

**JOHN P. MESSINA**

ATTORNEY AT LAW  
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**PRIVILEGED AND CONFIDENTIAL:  
FOR PURPOSES OF SETTLEMENT DISCUSSIONS ONLY**

August 15, 1990

**BY MESSENGER**

Bruce H. Weitzman, Esq.  
David J. Stetler, Esq.  
Lazar P. Raynal, Esq.  
McDERMOTT, WILL & EMERY  
227 West Monroe Street  
31st Floor  
Chicago, Illinois 60606-5096

Re: **Grove Fresh v. Everfresh**

Gentlemen:

I am writing to make a settlement demand that might serve as a framework for settlement discussions. Please let me know by close of business on Friday, August 17, 1990, whether you wish to pursue such discussions at this stage of the case.

**Summary of Grove Fresh's Claims**

Grove Fresh's claims under the Lanham Act consist of three components: Everfresh's unlawful profits, Grove Fresh's lost profits, and Grove Fresh's attorney's fees and costs. In addition, Grove Fresh has a claim under the common law for punitive damages. (Grove Fresh's common law claims include a claim for actual damages, but for settlement purposes only, we will treat such damages as duplicative of the amounts that would be recovered under the Lanham Act.)

Grove Fresh contends that the adulteration by Everfresh and its predecessors was a continuing tort, and that it is entitled to recover unlawful profits from the date that the defendants first began to manufacture and sell adulterated juice. Based on information from the Department of Citrus, Grove Fresh's claim is that it is entitled to Everfresh's unlawful profits for the period from at least 1975 to the date of the complaint.

**Concessions For Purposes of Settlement**

The demand outlined below makes two major concessions for the sake of settlement negotiations only. First, the demand is framed in terms of the date on which John Labatt Limited acquired the facilities in Chicago, Detroit, and Windsor, rather than the

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date on which Messrs. Kotwicki and Allen first started manufacturing and selling adulterated juice. In the case of Windsor, the demand concedes at least seven years of unlawful profits at Holiday Juice (from 1977, when Kotwicki became president, to 1983). In the case of Detroit, the demand concedes at least eleven years of unlawful profits at Ever Fresh (from May 1975, the date of a formula sheet for adulterated orange juice bearing Ever Fresh's name, to December 1986).

Second, even though Mr. Powell has admitted that Everfresh and its predecessors adulterated grapefruit juice and apple juice, the demand as to Everfresh's unlawful profits is framed in terms of orange juice sales only.

#### Settlement Demand

In order to make an informed settlement demand respecting Everfresh's unlawful profits, Grove Fresh would need substantially more information about sales and costs than it has obtained to date in discovery. Therefore, the demand outlined below is expressed as a percentage of sales, rather than as an absolute dollar amount. While we believe that the percentage figure in the demand is a reasonable one, we are open to persuasion that a different percentage figure is appropriate.

One final caveat. Grove Fresh has not yet completed its study of lost profits. However, the study has progressed to a point where Grove Fresh is prepared to demand a specific amount for lost profits, with the understanding that the amount demanded is for purposes of settlement only and is substantially lower than the amount that would be demanded and proven at trial.

With these observations in mind, and for the sake of initiating a conceptual framework for negotiations, Grove Fresh makes the following demands to compromise and settle all pending and potential claims against John Labatt, Ltd., John Labatt, Inc., Everfresh Inc. (Michigan), and Everfresh, Inc. (Canada):

1. 20% of the following orange juice sales: Holiday Juice, 1983 to February 1989; Boden Products, January 1986 to February 1989; Ever Fresh/Detroit, December 1986 to February 1989.
2. Lost profits: \$2,000,000
3. Attorney's fees and costs in an amount equal to the fees and costs incurred by the defense to date.
4. An amount for punitive damages.

If Everfresh is interested in settlement at this stage of the case, Grove Fresh is prepared to allow Everfresh to inspect and review (but not copy) a preliminary lost profit analysis

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prepared by plaintiff's consulting experts. However, an absolute condition to such inspection and review at this stage of the case is a written settlement proposal that makes good faith offers on each of the components outlined above.

Finally, comments made in the last round of settlement talks indicate that Everfresh is concerned about possible multiple liability. If the concern relates to Everfresh's potential liability to Grove Fresh's independent jobbers, we appreciate the reason for the concern. As you know, however, neither I nor the Rivkin firm represents the jobbers, and we cannot negotiate for them. Nevertheless, we are open to considering any suggestions you might have for addressing your client's concerns about possible multiple liability.

Sincerely,

A handwritten signature in black ink that reads "John P. Messina". The signature is written in a cursive style with a large initial "J" and a small mark above the "n" in "Messina".

John P. Messina

/jm

cc: Mr. Cecil Troy  
Dorothy B. Zimbrakos, Esq.  
Dale R. Crider, Esq.

*Chen*

**JOHN P. MESSINA**

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August 20, 1990

Bruce H. Weitzman, Esq.  
David J. Stetler, Esq.  
Lazar P. Raynal, Esq.  
McDERMOTT, WILL & EMERY  
227 West Monroe Street  
31st Floor  
Chicago, Illinois 60606-5096

Re: Grove Fresh v. Everfresh

Gentlemen:

Your client, Mr. Powell, called Mr. Troy today concerning settlement. Mr. Troy has asked me to reply.

If and when Everfresh makes a good faith settlement proposal that meets the criteria outlined in my letter of August 15, 1990, Grove Fresh will consider Mr. Powell's suggestion that the principals, rather than the attorneys, should meet to negotiate settlement. In the absence of a written proposal, there is no point to a meeting of the principals or, for that matter, the attorneys.

Grove Fresh construes Mr. Powell's comments to Mr. Troy as indicating that Everfresh is not willing to make a written settlement proposal, and it will proceed in that light.

Sincerely,



John P. Messina

/jm

cc: Mr. Cecil Troy  
Dorothy B. Zimbrakos, Esq .

**JOHN P. MESSINA**

ATTORNEY AT LAW  
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August 23, 1990

**BY FACSIMILE**

Bruce H. Weitzman, Esq.  
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Lazar P. Raynal, Esq.  
McDERMOTT, WILL & EMERY  
227 West Monroe Street  
Chicago, Illinois 60606-5096

Re: **Grove Fresh v. Everfresh**  
**Grove Fresh v. American Citrus**

Gentlemen:

I am writing to advise you that on Monday, August 27, 1990, Grove Fresh will be filing a new lawsuit (not an amended complaint) against your clients and others, including American Citrus Products Corp. The defendants will include several Labatt entities and several former officers and shareholders of entities acquired by Labatt over the last seven years. The complaint is about 40 pages and includes more than three dozen exhibits. In summary, the complaint alleges as follows:

By the early 1970s the Home Juice organization consisted of at least 20 different corporations doing business in 13 jurisdictions in the United States, Canada, and Europe. The entities included Home Juice Co. of Illinois and Ever Fresh Juice Co. of Michigan. The controlling principals in the Home Juice organization were Leonard Haddad and Albert Allen. Daniel Kotwicki was an officer of several of the Home Juice corporations. In June 1975, Kotwicki entered into a long-term employment contract with Home Juice.

The complaint will allege that beginning in May 1975 or earlier, Haddad, Allen and Kotwicki (and others) entered into a civil conspiracy to manufacture and distribute adulterated orange juice (and other fruit juices) in Illinois, Michigan, Canada and elsewhere. The complaint will allege that they carried out this conspiracy through the Home Juice organization and through the use of the facilities of interstate commerce.

The complaint will further allege that in May 1977, Haddad, Allen and Kotwicki extended the conspiracy across the border into Canada, when the three of them acquired a 66% interest in Jay-Zee Food Products Limited of Windsor, Ontario. The complaint will allege that after they took control of Jay-Zee Food Products, which they renamed Holiday Juice, Ltd., they put in place the

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same techniques for adulterating orange juice that were already at work in the Home Juice organization. The complaint will allege that the conspiracy continued intact through several changes in ownership of the corporate entities involved, up through February 1989 or later.

The complaint will allege that John Labatt Ltd. ("Labatt") learned about the adulteration practices in its fruit juice division no later than December 1986, although it very likely had known about these practices from the moment it acquired Holiday Juice in 1983.

The complaint fixes December 1986 as the latest date by which Labatt learned about the adulteration practices because that is when it acquired Ever Fresh Juice Co. (By 1986, Ever Fresh had been spun off from the Home Juice organization into an independent corporation controlled by Albert and Michael Allen.)

On the date of acquisition, Ever Fresh was a defendant in a law suit that had been filed in March 1986 by Purity Products, Inc., No. JFM 86-963 (D. Maryland). The Purity Products complaint alleged that Ever Fresh had been selling orange juice adulterated with sugar since at least 1984. The Purity Products complaint supported these allegations with the results of six tests performed by an independent food testing laboratory. Labatt settled this suit in August 1987.

The complaint by Grove Fresh will allege that R. Bruce Frasier, a Labatt vice-president, learned about the 1986 Purity Products complaint (and an earlier complaint making similar allegations that had been filed in 1982) in the course of conducting a "due diligence" investigation prior to Labatt's acquisition of Ever Fresh. The Grove Fresh complaint will also allege that in 1986 or 1987 another Labatt officer, Dave Murray, received the results of independent tests of products made by Labatt's fruit juice division, and that the results of these tests indicated that Labatt's juice products were adulterated. The complaint will allege that neither Frasier nor Murray took any steps to terminate the adulteration practices, and thereby gave their tacit approval to such practices.

The complaint will allege that after acquiescing in and profiting from the adulteration practices at its juice division for several years, Labatt, in the spring of 1989, devised a scheme for evading possible criminal liability for those practices. Specifically, the complaint will allege that after Grove Fresh filed its complaint in February 1989 and as rumors circulated in the industry about the forthcoming indictment against Edward Boden, et al., Labatt fabricated an explanation of events that made Kotwicki the scapegoat for the Labatt organization. In May and June 1989, in furtherance of this scheme, Labatt executives met with representatives of the Food and Drug Administra-

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tion and told certain untruths, namely, that Kotwicki had been carrying out his adulteration practices without the knowledge or approval of the parent organization.

We will consider postponing the filing of the new complaint, but only if we receive a good-faith settlement offer, in writing, by noon on Saturday, August 25, 1990,

Very truly yours,

A handwritten signature in cursive script, appearing to read "John P. Messina". The signature is written in dark ink and is positioned above the typed name.

John P. Messina

/jm

cc: Steven M. Kowal, Esq.  
Mr. Cecil Troy  
Dale R. Crider, Esq.  
Dorothy B. Zimbrakos, Esq.