



COURT FILE NUMBER	1201-07314
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	HER MAJESTY IN RIGHT OF ALBERTA
DEFENDANTS	ALTRIA GROUP, INC; B.A.T. INDUSTRIES P.L.C.; BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED; BRITISH AMERICAN TOBACCO P.L.C.; CANADIAN TOBACCO MANUFACTURERS COUNCIL; CARRERAS ROTHMANS LIMITED; IMPERIAL TOBACCO CANADA LIMITED; JTI- MACDONALD CORP.; PHILIP MORRIS INTERNATIONAL, INC.; PHILIP MORRIS USA, INC.; R.J. REYNOLDS TOBACCO COMPANY; R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.; ROTHMANS BENSON & HEDGES INC.; and ROTHMANS INC.
DOCUMENT	<u>STATEMENT OF DEFENCE</u>
PARTY FILING THIS DOCUMENT	BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED
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Statement of facts relied on:

I. INTRODUCTION

1. The Defendant British American Tobacco (Investments) Limited (“**Investments**”) denies all allegations contained in the Statement of Claim (the “**Claim**”), unless specifically admitted, to the same extent as if each were set forth and traversed *seriatim*, and further puts the Plaintiff to the strict proof thereof.
2. Without limiting the generality of the foregoing, Investments specifically denies that it took part in any conspiracy or concert of action with a common design as alleged or at all and specifically denies that it has owed or breached any common law, equitable or statutory duty or obligation to persons in Alberta as alleged in the Claim. Investments denies that any such alleged breach of duty or obligation caused any population of insured persons to smoke tobacco products or to continue to smoke tobacco products, or to be exposed to tobacco smoke. Investments specifically denies that it acted in a manner that wrongfully caused any person in Alberta to smoke or to continue smoking or the Plaintiff to incur the cost of health services resulting from tobacco-related diseases or the risk thereof.
3. Investments adopts headings used in the Claim but it does not thereby admit any facts or allegations contained within such headings. Except where indicated to the contrary, Investments adopts on the same basis the definitions used in the Claim.
4. Except as expressly admitted below, Investments denies the allegations contained in paragraphs 3 to 9, 12, 28, 44 to 46, 50 to 83, 84(c), 85 to 105, 107 to 109, 112 to 117, 131, 132, 134 and 137 to 143 of the Claim. With respect to paragraph 3 and allegations throughout the Claim, Investments denies that it has any predecessors, parents, affiliates or related companies for which it is legally responsible.
5. Investments has no knowledge of the facts alleged in paragraphs 10, 11, 13 to 23, 25 to 27, 29 to 43, 47 to 49, 84(a)(b)(d)-(k), 106, 110, 111, 118 to 130, 133, 135 and 136 of the Claim, and puts the Plaintiff to the strict proof thereof.
6. Investments denies that the Plaintiff is entitled to the relief sought in paragraphs 1 and 144 of the Claim.

7. With respect to paragraph 2 of the Claim, Investments repeats paragraph 3 above.

II. THE DEFENDANTS

8. With respect to paragraphs 9 and 50 of the Claim, Investments denies that it is a “Manufacturer”.
9. With respect to paragraph 12 of the Claim, Investments admits that it has a registered office at Globe House, 1 Water Street, London, England but states that it is incorporated pursuant to the laws of England and Wales.
10. With respect to paragraph 28 of the Claim, Investments admits that it was formerly known as British-American Tobacco Company Limited, and states that in this Statement of Defence the defined term “Investments” incorporates reference to the company’s former name. Subject to the qualification that Investments is an indirect subsidiary of British American Tobacco p.l.c. (“**BAT p.l.c.**”), paragraph 28 of the Claim is admitted.
11. Investments is unable to determine what, if any, legal or other significance the Plaintiff seeks to ascribe to the term “Lead Companies” as defined in paragraphs 44 and 84 of the Claim. Without prejudice to this, Investments denies that it was in such relation to any of the companies identified at paragraph 45 of the Claim and at paragraph 41 of the Plaintiff’s Response to Requests for Particulars (the “**Particulars Response**”). Investments denies that it “took the lead in the Conspiracy”, as alleged in paragraph 84(c) of the Claim or at all.
12. Investments denies that the “B.A.T. Group” is a designation with any legal significance whatsoever and makes no admissions as to the membership of the “B.A.T. Group”. Between 1902 and July 23, 1976, Investments was the ultimate parent company of the collection of companies sometimes referred to (although without legal significance) as the BAT group of companies. During that time certain of the corporate predecessors of the Defendant Imperial Tobacco Canada Limited were associated companies of Investments (those predecessors and Imperial Tobacco Canada Limited are collectively referred to hereinafter as “**ITCAN**”). At all material times Investments observed all formalities of corporate separateness with ITCAN and neither functionally nor legally exerted control or undue influence over or dominated ITCAN. In the normal course of

business Investments and ITCAN legitimately and appropriately exchanged information relevant to ITCAN's operations in Canada. However, Investments had no involvement in the day-to-day management of ITCAN's operations or programmes, and Investments did not dominate or exert functional or legal control or undue influence over ITCAN, with respect to smoking and health issues or at all.

13. Investments specifically denies paragraphs 77, 83 and 113 to 117 of the Claim. The committees, conferences, meetings and communications referred to were not used as vehicles to determine, direct or co-ordinate the policies or systems of ITCAN, or any positions ITCAN took on smoking and health, whether in committees of Canadian cigarette manufacturers or at meetings of the Tobacco Institute (“**TI**”) or the Canadian Tobacco Manufacturers’ Council (“**CTMC**”) or anywhere else. Investments did not determine, or direct ITCAN to adopt, policies or positions on smoking and health or addiction in Canada, through the meetings and structures identified in the Claim or at all. Ultimately, it was up to ITCAN to assess its own legal and commercial needs, to form its own scientific and business judgments, and to develop policies and day-to-day execution of those policies that best promoted the company-specific needs and judgments.
14. ITCAN acted independently in adopting its own policies and undertaking its own actions relating to smoking and health and research and development issues. ITCAN always retained the ultimate operational decision-making authority with respect to, among other subjects, the public statements it made and the positions it took relating to smoking and health issues. In particular, ITCAN:
 - a) Directed and controlled the operation of its R&D facilities;
 - b) Determined its own research agenda and did not seek or require Investments' agreement or approval for any aspect of its R&D program;
 - c) Designed and developed the specific products that it sold or intended to sell in the Canadian market, including in the Alberta market, based on ITCAN's own specific knowledge and assessment of these markets' legal and consumer requirements and other local considerations; and

- d) Adopted its own policies and made its own public statements with respect to smoking and health related issues.
15. Further, Investments denies that any alleged tobacco-related wrongs in Canada (which are denied) are a proximate or direct result of the meetings and structures identified in the Claim.
16. With respect to paragraphs 76, 131 and 132 of the Claim, Investments denies that it jointly breached any of the alleged duties or that it is jointly and severally liable for any of the alleged cost of health services.
17. Investments denies that it acted either as principal or as agent for any other Defendant, and specifically denies that ITCAN, or any of its predecessors, or any of the other members of the “B.A.T. Group” that are listed at paragraph 45 of the Claim and at paragraph 41 of the Particulars Response, or any of their predecessors, ever acted as agent for Investments, as alleged in paragraph 46 of the Claim or at all.
18. Investments denies the existence of any conspiracy or that it was a member of any such alleged conspiracy and denies that it conspired or has acted in concert with a common design with any other Defendant.
19. In answer to the whole of the Claim, Investments states that it does not carry on business in Alberta and has never designed, formulated, added substances to, manufactured, advertised, marketed, distributed, promoted or sold cigarettes or other tobacco products in Alberta.
20. Any activity including but not limited to the design, manufacture or promotion of cigarettes or other tobacco products in Alberta by another Defendant cannot and does not constitute such activity by Investments. Any plea otherwise is deficient by reason of the absence of the pleading of material facts in support.

III. THE DEFENDANTS’ KNOWLEDGE OF THE RISKS OF SMOKING AND EXPOSURE TO SMOKE

21. Investments admits that nicotine occurs naturally in the tobacco plant and is a constituent of tobacco smoke. Nicotine has pharmacological properties; it has both a mild stimulant effect and a mild relaxant effect. While the pharmacological effects of nicotine are an

important aspect of smoking behaviour, consumers enjoy many sensorial aspects of cigarette smoking, including smoke taste, aroma and the sensation resulting from stimulation of nerve endings in the mouth, nose and upper airway (throat “impact”). Many of those sensorial aspects of smoking are caused by non-nicotine components in cigarette smoke. Smoking is, for many people, difficult to quit and it can be termed an “addiction” or dependency. However, millions of smokers have quit without any medical help, and millions have modified where and when they smoke in the light of differing social norms, and nothing about smoking precludes smokers from either quitting or understanding the serious health risks of smoking. It has been known during all material times that smoking is difficult to quit and that smoking poses serious health risks.

22. The number of discrete compounds identified in cigarette smoke has increased rapidly over time and now totals over 4,000, most occurring in minute quantities. Those constituents include the constituents of tar, gases and the emissions listed on packages, such as nicotine. Water vapour is also produced by the combustion, because the burning of any organic material breaks down the chemical components and produces water.
23. Smoking is a cause, in some smokers, of serious diseases. The health risks of smoking are derived from epidemiology, the study of the incidence and distribution of diseases in human populations, and the factors which affect such distribution. Science to date has not been able to identify biological mechanisms which can explain with certainty the statistical findings linking smoking or exposure to smoke with certain diseases, nor has science been able to clarify the role of particular smoke constituents in those disease processes.
24. Investments states that at all material times, persons in Alberta have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government of Canada and the Plaintiff have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by, the federal government, the Plaintiff and the public health community have reinforced the awareness of persons in Alberta with respect to cigarette smoking and its potential risks. At all material times, Investments had no materially greater awareness of the potential health

risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Alberta, the federal government, the Plaintiff and/or the public health community.

IV. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Breaches of Duty not to Misrepresent or Deceive

25. Investments repeats paragraphs 19 and 20 above and denies that it owed a duty of care to persons in Alberta as alleged in paragraph 52 of the Claim or at all.
26. Investments has not made oral or written statements or representations of any kind as to the risks of smoking or exposure to smoke or as to addiction or any other risk or benefit allegedly associated with smoking or with tobacco smoke, either in Alberta or directed at persons in Alberta. Further, any statements or representations on those issues made by Investments outside of Alberta were based on Investments' reasonably and genuinely held beliefs given the scientific state of the art. While the precise articulation of Investments' positions on those issues has changed over time, Investments has recognised that along with the pleasures of smoking come real risks of serious diseases such as lung cancer, respiratory disease and heart disease, and that for many people smoking is difficult to quit.
27. Investments says further that at no time did it make any representations that were false or with wilful blindness, recklessness or negligence as to their truth or falsity.
28. Investments says further that at no time did it hide facts, suppress research or discourage the expression of views on the issues set out in paragraph 26 above, as alleged in paragraph 53 of the Claim or at all.
29. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any determination, direction or co-ordination by executives or directors at Investments.
30. By reason of the foregoing denials, the knowledge alleged in paragraph 52 of the Claim, insofar as it is alleged to be knowledge possessed by Investments, is irrelevant to any claim against Investments and is denied.

31. By reason of the foregoing denials, Investments denies the allegations of breach of duty at paragraphs 52 and 53 of the Claim.

B. Breach of Duty of Care

32. Investments repeats paragraphs 19 and 20 above and denies that it owed a duty of care to persons in Alberta as alleged in paragraph 55 of the Claim or at all.
33. Investments states further that no tobacco products have ever been sold in Alberta which can be regarded as “their” tobacco products, and accordingly Investments states that paragraphs 55 and 56 of the Claim have no application to Investments.
34. Investments did not determine, direct or co-ordinate the product development efforts of ITCAN with respect to the tobacco products ITCAN sold in Alberta. Nevertheless, the historical research efforts of Investments, over many years and with increasing degrees of sophistication as science developed, supported the ability of affiliated companies, including ITCAN, to reduce drastically the overall tar and nicotine yields of their products by employing various cigarette design techniques, including filters, ventilation, increasingly porous paper, reconstituted tobacco and expanded tobacco. Investments devoted substantial resources to other safer cigarette research, which again supported the research and product development efforts of affiliated companies such as ITCAN, including efforts to reduce selectively certain constituents in tobacco or tobacco smoke and to develop novel products as alternatives to traditional combustible tobacco products. All of that safer cigarette work has occurred in an environment where, even today, leading public health authorities have acknowledged that there is no scientifically valid way to determine the relative safety of one cigarette versus another.
35. Actions taken or not taken by ITCAN in Canada relating to the manufacture and design of its tobacco products were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN’s executives and not as a proximate result of any determination, direction or co-ordination by executives or directors at Investments.
36. By reason of the foregoing denials, the knowledge alleged at paragraphs 55(e) and (h) of the Claim, insofar as it is alleged to be knowledge possessed by Investments, is irrelevant to any claim against Investments and is denied.

37. By reason of the foregoing denials, Investments denies the allegations of breach of duty in paragraphs 55 and 56 of the Claim. Further, in specific answer to paragraph 56 of the Claim, Investments repeats paragraphs 26 and 27 above.

C. Breach of Duty to Warn

38. Investments repeats paragraphs 19 and 20 above and denies that there are or were any tobacco products sold in Alberta which can be regarded as tobacco products of which Investments was a “purveyor”, and accordingly Investments denies and does not plead to the balance of paragraph 58 of the Claim as it has no application to Investments.
39. To the extent that paragraph 59 of the Claim is founded upon conduct referable to tobacco products of which Investments was a “purveyor”, Investments repeats paragraph 38 above and does not plead to paragraph 59 as it has no application to Investments. Alternatively, to the extent that paragraph 59 alleges that Investments was subject to and breached a duty of care to persons in Alberta in respect of tobacco products other than tobacco products of which it was a “purveyor” then Investments denies the existence and breach of such a duty.
40. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN’s executives and not as a proximate result of any direction or instruction by executives or directors at Investments.
41. By reason of the foregoing denials, the knowledge alleged at paragraph 57 of the Claim, insofar as it is alleged to be knowledge possessed by Investments, is irrelevant to any claim against Investments and is denied.

D. Deceptive Marketing Practices – *Competition Act* (Canada)

42. Investments repeats paragraphs 19 and 20 above and denies that there are or were any tobacco products sold in Alberta which can be regarded as “their” tobacco products, and accordingly Investments denies and does not plead to the balance of paragraphs 60 and 62 of the Claim as they have no application to Investments.
43. To the extent that paragraphs 61 and 63 of the Claim are founded upon conduct referable to “their” tobacco products, Investments repeats paragraph 42 above and does not plead to paragraphs 61 and 63 as they have no application to Investments. Alternatively, to the

extent that paragraphs 61 and 63 allege that Investments was subject to and breached any duties to persons in Alberta in respect of tobacco products other than “their” tobacco products, then Investments denies the existence and breach of such duties.

44. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN’s executives and not as a proximate result of any direction or instruction by executives or directors at Investments.
45. By reason of the foregoing denials, the knowledge alleged at paragraph 60 of the Claim, insofar as it is alleged to be knowledge possessed by Investments, is irrelevant to any claim against Investments and is denied.

E. Unfair Trading Practices – *Fair Trading Act* (Alberta)

46. Investments repeats paragraphs 19 and 20 above and denies that there are or were any tobacco products which can be regarded as tobacco products that are or were “promoted and supplied” by Investments in Alberta, or which can be regarded as “their” tobacco products, and accordingly Investments denies and does not plead to the balance of paragraphs 68, 72 and 73 of the Claim as they have no application to Investments.
47. To the extent that paragraphs 64 to 67, 69 to 71, 74 and 75 of the Claim are founded upon conduct referable to tobacco products sold in Alberta that were “promoted and supplied” by Investments in Alberta, or that were “their” tobacco products, Investments repeats paragraph 46 above and does not plead to paragraphs 64 to 67, 69 to 71, 74 and 75 as they have no application to Investments. Alternatively, to the extent that paragraphs 64 to 67, 69 to 71, 74 and 75 allege that Investments was subject to and breached any duties to persons in Alberta in respect of tobacco products other than tobacco products that were “promoted and supplied” by Investments in Alberta, or that were “their” tobacco products, then Investments denies the existence and breach of such duties.
48. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN’s executives and not as a proximate result of any direction or instruction by executives or directors at Investments.

49. By reason of the foregoing denials, the knowledge alleged at paragraphs 66 and 68 of the Claim, insofar as it is alleged to be knowledge possessed by Investments, is irrelevant to any claim against Investments and is denied.

F. Exposure

50. Investments denies that any of the identified individual tobacco-related wrongs (the commission of which is denied) caused or contributed to insured persons starting or continuing to smoke or otherwise being exposed to cigarette smoke and says further in respect of such allegations:
- a) the decision to commence or continue smoking by any individual insured person is an individual decision taken by that person for reasons specific to that person;
 - b) while Investments accepts that smoking is for many people difficult to quit and that it can be termed an “addiction” or dependency, Investments says that the decision by any insured person to continue smoking is a true choice exercised by that person, and denies that an insured person who smokes is deprived, by reason of the effects of nicotine, of the ability to exercise a free choice to stop smoking; and
 - c) while Investments accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, Investments says that at all material times insured persons have been aware of, or had available to them, information which recognises the existence of health risks associated with smoking and the fact that smoking is difficult to quit. Therefore, and without prejudice to its primary case, Investments denies that insured persons relied, reasonably or otherwise, on positions adopted by Investments as to the health risks associated with smoking.

G. Disease and the Risk of Disease

51. Investments says that the risks and incidence of diseases that are associated with smoking vary considerably and may depend upon numerous factors including, but not limited to, the amount of tobacco products smoked per day, years smoked, periods of smoking cessation, and the presence or absence of other risk factors associated with the disease. Further, if Investments had any duties or obligations in Alberta (which is denied), and if

Investments breached any such duties or obligations (which is denied), no such breach caused or contributed to:

- a) any tobacco-related disease in any insured person; or
- b) any increased risk of tobacco-related disease in any insured person.

H. No Market Share

52. By reason of the facts and matters pleaded above, in particular at paragraphs 19 and 20, Investments has never possessed any share of the market for tobacco products in Alberta whether as defined by Part 2 of the *Crown's Right of Recovery Act*, SA 2009, c C-35 ("*Act*") or at all. Accordingly, Investments can have no liability quantifiable by reference to its market share and to the extent that liability under the *Act* is determined by reference thereto then Investments can have no liability at all.

V. CONSPIRACY AND CONCERT OF ACTION IN COMMITTING TOBACCO-RELATED WRONGS

A. Conspiracy - Generally

53. In the following section, Investments pleads as fully as it currently is able to the allegations contained in paragraphs 76 to 117, 131, 132 and 134 of the Claim. Investments reserves the right to supplement this Statement of Defence if further particulars become known.
54. If, which is denied, Investments has any liability to the Plaintiff by reason of the matters pleaded at paragraphs 51 to 75 of the Claim then the extent of such liability will fall to be determined by reference to the extent of the liability of each individual Defendant, if any, with whom Investments is found to be jointly and severally liable in respect of a tobacco-related wrong. Accordingly, without prejudice to the balance of this Statement of Defence, and without advancing a positive case beyond the scope of that otherwise set out in this Statement of Defence, Investments claims the benefit of all and any defences of all and any Defendants with whom Investments is alleged to be jointly and severally liable for the purposes of avoiding or reducing the amount, if any, for which each such Defendant and, hence, Investments is alleged to be jointly and severally liable.

55. Without prejudice to the foregoing, in the generality in respect of paragraphs 76 to 117, 131, 132 and 134 of the Claim, Investments denies that it:
- a) conspired with any other Defendant with respect to the commission of any tobacco-related wrong, whether directly or through the industry associations identified in the Claim; or
 - b) acted in concert with a common design with any other Defendant with respect to the commission of any tobacco-related wrong, whether directly or through the industry associations identified in the Claim; or
 - c) was involved either as principal or as agent for any other Defendant or any other person or entity with respect to the commission of any tobacco-related wrong; or
 - d) was the alter ego and guiding mind directing any other Defendant or any other entity with respect to the commission of any tobacco-related wrong or any other activities relating to the alleged conspiracy; or
 - e) acted so as to render it jointly or vicariously liable with any other Defendant in respect of any tobacco-related wrong, whether pursuant to section 44(2)(b)(iii) of the *Act* or otherwise pursuant to section 44 of the *Act*, or at all.
56. Further, Investments repeats paragraphs 13 to 16 above and denies that it determined or directed the activities of, or conspired or acted in concert with the Defendant ITCAN, as alleged or at all.
57. Further, the Plaintiff has no claim in respect of the alleged conspiracy or concerted action because the Plaintiff agreed to and adopted the design of what it alleges is a conspiracy or concerted action and became a party thereto and carried out acts in Alberta in furtherance thereof that the Plaintiff alleges are unlawful.
58. Further, the Plaintiff has profited from the sale of tobacco products and if, which is denied, any of the Defendants has committed a tobacco-related wrong, then the Plaintiff has directly benefitted from the tax revenue raised by each and every purchase of tobacco products which was entered into in consequence of that tobacco-related wrong. Accordingly, the cost of health services described in paragraphs 7 and 143 of the Claim

must be adjusted to reflect the financial benefits which the Plaintiff has obtained by reason of the foregoing.

B. Conspiracy – Internationally

59. Investments states that it never conspired or acted in concert with any other Defendants including any of the Lead Companies. Further, to the extent that other Defendants including Lead Companies may have had policies in common with Investments in relation to smoking and health, such were developed for appropriate business purposes and were lawful. Investments further states that the risks associated with smoking have been widely known in Alberta, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Alberta through a variety of sources and that Investments had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Alberta, the federal government, the Plaintiff and/or the public health community.
60. Investments was never a member of the TI. This was an American organization formed by and composed of members of the U.S. tobacco industry. The TI never disseminated information, in North America or anywhere else, on behalf of Investments.
61. Investments denies the allegations at paragraph 81 of the Claim that, through an agent, it participated in the meetings or communications alleged.
62. Investments was never a member of the Tobacco Industry Research Council or the Council for Tobacco Research. These were American organizations formed by and composed of members of the U.S. tobacco industry and have not existed as of 1998.
63. The Tobacco Research Council, originally known as the Tobacco Manufacturers' Standing Committee, was a U.K. organization, of which Investments was a founding member, which sponsored and conducted extensive published research relating to smoking and health. Investments denies the allegation at paragraph 85 of the Claim that any organisation named the Tobacco Industry Research Commission "became" either the Tobacco Research Council or the Tobacco Manufacturers' Standing Committee, and

denies that Investments was ever a member of an organisation named the Tobacco Industry Research Commission.

64. The Centre for Cooperation and Scientific Research Relative to Tobacco is an international organization founded in 1956 for the study of science and technology related to tobacco products, and in particular the development of analytical and testing methodologies, including with the World Health Organization and International Organization for Standardization. Its reports in this regard have been and are publicly available. Membership is open to organizations with research and development activities related to tobacco. Investments did not become a member until 1972.
65. Investments was never a member of the Committee for Indoor Air Research.
66. The International Committee on Smoking Issues was established in 1977 as a forum for the exchange of views and information on international tobacco issues (including smoking and health) among various unaffiliated tobacco companies. In December 1980, it became known as The International Tobacco Information Centre/Centre International d'Information du Tabac-INFOTAB. Investments announced its withdrawal from INFOTAB in 1987.
67. The Tobacco Documentation Centre was a separate body established in 1992 as a repository for published literature relevant to the tobacco industry.
68. None of those organizations, referred to in paragraphs 76 to 117 of the Claim, was under the direction or control of Investments and neither was any of those organizations ever used by Investments to determine, direct, control or co-ordinate the operations, systems, policies or positions of ITCAN. None ever determined the direction of Investments' research into issues relating to smoking and health.
69. With respect to paragraph 87 of the Claim, Investments repeats paragraph 28 above and denies the allegations therein.

C. Conspiracy – Inter-provincially throughout Canada

70. Investments denies paragraph 104 of the Claim, to the extent the allegations therein are directed at Investments, and states that:

- a) with respect to paragraph 104(a) of the Claim, Investments did not disseminate in Canada the language and message of the “Frank Statement to Cigarette Smokers”, in 1954 or at any other time;
 - b) with respect to paragraphs 104(b) and (c) of the Claim, Investments did not enter into the alleged agreements in or about 1962;
 - c) with respect to paragraph 104(d) of the Claim, Investments did not make representations to the Canadian Medical Association in 1963;
 - d) with respect to paragraph 104(e) of the Claim, Investments was not involved in the formation of the Ad Hoc Committee on Smoking and Health in or about 1963; and
 - e) with respect to paragraph 104(f) of the Claim, Investments did not make representations in or about 1969 to the Canadian federal House of Commons or the Standing Committee on Health, Welfare and Social Affairs.
71. Investments was not involved in the formation of the CTMC. The CTMC was a Canadian organization whose members were from the Canadian tobacco industry. Investments has never been a member of the CTMC. Investments has never controlled or co-ordinated the activities of, or positions taken by, either the CTMC or the TI.
72. Investments specifically denies paragraphs 107 and 108 of the Claim. Member companies of the CTMC, which did not include Investments, exclusively decided issues relating to smoking and health including, in particular, the approval and funding of CTMC research. Investments denies that it engaged in co-ordinated efforts with the CTMC as alleged in the Claim.
73. To the extent that the allegations in paragraph 109 of the Claim are directed at Investments, Investments denies that it destroyed documents detailing the research described, that it denied the existence of the research described, or that it conspired to do either of those things.
74. To the extent that the allegations in paragraph 112 of the Claim and paragraph 151 of the Particulars Response are directed at Investments, Investments denies that either the TI or the CTMC ever acted as agent for Investments.

VI. RELIEF

75. In answer to the entire Claim, Investments says that the costs that have been incurred or will be incurred by the Plaintiff in respect of health services for insured persons resulting from tobacco-related disease or the risk thereof have not been and will not be caused or contributed to by exposure of insured persons to tobacco products attributable to the tobacco-related wrongs alleged. Further, and in particular:

- a) if Investments breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to, or will cause or contribute to, the cost of health services as alleged or at all;
- b) if the Plaintiff has incurred the cost of health services as alleged or at all, which is denied, the cost of health services was caused by one or more of the following:
 - i. requirements of the statutes and regulations that were voluntarily enacted by the Plaintiff and which provide for health care in Alberta, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in the definition of “health services” in subparagraphs 41(1)(e)(i) to (vii) of the *Act*;
 - ii. the conduct and acts or omissions of the Plaintiff as further particularized herein;
 - iii. the conduct and acts or omissions of individual insured persons as further particularized herein;
 - iv. disease or risk of disease in individual insured persons unrelated to smoking tobacco or exposure to tobacco smoke; and
 - v. the manufacture, promotion and sale of tobacco products by persons other than the Defendants, including manufacturers located on First Nations reserves, whose tobacco products are packaged and sold to persons in Alberta in breach of duties owed to them;
- c) if the Plaintiff has incurred or will incur the cost of health services as alleged, which is denied, then the Plaintiff has made no expenditure and suffered no loss for which it is legally entitled to be compensated by reason of any or all of the following:

- i. that cost constitutes the utilization of a pre-determined budget for the provision of health care generally and is the product of decisions by the Plaintiff based upon, *inter alia*, political expediency, policy considerations and the availability of finance;
- ii. that cost reflects monies received from the government of Canada by means of transfer payments, conditional grants and shared-cost programmes;
- iii. that cost is or will be exceeded by tax revenues received by the Plaintiff from the sale of tobacco products in Alberta alleged to have been caused by the tobacco-related wrongs alleged; and
- iv. that cost is not influenced by the tobacco-related wrongs alleged.

VII. THE PLAINTIFF'S OWN CONDUCT

76. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Alberta and have been supervised, regulated and controlled by the Plaintiff and the government of Canada. Within that legal and regulatory framework, if the Plaintiff has incurred or will incur the cost of health services that have been or will be provided to insured persons who have suffered tobacco-related disease, as alleged (which is denied), Investments states that such costs were caused, and the Plaintiff's claim to recover such costs is subject to complete defences, by reason of the Plaintiff's own conduct and knowledge.
77. At material times and at least since 1950, the Plaintiff, through its ministers, ministries, departments, servants and agents, has been apprised of the information that was available, according to the state of the art of the day, regarding the health risks associated with smoking tobacco and exposure to tobacco smoke. Despite its knowledge of those risks, the Plaintiff:
 - a) continued to licence and regulate the production, manufacture, advertising, promotion, distribution and sale of tobacco products in Alberta and insured persons have relied upon the Plaintiff's activities in such areas in relation to their decisions to take up and continue smoking;

- b) has sought to benefit financially from the sale of tobacco products in Alberta, and has so benefited, by taking advantage of its ability to impose and to collect heavy taxation and licensing fees from, *inter alia*, manufacturers, distributors (both wholesalers and retailers) and consumers of tobacco products and, in particular but not exclusively, has justified the fact and scale of the taxation and licensing fees by reference to the health risks associated with smoking tobacco and exposure to tobacco smoke;
 - c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of tobacco products by people under the legal age for purchasing them as defined by law from time to time; and
 - d) has voluntarily undertaken the obligations of paying for the costs of health services, including such costs as it alleges are caused or contributed to by smoking or exposure to tobacco smoke, and has set its taxation and health care policies accordingly.
78. Further, Investments says that manufacturers of tobacco products in Canada complied at all times with government requests, mandates, and directions (including from the Plaintiff) in respect of, *inter alia*,
- a) the type of tobacco that would be purchased (which tobacco was developed by the government of Canada);
 - b) the type of tobacco products that would be sold;
 - c) product modifications;
 - d) whether tobacco products require health warnings, and the content, size and placement of those warnings;
 - e) the type of promotion that would be permitted; and
 - f) where tobacco products could be sold and used,
- and in doing so, acted reasonably in all the circumstances and committed no “tobacco-related wrong” in these respects or otherwise.
79. Further, Investments states that if the Plaintiff has incurred the cost of health services as alleged or at all (which is denied) then that cost was caused or contributed to, in whole or in part, by the Plaintiff’s own acts or omissions as pleaded herein, and not any act or

omission of Investments. Investments pleads and relies upon the provisions of the *Contributory Negligence Act*, RSA 2000, c C-27.

80. Further, Investments states that by reason of the facts set out herein and the knowledge, conduct and delay of the Plaintiff and the prejudice thereby caused to Investments, the Plaintiff is barred in law and in equity from advancing the claims made in the Claim against Investments. Investments also pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco-related wrongs alleged, including the *Limitations Act*, RSA 2000, c L-12 (if applicable).
81. Further, Investments states that, if the Plaintiff has incurred the cost of health services resulting from tobacco-related disease or the risk of tobacco-related disease as alleged (which is denied), the Plaintiff has mitigated its loss and such costs must be adjusted to reflect the financial benefits the Plaintiff thereby obtained.
82. Without prejudice to the foregoing, Investments repeats paragraph 76 above and says that the acts, errors and omissions pleaded therein represent failures by the Plaintiff to act reasonably to mitigate the “cost of health services” as alleged, and any such costs must be adjusted to reflect this failure.

VIII. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

83. If the Plaintiff has incurred the cost of health services as alleged (which is denied), the cost was caused by, and the Plaintiff’s claim to recover that cost is subject to complete defences by reason of, the conduct of individual insured persons, including their voluntary decisions to commence or to continue smoking with awareness of the associated risks.
84. Insured persons who smoke or have smoked tobacco products were aware of the risks associated with smoking during all material times.
85. Insured persons became, or should have become, aware of the risks associated with smoking at all material times by various means, including, without limitation, one or more of the following:

- a) discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;
 - b) education programmes including courses, seminars and lectures and educational literature and other media;
 - c) oral and written warnings from physicians and other health practitioners and public health authorities;
 - d) oral and written warnings from family members, friends and other acquaintances;
 - e) common general understandings and historical beliefs;
 - f) warnings on the packaging of tobacco products, as required for decades pursuant to federal and provincial legislation and regulations and/or voluntary codes of compliance by Canadian tobacco manufacturers; and
 - g) mandatory displays, signs and other warnings required by provincial legislation in premises where sales of tobacco products take place.
86. By reason of the foregoing, Investments states that insured persons who smoke or have smoked tobacco products were aware of, or should have been aware of, the associated risks at all material times.
87. Insured persons who commenced or continued to smoke tobacco products did so with awareness of the risks associated with smoking and voluntarily consented to accept such risks.
88. The cause in fact and in law of the commencement and continuation of the use of tobacco products by insured persons was a voluntary choice to smoke tobacco products with awareness of the associated risks. Investments had and has no legal duty to such persons, or, alternatively, no legal duty that has not been fulfilled.
89. Further, the cause of (i) an individual's choice to smoke or to continue to smoke or (ii) disease consists not of alleged breaches of duty but, rather, of some or all of the following:
- a) individual choices and decisions of the smoker;

- b) requests, mandates and directions from the Plaintiff and the government of Canada, and Investments repeats and relies on paragraphs 76 to 78 herein;
 - c) the many and varied causes of certain diseases including genetics, stress, excess weight, alcohol, environmental factors and other consumer products; and
 - d) the manufacture, promotion and sale of tobacco products by persons other than Defendants, including manufacturers located on First Nations reserves, whose tobacco products are packaged and sold to persons in Alberta in breach of duties owed to them.
90. Investments denies that insured persons began, continued or were unable to stop smoking by reason of any of the alleged breaches of duty of Investments (which are denied) or that any such breach of duty caused or contributed to any alleged tobacco-related disease or increased risk of tobacco-related disease in any insured person or the cost of health services.
91. Investments states that at all material times insured persons have been, or should have been, aware of health risks associated with smoking tobacco products. Accordingly, such persons voluntarily assume such risks when they decide to commence or continue smoking.
92. Further, Investments states that if the Plaintiff has incurred the cost of health services as alleged (which is denied) then that cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of Investments. Investments pleads and relies upon the provisions of the *Contributory Negligence Act*, RSA 2000, c C-27.
93. Further, Investments states that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to Investments, the Plaintiff is barred at law and in equity from advancing the claims made in the Claim against Investments.
94. Investments pleads and relies upon the limitation of actions statute (or statutes) applicable on a proper choice of law analysis to the tobacco-related wrongs alleged in respect of the

claims of any individual insured person upon which the Plaintiff's cause of action is alleged to rest, including the *Limitations Act*, RSA 2000, c L-12 (if applicable).

95. Further and in the alternative, Investments states that, if the Plaintiff has incurred the costs of health services as alleged (which is denied), individual insured persons have failed to act reasonably to assist the Plaintiff to mitigate that cost.

IX. PARLIAMENTARY PRIVILEGE

96. At various times in the Claim and the Particulars Response, the Plaintiff improperly references submissions made before a committee of the House of Commons, or presentations to Parliamentary legislative committees. Such statements made in the context of Parliamentary proceedings are subject to common law and statutory privilege protecting Parliamentary freedom of speech. This blanket privilege covers statements made both in Chambers and in committee meetings, and extends to non-Member witnesses. The privilege is absolute.

Any matters that defeat the claim of the Plaintiff:

97. The Claim is barred by the provisions of the *Limitations Act*, RSA 2000 c L-12 (if applicable).

Remedy sought:

98. Investments requests that the claim against it be dismissed with costs on a solicitor client basis or, alternatively, on a party-party basis.