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Court File No: C17773/97

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

LJUBISA SPASIC, AS ESTATE TRUSTEE OF THE ESTATE OF

MIRJANA SPASIC

Plaintiff

and

IMPERIAL TOBACCO LIMITED, and
ROTHMANS, BENSON & HEDGES INC.

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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

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

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

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

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

Date: May 1, 1997.
Issued by:

.....

Local Registrar
Address of court office:
491 Steeles Avenue East
Milton, Ontario
L9T 1Y7

Tel. (905) 878-2813

TO:

IMPERIAL TOBACCO LIMITED
3810 St. Antoine Street,
Montreal, Quebec.

ROTHMANS, BENSON & HEDGES INC.
1500 Don Mills Road,
North York, Ontario.

CLAIM

RELIEF SOUGHT

1. The plaintiff claims:

- (a) damages in the sum of \$1,000,000.00;
- (b) reimbursement for moneys expended on the purchase of the defendants' cigarette products;
- (c) aggravated, punitive and exemplary damages;
- (d) pre-judgement and post-judgement interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) its costs of this action; and
- (f) such further and other relief as the nature of this case may require and this Honourable Court deems just.

THE PARTIES AND RELATED FACTS

- 2. The deceased plaintiff, MIRJANA SPASIC (hereinafter, "the plaintiff") resided in the City of Burlington, in the Regional Municipality of Halton. She was born on January 26th, 1946.
- 3. The defendant IMPERIAL TOBACCO LIMITED ("ITL") is an incorporated company with its registered office located in the City of Montreal. ITL is a wholly-owned subsidiary of IMASCO LIMITED. IMASCO's major shareholder is B.A.T. INDUSTRIES p.l.c. ("BAT"), formerly known as BRITISH AMERICAN TOBACCO, the world's second largest cigarette producer. BAT exerts effective control over IMASCO and through it ITL.
- 4. The defendant ROTHMANS, BENSON & HEDGES INC. ("RBH") is an incorporated company with its registered office in the City of North York, Ontario. RBH is 60% controlled by ROTHMANS INC. of Toronto and 40% by PHILIP MORRIS INTERNATIONAL FINANCE CORPORATION ("PM") of New York City. The major shareholder of ROTHMANS INC. is ROTHMANS INTERNATIONAL B.V. of the Netherlands. ROTHMANS INTERNATIONAL is the fourth largest tobacco group in the world. PHILIP MORRIS COMPANIES INC., PM's ultimate parent, is the largest tobacco company in the world.
- 5. The plaintiff smoked cigarette products designed, manufactured and distributed by the defendants since approximately 1975, including so-called "light", "menthol" and "thrifit" (*i.e.* roll-your-own) products.
- 6. As a result of the consuming of the defendants' cigarette products, the plaintiff became addicted to, and had her addiction maintained by these products, and developed lung cancer which was diagnosed in 1995.

NEGLIGENT AND INTENTIONAL ACTS

7. The plaintiff alleges that her lung cancer was caused by the negligent and/or intentional acts of the defendants, their employees, servants, agents, research and development consultants, and marketing and advertising agencies, for whose acts the defendants are, in law, liable; such acts consisting as follows:

(a) they knew or ought to have known that cigarette products containing nicotine are nicotine delivery devices and pharmacologically addictive;

(b) they knew or ought to have known that cigarette products containing nicotine cause or materially contribute to serious negative health consequences, including addiction and lung cancer;

(c) they knew or ought to have known that cigarette products containing nicotine are inherently dangerous and defective and that there is no safe means of using the product nor safe level of use;

(d) they failed to warn that the consumption of their products was dangerous to health;

(e) they knew or ought to have known that the plaintiff either was not aware of, or did not understand, was confused about, or was likely not to appreciate the nature, gravity and extent of the health risks of cigarette smoking, including nicotine addiction, absent effective communication efforts by the defendants;

(f) they knew or ought to have known that descriptive terms, such as "light", "mild", "ultra mild", "pleasure" and "smooth", used in connection with the promotion of their various cigarette brands, inaccurately and misleadingly describe the impact and effect of their cigarette products on the human body;

(g) they knew or ought to have known from their own and others' research on consumers that the vast majority of smokers, including the plaintiff, inaccurately believe that cigarette products marketed as 'lower tar and nicotine' or "light" alternatives deliver lower quantities of toxic constituents, reduce the risk of negative health consequences to themselves and others, are a reasonable alternative to quitting, or aid in cutting down or quitting;

(h) they knew or ought to have known that the toxic constituent levels reported to the public, including the plaintiff, in respect of their cigarette products were misleading, because unlike the arbitrary and fixed mechanical smoke extraction method employed by the defendants to establish these published levels, smokers adjust their behaviour to extract their body's nicotine requirement;

(i) they knew or ought to have known that their labelling practices, public advocacy and brand-name promotional activities would falsely reassure the plaintiff that it was safe and acceptable to use the defendants' products despite health and social pressures to cut down or quit;

(j) they knew or ought to have known that cigarettes designed to deaden, mask or reduce negative sensory impressions of cigarette smoke (e.g., menthol cigarettes) negatively impact upon the plaintiff's desire to quit;

(k) at all material times, in order to induce the plaintiff and other consumers to smoke and continue smoking, they manufactured, distributed and sold cigarette products whose recipes, components and design features.

(i) ensure that these products contain and deliver forms and extractable levels of nicotine sufficient to facilitate, maintain and, indeed, heighten nicotine addiction; and

(ii) deaden, mask or reduce negative sensory impressions of cigarette smoke in order to encourage initiation and continued use of their products, and to facilitate, maintain and, indeed, heighten nicotine addiction;

(l) they either failed to report any toxic constituents to the public, including the plaintiff, or reported levels of constituents based upon arbitrary and fixed methods that misrepresent actual levels of toxins ingested by human smokers. They also failed to provide unambiguous, complete, and easily understood information in this respect to consumers, including the plaintiff;

(m) they either failed to communicate pertinent health and product information to consumers, including the plaintiff, or failed to develop and employ accurate, clear, complete, current, unqualified, prominent, undisguised and effective methods of communicating pertinent health and product information to the plaintiff;

(n) they failed to warn the plaintiff of added dangers posed by so-called 'lower tar and nicotine' or "light" brands;

(o) they engaged in misleading public advocacy, labelling practices and brand-name promotional activities designed to convey or imply, or engaged in activities the defendants ought to have reasonably known would convey or imply to the plaintiff, that:

(i) cigarettes containing nicotine are not addictive; that smoking is a pleasant, safe, indeed beneficial 'lifestyle' choice that can be adopted and abandoned at will;

(ii) cigarette smoke contains inconsequential quantities of toxic substances;

(iii) cigarettes containing nicotine do not cause or materially contribute to negative health consequences including addiction and lung cancer;

(iv) the nature and magnitude of the risk of smoking are exaggerated by public health and medical organizations, government bodies and officials and researchers thereof;

(v) there is a genuine, widespread controversy in the medical and scientific world in respect of whether cigarettes containing nicotine cause or materially contribute to negative health consequences including addiction and lung cancer;

(vi) health and medical organizations and public health authorities trying to reduce and gradually eliminate the demand for tobacco products are alarmists;

(vii) cigarettes containing nicotine are ordinary, benign, rewarding consumer products compatible with good physical and emotional health and well-being, as well as physical fitness;

(viii) certain cigarettes contain lower levels of nicotine and other toxic smoke constituents compared to others; and

(ix) the smoking of certain cigarettes is a badge of, or the route to, financial and social independence, social acceptance, success, advancement, sophistication and personal freedom;

when the defendants knew or ought to have known that these suggestions were inaccurate, misleading, untrue, and contrary to their own research data;

(p) at all material times, they engaged in misleading public advocacy, labelling practices and brand-name promotional activities designed to encourage, or that should reasonably have been recognized as encouraging, the plaintiff to initiate and continue smoking;

(q) they failed to reveal to the plaintiff their research data which established or alerted them to the likelihood of (1) serious negative health consequences resulting from cigarette product use, including lung cancer and addiction; and (2) smokers' perceptual vulnerabilities in respect thereof;

(r) at all material times, they suppressed, concealed and destroyed research data so as to prevent the plaintiff from discovering the defendants' true state of knowledge in respect of (1) their cigarette products; and (2) smokers' perceptual vulnerabilities;

(s) in the alternative, they were negligent or wilfully blind in failing to make enquiries of (1) their parent, controlling, affiliate and associate corporations; (2) other industry participants and research organizations and consultants; and (3) public health and medical authorities and organizations regarding available research with respect to the negative health consequences of cigarette smoking and smokers' perceptual vulnerabilities;

(t) they failed to obtain the informed consent of the plaintiff to the administration of the drug nicotine; and

(u) they failed to develop, promote and distribute cigarette products whose recipes, component and design features make inhalation unpleasant.

Spoliation

Existence of a potential lawsuit

8. Since at least the early 1950's up to, and including the present, the defendants, their employees, servants, agents; subsidiary, parent, controlling, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies have known that:

(a) cigarette tobacco smoke is hazardous, causing or materially contributing to serious negative health effects, including lung cancer, in those who ingest such smoke; and

(b) conventional unfiltered and filtered cigarette products, including so-called 'light' cigarettes, are inherently defective products, responsible for thousands of estimated premature deaths in Canada and elsewhere, annually.

9. Since at least the early 1960's, the defendants, their employees, servants, agents; subsidiary, parent, controlling, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies have known that nicotine, which is present in cigarette tobacco smoke, is an addictive drug, and that individuals who ingest such smoke can become addicted to nicotine.

Defendants' knowledge of a potential lawsuit

10. Since at least the 1950's, the defendants have known that, as a result of the continued sale, and misleading promotion of an inherently defective product C namely conventional cigarette products C they and their employees, servants, agents; subsidiary, parent, controlling, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies faced a potential flood of products liability lawsuits.

Intent on the part of the defendants to disrupt or defeat potential lawsuits by destroying, mutilating, or significantly altering potential evidence.

11. In order to prevent evidence that tended to establish their knowledge, information or belief of the hazardous nature of conventional cigarette products from reaching potential litigants (thus, preventing or seriously undermining the ability of such litigants from proving their case), the defendants, together with their employees, servants, agents; subsidiary, parent, controlling, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies engaged in various schemes to conceal, destroy and alter by unlawful, unethical, improper, unjustified, and unfair means, documentary and other evidence that tended to establish their knowledge, information and belief that:

(a) conventional cigarette products are hazardous to health, materially contributing to serious negative health consequences, including lung cancer and addiction;

(b) conventional cigarette products containing nicotine are nicotine delivery devices and pharmacologically addictive;

(c) conventional cigarette products containing nicotine are inherently dangerous and defective, and that there is no safe means of using such products or safe level of use;

(d) most consumers of conventional cigarettes are either not aware of, do not understand, are confused about, or are likely to not appreciate the nature, gravity and extent of the health risks of cigarette smoking, including nicotine addiction, absent effective communication efforts by the defendants and those for whom the defendants are, in law, liable C efforts the plaintiff claims have never been carried out;

(e) descriptive terms, such as "light", "mild", "ultra mild", "pleasure" and "smooth", used in connection with the promotion of their cigarette brands inaccurately and misleadingly describe the impact and effect of 'conventional' cigarette products upon the human body;

(f) that the vast majority of smokers inaccurately believe that cigarette products explicitly or implicitly marketed as "filtered", 'lower tar and nicotine' or "light" alternatives deliver lower quantities of toxic constituents, reduce the risk of negative health consequences to themselves and others, are a reasonable alternative to quitting, or aid in cutting down or quitting;

(g) cigarette product designs and formulations that tend to deaden, mask or reduce negative sensory impressions of cigarette smoke will negatively impact upon consumers' desire to quit;

(h) consumers are falsely reassured by the defendants' promotional activities in relation to their conventional cigarette products and their health related effects;

(i) toxic constituent levels reported to the public are misleading, in part, because smokers adjust their behaviour to extract their body's nicotine requirement; and

(j) their public advocacy and brand-name promotional activities, and labelling practices were misleadingly designed to convey or imply to, or reassure the public that:

(i) 'conventional' cigarettes products containing nicotine are not addicting drug delivery devices; rather, smoking is a pleasant, benign -- indeed beneficial -- 'lifestyle' choice that can be adopted and abandoned at will;

(ii) cigarette smoke contains inconsequential quantities of toxic substances;

(iii) cigarettes containing nicotine do not cause or materially contribute to negative health consequences including addiction and lung cancer;

(iv) the nature and magnitude of the risk of smoking are exaggerated by public health and medical organizations, government bodies and officials and researchers thereof;

(v) there is a genuine, widespread controversy in the medical and scientific world in respect of whether 'conventional' cigarette products containing nicotine cause or materially contribute to negative health consequences including addiction and lung cancer;

(vi) health and medical organizations and public health authorities trying to reduce and gradually eliminate the demand for tobacco products are alarmists;

(vii) cigarettes containing nicotine are ordinary, benign, rewarding consumer products compatible with good physical and emotional health and well-being, as well as physical fitness;

(viii) certain cigarettes deliver lower levels of nicotine and other toxic smoke constituents compared to others; and

(ix) the smoking of certain cigarettes is a badge of, or the route to, financial and social independence, social acceptance, success, advancement, sophistication and personal freedom.

12. Such schemes to conceal and destroy evidence include contrived document retention and destruction policies and plans, including policies, plans, and methods encouraged, or imposed upon the defendants, by associate companies.

Overt acts of the scheme to spoliate evidence

13. Overt acts carried out by the defendants, their employees, servants, agents; subsidiary, parent, controlling, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies, in furtherance of the schemes referred to in paragraphs 11 and 12 include the following:

(a) they deceitfully adopted code words and euphemisms when smoking and health issues were privately discussed in correspondence, memoranda, reports, or recorded in minutes and other documentation, so as to suppress and conceal evidence tending to establish their knowledge, information and belief that cigarettes are hazardous to health;

(b) they deceitfully adopted informal and formal communication strategies and policies, and document handling methods and retention policies designed to produce little or no documentary or electronic evidence of their research, and other evidence tending to establish their knowledge, information and belief that cigarettes are hazardous to health, such strategies including, but not limited to:

(i) making limited copies (or no copies) of potentially damaging documents, advising the recipient of the number of copies (or of the fact that no copies exist), ordering the recipient not to file the document, and ordering or inviting the recipient to destroy the document once read;

(ii) establishing plans to conceal, or destroy potentially damaging research results;

(iii) concealing potentially damaging research and other documentation by moving research offshore, by shipping research-related documents offshore to controlled, affiliate or parent companies or agents, and retaining no records of, or destroying records related to, this activity and such documents;

(iv) shutting down research facilities, and destroying evidence, once potentially damaging results were reached;

(v) having potentially damaging documents concealed by routing these to employees', servants' and agents' homes instead of the workplace; and

(vi) having in-house and outside lawyers:

(A) 'sanitize' internal documents to ensure that potentially damaging texts, prepared by researchers, company employees, agents and others, were deleted and euphemisms inserted, or were simply excised;

(B) act as a conduit for potentially damaging research and other documentation, thus establishing a scheme to conceal documents by using a contrived and improper plan which purported to be based upon claims of solicitor-client and derivative communications privilege (1); and

(C) be involved in all aspects of product and marketing related research and development, including biological and behavioural testing, in order to ensure that certain research was discontinued or modified when the results thereof, or the subject matter itself looked potentially damaging.

14. Based upon the facts as set out in paragraphs 8 to 13, the defendants breached their continuing duty to the plaintiff:

(a) not to destroy and suppress documents related to their knowledge, information and belief concerning product risks;

(b) to warn of dangers they had discovered in relation to their cigarette products from their research; and

(c) to provide clear, complete and current information concerning specific and general risks inherent from ordinary product use, even if the defendants did not consider their research to be conclusive.

Causal relationship between the act of spoliation and the inability to prove the lawsuit, and damages

15. As a result of the defendants' participation in concealment, destruction and alteration schemes related to documentary and other evidence tending to establish their knowledge, information and belief, as described herein, the plaintiff has been deprived of the opportunity to properly and fully investigate and prove the facts upon which the causes of action as set out in her claim are based.

The doctrine of omnia praesumuntur contra spoliatorem.

16. The plaintiff pleads and relies upon the doctrine of *omnia praesumuntur contra spoliatorem*.

Negligent Misrepresentations and Deceit

17. In order to induce the class of persons, which includes the plaintiff, to commence and to continue to consume their cigarette products, the defendants, their employees, servants, and agents represented through misleading public advocacy, misleading labelling practices, and misleading brand-name promotional activities (as these terms are defined in Schedule "A" to the Statement of Claim):

(a) that consumption of their cigarette products is not dangerous to health;

(b) that "light", "mild", "ultra light", "menthol" and "lower tar" cigarettes reduce the risk of negative health consequences, deliver lower quantities of toxic substances, and are a reasonable alternative to quitting;

(c) that cigarettes are not pharmacologically addictive, or drug delivery devices; rather, these are ordinary, benign, and desirable consumer products;

(d) that the consumption of cigarette products is compatible with a healthy, active lifestyle and with physical fitness;

(e) that cigarettes can be safely used, and consumed in moderation; and

(f) that their cigarette products do not contain significant levels of harmful ingredients.

18. The said misrepresentations are to be inferred from the defendants' misleading public advocacy, labelling practices, and brand-name promotional activities.

19. The plaintiff has since discovered, and the fact is, that each of the said representations was untrue in that:

(a) use of the defendants' products is harmful, regardless of the format in which, and brand-names under which, these cigarettes have been and are manufactured, distributed, promoted and sold;

(b) the defendants manipulate their cigarette products' ability to deliver the drug nicotine to the plaintiff, in order to cause the plaintiff to become and remain addicted to the defendants' cigarette products;

(c) consumption of the defendants' cigarette products is not compatible with a healthy, active lifestyle and with physical fitness, as the cigarettes contain harmful ingredients and residues, and when burned, emit significant levels of hazardous by-products.

20. The defendants made the said misrepresentations with full knowledge that the representations were not true, or recklessly, not caring whether these were true or false. The defendants had no genuine belief in the truth of the misrepresentations.

21. Acting on the faith and truth of the said misrepresentations, the plaintiff consumed the defendants' cigarette products, and continued to consume the defendants' cigarette products while addicted to them, and suffered physical damage.

Conspiracy

22. Since at least the 1950's up to, and including the present, the defendants conspired together and with (1) their agents; (2) parent, affiliate and associate corporations; (3) suppliers; (4) research and development, marketing and advertising agencies and consultants; and (5) tobacco industry associations and groups to develop and distribute cigarette products; engage in misleading public advocacy and promotional activities, and adopt misleading labelling practices in order to encourage smoking initiation, addiction and the continued use by a class of consumers that includes the plaintiff.

23. The facts set out in paragraphs 7, 11, 12, 13, and 17 of the Statement of Claim, together with the facts set out below, are overt acts in the said conspiracy.

24. Additional overt acts include the following matters, in which the defendants, together with (1) their agents; (2) parent, affiliate and associate corporations; (3) suppliers; (4) research and development, marketing and advertising agencies and consultants; and (5) tobacco industry associations and groups:

(a) refrained from developing, adequately funding the development of, promoting and distributing less hazardous nicotine delivery devices;

(b) refrained from candidly and effectively communicating to the public, including the plaintiff, the contents of, and information and results derived from, their extensive research data;

(c) refrained from remedying the misleading impact of their public advocacy and brand-name promotional activities, and labelling practices;

(d) refrained from ceasing all branded promotional and public advocacy activities in respect of conventional cigarettes and smoking; and

(e) refrained from initiating and funding effective public education and smoking cessation programmes.

25. The plaintiff pleads that the actions of the defendants, as set out above, are unlawful, that the defendants knew or ought to have known that the conspiracy would likely injure or cause damage to potential users of their cigarette products, including the plaintiff, and that the defendants were aware that such injuries would include lung cancer, and other serious health conditions including nicotine addiction.

26. As a result of the defendants' conspiracy, the plaintiff has suffered injury, loss and damage, including lung cancer and addiction.

Products Liability

27. Both defendants manufactured and distributed cigarette products containing nicotine that are inherently

defective and dangerous when used as intended; that is, ignited and inhaled into the body. The defendants are strictly liable for the design, manufacture and distribution of their commercially-available cigarette products containing nicotine.

28. In the alternative, the plaintiff alleges that her injury, loss and damage were caused by the cigarette recipes, components and design features utilized in the manufacture of cigarette products distributed and sold by the defendants.

29. These cigarette products were treated, blended, designed and intended by the defendants to be ignited, and the smoke produced thereby inhaled into the body of the ultimate consumer. These products were marketed under many brand names, distributed in several product formats, promoted in numerous advertisements and brand-name sponsorships over many years in various media and distributed in a myriad of retail locations to ultimate consumers, including the plaintiff.

30. The defendants' cigarette products reached ultimate consumers, including the plaintiff, in sealed packaging, without substantial change in their condition as manufactured and with no reasonable possibility of intermediate examination of the product.

31. The defendants' cigarette products were advertised as being suitable and implicitly safe for inhalation, promoted as "satisfying", "smooth", "light" and delivering "pleasure".

32. The plaintiff purchased and consumed the defendants' cigarette products.

33. The defendants' cigarette products are dangerously defective when used in the manner intended by the defendants. Particulars of the defects include the fact that these products cause or materially contribute to serious and fatal disease, and addiction.

34. The defendants knew or ought to have known that their cigarette products, marketed under various brand names, were dangerously defective, not of merchantable quality and not fit for their purpose by reason of access to their extensive research data (as defined in Schedule "A" to the Statement of Claim).

35. At all material times, the defendants were under a duty to take care and effectively warn consumers, including the plaintiff, of the dangerous and defective nature of their cigarette products, especially in light of the fact that:

(a) these goods were mass marketed; and

(b) product formulations and design features facilitating product inhalation and addiction are not evident to ordinary consumers, including the plaintiff.

Breaches of Express and Implied Warranties

36. The defendants expressly and impliedly warranted, via their public advocacy and brand-name promotional activities, and labelling practices that their cigarette products are fit for the purpose for which these are intended and of merchantable quality. The defendants are in breach of these express and implied warranties.

37. The plaintiff relied upon the defendants' representations with respect to their cigarette products, namely that these were fit for the purpose intended and were of merchantable quality. The plaintiff has acted and relied upon these misrepresentations to her detriment.

38. The plaintiff alleges that, as a result of the negligent and intentional acts of the defendants, the negligent representations and deceit, the conspiracy of the defendants and others, and the facts set out in the Statement of Claim with respect to the defendants' product liability, the breaches of express and implied warranties, the plaintiff has sustained injuries and continues to suffer serious, life-threatening and permanent injury, including lung cancer.

GENERAL, SPECIAL, PUNITIVE, AND EXEMPLARY DAMAGES

39 The plaintiff was required to undergo medical procedures, including radiation treatment and chemotherapy, and was required to take prescription drugs. The plaintiff was under the care of medical specialists, and required continuous treatment. She suffered great pain, discomfort, as well as limitations on movement and breathing. She was permanently injured.

40 The plaintiff was unable to carry out her normal tasks of living. She was unable to work or attend to her family needs. Her earning capacity and her enjoyment of life were lessened. She continued to suffer from the ravaging effects of cancer and lost enjoyment of life. She suffered from traumatic, emotional and nervous upset.

41 She was put to expense for medical attention and otherwise, as well as the expense of cigarettes and smoking cessation treatments.

42 The defendants' breach of duty, negligence and conspiracy constitute a wanton, reckless and outrageous disregard for the health and well-being of the plaintiff. The defendants' behaviour reflects an ongoing and complete indifference towards the plaintiff's health and safety, all in the pursuit of hundreds of millions of dollars in profits.

43 The defendants' deceit constitutes a reckless, wanton and wilful disregard for the health, safety and well-being of the plaintiff, through the concerted effort to profit, notwithstanding the likelihood of damage to be caused.

44 By reason of such high-handed conduct, the estate-plaintiff is entitled to an award of aggravated, punitive and exemplary damages.

PLACE OF TRIAL

45 The estate-plaintiff proposes that this action be tried at Milton, Ontario.

DATE: May 1, 1997.

SOMMERS & ROTH
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268 Avenue Road
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M4V 2G7

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Solicitors for the Plaintiff.

Notes:

1. i.e., contemplated litigation and attorney work product privilege.

<http://www.sommersandroth.com/cases-spasic-soc-amend.htm>