

CANADA

Class Actions Division
SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
No.: 500-06-001113-204

PAULUS DE LEEUW;

Applicant

-and-

TURQUOISE HILL RESOURCES LTD.;

-and-

ULF QUELLMANN;

-and-

LUKE COLTON;

-and-

BRENDAN LANE;

Respondents

**APPLICATION FOR PERMISSION TO AMEND THE RE-AMENDED APPLICATION
FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND FOR
AUTHORIZATION TO BRING AN ACTION PURSUANT TO SECTION 225.4 OF THE
QUÉBEC SECURITIES ACT
(Art. 2016, 207 and 585 C.C.P.)**

**TO THE HONOURABLE JUSTICE MARTIN F. SHEEHAN OF THE SUPERIOR
COURT OF QUÉBEC, APPOINTED TO PRESIDE IN THE PRESENT MATTER,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT
STATES THE FOLLOWING:**

1. On January 7, 2022, Applicant filed an “Application for Permission to Amend the Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec *Securities Act*” and

corresponding “Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec *Securities Act*” (the “**Re-Amended Application**”).

2. On February 10, 2022, the Honourable Justice Sheehan granted permission to file the Re-Amended Application.

3. For the reasons detailed hereinbelow, Applicant now seeks the Court’s permission to amend the Re-Amended Application, the whole in accordance with a copy of the draft proposed “Re-Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec *Securities Act*”, communicated herewith as **Exhibit R-1** (the “**Re-Re-Amended Application**”).

4. Applicant wishes to amend his Re-Amended Application to add additional Respondents and provide further specifics and details that were made evident when the pre-existing Respondents tendered hundreds of pages of documents in opposition to the Re-Amended Application, as well as certain information and exhibits that only became available after the Re-Amended Application had been filed.

5. Specifically, Applicant wishes to amend the Re-Amended *Application inter alia* to:

- a. Add Rio Tinto PLC, Rio Tinto Limited, Rio Tinto International Holdings Limited, Jean-Sébastien Jacques and Arnaud Soirat (collectively, the “**Rio Tinto Respondents**”) as Respondents;
- b. Provide additional details about the knowledge of the Respondents during the Class Period gained from internal monthly progress and other reports that the Respondents were contemporaneously receiving at the pertinent time, which was contained in the set of documents the Respondents tendered subsequent to the filing of the Re-Amended Application;
- c. Provide additional information and attach as exhibits documents that only became publicly available subsequent to the filing of the Re-Amended Application, such as an independent report commissioned by Rio Tinto PLC and Rio Tinto Limited (collectively, “**Rio Tinto**”) which was released subsequent to the filing of the Re-Amended

Application, as well as a portion of the confidential witness statement of an alleged whistleblower; and

- d. Add details about events that occurred after the Re-Amended Application had been filed that are pertinent to this action, such as Rio Tinto's new CEO apologizing to two alleged whistleblowers for Rio Tinto's conduct towards them.

6. The proposed amendments are limited in scope and do not constitute new claims against the pre-existing Respondents, but rather provide additional details about existing topics already present in the Re-Amended Application, as well as add claims arising out of the same events against the Rio-Tinto Respondents based on their being "influential persons" (as defined in the *Securities Act*) and affiliates of Turquoise Hill Resources Ltd. ("TRQ"), which was already a Respondent in this action.

New Exhibits

7. On or about February 1, 2022, Rio Tinto publicly released an external review conducted by former Australian Sex Discrimination Commissioner Elizabeth Broderick, of Rio Tinto's workplace culture, which was, in Rio Tinto's own words "commissioned as part of its commitment to ensure sustained cultural change across its global operations". Applicant wishes to add as Exhibit P-80 the report of the review conducted by Ms. Broderick.

8. On March 2, 2023, a lawyer for the Plaintiff in the corresponding U.S. class action filed a declaration, which attached as one of the exhibits thereto a portion of the confidential Witness Statement of alleged whistleblower Richard Bowley submitted in his dispute with Rio Tinto London Limited before the Employment Tribunals London Central. Applicant wishes to add as Exhibit P-81 the declaration of Michael Blatchley along with the corresponding exhibits.

9. On August 9, 2023, the *Daily Mail* released a news article titled "Rio Tinto boss Jakob Stausholm in tearful apology over bullying claims at the mining giant", which describes a meeting between Rio Tinto's CEO and two alleged whistleblowers referenced in this action. Applicant wishes to add as Exhibit P-82 this *Daily Mail* article.

10. On or about August 15, 2023, one of the alleged whistleblowers which the *Daily Mail* stated was at the meeting with the Rio Tinto's CEO, Richard Bowley, posted the *Daily Mail* article on his LinkedIn and confirmed the events described

therein. Applicant wishes to add as Exhibit P-83 Mr. Bowley's LinkedIn post. On August 11, 2023, Mr. Bowley also posted on his X (formerly Twitter account) replying to someone who had posted the *Daily Mail* article, and confirmed that he had been in the room and received an "unreserved apology for everything that happened in Mongolia". Applicant wishes to add as Exhibit P-84 Mr. Bowley's X posting.

11. On November 29, 2017, Rio Tinto's employee who was seconded to act as the Chief Development Officer of Oyu Tolgoi LLC ("**OTL**"), Marco Pires, gave a presentation to OTL's board (which included as members a pre-existing and a proposed new Respondent), about the status of the Mine's development. This presentation was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-85 this presentation.

12. By December 22, 2017, TRQ's management received a report updating them on the underground development at the mine. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-86 this report.

13. Rio Tinto created a report of data about the underground expansion of the Mine current to the end of April 2018, which it then provided to TRQ's management. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-87 this report.

14. By June 27, 2018, TRQ's management received a monthly report on the Mine development for May 2018. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-88 this report.

15. On June 6, 2018, Pires gave the board of OTL a presentation about the status of the underground development of the Mine. This presentation was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-89 this presentation.

16. By June 18, 2018, TRQ's management provided Respondent Quellmann a monthly report on the Mine development for May 2018 that had been provided to them by Rio Tinto and OTL. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-90 this report.

17. On or about July 5, 2018, TRQ's management received two monthly reports on the Mine development for June 2018. These reports were tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-91 and P-92 respectively, these reports.
18. On July 31, 2018, Pires gave a presentation to the TRQ board about the status of the Mine development. The slides from this presentation were tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-93 the slides from this presentation.
19. On August 15, 2018, Rio Tinto executive and proposed Respondent Arnaud Soirat gave an interview to a Mongolian news network in which he discussed the underground Mine expansion. Applicant wishes to add as Exhibit P-94 the video of this interview.
20. On September 12, 2018, Pires gave a presentation on the underground Mine. Development to the board of OTL. This slides from this presentation were tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-95 the slides from this presentation.
21. In or about early September 2018, Rio Tinto received a report from its third-party advisory firm Broadleaf regarding schedules for the underground Mine Development. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-96 this report.
22. On September 26, 2018, proposed Respondent Jacques gave a presentation on behalf of Rio Tinto at the Bernstein Pan European Strategic Decisions Conference in London, England, in which discussed the status of the underground Mine development. Applicant wishes to add as Exhibit P-97 the materials from this presentation.
23. Subsequent to the filing of the Re-Amended Application, the Respondents produced the monthly reports for September 2018 regarding the underground Mine development. Applicant wishes to add as Exhibits P-98 and P-99 these monthly reports.
24. On October 9, 2018, Pires gave a presentation to TRQ's management regarding the underground Mine development. This presentation was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-100 this presentation.

25. On or about October 16, 2018, Rio Tinto issued a news release titled “Rio Tinto releases third quarter production results”. Applicant wishes to add as Exhibit P-101 this news release.
26. On or about October 16, 2018, Rio Tinto released its Third Quarter 2018 Operations Review. Applicant wishes to add as Exhibit P-102 this document.
27. By October 17, 2018, TRQ’s management received a draft MD&A for the third quarter of 2018 from OTL which provided updates on the underground Mine development. This draft MD&A was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-103 this draft MD&A.
28. On November 12, 2018, proposed Respondent Jacques gave a presentation at the UBS Australasia Conference in Sydney, Australia, in which he discussed the status of the underground Mine development. Applicant wishes to add as Exhibit P-104 the materials from this presentation.
29. In December of 2018, TRQ received a monthly report for November 2018 regarding the status of the underground Mine development. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-105 this report.
30. By January 2019, monthly reports for December 2018 regarding the status of the underground Mine development were provided to TRQ. These reports were tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibits P-106 and P-107 these reports.
31. On January 18, 2019, Rio Tinto released its Fourth Quarter 2018 Operations Review. Applicant wishes to add as Exhibit P-108 this document.
32. In late 2018 and early 2019 TRQ’s mining consultant OreWin Pty Ltd. (“**OreWin**”) did an independent review of the underground Mine development. The draft report of this review was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-109 this draft report.
33. On February 29, 2019, executives of proposed Respondent Rio Tinto, including proposed Respondent Jacques, conducted a speech and held a question-and-answer session about Rio Tinto’s 2018 results, including the underground Mine development. Applicant wishes to add as Exhibit P-110 the transcript of this speech and question-and-answer session.

34. By March 4, 2019, Rio Tinto provided TRQ with a summary report of the underground Mine development current as of the end of February 2019. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-111 this report.

35. On or about March 5, 2019, OreWin provided TRQ with its final report regarding its review of the underground Mine development. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-112 this report.

36. On March 6, 2019, Pires gave a presentation to the OTL board regarding the underground Mine development. This presentation was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-113 this report.

37. By March 11, 2019, the board of OTL received the monthly report for January 2019 for the underground Mine development. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-114 this report.

38. On March 13, 2019, Respondent Lane gave a presentation to the board of TRQ regarding OreWin's review. This presentation was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-115 this presentation.

39. On or about April 12, 2019, TRQ's management including Quellman received monthly reports for March 2019 on the progress of the underground Mine Development. These reports were tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibits P-116 and P-117 these monthly reports.

40. On April 16, 2019 Rio Tinto issued a news release about its first quarter 2019 results, as well as released its First Quarter 2019 Operations Review. Applicant wishes to add as Exhibits P-118 and P-119 respectively this news release and the First Quarter 2019 Operations Review.

41. By April 29, 2019, TRQ's management provided a report to TRQ's board for March 2019 regarding the underground Mine development. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-120 this report.

42. By May 1, 2019, TRQ's management received a summary monthly report on the underground Mine development for April 2019. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-121 this report.
43. On May 13, 2019, Pires gave a presentation to the board of TRQ regarding the status of the underground Mine development. This presentation was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-122 this presentation.
44. On May 15, 2019, TRQ released its interim financial statements, MD&A, and Corresponding CEO and CFO certifications on Form 52-109F2, as well as a corresponding news release, for the three-month period ended March 31, 2019. Applicant wishes to add these documents as Exhibits P-123 to P-127 respectively.
45. On May 16, 2019, TRQ conducted a conference call to discuss its results for the three-month period ended March 31, 2019. Applicant wishes to add as Exhibit P-128 the transcript of this call.
46. By May 20, 2019, the board of OTL received a monthly report for April 2019 regarding the underground Mine development. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-129 this report.
47. By June 3, 2019, the management of TRQ received a summary report on the underground development current to May 23, 2019. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-130 this report.
48. By June 6, 2019, the TRQ board was provided with a report current to April 30, 2019 about the underground Mine development. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-131 this report.
49. On June 12, 2019, Pires gave the board of OTL a presentation regarding the status of the underground Mine development. This presentation as tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-132 this presentation.
50. Also on June 12, 2019, Pires gave another presentation regarding geotechnical risks for the Mine development. This presentation as tendered by the

Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-133 this presentation.

51. By June 26, 2019, the management of TRQ received a monthly report for May 2019 on the underground Mine development. This report was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-134 this report.

52. Applicant wishes to add as Exhibit P-135 a news article from the *Australian Financial Review* titled “How Rio Tinto dug itself a hole in Mongolia” dated July 8, 2019, which discusses Rio Tinto’s knowledge of the ground conditions at the Mine since 2012.

53. By July 19, 2019, TRQ’s management received the monthly report as well as a summary monthly report for June 2019 regarding the underground Mine development. These reports were tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibits P-136 and P-137 respectively these monthly reports.

54. In or about early July 2019, OTL provided TRQ with a draft MD&A for the three and six-month period ended June 30, 2019. This draft MD&A was tendered by the Respondents after the Re-Amended Application was filed. Applicant wishes to add as Exhibit P-138 this draft MD&A.

55. Applicant wishes to add as Exhibit P-139 the *Disclosure and Communications Policy* of Rio Tinto, last updated in December 18, 2019. This policy is substantially similar to what would have applied to the Rio Tinto Respondents during the relevant time period with respect to the duties they owed to the Class Members and other investors when interacting with the public and making public disclosure of corporate information.

56. Applicant wishes to add as Exhibit P-140 TRQ’s Code of Business Conduct called “*The way we work*” last updated in January 2013. This code of conduct is substantially similar to what would have mandated TRQ’s employees, officers, directors, and third parties working under TRQ’s directions to uphold their commitment to a culture of honesty, transparency, integrity, accountability, and the highest standards of professional and ethical conduct; and report any violations of laws, policies or standards (including using TRQ’s whistle-blowing system if necessary), and to follow up on any reported violations including by whistleblowers, among other things, during the relevant time period.

57. Applicant wishes to add as Exhibit P-141 Rio Tinto's Code of Conduct called "*The Way We Work*" last updated in February 2023. This code of conduct is substantially similar to what would have mandated Rio Tinto's employees, officers, directors, and third parties working under Rio Tinto's directions to uphold their commitment to a culture of honesty, transparency, integrity, accountability, and the highest standards of professional and ethical conduct, among other things, during the relevant time period.

58. The amendments include information and exhibits that were not available at the time the Re-Amended Application was initially filed.

59. The proposed amendments are neither useless nor contrary to the interests of justice, and do not result in an entirely new action as the proposed Class Members are the same, the original Respondents all remain and against whom the exact same causes of action are being advanced, the proposed new Respondents are connected to or affiliated with the original Respondents and the causes of action advanced against them are the same or very similar, and the causes of action against the proposed new Respondents arise out of substantially the same events and facts as pleaded in the Re-Amended Application.

60. Potential Class members' interests are better protected by the Re-Re-Amended Application, which provides a stronger legal and factual foundation to support the collective vindication of their rights in Québec, and also advances causes of action against new Respondents who appear to be at least partly culpable for the impugned conduct alleged in the Re-Amended Application.

61. The amendments would not prejudice the rights of any of the existing parties to this litigation and they further enlighten the Court of the issues to be determined.

62. For all of the above reasons, the amendments made do not in any manner change the stated intent of the proceedings and Applicant has the interest and is justified, on his behalf and on behalf of the proposed Class Members, to amend the Re-Amended Application in accordance with the Re-Re-Amended Application (Exhibit R-1).

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ALLOW Applicant to amend the "Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec *Securities Act*", as set forth in the "Re-Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec *Securities Act*", Exhibit R-1;

THE WHOLE without costs, except in the event of contestation.

**MONTREAL, August 30, 2023
LEX GROUP INC.**


Per: David Assor

And

KND COMPLEX LITIGATION


Per: Hadi Davarinia

Class Counsel/Attorneys for
Applicant

AFFIDAVIT

I, the undersigned, **HADI DAVARINIA**, attorney, practicing my profession with the firm **KND Complex Litigation**, located at 1186 Eglinton Ave. West, in the City of Toronto, Province of Ontario, M6C 2E3, solemnly declare:

1. I am one of the attorneys representing the Applicant in the present matter;
2. All of the facts alleged in the present *Application for Permission to Amend the Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act*, are true to my personal knowledge

AND I HAVE SIGNED:



Hadi Davarinia

SOLEMNLY DECLARED TO BEFORE ME
AT TORONTO, on August 30, 2023



COMMISSIONER OF OATHS FOR
ONTARIO

Taek Soo Shin (LSO #85691Q)

NOTICE OF PRESENTATION

TO: Me Nick Rodrigo and Me Faiz Lalani
Davies Ward Phillips & Vineberg S.E.N.C.R.L/s.r.l
1501 McGill College Avenue
Montreal, Quebec H3A 3N9
Attorneys for Respondents

TAKE NOTICE that the present *Application for Permission to Amend the Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act* will be presented for adjudication at a date and time to be determined by the Honourable Justice Martin F. Sheehan, sitting in class actions division of the Superior Court of Quebec, at the Montreal Courthouse located at 1 Notre-Dame Street East, or as soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, August 30, 2023
LEX GROUP INC.


Per: David Assor

And

KND COMPLEX LITIGATION


Per: Hadi Davarinia

Class Counsel/Attorneys for Applicant

**(Class Action Division)
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ORIGINAL

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