

[PUBLIC VERSION]
MEMORANDUM OF DETERMINATIONS

Political Violence Claim of Western Wireless International Corporation
Contract of Insurance No. F267
Contract of Insurance No. F331

I. Summary of the Claim

By e-mail dated September 16, 2004 (Exhibit 1), Western Wireless International Corporation (“Western Wireless” or the “Insured”), through its insurance broker, Aon Risk Services, submitted an initial claim for compensation pursuant to Contracts of Insurance Nos. F267 (Exhibit 2) and F331 (Exhibit 3).¹ The Insured later submitted a revised claim (Exhibit 4) on December 21, 2004 (Exhibit 4). The Insured alleges that acts of political violence occurred in Haiti during the period February 4, 2004 through March 7, 2004, resulting in the loss of personal property as well as the loss of business income due to service interruptions experienced by the Insured’s subsidiary, Communication Cellulaire d’Haiti (“Comcel” or the “Foreign Enterprise”). Comcel operates a nationwide wireless telecommunications network in Haiti. The Insured’s claim for loss of tangible property totals \$50,909 and its claim for business income loss totals \$148,114.92.

OPIC has determined that Western Wireless’ claim for tangible property loss is valid and compensation is now payable in the amount of \$54,209.² As discussed below, OPIC has determined that Western Wireless’ claim for lost business income must be denied.

II. The Insurance Contracts

Two Contracts of Insurance were entered into with the Insured in 2002.

Contract of Insurance No. F267, an OPIC Form 234 KGT 12-85 (Revised 6/01) NS (“Contract F267”), was issued effective September 6, 2002 to cover the Insured’s [\$] equity investment in the Project against expropriation and political violence (assets). The maximum coverage under this policy is \$18,000,000. The active amount of political violence coverage on February 4, 2004 was \$ 5,000,000.

Contract of Insurance No. F331, an OPIC Form 234 KGT 5-87 MAJ L(Revised 2/2002) (“Contract F331), was issued effective September 6, 2002 to cover the Insured’s [\$] equity investment in the Project against business income loss (following damage or loss of use

¹ Western Wireless notified OPIC Senior Insurance Officer Rashmi Nehra of its claims for missing property and lost business income based on the events in Haiti in February and again in August by telephone prior to submitting the backup detail of their claims. OPIC finds that Western Wireless satisfied the requirement at Sections 8.01(c) of Contracts No. F267 and F331 that notice be given within six (6) months of the loss.

² See Section IV., A., 3 for discussion of basis for paying slightly higher amount than claimed.

resulting from political violence). Contract F331 was amended December 10, 2003 to increase the Maximum Insured Amount to \$18,000,000. The active amount of coverage on February 4, 2004 was \$11,000,000.

Both Contract F267 and Contract F331 contain the following definition of “political violence”:

“Political violence” means a violent act undertaken with the primary intent of achieving a political objective, such as declared or undeclared war, hostile action by national or international armed forces, civil war, revolution, insurrection, terrorism or sabotage. However, strike, riot and civil commotion, and acts undertaken primarily to achieve labor or student objectives are not covered.

At the time the Contracts were written, strike, riot, and civil commotion were deleted from the definition of “political violence” because the Insured’s property and casualty policy covered those risks. “Civil strife” was also deleted from the standard OPIC definition of “political violence” due to its similarity to civil commotion.

As described below, the Insured made a partial recovery for the cost of the vehicle under its local auto insurance policy³ but did not seek compensation from its property and casualty insurer.

III. Factual Background

A. The Project and the Insured

The project involves the build-out and operation of a nationwide wireless communications network in Haiti by Comcel. Western Wireless, a wholly owned subsidiary of the NASDAQ-listed Western Wireless Corporation, holds its investment in Comcel through the Delaware limited liability company CCIH, LLC, which owns 51% of Comcel. The other 49% of Comcel is held by several US and Haitian investors.

B. Haiti’s History and Political Conditions

The political instability in Haiti that erupted into violence in February 2004 can be traced back to the political gridlock that followed the restoration of constitutional rule in 1995. The inability or unwillingness of political parties to organize free and fair elections, attempts by the dominant party, Fanmi Lavalas, to rule by decree, boycotted elections, unsuccessful mediation attempts by the OAS, violence directed at opposition members by pro-government groups, and

³ According to Gary Vitalone, Western Wireless’ broker for property and casualty insurance, auto insurance policies typically do not exclude political violence whereas property and casualty policies do. Mr. Vitalone believes this is the reason that Western Wireless was able to make a partial recovery for the Toyota pickup.

deterioration in the human rights situation all led to hardened attitudes, increased violence, and a lack of confidence in President Aristide.⁴

During the month of February 2004 violence between pro-government and anti-government groups escalated throughout Haiti. Violence broke out in northern Haiti in early February when rebel forces led by Buteur Metayer captured the city of Gonaives police station. In a period of a little over two weeks, Metayer and his forces effectively gained control of northern Haiti. Between February 5 and February 25, rebel forces captured Cap Haitien, Haiti's second largest city and several other cities in northern Haiti. On February 19, Metayer, declared himself president of the areas under his control and named Guy Philippe commander of the rebel army, a force of 300 men. Guy Philippe threatened an assault on Port-au-Prince unless Aristide left the country.

As rebel forces approached Port-au-Prince, gangs armed and directed by President Aristide attacked people and property throughout the city. On February 29, 2004 Aristide submitted his resignation as President of Haiti and fled to the Central African Republic.

Upon Aristide's departure, Guy Philippe led his forces into Port-au-Prince, took over government installations, and declared himself the "military chief." Anarchy reigned in the capital city for several days until U. S. marines began to patrol the city. On March 3, 2004, Guy Philippe announced that his forces would leave the capital since foreign troops had arrived to protect the city.⁵

C. Impact of Political Conditions on Western Wireless and Comcel

The Insured's property claims are summarized below:

Item	Claimed Amount
2004 double cabin Toyota pickup	\$4,700
Equipment located at Morne Salnave site ("Morne Salnave equipment"):	
28 solar panels	\$17,640
1 adjustable leg panel kit	\$740

⁴ For a good summary of the political instability in Haiti between 1995 and February 2004, see Bureau of Western Hemisphere Affairs, Dep't St., Background Note: Haiti (Feb. 2005), <http://www.state.gov/r/pa/ei/bgn/1982.htm> ("Dep't St. Background Note") at Exhibit 5.

⁵ See Dep't St. Background Note, 2004 Haiti Rebellion, Wikipedia Encyclopedia, at <http://en.wikipedia.org> as well as the following news articles: Christopher Marquis and Lydia Polgreen, U.S. to Mediate in Haiti Crisis; Urges Americans to Leave, N.Y. Times (Feb. 20, 2004), <http://www.nytimes.com/2004/02/20/politics/20HAIT.html>; Lydia Polgreen and Tim Weiner, Rebel Says He Is in Charge; Political Chaos Deepens, N.Y. Times (Mar. 3, 2004), <http://www.nytimes.com/2004/03/03/international/americas/03HAIT/html>; and Lydia Polgreen, U.S. Patrols Start in Haiti, but Residents Remain Wary, N.Y. Times (Mar. 4, 2004), <http://www.nytimes.com/2004/03/04/international/americas/04HAIT.html>, all of which can be found at Exhibit 5.

7 combiners	\$1,050
1 ground mounting kit	\$630
1 inter module cable	\$180
1 output cable	\$260
Installation	\$4,500
Conduit/installation	\$5,000
Subtotal:	\$30,000
Equipment located at Hilaire site ("Hilaire equipment"):	
16 solar panels	\$10,080
1 adjustable leg panel kit	\$492
4 combiners	\$600
1 ground mounting kit	\$360
1 inter module cable	\$117
1 output cable	\$60
Installation	\$4,500
Subtotal:	\$16,209
Total Amounts Claimed:	
	\$50,909

As described above, an atmosphere of lawlessness reigned in Port-au-Prince in February 2004 as pro-government and anti-government gangs patrolled the city, attacking property and people. On the evening of February 4, 2004, a Toyota pickup required for travel between cell sites in Port-au-Prince was taken from a Comcel employee by three armed men. Subsequently, Comcel employees reported seeing the vehicle being driven around Port-au-Prince by pro-government supporters.⁶

On the evening of February 29, security guards at the Morne Salnave cell site in northern Haiti abandoned their posts in fear. During the night the Morne Salnave equipment was taken. That same evening equipment at the Hilaire cell site in Port-au-Prince was vandalized.⁷

The Insured's claim for service interruptions is set forth below:

Location	Claimed Amount
Cap Haitien Site	\$45,793.66
Vertiere Site	\$94,008.13
Montana Site	\$8,313.13

⁶ See Exhibit 1

See Exhibit 1

Service interruption at Cap Haitien started on February 23 and continued for six (6) days when armed rebels forced the manager of the transmission facility provider to shut down transmission links in order to cut telephone service in Cap Haitien. Service interruption at Vertieres occurred during the evening of February 22 when vandals cut the optical fiber cable on the transmission line. Because the area continued to be unsafe, technicians were unable to fix the cable until March 8. Finally, service interruption at Montana occurred on February 29 because technicians were unable to travel safely to the site to correct a technical problem.⁸

IV. OPIC's Determinations

A. Tangible Property Claims

Under Contract F. 267, the Insured may receive compensation for tangible property if “political violence is the direct and immediate cause of the permanent loss (including loss of value by damage or destruction). . . .” A determination under this Contract requires an analysis of three issues: (1) whether political violence of the type covered under the Contract occurred; (2) if so, whether the political violence was the direct and immediate cause of the loss; and (3) the amount of compensation payable.

1 Type of Political Violence

The violence that led to Aristide's departure has been characterized as a rebellion to bring down his government—clearly within the scope of coverage, “a violent act undertaken with the primary intent of achieving a political objective.” Rebel forces, while not all acting under the same leader, were intent upon bringing down the Aristide government.

As stated above, the Contracts excluded “strike, riot and civil commotion, and acts undertaken primarily to achieve labor or student objectives.” It is clear that the parties regarded these risks as synonymous with “civil strife”, since “civil strife” was deleted from OPIC's standard definition of political violence. These exclusions do not extend to violence directed at overthrowing a government.

Although there was not any single, identifiable group opposing the Aristide government and engaging in the conflict, the various factions were united by a common theme—violent disagreement with the Aristide government and a desire to topple it.

2. Causation

The property losses suffered by Comcel were caused by the political violence that took place in Haiti in February 2004. This violence created an atmosphere of lawlessness that provided ample opportunity for gangs to loot and vandalize Comcel's sites throughout Haiti. The Toyota pickup was stolen from a Comcel employee by three armed men and was seen later being used to drive pro-government gang members around Port-au-Prince. The Morne Salnave equipment was taken from a site outside Cap Haitien in northern

⁸ See Exhibit 1.

Haiti after Comcel's security guards fled in fear. As described above, during the month of February, insurgents led by Metayer and Philippe were successful in gaining control of much of northern Haiti. Finally, the Hilaire site was located in Port-au-Prince, where prior to and for several days after Aristide's departure, Guy Philippe's forces attempted to establish control. Until U.S. marines began patrolling the city, a state of lawlessness existed as a result of the political violence.

Note that Section 6.02 of Contract No. F267 contains several exclusions, one of which must be considered here. The exclusion at subsection (c) applies if the loss "results from the failure to take reasonable measures to protect or preserve the property."⁹ Under the circumstances, OPIC finds that the Insured took reasonable steps to protect the property. It would be unreasonable to have expected Comcel's employees and security guards to risk their lives in protecting Comcel's property. Comcel has filed police reports, which have not resulted in the return of the property.

3. Amount of Compensation Payable

According to Section 7.01 of Contract No. F267, the Insured may receive compensation based on adjusted cost or replacement cost. Western Wireless has selected compensation based on replacement cost. Section 7.01(b) allows the Insured to receive an amount up to 200% of the original cost of an item provided that the Insured repairs or replaces the lost property within three years of the loss.

To support the replacement cost of the Toyota pickup, the Insured provided a copy of the sales invoice of \$29,800 for the replacement property.¹⁰

Note that Contract No. F267 also requires that anything of value received by the Insured or the Foreign Enterprise on account of the lost property must be deducted from the replacement cost figure. Comcel recovered \$21,800 under its local insurance policy for the Toyota pickup.¹¹ Accordingly, the replacement cost recovery for this item is \$8,000, slightly higher than the original claim amount of \$4,700.

With respect to the Morne Salnave and Hilaire equipment, the Insured provided a copy¹² of a detailed estimate from Muleng Multi Engineering Enterprises S.A. for the property.¹³ This estimate shows proposed prices totaling \$30,000 for replacement of the property at

⁹ See Exhibit 2.

¹⁰ See Exhibit 4.

¹¹ As noted above, Comcel's local auto insurance policy would not have excluded political violence.

¹² See Exhibit 4.

¹³ OPIC confirmed with the Insured that the headings for "Morne Salnave" and "Hilaire" in this estimate were inadvertently reversed. See e-mail from Ann Saxton, Western Wireless, to Cindy Shepard, Overseas Private Investment Corporation (Mar. 14, 2005) (on file with the author) at Exhibit 6.

the Morne Salnave site and \$16,209 for property and \$4,500 for replacement of the property at the Hilaire site. Therefore, OPIC allows replacement cost coverage of \$46,209.

B. Service Interruption Claims

Contract No. F331 provides for compensation to the Insured for lost business income based on damage to assets or loss of use of the operations of the Foreign Enterprise that results from political violence. Section 2.01 reads as follows:

Compensation is payable, subject to exclusions (§2.02) and limitations (§3.03), if (i) tangible property of the foreign enterprise used for the project and located in the project country sustains direct physical damage, disappears or is actually physically seized and retained (collectively, "damage"), or (ii) access to and operation of the foreign enterprise is blocked, prohibited, or rendered unsafe (collectively, "loss of use"), in either case directly resulting from political violence, and if such damage or loss of use causes the partial or total cessation of project operation and results in a loss of business income during the period of restoration ("lost business income").

The periods of service interruption sustained by Comcel were six (6) days at the Cap Haitien site in northern Haiti, sixteen (16) days at the Vertieres site, and one (1) day at the Montana site. Section 3.03 of the Contract precludes recovery for these short periods of service interruption. Section 3.03(a) provides that "[n]o compensation shall be payable for any lost business income sustained...during a period of restoration of 30 days or less...." Accordingly, OPIC finds that no compensation for service interruptions is payable to the Insured.

V. Conclusion

For the foregoing reasons, OPIC concludes that the Insured's claims for loss of tangible property totaling \$54,209 are granted. The Insured's claims for service interruption totaling \$148,114.92 are denied.

OVERSEAS PRIVATE INVESTMENT CORPORATION

By: Signed copy of file
Robert Mosbacher, Jr.
President and Chief Executive Officer

Date: October 24, 2005