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Stretching a Contract

By Ken Stier

Liberia and Firestone. Few country-and-company couplings have been as enduring as the one between the iconic American rubber and tire company and the West African nation germinated by onetime American slaves, even though the former is now owned by Japan's Bridgestone and the latter has suffered disastrously from civil war.

What began in 1926 is entering a renewed phase that is evidence of Liberia's return from chaos and the determination of the government--aided by high-powered nonprofit experts--to get more value for the nation's assets. The relationship started soon after scion Harvey Firestone Jr. joined the family business and was dispatched on a critical assignment: to find a cheap, reliable source of natural rubber to get around the duopolistic pricing of the British and Dutch. After visiting several countries, he settled on Liberia. Securing rights to 220 sq. mi. (almost 57,000 hectares), the company eventually planted 8 million rubber trees. Between 75,000 and 80,000 people--about 7,000 families--live on the plantation, which revolves around a small "capital," Harbel (a contraction of the names of Harvey and his wife Idabelle). Liberia still provides roughly 40% of Firestone's rubber.

For more than 20 years, from 1980, however, Liberia was also the location of a murderous internal conflict that claimed 200,000 lives and destroyed much of the nation's infrastructure. When the troubles subsided in 2003 with the installation of a transitional government protected by some 15,000 U.N. peacekeepers, Firestone was looking to resume operations, while ArcelorMittal, the Anglo-Indian steel giant, wanted to reopen an iron-ore mine. But the deals that emerged from negotiations in 2005 were criticized as far too favorable to the companies.

In 2006, Ellen Johnson Sirleaf was elected President, and she vowed to renegotiate the contracts. To make good on her promise, the Harvard-trained banker tapped into her overseas network and enlisted the

International Senior Lawyers Project (ISLP), which has been quietly offering pro bono help to developing--and deserving--nations since about 2002.

Previously, much of ISLP's work focused on promoting human rights and democratic governance. But more recently, the lawyers--mostly active or retired partners from major firms--have been throwing their weight behind efforts to craft better economic deals, training government officials to negotiate more favorable trade agreements and even sitting in at the negotiating table.

In Liberia, new deals with Firestone and ArcelorMittal allowed the country to assert a more robust sovereignty and ratchet up earnings through higher taxes. The new deal closed the loophole of intracompany transfer pricing, which has always provided a convenient means of lowballing export values.

In Firestone's case, land-rental rates were quadrupled to \$2 an acre (about \$5 a hectare) per year over the life of the contract, which was trimmed by 50 years to end in 2041. The company also agreed to build a \$10 million rubberwood factory that will employ 500 workers and could be the beginning of a new product line--one that other major rubber producers have had for years.

The agreement commits Firestone to a range of social benefits, such as providing new and upgraded housing and building a high school, to correct conditions that have generated a torrent of negative publicity in recent years. "They are not the worst corporate citizens," says Michael Jordan, a rubber-industry expert who advised the ISLP. "But the 2008 agreement is forcing them to be a good corporate citizen. It is not being left to goodwill anymore ... and that's a significant improvement for Liberia."

Firestone downplays the differences between the 2005 and 2008 contracts and maintains that the earlier one was legitimate and fair. "It doesn't make sense to get too good a deal. You get too good a deal, somebody is going to come back and beat you up about it, so we always wanted to get a deal that Firestone could defend to anyone," argues Gerald Padmore, a Denver-based lawyer originally from Liberia who negotiated for Firestone in both deals. Padmore concedes that it would have been better to wait until a new government was elected before concluding the 2005 contract but says getting "clarity and stability" about Firestone's tax position was urgent if the company was expected to commit \$100 million over 10 years.

The concern is legitimate, says Jordan, who notes that the government had another compelling reason to revisit the contract: surging rubber prices that rose from 50¢ per kg in 2000 to \$1.20 per kg in 2005 and to \$3.30 per kg last summer. Firestone objected to renegotiations but ultimately relented. "You always talk if the government wants to talk to you," says Padmore.

Johnson Sirleaf has won wide praise for her leadership, including her critical role in pushing for these better deals. Her reputation was called into question recently by the country's Truth and Reconciliation Commission, which recommended that she and others be barred from political office for their alleged roles in past civil wars. Johnson Sirleaf has acknowledged that she raised funds for Charles Taylor, a former President now facing war-crimes charges. But that support, she insists, was for aid when both were opposing the dictatorial rule of another earlier President, Samuel Doe. When Taylor's rule turned bloody, she opposed him.

It's sadly ironic, in that Liberia is getting critical international assistance in large part because of Johnson Sirleaf's reputation for incorruptibility. "President [Johnson] Sirleaf has worked tirelessly and with integrity to begin the difficult reconstruction of Liberia, which is fortunate to have her strong leadership," says Joseph C. Bell, a partner with the Washington law firm Hogan & Hartson who played a key role in ISLP's assistance to Liberia. ISLP has been involved in a dozen projects there--including drafting palm-oil concessions and upgrading the shipping industry's legal regime--which is making all contracts public, though not all are easily accessible. Imperfect as that development is, it's a significantly improved standard for both developing nations and the multinationals that do business with them.

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