

Schedule B

2009 01 T-0732 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN: THE ESTATE OF SUSAN PIERCEY, as represented
by KEITH PIERCEY
PLAINTIFF

AND: ATLANTIC LOTTERY CORPORATION INC. -
SOCIÉTÉ DES LOTTERIES E L'ATLANTIQUE
DEFENDANT

AND: VLC, INC.
FIRST THIRD PARTY

AND: SPIELO MANUFACTURING ULC
SECOND THIRD PARTY

AND: HI-TECH GAMING.COM LTD.
THIRD THIRD PARTY

AND: IGT-CANADA INC.
FOURTH THIRD PARTY

AND: INTERNATIONAL GAME TECHNOLOGY
FIFTH THIRD PARTY

AND: TECH LINK INTERNATIONAL ENTERTAINMENT
LIMITED
SIXTH THIRD PARTY

Statement of Claim Against Third Parties

Parties

1. The defendant, Atlantic Lottery Corporation Inc. – Société des Lotteries de L'Atlantique Inc. (ALC), is incorporated under the *Canada Business Corporations Act* and registered to carry on business in Newfoundland and Labrador, Nova Scotia, New Brunswick and Prince Edward Island. ALC's registered office in Newfoundland and Labrador is 30 Hallett Crescent, St. John's, NL, A1B 4C5. ALC's head office is 922 Main Street, P.O. Box 5500, Moncton, NB, E1C 8W6.
2. The first third party, VLC, Inc. (VLC), is registered to carry on business in Newfoundland and Labrador. VLC's registered office in Newfoundland and Labrador is Stewart McKelvey, P.O. Box 5038, Suite 1100 Cabot Place, 100 New Gower Street, St. John's, NL, A1C 6K3. Its registered office outside Newfoundland and Labrador is National Registered Agents, Inc., 26 W. Sixth Avenue, P.O. Box 1691, Helena, Montana, USA 596245. VLC is a designer, manufacturer and supplier of video lottery terminals, equipment, software and services.
3. The second third party, Spielo Manufacturing ULC (Spielo), is incorporated under the laws of Nova Scotia with its registered office at 1959 Upper Water Street, Suite 900, Halifax, Nova Scotia, B3J 3N2. It is the successor, following amalgamation, to Spielo Manufacturing Incorporated, which had been incorporated under the *Canada Business Corporations Act*. Spielo has an office and business premises at 328 Urquhart Avenue, Moncton, New Brunswick, E1H 2R6. Spielo is a designer, manufacturer and supplier of video lottery terminals, equipment, software and services.
4. The third third party, Hi-Tech Gaming.Com Ltd. (Hi-Tech), formerly known as Hi-Tech Gaming Ltd., is incorporated under the laws of the province of New Brunswick, with its registered office at 125 Gray's Brook Drive, Riverview, New Brunswick, E1B 5S6. Hi-Tech is a supplier of video lottery terminals, equipment, software and services.
5. The fourth third party, IGT-Canada Inc. (IGT Canada) is incorporated under the *Canada Business Corporations Act* and is registered to carry on business in Newfoundland and Labrador. IGT Canada's registered office in Newfoundland and Labrador is Stewart McKelvey, P.O. Box 5038, Suite 1100 Cabot Place, 100 New Gower Street, St. John's,

NL, A1C 6K3. Its registered office outside Newfoundland and Labrador is 800, Place Victoria, Suite 3700, Montreal, Quebec, H4Z 1E9, attention Nathalie Benoit. IGT Canada is a designer, manufacturer and supplier of video lottery terminals, equipment, software and services.

6. The fifth third party, International Game Technology (IGT International), is incorporated in Nevada, United States of America. Its registered agent is International Game Technology, Corporate Secretary, 9295 Prototype Drive, Reno, Nevada, 89521. IGT International is a designer, manufacturer and supplier of video lottery terminals, equipment, software and services.
7. The sixth third party, Tech Link International Entertainment Limited (Techlink), is incorporated under the *Canada Business Corporations Act*. Spielo has its registered office and business premises 480 King's Road, Sydney, Nova Scotia, B1S 1A8. Techlink is a designer, manufacturer and supplier of video lottery terminals, equipment, software and services.
8. The defendant relies upon Rules 6.07(1)(g), (h), (i) and (j) for service of this statement of claim against third parties on those third parties that do not have an address for service within Newfoundland and Labrador.

The Plaintiff's Claim Against the Defendant

9. The plaintiff has commenced this proceeding against the defendant claiming certification of it as a class action.
10. The allegations made by the plaintiff against the defendant are set out in the amended statement of claim filed December 4, 2009. Generally, the plaintiff alleges that video lottery terminals provided for use in Newfoundland and Labrador by the defendant, and the games offered on them, have deceptive features that render them inherently addictive and dangerous, and that persons playing the games on the terminals are harmed thereby. The plaintiff alleges that the video lottery terminals were designed to be inherently addictive and dangerous when used as intended.

11. The legal grounds relied upon by the plaintiff are set out in the amended statement of claim and generally include allegations that:

- a. the conduct and management by the defendant of video lottery in Newfoundland and Labrador is not authorized by the *Criminal Code*,
- b. video lottery in Newfoundland and Labrador is operated contrary to sections 52(1) and (1.1) of the *Competition Act*,
- c. the defendant breached a contractual warranty of fitness and merchantability, and contractual implied duties to warn of inherent danger and to act in good faith by offering services or products that are inherently dangerous,
- d. the *Gambling Act, 1710*, allows the plaintiff to sue in debt to recover money lost in gaming,
- e. the defendant is liable in negligence for failure to warn of inherent dangers of video lottery terminals,

and the plaintiff further pleads unjust enrichment and "waiver of tort". The plaintiff claims as remedies declarations, damages, including punitive damages, and an accounting for and disgorgement of profits.

12. The defendant will deny the allegations in the plaintiff's amended statement of claim.

Acquisition of VLTs from the Third Parties

13. Video lottery terminals, and the equipment, games, software and services associated with them, that have been offered by the defendant for use by consumers in Newfoundland and Labrador were purchased from the third parties by the defendant directly or through its agent Atlantic Gaming Equipment Limited.

14. At various times the defendant invited proposals from the third parties for the supply of video lottery terminals, equipment, games, software and services. Following the submission of proposals by the third parties the defendant would, from time to time, issue purchase orders for the purchase of various models of video lottery terminals,

equipment, games, software and services. From time to time the third parties supplied the defendant with updates to the games and software.

15. The defendant, from time to time, developed and adopted approval guides and specifications for video lottery products to be acquired by it, and which were communicated to the third parties.

Breach of Contract

16. The contractual arrangements made from time to time between the defendant and the third parties for the purchase of video lottery terminals, equipment, software and services for use in Newfoundland and Labrador:

- a. required that the video lottery terminals, equipment, software and services comply with the laws of Canada and Newfoundland and Labrador, and in particular the Newfoundland and Labrador *Video Lottery Regulations*,
- b. required that the video lottery terminals, equipment, software and services comply with guidelines and policies with respect to video lottery terminals in Newfoundland and Labrador,
- c. required that the video lottery terminals, equipment, software and services comply with the defendant's approval guides and specifications,
- d. provided that the third parties must reimburse and indemnify the defendant for liabilities or losses suffered by it if the video lottery terminals, equipment, software and services fail to meet the requirements set out in paragraphs (a) to (c) above, and
- e. provided that the laws of Canada and the province of New Brunswick apply to the contractual arrangements.

17. Further, or in the alternative, the contractual arrangements made from time to time between the defendant and the third parties for the purchase of video lottery terminals, equipment, software and services for use in Newfoundland and Labrador included express or implied terms that:

- a. the video lottery terminals, equipment, software and services would have no features that are inherently deceptive, addictive or dangerous, and
 - b. the video lottery terminals, equipment, software and services were of merchantable quality and fit for the purpose for which they were required, pursuant to section 16 of the Newfoundland and Labrador *Sale of Goods Act* and section 15 of the New Brunswick *Sale of Goods Act*.
18. Any video lottery terminals, equipment, software or services supplied by the third parties to the defendant that have features that are inherently deceptive, addictive, or dangerous, do not comply with the requirements of paragraphs 16(a) to (c) and 17(a) and (b) above.
19. The supply by a third party of video lottery terminals, equipment, software or services that do not comply with the requirements set out in paragraphs 16(a) to (c) and 17(a) and (b) above, or have features that are otherwise inherently deceptive, addictive or dangerous, is a breach of contract by the third party. The defendant claims against the third party for reimbursement and indemnification of any amount that the defendant is ordered to pay to the plaintiff or, if this proceeding is certified as a class action, to the class as a result of the breach of contract.

Negligent Misrepresentation

20. The third parties, in their proposals, promotional materials, and statements made from time to time in connection with the supply of video lottery terminals, equipment, software and services to the defendant, represented that the video lottery terminals, equipment, software and services comply with the requirements set out in paragraphs 16(a) to (c) and 17(a) and (b) above, and in particular that the video lottery terminals, equipment, software and services do not have features that are inherently deceptive, addictive or dangerous. The defendant, in reliance on those representations offered the third parties' video lottery terminals, equipment, software and services for use by consumers in Newfoundland and Labrador.
21. If any video lottery terminals, equipment, software or services supplied by a third party to the defendant have features that are inherently deceptive, addictive, or dangerous, then

the defendant says that the proposals, promotional materials and statements referred to above contained negligent misrepresentations. The defendant claims against the third party for reimbursement and indemnification of any amount that the defendant is ordered to pay to the plaintiff or, if this proceeding is certified as a class action, to the class as a result of the negligent misrepresentation.

Negligence

22. The third parties owed a duty to the defendant to ensure that video lottery terminals, equipment, software and services supplied by them to the defendant complied with the requirements set out in paragraph 16(a) to (c) and 17(a) and (b) above and otherwise are not inherently deceptive, addictive or dangerous.
23. If any video lottery terminals, equipment, software or services supplied by a third party to the defendant have features that are inherently deceptive, addictive, or dangerous, then the third party has breached the duty owed to the defendant. The defendant claims against the third party for reimbursement and indemnification of any amount that the defendant is ordered to pay to the plaintiff or, if this proceeding is certified as a class action, to the class as a result of the breach of duty.

Consequential Damages

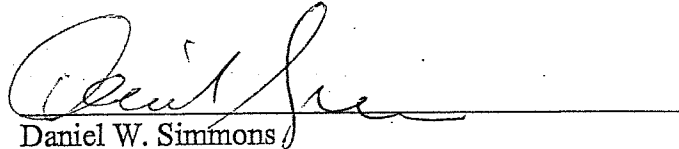
24. The defendant further claims against the third parties for damages for any losses suffered by the defendant as the result of an award to the plaintiff, or a class, in this proceeding of any form of remedy or relief.

Claim for Relief

25. The defendant therefore claims against the third parties for:
 - a. reimbursement and indemnification of any amount that the defendant is ordered to pay to the plaintiff or, if this proceeding is certified as a class action, to the class,
 - b. damages for any losses incurred by the defendant as a result of any remedy or relief granted to the plaintiff or, if this proceeding is certified as a class action, to the class,

- c. interest pursuant to the *Judicature Act* of New Brunswick, or alternatively the *Judgment Interest Act* of Newfoundland and Labrador,
- d. costs of this third party claim and of defending the claim of the plaintiff, and
- e. such other relief as this Honorable Court may permit.

DATED at St. John's, Newfoundland and Labrador, this 30th day of April, 2010.



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