



COURT FILE NO. **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 **STATEMENT OF DEFENCE**

PARTY FILING THIS DOCUMENT **PHILIP MORRIS USA INC.**

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I. INTRODUCTION

1. The defendant Philip Morris USA Inc. ("**PM USA**") denies, or where applicable does not admit, the allegations in the Statement of Claim, unless expressly admitted, and puts the plaintiff, Her Majesty the Queen in Right of Alberta (the "**Province**") to the strict proof thereof.

2. PM USA admits the allegations contained in paragraphs 10, 19, 38-39 of the Statement of Claim.

3. PM USA denies the allegations contained in paragraphs 1-9, 18, 24, 32, 44-46, 50-109, 111-112, 118-120, 126-132, 135, 137-142, and 144 of the Statement of Claim and further denies that the plaintiff is entitled to the relief sought in paragraph 144 of the Statement of Claim.

4. PM USA has no knowledge in respect of the allegations contained in paragraphs 11-17, 20-23, 25-31, 33-37, 40-43, 47-49, 110, 113-117, 121-125, 133-134, 136, and 143 of the Statement of Claim.

II. SUMMARY OF CLAIM

5. PM USA denies the allegations in paragraph 1 in the Statement of Claim and denies the ability of Her Majesty the Queen in the right of Alberta (the "**Province**") to seek relief or recover the cost of health care benefits described in paragraph 1 of the Statement of Claim (the "**Claimed Cost**") from PM USA, except that PM USA admits that this action is brought pursuant to the provisions of *Crown's Right of Recovery Act*, SA 2009, c C-35 (the "**Act**").

6. In reply to paragraphs 3-5 of the Statement of Claim, PM USA admits that U.S.-sourced tobacco products manufactured by PM USA accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s until 1989. PM USA denies the remaining allegations in paragraphs 3-5 of the Statement of Claim. Specifically, PM USA denies that it has committed any tobacco related wrong, breached any common law, equitable or statutory duty as alleged in the Statement of Claim or at all. PM USA further states as follows:

- (a) In all of the circumstances, PM USA did not manufacture a defective product, and did not fail to warn, unlawfully sell or market to children and adolescents, make any deceitful or negligent misrepresentations, contravene any consumer protection or competition legislation, or take part in any conspiracy, concerted action or common design as alleged or at all. At all times, PM USA conducted itself in accordance with appropriate business practices and in compliance with the applicable common law, equitable and statutory duties governing its conduct.

- (b) In addition, a significant and growing proportion of the Canadian cigarette market is supplied by manufacturers other than those identified in the Statement of Claim. Specifically, manufacturers located on Indian reserves (the “**Aboriginal Manufacturers**”) produce, promote and provide cigarettes to numerous consumers across Canada. Vendors selling cigarettes produced by the Aboriginal Manufacturers routinely fail to collect the federal and provincial taxes applicable to sales to non-Indian purchasers, creating a substantial incentive for non-Indians to purchase cigarettes from these manufacturers instead of the manufacturers identified in the Statement of Claim. Additionally, cigarettes produced by the Aboriginal Manufacturers dominate the market for contraband cigarettes in Canada. As a result, a significant fraction of the cigarettes consumed in Canada are not supplied by manufacturers identified in the Statement of Claim- but rather by the Aboriginal Manufacturers.
- (c) In particular, PM USA denies that any breach of duty by PM USA caused persons in Alberta to start or continue to smoke cigarettes or be exposed to cigarette smoke from cigarettes manufactured or promoted by it.
- (d) Without limiting the generality of the foregoing, PM USA specifically denies that it has breached any common law, equitable or statutory duty or obligation owed to persons in Alberta as alleged in the Statement of Claim. PM USA specifically denies that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes or to continue to smoke cigarettes.

7. PM USA admits that cigarette smoking causes or contributes in some smokers to certain tobacco-related diseases, but denies the remaining allegations in paragraph 6 of the Statement of Claim. PM USA further pleads and relies on paragraph 47 hereof.

8. PM USA denies the allegations in paragraphs 7-8 of the Statement of Claim.

III. THE DEFENDANTS

9. PM USA denies the allegations in paragraph 9 of the Statement of Claim. PM USA further states that it has never manufactured tobacco products in Canada at any material time. Furthermore, U.S.-sourced tobacco products manufactured by PM USA accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s

until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market. Further, tobacco products manufactured in the U.S. by PM USA for the Canadian duty-free market were provided for sale only to individuals leaving Canada and had to be taken out of the country immediately after purchase. To the very limited extent that cigarettes manufactured by PM USA were ever offered for sale in Canada, PM USA states that such cigarettes were at all material times a legal product sold in compliance with all applicable laws. PM USA further states that it has no knowledge as to the truth of the allegations made with respect to other Defendants.

10. PM USA admits that Altria Group, Inc. (previously known as Philip Morris Companies Inc.) is a Virginia corporation with a registered office at 6601 West Broad Street, Richmond, Virginia.

11. PM USA has no knowledge of the allegations in paragraphs 11-17 of the Statement of Claim and therefore denies the same.

12. PM USA denies the allegations in paragraph 18 of the Statement of Claim, but admits that Philip Morris International Inc. ("PMI") is a Virginia company with offices located at 120 Park Avenue in New York, New York.

13. PM USA admits that PM USA, Inc. is a Virginia corporation with offices at 6601 West Broad Street in Richmond, Virginia.

14. PM USA has no knowledge of the allegations in paragraphs 20-23 of the Statement of Claim and therefore denies the same.

15. PM USA denies the allegations in paragraph 24 of the Statement of Claim.

16. PM USA has no knowledge of the allegations in paragraphs 25-29 of the Statement of Claim and therefore denies the same.

17. PM USA admits that Rothmans, Benson & Hedges Inc. was created through the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited in 1986 but has no knowledge of the remaining allegations in paragraph 30 of the Statement of Claim and therefore denies the same.

18. PM USA has no knowledge of the allegations in paragraph 31 of the Statement of Claim and therefore denies the same.

19. PM USA states that between 1986 and March 2008, corporate entities related to Altria Group, Inc. held a 40% ownership interest in RBH. PM USA further states that it and Altria Group, Inc. has had no corporate affiliation with PMI since a March 28, 2008 spinoff. PM USA has no knowledge of the remaining allegations in paragraph 32 of the Statement of Claim and therefore denies the same.

20. PM USA has no knowledge of the allegations in paragraphs 33-37 of the Statement of Claim and therefore denies the same.

21. PM USA admits the allegations in paragraphs 38-39 of the Statement of Claim.

22. PM USA has no knowledge of the allegations in paragraphs 40-43 of the Statement of Claim and therefore denies the same.

23. PM USA denies the allegations in paragraphs 44-45 of the Statement of Claim. PM USA states additionally that paragraphs 44-45 of the Statement of Claim purport to collectively categorize separate entities as certain "Groups" or "Lead Companies", and PM USA denies that such characterization is accurate, proper or has any legal significance whatsoever relevant to the Province's claims or the Province's ability to seek relief or recover the Claimed Cost from PM USA.

24. PM USA denies the allegations in paragraph 46 of the Statement of Claim. To the extent that companies may have had policies in common with PM USA in relation to smoking and health, such common policies were developed for appropriate business purposes and were lawful. In further answer, PM USA states that:

- (a) while it has had a corporate relationship over the years with RBH, at all material times, operating decisions were made in Canada by RBH, and RBH arrived at its own positions on smoking-related issues;
- (b) it never entered into a conspiracy or common design with the Defendants PMI, Altria Group, Inc., or RBH, or any other defendant in this action;

- (c) it never acted in concert with the Defendants PMI, Altria Group, Inc., or RBH, or any other defendant in this action;
- (d) RBH was never the agent of PM USA; and
- (e) PM USA never directed the activities of RBH or any other defendant in this action.

25. PM USA has no knowledge of the allegations in paragraphs 47-49 of the Statement of Claim.

26. PM USA denies the allegations in paragraph 50 of the Statement of Claim.

IV. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS

27. PM USA denies the allegations in paragraph 51 of the Statement of Claim and pleads and relies on paragraphs 28-30 and 53 hereof.

A. BREACH OF DUTY NOT TO MISREPRESENT OR DECEIVE

28. PM USA denies the allegations in paragraphs 52-53 of the Statement of Claim. No representations were made by PM USA at any time which were false or made with willful blindness or recklessness as to their truth or falsity. Further, PM USA states that it never represented that any tobacco products were less hazardous than any others, and that any tobacco products manufactured by PM USA and sold in Canada were labelled consistently with all applicable federal and provincial legislation and regulations and with the voluntary advertising code, to the extent that its products were ever subject to such legislation or regulations or to the voluntary advertising code. PM USA pleads and relies on paragraphs 29-30 and 53 hereof.

B. BREACH OF DUTY OF CARE

29. PM USA denies the allegations in paragraphs 54-56 of the Statement of Claim and, in further answer, states that the allegations in paragraph 55(e) disclose no cause of action and are frivolous and vexatious. PM USA states that it does not manufacture, advertise, market, distribute or sell cigarettes in Alberta. In further answer, PM USA states that at all material times, it (and its corporate predecessors) have monitored the world-wide development of tobacco products, implemented all product modifications as appropriate, and ensured that its products were free of latent defects and fit for the purposes intended by the provincial and

federal governments. PM USA pleads and relies on paragraphs 28-30 and 53 hereof, and states that it complied with all applicable common law, equitable, and statutory duties that govern its conduct. PM USA further states as follows:

- (a) Over the years, PM USA has modified its cigarette design and manufacturing processes for all of its cigarettes to generally reduce the levels of smoke constituents, including allegedly harmful constituents, of cigarette smoke. These modifications have included filtration, paper porosity/air dilution, and the use of reconstituted and/or expanded tobacco, among others.
- (b) To date, there are no technologically possible and commercially feasible features that could potentially reduce the harm of cigarette smoking that could have been incorporated into the design or manufacture of traditional cigarettes that have not been so incorporated. Notwithstanding its efforts and numerous advancements in scientific knowledge on the subject of smoking and health, no entity has yet been able to produce a commercially viable traditional cigarette that is free of health risks.
- (c) PM USA further states that, at all material times, the federal government has directed and supported the manufacture and sale of cigarettes in Canada, and set the standard of care required for cigarette manufacturers. As part of its direction and supervision of the cigarette industry, the federal government (among other things):
 - (i) researched and developed strains of tobacco which became effectively the only varieties available for use in Canadian cigarettes;
 - (ii) advised manufacturers on the necessity and efficacy of printed package warnings, as well as their content; and
 - (iii) advised and directed manufacturers on the need to develop and promote lower-yield cigarettes.
- (d) Beginning in the 1950s, the government and public health community called for and otherwise encouraged the development and marketing of lower tar cigarettes. During this time, consumer demand also increased for lower tar cigarettes.

- (e) PM USA cooperated with the government and health community and responded to consumer demand by developing lower tar cigarettes.
- (f) PM USA denies that it has ever stated in its advertising that "light" brands are "safer" than full-flavour brands.
- (g) At all material times the Province informed the public within Alberta of the risks associated with smoking cigarettes.
- (h) At all times the Province alone had the obligation to enforce all relevant statutes and regulations pertaining to the sale of cigarettes to under-aged smokers, as defined from time to time by statutes or regulations, and failed to do so.
- (i) In further answer, PM USA admits that it has been unlawful to sell cigarettes to persons under a certain age. Notwithstanding those laws, some persons under a certain age have smoked. Further, PM USA has never targeted under-aged smokers or non-smokers.

C. BREACH OF DUTY TO WARN

30. PM USA denies the allegations in paragraphs 57-59 of the Statement of Claim. PM USA pleads and relies on paragraphs 28-29 and 53 hereof and further states that it complied with all common law, equitable and statutory duties that governed its conduct at all material times. PM USA states additionally that cigarettes sold in Canada by the manufacturers identified in the Statement of Claim were at all times labelled consistently with all applicable federal and provincial legislation and regulations and with the voluntary advertising code. Specifically, by 1972, the voluntary advertising code adopted by certain Canadian cigarette manufacturers required package warnings concerning the health risks of smoking. Prior to 1972, representatives of the federal government had advised against package warnings concerning health risks, on the ground that such risks were already well-understood and written warnings would only confuse the public. Package labels subsequently disclosed tar and nicotine levels by 1976. Thereafter, health warnings on cigarette packaging became increasingly prominent, in accordance with increasing federal and provincial legislation and regulation. By 2000, federal regulations required rotating graphic health warnings to cover at least 50% of cigarette packaging.

V. DECEPTIVE MARKETING PRACTICES - COMPETITION ACT (CANADA)

31. PM USA denies the allegations in paragraphs 60-63 of the Statement of Claim, and in further answer, repeats paragraphs 28-30 and 53 hereof.

VI. UNFAIR TRADING PRACTICES - FAIR TRADING ACT (ALBERTA)

32. PM USA denies the allegations in paragraphs 64-75 of the Statement of Claim, and in further answer, repeats paragraphs 28-30 and 53 hereof.

VII. CONSPIRACY

33. PM USA denies the allegations in paragraphs 76-80 of the Statement of Claim. PM USA further states that:

- (a) It conducts business in a highly regulated industry which leads, in some instances, to uniformity and consistency in the industry's manufacturing, packaging and promotional activities.
- (b) It conducted itself at all times in accordance with appropriate business practices and in compliance with any applicable common law, equitable, and statutory duties that governed its conduct.
- (c) In late 1953 and early 1954, representatives of the cigarette industry and tobacco growers based in the United States met to address scientific developments regarding smoking and health. As a result of those meetings, of which the U.S. Department of Justice received notice, the Tobacco Industry Research Committee, later known as the Council for Tobacco Research ("TIRC/CTR"), was formed to support and fund research. An independent scientist of national repute was appointed as the Scientific Director as was an Advisory Board of distinguished scientists disinterested in the cigarette industry. Over the years, the U.S. Surgeon General has cited more than 350 studies funded by TIRC/CTR starting with the 1964 Surgeon General Report.
- (d) In answer to the allegation that unlawful acts were committed by PM USA in furtherance of an alleged conspiracy, PM USA repeats paragraphs 6-32 herein, and in particular, paragraphs 28-30 herein.

- (e) PM USA states that it never conspired or acted in concert or with a common design with any of the Lead Companies or defendants. Further, to the extent that other Lead Companies or defendants may have had policies in common with PM USA in relation to smoking and health, those policies were developed for appropriate business purposes and were lawful. PM USA 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 PM USA 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 Province and the public health community.

PARTICULARS OF CONSPIRACY - INTERNATIONALLY

34. PM USA denies the allegations in paragraphs 81-103 of the Statement of Claim and repeats paragraphs 33 and 41 hereof.

PARTICULARS OF CONSPIRACY - INTERPROVINCIALY THROUGHOUT CANADA

35. PM USA denies the allegations in paragraphs 104-109 of the Statement of Claim and repeats paragraphs 33 and 41 hereof.

36. PM USA has no knowledge of the allegations in paragraph 110 of the Statement of Claim and therefore denies the same.

37. PM USA denies the allegations in paragraphs 111-112 of the Statement of Claim and repeats paragraphs 33 and 41 hereof.

PARTICULARS OF CONSPIRACY AMONG AFFILIATED CORPORATIONS

B.A.T. Group

38. PM USA has no knowledge of the allegations in paragraphs 113-117 of the Statement of Claim and therefore denies the same.

Rothmans Group

39. PM USA denies the allegations in paragraphs 118-120 of the Statement of Claim and repeats paragraphs 33 and 41 hereof.

RJR Group

40. PM USA has no knowledge of the allegations in paragraphs 121-125 of the Statement of Claim and therefore denies the same.

Philip Morris Group

41. PM USA denies the allegations in paragraphs 126-130 of the Statement of Claim and repeats paragraph 33 hereof.

VIII. JOINT AND SEVERAL LIABILITY

42. PM USA denies the allegations in paragraphs 131-132 of the Statement of Claim.

43. PM USA has no knowledge of the allegations in paragraphs 133-134 of the Statement of Claim and therefore denies the same.

44. PM USA denies the allegations in paragraph 135 of the Statement of Claim and repeats paragraphs 33 and 41 hereof.

45. PM USA has no knowledge of the allegations in paragraph 136 of the Statement of Claim and therefore denies the same.

IX. THE CROWN'S COST OF HEALTH SERVICES

46. PM USA denies the allegations in paragraph 137 of the Statement of Claim. PM USA states that cigarette smoke contains numerous constituents, some of which are acknowledged by public health organizations, such as the U.S. Food and Drug Administration, Health Canada, and the International Agency for Research on Cancer, to be hazardous to health. PM USA denies that it has been aware at all times since 1950 that cigarette smoke contains the specific constituents listed in paragraph 137 of the Statement of Claim, or that all of those constituents cause or contribute to disease. PM USA further 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, the Province and the public health community 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 Province 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, PM USA 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 Province and the public health community.

47. PM USA admits that cigarette smoking causes or contributes in some smokers to cancers of the lung, larynx, esophagus, bladder, kidneys, and pancreas; cardiovascular diseases (myocardial infarction, coronary heart disease, and atherosclerosis); emphysema; chronic bronchitis; chronic obstructive pulmonary disease; cerebrovascular disease; and aortic aneurysms. PM USA states that "stomach cancer" and "oral cancer" are relatively vague terms which might encompass a number of different and varied anatomical structures, but admits that smoking causes cancer in certain of the anatomical structures associated with the stomach and mouth. PM USA denies that smoking causes or contributes to liver cancer; or uterine or cervical cancer. PM USA states that "adverse reproductive outcomes" is a relatively vague term which might encompass a number of different and varied anatomical structures, but admits that smoking is associated with an increased risk of placental abruption, premature birth, sudden infant death syndrome, and intrauterine growth restriction; and that cigarette smoking causes lower infant birth weight in infants whose mothers were smokers during pregnancy. PM USA further states that many other factors, whether environmental, physiological, genetic, or based upon lifestyle choices, can also have harmful effects on pregnancy. PM USA also admits that smoking is associated with an increased risk of acute myeloid leukemia and Buerger's disease. PM USA acknowledges that the Surgeon General's 2014 Report (entitled "The Health Consequences of Smoking – 50 Years of Progress") concluded that there is sufficient evidence to infer a causal relationship between smoking and low bone density in post-menopausal women, premature rupture of the membranes, placenta previa, cataracts, post-surgery infections, peptic ulcers, reduced fertility (in females only), and increased morbidity and general deterioration of health, but PM USA's position is that at this time, these conclusions are based on inadequate scientific support. PM USA further states that diseases caused or contributed to by cigarette smoking are complex and may be caused or contributed to by many different

factors, whether environmental, physiological, genetic or based upon lifestyle choices. PM USA denies the remaining allegations in paragraphs 138-39 of the Statement of Claim.

48. PM USA states that it does not manufacture, advertise, market, distribute or sell cigarettes in Alberta. PM USA admits that U.S.-sourced tobacco products manufactured by PM USA (or its corporate predecessors) accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market. Further, tobacco products manufactured in the U.S. by PM USA for the Canadian duty-free market were provided for sale only to individuals leaving Canada and had to be taken out of the country immediately after purchase. To the very limited extent that cigarettes manufactured by PM USA were ever offered for sale in Canada, PM USA states that such cigarettes were at all material times a legal product sold in compliance with all applicable laws. PM USA states that it has no knowledge as to the truth of the allegations made with respect to other Defendants and denies the allegations in paragraph 140 of the Statement of Claim.

49. PM USA denies the allegations in paragraphs 141-142 of the Statement of Claim.

50. PM USA has no knowledge of the allegations in paragraph 143 of the Statement of Claim and therefore denies the same.

X. REMEDY SOUGHT

51. PM USA submits that the Province is not entitled to the relief sought in paragraph 144 of the Statement of Claim and that the Statement of Claim should be dismissed with costs.

XI. ANSWERS TO THE STATEMENT OF CLAIM AS A WHOLE

A. GENERAL DEFENCES

(i) No Cause of Action

52. The Statement of Claim discloses no cause of action because:

- (a) there has been no pecuniary damage suffered by insured persons in respect of the "cost of health care benefits" as defined by the Act;

- (b) the statutory liability the Province alleges is an ex post facto attempt to make actionable conduct that was not actionable when it occurred;
- (c) if the Claimed Cost was incurred as alleged or at all, which is denied, it was incurred by the federal government by means of transfer payments, conditional grants and shared cost programmes, and not by the Province;
- (d) if the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was incurred to provide services to insured persons that the Province was and is required to provide pursuant to the *Alberta Health Care Insurance Act*, RSA 2000, c A-20, as amended, and any predecessor statutes; and
- (e) if the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by the conduct and acts or omissions of the federal government and of the Province.

(ii) No Breach of Duty

53. In answer to the entire Statement of Claim, PM USA repeats paragraph 9 hereof, and states:

- (a) PM USA never owed nor breached a duty to persons in Alberta;
- (b) PM USA conducted itself at all times in accordance with appropriate business practices and in compliance with the common law, equitable and statutory duties that governed its conduct; and
- (c) at all materials times, the manufacture, sale, advertising and promotion of tobacco products in Alberta and throughout Canada has been supervised, regulated and controlled by the Province and the federal government, the Province encouraged or participated in such supervision, regulation and control in Alberta either directly or indirectly through agreements, express or implied with the federal government, and together the said governments have defined and delineated the duties of tobacco manufacturers in Canada including Alberta and have given advice, recommendations, directions and suggestions in relation to, *inter alia*:

- (i) the nature and scope of research into the properties of cigarettes to be undertaken by Canadian tobacco manufacturers;
- (ii) whether warnings of the health risks and addictive character of cigarettes should be provided to consumers;
- (iii) the content and placement of any such warnings to be provided;
- (iv) product modifications, including the development, manufacture, promotion, distribution and sale of cigarettes containing lower amounts of tar and nicotine as measured by standard smoking machines;
- (v) communications by Canadian manufacturers with consumers about the health risks and addictive character of cigarettes and their tar and nicotine content when measured by standard smoking machines; and
- (vi) the acceptability of the types of advertising and other forms of promotion that have been used in the past by Canadian manufacturers to promote the sale of their products.

(iii) No Damage

54. In answer to the entire Statement of Claim, PM USA states that:

- (a) if PM USA breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to the Claimed Cost as alleged or at all;
- (b) if the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, without limitation, one or more of the following:
 - (i) the requirement that the Province provide services to insured persons pursuant to the *Alberta Health Care Insurance Act*, RSA 2000, c A-20, as amended, and any predecessor statutes;
 - (ii) the conduct and acts or omissions of the federal government and of the Province;

- (iii) the conduct and acts or omissions of individual insured persons as further particularized herein; and
 - (iv) disease or risk of disease in individual insured persons unrelated to smoking cigarettes;
- (c) if the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by the tax revenue received by the Province from the sale of cigarettes in Alberta so that no cost is ultimately incurred by the Province;
- (d) if the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by monies received by the Province from the federal government by means of transfer payments, conditional grants and shared-cost programmes for the purpose of funding the Claimed Cost so that no cost is ultimately incurred by the Province; and
- (e) if the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was inflated by overbilling, waste, abuse, neglect and other misconduct by various of the Province, persons involved in the administration and delivery of health care benefits and insured persons.

(iv) Causation

55. PM USA admits that smoking causes or contributes to disease. These diseases are complex and may be caused or contributed to by many different factors, including genetics, stress, excess weight, alcohol, environmental factors and other consumer products. If PM USA breached any duties, as alleged or at all, 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.

(v) Limitations

56. PM USA pleads and relies upon the provisions of the *Limitations Act*, RSA 2000, c L-12, as amended, and any predecessor statutes, both in respect of the Province's claim and

in respect of the health care costs of those persons on which the Province's claim is alleged to be based and calculated.

B. DEFENCES ARISING OUT OF THE PROVINCE'S CONDUCT AND KNOWLEDGE

(i) General

57. The Province's claim to recover the Claimed Cost is subject to complete defences, by reason of information the Province knew or should have known, and the Province's own conduct, including:

- (a) the Province's knowledge of health risks associated with cigarette smoking;
- (b) the Province's licensing and regulation of the production, manufacture and sale of cigarettes, including its failure to enforce or implement such regulation to the extent constitutionally permissible;
- (c) the Province's voluntarily undertaking obligations to pay the cost of health care benefits allegedly caused or contributed to by cigarette smoking;
- (d) the Province's failure to establish or delay in developing, or both, policies and practices, including health care expenditures and taxation policies and practices, legislation and regulations, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking;
- (e) the Province's failure to fund, develop and implement health promotion and smoking cessation practices and policies, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking;
- (f) the Province's failure to take any steps prior to commencement of this action to attempt to recover the alleged cost of health care benefits by subrogation;
- (g) the Province's delay in implementing and failure to enforce laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time;

- (h) the Province's own decision to regulate many aspects of the tobacco business and to keep the largest portion of the proceeds from the sale of tobacco products;
- (i) the Province's taxation of cigarettes in excess of the cost (if any) of health care benefits allegedly resulting from tobacco related disease or the risk thereof; and
- (j) the Province's own breaches of its duty or duties to insured persons as particularized herein.

58. PM USA pleads and relies on the *Tobacco and Smoking Reduction Act*, SA 2005, c T-3.8, as amended, and any predecessor statutes and the regulations under the foregoing.

59. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Alberta subject to certain exceptions and restrictions all of which have been fully complied with by PM USA.

60. At all material times, the Province, through its ministers, ministries, departments, servants and agents, has known as much regarding the material risks associated with smoking cigarettes as PM USA.

61. Despite its knowledge of risks associated with smoking cigarettes, the Province continued to license and regulate the production, manufacturing, advertising, promotion and sale of cigarettes in Alberta and to impose heavy taxation upon, *inter alia*, manufacturers, distributors and consumers of cigarettes.

62. The Province benefits from the taxes imposed on and in relation to the sale of cigarettes in Alberta, which results in complete mitigation and set-off of the claim. PM USA pleads and relies on the *Tobacco Tax Act*, RSA 2000, c F-1, as amended, and any predecessor statutes.

63. Despite its knowledge of risks associated with cigarette smoking, the Province took no steps to restrict or limit the sale of cigarettes save for restrictions on sale to persons below a prescribed age and in that case, delayed in implementing such restrictions, and subsequently took no reasonable steps to enforce them. PM USA pleads and relies on the

Tobacco and Smoking Reduction Act, SA 2005, c T-3.8, as amended, and any predecessor statutes.

64. Despite its knowledge of risks associated with cigarette smoking, the Province voluntarily undertakes the obligation of paying for the costs of health care benefits including such costs it alleges are caused or contributed to by cigarette smoking and sets its taxation and health care policies accordingly.

65. Despite its knowledge of risks associated with cigarette smoking, the Province, at all material times, permitted the sale and consumption of cigarettes in Alberta and derived substantial revenue therefrom.

66. The Province is wrongfully attempting, by statute, to make conduct actionable which was not actionable at the time it occurred. As a result and because the Province waited for decades to commence a claim, PM USA pleads that the Province's action should be dismissed on the basis of voluntary assumption of risk, laches, estoppel and the *Limitations Act*, RSA 2000, c L-12, as amended, and any predecessor statutes.

(ii) Voluntary Assumption of Risk

67. PM USA repeats paragraphs 57-66 hereof and states that at all material times the Province has been aware of health risks associated with cigarette smoking. Accordingly, the Province voluntarily assumes such risks, whatever their extent, in incurring the costs it alleges are caused or contributed to by cigarette smoking. PM USA further states that:

- (a) the Province has had knowledge of the health risks for over 50 years. Despite that knowledge, the Province and the federal government have continued to permit the sale of tobacco products in Alberta;
- (b) PM USA's activities over the last 50 years took place with the knowledge and consent of the governments, including the Province; and
- (c) relying on the Province's course of conduct, PM USA continued to make its tobacco products available for sale in Alberta in compliance with all applicable government direction until 1989.

(iii) Contributory Negligence

68. PM USA repeats paragraphs 57-66 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or contributed to, in whole or in part, by the acts or omissions of the federal government acting alone or as agent for or in concert with the Province, or due to the acts or omissions of the Province as pleaded herein, and not any act or omission of PM USA. PM USA pleads and relies upon the *Contributory Negligence Act*, RSA 2000, c C-27, as amended, and any predecessor statutes.

69. PM USA repeats and relies on paragraphs 57-66 hereof and states that it was governments that decided many aspects of the tobacco business and who kept the largest portion of the proceeds from the sale of tobacco products. To the extent insured persons, including under-aged persons, were not informed of the risks associated with smoking cigarettes or purchased low tar cigarettes as a result of a misrepresentation (all of which is denied), it is because the Province or the federal government, or both, failed to perform their obligations adequately.

(iv) The Province Cannot Profit From Its Wrongful Conduct

70. PM USA repeats paragraphs 33-41 and 57-66 hereof and states that the Province is barred from recovering any damages or costs it has suffered, the existence of which is denied, as any damages or costs flowed from its participation as set out herein in conduct which the Province itself alleges in the Statement of Claim constituted breaches of duty.

(v) Legal and Equitable Bars

71. PM USA repeats paragraphs 57-66 hereof and states that by reason of the facts set out therein and the knowledge, conduct and delay of the Province and the prejudice thereby caused to PM USA, the Province is barred in law and in equity from advancing the claims made in the Statement of Claim against PM USA. PM USA pleads and intends to rely on the *Alberta Health Care Insurance Act*, RSA 2000, c A-20, as amended, and any predecessor statutes.

(vi) Mitigation

72. PM USA repeats paragraphs 57-66 hereof and states in further answer to the whole of the Statement of Claim, if the Province has incurred the Claimed Cost, as alleged or at all, which is denied, the Province has failed to mitigate the Claimed Cost.

C. DEFENCES ARISING OUT OF INDIVIDUAL CONDUCT

(i) General

73. In answer to the whole of the Statement of Claim, if the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, and the Province's claim to recover the Claimed Cost is subject to complete defences by reason of the conduct of individual insured persons, including their voluntary decisions to commence or continue smoking with awareness of the associated risks.

74. All of the insured persons who smoke or have smoked cigarettes were aware or had been warned of risks associated with smoking.

75. Each insured person became aware or received warnings of risks associated with smoking by various means, including, without limitation, one or more of the following:

- (a) warnings, including on the packaging of cigarettes, as required from time to time pursuant to federal and provincial legislation and regulations and voluntary codes of compliance by Canadian tobacco manufacturers;
- (b) mandatory displays, signs and other warnings required by provincial legislation in premises where sales of cigarettes take place;
- (c) discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;
- (d) education programmes including courses, seminars and lectures and educational literature and other media;
- (e) oral and written warnings from physicians and other health practitioners;

- (f) oral and written warnings from family members, friends and other acquaintances; and
- (g) the common general understandings and historical beliefs about adverse health consequences attributed to cigarette smoking dating back hundreds of years.

76. By reason of the foregoing, PM USA states that all of the insured persons who smoke or have smoked cigarettes were aware or had been warned of associated risks.

77. Each of those insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking, and each such insured person voluntarily consented to accept such risks.

78. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the associated risks. PM USA had and has no legal duty to such persons, or alternatively, no legal duty to such persons that has not been fulfilled.

79. PM USA denies that any insured persons began, continued, or were unable to cease smoking by reason of any of the alleged breaches of duty of PM USA, or that any alleged breach of duty caused or contributed to any alleged tobacco related disease or increased costs of tobacco related disease in any insured person.

80. If the federal government did not act as an agent for or in concert with the Province, then to the extent insured persons were not adequately informed about the risks of smoking cigarettes or purchased low tar cigarettes as the result of a misrepresentation (all of which is denied), they did so as a result of the breach of duty owed to them by the federal government.

81. Finally, to the extent the Province incurred health care costs due to smoking by insured persons, which is denied, the cost was caused by Aboriginal Manufacturers who breached duties owed to insured persons by the way they packaged and sold their products.

(ii) Voluntary Assumption of Risk

82. PM USA repeats paragraphs 73-81 hereof and states that at all material times individual insured persons were aware of health risks associated with cigarette smoking.

Accordingly, such persons voluntarily assumed such risks, whatever their extent, when they decided to commence and continue smoking.

(iii) Contributory Negligence

83. PM USA repeats paragraphs 73-81 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed 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 PM USA. PM USA pleads and relies upon the provisions of the *Contributory Negligence Act*, RSA 2000, c C-27, as amended, and any predecessor statutes.

(iv) Legal and Equitable Bars

84. PM USA repeats paragraphs 73-81 hereof and states that by reason of the facts set out therein and the knowledge and conduct of insured persons and the prejudice thereby caused to PM USA, the Province is barred at law and in equity from advancing the claims made in the Statement of Claim against PM USA including as a result of the passage of time.

(v) Limitations

85. PM USA pleads and relies upon the provisions of the *Limitations Act*, RSA 2000, c L-12, as amended, and any predecessor statutes, in respect of the claims of any individual insured person upon which the Province's cause of action is alleged to rest.

86. PM USA pleads and relies upon the limitation provisions in the *Competition Act*, RSC 1985, c. C-34, as amended, and any predecessor statutes.

(vi) Mitigation

87. PM USA repeats paragraphs 73-81 hereof and states in further answer to the whole of the Statement of Claim, that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, individual insured persons have failed to mitigate the Claimed Cost.

XII. RELIEF SOUGHT

88. The Defendant, Phillip Morris USA Inc., respectfully requests that this Honourable Court grant judgment:

- (a) dismissing the Plaintiff's claims and this Action;
- (b) awarding costs on such basis as this Honourable Court deems appropriate in the exercise of its discretion; and
- (c) granting such other relief as this Honourable Court deems just in the circumstances.