

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-06-000693-149

(Class Actions)

SUPERIOR COURT

ANAS NSEIR

Plaintiff

v.

BARRICK GOLD CORPORATION

- and -

JAMIE SOKALSKY

- and -

AMMAR AL-JOUNDI

Defendants

**ORIGINATING APPLICATION
(Article 583 C.c.p.)**

IN SUPPORT OF HIS ORIGINATING APPLICATION, THE PLAINTIFF EXPOSES:

1. On December 19, 2022, the Court of Appeal authorized the Plaintiff to institute an action for damages against the Defendants pursuant to sections 225.2 *et seq.* of the *Securities Act*¹ and authorized this action to proceed as a class action on behalf of the following persons:

All natural persons and legal persons who reside in Quebec and acquired securities of Barrick Gold Corporation between July 26, 2012, and October 31, 2013, except the defendants, all officers and directors of Barrick Gold Corporation during the class period, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which the excluded persons have a controlling interest now or during the class period.

Toutes les personnes physiques et les personnes morales qui résident au Québec et qui ont acquis des valeurs mobilières de Barrick Gold Corporation

¹ CQLR, c. V-1.1

entre le 26 juillet 2012 et le 31 octobre 2013, sauf les défendeurs, tout administrateur ou dirigeant de Barrick Gold Corporation durant la période visée par le Recours, ainsi que les membres de leurs familles immédiates, leurs représentants légaux et ayants droit, ou toute entité liée ou contrôlée par une personne exclue ou dans laquelle une personne exclue est un initié.

2. The authorization judgment identified the following questions of fact and law to be decided on the merits of the class action:
 - a) Were Barrick Gold Corporation's July 26, 2012, representations regarding the environmental compliance of Pascua-Lama's water management system materially misleading?
 - b) Were these misrepresentations publicly corrected and, if so, when?
 - c) Is the defendants' due diligence defence meritorious?
 - d) Are class members entitled to damages and, if so, in what amount?

I. THE DEFENDANTS

3. The Defendant Barrick Gold Corporation ("**Barrick**") is a mining corporation incorporated under the laws of Ontario and headquartered in Toronto, Ontario. At all relevant times, Barrick was either the largest or one of the largest gold producers in the world.
4. The Defendant Jamie Sokalsky was Chief Executive Officer and a director of Barrick during the entire class period.
5. The Defendant Ammar Al-Joundi was Chief Financial Officer and Executive Vice President of Barrick during the entire class period.

II. THE PASCUA-LAMA PROJECT

6. The Pascua-Lama gold and silver mining project, located in the Andes Mountains on both sides of the border between Chile and Argentina, is owned by Barrick.
7. From at least February 2006 until October 31, 2013, when its operations were suspended, Barrick attempted to develop the Pascua-Lama mine.
8. During this period, Barrick constantly presented Pascua-Lama as carrying enormous potential for the company's future, as appears from excerpts from a selection of Barrick's public disclosures, filed *en liasse* as **Exhibit P-1** – according to Barrick's predictions, Pascua-Lama was set to become one of the world's largest and lowest-cost gold mines.

9. From the outset, both Barrick and its capital markets understood that Pascua-Lama would present considerable challenges for development and production, including notably the significant and complex obligations relative to environmental protection imposed on the project.
10. The Pascua-Lama site was located at high altitude and immediately adjacent to several glaciers. Meltwater from these glaciers fed into a river named the Estrecho, an important source of water for the communities living in the nearby Atacama Desert, one of the driest deserts in the world.
11. The project was also subject to significant environmental scrutiny by governmental authorities and civil society in Chile.
12. A first application for environmental approval of the project had been denied by Chilean authorities in 2001, most notably because its projected impact on glaciers was deemed unacceptable.
13. In February 2006, Chilean authorities granted approval to a modified version of the Pascua-Lama project to Barrick's Chilean subsidiary, Compañía Minera Nevada SpA ("CMN"). The *Resolución de Calificación Ambiental* (the "RCA" – environmental rating resolution) issued by these authorities subjected the project to over 400 conditions, including:
 - a) A prohibition against destroying, displacing or altering the glaciers adjacent to the mine in any way;
 - b) An obligation to monitor the Estrecho River for the presence of heavy metals, and the obligation to activate "emergency plans" if heavy metals were detected;
 - c) An obligation to monitor the glaciers for any indications of adverse project impacts.
14. The original version of the RCA is filed as **Exhibit P-2**, and an English translation is filed as **Exhibit P-2A**.
15. In order to access mineralized ore, the project required excavation of large quantities of unmineralized ore or "waste rock", a mining process referred to as "pre-stripping." The environmental impact studies submitted by CMN predicted that a phenomenon known as "acid rock drainage" risked occurring when water came into contact with excavated waste rock. The RCA thus required CMN to construct a system for the management of water in the project area before pre-stripping began.
16. The project's water management system (the "WMS") was divided into two portions:

- a) the “non-contact” portion consisted of a network of channels meant to divert mountainside water flows away from the project area.
- b) the “contact” portion was intended to capture the water that came into contact with the project area (mainly rainfall and snowmelt), test it for acidification and treat it, if necessary, at acid mine drainage treatment facilities before being released into the Estrecho River.

17. The construction of the Pascua-Lama project began in May of 2009.

III. THE DEFENDANTS FALSELY CLAIMED THAT PRE-STRIPPING OPERATIONS HAD BEEN INITIATED AT PASCUA-LAMA IN CONFORMITY WITH THE RCA

18. The Defendants initiated pre-stripping operations at Pascua-Lama in May 2012.

19. On July 26, 2012, Barrick published its second quarterly report for 2012, **Exhibit P-3**. In this report, Barrick announced the initiation of pre-stripping at Pascua-Lama in the following way (the “Pre-stripping Announcement”):

During the second quarter, the project achieved critical milestones with completion of Phase 1 of the pioneering road and also the water management system in Chile, both of which enabled the commencement of pre-stripping activities.

20. As detailed below, the WMS was in fact not complete on this date, and never completed. As such, the Defendants initiated pre-stripping in violation of the RCA, and the Pre-stripping Announcement was false and misleading.

21. While the initiation of pre-stripping is a crucial step in the construction of any open pit mine, Barrick’s Pre-stripping Announcement was of particular significance to the market. By the date of this announcement, Pascua-Lama’s initial construction budget had more than doubled (from \$2.8 - \$3 billion to \$ 7.5 - \$8 billion) and projected first gold production had been delayed by more than three years. The Pre-stripping Announcement was thus crucial in reassuring the market that Pascua-Lama was progressing towards completion.

22. Furthermore, and as will be demonstrated at trial, the initiation of pre-stripping was crucially important to Barrick’s management in order to control the construction budget of Pascua-Lama.

a) A Chilean appellate court and Chile's environmental regulation agency both found that the Defendants had illegally initiated pre-stripping at Pascua-Lama.

23. In September 2012, four indigenous Diaguita communities located in the vicinity of Pascua-Lama initiated a "constitutional rights protection action" (the "Constitutional Action") against CMN before Chile's Court of Appeal for Copiapó (the "Copiapó Court").

24. Among multiple other violations of the RCA, the communities alleged that CMN had illegally initiated pre-stripping before completion of the WMS, and was thus infringing upon their environmental rights protected by Chile's constitution.

25. On January 18, 2013, CMN filed a self-reporting notice with the Chilean *Superintendencia del Medioambiente* (Environmental Superintendent, hereafter the "SMA") – the original version of the self-reporting notice is filed as **Exhibit P-4**, and its English translation as **Exhibit P-4A**.

26. In this self-report, CMN admitted to many violations of the RCA, including the following:

- a) An outlet, which was part of a system of canals meant to maintain all non-contact water clear of the Pascua-Lama project, had been built in the wrong place.
- b) In December 2012, a large flow of water and of colluvial matter damaged this outlet.
- c) In January 2013, a second large flow of water and colluvial material ruptured the outlet and caused a mudslide that damaged a nearby flood plain.
- d) CMN resolved this failure of the WMS with "relief channels" built in violation of the RCA, given that they redirected water from the "non-contact" system into the project area.

27. Following this self-report, the SMA ordered CMN to adopt interim measures to prevent further incidents and launched an investigation of the Pascua-Lama project.

28. On March 27, 2013, the SMA adopted a resolution ("Ordinary Resolution no. 58/2013") charging CMN with fourteen violations of the RCA regarding the project's WMS. In addition to the previous violations admitted to by CMN, the SMA found that CMN had simply omitted to construct several components of the "contact" WMS before initiating pre-stripping operations. More specifically, the SMA found that CMN had violated the RCA by initiating pre-stripping before having built:

- a) the hydrogen peroxide oxidation unit of the Acid Drainage Treatment Plant.

b) the Reverse Osmosis or Alternative Secondary Treatment Plants.

c) the Forced Evaporation System.

the original version of Ordinary Resolution no. 58/2013 is attached as **Exhibit P-5**, and an English translation as **Exhibit P-5A**.

29. Based on the charges filed by the SMA, the Diaguita communities solicited interim orders within the context of the Constitutional Action. On April 9, 2013, the Copiapó Court thus issued an interim, *ex parte* injunction suspending all construction at the Pascua-Lama project.
30. The Copiapó Court's injunction was reported in international media as of April 10, 2013. On this day, Barrick published two press releases – **Exhibit P-6 en liasse** – acknowledging these media reports and announcing that it was suspending all construction activities on the Chilean side of Pascua-Lama.
31. As will be demonstrated at trial, Barrick's share price fell by nearly 30% during the ten trading days following the revelation of the Copiapó Court's injunction.
32. On April 29, 2013, CMN wrote to the SMA to acknowledge all but one of the charges brought against it, including all charges related to the illegal initiation of pre-stripping – the original of CMN's letter acknowledging these charges is attached as **Exhibit P-7**, and an English translation as **Exhibit P-7A**.
33. On May 24, 2013, the SMA issued an administrative decision ("Exempt Resolution no. 477") sanctioning CMN for its violations of the RCA. The SMA classified all these violations at the highest level of severity under Chilean environmental law. In determining the appropriate sanctions, the SMA noted that non-compliance with the RCA appeared to be "the general practice" of CMN. The SMA thus ordered the suspension of all construction activities at Pascua-Lama until completion of the WMS in compliance with the RCA and fined CMN US\$16 million.² The original version of Exempt Resolution no. 477 is attached as **Exhibit P-8**, and an English translation as **Exhibit P-8A**.
34. On June 3, 2013, Barrick issued a material change report, **Exhibit P-9**, announcing the SMA's Exempt Resolution no. 477.
35. On June 28, 2013, Barrick published a press release entitled "Barrick Provides Updates on Pascua-Lama Project", attached as **Exhibit P-10**. Although it had stated almost one year previously – in the Pre-stripping Announcement – that it had completed the WMS and had thus been able to initiate pre-stripping, Barrick now said the following:

² This fine was later reduced to US\$ 12 million following an administrative review.

The company has submitted a plan, subject to review by Chilean regulatory authorities, to construct the project's water management system in compliance with permit conditions for completion by the end of 2014, after which Barrick expects to complete remaining construction works in Chile, including pre-stripping.

36. On July 15, 2013, the Copiapó Court partially granted the Constitutional Action on the merits. The Court found that CMN's initiation of pre-stripping before having completed the WMS violated the RCA and posed a serious threat to nearby waterways, in contravention of Chile's constitution. Noting CMN's "contemptuous" attitude towards its obligations under the RCA, the Court confirmed the suspension of all construction activities at Pascua-Lama until completion of the WMS – the original version of the Copiapó Court's decision is filed as **Exhibit P-11**, and an English translation as **Exhibit P-11A**.
37. On October 30, 2013, Barrick's Board of Directors decided to indefinitely suspend all construction activities at Pascua-Lama, as appears from a copy of the minutes of their meeting, **Exhibit P-12**. Among other factors justifying this decision, these minutes refer to "uncertainty about obtaining or retaining required permits from Chilean authorities." Barrick announced this decision the same day in its third quarterly report for 2013, **Exhibit P-13**.
38. As will be demonstrated at trial, Barrick's share price fell by nearly 15% during the ten trading days following the announcement of the indefinite suspension of the Pascua-Lama project.
39. To this day, Barrick has not re-initiated development of the Pascua-Lama project.

b) The Defendants knew that the Pre-stripping Announcement was false and misleading.

40. As mentioned, while Barrick claimed in the Pre-stripping Announcement that Pascua-Lama's WMS had been completed, it acknowledged nine months later before Chile's SMA that it had, in fact, initiated pre-stripping without having completed it.
41. Numerous other facts demonstrate that the Defendants knew that the decision to initiate pre-stripping in May 2012 violated the RCA, and thus knew that the Pre-stripping Announcement was false and misleading.
42. Project staff summarized major developments at Pascua-Lama to Barrick's management in monthly "Flash Reports". In the Flash Reports prepared for March to May 2011, filed herewith as **Exhibit P-14**, the project was described as being obligated to have the "entire Estrecho dump WMS in place and ready to operate prior to pre-stripping."

43. Project staff also prepared more comprehensive “Monthly Reports” for Barrick management. From July 2011 to June 2012, each Monthly Report identified as a regulatory risk the potential failure to “meet the commitment have the WMS fully operational before the start of pre-stripping.” The Reports also stated that initiating pre-stripping prior to the completion of the WMS would put the project at serious risk of being “paralyzed.” Relevant excerpts of Pascua-Lama’s Monthly Reports for July 2011 to June 2012 are filed as **Exhibit P-15, en liasse**.

44. Furthermore, during its investigation, the SMA examined under oath Jose Antonio Urrutia, a director of CMN and senior environmental counsel to the company. Mr. Urrutia testified that the project’s water treatment system was not operational for the purposes of the RCA as it was not able to reduce indicators of contamination in “contact water” to the levels required under Chilean law – the original transcript of Mr. Urrutia’s testimony is filed as **Exhibit P-16**, and an English translation as **Exhibit P-16A**.

45. Finally, Defendant Sokalsky made public admissions of responsibility for CMN/Barrick’s violations of the RCA on two separate occasions.

46. First, in an update to Barrick employees published after the Copiapó Court’s July 2013 decision, **Exhibit P-17**, Sokalsky wrote:

While we remain confident in the future of Pascua-Lama, we need to acknowledge that, as a company, we did not live up to our compliance obligations at the project. and we’ve seen just how costly this can be.

47. The following year, in Barrick’s Responsibility Report for 2013, **Exhibit P-18**, Sokalsky wrote:

I’m also disappointed with the company’s environmental compliance issues at the Pascua Lama project. While we are working to make things right, we did not live up to the high standards I expect of our company.

IV. DAMAGES CAUSED TO CLASS MEMBERS

48. The Pre-stripping Announcement artificially inflated the value of all publicly traded shares of Barrick. Indeed, the illegal initiation of pre-stripping at Pascua-Lama was crucial information for the prospects of Barrick’s business.

49. As mentioned above, Barrick’s share price fell precipitously when the Pre-stripping Announcement was corrected:

- a) The Pre-stripping Announcement was first corrected on April 10, 2013, when the Copiapó Court interim injunction was made public: at this moment, the market was informed of the seriousness of the risks faced by the Pascua-Lama project due to its alleged (and subsequently confirmed) illegal initiation of pre-stripping.

b) Correction of the Pre-stripping Announcement was completed on October 31, 2013, when Barrick announced the indefinite suspension of the Pascua-Lama project. It was only at this time that the market was properly informed that the Defendants' decision to initiate pre-stripping illegally at Pascua-Lama called into question the viability of the project.

50. As such, all class members – who purchased securities of Barrick during the period between the Pre-stripping Announcement and its full correction on October 31, 2013 – suffered damages because of the false and misleading nature of the Pre-stripping Announcement.

51. The Plaintiff will file an expert report estimating the total amount of damages suffered by class members and claims collective recovery of these damages.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the class action against the defendants.

DECLARE that Barrick Gold Corporation's July 26, 2012, representations regarding the environmental compliance of Pascua-Lama's WMS were materially misleading.

CONDEMN the defendants to pay for the damages suffered by the class members.

ORDER the defendants to pay each member of the class their respective claims, plus interest at the legal rate as well as the additional indemnity provided for in article 1619 C.C.Q.

ORDER collective recovery of all sums owed to class members.

THE WHOLE with costs, including the cost of all experts, expert reports and notices.

MONTREAL, February 22, 2024

Trudel Johnston & Lespérance

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Our File: 1319-1

SUMMONS
(Art. 145 and following C.c.p.)

Filing of a judicial application

Take notice that the Plaintiff has filed this originating application in the office of the Superior Court in the judicial district of Montreal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the Montreal Courthouse situated at 1 Notre-Dame St. East, Montreal, Québec, H2Y 1B6, within 15 days of service of this application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Plaintiff's lawyer or, if the Plaintiff is not represented, to the Plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of this summons. However, in family matters or if you have no domicile, residence or establishment in Québec, it must be filed within 3 months after service; or
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Where to file the judicial application

Unless otherwise provided, the judicial application is heard in the judicial district where

your domicile is located, or failing that, where your residence or the domicile you elected or agreed to with Plaintiff is located. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the court.

However, if the application pertains to an employment, consumer or insurance contract or to the exercise of a hypothecary right on the immovable serving as your main residence, it is heard in the district where the employee's, consumer's or insured's domicile or residence is located, whether that person is the Plaintiff or the Defendant, in the district where the immovable is located or, in the case of property insurance, in the district where the loss occurred. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the special clerk of that district and no contrary agreement may be urged against you.

Transfer of application to the Small Claims Division

If you qualify to act as a Plaintiff under the rules governing the recovery of small claims, you may contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the Plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Convening a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing that, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the originating application, the Plaintiff intends to use the following exhibits:

(See the Plaintiff's list of exhibits)

The exhibits are available on demand.

Notice of presentation of an application

Applications filed in the course of a proceeding and applications under Book III or V of the Code—but excluding applications pertaining to family matters under article 409 and applications pertaining to securities under article 480—as well as certain applications under Book VI of the Code, including applications for judicial review, must be accompanied by a notice of presentation, not by a summons. In such circumstances, the establishment of a case protocol is not required.

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PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
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(Class Actions)

SUPERIOR COURT

ANAS NSEIR

Plaintiff

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BARRICK GOLD CORPORATION

- and -

JAMIE SOKALSKY

- and -

AMMAR AL-JOUNDI

Defendants

PLAINTIFF'S LIST OF EXHIBITS

IN SUPPORT OF HIS ORIGINATING APPLICATION, THE PLAINTIFF INTENDS TO USE THE FOLLOWING EXHIBITS:

- Exhibit P-1:** Excerpts from a selection of Barrick's public disclosures, filed *en liasse*.
- Exhibit P-2:** February 15, 2006, Environmental Qualification Resolution (*Resolución de Calificación Ambiental*, the "RCA") for the Pascua-Lama Project, Regional Environmental Commission, Atacama Province, Chile.
- Exhibit P-2A:** English Translation of Selected Passages of the RCA.
- Exhibit P-3 :** Barrick's July 26, 2012, press release, interim financial statements and MD&A for Q2 2012.
- Exhibit P-4:** Compañía Minera Nevada SpA's ("CMN") January 18, 2013, "Self-Reporting" before Chile's *Superintendencia del*

Medioambiente (Superintendence of the Environment, “SMA”).

- Exhibit P-4A:** English Translation of CMN’s January 18, 2013 “Self-Reporting”.
- Exhibit P-5:** SMA Ordinary Resolution No. 58/2013 (March 27, 2013) (Spanish).
- Exhibit P-5A:** SMA Ordinary Resolution No. 58/2013 (English).
- Exhibit P-6:** Two press releases issued by Barrick Gold Corporation on April 10, 2013, *en liasse*.
- Exhibit P-7:** April 29, 2013 – Letter from CMN acknowledging charges imposed by SMA (Spanish).
- Exhibit P-7A:** April 29, 2013 – Letter from CMN acknowledging charges imposed by SMA (English excerpt).
- Exhibit P-8:** SMA’s May 24, 2013, Administrative Decision against CMN entitled “Exempt Resolution No. 477”.
- Exhibit P-8A:** English Translation of the SMA’s May 24, 2013 “Exempt Resolution No. 477”.
- Exhibit P-9:** Material Change Report issued by Barrick on June 3, 2013
- Exhibit P-10:** Press Release entitled “Barrick Provides Updates on Pascua-Lama Project”, June 28, 2013.
- Exhibit P-11:** July 15, 2013, Decision of the Court of Appeal for the Chilean province of Copiapó.
- Exhibit P-11A:** English Translation of July 15, 2013, Decision of the Court of Appeal for Copiapó.
- Exhibit P-12:** Minutes of the Meeting of Barrick’s Board of Directors, October 30, 2013.
- Exhibit P-13:** October 31, 2013, press release entitled “Barrick Reports Third Quarter 2013 Results”
- Exhibit P-14:** Pascua-Lama “Flash Reports” for March to May 2011, *en liasse*.

- Exhibit P-15:** Excerpts of Pascua-Lama Monthly Reports, July 2011 to June 2012, *en liasse*.
- Exhibit P-16:** Transcript of Jose Antonio Urrutia's Examination by the SMA, January 2013.
- Exhibit P-16A:** English translation of the transcript of Jose Antonio Urrutia's Examination by the SMA, January 2013.
- Exhibit P-17:** Pascua-Lama Update from Present and CEO Jamie Sokalsky – July 2013.
- Exhibit P-18:** Barrick's "Responsibility Report" for 2013.

MONTREAL, February 22, 2024

Trudel Johnston & Lespérance

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BT-1415

ORIGINATING APPLICATION
(Article 583 C.c.p.)

ORIGINAL

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