

Court File No. **Cv-12-448651 oocp**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

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 plaintiffs' lawyer or, where the plaintiffs do 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.



Date March ⁴⁶₁₂, 2012

Issued by 
Local Registrar

Address of court office 393 University Avenue,
10th Floor
Toronto, Ontario M5G 1E6

TO: Kinross Gold Corporation
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AND TO: Tye W. Burt
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AND TO: Paul H. Barry
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AND TO: Glen Masterman
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AND TO: Kenneth G. Thomas
Kinross Gold Corporation
25 York Street, 17th Floor
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CLAIM

1. The plaintiffs claim:
 - (a) an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “CPA”) and appointing the plaintiffs as representative plaintiffs 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 in paragraph 18) pertaining to the business and affairs of Kinross Gold Corporation;
 - (c) an order granting leave to pursue claims for statutory misrepresentation under Part XXIII.1 of the *OSA*, or alternatively, Other Securities Legislation;
 - (d) damages for negligent misrepresentation and statutory misrepresentation (as set out in Part XXIII.1 of the *OSA* or alternatively Other Securities Legislation) in the amount of \$4 billion, or such other sum as this Honourable Court may find appropriate;
 - (e) a declaration that the defendant Kinross is vicariously liable for the acts and omissions of the individual defendants;
 - (f) prejudgment and postjudgment 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;
 - (h) 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 to this Honourable Court may seem just.

Overview

2. On August 2, 2010, Kinross announced it had entered an agreement to acquire all of the issues and outstanding common shares of Red Back Mining Inc. (“Red Back”), by way of a plan of arrangement under section 192 of the *Canada Business Corporations Act*. The agreement required the approval of Kinross and Red Back shareholders.

3. The transaction was valued at approximately US\$7.1 billion. Kinross emphasized that the combination would give Kinross a strong position in West Africa and that it was “creating a gold growth powerhouse”. The acquisition would give Kinross a 100% interest in Red Back’s Tasiast gold mine in Mauritania, Africa.

4. On August 16, 2010, Kinross sent a management information circular to its shareholders setting out the benefits of acquiring Red Back and unanimously recommending they approve the arrangement with Red Back. It stated that the Tasiast mine was (a) a “world-class growth property”; and (b) that “the property contains significant potential beyond the current level of proven and probable mineral reserves which, if realized, would have a transformational impact on Kinross’s growth and production profile.”

5. On September 15, 2010, Kinross shareholders approved the arrangement with Red Back. In its press release announcing the approval, Kinross again referred to the Tasiast mine.

6. On February 16, 2011, Kinross announced its fourth quarter results for 2010 and disclosed its feasibility study to explore the mineral deposit at the Tasiast mine. Kinross stated that the Tasiast reserves and resources had grown significantly and that its gold grades were higher than expected. It also stated that Tasiast’s proven and probable mineral reserves had increased to 7.6 million gold ounces, measured and indicated resources were 2.1 million

ounces and inferred resources had increased to 8.6 million ounces. These statements were falsely or negligently made by the defendants.

7. Throughout the class period, Kinross made a number of representations relating to the quantity and quality of gold ore at the Tasiast mine and the costs of operating the mine. Kinross provided positive updates on its feasibility study and indicated that the results from drilling program at the Tasiast mine were meeting or exceeding expectations. Its management's discussion and analysis represented that the results from drilling were encouraging and allowed Kinross to add to its overall mineral resource estimate.

8. Further, the defendants made representations regarding the proven and probable mineral reserves and the resources at the Tasiast mine. These representations were not true. In addition, Kinross failed to disclose that its drilling program had revealed high amounts of low-grade ores.

9. On January 16, 2012, Kinross issued a press release indicating that the Tasiast mine would require significant capital expenditures since drilling had revealed lower grade ore and that Kinross expected to record a material non-cash accounting charge, primarily related to the goodwill recorded for the Tasiast mine.

10. This announcement had a significant adverse impact on the shares of Kinross. The price of its shares dropped from \$13.20 per share on January 16, 2012 to \$10.17 on January 19, 2012. This reflected more than \$3.4 billion in lost shareholder value.

11. On February 15, 2012, Kinross issued a press release announcing its results for the fourth quarter of 2011. It disclosed that Kinross's reported net loss for 2011 included a non-

cash goodwill impairment charge of \$2.94 billion, of which 85%, or \$2.49 billion, was for the Tasiast mine.

Parties

12. The plaintiffs are the trustees of the Musicians' Pension Fund Of Canada. The plaintiffs acquired Kinross shares on the Toronto Stock Exchange during the class period.

13. The defendant, Kinross Gold Corporation, is a mining company headquartered in Toronto, Ontario. It is incorporated under the laws of Ontario and is a reporting issuer whose shares trade on the Toronto Stock Exchange and the New York Stock Exchange.

14. The defendant, Tye W. Burt, has been Kinross' president, chief executive officer and a director since joining Kinross in 2005.

15. The defendant, Paul H. Barry, has been Kinross' chief financial officer and an executive vice president since March 31, 2011.

16. The defendant, Glen J. Masterman, was senior vice president of exploration during the class period.

17. The defendant, Kenneth G. Thomas, was appointed senior vice-president of projects in December 2009 and held that position throughout the class period.

18. The individual defendants were all officers during the class period within the meaning of the *OSA* and the Other Securities Legislation.¹

¹ *Securities Act*, R.S.B.C. 1996, c.418, s.1(1); *Securities Act*, R.S.A. 2000, c. S-4, s.1(II); *Securities Act*, 1988, S.S. 1988-89, c. S-42-2, s.2(1)(gg); *Securities Act*, C.C.S.M. c.S50, s.1(1); *Securities Act*, R.S.Q., c. V-1.1, title I, ch.II, s.5; *Securities Act*, S.N.B. 2004, c. S-5.5, s.1(1); *Securities Act*, R.S.N.S. 1989, c. 418, s.2(1)(ac);

19. The plaintiffs bring this action pursuant to the *CPA* on their own behalf and on behalf of all persons or entities, other than Excluded Persons, who purchased or otherwise acquired Kinross shares during the period from February 16, 2011 through and including January 16, 2012 (“Class Period”) on the Toronto Stock Exchange or other secondary market in Canada (the “Class Members”).

20. Excluded from the Class are the defendants, the officers and directors of Kinross 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 or had a controlling interest (the “Excluded Persons”).

The Misrepresentations Constituted Common Law Misrepresentations

21. The defendants owed a duty to investors and shareholders to ensure the accuracy of its public statements. This included an obligation to make full, true and accurate disclosure of material facts and changes with respect to Kinross’ business and affairs.

22. The defendants breached these duties by making the misrepresentations. By relying on the defendants’ representations to the Class’s detriment, the Class suffered damages. The defendants’ conduct constituted negligent misrepresentation and they are liable to the Class.

The Misrepresentations Constituted Statutory Misrepresentations

23. As a result of their misrepresentations, the defendants are liable for statutory misrepresentation in accordance with Part XXIII.1 of the *OSA* or, alternatively, the following securities legislation:

Securities Act, R.S.N.L. 1990, c. S-13, s.2(1)(dd); *Securities Act*, R.S.P.E.I. 1988, c. S-3.1, 1(nn), *Securities Act*, S.Y. 2007, c. 16, s.1(1); *Securities Act*, S.N.W.T. 2008, c. 10, s.1(1), *Securities Act*, S.Nu. 2008, c. 12, s.1(1) (collectively the “Other 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
Part 14 of *Securities Act*, S.Y. 2007, c. 16
Part 14 of *Securities Act*, S.N.W.T. 2008, c. 10
Part 14 of *Securities Act*, S.Nu. 2008, c. 12
(collectively the “Other Securities Legislation”).

24. The defendants are liable for documents released and public oral statements during the class period that contained misrepresentations relating to the Tasiast mine.

25. The defendants also failed to make timely and accurate disclosure of material changes relating to the Tasiast mine.

26. The individual defendants were officers at the time of the misrepresentations and authorized, permitted or acquiesced in the making of the misrepresentations and in the failure to make timely and accurate disclosure of material changes.

27. The defendants knew, at the time these documents were released and the public oral statements were made, that the documents and public statements contained misrepresentations. Alternatively, the defendants either deliberately avoided acquiring such knowledge or were guilty of gross misconduct in connection with the release of the documents and the making of public oral statements.

Damages

28. The plaintiffs and each Class Member suffered damages as a result of relying on the defendants' misrepresentations. These include losses suffered when Kinross announced the Tasiast mine would require significant capital expenditures since drilling had revealed lower grade ore and that Kinross would be taking a charge relating to the goodwill for that mine.

Vicarious Liability

29. Kinross is vicariously liable for the acts and omissions of the individual defendants including, without limitation, misrepresentations made negligently.

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

31. The trial of the action should take place in Toronto.

March 12, 2012

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Plaintiffs

Kinross Gold Corporation et al.
Defendants

and

Court File No: *Ca 12-448651 00CP*

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceeding Act, 1992*

NOTICE OF ACTION

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