

Wallace achieves resounding success for clients in US\$1.2 billion Commercial Court fraud claim brought by Vale — Wallace LLP

Monday 28 February, 2022

Wallace has obtained a stunning success for three individual defendants to a US\$1.2 billion Commercial Court fraud claim brought by companies within the Brazilian Vale group, one of the largest mining and metals conglomerates in the world.

The dispute related to a failed joint venture dating back to 2010 for the development of an iron ore mining project in the Simandou region of Guinea between Vale and BSGR, a natural resources multinational associated with Beny Steinmetz, the well-known Israeli businessman. Wallace's clients are three former BSGR senior executives. In early 2014, the Government of Guinea determined that the iron ore mining licences obtained by BSGR had been procured by bribery and corruption, an allegation vigorously contested by BSGR in an ICSID arbitration, and revoked them with immediate effect, after which they became worthless.

Vale brought international arbitration proceedings against BSGR in 2014 alleging that it had made fraudulent misrepresentations during the joint venture negotiations regarding the circumstances in which the mining licences had been obtained. A substantial LCIA arbitration award was made against BSGR in April 2019, but BSGR went into administration shortly afterwards.

In December 2019, Vale issued Commercial Court proceedings against Mr Steinmetz and five other individual defendants (including our clients) and two corporate entities, making similar allegations of fraud and conspiracy. Vale also obtained a worldwide freezing injunction over the defendants' assets pending determination of its claims.

The proceedings were extremely hard fought, including as to the parties' disclosure obligations and the tracing of an initial payment of US\$ 500 million by Vale to BSGR at the outset of the joint venture in 2010. Trial commenced on 24 January 2022 with a time estimate of 11 weeks. The defendants (led by our clients) asserted that Vale's claims had been brought after expiry of the relevant limitation period and were therefore time barred and bound to fail, a position they had maintained from the outset.

After three weeks of opening submissions and cross-examination of Vale's first three witnesses, together with further unexpected late disclosure made by Vale during trial, it became apparent that Vale knew of (or with reasonable diligence could have discovered) the alleged facts giving rise to its claims against the defendants well before December 2013, the cut-off date for limitation purposes.

On Monday 14 February 2022, the start of the fourth week of trial, and hours before one of its witnesses was to be cross-examined including in respect of the due diligence undertaken by Vale prior to entering into the joint venture in 2010, Vale abruptly applied to discontinue all claims against the defendants with immediate effect on the basis that it now accepted that its claims were indeed time barred. The Court immediately discharged the worldwide freezing order and on 15 February 2022 refused the discontinuance application and instead ordered that Vale's claims be dismissed in their entirety. Vale has been ordered to pay the defendants' costs of the proceedings on the indemnity basis and the defendants are at liberty to claim damages from Vale for losses they have incurred as a result of the worldwide freezing order having (wrongly) been imposed.

This is a superb outcome for Wallace's clients and vindicates their position from the outset that these proceedings should never have been brought. It also speaks to Wallace's deep expertise in advising clients in complex, multijurisdictional commercial disputes, including against parties represented by well-known international law firms, in this case the New York-based Cleary Gottlieb Steen and Hamilton LLP, solicitors to Vale.

Marcus Struik, Asher Avidan and Joseph Tchelet, Wallace's clients, said: *"Wallace have been more than excellent in defending us in these proceedings for over two years. Alexander Weinberg and Philip Blyghton were a formidable team, professional and attentive in all respects. Our legal team led at trial on the key argument that Vale's case was time barred and should never have been brought, which is the basis upon which the claims have been dismissed. We are extremely grateful for their and the Counsel team's hard work and commitment."*

The Wallace team was led by [Alexander Weinberg](#) and senior associate [Philip Blyghton](#). Tom

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Weisselberg QC, David Lowe and Warren Fitt (all of Blackstone Chambers) were retained as Counsel to Wallace's clients over the course of the proceedings. David Lowe and Warren Fitt represented Wallace's clients at trial.

"We are delighted to have secured such a positive result for our three clients in these proceedings, which aptly showcases Wallace's proficiency in handling high profile, heavyweight commercial disputes acting against and alongside household names in the industry."

It is an exciting time for our [commercial litigation practice](#), which continues to go from strength to strength."

— Alexander Weinberg, Litigation Partner at [Wallace LLP](#)

Company Contact:

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Wallace LLP

T. 07881487510

E. lisa.bates-wallis@wallace.co.uk

Additional Contact(s):

Rex Newman, Managing Partner

Wallace LLP

One Portland Place

London W1B 1PN

[View Online](#)

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