

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) MONDAY THE 22ND
JUSTICE PERELL) DAY OF JULY, 2013

B E T W E E N:

**E. EDDY BAYENS, JOHN SINCLAIR, LUC FORTIN, PIERRE RACICOT and
STANLEY SHORTT, in their capacity as TRUSTEES OF THE MUSICIANS' PENSION
FUND OF CANADA**

Plaintiffs

- and -

**KINROSS GOLD CORPORATION, TYE W. BURT, PAUL H. BARRY,
GLEN J. MASTERMAN and KENNETH G. THOMAS**

Defendants

Proceedings under the *Class Proceedings Act, 1992*

O R D E R

THIS MOTION, made by the plaintiffs for an order approving the terms of a litigation funding agreement entered into with Harbour Fund II, L.P. (the "Funding Agreement"), was heard on July 22, 2013,

ON READING the materials filed by each of the parties, and on hearing the submissions of counsel for the parties concerning whether the Funding Agreement should be approved, and if so, upon what terms,

1. **THIS COURT ORDERS** that:

(a) The Funding Agreement is approved, subject to the terms and conditions herein;

- (b) Harbour Fund II, L.P. ("HF2") shall pay into court the following amounts as security for the defendants' costs of this proceeding, on the dates specified:
- (i) \$300,000 CDN on or before August 22, 2013;
 - (ii) An additional \$700,000 CDN by no later than 30 days after any order certifying this proceeding as a class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and
 - (iii) An additional \$2,000,000 CDN by no later than 90 days prior to the scheduled trial date;
- (c) Each of the amounts specified in (b) shall be paid into court in the form of cash, certified cheque, or money order or the posting by HF2 of an irrevocable letter of credit in a form acceptable to the ~~plaintiffs~~ ^{defendants ✓ PMP} and their counsel, and also to the Accountant of the Superior Court of Justice;
- (d) Counsel for the plaintiffs shall notify counsel for the defendants forthwith upon the posting of security in accordance with the terms of this order;
- (e) If HF2 fails to provide security in accordance with the terms of this order the defendants or any of them are at liberty to bring a motion on short notice to have the action stayed or dismissed;
- (f) HF2 submits and attorns to the jurisdiction of the Ontario Superior Court of Justice for all purposes related to this litigation, including in relation to the enforcement of any costs order made in favour of the defendants or any of them;
- (g) Amounts posted pursuant to the order shall be paid out to the defendants in accordance with Rule 72.03 of the *Rules of Civil Procedure*, or as ordered by this Court;

- (h) The defendants or any of them shall be at liberty to seek to vary this order at any time to increase the amount of security required to be posted by HF2, provided that the total amount of security shall not exceed the maximum amount of indemnity provided for in clause 2.1 of the Funding Agreement;
- (i) Nothing in this order shall be interpreted as limiting the ability of the defendants or any of them to seek to enforce any costs award against either the plaintiffs or HF2;
- (j) Subject to further court order, no evidence obtained from a defendant may be provided to HF2 or its advisors (collectively "Harbour") without the written consent of the defendant from whom the evidence was obtained, provided that the plaintiffs and counsel for the plaintiffs may summarize and provide their comments and views on such evidence for the purposes of the reporting obligations set out in clause 4 of the Funding Agreement. To the extent any evidence obtained from the defendants is provided to Harbour, then Harbour shall be bound by Rule 30.1.01 of the *Rules of Civil Procedure* and shall be deemed to be a party for the purposes of that Rule; and
- (k) The plaintiffs may communicate to Harbour any formal settlement offers made by the defendants, and those communications and their contents shall be kept confidential pursuant to clause 5 of the Funding Agreement.

that is not part of the public record ✓

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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 23 2013

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:





E. EDDY BAYENS ET AL.
Plaintiffs

and **KINROSS GOLD CORPORATION,**
ET AL.
Defendants

Court File No: CV-12-44865100CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

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