

MONTERRICO CASE COULD SET PRECEDENT

Joe Rowley

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Monterrico Metals has paid compensation to more than 30 Peruvian farmers who claim they were beaten and tortured by police, in a case that the company's Peruvian lawyers say could set a precedent for claimants from countries where the legal systems would 'not allow compensation comparable to what can be obtained in the UK'.

The mining company agreed an undisclosed out of court settlement with 33 farmers who claim that they were hooded, handcuffed and beaten by police in 2005 following a protest at the company's copper mine in Rio Blanco, northern Peru. The agreement came on 20 July after the case was scheduled to go to trial at the UK's High Court.

The claimants accuse employees and security guards of Monterrico, owner of the mine, of inciting the police to attack the protestors.

The mining company has not admitted liability.

Monterrico, which is now the Peruvian unit of China's Zijin Mining Group, turned to UK firm Freshfields Bruckhaus Deringer LLP and Peru's Orihuela Abogados, with Leigh Day & Company advising the claimants.

Michelle Beckers, counsel at Orihuela Abogados, thinks similar cases could follow in the UK from claimants who could not get similar levels of compensation at home.

'Unfortunately this case fits with the current trend in Peru for social opposition to mining projects in the country,' she adds. 'Many large mining projects and their multinational owners are facing heavy opposition, often instigated by NGO's providing false information to locals, and this is a case that demonstrates that locals are fighting back in any way possible against mining companies to discourage development of mining in rural areas.'

Richard Meeran, partner at Leigh Day & Company, says the claimants are 'delighted' with the settlement, adding the dispute is likely to have 'considerable significance' in terms of the legal accountability of multinationals accused of human rights violations in developing countries.

Leigh Day began representing the claimants in February 2009 after the firm was approached by a US-based NGO which alleged it had seen evidence of torture and mistreatment of protesters at Rio Blanco.

The case was first brought in June 2009 when the protesters won a preliminary injunction at the UK High Court freezing more than £7 million (US\$11.5 million) of Monterrico's assets, which Meeran says was essential due to fears that the company would begin to move assets overseas.

In October that same year, the freezing order was upheld by the court, which stated that claimants had a “good arguable case” and ruled that £5 million (US\$8.2 million) should remain frozen - a figure covering damages and costs sought by the claimants.

A process of evidence gathering followed, requiring both sides to review thousands of documents disclosed by Monterrico as well as to obtain statements from dozens of witnesses. Beckers says this process was particularly challenging due to ‘all of the claimants, many of the witnesses and the location of the alleged events’ being situated in remote and impoverished areas in Peru.

Freshfields declined to comment on the settlement.

Zijin bought the Rio Blanco copper project from Monterrico in 2007, but the Chinese company was not the owner at the time of the protest.

One protester died during the protests in 2005, with five others saying they were shot and two women claiming they sexually abused over a two to three day period in which they were held.

Counsel to Monterrico

Peru

Orihuela Abogados

Partner Sandra Orihuela, of counsel Michelle Beckers, and associates Alexandra Pazzara, Nora Orihuela, Cesar Molina and Zynhia Barrios (No longer with Orihuela)

UK

Freshfields Bruckhaus Deringer LLP

Partners Jonathan Isted and Samantha Trevan (No longer with Freshfields), and associates Edward Cotton, Amelie Cholet and Matthew Bradley

Counsel to the claimants

Leigh Day & Company

Partner Richard Meeran