

FOR IMMEDIATE RELEASE

**Separate Class Actions Initiated Against  
Officers/Directors of St. Anne-Nackawic  
And the Superintendent of Pensions/Province of New Brunswick**

Two of the most historically significant New Brunswick based Class Actions have now been initiated by retired employees of St. Anne-Nackawic Pulp Company Ltd.

The first action is directed personally against the officers and directors of both the Pulp Company and its holding company, St. Anne Industries Ltd.

Among the directors and officers named are George F. Landegger and Karl C. Landegger, the principals of both the Pulp Company and its holding company, St. Anne Industries Ltd.

The cause in both actions is framed in the name of Joe Broczkowski, of Nackawic, representing the non-union retired salaried employees of St.-Anne Nackawic Pulp and Abigail Paul, of Woodstock, New Brunswick, representing the unionized employees.

Both individuals represent a respective class of between two and three hundred former employees of St.-Anne Pulp over 55 who were already retired at the time of the bankruptcy of St.-Anne Pulp & Paper on September 15<sup>th</sup>, 2004.

The second equally significant action has been initiated by the same individuals representing the same class of retired employees against the Superintendent of Pensions for the Province of New Brunswick. The grounds are based on breaching the Superintendent's obligations to properly oversee and enforce the proper administration of both pension plans in issue.

Talia C. Profit, of the Moncton offices of Barry Spalding, counsel for the Plaintiffs, has confirmed the first action against the officers and directors of St. Anne-Nackawic and St-Anne Industries is currently in the process of being served on the respective parties in the States of New York and Connecticut as well as in the Province of New Brunswick.

The second action has already been served on the Superintendent of Pensions for the Province of New Brunswick.

Ms. Profit stated that:

“Both legal actions emanate as a result of a series of steps taken by the officers and directors of St. Anne between 1999 and 2001, which effectively decimated the full value of both pension plans to the detriment of the retired employees.”

As a result of those actions, the officers and directors are now being sued for breach of trust, breach of fiduciary duty and breaches of utmost good faith with respect to the administration of the pension plan.

The Office of the Superintendent of Pensions and Insurance is being sued for failure as administrator of the **Pension Benefits Act**, to properly use its legal authority by taking the necessary regulatory action to prevent the officers and directors of St. Anne from depleting the pension plan by permitting the early retirement with pensions of certain employees in 1999 and 2001.

The actions have been filed in the Court of Queen's Bench of New Brunswick, Judicial District of Saint John.

**a) Background:**

St. Anne-Nackawic Pulp Company Ltd. (St. Anne-Nackawic) was the Town of Nackawic's largest employer from 1970 until it closed on September 14<sup>th</sup>, 2004. The foreclosure and bankruptcy affected both people employed at that time or nearing retirement as well as those individuals who had already retired but were subsequently forced to take substantial reductions in the pensions they were receiving.

St. Anne-Nackawic had been administering the non-union pension plan since 1969 and the unionized plan since 1971. Under the terms of each pension plan, pension eligibility was not reached until the age of 55.

On December 31<sup>st</sup>, 1998, both pension plans had funding excesses and were considered solvent.

**b) The Companies/Directors Class Actions:**

In April of 1999, officers and directors of St. Anne-Nackawic unilaterally amended the pension plans allowing early retirement for certain employees. The effect of same, as confirmed by external actuaries, was to put the union plan in deficit requiring special payments from St. Anne-Nackawic to ensure the continuing solvency of the plan. In 2001, a second amendment of both plans was authorized allowing early retirement for additional employees.

Ms. Profit pointed out "Contrary to actuarial advice, the directors again unilaterally amended their pension plans in 2001 to allow more early retirement packages for additional employees further decimating the funds' assets and putting both plans in deficit."

By December 2001, St. Anne-Nackawic approached the Province of New Brunswick seeking financial assistance. It was at that time that they first disclosed their precarious financial circumstances. The bank had refused to refinance their obligations.

Their parent company St. Anne Industries Ltd. took security and advanced cash to St. Anne-Nackawic.

The Province of New Brunswick with priority security loaned St. Anne-Nackawic a further fifteen million dollars (\$15,000,000.00) in July of 2002.

Notwithstanding this financial assistance, employees of St. Anne Pulp were terminated on September 14<sup>th</sup>, 2004 when St-Anne-Nackawic declared bankruptcy.

The New Brunswick Superintendent of Pensions authorized a Wind-Up of the Pension Plans on that same day.

Subsequent actuarial assessments confirmed that the unfunded liability of both plans exceeded forty-one million dollars (\$41,000,000.00).

The actions against the officers and directors specifically note their conflicts of interest in directing payments to the parent company as well as making decisions which directly resulted in creating the insolvency of both pension plans.

**c) New Brunswick Superintendent of Pensions:**

Pension plans in New Brunswick are subject to the provisions of the **Pension Benefits Act**. The New Brunswick Superintendent of Pensions, as administrator of the **Act**, is responsible for the supervision of pension plans in this province. The Office of the Superintendent of Pensions has a direct responsibility to the members of the pension plans, as residents of the Province of New Brunswick, to provide oversight as well as to implement directives to employers so pension plans remain solvent.

A specific example is the publicly disclosed fiscal deficiency in the City of Saint John Pension Plan and the ongoing negotiations between the City of Saint John and the New Brunswick Superintendent of Pensions over the past eight years.

This specific Class Action alleges that the Superintendent of Pensions failed to properly annually evaluate the two pension plans of St. Anne-Nackawic, and to order corrective measures.

More specifically, the Superintendent of Pensions failed to take any action when the officers and directors of St. Anne-Nackawic took the inappropriate steps in implementing the pension plan amendments of St. Anne-Nackawic in 1999 and 2001 that resulted in the decimation that created the forty-one million dollars (\$41,000,000.00) in unfunded liabilities.

The pleadings also allege that as a result of the failure of the Superintendent of Pensions to appropriately perform its statutory obligations under the **Pension Benefits Act**, the Province was forced to pass regulatory legislation in 2005 allowing it to retroactively exempt the province from its statutory obligations and financial exposure with respect to the St. Anne-Nackawic plans.

Specific provincial regulations were later passed on December 28<sup>th</sup>, 2005 exempting the St. Anne-Nackawic pension plans from the obligation to follow the designated distribution scheme for retired employees as well as exonerating the Superintendent of Pensions from its failure to perform its legal obligations with respect to those pension plans.

**d) Effect:**

With respect to the non-union employees, the effect was to reduce the pension benefits to 72% of the original expected pensions. In the case of the representative Plaintiff Joe Broczkowski, of Nackawic, the effect was to reduce the value of his pension by approximately \$223,000.00.

With respect to the unionized retiree, Abigail Paul, the effect was to reduce her pension by well over \$111,000.00, to 65% of the original expected pension.

The overall effect with respect to the 200 to 300 affected employees was to reduce their pensions by approximately forty-one million dollars (\$41,000,000.00).

A Class Action is a lawsuit in which the claim includes many people who have common but not identical interests and which can be incorporated in single Court proceedings, brought by one or more Plaintiffs who act as representatives of the Class, in this case the Plaintiffs Broczkowski and Paul. Class Action legislation was enacted in New Brunswick in 2007.

All of the Class members now seek damages for the actions of those who administered or oversaw the administration of the pension plans and knew or ought to have known that their actions would cause considerable reductions in the pensions of the retirees.

The action against the Superintendent of Pensions is with respect to their failure to properly perform their administrative statutory obligations under the **Pension Benefits Act** to either prevent or step in and immediately ameliorate the actions taken by the officers and directors of St. Anne-Nackawic.

The lead counsel for the representative Plaintiffs in the Class Action are Howard A. Spalding, Q.C. and Talia C. Profit, of Barry Spalding, a law firm with offices in Saint John and in Moncton.

Other counsel assisting the Barry Spalding firm and representing the Plaintiffs are Eugene J. Mockler, Q.C., of Fredericton, NB; Ward K. Branch, of Vancouver, BC; and Clint G. Docken, Q.C., of Calgary, AB.

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For further detailed information, please refer to the Barry Spalding website: [www.barryspalding.com](http://www.barryspalding.com). For further comments, Talia C. Profit can be reached at 1.506.388.4226; Howard A. Spalding, Q.C. can be reached at 1.506.633.4226 or by email at [tcp@barryspalding.com](mailto:tcp@barryspalding.com) and [has@barryspalding.com](mailto:has@barryspalding.com) .