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Renco Says Poisoning Suit Relates To New Peru Arbitration

By **Caroline Simson**

Law360, New York (July 10, 2017, 10:17 PM EDT) -- The Renco Group Inc. on Friday removed from Missouri state court a lawsuit over alleged lead poisoning suffered by Peruvian children who lived near an affiliate's metallurgical complex in the Andean highlands, arguing their suit falls under federal jurisdiction because it relates to new arbitration the company has initiated against Peru.

The lawsuit was filed in May against Renco, Doe Run Resources Corp., Renco owner and founder Ira Rennert, and several other individuals and related entities on behalf of dozens of children who claim they were exposed to toxic substances including lead, causing physical and psychological injuries including learning and other permanent disabilities, "mental anguish," emotional distress and stunted growth. It's one of numerous similar lawsuits involving thousands of plaintiffs affected by the alleged pollution that are pending in U.S. courts.

The lawsuit alleges this exposure can be traced back to the Doe Run facilities in La Oroya, Peru, which contain a set of smelters and refineries specially designed to transform ores mined from the region into metals like copper, zinc and lead. The facility was purchased from the Peruvian government in 1997 by a consortium that included Renco and Doe Run Resources through a subsidiary called Doe Run Perú S.R.LTDA.

Renco, which saw its arbitration last year against Peru over environmental issues at the plant **dismissed without prejudice** over jurisdictional issues, told the Missouri court that it's kicked off new arbitration in which it will seek to enforce Peru's agreement to assume liability for claims like the ones currently being asserted by the Peruvian children.

"The subject matter of this action relates to both the arbitration proceeding that Renco Group has initiated under the [United States-Perú Trade Promotion Agreement] and the arbitration proceeding that Renco Group and Doe Run Resources have initiated under the [stock transfer agreement]," Renco said. "Removal jurisdiction is, therefore, proper under [the Convention for the Recognition and Enforcement of Foreign Arbitral Awards]."

The Convention for the Recognition and Enforcement of Foreign Arbitral Awards, otherwise known as the New York Convention, is an international agreement governing the enforcement of international arbitration awards.

The previous arbitration claim Renco brought against Peru over environmental issues at the plant in 2011 was dismissed without prejudice last year by a World Bank tribunal for lack of jurisdiction. But Renco told the court that it put the wheels in motion for new arbitral proceedings against Peru last August.

Renco argued the Peruvian children's claims fall under an agreement from when it acquired the complex from the Peruvian government in 1997. One of the conditions of that sale was that Doe Run Peru and its affiliates and their officers would be shielded from claims like the ones asserted in the instant suit, Renco told the court.

As a result, one of the instruments invoked in the new arbitration is a stock transfer agreement Renco and Doe Run entered into with the state-owned Empresa Minera del Centro del Peru SA, or

Centromin, to purchase the facility. Renco says the deal included a guaranty from the Peruvian government that Centromin assumed obligations relating to environmental contamination at the facility — including personal injury claims alleged by Peruvian citizens.

Currently, Renco and Doe Run are awaiting the Peruvian government's response to their invitation to participate in a non-binding expert process established under the STA.

Renco has brought the other proceeding under the U.S. Peru TPA, which Renco said contains some of the same claims as those in the previously dismissed arbitration claim — which centered on the cleanup efforts at the site — as well as some new claims. Renco submitted its notice of intent to Peru to submit that claim last August.

Napoli Shkolnik PLLC partner Hunter J. Shkolnik, part of the legal team representing the plaintiffs in the instant suit and numerous other plaintiffs in the other lawsuits pending against Renco, told Law360 on Monday that they've always made it clear that the lawsuits have nothing to do with the arbitration.

He noted that the legal team representing the plaintiffs has been in the process of filing the claims for months and is continuing to do so. Once the process is complete, there will be between 3,000 and 4,000 plaintiffs, he said.

Attorneys and representatives for Renco and Doe Run could not immediately be reached for comment on Monday evening.

Renco is represented by Edward L. Dowd Jr., Terrence J. O'Toole and James E. Crowe of Dowd Bennett LLP. Doe Run is represented by Andrew Rothschild, Richard A. Ahrens, Thomas P. Berra Jr. and Michael J. Hickey of Lewis Rice LLC.

The plaintiffs are represented by D. Todd Mathews and Randy L. Gori of Gori Julian & Associates PC, Hunter J. Shkolnik, Sean P. Barth and Paul J. Napoli of Napoli Shkolnik PLLC, and Andrew V. Tramont of Rodriguez Tramont & Nunez PA.

The case is Collins et al v. Doe Run Resources Corporation et al., case number 4:17-cv-01927, in the U.S. District Court for the Eastern District of Missouri, Eastern Division.

--Editing by Philip Shea.