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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROGER PERRON

PLAINTIFF

AND:

R.J.R. MacDONALD INC.

DEFENDANT

STATEMENT OF CLAIM

WRIT ISSUED THE 20th DAY OF JUNE, 1988.

1. The Plaintiff had been a heavy equipment operator prior to 1983 and now is presently unemployed. He resides at 2840 East 7th Avenue in the City of Vancouver, in the Province of British Columbia.

2. The Defendant is a company incorporated under the laws of Canada, and has its chief place of business in the Province of British Columbia at 7080 River Road, in the Municipality of Richmond, in the Province of British Columbia.

3. The Defendant manufactures and sells cigarettes for public consumption and has done so in Canada since prior to 1968.

4. The Plaintiff, who was born on November 22, 1952, began smoking Export cigarettes manufactured by the Defendant at age 11.

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In 1976, at age 24, the Plaintiff began to suffer loss of circulation, pain, and discomfort in his lower extremities which increased to such a degree that in 1980, his left leg had to be amputated. Following an autopsy of his severed limb, he was informed that he suffered from Thromboangitis Obliterans, or Buerger's Disease. At that time, he was also informed by his doctor that smoking may have a deleterious effect on people who suffer from the disease.

Because of his addiction to and dependance upon the Defendant's cigarettes, the Plaintiff continued to smoke following the amputation of his left leg, and in 1983 his right leg was amputated in order to give him relief from the extreme pain and discomfort he suffered as a result of the said disease, in combination with the effects of smoking. Following the loss of his right leg, he stopped smoking and since that time, the disease has remained dormant, and his health and general emotional condition has improved.

5. The Plaintiff's loss of both legs was caused or contributed to by the negligence of the Defendant in that:

- a) It failed to carry out proper research to determine the effect of tobacco upon smokers who suffered from Buerger's Disease, to determine whether it represented a danger to them.
- b) It failed to test and research adequately the risk to tobacco use, and in particular,

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the association between tobacco use and Buerger's Disease when it knew, or ought to have known, that the use of tobacco by victims of the said disease exacerbated or made worse its symptoms and effects.

- c) It failed in its duty to inform itself fully of the characteristics of and potential hazards associated with its product, and in its duty to warn users who may run an unusual risk of harm.
- d) It failed to warn doctors, retailers, and consumers properly, or at all, of the effect of tobacco in association with Buerger's Disease.
- e) It failed to warn adequately the public and in particular, members of the public suffering from Buerger's Disease, that the association of tobacco with Buerger's Disease was unsafe and harmful to their health.
- f) The Plaintiff states further, and in the alternative, that if any warning was given by the Defendant, it was inadequate to apprise him or other users suffering from Buerger's Disease of the medical risks involved in smoking, and that any warning given by the Defendant was, knowingly and wilfully, negated, nullified and vitiated by the artful and insidious advertising in which it was contained.

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g) It failed to warn the Defendant that cigarette smoking was addictive and caused physical and psychological dependancy.

6. The Plaintiff states that the Defendant sold to the public a substance dangerous to the victims of Buerger's Disease, of which he is one, and therefore is strictly liable for the injuries sustained by him.

7. The Plaintiff states that as a result of the failure of the Defendant to warn him of the risk involved in his continued use of tobacco while suffering from Buerger's Disease, he lost both his legs by amputation.

8. The Plaintiff states that the Defendant expressly warranted that smoking its cigarettes did not present any danger to his health, and pleads and relies upon Section 18 of the Sale of Goods Act, R.S.B.C. 1979, Chapter 370.

9. As a result of the negligence of the Defendant, the Plaintiff claims general damages for pain and suffering, the loss of earnings or of earning capacity past and future, loss of enjoyment of life, undue aging or loss of life expectancy, loss of physical, mental or nervous health, loss of insurability, loss of resistance to injury or disease, and permanent disability. The Plaintiff requires and will be required to employ a wheelchair and artificial limbs, crutches and canes for the remainder of his life and also requires and will require a motor vehicle for his transportation.

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10. As a further result of the negligence of the Defendant, the Plaintiff has sustained and will continue to sustain certain special damages, loss and expense, particulars of which will be delivered as requested and available.

11. The Plaintiff claims aggravated, punitive and exemplary damages on the grounds that the Defendant sold and marketed its cigarettes with the knowledge that tobacco could adversely affect the condition and health of the smokers suffering from Buerger's Disease, and failed to warn the Plaintiff of this danger. Also, the Defendant was under a duty and failed to warn the Plaintiff and the public that victims of Buerger's Disease should not use its tobacco products.

WHEREFORE THE PLAINTIFF CLAIMS:

- a) General damages;
- b) Special damages;
- c) Aggravated, punitive and exemplary damages;
- d) Costs of this action;
- e) Such other and further relief as this Honourable Court may deem appropriate.

PLACE OF TRIAL.....VANCOUVER, B.C.


Solicitor for the Plaintiff

THIS STATEMENT OF CLAIM is filed by RUSSELL V. STANTON, Esq., Barrister and Solicitor, whose place of business and address for delivery is 4132 Tytahn Crescent, Vancouver, B.C. V6N 3N9 Telephone: 263-2751

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NO. _____
VANCOUVER REGISTRY

PRM 1 (RULE 3 (3))



In the Supreme Court of British Columbia

ROGER PERRON

Plaintiff

R. J. R. MACDONALD INC.

Defendant

WRIT OF SUMMONS

ROGER PERRON
2840 East 7th Avenue
Vancouver, B.C.

R. J. R. MACDONALD INC.
7080 River Road
Richmond, B.C.

LIZBETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms Territories, Queen, Head of the Commonwealth, Defender of the Faith.

to defendant(s): R. J. R. MACDONALD INC.

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing a form titled "Appearance" in the above Registry of this Court within the Time for Appearance endorsed hereon. YOU MUST ALSO DELIVER a copy of the "Appearance" to the plaintiff's address for delivery, which is set out in this writ.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" from the Registry.

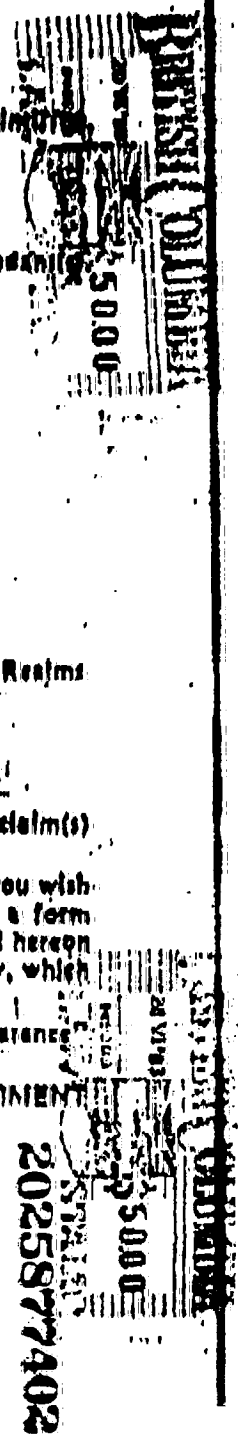
IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, JUDGMENT WILL BE TAKEN AGAINST YOU without further notice.

address of the registry is: 800 Smith Street, Vancouver, B.C.

and office address of plaintiff's solicitor (if any):

RUSSELL V. STANTON
Barrister and Solicitor
4132 Tytahn Crescent
Vancouver, B.C. V6N 3M9
Telephone: 263-2721

if it's address for delivery: same as above



06/22/88 11:03
JUN-20-1988 15:13 FROM

R B H INC CANADA
SMITH LYONS TORRANCE, TOR TO

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The Plaintiff's claim against the Defendant is for damages for negligence in failing to warn, or to warn adequately, the Plaintiff of the risk of injury from smoking tobacco while he was suffering from Buerger's Disease when it knew, or ought to have known, the effect that smoking had upon the said disease) AND the Plaintiff also claims damages for breach of warranty AND the Plaintiff claims for costs.

R. V. Smith

TIME FOR APPEARANCE the Plaintiff

Where this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days after service (not including the day of service).
Where this Writ is served on a person outside British Columbia, the time for appearance by that person, after service, shall be 21 days in the case of a person residing anywhere within Canada, 30 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere. The Court may shorten the time for appearance on a party's application.

CERTIFICATE OF SERVICE BY SHERIFF

I certify that

on the _____ day of _____

at _____ o'clock in the _____

noon, I left a copy of this document with _____

(By place)

at _____ this _____ day of _____

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