ICSID Case No. ARB/14/22

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

BSG Resources Limited
BSG Resources (Guinea) Limited
BSG Resources (Guinea) SARL

Claimants

v.

Republic of Guinea

Respondent

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COMMENTS OF THE REPUBLIC OF GUINEA ON THE FINAL REPORT OF THE TRIBUNAL-APPOINTED EXPERTS

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12 March 2018

DLA Piper France LLP
27, rue Laffitte
75009 Paris, France

Orrick Herrington & Sutcliffe LLP
31, avenue Pierre Ier de Serbie
75016 Paris, France
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1. Pursuant to paragraph 23 of the Terms of Reference for the Tribunal-appointed Experts and the letter of the Tribunal Secretary dated 1 March 2018, the Republic of Guinea submits the following comments on the Final Report of Messrs. Welch and LaPorte (the “Experts”) dated 12 February 2018 (the “Final Report”).

I. GENERAL COMMENTS ON THE FINAL REPORT

2. The Republic of Guinea has reviewed the Final Report with the assistance of its privately-appointed experts, Mr. Richard Picciochi and Dr. Valery Aginsky.

3. Both experts retained by the Republic of Guinea are highly-recognized for their experience and expertise in the field of forensic document examination. Mr. Picciochi is a questioned signature and document examiner with over thirty years of experience in the New York City Police Department Crime Laboratory and in private practice. Dr. Aginsky is perhaps the most renowned expert with respect to ink analysis and the leading author of ink analysis methodologies. He has nearly 35 years of experience in the field of forensic document examination.

4. Mr. Picciochi attended the document inspection and examination conducted in New York between 31 October and 3 November 2017. Mr. Picciochi considered the examination was conducted in a professional manner and that the methodologies used by the Experts were appropriate.

5. Mr. Picciochi and Dr. Aginsky have both studied the Final Report in full and consider it to be thorough and comprehensive. Mr. Picciochi and Dr. Aginsky approve of the methodologies used by the Experts and agree with their conclusion, based on all the observations that have been made, that “there is no evidence of page substitution, text alteration, text addition, or other irregularities to indicate that any of the Disputed Documents were fraudulently produced”.

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1 Annex A, Curriculum Vitae of Mr. Richard Picciochi.
2 Annex B, Curriculum Vitae of Dr. Valery Aginsky.
6. Consequently, it is Mr. Picciochi and Dr. Aginsky’s expert opinion that there is every indication that the Disputed Documents are genuine.

7. The Republic of Guinea notes that these conclusions accord perfectly with the evidence that has been adduced to date in this arbitration, in particular:

- the evidence that the remuneration promised to Mamadie Touré and/or her company Matinda under the terms of the Disputed Documents has effectively been paid to Mamadie Touré and/or Matinda;\(^4\)

- the evidence that the Claimants attempted, with the assistance of Frederic Cilins, to obtain the destruction of the Disputed Documents at a time when the Claimants were unaware that the Disputed Documents were already in the possession of the authorities;\(^5\) and

- the evidence that Michael Noy, a representative of Pentler and the signatory of several of the Disputed Documents, admitted the authenticity of the Disputed Documents involving Pentler in the LCIA proceedings between Vale and BSG Resources Limited\(^6\) – which evidence the Claimants acknowledged expressly and did not contest in their Reply submission.\(^7\)

8. In short, this is a case where the determination by the Experts aligns with the non-expert evidence. The Expert evidence thus confirms the logical conclusion of the entire file. There is no evidence supporting any alternative theory that the documents were somehow falsified and there is thus no alternative theory to test against the forensic evidence.\(^8\)

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\(^4\) See, *e.g.*, *Contre-Mémoire de la République de Guinée*, §§ 783, 800-805; *Mémoire en Duplique de la République de Guinée*, §§ 165-167, 190-192, 250, 388-484. The Republic of Guinea will add relevant references to the Hearing Transcripts in its forthcoming post-hearing submission.

\(^5\) See, *e.g.*, *Contre-Mémoire de la République de Guinée*, §§ 566-614, 785; *Mémoire en Duplique de la République de Guinée*, §§ 251, 669-701.

\(^6\) See, *e.g.*, *Mémoire en Duplique de la République de Guinée*, §§ 191, 430.

\(^7\) Claimant’s Reply, Annex 1, § 32.

\(^8\) While Messrs. Avidan and Struik testified that they did not sign exhibits R-27, R-28 and R-29, they provided no alternative explanations for the existence of these documents (see, *e.g.*, Hearing Transcript (English version) Day 4 at 199:24-200:12; 201:14-22 and 206:02-04 for Mr. Struik, and Hearing
II. COMMENTS ON THE EXPERTS’ RESPONSE TO THE COMMENTS OF THE REPUBLIC OF GUINEA ON THE PRELIMINARY REPORT

9. The Republic of Guinea is grateful to the Experts for having taken into consideration the comments of the Republic of Guinea on the Preliminary Report and for having taken the time to address these comments in Annex K to the Final Report.

10. With respect to the charting method used by the Experts in the Final Report for the signature comparisons (in Figures 33, 38 and 42, for example), the Republic of Guinea understands the Experts’ decision to adhere to their preferred charting method, on the basis of their experience with this method and its acceptation by accreditation bodies.

11. The Republic of Guinea notes that this charting method is apparently designed to be used during oral expert testimony, during which the Experts are able to explain the features and characteristics. The Republic of Guinea would be grateful if the Experts would plan, at the forthcoming hearing, to walk the Parties and the Tribunal through these identified features and characteristics.

12. In any event, the Republic of Guinea’s privately-appointed experts agree that there are a large number of similarities between the disputed and comparison signatures, including most of those identified by the Experts and others.

* * *

13. In sum, the Republic of Guinea is satisfied with the work of the Experts and supports the conclusions reached in the Final Report.

Respectfully submitted,

Paris, 12 March 2018

ANNEX A
Richard T. Picciochi
Access Forensic Group, LLC
110 Jericho Turnpike, Suite 104A, Floral Park, New York 11001

Employment

FORENSIC DOCUMENT EXAMINER (Private Practice) 2004-PRESENT
• Examine questioned handwriting and documents for genuineness or spuriousness
• Provide consultation, case review, on-site inspections, written reports, demonstrative exhibits and court testimony

• Examine questioned handwriting and documents for genuineness or spuriousness
• Collect evidence from crime scenes and collect handwriting specimens from suspects
• Provide written reports, demonstrative exhibits and court testimony
• Train personnel in handwriting examination, document examination, fingerprint processing and evidence photography
• Lecture to detectives, police management and assistant district attorneys
• Edit and contribute to Questioned Document Unit procedure and training manuals
• Conduct quality assurance examinations
• Supervise Questioned Document Unit personnel

POLICE ACADEMY AND FIELD TRAINING (New York City Police Dept.) 1984

FORENSIC SEROLOGIST (New York City Police Dept.) 1980-1982

TEACHING POSITIONS
• Hofstra University, Chemistry Department 2005-2013, 2015-PRESENT
• CUNY John Jay College, Science Department 1978-1980

Education

• MS in Forensic Science, John Jay College of Criminal Justice, New York, NY 1980
• BS in Biology, Adelphi University, Garden City, NY 1977

Certification

• Diplomate, American Board of Forensic Document Examiners 2005
• Re-certification 2010 & 2015

Affiliations

• American Academy of Forensic Science
• International Association for Identification
• Midwestern Association of Forensic Scientists
• New York Microscopical Society
• American Chemical Society
Specialized Training (Government Courses):

- Fundamentals of Documents Examination for Laboratory Personnel Course, *FBI Academy & University of Virginia* (1985)
- Crime Laboratory Photography Course, *FBI Academy & University of Virginia* (1985)
- Typewriter and Printer Examination Course, *FBI Academy & University of Virginia* (1991)

Specialized Training (University Courses):


Specialized Training and Workshops (Professional Organizations):

Specialized Training and Workshops (continued):

- Inkjet Printer Workshop, Mid-Atlantic Association of Forensic Scientists (2004)
- Signature Disguise and Simulation Workshop, American Board of Forensic Document Examiners (2006)
- Examining Documents Requiring a Multi-Faceted Approach Workshop, Midwestern Association of Forensic Scientists (2007)
- Sequencing of Indented Impressions Workshop, Midwestern Association of Forensic Scientists (2007)
- Forensic Examination of Computer Generated Documents Workshop, Midwestern Association of Forensic Scientists (2007)
Specialized Training and Workshops (continued):
• Photocopier, Facsimile and New Technology Workshop, Canon Imaging Group, Southeast Region System & Technical Support Division (2008)
• Dichroic Filter Workshop, Skill-Task Training, Assessment & Research, Inc. (2008)
• Handwriting Examinations Involving Extensive Multiple Known Writers Workshop, Skill-Task Training, Assessment & Research, Inc. (2008)
• Salvage and Restoration of Water Damaged and Charred Media Course, Document Reprocessors (2009)
• Hyper Spectral Imaging Workshop, ChemImage (2009)
• Improving the Quality and Reliability of Forensic Sciences Course, John Jay College Office of Continuing Professional Studies (2010)
• Cutting Edge Issues in Forensic Science: Pattern and Impression Evidence, National Academy of Sciences Study and Forensic Ethics Course, American Bar Association and the American Academy of Forensic Sciences (2010)
• Expert Testimony Course, New York State Bar Association (2010)
• Signature Examination Workshop - Complex Issues and Common Problems, American Board of Forensic Document Examiners (2011)
• Note Taking Techniques and Considerations for Document Examiners, Midwestern Association of Forensic Scientists (2011)
• Signature Examinations of Healthy and Impaired Writers Workshop, American Academy of Forensic Sciences (2013)
• Ultra-Violet and Infrared Capture of Crime Scene Evidence, The Evidence Conference (2013)
• Expert Testimony Workshop, Northeastern Association of Forensic Scientists (2013)
• The Examination of Documents Requiring a Multi-Faceted Approach Workshop, Midwestern Association of Forensic Scientists (2015)
• Evaluating Signatures Workshop, Midwestern Association of Forensic Scientists (2015)
• The Forensic Examination of Electronic Signatures, Midwestern Association of Forensic Scientists (2015)
• Steganography and Sympathetic Inks: The History Behind Invisible Inks and the Chemistry Associated With It, American Chemical Society (2015)
Meetings:
- Southern Association, Midwestern Association, Mid-Atlantic Association and Southwestern Association of Forensic Scientists Joint Meeting (2009)

Presentations:
- Handwriting and Questioned Document Examinations, in-service training courses for the Detective Bureau, Intelligence Division and Police Academy, New York City Police Department (1986 through 2004)
- CLE, Handwriting and Document Examinations, Suffolk Academy of Law (2011)

Publications:

Miscellaneous:
- Consultant to Hofstra University to develop a New York State accredited Bachelor of Science curriculum in Forensic Science (2004)
- Consultant to the New York State Police Department to provide training in Forensic Document Examination to crime laboratory personnel (2007 and 2008)
- Consultant to the New York State Police Department to provide technical peer review of forensic document cases (2012)
RICHARD T. PICCIOCHI
110 Jericho Turnpike, Suite 104A, Floral Park, New York 11002-2019

Miscellaneous (continued):

- Technical Assessor for ISO Inspection and Accreditation of Crime Laboratories by ASCLD/LAB International (2009 to present)
- Technical Assessor for ISO Inspection and Accreditation of Crime Laboratories by ANSI-ASQ National Accreditation Board (2013 to present)
- Assigned to the Questioned Document Expert Witness Panel of the Nassau County Bar Association Assigned Counsel Defender Plan (2013 to present)
- Conducted ISO 17025 accreditation inspection and assessment of the Federal Police Laboratory of Mexico, Questioned Document Section (October 2015)
- Conducted ISO 17025 accreditation inspection and assessment of the United States Army Criminal Investigation Laboratory, Questioned Document Section (November 2015)
- Conducted ISO 17025 accreditation inspection and assessment of the Honolulu Police Department Crime Laboratory, Questioned Document Section (June 2016)
- Conducted ISO 17025 accreditation inspection and assessment of the Attorney General, State of Puebla Mexico, Institute of Forensic Sciences Laboratory, Questioned Document Section (March 2017)
- Conducted ISO 17025 accreditation inspection and assessment of the United States Army Criminal Investigation Laboratory, Questioned Document Section (December 2017)
Position: Forensic Chemist / Ink and Document Dating Specialist
Aginsky Forensic Document Dating Laboratory, Inc.
East Lansing, Michigan

Education:
Ph.D. Analytical Chemistry - 1980
Military Academy of Chemical Defense (formerly known as the Chemical
Faculty of the Institute of Mechanical Engineering prior to 1940), Moscow, USSR
M.S. Analytical Chemistry - 1977
Military Academy of Chemical Defense, Moscow, USSR

Training:
Chromatography, Moscow State University – 1990
Examination of Questioned Documents, Forensic Science Center
Examination of Explosives, Forensic Science Center
of the Ministry of the Interior, Moscow, USSR – 1980

Professional Experience:
Aginsky Forensic Document Dating Laboratory, Inc.
East Lansing, Michigan
Forensic Chemist / Document Dating Specialist (since April 2008)

Riley, Welch & Aginsky Forensic Document Examinations, Inc.
Lansing, Michigan

Lansing, Michigan

Forensic Science Center of the Ministry of the Interior, Moscow, Russia
Senior Research Chemist (1980 to 2000)
Author of two ink aging methods that analyze ink volatile components (not ink dye components*) and that have been tested and applied to actual cases by multiple forensic laboratories. These two ink aging methods are the Sequential Extraction Technique (SET) and Solvent Loss Ratio Method (SLRM). The SET and SLRM measure certain parameters of ink that decrease as ink ages on paper. Other ink entries are not necessary for comparison. Dr. Aginsky has developed the SET as a result of many years of research of the “extent (percent) of extraction” ink aging methodology developed and published by Dr. Antonio Cantu in the 1980s. The SET is the only ink aging method that has proven its reliability through outside proficiency testing using “blind” samples (outside proficiency tests in 1995, 2001, and 2011).

Involved in methods development, technical assistance to investigative personnel, including training and presentations to legal proceedings and routine examination of evidence. Developed several techniques for examining questioned documents, counterfeit currency, currency exposed to an exploding dye-pack, drugs of abuse, explosives, gunshot residues, and determining the age of ink on documents.

Over 34 years of professional research and practical experience in the field of forensic document examination. Prepared expert reports and testified in civil and criminal cases involving altered (or counterfeit) documents, Wills, business contracts, medical records, deeds, promissory notes, corporate papers, personal and business checks, stock certificates, share transfer agreements, real estate documents, insurance records, prenuptial agreements, accounting forms and ledgers, diaries, computer-printed and photocopied documents, as well as documents involved in copyright and patent infringement cases.

Cases have been submitted from throughout the United States, as well as from Canada, England, Russia, Australia, Mexico, China, Israel, the Netherlands, Germany, Iceland, Greece, Sweden, Ireland, Lithuania, Poland, Ukraine, Kosovo, South Africa, Slovakia, Turkey, Malaysia, India, Italy, United Arab Emirates, Gibraltar, British Virgin Islands, Tunisia, Barbados, Cayman Islands, and Hong Kong.

**Types of examinations in which expert services have been provided:**

- Dating of documents
- Dating of ink on documents
- Determining whether ink(s) on a document was (were) commercially available on the supposed date of preparation of the document
- Examining medical records to determine whether the entries were made at the time alleged
- Determining sequence of written and printed entries (e.g., to answer the question, “Was a page signed in blank and then the text was printed?”)
- Determining sequence of execution of written and printed entries when lines do not intersect
- Determining whether a signature is original (ink) or a computer generated color copy
- Examining documents for suspected alterations, such as:
  - page substitutions or insertions
  - obliterations/overwriting, eradication, erasures
  - entries inserted (interlineations, additions) or changed after the fact

* At present, the ink aging techniques that analyze ink dye components are considered unreliable by the overwhelming majority of ink dating specialists and forensic document examiners.
- Examining **toner, inkjet and dot matrix printer ribbon ink** *(computer generated documents, photocopies, faxes)* using physical (optical) and chemical methods

- Examining **paper** using physical and chemical methods

- Examining **ink** *(signatures, writings, printed entries, typewritten entries, stamp impressions)* using physical and chemical methods

- Examining intersections (areas where two or more pen lines cross) to determine the order of writing (it may prove that a particular entry was added at a later time)

- Examining multiple documents (originals or photocopies), which were supposed to come from different sources, to determine whether they came from their respective origins or whether they have a common source

- Examining multiple documents (entries, signatures), which are dated over a long period of time, to determine whether they were or were not produced on or around their purported dates.

**Methods:**

- physical (optical) and chemical examination techniques, including the analysis and dating of ink on documents and the comparative analysis of inks, toners, and paper by Microscopy, Microspectrophotometry, Ultraviolet/Visible and Infrared Spectroscopy (FT-IR microscopy), Thin-Layer Chromatography, and Gas Chromatography-Mass Spectrometry.

**Honors/Awards:**

- Diploma and the First Prize for new techniques on Dating Inks, Ministry of the Interior of Russia, 1993.

- Award for excellence in service (Best Forensic Chemist), Ministry of the Interior of the USSR, 1982.

- Silver medal in chemistry at the 1976 All-Union Contest of Scientific Works, Ministry of Defense of the USSR.

- Co-Chair of the Questioned Documents Sections at the First International Forensic Science Symposium, Moscow, Russia, 1994, the 13th and 14th Meetings of the International Association of Forensic Sciences, Dusseldorf, Germany, 1993, and Tokyo, Japan, 1996.

- Appointed by the Scientific Council on Chromatography of the Russian Academy of Science to evaluate and compare the separation efficiency of high performance thin-layer chromatography (HPTLC) silica gel plates manufactured by Merck (Germany) and Professor B.G. Belenky’s TLC company (Russia), 1994.

- Invited speaker (“An Application of Chromatographic Methods for Dating Questioned Documents”) at the International Meeting Devoted to the 125th Birthday Anniversary of the Inventor of Chromatography, Dr. Michael Tswett, Duesseldorf, Germany, 1997.


- Invited speaker (“Ink Dating – The Essentials of the Sequential Extraction Technique”). The 7th International Congress of Experts in Forensic Document Analysis (SIPDO 2012), Las Palmas de
Gran Canaria, Canary Islands, 2012.

- Award “Atlantida 2012” for researches in the field of ink and document dating, La Sociedad Atlantica de Criminalistica y Ciencias Forenises, 2012.

Teaching Experience:

Conducted numerous training seminars for the personnel of forensic laboratories in Russia and the former Soviet Union in the framework of the Ministry of the Interior's training programs:

- Technical and Chemical Examination of Counterfeit Currency
- Detecting and Dating Alterations Made to Documents
- Ink/Paper Comparison by Thin-Layer Chromatography and Other Analytical Methods
- Identification of Explosive Residues in Post-Explosion Debris

Served as visiting examiner to the Division of Identification and Forensic Science, Israel Police Headquarters, 1996 & 1997 (conducted two ink dating case examinations).

Conducted seminars/workshops on ink analysis and dating for the Division of Identification and Forensic Science, Israel Police Headquarters, Jerusalem, Israel, 1995; Ministry of Justice and Ministry of the Interior Combined Scientific Council for Forensic Science and Criminalistics, Moscow, Russia, 1997; Forensic Sciences Division of the Canada Customs and Revenue Agency, Ottawa, Canada, 1998; Istanbul University, Institute of Forensic Sciences, Istanbul, Turkey 2000; the 7th International Congress of Experts in Forensic Document Analysis (SIPDO 2012), Las Palmas, Canary Islands, 2012; Canada (2015); Australia (2016); Colombia (2016). Conducted a seminar on Quantitative Thin-Layer Chromatography (Internal Standard Method) at the Russian-German Summer School on Thin-Layer Chromatography, Moscow, Russia, 1993.

Court Testimony

Testified regarding ink (paper, toner) physical and chemical analyses and ink/document dating in criminal and civil matters and in arbitrations in the United States, Canada, England, Russia, Cayman Islands, Israel, China, Poland, Iceland, Gibraltar, and Hong Kong.

Cases of Note

2014 – Peter A. Allard v. The Government of Barbados
2012 – Paul D. Ceglia v. Mark Elliot Zuckerberg and Facebook, Inc.
2012 – Gerald Morawski v. Lightstorm Entertainment, Inc. and James Cameron
2011 – Mattel, Inc. v. MGA, Inc. (Santa Ana, CA)
2011 – Vito G. Gallo v. Government of Canada (Toronto, ON)
2009 – Arkady "Badri" Patarkatsishvili (Miselva and Nexus Treuhand AG v. Inna Gudavadze, et al) (Gibraltar)
2009 – Libananco Holdings Co. Ltd. v. Republic of Turkey (The World Bank Group, Washington, DC)
2007 – Angeline Hebert v. Bank of America (Los Angeles, CA)
2006 – L’Oreal v. Estee Lauder
2003 – In re The Christian Science Monitor and George Galloway MP
2002 – CVC/Opportunity Equity Partners Limited v. Luis Roberto Demarco Almeida (Cayman Islands)

Professional Affiliations:
- American Society of Questioned Document Examiners (ASQDE)
- Scientific Working Group for Forensic Document Examination (SWGDOC)
- International Association for Identification, Questioned Document Section (IAI)
- International Association of Forensic Sciences, Questioned Document Section (IAFS)
- Regional Representative for the Russian Charted Division of the International Association for Identification (1998 - 2000)
- American Society for Testing & Materials (ASTM)
- Member of the Editorial Review Board of the Journal of the American Society of Questioned Document Examiners; Guest Reviewer for the Journal of Liquid Chromatography & Related Technologies

Professional Publications:
- Patents in analytical chemistry and forensic science. More than 25 peer-reviewed articles on ink analysis and dating, including chapters in several books and encyclopedias (see below).

Professional Publications

Books


10. Aginsky, V.N. Dating Writing Inks on Documents, Forensic Science Center of the Russia’s Ministry of the Interior, Moscow, Russia, 1997 (in Russian).


Peer-Reviewed Articles and Presentations at Scientific Conferences


34. Aginsky, V.N. *Current Methods for Dating Ink on Documents*. Proceedings of the 60th Annual Conference of the American Society of Questioned Document Examiners, San Diego, California,
Aginsky, V. N. *Using TLC and GC-MS to Determine whether Inks Came from the Same Manufacturing Batch*. Proceedings of the 63rd Annual Conference of the American Society of Questioned Document Examiners, Montreal, Canada, August 11-16, 2005.


Aginsky Forensic Document Dating Laboratory, Inc. Tel: (517) 339-0593 http://www.documentdating.com
Medellin, Colombia, November 1-5, 2016.


Other Professional Publications


60. Aginsky, V.N. A New Approach in Determining the Age of Inks Using Densitometric Thin-Layer Chromatography, ibid.


63. Tanaka, T., Aginsky, V., Barton, A., Mohammed, L., Morton, S., Richards, G., Spencer, R. Globalization and Questioned Documents. Panel Discussion. The 70th Annual Meeting of the
