# MEMORANDUM OF DETERMINATIONS

## Political Violence Claim of the American International School of Bamako Foundation, Inc. ("Insured")

**Mali** –American International School of Bamako (OPIC Contract of Insurance No. F972)

## I. CLAIM

By e-mails dated March 22, 2012 and April 4, 2012, OPIC was notified of events which could result in claims under the Insured's political violence insurance policy – OPIC Contract of Insurance No. F972 (the "Contract"). By an e-mail dated May 30, 2011, OPIC received notice that the Insured was preparing a claim under the Contract. A subsequent application for compensation, including an account of the political violence, was made by the American International School of Bamako (the "School") on behalf of the Insured on September 9, 2012, and additional information was provided by e-mail on November 2 and 21, 2012.[1]

The claimed losses occurred after Mali's elected civilian government was removed in a military seizure of power in March 2012. As a result of the political violence and ensuing instability, the School evacuated personnel to Burkino Faso and closed the School for the remainder of the academic year. Additionally, when it was safe to reopen and the new academic year started, enrollment at the School had dropped significantly from the pre-seizure expectations. The claimed losses for refunds, evacuation expenses and tuition income are made under §7.02 (Loss of Business Income) of the Contract. OPIC finds that the claim is valid and the Insured is entitled to compensation in the amount of $1,384,871.54.

## II. FACTUAL BACKGROUND

In the application, the Director of the School, on behalf of the Insured, provided background information describing the events. The facts related to the political situation have been verified by reports in international news sources and are consistent with announcements by the U.S. Department of State and the U.S. Embassy in Mali.[2] The facts below have been adapted from the description of events in the application and summarized for convenience.

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[1] The application and related documents are attached as Exhibit 1.

[2] News verification sources included the New York Times (e.g. http://www.nytimes.com/2012/03/23/world/africa/mali-coup-france-calls-for-elections.html?pagewanted=all&_r=0); BBC News (e.g. http://www.bbc.co.uk/news/world-africa-17498739); Al Jazeera (e.g. http://www.aljazeera.com/news/africa/2012/04/20124181943166936.html); and CNN (e.g. http://www.cnn.com/2012/04/03/world/africa/mali-unrest/index.html.) See also the messages from the U.S. Department of State, including the U.S. Embassy in Bamako, at: http://mali.usembassy.gov/emergency_messages.html .

A rebellion waged primarily by ethnic Tuareg groups started in northern Mali in January 2012. Starting on March 21, 2012, a group of military mutineers, dissatisfied with the government's handling of the rebellion in the north, removed the civilian government. The mutinous soldiers referred to themselves as the National Committee for the Restoration of Democracy and State (CNRDR). The United States government condemned the March 2012 military seizure of power.

In the aftermath, there was much instability and unrest in Mali, particularly in Bamako and in the rebelling north. The U.S. Embassy in Bamako issued numerous warnings for U.S. citizens in Mali to "shelter in place" throughout this period. On March 26, 2012 and April 3, 2012, the U.S. Department of State warned U.S. citizens against all travel to Mali because of the political instability in the country and the active rebellion in the north, and the State Department urged U.S. citizens in Mali to consider their own personal security and contingency plans, including temporary departure from Mali. On April 3, 2012, the State Department also authorized the departure of non-emergency personnel and eligible family members of Embassy personnel, noting that the situation remained fluid and unpredictable.[3] As a further example, on May 1, 2012, the Embassy noted that security conditions were changing rapidly and encouraged U.S. citizens to remain sheltered in place.

A new government of national unity was formed on August 20, 2012. The State Department travel warning issued on August 29, 2012, still warned U.S. citizens against all travel to Mali because of the fluid political conditions and noted that "[a]s a result of safety and security concerns, some organizations, including foreign companies, NGOs, and private aid organizations, have temporarily suspended operations in Mali or withdrawn some family members and/or staff"; however, the State Department lifted the authorized departure of embassy personnel and their families.

The School was open on March 20, 2012 and had a total enrollment of 206 students. Classes were cancelled on March 22 and 23, 2012 as a result of the military seizure of power. Those closures were followed by the School's previously scheduled one week "Spring Break". On April 2, 2012, the School re-opened for the fourth quarter and had 117 students present. On April 4, 2012, there were 88 students present. The School expected that families who were eligible to leave in accordance with the April 3 State Department authorization would do so as soon as possible.

The School's board decided to evacuate overseas teachers and their dependents and to close the School until at least May 3, 2012. The decision to close was based on the uncertain security and political situation, the lack of students and the

[3] Subsequent U.S. Embassy statements refer to the date of authorization as April 4, 2012.

inability, due to sanctions as a result of the political violence, to guarantee fuel supplies to generate electricity.[4]

During the period from April 4 to 8, 2012, overseas teachers and their dependents were evacuated to Ouagadougou, Burkina Faso. The School board met again on May 3, 2012, and ultimately decided to keep the School closed for the remainder of the academic year due to the continuing political instability in and around Bamako. The School board also decided that overseas teachers and families would be sent home directly from Ouagadougou, if possible, or through Bamako, on flights from May 5 to 7, 2012. The School board gave a large number of other employees 30 days notice on May 8, 2012.

The School opened as scheduled for the 2012-2013 school year on August 22, 2012. As of September 7, 2012, the School had 95 students enrolled, but expected to reach 100 students.

The School's enrollment had grown over the previous few years. In March 2009, the School had 164 students; in March 2010, the School had 179 students; in March 2011, the School had 183 students; and in March 2012, the School had 206 students. The School anticipated having 210 students for the 2012-2013 school year.

## III. THE CONTRACT

### A. Scope of Coverage

The Contract insures the Insured against Political Violence. The Contract covers 90% of the School's $4,400,000 Investment for loss of assets and business income due to Political Violence. Political Violence is defined in §6.01 of the Contract as "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, civil strife, terrorism or sabotage." It does not extend to coverage of acts undertaken primarily to achieve labor or student objectives. The maximum coverage ceiling under the Contract is $3,960,000. The active amount of coverage for Political Violence elected by the Insured as of the date of the claimed losses (March 22 - August 22, 2012) is $2,000,000.

All section references are to the Contract.

### B. Compensation

Section 7.02 provides that, if the requirements of §6.01.2 are satisfied, and subject to the limitations in §7.03(b) and adjustments in §7.04, OPIC shall pay

[4] According to the School, the U.S. Embassy informed the School that as a result of sanctions, the Embassy would not be able to ensure adequate fuel supplies to the School to generate electricity.

compensation for Loss of Business Income equal to 90% of the actual Lost Business Income (§6.01) of the School.

# IV. DETERMINATIONS UNDER THE CONTRACT

In our determination under an OPIC insurance contract, OPIC must decide (A) whether the acts cited satisfy all the elements of a claim required to bring them within the scope of coverage, (B) the amount of compensation that is payable, subject to any limitations and adjustments under the Contract, and (C) whether the Insured fulfilled its duties under the Contract.

## A. Scope of Coverage.

1. *Nature of Claim.*

According to the application, the Insured's claim is for loss due to Political Violence and, specifically, for Lost Business Income as the direct and immediate result of Temporary Abandonment.

The CNRDR's main goal was to overthrow the civilian Mali government and seize power and so the violent takeover had a political objective and constitutes Political Violence under the terms of the Contract. The Political Violence is well documented by accounts in the international press, as well as by the U.S. Department of State. None of the exceptions to Political Violence (i.e. labor or student objectives) applies.

2. *Requirements for a Claim in Connection With Temporary Abandonment.*

Under § 6.01.2(b), the Insured must show the following to prove a claim in connection with Temporary Abandonment:

(i) The total cessation of construction or operation of the School due solely to conditions created as a direct and immediate result of Political Violence in the Project Country that render it unreasonably hazardous or impossible to construct or operate the School without unreasonable risk of physical harm to School Personnel essential to the construction or operation of the School; and

(ii) Such total cessation continues without interruption for a period of at least fourteen (14) days, excluding any activities undertaken solely to protect and maintain Tangible Property.

As noted previously, the Political Violence is well documented by accounts in the international press, as well as by the U.S. Department of State. As it directly relates to the School, events of Political Violence occurred in Bamako, where the School is located. That the situation was unreasonably hazardous and posed unreasonable risk of harm to School Personnel (e.g. U.S. overseas teachers) is evidenced by the U.S. Embassy instructions to "shelter in place" and the authorized departure for family members and non-emergency personnel as conditions did not improve. The School was forced to close because it would have been unreasonably hazardous to its students and staff to remain open and hold classes. This unreasonable hazard was the direct and immediate result of the Political Violence, and there is no evidence that there were other intervening reasons to close.

In a strict sense, the School did not experience "total cessation" of operation because it continued to conduct some computer-based classes. However, OPIC believes that these computer-based classes are immaterial under this determination and that coverage should not be denied in this situation.

The School's Temporary Abandonment lasted more than fourteen (14) days. Originally, the School closed from March 22 to 23, 2012 because of the Political Violence. The students then had a one week scheduled break at the end of the third quarter. After the break, the School was open and held classes from April 2 to 6, 2012; however, less than half of the students attended. The School's board closed the School on April 6, 2012 until at least May 3, 2012 and, on May 3, 2012, the School's board then decided to close the School for the remainder of the academic year due to the continued instability. Regardless of whether the Temporary Abandonment started on March 22 or April 6, 2012, it is clear that the Temporary Abandonment lasted more than 14 days, which satisfies the Contract requirement.

3. *Requirements for Lost Business Income Associated with Temporary Abandonment.*

The Insured's claim under §6.01.2 ("Loss of Business Income") includes two components of Lost Business Income: (1) lost net income due to refunds and tuition and (2) Evacuation Expenses. Section 6.01.2(b) provides that, "[s]ubject to the exclusions in §6.02 and the limitations in §7.03(b), compensation is payable for Lost Business Income if such loss is the direct and immediate result of Temporary Abandonment." No exclusions are applicable to the Insured. The time limitation that exists for Evacuation Expenses is applicable but will be waived because it was exceeded by a few days and for good reason.

Lost Business Income is defined as:

> (i) the net income (net profit before income taxes) of the School that in the aggregate the School would have earned during the Period of Restoration had . . . (B) Temporary Abandonment not occurred;
> (ii) Expediting Expenses, if any;

(iii)Continuing Normal Expenses, if any; and
(iv)Evacuation Expenses, if any.

a. Claims For Loss of Income Due to Refunds and Loss of Tuition.

The Insured claims Lost Business Income in the form of Fourth Quarter refunds and adjustments and the loss of tuition and fees for the 2012-2013 school year under part (i) of the Lost Business Income definition. According to School policy, any student who attended for any part of the fourth quarter (either during the first week of the quarter or virtually through the computer based classes) is not entitled to a refund. The amount claimed for Fourth Quarter refunds and adjustments which are consistent with the School policy is $50,929.50.

The Insured is also claiming that the income for the 2012-2013 school year is significantly lower than what would have been earned as a result of the Political Violence. The amount claimed for the 2012-2013 school year lost tuition and fee income is $1,461,166.30.[5]

As of March 21, 2012, the School had 206 students. The Insured represented that for the 2012-2013 school year, the School anticipated growth to 210 students and had budgeted, hired teachers and ordered supplies for that number of students. The budgeting process starts in January/February for the next school year and includes surveys of parents, businesses, embassies and other organizations to get indications of the number of expected expatriates. This process occurred with respect to 2012-2013 year prior to the March military seizure. As of September 7, 2012, the School had 95 students enrolled, but expected to reach 100 students.

In order for Lost Business Income claims to be compensable, the losses must occur during the Period of Restoration. The Period of Restoration is defined as:

> the period of time beginning with the date . . . Temporary Abandonment first occurred and ending on the earlier to occur of: (a) . . . (ii) in the case of Temporary Abandonment, the date by which the School should, with due diligence and dispatch, be able to safely return School Personnel to the School and resume operations of the School; or (b) the first anniversary of the date Tangible Property Damage or Temporary Abandonment first occurred.

Under the Contract, once the School reopened for the 2012-2013 school year on August 22, 2012, the Period of Restoration ended under clause (a) of the definition. In the case of a school, it is reasonable to use the starting date of

[5] This amount is the product of the average tuition and fees per student for 2012-2013 ($13,283.33) and the claimed shortfall in the number of enrolled students (110). The entire amount is treated as "net" income based on OPIC's understanding that corresponding expenses had been incurred.

classes as the date for the resumed operations of the school. As noted above, the Temporary Abandonment may have started on either March 22 or April 6, 2012 for which the corresponding first anniversary dates under clause (b) are March 22, 2013 and April 6, 2013, respectively. August 22, 2012 is the earlier of the two end dates stipulated in the Contract.

In June 2012, the School invoiced families that the School reasonably expected would be returning to the School for the 2012-2013 school year. The School has represented to OPIC that students (except students on certain payment plans) pay their fees at the beginning of the school year.

Given the steady year-on-year growth in enrollment over the last four years, it is reasonable to believe that the School would have enrolled additional students for the 2012-2013 school year. Further, even if the School had not added additional students, it is reasonably certain that the number of enrolled students would have remained stable or decreased by a nominal amount. Accordingly, the massive drop in students could not have been predicted by the School during budget planning for the 2012-2013 school year, and it is reasonable to conclude that this severe loss of students is the direct result of the Political Violence that occurred.[6]

If it were not for the Political Violence, the School would not have made the Fourth Quarter refunds and would have invoiced and received payment for approximately the same number of students in the 2012-2013 school year as in the previous year. Accordingly, the Fourth Quarter refunds and the lost 2012-2013 tuition payments constitute Lost Business Income and are compensable under the Contract.

b. Claim For Evacuation Expenses

The Insured has also made a claim for Evacuation Expenses incurred because of the Temporary Abandonment. Section 6.01.2(b) defines "Evacuation Expenses" as:

> reasonable expenses incurred by the School during a "Period of Evacuation" necessary to evacuate School Personnel from the School to a Safe Haven, including: (i) transportation costs for such School Personnel from the School to the Safe Haven (and back to the School); and (ii) room and board at the Safe Haven during the Period of Evacuation.

The School's board evacuated School Personnel because of the uncertain and hazardous situation in Bamako. The Director of the School had previously made

[6] As noted above, the U.S. Department of State Travel Warning issued on August 29, 2012 stated that "[a]s a result of safety and security concerns, some organizations, including foreign companies, NGOs, and private aid organizations, have temporarily suspended operations in Mali or withdrawn some family members and/or staff."

arrangements with other International Schools in Senegal and Burkina Faso such that, as part of each school's emergency plans, the affected school could reach out to either of the other schools to host some of its personnel if an evacuation was required. When the Political Violence in Bamako continued, the School's Director contacted the Ouagadougou school in Burkina Faso, and the director of that program offered to host the evacuated personnel in its employees' houses.

The Contract defines a "Safe Haven" as:

> the nearest location to the School (i) where the Political Violence that is the direct and immediate cause of the Abandonment does not pose an unreasonable risk of physical harm to the School Personnel, (ii) to which transportation is available and (iii) which is the lowest cost alternative for evacuation.

Because of the unrest in Mali, it was necessary to evacuate the School Personnel from the country. Ouagadougou is one of the closest major airports. The hosting of personnel in homes for extended periods also limited the costs that could have been incurred by evacuating to another location without such an arrangement. Accordingly, Ouagadougou was an appropriate "Safe Haven".

As stipulated in the Contract, OPIC will only cover Evacuation Expenses for the Period of Evacuation. The "Period of Evacuation" is defined as:

> the period beginning on the date evacuation of School Personnel from the School to the Safe Haven commences and ending on the earlier of (i) the first date on which the School should have been able, with due diligence and dispatch, to safely return School Personnel to the School and resume operations of the School and (ii) the date that is four (4) weeks later.

The Insured evacuated overseas teachers with dependents on April 4, 2012 and evacuated the rest of the overseas teachers on April 8, 2012. The start of the Period of Evacuation is April 4, 2012.

According to the Contract, OPIC will only pay for Evacuation Expenses for four weeks from the start of the Period of Evacuation.[7] A four week period beginning on April 4, 2012, when the first teachers were evacuated, ends on May 2, 2012. Overseas teachers left Ouagadougou from May 5 to 7, 2012, returning directly to their home countries, if possible, or back to Bamako and then to their home countries. As teachers had already purchased tickets home for the summer, they incurred penalties for changing the date of departure and, in some cases, the point of departure.

[7] Based on the continuing instability, the standing authorized departures of U.S. Embassy personnel and the School board's decision to close the School for the remainder of the year, OPIC assumes that the date under clause (ii) is the earlier date.

As noted above, host families provided accommodations to the School Personnel, with the exception of two or three nights' hotel accommodation for some School Personnel. In accordance with the School's policy manual, travel and per-diem payments to overseas employees are the same as those made to U.S. Embassy direct hire employees, and the per diem charges claimed for "board" are based on the U.S. Government rates.

OPIC finds that the School's expenses were reasonable in the circumstances and will waive the fact that the Period of Evacuation exceeded four weeks. In this case, the Period of Evacuation was exceeded by a few days and for good reason. After the decision to remain closed on May 3, 2012, it would have taken School Personnel a few days to make and implement all arrangements. The amount claimed for Evacuation Expenses is $26,650.36.

## B. Compensation is Payable in an Amount Equal to $1,384,871.54.

As detailed above, the application and subsequent information detail a total loss, under Loss of Business Income due to Temporary Abandonment, of $1,538,746.16.

Under §7.02.1, if the requirements are satisfied, and subject to the limitations and adjustments, "OPIC shall pay compensation for Loss of Business Income in U.S. dollars equal to 90% of the Lost Business Income. . . . "

Section 7.02.1. further provides such Lost Business Income will be based upon:

> (a) the net income of the School . . . before Temporary Abandonment occurred,
> (b) the likely net income of the School if . . . Temporary Abandonment had not occurred, . . .
> (e) if a Temporary Abandonment had occurred, the Evacuation Expenses incurred by the School during the Period of Evacuation, and
> (f) any other relevant information including financial records, accounting procedures, bills, invoices, other vouchers, deeds, liens, or contracts.

The determinations for Lost Business Income under Section IV.A.3 are consistent with the bases set forth in §7.02.1 above. Accordingly, the amount of compensation payable is $1,384,871.54.[8]

The four-week limitation on Evacuation Expenses, including room and board, was waived for the reasons described above. Further, the payable amount does not

[8] 90% of $1,538,746.16 equals $1,384,871.54.

exceed the Active Amount of coverage that the Insured had elected. The Insured bears the risk of loss of 10% of the Lost Business Income. No other limitations or adjustments other than ones previously considered are applicable in this instance.

### C. The Insured is in Compliance with its Contractual Duties.

The Insured satisfies the 10% self-insurance requirement as it bears the risk of loss on the 10% of the Lost Business Income.

The School notified OPIC of the Political Violence that is the basis of the claim by e-mail to the responsible insurance officer and has kept OPIC informed of all relevant developments. That notice together with the Insured's right to compensation was filed with OPIC within two years of the damage. For purposes of this claim, OPIC accepts the manner of notice as satisfactory.

The Insured will provide to OPIC a certificate, satisfactory to OPIC, that the Insured has complied with its duties under the Contract, including its eligibility.

The Insured will execute a release and receipt in connection with payment of compensation assigning to OPIC the Investor's claims arising out of the loss due to Political Violence.

## V. CONCLUSION

Based on the foregoing determinations and subject to the execution of the certificate and receipt and release we find that the Political Violence claim of the Insured is valid and that OPIC is liable for $1,384,871.54 in compensation.

**OVERSEAS PRIVATE INVESTMENT CORPORATION**

By: Elizabeth L. Littlefield
Its: President & CEO

Date: 5 February 2013