

MEMORANDUM OF DETERMINATIONS

[Date May 31, 2013]

Expropriation Claim of Caterpillar Financial Services Corporation Contract of Insurance No. F314

I. BACKGROUND

By letter dated September 29, 2011, Caterpillar Financial Services Corporation (the "Insured") notified OPIC that on or about September 28, 2011, Consolidada de Ferrys C.A. ("Conferry"), the Insured's borrower, had been nationalized by the Venezuelan Government. Notice of formal expropriation procedures was issued by the Venezuelan government against Conferry on September 30, 2011 (see Exhibit 1). Over the next several months, OPIC and the Insured were in discussions by email and telephone as the Insured gathered information regarding whether the Venezuelan government's actions would cause a default on Conferry's scheduled payments to the Insured. In addition, OPIC granted the Insured an extension of time for the Insured to gather information and prepare and submit its expropriation claim.

Subsequently, by letter dated March 5, 2012, the Insured filed an Application for Compensation (the "Application") under OPIC Contract of Insurance No. F314 (see Exhibit 2) (the "Contract") for losses arising out of a loan agreement dated October 9, 2002, and a related Promissory Note dated October 9, 2002 in the original principal amount of \$26,805,020 (the "Loan") made by the Insured to Conferry.

The Application seeks compensation for certain past due payments owed under the Loan by Conferry prior to the date of expropriation, as well as payment of the remaining balance of the scheduled payments yet to be paid on the Loan (the "Claim"). According to the Application, past due scheduled payments of principal and interest as of January 2012 totaled \$2,962,399.72, and the total outstanding amount of the Loan (scheduled principal and interest) was \$6,065,565.11.

After an initial review of the Application, on April 26, 2012, OPIC forwarded to the Insured a list of follow up questions related to the Application. The Insured provided its response to the questions to OPIC on May 31, 2012. The parties scheduled a conference call on June 18, 2012, to discuss the questions, and the Insured requested additional information regarding the factual support OPIC was seeking to support some of the Insured's statements in the Application. OPIC sent an annotated list of the questions to the Insured on June 28, 2012. The Insured provided a response on July 31, 2012, but the response again lacked some of the requested factual information. On August 28, 2012, OPIC responded with a request for additional information and clarifications, to which the Insured responded on September 18th. As part of the resulting exchange, the Insured and OPIC agreed that OPIC would prepare an initial draft Memorandum of Determinations based on the information provided, highlighting those items where further supplementation of the Application would be needed. OPIC circulated an initial draft of this Memorandum of Determinations to the Insured on October 19, 2012.

In response to the initial draft Memorandum of Determinations and the Insured's subsequent response on November 1, 2012, an in-person meeting with the Insured was scheduled on December 17, 2012. After the meeting the Insured provided the additional information that OPIC needed to issue this Memorandum of Determinations. As a result, OPIC has determined that the Insured has satisfied its obligations under the Contract and, subject to the Insured making the assignments to OPIC required under Section 8.02 of the Contract and entering into a settlement agreement certifying and agreeing to certain

other matters, OPIC will make a claim payment to the Insured of \$4,555,429.09, plus \$17.17 per day from June 1, 2013, until the date such claim payment is made.

II. THE INSURANCE CONTRACT

The Contract was issued and became effective on July 30, 2002. The Contract is based on OPIC's Standard Form 234 KGT 5-73 PL, Contract of Institutional Lenders Insurance Against Inconvertibility, Expropriation and Political Violence, amended to include certain special terms and conditions. The Contract covers 100% of the outstanding and unpaid principal and accrued and unpaid interest under the Loan. Premiums under the Contract have been paid through October 29, 2012, and the active amount elected by the Insured is \$6,119,227.96.

III. CLAIMS HISTORY

Due to general economic upheaval and resulting governmental restrictions on currency exchange, beginning in 2003 Conferry began to face delays in converting currency for servicing the Loan (as well as a similar prior loan made to Conferry) that led the parties to enter into a forbearance agreement dated as of September 30, 2004 (the "Forbearance Agreement"). The Forbearance Agreement was reviewed and approved by OPIC; it does not create an actual extension of the due dates under the loans, but merely provides that the Insured would forbear from exercising its rights and remedies under the Loan Agreement with respect to any payment default, provided that payments were received within 180 days of their original payment due date. This allowed time for Conferry to request authorization for the conversion of Bolivars to Dollars from the Comision de Administracion de Divisas ("CADIVI"), the Venezuelan entity charged with managing the currency controls that were implemented by President Chavez' administration in early 2003.

Notwithstanding the Forbearance Agreement, the Insured continued to face delays in receiving payments on the Loan as a result of the CADIVI process. As a result, the Insured began preparing inconvertibility claims applications several times, but OPIC intervened with the Venezuelan government on the Insured's behalf and the Insured was ultimately able to convert through the CADIVI process. However, on May 24, 2006, the Insured filed a claim under the inconvertibility coverage provided in the Contract with respect to missed Loan payments in 2005. OPIC found the claim to be valid and paid compensation under the Contract in the amount of \$1,342,071.70 and also paid compensation under a related insurance contract for a similar loan in the amount of \$1,302,917.36, each in exchange for an assignment of the eligible local currency. The Memorandum of Determinations for that claim is attached as Exhibit 3. In late 2006 the Insured initiated a second claim for inconvertibility under the Contract but later withdrew the application when it became clear that other security for the Loan was available to bring the Loan current. Over the intervening years, the Insured notified OPIC of occasional delays in converting currency through the CADIVI process but ultimately received the late payments from Conferry and did not initiate any additional inconvertibility claims.

IV. DETERMINATIONS UNDER THE CONTRACT

This Memorandum examines three categories of issues with respect to the Claim: (a) whether the acts alleged by the Insured satisfy the substantive requirements of, and, therefore, fall within the scope of coverage set forth in, the Contract; (b) whether the Insured has satisfied its other duties under the Contract; and (c) the amount of compensation, if any, payable by OPIC. These will be addressed in order:

A. Requirements for Expropriation under the Contract

The Application provided a summary of the events leading up to the Insured's claim. On September 27, 2011, the Venezuelan government published an official notice of its intent to expropriate Conferry and all of its assets (the "Decree") and commenced formal expropriation procedures as of September 30, 2011. A translation of the Decree is attached as Exhibit 4. Article No. 3 of the Decree clearly states the government's intent to expropriate Conferry free and clear of all encumbrances, including the Loan, subject to the requirements of Venezuela's expropriation law. The Insured notified its local legal counsel and, pursuant to their advice, filed a claim with the Attorney General's Office for the "outstanding principal balance of US\$ 5,862,342.96, plus interest at the contract rate" (the "Expropriation Claim", a translation of which is attached as Exhibit 5). The Expropriation Claim asserts that Caterpillar has valid and enforceable debts against Conferry in accordance with Article 22 of the Expropriation Act of Public and Social Use.

OPIC does not dispute that Conferry and its assets are subject to the Decree. However, the claim determination requires an analysis of the impact that expropriation of the borrower had upon the lender, the Insured. Given OPIC's awareness of the CADIVI process and that two payments under the Loan were due on April 15, 2011 and July 15, 2011 (prior to the date of the Decree), OPIC raised issues whether those Loan payments should be included within the Expropriation Claim, given that they arose prior to the date of expropriation, and whether the CADIVI process continued with respect to those claims.

The question is not whether such payments are compensable under the Contract, but whether such payments should be treated as the subject of an expropriation claim or as a separate inconvertibility claim. In the May 31 response, the Insured clarified that (a) the July 2011 payment was not delinquent as of the expropriation date due to the forbearance arrangements, and (b) a CADIVI application was filed by Conferry with respect to the April 2011 payment. However, as detailed in the Insured's September 18, 2012 correspondence to OPIC (and the documents submitted therewith), Conferry's new government managers have confirmed with the Insured that no funds were submitted for the April 2011 CADIVI payment and no further funds would be submitted by Conferry for any future payments. Additionally, the Insured was advised that no application was made to CADIVI for the July 2011 payment and no further applications would be made. Accordingly, the April 2011 and July 2011 payments cannot be made through the CADIVI process. Finally, Conferry's management advised the Insured explicitly that it considered the sole source of compensation for remaining amounts due under the Loan to be through the expropriation process administered by the Attorney General, not through the CADIVI process. Accordingly, the Insured properly concluded that the April 2011 and July 2011 payments will not be made through the CADIVI process and has made no further efforts to pursue payment through CADIVI. Further, the expropriation of Conferry's assets by the Venezuelan government has effectively prevented Conferry from making any further scheduled payments with respect to the Loan and has deprived Conferry of its ability to control or dispose of its assets, so essential requirements for finding an expropriation of the Loan under Section 4.01 of the Contract have been satisfied.

After the December 17, 2012, meeting, the Insured provided the remaining information necessary for OPIC to make its determinations with respect to the Claim and agreed to assign any residual rights the Insured may have to recover payments on the Loan outside of the Expropriation Claim. Subject to that qualification, OPIC otherwise accepts that the Insured has satisfied the requirements of Article IV of the Contract in demonstrating that the Decree has resulted in a compensable Claim and that none of the exclusions under Section 4.02 of the Contract apply.

B. Insured's Duties under Article VIII and Article IX

In order to demonstrate that losses within the scope of coverage of the Contract are compensable, the Insured must demonstrate that all of the requirements set forth in the Contract with respect to the Claim have been satisfied. While the Insured states in the Application that it has satisfied all of its duties under the Contract and restated in its July 31 correspondence that it had fully complied with those duties, a number of the items that OPIC had requested for the Application to be complete were not provided until after the December 17th meeting, including a complete set of the Loan documentation.

OPIC must determine that the Insured has satisfied its obligations under Sections 8.01 (Application for Compensation), 8.02 (Assignment to OPIC) and 8.04 (Recoveries) of the Contract. Additionally, OPIC must determine that the Insured has fully satisfied its duties under Article IX of the Contract.

(i) Section 8.01 (Application for Compensation)

Under Section 8.01(b) of the Contract, a claim for expropriation must be filed within ninety (90) days after the Insured has reason to believe that all requirements of Article IV have been satisfied. As previously determined, the Insured has satisfied the requirements of Article IV of the Contract in demonstrating that the Decree has resulted in a compensable Claim and that none of the Exclusions under Section 4.02 of the Contract apply.

The Decree was published in the Venezuelan Official Gazette on September 30, 2011. Under Section 4.01 of the Contract, the act or acts must continue for a period of 90 days, or until December 26, 2011. Accordingly, under Section 8.01(b) of the Contract, the Insured's initial Application must have been filed no later than March 26, 2012. The Insured filed its Application on March 5, 2012. Thus, the Insured's Application was timely filed.

(ii) Section 8.02 of the Contract (Assignment to OPIC)

Section 8.02 of the Contract requires that, as a condition to OPIC's compensation of a Claim, the Insured must assign all rights vis a vis Conferry or the Government of Venezuela to OPIC. Following consultation with OPIC's own Venezuelan counsel, OPIC has determined, that it can pay compensation for the Claim subject to an undertaking from the Insured assigning all residual rights of the Insured vis a vis Conferry, the Venezuelan government (whether with respect to the CADIVI process, the Expropriation Claim, or any other claims), against the project guarantors¹ (the "Guarantors"), or otherwise, and otherwise agrees to cooperate with OPIC in further documenting such assignments as needed. The execution of such an agreement will satisfy the requirements of Section 8.02.

(ii) Section 8.04 of the Contract (Recoveries)

While not mentioned in the initial Application, OPIC was aware, from the prior claims, that the Insured had additional security for the Loan in the form of a pledged account in New York (the "ML Account") that could constitute a source of additional compensation to the Insured under Section 5.02(2)

¹ Each of Lilia Josefina Tovar Mata, Magdalena Josefina Tovar de Martínez, Antonio Martínez Bolívar, Rafael Tovar Mata, Rodolfo José Tovar Mata, Iversiones Tovar Mata C.A. and Naviera Nueva Esparta C.A. executed a guaranty of the Loan.

(Adjustments-Other Compensation) of the Contract and be subject to the requirements of Section 8.04 of the Contract (Recoveries).

All monies on deposit in the ML Account are pledged under a Security Agreement dated May 30, 2002, as additional security for the payment and performance of any obligations of Conferry under the Loan Agreement. Thus, the compensation paid to the Insured under the Claim should be reduced by the balance in the ML Account as of the date of the Decree, which was \$2,383,821.65 less agreed deductions for the Insured's expenses incurred from that date with respect to the Loan, which were \$868,399.49. Accordingly, the amount of compensation payable under the Claim will be reduced by \$1,515,422.16.

Additionally, in its September 18 correspondence to OPIC, the Insured stated that it had made demand in Venezuela upon the Guarantors, who also might be an additional source of other compensation. Any payment received by the Guarantors would reduce the compensation payable by OPIC. The Insured has indicated that it took whatever steps it deemed necessary to preserve its rights as a creditor in furtherance of the purposes of Section 9.01(7) of the Contract as further discussed below. We are advised that the Insured has not initiated legal proceedings and no judgment has been obtained, and that the Guarantors do not, at present, demonstrate any inclination to make payments voluntarily under the guaranties that would constitute an additional source of compensation to the Insured. Accordingly, no adjustment need be made to the amount paid by OPIC on the Claim on account of the liability of the Guarantors at this time, although, as a condition to the payment of the Claim, OPIC will require the Insured to (i) certify as to the steps it has taken to preserve its rights against the Guarantors, (ii) to assign all rights against the Guarantors to OPIC in consideration of the payment of the Claim (and agree to pay any future amounts the Insured may receive from the Guarantors on account of their guarantees to OPIC), and (iii) to cooperate with reasonable requests of OPIC in seeking to enforce any rights against the Guarantors.

(iii) Article IX of the Contract

Article IX imposes certain duties on the Insured with respect to the Contract, including a number which will be specifically applicable to the payment of any Claim. In particular, under Section 9.01(7) of the Contract "[t]he Insured shall at all times take all reasonable action to preserve and enforce its rights as a creditor." Additionally, prior to assigning any of its rights to OPIC, "the Insured shall, in consultation with OPIC, further take all reasonable measures to pursue available administrative and judicial remedies and to negotiate in good faith with the foreign governing authority and other potential sources of compensation."

As an initial matter, OPIC must be able to ascertain what the Insured's "rights as a creditor" are in order to determine whether reasonable action has been undertaken to preserve them. In this case, following the December 17th meeting, OPIC was provided with a complete set of the Loan documentation, including all amendments and extensions to the Forbearance Agreement, and has consulted with its own Venezuelan counsel regarding the steps that a lender might appropriately have taken to preserve its rights as a lender against Conferry under the documentation in light of the Decree and related proceedings. OPIC is satisfied that none of the amendments to the Loan Documents or to the Forbearance Agreement purport to or serve to alter or amend any of the Insured's legal rights against Conferry, the Guarantors or the collateral that secured the Loan.

The additional documentation provided at or immediately following the December 17th meeting also allowed OPIC to clarify whether the Insured considered the Loan accelerated or provided a notice of acceleration or demand for payment to Conferry or the Guarantors.

According to the Insured, the expropriation of Conferry in September 2011 was an event of default under the Loan Documents that was not covered by the Forbearance Agreement and thus automatically extinguished the Insured's obligation to forbear on September 30, 2011, whereupon the Insured had "the immediate right to enforce payment of the Indebtedness and all other amounts owing by [Conferry] and the Guarantors under . . . the Loan Documents." Additionally, on November 30, 2011, the forbearance period itself expired. As a result, the Insured has concluded that it has no continuing obligation to forbear from exercising its legal rights and the total amount of the Loan is due and payable. The Insured is also satisfied that by signing the Forbearance Agreement, Conferry agreed that upon expiration of the forbearance period (or earlier termination by another default) the Loan would be immediately due and payable and the Insured would have no obligation to offer additional terms of forbearance.

It is the Insured's position that a notice of acceleration was not required and that the Insured's rights under the Loan Documents and the Forbearance Agreement are unaffected.

In the discussions attempting to clarify the Insured's treatment of the Loan vis a vis Conferry OPIC learned of additional factors that would mitigate the risk of any failure to provide express notice to Conferry of the acceleration. First, the Expropriation Claim itself contemplates that the Loan is accelerated and, in the December 17th meeting OPIC was told that the Insured had engaged in discussions with the new managers of Conferry in which they seemed to acknowledge the acceleration and asked about any possibility of keeping the Loan in place. Secondly, in a September 18th email from the Insured, OPIC was informed that in fact in April 2012 a demand letter was sent by the Insured to each of the Guarantors of the Loan demanding payment in full of the outstanding amount of the Loan ².

Accordingly, while it is clear the Insured could have done more, OPIC is willing to compensate the Insured with respect to the Claim under agreement that the Insured will, as required by the Contract, cooperate in OPIC's further efforts to notify all parties of the acceleration of the Loan and of the Expropriation Claim.

C. Amount of Compensation

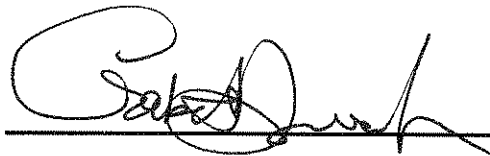
After review of the initial application, OPIC asked the Insured to clarify discrepancies between the loan amortization schedule originally attached to the Contract and to the original copy of the Loan Agreement and Note and the schedule referenced in the Application. After the December 17th meeting, the Insured provided a revised amortization schedule and satisfactorily explained that delays in the funding of the loan resulted in a revised amortization schedule that deferred the commencement of payments under the Loan from January 2003 to April 2003, and correspondingly extended the final maturity date of the Loan.

Accordingly, subject to the Insured making the assignments to OPIC required under Section 8.02 of the Contract and entering into a settlement agreement certifying and agreeing to certain other matters, OPIC will make a claim payment to the Insured in a lump sum of the remaining scheduled principal and interest payments due to the Insured under the Loan, which based on the initial Application is \$6,065,565.11, less the agreed amount of \$1,515,422.16 in other compensation available to the Borrower

² OPIC has determined that the April 2012 demand notice was not an attempt to negotiate a settlement of the compensation amount that would have compromised any future effort to enforce a claim and thus did not run afoul of the requirement of Section 9.01(7) to consult with OPIC.

through the ML Account (net of agreed expenses). OPIC will also pay interest on each such payment, as provided in Section 5.01 of the Contract, at the average daily federal funds rate from December 6, 2011 (which is the 90th day prior to OPIC's receipt on March 5, 2012, of the Insured's Initial Claim Application), through (and including) the date on which OPIC will pay such compensation.

OVERSEAS PRIVATE INVESTMENT CORPORATION

A handwritten signature in black ink, appearing to read "Elizabeth Littlefield", is written over a solid horizontal line.

Elizabeth L. Littlefield, President & CEO