.

¹¹⁷ **Exhibit C-028**, PAMA Operative Version at 159.

¹¹⁸ **Exhibit C-028**, PAMA Operative Version at 159.

plant.¹¹⁹ Project No. 9 required construction of a concrete wall for lead mud residues to prevent “lead mud” from “pouring into the Mantaro River.”¹²⁰ Project No. 10 called for the recirculation of contaminated water used in the lead speiss granulation process, “containing mostly arsenic, antimony and suspended particles,” which was “being poured into the Mantaro River.”¹²¹ Project No. 11 required the construction of a new automatic washing anode system to prevent “untreated water” laden with harmful metals from pouring into the Mantaro River.¹²² Project Nos. 8-11 were merged into one project, initially estimated to cost only US\$ 2.6 million.¹²³ Project No. 16 required the creation of a sewage treatment plant and garbage disposal facility in La Oroya for domestic waste to treat the raw sewage and trash discharged directly into the Mantaro and Yauli rivers.¹²⁴

- iv. **Management of Slag and Other Deposits:** The PAMA also included projects to address the inadequate disposal and storage of certain by-products, which were leaching or spilling into the surrounding rivers.¹²⁵ Project No. 12 required improved management and disposal of copper and lead slag.¹²⁶ At the time, the 1930s disposal equipment was “obsolete and create[d] many operative, maintenance and transportation difficulties,”¹²⁷ and the water used in the granulation process was directly discharged into the river, carrying “fine and/or suspended slag [25 percent of the annual production of copper and lead slags], as well as dissolved metals [*e.g.*,

¹¹⁹ **Exhibit C-028**, PAMA Operative Version at 160, 183-86.

¹²⁰ **Exhibit C-028**, PAMA Operative Version at 227.

¹²¹ **Exhibit C-028**, PAMA Operative Version at 228.

¹²² **Exhibit C-028**, PAMA Operative Version at 229, 161.

¹²³ **Exhibit C-028**, PAMA Operative Version at 160-61.

¹²⁴ **Exhibit C-028**, PAMA Operative Version at 74, 166, 270-75.

¹²⁵ **Exhibit C-028**, PAMA Operative Version at 91-95.

¹²⁶ **Exhibit C-028**, PAMA Operative Version at 162.

¹²⁷ **Exhibit C-028**, PAMA Operative Version at 230.

lead, cadmium and arsenic], [and] thus creating a serious pollution condition.”¹²⁸ Project No. 13 required the closure and abandonment of the copper and lead deposits at Huanchan, a disposal site near the Mantaro River.¹²⁹ The deposit was located on the bank of the Mantaro River, which received all of the rainwater runoff and drainage from the deposit.¹³⁰ In turn, Project No. 14 required the closure of the existing arsenic trioxide deposit and construction of a new structure to safely deposit future arsenic trioxide generated by the Complex,¹³¹ because arsenic and other contaminants were leaching directly into the Mantaro River.¹³² PAMA Project No. 15 called for the closure of the zinc ferrite deposit, which was pumping zinc ferrite pulp directly into the Mantaro River, while other contaminants like zinc, cadmium, and lead entered the river through dust and rain channels.¹³³

50. The proposed PAMA for the Complex was at best a very basic plan, prepared using preliminary data and designs, and it failed to address problems apparent even in the preliminary studies. For example, the PAMA included only one project to address fugitive emissions (PAMA Project No. 2)—which was intended to reduce emissions from the coke plant—even though both the Preliminary Environmental Assessment and the PAMA noted the existence of fugitive emissions from every plant at the smelter. Indeed, the PAMA provided a lengthy table listing 80 sources of fugitive emissions, but failed to identify or call for any treatment equipment or other measures to address these emissions.¹³⁴

¹²⁸ **Exhibit C-028**, PAMA Operative Version at 230.

¹²⁹ **Exhibit C-028**, PAMA Operative Version at 162, 239-42.

¹³⁰ **Exhibit C-028**, PAMA Operative Version at 239-42.

¹³¹ **Exhibit C-028**, PAMA Operative Version at 163.

¹³² **Exhibit C-028**, PAMA Operative Version at 92-93, 243-49.

¹³³ **Exhibit C-028**, PAMA Operative Version at 93-95, 164-65, 255-61.

¹³⁴ **Exhibit C-028**, PAMA Operative Version at 123-30 (table showing all these emissions). 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-045**, Letter from K. Dwyer (Knight Piésold) to D. L. Vornberg (Doe Run Peru), *Technical and Regulatory Review of*

C. IN THE SECOND BIDDING PROCESS, PERU AND CENTROMIN MADE CLEAR THAT THEY WOULD REMEDIATE THE AREAS AROUND THE LA OROYA COMPLEX AND RETAIN AND ASSUME LIABILITY FOR THIRD-PARTY CLAIMS RELATING TO ENVIRONMENTAL CONTAMINATION

51. On January 27, 1997, less than a month after the Ministry of Energy & Mines approved the PAMA, Peru's 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.¹³⁵ The bidders included, among others, *Servicios Industriales Peñoles S.A. de C.V.* ("Peñoles") from Mexico and the Renco Consortium.¹³⁶

52. 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.¹³⁷ The Share Transfer Agreement that the parties ultimately executed considered these consultations to be of "supplemental validity,"¹³⁸ and Centromin's answers to the bidders' questions provide guidance as to how Centromin understood its contractual and PAMA obligations.

53. The questions from potential investors made four points clear: (1) they would not purchase La Oroya if they were saddled with the environmental legacy, (2) they would not 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.

Commitments Outlined in the December La Oroya PAMA, August 29, 1997 at 7-8 (*hereinafter* "Knight Piésold PAMA Review").

¹³⁵ **Exhibit C-035**, 1997 White Paper at 50-51.

¹³⁶ **Exhibit C-035**, 1997 White Paper at 51.

¹³⁷ **Exhibit C-046**, Centromin, Public International Bidding PRI-16-97 - First Round of Consultations and Answers, February 27, 1997 (*hereinafter* "Consultation Round 1"); **Exhibit C-047**, Centromin, Public International Bidding PRI-16-97 - Second Round of Consultations and Answers, March 26, 1997 (*hereinafter* "Consultation Round 2").

¹³⁸ *See* **Exhibit C-002**, Stock Transfer Agreement, Clause 18.1(A) at 64.

54. In the second round of consultation published on March 26, 1997, for example, Centromin confirmed its commitment to perform environmental remediation and to assume liability for third-party environmental claims.¹³⁹

55. Centromin also confirmed that it set aside monies to finance its environmental liabilities and obligations. According to Centromin, these monies would ensure Centromin's compliance with its obligations.¹⁴⁰ In the years after the sale, however, Centromin repeatedly asserted that it had continued difficulties funding the remediation, calling into question whether these monies were set aside in the first place. To this day, Centromin has not remediated the soil in and around La Oroya, or assumed liability for third-party claims.¹⁴¹ Neither has Peru.

D. 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

56. The auction of Metaloroya's shares (and thus the Complex) took place on April 14, 1997.¹⁴² The bid initially was awarded to Peñoles, but Peñoles withdrew its bid on July 9, 1997 (forfeiting its bid bond).¹⁴³ On July 10, 1997, Peru's Special Privatization Committee notified the Renco Consortium, as the runner-up bidder that Peñoles had withdrawn its bid,¹⁴⁴ and the Renco Consortium agreed to enter into negotiations with Peru's Special Privatization Committee to acquire Metaloroya through a Stock Transfer Agreement. As required in the bidding conditions, the Renco Consortium also agreed to establish Doe Run Peru, a Peruvian acquisition vehicle.¹⁴⁵

¹³⁹ **Exhibit C-047**, Consultation Round 2, Question No 41 at 41.

¹⁴⁰ **Exhibit C-047**, Consultation Round 2, Question No. 42 at 41 (“**QUESTION No. 42.** Assuming that the new owners of Metaloroya comply with the PAMA's terms and the same measures against contamination to comply with National and International norms, but CENTROMIN fails to clean the existing environmental obstacles (pre-transfer) and a legal (local or foreign) entity presents a claim before a National or International court . . . How does CENTROMIN propose to free METALOROYA from responsibility? **ANSWER.** CENTROMIN has ordered the organization and provided the funds to comply with the environmental remedies of which it is responsible, guaranteeing, therefore, their compliance.”)

¹⁴¹ *See* Buckley Witness Stmt. at ¶¶ 15-17.

¹⁴² **Exhibit C-035**, 1997 White Paper at 51.

¹⁴³ **Exhibit C-035**, 1997 White Paper at 51. *See also* Sadlowski Witness Stmt. at ¶¶ 18-19.

¹⁴⁴ **Exhibit C-035**, 1997 White Paper at 52. *See also* Sadlowski Witness Stmt. at ¶¶ 18-19.

¹⁴⁵ **Exhibit C-047**, 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

57. On October 23, 1997, Centromin and Doe Run Peru, with the intervention of Metaloroya S.A., The Doe Run Resources Corporation and The Renco Group, Inc. entered into the Stock Transfer Agreement.¹⁴⁶ Pursuant to the Stock Transfer Agreement, Doe Run Peru (defined in the Stock Transfer Agreement as the “Investor”) acquired 99.98 percent of the outstanding shares of Metaloroya (defined in the Stock Transfer Agreement as the “Company”) in return for two purchase price payments to Centromin in the total amount of US\$ 121,440,608.¹⁴⁷ In addition to its purchase price payments to Centromin, Doe Run Peru made a separate capital contribution of US\$ 126,481,383.24 to Metaloroya on October 23, 1997 in accordance with Clause 3 of the Stock Transfer Agreement.¹⁴⁸

58. On December 30, 1997, Metaloroya merged into Doe Run Peru following approval from the Peruvian Government.¹⁴⁹

59. The negotiations leading to the execution of the Stock Transfer Agreement involved Renco, Doe Run Resources, and the Peruvian Government, in addition to Doe Run Peru and Centromin.¹⁵⁰ Renco and Doe Run Resources are additional signatories to the Stock Transfer Agreement.¹⁵¹

60. The Stock Transfer Agreement also refers to the Peruvian Government’s guarantee of *all of Centromin’s contractual obligations*: “[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

CENTROMIN possesses in the COMPANY, one or the other must establish a Peruvian subsidiary in order to execute the contract...”); **Exhibit C-048**, Deed of Incorporation for Doe Run Peru, S.A., September 8, 1997 (*hereinafter* “DRP Incorporation”). *See also* Buckley Witness Stmt. at ¶ 8; Sadlowski Witness Stmt. at ¶¶ 7-8.

¹⁴⁶ **Exhibit C-002**, Stock Transfer Agreement, Preamble at 2-3. Jeffrey 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.

¹⁴⁷ **Exhibit C-002**, Stock Transfer Agreement, arts. 1.2, 1.3 at 9-10; **Exhibit C-035**, 1997 White Paper at 13. *See also* Sadlowski Witness Stmt. at ¶ 20.

¹⁴⁸ **Exhibit C-035**, 1997 White Paper at 13; **Exhibit C-002**, Stock Transfer Agreement, Clauses 3.2, 3.4 at 11-12. *See also* Sadlowski Witness Stmt. at ¶ 20.

¹⁴⁹ *See* **Exhibit C-049**, Modification of the Contract to Transfer Shares, Increase Company Capital and Subscription of Shares of Metaloroya S.A., signed by Doe Run Peru and Centromin, December 17, 1999 at 7 (*hereinafter* “1999 Contract Modification”).

¹⁵⁰ *See* Buckley Witness Stmt. at ¶¶ 8-9.

¹⁵¹ *See supra* note Sections II.D-E.

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.”¹⁵²

61. The Stock Transfer Agreement is clear: Peru agreed to guarantee all of Centromin’s contractual obligations. This fact is further confirmed by the Guaranty Agreement of November 21, 1997.¹⁵³ Specifically, Clause 2.1 of the Guaranty Agreement provides that Peru “guarantee[s] the representations, securities, guaranties and obligations” undertaken by Centromin in the Stock Transfer Agreement.¹⁵⁴ Peru thus committed not only to perform the “obligations” undertaken by Centromin in the Stock Transfer Agreement, but also to honor Centromin’s “representations, securities [and] guaranties.”¹⁵⁵

E. WITH THE STOCK TRANSFER AGREEMENT AND THE GUARANTY AGREEMENT, CENTROMIN AND PERU RETAINED AND ASSUMED LIABILITY FOR THIRD-PARTY DAMAGES AND CLAIMS RELATING TO ENVIRONMENTAL CONTAMINATION

1. Key Terms of the Stock Transfer Agreement related to Liability for Third-Party Claims

62. In the Stock Transfer Agreement, Centromin and Peru (through the Guaranty Agreement) agreed to assume full liability for third-party claims relating to environmental contamination under virtually all circumstances in the event that such claims arose from the operation of the Complex prior to Peru’s sale of the Complex or during the period approved for performing the PAMA projects to slowly bring the Complex into compliance with applicable emissions standards.¹⁵⁶ 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 the Company.¹⁵⁷

¹⁵² **Exhibit C-002**, Stock Transfer Agreement, Clause 10 at 58.

¹⁵³ **Exhibit C-003**, Guaranty Agreement.

¹⁵⁴ **Exhibit C-003**, Guaranty Agreement, art. 2.1 at 2.

¹⁵⁵ **Exhibit C-003**, Guaranty Agreement, art 2.1 at 2. *See also* Sadlowski Witness Stmt. at ¶ 12 (“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].”).

¹⁵⁶ *See* Buckley Witness Stmt. at ¶¶ 10-11; Sadlowski Witness Stmt. at ¶¶ 9-12, 22-24, 28.

¹⁵⁷ *See* Buckley Witness Stmt. at ¶¶ 10-11; Sadlowski Witness Stmt. at ¶¶ 9-12, 22-24.

63. Clauses 5 and 6 of the Stock Transfer Agreement allocate responsibility for environmental matters between Centromin and the Company.¹⁵⁸ Centromin and Doe Run Peru first agreed that the Company “assumes the responsibility *only* for [the] . . . environmental matters” listed in that clause.¹⁵⁹ Clauses 5.3 and 5.4 set forth the universe of third-party environmental damages and claims for which the Company is liable, while Clause 5.9 expressly provides that “[a]ll other liabilities shall correspond to Centromin in accordance with the Sixth Clause.”

64. Clause 6.2 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 the Company or Centromin and/or Centromin’s predecessors, “except for the damages and third-party claims that are the Company’s responsibility in accordance with Numeral 5.3.” Clause 6.2 provides in its entirety:

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.

65. Centromin’s liability under Clause 6.2 extends to all third-party damages and claims arising prior to, and during the PAMA period, except the narrow categories of damages and claims for which the Company is liable under Clause 5.3.

66. Clause 5.3 specifies the very limited circumstances in which the Company is liable for third-party environmental damages and claims arising during the period approved for completing the PAMA projects. It provides:

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*:

¹⁵⁸ The Company was initially Metaloroya. The Company became Doe Run Peru after Metaloroya was merged into Doe Run Peru in December 1997.

¹⁵⁹ **Exhibit C-002**, Stock Transfer Agreement, Clause 5 at 17 (emphasis added).

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 5.2.¹⁶⁰

67. Thus, the Company 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 the Company, and (3) were the result of the Company'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 the Company on the performance of its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2 of the Stock Transfer Agreement (which relate to the Company'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).

68. Under Clauses 5.9 and 6.2, Centromin retained and assumed liability for all third-party claims and damages that the Company did not assume. Clause 5.3 thus narrowly limits the Company's liability for third-party environmental damages and claims arising during the period of time for completion of the PAMA projects.¹⁶¹

69. Clause 5.4 specifies the scope of the Company's liability for third-party environmental damages and claims arising after the expiration of the legal term of Metaloroya's PAMA. It provides:

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

¹⁶⁰ **Exhibit C-002**, Stock Transfer Agreement, Clause 5.3 at 21-22 (emphasis added).

¹⁶¹ **Exhibit C-002**, Stock Transfer Agreement, Clause 5.3 at 21-22.

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 the Company or of the obligations established by means of this contract in Numerals 5.1 and 5.2.

C) Should the damages be attributable to Centromin and to the Company, the Company will assume liability proportionately to its contribution to the damage.¹⁶²

70. Thus, under paragraphs (A) and (B) of Clause 5.4, the Company 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 the Company on the performance of its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2. In addition, under paragraph (C), the Company is "proportionately" liable for damages and claims arising after the PAMA period to the extent that the Company 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 5.2.¹⁶³

71. The scope of Centromin's liability for third-party damages and claims arising after the expiration of the legal term of the PAMA is addressed in Clauses 5.9 and Clause 6.3. As already noted, Clause 5.9 expressly provides that "[a]ll other liabilities shall correspond to Centromin in accordance with the Sixth Clause." Thus, Centromin retained and assumed all liability for third-party damages and claims arising after the expiration of the legal term of the PAMA that were not assumed by the Company under Clause 5.4.

72. Clause 6.3 provides:

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 the Company is liable in accordance with Numeral 5.4.

¹⁶² **Exhibit C-002**, Stock Transfer Agreement, Clause 5.4 at 22-23 (emphasis added).

¹⁶³ **Exhibit C-002**, Stock Transfer Agreement, 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.

In the case that damages may be attributable to Centromin and the Company, the provisions set forth in Numeral 5.4C shall apply.

73. Thus, 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 Doe Run Peru. Under the second paragraph of Clause 6.3, Centromin is proportionately liable with the Company for any damages and claims arising after the PAMA period to the extent that the Company is not liable for the third-party's loss under paragraph (C) of Clause 5.4.

74. For the avoidance of any doubt, Clause 5.5 then provides that “*the Company 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 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 Numeral 6.1 [*i.e.*, Centromin's PAMA obligations and its obligation to remediate the area around the Complex].”¹⁶⁴ Indeed, Clause 5.9 provides that “[a]ll other liabilities [*i.e.*, all environmental liabilities not specifically allocated to the Company under Clause 5] shall correspond to Centromin in accordance with the Sixth Clause.”

75. Peru assumed broad liability for third-party claims.¹⁶⁵ This made sense: Centromin and Cerro de Pasco had been operating the Complex for 75 years without environmental regulation and without investing in necessary technological upgrades.¹⁶⁶ Modernization of a massive, integrated, and technologically complex smelting and refining complex takes many years.¹⁶⁷ No investor had been willing to assume liability for third-party claims arising from the environmental contamination that existed and that would continue to

¹⁶⁴ **Exhibit C-002**, Stock Transfer Agreement, Clause 5.5 at 23-4 (emphasis added).

¹⁶⁵ See Buckley Witness Stmt. at ¶¶ 10-11.

¹⁶⁶ See Section A. See also Sadlowski Witness Stmt. at ¶ 15; Expert Report of Partelpoeg, February 18, 2014, at §§ 5.0, 9.0 at 12-15, 28-29.

¹⁶⁷ See Sections A, B.

accumulate during construction of the PAMA projects.¹⁶⁸ And the Renco Consortium would only agree to take on the financial responsibility of modernizing the Complex if they were fully protected from liability for third-party damages attributable to the operation of the Complex while carrying out the upgrades, and if they remained protected from liability for third-party damages attributable to residual contamination afterwards.¹⁶⁹ That is precisely what the Stock Transfer Agreement accomplished.

2. Approximately 1,000 Residents of La Oroya Have Filed U.S. Third-Party Claims against Renco and Its Affiliates, Officers and Directors for Harm Alleged to Have Been Suffered from the La Oroya Complex's Operations

76. On October 4, 2007, a group of plaintiffs from La Oroya filed lawsuits in St. Louis, Missouri, U.S.A., 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 a new set of lawsuits, which are comprised of 11 cases on behalf of 36 minor plaintiffs. No other cases were filed until 2012. In 2012 and 2013, the attorneys filed additional lawsuits on behalf of 933 new plaintiffs. All of these plaintiffs are Peruvian citizens and present or former residents of La Oroya.

77. The 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.”¹⁷⁰

¹⁶⁸ See Sadlowski Witness Stmt. at ¶¶ 15-16.

¹⁶⁹ See Sections B, C. See also Sadlowski Witness Stmt. at ¶¶ 25-38.

¹⁷⁰ **Exhibit C-050**, 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”).

78. Plaintiffs seek damages for alleged personal injuries and punitive damages, and name as defendants Renco and Doe Run Resources, 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, and Ira L. Rennert (collectively, the “Renco Defendants”). The plaintiffs did not bring claims against Centromin’s successor, Activos Mineros, nor against the Republic of Peru, or Doe Run Peru, and instead chose to sue Doe Run Peru’s U.S.-based affiliates in the courts of the United States.

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

79. Activos Mineros and Peru have refused to assume any liability for the claims in the St. Louis Lawsuits.¹⁷¹

80. On October 12, 2010, after receiving a decision in St. Louis that the Twenty-Second Judicial Circuit was the proper venue, counsel for Renco and its affiliates, including Doe Run Peru, wrote to Activos Mineros, the Ministry of Energy & Mines, and the Ministry of Economics & Finance of Peru to request that they honor their contractual obligations to assume liability for the St. Louis Lawsuits and release, protect and hold harmless Renco and its affiliates from those third-party claims.¹⁷² At that time, the Renco Defendants had removed the cases to federal court, but no other procedural steps had occurred.¹⁷³ Also, only thirty-six plaintiffs were involved as of that date, as opposed to 969 to date.¹⁷⁴

81. As Renco and Doe Run Peru 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 [Metaloroya], of Centromin and/or its predecessors, except for the damages and third-party claims that are [Metaloroya’s]

¹⁷¹ Sadlowski Witness Stmt. at ¶¶ 39-43.

¹⁷² **Exhibit C-051**, Letter from King & Spalding to P. Sanchez Gamarra (Ministry of Energy & Mines) *et al.*, October 12, 2010 (*hereinafter* “October 12, 2010 Letter”).

¹⁷³ Sadlowski Witness Stmt. at ¶ 39.

¹⁷⁴ **Exhibit C-052**, 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. at ¶ 39.

responsibility in accordance with numeral 5.3' ([Stock Transfer Agreement] Art. 6.2).¹⁷⁵ Doe Run Peru and Renco 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.”¹⁷⁶

82. Renco and its affiliates reiterated their requests to Activos Mineros, the Ministry of Energy & Mines, the Ministry of Economics & Finance, and their attorneys White & Case in numerous letters from November 2010 to June 2013.¹⁷⁷

83. To date, Peru has not responded in writing. Activos Mineros did respond, but refused to appear and defend the St. Louis Lawsuits or to accept or assume any responsibility or liability.¹⁷⁸ Activos Mineros, acting as successor-in-interest to Centromin, made the following four arguments in defense of its refusal to accept responsibility for the St. Luis Lawsuits:

- (i) It was only liable to Doe Run Peru for third-party claims, not Doe Run Peru’s affiliates.
- (ii) It had not received notice from Doe Run Peru, as required under Clause 8.14 of the Stock Transfer Agreement.

¹⁷⁵ **Exhibit C-051**, October 12, 2010 Letter at 2-3.

¹⁷⁶ **Exhibit C-051**, October 12, 2010 Letter at 3.

¹⁷⁷ See, e.g., **Exhibit C-053**, Letter from J. Carlos Huyhua (Doe Run Peru) to V. Carlos Estrella (*Activos Mineros*), November 11, 2010 (*hereinafter* “November 11, 2010 Letter”); **Exhibit C-054**, Letter from King & Spalding to P. Sanchez Gamarra (Ministry of Energy & Mines) *et al.*, December 14, 2010 (*hereinafter* “December 14, 2010 Letter”); **Exhibit C-055**, Letter from King & Spalding to V. Carlos Estrella (*Activos Mineros*), February 18, 2011 (*hereinafter* “February 18, 2011 Letter”); **Exhibit C-056**, Letter from King & Spalding to White & Case, July 12, 2011 (*hereinafter* “July 12, 2011 Letter”); **Exhibit C-057**, Letter from King & Spalding to White & Case, January 27, 2012 (*hereinafter* “January 27, 2012 Letter”); **Exhibit C-058**, Letter from King & Spalding to White & Case, March 20, 2012 (*hereinafter* “March 20, 2012 Letter”); **Exhibit C-059**, Letter from King & Spalding to White & Case, July 18, 2012 (*hereinafter* “July 18, 2012 Letter”); **Exhibit C-060**, Letter from King & Spalding to White & Case, August 9, 2012 (*hereinafter* “August 9, 2012 Letter”); **Exhibit C-061**, Letter from King & Spalding to White & Case, November 16, 2012 (*hereinafter* “November 16, 2012 Letter”); **Exhibit C-062**, Letter from E. G. Kehoe (King & Spalding) to J.C. Hamilton (White & Case), January 17, 2013 (*hereinafter* “January 17, 2013 Letter”); **Exhibit C-063**, Letter from E. G. Kehoe (King & Spalding) to J.C. Hamilton (White & Case), June 21, 2013 (*hereinafter* “June 21, 2013 Letter”).

¹⁷⁸ See, e.g., **Exhibit C-064**, Letter from V. Carlos Estrella (*Activos Mineros*) to King & Spalding, November 5, 2010 (*hereinafter* “November 5, 2010 Letter”); **Exhibit C-065**, Letter from V. Carlos Estrella (*Activos Mineros*) to J. Carlos Huyhua (Doe Run Peru), November 26, 2010 (*hereinafter* “November 26, 2010 Letter”); **Exhibit C-066**, Letter from V. Carlos Estrella (*Activos Mineros*) to (King & Spalding, January 21, 2011 (*hereinafter* “January 21, 2011 Letter”).

- (iii) Notice had not been given in a timely manner.
- (iv) Doe Run Peru had engaged in practices and standards less protective of the environment than those engaged in by Centromin, and therefore Doe Run Peru, not Centromin, was liable for all of the third-party harm.¹⁷⁹

84. None of these excuses has merit.

85. With respect to the first argument, Doe Run Peru noted that Centromin 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 [Doe Run Peru], of Centromin and/or its predecessors" with limited exceptions.¹⁸⁰ Thus, Peru's (and Activos Mineros') liability for damages and claims by third parties was not limited to those claims that third parties might bring against only Doe Run Peru. Such a narrow reading of the Stock Transfer Agreement would defeat the purpose of Peru's promise to keep and accept liability for third-party claims arising from Complex operations. As addressed in the Legal Argument Section below, an assumption of liability clause is different from, and broader than, an indemnification provision. In addition to agreeing to indemnify Doe Run Peru in Clause 6.5 of the Stock Transfer Agreement, Centromin and Peru contractually agreed in Clauses 5.9, 6.2 and 6.3 to take the liability for third-party damages and claims onto themselves. Accordingly, Centromin and Peru are obligated to compensate the Renco Defendants for all losses and costs they may incur as a result of the St. Louis Lawsuits (including the Renco Defendants' legal costs).

86. Doe Run Peru noted additionally that Doe Run Peru's corporate documents required it to indemnify all of the defendants in the cases being litigated in the U.S.¹⁸¹ Doe Run Peru also indicated in a December 14, 2010 letter that it had received notice from counsel to its parent entities and affiliates, Dowd Bennett, that pursuant to applicable law, Doe Run Peru was required to indemnify its parent entities and affiliates against any judgment entered against them

¹⁷⁹ **Exhibit C-064**, November 5, 2010 Letter; **Exhibit C-065**, November 26, 2010 Letter; **Exhibit C-066**, January 21, 2011 Letter.

¹⁸⁰ **Exhibit C-054**, December 14, 2010 Letter at 2.

¹⁸¹ **Exhibit C-067**, Letter from J. Carlos Huyhua (Doe Run Peru) to P. Sanchez Gamarra (Ministry of Energy & Mines) *et al.*, November 19, 2010 (*hereinafter* "November 19, 2010 Letter").

and any ongoing costs incurred in the St. Louis Lawsuits.¹⁸² Accordingly, even if Activos Mineros/Peru's 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 affiliates for these claims makes Activos Mineros and Peru ultimately liable – as they agreed to be.

87. With respect to the notice arguments, Doe Run Peru stated in a letter of November 11, 2010 that King & Spalding, which had provided notice to Activos Mineros previously, was “fully authorized by Doe Run Peru and its affiliates to represent their position and interests concerning rights and obligations arising under the Stock Transfer Agreement.”¹⁸³ Doe Run Peru further stated that the St. Louis proceedings had only recently commenced in the proper venue, and regardless, Doe Run Peru representatives had informed Activos Mineros and Peru 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.¹⁸⁴

88. Activos Mineros provided no support for its allegation that Doe Run Peru had engaged in standards and practices less protective of the environment than those of Centromin. Indeed, as Mr. Bianchi's expert statement makes clear,¹⁸⁵ and as shown in Sections G and I below, Doe Run Peru's standards and practices were significantly more protective than those of Centromin. Activos Mineros also overlooked that the comparison between the standards and practices of Centromin and Doe Run Peru only becomes relevant under Clause 5.3 of the Stock Transfer Agreement if the third-party damages and claims are attributable to business operations “not related to Metaloroya's PAMA,” which is not the case here.¹⁸⁶ Doe Run Peru did not

¹⁸² **Exhibit C-054**, Letter dated December 14, 2010 at 2.

¹⁸³ **Exhibit C-053**, Letter dated November 11, 2010.

¹⁸⁴ **Exhibit C-004**, Letter from Mr. Jorge del Castillo to Ambassador Michael McKinley, October 31, 2007.

¹⁸⁵ Bianchi Expert Opinion at 24 (concluding that “In all respects, the standards and practices of Doe Run Peru were significantly more protective of the environment than those of Centromin.”).

¹⁸⁶ *See* **Exhibit C-002**, Stock Transfer Agreement, Clause 5.3(A) at 21.

engage in any business operations unrelated to its PAMA while it was working to complete the PAMA projects.¹⁸⁷

89. Activos Mineros itself appears to have backed away from its standards and practices argument in its January 21, 2011 letter, in which it instead argues that “the 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.”¹⁸⁸ 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 Stock Transfer Agreement. Even if the period to complete the PAMA projects had expired by January 2007 (which it did not, given the 2006 extensions of the sulfuric acid plants project through March 2012), Activos Mineros and Peru still have liability for contamination that occurred during the PAMA period. This is true even if the claims themselves were filed or arose after that period.¹⁸⁹

90. To date, neither Peru nor Activos Mineros has joined the St. Louis Lawsuits or indicated any willingness to do so. Nor have they compensated Renco and the other defendants for their losses in connection with the Lawsuits as legal fees alone are already in the millions of U.S. dollars even though discovery is in its initial stages.¹⁹⁰

¹⁸⁷ See Mogrovejo Witness Stmt. at ¶ 51 (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.”).

¹⁸⁸ **Exhibit C-066**, January 21, 2011 Letter at 2.

¹⁸⁹ See Section II.E.1 above (describing the Stock Transfer Agreement).

¹⁹⁰ On January 7, 2011, the defendants removed the then-filed cases to federal court pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. On December 7, 2011, the District Court held that removal was proper and stayed the cases pending appeal to the Eighth Circuit Court of Appeals. The Eighth Circuit Court of Appeals upheld the District Court’s ruling on November 13, 2012. On January 14, 2013, the defendants answered the complaints. On January 16, 2013, the District Court ordered the consolidation of the cases for pre-trial purposes and lifted the stay pending appeal to the Eighth Circuit Court of Appeals. In the Spring of 2013, the district court judge entered several case management orders and ordered the beginning of discovery.

F. CENTROMIN AND PERU COMMITTED TO PERFORM CENTROMIN’S PAMA OBLIGATIONS AND TO REMEDIATE THE AREAS AROUND THE COMPLEX; AND THEY HAVE NOT DONE SO

1. Key Stock Transfer Agreement Terms related to Centromin and Peru’s Obligation to Remediate and Perform Centromin’s PAMA Obligations

91. On October 16, 1997, the Ministry of Energy & Mines issued Directorial Resolution 334-97-EM/DGM, allocating certain PAMA projects to Metaloroya (Doe Run Peru) at an initial estimated cost of US\$ 107.6 million, and certain projects to Centromin at an initial estimated cost of US\$ 24.2 million.¹⁹¹ Doe Run Peru would use its expertise to modernize and update the integrated and highly complex facility, while Centromin would be responsible both for the existing contamination and for the contamination that would continue to emanate from the Complex during the ten-year period (or longer with extension) while Doe Run Peru would be working to complete its PAMA projects.¹⁹²

92. The PAMA projects that Centromin retained included Project No. 4, rehabilitation of La Oroya,¹⁹³ PAMA Project No. 13, closure of Copper/Lead Slag Deposit, and Project No. 15, closure of Zinc Ferrite Deposit.¹⁹⁴ Centromin also retained part of PAMA Project No. 14 (Closure of Arsenic Trioxide Deposit).¹⁹⁵ Centromin was to seal and close the existing arsenic trioxide deposit,¹⁹⁶ which it failed to do properly.¹⁹⁷ This failure meant arsenic and other heavy metals like lead continued to leach into the river.¹⁹⁸

¹⁹¹ **Exhibit C-009**, Resolution No. 334-97; **Exhibit C-010** September 19, 1997 Letter at 9-12; **Exhibit C-002**, Stock Transfer Agreement, Clause 5, preamble. *See also* Buckley Witness Stmt. at ¶¶ 11-13.

¹⁹² *See* **Exhibit C-006**, 1999 White Paper at 12; **Exhibit C-002**, Stock Transfer Agreement, arts. 5, 6 at 16-28. *See also* Buckley Witness Stmt. at ¶¶ 11-12; Mogrovejo Witness Stmt. at ¶ 23.

¹⁹³ **Exhibit C-010**, September 19, 1997 Letter at 11; **Exhibit C-009**, Resolution No. 334-97; **Exhibit C-028**, PAMA Operative Version at 147.

¹⁹⁴ **Exhibit C-010**, September 19, 1997 Letter at 11-12. Pursuant to the Stock Transfer Agreement, Doe Run Peru had the option of taking over the closure of these deposits and continuing to use them after an upgrade; Doe Run Peru exercised this option in 2000, completing the first upgrade in 2002, and the second in 2004. *See* **Exhibit C-069**, Directorial Resolution No. 178-99-EM/DG concerning the amendment of the action and investment schedule of the PAMA, October 19, 1999 (*hereinafter* “Resolution No. 178-99”). In 2001, MEM modified the PAMA and Doe Run Peru officially took over the Project No. 15. *See* **Exhibit C-070**, Directorial Resolution No. 133-2001-EM-DGAA concerning modifying the PAMA for La Oroya Metallurgical Complex, April 10, 2001 at 2-4 (*hereinafter* “Resolution No. 133-2001”).

¹⁹⁵ **Exhibit C-010**, September 19, 1997 Letter at 11.

¹⁹⁶ **Exhibit C-010**, September 19, 1997 Letter at 11.

93. Centromin also made contractual commitments to perform the PAMA projects that were allocated to it, and to remediate the cumulative environmental impacts caused by the operation of the Complex.

94. Specifically, Clause 6.1 of the Stock Transfer 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.”¹⁹⁹ And Centromin’s PAMA includes the obligation to remediate, as set forth in PAMA Project No. 4 (Rehabilitation of La Oroya).²⁰⁰ Moreover, Clause 6.1(C) provides expressly 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.”²⁰¹ Remediation was important because it would reduce the health risk to the local population from existing toxins in the soil from historic operations.²⁰² Dr. Rosalyn Schoof explains that “remediation of the soil was necessary to achieve desired reductions in lead exposures,” because “the settled dust and soil in La Oroya would still have high residual concentrations of lead from historical emissions.”²⁰³

¹⁹⁷ Mogrovejo Witness Stmt. at ¶ 24 n. 8; Sadlowski Witness Stmt. at ¶ 38 n. 11.

¹⁹⁸ Mogrovejo Witness Stmt. at ¶ 24 n. 8.

¹⁹⁹ **Exhibit C-002**, Stock Transfer Agreement, Clause 6.1 at 25.

²⁰⁰ *See* **Exhibit C-028**, PAMA at 207-17.

²⁰¹ **Exhibit C-002**, Stock Transfer Agreement, Clause 6.1(C) at 26. The agreement to remediate the areas Centromin contaminated excluded only “those areas which are the responsibility of [Doe Run Peru] in accordance with the fifth [C]lause” of the Stock Transfer Agreement. *Id.* This did not impose any obligation on Doe Run Peru to remediate areas contaminated by Centromin. Clause 5 provides that the Company is responsible “only” for environmental matters it expressly assumed, Stock Transfer Agreement, Clause 5.1, and Clause 5.9 provides that “[a]ll other liabilities shall correspond to Centromin in accordance with the sixth [C]lause.” Clauses 5.1-5.4 then limit Doe Run Peru’s environmental responsibilities to (1) its own PAMA obligations (the “Metaloroya PAMA”), Stock Transfer Agreement, Clause 5.1; (2) potential future situations in which Doe Run Peru decided to assume certain of Centromin’s PAMA obligations (like the closure of zinc ferrite deposits), Stock Transfer Agreement, Clause 5.1-5.2; and (3) very limited liability for harm to third parties, Stock Transfer Agreement, Clause 5.3-5.4.

²⁰² *See* Buckley Witness Stmt. at ¶ 12; Sadlowski Witness Stmt. ¶ 15.

²⁰³ R. Schoof Expert Statement at 14. Through her affiliation with the consulting company Integral, Dr. Schoof, a toxicologist, was hired by Doe Run Peru and approved by the Ministry to conduct an independent study of health risks in La Oroya in 2005 and 2008. She also has submitted an expert report in these proceedings. Dr.

95. The negotiating history of the Stock Transfer Agreement reflects the high level of importance that the Renco Consortium attached to Centromin's remediation obligations.²⁰⁴ Under the Model Stock Transfer Agreement that Peru had provided to the bidders, Centromin assumed responsibility only for the technical abandonment of certain slag, arsenic and ferrite deposits.²⁰⁵ By contrast, Clause 6.1 of the final Stock Transfer Agreement requires Centromin not only to take responsibility for the technical abandonment of these deposits, but also to perform its PAMA obligations and to remediate the area around La Oroya.²⁰⁶ Moreover, to address the Renco Consortium's concern that Centromin and Peru would not perform their soil remediation obligations, the final Stock Transfer Agreement provides that the Company would not have any liability if Centromin and Peru defaulted on these obligations, which they undeniably have.²⁰⁷ Specifically, Clause 5.5 provides that "the Company will not have [now] nor will it assume any liability for damages or for third-party claims attributable to Centromin insofar as the same . . . are due to a default on the part of Centromin with regards to its obligations that are specified in Numeral 6.1."²⁰⁸

Schoof's conclusions were based on her own studies at La Oroya in 2005 and 2008 (when Centromin still had not remediated) and on the following: "Prior Complex operations by Cerro de Pasco and Centromin created pervasive environmental contamination in the region of La Oroya that I believe has contributed significantly to exposures of minors in La Oroya to lead and other metals since 1997. 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. 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."

²⁰⁴ See Buckley Witness Stmt. at ¶¶ 9-13.

²⁰⁵ **Exhibit C-071**, Model Contract, Capital Increase and Share Subscription Contract of Empresa Metalurgica La Oroya S.A, February 6, 1997, art. 4.1 at 4-5 (part of bidding documents) (*hereinafter* "1997 Model Contract").

²⁰⁶ **Exhibit C-002**, Stock Transfer Agreement, Clause 6.1 at 25-27.

²⁰⁷ **Exhibit C-046**, 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 with 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." **Exhibit C-047**, Consultation Round 2, Question 42 at 15. This fund, it insisted, would ensure its compliance with its obligations: "CENTROMIN has ordered the organization and created the provision of funds necessary to comply with the environmental remediation for which it is responsible. These will guarantee Centromin's compliance with its obligation."

²⁰⁸ **Exhibit C-002**, Stock Transfer Agreement, Clause 5.5 at 23-24.

96. Time also was of the essence. In negotiations with the Peruvian Government, Doe Run Peru and Renco made clear that “it was important that Centromin carry out its clean up 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.”²⁰⁹

2. Peru and Centromin Failed to Comply with Their Obligation to Remediate Areas Contaminated by the Complex’s Operations

97. Despite their promises and guaranties, neither Centromin nor Peru made any meaningful effort to remediate the area surrounding the Complex.²¹⁰ This failure has caused and continues to cause direct harm to the local population,²¹¹ and thus also to Doe Run Peru and its affiliates through the third-party claims in St. Louis.

a. *Remediation of the Soil Was Important to the Health of the Population*

98. After 75 years of uninterrupted contamination, even the initial studies Centromin conducted in its Preliminary Environmental Assessment showed elevated levels of lead (up to one percent Pb in some areas), arsenic and other contaminants in the soil around the La Oroya Complex.²¹² 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

²⁰⁹ Buckley Witness Stmt. at ¶ 14; Bianchi Expert Report at 23-25.

²¹⁰ In fact, Centromin recently demanded that Doe Run Peru help pay for the remediation. See Section K.1 below; **Exhibit C-072**, Activos Mineros Application to INDECOPI as Doe Run Peru Creditor, September 27, 2010 at 1 (*hereinafter* “Activos Mineros INDECOPI Application”). See also Buckley Witness Stmt. at ¶¶ 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.”); Neil Witness Stmt. at ¶¶ 12-13.

²¹¹ See Buckley Witness Stmt. at ¶ 16 (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 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 78 years.”).

²¹² **Exhibit C-008**, 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 soil, estimated surface soil metal concentrations are: Arsenic 840 mg/kg, Lead 1338 mg/kg, Cadmium 50 mg/kg.”).

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.”²¹³

99. Lead from the historical operation of the La Oroya 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.²¹⁴ In 1999, an NGO study found average blood lead levels 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.²¹⁵ 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,²¹⁶ and has become an increasingly important contributor as Doe Run Peru reduced heavy metal emissions from the plant.²¹⁷

²¹³ **Exhibit C-008**, Knight Piésold Report to Centromin at 37.

²¹⁴ R. Schoof Expert Statement at 9-11, 13-14, 16-17. *See also* **Exhibit C-022**, Doe Run Peru Request No. 1453558, Annex VI at 6-7; **Exhibit C-073**, 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-074**, 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-075**, *Dirección General de Salud Ambiental* (“DIGESA”), *Study of Blood Lead Levels in a Selected Population of La Oroya*, November 23-30, 1999 (*hereinafter* “1999 DIGESA Study”).

²¹⁵ *See* **Exhibit C-075**, 1999 DIGESA Study; *see* **Exhibit C-022**, Doe Run Peru Request No. 1453558, Annex VI at 9-10, 14, 19. *See also* Buckley Witness Stmt. at ¶ 18.

²¹⁶ *See* **Exhibit C-073**, 1998-2002 DRP Report at 75-76. *See also* **Exhibit C-075**, 1999 DIGESA Study at 21; **Exhibit C-022**, Doe Run Peru Request No. 1453558, Annex VI at 9-10, 14, 19.

²¹⁷ *See generally* **Exhibit C-076**, 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-077**, 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-078**, 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”).

b. *The Ministry of Energy & Mines Allowed Centromin to Defer Its Remediation Obligations*

100. Given the impact on human health,²¹⁸ Centromin was to immediately commence its cleanup efforts under the timetable of actions and associated investments proposed by Centromin and approved by the Ministry of Energy & Mines.²¹⁹ 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 2002,²²⁰ as well as preliminary soil-stabilization work, which Centromin was scheduled to complete by the end of 1997.²²¹ The remediation was to be completed by 2005.²²² Centromin did not commence the study or any remediation work.²²³

101. Doe Run Peru 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, Doe Run Peru's then President and General Manager, Ken Buckley, contacted Centromin to find out why it had not commenced the initial phases of rehabilitation.²²⁴ Centromin's then head (now Peru's Minister of Energy & Mines), Jorge Merino Tafur, explained that Centromin lacked the finances needed to perform the remediation.²²⁵ Doe Run Peru then held a series of fruitless meetings over the next two years trying to get Centromin and Peru to commence work.²²⁶ Finally, on October 21, 1999, Mr. Buckley wrote a letter informing Centromin that it urgently needed to undertake its rehabilitation obligations.²²⁷ He noted in this

²¹⁸ See Buckley Witness Stmt. at ¶¶ 13-14.

²¹⁹ See Buckley Witness Stmt. at ¶¶ 13-14.

²²⁰ See Bianchi Expert Report at 22.

²²¹ **Exhibit C-028**, PAMA Operative Version at 1-13, 207-17. A slightly amended PAMA may have moved the dike completion date to 1998. **Exhibit C-045**, Knight Piésold PAMA Review at 21. See also Buckley Witness Stmt. at ¶ 16.

²²² **Exhibit C-009**, Resolution No. 334-97 at 4. See also **Exhibit C-011**, Resolution No. 082-2000 at Table 1 (showing PAMA schedule for Centromin's projects).

²²³ Buckley Witness Stmt. at ¶¶ 14-18.

²²⁴ Buckley Witness Stmt. at ¶¶ 14-16.

²²⁵ Buckley Witness Stmt. at ¶¶ 16-17.

²²⁶ Buckley Witness Stmt. at ¶ 17.

²²⁷ Buckley Witness Stmt. at ¶ 18.

respect that contamination in the soil gave rise to certain third-party claims brought by local farming communities.²²⁸ To Doe Run Peru’s knowledge, Centromin did not respond.²²⁹

102. 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), Centromin requested that the Ministry of Energy & Mines defer Centromin’s remediation obligations and excuse its missed deadlines.²³⁰ On April 17, 2000, the Ministry of Energy & Mines granted Centromin’s request that PAMA No. 4 be 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.”²³¹ Thus, the Ministry allowed Centromin to “re-program[]” 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.”²³² And “[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.”²³³

103. The Ministry of Energy & Mines’ attempt to relieve Centromin and Peru of their obligation to remediate the contaminated soil was ineffective, because Centromin remained obligated to do so under Section 6.1 of the Stock Transfer Agreement. Nevertheless, the Ministry’s decision to grant this request—and to delay critically important remediation work—is notable in several respects.

104. First, SO₂ emissions were not the primary problem. When the Ministry granted Centromin’s extension request in 2000, “[t]he urgency of the lead exposure problem should have become even more obvious to the [G]overnment and Centromin, when the Peruvian Ministry of

²²⁸ See Buckley Witness Stmt. at ¶¶ 17-18.

²²⁹ See Buckley Witness Stmt. at ¶ 18.

²³⁰ Buckley Witness Stmt. at ¶ 19.

²³¹ **Exhibit C-011**, Resolution No. 082-2000 at 4.

²³² **Exhibit C-011**, Resolution No. 082-2000 at 4.

²³³ **Exhibit C-011**, Resolution No. 082-2000 at 4.

Health (MINSA) reported the results of a study showing elevated blood-lead levels in the population of La Oroya.”²³⁴ As Mr. Buckley points out, the Ministry of Energy & Mines’ “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.”²³⁵

105. Second, the Peruvian Government benefited to a certain extent 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, through the extension and “re-programming,” an agency of the Peruvian State delayed the PAMA obligations of a State-owned company and, in the process, purported to excuse a default that the Peruvian Government would have been required to remedy under its Guaranty Agreement and the Stock Transfer Agreement.²³⁶

106. Third, the stated basis for the decision by the Ministry of Energy & Mines (that re-vegetation and soil-stabilization efforts would have been “futile” until SO₂ emissions were reduced) could not have justified 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.²³⁷ 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 us [Centromin] to outline measures to rehabilitate the study area and other appropriate zones.”²³⁸ Although ongoing SO₂ emissions did not impact Centromin’s ability to undertake this study—and to develop the information that was needed for the remediation work—the Ministry of Energy & Mines deferred these PAMA obligations.

²³⁴ Buckley Witness Stmt. at ¶ 19.

²³⁵ Buckley Witness Stmt. at ¶ 19; Bianchi Expert Report at 23, 27.

²³⁶ See **Exhibit C-002**, Stock Transfer Agreement, Clause 6 at 25-28.

²³⁷ **Exhibit C-028**, PAMA Operative Version, § 1.1 at 207-17.

²³⁸ **Exhibit C-028**, PAMA Operative Version, § 1.1(d) at 209.

107. As Dr. Gino Bianchi explains “Centromin’s rationale to delay implementation of PAMA Project No. 4 “until after the La Oroya smelter controls SO₂ emissions” was “not reasonable or justified under the circumstances” and was without “scientific basis.”²³⁹ For one, “ongoing emissions, including ongoing emissions of SO₂, provide no basis to defer site characterization studies to identify areas that require immediate action due to potential impacts to public health resulting from the presence of high concentrations of lead and other heavy metals”—which “should have been the primary focus of the remedial program.”²⁴⁰ Moreover, “the stated need to [first] control SO₂ emissions fails to address changes in facility emissions, and thus the area of impact over time.” As the area impacted by aerial emissions had decreased over time, “there are areas outside the current area of impacts that contain high concentrations of lead and other heavy metals in soil that could be studied and remediated notwithstanding ongoing emissions.”²⁴¹

108. Peru still has not required compliance with the remediation obligations that Centromin assumed more than sixteen years ago. Centromin, now Activos Mineros, did not even obtain the remediation study until 2009.²⁴²

109. Of note, when the Ministry of Energy & Mines extended the deadline for Centromin to complete its PAMA obligations, the Ministry did not require any documentation from Centromin to support its claim that an extension was justified. The Ministry did not impose any special requirements or additional environmental projects before extending Centromin’s deadline under the PAMA. And the Ministry never suggested that it lacked the legal authority to grant an extension beyond the PAMA’s original ten-year period or that an amendment to the law to permit the PAMA extensions would be required. This contradicts the Ministry’s assertions and actions in response to Doe Run Peru’s later requests for a PAMA extension, as set forth in Sections H & J below.

²³⁹ Bianchi Expert Report at 22-23.

²⁴⁰ Bianchi Expert Report at 23.

²⁴¹ Bianchi Expert Report at 23.

²⁴² See **Exhibit C-079**, 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. at ¶ 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. at ¶ 24 n. 8; Bianchi Report at 24 (noting as well that the study itself “appears to be inadequate to develop an effective remedial program”).

c. *Peru and Centromin's Failure to Remediate Has Impacted Both the Health of the Citizens of La Oroya and Renco's Interests*

110. Peru and Centromin's failure to remediate has impacted La Oroya, whose citizens continue to be exposed to historical contamination from the Complex, and who have sued Renco, Doe Run Resources, officers of each, and other related entities. It also has proved deeply prejudicial to Renco, et al., who purchased the Complex, as they are now confronting the very risk the parties allocated to Peru in the Stock Transfer Agreement—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 Doe Run Peru's continuing operation of the Complex during the PAMA period.

111. The Ministry of Energy & Mines itself has recognized that soils contaminated by historic operations constitute an important exposure pathway, explaining that residents' exposure to high lead levels would continue despite the emissions reductions Doe Run Peru achieved because "the dust and soil in La Oroya [would] still will have high residual concentrations of lead from historical emissions."²⁴³ The Ministry's conclusion echoed the finding of independent expert, Integral, which Doe Run Peru had retained previously with the Ministry's support.²⁴⁴ Integral's "Human Health Risk Assessment Report" noted, "[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.*"²⁴⁵ 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."²⁴⁶

112. These elevated blood lead levels and other heavy metal contamination also underpin the third-party allegations in the St. Louis Lawsuits. At least some of the lead in the

²⁴³ **Exhibit C-080**, 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").

²⁴⁴ Schoof Expert Report at 12 ("Based on my prior experience, I was hired by Doe Run Peru and approved by MEM to conduct an independent assessment of health risks at La Oroya . . .").

²⁴⁵ **Exhibit C-078**, 2005 Integral Report at xxxvi (emphasis added).

²⁴⁶ Schoof Expert Report, Exhibit E, March 13, 2009 presentation by Activos Mineros' consultant GWI.

plaintiffs' blood would be directly due to residual lead concentrations in the soil from historical emissions—something that could have been significantly reduced, if not avoided entirely, had Peru followed through on the remediation work it committed to perform.²⁴⁷ This is particularly true given that Doe Run Peru dramatically reduced lead emissions from the Complex.²⁴⁸ 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 Doe Run Peru had made “substantial progress [] to mitigate health impacts”²⁴⁹ and the Complex’s “reduced lead emissions had resulted in reduced lead exposures in 2007 compared with those observed in 2005.”²⁵⁰

G. AS IT LEARNED MORE ABOUT WHAT REALLY NEEDED TO BE DONE, DOE RUN PERU SIGNIFICANTLY EXPANDED ITS EFFORTS, ENGAGED IN NUMEROUS COMPLEMENTARY PROJECTS TO ADDRESS PUBLIC HEALTH ISSUES, AND FOCUSED ON HELPING THE LOCAL POPULATION

113. After acquiring the La Oroya Complex in 1997, Doe Run Peru began to engage in the ever-evolving and complex process of upgrading the La Oroya Complex to meet emissions standards and addressing public health issues. Moreover, as it learned more through technical studies and evaluations, Doe Run Peru voluntarily expanded its efforts spending hundreds of millions of dollars to adequately address air and water emissions, as well as implementing public health and social programs to reduce worker and community exposure to lead and other substances emitted from the Complex.²⁵¹

114. Dr. Schoof notes that “[Doe Run Peru] went far beyond the terms of the PAMA in pursuing numerous, diverse actions to attempt to reduce impacts of emissions to the residents . . . The breadth and depth of such community interventions in La Oroya was impressive . . .”²⁵² She continues, “[i]t is important to recognize the unprecedented diversity and magnitude of the

²⁴⁷ Schoof Expert Report at 16 (“If during the PAMA period Centromin had investigated the magnitude and extent of contamination of soil and settled dust, and implemented programs to reduce exposures to the existing contaminated soil and settled dust, then exposures due to historical contamination would have been significantly reduced.”). See generally **Exhibit C-022**, Doe Run Peru Request No. 1453558, Annex VI.

²⁴⁸ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 76 (noting a “[r]eduction of lead emission by 68%, achieving the MPL in 2006.”).

²⁴⁹ Schoof Expert Report at 16.

²⁵⁰ Schoof Expert Report at 14.

²⁵¹ Buckley Witness Stmt. at ¶¶ 20-35; Mogrovejo Witness Stmt. at ¶¶ 26-34.

²⁵² Schoof Expert Report at 14.

programs being carried out to attempt to mitigate exposure to lead and other metals in La Oroya. Programs that I am aware of . . . in other smelter communities are much more limited than the programs that Doe Run Peru implemented and supported in La Oroya.”²⁵³

1. Doe Run Peru Expanded Its PAMA Obligations

115. Between 1998 and 2002, Doe Run Peru’s engineering and design studies showed that Centromin had severely underestimated the cost and complexity of updating the Complex to meet the environmental standards, and Doe Run Peru made multiple requests to expand the scope of its PAMA obligations.²⁵⁴ On October 19, 1999, the Ministry of Energy & Mines approved Doe Run Peru’s request to amend its PAMA obligations by adding more tasks and increasing the investment amount by US\$ 60,767,000 to US\$ 168,342,000.²⁵⁵ As the Ministry of Energy & Mines later noted, “the project of greater importance [was] the Industrial Liquid Effluents Treatment Plant that was increased from an initial amount of US\$ 2,500,000 to US\$ 33,600,000.”²⁵⁶ On January 25, 2002, the Ministry approved another Doe Run Peru request to increase its PAMA commitment to US\$ 173.05 million.²⁵⁷

116. Acknowledging that the PAMA did not address a number of critical issues, the Ministry requested that Doe Run Peru engage in eight new emissions reduction projects. On December 13, 2002, in a quarterly report on the outside auditor’s findings, the Ministry wrote to Doe Run Peru approving its progress to date,²⁵⁸ but directing Doe Run Peru to “implement additional actions to attain the fulfillment of the objectives of the projects agreed to in the

²⁵³ Schoof Expert Report at 14.

²⁵⁴ See, e.g., **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 7; **Exhibit C-044**, Request for PAMA Modification No. 1215214 at 2.

²⁵⁵ **Exhibit C-081**, Ministry of Energy and Mines Report No. 1237-99-EM-DGM-DFM/DFT concerning Environmental Mitigation and Management Plan (“PAMA”) and Modification of Timeline for “PAMA” actions and investments, October 18, 1999 at 3 (“There have been economic changes at the conclusion of some projects with budgeted amounts for investments due to detailed engineering studies, so the mentioned company referred asked to increase investment in the approved PAMA, which was scheduled to be executed into 2006 with an investment of US\$ 107,575,000.00 (see Table 1) and in the new projection, execution is considered with an investment of US\$ 168,342,000.00 (see Table 2), i.e., an increase of US\$ 60,767,000.00 in the same period, advising that the amount invested in all projects would increase, except the Vado and Malpaso Arsenic Trioxide Deposit (No. 14), where the investment would decrease from US\$ 2,000,000.00 to US\$ 1,858,000.00”) (hereinafter “MEM Report No. 1237-99”).

²⁵⁶ **Exhibit C-080**, Order No. 157-2006 at 5; **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 21-25.

²⁵⁷ **Exhibit C-022**, Doe Run Peru Request No. 1453558 at 17.

²⁵⁸ **Exhibit C-015**, Memorandum No. 732-2002 at 3.

PAMA” and to “present an execution schedule of the following activities that are considered of an urgent nature.”²⁵⁹ In particular, the Ministry requested that Doe Run Peru do the following:

(1) separate treatment for dusts to eliminate recirculation; (2) encapsulate the concentrates during warehousing; (3) an environmental management plan for the Huanchan deposit; (4) ongoing cleaning program for the plant; (5) establish self-limitations on the treatment of concentrates with high contents of arsenic and cadmium with the aim of reducing the levels of emission to acceptable national and international levels; (6) better the plant maintenance in order to reduce the emission of gasses and dust; (7) design a system of alert to prevent the occurrence of emission peaks; and (8) coordinate with the civil society the relocation of the educational centers of La Oroya Antigua, including transportation of the students.²⁶⁰

117. On December 27, 2002, Doe Run Peru responded to the Ministry’s request, noting that an independent environmental auditor, *Sociedad de Estudios y Representaciones Mineras S.R. Ltda.*, had not suggested the new undertakings during its inspection or in the “Inspection Report on Compliance with Environmental Protection and Conservation Standards for the second half of 2002.”²⁶¹ Doe Run Peru nevertheless added the new projects to its growing list of projects that it was required to undertake and complete within the original ten-year timeframe of the PAMA.

2. Doe Run Peru Identified Lead Contamination as a Public Health Risk and Engaged in Numerous Activities Outside the Scope of the PAMA to Address It

118. Doe Run Peru also engaged in numerous activities beyond the scope of the PAMA projects to reduce lead contamination and to address public health concerns related to lead exposure for both workers and the community.

119. Mr. Buckley, the President and General Manager of Doe Run Peru from 1997 to 2003, summarizes some of Doe Run Peru’s immediate efforts in lead reduction:²⁶²

²⁵⁹ **Exhibit C-015**, Memorandum No. 732-2002 at 3.

²⁶⁰ **Exhibit C-015**, Memorandum No. 732-2002 at 3.

²⁶¹ **Exhibit C-082**, Letter from K. Buckley (Doe Run Peru) to M. Chappuis (Ministry of Energy & Mines), December 27, 2002 at 1 (*hereinafter* “December 27, 2002 Letter”).

²⁶² **Exhibit C-083**, Doe Run Peru, *Report to Our Communities In La Oroya, Province of Yauli, Junín-Peru*, 2001 at 31 (*hereinafter* “2001 DRP Report to Our Communities”).

We knew lead was an issue, and embarked on a very intensive program to get the La Oroya workers' blood lead levels under control One of the first things that I did when we took over the Complex was to stand down all workers until they could be issued protective gear and trained in standard safety practices. Their equipment was so out of date. It was difficult to get the right protective equipment, but we brought in protective gear that covered the entire face Our workers' blood leads came down immediately.

We also had to stop workers from eating on the job. Eating on the job is a key way to get lead poisoning. So we built kitchens and lunch-rooms where people could eat in clean conditions, and we required that they wash their hands before eating.

We also built showers, and required that workers shower and change their boots and clothes before leaving for home, and leave their dirty clothes at the plant.²⁶³

120. As Mr. Buckley's witness statement highlights, Doe Run Peru reduced blood lead levels in its workers from 51.1 µg/dl at the time Doe Run Peru acquired the Complex in 1997, to 38.0 µg/dl in 2002, through (among other things) the mandated use of respirators and the change room (where workers start and end each day in a clean set of clothes), the use of spray trucks to reduce dust, and frequent medical check-ups.²⁶⁴ By 2002, the workers' blood lead levels were thus below the World Health Organization's recommended worker levels of 40 µg/dl for men and 30 µg/dl for women.²⁶⁵ And these average numbers continued to drop, reaching 32.18 µg/dl at the end of 2005.²⁶⁶ Moreover, Doe Run Peru's new practices dramatically reduced accidents at the Complex,²⁶⁷ and Doe Run Peru received awards for its safety record.²⁶⁸

²⁶³ Buckley Witness Stmt. at ¶¶ 23-25.

²⁶⁴ **Exhibit C-073**, 1998-2002 DRP Report at 30-31; *see also* **Exhibit C-083**, 2001 DRP Report to Our Communities at 29, 31. *See also* Buckley Witness Stmt. at ¶¶ 22-26; Neil Witness Stmt. at ¶¶ 9-12.

²⁶⁵ **Exhibit C-073**, 1998-2002 DRP Report at 30-31; **Exhibit C-083**, 2001 DRP Report to Our Communities at 29. *See also* Buckley Witness Stmt. at ¶ 26.

²⁶⁶ **Exhibit C-084**, Doe Run Peru, *Report to Our Communities, La Oroya*, 2006 at 19 (*hereinafter* "2006 DRP Report to Our Communities").

²⁶⁷ *Id.*; **Exhibit C-085**, Doe Run Peru, *Report to Our Communities, La Oroya*, 2005 at 8 (*hereinafter* "2005 DRP Report to Our Communities"). *See also* Buckley Witness Stmt. at ¶¶ 32-34; *id.* ¶ 33 ("For a year and a half . . . I would go beat the drum at La Oroya about safety. Supervisors who didn't comply with the safety procedures would get fired. To achieve workplace safety, you need to have zero tolerance for accidents.").

²⁶⁸ **Exhibit C-085**, 2005 DRP Report to Our Communities at 8. *See also* Buckley Witness Stmt. at ¶ 34.

121. Also not included in the original PAMA were the lead reduction measures Doe Run Peru implemented at the Complex to prevent the transmission of contaminants to the workers' homes. These measures included constructing on-site change-houses,²⁶⁹ washing trucks before they left the facility, and mandating that workers shower and change clothes after their shift.²⁷⁰

122. In addition, Doe Run Peru took a number of immediate measures to reduce emissions from the main stack and to control fugitive emissions (which were the main source of lead and other heavy metal emissions):²⁷¹ it installed a television system in an environmental control center to monitor and immediately address visible fugitive emissions related to operational issues, like malfunctioning machines or open windows,²⁷² introduced portable radios to facilitate real-time communications on the Complex, repaired the flues to improve dust recovery, and repaired and changed filter bags in 27 bag houses, increasing dust recovery from 96.5 percent to 98.1 percent, among other projects.²⁷³ By the end of 2001, Doe Run Peru had reduced the amount of particulate matter emitted from the main stack by 27.6 percent.²⁷⁴

123. In November 1999 the technical arm of the Peruvian Ministry of Health (DIGESA) reported the results of a study of blood lead levels in a selected population of La Oroya Township.²⁷⁵ Several months later, in March 2000, an NGO issued a report assessing blood lead levels of children under three and pregnant women in La Oroya.²⁷⁶ Both studies showed higher than normal blood-lead levels in the examined population.²⁷⁷

²⁶⁹ **Exhibit C-073**, 1998-2002 DRP Report at 32; **Exhibit C-084**, 2006 DRP Report to Our Communities at 16.

²⁷⁰ *See generally* **Exhibit C-073**, 1998-2002 DRP Report at 17-24; **Exhibit C-083**, 2001 DRP Report to Our Communities at 31. *See also* Buckley Witness Stmt. at ¶ 25; Neil Witness Stmt. ¶ 8.

²⁷¹ *See generally* **Exhibit C-073**, 1998-2002 DRP Report at 57-68; **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 79-82, 102, 115-16. *See also* Buckley Witness Stmt. at ¶ 22.

²⁷² Mogrovejo Witness Stmt. at ¶ 31.

²⁷³ **Exhibit C-073**, 1998-2002 DRP Report at 60-65.

²⁷⁴ **Exhibit C-083**, 2001 DRP Report to Our Communities at 73-79.

²⁷⁵ Buckley Witness Stmt. at ¶ 19.

²⁷⁶ **Exhibit C-086**, Consorcio Unión Para El Desarrollo Sostenible (“UNES”), *Evaluation of Lead Levels and Exposure Factors Among Pregnant Women and Children Under 3 Years Old in the City of La Oroya*, March 2000 at 5-6 (*hereinafter* “2000 UNES Report”). This study analyzed 48 pregnant women and 30 children.

²⁷⁷ **Exhibit C-086**, 2000 UNES Report at 6.

124. To determine the scope of the problem, Doe Run Peru performed a follow-up blood-lead level study in 2000 to 5,000 residents including children²⁷⁸ and created the Hygiene and Environmental Health Program to carry out a series of actions based on the general recommendations of the United States Centers for Disease Control and Prevention and the World Health Organization.²⁷⁹ These actions included: (1) evaluating and monitoring the physical and psychological well-being of the children of La Oroya;²⁸⁰ (2) utilizing social workers to evaluate the family situation and potential risk factors for high blood lead levels in the home;²⁸¹ (3) providing personalized training in hygiene and nutrition during house visits, including training in hand washing and bathing and training in proper cleaning of the house;²⁸² (4) creating leaders in health and hygiene through community workshops;²⁸³ (5) sponsoring presentations on health and hygiene in local schools, including an educational puppet show and children's book;²⁸⁴ and (6) sponsoring a campaign to clean the schools, roads, and neighborhoods on a weekly basis, for which Doe Run Peru provided cleaning supplies and pressurized water from a water truck.²⁸⁵

125. In 2003, at Doe Run Peru's insistence, the Peruvian Ministry of Health entered into an agreement with Doe Run Peru to support a public health program.²⁸⁶ Through this agreement, Doe Run Peru offered to provide financial support to the Peruvian Ministry of Health to achieve the following objectives: (1) establishing a culture of prevention in the population with the adoption of healthy habits that reduce exposure to dust; (2) establishing a safer water system, a program for potable water, monitoring programs for the soil, crops, wild vegetation and animals, and air quality, and monitoring of blood lead levels; (3) gradually reducing blood lead levels; (4) creating a program to treat children and pregnant women with high blood lead

²⁷⁸ The results of the study were presented on July 24, 2001. See **Exhibit C-083**, 2001 Report to Our Communities at 151.

²⁷⁹ **Exhibit C-073**, 1998-2002 DRP Report at 76. See also Neil Witness Stmt. at ¶¶ 9-12.

²⁸⁰ **Exhibit C-073**, 1998-2002 DRP Report at 84-87.

²⁸¹ **Exhibit C-073**, 1998-2002 DRP Report at 87-88.

²⁸² **Exhibit C-073**, 1998-2002 DRP Report at 88.

²⁸³ **Exhibit C-073**, 1998-2002 DRP Report at 89.

²⁸⁴ **Exhibit C-073**, 1998-2002 DRP Report at 92-96.

²⁸⁵ **Exhibit C-073**, 1998-2002 DRP Report at 97-99.

²⁸⁶ **Exhibit C-087**, Contract, Cooperation Agreement No. 008-2003 by and between The Ministry of Health and Doe Run Peru S.R.L., July 4, 2003 (*hereinafter* "2003 DRP-Ministry of Health Contract"). See also Buckley Witness Stmt. at ¶ 30.

levels; and (5) signing cooperation agreements with various local authorities and agencies.²⁸⁷ Prior to 2006 when the Ministry of Energy & Mines mandated its continuance,²⁸⁸ Doe Run Peru provided financial and other support (up to US\$ 1 million/year) for this program on a voluntary basis.

126. In another voluntary effort to reduce blood lead levels in the community, Doe Run Peru hired the consulting firm Gradient Corporation in 2003 to perform a study on the human health risks in La Oroya.²⁸⁹ Based on Gradient's conclusions, Doe Run Peru began a series of complementary projects to reduce lead (and other particulate) emissions from the facility.²⁹⁰

127. The additional projects to reduce lead (and other particulate) emissions through chimneys or stacks included (1) installation of baghouse filters for the lead furnaces, the arsenic kitchen, and the lead foam reverberator furnace, (2) preparation of units 1, 2 and 3 of the Cottrell Process for the sintering plant, and (3) reducing particulate material from copper converters and from the Cottrell Process in the anode residue plant.²⁹¹ Doe Run Peru also added an electrostatic precipitator to the Cottrell Central, which reduced particulate emissions by 23 percent.²⁹² Combined with stopping one line roasters in the Zinc Circuit, the project created a 35 percent reduction in particulate emissions from the chimney.²⁹³

128. The projects to reduce lead (and other particulate) fugitive emissions, in turn, included (1) repowering of ventilation systems A, B, C and D of the lead sintering plant, (2) closure of lead furnace buildings and foam plant, (3) management of lead plant fusion beds, (4)

²⁸⁷ **Exhibit C-087**, 2003 DRP-Ministry of Health Contract, Third Clause at 2-3.

²⁸⁸ **Exhibit C-088**, Ministerial Resolution No. 257-2006-MEM/DM concerning partially approving the Application for Exceptional Extension of the "Sulfuric Acid Plants" Project, May 29, 2006, art. 4 at 8 (*hereinafter* "Resolution No. 257-2006").

²⁸⁹ **Exhibit C-089**, Gradient Corporation, *Comparison of Human Health Risks Associated with Lead, Arsenic, Cadmium, and SO₂ in La Oroya Antigua, Peru*, February 9, 2004 (*hereinafter* "Gradient Corp. Report"). See also Bruce Neil Witness Stmt. at ¶ 10.

²⁹⁰ Neil Witness Stmt. at ¶¶ 10-11 ("The measures we took to address blood lead levels in our workers and in the surrounding community were not PAMA obligations, they were simply the right thing to do.").

²⁹¹ See, e.g., **Exhibit C-090**, Letter from J. C. Mogrovejo (Doe Run Peru) to J. Bonelli (Ministry of Energy & Mines), Request for an Exceptional Extension of Deadline to Complete the Sulfuric Acid Plants Projects, December 15, 2005 at 63-66 (*hereinafter* "Detailed Request for a PAMA extension"); **Exhibit C-013**, Report No. 118-2006 at 34-42; **Exhibit C-084**, 2006 DRP Report to Our Communities at 30.

²⁹² **Exhibit C-090**, Detailed Request for a PAMA extension at 7.

²⁹³ **Exhibit C-090**, Detailed Request for a PAMA extension at 7.

management of copper plant fusion beds, (5) management of nitrous gases at the anode residue plant, (6) a new ventilation system for the anode residue plant building, (7) reduction of recirculating fines and (8) restriction on entry of concentrates. Doe Run Peru also added industrial sweepers and paved the roads to the different plants.²⁹⁴

129. Doe Run Peru implemented these complementary projects alongside its rapidly expanding PAMA projects, with the twin goals of better environmental performance at the Complex and reducing blood lead levels in its workers and the community. As Mr. Buckley explained, Doe Run Peru performed the complementary projects, because, “[W]e had to do something. I was not prepared to wait for the [G]overnment, which had been dodging its obligation since the beginning.”²⁹⁵ When Doe Run Peru later applied for a PAMA extension, Doe Run Peru proposed that it complete the complementary projects as part of an enlarged commitment to address public health issues.²⁹⁶

3. Doe Run Peru Engaged in Numerous Additional Social and Public Health Projects to Help the Community

130. Doe Run Peru also sponsored and implemented social and public health projects for the community, spending more than US\$ 30 million between 1998 and 2010 on quality-of-life improvements.²⁹⁷ Indeed, Doe Run Peru was one of the first companies in Peru to implement this type of voluntary corporate social responsibility program.

131. Doe Run Peru’s social programs included the following:

- Offering special programs for the women from the communities: training programs focused on budget planning, child rearing, nutrition, and social responsibility, training a team of health promoters to educate the communities about health risks and orient pregnant women on pre-natal care, and extensive small business training;²⁹⁸

²⁹⁴ **Exhibit C-090**, Detailed Request for a PAMA extension at 63-66; **Exhibit C-013**, Report No. 118-2006 at 39-44; **Exhibit C-084**, 2006 DRP Report to Our Communities at 30.

²⁹⁵ Buckley Witness Stmt. at ¶ 27.

²⁹⁶ See Sections II.G.3 & II.H.2.

²⁹⁷ See **Exhibit C-091**, Doe Run Peru, *Report to Our Communities*, May 2011 at 24 (*hereinafter* “2011 DRP Report to Our Communities”). See also Buckley Witness Stmt. at ¶¶ 28-31, 35.

²⁹⁸ **Exhibit C-073**, 1998-2002 DRP Report at 126-36.

- Instituting the Human and Social Ecology Program, which monitored the health of at-risk children and provided daily nutritional lunches;²⁹⁹
- Sponsoring (1) training programs in animal husbandry targeted to the farming communities around La Oroya and (2) the Forestation and Andean Gardening program, in which Doe Run Peru and community participants planted more than 121,000 seedlings³⁰⁰ and 132,000 square meters of gardens by 2006;³⁰¹
- Founding the Ecological Recreation Center, a wildlife refuge and garden center with free access to the public;³⁰²
- Upgrading several community facilities, including marketplaces, community centers, and educational facilities;³⁰³ and
- Spending over US\$ 600,000 to rebuild the Central Highway that runs through La Oroya.³⁰⁴

H. IN 2006, THE MINISTRY OF ENERGY & MINES AND DOE RUN PERU AGREED, AS DID THE MINISTRY'S INDEPENDENT OUTSIDE CONSULTANT, THAT AN EXTENSION OF TIME FOR DOE RUN PERU TO COMPLETE THE SULFURIC ACID PLANTS PROJECT WAS NECESSARY

1. The Ministry of Energy & Mines Granted Doe Run Peru an Extension to Complete the Sulfuric Acid Plants PAMA Project to Address Lead Contamination and Other Environmental Concerns

132. On May 25, 2006, the Ministry of Energy & Mines granted Doe Run Peru an extension of two years and ten months beyond the original ten-year PAMA period, for Doe Run Peru to complete the PAMA. The Ministry explained that this extension was justified for the following reasons:

The PAMA in the mining sector was the first experience of using this instrument in Peru, thus the PAMA presented in this first phase, including the PAMA of the La Oroya Metallurgical Complex, were prepared with limited technical detail and a very basic level of engineering (conceptual), which did not contemplate the remediation of some environmental

²⁹⁹ **Exhibit C-073**, 1998-2002 DRP Report at 142-143.

³⁰⁰ **Exhibit C-084**, Doe Run Peru, La Oroya: Report to Our Communities 2006, 46-47; **Exhibit C-073**, 1998-2002 DRP Report at 195.

³⁰¹ **Exhibit C-084**, Doe Run Peru, La Oroya: Report to Our Communities 2006 at 46-48.

³⁰² **Exhibit C-073**, 1998-2002 DRP Report at 236.

³⁰³ **Exhibit C-084**, Doe Run Peru, La Oroya: Report to Our Communities 2006 at 44-45.

³⁰⁴ **Exhibit C-073**, 1998-2002 DRP Report at 300.

problems, which in some cases were significant, as they were not completely or adequately identified or characterized.

In the specific case of the PAMA for the La Oroya Metallurgical Complex, one of the sources of contamination that was not initially identified was fugitive emissions, the importance of which was not fully understood, since in addition to the emissions of particulate material, including heavy metals, they were not sufficiently measured. Their effects on health, particularly the effects of lead, were detected through subsequent monitoring in 1999, within the initial context of the studies performed to eliminate lead from gasoline in the country.³⁰⁵

133. Doe Run Peru had legitimately requested a five-year extension to complete its PAMA.³⁰⁶ Later Doe Run Peru reduced its request to four years. The extension of only two years and ten months granted by the Ministry of Energy & Mines was disappointing.³⁰⁷

134. As Doe Run Peru had informed the Ministry of Energy & Mines on February 17, 2004, despite Doe Run Peru's many additional projects, the La Oroya Complex would not meet the LMPs and ECAs for contaminants like lead—an urgent health issue—without significantly more work, investment and importantly, time.³⁰⁸ The two main sources of lead were soil and particulate emissions, particularly fugitive emissions, which a study Doe Run Peru commissioned found to have approximately eight times the impact of stack emissions.³⁰⁹ As a study of human health outcomes by Gradient³¹⁰—which Doe Run Peru provided to the Ministry of Energy & Mines—explained “the results of the risk analysis led to the conclusion that the effects of lead are the most immediate concern for this community.”³¹¹

³⁰⁵ **Exhibit C-013**, Report No. 118-2006 at 6.

³⁰⁶ See Neil Witness Stmt. at ¶¶ 14-31.

³⁰⁷ See Neil Witness Stmt. at ¶¶ 30-31; Mogrovejo Witness Stmt. at ¶¶ 35-47.

³⁰⁸ **Exhibit C-022**, Doe Run Peru Request No. 1453558, Annex VI at 9-11; **Exhibit C-077**, 2005 CDC Report, Conclusions at 33-35; **Exhibit C-076**, 2008 Integral Report, Conclusions at 7-1 to 7-8.

³⁰⁹ **Exhibit C-022**, Doe Run Peru Request No. 1453558 at 1-6. See also **Exhibit C-160**, McVehil-Monnett Associates, Inc., *Air Quality Dispersion Modeling For Human Health Risk Assessment: La Oroya Metallurgical Complex*, September 6, 2005, Executive Summary (*hereinafter* “McVehil-Monnett Report”); **Exhibit C-077**, 2005 CDC Report, Recommendations at 33-36.

³¹⁰ **Exhibit C-089**, Gradient Corp. Report.

³¹¹ **Exhibit C-022**, Doe Run Peru Request No. 1453558 at 6; **Exhibit C-090**, Detailed Request for a PAMA extension, Executive Summary at 10 (“The risk study confirmed that lead exposure, over other metals, resulting from decades of operation of the complex, constitutes the main health risk factor in La Oroya, and as such its

135. The PAMA, however, did not allocate any funds, or identify the necessary projects, to address lead reduction or fugitive emissions.³¹² To the contrary, the PAMA required that Doe Run Peru devote enormous resources to construction of the sulfuric acid plants, which did not address either the lead issue or the fugitive emissions.³¹³ And, Doe Run Peru understood that SO₂, though an important pollutant, did not have the same negative impact on human health as lead.³¹⁴ As a Comparison of Human Health Risks Associated with Lead, Arsenic, Cadmium and SO₂ in La Oroya Antigua stated “respiratory and irritant effects associated with short-term SO₂ exposures are readily reversible, and generally disappear within 24 hours” and there is little evidence of impact from long-term exposure.³¹⁵ Doe Run Peru thus emphasized the need to refocus resources on first reducing fugitive emissions, which have a significantly greater impact on air quality issues associated with lead and other particulate matter.³¹⁶

136. In 2006, the Ministry of Energy & Mines hired technical experts to assist it in evaluating Doe Run Peru’s request for an extension. Dr. Partelpoeg, the smelting and operations expert whom the Ministry hired in 2006 (and who has provided an expert opinion in these proceedings), concluded in 2006 that the three-year extension that the Ministry was considering was “very aggressive” and would require an “extraordinary effort” by Doe Run Peru to ensure timely completion of the Copper Circuit project.³¹⁷ Dr. Partelpoeg also confirmed to the Ministry in 2006 that existing measures to collect fugitive emissions from the Complex were

reduction must be prioritized. This study used the results obtained from chemical analyses of samples obtained during fieldwork concerning metals in water intended for human consumption, in soil, in house dust, and in exteriors; of lead, iron, calcium and zinc in food; and of the population’s blood lead levels, particularly the children’s. Information on the air quality monitoring obtained from [Doe Run Peru]’s stations was also taken into consideration.”).

³¹² **Exhibit C-022**, Doe Run Peru Request No. 1453558 at 17, 30-31, 35, 47-75.

³¹³ See **Exhibit C-028**, PAMA Operative Version at 152, 157, 169.

³¹⁴ **Exhibit C-022**, Doe Run Peru Request No. 1453558 at 45 (“Taking into account the health risks arising from contamination effects, the handling of particulate matter and lead emissions is prioritized over the handling of SO₂; the latter represents a lower health risk due to its reversible effects.”); *Id.* at Annex VI; **Exhibit C-089**, Gradient Corp. Report at 2-6; **Exhibit C-090**, Detailed request for a PAMA extension at 40-41.

³¹⁵ **Exhibit C-022**, Doe Run Peru Request No. 1453558 at 2.

³¹⁶ **Exhibit C-022**, Doe Run Peru Request No. 1453558 at 6 (stating “fugitive emissions have an effect 8 times greater on air quality than emissions from the main chimney”). See also **Exhibit C-160**, McVehil-Monnett Report, Executive Summary (stating “The future trend analysis demonstrates that the greatest improvement in ambient air quality will occur as projects are implemented to reduce or eliminate fugitive emissions”).

³¹⁷ **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, § 4.3 at 15.

inadequate³¹⁸ and he agreed with Doe Run Peru's initiatives to reduce emissions.³¹⁹ He also indicated that Doe Run Peru was making "a strong effort to implement projects that will reduce emissions."³²⁰

137. A human health expert, Dr. Scott Clark, also hired by the Ministry of Energy & Mines in 2006 likewise confirmed to the Ministry in 2006 the importance of taking immediate action to address lead emissions and public health initiatives to deal with lead exposure in the population.³²¹ He also noted that a major problem was lead-contaminated soil and interior dust build-ups in housing units,³²² which it was Centromin's obligation to remediate, and recommended an area-wide soil lead assessment.³²³

138. Moreover, as Doe Run Peru explained to the Ministry of Energy & Mines, the sulfuric acid plants project (PAMA Project No. 1) would require a complete redesign to meet the LMPs and ECAs for SO₂,³²⁴ something that could not be completed in the allotted time frame. The Ministry's smelting expert at the time, Dr. Partelpoeg, agreed.³²⁵

139. The original sulfuric acid plants project was intended to reduce the emission of SO₂ from the facility by introducing new technologies, and the original PAMA had called for the construction of two sulfuric acid plants—one for the Copper Circuit and one for the Lead and Zinc Circuits—to treat SO₂ emissions.³²⁶ Under the PAMA schedule, this project was to be completed last, with construction beginning in 2003 and finishing in 2006.³²⁷ In the planning and design process, Doe Run Peru engineers discovered that the only design that could meet the

³¹⁸ **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, § 4.4, Appendix A at 16, 18-19, 26.

³¹⁹ **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, Appendix A at 25, 28-30.

³²⁰ **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, Appendix A at 34.

³²¹ **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, Appendix Cat 17 *et seq.*

³²² **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, Appendix C at 23-27.

³²³ **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, Appendix C at 28.

³²⁴ **Exhibit C-090**, Detailed request for a PAMA extension at 49-50. *See also* Neil Witness Stmt. at ¶¶ 15-16.

³²⁵ **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, Appendix A at 38. *See also* Partelpoeg Expert Report, February 18, 2014, § 2 at 2.

³²⁶ **Exhibit C-044**, Request for PAMA Modification No. 1215214, Table 2 at 5; **Exhibit C-028**, PAMA Operative Version, Section 3.3.2 at 171-72. *See also* Neil Witness Stmt. at ¶¶ 15-16.

³²⁷ **Exhibit C-044**, Request for PAMA Modification No. 1215214, Table 2 at 5.

LMPs and ECAs for SO₂ required the construction of three separate sulfuric acid plants—one for each circuit; not two (and not a single sulfuric acid plant either).³²⁸

140. Building three separate plants required significant additional investment in a weak global metals market, and, more importantly, time.³²⁹ As Knight Piésold had noted in its 1996 report to Centromin, developing sulfuric acid plants was a very time-intensive and expensive project.³³⁰ Doe Run Peru’s then CEO, Bruce Neil, stated that in 2004 “[w]e understood that given the complexity, time and cost of designing and building three distinct sulfuric acid plants, it would be next to impossible to complete all plants by January 2007, as required in the initial PAMA.”³³¹ Importantly, the Ministry’s expert agreed with this assessment.³³²

2. The Ministry of Energy & Mines’ Extension Imposed Onerous Conditions and Significantly Expanded the Cost and Complexity of Doe Run Peru’s PAMA Obligations, While Granting Only an Additional Two Years and Ten Months

141. Though it ultimately recognized that an extension was fair and necessary, the Ministry of Energy & Mines imposed a number of onerous conditions, additional projects, and provided a timeline for the sulfuric acid plants that even its own expert described as “very aggressive.”³³³

142. Many months after receiving Doe Run Peru’s initial request for a five-year extension, the Ministry of Energy & Mines passed Law 046-2004-EM on December 29, 2004, providing that a company making an extension request would need to submit an exhaustive report by December 29, 2005, audited financial statements for the five fiscal years preceding submission of the extension request, statements of public support, and establish a trust account.³³⁴

³²⁸ **Exhibit C-090**, Detailed request for a PAMA extension at 49-50. *See also* Neil Witness Stmt. at ¶¶ 15-16.

³²⁹ **Exhibit C-090**, Detailed request for a PAMA extension at 38-41; **Exhibit C-022**, Doe Run Peru Request No. 1453558 at 46. *See also* Buckley Witness Stmt. at ¶ 20; Neil Witness Stmt. at ¶¶ 17, 25.

³³⁰ **Exhibit C-008**, Knight Piésold Report for Centromin at 33 (emphasis added).

³³¹ Neil Witness Stmt. at ¶ 17; Mogrovejo Witness Stmt. at ¶¶ 39-40.

³³² **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, § 5.2, Appendix A at 9, 38; Expert Report of Partelpoeg, February 18, 2014, § 2 at 2.

³³³ **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, § 4.3 at 15.

³³⁴ **Exhibit C-092**, Supreme Decree No. 046-2004-EM concerning Law Establishing Provisions dor the Extension of Terms on an Exceptional Basis for the Completion of Specific Environmntnal Projects Contemplated in Environmental Remediation Programs, December 29, 2004 (*hereinafter* “Decree No. 046-2004”), art. 7 at 3-4.

The granting of an extension was not new (the Ministry had at that point granted numerous other PAMA extensions to Centromin, and to other mine and smelter operators),³³⁵ but the conditions were new and burdensome.

143. The regulation allowed for a maximum extension of four years.³³⁶ On December 15, 2005, Doe Run Peru filed a request to extend the term of Project No. 1 for four years.³³⁷ In its exhaustive report, Doe Run Peru described its operations and compliance efforts, and the urgency of dealing with lead contamination.³³⁸

144. To address the fugitive emissions, Doe Run Peru committed to execute many projects outside the scope of the PAMA in an effort to dramatically reduce emissions levels.³³⁹ These projects were based on a number of reports and studies, including the Health Risk Assessment performed by Integral Consulting.³⁴⁰ Doe Run Peru's extension request also made clear that it would continue to perform additional projects at significant expense to improve the environment and help the local community.³⁴¹

145. Doe Run Peru estimated that from a technical perspective it would take a minimum of three-and-a-half to four years to complete the three sulfuric acid plants, in light of the engineering required and the complexity of constructing inside an operating metallurgical

³³⁵ See Mogrovejo Witness Stmt. at ¶ 36 (stating “MEM understood that the original PAMA (like the PAMAs for other facilities in Peru) as drafted was incomplete, underestimated the amount of work to be done and underestimated the cost involved. MEM had created arbitrary PAMA completion periods like five years for mines and ten years for smelters, without any reference to how long it would actually take to meet emissions levels at a facility As a result, MEM had granted PAMA extensions to numerous other companies: in 2000, MEM had granted an extension to Centromin for its portion of the La Oroya PAMA;[] in 2001, MEM had granted a blanket one-year extension to mining companies that had been unable to meet their five-year PAMA deadline and six additional months for certain special projects;[] and, in 2003, it had granted an extension to the Southern Peru copper smelter.”)

³³⁶ **Exhibit C-092**, Decree No. 046-2004, art. 1.2 at 1.

³³⁷ **Exhibit C-090**, Detailed Request for a PAMA Extension.

³³⁸ See **Exhibit C-090**, Detailed Request for a PAMA Extension.

³³⁹ **Exhibit C-090**, Detailed Request for a PAMA Extension at 7-8, 62-69.

³⁴⁰ See, e.g., **Exhibit C-090**, Detailed Request for a PAMA Extension, Executive Summary; **Exhibit C-089**, Gradient Corp. Report; **Exhibit C-077**, 2005 CDC Report .

³⁴¹ **Exhibit C-090**, Detailed Request for a PAMA Extension at 44-52.

plant—particularly one as complex as La Oroya.³⁴² In total, Doe Run Peru’s estimated PAMA investment increased to US\$ 195.86 million.³⁴³

146. Doe Run Peru also committed to complete all outstanding PAMA projects other than Project No. 1 (sulfuric acid plants) by the end of 2006, under the previously-approved schedule for their execution.³⁴⁴ At the time, Doe Run Peru was still working on Projects No. 8 and 16, but they were nearing completion.³⁴⁵

147. On February 17, 2006, through Decision No. 157-2006-MEM/AAM, the Ministry of Energy & Mines provided a preliminary response to Doe Run Peru’s extension request. In it, the Ministry stated that it “[may] make the approval of the extension requested by the mining holder conditional upon the adoption of special measures such as reprioritization of environmental goals of the PAMA, rescheduling suspension or substitution of projects, as well as any other supplementary measure geared to preventing and reducing risks to the environment, health or the safety of the population and to safeguard the proper execution of the PAMA.”³⁴⁶

148. Despite Doe Run Peru’s detailed submissions in support of its extension request, the Ministry of Energy & Mines provided 90 “observations” on the extension request and asked Doe Run Peru to respond within 30 days.³⁴⁷ For example, the Ministry stated that “Doe Run Peru must define specific objectives as regards the reduction in levels of metals in the soil, in accordance with international standards.”³⁴⁸ This “observation” was particularly unexpected and inappropriate, because remediation of the soil was Centromin’s (and Peru’s) obligation under both the PAMA and the Stock Transfer Agreement.³⁴⁹ Some of the 90 observations were also

³⁴² **Exhibit C-090**, Detailed Request for a PAMA Extension at 39.

³⁴³ **Exhibit C-090**, Detailed Request for a PAMA Extension at 5, 11-12.

³⁴⁴ **Exhibit C-090**, Detailed Request for a PAMA Extension at 5-8.

³⁴⁵ **Exhibit C-090**, Detailed Request for a PAMA Extension at 5-8.

³⁴⁶ **Exhibit C-080**, Order No. 157-2006 at 7.

³⁴⁷ **Exhibit C-080**, Order No. 157-2006.

³⁴⁸ **Exhibit C-080**, Order No. 157-2006, Observation 4 at 14.

³⁴⁹ *See Exhibit C-002*, Stock Transfer Agreement, Clause 6 at 25. *See also* Sections F, G, H, I.

impossible to achieve, including the Ministry's unreasonable call for "the *total* elimination of fine recirculants."³⁵⁰

149. After working around the clock to meet the 30-day deadline, Doe Run Peru responded to the Ministry's observations on March 20, 2006, and provided thousands of pages in support.³⁵¹

150. The Ministry of Energy & Mines engaged a team of experts, mentioned above, who on May 10, 2006, recommended granting the extension.³⁵²

151. The Ministry issued its final report and regulation in May 2006, granting a draconian extension. As a threshold matter, the extension provided for only two years and ten months and included numerous conditions.³⁵³ Two years and ten months was an extraordinarily aggressive timeline.³⁵⁴ And, as Mr. Neil points out, "[Doe Run Peru] would not have asked for four to five years if we thought it could be done in less time."³⁵⁵ As the Ministry of Energy & Mines' experts observed with regard to the two year and ten month timeline, "this schedule was very aggressive and would require an extraordinary effort to ensure its timely completion."³⁵⁶

152. Dr. Partelpoeg notes in his expert report: "[d]ue to its complexity, the copper circuit replacement was inherently a multi-year project" and reaffirmed his finding that the 2009 completion date was very aggressive.³⁵⁷ He then explained that the normal schedule for a project such as the copper smelter project Doe Run Peru proposed in 2006 is in the range of five to seven years, and that factors specific to the La Oroya Complex further complicated design and

³⁵⁰ **Exhibit C-080**, Order No. 157-2006, Observation 30 at 19.

³⁵¹ Mogrovejo Witness Stmt. at ¶ 41 ("We filed our report in December 2005 Upon receiving our report, MEM required that [Doe Run Peru] respond to an additional 90 requests for detailed information (interlaced with recommendations) in 30 days, which meant that we had to stop everything to pull together the required information. MEM subsequently requested another round of additional information, which we provided.")

³⁵² **Exhibit C-012**, 2006 Clark et al., Review of PAMA Projects, § 6.2 at 19.

³⁵³ Neil Witness Stmt. at ¶ 30.

³⁵⁴ *See e.g.*, Expert Report of Partelpoeg, February 18, 2014, § 2 at 2. *See also* 2006 Clark et al., Review of PAMA Projects, § 5.2 at 15.

³⁵⁵ Neil Witness Stmt. at ¶ 31; Mogrovejo Witness Stmt. at ¶ 40.

³⁵⁶ *See also* 2006 Clark et al., Review of PAMA Projects, § 4.3 at 15.

³⁵⁷ Expert Report of Partelpoeg, February 18, 2014, § 9 at 28-29.

execution of the project.³⁵⁸ First, the Complex is located in a relatively remote section of the Andes Mountains at a high altitude, which affects design and execution (because the systems are made for lower altitudes) and imposes transportation constraints, requiring equipment to be fabricated on-site.³⁵⁹ Second, the Complex “was in particularly poor condition by world standards when it was acquired in October 1997 As a result, a great deal of work in virtually every operational area was required to modernize [it].”³⁶⁰ The poly-metallic nature of the facility’s metal production circuits also increased the time and complexity of the projects, because “impurity elements can enter production processes through multiple sources,” all of which must be accounted for and addressed.³⁶¹

153. Intensifying the unfair and unnecessary time crunch, the Ministry of Energy & Mines imposed a number of conditions to the extension: (1) the Ministry accepted all six of Doe Run Peru’s suggested projects for reduction of emissions of particulate matter through chimneys,³⁶² and added six additional obligations;³⁶³ (2) the Ministry accepted all eight of Doe

³⁵⁸ Expert Report of Partelpoeg, February 18, 2014, § 8.2 at 22-23.

³⁵⁹ Expert Report of Partelpoeg, February 18, 2014, § 8.2.1 at 23.

³⁶⁰ Expert Report of Partelpoeg, February 18, 2014, § 8.2.2 at 23.

³⁶¹ Expert Report of Partelpoeg, February 18, 2014, § 8.2.2 at 23.

³⁶² **Exhibit C-013**, Report No. 118-2006 at 36-37 (Doe Run Peru’s suggested projects were: (1) “Installation of baghouse filter for the lead furnaces”; (2) “scrubbing area and the dust capture efficiency using units 1, 2 and 3 of the Cottrell Process that are released, with suspension of the operation of the three New Jersey roasters (Fluid Bed Roaster) at the zinc plant, reducing the dust that is emitted through the main chimney from 0.60 to 0.52 MT/day at the start of 2007”; (3) “Installation of the baghouse filter after the arsenic kitchen”; (4) “Installation of baghouse filter for the lead foam reverb furnace”; (5) “increasing the number of Cottrell Process units from 6 to 9, which is a product of the project to install baghouse filters to trap dust from the lead furnaces, and units 13, 14 and 15 will be freed and will be used to increase the area for treating dust from the converters, increasing the dust capture efficiency from 96.68% to 97.15%”; (6) “Decrease of particulate material from the Cottrell Process from the anode waste plant. The gases currently coming from the fusion reverbs of the copper and lead anode sludge at the anode waste plant are treated in a Cottrell Process with 94.8 percent efficiency, with particulate emissions of 0.24 MT/day. The improvement plan consists of including the waste gases from the Cottrell Process from the plant to units 1, 2 and 3 of the Cottrell Process, in which recovery of 0.09 MT/day of particulate material is estimated, reducing the amount emitted through the chimney from 0.24 MT/day, to 0.15 MT/day”).

³⁶³ **Exhibit C-013**, Report No. 118-2006 at 38-39 (the additional obligations included: (1) “present detailed schedules of activities and investments for the following projects to control emissions through chimneys”; (2) “Present a concise report every two weeks to the General Division of Mining on the activities taken to implement the measures to reduce particulate material through chimneys”; (3) “Form a technical team to conduct continuous inspections at all CMLO facilities in order to detect possible failure in gas conduction systems and other possible sources of fugitive emissions with particulate material content, and be able to immediately and efficiently take corrective measures”; (4) “present the detailed maintenance program of the different teams and channels to implement for control of particulate material through chimneys every month”;

Run Peru's suggested projects for reduction of particulate matter through fugitive emission,³⁶⁴ and added eight conditional obligations;³⁶⁵ (3) the Ministry accepted all of Doe Run Peru's supplemental environmental projects, and added three additional obligations;³⁶⁶ (4) the Ministry

(5) "Every six months, analyze the size of dust particles emitted through chimneys in order to take corrective measures for more efficient capture"; (6) conduct an evaluation of the efficiency of the equipment and whether it was "technically possible to raise the plume from the main chimney").

³⁶⁴ **Exhibit C-013**, Report No. 118-2006 at 39-41 (Doe Run Peru's suggested projects were: (1) "the repotentialization of the baghouses currently in systems A and B of the sintering plant, the installation of a baghouse in system D, and replacement of the scrubber in system C with a baghouse"; (2) "closure of the loading floor of the lead furnaces and foam plant, which includes installation of a ventilation system formed by ducts, negative pressure fans and two dust collectors (baghouse) to maintain adequate air quality inside the enclosures"; (3) "lateral closure of the buildings where the fusion beds are prepared for lead and copper smelting, supplemented with the installation of a roof-mounted water-spraying system in order to maintain adequate humidity when time conditions so require, and to prevent eolic dragging of the concentrated particles toward the surrounding means. The closure around the perimeter of the lead and copper fusion beds will be formed by a concrete wall 1.50 meters high, using prefabricated metal sheets on the upper portion. [Doe Run Peru] has the detailed engineering study"; (4) "treating nitrous gases that are released through a low-height chimney close to cupellation furnaces in a gas-scrubbing system, with the goal of absorbing them and preventing them from being emitted into the environment;" (5) installing a new ventilation system for the anode waste plant building, including the installation of ducts and a seven-compartment dust-collection system (baghouse) that traps dust from the gases in the plant's environment in order to control the fugitive emissions that occur in the different processes of the anode waste plant; (6) reduction of recirculating fines through "a series of sub-projects [] defined for differentiated handling of dust, which was included in the request for extension of the period for the Sulfuric Acid Plants project, such as installation of dust collectors to separate dust from lead with high cadmium content, and copper dust with high arsenic content. In this way the amount of dust sent to the Cottrell Process would be reduced, and the precipitation units would be made independent through the installation of separators or curtains," (7) creating proper storage of concentrates, and (8) restriction in entry of concentrates).

³⁶⁵ **Exhibit C-013**, Report No. 118-2006 at 42-43 (additional measures include (1) a concise report every two weeks of measures taken, (2) continuous maintenance and (3) reporting from a technical team, (4) "[i]f, after the projects listed above have been implemented as special measures, there are reasonable indications of possible breach of Air Quality Standards, Doe Run Peru must close the sintering plant, unless it shows that the fugitive emissions created there are not significant contributors to air quality contamination in La Oroya, in addition to evaluating other projects that cover all sources of fugitive emissions, such as "closure of combined grinding systems," (5) "approximately 23,000 MT of fine recirculants (balance of fine materials – 2005), with an approximate lead content of 30%, which return to the lead beds, and that will comprise a risk factor to consider in the generation of fugitive emissions. Therefore, no later than January 31, 2007, Doe Run Peru is required to show through a detailed technical report presented to the General Division of Mining, that the influence of fine recirculants in fugitive emissions close to the plants or reactors that receive these fine materials is not significant, or lacking this, to establish detailed measures to reduce (and eventually eliminate) this source," (6) control of other metallic elements, (7) efficiency improvement, and (8) continuous monitoring and inventory of fugitive emissions).

³⁶⁶ **Exhibit C-013**, Report No. 118-2006 at 43-44 (4.1.3.1 Operation of industrial sweepers; 4.1.3.2. Paving roads to the different smelting and refining plants; 4.1.3.3. System for washing the tires and hoppers of vehicles that enter CMLO; continuous monitoring of dust and heavy metals in paved areas, an optimization program, tire washing procedures for all light and heavy vehicles that enter the Complex, among others).

converted all of Doe Run Peru's voluntary public health projects into more than 60 mandatory projects;³⁶⁷ and (5) the Ministry unilaterally added numerous other projects and obligations.³⁶⁸

154. Moreover, the PAMA initially was designed so that Doe Run Peru would bring the Complex into compliance with emissions standards that were in place in 1997.³⁶⁹ To the extent that new emissions standards were in place in 2007, Doe Run Peru would be given additional time to come into compliance with such standards. Yet in granting the two year and 10 month extension in 2006, the Ministry of Energy & Mines required that Doe Run Peru come into compliance with the 2007 standards for all contaminants except SO₂ by 2007.

155. And in a similarly unfair manner, the Ministry imposed more stringent environmental requirements on Doe Run Peru than the national standards and the standards imposed on other companies. First, with respect to air quality, the Ministry required Doe Run Peru to meet a 0.5 µg/m³ annual lead standard by January 2007, when it should have only had to meet a 1.0 µg/m³ standard by that date even assuming the new regulations should apply to Doe Run Peru so quickly. The relevant regulations made clear that the 0.5 µg/m³ annual lead standard was an impossible requirement for Doe Run Peru to meet: it provided operating companies up to five years to meet the 0.5 µg/m³ *after receiving* the Government's plan of action to address ambient air quality.³⁷⁰ Doe Run Peru was told to meet the 0.5 µg/m³ standard by

³⁶⁷ **Exhibit C-013**, Report No. 118-2006 at 45-51.

³⁶⁸ **Exhibit C-013**, Report No. 118-2006 at 27-33, 51-59, 62-63, 64-65, 69-76.

³⁶⁹ **Exhibit C-093**, Ministerial Resolution No. 122-2010-MEM/DM concerning amendment requiring permanent health agreement with MINSA, March 18, 2010 (*hereinafter* "Resolution No. 122-2010"). *See also* Mogrovejo Witness Stmt. at ¶ 44 ("In granting the extension, MEM imposed all of these 2007 regulatory standards on [Doe Run Peru] overnight. It did so without taking into account the fact that the PAMA was intended to enable [Doe Run Peru] to meet *1997 regulations* by 2007. As a result, MEM entirely changed the goal-posts from 1997 standards to 2007 standards. This was shocking.")

³⁷⁰ Mogrovejo Witness Stmt. at ¶ 45. In 2001, MEM had passed Supreme Decree No. 074-2001-PCM, establishing the first ECAs. The decree did not stipulate either the transitory or the final ECAs for lead. **Exhibit C-094**, Supreme Decree No. 074-2001-PCM concerning Environmental Air Quality National Standards Regulation, 2001 (*hereinafter* "Decree No. 074-2001") Seventh, Annex 1, Annex 2. In 2003, MEM issued Supreme Decree No. 069-2003-PCM, which set the transitory standard at 1.0 µg/m³, and the final standard at 0.5 µg/m³. **Exhibit C-095**, Supreme Decree No. 069-2003-PCM concerning Establishing Annual Lead Concentration Value, July 14, 2003 (*hereinafter* "Decree No. 069-2003"). It stated that the processes for transitory measures set forth in the 2001 decree would apply to companies who were currently exceeding those standards. The 2001 decree, in turn, provided that such companies had up to five years to meet the final standard after a governmental group known as the "Zonal Gesta" created an action plan, and that the Zonal Gesta would also set forth the time in which they had to meet the transitory standard. **Exhibit C-094**, Decreto Supremo No. 074-2001, Seventh at 12. But the Zonal Gesta created Doe Run Peru's action plan for the Complex on March 1, 2006 and approved the plan on June 23, 2006. **Exhibit C-096**, Gesta Zonal del Aire de La Oroya, *Action Plan to Improve the Air*

January 2007, yet the Peruvian Government provided Doe Run Peru with the plan of action a mere six months earlier on June 23, 2006.³⁷¹

156. The Ministry of Energy & Mines also imposed a number of emissions and ambient air limitations on Doe Run Peru for metals that were not regulated under Peruvian law, including antimony, thallium, bismuth and cadmium.³⁷²

157. Doe Run Peru's Vice-President of Environmental Affairs, Mr. Jose Mogrovejo—who had been the General Director of Environmental Affairs of the Ministry of Energy & Mines at the time of the privatization—expressed surprise at the Ministry's treatment of Doe Run Peru's extension request.³⁷³ “I did not expect [the Ministry] to react negatively to our extension request. For one, [the Ministry] understood that the original PAMA (like the PAMAs for other facilities in Peru) as drafted was incomplete, underestimated the amount of work to be done and underestimated the cost involved.”³⁷⁴ In fact, the Ministry of Energy & Mines “had created arbitrary PAMA completion periods like five years for mines and ten years for smelters, without any reference to how long it would actually take to meet emissions levels at a facility.”³⁷⁵

158. According to Mr. Mogrovejo: “the extension terms imposed [on Doe Run Peru] by the Government were unfair. I felt that many members of Government agencies, including Centromin and [*Consejo Nacional del Ambiente*, the National Environmental Council], were trying to set Doe Run Peru up to fail. I had heard from friends in the Government that people in both agencies were against the extension, and were always trying to complicate the extension. It was also apparent given the short time-line and all of the emissions and air quality standards that were imposed just on [Doe Run Peru].”³⁷⁶

Quality and Health of La Oroya, March 1, 2006 (hereinafter “Gesta Zonal del Aire de La Oroya Report”) at 22. Under the plan, Doe Run Peru was required to meet the 0.5 µg/m³ standard by January 1, 2007.

³⁷¹ See **Exhibit C-096**, Gesta Zonal del Aire de La Oroya Report.

³⁷² Mogrovejo Witness Stmt. at ¶¶ 46-47

³⁷³ Mogrovejo Witness Stmt. at ¶¶ 36-37.

³⁷⁴ Mogrovejo Witness Stmt. at ¶ 36.

³⁷⁵ Mogrovejo Witness Stmt. at ¶ 36.

³⁷⁶ Mogrovejo Witness Stmt. at ¶ 47

I. BY DECEMBER 2008, DOE RUN PERU HAD COMPLETED ALL PAMA PROJECTS EXCEPT ONE OF THE THREE SULFURIC ACID PLANTS, AND HAD DRAMATICALLY REDUCED THE COMPLEX'S ENVIRONMENTAL IMPACTS

159. By January 2007, the originally-scheduled completion date for the PAMA, Doe Run Peru had completed all but the PAMA project for the sulfuric acid plants (as well as the environmental and fugitive emissions projects that the Ministry of Energy & Mines had imposed as a condition of receiving the extension).³⁷⁷ By the end of 2008, Doe Run Peru's total investment on the PAMA and related projects had increased to more than US\$ 300 million.³⁷⁸

160. By late 2008, the only PAMA project remaining to be finished was the sulfuric acid plants project, which had been totally redesigned in 2006. Doe Run Peru worked diligently on this project, spending almost US\$ 160 million on it in 2007 and 2008.³⁷⁹ By Fall 2008, Doe Run Peru had completed the sulfuric acid plants for two of the Complex's three primary circuits, completely updating the sulfuric acid plant for the Zinc Circuit and finishing construction on a new sulfuric acid plant for the Lead Circuit.³⁸⁰ In addition, Doe Run Peru had made good progress on the Copper Circuit sulfuric acid plant project, which required Doe Run Peru both to substantially redesign and overhaul its copper smelting process and to construct another new sulfuric acid plant.³⁸¹ Doe Run Peru had completed the detailed engineering work for the redesign of its copper smelting operations.³⁸² It had issued more than 90 percent of the purchase orders for the work on this project, including for a new state-of-the-art furnace that was the centerpiece of the Copper Circuit overhaul.³⁸³ It had contracts for all preliminary and structural work, and it had issued RFPs for the final installation of the remaining mechanical and electrical

³⁷⁷ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 14-71.

³⁷⁸ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 5.

³⁷⁹ See **Exhibit C-097**, October 2009 PowerPoint, Situacion Ambiental and Financiera de Doe Run Peru, slides 19, 20 (*hereinafter* "October 2009 PowerPoint Presentation"), Slide 19 (showing the total amounts spent on the PAMA and related projects). See also Mogrovejo Witness Stmt. at ¶ 49; Neil Witness Stmt. at ¶ 34.

³⁸⁰ **Exhibit C-098**, Teresa Céspedes, *Doe Run inaugural segunda planta de ácido sulfúrico en Andes Perú*, REUTERS, September 30, 2008 (*hereinafter* "Sept. 30, 2008 REUTERS"). See also Neil Witness Stmt. at ¶ 34; Sadlowski Witness Stmt. at ¶ 49.

³⁸¹ **Exhibit C-098**, Sept. 30, 2008 REUTERS at 95, 105-114.

³⁸² **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 108.

³⁸³ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 108.

equipment.³⁸⁴ And it was making good progress on the actual construction of the reconfigured copper smelting facility, having completed more than 25 percent of the total construction work, including about 55 percent of the site work and almost 40 percent of the structural work.³⁸⁵

161. At the same time, Doe Run Peru was continuing work on the construction of the new sulfuric acid plant for the Copper Circuit. This too was a complicated engineering task, requiring Doe Run Peru to design essentially two separate facilities—one to clean the process gas (that is, to remove the particulate matter, heavy metals, and acid gases) and a second “gas contact and sulfuric acid production system” to convert the cleaned gas into commercial grade (98.5 percent pure) sulfuric acid.³⁸⁶ Here, again, Doe Run Peru was making good progress: the detailed engineering work was virtually complete, more than three quarters of the contracts had been let, site work was more than 85 percent complete, and fully one-third of the mechanical and structural construction work had been completed.³⁸⁷

162. Doe Run Peru’s efforts yielded remarkable environmental results when compared to the situation Doe Run Peru inherited from Centromin in 1997. As discussed above, when Doe Run Peru took over operations from Centromin the environmental situation at the La Oroya Complex was troubling, to say the least. Peru had invested few, if any, resources to limit the environmental impacts from its operation of the Complex. Highly contaminated wastewater poured from the facility into the Mantaro and Yauli Rivers.³⁸⁸ Many of the smokestacks at the Complex lacked pollution control equipment, venting huge amounts of lead, arsenic, selenium, zinc, cadmium, SO₂ and other pollutants into the environment.³⁸⁹ What little pollution control equipment did exist was poorly maintained and badly needed repairs. And more than 80 uncontrolled sources of fugitive emissions released additional pollution at low altitudes, causing

³⁸⁴ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 108.

³⁸⁵ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 108.

³⁸⁶ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 111.

³⁸⁷ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 112.

³⁸⁸ *See* Section D above for an explanation of the extent of the contamination.

³⁸⁹ *See* Section D above for an explanation of the extent of the contamination.

concentrated particulate matter containing lead and other heavy metals to settle quickly over the inhabited areas surrounding the Complex.³⁹⁰

163. As a result of its construction of the industrial wastewater treatment plant and the many other changes it made to its effluent handling and storm water systems, for example, Doe Run Peru was able to effectively eliminate liquid effluent discharges from the Complex to the Yauli River and to bring discharges to the Mantaro and Yauli River into compliance with Peru's Class III water standards.³⁹¹ At the same time, Doe Run Peru dramatically reduced air emissions from the Complex, bringing the emissions from significant emission control points (stack) into compliance with the applicable emission limits.³⁹² To put this in context, Doe Run Peru reduced particulate matter emissions from the main stack by 78 percent compared to 1997 levels.³⁹³ It reduced lead emissions from the main stack by 68 percent,³⁹⁴ and arsenic emissions decreased by 93 percent over the same period.³⁹⁵ Even SO₂ emissions had been reduced by 52 percent, despite the fact that the final SO₂ plant had not yet been completed.³⁹⁶

164. These emission reductions resulted in dramatic air quality improvements in the area around the Complex. Dr. Bianchi provides a number of charts showing the dramatic improvement under Doe Run Peru of the standards and practices used by Doe Run Peru as compared to those used by Centromin.

³⁹⁰ See Section D above for an explanation of the extent of the fugitive emissions.

³⁹¹ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 6.

³⁹² Note that "there was periodic non-compliance with emissions, effluents, air quality rates, as well as minor issues with projects." Mogrovejo Witness Stmt. at 48 n. 31. "This type of non-compliance is operational, and a normal part of doing business." *Id.* As Mr. Mogrovejo points out, "[t]hese blips are easier to see where, as here [in the case of the Complex], the [G]overnment is monitoring compliance on a daily basis. As a general matter, monitoring of a facility is done every six months or so, and therefore it is more difficult to detect operational glitches." *Id.*

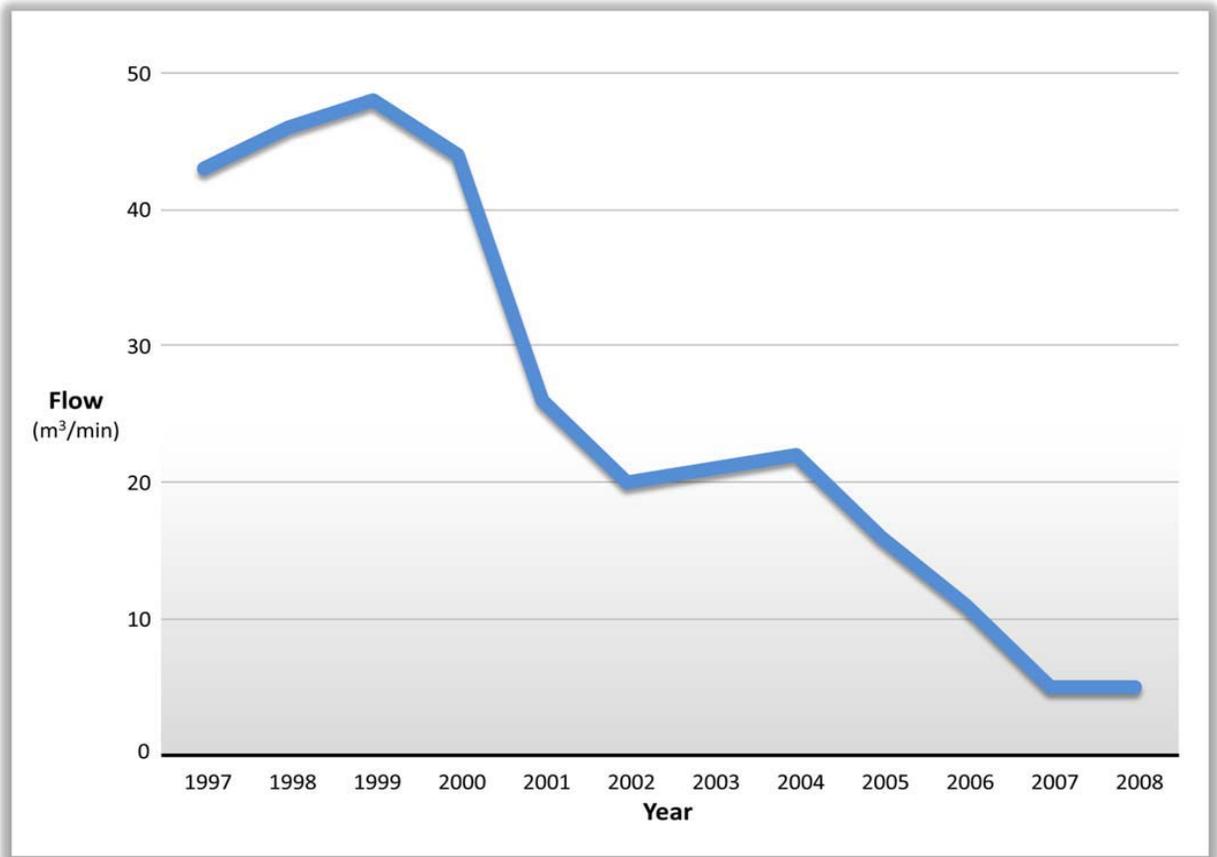
³⁹³ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 76.

³⁹⁴ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 76.

³⁹⁵ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 76.

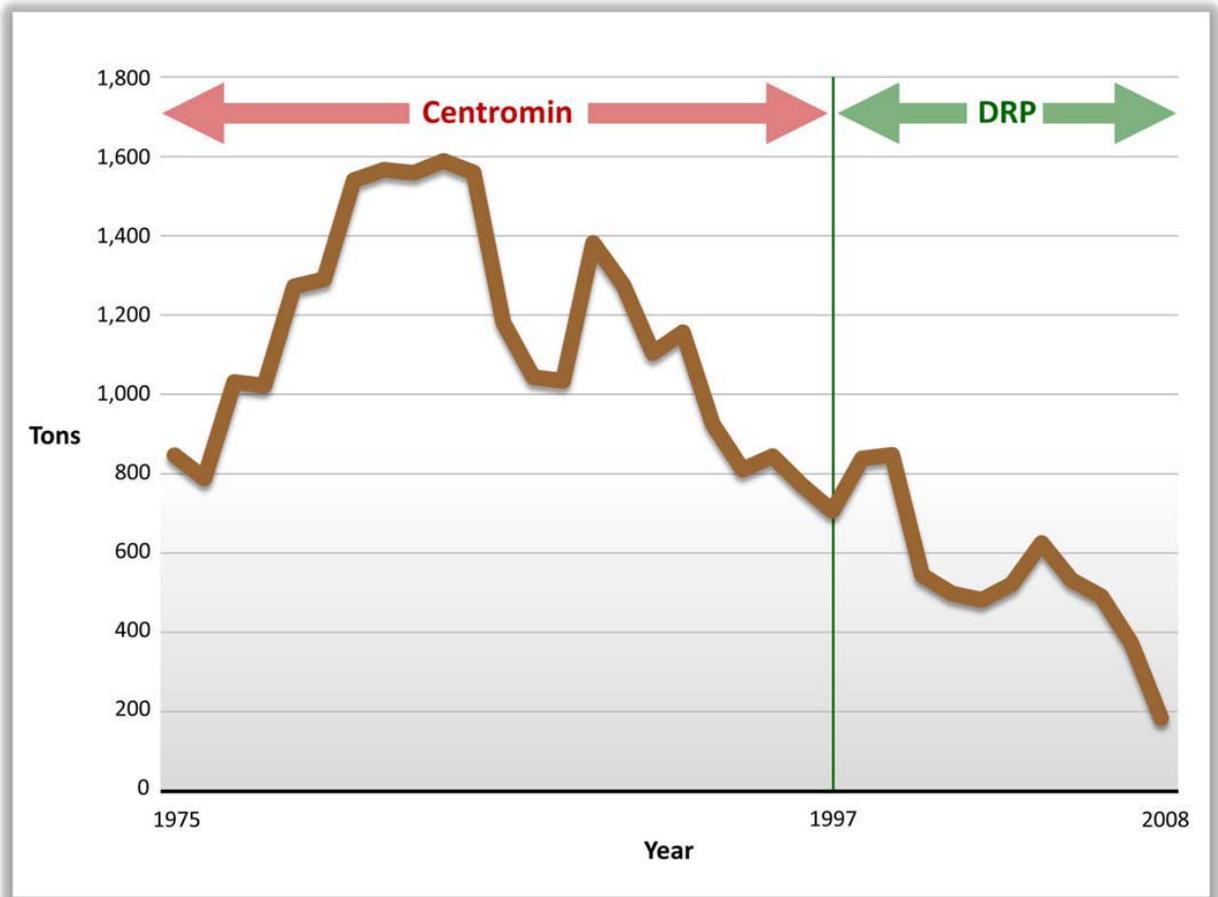
³⁹⁶ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 76.

Decrease in Effluent Discharged to the Mantaro River



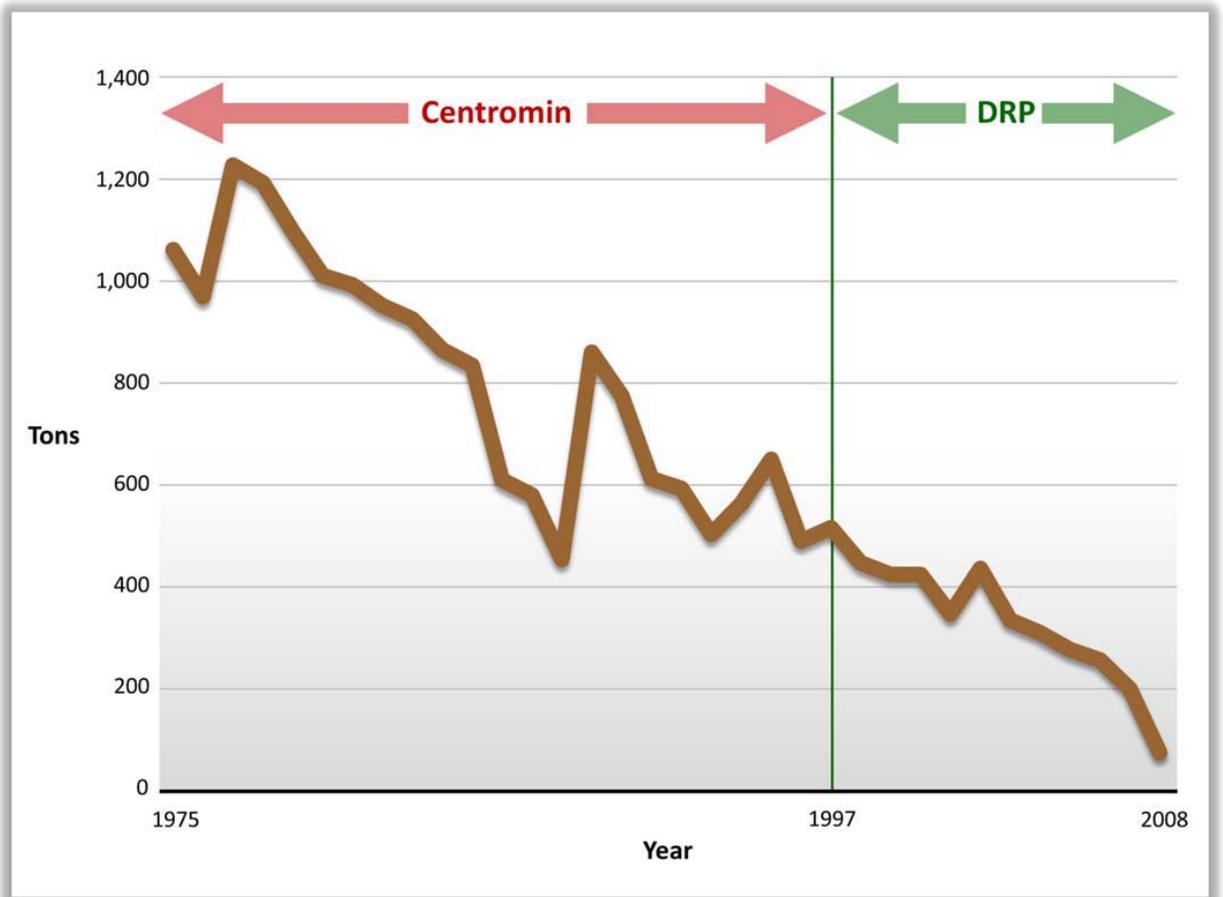
Bianchi Report, Figure 1.

Decrease in Lead Emissions from the CMLO Main Stack (1975-2008)



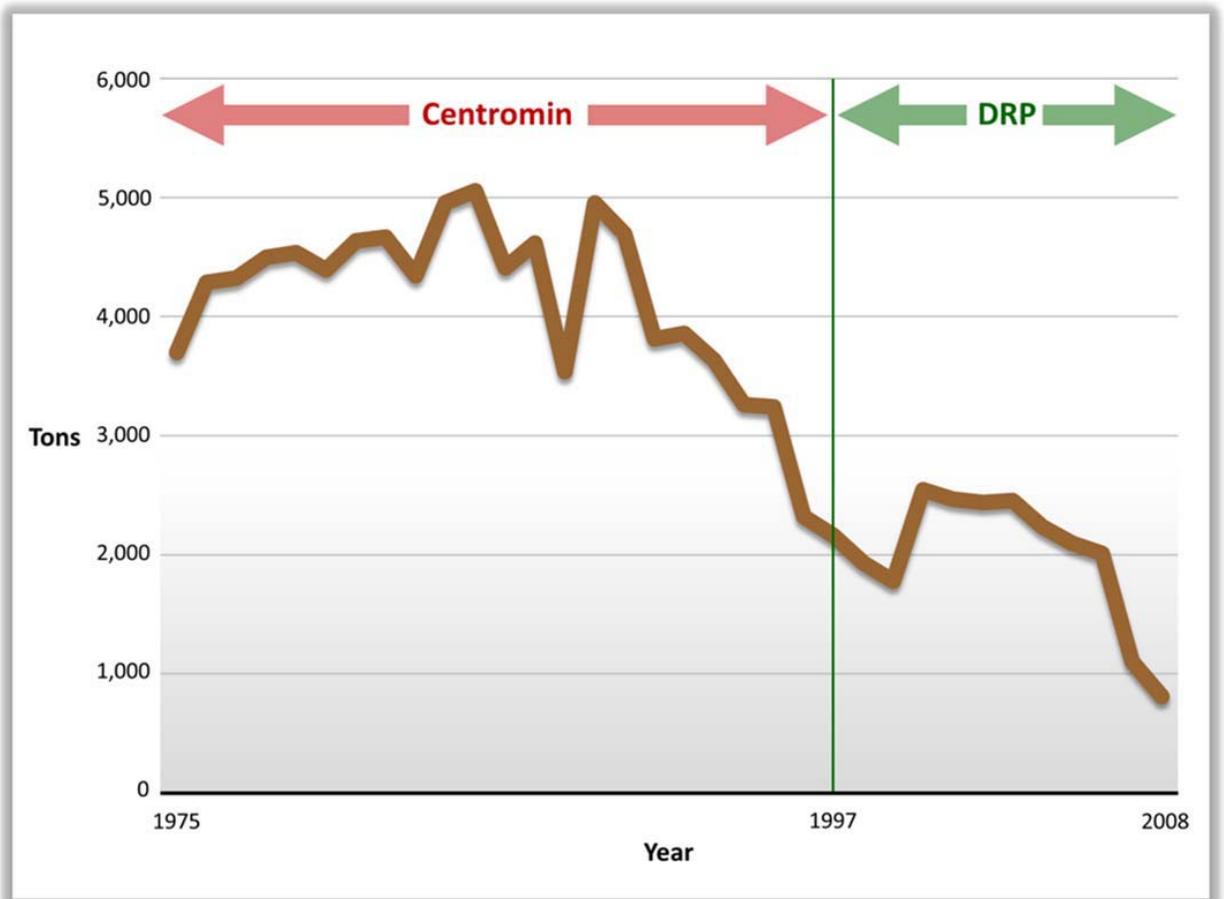
Bianchi Report, Figure 2.

Decrease in Arsenic Emissions from the CMLO Main Stack (1975-2008)



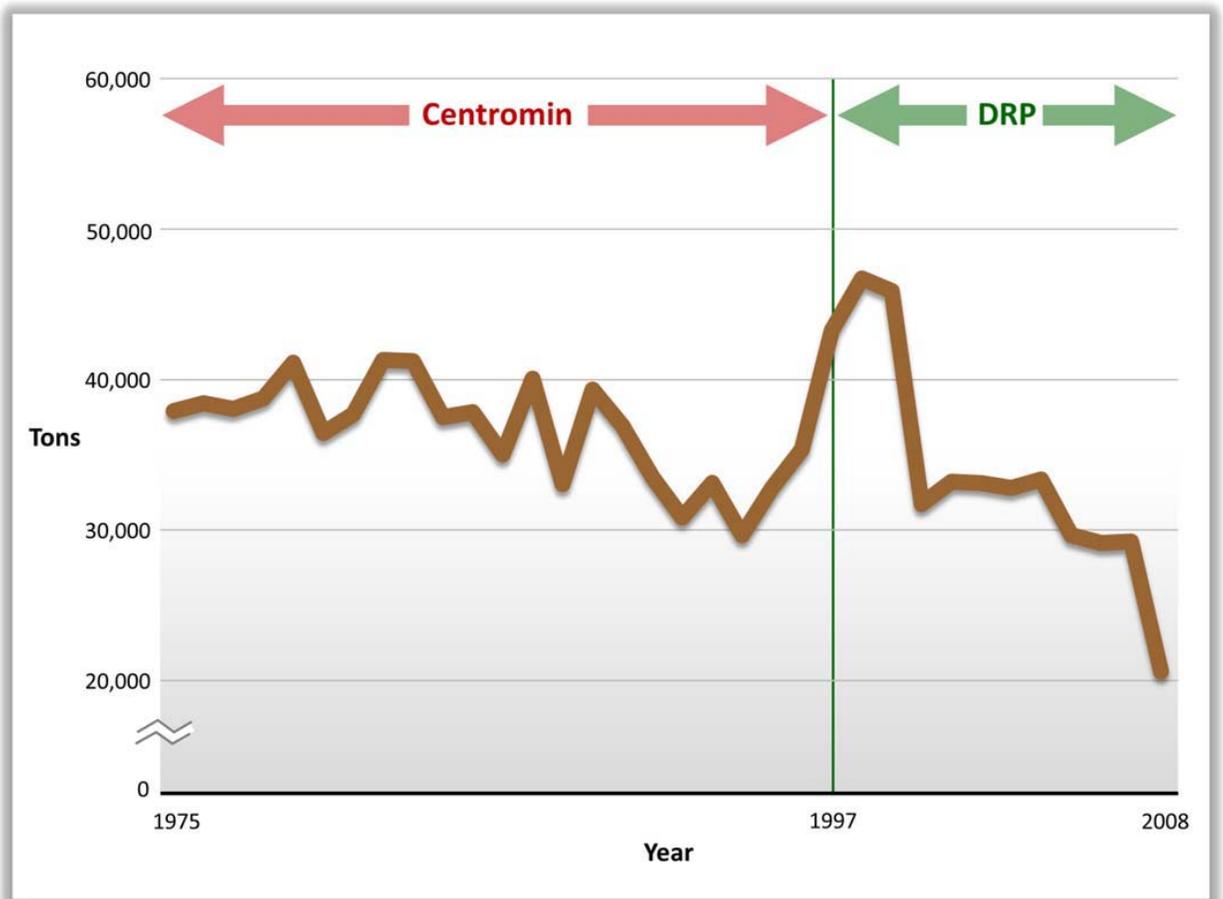
Bianchi Report, Figure 3

Decrease in Particulate Emissions from the CMLO Main Stack (1975-2008)



Bianchi Report, Figure 4.

Decrease in SO Emissions from the Main Stack (1975-2008)



Bianchi Report, Figure 5.

J. IN 2009, PERU TREATED DOE RUN PERU UNFAIRLY AND INEQUITABLY BY GRANTING – AND THEN UNDERMINING – ITS EXTENSION OF TIME TO FINISH THE SULFURIC ACID PLANT PROJECT FOR THE COPPER CIRCUIT

1. The Global Financial Crisis Prevented Doe Run Peru from Finishing the Copper Circuit Sulfuric Acid Plant Project by the October 2009 Deadline

165. Centromin and Doe Run Peru agreed in Clause 15 of the Stock Transfer Agreement that Doe Run Peru’s obligation to perform its PAMA projects would be deferred if the performance was “delayed, hindered or obstructed by . . . extraordinary economic alterations.” Clause 15, entitled “*Force Majeure*,” provides:

Neither of the contracting parties may demand from the other the fulfillment of the obligations assumed in this contract, when the fulfillment is *delayed, hindered or obstructed* by causes that arise that are not imputable to the obliged party and this obligation [sic] has not been foreseen at the time of the execution of this contract. All those causes are constituted, but not in a restrictive manner, by force or act of god such as earthquakes, floods, fires, . . . *extraordinary economic alterations*, . . . in accordance with the provisions of Article 1135 of the Civil Code. It is expressly agreed, nevertheless, that the fact that the Government of Peru does not supply financing for Centromin’s obligations shall not constitute a case of *force majeure* under this clause. (Emphasis added)

166. The parties’ inclusion of “extraordinary economic alterations” in the list of *force majeure* events signified that a severe economic downturn affecting Doe Run Peru’s financial situation would constitute a *force majeure* event, allowing the performance of its obligations to be “delayed,” including its obligation under Clause 5.1 to complete the PAMA projects.

167. The economic *force majeure* provision of the Stock Transfer Agreement is not commonly found in commercial agreements, but it was an important part of the negotiations between the Renco Consortium and Peru and the final agreement that they reached.³⁹⁷ This is because a significant decline in world metals prices would impede or even eliminate Doe Run Peru’s ability to finance the performance of its obligations under the Stock Transfer

³⁹⁷ See Sadlowski Witness Stmt. at ¶¶ 44-47.

Agreement.³⁹⁸ Centromin and Peru understood this, and agreed to incorporate this important and rather unusual *force majeure* event into the express language of the Stock Transfer Agreement.³⁹⁹

168. It cannot seriously be disputed that the global financial crisis was an event of *force majeure*, nor has Peru ever done so. Precipitated by the subprime mortgage entanglement in the United States, companies globally were forced to contend with severe Government spending cuts and frozen credit markets culminating in a global recession. Mining and smelting companies such as Doe Run Peru were not spared the impact of the global financial crisis; trade volumes decreased and metal prices dropped abruptly.⁴⁰⁰ As mining expert Dr. Partelpoeg explained in his 2014 report “[i]n 2008, the price of copper and other metals collapsed.”⁴⁰¹ The economic *force majeure* clause in the Stock Transfer Agreement was designed for exactly this contingency.⁴⁰²

169. The crash in metal prices (mainly copper and silver) effectively had wiped out profits from the Doe Run Peru’s Cobriza mine, which Doe Run Peru had acquired from the Peruvian Government in September 1998 and which constituted Doe Run Peru’s main source of financing for the PAMA projects.⁴⁰³ At the same time, “the global financial sector was reeling with troubles of their own” and “financing of projects [including metals and mining projects] came to a near standstill.”⁴⁰⁴ Doe Run Peru’s lenders, themselves reeling from the financial crisis, were unwilling to provide financing, because of concerns around the tight PAMA deadline and the Peruvian Government’s negative campaign against Doe Run Peru in the media, not to mention the industry-wide chill on financing mining operations.⁴⁰⁵ In February 2009, Doe Run

³⁹⁸ See Sadlowski Witness Stmt. at ¶¶ 11.

³⁹⁹ See Sadlowski Witness Stmt. at ¶¶ 11.

⁴⁰⁰ See Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27-28. See also Neil Witness Stmt. at ¶¶ 35-38; Sadlowski Witness Stmt. at ¶¶ 48-50.

⁴⁰¹ Partelpoeg, February 18, 2014, § 8.4.1 at 27.

⁴⁰² See Sadlowski Witness Stmt. at ¶¶ 44-47.

⁴⁰³ As explained by Dr. Partelpoeg, “the price of copper and other metals collapsed in conjunction with the global economic crisis.” Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27. See also Neil Witness Stmt. at ¶ 36.

⁴⁰⁴ Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27.

⁴⁰⁵ See, e.g., **Exhibit C-099**, Alex Emery & Heather Walsh, *Doe Run Won’t Get Government Bailout, Minister Says*, BLOOMBERG BUSINESS NEWS, April 28, 2009 (*hereinafter* “Apr. 28, 2009 BLOOMBERG BUSINESS NEWS”) (reporting Finance Minister Luis Carranza statement that Doe Run Peru would not be “bailed out” by the

Peru lost its US\$ 75 million revolving line of credit that provided day-to-day liquidity for its ongoing operations⁴⁰⁶ after Doe Run Peru's lenders informed it that they would not extend the credit agreement, unless Doe Run Peru obtained a formal extension from the Government of the October 2009 deadline to complete work on the Copper Circuit sulfuric acid plant.⁴⁰⁷

170. To address lender concerns, and recognizing the impossibility of completing the Copper Circuit sulfuric acid plant project before October 2009, Doe Run Peru wrote to the Ministry of Energy & Mines on March 5, 2009, to request that Peru grant an extension of Doe Run Peru's deadline to finish the project, as a result of "[t]he sudden and unexpected fall in metals and by-products since October 2008 . . ."⁴⁰⁸ Doe Run Peru also advised the Ministry that concentrate suppliers were going to freeze shipments as of March 9 and that the banks required that Doe Run Peru obtain a formal PAMA extension.⁴⁰⁹ The Ministry refused, claiming that a delay in completing the final PAMA project was unacceptable, notwithstanding the *force majeure* event.⁴¹⁰ Doe Run Peru continued its efforts to find a global solution with the Government and concentrate suppliers.

Government of Peru); **Exhibit C-100**, *The Multisectoral Commission Will Supervise the PAMA's Progress*, EL COMERCIO, September 26, 2009 (*hereinafter* "Sept. 26, 2009 EL COMERCIO") (reporting that lack of prior government supervision had permitted Doe Run to evade its environmental responsibilities); *see also* Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27.

⁴⁰⁶ **Exhibit C-101**, Contract, Amended and Restated Revolving Credit Agreement between Doe Run Peru SRL, BNP Paribas (as Administrative Agent, Letter of Credit Issuer and Lender), Banco de Credito del Peru (as Guarantee Issuing Bank), Standard Bank PLC (as Lender) and Banco de Credito del Peru, Sucursal Panama (as Lender) June 26, 2008 (*hereinafter* "Revolving Credit Agreement") at 29, 120. This financing was critical because Doe Run Peru operated the Complex through long-term supply agreements with mining companies that provided the mineral concentrates processed at the facility. Under these agreements, Doe Run Peru would purchase the raw concentrates and sell the finished metals on the world market after they had been processed and refined. Doe Run Peru thus relied on the revolving line of credit to provide bridge financing, allowing Doe Run Peru to meet its obligations to the mining companies that provided the concentrates (usually about US\$ 45 million per month) before the proceeds from the sale of the finished metals had been received. *See also* Sadlowski Witness Stmt. ¶ 50.

⁴⁰⁷ **Exhibit C-102**, Letter from J. Stufsky *et al.* (BNP Paribas) to C. Ward *et al.* (Doe Run Peru), February 13, 2009 (*hereinafter* "February 13, 2009 Letter"). *See also* Sadlowski Witness Stmt. at ¶ 50.

⁴⁰⁸ **Exhibit C-103**, Letter from J. Carlos Huyhua (Doe Run Peru) to P. Sanchez (Ministry of Energy & Mines), March 5, 2009 (*hereinafter* "Doe Run Peru Request to Ministry of Energy & Mines for Extension"). *See also* Neil Witness Stmt. at ¶ 39; Sadlowski Witness Stmt. at ¶ 51; Expert Report of Partelpoeg, February 18, 2014, § 8.4 at 27-28.

⁴⁰⁹ **Exhibit C-103**, Doe Run Peru Request to Ministry of Energy & Mines for Extension, Items 4 and 7 at 1-2.

⁴¹⁰ Sadlowski Witness Stmt. at ¶ 51.

171. At the end of March 2009, Doe Run Peru believed that it had reached an agreement with the Peruvian Government, the MOU, which would include a PAMA extension.⁴¹¹ The MOU acknowledged that Doe Run Peru was in financial *extremis* “essentially due to the international financial crisis that has caused the reduction of the mineral prices on the markets which, in turn, has caused, among others, the default on its obligations, the loss of its working capital, the accumulation of debt with several suppliers, the cancellation of credit lines on the financial system...”⁴¹²

172. As part of the MOU, the Peruvian Government insisted on concessions from Doe Run Peru in connection with Doe Run Peru’s claim for a *force majeure* extension, and Doe Run Peru acquiesced, although the terms of the Stock Transfer Agreement entitled Doe Run Peru to an extension of the PAMA period due to the economic *force majeure* event. Specifically, the Government demanded, among other things, that Doe Run Peru’s debt to Doe Run Cayman Ltd., of approximately US\$ 156 million, be 100 percent capitalized, and that Doe Run Cayman Ltd. pledge 100 percent of its shares in Doe Run Peru.⁴¹³ Only then would the Government comply with its vague promise to provide an extension “for a period to be determined as necessary to complete execution of the PAMA.”⁴¹⁴ While Doe Run Cayman Ltd.’s capitalization of the debt was to take place prior to any PAMA extension decree, the Ministry of Energy & Mines promised to provide a draft of a PAMA extension for review and Doe Run Peru advised that a thirty (30) month extension was required.

173. Believing that Peru would support Doe Run Peru’s efforts to obtain the much-needed financing and issue an extension decree, as it had promised to do, Doe Run Peru and its affiliates Doe Run Cayman Ltd. and Doe Run Cayman Holdings executed an MOU with the Peruvian Government on March 27, 2009,⁴¹⁵ and provided it to the Ministry of Energy & Mines. Doe Run Peru reached a separate agreement with its concentrate suppliers just a few days after it signed the MOU with the Government. On April 2, 2009, Doe Run Peru, the concentrate

⁴¹¹ **Exhibit C-016**, MOU.

⁴¹² **Exhibit C-016**, MOU, art. 1.4 at 1.

⁴¹³ Sadlowski Witness Stmt at ¶ 53.

⁴¹⁴ Sadlowski Witness Stmt at ¶ 53.

⁴¹⁵ **Exhibit C-016**, MOU. *See also* Sadlowski Witness Stmt. at ¶ 54.

suppliers and the Government held a press conference to publicly announce that a solution had been reached.⁴¹⁶

174. Yet the Government never signed the MOU, and Doe Run Peru grew concerned when the Ministry of Energy & Mines ignored Doe Run Peru's requests for a draft of the PAMA extension or an executed copy of the MOU.⁴¹⁷ Doe Run Peru's concerns were further heightened when, on April 3, 2009, the Minister of the Environment, Antonio Brack, publicly stated that Doe Run Peru would receive only a three-month extension.⁴¹⁸ A three month extension would have been of absolutely no value.

175. The Ministry of Energy & Mines and the Ministry of Economics & Finance continued to demand that Doe Run Peru immediately capitalize the debt of its affiliates and pledge its shares.⁴¹⁹ The capitalization was approved by Doe Run Peru's shareholders on April 7, 2009, but because of the Government's utter lack of transparency and confrontational stance, was subject to a firm commitment by the Government to expressly grant the PAMA extension that the Government had promised to provide and was obligated to provide under the economic *force majeure* provision of the Stock Transfer Agreement.⁴²⁰

176. The concern by this point was that Doe Run Peru would capitalize its debt and pledge its shares and that the Government would, in turn, give Doe Run Peru an unreasonably short extension (or no extension at all) such that Doe Run Peru would not be able to complete the PAMA.⁴²¹ If this occurred, Doe Run Peru would be pushed into bankruptcy, and its main shareholder, Doe Run Cayman Ltd., would not have any voting rights in the bankruptcy proceedings because it would have given up its right to claim as a creditor of Doe Run Peru.

⁴¹⁶ Sadlowski Witness Stmt. at ¶ 55.

⁴¹⁷ Sadlowski Witness Stmt. at ¶ 55.

⁴¹⁸ **Exhibit C-017**, Apr. 4, 2009 EL COMERCIO.

⁴¹⁹ Sadlowski Witness Stmt. at ¶ 56.

⁴²⁰ **Exhibit C-104**, Doe Run Peru, Partners Meeting, April 7, 2009 (*hereinafter* "2009 DRP Partners Meeting") at 3. *See also* Sadlowski Witness Stmt. at ¶ 56.

⁴²¹ Sadlowski Witness Stmt. at ¶ 57.

Doe Run Cayman Ltd. would thus lose its ability to appoint Doe Run Peru's management , and ultimately it would lose its entire investment in the company.⁴²²

177. Then in May 2009, other Peruvian Government officials made public statements denying that a PAMA extension would be granted to Doe Run Peru.⁴²³ After publicly threatening to shut down the Complex and well aware of Doe Run Peru's dire financial situation,⁴²⁴ President Alan Garcia then issued an emergency decree restricting the participation of certain related creditors in bankruptcy proceedings.⁴²⁵ This decree clearly and improperly targeted Doe Run Peru by attempting to eviscerate the significant rights of Doe Run Peru's shareholder through the US\$ 155 million debt owed to it by Doe Run Peru.⁴²⁶ Garcia was forced to revoke the decree in March 2010, after significant public criticism.⁴²⁷

178. In May and June 2009, Bruce Neil and Doe Run Peru managers had several meetings with Government Representative Jorge del Castillo, Congressman and former Prime Minister, to discuss a global solution to Doe Run Peru's problems. Renco agreed to provide around US\$ 31 million in funding to serve as working capital for the operations of Doe Run Peru; however, Mr. del Castillo insisted that the new funding should be used exclusively for the PAMA projects. Doe Run Peru and the Peruvian Government were unable to reach an agreement.⁴²⁸

179. Throughout this time, the La Oroya Complex was operating significantly below its capacity because it lacked concentrate supply.⁴²⁹ Because the Ministry of Energy and Mines refused to grant a PAMA extension, Doe Run Peru was not able to obtain a new revolving loan. Without the revolving loan, Doe Run Peru was unable to meet its payment obligations under contracts with its suppliers. Under these circumstances, Doe Run Peru did not have sufficient

⁴²² Sadlowski Witness Stmt. at ¶ 57.

⁴²³ **Exhibit C-018**, May 20, 2009 MINES AND COMMUNITIES.

⁴²⁴ **Exhibit C-105**, *Government Threatens to Shut Down Doe Run for Environmental Noncompliance - Peru*, BUSINESS NEWS AMERICA, May 21, 2009.

⁴²⁵ **Exhibit C-019**, Emergency Decree No. 061-2009.

⁴²⁶ Neil Witness Stmt at ¶ 41; Sadlowski Witness Stmt. at ¶ 58.

⁴²⁷ Sadlowski Witness Stmt. at ¶ 58.

⁴²⁸ Sadlowski Witness Stmt. at ¶ 60; Neil Witness Stmt. at ¶ 43.

⁴²⁹ Sadlowski Witness Stmt. at ¶ 59; Neil Witness Stmt at ¶¶ 40-42.

funds to run the operations at the La Oroya Complex normally. As previously mentioned, Doe Run Peru defaulted on contracts with suppliers and without the supply of new concentrates, had to drastically reduce the scope of operations in the La Oroya Complex, and eventually discontinue all operations at the La Oroya Complex.

180. On June 3, 2009, almost five months before the PAMA was scheduled to expire, Doe Run Peru suspended operations at the Complex because it was unable to obtain financing without a PAMA extension and unable to pay its concentrate suppliers without financing.⁴³⁰ Doe Run Peru negotiated with its workers and proposed alternatives to protect jobs and continue paying a percentage of the salaries during the stoppage.⁴³¹ In late June 2009, Mr. del Castillo and Pedro Sanchez, the Minister of Energy & Mines, approached the workers and offered that the Peruvian Government grant them the power to manage Doe Run Peru.⁴³² However, the workers continued to trust the management of Doe Run Peru and rejected this offer in a company-wide vote.⁴³³

181. Doe Run Peru nevertheless continued to request an extension of time to complete the last remaining sulfuric acid plant. On June 25, 2009, Doe Run Peru wrote to the Ministry of Energy & Mines providing a comprehensive proposal for a 30-month PAMA extension that included a fresh equity injection, and capitalization of the inter-company debt.⁴³⁴ The next day the Ministry rejected the request, stating that Doe Run Peru did not provide enough specifics.⁴³⁵ In response to the Ministry's letter, Doe Run Peru wrote providing answers to their questions and

⁴³⁰ Neil Witness Stmt. at ¶ 42; Sadlowski Witness Stmt. at ¶¶ 60-61.

⁴³¹ Doe Run Peru reached important agreements with the workers, which protected their rights during the halt in the operations and guaranteed they would be available to re-start working once the problems were solved.

⁴³² **Exhibit C-106**, *Government proposes Doe Run workers manage company, according to press*, RPP, June 24, 2009 (*hereinafter* "June 2009 RPP").

⁴³³ *See Exhibit C-107*, Metallurgical Workers' Union, Union Referendum Record No. 016-SC-2009, July 6, 2009 (*hereinafter* "2009 Union Referendum").

⁴³⁴ **Exhibit C-108**, Letter from J. Carlos Huyhua (Doe Run Peru) to P. Sanchez et al. (Ministry of Energy & Mines), June 25, 2009 (*hereinafter* "June 25, 2009 Letter").

⁴³⁵ **Exhibit C-109**, Letter from F. Gala Soldevilla (Ministry of Energy & Mines) to J. Carlos Huyhua (Doe Run Peru), June 26, 2009 (*hereinafter* "June 26, 2009 Letter").

again asking for an extension.⁴³⁶ Several days later, the Ministry responded refusing yet again to provide an extension despite having promised one.⁴³⁷

182. In July 2009, Doe Run Peru provided the Ministry of Energy & Mines with a comprehensive 162-page report that documented the progress Doe Run Peru had made in achieving its environmental objectives, the status of the last remaining sulfuric acid plant project for the Copper Circuit (which, was more than 50 percent complete),⁴³⁸ and how Doe Run Peru's progress on this project had been halted by the global financial crisis, which constituted a *force majeure* event.⁴³⁹ Doe Run Peru again requested a 30-month extension with supporting financial projections from the accounting firm Ernst & Young.

183. Despite the occurrence of a *force majeure* event with the onset of the world financial crisis, the Ministry of Energy & Mines summarily, and improperly, rejected Doe Run Peru's request to delay completion of the final PAMA project purportedly because it had "no regulatory framework to answer to an extension application or a project extension of the 'Copper Acid Plant and Copper Change' in favor of Doe Run Peru S.R.L."⁴⁴⁰ Moreover, the Ministry's explanation for its rejection of Doe Run Peru's request squarely conflicted with its decision to grant a PAMA extension to Centromin in 2000, which it did without even suggesting that additional legal authority was needed.

2. The Peruvian Congress Granted Doe Run Peru's *Force Majeure* Request for a 30-Month Extension, and the Ministry of Energy & Mines Thereafter Undermined the Extension

184. In late 2009, after Doe Run Peru had ceased operations at the Complex, the Peruvian Government appointed the Technical Commission to evaluate the La Oroya Complex. The Technical Commission concluded that a minimum 20-month extension to complete the

⁴³⁶ **Exhibit C-110**, Letter from Doe Run Peru to Ministry of Energy and Mines, July 2, 2009 (*hereinafter* "July 2, 2009 Letter"); **Exhibit C-112**, Letter from F.A. Ramirez del Pino (Ministry of Energy & Mines) to J. Mongrovejo (Doe Run Peru), July 15, 2009 (*hereinafter* "July 15, 2009 Letter").

⁴³⁷ **Exhibit C-111**, Letter from Ministry of Energy and Mines to Doe Run Peru, July 6, 2009 (*hereinafter* "July 6, 2009").

⁴³⁸ Neil Witness Stmt. at ¶ 45.

⁴³⁹ *See generally* **Exhibit C-014**, Doe Run Peru 2009 Request for Extension. *See also* Neil Witness Stmt. at ¶ 45; Sadlowski Witness Stmt. at ¶¶ 60-61; Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27-28.

⁴⁴⁰ **Exhibit C-112**, Letter from F.A. Ramirez del Pino (Ministry of Energy & Mines) to J. Mongrovejo (Doe Run Peru), July 15, 2009 (*hereinafter* "July 15, 2009 Letter").

Copper Circuit sulfuric acid plant was necessary with additional time required to obtain financing.⁴⁴¹ The Peruvian Congress thereafter passed a law that granted Doe Run Peru a 30-month extension of the PAMA, and required Doe Run Peru to restart operations within ten months of its passage.⁴⁴² Unfortunately for Doe Run Peru and Renco, the Ministry of Energy & Mines moved quickly to undermine the extension that the Peruvian Congress had granted.⁴⁴³ Under an article entitled “Miscellaneous,” the Peruvian Congress had authorized the Ministry to issue “supplementary” regulations to implement the law’s provisions.⁴⁴⁴ The Ministry used this authority to issue a Supreme Decree imposing conditions on Doe Run Peru’s right to receive the extension Congress had granted, which were extremely difficult, if not impossible, to fulfill. For example, the Ministry required Doe Run Peru to “channel one hundred percent (100%)” of its revenues, “irrespective of [the] source,” into a trust account to be used to fund the completion of the remaining sulfuric acid project.⁴⁴⁵

185. The Ministry of Energy & Mines’ decree imposing this “100% trust account” requirement made it all but impossible for Doe Run Peru to continue its operations and complete work on the sulfuric acid plant. No bank would loan money to Doe Run Peru without taking a security interest in its assets, but Doe Run Peru could not pledge any of its revenues as collateral, because the decree required that all of its revenues be channeled into the trust account.⁴⁴⁶ And under those circumstances, Doe Run Peru could not obtain sufficient credit from its concentrate suppliers.

⁴⁴¹ **Exhibit C-022**, 2009 Technical Commission Report.

⁴⁴² **Exhibit C-023**, Law No. 29410, art. 2 (“The term for the financing and culmination of the ‘Sulfuric Acid Plant and Modification of the Copper Circuit’ Project at the Metallurgical Complex of La Oroya is hereby extended, as per the directives issued by the La Oroya Technical Commission, created by Supreme Resolution No. 209-2009-PCM. Thus, a non-extendable maximum term of ten (10) months for the financing of the project and the start-up of the metallurgical complex and an additional non-extendable term of twenty (20) months for the construction and start-up of the project are hereby granted.”). *See also* Neil Witness Stmt. at ¶ 48.

⁴⁴³ Sadlowski Witness Stmt. at ¶¶ 64-68.

⁴⁴⁴ **Exhibit C-023**, Law No. 29410, art. 5 (Sept. 26, 2009) (“Miscellaneous. Through a supreme executive order, the Executive shall issue such supplementary provisions as may be necessary for the enforcement of this Law.”).

⁴⁴⁵ **Exhibit C-114**, Executive Decree No. 075-2009-EM concerning Implementing Law No. 29410, October 29, 2009 at §4.2 (*hereinafter* “Decree No. 075-2009”).

⁴⁴⁶ Neil Witness Stmt. at ¶¶ 49-50; Sadlowski Witness Stmt. at ¶ 66.

186. In addition, while Law No. 29410 provided Doe Run Peru ten months to obtain financing and restart the Complex, and 20 months thereafter to complete the sulfuric acid plant for the Copper Circuit, the Ministry of Energy & Mines imposed onerous time requirements, not contained in the Technical Report or in Law No. 24910. It subdivided the twenty month period providing Doe Run Peru:

- a maximum term of fourteen (14) months, as opposed to twenty (20), to complete construction the sulfuric acid plant;
- within the fourteen (14) months, it gave Doe Run Peru a “maximum term” of two (2) months for the “renegotiation and mobilization of the contractors,” and “up to twelve (12) months for the construction of the Project,” and
- Upon the expiration of the fourteen-month (14) term, the Ministry of Energy & Mines gave Doe Run Peru “a maximum . . . of six (6) months, for Project Start-up in accordance with the recommendations of the Technical [Commission]...”⁴⁴⁷

187. As Mr. Mogrovejo explains, having a “specific deadline for each individual activity within the 20 months [] eliminated flexibility, and made compliance more difficult. This permitted the [G]overnment to find that we had not complied and potentially close the Complex if, for example, it took us three months rather than two months to enter into contracts with suppliers.”⁴⁴⁸

188. Doe Run Peru did what it could to obtain passage of another law neutralizing the campaign by the Ministry of Energy & Mines to undermine the extension already granted by Congress.⁴⁴⁹ But the Ministry thwarted these efforts too.⁴⁵⁰ At the same time, a series of negative articles denouncing Doe Run Peru and the PAMA extension appeared in the press.⁴⁵¹ As a

⁴⁴⁷ **Exhibit C-114**, Decree No. 075-2009, §3.2. *See also* Sadlowski Witness Stmt. at ¶ 67.

⁴⁴⁸ Mogrovejo Witness Stmt. at ¶ 61.

⁴⁴⁹ *See* Neil Witness Stmt. at ¶¶ 51-53; Mogrovejo Witness Stmt. at ¶¶ 59-62.

⁴⁵⁰ Neil Witness Stmt. at ¶¶ 51-53 (“Also in May 2010 DRP agreed to provide guarantees of company assets valued at US\$ 250 million to secure completion of the PAMA. On May 31, 2010, however, MEM insisted on being able to foreclose on the guarantees and take over DRP in the event that we were not able to obtain financing and restart the Complex by July 27, 2010 – which was less than two months away . . .”).

⁴⁵¹ *See, e.g.*, **Exhibit C-113**, *Doe Run's errors*, DOW JONES, September 20, 2009 (*hereinafter* “Sept. 20, 2009 DOW JONES”); **Exhibit C-118**, *Doe Run: No to Company Irresponsibility*, EL COMERCIO, August 7, 2009 (*hereinafter* “Aug. 7, 2009 EL COMERCIO”); **Exhibit C-116**, Raúl Mayo, *La Oroya Survives in the Midst of Lead Poisoning*, EL COMERCIO, August 5, 2009 (*hereinafter* “Aug. 5, 2009 EL COMERCIO”).

former Congressman later declared, the Ministry had contributed to creating a negative image of the company, making the task of securing sources of financing even harder.⁴⁵²

189. On June 11, 2010, less than two months before Doe Run Peru's ten-month deadline to restart operations under Congress's 2009 law expired on July 27, 2010, the Peruvian Government loosened the "100% trust account" requirement, reducing Doe Run Peru's required contribution from 100 percent of its revenues down to 20 percent.⁴⁵³ But this did not correct the prior mistreatment because the Ministry of Energy & Mines refused to extend the deadline for Doe Run Peru to restart its operations, thus leaving Doe Run Peru the impossibly short period of only weeks to secure financing, negotiate agreements with its suppliers, and restart one of the most sophisticated smelting operations anywhere in the world.⁴⁵⁴ It was forced into Bankruptcy February 18, 2010 four months before.

K. PERU CAUSED RENCO TO LOSE CONTROL OF ITS INVESTMENTS THROUGH THE BANKRUPTCY PROCESS AND THEN REOPENED THE COMPLEX

190. After the Ministry of Energy & Mines undermined the extension of time granted by Congress, Doe Run Peru was forced into bankruptcy, and the Ministry asserted the bogus MEM Credit claim against Doe Run Peru in the bankruptcy proceedings in excess of US\$ 160 million – for the cost to complete the final PAMA project – thereby becoming the company's largest creditor. As the largest creditor, the Ministry of Energy & Mines greatly influenced the actions and decisions of the committee of creditors' in the bankruptcy process.

1. Peru Became Doe Run Peru's Largest Creditor by Asserting a Meritless Claim Based on the Cost of Completing the Sulfuric Acid Plant Project

191. On February 18, 2010, one of Doe Run Peru's suppliers, *Consortio Minero S.A.* ("Cormín"), commenced bankruptcy proceedings against Doe Run Peru, invoking an unpaid debt

⁴⁵² **Exhibit C-115**, *Paralización de Doe Run genera grandes pérdidas*, LA PRIMERA, November 28, 2011 (*hereinafter* "Nov. 28, 2011 LA PRIMERA").

⁴⁵³ *See Exhibit C-024*, Supreme Decree No. 032-2010-EM. *See also* Neil Witness Stmt. at ¶ 53; Sadlowski Witness Stmt. at ¶¶ 79-81.

⁴⁵⁴ *See, e.g.*, Neil Witness Stmt. at ¶¶ 51-53; Mogrovejo Witness Stmt. at ¶ 62; Sadlowski Witness Stmt. at ¶¶ 79-81.

of US\$ 24,222,361—the result of the Complex’s shutdown.⁴⁵⁵ Cormín is a subsidiary of Trafigura, a multinational commodity trading company headquartered in Switzerland. Several other entities then applied to *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*, the Peruvian Governmental agency which oversees bankruptcy proceedings (“INDECOPI”), to be recognized as Doe Run Peru’s creditors in the bankruptcy (the “INDECOPI Bankruptcy Proceedings” or the “Bankruptcy”). Once approved by INDECOPI, entities such as concentrate suppliers, the La Oroya Complex workers, companies providing services to execute the PAMA projects, and, most importantly, the Ministry of Energy & Mines and Activos Mineros constituted a creditors’ committee (the “Creditors’ Committee”).⁴⁵⁶

192. On September 14, 2010, in an effort to assert control in the INDECOPI Bankruptcy Proceedings, the Ministry of Energy & Mines filed the meritless MEM Credit claim against Doe Run Peru in the amount of US\$ 163,046,495.⁴⁵⁷ The Ministry alleged that the remaining amount that Doe Run Peru had planned to invest in the Copper Circuit sulfuric acid plant project constituted a debt in favor of the Ministry. Specifically, the Ministry of Energy & Mines argued that Doe Run Peru—a private entity—was obliged either to finish the PAMA project or to pay the an amount equal to the cost of finishing the project. But neither the 1993 Regulations nor the approved PAMA provide any support for the Ministry’s position. To the contrary, the 1993 Regulations make clear that the Ministry of Energy & Mines may impose fines or shut down a company’s operations if it cannot meet its PAMA milestones per the Stock Transfer Agreement provisions. However, the company has no obligation to pay the Ministry for the ultimate cost to complete the PAMA projects.

193. On September 27, 2010, Centromin’s successor, Activos Mineros, filed a similarly meritless claim against Doe Run Peru in the amount of US\$ 10,500,000.⁴⁵⁸ Activos Mineros based its claim on Doe Run Peru’s alleged responsibility to remediate the soil

⁴⁵⁵ **Exhibit C-119**, Cormin Notice Regarding Doe Run Peru’s Bankruptcy to INDECOPI, February 18, 2010 (*hereinafter* “Feb. 18, 2010 Cormin Notice”). *See also* Neil Witness Stmt. at ¶ 51; Sadlowski Witness Stmt. at ¶ 69.

⁴⁵⁶ *See* **Exhibit C-120**, List of Doe Run Peru Approved Creditors, January 10, 2012 (*hereinafter* “DRP Approved Creditors”).

⁴⁵⁷ **Exhibit C-025**, 2010 MEM Request to INDECOPI. *See also* Sadlowski Witness Stmt. at ¶¶ 82-84.

⁴⁵⁸ **Exhibit C-072**, Activos Mineros INDECOPI Application.

contamination that occurred between 1997 and 2010,⁴⁵⁹ thus ignoring all of the commitments Centromin and Peru made in the Stock Transfer Agreement.⁴⁶⁰ Activos Mineros' suggestion that Doe Run Peru was responsible for the remediation work is directly contrary to Clause 6.1 of the Stock Transfer Agreement, which states, "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" and 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.*"⁴⁶¹

194. Doe Run Peru opposed the claims brought by the Ministry of Energy & Mines and Activos Mineros.⁴⁶²

195. On February 2, 2011, INDECOPI dismissed Activos Mineros' claim, because Activos Mineros had failed to demonstrate that Doe Run Peru had undertaken an obligation to remediate the soil in and around La Oroya.⁴⁶³ Activos Mineros unsuccessfully appealed this dismissal.⁴⁶⁴

⁴⁵⁹ **Exhibit C-072**, Activos Mineros INDECOPI Application.

⁴⁶⁰ See e.g., **Exhibit C-121**, Activos Mineros Motion to Appeal INDECOPI Ruling No. 0507-2011/CCO-INDECOPI, February 18, 2011 at 14 (*hereinafter* "Feb. 2011 Activos Mineros Motion to Appeal").

⁴⁶¹ **Exhibit C-002**, Stock Transfer Agreement, Clause 6.1 at 25-27 (emphasis added).

⁴⁶² **Exhibit C-122**, Doe Run Peru's Request to INDECOPI Opposing Ministry of Energy & Mines' Request for Recognition of Claims, November 11, 2010 (*hereinafter* "Nov. 2010 DRP Request to INDECOPI"); **Exhibit C-123**, Doe Run Peru's Brief to INDECOPI with Additional Arguments in Support of Opposition to Ministry of Energy & Mines' Claim, November 15, 2010 (*hereinafter* "Nov. 15, 2010 DRP Brief to INDECOPI"); **Exhibit C-124**, Doe Run Peru's Response to INDECOPI Opposing Claim by Activos Mineros, December 2, 2010 (*hereinafter* "Dec. 2, 2010 DRP Response to INDECOPI"); **Exhibit C-125**, Ministry of Energy & Mines Brief to INDECOPI with Clarifications to Request for Recognition of Claims, December 4, 2010 (*hereinafter* "Dec. 4, 2010 MEM Brief to INDECOPI"); **Exhibit C-126**, Ministry of Energy & Mines' Response to INDECOPI to Requirements of Communication and Letter No. 1780-2010/CCO-INDECOPI, December 6, 2010 (*hereinafter* "December 6, 2010 MEM Response to INDECOPI"); **Exhibit C-127**, Doe Run Peru's Brief to INDECOPI with Additional Arguments in Support of Opposition to Ministry of Energy & Mines Claim, December 20, 2010 (*hereinafter* "December 20, 2010 DRP Brief to INDECOPI").

⁴⁶³ **Exhibit C-121**, Feb. 2011 Activos Mineros Motion to Appeal.

⁴⁶⁴ **Exhibit C-129**, INDECOPI Resolution regarding Recognition of Credits, September 7, 2011 (*hereinafter* "Sept. 7, 2011 INDECOPI Resolution") confirming Resolution 507-2011/CCO-INDECOPI, pursuant to which *Activos Mineros'* claim was dismissed).

196. INDECOPI also dismissed the claim brought by the Ministry of Energy & Mines—at least initially—because the obligation to complete the PAMA Project was not a “debt” of Doe Run Peru and therefore not a claim which could be recognized within the INDECOPI Bankruptcy Proceedings.⁴⁶⁵ However, the Ministry of Energy & Mines appealed this dismissal to INDECOPI’s reviewing body,⁴⁶⁶ which reversed the initial INDECOPI decision.⁴⁶⁷ INDECOPI then issued Resolution No. 9340-2011/COO-INDECOPI, recognizing the Ministry of Energy & Mines’ claim in the amount of US\$ 163,046,495 plus US\$ 87,699.29 in interest.⁴⁶⁸ As a result of this decision, the Peruvian Government is now Doe Run Peru’s largest creditor, accounting for approximately 40-45 percent of its total liabilities (including claims from SUNAT OSINERGMIN).⁴⁶⁹

197. The Court of First Instance upheld the second level INDECOPI decision, and Doe Run Peru appealed⁴⁷⁰ to a newly created section of the Superior Court of Appeals that specializes in INDECOPI matters.⁴⁷¹ The case has been fully briefed and was argued on September 16, 2013.⁴⁷² DRC’s position on the appeal is strong and Doe Run Peru initially believed that the

⁴⁶⁵ **Exhibit C-130**, INDECOPI Resolution regarding Recognition of Credits Unfounded, February 23, 2011 (*hereinafter* “Feb. 23, 2011 INDECOPI Resolution”).

⁴⁶⁶ **Exhibit C-121**, Feb. 2011 Activos Mineros Motion to Appeal; **Exhibit C-131**, Ministry of Energy & Mines Appeal of INDECOPI Resolution, March 2, 2011 (*hereinafter* “Mar. 2, 2011 MEM Appeal to INDECOPI”); **Exhibit C-132**, Activos Mineros Request to INDECOPI for Oral Presentation, April 1, 2011 (*hereinafter* “Apr. 1, 2011 Activos Mineros Request to INDECOPI”); **Exhibit C-133**, Doe Run Peru’s Response to INDECOPI in Opposition to Appeal by Activos Mineros, May 19, 2011 (*hereinafter* “May 19, 2011 DRP Response to INDECOPI”); **Exhibit C-134**, Doe Run Peru’s Response to Ministry of Energy & Mines Appeal, May 18, 2011 (*hereinafter* “May 18, 2011 DRP Response to MEM Appeal”); **Exhibit C-135**, Doe Run Peru’s Brief to INDECOPI in Opposition to Appeal by Ministry of Energy & Mines, November 16, 2011 (*hereinafter* “Nov. 16, 2011 DRP Brief to INDECOPI”).

⁴⁶⁷ **Exhibit C-136**, Resolution Issued by Chamber No. 1 for the Defense of Competition of INDECOPI, November 18, 2011 (*hereinafter* “Nov. 18, 2011 Resolution by Chamber No. 1”).

⁴⁶⁸ **Exhibit C-137**, INDECOPI Resolution, Recognition of Credits - Mandate of the Court for Defense of Competition No. 1, December 21, 2011 (*hereinafter* “Dec. 21, 2011 INDECOPI Resolution”).

⁴⁶⁹ See **Exhibit C-138**, ACA Request for Annulment of Ministry of Energy and Mines’ Claim, January 16, 2012 (*hereinafter* “ACA Request for Annulment”). In October 2012 the first instance court issued a decision denying Doe Run Peru’s request to annul the INDECOPI resolution.

⁴⁷⁰ **Exhibit C-139**, Annulment of Administrative Act, Case No. 2012-00368, October 18, 2012 (*hereinafter* “Oct. 18, 2012 Annulment of Administrative Act”). It should be noted that this court was a specially created “transitory court” specializing in administrative matters. I have been advised that the court no longer exists, the judge is no longer an acting judge, and the all files and computers have been moved to an off-site location.

⁴⁷¹ Sadlowski Witness Stmt. at ¶ 83.

⁴⁷² Sadlowski Witness Stmt. at ¶ 83.

chances of MEM's baseless credit being thrown out were high, which would allow for MEM's immediate removal from the bankruptcy process which it has improperly influenced for over three years.⁴⁷³ After continuous contacts between lawyers for the Ministry of Energy & Mines and the judges, the strict 90-day deadline for the court to issue its decision came and went.⁴⁷⁴ Recently, Doe Run Peru was informed that there is purported "discord" among the three judges such that an additional judge must be added to try to get a three-judge decision (and if a 2-2 split develops the process will repeat itself) making it likely that the Ministry will continue to be able to improperly control the Bankruptcy process for months to come.⁴⁷⁵

2. Through the Bankruptcy Process, Peru Promptly Helped to Defeat Doe Run Peru's Proposed Restructuring Plans and Then Allowed the Liquidator to Reopen the Complex

198. Doe Run Peru proposed several restructuring plans that would: (i) allow for the continuation of the business, (ii) ensure the completion of the PAMA projects as quickly as possible, and (iii) ensure that all recognized bankruptcy debts will be paid. The Ministry of Energy & Mines, as the largest creditor after having asserted the bogus MEM Credit in order to control the process, opposed every plan, even as Doe Run Peru showed flexibility by addressing the vast majority of issues raised by the Ministry of Energy & Mines.

199. On October 19, 2011, in order to facilitate restructuring and reopening, an agreement was reached whereby both Glencore (a supplier) and Renco would provide lines of credit to Doe Run Peru that would allow it to restructure its debt.⁴⁷⁶ The Renco loan would consist of a five-year line of credit for up to US\$ 65 million, and the Glencore loan would consist of a five-year line of credit of up to US\$ 135 million. In addition, Glencore would commit to provide mineral concentrates and Doe Run Peru would agree to sell a percentage of its production in La Oroya to Glencore.⁴⁷⁷

⁴⁷³ Sadlowski Witness Stmt. at ¶ 84.

⁴⁷⁴ Sadlowski Witness Stmt. at ¶ 84.

⁴⁷⁵ Sadlowski Witness Stmt. at ¶ 84.

⁴⁷⁶ **Exhibit C-140**, Letter of Intent among Glencore, DRP, and Renco, October 19, 2011 (*hereinafter* "Letter of Intent"). *See also* Sadlowski Witness Stmt. at ¶ 92.

⁴⁷⁷ Sadlowski Witness Stmt. at ¶ 92.

200. Thereafter, Doe Run Peru submitted several restructuring plans in early 2012.⁴⁷⁸ For example, after taking into account the several “observations” raised by the Ministry of Energy & Mines in connection with a restructuring plan submitted by Doe Run Peru on March 30, 2012, Doe Run Peru submitted an amended restructuring plan on April 11, 2012. Under that plan, the operations of the La Oroya Complex would be restarted no later than the end of June 2012. Notwithstanding the fact that this plan was commercially and financially viable, the Government, a 45.53 percent creditor, strongly opposed it, and was not willing to provide the flexibility Doe Run Peru needed, and to which it was entitled under the economic *force majeure* provision of the Stock Transfer Agreement, with respect to the PAMA obligations. On April 12, 2012, the Creditors Committee rejected the amended restructuring plan proposed by Doe Run Peru.⁴⁷⁹

201. After the April plan was rejected, Doe Run Peru submitted another amended restructuring plan on May 14, 2012.⁴⁸⁰ This new Plan was based on the same business model but removed all of the major items to which the Ministry of Energy & Mines had objected, demonstrating continued flexibility and cooperation from Doe Run Peru. The only meaningful right Doe Run Peru attempted to retain in the amended plan was its right to operate all Circuits in the Complex to generate the necessary funds to complete the PAMA. In its veto of the plan, the Ministry insisted that the PAMA for the Copper Circuit be completed before it was re-opened.⁴⁸¹ The Ministry also continued to demand that, upon re-starting, the operations at La Oroya Complex must be in accordance with all environmental standards in force at the time, including the 80 µg/m³ SO₂ standard. Finally, as a pre-condition to supporting the restructuring plan, the Ministry continued to demand that Doe Run Peru withdraw its *Acción Contencioso Administrativa*, a judicial challenge Doe Run Peru had brought against the sham US\$ 163 million MEM Credit claim requesting the annulment of an INDECOPI resolution which had approved the Ministry’s claim (the “MEM Action”).⁴⁸²

⁴⁷⁸ Sadlowski Witness Stmt. at ¶ 91.

⁴⁷⁹ Sadlowski Witness Stmt. ¶ 93.

⁴⁸⁰ **Exhibit C-026**, 2012 DRP Restructuring Plan.

⁴⁸¹ **Exhibit C-027**, June 26, 2012 Letter.

⁴⁸² Doe Run Peru challenged INDECOPI’s decision to recognize MEM’s claim by filing an Administrative Contentious Action (*Acción Contencioso Administrativa*) against MEM and INDECOPI requesting the

202. Doe Run Peru continued its efforts to persuade the Ministry of Energy & Mines to accept its May 2012 restructuring plan.⁴⁸³ However, the Ministry continued to: (i) refuse to permit Doe Run Peru to operate the Copper Circuit (which was both unreasonable and inconsistent with the 1993 Regulations, the PAMA extension laws of 2004 and 2009, and the Ministry’s acquiescence in the La Oroya Complex’s full operation while the PAMA projects were being completed); and (ii) insist that Doe Run Peru immediately comply with all environmental standards in force at the time, including the 80 µg/m³ SO₂ standard, contrary to the intent of the Stock Transfer Agreement that the PAMA projects were to bring the Complex into compliance with the standards in place at the time the Stock Transfer Agreement was executed (October 1997).⁴⁸⁴ With respect to the final point, if the standards were going to be modified, the Ministry would have to give the company a reasonable period of additional time to meet the new standards after completion of the fundamental modifications to the Complex contemplated by the PAMA. All further efforts to gain the Ministry’s support for Doe Run Peru’s restructuring plan have failed.⁴⁸⁵

203. The creditors, led by MEM, voted to put Doe Run Peru into liquidation proceedings under Right Business, a Peruvian entity. Right Business described the reasoning of the creditors’ – including the Ministry – as follows: “[i]n April, Doe Run Peru was declared by its creditors to be in a process of ‘operational liquidation,’ meaning that while the creditors would not approve the company’s restructuring plan, they would allow the company to resume production while the board of creditors further analyzed Doe Run Peru’s situation and prepare to make a final decision.”⁴⁸⁶ The Complex has been operating, without a PAMA and without any

annulment of the INDECOPI resolution approving MEM’s bankruptcy claims. **Exhibit C-027**, June 26, 2012 Letter.

⁴⁸³ **Exhibit C-141**, Letter from D. Sadlowski (Renco) to J. Merino Tafur (Ministry of Energy & Mines), June 28, 2012 (*hereinafter* “June 28, 2012 Letter”).

⁴⁸⁴ **Exhibit C-142**, Letter from D. Sadlowski (Renco) to R. Patiño (Ministry of Energy & Mines), July 17, 2012 (*hereinafter* “July 17, 2012 Letter”).

⁴⁸⁵ **Exhibit C-143**, Letter from D. Sadlowski (Renco) to M. del Rosario Patiño (Ministry of Energy & Mines), August 2, 2012 (*hereinafter* “August 2, 2012 Letter”); **Exhibit C-144**, Letter from D. Sadlowski (Renco) to M. del Rosario Patiño (Ministry of Energy & Mines), August 13, 2012 (*hereinafter* “August 13, 2012 Letter”).

⁴⁸⁶ **Exhibit C-145**, Dorothy Kosich, *After 3 years, Doe Run Peru's La Oroya finally restarts*, MINEWEB, July 30, 2012, available at <http://www.mineweb.com/mineweb/content/en/mineweb-base-metals?oid=156005&sn=Detail&pid=102055> (*hereinafter* “July 20, 2012 MINEWEB”); **Exhibit C-146**, *Doe Run Peru announces smelter restart*, FOX LATINO NEWS, July 28, 2012, available at

additional environmental investments or improvements, since July 29, 2012.⁴⁸⁷ In discussing the reopening, Minister Merino Tafur noted that “the resumption of operations at the complex was achieved through consensus and the efforts of the management company Right Business, workers at the smelter, and creditors of the company Doe Run Peru, who were all interested in resurrecting a vital investment to the economy of La Oroya.”⁴⁸⁸

204. Since appointment of the liquidator, Peru has treated Doe Run Peru, as managed by Right Business, more favorably than under former management and has turned a blind eye to numerous environmental violations, unlike before Right Business’ appointment where the State fined Doe Run Peru for any minor infraction and had an inspector residing in La Oyoya, which is no longer the case.

205. Though the Copper Circuit is still not running, the SO₂ emissions continue to exceed maximum permissible limits. For example, “on January 8, 2013, Doe Run Peru was notified via Sub-directional Resolution No. 0256-2012-OEFA-DFSAI/SDI through which the administrative sanctioning procedure of Doe Run Peru was initiated, for supposed excesses in daily average amounts of concentrations of Sulfur Dioxide (SO₂) on the 9th, 10th, 14th, 16th, 17th, 18th, 20th, and 22nd of October 2012, in relation to the amount established in the current regulation for said parameter.”⁴⁸⁹ And “[o]n January 28, 2013, Sub-directional Resolution N° 067-2013-OEFA-DFSAI/SDI which extended the administrative sanctioning procedure in respect to the months of August (dates: 9th, 10th, 11th, 13th, 14th, 15th, 19th, and 22nd) and September (dates: 16th, 17th, 18th, 21st, 22nd, 23rd, 24th, and 25th) was issued.”⁴⁹⁰ Despite these violations—and despite its claim that Doe Run Peru should not be allowed to operate until the Complex achieved compliance with the SO₂ limit—the Ministry of Energy & Mines and other creditors continue to operate it and have not addressed SO₂ emissions.⁴⁹¹

<http://latino.foxnews.com/latino/news/2012/07/28/doe-run-peru-announces-smelter-restart> (*hereinafter* “July 28, 2012 FOX LATINO NEWS”).

⁴⁸⁷ Mogrovejo Witness Stmt. at ¶¶ 63-65.

⁴⁸⁸ **Exhibit C-145**, July 20, 2012 MINEWEB; **Exhibit C-146**, July 28, 2012 FOX LATINO NEWS.

⁴⁸⁹ **Exhibit C-147**, Letter from A. Miguel López-Cano Algorta, et. al (Right Business S.A.) to J. Muñoz Zinches (Doe Run Cayman) and Estudio Muñoz, et. al., February 22, 2013 at 2 (*hereinafter* “February 22, 2013 Letter”).

⁴⁹⁰ **Exhibit C-147**, February 22, 2013 Letter.

⁴⁹¹ *See* Sadlowski Witness Stmt. at ¶¶ 94-96.

206. Moreover, the Ministry of Energy & Mines has implemented regulatory changes to make compliance easier for the creditors operating the Complex. These include a change to the way in which ambient SO₂ concentrations are calculated—a change that Doe Run Peru itself requested and the Ministry rejected prior to its takeover of the Complex⁴⁹²—the SO₂ standards for high altitude operations, including the Complex.⁴⁹³ This reversal disregards precisely the principles that the Ministry cited to refuse Doe Run Peru an extension and to denigrate Doe Run Peru in the media.

207. In yet another example of the Ministry’s application of a double standard, the Ministry of Energy & Mines (and the other creditors) ignored the Peruvian Government’s own instructions to fix toaster no. 12 before re-initiating operations at the smelter to avoid fugitive emissions.⁴⁹⁴ As a result, on November 15, 2012, “[Peruvian Government] personnel arrived at the metallurgical complex and verified that the process continued ‘without adoption of measures to mitigate fugitive emissions.’”⁴⁹⁵

208. As a result of the Peruvian Government’s actions, including the Ministry of Energy & Mines’ conduct throughout the bankruptcy process, Renco has lost all control of its indirect wholly-owned subsidiary, Doe Run Peru, and its investments have been expropriated.

⁴⁹² See generally **Exhibit C-148**, *Peru loosens new air pollution limits after industry protests*, CHICAGO TRIBUNE, July 11, 2013, available at http://articles.chicagotribune.com/2013-07-11/news/sns-rt-peru-miningenvironment-20130711_1_la-oroya-doe-run-peru-environment-ministry (hereinafter “July 11, 2013 CHICAGO TRIBUNE”) at 1 (“The environment ministry told Reuters . . . that it would not apply 2014 limits on sulfur dioxide emissions . . . in the highland town La Oroya, where Doe Run Peru has a poly-metallic smelter.”); **Exhibit C-149**, Roberto Rosado, *Ministry of the Environment has an Adaptation Mechanism: Guideline to Comply with New Environmental Air Standard is Eased*, GESTIÓN, July 11, 2013 (hereinafter “July 11, 2013 GESTIÓN”); **Exhibit C-150**, *Will the environmental standard be made more flexible in favor of Southern Peru?* GATO EN CERRADO, June 20, 2013 (hereinafter “June 20, 2013 GATO EN CERRADO”); **Exhibit C-151**, *New Environmental Standard Worries Southern Peru*, EL COMERCIO, June 20, 2013 (hereinafter “June 20, 2013 EL COMERCIO”); **Exhibit C-152**, Ministerial Resolution No. 205-2013-MINAM regarding the complementary provisions for the application of the Environmental Air Quality Standards (EQS), July 13, 2013 (hereinafter “Resolution No. 205-2013”).

⁴⁹³ See e.g., **Exhibit C-148**, July 11, 2013 CHICAGO TRIBUNE

⁴⁹⁴ **Exhibit C-153**, *OEFA Warns of the Emissions of Contaminating Gases at La Oroya Complex*, PERU 21, November 15, 2012 (hereinafter “November 15, 2012 PERU 21”)

⁴⁹⁵ **Exhibit C-153**, November 15, 2012 PERU 21.

L. FOR THE PAST THREE YEARS, DESPITE NO EVIDENCE OF WRONGDOING, BASELESS CRIMINAL CHARGES HAVE BEEN PURSUED AGAINST RENCO OFFICERS.

209. On March 2, 2011, after an exhaustive review of Doe Run Peru's and Doe Run Cayman Limited's documents, including accounting records, INDECOPI issued a lengthy decision recognizing Doe Run Cayman Limited as a creditor of Doe Run Peru and upholding its credit in the bankruptcy proceeding in the amount of US\$ 155,739,617.⁴⁹⁶ Unhappy with this decision, on April 25, 2011, Cormín (a competitor of Doe Run Peru) filed a criminal complaint against Renco officers Ira Rennert and Bruce Neil accusing them of several crimes related to the INDECOPI bankruptcy proceeding and the intercompany note issued by Doe Run Peru to DRCL.⁴⁹⁷

210. The Lima District Attorney ordered police accounting experts to conduct a review of the transactions, even though the extensive investigation by INDECOPI found no irregularities. Despite the earlier INDECOPI decision, two police experts issued an expert accounting report on November 11, 2011 (*Dictamen Pericial Contable*) finding that the debt under the intercompany note was irregular and recommending that the District Attorney indict Messrs. Rennert and Neil.⁴⁹⁸ This report was rife with inaccuracies, including, among other things, a mischaracterization of the Stock Transfer Agreement, and Doe Run Peru filed complaints against the authors of the reports with the Office of Internal Affairs of the Peruvian National Police and the Prosecutor's office.⁴⁹⁹

211. Notwithstanding, the District Attorney issued a criminal indictment (*denuncia*) against Messrs. Rennert and Neil for the alleged crimes of: (i) Fraudulent Insolvency (based on the transactions supporting the debt under an intercompany note issued by Doe Run Peru to Doe Run Cayman Limited); and (ii) False Statement in an Administrative Proceeding (based upon the request for recognition before INDECOPI that the debt owed by Doe Run Peru to DRCL

⁴⁹⁶ **Exhibit C-154**, INDECOPI Resolution regarding Recognition of Credits of Doe Run Cayman Limited, March 2, 2011 (*hereinafter* "Mar. 2, 2011 INDECOPI Resolution").

⁴⁹⁷ Sadlowski Witness Statement at ¶ 85.

⁴⁹⁸ Sadlowski Witness Statement at ¶ 86.

⁴⁹⁹ Sadlowski Witness Statement at ¶ 87.

constituted a bankruptcy credit).⁵⁰⁰ The case was then assigned to Judge Flores of the 39th Criminal Court in Lima who formally opened a criminal case (*Auto de Apertura de Instrucción*) against Messrs. Rennert and Neil on both charges (the “*Auto de Apertura*”).⁵⁰¹

212. The *Auto de Apertura* too was both substantively and procedurally defective and counsel for Messrs. Rennert and Neil asserted three procedural defenses, namely (i) Preliminary Matter (*Cuestión Previa*) asserting that prior to indicting someone for the claims alleged, the District Attorney must obtain a technical report from INDECOPI with respect to the allegations; (ii) Motion to Dismiss (*Excepción de Naturaleza de Acción*) asserting that the Criminal Court’s decision (*Auto de Apertura*) does not sufficiently allege that criminal conduct occurred; and (iii) Nullity Request (*Nulidad*) asserting that the Criminal Court’s decision (*Auto de Apertura*) violates the Constitution because it is too vague and does not state with sufficient clarity conduct attributable to Messrs. Rennert and Neil.

213. The Criminal Court rejected these three procedural defenses and the decision was appealed to the 5th Criminal Chamber of the Superior Court of Lima. After nearly three years, the Superior Court of Appeals ruled in favor of Messrs Rennert and Neil.⁵⁰² Cormín immediately filed three “exceptional writs” with the Permanent Criminal Chamber of the Supreme Court, akin to writ of certiorari, as to all three defenses. Oral argument was heard on November 11, 2013 on the first defense, Preliminary Matter, and the Supreme Court recently rejected Cormín’s writ on January 22, 2014, effectively dismissing the crime of Fraudulent Insolvency.⁵⁰³ Oral argument has not yet been set on the remaining two defenses, which relate to the crime of False Statement in an Administrative Proceeding.

214. Whatever the end result, it is clear that the District Attorney has bent over backwards to harass Renco’s officers and directors by lodging a bogus indictment based upon the DRCL credit after the credit had already been approved and recognized by INDECOPI.

⁵⁰⁰ **Exhibit C-155**, Indictment No. 339-2011 against I. Rennert and B. Neil issued by the District Attorney, November 14, 2011 (*hereinafter* “Indictment No. 339-2011”).

⁵⁰¹ **Exhibit C-156**, Criminal Case issued by Judge Flores of the 39th Criminal Court in Lima, December 2, 2011 (*hereinafter* “Dec. 2, 2011 Criminal Case”).

⁵⁰² **Exhibit C-157**, Opinions issued by the Superior Court of Appeals of Lima (*hereinafter* “Superior Court of Appeals Opinions”). *See also* Neil Witness Stmt. at ¶ 56.

⁵⁰³ **Exhibit C-158**, Permanent Criminal Chamber of the Superior Court of Peru Decision on Queja Excepcional No. 311-2013, January 22, 2014 (*hereinafter* “Decision No. 311-2013”).

III. THE TRIBUNAL HAS JURISDICTION OVER THIS DISPUTE

215. The Tribunal has jurisdiction over Renco's claims in this arbitration.

216. Peru provided its general consent for the submission of a claim to arbitration under the Treaty. Renco "consent[ed] in writing to arbitration" in its notice of arbitration pursuant to Article 10.18(2), and provided a written waiver of any right to initiate or continue before any administrative tribunal or court under the law of any Party, any proceeding with respect to the measures alleged to constitute a breach.

217. Renco has complied with the Treaty's requirements to bring a claim. Renco provided Peru with written notice of Renco's intention to submit the claim to arbitration at least 90 days before submitting any claim to arbitration in accordance with Article 10.16(2) of the Treaty. And, as required by Article 10.16(3), more than six months elapsed between the time the disputes herein crystallized in the latter half of 2009 and the time Renco commenced arbitration on April 4, 2011 (amended Notice of Arbitration on August 9, 2011). Moreover, in observance of Article 10.18(4)(a), Renco has not submitted "the same alleged breach" to an administrative tribunal or court of the host State or to any other binding dispute settlement procedure.

218. Renco is an investor as defined in Article 10.28 of the Treaty, which provides that an "investor" is "a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party." Renco was a U.S. legal entity both before the dispute arose and on the date on which it consented to arbitration by filing its Notice of Arbitration and Amended Notice of Arbitration.

219. Renco has also made an "investment" in Peru. Article 10.28 of the Treaty broadly defines "investment" as follows:

every asset that an investor owns or controls, directly or indirectly,
that has the characteristics of an investment, including [. . .]

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;
- (d) futures, options, and other derivatives;

- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges [...]

220. The Treaty defines investment as “every asset,” and thus, Renco’s interest in Doe Run Peru, as well as the related cash flows, constitute assets protected by the Treaty. Further, Doe Run Peru is an enterprise owned and controlled by Renco and therefore an investment under Article 10.28(a). Renco’s participation in Doe Run Peru also constitutes an investment in the form of “shares, stock, and other forms of equity participation in an enterprise.” In addition, Renco’s “investments” include the Stock Transfer Agreement, which is both a “production contract” and a “property right.” The Guaranty Agreement, as well as Doe Run Peru’s rights under both the Stock Transfer Agreement and the Guaranty Agreement also constitute property rights under Article 10.28(h), as does the La Oroya Complex and the Cobriza mine. Moreover, as explained below, the Stock Transfer Agreement and the Guaranty Agreement together constitute an “investment agreement” within the meaning of Article 10.28 of the Treaty.

221. Chapter 10 of the Treaty provides for the protection of US investors’ investments in Peru and for arbitration of investment disputes between US investors and Peru. Specifically, Article 10.16 of the Treaty provides as follows:

In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation –

- (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim
 - (i) that the respondent has breached
 - (A) an obligation under Section A,
 - (B) an investment authorization, or
 - (C) an investment agreement; and
 - (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach[.]

222. The Tribunal has jurisdiction over Renco’s claims that Peru breached an “investment agreement” and for its claims for breach by Peru of Section A of the Treaty.

A. THE TRIBUNAL HAS JURISDICTION OVER RENCO’S CLAIMS THAT PERU HAS BREACHED AN “INVESTMENT AGREEMENT”

223. The Tribunal has jurisdiction over Renco’s claims that Peru violated its “investment agreement” with Renco’s covered investment Doe Run Peru (Doe Run Peru is an asset that Renco owns, directly or indirectly, and therefore is an investment as defined in Article 10.28(a)).

224. Article 10.16(1)(ii) of the Treaty grants the Tribunal jurisdiction over claims that the host State has breached an “investment agreement,” resulting in loss or damage to the investor or its investments.

225. The Treaty defines investment agreement as follows:

investment agreement means a written agreement between a national authority of a Party and a covered investment or an investor of another Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the [G]overnment.

226. The parties to the Treaty clarified that, for the purposes of the definition of “investment agreement,” the words “national authority” “mean[] an authority at the central level of [G]overnment.”

227. Annex 10-H to the Treaty further clarifies that several instruments may constitute a single “investment agreement.” Specifically, “for multiple written instruments to make up an ‘investment agreement,’ as defined in Article 10.28, one or more of those instruments must grant rights to the covered investment or the investor as defined in subparagraph (a), (b), or (c) of that definition.

228. Here, the Guaranty Agreement and the Stock Transfer Agreement together qualify as an “investment agreement,” as they constitute a written agreement between a national authority (Peru and Centromin) and a covered investment (*i.e.*, Doe Run Peru) and an investor (Renco), on which Renco relied in making its investment.⁵⁰⁴ Moreover, these agreements grant Renco’s investment Doe Run Peru and Renco certain rights with respect to the “refining” of natural resources controlled by a national authority of Peru.⁵⁰⁵

229. The Stock Transfer Agreement and the Guaranty Agreement are inseparable parts of the same transaction. The Guaranty Agreement was part of the bargain: Doe Run Peru and the Renco Consortium would not enter into the Stock Transfer Agreement without Peru’s guarantee of Centromin’s obligations under the Stock Transfer Agreement, and the Guaranty Agreement would not exist without the Stock Transfer Agreement. The Stock Transfer Agreement itself recognizes this fundamental inseparability, and incorporates the Guaranty Agreement 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.”⁵⁰⁶ Accordingly, the Stock Transfer Agreement and the Guaranty Agreement form a single investment agreement under the Treaty.⁵⁰⁷

230. The investment agreement consisting of the Stock Transfer Agreement and the Guaranty Agreement satisfies the requirement in Annex 10-H to the Treaty that “one or more of

⁵⁰⁴ See **Exhibit C-003**, Guaranty Agreement; **Exhibit C-002**, Stock Transfer Agreement.

⁵⁰⁵ **Exhibit C-003**, Guaranty Agreement, art. 2.2 at 4; **Exhibit C-002**, Stock Transfer Agreement, Clause 5.1 at 17-18.

⁵⁰⁶ **Exhibit C-002**, Stock Transfer Agreement, Clause 10 at 57-58.

⁵⁰⁷ **Exhibit C-003**, Guaranty Agreement, art. 2-3 at 4.

those instruments must grant rights to the covered investment or the investor as defined in subparagraph (a), (b), or (c) of that definition.” Here, both the Stock Transfer Agreement and the Guaranty Agreement grant rights to the covered investment or the investor. The Stock Transfer Agreement grants to Doe Run Peru the right to own and operate Metaloroya, the right to own a Peruvian smelting and refining operation, the right to produce exportable products from Peru’s mineral resources, rights to water, the right to require Centromin and Peru to remediate, and the right to indemnification and defense for third-party claims related to environmental liability, among others.⁵⁰⁸ Through the Guaranty Agreement, the Government of Peru guaranteed all of these rights, and provided Doe Run Peru with an additional right to seek relief against the Government of Peru.⁵⁰⁹

231. The agreement consisting of the Stock Transfer Agreement and the Guaranty Agreement also satisfies the requirement that a “national authority” be a party.⁵¹⁰ Article 10.28 defines the term “national authority” as “an authority at the central level of [G]overnment.” Article 1.3 of the Treaty provides the following definition of those terms: “For purposes of this Agreement, unless otherwise specified: central level of [G]overnment means: for Peru, the national level of [G]overnment; and for the United States, the federal level of [G]overnment...” Here, Peruvian President Fujimori signed the decree authorizing the [G]uaranty, and the Vice Minister of Mines signed the Guaranty Agreement with Doe Run Peru.⁵¹¹ Both are “an authority at the central level of [G]overnment.” As a result, the “investment agreement” satisfies the Treaty requirement that the [G]overnment party be a “national authority.”

232. The agreement also satisfies the requirement that an investor or a “covered investment” be a party, as Doe Run Peru is a “covered investment” as defined in the Treaty.

233. Lastly, the agreement consisting of the Stock Transfer Agreement and the Guaranty Agreement indisputably grants Doe Run Peru rights with respect to the “exploration, extraction, refining, transportation, distribution, [and] sale” of natural resources. Pursuant to Clause 1.2 of the Stock Transfer Agreement, Centromin agreed to transfer 99.93 percent of

⁵⁰⁸ **Exhibit C-002**, Stock Transfer Agreement, Clauses 5-8 at 16-52.

⁵⁰⁹ **Exhibit C-003**, Guaranty Agreement, art. 2-3 at 4.

⁵¹⁰ **Exhibit C-002**, Stock Transfer Agreement, Clause 10 at 57-58; **Exhibit C-003**, Guaranty, art. 2 at 4.

⁵¹¹ **Exhibit C-162**, Decree No. 042-97; **Exhibit C-003**, Guaranty Agreement at 2.

Metaloroya's shares to Doe Run Peru.⁵¹² Under Clause 1.1, Centromin “represent[ed], guarantee[d] and agree[d]” that it had transferred the “La Oroya Metallurgical Complex” to Metaloroya.⁵¹³ Clause V of the “Background” section of the Stock Transfer Agreement notes that Metaloroya “is a corporation organized under the basis of the La Oroya Metallurgical Complex of Centromin . . . whose stock is wholly owned by Centromin and whose corporate objective is mainly to engage in activities proper to the metallurgical and mining industry, such as smelting, refining, industrialization, mining and marketing of its products.”

234. Moreover, Centromin expressly “represent[ed] and guarantee[d]” in Clauses 8.5 and 8.7 of the Stock Transfer Agreement that the consideration received by Doe Run Peru under the Stock Transfer Agreement included the smelting concessions and mining rights that Centromin had duly transferred and registered to Metaloroya. In particular, Centromin represented and guaranteed that: (1) it had duly transferred and registered to Metaloroya all of the “concessions and mining rights” listed in Annex 5 of the Stock Transfer Agreement; (2) Metaloroya had “complied with all mining obligations corresponding to [its] mining rights”; (3) “[a]ll mining rights are in force and have not incurred in [sic] any cause for lapsing and all obligations under the General Mining Law have been satisfied by Centromin through 1997”; and (4) “[m]ining good standing rights of concessions belonging to [Metaloroya] have been paid for 1997.”⁵¹⁴

B. THE TRIBUNAL HAS JURISDICTION OVER RENCO'S CLAIMS THAT PERU HAS BREACHED SECTION A OF THE TREATY

235. The Tribunal has jurisdiction over Renco's claims under Chapter 10, Section A of the Treaty, as set forth in Article 10.16(1)(i).

236. Measures taken by Peru (as set forth in detail in Section IV.B and IV.C) have breached a number of Section A obligations. First, Peru breached its obligation to provide to Renco fair and equitable treatment and full protection and security. Second, Peru breached its obligation to treat Renco and its investments no less favorably than the treatment accorded by Peru to its own investors and investments. Third, Peru breached its obligation not to expropriate

⁵¹² **Exhibit C-002**, Stock Transfer Agreement, Clause 1.2 at 9-10.

⁵¹³ **Exhibit C-002**, Stock Transfer Agreement, Clause 1.1 at 8-9.

⁵¹⁴ **Exhibit C-002**, Stock Transfer Agreement, Clause 8.5 and 8.7 at 38-39, 41.

or nationalize Renco's investments, either directly or indirectly, through measures equivalent to expropriation or nationalization, save for a public purpose, in a non-discriminatory manner, on payment of prompt, adequate, and effective compensation, and in accordance with due process of law. Accordingly, the Tribunal has jurisdiction over Renco's treaty claims as set forth in Section A.

IV. LEGAL ARGUMENT

237. Peru breached the investment agreement consisting of the Guaranty Agreement and the Stock Transfer Agreement by refusing to assume liability for the claims asserted in the St. Louis Lawsuits, despite its duty to do so under these contracts. Peru's refusal to assume this liability also breached its obligation under Section A of the Treaty to treat Renco's investments fairly and equitably, because Peru induced and enticed Renco to invest in Doe Run Peru and the Complex by agreeing to assume liability for precisely the type of third-party claims that the Plaintiffs have asserted in the St. Louis Lawsuits.

238. Peru also has breached multiple obligations under the Treaty and the investment agreement through its pattern of unfair treatment of Doe Run Peru in connection with its requests for an extension of time to complete its ninth and final PAMA project. Despite Doe Run Peru's entitlement to an extension of time to complete its PAMA under the broad economic *force majeure* clause contained in the Stock Transfer Agreement, Peru denied multiple requests and then undermined the extension once finally granted. Peru's treatment of Doe Run Peru's proposed restructuring plans also breached Peru's Treaty obligation. Thus, Peru's multiple breaches of the Treaty and investment agreement resulted in Claimant's total loss of control over its investments in Peru.

A. PERU'S REFUSAL TO ASSUME LIABILITY FOR THE CLAIMS IN THE ST. LOUIS LAWSUITS VIOLATES THE TREATY BECAUSE IT BREACHES THE GUARANTY AGREEMENT AND THE STOCK TRANSFER AGREEMENT, WHICH TOGETHER CONSTITUTE AN INVESTMENT AGREEMENT

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

239. Article 10.22(2) of the Treaty calls for the Tribunal to apply Peruvian law to claims for breach of an investment agreement that expressly provides for the application of

Peruvian law, and to apply both Peruvian law and international law to claims for breach of an investment agreement that is silent on the choice of applicable law:

[W]hen a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C) [*i.e.*, claims arising out of investment authorizations and investment agreements], the tribunal shall apply:

- (a) the rules of law specified in the pertinent investment authorization or investment agreement, or as the disputing parties may otherwise agree; or
- (b) if the rules of law have not been specified or otherwise agreed:
 - (i) the law of the respondent,⁵¹⁵ including its rules on the conflict of laws, and
 - (ii) such rules of international law as may be applicable.

240. The Stock Transfer Agreement is governed by Peruvian law in accordance with the parties' express agreement in Clause 11.⁵¹⁶ The Guaranty Agreement, on the other hand, is silent on the issue of governing law. As a result, it is governed by both Peruvian law and such rules of international law as may be applicable.

241. The Peruvian Civil Code of 1984 (the "Civil Code") requires the Guaranty Agreement and the Stock Transfer Agreement to be interpreted in accordance with (i) their plain terms; (ii) the principle of good faith; and (iii) the parties' shared intentions judged at the time the agreements were concluded. Certain relevant provisions of the Civil Code 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.⁵¹⁷

⁵¹⁵ **CLA-001**, Treaty, art. 10.22(2)(b)(i) n. 11 at 10-19 (defining the "law of the respondent" as "the law that a domestic court or tribunal of proper jurisdiction would apply in the same case").

⁵¹⁶ **Exhibit C-002**, Stock Transfer Agreement, Clause 11 entitled "*Governing Legislation*" (providing that "[t]his contract will be governed and executed in accordance with the laws of the Republic of Peru . . ."). See Stock Transfer Agreement, Clause 11, 58. Clause 2.2 of the Amended Stock Transfer Agreement provides that "all Clauses of the '*Metaloroya Transfer Contract*' [STA] continue in force and keep their legal power, insofar as they have not been modified by this Contract." See Amended Stock Transfer Agreement, Clause 2.2 at 15. The Stock Transfer Agreement's governing law provision was not modified by the Amendment to the Stock Transfer Agreement.

⁵¹⁷ **Exhibit C-159**, 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 1362. Contracts shall be negotiated, executed and performed according to the rules of good faith and according to the common intention of the parties.⁵¹⁸

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.⁵¹⁹

242. 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.”⁵²⁰ It requires the Guaranty Agreement and the Stock Transfer 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.”⁵²¹

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-161**, Peruvian Commercial Code, February 15, 1902 (*hereinafter* “Commercial Code”), art. 57.

⁵¹⁸ **Exhibit C-159**, Civil Code, 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-161**, 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 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-002**, Juan Guillermo Lohmann Luca de Tena, *EL NEGOCIO JURÍDICO* 199 (1st ed. 1986) (*hereinafter* “Lohmann, JURÍDICO”).

⁵¹⁹ **Exhibit C-159**, Civil Code, 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.”).

⁵²⁰ **CLA-002**, 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.”).

⁵²¹ **CLA-003**, 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, *Código Civil*”). See also **CLA-002**, 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 good faith of the recipient of the declaration, and properly understand it, without twisting its meaning.”). See also **CLA-004**, 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.”).

243. In addition to the requirement of good faith interpretation, the obligation to construe the Guaranty Agreement and the Stock Transfer Agreement in accordance with the “common intention of the parties” at the time of their conclusion is also mandated by Peruvian law.⁵²² Specifically, contractual provisions must be interpreted both “systematically” and “functionally.”

244. The so-called “systematic interpretation” approach requires consistency both among the different parts of a single contract⁵²³ (Stock Transfer Agreement) and between several related contracts that are part of a single transaction⁵²⁴ (Guaranty Agreement and the Stock Transfer 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.⁵²⁵

245. “Functional interpretation,” on the other hand, 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.⁵²⁶ In ascertaining the “common intention of the parties,” therefore, the parties’ conduct before, during and after the

⁵²² See **Exhibit C-159**, Civil Code, art. 1362

⁵²³ For a systematic interpretation of the Stock Transfer Agreement 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 Stock Transfer Agreement 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-002, Stock Transfer Agreement, Clause 18.1 at 64.

⁵²⁴ **CLA-003**, Fernández Cruz, *Código 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.

⁵²⁵ **Exhibit C-159**, 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.”).

⁵²⁶ **Exhibit C-159**, Civil Code, art. 170 (“Expressions that have various meanings should be understood as the most fitting for the nature and purpose of the act.”).

execution of the contract is relevant under Peruvian law, including negotiation documents, correspondence and drafts.⁵²⁷

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

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

246. By the express terms of the Stock Transfer Agreement, 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 Doe Run Peru, Renco, Doe Run Resources, or any other related entity or person. The key features of the liability regime for third-party damages and claims relating to environmental contamination are as follows:

247. **Centromin's Retention and Assumption of Liability:** Under the Stock Transfer Agreement, 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 Stock Transfer Agreement and (2) to assume liability for third-party damages and claims attributable to Doe Run Peru's operation of the Complex after the execution of the Stock Transfer Agreement.⁵²⁸

248. Under Clause 5.5 of the Stock Transfer Agreement, the parties agreed that Doe Run Peru "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 Doe Run Peru under Clause 5 "shall correspond to Centromin in accordance with the Sixth Clause." Centromin thus agreed

⁵²⁷ See **CLA-002**, Lohmann, JURÍDICO at 190 ("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-003**, Fernández Cruz, *Código Civil* at 813.

⁵²⁸ **Exhibit C-002**, Stock Transfer Agreement, Clauses 6.2, 6.3 at 27.

under the Stock Transfer Agreement 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.

249. In addition to retaining the third-party liability that it held prior to the execution of the Stock Transfer Agreement, Centromin agreed in Clauses 6.2 and 6.3 of the Stock Transfer Agreement to “assume” liability for third-party damages and claims attributable to Doe Run Peru's operation of the Complex after the execution of the Stock Transfer Agreement. In particular, and as discussed in more detail below, Centromin agreed to assume liability for all third-party damages and claims attributable to Doe Run Peru's operation of the Complex during the period approved by the Ministry of Energy & Mines for the performance of Doe Run Peru's PAMA projects (initially ten years), subject to very narrow exceptions not applicable here.⁵²⁹ 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.

250. **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 Stock Transfer Agreement, Centromin agreed to assume liability for the vast majority of third-party damages and claims arising during the PAMA period, when Doe Run Peru would be upgrading the Complex to improve its environmental performance and to bring it into compliance with the environmental standards Peru established in 1996.⁵³⁰ 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 Doe Run Peru, after the merger of Metaloroya and Doe Run Peru in December 1997], of Centromin and/or its predecessors, except for the damages and third-party claims” for which Doe Run Peru is liable under Clause 5.3.⁵³¹

251. Clause 5.3 narrowly circumscribes Doe Run Peru's liability for third-party damages and claims arising during the PAMA period to: (1) damages and claims that are “exclusively attributable” to Doe Run Peru, “but only insofar” as they are attributable both to

⁵²⁹ **Exhibit C-002**, Stock Transfer Agreement, Clauses 6.2, 6.3 at 27.

⁵³⁰ **Exhibit C-002**, Stock Transfer Agreement, Clause 6.2 at 27.

⁵³¹ **Exhibit C-002**, Stock Transfer Agreement, Clauses 6.2 at 27.

business operations of Doe Run Peru “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 Doe Run Peru on the performance of its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2 of the Stock Transfer Agreement (which are not relevant here as they relate to Doe Run Peru’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).⁵³²

252. Centromin is thus liable under Clause 6.2 of the Stock Transfer Agreement for **all** third-party environmental damages and claims arising during the period approved to complete the PAMA projects unless Centromin can establish that:

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

or, in the alternative, Centromin must establish that:

- (1) Doe Run Peru defaulted on its PAMA obligations or on the obligations specified in Clauses 5.1 and 5.2 of the Stock Transfer Agreement; **and**

⁵³² 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.”

Exhibit C-002, Stock Transfer Agreement, Clause 5.3 at 21-22 (emphasis added).

(2) the damages and claims arise directly from such default.

253. **Centromin’s Liability for Third-Party Damages and Claims Arising After the Expiration of the PAMA Period:** Clause 6.3 of the Stock Transfer Agreement 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 Stock Transfer Agreement, and (2) Centromin assumes proportionate liability for any damages and claims arising after the expiration of the PAMA period to the extent that Doe Run Peru is not liable for such damages and claims under Clause 5.4.

254. Clause 5.4 specifies the scope of Doe Run Peru’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), Doe Run Peru 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 Doe Run Peru on the performance of its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2. Under Clause 5.4(C), Doe Run Peru assumes “proportionat[e]” liability for damages and claims arising after the PAMA period to the extent that Doe Run Peru’s operations after the PAMA expired contributed to the third-party’s damage. Doe Run Peru did not operate the Complex after the PAMA period expired, and thus can have no proportionate liability under Clause 5.4.

255. **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:** Doe Run Peru 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.⁵³³ An “assumption of liability” is different from, and broader than, and subsumes within it, an obligation to indemnify.⁵³⁴ A party that agrees to assume a liability takes

⁵³³ See Sadlowski Witness Stmt. ¶ 11.

⁵³⁴ See, e.g., **CLA-005**, *Caldwell Trucking PRP v. Rexon Technology Corp.*, 421 F.3d 234, 243 (3d Cir. 2005); **CLA-006**, *Lee-Thomas, Inc. v. Hallmark Cards, Inc.*, 275 F.3d 702, 706 (8th Cir. 2002); **CLA-007**, *Davis Oil*

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.⁵³⁵

256. 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.⁵³⁶ 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.”⁵³⁷ 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.⁵³⁸ 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.⁵³⁹

257. 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 for the contamination.⁵⁴⁰ 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.”⁵⁴¹ The corollary of this rather universal tenet of contract interpretation is found in,

Co. v. TS, Inc., 145 F.3d 305, 316-17 (5th Cir. 1998); **CLA-008**, *Thrifty Rent-A-Car System, Inc. v. Toye*, 1994 U.S. App. LEXIS 8034, at *14-19 (10th Cir. Apr. 19, 1994); **CLA-009**, *Bouton v. Litton Industries Inc.*, 423 F.2d 643, 651 (3d Cir. 1970).

⁵³⁵ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 243-44; **CLA-009**, *Bouton*, 423 F.2d at 651.

⁵³⁶ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 240.

⁵³⁷ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 241-42.

⁵³⁸ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 240.

⁵³⁹ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 240-41.

⁵⁴⁰ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 243-44.

⁵⁴¹ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 243-44.

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.”⁵⁴² 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 Rexon’s violation of Environmental Laws, in addition to requiring Pullman to “indemnify” Rexon for such liabilities.⁵⁴³ Accordingly, even though Pullman did not agree to indemnify Caldwell by name in the stock purchase agreement (or anyone other than Rexon 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.⁵⁴⁴

258. A party who 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.*”⁵⁴⁵ 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.

259. While 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 Stock Transfer Agreement leads to the same result. 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.⁵⁴⁶ Centromin

⁵⁴² **CLA-003**, Fernández Cruz, *Código Civil* at 841.

⁵⁴³ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 243-44.

⁵⁴⁴ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 243-44.

⁵⁴⁵ **CLA-009**, *Bouton*, 423 F.2d at 651 (emphasis added). *See also* **CLA-006**, *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).

⁵⁴⁶ **Exhibit C-159**, Civil Code, art. 168; **Exhibit C-159**, Civil Code, art. 1361; **Exhibit C-159**, Civil Code, art. 1362

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 obligation 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 Doe Run Peru, after the merger of Metaloroya and Doe Run Peru) 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.

260. Renco’s interpretation of Clauses 6.2 and 6.3 accords not only with the plain text of the Stock Transfer Agreement, 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,⁵⁴⁷ the negotiators for Doe Run Peru 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 Doe Run Peru was carrying out the upgrades.⁵⁴⁸ 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 Stock Transfer Agreement accomplished. 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 Doe Run Peru.

⁵⁴⁷ See Section I.A. See also Sadlowski Witness Stmt. at ¶ 15; Expert Report of Partelpoeg, February 18, 2014, §§ 2.1, 5.5, 8.1 at 2, 15, 20-21.

⁵⁴⁸ See Sadlowski Witness Stmt. ¶ 11. See also sub-section (b) below; Buckley Witness Stmt. at ¶¶ 11-12.

261. 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, Doe Run Peru) for any damages, liabilities or obligations arising from third-party claims, and it agreed in Clause 8.14 to defend the “Company” or the “Investor” (*i.e.*, Doe Run Peru) from such claims.⁵⁴⁹ 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 Stock Transfer Agreement.

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

262. 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.⁵⁵⁰ 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 Doe Run Peru and any affiliates, or any other third party exposed to liability for contamination from operations of the Complex.

263. To ensure the plain terms of the Stock Transfer Agreement 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. 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.⁵⁵¹ The contemporaneous evidence and circumstances surrounding Centromin’s privatization demonstrate that no investor (including

⁵⁴⁹ **Exhibit C-002**, Stock Transfer Agreement, Clauses 6.5, 8.14 at 45-46.

⁵⁵⁰ **Exhibit C-159**, 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.”).

⁵⁵¹ Sadlowski Witness Stmt. at ¶¶ 11, 25-43.

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.⁵⁵² The Stock Transfer Agreement and the Guaranty Agreement must be interpreted with this context in mind to give effect to the promises, assurances, and obligations which functioned as the essential precondition to the Renco Consortium's decision to invest in Peru.

264. 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.⁵⁵³ 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.⁵⁵⁴ The Peruvian Government publicly recognized that the Complex was one of the worst polluters in the country.⁵⁵⁵ 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.⁵⁵⁶ 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.⁵⁵⁷

265. Given this context, it is unsurprising that environmental liabilities, potential claims by third parties, and remediation were at the forefront of investors' concerns.⁵⁵⁸ Indeed, this is one of the main reasons that when Peru attempted to sell La Oroya in the first bidding

⁵⁵² Sadlowski Witness Stmt. at ¶¶ 15-17.

⁵⁵³ **Exhibit C-032**, 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 5.

⁵⁵⁴ **Exhibit C-005**, Apr. 18, 1994 NEWSWEEK.

⁵⁵⁵ **Exhibit C-035**, 1997 White Paper at 19.

⁵⁵⁶ *See* Section I.A. *See also* Sadlowski Witness Stmt. at ¶ 15; *see also* Expert Report of Partelpoeg, February 18, 2014, §§ 2.1, 5.5, 8.1 at 2, 15, 20-21.

⁵⁵⁷ *See* Mogrovejo Witness Stmt. at ¶ 12.

⁵⁵⁸ *See* Sadlowski Witness Stmt. at ¶¶ 15-16.

process without assuming liability for third-party claims, it did not even receive a single bid.⁵⁵⁹ As the Peruvian Government conceded in its 1999 White Paper prepared by its Special Privatization Committee, 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.⁵⁶⁰

266. 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*,"⁵⁶¹ in addition to remediating "*the environmental problems accumulated in the past*,"⁵⁶² including the creation of a special fund for such purposes.

267. 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.⁵⁶³ 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:⁵⁶⁴

Question No. 41. *Taking into account that CENTROMIN will assume responsibility for the existing contamination at La Oroya's Smelter, and*

⁵⁵⁹ **Exhibit C-006**, 1999 White Paper at 20 (explaining that "there was no concrete proposal during the auction on May 10, 1994"). *See also* Sadlowski Witness Stmt. at ¶ 16.

⁵⁶⁰ **Exhibit C-006**, 1999 White Paper 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-035**, 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").

⁵⁶¹ **Exhibit C-006**, 1999 White Paper at 62 (emphasis added).

⁵⁶² **Exhibit C-006**, 1999 White Paper at 62 (emphasis added).

⁵⁶³ **Exhibit C-046**, Consultation Round 1; **Exhibit C-047**, Consultation Round 2.

⁵⁶⁴ **Exhibit C-047**, Consultation Round 2.

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 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).⁵⁶⁵

268. 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.⁵⁶⁶

269. Both the model share transfer agreement and final Stock Transfer Agreement signed by Centromin and Doe Run Peru (with the intervention of Renco and Doe Run Resources) declare these consultations to be of "supplemental validity."⁵⁶⁷ 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.⁵⁶⁸

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

⁵⁶⁵ **Exhibit C-047**, Consultation Round 2, Question 41 (emphasis added).

⁵⁶⁶ **Exhibit C-047**, Consultation Round 2, Question 42.

⁵⁶⁷ **Exhibit C-002**, Stock Transfer Agreement, Clause 18.1 at 64.

⁵⁶⁸ See **CLA-002**, 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-003**, Fernández Cruz, Código Civil at 813.

undertake in the Stock Transfer Agreement were backed by the full force of the State.⁵⁶⁹ This guarantee was an essential precondition for the Renco Consortium's decision to invest in Peru.⁵⁷⁰

271. President Fujimori himself issued a Supreme Decree resolving that the "Peruvian State" would enter into a contract with Doe Run Peru guaranteeing the "*declarations, assurances, guarantees and obligations assumed by [Centromin]*" in the Stock Transfer Agreement.⁵⁷¹ 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.*"⁵⁷²

272. That is exactly what transpired. Subsequent to the Stock Transfer Agreement's execution, Peru guaranteed all of the "*representations, securities, guarantees and obligations*" Centromin had assumed in the Stock Transfer Agreement:

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 . . .⁵⁷³

273. Peru's obligations under the Guaranty Agreement remain in force "*as long as THE TRANSFEROR has pending obligations pursuant to*" the Stock Transfer Agreement.⁵⁷⁴ 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 Stock Transfer Agreement. The Renco Consortium reasonably relied upon these assurances when deciding to invest in Peru.⁵⁷⁵

⁵⁶⁹ Sadlowski Witness Stmt. at ¶¶ 12, 28.

⁵⁷⁰ Sadlowski Witness Stmt. at ¶ 12 ("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].").

⁵⁷¹ **Exhibit C-162**, Decree No. 042-07.

⁵⁷² **Exhibit C-162**, Decree No. 042-07.

⁵⁷³ **Exhibit C-003**, Guaranty Agreement, art. 2.1 at 2.

⁵⁷⁴ **Exhibit C-003**, Guaranty Agreement, art. 4 at 3.

⁵⁷⁵ Sadlowski Witness Stmt. at ¶¶ 12, 28.

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

274. Peru and Centromin have failed to comply with their obligation under Clauses 5.9, 6.2 and 6.3 of the Stock Transfer Agreement 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.⁵⁷⁶

275. As described above, 967 plaintiffs, all of whom are Peruvian citizens and residents of La Oroya, filed 22 cases which currently are pending in the Eastern District of Missouri.⁵⁷⁷ 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.*”⁵⁷⁸ In short, the St. Louis Lawsuits are *precisely* the type of third-party environmental claims that the parties meticulously and carefully carved out from Doe Run Peru’s sphere of responsibility when signing the Stock Transfer Agreement.⁵⁷⁹

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

276. Centromin and Peru are liable for the claims asserted in the St. Louis Lawsuits, whenever those claims arose.

277. Centromin and Peru’s liability for the claims asserted in the St. Louis Lawsuits is governed by Clause 6.2 of the Stock Transfer Agreement, to the extent the claims arose during the period approved for the performance of Doe Run Peru’s PAMA. Clause 6.2 provides that “Centromin will assume liability for any damages and claims by third parties that are attributable

⁵⁷⁶ For a detailed discussion of Peru and Centromin’s breach of their contractual obligation to remediate the areas around the Complex, *see* Part II.F *supra*.

⁵⁷⁷ **Exhibit C-163**, Letter from King & Spalding to White & Case, August 15, 2013 (*hereinafter* “August 15, 2013 Letter”).

⁵⁷⁸ **Exhibit C-163**, August 15, 2013 Letter, para. 1 of attached pleading.

⁵⁷⁹ Sadlowski Witness Stmt. at ¶¶ 25-38.

to the activities of the Company or Centromin and/or its predecessors, except for the damages and third-party claims” for which Doe Run Peru is liable under Clause 5.3.

278. The evidence establishes that Doe Run Peru is not liable under Clause 5.3 for claims asserted in the St. Louis Lawsuits that arose during the PAMA period because:

- (1) Dr. Schoof’s expert report establishes that the claims asserted in the St. Louis Lawsuits are not “exclusively attributable” to Doe Run Peru’s operation of the Complex;⁵⁸⁰
- (2) Mr. Mogrovejo’s witness statement establishes that Doe Run Peru did not engage in any business operations during the PAMA period that were “not related” to its PAMA;⁵⁸¹
- (3) Dr. Bianchi’s expert report establishes that Doe Run Peru did not engage in standards and practices that were “less protective of the environment or of public health than those Centromin used . . .”;⁵⁸² and
- (4) Doe Run Peru did not default on its PAMA obligations or the obligations specified in Clauses 5.1 and 5.2 of the Stock Transfer Agreement.⁵⁸³

279. Because Doe Run Peru 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.

280. Centromin and Peru’s liability for the claims asserted in the St. Louis Lawsuits is governed by Clause 6.3 of the Stock Transfer Agreement 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

⁵⁸⁰ Schoof Report at 6, 17.

⁵⁸¹ Mogrovejo Witness Stmt. at ¶ 51.

⁵⁸² Bianchi Report at 6-21, 24-25.

⁵⁸³ **Exhibit C-014**, July 2009 Extension Request.

Centromin’s and/or its predecessors’ activities,” except if Doe Run Peru 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 [Doe Run Peru’s] operations after the [PAMA] period” because Doe Run Peru stopped operating the Complex in June 2009, four months before the PAMA period expired in October 2009; and (2) Doe Run Peru did not default on its PAMA obligations.⁵⁸⁴ Because the narrow exception in Clause 5.4 does not apply, “all other liabilities shall correspond to Centromin in accordance with the Sixth Clause” pursuant to Clause 5.9.

281. In sum, no matter how the claims asserted in the St. Louis Lawsuits are characterized, the Stock Transfer Agreement’s comprehensive liability regime requires Centromin and Peru to assume liability for those claims under these circumstances.⁵⁸⁵ 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*

282. As explained above,⁵⁸⁶ Renco and its affiliates repeatedly wrote to Centromin (now Activos Mineros), the Ministry of Energy & Mines and the Ministry of Economics &

⁵⁸⁴ As discussed in Part II above, 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 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.

⁵⁸⁵ **Exhibit C-159**, Civil Code, art. 168.

⁵⁸⁶ See Section I.E.

Finance, 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.⁵⁸⁷ Rather than comply with their contractual obligations, however, Activos Mineros has refused to accept or to assume any responsibility or liability for the claims asserted in the St. Louis Lawsuits,⁵⁸⁸ while the Peruvian Government has ignored entirely Renco's requests to date.

283. 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 Doe Run Peru itself.⁵⁸⁹

284. This argument must fail because it is contrary to (1) the plain terms of Clauses 5.9, 6.2 and 6.3 of the Stock Transfer Agreement, 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 Doe Run Peru from liability for third-party environmental claims in order to induce and entice Claimant to invest in the Complex. As fairness and common sense dictate, and as explained in the in the *Caldwell* and *Bouton* cases, 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.⁵⁹⁰

⁵⁸⁷ See, e.g., **Exhibit C-051**, October 12, 2010 Letter, **Exhibit C-053**, Letter from J. Carlos Huyhua (Doe Run Peru) to V. Carlos Estrella (*Activos Mineros*), November 11, 2010 (*hereinafter* "November 11, 2010 Letter"), **Exhibit C-054**, December 14, 2010 Letter, **Exhibit C-055**, February 18, 2011 Letter, **Exhibit-056**, July 12, 2011 Letter, **Exhibit C-057**, January 27, 2012 Letter, **Exhibit C-058**, March 20, 2012 Letter, **Exhibit C-059**, July 18, 2012 Letter, **Exhibit C-060**, August 9, 2012 Letter, **Exhibit C-061**, November 16, 2012 Letter, **Exhibit C-062**, January 17, 2013 Letter; **Exhibit C-063**, June 21, 2013 Letter.

⁵⁸⁸ See, e.g., **Exhibit C-065**, November 26, 2010 Letter; **Exhibit C-066**, January 21, 2011 Letter.

⁵⁸⁹ **Exhibit C-065**, 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-066**, January 21, 2011 Letter.

⁵⁹⁰ **CLA-005**, *Caldwell Trucking*, 421 F.3d at 243-44; **CLA-009**, *Bouton*, 423 F.2d at 651.

285. Activos Mineros' argument also must fail because Centromin and Peru are also obligated to indemnify Doe Run Peru under Clauses 6.5 and 8.14 of the Stock Transfer Agreement, and Doe Run Peru 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 Doe Run Peru of the St. Louis Lawsuits. Doe Run Peru, in turn, notified Centromin and Peru. As the St. Louis Lawsuits allege both acts and facts "*included within the responsibilities, declaration and guarantees offered by Centromin.*"⁵⁹¹ Centromin (now Activos Mineros) was required under Clause 8.14 "*to immediately assume those obligations as soon as it [was] notified.*"

286. 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 1997,⁵⁹² the broad assumption of liability contained in the finally-executed Stock Transfer Agreement, 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 Stock Transfer Agreement, which unambiguously included Centromin's responsibility for environmental matters.⁵⁹³

287. In light of these unambiguous and specific guarantees, the refusal of Peru and Centromin (now Activos Mineros) to assume liability for and defend the St. Louis Lawsuits for which they are responsible on the bad faith ground that the Plaintiffs in the Lawsuit named the Renco Consortium members and related entities and individuals as the Defendants, rather than Doe Run Peru itself, is disingenuous and contrary to the terms the Stock Transfer Agreement as well as the central principle of good faith which forms the bedrock of Peruvian law.⁵⁹⁴ As

⁵⁹¹ **Exhibit C-002**, Stock Transfer Agreement, Clauses 8.14 at 45-46.

⁵⁹² **Exhibit C-046**, Consultation Round 1; **Exhibit C-047**, Consultation Round 2.

⁵⁹³ **Exhibit C-003**, Guaranty Agreement, art. 2.1 at 2.

⁵⁹⁴ **CLA-002**, 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.").

discussed below, the principle of good faith is also one of the most important principles under international law.⁵⁹⁵

288. Moreover, when the terms of the Stock Transfer Agreement are read in light of circumstances surrounding the execution of the Stock Transfer Agreement and the parties' objective intention, the conclusion that the parties understood and intended for Renco 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 Stock Transfer Agreement cannot be read to eliminate protections that Renco and other Defendants in the St. Louis Lawsuits clearly would have wanted, because:

- 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.," who are named Defendants in the U.S. Litigation.⁵⁹⁶
- Representatives of the Defendants in the St. Louis Lawsuits signed to the Stock Transfer Agreement.⁵⁹⁷
- The Stock Transfer Agreement expressly recognizes that Doe Run Peru is "an indirect wholly owned subsidiary" of Doe Run Resources, a named Defendant in the St. Louis Lawsuits.⁵⁹⁸
- The Renco Consortium won the public bidding process for Centromin and thereafter formed the locally-incorporated investment vehicle (Doe Run Peru) to comply with the bidding conditions. The Consortium thereafter "assigned its rights to the INVESTOR [Doe Run Peru]," as was required by the bidding conditions.⁵⁹⁹

⁵⁹⁵ See, e.g., **CLA-010**, *Teco Guatemala Holdings LLC v. The Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, December 19, 2013 at ¶ 456 (*hereinafter* "Teco Award").

⁵⁹⁶ **Exhibit C-002**, Stock Transfer Agreement, Title page. See also **Exhibit C-002**, Stock Transfer Agreement 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.").

⁵⁹⁷ Specifically, Jeffery Zelms signed the Stock Transfer Agreement on behalf of Doe Run Peru and DRRC, while Marvin Koenig signed the Stock Transfer Agreement on behalf of the Renco Group Inc. See **Exhibit C-002**, Stock Transfer Agreement at 66-67.

⁵⁹⁸ **Exhibit C-002**, Stock Transfer Agreement at 4.

⁵⁹⁹ **Exhibit C-002**, Stock Transfer Agreement, § VIII at 7.

- Doe Run Resources and Renco warranted Doe Run Peru's compliance with the investment requirements set forth in the Stock Transfer Agreement.⁶⁰⁰
- Representatives of Doe Run Resources and Renco specifically bargained for and conditioned entering into the Stock Transfer Agreement upon such protection.⁶⁰¹

289. It is clear from the foregoing that the foreign investors comprising the Renco Consortium are parties to the Guaranty Agreement and the Stock Transfer 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 if Peru and Centromin were able to evade the obligations they assumed in the Stock Transfer Agreement because the Consortium members, rather than Doe Run Peru, are named Defendants in the St. Louis Lawsuits. This conclusion is particularly compelling given that Peru mandated that the Renco Consortium create Doe Run Peru as a local Peruvian enterprise to comply with the bidding conditions.⁶⁰²

290. 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 Stock Transfer Agreement and Guaranty Agreement. Such an absurd result cannot stand.

291. Unfortunately, Peru and Activos Mineros have failed to assume liability for the claims asserted in the St. Louis Lawsuits. Regardless of whether Peru and Activos Mineros

⁶⁰⁰ **Exhibit C-002**, Stock Transfer Agreement, Clause 18.5 at 65-66.

⁶⁰¹ Sadlowski Witness Stmt. ¶¶ 9-11; Buckley Witness Stmt. at ¶¶ 11-12.

⁶⁰² *See* Section II.D.

comply with their obligations, however, there can be no doubt that they are in fact liable (pursuant to the Stock Transfer Agreement’s liability regime discussed *supra*) both for any ultimate award rendered in the St. Louis Lawsuits, and Renco’s substantial damages associated with defending these third-party claims, including its substantial legal fees. To date, the Renco Consortium has spent many millions of dollars (US) defending the St. Louis Lawsuits.

292. As explained, Peru’s and Centromin’s obligation to retain and assume liability for the vast majority of third-party environmental claims pursuant to the Stock Transfer Agreement liability regime is clear. As a result, there is no question that: (1) Peru and Centromin are liable for the claims at issue in the St. Louis Lawsuits; and (2) the benefit of Peru and Centromin’s retention and assumption of liability runs in favor of Doe Run Peru, the Renco Consortium members and related entities and individuals because Clauses 5.9, 6.2 and 6.3 contain intentionally broad language regarding the scope of the parties protected by the assumption of liability.⁶⁰³

293. Any other conclusion would lead to the untenable result of Peru and Activos Mineros (as the true parties liable for the claims asserted in the St. Louis Lawsuits) turning the party-agreed allocation of environmental liability on its head, and leaving the Renco Consortium members and related entities and individuals (as the parties who invested millions in the Complex on the condition that they would not be liable for such claims), completely unprotected with respect to the third-party claims asserted in the St. Louis Lawsuits.

B. PERU’S REFUSAL TO ASSUME LIABILITY FOR THE CLAIMS IN THE ST. LOUIS LAWSUITS VIOLATES THE TREATY’S FAIR AND EQUITABLE TREATMENT STANDARD

1. The Content of the Fair and Equitable Treatment Standard under Customary International Law

294. Article 10.5 of the Treaty requires Peru to accord covered investments “treatment in accordance with customary international law, including fair and equitable treatment”⁶⁰⁴ While the Treaty does not define the phrase “fair and equitable treatment,” it provides that the standard prescribes “the customary international law minimum standard of treatment of aliens,”

⁶⁰³ Exhibit C-002, Stock Transfer Agreement, Clauses 5.9, 6.2, 6.3 at 25, 27.

⁶⁰⁴ CLA-001, Treaty, art. 10.5(1) at 10-2 to 10-3.

which it identifies as comprising “all customary international law principles that protect the economic rights and interests of aliens.”⁶⁰⁵ In addition, the Treaty provides that the fair and equitable treatment standard “includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world.”⁶⁰⁶

295. Investment treaty case law provides a good indication of the current standards of investment protection under customary international law, which, by definition, evolves over time. Notably, the tribunal in *ADF Group, Inc. v. United States* recognized that the customary international law standard of fair and equitable treatment prescribed by Article 1105(1) of the North American Free Trade Agreement (“NAFTA”),⁶⁰⁷ as interpreted by the NAFTA Free Trade Commission in July 2001, “must be disciplined by being based upon State practice and judicial or arbitral case law or other sources of customary or general international law.”⁶⁰⁸

296. In a seminal decision on the content of the customary international law standard of fair and equitable treatment, the NAFTA tribunal in *Waste Management* held that a host State violates this standard if its treatment of an investor or investment is “arbitrary,” “grossly unfair, unjust or idiosyncratic” or “discriminatory,” or if it involves a lack of due process leading to an outcome which offends judicial propriety:

The search here is for the Article 1105 standard of review, and it is not necessary to consider the specific results reached in the cases discussed above. But as this survey shows, despite certain differences of emphasis a general standard for Article 1105 is emerging. Taken together, the *S.D. Myers*, *Mondev*, *ADF* and *Loewen* cases suggest that *the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety*—as

⁶⁰⁵ **CLA-001**, Treaty, art. 10.5(2) at 10-3; *id.* Annex 10-A at 10-28.

⁶⁰⁶ **CLA-001**, Treaty, art. 10.5(2)(a) at 10-3.

⁶⁰⁷ **CLA-011**, North American Free Trade Agreement, U.S.-Can.-Mex., art. 1105(1), Dec. 17, 1992, 107 Stat. 2057 (*hereinafter* “NAFTA”).

⁶⁰⁸ **CLA-012**, *ADF Group Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/1, Award, January 9, 2003 at ¶ 184 (*hereinafter* “ADF Award”). See also **CLA-013**, *Mondev Int’l Ltd. v. United States of America*, Case No. ARB(AF)/99/2, Award, October 11, 2002 at ¶ 119 (*hereinafter* “Mondev Award”).

might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process. *In applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant.*

Evidently *the standard is to some extent a flexible one which must be adapted to the circumstances of each case.*⁶⁰⁹

297. The *Waste Management* tribunal thus acknowledged the uncontroversial fact that “[a] basic obligation of the State . . . is to act in good faith and form, and not deliberately to set out to destroy or frustrate the investment by improper means.”⁶¹⁰

298. Most recently, the *Teco v. Guatemala* tribunal, interpreting the Dominican Republic-Central American Free Trade Agreement (“CAFTA-DR”),⁶¹¹ reaffirmed the *Waste Management* standard when interpreting a treaty with nearly identical language to Article 10.5 of the Treaty:

The Arbitral Tribunal considers that *the minimum standard of FET under Article 10.5 of CAFTA-DR is infringed by conduct attributed to the State and harmful to the investor if the conduct is arbitrary, grossly unfair or idiosyncratic, is discriminatory or involves a lack of due process leading to an outcome which offends judicial propriety.*⁶¹²

299. The *Teco* tribunal also underscored that fair and equitable treatment under customary international law encompasses the principle of good faith:

The Arbitral Tribunal also considers that *the minimum standard is part and parcel of the international principle of good faith.* There is no doubt in

⁶⁰⁹ **CLA-014**, *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, April 30, 2004 at ¶¶ 98-99 (emphasis added) (*hereinafter* “*Waste Management Award*”).

⁶¹⁰ **CLA-014**, *Waste Management Award* at ¶ 138 (emphasis added). The *Waste Management* tribunal also recognized that the standard is an objective one, and “[n]either State practice, the decisions of international tribunals nor the opinion of commentators support the view that bad faith or malicious intention is an essential element of unfair and inequitable treatment or denial of justice amounting to a breach of international justice.” *See id.* at ¶ 97.

⁶¹¹ **CLA-015**, Dominican Republic-Central America Free Trade Agreement, U.S.-Guat.-El Sal.-Hond.-Nicar.-Costa Rica-Dom. Rep., Aug. 5, 2004, 119 Stat. 462 (*hereinafter* “*DR-CAFTA*”).

⁶¹² **CLA-010**, *Teco Award* at ¶ 454.

the eyes of the Arbitral Tribunal that the principle of good faith is part of customary international law as established by Article 38.1(b) of the Statute of the International Court of Justice, and that a lack of good faith on the part of the State or of one of its organs should be taken into account in order to assess whether the minimum standard was breached.⁶¹³

300. In interpreting the fair and equitable treatment standard under customary international law, investment tribunals have been particularly concerned with the protection of investors' legitimate expectations, especially when specific representations have been made by the State—and relied upon by the investor—to induce the foreign investment. Thus, the *Waste Management* tribunal explained that when interpreting the fair and equitable treatment standard in accordance with customary international law, “*it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the [c]laimant.*”⁶¹⁴ Indeed, numerous tribunals have confirmed that a sovereign state's revocation of specific representations made to induce a foreign investor's investment constitutes a violation of the fair and equitable treatment standard.⁶¹⁵ As explained by the *International Thunderbird Gaming Corp v. Mexico* tribunal:

Having considered recent investment case law and the good faith principle of international customary law, the concept of “legitimate expectations” relates, within the context of the NAFTA framework, to a situation where *a Contracting Party's conduct creates reasonable and justifiable expectations on the part of an investor (or investment) to act in reliance on said conduct, such that a failure by the NAFTA Party to honour those expectations could cause the investor (or investment) to suffer damages.*⁶¹⁶

⁶¹³ **CLA-010**, *Teco* Award at ¶ 456.

⁶¹⁴ **CLA-014**, *Waste Management* Award at ¶ 98.

⁶¹⁵ For a discussion of the same, see **CLA-016**, Campbell MacLachlan, Laurence Shore, and Matthew Weininger, *Treatment of Investors*, in INTERNATIONAL INVESTMENT ARBITRATION: SUBSTANTIVE PRINCIPLES at ¶¶ 7.108-7.112 (Oxford University Press, 2007) (*hereinafter* “MacLachlan et al., *Treatment of Investors*”). See also **CLA-017**, Rudolf Dolzer & Christoph Schreuer, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW 146 (Oxford University Press, 2008) (*hereinafter* “Dolzer & Schreuer, PRINCIPLES”); **CLA-018**, *Metalclad Corp. v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, August 30, 2000 at ¶ 85 (*hereinafter* “*Metalclad* Award”); **CLA-019**, *International Thunderbird Gaming Corp. v. United Mexican States*, Ad hoc - UNCITRAL, Award, January 26, 2006 ¶ 147 (*hereinafter* “*Thunderbird* Award”).

⁶¹⁶ **CLA-019**, *Thunderbird* Award at ¶ 147 (emphasis added).

301. In summary therefore, the fair and equitable treatment standard under customary international law:

- Prohibits Peru from acting in a manner that is “*arbitrary, grossly unfair, unjust or idiosyncratic*” or “discriminatory;”⁶¹⁷
- Requires Peru “to act in good faith and form, and not deliberately to set out to destroy or frustrate the investment by improper means;”⁶¹⁸
- Obligates Peru to “honour those [reasonable and justifiable] expectations” that the Renco Consortium relied upon in making the investment;⁶¹⁹ and
- Prohibits Peru from acting in a manner that “involves a lack of due process leading to an outcome which offends judicial propriety.”⁶²⁰

302. Peru’s evisceration of the robust commitments found in the Consultation Rounds, the Stock Transfer Agreement, and the Guaranty Agreement with respect to liability for third-party claims, violates the Treaty’s fair and equitable treatment provision.

2. Peru Has Breached the Treaty’s Fair and Equitable Treatment Standard by Failing to Assume Liability for the Claims in the St. Louis Lawsuits

303. Peru’s refusal to assume liability for the third-party claims and damages for which it is responsible, and its refusal to defend and indemnify Doe Run Peru’s affiliates against the third-party claims for personal injury asserted in the St. Louis Lawsuits constitute a violation of the Treaty’s fair and equitable treatment standard. The package of assurances and protections from third-party environmental claims and damages contained in the Stock Transfer Agreement and the Guaranty Agreement can only be described as broad, overlapping and robust.⁶²¹ The Peruvian Government’s utter disregard of those explicit and specific protections from liability — for which the Renco Consortium specifically bargained and relied upon when deciding to invest in Peru, and which the Peruvian Government expressly guaranteed — violate Article 10.5 of the Treaty.

⁶¹⁷ **CLA-019**, *Thunderbird* Award at ¶ 147 (emphasis added).

⁶¹⁸ **CLA-014**, *Waste Management* Award at ¶ 138 (emphasis added).

⁶¹⁹ **CLA-019**, *Thunderbird* Award at ¶ 147 (emphasis added).

⁶²⁰ **CLA-014**, *Waste Management* Award at ¶ 98; **CLA-010**, *Teco* Award at ¶ 456.

⁶²¹ **Exhibit C-162**, Decree No. 042-97; **Exhibit C-046**, Consultation Round 1; **Exhibit C-047**, Consultation Round 2; Sadlowski Witness Stmt. at ¶ 12 (“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].”).

304. As explained by the *Waste Management* tribunal, the fair and equitable treatment standard “*is to some extent a flexible one which must be adapted to the circumstances of each case.*”⁶²² The circumstances of this case can only lead to the conclusion that Peru violated Article 10.5 of the Treaty:

- Peru created one of the world’s most polluted sites through Centromin’s operation of the La Oroya Complex. Peru’s “openly hostile” approach to environmental concerns⁶²³ resulted in the areas in and around La Oroya becoming an environmental “vision from hell.”
- Peru’s initial attempts to privatize Centromin failed completely. No investor was willing “*to take charge of the accumulated environmental problems*” surrounding the La Oroya Complex.⁶²⁴
- Peru completely revised its privatization strategy by dividing responsibility for past environmental damage and harm caused by Peru’s operation of the Complex from the responsibility for future investments and upgrades to the Complex. Critically, Centromin retained “*responsibility . . . to remediate the environmental problems accumulated in the past, as well as the claims of third parties in relation to environmental liabilities.*”⁶²⁵
- Peru made numerous assurances and representations during two Consultation Rounds with foreign investors in February and March 1997. Among other representations, Peru promised that (1) the Peruvian State would guarantee directly Centromin’s responsibilities and obligations; (2) Centromin would both remediate the accumulated contamination surrounding the Complex and assume liability for third-party environmental claims; and (3) Centromin would create a fund to ensure its compliance with these fundamental obligations.⁶²⁶
- The Government of Peru issued a Guaranty Agreement stating that “*The STATE hereby guarantees THE INVESTORS the representations, securities, guarantees and obligations assumed by the TRANSFEROR [Centromin]*” under the Stock Transfer Agreement . . .⁶²⁷
- The Stock Transfer Agreement ensured that Centromin and Peru would be responsible for the vast majority of third-party claims before, during and after the PAMA period. Peru and Centromin’s obligations extended to assuming

⁶²² **CLA-014**, *Waste Management* Award at ¶ 99 (emphasis added).

⁶²³ **Exhibit C-005**, Apr. 18, 1994 NEWSWEEK.

⁶²⁴ **Exhibit C-006**, 1999 White Paper at 20.

⁶²⁵ **Exhibit C-006**, 1999 White Paper at 62 (emphasis added).

⁶²⁶ See paras 51-55 above.

⁶²⁷ **Exhibit C-003**, Guaranty Agreement, art. 2.1 at 2.

liability for the vast majority of third-party claims and damages, and defending and indemnifying Doe Run Peru and its affiliates.

- To date, nearly one thousand plaintiffs, all of whom are Peruvian citizens and residents of La Oroya, filed 22 claims which currently are pending in the U.S. The St. Louis Lawsuits are precisely the kind of third-party environmental claims that for which the parties meticulously and judiciously agreed that Centromin, and Peru, would assume liability for signing the Stock Transfer Agreement. Despite the broad language of the Stock Transfer Agreement and Guaranty Agreement, Centromin (now Activos Mineros) and Peru have failed to assume liability for the third-party claims and damages asserted in the St. Louis Lawsuits. Thus, the key representations and contractual protections upon which the Renco Consortium relied when deciding to invest in Peru and in purchasing the La Oroya Complex considering its legacy of environmental contamination have been flouted by the Peruvian Government, causing great harm to the Renco Consortium.

305. Peru’s conduct goes to the core of the Parties’ agreement—the Renco Consortium never would have invested in Peru without the specific assurances it received from the Peruvian Government that its liability for third-party environmental claims and damages would be restricted, and that the Peruvian Government would assume liability for the vast majority of third-party claims, as well as defend and indemnify Doe Run Peru and its affiliates for any claims or damages falling within the Peruvian Government’s responsibility.⁶²⁸ By flouting those commitments, the Peruvian Government has acted in a grossly unfair and unjust manner, contrary to good faith, and has failed to “*honour those [reasonable and justifiable] expectations*” that the Renco Consortium relied upon in making the investment.⁶²⁹ This conduct unquestionably constitutes a breach of the Treaty’s fair and equitable provision.

306. Peru’s refusal to assume liability for the claims asserted in the St. Louis Lawsuits also violates Peru’s obligations under the “umbrella” clause contained in a number of its investment treaties with other countries. For example, Article 4.2 of the Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of Peru for the Promotion and Protection of Investments provides in pertinent part: “Each Contracting Party shall observe any obligation, additional to those specified in this Agreement, into which it may have entered with regard to investments of nationals or companies of the other Contracting

⁶²⁸ See Section II.E.

⁶²⁹ **CLA-019**, *Thunderbird* Award at ¶147 (emphasis added).

Party.”⁶³⁰ Article 10.4 of the U.S.-Peru Treaty requires Peru to treat U.S. investors and investments no less favorably than it treats investors and investments from countries other than the United States. The “umbrella” clause in Article 4(2) of the Thailand-Peru BIT extends to the present case by virtue of Article 10.4 of the Treaty. Peru has breached this clause by refusing to assume liability for the claims asserted in the St. Louis Lawsuits, which is clearly an obligation into which it entered with regard to the investments of Renco.

C. PERU’S PATTERN OF MISTREATMENT OF DOE RUN PERU IN CONNECTION WITH EXTENSION REQUESTS TO COMPLETE THE REMAINDER OF ITS NINTH AND FINAL PAMA PROJECT, BASED ON ECONOMIC *FORCE MAJEURE*, AND OF DOE RUN PERU’S PROPOSED RESTRUCTURING PLANS, VIOLATED THE TREATY’S FAIR AND EQUITABLE TREATMENT STANDARD AND ITS PROTECTION OF INVESTMENT AGREEMENTS

1. Peru’s Pattern of Mistreatment of Doe Run Peru In Connection with the Economic *Force Majeure* Extension Requests and Proposed Restructuring Plans from Doe Run Peru Violated Article 10.5’s Guarantees of Fair and Equitable Treatment

307. Peru also violated the fair and equitable treatment standard prescribed by Article 10.5 of the Treaty by engaging in a pattern of unfair conduct against Doe Run Peru. This included, but was not limited to (i) extracting key concessions from Doe Run Peru as a pre-condition to granting an extension based upon economic *force majeure* as provided in the Stock Transfer Agreement; and (ii) failing to grant Doe Run Peru an effective extension to finish one of the three sub-projects comprising its ninth and final PAMA project. Doe Run Peru had been forced to suspend its final PAMA project in December 2008 because of the steep decline in world metals prices brought about by the global financial crisis.⁶³¹ This suspension occurred despite the fact that Doe Run Peru had already spent more than US\$ 313 million on its nine PAMA projects and had completed over 50 percent of its only remaining PAMA project.⁶³² In particular, the Ministry of Energy & Mines’ willful undermining of the 30-month extension that the Peruvian Congress granted constituted grossly unfair and inequitable treatment that

⁶³⁰ **CLA-020**, Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of Peru for the Promotion and Protection of Investments, November 15, 1991, art. 4.2 (*hereinafter* “U.S.-Thailand Agreement”).

⁶³¹ See Section II.J.I.

⁶³² See **Exhibit C-097**, October 2009 PowerPoint Presentation, slides 19, 20.

prevented Doe Run Peru from operating the Complex and destroyed the value of Renco's indirect shareholding in the company.

308. As discussed in Part A above, Article 10.5 of the Treaty obligates Peru to accord "fair and equitable treatment" to Renco's investments. This obligation undoubtedly (1) prohibits Peru from acting in a manner that is "*arbitrary, grossly unfair, unjust or idiosyncratic*" or "*discriminatory*;"⁶³³ (2) requires Peru "*to act in good faith and form, and not deliberately to set out to destroy or frustrate the investment by improper means*;"⁶³⁴ (3) obligates Peru to "*honour those [reasonable and justifiable] expectations*" that an investor relies upon when deciding to make an investment;⁶³⁵ and (4) prohibits Peru from acting in a manner that "*involves a lack of due process leading to an outcome which offends judicial propriety*."⁶³⁶ As demonstrated below, given the facts at issue in this case, Peru violated the Treaty's fair and equitable treatment standard through its handling of Doe Run Peru's PAMA extension.

a. *The Ministry of Energy & Mines' Pattern of Mistreatment of Doe Run Peru in Connection With the Extension Requests and Proposed Restructuring Plans from Doe Run Peru Was Grossly Unfair and Arbitrary*

309. As already noted, a host State's treatment of an investor or investment violates the customary international law standard of fair and equitable treatment prescribed by Article 10.5 of the Treaty if it is "grossly unfair" or "arbitrary."⁶³⁷

310. Here, Peru engaged in a pattern of grossly unfair and arbitrary treatment of Doe Run Peru in connection with Doe Run Peru's requests for an extension of time to complete one of the three sub-projects comprising its ninth and final PAMA project. These requests were all based upon economic *force majeure* events brought on by the world financial crisis which began in late 2008.⁶³⁸ As explained in Part II above, the Peruvian Government denied Doe Run Peru's

⁶³³ **CLA-019**, *Thunderbird*, Award at ¶147 (emphasis added).

⁶³⁴ **CLA-014**, *Waste Management* Award at ¶138 (emphasis added).

⁶³⁵ **CLA-019**, *Thunderbird* Award at ¶147 (emphasis added).

⁶³⁶ **CLA-014**, *Waste Management* Award at ¶ 98; **CLA-010**, *Teco* Award at ¶ 456.

⁶³⁷ **CLA-014**, *Waste Management* Award at ¶ 98; **CLA-010**, *Teco* Award at ¶ 454.

⁶³⁸ **Exhibit C-103**, Doe Run Peru Request to Ministry of Energy & Mines for Extension, Items 4 and 7 at 1-2; **Exhibit C-016**, MOU, art. 1.4 at 1. *See also* Neil Witness Stmt. at ¶ 39; Sadlowski Witness Stmt. at ¶ 51; Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27-28.

extension requests starting in March 2009 and then conditioned an extension on Doe Run Peru, Doe Run Cayman Ltd. and Doe Run Holdings signing an MOU requiring that Doe Run Peru capitalize US\$ 156 million of debt to Doe Run Cayman Ltd. and that Doe Run Cayman Ltd. pledge 100 percent of its shares in Doe Run Peru.⁶³⁹ While Doe Run Peru and its affiliates signed the MOU with Peru and, in good faith, stood ready to perform, the Peruvian Government refused to provide details regarding the extension and failed to provide a copy of the MOU executed by the Government.⁶⁴⁰ At the same time, Peruvian officials stated publicly that Doe Run Peru would receive only a three-month extension (the equivalent of no extension), while other officials stated that Doe Run Peru would receive no extension at all, and threatened to shut the company down.⁶⁴¹

311. As if this were not enough, with the Complex running at a severely diminished capacity due to the crash in metal prices, and then forced to shut down entirely, when Renco offered US\$ 31 million in funding, the Peruvian Government restricted use of the funds to the PAMA work only and refused to permit any part to be used as working capital.⁶⁴² At the same time, with Doe Run Peru on its heels, President Garcia issued an Emergency Decree (repealed a year later) targeting Doe Run Peru as it restricted related-entity credit claims in the INDECOPI Bankruptcy Proceedings.⁶⁴³ The Government then approached Doe Run Peru's workers and offered them the power to manage Doe Run Peru, but the workers sided with Doe Run Peru who had been managing the facility for the previous twelve years.⁶⁴⁴

312. After numerous proposals and rejections,⁶⁴⁵ in July 2009, Doe Run Peru submitted to the Peruvian Government yet another detailed and comprehensive request for a 30-month extension of time to finish its Copper Circuit sub-project, consisting of the construction of a sulfuric acid plant for the Copper Circuit and the modernization of the copper smelter, on the

⁶³⁹ **Exhibit C-016**, MOU, art. 3.2 at 2-3.

⁶⁴⁰ See ¶¶ 173-174; Sadlowski Witness Stmt. at ¶ 55.

⁶⁴¹ **Exhibit C-017**, Apr. 4, 2009 EL COMERCIO; **Exhibit C-018**, "May 20, 2009 MINES AND COMMUNITIES.

⁶⁴² **Exhibit C-016**, MOU, art. 3.2 at 2-3.

⁶⁴³ **Exhibit C-019**, Emergency Decree No. 061-2009.

⁶⁴⁴ **Exhibit C-106**, June 2009 RPP.

⁶⁴⁵ See e.g., **Exhibit C-110**, July 2, 2009 Letter; **Exhibit C-014**, Doe Run Peru 2009 Extension Request; **Exhibit C-111**, July 6, 2009 Letter.

ground that the steep decline in world metals prices brought about by the global financial crisis constituted an event of *force majeure* under Clause 15 of the Stock Transfer Agreement and Peruvian law.⁶⁴⁶

313. Doe Run Peru's *force majeure* extension request was based on the recommendations of the two international project management companies.⁶⁴⁷ Moreover, Doe Run Peru submitted with its extension request a report by Ernst & Young opining that the company could cover its working capital needs and finish the work on the Copper Circuit sub-project if it obtained financing in the amount of US\$ 135 million for 2008 and US\$ 52 million for 2010.⁶⁴⁸

314. Though Peru had initially ignored, without refuting, Doe Run Peru's clear entitlement to an extension of time to finish its Copper circuit sub-project under the doctrine of *force majeure* as a result of the 2008-2009 financial crisis, it ultimately elected to form a technical commission to study the issue. In its report dated September 12, 2009, the multi-sectorial commission concluded that Doe Run Peru would need 20 months to finish the construction phase of the project, and recommended an additional extension so that Doe Run Peru would have time to obtain the necessary financing.⁶⁴⁹ Confirming the legitimacy of Doe Run Peru's long-standing extension requests, on September 24, 2009, Congress granted Doe Run Peru a 30-month extension consisting of (1) a ten-month period to obtain the financing necessary for it to finish the Copper Circuit sub-project and to cover its working capital needs and (2) an additional 20-month period to complete the construction phase of the project.⁶⁵⁰

⁶⁴⁶ **Exhibit C-014**, Doe Run Peru 2009 Extension Request; **Exhibit C-002**, Stock Transfer Agreement, Clause 15 at 61-62.

⁶⁴⁷ The two international project management companies were Global Resources Solutions of Australia and CH2M HILL of the U.S. **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 5, 10.

⁶⁴⁸ **Exhibit C-014**, Doe Run Peru 2009 Extension Request, at 12; *id.* at Annex 10.

⁶⁴⁹ **Exhibit C-021**, 2009 Technical Commission Report.

⁶⁵⁰ **Exhibit C-023**, Law No. 29410, art. 2 ("The term for the financing and culmination of the 'Sulfuric Acid Plant and Modification of the Copper Circuit' Project at the Metallurgical Complex of La Oroya is hereby extended, as per the directives issued by the La Oroya Technical Commission, created by Supreme Resolution No. 209-2009-PCM. Thus, a non-extendable maximum term of ten (10) months for the financing of the project and the start-up of the metallurgical complex and an additional non-extendable term of twenty (20) months for the construction and start-up of the project are hereby granted.").

315. But the Ministry of Energy & Mines acted quickly to undermine the extension, issuing implementing regulations that made it all but impossible for Doe Run Peru to obtain the necessary financing by, among other things, requiring it to divert 100 percent of its sales revenues into a trust account controlled by the Ministry.⁶⁵¹ The Ministry's conduct prevented Doe Run Peru from operating the Complex and destroyed the value of Renco's indirect shareholding in the company.

316. Importantly, the Peruvian Government itself later recognized that the trust account requirement imposed by the Ministry of Energy and Mines improperly nullified Doe Run Peru's rights, and on June 11, 2010, lowered the trust account to 20 percent of its revenues (not 100 percent) into the trust account.⁶⁵² By then it was too little too late for DRP to obtain financing and recommence operations by the July 26, 2010 deadline, less than two months away. In view of the tight credit markets at the time, this was a woefully inadequate amount of time for Doe Run Peru to obtain the approximately US\$ 187 million in financing that it needed.⁶⁵³

317. The following facts and circumstances make clear that the Ministry of Energy & Mines' undermining of the 30-month extension granted by Congress for Doe Run Peru to finish the Copper Circuit sub-project, described above, constituted a pattern of grossly unfair and arbitrary treatment amounting to a breach of Article 10.5 of the Treaty:

- (i) Peru's own environmental consultant recognized from the outset that achieving compliance with Peru's *existing* SO₂ standards would require more than the ten-year period granted by the Ministry;⁶⁵⁴
- (ii) Doe Run Peru's undertaking to improve the Complex's environmental performance and the health of the local population was radically transformed during the period from 1997 to 2009, with the adoption of major design and engineering changes, the addition of numerous new environmental and public health

⁶⁵¹ **Exhibit C-114**, Decree No. 075-2009.

⁶⁵² **Exhibit C-024**, Supreme Decree No. 032-2010-EM.

⁶⁵³ Sadlowski Witness Stmt. at ¶¶ 79-81.

⁶⁵⁴ **Exhibit C-008**, Knight Piésold Report for Centromin at 33.

projects, and the imposition on Doe Run Peru of more stringent environmental standards;⁶⁵⁵

- (iii) Doe Run Peru’s actual investments in its PAMA projects during the period from 1997 to 2009 exceeded the required investment of approximately US\$ 107 million by more than US\$ 200 million;⁶⁵⁶
- (iv) The global financial crisis of 2008-09 and the resulting steep decline in world metals prices constituted an “extraordinary economic alteration” excusing Doe Run Peru’s inability to finish the Copper Circuit sub-project by October 2009 and requiring a reasonable and effective extension;⁶⁵⁷
- (v) Peru sought to extract concessions from Doe Run Peru as conditions to granting the PAMA extension to which Doe Run Peru was clearly entitled under the economic *force majeure* clause in the Stock Transfer Agreement;⁶⁵⁸
- (vi) The Ministry of Energy & Mines violated Peruvian law when it issued implementing regulations that made it virtually impossible for Doe Run Peru to obtain the necessary financing by requiring it to divert 100 percent of its sales revenues into a trust account; and
- (vii) Peru’s unfair treatment of Doe Run Peru continued with the Ministry of Energy & Mines’ insistence on an unreasonably short period to foreclose on Doe Run Peru’s proposed guarantee.

318. For the sake of clarity and convenience, Doe Run Peru now summarizes the evidence relating to each of these points in sub-sections (i) through (vii).

⁶⁵⁵ See Section II.G-I.

⁶⁵⁶ **Exhibit C-081**, MEM Report No. 1237-99 at 3; **Exhibit C-080**, Order No. 157-2006.

⁶⁵⁷ **Exhibit C-164**, “Three Top Economists Agree 2009 Worst Financial Crisis Since Great Depression; Risks Increase if Right Steps are Taken, Reuters, February 27, 2009 (*hereinafter* “February 27, 2009 Reuters”); Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27-28.

⁶⁵⁸ See *e.g.*, **Exhibit C-016**, MOU.

(i) Peru's Own Environmental Consultant Recognized that Achieving Compliance with Peru's Existing SO₂ Standards Would Take More Than Ten Years

319. In its September 1996 report, Knight Piésold (a U.S. environmental consulting group hired by Peru's Special Privatization Committee to provide an independent evaluation of the Complex) concluded that compliance with the SO₂ standards issued by Peru in 1996 "may be unrealistic for an older facility such as La Oroya" and "cannot be [achieved] except by multiple process changes and/or modifications to the smelter. *Such changes or modifications will be required over a 10-year period.*"⁶⁵⁹ Importantly, the Copper Circuit sub-project for which Doe Run Peru requested an extension in July 2009 involved precisely the type of "process changes and/or modifications to the smelter" that Knight Piésold concluded would be necessary for the Complex to achieve compliance with Peru's SO₂ standards. In particular, this sub-project consisted of the construction of an entirely new sulfuric acid plant for the Copper Circuit and the modernization of the copper smelter, and its principal purpose was to reduce the Complex's SO₂ emissions.⁶⁶⁰ Moreover, even Knight Piésold significantly *underestimated* the extent of the technological changes that Doe Run Peru would be required to implement in order to achieve compliance with Peru's SO₂ standards, because in 2008 Peru imposed far more stringent SO₂ standards, lowering the ECA daily value for SO₂ from 365 µg/m³ to 80 µg/m³.⁶⁶¹

(ii) Doe Run Peru's Undertaking to Improve the Environmental Performance of the Complex and the Health of the Local Population Was Radically Transformed During the Period from 1997 to 2009

320. The radical transformation and expansion of Doe Run Peru's undertaking to improve the Complex's environmental performance and the health of the local population contributes to the grossly unfair and arbitrary character of Peru's failure to grant Doe Run Peru an effective extension of time to finish its ninth and final PAMA project. Notably, during the five-year period after Doe Run Peru's acquisition of the Complex, the Ministry of Energy &

⁶⁵⁹ **Exhibit C-008**, Knight Piésold Report for Centromin at 33 (emphasis added).

⁶⁶⁰ **Exhibit C-014**, Doe Run Peru 2009 Extension Request, art. 1.2 at 7; *see also* Expert Report of Partelpoeg, February 18, 2014, § 7 at 20.

⁶⁶¹ **Exhibit C-152**, Resolution No. 205-2013.

Mines approved major design and engineering changes to Doe Run Peru's PAMA projects, increasing its investment commitment by 62 percent from US\$ 107.6 million to US\$ 174.0 million.⁶⁶² In addition, Doe Run Peru undertook numerous complementary environmental and public health projects outside the scope of its PAMA in order to reduce emissions and improve the health of the local population.⁶⁶³ For example, based on the conclusions of a human health risks study that it commissioned in 2003, Doe Run Peru implemented a series of projects to reduce stack and fugitive emissions of lead.⁶⁶⁴ Doe Run Peru also established a Hygiene and Environmental Health Department and spent more than US\$ 30 million on social and public health projects during the period from 1998 to 2010.⁶⁶⁵

321. On top of all these changes, the Ministry of Energy & Mines significantly expanded the cost and complexity of Doe Run Peru's environmental obligations in May 2006, admitting that the original PAMA that it had approved in January 1997 "did not contemplate the remediation of some environmental problems, which in some cases were significant, as they were not completely or adequately identified or characterized."⁶⁶⁶ For example, the Ministry required Doe Run Peru to undertake numerous new projects to reduce stack and fugitive emissions of particulate matter. At the same time, the Ministry granted Doe Run Peru an extension of only two years and ten months to complete the expanded sulfuric acid plants project, even though the technical consultant hired by the Ministry to evaluate Doe Run Peru's December 2005 extension request considered that five years was a reasonable estimate, and any less was "very aggressive."⁶⁶⁷ Moreover, the Ministry subjected Doe Run Peru to more stringent environmental standards than other companies, requiring it to meet a 0.5 µg/m³ annual lead emission standard by January 1, 2007, rather than the applicable transitory standard of 1.0 µg/m³

⁶⁶² **Exhibit C-081**, MEM Report No. 1237-99 at 3; **C-080**, Order No. 157-2006 at 5.

⁶⁶³ **Exhibit C-015**, Memorandum No. 732-2002 at 3.

⁶⁶⁴ **Exhibit C-090**, Detailed Request for a PAMA Extension at 8-9, 64-69; **Exhibit C-013**, Report No. 118-2006 at 35-44; **Exhibit C-084**, 2006 DRP Report to Our Communities at 30. *See also* Neil Witness Stmt. at ¶ 10 (noting that following the study "[Doe Run Peru] began a series of projects outside the scope of the PAMA to immediately reduce fugitive and stack lead emissions from the facility. These projects included paving roads inside the smelter to prevent dusts from being picked up by traffic, carried by winds, and re-deposited, and also installing bag-houses and new ventilation systems.").

⁶⁶⁵ **Exhibit C-091**, 2011 DRP Report to Our Communities at 24.

⁶⁶⁶ **Exhibit C-013**, Report No. 118-2006 at 6.

⁶⁶⁷ Expert Report of Partelpoeg, February 18, 2014, §§ 8.2, 8.3 at 22, 26.

⁶⁶⁸; and imposing environmental standards related to bismuth, cadmium, antimony and other metals that did not exist under Peruvian law.⁶⁶⁹

322. Doe Run Peru's efforts achieved remarkable results as compared with the situation that it inherited from Centromin in 1997. For example, by the end of 2008 Doe Run Peru had reduced emissions of particulate matter from the main stack by 78 percent as compared with 1997 levels; it had also reduced emissions of lead and arsenic from the main stack by 68 percent and 93 percent, respectively.⁶⁷⁰ Doe Run Peru had even reduced SO₂ emissions by 52 percent, despite the fact that it had not yet completed the sulfuric acid plant for the Copper Circuit.⁶⁷¹ These emissions reductions resulted in dramatic air quality improvements in the areas around the Complex. Doe Run Peru's actions also dramatically reduced the release of effluents into the rivers around the Complex.

(iii) Doe Run Peru's Actual Investments in Its PAMA Projects Exceeded the Required Investment by Over US\$ 200 Million

323. Peru's woeful underestimate of the total cost of Doe Run Peru's PAMA projects also contributes to the gross unfairness of its failure to grant the company an effective extension of time to finish its ninth and final PAMA project. On October 16, 1997 (only one week before the execution of the Stock Transfer Agreement), the Ministry of Energy & Mines issued a resolution officially allocating PAMA projects to Metaloroya with a total estimated cost of US\$ 107 million.⁶⁷² By December 2008, Doe Run Peru had spent over US\$ 300 million on its nine PAMA projects and related environmental projects, and it estimated that it would need to spend an additional amount of US\$ 120.6 million to finish the last project.⁶⁷³ The total amount invested in the PAMA projects has thus exceeded Peru's original estimate by approximately US\$ 200

⁶⁶⁸ **Exhibit C-013**, Report No. 118-2006 at 20.

⁶⁶⁹ *See* Section II.H.2.

⁶⁷⁰ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 76.

⁶⁷¹ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 7676.

⁶⁷² **Exhibit C-009**, Resolution No. 334-97. *See also* **Exhibit C-010**, September 19, 1997 Letter at 9-12; **Exhibit C-002**, Stock Transfer Agreement, Clause 5, preamble at 17.

⁶⁷³ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 4, 5, 8, 110, 114.

million, an amount almost three times more.⁶⁷⁴ Given the exponential increase in the cost of Doe Run Peru's PAMA projects, and Doe Run Peru's willingness to dedicate even significantly more financial resources, it was grossly unfair for Peru not to provide the company with an effective extension of time to finish its last project.

- (iv) The Global Financial Crisis and Steep Decline in World Metals Prices Constituted an "Extraordinary Economic Alteration" Excusing Doe Run Peru's Inability to Finish the Copper Circuit Sub-Project

324. The fact that Peru ignored, without refuting, Doe Run Peru's entitlement to an extension of time to finish its Copper Circuit sub-project under the doctrine of *force majeure* as a result of the 2008-2009 financial crisis also demonstrates the gross unfairness and arbitrariness of Peru's failure to grant the company an effective extension. Significantly, Centromin and Doe Run Peru agreed in Clause 15 of the Stock Transfer Agreement that either party's non-performance of its obligations under the agreement would be excused if the performance was "delayed, hindered or obstructed by . . . extraordinary economic alterations."

325. Peru, too, was contractually and legally bound to allow for flexibility in Doe Run Peru's implementation of its PAMA in the event of "extraordinary economic alterations." First, Peru agreed in Clause 2.1 of the Guaranty Agreement not only to perform the "obligations" undertaken by Centromin in the Stock Transfer Agreement, but also to honor Centromin's "representations, securities [and] guaranties." Accordingly, the Guaranty Agreement bound Peru to honor the broad *force majeure* clause contained in the Stock Transfer Agreement. Second, Article 48 of Peru's Regulations for Environmental Protection in Mining and Metallurgy, as amended, expressly provides that a company's non-compliance with its PAMA (including its failure to complete its PAMA by the end of its PAMA period) cannot result in any sanctions "in cases of fortuitous circumstances or *force majeure*."⁶⁷⁵

326. The global financial crisis of 2008-09 and the resulting steep decline in world metals prices excused Doe Run Peru's inability to finish the Copper Circuit sub-project by October 2009 because: (1) these events clearly and unmistakably constituted an "extraordinary

⁶⁷⁴ **Exhibit C-014**, Doe Run Peru 2009 Extension Request at 4, 5.

⁶⁷⁵ **Exhibit C-068**, Decree No. 022-2002 at art. 1 at 1-2 (amending Article 48 of Supreme Decree No. 016-93-EM).

economic alteration” under the Stock Transfer Agreement and a *force majeure* circumstance under Peruvian law; and (2) they severely impacted Doe Run Peru’s ability to finish the Copper Circuit sub-project by causing its revenues to collapse from US\$ 1.46 billion in 2007 to US\$ 471.8 million in 2009.⁶⁷⁶

327. Many economists consider the global financial crisis of 2008-09 to have been the worst economic crisis since the Great Depression of the 1930s.⁶⁷⁷ Mining experts concur. As Dr. Partelpoeg explains, “the price of copper and other metals collapsed in conjunction with the global economic crisis.”⁶⁷⁸ And, “concurrently with the decline in metal prices, the global financial sector was reeling with troubles of their own—financing of projects came to a near standstill. Financing of projects in the mining and metals industry were severely impacted because of the decline in metal prices” and the impacts were felt “throughout the industry.”⁶⁷⁹ The collapse of Doe Run Peru’s revenues in 2008 made it impossible for the company to pay for the remaining work on its Copper Circuit sub-project. As of December 2008, when it suspended its work on this project, Doe Run Peru estimated that it still needed to spend US\$ 120.6 million in order to finish the project. Moreover, in February 2009, Doe Run Peru’s lenders, themselves reeling from the financial crisis,⁶⁸⁰ informed it that they would not extend its US\$ 75 million revolving line of credit that provided day-to-day liquidity for its ongoing operations, unless it obtained a formal extension of its October 2009 deadline to finish the Copper Circuit sub-project. Under these circumstances, Peru could not merely stand by while Doe Run Peru lost its ability to operate the Complex. Instead, it had an obligation under the doctrine of *force majeure* to grant Doe Run Peru an effective extension of time to finish the project.

- (v) Peru Sought to Extract Concessions from Doe Run Peru as Conditions to Granting the PAMA Extension to Which Doe

⁶⁷⁶ **Exhibit C-165**, Doe Run Peru S.R.L. Financial Statements as of October 31, 2008 and 2007, July 6, 2009 (*hereinafter* “DRP 2007-2008 Financial Statements”) at 7; **Exhibit C-166**, Doe Run Peru S.R.L. Financial Statements as of October 31, 2010 and 2009, January 30, 2012 (*hereinafter* “DRP 2009-2010 Financial Statements”) at 7.

⁶⁷⁷ **Exhibit C-164**, February 27, 2009 REUTERS.

⁶⁷⁸ Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27.

⁶⁷⁹ Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27.

⁶⁸⁰ Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27-28.

Run Peru Was Clearly Entitled under the Economic *Force Majeure* Clause in the Stock Transfer Agreement

328. Peru never disputed that the 2008 world financial crisis constituted an event of economic *force majeure* under the Stock Transfer Agreement. Yet, instead of working collaboratively with Doe Run Peru, it adopted an aggressive and confrontational stance by both refusing to grant Doe Run Peru's extension requests and seeking to extract concessions from Doe Run Peru before it would agree to the extension to which Doe Run Peru was entitled.

329. On March 5, 2009, after the impact of the world financial crisis was already taking its toll, Doe Run Peru advised the Ministry of Energy & Mines that it needed an extension as concentrate suppliers were going to freeze shipments and the banks required that Doe Run Peru obtain a formal extension.⁶⁸¹ The Ministry refused.⁶⁸² When it did come to the table, it sought a number of concessions from Doe Run Peru. For example, in late March 2009, the Government and Doe Run Peru negotiated an MOU (which the Government never signed), but which required that Doe Run Peru capitalize its Intercompany Note and that Doe Run Cayman Ltd. pledge all of its shares in Doe Run Peru.⁶⁸³

330. The Government continued to demand that Doe Run Peru capitalize its debt and Doe Run Cayman Ltd. pledge all its shares, even after making statements that Doe Run Peru would only be granted a three month extension, and refusing to provide a signed MOU or provide a draft of or any details regarding the extension.⁶⁸⁴ In May, the Government publicly confirmed that no extension was planned.⁶⁸⁵

331. Peru's persistent refusals to grant the promised extension along with its unfounded demands for concessions caused great damage to Doe Run Peru's business and prohibited it from obtaining a new revolving loan or making payment to its suppliers.⁶⁸⁶

⁶⁸¹ **Exhibit C-103**, Doe Run Peru Request to Ministry of Energy & Mines for Extension, Items 4 and 7 at 1-2.

⁶⁸² Sadlowski Witness Stmt. at ¶ 51.

⁶⁸³ **Exhibit C-016**, MOU, art. 3.2 at 2-3.

⁶⁸⁴ See Section II.J.

⁶⁸⁵ **Exhibit C-018**, May 20, 2009 MINES AND COMMUNITIES.

⁶⁸⁶ See Section II.J.

(vi) By Imposing the Trust Account Requirement *inter alia*, the Ministry of Energy & Mines Violated Peruvian Law

332. In addition to its demands for concessions, the actions taken by the Ministry of Energy & Mines to undermine the extension that Congress finally granted—including the imposition of an extremely onerous trust account requirement—constitutes cumulative and glaring evidence of the grossly unfair and arbitrary character of the Peruvian Government’s failure to grant Doe Run Peru an effective extension. MEM’s decree required Doe Run Peru to channel 100 percent of its revenues into a trust account to be used to pay for the completion of the Copper Circuit sub-project.⁶⁸⁷ This trust account requirement made it virtually impossible for Doe Run Peru to obtain the financing necessary for it to finish the project and to cover its working capital needs, because Doe Run Peru would be left without any funds from which to repay its creditors.⁶⁸⁸

333. By undermining the extension granted by Congress, the Ministry of Energy & Mines violated Peruvian law, because the executive exceeded its powers and breached the principle of legal hierarchy, a basic principle under Peruvian law contemplated by the Constitution.⁶⁸⁹ As the Peruvian Constitutional Tribunal has explained: “In order for a higher ranking instrument to achieve its purpose, it is crucial that it cannot be distorted by the lower-ranking instrument that regulates it.”⁶⁹⁰ Pursuant to this principle, a lower-ranking instrument that conflicts with a higher-ranking instrument shall not be applied.⁶⁹¹

334. Importantly, the Peruvian Government itself later recognized that the trust account requirement imposed by the Ministry of Energy & Mines improperly nullified Doe Run Peru’s rights, and reduced the trust requirement to 20 percent of its revenues (not 100 percent), in

⁶⁸⁷ **Exhibit C-114**, Decree No. 075-2009, § 4.2 at 2.

⁶⁸⁸ Sadlowski Witness Stmt. at ¶ 66.

⁶⁸⁹ **Exhibit C-167**, Political Constitution of Peru (*hereinafter* “Peru Const.”), Art. 51 (“The constitution prevails over any other legal rule, the laws over level provisions, and so on successively. Publication is essential to the enforcement of any legal rule of the State.”).

⁶⁹⁰ **Exhibit C-168**, Peruvian Constitutional Tribunal Exp. No. 047-2004-AI/TC, Decision, April 24, 2006 (*hereinafter* “Peruvian Const. Trib. Exp. No. 047-2004”) at ¶ 59.

⁶⁹¹ **Exhibit C-169**, Peruvian Supreme Court Case. No. 472-2008, June 5, 2008 (*hereinafter* “Case No. 472-2008”). *See also*, Peru Const., art. 138 (directing judges that “[i]n any proceedings, when incompatibility exists between a constitutional and a legal rule, the judges decide for the first one. Likewise, they choose the legal rule over any other rule of lower rank.”).

theory allowing Doe Run Peru to repay its creditors from its remaining revenues.⁶⁹² However, the Government still required Doe Run Peru to obtain financing and restart in less than two months. This was not nearly enough to obtain the approximately US\$ 187 million needed, in view of the tight credit markets at the time.⁶⁹³

(vii) Peru's Unfair Treatment of Doe Run Peru Continued with the Ministry of Energy & Mines' Insistence on an Unreasonably Short Period to Foreclose on Doe Run Peru's Proposed Asset Guarantees

335. Another example of Peru's continued pattern of unfair treatment of Doe Run Peru relates to asset guarantees Doe Run Peru proposed to secure the completion of the final PAMA project. On March 24, 2010, Doe Run Peru proposed to pledge certain assets (valued at US\$ 250 million) to the Ministry of Energy & Mines as security to complete the PAMA. These guarantees would have covered over 100 percent of the cost of the project estimated at US\$ 163 million.⁶⁹⁴ MEM accepted Doe Run Peru's proposed asset guarantees on April 21, 2010.⁶⁹⁵ Thereafter, Doe Run Peru and the Ministry negotiated a Security Agreement.⁶⁹⁶ MEM, however, insisted that it be able to foreclose on the guarantees if Doe Run Peru did not obtain financing and restart operations by July 27, 2010, less than two months away.⁶⁹⁷

336. Because Doe Run Peru already was under the onerous terms of the Supreme Decree, Doe Run Peru requested that the Ministry's right to foreclose on the guarantees be limited to DRP's failure to complete the final PAMA project within 20-months as required by

⁶⁹² **Exhibit C-024**, Supreme Decree No. 032-2010.

⁶⁹³ Neil Witness Stmt. at ¶53; Sadlowski Witness Stmt. at ¶¶ 66-68.

⁶⁹⁴ **Exhibit C-170**, "Esquema de Asignacion de Garantias Entre las Partes Intersadas" dated March 24, 2010 (*hereinafter* "Mar. 24, 2010 Assignment of Guarantees"); Sadlowski Witness Stmt. ¶74.

⁶⁹⁵ **Exhibit C-171**, The Ministry of Energy & Mines "Informe No. 228-2010-the Ministry of Energy & Mines-DGM-DTM" dated April 21, 2010 (*hereinafter* "Report No. 228-2010"); Sadlowski Witness Stmt. ¶ 74.

⁶⁹⁶ **Exhibit C-172**, Real and Personal Property Security Agreement (*hereinafter* "Draft Guaranty")

⁶⁹⁷ **Exhibit C-172**, Draft Guaranty at 2-3.

the Extension Law.⁶⁹⁸ However, the Ministry rejected this request based on the language of Extension Law.⁶⁹⁹ Article 3 provides:

The company Doe Run Perú S.R.L. shall submit the relevant guarantees of full compliance with the terms, commitments, and investments referred to in the above article, *subject to such terms and conditions as may be established by the Ministry of Energy and Mines.*⁷⁰⁰

337. However, Section 5.2 of the Supreme Decree provides:

5.2 The guarantees shall remain in full force and effect until full and thorough discharge of the duties of Doe Run Perú S.R.L. with regard to Project construction and startup and until the issuance of the relevant consent by the mining authority.⁷⁰¹

338. Thus, the Supreme Decree itself provides that the guarantees would remain in effect until the PAMA project was complete and signed off on by the Ministry of Energy & Mines. This is the essence of grossly unfair and inequitable conduct by the Peruvian Government in connection with Renco's investments.

339. While this happening, Peru was continuing its pattern of grossly unfair and arbitrary treatment in the bankruptcy proceedings.

(viii) Peru's Pattern of Mistreatment Included Efforts to Control the Bankruptcy Proceeding by Asserting a Bogus US\$ 163 Million Credit

340. After the Peruvian Government's actions resulted in Doe Run Peru being forced into bankruptcy in February 2010, and the Ministry of Energy & Mines asserted a baseless US\$ 163 million claim against Doe Run Peru in the INDECOPI Bankruptcy Proceedings in the amount of the cost to finish the Copper Circuit sub-project,⁷⁰² the Peruvian Government became

⁶⁹⁸ **Exhibit C-172**, Draft Guaranty; Sadlowski Witness Stmt. ¶ 77.

⁶⁹⁹ **Exhibit C-173**, Letter from V. Manuel Vargas Vargas (Ministry of Energy and Mines) to J. Carlos Huyhua (Doe Run Peru), May 31, 2010 (*hereinafter* "May 31, 2010 Letter").

⁷⁰⁰ **Exhibit C-023**, Law No. 29410, art. 3 (emphasis added).

⁷⁰¹ **Exhibit C-114**, Decree No. 075-2009, §5.2.

⁷⁰² Section II.K.1.

Doe Run Peru's largest creditor and has been able to greatly influence, if not completely control, the Bankruptcy process.⁷⁰³ Doe Run Peru's challenge to the MEM Credit has been languishing for years. Although INDECOPI initially dismissed the MEM Credit because it has no legal or contractual basis, an appellate body within the agency reversed the dismissal.⁷⁰⁴ After the First Instance Court affirmed, Doe Run Peru appealed the claim to a three-judge appellate tribunal, the case was fully briefed and oral argument took place on September 16, 2013.⁷⁰⁵ After continuous contact between Ministry lawyers and the Court, the strict 90-day request for the Appellate Court to issue its opinion came and went.⁷⁰⁶ Only recently, Doe Run Peru was informed that there is purported "discord" among the three judges such that an additional judge must be added to try to get a three-judge decision (and if a 2-2 split develops the process will repeat itself) making it likely that the Ministry will continue to be able to improperly influence the Bankruptcy process for months to come.⁷⁰⁷ Thus, the Peruvian Government's improper injection of itself into the INDECOPI proceedings formed part of the pattern of gross and unfair conduct resulting in Renco's loss of its investment.

(ix) Peru's Pattern of Unfair Treatment Continued with Its Refusal to Approve Doe Run Peru's Restructuring Plans

341. After Doe Run Peru was forced into the INDECOPI Bankruptcy Proceedings, and the Ministry of Energy & Mines improperly asserted the above-referenced US\$ 163 million claim,⁷⁰⁸ Peru continued its pattern of unfair treatment in opposing Doe Run Peru's restructuring plan.

342. Doe Run Peru submitted several restructuring plans during early 2012 with the final amended restructuring plan submitted on May 14, 2012.⁷⁰⁹ Despite arranging US\$ 200 million in financing (US\$ 135 million from Glencore and US\$ 65 million from Renco), and submitting plans that would allow for the continuation of the business, ensure completion of the

⁷⁰³ Section II.K.1.

⁷⁰⁴ **Exhibit C-136**, Nov. 18, 2011 Resolution by Chamber No. 1.

⁷⁰⁵ Section II.K.1.

⁷⁰⁶ Sadlowski Witness Stmt. ¶ 84.

⁷⁰⁷ Section II.K.1.

⁷⁰⁸ **Exhibit C-025**, 2010 MEM Request to INDECOPI. *See also* Sadlowski Witness Stmt. at ¶¶ 84-86.

⁷⁰⁹ **Exhibit C-026**, 2012 DRP Restructuring Plan.

final PAMA project, and ensure that all creditors are paid, the Ministry of Energy & Mines aggressively opposed every plan put forward by Doe Run Peru, while Doe Run Peru remained flexible and cooperative in connection with the Ministry's concerns.⁷¹⁰

343. The Ministry of Energy & Mines opposed any plan submitted by Doe Run Peru and demanded as a pre-condition to supporting any plan that Doe Run Peru: (i) agree not to operate the Copper Circuit while it completed the remainder of the final PAMA project; (ii) immediately comply with all environmental standards in force at the time, including the 80 µg/m³ SO₂ standard, which, as of January 1, 2014 would be lowered to 20 µg/m³; and (iii) agree to drop its challenge to the US\$ 163 million MEM Credit claim.⁷¹¹ These demands were patently unfair and inconsistent with Stock Transfer Agreement, the extension laws of 2004 and 2009, and the practice of the parties over the previous decade whereby Doe Run Peru used revenues generated by operations as both working capital and to fund the PAMA projects. The requirement that Doe Run Peru must immediately comply with all existing environmental standards flies in the face of the Stock Transfer Agreement and PAMA, which contemplated the Complex would be brought into compliance with standards in place in 1997, the time of execution of the Stock Purchase Agreement.⁷¹² Thereafter, Doe Run Peru would have been given several years to comply with a standards in effect at the end of the time for completion of the PAMA projects.⁷¹³

344. Peru's unfair conduct in opposing Doe Run Peru's restructuring plans and its insistence on patently unreasonable terms that Doe Run Peru could not possibly comply with makes it unlikely that Renco will ever regain control of its investment.

b. *The Ministry of Energy & Mines' Pattern of Mistreatment of the Extension Requests and Proposed Restructuring Plans from Doe Run Peru Frustrated Renco's Legitimate Expectations*

345. As the Tribunal in *Waste Management* noted, a host State violates this standard if its conduct breaches "representations made by the host State which were reasonably relied on by

⁷¹⁰ See Section II.K.2.

⁷¹¹ See Section II.K.2; **Exhibit C-027**, June 26, 2012 Letter.

⁷¹² See para. 154.

⁷¹³ See para. 154.

the [investor].”⁷¹⁴ Subsequent tribunals have confirmed this conclusion.⁷¹⁵ Thus, the fair and equitable treatment standard prescribed by Article 10.5 of the Treaty protects an investor’s legitimate expectations based on the host State’s representations – particularly those made in order to induce the investor to make the investment in the first place.⁷¹⁶

346. Here, when Renco and Doe Run Peru entered into the Stock Transfer Agreement and the Guaranty Agreement, they had a legitimate expectation that the Peruvian Government would grant Doe Run Peru an effective extension of time in the event of a steep decline in metals prices affecting Doe Run Peru’s ability to fund its PAMA projects, mainly because the Stock Purchase Agreement so provides. As explained by Mr. Sadlowski, Renco’s Vice President of Law,

The original model contract in the bid documents contained no economic *force majeure* provision We were very clear with Centromin/CEPRI that a broad *force majeure* clause, including protection in the event of a depression in metal prices, or other adverse economic conditions, was an essential part of the deal without which, we would not go forward with the purchase. Such events would have an immediate and significant impact upon Doe Run Peru’s cash flow and its ability to perform its PAMA obligations in a timely fashion.⁷¹⁷

⁷¹⁴ **CLA-014**, *Waste Management* at ¶ 98.

⁷¹⁵ See **CLA-016**, *MacLachlan et al., Treatment of Investors* at ¶¶ 7.108-7.112. See also **CLA-017**, *Dolzer & Schreuer*, PRINCIPLES at 146; **CLA-018**, *Metalclad Award* at ¶ 85; **CLA-019**, *Thunderbird Award* at ¶ 143.

⁷¹⁶ Numerous other investment treaty tribunals have held that the fair and equitable treatment standard prohibits host State conduct violating the legitimate and reasonable expectations of investors. See, e.g., **CLA-019**, *Thunderbird Award* at ¶ 147 (applying customary international law standard of fair and equitable treatment); **CLA-021**, *Occidental Exploration & Production Co. v. The Republic of Ecuador*, LCIA Case No. UN3467, Final Award, July 1, 2004 at ¶¶ 183-87 (*hereinafter* “2004 Occidental Exploration Final Award”); **CLA-022**, *CME Czech Rep. B.V. (Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, September 13, 2001 at ¶ 611 (*hereinafter* “CME Czech Partial Award”); **CLA-023**, *CMS Gas Transmission Co. v. Argentine Republic*, ICSID Case No. ARB/01/8, Award, May 12, 2005 at ¶¶ 274-76 (*hereinafter* “CMS Award”); **CLA-024**, *PSEG Global, Inc. et al. v. Turkey*, ICSID Case No. ARB/02/5, Award, January 19, 2007 at ¶ 240 (*hereinafter* “PSEG Award”); **CLA-025**, *MTD Equity Sdn. Bhd. & MTD Chile S.A. v. The Republic of Chile*, ICSID Case No. ARB/01/7, Award, May 25, 2004 at ¶¶ 113-15 (*hereinafter* “MTD Award”); **CLA-026**, *BG Group Plc. v. The Republic of Argentina*, UNCITRAL, Award, December 24, 2007 at ¶¶ 294-300 (*hereinafter* “BG Award”); **CLA-027**, *National Grid v. The Republic of Argentina*, UNCITRAL, Award, November 3, 2008 at ¶ 179 (*hereinafter* “National Grid Award”); **CLA-028**, *Waguih Elie George Siag & Clorinda Vecchi v. Arab Republic of Egypt*, ICSID No. ARB/05/15, Award, June 1, 2009 at ¶ 450 (*hereinafter* “Siag Award”); **CLA-029**, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, July 24, 2008 at ¶¶ 602, 615 (*hereinafter* “Biwater Award”).

⁷¹⁷ Sadlowski Witness Stmt. at ¶ 44.

347. Mr. Sadlowski further explains that “Centromin/CEPRI agreed with our request for an ‘economic’ *force majeure* protection[.]”⁷¹⁸ In particular, Clause 15 of the final, executed version of the Stock Transfer Agreement provides that “[n]either of the contracting parties may demand from the other the fulfillment of the obligations assumed in this contract, when the fulfillment is delayed, hindered or obstructed by . . . *extraordinary economic alterations*” (emphasis added). The term “extraordinary economic alterations” in Clause 15 is broad and clearly encompasses a steep decline in metals prices brought about by a major economic crisis.⁷¹⁹

348. Importantly, Peru agreed to honor the broad economic *force majeure* clause in the Stock Transfer Agreement. Under Clause 2.1 of the Guaranty Agreement, Peru committed not only to perform the “obligations” undertaken by Centromin in the Stock Transfer Agreement, but also to honor Centromin’s “representations, securities [and] guaranties.”⁷²⁰ Moreover, Peru was also bound under Article 48 of its 1993 Regulations for Environmental Protection in Mining and Metallurgy to allow Doe Run Peru additional time to finish its PAMA in the event of a major economic crisis constituting a *force majeure* circumstance.⁷²¹

349. As explained by Mr. Sadlowski, “Peru never disagreed that the 2008 financial crisis was a valid economic *force majeure* event under the [Stock Transfer Agreement]” excusing Doe Run Peru’s inability to finish its Copper Circuit sub-project by October 2009.⁷²² However, Peru nonetheless failed to grant Doe Run Peru an effective extension of time to finish this project. Because Peru induced Renco and Doe Run Peru to invest in the Complex by representing that it would allow for flexibility in the implementation of Doe Run Peru’s PAMA in the event of a major economic crisis, its breach of that representation violated the fair and equitable treatment standard prescribed by Article 10.5 of the Treaty.

⁷¹⁸ Sadlowski Witness Stmt. at ¶ 46.

⁷¹⁹ See Sadlowski Witness Stmt. at ¶ 46; Expert Report of Partelpoeg, February 18, 2014, § 8.4.1 at 27-28.

⁷²⁰ **Exhibit C-003**, Guaranty Agreement art. 2.1 at 2.

⁷²¹ **Exhibit C-037**, Decree No. 016-93, art. 48 at 13.

⁷²² Sadlowski Witness Stmt. at ¶ 47.

c. *The Ministry of Energy & Mines’ Pattern of Mistreatment of the Extension Requests and Proposed Restructuring Plans from Doe Run Peru Involved a Complete Lack of Transparency and Candor*

350. The *Waste Management* tribunal stated that a “complete lack of transparency and candour in administrative process” constitutes a breach of the customary international law standard of fair and equitable treatment.⁷²³ Similarly, the *Teco* tribunal held that “a willful disregard of the fundamental principles upon which the regulatory framework is based, a complete lack of candor or good faith on the part of the regulator in its dealings with the investor, as well as a total lack of reasoning, would constitute a breach of the minimum standard.”⁷²⁴

351. In considering the threshold for finding a violation of the fair and equitable treatment standard under the Netherlands-Czech Republic BIT (which does not refer to customary international law), the tribunal in *Saluka Investments BV v. Czech Republic* quoted the *Waste Management* tribunal’s formulation of the customary international law standard of fair and equitable treatment and then observed as follows:

[I]t appears that the difference between the Treaty standard laid down in Article 3.1 of the [Netherlands-Czech Republic BIT] and the customary minimum standard, when applied to the specific facts of a case, may well be more apparent than real. To the extent that the case law reveals different formulations of the relevant thresholds, an in-depth analysis may well demonstrate that they could be explained by the contextual and factual differences of the cases to which the standards have been applied.⁷²⁵

352. Although the *Saluka* tribunal went on to hold that the fair and equitable treatment standard in the Netherlands-Czech Republic BIT is an “autonomous Treaty standard and must be interpreted, in light of the object and purpose of the Treaty, so as to avoid conduct of the Czech Republic that clearly provides disincentives to foreign investors,”⁷²⁶ it defined the content of this

⁷²³ **CLA-014**, *Waste Management* Award at ¶ 98.

⁷²⁴ **CLA-010**, *Teco* Award at ¶ 458.

⁷²⁵ **CLA-030**, *Saluka Investments B.V. (Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, March 17, 2006 at ¶¶ 288, 291 (*hereinafter* “*Saluka* Partial Award”).

⁷²⁶ **CLA-030**, *Saluka* Partial Award at ¶ 309.

“autonomous” standard in terms very similar to those used by the *Waste Management* tribunal to define the content of the customary international law standard of fair and equitable treatment. In particular, the *Saluka* tribunal held that “[a] foreign investor whose interests are protected under the Treaty is entitled to expect that the Czech Republic will not act in a way that is manifestly inconsistent, non-transparent [or] unreasonable (*i.e.*, unrelated to some rational policy).”⁷²⁷ Thus, both the fair and equitable treatment standard in the Netherlands-Czech Republic BIT and the customary international law standard of fair and equitable treatment prohibit conduct by a host State involving a complete lack of transparency and candor.

353. The *Saluka* tribunal’s application of the fair and equitable treatment standard to the facts of that case sheds further light on the content of the standard. *Saluka* had acquired a troubled Czech bank, IPB, with the intention of restructuring it and selling it to a strategic investor.⁷²⁸ After *Saluka*’s acquisition, the Czech National Bank concluded that IPB was not performing prudently and that it needed to create at least another CZK 40 billion in provisions for its bad loans.⁷²⁹ *Saluka* and IPB launched a major effort to secure State aid in order to increase the bank’s capital and to make it attractive to a potential strategic investor.⁷³⁰ But instead of negotiating in good faith on the proposals made by IPB and its shareholders, the Czech Ministry of Finance and the Czech National Bank took sides with another Czech bank that was interested in acquiring IPB’s business.⁷³¹ Moreover, irresponsible statements by Czech officials caused two runs on IPB.⁷³² The Czech Republic ultimately refused to provide State aid to IPB, and instead placed the bank into forced administration.⁷³³

354. The *Saluka* tribunal held that the Czech Republic violated the fair and equitable treatment standard by unreasonably frustrating IPB’s and its shareholders’ good faith efforts to resolve the bank’s bad debt problem.⁷³⁴ In particular, the Czech Government failed to consider

⁷²⁷ **CLA-030**, *Saluka* Partial Award at ¶ 309.

⁷²⁸ **CLA-030**, *Saluka* Partial Award at ¶ 58.

⁷²⁹ **CLA-030**, *Saluka* Partial Award at ¶ 88.

⁷³⁰ **CLA-030**, *Saluka* Partial Award at ¶¶ 89-96.

⁷³¹ **CLA-030**, *Saluka* Partial Award at ¶¶ 408-416.

⁷³² **CLA-030**, *Saluka* Partial Award at ¶¶ 94, 100, 126.

⁷³³ **CLA-030**, *Saluka* Partial Award at ¶ 136.

⁷³⁴ **CLA-030**, *Saluka* Partial Award at ¶ 407.

their proposals in an “unbiased, even-handed, transparent and consistent way,” and it “unreasonably refused to communicate with IPB and Saluka/Nomura in an adequate manner.”⁷³⁵ The tribunal summarized the Czech Republic’s violation of the fair and equitable treatment standard as follows:

Saluka was entitled to expect that the Czech Republic took seriously the various proposals that may have had the potential of solving the bank’s problem and that these proposals were dealt with in an objective, transparent, unbiased and even-handed way. . . . The Czech Government’s conduct lacked even-handedness, consistency and transparency and the Czech Government has refused adequate communication with IPB and its major shareholder, Saluka/Nomura. This made it difficult and even impossible for IPB and Saluka/Nomura to identify the Czech Government’s position and to accommodate it.⁷³⁶

355. Like the Czech Government’s treatment of Saluka’s request for State aid, the treatment of Doe Run Peru’s request for a 30-month extension to finish its ninth and final PAMA project involved a complete lack of transparency and candor by the Ministry of Energy & Mines amounting to a breach of the fair and equitable treatment standard. When Doe Run Peru first requested the extension on March 5, 2009, the Ministry responded that an extension was legally impossible.⁷³⁷ At the end of that month, however, Doe Run Peru believed it had reached an agreement with the Peruvian Government on an extension.⁷³⁸ The MOU required, among other things, that Doe Run Peru’s debt to Doe Run Cayman Ltd. be capitalized. In return, the Peruvian Government would agree to an extension “for a period to be determined as necessary to complete execution of the PAMA.” As explained by Mr. Sadlowski,

While capitalization was to take place prior to any PAMA extension decree, [the Ministry of Energy & Mines] promised to provide a draft of a PAMA extension for review

Because we believed that Peru would, in fact, support Doe Run Peru’s efforts to obtain the much needed financing and, as promised, issue an

⁷³⁵ **CLA-030**, *Saluka* Partial Award at ¶ 407.

⁷³⁶ **CLA-030**, *Saluka* Partial Award at ¶ 499.

⁷³⁷ Neil Witness Stmt. at ¶ 39.

⁷³⁸ **Exhibit C-016**, MOU. *See also* Sadlowski Witness Stmt. at ¶¶ 52-59 (the “MOU”).

extension decree, I authorized the execution of the MOU on March 27, 2009. I also authorized execution of an agreement with key concentrate suppliers

On April 2, 2009, Doe Run Peru, the concentrate suppliers and the [G]overnment held a press conference to publicly announce that a solution had been reached. However, [the Ministry of Energy & Mines] continued to ignore our requests for a draft of the PAMA extension document (or any feedback on our request for 30 months) or an executed copy of the MOU. Our concerns were heightened when, on April 3, 2009 the Minister of the Environment, Antonio Brack, publicly stated that Doe Run Peru would receive only a three-month extension.⁷³⁹

356. In May 2009, other Peruvian Government officials made public statements denying that Doe Run Peru would receive any extension of time to finish its last PAMA project.⁷⁴⁰ In October, after Congress had enacted a law granting Doe Run Peru a 30-month extension (including a 10-month period to obtain financing), the Ministry of Energy & Mines undermined the extension by issuing implementing regulations that made it next to impossible for Doe Run Peru to obtain the necessary financing by requiring it to divert 100 percent of its sales revenues into a trust account.

357. In short, the Ministry of Energy & Mines breached Peru's obligations under the customary international law standard of fair and equitable treatment by failing to treat Doe Run Peru's extension request in an unbiased, even-handed, transparent and consistent way.

d. *The Ministry of Energy & Mines' Imposition of the Trust Account Requirement, and Other Erroneous Conditions, Was Not a Proportionate Response*

358. In 2012, the tribunal in *Occidental Petroleum Corporation v. Ecuador* observed "a growing body of arbitral law . . . which holds that the principle of proportionality is applicable to potential breaches" of a contract or domestic law.⁷⁴¹ It considered that a host State's reaction to an investor's actual or perceived breach of contract or legal violation must be proportionate; a disproportionate response would violate the host State's obligation under international law to

⁷³⁹ Sadlowski Witness Stmt. at ¶¶ 53-55.

⁷⁴⁰ **Exhibit C-018**, May 20, 2009 MINES AND COMMUNITIES

⁷⁴¹ **CLA-031**, *Occidental Petroleum Corp. v. Ecuador*, ICSID Case No. ARB/06/11, Award, October 5, 2012 at ¶ 404 (*hereinafter* "2012 Occidental Petroleum Award").

treat the investor fairly and equitably.⁷⁴² The *Occidental Petroleum* tribunal held that Ecuador violated its duty to provide fair and equitable treatment to Occidental's investment by terminating its contract after it violated the laws of Ecuador by transferring certain rights without prior approval.⁷⁴³ The tribunal considered that Ecuador's termination of the contract, although within its rights, was not a proportionate response to Occidental's violation of the law.⁷⁴⁴ Specifically,

the overriding principle of proportionality requires that any such administrative goal must be balanced against the Claimants' own interests and against the true nature and effect of the conduct being censured. The Tribunal finds that the price paid by the Claimants—total loss of an investment worth many hundreds of millions of dollars—was out of proportion to the wrongdoing alleged against OEPC, and similarly out of proportion to the importance and effectiveness of the 'deterrence message' which the Respondent might have wished to send to the wider oil and gas community.⁷⁴⁵

359. Here the imposition of the trust account requirements by the Ministry of Energy & Mines was not a proportionate response to Doe Run Peru's inability to finish its ninth and final PAMA project by October 2009. As discussed above, numerous circumstances beyond Doe Run Peru's control contributed to its inability to complete this project on time. Most importantly, the global financial crisis of 2008-09 and the resulting steep decline in world metals prices constituted an "extraordinary economic alteration" excusing Doe Run Peru's non-performance under the Stock Transfer Agreement and Peruvian law. Moreover, Doe Run Peru's undertaking to improve the Complex's environmental performance and the health of the local population had been radically transformed and expanded during the period from 1997 to 2009, and its actual investments in its PAMA projects had exceeded Peru's original estimate by over US\$200 million.

360. Notwithstanding these circumstances (among others) justifying Doe Run Peru's request for an extension, MEM imposed a punitive trust account requirement that ensured that

⁷⁴² **CLA-031**, 2012 *Occidental Petroleum* Award at ¶¶ 404, 405.

⁷⁴³ **CLA-031**, 2012 *Occidental Petroleum* Award at ¶¶ 424-436, 442-451.

⁷⁴⁴ **CLA-031**, 2012 *Occidental Petroleum* Award at ¶¶ 404-405.

⁷⁴⁵ **CLA-031**, 2012 *Occidental Petroleum* Award at ¶ 450.

Doe Run Peru could not take advantage of the 30-month extension granted by Congress. This requirement was completely out of proportion to any alleged “wrongdoing” by Doe Run Peru, and it was also completely out of proportion to the Peruvian Government’s policy interest in ensuring that Doe Run Peru’s ninth and final PAMA project would be completed in a timely manner. In fact, the trust account requirement produced the opposite effect by ensuring that Doe Run Peru could not obtain the financing necessary to complete the project. Indeed, the Peruvian Government itself acknowledged that the trust account requirement was disproportionate when it issued a decree reducing the percentage of sales revenues that Doe Run Peru had to divert into the account from 100 percent to 20 percent. However, this change was too little, too late, as it left Doe Run Peru only 45 days to negotiate credit arrangements with its lenders and suppliers, a woefully inadequate amount of time.

e. *The Ministry of Energy & Mines’ Undermining of the Extension Was Inconsistent with the Actions of Congress and the Technical Commission*

361. The fair and equitable treatment standard also requires that a host State treat a covered investor or investment consistently and coherently.⁷⁴⁶ As held by the tribunal in *MTD Equity v. Chile*, the standard is infringed by treatment involving “inconsistency of action between two arms of the same Government.”⁷⁴⁷

362. Here, the Ministry’s undermining of the extension recommended by the Technical Commission and granted by Congress constituted a breach of the consistency requirement under the fair and equitable treatment standard. As discussed above,⁷⁴⁸ in September 2009, Congress granted Doe Run Peru a 30-month extension,⁷⁴⁹ yet the Ministry of Energy & Mines acted

⁷⁴⁶ **CLA-023**, *CMS Award* at ¶¶ 279, 283-84 (holding that “the Treaty standard of fair and equitable treatment [which requires the host State ‘to act in a consistent manner’] . . . is not different from the international law minimum standard and its evolution under customary law”).

⁷⁴⁷ **CLA-025**, *MTD Award* at ¶¶ 163-65.

⁷⁴⁸ See paras. 14, 185, 315, 332.

⁷⁴⁹ **Exhibit C-023**, Law No. 29410 art. 2 (“The term for the financing and culmination of the ‘Sulfuric Acid Plant and Modification of the Copper Circuit’ Project at the Metallurgical Complex of La Oroya is hereby extended, as per the directives issued by the La Oroya Technical Commission, created by Supreme Resolution No. 209-2009-PCM. Thus, a non-extendable maximum term of ten (10) months for the financing of the project and the start-up of the metallurgical complex and an additional non-extendable term of twenty (20) months for the construction and start-up of the project are hereby granted.”).

quickly by issuing onerous regulations that deprived Doe Run Peru of the extension itself.⁷⁵⁰ This inconsistent treatment of Doe Run Peru’s extension request by different arms of the Peruvian Government violated the fair and equitable treatment standard.

f. *Peru Coerced and Harassed Renco*

363. Freedom from harassment and coercion is another key protection of the fair and equitable treatment standard.⁷⁵¹ As explained in a recent treatise on investor-state arbitration: “[o]nce an investment has been made, foreign investors can be vulnerable to [G]overnment pressure or harassment. Particularly in capital-intensive sectors, long-term projects are in some sense hostage to the host State. As one might expect, this type of [G]overnment conduct is precisely one of the areas targeted by investment protection treaties.”⁷⁵²

364. Peru’s coercion and harassment of Renco in connection with its request for an extension of time to finish its last PAMA project violated the fair and equitable treatment standard. Notably, after publicly threatening to shut down the Complex, President Garcia issued an emergency decree that deliberately targeted Renco by restricting the participation of related creditors in the INDECOPI Bankruptcy Proceedings. In addition, since the commencement of this arbitration Peru has pursued baseless criminal charges against Messrs. Rennert and Neil relating to the Intercompany Note.

2. The Ministry of Energy & Mines’ Pattern of Mistreatment of Doe Run Peru In Connection with its Requests for an Extension of Time based upon Economic *Force Majeure* and of Doe Run Peru’s Proposed Restructuring Plans Violated the Treaty Because It Breached the Guaranty Agreement and the Stock Transfer Agreement, which Together Constitute an Investment Agreement

365. In addition to violating the fair and equitable treatment standard prescribed by Article 10.5 of the Treaty, Peru’s failure to grant Doe Run Peru an effective extension of time to finish its ninth and final PAMA project also constituted a breach of contract under Peruvian law.

⁷⁵⁰ **Exhibit C-114**, Decree No. 075-2009, § 4.2 at 2.

⁷⁵¹ **CLA-028**, *Siag* Award at ¶ 450.

⁷⁵² **CLA-032**, Christopher F. Dugan, Don Wallace, Jr., Noah Rubins, Borzu Sabahi, *INVESTOR-STATE ARBITRATION* 523 (Oxford University Press, 2008) (*hereinafter* “Dugan et al., *INVESTOR-STATE*”).

366. As discussed above, Centromin and Doe Run Peru agreed in Clause 15 of the Stock Transfer Agreement that either party's non-performance of its obligations under the agreement would be excused if the performance was "delayed, hindered or obstructed by . . . extraordinary economic alterations." Peru, too, was contractually bound to allow for flexibility in Doe Run Peru's implementation of its PAMA in the event of "extraordinary economic alterations," because it agreed in Clause 2.1 of the Guaranty Agreement not only to perform the "obligations" undertaken by Centromin in the Stock Transfer Agreement, but also to honor Centromin's "representations, securities [and] guaranties."

367. As discussed above, the collapse of Doe Run Peru's revenues in 2008 made it impossible for the company to pay for the remaining work on its Copper Circuit sub-project.⁷⁵³ As of December 2008, when it suspended its work on this project, Doe Run Peru estimated that it still needed to spend US\$ 120.6 million in order to finish the project.⁷⁵⁴ Moreover, in February 2009, Doe Run Peru's lenders informed it that they would not extend its US\$ 75 million revolving line of credit that provided day-to-day liquidity for its ongoing operations, unless it obtained a formal extension of its October 2009 deadline to finish the Copper Circuit sub-project.⁷⁵⁵ Under these circumstances, Peru could not merely stand by while Doe Run Peru lost its ability to operate the Complex. Instead, it had an obligation under the Guaranty Agreement and the broad *force majeure* clause in Clause 15 of the Stock Transfer Agreement to grant Doe Run Peru an effective extension of time to finish the project. Peru's decision to grant the extension (through Congress) and then to revoke the extension (through the Ministry's implementing regulations) thus amounted to a breach of the investment agreement.

⁷⁵³ See Expert Report of Partelpoeg, February 18, 2014, § 9 at 29. See also Neil Witness Stmt. at ¶¶ 34-37; Sadlowski Witness Stmt. at ¶¶ 48-50.

⁷⁵⁴ **Exhibit C-014**, Doe Run Peru 2009 Request for Extension at 4, 5, 8, 110, 114.

⁷⁵⁵ **Exhibit C-101**, Revolving Credit Agreement at 29, 120. This financing was critical because Doe Run Peru operated the Complex through long-term supply agreements with mining companies that provided the mineral concentrates processed at the facility. Under these agreements, Doe Run Peru would purchase the raw concentrates and sell the finished metals on the world market after they had been processed and refined. Doe Run Peru thus relied on the revolving line of credit to provide bridge financing, allowing Doe Run Peru to meet its obligations to the mining companies that provided the concentrates (usually about US\$ 45 million per month) before the proceeds from the sale of the finished metals had been received. See also Sadlowski Witness Stmt. ¶ 50.

D. PERU’S DISCRIMINATORY TREATMENT OF DOE RUN PERU’S EXTENSION REQUESTS VIOLATED ARTICLE 10.3 OF THE TREATY

368. Peru’s treatment of Doe Run Peru’s requests for an extension of time to finish its ninth and final PAMA project violated the national treatment standard in Article 10.3 of the Treaty. Article 10.3(1) of the Treaty provides that “[e]ach Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.”⁷⁵⁶ Because the Peruvian Government treated Doe Run Peru’s extension requests less favorably than it treated Centromin’s extension request, Peru violated the national treatment standard in Article 10.3.

369. To establish a breach of the national treatment standard, a foreign investor need only present a *prima facie* case that: (i) it “has been treated in a different and less favorable manner” than domestic investors in like circumstances⁷⁵⁷; and (ii) the distinctions between the treatment of the two investors were “unreasonable.”⁷⁵⁸ Once an investor presents *prima facie* evidence raising a presumption in favor of its claim, the burden to disprove the claim shifts to the host State.⁷⁵⁹

1. Peru Treated Doe Run Peru’s Extension Requests Less Favorably Than It Treated Centromin’s Extension Request

370. Peru gave preferential treatment to Centromin with respect to the extension of its PAMA deadlines. PAMA Project No. 4 required Centromin to delimit the surface area negatively impacted by the environmental pollution from the Complex’s operations, identify

⁷⁵⁶ Article 10.3 of the Treaty closely follows Article 1102 of the NAFTA. **CLA-011**, NAFTA Article 1102(1) provides, “Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.”

⁷⁵⁷ **CLA-033**, *Marvin Feldman v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, December 16, 2002 at ¶ 177 (*hereinafter* “*Feldman Award*”).

⁷⁵⁸ **CLA-033**, *Feldman Award* at ¶ 170. Similarly, the *S.D. Myers, Inc. v. Canada* tribunal found that a determination of “likeness” then initiates “an inquiry into whether the different treatment of situations found to be ‘like’ is justified by legitimate public policy measures that are pursued in a reasonable manner.” **CLA-034**, *S.D. Myers, Inc. v. Government of Canada*, NAFTA, 40 ILM 1408, Partial Award, October 26, 2000 at ¶ 246 (*hereinafter* “*S.D. Myers Partial Award*”). No public policy concern motivated Peru’s unfavorable treatment of Renco in this case.

⁷⁵⁹ **CLA-033**, *Feldman Award* at ¶ 170.

future corrective actions, and conduct a soil-stabilization project. Centromin was obligated to commence the soil stabilization projects in 1997, finalize the soil impact study in 2002, and finish remediation of soil in full by the end of 2005.⁷⁶⁰ By 2000, Centromin had failed to even commence the study (among other obligations) and instead requested that the Ministry of Energy & Mines defer Centromin's obligations to a later date.⁷⁶¹ On April 17, 2000, the Ministry issued a resolution approving a revised schedule for Centromin's remediation work and extending its PAMA deadline from 2006 to 2010.⁷⁶² In extending Centromin's PAMA deadlines, the Ministry did not impose any special requirements or additional environmental projects on Centromin or otherwise supplement Centromin's PAMA obligations.⁷⁶³ Instead, the Ministry granted Centromin's request for a four-year extension, in short order and at no cost.⁷⁶⁴ Centromin (now Activos Mineros) did not complete even the remediation study until 2009, and has yet to engage in any significant remediation of the area.⁷⁶⁵

371. In sharp contrast to Peru's treatment of Centromin, Peru forced Doe Run Peru to undergo an extremely lengthy and expensive process with respect to its request for an extension of its PAMA deadline, and the Ministry of Energy & Mines repeatedly obstructed the process along the way.⁷⁶⁶ In February 2004, Doe Run Peru informed the Ministry that the existing PAMA schedule and obligations would not solve the environmental problems at La Oroya. Doe Run Peru applied for a four-year extension of time to meet the objectives of its then-current PAMA obligations.⁷⁶⁷ Instead of simply granting that extension request as it had done for Centromin, on December 20, 2004, the Ministry issued Supreme Decree No. 046-2004-EM, establishing a new regulatory framework governing applications for PAMA extension requests by mining operators. That regulation required Doe Run Peru to submit an exhaustive report supporting its application, audited financial statements from the preceding five fiscal years, and

⁷⁶⁰ See **Exhibit C-028**, PAMA Operative Version at 158-299.

⁷⁶¹ See Section II.F.

⁷⁶² See Section II.F.

⁷⁶³ See Section II.F.

⁷⁶⁴ See Section II.F.

⁷⁶⁵ See Section II.F above.

⁷⁶⁶ See Section II.H above.

⁷⁶⁷ See Section II.H above.

statements of public support.⁷⁶⁸ Moreover, as a condition of granting an extension, the Ministry obligated Doe Run Peru to undertake numerous additional environmental obligations, some of which addressed Centromin's own PAMA obligations.⁷⁶⁹ The Ministry also required Doe Run Peru to provide expanded financial guarantees and imposed all of the new regulatory standards on Doe Run Peru overnight, including regulations that did not exist under Peruvian law.⁷⁷⁰ Ultimately, in February 2006, the Ministry granted Doe Run Peru an extension of only two years and ten months, rather than the four years Doe Run Peru had requested and which the Ministry had previously granted to Centromin.⁷⁷¹

372. Peru's refusal to grant the same extension of time to Doe Run Peru that it had granted to Centromin also resulted in more unfavorable treatment of Doe Run Peru in 2009-10. As discussed above, the impact of the global financial crisis and the resulting steep decline in world metals prices on Doe Run Peru's revenues forced it to suspend work on its ninth and final PAMA project in December 2008.⁷⁷² On March 5, 2009, Doe Run Peru wrote to the Ministry of Energy & Mines to request an extension based upon clear economic *force majeure* circumstances.⁷⁷³ The Ministry first claimed that an extension was legally impossible.⁷⁷⁴ That response, of course, stood in marked contrast to the Ministry's reaction to similar requests from Centromin and other mining companies.⁷⁷⁵ Then, the Ministry suggested that it would consider providing an extension subject to additional financial conditions – again, a requirement that the Ministry did not impose on Centromin.⁷⁷⁶ In addition, the Ministry claimed that it had “no regulatory framework to answer to an extension application,”⁷⁷⁷ despite having granted Centromin an extension without any regulations.

⁷⁶⁸ See Section II.H above.

⁷⁶⁹ See Section II.H above.

⁷⁷⁰ See Section II.H above.

⁷⁷¹ See Section II.H above.

⁷⁷² See paras. 310, 372.

⁷⁷³ **Exhibit C-103**, Doe Run Peru Request to Ministry of Energy & Mines for Extension.

⁷⁷⁴ Neil Witness Stmt. at ¶ 38.

⁷⁷⁵ See, e.g., **Exhibit C-011**, Resolution No. 082-2000 at 4.

⁷⁷⁶ **Exhibit C-016**, MOU. See also Sadlowski Witness Stmt. at ¶¶ 52-59 (the “MOU”).

⁷⁷⁷ **Exhibit C-112**, July 15, 2009 Letter.

373. The Ministry of Energy & Mines was so dilatory in responding to Doe Run Peru's extension request that Peru's Congress was forced to step in and enact a law granting Doe Run Peru a 30-month extension.⁷⁷⁸ However, once again, the Ministry quickly moved to block that extension by issuing implementing regulations that it had not issued when it granted an extension to Centromin.⁷⁷⁹ The Ministry of Energy & Mines' unfavorable treatment forced Doe Run Peru to permanently suspend operations at La Oroya and destroyed the value of Renco's indirect shareholding in the company. Of course, even if Peru's expropriate were lawful, Peru is still required to pay just compensation to Renco for the fair value of Renco's lost investment.

2. Peru's Differential Treatment of Doe Run Peru's and Centromin's Extension Requests Lacked Any Rational Basis

374. Finding for the investor, The *Pope & Talbot* tribunal found that differences in treatment between a foreign and domestic investor "will presumptively violate" the national treatment standard "unless they have a reasonable nexus to rational [G]overnment policies that (1) do not distinguish, on their face or *de facto*, between foreign-owned and domestic companies, and (2) do not otherwise unduly undermine the investment liberalizing objectives of [the Treaty]."⁷⁸⁰ Similarly, holding for the investor the *S.D. Myers* tribunal found that "in assessing whether a measure is contrary to a national treatment norm," a tribunal must discover "whether the practical effect of the measure is to create a disproportionate benefit for nationals over non-nationals" and "whether the measure, on its face, appears to favor its nationals over non-nationals who are protected by the relevant treaty."⁷⁸¹ The *S.D. Myers* tribunal emphasized that a practical impact is required to produce a breach in national treatment.⁷⁸²

375. In the present case, Peru's differential treatment of Doe Run Peru's and Centromin's extension requests lacked any rational basis, as Mr. Bianchi makes clear in his expert report. Centromin should have commenced the remediation study immediately, and its failure to do so continues to expose children to lead in the soil and suspended dust.

⁷⁷⁸ **Exhibit C-023**, Law No. 29410, art. 2.

⁷⁷⁹ **Exhibit C-114**, Decree No. 075-2009, § 4.2 at 2.

⁷⁸⁰ **CLA-035**, *Pope & Talbot Inc. v. Government of Canada*, NAFTA/UNCITRAL, Award on the Merits of Phase 2, April 10, 2001 at ¶ 78 (*hereinafter* "*Pope & Talbot Merits Award*").

⁷⁸¹ **CLA-034**, *S.D. Myers* Partial Award at ¶ 252.

⁷⁸² **CLA-034**, *S.D. Myers* Partial Award at ¶ 252.

3. Doe Run Peru and Centromin Were in Like Circumstances

376. The *S.D. Myers, Inc. v. Canada* tribunal acknowledged that “[t]he phrase ‘like circumstances’ is open to a wide variety of interpretations.”⁷⁸³ The *Pope & Talbot Inc. v. Canada* tribunal confirmed that “like circumstances” varied depending on the facts of the case.⁷⁸⁴

377. When determining whether a foreign and domestic investor are in “like circumstances,” a primary factor to determine is whether the investors are in the same economic or business sector.⁷⁸⁵ In *S.D. Myers*, for instance, the tribunal found that S.D. Myers, Inc., a U.S. company, and Myers Canada, an affiliated Canadian company, were in the same business sector as other Canadian operators and thus in “like circumstances,” as “all were engaged in providing PCB waste remediation services.”⁷⁸⁶ Similarly, the tribunal in *Feldman v. Mexico* held that CEMSA, a Mexican company owned by a U.S. national, was in “like circumstances” with the Poblano Group, a Mexican company, as both entities purchased Mexican cigarettes for export.⁷⁸⁷ Furthermore, in *Cargill v. Mexico*, the tribunal found “like circumstances” between Cargill and Cargill de Mexico, which sold high-fructose corn syrup, and Mexican suppliers of cane sugar; although the products were not the same, the tribunal ruled that, with relation to Mexico’s tax provisions and import permit requirements, Cargill and Cargill de Mexico were in “like circumstances” with Mexican sugar suppliers.⁷⁸⁸

378. In the present case, Doe Run Peru and Centromin were clearly in “like circumstances,” as they operated in the same economic sector, the Peruvian mining industry. Centromin was organized to “perform[] the activities intrinsic to the mining industry as approved by the State.”⁷⁸⁹ Doe Run Peru, in turn, was formed by the Renco Consortium to continue Centromin’s activities at La Oroya once Renco had won the bid for Metaloroya’s shares. Thus,

⁷⁸³ **CLA-034**, *S.D. Myers* Partial Award at ¶ 243.

⁷⁸⁴ **CLA-035**, *Pope & Talbot* Merits Award at ¶ 75.

⁷⁸⁵ See **CLA-035**, *Pope & Talbot* Merits Award at ¶¶ 78, 250; **CLA-036**, *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, September 18, 2009 at ¶ 189 (*hereinafter* “*Cargill Award*”).

⁷⁸⁶ **CLA-034**, *S.D. Myers* Partial Award at ¶ 251.

⁷⁸⁷ **CLA-033**, *Feldman* Award at ¶ 172.

⁷⁸⁸ **CLA-036**, *Cargill* Award at ¶ 211.

⁷⁸⁹ **Exhibit C-031**, Law No. 21117.

not only did Doe Run Peru and Centromin operate in the same business sector, but they also operated in exactly the same business, namely, the La Oroya Complex.

379. In addition to working in the same business sector and operating the same Complex, both Doe Run Peru and Centromin were subject to the 1997 PAMA with their respective obligations as approved by the Ministry of Energy & Mines. While Centromin assumed responsibility for third-party claims corresponding to situations or conditions existing prior to the transfer, it also claimed responsibility to finance and remediate the soil in and around La Oroya. Doe Run Peru, on the other hand, agreed to perform the 11 projects intended to improve the facility's environmental performance. With the Ministry of Energy & Mines supervising the completion of their PAMA obligations, Doe Run Peru and Centromin were again in "like circumstances."

E. PERU'S CONDUCT CAUSED RENCO TO LOSE CONTROL OVER DOE RUN PERU AND VIOLATED ARTICLE 10.7 OF THE TREATY

380. As discussed in Section II. G, H, I, above, from 1997 to 2009 Doe Run Peru invested more than US\$ 300 million in the Complex to meet and exceed its environmental obligations and to ensure the commercial viability and longevity of a once-obsolete smelting operation. Despite tremendous practical and logistical hurdles, Doe Run Peru was on the verge of transforming a notorious mega-polluter into an up-to-date and environmentally sound industrial complex.

381. Through a variety of measures—including the grossly unfair and arbitrary failure to grant Doe Run Peru an extension of time to complete its ninth and final PAMA project, the undermining of the extension once granted by Congress, the assertion of baseless claims against Doe Run Peru in the INDECOPI Bankruptcy Proceedings, the removal of Doe Run Peru's management, and the opposition to Doe Run Peru's restructuring Plans, Peru has effected an unlawful expropriation of Renco's investments, without having paid fair compensation to Renco for the value of its investments.⁷⁹⁰

⁷⁹⁰ **CLA-001**, Treaty, art. 10.7. According to the Treaty, Peru may not expropriate a covered investment except "on payment of prompt, adequate, and effective compensation." As discussed herein, there can be no dispute that Peru has not paid *any* compensation – much less "prompt, adequate, and effective compensation" to Renco. *See also* Sadlowski Witness Stmt. at ¶ 97.

382. As the Tribunal is well aware, in international law, there are two types of unlawful expropriation that give rise to a State’s liability: direct and indirect expropriation. The Treaty expressly prohibits both. Article 10.7 of the Treaty provides: “No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization”⁷⁹¹

383. In Renco’s view, and as discussed below, Peru’s actions that resulted in Renco’s loss of the investments can be characterized either as a direct or indirect expropriation. Because the Treaty prohibits both types of unlawful expropriation, however, the characterization of the expropriation is largely academic. The result of Peru’s actions – regardless of their complexity or motivation—is the decisive factor in the present case, for at the end of the analysis, the Tribunal can only conclude that Renco no longer controls or benefits from its investment. That misconduct—effecting the takeover of Renco’s investments (by whatever means) without paying compensation—is an unlawful expropriation in violation of the Treaty and international law, for which Peru must be held liable.

1. The Legal Standards for Direct and Indirect Expropriation

384. Expropriation in international law refers to a State taking an investor’s interests in its property, whether tangible or intangible, either in whole or in substantial part. Direct expropriation has been described as “the compulsory transfer of title to property to the State or a third party, or the outright seizure of property by the State.”⁷⁹² Many so-called “classic” cases of direct expropriation involve the seizure of tangible or intangible property by formal, Government decree.⁷⁹³

⁷⁹¹ **CLA-001**, Treaty, art. 10.7 at 10-4 to 10-5.

⁷⁹² **CLA-037**, L. Yves Fortier & Stephen L. Drymer, *Indirect Expropriation in the Law of International Investment: I Know It When I See It, or Caveat Investor*, ICSID Rev. – F.I.L.J. 293, 297 (Fall 2004) (*hereinafter* “Fortier & Drymer, *Indirect Expropriation*”).

⁷⁹³ For example, in the case of *Kardassopoulos v. Georgia*, the tribunal found that Georgia directly expropriated the interests one of the claimants held in a company called GTI. Georgia had issued a decree that extinguished the rights of GTI in a pipeline and had issued an order extinguishing GTI’s rights over future pipelines. **CLA-038**, *Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/07/15, Award, February 10, 2010 at ¶ 351 (*hereinafter* “*Kardassopoulos Award*”). The tribunal found that “the circumstances of Mr. Kardassopoulos’ claim present a classic case of direct expropriation, Decree No. 178 having deprived GTI of its rights in the early oil pipeline and Mr. Kardassopoulos’ interest therein.” *Id.* at ¶ 387. Additionally, the tribunal in *Santa Elena v. Costa Rica* found that a direct expropriation had occurred on the date of an expropriation decree, even though the decree still had to be implemented and did not, in itself, formally transfer title of the

385. “Indirect expropriation,” by contrast, is widely understood as interference with an investment that “deprives [the investor] of the possibility to utilize the investment in a meaningful way.”⁷⁹⁴ The Iran-US Claims Tribunal has consistently recognized the concept of indirect expropriation as “interference by the Government with the alien’s enjoyment of the incidents of ownership – such as the use or control of the property, or the income and economic benefits derived therefrom.”⁷⁹⁵ Such interference “constitutes a compensable taking.”⁷⁹⁶

386. As indicated above, the key factor that typically distinguishes a direct expropriation from an indirect expropriation is the extent to which an investor maintains ownership or control over its investment: if the investment has been taken completely, the taking is usually viewed as a direct expropriation; if the investment has not been taken but has merely suffered gross interference from the host State, an indirect expropriation likely has occurred. In both cases, the investor is left without its investment (in whole or in substantial part). That is what has occurred here.

property in question. **CLA-039**, *Compañía del Desarrollo de Santa Elena, S.A. v. The Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, February 17, 2000 at ¶¶ 76-81 (*hereinafter* “*Santa Elena Award*”). For other examples of cases of direct expropriation, see **CLA-040**, *Wena Hotels, Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, December 8, 2000 at ¶ 99 (*hereinafter* “*Wena Hotels Award*”); **CLA-028**, *Siag Award* at ¶ 448; and **CLA-041**, *Bernardus Henricus Funnekotter et al. v. The Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award, April 22, 2009 at ¶ 98 (*hereinafter* “*Bernardus Award*”).

⁷⁹⁴ **CLA-017**, Dolzer & Schreuer, *PRINCIPLES* at 92. *See also*, **CLA-042**, United Nations Conference on Trade and Development (UNCTAD), *Taking of Property* (New York and Geneva, 2000) (*hereinafter* “*UNCTAD, Property*”).

⁷⁹⁵ **CLA-043**, Charles N. Brower, *Current Developments in the Law of Expropriation and Compensation: A Preliminary Survey of Awards of the Iran-United States Claims Tribunal*, 21 INT’L L. 639, 643 (1987) (*hereinafter* “*Brower, Current Developments*”); **CLA-044**, *Starrett Housing Corp., et al. v. The Islamic Republic of Iran*, 4 IRAN-UNITED STATES CL. TRIB. REP. 112, Final Award, December 20, 1984 at 154 (appointment of a “temporary” manager by Iran) (“... it is recognized in international law that measures taken by a State can interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated, even though the State does not purport to have expropriated them and the legal title to the property formally remains with the original owner”) (*hereinafter* “*Starrett Award*”); **CLA-045**, *Tippetts, Abbott, McStratton v. TAMS-AFFA*, 6 IRAN-UNITED STATES CL. TRIB. REP. 219, Award No. 141-7-2, June 22, 1984 at 5 (“A deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected. While assumption of control over property by a government does not automatically and immediately justify a conclusion that the property has been taken by the government, thus requiring compensation under international law, such a conclusion is warranted whenever events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral.”) (*hereinafter* “*Tippetts Award*”).

⁷⁹⁶ **CLA-043**, Brower, *Current Developments* at 643.

2. Peru Expropriated Renco's Investments

387. In the present case, Peru's actions and omissions towards Renco's ownership interests in the La Oroya Complex embody the hallmarks of both types of expropriation: Renco has been totally deprived of its investments, just as in classic cases of direct expropriation, and Peru effected that taking by a series of measures that indirectly deprived Renco of the benefits of its investments and its "incidents of ownership."

388. First, in 2009, Peru failed, without justification, to grant Doe Run Peru an effective extension of time to finish its ninth and final PAMA project. That failure and the dilatory tactics employed by the Ministry of Energy & Mines to hinder the extension process, forced Doe Run Peru to shut down operations at the Complex. The Ministry then asserted a bogus US\$ 163 million credit claim in the Bankruptcy in order to ensure that it became Doe Run Peru's largest creditor.⁷⁹⁷ Finally, the Ministry of Energy & Mines used its position as Doe Run Peru's largest creditor to obtain the removal of Doe Run Peru's management and approval of Doe Run Peru's restructuring plan..

389. Peru's failure to grant Doe Run Peru an effective extension of time to finish its ninth and final PAMA project resulted in the expropriation of Renco's investments. Peru failed to grant an effective extension, and then it seized upon the opportunity to exercise its commanding influence on the Creditors' Committee to cause the removal of Doe Run Peru's management as part of its continuing pattern of actions adverse to Renco's investments. Since international law is clear that acts as well as omissions can amount to unlawful expropriation requiring fair compensation,⁷⁹⁸ Peru is liable to Renco under the Treaty for this taking.

390. In *Metalclad Corp. v. Mexico*, which involved the denial of a construction permit and the classification of land as a national area for the protection of a rare cactus, a NAFTA tribunal found that an indirect expropriation had occurred because Mexico's measures had deprived Metalclad, "in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property[,]” even though the result of those measures did “not necessarily

⁷⁹⁷ Sadlowski Witness Stmt. at ¶¶ 82-84.

⁷⁹⁸ **CLA-023**, CMS Award at ¶ 266.

[inure] to the obvious benefit of the host State.”⁷⁹⁹ Likewise, in the case of *CME v. The Czech Republic*, which involved interference with an investor’s contractual rights by a regulatory authority, the tribunal held: “measures that do not involve an overt taking but that effectively neutralized the benefit of the property of the foreign owner, are subject to expropriation claims. This is undisputed under international law.”⁸⁰⁰ In the present case, Peru deprived Renco of the *whole* of its investments, including all of the reasonably-to-be-expected economic benefits.

391. The key question for the Tribunal is whether the actions and omissions of Peru, when viewed as a whole,⁸⁰¹ have had the effect of depriving Renco, in whole or in significant part, of the use or control of its investments or the income and economic benefits associated with the investments. While the present case may not be considered a typical example of either “direct” or “indirect” expropriation, its exceptional character should not prevent the Tribunal from concluding that an unlawful expropriation has occurred. Peru violated the Treaty because it “directly or indirectly” expropriated Renco’s investments through its pattern of conduct including the repeated refusals to grant Doe Run Peru an extension of time to finish its last PAMA project, once given, and the assertion of a baseless claim by the Ministry of Energy & Mines in the INDECOPI Bankruptcy Proceedings resulting in its ability to influence the Bankruptcy proceeding and approve Doe Run Peru’s restructuring plans. As will be shown in the following section, Peru is liable for that breach because its expropriation of Renco’s investments was unlawful.

3. Peru’s Expropriation of Renco’s Investments Was Unlawful

392. Article 10.7 of the Treaty sets forth the conditions that a host State must meet in order for an otherwise prohibited expropriation to be deemed lawful. It states:

⁷⁹⁹ **CLA-018**, *Metalclad Award* at ¶ 103. The *Metalclad Award* was partially set aside by the British Columbia Supreme Court on unrelated grounds.

⁸⁰⁰ **CLA-022**, *CME Czech Partial Award* at ¶¶ 604-605.

⁸⁰¹ **CLA-046**, *RosInvestCo UK Ltd. v. The Russian Federation*, SCC Case No. Arb. V079/2005, Final Award, September 12, 2010 at ¶ 410 (where the tribunal found that “an assessment of whether Respondent breached the IPPA can only be effectively made if and after the conduct as a whole is reviewed, rather than isolated aspects . . . the [t]ribunal will . . . turn to its own considerations as to whether Respondent’s measures, seen together and in their cumulative effect, can be considered as a breach of the IPPA.”) (*hereinafter* “*RosInvestCo Award*”).

No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (“expropriation”) except:

[i] for a public purpose;

[ii] in a non-discriminatory manner;

[iii] on payment of prompt, adequate, and effective compensation;
and

[iv] in accordance with due process of law and Article 10.5.⁸⁰²

393. The terms of Article 10.7, in which the conjunctive “and” is used, require compliance with each of the four listed conditions in order for an expropriation to be deemed lawful and not entail a breach of the Treaty.⁸⁰³ Numerous tribunals considering similar treaty provisions in respect of expropriation have confirmed that fact.⁸⁰⁴

394. Thus, a finding that Peru failed to meet any one of the four conditions listed in Article 10.7 of the Treaty is sufficient to trigger its liability for an unlawful expropriation. However, Peru meets *none* of the four conditions for a lawful expropriation in this case. Its expropriation of Renco’s investments therefore violated Article 10.7 of the Treaty and international law.

a. *Peru’s Expropriation of Doe Run Peru Was Not “For a Public Purpose”*

395. The requirement that an expropriation be “for a public purpose” in order to be deemed lawful is fundamental. As the renowned scholar Garcia Amador has explained, this requirement is “the least” that can be expected of an expropriating state, because a taking for the public good is the very *raison d’être* of permitting a lawful expropriation:

⁸⁰² **CLA-001**, Treaty, art. 10.7.

⁸⁰³ See **CLA-047**, United Nations Conference on Trade and Development (UNCTAD), *Bilateral Investment Treaties in the Mid-1990s* 66 (New York and Geneva, 1998) (*hereinafter* “UNCTAD, *BITs*”); **CLA-017**, Dolzer & Schreuer, *PRINCIPLES* at 89-91.

⁸⁰⁴ See, e.g., **CLA-038**, *Kardassopoulos* Award at ¶¶ 407-408. See also **CLA-041**, *Bernardus* Award at ¶ 98 (“The [t]ribunal observes that the conditions enumerated in Article 6 are cumulative. In other terms, if any of those conditions is violated, there is a breach of Article 6.”); **CLA-028**, *Siag* Award at ¶ 428; **CLA-017**, Dolzer & Schreuer, *PRINCIPLES* at 91.

[T]he least that can be required of the State is that it should exercise [the] power [to expropriate] only when the measure is clearly justified by the public interest. Any other view would condone and even facilitate the abusive exercise of the power to expropriate and give legal sanction to manifestly arbitrary acts of expropriation. . . .

[A]ll states should comply with the condition or requirement which is common to all; namely, that the power to expropriate should be exercised only when expropriation is necessary and is justified by a genuinely public purpose or reason. If this *raison d'être* is plainly absent, the measure of expropriation is “arbitrary” and therefore involves the international responsibility of the State.⁸⁰⁵

396. While the condition that a lawful expropriation must be for a public purpose is paramount, that condition cannot serve as an excuse for a State attempting to escape liability for an unlawful expropriation. As the *ADC* tribunal noted:

. . . a treaty requirement for ‘*public interest*’ requires some genuine interest of the public. If a mere reference to ‘*public interest*’ can magically put such interest into existence and therefore satisfy this requirement, then this requirement would be rendered meaningless.⁸⁰⁶

397. In *ADC*, Hungary attempted to justify the alleged expropriation by generally referring to “activities of strategic importance” and “contractual non-performance.”⁸⁰⁷ Upon examination, however, the tribunal concluded that “no satisfactory explanation has ever been given for the takeover and none of the reasons now sought to be relied upon are tenable.”⁸⁰⁸ The tribunal found that the expropriation was not proven to be in the public interest, and therefore, was unlawful.⁸⁰⁹

⁸⁰⁵ **CLA-048**, F.V. García Amador, “State Responsibility,” Special Rapporteur’s Report, Int’l Law Commission, Y.B. INT’L L. COMM’N. (1959) at ¶ 59 (*hereinafter* “Amador, State Responsibility”).

⁸⁰⁶ **CLA-049**, *ADC Affiliate Ltd. & ADC & ADMC Mgmt. Ltd. v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award, October 2, 2006 at ¶ 432 (*hereinafter* “*ADC Award*”). In this respect, it is worth noting that the Treaty equates the term it uses, “public purpose,” with the terms “public interest,” “public necessity,” or “public use,” which are sometimes used in domestic legal systems and in analogous investment treaties. *See CLA-001*, Treaty, art. 10.7, n. 5.

⁸⁰⁷ **CLA-049**, *ADC Award* at ¶¶ 273-81.

⁸⁰⁸ **CLA-049**, *ADC Award* at ¶ 285.

⁸⁰⁹ **CLA-049**, *ADC Award* at ¶¶ 429, 433, 445, 476. *See also CLA-050*, *Siemens A.G. v. The Republic of Argentina*, ICSID Case No. ARB/02/08, Award, February 6, 2007 at ¶ 273 (“ . . . there is no evidence of a

398. Peru has never claimed that its expropriation of the Complex was for a public purpose, and in any event, Peru cannot satisfy that requirement now. Peru’s unjustified failure to grant Doe Run Peru an effective extension of time to finish its ninth and final PAMA project was directly contrary to the public interest. Since after Doe Run Peru lost control of the Complex operations, the pollution and health conditions in the area have likely not improved and may have worsened if Right Business (the current operator of the Complex) is not engaging in actions like street washing, upgrades to the facilities, monitoring of the facilities for fugitive emissions from machine glitches or open windows, and community outreach to address exposures to re-circulated dust and soil. Moreover, contaminated soil and dust remains a significant, unaddressed exposure pathway,⁸¹⁰ given Centromin and Activos Mineros’ failure to remediate. Activos Mineros’ consultant noted in 2009 that soil exposure alone was predicted to cause a large number of children in the surrounding communities to have elevated blood lead levels.⁸¹¹ Furthermore, Peru’s pursuit of baseless bankruptcy claims did not serve any public interest, because the claims were contrived and designed to ensure eventual State control of the Complex.

399. As shown in Section II A, B above, the environment and the health of the local population both suffered under State control prior to Renco’s investment. Every problem that was created by poor management and neglect – including the obsolete technology, the inefficient operations of the Complex, the extreme environmental contamination, and the poor health of the La Oroya residents – improved while Doe Run Peru managed the Complex.⁸¹² Far from fulfilling a public purpose, Peru has acted against it by removing Doe Run Peru’s management.

400. Because Peru’s loss of control over Doe Run Peru was not for a public purpose, the Tribunal should conclude that Peru’s expropriation of Renco’s investments was unlawful under Article 10.7 of the Treaty and international law.

public purpose in the measures prior to the issuance of Decree 669/01. It was an exercise of public authority to reduce the costs to Argentina of the Contract recently awarded through public competitive bidding, and as part of a change of policy by a new Administration eager to distance itself from its predecessor.”) (*hereinafter* “*Siemens Award*”).

⁸¹⁰ Schoof Expert Report at ¶¶ 16-17.

⁸¹¹ **Exhibit C-174**, Todd Hamilton, Ground Water Initiative (GWI), Remedacion de las Areas Afectadas por Emisiones del CMLO, May 13, 2009 (*hereinafter* “GWI Report”).

⁸¹² Bianchi Expert Report at 6-20, 24-25; Expert Report of Partelpoeg, February 18, 2014, § 6 at 15-19; Schoof Expert Report at ¶¶ [#].

b. *Peru's Expropriation of Doe Run Peru Was Discriminatory*

401. Peru's expropriatory measures also were illegal under Article 10.7 of the Treaty and international law because they were discriminatory. As discussed in Section IV. D above, *supra*, Peru's discrimination against Doe Run Peru and in favor of Centromin violated the national treatment standard prescribed by Article 10.3 of the Treaty. For the sake of brevity, Renco respectfully refers the Tribunal to the discussion of discrimination in that section as an additional basis for concluding that Peru's expropriation was unlawful.

c. *Peru Has Not Compensated Renco for the Investments It Expropriated*

402. Peru's expropriation of Renco's investments was also unlawful because Peru failed to pay Renco "prompt, adequate and effective compensation," as required by Article 10.7 of the Treaty and international law. Far from meeting that threshold requirement of a lawful expropriation, Peru has never paid *any* compensation to Renco for the investments that it took over.

403. Article 10.7's requirement that any expropriation be accompanied by "prompt, adequate, and effective compensation" is solidly grounded in international law. The rule has been confirmed by numerous tribunals and recognized by a wide array of international scholars.⁸¹³

⁸¹³ See, e.g., **CLA-017**, Dolzer & Schreuer, *PRINCIPLES* at 110; **CLA-051**, *Pope & Talbot Inc. v. Government of Canada*, NAFTA-UNCITRAL, 40 I.L.M. 258 (2001), Interim Award, June 26, 2000 at ¶ 99 (*hereinafter* "Pope & Talbot Interim Award"); **CLA-039**, *Santa Elena Award* at ¶ 72; **CLA-052**, *Azurix Corp. v. The Republic of Argentina*, ICSID Case No. ARB/01/12, Award, July 14, 2006 at ¶ 309 (*hereinafter* "Azurix Award"); **CLA-053**, *Tecnicas Medioambientales TECMED S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, May 29, 2003 at ¶ 121 (*hereinafter* "Tecmed Award"); **CLA-054**, *Phelps Dodge Corp. v. Iran*, Case No. 99, Award No. 217-99-2, 10 IRAN-US CL. TRIB. REP. 121, March 19, 1986 at 30; **CLA-055**, *Amoco Int'l Fin. Corp. v. Iran*, Case No. 56, Partial Award No. 310-56-3, 15 IRAN-UNITED STATES CL. TRIB. REP. 288, July 14, 1987 at ¶¶ 112, 189, 193 ("[A] lawful expropriation must give rise to 'the payment of fair compensation, or of the just price of what was expropriated.' Such an obligation is imposed by a specific rule of the international law of expropriation."); **CLA-056**, *Biloune and Marine Drive Complex Ltd. v. Ghana Investments Centre*, UNCITRAL, 95 ILR 189, Award on Jurisdiction and Liability, October 27, 1989 at 208-209 ("*Biloune Award*"); **CLA-057**, Eli Lauterpacht, *Issues of Compensation and Nationality in the Taking of Energy Investments*, 8 J. ENERGY & NAT. RES. L. 241, 243 (1990) ("Whatever the form of the taking by the State of a foreign investment, it is not usually in itself internationally unlawful if it satisfies certain conditions. One is that the taking should be for a public purpose. A second is that it should not be discriminatory. A third is that the taking should be accompanied by compensation.") (*hereinafter* "Lauterpacht, *Compensation and Nationality*"); **CLA-058**, Peter Muchlinski, *MULTINATIONAL ENTERPRISES AND THE LAW* 504 (Wiley-Blackwell 1999) (*hereinafter* "Muchlinski, *MULTINATIONAL ENTERPRISES*"), setting out the elements of lawful expropriation; **CLA-059**, Malcolm N. Shaw, *INTERNATIONAL LAW* 739 (Cambridge Univ. Press, 5th ed. 2004) ("International

404. In the present case, there can be no dispute that Peru has never paid any compensation to Renco for the expropriation of its investments.

d. *Peru's Expropriation of Doe Run Peru Was Not in Accordance with Due Process of Law and Article 10.5*

405. The final condition that an expropriation must satisfy in order to be deemed lawful under the Treaty is that it must have been carried out under due process of law and in accordance with Article 10.5 of the Treaty. Peru's expropriatory measures met neither requirement.

406. In international law, "due process" encompasses both procedural and substantive fairness. In *ADC v. Hungary*, the tribunal described the "due process of law" requirement as follows:

The Tribunal agrees with the Claimants that "*due process of law*," in the expropriation context, demands an actual and substantive legal procedure for a foreign investor to raise its claims against the depriving actions already undertaken or about to be taken against it. Some basic legal mechanisms, such as reasonable advance notice, a fair hearing and an unbiased and impartial adjudicator to assess the actions in dispute, are expected to be readily available and accessible to the investor to make such legal procedure meaningful. In general, the legal procedure must be of a nature to grant an affected investor a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard. If no legal procedure of such nature exists at all, the argument that "*the*

law will clearly be engaged where the expropriation is unlawful, either because of, for example, the discriminatory manner in which it is carried out or the offering of inadequate or no compensation.") (*hereinafter* "Shaw, INTERNATIONAL LAW"); **CLA-060**, Ian Brownlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 519 (Oxford Univ. Press, 6th ed. 2003) ("The majority of states accept the principle of compensation.") (*hereinafter* "Brownlie, PUBLIC INTERNATIONAL LAW"); **CLA-061**, C.F. Amerasinghe, STATE RESPONSIBILITY FOR INJURIES TO ALIENS 147 (Clarendon Press 1967) ("[T]he practice of the majority of States in paying compensation, whether by treaty or by legislation, lends itself to the conclusion that the rule that that compensation is payable which was applicable to expropriation has not been changed. . . . It is submitted that the rule that there must be compensation permits of no exceptions, and that it applies to all forms of expropriation, including nationalization.") (*hereinafter* "Amerasinghe, STATE RESPONSIBILITY"); **CLA-062**, George S. Georgiev, *The Award in Saluka Investments v. Czech Republic in*, THE REASONS REQUIREMENT IN INTERNATIONAL INVESTMENT ARBITRATION at 175 *et seq.* (G. Aguilar-Alvarez and M. Reisman, eds., 2008) (*hereinafter* "Georgiev, *Saluka*"); **CLA-041**, *Bernardus Award* at ¶¶ 98, 107; **CLA-038**, *Kardassopoulos Award* at ¶¶ 389-90, 405; **CLA-063**, *Rumeli Telekom A.S. & Telsim Mobil Telekomikasyon Hizmetleri A.S. v. The Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, July 29, 2008 at ¶ 706 (finding that the expropriation was unlawful because "the valuation placed on Claimants' shares was manifestly and grossly inadequate compared to the compensation which the [t]ribunal there holds to be necessary in order to afford adequate compensation under the BIT and the FIL.") (*hereinafter* "Rumeli Award").

actions are taken under due process of law” rings hollow. And that is exactly what the Tribunal finds in the present case.⁸¹⁴

407. The failures of due process at issue in this case are markedly more numerous and severe than those at issue in *ADC*. That tribunal found that the host State had not given the investors a reasonable opportunity to be heard following an expropriation. In the present case, Renco was given no chance to object to the expropriation that occurred in 2012.

408. Furthermore, Peru’s expropriatory measures were not carried out in accordance with Article 10.5 of the Treaty. As discussed in Section IV. B., C. above, *supra*, Article 10.5 requires Peru to afford fair and equitable treatment to Renco’s investments, and Peru failed to treat Renco and its investments in accordance with that standard. The requirement, under Treaty Article 10.7, that any expropriatory measures be carried out in accordance with Article 10.5 means that any expropriation must be accomplished in a fair and equitable manner. The same actions of Peru that violated the fair and equitable treatment standard in Article 10.5 in relation to the extension request also led to the expropriation of Renco’s investments in the Complex.

409. In particular, there was nothing fair or equitable in Peru’s refusal to grant Doe Run Peru an effective extension of time to finish its ninth and final PAMA project. Additionally, Peru violated its own laws when it asserted baseless claims against Doe Run Peru in the INDECOPI Bankruptcy Proceedings, thus ensuring that its acquisition of control over the company would be accomplished in an unlawful way.

410. The violations of due process that Peru committed and its failure to act fairly or equitably when causing Claimant to lose control over its investments are extraordinary, and they too render Peru’s expropriation of Renco’s investments illegal under Article 10.7 of the Treaty and international law.

411. In sum, Peru has committed an unlawful expropriation under the Treaty by causing Claimant to lose control of its investments, contrary to a public purpose, in a discriminatory manner, without paying compensation, and in violation of due process and Article 10.5 of the Treaty.

⁸¹⁴ **CLA-049**, *ADC Award* at ¶ 435. See also **CLA-064**, *Compañiá de Aguas del Aconquija S.A. and Universal v. The Republic of Argentina*, ICSID Case No. ARB/97/3, Award, November 21, 2000 at 2 (*hereinafter* “*Vivendi Award*”).

* * * *

412. In conclusion, Peru breached the Treaty by (1) improperly refusing to assume liability for the St. Louis Lawsuits, and (2) engaging in a pattern of improper, unfair and discriminatory treatment of DRP in violation of the Treaty, by which Peru caused injury to Renco, including by expropriating Renco's investments. This pattern includes, but is not limited to, the Government's:

- (i) persistent and unfounded refusals to grant DRP's extension requests during the first half of 2009 when DRP clearly was entitled to one under the economic *force majeure* clause of the STA;
- (ii) promise to give DRP the extension, but attempting to extract concessions in advance pursuant to the terms of an MOU, while at the same time refusing to execute the MOU or provide any details of the promised extension;
- (iii) undermining of the 30-month extension granted by Congress by issuing a Supreme Decree which put a stranglehold on the company for over seven months, only to loosen the trust restriction the month before DRP was required to have obtained financing and restart the facility, when it was far too late;
- (iv) demand that DRP guaranty all of its assets, but that Peru be able to take over all of DRP's assets, if DRP defaulted on the deadline to obtain financing and restart the facility, which was less than two months away, while rejecting DRP's request that Peru execute on the guaranty only if DRP failed to complete the remainder of the PAMA project within the 20 months set by Congress;
- (v) heavy-handed control of the bankruptcy process by asserting a meritless \$163 million credit and then vetoing of DRP's viable restructuring plans by refusing to permit DRP to operate the copper circuit while finishing the remainder of the final project and requiring DRP to immediately comply with all current emission standards, both demands being contrary to 1993 regulations, the Stock Purchase Agreement, the 2004 and 2009 extensions and historical practice between the parties;
- (vi) permitting new management, Right Business, to operate the facility while exceeding current emission standards and doing little, if anything, about it; and

(vii) harming Claimant's reputation as a result of Respondent's failure to assume liability and responsibility for the third-party claims in the St. Louis Lawsuits, failure to comply with its remediation obligations to Claimant's detriment, making negative, and untrue, statements about Claimant and its officers and affiliates, and perpetuating the criminal proceedings against Renco officers.

V. CONCLUSION

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

- A declaration that Peru has breached the Guaranty Agreement and the Stock Transfer Agreement by failing to assume liability for third-party claims and damages for which it is responsible and by refusing to defend and indemnify the Renco Consortium members and related entities and individuals in the personal injury St. Louis Lawsuits;
- A declaration that Peru has violated the fair and equitable treatment standard prescribed by Article 10.5 of the Treaty by failing to assume liability for third-party claims and damages for which it is responsible and by refusing to defend and indemnify the Renco Consortium members and related entities and individuals in the personal injury St. Louis Lawsuits;
- A declaration that Peru has violated the fair and equitable treatment standard prescribed by Article 10.5 of the Treaty through its unwarranted delay in granting, and subsequent undermining of Doe Run Peru's extension of time to finish its ninth and final PAMA project;
- A declaration that Peru has breached the Guaranty Agreement and the Stock Transfer Agreement through its unwarranted delay in granting, and subsequent undermining of, Doe Run Peru's extension of time to finish its ninth and final PAMA project;

- A declaration that Peru has violated Article 10.3 of the Treaty by treating Doe Run Peru's extension requests less favorably than it treated Centromin's extension request;
- A declaration that Peru has violated Article 10.7 of the Treaty by expropriating Renco's investments;
- Compensation to Claimant for all damages that it has suffered and will suffer as set forth herein and as may be further developed and quantified in the course of this proceeding;
- Compensation for moral damages arising from harm to Claimant's reputation, Moral damages are a part of reparation of an international wrong as clearly established under the International Law Commission's Articles on State Responsibility Articles 31, 36 and 37;
- An award of pre-and-post-award interest until the date of Peru's final satisfaction of the award, compounded quarterly;
- All costs of the St. Louis Lawsuits, including attorneys' fees, expert fees, and all expenses; and
- All costs of this proceeding, including Claimant's attorneys' fees, expert fees, and expenses.

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