

CANADA

(Class Action Division)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT

---

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*

---

**APPLICATION FOR PERMISSION TO AMEND 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  
(Art. 206, 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 July 27, 2021, 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 “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 “**Amended Application**”).

2. On November 4, 2021, the Honourable Justice Sheehan granted permission to file the Amended Application.
3. For the reasons detailed hereinbelow, Applicant now seeks the Court's permission to amend the Amended Application, the whole in accordance with a copy of the draft proposed "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-Amended Application**").
4. Applicant wishes to amend his Amended Application to provide further specifics and details that have been recently uncovered that are relevant to the matters described in the Amended Application, as well as to describe further events that have occurred only after the Amended Application was filed that are relevant to the allegations advanced herein.
5. Specifically, Applicant wishes to amend the Amended Application to provide additional details and specifics *inter alia* about:
  - a. The information contained in a report of an independent investigation ("**Independent Report**") into the schedule delays and cost overruns at the underground development of Respondent Turquoise Hill Resources Ltd.'s ("**TRQ**") mine that is at issue in this proceeding, which was jointly commissioned by TRQ and its partner in the mine, the Government of Mongolia, as well as a corresponding expert peer review of the Independent Report ("**Peer Review**"), which were not finalized and delivered to TRQ until August 2021 after the Amended Application had been served and which were not available beforehand;
  - b. Additional details expanding on the nature and extent of the issues which caused the delays and cost overruns to TRQ's underground development – in particular, issues with Shaft 2, Shaft 5, the infrastructure for Shaft 1, and Primary Crusher #1 – which were revealed in the Independent Report, Peer Review and/or other sources which came to light after the Amended Application had been filed;
  - c. Additional details about the knowledge of senior management of TRQ and senior management at the underground mine development during the Class Period about the cost overruns and schedule delays;

- d. Additional details about issues and setbacks with the underground development that occurred prior to the start of the Class Period that would have made it evident that the cost forecasts and schedule being disclosed during the Class Period were wrong and unreasonable;
  - e. Additional details about why 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; and
  - f. Additional relevant disclosures made by TRQ after the filing of the Amended Application, such as TRQ announcing in October of 2021 that production from the underground development would be further delayed longer than previously disclosed, as well as that it would require an additional USD \$1.2 billion on top of what it had previously disclosed in incremental funding for the underground development of the mine.
6. 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 Amended Application.

#### New Exhibits

7. On October 19, 2021, Respondents filed a declaration from their lawyer in the corresponding U.S. class action, Gregory F. Laufer, in support of Respondents' motion to dismiss the Second Amended Complaint. This declaration attached as exhibits, *inter alia*, the Independent Report and Peer Review referenced above. Applicant wishes to add as Exhibit P-71 this declaration of Gregory F. Laufer executed October 19, 2021 ("**Laufer Declaration**").
8. Exhibit 29 to the Laufer Declaration is the Independent Report, which is titled "Independent Technical Review Oyu Tolgoi Underground Expansion Project" and is dated July 31, 2021, and which was submitted to representatives of TRQ on or about August 3, 2021. Applicant wishes to add as Exhibit P-72 this Independent Report, which goes into detail about the reasons for the schedule delays and cost overruns of the underground development and refutes the Respondents' assertion that these delays and cost overruns were caused by unknown geotechnical issues.

9. Exhibit 30 to the Laufer Declaration is the Peer Review of the Independent Report, which is titled “Investigation into Cost and Schedule Overrun – Peer Review” and is dated July 28, 2021, and which was submitted to representatives of TRQ on or about August 3, 2021. Applicant wishes to add as Exhibit P-73 this Peer Review, which reviews the findings in the Independent Report about the schedule delays and cost overruns of the underground development and assesses whether those findings appear to be correct and whether the expert authors of the Peer Review agree with the findings.

10. Applicant wishes to add as Exhibit P-74 TRQ’s news release dated August 9, 2021, wherein TRQ responded to media reports about the Independent Report and Peer Review and admitted that the Independent Report raises questions about the management of the underground development causing the delays and cost overruns and that it suggests that changes in geotechnical issues did not cause the excess costs and schedule delays.

11. Applicant wishes to add as Exhibit P-75 a news article from the *Financial Times* titled “Review casts doubt over Rio Tinto explanation of Oyu Tolgoi problems” dated August 9, 2021, which describes the findings in the Independent Report, and specifically that the delays and cost overruns were due to infrastructure problems including with two underground shafts and not geotechnical issues as claimed by Rio Tinto, and how the project was falling behind schedule before the Class Period began and continued to fall further and further behind as time progressed.

12. Applicant wishes to add as Exhibit P-76 a news article from the *Australian Financial Review* titled “Oyu Tolgoi another Jacques scandal for Rio Tinto” dated August 9, 2021, which describes how the Independent Report and Peer Review refute the stated justification that the underground development was running late and over budget because of unexpected geotechnical issues and to the contrary the cost overruns and delays were caused by management’s actions, and how “the reporting of overall progress was misleading (at best)”.

13. Applicant wishes to add as Exhibit P-77 a news article from *MINING.com* titled “Turquoise Hill stock crushed after Oyu Tolgoi funding gap swells by \$1.2 billion” dated October 14, 2021, which discusses TRQ’s announcement that day about delays in underground mine development and that its funding requirement had gone up to USD \$3.6 billion from USD \$2.4 billion announced three months prior, as well as provides an analyst’s comments about it was unclear how such a material change to sequencing and cost would have only emerged over the past three months.

14. Applicant wishes to add as Exhibit P-78 TRQ's Material Change Report released October 20, 2021, which describes and attaches as Schedule "A" TRQ's news release dated October 14, 2021, which *inter alia* disclosed that sustainable production from the underground development would be delayed even further than previously disclosed, as well as that TRQ now required incremental funding of USD \$3.6 billion for the underground development of the mine.

15. Applicant wishes to add as Exhibit P-79 a news article from *CNBC* titled "Mongolia has concerns about Rio Tinto's management of a major copper mine, official says" dated October 18, 2021, which describes the escalating cost overruns and delays at the underground development and details how TRQ's partner at the underground mine, the Government of Mongolia, was concerned about the truth and lack of transparency about the causes of these costs and delays, particularly given the contradictory findings of the Independent Report from what Rio Tinto had claimed.

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

17. The proposed amendments are neither useless nor contrary to the interests 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.

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

19. 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.

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

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

**ALLOW** Applicant to amend 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*”, as set forth in 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*”, Exhibit R-1;

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

**MONTREAL, January 7, 2022**  
**LEX GROUP INC.**

*(s) Lex Group Inc.*

---

**Per: David Assor / Joanie Lévesque**

And

**KND COMPLEX LITIGATION**

*(s) Hadi Davarinia*

---

**Per: Eli Karp / 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 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 January 7, 2022

---

COMMISSIONER OF OATHS FOR  
ONTARIO

## **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 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, January 7, 2022**  
**LEX GROUP INC.**

*(s) Lex Group Inc.*

---

**Per: David Assor / Joanie Lévesque**

And

**KND COMPLEX LITIGATION**

*(s) Hadi Davarinia*

---

**Per: Eli Karp / Hadi Davarinia**

Class Counsel/Attorneys for Applicant



---

---

**(Class Action Division)  
SUPERIOR COURT  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

---

---

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

*Applicant*

v.

**TURQUOISE HILL RESOURCES LTD**

-and-

**ULF QUELLMANN**

-and-

**LUKE COLTON**

-and-

**BRENDAN LANE**

*Respondents*

---

---

**APPLICATION FOR PERMISSION TO AMEND  
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***

---

---

**ORIGINAL**

---

---

*Me David Assor*



**Lex Group Inc.**  
4101 Sherbrooke St. West  
Westmount, (Québec), H3Z 1A7

T: 514.451.5500  
F: 514.940.1605  
@: [davidassor@lexgroup.ca](mailto:davidassor@lexgroup.ca)

**BL 5606**