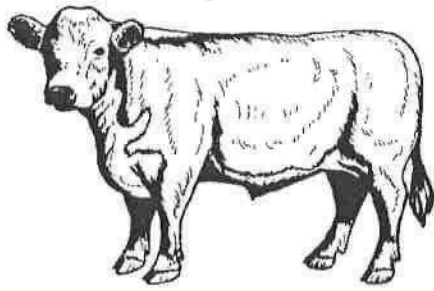


## XL FOODS CLASS ACTION

### NOTICE OF CERTIFICATION AND HEARING TO APPROVE PROPOSED SETTLEMENT



**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS**

**This notice is directed at anyone in Canada or the United States who purchased and/or consumed Recalled XL Beef or who purchased Unidentifiable Beef.**

**"Recalled XL Beef"** means beef products that were processed at the XL Foods Brooks, Alberta facility on August 24, 27, 28, 29 or September 5, 2012, recalled by XL Foods and identified in the alerts issued by Canadian Food Inspection Agency and the U.S. Food Safety and Inspection Service.

**"Unidentifiable Beef"** means any beef or beef product purchased (for private, non-commercial consumption) between August 24, 2012 and October 21, 2012 and disposed of on or after September 16, 2012 as a result of the notice or communication regarding the alerts issued by the Canadian Food Inspection Agency or the U.S. Food Safety and Inspection Service regarding the recall of beef products that were processed at the XL Foods Brooks, Alberta facility on August 24, 27, 28, 29 or September 5, 2012.

#### **WHAT IS A CLASS ACTION?**

A class action is a lawsuit filed by one person on behalf of a large group of people.

#### **WHAT IS THIS CLASS ACTION ABOUT?**

A class action lawsuit has been commenced against XL Foods Inc. ("XL Foods") in connection with the fall 2012 recall of beef products processed at the XL Foods facility in Brooks, Alberta. The recall was issued as a result of a possible *E. coli* contamination.

The class action alleges that XL Foods negligently produced certain beef products processed at the Brooks facility. Specifically, the claim alleges that XL Foods was negligent in the design and implementation of control, sampling and testing procedures and that, upon discovering the possible *E. coli* contamination, XL Foods was negligent in managing the resulting product recall.

The class action seeks to recover damages for: (a) economic loss for individuals who purchased Recalled XL Beef or Unidentifiable Beef and disposed of the beef without receiving a refund; and (b) personal injury for individuals who consumed Recalled XL Beef and experienced illness or injury as a result.

Symptoms associated with *E. coli* exposure typically appear one to ten days after exposure and include: severe stomach cramps; watery or bloody diarrhea; vomiting; nausea; headache; and little or no fever. Some people can develop more serious consequences, such as kidney failure, seizures and stroke. *E. coli* exposure can also exacerbate pre-existing medical conditions.

#### **WHO IS AFFECTED BY THE CLASS ACTION?**

On October 8, 2013, the Alberta court certified the action as a class action. This means that the court has determined that this action can proceed as a class action.

The action was certified on behalf of the following "class" or "class members":

All natural persons in Canada or in the United States who:

- (a) purchased Recalled XL Beef (for private, non-commercial consumption) and suffered an economic loss;
- (b) purchased Unidentifiable Beef (for private, non-commercial consumption) and suffered an economic loss; and
- (c) consumed Recalled XL Beef and suffered a physical illness or injury.

#### **HAS A SETTLEMENT BEEN REACHED IN THE CLASS ACTION?**

A settlement has been reached in the class action. XL Foods has agreed to pay CDN \$4 million to resolve claims relating to:

1. economic loss suffered by class members as a result of having purchased Recalled XL Beef and/or Unidentifiable Beef;
2. personal injuries suffered by class members as a result of having consumed Recalled XL Beef; and
3. claims by Canadian provincial health care providers in relation to expenses that they incurred in treating personal injuries suffered by class members as a result of having consumed Recalled XL Beef.

The settlement represents a resolution of disputed claims. XL Foods does not admit any wrongdoing or liability.

The proposed settlement must be approved by the Alberta court before it can become effective. An application to approve the settlement will be heard in Edmonton, Alberta on September 23, 2015 at 9:00 a.m.

At this hearing, the Alberta court will determine whether the settlement is fair, reasonable, and in the best interests of class members. The Alberta court will either approve the settlement as it is, or will reject it. The Alberta court will not modify the settlement.

## WHAT DO I NEED TO DO?

**If you want to be a member of the class action, you do not need to do anything.** However, in order to protect your rights, you should:

1. Register online at [www.classaction.ca/xlbeef](http://www.classaction.ca/xlbeef) to receive updates about the process for applying for settlement benefits.
2. Keep copies of any invoices, receipts, credit card statements or other documents that establish your purchase of Recalled XL Beef or Unidentifiable Beef.
3. If you suffered personal injury or illness after consuming Recalled XL Beef, contact Class Counsel. Class Counsel can assist in the process of obtaining medical records that might be necessary in applying for a share of the settlement funds.

If you want to tell the Alberta court what you think about the proposed settlement or speak to the Alberta court at the settlement approval hearing, you must send a letter to class counsel at the address listed below, postmarked no later than August 10, 2015.

You may (but do not need to) attend the settlement approval hearing. If you wish to attend the hearing, please contact class counsel for additional details.

## HOW WILL THE SETTLEMENT MONIES GET PAID OUT?

The Alberta court will be asked to approve a protocol setting out how the settlement monies will get paid out. A copy of the proposed distribution protocol can be viewed at [www.classaction.ca/xlbeef](http://www.classaction.ca/xlbeef).

After the settlement approval hearing (assuming the settlement is approved), a further notice will be published advising class members of the process for applying to receive settlement benefits.

The settlement monies will be paid to three categories of claimants:

1. class members who purchased Recalled XL Beef or Unidentifiable Beef and suffered an economic loss (i.e., claims for a refund of the purchase price);
2. class members who consumed Recalled XL Beef and suffered an injury or illness as a result; and
3. Canadian provincial health care providers who incurred expenses treating class members who consumed Recalled XL Beef and suffered an injury or illness as a result.

If there is not sufficient monies to pay all claims in full, all claims will be reduced on a proportional basis (i.e., based on the value of your claim in proportion to the value of all claims).

If a proportional distribution would result in payments being issued in an amount less than CDN\$20, further directions will be sought from the court regarding the distribution of the settlement funds.

### **Category 1: Economic Loss Claims**

You are eligible for settlement benefits for economic losses (i.e., refund claims) if:

- you reside in Canada or the United States; and
- (i) you purchased and disposed of Recalled XL Beef or Unidentifiable Beef, and (ii) did not receive a refund of the purchase price; or
- (i) you purchased Recalled XL Beef; (ii) you or another individual consumed the Recalled XL Beef and experienced illness or injury as a result, and (iii) you did not receive a refund of the purchase price.

Settlement monies payable to class members with economic loss claims will be distributed as follows:

- Class members with proof of purchase will receive the amount of their purchases.
- Class members without proof of purchase will receive the amount of their stated purchases, to a maximum of CDN \$25.
- The total economic loss claims without proof of purchase are capped at CDN \$500,000. If that cap is exceeded, the claims will be reduced on a proportional basis. If the cap is exceeded, but there are settlement funds remaining after all other approved claims are paid in full, the excess settlement funds will be used to increase payments to class members without proof of purchase up to a maximum of CDN \$25.
- If there is not sufficient monies to pay all claims in full, all claims will be reduced on a proportional basis (i.e., based on the value of your claim in proportion to the value of all claims).

### **Category 2: Personal Injury Claims**

You are eligible for settlement benefits for personal injury if:

- you reside in Canada or the United States; and
- you consumed Recalled XL Beef; and
- you experienced illness or injury as a result.

Settlement monies payable to class members with bodily injuries will be distributed as follows:

- based on: (i) the level of evidence provided by the Class Member to substantiate the claims; and (ii) the severity of injuries suffered by the Class Member. See Schedule A of the proposed distribution protocol for more information.
- The total personal injury claims without medical records are capped at CDN \$500,000. If that cap is exceeded, the claims will be reduced on a proportional basis. If the cap is exceeded, but there are settlement funds remaining after all other approved bodily injury and provincial health care claims are paid in full, the excess settlement funds will be

used to increase payments to class members without medical records in accordance with Schedule A of the proposed distribution protocol.

- If there is not sufficient monies to pay all claims in full, all claims will be reduced on a proportional basis (i.e., based on the value of your claim in proportion to the value of all claims).

### **Category 3: Provincial Health Care Costs**

Canadian provincial health care providers are eligible settlement benefits for their costs in treating class members with approved personal injury claims.

Settlement monies payable to provincial health care providers will be distributed as follows:

- based on the documented costs incurred by the health care provider in respect of the approved personal injury claim.
- If there is not sufficient monies to pay all claims in full, all claims will be reduced on a proportional basis (i.e., based on the value of the health care provider's claim in proportion to the value of all claims).

### **What if there are settlement funds remaining after all valid claims have been paid?**

If there are remaining settlement funds after all valid claims are paid, the excess will be paid in equal shares to the following organizations:

- Food Banks Canada: a Canadian charitable organization representing and supporting the food bank community across Canada. Food Banks Canada will use the money to fund its National Food Sharing System program.
- Feeding America: an American charitable organization representing and supporting the food bank community across the U.S. Feeding America will use the money to fund its National Produce Program.

### **WHAT IF I DON'T WANT TO BE PART OF THE CLASS ACTION?**

If you do not want to be part of the class action, you can exclude yourself from the class action ("opt-out") by sending a letter to Class Counsel with the following information:

- your name, address, email address and phone number;
- where the person seeking to opt-out is a minor, the name of the parent or guardian acting on that person's behalf;
- a statement: "I hereby request that I be excluded from the XL Foods class action";
- a statement of whether you were hospitalized for a period exceeding seven days; and
- your signature or if the person seeking to opt-out is a minor, the signature of the person's parent or guardian.

Requests to opt-out of the proceedings must be postmarked by August 10, 2015.

If you exclude yourself or opt-out:

- you will not be able to receive money as part of the settlement or participate in the class action, but
- you will be able to start your own case against XL Foods regarding the claims at issue in the class action, although there may be some time limits in doing so – consult counsel as appropriate.

If you do nothing, and so do not exclude yourself or opt-out:

- you will be eligible to receive money as part of the settlement and participate in the class action, but
- you will not be able to start your own case against XL Foods regarding the claims at issue in the class action.

#### **WHO ARE THE LAWYERS WORKING ON THE CLASS ACTION AND HOW ARE THEY PAID?**

The following law firms act on behalf of the class:

**Siskinds LLP**  
680 Waterloo Street  
London, ON N6A 3V8

**Docken Klym**  
800-6 Avenue SW  
Suite 900  
Calgary, AB T2P 3G3

**James H Brown and Associates**  
2400 Sunlife Place  
10123 99 Street  
Edmonton, AB T5J 3H1

You do not need to pay out-of-pocket for the lawyers working on the class action. The lawyers will be paid from the settlement funds. The Alberta court will be asked to decide how much the lawyers will be paid.

Class Counsel will collectively be requesting legal fees of approximately CDN \$1,285,000.00, plus disbursements of approximately CDN \$104,200.00 and applicable taxes. A legal fee of CDN \$1,285,000.00 represents approximately 33 1/3% of the settlement amount after deducting disbursements and applicable taxes. Any approved legal fees will be paid out of the settlement funds.

#### **A. WHERE CAN I ASK MORE QUESTIONS?**

For more information, please visit [www.classaction.ca/xlbeef](http://www.classaction.ca/xlbeef). If you have questions that are not answered online, please email [xlfoodsclassaction@siskinds.com](mailto:xlfoodsclassaction@siskinds.com) or call toll-free 1-800-461-6166 ext. 2446.

To receive future notices, please register online at [www.classaction.ca/xlbeef](http://www.classaction.ca/xlbeef)

*This notice contains only a summary of the settlement agreement and Class Members are encouraged to review the complete settlement agreement, which is available online at [www.classaction.ca/xlbeef](http://www.classaction.ca/xlbeef).*