

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

THE COCA-COLA COMPANY,)

Plaintiff,)

v.)

**CERTAIN UNDERWRITERS AT
LLOYD’S,**)

Specifically Syndicate Nos. 4444 CNP,)

4472 LIB, 2001 AML, 510 KLN,)

1183 TAL, 1036 COF, and 9982 ANV)

Subscribing to)

Policy No. B0621M81009013,)

and)

International Insurance Company of)

Hannover Ltd.,)

Subscribing to)

Policy No. B0621M81009013)

Defendants.)

Case No.: _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff The Coca-Cola Company (“Coca-Cola”) for its Complaint against Defendants Certain Underwriters at Lloyd’s (“Lloyd’s”), Specifically Syndicate Nos. 4444 CNP (“Canopus”), 4472 LIB (“Liberty”), 2001 AML (“Amlin”), 510 KLN (“Kiln”), 1183 TAL (“Talbot”), 1036 COF (“O’Farrell”), and 9982 ANV

(“ANV”), and International Insurance Company of Hannover Ltd. (“Hannover” and, together with Lloyd’s, “Insurers” or “Defendants”), alleges and avers as follows:

PRELIMINARY STATEMENT

1. This action arises from the refusal of Coca-Cola’s Insurers to reimburse Coca-Cola for nearly \$1 million in business interruption losses it incurred in connection with the interruption of its operations at two bottling plants in Nepal due to the blockade of the Nepal-India border (the “Nepal-India Border Blockade”). The blockade occurred during the period of September 23, 2015 to February 5, 2016.

2. The Insurers are large insurance companies that promised to provide Coca-Cola with insurance coverage under a political risks insurance policy (the “Political Risks Insurance Policy” or “Policy”) to protect Coca-Cola against, among other things, loss of business income due to the full or partial cessation of Coca-Cola’s business operations in foreign countries (including Nepal) caused by the foreign country’s political unrest and violation of international law or treaties.

3. For these reasons and those set forth in further detail below, the Insurers have breached their contractual coverage obligations by refusing to reimburse Coca-Cola for the business interruption losses covered by the Political

Risks Insurance Policy. As a result of the Insurers' wrongful denial of coverage and breach of its implied duty of good faith and fair dealing, Coca-Cola has been forced to file this action for a declaratory judgment and breach of contract to receive the benefit of the insurance coverage it purchased from the Insurers.

THE PARTIES

4. Plaintiff The Coca-Cola Company is a corporation organized under the laws of Delaware with its principal place of business at One Coca-Cola Plaza, Atlanta, Georgia 30313.

5. Defendants Certain Underwriters at Lloyd's, specifically Syndicate Nos. 4444 CNP, 4472 LIB, 2001 AML, 510 KLN, 1183 TAL, 1036 COF, and 9982 ANV, are insurers engaged in the business of selling insurance contracts to commercial entities such as Coca-Cola in Georgia and elsewhere. These Lloyd's Syndicates maintain their principal places of business in the United Kingdom and subscribe to the Political Risks Insurance Policy covering Coca-Cola (UMR / Policy No. B0621M81009013).

6. Defendant International Insurance Company of Hannover Ltd. is an insurer engaged in the business of selling insurance contracts to commercial entities such as Coca-Cola in Georgia and elsewhere. Upon information and belief, Hannover maintained its principal place of business in the United Kingdom

when it subscribed to the Political Risks Insurance Policy covering Coca-Cola (UMR / Policy No. B0621M81009013), and now operates as International Insurance Company of Hannover SE and maintains its principal place of business in Hannover, Germany.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.

8. This Court has personal jurisdiction over Lloyd's and Hannover because Lloyd's and Hannover have submitted to jurisdiction in this state by (a) transacting business in Georgia, by virtue of selling the Political Risks Insurance Policy at issue in this case to Coca-Cola in Georgia; and (b) entering into contracts of insurance covering an entity located within Georgia at the time of contracting. In addition, the Insurers have consented, by the terms of the Political Risks Insurance Policy, to suit in a court of competent jurisdiction within the United States, including this Court. Policy at 3, Choice of Law & Jurisdiction.

9. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Coca-Cola's claim occurred in Atlanta, Georgia, where Coca-Cola is located.

FACTUAL ALLEGATIONS

10. Coca-Cola incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-9 above.

The Political Risks Insurance Policy

11. Coca-Cola is the world's largest beverage company and through its beverage distribution system, it provides more than 1.9 billion servings in more than 200 countries each day. Coca-Cola purchased the Political Risks Insurance Policy from the Insurers to protect Coca-Cola against, among other things, losses from interruptions to its business operations caused by political risks Coca-Cola faces in many of the countries in which it operates.

12. Through the Insuring Agreement in the Political Risks Insurance Policy, the Insurers promised to reimburse Coca-Cola for "any Loss arising out of an Event that occurs during the Policy Period." Policy, § II.

13. The Political Risks Insurance Policy defines "Event" to include an "Expropriation" for which Coca-Cola seeks compensation under the Political Risks Insurance Policy. *Id.* at § III.F.

14. "Expropriation" is defined as

[A]n act or series of acts taken or in actions by the Host Government that:

1. Effectively deprives the insured of all or part of its Insured Interest in the Foreign Enterprise; or
2. Effectively prevents or restricts, through financial, regulatory or other measures, the operation of the Foreign Enterprise, causing the partial or total cessation of the Foreign Enterprise's operations; or
3. Effectively deprives the Foreign Enterprise of all or part of its real or tangible property; or
4. Effectively prevents the Insured or the Foreign Enterprise from effectively controlling funds (whether deposited in local banks or not) in the host Country which constitutes dividends or profits on, or proceeds from the disposal of, or payment obligations relating to the Insured Investment;

provided such act or acts or inactions (i) are violations of international law (without regard to the availability of local remedies) and/or of obligations stated in the relevant Bilateral Investment Treaty, if applicable, and (ii) continue for the duration of the Waiting Period.

Id. at § III.E.

15. The Political Risks Insurance Policy defines “Business Interruption” as “an Expropriation . . . that restricts the Insured or Foreign Enterprise from access (‘loss of use’) to the operation of the Foreign Enterprise or causes physical loss or damage to the operation of the Foreign Enterprise resulting in a loss of business income. The Insured shall be compensated if such loss of use causes the partial or total cessation of operations of the Foreign Enterprise resulting in a loss of Business Income or the incurring of Expediting Expenses during the Period of Restoration (‘lost Business Income’).” *Id.* at § III.A.

16. “Host Government” is defined as:

1. The present or any succeeding governing authority (without regard to the method of its succession or as to whether it is internationally recognized) in effective control of all or any part of the territory of the Host Country or any political or territorial subdivision thereof (including any dependent territory); and

2. Any other public authority in or of the Host Country on which regulatory powers are conferred by the laws of the Host Country.

Id. at § III.L.

17. Nepal is identified as a “Host Country” under the Political Risks Insurance Policy.

18. The named Insured in the Political Risks Insurance Policy is “The Coca-Cola Company and/or subsidiary and/or affiliated companies for their respective rights and interests.” *Id.* at § III.N.; *id.* at Declarations, Item 1.

19. The Policy Period was from May 1, 2013 to May 1, 2016. *Id.* at Declarations, Item 2. The Political Risks Insurance Policy provides an aggregate limit of liability of \$50 million, and it has no retention. *Id.* at 1, Sums Insured & Retention.

20. Coca-Cola has paid substantial premiums in return for the insurance coverage that the Insurers agreed to provide, and has fully complied with all other terms and conditions of the Political Risks Insurance Policy.

The Nepal-India Border Blockade

21. Coca-Cola operates two bottling plants in Nepal: Bottlers Nepal Limited (“BNL”) and Bottlers Nepal (Terai) Limited (“BNTL” and, together with BNL, the “Coca-Cola Bottling Plants”). The Coca-Cola Bottling Plants constitute “Foreign Enterprises” under the Political Risks Insurance Policy.

22. Nepal adopted a new constitution on September 20, 2015. The adoption of the new constitution proved disruptive because it allegedly discriminated against women and the Madhesi ethnic group. As widely reported, its adoption led to political unrest in Nepal and the surrounding region.

23. The Madhesi people demanded a nullification of the first draft of the constitution and held talks with Nepalese Government officials. When the Nepalese Government refused to revise the constitution, the Madhesi—led by the United Democratic Madhesi Front—obstructed the inflow of supplies to Nepal from India.

24. A blockade of the entry to Nepal began on September 23, 2015, shortly after Nepal adopted the new constitution. The Nepalese Government sent in a paramilitary police force, but it was unable to control its borders.

25. Nepal is a small, landlocked country, and therefore depends on receiving most of its natural supplies, including fuel, from India. The Nepalese

Government's inability to control the violence within the country and at its borders after the adoption of the new constitution led to the severe strangulation of fuel and other supplies crucial to the continuation of production at the Coca-Cola Bottling Plants in Nepal.

26. The inability for supplies to arrive in Nepal significantly limited the Coca-Cola Bottling Plants' ability to obtain sugar, fuel, CO₂, and other supplies. The shortages restricted access to the operations of the Coca-Cola Bottling Plants. Specifically, the shortages caused a partial cessation of operations at BNL, which could only operate when power was available from alternate fuel sources, and the BNTL plant had to close completely for a certain period of time due to running out of stock of diesel fuel and having no other compatible alternative fuel.

27. The inability to run BNL to capacity and to run BNTL at all led to significant Business Interruption losses to Coca-Cola.

28. The Nepalese Government's actions and inactions that led to the Nepal-India Border Blockade violated international law and/or a Bilateral Investment Treaty, including the Treaty of Transit Between the Government of India and His Majesty's Government of Nepal.

29. The Nepalese Government amended the new constitution on January 23, 2016. Shortly thereafter, the Nepal-India Border Blockade ended on February 5, 2016.

The Insurers' Failure to Honor Their Policy Obligations

30. Coca-Cola provided timely notice of this claim for Business Interruption losses under the Policy to the Insurers.

31. In letters dated August 19, 2016 and December 29, 2016, Coca-Cola outlined the basis for coverage for its claim. The December 29, 2016 letter included an updated Proof of Loss demonstrating the \$986,029 of Business Interruption loss Coca-Cola incurred during the Nepal-India Border Blockade.

32. Coca-Cola's August 19, 2016 and December 29, 2016 letters explained why Coca-Cola was entitled to coverage under the Policy and provided the Insurers with ample opportunity to consider the reasons why their coverage denial lacked any reasonable basis.

33. Despite Coca-Cola's correspondence to the Insurers, the Insurers have disregarded Coca-Cola's rights under the Political Risks Insurance Policy and continued to wrongfully deny coverage to Coca-Cola.

COUNT I
BREACH OF CONTRACT

**(LOSS INCURRED DUE TO PARTIAL OR TOTAL CESSATION OF THE
OPERATION OF THE COCA-COLA BOTTLING PLANTS DURING THE
NEPAL-INDIA BORDER BLOCKADE)**

34. Coca-Cola incorporates by reference, as if fully set forth herein, the facts set forth in paragraphs 1-33 above.

35. The Political Risks Insurance Policy is an insurance contract under which the Insurers received substantial premiums in exchange for a promise to provide broad insurance coverage, including coverage for the Business Interruption loss Coca-Cola incurred due to the partial or total cessation of the operations of its Coca-Cola Bottling Plants during the Nepal-India Border Blockade.

36. The Political Risks Insurance Policy does not limit or exclude Coca-Cola's claim for coverage, and Coca-Cola has satisfied all condition(s) precedent to coverage.

37. The Insurers owe Coca-Cola a duty of good faith and fair dealing in their handling of Coca-Cola's claim for coverage under the Political Risks Insurance Policy.

38. By denying coverage to Coca-Cola for its Business Interruption loss incurred from the cessation of the operations of its Coca-Cola Bottling Plants, the Insurers have expressly and wrongfully repudiated their coverage obligations and

declined to honor the promises they made when they issued the Political Risks Insurance Policy. The Insurers' wrongful repudiation of their coverage obligations to Coca-Cola is a breach of the Political Risks Insurance Policy and a breach of the implied duty of good faith and fair dealing.

39. As a result of the Insurers' breach of the Political Risks Insurance Policy, Coca-Cola has sustained substantial damages, in an amount to be established at trial.

COUNT II
DECLARATORY JUDGMENT

**(LOSS INCURRED DUE TO PARTIAL OR TOTAL CESSATION OF THE
OPERATION OF THE COCA-COLA BOTTLING PLANTS DURING THE
NEPAL-INDIA BORDER BLOCKADE)**

40. Coca-Cola incorporates by reference, as if fully set forth herein, the facts set forth in paragraphs 1-39 above.

41. The Political Risks Insurance Policy is an insurance contract under which the Insurers received substantial premiums in exchange for a promise to provide broad insurance coverage, including coverage for the Business Interruption loss Coca-Cola incurred due to the partial or total cessation of the operations of its Coca-Cola Bottling Plants during the Nepal-India Border Blockade.

42. Coca-Cola incurred Business Interruption losses from the cessation of the operations of its Coca-Cola Bottling Plants during the Nepal-India Border Blockade.

43. Coca-Cola has satisfied all condition(s) precedent to coverage.

44. The Insurers owe Coca-Cola a duty of good faith and fair dealing in their handling of Coca-Cola's claim for coverage under the Political Risks Insurance Policy.

45. By denying coverage to Coca-Cola for all covered Business Interruption loss Coca-Cola incurred from the cessation of the operations of its Coca-Cola Bottling Plants, the Insurers have expressly and wrongfully repudiated their coverage obligations and declined to honor the promises they made when they issued the Political Risks Insurance Policy.

46. The parties dispute the Insurers' coverage obligations under the Political Risks Insurance Policy, and an actual case or controversy exists regarding Coca-Cola's rights and the Insurers' obligations to pay losses incurred by Coca-Cola relating to the cessation of the operations of its Coca-Cola Bottling Plants during the Nepal-India Border Blockade.

47. Pursuant to 28 U.S.C. § 2201, Coca-Cola seeks a declaratory judgment from this Court establishing the following:

- (a) Coca-Cola's losses from the cessation of the operations of its Coca-Cola Bottling Plants during the Nepal-India Border Blockade are insured Business Interruption losses under the Political Risks Insurance Policy;
- (b) the Insurers' denial of Coca-Cola's request for coverage breached the implied duty of good faith and fair dealing that the Insurers' owed to Coca-Cola; and
- (c) the Insurers are obligated to pay Coca-Cola for the full amount of their respective shares of Coca-Cola's Business Interruption losses from the cessation of the operations of the Coca-Cola Bottling Plants during the Nepal-India Border Blockade.

PRAYER FOR RELIEF

WHEREFORE, Coca-Cola respectfully prays that the Court:

- (1) enter judgment on Count I in favor of Coca-Cola and against the Insurers;
- (2) enter judgment on Count I for compensatory damages in favor of Coca-Cola and against the Insurers in an amount sufficient to compensate Coca-Cola for all covered Business Interruption losses sustained as a result of the Insurers' breaches of the Political Risks Insurance Policy by refusing to pay Coca-Cola for its claim, including attorneys' fees in seeking coverage for the wrongful denial;
- (3) enter a declaratory judgment on Count II in favor of Coca-Cola and against the Insurers, declaring as follows:
 - (a) Coca-Cola's Business Interruption losses arising from the cessation of the operations of its Coca-Cola Bottling Plants during the Nepal-India Border Blockade are insured losses under the Political Risks Insurance Policy;
 - (b) the Insurers' denial of Coca-Cola's request for coverage breached the implied duty of good faith and fair dealing that the Insurers' owed to Coca-Cola; and

- (c) the Insurers are obligated to pay Coca-Cola for the full amount of their respective shares of Coca-Cola's Business Interruption losses arising from the cessation of the operations of its Coca-Cola Bottling Plants during the Nepal-India Border Blockade.
- (4) award to Coca-Cola and against the Insurers prejudgment interest, to be calculated according to law, to compensate Coca-Cola for the loss of use of funds caused by the Insurers' wrongful refusal to pay Coca-Cola for the losses it incurred from the cessation of the operations of its Coca-Cola Bottling Plants during the Nepal-India Border Blockade; and
- (5) award Coca-Cola such other, further, and additional relief as this Court deems just and appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Coca-Cola hereby demands that all claims in this action be tried to a jury.

Respectfully submitted this 5th day of April, 2017.

/s/ Anthony P. Tatum

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