

MEMORANDUM OF DETERMINATIONS

Political Violence Claim of Nord Resources Corporation Sierra Leone - Contract of Insurance No. A628 (as amended, the "Contract")

I. CLAIM

By letter dated October 2, 1995, Nord Resources Corporation ("Nord" or the "Investor") filed a claim (as amended, modified and supplemented, the "Claim") under Coverage C of the Contract, a standard form 234 KGT 12-70 (Revised), as amended, covering losses due to war, revolution, insurrection, and civil strife ("War Coverage") for compensation in the amount of US \$15,704,500. This claim is for Damage sustained with respect to Nord's investment in Sierra Rutile Limited. To assist Nord in completing the Claim, OPIC requested additional information required under the Contract. Although the political instability in Sierra Leone, among other things, caused Nord difficulty in obtaining the required information, the Investor provided amendments or supplements to the Claim on December 26, 1995, March 20, 1996, May 7, 1996, May 9, 1996 and July 3, 1996. Finally, in amendments received on February 10, 1998, Nord thoroughly revised and restated the Claim, providing substantially all of the information required by the Contract.¹

OPIC finds the Claim to be valid and the amount of compensation due to be \$15,704,500 of which \$1,500,000 has been paid to Nord by OPIC as an advance.

II. FACTUAL BACKGROUND

A. History of the Investment

In 1976, Bethlehem Steel Corporation, through a subsidiary ("Bethlehem"), and Nord formed a joint venture company, Sierra Rutile Limited ("SRL" or the "Foreign Enterprise"), to develop a rutile project in Sierra Leone. At that time, OPIC wrote coverage for both investors. Through a series of transactions, Bethlehem sold its interests, and Nord ultimately retained a fifty percent interest in Sierra Rutile Holdings Limited, of which SRL is a wholly owned subsidiary. At the time of the Damage, this investment was covered by the Contract.

B. History of the Damage

Sierra Leone has experienced various levels of political instability since gaining independence from Britain in 1961. Most recently, this has included a civil war, which began in 1991. Rebel activity was often intense and, over time, expanded to many regions of the country. In its first five years, the civil war killed more than 10,000 people and drove almost half of Sierra Leone's population from their homes.

The conflict began during the reign of President Joseph Momoh, who headed a one-party system that had been in place since 1978. The main armed rebel group, the Revolutionary United Front ("RUF"), launched a revolt with the backing of a Liberian insurgent group, the National Patriotic Front of Liberia ("NPFL") in March of 1991.

After widespread political agitation, President Momoh consented to a national referendum concerning return to a multi-party political system. In the referendum, which was conducted in August 1991, the population voted overwhelmingly in favor of the change. On April 30, 1992, after repeated delays in the promised transition to multi-party democracy, military officers, led by Captain Valentine Melvin Strasser (a 27-year old army officer), staged a successful coup, taking power after a brief confrontation with government officials and police. With Momoh in Guinea, Captain Strasser set up the National Provisional Ruling Council ("NPRC"), whose stated priorities were to end the war, restore multi-party democracy, and institute economic reforms.

The war in Sierra Leone, which had been largely confined to the southeastern regions, spread to other areas of the country in mid-1994. The presence of other smaller rebel movements and bands of renegade soldiers who appeared to be collaborating with the RUF complicated the situation, and may have precipitated the insurgency's spread. On January 1, 1995, rebel forces attacked an area near the town of Lunsar in northern Sierra Leone, only 124 km from the capital, Freetown.

On the evening of January 19, 1995, fighting broke out between government troops and rebel forces in the vicinity of SRL's minesite. The fighting soon spread to the area of SRL's operations. On January 20, 1995, at approximately 5:00 AM, SRL's rutile mine and processing facility came under attack from rebel forces. SRL began evacuating personnel, and operations at the mine were suspended. The attack was defended against by a local contingent of Sierra Leone government ("GOSL") troops. An attempt at negotiation failed and resulted in hostages being taken. All hostages were later released unharmed, some after several months of captivity. The mine was briefly retaken by government forces on February 1, 1995, but later again fell into the hands of non-government forces. On April 24, 1995, government troops once again took control of the minesite. SRL subsequently regained possession and has continued to exercise some degree of control, although the situation is far from secure.

C. Procedural History of the Claim

By facsimile dated January 20, 1995, and later by letter on January 31, 1995, Nord (through its insurance broker, Marsh & McLennan) notified OPIC, as required by the Contract, that certain

actions had taken place on January 20, 1995, that caused Damage and might give rise to a claim within the scope of Coverage C. As set forth above, Nord accumulated and organized information necessary to complete its Claim from that time until February 10, 1998.

Pursuant to a Provisional Payment and Indemnification Agreement dated September 30, 1996, OPIC agreed to advance Nord a provisional payment of \$2,000,000 with \$500,000 of that amount withheld pending Nord's fulfillment of certain conditions subsequent related to mitigation efforts (the "Conditions Subsequent"). On September 30, 1996, OPIC advanced a provisional payment to Nord of \$1,500,000 (the "Provisional Payment"). Nord did not fulfill the Conditions Subsequent.

III. DETERMINATIONS UNDER THE CONTRACT

OPIC hereby makes the following determinations under the Contract.

A. Section 1.07. Damage has occurred

The threshold question presented by the Claim is whether the actions which occurred constituted Damage. "Damage" is defined under Section 1.07 of the Contract as follows:

Under Coverage C, the term Damage means (a) injury to, (b) disappearance of, or (c) seizure and retention of Covered Property (any of which events, for the purposes of this Section, shall be referred to as a 'Loss') directly caused by an act of (1) war (whether or not formally declared), (2) revolution or insurrection, or (3) civil strife, terrorism or sabotage. An act of revolution or insurrection is an act committed by an organized group having as its principal objective either the violent overthrow of the established political authorities or the ouster of such authorities from a specific geographic area. An act of civil strife, terrorism or sabotage is a violent act undertaken by an individual or group with the primary intent of achieving a political objective. For purposes of this Section, a Loss caused by an individual or a group acting primarily to achieve demands of labor or students shall be excluded from coverage.

Three issues are presented by this provision of the Contract: (1) whether the acts causing the injury were acts of war, revolution, insurrection, civil strife, terrorism or sabotage; (2) whether such injury was the direct result of such action; and (3) whether the injury occurred to Covered Property.

1. The Acts Causing The Loss Were Acts Of War, Revolution, Insurrection, Civil Strife, Terrorism Or Sabotage As Defined In The Contract.

Based on published accounts of the conditions in Sierra Leone on the date the SRL minesite was attacked by RUF rebels, and transcripts of eyewitness accounts provided to OPIC by Nord, OPIC determines that acts causing the loss were acts of revolution or insurrection. RUF rebels urged the overthrow of the government and conducted armed guerrilla campaigns throughout Sierra Leone. RUF's actions against SRL appeared to be part of a military campaign directed at the ouster of the established political regime. It is believed that RUF rebels overran the minesite because rutile production is a major source of funding for the government, as earnings from rutile made up about 40 percent of Sierra Leone's foreign exchange earnings. OPIC has determined that these circumstances offer sufficient evidence to support a finding that the acts causing the Loss had as their principal objective the violent overthrow of the established authorities.

There is substantial evidence that much of the Damage was caused by the RUF incursion or subsequent attacks by the GOSL troops and their allies.

2. Political Violence Was the Direct Cause of the Loss.

Section 1.07 of the Contract provides the principles that are to be used to determine whether the Loss was directly caused by an event with respect to which OPIC coverage is provided:

[A]n act shall be considered to be the direct cause of a Loss if there is an unbroken chain of causes and effects from the act to the Loss, without the intervention of any force operating actively from an independent source, and the Loss would not have occurred but for the act. An action taken to combat or defend against an actual or anticipated act of war, revolution, insurrection, civil strife, terrorism or sabotage can constitute an element in a chain of causes and effects.

Therefore, two separate conditions must be met to establish causality. The first is that there must be an unbroken chain of causes and effects from the event to the injury, without any independent force intervening. The second, which must be established independently of the first, is that the Loss would not have occurred but for the event insured against.

As discussed above, substantial evidence indicates the Damage was caused either by the initial RUF incursion or by the subsequent attempts of GOSL troops and their allies to dislodge them. Both Nord and SRL have represented to OPIC, however, that as much as forty percent of the Damage (particularly including looting) resulted from organized pillaging by GOSL army forces. That this activity also falls within the chain of events is demonstrated by the fact that it has been virtually eliminated since the political violence around the project has abated and the Foreign Enterprise and its agents have retaken control of the mine-site.

OPIC, therefore, finds that the direct causation test is satisfied by the chain of causes and effects from the Political Violence to the injury to the project.

3. The Property Damaged Was Covered Property Under The Contract.

"Covered Property" is defined in Section 1.05 of the Contract as "tangible property owned by the Foreign Enterprise or of which the Foreign Enterprise bears the risk of loss and which is used in connection with the Project and is located in the Project Country on the Date of Damage."

The Investor has filed the instant Claim with respect to extensive Damage caused to diverse categories of property. Both on-site assets and inventory were damaged. The categories of on-site assets damaged are as follows:

- (a) contract earth moving (CEM) equipment including heavy machinery, light vehicles, tools, and miscellaneous equipment;
- (b) mining and processing machinery and equipment;
- (c) auxiliary mining machinery and equipment;
- (d) the Nititi port area, including land-based equipment, barges, fuel oil tanks and the generating plant;
- (e) service facilities, including the power plant and its components and equipment and the water and sewage treatment plants and their equipment and systems;
- (f) buildings including plants, workshops, sheds, offices, laboratory, and warehouses;
- (g) equipment used in the buildings, including laboratory and office equipment such as computers, radios and telephones and workshop equipment;
- (h) dams and earthworks;
- (i) transportation equipment, including light and heavy vehicle fleets;
- (j) plant, including earthmoving equipment not included in the CEM category, cranes and other mobile equipment;
- (k) housing and the necessary components;
- (l) furniture; and
- (m) construction in progress, consisting of a dredge, a powerhouse, construction and associated civil works, including materials, tools, mobile equipment and generators.

The categories of inventory are as follows:

- (a) plant materials, including supplies and equipment;
- (b) CEM materials, including supplies and equipment;
- (c) fuel; and
- (d) foodstores.

Nord has certified to OPIC that the above items were owned by SRL on the Date of Damage, were located in the Project Country and were used in connection with the Project. In addition, Nord has supplied video tapes of the minesite, including certain of those assets that were damaged but not removed, and extensive records demonstrating that this property was owned by SRL, including, in many instances, records which provide third party confirmation of this fact. On the basis of this certification, a site visit and analysis of the backup provided, OPIC finds the damaged property constitutes Covered Property.

B. Section 24.01. The amount of compensation to be paid

The Contract provides that the amount of compensation for Damage is the lesser of the Net Investment as of the Date of Damage or the Investor's Share of the amount of Damage, less any Other Compensation received by the Investor for the same Damage and the Investor's Share of any Other Compensation received by the Foreign Enterprise for the same Damage.

Both the Net Investment as of the Date of Damage and the Investor's Share of the amount of Damage exceed the amount of coverage.

1. The Amount of Net Investment.

Based on an analysis of Nord's 1995 Form 10K filed with the Securities and Exchange Commission, Nord's investment in SRL was at least \$56,000,000. OPIC finds the amount of Nord's Net Investment exceeded the amount of coverage available.

2. The Amount of Damage to Covered Property.

Section 25.01 of the Contract provides the formula by which the amount of Damage is

determined for purposes of compensation:

The amount of Damage shall be the Actual Cash Value, immediately prior to the Date(s) of Damage, of the Covered Property which has suffered Damage, but not exceeding the lesser of (i) the reasonable cost of repairing or replacing such Covered Property with property of like kind and quality within a reasonable time after such Damage, or (ii) the amount by which the Damage reduced the fair market value in the Project Country on the Date(s) of Damage of such Covered Property.

The term Actual Cash Value is defined under Section 1.02 of the contract as follows:

Under Coverage C, the term "Actual Cash Value" for any item of Covered Property owned by the Foreign Enterprise means on any date the reasonable cost thereof to the Foreign Enterprise (adjusted if necessary to reflect abnormal deterioration in the physical condition of such item). For the purpose of this section, "reasonable cost" means the basic cost of any item (not to exceed fair market value in the United States of America at the time of acquisition) plus freight, insurance, import duties, cost of installation and such other direct costs related to such item as have been, in accordance with the principle of accounting referred to in Article 9, capitalized and charged to such item on the books of account of the Foreign Enterprise. For any item of Covered Property not owned by the Foreign Enterprise but as to which the Foreign Enterprise does bear the risk of loss, the term "Actual Cash Value" means the amount of the Foreign Enterprise's equity in such item plus any amounts which the Foreign Enterprise is legally obligated to pay the owner thereof for Damage.

In the Claim, the Investor claims losses in the amount of \$20,817,967, which represents its 50 percent interest in what Nord asserts was SRL's total loss of \$41,635,933. This figure is a combination of \$37,124,281 for damage to on-site property and \$4,511,652 for preservation of assets.

As expenditures for preservation of assets are not covered by the Contract, this figure is not included in OPIC's calculation of the Amount of Damage.

Applying the first portion of the Contract's tests, the Investor calculated the amount of Damage by determining the lesser of Actual Cash Value or the cost of repairing or replacing damaged property. With respect to the third leg of this test, however, the Investor has asserted that "The amount by which the damage reduced the fair market value in Sierra Leone is not applicable because the items damaged, destroyed or stolen were not commercially operable after the damage, nor does a fair market exist in Sierra Leone for the property in question."²

OPIC finds this argument untenable. Even if the property had no value after the Damage, the provision still requires calculation of the fair market value before the Damage, as a limit on the amount of compensation payable. Nord negotiated no revision to the Contract with respect to this provision, much of the property was not specialized and Sierra Leone has a substantial mining industry. A value may be derived, however, as envisioned in the Contract. Since the Investor has not provided any information with respect to the fair market value, OPIC has sought to create a reasonable proxy. To provide such an approximation, OPIC used the depreciated book value from SRL's books. Under this analysis, the total amount of Damage is reduced by \$4,338,089.

As set forth in greater detail at Tab A:

| | |
|---|----------------|
| The Actual Cash Value of the on-site property | \$210,398,913. |
| The Investor's loss valuation using the lesser of reasonable cost of repairing or replacing the Damage | \$37,063,694. |
| Reduction to account for fair market value | \$4,338,089. |
| Total loss | \$32,725,605. |

Therefore, OPIC finds the Amount of Damage was \$32,725,605.

3. The Investor's Share of the Amount of Damage is US \$16,362,803.

Pursuant to Section 1.21 of the Contract, the Investor's Share is 50 percent. OPIC finds that the Investor's Share of the Amount of Damage is \$16,362,803.

4. Nord has received no Other Compensation from any source for items for which compensation from OPIC is requested.

As required by Section 26.02 of the Contract, the Investor has certified that it has received no Other Compensation, except the \$1,500,000 Provisional Payment.

5. The Compensation Determined To Be Due Exceeded the Current Insured Amount and the Maximum Insured Amount for Coverage C under the Contract but Does Not Exceed the Net Investment.

As discussed above, OPIC has determined that in accordance with Section 24.01 of the Contract (a) the amount of Damage to Covered Property, \$16,362,803, exceeds the Current Insured Amount and the Maximum Insured Amount for Coverage C under the Contract, but (b) does not exceed the Net Investment of the Investor in the Foreign Enterprise on the Date of Damage.

6. Nord has Retained Risk of Loss with Respect to More than Ten Percent of its Total Contribution to SRL.

In Section 2.05, the Contract requires Nord retain the risk of loss with respect to ten percent of its total contribution to SRL. As Nord's investment in SRL was in excess of \$56,000,000, and its insurance with respect to Coverage C was \$15,704,500, it has satisfied this requirement.

C. Section 23.01. The Investor gave timely notice of acts within the scope of political violence coverage and of its entitlement to compensation and has provided the additional information required by OPIC to evaluate the claim.

Section 23.01 requires the Investor to notify OPIC promptly of any action which the Investor has reason to believe may cause or has caused Damage. Section 26.01 of the Contract requires the Investor to provide OPIC with notice demonstrating the Investor's entitlement to compensation within six months of the loss and to complete its claim for compensation within three years. The Investor notified OPIC promptly in a facsimile dated January 20, 1995 of the political violence threat to the project and the possibility of a claim. By letter dated May 24, 1995, Nord requested an extension of the time limitation for filing a claim for compensation. By letter dated June 12, 1995, OPIC extended the deadline to October 18, 1995. By letter dated October 2, 1995, Nord submitted a claim for compensation. OPIC finds Nord complied with its duty to provide notice and, within the context of this project and the difficult situation in Sierra Leone, with its duty to provide additional information.

D. Article 2. The Investor was, on the date of execution of the Contract and has remained, a corporation created under the laws of a state of the United States and substantially beneficially owned by United States citizens.

The Investor represented in executing the Contract that it was, and in connection with the Claim, has since certified that it remains, an eligible investor.

E. Section 23.02. Prior to the claim payment, the Investor will assign to OPIC any claims, causes of action or rights which it may have for compensation from any other source based on the Damage.

Prior to payment of the claim, Nord will assign, transfer and convey to OPIC any claims, causes of action or rights which the Investor may have from any other source for Damage, and execute all documents and take all necessary actions to complete such assignments, transfers and conveyances.

IV. CONCLUSION

Based on the foregoing determinations and subject to the assignments required in Section 23.02 of the Contract, OPIC hereby finds that the Claim is valid and that additional compensation is payable to Nord Resources Corporation and its assignees in the amount of \$14,204,500.

OVERSEAS PRIVATE INVESTMENT CORPORATION

By: Kirk Robertson
Executive Vice President
May 14, 1998

1/ The determinations herein are based on the submissions collectively forming the Claim. To the extent there is conflict among portions of the Claim, OPIC has assumed that later submissions supercede earlier versions.

2/ Nord Submission of February 10, 1998, Narrative p. 7.

SIERRA RUTILE LIMITED

SUMMARY OF DETAIL DAMAGE REPORTS

(As Calculated by Nord (1))

| Schedule | Description | Original Cost | Loss Valuation | Net Book Value Adjustment (2) | Revised Loss Valuation (3) |
|-----------------------|-----------------------------|----------------------|---------------------|-------------------------------|----------------------------|
| ON-SITE ASSETS | | | | | |
| CEM | EARTHMOVING | \$4,551,212 | \$1,945,616 | (\$147,884) | \$1,797,732 |
| SO1 | MINING & PROCESSING | 61,945,468 | 7,921,468 | (61,132) | 7,860,___6 (unreadable) |
| SO2 | AUXILIARY MINING | 12,598,670 | 1,200,000 | | 1,200,000 |
| SO3 | NITTI | 6,601,756 | 845,848 | (45,384) | 800,46_ (unreadable) |
| SO4 | SERVICES | 7,244,531 | 1,071,465 | | 1,071,465 |
| SO5 | BUILDINGS | 3,748,471 | 1,171,595 | (471,971) | 699,624 |
| SO6 | EQUIPMENT | 6,348,230 | 3,270,448 | (908,484) | 2,361,964 |
| SO7 | DAMS & EARTHWORKS | 34,450,082 | 200,008 | | 200,008 |
| SO8 | DREDGE MOVE | 3,274,860 | 0 | | 0 |
| SO9 | TRANSPORTATION | 6,055,086 | 2,331,873 | (755,193) | 1,576,680 |
| SO10 | PLANT | 2,432,349 | 849,301 | (374,739) | 474,562 |
| SO11 | HOUSING | 10,544,553 | 6,323,058 | (1,293,915) | 5,029,143 |
| SO12 | FURNITURE | 932,695 | 566,253 | (279,387) | 286,866 |
| SO13 | SUNDRY | 1,856,647 | 0 | | 0 |
| SO14 | CIP – OPTION 3 | 31,796,624 | 2,210,675 | | 2,210,675 |
| | TOTAL ON SITE ASSETS | \$194,381,234 | \$29,907,609 | (\$4,338,089) | \$25,569,520 |
| INVENTORY | | | | | |
| I-PLANT | PLANT | \$11,890,568 | \$4,462,334 | | |
| I-CEM | CEM | 2,869,009 | 1,821,383 | | |

| | | | | | |
|--------|-------------------------------|----------------------|---------------------|----------------------|---------------------|
| I-FUEL | FUEL | 593,214 | 317,755 | | |
| I-FOOD | FOODSTORES | 664,888 | 615,200 | | |
| | TOTAL INVENTORY | \$16,017,679 | \$7,216,672 | | \$7,216,672 |
| | TOTAL ON-SITE PROPERTY | \$210,398,913 | \$37,124,281 | (\$4,338,089) | \$32,786,192 |

- Notes: (1) This is the calculation prepared by Nord before any adjustments.
- (2) This adjustment limits the amount claimed for any asset to its net book value at 12/31/94
- (3) This amount is the Nord loss valuation as reduced by the net book value adjustment