

Court File No :

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF NEW
BRUNSWICK,

Plaintiff,

- and -

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

Defendants.

STATEMENT OF CLAIM

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I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

1 The Plaintiff, Her Majesty the Queen in right of the Province of New Brunswick (the "Province"), brings this action against the Defendants pursuant to the provisions of section 2 of the *Tobacco Damages and Health Care Costs Recovery Act*, S.N.B. 2006 c. T-7.5 (the "Act") to recover the cost of health care benefits, namely:

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

caused or contributed to by the tobacco-related wrongs hereinafter described.

2 Pursuant to subsection 2(1) and paragraph 2(4)(b) of the *Act*, the Province brings this action to recover, on an aggregate basis, the cost of health care benefits, provided for a population of insured persons as a result of smoking cigarettes.

3 Pursuant to subsections 2(1) and 2(2) of the *Act*, the Province 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 Province does so in its own right and not on the basis of a subrogated claim.

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", "promote", "promotion", "tobacco product", "tobacco-related disease", and "tobacco-related wrong", have the meanings ascribed to them in 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

B. The Defendants

6. The defendant, Rothmans Inc (formerly Rothmans of Pall Mall Canada Limited), is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, Toronto, Ontario.
7. The defendant, Rothmans Benson & Hedges Inc (created through the amalgamation of Benson & Hedges (Canada) Inc and Rothmans of Pall Mall Limited), is a company incorporated pursuant to the laws of Canada with a registered office at 1500 Don Mills Road, North York, Ontario.
8. The defendant, Carreras Rothmans Limited, is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Oxford Road, Aylesbury, Bucks, England.
9. The defendant, Altria Group, Inc. (formerly known as Philip Morris Companies Inc.), has a registered office in New York, New York in the United States of America
10. The defendant, Philip Morris USA Inc., is a company incorporated pursuant to the laws of Virginia and has a registered office in Richmond, Virginia in the United States of America.
11. The defendant, Philip Morris International Inc, is a company incorporated pursuant to the laws of Delaware, and has a registered office in Lausanne, Switzerland.
12. The defendant, JTI-Macdonald Corp. (formerly RJR-Macdonald Corp and RJR-Macdonald Inc), is a company incorporated pursuant to the laws of Nova Scotia with a registered office at 5151 George Street, Suite 1600, Halifax, Nova Scotia

In 2004, JTI-Macdonald Corp sought protection from the Ontario Superior Court of Justice under the *Companies Creditor Arrangements Act*, R.S.C. 1985, c. C-36. If required, the plaintiff will seek leave from the appropriate Court to proceed against JTI-Macdonald Corp. as a defendant in this action.

13. The defendant, R.J. Reynolds Tobacco Company, is a company incorporated pursuant to the laws of New Jersey and has a registered office at 830 Bear Tavern Road, Trenton, New Jersey, in the United States of America.
14. The defendant, R.J. Reynolds Tobacco International, Inc., is a company incorporated pursuant to the laws of Delaware and has a registered office at 32 Loockerman Square, Suite L-100, Dover, Delaware, in the United States of America.
15. The defendant, Imperial Tobacco Canada Limited (created through the amalgamation of, *inter alia*, Imperial Tobacco Limited and Imasco Ltd.), is a company incorporated pursuant to the laws of Canada and has a registered office at 3810 St. Antoine Street, Montreal, Quebec.
16. 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.
17. The defendant, British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England.
18. The defendant, B.A.T. Industries p.l.c. (formerly B.A.T. Industries Limited and Tobacco Securities Trust Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England.

19. All of the defendants described above or their predecessors in interest for whom they are in law responsible, collectively described hereinafter as the "Defendants", are "manufacturers" pursuant to the *Act* by reason of one or more of the following:
- (a) they manufacture, or have manufactured, tobacco products, including cigarettes;
 - (b) they cause, or have caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of tobacco products, including cigarettes;
 - (c) they engage in, or have engaged in, or cause, or have caused, directly or indirectly, other persons to engage in, the promotion of tobacco products, including cigarettes; or
 - (d) for one or more of the material fiscal years, each has derived at least 10% of its revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products, including cigarettes, by itself or by other persons
20. The defendant, Canadian Tobacco Manufacturers' Council ("CTMC"), is a company incorporated pursuant to the laws of Canada and has a registered office at 1808 Sherbrooke St. West, Montreal, Quebec, and is the trade association of the Canadian tobacco industry.
21. CTMC is a manufacturer pursuant to the *Act* by reason of its having been primarily engaged in one or more of the following activities:
- (a) the advancement of the interests of manufacturers,
 - (b) the promotion of cigarettes, and
 - (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes
22. This Notice of Action with Statement of Claim attached is being served outside New Brunswick without leave of the court pursuant to Rule 19.01 (h),(i),(n),(o) and (r) of the New Brunswick Rules of Court.

II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN NEW BRUNSWICK

A. Canadian Tobacco Enterprises

1. The Defendant Rothmans Inc.

- 23 Rothmans Inc. purports to be the only Canadian owned, publicly traded tobacco company, and to have been a part of the Canadian tobacco industry for the past 100 years. Its predecessor companies include Rothmans of Pall Mall Canada Limited, which was incorporated in 1956 and changed its name in 1985 to Rothmans Inc.
- 24 Rothmans Inc. has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.

2. The Defendant Rothmans, Benson & Hedges Inc.

- 25 Rothmans of Pall Mall Limited, incorporated in 1960 in the United Kingdom, acquired part of the tobacco related business of Rothmans Inc. in 1985 and engaged, until it amalgamated with Benson & Hedges (Canada) Inc. in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
- 26 Benson & Hedges (Canada) Inc., incorporated in 1934, engaged, until it amalgamated with Rothmans of Pall Mall Limited in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
- 27 Rothmans, Benson & Hedges Inc., formed in 1986 by the amalgamation of Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc., has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
- 28 Rothmans, Benson & Hedges Inc. manufactures and promotes cigarettes sold in New Brunswick and the rest of Canada under several brand names, including *Rothmans* and *Benson & Hedges*.

- 29 Rothmans, Benson & Hedges Inc. is 60% owned by Rothmans Inc. and 40% owned by FTR Holding S.A., a Swiss company, which is a subsidiary of the defendant, Altria Group, Inc., and is affiliated with the defendants, Philip Morris U.S.A. Inc. and Philip Morris International, Inc.

3. The Defendant JTI-Macdonald Corp.

- 30 W.C. MacDonald Incorporated, which carried on business in Montreal from 1858 until incorporation in 1930, changed its name to Macdonald Tobacco Inc. in 1957 and became a wholly owned subsidiary of the defendant, R.J. Reynolds Tobacco Company, in 1973.
- 31 RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. Also 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. In 1999, as the result of a series of mergers, the name of RJR-Macdonald Inc. was changed to RJR-Macdonald Corp. and, subsequently, to JTI-Macdonald Corp.
- 32 JTI-Macdonald Corp. (and its predecessor Macdonald Tobacco Inc.) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
- 33 JTI-Macdonald Corp. manufactures and promotes cigarettes sold in New Brunswick and the rest of Canada under several brand names including *Export* "A" and *Vantage*.

4. The Defendant Imperial Tobacco Canada Limited

- 34 Imperial Tobacco Company of Canada Limited, incorporated in 1912, changed its name, effective December 1, 1970, to Imasco Limited.

35. In or about 1970, part of the tobacco related business of Imasco was acquired by Imperial Tobacco Limited, (a wholly owned subsidiary).
36. In or about February, 2000, Imasco Limited amalgamated with its subsidiaries including Imperial Tobacco Limited to form Imasco Limited. In a second amalgamation, also in or about February, 2000, Imasco Limited amalgamated with its parent company, British American Tobacco p.l.c., to form Imperial Tobacco Canada Limited ("Imperial")
37. Imperial is a wholly owned subsidiary of the defendant, British American Tobacco p.l.c.
38. Imperial (and its predecessor corporations) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
39. Imperial manufactures and promotes cigarettes sold in New Brunswick and the rest of Canada under several brand names, including *Player's* and *duMaurier*

B. Multinational Tobacco Enterprises

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

one or more of the Defendants within each group ("Lead Companies") or their predecessors in interest for whom they are in law responsible.

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

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

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

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

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

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

(e) Benson & Hedges (Canada) Inc.

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

(a) R.J. Reynolds Tobacco Company;

(b) R.J. Reynolds Tobacco International, Inc.;

(c) JTI-Macdonald Corp.; and

(d) Macdonald Tobacco Inc.

47. The members of the BAT Group have included the following companies:

(a) Imasco Limited and Imperial Tobacco Limited (now Imperial Tobacco Canada Limited);

(b) B.A.T Industries p.l.c.;

(c) British American Tobacco (Investments) Limited; and

(d) British American Tobacco p.l.c.

III. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. The Defendants' Knowledge

48 The Defendants designed and manufactured cigarettes to deliver nicotine to smokers

49. 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

50. 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; and

(iv) asthma

- (b) Cancer, including:
 - (i) cancer of the lung;
 - (ii) cancer of the lip, oral cavity and pharynx;
 - (iii) cancer of the larynx;
 - (iv) cancer of the esophagus;
 - (v) cancer of the bladder;
 - (vi) cancer of the kidney;
 - (vii) cancer of the pancreas; and
 - (viii) cancer of the stomach.
 - (c) circulatory system diseases, including:
 - (i) coronary heart disease;
 - (ii) pulmonary circulatory disease;
 - (iii) vascular disease; and
 - (iv) peripheral vascular disease.
 - (d) increased morbidity and general deterioration of health; and
 - (e) fetal harm
51. The Defendants have been aware that, when smoked as intended, cigarettes:
- (a) contain substances which can cause or contribute to disease;
 - (b) produce by-products which can cause or contribute to disease; and
 - (c) cause or contribute to addiction.
52. 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.
53. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that the nicotine present in cigarettes is addictive. In the alternative, at all material times, the Defendants knew or ought to have known that:
- (a) nicotine is an active ingredient in cigarettes;

- (b) smokers crave nicotine; and
- (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke

B. Deceit and Misrepresentation

- 54. The Defendants owed a duty not to misrepresent the risks of smoking.
- 55. The Defendants, with full knowledge of the risks of addiction and disease, misrepresented the risks of smoking and, in particular, without limiting the generality of the foregoing, misrepresented that:
 - (a) smoking has not been shown to cause any known diseases;
 - (b) they were not aware of any research, or any credible research, establishing a link between smoking and disease;
 - (c) many diseases shown to have been caused by smoking tobacco were in fact caused by other environmental or genetic factors;
 - (d) cigarettes are not addictive;
 - (e) smoking is merely a habit or custom as opposed to an addiction;
 - (f) they did not manipulate nicotine levels;
 - (g) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
 - (h) machine measurements of the tar and nicotine were representative of actual intake;
 - (i) certain of their cigarettes, such as "filter", "mild", "low tar" and "light" brands, were safer than other cigarettes;
 - (j) smoking is consistent with a healthy lifestyle; and
 - (k) the risks of smoking were less serious than they knew them to be
- 56. The Defendants suppressed scientific and medical data which revealed the serious health risks of smoking
- 57. The Defendants misinformed the public as to the harm of both smoking and of exposure to cigarette smoke

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

C. Failure to Warn

61. At all material times the Defendants knew or ought to have known that their cigarettes, when smoked as intended, were addictive and could cause or contribute to disease, and they owed a duty of care to warn the public of the risks of smoking.
62. The Defendants breached their duty by failing to provide any warning prior to 1972, or any adequate warning thereafter, of:
- (a) the risk of tobacco-related disease; or
 - (b) the risk of addiction to the nicotine contained in their cigarettes
63. Any warnings that were provided were inadequate and ineffective in that they:
- (a) failed to warn of the actual and known risks;
 - (b) were insufficient to give users, prospective users, and the public a true indication of the risks;
 - (c) were introduced for the purpose of delaying more accurate government mandated warnings; and

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

D. Promotion of Cigarettes to Children and Adolescents

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

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

E. Negligent Design and Manufacture

- 77 At all material times the Defendants owed a duty of care to design and manufacture a reasonably safe product, and to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking the cigarettes they manufactured and promoted
- 78 The Defendants have breached, and continue to breach, these duties by failing to design a reasonably safe product, and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking
- 79 The Defendants, in the design, manufacture and promotion of their cigarettes, created, and continue to create, an unreasonable risk of harm to the public from which they have failed to protect the public.

80. The Defendants increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
- (a) special blending of tobacco;
 - (b) adding nicotine or substances containing nicotine;
 - (c) introducing substances, including ammonia, to enhance the bio-availability of nicotine to smokers; and
 - (d) such further and other particulars known to the Defendants
81. The Defendants increased the risks of smoking by adding to their cigarettes ineffective filters and by misleading the public and government agencies that these filters made smoking safer
82. The Defendants further misled the public by misrepresenting that "mild", "low tar" and "light" cigarettes were healthier than regular cigarettes.
83. As a result of these tobacco-related wrongs, persons in New Brunswick started to smoke or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco-related disease and an increased risk of tobacco-related disease.

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

84. The Defendants, in their role as manufacturers of products for human use and consumption, were under legal, equitable and statutory duties to ensure that their cigarettes were reasonably safe, and they expressly or impliedly warranted that their cigarettes were reasonably safe.
85. Knowing that cigarettes were addictive and would cause and contribute to disease, the Defendants intentionally inflicted harm on persons in New Brunswick, by manufacturing, promoting and selling cigarettes, for profit and in disregard of public health

86 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;
- (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 including the risks of disease and addiction;
- (d) engaging in collateral 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;
- (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;
- (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, when smoked as intended, they are addictive and inevitably cause or contribute to disease and death;

- (k) misrepresenting that:
 - (i) smoking has not been shown to cause any known diseases;
 - (ii) they were not aware of any research, or any credible research, linking smoking and disease;
 - (iii) many diseases shown to have been caused by smoking tobacco were in fact caused by other environmental or genetic factors;
 - (iv) cigarettes are not addictive;
 - (v) smoking is merely a habit or custom as opposed to an addiction;
 - (vi) they did not manipulate nicotine levels;
 - (vii) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
 - (viii) machine measurements of tar and nicotine were representative of actual intake;
 - (ix) certain of their cigarettes, such as "filter", "mild", "low tar" and "light" brands, were safer than other cigarettes;
 - (x) smoking is consistent with a healthy lifestyle;
 - (xi) the risks of smoking were less serious than they knew them to be;
- (l) failing to correct statements regarding the risks of smoking which they knew were incomplete or inaccurate, and, by omission or silence, thereby misrepresenting the risks of smoking;
- (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;

- (q) deliberately and unconscionably discrediting various testing and research which showed a link between smoking and disease and addiction; and
- (r) such further and other particulars known to the Defendants.

87. 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 subsequently the *Competition Act* R.C.S. 1985, chapter C-34 and amendments thereto, and statutory and regulatory obligations in the province of New Brunswick.
88. As a result of these tobacco-related wrongs, persons in New Brunswick started or continued to smoke cigarettes manufactured and promoted by the Defendants or were exposed to cigarette smoke and thereby suffered tobacco-related disease and increased risk of such disease.

IV. CONSPIRACY, CONCERT OF ACTION, AND COMMON DESIGN

A. Role of the Lead Companies

89. At various times after about 1953, in response to mounting publicity and public concern about the link between smoking and disease, some or all of the Lead Companies of the four Groups or their predecessors in interest for whom the Lead Companies are in law responsible, and some or all of the remaining Defendants, conspired, acted in concert or with a common design, to prevent the Province and persons in New Brunswick 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.
90. This conspiracy, concert of action and common design secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco Company Limited), and American Tobacco Company. These

companies, on their own behalf and on behalf of their respective Groups, agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking;
- (b) make no statement or admission that smoking caused disease;
- (c) suppress or conceal research regarding the risks of smoking; and
- (d) orchestrate a public relations program on smoking and health issues with the object of:
 - (i) promoting cigarettes;
 - (ii) protecting cigarettes from attack based upon health risks; and
 - (iii) reassuring the public that smoking was not hazardous

- 91. This conspiracy, concert of action and common design was continued at secret committees, conferences and meetings involving senior personnel and through written and oral directives.
- 92. Between late 1953 and the early 1960s, the Lead Companies formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964 (the "CTR")), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), and the Tobacco Research Council ("TRC").
- 93. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC and similar organizations, would objectively conduct research and gather data concerning the link between smoking and disease and would publicize the results of this research throughout the world.
- 94. In reality, the Lead Companies conspired with the TIRC, the CTR, CORESTA, the TRC, and similar organizations, to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants intended to mislead the public and the Province,

into believing that there was a real medical or scientific controversy about whether smoking caused addiction and disease.

- 95 In 1963 and 1964 the Lead Companies and some or all of 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 were a harmful and dangerous product.
- 96 In April and September 1963, the Lead Companies agreed to develop a public relations campaign to counter the Royal College of Physicians report in England, the forthcoming Surgeon General's Report in the United States and a report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes.
- 97 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.
98. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes.
99. By the mid-1970s the Lead Companies, and some or all of the Defendants, decided that an increased international misinformation campaign was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease could lead to a "domino effect" to the detriment of the industry world-wide.
100. As a result, in June, 1977, the Lead Companies, and some or all of the Defendants with international interests, met in England to establish the International Committee on Smoking Issues ("ICOSI")
- 101 Through ICOSI, the Defendants resisted attempts by governments to provide adequate warnings about smoking and disease, and pledged to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking;
 - (b) make no statement or admission that smoking caused disease;
 - (c) suppress research regarding the risks of smoking;
 - (d) not compete with each other by making health claims with respect to their cigarettes, and thereby avoid direct or indirect admissions about the risks of smoking; and
 - (e) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and authorities in New Brunswick and other jurisdictions that smoking was not hazardous.
102. In and after 1977 the members of ICOSI, including each of the Lead Companies agreed orally and in writing, to ensure that:
- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health, including the decision to mislead the public about the link between smoking and disease;
 - (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, CTMC, to ensure compliance in the various tobacco markets world wide;
 - (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves; and
 - (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.
103. In the late 1970s, the Defendants launched Operation Berkshire, which was aimed at Canada and other major markets, to further advance their campaign of misinformation and to promote smoking. Operation Berkshire was lead by both the Philip Morris Group in concert with the Rothmans Group and by the BAT Group with some or all of the Defendants
104. In 1980, ICOSI was renamed the International Tobacco Information Centre / Centre International d'Information du Tabac - INFOTAB ("INFOTAB") In or

before 1992 INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are hereinafter referred to collectively as "ICOSI").

105. At all times, the policies of ICOSI were identical to the policies of the NMAs including CTMC, and were presented as the policies and positions of the NMAs and their member companies so as to conceal from the public and from governments the existence of the conspiracy, concert of action and common design.
106. The Lead Companies at all times acted to ensure that manufacturers complied, and did not deviate, from the official ICOSI position on the adverse health effects of smoking.
107. At all material times, the Defendants conspired, acted in concert, and with common design, in committing tobacco-related wrongs.
108. Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued, and of the breaches of duty committed in furtherance of the conspiracy, concert of action or common design are within the knowledge of the Defendants.

B. Conspiracy and Concerted Action in Canada

109. At all material times, the Defendants conspired, acted in concert or with common design, to prevent the Province and persons in New Brunswick and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco-related wrongs in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the conspiracy, concert of action or common design
110. This conspiracy, concert of action and common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by some or all of the Defendants in Canada, and

attended by their senior personnel and through written and oral directives and communications amongst some or all of them.

111. The conspiracy, concert of action and common design was continued when:

- (a) in or about 1962, the Defendants in Canada agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking;
- (b) in 1963 some or all of the Defendants misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease;
- (c) in or about 1963, some or all of the Defendants formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, and incorporated as CTMC in 1982) in order to maintain a united front on smoking and health issues (the Ad Hoc Committee on Smoking and Health, the pre-incorporation Canadian Tobacco Manufacturers' Council and CTMC are hereinafter collectively referred to as CTMC"); and
- (d) in or about 1969, some or all of the Defendants misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.

112. Upon its formation, and at all material times thereafter, CTMC provided a means and method to continue the conspiracy, concert of action and common design and, upon its incorporation, agreed, adopted and participated in the conspiracy, concert of action and common design.

113. CTMC has lobbied governments and regulatory agencies throughout Canada since about 1963, with respect to tobacco industry matters, as well as misrepresenting the risks of smoking to the Canadian public, in accordance with the tobacco industry's position

114. CTMC has co-ordinated, with some or all of the Defendants and international tobacco industry associations, the Canadian cigarette industry's positions on smoking and health issues.

115 In furtherance of the conspiracy, concert of action and common design, CTMC:

- (a) disseminated false and misleading information regarding the risks of smoking including making false and misleading submissions to governments;
- (b) refused to admit that smoking caused disease;
- (c) suppressed research regarding the risks of smoking;
- (d) participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease; and
- (e) lobbied governments in order to delay and minimize government initiatives with respect to smoking and health.

116 At all material times, CTMC acted as the agent of some or all of the Defendants.

117 Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued, and of the tobacco-related wrongs committed by the Defendants in Canada in furtherance of the conspiracy, concert of action or common design, are within the knowledge of the Defendants.

C. Joint Liability

118 The Province pleads that the Defendants, including CTMC, are jointly and severally liable for the cost of health care benefits and relies upon the provisions of section 4 of the *Act*.

119 In the alternative, the Defendants within each Group are jointly and severally liable.

1. The Rothmans Group

120 The Rothmans Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized, convened and attended by senior personnel of the Rothmans Group members, including those of Rothmans Inc., Rothmans,

Benson & Hedges Inc , its amalgamating company Rothmans of Pall Mall Limited, and Carreras Rothmans Limited, as well as those of the Philip Morris Group, and through written and oral directives and communications amongst the Rothmans Group members.

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

2. The Philip Morris Group

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

through written and oral directives and communications amongst the Philip Morris Group members.

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

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

3. The RJR Group

131. The RJR Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized and convened by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. and attended by senior personnel of the RJR Group members, including those of JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., and through written and oral directives and communications amongst the RJR Group members
- 132 The meetings used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health included the Winston-Salem Smoking Issues Coordinator Meetings.
- 133 The conferences used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common

policies on smoking and health include the "Hound Ears" and Sawgrass conferences.

134. R J Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., further directed or co-ordinated the RJR Group's position on smoking and health by means of a system of reporting whereby each global "Area" had a "smoking issue designee" who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to the Manager of Science Information in the R.J. Reynolds Tobacco Company. In the case of Area II (Canada), this "designee" was, from 1974, a senior executive of Macdonald Tobacco Inc., and later of JTI-Macdonald Corp.
135. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the RJR Group's common policies on smoking and health by preparing and distributing to the members of the RJR Group, including JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., written directives and communications including an "Issues Guide". These directives and communications set out the RJR Group's position on smoking and health issues to ensure that the personnel of the RJR Group companies, including JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., understood and disseminated the RJR Group's position.
136. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the smoking and health policies of JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
137. Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued and of the tobacco-related wrongs committed by JTI-Macdonald Corp., its predecessor company Macdonald Tobacco Inc., and the defendant, R.J. Reynolds Tobacco Company, in

furtherance of the conspiracy, concert of action or common design are within the knowledge of the RJR Group members.

4. The BAT Group

138. The BAT Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized and convened by British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. and attended by senior personnel of the BAT Group members, including those of Imperial Tobacco Limited and Imasco Limited, and through written and oral directives and communications amongst the BAT Group members.
139. The committees used by British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., or either of them, to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board, the Tobacco Executive Committee, and the Tobacco Strategy Review Team (which later became known as the Tobacco Strategy Group).
140. The conferences used by the defendants, British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Advisory Conferences, BAT Group Research Conferences, and BAT Group Marketing Conferences. Some of these conferences took place in Canada.
141. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c. further directed or co-ordinated the BAT Group's common policies on smoking and health by preparing and distributing to the members of the BAT Group, including Imperial Tobacco Limited and Imasco Limited, written directives and communications including "Smoking Issues:

Claims and Responses", "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues", "Smoking and Health: The Unresolved Debate", "Smoking: The Scientific Controversy", "Smoking: Habit or Addiction?", and "Legal Considerations on Smoking and Health Policy". These directives and communications set out the BAT Group's position on smoking and health issues to ensure that the personnel of the BAT Group companies, including the personnel of Imperial Tobacco Limited and Imasco Limited, understood and disseminated the BAT Group's position

- 142 British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., further directed or co-ordinated the smoking and health policies of Imperial Tobacco Limited and Imasco Limited, by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC
143. Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued and of the tobacco-related wrongs committed in furtherance of the conspiracy, concert of action or common design, are within the knowledge of the BAT Group members.

V. RELIEF

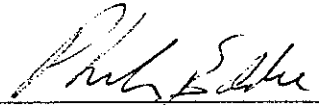
- 144 The Province provides health care benefits for the population of insured persons who suffer tobacco-related disease or the risk of tobacco-related disease as a result of the tobacco-related wrongs committed by the Defendants and therefore claims against the Defendants, and each of them:
- (a) the present value of the total expenditure by the Province for health care benefits provided for insured persons resulting from tobacco-related disease or the risk of tobacco-related disease, further particulars of which will be furnished as soon as they become available, pursuant to Rule 27.06(10);
 - (b) the present value of the estimated total expenditure by the Province 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, further particulars of which will be furnished as soon as they become available, pursuant to Rule 27.06 (10);

- (c) costs or, in the alternative, special or increased costs; and
- (d) such other relief as to this Honourable Court seems just.

145 The Province intends to proceed in the English and French languages

DATED at Fredericton, New Brunswick, this 13th day of March, 2008.



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