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Residents aim to win 'lottery': Inco; Pioneering suit

BYLINE: Joe Schneider, Bloomberg News

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Vale SA's Inco Ltd. said Ontario residents seeking \$400-million because their properties were polluted by a nickel refinery are looking to win a "lottery."

The residents' argument was, "if you don't like this" calculation of damages, "give them \$1,000" each, Inco lawyer Alan Lenczner told Superior Court Judge Joseph Henderson last week at the close of a three-month trial in Welland, Ont. "What about the evidence?"

In a class action, a group of residents in Port Colborne, Ont., sued in 2001, claiming their property values didn't rise as rapidly as those in surrounding areas after the provincial Ministry of the Environment said land near the refinery was polluted, posing a potential risk to people's health.

The plaintiffs accused Inco of nuisance and trespass for allowing nickel oxide to be dumped on their properties. Inco operated the nickel refinery in Port Colborne, 145 kilometres south of Toronto on the shore of Lake Erie, from 1918 to 1984.

"This became a problem for the community in 2000," after the provincial study was publicized, Kirk Baert, the residents' lawyer, said in response to Mr. Lenczner's assertion that the six-year limit to file a lawsuit expired because the refinery stopped discharging emissions in 1984. It would be "totally unfair" to say the residents should have known about the pollution before the study, Mr. Baert said.

It's the first attempt in Ontario to force a company to pay for long-term environmental damage. The suit was twice dismissed by courts in the province, before the Court of Appeal for Ontario overturned those decisions. The Supreme Court of Canada declined to hear Inco's appeal.

Mr. Lenczner said individual lawsuits by the plaintiffs, claiming \$1,000 to \$5,000 for the devaluation of their properties, would be thrown out.

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