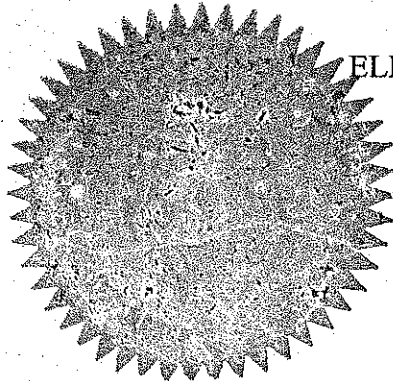


**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) MONDAY, THIS 9TH DAY
JUSTICE PAUL PERELL) OF MARCH, 2009

BETWEEN:



CEZANNE BILODEAU, OLGA POUSTOVAR,
ELIZABETH MOROSKY by her litigation guardian DAVID MOROSKY,
DAVID MOROSKY personally, WILLIAM GRIMES,
ANNE GRIMES, RONALD J. ROSE, HEATHER DOWLING,
SHIRLEY VANDAELE, DAVID DOWLING,
and DONNA HYLAND

Plaintiffs

- and -

MAPLE LEAF FOODS INC. and
MAPLE LEAF CONSUMER FOODS INC.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992, S.O.
1992, C.6, as amended

J U D G M E N T

THIS MOTION made by the plaintiffs, for an order certifying the action for settlement purposes, for judgment pursuant to s. 29(2) of the *Class Proceedings Act*, 1992 approving the Settlement Agreement between the parties, dated December 17, 2008, and for an order approving the fees and disbursements of Class Counsel, was heard on March 5, 2009 at the court house, 361 University Avenue, Toronto, Ontario.

ON READING the materials filed, including the following:

- (a) the Settlement Agreement and all annexes thereto;
- (b) the affidavits of:
 - (i) Luciana Brasil, sworn February 27, 2009 and March 4, 2009, and exhibits thereto;
 - (ii) Rachel Hepburn Craig, sworn February 27, 2009, and exhibits thereto;
 - (iii) Sakie Tambakos, sworn February 27, 2009 and March 5, 2009, and exhibits thereto;
 - (iv) Ronald J. Rose, sworn February 26, 2009, and exhibits thereto;
 - (v) David Morosky, sworn February 28, 2009, and exhibits thereto;
 - (vi) Laura Bruneau, sworn March 3, 2009, and exhibits thereto; and,
 - (vii) Evatt Merchant, sworn March 4, 2009.

AND ON BEING ADVISED that:

- (a) the parties consent to this Judgment;
- (b) Bruneau Group Inc. consents to being appointed Claims Administrator and Trustee in accordance with the Settlement Agreement;
- (c) Reva Devins and Pierre Sébastien consent to being appointed as Arbitrators in accordance with the Settlement Agreement and Claims Protocol.

AND ON HEARING the submissions of counsel for the plaintiffs and the defendants, no objectors appearing, the written objections set out in exhibit "C" to the affidavit of Laura Bruneau having been considered,

Definitions

1. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Judgment, the capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement attached hereto as Schedule "A" (hereinafter Settlement Agreement).

Certification

2. **THIS COURT ORDERS** that:

- (a) this action is hereby certified as a class proceeding for settlement purposes only on behalf of the following classes (collectively, the "Ontario Class");

"All persons resident in Ontario, Alberta and British Columbia, excluding the defendants and their senior employees, who purchased or consumed products included in the Recall other than persons and corporations who purchased the products included in the Recall for resale purposes." (the "Ontario Primary Class")

"All persons who by reason of his or her relationship to a member of the Class are entitled to make claims under the *Family Law Act*, R.S.O. 1990, c. F.3, or would have been entitled had such persons resided in Ontario." (the "Ontario Family Class")

- (b) Ronald J. Rose is hereby appointed as the representative plaintiff for the Ontario Primary Class;
- (c) David Morosky is hereby appointed as the representative plaintiff for the Ontario Family Class;

- (d) Branch MacMaster, Docken & Company; Falconer Charney, LLP, Hotz Lawyers, Merchant Law Group, LLP, Rochon Genova LLP; Stevensons LLP; and Sutts, Strosberg LLP are hereby appointed as class counsel for the Ontario Class;
- (e) the common issue certified is:

“What, if any, liability do the defendants have to members of the Ontario Class arising from, or relating to, all claims in connection with the Recall.”
- (f) the nature of the claims asserted by the representative plaintiffs and the Ontario Class are strict liability, negligence, breach of the *Consumer Protection Act*, S.O. 2002, c. 30 and equivalent in other provinces, and waiver of tort; and
- (g) the relief sought by the representative plaintiffs and the Ontario Class is damages, disgorgement of benefits that have accrued to the defendants and waiver of tort.

Settlement Approval

3. **THIS COURT ORDERS** that the Settlement Agreement in its entirety, including its preamble and annexes, subject to paragraphs 5 and 6 below, but excluding any elements relating to authorization and settlement approval in the provinces of Québec and Saskatchewan, is approved and incorporated by reference into this Judgment, except as otherwise amended by this Judgment. This Judgment, including the Settlement Agreement, is binding upon the representative plaintiffs, upon all Ontario Class members

who do not opt out of the Ontario Class in accordance with this Judgment, and upon the defendants.

4. **THIS COURT ORDERS** that the Claims Administration and Arbitration Protocol attached hereto as Schedule "B" is approved and incorporated by reference into this Judgment.

5. **THIS COURT ORDERS** that the Settlement Agreement is revised on consent of the parties to reflect the revised definition of Ontario Family Class set out herein;

6. **THIS COURT ORDERS** that the revised Compensation Grid attached hereto as Schedule "C" is approved and incorporated by reference into this Judgment.

7. **THIS COURT ORDERS AND DECLARES** that the settlement of this action as described herein and in the Settlement Agreement:

- (a) is fair, reasonable, and in the best interests of the Ontario Class;
- (b) is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992*;
and
- (c) shall be implemented in accordance with the terms of the Settlement Agreement.

8. **THIS COURT ORDERS** that Bruneau Group Inc. is hereby appointed as Claims Administrator and Trustee in accordance with the Settlement Agreement and Claims Administration and Arbitration Protocol, and that all fees and disbursements of Bruneau Group Inc. are to be paid from the Settlement Funds.

9. **THIS COURT ORDERS** that Reva Devins and Pierre Sébastien be appointed as Arbitrators for the Settlement (the "Arbitrators"), that either Arbitrator shall conduct Arbitrations and appeals from the Claims Administrator's assessments, pursuant to the applicable provisions of the Settlement Agreement and Claims Administration and Arbitration Protocol, and if, for any reason, any appointed Arbitrator is unable to fulfill any of the duties set out in the Settlement Agreement and Claims Administration and Arbitration Protocol, another Arbitrator shall be appointed in his/her place.

10. **THIS COURT ORDERS** that the fees and disbursements of the Arbitrators are to be paid from the Settlement Funds.

Notice of Certification and Settlement Approval

11. **THIS COURT ORDERS** that the Ontario Class members shall be given notice of certification and Settlement approval in accordance with this Judgment, substantially in the form of the notice attached hereto as Schedule "D", which is hereby approved, and substantially in the manner set out in the notice plan previously provided to the court on January 14, 2009, as amended to authorize the Claims Administrator to make inquiries about any residential institutions that may have purchased the products in the Recall and to include the residents of those institutions in the direct mail component

of the notice plan (the "Notice Plan"), which plan is hereby approved and satisfies the requirements of ss. 17, 19 and 29 of the *Class Proceedings Act, 1992*.

12. **THIS COURT ORDERS** that the cost of providing notice to the Ontario Class of certification and Settlement approval in accordance with the Notice Plan is to be paid from the Settlement Funds.

13. **THIS COURT ORDERS** that the Claims Administrator shall file an affidavit with the court confirming that notice was given in accordance with this Judgment.

14. **THIS COURT ORDERS** that the cost of providing the Notice of Proposed Certification and Settlement is to be paid or reimbursed from the Settlement Funds.

Releases

15. **THIS COURT ORDERS** that each Ontario Class member who does not opt out shall submit to the jurisdiction of this court, and that the Releasees are hereby released from any and all of the settled claims as provided for in the Settlement Agreement.

16. **THIS COURT ORDERS** that in consideration of the payments made to the Provincial Health Care Plans as provided for herein and in the Settlement Agreement, Provincial Health Care Plans will be deemed to release and forever discharge the

defendants from any and all actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, claims and demands whatsoever that were asserted or could have been asserted by or on behalf of any Class Member relating to the Recall. Provincial Health Care Plans may not make any claims, or take or continue any proceedings against any person, partnership, corporation, or other entity who might claim contribution or indemnity or any other relief of a monetary, declaratory or injunctive nature from the defendants in connection with the claims released in this Settlement Agreement.

Class Counsel Fees

17. **THIS COURT ORDERS** that the following fees, disbursements and taxes of Class Counsel, which are to be paid forthwith from the Settlement Funds, are fair and reasonable and are hereby approved, with the remainder of the amounts for which approval may be sought by Class Counsel to be dealt with by further order of this court:

- (a) \$3,000,000.00, plus GST and any applicable provincial taxes;
- (b) ^{120,867.33 ✓PMP}
~~\$118,958.57~~ for disbursements, plus GST and any applicable provincial taxes.

18. **THIS COURT ORDERS** that there shall be no further application for approval of fees until the Claims Administrator has provided its report establishing that Enhanced Payments have been paid in full.

Opting Out

19. **THIS COURT ORDERS** that Ontario Primary Class members may opt out of this class proceeding by sending a fully completed Opt-Out Form, substantially in

the form of the Opt-Out Form attached as Schedule "E" and all necessary supporting documentation as set out in the Opt-Out Form, to the Claims Administrator which, to be effective, must be received or postmarked on or before 90 days after publication of the Notice of Approval of Certification and Settlement (the "Opt-Out Deadline").

20. **THIS COURT ORDERS** that if any Ontario Primary Class member, or the executor, administrator or personal representative of a deceased person who, had he or she not died, would have been an Ontario Primary Class member, elects to opt out of this class proceeding, each and every Ontario Family Class member related to the Ontario Primary Class member who has opted out is deemed to also have opted out of this class proceeding.

21. **THIS COURT ORDERS** that any person who has opted out of this action is not bound by the Settlement Agreement and may not participate in any continuation of, amendment of, or settlement of this action.

22. **THIS COURT ORDERS** that, subject to paragraph 20, no person may opt out a minor (based on the province of residence) or mentally incapable adult without the permission of the Court on notice to the Office of the Public Guardian and Trustee or The Office of the Children's Lawyer as appropriate.

23. **THIS COURT ORDERS** that within 30 days of the Opt-Out Deadline, the Claims Administrator shall report to the Court, the defendants and Ontario Class counsel, the names of those persons, if any, who have opted out of the action.

Claims Period

24. **THIS COURT ORDERS** that, subject to a further order of the Court, the Claims Period shall expire at 5:00 p.m. Eastern Standard Time on November 2, 2009.

25. **THIS COURT ORDERS** that at the expiration of the Claims Period, the Claims Administrator shall report to the Court, on notice to the Trustee, Counsel and Maple Leaf as to its preliminary calculation of the Opt Out Reserve Credits. At that time the Court will give all necessary directions, including directions as to the establishment and quantum of the Opt Out Reserve Fund, and may authorize the interim distributions to the Eligible Claimants out of the balance of the Settlement Funds.

Directions

26. **THIS COURT ORDERS** that the representative plaintiffs, Class Counsel, the defendants or the Claims Administrator may apply to the Court for directions in respect of the implementation of the Settlement Agreement or any other matter related thereto, including when the Eligible Claimants shall be paid and how *Cy-Près* Payments, if any, shall be paid.

Miscellaneous

27. **THIS COURT ORDERS** that it reserves the right to approve at a later date, upon application by Class Counsel, lump sum payments to one or more of the

Provincial Health Care Plans in lieu of payments on a claim by claim basis according to the value of health services provided to Eligible Claimants.

28. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved on behalf of parties under a disability.

29. **THIS COURT ORDERS** that the need for further service of the Office of the Public Guardian and Trustee and The Office of the Children's Lawyer, as well as the other requirements in Rule 7 of the *Rules of Civil Procedure*, except as may expressly be stated herein, are dispensed with.

30. **THIS COURT ORDERS** that subject to a further Order of the Court, any amounts payable to minor members of the Ontario Class pursuant to the terms of the Settlement Agreement shall be paid to the Accountant of the Ontario Superior Court of Justice in accordance with Rule 7.09 of the *Rules* to be held to the credit of that minor until he or she attains the age of majority in the province in which the minor is resident.

31. **THIS COURT ORDERS** that no person may bring any action or take any proceedings against the Claims Administrator, Arbitrators, Trustee or any of their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the administration of the settlement terms and payments except with leave of the Court.

Contingent Approval

32. **THIS COURT ORDERS AND DECLARES** that this Judgment and approval of the Settlement Agreement is contingent upon the final approval of the Court of Queen's Bench of Saskatchewan and la Cour supérieure du Québec of the same Settlement Agreement. This Judgment shall, if either the defendants or the representative plaintiffs elect, be of no force and effect in the event that:


- (a) the Court of Queen's Bench of Saskatchewan and la Cour supérieure du Québec refuse to approve the Settlement Agreement and issue an order substantially in this form; or
- (b) the judgment or the certification and settlement approval order issued by the Court of Queen's Bench of Saskatchewan or la Cour supérieure du Québec, or any of their significant constituent elements, are reversed, vacated, overturned, set aside or modified, by this Honourable Court or by the Court of Queen's Bench of Saskatchewan or la Cour supérieure du Québec, or on appeal.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 16 2009

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:





JUSTICE PERELL

BILODEAU et al.
Plaintiffs

-and- MAPLE LEAF FOODS INC. et al.
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

JUDGMENT

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