

**IN THE SUPREME COURT OF NOVA SCOTIA**

BETWEEN:

NEILA CATHERINE MACQUEEN, JOSEPH M. PETITPAS,  
ANN MARIE ROSS, KATHLEEN IRIS CRAWFORD, and THE ESTATE OF CARL  
ANTHONY CRAWFORD by his executor or representative KATHLEEN IRIS  
CRAWFORD

Court Administration  
SEP 07 2007  
Halifax, N.S.

Plaintiffs

- and -

ISPAT SIDBEC INC., a body corporate; ~~HAWKER SIDDELEY CANADA INC., a  
body corporate~~; SYDNEY STEEL CORPORATION, a body corporate; THE  
ATTORNEY GENERAL OF NOVA SCOTIA representing Her Majesty the Queen in  
right of the Province of Nova Scotia; CANADIAN NATIONAL RAILWAY  
COMPANY, a body corporate; THE ATTORNEY GENERAL OF CANADA  
representing Her Majesty the Queen in right of Canada; and DOMTAR INC., a body  
corporate.

Defendants

Proposed Common Law Class Proceeding

**INTERLOCUTORY NOTICE**  
**(APPLICATION INTER PARTES)**

**TAKE NOTICE** that an Application will be made on behalf of the Plaintiffs to  
the Honourable Justice A. David MacAdam presiding in Chambers at the Law Courts, in  
Halifax, Nova Scotia on the dates of November 3 to 14, 2008 inclusive, or such other  
time and date as Justice MacAdam may fix, commencing each day at the hour of 9:30  
o'clock in the forenoon for:

- 1) An Order granting that the within action be certified as a class proceeding  
pursuant to Civil Procedure Rule s. 5.09 and the Supreme Court of Canada's decision in  
*Western Canadian Shopping Centers Inc. v. Dutton*, [2001] 2 S.C.R. 534.

2) An Order defining the Classes as:

(a) The Property Owner Class, defined as:

Persons other than the Defendants and their parent companies, affiliates or subsidiaries who are the beneficial owners of property within the Class Boundaries as of the date that notice of the order certifying this proceeding as a class proceeding is given.

(b) The Residential Class, defined as:

Living Persons who:

have lived within the Class Boundaries continuously throughout the Class Period; or

have lived within the Class Boundaries for their entire lives; or

have lived within the Class Boundaries for a minimum of three (3) continuous years during the Class Period; or

if not the age of majority, have lived within the Class Boundaries for 50% or more of their lives for three (3) continuous years, whichever is less.

3) An Order that the within action be certified on the basis of the following common issues:

- (a) Did the Defendants cause or permit the emission or escape of the Contaminants onto the properties and persons living within the Class Boundaries during the Class Period?
- (b) If the answer to (a) is yes, do the Contaminants emitted pose a risk to the lives and health of persons exposed to them or to the use, enjoyment and value of properties contaminated by them?
- (c) Did the Defendants know, should they have known, or were they reckless or willfully blind when they were causing or permitting the emission or escape of the Contaminants that they created a risk to the lives and health of persons exposed to them or to the use, enjoyment and value of properties contaminated by them? If so, when did they have or should they have had such knowledge?
- (d) Do the harmful emissions deposited within the Class Boundaries present an ongoing risk to the health of Class Members?
- (e) Are the Contaminants still escaping from the properties of the Defendants over or under the land, through the air or the water?

- (f) Did the Defendants owe the Class Members a duty of care to take steps to contain, reduce, minimize or eliminate the emission or escape of the Contaminants that they knew or ought to have known presented a serious risk to the lives, health and property of Class Members?
- (g) Did the Defendants breach the duty of care owed to Class Members by failing to take available steps to contain, reduce, minimize or eliminate the emission or escape of Contaminants including but not limited to the implementation of emissions controls, the introduction of cleaner processes, and the use of cleaner raw materials?
- (h) Did the Defendants have a duty to warn the Class Members of the adverse health risks to which they were exposed as a result of the emission or escape of the Contaminants, and if so did they warn in a timely and effective manner?
- (i) Did the Defendants or any of them intentionally cause the Contaminants to come into contact with Class Members so as to constitute a battery at law?
- (j) Did the Defendants or any of them carelessly emit or permit the escape of the Contaminants when they knew or ought to have known that they would come into contact with the Class Members so as to constitute a negligent battery at law?
- (k) Does the deposition of the Contaminants by the Defendants on the properties within the Class Boundaries constitute a trespass at law?
- (l) Are the Defendants or any of them strictly liable to Class Members for damages in tort or pursuant to the principle in Rylands v. Fletcher for the emission or escape of the Contaminants from the properties of the Defendants?
- (m) Did Canada and/or Nova Scotia owe the Class Members a fiduciary duty to act in the best interests of Class Members in dealing with the dissemination of information concerning the existence of contamination within the Class Boundaries and the remediation of the contamination within the Class Boundaries? If so, did they breach that duty by:
  - (i) Concealing the known nature and effects of the Contaminants;
  - (ii) Concealing the health risks associated with exposure to the Contaminants from the Plaintiffs and Class Members;
  - (iii) Continuing to spread the Contaminants within the Class Boundaries in spite of that knowledge; and
  - (iv) Declining to remediate the contamination now present on the lands in the within the Class Boundaries?

- (n) Is a medical monitoring regime an appropriate and effective way to ameliorate the emotional, mental and physical health effects of the emission and/or escape of the Contaminants that the defendants have caused or permitted?
- (o) Are the Defendants required to ameliorate the ongoing exposure of Class Members to Contaminants they emitted or permitted to escape onto the properties of Class Members within the Class Boundaries either by remediating those properties, or where not possible to effectively do so, by bearing the cost of relocating such Class Members to reasonably equivalent property that does not present such a risk?
- (p) Are the Defendants jointly and severally liable for the remedies set out in issues (n) and (o) or otherwise for the conduct set out in the Statement of Claim?
- (q) Should one or both of Canada and Nova Scotia be liable to pay punitive damages in the aggregate and, if so, what is an appropriate amount of such aggregate damages?

4) An Order that Neila Catherine MacQueen, Ann Marie Ross, Kathleen Iris Crawford be appointed as Representative Plaintiffs for the Classes.

5) An Order that Joseph M. Petitpas be appointed as a Representative Plaintiff for the Residential Class.

6) An Order that the Notice of Certification to the Class Members be given pursuant to the Litigation Plan attached and marked as Exhibit "A" to the affidavit of Michael J. Peerless.

7) An Order that the Defendants shall be responsible for all costs associated with the Notice of Certification.

8) An Order that the Class Members who elect to opt-out of the class proceeding must do so in a manner and within a period of time to be fixed by the Court.

9) An Order for costs of this application on a full indemnity basis, including taxes.

10) Such further and other relief as the Court may seem just.

**AND TAKE NOTICE** that in support of this Application will be read the following documents:

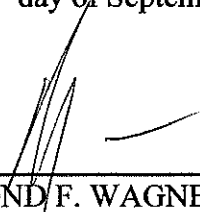
- (a) Affidavit of Neila Catherine MacQueen;
- (b) Affidavit of Joseph M. Petitpas;
- (c) Affidavit of Ann Marie Ross;
- (d) Affidavit of Kathleen Iris Crawford;
- (e) Affidavit of Timothy Lambert;
- (f) Affidavit of Tee L. Guidotti;
- (g) Affidavit of Colin Soskolne; and
- (h) Affidavit of Michael J. Peerless.

true copies of which are hereto attached, and such other material as Counsel may advise, a true copy of which will be delivered to you or your solicitor not later than one (1) clear month before the hearing of the Application.

**AND TAKE NOTICE** that the grounds for this Application are:

- (a) The pleadings herein disclose a cause of action against the Defendants;
- (b) There are identifiable classes of persons who share a common interest in the common issues raised by the pleadings;
- (c) The claims of the Class Members raise common issues respecting the within litigation;
- (d) The proposed Representative Plaintiffs will adequately represent the interests of the Classes;
- (e) A class proceeding is the preferable procedure for the resolution of the common issues;
- (f) Civil Procedure Rule 5.09;
- (g) *Western Canadian Shopping Centers Inc. v. Dutton*, [2001] 2 S.C.R. 534; and
- (h) Such further and other grounds as counsel may advise.

DATED at Halifax, Nova Scotia this 7<sup>th</sup> day of September, 2007.

  
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WAGNERS  
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TO: Prothonotary

AND TO: David Coles, Q.C.  
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