



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

<p>WALTER E. RYAN, JR., In the right of and for the benefit of MAXIM INTEGRATED PRODUCTS, Inc.,  Plaintiff,  v. JOHN F. GIFFORD, JAMES R. BERGMAN, B. KIPLING HAGOPIAN, A.R. FRANK WAZZAN, ERIC P. KARROS, M.D. SAMPELS,  Defendants,  and MAXIM INTEGRATED PRODUCTS, Inc.,  Nominal Defendant.</p>	<p>Civil Action No.</p>
---	-------------------------

**DERIVATIVE ACTION COMPLAINT**

Plaintiff, WALTER E. RYAN, JR., for his derivative action complaint, based upon the investigation of his counsel, alleges as follows on information and belief:

1. This shareholder's derivative action is brought in the right of, and for the benefit of nominal defendant MAXIM INTEGRATED PRODUCTS, INC. ("MAXIM" or the "Company") against its Chief Executive Officer and Chairman of the Board of Directors, John F. Gifford, as

well as members of the Board of Directors, James R. Bergman, B. Kipling Hagopian, A.R. Frank Wazzan, Eric P. Karros, and M.D. Sampels, all of whom as Board Members authorized, or through abdication of duty permitted, the back-dating of stock option grants to and for the benefit of Defendant Gifford at the expense of Maxim and its shareholders.

2. A stock option granted to an employee of a corporation allows the employee to purchase company stock at a specified price – referred to as the “exercise price” – for a specified period of time. Stock options are granted as part of employee compensation packages as a means to create incentives to boost profitability and stock value. When the employee exercises the option, he or she purchases the stock from the company at the exercise price, regardless of the stock's market price at the time the option is exercised. If the exercise price is lower than it should be, the employee pays less and the company gets less when the stock option is exercised.

3. Essentially, a back-dated option is a retroactive grant, so that the exercise price is lower, or in some cases, much lower, than the actual market price as of the time when the options were in fact granted. This creates a windfall for the grantee, who realizes an instant paper gain.

4. On May 22, 2006, Merrill Lynch issued an analysis of the options grant timing for the semiconductor and semiconductor equipment companies that comprise the Philadelphia Semiconductor Index (“SOX”). Maxim and Defendant Gifford were included in this study. (Exhibit A attached hereto).

5. The study was conducted in response to recent scrutiny of conduct related to stock option grants.

6. To analyze the validity of the options grants, Merrill Lynch looked at whether the stock price performance, subsequent to options pricing, diverges from stock price performance

over a long period of time. Specifically, Merrill Lynch then looked at annualized stock price returns for the 20 day period subsequent to options pricing in comparison to stock price returns for the calendar year in which the options were granted.

7. Merrill Lynch noted that theoretically, if the timing of options grants are at arms length, there should not be material difference between the two measurements. Instead, Merrill Lynch found that Maxim management's (including Gifford's) 20 day return on the grants was approximately 14%, averaged for the period from 1997 to 2002, or a annualized return of 243%.

8. In contrast, Merrill Lynch found that annualized market returns in the same period averaged 29%.

9. Merrill Lynch pointed out that the companies in the study, including Maxim, must have been remarkably effective at timing options pricing events. Merrill Lynch did not take a position as to whether back-dating occurred. Plaintiff alleges that the Merrill Lynch research demonstrates that options were back-dated.

10. On June 7, 2006, Maxim announced that it had been contacted by the Securities and Exchange Commission for an informal inquiry into its past stock option grants.

11. Maxim's stock option plans provided that stock option grants must be priced at not less than the fair market value of the common stock on the date of the grant, as measured by the publicly traded closing price for the stock on the date of the grant. Thus back-dating violated the terms of Maxim's stock option plans. It also was in breach of Defendants' fiduciary duties of care, loyalty and good faith to the Company.

12. Defendants' conduct has unjustly enriched Defendant Gifford, to the detriment of the Company and its shareholders.

## **PARTIES**

13. Plaintiff Walter E. Ryan, Jr. is a resident of Illinois. He is currently a shareholder of Maxim and has continuously been a shareholder since his Dallas Semiconductor Incorporated shares were converted to Maxim shares upon Maxim's acquisitions of Dallas Semiconductor on April 11, 2001.

14. Defendant Gifford is a founder of MAXIM, and has served as Chairman of the Board of Directors of MAXIM since its inception in 1983. He also served as Chief Executive Officer of the Company from its formation to the present. He has personally benefited from the back-dated stock option grants described herein.

15. Defendant Bergman is currently, and has been, on Maxim's Board of Directors since 1988. Defendant Bergman was a member of the Board that granted Defendant Gifford's stock options from 1998 to 2002. In addition, Defendant Bergman was a member of the Compensation Committee 1998 to 2002. The Compensation Committee approved Defendant Gifford's option grants from 1998 to 2002.

16. Defendant Hagopian is currently, and has been, on Maxim's Board of Directors since at least 1997. Defendant Hagopian was a member of the Board that granted Defendant Gifford's stock options from 1998 to 2002. In addition, Defendant Hagopian was a member of the Compensation Committee 1998 to 2002. The Compensation Committee approved Defendant Gifford's option grants from 1998 to 2002.

17. Defendant Wazzan is currently, and has been, on the Board of Directors since 1990. Defendant Wazzan was a member of the Board that granted Defendant Gifford's stock options from 1998 to 2002. In addition, Defendant Wazzan was a member of the Compensation

Committee 1998 to 2002. The Compensation Committee approved Defendant Gifford's option grants from 1998 to 2002.

18. Defendant Karros, served on the Board of Directors from 2000 until 2002. Defendant Karros was a member of the Board that granted Defendant Gifford's stock options from 2000 to 2002.

19. Defendant Sampels has been on the Board of Directors from 2001 until 2005. Defendant Sampels was a member of the Board that granted Defendant Gifford's stock options during 2001 and 2002.

### **FACTS**

20. Maxim is a worldwide leader in design, development, and manufacture of linear and mixed-signal integrated circuits (ICs). Its products are used in a wide variety of microprocessor-based electronics equipment, including personal computers and peripherals, process control, instrumentation, test equipment, handheld devices, wireless and fiber communications, and video displays.

21. Between 1998 and mid-2002, Maxim, through the actions of its Board of Directors, granted stock options for the purchase of millions of shares of the Company's common stock to Gifford.

22. In shareholder approved stock option plans filed with the Securities and Exchange Commission, Maxim contracted and represented that the exercise price of all of the stock options granted would be no less than the fair market value of the Company's common stock, measured by the publicly traded closing price for Maxim stock, on the date of the grant.

23. For example Maxim's 1983 Stock Option Plan, amended as of November 10, 1994, provides in relevant part:

(b) The exercise price of each option shall be not less than one hundred percent (100%) of the fair market value of the stock subject to the option on the date the option is granted.

24. Similarly, Maxim's 1999 Amended Stock Incentive Plan, located in its 1999 10-K form filed with the SEC provides in relevant part:

“(a) Exercise Price. The exercise price for an Option shall be as follows:

(i) In the case of an Incentive Stock Option:

(A) granted to an Employee who, at the time of the grant of such Incentive Stock Option owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be not less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant.

(B) granted to any Employee other than an Employee described in the preceding paragraph, the per Share exercise price shall be not less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.”

25. These particular provisions of the plan are also required under applicable provisions of the Internal Revenue Code, in order to qualify for the desired tax treatment for both the company and the grantee. 26 U.S.C. § 422(b)(4).

26. Maxim's 1999 Amended Stock incentive plan also provides for how the plan is administered:

“(i) Administration with Respect to Directors and Officers.

With respect to grants of Options to Directors or Employees who are also Officers or Directors of the Company, the Plan shall be administered by

(A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws and to permit such grants and related transactions under the Plan to be exempt from Section 16(b) of the Exchange Act in accordance with Rule 16b-3. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board.”

27. Defendants, as Board members, were responsible for granting the options to Defendant Gifford.

28. Contrary to the foregoing contractual provisions and Maxim’s public disclosures, the multi-year pattern of grant dates that were highly favorable to Defendant Gifford (discussed in greater detail in paragraphs 31 through 40 below), demonstrates that the stock options were not priced “on the date of the grant” but were in fact back-dated. In many instances, the annual grants were purportedly dated the very day that Maxim stock hit its low price for the year or just prior to a sharp increase in the market price of the Company’s stock.

29. Many companies make their stock option grants at the same time each year, a policy that eliminates the potential for surreptitious back-dating. Providing for predetermined dates for the granting of those options (and hence the date on which the exercise price would be set) eliminates the potential for back-dating.

30. In contrast, between 1998 and 2002, Maxim granted stock options to Gifford in each of the following months: January, March, April, May, July, September, October and December.

31. Purportedly on October 27, 1998, Defendant Gifford was granted 800,000 options at an exercise price of \$14.53 per share.

32. Purportedly in July 1998, Defendant Gifford was granted 600,000 options at an exercise price of \$14.06 per share.

33. Purportedly on May 25, 1999, Defendant Gifford was granted 1,040,000 options at an exercise price of \$24.59 per share, which was the lowest trading price of the stock until 2002.

34. Purportedly on March 15, 2000, Defendant Gifford was granted 600,000 options at an exercise price of \$57.81, the day's closing trade. On March 16, 2000, Maxim's price closed at \$70.31. That difference produced a paper gain, for one day, of \$7,500,000.

35. Purportedly on September 18, 2000, Defendant Gifford was granted 53,333 options at an exercise price of \$75.00 per share. Ten days later, on September 28, the stock closed at \$85.06 per share, a ten day paper gain of over \$533,333.

36. Purportedly on October 11, 2000, Defendant Gifford was granted 59,590 options at an exercise price of \$67.19 per share.

37. Purportedly on January 30, 2001, Defendant Gifford was granted 600,000 options at an exercise price of \$58.13 per share. On February 12, 2001, the stock closed at \$60.19, generating a twelve day gain of over \$1,200,000.

38. Purportedly on September 27, 2001, Defendant Gifford was granted another 600,000 in options at \$33.68, the lowest price the stock was traded at between the beginning of 2000 and the beginning of 2002. Subsequently, on October 11, 2001, fourteen days later, the stock closed at \$47.23, a fourteen day paper gain of \$8,130,000.

39. Purportedly on April 26, 2002 Defendant Gifford was granted 600,000 options at an exercise price of \$48.19.

40. The Merrill Lynch report, on page 14, shows that most of the option grants in question were purportedly granted at the low market price of the month, or year, in which the stock was traded.

41. Many of the other grants occurred from one day to one week before a major rise in the market price of Maxim common stock. As the charts in the Merrill Lynch SOX report show on page 14, each trade was made in a “valley” on the chart. The timing is too favorable on a repeated basis to be mere coincidence.

42. As a result of the back-dating of options issued to Defendant Gifford, he has been unjustly enriched at the expense of Maxim, which receives less money from Defendant Gifford when he exercises his options at prices substantially lower than he would have if the options had not been back-dated.

43. Had Defendant Gifford’s stock options not been back-dated, his profits and unrealized gains on exercisable stock options would have been tens of millions of dollars less.

44. The practice of back-dating stock options not only lined the pockets of Defendant Gifford at the direct expense of the Company, which dollar for dollar receives money when the options are exercised, but also may have resulted in the overstatement of Maxim’s profits in the years 1998, through 2002. This is because options priced below the stock’s fair market value at the time of award bring the recipient an instant paper gain. Under accounting rules, that is the equivalent of additional compensation and thus must be treated as a cost to the company. On information and belief, Maxim did not account for the amount by which the market price of the Company’s stock, on the actual date the options were issued, exceeded the exercise price of the

options, as expenses, and thus the Defendants' conduct described herein may have caused the company to overstate its profits.

45. Defendant Gifford, who was CEO and Chairman of the Board of Directors of Maxim, with a fiduciary duty to act with the utmost due care, loyalty, and good faith, either expressly authorized the practice of back-dating options or in conscious abrogation of their fiduciary duties, permitted it to occur repeatedly over the years. The practice only ceased after the passage of sweeping changes to the federal securities laws in 2002, which curtailed the potential for back-dating by requiring companies to disclose option grants within two days.

46. Defendants stood in a fiduciary relationship with the company's shareholders, and had a duty to disclose the practice of back-dating stock options. In violation of that duty, the Defendants fraudulently concealed the fact that the options had been granted to Defendant Gifford with an exercise price less than the market price on the date of grant. Instead, the Compensation Committee's report in the proxy statement asserts that all options are granted pursuant to the Company's stock option plans.

#### **DERIVATIVE ACTION AND DEMAND FUTILITY ALLEGATIONS**

47. Plaintiff brings this action derivatively in the right and for the benefit of Maxim to redress the injuries suffered, and to be suffered, by Maxim as a direct result of the breach of fiduciary duty and unjust enrichment alleged herein. Maxim is named as a nominal defendant solely in a derivative capacity.

48. Plaintiff will adequately and fairly represent the interest of Maxim in enforcing and prosecuting its rights.

49. Plaintiff is and has continuously been an owner of Maxim stock since 2001.

50. Plaintiff did not make a demand on the Board of Directors to bring this action on behalf of Maxim because such a demand would have been a futile, wasteful, and useless act. Maxim's Board of Directors currently consists of six Directors. Defendants Gifford, Bergman, Hagopian, and Wazzan are still currently serving on Maxim's Board of Directors. Only two of the six current Directors, Michael J. Byrd and Peter De Roethh, were elected after the wrongdoing, in 2005.

51. Under the 1983 Stock Option Plan and the 1999 Stock Incentive Plan, the stock option exercise price "is determined by the Board according to the terms of the plan." Thus, as members of the Board, each of the Defendants authorized and enabled Maxim to back-date stock options issued to Defendant Gifford. The board has no discretion to contravene the terms of the stock option plans. The back-dating of stock options was in direct violation of the stock option plans, which cannot be an exercise of business judgment.

52. Under the terms of the 1999 plan, the Board could designate a Committee to approve the options, known as the Compensation Committee. Defendants Bergman, Hagopian, and Wazzan, were members of the Compensation Committee that approved the option grants to Defendant Gifford.

53. Because the Defendants approved and/or accepted the benefit of the alleged back-dating, they are personally liable for the company's losses.

**CAUSES OF ACTION**

**COUNT I**

**Breach of Fiduciary Duty Against All Defendants**

54. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

55. The Defendants owe Maxim fiduciary obligations. By reason of their fiduciary relationships, the Defendants owed and owe Maxim the highest obligation of good faith, fair dealing, loyalty and due care.

56. The Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

57. Each of the Defendants authorized, or by abdication of duty permitted, the stock options granted to Defendant Gifford to be back-dated. These actions were not a good faith exercise of business judgment to protect and promote the Company's corporate interests.

58. As a direct and proximate result of the Defendants' breaches of their fiduciary obligations, Maxim has sustained and will continue to sustain significant damages. As a result of the misconduct alleged herein, Defendants are liable to the Company.

59. Defendants caused Maxim to "give away" for no consideration the difference between the exercise prices of Gifford's options and the exercise prices the options should have had pursuant to the governing plans. The transactions acted as a fraud on the corporation, giving a windfall to Defendant Gifford.

60. In approving and/or accepting back dated options, Defendants knowingly preferred the interest of Gifford over those of Maxim and its shareholders.

61. Plaintiff has no adequate remedy at law.

**COUNT II**  
**Against Defendant Gifford for Unjust Enrichment**

62. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

63. As a result of the back-dating of the options granted to him, Defendant Gifford has been and will continue to be unjustly enriched at the expense of and to the detriment of Maxim.

64. Accordingly, this Court should order Defendant Gifford to disgorge all profits, benefits, and other compensation he obtained from the wrongful conduct and fiduciary breaches described herein, and should order the options held by Defendant Gifford, which have not yet been exercised, to be rescinded or repriced at the market price of Maxim's stock on the dates the Court finds that those options were, in fact, granted.

65. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

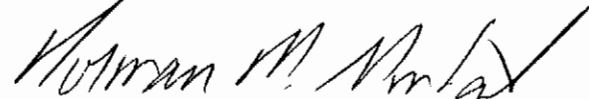
**WHEREFORE**, Plaintiff demands judgment as follows:

- a. Against Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Defendants' breaches of fiduciary duties;
- b. Ordering disgorgement of all profits, benefits and other compensation Gifford obtained by as a result of the conduct alleged herein;

- c. Rescinding and/or repricing the back-dated stock options;
- d. Imposing a constructive trust for the benefit of Maxim on the amounts by which Maxim has been unjustly enriched;
- e. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and
- f. Granting such other and further relief as the Court deems just and proper.

Dated: June 12, 2006

ROSENTHAL, MONHAIT & GODDESS, P.A

By: 

Norman M. Monhait (#1040)  
919 Market Street, Suite 1401  
Citizens Bank Center  
P.O. Box 1070  
Wilmington, Delaware 19899  
(302) 656-4433  
Attorneys for Plaintiff

KRISLOV & ASSOCIATES, LTD.  
Clinton A. Krislov  
20 N. Wacker Drive Suite 1350  
Chicago, IL 60606  
(312) 606-0500