

SUPREME COURT OF PRINCE EDWARD ISLAND

(TRIAL DIVISION)

BETWEEN:

STATE OF MAINE

APPLICANT

AND:

CHOICE TOBACCO INC.

RESPONDENT

MEMORANDUM OF SETTLEMENT made this 17th day of February, 2006, between Daniel L. Rideout, Solicitor for the Applicant, State of Maine, and Eugene P. Rossiter, Q.C., Solicitor for the Respondent, Choice Tobacco Inc.

WHEREAS the Respondent is a body incorporated under the laws of Prince Edward Island;

AND WHEREAS the Applicant obtained a judgment against the Respondent within the Superior Court of the State of Maine, U.S.A. (the "Judgment");

AND WHEREAS the Applicant commenced an application in the Supreme Court of Prince Edward Island to have the judgment recognized and enforcement against the Respondent on the 3rd day of August, A.D. 2005, and being File No. S1-GS-21145 (the "Application");

AND WHEREAS the Respondent, Choice Tobacco Inc., filed a Notice of Appearance on the 3rd day of September, A.D. 2005;

AND WHEREAS the Applicant filed an Application Record on the 8th day of September, A.D. 2005;

AND WHEREAS the Respondent filed an Application Record on the 16th day of December, A.D. 2005;

AND WHEREAS the parties hereto, the solicitors for the Applicant and the Respondent; with the consent of and upon the instructions of the Applicant and the Respondent, have agreed to settle the Application;

WITNESSETH that the Applicant and the Respondent agree as follows:

1. That the Respondent forward payment to its bank in the State of Maine the amount of \$8,029.39, in U.S. currency, by January 31st, 2006, and direct its bank that such payment be placed into the Respondent's escrow sub-account for the State of Maine.
2. That the Respondent forward payment to the law firm of Patterson Palmer, Charlottetown, the amount of \$91,970.61 in U.S. currency, by January 31st, 2006, to be placed in trust for the benefit of the State of Maine.
3. That immediately upon receipt of the funds mentioned in paragraphs 1 and 2, the Applicant shall execute and forward to the Respondent's counsel a Final Release in the form annexed hereto with respect to its claims against the Respondent in the Province of Prince Edward Island in Cause No. S1-GS-21154 and in all other Canadian jurisdictions.
4. That immediately upon receipt of the funds mentioned in paragraphs 1 and 2, the Applicant shall undertake in the form annexed not to enforce or take any steps to enforce in Canada, either directly or indirectly, with respect to the State of Maine's Superior Court Docket No. CV-2002-132 Order dated January 22, 2005 and to not seek to enforce within Canada any further judgment on any matters which were the subject matter of the aforesaid judgment. This shall not affect the right of the State of

Maine to pursue and/or enforce claims against the Releasees, with respect to the above-noted Order, in any jurisdiction outside of Canada and the Canadian Provinces and Territories.

5. That immediately upon receipt of the funds mentioned in paragraphs 1 and 2, the Applicant shall file a Notice of Discontinuance with the P.E.I. Supreme Court for Cause No. S1-GS-21154.

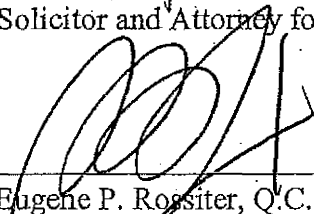
6. The Applicant and the Respondent agree that they shall each bear their own costs.

7. It is hereby declared that the terms of this settlement are fully understood and that the settlement is accepted voluntarily for the purpose of making a full and final compromise, adjustment and settlement of any and all actions, claims and demands, direct or indirect, arising in any manner whatsoever out of the Application.

Dated at Charlottetown, in the Charlottetown, Province of Prince Edward Island, this 17th day of February, 2006.



DANIEL L. RIDEOUT
Solicitor and Attorney for the Applicant



Eugene P. Rossiter, Q.C.
Solicitor and Attorney for the Respondent

FINAL RELEASE

1. THIS FINAL RELEASE in respect of any losses and claims of any nature or kind is freely and voluntarily executed by the undersigned in consideration of payment of the sum of One Hundred Thousand U.S. Dollars, (\$100,000.00) inclusive of all costs, interest and other amounts (the "Settlement Sum"), the Settlement Sum being irrevocably directed by the undersigned to be paid in the following manner:

(a) Eight Thousand, Twenty Nine Dollars and Thirty Nine Cents, U.S. (\$8,029.39) to be paid into the State of Maine's established escrow account;

(b) Ninety One Thousand, Nine Hundred Seventy Dollars and Sixty One Cents, U.S. (\$91,970.61) to be paid to the State of Maine;

2. AND IN CONSIDERATION of the Settlement Sum the undersigned hereby for itself and assigns:

(a) releases and forever discharges within Canada Choice Tobacco Inc, its successors and assigns (the "Releasees") from any actions, causes of action, demands or claims arising from or related to, either directly or indirectly, the Order of the Superior Court of Maine, Court Docket No. CV-202-132, Order dated January 22, 2005;

(b) releases and forever discharges the Releasees in the Province of Prince Edward Island, or any other Canadian jurisdiction, from any claim arising out of the Order of the Superior Court of Maine in Cause No. S1-GS-21154;

- (c) agrees not to make any claim, either directly or indirectly, against the Releasees or take any future proceedings in any Canadian jurisdiction in relation to any matters which were the subject of the Order of the Superior Court of Maine, Court Docket No. CV-202-132, Order dated January 22, 2005; however, this Release shall not affect the right of the State of Maine to pursue and/or enforce claims against the Releasees, with respect to the above-noted Order, in any jurisdiction outside of Canada and the Canadian Provinces and Territories;
- (d) agrees that the payment herein does not constitute an admission of liability on the part of the Releasees; and
- (e) acknowledges and declares that the terms of this Release and Settlement are fully understood; that the Settlement Sum stated herein is the sole and adequate consideration of this Release; and that such amount is accepted voluntarily as a full and final settlement of the claim against Choice Tobacco Inc. in the Province of Prince Edward Island in Cause No. S1-GS-21154, costs and interest as aforesaid.

DATED at Charlottetown, Province of Prince Edward Island, this 17th

day of January, 2006.

Witness:



DANIEL L. RIDEOUT as
Solicitor and Attorney for and on behalf
of the State of Maine

SUPREME COURT OF PRINCE EDWARD ISLAND

(TRIAL DIVISION)

BETWEEN:

STATE OF MAINE

APPLICANT

AND:

CHOICE TOBACCO INC.

RESPONDENT

NOTICE OF DISCONTINUANCE

The Applicant wholly discontinues this action against the Respondent without costs to any party. Pursuant to Rule 23.04(1) of the Civil Procedure Rules, this discontinuance shall constitute a full defence to any subsequent action brought by or on behalf of the Applicant.

DATED at Charlottetown, Queens County, Prince Edward Island this 17th day

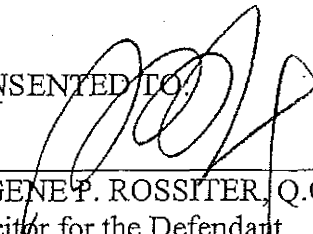
of ~~January~~, 2006.

February DR

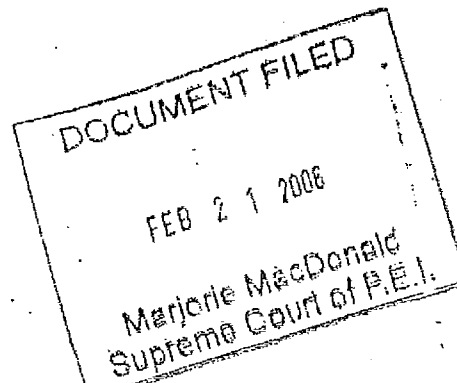


DANIEL L. RIDEOUT
Solicitor for the Applicant

CONSENTED TO:



EUGENE P. ROSSITER, Q.C.
Solicitor for the Defendant



R. 23.04

- 23.04 (1) The discontinuance of all or part of an action is not a defence to a subsequent action, unless the order giving leave to discontinue or a consent filed by the parties provides otherwise.
- (2) Where a plaintiff has discontinued and is liable for costs of an action, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest before payment of the costs of the discontinued action, the court may order a stay of the subsequent action until the costs of the discontinued action have been paid.

COSTS OF DISCONTINUANCE

23.05 Where a plaintiff discontinues an action against a defendant,

- (a) the defendant is entitled to the costs of the action; and
- (b) where the defendant has made a crossclaim or third party claim that is deemed to be dismissed under Rule 23.03, the defendant is entitled to recover from the plaintiff,
 - (i) the costs payable under Rule 23.03, and
 - (ii) the defendant's own costs of the crossclaim or third party claim,

unless the court orders otherwise.

WITHDRAWAL BY DEFENDANT

- 23.06 (1) A defendant may withdraw all or part of the statement of defence with respect to any plaintiff at any time by delivering to all parties a notice of withdrawal of defence (Form 23C), but,
- (a) where the defendant has crossclaimed or made a third party claim, leave to withdraw must be obtained from the court; and
 - (b) where the defendant seeks to withdraw an admission in the statement of defence, Rule 51.05 (withdrawal of admission) applies.
- (2) Where a defendant withdraws the whole of the statement of defence, the defendant shall be deemed to be noted in default.

APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS

BETWEEN:

STATE OF MAINE)

APPLICANT)

AND:)

CHOICE TOBACCO INC.)

RESPONDENT)

SUPREME COURT OF P.E.I.

(Trial Division)

Proceeding Commenced At
Charlottetown, Prince Edward Island

NOTICE OF DISCONTINUANCE

EUGENE P. ROSSITER, Q.C.
Stewart McKelvey Stirling Scales
65 Grafton Street
Charlottetown, PEI
Canada C1A 8B9
902.892.2485

54772/EPR/jmm

The State of Maine

UNDERTAKING

The STATE OF MAINE, United States of America, hereby undertakes:

1. To not enforce or take any steps to enforce, either directly or indirectly, in Canada, the State of Maine's Superior Court Docket No. CV-202-132, Order dated January 22, 2005;
2. To not bring any future action within Canada or to attempt to enforce in any manner or take any steps to enforce any judgment on any proceedings, either directly or indirectly, in Canada, on any matters which were the subject the State of Maine's Superior Court Docket No. CV-202-132, Order dated January 22, 2005;
3. This understanding does not affect the right of the State of Maine to pursue and/or enforce claims against the Respondent identified in the herein referred to Court Order in any jurisdiction outside of Canada and the Canadian Provinces and Territories;
4. As solicitor for the State of Maine, I do hereby confirm I have authorization and authority to give this Undertaking for and on behalf of the State of Maine.

DATED this 17th day of January, 2006.

February PR



DANIEL L. RIDEOUT

Patterson Palmer

20 Great George Street

Charlottetown, PE C1A 7L1

Solicitor for the State of Maine

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
DOCKET NO: CV-2002-132

STATE OF MAINE,)
Plaintiff)
)
v.)
)
CHOICE TOBACCO, INC.,)
Defendant)
)

ORDER AND JUDGMENT

Upon granting of plaintiff's Motion for Default and Entry of Judgment, the Court makes the following FINDINGS:

1. Choice Tobacco, Inc. knowingly violated 22 M.R.S.A. § 1580-I by failing to place \$125,846.36 into a qualified escrow fund for cigarettes sold in the State of Maine between June 4, 1999 and December 31, 1999.
2. Choice Tobacco, Inc. knowingly violated 22 M.R.S.A. § 1580-I by failing to place \$147,026.65 into a qualified escrow fund for cigarettes sold in the State of Maine between January 1, 2000 and December 31, 2000.
3. Choice Tobacco, Inc. knowingly violated 22 M.R.S.A. § 1580-I by failing to place \$167,418.97 into a qualified escrow fund for cigarettes sold in the State of Maine between January 1, 2001 and December 31, 2001.

It is hereby ORDERED, ADJUDGED AND DECREED:

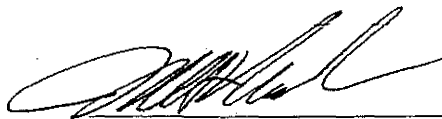
1. Choice Tobacco, Inc. is ordered to create a qualified escrow fund, as defined by 22 M.R.S.A. § 1580-H in a form acceptable to the State of Maine, Office of the Attorney General.

2. Choice Tobacco, Inc. is ordered to place \$125,846.36 in said qualified escrow fund for cigarettes sold in the State of Maine between June 4, 1999 and December 31, 1999.
3. Choice Tobacco, Inc. is ordered to place \$147,026.65 in said qualified escrow fund for cigarettes sold in the State of Maine between January 1, 2000 and December 31, 2000.
4. Choice Tobacco, Inc. is ordered to place \$167,418.97 in said qualified escrow fund for cigarettes sold in the State of Maine between January 1, 2001 and December 31, 2001.
5. Choice Tobacco, Inc. is ordered to pay a civil penalty in the amount of \$377,539.08, which is equal to 300% of the original amount improperly held from escrow between June 4, 1999 and December 31, 1999.
6. Choice Tobacco, Inc. is ordered to pay a civil penalty in the amount of \$441,079.95, which is equal to 300% of the original amount improperly held from escrow between January 1, 2000 and December 31, 2000.
7. Choice Tobacco, Inc. is ordered to pay a civil penalty in the amount of \$502,256.91, which is equal to 300% of the original amount improperly held from escrow between January 1, 2001 and December 31, 2001.
8. Choice Tobacco, Inc. shall reimburse the State of Maine, Office of Attorney General, for its costs in this action, totaling \$405.93, as authorized by 22 M.R.S.A. § 1580-I.
9. Choice Tobacco, Inc. shall pay the State of Maine, Office of the Attorney General \$15,000.00 for its attorney's fees in prosecuting this action, as authorized by 22 M.R.S.A. § 1580-I.
10. It is hereby ordered that "Yankee Blend," "Canadian Blend," "Canadian Natural," "Choice," "Atlantic Choice," and "Maritimer Smooth" tobacco products shall not be sold in the state of Maine, either at the wholesale or retail level (whether directly or through a distributor,

retailer or similar intermediary) for a period of two years from the date this Judgment is entered on the docket. In addition, Choice Tobacco, Inc. shall not sell any other brand of tobacco products within the state of Maine, either at the wholesale or retail level (whether directly or through a distributor, retailer or similar intermediary) for a period of two years. At the expiration of two years, this injunction shall continue in full force and effect until and unless the Defendant has complied with all other terms of this Order and Judgment. This injunction is in addition to any remedies that may be available to the State of Maine pursuant to 22 M.R.S.A. § 1580-L.

Dated:

Jan 27, 2006



Justice, Superior Court

A TRUE COPY.
ATTEST:

Nancy A. Desjardin
Nancy A. Desjardin
Clerk of Courts

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
DOCKET NO:

STATE OF MAINE,)	
Plaintiff)	
)	
v.)	COMPLAINT
)	
CHOICE TOBACCO, INC.,)	
Defendant)	
)	
and)	
)	
CHOICE TOBACCO (U.S.A.) LTD.,)	
Defendant)	

Plaintiff, State of Maine, by and through counsel, complains against the Defendants, Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd., as follows:

1. The Maine Attorney General is authorized by 22 M.R.S.A. § 1580-I to bring a civil action on behalf of the State of Maine against any tobacco product manufacturer that fails to place into escrow the funds required under 22 M.R.S.A. § 1580-I.
2. Defendant Choice Tobacco, Inc. is a corporation organized and existing under the laws of the Canadian province of Prince Edward Island, with a principal place of business at RR 4, Montague, Prince Edward Island, Canada.
3. Defendant Choice Tobacco, Inc. is not registered to do business in the State of Maine.
4. Defendant Choice Tobacco (U.S.A.) Ltd. is a corporation organized and existing under the laws of the state of North Carolina, with a principal place of business at RR 4, Montague, Prince Edward Island, Canada.

5. Defendant Choice Tobacco (U.S.A.) Ltd. is not registered to do business in the State of Maine.

6. This Court has personal jurisdiction over Defendants because they transact business within the State of Maine by supplying "roll-your-own" tobacco products, either directly or through a distributor, retailer or similar intermediary or intermediaries within the State of Maine, to consumers within the State of Maine, thus submitting to the jurisdiction of the courts of this state pursuant to 14 M.R.S.A. § 704-A.

7. "Roll-your-own tobacco" is a "cigarette", as that term is defined in 22 M.R.S.A. § 1580-H. For purposes of this definition, 0.09 ounces of "roll-your-own" tobacco constitutes one individual Cigarette.

8. Defendants are "tobacco product manufacturers" within the meaning of 22 M.R.S.A. § 1580-H.

9. As tobacco product manufacturers, Defendants are required, pursuant to 22 M.R.S.A. § 1580-I, to either (1) become participating manufacturers (as the term is defined in Section II (jj) of the Master Settlement Agreement) and generally perform their financial obligations under the Master Settlement Agreement; or (2) place into a qualified escrow fund, by April 15 of the year following the year in question, certain amounts of money, adjusted for inflation. (The term "Master Settlement Agreement" is defined in 22 M.R.S.A. § 1580-H.)

10. Defendants have not become participating manufacturers under the Master Settlement Agreement.

COUNT I

The allegations in paragraphs 1 through 10 are incorporated herein.

11. Between June 4, 1999 and December 31, 1999, Defendants sold 12,964,763 total units of individual cigarettes in Maine, either directly or indirectly.

12. Pursuant to 22 M.R.S.A. § 1580-I, Defendants were required to place into a qualified escrow fund an amount equal to \$.0097068 per individual cigarette sold in Maine between June 4, 1999 and December 31, 1999, or \$125,846.36.

13. Defendants have been notified in writing of their obligations to place money on behalf of the State of Maine into a qualified escrow fund by letters dated April 20, 2001, July 19, 2001, and May 3, 2002.

14. Defendants have not, to date, placed any monies on behalf of the State of Maine into a qualified escrow fund, in knowing violation of 22 M.R.S.A. § 1580-I.

COUNT II

The allegations contained in paragraphs 1 through 14 are incorporated herein.

15. Between January 1, 2000 and December 31, 2000, Defendants sold 13,185,537 total units of individual cigarettes in Maine, either directly or indirectly.

16. Pursuant to 22 M.R.S.A. § 1580-I, Defendants were required to place into a qualified escrow fund an amount equal to \$.0111506 per individual cigarette sold in Maine between January 1, 2000 and December 31, 2000, or \$147,026.65.

17. Defendants have been notified in writing of their obligations to place money on behalf of the State of Maine into a qualified escrow fund by letters dated April 20, 2001, July 19, 2001 and May 3, 2002.

18. Defendants have not, to date, placed any monies on behalf of the State of Maine into a qualified escrow fund, in knowing violation of 22 M.R.S.A. § 1580-I.

COUNT III

The allegations contained in paragraphs 1 through 18 are incorporated herein.

19. Between January 1, 2001 and December 31, 2001, Defendants sold 11,213,144 total units of individual cigarettes in Maine, either directly or indirectly.

20. Pursuant to 22 M.R.S.A. § 1580-I, Defendants were required to place into a qualified escrow fund an amount equal to \$.0149306 per individual cigarette sold in Maine between January 1, 2001 and December 31, 2001, or \$167,418.97.

21. Defendants have been notified in writing of their obligations to place money on behalf of the State of Maine into a qualified escrow fund by letters dated April 20, 2001, July 19, 2001 and May 3, 2002.

22. Defendants have not, to date, placed any monies on behalf of the State of Maine into a qualified escrow fund, in knowing violation of 22 M.R.S.A. § 1580-I.

WHEREFORE, the State of Maine respectfully requests that this Court:

1. Find Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. have knowingly violated 22 M.R.S.A. § 1580-I by failing to place \$125,846.36 into a qualified escrow fund for cigarettes sold in the State of Maine between June 4, 1999 and December 31, 1999.

2. Find Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. have knowingly violated 22 M.R.S.A. § 1580-I by failing to place \$147,026.65 into a qualified escrow fund for cigarettes sold in the State of Maine between January 1, 2000 and December 31, 2000.

3. Find Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. have knowingly violated 22 M.R.S.A. § 1580-I by failing to place \$167,418.97 into a qualified escrow fund for cigarettes sold in the State of Maine between January 1, 2001 and December 31, 2001.

4. Order Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. to create a qualified escrow fund, as defined by 22 M.R.S.A. § 1580-H.

5. Order Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. to place \$125,846.36 in said qualified escrow fund for cigarettes sold in the State of Maine between June 4, 1999 and December 31, 1999.

6. Order Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. to place \$147,026.65 in said qualified escrow fund for cigarettes sold in the State of Maine between January 1, 2000 and December 31, 2000.

7. Order Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. to place \$167,418.97 in said qualified escrow fund for cigarettes sold in the State of Maine between January 1, 2001 and December 31, 2001.

8. Assess a civil penalty against Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. in the amount of \$377,539.08, which is equal to 300% of the original amount improperly held from escrow between June 4, 1999 and December 31, 1999, as authorized by 22 M.R.S.A. § 1580-I (2)(B)(2).

9. Assess a civil penalty against Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. in the amount of \$441,079.95, which is equal to 300% of the original amount improperly held from escrow between January 1, 2000 and December 31, 2000.

10. Assess a civil penalty against Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. in the amount of \$502,256.91, which is equal to 300% of the original amount improperly held from escrow between January 1, 2001 and December 31, 2001.

11. Enjoin Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. from selling cigarettes to consumers within the State of Maine (whether directly or through a

distributor, retailer or similar intermediary) for two years, as authorized by Maine law, 22 M.R.S.A. § 1580-I(2)(B)(3).


12. Order Defendants Choice Tobacco, Inc. and Choice Tobacco (U.S.A.) Ltd. to pay all costs and attorney's fees associated with the prosecution of this Motion.

13. Order such other relief as this Court deems just, proper and equitable.

Dated: 7.15.2002

Respectfully Submitted,

G. STEVEN ROWE
Attorney General


MELISSA REYNOLDS O'DEA
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8800
Maine Bar Registration No. 8308

PAUL STERN
Deputy Attorney General
Maine Bar Registration No. 2310

Attorneys for State of Maine