

112

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
C.A. NO.

09 01455

CULLEN MACLEOD, a Minor by his
Parents and Next Friends,
ROBIN MACLEOD (Mother) and
GREG MACLEOD (Father),
Plaintiffs,

*
*
*
*
*
*
*
*
*
*
*

v.

DONOVAN SERVICES, INC.
d/b/a DUNKIN DONUTS, and
CONTINENTAL CASUALTY COMPANY
d/b/a CNA INSURANCE COMPANY,
Defendants

8/21/09
RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY

COMPLAINT AND DEMAND FOR JURY TRIAL

PARTIES

1. The Plaintiff, Cullen MacLeod, is a Minor, date of birth, September 28, 2007, who brings this action by his Parents and Next Friends, Robin MacLeod (Mother) and Greg MacLeod (Father); all plaintiffs reside in Franklin, Norfolk County, Massachusetts.

2. Defendant, Donovan Services, Inc. d/b/a Dunkin Donuts ("Dunkin Donuts" sometimes hereafter), is a Massachusetts corporation with offices located at 72 Sharp Street, Unit A-7, Hingham, Massachusetts.

3. Defendant CNA Insurance Company (hereinafter "CNA") is a duly organized insurance company authorized to do business in the Commonwealth of Massachusetts, with a usual place of business at 333 S. Wabash Avenue, Chicago, Illinois.

FACTS

4. On January 14, 2009, Minor Plaintiff and his Mother proceeded to enter the drive-thru of the Defendant's Dunkin Donuts store, located at 95 Franklin Street, Quincy, Massachusetts. Upon entering the drive-thru, Minor Plaintiff's Mother purchased an order of breakfast hash browns for the Minor Plaintiff to eat.

5. After receiving the order, Minor Plaintiff's Mother picked up and felt a hash brown. Upon feeling that the hash brown was lukewarm to the touch, Minor Plaintiff's Mother handed the hash brown to her son to eat. Unknown to the Plaintiffs, the hash browns that were served by the Defendant were prepared in a manner that caused the hash browns to heat unevenly and caused the interior portion of the hash browns to become dangerously hot and, as a result, unsafe for public consumption.

6. Upon biting into the hash brown, Minor Plaintiff was immediately startled by its extremely hot temperature, causing him to instinctively drop the hash brown onto his neck. Upon coming into contact with Minor Plaintiff's skin, the hash brown immediately became stuck to his skin.

7. Despite the quick action taken by Minor Plaintiff's Mother to remove the hash brown from his skin, it took only seconds for the extremely high temperature of the interior portion of the food item to severely burn and blister Minor Plaintiff's skin.

8. As a result of the negligence on behalf of the Defendant, or their servants, agents, or employees, Minor Plaintiff suffered severe and permanent burn injuries to his neck and chin area.

COUNT I

Negligence

(Against Dunkin Donuts)

9. The Plaintiffs repeat, reallege and incorporate by reference all prior paragraphs as if fully set forth herein in their entirety.

10. The Defendant, Dunkin Donuts had an obligation to prepare its heated food items in a manner that was safe for all customers' consumption and reasonably would have expected that some customers would be injured by over-heated food items and by food items that have not been heated evenly due to the use of defective heating equipment and/or human error in the use of such heating equipment.

11. Due to the negligence of the Defendant, their servants, agents, or employees (or those whose conduct they are responsible for) in providing the Plaintiffs with a food item that was not safe for customer consumption, when the Minor Plaintiff bit into the extremely over-heated food item, the Minor Plaintiff sustained serious and permanent burn injuries.

12. The burn injuries sustained by the Minor Plaintiff were proximately caused by the negligence of the Defendant, their servants, agents, or employees (or those whose conduct they are responsible for).

13. As a result of the negligence of Defendant, Minor Plaintiff has suffered severe personal injuries and damages, including, but not limited to physical and emotional injuries, permanent scarring, costs of past and future medical treatments for such injuries, pain and suffering, and other monetary, physical and mental damages, consequential damages and other damages.

COUNT II

Unfair and Deceptive Acts and Practices in Violation of M.G.L. Ch. 93A

(Against CNA)

14. The Plaintiffs repeat, reallege and incorporate by reference all prior paragraphs as if fully set forth herein in their entirety.

15. CNA is engaged in commerce in Massachusetts sufficient to be governed by the Massachusetts Consumer Protection Statute, M.G.L. Ch. 93A.

16. Plaintiffs provided in a timely fashion to CNA all requested medical bills, reports, photographs and additional materials in their possession to allow CNA to properly investigate the claim.

17. Plaintiffs, through counsel, submitted a demand package to CNA along with several supplemental letters updating The Defendant on the Minor Plaintiff's medical status and course of treatment. There was no response to these demands.

18. On July 7, 2009, Plaintiffs, through counsel, sent a demand letter under M.G.L Ch. 93A to CNA, outlining the unfair and deceptive settlement practice in failing to make a reasonable offer of settlement in a timely fashion.

19. CNA has refused to make a good faith offer to settle the claim.

20. CNA's failure to make a reasonable offer of settlement in a timely fashion constitutes unfair and deceptive settlement practice in violation of M.G.L. Ch. 93A.

21. As a direct and proximate result of CNA's unfair and deceptive trade practices, Plaintiffs suffered additional actual, consequential and incidental damages.

22. As a direct and proximate result of CNA's conduct as alleged herein, Plaintiffs have incurred and continue to incur legal fees, costs and expenses in connection with this action that would have been unnecessary but for the CNA's unreasonable settlement posture. As a result of the unfair and deceptive settlement practices CNA, Plaintiffs have suffered damages and have incurred and continue to incur legal fees.

WHEREFORE, the Plaintiffs pray that the Court grant the following relief against Defendant CNA:

- a. Find that the conduct of the Defendant was a violation of Chapter 93A.
- b. Find that the actions of Defendant were willful and knowing violations of Chapter 93A and/or that its refusal to grant relief upon demand was made in bad faith.

- c. Award damages to the Plaintiffs in an amount to be determined at trial, plus interest and costs as provided by law;
- d. Award Plaintiffs double/treble damages and attorneys' fees on their claims;
- e. Grant other such relief as the Court deems just and appropriate.

Count III

**Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the
Business of Insurance in Violation of M.G.L. c. 176D**

(Against CNA)

23. The Plaintiffs repeat, reallege and incorporate by reference all prior paragraphs as if fully set forth herein in their entirety.

24. The Defendant, CNA is a duly licensed insurance company in the Commonwealth engaged in the business of insurance within the Commonwealth.

25. CNA has violated M.G.L. c. 176D, section 3(9) (b) in that it failed to "acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies".

26. CNA has violated M.G.L. c. 176D section 3(9) (c) in that it failed to "adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies".

27. CNA has violated M.G.L. c. 176D section 3(9) (d) in that it refused to "pay claims without conducting a reasonable investigation based upon all available information".

28. CNA has violated M.G.L. c. 176D section 3(9) (f) in that it failed to "effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear".

29. CNA's refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the acts and practices complained of violated Chapter 93A and 176D.

30. The acts of CNA were willful and knowing acts in violation of G.L. c. 93A and 176D.

31. The failure of CNA to make a reasonable offer of settlement is a willful and knowing violation of G.L. c. 93A and 176D.

32. As a result of CNA's knowing and willful violation of M.G.L. c. 176D, Plaintiffs' damages include, but are not limited to: (a) the outstanding medical bills incurred as a result of this matter; (b) compensation for Minor Plaintiffs injuries including pain and suffering; (c) punitive damages; (d) interest and costs; and (e) attorney's fees.

WHEREFORE, the Plaintiffs pray that the Court grant the following relief against Defendant CNA:

- a. Find that the conduct of the Defendant was a violation of Chapter 93A and 176D.
- b. Find that the actions of Defendant were willful and knowing violations of Chapter 93A and 176D and/or that its refusal to grant relief upon demand was made in bad faith.
- f. Award damages to the Plaintiffs in an amount to be determined at trial, plus interest and costs as provided by law;
- g. Award Plaintiffs double/treble damages and attorneys' fees on their claims;
- h. Grant other such relief as the Court deems just and appropriate.

COUNT IV

Loss of Consortium

(Against Dunkin Donuts)

33. The Plaintiffs incorporate by reference all the preceding allegations and in addition state:

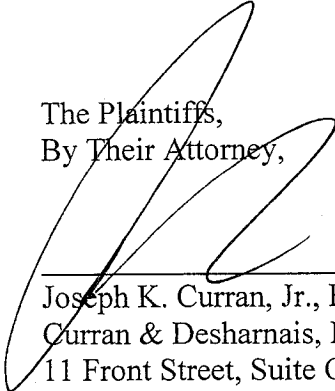
34. That as the result of the negligence of the Defendant, Dunkin Donuts, or their servants, agents, or employees (or those whose conduct they are responsible for) the Plaintiffs, as Mother and Father of Cullen MacLeod, suffered a loss of society and companionship with their minor son.

WHEREFORE, the Plaintiffs demand judgment against the Defendant, Donovan Services, Inc. d/b/a Dunkin Donuts and that damages be awarded plus counsel fees, costs of suit, and such other and further relief that this Court considers just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby make demand for trial by jury on all issues so triable.

The Plaintiffs,
By Their Attorney,



Joseph K. Curran, Jr., Esq. BBO# 668123
Curran & Desharnais, P.C.
11 Front Street, Suite One
Weymouth, MA 02189
781-331-3811 Telephone
781-331-3866 Facsimile

Dated: 8/18/09

Plaintiffs reserve their right to file additional counts.