

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**  
**RYESEKKS P.L.C.**

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 201, 203(e), 207, 208(b) & (c), 209 (b)(ii), 212 and 223 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 paragraph 210 and further says that the issue of causation is to be determined according to the provisions of the *Act*.

6. In reply to paragraph 209(b)(i) of the Statement of Defence, if the Claimed Cost 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 209(c) of the Statement of Defence, the plaintiff says that the Claimed Cost has been increased as a result of tobacco related disease and will be increased by reason of the consumption of tobacco products;

8. In reply to paragraph 209(d) 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.

9. In reply to paragraph 209(e) 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.

10. In reply to paragraph 211 of the Statement of Defence, the plaintiff pleads section 6 of the *Act*.

11. The plaintiff denies the allegations contained in paragraphs 224 to 235 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 224 to 235 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.

12. In reply to paragraph 236 of the Statement of Defence, the plaintiff says that if Ryeseckks p.l.c. was placed into voluntary liquidation as is alleged at paragraph 6 of the Statement of Defence, or at all, which is denied, the Claimed Cost is a provable debt and the action is maintainable. The plaintiff says that Ryeseckks p.l.c. cannot under the laws of the United Kingdom or otherwise voluntarily liquidate its assets and affairs without satisfying its liability to the plaintiff in full.

13. The plaintiff specifically denies each and every allegation of fact contained in paragraph 237 of the Statement of Defence. In particular, without restricting the generality of the foregoing, the plaintiff denies that there has been any final distribution of assets as alleged therein or at all. Alternatively, if Ryeseckks p.l.c. or its liquidator has purported to distribute the assets of Ryeseckks p.l.c. through a voluntary liquidation, without restricting the plaintiff's other remedies as against Ryeseckks p.l.c., its directors, officers, agents or liquidator, such liquidation or other steps are a nullity and of no force or effect, or alternatively, are liable to be set aside, on the basis that Ryeseckks p.l.c. has not satisfied its liability to the plaintiff.

14. The plaintiff says further that all material times Ryesecks p.l.c., its directors, officers, agents and liquidator, had notice of the plaintiff's claim and expressly or impliedly acknowledged the existence of the plaintiff's claim by accepting service of the Writ of Summons and Statement of Claim of the plaintiff on September 3, 2001 and by filing a Notice of Motion on October 11, 2001 seeking an Order that the *ex juris* service of the Writ of Summons and Statement of Claim be set aside on the ground that the British Columbia Court had no jurisdiction over Ryesecks p.l.c. At no time has Ryesecks p.l.c. nor its agents or its liquidator provided the plaintiff with notice requiring the plaintiff to submit a claim other than the claim as expressly made known to Ryesecks p.l.c. and its liquidator in this action and other legal proceedings by the plaintiff initiated since 2001. Ryesecks is estopped by its conduct, including its defence of this action, from relying on any steps taken in any voluntary liquidation proceedings which purport to deprive the plaintiff of any right of action, remedy or recovery.

Bull, Housser & Tupper LLP

per:



Solicitors for the Plaintiff

Dated: February 27, 2007

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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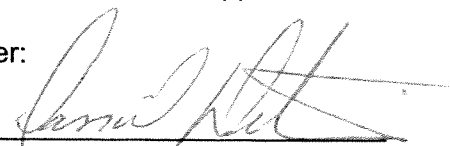
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Bull, Housser & Tupper LLP

per:

  
Solicitors for the Plaintiff

Dated: February 27, 2007

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