

AMENDED THIS  
MODIFIÉ CE

March 28 2014

PURSUANT TO  
CONFORMEMENT À

☒ RULE 26.02 (A)

☐ THE ORDER OF  
L'ORDONNANCE DU

DATED / FAIT LE

ONTARIO

SUPERIOR COURT OF JUSTICE

REGISTRAR

SUPERIOR

GREFFIER

COUR SUPÉRIEURE DE 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

FRESH AS AMENDED 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: September 29, 2009 Issued by: "J. Grant"

Local Registrar

Address: 393 University Avenue, 10<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1E6

**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 against the Defendants, jointly and severally:
  - (a) recovery 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 and post-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., 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 (formerly known as John Sinclair, 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.), 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.
- 11. The Defendant, Philip Morris USA Inc. (formerly known as Philip Morris Incorporated), 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 and it engaged, directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario.

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., RJR-Macdonald Inc., and Macdonald Tobacco 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.
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 and it engaged, directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario.
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 and is a successor in interest to the Defendants, B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited.
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 and is a successor in interest to the Defendant, British American Tobacco (Investments) Limited.

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, particulars of which are set out in paragraphs 110-116.

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,

particulars of which are set out in paragraphs 110-116.

### **III. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO**

#### **A. Canadian Tobacco Companies**

##### **The Defendant Rothmans Inc.**

23. Rothmans Inc., and its predecessor corporations, have 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. Rothmans Inc. was incorporated in 2000 as an amalgamation of ROTHMANS INC., ROTHMANS OF CANADA LTD., and ROTHMANS PARTNERSHIP IN INDUSTRY CANADA LIMITED.

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 pursuant to the laws of Canada in 1980, 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, including cigarettes manufactured by the Defendant Philip Morris USA Inc.
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. MacDonald Brothers and Company Tobacco Merchants carried on business commencing in 1858 and was renamed W.C. MacDonald Incorporated, Tobacco Merchant and Manufacturer, and then renamed W.C. MacDonald Incorporated in 1930, and again changed its name to Macdonald Tobacco Inc. in 1957, and became a wholly owned subsidiary of the Defendant, R.J. Reynolds Tobacco Company, in 1974.
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 of Macdonald Tobacco Inc.'s assets and liabilities 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., which was the ultimate parent of R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International. In March 1999, RJR Nabisco sold RJR-Macdonald Corp., which was the amalgamation of RJR-Macdonald Inc. and a subsidiary of RJR-Macdonald Inc., to Japan Tobacco Inc. As a result of that transaction, the name of the RJR-Macdonald Corp. was changed to JTI-Macdonald Corp.
32. JTI-Macdonald Corp. (and its predecessor corporations, Macdonald Tobacco Inc., RJR-Macdonald Inc. and RJR-Macdonald Corp., for whom it is responsible at law) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario, including cigarettes manufactured by the Defendant R.J. Reynolds Tobacco Company.

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 ("Imasco").
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, a 58% shareholding interest in Imasco was acquired by a wholly owned subsidiary of British American Tobacco p.l.c., British American Tobacco (Canada) Limited. At that time, British American Tobacco p.l.c. was the owner of 42% of the issued and outstanding shares in Imasco. Imasco and British American Tobacco (Canada) Limited were then amalgamated and the name of the amalgamated entity was changed to Imperial Tobacco Canada Limited ("Imperial"). In the result, British American Tobacco p.l.c. became the owner of 100% of the issued and outstanding shares in 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, as set out above in paragraphs 23-39.
42. The manufacturers of cigarettes sold in Ontario within each Group have had common policies relating to smoking and health. The common policies have been directed or co-ordinated by the Defendants within each group ("Lead Companies") or their predecessors in interest for whom they are in law responsible. Particulars of the common policies and the manner in which they were implemented are set out in paragraphs 86 to 141.
43. At all material times since 1950, the Lead Companies of the four Groups were as follows:

<b>Group</b>	<b>Lead Companies</b>
Rothmans Group	Carreras Rothmans Limited [1950 to present]
Philip Morris Group	Altria Group, Inc. (formerly Philip Morris Companies Inc.) [1985 to present] Philip Morris USA Inc. [1950 to present] Philip Morris International, Inc. [1987 to present]

Group	Lead Companies
RJR Group	R.J. Reynolds Tobacco Company [1875 to present] R.J. Reynolds Tobacco International, Inc. [1976 to present]
BAT Group	British American Tobacco p.l.c. [1998 to present] B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and before that Tobacco Securities Trust Limited) [1976 to present] British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited) [1902 to present]

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

- (a) Rothmans, Benson & Hedges Inc. (federally incorporated in Canada) [1986 to 2009];
- (b) Rothmans Inc. (federally incorporated in Canada) [2000 to 2009];
- (c) Rothmans of Pall Mall Limited (incorporated in the United Kingdom) [1960 to present];
- (d) John Sinclair, Limited (incorporated in the United Kingdom) [1905 to 1972], later renamed Carreras Rothmans Limited [1972 to present];
- (e) Carreras, Limited (incorporated in the United Kingdom) [1903 to 1972], later renamed Rothmans International Limited [1972 to 1981], Rothmans International p.l.c. [1981 to 1993], and Ryesekks p.l.c. [1993];
- (f) Rothmans of Pall Mall Canada Limited (federally incorporated in Canada) [1956 to 1985], later renamed ROTHMANS INC. [1985 to 2000];
- (g) Rothmans of Canada Kings Limited (federally incorporated in Canada) [1980 to 1985], later renamed Rothmans of Pall Mall Limited [1985 to 1986]; and
- (h) Lintpenny Limited (incorporated in the United Kingdom) [1986], later renamed Rothmans International Services Limited [1986 to 1991], Rothmans International Tobacco Limited [1991 to 1993], and then Rothmans International Services Limited [1993 to present].

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

- (a) Philip Morris Companies Inc. (incorporated in Virginia) [1985 to 2003], later renamed Altria Group, Inc. [2003 to present];

- (b) Philip Morris & Co. Limited (incorporated in Virginia), later renamed Philip Morris USA Inc. [1919 to present];
  - (c) Philip Morris International, Inc. (incorporated in Virginia) [1987 to present];
  - (d) Rothmans, Benson & Hedges Inc. (federally incorporated in Canada) [1986 to present]; and
  - (e) Benson & Hedges (Canada) Inc. (federally incorporated in Canada) [1934 to 1986].
46. The members of the RJR Group have included the following companies:
- (a) R.J. Reynolds Tobacco Company [1875 to present];
  - (b) R.J. Reynolds Tobacco International, Inc. [1976 to 1999];
  - (c) Macdonald Tobacco Inc. [1974 to 1979];
  - (d) RJR-Macdonald Inc. [1978 to 1999]; and
  - (e) RJR-Macdonald Corp. [1999], later renamed JTI-Macdonald Corp. [1999 to present].
47. The members of the BAT Group have included the following companies:
- (a) Imperial Tobacco Company of Canada, Limited (federally incorporated in Canada) [1912 to 1966], later renamed Imperial Tobacco Company of Canada Limited [1966 to 1970], and then Imasco Limited [1970 to 2000];
  - (b) B.A.T Industries p.l.c. [1976 to present];
  - (c) British American Tobacco (Investments) Limited [1902 to present];
  - (d) British American Tobacco p.l.c. [1998 to present];
  - (e) Imperial Tobacco Canada Limited (incorporated in Canada) [2000 to present];
  - (f) Imperial Tobacco Sales Company of Canada Limited (incorporated in Canada) [1931 to 1966], later renamed Imperial Tobacco Sales Limited [1966 to 1969], Imperial Tobacco Products Limited [1969 to 1974], and Imperial Tobacco Limited [1970 to 2000];
  - (g) Brown & Williamson Tobacco Corporation [1927 to 2004]; and
  - (h) American Tobacco Company [1994 to present].



#### **IV. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS**

48. The Crown states that the Defendants, R.J. Reynolds Tobacco Company, Rothmans Inc. (and its predecessor corporations), Rothmans, Benson & Hedges Inc. (and its predecessor corporations), Philip Morris USA Inc. (formerly known as Philip Morris Incorporated), JTI-Macdonald Corp. (and its predecessor corporations) and Imperial (and its predecessor corporations), all of which engaged directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario, have committed tobacco related wrongs as that term is defined in the *Act*. In particular, these Defendants, hereinafter referred to as Direct Breach Defendants, have committed the following breaches of common law, equitable or statutory duties or obligations owed by these Defendants to persons in Ontario who have been exposed or might become exposed to a tobacco product manufactured by them and offered for sale in Ontario. 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 Direct Breach Defendants designed and manufactured cigarettes sold in Ontario 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 since 1950, or from the date of their incorporation if subsequent to that date, 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 to nicotine.
53. By 1950, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that smoking cigarettes could cause or contribute to the diseases set out in paragraph 51 herein.
54. By 1950, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health 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, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that exposure to second hand smoke could cause or contribute to disease.

**Breach of the Duty - Design and Manufacture**

56. At all material times since 1950, the Direct Breach Defendants owed a duty of care to persons exposed to cigarettes manufactured by them to design and manufacture a reasonably safe product which would not cause addiction and disease, and to take all reasonable measures to eliminate, minimize, or reduce the risks of addiction and disease from smoking the cigarettes they manufactured and promoted.
57. The Direct Breach Defendants have breached, and continue to breach, these duties since 1950 by failing to design a reasonably safe product which would not cause addiction and disease, and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of addiction and disease from smoking cigarettes manufactured by them.
58. The Direct Breach Defendants, in the design, manufacture and promotion of their cigarettes, created, and continue to create, an unreasonable risk of harm to the public from addiction and disease as a result of smoking or exposure to second hand smoke from which they have failed to protect the public, particulars of which are set out below.
59. The Direct Breach Defendants increased the risks of addiction and disease from smoking by manipulating the level and bio-availability of nicotine i.e. the biological availability of nicotine in the body from smoking their cigarettes, for purposes of maintaining and increasing sales of 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 Direct Breach Defendants.
60. The Direct Breach Defendants increased the risks of addiction and disease from smoking by adding to their cigarettes ineffective filters which did not reduce the risks of addiction and disease from smoking, since, as was known or should have been known by these Defendants, based on the research known to them into smoking practices, smokers would fully compensate for the presence of the filters by taking deeper inhalations of smoke and/or blocking the air holes in the filter; and by nevertheless misleading the public and government agencies by misrepresenting, particulars of which are set out in paragraph 72, that these filters made smoking safer contrary to their knowledge.
61. The Direct Breach Defendants further misled the public from 1950 on through marketing and advertising campaigns, by misrepresenting, particulars of which are set out in paragraph 72, in written and visual material, that “mild”, “low tar” and “light” filter cigarettes were healthier than regular cigarettes contrary to their knowledge.
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 Direct Breach 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 since 1950, the Direct Breach Defendants knew or ought to have

known that their cigarettes, when smoked as intended, were addictive and could cause or contribute to disease, and as manufacturers of cigarettes sold to persons in Ontario they owed a duty of care to warn the public who smoked cigarettes or might become exposed to cigarette smoke of the risks of addiction and disease from smoking or exposure to cigarette smoke, as was known, or should have been known to them based on research known to them on smoking and health.

64. The Direct Breach Defendants breached their duty to persons in Ontario 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,

which was known to them, or should have been known to them based on research known to them on smoking and health from 1950 on.

65. Any warnings that were provided by the Direct Breach Defendants were inadequate and ineffective in that they did not accurately reveal the true extent of what they knew or should have known of addiction and disease from smoking or exposure to cigarette smoke based on research known to them on smoking and health and:

- (a) failed to warn of the actual and known risks of addiction and disease from smoking;
- (b) were insufficient to give users, prospective users, and the public a true indication of the risks of addiction and disease from smoking or exposure to cigarette smoke;
- (c) were introduced for the purpose of delaying more accurate government-mandated warnings of the risks of addiction and disease from smoking or exposure to cigarette smoke;

- (d) failed to make clear, credible, complete and current disclosure of the risks of addiction and disease inherent in the ordinary use of their cigarettes and therefore failed to permit free and informed decisions concerning smoking; and
  - (e) and failed to inform persons who might become exposed to cigarette smoke of the risks of disease from such exposure so that they could take measures to limit or eliminate such exposure.
66. The Direct Breach Defendants knew or ought to have known based on research known to them since 1950 that children under the age of 13 and adolescents under the age of 19 in Ontario were smoking or might smoke their cigarettes, but failed to provide warnings sufficient to inform children and adolescents of the risks of addiction and disease, which would have accurately conveyed their knowledge of these risks to children and adolescents.
67. The Direct Breach 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, by mischaracterizing any health concerns relating to smoking, either with respect to addiction or disease, or attempts at regulation by health authorities or governments, as unproven, controversial, extremist, authoritarian, and an infringement of liberty.
68. The Direct Breach Defendants suppressed the information which was known to them or should have been known to them based on research conducted by them or by their Lead Companies or on their behalf, regarding the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke, as directed by their Lead Companies as set out in paragraphs 88 to 107 herein.
69. The Direct Breach Defendants misinformed and misled the public, particulars of which

are set out in paragraph 72, about the risks of addiction and disease from smoking and the risks of disease from 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 Direct Breach 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. As manufacturers of tobacco products, the Direct Breach Defendants owed a duty of care to persons in Ontario who consumed, or were exposed to, cigarette smoke from cigarettes manufactured by them and sold in Ontario and ought reasonably to have foreseen that persons in Ontario who smoked would rely on any representations made by them with respect to the risks of addiction and disease from smoking and the risk of disease from exposure to second hand smoke. Such reliance by persons in Ontario was reasonable in all of the circumstances since as set out below the Direct Breach Defendants took steps to assure persons in Ontario of the truth of their misrepresentations and to conceal from them the true extent of the risks of smoking and exposure to second hand smoke. As a result, since 1950 the Direct Breach Defendants owed a duty to persons in Ontario not to misrepresent the risks of addiction and disease from smoking and the risk of disease from exposure to second hand smoke as was known, or should have been known to them based on research known to them on smoking and health.

72. The Direct Breach Defendants, with full knowledge of the risks of addiction and disease,



misrepresented the risks of smoking and exposure to second hand smoke since 1950 by denying any link between smoking and addiction and disease and denying any link between exposure to second hand smoke and disease contrary to what was known or should have been known to them, based on research known to them on smoking and health. In particular, since 1950 and continuing to the present the Direct Breach Defendants misrepresented to persons in Ontario 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.

72.1. The above misrepresentations were conveyed to persons in Ontario by the Direct Breach Defendants:

- (a) in cigarette brand advertising and related marketing and promotional materials in all media, including radio, television, billboards, bus shelters, posters, displays, signs, print media and various electronic media including the internet. Advertising includes commercials, posters, print ads, news releases, press kits, contest materials, coupons, brand merchandising materials, sampling items and activities, discounting and other marketing activities;
- (b) on cigarette packaging, including carton wrappings;
- (c) at cigarette brand-promoting activities, including cultural, sporting and other events and activity sponsorships, and in promotional materials prepared in relation to such activities, including news releases, press kits, contests, coupons, brand merchandising materials, sampling items and activity materials, discounting and other marketing activities;
- (d) in paid advocacy carried out in media including newspapers, magazines, radio, television, and the internet paid for in whole or in part by the Direct Breach Defendants;
- (e) in research results presented to the public, governments, news and information media and other organizations as objective and independent when in fact these results were not and the research itself had been funded by the Direct Breach Defendants;
- (f) in media interviews, correspondence and other materials prepared on behalf of, and discussions, speeches and presentations given by, company officials, tobacco industry spokespersons acting on behalf of Direct Breach Defendants directly or indirectly (such as CTMC lobbyists, and public relations experts), to persons in Ontario, elected officials, government bureaucrats, medical, health and scientific organizations and bodies, conferences, columnists and journalists, writers, media editors, publishers and scientists; and
- (g) via company or tobacco industry spokespersons who did not represent themselves as such at the time or who held themselves out as 'independent' of the Direct Breach Defendants' interests, but who were in fact acting as agents for the Direct Breach Defendants, having received money or money's worth from the Direct Breach Defendants, directly or indirectly. These individuals communicated to, and corresponded with, and provided information to the public, members of the news and information media, elected officials, government officials, members of scientific and health promotion and research entities as well as members of the general public.

72.2. Since 1950, Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually

by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors through a variety of means, including the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and the National Association of Tobacco and Confectionery Distributors Convention (October 1969);
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), and with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981);
- (c) full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart "vital information" as soon as available; and
- (d) public and media statements to Canadian newspapers and on national television (including in the Toronto Daily Star (September 1962, June 1969) and in the Globe and Mail (June 1967).

72.3. Since 1950, Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by Rothmans, Benson & Hedges Inc. and its predecessors through a variety of means, including the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988);
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);

- (c) public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978));
- (d) Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.);
- (e) publications (including in the 1978 Booklet "The Facts" published by Benson & Hedges (Canada) Inc.); and
- (f) advertising, marketing and promotional campaigns.

72.4. Since 1950, R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors, as members of the RJR Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors through a variety of means, including the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988);
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);
- (c) publications (including "R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina" in The Tobacco Industry in Transition);
- (d) speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts);
- (e) public statements (including the 1983 Revised Mission Statement on Smoking and Health); and
- (f) advertising, marketing and promotional campaigns.

72.5. Since 1950, Imperial Tobacco Canada Limited and its predecessors, as members of the BAT Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by Imperial Tobacco Canada Limited and its predecessors through a variety of means, including the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969), the National Association of Tobacco and Confectionery Distributors Convention (October 1969), federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996);
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);
- (c) Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited);
- (d) public and media statements to Canadian newspapers and on national television, (including CBC television (December 1969) and in the Toronto Daily Star (June 1971));
- (e) publications (including on the topics of smoking and health, “habit or addiction” and environmental tobacco smoke); and
- (f) advertising, marketing and promotional campaigns.

73. The Direct Breach Defendants suppressed from persons in Ontario scientific and medical data, which was known or should have been known to them based on research on smoking and health which was known to them, which revealed the serious health risks of smoking and second hand smoke, for the purpose of continuing to misrepresent and conceal the risks of addiction and disease from smoking and exposure to second hand smoke.

73.1. Particulars of this suppression of scientific and medical data by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group:

- (a) agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake; and
- (b) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.2. Particulars of this suppression of scientific and medical data and research by Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group:

- (a) agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);
- (b) destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group;
- (c) closing research laboratories and destroying related scientific information;
- (d) withdrawing internal research relating to nicotine from peer review;
- (e) destroying internal research relating to nicotine;
- (f) prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the addictive effect of smoking; and
- (g) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.3. Particulars of this suppression of scientific and medical data by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors, as members of the RJR Group:

- (a) agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);

- (b) ceasing research on the effects of smoke because of its potential bearing on product liability;
- (c) imposing restrictions on the use of terms, including “drug,” “marketing” and “dependency,” in scientific studies;
- (d) invalidating and destroying research reports;
- (e) terminating and destroying research associated with R.J. Reynolds Tobacco Company’s “The Mouse House” experiments; and
- (f) participating in ICOSI’s total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.4. Particulars of this suppression of scientific and medical data by Imperial Tobacco Canada Limited and its predecessors, as members of the BAT Group:

- (a) agreeing with the Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);
- (b) agreeing with Rothmans Group to suppress research relating to carbon monoxide and smoke intake;
- (c) implementing a policy to avoid written documentation on issues relating to smoking and health;
- (d) agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group;
- (e) destroying research reports indicating the adverse health effects of smoking and exposure to second hand smoke (1992);
- (f) suppressing information and developments relating to potentially safer products; and
- (g) participating in ICOSI’s total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

74. The Direct Breach Defendants misinformed the public in Ontario, particulars of which are set out in paragraph 72, as to the harm of both smoking and of exposure to cigarette smoke, which was known or should have been known to them based on research on

smoking and health which was known to them.

75. The Direct Breach Defendants participated in a misleading campaign, particulars of which are set out in paragraph 72, to enhance their own credibility and diminish the credibility of health authorities and anti-smoking groups, for the purpose of reassuring smokers, contrary to what they knew or should have known based on research on smoking and health which was known to them, that cigarettes were not as dangerous as authorities were saying.
76. The Direct Breach 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 their cigarettes. It was reasonably foreseeable that persons in Ontario would and they did, in fact, rely upon these misrepresentations made by the Direct Breach Defendants for the purpose of persuading persons in Ontario to purchase cigarettes manufactured by them.
77. As a result of these misrepresentations, which were either made fraudulently, (contrary to their actual knowledge of the risks of addiction and disease from smoking or exposure to second hand smoke or recklessly without any reasonable basis or belief in their truth) or, in the alternative, negligently (in disregard of research into smoking and health which was available to them and which was known or should have been known to them) persons in Ontario started to, or continued to, purchase and smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke from such cigarettes, 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. Further to the duty of care alleged in paragraph 71, at all material times since 1950, the Direct Breach Defendants as manufacturers of cigarettes sold in Ontario 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 Direct Breach 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 as further particularized in paragraphs 142 to 147 herein, or public policy to sell cigarettes to children and adolescents or to promote smoking by such persons.
81. The Direct Breach Defendants knew or ought to have known based on research known to them on smoking and health 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 Direct Breach Defendants failed to take reasonable and appropriate measures to prevent children and adolescents from starting or continuing to smoke cigarettes manufactured by them and sold in Ontario.
83. The Direct Breach 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 Direct Breach Defendants, in further breach of their duty of care failed to take all reasonable measures to prevent children and adolescents from starting or continuing to smoke and 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 Direct Breach 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**

86. At all material times, the Defendants conspired, and acted in concert in committing the tobacco related wrongs alleged in paragraphs 48 to 85 and paragraphs 142 to 147, particulars of which are set out below. The Defendants are accordingly all deemed to have jointly breached the duties alleged in paragraphs 48 to 85 and paragraphs 142 to 147 under section 4 of the Act.

#### **(i) Conspiracy within the International Tobacco Industry**

87. Commencing in or about 1953, in response to mounting publicity and public concern about the link between smoking and disease, the Lead Companies of the four Groups or their predecessors in interest for whom the Lead Companies are in law responsible,

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 through meetings it attended on behalf of and as directed by its parent corporation British American Tobacco Company Limited), and American Tobacco Company. These companies, on their own behalf and on behalf of their respective Groups, contrary to their knowledge, agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of addiction and disease from smoking cigarettes;
- (b) make no statement or admission that smoking caused disease;
- (c) suppress or conceal research that was known or should have been known to them regarding the risks of addiction and disease from smoking cigarettes; 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 that were known or should have been known to them; 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 of the Lead Companies

and through written and oral directives issued by the Lead Companies to members of their Groups who manufactured cigarettes sold in Ontario.

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"), the Tobacco Institute ("TI"), and the Tobacco Manufacturers' Standing Committee, (renamed the Tobacco Research Council ("TRC") and then the Tobacco Advisory Council), collectively referred to as TRC, and Verband der Cigarettenindustrie ("Verband") which was the German equivalent of the Tobacco Institute to which the Lead Companies were affiliated.
91. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC, CTMC, TI, Verband 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. Particulars of these misrepresentations are within the knowledge of the Defendants but include:
  - (a) The issuance of the TIRC's 1954 "Frank Statement to Cigarette Smokers" which received coverage in the Canadian press;
  - (b) Statements made to the Canadian Medical Association in May 1963;
  - (c) November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare;
  - (d) May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs;
  - (e) Statements to the national press and news organizations in Canada; and

- (f) Communications through the CTMC in Canada, including to the federal Department of Health and Welfare.
92. In reality, the Lead Companies conspired with the TIRC, the CTR, CORESTA, the TRC, CTMC, TI, Verband and similar organizations, to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Lead Companies intended to mislead persons in Ontario and the Crown, into believing that there was a real medical or scientific controversy about whether smoking caused addiction and disease contrary to their knowledge.
93. In 1963 and 1964, the Lead Companies agreed to co-ordinate 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, contrary to their knowledge.
95. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease, as was known to them or should have been known to them based on research on smoking and health which was known to them, 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, which was known to them or should have been known to them based on research on smoking and health which was known to them.

97. By the mid-1970s, the Lead Companies 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 as was known to them or should have been known to them based on research on smoking and health which was known to them, could lead to a “domino effect” to the detriment of the industry world-wide.
- 97.1. In 1974, the Lead Companies as members of TI formed a Research Review Committee, which became known as the Research Liaison Committee to achieve a coordinated approach to all industry research into smoking and health. In 1978, the Research Liaison Committee was replaced with the Industry Research Committee.
98. As a result, in June, 1977, the Lead Companies met in England to establish the International Committee on Smoking Issues ("ICOSI").
99. Through ICOSI, the Lead Companies resisted attempts by governments including in Canada to provide adequate warnings about smoking and disease including the effects of second hand smoke, and pledged to:
- (a) jointly disseminate false and misleading information regarding the risks of addiction and disease from smoking;
  - (b) make no statement or admission that smoking caused disease;
  - (c) suppress research that was known or should have been known to them regarding the risks of addiction and disease from 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 addiction and disease from 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;

hereinafter referred to as the ICOSI policies and position on smoking.

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 the Direct Breach Defendants, would act in accordance with the ICOSI position on smoking and health set out above, 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 Lead Companies 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 led by Lead Companies of the Philip Morris Group in concert with the Rothmans Group and the BAT Group.
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 material 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 including in Canada the existence of the conspiracy, concert of action and common design.

104. The Lead Companies at all times acted to ensure that the manufacturers of cigarettes sold in Ontario within their Group complied, and did not deviate, from the official ICOSI position on the adverse health effects of smoking, particulars of which are set out below in paragraphs 117 to 140.
105. In addition to the foregoing, the Lead Companies engaged in a conspiracy, concert of action and common design specifically with respect to the issue of second hand smoke, as set out below.
106. In the early 1970s, the Lead Companies began to combine their resources and coordinate their activities specifically with respect to second hand smoke. In 1975, the Lead Companies formed the first of several committees to specifically address second hand smoke, which they also called Environmental Tobacco Smoke (ETS) and passive smoking. The first committee, sometimes referred to as the Public Smoking Committee or Advisory Group, met under the direction of the Research Liaison Committee. Although the Lead 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 Lead Companies of these harmful effects. The Committee formed in 1975 and its various successors, including the Tobacco Institute ETS Advisory Committee (“TI-ETSAG”) founded in 1984 and the Committee for Indoor Air Research (“CIAR”) founded in 1988,



carried out the mandate of the Lead Companies of challenging the growing consensus regarding second hand smoke by:

- (a) 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;
- (b) leading the attack on government efforts to act on evidence linking second hand smoke to disease;
- (c) 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;
- (d) in the case of TI-ETSAG, meeting monthly to propose, review, and manage scientific projects approved for funding;
- (e) in 1988 when it was formed, the Chairman of the CIAR Board told the TI that the purpose of CIAR was providing ammunition for the tobacco industry on the ETS battlefield;
- (f) from 1988 until its dissolution in 1999, funding of 150 projects by CIAR at 75 institutions resulting in 250 peer reviewed publications, in addition to special studies on the effects of second hand smoke, 18 of which were released;
- (g) creating a consultancy program in June 1987 at a conference called “Operation Down Under” to train and deploy scientists worldwide;
- (h) in 1988 forming and funding of the Association for Research on Indoor Air (ARIA) by the Defendants’ consultants on second hand smoke; and
- (i) in 1989, forming of the Indoor Air International (IAI), a group to address scientific issues related to indoor air quality that the Defendants promoted publicly as learned societies dedicated to promote indoor air quality but failed to disclose that they were funded by the tobacco industry.

The policies and positions referenced above are hereinafter referred to as the CIAR policies and position on second hand smoke.

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 since in or about 1950, the Direct Breach Defendants, in furtherance of the conspiracy and concerted action within the International Tobacco Industry and within their particular Corporate Groups, conspired and acted in concert to prevent the Crown and persons in Ontario from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco related wrongs, as set out above in paragraphs 48 to 85 and below in paragraphs 142 to 147, 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 the Defendants Rothmans Inc., Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp. and Imperial Tobacco Canada Limited and their predecessors in interest for whom they are liable, hereinafter referred to as the Canadian Tobacco Company Defendants, and attended by their senior personnel and through written and oral directives and communications amongst them.
110. The conspiracy, concert of action and common design was continued when, contrary to their knowledge:
- (a) in or about 1962, the Canadian Tobacco Company Defendants 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 addiction and disease from smoking;

- (b) in 1963, the Canadian Tobacco Company Defendants misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease;
- (c) in or about 1963, the Canadian Tobacco Company 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, the Canadian Tobacco Company 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. In furtherance of the conspiracy, concert of action and common design, CTMC has lobbied governments and regulatory agencies throughout Canada on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants' since about 1963, with respect to tobacco industry matters, including delaying and minimizing government initiatives in respect of warnings to be placed on cigarette packages and imposing limitations on smoking in public places, as well as misrepresenting the risks of addiction and disease from smoking to the Canadian public, in accordance with the tobacco industry's position, which is the same as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

113. CTMC has co-ordinated, with the Canadian Tobacco Company Defendants and the international tobacco industry associations ICOSI and INFOTAB, through its membership in these organizations, the Canadian cigarette industry's positions on smoking and health issues.
114. In furtherance of the conspiracy, concert of action and common design, CTMC on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants:
- (a) disseminated false and misleading information regarding the risks of addiction and disease from smoking including making false and misleading submissions to governments denying any connection contrary to its knowledge;
  - (b) refused to admit that smoking caused disease contrary to its knowledge;
  - (c) suppressed research regarding the risks of addiction and disease from smoking which was known or should have been known to them;
  - (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, which was known or should have been known to them, between smoking and disease;
  - (e) lobbied governments in order to delay and minimize government initiatives with respect to smoking and health, including initiatives to place warnings on cigarettes packaging and limiting smoking in public places contrary to its knowledge;
  - (f) in a 1963 presentation to the Conference on Smoking and Health of the Department of National Health and Welfare, the Ad Hoc Committee of the Canadian Tobacco Industry (the predecessor to the CTMC) claimed that the evidence that tobacco causes disease was inconclusive and used this to undermine the scientific case against tobacco;
  - (g) stated in a 1968 paper that there is no established proof that tobacco causes harm;
  - (h) in June 1969 made a statement to the House of Commons Standing Committee on Health and Welfare denying that smoking is a major cause of illness or death;
  - (i) at a 1971 meeting of technical representatives of the members of CTMC called by the head of the CTMC, representatives of the CTMC and the Canadian tobacco companies noted the need for minimum nicotine levels in cigarettes;

- (j) denied at a 1971 press conference that tobacco causes disease;
- (k) in a 1977 Position Paper, stated that there is no persuasive scientific evidence to support the contention that the non-smoker is harmed by the tobacco smoke of others;
- (l) in a 1987 Position Statement, stated that:
  - (i) smoking had not been proven to cause disease;
  - (ii) smoking is not addictive; and
  - (iii) there was no conclusive evidence that second hand smoke causes adverse health effects and stated that the scientific community holds the view that there are no proven health consequences to exposure to second hand smoke;
- (m) in a 1987 press release denied that second hand smoke is harmful to health;
- (n) in 1987 advised a House of Commons Legislative Committee that there was uncertainty regarding the role of smoking in causing disease; and
- (o) in a 1990 letter wrote to the Canadian government to voice the Industry's opposition to the federal government's proposed amendments to the Tobacco Products Regulations which would require, inter alia, the placing of addiction warnings on cigarette packages. In its letter, the CTMC questioned whether smoking was addictive and whether second hand smoke was dangerous.

115. At all material times, CTMC acted as the agent of the Canadian Tobacco Company Defendants, as members of the CTMC, and as agent of the Lead Companies through its membership with them in the International Associations, ICOSI and INFOTAB. In 1982 CTMC became an associate member of INFOTAB and was a full participant from 1982 to 1989.

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 these Defendants and the CTMC.

**(iii) Conspiracy within Corporate Groups**

**The Rothmans Group**

117. In or about 1953 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 within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized, convened and attended by senior personnel of the Rothmans Group members, including those of Rothmans International Limited, 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. Rothmans International Limited functioned as a central body to coordinate and establish policies for all Rothmans Group members worldwide, creating an International Advisory Board for this particular purpose. These positions were then adopted by member companies.
- 118.1. From 1950 onwards, Rothmans Group policies included denying the existence of any relationship between smoking and adverse health effects, and strenuously opposing the introduction of warning labels on tobacco products. From 1960 onwards, these policies included denying or minimizing the relationship between exposure to cigarette smoke,

including second hand smoke, and adverse health effects.

118.2. Rothmans International Limited and Carreras Rothmans Limited directed Rothmans Inc. (and its predecessor corporations) to maintain the Rothmans Group's position that more research was required to determine whether cigarettes cause disease, and instructed Rothmans Inc. to resist cautionary warnings in advertising. Carreras Rothmans Limited also directed Rothmans Inc. (and its predecessor corporations) on how to vote at CTMC meetings on issues relating to smoking and health, including the approval and funding of research. Rothmans Inc. (and its predecessor corporations) acted as an agent for and as directed by Carreras Rothmans Limited.

118.3. Within the Rothmans Group, scientists worked collaboratively, exchanged research results, and advised senior management of the companies that were part of the Rothmans Group from time to time, through specific committees. From 1978 to 1986, Carreras Rothmans Limited and its research division were designated responsibility for providing direction on tobacco-related health issues and for coordinating the Rothmans Group's research strategy. Rothmans Inc. (and its predecessor corporations) in particular relied on Carreras Rothmans Limited's expertise and direction on smoking-related health issues. Rothmans Group companies also held meetings on issues related to second-hand smoke. Through its conferences, meetings, directives and policies, Carreras Rothmans Limited directed the Rothmans Group to take the same positions on smoking and health as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

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. (and its predecessor corporations), by influencing or advising how they should vote in committees of the Canadian manufacturers of cigarettes sold in Ontario 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. (and its predecessor corporations), 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. In or about 1953 the Philip Morris 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 within the International Tobacco Industry and the Canadian Tobacco Industry 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, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

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 of cigarettes sold in Ontario and by CTMC.
- 126.1 In furtherance of the conspiracy, concert of action and common design, Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and Rothmans Benson & Hedges Inc. and their predecessors participated in the establishment and operation of INBIFO, a research facility in Europe. At INBIFO, research was carried out into the health effects of both smoking and second hand smoke. When the research indicated that smoking and second hand smoke was harmful to health, the research was suppressed and/or destroyed.
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. In or about 1953 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 within the International Tobacco Industry and the Canadian Tobacco Industry 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 corporations), 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. (and its predecessor corporations).

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 corporations), written directives and communications including an "Issues Guide" and a "Media Guide".
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 corporations) 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 and maintaining the right to veto any particular research proposal.
  - 133.1 The direction and co-ordination of the RJR Lead Companies over the RJR Group was also carried out by:
    - (a) Developing an action plan which set out the RJR Group's position on smoking and health issues to ensure that the personnel in the RJR Group companies, including its Canadian subsidiaries, understood and disseminated the RJR Group's position;
    - (b) Taking a leadership role in the International Committee on Smoking Issues (ICOSI), particularly in relation to Canada and coordinating CTMC's positions to align with those of ICOSI as particularized in paragraph 99 herein, as well as the CIAR policies on second hand smoke particularized in paragraph 106 herein;
    - (c) Placing senior executives of the Lead Companies as senior executives of the Canadian subsidiaries;

- (d) Advising the RJR Group's sales representatives that cigarettes did not pose a health hazard to the non-smoker;
- (e) Making public statements on behalf of the entire Group denying or marginalizing the link between health and second hand smoke;
- (f) Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department;
- (g) Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes; and
- (h) Holding RJR Group and tobacco industry meetings relating to environmental tobacco smoke.

133.2 These directives and communications set out the RJR Group's position on smoking and health issues, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein. These directives and communications were meant to ensure that the personnel of the RJR Group companies, including those of JTI-Macdonald Corp. (and its predecessor corporations) understood and disseminated the RJR Group's position.

133.3 In furtherance of the conspiracy, concert of action and common design, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., and JTI-Macdonald Corp. (and its predecessor corporations) participated in the removal and destruction of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina and destroyed research relating to the biological activity of cigarettes manufactured and promoted by members of the RJR Group for sale in Ontario.

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., (and its predecessor corporations), and the Defendants, R.J. Reynolds Tobacco International and 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. In or about 1953 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 within the International Tobacco Industry and the Canadian Tobacco Industry 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.
- 135.1 The Lead Companies of the BAT Group have consistently held the BAT Group out to the public as a single corporate entity and tobacco enterprise, continuously in operation since 1902, and, as a result, each of the Lead Companies, by its words and conduct, continued and thereby adopted and assumed the benefits of and the liabilities of its predecessors for the conspiracy and acting in concert within the International Tobacco Industry and the Canadian Tobacco Industry and its own Group. British American Tobacco p.l.c. stands where its predecessors stood, at the head of the BAT Group, representing a continuity of control, purpose and policies throughout the past 100 years or more. British American

Tobacco p.l.c., like B.A.T Industries p.l.c. before it, has represented to the public in its annual financial statements and otherwise, that it has been in existence since 1902, employing tens of thousands of people and is one of the largest tobacco companies in the world. British American Tobacco p.l.c. has continued the BAT Group's practice of misleading the public and governments about the dangers of smoking and the risks of second-hand smoke.

136. The committees used by 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 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, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the the CIAR policies and position on second hand smoke particularized in paragraph 106 herein, by creating a Tobacco Strategy Review Team (TSRT) and preparing and distributing to the members of the

BAT Group, including Imperial Tobacco Limited and Imsco Limited, written directives and communications including "Smoking Issues: Claims and Responses", "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues" (that addressed inter alia second hand smoke), "Smoking and Health: The Unresolved Debate", "Smoking: The Scientific Controversy", "Smoking: Habit or Addiction?", and "Legal Considerations on Smoking and Health Policy", "Smoking and Health – Assumptions – Policy – Guidelines", "Environmental Tobacco Smoke – Improving the Quality of Public Debate, Smoking and Health – The End Result Debate", and "Answering the Critics". These directives and communications set out the BAT Group's position on smoking and health issues, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein and were meant to ensure that the personnel of the BAT Group companies, including the personnel of Imperial Tobacco Limited and Imsco Limited, understood and disseminated the BAT Group's position.

138.1 Direction, to this end, was further provided at meetings of the Tobacco Strategy Review Team and recorded in notes of meetings of the Tobacco Strategy Review Team. This strategy for the BAT Group was further set out in corporate documents such as the Listing Particulars of British American Tobacco p.l.c. in 1998, the statement of Policy of the Group on Regulatory and Taxation Issues and through various websites operated by the Lead Companies from and after 1998, including statements made by British American Tobacco p.l.c. on its website in 2003 and thereafter questioning research that exposure to second hand smoke causes disease.

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 of cigarettes sold in Ontario 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, set out in paragraphs 86 to 140, 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 Direct Breach 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, s.14 and 17, engaged in unfair practices by making false, misleading or deceptive representations in respect of cigarettes sold to persons in Ontario, by word or by conduct. These Defendants further breached these statutes by making unconscionable representations in respect of cigarettes sold by them to

persons in Ontario, contrary to the *Consumer Protection Act*, 2002 S.O. 2002, s.15. Particulars of the false, misleading or deceptive and unconscionable representations are set out in paragraphs 56 to 85 and 145 herein.

143. In addition, these Defendants, for the purpose of promoting, directly or indirectly, the supply to or use of cigarettes by persons in Ontario, breached their statutory duties or obligations to consumers in Ontario 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, section 116 and amendments thereto and subsequently the *Competition Act* R.C.S. 1985, chapter C-34, sections 52(1), 52(4), 74.1 and 74.03 and amendments thereto. Specifically, the Defendants made representations to the public in Ontario that were false or misleading in a material respect and made representations to the public in Ontario in the form of statements regarding the performance and efficacy of cigarettes that were not based on adequate and proper testing, particulars of which are set out in paragraphs 56 to 85 and 145.
144. Knowing that cigarettes were addictive and would cause and contribute to disease, these Defendants intentionally inflicted harm on persons in Ontario by manufacturing, promoting and selling cigarettes, for profit and in disregard of public health, with knowledge of the risks of addiction and disease and failing to disclose and suppressing this information as particularized herein.
145. These Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine from smoking cigarettes, 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 in reducing the risks of addiction and disease from smoking, 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 which was known or should have been known to them based on research on smoking and health which was known to them;
- (d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings regarding the risks of addiction and disease from smoking provided to such consumers;
- (e) suppressing or concealing from such consumers scientific and medical information regarding the risks of addiction and disease from smoking;
- (f) engaging in marketing and promotional 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 addiction and disease from smoking and the risks of disease from 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 in Ontario about the risks of addiction and disease from smoking and the risks of disease from 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 of cigarettes and persons exposed to cigarette smoke and provide no benefit to either class of persons;
- (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) representing that the actual intake of tar and nicotine associated with smoking their cigarettes was less than they knew it to be,
  - (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 on their behalf 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, these 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 by the Direct Breach Defendants, 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.

## **V. CONCLUSION**

148. Exposure to cigarettes can cause or contribute to disease. During the period in which the Defendants committed the tobacco related wrongs referred to in Part IV above, cigarettes manufactured or promoted by the Direct Breach Defendants were offered for sale in Ontario.
149. But for the above described tobacco related wrongs, insured persons in Ontario exposed to tobacco products manufactured or promoted by the Direct Breach Defendants would not have been exposed to these products, and as a result, 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 Direct Breach Defendants. The Crown pleads and relies on section 3 of the Act.
150. 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 all Defendants conspired and acted in concert in committing the tobacco related wrongs committed by the Direct Breach Defendants and as a result, all 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 caused or contributed to by the breaches of duty of the Direct Breach Defendants.
151. 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.

*September 29, 2009*  
Date: ~~March 28, 2014~~

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**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**ROTHMANS INC., et al**

- and -

Plaintiff

Defendants

**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
  
Proceeding commenced at Toronto

**FRESH AS AMENDED STATEMENT OF CLAIM**

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