

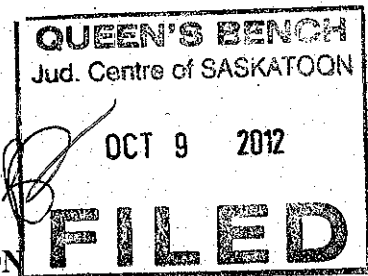
**AMENDED STATEMENT OF CLAIM**

(Amended October 5, 2012)

CANADA

PROVINCE OF SASKATCHEWAN

**IN THE QUEEN'S BENCH  
JUDICIAL CENTRE OF SASKATOON**



**BETWEEN:**

THE GOVERNMENT OF SASKATCHEWAN

**PLAINTIFF**

- and -

ROTHMANS, BENSON & HEDGES INC., ROTHMANS INC., 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, CARRERAS ROTHMANS LIMITED, and CANADIAN TOBACCO MANUFACTURERS' COUNCIL

**DEFENDANTS**

**NOTICE TO DEFENDANTS**

1 The plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as may be granted pursuant to the Rules of Court

within 20 days if you were served in Saskatchewan;

within 30 days if you were served elsewhere in Canada or in the United States of America;

within 40 days if you were served outside Canada and the United States of America.

(excluding the day of service) you serve a Statement of Defence on the plaintiff and file a copy thereof in the office of the local registrar of the Court for the judicial centre above-named.

2 In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult his lawyer as to his rights.

3 This Statement of Claim is to be served within six months from the date on which it is issued.

4 This Statement of Claim is issued at the above-named judicial centre the 8<sup>th</sup> day of June, 2012.

R. Robertson, Deputy Local Registrar  
Local Registrar

## AMENDED STATEMENT OF CLAIM

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## **I. INTRODUCTION**

### **A. The Plaintiff and the Nature of the Claim**

1. The Plaintiff, the Government of Saskatchewan, provides health care benefits for insured persons. Pursuant to the provisions of *The Tobacco Damages and Health Care Costs Recovery Act*, S.S. 2007, c.T-14.2 (the "Act"), the Government of Saskatchewan brings this action against the Defendants to recover the cost of health care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes.

In particular, the Government of Saskatchewan seeks to recover:

- (a) the present value of the total expenditure by the Government of Saskatchewan since 1953 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 Government of Saskatchewan 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 of the Defendants as described below. The Government of Saskatchewan pleads and relies on sections 3 and 4 of the Act.

2. The Government of Saskatchewan 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, and the Government of Saskatchewan does so in its own right and not

on the basis of a subrogated claim. The Government of Saskatchewan pleads and relies on subsections 3(1) and 3(2) of the Act.

3. The Government of Saskatchewan also pleads and relies on the presumptions and population-based evidence provisions under the Act, including subsections 3(5), 4(2) and 4(3) and section 6.
4. 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," "market share," "promote," "promotion," "tobacco product," "tobacco-related disease" and "tobacco-related wrong," have the meanings ascribed to them in the Act. The Government of Saskatchewan pleads and relies on the provisions of section 2 of the Act.
5. 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 and includes exposure to cigarette smoke.
6. Throughout the Statement of Claim, reference to a defendant includes both its predecessors in interest and its predecessors in name as identified in Part C. Reference to the Defendants means all of the Defendants unless otherwise stated.
7. The Defendants' tobacco-related wrongs began in 1950 and continue to the present, unless otherwise stated.

**B. Overview of the Government of Saskatchewan's Claim**

8. Each of the Defendants is a Manufacturer of tobacco products (referred to herein as cigarettes), as defined in the Act. At all times material to this action, cigarettes manufactured and promoted by the Defendants were offered for sale in Saskatchewan. The Defendants owed a duty to persons in Saskatchewan who have been exposed or might become exposed to cigarettes.
9. By 1950, the Defendants knew or ought to have known that nicotine is addictive and that smoking cigarettes could cause or contribute to disease. By 1960, the Defendants also knew or ought to have known that exposure to cigarette smoke could cause or contribute to disease.
10. From 1950, all of the Defendants have committed tobacco-related wrongs by breaching duties and obligations to persons in Saskatchewan, particularly their duties and obligations not to misrepresent the risks of smoking, to warn of the risks of smoking, not to promote cigarettes to children and adolescents, to design and manufacture a reasonably safe product, and other common law, equitable and statutory duties and obligations, as pleaded.
11. The Defendants have breached these duties and obligations by misrepresenting the risks of smoking and exposure to smoke, failing to warn the public that cigarettes are addictive and cause disease, engaging in promotional activities to neutralize the effectiveness of the warnings on cigarette packaging, targeting children and adolescents in promotional and marketing activities, suppressing information and scientific and medical data about the risks of smoking and exposure to smoke, manipulating the level and bio-availability of

nicotine in their cigarettes and misrepresenting that filters reduce the risks of smoking and that filtered, "mild," "low tar" and "light" cigarettes are healthier and safer than other cigarettes.

12. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and have suffered, or will suffer, tobacco-related disease or an increased risk of tobacco-related disease.
13. In committing these tobacco-related wrongs, the Defendants have conspired or acted in concert. From the 1950s, the Defendants have been members of multinational tobacco enterprises or "Groups" whose companies engaged in the manufacture and promotion of cigarettes in Saskatchewan and throughout the world. The four Groups were:
  - (a) the Philip Morris Group
  - (b) the R.J. Reynolds or RJR Group
  - (c) the British American Tobacco or BAT Group
  - (d) the Rothmans Group.
14. Beginning in 1953, these Groups agreed to disseminate false and misleading information, to suppress research and information on the risks of smoking and to orchestrate a false and misleading public relations program on smoking and health issues.
15. From 1953, the Defendants, both within each Group and with each other, have continued to conspire or to act in concert to distort research and to publicize misleading information about smoking and disease. They collectively agreed not to make any statement or

admission that smoking caused disease and not to issue cigarette warnings unless they were forced to do so by government action. Since 1960, the Defendants have conspired or acted in concert to misrepresent the risk of exposure to smoke.

16. Beginning in 1953, this conspiracy was implemented in Saskatchewan and throughout Canada through the defendants Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited, Rothmans Inc., and the Canadian Tobacco Manufacturers' Council.
17. The Defendants have conspired or acted in concert to prevent the Government of Saskatchewan and persons in Saskatchewan from acquiring knowledge of the harmful and addictive properties of cigarettes and in committing tobacco-related wrongs.
18. Particulars of the Government of Saskatchewan's claim are provided below.

**C. The Defendants**

19. In 1950 and for several decades thereafter, the four tobacco Groups were the Philip Morris Group, the RJR Group, the BAT Group and the Rothmans Group. Within each Group, certain companies (referred to herein as the Lead Companies) were responsible for the direction, control, coordination and implementation of the common policies on smoking and health described below.

**(i) The Philip Morris Group**

**1. Altria Group, Inc.**

20. The defendant Altria Group, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in



the United States of America. Altria Group, Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Companies Inc. Altria Group, Inc. is a Lead Company of the Philip Morris Group.

**2. Philip Morris U.S.A. Inc.**

21. The defendant Philip Morris U.S.A. Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in the United States of America. Philip Morris U.S.A. Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Incorporated. Philip Morris U.S.A. Inc. is a Lead Company of the Philip Morris Group.

**3. Philip Morris International, Inc.**

22. The defendant Philip Morris International, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Avenue, New York, New York, in the United States of America. Philip Morris International, Inc. is responsible in law for the actions and conduct of its predecessor in interest, Philip Morris Overseas, a division of Philip Morris Incorporated. In 1987, Philip Morris International, Inc. was incorporated as a subsidiary of Altria Group, Inc. Philip Morris International, Inc. remained a subsidiary of Altria Group, Inc. until 2008. Philip Morris International, Inc. is a Lead Company of the Philip Morris Group.

**4. Rothmans, Benson & Hedges Inc.**

23. The defendant Rothmans, Benson & Hedges Inc. is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans, Benson & Hedges Inc. is responsible in law for the actions and

conduct of its predecessors in interest, Benson & Hedges (Canada) Limited, Benson & Hedges (Canada) Inc., and Rothmans of Pall Mall Limited.

24. Benson & Hedges (Canada) Limited was incorporated in 1934. In 1958, Benson & Hedges (Canada) Limited became a subsidiary of Philip Morris International, Inc. and an integral part of the Philip Morris Group. In 1979, Benson & Hedges (Canada) Limited changed its name to Benson & Hedges (Canada) Inc.
25. Rothmans, Benson & Hedges Inc. was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited. In 2009, Rothmans, Benson & Hedges Inc. and the defendant Rothmans Inc. amalgamated and continued to operate as Rothmans, Benson & Hedges Inc. Rothmans, Benson & Hedges Inc. is a wholly owned subsidiary of Philip Morris International, Inc.

**5. The Philip Morris Group Lead Companies Control and Direct Rothmans, Benson & Hedges Inc.**

26. At all times material to this action, the Canadian company, Rothmans, Benson & Hedges Inc., has been controlled and directed by the Lead Companies of the Philip Morris Group. The control and direction by Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. has extended to the manufacture and promotion of their cigarettes.
27. The means by which the Philip Morris Group Lead Companies have exercised control and direction include:
  - i. Overseeing board meetings of Rothmans, Benson & Hedges Inc.

- ii. Placing board members of the Lead Companies on the board of directors of Rothmans, Benson & Hedges Inc.
- iii. Placing senior executives of the Lead Companies as senior executives of Rothmans, Benson & Hedges Inc.
- iv. Providing technical expertise, smoking and health materials, financial support and direction to Rothmans, Benson & Hedges Inc., including information on the relationship between smoking and health and technical knowledge for the manufacture of cigarettes, the levels of tar and nicotine and the type of tobacco to be used
- v. Organizing Philip Morris Group smoking and health conferences to set common policies for key tobacco companies in the Philip Morris Group, including Rothmans, Benson & Hedges Inc.
- vi. Developing and implementing Philip Morris Group positions and policies through committees, including the Corporate Issues Management Committee, the Corporate Products Committee and the Committee on Smoking Issues and Management
- vii. Creating a Public Affairs branch designed to manage smoking and health issues and government relations
- viii. Orchestrating marketing and promotional campaigns

- ix. Approving the deployment of funds for subsidiary operations, research into smoking and health, the promotion of cigarettes and smoker reassurance campaigns.
28. The control and direction by the Lead Companies of the Philip Morris Group have involved the implementation of the Philip Morris Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Philip Morris Group has maintained a policy that members of the Philip Morris Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the Philip Morris Group was to create doubt and controversy regarding the adverse health consequences of smoking and to defeat or delay anti-smoking legislation that would impose restrictions on the formulation, marketing, sale or use of cigarettes.
29. From 1960, it has been the Philip Morris Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
30. The Lead Companies of the Philip Morris Group have communicated and directed these policies for Rothmans, Benson & Hedges Inc. by a variety of means, including:
- i. Establishing directives and communications such as "Smoking and Health Quick Reference Guides" and "Issues Alerts" to the Regions, including Canada
  - ii. Providing training, technical expertise and support
  - iii. Convening conferences, including the Conference on Smoking and Health and the Corporate Affairs World Conference

- iv. Forming committees, such as the Committee on Smoking Issues Policy and Management and the Scientific Research and Review Committee for Worldwide Tobacco
  - v. Establishing Corporate Affairs and Public Affairs departments of the Lead Companies
  - vi. Conspiring or acting in concert as particularized in Part IV below.
31. These common policies of the Philip Morris Group have continued notwithstanding changes in the corporate structure of the Philip Morris Group. These common policies on smoking and health in the Philip Morris Group have been maintained in Canada under the control and direction of Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. from 1950 to the present, such that these defendants are responsible in law for the Philip Morris Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
32. In particular, the Government of Saskatchewan states that:
- i. By reason of the facts pleaded, Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
  - ii. Rothmans, Benson & Hedges Inc. has acted as agent for Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada

- iii. As described in Part IV, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**6. The Philip Morris Group Defendants are Manufacturers under the Act**

- 33. Each of Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. (collectively, "the Philip Morris Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the Philip Morris Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the Philip Morris Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the Philip Morris Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
- iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the Philip Morris Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants,

associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

34. From 1950 and continuing to the present, cigarettes manufactured or promoted by the Philip Morris Defendants have been offered for sale in Saskatchewan. The brand names of the cigarettes of the Philip Morris Defendants offered for sale in Saskatchewan and the rest of Canada include *Benson & Hedges, Belvedere, Marlboro, Marlboro Lights, Rothmans, Alpine* and *Parliament*.

(ii) **The RJR Group**

1. **R.J. Reynolds Tobacco Company**

35. The defendant R.J. Reynolds Tobacco Company is a company currently incorporated pursuant to the laws of ~~New Jersey~~ North Carolina and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco Company is a Lead Company of the RJR Group.
36. R.J. Reynolds Tobacco Company was incorporated in 1922. In 2004<sup>3</sup>, the U.S. assets, liabilities and operations of R.J. Reynolds Tobacco Company (at the time, incorporated pursuant to the laws of New Jersey) were combined ~~entered into a business combination~~ with those of Brown & Williamson Tobacco Corporation, owned by the defendant, British American Tobacco p.l.c. Concurrent with the completion of the business combination, R.J. Reynolds Tobacco Company became a North Carolina corporation. Its principal place of business continued to be North Carolina. For greater certainty, the Province pleads that R.J. Reynolds Tobacco Company (incorporated in North Carolina) is

responsible in law for the actions and conduct of its predecessor in interest and name, R.J. Reynolds Tobacco Company (incorporated in New Jersey).

**2. R.J. Reynolds Tobacco International, Inc.**

37. The defendant R.J. Reynolds Tobacco International, Inc. is a company incorporated pursuant to the laws of Delaware and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco International, Inc. is a Lead Company of the RJR Group.

**3. JTI-Macdonald Corp.**

38. The defendant JTI-Macdonald Corp. is a company formed by continuance pursuant to the laws of Canada and has a registered office at 1 Robert Speck Parkway, Mississauga, Ontario. JTI-Macdonald Corp. is responsible in law for the actions and conduct of its predecessors in interest, RJR-Macdonald Corp., RJR-Macdonald Inc. and Macdonald Tobacco Inc.
39. W.C. Macdonald Incorporated was incorporated in 1930 and changed its name to Macdonald Tobacco Inc. in 1957. In 1970, Macdonald Tobacco Inc. became the exclusive Canadian distributor of the cigarette brands of R.J. Reynolds Tobacco Company referred to in paragraph 50. Macdonald Tobacco Inc. became a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1974.
40. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald Tobacco Inc. and acquired all or substantially all of Macdonald Tobacco Inc.'s assets and



continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc.

41. In 1999, RJR-Macdonald Inc. amalgamated with 3027221 Nova Scotia Company and continued as RJR-Macdonald Corp. JTI-Macdonald Corp. was created in 1999 as a result of an amalgamation between RJR-Macdonald Corp. and JT-Nova Scotia Corporation.

**4. The RJR Group Lead Companies Control and Direct JTI-Macdonald Corp.**

42. At all times material to this action, the Canadian company, JTI-Macdonald Corp., has been controlled and directed by the Lead Companies of the RJR Group. The control and direction by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. has extended to the manufacture and promotion of their cigarettes.
43. The means by which the RJR Lead Companies have exercised control and direction include:
  - i. Developing a reporting system whereby each global "Area," including Canada as Area II, had a smoking issue designee who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to R.J. Reynolds Tobacco Company's Manager of Science Information
  - ii. Convening meetings such as the Winston-Salem Smoking Issues Coordinator Meetings
  - iii. Developing and implementing positions and policies such as the "Issues Guide" to direct and control the activities of the RJR Group's subsidiaries, including JTI-Macdonald Corp.

- iv. Placing senior executives of the Lead Companies as senior executives of JTI-Macdonald Corp.
  - v. Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department
  - vi. 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
  - vii. Providing cigarettes and cigarette samples made by the Lead Companies to JTI-Macdonald Corp. for sale in Canada, including Saskatchewan
  - viii. Maintaining a veto over research funding by the Canadian Tobacco Manufacturers' Council.
44. The control and direction by the Lead Companies of the RJR Group have involved the implementation of the RJR Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the RJR Group has maintained a policy that members of the RJR Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. This policy included the creation of an action plan to respond to health and smoking issues by distributing information creating a scientific controversy surrounding smoking-related disease and by countering anti-smoking groups and legislation.
45. From 1960, it has been the RJR Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.

46. The Lead Companies of the RJR Group have communicated and directed these policies for JTI-Macdonald Corp. by a variety of means, including:

- i. Establishing directives and communications such as the "Issues Guide"
- ii. 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 JTI-Macdonald Corp., understood and disseminated the RJR Group's position
- iii. Convening meetings including the Winston-Salem Smoking Issues Coordinator Meetings
- iv. Convening conferences including the "Hounds Ears" and Sawgrass conferences
- v. Taking a leadership role in the International Committee on Smoking Issues ("ICOSI"), particularly in relation to Canada
- vi. Conspiring or acting in concert as particularized in Part IV below.

47. These common policies of the RJR Group have continued notwithstanding changes in the corporate structure of the RJR Group. These common policies on smoking and health in the RJR Group have been maintained in Canada under the control and direction of R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. from 1950 to the present, such that these defendants are responsible in law for the RJR Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of JTI-Macdonald Corp.

48. In particular, the Government of Saskatchewan states that:

- i. By reason of the facts pleaded, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of JTI-Macdonald Corp.
- ii. JTI-Macdonald Corp. has acted as agent for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. in committing tobacco-related wrongs in Canada
- iii. As described in Part IV, R.J. Reynolds Tobacco Company, R.J. Reynolds International, Inc. and JTI-Macdonald Corp. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**5. The RJR Group Defendants are Manufacturers under the Act**

49. Each of R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc. and JTI-Macdonald Corp. (collectively, "the RJR Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the RJR Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the RJR Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the RJR Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.

iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the RJR Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

50. From 1950 and continuing to the present, cigarettes manufactured or promoted by the RJR Defendants have been offered for sale in Saskatchewan. The brand names of the cigarettes of the RJR Defendants offered for sale in Saskatchewan and the rest of Canada include *Export*, *Export "A"*, *Vantage*, *Camel*, *Salem*, *Smooth*, *Contessa*, *Contessa Slims*, *More*, *Macdonald* and *Winston*.

**(iii) The BAT Group**

**1. British American Tobacco p.l.c.**

51. 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. British American Tobacco p.l.c. is responsible in law for the actions and conduct of its predecessors in interest, British-American Tobacco Company Limited (now known as British American Tobacco (Investments) Limited) and B.A.T Industries p.l.c. British American Tobacco p.l.c. is a Lead Company of the BAT Group.

52. British American Tobacco p.l.c. has been the parent company of the BAT Group since 1998. British American Tobacco p.l.c. purports to have been in the tobacco business in the Americas for more than 100 years and to be solely focused on tobacco.

**2. British American Tobacco (Investments) Limited**

53. The defendant British American Tobacco (Investments) Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. British American Tobacco (Investments) Limited is responsible in law for the actions and conduct of its predecessor in name, British-American Tobacco Company Limited. British American Tobacco (Investments) Limited is a Lead Company of the BAT Group.
54. British American Tobacco (Investments) Limited was the parent company of the BAT Group from 1902 to 1976. British American Tobacco (Investments) Limited was known as British-American Tobacco Company Limited until 1998.

**3. B.A.T Industries p.l.c.**

55. The defendant B.A.T Industries p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. B.A.T Industries p.l.c. is responsible in law for the actions and conduct of its predecessors in interest, B.A.T Industries Limited and Tobacco Securities Trust Limited. B.A.T Industries p.l.c. is a Lead Company of the BAT Group.
56. B.A.T Industries p.l.c. was the parent company of the BAT Group from 1976 to 1998.

**4. Imperial Tobacco Canada Limited**

57. The defendant Imperial Tobacco Canada Limited is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street West, Montreal, Quebec. Imperial Tobacco Canada Limited is responsible in law for the actions and

conduct of its predecessors in interest, Imperial Tobacco Company of Canada Limited, Imperial Tobacco Limited and Imasco Ltd.

58. For 100 years, Imperial Tobacco Canada Limited and its predecessors have been an integral part of the BAT Group and a subsidiary of the parent company of the BAT Group.
59. Imperial Tobacco Company of Canada Limited was incorporated in 1912. In 1970, Imperial Tobacco Company of Canada Limited changed its name to Imasco Limited, and formed a wholly owned subsidiary, Imperial Tobacco Limited. In 2000, Imasco Limited and Imperial Tobacco Limited were amalgamated under the name Imperial Tobacco Canada Limited.
60. In 2000, Imperial Tobacco Canada Limited became a wholly owned subsidiary of British American Tobacco p.l.c., the current parent of the BAT Group.

**5. The BAT Group Lead Companies Control and Direct Imperial Tobacco Canada Limited**

61. At all times material to this action, the Canadian company, Imperial Tobacco Canada Limited has been controlled and directed by the Lead Companies of the BAT Group. The control and direction by British American Tobacco p.l.c., British American Tobacco (Investments) Limited, and B.A.T Industries p.l.c. has extended to the manufacture and promotion of their cigarettes.
62. The means by which the BAT Group Lead Companies have exercised control and direction include:

- i. Establishing Smoking and Health Policies to be followed by the members of the BAT Group
  - ii. Convening Tobacco Strategy Review Team Policy meetings
  - iii. Convening Smoking and Health, Marketing and Research conferences for major international markets, including Canada
  - iv. Forming committees including the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board and the Tobacco Executive Committee
  - v. Overseeing tobacco-related activities in Canada by the Chairman of the BAT Group Tobacco Division Board
  - vi. Making final decisions on which Canadian Tobacco Manufacturers' Council research should be funded by Imperial Tobacco Canada Limited.
63. The control and direction by the Lead Companies of the BAT Group have involved the implementation of the BAT Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the BAT Group has maintained a policy that members of the BAT Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the BAT Group was to maintain that causation had not been scientifically proven and remained controversial and to resist warnings as long as possible.



64. From 1960, it has been the BAT Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
65. The Lead Companies of the BAT Group have communicated and directed these policies for Imperial Tobacco Canada Limited by a variety of means, including:
  - i. Establishing the Smoking and Health Policies which ensured that all BAT Group companies gave uniform answers to similar questions on smoking and health issues, including B.A.T Industries p.l.c.'s Statement of Business Conduct
  - ii. Convening the Chairman's Advisory Conferences, BAT Group Research Conferences and BAT Group Marketing Conferences, all of which included Imperial Tobacco Canada Limited
  - iii. Preparing and distributing to BAT Group members, including Imperial Tobacco Canada Limited, written directives and communications, including "Smoking Issues: Claims and Responses," "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues," "Smoking and Health: The Unresolved Debate," "Smoking: The Scientific Controversy," "Smoking: Habit or Addiction?" and "Legal Considerations on Smoking and Health Policy"
  - iv. Ensuring through all of these means that the personnel of the BAT Group companies, including Imperial Tobacco Canada Limited, understood and disseminated the BAT Group's position on smoking and health
  - v. Conspiring or acting in concert as particularized in Part IV below.

66. These common policies of the BAT Group have continued notwithstanding changes in the corporate structure of the BAT Group. There continues to be central coordination of the BAT Group's international strategy, of which Canada is an integral part, and central control and management of the BAT Group policies on smoking and health issues. These common policies on smoking and health in the BAT Group have been maintained in Canada under the control and direction of British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited from 1950 to the present, such that these defendants are responsible in law for the BAT Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited.

67. In particular, the Government of Saskatchewan states that:

- i. By reason of the facts pleaded, British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited are jointly liable with and are vicariously liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited
- ii. Imperial Tobacco Canada Limited has acted as agent for British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited in committing tobacco-related wrongs in Canada
- iii. As described in Part IV, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Imperial Tobacco Canada Limited have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**6. The BAT Group Defendants are Manufacturers under the Act**

68. Each of British American Tobacco p.l.c., British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Imperial Tobacco Canada Limited (collectively, "the BAT Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the BAT Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the BAT Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the BAT Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
- iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the BAT Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

69. From 1950 and continuing to the present, cigarettes manufactured or promoted by the BAT Defendants have been offered for sale in Saskatchewan. The brand names of the cigarettes of the BAT Defendants offered for sale in Saskatchewan and the rest of Canada include *du Maurier*, *Peter Jackson*, *Player's Matinee*, *Goldcrest*, *John Player*, *Avanti*,

*Cameo, Kool, Marlboro, Sweet Caporal, Pall Mall, Medallion, Matinee Slims, Matinee Special Mild, Matinee Extra Mild and Vogue.*

**(iv) The Rothmans Group**

**1. Carreras Rothmans Limited**

70. The defendant Carreras Rothmans Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. Carreras Rothmans Limited is responsible in law for the actions and conduct of its predecessors in interest Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada and Carreras Limited. Carreras Rothmans Limited was a Lead Company of the Rothmans Group. Since 1999, Carreras Rothmans Limited has been part of the BAT Group.

71. Carreras Rothmans Limited was formed in 1958 when Rothmans of Pall Mall Limited acquired a controlling interest in Carreras Limited. At that time, Rothmans of Pall Mall Limited controlled Rothmans of Pall Mall Canada Limited and Carreras Limited controlled Rock City Tobacco Company of Quebec. By 1963, Rothmans of Pall Mall Canada had assumed all outstanding shares of Rock City Tobacco Company of Quebec.

**2. Rothmans Inc.**

72. The defendant Rothmans Inc. is a company incorporated pursuant to the laws of Ontario and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans Inc. has represented itself to have been a part of the Canadian tobacco industry for the past 100 years. Rothmans Inc. is responsible for the actions and conduct of its predecessor in name Rothmans of Pall Mall Canada Limited.

73. Rothmans of Pall Mall Canada Limited was incorporated in 1956. In 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc. Between 1986 and 2008, Rothmans Inc. was a co-owner with Altria Group, Inc. of Rothmans, Benson & Hedges Inc. In 2009, Rothmans Inc. amalgamated with and continued as Rothmans, Benson & Hedges Inc. as a wholly owned subsidiary of Philip Morris International, Inc.

**3. The Rothmans Group Lead Companies Controlled and Directed Rothmans Inc.**

74. Prior to 1986, the Canadian company, Rothmans Inc., was controlled and directed by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group. The control and direction by the Rothmans Group Lead Companies extended to the manufacture and promotion of their cigarettes.
75. Since 1980, the Philip Morris Group exercised substantial influence over Rothmans International through the creation of a partnership with the Rothmans Group and the placement of board members of the Philip Morris Group Lead Companies on the board of Rothmans International.
76. The means by which Carreras Rothmans Limited and Rothmans International exercised control and direction included:
- i. Coordinating the research strategy of all of the Rothmans Group companies worldwide, including Canada
  - ii. Facilitating a constant exchange of information, knowledge and ideas of all of the Rothmans Group companies worldwide, including Canada

- iii. Directing its subsidiaries and affiliates, including Rothmans Inc., to conform their policies to those of the broader tobacco industry
  - iv. Creating the International Advisory Board for the development of common policies and strategies for the benefit of the Rothmans Group
  - v. Providing technical expertise and other support to members of the Rothmans Group
  - vi. Placing board members of the Lead Companies on the board of directors of Rothmans Inc.
77. The control and direction by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group involved the implementation of the Rothmans Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Rothmans Group maintained a policy that members of the Rothmans Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed.
78. From 1960, it was the Rothmans Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
79. The Lead Companies of the Rothmans Group, including Carreras Rothmans Limited and Rothmans International, communicated and directed these policies for Rothmans Inc. by a variety of means, including:
- i. Directing Rothmans Inc. to maintain the Rothmans Group's position that more research was needed in order to determine whether cigarettes cause disease

- ii. Instructing Rothmans Inc. not to agree voluntarily to cautionary warnings in advertising
  - iii. Creating the International Advisory Board
  - iv. Conspiring or acting in concert as particularized in Part IV below.
80. These common policies on smoking and health in the Rothmans Group were maintained in Canada under the control and direction of Carreras Rothmans Limited and Rothmans International from 1950 to 1986 such that Carreras Rothmans Limited is responsible in law for its own tobacco-related wrongs and is jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
81. Altria Group, Inc. and Philip Morris International, Inc. controlled and directed the Rothmans Group such that from 1980 to the present, Altria Group, Inc. and Philip Morris International, Inc. are responsible in law for their own tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
82. In particular, the Government of Saskatchewan states that:
- i. By reason of the facts pleaded, Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans Inc.
  - ii. Rothmans Inc. has acted as agent for Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada

- iii. As described in Part IV, Carreras Rothmans Limited, Altria Group, Inc., Philip Morris International, Inc. and Rothmans Inc. have, together and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**4. The Rothmans Group Defendants are Manufacturers under the Act**

- 83. Each of Carreras Rothmans Limited and Rothmans Inc. (together, the "Rothmans Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:
  - i. Each of the Rothmans Defendants has manufactured cigarettes.
  - ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the Rothmans Defendants has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
  - iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the Rothmans Defendants derived at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
  - iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the Rothmans Defendants engaged in, or caused, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of tobacco cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.
- 84. From 1950 until 2008, cigarettes manufactured or promoted by the Rothmans Group were offered for sale in Saskatchewan. The brand names of the cigarettes of the



Rothmans Group offered for sale in Saskatchewan and the rest of Canada are now offered for sale through the defendant, Rothmans, Benson & Hedges Inc. and include *Rothmans, Dunhill, Craven "A", Craven "A" Superslims, Sportsman and Black Cat*.

(v) **The Canadian Tobacco Manufacturers' Council**

85. The defendant Canadian Tobacco Manufacturers' Council is a company incorporated pursuant to the laws of Canada and has a registered office at 6 Rue D'Angers, Gatineau, Quebec. The Canadian Tobacco Manufacturers' Council is the trade association of the Canadian tobacco industry and was originally formed as an ad hoc committee of members of the Canadian tobacco industry in 1963 to influence government authorities on the question of smoking and health.
86. The founding members of the Canadian Tobacco Manufacturers' Council were Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans Inc.
87. As described in paragraphs 167 - 184, the Canadian Tobacco Manufacturers' Council provided a means by which the Defendants' Conspiracy (defined in Part IV) was implemented and continues to be implemented in Canada. In addition, the Canadian Tobacco Manufacturers' Council itself was and remains a participant in the Conspiracy.
88. The Canadian Tobacco Manufacturers' Council is a Manufacturer pursuant to subparagraph 2(1)(h)(iv) of the Act because it has been and is engaged in all of the following activities:

- (a) the advancement of the interests of Manufacturers

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

## **II. THE DEFENDANTS' KNOWLEDGE OF THE RISKS OF SMOKING AND EXPOSURE TO SMOKE**

- 89. The Defendants designed and manufactured cigarettes to deliver nicotine to smokers.
- 90. 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.
- 91. Smoking causes or contributes 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
    - 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
- viii. cancer of the stomach

(c) circulatory system diseases, including:

- i. coronary heart disease
- ii. pulmonary circulatory disease
- iii. cerebrovascular disease
- iv. atherosclerosis, aortic and other aneurysms
- v. peripheral vascular disease

(d) pneumonia and influenza

(e) peptic ulcers

(f) increased morbidity and general deterioration of health

(g) fetal harm.

92. Since 1950, the Defendants have been aware that cigarettes:

- (a) contain substances and produce by-products which can cause or contribute to disease including, nitrosamines, carbon monoxide, benzene, benzo[a]pyrene, dibenz[a,h]anthracene, benzo[e]pyrene, chrysene, dibenzo[a,i]pyrene, n'nitrosonornicotine, acrolein, hydrogen cyanide, isoprene, chromium, chloracetophenone and arsenic
- (b) cause or contribute to addiction.

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

94. By 1950, the Defendants knew or ought to have known that:

- (a) nicotine is an addictive and active ingredient in cigarettes
- (b) smokers crave nicotine
- (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

### **III. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS**

#### **A. Deceit and Misrepresentation**

95. At all material times, the Defendants have owed a duty to persons in Saskatchewan not to misrepresent the risks of smoking, those risks being the risks of addiction and disease.

96. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

(i) **The Misrepresentations**

97. From 1950, the Defendants have misrepresented the risks of addiction and disease and in particular, without limiting the generality of the foregoing, have misrepresented in Saskatchewan and throughout Canada that:

- (a) smoking has not been shown to cause any known diseases
- (b) there is no medical or scientific link between smoking and disease
- (c) they were not aware of any research, or any credible research, establishing a link between smoking and disease
- (d) environmental and genetic factors are to blame for many diseases rather than smoking
- (e) cigarettes are not addictive
- (f) smoking is merely a habit or custom, not an addiction
- (g) they have not manipulated nicotine levels
- (h) they have not included substances in their cigarettes designed to increase the bio-availability of nicotine

- (i) certain of their cigarettes, such as "filter," "mild," "low tar" and "light" brands, are safer than other cigarettes
- (j) machine measurements of tar and nicotine are representative of actual intake
- (k) smoking is consistent with a healthy lifestyle
- (l) smoking is not harmful to health
- (m) exposure to cigarette smoke is not harmful to health
- (n) smoking and exposure to cigarette smoke are not a serious health risk
- (o) they are interested in the health and well-being of smokers.

98. The misrepresentations by the Philip Morris Group in Canada have been continuous and have been made through a variety of means, including:

- i. 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)
- ii. 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 Assistant Deputy federal Minister of

Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)

- iii. 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))
- iv. Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.)
- v. Publications (including in the 1978 Booklet "The Facts" published by Benson & Hedges (Canada) Inc.)
- vi. Advertising, marketing and promotional campaigns
- vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

99. The misrepresentations by the RJR Group in Canada have been continuous and have been made through a variety of means, including:

- i. 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)

- ii. 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 Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
  - iii. Publications (including "R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina" in *The Tobacco Industry in Transition*).
  - iv. Speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts)
  - v. Public statements (including the 1983 Revised Mission Statement on Smoking and Health)
  - vi. Advertising, marketing and promotional campaigns
  - vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.
100. The misrepresentations by the BAT Group in Canada have been continuous and have been made through a variety of means, including:
- i. 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)

- ii. 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 Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
- iii. Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited)
- iv. Public and media statements to Canadian newspapers and on national television (including CBC television (December 1969) and in the Toronto Daily Star (June 1971))
- v. Publications (including on the topics of smoking and health, "habit or addiction" and environmental tobacco smoke)
- vi. British American Tobacco p.l.c.'s website relating to environmental tobacco smoke
- vii. Advertising, marketing and promotional campaigns

viii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

101. The misrepresentations by the Rothmans Group in Canada were continuous and were made through a variety of means, including:

- i. 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)
- ii. 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 Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981)
- iii. Full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart "vital information" as soon as available
- iv. 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))
- v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

102. Since 1963, the Canadian Tobacco Manufacturers' Council's misrepresentations have been continuous and have been made through a variety of means including:

- i. Presentations, including the 1963 presentation to the Canadian Medical Association, the 1963 presentation to the federal Department of National Health and Welfare, the 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs, the 1969 presentation to the National Association of Tobacco and Confectionery Distributors Convention and the 1987 and 1988 presentations to federal Legislative Committees
- ii. Meetings with the federal Department of National Health and Welfare, the purpose of which was to oppose and delay regulatory measures
- iii. Position papers
- iv. Public statements characterizing warnings as misstatements and exaggerations of the scientific evidence, and representing environmental tobacco smoke as a symptom of inadequate ventilation in buildings
- v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

**(ii) Suppression and Concealment of Scientific and Medical Data**

103. From 1950, the Defendants have suppressed and concealed scientific and medical data which revealed the serious health risks of smoking and exposure to cigarette smoke. Each Group had policies in accordance with which the Defendants have withheld, altered and destroyed research on addiction and disease causation.

104. Particulars of this suppression of scientific and medical data and research by the Philip Morris Group include:

- i. 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)
- ii. Destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group
- iii. Closing of research laboratories and destroying related scientific information
- iv. Withdrawing internal research relating to nicotine from peer review
- v. Destroying internal research relating to nicotine
- vi. Prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the additive effect of smoking
- vii. Establishing INBIFO, a facility in Europe where unfavourable research was destroyed
- viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

105. Particulars of this suppression of scientific and medical data by the RJR Group include:

- i. 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)

- ii. Ceasing research on the effects of smoke because of its potential bearing on product liability
  - iii. Removing 150 boxes of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina
  - iv. Imposing restrictions on the use of terms, including "drug," "marketing" and "dependency," in scientific studies
  - v. Destroying research relating to the biological activity of Camel cigarettes
  - vi. Invalidating and destroying research reports
  - vii. Terminating and destroying research associated with R.J. Reynolds Tobacco Company's "The Mouse House" experiments
  - viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
106. Particulars of this suppression of scientific and medical data by the BAT Group include:
- i. 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)
  - ii. Agreeing with the Rothmans Group to suppress research relating to carbon monoxide and smoke intake
  - iii. Implementing a policy with Imperial Tobacco Canada Limited to avoid written documentation on issues relating to smoking and health

- iv. 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
  - v. Directing that certain research reports in Canada be destroyed (1992)
  - vi. Suppressing information and developments relating to potentially safer products
  - vii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
107. Particulars of this suppression of scientific and medical data by the Rothmans Group include:
- i. Agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake
  - ii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
108. Particulars of the Canadian Tobacco Manufacturers' Council's suppression of scientific and medical data include:
- i. Refusing to approve and fund research where there was a concern that the results could be adverse to the tobacco industry
  - ii. Sponsoring studies only where there was no likelihood that the results could be harmful to the tobacco industry.

**(iii) Misleading Campaigns to Enhance Their Own Credibility**

109. From 1950, the Defendants have participated in misleading campaigns to enhance their own credibility and to diminish the credibility of health authorities and anti-smoking groups for the purposes of reassuring smokers that cigarettes were not as dangerous as authorities were saying and of maintaining the social acceptability of smoking.

110. The misleading campaigns were at least two-pronged: (a) public denials as to the harmful effects of smoking and the calls for more research (while concealing research findings and suppressing further research); and (b) implementing misleading campaigns designed to reassure smokers which (as described in paragraphs 98 to 102) included advertising campaigns and numerous public statements relating both to cigarette smoking and exposure to cigarette smoke.

**(iv) Misrepresentations Relating to Filtered, "Mild," "Low Tar" and "Light" Cigarettes**

111. Beginning in the 1960s, the Defendants have wrongfully promoted filtered, "mild," "low tar" and "light" cigarettes to the public and government agencies, including the federal government and the federal Department of Health and Welfare, with the purpose of deceiving the public and these agencies into believing that these cigarettes were healthier and safer.

112. From the 1960s, the Defendants have known that filtered, "mild," "low tar" and "light" cigarettes were not healthier or safer because smokers would compensate by increasing their inhalation of smoke to obtain as much or more nicotine.

113. The Defendants have also misled the public by linking a healthy image and lifestyle to filtered, "mild," "low tar" and "light" cigarettes. In this way, the Defendants have reassured the public and furthered their campaign of misrepresentation. The tobacco industry's research confirmed that smokers and the public mistakenly believed that filtered, "mild," "low tar" and "light" cigarettes meant healthier or safer cigarettes.

114. Particulars of the Defendants' research are as follows:

- i. The Philip Morris Group's research confirmed that smokers develop a daily nicotine intake quota and that when smoking a cigarette lower in nicotine delivery than their regular cigarettes, smokers will adjust their smoking patterns to obtain their normal nicotine intake.
- ii. The RJR Group's research confirmed that smokers will subconsciously adjust their intake volume and frequency, and smoking frequency, to obtain and maintain their hourly and daily requirements of nicotine. The RJR Group also knew that "low tar, low nicotine" cigarettes did not offer a health advantage compared to regular filter cigarettes.
- iii. The BAT Group's research confirmed that smokers must maintain a threshold amount of nicotine. BAT Group scientists found that when nicotine content was reduced, smokers would adjust their smoking patterns to obtain their threshold nicotine intake. These scientists also found that smokers would obtain a tar yield proportionately higher than that which the cigarette was designed to produce and could more than double the amount of nicotine intake reported in league tables.



- iv. The Rothmans Group possessed research which confirmed that when a smoker changes to a brand of cigarette with purportedly lower delivery of nicotine the smoker will compensate by increasing inhalation of tar and carbon monoxide.

**(v) Campaigns to Increase Smoking Rates Among Women**

115. From 1950, the Defendants have engaged in deceitful advertising, marketing and promotional campaigns to increase smoking rates among women.
116. The Defendants have advertised, marketed and promoted their cigarettes to women as being reasonably healthy and safe, both expressly, through public statements including denials that cigarettes are harmful, and impliedly, through campaigns which equate smoking cigarettes with physical activities and a healthy lifestyle.
117. Each of the four Groups has targeted women as smokers and as potential smokers through advertising and branding campaigns. In Saskatchewan, and throughout Canada, brands targeted at women include the Philip Morris Group's *Marlboro Lights* and *Virginia Slims*, the RJR Group's *Contessa* and *Contessa Slims*, the BAT Group's *Matinee*, *Matinee Slims*, *Matinee Special Mild* and *Matinee Extra Mild*, and the Rothmans Group's *Craven "A" Superslims*.

**B. Failure to Warn**

118. At all material times, the Defendants knew or ought to have known that their cigarettes were addictive and could cause or contribute to disease. At all material times, the Defendants owed a duty to persons in Saskatchewan to warn of the risks of smoking, being addiction and disease. As Manufacturers, the Defendants have owed a duty to

persons in Saskatchewan as consumers of cigarettes and as persons who would be exposed to cigarette and tobacco smoke.

119. As described below, from 1950, the Defendants have breached this duty, thereby committing tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

120. Beginning in 1950, the Defendants breached their duty by failing to provide any warning, or any adequate warning after 1972, of:

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

121. Any warnings that were provided were inadequate and ineffective in that they:

- (a) failed to warn of the actual and known risks
- (b) failed to give smokers, prospective smokers, and the public a true indication of the risks
- (c) were introduced for the purpose of delaying more accurate government mandated warnings
- (d) were combined with marketing plans and campaigns designed to reassure smokers
- (e) failed to make clear, credible, complete and current disclosure of the harmful substances in their cigarettes.

122. From 1950, the Defendants have breached their duty to warn by wrongfully engaging in advertising, marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings on cigarette packaging and of warnings and advertising by governments and other agencies concerned with public health. These activities include the campaigns to reassure the public and governments, all as previously described.
123. From 1950, the Defendants have breached their duty to warn by misinforming and misleading the public about the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 95-102.
124. From 1950, the Defendants have breached their duty to warn by selectively promoting and publicising misleading research to create doubt and controversy regarding the risks of smoking and of exposure to cigarette smoke. This selective promotion and publication of misleading research was facilitated, in part, by the Defendants' creation of tobacco organizations, as particularized in paragraphs 151-157, and the Canadian tobacco Manufacturers' Council, and by presentations made by the Lead Companies to the public.
125. From 1950, the Defendants have breached their duty to warn by suppressing and concealing information regarding the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 103 to 108.
126. From 1950, the Defendants have breached their duty to warn children and adolescents. The Defendants knew or ought to have known that children (under the age of 13) and adolescents (between the ages of 13 and 18) in Saskatchewan either were smoking or might start smoking. Despite their knowledge, the Defendants failed to provide warnings sufficient to inform children and adolescents of the risks. The Defendants wrongfully

directed advertising, marketing and promotional material to children and adolescents who were unable to make informed decisions about smoking.

**C. Promotion of Cigarettes to Children and Adolescents**

127. At all material times, the Defendants have owed a duty to children and adolescents in Saskatchewan to take all reasonable measures to prevent them from starting or continuing to smoke.
128. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, children and adolescents in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.
129. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age. The Defendants were also aware that children and adolescents are unable to make informed decisions about smoking.
130. From 1950, the Defendants knew or ought to have known that children and adolescents in Saskatchewan were smoking or might start to smoke and that it was contrary to law, including the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and public policy, to sell cigarettes to children and adolescents or to promote smoking by such persons.

131. From 1950, the Defendants knew or ought to have known that children and adolescents in Saskatchewan who smoked cigarettes would become addicted and would suffer tobacco-related disease.
132. From 1950, the Defendants have failed to take any reasonable and effective measures to prevent children and adolescents from starting or continuing to smoke. Instead, the Defendants have effectively done the opposite: they have targeted children and adolescents in their advertising, promotional and marketing activities; they have advertised in publications accessed by children and adolescents; they have marketed cigarettes for sale in places frequented by children and adolescents; and they have engaged in marketing campaigns directed at children and adolescents.
133. These activities were undertaken to induce children and adolescents in Saskatchewan to start or continue to smoke and to undermine government initiatives and legislation (including that set out in paragraph 130) aimed at preventing children and adolescents in Saskatchewan from starting or continuing to smoke.
134. In particular:
  - (a) The Philip Morris Group targeted youth as a means to both attract new smokers and develop those smokers into a "young adult franchise" and through Rothmans, Benson & Hedges Inc., undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands.
  - (b) The RJR Group recognized the importance of imagery for the youth market and developed marketing criteria (including the use of cartoons and celebrities) and

specific brands it believed would assist in obtaining and maintaining the youth marketing position.

- (c) The BAT Group targeted what it described as "starters", that is, children and adolescents, by studying their smoking habits and adopting advertising strategies which focused on youth-oriented and youth-appealing activities.
- (d) The Rothmans Group targeted youth and undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands in Canada.

**D. Negligent Design and Manufacture**

- 135. At all material times, the Defendants have owed a duty to design and manufacture a reasonably safe product and a duty to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking the cigarettes they manufactured and promoted.
- 136. As described below, since 1950, the Defendants have breached these duties by failing to design a reasonably safe product – a product that is not addictive and does not cause disease – and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking. In breaching these duties, the Defendants have committed tobacco-related wrongs.
- 137. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

138. From the 1960s, the Defendants have halted research and development of alternative products because of concerns that such products would imply that cigarettes were unsafe. As described in paragraph 105, the RJR Group stopped work on the alleged positive effects of smoke due to concerns about product liability. As described in paragraph 106, through its control of Imperial Tobacco Canada Limited, B.A.T Industries p.l.c. suppressed information relating to potentially safer products because of the negative implications for cigarettes.
139. From the 1960s, the Defendants have increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
- (a) blending of tobacco
  - (b) adding nicotine or substances containing nicotine
  - (c) increasing the pH level to increase the rate of nicotine intake into the body
  - (d) introducing substances, such as ammonia and menthol, to enhance the bio-availability of nicotine to smokers or to compensate for the variability in the nicotine content
  - (e) such further and other activities known to the Defendants.
140. From the 1960s, the Defendants have increased the risks of smoking by adding to their cigarettes ineffective filters and by misleading the public and government agencies, including the federal government and the federal Department of Health and Welfare, that these filters made smoking safer. At all material times, the Defendants have known that smokers compensated for the filters by increasing their inhalation and by adopting other

means to increase the assimilation of smoke into their lungs. The Defendants have known that the design of these filters resulted in a larger dose of nicotine to be inhaled by the smoker.

141. From the 1960s, the Defendants have designed and manufactured filtered, "mild," "low tar" and "light" cigarettes which they promoted as healthier than regular cigarettes, with knowledge that this was not the case. The Defendants have misled the public by linking a healthy image to a low tar – low nicotine cigarette through the use of descriptors and the portrayal of filtered, "mild," "low tar" and "light" cigarettes in the context of a lifestyle or activities that misrepresented smoking and health.

142. These filtered, "mild," "low tar" and "light" cigarettes were designed and manufactured notwithstanding the Defendants' own research and knowledge. In particular, the BAT Group's research confirmed that smokers and the public mistakenly believed that "light" or "low tar" meant a healthier cigarette and Imperial Tobacco Canada Limited marketed its brands, including *Medallion*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The Philip Morris Group's research confirmed that smokers mistakenly believed that low delivery was healthy and that the public's positive perception of filtration was more important than the filtration's actual effectiveness. Rothmans, Benson & Hedges Inc. marketed its brands, including *Benson & Hedges Lights*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The RJR Group's research confirmed that younger people believed "mild," "low tar" and "light" cigarettes to be more healthy and JTI-Macdonald Corp. marketed its brands, including *Vantage*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette.



**E. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations**

143. The Defendants, in their role as Manufacturers of cigarettes for human use and consumption, were under legal, equitable and statutory duties and obligations to ensure that their cigarettes were reasonably safe, and they expressly or impliedly warranted that their cigarettes were reasonably safe. In particular, from 1950, the Defendants advertised and promoted their cigarettes as being reasonably safe, both expressly, through public statements including denials that they are harmful, and impliedly, through campaigns which related cigarettes to a healthy lifestyle and physical activities. The Defendants also have repeatedly proclaimed to be interested in the health and well-being of smokers.

144. Knowing that cigarettes are addictive and cause and contribute to disease, from 1950, the Defendants inflicted harm on persons in Saskatchewan by manufacturing, promoting and selling cigarettes for profit and in disregard of public health.

145. From 1950, the Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine, particulars of which include:

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

i. sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine

ii. deliberately increasing the level of nicotine through blending of tobaccos

- iii. deliberately increasing the level of nicotine by adding nicotine or other substances containing nicotine
  - iv. adding ammonia and menthol
- (b) adding ineffective filters to cigarettes and misleading the public into believing these filters made smoking safer
  - (c) failing to disclose to consumers the risks inherent in smoking, those being the risks of disease and addiction
  - (d) engaging in marketing, promotional and public relations activities to neutralize or negate the effectiveness of safety warnings provided to the public
  - (e) suppressing or concealing scientific and medical information regarding the risks of smoking and of exposure to cigarette smoke
  - (f) marketing and promoting smoking in a manner designed to mislead the public into believing that cigarettes have performance characteristics, ingredients, uses, benefits and approval that they did not have
  - (g) using innuendo, exaggeration and ambiguity to misinform and mislead the public about the risks of smoking and of exposure to cigarette smoke by mischaracterizing any health concerns relating to smoking and exposure to smoke or attempts at regulation as unproven, controversial, extremist and an infringement of liberty or authoritarian
  - (h) failing to take any reasonable measures to prevent children and adolescents from starting or continuing to smoke

- (i) targeting children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents to start smoking or to continue to smoke
- (j) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that they are addictive and cause or contribute to disease and death
- (k) misrepresenting that:
  - i. smoking has not been shown to cause any known diseases
  - ii. there is no medical or scientific link between smoking and disease
  - iii. they were not aware of any research, or any credible research, establishing a link between smoking and disease
  - iv. environmental and genetic factors are to blame for many diseases rather than smoking
  - v. cigarettes are not addictive
  - vi. smoking is merely a habit or custom, not an addiction
  - vii. they have not manipulated nicotine levels
  - viii. they have not included substances in their cigarettes designed to increase the bio-availability of nicotine

- ix. certain of their cigarettes, such as filtered, "mild," "low tar" and "light" brands, are safer than other cigarettes
  - x. machine measurements of tar and nicotine are representative of actual intake
  - xi. smoking is consistent with a healthy lifestyle
  - xii. smoking is not harmful to health
  - xiii. exposure to cigarette smoke is not harmful to health
  - xiv. smoking and exposure to cigarette smoke are not a serious health risk
  - xv. they are interested in health and well-being of smokers.
- (l) failing to correct statements regarding the risks of smoking which they knew were incomplete or inaccurate, thereby misrepresenting the risks of smoking by omission or silence
- (m) misrepresenting the characteristics of their cigarettes without proper testing, investigation or research concerning:
- i. the risk of disease
  - ii. the risk of addiction to nicotine
  - iii. the feasibility of eliminating or minimizing these risks

- (n) misrepresenting as safer products, cigarettes with filters, and "mild," "low tar" or "low nicotine" tobacco, which adequate and proper testing would have revealed were ineffective to safeguard the health of smokers
- (o) failing to make clear, credible, complete and current disclosure of the risks inherent in smoking their cigarettes
- (p) misleading the public about the risks of smoking and of exposure to cigarette smoke
- (q) deliberately and unconscionably discrediting various testing and research which showed a link between smoking and disease and addiction
- (r) such further and other activities known to the Defendants.

146. The Defendants breached their legal, equitable and statutory duties and obligations, provincially and federally, including the provisions of *Combines Investigation Act*, R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act*, S.C. 1968-69, chapter 38 and amendments thereto (and in particular, section 33D) and subsequently the *Competition Act*, R.S.C. 1985, chapter C-34 and amendments thereto (and in particular, section 74.01), the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and statutory and regulatory obligations in the province of Saskatchewan.

147. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and increased risk of such disease.

#### **IV. CONSPIRACY AND CONCERT OF ACTION IN COMMITTING TOBACCO-RELATED WRONGS**

##### **A. Role of the Lead Companies**

148. At various times beginning in 1953 and continuing to the present, in response to reports in medical and other publications linking smoking and disease, the Defendants conspired or acted in concert to prevent the Government of Saskatchewan and persons in Saskatchewan 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 (the "Conspiracy").

149. The Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups were acting throughout on their own behalf and on behalf of their respective Groups. As particularized below, the Conspiracy was renewed at numerous meetings and through various campaigns and policies, all of which are known to the Defendants.

##### **(vi) The Industry Conspiracy is Hatched**

150. The Conspiracy or concert of action secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco (Investments) Limited), American Tobacco Company, Lorillard Tobacco Company and the public relations firm, Hill & Knowlton. At least two of these meetings were held at the Plaza Hotel in New York on December 15 and 28, 1953. These companies agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking
- (b) make no statement or admission that smoking caused disease
- (c) 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
  - iii. reassuring the public that smoking was not hazardous (sometimes referred to as the campaign of reassurance).

**(vii) Use of Research Organizations in Furtherance of the Conspiracy**

- 151. Between late 1953 and the early 1960s, the Lead Companies of each of the Groups formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964, both referred to herein as TIRC), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Manufacturers' Standing Committee (the "TMSC", renamed the Tobacco Research Council in 1963 and renamed the Tobacco Advisory Council in 1978, collectively referred to herein as TMSC) and Verband der Cigarettenindustrie ("Verband").
- 152. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, CORESTA, TMSC and Verband, 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:

- i. The issuance of the TIRC's 1954 "Frank Statement to Cigarette Smokers" which received coverage in the Canadian press
  - ii. Statements made to the Canadian Medical Association in May 1963
  - iii. November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare
  - iv. May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs
  - v. Statements to the national press and news organizations in Canada
  - vi. Communications through the Canadian Tobacco Manufacturers' Council in Canada, including to the federal Department of Health and Welfare
  - vii. As to British American Tobacco p.l.c. and the Philip Morris Group in particular, misleading statements on environmental tobacco smoke.
153. From 1953, the Lead Companies conspired with the TIRC, CORESTA, TMSC and Verband to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants misled the public and the Government of Saskatchewan, into believing that there was a medical or scientific controversy about whether smoking is addictive and causes disease. The Defendants' position and policy has been that causation remains an "open question." As described



below, this policy was enforced through ICOSI and the Canadian Tobacco Manufacturers' Council.

154. In 1963 and 1964 the Lead Companies and the Defendants 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 are harmful and dangerous. In particular, the Lead Companies contributed to research and vetted and selected the persons who were to conduct such research.
155. In April and September 1963, the Lead Companies, and in particular, British American Tobacco (Investments) Limited, through its agent Brown & Williamson Tobacco Corporation, and Imperial Tobacco Canada Limited, Philip Morris U.S.A. Inc. and R.J. Reynolds Tobacco Company, together with TIRC and Hill & Knowlton, 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. This public relations campaign was part of the broader ongoing public relations campaign which continues to the present to reassure the public and to suppress information.
156. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease unless and until they were forced to do so by government action.
157. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes and risks of smoking, including research

funded by British American Tobacco (Investments) Limited at Harrogate Labs in England. In particular, the Lead Companies agreed to suppress and conceal all information which confirmed scientific work on the carcinogenicity of tobacco smoke condensate, and to avoid reference to nicotine, nicotine dependence and nicotine pharmacology in the development of research proposals.

**(viii) Operation Berkshire and the Establishment of ICOSI**

158. By the mid-1970s, the Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups decided that an increased international misinformation campaign ("Operation Berkshire") was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease could lead to a "domino effect" to the detriment of the industry world-wide.
159. Through Operation Berkshire, the Defendants further advanced their campaign of misinformation. Operation Berkshire was aimed at Canada and other major markets and led by both the Philip Morris Group in concert with the Rothmans Group and the BAT Group.
160. Operation Berkshire was implemented as a scheme among the Defendants. This scheme involved an agreement among the Defendants not to make concessions voluntarily and to oppose, through legal or other means, the imposition of anti-smoking legislation. The Defendants also agreed not to concede that adverse health effects had been linked to smoking and, instead, agreed to create "controversy" concerning any research or studies suggesting otherwise.

161. In June, 1977, Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, as Lead Companies of each of the four Groups and acting on behalf of the members of those Groups, met in England to establish ICOSI.
162. The primary objective of ICOSI was to implement the Conspiracy. The smoking and health scheme denying the relationship between smoking and disease was directed at major international markets, including Canada. This scheme included an agreement by all members that the issue of causation remains controversial and unresolved and that warning notices would be strenuously resisted with all means at their disposal.
163. On June 2 and 3, 1977 and November 11 and 12, 1977, the founding members of ICOSI, including Philip Morris U.S.A. Inc., the R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, adopted a position paper and then a revised version thereof, developed jointly by the BAT and Philip Morris Groups. The position paper and the revised version required that the tobacco industry as a whole take the position that there was "medical controversy" regarding the relationship between smoking and disease.
164. Through ICOSI, the Defendants resisted attempts by governments to provide warnings about smoking and disease and sought to attribute warnings to governments. In furtherance of the Conspiracy, all of the Defendants pledged to:
  - (a) jointly disseminate false and misleading information regarding the risks of smoking
  - (b) make no statement or admission that smoking caused disease

- (c) suppress research regarding the risks of smoking
- (d) resist government attempts to restrict advertising, sponsorship and smoking in public places
- (e) not compete with each other by making health claims with respect to their cigarettes – in other words, not advertise "safer" cigarettes - and thereby avoid direct or indirect admissions about the risks of smoking
- (f) attribute quotes on smoking and health to "appropriate non-ICOSI sources"
- (g) 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 Saskatchewan and other jurisdictions that smoking was not hazardous.

165. In and after 1977 the members of ICOSI, including the Lead Companies of each of the Groups, in furtherance of the Conspiracy, agreed orally and in writing, to ensure that:

- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health (as described in paragraph 164), 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, the Canadian Tobacco Manufacturers' Council, to ensure compliance in the various tobacco markets worldwide

- (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
- (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.

166. In 1980, ICOSI was renamed the International Tobacco Information Centre/Centre International d'Information du Tabac – INFOTAB. In 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are referred to collectively as ICOSI). The objectives of ICOSI have remained the same notwithstanding these name changes and the Defendants maintained and have continued their Conspiracy to commit tobacco-related wrongs.

**(ix) ICOSI and the Canadian Tobacco Manufacturers' Council**

167. At all times from 1977 onward, the policies of ICOSI were identical to the policies of the NMAs, including the Canadian Tobacco Manufacturers' Council, and were presented as the policies and positions of the NMAs, including the Canadian Tobacco Manufacturers' Council and its member companies, so as to conceal from the public and from governments the existence of the Conspiracy or concert of action. ICOSI organized conferences of the NMAs, including the Canadian Tobacco Manufacturers' Council, to ensure compliance with ICOSI initiatives.

168. The Lead Companies were members of the Canadian Tobacco Manufacturers' Council through their respective operating companies in Canada, the predecessors of the

defendants Imperial Tobacco Canada Limited, JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Rothmans Inc. The Canadian Tobacco Manufacturers' Council was an allied member of ICOSI.

169. In particular, the ICOSI and the Canadian Tobacco Manufacturers' Council position papers were essentially identical in most respects and include the false and misleading positions that:

- i. No causal relationship between smoking and disease exists
- ii. No persuasive scientific evidence exists to support the contention that non-smokers are harmed by the tobacco smoke of others
- iii. Laws and regulations banning smoking are an unwarranted intrusion into the lives and rights of citizens.

170. At all material times, the Lead Companies conspired or acted in concert to ensure that manufacturers complied with, and did not deviate from, the official ICOSI position on the adverse health effects of smoking. In particular, "Issues Binders" were prepared so that ICOSI affiliates, including the Defendants in Canada, would speak with one voice on key issues such as addiction, advertising and sponsorship, the public smoking issue, smoking and health, social costs and warning labels. The Lead Companies instructed their respective Group companies to conform their policies to those of ICOSI. ICOSI developed workshops for the training of NMA personnel, including personnel of the Canadian Tobacco Manufacturers' Council.

171. The Defendants conspired or acted in concert in committing the tobacco-related wrongs particularized in Part III. The Defendants have continued the Conspiracy or have

continued to act in concert to commit tobacco-related wrongs. The Defendants have continued to maintain that environmental tobacco smoke is not harmful, have continued to create doubt and controversy regarding the health effects of exposure to cigarette smoke. The Defendants also have continued to oppose, delay and negate attempts by all levels of government, including municipal governments, and by health authorities, to provide health warnings or to otherwise limit or control cigarette smoking and exposure to cigarette smoke.

172. The Defendants' Conspiracy or concert of action has continued for more than thirty years since the inception of ICOSI. Further particulars of the manner in which the Conspiracy or concert of action was entered into and continued, and of the breaches of duty committed in furtherance of the Conspiracy or concert of action, are within the knowledge of the Defendants.

**B. Conspiracy and Concerted Action in Canada**

**(x) Canadian Tobacco Manufacturer's Council**

173. In furtherance of the Conspiracy, from 1953, the Defendants conspired or acted in concert with one another and within each Group to prevent the Government of Saskatchewan and persons in Saskatchewan and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and to commit the tobacco-related wrongs described in Part III. The Defendants conspired or acted in concert 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 or concert of action.

174. The Conspiracy or concert of action was continued in Canada when:

- (a) In 1962, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited secretly agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking.
- (b) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease.
- (c) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, incorporated as the Canadian Tobacco Manufacturers' Council in 1982 and collectively referred to as the Canadian Tobacco Manufacturers' Council) in order to maintain a united front on smoking and health issues and to respond to what the Defendants viewed as an increasingly vocal anti-tobacco lobby.
- (d) In May 1969, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited, through the Canadian Tobacco Manufacturers' Council, misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.



- (e) The Lead Companies of each of the Groups recruited, approved and coordinated the witnesses who presented the positions and misrepresentations of the Canadian tobacco industry.

- 175. Upon its formation in 1963 and at all material times thereafter, the Canadian Tobacco Manufacturers' Council provided a means and method to continue the Conspiracy or concert of action in Canada. From its inception, the Canadian Tobacco Manufacturers' Council agreed, adopted and participated in the Conspiracy or concert of action.
- 176. Through meetings, presentations and position papers, the Canadian Tobacco Manufacturers' Council has maintained that smoking was not the cause of any disease and has misrepresented the risks of smoking to governments and regulatory agencies throughout Canada. Through its misrepresentations and delay tactics, the Canadian Tobacco Manufacturers' Council has opposed or negated government restrictions on the tobacco industry.
- 177. In accordance with the position of the Lead Companies and its members, the Canadian Tobacco Manufacturers' Council has maintained that smoking is not the cause of any disease and misrepresented the risks of smoking to the Canadian public.
- 178. Since 1963, the Canadian Tobacco Manufacturers' Council has co-ordinated with its co-Defendants and international tobacco industry associations the Canadian tobacco industry's positions on smoking and health issues. At all material times, the Canadian Tobacco Manufacturers' Council acted as agent for each of its co-Defendants.
- 179. In furtherance of the Conspiracy or concert of action, the Canadian Tobacco Manufacturers' Council:

- (a) Disseminated false and misleading information regarding the risks of smoking, including making false and misleading submissions to governments and withheld from the federal government research relating to carbon monoxide, addiction, smoker compensation and warnings
- (b) Refused to admit that smoking caused disease
- (c) Suppressed research regarding the risks of smoking
- (d) Participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease
- (e) Misled governments in order to delay and minimize government initiatives with respect to smoking and health
- (f) Characterized anyone who disagreed with the Canadian tobacco industry on the issue of smoking and health as uninformed, misinformed or extremist
- (g) Participated in coordinated tobacco industry efforts in Canada to dismiss or minimize the risk of exposure to smoke.

**(xi) The Conspiracy in Canada Among the Groups**

180. As to the Philip Morris Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. Philip Morris Conference on Smoking and Health in June 1976

- ii. International Conference on Smoking Behaviour in November – December 1977
- iii. Conference on May 9, 1978 designed to change public opinion by developing policies to challenge and fight anti-smoking efforts
- iv. Tobacco Technology Group Meetings
- v. Corporate Affairs World Conference
- vi. Philip Morris International Legal Conference
- vii. Philip Morris International Corporate Affairs Presentation
- viii. Meetings of the Canadian Tobacco Manufacturers' Council
- ix. Meetings of ICOSI
- x. Position Papers of the Canadian Tobacco Manufacturers' Council
- xi. Direction by the Lead Companies to Rothmans, Benson & Hedges Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
- xii. The Canadian Tobacco Manufacturers' Council and Rothmans, Benson & Hedges Inc. acting as agents for the Lead Companies in the Philip Morris Group
- xiii. Requests by Rothmans, Benson & Hedges Inc. to the Canadian Tobacco Manufacturers' Council and ICOSI to respond to anti-tobacco campaigns

- xiv. Public statements about the Philip Morris Group's continued efforts, in concert with the other Defendants, to present the smoking and health issue to the public
- xv. Philip Morris Group and tobacco industry meetings relating to environmental tobacco smoke.

181. As for the RJR Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. Hounds Ears and Sawgrass conferences
- ii. Meetings of the Canadian Tobacco Manufacturers' Council
- iii. Meetings of ICOSI and in particular, the Social Acceptability Working Party chaired by the RJR Group
- iv. Smoking Issues Coordinator meetings
- v. Position Papers of the Canadian Tobacco Manufacturers' Council
- vi. Direction by the Lead Companies to JTI-Macdonald Corp. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research and the importance of maintaining the right to veto any particular research proposal
- vii. The Canadian Tobacco Manufacturers' Council and JTI-Macdonald Corp. acting as agents for the Lead Companies in the RJR Group

viii. RJR Group and tobacco industry meetings relating to environmental tobacco smoke.

182. As for the BAT Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. BAT Group Smoking and Health Policy Meetings, including Chairman's Advisory Conferences and BAT Group Smoking Behaviour Conferences
- ii. Smoker Reassurance Campaigns, including Project Viking and the September 1976 campaign
- iii. BAT Group document destruction meetings, including on January 8, 1990, June 21-22, 1990, August 1990 and September 1991
- iv. Imperial Tobacco Canada Limited's retention of Hill & Knowlton in 1962 to combat certain Health Canada information
- v. Meetings of the Canadian Tobacco Manufacturers' Council, including those dealing with the threshold nicotine content, procrastination in relation to carbon monoxide warnings and environmental tobacco smoke
- vi. The Canadian Tobacco Manufacturers' Council Position Papers
- vii. Meetings of ICOSI at which Imperial Tobacco Canada Limited was present or represented
- viii. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council

- v. Pooling of resources with other companies in the tobacco industry to fund studies intended to generate data that supported the industry's position that environmental tobacco smoke is not a health risk
- vi. Direction by Carreras Rothmans Limited to Rothmans Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
- vii. The Canadian Tobacco Manufacturers' Council and Rothmans Inc. acting as agents for Carreras Rothmans Limited
- viii. Rothmans Group and tobacco industry meetings relating to environmental tobacco smoke.

184. Further particulars of the manner in which the Conspiracy or concert of action was entered into or continued, and of the tobacco-related wrongs committed by the Defendants in furtherance and as a result of the Conspiracy or concert of action, are within the knowledge of the Defendants.

**C. Joint and Several Liability**

185. The Government of Saskatchewan states that by reason of the facts pleaded, all of the Defendants are jointly and severally liable for the Government of Saskatchewan's aggregate cost of health care benefits equal to the Defendants' combined market share in cigarettes.

186. The Government of Saskatchewan also states that by reason of the facts pleaded, the Defendants within each Group are jointly and severally liable.

187. The Government of Saskatchewan pleads and relies on subsections 2(6) and 4(3) and section 5 of the Act.

**V. RELIEF**

188. The Government of Saskatchewan claims against the Defendants, and each of them:

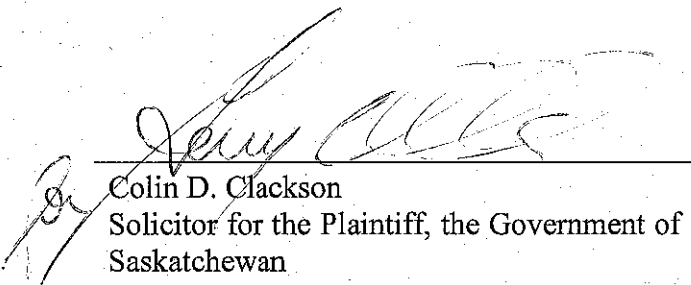
- (a) Its health care expenditures attributable to tobacco-related disease or the risk of tobacco-related disease, for each fiscal year from 1953, the present value of which for each year will be calculated to the date of trial.
- (b) The present value of the estimated total expenditure by the Government of Saskatchewan for health care benefits which could reasonably be expected to result from tobacco-related disease or the risk of tobacco-related disease.
- (c) costs; and
- (d) such other relief as to this Honourable Court seems just.

**DATED** at the City of Saskatoon, in the province of Saskatchewan, this 8<sup>th</sup> day of June, 2012.

"Colin D. Clackson"

Colin D. Clackson  
Solicitor for the Plaintiff, the Government of  
Saskatchewan

**AMENDED AND DATED** at the City of Saskatoon, in the province of Saskatchewan, this 8 day of October, 2012.

  
Colin D. Clackson

Solicitor for the Plaintiff, the Government of  
Saskatchewan

This document was delivered by:

**Wallace Meschishnick Clackson Zawada**

901-119 4<sup>th</sup> Avenue S.

Saskatoon, Saskatchewan S7K 5X2

Telephone: (306) 659-1226

Facsimile: (306) 933-2006

and the addresses for service is:

as above

Lawyer in charge of file:

Colin D. Clackson

Telephone: (306) 659-1227

Facsimile: (306) 933-2006

Our File No. 7933-16035