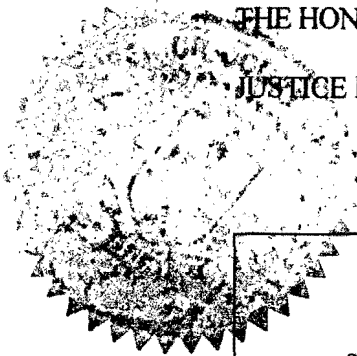


**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE PATRICIA HENNESSY

) TUESDAY, THE 4<sup>TH</sup> DAY  
)  
) OF MARCH, 2014.



<p style="text-align: center;">Court File # CV4802/10</p> <p style="text-align: center;"><b>ONTARIO SUPERIOR COURT OF JUSTICE</b></p> <p>BETWEEN:</p> <p style="text-align: center;">BRADLEY BELL, STEPHANIE PAUL and DANIEL GOGUEN Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">CARA OPERATIONS LIMITED, 1233280 ONTARIO INC. and COLABOR LIMITED PARTNERSHIP / COLABOR, SOCIETE EN COMMANDITE carrying on business as SUMMIT FOOD SERVICE DISTRIBUTORS Defendants</p> <p style="text-align: center;"><i>Proceeding under the Class Proceedings Act, 1992</i></p>	<p style="text-align: center;">Court File # CV-10-4802-CPA1</p> <p style="text-align: center;"><b>ONTARIO SUPERIOR COURT OF JUSTICE</b></p> <p>BETWEEN:</p> <p style="text-align: center;">BRADLEY BELL, STEPHANIE PAUL and DANIEL GOGUEN Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">CARA OPERATIONS LIMITED, 1233280 ONTARIO INC. and COLABOR LIMITED PARTNERSHIP / COLABOR, SOCIETE EN COMMANDITE carrying on business as SUMMIT FOOD SERVICE DISTRIBUTORS Defendants</p> <p style="text-align: center;">and</p> <p style="text-align: center;">BAMFORD PRODUCE COMPANY LIMITED Third Party</p> <p style="text-align: center;"><i>Proceeding under the Class Proceedings Act, 1992</i></p>
<p style="text-align: center;">Court File No. CV-10-4802-CPB1</p> <p style="text-align: center;"><b>ONTARIO SUPERIOR COURT OF JUSTICE</b></p> <p>BETWEEN:</p> <p style="text-align: center;">BRADLEY BELL, STEPHANIE PAUL and DANIEL GOGUEN Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">CARA OPERATIONS LIMITED, 1233280 ONTARIO INC. and COLABOR LIMITED PARTNERSHIP / COLABOR, SOCIETE EN COMMANDITE carrying on business as SUMMIT FOOD SERVICE DISTRIBUTORS Defendants</p> <p style="text-align: center;">and</p> <p style="text-align: center;">VIBO CANADA PRODUCE INC., VIBO PRODUCE L.L.C. and R.A. RASMUSSEN &amp; SONS, INC. Fourth Parties</p> <p style="text-align: center;"><i>Proceeding under the Class Proceedings Act, 1992</i></p>	

**JUDGMENT**

THIS MOTION, made by the plaintiffs for an order approving the proposed settlement, and approving class counsel fees and disbursements, was heard on this day at the Court House, 360 Plouffe Street, North Bay, Ontario.

ON READING the order of Justice Hennessey dated May 31, 2010, certifying this action as a class proceeding, and on reading the material filed,

AND ON HEARING the submissions of Class Counsel, counsel for the Defendants and counsel for the Third Party Defendant and Fourth Party Defendant,

AND ON BEING ADVISED that notice of the proposed settlement was given to the Public Guardian and Trustee and to the Children's Lawyer,

AND ON BEING FURTHER ADVISED that

- (a) the parties consent to this order;
- (b) Bruneau Group consents to being appointed as Administrator; and
- (c) Reva Devins consents to being appointed as Referee;

AND ON BEING ADVISED of the objection to this settlement,

1. THIS COURT ORDERS that, for the purposes of this Judgment and Distribution Plan, the following definitions apply:

- (a) **“Action”** means the action *Bradley Bell et. al v. Cara Operations Limited et al.*, court file no. 4802/10 commenced in the Court in North Bay, including all crossclaims and third and fourth party proceedings;
- (b) **“Administrator”** means Bruneau Group or its successor appointed from time to time by the Court;
- (c) **“Claim Form”** or **“Claim Forms”** means claim forms which are substantially in accordance with the forms attached hereto as Schedule **“B”**;
- (d) **“Claims Bar Date”** means March 18, 2015 for all Class Members who are not **Minors**;
- (e) **“Class”** or **“Class Members”** means, for the purposes of this settlement, all persons excluding the **Defendants’** employees, who consumed food and/or beverage from the **Restaurant** during the **Class Period**, and all persons who were secondarily infected with **E.coli** as a result of contact with a person who consumed food and/or beverage from the **Restaurant** during the **Class Period** who did not opt out of this action;
- (f) **“Class Counsel”** means Sutts, Strosberg LLP and Hotz Lawyers;
- (g) **Class Counsel Fees** means the fees, disbursements, costs, GST and other applicable taxes or charges of **Class Counsel**;
- (h) **“Class Period”** means the period from and including September 12, 2008 to and including October 12, 2008;
- (i) **“CPA”** means *Class Proceedings Act, 1992*;
- (j) **“Court”** means the Ontario Superior Court of Justice;
- (k) **“Defendants”** means Cara Operations Limited, 1233280 Ontario Inc., Colabor Limited Partnership/Colabor, Societe en Commandite carrying on business as Summit Food Service Distributors, Bamford Produce Company Limited, and R.A. Rasmussen & Sons, Inc.;
- (l) **“Distribution Plan”** means the plan for distributing the funds due and payable under this judgment to the **Class Members** and **Family Class Members** and to **Class Counsel** on account of **Class Counsel Fees**;
- (m) **“E.coli”** means Escherichia Coli 0157:H7;

- (n) **“Family Class” or “Family Class Members”** means, for the purposes of this settlement, the same-sex partner, spouse, child, grandchild, parent, grandparent or sibling of a **Class Member** who did not opt out of this action;
- (o) **“Fee Agreement”** means the Contingency Fee Retainer Agreement between Class Counsel and the plaintiffs made as at October 22, 2008;
- (p) **“FLA”** means *Family Law Act*, R.S.O. 1990, c.F.3;
- (q) **“Medical Records”** includes, but is not limited to, all notes, reports, diagnostic images, test results and any other record, directly or indirectly related to **E.coli** infection;
- (r) **“Minor” or “Minors”** means a person, who as of the date of this judgment, has not attained the age of 18 years;
- (s) **“Minor Notice Form”** means the form alerting the Administrator that the Minor Class Member intends to file a claim, substantially in accordance with the forms attached hereto as Schedule “C”;
- (t) **“Notice”** means a notice of the **Settlement** of this **Action** substantially in the form of the **Notice** attached as Schedule “D”;
- (u) **“Notice Program”** means the method of giving **Notice** to the **Class Members** and the **Family Class Members** particularized in paragraph 4;
- (v) **“Referee”** means Reva Devins or her successor appointed from time to time by the **Court**; and
- (w) **“Restaurant”** means Harvey’s/Swiss Chalet which is located at 1899 Algonquin Avenue in North Bay, Ontario;

2. THIS COURT ORDERS AND DECLARES that the settlement and the Distribution Plan, annexed hereto as Schedule “A”, which is incorporated by reference into this judgment, are fair, reasonable and in the best interests of the Class and the Family Class and are hereby approved.

3. THIS COURT ORDERS that the Administrator and the Referee are appointed, each with the duties and responsibilities set out in the Distribution Plan and in this judgment.

4. THIS COURT ORDERS AND DECLARES that, on or before March 18, 2014, the Notice Program, giving Notice of this judgment and the Distribution Plan, must be implemented as follows:

- (a) by Class Counsel emailing the Notice to every person who registered with Class Counsel and provided a valid email address;
- (b) by Class Counsel delivering the Notice by regular mail to every person who registered with Class Counsel and provided a valid mailing address, but did not provide a valid email address at the Defendants' expense;
- (c) by Class Counsel delivering the Notice by regular mail to every person who appeared on the list of individuals who contacted the North Bay Parry Sound District Health Unit in connection with the E.coli outbreak at the Restaurant, at the Defendants' expense, which list was delivered to Class Counsel pursuant to the certification order dated May 31, 2010;
- (d) by Class Counsel posting the Notice on the website [www.harveysclassaction.ca](http://www.harveysclassaction.ca) ;
- (e) by Class Counsel sending the notice by email to the Public Trustee and the Children's Lawyer;
- (f) by Class Counsel providing the Notice to any person who requests it and provides an email address or a mailing address;
- (g) by the Defendants purchasing an advertisement on Google.com which will provide a link to the Notice of Settlement to web-based searchers and which will remain in place until the Claims Bar Date; and
- (h) by the Defendants sending the Notice to all Class Members with whom they have been in contact.

5. THIS COURT DECLARES that the notice program provided for in this judgment satisfies the requirements of s. 17 of the *CPA*.

6. THIS COURT ORDERS AND APPROVES the Claim Forms which are attached hereto as Schedule "B".

7. THIS COURT ORDERS that each Class Member (with the except of any Minor) who qualifies to participate in the Distribution Plan must submit a Claim Form and any required supporting documents or information on or before the Claims Bar Date, or else have their claim to participation in the Distribution Plan and compensation thereunder barred.

8. THIS COURT ORDERS that a Minor must deliver a completed Minor Notice Claim Form to the Administrator on or before the Claims Bar Date in order to preserve the right of the Minor and the Minor's Family Class Members to submit a Claim Form in the future, or else have their claim to participation in the Distribution Plan and compensation thereunder barred, subject to any further orders of the Court.

9. THIS COURT ORDERS that the claims of any Minor may be adjudicated by the Court or the Referee/Administrator, at the option of the Minor or the legal representative of the Minor.

10. THIS COURT ORDERS that the procedure for determining the claim period for Minors is as follows:

- (a) the Minor may choose to make a claim at any time before the Claims Bar Date; or

- (b) any party to this Action may apply to the Court in writing to have the Minor's claim adjudicated in accordance with the procedure set out in the Distribution Plan; or
- (c) if no earlier date is chosen by the Minor or set by the Court, the time for the Minor to deliver a Claim Form shall expire six months after the Minor attains 18 years of age.

11. THIS COURT ORDERS AND DECLARES that each Class Member who submits a Claim Form and any required supporting documents or information to the Administrator on or before the Claims Bar Date is deemed to have also submitted a claim on behalf of all of their Family Class Members identified on the Claim Form and the award to the Family Class Members shall be divided in accordance with the grid set out in the Distribution Plan.

12. THIS COURT ORDERS that the Administrator shall deliver any cheques payable to the Family Class Members, to the address of the person making the claim on behalf of the Class Member, unless the Administrator is specifically directed otherwise.

13. THIS COURT ORDERS that the Administrator shall pay any of the following awards to the Accountant of the Superior Court of Justice to the credit of the Minor, until the Minor attains the age of eighteen years, at which time the Accountant shall pay the amount to the Minor and the Minor's Family Class Members without any further order of the Court:

- (a) awards payable to a Class Member or a Family Class Member who is a Minor; and
- (b) awards payable to the Family Class Member(s) of a Minor, even if such Family Class Member(s) have attained 18 years of age.

14. THIS COURT ORDERS AND DECLARES that if a Class Member does not submit a Claim Form and any required supporting documents or information, or a Minor Notice Form or Claim Form and any required supporting documents or information in the case of a Class Member who is a Minor, to the Administrator on or before the Claims Bar Date, that the Class Member and all of their Family Class Members, and each of their respective heirs, executors and assigns shall be forever barred from participating in the Distribution Plan and receiving compensation thereunder but shall, in all other respects, be bound by the terms of this judgment.

15. THIS COURT ORDERS AND DECLARES each Class Member, each Family Class Member and each of their respective heirs, executors, administrators, estate trustees and assigns does hereby release and forever discharge the Defendants, their heirs, executors, officers, directors, agents, servants, employees, affiliates, subsidiaries, and insurers from all claims, suits, actions, causes of action, or demands whatever which the Class Member ever had, now has, or which the Class Member or his or her heirs, executors, successors or assigns may at any time in the future have against the Defendants by reason of, arising out of, or in any way connected with any injury or damaged caused by consumption of food and/or beverage at the Restaurant, including those claims that are the subject matter of the Action.

16. THIS COURT ORDERS AND DECLARES that, unless a Class Member successfully opted out of the Action in accordance with the order of Justice Hennessy made on May 31, 2010, this judgment and the Distribution Plan are binding upon all of



the Class Members and Family Class Members and each of their respective heirs, executors, administrators and assigns including those who are Minors, unborn persons or persons under a disability and the requirements of rule 7.08(4) of the *Rules of Civil Procedure* with respect to this judgment and the Distribution Plan are dispensed with.

17. THIS COURT ORDERS that:
- (a) the Defendants are directed to forthwith pay \$75,000 to Sutts, Strosberg LLP, in trust, on account of the settlement funds payable to the Ministry of Health and Long-Term Care;
  - (b) the Defendants shall deliver funds to satisfy any awards payable under this judgment and Distribution Plan to the Administrator within 30 days of being advised by the Administrator that such funds are due and payable;
  - (c) the Defendants are directed to forthwith pay Sutts, Strosberg LLP, in trust, \$150,000 on account of partial Class Counsel Fees, and up to \$40,000 on account of the disbursements incurred by Class Counsel plus taxes thereon; and
  - (d) the Administrator is authorized and directed to pay Sutts, Strosberg LLP the balance of Class Counsel Fees of 15% of the awards to be paid to Class Members and Family Class Members under this judgment and Distribution Plan, plus taxes thereon.

18. THIS COURT ORDERS that if any Class Member or any Family Class Member retains Class Counsel to appeal from the Administrator's decision or to act on an individual assessment of damages, Class Counsel shall be paid the amounts set out in paragraph 17(d) above plus any reasonable disbursements incurred, plus taxes, and the Administrator is authorized and directed to pay these amounts.

19. THIS COURT ORDERS AND DECLARES that the Class Counsel Fees awarded in this judgment are a first charge in favour of Class Counsel.

20. THIS COURT ORDERS that the Defendants shall pay all reasonable fees and disbursements of the Administrator and Referee plus taxes thereon.

21. THIS COURT ORDERS that Class Counsel, the Defendants, the Administrator or the Referee may make a motion to the Court for directions.


22. THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceeding against the Referee or Administrator or any of their employees, agent, partners, associates, representatives, successors or assigns for any matter in any way relating to the settlement agreement, the implementation of this order or the administrator of the settlement agreement, except with leave of the Court.

23. THIS COURT ORDERS that the subrogated claims of the Ministry of Health and Long Term Care be and are hereby released, and dismissed with prejudice and without further costs, save and except for the subrogated claim relating to the Minor Class Member whose identity is known to the Defendants.

24. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, the Action, including all crossclaims, third party claims and fourth party claims be and are hereby dismissed, with prejudice and without further costs.

25. THIS COURT ORDERS that a copy of this judgment shall be served upon The Children's Lawyer and the Public Guardian and Trustee by email.

  
JUSTICE

ENTERED AT NORTH BAY  
In Book No. 98  
On MAR 18 2014  
Document No. 0052-11  
By 

BRADLEY BELL et al.

Plaintiffs

vs. CARA OPERATIONS LIMITED et al.

Defendants

Court File No. CV4802/10

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR  
(Transferred to North Bay)

**JUDGMENT**

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FILE: 43 204 000  
REF: SRS/mu