ORIGINATING NOTICE (ACTION)

2004

S. H. NO. 218010

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

NEILA CATHERINE MACQUEEN, JOSEPH M. PETITPAS, ANN MARIE ROSS, and **KATHLEEN IRIS CRAWFORD**

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

TO THE DEFENDANT:

TAKE NOTICE that this proceeding has been brought by the Plaintiffs against you, the Defendant, in respect of the claim set out in the Statement of Claim annexed to this notice.

AND TAKE NOTICE that the Plaintiffs may enter judgment against you on the claim, without further notice to you, unless within TWENTY days after the service of this Originating Notice upon you, excluding the day of service, you or your solicitor cause your Defence to be delivered by mail or personal delivery to,

(a) the office of the Prothonotary at 1815 Upper Water Street in Halifax, Nova Scotia, and

(b) to the address given below for service of documents on the Plaintiffs:

provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of $ (or such sum as may be allowed on taxation) for costs to the plaintiff or her solicitor within six days from the service of this notice on you, then this proceeding will be stayed.

ISSUED the 24th day of March, A.D., 2004.

RAYMOND F. WAGNER
Solicitor for the Plaintiffs
whose address for service
is 1869 Upper Water Street
Halifax, Nova Scotia
B3J 1S9

S.H. No.

IN THE SUPREME COURT OF NOVA SCOTIA

B E T W E E N:

NEILA CATHERINE MACQUEEN, JOSEPH M. PETITPAS, ANN MARIE ROSS, and KATHLEEN IRIS CRAWFORD

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

STATEMENT OF CLAIM

I. REPRESENTATIVE PLAINTIFFS

1. The Plaintiffs and class members were/are ordinarily resident in homes located in neighbourhoods in close proximity to the steel plant, coke ovens (hereinafter the "Steel Works") and Muggah Creek in Sydney, Nova Scotia, at all material times; some for their entire lives. These neighbourhoods include but are not limited to the Whitney Pier, Ashby, and the North End areas of central Sydney, Nova Scotia (hereinafter referred to as the "Neighbourhoods").

2. The Plaintiffs seek to certify this action as a class proceeding, and plead the Supreme Court of Canada's decision in *Western Canadian Shopping Centers Inc. v. Dutton*, [2001] 2 S.C.R. 534, and Rule 5.09 of Nova Scotia's *Civil Procedure Rules*, as providing the basis for such certification. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented

by the Plaintiffs; that the Plaintiffs' claims raise common issues; and a class proceeding would be the preferable procedure for the resolution of such common issues.

II. DEFENDANTS

(A) Steel Works Defendants: Steel Plant and Coke Ovens Operations (1900 – 2000)

3. In 1900, a steel plant was built in the heart of Sydney, Nova Scotia, alongside Muggah Creek, a tidal estuary flowing into the Sydney harbour. An integral part of the steel making operations involved the use of coke as fuel in the steel plant's blast furnaces. Coke is a by-product of the incomplete combustion of coal. Consequently, in addition to the steel plant site, batteries of coke ovens were built on an approximately 60 hectare parcel of land abutting the steel plant. In addition, the coke ovens operations included a number of on site by-products plants directed at processing some of the coking by-products including coal tar, benzol, ammonia sulphate, and sulphuric acid. The following Defendants (collectively referred to as the "Steel Works Defendants"), were, either serially or concurrently, the owners and operators of Sydney steel plant and/or the coke ovens from 1928 up to the present time.

4. The steel plant and coke ovens were built by the Dominion Iron and Steel Company (DISCO) in or about 1900. In or about 1909, DISCO amalgamated with the Dominion Coal Company to become the Dominion Steel Corporation. In 1920, the British Empire Steel Company (BESCO) was combined with the Dominion Steel Corporation, and other coal and rail operations. In 1928, BESCO went into receivership and the Defendant Ispat Sidbec Inc. ("Ispat"), formerly known as the Dominion Steel and Coal Corporation (DOSCO), assumed ownership and control of BESCO operations.

5. Ispat is a federal company, duly incorporated pursuant to the laws of Canada with its registered office located at the Town of Contrecoeur in the Province of Quebec. Ispat is now a wholly owned subsidiary of Ispat International N.V., a multinational holding company which, through its subsidiaries, is engaged in the production of steel and steel-related products. Ispat owned and operated the

steel plant and coke ovens from 1928 until December 31, 1967.

6. In or about 1957, the Defendant Ispat became a wholly owned subsidiary of A.V. Roe Ltd., a Canadian subsidiary of the British owned Hawker Siddeley Canada Inc., formerly known as Hawker Siddeley Canada Limited (hereinafter "Hawker Siddeley"). The Defendant Hawker Siddeley is now a wholly owned subsidiary of Glacier Ventures International Corp., a Vancouver based information communications company. The Defendant Hawker Siddeley, through Ispat and, later A.V. Roe Ltd., owned and operated the steel plant and coke ovens between 1957 and 1967.

7. On October 13, 1967, the Defendant Ispat announced an intended closure of the steel plant on April 30, 1968. Shortly after this announcement the Defendant Ispat agreed to sell the Steel Works to the Province of Nova Scotia (hereinafter "Nova Scotia", represented by the Defendant Attorney General of Nova Scotia). At this time, the *Sydney Steel Corporation Act*, 1967 (2nd) Sess., c. 1, was enacted to authorize the purchase of the steel plant and coke ovens, and to create a corporation to operate the Steel Works (*i.e.*, the Sydney Steel Corporation, hereinafter Defendant "SYSCO").

8. Nova Scotia, through its various representatives, was at all material times the environmental regulator and the regulator of public health and safety matters in the province. All agencies and departments of Nova Scotia are referred to herein as Nova Scotia, which, for the purposes of this action, includes all of its contractors, sub-contractors, agents, servants, employees, assigns, appointees and partners.

9. The Defendant SYSCO operated the steel plant and coke ovens from 1967 until it finally closed operations in 2000. For six of these 33 years the coke ovens were in the hands of the federal government. Specifically, the coke ovens were sold to the federal crown corporation, the Cape Breton Development Corporation ("DEVCO") in or about July 1, 1968. DEVCO was a federal crown corporation statutorily created in 1965 pursuant to the *Cape Breton Development Corporation Act*, 1985, Chap. C-25, as amended. The Defendant, the Attorney General of Canada representing Her Majesty the Queen in right of Canada (hereinafter

"Canada"), is the successor principal to the now dissolved DEVCO pursuant to the *Cape Breton Development Corporation Divestiture Authorization and Dissolution Act*, R.S.C. 2000, C-23. All agencies and all departments of the government of Canada are referred to herein as Canada, which, for the purposes of this action, includes all of its contractors, sub-contractors, agents, servants, employees, assigns, appointees and partners.

10. DEVCO owned and operated the coke ovens from July 1, 1968 until in or about 1973, when they were sold back to the Defendants Nova Scotia and SYSCO. Except for a temporary closure between 1983 and 1985 due to a surplus in available quantities of coke, the Defendants SYSCO and Nova Scotia owned and operated the coke ovens until they were permanently closed in 1988.

(B) By-Product Defendant: DOMTAR Operations (1903 – 1962)

11. The Defendant, Domtar Inc., formerly Dominion Tar and Chemical Company Limited, is a federal company duly incorporated pursuant to the laws of Canada, with its registered office located in Montreal, Quebec. Between 1903 and 1962, the Defendant Domtar Inc. operated a coal tar refining plant and a coal tar storage facility directly adjacent to the coke oven operations on leased land. The Defendant Domtar Inc. diverted coal tar from the coke ovens, refined it, moved it through a series of above ground pipes, stored it in tanks and shipped it elsewhere.

(C) Current Owners of the Tar Ponds:

12. The Defendant, Canadian National Railway Company (hereinafter "CNR"), is a federal company duly incorporated pursuant to the laws of Canada, with its registered office located in Montreal, Quebec. This Defendant owns a portion of the Sydney Tar Ponds, and some adjacent lands. The remaining portion of the Sydney Tar Ponds is owned by the Defendant Nova Scotia.

III. NATURE OF THE ACTION: EMISSIONS AFFECTING THE NEIGHBOURHOODS

13. The steel plant, coke ovens site, and Domtar by-product operations are all situate in the Muggah Creek watershed. Although originally constructed directly adjacent to the Muggah Creek, after decades of dumping waste on the tidal flats, the steel plant is now almost a kilometre distant from the present shoreline of what is left of the tidal estuary. The coke ovens site is immediately adjacent to the steel plant, and is dissected by the Coke Ovens Brook. Muggah Creek, the Coke Ovens Brook, and other proximate watercourses or brooks, including the sewers on the steel plant and coke ovens site, carried, and continue to carry, contaminated ground and surface water to the surrounding lands, Muggah Creek and the Sydney harbour. The Plaintiffs and class members all live(d) in and/or possess(ed) land in the Neighbourhoods closest to the steel plant, coke ovens, and by-product operations.

14. Over time, the people of Sydney have stopped referring to Muggah Creek by its proper name. Instead, this former tidal estuary is commonly referred to as the "Tar Ponds", reflecting the fact that it contains approximately 700,000 tons of sludge consisting of many contaminants hazardous to human health. These contaminants include, but are not limited to, oils, heavy metals (such as lead, arsenic and cadmium), polychlorinated biphenyls (PCB's), and polycyclic aromatic hydrocarbons (PAH's) (including but not limited to benzypyrene, benzchphenanthrene, benz(a)anthracene, a benzfluoranthene isomer, a bezfluoranthrene isomer and cloanthrenetar) (the "Tar Ponds Contaminants").

15. The steel plant, coke ovens, and by-product operations are the primary sources of the contamination now contained in the Tar Ponds co-owned by the Defendants CNR and Nova Scotia. The Steel Works and By-Product Defendants directly released these contaminants into Muggah Creek, the tributaries leading into Muggah Creek, and onto the land directly adjacent to these water systems. Exposure to the Tar Pond Contaminants represents a serious human health hazard.

16. In addition to their responsibility for the cumulative toxic contamination of the Tar Ponds, the Steel Works and By-Product Defendants knowingly and continuously

emitted toxic, noxious, dangerous and hazardous substances directly, and without due regard for the surrounding community, into the ambient air as fine particulates amenable to inhalation, and onto the lands of the surrounding Neighbourhoods.

17. There were never any emission controls installed by the Steel Works Defendants to combat air pollution from the coke ovens. Similarly, the Defendant Domtar never installed emission controls with respect to its by-product operations. The steel plant only installed emission controls in or about 1988. Consequently, these Defendants released their emissions directly into the air, soil and water, including both surface and ground water. These emissions contained contaminants including, but not limited to, heavy metals (such as lead, arsenic, and cadmium), polycyclic aromatic hydrocarbons (PAH's, including but not limited to benzpyrene, benzchphenanthrene, benz(a)anthracene, a benzfluoranthene isomer, a bezfluoranthrene isomer, and cIolanthrene), and other dangerous respirable particulates (the "Operational Emissions").

18. When the Defendant Canada operated the coke ovens the operational emission levels were exacerbated. During this operational phase, very low grade coal was used in the coking process resulting in even greater levels of contaminants being emitted into the air, and many coke oven by-products were dumped directly onto the lands, and directly into Muggah Creek or its tributaries.

19. The Canadian Ministry of the Environment and the Canadian Council of Ministers of the Environment (CCME), has classified a number of carcinogens and "priority substances" (defined as such since they "may be harmful to the environment or constitute a danger to human health"). Many of the compounds customarily associated with steels works and coke ovens operations were among these classified substances.

20. The Steel Works and By-Product Defendants knew or were substantially certain that people living in the area surrounding the steel works, coke ovens, and by-product operations would be exposed to and would breathe in the emissions directly resulting from their operations. These Defendants knew what the emissions contained as well as the fact that inhalation constituted a non-trivial

interference with the bodily security of persons exposed to airborne emissions. All persons normally resident in the Neighbourhoods were exposed to the chemical compounds and respirable particulates contained in the Operational Emissions. These materials were deposited in the Plaintiffs' and class members' respiratory bronchioles and alveoli, and are linked to adverse health effects.

21. The contamination from the steel works, coke ovens, and by-product operations has penetrated the ground to a depth of seventy feet in some parts of the coke ovens site. These contaminants remain in the surface water, ground water, and in or on the soil. Although these contaminants have migrated and continue to migrate throughout Sydney, they are primarily found in the Neighbourhoods in which the Plaintiffs and class members live or lived. Prevailing climatological conditions and various human activities (e.g., industry) at play in the affected areas continue to cause these already widely dispersed contaminants to migrate into, *inter alia*, the Plaintiffs' and class members' property and homes.

22. There exists, underneath the coke ovens site, approximately one hundred and sixty kilometres of underground pipes. These pipes were used to move chemicals throughout the coke ovens and steel plant site. Despite the fact that these pipes contain a mixture of dangerous, toxic and potentially explosive substances, many were never purged of their contents when the coke ovens operations ceased.

23. The Defendant Domtar Inc. ceased its operations in Sydney in 1962. Domtar Inc. abandoned its former facilities consisting of several storage tanks, waste disposal lagoons, a series of above ground pipes, several buildings and other equipment. At that time, Defendant Domtar conducted little or no clean up of the site of its former operations.

24. A large tank, commonly referred to as the "Domtar tank", remains in place adjacent to the coke ovens site. This tank is approximately twenty-eight metres in diameter and six metres high. The tank contains materials abandoned by the Defendant Domtar Inc., along with other materials that have been added since 1962. Until recently it remained uncovered and open to the elements. Consequently, during the many years where the tank remained uncovered, each

time it rained the contents mixed with the precipitation and frequently overflowed, running into the surrounding soils and groundwater systems. Prior to efforts to clean up the Domtar tank, which began in 2003, the Domtar tank contained a variety of organic and inorganic substances, including but not limited to petroleum hydrocarbons, PAH's, benzene, toluene, ethybenzene, xylene, phenols and heavy metals; all of which represent a human health hazard (the "Domtar Contaminants").

25. Many of the contaminants (Tar Ponds Contaminants, Operational Emissions, and Domtar Contaminants), referred to in the preceding paragraphs are now present in and on the lands and homes owned, occupied or used by the Plaintiffs and in the Neighbourhoods, in quantities far exceeding human safety levels. No effective toxic remediation has taken place at the steel plant, coke ovens, Tar Ponds, Domtar tank, or in the immediately surrounding areas, consequently these toxins continue to migrate into and affect the Plaintiffs' and class members' properties.

26. The Plaintiffs' and class members have suffered offensive and/or inherently harmful bodily contacts with Operational Emissions, as a result of the direct conduct of the Steel Works and By-Product Defendants. In 2003, a study was released to the Sydney community which specifically identified (i) the materials contained in the Operational Emissions; (ii) the unique and specific exposure of Neighbourhood residents to high levels of air borne emissions; and (iii) the potential for a causal link between these emissions and adverse health consequences (commonly referred to as the Band & Camus study).

27. The continued presence of all of these contaminants in the Tar Ponds and on the lands in the Neighbourhoods have also caused, and continue to cause, extensive, severe and widespread damage to the physical and mental health of the Plaintiffs and other class members. The Defendant CNR, along with the other Defendants, is liable to the Plaintiffs and class members for the failure to prevent the past and continuing escape of such contaminants onto the Neighbourhood lands. In addition to the harm already suffered by the Plaintiffs and other class members, new or additional symptoms caused by the exposure to, and the inhalation or ingestion of, emissions may not manifest for many years.

28. The Steel Works and By-Product Defendants also deposited and released slag and other hazardous materials at or under properties in the vicinity of the steel plant operations. The details of such deposits and releases are known to these Defendants.

29. The Plaintiffs claim, and the fact is, that all of the torts and wrongdoings pleaded herein are either ongoing (i.e., unremediated presence of contaminants on, and continued migration onto, the lands of the Plaintiffs and class members), or not discoverable. Moreover, the Band & Camus (Health & Welfare Canada) study, released in March, 2003, made known the nature of the contaminants contained in the Operational Emissions, the specific area affected by such emissions, and the potential for adverse health consequences. Even in the face of a growing body of evidence (only recently becoming available to the Plaintiffs and class members), as to the nature of the emissions and their inherent dangers, the Defendants have, and continue to, tell the Plaintiffs and class members that (i) there is no connection between the contaminants present on their lands and the Operational Emissions, and (ii) that the Neighbourhoods are a safe place to live.

30. Those Plaintiffs and class members who have suffered manifest illnesses were not made aware of the connection between their exposure to toxic emissions and their injuries. The damages wrought by exposure to toxic emissions are peculiarly complex, manifesting themselves slowly and imperceptibly. The Plaintiffs and class members did not know and were prevented from fully knowing the nature and/or impact of the offensive contact delivered by the Defendants.

31. The Defendants knew that their emissions had the potential for creating serious health risks for people living in the surrounding community. Air quality monitoring occurred in Sydney as early as 1958. This data was in the hands of the Defendants. Environment Canada conducted two studies on the levels of air pollution being released from the steel plant and coke ovens (being the Havelock study in 1973, and the Choquette study in 1974). The Havelock and Choquette studies were made available to the Defendants SYSCO, Nova Scotia, and Canada, but not released to the general public. These studies were marked restricted and intentionally suppressed from public disclosure. Thus, the

Defendants knew and concealed from the Plaintiffs and class members information regarding the potential health risk posed by the airborne emissions.

32. In 1982, the contamination in Sydney resulting from the Defendants' operations was recognized by the Defendant Canada when it closed the lobster fishery in the south arm of Sydney harbour (the outlet of Muggah Creek), since it was discovered that the lobsters were contaminated with PCB's, mercury, cadmium and lead. Despite the obvious connection between the contamination of local aquatic life and emissions, no steps were taken to halt or reasonably limit the Defendants' release of contaminants, nor were any steps taken to protect the health and safety of the Plaintiffs and class members living in the surrounding Neighbourhoods.

33. This lack of response continued even in the face of a 1985 warning, issued in a letter from J. R. Hickman, the then Director of the Bureau of Chemical Hazards at Health and Welfare Canada to the Nova Scotia Regional Director of the federal Environmental Protection Service, that continuing coke oven operations without installing emission controls "could be expected to result in increases of morbidity and mortality in the coke plant workers and probably in the residents of Sydney."

34. Despite knowledge that the surrounding communities were being exposed to materials which had the potential to pose a serious human health hazard, the Defendants Nova Scotia and Canada failed to take such steps or apply such laws, regulations and guidelines as their mandates, and the "polluter pay principle", required in order to prevent (or attempt to prevent), the continued airborne exposure to airborne particulates and other contaminants, causing extensive and severe damage to the Plaintiffs' and class members' health and property.

35. On or about November 7, 1986, the Defendants Nova Scotia and Canada entered into a joint federal/provincial agreement to clean up the Muggah watershed area. For the ensuing eighteen years, and through the auspices of a variety of government departments, agencies, and advisory bodies, there have been lengthy and conflict-ridden deliberations as to how to proceed with an effective clean up.

36. However, to date nothing material has been done to effect an actual clean up, other than superficial efforts to demolish buildings and to remove a top layer of soil from a patchwork of neighbouring residential properties. Further, nothing material has been done to remedy the personal and property exposure suffered by the Plaintiffs and class members. The risk of continued inaction is one which is borne directly by the Plaintiffs and other class members.

37. In the 2002, Report of the Commissioner of the Environment and Sustainable Development to the House of Commons (Office of the Auditor General of Canada), it was noted that "the federal government has so far failed to address the issue of federal contaminated sites adequately." Further, that although Sydney Tar Ponds is not considered to be a designated federal toxic site, and despite the fact that $250 million has been spent on this site and surrounding areas in the last 20 years, the Defendant Canada has not yet "finalize[d] its game plan for the Sydney tar ponds site."

38. On February 2, 2004, the Government of Canada delivered its Speech from the Throne, reiterated in the federal budget announcement delivered on March 23, 2004. Therein, the Defendant Canada announced a $3.5 billion program to clean up contaminated sites for which it is responsible, along with a further $500 million to "do its part in the remediation of certain other sites, notably the Sydney tar ponds." The difficulty with this announcement is the establishment of a further ten year horizon for the effective remediation, and, apparently, the plan still does not address the individual needs and claims of the Plaintiffs and class members.

39. The Defendant Nova Scotia despite its knowledge to the contrary through its servants, agents or contractors, including but not limited to its Chief Medical Officer and the Sydney Tar Ponds Agency, has made and continues to make public statements indicating that some or all of the Neighbourhoods are safe places to live. The Plaintiffs state that Defendant governments' ineffectiveness in undertaking a clean-up is the result of a conflict between their duties as environmental regulators, and their economic self-interests.

IV. IMPACT ON PLAINTIFFS

(i) Neila Catherine MacQueen

40. The Plaintiff Neila MacQueen, age 63, has lived in Sydney from in or about 1950 to the present time. From in or about 1950 until approximately 1968 she resided at 895 Upper Prince Street in the Ashby Neighbourhood. From approximately 1968 until 1983 she resided at 29 and 53 Stanfield Street, in Ashby. From 1983 to the present time she has resided at 206 and at 198 Dorchester Street, in the North End Neighbourhood, in close proximity to the Tar Ponds. Neila MacQueen also worked at the Prince Street Shopping Mall, which is in close proximity to the Tar Ponds, for almost thirty years from in or about 1954 to 1983. In the normal course of her residential life in the Neighbourhoods, Ms. McQueen has been exposed to, and breathed in, the airborne contaminants emitted by the Defendants.

41. This Plaintiff is the owner of the residential properties at 198 Dorchester Street, 29 and 53 Stanfield Street, and the store and residential property at 206 Dorchester Street, Sydney. The soil on all four of these properties was tested by the Department of Health of the Defendant Nova Scotia and, with the exception of 29 Stanfield Street, were found to have levels of petroleum hydrocarbons, polycyclic aromatic hydrocarbons and heavy metals exceeding the recommended CCME guidelines for residential uses. The Defendant Nova Scotia offered to remediate the soil at 53 Stanfield Street, but not at any of the other properties.

42. Ms. MacQueen was diagnosed with lung cancer in 1999. She has never smoked. As a result she has had the lower lobe on her right lung removed. Since 1999 she has suffered from asthma, chronic bronchitis, and a persistent cough. She has also suffered from ear and throat infections. This Plaintiff states that these personal injuries were caused by, or materially contributed to, her exposure to contaminants released by the Defendants.

43. In addition, Ms. MacQueen has suffered and continues to suffer from anxiety about her and her family's health because of the contaminated environment in which they live. This Plaintiff states that the Defendants bear the responsibility

to, *inter alia*, create a medical monitoring fund/mechanism that would give her and the members of the class access to experts who could address their health concerns.

(ii) Joseph M. Petitpas

44. The Plaintiff Joseph M. Petitpas, age 56, is a lifelong resident of the Whitney Pier Neighbourhood. Since 1977, he has owned and lived at 153 Laurier Street in the Whitney Pier Neighbourhood. In the normal course of his residential life in the Neighbourhoods, Mr. Petitpas has been exposed to, and breathed in, the airborne contaminants emitted by the Defendants.

45. This Plaintiff has made many home improvements to the family home. In the past couple of years he has been trying to sell this home. A realtor's sign has been on his front lawn since approximately September, 2002. He has not received any purchase offers.

46. Mr. Petitpas suffers from unexplained, and highly distressing, health conditions, including but not limited to seizures and headaches. Consequently, this Plaintiff has suffered, and continues to suffer, from anxiety about his and his family's health in the face of the contaminated environment in which they live. Mr. Petitpas states that these personal injuries were caused by, or materially contributed to, his exposure to contaminants released by the Defendants. This Plaintiff states that the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism that would give him and the members of the class access to experts who could address their health concerns.

(iii) Ann Marie Ross

47. Ann Ross, age 44, owns and has resided at 192 Laurier Street, in the Whitney Pier Neighbourhood, for her entire life. In the normal course of her residential life in the Neighbourhoods, Ms. Ross has been exposed to, and breathed in, the airborne contaminants emitted by the Defendants.

48. In or about 1999, this Plaintiff started observing an orange substance seeping into her basement. In or about May, 1999, Ann Ross and her daughter (Lindsay), were relocated from their home by the Defendant Nova Scotia and

accommodated at a hotel in Sydney for a period of forty-two days. Nine other families, all of whom resided on either Frederick Street or Curry's Lane in the Whitney Pier Neighbourhood, were also relocated by the Defendant Nova Scotia. Subsequent to May 1999, the Defendant Nova Scotia offered to buy all of the properties owned by the nine other families. However, the Defendant Nova Scotia advised Ann Ross that her home was safe for occupation and she should return there.

49. Soil tests were conducted on Ann Ross' property pursuant to the Chronic Health Risk Assessment conducted by the Defendant Nova Scotia and released in or about December, 2001. The results of the testing showed that the soil at 192 Laurier Street had elevated levels of petroleum hydrocarbons, polycyclic aromatic hydrocarbons, and heavy metals exceeding both the recommended CCME guidelines for residential uses and the urban background guidelines (commonly referred to as "the made in Sydney standards"). Ever since June, 1999, the Defendant Nova Scotia has consistently refused to relocate Ann Ross despite numerous requests for relocation.

50. In or about June, 2002, the Defendant Nova Scotia offered to remediate Ann Ross' property. The cost of remediation was estimated to be $100,000. The fair market value of 192 Laurier Street is less than the cost of remediation. Ann Ross declined the Defendant Nova Scotia's offer of remediation and continued to request relocation by the Defendant Nova Scotia.

51. Ann Ross suffers from various medical conditions including nose bleeds, headaches, burning eyes, water blisters, running nose, frequent sore throat, psoriasis, skin rashes, and neurological problems. In addition, Ann Ross has suffered and continues to suffer from anxiety about her and her daughter's health because of the contaminated environment in which they live. Ms. Ross states that these personal injuries were caused by, or materially contributed to, her exposure to contaminants released by the Defendants. This Plaintiff states that the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism that would give her and the members of the class access to experts who could identify and address their health concerns.

(iv) Kathleen Iris Crawford

52. Iris Crawford, age 63 (born January 5, 1941), is the widow of Carl Anthony Crawford, and currently resides at 86 Hankard Street in the Whitney Pier Neighbourhood. Iris Crawford and the late Carl Anthony Crawford have resided in the Whitney Pier Neighbourhood for their entire lives. In the normal course of her and her late husband's residential life in the Neighbourhoods, they, along with their four children, were exposed to, and breathed in, the airborne contaminants emitted by the Defendants.

53. The late Carl Anthony Crawford worked as a member of the Sydney Police Force from 1964 until 1986, when he retired. In June, 2003, Mr. Crawford was diagnosed with pancreatic cancer. He died on November 7, 2003.

54. As a result of the past and continuing discharge of toxic emissions and other activities of the Defendants, and the failure of the Defendants to take proper and appropriate steps to prevent or minimize the effects of these contaminants and activities, Iris Crawford has also suffered damages recognized pursuant to sections 3, 4, and 5(1) of the *Fatal Injuries Act*, R.S.N.S., c. 163, s. 1. Iris Crawford claims, pursuant to the *Fatal Injuries Act*, *supra*, for herself and their four children, being Cheryl Ann Crawford (born December 14, 1960), Carl Alonzo Crawford (born December 16, 1961), Rhonda Georgina Crawford (born July 24, 1965), and Carol Lynn Crawford (June 20, 1968).

55. In addition, Mrs. Crawford has suffered and continues to suffer from anxiety about her and her family's health because of the contaminated environment in which they live or have lived. This Plaintiff states that the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism that would give her and the members of the class access to experts who could identify and address their health concerns.

V. LIABILITY

(A) Battery

56. The Steel Works and By-Product Defendants are liable to the Plaintiffs and class members for having committed the intentional tort of battery. These Defendants

knew or were substantially certain that people living in the area surrounding the steel works, coke ovens, and by-product operations would be exposed to and breathe in the emissions directly resulting from their conduct. Chemicals and fine respirable particulates contained in the emissions were deposited in the Plaintiffs' and class members' respiratory bronchioles and alveoli, and are linked to adverse health effects. These Defendants knew what the emissions contained, as well as the fact that inhalation constituted a non-trivial interference with the bodily security of persons exposed to airborne emissions. This information was not disclosed to the class members living in the Neighbourhoods at the material time. The Plaintiffs and class members normally resident in the Neighbourhoods were exposed to the respirable particulates contained in the Operational Emissions.

(B) Strict Liability and Nuisance

57. The Defendants are liable pursuant to the doctrine of strict liability in *Rylands v. Fletcher*, in that the storage and release of contaminants, including but not limited to carcinogenic and toxic chemicals, is a non-natural use of the lands of each of the Defendants. Further, the Defendants failed, and continue to fail, to prevent the escape of these contaminants, thereby causing damage to the Plaintiffs and other class members.

58. In addition, the Defendants are strictly liable given that they, in pursuit of their own interests, released contaminants creating an abnormally dangerous and pervasive risk to the health and welfare of the surrounding residential community (i.e., the Neighbourhoods); in particular a risk posed to the Plaintiffs and class members. The extraordinary risk created by these Defendants has materialized resulting in direct and consequential damages to the property and health of the Plaintiffs and class members.

59. Further, the past and ongoing release of contaminants and other activities by the Defendants has substantially and unreasonably interfered with the Plaintiffs' and class members' use and enjoyment of their lands and premises. In addition to causing extensive property damage, exposure to these toxins has created widespread adverse health consequences and risks to the Plaintiffs and other

class members. Accordingly, the Defendants are liable in nuisance.

(C) Trespass

60. The Defendants are liable in trespass in that the Defendants have discharged, and continue to discharge contaminants, without the Plaintiffs' and class members' consent, onto lands owned by the Plaintiffs and other class members.

(D) Negligence

61. The Plaintiffs and class members live(d) on property in close proximity to the steel plant, coke ovens, Tar Ponds, and the Domtar tank. The Steel Works and By-Product Defendants knew or ought to have known that a lack of sufficient care on their part would cause damage to the Plaintiffs and other class members. Accordingly, a duty of care was owed by all of the Defendants to the Plaintiffs and class members. The past and ongoing release and migration of contaminants into the ambient air, land and water of the Neighbourhoods and surrounding lands caused damage to the Plaintiffs and class members. The Defendants' failure to exercise a sufficient standard of care in relation to the toxic emissions caused or materially contributed to the damages suffered by the Plaintiffs and class members.

62. These Defendants had a duty to the Plaintiffs and class members to meet a high standard of conduct in relation to the contaminants emanating from their respective operations because:

(a) The quality of the environment (i.e., clean air, water and land) is essential to the well-being of the Plaintiffs and class members;

(b) A contaminated environment is inherently dangerous and poses a risk to human health;

(c) The Defendants Canada and Nova Scotia controlled and regulated all aspects of environmental and toxic waste management;

(d) The Plaintiffs and class members have no control over and/or knowledge in relation to the contaminants which have and continue to affect their environment.

63. The particulars of these Defendants' negligence are that they breached their duty to the Plaintiffs and class members in that they:

(a) Chose not to warn the Plaintiffs and other class members of known hazardous emissions, defects and other failures at the respective operations;

(b) As operators of the Steel Works and By-Products operations, did not limit the exposure of the Plaintiffs and class members to substances potentially hazardous to health;

(c) Concealed that the Plaintiffs and class members are, and were, exposed to substances emitted from the respective operations which represent a substantial health hazard;

(d) Ignored information and advice available to rectify or limit known defects and failures at the respective operations;

(e) Chose to study little, if any, health risks and their association with toxic pollution and contamination in order to avoid responsibility for clean up and notice to the Plaintiffs and class members regarding the risk of exposure;

(f) Ignored complaints made by the Plaintiffs or by others about the emission of contaminants and other activities related to the respective operations;

(g) Chose not to conduct, or caused to be conducted, in a timely fashion or at all, accurate and complete studies of the impacts of the respective operations;

(h) Breached specific statutory obligations under sections 67 and 68 of the *Environment Act,* R.S.N.S., c. 18, as amended, by causing or permitting contaminants to be discharged into the natural environment which has resulted in adverse effects;

(i) Decided not to employ adequate equipment or procedures to prevent the release of contaminants from the steel plant, coke ovens, and by-product manufacturing sites;

(j) Ignored scientific standards, industry specific and professional advice to provide adequate equipment or procedures to reduce the release of contaminants from the respective operations;

(k) Ignored information or were wilfully blind to the availability of, and the need to utilize, adequate equipment and procedures to determine the composition and concentration of contaminants released from the respective operations;

(l) Employed an insufficient number of employees to operate the steel plant, coke ovens, and by-product manufacturing sites and chose not to ensure that those employees involved in such operations were properly qualified, properly trained and properly supervised;

(m) Poorly operated and inadequately maintained the steel plant, coke ovens, and by-product manufacturing sites and not in a reasonable or prudent manner;

(n) Improperly monitored and inadequately inspected the respective operations, and not in a reasonable or prudent manner;

(o) With respect to the Defendants Canada and Domtar Inc., inadequately and improperly responded to problems and potential hazards once these Defendants relinquished control of their respective operational areas; and

(p) Such other negligence as may appear.

64. The Plaintiffs state that the Defendants are responsible, jointly and severally, for the injuries and damages suffered by the Plaintiffs and other class members.

65. The Plaintiffs plead the doctrine of *respondeat superior* and state that the Defendants are vicariously liable to the Plaintiffs and class members for the acts, omissions, deeds, misdeeds and liabilities of their contractors, sub-contractors, agents, servants, employees, assigns, appointees and partners.

66. The Plaintiffs plead and rely on the *Proceedings Against the Crown Act*, R.S.N.S., 1989, c. 360, the *Crown Liability and Proceedings Act*, S.C.C. 1985, c. C-50, and the *Tortfeasors Act*, R.S.N.S., c. 471.

VI. DAMAGES

(i) Manifest Harm and Injuries:

67. The past and ongoing emissions of toxins, including those known to be human carcinogens, and other activities of the Defendants, and the failure of the Defendants to take proper or appropriate steps to prevent or minimize the adverse effects of these emissions and activities have resulted, but are not limited to, the following types of losses or injuries to property:

(a) Loss of use and enjoyment of property owned, occupied or used by the Plaintiffs and other class members, including extensive business and personal loss; and

(b) Diminution of value of property owned, occupied or used by the Plaintiffs and other class members, including the complete or

substantial devaluation of certain properties, and the loss of the ability to sell, finance or mortgage numerous properties.

68. In addition, the past and ongoing exposure to the contaminants emitted by the Defendants, and the failure to take proper steps to prevent or minimize the effects of such toxic emissions, have resulted in, but are not limited to, the Plaintiffs' physical and mental health injuries pleaded above, and have further led to pain and suffering, loss of income, impairment of earning ability, loss of valuable services, future care costs, medical costs, loss of amenities and enjoyment of life, anxiety, nervous shock, mental distress, emotional upset, and out of pocket expenses.

(ii) Medical Monitoring: Responding to Material Risk of Illness

69. Further, exposure to, and the breathing in of, the toxic contaminants emitted by the Defendants have also caused or materially contributed to a material risk of illness, including but not limited to increased risks of cancer and lung disease to the Plaintiffs and other class members. As a result of the exposure, the Plaintiffs and class members have already and will continue to experience illness, anxiety, loss of amenities and enjoyment of life, and a number will die premature deaths.

70. The Plaintiffs and class members also seek to recover damages in the form of the total funds required to establish a 'medical monitoring' process to be made available to the Plaintiffs and the class. Such damages include the costs of medical screening and treatment incurred by or on behalf of the class.

71. The damages referred to above may have been incurred directly by class members, or may constitute subrogated claims owed to provincial health insurers, or to private health, disability, or group benefit insurers.

(iii) Family Losses:

72. As well, as a result of the past and continuing discharge of toxic emissions and other activities of the Defendants, and the failure of the Defendants to take proper and appropriate steps to prevent or minimize the effects of these contaminants and activities, the Plaintiffs and the class members, who are the spouses, common-law partners, parents or children of deceased persons, have

also suffered damages recognized pursuant to sections 3, 4, and 5(1) of the *Fatal Injuries Act*, R.S.N.S., c. 163, s. 1. These damages include, but are not limited to:

(a) Pecuniary losses resulting from the injury to such deceased persons, expenses incurred for the benefit of such deceased persons, travel expenses incurred in visiting such deceased persons during their treatment and recovery;

(b) A reasonable allowance for loss of income and the value of nursing, housekeeping and other services rendered to such deceased persons;

(c) An amount to compensate for the loss of guidance, care and companionship reasonably expected to be received from such deceased persons if the contaminants had not been released by the Defendants; and

(d) funeral and burial expenses for such deceased persons.

VII. AGGRAVATED, AND PUNITIVE AND EXEMPLARY DAMAGES

73. The Defendants Canada and Nova Scotia operated the steel plant and coke ovens for decades with full knowledge of the fact that they were emitting materials that could and did adversely impact the physical and psychological health of, as well as the property used by, the people living in surrounding residential Neighbourhoods. Knowledge of the risks associated with such emissions was not released to the people who suffered such risks. Despite having specific information that people living in the surrounding Neighbourhoods were at risk of higher mortality and morbidity rates due to the failure to install appropriate emissions controls, these Defendants continued steel plant and coke operations without any or reasonable controls.

74. The activities of these Defendants were carried out with reckless, callous and wanton disregard for the health, safety and pecuniary interests of the Plaintiffs and other class members. These Defendants knowingly compromised the interests of the Plaintiffs and class members, solely for the purpose of monetary gain and political expediency. Furthermore, once the Defendants knew of the extraordinary dangers that their operations posed to the Plaintiffs and class

members, these Defendants failed to advise them in a timely fashion, or fully, or at all. Indeed, the Plaintiffs and class members were misled into believing that Sydney's environment was a safe place to live. These misrepresentations persist.

75. Consequently, the Plaintiffs and class members are entitled to aggravated damages, and an award of punitive and exemplary damages commensurate with these Defendants' outrageous behaviour.

76. The Plaintiffs restate the foregoing paragraphs of this Statement of Claim and state that the Defendants are jointly and severally liable for the following:

(a) an Order certifying this proceeding as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs;

(b) compensatory damages, including aggravated damages for personal injuries;

(c) general and special damages for damage to the Plaintiffs' and class members' property and for the diminution of the Plaintiffs' and class members' property values, including, where applicable, costs for relocation;

(d) special damages for medical expenses and in the diagnosis and treatment of diseases and illness related to exposure to the toxins emitted by the steel plant, coke ovens, and by-product operations;

(e) punitive and exemplary damages;

(f) damages for the funding of a "Medical Monitoring Program", supervised by the Court, for the purpose of retaining appropriate health and other experts to review and monitor the health of the Plaintiffs and other class members, and to make recommendations about their treatment;

(g) a permanent injunction and an Order for declaratory relief directing the Defendants Canada and Nova Scotia to remediate the Plaintiffs' and class members' property to a pristine level, ensuring that such remediation is undertaken in a manner which prevents further property and/or health risks to class members;

(h) a permanent injunction and an Order for declaratory relief directing the Defendants to remediate the steel plant site, coke ovens site, Tar Ponds and Domtar tank to a pristine level;

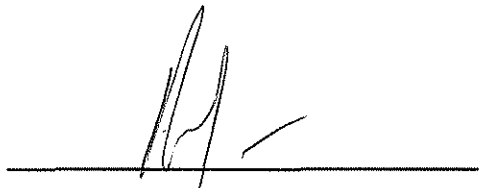
(i) interest pursuant to the *Judicature Act*;

(j) costs; and

(k) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, in the County of Halifax, Province of Nova Scotia this 24th day of March, 2004.



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