

SETTLEMENT AGREEMENT

WHEREAS:

- A. Christopher Dalhuisen, by his Guardian Ad Litem, Cor Dalhuisen, on his own behalf and as representative of the class, and the Defendant Maxim's Bakery Ltd. ("Maxim's") (collectively, the "Parties") enter into this Settlement Agreement (the "Agreement") providing for the settlement of the action described below, pursuant to the terms and conditions set out below, subject to the approval of the Supreme Court of British Columbia;
- B. On May 7, 2000 Christopher Dalhuisen, by his Guardian Ad Litem, Cor Dalhuisen (the "Plaintiff"), filed an action against Maxim's for personal injuries he and the class sustained as a result of eating baked products manufactured, distributed, and sold by Maxim's that were tainted with *Salmonella enteritidis* bacteria (the "Tainted Pastry") in August or September 2000;
- C. On April 11, 2002 the Court rendered judgment certifying the action as a class proceeding (the "Class Action");
- D. Based on an analysis of the facts and the law and taking into account the burden and expense of litigation, as well as the fair, cost effective, and assured method of resolving claims of the class, Klein, Lyons ("Class Counsel") have concluded that this Agreement provides substantial benefits to the class and is fair, reasonable, adequate and in the best interest of the class;
- E. Counsel for Maxim's and Sovereign General Insurance Company ("Maxim's Insurer"), also concluded that this Agreement is desirable to resolve finally and completely the pending and potential claims related to Maxim's manufacture, distribution, and sale of the Tainted Pastry;
- F. Maxim's intends by this Agreement to resolve all of the present and future claims against it for or relating in any way to the conduct of Maxim's in connection with the Tainted Pastry;
- G. Maxim's and Class Counsel have agreed upon a process to provide for the settlement of all claims made across British Columbia in this Class Action;
- H. Subject to the approval of the Court, the Parties agree that the Class Action and in particular, all claims contemplated, asserted, and unasserted, and raised, directly or indirectly, shall be resolved as set forth in this Agreement as follows:

Court Approval Hearing

1. Promptly after the execution of this Agreement, the Parties shall jointly advise the Court of this Agreement and shall initiate a motion for an Order that shall:
 - a. approve this Agreement;
 - b. declare that this Agreement is fair and reasonable and in the best interest of the class;
 - c. define the class as set out in paragraph 2 below;
 - d. approve the form of notification of certification and settlement;
 - e. provide a time to opt out of the class and settlement; and
 - f. provide that this Class Action shall stand dismissed without costs upon the conclusion of all claims of the class.

Class Definition

2. The class includes persons who:
 - a. are residents of British Columbia at the date of the certification of this action;
 - b. were infected with Salmonella in August or September 2000 after eating baked goods purchased from the Defendant; and
 - c. do not opt out of this action.

(the "Class")

Notice to Class

3. The Notice of Certification and Settlement and a claim package, as approved by the Court, shall be sent to the Class by direct mail. The notice and claim package shall include a stamped self-addressed envelope to Class Counsel.
4. Class Counsel shall notify by direct mail all their known Class Members and/or their counsel. Class Counsel shall also post the Notice of Certification and Settlement and Claim Forms on its internet web site.
5. The Parties shall apply for an order directing the British Columbia Centre for Disease Control ("BCCDC") to provide to Class Counsel the names and last known address of all known Class Members. If such an order cannot be obtained, the Parties shall apply for an order directing the BCCDC to notify all Class Members by forwarding by registered and

regular mail the Notice of Certification and Settlement and the claim package to the Class Member's last known address.

6. Any communication by Class Counsel to the Class shall be as agreed by counsel or, failing agreement, as approved by the Court.
7. The Defendant shall reimburse the BCCDC and the Class Counsel for their reasonable out-of-pocket expenses in relation to this notification and mailing.

Compensation to Class Members

8. Any prior settlement negotiated by Maxim's and an infant claimant or mentally incapable adult coming within the proposed class definition prior to this Agreement and whose settlement has not yet been formally approved by the Public Guardian and Trustee or the court will be subject to the terms of this settlement agreement and will be adjusted upwards, if necessary, so that infants receive as much as they would be entitled to under the terms of the class settlement.
9. The classification and compensation of Class claims shall be as follows:

Category 1

- a. Category 1 shall include all Class Members who were infected with Salmonella as a result of consuming the Tainted Pastry and who were not admitted to hospital.
- b. Maxim's shall pay each eligible Category 1 Class Member a lump sum of \$3,750.00 and reimbursement of all reasonable and documented special damages suffered by the claimant or the claimant's family as a direct result of the Salmonella infection.

Category 2

- c. Category 2 shall include all Class Members who were admitted to hospital for less than 30 days due to the Salmonella infection as result of consuming the Tainted Pastry and whose symptoms arising from the infection have now resolved.
- d. Maxim's shall pay each eligible Category 2 Class Member the greater of:
 - i. a lump sum of \$6,500.00 plus an additional lump sum of \$600.00 for each day or part thereof spent in hospital
 - OR
 - ii. a lump sum of \$10,000.00.

- e. Maxim's shall also reimburse each eligible Category 2 Class Member for all reasonable and documented special damages suffered by the claimant or the claimant's family as a direct result of the Salmonella infection.

Category 3

- f. Category 3 shall include all those Class Members not falling within Category 1 or 2 who provide medically supported evidence of continuing symptoms relating to the Salmonella infection.
- g. Category 3 shall also include all Class Members who were admitted to hospital for 30 days or longer due to the Salmonella infection.
- h. Compensation for a Category 3 Class Member shall be as agreed by the Class Member and Maxim's. If the parties are unable to agree, the dispute shall be mediated. The Class Member and counsel for Maxim's, both acting reasonably, shall agree on the appointment of a mediator. Disputes not resolved through mediation shall be referred to and resolved by a Court appointed referee whose decision shall be binding on the parties and shall not be subject to further appeal or review. Maxim's shall bear the costs of the mediation and/or referee.

Exceptional Category 1 Claims

- i. A Category 1 Class Member who has medically supported evidence of continuing symptoms due to the Salmonella infection may, with leave of court, have the claim adjudicated in the same manner as a Category 3 claimant. If the Court denies leave, the class member shall have 30 days from the date of the denial of leave to opt out of the Class Action.

Settlements Involving Minors

- j. All Category 3 and Exceptional Category 1 settlements involving minors shall be subject to the approval of the Public Guardian and Trustee and the Court, in accordance with the provisions of the *Infants Act*, R.S.B.C. 1996, Ch. 223.

Settlements Involving Mentally Incapable Adults

- k. All Category 3 and Exceptional Category 1 settlements involving mentally incapable adults shall be subject to the approval of the court, in accordance with the provisions of the Supreme Court Rules (Rule 6).

Administration of Settlement

Proof of Membership in Class and Damages

10. Each claimant shall complete a Statutory Declaration verifying that he or she:
 - a. was a resident of British Columbia on the date of the certification of the Class Action;
 - b. consumed the Tainted Pastry in August or September 2000 and was infected with the Salmonella bacteria as a result; and
 - c. is of legal capacity and has not already accepted a settlement offer as regards the Salmonella infection.
11. For infant claims, the minor's parent or guardian or the Public Guardian and Trustee if the minor is a ward shall complete a Statutory Declaration verifying that the minor:
 - a. was a resident of British Columbia on the date of the certification of the Class Action; and
 - b. consumed the Tainted Pastry in August or September 2000 and was infected with the Salmonella bacteria as a result.
12. For claims of mentally incapable adult, the adult's legally appointed personal representative shall complete a Statutory Declaration verifying that the adult:
 - a. was a resident of British Columbia on the date of the certification of the Class Action; and
 - b. consumed the Tainted Pastry in August or September 2000 and was infected with the Salmonella bacteria as a result.
13. A claimant shall prove membership in the Class by submitting:
 - a. the appropriate Statutory Declaration referred to above; and
 - b. results of testing done in British Columbia verifying the Salmonella infection during August or September 2000.

Supporting Documentation

14. Together with a completed and executed claim form, each Class Member must mail to Maxim's Insurer, postmarked by the requisite date, the following supporting documentation:

- a. such medical documentation as is necessary to support their entitlement to anything other than Category 1 compensation;
- b. a photocopy of the Class Member's birth certificate or other acceptable proof of the Class Member's date of birth; and
- c. an authorization permitting Maxim's to obtain relevant medical records.

Special Damages and Hospitalisation

- 15. Where special damages are claimed, the Class Member's application for compensation must include the nature and amount of the special damages claimed together with supporting documentation and applicable receipts.
- 16. Where a period of admission to hospital is claimed, the Class Member must attach copies of the relevant hospital records of the dates, time, place, and reasons for admission(s) to hospital.
- 17. Where wage loss is claimed, the claimant must provide an authorization permitting Maxim's to obtain wage loss verification from the claimant's employer.

Procedure for Payments

- 18. To participate in the settlement, Class Members must provide notice of their claim to Maxim's Insurer on or before the registration deadline set by the Court.
- 19. All claims to Maxim's shall be sent to Maxim's Insurer.
- 20. Approved claims shall be sent and payable to Class Counsel who will in turn send the net proceeds to Class Members, or in the case of infants to the Public Guardian and Trustee, or in the case of mentally incapable adults to the legally appointed personal representative, after deducting Class Counsel fees and disbursements.

Disputed Claims

- 21. Maxim's may refuse to pay a claim if it can be shown on a balance of probabilities that the claimant is not a member of the Class.
- 22. Maxim's may refuse to pay a claim if it can be shown on a balance of probabilities that the special damages or period of admission to hospital has not been proven.
- 23. If Maxim's refuses to pay a claim or disputes any amount being claimed, Maxim's Insurer shall provide Class Counsel with prompt notice of same along with copies of the application in dispute and all related supporting documentation. The Class Member or Maxim's may request mediation. Maxim's and the Class Member shall equally share the cost of the mediation. If Maxim's and the Class Member are unable to resolve the claim

by mediation, the dispute shall be forwarded to a Court appointed referee whose decision shall be binding on the parties and shall not be subject to further appeal or review. The costs of the referee shall be paid by the unsuccessful party, as determined at the discretion of the referee.

24. If a Class Member and Maxim's are not in agreement as to the membership of a Class Member in Category 3, the matter shall be resolved by application to the Court.
25. For any disputed claims, Maxim's shall have the same rights to document discovery, examinations for discovery and independent medical examinations as are provided for by Rules 26 – 32A of the Supreme Court Rules. Maxim's shall pay any reasonable taxable costs.

Release

26. Each Class Member shall, as a condition of receipt of the settlement amount, sign a release in a form to be agreed upon by Class Counsel and counsel for Maxim's. Failing agreement of counsel, the terms of the Release shall be settled by Court Order.

Opting out of the Agreement

27. All persons who fall within the definition of the Class but who do not want to participate in the settlement of the Class Action must opt out of the Class on or before the deadline set by the Court.
28. Any decision to opt out on behalf of an infant claimant or mentally incapable adult claimant should be reviewable by the Public Guardian and Trustee and/or the court.

Miscellaneous

29. Upon Court approval, Class Members (other than those who validly opt out of the Class Action) shall be deemed to have accepted the terms of the Agreement and to have released Maxim's and any of Maxim's' successors, parents, subsidiaries, assigns, affiliates, and past, present, future directors, officers, lawyers, employees, agents, consultants, advisors, and other representatives of any type (collectively the "Released Parties") from any and all claims, law suits, demands and causes of action that were asserted or could have been asserted by or on behalf of or through the Plaintiff or any Class Member individually, collectively or otherwise, based upon any conduct of Maxim's or the Released Parties in respect of the matters that were asserted or could have been asserted in the Class Action.
30. Nothing in this Agreement shall constitute or shall be deemed to constitute a waiver by Maxim's of defences based on statutes of limitation or repose, prescription periods, or any other limitation or prescription defences with respect to any Class Member who opts out of the Agreement, is deemed to opt out of the Agreement, or in the event the

Agreement is terminated, brings or continues an action against Maxim's, subject to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

31. Upon Court approval and the expiry of each of the relevant deadlines and payment of all claims, the Parties shall file a consent to the dismissal of the Class Action with prejudice on a without costs basis together with any other documents which may be necessary for the dismissal of the Class Action.
32. This Agreement constitutes the entire agreement between the Parties pertaining to the Class Action, and supersedes all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written, which may have occurred prior hereto. There are no other warranties or representations between the Parties in connection with the subject matter of this Agreement, except as specifically set forth herein and no such other warranties or representations have been relied upon by the Parties in entering into this Agreement.
33. The law of the Province of British Columbia governs this Agreement.
34. This Agreement may be executed in counterparts.
35. The Parties acknowledge that they have required that this Settlement and all related documents be prepared in English.
36. Class Counsel may apply for approval of a fee payable by Class Members for claims settled pursuant to this Agreement. Approval of this fee is not a condition of this Settlement. Maxim's shall take no position on any such application.

Dated at Vancouver, this ____ day of July 2002.

Christopher Dalhuisen, the Representative Plaintiff,
by his counsel, David A. Klein.

Maxim's Bakery Ltd.
by its counsel, L. Clive Boulton
