

2011 01G. No. 0826  
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

BETWEEN:

ATTORNEY GENERAL OF NEWFOUNDLAND  
AND LABRADOR

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 AMERICA TOBACCO  
(INVESTMENTS) LIMITED, and CANADIAN TOBACCO  
MANUFACTURERS' COUNCIL

DEFENDANTS

STATEMENT OF CLAIM

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

1. The Plaintiff, the Attorney General of Newfoundland and Labrador (the "Province"), provides health care services to a population of insured persons who suffer from tobacco related disease or who are at risk of suffering from tobacco related disease as a result of the wrongs committed by the Defendants.
2. Pursuant to Section 4 of the *Tobacco Health Care Costs Recovery Act*, S.N.L. 2001, c. T-4.2 (the "Act") the Province in its own right and not on the basis of a subrogated claim, claims against the Defendants for recovery of the cost of health care services that it has provided and will continue to

provide to insured persons who have suffered or are suffering or are at risk of suffering from tobacco related disease, namely:

- (a) the present value of the total expenditure by the Province for health care services that it has 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 services that it could reasonably be expected the Province will be required to provide for insured persons resulting from tobacco related disease or the risk of tobacco related disease,

that have been caused or contributed to by the tobacco related wrongs committed by the Defendants.

3. The words and terms used in this Statement of Claim, including;

- (i) cost of health care services;
- (ii) disease;
- (iii) exposure;
- (iv) health care services;
- (v) insured person;
- (vi) joint venture;
- (vii) manufacture;
- (viii) manufacturer;
- (ix) person;
- (x) promote;
- (xi) promotion;
- (xii) tobacco product;
- (xiii) tobacco related disease;
- (xiv) tobacco related wrong;
- (xv) type of tobacco product; and
- (xvi) related person

have the meanings ascribed to them in Sections 2 and 3 of the *Act*.

**B. The Defendants**

4. The Defendant, Rothmans Inc., formerly Rothmans of Pall Mall Canada Limited, is a company incorporated pursuant to the laws of Canada with its registered office located at 1500 Don Mills Road, Toronto, Ontario, Canada.
5. The Defendant, Rothmans Benson & Hedges Inc. which was established 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 its registered office located at 1500 Don Mills Road, North York, Ontario, Canada.
6. The Defendant, Carreras Rothmans Limited, is a company incorporated pursuant to the laws of the United Kingdom with its registered office located at Globe House, 1 Water Street, London, England.
7. The Defendant, Altria Group, Inc., formerly Philip Morris Companies Inc., is a company incorporated pursuant to the laws of Virginia, in the United States of America with its registered office located at 6601 Broad Street, Richmond, Virginia, in the United States of America.
8. The Defendant, Philip Morris USA Inc., is a company incorporated pursuant to the laws of Virginia, in the United States of America with its registered office located at 6601 Broad Street, Richmond, Virginia in the United States of America.
9. The Defendant, Philip Morris International Inc., is a company incorporated pursuant to the laws if Virginia, in the United States of

America with its registered office located at 120 Park Ave., New York, New York, United States of America.

10. 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 located at 5151 George Street, Box 247, Halifax, Nova Scotia, Canada.

11. The Defendant, R.J. Reynolds Tobacco Company, is a company incorporated pursuant to the laws of North Carolina, in the United States of America with its principal office located at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America.

12. The Defendant, R.J. Reynolds Tobacco International, Inc., is a company incorporated pursuant to the laws of Delaware with its principal office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America.

13. The Defendant, Imperial Tobacco Canada Limited which was established through the amalgamation of, *inter alia*, Imperial Tobacco Limited and Imasco Ltd., is a company incorporated pursuant to the laws of Canada with its registered office located at 3371 St. Antoine Street, Montreal, Quebec, Canada.

14. The Defendant, British American Tobacco P.L.C., is a company incorporated pursuant to the laws of the United Kingdom with its registered office located at Globe House, 4 Temple Place, London, England.

15. The Defendant, B.A.T. Industries P.L.C., formerly B.A.T. Industries Limited and the Tobacco Securities Trust Company Limited, is a company

incorporated pursuant to the laws of the United Kingdom with its registered office located at Globe House, 4 Temple Place, London, England.

16. 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 with its registered office located at Globe House, 1 Water Street, London, England.

17. Each and every one of the Defendants referenced in Paragraphs 4 through and including 16 of this Statement of Claim and/or their predecessors in interest for whom they are in law responsible are "manufacturers" pursuant to the *Act* by reason of one or more of the following:

- (a) they manufacture, or have manufactured, tobacco products, including cigarettes;
- (b) they cause or have caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of tobacco products, including cigarettes;
- (c) they engage in, or have engaged in, or cause, or have caused, directly or indirectly, other persons to engage in, the promotion of tobacco products themselves, including cigarettes; or
- (d) for one or more of the material fiscal years, each has derived at least ten percent (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.

18. The Defendant, the Canadian Tobacco Manufacturers' Council ("CTMC"), is a company incorporated pursuant to the laws of Canada with its registered office located at 1808 Sherbrooke St. West, Montreal, Quebec, Canada. CTMC is the trade association of the Canadian tobacco industry.

19. CTMC is also 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 tobacco products, and
- (c) causing, directly or indirectly, other persons to engage in the promotion of tobacco products.

## **II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN THE PROVINCE OF NEWFOUNDLAND AND LABRADOR**

### **A. Canadian Tobacco Enterprises**

#### **1. The Defendant - Rothman's Inc.**

20. Rothmans Inc. has been involved in the Canadian tobacco industry for over one hundred (100) years. Its predecessor companies include Rothmans of Pall Mall Canada Limited which was incorporated in Canada in 1956. Subsequently in 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc.

21. Rothmans Inc. has engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.

**2. The Defendant - Rothman's, Benson & Hedges Inc.**

22. Rothmans of Pall Mall was originally incorporated in the United Kingdom in 1960. In 1985 Rothman's of Pall Mall acquired a portion of the tobacco related business operations of Rothmans Inc. and until it amalgamated with Benson & Hedges (Canada) Inc. in 1986 to form Rothmans, Benson & Hedges Inc., engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.
23. Benson & Hedges (Canada) Inc. was incorporated in 1934 and until 1986 when it amalgamated with Rothmans of Pall Mall Limited to form Rothmans, Benson & Hedges Inc., engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.
24. Rothmans, Benson & Hedges Inc. was established in 1986 through the amalgamation of Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc. It has engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.
25. Rothmans, Benson & Hedges Inc. manufactures and promotes tobacco products sold in the Province of Newfoundland and Labrador and throughout Canada under several brand names, including Rothmans and Benson & Hedges.
26. Rothmans, Benson & Hedges Inc. is owned sixty percent (60%) by Rothmans Inc. and forty percent (40%) by FTR Holding S.A., a Swiss company. FTR Holding S.A. is a subsidiary of the Defendant, Philip Morris International Inc. and was, at one time, also a subsidiary of the

Defendant, Altria Group Inc. It is now affiliated with the Defendant, Philip Morris U.S.A. Inc.

**3. The Defendant—JTI-MacDonald Corp.**

27. W. C. MacDonald Incorporated carried on business operations in Montreal from 1858 until its incorporation in 1930. In 1957 it changed its name to MacDonald Tobacco Inc. In 1973 Macdonald Tobacco Inc. became a wholly owned subsidiary of the Defendant, R.J. Reynolds Tobacco Company.
28. In 1978, R. J. Reynolds Tobacco Company incorporated a wholly owned subsidiary known as RJR-Macdonald Inc. to which it sold all or substantially all of the assets of its other wholly owned subsidiary, Macdonald Tobacco Inc. RJR-Macdonald Inc. continued the business of manufacturing, promoting and selling tobacco products previously conducted by Macdonald Tobacco Inc. RJR-Macdonald Inc. subsequently became a wholly owned subsidiary of RJR Nabisco Holdings Corp. In March 1999, RJR Nabisco Holdings Corp. sold RJR-Macdonald Inc. to Japan Tobacco Inc. As a result of this transaction, the name of the RJR-Macdonald Inc. was changed to JTI-Macdonald Corp.
29. JTI-Macdonald Corp. and its predecessors including, Macdonald Tobacco Inc. and RJR-Macdonald Inc., has engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.
30. JTI-Macdonald Corp. manufactures and promotes the sale of tobacco products in the Province of Newfoundland and Labrador and throughout Canada under several brand names including, Export "A" and Vantage.



31. On August 24, 2004, JTI-Macdonald Corp. sought protection from the Ontario Superior Court of Justice under the *Companies Creditor Arrangements Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"). On April 16, 2010, the protection order under the CCAA was terminated by the Ontario Superior Court of Justice. Specifically, the Ontario Superior Court of Justice ordered, amongst other things, that "*all proceedings by or against JTI-Macdonald may continue without effect by those stays of proceedings*" and "*JTI-Macdonald shall be entitled to carry on business irrespective of the CCAA proceedings and the Orders made therein.*"

4. **The Defendant—Imperial Tobacco Canada Limited**

32. Imperial Tobacco Company of Canada Limited was incorporated in 1912. Effective December 01, 1970, Imperial Tobacco Company of Canada Limited changed its name to Imasco Limited.

33. In or about 1970 a portion of the tobacco related business of Imasco Limited was acquired by Imperial Tobacco Limited, its wholly owned subsidiary.

34. In or about February 2000, Imasco Limited amalgamated with its subsidiaries including, Imperial Tobacco Limited, and continued its operations and those of its subsidiaries under the name 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").

35. Imperial is a wholly owned subsidiary of the Defendant, British American Tobacco P.L.C.

36. Imperial and its predecessor corporations have engaged, directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.

37. Imperial manufactures and promotes tobacco products sold in the Province of Newfoundland and Labrador and throughout Canada under several brand names, including Player's and duMaurier.

**B. Multinational Tobacco Enterprises**

37. There are four (4) multinational tobacco enterprises ("Groups") whose member companies engage, either directly or indirectly, in the manufacture, promotion and sale of tobacco products in the Province of Newfoundland and Labrador and throughout the world. The four (4) Groups are:

- a. Rothmans;
- b. Philip Morris;
- c. RJR; and
- d. BAT.

38. At all times material to this action, tobacco products sold in the Province of Newfoundland and Labrador have been manufactured and promoted by manufacturers who are, or were, members of one (1) of the four (4) Groups.

39. The manufacturers within each of the four (4) Groups have developed and implemented common policies relating to smoking and health which policies have been directed and/or coordinated by one or more of the Defendants within each of the four (4) Groups ("Lead Companies") or their predecessors in interest for whom they are in law responsible.

40. At material times, Lead Companies of the four (4) 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 Group 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)

41. 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.

42. 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.

43. 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.

44. 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**

#### **I. The Defendants' Knowledge**

45. The Defendants designed and manufactured tobacco products to deliver nicotine to smokers.
46. 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.
47. Smoking and exposure to second hand smoke cause or contribute to diseases including, but not limited to:
- (a) chronic obstructive pulmonary disease and related conditions, including but not limited to:
    - (i) emphysema;
    - (ii) chronic bronchitis;
    - (iii) chronic airways obstruction; and
    - (iv) asthma;
  - (b) cancer, including but not limited to:

- (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 but not limited to:
  - (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.

48. The Defendants have been aware that when smoked and consumed as intended, tobacco products:

- (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.

49. By 1950 and at all times thereafter which are material to this action the Defendants knew or ought to have known that:

- (d) smoking and consuming tobacco products could cause or contribute to disease;
- (e) nicotine present in tobacco products is addictive.

50. In the alternative, at all times material to this action the Defendants knew or ought to have known that:

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

51. By in or about 1970 and at all times thereafter material to this action the Defendants knew or ought to have known that exposure to second hand smoke could cause or contribute to disease.

**A. Breaches of Common Law, equitable and Statutory Duties and Obligations**

52. The Province states that the Defendants have committed tobacco related wrongs as defined in the *Act*. In particular, the Defendants have committed breaches of common law, equitable or statutory duties and obligations owed by the Defendants to persons in the Province of Newfoundland and Labrador who have been exposed to or might become exposed to a tobacco product.

53. The Defendants have also committed torts in the Province of Newfoundland and Labrador which constitute tobacco related wrongs pursuant to the *Act*.

54. As a result of these tobacco related wrongs, insured persons in the Province of Newfoundland and Labrador have suffered tobacco related disease or the risk of tobacco related disease and the Province has incurred and will continue to incur expenditures for health care benefits provided to these insured persons.

**1. Breach of Duty—Design and Manufacture**

55. At all times material to this action, 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 and consuming other tobacco products that they manufactured and promoted.

56. 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 and consuming other tobacco products.

57. The Defendants, in the design, manufacture and promotion of their tobacco products, created, and continue to create, an unreasonable risk of harm to the public from which they have failed to protect the public.

58. The Defendants increased the risks of smoking by manipulating the level and bio-availability of nicotine in their tobacco products, 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 actions, the particulars of which are known to the Defendants.

59. The Defendants increased the risks of smoking by adding ineffective filters to their cigarettes and by misleading the public and government agencies into believing that these filters made smoking safer.

60. The Defendants further misled the public by misrepresenting that "mild", "low tar", and "light" cigarettes were healthier for the public than regular cigarettes.

61. As a result of these tobacco related wrongs, persons in the Province of Newfoundland and Labrador commenced smoking or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke or consumed tobacco products and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

## **2. Breach of Duty - Misrepresentation**

62. The Defendants owed a duty to the public not to misrepresent the risks associated with the use of tobacco products.

63. The Defendants, with full knowledge of the risks of addiction and disease, misrepresented the risks of exposure to second hand smoke and, in particular, without limiting the generality of the foregoing, misrepresented that:

- (e) smoking and exposure to second hand smoke had not been shown to cause any known diseases;
- (f) they were not aware of any research, or any credible research, establishing a link between smoking or exposure to second hand smoke and disease;
- (g) many diseases shown to have been caused by smoking tobacco or exposure to second hand smoke were in fact caused by other environmental or genetic factors;
- (h) cigarettes were not addictive;
- (i) they were not aware of any research, or any credible research, that established that smoking is addictive;
- (j) smoking is merely a habit or custom;



- (k) they did not manipulate nicotine levels in their cigarettes;
- (l) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
- (m) the intake of tar and nicotine associated with smoking their cigarettes was less than they knew or ought to have known it to be;
- (n) certain of their cigarettes, such as "filter", "mild", "low tar" and "light" brands, were safer than other cigarettes;
- (o) smoking is consistent with a healthy lifestyle; and
- (p) the risks of smoking and exposure to second hand smoke were less serious than they knew them to be.

64. The Defendants suppressed scientific and medical data which revealed the serious health risks associated with smoking and the use of other tobacco products.

65. The Defendants misinformed the public as to the harm of both smoking and of exposure to cigarette smoke.

66. 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 the public that cigarettes were not as dangerous as the health authorities and anti-smoking groups were saying.

67. The Defendants intended that these misrepresentations be relied upon by individuals in Province of Newfoundland and Labrador for the purpose of inducing them to use tobacco products and in particular, to commence smoking or to continue to smoke.

68. As a result of these tobacco related wrongs, persons in the Province of Newfoundland and Labrador used tobacco products and in particular, commenced 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.

### **3. Breach of Duty - To Warn of Risks**

69. At all times material to this action the Defendants knew or ought to have known that their tobacco products, when smoked or consumed as intended, were addictive and could cause or contribute to disease, and the Defendants owed a duty of care to warn public of the risks inherent in the use of their tobacco products.

70. The Defendants breached their duty to the public prior to 1972 by failing to provide any warning whatsoever and thereafter any adequate warning of the risks to the public associated with the use of tobacco products including, but not limited to:

- (q) tobacco related disease; or
- (r) addiction to the nicotine contained in their tobacco products.

71. Any warnings that were provided to the public by the Defendants were inadequate and ineffective in that they:

- (s) failed to warn of the actual and known risks;
- (t) were insufficient to give users, prospective users, and the public a true indication of the risks;
- (u) were introduced for the purpose of delaying more accurate government-mandated warnings; and
- (v) 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.

72. The Defendants knew or ought to have known that children and adolescents in the Province of Newfoundland and Labrador were using or might use tobacco products, but failed to provide warnings sufficient to inform children and adolescents of the risks.

73. The Defendants engaged in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of the stated warnings placed on packages of tobacco products and in particular, cigarette packaging. These activities by the Defendants were intended to affect the import to the public of the warnings contained in advertising and given by governments and other agencies concerned with public health.

74. The Defendants suppressed information regarding the risks of smoking and of exposure to second hand smoke.

75. The Defendants misinformed and misled the public about the risks of smoking and the risks of exposure to second hand smoke.

76. As a result of these tobacco related wrongs, persons in the Province of Newfoundland and Labrador commenced or continued to use tobacco products and, in particular, 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 tobacco related disease.

4. Breach of Duty—Manufacturing or Promoting Tobacco Products for Children and Adolescents

77. At all times material to this action the Defendants owed a duty of care to children and adolescents in the Province of Newfoundland and Labrador to take all reasonable measures to prevent them from commencing or continuing to smoke.

78. The Defendants' own research revealed that the vast majority of smokers commenced smoking and were addicted to tobacco products before they reached the age of nineteen (19) years.

79. The Defendants knew or ought to have known that children and adolescents in the Province of Newfoundland and Labrador were smoking or might commence to smoke prior to reaching the age of nineteen (19) years and that it was contrary to law or public policy to sell cigarettes and other tobacco products to children and adolescents or to promote the use of tobacco products and in particular, smoking by such persons.

80. The Defendants knew or ought to have known that children and adolescents in the Province of Newfoundland and Labrador who used their tobacco products and in particular, smoked their cigarettes were at risk of becoming addicted to cigarettes and would suffer tobacco related disease.

81. The Defendants failed to take reasonable and appropriate measures to prevent children and adolescents from commencing or continuing to smoke or to use other tobacco products.

82. The Defendants targeted children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children

and adolescents in the Province of Newfoundland and Labrador to commence or continue to smoke or to use tobacco products.

83. The Defendants, in further breach of their duty, undermined government initiatives and legislation which were intended to prevent children and adolescents in the Province of Newfoundland and Labrador from commencing or continuing to smoke or to use tobacco products.

84. As a result of these tobacco related wrongs, children and adolescents in the Province of Newfoundland and Labrador commenced to or continued to smoke cigarettes or to use tobacco products 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.

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

85. As manufacturers of a product intended for human use and consumption the Defendants were under a legal, equitable and statutory obligation and duty to ensure that their tobacco products and, in particular, cigarettes, were reasonable safe for that purpose. By their actions in the manufacture and promotion of their tobacco products and, in particular, their cigarettes, the Defendants either expressly or impliedly, warranted to the public that their products were reasonably safe for human use and consumption.

86. As the Defendants knew or ought to have known that their tobacco products and, in particular, their cigarettes, were addictive and could cause or contribute to tobacco related disease, the Defendants intentionally inflicted harm to the public in the Province of Newfoundland and Labrador by their manufacture, promotion and sale of their tobacco

products and, in particular, their cigarettes, for profit with complete disregard for public health.

87. The Defendants engaged in unconscionable acts and/or practices which did or had the intention of exploiting the vulnerabilities of children and adolescents and other persons addicted to nicotine, the particulars of which include but are not limited to the following:

- (a) manipulating the level and bio-availability of nicotine in their cigarettes by:
  - (i) sponsoring or engaging in selective breeding and/or genetic engineering of tobacco plants with the intention of producing a tobacco plant which contained increased levels of nicotine;
  - (ii) deliberately increasing the level of nicotine in tobacco products and, in particular, cigarettes by blending different tobaccos;
  - (iii) deliberately increasing the level of nicotine in tobacco products and, in particular, cigarettes by adding additional nicotine or other substances containing nicotine to their tobacco products and, in particular, cigarettes;
- (b) adding ineffective filters to cigarettes and misleading the public into believing that these filters made smoking safer ;
- (c) failing to disclose to consumers the inherent risks of disease and addiction which are associated with the use of tobacco products and, in particular, smoking;
- (d) engaging in collateral marketing, promotion and public relation activities intended to neutralize or negate the effectiveness of safety warnings issued by government agencies and anti-smoking groups to the public;

- (e) suppressing or concealing scientific and medical information relating to the risks of consumption of tobacco products and, in particular, smoking;
- (f) marketing and promoting smoking in a manner designed to mislead the public into believing that cigarettes contain performance enhancing characteristics, ingredients, uses and benefits that they did not contain;
- (g) using innuendo, exaggeration and ambiguity with the intention of misinforming and misleading the public about the inherent risks of consumption of tobacco related products and, in particular, cigarettes;
- (h) failing to undertake any reasonable measures to prevent children and adolescents from commencing or continuing to smoke or use tobacco products;
- (i) targeting children and adolescents in their advertising, promotional and marketing activities with the intention of inducing children and adolescents to commence or continue smoking or to use tobacco products;
- (j) manufacturing, marketing, distributing and selling tobacco products and, in particular, cigarettes, which they knew or ought to have known are unjustifiably hazardous and likely to cause or contribute to tobacco related disease or death when used as intended;
- (k) misrepresenting to, amongst others, the public, government agencies and anti-smoking groups that:
  - (i) smoking and exposure to second hand smoke had not been shown to cause any known disease;
  - (ii) they were not aware of any research, or credible research that linked smoking to a tobacco related disease;

- (iii) many of the diseases which were alleged to have been caused by smoking were caused instead 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 or intended to increase the bio-availability of nicotine;
  - (viii) machine measurements of tar and nicotine were representative of actual intake by consumers;
  - (ix) "filter", "mild", "low tar" and "light tar" tobacco products were safer than other tobacco products;
  - (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 or ought to have known were false, incorrect or inaccurate and by their omission or silence, misrepresenting the risks of smoking;
  - (m) misrepresenting the characteristics of their cigarettes without proper testing, investigation or research concerning:
    - (i) risk of disease;
    - (ii) risk of addiction to nicotine;
    - (iii) feasibility of eliminating or minimizing these risks
  - (n) misrepresenting as safer tobacco products, cigarettes with filters and "mild", "low tar" or "low nicotine" tobacco, all of which would have been revealed to be an ineffective safeguard to the health of smokers had adequate or proper testing been conducted of the tobacco product;



- (o) failing to provide clear, credible, complete and current disclosure of the inherent risks of smoking and the use of tobacco products;
- (p) misleading the public as to the risks associated with the consumption of tobacco products and, in particular, smoking;
- (q) deliberately and unconscionably attempting to discredit various test results and research which disclosed a link between the consumption of tobacco products and, in particular, smoking, and tobacco related diseases and addiction; and
- (r) such further and other particulars known to the Defendants.

88. In making these representations or by misrepresenting the information and research which was known or ought to have been known to them the Defendants knew or ought to have known that:

- (a) consumers may not be reasonably able to protect their own interests because of the failure of the Defendants to disclose its research results;
- (b) consumers may not be reasonably able to protect their own interests because of disability, ignorance, illiteracy or similar factors.

89. The Defendants have breached their legal, equitable and statutory duties and obligations, both principally and federally. Specifically they have breached the provisions of the *Combines Investigation Act*, R.S.C. 1952 (supp), c.314, as amended by the *Criminal Law Amendment Act*, S.C. 1968-1969, c. C-34, as amended, and the statutory and regulatory obligations of the Province of Newfoundland and Labrador.

90. As a result of these tobacco related wrongs, persons in the Province of Newfoundland and Labrador commenced or continued to consume tobacco products and, in particular, cigarettes, manufactured and promoted

by the Defendants or were exposed to cigarette smoke thereby resulting in persons suffering from tobacco related disease and an increased risk of tobacco related disease.

#### **IV. CONSPIRACY, CONCERT of ACTION, AND COMMON DESIGN**

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

91. At all times material to this action the Defendants conspired and acted in concert in committing tobacco related wrongs.

92. At various times after in or 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 (4) Groups or their predecessors in interest for whom the Lead Companies are in law responsible, and some or all of the remaining Defendants, conspired and acted in concert to prevent the Province and persons in the Province of Newfoundland and Labrador and other jurisdictions from acquiring knowledge of the harmful and addictive properties of tobacco products and, in particular, cigarettes, in circumstances where they knew or ought to have known that their actions would cause increased health care costs.

93. This conspiracy, concert of action and common design secretly originated in or about 1953 and early 1954 in a series of meetings and communications amongst 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.

94. This conspiracy, concert of action and common design of the Defendants was continued at secret committees, conferences and meetings involving senior personnel of the Lead Companies and through written and oral directives.

95. Between in or about 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").

96. 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.

97. 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 as to whether the consumption of tobacco products and, in particular, smoking caused addiction and disease.

98. In or about 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 of America ("USA") for the purpose of suppressing any findings which might indicate that cigarettes were a harmful and dangerous product.
99. In or about April and September 1963, the Lead Companies agreed to jointly develop a public relations campaign intended to counter the report of the Royal College of Physicians in England, the then forthcoming report of the Surgeon General in the USA and a report of the Canadian Medical Association for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes.
100. In or about 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.
101. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of tobacco products and, in particular, cigarettes.
102. By in or about the mid-1970s, the Lead Companies, and some or all of the Defendants determined that the international component of their misinformation campaign was required to be increased in an effort to protect the interests of the tobacco industry from any disclosures or admissions which might suggest a link between the consumption of tobacco products and, in particular, cigarettes, and tobacco related disease. The Defendants feared that any such disclosure or admission would create

a "domino effect" which would be a significant detriment to the industry world-wide.

103. As a result of these intentions and with the specific purpose of ensuring a continued and effective international component to their misinformation campaign, in or about 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").
104. Through ICOSI, the Defendants resisted attempts by governments to provide or require the Defendants to provide adequate warnings as to the link between the consumption of tobacco products and, in particular, cigarettes, 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 tobacco products and, in particular, 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 the Province of Newfoundland and Labrador and other jurisdictions that smoking was not hazardous.
105. 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 groups comprising the Lead Companies 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.

106. In or about the late 1970s, the Defendants launched "Operation Berkshire", which was directed at Canada and other major markets and was intended to further advance their campaign of misinformation and to promote smoking. Operation Berkshire was lead by the Philip Morris Group in concert with the Rothmans Group and by the BAT Group with assistance from some or all of the Defendants.

107. In or about 1980, ICOSI was renamed the International Tobacco Information Centre/Centre International d'Information du Tabac - INFOTAB ("INFOTAB"). INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are hereinafter collectively referred to as "ICOSI").

108. At all times material to this action 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. The basis or rationale for these policies was to conceal from the public and from

governments the existence of the conspiracy, concert of action and common design of the Defendants.

109. At all times material to this action the Lead Companies acted to ensure that manufacturers complied with and did not deviate from the official ICOSI position on the adverse health effects of the consumption of tobacco products and, in particular, cigarettes.

110. In addition to the foregoing, the Defendants specifically engaged in a conspiracy, concert of action and common design with respect to the issue of second hand smoke.

111. In or about the early 1970s, the Defendants and/or related and affiliated companies began to specifically combine their resources and coordinate their activities with respect to the issue of second hand smoke. In 1975, the Defendants and/or related and affiliated companies formed the first of several committees to specifically address second hand smoke. Although the Defendants and related companies claimed that the Committees were formed to conduct "sound science" regarding the emerging issue of second hand smoke, their actual purpose was to fund projects that would counter the public's growing concern regarding the harmful effects of second hand smoke, despite the knowledge amongst the Defendants of its harmful effects. The Committee for Indoor Air Research ("CIAR") founded in 1987, carried out their mandate of challenging the growing consensus that second hand smoke was harmful by:

- (a) coordinating and funding efforts to generate evidence to support the notion that there remained an "open controversy" as to the health implications of second hand smoke;
- (b) leading the attack on government efforts to act on evidence linking second hand smoke to disease; and
- (c) acting as a "front" organization for flowing tobacco industry funds to

research projects so that the various committees appeared to be independent organizations and the role of the tobacco industry was hidden.

112. At all times material to this action the Defendants conspired and acted in concert and with common design to commit tobacco related wrongs.
113. Further particulars of the manner in which the conspiracy, concert of action and common design were entered into or continued and of the breaches of duty committed in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Defendants.

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

114. At all material times material to this action, the Defendants conspired and acted in concert to prevent the Province and the public in the Province of Newfoundland and Labrador and in other jurisdictions from acquiring knowledge of the harmful and addictive properties of tobacco products and, in particular, cigarettes. The Defendants 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 their conspiracy, concert of action and common design.
115. 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 also through written and oral directives and communications amongst some or all of the Defendants.
116. 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 or about 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 and the Standing Committee on Health, Welfare and Social Affairs that there was no causal connection between smoking and disease.

117. Upon its formation, and at all material times thereafter material to this action, 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.

118. CTMC has lobbied governments and regulatory agencies throughout Canada since in or about 1963 on matters of interest to, or related to, the tobacco industry and has also, through these lobbying efforts, misrepresented the risks of smoking to the Canadian public, in accordance with the tobacco industry's position.

119. CTMC in concert with some or all of the Defendants and the international tobacco industry associations has coordinated the Canadian cigarette industry's positions on smoking and health issues.
120. In furtherance of the conspiracy, concert of action and common design of the Defendants, 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 cigarettes 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.
121. At all times material to this action CTMC has acted as the agent of some or all of the Defendants.
122. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued, and of the tobacco related wrongs committed by the Defendants in Canada and, in particular in the Province of Newfoundland and Labrador, in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Defendants.

**C. Joint Liability**

123. The Province states that the Defendants, including CTMC, are jointly and individually liable for the cost of health care services which the Province has incurred and which it will continue to incur as a result of tobacco related disease caused by the tobacco related wrongs of the Defendants.
124. In the alternative, the Province states that the Defendants within each of the four (4) Groups are jointly and individually liable for the cost of health care services which the Province has incurred and which it will continue to incur as a result of tobacco related disease caused by the tobacco related wrongs of the Defendants.
125. The Province pleads and relies upon the provisions of the *Act* and, in particular, section 6 thereof.

**1. The Rothman's Group**

126. Members of the Rothmans Group 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 members of the Rothmans Group including senior personnel of Rothmans Inc., Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, Carreras Rothmans Limited and the Philip Morris Group. The members of the Rothman's Group also entered into and continued the conspiracy, concert of action and common design through written and oral directives and communications amongst its members.

127. Carreras Rothmans Limited and its affiliated companies were involved in directing or coordinating the common policies on smoking and health of the Rothmans Group by preparing and distributing statements which set out the Rothmans Group's position on smoking and health issues.
128. Carreras Rothmans Limited and its affiliated companies were also involved in directing or coordinating 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 each of these companies how they should vote in committees of 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.
129. Further particulars of the manner in which the conspiracy, concert action and common design was entered into or continued and of the tobacco related wrongs committed by Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc., in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Rothmans Group members.

2. The Philip Morris Group

130. The members of the Philip Morris Group 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 senior personnel of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada)

Ltd. The members of the Philip Morris Group also entered into and continued the conspiracy, concert of action and common design through written and oral directives and communications amongst its members.

131. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. used committees including the Committee on Smoking Issues and Management and the Corporate Products Committee to direct or coordinate the common policies on smoking and health of the Philip Morris Group.
132. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. used conferences including the Conference on Smoking and Health and the Corporate Affairs World Conference to direct or coordinate the common policies on smoking and health of the Philip Morris Group.
133. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International Inc. further directed or coordinated the common policies on smoking and health of the Philip Morris Group through 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 position of the Philip Morris Group on smoking and health issues.
134. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or coordinated 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"*. Information on the position of the Philip Morris Group on smoking and health issues were contained within these directives and communications which were distributed amongst the members of the Philip Morris Group, including Rothmans, Benson & Hedges Inc., and its amalgamating company Benson & Hedges (Canada) Ltd., to ensure that their personnel understood and disseminated the position of the Philip Morris Group.

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

### 3. The RJR Group

137. Members of the RJR Group 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., that were attended by senior personnel of the RJR Group Members, including those of JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. The members of the RJR Group also entered into and continued the conspiracy, concert of action and common design through written and oral directives and communications amongst its members.

138. R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc. used meetings including the Winston-Salem Smoking Issues Coordinator Meetings to direct or coordinate the common policies on smoking and health of the RJR Group.
139. The conferences used by R. J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. used conferences including the "*Hound Ears*" and "*Sawgrass*" conferences to direct or coordinate the common policies on smoking and health of the RJR Group.
140. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., further directed or coordinated the common policies of the RJR Group on smoking and health by establishing a reporting system throughout its member companies which required each global "Area" to have a "smoking issue designee" who was then supervised by representatives of R.J. Reynolds Tobacco International, Inc. The "smoking issue designee" was required to report to the Manager of Science Information at R.J. Reynolds Tobacco Company. Canada was designated as global "Area II" and from in or about 1974 its "smoking issue designee" was a senior executive of Macdonald Tobacco Inc. and later of JTI-Macdonald Corp.

141. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or coordinated the common policies on smoking and health of the RJR Group by preparing and distributing to its member companies 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 common policy of the RJR Group on smoking and health issues and were intended to ensure that personnel of the companies within the RJR Group including JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. understood and disseminated the position of the RJR Group.
142. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or coordinated the common smoking and health policies of JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. by directing, influencing or advising each of these companies 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 and common design was entered into or continued and of the tobacco related wrongs committed by JTI-Macdonald Corp., its predecessor company Macdonald Tobacco Inc., and the Defendant, R.J. Reynolds Tobacco Company, in furtherance of the conspiracy, concert of action and common design are within the knowledge of the RJR Group members.



### The BAT Group

144. Members of the BAT Group entered into the conspiracy, concert or 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. that were attended by senior personnel of the BAT Group members, including those of Imperial Tobacco Limited and Imasco Limited. The members of the BAT Group also entered into and continued the conspiracy, concert of action and common design through written and oral directives and communications amongst its members.
145. British American Tobacco (Investments) Limited, British American Tobacco P.L.C. and B.A.T. Industries P.L.C. or either of them used committees to direct and/or co-ordinate the common policies on smoking and health of the BAT Group including 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 (later changing its name to the Tobacco Strategy Group).
146. The Defendants, British American Tobacco (Investments) Limited, British American Tobacco P.L.C. and B.A.T. Industries P.L.C. used conferences, including the Chairman's Advisory Conferences, BAT Group Research Conferences, and BAT Group Marketing Conferences, to direct or co-ordinate the common policies on smoking and health of the BAT Group include. Some of these conferences took place in Canada.

147. British American Tobacco (Investments) Limited, British American Tobacco P.L.C. and B.A.T. Industries P.L.C. further directed or coordinated the common policies on smoking and health of the BAT Group 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 position on smoking and health issues of the BAT Group and were intended to ensure that personnel of the BAT Group of companies, including the personnel of Imperial Tobacco Limited and Imasco Limited, understood and disseminated the position of the BAT Group.
148. British American Tobacco (Investments) Limited, British American Tobacco P.L.C. and B.A.T. Industries P.L.C. further directed or coordinated 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.
149. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed in furtherance of the conspiracy, concert of action and common design are within the knowledge of the BAT Group members.

## V. SERVICE OF DOCUMENTS

150. In accordance with Rule 6.07 (3) of the *Rules of the Supreme Court, 1986* the within Statement of Claim is to be served upon the Defendants outside of the Province of Newfoundland and Labrador pursuant to Rule 6.07(1)(h) and Rule 6.07(1)(o) by virtue of the facts pled and relied upon by the Plaintiff herein.

## VI. RELIEF SOUGHT

151. The Province has provided and will continue to provide health care services for insured persons as defined in Section 2(e) of the *Act*, who have suffered or are suffering or are at risk of suffering from tobacco related disease as a result of the tobacco related wrongs committed by the Defendants. The Plaintiff therefore claims against each of the Defendants, both jointly and individually, the following:
- (a) the present value of the total expenditure by the Province for health care services that it has 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 services that it could reasonably be expected the Province will be required to provide for insured persons resulting from tobacco related disease or the risk of tobacco related disease; and
  - (c) all costs of this proceeding, including but not limited to pre-trial discoveries, applications and hearings; and
  - (d) Interest pursuant to the *Judgment Interest Act*, R.S.N. 1990, c.J-2;
  - (e) Such further and other relief as this Honourable Court shall deem mete.

**DATED** at the City of St. John's, in the Province of Newfoundland and Labrador this 8<sup>th</sup> day of February, 2011.



**ROEBOTHAN, MCKAY, MARSHALL**

Solicitors for the Plaintiff

Whose address for service is:

70 Brookfield Road

P.O. Box 5236

St. John's, NL. A1C 5W1

**TO:**

**The Supreme Court of Newfoundland and Labrador—Trial Division (General)**

309 Duckworth Street

P.O. Box 937

St. John's, NL., A1C 5M3

**AND TO:**

**Rothman's Inc.**

1500 Don Mills Road

Toronto, ON

**Rothman's Benson & Hedges Inc.**

1500 Don Mills Road

Toronto, ON

**Carreras Rothman's Limited**

Globe House

1 Water Street

London, England

**Altria Group Inc.**

6601 Broad Street

Richmond, Virginia, USA

**Philip Morris USA Inc.**

6601 Broad Street

Richmond, Virginia, USA

**Philip Morris International Inc.**

120 Park Avenue

New York, New York, USA

**JTI-MacDonald Corp.**

5151 George Street  
P.O. Box 247  
Halifax, NS

**R.J. Reynolds Tobacco Company**

401 North Main Street  
Winston-Salem, North Carolina, USA

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

401 North Main Street  
Winston-Salem, North Carolina, USA

**Imperial Tobacco Canada Limited**

3711 St. Antoine Street  
Montreal, QB

**British American Tobacco P.L.C.**

Globe House  
4 Temple Place  
London, England

**B.A.T. Industries P.L.C.**

Globe House  
4 Temple Place  
London, England

**British American Tobacco Investments) Limited**

Globe House  
1 Water Street  
London, England

**Canadian Tobacco Manufacturers' Council**

1808 Sherbrooke St. West  
Montreal, QB.

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador this *8th*  
day of February, 2011

sgd.,

LINDA *BOYLES*

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COURT  
OFFICER

2011 01G. No.  
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

BETWEEN:

ATTORNEY GENERAL OF NEWFOUNDLAND  
AND LABRADOR

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 AMERICA TOBACCO  
(INVESTMENTS) LIMITED, and CANADIAN TOBACCO  
MANUFACTURERS' COUNCIL

DEFENDANTS

NOTICE TO DEFENDANT(S)

You are hereby notified that the Plaintiff(s) may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within 10 days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland at St. John's a defence and unless within same time a copy of your defence is served upon the plaintiff(s) or the plaintiff(s) solicitor(s) at the plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the plaintiff(s) or the plaintiff's solicitors within ten (10) days from the service of this notice upon you, then this proceedings will be stayed.

TO:

**Rothman's Inc.**  
1500 Don Mills Road  
Toronto, ON

**Rothman's Benson & Hedges Inc.**  
1500 Don Mills Road  
Toronto, ON

**Carreras Rothman's Limited**  
Globe House  
1 Water Street  
London, England

**Altria Group Inc.**  
6601 Broad Street  
Richmond, Virginia, USA

**Philip Morris USA Inc.**  
6601 Broad Street  
Richmond, Virginia, USA

**Philip Morris International Inc.**  
120 Park Avenue  
New York, New York, USA

**JTI-MacDonald Corp.**  
5151 George Street  
P.O. Box 247  
Halifax, NS

**R.J. Reynolds Tobacco Company**  
401 North Main Street  
Winston-Salem, North Carolina, USA

**R.J. Reynolds Tobacco International, Inc.**  
401 North Main Street  
Winston-Salem, North Carolina, USA

**Imperial Tobacco Canada Limited**  
3711 St. Antoine Street  
Montreal, QB

**British American Tobacco P.L.C.**  
Globe House  
4 Temple Place  
London, England

**B.A.T. Industries P.L.C.**

Globe House  
4 Temple Place  
London, England

**British American Tobacco Investments) Limited**

Globe House  
1 Water Street  
London, England

**Canadian Tobacco Manufacturers' Council**

1808 Sherbrooke St. West  
Montreal, QB.



2011 01G. No.  
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

BETWEEN:

ATTORNEY GENERAL OF NEWFOUNDLAND  
AND LABRADOR

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 AMERICA TOBACCO  
(INVESTMENTS) LIMITED, and CANADIAN TOBACCO  
MANUFACTURERS COUNCIL

DEFENDANTS

Affidavit Of Service

I, \_\_\_\_\_, of \_\_\_\_\_, make oath  
and say as follows:

(Personal Service)

1. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_\_\_ at \_\_\_\_\_ I served  
\_\_\_\_\_ with the within Statement of Claim  
by leaving a copy with him/her  
at \_\_\_\_\_

(Where the rules provide for personal service on a corporation, etc.  
by leaving a copy of the document with another person, substitute:  
by leaving a copy with \_\_\_\_\_  
at \_\_\_\_\_.

2. I was able to identify the person (or corporation) by means of  
\_\_\_\_\_.

**(Service by leaving a copy with an adult person in the same household as an alternative to personal service)**

1. I served the \_\_\_\_\_ with the \_\_\_\_\_ within Statement of Claim on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ by leaving a copy with a person \_\_\_\_\_ who appeared to be an adult member of the same household in which is residing, at \_\_\_\_\_, and by sending a copy by regular letter mail (or registered or certified mail) on \_\_\_\_\_ to \_\_\_\_\_ at the same address.
2. I ascertained that the person was an adult member of the household and/or a Director or representative of the corporation by means of \_\_\_\_\_.
3. Before serving the documents in this way, I made an unsuccessful attempt to serve \_\_\_\_\_ personally at the same address on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ (If more than one attempt has been made, add: and again on \_\_\_\_\_.)

**(Service by registered mail as an alternate to personal service)**

1. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, I sent to \_\_\_\_\_ by registered mail with Canada Post Corporation item # \_\_\_\_\_ attached to the envelope, a copy of the \_\_\_\_\_ within Statement of Claim.
2. Attached is the confirmation of delivery receipt obtained from Canada Post Corporation for item # \_\_\_\_\_ showing the envelope was \_\_\_\_\_ delivered \_\_\_\_\_ to \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.
3. The item # \_\_\_\_\_ on the confirmation of delivery receipt is identical to the item number on the registered mail receipt obtained from Canada Post Corporation for the envelope sent to \_\_\_\_\_.

**(Service by certified mail as an alternative to personal service)**

1. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

I \_\_\_\_\_ sent \_\_\_\_\_ to \_\_\_\_\_  
by certified mail a copy of the within Statement of Claim.

2. I received the attached receipt card from Canada Post Corporation which indicates the documents were received on \_\_\_\_\_ and which bears a signature that purports to be the signature of \_\_\_\_\_.

**(Service by regular letter mail as an alternative to personal service)**

1. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_  
I sent to \_\_\_\_\_ by regular letter mail a copy of the \_\_\_\_\_ together with an acknowledgment of receipt form.

2. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_  
I received the attached acknowledgment of receipt form bearing a signature that purports to be the signature of \_\_\_\_\_.

**SWORN (OR AFFIRMED) to**

at the \_\_\_\_\_ of \_\_\_\_\_  
in the \_\_\_\_\_ of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_,  
before me:

\_\_\_\_\_