

Corporate Attacks: Environment

Case Study: Metal Smelter Pollution

Investor-State Dispute Settlement (ISDS) grants corporations shocking powers to attack the laws we rely on for a clean environment, financial stability, affordable medicines, safe food and decent jobs. ISDS empowers multinational corporations to sue our governments before panels of three corporate lawyers. The corporate lawyers can award the corporations unlimited sums to be paid by America's taxpayers, including for the loss of expected future profits the corporations claim they would have earned if the domestic law was never enacted. The corporate lawyers' decisions are not subject to appeal and the amount they can order taxpayers to give corporations has no limit.

Renco v. Peru *Dismissed, New Case Pending*

Renco Group, a corporation [owned by one of the wealthiest people](#) in the United States, Ira Rennert, demanded \$800 million from the government of Peru. The corporation claimed that the Peruvian government [violated the U.S.-Peru FTA](#) by not granting an extension on the firm's overdue commitment to clean up environmental contamination. Doe Run Peru, Renco's Peruvian subsidiary, failed to meet its environmental clean-up commitments under the terms of a 1997 privatization of a metal smelting operation in La Oroya, Peru — [one of the world's most polluted sites](#). The Peruvian government granted two extensions past the 2007 date by which Doe Run was to have built a sulfur oxide treatment facility – a commitment that the corporation repeatedly failed to fulfill.

In 2007 and 2008, Doe Run was [challenged in class action lawsuits](#) filed in Missouri courts, the firm's state of incorporation. The suits demanded compensation and medical assistance for La Oroyan children that had been injured by toxic emissions from the smelter since its acquisition by Renco. In 2010, the company launched an \$800 million investor-state claim against Peru under the FTA. The company claimed a violation of fair and equitable treatment, blamed Peru for not granting a third extension to comply with its [unfulfilled 1997 environmental commitments](#), and demanded that Peru, not Renco, [should have assumed](#) liability for the Missouri cases.

Some analysts believed that Renco used the investor-state claim to derail the Missouri-based lawsuit seeking compensation for La Oroya's children. Renco previously had tried three times to remove the case to federal court from the Missouri courts, where the jury pool was likely to be skeptical of the company after highly publicized incidents of pollution in Missouri. Renco had failed each time. But one week after launching its investor-state claim, Renco tried a fourth time to remove the case to federal courts and succeeded. The same judge that had denied the previous requests now granted it, citing the ISDS claim under the Peru FTA as the reason given federal legislation on arbitration would newly apply because of the ISDS claim.

In July 2016, after six years of costly litigation with the three ISDS tribunalists charging hundreds of dollars per hour in addition to Peru paying for its defense lawyers, the tribunal dismissed Renco's claim. Oddly, it did so based on a jurisdictional issue it could have decided years earlier. The tribunal determined that it did not have jurisdiction over the case because the company had failed to comply fully with an FTA requirement that it had to waive certain domestic litigation rights to proceed with an ISDS claim.

However, the tribunal ruled that the Peruvian government and the corporation must split the costs of arbitration as well as each bearing its own legal costs. This means a [\\$8.39 million bill for Peru](#) despite the case being dismissed and the grounds for dismissal being that the corporation failed to meet the technical rules for pursuing an ISDS claim.

At the time of the decision, Renco stated that "the Tribunal's decision is an insignificant victory for Peru," [immediately threatening to refile](#) the same claims after resolving the technicality upon which the case was dismissed.

In August 2016, [Renco made good on its threat](#) and filed a new Notice of Intent to restart an ISDS case on the same matters.