

CANADA

(Class Action Division)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT

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No.: 500-06-001113-204

P [REDACTED] D [REDACTED] L [REDACTED]

*Applicant*

v.

**TURQUOISE HILL RESOURCES LTD.**

-and-

**ULF QUELLMANN**

-and-

**LUKE COLTON**

-and-

**BRENDAN LANE**

*Respondents*

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**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*  
(Art. 585 C.C.P.)**

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**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 December 22, 2020, Applicant filed an “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 “**Original Application**”).
2. For the reasons detailed hereinbelow, Applicant now seeks the Court’s permission to amend the Original Application, the whole in accordance with a copy of the draft proposed “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 “**Amended Application**”).

3. Applicant wishes to amend his Original Application to provide further specifics and details that have been recently uncovered that are relevant to the matters described in the Original Application, as well as to describe further events that have occurred only after the Original Application was filed that are relevant to the allegations advanced herein.

4. Specifically, Applicant wishes to amend the Original Application to provide additional details and specifics *inter alia* about:

- a. The nature and extent of the issues causing delays and cost overruns to TRQ’s underground development – in particular, the “catastrophic” problems with Shaft 2 and the setbacks with getting Shaft 5 operational – as well as the extent to which Respondents were informed and knew or should have known about these costly problems and delays from even before the outset of the Class Period;
- b. How the delays and cost overruns that were disclosed by Respondents in the corrective disclosures at the end of the Class Period were not due to unknown geotechnical issues as Respondents claimed, but due to undisclosed problems within Respondents’ knowledge and control;
- c. The very explicit and specific warnings being given to Respondents from before the start of and throughout the Class Period by whistleblower Richard Bowley, expressly regarding the “catastrophic” problems and significant delays and costs overruns with the Mine’s underground development, as well as the contents of Bowley’s sworn Witness Statement regarding the matters at issue in this action that was submitted to the U.K. Employment Tribunal;
- d. The actions of whistleblower Dr. Maurice Duffy as well as Rio Tinto’s successful efforts to have Dr. Duffy’s data about these matters destroyed;
- e. The so called “re-forecast” announced by TRQ in the middle of the Class Period, which gave the false appearance that TRQ was closely adhering to schedule and still on budget, but in fact was accomplished

by transferring costs and projects to later phases so as to hide how behind schedule and over-budget TRQ truly was; and

- f. The termination of Respondent Quellmann at the behest of Rio Tinto after the Original Application was filed.

5. The proposed amendments are limited in scope and do not constitute new claims, but rather provide additional details about existing topics already present in the Original Application.

#### New Exhibits

6. On March 3, 2021 after the Original Application was filed, Respondent Quellmann was terminated as Respondent Turquoise Hill Resources Ltd.'s ("TRQ") chief executive officer, at the behest of its majority shareholder, Rio Tinto, for attempting to protect the rights of TRQ's other minority shareholders. Rio Tinto is alleged to be intricately involved in the events at issue in this class action and the impetus for TRQ's alleged poor corporate governance. Applicant wishes to add as Exhibit P-61 a news article from *MINING.COM* titled "Turquoise Hill CEO quits on Rio Tinto Meddling" dated March 4, 2021, which describes the reasons for Quellmann's termination and analyst downgrades made pertaining to Turquoise Hill's poor corporate governance after the news' revelation.

7. Applicant wishes to complete his pre-existing allegations about the importance of Shaft 2 and Shaft 5 to the underground development project schedule, as well as Respondents' knowledge about the status of and extent of work still left remaining on Shafts 2 and 5 at the start of the Class Period, by adding as Exhibit P-62 the transcript of TRQ's conference call with investors on November 3, 2017, wherein even prior to the Class Period, TRQ's former CEO is describing how crucial Shaft 2 and Shaft 5 are to underground development and assuring investors that the sinking of the shafts are progressing well, when even at the very moment there were catastrophic problems with Shaft 2 and the project was already many months behind schedule and tens of millions of dollars over budget.

8. Applicant wishes to add as Exhibit P-63 a news article from the *Australian Financial Review* titled "Dirty Dozen Accuse Rio of Covering Up Extent of Mongolian Blowout" dated March 25, 2021, which recounts the testimony provided in the companion U.S. class action by twelve former employees or contractors that worked at the Mine detailing the extent of the delays and cost overruns besetting the underground development project even before the beginning of the Class Period, as well as Rio Tinto's knowledge of these problems.

9. On March 17, 2021, a “Consolidated Class Action Complaint for Damages” (the “**U.S. Claim**”) was filed in the United States against many of the same Respondents as in this action and regarding the same events and allegations as in the present proceeding. Applicant wishes to add as Exhibit P-64 the U.S. Claim, which *inter alia* provides details about the specific contents of the messages the whistleblowers and other employees and contractors were conveying to Respondents throughout the Class Period about the delays and cost overruns the project was experiencing. In addition, the U.S. Claim contains part of the contents of the sworn “Witness Statement” of one of the whistleblowers about this matter that was submitted to the U.K. Employment Tribunal, which is otherwise not public.

10. Applicant wishes to add as Exhibit P-65 a news article from *Global Investigations Review* titled “Rio Tinto and Purported Whistleblower Settle Employment Dispute” dated September 28, 2020, which describes whistleblower Richard Bowley’s Witness Statement and action before the U.K. employment tribunal (stemming from his termination for repeatedly warning about the problems alleged in this action), and provides details about the actions Bowley undertook to inform relevant management about the delays and cost overruns at issue in this lawsuit.

11. Applicant wishes to add as Exhibit P-66 TRQ’s MD&A for the fiscal year ended December 31, 2019, which was publicly released on or about March 20, 2020, wherein it disclosed that due to the delays and cost overruns, it would require at least an additional USD \$4.5 billion in financing to complete the underground development project.

12. Applicant wishes to add as Exhibit P-67 TRQ’s news release dated December 18, 2020, wherein TRQ provided the “Definitive Estimate” of exactly how long the delay and how much the cost overruns with the project were expected to be (as previously TRQ had only provided a range).

13. Applicant wishes to add as Exhibit P-68 TRQ’s news release dated January 11, 2021, wherein TRQ revealed that the Government of Mongolia (who is part owner of the Mine) had announced that it was “dissatisfied with the results of the Definitive Estimate” and had expressed its intention to initiate discussions with respect to the termination and replacement of the deal regarding the Mine.

14. Applicant wishes to add as Exhibit P-69 the projected Statement of Claim that tentatively is proposed to be filed in this action if Applicant receives the Court’s authorization to institute a class action and to bring a securities action pursuant to s. 225.4 of the *Securities Act*.

15. The proposed amendments include some information and exhibits that were not available at the time the Original Application was initially filed.

16. The proposed amendments are neither useless nor contrary to the ends of justice, and do not result in an entirely new action as the parties, the proposed Class Members, and the causes of action all remain exactly the same.

17. Potential Class Members' interests are better protected by the Amended Application, which provides a stronger legal and factual foundation to support the collective vindication of their rights in Québec.

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

19. Given that the proposed class action has not yet been authorized, permitting these amendments would not run contrary to the interests of justice.

20. 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 Original Application in accordance with the Amended Application (Exhibit R-1).

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**ALLOW** Applicant 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*", as set forth in the "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, July 27, 2021**  
**LEX GROUP INC.**

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**Per: David Assor**

And

**KND COMPLEX LITIGATION**

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**Per: Eli Karp / Hadi Davarinia**

Class Counsel/Attorneys for  
Applicant

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**(Class Action Division)  
SUPERIOR COURT  
PROVINCE OF QUEBEC  
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**ORIGINAL**

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*Me David Assor*



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