

MEMORANDUM OF DETERMINATION

Political Violence Claim of Sector Resources, Ltd.
Contract of Insurance No. F030

I. The Claim

By letter dated February 22, 2011 (Annex A), Sector Resources, Ltd., a U.S.-owned Cayman Islands company (“Sector”) filed an application for compensation pursuant to Contract of Insurance No. F030. Sector notified OPIC that on February 7, 2011, an armed robbery occurred at the site of the Las Animas precious minerals mine in the State of Tolima, Colombia (the “Project”), resulting in the loss of two gold dore bars. Sector alleges that the robbery was committed by insurgents and constitutes an act of political violence; consequently, Sector has filed a claim (the “Claim”) with OPIC for \$112,846, the estimated value of the stolen gold dore bars.

For the reasons stated below, OPIC has determined that Sector has not demonstrated its right to compensation and therefore the Claim is not payable.

II. The Insurance Contract

Contract of Insurance No. F030, an OPIC Form 234 KGT 12-85 (Second Revised) NS (the “Contract”) (Annex B) was issued effective August 18, 1999, to cover Sector’s \$3,500,000 equity investment in the Project. The current maximum coverage under the Contract (reflecting reductions for payment of previous claims) is \$7,522,062. The active amount of coverage on the date of loss (February 7, 2011) was \$3,150,000. Article VI (Political Violence – Scope of Coverage) and Article VII (Political Violence – Amount of Compensation) of the Contract have been deleted in their entirety and replaced in Sections 10.04 and 10.05, respectively, of Article X (Amendments). All references in this memorandum are to the amended Contract.

III. Factual Background

A. The Project

The Project involves the acquisition and expansion of the Las Animas underground quartz, gold and silver mine in the State of Tolima, Colombia. Sector has made an investment of up to \$3,500,000 into its Colombian branch, Sector Resources Colombia.

B. Project History

From its inception, political violence has been a significant concern for the Project. The Las Animas mine is located near the town of Santa Isabel, in the State of Tolima. Tolima has not been one of the most active areas for political violence, but sporadic insurgent activity has occurred there. Sector has had to suspend operations in the past in response to political violence.

Between 2002 and 2007, OPIC paid compensation in the aggregate amount of approximately \$3,225,516 with respect to ten claims made by Sector and an affiliated company, Sector Capital. These claims arose from acts of political violence by the Revolutionary Armed Forces of Colombia (FARC) and, in one instance, the National Liberation Army (ELN) that resulted in loss of business income and physical damage to the Project, as well as defaults under equipment leases (which were covered under a separate insurance contract that is no longer in effect). The mine had to be closed for several years due to the threat of direct attacks by the FARC, until the Colombian armed forces reasserted control over the area in 2004.

In anticipation of reopening the mine in 2004, Sector entered into an arrangement with the Colombian military consistent with Colombian legislation relating to protection of the mining sector, and it also retained private security consultants to take measures to reduce the risk of loss due to political violence. These measures included establishing communications with the local military that would permit a quick response to incidents, improving the physical security of the mine, instituting security-conscious personnel practices and operating procedures, and obtaining equipment such as GPS devices for vehicles. Sector has represented that it has sought to diminish the risk of political violence by operating in a manner that would build ties with the local community and obtain its endorsement for development of the mine.

IV. Facts Regarding the Incident

At approximately 2:00 am on February 7, 2011, a group of about six men wearing face masks and carrying hand guns entered Sector's Las Animas mine. The perpetrators subdued the mine employees on duty at the time, and allegedly asked for the plant mechanic, Cesar Diaz, by name. The armed men compelled Mr. Diaz and another employee to cut through a safe box containing gold dore. The perpetrators took two bars of gold dore, which together were worth \$112,846, and eventually left the premises. The mine employees had been moved into a plant maintenance container during the robbery, and they remained there until shortly after 3:00 am, when they were sure the perpetrators had left.

The 16th Infantry Battalion of the Colombian Armed Forces was dispatched to the mine sometime before 3:00 am, but the military unit was unable to intercept any of the perpetrators as they fled the scene. Several Sector officers, including Coordinator of Operations Mr. William Torres, arrived at the mine shortly after 3:00 am and began assessing the situation.

Investigators from the Basic Criminal Investigations Unit of the Judicial and Investigative Police Section (SIJIN) arrived at the mine around 8:40 am and commenced an investigation into the robbery. Mr. Torres filed a complaint with the Office of the Prosecutor General in Lérida, alleging that the men who committed the robbery were insurgents. Mr. Torres stated that he suspected that the perpetrators were members of the Líbano Bolshevik Bloc of the ELN because the mine operators had recently received some "threatening pamphlets" from that group expressing anger at the presence of Sector, a multinational company, in the region. Sector's Head of Security, Mr. Fernando Pinilla, also expressed a belief that insurgents had committed the robbery, basing this belief on witness reports that the perpetrators carried a

backpack with a Che Guevara emblem and claimed to be members of the Águilas Negras, another insurgent group in the region.

The investigation into the robbery is still in progress, but investigators at the Office of the Prosecutor General have determined that the crime was most likely committed by members of a “common criminal gang.” That office’s Executive Criminal Case Report, dated January 30, 2012 (the “Case Report”), notes that an individual reportedly received a telephone call from a woman who warned her that a common criminal gang was planning to rob the mine. The Case Report also reviews recent progress toward apprehending various suspects in the case, one of whom has been identified by several mine employees. The Case Report takes note of Sector’s allegations that insurgents committed the robbery, but concludes that the Office of the Prosecutor General believes the crime was committed by a common criminal gang, possibly with the help of mine personnel.

V. Determination Under the Contract

A determination under an OPIC insurance contract addresses three factors: (1) whether the acts complained of satisfy all the elements required to bring them within the scope of coverage; (2) the amount of compensation payable; and (3) whether the insured fulfilled its duties under the insurance contracts.

Was political violence the direct and immediate cause of the permanent loss of tangible property of the foreign enterprise used for the Project?

Section 6.01(a) of the Contract provides that “compensation is payable ... if political violence is the direct and immediate cause of the permanent loss ... of tangible property of the foreign enterprise used for the project”. Section 6.01 of the Contract defines “political violence” as “a violent act undertaken with the primary intent of achieving a political objective, such as declared war or undeclared war, hostile action by national or international armed forces, civil war, revolution, insurrection, civil strife, terrorism or sabotage.” Section 8.01 of the Contract provides that the “application for compensation shall demonstrate the Investor’s right to compensation in the amount claimed”.

In the Claim, Sector alleges that the armed robbery was committed by an insurgent group, and that therefore the robbery was an act of violence with a political objective, satisfying the definition of political violence. OPIC paid a previous claim in 2007 for the hijacking of two shipments of gold concentrate, treating as political violence ordinary criminal acts that were committed by an insurgent group as a means of financing its activities or undermining the authority of the government. In that case, the Colombian military ascribed the hijackings to the FARC and the ELN, and OPIC had no evidence to the contrary. However, the Claim lacks similar independent evidence that the robbery was committed by an insurgent group rather than a common criminal gang. Sector’s documentation refers generally to the perpetrators as “insurgents,” but it does not include supporting evidence to substantiate that characterization. Representatives of Sector have speculated about the involvement of different insurgent groups, such as the Líbano Bolshevik Bloc of the National Liberation Army (ELN) or Águilas Negras, but with no consistency or evidence to support such speculation. In a letter to OPIC, dated

February 22, 2011, Sector states that with such letter it was providing a “letter issued by the Colombian Army indicating an event of political violence”, but the noted letter from the Colombian Army does not indicate an event of political violence. Such letter, a written record of Brigadier General Rodriguez, states only that there were “six gunmen reportedly members of armed groups outside the law” (translated from Spanish), which does not necessarily mean insurgents; further, the description appears to be based on the Sector employees’ characterizations rather than on independent conclusions reached by the military. The claims of insurgent activity are further weakened by the information in the Case Report that an individual received a phone call warning that a common criminal gang was planning to rob the mine. In light of the lack of evidence supporting a claim of political violence and receipt of an official report that treat the crime as committed by a common criminal gang, OPIC cannot determine that the robbery was committed by an insurgent group and constituted an act of political violence under the Contract.

In granting past political violence claims by Sector, OPIC has relied on independent evidence that the acts were committed by insurgent groups. For instance, in Sector’s 2007 claim of political violence arising out of two separate hijackings of Sector’s trucks, certifications by the Colombian Army that the acts were committed by members of the FARC and ELN were deemed sufficient independent evidence that the acts had been committed by insurgent groups. In the Claim, Sector has not provided any such certifications or other independent evidence. In the absence of other evidence, OPIC deferred its determination on the Claim pending receipt of the Case Report. The Case Report, which is the only independent report available in this case, concludes that the crime was most likely committed by members of a common criminal gang, not insurgents.

Because the only independent evidence available suggests the robbery was committed by a common criminal gang, Sector has not demonstrated that the February 7, 2011 armed robbery was undertaken with the primary intent of achieving a political objective. Therefore, Sector has not established that the robbery constitutes an act of political violence.

In light of the above, OPIC determines that political violence was not the direct and immediate cause of the loss, and therefore that the acts complained of are not within the scope of coverage. We will not analyze in detail the above noted second or third factors for the determination because the first requirement has not been met. However, we do note the following:

- Sector’s security arrangements for the mine at the time of the robbery were weaker than what OPIC understood Sector had in place. Sector has informed OPIC that it has a contract with the National Army to provide security, but Army personnel were located 1.8 kilometers from the mine, with no Army personnel onsite. OPIC also has learned that Sector does not permit its security guards onsite to carry weapons. In addition, Sector’s closed circuit surveillance system was down for maintenance at the time of the robbery and OPIC has no information as to how long the surveillance system had been out of work or how well known this security weakness was among Sector employees or other persons in the area.

- Sector has not fulfilled its duty set forth in Section 9.01.15(g) of the Contract, which requires Sector to submit to OPIC an annual monitoring report which documents Sector's compliance with environmental requirements for the project as outlined in the *Plan de Manejo Ambiental para la Explotacion de la Mina de Oro Filoniano "Las Animas"* and the Development Plan. Such report was required to be submitted (a) on or before May 30, 2007 with respect to the period April 1, 2006 – April 30, 2007, (b) on or before June 30, 2008 with respect to the period May 1, 2007 – May 31, 2008 and (c) thereafter, on or before June 30 of each year during the term of the insurance contract for with respect to the corresponding twelve-month period. Sector has not provided such annual report for 2007 - 2011.

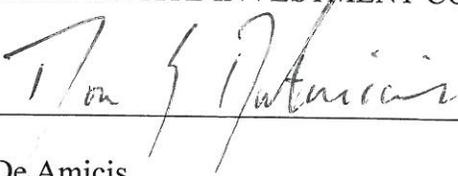
Section 9.02 of the Contract provides that a “material breach or misrepresentation by the Investor shall constitute default, and OPIC may (a) refuse to make payments to the Investor; (b) recover payments made; and (c) terminate [the] Contract effective as of the date of the breach by giving notice to the Investor.” Section 9.03 of the Contract provides that “[n]either OPIC’s failure to invoke its rights, nor its acceptance of premiums, shall constitute waiver of any of its rights, even though OPIC knows of the Investor’s breach.”

VI. Conclusion

For the foregoing reasons, OPIC concludes that Sector has not demonstrated its right to compensation and therefore the Claim is not payable.

OVERSEAS PRIVATE INVESTMENT CORPORATION

By: _____



Don S. De Amicis

Vice President and General Counsel

August 23, 2012