



NO. M091084  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

THERESA ANNE HOLIZKI

PLAINTIFF

AND:

CHRISTINE JOAN CLARKE, MARK ALLAN MARISSIN  
and VOLVO CARS OF CANADA CORP. doing business as  
VOLVO CAR FINANCIAL SERVICES CANADA

DEFENDANTS

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**STATEMENT OF DEFENCE**  
*Subject to Rule 66*

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1. Unless specifically admitted, the Defendants deny each and every allegation of fact contained in the Statement of Claim.

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2. The Defendants admit, for the purpose of this action only but not otherwise, that the accident particularized in paragraph 5 of the Statement of Claim (the "Accident") occurred as a result of the negligence of the Defendants.

3. The Defendants deny that the Plaintiff suffered any injury, loss, damage or expense as a result of the Accident and, without limiting the generality of the foregoing, specifically deny all those allegations of fact contained in paragraphs 10 and 11 of the Statement of Claim.

4. In the alternative and in answer to the whole of the Statement of Claim, the Defendants say that if the Plaintiff suffered any injury, loss, damage or expense as alleged in the Statement of Claim, or at all, which is not admitted but specifically denied, then such injury, loss, damage or expense could have been prevented, or the severity thereof reduced, if the Plaintiff had not been negligent in respect of her own personal safety and the Defendants plead the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333, and amendments thereto.

5. Particulars of the negligence of the Plaintiff with respect to her own personal safety are:

- (a) In not wearing and having properly adjusted and securely fastened the complete seatbelt assembly installed in the motor vehicle which the Plaintiff was driving, contrary to the provisions of Section 220 of the *Motor Vehicle Act*, R.S.B.C. 1996, c.318 and amendments thereto.
- (b) In failing to have adjusted properly the headrest devices installed in the motor vehicle which the Plaintiff was driving.

6. Furthermore or alternatively, the Defendants say that if the Plaintiff suffered any injury, loss, damage or expense as alleged in the Statement of Claim, or at all, which is not admitted but specifically denied, then any such injury, loss, damage or expense was not caused by the Accident, but is attributable to previous and/or subsequent accidents involving the Plaintiff or congenital defects and/or pre-existing conditions. The Defendant further say that the Accident did not aggravate any pre-existing injury or condition, and the Defendants put the Plaintiff to the strict proof of all injury, loss, expense or damage alleged.

7. Furthermore or alternatively, if the Plaintiff suffered any injury, loss, damage or expense as alleged, or at all, all of which is not admitted but specifically denied, the Defendants say that the Plaintiff could, by the exercise of due diligence, have reduced the amount of any such injury, loss, damage or expense, and the Defendants say that the Plaintiff failed, or refused to take any reasonable steps, to mitigate these damages.

8. In further answer to the whole of the Statement of Claim, the Defendants say that the Plaintiff was insured at all material times under the provisions of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, and amendments and Regulations thereto, and the Plaintiff received, or was entitled to receive, benefits as provided under the said *Insurance (Vehicle) Act*. The Defendants further say that payment of, or an entitlement to, benefits as aforesaid constitutes a release by the Plaintiff to the Defendants to the extent of such payment or entitlement and the Defendants plead the provisions of the said *Insurance (Vehicle) Act*. Without restricting the generality of the

foregoing, the Defendants specifically plead the provisions of Section 83 of the said *Insurance (Vehicle) Act*.

9. In further answer to the whole of the Statement of Claim, the Defendants say that they are designated Defendants pursuant to the provisions of Section 95 of the said *Insurance (Vehicle) Act*, and the Plaintiff's entitlement to recovery of loss of income is limited by the provisions of Section 98 of the said *Insurance (Vehicle) Act*, and the Defendants specifically plead and rely upon Sections 95 and 98 of the said *Insurance (Vehicle) Act*.

10. Further, and in answer to the whole of the Statement of Claim, the Defendants say that the Plaintiff was entitled to receive or did receive benefits pursuant to plans of accident, sickness or disability insurance, and to the extent of any benefits received by the Plaintiff or to which the Plaintiff was entitled, the Defendants claim a reduction of any damages which the Defendants may be ordered to pay to the Plaintiff.

WHEREFORE the Defendants submit that the within action be dismissed with costs.

DATED: June 26<sup>th</sup>, 2009

  
Solicitor for the Defendants

This **STATEMENT OF DEFENCE** is delivered by **Donna De Baie** of the firm, Macaulay McColl, Barristers & Solicitors, whose place of business and address for service and delivery is Suite 1575 - 650 West Georgia Street, Vancouver, British Columbia, V6B 4N9. Telephone: (604) 687-9811 Facsimile: (604) 687-8716