

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE ONTARIO FLUE-CURED TOBACCO GROWERS' MARKETING  
BOARD, ANDY J. JACKO, BRIAN BASWICK, RON KICHLER  
and ARPAD DOBRENTEY

Plaintiffs

and

ROTHMANS, BENSON & HEDGES, INC.

Defendant

Proceeding Under the *Class Proceedings Act, 1992*

**REPLY**

1. Except as expressly admitted in the statement of claim or herein, the plaintiffs deny all allegations contained the statement of defence.

**THE RELEASED CLAIM DEFENCE**

2. The plaintiffs in this class action commenced two other class actions that involve similar issues against Imperial Tobacco Canada Limited (“ITCAN”) in court file no. 64757CP (the “ITCAN action”) and JTI-Macdonald Corp. in court file no. 1056/10CP (the “JTI action”).

3. Following the commencement of this action, on April 30, 2010 Her Majesty the Queen in Right of Ontario (“Ontario”) made an application in court file no. CV-10-14709 for an order declaring that the claim of the Ontario Flue-Cured Tobacco Growers’ Market Board (the

“Board”) in the ITCAN action is not a “Released Claim” for the purposes of section 15 of the Comprehensive Agreement dated July 31, 2008 made between ITCAN and Her Majesty the Queen in Right of Canada and in Right of the Provinces (the “Application”).

4. The defendant, Rothmans, Benson & Hedges, Inc. (“Rothmans”), participated as an Intervener in the Application agreeing to be bound by the result.

5. By order dated July 20, 2011, the Court of Appeal for Ontario ordered the Application to proceed “to seek a declaration that the claim of the Tobacco Board in Court file no. 64757CP is not a Released Claim for the purposes of s.15 of the Comprehensive Agreement dated July 31, 2008.”

6. On October 17, 2011, the Regional Senior Judge for the Southwest Region of Ontario designated the Honourable Justice Rady to hear all matters in the three related class actions (this action, the ITCAN action and the JTI action) and the Application.

7. By judgment dated January 2, 2013, the Honourable Justice Rady granted the Application and declared that the Board’s claim in the ITCAN action is not a Released Claim for the purposes of section 15 of the Comprehensive Agreement dated July 31, 2008.

8. Rothmans is therefore bound in the result of the Application as it relates to the Comprehensive Agreement dated July 31, 2008 made between Rothmans and Her Majesty the Queen in Right of Canada and in Right of the Provinces.

9. Rothmans’ defence that the release in the Comprehensive Agreement is complete defence and estoppel to this claim is a collateral attack on the January 2, 2013 judgment of the Honourable Justice Rady because the issue has been finally determined by the Court. The

plaintiffs plead and rely upon the related doctrines of *res judicata*, issue estoppel and abuse of process.

**THE LIMITATIONS ACT DEFENCE**

10. At all times prior to July 31, 2008, when Rothmans pleaded guilty to violating section 241(1)(a) of the federal *Excise Act* by “aiding persons to sell or be in possession of tobacco products manufactured in Canada that were not packaged and were not stamped in conformity with the *Excise Act*”, Rothmans publicly denied that it had any involvement in the smuggling of tobacco products back into Canada during the Class Period.

11. Notwithstanding Rothmans’ July 31, 2008 guilty plea on the *Excise Tax* offence, Rothmans continues to deny in its statement of defence that it was involved or that it ever admitted having been involved in smuggling operations.

12. In the circumstances of Rothmans’ repeated and continued denials, the plaintiffs did not know the material facts underlying their claim that, according to Rothmans, never existed.

13. The plaintiffs relied on Rothmans’ representations that it had no involvement in the smuggling of tobacco products back into Canada.

14. The plaintiffs therefore deny that the action is statute barred.

May 17, 2013

**SUTTS, STROSBURG LLP**

Lawyers  
600 - 251 Goyeau Street  
Windsor, ON N9A 6V4

**HARVEY T. STROSBURG, Q.C.**

LSUC# 126400

**WILLIAM V. SASSO**

LSUC# 12134I  
Tel: 519.561.6222  
Fax: 519.561.6203

Lawyers for the Plaintiffs

TO: **GREENSPAN HUMPHREY LAVINE**

Lawyers  
15 Bedford Road  
Toronto, ON M5R 2J7

**BRIAN H. GREENSPAN**

LSUC# 14268J

**NAOMI M. LUTES**

LSUC# 60192Q  
Tel: 416.868.1755  
Fax: 416.868.1990

Lawyers for the Defendant

THE ONTARIO FLUE-CURED TOBACCO GROWERS'  
MARKETING BOARD et al.  
Plaintiffs

-and- ROTHMANS, BENSON & HEDGES, INC.  
Defendant

Court File No. 64462CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
LONDON

**REPLY**

**SUTTS, STROSBURG LLP**  
Lawyers  
600 - 251 Goyeau Street  
Windsor, ON N9A 6V4

**HARVEY T. STROSBURG, Q.C.**  
LSUC# 126400  
Tel: 519.561.6228

**WILLIAM V. SASSO**  
LSUC# 12134I  
Tel: 519.561.6222  
Fax: 519.561.6203

Lawyers for the Plaintiffs

File number: 72.216.001

FILED  
MAY 28 2013

