



IN THE SUPREME COURT OF BRITISH COLUMBIA

DONALD PEARSON, ELIZABETH MATUS and KENNETH ELLIOTT,
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

**STATEMENT OF DEFENCE
OF THE DEFENDANTS BOLIDEN LIMITED, TRELLEBORG INTERNATIONAL BV,
TRELLEBORG AB, ANDERS BULOW, JAN PETER TRAAHOLT, KJELL NILSSON,
LARS OLOF NILSSON and ROBERT K. McDERMOTT**

| | | |
|----|--|----|
| A. | Introduction | 2 |
| B. | Denials and Admissions | 2 |
| C. | Boliden Limited and the IPO | 3 |
| D. | Aznalcóllar/Los Frailes Mining Operations | 4 |
| | (a) Introduction | 4 |
| | (b) Aznalcóllar/Los Frailes Tailings Storage Facility | 5 |
| | (c) Blue Marl Formation | 6 |
| | (d) Complaints | 7 |
| | (e) Geotechnical and Hydro-Geological Investigations and Reports | 7 |
| | (f) Dismissal of the Complaints | 8 |
| | (g) Tailings Dam Enlargement Project | 9 |
| | (h) Failure Mechanism | 9 |
| | (i) Reasons for the Failure | 9 |
| | (j) Spanish Criminal Proceedings | 10 |
| E. | The Prospectus | 11 |
| F. | The Alleged Misrepresentations | 15 |
| | (a) Alleged Improper Dam Construction and Maintenance | 15 |
| | (b) Alleged Warnings | 15 |
| | (c) Alleged 1997 Study | 16 |
| | (d) Seepage | 16 |
| | (e) Aguilar complaint and warning | 16 |
| | (f) Other | 17 |
| | (g) Alleged Mis-statements | 17 |
| G. | Due Diligence Defence | 18 |
| H. | Applicable Law | 19 |
| I. | Damages | 20 |
| | Appendix 1 – Aerial View of the Tailings Dam | |
| | Appendix 2 – Tailings Dam Cross-Section | |

A. INTRODUCTION

1. In their Further Amended Statement of Claim, the plaintiffs make certain allegations with respect to the disclosure contained in the prospectus dated June 10, 1997 (the "Prospectus") prepared in connection with the \$813,064,960 initial public offering by way of secondary offering of common shares of Boliden Limited owned by Trelleborg International BV (the "IPO").
2. The plaintiffs allege that the Prospectus omitted to state certain facts with respect to the Aznalcóllar/Los Frailes tailings dam (which failed in April 1998) and contained certain untrue statements with respect to the Los Frailes mine, all of which constituted "misrepresentations" within the meanings of the Securities Laws (defined in paragraph 51 below).
3. The Defendants (defined in paragraph 4 below) state that:
 - (a) the Prospectus constituted full, true and plain disclosure of all material facts relating to the securities offered thereby and did not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed thereby;
 - (b) the Prospectus did not state that the Aznalcóllar/Los Frailes tailings dam was unstable; the dam failed suddenly and without warning; at no time before the failure did the Defendants know, or have any reason to suspect, that the dam was unstable; matters that are not known are not "facts" within the meanings of the Securities Laws; and
 - (c) the other alleged omissions from the Prospectus were either not "facts" or not "material facts" within the meanings of the Securities Laws; the alleged untrue statements in the Prospectus were true and correct.

B. DENIALS AND ADMISSIONS

4. The defendants Boliden Limited, Trelleborg International BV and Trelleborg AB (the "Corporate Defendants") and the defendants Anders Bülow, Jan Peter Traaholt, Kjell Nilsson, Lars Olof Nilsson and Robert K. McDermott (the "Individual Defendants" and, together with the Corporate Defendants, the "Defendants") deny each of the allegations made in the Further Amended Statement of Claim unless expressly admitted.

5. The Corporate Defendants admit the facts with respect to the Corporate Defendants set forth in paragraphs 4, 5 and 6 of the Further Amended Statement of Claim, except as follows:

- (a) the registered office of Boliden Limited is located at Suite 1000, 145 King Street West, Toronto, Ontario, M5H 1J8;
- (b) on December 5, 2001, Boliden Limited and its then wholly-owned Swedish subsidiary, Boliden AB, completed an arrangement under the *Canada Business Corporations Act* pursuant to which the shareholders of Boliden Limited became shareholders of Boliden AB, Boliden Limited became a wholly-owned subsidiary of Boliden AB and ceased to be a public company and Boliden AB became the parent company of the Boliden group of companies (the "Boliden Group") and a public company with its shares listed on the Stockholm Exchange and the Toronto Stock Exchange; and
- (c) at all material times, the principal offices of Trelleborg International BV were located at Hoogezaand, The Netherlands.

6. The Individual Defendants admit the facts with respect to the Individual Defendants set forth in paragraphs 7, 8, 9, 10 and 12 of the Further Amended Statement of Claim except as follows:

- (a) since September 2000, Anders Bülow has resided in Ryssby, Sweden;
- (b) from June 2001 to June 2002, Jan Petter Traaholt resided in Oslo, Norway and since June 2002, he has resided in Karlstad, Sweden; and
- (c) since August 2001, Kjell Nilsson has resided in Mölnlycke, Sweden.

C. BOLIDEN LIMITED AND THE IPO

7. Boliden Limited was formed in April 1997 to acquire and hold the mining, smelting and fabrication businesses of Trelleborg AB and to facilitate the IPO.

8. Before the IPO, Trelleborg AB reorganized its mining, smelting and fabrication businesses and transferred them to Trelleborg International BV which in turn transferred them to Boliden Limited in exchange for common shares of Boliden Limited (the "Reorganization").

9. After the Reorganization, Boliden Limited was a wholly-owned subsidiary of Trelleborg International BV, which itself was an indirect wholly-owned subsidiary of Trelleborg AB.
10. In the IPO, approximately 55% of the common shares of Boliden Limited (represented by instalment receipts) were sold to the public in Canada, the United States and elsewhere by Trelleborg International BV and a syndicate of underwriters led by the defendant Nesbitt Burns Inc. After the IPO, Trelleborg International BV held approximately 45% of the common shares of Boliden Limited.
11. The securities sold in the IPO were sold:
 - (a) in Canada, pursuant to the Prospectus;
 - (b) in the United States, pursuant to a U.S. private placement memorandum (the "U.S. Private Placement Memorandum"); and
 - (c) elsewhere, pursuant to an international prospectus (the "International Prospectus").

Both the U.S. Private Placement Memorandum and the International Prospectus included, among other things, the disclosure contained in the Prospectus.

12. The closing of the IPO was completed on June 17, 1997. The closing of an over-allotment (or "green shoe") option granted to the underwriters as part of the IPO was completed on July 17, 1997.

D. AZNALCOLLAR/LOS FRAILES MINING OPERATIONS

(a) Introduction

13. The Aznalcóllar/Los Frailes mining operations are located approximately 45 kilometres west of Seville, Spain. In 1987, a Swedish subsidiary of Trelleborg AB acquired the shares of the Spanish company that originally owned the operations. Boliden Apirsa, S.L. ("Apirsa") acquired the operations in 1994. Boliden Limited acquired indirectly the shares of Apirsa on completion of the Reorganization.
14. At the time Boliden Limited acquired the shares of Apirsa, the Aznalcóllar/Los Frailes mining operations consisted of the depleted Aznalcóllar open pit mine, the Los Frailes open pit mine, a

mill and concentrator (for grinding and processing ore into concentrates) and a tailings storage facility. Tailings are the fine-grained rock particles remaining after the milling and processing of ore. To prevent sulphide oxidation, tailings are typically stored under a layer of water in a tailings pond.

15. In April 1998, the Aznalcóllar/Los Frailes tailings dam failed, releasing approximately 1.3 million cubic metres of tailings and 5.5 million cubic metres of tailings water into the nearby river systems. Immediately after the failure, Apirsa suspended operations at the Los Frailes mine. Shortly thereafter, it began reclamation and remediation activities. These activities were largely completed by the end of 1998. The tailings storage facility was closed and decommissioned. In April 1999, Apirsa re-started operations at the Los Frailes mine. Production continued until 2001, when the Aznalcóllar/Los Frailes mining operations were permanently shut down.

(b) Aznalcóllar/Los Frailes Tailings Storage Facility

16. The Aznalcóllar/Los Frailes tailings storage facility consisted of a large tailings pond, hydraulic containment and collection trenches and piping systems to collect surface water and seepage through the alluvial terrace underlying the facility and return the collected water to the dam and a water treatment plant, to purify surface and process water before recycling or discharge to the Agrio River in accordance with the mine's effluent discharge permits.
17. The Aznalcóllar/Los Frailes tailings pond was nearly rectangular in shape, extending approximately 2,000 metres north/south and 1,000 metres east/west, and covered an area of approximately 200 hectares. The tailings pond was divided into two separate ponds by an east/west central dyke. The west side of the tailings pond was closed by a natural slope and the north, east and south sides were closed by the tailings dam.
18. Appendix I shows an aerial view of the tailings pond before the failure.
19. The main body of the tailings dam consisted of compacted waste rock. The interior of the dam was covered by an impermeable red raña (clay) screen approximately four metres thick. A classified sand filter approximately three metres thick separated the raña screen from the dam. The dam rested on a four metre deep alluvial terrace which itself was underlain by an impermeable blue marl (clay) formation approximately 70 metres deep. To control water run-off and seepage through the alluvial terrace, the dam wall had a 60 centimetre thick bentonite cement

cut-off wall installed in a trench below the dam, penetrating into the top one and one-half metres of the blue marl formation.

20. The tailings dam was designed by Internacional de Ingeniería y Estudios Técnicos, S.A. ("Intecsa"), a Spanish engineering consulting company, in 1978. Construction of the tailings dam commenced in 1979. The dam was designed to be increased in stages, to accommodate the volume of tailings produced over the operational life of the mine. The final design capacity of the dam was 32.6 million cubic metres of tailings and the final design maximum crest elevation of the dam along its eastern side was 72.04 metres above sea level (30 metres above ground level). At the time of its failure, the dam contained approximately 15 million cubic metres of tailings and had reached a height of approximately 69 metres above sea level (three metres below the final design maximum crest elevation).
21. The Aznalcóllar/Los Frailes mining operations were subject to ongoing regulation by the Andalusian regional and Spanish central government authorities. The minesite, including the tailings facility, was subject to regular inspection by both Andalusian regional and Spanish central government regulatory authorities. All mine site operations were conducted pursuant to annual work plans submitted to and approved by the Mining Service of the Andalusian Department of Industry, Trade and Tourism. Each enlargement or "lift" of the tailings dam required, and received, the prior approval of the Mining Service.

(c) Blue Marl Formation

22. The blue marl formation underlying the tailings storage facility is a heavily over-consolidated and saturated clay of high plasticity. The term "over-consolidated" refers to clay that, as a result of sedimentary bedding processes, has been loaded with high stresses. These make the marls more brittle, a condition which permits the development of progressive failure and results in a significant loss of frictional strength when the marls are strained past peak strength.
23. Because the marls are completely saturated, the load exerted by the tailings dam and the ponded tailings is initially borne by the water in the pores of the soil skeleton of the marls and not, as desired, by the soil skeleton itself. Due to the thickness and very low permeability of the marls, the process by which the pore water is forced out of the pores, and the load exerted by the dam and the ponded tailings is transferred from pore water to the solid structure of the marls, is very slow.

(d) Complaints

24. On November 29, 1995, Manuel Aguilar Campos ("Aguilar"), a former Apirsa employee fired earlier in 1995, filed a complaint with the Andalusian Department of Industry, Trade and Tourism. The complaint alleged that there had been defects in the construction of successive "lifts" of the tailings dam and that acidic seepage from the tailings pond was polluting the Agrio River.
25. On January 24, 1996, the Confederation of Ecologists and Pacifists ("CEPA"), a Spanish environmental group, relying on the Aguilar complaint, filed a similar complaint in the Magistrates Court in the nearby town of Sanlúcar la Mayor.

(e) Geotechnical and Hydro-Geological Investigations and Reports

26. In consultation with Andalusian regional and Spanish central government regulatory authorities, Apirsa commissioned several technical investigations and reports to address the allegations made by Aguilar and CEPA. These included the following:
 - (a) a geotechnical investigation and report by Geotécnica y Cimientos, S.A. ("Geocisa"), a leading Spanish geotechnical and engineering consulting company, on the stability and integrity of the tailings dam;
 - (b) an hydraulic modelling investigation and report by Golder Associates, a leading international engineering consulting firm, to determine the actual extent of seepage from the tailings pond; and
 - (c) a hydro-geological investigation and report by another leading international engineering consulting firm, Dames & Moore, on possible technical solutions to further minimize seepage through the alluvial terrace underlying the tailings storage facility.
27. In its March 1996 report (the "Geocisa Stability Study"), Geocisa concluded that the tailings dam would be stable under all assumed conditions and that in fact the "safety factor" of the dam was greater than the safety factor usually required in similar structures. Geocisa also concluded that the stability of the dam had been unaffected by either normal rainfall or the abnormally high rainfall which had been recently experienced.

28. The Geocisa Stability Study was reviewed and ratified by the Geological and Mining Technical Institute of Spain (the "ITGM"), an agency of the Spanish central government. The ITGM concluded that the results of the Geocisa stability study were "ruled positive, in that the safety factors governing the stability of the dam of the pond obtained in the least favourable circumstances are greater than those normally usually considered admissible for this type of structure" (*translated from Spanish*).
29. In its June 1996 report, Golder Associates concluded that seepage through the alluvial terrace underlying the tailings storage facility was in the order of ten cubic metres per hour, 85% of which was being captured and returned to the tailings pond by existing containment and pumping systems, leaving only one and one-half cubic metres per hour seeping into the Agrio River.
30. In its April 1996 report, Dames & Moore recommended that Apirsa construct an hydraulic barrier system around the tailings dam, comprising drainage collection ditches and piping and a further bentonite cement cut-off wall, and increase the capacity of the existing water treatment plant by 50%, to 1,500 cubic metres per hour.
31. The Dames & Moore recommendations were adopted by Apirsa and endorsed by the Andalusian Department of Industry, Trade and Tourism. The recommendations were also reviewed and approved by the ITGM.

(f) Dismissal of the Complaints

32. In June 1996, the Andalusian Department of Industry, Trade and Tourism dismissed Aguilar's complaint on the basis that the steps taken by Apirsa "confirm the stability of the tailings dam challenged in [the] complaint" (*translated from Spanish*) and directed Apirsa to submit design specifications for the technical modifications recommended by Dames & Moore, as well as for the enlargement of the tailings dam required for the operation of the Los Frailes mine.
33. In March 4, 1997, the presiding judge of the Magistrates Court in Sanlúcar la Mayor dismissed the CEPA complaint.

(g) Tailings Dam Enlargement Project

34. In June 1996, the required design specifications for the enlargement of the tailings dam were prepared by Geocisa and submitted by Apirsa for regulatory review and approval. The specifications included a site monitoring plan consisting of the installation of monitoring instrumentation and a recommended schedule of instrumentation reading and visual inspection.
35. In July 1996, Geocisa's recommendations were approved by the Department of Industry, Trade and Tourism and Apirsa was authorized to proceed with the tailings dam enlargement project in accordance with Geocisa's design specifications and proposed program of monitoring.
36. Apirsa retained Geocisa to supervise the installation of the instrumentation and to carry out the recommended instrument reading and reporting program. Installation of instrumentation was completed in early 1997 and Geocisa commenced monitoring, inspection and reporting activities in March 1997.
37. None of the monitoring activities carried out by Geocisa, including a site visit and inspection of the tailings dam conducted by Geocisa personnel on April 24, 1998, the day before the tailings dam failed, revealed any instability in the dam.

(h) Failure Mechanism

38. The tailings dam failed in the early morning of April 25, 1998. The failure occurred as a result of a 60 metre lateral displacement of a 700 metre long section of the eastern portion of the dam which, together with the four metre thick alluvial terrace on which it was built and the upper ten metres of the underlying blue marl formation, formed a block which slid, with almost no deformation of the dam, along a horizontal bedding surface in the blue marl formation. This movement opened a breach in the dam wall at the point where the central dyke joined the dam.
39. Appendix 2 shows a cross-section of the tailings dam after the failure.

(i) Reasons for the Failure

40. The tailings dam failed because of deficiencies in the work carried out by Intecsa in 1978 in designing the dam and Geocisa in 1996 in assessing the stability of the dam. In their work,

neither Intecsa nor Geocisa took into account adequately or at all two key attributes of the blue marl formation below the tailings storage facility:

- (a) the high pore pressure induced in the blue marl formation by the load exerted by the dam and the ponded tailings and the very slow rate at which this would dissipate; and
- (b) the brittle quality of the blue marl formation that gives rise to a progressive reduction in strength over time.

As a result, both Intecsa and Geocisa significantly over-estimated the capacity of the blue marl formation to bear the load exerted by the dam and the ponded tailings.

- 41. Seepage from the tailings dam did not cause or contribute to the failure.
- 42. The tailings dam failed suddenly and without warning. The Defendants relied reasonably on the work carried out by Intecsa and Geocisa, the reviews carried out by the Andalucian regional and Spanish central government regulatory authorities and their conclusions that the dam was stable and safe. At no time before the failure did the Defendants know, or have any reason to suspect, that there had been any deficiencies in the work carried out by Intecsa or Geocisa or that the dam was unstable.

(j) Spanish Criminal Proceedings

- 43. In accordance with Spanish procedure, after the failure of the tailings dam, a judge of the Magistrates Court of the Town of Sanlúcar la Mayor (the "Investigating Judge") commenced a formal investigation into the cause of the failure. The purpose of investigation was to determine whether criminal charges should be laid in connection with the failure.
- 44. The investigation, which took over two and one-half years to complete, included extensive oral and affidavit evidence from representatives of Apirsa, Intecsa, Geocisa, the applicable Andalucian regional and Spanish central government regulatory authorities and others and a detailed technical report from two leading Spanish geotechnical experts appointed by the Investigating Judge to determine the technical causes of the failure.
- 45. On December 22, 2000, the Investigating Judge dismissed the criminal proceedings. In her judgment, she:

- (a) endorsed the conclusions of her technical experts that the failure mechanism and the reasons for the failure were as set out in paragraphs 38, 40 and 41 above;
 - (b) concluded that there was no forewarning of the failure and no knowledge of any instability of the tailings dam; and
 - (c) concluded that the design and construction of the tailings dam conformed to professional standards at the relevant times.
46. On November 20, 2001, the High Court of the Province of Seville affirmed the decision of the Investigating Judge, putting an end to all criminal proceedings.

E. THE PROSPECTUS

47. The Prospectus was prepared by Boliden Limited and, as required by the Securities Laws, contained a certificate of Boliden Limited as issuer, a certificate of Trelleborg International BV and its parent corporation, Trelleborg AB, as promoters, and a certificate of Nesbitt Burns Inc. and 13 other Canadian investment dealers as underwriters that the Prospectus constituted full, true and plain disclosure of all material facts relating to the securities offered thereby and did not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed thereby.
48. Preparation of the Prospectus involved extensive and comprehensive business, environmental, financial, legal and other due diligence by the Corporate Defendants and their lawyers, accountants and other advisors and by the underwriters of the IPO and their legal and other advisors in order to identify and fully and accurately describe all the facts which were material to the securities being offered pursuant to the Prospectus.
49. In their due diligence, the Corporate Defendants and their advisors and the underwriters and their advisors were assisted by local management, legal counsel and accountants in those jurisdictions, including Spain, where the Boliden Group had its principal operations. They were also assisted by experts retained to review and report on mineral reserves and resources and environmental and other matters at the principal operations of the Boliden Group, including the Aznalcóllar/Los Frailes mining operations.

50. Preparation of the Prospectus involved active due diligence by the Individual Defendants. This included:
- (a) reviewing and commenting on successive drafts of the Prospectus;
 - (b) preparing for and participating in formal due diligence meetings held in connection with the preliminary and final versions of the Prospectus;
 - (c) completing and returning detailed due diligence questionnaires;
 - (d) attending the meetings of the directors of Boliden Limited held to approve the preliminary and final versions of the Prospectus and their filing with the Canadian securities regulatory authorities; and
 - (e) meeting from time to time with officers and employees of Trelleborg AB and the Boliden Group to review and discuss matters relating to the Reorganization, the IPO and the Prospectus.

In addition, Anders Bülow, Kjell Nilsson and Robert K. McDermott participated in due diligence site visits to the principal operations of the Boliden Group, including the Aznalcóllar/Los Frailes mining operations.

51. The Prospectus was filed with, and receipts for the Prospectus were received from, the securities regulatory authorities in each of the Provinces of Canada in accordance with the provisions of the following provincial securities laws:
- (a) *Securities Act*, R.S.B.C. 1996, c.418;
 - (b) *Securities Act*, S.A. 1981, c.S-6.1;
 - (c) *The Securities Act, 1988*, S.S. 1988, c.S-42.2;
 - (d) *Securities Act*, R.S.M. 1988, c.S50;
 - (e) *Securities Act*, R.S.O. 1990, c.S-5;
 - (f) *Securities Act*, R.S.N.S. 1989, c.418;

- (g) *Security Frauds Prevention Act*, R.S.N.B. 1973, c.S-6;
- (h) *Securities Act*, R.S.P.E.I. 1988, c.S-3;
- (i) *Securities Act*, R.S.N. 1990, c.S-13; and
- (j) *Securities Act*, R.S.Q., c.V-1.1.

and the respective regulations and rules promulgated thereunder (collectively, the “Securities Laws”).

- 52. The Prospectus constituted full, true and plain disclosure of all material facts relating to the securities offered thereby and did not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed thereby.
- 53. The Prospectus did not disclose that there were deficiencies in the work carried out by Intecsa and Geocisa or that the tailings dam was unstable. At no time before the failure did the Defendants know, or have any reason to suspect, that there had been any deficiencies in the work carried out by Intecsa or Geocisa or that the dam was unstable. Matters that are not known are not “facts” within the meanings of the Securities Laws.
- 54. The Prospectus contained the following explicit disclosure of the drought and abnormally high rainfall which disrupted operations at the Aznalcóllar/Los Frailes mining operations and the steps being taken by Apirsa control seepage:

Water Supply/Environmental Matters

In recent years, southern Spain has experienced unusual climatic conditions, including both a drought and severe flooding which seriously disrupted operations at the Aznalcóllar mine. In response, Apirsa has broadened its water management program, including expansion of the capacity of its water treatment plant to permit recycling of water from the tailings area within the mill ... Apirsa has received all necessary environmental permits to construct and operate the mine and is currently satisfying certain conditions attaching to these permits, including expansion of the water treatment plant and modification of the tailings dam to control seepage. (*Prospectus, at pages 37 and 38*)

- 55. The Prospectus contained the following explicit disclosure of the risks and uncertainties associated with the mining business carried on by the Boliden Group:

Mining Risks and Insurance

The mining operations of Boliden are subject to risks normally encountered in the mining business. Such risks include environmental hazards, industrial accidents, labour disputes, unusual or unexpected geological formations or pressures, rock bursts, cave-ins, flooding and periodic interruptions due to inclement or hazardous weather conditions. Such risks could result in damage to, or destruction of, mineral properties or production facilities, personal injury, environmental damage, delays in mining, monetary losses and possible legal liability. Although Boliden maintains insurance within ranges of coverage consistent with industry practice, no assurance can be given that such insurance will be available at economically feasible premiums. Insurance against environmental risks (including potential liability for pollution or other hazards as a result of disposal of waste products occurring from exploration and production) is not generally available to Boliden or to other companies within the industry. To the extent that Boliden is subject to environmental liabilities, the payment of such liabilities would reduce the funds available to Boliden. If Boliden is unable to fund fully the cost of remedying an environmental problem, Boliden might be required to suspend operations or enter into interim compliance measures pending completion of the required remedy. *(Prospectus, at page 78)*

Reserves

The ore reserves presented in this prospectus are, in large part, estimates made by Boliden's technical personnel, and no assurance can be given that the indicated level of recovery of these metals will be realized. Reserves estimated for properties that have not yet commenced production may require revision based on actual production experience. Market price fluctuations of Boliden's metals, as well as increased production costs or reduced recovery rates, may render ore reserves containing relatively lower grades of mineralization uneconomic and may ultimately result in a restatement of ore reserves. Moreover, short-term operating factors relating to the ore reserves, such as the need for sequential development of orebodies and the processing of new or different ore grades, may adversely affect Boliden's profitability in any particular accounting period. *(Prospectus, at page 79)*

Certain Environmental Risks

...Boliden's businesses, particularly its minerals business, are subject to extensive government regulations relating to the protection of the environment, including those relating to air and water quality, solid and hazardous waste handling and disposal and mine reclamation and closure. Although Boliden believes that its current provision for mine reclamation and mine closure costs as well as its current estimates for total mine reclamation and mine closure costs are reasonable, there can be no assurance that they will not prove inadequate for various reasons. *(Prospectus, at page 80)*

56. The Prospectus also contained the following explicit disclosure with respect to the uncertainties inherent in the forward-looking statements contained in the Prospectus:

Forward-Looking Statements

The forward-looking statements made in this prospectus are based on assumptions and judgments of management regarding future events and results. These assumptions and

judgments may prove to be inaccurate as a result of a number of factors, many of which are beyond the control of Boliden, and Boliden's actual results may differ materially from the results contemplated in such forward-looking statements. The principal factors that may negatively impact the accuracy of these statements are discussed above. (*Prospectus, at page 81*)

F. THE ALLEGED MISREPRESENTATIONS

57. The Defendants deny the allegation in paragraphs 36 and 37 of the Further Amended Statement of Claim that the Prospectus did not constitute full, true and plain disclosure of all material facts relating to the securities offered thereby and contained misrepresentations likely to affect the value or market price of the securities to be distributed thereby, whether by way of omission or positive mis-statement, and plead and rely on the disclosure in the Prospectus, including the explicit disclosure referred to in paragraphs 54, 55 and 56 above.
58. The Prospectus did not disclose the alleged material facts referred to in paragraphs 32 – 36, inclusive, of the Further Amended Statement of Claim for the reasons described below.

(a) Alleged Improper Dam Construction and Maintenance

59. The alleged material fact referred to in paragraph 36(a) of the Further Amended Statement of Claim (*to the effect that the tailings dam had not been properly constructed or maintained*) was not disclosed because this was not true. The dam failed because, unknown to the Defendants, both Intecsa and Geocisa significantly over-estimated the capacity of the blue marl formation to bear the load exerted by the dam and the ponded tailings, not because of any improper construction or maintenance.

(b) Alleged Warnings

60. The alleged material facts referred to in paragraph 36(b) of the Further Amended Statement of Claim (*to the effect that the Defendants had been apprised that the tailings dam was suffering from construction defects*) and in paragraph 36(c) of the Further Amended Statement of Claim (*to the effect that Boliden Group executives had repeatedly been advised of the stability problems with and the structural defects under the tailings dam, including written warnings provided in 1992 and 1995*) were not disclosed because, except for the Aguilar and CEPA complaints and warnings, both of which had been dismissed by the Spanish authorities, there were no such "facts".

(c) Alleged 1997 Study

61. The alleged material fact referred to in paragraph 36(d) of the Further Amended Statement of Claim (*to the effect that Boliden had commissioned a study in 1997 by the same company that had designed and constructed the tailings dam which confirmed "some of the problems" with the tailings dam*) was not disclosed because this was not true. The reports received from Geocisa, the designers of the 1996 tailings dam enlargement, had in fact all confirmed the stability of the dam.

(d) Seepage

62. The alleged material facts referred to in paragraph 36(e) of the Further Amended Statement of Claim (*to the effect that the tailings pond had experienced seepage problems in 1995 and 1996 and that these seepage problems had not been properly corrected*) were not disclosed because at the time of the IPO, most of the seepage was being captured and returned to the tailings pond, and additional measures to capture and treat the remainder were being implemented. The Prospectus did disclose that Apirsa was taking steps to control seepage and, in any event, seepage did not cause or contribute to the failure of the tailings dam.
63. The alleged material fact referred to in paragraph 36(i) of the Further Amended Statement of Claim (*to the effect that two "tailings ponds" were observed to be "overflowing"*) was not disclosed because there were no such "facts". For a short period of time in January 1996, the volume of surface water run-off at the Aznalcóllar/Los Frailes operations exceeded the capacity of several small containment ponds and, as a result, ponded surface water overflowed into the Agrio River. Contrary to the allegation in paragraph 36(i), however, the drainage involved was not "effluent" and was not from the tailings pond.

(e) Aguilar complaint and warning

64. The alleged material facts referred to in paragraph 36(l) of the Further Amended Statement of Claim (*to the effect that Aguilar had filed a formal complaint alleging tailings dam construction deficiencies, insufficient compaction of material on top of the tailings dam and continuous filtering of material from the tailings pond*) and in paragraph 36(g) of the Further Amended Statement of Claim (*to the effect that Aguilar had warned of a risk of natural disaster due to seepage, poor construction and other defects*) were not disclosed because the complaints had

been thoroughly investigated, the investigations had confirmed the stability and integrity of the dam and the complaints had been dismissed.

(f) Other

65. The Prospectus also did not disclose the alleged material fact referred to in paragraph 36(h) of the Further Amended Statement of Claim (*to the effect that any natural disaster at the Los Frailes mine would have especially serious consequences*) because, at the date of the Prospectus, no such disaster had occurred nor, based on the facts known to the Boliden Group and the Defendants, was any such disaster likely to occur.
66. The Prospectus also did not disclose the alleged material fact referred to in paragraph 36(j) of the Further Amended Statement of Claim (*to the effect that several Spanish scientists had warned that Aznalcóllar mine "residues" represented a "chemical time bomb" for the Doñana National Park*) because the Boliden Group and the Defendants had no such knowledge of such warnings.
67. In the alternative, if and to the extent that there is a factual basis in the allegations in paragraph 36 of the Further Amended Statement of Claim or any of them, which is not admitted and which is specifically denied, in the context of a public offering of securities of the size of the IPO, none of such facts constituted, or could reasonably be construed as constituting, a material fact.

(g) Alleged Mis-statements

68. The Defendants admit that the Prospectus contained the statement as to the principal factors that might negatively impact the accuracy of the forward-looking statements in the Prospectus referred to in paragraph 35(a) of the Further Amended Statement of Claim. The Defendants deny the allegation in paragraph 36 of the Further Amended Statement of Claim that such statement constituted a misrepresentation inasmuch as such statement was true and correct.
69. The Defendants admit that the Prospectus contained the statements as to environmental protection, zinc production and Los Frailes production estimates and ore grades referred to in paragraphs 32, 33 and 34 of the Further Amended Statement of Claim. The Defendants deny the allegations in paragraphs 36 and 37 of the Further Amended Statement of Claim that such statements constituted misrepresentations inasmuch as such statements were true and correct.

70. In the alternative, none of the facts disclosed in the statements referred to in paragraphs 32, 33 and 34 of the Further Amended Statement of Claim constituted, or could reasonably be construed as constituting, a material fact and, accordingly, none of such statements could constitute a misrepresentation.

G. DUE DILIGENCE DEFENCE

71. As described in paragraph 50 above, the preparation of the Prospectus involved active due diligence by the Individual Defendants.
72. The due diligence carried out by the Individual Defendants constituted a reasonable investigation sufficient to provide reasonable grounds for a belief that the Prospectus did not contain a misrepresentation and each of the Individual Defendants reasonably believed that the Prospectus did not contain a misrepresentation. The Individual Defendants specifically plead and rely upon the following provisions of the Securities Laws and the due diligence defence afforded to them thereunder:
- (a) *Securities Act*, R.S.B.C. 1996, c.418, s.131(7);
 - (b) *Securities Act*, S.A. 1981, c.S-6.1, s.168(6);
 - (c) *The Securities Act, 1988*, S.S. 1988, c.S-42.2, s.137(6);
 - (d) *Securities Act*, R.S.M. 1988, c.S50, s.141;
 - (e) *Securities Act*, R.S.O. 1990, c.S.5, s.130(5);
 - (f) *Securities Act*, R.S.N.S. 1989, c.418, s.137(5);
 - (g) *Securities Act*, R.S.P.E.I. 1988, c.S-3, s.16(5); and
 - (h) *Securities Act*, R.S.N. 1990, c.S-13, s.130(5).
73. The Individual Defendants acted with prudence and diligence with respect to the contents of the Prospectus and plead and rely on the provisions of section 220(1) of the *Securities Act* (Québec), R.S.Q., c.V-1.1.

H. APPLICABLE LAW

74. The law to be applied to each purchase of the securities sold in the IPO is the law of the jurisdiction in which the purchase took place.
75. The limitation period provisions contained in the Securities Laws of the Provinces of Alberta, Saskatchewan, Manitoba, Québec, Prince Edward Island, Nova Scotia and Newfoundland apply and the claims of those plaintiffs who purchased the securities sold in the IPO in these provinces are time-barred.
76. In specific response to paragraphs 40 and 58 of the Further Amended Statement of Claim:
- (a) the *Securities Act* (Québec) does not provide for deemed reliance by those plaintiffs who purchased the securities sold in the IPO in Québec; and
 - (b) the plaintiffs did not in fact rely on the alleged misrepresentations and the Defendants put the plaintiffs to the strict proof thereof.
77. In specific response to paragraphs 41 and 59 of the Further Amended Statement of Claim, the *Security Frauds Prevention Act* (New Brunswick) does not provide the plaintiffs who purchased the securities sold in the IPO in New Brunswick with a right of action, either as alleged or at all.
78. To the extent that the claims made in the Further Amended Statement of Claim are made on behalf of plaintiffs who purchased the securities sold in the IPO outside of Canada, such purchases were made pursuant to either the U.S. Private Placement Memorandum or the International Prospectus and the Securities Laws do not provide such plaintiffs with a cause of action.
79. To the extent that the claims made in the Further Amended Statement of Claim are made on behalf of plaintiffs who purchased the securities sold in the IPO, either outside the period of distribution or distribution to the public within the meaning of the Securities Laws or in the secondary market, the Securities Laws do not provide such plaintiffs with a cause of action.

I. DAMAGES

80. If and to the extent that the Prospectus contained any misrepresentations, which is not admitted and which is specifically denied, the plaintiffs did not suffer any damages as a result thereof, either as alleged or at all, and the Defendants put the plaintiffs to the strict proof thereof.
81. To the extent that the claims made in the Further Amended Statement of Claim are made on behalf of persons who purchased the securities sold in the IPO and who sold such securities before the failure of the Aznalcóllar/Los Frailes tailings dam, without limiting the generality of paragraph 80, if and to the extent that the Prospectus contained any misrepresentations, which is not admitted and which is specifically denied, such persons did not suffer any damages as a result thereof, and the Defendants put the plaintiffs to the strict proof thereof.

The Defendants request that this action be dismissed against them, with costs.

Dated this 16th day of September, 2002.

BULL, HOUSSER & TUPPER

Per:



Counsel for Boliden Limited, Trelleborg
International BV, Trelleborg AB, Anders
Bülow, Jan Petter Traaholt, Kjell Nilsson,
Lars Olof Nilsson and Robert K. McDermott

THIS STATEMENT OF DEFENCE is made and filed by Bull, Housser & Tupper, whose place of business and address for delivery is 3000 – 1055 West Georgia Street, Vancouver, B.C. V6E 3R3, Attention: Elliott M. Myers. Telephone: 604.687-6575, Fax: 604.641-4949.



