

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

Between:

KENNETH ELLIOTT and MORRIS DONEN
As representative plaintiffs

Plaintiffs

-- And --

BOLIDEN LIMITED, TRELLEBORG INTERNATIONAL BV, TRELLEBORG AB, ANDERS
BULOW, JAN PETER TRAAHOLT, KJELL NILSSON, LARS OLOF NILSSON, ALEX G.
BALOGH, ROBERT K. McDERMOTT, ROBERT R. STONE, FREDERICK H. TELMER and
NESBITT BURNS, INC.

Defendants

Brought under the *Class Proceedings Act*, 1992

AMENDED STATEMENT OF CLAIM
(Notice of Action issued October 20, 1998)

1. The plaintiffs claim on their own behalf and on behalf of all Class Members:
 - (a) general damages of \$200,000,000.00;
 - (b) special damages of \$100,000,000.00;
 - (c) punitive and exemplary damages of \$100,000,000.00;
 - (d) prejudgment and post judgment interest pursuant to the *Courts of Justice Act*;
 - (e) the costs of this action;
 - (f) an Order certifying these proceedings as a class proceeding and appointing him representative plaintiff; and
 - (g) such further and other relief as to this Honorable Court may seem just.

2. The plaintiff, Kenneth Elliott, resides at 3676 Maginnis Avenue, North Vancouver, British Columbia, V7K 2L6. The plaintiff purchased 1000 Boliden shares in May 1977.

2a The plaintiff Morris Donen resides at 22 Kimloch Crescent, Toronto, Ontario. The plaintiff purchased 2000 Boliden shares in or about June 1997.

3. The plaintiffs undertake this action on their own behalf and, pursuant to the *Class Proceedings Act*, 1992, on behalf of all persons who acquired Boliden shares during the period of distribution or distribution to the public of Boliden's June 10, 1997 Initial Public Offering (the "IPO"), other than the defendants, members of the defendants' immediate families and any entity in which a defendant has a controlling interest.

THE DEFENDANTS

4. The defendant, Boliden Limited, is a company which was incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 on or about April 18, 1997. Prior to the IPO, Boliden was a wholly owned subsidiary of the defendant, Trelleborg AB. At all material times Boliden's principal corporate offices were located at 181 Bay Street #1500, Toronto, Ontario, M5J 2T3. Boliden's IPO was conducted in Canada, and its common stock is traded on the Toronto and Montreal Stock Exchanges.
5. The defendant, Trelleborg International BV, is a company incorporated under the laws of the Netherlands. At all material times its principal corporate offices were located in Trelleborg, Sweden. The defendant, Trelleborg International BV, is an indirect wholly owned subsidiary of the defendant, Trelleborg AB. Prior to the IPO, the defendant, Trelleborg International BV, owned all of the acquired shares of Boliden. The defendant Trelleborg International BV was the selling shareholder in the IPO.
6. The defendant, Trelleborg AB, is a company incorporated under the laws of Sweden. At all material times its principal corporate offices were located in Trelleborg, Sweden. Trelleborg AB, owns all of the shares of the defendant, Trelleborg International BV.
7. The defendant, Anders Bulow ("Bulow") was Boliden's President and Chief Executive Officer at the time of the IPO. Bulow resides at 968 Tennyson Avenue, Mississauga, Ontario.

8. The defendant, Jan Peter Traaholt ("Traaholt"), was Boliden's Senior Vice President and Chief Financial Officer at the time of the IPO. Traaholt resides at 1819 Shady Creek Court, Mississauga, Ontario.
9. The defendant, Kjell Nilsson ("K. Nilsson") was the President and Chief Executive Officer of Trelleborg AB, and a member of the Boliden's Board of Directors, at the time of the IPO. K. Nilsson resides in Trelleborg, Sweden.
10. The defendant, Lars Olof Nilsson ("L.O. Nilsson") was Senior Vice President and Group Treasurer of Trelleborg AB and a member of the Boliden's Board of Directors at the time of the IPO. L.O. Nilsson resides in Saltsjobaden, Sweden.
11. The defendant, Alex G. Balogh ("Balogh") was a member of Boliden's Board of Directors at the time of the IPO. Balogh resides at 355 Balboa Court, Oakville, Ontario.
12. The defendant, Robert K. McDermott ("McDermott") was a Director and Secretary of Boliden at the time of the IPO. McDermott was a partner in the law firm of McMillin Binch, counsel to Boliden, at the time of the IPO. McDermott resides at 6A Wychwood Park, Toronto, Ontario.
13. The defendant, Robert R. Stone ("Stone"), was a member of Boliden's Board of Directors at the time of the IPO. Stone resides at 1609 Balsam Street, Vancouver, British Columbia.
14. The defendant, Frederick H. Telmer ("Telmer") was Chairman of Boliden's Board of Directors at the time of the IPO. Telmer resides at 4451 Lakeshore Road, Burlington, Ontario.
15. The defendant, Nesbitt Burns Inc. ("Nesbitt Burns"), is a Canadian company. Nesbitt Burns was Boliden's primary underwriter for the IPO. Nesbitt Burns has offices located at 2500 Park Place, 666 Burrard Street, Vancouver, British Columbia, V6C 2X8.
16. The defendants described in paragraphs 4, 5, and 6 above are referred to collectively herein as the "Mining Corporation Defendants".

17. The defendants described in paragraphs 7 to 14 above are referred to collectively herein as the “Individual Defendants”. Each of the Individual Defendants prepared, reviewed and/or signed the prospectus (the “Prospectus”) pursuant to which Boliden shares were marketed and sold to the public.

THE EVENTS

18. Boliden is a company engaged in the mining, processing and sale of metals and mineral products. Boliden Apirsa SL is a company incorporated pursuant to the laws of Spain, and is a subsidiary of Boliden. In or about 1987, Boliden Apirsa SL acquired a mine (the “Aznalcóllar Mine”) in Aznalcóllar, in southwestern Spain. The Aznalcóllar Mine generated a substantial amount of zinc and silver production. By 1996, however, the Aznalcóllar Mine was almost depleted.
19. By the end of 1988, Boliden Apirsa SL had discovered an ore body located at Los Frailes, one kilometre to the east of the Aznalcóllar Mine. The Mining Corporation Defendants and Boliden Apirsa SL, or some of them, invested more than \$175 million to develop a mine (the “Los Frailes Mine”) at this ore body. The Mining Corporation Defendants and Boliden Apirsa SL, or some of them, decided to place the Los Frailes Mine in production in February, 1997, to replace the Aznalcóllar Mine.
20. In order to operate the Aznalcóllar Mine and the Los Frailes Mine, Boliden was required to maintain a tailings dam (the “Tailings Dam”) in or near Los Frailes. Tailings are the toxic byproducts which remain after all metals considered economic have been removed from ore during milling. A tailings dam is an earthen structure built to hold these toxic byproducts created during the mining process. The tailings from the Aznalcóllar Mine and the Los Frailes Mine were held in a tailings pond (the “Tailings Pond”) enclosed by the Tailings Dam.
21. During 1996, southern Spain, and for further clarity, the area of Spain containing the Aznalcóllar Mine, the Los Frailes Mine, and the Tailings Dam, experienced unusually heavy rainfall.
22. The Mining Corporation Defendants and Individual Defendants had been apprised by their own

engineering consultants and internal engineering staff that the heavy rainfall in southern Spain in 1996 had aggravated structural defects in the Tailings Dam. This heavy rainfall adversely impacted the Tailings Dam and disrupted mine operations for at least two months during 1996. The Tailings Dam was suffering from substantial structural infirmities and was leaking toxins into the surrounding countryside.

23. The Mining Corporation Defendants and Individual Defendants, or some of them, realized, or should have realized, that closing the Los Frailes Mine or properly accounting for its impaired value (having regard to weather conditions and the condition of the Tailings Dam) would severely impair the balance sheets of the Mining Corporation Defendants. A proper accounting would also have derailed the defendants' plan to sell Boliden shares to the public pursuant to the IPO.
24. The defendants sold approximately 55,898,216 Boliden shares pursuant to the IPO, at a price of \$16.00 per common share. The defendants raised approximately \$894,371,456.00 pursuant to the IPO. The shares sold included approximately 5,081,656 shares, valued at \$81,306,496.00, sold to the underwriters pursuant to an over-allotment option.
25. The shares' purchase price was payable in two installments. The first installment of \$8.00 per share was payable upon closing and the final installment of \$8.00 per share was payable on or before June 17, 1998. Upon closing, the shares were pledged to Trelleborg International BV, the selling shareholder, to secure payment of the final installment. Before full payment of the final installment, beneficial ownership of the shares was subject to the pledge and was represented by installment receipts.
26. On April 25, 1998, the Tailings Dam collapsed (the "Collapse"). The Collapse sent 7 million cubic meters of toxic waste rushing through a 50-meter breach in the reservoir wall and into the Spanish countryside.

27. As a result of the Collapse, approximately 10,000 hectares of land, much of it used for raising crops, were contaminated. The Collapse also threatened Donana National Park (Europe's largest nature reserve) and killed or injured a substantial amount of wildlife in the area..
28. As a result of the Collapse, Boliden has had to create a reserve of more than \$50 million for remediation expenses, beyond the amounts paid by its insurance carriers. Boliden may have to spend up to \$250 million for remediation efforts.
29. As a result of the Collapse and the consequent disruption of mining activities, Boliden has lost tens of millions of dollars in production revenue.
30. On November 16, 1998, Boliden shares closed at \$5.35 on the Toronto Stock Exchange.

THE PROSPECTUS

31. The Prospectus was prepared by the defendants to support the IPO pursuant to the following statutes, and the respective regulations thereunder, upon which the plaintiffs plead and rely:
- (a) the *Securities Act* (British Columbia);
 - (b) the *Securities Act* (Alberta);
 - (c) the *Securities Act* (Saskatchewan);
 - (d) the *Securities Act* (Manitoba);
 - (e) the *Securities Act* (Ontario);
 - (f) the *Securities Act* (Nova Scotia);
 - (g) the *Securities Fraud Prevention Act* (New Brunswick);
 - (h) the *Securities Act* (Prince Edward Island);
 - (i) the *Securities Act* (Newfoundland); and
 - (j) the *Securities Act* (Quebec);
- (collectively, the "Securities Acts").
32. The Prospectus contains statements indicating that environmental protection and pollution prevention are priorities at all Boliden operations.

33. The projections in the Prospectus include statements that Boliden believed it would become the fifth largest zinc producer in the Western World once the Los Frailes Mine reached production of approximately 125,000 tonnes of zinc per annum in 1998.
34. The Prospectus states that Boliden expected annual production from the Los Frailes Mine would be 4 million tonnes of ore in 1998 increasing to approximately 4.2 million tonnes of ore in 2000. The Prospectus also states that Boliden believed that the average ore grades would be approximately 3.8% zinc, 2.2% lead, 0.3% copper and 60 grams per tonne silver. The Prospectus further states that Boliden believed that, commencing in 1998, the annual contained primary metal production from the mill operating in conjunction with the Los Frailes Mine, would be approximately 125,000 tonnes of zinc, 5,400 tonnes of copper, 47,600 tonnes of lead and 3,000,000 ounces of silver (collectively, the "Production Estimates").
35. The Prospectus contains statements indicating that:
- (a) the principal factors that might negatively impact the accuracy of the forward looking statements in the Prospectus are discussed in the Prospectus;
 - (b) the Prospectus constitutes full, true and plain disclosure of all material facts relating to Boliden shares; and
 - (c) the Prospectus does not contain any misrepresentation likely to affect the value or the market price of Boliden shares.
36. These statements, and others, were misrepresentations, and were misrepresentations at the time the plaintiffs and other Class Members purchased Boliden shares, in that the Prospectus omitted, *inter alia*, the following material facts, which were known, or should have been known, to the defendants:
- (a) the Tailings Dam had not been properly constructed or maintained;
 - (b) prior to the IPO, the defendants had been apprised that the Tailings Dam was suffering from construction defects and could not support the mining activity at the Aznalcóllar Mine and, *a fortiori*, could not support the additional tailings generated from the Los Frailes Mine when it came on line in 1997;
 - (c) Boliden executives in charge of the Aznalcóllar Mine and the Los Frailes Mine had

- repeatedly been apprised of the stability problems with and structural defects under the Tailings Dam, including written warnings provided to them in 1992 and 1995;
- (d) in 1997, Boliden had commissioned a study by the same company that had designed and constructed the Tailings Dam, which study again confirmed some of the problems with the Tailings Dam;
 - (e) the Tailings Pond experienced seepage problems in 1995 and 1996 and these seepage problems were not properly corrected;
 - (f) in November, 1995, Manuel Aguilar Campos, a former Boliden Apirsa SL engineer, filed a formal complaint with the regional government's environmental agency alleging deficiencies in the construction of the Tailings Dam, insufficient compaction of the material on top of the Tailings Dam, and continuous filtering of toxic material from the Tailings Pond into the adjacent river system;
 - (g) in early 1996, Mr. Campos, warned authorities that because of chronic seepage, poor construction design and other problems at the Tailings Dam and Tailings Pond there was a major risk of a natural disaster;
 - (h) any natural disaster at the Los Frailes Mine would have especially serious consequences as it was located near one of Spain's most fertile agricultural regions and on the borders of one of Europe's most important nature reserves, Donana National Park;
 - (i) in January, 1996, a site visit to the Aznalcóllar Mine by officials of the regional environment laboratory documented that one tailings pond was overflowing into a second pond, which in turn was overflowing and pouring its effluent directly into the Guadiamar River; and
 - (j) in a 1996 scientific publication, Pablo Arambarri and two other Spanish scientists warned that the residues from the Aznalcóllar Mine leaking into the nearby river represented a "chemical time bomb" for Donana National Park.

37. Further, the Production Estimates were misrepresentations in that they were untrue, inaccurate, misleading, and/or not realistically feasible in light of, *inter alia*, the facts listed in paragraph 36 above, and the heavy rainfall in southern Spain in 1996.

CLAIMS AGAINST THE MINING CORPORATION DEFENDANTS

38. Each of the Mining Corporation Defendants controlled the information contained in and omitted from Boliden's Prospectus and other corporate reports and filings used to sell Boliden's shares to the public.

Breach of Statutory Duty

39. Pursuant to the Securities Acts, the Prospectus was required to be accurate and to contain no material omissions or misrepresentations. Pursuant to the Acts listed in paragraph 31(a) to 31(i) above, the Prospectus was required to constitute full, true and plain disclosure of all material facts relating to Boliden shares. Pursuant to the *Securities Act* (Quebec) the Prospectus was required to not contain any misrepresentation likely to affect the value or the market price of Boliden shares.

40. The Prospectus did not meet these requirements in that it contained misrepresentations as described in paragraphs 32 to 37 above. These misrepresentations were misrepresentations at the time the plaintiffs and other Class Members purchased Boliden shares. The plaintiffs and other Class Members purchased Boliden shares during the period of distribution or distribution to the public, and are deemed to have relied on these misrepresentations pursuant to the Securities Acts. The plaintiffs and other Class Members have suffered damages as a result of these misrepresentations.

41. Each of the Mining Corporation Defendants was

- (a) an issuer of Boliden shares;
- (b) a selling security holder on whose behalf the distribution was made; and/or
- (c) a signatory to the Prospectus.

As such, pursuant to the Securities Acts, the plaintiffs and other Class Members have a right of action for damages against each of the Mining Corporation Defendants for breach of statutory duty, or otherwise.

Negligence

42. Boliden, as the company whose shares were being offered for sale pursuant to the IPO owed a duty of care to the plaintiffs and other Class Members. Trelleborg International BV, as the selling

shareholder in the IPO owed a duty of care to the plaintiff and other Class Members. Trelleborg AB, as the owner of all the shares of the selling shareholder in the IPO owed a duty of care to the plaintiffs and other Class Members. This duty of care included, *inter alia*, a duty to

- (a) make a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) disseminate accurate and truthful information with respect to the condition of Boliden's operations, as well as the Company's finances and business prospects;
- (c) correct any previously issued statements from any source that were untrue or that had become untrue; and
- (d) disclose any information that would materially affect the present condition and/or future earnings of the company.

43. The Mining Corporation Defendants and/or their agents breached their duty of care by, *inter alia*:

- (a) not making a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) causing or permitting the preparation and dissemination of the misleading Prospectus;
- (c) failing to disclose adverse reports detailing the true condition of the Tailings Dam;
- (d) making or failing to prevent others from making materially misleading statements concerning the true condition of Boliden's mining assets;
- (e) failing to disclose material information that was adverse to Boliden's interests, as characterized in paragraph 36 above;
- (f) actively attempting to minimize or discredit reports questioning the safety and environmental soundness of the Tailings Dam; and
- (g) making or acquiescing in, or causing others to make filings required under applicable securities laws that they knew or should have known were untrue, inaccurate and/or

misleading.

44. It was or ought to have been reasonably foreseeable to the Mining Corporation Defendants that a breach of this duty of care would cause damage to the plaintiffs and other Class Members. The plaintiffs and other Class Members have suffered damages as a result of the Mining Corporation Defendants' breach of this duty of care and the Mining Corporation Defendants are liable therefor.

Negligent Misrepresentation

45. A special relationship existed between the Mining Corporation Defendants and the plaintiffs and other Class Members in that:

- (a) Boliden shares were being offered for sale pursuant to the IPO;
- (b) Trelleborg International BV was the selling shareholder in the IPO;
- (c) Prior to the IPO Trelleborg International BV owned all of the acquired shares of Boliden;
- (d) Trelleborg AB owns all of the shares of Trelleborg International BV;
- (e) each of the Mining Corporation Defendants controlled the information contained in and omitted from Boliden's Prospectus and other corporate reports and filings used to sell Boliden's shares to the public; and
- (f) the plaintiffs and other Class Members were completely reliant on the Prospectus to provide accurate and honest information concerning Boliden and its operations.

46. The Prospectus contained misrepresentations as described in paragraphs 32 to 37 above. These misrepresentations were misrepresentations at the time the plaintiffs and other Class Members purchased Boliden shares. The Mining Corporation Defendants acted negligently in making these misrepresentations and in:

- (a) not making a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;

- (b) causing or permitting the preparation and dissemination of the misleading Prospectus;
- (c) failing to disclose adverse reports detailing the true condition of the Tailings Dam;
- (d) making or failing to prevent others from making materially misleading statements concerning the true condition of Boliden's mining assets;
- (e) failing to disclose material information that was adverse to Boliden's interests, as characterized in paragraph 36 above;
- (f) actively attempting to minimize or discredit reports questioning the safety and environmental soundness of the Tailings Dam; and
- (g) making or acquiescing in, or causing others to make filings required under applicable securities laws that they knew or should have known were untrue, inaccurate and/or misleading.

47. The plaintiffs and other Class Members reasonably relied on the representations made by the Mining Corporation Defendants, the Prospectus and the representations therein. Further, they purchased Boliden shares during the period of distribution, or distribution to the public, and are deemed to have relied on the misrepresentations in the Prospectus pursuant to the Securities Acts. The plaintiffs and other Class members have suffered damages as a result of said reliance. The plaintiffs and other Class Members claim that the Mining Corporation Defendants are liable for the damages they have suffered as a result of the Mining Corporation Defendants' negligent misrepresentations.

Breach of Fiduciary or Other Duty

48. The plaintiffs and other Class Members were particularly vulnerable to the Mining Corporation Defendants and had only the Prospectus to apprise them of Boliden's financial condition and prospects. The plaintiffs and other Class Members were completely reliant on the Prospectus to provide accurate and honest information concerning Boliden and its operations. As such, the Mining Corporation Defendants had a fiduciary or other duty to act in the utmost good faith towards the plaintiffs and other Class Members. This fiduciary or other duty included, *inter alia*, a duty to

- (a) make a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the

IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;

- (b) disseminate accurate and truthful information with respect to the condition of Boliden's operations, as well as the Company's finances and business prospects;
- (c) correct any previously issued statements from any source that were untrue or that had become untrue; and
- (d) disclose any information that would materially affect the present condition and/or future earnings of the company.

49. The Mining Corporation Defendants and/or their agents breached their fiduciary or other duty by, *inter alia*:

- (a) not making a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) causing or permitting the preparation and dissemination of the misleading Prospectus;
- (c) failing to disclose adverse reports detailing the true condition of the Tailings Dam;
- (d) making or failing to prevent others from making materially misleading statements concerning the true condition of Boliden's mining assets;
- (e) failing to disclose material information that was adverse to Boliden's interests, as characterized in paragraph 36 above;
- (f) actively attempting to minimize or discredit reports questioning the safety and environmental soundness of the Tailings Dam; and
- (g) making or acquiescing in, or causing others to make filings required under applicable securities laws that they knew or should have known were untrue, inaccurate and/or misleading.

50. The plaintiffs and other Class Members have suffered damages as a result of the Mining Corporation Defendants' breach of fiduciary or other duty and that the Individual Defendants are

liable therefor.

Vicarious Liability of the Mining Corporation Defendants

51. The plaintiffs claim that the Mining Corporation Defendants are vicariously liable for the breach of statutory duty of the Individual Defendants as particularized in paragraphs 57 to 59 below.
52. The plaintiffs claim that the Mining Corporation Defendants are vicariously liable for the negligence of the Individual Defendants as particularized in paragraphs 60 to 62 below.
53. The plaintiffs claim that the Mining Corporation Defendants are vicariously liable for the negligent misrepresentations of the Individual Defendants as particularized in paragraphs 63 to 65 below.
54. The plaintiffs claim that the Mining Corporation Defendants are vicariously liable for the breach of fiduciary or other duty of the Individual Defendants as particularized in paragraphs 66 to 68 below.

CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS

55. Each of the Individual Defendants, as directors and/or officers of the Mining Corporation Defendants, was personally aware of, or had access to, non-public information regarding Boliden, the Los Frailes Mine and the Tailings Dam. This information includes but is not limited to:
 - (a) Boliden's operating plans, budgets and forecasts;
 - (b) survey, mining and geological reports relating to the Los Frailes Mine;
 - (c) details of the status and condition of the Tailings Dam and its structural defects;
 - (d) conversations with other corporate officers and employees;
 - (e) conversations at Board of Directors' meetings; and
 - (f) internal memoranda.

56. The Individual Defendants controlled the information contained in and omitted from Boliden's Prospectus and other corporate reports and filings used to sell Boliden's shares to the public. Each of the Individual Defendants had the power to direct the Mining Corporation Defendants' course of action.

Breach of Statutory Duty

57. Pursuant to the Securities Acts, the Prospectus was required to be accurate and to contain no material omissions or misrepresentations. Pursuant to the Acts listed in paragraph 31(a) to 31(i) above, the Prospectus was required to constitute full, true and plain disclosure of all material facts relating to Boliden shares. Pursuant to the *Securities Act* (Quebec) the Prospectus was required to not contain any misrepresentation likely to affect the value or the market price of Boliden shares.

58. The Prospectus did not meet these requirements in that it contained misrepresentations as described in paragraphs 32 to 37 above. These misrepresentations were misrepresentations at the time the plaintiffs and other Class Members purchased Boliden shares. The plaintiffs and other Class Members purchased Boliden shares during the period of distribution or distribution to the public, and are deemed to have relied on these misrepresentations pursuant to the Securities Acts. The plaintiffs and other Class Members have suffered damages as a result of these misrepresentations.

59. Each of the Individual Defendants was:

- (a) an issuer of Boliden shares;
- (b) a director of an issuer of Boliden's shares at the time the Prospectus was filed; and/or
- (c) a signatory to the Prospectus.

As such, pursuant to the Securities Acts, the plaintiffs and other Class Members have a right of action for damages against each of the Individual Defendants for breach of statutory duty, or otherwise.

Negligence

60. As directors and/or officers of a company offering securities for sale to the public each of the Individual Defendants owed a duty of care to the plaintiffs and other Class Members. This duty of care included, *inter alia*, a duty to

- (a) make a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) disseminate accurate and truthful information with respect to the condition of Boliden's operations, as well as the Company's finances and business prospects;
- (c) correct any previously issued statements from any source that were untrue or that had become untrue; and
- (d) disclose any information that would materially affect the present condition and/or future earnings of the company.

61. The Individual Defendants and/or their agents breached their duty of care by, *inter alia*:

- (a) not making a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) causing or permitting the preparation and dissemination of the misleading Prospectus;
- (c) failing to disclose adverse reports detailing the true condition of the Tailings Dam;
- (d) making or failing to prevent others from making materially misleading statements concerning the true condition of Boliden's mining assets;
- (e) failing to disclose material information that was adverse to Boliden's interests, as characterized in paragraph 36 above;
- (f) actively attempting to minimize or discredit reports questioning the safety and environmental soundness of the Tailings Dam; and
- (g) making or acquiescing in, or causing others to make filings required under applicable securities laws that they knew or should have known were untrue, inaccurate and/or misleading.

62. It was or ought to have been reasonably foreseeable to the Individual Defendants that a breach of

this duty of care would cause damages to the plaintiffs and other Class Members. The plaintiffs and other Class Members have suffered damages as a result of the Individual Defendants' breach of this duty of care and the Individual Defendants are liable therefor.

Negligent Misrepresentation

63. A special relationship existed between each of the Individual Defendants and the plaintiffs and other Class Members in that:

- (a) the Individual Defendants were the directors and/or officers of the Mining Corporation Defendants;
- (b) the Individual Defendants had the power to direct the Mining Corporation Defendants' course of action;
- (c) the Individual Defendants controlled the information contained in and omitted from the Prospectus and other corporate reports and filings used to sell Boliden's shares to the public; and
- (d) the plaintiffs and other Class Members were completely reliant on the Prospectus to provide accurate and honest information concerning Boliden and its operations.

64. The Prospectus contained misrepresentations as described in paragraphs 32 to 37 above. These misrepresentations were misrepresentations at the time the plaintiffs and other Class Members purchased Boliden shares. The Individual Defendants acted negligently making these misrepresentations and in

- (a) not making a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) causing or permitting the preparation and dissemination of the misleading Prospectus;
- (c) failing to disclose adverse reports detailing the true condition of the Tailings Dam;
- (d) making or failing to prevent others from making materially misleading statements concerning the true condition of Boliden's mining assets;
- (e) failing to disclose material information that was adverse to Boliden's interests, as

characterized in paragraph 36 above;

- (f) actively attempting to minimize or discredit reports questioning the safety and environmental soundness of the Tailings Dam; and
- (g) making or acquiescing in, or causing others to make filings required under applicable securities laws that they knew or should have known were untrue, inaccurate and/or misleading.

65. The plaintiffs and other Class Members relied on the representations made by the Individual Defendants, the Prospectus and the representations therein. Further, they purchased Boliden shares during the period of distribution or distribution to the public, and are deemed to have relied on the misrepresentations in the Prospectus pursuant to the Securities Acts. The plaintiffs and other Class Members have suffered damages as a result of this reliance. The plaintiffs and other Class Members claim that the Individual Defendants are liable for the damages they have suffered as a result of the Individual Defendants' negligent misrepresentations.

Breach of Fiduciary or Other Duty

66. The plaintiffs and other Class Members were particularly vulnerable to the Individual Defendants and had only the Prospectus to apprise them of Boliden's financial condition and prospects. The plaintiffs and other Class Members were completely reliant on the Prospectus to provide accurate and honest information concerning Boliden and its operations. As such, the Individual Defendants had a fiduciary or other duty to act in the utmost good faith towards the plaintiffs and other Class Members. This fiduciary or other duty included, *inter alia*, a duty to

- (a) make a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) disseminate accurate and truthful information with respect to the condition of Boliden's operations, as well as the Company's finances and business prospects;
- (c) correct any previously issued statements from any source that were untrue or that had become untrue; and

- (d) disclose any information that would materially affect the present condition and/or future earnings of the company.

67. The Individual Defendants and/or their agents breached their fiduciary or other duty by, *inter alia*:

- (a) not making a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) causing or permitting the preparation and dissemination of the misleading Prospectus;
- (c) failing to disclose adverse reports detailing the true condition of the Tailings Dam;
- (d) making or failing to prevent others from making materially misleading statements concerning the true condition of Boliden's mining assets;
- (e) failing to disclose material information that was adverse to Boliden's interests, as characterized in paragraph 36 above;
- (f) actively attempting to minimize or discredit reports questioning the safety and environmental soundness of the Tailings Dam; and
- (g) making or acquiescing in, or causing others to make filings required under applicable securities laws that they knew or should have known were untrue, inaccurate and/or misleading.

68. The plaintiffs and other Class Members have suffered damages as a result of the Individual Defendants' breach of fiduciary or other duty and the Individual Defendants are liable therefor.

CLAIMS AGAINST NESBITT BURNS

Breach of Statutory Duty

69. Pursuant to the Securities Acts, the Prospectus was required to be accurate and to contain no material omissions or misrepresentations. Pursuant to the Acts listed in paragraph 31(a) to 31(i) above, the Prospectus was required to constitute full, true and plain disclosure of all material facts relating to Boliden shares. Pursuant to the *Securities Act* (Quebec) the Prospectus was required to not contain any misrepresentation likely to affect the value or the market price of Boliden shares.
70. The Prospectus did not meet these requirements in that it contained misrepresentations as described in paragraphs 32 to 37 above. These misrepresentations were misrepresentations at the time the plaintiffs and other Class Members purchased Boliden shares. The plaintiffs and other Class Members purchased Boliden shares during the period of distribution or distribution to the public, and are deemed to have relied on these misrepresentations pursuant to the Securities Acts. The plaintiffs and other Class Members have suffered damages as a result of these misrepresentations.
71. Nesbitt Burns was an underwriter of the IPO required to sign the certificate in the Prospectus. As such, pursuant to the Securities Acts, the plaintiffs and other Class Members have a right of action for damages against Nesbitt Burns for breach of statutory duty, or otherwise.

Negligence

72. As an underwriter of the IPO, Nesbitt Burns owed a duty of care to the plaintiffs and other Class Members. This duty of care included, *inter alia*, a duty to
- (a) make a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
 - (b) disseminate accurate and truthful information with respect to the condition of Boliden's operations, as well as the Company's finances and business prospects;
 - (c) correct any previously issued statements from any source that were untrue or that had become untrue; and

- (d) disclose any information that would materially affect the present condition and/or future earnings of the company.

73. The Individual Defendants and/or their agents breached their duty of care by, *inter alia*:

- (a) not making a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) causing or permitting the preparation and dissemination of the misleading Prospectus;
- (c) failing to disclose adverse reports detailing the true condition of the Tailings Dam;
- (d) making or failing to prevent others from making materially misleading statements concerning the true condition of Boliden's mining assets;
- (e) failing to disclose material information that was adverse to Boliden's interests, as characterized in paragraph 36 above;
- (f) actively attempting to minimize or discredit reports questioning the safety and environmental soundness of the Tailings Dam; and
- (g) making or acquiescing in, or causing others to make filings required under applicable securities laws that they knew or should have known were untrue, inaccurate and/or misleading.

74. It was or ought to have been reasonably foreseeable to Nesbitt Burns that a breach of this duty of care would cause damages to the plaintiffs and other Class Members. The plaintiffs and other Class Members have suffered damages as a result of Nesbitt Burns breach of this duty of care and the Individual Defendants are liable therefor.

Negligent Misrepresentation

75. A special relationship existed between Nesbitt Burns and the plaintiffs and other Class Members in that Nesbitt Burns was the primary underwriter of the IPO:

- (a) Nesbitt Burns was the primary underwriter for the IPO;
- (b) Nesbitt Burns controlled the information contained in and omitted from Boliden's

Prospectus and other corporate reports and filings used to sell Boliden's shares to the public; and

- (c) the plaintiffs and other Class Members were completely reliant on the Prospectus to provide accurate and honest information concerning Boliden and its operations.

76. The Prospectus contained misrepresentations as described in paragraphs 32 to 37 above. These misrepresentations were misrepresentations at the time the plaintiffs and other Class Members purchased Boliden shares. Nesbitt Burns acted negligently in making these misrepresentations and in:

- (a) not making a reasonable and diligent investigation of the statements contained in the Prospectus and of the other statements made by the defendants in connection with the IPO to ensure that such statements were not misleading and that there was no omission to state any material fact required to be stated in order to make the statements not misleading;
- (b) causing or permitting the preparation and dissemination of the misleading Prospectus;
- (c) failing to disclose adverse reports detailing the true condition of the Tailings Dam;
- (d) making or failing to prevent others from making materially misleading statements concerning the true condition of Boliden's mining assets;
- (e) failing to disclose material information that was adverse to Boliden's interests, as characterized in paragraph 36 above;
- (f) actively attempting to minimize or discredit reports questioning the safety and environmental soundness of the Tailings Dam; and
- (g) making or acquiescing in, or causing others to make filings required under applicable securities laws that they knew or should have known were untrue, inaccurate and/or misleading.

77. The plaintiffs and other Class Members reasonably relied on the representations made by Nesbitt Burns, the Prospectus and the representations therein. Further, they purchased Boliden shares during the period of distribution, or distribution to the public, and are deemed to have relied on the misrepresentations in the Prospectus pursuant to the Securities Acts. The plaintiffs and other Class members have suffered damages as a result of said reliance. The plaintiffs and other Class

Members claim that Nesbitt Burns is liable for the damages they have suffered as a result of Nesbitt Burns' negligent misrepresentations.

RELIEF SOUGHT

78. The plaintiffs plead and rely on the *Class Proceedings Act, 1992*. They seek, on their own behalf, and on behalf of all Class Members, an order certifying this proceeding as a class proceeding pursuant to the *Class Proceedings Act* and appointing them Representative Plaintiffs.
79. The actions of the defendants were arrogant, high handed, and abusive, and the plaintiffs therefore seeks punitive and exemplary damages against the defendants.

Dated at Toronto this 18 th day of November, 1998.

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