

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**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

Proceeding under the *Class Proceedings Act, 1992*

**FACTUM OF THE MOVING PLAINTIFFS**  
**(Settlement Administration)**

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**PART I - OVERVIEW OF THE MOTION**

1. This is a motion to approve two aspects of the methodology applied by Marsh Risk Consulting Canada ("**Marsh**") to administer the court-approved settlement in this matter that were not set out in the Court-approved plan to allocate and distribute the settlement proceeds (the "**Plan of Allocation**"). The Plaintiffs also seek a conditional order discharging Marsh as settlement administrator upon the conclusion of the administration of the settlement.

2. By order dated June 18, 2015, this Court approved a settlement between the Plaintiffs and the Defendants and approved the Plan of Allocation to allocate and distribute the settlement funds along class members who submitted valid claims.<sup>1</sup>

3. The claims process is now complete. Over 22,000 claims were made in the settlement.<sup>2</sup>

4. Allocation of the settlement proceeds is also now complete. Marsh is now in a position to commence the distribution of the settlement funds. However, before it does so, Marsh seeks an order approving its methodology to: (a) convert U.S. currency to Canadian currency; and (b) accept electronic bulk claim submissions from and settlement fund distribution through 11 financial institutions.

5. *First*, in the course of administering the settlement, Marsh was required to convert U.S. currency to Canadian currency. The court-approved Plan of Allocation permitted claimants who purchased Kinross Gold Corporation ("**Kinross**") shares in U.S. dollars to submit claims in the settlement. However, the Plan of Allocation required compensation to be paid in Canadian currency. As a result, in the course of administering the settlement, it was necessary for Marsh to convert U.S. currency to Canadian currency.<sup>3</sup>

6. The Plan of Allocation did not provide a methodology to convert U.S. currency to Canadian currency. Marsh converted U.S. dollars to Canadian dollars at the rate of 1.0132:1, the Bank of Canada Noon Rate on January 17, 2012. This was the date that claimants were required

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<sup>1</sup> Affidavit of Lauren Hill sworn September 27, 2016 ("**Hill Affidavit**"), para. 2, Plaintiffs' Motion Record ("**PMR**"), Tab 2, p. 7.

<sup>2</sup> Hill Affidavit, para. 6, PMR, Tab 2, p. 9.

<sup>3</sup> Hill Affidavit, para. 4, PMR, Tab 2, p. 7.

to have held shares in accordance with the Plan of Allocation to be entitled to compensation. To ensure consistency in the calculation of claimants' entitlement under the settlement, Marsh applied this rate to all claims.<sup>4</sup>

7. **Second**, Marsh granted requests from 11 institutions to permit them to electronically submit 15,930 claims in bulk. The court-approved claim form stated that claimants with large numbers of transactions may request to submit information regarding their transactions electronically. It further stated that claimants wishing to submit an electronic batch claim must contract the Claims Administrator.<sup>5</sup>

8. Instead of requiring each of their customers to individually submit claim forms, 11 institutions contacted Marsh seeking to electronically file bulk claims on behalf of 15,930 customers. In the interest of an efficient administration, Marsh made available a process permitting these claims to be filed in bulk by the institutions and permitting payment of settlement funds to these claimants through the 11 institutions.<sup>6</sup>

9. **Third**, the settlement requires the administrator to report to the Court and account for all monies it proposes to distribute in accordance with the settlement agreement and the Plan of Allocation. It further states that the administrator may obtain an order from the court discharging

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<sup>4</sup> Hill Affidavit, para. 4, PMR, Tab 2, p. 7.

<sup>5</sup> Claim Form, Schedule "E" to the Settlement Agreement, PMR, Tab 3(A), p. 212.

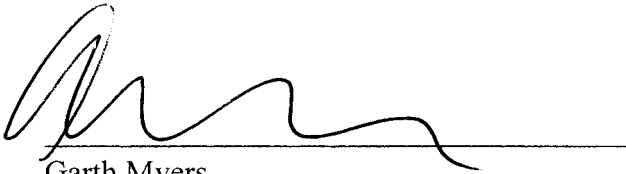
<sup>6</sup> Hill Affidavit, para. 4, PMR, Tab 2, p. 8.

it as administrator.<sup>7</sup> Marsh respectfully seeks an order discharging it as administrator upon completion of the settlement administration.

**PART II - ORDER REQUESTED**

10. The Plaintiffs respectfully request an order approving the methodology used by Marsh and an order discharging Marsh as settlement administrator upon the completion of the settlement administration.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of October, 2016

A handwritten signature in black ink, appearing to read 'Garth Myers', is written over a horizontal line.

Garth Myers

Koskie Minsky LLP  
Lawyer for the Plaintiffs

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<sup>7</sup> Settlement Agreement, p. 26-27, PMR, Tab 3(A), pp. 179-180.

**SCHEDULE "A" - LIST OF AUTHORITIES**

nil



**SCHEDULE "B" - RELEVANT STATUTES**

*Class Proceedings Act, 1992, S.O. 1992, c. 6*

**Court may determine conduct of proceeding**

12. The court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate. 1992, c. 6, s. 12.

**E. EDDY BAYENS, et al**  
Plaintiffs

**KINROSS GOLD CORPORATION, et al.**  
and  
Defendant

Court File No. CV-12-44865100CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding under the *Class Proceedings Act, 1992*

Proceeding commenced at **TORONTO**

**FACTUM OF THE PLAINTIFFS**  
(Settlement Administration)

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