

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

PLAINTIFF

AND:

IMPERIAL TOBACCO LIMITED, IMASCO LIMITED, BRITISH
AMERICAN TOBACCO (INVESTMENTS) LTD., B.A.T.
INDUSTRIES p.l.c., BRITISH AMERICAN TOBACCO p.l.c.,
BROWN & WILLIAMSON TOBACCO CORPORATION,
AMERICAN TOBACCO COMPANY, BAT #1, #2, #3, #4, #5, #6,
#7, #8, #9, #10,
ROTHMANS, BENSON & HEDGES INC., ROTHMANS INC.,
ROTHMANS INTERNATIONAL LIMITED, ROTHMANS
INTERNATIONAL p.l.c., ROTHMANS INTERNATIONAL N.V.,
ROTHMANS #1, #2, #3, #4, #5, #6, #7, #8, #9, #10,
PHILIP MORRIS COMPANIES INC., PHILIP MORRIS INCORPORATED,
PHILIP MORRIS INTERNATIONAL, INC., PHILIP MORRIS #1,
#2, #3, #4, #5, #6, #7, #8, #9, #10,
RJR-MACDONALD INC., R. J. REYNOLDS TOBACCO COMPANY,
RJR NABISCO INC., R. J. REYNOLDS TOBACCO INTERNATIONAL,
INC., RJR #1, #2, #3, #4, #5, #6, #7, #8, #9, #10,
LIGGETT GROUP, INC.,
CANADIAN TOBACCO MANUFACTURERS' COUNCIL,
THE COUNCIL FOR TOBACCO RESEARCH - U.S.A., INC.,
THE TOBACCO INSTITUTE, INC.

DEFENDANTS

STATEMENT OF CLAIM

THE NATURE OF THE GOVERNMENT'S CLAIM

1. The Plaintiff Her Majesty the Queen in right of British Columbia (the “government”) brings this action against the Defendants pursuant to the provisions of section 13 of the *Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 1997, c. 41 and amendments thereto (the “Act”) to recover the cost of health care benefits that have been incurred or will be incurred by the government resulting from the tobacco related wrongs hereinafter described.

2. The government has provided and continues to provide health care benefits to insured persons.

3. Pursuant to section 13(5)(b) of the *Act*, the government brings this action to recover the cost of health care benefits, on an aggregate basis, that have been provided or will be provided to that portion of the population of insured persons who have suffered disease caused or contributed to by smoking cigarettes.

4. In this Statement of Claim:

- (a) “cigarette” includes loose tobacco intended for incorporation into a cigarette;
- (b) “consumer” means a smoker or a person who has been or might become a smoker;
- (c) “health care benefits” has the meaning set forth in section 1(1) of the *Act*;
- (d) “insured person” has the meaning set forth in section 1(1) of the *Act*;
- (e) “manufacture” has the meaning set forth in section 1(1) of the *Act*;
- (f) “manufacturer” has the meaning set forth in section 1(1) of the *Act*;
- (g) “promote” has the meaning set forth in section 1(1) of the *Act*;
- (h) “related” within the context of “related company”, “related manufacturer” or “related person” has the meaning set forth in section 1(2) of the *Act*;

- (i) “to smoke” or “smoking” means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette;
- (j) “tobacco related disease” means disease caused or contributed to by smoking and includes the diseases particularized in paragraph 114 herein;
- (k) “tobacco related wrong” has the meaning set forth in section 1(1) of the *Act*.

THE TOBACCO COMPANIES

5. The Defendants Imperial Tobacco Limited, Rothmans, Benson & Hedges Inc. and RJR-Macdonald Inc. are the principal manufacturers of cigarettes sold in Canada and in the Province of British Columbia.

6. There are four worldwide multinational tobacco enterprises (“Groups”). Each of these Groups is comprised of a web of related manufacturers of tobacco products, including cigarettes, which are sold in one or more countries, including the United Kingdom, the United States of America and Canada.

7. Each of the Defendants Imperial Tobacco Limited, Rothmans, Benson & Hedges Inc. and RJR-Macdonald Inc. is part of one or more of these Groups, namely:

- (a) the Defendant Imperial Tobacco Limited is a member of the BAT Group;
- (b) the Defendant Rothmans, Benson & Hedges Inc. was formed by the amalgamation of subsidiary companies of the Rothmans Group and the Philip Morris Group and is a member of both Groups, and
- (c) the Defendant RJR-Macdonald Inc. is a member of the RJR Group.

8. Within each Group, one or more companies (“Control Companies”) own or control, directly or indirectly, members of the Group. In some instances and from time to time, a Control Company may itself be engaged in the manufacture or promotion of tobacco products, including cigarettes.

9. While the related manufacturers within each Group have a measure of autonomy in day to day operations, there is a common corporate policy on issues relating to tobacco, including research and development, product development, science and technology reviews, regulatory issues, marketing, public affairs including communications on smoking and health, and general strategy issues for each Group.

10. The composition of and corporate control structure within each Group has changed from time to time during the period that the tobacco related wrongs hereinafter described were committed. A description of each Group is particularized in the following paragraphs, namely:

- (a) the BAT Group at paragraphs 11 - 40;
- (b) the Rothmans Group at paragraphs 41 - 62;
- (c) the Philip Morris Group at paragraphs 41 - 46 and 63 - 76, and
- (d) the RJR Group at paragraphs 77 - 94.

The BAT Group

11. During all or part of the period that the tobacco related wrongs hereinafter described were committed, the following related manufacturers have been members of the BAT Group:

- (a) the Defendant Imasco Limited,
- (b) the Defendant Imperial Tobacco Limited,
- (c) the Defendant British American Tobacco (Investments) Ltd. (formerly British-American Tobacco Company Limited),
- (d) the Defendant B.A.T. Industries p.l.c. (formerly B.A.T. Industries Limited and, before that, Tobacco Securities Trust Company Limited),
- (e) the Defendant British American Tobacco p.l.c.,
- (f) the Defendant Brown & Williamson Tobacco Corporation, and

(g) the Defendant American Tobacco Company.

12. The Defendant Imasco Limited is a company incorporated pursuant to the laws of Canada and has a registered office at 600 de Maisonneuve Boulevard West, Montreal, Quebec.

13. The Defendant Imperial Tobacco Limited is a company incorporated pursuant to the laws of Canada and has a registered office at 600 de Maisonneuve Boulevard, Montreal, Quebec. The Defendant Imperial Tobacco Limited is registered as an extra-provincial company pursuant to the laws of the Province of British Columbia with an office in British Columbia at 873 Beatty Street, Vancouver.

14. At all material times the Defendant Imperial Tobacco Limited has been owned and controlled by the Defendant Imasco Limited.

15. Prior to 1969, the Defendant Imasco Limited was engaged, directly or through related manufacturers, in the manufacture and promotion of cigarettes. In or about January, 1969 the tobacco related part of the business of the Defendant Imasco Limited was acquired by the Defendant Imperial Tobacco Limited and thereafter, to the present date, the Defendant Imperial Tobacco Limited has been engaged, directly or through related manufacturers, in the manufacture and promotion of cigarettes.

16. Pursuant to section 17.1(2) of the *Act*, the Defendant Imperial Tobacco Limited is jointly and severally liable with Imasco Limited for the tobacco related wrongs committed by the Defendant Imasco Limited prior to the acquisition.

17. At all material times the Defendant Imasco Limited has, directly or through related manufacturers including the Defendant Imperial Tobacco Limited, manufactured and promoted cigarettes sold in the Province of British Columbia.

18. The Defendant Imperial Tobacco Limited is currently Canada's largest manufacturer of cigarettes.

19. Prior to 1976, members of the BAT Group, including the Defendants Imasco Limited and Imperial Tobacco Limited, were owned or controlled, directly or indirectly, by Tobacco

Securities Trust Company Limited which was, in turn, jointly owned or controlled, directly or indirectly, by two companies, British-American Tobacco Company Limited and Imperial Tobacco Company (of Great Britain and Ireland) Limited.

20. In or about July, 1976, the BAT Group underwent a restructuring in which Tobacco Securities Trust Company Limited acquired ownership of British-American Tobacco Company Limited and became the company that controlled, directly or indirectly, the BAT Group. As part of this restructuring, Tobacco Securities Trust Company Limited changed its name to B.A.T. Industries Limited. In or about July, 1981, B.A.T. Industries Limited changed its name to the Defendant B.A.T. Industries p.l.c.

21. The Defendant B.A.T. Industries p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Windsor House, 50 Victoria Street, London, England.

22. In or about April, 1998, British-American Tobacco Company Limited changed its name to the Defendant British American Tobacco (Investments) Ltd.

23. The Defendant British American Tobacco (Investments) Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Millbank, Knowle Green, Staines, Middlesex, England.

24. In or about July, 1998, the BAT group was again restructured. B.A.T. Industries p.l.c. transferred ownership of its non-tobacco businesses to newly-formed companies and B.A.T. Industries p.l.c. became a subsidiary of the Defendant British American Tobacco p.l.c.

25. The Defendant British American Tobacco p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Windsor House, 50 Victoria Street, London, England.

26. At all material times one or more of the Defendants British American Tobacco (Investments) Ltd. (formerly British-American Tobacco Company Limited), B.A.T. Industries p.l.c. (formerly B.A.T. Industries Limited and, before that, Tobacco Securities Trust Company Limited), British American Tobacco p.l.c. and BAT #1, #2, #3, #4 and #5 (hereinafter

collectively referred to as the “BAT Control Companies”) have owned or controlled, directly or indirectly, members of the BAT Group including the Defendants Imasco Limited, Imperial Tobacco Limited, Brown & Williamson Tobacco Corporation, American Tobacco Company and BAT #6, #7, #8, #9 and #10.

27. Each of the BAT Control Companies is a manufacturer by reason of one or more of the following:

- (a) it engages or has engaged, directly or indirectly, in the manufacture of cigarettes;
- (b) it owns or has owned a trade-mark, trade name or brand name, registered or not, under which cigarettes are promoted to the public;
- (c) it is related or has been related to a manufacturer and has a right or has had a right to use a trade-mark, trade name or brand name, registered or not, for the purpose of promoting cigarettes to the public;
- (d) for one or more of the material fiscal years, it has generated at least 10% of its worldwide revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products; and
- (e) it is related or has been related to a manufacturer and engages or has engaged in, or causes or has caused, directly or indirectly, other persons to engage in the promotion of cigarettes.

28. At all material times one or more of the Defendants BAT #1, #2, #3, #4 and #5, whose identities are not known to the Plaintiff but are known to one or more of the Defendants British American Tobacco p.l.c., Imasco Limited, Imperial Tobacco Limited, and Brown & Williamson Tobacco Corporation, have been BAT Control Companies.

29. The Defendant Brown & Williamson Tobacco Corporation is a company incorporated pursuant to the laws of Delaware and carries on business at 1500 Brown & Williamson Tower, Louisville, Kentucky, in the United States of America.

30. The Defendant Brown & Williamson Tobacco Corporation is the BAT Group's principal manufacturer of cigarettes in the United States of America.

31. The Defendant American Tobacco Company is a company incorporated pursuant to the laws of Delaware and carries on business at 6 Stamford Forum, Stamford, Connecticut, in the United States of America.

32. The Defendant American Tobacco Company is a manufacturer of cigarettes in the United States of America.

33. Prior to December, 1994, the Defendant American Tobacco Company was a subsidiary of American Brands Inc. and was not a member of the BAT Group.

34. In December, 1994, the Defendant American Tobacco Company was acquired, directly or indirectly, by B.A.T Industries p.l.c.

35. At all material times one or more of the Defendants BAT #6, #7, #8, #9, and #10, whose identities are not known to the Plaintiff but are known to one or more of the Defendants B.A.T. Industries p.l.c., British American Tobacco p.l.c., Imasco Limited and Imperial Tobacco Limited, have been member companies of the BAT Group and have manufactured or promoted cigarettes sold in the Province of British Columbia.

36. The BAT Group is the world's second largest cigarette manufacturer. The BAT Group manufactures cigarettes in over 50 countries and sells cigarettes in approximately 180 countries and duty-free markets.

37. During the period that the tobacco related wrongs hereinafter described were committed, BAT Control Companies directed and coordinated science and technology reviews, research and product development programs, the results of which were shared amongst the members of the BAT Group. The BAT Group had a common policy with respect to strategic issues regarding tobacco including marketing, legal and regulatory issues. The BAT Group also had a common policy with respect to communications with the public and governments and other agencies concerned with public health on the issue of the risks associated with smoking and the disclosure of research regarding the risks associated with smoking. These common policies were dictated

by the BAT Control Companies or, alternatively, were arrived at by agreement amongst the member companies of the BAT Group and, in implementing these policies, the member companies of the Group were acting as agents of the BAT Control Companies.

38. Through their effective control of the Defendants Imasco Limited, Imperial Tobacco Limited, Brown & Williamson Tobacco Corporation, American Tobacco Company and BAT #6, #7, #8, #9, and #10, the BAT Control Companies have placed cigarettes into the stream of commerce with the intention that sales of cigarettes would be made within the Province of British Columbia. In manufacturing or promoting cigarettes sold in British Columbia, the Defendants Imasco Limited, Imperial Tobacco Limited, Brown & Williamson Tobacco Corporation, American Tobacco Company and BAT #6, #7, #8, #9, and #10 have acted as agents of the BAT Control Companies.

39. During all or part of the period that the tobacco related wrongs hereinafter described were committed, cigarettes manufactured or promoted by the following members of the BAT Group, or their related manufacturers, have been sold in the Province of British Columbia:

- (a) the Defendant Imasco Limited,
- (b) the Defendant Imperial Tobacco Limited,
- (c) the Defendant British American Tobacco (Investments) Ltd. (formerly British-American Tobacco Company Limited),
- (d) the Defendant B.A.T. Industries p.l.c. (formerly B.A.T. Industries Limited and, before that, Tobacco Securities Trust Company Limited),
- (e) the Defendant British American Tobacco p.l.c.,
- (f) the Defendant Brown & Williamson Tobacco Corporation,
- (g) the Defendant American Tobacco Company, and
- (h) the Defendants BAT #1, #2, #3, #4, #5, #6, #7, #8, #9 and #10,

40. The companies described in paragraphs 11, 28 and 35 are related manufacturers within the BAT Group and, pursuant to section 17.1(1) of the *Act*, must be considered to be one manufacturer for the purposes of establishing the tobacco related wrongs hereinafter described and each is jointly and severally liable for the tobacco related wrongs committed by any of the related manufacturers.

The Rothmans and Philip Morris Groups

41. The Defendant Rothmans, Benson & Hedges Inc. is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, North York, Ontario. The Defendant Rothmans, Benson & Hedges Inc. is registered as an extra-provincial company pursuant to the laws of the Province of British Columbia with an office in British Columbia at 2100-1075 West Georgia Street, Vancouver.

42. The Defendant Rothmans, Benson & Hedges Inc. was formed in December, 1986 by the amalgamation of Rothmans of Pall Mall Limited, a wholly owned subsidiary of the Defendant Rothmans Inc., and Benson & Hedges (Canada) Inc., a wholly owned subsidiary of the Defendant Philip Morris Incorporated.

43. The Defendant Rothmans, Benson & Hedges Inc. is currently Canada's second largest manufacturer of cigarettes.

44. At all material times the Defendant Rothmans, Benson & Hedges Inc. and its predecessor companies have, directly or through their related companies, manufactured and promoted cigarettes sold in the Province of British Columbia.

45. At the present time approximately sixty percent of the shares of the Defendant Rothmans, Benson & Hedges Inc. are owned by the Defendant Rothmans Inc. The remaining shares, approximately forty percent, are owned, directly or indirectly, by the Defendant Philip Morris International Inc.

46. At all material times the Defendant Rothmans, Benson & Hedges Inc. has been controlled, directly or indirectly, by one or more Control Companies in the Rothmans and Philip Morris Groups.

The Rothmans Group

47. During all or part of the period that the tobacco related wrongs hereinafter described were committed, the following related manufacturers have been members of the Rothmans Group:

- (a) the Defendant Rothmans International Limited,
- (b) the Defendant Rothmans International p.l.c.,
- (c) the Defendant Rothmans Inc. (formerly Rothmans of Pall Mall Canada Limited),
- (d) the Defendant Rothmans International N.V.,
- (e) the Defendant Rothmans, Benson & Hedges Inc. (pre-amalgamation Rothmans of Pall Mall Limited).

48. Rothmans of Pall Mall Canada Limited was incorporated pursuant to the laws of Canada in May, 1956 and began its cigarette manufacturing operations in Canada in or about October, 1957.

49. In or about 1978, the Defendant Rothmans International Limited, a company incorporated pursuant to the laws of the United Kingdom with a registered office at 15 Hill Street, London, England, acquired, directly or indirectly, the majority interest in Rothmans of Pall Mall Canada Limited.

50. Prior to 1985, control of Rothmans of Pall Mall Canada Limited was acquired, directly or indirectly, by the Defendant Rothmans International p.l.c., a company incorporated with a registered office at 15 Hill Street, London, England.

51. In 1985, the Defendant Rothmans of Pall Mall Canada Limited changed its name to the Defendant Rothmans Inc. The Defendant Rothmans Inc. has its registered office at 1500 Don Mills Road, North York, Ontario.

52. In or about 1985, the tobacco related part of the business of the Defendant Rothmans Inc. was acquired by Rothmans of Pall Mall Limited which, in 1986, amalgamated with Benson & Hedges (Canada) Inc. to form the Defendant Rothmans, Benson & Hedges Inc.

53. Currently, Rothmans, Benson & Hedges Inc. is owned or controlled, directly or indirectly, by the Defendant Rothmans International N.V., a company incorporated pursuant to the laws of the Netherlands with a registered office at De Boelelaan 7, 1083 HJ Amsterdam, Netherlands.

54. Pursuant to section 17.1(2) of the *Act*, having acquired the tobacco related part of the business of the Defendant Rothmans Inc. (formerly Rothmans of Pall Mall Canada Limited), Rothmans of Pall Mall Limited became jointly and severally liable with the Defendant Rothmans Inc. for the tobacco related wrongs committed by the Defendant Rothmans Inc. prior to the acquisition. The Defendant Rothmans, Benson & Hedges Inc. assumed this liability upon amalgamation.

55. At all material times one or more of the Defendants Rothmans International Limited, Rothmans International p.l.c., Rothmans International N.V., Rothmans Inc. and Rothmans #1, #2, #3, #4 and #5 (hereinafter collectively referred to as the “Rothmans Control Companies”) have owned or controlled, directly or indirectly, one or more of the members of the Rothmans Group, including Rothmans of Pall Mall Canada Limited, Rothmans of Pall Mall Limited, the Defendant Rothmans, Benson & Hedges Inc. and the Defendants Rothmans #6, #7, #8, #9, and #10.

56. Each of the Rothmans Control Companies is a manufacturer by reason of the following:

- (a) it engages or has engaged, directly or indirectly, in the manufacture of cigarettes;
- (b) it owns or has owned a trade-mark, trade name or brand name, registered or not, under which cigarettes are promoted to the public;
- (c) it is related or has been related to a manufacturer and has a right or has had a right to use a trade-mark, trade name or brand name, registered or not, for the purpose of promoting cigarettes to the public;

- (d) for one or more of the material fiscal years, it has generated at least 10% of its worldwide revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products; and
- (e) it is related or has been related to a manufacturer and engages or has engaged in, or causes or has caused, directly or indirectly, other persons to engage in the promotion of cigarettes.

57. At all material times one or more of the Defendants Rothmans #1, #2, #3, #4, and #5, whose identities are not known to the Plaintiff but are known to one or more of the Defendants Rothmans International N.V., Rothmans International p.l.c., Rothmans Inc. and Rothmans, Benson & Hedges Inc., have been Rothmans Control Companies.

58. At all material times one or more of the Defendants Rothmans #6, #7, #8, #9 and #10, whose identities are not known to the Plaintiff but are known to one or more of the Defendants Rothmans International N.V., Rothmans International p.l.c., Rothmans Inc., and Rothmans, Benson & Hedges Inc., have been member companies of the Rothmans Group and have manufactured or promoted cigarettes sold in the Province of British Columbia.

59. The Rothmans Group is the world's fourth largest manufacturer of cigarettes.

60. During the period that the tobacco related wrongs hereinafter described were committed, Rothmans Control Companies directed and coordinated science and technology reviews, research and product development programs, the results of which were shared amongst the members of the Rothmans Group. The Rothmans Group had a common policy with respect to strategic issues regarding tobacco including marketing, legal and regulatory issues. The Rothmans Group also had a common policy with respect to communications with the public and governments and other agencies concerned with public health on the issue of the risks associated with smoking and the disclosure of research regarding the risks associated with smoking. These common policies were dictated by the Rothmans Control Companies or, alternatively, were arrived at by agreement amongst the member companies of the Rothmans Group and, in

implementing these policies, the member companies of the Group were acting as agents of the Rothmans Control Companies.

61. Through their effective control of Rothmans of Pall Mall Canada Limited, Rothmans of Pall Mall Limited, the Defendant Rothmans, Benson & Hedges Inc. and the Defendants Rothmans #6, #7, #8, #9, and #10, the Rothmans Control Companies have placed cigarettes into the stream of commerce with the intention that sales of cigarettes would be made within the Province of British Columbia. In manufacturing or promoting cigarettes sold in British Columbia, Rothmans of Pall Mall Canada Limited, Rothmans of Pall Mall Limited, the Defendant Rothmans, Benson & Hedges Inc. and the Defendants Rothmans #6, #7, #8, #9, and #10 have acted as agents of the Rothmans Control Companies.

62. The companies described in paragraphs 47, 57 and 58 are related manufacturers within the Rothmans Group and, pursuant to section 17.1(1) of the *Act*, must be considered to be one manufacturer for the purposes of establishing the tobacco related wrongs hereinafter described and each is jointly and severally liable for the tobacco related wrongs committed by any of the related manufacturers.

The Philip Morris Group

63. During all or part of the period that the tobacco related wrongs hereinafter described were committed, the following related manufacturers have been members of the Philip Morris Group:

- (a) the Defendant Philip Morris Companies Inc.,
- (b) the Defendant Philip Morris Incorporated,
- (c) the Defendant Philip Morris International, Inc., and
- (d) the Defendant Rothmans, Benson & Hedges Inc. (pre-amalgamation Benson & Hedges (Canada) Inc.).

64. The Defendant Philip Morris Companies Inc. is a company incorporated pursuant to the laws of Virginia, whose principal place of business is at 120 Park Avenue, New York, New York, in the United States of America.

65. The Defendant Philip Morris Incorporated is a company incorporated pursuant to the laws of Virginia, whose principal place of business is at 120 Park Avenue, New York, New York in the United States of America. The Defendant Philip Morris Incorporated is a subsidiary of the Defendant Philip Morris Companies Inc.

66. Prior to 1954, Benson & Hedges (Canada) Inc. was an independent cigarette manufacturer, incorporated pursuant to the laws of Canada. In 1954, Benson & Hedges (Canada) Inc. was acquired, directly or indirectly, by the Defendant Philip Morris Incorporated.

67. The Defendant Philip Morris International, Inc. is a company incorporated pursuant to the laws of Delaware, having a registered office at 800 Westchester Avenue, Ryebrook, New York, in the United States of America and holds, directly or indirectly, approximately forty per cent of the shares in the Defendant Rothmans, Benson & Hedges Inc. The Defendant Philip Morris International, Inc. is owned or controlled, directly or indirectly, by the Defendant Philip Morris Companies Inc.

68. At all material times one or more of the Defendants Philip Morris Companies Inc., Philip Morris Incorporated, Philip Morris International, Inc. and Philip Morris #1, #2, #3, #4 and #5 (hereinafter referred to as the "Philip Morris Control Companies") have owned or controlled, directly or indirectly, members of the Philip Morris Group including the Defendants Rothmans, Benson & Hedges Inc. (pre-amalgamation Benson & Hedges (Canada) Inc.) and Philip Morris #6, #7, #8, #9, and #10.

69. Each of the Philip Morris Control Companies is a manufacturer by reason of the following:

- (a) it engages or has engaged, directly or indirectly, in the manufacture of cigarettes;
- (b) it owns or has owned a trade-mark, trade name or brand name, registered or not, under which cigarettes are promoted to the public;
- (c) it is related or has been related to a manufacturer and has a right or has had a right to use a trade-mark, trade name or brand name, registered or not, for the purpose of promoting cigarettes to the public;

- (d) for one or more of the material fiscal years, it has generated at least 10% of its worldwide revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products; and
- (e) it is related or has been related to a manufacturer and engages or has engaged in, or causes or has caused, directly or indirectly, other persons to engage in the promotion of cigarettes.

70. At all material times one or more of the Defendants Philip Morris #1, #2, #3, #4, and #5, whose identities are not known to the Plaintiff but are known to one or more of the Defendants Philip Morris Companies Inc., Philip Morris Incorporated, and Rothmans, Benson & Hedges Inc., have been Philip Morris Control Companies.

71. At all material times one or more of the Defendants Philip Morris #6 , #7, #8, #9 and #10, whose identities are not known to the Plaintiff but are known to one or more of the Defendants, Philip Morris Companies Inc., Philip Morris Incorporated, and Rothmans Benson & Hedges Inc., have been member companies of the Philip Morris Group and have manufactured or promoted cigarettes sold in the Province of British Columbia.

72. The Philip Morris Group is the world's largest cigarette manufacturer.

73. During the period that the tobacco related wrongs hereinafter described were committed, Philip Morris Control Companies directed and coordinated science and technology reviews, research and product development programs, the results of which were shared amongst the members of the Philip Morris Group. The Philip Morris Group had a common policy with respect to strategic issues regarding tobacco including marketing, legal and regulatory issues. The Philip Morris Group also had a common policy with respect to communications with the public and governments and other agencies concerned with public health on the issue of the risks associated with smoking and the disclosure of research regarding the risks associated with smoking. These common policies were dictated by the Philip Morris Control Companies or, alternatively, were arrived at by agreement amongst the member companies of the Philip Morris

Group and, in implementing these policies, the member companies of the Group were acting as agents of the Philip Morris Control Companies.

74. Through their effective control of the Defendants Rothmans, Benson & Hedges Inc. (pre-amalgamation Benson & Hedges (Canada) Inc.) and Philip Morris #6, #7 #8, #9, and #10, the Philip Morris Control Companies have placed cigarettes into the stream of commerce with the intention that sales of cigarettes would be made within the Province of British Columbia. In manufacturing or promoting cigarettes sold in British Columbia, the Defendants Rothmans, Benson & Hedges Inc. (pre-amalgamation Benson & Hedges (Canada) Inc.) and Philip Morris #6, #7, #8, #9, and #10 have acted as agents of the Philip Morris Control Companies.

75. The companies described in paragraphs 63, 70 and 71 are related manufacturers within the Philip Morris Group and, pursuant to section 17.1(1) of the *Act*, must be considered to be one manufacturer for the purposes of establishing the tobacco related wrongs hereinafter described and each is jointly and severally liable for the tobacco related wrongs committed by any of the related manufacturers.

76. During all or part of the period that the tobacco related wrongs hereinafter described were committed, cigarettes manufactured or promoted by the following members of the Rothmans Group or their related manufacturers and the following members of the Philip Morris Group or their related manufacturers have been sold in the Province of British Columbia:

- (a) the Defendant Rothmans International Limited,
- (a) the Defendant Rothmans International p.l.c.,
- (b) the Defendant Rothmans International N.V.,
- (c) the Defendant Rothmans Inc. (formerly Rothmans of Pall Mall Canada Limited),
- (d) the Defendants Rothmans #1, #2, #3, #4, #5, #6, #7, #8, #9 and #10,
- (e) the Defendant Philip Morris Companies Inc.,
- (f) the Defendant Philip Morris Incorporated,

- (g) the Defendant Philip Morris International, Inc.,
- (h) the Defendant Rothmans, Benson & Hedges Inc. (pre-amalgamation Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc.), and
- (i) the Defendants Philip Morris #1, #2, #3, #4, #5, #6, #7, #8, #9 and #10.

The RJR Group

77. During all or part of the period that the tobacco related wrongs hereinafter described were committed, the following related manufacturers have been members of the RJR Group:

- (a) the Defendant R. J. Reynolds Tobacco Company,
- (b) the Defendant RJR-Macdonald Inc. (formerly Macdonald Tobacco Co.),
- (c) the Defendant RJR Nabisco Inc., and
- (d) the Defendant R. J. Reynolds Tobacco International, Inc. .

78. Macdonald Tobacco Co. was established in Montreal in 1858 and was an independent manufacturer of tobacco products in Canada. In 1974, the Defendant R.J. Reynolds Tobacco Company acquired, directly or indirectly, Macdonald Tobacco Co., renaming the subsidiary RJR-Macdonald Inc.

79. The Defendant R. J. Reynolds Tobacco Company is a company incorporated pursuant to the laws of New Jersey whose principal place of business is at 4th and Main Streets, Winston-Salem, North Carolina, in the United States of America.

80. The Defendant RJR-Macdonald Inc. is a company incorporated pursuant to the laws of Canada and has a registered office at 1 First Canadian Place, 60th Floor, Toronto, Ontario. The Defendant RJR-Macdonald Inc. is registered as an extra-provincial company pursuant to the laws of the Province of British Columbia with an office in British Columbia at 4190 Lougheed Highway, Burnaby.

81. The Defendant RJR-Macdonald Inc. is currently Canada's third largest manufacturer of cigarettes.

82. At all material times the Defendant RJR-Macdonald Inc. (formerly Macdonald Tobacco Co.) has, directly or through its related companies, manufactured and promoted cigarettes sold in the Province of British Columbia.

83. The Defendant RJR Nabisco Inc. is a company incorporated pursuant to the laws of Delaware and has a principal place of business at 1301 Avenue of the Americas, New York, New York, in the United States of America. The Defendant RJR Nabisco Inc. owns or controls, directly or indirectly, the Defendant R. J. Reynolds Tobacco Company.

84. The Defendant RJR Nabisco Inc. conducts its cigarette manufacturing and promotion operations in the United States of America through the Defendant R. J. Reynolds Tobacco Company and outside the United States of America through the Defendant R. J. Reynolds Tobacco International, Inc., a company incorporated in 1976 under the laws of Delaware, and having a place of business at 1301 Avenue of the Americas, New York, New York, in the United States of America.

85. The Defendant RJR-Macdonald Inc. is currently owned or controlled, directly or indirectly, by the Defendant Reynolds Tobacco International, Inc. which, in turn, is owned or controlled, directly or indirectly, by the Defendant RJR Nabisco Inc.

86. At all material times one or more of the Defendants RJR Nabisco Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc. and RJR #1, #2, #3, #4, and #5 (collectively referred to as the "RJR Control Companies") have owned or controlled, directly or indirectly, members of the RJR Group including the Defendants RJR Macdonald Inc. and RJR #6, #7, #8, #9, and #10.

87. Each of the RJR Control Companies is a manufacturer by reason of the following:

- (a) it engages or has engaged, directly or indirectly, in the manufacture of cigarettes;

- (b) it owns or has owned a trade-mark, trade name or brand name, registered or not, under which cigarettes are promoted to the public;
- (c) it is related or has been related to a manufacturer and has a right or has had a right to use a trade-mark, trade name or brand name, registered or not, for the purpose of promoting cigarettes to the public;
- (d) for one or more of the material fiscal years, it has generated at least 10% of its worldwide revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products; and
- (e) it is related or has been related to a manufacturer and engages or has engaged in, or causes or has caused, directly or indirectly, other persons to engage in the promotion of cigarettes.

88. At all material times one or more of the Defendants RJR #1, #2, #3, #4, and #5, whose identities are not known to the Plaintiff but are known to one or more of the Defendants RJR Nabisco Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc. and RJR- Macdonald Inc., have been RJR Control Companies.

89. At all material times one or more of the Defendants RJR #6 , #7, #8, #9 and #10, whose identities are not known to the Plaintiff but are known to the Defendants RJR Nabisco Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco Company and RJR- Macdonald Inc., have been member companies of the RJR Group and have manufactured or promoted cigarettes sold in the Province of British Columbia.

90. The RJR Group is the world's third largest cigarette manufacturer and is engaged in the manufacture or promotion of cigarettes in more than 170 countries and duty free markets around the world.

91. During the period that the tobacco related wrongs hereinafter described were committed, RJR Control Companies directed and coordinated science and technology reviews, research and product development programs, the results of which were shared amongst the members of the

RJR Group. The RJR Group had a common policy with respect to strategic issues regarding tobacco including marketing, legal and regulatory issues. The RJR Group also had a common policy with respect to communications with the public and governments and other agencies concerned with public health on the issue of the risks associated with smoking and the disclosure of research regarding the risks associated with smoking. These common policies were dictated by the RJR Control Companies or, alternatively, were arrived at by agreement amongst the member companies of the RJR Group and, in implementing these policies, the member companies of the Group were acting as agents of the RJR Control Companies.

92. Through their effective control of the Defendants RJR-Macdonald Inc. and RJR #6, #7, #8, #9, and #10, the RJR Control Companies have placed cigarettes into the stream of commerce with the intention that sales of cigarettes would be made within the Province of British Columbia. In manufacturing or promoting cigarettes sold in British Columbia, the Defendants RJR-Macdonald Inc. and RJR #6, #7, #8, #9, and #10 have acted as agents of the RJR Control Companies.

93. During all or part of the period that the tobacco related wrongs hereinafter described were committed, cigarettes manufactured or promoted by the following members of the RJR Group or their related manufacturers, have been sold in the Province of British Columbia:

- (a) the Defendant RJR-MacDonald Inc. (formerly Macdonald Tobacco Co.),
- (b) the Defendant RJR Nabisco Inc.,
- (c) the Defendant R. J. Reynolds Tobacco Company,
- (d) the Defendant R. J. Reynolds Tobacco International, Inc., and
- (e) the Defendants RJR #1, #2, #3, #4, #5, #6, #7, #8, #9 and #10.

94. The companies described in paragraphs 77, 88 and 89 are related manufacturers within the RJR Group and, pursuant to section 17.1(1) of the *Act*, must be considered to be one manufacturer for the purposes of establishing the tobacco related wrongs hereinafter described

and each is jointly and severally liable for the tobacco related wrongs committed by any of the related manufacturers.

95. The Defendants Imasco Limited, Imperial Tobacco Limited, Rothmans, Benson & Hedges Inc. (pre-amalgamation Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc.), Rothmans Inc. (formerly Rothmans of Pall Mall Canada Ltd.) and RJR-Macdonald Inc. (formerly Macdonald Tobacco Co.) are collectively referred to as the “Canadian Tobacco Companies”.

Independent U.S. Tobacco Companies

96. The Defendant Liggett Group, Inc. (formerly Liggett & Myers Inc. and, before that, Liggett & Myers Tobacco Company) is a company incorporated pursuant to the laws of Delaware with its principal place of business at 700 Main Street, Durham, North Carolina, in the United States of America.

97. At some or all of the material times the Defendant Liggett Group, Inc. manufactured and promoted cigarettes in the United States, which were sold in the Province of British Columbia.

98. The Defendants Liggett Group, Inc. and Imperial Tobacco Limited jointly own and control Liggett & Myers Tobacco Company of Canada Limited, a company incorporated pursuant to the laws of Quebec with a registered office at 3810 Rue St. Antoine, Montreal, Quebec.

99. Liggett & Myers Tobacco Company of Canada Limited is a wholesaler of cigarettes in Canada, including the Province of British Columbia, manufactured by the Defendant Liggett Group, Inc. in the United States of America.

100. Lorillard Tobacco Company is a company incorporated pursuant to the laws of Delaware and has its principal place of business at 1 Park Avenue, New York, New York, in the United States of America. At some or all of the material times Lorillard Tobacco Company manufactured cigarettes in the United States.

101. The Defendants Brown & Williamson Tobacco Corporation, American Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company and Liggett Group, Inc. and Lorillard Tobacco Company are collectively referred to as the “U.S. Tobacco Companies”.

Trade Associations

102. The Defendant Canadian Tobacco Manufacturers’ Council (“CTMC”) was formed in or about 1963 and is the Canadian tobacco industry’s principal lobby association. Since 1963, the activities of the Defendant CTMC have included advising and informing the Canadian and provincial governments, government regulatory agencies and the Canadian public of the industry’s position with respect to the health concerns and risks of smoking and consumption of cigarettes. At the present time the members of the Defendant CTMC are the Defendants Imperial Tobacco Limited, Rothmans, Benson & Hedges Inc. and RJR-Macdonald Inc.

103. The Defendant CTMC is a company incorporated pursuant to the laws of Canada with a office at 666 Burrard Street, Vancouver, British Columbia.

104. The Defendant The Council for Tobacco Research - U.S.A., Inc. (“CTR”) is the successor in interest to the Tobacco Industry Research Committee (“TIRC”), and is a corporation organized pursuant to the laws of the State of New York, with its principal place of business at 900, 3rd Avenue, New York, New York, in the United States of America.

105. The Defendant The Tobacco Institute, Inc. (“Tobacco Institute”) is a corporation organized pursuant to the laws of the State of New York with its principal place of business at 1875 I Street N.W., Suite 800, Washington, District of Columbia, in the United States of America. The Defendant Tobacco Institute, since its incorporation in 1958, has operated as the public relations and lobbying arm of the U.S. Tobacco Companies.

106. Hill & Knowlton, Inc. (“Hill & Knowlton”) is a company incorporated pursuant to the laws of New York with its principal place of business at 420 Lexington Avenue, New York,

New York, in the United States of America. Hill & Knowlton is an international public relations firm which engaged in the dissemination and publication of statements regarding the risks and hazards of smoking and consumption of cigarettes.

107. The Defendants CTMC, CTR and Tobacco Institute are each manufacturers in that each has been primarily engaged in:

- (a) the advancement of the interests of manufacturers,
- (b) the promotion of cigarettes, or
- (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes.

PROPERTIES OF CIGARETTES

108. Cigarettes are made from tobacco, which contains nicotine. Cigarettes are devices for the delivery of nicotine to smokers.

109. Nicotine is a psychoactive drug that affects the brain and central nervous system, skeletal muscles, the cardiovascular system, endocrine functions, organs including the lungs, and other body systems.

110. Nicotine is an addictive substance which creates a dependency in users.

111. Once addicted, smokers experience recurrent cravings for tobacco (or its pharmacologically active ingredient, nicotine). Attempted withdrawal from smoking causes irritability, difficulty in concentrating, anxiety, restlessness, increased hunger, depression and a pronounced craving for tobacco. These withdrawal symptoms are caused by a dependence on nicotine.

112. The majority of smokers who try to quit are unsuccessful.

113. Smoking cigarettes exposes smokers to a number of substances which are known to be harmful, including:

- (a) Tar,
- (b) Nicotine,
- (c) Ammonia,
- (d) Hydrogen cyanide,
- (e) Carbon monoxide,
- (f) Polyaromatic Hydrocarbons including:
 - (i) Benzo(a)pyrene,
 - (ii) 2-amino-naphthalene,
 - (iii) 1-amino-naphthalene,
 - (iv) 4-amino-biphenyl,
 - (v) 3-amino-biphenyl,
 - (vi) 5 - methylchrysene,
 - (vii) Methyl ethyl ketone,
 - (viii) Dibenz(a,h)anthracene,
 - (ix) Benzo(b) fluorenone,
 - (x) Benzo(j) fluorenone,
 - (xi) Dibenz(a,j) acridine,
 - (xii) Indeno(1,2,3,-cd)pyrene,
 - (xiii) Benz(a)anthracene,
 - (xiv) 2-methylfluoranthene, and

- (xv) Dibenz(a,h)acridine,
- (g) Phenols including m, p-and o-cresol,
- (h) Catechol,
- (i) Aldehydes including:
 - (i) Formaldehyde,
 - (ii) Acetaldehyde,
 - (iii) Crotonaldehyde,
 - (iv) Propionaldehyde,
 - (v) Acrolein, and
 - (vi) Butyraldehyde,
- (j) Nitrogen dioxide and Nitrogen monoxide,
- (k) Nitrosamines including:
 - (i) N-nitrosodimethylamine (NDMA),
 - (ii) N-nitrosodiethylamine (NDEA),
 - (iii) N'-nitrosopyrrolidine (NPyr),
 - (iv) N'-nitrosonornicotine (NNN),
 - (v) 4-(methylnitrosamino)-1-(3 pyridyl)-1-butanone (NNK),
 - (vi) N'-nitrosoanatabine (NAT), and
 - (vii) N'-nitrosoanabasine (NAB),
- (l) Miscellaneous Organics including:

- (i) Acetone,
- (ii) 1,3-butadiene,
- (iii) Acrylonitrile,
- (iv) Benzene,
- (v) Styrene,
- (vi) Toluene,
- (vii) Quinoline, and
- (viii) p-Hydroquinone,
- (m) Miscellaneous metals including:
 - (i) Nickel,
 - (ii) Lead,
 - (iii) Cadmium,
 - (n) Polonium-210,
 - (iv) Arsenic,
 - (v) Selenium, and
 - (vi) Mercury.

114. Smoking cigarettes can cause or contribute to disease, including but not limited to:

- (a) chronic obstructive lung disease including:
 - (i) emphysema, and
 - (ii) chronic bronchitis,

- (b) cancer including:
 - (i) cancer of the lung,
 - (ii) cancer of the tongue,
 - (iii) cancer of the lip,
 - (iv) cancer of the larynx,
 - (v) cancer of the oropharynx,
 - (vi) cancer of the bladder,
 - (vii) cancer of the kidney,
 - (viii) cancer of the pancreas,
 - (ix) cancer of the stomach, and
 - (x) cancer of the cervix,
- (c) cardiovascular disease including:
 - (i) coronary artery disease,
 - (ii) stroke,
 - (iii) aortic aneurysm, and
 - (iv) peripheral artery disease,
- (d) morbidity and general deterioration of health.

115. Approximately 50% of smokers die of tobacco related disease.

NEGLIGENCE

Cigarettes Are A Dangerous Product

116. At all material times the Defendants, directly or through their related companies, manufactured and promoted cigarettes which were intended to reach and did reach consumers in British Columbia without any change in their condition as manufactured and which were smoked in the manner intended.

117. The Defendants' cigarettes were at all material times dangerous in that:

- (a) they contained substances which, when smoked as intended, can cause or contribute to disease;
- (b) when smoked as intended, they produce byproducts which can cause or contribute to disease; and
- (c) when smoked as intended, they can cause or contribute to addiction.

118. By 1950, and at all material times, the Defendants knew or ought to have known that smoking cigarettes could cause or contribute to disease in smokers.

119. By 1950, and at all material times, the Defendants knew or ought to have known that nicotine is addictive.

120. Alternatively, by 1950, and at all material times, the Defendants knew or ought to have known that:

- (a) nicotine was present in their cigarettes;
- (b) smokers crave nicotine; and
- (c) the physiological effect of nicotine on smokers is the main reason for continuing to smoke.

121. To the extent that the Defendants' knowledge of the risks of smoking was incomplete, the Defendants, as manufacturers of products intended for human consumption, ought to have investigated and performed research on an ongoing basis into:

- (a) the risk of disease caused or contributed to by smoking their cigarettes;
- (b) the risk of addiction to nicotine contained in their cigarettes; and
- (c) the feasibility of eliminating or minimizing the risks referred to in subparagraphs (a) and (b).

Duty of Care

122. At all material times the Defendants owed a duty of care:

- (a) to consumers to take all reasonable measures to eliminate or minimize the risks of smoking their cigarettes;
- (b) to consumers to provide a warning of the risks of smoking their cigarettes; and
- (c) to children and adolescents to take all reasonable measures to prevent them from starting to or continuing to smoke.

(a) Defective Product

123. The Defendants breached their duty to consumers to design a reasonably safe product by failing to eliminate or reduce the level of substances in cigarettes and byproducts of combustion, including nicotine and tar, which are addictive and which can cause or contribute to disease.

124. The Defendants, in further breach of their duty, increased the risks of smoking by manipulating the level and bioavailability of nicotine in their cigarettes, particulars of which include the following:

- (a) the Defendants have sponsored or engaged in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine;
- (b) the Defendants have increased the level of nicotine by the methods used in blending the tobacco contained in their cigarettes;

- (c) the Defendants have increased the level of nicotine in their cigarettes by the addition of nicotine or substances containing nicotine;
- (d) the Defendants have introduced substances, including ammonia, into their cigarettes to enhance the bioavailability of nicotine to smokers.

125. The Defendants, in further breach of their duty, incorporated into the design of their cigarettes ostensible safety features such as filters which they knew or ought to have known were ineffective, yet which would lead a reasonable consumer to believe that the product was safer to use than it was in fact.

126. As a result of these breaches of duty by the Defendants, and each of them, persons started to smoke or continued to smoke cigarettes which were unreasonably dangerous and as a consequence suffered tobacco related disease. The government has incurred and will continue to incur the cost of health care benefits that have been provided or will be provided to that portion of the population of insured persons who have suffered tobacco related disease.

(b) Failure to Warn

127. The Defendants breached their duty to consumers to warn them of the risks of smoking their cigarettes, and in particular they failed to provide any or any adequate warning:

- (a) of the risk of tobacco related disease; and
- (b) of the risk of addiction to the nicotine contained in their cigarettes.

128. To the extent that the Defendants have purported to provide warnings, these warnings have not been sufficient to give consumers an adequate indication of each of the specific risks of smoking their cigarettes. The warnings have failed to make clear, credible, complete and current disclosure to consumers of the risks inherent in the ordinary use of their cigarettes in such a way as to allow consumers to make free and informed decisions concerning smoking.

129. Without restricting the generality of the foregoing, although the Defendants knew or ought to have known that children and adolescents were smoking or might smoke their

cigarettes, the Defendants failed to provide a warning sufficient to convey to such persons the risks of smoking.

130. The Defendants have engaged in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of the warnings provided to consumers by the Defendants and by governments and other agencies concerned with public health.

131. The Defendants have suppressed information regarding the risks of smoking.

132. The Defendants have misinformed and misled the public about the risks of smoking.

133. As a result of these breaches of duty by the Defendants, and each of them, persons began to smoke or continued to smoke cigarettes and suffered tobacco related disease. The government has incurred and will continue to incur the cost of health care benefits that have been provided or will be provided to that portion of the population of insured persons who have suffered tobacco related disease.

(c) Sale of Cigarettes to Children and Adolescents

134. In British Columbia more than 80% of smokers start to smoke and become addicted before they are 19 years of age.

135. The Defendants knew or ought to have known that children and adolescents were smoking or might start to smoke their cigarettes and that it was contrary to law or public policy to sell cigarettes to children and adolescents and to promote smoking by such persons.

136. The Defendants knew or ought to have known of the risk that children and adolescents who smoked their cigarettes would become addicted to cigarettes and would suffer tobacco related disease.

137. The Defendants, in breach of their duty to children and adolescents, failed to take any or any reasonable measures to prevent them from starting or continuing to smoke.

138. The Defendants, in further breach of their duty, targeted children and adolescents in their advertising, promotional and marketing activities with the object of inducing children and adolescents to start or continue to smoke.

139. As a result of these breaches of duty by the Defendants, and each of them, children and adolescents started to smoke or continued to smoke cigarettes and suffered tobacco related disease. The government has incurred and will continue to incur the cost of health care benefits that have been provided or will be provided to that portion of the population of insured persons who have suffered tobacco related disease.

STRICT LIABILITY

140. At all material times the Defendants knew or ought to have known that their cigarettes, when smoked as intended, were addictive and could cause or contribute to disease.

141. At all material times the Defendants have manufactured, marketed, distributed and sold cigarettes which are unjustifiably hazardous in that, when smoked as intended, they are addictive, inevitably cause or contribute to disease and death in large numbers of consumers and which have no utility or benefit to consumers or, alternatively, any utility or benefit is vastly outweighed by the risks and costs associated with smoking.

142. The Defendants breached their duty by manufacturing, marketing, distributing and selling cigarettes which were unjustifiably hazardous or, alternatively, which they knew or ought to have known were unjustifiably hazardous.

143. As a result of these breaches of duty by the Defendants, and each of them, persons started to smoke or continued to smoke cigarettes which were unjustifiably hazardous and, as a consequence, suffered tobacco related disease. The government has incurred and will continue to incur the cost of health care benefits that have been provided or will be provided to that portion of the population of insured persons who have suffered tobacco related disease.

DECEIT AND NEGLIGENT MISREPRESENTATION

144. The Defendants, knowing of the risks of smoking, including addiction and disease, made representations to consumers with respect to smoking which they knew were false or which were made with willful blindness, or recklessness as to their truth or falsehood, particulars of which include the following:

- (a) they represented that smoking has not been shown to cause any known diseases;
- (b) they represented that they were aware of no research, or no credible research, establishing a link between smoking and disease;
- (c) they represented that cigarettes were not addictive;
- (d) they represented that smoking is merely a habit or custom as opposed to an addiction;
- (e) they represented that they did not manipulate nicotine levels in their cigarettes;
- (f) they represented that they did not include substances in their cigarettes designed to increase the bioavailability of nicotine;
- (g) they misrepresented the actual intake of tar and nicotine associated with smoking their cigarettes;
- (h) they represented that certain of their cigarettes, such as “low tar” and “light” brands, were safer than other cigarettes;
- (i) they represented that smoking is consistent with a healthy lifestyle.

145. At all material times the Defendants have been in possession of scientific and medical data establishing the risks of smoking, but they have suppressed such knowledge and have represented, directly and by omission, that the risks of smoking were less serious than they knew them to be.

146. The Defendants have also failed to correct statements made by others to consumers regarding the risks of smoking, which the Defendants knew were incomplete or inaccurate. The Defendants' failure to correct this misinformation is a misrepresentation by omission or silence.

147. In the alternative, if the Defendants did not know that the representations referred to in paragraphs 144 - 146 were false, they ought to have known that they were false, and the Defendants were negligent in making the representations.

148. The Defendants intended that the aforementioned representations would be relied upon by consumers as conveying truthful information regarding the risks of smoking and the Defendants knew that, if the representations were relied upon, persons would start to smoke or continue to smoke.

149. As a result of the deceit or negligent misrepresentation by the Defendants, and each of them, persons started to smoke or continued to smoke cigarettes and suffered tobacco related disease. The government has incurred and will continue to incur the cost of health care benefits that have been provided or will be provided to that portion of the population of insured persons who have suffered tobacco related disease.

CONSUMER PROTECTION LEGISLATION

(a) *Trade Practices Act*

150. The Defendants, being suppliers under the *Trade Practices Act* S.B.C. 1974, c. 96 and amendments thereto, in breach of their statutory duty or obligation to consumers, engaged in deceptive acts or practices in relation to consumer transactions by representations or other conduct which had the capability, tendency or effect of deceiving or misleading consumers. Particulars of such representations and other conduct include the following:

- (a) manipulating the level and bioavailability of nicotine in their cigarettes, particulars of which include the following:

- (i) sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine,
 - (ii) increasing the level of nicotine by the methods used in blending the tobacco contained in their cigarettes,
 - (iii) increasing the level of nicotine in their cigarettes by the addition of nicotine or substances containing nicotine,
 - (iv) introducing substances, including ammonia, into their cigarettes to enhance the bioavailability of nicotine to smokers,
- without advising consumers;
- (b) incorporating into the design of their cigarettes ostensible safety features such as filters which were ineffective, yet which would lead a reasonable consumer to believe that the product was safer to use than it was in fact;
 - (c) failing to disclose to consumers the risks inherent in the ordinary use of their cigarette products including the risks of disease and addiction;
 - (d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of the warnings provided to consumers by the Defendants and by governments and other agencies concerned with public health;
 - (e) suppressing or concealing scientific and medical information regarding the risks of smoking;
 - (f) engaging in marketing and promotion activities having the tendency to lead consumers to believe that cigarettes have performance characteristics, ingredients, uses and benefits and approval that they did not have;

- (g) misinforming and misleading the public about the risks of smoking by using innuendo, exaggeration and ambiguity having the tendency to mislead consumers about the material facts regarding smoking and health;
- (h) making the following representations to consumers:
 - (i) representing that smoking has not been shown to cause any known diseases,
 - (ii) representing that they were aware of no research, or no credible research, establishing a link between smoking and disease,
 - (iii) representing that cigarettes were not addictive,
 - (iv) representing that smoking is merely a habit or custom as opposed to an addiction,
 - (v) representing that they did not manipulate nicotine levels in their cigarettes,
 - (vi) representing that they did not include substances in their cigarettes designed to increase the bioavailability of nicotine,
 - (vii) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes,
 - (viii) representing that certain of their cigarettes, such as “low tar” and “light” brands, were safer than other cigarettes,
 - (ix) representing that smoking is consistent with a healthy lifestyle,
 - (x) representing that the risks of smoking were less serious than they knew them to be;
- (i) failing to correct statements made by others to consumers regarding the risks of smoking, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.

151. The Defendants, being suppliers under the *Trade Practices Act*, in breach of their statutory duty or obligation to consumers, engaged in unconscionable acts or practices in relation to consumer transactions, before, during and after such transactions, by taking advantage of what the Defendants knew or ought to have known was the inability or incapacity of children and adolescents and persons addicted to nicotine to reasonably protect their own interests because of their physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character or nature of the purchase of cigarettes including the risks of smoking. Particulars of such unconscionable acts and practices include the following:

- (a) manipulating the level and bioavailability of nicotine in their cigarettes, particulars of which include the following:
 - (i) sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine,
 - (ii) increasing the level of nicotine by the methods used in blending the tobacco contained in their cigarettes,
 - (iii) increasing the level of nicotine in their cigarettes by the addition of nicotine or substances containing nicotine,
 - (iv) introducing substances, including ammonia, into their cigarettes to enhance the bioavailability of nicotine to smokers;
- (b) incorporating into the design of their cigarettes ostensible safety features such as filters which they knew or ought to have known were ineffective, yet which would lead a reasonable consumer to believe that the product was safer to use than it was in fact;
- (c) failing to disclose to such consumers the risks inherent in the ordinary use of their cigarette products including the risks of disease and addiction;

- (d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of the warnings provided to such consumers by the Defendants and by governments and other agencies concerned with public health;
- (e) suppressing or concealing from such consumers scientific and medical information regarding the risks of smoking;
- (f) engaging in marketing and promotion activities having the tendency to lead such consumers to believe that cigarettes have performance characteristics, ingredients, uses and benefits and approval that they did not have;
- (g) misinforming and misleading such consumers about the risks of smoking by using innuendo, exaggeration and ambiguity having the tendency to mislead them about the material facts regarding smoking and health;
- (h) failing to take any or any reasonable measures to prevent children and adolescents from starting or continuing to smoke;
- (i) targeting children and adolescents in their advertising, promotional and marketing activities with the object of inducing children and adolescents to start or continue to smoke;
- (j) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that, when smoked as intended, they are addictive and inevitably cause or contribute to disease and death in large numbers of addicted persons;
- (k) making the following representations to such consumers which they knew or ought to have known were false or misleading:
 - (i) representing that smoking has not been shown to cause any known diseases,

- (ii) representing that they were aware of no research, or no credible research, establishing a link between smoking and disease,
 - (iii) representing that cigarettes were not addictive,
 - (iv) representing that smoking is merely a habit or custom as opposed to an addiction,
 - (v) representing that they did not manipulate nicotine levels in their cigarettes,
 - (vi) representing that they did not include substances in their cigarettes designed to increase the bioavailability of nicotine,
 - (vii) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes,
 - (viii) representing that certain of their cigarettes, such as “low tar” and “light” brands, were safer than other cigarettes,
 - (ix) representing that smoking is consistent with a healthy lifestyle,
 - (x) representing that the risks of smoking were less serious than they knew them to be;
- (l) failing to correct statements made by others to such consumers regarding the risks of smoking, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.

(b) *Competition Act*

152. The Defendants, for the purpose of promoting, directly or indirectly, the supply or use of cigarettes, in breach of their statutory duty or obligation to consumers under the *Combines Investigation Act* RSC 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act* SC 1968-69, chapter 38 and amendments thereto and subsequently the *Competition Act* RSC 1985, chapter C-34 and amendments thereto:

- (a) made representations to the public that were false or misleading in a material respect;
- (b) made representations to the public in the form of statements regarding the performance and efficacy of cigarettes that were not based on adequate and proper testing.

Particulars of such representations include the following:

- (a) making representations about the characteristics of their cigarettes that were not based upon any or any adequate and proper testing of and investigation and research into:
 - (i) the risk of disease caused or contributed to by smoking their cigarettes,
 - (ii) the risk of addiction to nicotine contained in their cigarettes, and
 - (iii) the feasibility of eliminating or minimizing the risks referred to in subparagraphs (i) and (ii).
- (b) promoting as safer products, cigarettes with ostensible safety features such as filters, “low tar” or “low nicotine” which adequate and proper testing would have revealed were ineffective to safeguard the health of consumers;
- (c) to the extent that the Defendants have purported to provide information about their cigarettes or warnings about the risks of smoking, they have failed to make clear, credible, complete and current disclosure of the risks inherent in the ordinary use of their cigarettes;
- (d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of the warnings provided to consumers by the Defendants and by governments and other agencies concerned with public health;

- (e) providing misleading information to the public about the risks of smoking based upon a failure to provide any or any adequate research or testing of their cigarettes;
- (f) publicly discrediting the testing and research undertaken, and information provided, by others regarding the linkage between smoking and disease and smoking and addiction;
- (g) representing that smoking has not been shown to cause any known diseases;
- (h) representing that they were aware of no research, or no credible research, establishing a link between smoking and disease;
- (i) representing that smoking has not been shown to cause addiction;
- (j) representing that they were aware of no research, or no credible research, establishing a link between smoking and addiction;
- (k) representing that smoking is merely a habit or custom as opposed to an addiction;
- (l) representing that they did not manipulate nicotine levels in their cigarettes;
- (m) representing that they did not include substances in their cigarettes designed to increase the bioavailability of nicotine;
- (n) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes;
- (o) representing that certain of their cigarettes, such as “low tar” and “light” brands, were safer than other cigarettes;
- (p) representing that smoking is consistent with a healthy lifestyle;
- (q) failing to correct statements made by others to consumers regarding the risks of smoking, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.

153. As a result of the breaches of their statutory duties and obligations referred to in paragraphs 150 - 152 by the Defendants, and each of them, persons started to smoke or continued to smoke cigarettes and suffered tobacco related disease. The government has incurred and will continue to incur the cost of health care benefits that have been provided or will be provided to that portion of the population of insured persons who have suffered tobacco related disease.

CONSPIRACY

154. In response to mounting publicity about the link between smoking and disease, the chief executive officers of the U.S. Tobacco Companies met in New York City on December 15, 1953, and conspired to jointly disseminate false and misleading information regarding the risks of smoking and to suppress or conceal research regarding the health risks of cigarettes to consumers in the United States of America and Canada. The conspiracy has continued to the present date.

155. In furtherance of the conspiracy, all of the U.S. Tobacco Companies, with the exception of the Defendant Liggett Group, Inc., agreed to participate in a public relations program on “the health issue” with the object of promoting cigarettes and protecting cigarette sales from attack based upon health risks. Hill & Knowlton was retained to serve as the operating agent of the U.S. Tobacco Companies in this initiative.

156. As a result of the December 15, 1953 meeting and upon the recommendation of Hill & Knowlton, the U.S. Tobacco Companies, with the exception of the Defendant Liggett Group, Inc., agreed to create the TIRC and its successor in interest, the Defendant CTR. The Defendant Liggett Group, Inc. joined the TIRC in 1964, following the release of the report of the U.S. Surgeon General linking cigarette smoking to lung cancer. The U.S. Tobacco Companies, both directly and through their agent Hill & Knowlton, operated and effectively controlled the TIRC, and subsequently the Defendant CTR.

157. On or about January 4, 1954, the U.S Tobacco Companies publicized the creation of the TIRC and, contrary to their actual intent, which was to pursue the aforementioned conspiracy, they pledged to the public that through the TIRC they would conduct and publicly report the results of objective and unbiased research regarding smoking and health. In fact their intent was

to promote only research favourable to their products, to cast doubt upon unfavourable research, and to confuse and mislead the public.

158. The TIRC and subsequently the Defendant CTR joined the conspiracy and committed unlawful acts in furtherance of the joint design.

159. A second trade association, the Defendant Tobacco Institute, was formed by the U.S. Tobacco Companies in 1958 and was used as a vehicle to further the conspiracy.

160. In entering into and furthering the conspiracy, the U.S. Tobacco Companies were acting as the agents of their parent companies or of related Canadian companies or both, particulars of which are as follows:

- (a) the Defendant Brown & Williamson Tobacco Corporation was acting as the agent of the BAT Control Companies and of the Defendants Imasco Limited and Imperial Tobacco Limited;
- (b) the Defendant Philip Morris Incorporated was acting as the agent of the Philip Morris Control Companies and of Benson & Hedges (Canada) Inc. and Rothmans, Benson and Hedges Inc.;
- (c) the Defendant R. J. Reynolds Tobacco Company was acting as the agent of the RJR Control Companies and of the Defendant RJR-Macdonald Inc;

161. In the alternative, the Canadian Tobacco Companies and the BAT, Rothmans, Philip Morris and RJR Control Companies became aware of the joint design of the US Tobacco Companies, and agreed to and adopted that design and have carried out unlawful acts in British Columbia in furtherance of the conspiracy.

162. In 1964 the Canadian Tobacco Companies formed the Defendant CTMC. The Defendant CTMC joined the conspiracy and committed unlawful acts in British Columbia in furtherance of the joint design.

163. In entering into and furthering the conspiracy, TIRC and the Defendants CTR, Tobacco Institute and CTMC were acting as agents of their members or of the Control Companies of each

of their members. Further, TIRC and the Defendants CTR and Tobacco Institute were acting as agents of the Canadian Tobacco Companies, either directly or through the BAT, Rothmans, Philip Morris and RJR Control Companies.

164. Particulars of the unlawful acts committed by the aforementioned persons either directly or through their related companies and agents in furtherance of the conspiracy include the following:

- (a) misrepresenting the risks of smoking, including the risk of addiction, and the link between smoking and disease;
- (b) suppressing or concealing information and research regarding the risks of smoking, including the risk of addiction, and the link between smoking and disease;
- (c) creating a false controversy by attacking and attempting to discredit research by third parties, which they knew to be credible, regarding the risks of smoking, including the risk of addiction and the link between smoking and disease;
- (d) agreeing to continue to design, manufacture, market, distribute and sell cigarettes which they knew to be unreasonably dangerous;
- (e) suppressing the design, testing, manufacture, marketing or sale of less addictive, less carcinogenic and less pathologic cigarettes.

165. The aforementioned acts were performed with knowledge that these acts would lead to persons in British Columbia starting to smoke or continuing to smoke cigarettes and that smokers in British Columbia would likely become addicted and suffer tobacco related disease.

166. As a result of the aforementioned conspiracy, persons began to smoke and continued to smoke cigarettes and suffered tobacco related disease. The government has incurred and will continue to incur the cost of health care benefits that have been provided or will be provided to that portion of the population of insured persons who have suffered tobacco related disease.

167. In addition to the aforementioned conspiracy, the BAT Control Companies in combination with their related companies, including the Defendants Brown & Williamson Tobacco Corporation, Imasco Limited and Imperial Tobacco Limited, agreed to jointly disseminate false and misleading information regarding the risks of smoking and suppress or conceal research regarding the health risks of cigarettes to consumers of their cigarettes in the United States, United Kingdom, and Canada, including British Columbia, and performed unlawful acts in furtherance of the conspiracy including the following:

- (a) misrepresenting the risks of smoking, including the risk of addiction, and the link between smoking and disease;
- (b) suppressing or concealing information and research regarding the risks of smoking, including the risk of addiction, and the link between smoking and disease;
- (c) creating a false controversy by attacking and attempting to discredit research by third parties, which they knew to be credible, regarding the risks of smoking, including the risk of addiction, and the link between smoking and disease;
- (d) agreeing to continue to design, manufacture, market, distribute and sell cigarettes which they knew to be unreasonably dangerous;
- (e) suppressing the design, testing, manufacture, marketing or sale of less addictive, less carcinogenic and less pathologic cigarettes.

168. The aforementioned acts were performed by the aforementioned members of the BAT Group with knowledge that their acts would lead to persons in British Columbia starting to smoke or continuing to smoke cigarettes and that smokers in British Columbia would likely become addicted and suffer tobacco related disease.

169. As a result of the aforementioned conspiracy, persons began to smoke and continued to smoke cigarettes and suffered tobacco related disease. The government has incurred and will continue to incur the cost of health care benefits that have been provided or will be provided to that portion of the population of insured persons who have suffered tobacco related disease.

RELIEF

WHEREFORE the Plaintiff claims against the Defendants, and each of them, as follows:

- a) The cost of health care benefits that have been incurred or will be incurred by the government;
- b) Court Order Interest;
- c) Costs or, in the alternative, special or increased costs; and
- d) Such other relief as to this Honourable Court seems just.

Place of trial: Vancouver, British Columbia

Bull, Housser & Tupper

per:

Dated: November 12, 1998

Solicitors for the Plaintiff

This WRIT OF SUMMONS and attached STATEMENT OF CLAIM is filed by Bull, Housser & Tupper, Solicitors for the Plaintiff, whose office address and address for delivery is 3000 - 1055 West Georgia Street, Vancouver, British Columbia, V6E 3R3 Attention: D. A. Webster, Q.C. Telephone: (604) 687-6575 Facsimile: (604) 641-4949