



NO. S010421
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

PLAINTIFF

AND:

IMPERIAL TOBACCO CANADA LIMITED, ROTHMANS, BENSON & HEDGES INC., ROTHMANS INC., JTI-MACDONALD CORP., CANADIAN TOBACCO MANUFACTURERS' COUNCIL, B.A.T INDUSTRIES p.l.c., BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, CARRERAS ROTHMANS LIMITED, PHILIP MORRIS INCORPORATED, PHILIP MORRIS INTERNATIONAL, INC., R. J. REYNOLDS TOBACCO COMPANY, R. J. REYNOLDS TOBACCO INTERNATIONAL, INC., ROTHMANS INTERNATIONAL RESEARCH DIVISION and RYESEKKS p.l.c.

DEFENDANTS

**REPLY TO STATEMENT OF DEFENCE OF
PHILIP MORRIS U.S.A. INC.**

1. In reply to paragraph 202 of the Statement of Defence, the plaintiff says that the doctrine of *nemo debet bis vexari* is not applicable and that this action is not *res judicata* because:
 - (a) the claim herein is founded upon a different cause of action than that which formed the basis of the Previous Action; and
 - (b) the claim in the Previous Action was never adjudicated on its merits.

2. In reply to paragraph 203(a) of the Statement of Defence, the plaintiff says that whether or not insured persons have suffered pecuniary damage in respect of the cost of health care benefits is immaterial to the cause of action conferred on the plaintiff by the *Act* or to the claim advanced by the plaintiff in the Statement of Claim.
3. In reply to paragraph 203(b) of the Statement of Defence, the plaintiff denies that the liability alleged is an *ex post facto* attempt to make actionable conduct that was not actionable when it occurred, and, in any event, the *Act* has the retroactive effect necessary to give its provisions full effect for the purpose of a claim under section 2.
4. The plaintiff denies the allegations of fact contained in paragraphs 203(e) 204(d) & (e), 205(b)(ii), 208 and 219 in the Statement of Defence and says:
 - (a) the misrepresentations, acts and omissions alleged in the Statement of Claim were also directed to governments and public health agencies, including the plaintiff, and were relied on by them;
 - (b) the defences and legal principles referred to are inapplicable to actions and decisions made by government in the legislative and policy sphere; and
 - (c) the defences and legal principles referred to are inapplicable to a claim brought under the *Act*.
5. The plaintiff denies the allegations contained in paragraphs 205(a) and 206 and further says that the issue of causation is to be determined according to the provisions of the *Act*.
6. In reply to paragraph 205(b)(i) of the Statement of Defence, if the cost of health care benefits was paid pursuant to the requirements of the statutes referred to, this does not preclude a claim to recover those costs in a claim under the *Act*. In fact, the right of the plaintiff to recover the cost of health care benefits under the *Act* depends upon those benefits being paid pursuant to, *inter alia*, the statutes referred to.
7. In reply to paragraph 205(c) of the Statement of Defence, the plaintiff admits that it receives tax revenue from the sale of cigarettes but denies that tax revenue from the sale of cigarettes is to be deducted from a claim for the cost of health care benefits under the *Act*. The plaintiff further denies that this revenue exceeds the costs of providing health care services to insured persons who have suffered tobacco related disease.

8. In reply to paragraph 205(d) of the Statement of Defence, if the plaintiff has received transfer payments, conditional grants and other funding from the government of Canada as alleged or at all, which is denied, any such funding does not exceed the Claimed Cost and further the plaintiff denies that any funding received is to be deducted from the Claimed Costs.
9. In reply to paragraph 207 of the Statement of Defence, the plaintiff pleads section 6 of the Act.
10. The plaintiff denies the allegations contained in paragraphs 205(b)(iii) and (iv) and 220 to 231 of the Statement of Defence. The plaintiff says that that the action is an aggregate action under section 2 of the Act, in respect of which defences based on the conduct of individual insured persons are inapplicable. The allegations contained in paragraphs 205(b)(iii) and (iv) and 220 to 231 of the Statement of Defence, which are not admitted, are material, if at all, only under section 3(4) of the Act pursuant to which the defendant may seek to establish that its breach of duty did not cause or contribute to the exposure of insured persons to a tobacco product.

Dated: January 31, 2007

Bull, Housser & Tupper LLP

per:


Solicitors for the Plaintiff

This REPLY is prepared and filed by Bull, Housser & Tupper LLP, Solicitors for the Plaintiff, whose office address and address for delivery is 3000 - 1055 West Georgia Street, Vancouver, British Columbia, V6E 3R3 Attention: Daniel A. Webster, Q.C. Telephone: (604) 641-4879 Facsimile: (604) 641-4949



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DEFENDANTS

**REPLY TO STATEMENT OF DEFENCE OF
PHILIP MORRIS INTERNATIONAL INC.**

1. In reply to paragraph 202 of the Statement of Defence, the plaintiff says that the doctrine of *nemo debet bis vexari* is not applicable and that this action is not *res judicata* because:

- (a) the claim herein is founded upon a different cause of action than that which formed the basis of the Previous Action; and
- (b) the claim in the Previous Action was never adjudicated on its merits.

2. In reply to paragraph 203(a) of the Statement of Defence, the plaintiff says that whether or not insured persons have suffered pecuniary damage in respect of the cost of health care benefits is immaterial to the cause of action conferred on the plaintiff by the *Act* or to the claim advanced by the plaintiff in the Statement of Claim.

3. In reply to paragraph 203(b) of the Statement of Defence, the plaintiff denies that the liability alleged is an *ex post facto* attempt to make actionable conduct that was not actionable when it occurred, and, in any event, the *Act* has the retroactive effect necessary to give its provisions full effect for the purpose of a claim under section 2.

4. The plaintiff denies the allegations of fact contained in paragraphs 203(e), 205(b)(ii), 208 and 219 in the Statement of Defence and says:

- (a) the misrepresentations, acts and omissions alleged in the Statement of Claim were also directed to governments and public health agencies, including the plaintiff, and were relied on by them;
- (b) the defences and legal principles referred to are inapplicable to actions and decisions made by government in the legislative and policy sphere; and
- (c) the defences and legal principles referred to are inapplicable to a claim brought under the *Act*.

5. The plaintiff denies the allegations contained in paragraphs 205(a) and 206 and further says that the issue of causation is to be determined according to the provisions of the *Act*.

6. In reply to paragraph 205(b)(i) of the Statement of Defence, if the cost of health care benefits was paid pursuant to the requirements of the statutes referred to, this does not preclude a claim to recover those costs in a claim under the *Act*. In fact, the right of the plaintiff to recover the cost of health care benefits under the *Act* depends upon those benefits being paid pursuant to, *inter alia*, the statutes referred to.

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alleged or at all, which is denied, any such funding does not exceed the Claimed Cost and further the plaintiff denies that any funding received is to be deducted from the Claimed Costs.

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10. The plaintiff denies the allegations contained in paragraphs 205(b)(iii) and (iv) and 220 to 231 of the Statement of Defence. The plaintiff says that the action is an aggregate action under section 2 of the *Act*, in respect of which defences based on the conduct of individual insured persons are inapplicable. The allegations contained in paragraphs 205(b)(iii) and (iv) and 220 to 231 of the Statement of Defence, which are not admitted, are material, if at all, only under section 3(4) of the *Act* pursuant to which the defendant may seek to establish that its breach of duty did not cause or contribute to the exposure of insured persons to a tobacco product.

Bull, Houser & Tupper LLP

per:



Solicitors for the Plaintiff

Dated: January 31, 2007

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