

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL DIVISION)

BETWEEN:

MORIE MOMOH & 14 OTHERS
 2/3 RESETELEMENT
 KOIDU CITY

1ST PLAINTIFFS/APPLICANTS

MARGINALISED AFFECTED PROPERTY OWNERS 2ND PLAINTIFFS/APPLICANTS
 (LG)

9 GBENSE NGUMBU STREET
 TANKORO
 KOIDU CITY
 AND

OCTEA LTD

1st DEFENDANT/RESPONDENTS

THE MANAGING DIRECTOR OCTEA LIMITED

2nd DEFENDANT/RESPONDENTS

OCTEA DIAMOND LTD

3rd DEFENDANT/RESPONDENTS

THE MANAGING DIRECTOR OCTEA DIAMOND
 LIMITED

4th DEFENDANT/RESPONDENTS

OCTEA MINING LIMITED

5th DEFENDANT//RESPONDENTS

THE MANAGING DIRECTOR OCTEA
 MINING LIMITED

6th DEFENDANT/RESPONDENTS

OCTEA SERVICES LIMITED

7th DEFENDANT/RESPONDENTS

THE MANAGING DIRECTOR OCTEA
 SERVICES LIMITED

8th DEFENDANT/RESPONDENTS

OCTEA FOUNDATION LIMITED

9th DEFENDANT/RESPONDENTS

THE MANAGING DIRECTOR OCTEA
 FOUNDATION LIMITED

10th DEFENDANT/RESPONDENTS

KOIDU LIMITED

11th DEFENDANT/RESPONDENTS

THE MANAGING DIRECTOR
 KOIDU LIMITED

12th DEFENDANT/RESPONDENTS

ALL OF 84 WILKINGSON ROAD FREETOWN, SIERRA LEONE

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION:

I JAMES A. FORNAH Esq of No.12 Forest Road, New London, Makeni in the Northern Province of the Republic of Sierra Leone, make an OATH and say as follows:

1. That I am a Partner at C & J Partners Solicitors for the Plaintiffs herein and I am duly authorized to make this Affidavit in Support of the Motion.
1. That this is an Affidavit in Support of a Notice of Motion in support of the Plaintiffs'/Applicants Application for Freezing Orders preventing all the Defendants from

disposing of assets worldwide and/ or moving their assets out of the Sierra Leone jurisdiction.

2. That the facts deposed to herein are unless otherwise stated within my custody, information and belief.
1. That I have been reliably informed and verily believe that the 11th Defendant is a Company Incorporated and registered in Sierra Leone, whilst the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 12th Defendants are Parents, Affiliates, Shareholders or Directors of the 11th Defendant. True copies of the relevant company documents taken out in the name of the 11th Defendant are exhibited herein and marked as **Exhibit JAF 1**.
2. That the Plaintiff instituted an action against the Defendants herein by way of a Writ of Summons in the Kono Registry, dated the 5th February 2020. A true copy of the said Writ of Summons is hereby shown to me marked as **Exhibit JAF 2**.
3. That in response to the said Writ of Summons, the Defendants entered Appearance to same. A True copy of the said Memorandum and Notice of Appearance dated the 17th day of February 2020 is hereby shown to me marked as **Exhibit JAF3**.
4. That the Defendants, having entered an Appearance on the 17th February 2020, filed a Notice of Motion dated 20th February 2020 at the Kenema District Registry to strike out the Writ of Summons dated 5th February 2020 aforesaid, but the said Motion has not been prosecuted since that time. I am reliably informed and verily believe that the filing of the motion in the Kenema District Registry to strike out the Writ of Summons issued at the Kono Registry is a ploy calculated to give the Defendants sufficient time to dispose of its assets and interest in Sierra Leone, thereby depriving the Plaintiffs of the fruits of any legal victory in this matter. A True copy of the Motion to strike out is hereby shown to me marked as **Exhibit JAF4**.
5. That the Solicitors for the Plaintiffs/Applicants herein have filed an Affidavit in Opposition dated 8th June 2020 to the said Motion to strike out the Writ of Summons dated the 5th of February 2020. A copy of the said Affidavit in Opposition is marked and shown to me as **Exhibit JAF5**.
6. That there is a clear and present risk that the Defendants, their parent companies, and their beneficial owners will ex-patriate funds, strip productive assets from Sierra Leone, or assign them to third parties that are in reality under their control in order to prevent

judgment creditors from enforcing and or executing any eventual judgment against them.

7. That in recognition of the risk of dissipation and expatriation of assets, the Commercial Court sub-division of the UK High Court of Justice issued freezing orders on the 3rd and 16th December 2019 respectively, inter alia preventing the ultimate parent companies of the 1st, 3rd, 5th, 7th, 9th, and 11th Defendants – Balda Foundation and Nysco Management Ltd. – and other affiliated individuals including their beneficial owners, Benny Steinmetz, from disposing of up to the value of USD 1.85 billion while Vale’s legal action against them for fraud is pending in the same Court. That these Freezing Orders would not, however, prevent the parties to whom it applies from shifting the assets of the 1st, 3rd, 5th, 7th, 9th, or 11th Defendants in such a way as to put them beyond the reach of the courts of Sierra Leone. True copies of said Freezing Injunctions issued by the English High Court are hereby shown to me and marked **Exhibits JAF 6 and JAF 7**, respectively.
8. That my belief in the severity of this risk aforesaid is rooted in the fraudulent and corrupt track record of the Defendants’ corporate parents; the legal strategies that these entities have undertaken to shield their assets – including the assets of their subsidiaries, the 1st, 3rd, 5th, 7th, 9th, and 11th Defendants – from courts and creditors; the financial maneuvers that these entities have subjected their subsidiary units (including the Defendants) to avoid paying their debts; and my knowledge about the financial affairs of the Defendants, including the structure of their asset holdings. The remainder of this Affidavit provides detailed information about each of these factors. These factors demonstrate that, the defendants Corporate Parents operate a Common Enterprise with the defendants and do not hesitate to commingle the defendants’ financial interests with their own.
9. That the parent company of the 1st, 3rd, 5th, 7th, 9th, and 11th Defendants, BSG Resources Ltd. (“BSGR”), does not operate at arms’ length from its subsidiaries; rather, BSGR is deeply involved in the finances of its subsidiaries, and the various Defendants and their parents enter into financial arrangements for each other’s benefit and in pursuance of realising their common objectives/interest as a unified enterprise, as evidenced by Clause 6(c) of a Resolution of the 7th Defendant dated 26th day of September 2014, which demonstrates that the 7th Defendant and the 1st Defendant entered into a Share Mortgage Agreement as a condition precedent for the conclusion of a credit facility agreement between BSGR, the 1st, 3rd, 5th, and 9th Defendants and Standard Chartered

Bank. A true copy of the said Resolution is hereby shown to me marked **Exhibit JAF 8**.

10. BSGR has committed fraud on a massive scale in connection with its mining interests, most spectacularly in Guinea, where it obtained the Simandou Iron Ore concession through a complex bribery scheme that targeted, among others, the former Guinean First Lady. True and correct copies of the Award issued by the London Court of International Arbitration (“LCIA”) finding BSGR liable to its former joint venture partner, Vale S.A., for fraudulent misrepresentation that led Vale into joining its corruptly obtained mining project; the Enforcement Order of the UK High Court authorizing Vale to enforce the arbitral award; the decision of the UK High Court to deny BSGR’s motion to set aside the Enforcement Order; the decision of the UK High Court denying BSGR’s challenge to the enforcement of the arbitral award; and the Judgment of the U.S. District Court for the Southern District of New York, granting recognition and enforcement of the arbitral award, are hereby shown to me and marked **Exhibits JAF 9, 10, 11, 12, and 13 respectively**.
11. BSGR adopts Legal Strategies to Shield Assets and Operating Units from Courts and Creditors, for example BSGR placed itself under administration in Guernsey – the local equivalent of bankruptcy – solely for the purpose of avoiding having to pay the 1.25 billion U.S. dollar arbitration award in favor of Vale. An article by Thomas Biesheuvel in *Bloomberg News* quotes BSGR Director Dag Cramer as saying, “This is drawing up the drawbridge, filling up the moat, putting some sharks in the moat, to make sure we can stay the distance on both the arbitration and litigation that we have, even if there are adverse awards or developments that would normally prevent us from doing this.” A true copy of the said article by Thomas Biesheuvel in *Bloomberg News*, quoting BSGR Director Dag Cramer, is hereby shown to me and marked **Exhibit JAF 14**.
12. In the course of the arbitration, BSGR reshuffled the ownership of several subsidiaries and moved them from one jurisdiction to another. The LCIA determined that BSGR did this expressly in order to evade the Tribunal’s discovery orders, which would have required BSGR to disclose the subsidiaries’ existence, relationships, and documents. The LCIA arbitral award, referred to hereinabove as **Ex. JAF 9**, describes these evasions at ¶¶ 426, 683-87.

13. BSGR migrated the country of incorporation of the 1st, 5th, and 7th Defendants from the British Virgin Islands to Guernsey in 2019, demonstrating how easy it is for them to move around their subsidiaries in ways that could put them outside the reach of the courts. Malcolm Cohen, one of the Joint Administrators for BSGR's bankruptcy in Guernsey, attested to the fact that some of BSGR's subsidiaries were migrated to Guernsey in Paragraph 9(a) of a sworn Declaration that was submitted on June 21, 2019, in support of BSGR's Petition for Recognition of Foreign Main Proceeding and Related Relief, filed with the U.S. Bankruptcy Court for the Southern District for New York., A true and correct copy of the said Declaration of Malcolm Cohen and a Corporate Structure Chart for BSGR and its subsidiaries, filed as Exhibit I to the Declaration of Malcolm Cohen are hereby shown to me and marked **Exhibit JAF 15.** and **16** respectively.
14. That BSGR's Financial Strategies to Siphon and Dissipate Assets and Hide Them from Creditors, BSGR took the 500 million U.S. dollars that it fraudulently induced Vale to pay to it and "upstreamed" at least \$371 million to its parent entities, Nysco Management Corp. and the Balda Foundation in Liechtenstein, rather than investing in its operations. Balda Foundation then used this money for the personal benefit of its beneficiaries – Beny Steinmetz and his family – and to make increased payouts to other entities closely connected to BSGR. Minutes of a Balda Foundation Council Meeting held 1st July 2010 note that the Foundation had received the "proceeds" of Vale's buy-in and the "subsequent substantial liquidity in the foundation," and approving the use of these funds for Foundation investments, payments to Steinmetz, his family members, Onyx Financial Advisors Ltd., and the Foundation Council members themselves. A true and correct copy of said minutes of the Balda Foundation Council Meeting held 1st July 2010, filed as part of Ex. B to the Blackman Declaration supporting Vale's Opposition to BSGR's Motion to Dismiss Vale's enforcement action in the U.S. District Court for the Southern District of New York, is hereby shown to me and marked **Exhibit JAF17.**
15. In Paragraph 7 of a Witness Statement filed by Nysco and Balda to the English High Court in support of their Summary Judgment Application in the fraud action and presented as Ex. 3 to the Declaration of Nicola Boulton in opposition to Vale's application for discovery from Steinmetz's New York real estate partners to trace the proceeds of the fraud, BSGR's Israeli attorney Doron Levy admits that at least \$371

million of the proceeds from Vale's investment were paid to Nysco. A true and correct copy of said Witness Statement of Doron Levy , is hereby shown to me and marked **Exhibit JAF18**.

16. I am informed and verily believe that Mr. Steinmetz himself received at least 94 million U.S. dollars of the total that Balda Foundation siphoned out of BSGR to pay off the debts of another unrelated company that he owned, Scorpio Real Estate Ltd. A letter dated 10th November 2010 that Mr. Steinmetz wrote to the Balda Foundation requesting 94 million U.S. dollars for this purpose, was filed as part of Ex. B to the Blackman Declaration supporting Vale's Opposition to BSGR's Motion to Dismiss Vale's enforcement action in the U.S. District Court for the Southern District of New York. A true copy of the said letter from Beny Steinmetz shown to me and marked as **Exhibit JAF 19**.
17. I am informed and verily believe that Mr. Steinmetz did in fact received the amount requested, in an article by Avi Shauly in *Globes* dated 17th February 2011 just three months after the letter hereinabove referred to as Exhibit JAF 19 announced that Mr. Steinmetz would inject 100 million U.S. dollars into Scorpio. A true copy of the said article is hereby shown to me and marked **Exhibit JAF 20**.
18. BSGR has also taken steps to ensure that the assets of its subsidiaries, including Ocea Limited (the 1st Defendant), are not available to satisfy judgment debts, while still maintaining effective control over those subsidiaries for the purposes of making profits. For example, in a filing with the U.S. Bankruptcy Court for the Southern District of New York, BSGR's Joint Administrators declared that Ocea Limited "not currently producing revenue flows that are available to BSGR," apparently because both its revenue stream is pledged as security to cover BSGR and its subsidiaries' debts to Standard Chartered Bank, and because BSGR's shares in the 1st Defendant are pledged to Star West Investments Ltd. as a security for that company's loan of \$161 million to the 1st Defendant. A true and correct copy of the 7th March 2019 report of BSGR's Joint Administrators, filed as Exhibit E to BSGR's Petition for Recognition of the Guernsey Administration proceedings in the U.S. District Court of the Southern District of New York, describing these arrangements at pp. 9-11, is hereby shown to me and marked **Exhibit JAF 21**.
19. Pages 9, 11, and 12 of a report of the BSGR Joint Administrators dated 5th March 2020 provide updated information on these arrangements and affirm that any payments from Ocea to BSGR are subjected to Ocea's prior satisfaction of more senior debt to Star

West. A true copy of the said report, which was filed as Ex. I to Vale's Motion opposing BSGR's confidentiality designations in BSGR's Guernsey Administration recognition action in the U.S. District Court of the Southern District of New York, is hereby shown to me and marked **Exhibit JAF 22**.

20. I am informed and verily believe that BSGR also stands to regain control over the revenue streams flowing from the concession that was the subject of its dispute with Vale while avoiding (for the present) an ownership stake that could be used to satisfy judgment debts. For example, in March 2019, it was announced that BSGR had settled its dispute with the Government of Guinea, and the concession had been regranted to a "new group of investors (presented by and including Beny Steinmetz)" that is led by Niron Metals plc, to take over the operations. The Directors of Niron have given several indications that the future operations at Simandou will entail a revenue stream for BSGR and Beny Steinmetz. The 5 March 2020 report of the BSGR Joint Administrators, referred to herein above at paragraph 23 as **Exhibit JAF 22**, describes at p. 2 the settlement term sheet whereby BSGR will be entitled to participate in the revenues from the Niron license if the deal is finalized. Further, a true and correct copy of a report by Global Witness on the links between Niron and BSGR published 3rd May 2019 is hereby shown to me and marked **Exhibit JAF 23**.
21. I am informed and verily believed that Star West Investments Ltd., the creditor of the 1st Defendant, is substantially under the control of or allied with Niron; its shareholder, Global Special Opportunities Ltd. (GSOL); and GSOL's subsidiary American Nickel, and thereby and/or by extension, Beny Steinmetz and BSGR. An article in Africa Mining Intelligence identified the Directors and shareholders of Niron, as well as identified Americano Nickel as a subsidiary of Niron's shareholder, GSOL, which is linked to BSGR and Ocea group of companies as described in the Global Witness article referred to hereinabove as Exhibit JAF 23. A true and correct copy of the said Africa Mining Intelligence article dated 19th July 2019 is hereby shown to me and marked **Exhibit JAF24**.
22. Records at the Bermuda Registrar of Companies for Star West Investments Ltd., Americano Nickel Ltd., and Americano Nickel Finance Ltd., filed as Exhibits H, I, and J dated 19th July 2019 to the Schweitzer Declaration in support of Vale's Opposition to BSGR's Motion for Protective Order in the Guernsey Administration recognition proceeding in New York, reveal that all of Star West's Directors are also Directors either of Americano Nickel or Americano Nickel Finance Ltd, thereby establishing that

Niron – the operational company for Mr. Steinmetz’s renewed investment in Guinea – is linked to Star West via its shareholder GSOL’s subsidiary, Americano Nickel. True and correct copies of said Bermuda Registrar of Companies records are hereby shown to me and marked **Exhibit JAF 25**.

23. Furthermore the debt arrangement described *supra* in paragraph 12 was transferred from Standard Chartered Bank to GSOL and then, three months later, to Star West, according to an Application for variation of charge filed by the 1st Defendant Company (Octea Ltd) with the Registrar of Corporate Affairs of the British Virgin Islands, dated 15th May 2020 and submitted as Ex. K to Vale’s Reply Memorandum in support of its application for discovery from Steinmetz’s New York real estate partners to trace the proceeds of the fraud. The said Application for variation of charge, which further documented the links between Niron and Star West via Niron’s shareholder, GSOL, is hereby shown to me and marked **Exhibit JAF 26**.
24. Documents from BSGR’s Joint Administrators also describe significant impairments to BSGR’s remaining productive assets that could similarly place their asset streams beyond the reach of creditors, suggesting that the Defendants’ assets are likely the only available recourse to satisfy BSGR’s debt obligations globally. Specifically, West African Power Ltd (WAPL), a Nigerian subsidiary, is currently restrained from dealing with its shares in a power plant by order of a Nigerian court and is not producing any cash flow for BSGR; and Roslindale PTE, whose shares are impaired to an aggregate value of just \$1,000 because “significant uncertainty over future cash flows” from an undeveloped oil and gas field that is the subject of a territorial dispute between Israel and Cyprus. The Declaration of Malcolm Cohen, referred to hereinabove as **Exhibit JAF 15**, is evidence to this effect in that it describes at ¶ 9(b) the restrictions on BSGR’s investment in WAPL. The 5th March 2020 report of the BSGR Joint Administrators, referred to hereinabove as **Exhibit JAF 22**, provides more updated information on the impairments to both WAPL and Roslindale at pp. 9-10.
25. I am informed that these examples demonstrate a pattern by which BSGR uses legal maneuvers and colludes with third parties that are under the effective control of BSGR, its Executives, or its affiliates to maintain access to the revenue streams and assets of its operating units while avoiding legal relationships or obligations that could put such assets at the disposal of judgment creditors or expose them to the jurisdiction of the courts. BSGR or its parent companies could easily appropriate the Defendants’ liquid

assets and park them in investments or pay them out to individuals or third parties, as they did with the Vale payment.

26. The Defendants have already taken steps to make it easy to put their assets out of this Court's reach; as of February 6, 2015, of the six corporate Defendants, only one – the 11th Defendant – had bank accounts in Sierra Leone, and the 11th Defendant also had an account with Standard Chartered Bank in the United Kingdom. All other corporate Defendants registered only bank accounts at Standard Chartered Bank in the United Kingdom. It would thus be very easy for the 11th Defendant to move any and all liquid assets to its account outside of Sierra Leone and, from there, to shift them around the corporate group. A true and correct copy of BSGR's disclosure of bank accounts for the Ocea Group dated 6th February 2015 is hereby shown to me and **marked Exhibit JAF 27**.
27. BSGR and its parents could also easily take advantage of the existing liens that they claim exist on Ocea's revenue streams to frustrate Plaintiffs' attempts to execute a judgment. They have already declared that Standard Chartered Bank claims priority rights over the revenue stream of Ocea, and they could use their influence over to Star West to induce or allow Star West to foreclose on its mortgage over BSGR's shares in the 1st Defendant, ensuring that Ocea and its assets become unavailable to satisfy a favorable judgment. The 5th March 2020 report of the BSGR Joint Administrators, referred to hereinabove as **Exhibit JAF 22**, describes Standard Charter's security interest over "all proceeds" flowing into the company at p. 11.
28. BSGR and its parents could reassign custodianship of documents and assets to a limitless array of yet-to-be-designed shell companies in order to frustrate discovery or asset recovery, as they did in the Vale arbitration. The LCIA arbitral award, hereinabove referred to as **Exhibit JAF 9**, describes the practice by which BSGR's back-office management company, Onyx, provided "shelf companies" in off-shore jurisdictions to enable these shell games at paragraph 195.
29. In fact, based on this global web of obligations and relationships, without a freezing order requiring the Defendants to keep their assets in Sierra Leone, Plaintiffs might have to pursue actions to execute any eventual judgment in their favor in Guernsey (domicile of the 1st, 5th, and 7th Defendants and BSGR), the British Virgin Islands (domicile of Nysco Management Corp.), Liechtenstein (domicile of Balda Foundation), Switzerland (domicile of Beny Steinmetz), Bermuda (domicile of Star West Investments Ltd.), and the United Kingdom (domicile of Standard Chartered) in

addition to Sierra Leone – seven jurisdictions in all – just to sort out the competing claims to Ocea’s assets. This global distribution of incorporation, domicile, and interlocking financial and fiduciary obligations is not an accident, but its import could be avoided if the Court grants Plaintiffs’ motion.

30. The home jurisdictions of the parent companies of the Ocea Group are notorious as offshore secrecy jurisdictions from which it would be difficult if not nearly impossible to recover assets if they were to be wrongfully transferred thereto or if the Defendants in this action were judgment-proof, because in the absence of reciprocity agreements between Sierra Leone and each of these countries, plaintiffs would be required to retain counsel and file a new action seeking either recognition of the judgment, payment of the judgment debt, and/or conversion of the Sierra Leone judgment into an enforceable local order. In the course of such procedure, many issues already settled in Sierra Leone – such as personal jurisdiction over the defendants and even the merits of the claims – would be relitigated. True copies of analyses by Thomson Reuters of the laws relating to enforcement of foreign judgments in the British Virgin Islands and Guernsey, and an analysis by International Comparative Legal Guides on the same subject for Liechtenstein, are hereby shown to me marked **Exhibits JAF 28, 29, and 30, respectively**.
31. Because the Defendants and their parent companies have the track record, the incentive, and the ability to move their assets – liquid, physical, and intangible – out of Sierra Leone or otherwise put them beyond the reach of judgment creditors, and the results of them doing so would be so calamitous to the interests of the Plaintiffs, I conclude that it will serve the interests of justice if the Defendants herein are restrained from disposing any of their assets worldwide or moving any such assets that are currently within the territory of the Republic of Sierra Leone outside Sierra Leone without prior approval of the Court, pending the determination of both this application and the Action.
32. I am reliably informed and verily believe that recent development in Gurnesey Court and the United States Bankruptcy Court for Southern New York, between have revealed that the Defendants Parents company’s BSGR and its former Venture Partner in LCIA award orders Vale, are locked into multiple legal disputes that may lead to discharge of BSGR joint administrators and place BSGR into liquidation on the 25th August, 2020, this situation will expose the defendants assets to prey of the creditor (s) of BSGR unless this Court grant this application and preserve the defendants assets

within the Sierra Leone jurisdiction. True Copy of Letters to the Honorable Sean H. Lane dated the 5th, 6th and 11 August, 2020 an on behalf of BSGR and Val and shown to me marked as Exhibits JAF. 31,32 and 33 respectively

33. That the Plaintiffs/Applicants herein undertakes to pay any damages that the Respondents may suffer as a result of the grant of this Application should it turn out

34. That the Plaintiff/Applicants herein undertakes to pay any damages that the Defendants/Respondents may suffer as a result of the grant of this Application should it turn out in the end that the Plaintiff/Applicants were not entitled to any Orders and or Prayers on the face of the Motion herein.

35. That it is in the Interest of Justice this Honourable Court grants the Plaintiffs/Applicants' Application herein.

36. That I make these Affidavits in Support of the Plaintiffs/Applicants' Application herein.

37. That the Defendants/Respondents bear the costs of this Application.

38. That the contents of this Affidavit are true to the best of my knowledge, information and belief.

Sworn at the Law Courts Building Freetown
On the Day of 2020, at the
Hours ofO clock in the fore Noon

DEPONENT

BEFORE

ME

A COMMISSIONER OF OATH

TO:

1. THE MASTER AND REGISTRAR
LAW COURTS BUILDING
FREETOWN

AFFIDAVIT IN SUPPORT

**C & J PARTNERS
1 JALLOH TERRACE MAKENI-KABALA HIGHWAY
MAKENI
SOLICITORS FOR PLAINTIFFS/APPLICANTS**