

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

**ROTHMANS INC., ROTHMANS, BENSON & HEDGES INC., CARRERAS
ROTHMANS LIMITED, ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC.,
PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J.
REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO
INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH
AMERICAN TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN
TOBACCO (INVESTMENTS) LIMITED, and CANADIAN TOBACCO
MANUFACTURERS' COUNCIL**

Defendants

**STATEMENT OF DEFENCE OF
B.A.T INDUSTRIES PLC**

1. The defendant B.A.T Industries plc (hereinafter "Industries") denies, or where applicable does not admit, all allegations contained in the Amended Fresh as Amended Statement of Claim (the "Statement of Claim"), unless and except where expressly admitted herein, and puts the plaintiff to the strict proof thereof.
2. Without limiting the generality of the foregoing, Industries specifically denies:
 - (a) that it took part in any conspiracy, concert of action or common design as alleged or at all; or
 - (b) that it has owed or breached any common law, equitable or statutory duty or obligation to persons in Ontario as alleged in the Statement of Claim or at all; or
 - (c) that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes, to continue to smoke cigarettes, or to be exposed to cigarette smoke; or

- (d) that it acted in a manner that wrongfully caused any person in Ontario to smoke or continue smoking cigarettes or the plaintiff to incur the cost of health care benefits resulting from tobacco related disease or the risk thereof.
- 3. Industries adopts headings used in the Statement of Claim but it does not thereby admit any facts or allegations contained within such headings. Except where indicated to the contrary, Industries adopts on the same basis the definitions used in the Statement of Claim.
- 4. Except as expressly admitted below, Industries denies the allegations contained in paragraphs 19, 20, 40 to 43, 47, 50 to 55, 68, 73.1(b), 73.2(g), 73.3(f), 73.4(d)(g), 77, 79, 86 to 107, 115, 135 to 141 and 148 to 150 of the Statement of Claim. With respect to paragraph 20 and allegations throughout the Statement of Claim, Industries denies that it has any predecessors in interest for whom it is in law responsible.
- 5. Industries has no knowledge of the facts alleged in paragraphs 7 to 18, 21 to 39, 44 to 46, 48, 49, 56 to 67, 69 to 73, 73.1(a), 73.2(a)-(f), 73.3(a)-(e), 73.4 (a)-(c)(e), 74 to 76, 78, 80 to 85, 108 to 114, 116 to 134 and 142 to 147 of the Statement of Claim, and puts the plaintiff to the strict proof thereof.

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

- 6. Industries denies that the plaintiff is entitled to the relief sought in paragraphs 1 to 4 and 149 of the Statement of Claim.
- 7. With respect to paragraphs 5 and 6 of the Statement of Claim, Industries repeats paragraph 3 above.

B. The Defendants

- 8. With respect to paragraph 18 of the Statement of Claim, Industries:
 - (a) states that:
 - (i) it was incorporated on September 3, 1928 as an investment trust company named Tobacco Securities Trust Company Limited;

- (ii) its name was changed by resolution on July 23, 1976 to B.A.T Industries Limited; and
 - (iii) it was re-registered as a public limited company on July 8, 1981 as B.A.T Industries p.l.c.; and
 - (b) admits that it has a registered office at Globe House, 4 Temple Place, London, England but states that it is a public limited company incorporated pursuant to the laws of England and Wales; and
 - (c) denies that it is a successor in interest to the defendant British American Tobacco (Investments) Limited, formerly named British-American Tobacco Company Limited (hereinafter "Investments").
9. Throughout its history, Industries has functioned as a share holding company. It has never had any commercial operations. Its office has always been located in London, England. As an investment holding company, Industries has never been involved in the research, development, design, manufacture, advertisement, marketing, distribution or promotion of tobacco products sold in Ontario, Canada or anywhere else.
10. With respect to paragraphs 86 and 150 of the Statement of Claim, Industries 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 care benefits.
11. Industries denies the existence of any conspiracy or that it was a member of any such alleged conspiracy and denies that it conspired or acted in concert or with common design with any other defendant, or has been involved either as principal or as agent for any other defendant.
12. Industries states that it has never carried on business in Ontario and, as a holding company, has never researched, developed, designed, manufactured, advertised, marketed, distributed, promoted or sold cigarettes or other tobacco products in Ontario or anywhere else.
13. Any activity by another defendant or company, including but not limited to the manufacture or promotion of cigarettes sold in Ontario, cannot and does not constitute

such activity by Industries. Any plea otherwise is deficient by reason of the absence of the pleading of material facts in support. Industries denies that it is a “manufacturer” within the meaning of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, SO 2009 c 13 (the “Act”) or at all, or that the Act has any permissible application to it.

II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

Multinational Tobacco Enterprises

14. Industries denies, if it is alleged, that it is a Multinational Tobacco Enterprise, and specifically denies that it was ever, together with its subsidiaries and associates, operated as a single corporate entity or enterprise.
15. Industries denies that the “BAT Group” is a designation with any legal significance whatsoever and makes no admissions as to the membership of the “BAT Group”.
16. Industries is unable to determine what, if any, legal or other significance the plaintiff ascribes to the term “Lead Companies” as defined in paragraphs 42 and 43 of the Statement of Claim. Without prejudice to the foregoing, Industries denies that it was in such relation to any of the companies identified in paragraph 47 of the Statement of Claim, and specifically denies the allegation that it has directed or co-ordinated within those companies common policies relating to smoking and health.
17. Industries became the parent holding company of the BAT group of companies on July 23, 1976 as the result of a “reverse takeover” under English law whereby Industries, which had had a small shareholding in Investments, became the sole ordinary shareholder of Investments. The former public shareholders of the ordinary shares of Investments became shareholders of Industries. Industries, as a holding company, became the ultimate owner of the shares of Investments and the diverse range of other subsidiaries and associates in the BAT group of companies. As required by law, the reverse takeover was approved by the High Court of Justice of England and Wales under Section 206 of the *Companies Act 1948* (the “1976 Transaction”).
18. The 1976 Transaction did not entail the combination of two companies to form a new company, nor did it render Industries a successor to Investments. Investments is not a predecessor to Industries. Each company retains its own separate corporate identity and

existence. Each of Industries and Investments is incorporated pursuant to the law of England and Wales and any question of whether Investments is a predecessor in interest for whom Industries is in law responsible is subject to the law of England and Wales, which does not recognise any doctrine of successor liability as a matter of law.

19. From July 1976 to September 1998 Industries 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, Industries owned under 50% of the shares of Imasco Limited (“Imasco”) which made Imasco an associated company of Industries. The defendant Imperial Tobacco Canada Limited is a corporate successor to Imasco, and also to Imperial Tobacco Limited (all three of which are collectively referred to hereinafter as “ITCAN”). At all material times Industries 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 Industries and ITCAN legitimately and appropriately exchanged information relevant to ITCAN’s operations in Canada. However, Industries had no involvement in the day-to-day management of ITCAN’s operations or programmes, and Industries did not dominate or exert functional or legal control or undue influence over ITCAN, with respect to smoking and health issues or at all.
20. Industries specifically denies the allegations contained in paragraphs 42, 68, 89 and 135 to 140 of the Statement of Claim. To the extent that Industries had any involvement in the committees, conferences, meetings and communications referred to, they were not used as vehicles to direct or co-ordinate ITCAN’s activities or its policies on smoking and health. Industries did not direct ITCAN to adopt policies or positions on smoking and health in Canada through the meetings and structures identified in the Statement of 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.
21. 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.

22. Further, Industries denies that any alleged tobacco-related wrongs in Canada (which are not admitted but denied) are a proximate or direct result of the committees, conferences, meetings and communications identified in the Statement of Claim.

III. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Breaches of Common Law, Equitable or Statutory Duties or Obligations

23. Industries repeats paragraphs 12 and 13 above and denies that it owes or ever owed a duty to persons in Ontario.
24. Further, and in the alternative, to the extent that Industries owes or ever owed a duty to persons in Ontario (which is not admitted but denied), Industries complied with any such duty, whether based in common law, equity or statute.
25. Further, and in the alternative, if Industries breached any duty to persons in Ontario (which is not admitted but denied), Industries says no such breach resulted in persons in Ontario starting or continuing to smoke cigarettes manufactured or promoted by the defendants, or being exposed to cigarette smoke, or suffering tobacco related disease or an increased risk of tobacco related disease.

The Defendants' Knowledge

26. Industries 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 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 smoke. Smoking is, for many people, difficult to quit and 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.

27. The number of discrete compounds identified in tobacco smoke has increased rapidly over time and now totals over 4,000, most 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.
28. 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.
29. Industries states that, at all material times, persons in Ontario 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 Ontario with respect to smoking and its potential risks. At all material times, Industries 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 Ontario, the federal government, the plaintiff and/or the public health community.
30. With respect to paragraphs 73.1(b), 73.2(g), 73.3(f) and 73.4(d)(g) of the Statement of Claim, Industries denies that it suppressed or concealed scientific and medical data. Industries had no policy to avoid public disclosure or to conceal its knowledge of such data. Without prejudice to the generality of the foregoing, Industries specifically denies:

- (a) that it participated in “ICOSI’s total embargo of all research relating to the pharmacology of nicotine” in concert with the other “Groups” or at all, or that any such embargo existed; or
- (b) that it agreed not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the “BAT Group”.

Exposure

31. Industries 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 to continue smoking by any individual insured person is an individual decision taken by that person for reasons specific to that person;
 - (b) while Industries accepts that smoking is for many people difficult to quit and that it can be termed an “addiction” or dependency, Industries 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 Industries accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, Industries 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, Industries denies that insured persons relied, reasonably or otherwise, on positions adopted by Industries as to the health risks associated with smoking.

Disease and the Risk of Disease

32. Industries 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, cigarettes smoked per day, years smoked, periods of smoking cessation, and the presence or absence of other risk factors associated with the disease. Further, if Industries had any duties or obligations in Ontario (which is denied), and if Industries 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.

No Market Share

33. By reason of the facts and matters pleaded above, in particular at paragraphs 12 and 13, Industries has never possessed any share of the market for tobacco products in Ontario whether as defined by the *Act* or at all. Accordingly, Industries 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 Industries can have no liability at all.

Conspiracy, Concert of Action and Common Design

34. In the following section, Industries pleads as fully as it currently is able to the allegations contained in paragraphs 86 to 116, 135 to 141 and 150 of the Statement of Claim. Industries reserves the right to supplement this Statement of Defence if further particulars become known in the future.
35. If, which is denied, Industries has any liability to the plaintiff by reason of the matters pleaded at paragraphs 56 to 85 and 142 to 147 of the Statement of 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 Industries 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, Industries claims the

benefit of all and any defences of all and any defendants with whom Industries 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, Industries is alleged to be jointly and severally liable.

36. Without prejudice to the foregoing, in the generality in respect of paragraphs 86 to 116, 135 to 141 and 150 of the Statement of Claim, Industries 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 Statement of Claim; or
 - (b) acted in concert or 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 Statement of Claim; or
 - (c) was involved either as principal or as agent for any other defendant with respect to the commission of any tobacco related wrong; or
 - (d) 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 4(2)(b)(iii) of the *Act* or otherwise pursuant to section 4 of the *Act*, or at all.
37. Further, Industries denies that it directed or co-ordinated the activities of, or conspired or acted in concert with the defendant ITCAN, as alleged or at all.
38. Further, the plaintiff has no claim in respect of the alleged conspiracy, concert of action or common design because the plaintiff agreed to and adopted the design of what it alleges is a conspiracy, concert of action or common design and became a party thereto and carried out acts in Ontario in furtherance thereof that the plaintiff alleges are unlawful.
39. 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 care benefits described in paragraph 2 of the Statement of Claim must be adjusted to reflect the financial benefits which the plaintiff has obtained by reason of the foregoing.

(i) Conspiracy within the International Tobacco Industry

40. Industries states that it never conspired or acted in concert with any of the Lead Companies. Industries further states that the risks associated with smoking have been widely known in Ontario, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Ontario through a variety of sources and that Industries 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 Ontario, the federal government, the plaintiff and/or the public health community.
41. With respect to allegations contained in paragraphs 68, 73 to 73.4 and 88 to 107 of the Statement of Claim, Industries denies that it agreed with any other defendant to suppress or conceal, or suppressed or concealed, or directed any Direct Breach Defendant to suppress or conceal, or had any policy to suppress or conceal information about the risks associated with smoking and exposure to smoke.
42. Industries denies that it formed, joined or was ever a member of any of the industry organizations identified in the Statement of Claim. More particularly, Industries was not involved in the formation of, was never a member of, never undertook any activities through or with, never participated in meetings of, and never entered into agreements through or with the Tobacco Industry Research Committee ("TIRC"), the Council for Tobacco Research ("CTR"), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Institute ("TI"), the Tobacco Research Council ("TRC"), the Tobacco Manufacturers' Standing Committee ("TMSC"), the Tobacco Advisory Council ("TAC"), the Verband der Cigarettenindustrie, the International Committee on Smoking Issues ("ICOSI"), the International Tobacco Information Centre/Centre International d'Information du Tabac - INFOTAB ("INFOTAB"), the Tobacco Documentation Centre ("TDC"), the Committee for Indoor Air Research, the

Association for Research on Indoor Air or Indoor Air International, or any of the committees or groups allegedly formed by those organizations.

43. None of those organizations, referred to in paragraphs 90 to 106 of the Statement of Claim, was under the direction or control of Industries and neither was any of those organizations ever used by Industries to direct or co-ordinate the activities, policies or positions of ITCAN or any other defendant.
44. Industries denies that it was involved in the launch of, or led, or ever joined any "Operation Berkshire".
45. Industries specifically denies the allegations contained in paragraph 91 of the Statement of Claim:
 - (a) with respect to paragraph 91(a), Industries did not make the Tobacco Industry Research Council's 1954 "Frank Statement to Cigarette Smokers". Industries did not draft, sign or publish or direct anyone else to draft, sign or publish the "Frank Statement to Cigarette Smokers";
 - (b) with respect to paragraph 91(b), Industries did not make representations in May 1963 to the Canadian Medical Association;
 - (c) with respect to paragraph 91(c), Industries did not make a presentation to the Conference on Smoking and Health of the Federal Department of National Health Welfare on November 25-26, 1963;
 - (d) with respect to paragraph 91(e), Industries did not make statements to the National Press or news organisations in Canada; and
 - (e) with respect to paragraph 91(f), Industries did not make communications through the Canadian Tobacco Manufacturers' Council ("CTMC") in Canada including, without limitation, to the Federal Department of Health Welfare.

(ii) Conspiracy within the Canadian Tobacco Industry

46. Industries was not involved in the formation of the CTMC. The CTMC was a Canadian organization whose members were from the Canadian tobacco industry. Industries has

never been a member of the CTMC and has never engaged in any co-ordinated efforts with the CTMC.

47. With respect to paragraph 115 of the Statement of Claim, Industries denies that the CTMC ever acted as agent for Industries, as alleged or at all.
48. Industries specifically denies that allegations contained in paragraph 139 of the Statement of Claim. Industries has never directed or advised how ITCAN should vote in committees of Canadian manufacturers or at meetings of the CTMC. Member companies of the CTMC, which did not include Industries, exclusively decided issues relating to smoking and health including, in particular, the approval and funding of CTMC research.

IV. RELIEF

49. In answer to the entire Statement of Claim, Industries states that the costs that have been incurred or will be incurred by the plaintiff in respect of health care benefits 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 Industries 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 care benefits as alleged or at all
 - (b) if the plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, the cost of health care benefits 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 Ontario, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in the definition of "health care benefits" in subparagraph 1(1) 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 Ontario in breach of duties owed to them.
- (c) if the plaintiff has incurred or will incur the cost of health care benefits 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 Ontario alleged to have been caused by the tobacco-related wrongs alleged; and
 - iv. that cost is not influenced by the tobacco-related wrongs alleged.

V. THE PLAINTIFF'S OWN CONDUCT

50. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario 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 care benefits that have been or will be provided to insured persons who have suffered tobacco-related disease, as alleged (which is denied), Industries 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.

51. 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 license and regulate the production, manufacture, advertising, promotion, distribution and sale of tobacco products in Ontario 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 Ontario, 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 cost of health care benefits, including such costs as it alleges are caused or contributed to by tobacco smoking or exposure to tobacco smoke, and has set its taxation and health care policies accordingly.

52. Further, without prejudice to its pleading herein that it is not a manufacturer of tobacco products under the *Act* or at all, Industries states 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.
53. Further, Industries states that if the plaintiff has incurred the cost of health care benefits 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 Industries. Industries pleads and relies upon the provisions of the *Negligence Act*, RSO 1990, c N.1.
54. Further, Industries 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 Industries, the plaintiff is barred in law and in equity from advancing the claims made in the Statement of Claim against Industries. Industries 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 (if applicable) the *Limitations Act, 2002*, SO 2002, c 24.

55. Further, Industries states that, if the plaintiff has incurred the cost of health care benefits 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.
56. Without prejudice to the foregoing, Industries repeats paragraph 50 above and states that the acts, errors and omissions pleaded therein represent failures by the plaintiff to act reasonably to mitigate the "cost of health care benefits" as alleged, and any such costs must be adjusted to reflect this failure.

VI. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

57. If the plaintiff has incurred the cost of health care benefits 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.
58. At all material times insured persons who smoke or have smoked cigarettes were aware of the risks associated with smoking during all material times.
59. 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.
60. By reason of the foregoing, Industries states that insured persons who smoke or have smoked cigarettes were aware of, or should have been aware of, the associated risks at all material times.
61. Insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking and voluntarily consented to accept such risks.
62. 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. Industries had and has no legal duty to such persons, or, alternatively, no legal duty that has not been fulfilled.
63. 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 Industries repeats and relies on paragraphs 50 to 52 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 Ontario in breach of duties owed to them.

64. Industries denies that insured persons began, continued or were unable to stop smoking by reason of any of the alleged breaches of duty of Industries (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 care benefits.
65. Industries states that at all material times insured persons have been, or should have been, aware of health risks associated with smoking cigarettes. Accordingly, such persons voluntarily assume such risks when they decide to commence or continue smoking.
66. Further, Industries states that if the plaintiff has incurred the cost of health care benefits 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 Industries. Industries pleads and relies upon the provisions of the *Negligence Act*, RSO 1990, c N.1.
67. Further, Industries states that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to Industries, the plaintiff is barred at law and in equity from advancing the claims made in the Statement of Claim against Industries.
68. Industries 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 in respect of the claims of any individual insured person upon which the plaintiff's cause of action is alleged to rest, including (if applicable) the *Limitations Act*, 2002, SO 2002, c 24.
69. Further and in the alternative, Industries states that, if the plaintiff has incurred the cost of health care benefits as alleged (which is denied), individual insured persons have failed to act reasonably to assist the plaintiff to mitigate that cost.
70. Industries requests that the claim against it be dismissed with costs.

Date: 2016 April 29

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 1B9

David R. Byers, LSUC # 22992W
Tel: (416) 869-5697

Vanessa Voakes, LSUC # 58486L
Tel: (416) 869-5538
Fax: (416) 947-0866

Lawyers for the Defendants, British
American Tobacco p.l.c, B.A.T Industries
p.l.c., and British American Tobacco
(Investments) Limited

TO: **MINISTRY OF ATTORNEY GENERAL**
Crown Law Office - Civil
8th Floor, 720 Bay Street
Toronto, Ontario M7A 2S9

Ronald E. Carr LSUC#: 13341F
Tel: (416) 326-2704

Antonin I. Pribetic LSUC #: 34843S
Tel: (416) 212-1333

Shahana Kar LSUC #: 33311O
Tel: (416) 212-6455

Lynne M. McArdle LSUC #: 40561H
Tel: (416) 212-7138

Sunil S. Mathai LSUC #: 49616O
Tel: (416) 326-0486
Fax: (416) 326-4181

Lawyers for the Plaintiff, Her Majesty the Queen in Right of Ontario

AND TO: HARPER GREY LLP
3200 Vancouver Centre
650 West Georgia Street
Vancouver, BC V6B 4P7

Christopher Rusnak
Tel: (604) 895-2838
Fax: (604) 669-9385

Lawyers for the Defendant, Carreras Rothmans Limited

AND TO: BORDEN LADNER GERVAIS LLP
Scotia Plaza
40 King Street West
Toronto, ON M5H 3Y4

Guy Pratte
Tel.: (416) 350-2638
Ira Nishisato
Tel.: (416) 367-6349
Cindy Clarke
Tel.: (416) 367-6321
Fax: (416) 361-7307

Lawyers for the Defendant, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and JTI MacDonald Corp.

AND TO: BORDEN LADNER GERVAIS LLP
World Exchange Plaza
1100 - 100 Queen Street
Ottawa, ON K1P 1J9

Peter Doody
Tel.: (613) 787-3510
Fax: (613) 230-8842

Lawyers for the Defendant, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and JTI MacDonald Corp.

AND TO: ORMSTON LIST FRAWLEY LLP
720 - 40 University Avenue
Toronto, ON M5J 1T1

John Ormston
Tel.: (416) 594-0791 ext. 111
Fax: (416) 594-9690

Lawyers for the Defendant, Canadian Tobacco Manufacturers' Council

AND TO: GOWLINGS LAFLEUR HENDERSON LLP

One First Canadian Place
100 King Street West
Suite 1600
Toronto, ON M5X 1G5

Michael Watson

Tel.: (416) 369-7245

Steven Sofer

Tel.: (416) 369-7240

Fax: (416) 369-7250

Lawyers for the Defendant, Rothmans Inc., Rothmans Benson & Hedges Inc.

AND TO: MCCARTHY TÉTRAULT LLP

Toronto Dominion Bank Tower
5300 - 66 Wellington Street West
P.O. Box 48
Toronto, ON M5K 1E6

R. Paul Steep

Tel.: (416) 601-7998

Sarit Batner

Tel.: (416) 601-7756

Elder C. Marques

Tel.: (416) 601-7822

Fax: (416) 868-0673

Lawyers for the Defendant, Phillip Morris International Inc., Philip
Morris U.S.A. and Altria Group

AND TO: OSLER, HOSKIN & HARCOURT LLP

One First Canadian Place
100 King Street West
P.O. Box 50
Toronto, ON M5X 1B8

Deborah Glendinning

Tel.: (416) 862-4714

Craig Lockwood

Tel.: (416) 862-5988

Fax: (416) 862-6666

Lawyers for the Defendant, Imperial Tobacco Canada Limited

HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO
Plaintiff

and

ROTHMANS INC., et al
Defendants

Court File No. CV-09-387984

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**Statement of Defence of
B.A.T Industries p.l.c.**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

David R. Byers LSUC # 22992W
Tel: (416) 869-5697
Vanessa Voakes LSUC # 58486L
Tel: (416) 869-5538
Fax: (416) 947-0866

Lawyers for the Defendants, British
American Tobacco p.l.c, B.A.T
Industries p.l.c., and British American
Tobacco (Investments) Limited