

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE) TUESDAY, THE 6th DAY
J.R. HENDERSON) OF JULY, 2010

B E T W E E N:

ELLEN SMITH

Plaintiff

- and -

INCO LIMITED

Defendant

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

THIS ACTION was heard on October 13, 14, 15, 16, 19, 20, 21, 22, 23, November 2, 3, 4, 5, 9, 10, 12, 13, 23, 24, 25, 26, 27, 30, December 1, 2, 3, 4, 7, 8, 9, 10, 2009, January 11, 12, 13, 14, 19, 20, 21, 2010 and May 10, 20, 2010, without a jury, in Welland, Ontario, in the presence of counsel for all parties, judgment having been reserved until this day.

UPON READING the pleadings and hearing the evidence and submissions of counsel for the parties, and for written reasons given this day, and on being advised of the consent of the parties with respect to the matters dealt with in paragraphs 9 and 10 of this judgment,

1. **THIS COURT ORDERS AND ADJUDGES** that judgment shall be and hereby is granted to the Class, as defined below, in the amount of thirty-six million dollars (\$36,000,000.00).

2. **THIS COURT ORDERS AND ADJUDGES** that the class shall be defined as follows:

“Class” or “Class Members” mean:

All persons owning residential property since September 20, 2000 within the area of the City of Port Colborne bounded by Lake Erie to the south, Neff Road/Michael Road to the east, Third Concession to the north and Cement Road/Main Street West/Hwy 58 to the

west, or where such a person is deceased, the heir(s), executor(s), administrator(s), assign(s) or personal representative(s) of the estate of the deceased person.

3. **THIS COURT ADJUDGES** that the claims asserted by the class were for (a) trespass; (b) public nuisance; (c) private nuisance; and (d) strict liability pursuant to the doctrine of *Rylands v. Fletcher*.

4. **THIS COURT ORDERS AND ADJUDGES** that the certified common issues are answered as follows:

6(c) The disclosures from and after September 2000 of information concerning nickel contamination in the Rodney Street area and elsewhere in Port Colborne had a negative effect on property values in the Port Colborne area.

6(d) The discharge of nickel by Inco did not amount to a public nuisance but did amount to a private nuisance.

6(e) The discharge of nickel by Inco did not amount to a trespass.

6(f) Inco is strictly liable to the class for the discharge of nickel as a result of a failure to prevent the escape of a dangerous substance (*Rylands v. Fletcher*).

6(g) Class Members' claims for property damages are assessed as follows:

- i. \$9,000,000.00 aggregate for the Rodney Street Area;
- ii. \$15,000,000.00 aggregate for the East Side Area; and
- iii. \$12,000,000.00 aggregate for the West Side Area.

6(h) Inco's conduct does not justify an award of punitive damages.

6(i) Class Members' claims are not statute-barred by the provisions of the *Limitations Act*, R.S.O. 1990, c.L.15.

6. **THIS COURT ORDERS AND ADJUDGES** that the Rodney Street Area is defined as all properties owned by Class Members which are situated east of the Welland Canal, bordered by the Welland Canal to the west, Rodney Street to the south, Davis Street to the east and Durham Street to the north, in the City of Port Colborne, in the Province of Ontario.

7. **THIS COURT ORDERS AND ADJUDGES** that the East Side Area is defined as all properties owned by Class Members which are situated east of the Welland Canal, excluding the Rodney Street Area, defined above, in the city of Port Colborne, in the Province of Ontario.

8. **THIS COURT ORDERS AND ADJUDGES** that the West Side Area is defined as all properties owned by Class Members which are situated west of the Welland Canal, in the City of Port Colborne, in the Province of Ontario.

9. **THIS COURT ORDERS AND ADJUDGES** that the defendant shall pay the plaintiff her costs of this action, fixed at \$4.3 million, inclusive of all costs, disbursements and applicable taxes.

10. **THIS COURT ORDERS AND ADJUDGES** that the defendant shall pay the plaintiff the sum of \$1,062,049.32 for prejudgment interest.

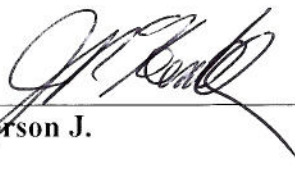
11. **THIS COURT ORDERS AND ADJUDGES** that the issue of notice to the Class Members and the criteria and process for distribution of the judgment shall be determined on further motion to this court, if necessary, following the final disposition of any appeal to the Court of Appeal for Ontario.

12. **THIS COURT ORDERS AND ADJUDGES** that the amounts owing to Class Counsel (being some portion of the amounts set out under paragraphs 1, 9 and 10 above) under ss. 32 and 33 of the *Class Proceedings Act, 1992* shall be determined on further motion to this court, if necessary, following the final disposition of any appeal to the Court of Appeal for Ontario.

13. **THIS COURT ORDERS AND ADJUDGES** that the amounts owing to the Law Foundation of Ontario (being some portion of the amounts set out under paragraphs 1, 9 and 10 above) under the *Law Society Act*, shall be determined on further motion to this court, if necessary, following the final disposition of any appeal to the Court of Appeal for Ontario, and the Law Foundation of Ontario shall be given notice of such motion by the plaintiff.

THIS JUDGMENT bears interest at the rate of 2% per annum, commencing on July 7, 2010.

Entered at Welland
Inscrit à Welland
in Book No. 10
dans le Livre n. _____
as Document No. 1773
corresponding Document n. _____
on Oct 12 2010
le _____ 20____
by [Signature]
par _____



Henderson J.

ELLEN SMITH
Plaintiff and

INCO LIMITED
Defendant

Court File No: 12023/01

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **WELLAND**

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

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