



1-1-2013

“Have a Coke and a Smile”: Is the Aqueduct Alliance Coca- Cola’s Solution to Escape Future Liability for Groundwater Depletion?

Alyssa Carroll

Pacific McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/globe>



Part of the [Water Law Commons](#)

Recommended Citation

Alyssa Carroll, *“Have a Coke and a Smile”: Is the Aqueduct Alliance Coca- Cola’s Solution to Escape Future Liability for Groundwater Depletion?*, 26 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 475 (2013).

Available at: <https://scholarlycommons.pacific.edu/globe/vol26/iss2/3>

This Comments is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Global Business & Development Law Journal by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Comments

“Have a Coke and a Smile”: Is the Aqueduct Alliance Coca-Cola’s Solution to Escape Future Liability for Groundwater Depletion?

*Alyssa Carroll**

TABLE OF CONTENTS

I. INTRODUCTION 476

II. BACKGROUND..... 478

 A. *Coca-Cola’s Presence in India* 478

 B. *The Aqueduct Alliance*..... 480

III. THE LEGAL ANGLE AND LEGISLATIVE HANG-UPS 481

 A. *The Structure of the Kerala Government* 481

 B. *Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal*..... 482

 C. *Why Coca-Cola May Be Looking to Litigate Within the Natural Green Tribunal*..... 484

 D. *Who the Aqueduct Alliance Is Going to Benefit in Litigation* 488

 E. *Coca-Cola Uses Scientific Uncertainty as a Tool to Escape Liability*..... 489

IV. HOW THE AQUEDUCT ALLIANCE RESONATES WITH STAKEHOLDERS 492

 A. *The Corporate Environmental Movement, CSR Policies, and International Environmental Standards*..... 492

 B. *Stakeholder Involvement in Water Initiatives*..... 494

V. THE IMPACT OF TRANSPARENCY ON OTHER CORPORATIONS: DOES COCA-COLA MEASURE UP?..... 496

 A. *Environmental Reporting Systems and Mission Statements*..... 496

 B. *Effective Corporate Crisis Management*..... 499

VI. CONCLUSION..... 501

* J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2013; B.A., Santa Clara University, 2008. Thanks to my faculty advisor, Professor Rachael Salcido, for her encouragement and guidance throughout the writing process; to my mom and Shannon for providing me with fresh interpretations and feedback; and to my family and friends for pretending to enjoy discussions about water. I dedicate this Comment to my parents, thank you for your eternal support.

2013 / "Have a Coke and a Smile"

I. INTRODUCTION

In the neighborhood of Vasant Kunj, a slum in the city of New Delhi, residents gather before dawn with buckets in hand waiting along the roadside.¹ Each morning, the crowd greets a large tanker filled with 2,500 gallons of water, the community's daily freshwater supply.² The men and women pick up hoses that lie on the ground from the previous morning and dip one end into the back of the tanker.³ Taking the other end of the hose, they use their mouths as a suction to start the flow of water and fill up their buckets.⁴ A family will have forty gallons of water for the day if they are able to fill six or seven five-gallon containers to carry home.⁵ In India, forty-five percent of the population, 540 million people, do not have access to clean drinking water on a daily basis.⁶

One of New Delhi's sources for water comes from a dam just north of its boarder in the Yamuna River.⁷ At the point of diversion, the water in the Yamuna is flowing and bountiful; however, after the dam, the river becomes a trickle until it is replenished with water from a tributary.⁸ East of Delhi, the Yamuna has become a dumping ground for waste and contaminants, housing twenty-two drains carrying discharge and sewage into the water.⁹ Additionally, the people of New Delhi use the water for household chores like laundry, and consider it a sacred place where they can swim to wash away their sins.¹⁰ The water in this region is filled with so many contaminants that one eyedropper of water is enough to render six bathtubs of water unhealthy to sit in by U.S. standards.¹¹

Water-stress and water pollution have forced India to rely heavily on groundwater¹² as a resource for agriculture.¹³ Studies indicate that groundwater is used for seventy percent of irrigation and eighty percent of domestic water demands.¹⁴ India houses over twenty-five million wells and borewells, the

1. For the conditions of the neighborhood of Vasant Kunj, New Delhi, explained in detail, see CHARLES FISHMAN, *THE BIG THIRST: THE SECRET LIFE AND TURBULENT FUTURE OF WATER* 218 (2011).

2. *Id.* at 219.

3. *Id.*

4. *Id.*

5. *Id.* at 220.

6. *Id.* at 223.

7. *Id.* at 256-57.

8. *Id.* at 257.

9. *Id.* at 258.

10. *Id.* at 231.

11. *Id.* at 258.

12. Groundwater is defined as all water beneath the surface of the Earth, and particularly water that can be extracted by using a well or water that emerges from a spring. Joseph Dellapenna, *The Law of Water Allocation in the Southeastern States at the Opening of the Twenty-First Century*, 25 U. ARK. LITTLE ROCK L. REV. 9, 39 (2002).

13. See JOHN BRISCOE & R.P.S. MALIK, *INDIA'S WATER ECONOMY: BRACING FOR A TURBULENT FUTURE* (2006).

14. *Id.*

Global Business & Development Law Journal / Vol. 26

majority of which operate without meters.¹⁵ It is estimated that by 2025, sixty percent of India's aquifers will be in critical danger of drying up.¹⁶

The abundance of groundwater use and the lack of regulation in India seem to act as a welcome sign for large corporations who are highly dependent on water for operation and want to avoid the constraints often placed on surface water use.¹⁷ Coca-Cola is a prime example. In 2007, Coca-Cola had sixty bottling plants operating on India's soil.¹⁸ A two-liter bottle of Coke, the corporation's most popular beverage,¹⁹ requires over one gallon of water during the manufacturing process at the bottling plant.²⁰ That figure can skyrocket to 132 gallons of water per two-liter bottle of soda when the calculations include growing the crops necessary to produce the beverage.²¹ Coca-Cola, a company who used slogans over the years such as "Life tastes Good," "Where there's Coke there's hospitality," and "Have a Coke and a Smile,"²² was accused in a matter of months of depleting so much groundwater that it sent an entire agricultural region tumbling into a drought, and triggered further economic hardship.²³

Coca-Cola responded to accusations and fought to maintain its facilities in India.²⁴ Recently, the company took a new approach to handling the international water crisis by joining the Aqueduct Alliance.²⁵ The Aqueduct Alliance is a consortium of corporations, non-governmental organizations, and academic institutions, aimed at providing the public with data concerning water availability

15. S. Vishwanath, *Needed: A Good Water Meter*, THE HINDU (Feb. 3, 2012), <http://www.thehindu.com/todays-paper/tp-features/tp-propertyplus/article2861771.ece>.

16. Ajith Athrady, *India's Groundwater Table to Dry Up in 15 Years*, DECCAN HERALD (Mar. 7, 2012), <http://www.deccanherald.com/content/56673/indias-ground-water-table-dry.html>.

17. See Craig Simons, *India Coke Plant Still Closed as Water Woes Argued*, ATLANTA J.-CONST., Dec. 16, 2007.

18. See *id.*

19. Peter Hartlaub, *Sweet! America's Top 10 Brands of Soda*, NBC NEWS, http://www.nbcnews.com/id/4225151/ns/business-us_business/t/sweet-americas-top-brands-soda/#.UWJCN1fiidw (last visited Apr. 7, 2013).

20. Alexandra Alter, *Yet Another 'Footprint' to Worry About: Water*, WALL ST. J. (Feb. 17, 2009), <http://online.wsj.com/articles/SB123483638138996305.html>.

21. *Id.*

22. *Coke Slogans by Year*, COLA CORNER, <http://www.colacorner.com/coke-slogans.html>.

23. Sujith Koonan, *Legal Implications of Plachimada a Case Study 1* (Int'l Env'tl. Law Research Ctr., Working Paper No. 2007-05, 2007), available at <http://www.ielrc.org/content/w0705.pdf>.

24. See Joe A. Scaria, *Bill in Kerala House to Penalise Coke for Plachimada Plant*, ECON. TIMES (Feb. 23, 2011, 4:17 AM), http://articles.economicstimes.indiatimes.com/2011-02-23/news/28626833_1_plachimada-plant-in-palakkad-district-hindustan-coca-cola-beverages; see also Simons, supra note 17.

25. The Aqueduct Alliance has recently changed its website to read "Aqueduct"; however, this change has not been reflected in the majority of the information available about the Aqueduct Alliance, so for purposes of this Comment it will be referred to as "Aqueduct Alliance." Press Release, World Res. Inst., WRI and Partners Launch Aqueduct Alliance to Measure, Map, and Report on Global Water Risk (Aug. 16, 2011), available at <http://www.wri.org/press/2011/08/release-wri-and-partners-launch-aqueduct-alliance-measure-map-and-report-global-water->

2013 / “Have a Coke and a Smile”

through an online database.²⁶ This Comment argues that Coca-Cola’s participation in the Aqueduct Alliance is a marketing move that was undertaken to bolster the corporation’s reputation, while simultaneously skirting individual liability and arming the corporation against future lawsuits concerning groundwater.

In Part II, this Comment begins with a brief background outlining Coca-Cola’s presence in India, and an in-depth description of the Aqueduct Alliance. Part III discusses the legal tools that Coca-Cola is trying to implement in an effort to skirt being held individually liable to its victims in the State of Kerala. This portion also describes how the Kerala government appears to be acquiescing to Coca-Cola’s request to halt a bill that declares Coca-Cola directly liable for the groundwater depletion.

Part IV considers the marketing angle of the Aqueduct Alliance. It reviews how the Alliance will resonate with stakeholders by considering corporate environmental business practices, corporate social responsibilities, international environmental standards, and the shareholders’ role in the water movement. Part V analyzes the impact that transparency has had on other corporations and critiques Coca-Cola’s use of an environmental reporting system to communicate with the public and shareholders. This Comment concludes that Coca-Cola’s participation in the Aqueduct Alliance is a marketing move that was undertaken to bolster the corporation’s reputation with the public and shareholders, avoid individual liability, and arm the corporation against future lawsuits concerning groundwater depletion. This Comment suggests that a more palpable solution would be to increase environmental transparency and incorporate shareholder values into the corporation’s environmental decision-making process.

II. BACKGROUND

A. *Coca-Cola’s Presence in India*

In 2007, Coca-Cola operated sixty bottling plants in India alone.²⁷ Coca-Cola’s water use has been scrutinized at several of these plants; however, one of the most notable disputes took place in the village of Plachimada,²⁸ in the State of Kerala, located on the southwest tip of India’s mainland.²⁹

Plachimada is a small agricultural community comprised primarily of agricultural laborers, many of whom do not own property and are illiterate.³⁰

26. *Id.*

27. *See* Simons, *supra* note 17.

28. *See id.*

29. *See Kerala at a Glance*, THE OFFICIAL WEB PORTAL OF GOV’T OF KERALA, http://www.kerala.gov.in/index.php?option=com_content&view=article&id=2818&Itemid=2263 (last visited Feb. 19, 2012).

30. *See* Koonan, *supra* note 23.

Global Business & Development Law Journal / Vol. 26

When the plant was introduced in 1999, the \$16 million facility brought 350 fulltime jobs for the 1,200 residents of Plachimada.³¹ Within six months of the plant opening, the surrounding residents began to vocalize concerns about toxins in the wells and fertilizers, and in some instances, they even complained of wells drying up entirely.³² The depletion of groundwater was a paramount concern in Plachimada since approximately eighty percent of the residents depended on local agriculture to sustain their livelihood.³³

When the region's agriculture began to decline, there was a swift response.³⁴ Within two years of the Coca-Cola plant opening its doors, residents of Plachimada began to lobby against the corporate giant's operation in their community.³⁵ The Kerala Ground Water Department debated the accuracy of these allegations, finding that the alleged contaminants were not a threat,³⁶ and that the lowered groundwater tables were due to a drought.³⁷

In March 2004, the bottling plant was initially shutdown until the beginning of monsoon season in June; however, after its closure, the company was unable to obtain the necessary permits to reopen.³⁸ Concerns remained about Coca-Cola's daily water consumption.³⁹ Coca-Cola, along with other advocates, lobbied for the return of the bottling plant, citing what they labeled as conflicting research.⁴⁰ The state government conducted a study which found that after the bottling plant closed, the aquifer that Coca-Cola was using had dropped an additional five feet due to a regional drought.⁴¹ Unfortunately, no scientific testing was conducted prior to the bottling plant's development, making it impossible to refer to scientific records to determine the source of the depleted groundwater tables.⁴²

Overall, India is a "severely water-stressed economy[.]" which highlights the issues in this dispute as being of the utmost importance.⁴³ India constitutes the world's largest groundwater user in terms of the volume of water pumped and the number of individuals dependent on the source.⁴⁴ Groundwater is a vital resource

31. See Simons, *supra* note 17.

32. See Koonan, *supra* note 23.

33. See *id.*

34. See *id.*

35. See *id.*

36. See *id.*

37. See *id.*

38. *Villagers Score Victory Against Coca-Cola for Water in India*, WE!, 59 (Oct. 1, 2005), <http://www.highbeam.com/doc/1G1-139966263.html>.

39. See Simons, *supra* note 17.

40. See *id.*

41. See *id.*

42. See *id.*

43. See Shilpa Kannan, *The Technology of Saving India's Precious Water Supply*, BBC NEWS (Sept. 12, 2010), <http://www.bbc.co.uk/news/business-14847808>.

44. See *id.*

2013 / “Have a Coke and a Smile”

in India, which provides eighty percent of the water supply to rural areas.⁴⁵ Currently, fifty percent of the villages do not have access to protected drinking water.⁴⁶ It is thought that the water crisis in India will only worsen; in part, because city planners project that the demand for water will double by 2050.⁴⁷

B. *The Aqueduct Alliance*

In response to the growing international water crisis, the think-tank, World Resources Institute (“WRI”), designed the Aqueduct Alliance as a means of creating a coalition of diverse experts to identify and strategize responses to a variety of global water risks.⁴⁸ WRI, Goldman Sachs, and General Electric officially launched the Aqueduct Alliance in August 2011.⁴⁹ In addition to its founders, the consortium is comprised of leading water experts from public and private sectors, non-governmental organizations (“NGOs”), academia, and also large corporate names like Bloomberg, The Dow Chemical Company, Talisman Energy, United Technologies, and Coca-Cola.⁵⁰ In September 2011, the University of Virginia became the first school invited to join the consortium.⁵¹

The Aqueduct Alliance operates through a publicly accessible database that doubles as a resource for businesses and governments to address issues not only pertaining to physical water scarcity, but also to determine regulatory and socioeconomic water risks.⁵² Coca-Cola provided the alliance with an extensive database of the corporation’s private water risk information.⁵³ Coca-Cola’s contributions included thirteen maps that analyze “water stress, water reuse, and drought at a sub-basin level of geographic detail.”⁵⁴ The Aqueduct Alliance’s online water risk mapping platform is based on a prototype that was designed for the Yellow River Basin in Northern China.⁵⁵ The information has been made accessible to the public in an interactive platform, creating a local perspective unlike any water database in existence in the public domain.⁵⁶

45. *See id.*

46. *See id.*

47. *See id.*

48. *See* Press Release, World Res. Inst., *supra* note 25.

49. *See id.*

50. *See id.*

51. Univ. of Va., *University of Virginia Joins Consortium Addressing Global Water Issues*, UVA TODAY (Sept. 29, 2011), <http://www.virginia.edu/uvatoday/newsRelease.php?id=16222>.

52. *See* Press Release, World Res. Inst., *supra* note 25.

53. *See* Univ. of Va., *supra* note 51.

54. Tien Shiao, *A Closer Look at Aqueduct’s New Global Water Stress Maps*, WRI INSIGHTS (Oct. 3, 2011), <http://insights.wri.org/aqueduct/2011/10/closer-look-aqueducts-new-global-water-stress-maps>.

55. *Coca-Cola Joins Alliance to Measure and Map Global Water Risks*, COCA-COLA COMPANY (Aug. 26, 2011), http://216.64.210.4/dynamic/press_center/2011/08/coca-cola-joins-aqueduct-alliance.html.

56. *See* Shiao, *supra* note 54.

Global Business & Development Law Journal / Vol. 26

The maps currently available include information concerning: (1) baseline water stress, which shows the proportion of the annual renewable supply of water in a given area that is being withdrawn for human use; (2) the estimated long-term change in water stress caused by future climate change, population, and economic development; (3) baseline water reuse from 2000, which displays the quantity of “water in a waterway that was withdrawn and discharged as wastewater upstream”⁵⁷—the map highlights locations throughout the world where adequate water treatment is especially critical to maintaining high-quality water; and (4) socio-economic drought projections that chart estimates concerning the extent and severity of short (one year) and long (three year) term socioeconomic drought conditions.⁵⁸ In this case, socioeconomic droughts are defined as times when there are not sufficient freshwater supplies to support normal water use.⁵⁹

The information obtained and provided by the Aqueduct Alliance is geared toward water conservation and preservation, but the Alliance’s defining feature is the transparency that it provides the public on a global level.⁶⁰

III. THE LEGAL ANGLE AND LEGISLATIVE HANG-UPS

A. *The Structure of the Kerala Government*

While Coca-Cola is ostensibly working to create transparency in groundwater research through the Aqueduct Alliance,⁶¹ the corporation appears to be veiling their current political and legal struggles surrounding previous groundwater use in Kerala.⁶² A search on Coca-Cola’s website shows no indication that any dispute exists.⁶³ Their last press release concerning Kerala is from 2006, addressing a court order that had been lifted, allowing their bottling plant to continue to operate and sell in the state.⁶⁴ Although Coca-Cola does not include additional information about Kerala on their website, a legal and political battle with the state continues today.⁶⁵

57. *Id.*

58. *See id.*

59. *See id.*

60. *See* Press Release, World Res. Inst., *supra* note 25.

61. *See id.*

62. *E.g.*, THE COCA-COLA COMPANY, <http://www.thecoca-colacompany.com/index.html> (last visited Oct. 24, 2011); *see also* Shaju Philip, *Kerala Passes Bill to Seek Compensation from Coke*, INDIAN EXPRESS (Feb. 25, 2011), <http://www.indianexpress.com/news/kerala-passes-bill-to-see-compensation-from/754468/>.

63. *See generally* THE COCA-COLA COMPANY, *supra* note 62.

64. *See Ask Coca-Cola*, THE COCA-COLA COMPANY, <http://www.coca-colacompany.com/contact-us/> (last visited Oct. 24, 2011).

65. *See* Philip, *supra* note 62.

2013 / “Have a Coke and a Smile”

To understand the influence that Coca-Cola had over the legislature in Kerala, it is important to have a basic understanding of the structure of the state of Kerala’s government.⁶⁶ In accordance with the Indian Constitution, Kerala’s government is divided into three sections: Legislature, Executive, and Judiciary.⁶⁷ The Legislature operates under a unicameral system, meaning the Legislative Assembly is the only house in this branch of government.⁶⁸ The Executive is comprised of a Governor (appointed by the President), a Chief Minister, and the Council of Ministers.⁶⁹ The Chief Minister is the operational head of the State, and the Council of Ministers report to the Legislative Assembly.⁷⁰ The Judiciary operates as an impartial and independent judicial body.⁷¹

B. *Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Act*

On February 24, 2011, the Kerala Legislative Assembly unanimously passed the Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Act, 2011.⁷² To become effective, several ministries would have to vet the bill, and then the president would have to sign it.⁷³ This bill stated that those who were harmed by Coca-Cola’s operations and the corporation’s impact on the environment could seek compensation.⁷⁴ The bill indicated that grievances would be brought before a three-person tribunal comprised of a chairperson, an administrative member, and an expert member.⁷⁵

The Legislative Assembly passed the bill and sent it to the Ministry of Home Affairs who held it for almost four months before returning it to the Legislative Assembly, instead of sending it to the president for her assent.⁷⁶ The Ministry of Home Affairs received the bill, and then distributed it to a number of other ministries for comments, conflicts, or objections to be returned.⁷⁷

By the time the six-week deadline passed in late May, only three of the seven ministries had responded, stating that they had no objection to the language of the

66. See Ankur Paliwal & Savvy Soumya Misra, *Home Ministry Delayed Plachimada Bill*, DOWN TO EARTH (Oct. 22, 2011), <http://www.downtoearth.org.in/content/home-ministry-delayed-plachimada-bill>.

67. See *State Profile*, THE OFFICIAL WEB PORTAL OF GOV’T OF KERALA, http://www.kerala.gov.in/index.php?option=com_content&view=article&id=2642&Itemid=2754 (last visited Oct. 24, 2011).

68. *See id.*

69. *See id.*

70. *See id.*

71. *See id.*

72. *See Philip, supra* note 62.

73. *See Paliwal & Misra, supra* note 66.

74. *See Philip, supra* note 62.

75. The Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, INDIA CODE (2011), *available at* <http://www.niyamasabha.org/bills/12kla/plachimada%20victims.pdf>.

76. *See Paliwal & Misra, supra* note 66.

77. *See id.*

Global Business & Development Law Journal / Vol. 26

bill.⁷⁸ According to Cabinet guidelines, at this juncture the Ministry of Home Affairs was required to continue processing the bill absent responses from the remaining ministries.⁷⁹ It is stipulated that should a conflict arise in the future, the silent ministries would be held responsible.⁸⁰ The Ministry of Home Affairs elected to ignore these Cabinet requirements and waited for more of the ministries to respond.⁸¹ Finally, in mid-July the Cabinet returned the bill to the Kerala Legislature.⁸² Fourteen months later, the president had still not signed the bill.⁸³

The unorthodox process implemented for the bill comes after Coca-Cola sent a letter of opposition to the Ministry of Home Affairs questioning the bill's validity.⁸⁴ This bill's delay demonstrates the uncharted territory that is being dealt with in the groundwater debate, and the ability for corporate pressures to shape how legislation develops.⁸⁵ After a series of delays and exceptions, it appears that Kerala's legislative process acquiesced to Coca-Cola's request to halt the bill.⁸⁶ Today the bill remains unopposed by the ministries, and yet back in the possession of the Kerala Legislature.⁸⁷ It has not been funneled through the proper channels to be signed into effect by the president.⁸⁸ The bill remains stagnant and the government has not released any additional statements concerning the matter.⁸⁹ This divergence from the general practices demonstrates the influence that large corporations can have over regimes and in some cases judicial bodies.⁹⁰

In addition to releasing public relations statements addressing the groundwater depletion accusations, Coca-Cola's attorney, K. K. Venugopal, sent a legal opinion letter to the Ministry of Home Affairs questioning the constitutional validity of the disputed legislation.⁹¹ The contents of this letter have not been made public.⁹² The Ministry of Home Affairs forwarded this letter to the

78. *See id.*

79. *See id.*

80. *See id.*

81. *See id.*

82. *See id.*

83. Special Correspondent, *Call for Presidential Assent to Plachimada Bill*, THE HINDU (June 5, 2012), <http://www.thehindu.com/news/states/kerala/article3493595.ece>.

84. T. Ramavarman, *Panel Member Contests Cola's Claim*, TIMES OF INDIA (Sept. 24, 2012), http://articles.timesofindia.indiatimes.com/2011-09-24/kochi/30198102_1_legal-opinion-water-samples-plachimada-coca-cola-victims-relief.

85. *See* Koonan, *supra* note 23.

86. *See* Paliwal & Misra, *supra* note 66.

87. *See id.*

88. *See id.*

89. *See id.*

90. *See id.*

91. Ramavarman, *supra* note 84.

92. *See* Paliwal & Misra, *supra* at 66.

2013 / “Have a Coke and a Smile”

Kerala government for consideration along with the bill.⁹³ While the contents of Coca-Cola’s communication have not been released, some reports speculate that Coca-Cola contends that the Legislative Assembly does not hold the power to govern this area of the law, but rather retribution falls within the jurisdiction of the preexisting Natural Green Tribunal.⁹⁴ The National Green Tribunal, formed in October 2011, is one of three tribunals worldwide that is dedicated solely to green issues.⁹⁵

C. *Why Coca-Cola May Be Looking to Litigate Within the Natural Green Tribunal*

India has been slow to develop a comprehensive method for effectively and efficiently handling environmental disputes.⁹⁶ In 2009, the Indian Parliament approved the development of the Natural Green Tribunal in an effort to replace the existing National Environment Appellate Authority.⁹⁷ The National Environment Appellate Authority was established to rule on appeals brought by anyone who was aggrieved when the government approved dams, industrial, or infrastructure projects.⁹⁸ The National Environmental Appellate Authority was criticized for its strict requirements regarding standing.⁹⁹ During its eleven years of operation, it dismissed every citizen appeal except for one.¹⁰⁰ The development of the Natural Green Tribunal was intended to increase accessibility to remedies for environmental disputes, which were not previously being afforded to citizens.¹⁰¹

As India began to develop its new tribunal, it had plenty of environmental tribunals and courts (“ETCs”) already in existence to look to for guidance.¹⁰² The prevalence of ETCs grew from only a few courts in the 1970s to over 360 ETCs in forty-two different countries in 2010.¹⁰³ However, Australia and New Zealand are the only other countries that have specially developed green tribunals.¹⁰⁴ As

93. *Id.*

94. *Id.*

95. IANS, *National Green Tribunal Starts Functioning*, ECON. TIMES (July 4, 2011, 1:04 PM) http://articles.economictimes.indiatimes.com/2011-07-04/news/29736147_1_national-green-tribunal-ngt-environment-ministry.

96. See GEORGE (ROCK) PRING & CATHERINE (KITTY) PRING, *GREENING JUSTICE, CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS* 11 (2009).

97. *Id.* at 38.

98. *Id.*

99. *Id.* at 27.

100. *Id.* at 38.

101. See *id.*

102. See George Pring & Catherine Pring, *Increase in Environmental Courts and Tribunals Prompts New Global Institute*, 3 J. CT. INNOVATION 11, 12 (2010).

103. *Id.*

104. See *id.* at 19-21.

Global Business & Development Law Journal / Vol. 26

the Natural Green Tribunal continues to develop, it will be expanding to five different locations to increase accessibility to citizens.¹⁰⁵ Within the next several months, the Tribunal will have locations in New Delhi, Pune, Bhopal, Kolkata, and Chennai.¹⁰⁶

The Natural Green Tribunal's jurisdiction is more expansive than its predecessor.¹⁰⁷ The Tribunal can review cases that pertain to "substantial questions relating to the environment," encompassing issues in air pollution, water, and bio-diversity.¹⁰⁸ In one of its most important cases since the Tribunal started in October 2010, it decided that, barring frivolous claims, the Tribunal has jurisdiction over any individual's grievance that pertains to the protection and improvement of the natural environment.¹⁰⁹ The Natural Green Tribunal also differs from the National Environmental Appellate Authority in that it has original jurisdiction over a variety of cases, and it has the ability to award compensation and direct restitution for damaged ecology and property.¹¹⁰

The effectiveness of green tribunals is in dispute.¹¹¹ Proponents of using environmental tribunals highlight the fact that they provide an opportunity to appoint decision-makers who are experts in both national and international environmental standards and laws.¹¹² Additionally, they allow time sensitive cases to be prioritized in the litigation queue, rather than being heard strictly in the order that they are filed, which is frequently the case in the traditional court system.¹¹³ These modifications in structure and expertise can have immense repercussions on the outcomes of cases.¹¹⁴ Swift-acting courts have the ability to prevent unnecessary environmental degradation by defendants¹¹⁵ that may cause irreversible harm to the natural environment in dispute.¹¹⁶ The Tribunal's leeway may benefit Coca-Cola's litigation if they are able to try their cases within the Natural Green Tribunal because as each individual plaintiff brings a claim regarding a past environmental harm, it opens the door to the possibility that

105. Ajanta Chakraborty, *Tribunal to Fast-Track Green Cases*, TIMES OF INDIA (Feb. 9, 2012, 1:19 AM), http://articles.timesofindia.indiatimes.com/2012-02-09/Kolkata/31041695_1_national-green-tribunal-act-green-bench-environment.

106. *Id.*

107. Shibani Ghosh, *Environmental Litigation in India*, BUS. LINE (Jan. 31, 2012), <http://www.thehindubusinessline.com/opinion/article2848051.ece>.

108. *Id.*

109. *Id.*

110. *Id.*

111. PRING & PRING, *supra* note 96, at 14.

112. *Id.*

113. *Id.* at 15.

114. *See id.*

115. *Id.*

116. Ghosh, *supra* note 107.

2013 / “Have a Coke and a Smile”

plaintiffs’ claims will be low on the list of priorities when compared to claimants whose property is in the midst of environmental degradation and harm.¹¹⁷

The weaknesses that plague environmental tribunals provide Coca-Cola with incentives to try groundwater disputes in the Natural Green Tribunal. Opponents of green tribunals argue that sending environmental cases to separate institutions for review marginalizes environmental issues.¹¹⁸ They reason that tribunals are routinely comprised of less-qualified decision-makers than those in the general court system.¹¹⁹ Additionally, they argue that the inadequate budgets and a lack of judicial prestige garner less attention from the public, which further minimizes the issues.¹²⁰ Since the Natural Green Tribunal is new, and is continuing to expand and establish itself in India,¹²¹ it is likely that Coca-Cola expects that moving their case to this jurisdiction will keep the case out of the public eye and reduce bad publicity.¹²²

Because Coca-Cola’s letter to the Kerala government, objecting to the bill, was not made public, it can only be speculated that Coca-Cola is attacking the constitutional validity of Kerala’s new legislation based on a lack of constitutional power.¹²³ In the structure of the Kerala government there is overlap between the tasks designated to the Executive and Legislative branches; however, the Judicial branch operates as a separate entity.¹²⁴ Removing the power to establish victim relief funds from the Legislature could create a mandate that the Natural Green Tribunal must hear the Coca-Cola cases, which places these claims in a judicial system that will evaluate each individual charge, determine guilt, and then assign damages.¹²⁵ This could prevent several victims from recovering since the Natural Green Tribunal mandates that all claims be brought before the Tribunal within ninety days of a grievance.¹²⁶

Moreover, in the present dispute, if the claims were heard in the Natural Green Tribunal the burden of proving harm would be placed on individual plaintiffs from a largely illiterate community.¹²⁷ It is unlikely that these

117. See PRING & PRING, *supra* note 96, at 15.

118. *Id.* at 17.

119. *Id.*

120. *Id.*

121. Chakraborty, *supra* note 105.

122. See generally PRING & PRING, *supra* note 96, at 17.

123. See generally Paliwal & Misra, *supra* note 66.

124. *State Profile*, THE OFFICIAL WEB PORTAL OF GOV’T OF KERALA, http://www.kerala.gov.in/index.php?option=com_content&view=article&id=2642&Itemid=2754 (last visited Feb. 19, 2012).

125. The National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 (India).

126. *Id.*

127. Koonan, *supra* note 23; Deepto Roy & Shivani Chugh, *The National Green Tribunal and Environmental Clearances for Infrastructure Projects- SEERIL Current Practice Newsletter*, 8 CURRENT PRAC. NEWSL. INT’L B. ASS’N SEC. ON ENERGY, ENV’T, NAT. RESOURCES AND INFRASTRUCTURE L. 1 (2012).

Global Business & Development Law Journal / Vol. 26

individuals will be able to adequately represent themselves, which would minimize the amount that Coca-Cola will have to pay in restitution.¹²⁸

Litigating in the Natural Green Tribunal differs from the Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Act, because the bill requires that funds be set aside for victims.¹²⁹ By requiring Coca-Cola to allocate money for individuals who have been impacted by environmental hardships, the bill undoubtedly finds that Coca-Cola is the cause of environmental degradation—a charge that the corporation vehemently denies.¹³⁰

Victim compensation funds have been an effective tool in the past for providing fair and dependable compensation to large groups who have suffered from a common harm.¹³¹ For example, in January 2011, President Obama signed the James Zadroga 9/11 Health and Compensation Act of 2010.¹³² This act compensated those who suffered physical harm and the families of those killed in the September 11th attacks.¹³³ Individuals have access to compensation from the \$2.775 billion fund if they are able to supply the necessary materials to prove that their ailments stem from the events on September 11, 2001.¹³⁴ These types of funds benefit the victims because they are able to receive compensation from the responsible entities in a more efficient and reliable manner than they would going through the entire litigation process.¹³⁵ Similarly, victim compensation funds can cost the liable party far less in this form of a settlement agreement because there is often a cap on the amount of money that they must contribute to the fund.¹³⁶

Since Coca-Cola seemingly intends to skirt liability, including participation in a victim compensation fund, the Aqueduct Alliance will serve as a crucial tool for Coca-Cola. If Coca-Cola is able to prove that the National Green Tribunal should be handling the individual groundwater disputes, it is placing a higher burden on the individual to prove Coca-Cola's guilt, in addition to the individual damages.¹³⁷ The corporation will be able to use internal scientific research that their opponents were unable to conduct during the critical time in controversy.¹³⁸ Therefore, it is likely that both parties will have to rely on the information that Coca-Cola has made public. Additionally, their new feeble attempts at

128. See Koonan, *supra* note 23.

129. See The Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, INDIA CODE (2011).

130. See *id.*

131. See generally *General Program Information*, SEPTEMBER 11TH VICTIMS COMPENSATION FUND, <http://www.vcf.gov/genProgramInfo.html> (last visited Feb. 19, 2012).

132. See generally *id.*

133. James Zadroga 9/11 Health and Compensation Act of 2010, 28 C.F.R. § 104 (2011).

134. *Id.*

135. *Id.*

136. See generally *id.*

137. See The National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 (India).

138. See Chakraborty, *supra* note 105.

2013 / “Have a Coke and a Smile”

transparency will help to build the corporation’s environmental reputation before litigation ensues.

D. Who the Aqueduct Alliance Is Going to Benefit in Litigation

The Aqueduct Alliance will also be important for future litigation. By making the scientific data publically available it shares the burden of research, and puts governments, NGOs, and shareholders on notice concerning the impact of business decisions abroad.¹³⁹ This means that objections to projects are likely to be made at the onset of the project when companies have invested less money, and victims will have incurred fewer damages.¹⁴⁰ This contrasts with the situation in Kerala where the agricultural hardships were not realized until there was extensive permanent damage to the environment.¹⁴¹ On a grassroots level, the Aqueduct Alliance will also provide farmers with the information necessary to understand their own water supplies and the implications of corporate entities’ potential impact on the environment before they move into a region.¹⁴² Although, this assumes that the farmers are literate and have access to the necessary technology to view the data.

While the Aqueduct Alliance is marketed as a tool to facilitate public knowledge about international water levels and availability, it is likely a more important asset to water-reliant corporations like Coca-Cola.¹⁴³ It will allow corporations to design business models and build facilities in areas that are proven to have adequate water supplies, without having the burden of independently financing the totality of the research.¹⁴⁴ The scientific research will allow corporations to monitor their water use and the natural water fluctuation.¹⁴⁵ Thus, they can conduct their business in a manner that allows them to attribute groundwater depletion to a lack of rainfall or natural water cycles based on scientific research.¹⁴⁶ Furthermore, they will avoid future litigation in instances where they have taken the necessary environmental precautions and are not to blame for a drought.¹⁴⁷ This is specifically important for Coca-Cola’s business plan, because as the U.S. economy has taken a downturn, the corporation has found refuge in its booming business overseas, specifically in India and China.¹⁴⁸

139. Press Release, World Res. Inst., *supra* note 25.

140. *Id.*

141. See Koonan, *supra* note 23.

142. See Press Release, World Res. Inst., *supra* note 25.

143. See generally *id.*

144. *Id.*

145. *Id.*

146. *Id.*; Koonan, *supra* note 23.

147. See generally Press Release, World Res. Inst., *supra* note 25.

148. Sarah Skidmore, *Coca-Cola 3rd-Quarter Profit Up on Volume*, ABC NEWS (Oct. 18, 2011) <http://abcnews.go.com/Business/wireStory/coca-cola-3rd-quarter-net-income-rises-14759785>.

Global Business & Development Law Journal / Vol. 26

E. Coca-Cola Uses Scientific Uncertainty as a Tool to Escape Liability

In addition to its covert letter to the Ministry,¹⁴⁹ Coca-Cola officially responded to this projected legislation by releasing a statement claiming that the bill lacks sufficient facts and scientific findings.¹⁵⁰ The company told the *Economic Times*:

Our stated position has been that we disagree with the recommendations of the High Powered Committee and subsequent follow up. The said committee, in our view, was set up with the pre-determined and unproven conclusion. This is in spite of the fact that numerous scientific studies by independent experts and investigations by the Government of Kerala itself have shown that Hindustan Coca-Cola Beverages operations is not the cause of local watershed issues in Plachimada. It is our opinion that any government committee or panel reviewing claims should have first determined through scientific study and through established process of law whether any damage was caused to the local residents. And second, if such damage was caused, who or what was responsible. We remain willing to continue to engage with all stake holders on this.¹⁵¹

Coca-Cola's statement is significant in two ways. First, it requests scientific research, which is likely impossible to obtain, in order to hold anyone responsible for the water table depletion.¹⁵² The statement projects a positive public image, implying that once the proper research has been conducted, Coca-Cola will take responsibility for the groundwater depletion should they be to blame.¹⁵³ However until that time comes, Coca-Cola believes and will maintain that they did not play any role in the water crisis.¹⁵⁴ The statement fails to note that since there was no research conducted prior to the bottling plant's construction, it is impossible to retroactively determine with scientific certainty the change in the level of the groundwater tables during the time that the plant was in operation, and the primary cause of that change.¹⁵⁵ Although Coca-Cola's statement to the public alludes to the fact that they will do everything in their power to find the cause of the depletion of the groundwater in Plachimada and to determine a proper remedy, the company appears to be actually exploiting scientific uncertainty to avoid liability.¹⁵⁶

149. See Paliwal & Misra, *supra* note 66.

150. Kannan, *supra* note 43.

151. Scaria, *supra* note 24.

152. *See id.*

153. *See id.*

154. *See id.*

155. Simons, *supra* note 17.

156. *See generally* Scaria, *supra* note 24.

2013 / “Have a Coke and a Smile”

Regardless of whether there was a drought, it is undeniable that Coca-Cola’s activities did, to some extent, impact the groundwater tables.¹⁵⁷ During the standard operation of the plant in Plachimada, the corporation was known to consume up to 500,000 liters of water per day.¹⁵⁸ Coca-Cola’s statement allows the company to deny liability based on a lack of concrete data showing changes in the aquifer water tables.¹⁵⁹

Coca-Cola is not the first business entity to rely on scientific uncertainty to avoid liability.¹⁶⁰ In 2006, Allegheny Energy, a coal-fired power plant in Masontown, Pennsylvania, elected to install scrubbers in their plant to clean the air that emerged from the smoke stacks.¹⁶¹ This decision was in response to environmentalists’ and community members’ concerns that the toxins being released into the air were creating respiratory diseases and toxic rain.¹⁶² Scrubbers work by combing crushed and processed limestone with water, which is sprayed into coal combustion gases.¹⁶³ The limestone absorbs sulfur and other toxins in the gas and traps them before they can be emitted into the air.¹⁶⁴ When the scrubbers were installed in the Allegheny Energy plant, the company started to dump wastewater that contained the remnants from this chemical process into the Monongahela River.¹⁶⁵ Officials from Allegheny Energy then had to respond to residents’ new concerns about water contaminants, and deal with a new influx of lawsuits concerning water contamination.¹⁶⁶ The response was simple—they claimed that the pollution did not pose any risk because the plant treated most of its water.¹⁶⁷ Although they conceded that some dissolved metals and chemicals are in the water, they claimed that these contaminants are “not likely to cause the Monongahela River to exceed safety levels for those contaminants.”¹⁶⁸ Coca-Cola is using these well-established methods of denying liability based on scientific uncertainty, despite the fact that records can indicate the quantity of water being removed from the aquifer during the company’s operation in Kerala.¹⁶⁹

157. Simons, *supra* note 17.

158. *Id.*

159. *See* Scaria, *supra* note 24.

160. *See* GEORGE WATTS ET AL., PETITION FOR EXEMPTION FROM EPCRA AND CERCLA REPORTING REQUIREMENTS FOR AMMONIA EMISSIONS FROM POULTRY OPERATIONS (2005), available at <http://www.uspoultry.org/environment/docs/poultrypetition.pdf>.

161. Charles Duhigg, *Cleansing the Air at the Expense of Waterways*, N.Y. TIMES (Oct. 12, 2009), http://www.nytimes.com/2009/10/13/us/13water.html?pagewanted=all&_r=0.

162. *Id.*

163. Fossil Energy Office of Communications, *The Clean Coal Technology Program*, U.S. DEP’T OF ENERGY (Mar. 29, 2011), <http://www.fossil.energy.gov/programs/powersystems/cleancoal/>.

164. *Id.*

165. Duhigg, *supra* note 161.

166. *Id.*

167. *Id.*

168. *Id.*

169. Simons, *supra* note 17.

Global Business & Development Law Journal / Vol. 26

Coca-Cola's statement's second function is to pave the way for the public to recognize the importance of the Aqueduct Alliance.¹⁷⁰ By creating a public demand for the groundwater data, the company will receive more recognition for its efforts and contributions to the Alliance.¹⁷¹ Coca-Cola is modeling its commitment to the Aqueduct Alliance after traditional supplemental environmental project ("SEP"), frequently found in the United States.¹⁷² The corporation is likely participating in the Alliance with the hope that it will help to mitigate their future liability by preemptively imitating a SEP as a response to any harm that they may have caused in both India and other locations of the world.

In the United States, a traditional SEP is implemented when the Environmental Protection Agency reduces a penalty, so long as the defendant agrees to participate in an environmentally beneficial project.¹⁷³ These projects can focus on a host of areas from public health, to pollution reduction, environmental restoration, and emergency planning and preparedness.¹⁷⁴ SEPs are an easy cost-benefit analysis for companies.¹⁷⁵ They generally allow the company to design projects that will benefit the geographical areas where their victims have been impacted.¹⁷⁶ This builds positive publicity while lessening the financial strain of being held liable since courts reduce the company's fines if they participate in a SEP.¹⁷⁷

One example of a recent SEP was when BP Products Northern America Inc. ("BP") elected to undertake a \$6 million supplemental project to reduce air pollution in Texas City, after an explosion at their plant killed fifteen people, injured at least 170 others, and violated the Clean Air Act.¹⁷⁸ BP's project was called the Natural Gas Conversion SEP, which agreed to convert the fleet of cars for both the city and a couple of school districts to either light-duty gasoline vehicles or liquefied natural gas vehicles, to reduce gasoline emissions in the region.¹⁷⁹ Additionally, BP was required to support and implement four refueling

170. See generally Joyce Nelson, *GE and Water Privatization*, RABBLE.CA (Jan. 25, 2012), <http://rabble.ca/news/2012/01/ge-and-privatization-water>.

171. See generally Rebecca Weeks, *The Bumpy Road to Community Preparedness: The Emergency Planning and Community Right-to-Know Act*, 4 ENVTL. L. 827, 852 (1998).

172. *Id.*

173. *Id.*

174. *Id.*

175. Kathleen Boergers, *The EPA's Supplemental Environmental Projects (EPA)*, 26 ECOLOGY L.Q. 777, 784 (1999).

176. *Id.*

177. *Id.* at 783-84.

178. *BP Products to Pay Nearly \$180 Million to Settle Clean Air Violations at Texas City Refinery*, DEP'T OF JUSTICE (Feb 19, 2009), available at http://www.contractormisconduct.org/ass/contractors/61/cases/1106/1526/bp-amoco-caa-viols-texas-city_pr.pdf.

179. *Id.*

2013 / “Have a Coke and a Smile”

stations and the appropriate service stations required for the vehicles.¹⁸⁰ BP’s SEP exemplifies the positive impact that a corporation can have in the general arena where they have caused harm, without calling attention to the damage itself.¹⁸¹ Coca-Cola has taken a similar approach; by joining the Aqueduct Alliance, they are involved in a beneficial environmental project that tangentially addresses the issue of groundwater depletion, without shining a spotlight on the controversy in India.

IV. HOW THE AQUEDUCT ALLIANCE RESONATES WITH STAKEHOLDERS

A. *The Corporate Environmental Movement, CSR Policies, and International Environmental Standards*

Coca-Cola’s participation in the Aqueduct Alliance falls in accordance with the growing corporate movement to address environmental concerns as an element of making effective business decisions that enhance marketing practices and resonate with stakeholders.¹⁸² The corporate transition into environmental practices has developed in phases.¹⁸³ Historically, corporations considered the environmental impacts of their actions as a means of complying with legal regulations.¹⁸⁴ Eventually, there was a shift in corporate focus as corporations started to use environmental awareness as a method for bolstering profits.¹⁸⁵

Corporations began to acknowledge environmental issues in an effort to comply with legal regulations and cut costs.¹⁸⁶ Coca-Cola was not a stranger to this methodology.¹⁸⁷ A 2003 court ruling prohibited Coca-Cola from removing groundwater for its bottling plant in Plachimada, Kerala.¹⁸⁸ The corporation submitted a 2004 application to renew the bottling plant lease.¹⁸⁹ This application was rejected, citing groundwater depletion as the reason.¹⁹⁰ In response to these decisions, Coca-Cola issued a statement outlining the precautions that the company had taken in an effort to comply with all state and federal regulations

180. *Id.*

181. *See id.*

182. *See* Anita Jose & Shang-Mei Lee, *Environmental Reporting of Global Corporations: A Content Analysis Based on Website Disclosures*, 72 J. BUS. ETHICS 307, 307 (2007) (researching and analyzing the methods of environmental disclosure found on large corporations’ websites).

183. *Id.* at 308.

184. *Id.* at 307.

185. *Id.*

186. *Id.*

187. Jonathan Hills & Richard Welford, *Case Study: Coca-Cola and Water in India*, 12 CORP. SOC. RESP. & ENVTL. MGMT. 168, 171-72 (2005).

188. *Id.*

189. *Id.*

190. *Id.*

Global Business & Development Law Journal / Vol. 26

since the plant opened in 2000.¹⁹¹ This statement demonstrates the school of thought that was indicative of corporations focused on complying with environmental regulations to avoid litigation, rather than using their environmentally friendly decisions as a marketing move.¹⁹² From 2000 until 2003, Coca-Cola's environmental business practices in India focused on conforming with regulations in order to save money.¹⁹³

Recently, the environmental movement has developed as corporations focus on increasing gains through an environmental marketing lens.¹⁹⁴ This has been achieved largely with the implementation of corporate social responsibility ("CSR") policies.¹⁹⁵ CSR is defined as the belief that, "the social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time."¹⁹⁶ Corporations that apply CSR policies often believe that there is a competitive advantage to implementing proactive environmental programs, reasoning that the programs improve the overall reputation of the corporation, which resonates with stakeholders.¹⁹⁷ CSR policies promote business practices that ensure stakeholders that the company is looking beyond the immediate bottom line to create a sustainable and valuable business in the long-term.¹⁹⁸

Historically, Coca-Cola discovered that environmental impact reports can have both negative and positive impacts on business.¹⁹⁹ After India released a Center for Science and Environment report that stated that pesticides were present in their beverages, Coca-Cola stocks dropped by thirty to forty percent, ending what was a seventy-five percent growth trajectory over the prior five years.²⁰⁰

While Coca-Cola has its own CSR system, in 2009 it began its transition to the ISO 14000 standards.²⁰¹ This is a series of global standards that were written in 2000 to allow companies to have their environmental management systems ("EMS") audited and certified by a third party, putting them in compliance with the International Organization for Standardization ("ISO").²⁰² The goals behind

191. *Id.*

192. See Jose & Lee, *supra* note 182.

193. See generally Hills & Welford, *supra* note 187, at 172-73.

194. See Jose & Lee, *supra* note 182, at 308.

195. See Joe W. (Chip) Pitts III, *Corporate Social Responsibility: Current Status and Future Evolution*, 6 RUTGERS J. L. & PUB. POL'Y 334, 336-37 (2009).

196. Mahesh Chandra, *Business Article: ISO Standards from Quality to Environment to Corporate Social Responsibility and Their Implications for Global Companies*, 10 J. INT'L BUS. & L. 107, 110 (2011).

197. See Jose & Lee, *supra* note 182, at 308.

198. Pitts, *supra* note 195, at 414.

199. See generally Hills & Welford, *supra* note 187, at 170.

200. *Id.*

201. CHARLES J. CORBETT & DAVID A. KIRSCH, *ISO 14000: AN AGNOSTIC'S REPORT FROM THE FRONT LINE* 4, 5-6 (2000).

202. *Id.*

2013 / “Have a Coke and a Smile”

the ISO are to create a norm for environmental standards for companies partaking in international transactions, regardless of whether the environment is a focal point of their work.²⁰³ The ISO is comprised of 130 national member organizations,²⁰⁴ from these members, a taskforce committee is formed to draft the standards.²⁰⁵ A certification ensures that the company has implemented an EMS that has been reviewed by a third-party registrar and that the EMS is in compliance with the relevant environmental regulations.²⁰⁶ This certification is voluntary, and it does not indicate government approval of a company’s EMS system.²⁰⁷ As Coca-Cola voluntarily transitions into a system of international environmental standards, they are sending a message that the company is concerned with international environmental conservation.²⁰⁸

B. Stakeholder Involvement in Water Initiatives

The Coca-Cola Company released their most recent CSR report for 2009/2010.²⁰⁹ This report addressed the goal of water conservation head-on, stating on the first page that the company intends to, “minimize our water use and replenish the amount of water equivalent to what we use in all of our beverages to the local communities in which we operate.”²¹⁰ It describes how the company hosted its first roundtable discussion on the topic of water with stakeholders.²¹¹ The discussion included academics, NGOs, government officials, and consultants who specialized in water issues.²¹² The takeaway from this meeting was that the Coca-Cola Company should manage their water initiatives by evaluating the risks and scarcity in various regions.²¹³ “Ultimately, we were told, it should be our goal to link these issues to other issues such as climate change and agriculture. Over time, [Coca-Cola]’s approach must evolve from one of ‘doing no harm’ to ‘creating positive impacts’ and actively helping to solve water-sustainability challenges.”²¹⁴

The message from this meeting is reflected in the statement that Coca-Cola released concerning the scrutiny that they were receiving about their water use in

203. *Id.*

204. *Id.* at 6.

205. *Id.*

206. *Id.*

207. *Id.*

208. *See id.* at 17.

209. COCA-COLA ENTERPRISES, CLEAR ON OUR COMMITMENTS, OUR JOURNEY TO 2020 (2009), available at http://www.thecoca-colacompany.com/citizenship/pdf/CCE_2009.pdf.

210. *Id.* at 2.

211. *Id.* at 63.

212. *Id.*

213. *Id.*

214. *Id.*

Global Business & Development Law Journal / Vol. 26

India.²¹⁵ In 2011, when Coca-Cola released their response to the bill in Kerala, which sought to hold Coca-Cola individually liable to the victims of groundwater depletion, Coca-Cola countered by citing natural droughts and agriculture as the primary cause of the water shortages.²¹⁶ However, they failed to claim that the company operates under a “leave no footprints” philosophy, even though the verbiage used in the CSR reporting indicates that the corporation does not leave a mark on the communities where it operates.²¹⁷ In fact, the CSR report goes so far as to state that they hope to transition to an operating system that restores and betters the communities where they operate.²¹⁸

One of the primary differences between the ISO 14000 standards, and Coca-Cola’s current system, including the Aqueduct Alliance, is the element of international corroboration in compiling the standards.²¹⁹ Individual countries have varied priorities and focuses concerning water data and collection, based on utility and need.²²⁰ Relying solely on U.S. data collection and scientific findings to set standards and operate the Aqueduct Alliance may create holes in the research, which are difficult to identify without considering divergences in cultural values and views on the importance of water.²²¹

Although the Aqueduct Alliance is not a CSR and does not have the breadth of ISO 14000 standards, it will prove to be a useful tool for Coca-Cola in meeting the rising demands of shareholders who want to see water-risk prevention factored into the company’s business model.²²² One of the reasons for creating the Alliance was to satisfy investors who were interested in reviewing how a company navigates water-related risks.²²³ A 2011 study, conducted by the Carbon Disclosure Project’s Water Disclosure program, looked at 190 companies to determine whether they faced water-risks pertaining to flooding, scarcity, or reputational damage, and fifty-nine percent of the companies reported being exposed to these risks.²²⁴ With more companies realizing that their business’s relationship to water has financial implications, the tools available will only improve, and Coca-Cola’s early establishment in the groundwater mapping landscape will be appreciated by shareholders.²²⁵

215. Scaria, *supra* note 24.

216. *Id.*

217. FISHMAN, *supra* note 1.

218. COCA-COLA ENTERPRISES, *supra* note 209.

219. *See* CORBETT & KIRSCH, *supra* note 201; COCA-COLA ENTERPRISES, *supra* note 209.

220. *See* CORBETT & KIRSCH, *supra* note 201; COCA-COLA ENTERPRISES, *supra* note 209.

221. *See generally* *GE Sponsors Water Risk Mapping Tool*, FINCHANNEL.COM (July 3, 2012), http://finchannel.com/Main_News/Tech/105229_GE_Sponsors_Water_Risk_Mapping_Tool/.

222. Peter S. Green, *Water Risk in Supply Chains Draws Investor Scrutiny*, BLOOMBERG (Jan. 10, 2012, 4:11 AM), <http://www.bloomberg.com/news/2012-01-10/water-risk-in-supply-chains-draws-investor-scrutiny.html>.

223. *GE Sponsors Water Risk Mapping Tool*, *supra* note 221.

224. *Id.*

225. *See generally id.*

2013 / “Have a Coke and a Smile”

In recent years, companies have seen shareholders take a more active role in lobbying for the instatement of effective water-risk management programs.²²⁶ Shareholders have become increasingly vocal.²²⁷ Jonas Kron, investment advisor at Trillum Asset Management,²²⁸ is one example of an ardent proponent of corporate water management.²²⁹ During the course of the last year, Kron lead a shareholder challenge to J.M. Smucker requesting that the company prepare and implement a new business model that will be amenable to market transformations as global warming persists creating changes in the hydrological cycle, which will impact coffee production.²³⁰ This is a practical concern for the company because a one-pound bag of coffee requires 2,650 gallons of water and if freshwater shortages persist, prices and access to water will impact the entire supply chain.²³¹ According to Kron, “companies actively dealing with carbon emissions are outperforming their peers,” and as water management becomes more important in the future, there may be a similar correlation between water management performance and stock value.²³² If Kron is correct, this creates a real incentive for corporations to consider water-risks, which will promote the longevity of their business and appease stakeholders and shareholders alike.²³³

V. THE IMPACT OF TRANSPARENCY ON OTHER CORPORATIONS: DOES COCA-COLA MEASURE UP?

A. *Environmental Reporting Systems and Mission Statements*

Coca-Cola should revamp their environmental reporting system by looking to other global companies that started to pave the way with successful methods that captured the media’s attention and curbed lawsuits. Johnson & Johnson, ranked 123rd in the 2011 Global 500 listed by Fortune Magazine,²³⁴ was one of the leaders in this trend when it began establishing environmental goals in 1990.²³⁵ In 1993, Johnson & Johnson started reporting on environmental issues, and in 2003 printed their first annual Sustainability Report.²³⁶ These reports were designed to

226. Jose & Lee, *supra* note 182.

227. Green, *supra* note 222.

228. *Jonas Kron, Esq.*, TRILLIAN ASSET MANAGEMENT, <http://www.trilliuminvest.com/staff/jonas-kron/> (last visited Apr. 8, 2013).

229. Green, *supra* note 222.

230. *Id.*

231. FRED PEARCE, *WHEN THE RIVERS RUN DRY* 4 (2006).

232. Green, *supra* note 222.

233. *Id.*

234. *Global 500*, CNNMONEY (July 25, 2011), <http://money.cnn.com/magazines/fortune/global500/2011/countries/US.html>.

235. Susan Borkowski et al., *Johnson & Johnson: A Mode for Sustainability Reporting*, 92 STRATEGIC FIN. 1, 3 (2010).

236. *Id.*

Global Business & Development Law Journal / Vol. 26

create transparency and engage with external shareholders by explaining the corporation's strategies concerning sustainability issues.²³⁷ Backed by upper management, Johnson & Johnson focuses their business model on "the needs and well-being of the people we serve first."²³⁸ They accomplish this by focusing on four groups of stakeholders in the following order of importance: customers, employees, the community (both local and global), and then finally, the shareholders.²³⁹ The content of Johnson & Johnson's reports have changed over the years, reflecting the trends in data being reported globally, the reports published by competitors, in addition to areas of paramount importance to the corporation's environmental mission.²⁴⁰

While Coca-Cola has been slowly working to increase its sustainable practices, it has room for improvement.²⁴¹ In 2009, Newsweek began ranking the top green companies based on the U.S. 500 list.²⁴² Overall, Coca-Cola ranks in the lower half of the companies for 2011, holding the 289th place for progressive environmental policy.²⁴³ Meanwhile, their largest competitor PepsiCo²⁴⁴ ranked 182nd, as compared to the environmentally innovative Johnson & Johnson which ranked 6th.²⁴⁵ The importance of environmental transparency for Coca-Cola became apparent in 2003, when Coca-Cola's controversy in India initially surfaced and the company's stocks plummeted, but as these rankings depict, the company's environmental policy still has room for growth.²⁴⁶

While the Aqueduct Alliance is a step towards improving the transparency of Coca-Cola's impact on the environment, the mapping tool does have its shortcomings—namely, that in calculating the appropriate water consumption in a given region, it neglects to consider the social concerns and ecological limitations that shape a region's sustainability needs.²⁴⁷ This type of tailored data, while difficult to achieve, is a means of creating individual conservation plans that preserve water resources in a manner that allows a community to retain

237. *Id.*

238. *Id.*

239. *Id.* at 4.

240. *Id.* at 5.

241. See Newsweek—Green Rankings, *U.S. Companies*, DAILY BEAST (Oct. 16, 2011, 11:30 PM), <http://www.thedailybeast.com/newsweek/features/green-rankings/2011/us.html>.

242. Newsweek—Green Rankings, *2011 Green Rankings FAQ*, DAILY BEAST (Oct. 16, 2011, 5:23 PM), <http://www.thedailybeast.com/newsweek/2011/09/07/newsweek-green-rankings-frequently-asked-questions.html>.

243. Newsweek—Green Rankings, *U.S. Companies*, *supra* note 241.

244. Skidmore, *supra* note 148.

245. Newsweek—Green Rankings, *U.S. Companies*, *supra* note 241.

246. See *Interactive Stock Chart*, COCA-COLA, <http://ir.thecoca-colacompany.com/phoenix.zhtml?c=94566&p=irol-stockchart> (last visited Oct. 23, 2011).

247. Bill Baue, *Corporate Water Risk Tools*, GUARDIAN (Mar. 22, 2012, 12:56 PM), <http://www.guardian.co.uk/sustainable-business/world-water-day-corporate-water-risk-tools?newsfeed=true>.

2013 / “Have a Coke and a Smile”

cultural practices.²⁴⁸ In order for the Aqueduct Alliance to be an effective tool for creating environmental transparency, the scope of the water basins and water courses that it covers needs to be expanded.²⁴⁹ Currently, the Alliance’s data encompasses just four river basins: Yellow River Basin, Orange-Senqu River Basin, Murray-Darling Basin, and the Colorado River Basin; however, only information pertaining to the Yellow River Basin is currently available online.²⁵⁰

As time progresses, it may become easier to fill the gaps left by the Alliance.²⁵¹ Over the last few years, water mapping has emerged as a growing trend.²⁵² A study in 2010 by the World Business Council for Sustainable Development and the International Union for the Conservation of Nature, indicated that there were just four tools available that identified and assessed water related risks.²⁵³ This study analyzed the focus and processes of nineteen sustainable water management tools.²⁵⁴ In the last six months, the number of tools available has doubled, most recently including the Global Environmental Management Initiative (“GEMI”), Ceres Aqua Gauge, and the Aqueduct Alliance.²⁵⁵ GEMI is a revamping of the 2002 and 2007 “Collecting the Drops” programs, and is focused on local water use by providing three modules to guide a company on how to assess their relationship with water in local regions.²⁵⁶ It identifies challenges and opportunities, and teaches companies how to create a plan that considers a community’s social needs.²⁵⁷

The Ceres Aqua Gauge is a tool that compliments the Aqueduct Alliance because it focuses on the business aspects of water mapping.²⁵⁸ The Ceres Aqua Gauge creates a platform for companies to benchmark and enhance the way they manage water risks as they pertain to governance and management, measurement and risk assessment, stakeholder engagement, and disclosure.²⁵⁹ The goal of Ceres Aqua Gauge is to also create an outlet that allows investors to track and consider a company’s disclosures and reactions to water risk in determining their

248. *See generally id.*

249. *See* Paul Reig, *Aqueduct Brings Improved Water Risk Framework to World Water Forum*, WRI INSIGHTS (Mar. 7, 2012), <http://insights.wri.org/aqueduct/2012/03/aqueduct-brings-improved-water-risk-framework-world-water-forum>.

250. *See id.*

251. Baue, *supra* note 247.

252. *Id.*

253. *See* WORLD BUS. COUNSEL FOR SUSTAINABLE DEV., *WATER FOR BUSINESS: INITIATIVES GUIDING SUSTAINABLE WATER MANAGEMENT IN THE PRIVATE SECTOR* (2010), *available at* <http://www.wbcsd.org/web/water4business.pdf>.

254. Baue, *supra* note 247.

255. *Id.*

256. *Collecting the Drops: A Water Sustainability Planner*, GEMI (Jan. 2007), <http://www.gemi.org/resources/GEMI-CollectingtheDropsJan07.pdf> (noting project originally entitled Connecting the Drops).

257. *Id.*

258. Baue, *supra* note 247.

259. *Id.*

Global Business & Development Law Journal / Vol. 26

investments.²⁶⁰ As these tools develop and new water-mapping tools are introduced into the market, Coca-Cola will be pressured to conduct their business with a level of environmental transparency far more precise than can be found in their current practices and resources.

B. Effective Corporate Crisis Management

Stock prices frequently plummet amid corporate scandal, but in the wake of these declines, corporations have an opportunity to learn about consumer concerns and redevelop their marketing strategies using corporate social responsibility to strengthen their public image and improve their business practices.²⁶¹ Coca-Cola's stock declined after it was reported that pesticides were present in its beverages, causing consumers to boycott the sodas.²⁶² A short time later, this negative publicity was compounded by accusations that the corporation was the cause of Plachimada's water shortages.²⁶³

Historically, Coca-Cola has made meager efforts to create transparency to inform consumers about company conduct in the face of adversity.²⁶⁴ Despite being confronted with accusations of pesticides being in their beverages, reports came out three weeks after the controversy broke indicating that Coca-Cola had done relatively little to address the issue.²⁶⁵ In fact, Coca-Cola's primary response was to publish advertisements in newspapers, and to release brief statements countering the claims, citing a few studies conducted on their Indian products that were tested in California.²⁶⁶ This method proved not to be effective. In 2006, Coca-Cola was actually banned from selling its beverages to the thirty million people of Kerala, India.²⁶⁷

Coca-Cola is such a large international corporation that they may not feel the need to mitigate public concern that is confined to only one country; however, the corporation should take an opportunity to consider the successful strategies implemented by Johnson & Johnson when navigating how a large corporation should respond to public concern.²⁶⁸ In 1982, Johnson & Johnson consumers

260. *Id.*

261. Winston A. Marbella, *Reputation Management: How to Polish Your Corporate Apple*, PHIL. DAILY INQUIRER, 5 (Nov. 14, 2011), <http://business.inquirer.net/30263/reputation-management-how-to-polish-your-corporate-apple>.

262. Hills & Welford, *supra* note 187.

263. Simons, *supra* note 17.

264. *Coke, Pepsi Doing Little to Confront Pesticide Allegations in India*, U.S. WATER NEWS ONLINE (Sept. 2006), <http://www.uswaternews.com/archives/arcglobal/6cokepeps9.html>.

265. *Id.*

266. *Id.*; Brian Bremner & Nandini Lakshman, *India: Pesticide Claims Shake Up Coke and Pepsi*, BLOOMBERG BUSINESSWEEK: GLOBAL ECON. (Aug. 9, 2006), http://www.businessweek.com/globalbiz/content/aug2006/gb20060810_826414.htm.

267. Bremner & Lakshman, *supra* note 266.

268. See Marbella, *supra* note 261.

2013 / “Have a Coke and a Smile”

feared the company’s Tylenol product after a third party laced several Tylenol capsules with potassium cyanide, and then returned the bottles to their shelves to be sold at Chicago drugstores.²⁶⁹ The altered drugs caused the death of seven individuals and instigated 270 copycat tampering incidents.²⁷⁰ In the aftermath of the Tylenol poisoning, Johnson & Johnson’s stocks dropped twenty-nine percent, totaling a \$2.31 billion decline for the company.²⁷¹

In response to this incident, Johnson & Johnson was praised for being honest and open with the public.²⁷² The company encouraged consumers not to use their Tylenol product and recalled 264,000 bottles.²⁷³ They informed consumers that there would be changes to their product since it had become evident that the company was unable to guarantee the safety of their merchandise using current methods.²⁷⁴ Initially, Johnson & Johnson responded by putting seals on the bottles and lids of all of their medications—a precaution that was later required of all drug manufacturers.²⁷⁵ Later, they announced that they would no longer be carrying capsule drugs over the counter; instead, all of their products would be solid oval pills.²⁷⁶ Johnson & Johnson’s candid communication with the public was an effective tool for handling corporate social responsibility.²⁷⁷ Within a year, their market shares had rebounded and the company’s reputation had been repaired.²⁷⁸

Today, Johnson & Johnson continues to be diligent about their management of the Tylenol product, as well as the other pharmaceuticals that it produces.²⁷⁹ For current recalls, Johnson & Johnson states on its website that all present recalls are conducted “voluntarily” as a safety precaution.²⁸⁰ This method has proven to be relatively effective. In 2010, there were a series of consumer recalls and the company reported that third quarter sales dropped by .7 percent, yet

269. Dan Fletcher, *A Brief History of the Tylenol Poisonings*, TIME (Feb. 9, 2009), <http://www.time.com/time/nation/article/0,8599,1878063,00.html>.

270. *Id.*

271. Thomas D. Dowdell, Suresh Govindaraj & Prem C. Jain, *The Tylenol Incident, Ensuing Regulation, and Stock Prices*, 27 J. FIN. & QUANTITATIVE ANALYSIS 283 (1992).

272. Marbella, *supra* note 261.

273. *Id.*

274. Michael Wright & Caroline Rand Herron, *The Nation: Tylenol Maker Drops Capsules*, N.Y. TIMES (Feb. 23, 1986), <http://www.nytimes.com/1986/02/23/weekinreview/the-nation-tylenol-maker-drops-capsules.html>.

275. *Id.*

276. *Id.*

277. Marbella, *supra* note 261.

278. *Id.*

279. *See Product Recall Information*, MCNEILCONSUMER HEALTHCARE, <http://www.mcneilproductrecall.com/> (last visited Nov. 21, 2011).

280. *News*, JOHNSON & JOHNSON, <http://www.jnj.com/connect/news> (last visited Nov. 21, 2011); *All News*, JOHNSON & JOHNSON, <http://www.jnj.com/connect/news/all/mcneil-consumer-healthcare-announces-voluntary-nationwide-recall-of-infants-tylenol-oral-suspension-1-oz-grape-due-to-dosing-system-complaints> (last visited Nov. 21, 2011).

Global Business & Development Law Journal / Vol. 26

overall third quarter earnings increased 2.2 percent from the previous year.²⁸¹ Although earnings grew, some speculated that the continuous recalls may permanently impact consumer confidence in the company's over the counter pharmaceuticals.²⁸² In response, the company was quick to announce that they would be revamping their product design and packaging.²⁸³

Recently, Coca-Cola appears to be taking a similar approach to Johnson & Johnson's use of transparency in response to conflict. By participating in the Aqueduct Alliance, Coca-Cola has started communicating more candidly with the public about the manner in which they are handling water consumption. It has been widely publicized that Coca-Cola donated all of their internal groundwater maps and research.²⁸⁴ This creates a new degree of transparency on a global level that allows for international checks and balances concerning corporate decisions that will impact water supplies.²⁸⁵ However, unlike Johnson & Johnson's direct transparency, Coca-Cola is using a degree of separation by filtering their information through the Aqueduct Alliance. In order to bridge this gap in the future, Coca-Cola may have to make direct admissions in the face of controversy in order to obtain a similar level of public support and forgiveness that was witnessed in the Tylenol scandal.²⁸⁶

VI. CONCLUSION

Coca-Cola's participation in the Aqueduct Alliance is a marketing move that was undertaken to bolster the corporation's reputation, while simultaneously skirting individual liability and arming the corporation against future lawsuits concerning groundwater depletion. A better solution would be to increase environmental transparency and incorporate shareholder values into the corporation's environmental decision making process. The corporation boasts about the potential positive environmental impacts that the Aqueduct Alliance will have internationally; however, the Alliance will also serve as an important tool for business decisions.²⁸⁷ The Aqueduct Alliance will provide Coca-Cola access to large quantities of updated research without having to independently finance all of the data collection.²⁸⁸ It also provides Coca-Cola with an outlet to participate in a positive environmental program to enhance their public image,

281. Natasha Singer, *Tylenol Recalls Erode Johnson & Johnson Sales*, N.Y. TIMES (Oct. 19, 2010, 2:24 PM) <http://prescriptions.blogs.nytimes.com/2010/10/19/tylenol-recalls-erode-jj-sales/>.

282. *Id.*

283. Jonathan D. Rockoff, *J&J Revamps McNeil Unit After Recalls*, WALL ST. J. (Mar. 31, 2011), <http://online.wsj.com/article/SB10001424052748703712504576233112549707154.html>.

284. Shiao, *supra* note 54.

285. *Id.*

286. *See* Marbella, *supra* note 261.

287. Shiao, *supra* note 54, at 307, 308.

288. *See id.*

2013 / "Have a Coke and a Smile"

which they hope will overshadow their goal of avoiding individual liability to the groundwater depletion victims in the State of Kerala. The Aqueduct Alliance is an example of a modern corporate move to gain public approval through transparent environmental programs that also serves underlying purposes. Coca-Cola will eventually be forced to adopt more transparent environmental policies when water-conscious business practices become more established as a corporate trend, but for the time being, Coca-Cola will continue to hide behind the Aqueduct Alliance to create an illusion of candor.