

Court File No:

C18187/9.

ONTARIO COURT (GENERAL DIVISION)

**EXHIBIT "A"**

BETWEEN:

MIRJANA SPASIC

Plaintiff

and

B.A.T. INDUSTRIES P.L.C.

Defendant

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.

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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: September 16, 1997.

Issued by: .....

  
Local Registrar

Address of court office:

491 Steeles Avenue East  
Milton, Ontario  
L9T 1Y7  
Tel. (905) 878-2813

TO: B.A.T. INDUSTRIES P.L.C.  
Windsor House  
50 Victoria Street  
London SW1H 0NL,  
United Kingdom.

## CLAIM

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### 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 defendant's 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) her 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.

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### THE PARTIES AND RELATED FACTS

2. The plaintiff, MIRJANA SPASIC ("the plaintiff") resides in the City of Burlington, in the Regional Municipality of Halton. She was born on January 26th, 1946.
3. The defendant, B.A.T. Industries p.l.c. ("BAT"), is an incorporated company with its registered office located in the City of London, England. BAT, formerly known as BRITISH AMERICAN TOBACCO CORPORATION LIMITED ("BATCL"), is the world's second largest tobacco products company. It owns

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approximately 41.5% of the shares of IMASCO Limited of Montreal ("IMASCO"), which, in turn, owns 100% of the shares of Imperial Tobacco Limited ("ITL"). No other single shareholder owns more than 15% of IMASCO's common shares.

4. Through a succession of intermediary corporations and holding companies, the defendant is the sole shareholder of the BROWN & WILLIAMSON TOBACCO CORPORATION ("B&W"). B&W is a Delaware corporation, with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202.

5. Through a succession of intermediary corporations and holding companies, the defendant is the majority shareholder of a number of other tobacco companies in various countries, including Germany and Brazil, particulars of which are well known to the defendant. The defendant and its affiliated companies commonly refer to themselves in private communications as the "BAT Industries Group", the "BAT Group", the "Group", or simply "BAT".

6. Since at least the 1950's, up to and including the present, the defendant has carried out cigarette-related research on behalf of, and funded by BAT Group Companies, including IMASCO and ITL, particulars of which are well known to the defendant.

7. Since at least the 1960's, up to and including the present the defendant has

convened regular BAT Group biological, behavioural, tobacco marketing and related research conferences, in various locations, including Canada, particulars of which are well known to the defendant.

8. Further, since at least 1983, up to and including the present, the defendant has convened a Committee of senior BAT Group Company officers, including ITL and IMASCO participants, to "formulate overall strategic objectives" for the BAT Group relating to tobacco issues, particulars of which are well known to the defendant.

9. The plaintiff has been smoking cigarette products designed, manufactured and distributed by ITL since approximately 1975, including so-called "light", and 'thrift' (i.e., roll-your-own) products.

10. As a result of consuming ITL cigarette products, the plaintiff has become addicted to, and has had this addiction maintained by such products; and has developed lung cancer which was diagnosed in 1995.

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**WRONGFUL ACTS**

**Conspiracy**

11. Since at least the 1950's, up to, and including the present, the defendant has profited from the sale of cigarette products manufactured, distributed, promoted, and sold by BAT Group affiliated companies, including ITL, in Ontario, particulars of which are well known to the defendant.

12. Since at least the early 1950's up to, and including the present, the defendant and its Group Companies, including ITL, have known or ought to have known that cigarette tobacco smoke is hazardous, and can cause serious negative health effects, including lung cancer, in those who ingest such smoke.

13. Further, since at least the early 1960's, the defendant and its Group Companies, including ITL, have known or ought to 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.

14. Since at least the early 1950's up to, and including, the present, the defendant together with its Group Companies, including ITL, conspired

- (a) to suppress, conceal, and destroy, by unlawful means, documentary and other evidence of their knowledge, information and belief that cigarettes are hazardous to health to prevent such evidence becoming public knowledge and, in particular, from reaching the plaintiff and

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- other consumers and potential consumers of cigarette products; and
- (b) to reassure the public, by unlawful means, that cigarettes are not hazardous,

so as to maintain continued elevated consumption levels of highly lucrative 'conventional' cigarette products, and thus secure continued profits therefrom for BAT and its Group Companies.

15. The plaintiff pleads that:

- (a) the defendant's and its Group Companies' conduct was directed towards members of the public, including the plaintiff;
- (b) the defendant and its Group Companies knew or ought to have known that the conspiracy would likely injure or cause damage to potential users of cigarette products, including the plaintiff; and
- (c) the defendant and its Group Companies were aware that such injuries would include lung cancer, and other serious health conditions including nicotine addiction.

16. Alternatively, since at least the early 1950's up to, and including, the present, the defendant and its BAT Group Companies, including ITL, conspired with each other with the predominant purpose of injuring members of the public, including the plaintiff, who might try cigarette products by

- (a) ensuring the commercial availability and misleading promotion of 'conventional' cigarette products containing the addictive drug nicotine;

- (b) ensuring that Group companies, including ITL, manipulated conventional cigarette products in ways to facilitate the inhalation and absorption of, and to facilitate the boosting of the pharmacological effects of nicotine;
- (c) suppressing Group knowledge, information and belief that cigarettes are hazardous to health; and
- (d) conspiring to reassure the public that cigarettes are not hazardous, so as to prevent and discourage consumers, including the plaintiff, from refraining to start, ceasing to smoke, or switching to safer nicotine delivery products, thus securing continued profits to BAT and its Group Companies from highly lucrative, but hazardous 'conventional' cigarette products.

17. Overt acts carried out by BAT and its Group Companies in pursuance of the conspiracy referred to in paragraphs 14 to 16 include the following:

- (a) they deceitfully or negligently adopted code words and euphemisms when smoking and health issues were discussed within the BAT Group in correspondence, memoranda, reports, or recorded in minutes and other documentation, so as to suppress evidence of the Group's knowledge, information and belief that cigarettes are hazardous to health;
- (b) they deceitfully or negligently adopted informal and formal inter- and intra-company communication strategies and policies, and document handling and retention methods, designed to produce little or no documentary evidence of BAT Group Company-sponsored research,

- and evidence of the Group's knowledge, information and belief that cigarettes are hazardous to health;
- (c) they deceitfully or negligently adopted procedures for routing potentially damaging BAT Group research and other documentation through in-house and outside lawyers, as a contrived and improper means of claiming solicitor-client and derivative communications privilege (such as contemplated litigation privilege), in order to conceal evidence of the Group's knowledge, information and belief that cigarettes are hazardous to health from potential litigants;
  - (d) they deceitfully or negligently adopted a strategy of attorney involvement in all aspects of product research and development, including biological and behavioural testing, in order to ensure that:
    - (i) certain research was discontinued or modified when the results thereof, or the subject matter itself looked potentially threatening to the BAT Group's public position that
      - (A) conventional cigarettes have not been proven to be hazardous;
      - (B) conventional cigarettes should not be regulated by governments as nicotine delivery devices or otherwise restrictively (*i. e.*, the design, labelling, promotion, distribution, or sale of cigarettes); and
      - (C) there is a "genuine" scientific and medical "controversy" whether such cigarettes are hazardous;

- (ii) reports, minutes and memoranda were vetted, and 'sanitized' of words and phrases that would tend to establish BAT Group Companies' knowledge, information and belief that cigarettes are hazardous to health; and
- (iii) Group Companies could artificially and improperly claim the protection afforded by solicitor-client and derivative<sup>1</sup> communications privilege;
- (e) they secretly carried out projects related to the development of less "biologically active" (*i.e.*, less hazardous) products (some projects dating back to at least the early 1960's), including PROJECTS ARIEL, RIO, GREENDOT, AIRBUS, and NOVA, and the development of genetically-engineered (code-named "Y-1") tobacco, while deceitfully or negligently denying to the public that cigarettes are hazardous and failing to notify it of the results derived from, or existence of such projects;
- (f) they deceitfully or negligently discontinued the development, or halted the introduction of less hazardous nicotine delivery products, and agreed to refrain from forthrightly and candidly promoting or encouraging consumers to switch to less hazardous nicotine delivery products, in order to protect the BAT Group from legal liability and potential restrictive government regulation in respect of 'conventional' cigarettes;

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<sup>1</sup>*i.e.*, contemplated litigation and attorney work product privilege.

- (g) they deceitfully or negligently refrained from providing members of the public, including the plaintiff, clear, complete and current information in respect of dangers inherent in ordinary 'conventional' cigarette product use;
- (h) they deceptively or negligently agreed to present to the public misleading, incorrect, incomplete, and outdated information about the effects of 'conventional' cigarette smoking, and misleading imagery in respect of cigarette brands, particulars of which are well known to the defendant;
- (i) they deceitfully or negligently agreed to attempt to discredit, undermine, and neutralise medical and scientific researchers and health authorities who claimed that cigarettes are hazardous, and even restrained the disclosure by researchers and others of evidence supporting the conclusion that cigarettes are hazardous, particulars of which are well known to the defendant;
- (j) they deceitfully or negligently agreed to refrain from ceasing all promotional and public advocacy activities in respect of cigarette brands, and smoking generally, all of which the plaintiff claims are inherently misleading, particulars of such activities being well known to the defendant;
- (k) they deceitfully or negligently refrained from remedying, or agreed with each other to remain 'wilfully blind' to the misleading impact of all ITL-related cigarette brand promotional activities, labelling practices, and public advocacy activities, particulars of such activities

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and practices being well known to the defendant; and

- (1) they deceitfully or negligently refrained from initiating and funding effective corrective public education and smoking cessation programmes to mitigate the injury and damage caused by past wrongdoing as described herein.

18. As a result of the conspiracy described in paragraphs 14 to 17, the plaintiff has sustained injury, loss and damage in Ontario, including lung cancer and addiction to nicotine.

### **Other Intentional and Negligent Acts**

19. In the alternative, the plaintiff alleges that her lung cancer was caused by the intentional and/or negligent acts of the defendant, its employees, servants, agents; subsidiary, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies, for whose acts the defendant is, 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;
- (c) 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;
- (d) 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;
- (e) they failed to warn that the consumption of cigarette products is dangerous to health, and in this respect, 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;
- (f) 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 defendant, its employees, servants, agents; subsidiary, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies;

- (g) 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 various BAT Group affiliated company cigarette brands, including those of ITL, inaccurately and misleadingly describe the impact and effect of 'conventional' cigarette products upon the human body;
- (h) they knew or ought to have known that the vast majority of smokers, including the plaintiff, inaccurately believed that cigarette products 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;
- (i) at all material times, in order to induce the plaintiff and other consumers and potential consumers to smoke and continue smoking, BAT Group affiliated companies, including ITL, manufactured, distributed and sold 'conventional' cigarette products whose recipes, components and design features:
  - (i) ensure that such products contain and deliver forms and extractable levels of nicotine sufficient to facilitate, maintain and, indeed, heighten nicotine addiction; and



carried out, activities the defendant, its employees, servants, agents; subsidiary, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies ought reasonably to have known would convey or imply to the plaintiff, that:

- (i) 'conventional' cigarettes products containing nicotine are not addicting drug delivery devices; rather, smoking is a pleasant, and 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 '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 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 defendant, its employees, servants, agents, research and development consultants, and marketing and advertising agencies knew or ought to have known that these suggestions were inaccurate, misleading, untrue, and contrary to the BAT Group's own research data;

(o) the purpose of activities and practices described in paragraph (n) was to encourage (or the effect reasonably should have been recognized as encouraging) members of the public, including the plaintiff, to initiate and continue smoking 'conventional' cigarette products;

(p) they knew or ought to have known that BAT Group affiliated company cigarette labelling practices, including those of ITL, and their public advocacy and brand-name promotional activities would falsely reassure the plaintiff that it was safe and acceptable to use such products despite health and social pressures to cut down or quit;

(q) they failed to reveal to the plaintiff results of BAT Group sponsored

research that established or alerted the defendant, its employees, servants, agents; subsidiary, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies of the likelihood of

- (i) serious negative health consequences resulting from cigarette product use, including lung cancer and addiction; and
  - (ii) smokers' perceptual vulnerabilities in respect thereof;
- (r) at all material times, they suppressed, concealed and destroyed research data so as to prevent litigants, including the plaintiff, from discovering the BAT Group's true state of knowledge, information, and belief in respect of
- (i) the health effects of their 'conventional' cigarette products; and
  - (ii) smokers' perceptual vulnerabilities with respect to these;
- (s) they failed to obtain the informed consent of the plaintiff to the administration of the drug nicotine; and
- (t) they failed to develop, promote and distribute cigarette products whose recipes, component and design features make inhalation unpleasant.

20. In the alternative, BAT was negligent or wilfully blind in failing to make enquiries of

- (i) its subsidiary, affiliate, and associate corporations;
- (ii) other industry participants and research organizations and consultants; and

(iii) public health and medical authorities and organizations regarding available research with respect to the negative health consequences of cigarette smoking and smokers' perceptual vulnerabilities in this respect.

21. In the alternative, the plaintiff alleges that, at all material times, particulars of such a policy being well known to the defendant, BAT secretly imposed upon its Group Companies, including ITL, a false and misleading policy that dictates that such Companies and their employees shall publicly maintain that there is a "genuine controversy" within the scientific and medical world as to whether smoking is hazardous, and that "[n]o conclusive scientific evidence has been advanced" to support the conclusion that smoking is hazardous to health. Pursuant to a BAT directive, any breach of this policy could result in disciplinary action including termination.

### **Spoliation**

22. The plaintiff alleges that the defendant, its employees, servants, agents; subsidiary, controlled, or affiliate companies; research and development consultants; and marketing and advertising agencies, for whose acts the defendant is, in law, liable, have engaged in spoliation of evidence depriving her of the opportunity to properly and fully investigate or prove the facts upon which the causes of action are based, and pleads and relies upon the doctrine of *omnia praesumuntur contra spoliatores*, and the tort of spoliation.

23. The plaintiff alleges that, as a result of the intentional and negligent acts of the defendant, its employees, servants, agents; subsidiary, affiliate, and associate corporations; research and development consultants; and marketing and advertising agencies, for whose acts the defendant is, in law, liable, the plaintiff has sustained damage in Ontario and continues to suffer from serious, life-threatening and permanent injury, including lung cancer.

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#### **GENERAL, SPECIAL, PUNITIVE, AND EXEMPLARY DAMAGES**

24. The plaintiff has been and will be required to undergo medical procedures, including radiation treatment and chemotherapy, and has been and will be required to take prescription drugs. The plaintiff remains under the care of Ontario medical specialists, and continues to require treatment. She has suffered and continues to suffer from great pain, discomfort, as well as limitations on movement and breathing. She has been permanently injured.

25. The plaintiff has been and will be unable to carry out her normal tasks of living. Her life expectancy has been materially shortened. She has been and will be unable to work or attend to her family needs. Her earning capacity has been lessened and her enjoyment of life has been and will be lessened. She will continue to suffer from the ravaging effects of cancer and will lose enjoyment of life. She has and will suffer from traumatic, emotional and nervous upset.

26. She has been and will be put to expense for medical attention and otherwise.

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as well as the expense of cigarettes and smoking cessation treatments.

27. The defendant's conspiracy, breach of duty, and negligence constitute a wanton, reckless and outrageous disregard for the health and well-being of the plaintiff. The defendant's behaviour reflects an ongoing and complete indifference towards the plaintiff's health and safety.

28. The defendant's 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.

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

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#### **REQUIREMENTS OF R. 17.04(1)**

30. The plaintiff relies upon r. 17.02(h) of the *Rules of Civil Procedure* in support of service of this originating process upon BAT, without leave. The damage sustained by the plaintiff in Ontario, as a result of the torts described herein, is set out in paragraphs 10, 18, 22, 23, 24, 25, and 26.

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**PLACE OF TRIAL**

31. The plaintiff proposes that this action be tried at Milton, Ontario.

DATE: September 16, 1997.

**SOMMERS & ROTH**  
Barristers and Solicitors  
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