

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

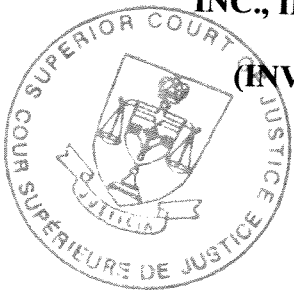
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

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 CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THAT PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM AND \$1,500 FOR COSTS WITHIN THE TIME FOR SERVING AND FILING YOUR STATEMENT OF DEFENCE, YOU MAY MOVE TO HAVE THIS PROCEEDING DISMISSED BY THE COURT. IF YOU BELIEVE THE AMOUNT CLAIMED FOR COSTS IS EXCESSIVE, YOU MAY PAY THE PLAINTIFF'S CLAIM AND HAVE THE COSTS ASSESSED BY THE COURT.

Date: *Sept. 29th 2009*

Issued by: *Y. Grant*

Local Registrar

Address: 393 University Avenue, *10th Floor*
Toronto, Ontario
M5G 1E6

Y. Grant
Registrar

TO: Rothmans Inc.
1500 Don Mills Road
Toronto, Ontario

AND TO: Rothmans Benson & Hedges Inc.
1500 Don Mills Road,
Toronto, Ontario.

AND TO: Carreras Rothmans Limited
Globe House
1 Water Street, London.

AND TO: Altria Group, Inc.
6601 Broad Street, Richmond
Virginia, USA

AND TO: Philip Morris USA Inc
6601 Broad Street, Richmond
Virginia, USA

- AND TO:** Philip Morris International Inc
120 Park Ave.,
New York, New York.
- AND TO:** JTI-Macdonald Corp.
5151 George Street, Box 247
Halifax, Nova Scotia
- AND TO:** R.J. Reynolds Tobacco Company
401 North Main Street
Winston-Salem
North Carolina, USA
- AND TO:** R.J. Reynolds Tobacco International, Inc.
401 North Main Street
Winston-Salem
North Carolina, USA
- AND TO:** Imperial Tobacco Canada Limited
3711 St. Antoine Street
Montreal, Quebec
- AND TO:** British American Tobacco p.l.c.,
Globe House, 4 Temple Place,
London, England.
- AND TO:** B.A.T Industries p.l.c.
Globe House
4 Temple Place
London, England
- AND TO:** British American Tobacco (Investments) Limited
Globe House
1 Water Street,
London, England.
- AND TO:** Canadian Tobacco Manufacturers' Council
1808 Sherbrooke St. West
Montreal, Quebec

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I. RELIEF CLAIMED

1. The Plaintiff, Her Majesty the Queen in right of Ontario (the “Crown”), claims:
 - (a) damages in the amount of \$50,000,000,000.00 (fifty billion dollars) for the cost of health care benefits, resulting from tobacco related disease or the risk of tobacco related disease, which have been paid or will be paid by the Crown for insured persons;
 - (b) its costs of this action on a substantial indemnity basis;
 - (c) pre-judgment interest in accordance with the provisions of s. 128 of the *Courts of Justice Act*, 1990, R.S.O. and amendments thereto; and
 - (d) such further and other relief as this Honourable Court deems just.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

2. The Crown provides health care benefits for the population of insured persons who suffer tobacco related disease or the risk of tobacco related disease as a result of the tobacco related wrongs committed by the Defendants. Pursuant to section 2 of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, S.O. 2009 C.13 (the “*Act*”), the Crown claims against the Defendants for recovery of the cost of health care benefits,

namely:

- (a) the present value of the total expenditure by the Crown for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease, and
- (b) the present value of the estimated total expenditure by the Crown for health care benefits that could reasonably be expected will be provided for those insured persons resulting from tobacco related disease or the risk of tobacco related disease,

caused or contributed to by the tobacco related wrongs hereinafter described. Further particulars of the costs incurred by the Crown will be provided prior to trial.

- 3. Pursuant to subsection 2(1) and section 2(4)(b) of the Act, the Crown brings this action to recover the costs of health care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes.
- 4. Pursuant to subsections 2(1) and 2(2) of the Act, the Crown brings this action as a direct and distinct action for the recovery of health care benefits caused or contributed to by a tobacco related wrong as defined in the Act. The Crown does so in its own right and not on the basis of a subrogated claim.
- 5. The words and terms used in this Statement of Claim including, “cost of health care benefits”, “disease”, “exposure”, “health care benefits”, “insured person”, “manufacture”, “manufacturer”, “promote”, “promotion”, “tobacco product”, “tobacco related disease”, and “tobacco related wrong”, have the meanings ascribed to them in the Act.

6. Also in this Statement of Claim:

- (a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and
- (b) "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.

B. The Defendants

- 7. The Defendant, Rothmans Inc. (formerly Rothmans of Pall Mall Canada Limited), is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, Toronto, Ontario.
- 8. The Defendant, Rothmans Benson & Hedges Inc. (created through the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited), is a company incorporated pursuant to the laws of Canada with a registered office at 1500 Don Mills Road, North York, Ontario.
- 9. The Defendant, Carreras Rothmans Limited, is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London.
- 10. The Defendant, Altria Group, Inc. (formerly known as Philip Morris Companies Inc.), has a registered office at 6601 Broad Street, Richmond, Virginia, in the United States of America.
- 11. The Defendant, Philip Morris USA Inc., is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 Broad Street, Richmond, Virginia in the United States of America.

12. The Defendant, Philip Morris International Inc., is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Ave., New York, New York.
13. The Defendant, JTI-Macdonald Corp. (formerly RJR-Macdonald Corp. and RJR-Macdonald Inc.), is a company incorporated pursuant to the laws of Nova Scotia with a registered office at 5151 George Street, Box 247, Halifax, Nova Scotia. On August 24, 2004, JTI-Macdonald Corp. sought protection from the Ontario Superior Court of Justice under the *Companies Creditor Arrangements Act*, R.S.C. 1985, c. C-36. The Plaintiff will seek leave from the Ontario Superior Court of Justice to proceed against JTI-Macdonald Corp. as a Defendant in this action.
14. The Defendant, R.J. Reynolds Tobacco Company, is a company incorporated pursuant to the laws of North Carolina and has its principal office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America.
15. The Defendant, R.J. Reynolds Tobacco International, Inc., is a company incorporated pursuant to the laws of Delaware and has its principal office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America.
16. The Defendant, Imperial Tobacco Canada Limited (created through the amalgamation of, *inter alia*, Imperial Tobacco Limited and Imasco Ltd.), is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street, Montreal, Quebec.
17. 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 Globe House, 4 Temple Place, London, England.

18. The Defendant, B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and Tobacco Securities Trust Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England.
19. The Defendant, British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England.
20. All of the Defendants described above or their predecessors in interest for whom they are in law responsible are “manufacturers” pursuant to the Act by reason of one or more of the following:
 - (a) they manufacture, or have manufactured, tobacco products, including cigarettes;
 - (b) they cause, or have caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of tobacco products, including cigarettes;
 - (c) they engage in, or have engaged in, or cause, or have caused, directly or indirectly, other persons to engage in, the promotion of tobacco products, including cigarettes; or
 - (d) for one or more of the material fiscal years, each has derived at least 10% of its revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products, including cigarettes, by itself or by other persons.
21. The Defendant, Canadian Tobacco Manufacturers’ Council (“CTMC”), is a company incorporated pursuant to the laws of Canada and has a registered office at 1808 Sherbrooke St. West, Montreal, Quebec. It is the trade association of the Canadian tobacco industry.

22. CTMC is a manufacturer pursuant to the Act by reason of its having been primarily engaged in one or more of the following activities:
- (a) the advancement of the interests of manufacturers,
 - (b) the promotion of cigarettes, and
 - (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes.

III. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

A. Canadian Tobacco Companies

The Defendant Rothmans Inc.

23. Rothmans Inc. has been part of the Canadian tobacco industry for the past 100 years. Its predecessor companies include Rothmans of Pall Mall Canada Limited, which was incorporated in 1956 and changed its name in 1985 to Rothmans Inc.
24. Rothmans Inc. has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

The Defendant Rothmans, Benson & Hedges Inc.

25. Rothmans of Pall Mall Limited, incorporated in 1960 in the United Kingdom, acquired part of the tobacco related business of Rothmans Inc. in 1985 and engaged, until it amalgamated with Benson & Hedges (Canada) Inc. in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in

Ontario.

26. Benson & Hedges (Canada) Inc., incorporated in 1934, engaged, until it amalgamated with Rothmans of Pall Mall Limited in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.
27. Rothmans, Benson & Hedges Inc., formed in 1986 by the amalgamation of Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc., has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.
28. Rothmans, Benson & Hedges Inc. manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names, including Rothmans and Benson & Hedges.
29. Rothmans, Benson & Hedges Inc. is 60% owned by Rothmans Inc. and 40% owned by FTR Holding S.A., a Swiss company. FTR Holding S.A. is a subsidiary of the Defendant, Philip Morris International Inc. and, at one time, was a subsidiary of the Defendant Altria Group, Inc. It is also affiliated with the Defendant, Philip Morris U.S.A. Inc.

The Defendant JTI-Macdonald Corp.

30. W.C. MacDonald Incorporated, which carried on business in Montreal from 1858 until incorporation in 1930, changed its name to Macdonald Tobacco Inc. in 1957 and became a wholly owned subsidiary of the Defendant, R.J. Reynolds Tobacco Company, in 1973.
31. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds

Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald Tobacco Inc. and acquired all or substantially all of Macdonald Tobacco Inc.'s assets and continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc. RJR-Macdonald Inc. was a wholly owned subsidiary of RJR Nabisco Holdings Corp. In March 1999, RJR Nabisco sold RJR-Macdonald Inc to Japan Tobacco Inc. As a result of that transaction, the name of the RJR-Macdonald Inc. was changed to JTI-Macdonald Corp.

32. JTI-Macdonald Corp. (and its predecessor Macdonald Tobacco Inc.) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.
33. JTI-Macdonald Corp. manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names including Export "A" and Vantage.

The Defendant Imperial Tobacco Canada Limited

34. Imperial Tobacco Company of Canada Limited, incorporated in 1912, changed its name, effective December 1, 1970, to Imasco Limited.
35. In or about 1970, part of the tobacco related business of Imasco was acquired by Imperial Tobacco Limited, (a wholly owned subsidiary).
36. In or about February, 2000, Imasco Limited amalgamated with its subsidiaries including Imperial Tobacco Limited to form Imasco Limited. In a second amalgamation, also in or about February, 2000, Imasco Limited amalgamated with its parent company, British

American Tobacco p.l.c., to form Imperial Tobacco Canada Limited ("Imperial").

37. Imperial is a wholly owned subsidiary of the Defendant, British American Tobacco p.l.c.
38. Imperial (and its predecessor corporations) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.
39. Imperial manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names, including Player's and duMaurier.

B. Multinational Tobacco Enterprises

40. There are four multinational tobacco enterprises ("Groups") whose member companies engage directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario and throughout the world. The four Groups are:
 - (a) the Rothmans Group;
 - (b) the Philip Morris Group;
 - (c) the RJR Group; and
 - (d) the BAT Group.
41. At all material times, cigarettes sold in Ontario have been manufactured and promoted by manufacturers who are, or were, members of one of the four Groups.
42. The manufacturers within each Group have had common policies relating to smoking and health. The common policies have been directed or co-ordinated by one or more of the Defendants within each group ("Lead Companies") or their predecessors in interest for whom they are in law responsible.

43. At material times, Lead Companies of the four Groups were as follows:

Group	Lead Companies
Rothmans Group	Carreras Rothmans Limited Rothmans Inc. Rothmans, Benson & Hedges Inc.
Philip Morris Group	Altria Group, Inc. (formerly Philip Morris Companies Inc.) Philip Morris USA Inc. Philip Morris International, Inc.
RJR Group	R.J. Reynolds Tobacco Company R.J. Reynolds Tobacco International, Inc.
BAT Group	British American Tobacco p.l.c. B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and before that Tobacco Securities Trust Limited) British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited)

44. The members of the Rothmans Group have included the following companies:

- (a) Rothmans, Benson & Hedges Inc.;
- (b) Rothmans Inc.;
- (c) Rothmans of Pall Mall Limited; and
- (d) Carreras Rothmans Limited.

45. The members of the Philip Morris Group have included the following companies:

- (a) Altria Group, Inc.;
- (b) Philip Morris USA Inc.;
- (c) Philip Morris International, Inc.;
- (d) Rothmans Benson & Hedges Inc.; and
- (e) Benson & Hedges (Canada) Inc.

46. The members of the RJR Group have included the following companies:

- (a) R.J. Reynolds Tobacco Company;

- (b) R.J. Reynolds Tobacco International, Inc.;
 - (c) JTI-Macdonald Corp.; and
 - (d) Macdonald Tobacco Inc.
47. The members of the BAT Group have included the following companies:
- (a) Imasco Limited and Imperial Tobacco Limited (now Imperial Tobacco Canada Limited);
 - (b) B.A.T Industries p.l.c.;
 - (c) British American Tobacco (Investments) Limited; and
 - (d) British American Tobacco p.l.c.

III. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

48. The Crown states that the Defendants have committed tobacco related wrongs as that term is defined in the *Act*. In particular, the Defendants have committed the following breaches of common law, equitable or statutory duties or obligations owed by the Defendants to persons in Ontario who have been exposed or might become exposed to a tobacco product. The Defendants have also committed torts in Ontario which constitute tobacco related wrongs pursuant to the *Act*. As a result of these tobacco related wrongs, insured persons in Ontario have suffered tobacco related disease or the risk of tobacco related disease and the Crown has incurred expenditures for health care benefits provided to these insured persons.

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

The Defendants' Knowledge

49. The Defendants designed and manufactured cigarettes to deliver nicotine to smokers.
50. Nicotine is an addictive drug that affects the brain and central nervous system, the cardiovascular system, the lungs, other organs and body systems and endocrine function. Addicted smokers physically and psychologically crave nicotine.
51. Smoking and exposure to second hand smoke cause or contribute to disease including, but not limited to:
 - (a) chronic obstructive pulmonary disease and related conditions, including:
 - (i) emphysema;
 - (ii) chronic bronchitis;
 - (iii) chronic airways obstruction; and
 - (iv) asthma;
 - (b) cancer, including:
 - (i) cancer of the lung;
 - (ii) cancer of the lip, oral cavity and pharynx;
 - (iii) cancer of the larynx;
 - (iv) cancer of the esophagus;
 - (v) cancer of the bladder;
 - (vi) cancer of the kidney;
 - (vii) cancer of the pancreas; and
 - (viii) cancer of the stomach;
 - (c) circulatory system diseases, including:

- (i) coronary heart disease;
 - (ii) pulmonary circulatory disease;
 - (iii) vascular disease; and
 - (iv) peripheral vascular disease;
- (d) increased morbidity and general deterioration of health; and
- (e) fetal harm.
52. The Defendants have been aware that, when smoked as intended, cigarettes:
- (a) contain substances which can cause or contribute to disease;
 - (b) produce by-products which can cause or contribute to disease; and
 - (c) cause or contribute to addiction.
53. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that smoking cigarettes could cause or contribute to disease.
54. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that the nicotine present in cigarettes is addictive. In the alternative, at all material times, the Defendants knew or ought to have known that:
- (a) nicotine is an active ingredient in cigarettes;
 - (b) smokers crave nicotine; and
 - (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.
55. By 1970 or thereabouts, and at all material times thereafter, the Defendants knew or ought to have known that exposure to second hand smoke could cause or contribute to disease.

Breach of the Duty - Design and Manufacture

56. At all material times, the Defendants owed a duty of care to design and manufacture a reasonably safe product, and to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking the cigarettes they manufactured and promoted.
57. The Defendants have breached, and continue to breach, these duties by failing to design a reasonably safe product, and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking.
58. The Defendants, in the design, manufacture and promotion of their cigarettes, created, and continue to create, an unreasonable risk of harm to the public from which they have failed to protect the public.
59. The Defendants increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
 - (a) special blending of tobacco;
 - (b) adding nicotine or substances containing nicotine;
 - (c) introducing substances, including ammonia, to enhance the bio-availability of nicotine to smokers; and
 - (d) such further and other particulars known to the Defendants.
60. The Defendants increased the risks of smoking by adding to their cigarettes ineffective filters and by misleading the public and government agencies that these filters made smoking safer.
61. The Defendants further misled the public by misrepresenting that “mild”, “low tar” and

“light” cigarettes were healthier than regular cigarettes.

62. As a result of these tobacco related wrongs, persons in Ontario started to smoke or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty to Warn

63. 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, and they owed a duty of care to warn the public of the risks of smoking.
64. The Defendants breached their duty by failing to provide any warning prior to 1972, or any adequate warning thereafter, of:
- (a) the risk of tobacco related disease; or
 - (b) the risk of addiction to the nicotine contained in their cigarettes.
65. Any warnings that were provided were inadequate and ineffective in that they:
- (a) failed to warn of the actual and known risks;
 - (b) were insufficient to give users, prospective users, and the public a true indication of the risks;
 - (c) were introduced for the purpose of delaying more accurate government-mandated warnings; and

- (d) failed to make clear, credible, complete and current disclosure of the risks inherent in the ordinary use of their cigarettes and therefore failed to permit free and informed decisions concerning smoking.
66. The Defendants knew or ought to have known that children and adolescents in Ontario were smoking or might smoke their cigarettes, but failed to provide warnings sufficient to inform children of the risks.
67. The Defendants engaged in collateral marketing and promotional and public relations activities to neutralize or negate the effectiveness of the stated warnings on cigarette packaging in advertising and in warnings given by governments and other agencies concerned with public health.
68. The Defendants suppressed information regarding the risks of smoking and the risks of exposure to second hand smoke.
69. The Defendants misinformed and misled the public about the risks of smoking and the risks of exposure to second hand smoke.
70. As a result of these tobacco related wrongs, persons in Ontario started or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty - Misrepresentation

71. The Defendants owed the public a duty not to misrepresent the risks of smoking.

72. The Defendants, with full knowledge of the risks of addiction and disease, misrepresented the risks of exposure to second hand smoke and, in particular, without limiting the generality of the foregoing, misrepresented that:
- (a) smoking and exposure to second hand smoke have not been shown to cause any known diseases;
 - (b) they were aware of no research, or no credible research, establishing a link between smoking or exposure to second hand smoke and disease;
 - (c) many diseases shown to have been caused by smoking tobacco or exposure to second hand smoke were in fact caused by other environmental or genetic factors;
 - (d) cigarettes were not addictive;
 - (e) they were aware of no research, or no credible research, establishing that smoking is addictive;
 - (f) smoking is merely a habit or custom;
 - (g) they did not manipulate nicotine levels in their cigarettes;
 - (h) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
 - (i) the intake of tar and nicotine associated with smoking their cigarettes was less than they knew or ought to have known it to be;
 - (j) certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes;
 - (k) smoking is consistent with a healthy lifestyle; and
 - (l) the risks of smoking and exposure to second hand smoke were less serious than they knew them to be.
73. The Defendants suppressed scientific and medical data which revealed the serious health risks of smoking.
74. The Defendants misinformed the public as to the harm of both smoking and of exposure to cigarette smoke.

75. The Defendants participated in a misleading campaign to enhance their own credibility and diminish the credibility of health authorities and anti-smoking groups, for the purpose of reassuring smokers that cigarettes were not as dangerous as authorities were saying.
76. The Defendants intended that these misrepresentations be relied upon by individuals in Ontario for the purpose of inducing them to start smoking or to continue to smoke.
77. As a result of these tobacco related wrongs, persons in Ontario started to, or continued to, smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty - Manufacturing or Promoting Products for Children and Adolescents

78. At all material times, the Defendants owed a duty of care to children and adolescents in Ontario to take all reasonable measures to prevent them from starting or continuing to smoke.
79. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age.
80. The Defendants knew or ought to have known that children and adolescents in Ontario were smoking or might start to smoke and that it was contrary to law or public policy to sell cigarettes to children and adolescents or to promote smoking by such persons.

81. The Defendants knew or ought to have known of the risk that children and adolescents in Ontario who smoked their cigarettes would become addicted to cigarettes and would suffer tobacco related disease.
82. The Defendants failed to take reasonable and appropriate measures to prevent children and adolescents from starting or continuing to smoke.
83. The Defendants targeted children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents in Ontario to start or continue to smoke.
84. The Defendants, in further breach of their duty, undermined government initiatives and legislation which were intended to prevent children and adolescents in Ontario from starting or continuing to smoke.
85. As a result of these tobacco related wrongs, children and adolescents in Ontario started to or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Conspiracy, Concert of Action and Common Design

(i) Conspiracy within the International Tobacco Industry

86. At all material times, the Defendants conspired, and acted in concert in committing tobacco related wrongs.

87. At various times after about 1953, in response to mounting publicity and public concern about the link between smoking and disease, some or all of the Lead Companies of the four Groups or their predecessors in interest for whom the Lead Companies are in law responsible, and some or all of the remaining Defendants, conspired and acted in concert to prevent the Crown and persons in Ontario and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health care costs.
88. This conspiracy, concert of action and common design secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco Company Limited), and American Tobacco Company. These companies, on their own behalf and on behalf of their respective Groups, agreed to:
- (a) jointly disseminate false and misleading information regarding the risks of smoking;
 - (b) make no statement or admission that smoking caused disease;
 - (c) suppress or conceal research regarding the risks of smoking; and
 - (d) orchestrate a public relations program on smoking and health issues with the object of:
 - (i) promoting cigarettes;
 - (ii) protecting cigarettes from attack based upon health risks; and
 - (iii) reassuring the public that smoking was not hazardous.
89. This conspiracy, concert of action and common design was continued at secret

committees, conferences and meetings involving senior personnel and through written and oral directives.

90. Between late 1953 and the early 1960s, the Lead Companies formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964 (the "CTR")), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), and the Tobacco Research Council ("TRC").
91. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC and similar organizations, would objectively conduct research and gather data concerning the link between smoking and disease and would publicize the results of this research throughout the world.
92. In reality, the Lead Companies conspired with the TIRC, the CTR, CORESTA, the TRC, and similar organizations, to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants intended to mislead the public and the Crown, into believing that there was a real medical or scientific controversy about whether smoking caused addiction and disease.
93. In 1963 and 1964, the Lead Companies and some or all of the Defendants agreed to coordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes were a harmful and dangerous product.
94. In April and September 1963, the Lead Companies agreed to develop a public relations campaign to counter the Royal College of Physicians report in England, the forthcoming

Surgeon General's Report in the United States and a report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes.

95. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease unless and until they were forced to do so by government action.
96. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes.
97. By the mid-1970s, the Lead Companies, and some or all of the Defendants, decided that an increased international misinformation campaign was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease could lead to a "domino effect" to the detriment of the industry world-wide.
98. As a result, in June, 1977, the Lead Companies, and some or all of the Defendants with international interests, met in England to establish the International Committee on Smoking Issues ("ICOSI").
99. Through ICOSI, the Defendants resisted attempts by governments to provide adequate warnings about smoking and disease, and pledged to:
 - (a) jointly disseminate false and misleading information regarding the risks of smoking;
 - (b) make no statement or admission that smoking caused disease;
 - (c) suppress research regarding the risks of smoking;

- (d) not compete with each other by making health claims with respect to their cigarettes, and thereby avoid direct or indirect admissions about the risks of smoking; and
 - (e) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and authorities in Ontario and other jurisdictions that smoking was not hazardous.
100. In and after 1977, the members of ICOSI, including each of the Lead Companies, agreed orally and in writing, to ensure that:
- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health, including the decision to mislead the public about the link between smoking and disease;
 - (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, CTMC, to ensure compliance in the various tobacco markets world wide;
 - (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves; and
 - (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.
101. In the late 1970s, the Defendants launched Operation Berkshire, which was aimed at Canada and other major markets, to further advance their campaign of misinformation and to promote smoking. Operation Berkshire was lead by both the Philip Morris Group in concert with the Rothmans Group and by the BAT Group with some or all of the Defendants.
102. In 1980, ICOSI was renamed the International Tobacco Information Centre / Centre International d'Information du Tabac - INFOTAB ("INFOTAB"). In or before 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI,

INFOTAB and TDC are hereinafter referred to collectively as "ICOSI").

103. At all times, the policies of ICOSI were identical to the policies of the NMAs including CTMC, and were presented as the policies and positions of the NMAs and their member companies so as to conceal from the public and from governments the existence of the conspiracy, concert of action and common design.
104. The Lead Companies at all times acted to ensure that manufacturers complied, and did not deviate, from the official ICOSI position on the adverse health effects of smoking.
105. In addition to the foregoing, the Defendants engaged in a conspiracy, concert of action and common design specifically with respect to the issue of second hand smoke.
106. In the early 1970s, the Defendants and/or related and affiliated companies began to combine their resources and coordinate their activities specifically with respect to second hand smoke. In 1975, the Defendants and/or related and affiliated companies formed the first of several committees to specifically address second hand smoke. Although the Defendants and related companies claimed that the Committees were formed to conduct "sound science" regarding the emerging issue of second hand smoke, their actual purpose was to fund projects that would counter the public's growing concern regarding the harmful effects of second hand smoke, despite the knowledge amongst the Defendants of these harmful effects. The Committee formed in 1975 and its various successors, including the Committee for Indoor Air Research ("CIAR") founded in 1987, carried out their mandate of challenging the growing consensus regarding second hand smoke by:
 - (1) coordinating and funding efforts to generate evidence to support the notion that there remained an "open controversy" as to the health implications of second hand smoke;

- (2) leading the attack on government efforts to act on evidence linking second hand smoke to disease; and
 - (3) acting as a “front” organization for flowing tobacco industry funds to research projects so that the various committees appeared to be independent organizations and the role of the tobacco industry was hidden.
107. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued, and of the breaches of duty committed in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Defendants.

(ii) Conspiracy within the Canadian Tobacco Industry

108. At all material times, the Defendants conspired and acted in concert to prevent the Crown and persons in Ontario and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco related wrongs in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the conspiracy, concert of action and common design.
109. This conspiracy, concert of action and common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by some or all of the Defendants in Canada, and attended by their senior personnel and through written and oral directives and communications amongst some or all of them.
110. The conspiracy, concert of action and common design was continued when:

- (a) in or about 1962, the Defendants in Canada agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking;
 - (b) in 1963, some or all of the Defendants misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease;
 - (c) in or about 1963, some or all of the Defendants formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, and incorporated as CTMC in 1982) in order to maintain a united front on smoking and health issues (the Ad Hoc Committee on Smoking and Health, the pre-incorporation Canadian Tobacco Manufacturers' Council and CTMC are hereinafter collectively referred to as CTMC"); and
 - (d) in or about 1969, some or all of the Defendants misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.
111. Upon its formation, and at all material times thereafter, CTMC provided a means and method to continue the conspiracy, concert of action and common design and, upon its incorporation, agreed, adopted and participated in the conspiracy, concert of action and common design
112. CTMC has lobbied governments and regulatory agencies throughout Canada since about 1963, with respect to tobacco industry matters, as well as misrepresenting the risks of smoking to the Canadian public, in accordance with the tobacco industry's position.
113. CTMC has co-ordinated, with some or all of the Defendants and international tobacco industry associations, the Canadian cigarette industry's positions on smoking and health issues.
114. In furtherance of the conspiracy, concert of action and common design , CTMC:
- (a) disseminated false and misleading information regarding the risks of smoking including making false and misleading submissions to governments;
 - (b) refused to admit that smoking caused disease;

- (c) suppressed research regarding the risks of smoking;
 - (d) participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease; and
 - (e) lobbied governments in order to delay and minimize government initiatives with respect to smoking and health.
115. At all material times, CTMC acted as the agent of some or all of the Defendants.
116. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued, and of the tobacco related wrongs committed by the Defendants in Canada in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Defendants.

(iii) Conspiracy within Corporate Groups

The Rothmans Group

117. The Rothmans Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized, convened and attended by senior personnel of the Rothmans Group members, including those of Rothmans Inc., Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Carreras Rothmans Limited, as well as those of the Philip Morris Group, and through written and oral directives and communications amongst the Rothmans Group members.
118. Carreras Rothmans Limited and affiliated companies were involved in directing or co-

ordinating the Rothmans Group's common policies on smoking and health by preparing and distributing statements which set out the Rothmans Group's position on smoking and health issues.

119. Carreras Rothmans Limited and affiliated companies also were involved in directing or co-ordinating the smoking and health policies of Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc., by influencing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
120. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed by Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc., in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Rothmans Group members.

The Philip Morris Group

121. The Philip Morris Group members entered into the conspiracy, concert of action and common design and referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized and convened by Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and attended by senior personnel of the Philip Morris Group companies, including those of Rothmans, Benson & Hedges Inc. and its amalgamating

company Benson & Hedges (Canada) Ltd., and through written and oral directives and communications amongst the Philip Morris Group members.

122. The committees used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Committee on Smoking Issues and Management and the Corporate Products Committee.
123. The conferences used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Conference on Smoking and Health and the Corporate Affairs World Conference.
124. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International Inc. further directed or co-ordinated the Philip Morris Group's common policies on smoking and health by means of their respective Corporate Affairs and Public Affairs Departments which directed or advised various departments of the other members of the Philip Morris Group, including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., concerning the Philip Morris Group position on smoking and health issues.
125. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the common policies of the Philip Morris Group on smoking and health by preparing and distributing to the members of the Philip Morris Group including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., written directives and communications including "Smoking and Health

Quick Reference Guides" and "Issues Alerts". These directives and communications set out the Philip Morris Group's position on smoking and health issues to ensure that the personnel of the Philip Morris Group companies, including Rothmans, Benson & Hedges Inc., and its amalgamating company Benson & Hedges (Canada) Ltd., understood and disseminated the Philip Morris Group's position.

126. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the smoking and health policies of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
127. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed by Rothmans, Benson & Hedges Inc., its amalgamating company Benson & Hedges (Canada) Inc., and by Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Philip Morris Group members.

The RJR Group

128. The RJR Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized and

convened by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. and attended by senior personnel of the RJR Group members, including those of JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., and through written and oral directives and communications amongst the RJR Group members.

129. The meetings used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health included the Winston-Salem Smoking Issues Coordinator Meetings.
130. The conferences used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health include the "Hound Ears" and Sawgrass conferences.
131. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., further directed or co-ordinated the RJR Group's position on smoking and health by means of a system of reporting whereby each global "Area" had a "smoking issue designee" who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to the Manager of Science Information in the R.J. Reynolds Tobacco Company. In the case of Area II (Canada), this "designee" was, from 1974, a senior executive of Macdonald Tobacco Inc., and later of JTI-Macdonald Corp.
132. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the RJR Group's common policies on smoking and health by preparing and distributing to the members of the RJR Group, including JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., written directives and communications including an "Issues Guide". These directives and communications set

out the RJR Group's position on smoking and health issues to ensure that the personnel of the RJR Group companies, including JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., understood and disseminated the RJR Group's position.

133. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the smoking and health policies of JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
134. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed by JTI-Macdonald Corp., its predecessor company Macdonald Tobacco Inc., and the Defendant, R.J. Reynolds Tobacco Company, in furtherance of the conspiracy, concert of action and common design are within the knowledge of the RJR Group members.

The BAT Group

135. The BAT Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design and at or through committees, conferences and meetings established, organized and convened by British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. and attended by senior personnel of the BAT Group members, including those of Imperial Tobacco Limited and Imasco Limited, and

through written and oral directives and communications amongst the BAT Group members.

136. The committees used by British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., or either of them, to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board, the Tobacco Executive Committee, and the Tobacco Strategy Review Team (which later became known as the Tobacco Strategy Group).
137. The conferences used by the Defendants, British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Advisory Conferences, BAT Group Research Conferences, and BAT Group Marketing Conferences. Some of these conferences took place in Canada.
138. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c. further directed or co-ordinated the BAT Group's common policies on smoking and health by preparing and distributing to the members of the BAT Group, including Imperial Tobacco Limited and Imasco Limited, written directives and communications including "Smoking Issues: Claims and Responses", "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues", "Smoking and Health: The Unresolved Debate", "Smoking: The Scientific Controversy", "Smoking: Habit or Addiction?", and "Legal Considerations on Smoking and Health Policy". These directives and communications set out the BAT Group's position on smoking and health issues to ensure that the personnel of the BAT Group companies,

including the personnel of Imperial Tobacco Limited and Imasco Limited, understood and disseminated the BAT Group's position.

139. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., further directed or co-ordinated the smoking and health policies of Imperial Tobacco Limited and Imasco Limited, by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
140. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed in furtherance of the conspiracy, concert of action and common design are within the knowledge of the BAT Group members.
141. As a result of the aforementioned conspiracy, concert of action and common design, persons in Ontario started to, or continued to, smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

**Breach of *Consumer Protection Act, 2002*, the *Competition Act* and their
Predecessor Statutes**

142. The Defendants, in breach of their statutory duties or obligations pursuant to the *Business Practices Act* S.O. 1974, c.131, s.2 and successor legislation including the *Consumer Protection Act, 2002* S.O. 2002, engaged in unfair practices by making false, misleading

or deceptive representations, by word or by conduct. The Defendants further breached these statutes by making unconscionable representations.

143. In addition, the Defendants, for the purpose of promoting, directly or indirectly, the supply or use of cigarettes, breached their statutory duties or obligations to consumers under the *Combines Investigation Act* R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act* S.C. 1968-69, chapter 38 and amendments thereto and subsequently the *Competition Act* R.C.S. 1985, chapter C-34 and amendments thereto. Specifically, the Defendants made representations to the public that were false or misleading in a material respect and 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.
144. Knowing that cigarettes were addictive and would cause and contribute to disease, the Defendants intentionally inflicted harm on persons in Ontario by manufacturing, promoting and selling cigarettes, for profit and in disregard of public health.
145. The Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine, particulars of which include:
 - (a) manipulating the level and bio-availability 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 through the blending of tobaccos 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 bio-availability 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 warnings provided to such consumers;
 - (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 and the risks of exposure to second hand smoke by using innuendo, exaggeration and ambiguity having the tendency to mislead them about the material facts regarding smoking and health;
 - (h) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes;
 - (i) providing misleading information to the public about the risks of smoking and the risks of exposure to second hand smoke based upon a failure to provide any or any adequate research or testing of their cigarettes;
 - (j) publicly discrediting the testing and research undertaken, and information provided by others, regarding the link between smoking and disease and smoking and addiction;
 - (k) failing to take any, or any reasonable, measures to prevent children and adolescents from starting or continuing to smoke;
 - (l) 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;
 - (m) 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 consumers;
- (n) making the following representations to such consumers which they knew or ought to have known were false or misleading:
 - (i) representing that smoking and exposure to second hand smoke 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 or exposure to second hand smoke and disease,
 - (iii) representing that many diseases shown to have been caused by smoking tobacco or exposure to second hand smoke were in fact caused by other environmental or genetic factors;
 - (iv) representing that cigarettes were not addictive,
 - (v) representing that they were aware of no research, or no credible research, establishing that smoking is addictive,
 - (vi) representing that smoking is merely a habit or custom,
 - (vii) representing that they did not manipulate nicotine levels in their cigarettes,
 - (viii) representing that they did not include substances in their cigarettes designed to increase the bio-availability of nicotine,
 - (ix) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes,
 - (x) representing that certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes,
 - (xi) representing that smoking is consistent with a healthy lifestyle,
 - (xii) representing that the risks of smoking were less serious than they knew them to be; and
 - (o) 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 and exposure to second hand smoke,
 - (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);
 - (p) failing to correct statements made by others to such consumers regarding the risks of smoking and exposure to second hand smoke, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.
146. In making the representations referred to in paragraph 145, the Defendants knew or ought to have known:
- (a) that the consumers are not reasonably able to protect their interests because of disability, ignorance, illiteracy, or similar factors; and
 - (b) that the consumers are unable to receive a substantial benefit from the subject-matter of the representations (ie. cigarettes).
147. As a result of the aforementioned breaches of statutory duties and obligations, persons in Ontario started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of such disease. The Crown has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

JTI-Macdonald Corp. Active Participation in Smuggling

148. During the period 1986 to 1996, the Defendant, JTI-Macdonald Corp., then known as RJR Macdonald Inc. (hereinafter, "JTI"), engaged in activities that constituted breaches of the *Criminal Code of Canada* and breaches of duty to consumers in Ontario, including, without restriction, children and adolescents. These activities were undertaken with the knowledge and participation of, and in concert with, its then parent company, the Defendant, R.J. Reynolds Tobacco Company. Particulars of these activities are as

follows:

- (a) JTI exported significant quantities of cigarettes and fine-cut tobacco products manufactured in Canada to the United States, without paying federal excise taxes and duties, intending those products to be brought back into Canada, sold and consumed in Canada;
 - (b) JTI acted in concert with others and aided and abetted them to smuggle and import tobacco products back into Canada for distribution and sale through the “underground” or “black market” in Canada, including in Ontario, without payment of applicable taxes and outside of lawful channels; and
 - (c) JTI actively covered up and concealed their actions, and made false representations to the effect that they were not involved in smuggling.
149. JTI was, during the relevant time, aware of illegal distribution channels through which its tobacco products were being smuggled back into Canada and knowingly used these illegal distribution channels to enable persons to possess and sell its tobacco products in Ontario at prices which did not include duties and taxes. JTI was thus able to make products available at a lower price outside the Government regulatory framework which, *inter alia*, prohibited the sale of tobacco products to adolescents and youth. These activities were carried out in order to maintain the market share of JTI in Canada.
150. In this manner, JTI acted to avoid paying the required taxes under the *Ontario Tobacco Tax Act*, R.S.O. 1990, c.T.10 and breached the *Criminal Code of Canada*.
151. Full particulars of the active involvement of JTI and its affiliates in the unlawful smuggling activities described above are contained in the Notice of Claim filed by the Province of Ontario in Superior Court of Ontario Court File No. 04-CL-5530, being a proceeding initiated by JTI-Macdonald Corp. pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
152. In connection with the sale of the international (including Canada) tobacco business to

Japan Tobacco Inc. on May 12, 1999, the Defendant, R.J. Reynolds Tobacco Company, and others, agreed to indemnify Japan Tobacco Inc., and its affiliates (which affiliates include JTI-Macdonald Corp.), *inter alia*, for any liabilities arising out of the activities of Northern Brands International Inc. (“NBI”) (the “Indemnity”). On December 22, 1998, NBI entered into a plea agreement with the United States Attorney for the Northern District of New York in respect of charges that it aided and abetted certain customers who brought merchandise into the United States by means of false and fraudulent practices. The activities of NBI which were the subject of the Indemnity and NBI’s criminal guilty plea aforesaid were an integral part of the smuggling networks used by JTI to avoid the payment and collection of taxes on Its products intended for sale in Ontario and elsewhere in Canada.

153. The health care costs that the Crown has incurred and will continue to incur for decades to come relating to the treatment of smokers in Ontario who became addicted to cigarettes as a direct result of the unlawful smuggling activities of NBI, JTI and their affiliates, are liabilities of the Defendant, JTI, for which it is indemnified under the Indemnity. The Crown says that it has a direct interest or claim in the Indemnity, or alternatively, in any funds or other benefits flowing to JTI as a result of the Indemnity, in respect of the health care costs of treating smokers who became addicted to cigarettes as a result of the smuggling activities aforesaid
154. The effect of the unlawful participation in smuggling activities aforesaid was to undermine the Crown’s tobacco control and taxation policies designed to deter smoking. As a result of these tobacco related wrongs, persons in Ontario started to smoke or continued to smoke cigarettes manufactured and promoted by the Defendants JTI, or

were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

B. Torts

155. In addition and by way of alternative, the Crown states that the material facts as set out in paragraphs 49 to 154 above also constitute the torts of negligence, negligent misrepresentation, fraudulent misrepresentation and conspiracy, committed in Ontario by the Defendants which caused or contributed to tobacco related disease.

V. CONCLUSION

156. Exposure to cigarettes can cause or contribute to disease. During all or part of the period in which the Defendants committed the tobacco related wrongs referred to in Part IV above, cigarettes manufactured or promoted by the Defendants were offered for sale in Ontario.
157. As a result of the above described tobacco related wrongs, insured persons in Ontario have suffered tobacco related disease or the risk of tobacco related disease. The Crown has incurred expenditures for health care benefits provided to these insured persons. In accordance with the Act, the Crown is entitled to recover these health care costs from the Defendants.
158. Furthermore, in accordance with section 4 of the *Act* and as a result of the facts set out in paragraphs 86 through 141, the Crown pleads that the Defendants are jointly and

severally liable for the cost of health care benefits provided to insured persons in Ontario resulting from tobacco related disease or the risk of tobacco related disease.

159. The Crown relies on Rules 17.02(g), (h), (o) and (p) in serving the Statement of Claim on Defendants outside Ontario without leave.

The Crown proposes that this action be tried at Toronto.

Date: September 29, 2009

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO v. ROTHMANS INC., ROTHMANS, BENSON & HEDGES INC., ET AL

Plaintiff

Defendants

Court File No.: *CV 09-387984*

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceedings Commenced in TORONTO

STATEMENT OF CLAIM

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