South American Regulation and Insurance Dispute

After a power plant in South America defaulted on certain debt obligations, a dispute arose between two insurers regarding a political risk insurance policy. The plaintiff insurer alleged that a change in regulatory policy led directly to the plant’s default and amounted to a governmental expropriation that should be covered by the defendant’s policy. Defense counsel retained Cornerstone Research, Professor James Sweeney of Stanford University, and Professor Colin Blaydon of Dartmouth College.

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Professor Sweeney demonstrated that the regulatory change in question was consistent with the country’s pre-existing policies and with rules established in bid-based power markets in the United States and that the regulatory price cap mechanism adopted was reasonable because it permitted the plant to recover its variable costs. Working with Professor Blaydon, Cornerstone Research analyzed the plant’s operating and financial performance as well as the power market supplied by the plant. Professor Blaydon found that the plant’s default did not result from the regulatory change, but rather from its inefficient operation, its relatively high operating and fuel costs, and excess power supply in the market. The case settled.