

CV-14-50277800CP

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MICHAEL WEINER

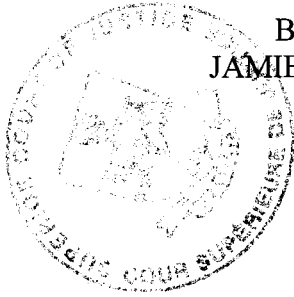
Plaintiff

- and -

BARRICK GOLD CORPORATION, AARON REGENT,
JAMIE SOKALSKY, AMMAR AL-JOUNDI and PETER KINVER

Defendants

Proceeding under the *Class Proceedings Act, 1992*



NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

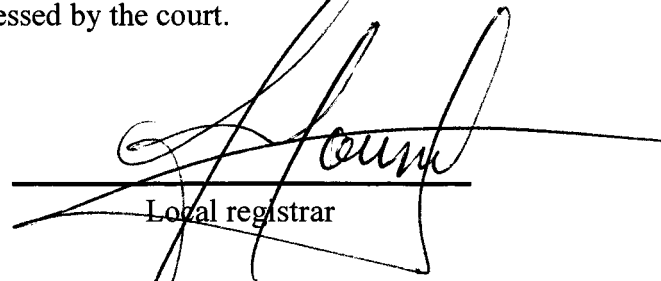
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date April ⁴⁴24, 2014

Issued by



Local registrar

Address of court office 393 University Avenue
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TO: **Barrick Gold Corporation**
Brookfield Place
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AND TO: **Aaron Regent**
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AND TO: **Jamie Sokalsky**
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AND TO: **Ammar Al-Joundi**
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AND TO: **Peter Kinver**
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CLAIM

1. The plaintiff, on behalf of the Class (defined below), claims:
 - (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff for the Class;
 - (b) a declaration that the defendants failed to make timely disclosure of materially adverse changes and made misrepresentations (as defined for the purposes of Part XXIII.1 of the *Securities Act*, R.S.O. 1990, c. S. 5 (the “*OSA*”) and Other Securities Legislation (defined below)) pertaining to the business and affairs of Barrick Gold Corporation (“Barrick”);
 - (c) an order granting leave *nunc pro tunc* to the date the action was commenced to pursue claims pursuant to section 138.3 of the *OSA* or alternatively the equivalent provision in Other Securities Legislation;
 - (d) damages for negligent misrepresentation and the statutory claim in section 138.3 of the *OSA*, or alternatively the equivalent provision in Other Securities Legislation, in the amount of \$6 billion or such other sum as this Honourable Court may find appropriate;
 - (e) a declaration that the defendant Barrick is vicariously liable for the acts and omissions of the individual defendants;
 - (f) pre-judgement and post-judgement interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (g) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;
 - (h) pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
 - (i) such further and other relief as this Honourable Court may deem just and appropriate in all the circumstances.

Parties

2. The plaintiff, Michael Weiner, purchased Barrick shares during the Class Period.
3. The defendant Barrick is a corporation incorporated under the laws of Ontario and is headquartered in Toronto, Ontario. Barrick is a reporting issuer whose shares trade on the Toronto Stock Exchange and the New York Stock Exchange. Barrick is a mining company.

4. The defendant Aaron Regent was Chief Executive Officer and a director of Barrick from January 2009 until he was terminated on June 6, 2012.

5. The defendant Jamie Sokalsky was Chief Financial Officer of Barrick from 1999 until June 2012, after which he became Chief Executive Officer and a director.

6. The defendant Ammar Al-Joundi has been Chief Financial Officer and Executive Vice President of Barrick since June 2012.

7. The defendant Peter Kinver was Chief Operating Officer of Barrick from January 1, 2004 to May 2, 2012 and Executive Vice President from September 9, 2012 to May 2, 2012.

8. The individual defendants, as senior officers of Barrick, had actual, implied or apparent authority to act and speak on behalf of Barrick and did so in making the misrepresentations and failures to disclose described below.

9. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of all Class Members.

10. The Class Members are all persons, other than Excluded Persons, who acquired Barrick securities during the period from May 7, 2009 to November 1, 2013 (the "Class Period"). Excluded from the Class are the defendants, the officers and directors of Barrick during all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which the defendants have a controlling interest now or during the Class Period (the "Excluded Persons").

Background

11. Barrick owns the Pascua-Lama mine located on the border between Chile and Argentina. From at least 2006 until October 31, 2013, when its operations were suspended, Barrick purported to develop the Pascua-Lama mine.

12. From the outset, the defendants understood that the mine would present considerable challenges for development and production. The mine is located underneath glaciers in the Andes mountains and the environment is subject to extreme temperature and weather changes.

13. Barrick misrepresented the progress and feasibility for development and production at the Pascua-Lama mine, repeatedly throughout the Class Period.

14. In June 2006, the Chilean government approved of the Pascua-Lama project, subject to 400 conditions including a variety of environmental conditions. Throughout the Class Period, the defendants represented compliance with those environmental conditions and also made statements that Barrick was safeguarding or protecting the environment of the area and water surrounding the mine. This included statements that Barrick was instituting measures to protect the environment. These representations were inaccurate, misleading or omitted key facts regarding Barrick's failure to comply with environmental conditions, regulation and permits and regarding Barrick's failure to safeguard or protect the environment.

15. On May 7, 2009, the beginning of the Class Period, Barrick announced that it would start construction on the Pascua-Lama project and estimated the cost in the range of \$2.8 to \$3.0 billion, with production beginning early 2013. This timing and cost estimate was inaccurate and objectively unreasonable. In short, the defendants ought to have known that the Pascua-Lama project could not be completed for such a low cost and in such a short time period, particularly in

light of the significant and apparent challenges unique to the Pascua-Lama mine. In fact, in 2006 or 2007, Barrick had received an estimate from Bechtel Corporation¹ that the project would cost \$5 billion and take 4 to 5 years to complete.

16. On February 17, 2011, Barrick increased its cost estimate for the Pascua-Lama mine to \$3.3 to \$3.6 billion, still far below a reasonable cost estimate. The defendants misrepresented the reason for the cost increase, blaming inflationary pressures, high labour costs, exchange rates and increased commodity prices. The defendants also claimed that production was expected in the first half of 2013, along with other misstatements about the progress and feasibility of the mine. These statements regarding the progress and feasibility of the Pascua-Lama mine were inaccurate, misleading, omitted key facts and were objectively unreasonable.

17. On July 28, 2011, Barrick announced that it was increasing the cost estimate for the Pascua-Lama project to \$4.7 to \$5.0 billion, but reassured the investing public (the Class Members) that production was still on schedule for mid-2013. The defendants misrepresented the reason for the cost increase along with other misstatements about the progress and feasibility of the development of the mine. These statements regarding the progress and feasibility of the Pascua-Lama mine were inaccurate, misleading, omitted key facts and were objectively unreasonable.

18. On June 6, 2012, Barrick terminated Aaron Regent with almost no explanation.

19. On July 26, 2012, Barrick increased the costs of the Pascua Lama project to \$8 billion and extended the schedule for the commencement of production to mid-2014. The defendants

¹ Bechtel is an Engineering, Procurement and Construction Management Company. This type of company manages the development and construction of mines.

misrepresented the reason for the cost increase along with other statements about the progress and feasibility of the development of the mine. These statements regarding the progress and feasibility of the Pascua-Lama mine were inaccurate, misleading, omitted key facts and were objectively unreasonable.

20. On November 1, 2012, Barrick again increased its cost estimate for the Pascua-Lama project. It stated it would cost \$8.5 billion. The defendants misrepresented the reason for the cost increase along with other misstatements about the progress and feasibility of the development of the mine. These statements regarding the progress and feasibility of the Pascua-Lama mine were inaccurate, misleading, omitted key facts and were objectively unreasonable.

21. On April 10, 2013, a Chilean appeals court ordered Barrick to halt construction at the Pascua-Lama project based on environmental infractions.

22. On June 28, 2013, Barrick announced it expected to take an after-tax impairment charge of \$4.5 to 5.5 billion relating to the Pascua-Lama mine and that production would not begin until mid-2016.

23. On October 31, 2013, Barrick announced it was indefinitely suspending the Pascua-Lama project and it would only proceed if a more effective, phased approach was developed. After the close of trading that day, Barrick announced a \$3 billion offering of its shares and indicated that the proceeds would be used to pay down debt, to strengthen its balance sheet and for general corporate purposes including for the ongoing operating and capital costs of Barrick's mines. In short, the costs of the Pascua-Lama project had become so significant that Barrick was raising capital from public markets.

Misrepresentations

24. The defendants made, authorized or acquiesced in misrepresentations regarding the progress and feasibility of the Pascua-Lama project, including development in compliance with environment requirements. These misrepresentations were made on the following occasions:

- (a) May 7, 2009 press release titled “Barrick Announces Go-Ahead of Pascua Lama”;
- (b) May 7, 2009 conference call titled “Barrick Gold update on the Pascua-Lama project Conference Call”;
- (c) June 4, 2009 presentation at the Goldman Sachs Basic Materials Conference;
- (d) July 30, 2009 earnings conference call for Q2 2009;
- (e) July 31, 2009 press release, interim financial statements and management’s discussion & analysis (“MD&A”) for Q2 2009;
- (f) September 8, 2009 press release titled “Barrick Announces Silver Sale Agreement”;
- (g) September 8, 2009 preliminary short form prospectus and amendment on September 9, 2009, including documents incorporated by reference;
- (h) September 15, 2009 final short form prospectus, including documents incorporated by reference;
- (i) October 13, 2009 earnings conference call for Q3 2009;
- (j) October 30, 2009 press release, interim financial statements and MD&A for Q3 2009;
- (k) November 7, 2009 final short form prospectus, including documents incorporated by reference;
- (l) December 10, 2009 statements at the Bank of America-Merrill Lynch 2009 Global Industries Conference;
- (m) January 2010 statements at the CIBC Whistler Institutional Investor Conference;
- (n) February 18, 2010 earnings conference call for Q4 2009;
- (o) March 23, 2010 press release, annual report, annual financial statements and MD&A for 2009;
- (p) March 29, 2010 annual information form;
- (q) April 1, 2010 amended annual report;
- (r) April 28, 2010 earnings conference call for Q1 2010;

- (s) April 29, 2010 press release, interim financial statements and MD&A for Q1 2010;
- (t) June 4, 2010 statements at the 2010 Goldman Sachs Basic Materials Conference;
- (u) July 29, 2010 earnings conference call for Q2 2010;
- (v) July 30, 2010 press release, interim financial statements and MD&A for Q2 2010;
- (w) October 28, 2010 earnings conference call for Q3 2010;
- (x) October 29, 2010 press release, interim financial statements and MD&A for Q3 2010;
- (y) February 17, 2011 earnings conference call for Q4 2010;
- (z) February 18, 2011 press release, annual financial statements and MD&A for 2010;
- (aa) March 1, 2011, amended MD&A for 2010;
- (bb) March 22, 2011 annual report for 2010;
- (cc) March 31, 2011 annual information form;
- (dd) March 31, 2011 NI43-101 technical report for the Pascua-Lama project;
- (ee) April 27, 2011 earnings conference call for Q1 2011;
- (ff) April 28, 2011 press release, interim financial statements and MD&A for Q1 2011;
- (gg) May 25, 2011 statements at Goldman Sachs Basic Materials Conference;
- (hh) June 27, 2011, registration statement, as amended on August 3, 2011 and filed on SEDAR² on August 4, 2011, including documents incorporated by reference;
- (ii) June 28, 2011 earnings conference call for Q2 2011;
- (jj) July 29, 2011 press release, interim financial statements and MD&A for Q2 2011;
- (kk) September 7, 2011 Investor Day presentation;
- (ll) October 27, 2011 earnings conference call for Q3 2011;
- (mm) October 27, 2011 press release, interim financial statements and MD&A for Q3 2011;
- (nn) December 14, 2011 statement in response to outside concerns regarding the impact on glaciers of the Pascua-Lama project;

² System for Electronic Document Analysis and Retrieval.

- (oo) February 16, 2012 earnings conference call for Q4 2011;
- (pp) February 17, 2012 press release, annual financial statements and MD&A for 2011;
- (qq) March 27, 2012 annual report for 2011;
- (rr) April 20, 2012 registration statement, as amended on May 9, 2012 and filed on SEDAR on May 9, 2012, including documents incorporated by reference;
- (ss) May 2, 2012 earnings conference call for Q1 2012;
- (tt) May 3, 2012 press release, interim financial statements and MD&A for Q1 2012;
- (uu) July 26, 2012 press release and earnings conference call for Q2 2012;
- (vv) July 27, 2012 press release, interim financial statements and MD&A for Q2 2012;
- (ww) November 1, 2012 earnings conference call for Q3 2012;
- (xx) November 2, 2012 press release, interim financial statements and MD&A for Q3 2012;
- (yy) January 24, 2013 statements at the CIBC World Markets Whistler Institutional Investor Conference;
- (zz) February 14, 2013 earnings conference call for Q4 2012;
- (aaa) February 14, 2013 press release, annual financial statements and MD&A for 2012;
- (bbb) March 25, 2013 annual report for 2012;
- (ccc) March 28, 2013 annual information form;
- (ddd) April 24, 2013 earnings conference call for Q1 2013;
- (eee) April 24, 2013 press release, interim financial statements and MD&A for Q1 2013;
- (fff) June 28, 2013 press release regarding update on the Pascua-Lama project; and
- (ggg) August 1, 2013 press release, interim financial statements and MD&A for Q2 2013.

25. These documents and public oral statements contained material misrepresentations and omitted key facts regarding challenges to the progress and feasibility of the Pascua-Lama project.

26. The defendants also failed to make timely disclosure of material changes as required by section 75 of the *OSA* (and comparable securities provisions in other provinces) relating to the progress and feasibility of the Pascua-Lama project.

27. The defendants ought to have known of the misrepresentations and failures to disclose at the time they were made.

Legal Claims

Negligent Misrepresentation

28. Barrick owed a duty to Class Members to ensure the accuracy of public statements. It had an obligation to make full, true and accurate disclosure of material facts and changes with respect to its business and affairs, which included statements regarding the Pascua-Lama project.

29. The individual defendants, by virtue of their positions as officers of Barrick, also owed a duty to Class Members to ensure that public statements on behalf of Barrick were not untrue, inaccurate or misleading. They owed a duty to ensure that material events, such as a significant increase in project costs and timing or environmental problems, were publicly disclosed to Class Members in a timely manner and that there were no material omissions in quarterly and annual reports. The continuous disclosure requirements in Canadian securities law mandated Barrick to provide material change reports and quarterly and annual reports. These reports were meant to be read by investors in the secondary market and to be relied on in making investment decisions. These reports and other public disclosure were prepared to attract investment in Barrick and the defendants intended that Class Members would rely on public disclosure for that purpose. Further, the individual defendants had similar statutory obligations under Canadian securities law to ensure the accuracy of these disclosure documents. During the Class Period, the individual

defendants signed annual reports and certified that the quarterly reports and annual reports did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made not misleading. They also certified that the financial statements and other financial information fairly presented Barrick's financial condition, results of operations and cash flows.

30. The defendants breached these duties by making the misrepresentations to the Class Members. The defendants acted negligently as they ought to have known of the misrepresentations and ought to have known that the misrepresentations would mislead Class Members. The defendants made the misrepresentations with the intent that investors would rely on them.

31. The plaintiff and Class Members relied on the misrepresentations to their detriment. They reviewed the defendants' public disclosure and relied on it. In addition, the price of Barrick's securities traded based on the information released from the defendants. The market price incorporated new information quickly and efficiently. In their purchase of Barrick securities, the plaintiff and Class Members were purchasing at prices that reflected the misrepresentations from the defendants. Those misrepresentations caused the price of securities to be inflated and thus the plaintiffs and Class Members purchased Barrick securities at higher prices that they otherwise would have, but for the misrepresentations.

32. Finally, the plaintiff and Class Members relied on the defendants' obligations to make timely disclosure of all material facts and changes, to comply with securities law and to prepare quarterly and annual reports in accordance with Generally Accepted Accounting Principles

(GAAP) and International Financial Reporting Standards (IFRS). The defendants violated these obligations.

Statutory Securities Act Claims

33. As a result of their misrepresentations to the Class Members and failures to make timely disclosure as described above, the defendants are liable for statutory misrepresentations in accordance with Part XXIII.1 of the *OSA* or, alternatively, the following securities legislation:

Part 16.1 of *Securities Act*, R.S.B.C. 1996, c.418; Part 17.01 of *Securities Act*, R.S.A. 2000, c. S-4; Part XVIII.1 of *Securities Act*, 1988, S.S. 1988-89, c. S-42-2; Part XVIII of *Securities Act*, C.C.S.M. c.S50; Division II of Title VIII, Chapter II of *Securities Act*, R.S.Q., c. V-1.1; Part 11.1 of *Securities Act*, S.N.B. 2004, c. S-5.5; Sections 146A to 146N of *Securities Act*, R.S.N.S. 1989, c. 418; Part XXII.1 of *Securities Act*, R.S.N.L. 1990, c. S-13; Part 14 of *Securities Act*, R.S.P.E.I. 1988, c. S-3.1 (collectively the “Other Securities Legislation”).

34. The defendants released documents that contained misrepresentations (as defined for the purposes of Part XXIII.1 of the *OSA* and the Other Securities Legislation).

35. Barrick’s quarterly reports, annual reports, management discussion and analysis and its material change reports during the Class Period contained misrepresentations and were core documents within the meaning of Part XXIII.1 of the *OSA*, Other Securities Legislation or rules or regulations thereunder. Barrick also released non-core documents that contained misrepresentations.

36. Each of the individual defendants were officers at the time Barrick released these documents and authorized, permitted or acquiesced in their release. In particular, without limitation, they signed the annual reports and certified that the quarterly reports and the annual reports did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made not misleading. They each also certified that the financial

statements and other financial information fairly presented Barrick's financial condition, results of operations and cash flows.

37. In addition, the defendants released documents and made public oral statements that contained misrepresentations (as defined for the purposes of Part XXIII.1 of the *OSA* and the Other Securities Legislation). The individual defendants did so with actual, implied or apparent authority to release such documents and to make such statements on Barrick's behalf.

38. The defendants also failed to make timely disclosure of material changes and in particular, without limitation, material changes relating to the progress and feasibility of the Pascua-Lama project. The individual defendants authorized, permitted or acquiesced in the failure to make timely disclosure of material changes.

39. The defendants knew, at the time these documents were released and the public oral statements were made or the failure to make timely disclosure was made, that the documents and public statements contained misrepresentations or there were material changes or that they deliberately avoided acquiring such knowledge or were guilty of gross misconduct in connection with the release of the documents and making the public oral statements or the failure to make timely disclosure.

Damages

40. The plaintiff and each Class Member suffered damages as a result of relying on these misrepresentations, which include losses suffered when the price of Barrick's securities dropped to their true value as the truth regarding its operations was revealed.

41. There were multiple and partial corrective disclosures on April 10, 2013 and October 31, 2013. The Class Members suffered damages equivalent to the drop in security price as the true state of affairs was disclosed. If the defendants had not made the misrepresentations described above, the price of Barrick's securities would not have traded at an artificially high level and the Class Members, who acquired the securities during the Class Period, would not have suffered the losses when the truth about Barrick's operations was revealed.

Vicarious Liability

42. The individual defendants prepared the documents and made the oral statements referenced above in the exercise of their duties as officers and managers of Barrick. They were employees of Barrick and made these misrepresentations in the course of their employment. Their duties as officers included an obligation to review, approve and make public statements with respect to Barrick's financial condition and state of affairs.

43. Accordingly, in addition to its direct liability for negligent misrepresentation, as the individual defendants' employer, Barrick is vicariously liable for the acts and omissions of the individual defendants as set out above, including, without limitation, misrepresentations made negligently.

44. This action is commenced pursuant to the *Class Proceedings Act, 1992*.

45. The trial of this action should take place in Toronto.

April 24th, 2014

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BARRICK GOLD CORPORATION et al
Defendants

and

MICHAEL WEINER
Plaintiff

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF ACTION

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