IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

No. V878 of 2004

B E T W E E N :

HARRY GEORGIOU (on his own behalf and in a representative capacity)

Applicant

- and -

OLD ENGLAND HOTEL PTY LTD (ACN 074 186 762)

Respondent

SETTLEMENT AGREEMENT

Date of Document:	5 April 2006
Filed on behalf of:	The Applicant
Prepared by:	
Maurice Blackburn Cashman Lawyers Level 10 456 Lonsdale Street MELBOURNE. VIC. 3000	Solicitors Code: 564 Tel: (03) 9605 2700 Fax: (03) 9600 2401 DX: 466 MELBOURNE Ref: BM\AN2 6913401

BACKGROUND

A. This proceeding is commenced by the Applicant on his own behalf and on behalf of the other persons defined as Group Members in paragraph 2 of the Statement of Claim as amended and filed on 3 December 2004 herein ("the Group Members").

B. The Respondent has agreed to settle the claims of the Applicant and the Group Members on the terms set out herein and subject to Court approval. This Settlement Agreement supersedes the Settlement Agreement dated 16 March 2006, and the Variation of Settlement Agreement dated 3 April 2006.

THE APPLICANT AND THE RESPONDENT AGREE AS FOLLOWS:

1. **COURT APPROVAL AND CLASS CLOSURE**

1.1 On **27 March 2006**, or as soon thereafter as practicable, the Applicant and the Respondent will apply to the Court for orders to the following effect:

(a) The settlement of this proceeding contained in this Settlement Agreement is approved pursuant to Section 33V of the ***Federal Court Act*** ("the Act").

(b) The claim for damages:

(i) is to proceed as an assessment of damages subject only to the issues of causation and whether the Claimant is a Group Member;

(ii) is to be assessed in accordance with these terms and when assessed the damages so determined are to be paid by the Respondent;

(iii) the Respondent agrees that where a Group Member suffered any or all of the Defined Symptoms, the source of the injury was from the Old England Hotel premises.

(c) The Respondent pay:

(i) the Applicant's costs including reserved costs and costs of and incidental to the proceedings up to and including the date of settlement approval; and

(ii) the individual Group Members' costs up to and including the date of settlement approval;

to a maximum in total of $500,000.00 including disbursements, for the period up to and including the date of settlement approval, calculated on the basis of hourly rates agreed as follows:

Partner/Snr Consultant	$420
Associates/Consultants	$350
Solicitors	$310
Paralegals/Law Clerks	$225
Legal Assistants	$160

The hourly rates set out above are inclusive of any GST payable.

In respect of disbursements for Counsel's fees, calculated on the basis of the rates agreed as follows:

Mr Terry Casey QC	$660 per hour	$6,600 per day
Mr Lachlan Armstrong	$260 per hour	$2,600 per day

(d) The Respondent pay to the Applicant the costs referred to in paragraph 1.1(c) above within 21 days of receipt of a bill of costs prepared in accordance with the hourly rates set out therein and supported by a certificate supplied by an independent costs assessor.

(e) Within seven (7) days of approval of the settlement of this proceeding the Applicant publish in each of The Age and The Herald Sun a notice in an approved form ("the Notice") advising Group Members that this proceeding has settled, and that any Group Member seeking to participate in the settlement must complete the Form attached to the Notice ("the Form") personally or by his or her solicitor and return it to the Applicant's Lawyer within twenty-one (21) days of the date of the Notice. The Respondent will pay the reasonable costs of and incidental to the Notice. Maurice Blackburn Cashman Pty Ltd will write directly to each Group Member who has instructed it in the proceeding enclosing the Form.

(f) Within twenty-eight (28) days of the Notice the Applicant's Lawyer file and serve an affidavit annexing a list of the names and addresses of each Group Member who has completed and returned the Form as required in the Notice ("the Claimants").

(g) On filing of the affidavit set out in sub-paragraph (f) above, the Statement of Claim be amended in an approved Form so that the Group Members to whom the proceeding relates within the meaning of Section 33H of the Act be the Claimants. However, the addition or deletion of persons to or from the said list may be effected at any time by the Court if it is satisfied that the omission or inclusion of the person on the said list was the result of an error by any party, its representative or the Court, or otherwise.

1.2 Once claims have been assessed and paid as provided for in this Agreement, and any necessary approval has been obtained of the compromise of a claim by a person under a disability, the Applicant and the Respondent will seek orders that the proceeding be dismissed.

2. DEFINITIONS

2.1 **Agreed Counsel** means Mr P Scanlon Q.C. or any replacements appointed pursuant to paragraph 8.2.

2.2 **Applicant's Lawyer** means Maurice Blackburn Cashman Pty Ltd.

2.3 **Claimant** means subject to clause 1.1(b)(i), a Group Member who has completed and returned a Form as required by paragraph 3 whether personally or through his or her lawyer.

2.4 **Claimant's Representative** means the Claimant's Lawyer specified under paragraph 3.2 or, if the Claimant is a person under a disability, that Claimant's Litigation Guardian or lawyer and includes the Applicant's Lawyer.

2.5 **Defined Symptoms** means the following symptoms:

(i) Diarrhoea;

(ii) Fever;

(iii) Nausea or vomiting;

(iv) Headaches or muscle aching.

2.6 **Respondent** means the Respondent to this proceeding.

2.7 **Respondent's Lawyer** means the lawyers nominated by the Respondent.

3. IDENTIFICATION OF CLAIMANTS

3.1 A Group Member may notify the Applicant's Lawyer in writing of the intention of that Group Member to participate in this Settlement Agreement.

3.2 Such notification must be in the Form attached to the Notice referred to at sub-paragraph 1.1(e) and must specify either the name and address of that Claimant or the name and address of the Claimant's Representative who shall be a lawyer.

4. CLAIMS ASSESSMENT PROCEDURE

4.1 Each Claimant must provide the following documents ("the Claim Documents"):

(a) A statement which provides the following information -

(i) The Claimant's name, address, date of birth and occupation;

(ii) The place, date, time and circumstances of the consumption of food at the Old England Hotel;

(iii) Details of the Claimant's symptoms and treatment;

(iv) Particulars of any loss of earnings;

(v) Particulars of the cost of any professional or non-professional care;

(vi) Particulars of any Notice of Charge under the ***Health and Other Services (Compensation) Act***;

(vii) Any notice served by the Department of Social Security or related entity.

(b) Any medical or expert reports or medical certificates upon which the Claimant intends to rely.

(c) Documents in support of any loss of earnings claim.

(d) Documents in support of any claim for medical and like expenses.

4.2 The Claimant or the Claimant's Representative must deliver the Claim Documents to the Respondent's Lawyer within 14 weeks of the date of approval of the settlement.

STAGE ONE

4.3 In the period between 3 weeks and 5 weeks after delivery of the Claim Documents pursuant to paragraph 4.2 the Respondent's Lawyer will meet with the Applicant's Lawyer and any other Claimant or Claimant's Representative to endeavour to agree on an appropriate sum of compensation for each claim ("the Settlement Sum"). Claims in respect of which no such agreement is made are dealt with in paragraph 5.

4.4 The Settlement Sum will be determined pursuant to common law principles of assessment of general and special damages for personal injury or death as

appropriate (as modified by statute) including claims for interest.

4.5 Where agreement is reached pursuant to paragraph 4.3, the Respondent will pay the Settlement Sum to the Claimant's Representative of any Claimant not under a disability within twenty-one (21) days of the agreement of the Settlement Sum or within twenty-one (21) days of completion of all obligations of the Respondent or their insurer pursuant to the ***Health and Other Services (Compensation) Act***, ***Social Security Act*** 1991 or related legislation whichever is later.

4.6 In respect of a Claimant under a disability the Settlement Sum is subject to Court approval. The parties will join in seeking appropriate orders for Court approval of the Settlement Sum at the earliest opportunity after the agreement of the Settlement Sum.

4.7 If pursuant to paragraph 4.6, a claim which is submitted for Court approval is not approved, the claim will be referred back to the Respondent's Lawyer and the Applicant's Lawyer, the Claimant or the Claimants Representative for reassessment under the Stage One Process.

4.8 In the absence of agreement the Respondent will make a final offer in writing to the claimant within fourteen (14) days of the meeting referred to in paragraph 4.3 ("the Respondent's Final Offer"). The Claimant must accept or reject the Respondent's Final Offer within twenty-eight (28) days of the date of the Offer. The failure of the Claimant to accept the Respondent's Final Offer within the twenty-eight (28) day period shall be deemed to be a rejection of that Offer.

5. STAGE TWO: PROCEDURE FOR ASSESSMENT OF DAMAGES BY AGREED COUNSEL

5.1 Claims where the Respondent's Final Offer has been rejected ("Unsettled Claims") will be assessed and determined by Agreed Counsel.

5.2 The Respondent's Lawyer or other Claimant or Claimant's Representative will provide Claim Documents of Unsettled Claims to the Agreed Counsel within fourteen (14) days of the date upon which the Respondent's Final Offer was

rejected.

5.3 The Agreed Counsel will assess and determine the amount of damages, if any, for each Claimant in accordance with the principles referred to in paragraph 4.4 and provide his written assessment of the total damages including interest to the Respondent's Lawyer and the Applicant's Lawyer or other Claimant or Claimant's Representative within twenty-one days of receipt by the Agreed Counsel of the Claim Documents, additional medical report referred to in paragraph 5.5 or submissions referred to in paragraph 5.6 and 5.7, whichever is the later.

5.4 Agreed Counsel will not be informed of any offers made during the Stage One Process.

5.5 The Respondent has the right to request the Applicant or a Claimant to attend for medical examinations. The Claimant or the Applicant is to be notified of such medical examinations within fourteen (14) days of the Applicant or the Claimant's rejection of the Respondent's Final Offer. Any report obtained by the Respondent as the result of such examinations is to be provided to the Agreed Counsel and the Applicant's Lawyer or the Claimant's Representative forthwith upon receipt thereof. If the Applicant or the Claimant unreasonably refuses to attend any such medical examination then the Respondent may apply to the Court for an Order that the Claimant's claim be stayed.

5.6 If the Respondent's Lawyer wishes to submit a written submission in respect of the Unsettled Claim, then such written submission must be provided to the Applicant or the Claimant's Representative and the Agreed Counsel within seven (7) days of the rejection of the Respondent's Final Offer or within (7) days of the receipt of any medical report referred to in paragraph 5.5 which ever is the later.

5.7 If the Applicant's Lawyer or other Claimant or Claimant's Representative wishes to submit a written submission in respect of the Unsettled Claim to the Agreed Counsel, then such written submission must be provided to the Agreed Counsel and the Respondent's Lawyer within (7) days of the service of the written submission referred to in paragraph 5.6.

5.8 The Agreed Counsel will make his assessment of any Unsettled Claims on the basis of the Claim Documents together with written submissions, if any, provided pursuant to paragraph 5.6 and 5.7 and any medical report referred to in paragraph 5.5.

5.9 The Respondent will pay the damages assessed and determined by the Agreed Counsel for the Claimants not under a disability within twenty-one (21) days of the receipt by the Respondent's Lawyer of that determination or within twenty-one (21) days of completion of all obligations of the Respondent or their insurer pursuant to the ***Health and Other Services (Compensation) Act***; the ***Social Security Act*** 1991 or related legislation, whichever is later.

5.10 In respect of a Claimant under a disability the Agreed Counsel's assessment is subject to Court approval. The parties will join in seeking appropriate Orders for Court approval of the Agreed Counsel's assessment at the earliest opportunity after the date upon which the determination is made.

5.11 If a claim is submitted for Court approval under paragraph 5.10 and the Court does not approve the settlement of the claim, the claim will be re-assessed pursuant to the Stage Two procedure, however, the assessment will be undertaken not by Agreed Counsel but by Senior Counsel appointed by the Chairman of the Bar Council.

5.12 Any determination by the Agreed Counsel of an amount of damages to which a Claimant is entitled is, subject to paragraph 5.10 hereof, binding on the Claimant and the Respondent. A Claimant has liberty to apply to the Court on a question of law arising from a determination of Agreed Counsel.

5.13 The costs of the assessment and determination by the Agreed Counsel or any Senior Counsel appointed under paragraph 5.11 are to be borne by the Respondent.

6. COSTS OF ASSESSMENT

6.1 Where a Claimant nominates a representative pursuant to paragraph 3.2, and where the Claimant's Representative submits the Claim Documents and where the

Respondent makes an offer to pay damages to the Claimant or where damages are awarded in the second stage, the Respondent will pay

(a) the Claimant's legal costs and disbursements of the Stage One Process fixed at $3,200.00 (inclusive of GST);

(b) any reasonable expert fees.

6.2 Where further steps are required to be taken to obtain Court approval for an award of damages to a person under a disability, the Respondent shall pay the Claimant's additional costs of taking those further steps calculated on the basis of the agreed hourly rates set out in paragraph 1.1(c) above.

6.3 The costs of the Claimants' Representatives in respect of Stage 2 of the Assessment Process shall be paid by the Respondent calculated in accordance with the hourly rates set out in paragraph 1.1(c) above. The Respondent shall pay any disbursements incurred in respect of Stage 2 of the Assessment Process.

6.4 The Respondent pay to the Claimant's Representative the costs and disbursements referred to in paragraph 6.3 above within 21 days of receipt of a bill of costs.

7. RELEASE AND PAYMENT OF DAMAGES

7.1 The act of payment of a Settlement Sum to a Claimant whether the sum was agreed as provided for in paragraph 4 above or the subject of a determination by Agreed Counsel as provided in paragraph 5 above will:

(a) signify the agreement by each Claimant not under a disability, and subject to paragraphs 4.6 and 5.10 above the agreement of each Claimant under a disability:

(i) to release and forever discharge the Respondent, their servants, agents, successors, contractors and assigns from any and all liability whatsoever in relation to the proceeding and any claim arising out of or connected with the subject matter of the proceeding, save and except for any damages which becomes payable to such Claimants pursuant to this Settlement Agreement;

(ii) to have deducted from any such damages any sum or sums which

the Respondent or its insurers may be legally liable to pay to the Commonwealth pursuant to the provisions of the ***Health and Other Services (Compensation) Act*** 1995 or ***Social Security Act*** 1991 or related legislation;

(iii) to pay or repay out of any damages received by the Claimant any sum or sums which the Respondent or their insurers may be liable to pay or hereafter may become liable to pay in respect of that Claimant pursuant to any legislation other than that referred to in sub-paragraph (ii) and to indemnify the Respondent and their insurers against liability to pay any such sum;

(iv) that payment of any damages apart from that portion of the damages referred to in sub-paragraph (ii) or (iii) will be satisfied by payment to the Claimant's Representative; or

(b) constitute each Claimant a party to this Settlement Agreement and bound thereby.

8. **GENERAL**

8.1 The time for doing any act or thing under this Settlement Agreement may be extended by agreement between the Claimant's Representative and the Respondent's Lawyer or in the absence of agreement by direction of the Agreed Counsel.

8.2 In the event of Agreed Counsel becoming unavailable to act as Agreed Counsel, the Claimant's Representative and the Respondent Lawyer shall agree upon other Counsel. If the Claimant's Representative and the Respondent's Lawyer are unable to agree upon a replacement, both parties agree to accept a substitute nominated by the agreed counsel or if he or she is unavailable by the chairman of the Bar Council.

8.3 The solicitors for the parties have liberty to apply to the Court for determination of any matter arising in relation to the implementation of this Settlement Agreement.

SIGNED SEALED AND DELIVERED by)
Maurice Blackburn Cashman Pty Ltd on behalf of)
the Applicant in the presence of:)

Witness

SAM GEARING
Print witness name

LEVEL 10, 456 LONSDALE ST, MELBOURNE
Print witness address

5 APRIL 2006
Date

SIGNED SEALED AND DELIVERED by)
Richard Mole)
)

on behalf of the Respondent in the presence of:

Witness

Thomas Mah
Print witness name

21/385 Bourke St, Melbourne
Print witness address

5/4/06
Date