

C A N A D A

(Class action)
SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-000640-132

BETWEEN :

LYDIA KENNEDY

Plaintiff

and

COLACEM CANADA INC.

Defendant

SETTLEMENT AGREEMENT

WHEREAS on June 8, 2011, the Plaintiff filed a Motion to Authorize the Bringing of a Class Action and to Obtain the Status of Representative (the “**Class Action**”) against the Defendant;

WHEREAS on January 29, 2015, the Honorable Donald Bisson, of the Superior Court of Québec, authorized the Class Action against the Defendant, on behalf of the following class (the “**Class**”):

All natural persons who are residing or have resided full or part time between June 8, 2008 and January 29, 2015 in the following zone: either the municipality of Grenville-sur-la-Rouge or the municipality of Harrington, in Quebec, AND within a five (5) kilometre radius of the Colacem Canada Inc. cement production plant, located on Kilmar Road in Grenville-sur-la-Rouge, Quebec.

AND

All legal persons who are or have been, between June 8, 2008 and January 29, 2015, owners or lessees of a piece of land, an immovable or a business located in this same zone. To qualify, a legal person must not, between June 8, 2010 and June 8, 2011, have had under its direction or control more than 50 persons bound to it by contract and must not be dealing at arm's length with Mrs. Lydia Kennedy, class representative.

WHEREAS on April 28, 2015, the Plaintiff filed a Motion Introductory of Class Action Proceedings (the “**Application**”);

WHEREAS the hearing on the merits, in this case, was scheduled from September to November 2020, for a period of thirty-four (34) days;

WHEREAS the Defendant has denied and continues to deny the merits of the allegations and the damages claimed through the Application and has denied and continues to deny any misconduct or liability of any kind in relation to the exercise of this Class Action;

WHEREAS the parties have agreed to settle this Class Action out of Court, in accordance with the terms set out below, the purpose of this Agreement being to completely and definitively resolve all Class Member claims relating to this Class Action;

WHEREAS the Parties have conducted negotiations to reach an out of Court settlement of this Class Action and the Plaintiff and Class Counsel are of the view that the proposed Settlement is just and reasonable and that it best serves the interests of the Class Members in the circumstances; and

WHEREAS the Agreement and its approval by the Court shall not constitute for the Defendant any admission of liability of any kind or the existence of any damage whatsoever and that this Agreement is entered into for the sole purpose of buying peace and to avoid the additional costs and disbursements of a trial, as well as to take into account the risks and delays involved in holding such a trial.

THE PARTIES AGREE AS FOLLOWS:

I. INTERPRETATION

1. The recitals form an integral part of this Agreement.
2. Unless otherwise specified, all amounts referred to herein are in lawful money of Canada.
3. Unless the context requires otherwise, the singular includes the plural and vice versa, and a word used in the masculine gender includes the feminine and vice versa.
4. Unless otherwise specified, the delay within which or after which a payment must be made or an action must be taken is calculated by excluding the day where the delay starts to run, but including the day where it ends. Such delay is automatically prolonged to the next business day if the last day of the delay is not a business day.

II. DEFINITIONS

5. Unless the context requires otherwise, the following definitions apply to the Agreement and its Schedule :
 - (a) **“Affected Property”**, means a property within the region described in the Class definition;

- (b) **“Agreement”**, means this Settlement Agreement, including the Distribution Protocol;
- (c) **“Application”** has the meaning provided in the third “Whereas” of the recitals of this Agreement;
- (d) **“Approval Order”**, means the judgment to be rendered by the Court approving the Agreement;
- (e) **“Claim”**, means a claim to obtain compensation from the Settlement Amount;
- (f) **“Claims Administrator”**, means the firm proposed by Class Counsel, as approved by Counsel for the Defendant and appointed by the Court for the administration of the Agreement in accordance with its terms and in accordance with the Distribution Protocol;
- (g) **“Claims Deadline”**, means the deadline for filing a Claim, which shall be no later than 90 days after the last publication of a Notice to Members informing them of the approval of the Agreement and of the Distribution Protocol;
- (h) **“Class”**, has the meaning provided in the second “Whereas” of the recitals of this Agreement;
- (i) **“Class Action”**, has the meaning provided in the first “Whereas” of the recitals of this Agreement;
- (j) **“Class Counsel”**, means the law firm Siskinds, Desmeules, Avocats, s.e.n.c.r.l.;
- (k) **“Class Counsel Fees”**, means an amount not exceeding 25% of the Settlement Amount plus applicable taxes;
- (l) **“Class Member”**, means a member of the Class who has not excluded himself from the Class in accordance with article 580 of the *Code of Civil Procedure*;
- (m) **“Costs”**, means the judicial costs incurred by Class Counsel, plus applicable taxes, in pursuing this Class Action, which amount to a global sum of \$135,000;
- (n) **“Counsel for the Defendant”**, means the law firm Osler, Hoskin & Harcourt LLP;
- (o) **“Court”**, means the Superior Court of Québec.
- (p) **“Defendant”**, means Colacem Canada Inc.;
- (q) **“Distribution Protocol”**, means the document attached as Schedule A, providing for the manner in which the Settlement

Amount will be distributed to the Class Members, to be approved by the Court;

- (r) **“Notice Approval Hearing”**, means the hearing where the Court will be asked to approve the Notice to Members and to appoint the Claims Administrator;
- (s) **“Notice to Members”**, means the notices informing Class Members of the Agreement and of the date of the Settlement Approval Hearing;
- (t) **“Parties”**, means the Plaintiff and the Defendant;
- (u) **“Plaintiff”**, means Lydia Kennedy;
- (v) **“Releasors”**, means the Class Members, their directors, officers, employees, mandataries, representatives, agents, managers, business partners, shareholders, partners (in their capacity as partners and in their personal capacity) and their affiliated companies, predecessors, successors, heirs, beneficiaries and insurers;
- (w) **“Settlement Amount”** means the sum of 1.3 million dollars; and
- (x) **“Settlement Approval Hearing”**, means the hearing where the Court will be asked to approve the Agreement in accordance with article 590 of the *Code of Civil Procedure*; and
- (y) **“Zone”** has the meaning provided in the first paragraph of the Distribution Protocol attached as Schedule A of this Agreement.

III. THE AGREEMENT

- 6. Subject to Court approval, the Parties agree to settle completely and definitively the dispute existing between them.
- 7. The Defendant agrees to pay the Settlement Amount, plus an additional amount corresponding to the Costs incurred by the Class Counsel in the pursuit of the Class Action, as a full and final settlement, for any past, present or future claims arising from the facts alleged in the Class Action proceedings.
- 8. Parties undertake to cooperate in presenting this Agreement and its terms to the Court as fair and reasonable and in the best interests of the Class Members.

IV. NOTICE APPROVAL HEARING

- 9. As soon as possible, and no later than 60 days following the execution of this Agreement by the Parties, the Plaintiff will file an application, as approved by the Defendant prior to filing in Court, for approval of the Notice to Members.

10. At the Notice Approval Hearing, the Court will also be asked to appoint the Claims Administrator.
11. The Notice to Members shall indicate that an Agreement has been reached between the Parties, that it shall be subject to the approval of the Court and that at the Settlement Approval Hearing, the Court will also be asked to approve the Class Counsel Fees and a Distribution Protocol.
12. The costs for the publication of the Notice to Members shall be borne by the Defendant. However, these costs shall not be reimbursed if the Agreement is cancelled.
13. The Parties undertake to collaborate and take all measures reasonably necessary to ensure that the Notice to Members is published in accordance with the terms of the judgment to be rendered by the Court.

V. SETTLEMENT APPROVAL HEARING

14. As soon as possible, and no later than 60 days following the publication of the Notice to Members, the Plaintiff will file an application, as approved by the Defendant prior to filing in Court, requesting the Court:
 - (a) to approve this Agreement;
 - (b) to declare the Agreement fair and reasonable and in the best interests of the Class Members; and
 - (c) to approve the Distribution Protocol and all documents related thereof.
15. At the Settlement Approval Hearing, Class Counsel will also ask the Court to approve the payment of their fees, to be paid from the Settlement Amount.
16. In the event the Agreement is not fully approved by the Court:
 - (a) the Agreement shall be deemed null and void and the Parties and the Class Members shall be placed in the situation that prevailed prior to the execution of the Agreement. For more certainty and without limiting the foregoing, the Defendant will not have to pay the Settlement Amount or the Costs; and
 - (b) the Agreement and all the provisions contained therein, as well as any negotiation, declaration or proceeding related thereto shall not and will not affect the rights and recourses of the Parties and will not be used against one or the other Party in the context of any judicial proceeding.

VI. SETTLEMENT ADMINISTRATION

17. As soon as possible, and no later than 30 days following the issuance of the Approval Order, the Defendant agrees to transfer the Settlement Amount into the in-trust account of the Claims Administrator to process the Claims.
18. The Settlement Amount shall be distributed in accordance with the terms and conditions set forth in the Distribution Protocol, attached as Schedule "A" and any order to be made by the Court.
19. The Defendant shall have no responsibility or liability whatsoever for the administration of this Agreement, the management, placement, and distribution of the Settlement Amount, or for the Distribution Protocol.
20. The fees related to the Claims administration process shall be borne by the Defendant.

VII. RELEASE

21. Upon the Approval Order, the Releasors will be deemed to have accepted the terms and conditions of this Agreement; and:
 - (a) to have given full general and final discharge to the Defendant and its directors, officers, employees, mandataries, representatives, agents, managers, business partners, shareholders, partners (in their capacity as partners and in their personal capacity) and their affiliated companies, predecessors, successors, beneficiaries, insurers or other representatives of any nature whatsoever, for any claim, action, demand or cause of action known or unknown that has been alleged by the Plaintiff or by any Class Member and arising out of or resulting from the facts alleged in the Class Action; and
 - (b) to undertake to refrain from bringing any legal proceedings arising out of or resulting from the facts alleged in the Class Action;

VIII. COMMUNICATION

22. As part of their public declarations and comments in relation to the facts alleged in this file, the Class Action or this Agreement, the Parties (and their representatives) undertake to limit their declarations and comments to the content of a release prepared jointly.

IX. MISCELLANEOUS

23. This Agreement reflects the entire agreement reached between the Parties and supersedes any prior agreement, whether written or oral. This Agreement constitutes a transaction within the meaning of article 2631 of the *Civil Code of Québec*.
24. The Parties acknowledge having had all necessary time to read and study this Agreement and having had the opportunity to consult independent

counsel prior to its execution. Each of the Parties declares having freely and voluntarily consented to this Agreement after having understood all of its terms and having been in agreement with them, without another Party, including its counsel or another mandatary, having issued a promise, a representation or a guaranty, whether explicit or implicit, that is not contained herein.

25. The Parties expressly acknowledge that this Agreement is made without admission of liability and for the sole purpose of buying peace.
26. The Parties may, at any time, ask the Court for instructions or to make any further order or judgment with respect to any matter relating to this Agreement.
27. This Agreement shall not enter into force until it has been approved by the Court. As of the date of the Approval Order, the present action will be settled out of Court against the Defendant.
28. The Parties expressly requested this Agreement to be written in French and in English and in case of divergences between the two texts, the French version shall prevail.
29. This Agreement may be executed in any number of counterparts, delivered by facsimile or email (PDF), each copy constituting an original.

(Signature page follows on the next page)

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on
September _____ 2018:

LYDIA KENNEDY (in her capacity as
representative of the Class Members
and in her personal capacity)

COLACEM CANADA INC.

By : _____
Name : Marco Focardi
Title : President