

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

SISTER KATE REID and MEGAN	)	Case Nos. 4:11CV44CDP
HEENEY as Next Friends of A.O.A., et	)	4:11CV45CDP
al.,	)	4:11CV46CDP
	)	4:11CV47CDP
Plaintiffs,	)	4:11CV48CDP
	)	4:11CV49CDP
v.	)	4:11CV50CDP
	)	4:11CV52CDP
THE DOE RUN RESOURCES	)	4:11CV55CDP
CORPORATION, et al.,	)	4:11CV56CDP
	)	4:11CV59CDP
Defendants.	)	

**DEFENDANTS’ MOTION TO STAY PROCEEDINGS PENDING ARBITRATION**

COME NOW Defendants The Renco Group, Inc., DR Acquisition Corp., Renco Holdings, Inc., Ira L. Rennert, The Doe Run Resources Corporation, Marvin K. Kaiser, Albert Bruce Neil, Jeffery L. Zelms, Theodore P. Fox III, and Daniel L. Vornberg (“Defendants”), and hereby request that this Court stay proceedings in the above cases pending resolution of the issues that are the subject of the arbitration between Defendant The Renco Group, Inc. and the Republic of Peru. In support of this motion, Defendants state as follows:

1. On December 29, 2010, Defendant The Renco Group, Inc. (“Renco Group”) commenced arbitration with the Republic of Peru. That arbitration was initiated under the United States-Peru Trade Promotion Agreement. By the arbitration, Renco Group seeks to enforce the terms of the Stock Transfer Agreement and Guaranty entered into by the Republic of Peru in connection with the purchase of the La Oroya metallurgical complex that is the locus of Plaintiffs’ claims here.

2. Defendants The Renco Group, Inc., DR Acquisition Corp., Renco Holdings, Inc., and Ira L. Rennert subsequently removed these cases to federal court on January 7, 2011. The remaining defendants joined in this removal.

3. Plaintiffs moved to remand these cases to state court on February 7, 2011.

4. On June 22, 2011, this Court denied Plaintiffs' Motions to Remand, holding that these cases were related to the pending arbitration between Defendant Renco Group and the Republic of Peru – including its consideration of the Peruvian government's involvement in polluting the environment around the La Oroya Complex – and therefore were removable under 9 U.S.C. § 205 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"). See Memorandum Opinion [Docket No. 45, Case No. 4:11CV44CDP], p. 20.

5. More specifically, this Court held that:

Because the arbitration panel's decision will determine whether Peru violated the Share Transfer Agreement by failing to clean up the environment around La Oroya and by failing to defend those investors in these actions, I conclude that the arbitration panel's decision could conceivably affect plaintiffs' claims and that these eleven cases are therefore removable pursuant to § 205. In particular, the arbitration panel will decide whether Peru was required by its Agreement with investors to clean up the soil around Peru. If the panel determines that Peru failed to fulfill this contractual obligation, this determination will in turn affect the issues in this case of whether defendants polluted the environment in La Oroya, whether defendants' alleged pollution caused plaintiffs' injuries, and whether Peru's alleged pollution caused the injuries. Additionally, if the arbitration panel determines that Peru is contractually obligated to defend Renco and the other defendants, Peru could be required to enter into these cases as a defendant. Plaintiffs contend that only the defendants' actions caused their injuries, not Peru's, but this is a question of fact that cannot be determined simply by the pleadings, and an arbitration panel's determination that Peru failed to remedy some of the environmental contamination in the years after the 1997 sale could be relevant to that question. Accordingly, because the arbitration panel's decision on the claims raised by Renco before that panel – including Peru's responsibility for and failure to clean up the environment around La Oroya – could conceivably affect the issues in this case, these actions are removable under § 205.

Id., pp. 12-13.

6. 9 U.S.C. § 3 of the Federal Arbitration Act (which applies to Convention actions pursuant to 9 U.S.C. § 208) requires a district court to stay proceedings if the suit involves “any issues referable to arbitration” and if the party requesting the stay “is not in default in proceeding with such arbitration.” Such a stay is mandatory if these two conditions are met, see Arthur Andersen LLP v. Carlisle, 129 S. Ct. 1896, 1899 (2009), and the statute is “broad enough to permit the stay of litigation between nonarbitrating parties as long as that lawsuit is based on issues referable to arbitration under an arbitration agreement governed by the Arbitration Act,” Contracting Northwest, Inc. v. Fredericksburg, 713 F.2d 382, 387 (8th Cir. 1983), and as long as the arbitration provision can be enforced by or against the non-signatory under traditional principles of contract law. Arthur Andersen, 129 S. Ct. at 1902.

7. The two preconditions are met; the case should be stayed pending the outcome of the proceedings. The instant lawsuit is clearly based on issues referable to arbitration and Renco Group is not in default with respect to that arbitration, thereby requiring a stay here. The issues raised in the pending arbitration are determinative of the claims made by Plaintiffs in these cases.

8. Plaintiffs have linked their claims against Defendants to the Stock Transfer Agreement (“STA”), ¶5.3 and, specifically, to the language in the STA which protects Renco Group from third-party liability except under very limited circumstances determined under specific criteria established in the STA.

9. The arbitration panel that has been convened in this case will decide the precise question of whether the liability asserted by Plaintiffs falls within the protection afforded Renco Group under the STA.

10. By linking their claims to ¶5.3 of the STA, Plaintiffs are estopped from denying the applicability of other provisions of the STA under direct benefit estoppel, assumption and other common law theories that have been invoked by or against non-signatories to enforce arbitration provisions which impact a non-signatory's claims in litigation.

11. Alternatively, this Court has “the inherent power to grant [a] stay in order to control its docket, conserve judicial resources, and provide for a just determination of the cases pending before it.” Contracting Northwest, 713 F.2d at 387. More specifically, this Court has discretion to stay “third party litigation [that] involves common questions of fact that are within the scope of the arbitration agreement” that is the subject of the pending arbitration. Id.

12. A discretionary stay is warranted in this case because:

a. allowing the litigation to proceed in this forum will render the arbitration largely meaningless by forcing the Defendants to continue to defend claims here when the central issue before the arbitration panel is whether Defendants or the Republic of Peru should defend these claims;

b. common questions of law and fact overlap both proceedings, and allowing the litigation to continue will disserve the strong federal policy favoring arbitration over litigation - particularly in the international area - and will invite inconsistent and potentially irreconcilable findings and conclusions;

c. Defendants will be seriously handicapped in developing and presenting their defenses as they will not be able to obtain party discovery from Peru;

d. the eventual substitution of Peru for the Defendants will make any proceedings before this Court largely ineffectual and unenforceable; and,

e. the eventual substitution of Peru for Defendants will cast into serious doubt this Court's jurisdiction over Plaintiffs' claims.

13. In light of these facts and in view of the strong federal policy favoring agreements to arbitrate, Defendants move to stay proceedings in these cases pending resolution of the issues that are the subject of the arbitration between Defendant Renco Group and the Republic of Peru.

WHEREFORE, for the foregoing reasons and those set forth in the memorandum in support of this motion, Defendants The Renco Group, Inc., Renco Holdings, Inc., DR Acquisition Corp., Ira L. Rennert, The Doe Run Resources Corporation, Marvin K. Kaiser, Albert Bruce Neil, Jeffery L. Zelms, Theodore P. Fox III, and Daniel L. Vornberg respectfully request a stay of proceedings in the above cases pending resolution of the issues of the issues that are the subject of the arbitration between Defendant Renco Group and the Republic of Peru, and for such other and further relief as the Court deems appropriate.

Dated: August 12, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 12th day of August, 2011, a true and correct copy of the foregoing document was caused to be delivered by operation of the CM/ECF system to counsel of record for the parties, including:

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