Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Applicant

MOTION RECORD OF THE MOVING PARTY, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

MOTIONS TO LIFT STAYS IN
Court File No. CV-19-615862-00CL, *JTI-Macdonald Corp., Re*
Court File No. CV-19-616077-00CL, *Imperial Tobacco Canada Limited et al., Re*
Court File No. CV-19-616779-00CL, *Rothmans, Benson & Hedges Inc., Re*
RETURNABLE APRIL 4 - 5, 2019

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Applicant

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O. Exhibit "O": Endorsement of Master Short dated February 5, 2018

P. Exhibit "P": Endorsement of Master Short dated February 26, 2018

Q. Exhibit "Q": Endorsement of Master Short dated May 8, 2018

R. Exhibit "R": Endorsement of Master Short dated June 28, 2018

S. Exhibit "S": Endorsement of Master Short dated August 31, 2018

T. Exhibit "T": Notices executed by defendants not opposing Ontario's motion seeking leave to amend the Amended Fresh as Amended Statement of Claim

U. Exhibit "U": Email correspondence between Jacqueline Wall and Beson Yung dated February 27 and 28, 2019

V. Exhibit "V": Email from Jacqueline Wall to counsel for all defendants dated February 27, 2019

W. Exhibit "W": Order of Master Short dated March 8, 2019

X. Exhibit "X": Letter from Jacqueline Wall to Guy Pratte dated March 7, 2019

Y. Exhibit "Y": Letter from Jacqueline Wall to Deborah Glendinning dated March 7, 2019

Z. Exhibit "Z": Letter of Jacqueline Wall to Paul Steep dated March 7, 2019

AA. Exhibit "AA": Letter from Nancy Roberts to Justice Conway and Master Short dated March 14, 2019

BB. Exhibit "BB": Letter from Nancy Roberts to the Registrar of the Ontario Superior Court of Justice at 393 University Avenue dated March 14, 2019

CC. Exhibit "CC": Imperial Tobacco press release dated March 12, 2019

DD. Exhibit "DD": British American Tobacco press release dated March 12, 2019

EE. Exhibit "EE": Rothmans, Benson & Hedges press release dated March 22, 2019

FF. Exhibit "FF": Philip Morris International press release dated March 22, 2019

3. Amended Fresh as Amended Statement of Claim dated April 20,2016

4. Statement of Defence of Altria Group, Inc. dated April 29, 2016

5. Statement of Defence of B.A.T. Industries p.l.c. dated April 29, 2016

6. Statement of Defence of British American Tobacco (Investments) Limited dated April 29, 2016

7. Statement of Defence of British American Tobacco p.l.c. dated April 29, 2016

8. Statement of Defence of Carreras Rothmans Limited dated April 29, 2016

9. Statement of Defence of Canadian Tobacco Manufacturers' Council dated April 29, 2016

10. Statement of Defence of Imperial Tobacco Canada Limited dated April 29, 2016

11. Statement of Defence of JTI-Macdonald Corp. dated April 29, 2016

12. Statement of Defence of Philip Morris International Inc. dated April 29, 2016

13. Statement of Defence of Philip Morris USA Inc. dated April 29, 2016

14. Statement of Defence of Rothmans Inc. and Rothmans, Benson & Hedges Inc. dated April 29, 2016

15. Statement of Defence of R.J. Reynolds Tobacco Company dated April 29, 2016

16. Statement of Defence of R.J. Reynolds Tobacco International Inc. dated April 29, 2016

17. Factum of JTI-Macdonald Corp. dated March 8, 2019, paragraphs 18 and 34.

TAB 1

Court File No. CV-19-615862-00CL

ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Applicant

NOTICE OF MOTION

Her Majesty the Queen in right of Ontario ("**Ontario**"), will make a motion to a judge presiding over the Commercial List on Thursday April 4, 2019 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

☐ in writing under subrule 37.12.1(1) because it is *(insert on of on consent, unopposed or made without notice)*;
☐ in writing as an opposed motion under subrule 37.12.1 (4);
☑ orally.

THE MOTION IS FOR:

1. An Order lifting the stay, effected by paragraphs 18 and 19 of the Initial Order (the "**JTIM Stay**") of the Honourable Justice Hainey dated March 8, 2019 (the "**JTIM Initial Order**"), only of the Ontario HCCR Action, as against all of the defendants to that action namely, JTI-Macdonald Corp.,("**JTIM**"), Imperial Tobacco Canada Limited ("**ITCAN**"),

Rothmans, Benson & Hedges Inc. ("**RBH**"), Rothmans Inc., British American Tobacco (Investments) Limited, B.A.T. Industries p.l.c., British American Tobacco p.l.c., Carreras Rothmans Limited, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and the Canadian Tobacco Manufacturers' Council; and

2. An Order varying the JTIM Initial Order by adding the following paragraph as Paragraph 19A of the JTIM Initial Order:

> **THIS COURT ORDERS** that nothing in this Order shall have the effect of staying, suspending or otherwise delaying the conduct of Action No. CV-09-387984 bearing the title of proceedings *Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.* commenced in the Ontario Superior Court of Justice (the **"Ontario HCCR Action")**, and Her Majesty the Queen in right of Ontario is authorized to and shall have the right in its discretion to continue the Ontario HCCR Action against the following defendants: JTI-Macdonald Corp.; Imperial Tobacco Canada Limited; Rothmans, Benson & Hedges Inc.; Rothmans Inc.; British American Tobacco (Investments) Limited; B.A.T. Industries p.l.c.; British American Tobacco p.l.c.; Carreras Rothmans Limited; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International Inc.; Altria Group, Inc.; Philip Morris U.S.A. Inc.; Philip Morris International, Inc.; and the Canadian Tobacco Manufacturers' Council. Notwithstanding anything to the contrary in this Order, the taking of any proceedings to enforce any judgment and/or collect any amount owing or found to be owing by JTI-Macdonald Corp. in the Ontario HCCR Action shall be stayed pending further Order of this Court.

3. An Order exempting the application of paragraph 65 of the JTIM Initial Order to the Order of Master Short dated March 8, 2019, which granted Ontario leave to amend its Amended Fresh as Amended Statement of Claim in the form of the Second Amended Fresh as Amended Statement of Claim, and lifting the JTIM Stay to authorize and permit:

(a) the Ontario Superior Court of Justice to take whatever steps are necessary and proper to formally effect the amendments to Ontario's Amended Fresh as Amended Statement of Claim as ordered by Master Short on March 8, 2019; and

(b) Ontario to serve the Second Amended Fresh as Amended Statement of Claim on all of the defendants to the Ontario HCCR Action.

4. If necessary, an order abridging the time for service and filing of Ontario's Notice of Motion, Motion Record and Factum, dispensing with service on any person other than those served, and declaring that the motion is properly returnable on April 4, 2019; and

5. Such further and other relief as counsel for Ontario may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Ontario HCCR Action was commenced by Ontario on September 29, 2009, pursuant to section 2 of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, S.O. 2009, c. 13 (the "**Ontario HCCR Act**"), against thirteen tobacco companies, including JTIM, ITCAN and RBH, and the Canadian Tobacco Manufacturers' Council ("**CTMC**").

2. Ontario seeks to recover from all fourteen defendants in the Ontario HCCR Action the costs it incurred in regard to the provision of health care benefits caused or contributed to by a "tobacco related wrong" which is defined in section 1(1) of the Ontario HCCR Act to be "a tort committed in Ontario by a manufacturer [of a tobacco product] which causes or contributes to tobacco related disease", or "a breach of a common law, equitable or statutory duty or obligation

owed by a manufacturer to persons in Ontario who have been exposed or might become exposed to a tobacco product".

3. Of the fourteen defendants in the Ontario HCCR Action only three defendants, JTIM, ITCAN and RBH, are defendants and judgment debtors in *Imperial Tobacco Canada ltée c. Conseil Québécois sur le tabac et la santé,* [2019] J.Q. No. 1387 which involves two Quebec Class Actions. The first class action (the Blais action) sought damages on behalf of persons in Québec who developed lung cancer, throat cancer or emphysema as a result of smoking cigarettes manufactured by the defendants. The second class action (the Létourneau action) sought damages on behalf of persons in Québec who, as a result of smoking cigarettes manufactured by the defendants, developed a dependence on nicotine.

4. Justice Riordan of the Quebec Superior Court rendered a trial judgment dated June 9, 2015, against JTIM, ITCAN and RBH, which have their principal places of business in Canada. The Court of Appeal of Quebec released its decision on March 1, 2019, in which it affirmed the trial judgment in its entirety other than by reducing the damages award by $1,009,920 from the amount of $6,858,864,000 awarded by the trial judge to a damages award of $6,857,854,080 plus interest and additional indemnity. The Court of Appeal of Quebec awarded legal costs to the plaintiffs.

5. On March 8, 2019, JTIM brought an *ex parte* application under the CCAA before Justice Hainey who granted the JTIM Initial Order.

6. The JTIM Initial Order effected a stay of, *inter alia*, the Ontario HCCR Action until April 5, 2019 as against all fourteen defendants, including JTIM, ITCAN and RBH, four defendant

corporations with their principal place of business in the United Kingdom, five defendant corporations with their principal place of business in the United States, and two other Canadian corporations.

7. On March 12, 2019, ITCAN and Imperial Tobacco Company Limited (which is not a defendant in the Ontario HCCR Action), brought an *ex parte* application under the CCAA before Justice McEwen who granted the ITCAN Initial Order.

8. The ITCAN Initial Order effected a stay (the "**ITCAN Stay"**) of, *inter alia*, the Ontario HCCR Action until April 11, 2019 as against the following five defendants: ITCAN, British American Tobacco p.l.c. (UK), British American Tobacco (Investments) Limited (UK); B.A.T. Industries p.l.c. (UK) and Carreras Rothmans Limited (UK).

9. On March 22, 2019, RBH brought an *ex parte* application under the CCAA before Justice Pattillo who granted the RBH Initial Order.

10. The RBH Initial order effected a stay (the "**RBH Stay**") of, *inter alia*, the Ontario HCCR Action until April 19, 2019, as against the following two defendants: RBH and Philip Morris International, Inc. (US).

11. There is no evidence that the two Quebec Class Action Judgments, have or will have any financial or other impact whatsoever on any of the eleven defendants other than JTIM, ITCAN and RBH.

12. In particular, JTIM, ITCAN and RBH did not tender any evidence that, if the JTIM Stay, the ITCAN Stay and the RBH Stay were not granted in favour of the other eleven defendants in

the Ontario HCCR Action who have not filed under the CCAA, any of those eleven defendants would be rendered insolvent, put out of business and/or have their values destroyed for their employees, suppliers and customers.

13. Over the past decade, Ontario has invested a tremendous amount of time, money and effort to prosecute the Ontario HCCR Action in order to hold the thirteen defendant tobacco companies and the CTMC accountable for their conduct over the period from 1950 to the present. By obtaining *ex parte* the stays of the Ontario HCCR Action, JTIM, ITCAN and RBH have used the CCAA as a sword to cut down Ontario's efforts and cause delay for an indefinite period of time of likely several years and cause serious prejudice to Ontario.

14. The JTIM Stay, the ITCAN Stay and the RBH Stay have the effect of removing the Ontario HCCR Action from the nine year long effective case management by Master Short and Justice Conway and the ongoing oversight of the action's progress toward trial by Regional Senior Justice Morawetz. If the JTIM Stay, the ITCAN Stay and the RBH Stay are continued past April 4, 2019, they will act to undo the work that Ontario, all of the defendants, Master Short, Justice Conway and Justice Morawetz have done to move the Ontario HCCR Action forward and prepare it for the projected trial commencement date of late 2020/early 2021. Moreover, Ontario will be barred from proceeding forward with its claims against eleven defendant corporations who have not filed under the CCAA. This state of affairs is highly prejudicial to Ontario.

15. In the hearing of an *ex parte* initial application under the CCAA, it is incumbent on the applicant to be scrupulously fair and transparent with respect to the disclosure to the Court of all facts material to the Court's decision whether to grant the Initial Order in the form requested by

the applicant. Such full and frank disclosure was not provided by JTIM, ITCAN and RBH to any of the three judges presiding at the initial applications in regard to the Ontario HCCR Action.

16. The balance of convenience, the assessment of the relative prejudice to Ontario versus JTIM, ITCAN and RBH, and the merits of the Ontario HCCR Action favour the granting of the Orders requested by Ontario. Just as JTIM, ITCAN and RBH seek to maintain their *status quo* and carry on business as usual without disruption, Ontario similarly seeks to maintain the *status quo* of continuing to prosecute and prove its claim against all fourteen defendants in the Ontario HCCR Action.

17. The approach proposed by Ontario is not novel or unreasonable. In fact, this is precisely the approach followed for six years during JTIM's prior CCAA proceeding from 2004 – 2010, and while JTIM, ITCAN and RBH pursued their appeals in the Quebec Class Actions before the Court of Appeal of Quebec from June, 2015 – March, 2019.

18. Sections 11.02(1) and 11.02(3)(a) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended.

19. Rules 2.03, 3.02, 37.14(1)(a), 37.14(2), 37.14(4) and 39.01(6) of the *Rules of Civil Procedure*.

20. Such further and other grounds as counsel for Ontario may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Peter Entecott, sworn March 28, 2019, and the exhibits attached thereto;

2. Motion Record, Factum and Book of Authorities; and

3. Such further and other evidence as counsel for Ontario may advise and this Honourable Court may permit.

Date: March 29, 2019

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Lawyers for the Moving Party,
Her Majesty the Queen in right of Ontario

TO: ATTACHED SERVICE LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION

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Her Majesty the Queen in right of Ontario

TAB 2

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Applicant

AFFIDAVIT OF PETER ENTECOTT
(Sworn March 28, 2019)

I, Peter Entecott, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am employed as a Counsel in the Crown Law Office – Civil ("**CLOC**") of the Ministry of the Attorney General. Since July 31, 2017, I have been a member of the team of CLOC Counsel who, on behalf of Her Majesty the Queen in right of Ontario ("**Ontario**"), are prosecuting Action No. CV-09-387984 bearing the title of proceedings *Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.* commenced in the Ontario Superior Court of Justice (the "**Ontario HCCR Action**"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where this affidavit is not based on my personal knowledge, it is based upon information obtained by me from the files of CLOC. I believe such information to be true.

Relief sought by Ontario in proceedings by JTI-Macdonald Corp. ("JTIM") under *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 ("CCAA")

2. I swear this affidavit in support of the motion by Ontario in Court File No. CV-19-615862-00CL, *In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald Corp.* (the "**JTIM CCAA Proceeding**"), seeking:

(a) An Order lifting the stay, effected by paragraphs 18 and 19 of the Initial Order (the "**JTIM Stay**") of the Honourable Justice Hainey dated March 8, 2019 (the "**JTIM Initial Order**"), only of the Ontario HCCR Action, as against all of the defendants to that action namely, JTIM, Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., British American Tobacco (Investments) Limited, B.A.T. Industries p.l.c., British American Tobacco p.l.c., Carreras Rothmans Limited, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and the Canadian Tobacco Manufacturers' Council; and

(b) An Order varying the JTIM Initial Order by adding the following paragraph as Paragraph 19A of the JTIM Initial Order:

> **THIS COURT ORDERS** that nothing in this Order shall have the effect of staying, suspending or otherwise delaying the conduct of Action No. CV-09-387984 bearing the title of proceedings *Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.* commenced in the Ontario Superior Court of Justice (the **"Ontario HCCR Action")**, and Her Majesty the Queen in right of Ontario is authorized to and shall have the right in its discretion to continue the Ontario HCCR Action against the following defendants: JTI-Macdonald Corp.; Imperial Tobacco Canada Limited; Rothmans, Benson & Hedges Inc.; Rothmans Inc.; British American Tobacco (Investments) Limited; B.A.T. Industries p.l.c.; British American Tobacco p.l.c.; Carreras Rothmans Limited; R.J. Reynolds Tobacco

> Company; R.J. Reynolds Tobacco International Inc.; Altria Group, Inc.; Philip Morris U.S.A. Inc.; Philip Morris International, Inc.; and the Canadian Tobacco Manufacturers' Council. Notwithstanding anything to the contrary in this Order, the taking of any proceedings to enforce any judgment and/or collect any amount owing or found to be owing by JTI-Macdonald Corp. in the Ontario HCCR Action shall be stayed pending further Order of this Court.

(c) An Order exempting the application of paragraph 65 of the JTIM Initial Order to the Order of Master Short dated March 8, 2019, which granted Ontario leave to amend its Amended Fresh as Amended Statement of Claim in the form of the Second Amended Fresh as Amended Statement of Claim, and lifting the JTIM Stay to authorize and permit:

(i) the Ontario Superior Court of Justice to take whatever steps are necessary and proper to formally effect the amendments to Ontario's Amended Fresh as Amended Statement of Claim as ordered by Master Short on March 8, 2019; and

(ii) Ontario to serve the Second Amended Fresh as Amended Statement of Claim on all of the defendants to the Ontario HCCR Action.

Relief sought by Ontario in proceedings by Imperial Tobacco Canada Limited ("ITCAN") and Imperial Tobacco Company Limited under CCAA

3. I also swear this affidavit in support of the motion by Ontario in Court File No. CV-19-616077-00CL, *In the Matter of a Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited* (the "**ITCAN CCAA Proceeding**"), seeking:

(a) An Order lifting the stay, effected by paragraphs 18 and 19 of the Initial Order (the "**ITCAN Stay**") of the Honourable Justice McEwen dated March 12, 2019 (the "**ITCAN**

Initial Order"), only of the Ontario HCCR Action, as against the following five defendants to that action: Imperial Tobacco Canada Limited, British American Tobacco p.l.c., British American Tobacco (Investments) Limited; B.A.T. Industries p.l.c. and Carreras Rothmans Limited.

(b) An Order varying the ITCAN Initial Order by adding the following paragraph as Paragraph 19A of the ITCAN Initial Order:

> **THIS COURT ORDERS** that nothing in this Order shall have the effect of staying, suspending or otherwise delaying the conduct of Action No. CV-09-387984 bearing the title of proceedings *Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.* commenced in the Ontario Superior Court of Justice (the **"Ontario HCCR Action")**, and Her Majesty the Queen in right of Ontario is authorized to and shall have the right in its discretion to continue the Ontario HCCR Action against the following defendants: Imperial Tobacco Canada Limited, British American Tobacco p.l.c., British American Tobacco (Investments) Limited; B.A.T. Industries p.l.c. and Carreras Rothmans Limited. Notwithstanding anything to the contrary in this Order, the taking of any proceedings to enforce any judgment and/or collect any amount owing or found to be owing by Imperial Tobacco Canada Limited in the Ontario HCCR Action shall be stayed pending further Order of this Court.

(c) An Order lifting the ITCAN Stay to authorize and permit:

(i) the Ontario Superior Court of Justice to take whatever steps are necessary and proper to formally effect the amendments to Ontario's Amended Fresh as Amended Statement of Claim as ordered by Master Short on March 8, 2019; and

(ii) Ontario to serve the Second Amended Fresh as Amended Statement of Claim on all of the defendants to the Ontario HCCR Action.

Relief sought by Ontario in proceedings by Rothmans, Benson & Hedges Inc. ("RBH") under CCAA

4. I also swear this affidavit in support of the motion by Ontario in Court File No. CV-19-616779-00CL, *In the Matter of a Plan of Compromise or Arrangement of Rothmans, Benson & Hedges Inc.* (the "**RBH CCAA Proceeding**"), seeking:

(a) An Order lifting the stay, effected by paragraphs 18 and 19 of the Initial Order (the "**RBH Stay**") of the Honourable Justice Pattillo dated March 22, 2019 (the "**RBH Initial Order**"), only of the Ontario HCCR Action, as against the following two defendants to that action: RBH and Philip Morris International Inc.;

(b) An Order varying the RBH Initial Order by adding the following paragraph as Paragraph 19A of the RBH Initial Order:

> **THIS COURT ORDERS** that nothing in this Order shall have the effect of staying, suspending or otherwise delaying the conduct of Action No. CV-09-387984 bearing the title of proceedings *Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.* commenced in the Ontario Superior Court of Justice (the **"Ontario HCCR Action")**, and Her Majesty the Queen in right of Ontario is authorized to and shall have the right in its discretion to continue the Ontario HCCR Action against the following defendants: Rothmans, Benson & Hedges Inc., Philip Morris International Inc. and Philip Morris USA Inc. Notwithstanding anything to the contrary in this Order, the taking of any proceedings to enforce any judgment and/or collect any amount owing or found to be owing by Rothmans, Benson & Hedges Inc. in the Ontario HCCR Action shall be stayed pending further Order of this Court.

(c) An Order lifting the RBH Stay to authorize and permit:

(i) the Ontario Superior Court of Justice to take whatever steps are necessary and proper to formally effect the amendments to Ontario's Amended Fresh as Amended Statement of Claim as ordered by Master Short on March 8, 2019; and

(ii) Ontario to serve the Second Amended Fresh as Amended Statement of Claim on all of the defendants to the Ontario HCCR Action.

JTIM CCAA Proceeding

5. On March 8, 2019, JTIM sought and obtained protection from its creditors under the CCAA. Attached hereto and marked as Exhibit "A" is a true copy of the Initial Order of Justice Hainey dated March 8, 2019.

6. Attached hereto and marked as Exhibit "B" is a true copy of the affidavit of Robert McMaster sworn March 8, 2019, and only Exhibit "AA" thereto, that JTIM filed in support of its CCAA application.

7. Attached hereto and marked as Exhibit "C" is a true copy of the letter dated March 12, 2019, that Robert Thornton, counsel for JTIM, sent to the Service List for the JTIM CCAA Proceeding as it was constituted on March 12, 2019.

8. Attached hereto and marked as Exhibit "D" is a true copy of the Report of the Proposed Monitor, Deloitte Restructuring Inc., dated March 8, 2019 filed by JTIM in its initial application.

ITCAN CCAA Proceeding

9. On March 12, 2019, ITCAN and Imperial Tobacco Company Limited sought and obtained protection from their creditors under the CCAA. Attached hereto and marked as Exhibit "E" is a true copy of the Initial Order of Justice McEwen dated March 12, 2019.

10. Attached hereto and marked as Exhibit "F" is a true copy of the affidavit of Eric Thauvette sworn March 12, 2019, without exhibits, that ITCAN and Imperial Tobacco Company Limited filed in support of their CCAA application.

RBH CCAA Proceeding

11. On March 22, 2019, RBH sought and obtained protection from its creditors under the CCAA. Attached hereto and marked as Exhibit "G" is a true copy of the Initial Order of Justice Pattillo dated March 22, 2019.

12. Attached hereto and marked as Exhibit "H" is a true copy of the affidavit of Peter Luongo sworn March 22, 2009, and only Exhibit "A" and Exhibit "H" thereto, that RBH filed in support of its CCAA application.

Ontario HCCR Action is a Case of First Impression

13. The Ontario HCCR Action is a case of first impression as it was commenced pursuant to section 2 of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, S.O. 2009, c. 13 (the "**Ontario HCCR Act**").

14. All ten provinces have filed statements of claim against tobacco companies pursuant to very similar legislation. No provincial claim has proceeded yet to trial.

15. Ontario seeks to recover the costs it incurred in regard to the provision of health care benefits caused or contributed to by a "tobacco related wrong" which is defined in section 1(1) of the Ontario HCCR Act to be "a tort committed in Ontario by a manufacturer [of a tobacco product] which causes or contributes to tobacco related disease", or "a breach of a common law, equitable or statutory duty or obligation owed by a manufacturer to persons in Ontario who have been exposed or might become exposed to a tobacco product".

16. Pursuant to section 1(1) of the Ontario HCCR Act, the cost of health care benefits which Ontario claims against the defendants is the sum of:

(a) the present value of the total expenditure by Ontario for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease (i.e. past expenditures); and

(b) the present value of the estimated total expenditure by Ontario for health care benefits that could reasonably be expected will be provided for those insured persons resulting from tobacco related disease or the risk of tobacco related disease (i.e. future expenditures).

17. Pursuant to section 3(1) of the Ontario HCCR Act, Ontario is required to prove, on a balance of probabilities that, in respect of a type of tobacco product (cigarettes are the tobacco product at issue in the Ontario HCCR Action):

(a) the defendant breached a common law, equitable or statutory duty or obligation owed to persons in Ontario who have been exposed or might become exposed to the type of tobacco product;

(b) exposure to the type of tobacco product can cause or contribute to disease; and

(c) during all or part of the period of the breach referred to in clause (a), the type of tobacco product, manufactured or promoted by the defendant, was offered for sale in Ontario.

18. If Ontario meets this burden of proof then, pursuant to section 3(2) of the Ontario HCCR Act, the Court shall make the following two presumptions:

(a) that the population of insured persons who were exposed to the type of tobacco product manufactured or promoted by the defendant would not have been exposed to the product but for the breach referred to in clause 3(1)(a); and

(b) the exposure described in clause 3(2)(a) caused or contributed to disease or the risk of disease in a portion of the population described in clause (3)(2)(a).

19. Section 3(3)(b) of the Ontario HCCR Act provides that if the above two presumptions apply:

(a) the court shall determine on an aggregate basis the cost of health care benefits provided after the date of the breach referred to in clause 3(1)(a) resulting from exposure to the type of tobacco product; and

(b) each defendant to which the presumptions apply is liable for the proportion of the aggregate cost referred to in clause 3(3)(a) equal to its market share in the type of tobacco product.

Defendants to Ontario HCCR Action

20. I have reviewed all of the Statements of Defence and set out in the table below the jurisdiction of incorporation and the location of the head office of the defendants as pleaded by each defendant and confirmed in the affidavits which are Exhibits "B", "F", "I", "J", "K", "L", "M" and "N" to my affidavit (see paragraphs 6, 10 and 21 herein):

Defendant Corporations in Ontario HCCR Action	Jurisdiction of Incorporation	Head Office Location / Principal Place of Business
JTI-Macdonald Corp.	Canada	Mississauga[1]
Imperial Tobacco Canada Limited	Canada	Brampton, Ontario[2]
Rothmans, Benson & Hedges Inc.	Canada	Toronto, Ontario
Rothmans Inc.	Canada	Toronto, Ontario
British American Tobacco (Investments) Limited	United Kingdom	London, England
B.A.T. Industries p.l.c	United Kingdom	London, England
British American Tobacco p.l.c.	United Kingdom	London, England
Carreras Rothmans Limited	United Kingdom	London, England
R.J. Reynolds Tobacco Company	North Carolina	Winston-Salem, NC
R.J. Reynolds Tobacco International Inc.	Delaware	Winston-Salem, NC
Altria Group, Inc.	Virginia	Richmond, Virginia
Philip Morris U.S.A. Inc.	Virginia	Richmond, Virginia
Philip Morris International, Inc.	Virginia	New York, New York
Canadian Tobacco Manufacturers' Council	Canada	Gatineau, Quebec

21. Additional information regarding R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., British American Tobacco p.l.c., British American Tobacco (Investments) Limited, B.A.T. Industries p.l.c., Imperial Tobacco Canada Limited and Carreras Rothmans Limited is found in the following affidavits which certain of the defendants filed in the Ontario HCCR Action in support of their motions challenging the jurisdiction of the court (the jurisdiction motions are described in more detail in paragraphs 24 and 30-32 herein):

[1] Affidavit of Robert McMaster sworn March 8, 2019 at para. 10 and para. 17 which states: "… the manufacturing of JTIM's products are carried out at a manufacturing facility located at 2455 Ontario Street East, in Montreal, Quebec (the "Plant")".
[2] Affidavit of Eric Thauvette sworn March 12, 2019 at para. 17.

(a) Attached hereto and marked as Exhibit "I" is a true copy of the affidavit of Thomas R. Adams ("**Adams**") sworn February 15, 2010. Adams deposed that, at the time of swearing his affidavit, he was the Executive Vice President and Chief Financial Officer of both Reynolds American Inc. and RAI Services Company. Adams further deposed as follows: "In 1999 I was hired as Senior Vice President and Controller of R.J. Reynolds Tobacco Holdings, Inc., ("RJR Holdings"). I was named Senior Vice President and Chief Accounting Officer for RAI, which is a successor to RJR Holdings, and R.J. Reynolds Tobacco Company ("RJRT") in 2004, and became Senior Vice President – Business Processes for RJRT the following year";

(b) Attached hereto and marked as Exhibit "J" is a true copy of the reply affidavit of Adams sworn November 1, 2010;

(c) Attached hereto and marked as Exhibit "K" is a true copy of the affidavit of Nicola Snook ("**Snook**") sworn January 12, 2010. Snook deposed that, at the time of swearing her affidavit, she was the Company Secretary of British American Tobacco p.l.c.;

(d) Attached hereto and marked as Exhibit "L" is a true copy of the affidavit of Snook sworn January 12, 2010 in which she deposed that, at the time swearing her affidavit, she was the Company Secretary of B.A.T. Industries p.l.c.;

(e) Attached hereto and marked as Exhibit "M" is a true copy of the affidavit of Richard Cordeschi ("**Cordeschi**") sworn January 12, 2010. Cordeschi deposed that, at the time of swearing his affidavit, he was a director of Carreras Rothmans Limited; and

(f) Attached hereto and marked as Exhibit "N" is a true copy of the affidavit of Cordeschi sworn January 12, 2010, in which he deposed that, at the time swearing his affidavit, he was the Company Secretary of British American Tobacco (Investments) Limited.

Procedural History of Ontario HCCR Action

22. As described in the paragraphs that follow, for the past ten years, Ontario has invested a tremendous amount to time, money and effort to prosecute the Ontario HCCR Action in order to hold the thirteen defendant tobacco companies and the Canadian Tobacco Manufacturers' Council accountable for their conduct over the period from 1950 to the present.

(a) Defendants' Challenges to Statement of Claim and Commencement of Case Management in 2010

23. The Statement of Claim was issued on September 29, 2009 (the "**Claim**"). On December 11, 2009, Ontario made minor amendments to the Claim.

24. On December 30, 2009, various defendants served notices of motion to strike the Claim. The defendants' motions to strike were then held in abeyance until 2014 while the following six defendants challenged the Court's jurisdiction: British American Tobacco p.l.c.; British American Tobacco (Investments) Limited; B.A.T. Industries p.l.c.; Carreras Rothmans Limited; R.J. Reynolds Tobacco Company; and R.J. Reynolds Tobacco International Inc.

25. In May, 2010, Justice Conway was appointed as the Case Management Judge, and Master Short was appointed as the Case Management Master for the Ontario HCCR Action.

26. On August 25, 2010, Ontario further amended the Claim.

(b) Third Party Claims commenced against Attorney General of Canada and "Aboriginal manufacturers"

27. In May, 2011, JTIM, ITCAN, Rothmans Inc. and RBH commenced third party claims against the Attorney General of Canada. These defendants discontinued these third party claims in October, 2014.

28. In May, 2011, ITCAN, Philip Morris International, Inc., Philip Morris USA Inc., Altria Group, Inc. Rothmans Inc. and RBH commenced third party claims against various corporations and individuals whom they referred to as "Aboriginal manufacturers". These third party claims have not been discontinued; however, it is my understanding that the defendants have not required any of the third parties to deliver statements of defence to the third party claims, nor have the defendants taken any steps to prosecute the third party claims.

29. During the monthly Case Management Conference on February 8, 2019, (which was conducted prior to the issuance of the JTIM Initial Order, the ITCAN Initial Order and the RBH Initial Order) Master Short scheduled a motion by the third party, Grand River Enterprises Six Nations Ltd. ("**GRE**"), to strike the third party claim against it to be heard on June 18-19, 2019. During the Case Management Conference on March 8, 2019, Master Short set a timetable for the parties to deliver their motion materials in regard to GRE's motion to strike. Also during the Case Management Conference on March 8, 2019, counsel for several other third parties advised that they are in the process of obtaining instructions regarding whether to bring a motion to strike the third party claims against them.

(c) UK Defendants' and US Defendants' unsuccessful four year challenge to jurisdiction of Ontario Superior Court of Justice

30. From early 2010 to December 2013, Ontario successfully defended motions and subsequent appeals brought by the four defendants incorporated in the United Kingdom [British American Tobacco (Investments) Limited, B.A.T. Industries p.l.c., British American Tobacco p.l.c. and Carreras Rothmans Limited], and two of the five defendants incorporated in the United States [R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.] (collectively referred to hereinafter as the "**Jurisdiction Challenging Defendants**") seeking to set aside the service *ex juris* of the Statement of Claim on the ground that Ontario is not the *forum conveniens* for the adjudication of Ontario's claims pursuant to the Ontario HCCR Action.

31. On January 4, 2012, Justice Conway found that the Court had jurisdiction over all of the foreign defendants. On May 30, 2013, the Court of Appeal for Ontario dismissed the appeal by the Jurisdiction Challenging Defendants. Both Justice Conway and the Court for Appeal held that:

(i) the Ontario Courts have jurisdiction *simpliciter* over the Jurisdiction Challenging Defendants;

(ii) Ontario's Statement of Claim is sufficient for jurisdictional purposes; and

(iii) there is a real and substantial connection between Ontario and the subject matter of the Ontario HCCR Action.

32. The Jurisdiction Challenging Defendants sought leave to appeal to the Supreme Court of Canada which was denied on December 19, 2013.

(d) Defendants' motion to strike the Claim and motion for further and better particulars regarding the Claim

33. On March 29, 2014, Ontario made further amendments to the Claim.

34. The defendants withdrew their motions to strike the Claim except with respect to one narrow issue regarding parliamentary privilege which was argued by ITCAN.

35. On June 2, 2014, Justice Conway heard ITCAN's motion to strike portions of eight paragraphs in Ontario's Fresh as Amended Statement of Claim on the basis of parliamentary privilege. By a decision dated June 12, 2014, Justice Conway granted ITCAN's motion. The other defendants withdrew their motions to strike the Claim.

36. On February 11, 2015, Master Short heard motions by the defendants requesting further and better particulars in respect of forty-nine paragraphs in the Fresh as Amended Statement of Claim which focused on the allegations of misrepresentation and conspiracy. Master Short released his decision on January 14, 2016.

37. On April 20, 2016, Ontario amended the Claim in the form of the "Amended Fresh as Amended Statement of Claim".

38. The defendants delivered their respective Statements of Defence on or about April 29, 2016. None of the defendants have brought cross-claims against each other.

39. Ontario served its Replies to all of the Statements of Defence on May 20, 2016.

(e) Clawback Protocol and Confidentiality Order for documentary discovery

40. On January 20, 2017, Master Short issued an order approving a clawback protocol relating to the documentary discovery process to address any inadvertent disclosure by any party of a document that is privileged, subject to public interest immunity or subject to a statutory prohibition on disclosure.

41. In December, 2017, the parties successfully negotiated a consent Order with respect to the confidentiality of documents produced. Justice Conway issued the confidentiality order on December 12, 2017.

(f) Monthly Case Management Conferences conducted by Master Short since January, 2018

42. Since January, 2018, the parties have participated in monthly Case Management Conferences conducted by Master Short on the second Friday of every month. In accordance with a protocol established by Master Short, nine days before each Case Management Conference, Ontario prepares and sends a draft agenda to the defendants for their review and comment. On the Monday before each Case Management Conference, Ontario sends the agenda to Master Short's Registrar. Following each Case Management Conference, Ontario prepares a draft Case Management Conference Report which Ontario sends to the defendants and Master Short's Registrar. Attached hereto and marked as Exhibit "O" is a true copy of the Endorsement of Master Short dated February 5, 2018, in respect of the Case Management Conference he conducted on January 18, 2018. In the first paragraph of the Endorsement Master Short directed that "Monthly Case Management Conferences shall be held on the second Friday of each month".

(g) Ontario's intervention in British Columbia's appeal to Supreme Court of Canada regarding the compellability of the provincial healthcare databases

43. On January 17, 2018, Ontario intervened at the Supreme Court of Canada in the appeal by Her Majesty the Queen in right of British Columbia from the decision of the British Columbia Court of Appeal that held that s. 2(5)(b) of the British Columbia *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27 (the "**BC HCCR Act**") does not prohibit the compellability of insured persons' health care data contained in the health care databases sought by the defendants. Section 2(5)2 of the Ontario HCCR Act is nearly identical to section 2(5)(b) of the BC HCCR Act, which was the subject of British Columbia's appeal before the Supreme Court of Canada.

44. On July 13, 2018, the Supreme Court of Canada granted British Columbia's appeal and held that the BC HCCR Act prohibits the compellability of British Colombia's healthcare databases; however, the databases are compellable once they have been relied on by an expert witness. In addition, a "statistically meaningful sample" of the databases, once the health care records have been anonymized, is compellable on a successful application under the BC HCCR Act.

(h) Further discovery-related motions and parties' exchange of productions

45. In February, 2018, Ontario brought the following two discovery-related motions: (i) a motion to compel the defendants, Altria Group Inc. and Philip Morris U.S.A. Inc., to serve an affidavit of documents listing all relevant documents and produce their documents on an encrypted hard drive (the "**Production Motion**"); and (ii) a motion to compel all defendants to comply with a discovery plan and to produce a sworn affidavit of documents (the "**Discovery Plan Motion**"). The Production Motion was resolved by the consent order of Master Short dated

March 29, 2018. Following an adjournment, the Discovery Plan Motion was also resolved by the consent order of Master Short dated May 2, 2018.

46. Commencing in December, 2009 and continuing into 2017, Ontario engaged in an extensive, very expensive and labour-intensive process of document preservation, collection and review to identify potentially relevant paper and electronic documents that are in the possession, power or control of Ontario for production in the Ontario HCCR Action. This document discovery undertaking included, but was not limited to, the search of multiple Ministries and the Archives of Ontario. Potentially relevant documents identified in the searches were reviewed and vetted for relevance, privilege and public interest immunity. Documents were scanned, transformed to Optical Character Recognition (OCR) format where possible, coded in electronic format and uploaded into a secure Ringtail database.

47. Ontario served its initial List of Documents on December 15, 2016. Between February 1, 2017 and February 15, 2018, Ontario served seven Supplemental Lists of Documents. Ontario has produced in excess of 135,000 documents covering the period from the 1950s to post-2009.

48. The defendants have served Ontario with productions totaling in excess of 8 million documents.

49. On May 29, 2018, Ontario served Requests to Admit on all fourteen of the defendants in the Ontario HCCR Action requesting that they admit the authenticity of approximately 1,264 documents which are supporting documents cited in the reports of three of Ontario's liability experts. The defendants served their Responses to Ontario's Requests to Admit between July 31, 2018 and August 7, 2018.

(i) Communications with Court regarding Trial Date

50. Attached hereto and marked as Exhibit "P" is a true copy of the Endorsement of Master Short dated February 26, 2018, made in respect of the Case Management Conference he conducted on February 9, 2018 in which he stated:

> 2. The Court advised the parties that Justices Conway and Firestone are aware of Ontario's desire for trial scheduling and the Court shall provide a more fulsome update at the next Case Management Conference.

51. Attached hereto and marked as Exhibit "Q" is a true copy of the Endorsement of Master Short dated May 8, 2018, made in respect of the Case Management Conference he conducted on May 2, 2018 in which he stated:

> 3. Master Short advised that following the last Case Management Conference, he discussed timing for the trial with RSJ Morawetz, who at that point, declined to set a trial date pending the release of the SCC decision in the BC HCCR case as in his view it may impact the timing of the Ontario HCCR case. Master Short will canvass RSJ Morawetz's availability for an in-person attendance with his Honour for the June 2018 Case Management Conference, and update the parties accordingly. At that point, the parties may make submissions with respect to the setting of a trial date.

52. Attached hereto and marked as Exhibit "R" is a true copy of the Endorsement of Master Short dated June 28, 2018, made in respect of the Case Management Conference conducted in person before Master Short and Regional Senior Justice Morawetz on June 8, 2018. I am advised by Jacqueline Wall ("**Wall**"), counsel for Ontario, and believe to be true that during this Case Management Conference on behalf of Ontario she made submissions requesting that a trial date be set in late 2020/early 2021. Master Short's Endorsement includes the following statements and directions:

1. No trial date will be set at this time. Regional Senior Justice Morawetz and Master Short will continue to monitor the progress of this action.

2. Regional Senior Justice Morawetz advised the parties that he will meet with the Honourable Justice S.E. Firestone in order to identify a trial judge and a back-up trial judge and will report back to the parties in a month's time regarding the identity of the trial judge(s).

3. I will continue to hold monthly Case Management Conferences by telephone (CourtCall) on the second Friday of each month.

4. The Honourable Justice B.A. Conway will hear any motions that may be brought by the parties in this matter that fall within her jurisdiction.

5. Regional Senior Justice Morawetz advised the parties that he will make himself available for "reality checks" if the parties wish to discuss their respective strategic objectives. He further advised that the Court's objective is not to hold the parties up and that the Court will keep a trial judge available to hear the trial of this action.

6. I will send updates regarding the monthly Case Management Conferences to Regional Senior Justice Morawetz [emphasis added].

53. Attached hereto and marked as Exhibit "S" is a true copy of the Endorsement of Master Short dated August 31, 2018, made in respect of the Case Management Conference he conducted on August 10, 2018 in which he stated:

1. The parties advised of the release of the Supreme Court of Canada's decision in *British Colombia v Philip Morris International, Inc., at el,* 2018 SCC 36. Ontario takes the position that this decision does not change its proposed late 2020 /early 2021 start of the trial in this action, the Defendants maintain that it is premature to set a trial date. The Court will advise the Honourable Regional Senior Justice Morawetz of the release of the Supreme Court of Canada's judgment and continue to provide the parties with updates as to the identity of the trial judge and the back-up trial judge.

(j) Ontario has served eight expert reports

54. On or about June 15, 2018, Ontario served on the defendants the report of five experts whom Ontario retained to provide opinion evidence to establish liability on the part of the defendant tobacco companies. As described in paragraphs 61 and 28-84 herein, Ontario has also served three expert reports addressing the quantum of Ontario's claim.

(k) Examinations for Discovery

55. On October 24, 2018, Ontario served thirteen sets of Questions on Written Examination for Discovery on the defendants.

56. Between October 30, 2018 and January 18, 2019, Ontario produced the following seven witnesses who were examined for discovery over twenty-three days by counsel for the defendants:

(a) Heidi Lazar-Meyn, Counsel, Ministry of the Attorney General;

(b) Karen Gill, Director of the Curriculum and Assessment Policy Branch (retired), Ministry of Education;

(c) David Hagarty, Director and Secretary to the Farm Products Marketing Commission, Ministry of Agriculture, Food and Rural Affairs;

(d) Jeff Sweeting, Senior Manager, Tobacco Policy, Ministry of Finance;

(e) Skanda Skanthavarathan, Chief Accountant, Ministry of Health and Long-Term Care;

(f) Geoff Bannon, Manager, Data Access and Release, Ministry of Health and Long-Term Care; and

(g) Dr. David Williams, Chief Medical Officer of Health, Ministry of Health and Long-Term Care.

57. Since November, 2018, and as each witness' discovery was completed, Ontario's discovery witnesses and other persons at the aforesaid five Ministries have been engaged in preparing the answers to the undertakings given and, where appropriate, the questions taken under advisement and questions refused during the examinations for discovery.

58. In addition to the questions from the twenty-three days of oral discoveries, Ontario is in the process of preparing answers to in excess of 600 written discovery questions that were served on Ontario on January 25, 2019, by British American Tobacco p.l.c., British American Tobacco (Investments) Limited, B.A.T. Industries p.l.c., Rothmans, Benson & Hedges Inc. and Rothmans Inc.

59. During the Case Management Conference on December 14, 2018, Ontario advised Master Short and the defendants' counsel that it intends to serve three further liability reports prepared by three physicians.

60. During the Case Management Conference on January 11, 2019, Ontario advised Master Short and the defendants' counsel that it also intends to serve an expert report addressing the defendants' marketing practices relating to the effects of exposure to environmental tobacco smoke.

61. On January 31, 2019, Ontario served the expert report of Dr. Glenn Harrison ("**Dr. Harrison**"), an economist retained by Ontario, who has calculated the smoking attributable expenditures due to environmental tobacco smoke (second-hand smoke) in Ontario to be between $9.391 billion and $10.913 billion in present value 2016 dollars, depending on the assumed end-date for the breach exposure.

62. At the end of February, 2019 and in early March, 2019, the defendants served answers to some of the written examinations for discovery questions served by Ontario. Many questions remained unanswered by the defendants.

63. The next Case Management Conference by telephone with Master Short is scheduled to be held on April 9, 2019 commencing at 9:30 a.m.

Prejudice to Ontario if the Stays of Ontario HCCR Action are not lifted

64. If the JTIM Stay, the ITCAN Stay and the RBH Stay are not lifted in accordance with the Orders requested in Ontario's Notices of Motion filed in the JTIM CCAA Proceeding, the ITCAN CCAA Proceeding and the RBH CCAA Proceeding (set out in paragraphs 2, 3 and 4 herein), the matters described in the paragraphs that follow will not proceed expeditiously or as already scheduled through case management in the Ontario HCCR Action, thereby significantly causing delay for an indefinite period of time and causing serious prejudice to Ontario.

(a) Trial of Ontario HCCR Action will be delayed indefinitely

65. First, there will be an unwarranted delay for an indefinite period of time before the trial date in the Ontario HCCR Action is set. If the Orders requested by Ontario are granted, I believe that, with the benefit of Master Short's ongoing close case management and Regional Senior Justice Morawetz's oversight, the Ontario HCCR Action will remain on track and Ontario's projected trial commencement date in late 2020 / early 2021 will be achievable.

66. Ontario seeks to prove its claims against all of the defendants in the Ontario HCCR Action, including the eleven defendants that have not filed for protection under the CCAA. The mere fact that JTIM, ITCAN and RBH have commenced CCAA proceedings ought not to bar

Ontario from proceeding to prove its claims, obtain a judgment and enforce a judgment against whichever of the eleven non-filing defendants are held to be liable. The Orders sought by Ontario restrict the taking of any future proceedings to enforce any judgment and/or collect any amount owing or found to be owing by JTIM, ITCAN and/or RBH in the Ontario HCCR Action shall be stayed pending further Order of this Honourable Court.

67. None of JTIM, ITCAN or RBH filed any evidence at the *ex parte* hearings of their CCAA applications that any of the other eleven defendants in the Ontario HCCR Action have any inclination to participate in a global settlement.

(b) Defendants' motion for a statistically meaningful sample will be delayed indefinitely

68. Secondly, since the release of the Supreme Court of Canada's decision on July 13, 2018 (described in paragraphs 43-44 herein) regarding the compellability of provincial healthcare databases, Ontario has focused on providing the defendants with a very large volume of documents and information regarding Ontario's healthcare databases as well as the supporting documents, data and calculations used by Dr. Harrison to generate his expert reports. This discovery was provided to enable the defendants to determine the parameters of the statistically meaningful sample of the health care records and documents of individual insured persons they seek Ontario to produce pursuant to section 2(5)4 of the Ontario HCCR Act. Despite Ontario's repeated requests that the defendants proceed with a motion for a statistically meaningful sample, they have not yet done so.

69. During the Case Management Conference held on October 12, 2018, Master Short advised that he had set aside June 4, 5, 6 and 7, 2019 as tentative dates for the hearing of a

motion by the defendants to obtain a statistically meaningful sample. The issue of the defendants' statistically meaningful sample motion has been discussed during the monthly Case Management Conferences held on the following dates: August 10, 2018; September 14, 2018; October 12, 2018; November 9, 2018; December 14, 2018; January 11, 2019; February 8, 2019; and March 8, 2019.

70. During the Case Management Conference on March 8, 2019, Master Short directed that Ontario's request for a timetable for the defendants' motion for a statistically meaningful sample would be further discussed at the Case Management Conference scheduled to be held on April 9, 2019.

71. Regardless of whether the parameters of the statistically meaningful sample that Ontario will provide to the defendants is determined on the consent of the parties or by a motion to the Court, it will likely take some months for Ontario to prepare the statistically meaningful sample for production to the defendants. It is imperative that this process of communication between Ontario and the defendants continue in the Ontario HCCR Action to avoid an unreasonable delay and maintain the action on track for Ontario's projected trial date of late 2020 / early 2021.

(c) Completion of examinations for discovery will be delayed indefinitely

72. Thirdly, during the Case Management Conference held on March 8, 2019, Master Short suggested that by June 1, 2019, (i) Ontario should serve the answers to its undertakings, and (ii) the defendants should serve their respective outstanding answers to Ontario's written examinations for discovery. These steps must be completed in a timely manner to avoid unreasonable delay and maintain the action on track for Ontario's projected trial date of late 2020 / early 2021.

(d) June 4-7, 2019 dates being held by Master Short for potential refusals motion or other motion will be lost

73. Fourthly, in the event that any party determines that it is necessary to bring a refusals motion, such a step will introduce a further delay in the Ontario HCCR Action. At the time of March Case Management Conference, Master Short continued to hold the dates of June 4 – 7, 2019 for the hearing of any motions.

(e) GRE's motion to strike third party claims cannot proceed on June 18-19, 2019 as scheduled by Master Short; status of third party claims will remain uncertain indefinitely

74. Fifthly, in order to maintain the Ontario HCCR Action on track for its projected trial date, it is necessary to achieve certainty with respect to the status of the third party claims. Rule 29.08(2) of the *Rules of Civil Procedure* provides that "The third party claim shall be tried at or immediately after the trial of the main action, unless the court orders otherwise". To date, the defendants have not obtained any Court order under Rule 29.08(2); therefore, it is necessary for the status of the third party claims to be determined with certainty particularly in light of Rule 29.09 which provides that "A plaintiff is not to be prejudiced or unnecessarily delayed by reason of a third party claim …".

75. During the Case Management Conference held on September 14 2018, Master Short directed the defendants to prepare a draft Order pursuant to Rule 29.08(2) regarding the trial of the third party claims, and provide the draft Order to Ontario and subsequently to the Court. To date, the defendants have not provided any such draft Order to Ontario.

76. If the JTIM Stay, the ITCAN Stay and the RBH Stay are not lifted in accordance with the Orders requested in Ontario's Notices of Motion, GRE's motion to strike the third party claim

against it will not be heard by Master Short on June 18-19, 2019 (see paragraphs 29 and 74 herein). The motion dates for GRE's motion were scheduled during the Case Management Conference held on February 8, 2019.

(f) Ontario's service of additional expert reports and defendants' service of all of their expert reports will be delayed indefinitely

77. Sixthly, if the JTIM Stay, the ITCAN Stay and the RBH Stay are not lifted in accordance with the Orders requested in Ontario's Notices of Motion, Ontario will be barred from serving its further expert reports (see paragraphs 59-60 herein).

78. None of the defendants have served any responding expert reports in the Ontario HCCR Action. During the Case Management Conferences held on February 8, 2019, and March 8, 2019, Ontario requested that Master Short set a deadline for the defendants to serve their expert reports. During the Case Management Conference on March 8, 2019, Master Short directed that Ontario's request for a timetable for the defendants to serve their expert reports would be further discussed at the April Case Management Conference.

79. In summary, the JTIM Stay, the ITCAN Stay and the RBH Stay have the effect of removing the Ontario HCCR Action from the nine year long effective case management by Master Short and Justice Conway and the oversight of the action's progress toward trial by Regional Senior Justice Morawetz. If the three Stays as they pertain to the Ontario HCCR Action are continued past April 4, 2019, they will act to undo the work that Ontario, the fourteen defendants, Master Short and Justice Morawetz have done to move the Ontario HCCR Action forward and prepare it for trial. Moreover, Ontario will be barred from proceeding forward with

its claims against eleven defendant corporations other than JTIM, ITCAN and RBH. This state of affairs is unwarranted and highly prejudicial to Ontario.

80. Ontario estimates that the trial of the Ontario HCCR Action may take approximately one year. The *sui generis* nature of the Ontario HCCR Action, coupled with the complexity of the parties' liability and damages cases, is such that the case is not suitable for adjudication in accordance with any summary claims procedure in a CCAA proceeding.

81. JTIM, ITCAN and RBH are necessary parties to the determination of the Ontario HCCR Action against the other eleven defendants. Ontario seeks Orders varying the JTIM Stay, the ITCAN Stay and the RBH Stay to permit Ontario to continue prosecuting the Ontario HCCR Action; however, Ontario would be barred from taking any proceedings to enforce any judgment and/or collect any amount owing or found to be owing by JTIM, ITCAN and/or RBH in the Ontario HCCR Action pending further Order of this Honourable Court.

Prejudicial Impact of JTIM's Initial Order on Amendment of Ontario's Amended Fresh as Amended Statement of Claim

(a) Ontario's motion to amend its pleading was served and filed on June 28, 2018

82. On June 15, 2018, Ontario served on the defendants the following two reports prepared by Dr. Harrison: (i) report entitled "Calculations of Health Expenditures attributable to Smoking in Ontario" dated May 24, 2018; and (ii) report entitled "Supplementary Calculations of Health Expenditures attributable to Smoking in Ontario" dated May 25, 2018. Dr. Harrison applied statistical methods to publicly available data to calculate the Smoking Attributable Fraction (SAF) which is the share of health expenditures by Ontario that are due to smoking behavior. I have reviewed both of Dr. Harrison's reports.

83. Dr. Harrison has opined that the present value of the cost of health care benefits that Ontario has incurred and will reasonably continue to incur as a result of tobacco related disease or the risk of tobacco related disease exceeds the $50 billion currently claimed in the Amended Fresh as Amended Statement of Claim. Dr. Harrison has calculated that such expenditures are in the range of $327.2 billion in 2016/17 dollars assuming an end of breach period date of May 14, 2009.

84. Based upon Dr. Harrison's quantification of Ontario's health care benefits expenditures, Ontario decided to amend its pleading to increase the cost of health care benefits claimed to $330 billion.

85. On June 28, 2018, Ontario filed a motion in writing seeking leave to amend the Amended Fresh as Amended Statement of Claim in order to increase the cost of health care benefits claimed against the defendants from the amount of $50 billion pleaded in paragraph 1(a) of the Amended Fresh as Amended Statement of Claim to the amount of $330 billion pleaded in the Second Amended Fresh as Amended Statement of Claim. Ontario's motion was filed in the Court Office at the 393 University Avenue Courthouse, as well as sent electronically to Master Short's Registrar on June 28, 2018.

86. The defendants did not oppose the proposed amendments identified by double underlining in the Second Amended Fresh as Amended Statement of Claim. Attached hereto and marked as Exhibit "T" are true copies of the Notices executed on June 26 and 27, 2018, by the defendants including JTIM, ITCAN and RBH, by their respective counsel, stating that the defendants do not oppose the motion. The defendants did not file any responding motion materials.

87. With the passage of time, CLOC Counsel became concerned that perhaps we had not been notified by the Court that the order regarding the disposition of the motion had been issued was available for pick-up from the Court Office. During the week of February 25, 2019, CLOC Counsel directed KAP Litigation to check the Court's computer system and make inquiries in the Court Office at the 393 University Courthouse to determine the status of the motion. Attached hereto and marked as Exhibit "U" are true copies of the emails exchanged Wall and Beson Yung ("**Yung**") of KAP Litigation on February 27 and 28, 2019. Yung advised that the Court Office has no record of any order having being issued, and that the court staff had searched for and could not locate Ontario's motion record or any order issued by Master Short.

(b) Case Management Conference with Master Short on March 8, 2019

88. In accordance with the protocol established by Master Short, each month Ontario's counsel prepares the Agenda for the monthly Case Management Conference. Attached hereto and marked as Exhibit "V" are true copies of the email that Wall sent on February 27, 2019, to counsel for all of the defendants, including JTIM, ITCAN and RBH, in the Ontario HCCR Action. Item #4 on the Agenda is "Ontario's motion to amend Amended Fresh as Amended Statement of Claim".

89. I participated in the Case Management Conference which commenced at 9:30 a.m. on March 8, 2019. JTIM, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc. were represented by Caitlin Sainsbury of the law firm of Borden Ladner Gervais LLP.

90. During the Case Management Conference, Master Short advised that he recalled signing the amendment Order. He directed Ontario to re-file its motion record on March 8, 2019, and advised that he would sign the Order that same day.

91. At approximately 11:30 a.m. on March 8, 2019, I walked to the Courthouse at 393 University Avenue and delivered a copy of Ontario's motion record to David Backes, Master Short's Registrar.

92. I am advised by Wall and believe to be true that at approximately 12:30 p.m. on March 8, 2019, she received a telephone call from the Master Short's Registrar advising that Master Short had signed the Order and that it was available for pickup from the Masters' Reception.

93. Attached hereto and marked as Exhibit "W" is a true copy of the amendment Order issued by Master Short midday on March 8, 2019. The Second Amended Fresh as Amended Statement of Claim is attached to Master Short's Order.

94. Paragraph 65 of the JTIM Initial Order provides that:

> "**THIS COURT ORDERS** this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the **"Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicant or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property or the Business shall be deemed not to have been taken or given, as the case may be [emphasis added].

95. By operation of paragraph 65 of the JTIM Initial Order, Master Short's Order granting Ontario leave to amend its Amended Fresh as Amended Statement of Claim, is deemed not to have been issued.

96. In order to rectify this situation, Ontario seeks an order exempting the application of paragraph 65 of the JTIM Initial Order to the Order of Master Short dated March 8, 2019 (which is Exhibit "W" hereto), and an order lifting the CCAA stay to permit the Ontario Superior Court of Justice to take whatever steps are necessary and proper to formally effect the amendments to Ontario's Amended Fresh as Amended Statement of Claim as ordered by Master Short on March 8, 2019, and authorize and permit Ontario to serve the Second Amended Fresh as Amended Statement of Claim on all of the defendants to the Ontario HCCR Action.

Ontario requested that JTIM, ITCAN and RBH provide Ontario with Notice of the Initial Applications under the CCAA

97. Attached hereto and marked as Exhibit "X" is a true copy of the letter dated March 7, 2019 that Wall sent to Guy Pratte, counsel for JTIM in the Ontario HCCR Action, requesting that if JTI decided to bring an application seeking protection under the CCAA or any other applicable statute, that JTI provide Ontario with reasonable notice of the hearing date and serve its application materials on Ontario in advance of the initial hearing. JTIM did not provide Ontario with notice of the application heard by Justice Hainey on March 8, 2019.

98. Attached hereto and marked as Exhibit "Y" is a true copy of the letter dated March 7, 2019, that Wall sent to Deborah Glendinning, counsel for ITCAN in the Ontario HCCR Action, requesting that if ITCAN decided to bring an application seeking protection under the CCAA or any other applicable statute, that ITCAN provide Ontario with reasonable notice of the hearing

date and serve its application materials on Ontario in advance of the initial hearing. ITCAN did not provide Ontario with notice of the application heard by Justice McEwen on March 12, 2019.

99. Attached hereto and marked as Exhibit "Z" is a true copy of the letter dated March 7, 2019, that Wall sent to Paul Steep, counsel for RBH in the Ontario HCCR Action, requesting that if RBH decided to bring an application seeking protection under the CCAA or any other applicable statute, that RBH provide Ontario with reasonable notice of the hearing date and serve its application materials on Ontario in advance of the initial hearing. RBH did not provide Ontario with notice of the application heard by Justice Pattillo on March 22, 2019.

ITCAN's Communications to Justice Conway, Master Short and the Registrar of the Ontario Superior Court of Justice advising of the ITCAN Stay

100. Attached hereto and marked as Exhibit "AA" is a true copy of the letter dated March 14, 2019 that Nancy Roberts, counsel to ITCAN, sent to Justice Conway and Master Short advising them that the Ontario HCCR Action is stayed as against ITCAN, British American Tobacco p.l.c., British American Tobacco (Investments) Limited, B.A.T. Industries p.l.c. and Carreras Rothmans Limited, until and including April 11, 2019, pending further Order of the Court.

101. Attached hereto and marked as Exhibit "BB" is a true copy of the letter dated March 14, 2019 that Nancy Roberts, counsel to ITCAN, sent to the Registrar of the Ontario Superior Court of Justice at the Courthouse at 393 University Avenue advising the Registrar that the Ontario HCCR Action is stayed as against ITCAN, British American Tobacco p.l.c., British American Tobacco (Investments) Limited, B.A.T. Industries p.l.c. and Carreras Rothmans Limited, until and including April 11, 2019, pending further Order of the Court.

102. As of the swearing of this affidavit, Ontario has not received or been copied on any communications from either JTIM or RBH to any of Justice Conway, Master Short or the Registrar of the Ontario Superior Court of Justice advising them of the scopes of the JTIM Stay and the RBH Stay.

Defendants' Press Releases regarding CCAA Proceedings

103. Attached hereto and marked as Exhibit "CC" is a true copy of the press release dated March 12, 2019, that I printed from the website of ITCAN, www.imperialtobaccocanada.com, which states, in part, in relation to the Quebec Class Actions:

> ... Following the first instance judgment, the Company made an initial deposit of $758 million in escrow. This amount, as directed by the first instance judge and affirmed by the Court of Appeal, should satisfy any order to pay the claimants.
>
> Imperial Tobacco Canada continues to disagree with the judgments by the Quebec Court of Appeal and the Quebec Superior Court.

104. Attached hereto and marked as Exhibit "DD" is a true copy of the press release dated March 12, 2019 that I printed from the website of British American Tobacco, www.bat.com, which states, in part:

> In addition, across Canada, other tobacco plaintiffs and provincial governments are collectively seeking significant damages which substantially exceed ITCAN's total assets. In seeking protection under the CCAA, ITCAN will look to resolve not only the Quebec case but also all other tobacco litigation in Canada under an efficient and court supervised process, while continuing to trade in the normal course.

105. Attached hereto and marked as Exhibit "EE" is a true copy of the press release dated March 22, 2019 issued by RBH that I printed from the website www.newswire,ca which states, in part:

> "The CCAA forum provides RBH with a promising opportunity to resolve all the pending litigation we have faced for decades in Canada," said Peter Luongo, Managing Director of RBH.
>
> . . . .
>
> "While RBH disputes liability in the Canadian litigation given the widespread awareness of the health risks of smoking, we are optimistic about reaching an arrangement that could resolve all pending litigation and allow RBH to focus on the future," said Luongo.

106. Attached hereto and marked as Exhibit "FF" is a true copy of the press release dated March 22, 2019 issued by Philip Morris International, Inc. that I printed from the website www.pmi.com which states, in part:

> The initial order includes a comprehensive stay of all tobacco-related litigation pending in Canada against RBH and PMI, thus providing an efficient forum for RBH to seek resolution of all such litigation.
>
> . . . .
>
> PMI will continue to monitor developments in the CCAA proceedings as there is a significant lack of clarity with respect to several factors, including the likelihood of resolving in the CCAA process the underlying litigation to which RBH is a party, the financial and other parameters of any resolution of the underlying litigation, and the length of the CCAA process.
>
> . . . .
>
> RBH is also a defendant in litigation brought by the Canadian Provinces related to the recovery of health care costs. As part of RBH's filing for creditor protection, the Ontario Superior Court of Justice made an initial order staying proceedings, including the Québec Class Action proceedings and all other tobacco-related

litigation pending in Canada against RBH and PMI, including the litigation with the Provinces, to provide RBH with the necessary time to explore a court-supervised resolution of such matters.

107. I swear this affidavit in support of Ontario's motion seeking the relief enumerated in Ontario's Notice of Motion filed in the JTIM CCAA Proceeding, Ontario's Notice of Motion filed in the ITCAN CCAA Proceeding, and Ontario's Notice of Motion filed in the RBH CCAA Proceeding, and for no improper purpose.

SWORN BEFORE ME)
at the City of Toronto,)
in the Province of Ontario,)
this 28th day of March, 2019.)
)
Harmehak Kaur Somal)
A Commissioner for Taking Oaths, etc.

Peter Entecott
PETER ENTECOTT

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF PETER ENTECOTT

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Counsel to the Moving Party,
Her Majesty the Queen in right of Ontario

This is **Exhibit "A"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

Court File No. 19-CV- 615462-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 8TH
	)	
JUSTICE HAINEY	)	DAY OF MARCH, 2019
	)	

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

INITIAL ORDER

THIS APPLICATION, made by JTI-Macdonald Corp. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Robert McMaster sworn March 8, 2019 and the exhibits thereto (the "**McMaster Affidavit**") and (ii) the pre-filing report dated March 8, 2019 (the "**Pre-Filing Report**") of Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as the proposed Monitor of the Applicant (the "**Monitor**") and on being advised that JTI-Macdonald TM Corp. and JT Canada LLC Inc., the secured creditors who are likely to be affected by the charges created herein (the "**Secured Creditors**") were given notice, and on hearing the submissions of counsel for the Applicant, the Secured Creditors, Deloitte and on reading the consent of Deloitte to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

DEFINITIONS

4. **THIS COURT ORDERS** that for purposes of this Order:

(a) "**JTI Group**" means entities related to or affiliated with the Applicant;

(b) "**Pending Litigation**" means any and all actions, applications and other lawsuits existing at the time of this Order in which the Applicant is a named defendant or respondent (either individually or with other Persons (as defined below)), relating in any way whatsoever to a Tobacco Claim (as defined below), including, without limitation, the Quebec Class Actions (as defined below), the Additional Class Actions and the HCCR Actions (as each of those terms is defined in the McMaster Affidavit);

(c) **"Quebec Class Actions"** means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI-Macdonald*

Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc. and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings;

(d) "**Sales & Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;

(e) "**Tobacco Claim**" means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicant or any member of the JTI Group that has been advanced (including without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person's own account, on behalf of another Person, as a dependent of another Person or on behalf of a certified or proposed class or made or advanced as a government body or agency, insurer, employer or otherwise under or in connection with:

(i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (as defined below), the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products in Canada or, in the case of the Applicant, anywhere else in the world; or

(ii) the HCCR Legislation (as defined in the McMaster Affidavit),

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicant or any member of the JTI Group; and

(f) "**Tobacco Products**" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the McMaster Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Pension Plans (as defined in the McMaster Affidavit), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance

and severance pay, all of which is payable to or in respect of employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course prior to, on or after the making of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of $1 million or an aggregate of such expenditures in a calendar year in excess of $10 million;

(c) all interest due and payable on the Applicant's secured obligations; and

(d) payment for goods or services supplied or to be supplied to the Applicant (including the payment of any royalties or shared services).

9. **THIS COURT ORDERS** that the Applicant is authorized to complete outstanding transactions and engage in new transactions with the members of the JTI Group and to continue, on and after the date hereof, to buy and sell goods and services, and to allocate, collect and pay costs, expenses and other amounts from and to the members of the JTI Group, including without limitation in relation to finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licences (collectively, all transactions and all inter-company policies and procedures between the Applicant and any member of the JTI Group, the "**Intercompany Transactions**") in the ordinary course of business or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicant and any member of the JTI Group, including the provision of goods and services from any member of the JTI Group to the Applicant, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all Sales & Excise Taxes required to be remitted by the Applicant in connection with the Business; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that the Applicant is authorized to post and to continue to have posted cash collateral, letters of credit, performance bonds, payment bonds, surety bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding $18 million (the "**Bonding Collateral**"), to satisfy regulatory or administrative requirements to provide security that have been imposed on it in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicant as such security, and the Applicant is authorized to post and to continue to have posted surety bonds with Chubb Insurance Company of Canada (f/k/a ACE INA Insurance) and any other issuers of Bonding Collateral as security therefor.

12. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes are hereby stayed during the Stay Period (as defined below) from requiring that any additional bonding or other security be posted by or on behalf of the Applicant in connection with Sales & Excise Taxes or any other matters for which such bonding or security may otherwise be required.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant or claims to which it is subject to any of its creditors as of this date and to post no security in respect of any such amounts or claims, including pursuant to any order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $5 million in any one transaction or $10 million in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

16. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time

of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

18. **THIS COURT ORDERS** that until and including April 5, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to the Pending Litigation and any other Proceeding in relation to a Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicant in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. **THIS COURT ORDERS** that during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons, the "**Other Defendants**"); and (ii) no Proceeding in Canada that relates in any way to a

Tobacco Claim or to the Applicant, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the JTI Group or R. J. Reynolds Tobacco Company or R. J. Reynolds Tobacco International, Inc.; except, in either case, with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants or any member of the JTI Group, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in this Order, the Applicant is authorized to continue, and the applicable Other Defendants are not stayed from continuing, to contest the Quebec Class Actions during the Stay Period (the "**Further Quebec Class Action Proceedings**"), including without limitation by way of an application for leave to appeal to the Supreme Court of Canada and an appeal on the merits to the Supreme Court of Canada if leave is granted. Nothing in this Order shall prevent any Person from responding to the Further Quebec Class Action Proceedings, provided that during the Stay Period this paragraph does not, without further order of this Court, permit the Applicant to post security or grant any security interest, or permit any Person to seek security from the Applicant in relation to the Further Quebec Class Action Proceedings.

21. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicant, any of the Other Defendants or any member of the JTI Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

22. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property (including for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions or any enforcement process or other steps in respect of the Applicant or the JTI Group's trademarks or other intellectual property used by the Applicant), are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or

services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services, or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

SALES AND EXCISE TAX CHARGE

26. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes shall be entitled to the benefit of and are hereby granted a charge (the "**Sales and Excise Tax Charge**") on the Property, which charge shall not exceed an aggregate amount of

$127 million, as security for all amounts owing by the Applicant in respect of Sales & Excise Taxes. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 41 and 43 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

27. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

28. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

29. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $4.1 million, as security for the indemnity provided in paragraph 28 of this Order. The Directors' Charge shall have the priority set out in paragraphs 41 and 43 herein.

30. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 28 of this Order.

CRO APPOINTMENT

31. **THIS COURT ORDERS** that

(a) the agreement dated as of April 23, 2018 pursuant to which the Applicant has engaged BlueTree Advisors Inc. ("**BlueTree**") to provide the services of William E. Aziz to act as chief restructuring officer to the Applicant (the "**CRO**"), a copy of which is attached as Confidential Exhibit "1" to the McMaster Affidavit (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;

(b) the CRO shall not be or be deemed to be a director or employee of the Applicant;

(c) neither BlueTree nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below);

(d) BlueTree and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of BlueTree or the CRO;

(e) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of BlueTree and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and

(f) the obligations of the Applicant to BlueTree and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the *Bankruptcy and Insolvency Act*, R.S.C, 1985, c. B-3, as amended (the "**BIA**") in respect of the Applicant.

APPOINTMENT OF MONITOR

32. **THIS COURT ORDERS** that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

33. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in its preparation of the Applicant's cash flow statements, which information shall be reviewed with the Monitor;

(d) advise the Applicant in its development of the Plan and any amendments to the Plan;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) assist the Applicant, to the extent required by the Applicant, in its efforts to explore the potential for a resolution of any of the Tobacco Claims; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

34. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

35. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, the Ontario *Occupational Health and Safety Act* the Quebec *Environment Quality Act*, the Quebec *Act Respecting Occupational Health and Safety* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

36. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any

responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

37. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings and the CRO shall be paid its fees and expenses pursuant to the CRO Engagement Letter. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and the fees and expenses of the CRO pursuant to the CRO Engagement Letter.

39. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

40. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount

of $3 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and the CRO, other than in respect of any success fee provided for in the CRO Engagement Letter. The Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

41. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "**Charges**" and each individually, a "**Charge**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $3 million);

Second — Directors' Charge (to the maximum amount of $4.1 million); and

Third – Sales and Excise Tax Charge (to the maximum amount of $127 million).

42. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

43. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property, save and except for

(a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);

(b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;

(c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the Pension Plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract;

(d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute; and

(e) cash collateral deposited with a financial institution as security for letters of credit or bank guarantees issued by the financial institution at the request of the Applicant.

44. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

45. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency

made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

47. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below), (ii) within five days

after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor, except employees, who has a claim (contingent, disputed or otherwise) against the Applicant of more than $5,000, except with respect to (I) plaintiffs in the Pending Litigation, in which cases the Monitor shall only send a notice to counsel of record as applicable, and (II) beneficiaries of the Pension Plans in which case the Monitor shall only send a notice to the trustees of each of the Pension Plans and the Financial Services Commission of Ontario and the Régie Des Rentes Du Québec as applicable, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced at subparagraph (C) above shall not include the names, addresses, or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

48. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL ' www.insolvencies.deloitte.ca/en-ca/JTIM'.

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. **THIS COURT ORDERS** that the Applicant is authorized to rely upon the notice provided in paragraph 47 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

51. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

52. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably

required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100-2-175 (SOR/DORS).

53. **THIS COURT ORDERS** that, subject to paragraph 54, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

54. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

55. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

56. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

(a) whether a hearing is necessary;

(b) whether such hearing will be in person, by telephone or by written submissions only; and

(c) the parties from whom submissions are required

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

57. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

58. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the

Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

SEALING

59. **THIS COURT ORDERS** that the Confidential Exhibit "1" to the McMaster Affidavit be and is hereby sealed pending further Order of the Court and shall not form part of the public record.

GENERAL

60. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

61. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

62. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

63. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

64. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

65. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicant or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property or the Business shall be deemed not to have been taken or given, as the case may be.

Hainey J.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 0 8 2019

PER / PAR:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Court File No.: 19-CV-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicant

This is **Exhibit "B"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal
A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

Court File No. 19-CV-_____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENTOF **JTI-MACDONALD CORP.**

Applicant

AFFIDAVIT OF ROBERT MCMASTER
(sworn March 8, 2019)

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ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

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Applicant

AFFIDAVIT OF ROBERT MCMASTER
(sworn March 8, 2019)

I, **ROBERT MCMASTER**, of the Town of Whitby, in the Province of Ontario, MAKE OATH AND SAY:

I. INTRODUCTION

1. I am a Chartered Professional Accountant (CPA, CA) and the Director, Taxation and Treasury for JTI-Macdonald Corp. ("**JTIM**") and as such, have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I have obtained information from others I have stated the source of the information and believe it to be true.

2. This affidavit is sworn in support of an application by JTIM for an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), which application has been commenced as a result of the current financial circumstances of JTIM due to recent adverse developments in certain litigation in which JTIM is a defendant.

II. PRESSING NEED FOR RELIEF

3. JTIM, through its predecessor corporations and other related business entities, have been manufacturers of tobacco products in Canada since 1858.

4. As described more fully herein, Mr. Justice Riordan of the Quebec Superior Court rendered a judgment in the Class Actions (as defined herein) against JTIM and the other defendants (the "**Judgment**"), which was publicly released on June 1, 2015, and subsequently amended on June 9, 2015, that awarded a total of approximately $6.8 billion in damages on a collective and solidary basis against the defendants and punitive damages on an individual basis (all of which had an aggregate value of approximately $15.5 billion including interest and an additional indemnity as of the date of the Judgment).

5. JTIM was unsuccessful in overturning the Judgment at the Quebec Court of Appeal for the reasons described in the decision released on March 1, 2019 (the "**QCA Judgment**"). The QCA Judgment substantially upheld the Judgment and requires JTIM to pay an initial deposit of $145 million. There is uncertainty as to whether the QCA Judgment is immediately enforceable, or provides JTIM with a maximum of up to 60 days to make the payment of the initial deposit. The QCA Judgment is 422 pages and is in French only. The English conclusions of the QCA Judgment and an English summary prepared by the Quebec Court of Appeal is attached as Exhibit "**A**".

6. JTIM is an economically viable company that is able to meet its ordinary course obligations as they become due. However, if not stayed, the QCA Judgment will put JTIM out of business and destroy value for its approximately 500 full time employees, 1,300 suppliers and its customers. It would also impact approximately 28,000 retailers that sell JTIM's products and approximately 790,000 consumers of its products. Currently, the federal and provincial governments collect more

than $1.3 billion in taxes annually in relation to the sale of JTIM's products. If JTIM is forced out of business, those collections would stop.

7. JTIM is also the subject of significant health care cost recovery litigation (the "**HCCR Actions**"). The HCCR Actions commenced as a result of legislation passed in each of the ten provinces regarding the recovery of health care costs related to alleged "tobacco related wrongs", as defined in the applicable statutes. The total potential quantum of damages claimed against the defendants in the HCCR Actions, including JTIM on a joint and several basis together with other Canadian manufacturers and certain of their affiliates, is not yet known as some provincial plaintiffs have not specified the amount of their claim. However, to date, I am advised by counsel that over $500 billion has been claimed to be owing by all of the defendants in the five provinces where amounts have been specified in the claims or that have been detailed in expert reports. These claims are vastly in excess of the total book value of JTIM's assets (as disclosed herein) and are vastly in excess of the global asset value of the parent companies of the other defendant Canadian tobacco manufacturers as presented in their most recent Annual Reports.

8. JTIM requires the protections afforded under the CCAA in order to maintain the *status quo* of its operations, to allow for an application for leave and, if successful, to appeal the QCA Judgment to the Supreme Court of Canada and preserve going concern value for all of its stakeholders.

9. Notwithstanding that JTIM continues to assert that it has no liability in respect of the litigation claims asserted against it, in parallel with any appeal of the QCA Judgment, JTIM has decided to seek a collective solution for the benefit of all stakeholders in respect of the QCA

Judgment and the other multi-billion dollar claims currently being pursued against it. The requested stay under the CCAA will allow JTIM time and a platform to achieve such a solution.

III. OVERVIEW OF THE APPLICANT

A. *Corporate Structure*

10. JTIM is a private company that was continued as a corporation under the *Canada Business Corporations Act* in April 2012, and maintains its registered head office in Mississauga, Ontario (the "**Head Office**"). JTIM is owned indirectly by Japan Tobacco Inc. ("**Japan Tobacco**"), a publicly listed company in Japan.

11. A copy of an organization chart of the relevant related-party tobacco companies outside of Japan (such companies, collectively, "**JT International**") is attached as Exhibit "**B**".

12. On May 11, 1999, JTIM, then known as RJR-Macdonald Corp. was acquired by JT Nova Scotia Corporation, an indirectly wholly-owned subsidiary of Japan Tobacco.

13. Following an amalgamation and corporate reorganization in 2012, JTIM is now a direct wholly-owned subsidiary of JT Canada LLC Inc. ("**ParentCo**"), a Nova Scotia corporation and an indirect subsidiary of Japan Tobacco.

14. JTIM is the parent and sole shareholder of JTI-Macdonald TM Corp. ("**TM**"). TM owns many of the trademarks that JTIM uses in its business and is a secured creditor of JTIM. As a result of the Recapitalization Transactions (as defined herein), ParentCo is a secured creditor of TM.

15. On April 13, 2015, ParentCo demanded payment of the secured indebtedness owing from TM to ParentCo, then in the amount of approximately $1.0 billion. TM was unable to satisfy that

demand. Pursuant to the terms of the security agreements granted by TM in favour of ParentCo, on July 9, 2015, ParentCo privately appointed PricewaterhouseCoopers Inc. as the receiver and manager of TM (the "**TM Receiver**"). Subsequent to the appointment of the TM Receiver, each of the directors of TM resigned.

16. TM is not a party in any of the litigation involving JTIM. For that reason, TM is not a part of these proceedings.

B. ***The Business***

17. Most of JTIM's senior management are located at the Head Office in Mississauga, Ontario. The Head Office is responsible for all functional areas regarding the sales and distribution of JTIM's products in Canada. Managerial responsibilities for the manufacturing of JTIM's products are carried out at a manufacturing facility located at 2455 Ontario Street East, in Montreal, Quebec (the "**Plant**").

18. JTIM employs approximately 500 full-time employees in Canada. In addition, JTIM leases offices and warehouse space and employs sales representatives and associates across Canada. JTIM has been on the Aon Hewitt Best Employers list for Canadian companies and was recently certified as a Top Employer in Canada by the Top Employers Institute.

19. JTIM is the third largest tobacco company defendant in the Class Actions (as defined herein) based on volume of sales in Canada. JTIM's products consist of cigarettes, fine-cut tobacco, cigars and accessories branded under various trademarks and brand names for distribution throughout Canada and for export. JTIM imports tobacco products for distribution in Canada mainly from JT International SA ("**JTI-SA**"), a foreign sister company to ParentCo.

20. JTIM purchases some processed tobacco from other related party entities, including JTI-SA, but most is purchased from third party suppliers.

21. JTIM's processed tobacco is stored at leased premises near Montreal, Quebec and is shipped to the Plant as needed. The Plant has been in operation since 1874 and is JTIM's only manufacturing facility.

22. JTIM's tobacco products are either manufactured at the Plant or imported by JTIM. Generally, JTIM sells to wholesalers who in turn sell to retailers who sell to consumers. On a lesser basis, JTIM sells tobacco products directly to retailers and consumers.

C. *Pension Plans*

23. JTIM is the plan sponsor and administrator of the following four pension and post-retirement benefits plans: (i) the JTI-Macdonald Corp. Employees' Retirement Plan (the "**ERP**"), (ii) the JTI-Macdonald Corp. Management Employees' Pension Plan (the "**MEPP**"), (iii) the JTI-Macdonald Corp. Executive Supplemental Benefit Plan (the "**ESBP**"), and (iv) the JTI-Macdonald Corp. Supplemental Non-Registered DC Pension Plan (the "**Non-Registered DC Plan**" and collectively with the ERP, the MEPP and the ESBP, the "**Pension Plans**").

24. Based on the most recent actuarial valuations, the Pension Plans had the following degrees of solvency: (i) 99.5% for the ERP, representing a deficiency in the amount of approximately $2.0 million, (ii) 99% for the MEPP, representing a deficiency in the amount of approximately $0.3 million, and (iii) 100% for the ESBP. The concept of a solvency deficiency does not apply to the Non-Registered DC Plan.

25. All employee contributions and solvency deficiency payments are current in respect of each of the Pension Plans.

26. JTIM provides other post-employment benefits ("**OPEBs**") to former salaried and hourly employees (unionized and non-unionized) and their dependants, including drug, medical, dental and life insurance benefits. As of December 31, 2018, the total present value for future OPEB contingent liabilities is estimated at $109.2 million. It is contemplated that these CCAA proceedings will not affect any payments required to be made in respect of the Pension Plans or the OPEBs.

D. *Material Contracts*

i) Trademark Agreement

27. JTIM's market share in Canada is largely attributed to the brands of tobacco products it exclusively sells in the Canadian market. JTIM licenses or has the right to use all of the trademarks with respect to such brands from related parties. If such arrangements were terminated, JTIM's business would effectively cease in its current form.

28. Many of the trademarks that JTIM is permitted to use in its operations are owned by TM. Pursuant to the Trademark License Agreement dated October 8, 1999, as amended from time to time (collectively, the "**Trademark Agreement**"), TM granted to JTIM a non-exclusive, world-wide license to use TM's trademarks in association with the manufacturing, distribution, advertising and sale of the licensed products for the remuneration set out therein.

29. In August 2017 and January 2018, after a default by JTIM under its secured facilities with TM as a result of the issuance of the Judgment (such default is discussed in more detail below), JTIM and TM negotiated amendments to the Trademark Agreement (the "**Trademark**

Amendments") as consideration for TM's agreement to forbear from exercising its enforcement rights against JTIM. The August 2017 amendment changed the frequency of royalty payments paid by JTIM to TM under the Trademark Agreement from semi-annual payments to monthly payments. The aggregate annual amounts payable under the Trademark Agreement remained unchanged. The January 2018 amendment to the Trademark Agreement, which was a condition of the extension of the forbearance arrangement, made the supply of goods and services under the Trademark Agreement solely in the discretion of TM, acting through the TM Receiver, and required JTIM to provide a deposit to TM in an amount equal to 1.5 times the average monthly payment under the Trademark Agreement against which outstanding liabilities could be set-off. JTIM provided TM with a deposit, which as of February 28, 2019 is $1,330,000, in satisfaction of this term of the January 2018 amendment. Attached as Exhibit "**C**" are copies of the Trademark Amendments.

30. The Trademark Amendments were required by ParentCo as part of a forbearance arrangement and in response to the possibility of liquidity constraints on JTIM in the event that the Judgment was upheld. ParentCo. is the senior secured creditor of TM and has enforced its security and appointed the TM Receiver over TM. As a result of the forbearance arrangement, the TM Receiver has agreed to forbear from enforcing on the loan and security granted by JTIM to TM.

31. JTIM is required to continue paying TM pursuant to the terms of the Trademark Agreement. Termination of the right to use the trademarks licensed pursuant to the Trademark Agreement (which license is provided on a discretionary basis) would likely cause the cessation of JTIM's business. Although not every aspect of the business is affected by the TM trademarks,

the remaining lines of business would likely not be viable on a stand-alone basis. These arrangements have allowed JTIM to continue operating in the ordinary course.

ii) Other Related Party Agreements

32. JTIM is a party to numerous services agreements and limited risk distribution agreements (the "**LRD Agreements**") with related parties, which are required for JTIM's continued operations.

33. JTIM also has related party contracts in respect of manufacturing, distribution, leaf sourcing and other miscellaneous agreements.

34. I have been advised by legal counsel that the Proposed Monitor (as defined below) in this proceeding has reviewed the material related party agreements, including the payment provisions thereunder. The service charges in place have also been audited by Canada Revenue Agency ("**CRA**") up to the 2013 taxation year and no adjustments have been required to date. CRA is currently in the process of auditing the 2014-2016 taxation years and, to date, no adjustments have been proposed.

iii) 2018 Amendments and Forbearance of Related Party Agreements

35. Against the backdrop of litigation and related credit risk, JTIM's related-party suppliers expressed concern about their potential exposure in the event that enforcement steps were taken by a judgment creditor resulting in JTIM's need to seek creditor protection. Under the intercompany arrangements then in place, such credit risk was viewed by the related parties as unacceptable. The related party suppliers advised JTIM that the intercompany supply agreements were at risk of termination. Given the unique nature of the goods and services provided, it would not be possible for JTIM to find satisfactory replacement supply arrangements. The agreements

reached with these suppliers were necessary to permit JTIM to continue operating in the ordinary course.

36. In order to maintain the necessary supply of goods and services and avoid a disruption to JTIM's business, JTIM negotiated forbearance agreements (the "**Forbearance Agreements**"), copies of which are attached as Exhibit "**D**", with five of its related party suppliers. Collectively, the Forbearance Agreements increased the frequency of payments (but not the total amount of payments) to monthly in advance (except for the LRD Agreements), required JTIM to provide a deposit capable of being set-off by the related party supplier against amounts owing by JTIM, and/or granted a security interest in all of JTIM's present and after acquired personal property in the form of a general security agreement or moveable hypothec. The following chart summarizes the changes implemented under the Forbearance Agreements:

Supplier	Frequency of Payment	Security	Right to Deposit
JTI-SA	Monthly in advance (save and except the LRD Agreements)	Yes*	No
JT International Business Services Limited ("JTI-BSL")	Monthly in advance	Yes*	Yes†
JT International Holding B.V. ("JTIH-BV")**	Monthly in advance	Yes*	Yes†
JTI Services Switzerland SA	Monthly in advance	No	No
JTI (US) Holdings Inc.	Monthly in advance	No	No

* The security granted was in the form of a general security agreement and moveable hypothec.

**On its own behalf and on behalf of certain of its affiliates.

† A deposit was ultimately not required as payments were, and continue to be, made monthly in advance.

E. ***Cash Management***

37. JTIM is part of a globally-integrated business processes and information system known as SAP. The SAP system provides substantial operational benefits to JTIM, including the integration of the supply chain, research and development and finance/treasury information systems, real-time data availability, improved quality control and internal controls, and treasury-related benefits such as reducing the number of bank accounts, automating bank reconciliations, enhancing cash flow forecasting and improving liquidity management.

38. As a result of the SAP system, JTIM's information flows are consistent with its foreign affiliates. In addition, the management of JT International is provided with real-time visibility into JTIM's operational and financial information.

39. Citibank Canada is the banking service provider for those JT International entities operating in North America. JTIM maintains seven bank accounts with Citibank, N.A., Canada Branch ("**Citibank**"), one of which is denominated in USD. JTIM's accounts are comprised of single-purpose accounts for the receipt of tax refunds, for payment of employee benefits, for receipt of funds from direct sales to retailers, for payment of marketing and sales programs to retailers and to hold cash collateral, as further described below. The USD account and one CAD account are used for general operations transactions in those respective currencies.

40. Pursuant to agreements dated November 18, 2016 and February 24, 2017 between JTIM and Citibank, JTIM pledged $900,000 as cash collateral in respect of central travel account card

services and $8 million in respect of certain cash management services which require the extension of credit by Citibank, respectively, in each case as provided by Citibank to JTIM. Attached as Exhibits "**E**" and "**F**" are the two cash collateral agreements.

41. JTIM currently maintains two bank accounts at Royal Bank of Canada, one of which is a high interest savings account and the other is used for collecting sales proceeds from certain retail customers. JTIM also maintains term deposits at Sumitomo Mitsui Banking Corporation, Canada Branch.

IV. LIABILITIES OF THE APPLICANT

A. *Secured Creditors of JTIM*

i) TM Term Debentures

42. On March 9, 1999, it was announced that Japan Tobacco had reached an agreement to purchase the international (non-US) tobacco assets of RJR Nabisco, Inc., R. J. Reynolds Tobacco Company and their affiliates (collectively, the "**RJR Group**") pursuant to the terms of the Purchase Agreement (as defined below). The aggregate purchase price as set out in the Purchase Agreement was USD$7,832,539,000 in cash. The bid process was competitive and the major international tobacco groups participated in it. At the time, Japan Tobacco was a large company in Japan but only had a limited international presence.

43. From the outset, it was understood that, for tax-planning purposes, the acquisition of the Canadian assets would be a leveraged buyout leaving the Canadian operating company with debt and interest that would be deductible from its earnings. However, because of the extremely tight time frame to close the transaction, which ultimately occurred on May 11, 1999, the completion of many of the necessary planning and implementation steps required to integrate this worldwide

acquisition had to be postponed until after closing.

44. To effect a leveraged buyout structure, on November 23, 1999, JT International B.V. ("**JTI-BV**"), an affiliated entity incorporated under the laws of the Netherlands, borrowed $1.2 billion from ABN AMRO Bank N.V. ("**ABN AMRO**"), a third-party financial institution. On the same day, JTI-BV made a secured advance of $1.2 billion to ParentCo. ParentCo then made a secured advance of $1.2 billion to TM and TM made a secured advance of $1.2 billion to JT Nova Scotia Corporation (now JTIM through amalgamation). JTIM then returned capital of $1.2 billion to its then parent, JT Canada LLC II Inc. Through various intercompany transactions, the funds were eventually paid to JTI-BV, who repaid the loan to ABN AMRO (collectively, the "**Recapitalization Transactions**").

45. The Recapitalization Transactions were reviewed in detail during the CCAA proceedings commenced by the Applicant in 2004 as more particularly described herein. The Fourth Report to the Court of the 2004 Monitor (as defined herein) dated February 16, 2005 (the "**Fourth Report**"), a copy of which is attached without exhibits as Exhibit "**G**", provides a detailed overview of the Recapitalization Transactions. My comments on the Recapitalization Transactions are based on my personal knowledge of the Recapitalization Transactions and from my review of the Fourth Report.

46. As a result of the Recapitalization Transactions, the amounts owed by JTIM to TM are: (i) evidenced by ten (10) convertible debentures, governed by the laws of the Province of Quebec, in the total aggregate principal amount of $1.2 billion (the "**TM Term Debentures**"), as amended from time to time, (ii) subscribed for under the Convertible Debenture Subscription Agreement dated November 23, 1999, as amended by the Amending Agreement dated December 23, 2014

(collectively, the "**Subscription Agreement**"), (iii) due on November 18, 2024, and (iv) redeemable at the option of JTIM and convertible into special preference shares of JTIM at the option of the holder. On December 2, 1999, JTIM also delivered a demand debenture to TM (the "**Demand Debenture**"), governed by the laws of the Province of Nova Scotia, granting TM a general and continuing security interest in JTIM's business, undertakings and all of its property and assets, real and personal, movable and immovable of whatsoever kind and nature, both present and future. Copies of one of the TM Term Debentures, the Subscription Agreement and the Demand Debenture are attached as Exhibits "**H**", "**I**" and "**J**".

47. The Judgment triggered an event of default pursuant to section 13.9 of the Subscription Agreement, making the security granted thereunder enforceable by the TM Receiver against JTIM. On August 3, 2017, the TM Receiver and JTIM agreed to the terms of a forbearance letter (the "**TM Forbearance Letter**"). Pursuant to the terms of the TM Forbearance Letter, the TM Receiver agreed, among other things, to forbear from enforcing its rights and remedies against JTIM in consideration of changes to the frequency of royalty payments owing pursuant to the Trademark Agreement, as described above. A copy of the TM Forbearance Letter (without schedules because these schedules are separately attached hereto as Exhibit "**C**") is attached as Exhibit "**K**".

48. The forbearance was extended pursuant to several letter agreements (collectively, the "**Forbearance Extensions**"). Copies of the Forbearance Extensions are attached as Exhibit "**L**".

49. The Forbearance Extensions expired on February 28, 2019. On February 28, 2019, by way of letter, the TM Receiver informed JTIM that in light of the pending QCA Judgment, the TM Receiver was not prepared to formally extend the forbearance period further. However, the TM

Receiver would agree to a day-to-day extension under the same terms and conditions of the TM Forbearance Letter, which day-to-day extension may be terminated at the TM Receiver's sole and absolute discretion. A copy of the letter from TM's counsel is attached as Exhibit "**M**".

50. In accordance with the terms of the TM Forbearance Letter, the TM Term Debentures were amended by an agreement dated August 3, 2017 (the "**TM Debenture Amending Agreement**" and collectively with the TM Term Debentures, the "**Revised TM Term Debentures**") to change the interest payment frequency (but not total amount) from bi-annually to monthly. Currently, JTIM makes interest payments to TM on account of its secured indebtedness in the approximate amount of $7.6 million monthly on the 18th and principal payments of approximately $950,000 in May and November annually. As at February 28, 2019, the amount outstanding under the TM Term Debentures (including accrued interest) was approximately $1.18 billion. A copy of the TM Debenture Amending Agreement is attached as Exhibit "**N**".

51. The Revised TM Term Debentures are secured by, among other things, the Demand Debenture, a Deed of Hypothec dated November 23, 1999, a Supplemental Deed of Hypothec dated December 2, 1999, a Deed of Moveable Hypothec and Pledge of Shares dated December 12, 2000 and a Deed of Confirmation dated May 14, 2015, each as amended (collectively, the "**Hypothecs**") now held by BNY Trust Company of Canada (and in certain cases, formerly held by the Trust Company of Bank of Montreal) ("**TrustCo**") as the attorney for TM. Copies of the Hypothecs are attached as Exhibits "**O**", "**P**", and "**Q**" and "**R**", respectively.

52. I am advised by legal counsel that:

(a) TM directly registered its security interest against the personal property of JTIM in the following jurisdictions and on the following dates:

Registration Number	Jurisdiction	Registration Date	Collateral
856928601	Ontario	November 22, 1999	All classes except "consumer goods".
2399489 / 2417398	Nova Scotia		All present and after-acquired personal property.
681989I	British Columbia	June 23, 2015	
15062337351	Alberta		
301355169	Saskatchewan	June 24, 2015	
201511679902	Manitoba		
26022244	New Brunswick		
3707279	Prince Edward Island		
13031521	Newfoundland		

(b) pursuant to the security interest granted by the Hypothecs, TrustCo registered its security interest, as attorney for TM, in Ontario and Nova Scotia on December 11, 2000 under the Ontario *Personal Property Security Act* and Nova Scotia *Personal Property Security Act*. Copies of the personal property registry searches in each province as at February 28, 2019, are attached as Exhibit "**S**";

(c) as holder of the TM Term Debentures, TrustCo also registered its security interest in Quebec on December 13, 2000 and May 14, 2015 in the Registrar of Personal and Moveable Real Rights (Quebec) (the "**Quebec RPMRR**") in respect of all of JTIM's present and future property, moveable and immovable, real and personal, corporeal and incorporeal, tangible and intangible;

(d) TrustCo also registered a charge against the Plant in the Land Register for the registration division of Montreal on December 3, 1999 under registration number 5 138 944 (the "**Charge**"). There are no registrations against title to the Plant other than the Charge. A copy of the real property subsearch report prepared by Quebec counsel to JTIM relating to the Plant as at February 27, 2019 is attached as Exhibit "**T**".

ii) JTIM Secured Debt to ParentCo

53. Prior to the issuance of the Judgment, Citibank had granted an unsecured credit facility to JTIM, TM and ParentCo as joint borrowers in the principal amount of $60 million (the "**Citibank Loan**"). The Citibank Loan was used as a "smoothing" facility that was necessary as a result of the timing of the payments of substantial monthly federal excise duty and other obligations, such as interest payments, royalty payments and payroll, versus the timing of the collection of the receivables generated by the sale of inventory.

54. On June 25, 2015, after the delivery of the Judgment, Citibank advised that JTIM was no longer authorized to borrow under its credit facility. To ensure necessary cash flow for continued operations, ParentCo agreed to provide a secured borrowing facility to JTIM in the principal amount of $70 million (the "**Cash Flow Loan**") on the terms outlined in the loan agreement dated June 25, 2015 (the "**ParentCo Loan Agreement**"), attached as Exhibit "**U**". Among other things, the ParentCo Loan Agreement allows JTIM to pay the required excise duty as such obligations become due and payable, while also paying trade and employee obligations in the ordinary course.

55. As security for the amounts advanced under the Cash Flow Loan, JTIM granted a hypothec to ParentCo in respect of, among other things, its moveable property located in the Province of Quebec (the "**ParentCo Hypothec**"). The ParentCo Hypothec is attached as Exhibit "**V**". I am advised by legal counsel that ParentCo registered its security interest against JTIM pursuant to the Quebec RPMRR on June 26, 2015.

56. As of February 28, 2019, there are no amounts outstanding under the ParentCo Loan Agreement.

iii) Related Party Security Agreements

57. As noted above, as a result of the uncertainty caused by the Judgment, certain related party suppliers required JTIM to grant security to them in respect of goods and services that are delivered on credit. As at the quarter ended December 31, 2018, the gross amount outstanding to these related party suppliers is approximately $54.6 million and such amount relates almost entirely to JTIM's LRD Agreement with JTI-SA to distribute JTI-SA's tobacco products in Canada. This related party security is described in more detail below.

58. I am advised by legal counsel that,

(a) *JTI-SA Security:* in accordance with the terms of its forbearance arrangement, JTI-SA registered a purchase money security interest ("**PMSI**") against JTIM in all of the provinces (except Quebec) in Canada and a hypothec in Quebec, being the jurisdictions in which the products sold thereunder are located. A copy of the notices issued to effect the PMSI priority and hypothec are attached as Exhibit "**W**";

(b) *JTI-BSL Security:* in accordance with the terms of its forbearance arrangement, JTI-BSL registered its security interest against JTIM in all of the provinces (except Quebec) in Canada and a hypothec in Quebec, being the jurisdictions in which the services may be provided thereunder; and

(c) *JTIH-BV Security:* in accordance with the terms of its forbearance arrangement, JTIH-BV registered its security interest against JTIM in all of the provinces (except

Quebec) in Canada and a hypothec in Quebec, being the jurisdictions in which the services may be provided thereunder.

B. ***Litigation***

i) Quebec Class Actions

59. I am advised by our litigation counsel, François Grondin of Borden Ladner Gervais LLP, that:

(a) on February 21, 2005, a class action was certified against JTIM, Imperial Tobacco Canada Limited ("**Imperial**") and Rothmans, Benson & Hedges Inc. ("**Rothmans**" and collectively, with JTIM and Imperial, the "**Defendants**") in *Cécilia Létourneau* v. *Imperial Tobacco Limitée, Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.* on behalf of tobacco smokers in the Province of Quebec for the purpose of claiming, for each proposed class member, moral damages resulting from an alleged addiction to nicotine, as well as punitive damages (the "**Létourneau Class Action**");

(b) on February 21, 2005, a class action was certified against the Defendants in *Conseil québécois sur le tabac et la santé and Jean-Yves Blais* v. *Imperial Tobacco Limitée, Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.*, on behalf of tobacco smokers in the Province of Quebec suffering from lung, larynx or throat cancer or emphysema for the purpose of claiming, for each proposed class member, compensatory and exemplary damages (the "**Blais Class Action**");

(c) all of the alleged wrong-doings in the Létourneau Class Action and the Blais Class Action (collectively, the "**Class Actions**") occurred prior to the acquisition of JTIM by Japan Tobacco;

(d) the Class Actions were tried together and concluded on December 11, 2014. The Defendants were found liable for "moral damages" (i.e. non-pecuniary damages including pain and suffering, loss of enjoyment of life, etc.) in the Blais Class Action in the aggregate amount of approximately $6.8 billion ($15.5 billion with interest and the additional indemnity described below) of which JTIM was specifically liable for 13% of that amount totalling approximately $2 billion. However, as all of the Defendants were found "solidarily liable", each Defendant is liable for the full amount of the moral damages awarded and the Judgment can therefore be enforced against each Defendant for the full amount of the said moral damages awarded against all three Defendants. Each Defendant would have a "contribution" claim against the other Defendants for the part of the Judgment owing by them that was paid by such Defendant;

(e) the Defendants were found liable for punitive damages in the Létourneau Class Action in the amount of $131 million, of which JTIM was specifically liable for $12.5 million**.** JTIM was also found to be liable for punitive damages in the Blais Class Action in the amount of $30,000. The "condemnations" in punitive damages were awarded on an individual basis against each Defendant, including JTIM. Attached hereto as Exhibit "**X**" is an excerpt of the conclusions of the Judgment;

(f) the Defendants appealed the Judgment to the Quebec Court of Appeal (the "**QCA**") and brought a motion to strike provisions in the Judgment authorizing the plaintiffs in the Class Actions (the "**Class Action Plaintiffs**") to provisionally execute the Judgment. On July 23, 2015, the QCA released a decision that cancelled those provisions. Attached hereto as Exhibit "**Y**" is a copy of the judgment cancelling provisional execution of the Judgment;

(g) in response, the plaintiffs in the Class Actions filed a motion seeking an order that the Defendants furnish security for the Judgment, which motion was heard by the QCA on October 6, 2015. Prior to the commencement of the hearing, the motion against JTIM was withdrawn by the Class Action Plaintiffs due to the inability of counsel for JTIM and counsel for the Class Action Plaintiffs to find a mutually agreeable hearing date;

(h) a judgment was granted against Imperial and Rothmans only on October 26, 2015, which was later modified on December 9, 2015, ordering Imperial and Rothmans to furnish security to the Class Action Plaintiffs. Security was ordered in the amount of $758 million with respect to Imperial and in the amount of $226 million in respect to Rothmans, each payable by way of equal quarterly instalments until September 30, 2017. Attached hereto as Exhibit "**Z**" is a copy of the judgment ordering Imperial and Rothmans to furnish security;

(i) between November 21 and 30, 2016, the QCA heard the appeal of the Judgment. On March 1, 2019, the QCA released its judgment with respect to the appeal. The QCA Judgment confirmed the Judgment in all respects, but revised certain dates

related to the calculation of interest. The result is that the Defendants remained liable for damages in the aggregate amount of approximately $6.8 billion (approximately $13.5 billion with the revised interest dates and additional indemnity). JTIM remained specifically liable for 13% of that amount, totalling approximately $1.75 billion. Each of the Defendants remained "solidarily liable" for the full amount of the damages awarded to the Class Action Plaintiffs; and

(j) the Defendants remained liable for punitive damages in the Létourneau Class Action in the amount of $131 million, of which JTIM was specifically liable for $12.5 million. JTIM also remained liable for punitive damages in the Blais Class Action in the amount of $30,000. JTIM has up to a maximum of 60 days from the date of the QCA Judgment to pay an initial deposit of $145 million.

ii. HCCR Actions

60. I am advised by internal legal counsel that JTIM is also subject to ten distinct HCCR Actions brought by each province. The HCCR Actions were commenced as a result of legislation enacted in each of the ten provinces exclusively to allow the provinces to recoup the health care costs allegedly incurred, and that will be incurred, resulting from alleged "tobacco related wrongs", as defined in the applicable statutes. The HCCR Actions were commenced against numerous parties, including Imperial, Rothmans and certain of their affiliates, and JTIM.

61. The HCCR Actions have also been brought against R. J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc. (collectively, "**Reynolds**"). Pursuant to a Purchase Agreement dated as of March 9, 1999 as amended and restated as of May 11, 1999 (the "**Purchase Agreement**"), Japan Tobacco agreed to indemnify the RJR Group as a former parent of JTIM, for

any Damages (as defined therein) incurred by the RJR Group for liabilities or obligations relating to the health effects of any products manufactured or sold by the RJR Group at any time that were consumed or intended to be consumed outside the United States, including products that were sold prior to the purchase of the business by Japan Tobacco. JTIM may have liability for certain claims being made against Reynolds. In order to effect a CCAA stay for JTIM and allow for a collective solution to the HCCR Actions, it is also beneficial to have those claims stayed against Reynolds. A copy of the relevant portions of the Purchase Agreement are attached as Exhibit "**AA**".

62. I am advised by internal legal counsel to JTIM that the status of the HCCR Actions in each of the provinces is:

Location	Status	Defendants
British Columbia	It was commenced in January 2001 against tobacco industry members including JTIM. The claim amount is unspecified. An expert report served by the Province of British Columbia in the proceeding states the value of the claim to be $120 billion. The action remains pending. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., Rothmans International Research Division and Ryesekks p.l.c.and Canadian Tobacco Manufacturers Council (the "**CTMC**")
Alberta	It was commenced in June 2012 against tobacco industry members, including JTIM. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages. The total amount claimed is at least $10 billion. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Altria Group, Inc., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Carreras Rothmans Limited; Philip Morris International, Inc., Philip Morris USA, Inc., and Rothmans Inc.

Saskatchewan	It was commenced in June 2012 against tobacco industry members, including JTIM. The claim amount is unspecified. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, and Carreras Rothmans Limited
Manitoba	It was commenced in May 2012 against tobacco industry members including JTIM. The claim amount is unspecified. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Carreras Rothmans Limited
Ontario	It was commenced in September 2009 against tobacco industry members, including JTIM. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages within the total claimed amount of $330[1] billion. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited
Quebec	It was commenced in June 2012 against tobacco industry members, including JTIM. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages. The total amount claimed is approximately $61 billion.	JTIM, Reynolds, Imperial, Rothmans, CTMC, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris USA Inc., and Philip Morris International Inc.

[1] On May 31, 2018, the Province of Ontario indicated to the defendants that it intends to amend its Statement of Claim to increase the amount claimed to $330 billion from $50 billion.

	The pre-trial process is ongoing and a trial date is not yet scheduled.	
New Brunswick	It was commenced in March 2008 against tobacco industry members, including JTIM. The claim amount is unspecified. The documents filed by the Province of New Brunswick in the proceeding valued its claim at approximately $18 billion. The pre-trial process is ongoing and the trial is scheduled to begin in November 2019.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited
Nova Scotia	It was commenced in January 2015 against tobacco industry members, including JTIM. The claim amount is unspecified. JTIM filed a defence on July 2, 2015. The parties entered into a "standstill" agreement whereby all parties agreed to take no further steps in the litigation. Although the standstill has expired, the proceeding continues to be on hold and no significant document production has occurred.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Carreras Rothmans Limited
Prince Edward Island	It was commenced in September 2012 against tobacco industry members, including JTIM. The claim amount is unspecified. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Carreras Rothmans Limited
Newfoundland and Labrador	It was commenced in February 2011 against tobacco industry members, including JTIM. The claim amount is unspecified. The proceedings are ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c, and British America Tobacco (Investments) Limited

iii) Other Ongoing Litigation

63. I am advised by internal legal counsel that JTIM is also subject to the following other unresolved class actions (the "**Additional Class Actions**"):

Action	Brief Description	Defendants
Tobacco Growers Class Action	On April 23, 2010, a class action was commenced on behalf of Ontario flue-cured tobacco growers and producers against JTIM for the alleged failure of JTIM to appropriately pay for tobacco purchased for sale in the Canadian market in the amount of $50 million (plus interest and costs). The proceedings are ongoing.	JTIM, to be heard together with similar class actions filed against Imperial and Rothmans
Adams, Kunta, Dorian and Semple Class Actions	In July 2009, four class actions seeking unquantified damages were filed in Saskatchewan, Manitoba, Alberta and Nova Scotia against JTIM as well as a number of other manufacturers participating in the Canadian cigarette market alleging that cigarettes are a defective product with the potential to cause harm. Apart from the initial exchange of pleadings, no further steps have been taken to advance the claims and are thus, each either expired or dormant.	JTIM, Reynolds, Imperial, B.A.T Industries p.l.c, British American Tobacco (Investments) Limited, British American Tobacco p.l.c, Rothmans, Altria Group Inc., Phillip Morris Incorporated, Phillip International, Inc. and Phillip Morris U.S.A. Inc., Carreras Rothman, Carreras Rothmans Limited, Rothmans Inc., Ryesekks p.l.c. and the CTMC
Bourassa and McDermid Class Actions	In July 2010, two class actions seeking unquantified damages were filed and served in British Columbia against JTIM as well as a number of other manufacturers participating in the Canadian cigarette market. In the class actions, the plantiffs' claim for health related damages on behalf of individuals who smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants. Apart from the initial	JTIM, Reynolds, Imperial, B.A.T Industries p.l.c, British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Rothmans, Rothmans, Altria Group Inc., Phillip Morris Incorporated, Phillip International, Inc. and Phillip Morris U.S.A. Inc., Carreras Rothman, Carreras Rothmans

	exchange of pleadings, no further steps have been taken to advance the claims and are thus, each either expired or dormant.	Limited, Rothmans Inc., Ryesekks p.l.c and the CTMC
Jacklin Class Action	In June 2012, a class action seeking unquantified damages was filed in Ontario against JTIM as well as a number of other manufacturers participating in the Canadian cigarette market. In the class action, the plantiffs' claim for health related damages on behalf of individuals who smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants. The claims were served on JTIM in November 2012, but no further steps have been taken and are currently dormant.	JTIM, Reynolds, Imperial, B.A.T Industries p.l.c, British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Rothmans, Rothmans, Altria Group Inc., Phillip Morris Incorporated, Phillip International, Inc. and Phillip Morris U.S.A. Inc., Carreras Rothman, Carreras Rothmans Limited, Rothmans Inc., Ryesekks p.l.c and the CTMC

C. *Ordinary Course Obligations*

64. JTIM has approximately 1,300 suppliers and other normal course creditors. All of JTIM's trade, tax and employment obligations are current in accordance with agreed or required payment terms. As at December 31, 2018, the total outstanding pre-filing indebtedness for these ordinary course obligations, excluding related party trade debt, is approximately $108.1 million. Of that amount, approximately $54.6 million relates to outstanding taxes and duties, $12 million is in respect of payroll and benefits (including pension payments), $5 million relates to arm's length trade creditors and $36.5 million relates to accruals and other liabilities including accruals for goods received before invoices in respect thereof are received. JTIM pays its outstanding taxes and duties one month in arrears in accordance with the law and is current on its payments.

65. JTIM proposes to continue to pay its suppliers in the ordinary course and to treat them as unaffected creditors in the CCAA proceeding.

66. Any damage to the ongoing operations of the business would negatively affect JTIM's stakeholders. In the majority of cases, it would be difficult to quickly replace a trade creditor that stopped supply as a result of JTIM's failure to pay its outstanding obligations. The cost of any potential disruption to JTIM's business and the costs that would be associated with any claim identification and determination process involving a multitude of trade creditors for relatively minor amounts as compared to the stated litigation claims would be uneconomical and unnecessary. JTIM's total third party ordinary course trade liabilities represent less than 0.30% of the total liabilities of JTIM as at December 31, 2018, including the QCA Judgment but excluding any other litigation claims. Preservation of going concern value, including by minimizing supply disruption, is in the best interests of all stakeholders.

67. JTIM's employees are paid periodically, usually in arrears through a payroll provider. All payments to employees are being made, and are proposed to continue to be paid, in the ordinary course.

68. JTIM proposes to pay all Pension Plan obligations, including OPEBs, in accordance with applicable requirements and in the ordinary course.

69. JTIM pays substantial amounts in taxes and duties to the various provincial and federal governments. All obligations are current in accordance with required terms and are proposed to continue to be paid in the ordinary course.

70. Pursuant to the Trademark Agreement, the next monthly royalty payment to TM is due, and is proposed to be paid, on April 1, 2019, in the ordinary course. The amount of the royalty payment varies with sales, but has historically been approximately $1 million per month.

V. Financial Situation and Cash Flow Forecast

A. *Financial Statements*

71. As at the close of business on February 28, 2019, JTIM had approximately $90 million in net available cash on hand, after allowing for known payments that were due on that day. As the operations of JTIM have been, and are expected to remain, cash flow positive, JTIM will have sufficient cash to fund its projected operating costs until the end of the proposed stay period. A copy of JTIM's annual financial statements for the year ended December 31, 2017, are attached as Exhibit "**BB**". A copy of JTIM's interim quarterly financial statements for the quarter ended December 31, 2018, are attached as Exhibit "**CC**".

72. As at December 31, 2018, JTIM's assets had a book value of approximately $1.9 billion and JTIM's liabilities, other than the QCA Judgment and the litigation related contingent liabilities, were valued as follows:

	December 31, 2018
ASSETS (CDN$000s)	
Current	
Cash and short term investments	139,195
Accounts receivable	9,643
Inventories	152,528
Other current assets	5,928
	307,294
Non-current	
Properties, plant and equipment	40,886
Investment in subsidiary companies	1,200,000
Other Assets	8,900
Goodwill	304,328
Future income taxes	29,153
Total assets	1,890,561

	December 31, 2018
LIABILITIES (CDN$000s)	
Current	
Short Term Borrowing	-
Accounts payable and accrued liabilities	103,719
Due to related parties – current	39,932
	143,651
Non-current	
Secured convertible debenture payable to subsidiary	1,183,326
Employee future benefits	102,553
Other liabilities and capital leases	4,394
Total liabilities	1,433,924

73. A majority of JTIM's approximately $1.9 billion book value of assets on its balance sheet relates to JTIM's $1.2 billion equity investment in its subsidiary, TM. This equity interest ranks behind the secured debt owing by TM to ParentCo of approximately $1.0 billion. TM is in receivership and the value of JTIM's equity investment is questionable at best. The remaining assets of JTIM cannot satisfy the secured claims against JTIM, much less the unsecured litigation claims including the QCA Judgment.

74. As at December 31, 2018, JTIM had non-contingent liabilities totalling approximately $1.4 billion, of which approximately $144 million consist of current liabilities, such as accounts payable and accrued liabilities. The majority of JTIM's liabilities consist of the $1.18 billion of secured debt owed to TM, now under the control of the TM Receiver appointed by ParentCo.

75. As described above, JTIM is able to meet its ordinary course obligations as they become due. JTIM is seeking relief, however, because it does not have the financial resources to pay its share of the QCA Judgment, let alone the full amount for which it is solidarily liable. JTIM therefore requires the protections offered under the CCAA to obtain a stay and a period of stability within which to attempt to find a collective resolution.

76. I am advised by legal counsel that it is uncertain whether steps can be taken immediately to enforce the QCA Judgment and that counsel to the Class Action Plaintiffs have refused to confirm that the QCA Judgment is not immediately enforceable, notwithstanding that the QCA Judgment provides for up to a maximum of 60 days for JTIM to provide the initial deposit. Therefore, JTIM is facing the potential for the immediate enforcement of a significant judgment and is also the subject of the pending HCCR Actions, which claims are far in excess of the book value of the assets of JTIM (as discussed above). The total secured and unsecured obligations of JTIM, including the QCA Judgment, greatly exceed my expectation of the realizable value of the assets on a going concern basis**.** I have been advised by external legal counsel that JTIM is therefore insolvent, as that term is understood in the restructuring context.

B. *Cash Flow Forecast*

77. Attached as Exhibit "**DD**" is a statement of the projected 13-week cash flow forecast (the "**Cash Flow Statement**") of JTIM for the week commencing February 25, 2019 to the week ending May 24, 2019. The Cash Flow Statement was prepared by JTIM with the assistance of Deloitte Restructuring Inc. ("**Deloitte**"), the proposed Monitor (in such capacity, the "**Proposed Monitor**"). The Cash Flow Statement demonstrates that if the relief requested is granted, including the staying of the QCA Judgment, JTIM has sufficient liquidity to meet its obligations during the initial 13 week period of a CCAA filing.

VI. RELIEF BEING SOUGHT IN THE CCAA

A. *The Monitor*

78. Deloitte has consented to act as the Court-appointed Monitor of JTIM, subject to Court approval. A copy of Deloitte's consent is attached as Exhibit "**EE**". I am advised by external counsel that Deloitte is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency*

Act, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

B. *Treatment of Ordinary Creditors*

i) The 2004 CCAA Proceedings

79. JTIM was in CCAA from 2004 to 2010 (the "**2004 CCAA Proceedings**"). During the 2004 CCAA Proceedings, JTIM was allowed to pay all of its trade creditors in the ordinary course. JTIM seeks the same result in this proceeding. As was the case in the 2004 CCAA Proceedings, the continued payment of all trade liabilities remains an essential part of preserving the value of JTIM's business.

80. By way of background, in response to enforcement and seizure actions taken by the Minister of Revenue for the Province of Quebec (the "**MRQ**") in respect of allegedly unpaid taxes from allegedly contraband activities (the "**MRQ Assessment**"), JTIM obtained protection pursuant to the CCAA by Order of Mr. Justice Farley of the Ontario Superior Court of Justice on August 24, 2004 (the "**2004 Initial Order**"), a copy of which is attached as Exhibit "**FF**". Ernst & Young Inc. was appointed as Monitor (the "**2004 Monitor**").

81. The critical events precipitating JTIM's filing for CCAA protection in 2004 were the issuance of the MRQ Assessment and the related immediate measures taken to collect on the MRQ Assessment by the MRQ. The result of the service of third-party demands for payment issued by the MRQ on all of JTIM's Quebec customers would have diverted approximately 40% of JTIM's revenue. If the collection action had not been stayed by the 2004 CCAA Proceedings, JTIM would likely have been forced to cease operations and its business likely would have been destroyed.

82. At the time of the 2004 Initial Order, many of the litigation claims that are discussed herein were being pursued against JTIM, which posed the threat of enormous judgments against JTIM, among others. However, no claimant, with the exception of the MRQ, had the ability to disrupt JTIM from carrying on business in the ordinary course until a judgment was rendered and execution steps were taken. As discussed herein, the Class Action Plaintiffs have the same ability to prevent JTIM from carrying on business in the ordinary course as the MRQ did in 2004, through enforcement of the QCA Judgment.

83. On April 13, 2010, a global settlement was reached with all government authorities (the "**Global Settlement**") for the resolution of all alleged contraband claims that precipitated the 2004 CCAA Proceedings, and those proceedings were terminated on April 16, 2010. Similar settlements were also previously entered into by the other major Canadian tobacco manufacturers. JTIM has continued operations in the ordinary course since the termination of the 2004 CCAA Proceedings. The Class Actions and the HCCR Actions have also continued in the ordinary course.

ii) Proposed Treatment

84. Consistent with the approach authorized by Mr. Justice Farley in the 2004 CCAA Proceedings, JTIM is of the opinion that certain pre-filing amounts should be paid following the date of the Initial Order as non-payment of these amounts may have a significant detrimental impact on JTIM's business and going concern value. JTIM intends to treat all of its trade creditors equally and fairly.

85. JTIM proposes to pay its suppliers, trade creditors (including intercompany trade payables and monthly royalty payments), taxes, duties and employees (including outstanding and future pension plan contributions, OPEBs and severance packages) in the ordinary course of

business for current amounts owing both before and after JTIM's application to the Court for protection under the CCAA in order to minimize any disruption of its business. Maintaining JTIM's operations as a going concern and avoiding any unnecessary disruption to its business operations is in the best interests of all of JTIM's stakeholders, including the Class Action Plaintiffs.

86. I am advised by legal counsel that it is JTIM's current expectation that its trade creditors and employees would be unaffected by any plan of arrangement that it may file in this proceeding. I have been further advised by internal legal counsel that not paying the outstanding ordinary course payments would significantly and unnecessarily complicate the restructuring proceedings. I am advised by counsel that the Proposed Monitor supports this relief and will provide further comment on this issue in its report to the Court in connection with this application.

C. ***Stay of Proceedings***

87. In addition to the stay of proceedings in respect of JTIM, JTIM is requesting a stay of proceedings in respect of: (i) any person named as a defendant or respondent in any of the Class Actions, HCCR Actions and the Additional Class Actions (collectively, the "**Pending Litigation**"), and (ii) any proceeding in Canada relating to a tobacco claim against or in respect of any member of JT International or the RJR Group. In both cases, JTIM and the Monitor may provide their written consent to allow the stay to be temporarily lifted.

88. I am advised by legal counsel that JTIM requires the extension of the stay of proceedings to any other defendant or respondent in the Pending Litigation to ensure that steps are not taken in the Pending Litigation without JTIM's participation, which may prevent JTIM's ability to reach a collective solution. Further, the RJR Group is named as a defendant in the HCCR Actions. Since

the defence of the RJR Group and JTIM are connected, it would be potentially disadvantageous to JTIM to allow such actions to continue against the RJR Group alone.

D. ***Interest on TM Term Debentures***

89. It is the current expectation that JTIM will continue paying the secured monthly interest payments to TM under the TM Term Debentures. The TM Term Debentures have been in place since 1999. There would be potential adverse tax consequences to its senior secured creditor if such payments were suspended for a significant period of time. Further, I have been advised by legal counsel that the Proposed Monitor does not object to this relief.

90. JTIH-BV, a credit-worthy entity related to JTIM, has provided an undertaking to repay any post-filing interest received during these CCAA proceedings (the "**Repayment Undertaking**") in the event this Court (or any applicable appellate court) finally determines that TM was not entitled to receive the post-filing interest payments. As evidence of its credit-worthiness, a copy of the 2017 Annual Report of JTIH-BV is attached as Exhibit "**GG**". A copy of the Repayment Undertaking of JTIH-BV is attached as Exhibit "**HH**".

E. ***Administration Charge***

91. JTIM seeks a first-ranking charge (the "**Administration Charge**") on the Property (as defined in the proposed form of Initial Order) in the maximum amount of $3 million to secure the fees and disbursements incurred in connection with services rendered to JTIM both before and after the commencement of the CCAA proceedings by counsel to JTIM, the Proposed Monitor, counsel to the Proposed Monitor and the proposed Chief Restructuring Officer (the "**CRO**"), other than any success fee in respect of the CRO.

92. It is contemplated that each of the aforementioned parties will have extensive involvement

during the CCAA proceedings, have contributed and will continue to contribute to the restructuring of the Applicant, and there will be no unnecessary duplication of roles among the parties.

93. I am advised by legal counsel that the Proposed Monitor believes that the proposed quantum of the Administration Charge to be reasonable and appropriate in view of JTIM's CCAA proceedings and the services provided and to be provided by the beneficiaries of the Administration Charge. I am further advised by legal counsel that the only secured creditors that will be affected by the Administration Charge are ParentCo, TM and certain other secured related party suppliers, each of which support the Administration Charge.

F. ***Directors' Charge***

94. To ensure the ongoing stability of JTIM's business during the CCAA proceedings, JTIM requires the continued participation of its directors and officers who manage the business and commercial activities of JTIM. The directors and officers of JTIM have considerable institutional knowledge and valuable experience.

95. There is a concern that the directors and officers of JTIM may discontinue their services during this restructuring unless the Initial Order grants the Directors' Charge (as defined below) to secure JTIM's indemnity obligations to the directors and officers that arise post-filing in respect of potential personal statutory liabilities.

96. JTIM maintains directors' and officers' liability insurance (the "**D&O Insurance**") for the directors and officers of JTIM. The current D&O Insurance policies provide a total of $12.908 million in coverage. In addition, under the D&O Insurance, a retention amount, akin to a deductible, is applicable for certain claims in the amount of $45,178.

97. The proposed Initial Order contemplates the establishment of a second-ranking charge on the Property in the amount of $4.1 million (the "**Directors' Charge**") to protect the directors and officers against obligations and liabilities they may incur as directors and officers of JTIM after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct. The Directors' Charge was calculated by reference to the monthly payroll, withholding and pension obligations of JTIM totalling approximately $4 million. The payroll obligations of JTIM are paid primarily in arrears which increases the potential director and officer liability.

98. JTIM worked with the Proposed Monitor in determining the proposed quantum of the Directors' Charge and believes that the Directors' Charge is reasonable and appropriate in the circumstances. The Directors' Charge is proposed to rank behind the Administration Charge, but ahead of the Tax Charge (as defined below) and the existing security granted by JTIM in favour of TM and ParentCo. I have been advised by counsel that the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

99. Although the D&O Insurance is available, the directors and officers of JTIM do not know whether the insurance providers will seek to deny coverage on the basis that the D&O Insurance does not cover a particular claim or that coverage limits have been exhausted. JTIM may not have sufficient funds available to satisfy any contractual indemnities to the directors or officers should the directors or officers need to call upon those indemnities. It is proposed that the Directors' Charge will only be engaged if the D&O Insurance fails to respond to a claim.

G. *Tax Charge*

100. Of the $1.3 billion of annual taxes and duties payable in connection with its operations and products, JTIM directly pays, on its own behalf, more than $500 million each year to the various provincial and federal governments. The additional $800 million is paid by JTIM's customers and the consumers of JTIM's products.

101. The government agencies to whom JTIM remits its taxes currently hold surety bonds in the approximate amount of $18 million that have been posted as security for such unremitted taxes and duties (the "**Tax Bonds**"). The proposed Initial Order contemplates the establishment of a third-ranking charge on the Property in the amount of $127 million (the "**Tax Charge**") to secure the payment of any excise tax or duties, import or customs duties and provincial and territorial tobacco tax and any harmonized sales or provincial sales taxes (collectively, "**Taxes**") required to be remitted by JTIM to the applicable provincial, territorial or federal taxing authority in connection with the import, manufacture or sale of goods and services by JTIM after the commencement of the CCAA proceedings.

102. The Tax Charge was calculated by reference to the amount of monthly Taxes that JTIM must remit in a month where the highest exposure exists to directors, multiplied by two to reflect the liability that directors actually face (one month in arrears plus an ongoing "stub" period), totalling approximately $136 million, less the amount of such liabilities that would be covered by outstanding Tax Bonds. I have been advised by legal counsel that the Proposed Monitor is of the view that the Tax Charge is reasonable and appropriate in the circumstances.

H. *CRO Appointment*

103. JTIM hopes to achieve a collective solution among its stakeholders. Based on past experience, JTIM believes that achieving such a result will be complicated and time consuming. In order to minimize disruption to the business and the distraction of senior executives away from the task of managing the business and maintaining positive cash flow, JTIM seeks (i) the approval and confirmation of the Court of the retention of an experienced CRO to oversee the stakeholder engagement and negotiation process and (ii) the approval of the terms of the CRO's engagement letter.

104. Pursuant to the CRO engagement letter dated April 23, 2018, JTIM agreed to apply to the Court for approval of: (i) the engagement letter, (ii) retention of the CRO, and (iii) the payment of the fees and expenses of the CRO. Compensation to the CRO includes both a monthly work fee component and a success fee component. A redacted copy of the CRO engagement letter is attached as Exhibit "**II**". An unredacted version of the CRO engagement letter is attached as Confidential Exhibit "**1**" to the Confidential Compendium.

105. JTIM proposes retaining BlueTree Advisors Inc. to provide the services of William E. Aziz as the CRO in accordance with the terms of the CRO engagement letter. Mr. Aziz is a well-known and experienced CRO as evidenced from his *curriculum vitae* attached as Exhibit "**JJ**". I have been advised by legal counsel that the Proposed Monitor is of the view that the relief sought with respect to the CRO is appropriate in the circumstances and consistent with established precedent.

I. *Sealing Order*

106. JTIM will be seeking an order sealing the unredacted copy of the CRO engagement letter. I have been advised by the CRO that the engagement letter contains commercially sensitive terms

of the engagement of the CRO. The CRO has advised me that the disclosure of those commercial terms would have a detrimental impact on the CRO's ability to negotiate compensation on any future engagements.

107. I am advised by counsel that the sealing of the unredacted CRO engagement letter should not materially prejudice any third parties. I have been advised by counsel to JTIM that the Monitor supports the sealing of the unredacted CRO engagement letter.

VII. FORM OF ORDER

108. JTIM seeks an Initial Order under the CCAA substantially in the form of the Model Order adopted for proceedings commenced in Toronto, subject to certain changes all as reflected in the proposed form of order contained in the Motion Record, blacklined to the Model Order. The reasons for the material proposed changes are described herein.

109. By letter dated July 6, 2015, restructuring counsel to the Class Action Plaintiffs wrote to the Court House of Montreal and the Superior Court of Justice requesting seven (7) days prior notice of any CCAA filing in Quebec or Ontario. JTIM did not respond to this request. A copy the July 6, 2015 letter is attached as Exhibit "**KK**".

110. By letter to JTIM's counsel dated March 6, 2019, counsel to the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan in connection with the HCCR Actions requested advance notice prior to any CCAA filing. JTIM's counsel did not respond to this request. A copy of the March 6, 2019 letter is attached as Exhibit "**LL**".

111. By letter to JTIM's litigation counsel dated March 7, 2019, counsel to Her Majesty the Queen in right of Ontario requested advance notice prior to any CCAA filing. JTIM's counsel did not respond to this request. A copy of the March 7, 2019 letter is attached as Exhibit "**MM**".

112. As described above, Japan Tobacco is a publicly traded company on the Tokyo stock exchange. In order to manage market responses and prevent potentially opportunistic trading of Japan Tobacco and other tobacco stock, the approach to the application for CCAA relief, including the notice and timing of the filing, has to take into account public market considerations in Tokyo, New York and London. In this regard, a request for a hearing, and disclosure of that hearing, when none of these markets are open were considered to be appropriate steps in the circumstances.

113. This affidavit is sworn in support of JTIM's application for protection pursuant to the CCAA and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on March 8, 2019.

Commissioner for Taking Affidavits

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I

ROBERT MCMASTER

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP.

Court File No.: 19-CV-

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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Lawyers for the Applicant

EXHIBIT “AA”

This is **Exhibit "AA"**, referred to in the **Affidavit of Robert McMaster**, sworn before me this 8th day of March, 2019.

Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I

PURCHASE AGREEMENT

dated as of

March 9, 1999,

AS AMENDED AND RESTATED

as of

May 11, 1999,

among

R. J. REYNOLDS TOBACCO COMPANY

RJR NABISCO, INC.

and

JAPAN TOBACCO INC.

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PURCHASE AGREEMENT

PURCHASE AGREEMENT dated as of March 9, 1999, as amended and restated as of May 11, 1999, among JAPAN TOBACCO INC., a Japanese corporation ("**Buyer**"), R. J. REYNOLDS TOBACCO COMPANY, a New Jersey corporation ("**RJRT**"), and RJR NABISCO, INC., a Delaware corporation ("**RJRN**" and, together with RJRT, the "**Sellers**").

W I T N E S S E T H:

WHEREAS, Buyer and Sellers entered into a Purchase Agreement dated as of March 9, 1999 (the "**Purchase Agreement**");

WHEREAS, the parties hereto desire to amend and restate the Purchase Agreement as of May 11, 1999, as set forth herein;

WHEREAS, Sellers (and certain of their direct or indirect subsidiaries) are the record and beneficial owners of the Shares (as defined below) of each of the RJRI Companies (as defined below) and desire to sell the Shares and the Purchased Assets (as defined below) to Buyer, and Buyer desires to (or to have one or more of its direct or indirect subsidiaries) purchase the Shares of each of the RJRI Companies and the Purchased Assets from Sellers (or their direct or indirect subsidiaries), upon the terms and subject to the conditions set forth below;

WHEREAS, Sellers and Buyer (and/or their Affiliates, as appropriate) will enter into agreements on and as of the Closing Date providing for the sale, conveyance, transfer, assignment and delivery of (i) the Purchased IPRs (as defined below), pursuant to the Intellectual Property Agreement attached hereto as Exhibit A (the "**IPR Agreement**") and (ii) the Puerto Rico Plant (as defined below) pursuant to the Puerto Rico Transfer Agreement attached hereto as Exhibit B (the "**Transfer Agreement**") providing for the transfer of all of the assets and assumption of all of the liabilities, in each case relating to the Puerto Rico Plant on the Closing Date (as defined below);

WHEREAS, the RJRI Companies conduct an international business involving (i) the manufacture, marketing, sale and distribution of tobacco products for sale outside of the United States (as defined below), (ii) the manufacture of tobacco products in Puerto Rico for export outside of the United States and (iii) a brand diversification business outside the United States (collectively, the "**Business**");

WHEREAS, Buyer and Sellers (and/or their Affiliates, as appropriate) on and as of the Closing Date will enter into (i) the Production Agreement attached as Exhibit C hereto (the "**Production Agreement**") for the supply of tobacco products by Sellers' Group (as defined below) to Buyer, its Affiliates (as defined below) or the RJRI Group (as defined below) for use in the Business following the Closing, (ii) the Puerto Rico Production Agreement attached hereto as Exhibit D hereto (the "**Puerto Rico Production Agreement**") for the supply of tobacco products by the Puerto Rico Plant to Sellers' Group after the Closing and (iii) the Cast Sheet Agreement attached as Exhibit E hereto (the "**Cast Sheet Agreement**") for the supply of Cast Sheet by the RJRI Group to Sellers' Group after the Closing; and

WHEREAS, Buyer and Sellers (and/or their Affiliates, as appropriate) on and as of the Closing Date will enter into (i) the Transitional Services Agreement attached as Exhibit F hereto (the "**Transitional Services Agreement**") relating to certain services to be performed by members of Sellers' Group for the benefit of Buyer, its Affiliates or the RJRI Group following the Closing to permit an orderly transition of ownership of the Business and (ii) the Puerto Rico Transitional Services Agreement attached as Exhibit G hereto (the "**Puerto Rico Transitional Services Agreement**") relating to services to be performed by the RJRI Group for the benefit of Sellers' Group following the Closing and (iii) the Document Preservation and Access Agreement and the Defense Cooperation Agreement attached as Exhibit H hereto (the "**Litigation Agreements**").

The parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.01. *Definitions*. (a) The following terms, as used herein, have the following meanings:

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; *provided* that none of the RJRI Companies or any Subsidiary shall be considered an Affiliate of Sellers or Buyer, but shall be considered an Affiliate of Buyer immediately after the Closing Date and *further provided* that the Government of Japan shall not be considered an Affiliate of Buyer. For purposes of this definition, the term "**control**" (including the correlative terms "**controlling**", "**controlled by**" and "**under common control with**") means the possession,

direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"**Balance Sheet**" means the audited combined balance sheet of the RJRI Group as of December 31, 1998.

"**Balance Sheet Date**" means December 31, 1998.

"**Business Day**" means any day other than a Saturday, Sunday or one on which banks are authorized or required by law to close in New York, New York or in Tokyo, Japan.

"**Capital Stock**" means the capital stock of each of the RJRI Companies set forth on Exhibit I hereto.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"**Closing Date**" means the date of the Closing.

"**Code**" means the Internal Revenue Code of 1986.

"**Confidentiality Agreement**" means the confidentiality agreement between RJRN and Buyer dated December 14, 1998.

"**Disclosure Letter**" means the letter from Sellers to Buyer that is identified as the disclosure letter and that is dated the date of this Agreement.

"**Environmental Laws**" means any federal, state, local or foreign law (including, without limitation, common law), treaty, judicial decision, regulation, rule, judgment, order, decree, injunction, permit or governmental restriction or any agreement with any Governmental Entity relating to the environment, the effect of the environment on human health and safety or to pollutants, contaminants, wastes or chemicals or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substances, wastes or materials.

"**Environmental Liabilities**" means any and all liabilities arising in connection with or in any way relating to the Business (as currently or previously conducted), the RJRI Group or any activities or operations occurring or conducted at the real property used or held for use in the conduct of the Business (together with all buildings, fixtures and improvements thereon and, also including, without limitation, offsite disposal), whether accrued, contingent, absolute, determined,

determinable or otherwise, which arise under or relate to any Environmental Law, whether now or hereinafter in effect, (including, without limitation, any matter disclosed or required to be disclosed in the Disclosure Letter pursuant to Section 3.18).

"**Excluded Liabilities**" means any and all liabilities, whether accrued, contingent, absolute, determined, determinable or otherwise, arising out of or related to the matters described in paragraphs 22, 23 or 24 of Section 3.13 of the Disclosure Letter or otherwise arising out of or related to activities of Northern Brands International, Inc. or its employees.

"**GAAP**" means generally accepted accounting principles in the United States.

"**Governmental Entity**" means any government or any state, department or other political subdivision thereof, or any governmental body, agency, authority (including, without limitation, any central bank or taxing authority) or instrumentality (including, without limitation, any court or tribunal) in any jurisdiction exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"**Hazardous Substances**" means any pollutant, contaminant or any toxic, radioactive or otherwise hazardous substance, as such terms are defined in, or identified pursuant to, any Environmental Law.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"**Intellectual Property Right**" means any trademark, service mark, trade name, trade dress, invention, patent, trade secret, copyright, rights in designs, know-how (including any registrations or applications for registration of any of the foregoing) or any other similar type of proprietary intellectual property right.

"**knowledge of Sellers**", "**Sellers' knowledge**" or any other similar knowledge qualification in this Agreement means to the actual knowledge of any senior vice president or more senior executive officer of R. J. Reynolds International B.V. (Hilversum), Geneva branch.

"**Lien**" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance in respect of such property or asset.

"**Material Adverse Effect**" means a material adverse effect on the financial condition, business, assets, liabilities or results of operations of the Business taken as a whole, except any such effect resulting from or arising in connection with (i) any of the Transaction Documents, the transactions contemplated by the Transaction Documents or the announcement thereof, (ii) changes or conditions (including changes in GAAP, law, regulation or judicial or other interpretation) affecting the tobacco industry generally or any particular markets in which the Business is operated, (iii) changes in economic, financial market, regulatory or political conditions generally or in particular markets in which the Business is operated or (iv) any matters disclosed in the Disclosure Letter.

"**1934 Act**" means the Securities Exchange Act of 1934.

"**Person**" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof (or any equivalent in any jurisdiction).

"**Puerto Rico Plant**" means the real property, and personal property appurtenant thereto, located in Puerto Rico currently used in the operation of the Business primarily in connection with (i) the manufacture of tobacco products and (ii) the sale, marketing and distribution of tobacco products outside the United States, but shall exclude the real property, and personal property appurtenant thereto, located in Puerto Rico currently used by the Sellers' Group or the RJRI Group exclusively in connection with the sale, marketing and distribution of tobacco products in the United States, as more particularly defined in the Transfer Agreement.

"**Purchased Assets**" means the Purchased IPRs and the Puerto Rico Plant.

"**Purchased IPRs**" means the Intellectual Property Rights identified on Schedule 1.01(a).

"**RJRI Companies**" means the companies listed on Exhibit I hereto.

"**RJRI Group**" means the RJRI Companies and their Subsidiaries.

"**RJRI Liabilities**" means all debts, obligations, contracts and liabilities of any member of either the RJRI Group or the Sellers' Group (or any predecessor of any member of either the RJRI Group or the Sellers' Group or any prior owner of all or part of their businesses or assets) of any kind, character or description (whether known or unknown, accrued, absolute, contingent, indirect or derivative,

or otherwise) in any way relating to or arising out of the conduct of the Business, in whole or in part, including without limitation, (i) all liabilities set forth on the April 30 Balance Sheet; (ii) all liabilities relating to any Sellers' Group Guarantee remaining outstanding after the Closing; (iii) all liabilities of any member of the Sellers' Group arising on or after the Closing Date under the contracts and agreements listed on Exhibit M or to any other contracts, agreements, licenses, permits or approvals relating to the Business that are assigned or otherwise transferred by any member of the Sellers' Group to, and assumed by, any member of the RJRI Group, (iv) all Environmental Liabilities; (v) all liabilities and obligations arising out of any action, suit, investigation or proceeding before any arbitrator or Governmental Entity listed in the Disclosure Letter; (vi) all liabilities and obligations arising out of any action, suit, investigation or proceedings before any arbitrator or Governmental Entity which may at any time (whether past, present or future) be made, commenced, asserted or pursued that in any way are based upon or arise from tobacco products of any description consumed or intended to be consumed outside of the United States, including, without limitation, all such liabilities and obligations relating to or arising in any way from (A) the manufacture, marketing, development, advertising, research, distribution or sale of such products on or before the Closing Date and (B) any statement or other actions or omissions of any member of either the RJRI Group or the Sellers' Group (or any predecessor of any member of either the RJRI Group or the Sellers' Group or any prior owner of all or part of their businesses or assets) made or occurring on or before the Closing Date relating to such products, (vii) all liabilities and obligations relating to any products manufactured or sold by the Business at any time, including without limitation all warranty obligations and product liabilities and any liability or obligation relating to the health effects of, or exposure to, any products manufactured or sold by the Business at any time and (viii) except as expressly provided in Article 9, all liabilities or obligations relating to employee benefits or compensation arrangements existing on or prior to the Closing Date with respect to any employee or former employee of the Business. Notwithstanding the foregoing, "**RJRI Liabilities**" shall exclude the liabilities for which Buyer or its Affiliates are expressly indemnified by Sellers pursuant to this Agreement.

"**Sellers' Group**" means Sellers and their respective Affiliates (exclusive of any member of the RJRI Group).

"**Sellers' Group Guarantees**" means the guarantees by members of Sellers' Group of indebtedness of any member of the RJRI Group listed on Schedule 6.03.

"**Sellers Product Liabilities**" means all liabilities and obligations of any member of either the RJRI Group or the Sellers' Group (or any predecessor of any

member of either the RJRI Group or the Sellers' Group or any prior owner of all or part of their businesses or assets) of any kind, character or description (whether known or unknown, accrued, absolute, contingent, indirect or derivative, or otherwise) arising out of any action, suit, investigation or proceeding before any arbitrator or Governmental Entity which may at any time (whether past, present or future) be made, commenced, asserted or pursued that are in any way based upon or arise from tobacco products of any description consumed or intended to be consumed in the United States (exclusive of any such liabilities and obligations in any way based upon or arising from the manufacture, marketing, development, advertising, research, distribution or sale of tobacco products by Buyer or its Affiliates on or before the Closing Date), including, without limitation, all such liabilities and obligations relating to or arising in any way from (A) the manufacture, marketing, development, advertising, research, distribution or sale of such products on or before the Closing Date and (B) any statement or other actions or omissions of any member of either the RJRI Group or the Sellers' Group (or any predecessor of any member of either the RJRI Group or the Sellers' Group or any prior owner of all or part of their businesses or assets) made or occurring on or before the Closing Date.

"**Shares**" means the shares of Capital Stock referred to in Exhibit I hereto.

"**Special Purpose Accounting Basis**" means the basis of accounting and reporting for special purpose financial presentations. The Special Purpose Accounting Basis shall conform with GAAP, applied on a basis consistent with those used in preparing the Pro Forma Balance Sheet (except as may be indicated in the notes thereto), except that: (i) accounting standards which become effective after December 31, 1998 will not be adopted; (ii) intangible assets (including, without limitation, goodwill, patents, trademarks, deferred expenses and unamortized debt discount) will not be amortized or otherwise adjusted subsequent to December 31, 1998 and (iii) any currency translation adjustments recorded on the Pro Forma Balance Sheet will not be adjusted subsequent to December 31, 1998.

"**Subsidiary**" means any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by any of the RJRI Companies.

"**Transaction Documents**" means this Agreement, the Production Agreement, the Transitional Services Agreement, the IPR Agreement, the Transfer Agreement, the Puerto Rico Production Agreement, the Cast Sheet Agreement, the Puerto Rico Transitional Services Agreement, the Litigation

Agreements and the documents referred to in Sections 2.03(b) and (c) and 2.04(a)(ii), 2.04(b)(ii), (d), (e) and (f).

"**United States**" means the United States of America and each of its territories, commonwealths and possessions (including, without limitation, Puerto Rico) but shall not include U.S. embassies and consulates, U.S. military installations located outside the United States and worldwide duty-free sales.

Any reference in this Agreement to a statute shall be to such statute, as in effect on the date of this Agreement, and to the rules and regulations promulgated thereunder.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
April 30 Balance Sheet	2.05(a)
April 30 Stockholder's Equity	2.05(a)
Alternative Sale	12.01
Base Stockholder's Equity	2.05
Business	Recitals
Business IPRs	3.15(a)
Buyer	Preamble
Cast Sheet Agreement	Recitals
Claim	11.03
Closing	2.03
Closing Stockholder's Equity	2.04
Condition	2.04(b)
Damages	11.02
Exhibit K Companies	2.03
Exhibit K Company Closing	2.04(b)
Fair Market Value	2.04(b)
Final Stockholder's Equity	2.05
Indemnified Party	11.03
Indemnifying Party	11.03
IPR Agreement	Recitals
Litigation Agreements	Recitals
Loss	8.05
May 31 Balance Sheet	2.05(b)
May 31 Stockholder's Equity	2.05
Net May Financing	2.05
Post-Closing Tax Period	8.01

ARTICLE 11

SURVIVAL; INDEMNIFICATION

SECTION 11.01. *Survival.* The covenants, agreements, representations and warranties contained in Articles 8 and 9 shall survive until expiration of the statute of limitations applicable to the matters covered thereby (giving effect to any waiver, mitigation or extension thereof). The representations and warranties in Sections 3.01, 3.02, 3.06, 3.07, 3.15, 3.18, 3.20 and 4.09 shall survive for three years after the Closing Date, and all other representations and warranties contained herein (except for those contained in Articles 8 and 9) shall survive for one year after the Closing Date. The covenants and agreements contained herein (except for those contained in Articles 8 and 9) shall survive for the period indicated therein or, if not so indicated, indefinitely. Notwithstanding the foregoing, any covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the foregoing, if *bona fide* notice of such inaccuracy or breach giving rise to such right of indemnity specifying with particularity (x) the covenant, agreement, representation or warranty in this Agreement in respect of which indemnity may be sought and (y) the facts and circumstances giving rise to such right shall have been given to the party against whom such indemnity may be sought prior to such time.

SECTION 11.02. *Indemnification.* (a) Sellers hereby jointly and severally indemnify Buyer, its Affiliates and the members of the RJRI Group and, if applicable, their respective directors, officers, agents, employees, successors and assigns against and agree to hold each of them harmless from any and all assessments, penalties, fines, damages, losses, liabilities and expenses (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding) ("**Damages**") incurred or suffered by Buyer, any of its Affiliates or any member of the RJRI Group or their respective directors, officers, agents, employees, successors and assigns arising out of:

(i) any misrepresentation or breach of warranty made by the Sellers' Group to Buyer or any of its Affiliates pursuant to the Transaction Documents, or breach of warranty, made by the Sellers' Group pursuant to the Transaction Documents (other than pursuant to Article 8 of this Agreement), *provided* that, with respect to any Damages incurred or suffered by Buyer or any of its Affiliates or any member of the RJRI Group arising out of any misrepresentation or breach of warranty, Sellers shall not be liable under this Section 11.02(a)(i) unless the aggregate

amount of Damages exceeds $50,000,000 (and then only to the extent of such excess);

(ii) any breach of covenant or agreement made or to be performed by the Sellers' Group pursuant to the Transaction Documents (other than pursuant to Article 8 of this Agreement);

(iii) Sellers Product Liabilities; or

(iv) Excluded Liabilities.

(b) Buyer hereby indemnifies each member of the Sellers' Group and, if applicable, their respective directors, officers, agents, employees, successors and assigns against and agrees to hold each of them harmless from any and all Damages incurred or suffered by any member of the Sellers' Group or their respective directors, officers, agents, employees, successors and assigns arising out of:

(i) any misrepresentation or breach of warranty made or to be performed by Buyer or its Affiliates pursuant to the Transaction Documents (other than pursuant to Article 8 of this Agreement), *provided* that, with respect to any Damages incurred or suffered by the Sellers' Group arising out of any misrepresentations or breach of warranty, Buyer shall not be liable under this Section 11.02(b)(i) unless the aggregate amount of Damages exceeds $50,000,000 (and then only to the extent of such excess);

(ii) any breach of covenant or agreement made or to be performed by Buyer or its Affiliates pursuant to the Transaction Documents (other than pursuant to Article 8 of this Agreement); or

(iii) any RJRI Liabilities;

provided that it is understood that Sellers will first pursue any claims under this Section 11.02(b) against members of the RJRI Group before making claims against Buyer, and that Buyer will only be secondarily liable for such claims.

(c) The monetary thresholds set forth in this Section 11.02 have been negotiated for the special purpose of the provision to which they relate and are not to be taken as evidence of the level of "materiality" for purposes of any statutory or common law which may be applicable to the transactions contemplated by this Agreement under which a level of materiality might be an issue.

SECTION 11.03. *Procedures.* (a) The party seeking indemnification under Article 8 or 9 or Section 11.02 (the "**Indemnified Party**") agrees to give prompt notice to the party against whom indemnity is sought (the "**Indemnifying Party**") of the assertion of any claim, or the commencement of any suit, action or proceeding ("**Claim**") in respect of which indemnity may be sought under such Section or Article and will provide the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request. The failure so to notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have materially prejudiced the Indemnifying Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Claim asserted by any third party ("**Third Party Claim**") and, subject to the limitations set forth in this Section, shall be entitled to (and at the request of the Indemnifying Party shall) control and appoint lead counsel for such defense, in each case at its expense. The Indemnified Party shall obtain the written consent of the Indemnifying Party before entering into any settlement of any Third Party Claim.

(c) If the Indemnifying Party shall assume the control of the defense of any Third Party Claim in accordance with the provisions of this Section 11.03, the Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement of such Third Party Claim, if the settlement does not release the Indemnified Party from all liabilities and obligations with respect to such Third Party Claim or the settlement imposes injunctive or other equitable relief against the Indemnified Party and the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ separate counsel of its choice for such purpose. The fees and expenses of such separate counsel shall be paid by the Indemnified Party.

(d) Each party shall cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim (and any Excluded Liability) and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith to the same extent as if no indemnification were provided hereunder. The Indemnifying Party shall bear the reasonable out-of-pocket expenses of such cooperation.

SECTION 11.04. *Calculation of Damages.* (a) The amount of any Damages payable under Article 8 or 9 or Section 11.02 by the Indemnifying Party shall be net of any amounts recovered or recoverable by the Indemnified Party under applicable insurance policies and any Tax Benefit realized by the

Indemnified Party arising from the incurrence or payment of any such Damages. In computing the amount of any such Tax Benefit, the Indemnified Party shall be deemed fully to utilize, at the highest marginal tax rate then in effect, all Tax items arising from the incurrence or payment of any indemnified Damages.

(b) The Indemnifying Party shall not be liable under Article 8 or 9 or Section 11.02 for any (i) Damages relating to any matter to the extent that (A) there is included in the April 30 Balance Sheet a specific liability or reserve relating to such matter or the Indemnified Party has otherwise been compensated for such matter pursuant to the Purchase Price adjustment under Section 2.05, consequential Damages or Damages for lost profits. For the purposes of this Agreement, Damages shall not be determined through any multiple of earnings approach or variant thereof and shall take account of the time value of money.

(c) Notwithstanding any other provision of this Agreement to the contrary, if on the Closing Date the Indemnified Party knows of any information that would cause one or more of the representations and warranties made by the Indemnifying Party to be inaccurate, the Indemnified Party shall have no right or remedy after the Closing with respect to such inaccuracy and shall be deemed to have waived its rights to indemnification in respect thereof.

SECTION 11.05. *Assignment of Claims.* If the Indemnified Party receives any payment from an Indemnifying Party in respect of any Damages pursuant to Section 11.02 and the Indemnified Party could have recovered all or a part of such Damages from a third party (a "**Potential Contributor**") based on the underlying Claim asserted against the Indemnifying Party, the Indemnified Party shall assign such of its rights to proceed against the Potential Contributor as are necessary to permit the Indemnifying Party to recover from the Potential Contributor the amount of such payment.

SECTION 11.06. *Exclusivity of Remedies.* Except as specifically set forth in this Agreement, effective as of the Closing, each party (on behalf of itself and its Affiliates) waives any rights and claims it (or its Affiliates) may have against the other party or its Affiliates, whether in law or in equity, relating to the Business or the Shares or the transactions contemplated by the Transaction Documents. The rights and claims waived include, without limitation, claims for contribution or other rights of recovery arising out of or relating to any Environmental Law, claims for breach of contract, breach of representation or warranty, negligent misrepresentation and all other claims for breach of duty. After the Closing, Articles 8 and 9 and Section 11.02 will provide the exclusive remedy for any misrepresentation, breach of warranty, covenant or other agreement or other claim arising out of the Transaction Documents or the transactions contemplated thereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

JAPAN TOBACCO INC.

By: [redacted]
Name [redacted]
Title: Senior Executive Vice President

RJR NABISCO, INC.

By: [redacted]
Name [redacted]
Title: SENIOR VICE PRESIDENT AND GENERAL COUNSEL

R. J. REYNOLDS TOBACCO COMPANY

By: [redacted]
Name [redacted]
Title: ATTORNEY-IN-FACT

This is **Exhibit "C"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal
A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27 2021

Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Robert I. Thornton
T: 416-304-0560
E: rthornton@tgf.ca
File No. 1671-001

March 12, 2019

VIA EMAIL TO THE SERVICE LIST

Dear Sirs/Madams:

Re: In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald Corp. (the "Applicant") Court File No.: CV-19-615862-00CL (the "CCAA Proceeding")

Since the commencement of the CCAA Proceeding on March 8, 2019, there have been a number of media reports questioning why the Initial Order dated March 8, 2019 (the "**Initial Order**") of the Ontario Superior Court of Justice suspends all legal proceedings against all three defendants to the Quebec class action proceedings until April 5, 2019, even though only the Applicant sought protection from its creditors pursuant to the *Companies' Creditors Arrangement Act*.

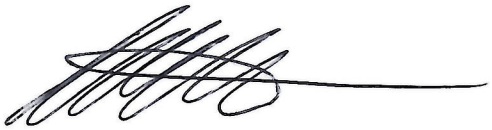
We note that the stay of proceedings granted in paragraphs 18 and 19 of the Initial Order is broad on an interim basis only. The reasons why the Initial Order was drafted that way were explained in submissions to the judge. The stay of proceedings is required to extend to matters involving the Applicant, certain entities related to or affiliated with the Applicant, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. (collectively, the "**JTI Defendants**"), including in the broader context of the health care cost recovery actions commenced across certain provinces.

The stay of proceedings was never intended to affect matters that do not, in the interim before the comeback hearing, affect the JTI Defendants. In respect of such matters, the stay of proceedings can be lifted pursuant to paragraph 19 of the Initial Order with the consent of the Applicant and the Monitor. As of today's date, no parties have requested such consent.

The comeback hearing has been set for April 4, 2019. Any parties wishing to make submissions at the comeback hearing should serve a Notice of Appearance on the Service List.

Yours truly,

Thornton Grout Finnigan LLP



Robert I. Thornton

RIT

cc: Harvey Chaiton, *Chaitons LLP*
Avram Fishman, *Fishman Flanz Meland and Paquin LLP*

This is **Exhibit "D"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal
A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

Court File No. CV-19 - _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

REPORT OF THE PROPOSED MONITOR
March 8, 2019

INTRODUCTION

1. Deloitte Restructuring Inc. ("**Deloitte**" or the "**Proposed Monitor**") understands that JTI-Macdonald Corp. ("**JTIM**" or the "**Applicant**") will be bringing an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") seeking, among other things, an initial order (the "**Proposed Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The Applicant proposes that Deloitte be appointed as Monitor in the CCAA proceedings.

2. This report (the "**Report**") has been prepared by the Proposed Monitor prior to and in contemplation of its appointment as Monitor in the CCAA proceedings to provide information to the Court for its consideration on the Applicant's initial hearing seeking protection pursuant to the CCAA.

PURPOSE

3. The purpose of this Report is to provide information to the Court on:

   i. Deloitte's qualifications to act as Monitor;

   ii. Background information with respect to JTIM;

   iii. An overview of arrangements in place regarding certain financing, operational and administrative services between JTIM and certain related-parties;

   iv. The review by the Proposed Monitor's counsel of certain security granted by JTIM to JTI-Macdonald TM Corp. ("**TM**");

   v. The review by the Proposed Monitor's counsel of other related party security;

   vi. Deloitte's proposed monitoring procedures;

   vii. An overview of JTIM's 13-week cash flow projection (the "**Cash Flow Statement**");

   viii. The proposed Court-ordered charges; and

   ix. The Proposed Monitor's comments on the Proposed Initial Order and conclusions.

TERMS OF REFERENCE AND DISCLAIMER

4. In preparing this Report and making the comments herein, the Proposed Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by JTIM, and discussions with management of the Applicant ("**Management**") (collectively, the "**Information**").

5. The Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards ("**Canadian GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.

6. Some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

7. Future oriented financial information referred to in this Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

8. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

I. DELOITTE'S QUALIFICATIONS TO ACT AS MONITOR

9. Deloitte is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada). The senior Deloitte professional personnel associated with this

matter have acquired knowledge of the Applicant and its business through discussions held with Management and other interested parties. Prior to the filing, Deloitte was engaged by JTIM for the limited purposes of assisting JTIM in preparation for a potential CCAA filing and providing financial consulting services in connection therewith. In preparation for the potential appointment as Monitor, Deloitte has spent time with Management to understand the Applicant's operations, debt structure and intercompany arrangements as more fully described in this Report for the assistance of the Court. This mandate also included consultation with independent legal advisors. Deloitte is, therefore, in a position to immediately assist the Applicant in its CCAA proceedings.

10. Deloitte is not subject to any of the restrictions on who may be appointed as Monitor pursuant to section 11.7(2) of the CCAA.

11. For completeness, the Proposed Monitor notes the following regarding other members of the Deloitte global group, for the Court's information:

i. In Canada, Deloitte LLP ("**Deloitte Canada**"), an affiliate of the Proposed Monitor, provides audit services to the trustees of the Applicant's pension plans. Deloitte Canada is retained directly by the trustees, although paid by JTIM;

ii. Deloitte Canada provides personal tax compliance services for JTIM in respect of its internationally assigned employees. This work forms a part of a global engagement between Deloitte SA in Switzerland and JT International SA ("**JTI-SA**") in respect of internationally assigned employees of Japan Tobacco Inc. ("**Japan Tobacco**");

iii. Previously, Deloitte Canada provided certain administrative functions to certain litigation defendants, including JTIM by hosting data productions received from provincial governments for counsel's review and assembly relating to health care cost litigation in Quebec. This mandate finished in April 2013. Deloitte Canada currently provides such administrative hosting functions for health care cost litigation in New Brunswick. No advocacy, analysis, review or reporting functions were or are currently performed by Deloitte Canada in respect of such hosting services;

iv. Globally, Deloitte Touche Tohmatsu LLC ("**DTT**") is the independent auditor of Japan Tobacco. DTT most recently conducted an audit for fiscal 2017 and quarterly reviews for the current year out of its offices in Tokyo, Japan. There is no common ownership between the Proposed Monitor and DTT and neither entity has control or oversight over the other. Deloitte Canada does not provide audit services to JTIM or any of the Canadian affiliates or subsidiaries of JTIM. For fiscal years ended 2011 and prior, Deloitte Canada assisted DTT with group reporting, but no longer does so;

v. In 1999, Deloitte & Touche LLP (the predecessor firm name for Deloitte Canada) was retained by RJR Nabisco, Inc. to provide an independent valuation of the assets of RJR Nabisco, Inc. in connection with the purchase by Japan Tobacco of the world-wide tobacco operations of R.J. Reynolds Tobacco Company. Also in 1999, Deloitte & Touche LLP provided an independent valuation of the brand equity of RJR-Macdonald Corp. for the purposes of supporting the fair market value transfer

of RJR Macdonald Corp.'s beneficial ownership of its trademarks and the associated rights to sell goods bearing the trademarks to TM. These matters were described in the Fourth Report of Ernst & Young Inc. in its capacity as Monitor in JTIM's 2004 CCAA proceedings, which is attached as Exhibit "G" to the McMaster Affidavit (as defined below); and

vi. Deloitte & Touche LLP previously provided specialized tax services (not audit functions) to JTIM and its Canadian affiliates but has not provided such services for at least five years.

12. None of the Proposed Monitor's team members have had any prior involvement with the matters set out above. Only the Proposed Monitor's team members will have access to confidential information and internal documents relating to the CCAA proceedings.

13. Deloitte has consented to act as Monitor, should the Court grant the Applicant's request for the Proposed Initial Order.

14. The Proposed Monitor has retained Blake, Cassels & Graydon LLP ("**Monitor's Counsel**") to act as its independent counsel.

II. BACKGROUND INFORMATION WITH RESPECT TO JTIM

15. This Report should be read in conjunction with the Affidavit of Robert McMaster sworn March 8, 2019 (the "**McMaster Affidavit**") for additional background information with respect to JTIM, upon which the Proposed Monitor relies.

Background

16. Japan Tobacco, together with its subsidiaries, manufactures and sells tobacco products, primarily cigarettes, in Japan and internationally. It also distributes imported tobacco products. Japan Tobacco is based in Tokyo, Japan.

17. In Canada, JTIM is a wholly owned subsidiary of JT Canada LLC Inc. ("**ParentCo**") which is an indirect subsidiary of Japan Tobacco. Originally founded in 1858 as McDonald Brothers and Co., the company's name was changed to JTI-Macdonald Corp. in 1999 when Japan Tobacco bought the non-US tobacco operations of RJR Nabisco Inc., R.J. Reynolds Tobacco Co. and their respective affiliates (collectively, the "**RJR Group**"). JTIM is the third largest tobacco company based on volume of sales in Canada.

18. JTIM manufactures and imports a variety of cigarettes – its Canadian manufactured brands include Export A, Macdonald Special, Liggett Ducat and Winston. Besides standard cigarettes, the company also produces two lines of fine-cut products, under the brand names Export A and Macdonald Special, and Century Sam cigars.

19. The Applicant's sales, net of taxes, for fiscal 2018 were approximately $598.5 million. The vast majority of the Applicant's customers are tobacco wholesalers who then distribute the products to their retail customers. In limited circumstances, the Applicant sells products directly to retailers and consumers in Ontario.

Class Actions and Health-Care Cost Recovery Litigation

20. As discussed in the McMaster Affidavit, a judgment (the "**Judgment**") was rendered by the Quebec Superior Court against JTIM in two class action lawsuits (the "**Quebec Class**

Actions") commenced in the Province of Quebec. The Judgment was appealed to the Quebec Court of Appeal by JTIM and the other defendants in the proceedings, also Canadian tobacco companies.

21. As discussed in the McMaster Affidavit, the Quebec Court of Appeal substantially upheld the Judgment for the reasons described in the decision released on March 1, 2019 (the "**QCA Judgment**"). The QCA Judgment is 422 pages and is in French only. The English conclusions of the QCA Judgment and an English summary prepared by the Quebec Court of Appeal is attached as Exhibit "A" to the McMaster Affidavit.

22. As discussed in the McMaster Affidavit, JTIM is also the subject of lawsuits filed by each of the ten provinces against tobacco industry members relating to the potential recovery of health-care costs resulting from alleged "tobacco related wrongs" (the "**HCCR Actions**"). The defendants in such actions include R.J. Reynolds Tobacco Co. and R.J. Reynolds Tobacco International, Inc. (collectively, "**Reynolds**"), which parties benefit from an indemnity arising from the purchase agreement between the RJR Group and Japan Tobacco. As stated in the McMaster Affidavit, JTIM may have liability for the indemnification claims should a judgment be rendered against Reynolds. The total potential quantum of damages claimed is not yet known. The amount of claims, where quantified or estimated based on plaintiffs' expert reports, against Canadian tobacco industry members are as follows:

Provinces	Estimated Amount of Claims ('000s)
British Columbia	120,000,000
Alberta	10,000,000
Saskatchewan	Unspecified
Manitoba	Unspecified
Ontario	330,000,000
Quebec	61,000,000
New Brunswick	18,000,000
Nova Scotia	Unspecified
Prince Edward Island	Unspecified
Newfoundland and Labrador	Unspecified
	539,000,000 plus unspecified amounts

23. In addition to the Quebec Class Actions lawsuits and the HCCR Actions, the McMaster Affidavit also describes the following other outstanding litigation:

Provinces	Name of Class Action	Status	Estimated Value of Claims ('000s)
British Columbia	Bourassa	Dormant/Expired	Unspecified
British Columbia	McDermid	Dormant/Expired	Unspecified
Alberta	Dorian	Dormant/Expired	Unspecified
Saskatchewan	Adams	Dormant/Expired	Unspecified
Manitoba	Kunta	Dormant/Expired	Unspecified
Ontario	Jacklin	Dormant	Unspecified
Ontario	Tobacco Growers	Ongoing	$50.0 million (plus interest and costs)
Nova Scotia	Semple	Dormant/Expired	Unspecified

24. Based on the financial position of JTIM as set out in the McMaster Affidavit, JTIM does not have available funds to satisfy the QCA Judgment**.**

25. The Applicant requires the protections afforded under the CCAA in order to maintain the *status quo* of its operations and preserve going concern value for all of its stakeholders. If JTIM is forced to cease operations as a result of enforcement steps taken pursuant to the QCA Judgment, significant value of the business could be lost, employees will lose their

jobs, and trade creditors who rely on JTIM will be harmed. The stay of proceedings will provide an opportunity for JTIM to engage in discussions with its creditors, assess its strategic options, and seek a collective solution for the benefit of all stakeholders.

III. OVERVIEW OF ARRANGEMENTS WITH RELATED PARTIES

26. An organization chart with the relevant Canadian entities related to JTIM is attached as Exhibit "B" to the McMaster Affidavit.

27. As part of the Japan Tobacco global group, the Applicant benefits from group purchasing, financing, management expertise, information technology and licensing agreements. A description of certain related parties and the nature of their arrangements with the Applicant are outlined in detail in the McMaster Affidavit. The following table summarizes the material receivables and payables (gross annual transactions greater than $1.0 million) between the related parties as at December 31, 2018:

Amounts in '000s				Balance as at December 31, 2018	
Related Party	**Description**	**Frequency**	**2018 Annual Receipt (Payment)**	**Due to JTIM**	**Due from JTIM**
TM	Convertible debenture[1]	Monthly	(93,634)	-	1,187,674
TM	Royalty payments[1]	Monthly	(10,640)	429	-
ParentCo	Revolving Line of Credit*	On demand	-	-	-
ParentCo	Demand note	On demand	-	-	8,989
JTI-SA	Tobacco purchases, payments related to contract manufacturing and distribution of certain brands	Monthly in advance except Vantage royalties and distribution of certain brands which are 60 or 90 days	(262,594)	-	54,537
JTI-SA	Contract manufacturing for JTI-SA	Monthly	199,051	23,252	-
JTI-SA	Global IT services from JTI-SA	Monthly in advance	(4,140)	-	-
JTI-SA	Global function services for JTI-SA	Quarterly	4,691	34	-
JTI-SA	Regional IT services	Quarterly	4,475	416	
JTI-SA	Global human resources services	Monthly	5,058	207	
JTIH-BV[2]	Global administrative services	Monthly in advance	(6,688)	-	-
JTI Services[3]	Global human resources services	Monthly in advance	(1,203)	34	-
JTI-US[4]	Regional services provided for JTI-US	Quarterly	3,075	26	-
JTI-US[4]	Regional services provided by JTI-US	Monthly in advance	(632)	-	-
LLC-Cres[5]	Tobacco purchases	Monthly in advance	(2,229)	-	70
JTI-USA[6]	Distribution of brands in USA	Two to three times annually	4,428	1,890	-
JTI-USA[6]	Master Settlement Agreement for distribution of brands in USA	Monthly in advance	(578)	-	-
JTI-BusServ[7]	Global administrative services	Monthly in advance	(1,052)	-	-
JTI CTI[8]	Administrative services	Monthly	174	933	-
Logic[9]	Scientific & regulatory affairs services	Quarterly	1,184	-	-
				27,221	**1,251,270**

*ParentCo Loan Agreement was entered into on June 25, 2015 to replace the facility with Citibank; the principal balance outstanding is nil as at February 28, 2019.
[1]Amounts include both principal and interest accrual and payments. The Forbearance Letter dated August 3, 2017 (as amended on January 26, 2018, April 10, 2018, July 31, 2018, September 28, 2018 and January 8, 2019) between TM and JTIM amended the royalty and interest payment frequency from semi-annually to monthly. The amount owing with respect to royalty payments is net of a deposit of $1.3 million provided to TM, in satisfaction of the terms of the January 26, 2018 amendment.
[2]JT International Holding B.V.
[3]JTI Services Switzerland SA
[4]JTI (US) Holdings Inc.
[5]LLC Cres Neva
[6]Japan Tobacco International USA Inc.
[7]JTI Business Services Ltd.
[8]JTI Canada Tech Inc.
[9]Logic Technology Development LLC

IV. REVIEW OF TM SECURITY

28. The monies owed by the Applicant to TM are evidenced by debentures (the "**TM Term Debentures**") governed by the laws in the Province of Nova Scotia that are due November 18, 2024. The TM Term Debentures are redeemable at the option of the Applicant and convertible into special preference shares of JTIM at the option of TM. As part of an agreement by JTIM's secured creditors to forbear from exercising their enforcement rights against JTIM, the TM Term Debentures were amended by an agreement dated August 3, 2017, which amendment changed the interest payment dates (but not the amounts) from bi-annually to monthly; monthly interest payments are approximately $7.6 million and principal payments, due every May and November, are approximately $950,000.

29. The Proposed Monitor has requested that Monitor's Counsel review and opine on the security granted by JTIM to TM to secure obligations owing by JTIM to TM (the "**TM Security**"). The Proposed Monitor understands that JTIM owns real and personal (i.e: moveable and immovable) property in the Province of Quebec, and personal property in the other nine provinces.

30. Subject to the assumptions and qualifications as more particularly described in the opinions of the Monitor's Counsel, TM holds a valid security interest in the personal property of JTIM located in Nova Scotia, Ontario, Alberta and British Columbia and in the personal property and real property of JTIM located in Quebec. Copies of the Monitor's Counsel's legal opinions will be made available to the Court at the hearing of this matter and to stakeholders on appropriate arrangements regarding confidentiality, reliance and privilege.

31. Monitor's Counsel has also conducted searches of the personal property security registries against JTIM in Saskatchewan, Manitoba, New Brunswick, Prince Edward Island and Newfoundland & Labrador (the "**Additional Provinces**"). The searches disclose registrations in favour of TM, which on the face of the search have not expired. The Monitor's Counsel is not licenced to practice law in these jurisdictions, and no legal opinion has been given in respect of the validity or perfection of the TM Security in the Additional Provinces. The Proposed Monitor has been advised that JTIM's collateral in these jurisdictions is limited to non-material amounts of inventory compared to the total indebtedness owing to TM (i.e. $1.2 billion). As a result, the Monitor did not engage counsel in the Additional Provinces to provide security opinions.

32. As noted in the McMaster Affidavit, ParentCo privately appointed PricewaterhouseCoopers Inc. as receiver of TM on July 9, 2015 pursuant to the security granted by TM to ParentCo. Accordingly, references hereinafter to TM are to TM, in receivership.

V. OTHER RELATED PARTY SECURITY

33. In addition to the TM Security, JTIM has granted security to ParentCo to secure JTIM's obligations under a revolving line of credit. The Monitor understands there are currently no amounts owing under that credit facility.

34. JTIM has also granted security to secure ordinary course trade terms in favour of certain related party suppliers. Such trade terms and related security are discussed in greater detail in the McMaster Affidavit.

35. The Applicant is not seeking any specific relief in connection with these secured arrangements at this time. Monitor's Counsel is in a position to review and opine on such security, if and when required.

VI. PROPOSED MONITORING PROCEDURES

36. As part of its monitoring procedures, the Proposed Monitor would monitor and report on the following to ensure compliance with the Proposed Initial Order:

i. material disbursements by the Applicant to third parties in compliance with the terms of the Proposed Initial Order;

ii. receipts and disbursements as may be authorized by the Court, in respect of the Applicant's bank accounts, and weekly receipts and disbursements on a summary basis for comparison to the 13-week Cash Flow Statement (as may be updated in the future);

iii. receipts from related parties in respect of goods and services provided in accordance with existing contracts;

iv. fees paid by the Applicant to any of its related parties in respect of goods supplied and services performed to test that they are reasonable and supportable, in accordance with existing contracts including:

(a) terms and payments with respect to related party tobacco leaf purchases;

(b) fees paid by the Applicant to related parties in respect of the global information technology services provided, the sale of tobacco brands under the distribution agreement and the use of trademarks through licensing agreements, to test that they are reasonable and supportable, in accordance with existing contracts;

(c) fees paid by the Applicant to related parties in respect of the global functions provided, to test that they are reasonable and supportable, in accordance with existing contracts;

(d) fees paid by the Applicant to related parties in respect of staffing support, to test that they are reasonable and supportable, in accordance with existing contracts; and

(e) royalty payments made to TM in respect of the use of licensed trademarks and interest service payments made to TM in connection with the TM Term Debentures.

37. The Proposed Monitor believes that appropriate monitoring of the delivery of and payment for third party and intercompany services will provide the necessary oversight of the Applicant's operations during the CCAA proceedings. The Applicant and the Proposed Monitor have discussed these procedures with which the Applicant concurs.

VII. APPLICANT'S CASH FLOW STATEMENT

38. The Applicant, with the assistance of the Proposed Monitor, has prepared the Cash Flow Statement for the period from February 25 to May 24, 2019 (the "**Cash Flow Period**") for the purposes of projecting the estimated results of the Applicant's planned operations and other activities during the Cash Flow Period. A copy of the Cash Flow Statement is attached as Appendix "A" hereto, and summarized below:

Summary of Cash Flow Statement	**Amount ('000s)**
Receipts	
Sales and other	261,379
Intercompany	75,959
Total Receipts	**337,338**
Disbursements	
Payroll and Benefits	17,085
Pension	2,301
Taxes	184,153
Intercompany – Debenture	23,878
Intercompany – Royalties	2,284
Intercompany – Other	70,766
Professional Fees	4,194
Restructuring Costs	2,430
Other	62,036
Total Disbursements	**369,127**
Cash Flow Surplus / (Deficit)	**(31,789)**
Opening Cash	**161,196**
Closing Cash	**129,407**
Cash Collateral pledged to Citibank	**8,900**
Closing Cash net of Cash Collateral	**120,507**

39. The Cash Flow Statement is presented on a weekly basis during the Cash Flow Period and represents the best estimate of Management of the projected cash flow during the Cash Flow Period. The Cash Flow Statement has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Cash Flow Statement (the "**Assumptions**").

40. The Proposed Monitor has reviewed the Cash Flow Statement to the standard required of a Court-appointed monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for monitors fulfilling their statutory responsibilities under the CCAA in respect of a monitor's report on a cash flow statement.

41. In accordance with the standard, the Proposed Monitor's review of the Cash Flow Statement consisted of inquiries, analytical procedures and discussions related to the Information. Since the Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Statement. The Proposed Monitor also reviewed the support provided by Management for the Assumptions and the preparation and presentation of the Cash Flow Statement.

42. Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:

i. the Assumptions are not consistent with the purpose of the Cash Flow Statement;

ii. as at the date of this Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Statement, given the Assumptions; or

iii. the Cash Flow Statement does not reflect the Assumptions.

43. Since the Cash Flow Statement is based on Assumptions regarding future events, actual results will vary from the information presented even if the Assumptions occur, and the variations could be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Statement will be achieved. In addition, the Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Statement, or relied upon by the Proposed Monitor in preparing this Report.

44. The Cash Flow Statement has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

VIII. OTHER COURT ORDERED CHARGES

45. The Proposed Initial Order provides for an Administration Charge (as defined below), a Directors' Charge (as defined below) and a Sales and Excise Tax Charge (as defined below) (collectively, the "**Charges**").

46. If the Proposed Initial Order is granted, the Charges shall constitute a charge on the Property (as defined in the Proposed Initial Order) and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any person, except for (i) purchase money security interests, (ii) statutory superpriority deemed trusts and liens for unpaid employee source deductions, (iii) statutory superpriority deemed trusts and liens for any pension obligations with respect to the Applicant's pension plans, (iv) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute, and (v) cash collateral securing letters of credit or bank guarantees (the "**Permitted Priority Liens**").

Administration Charge

47. The Proposed Initial Order provides for a charge (the "**Administration Charge**") in favour of counsel to the Applicant, the Monitor, Monitor's Counsel and the proposed Chief Restructuring Officer (the "**CRO**"), other than any success fee in respect of the CRO. The Administration Charge shall not exceed an aggregate amount of $3.0 million, as security for professional fees and disbursements incurred at the standard rates and charges of the CRO, the Monitor and such counsel, both before and after the issuance of the Proposed Initial Order in respect of these CCAA proceedings.

Directors' Charge

48. The Proposed Initial Order provides for a charge in the amount of $4.1 million (the "**Directors' Charge**") in favour of the Applicant's directors and officers as security for any obligations or liabilities that may arise after the commencement of the CCAA

proceedings, except to the extent that such obligation or liability is incurred as a result of such director's or officer's gross negligence or wilful misconduct and to the extent that such directors do not have coverage under any directors' and officers' insurance policy.

Sales and Excise Tax Charge

49. The Proposed Initial Order provides for a charge in favour of the provincial, territorial and federal taxing authorities (the "**Sales and Excise Tax Charge**") to secure the Applicant's obligations to remit harmonized and provincial sales or excise tax or duties, import or customs duties and provincial and territorial tobacco tax (collectively, the "**Sales and Excise Taxes**"). The Sales and Excise Tax Charge shall not exceed an aggregate amount of $127.0 million.

IX. PROPOSED MONITOR'S COMMENTS ON THE PROPOSED INITIAL ORDER

50. In addition to the matters described above, the Proposed Monitor has set out its observations with respect to the following certain matters relating to the Proposed Initial Order or referenced in the McMaster Affidavit:

i. the Charges and their priority:

ii. the appointment of the CRO;

iii. payment of trade creditors, taxes, pension and other disbursements;

iv. scope of stay;

v. sealing Order; and

vi. notice to creditors.

i. ***Charges***

51. The Charges, as set out in the Proposed Initial Order, would have the following priority:

i. Administration Charge;

ii. Directors' Charge;

iii. Sales and Excise Tax Charge.

52. The Proposed Monitor is of the view that the proposed Administration Charge is reasonable and appropriate in the circumstances, having regard to, among other things, the complexity of these CCAA proceedings, and the potential professional work involved at peak times.

53. The Proposed Monitor reviewed the proposed amount of the Directors' Charge, taking into consideration the amount of the Applicant's payroll and vacation pay and pension liabilities. The quantum of the Directors' Charge, however, does not include amounts owed by JTIM in respect of taxes that may also be personal liabilities of the directors and/or officers if not paid by JTIM. JTIM's obligations in connection with such tax liabilities are to be secured by the Sales and Excise Tax Charge.

54. The table below is derived from the Cash Flow Statement and discussions with Management and estimates the maximum liability associated with potential directors' and officers' obligations in the ordinary course of business:

Potential Directors & Officers Liabilities	Payment Frequency	Max Liability	Amount ('000s)
Payroll	Weekly/Bi-weekly	2 weeks	2,100
Pension	Monthly	1 month	982
Vacation and other	Monthly	1 month	557
			3,639
Proposed Director's Charge			**4,100**

55. The Applicant maintains directors' and officers' liability insurance ("**D&O Insurance**") for the directors and officers of the Applicant. The Proposed Monitor understands that the current D&O Insurance provides a total of $12.9 million in coverage and a retention amount (akin to a deductible) is applicable for certain claims in the amount of $45,178.

56. The proposed Directors' Charge of $4.1 million is approximately the maximum estimated liability associated with directors' and officers' non-tax related obligations at peak times. The Proposed Initial Order provides that the Directors' Charge will only be available to the extent the D&O Insurance is not available, in the event a claim is made. The Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate under the circumstances.

57. The Proposed Monitor reviewed the proposed amount of the Sales and Excise Tax Charge, taking into consideration the amount of the Applicant's tax liabilities and surety bonds or other security posted as security for such unremitted taxes. As mentioned in the McMaster Affidavit, the Applicant remits more than $500 million in taxes and duties annually to the

federal and provincial governments in relation to the sale of JTIM's products; directors and officers potentially face significant liability if those taxes were not remitted. The Sales and Excise Tax Charge ensures this risk is mitigated and provides the directors and officers comfort that they will not expose themselves to personal liability by remaining with JTIM. The table below estimates the maximum liability the directors and/or officers may be personally liable for if not paid by JTIM:

Potential Directors & Officers Liabilities	**Payment Frequency**	**Max Liability**	**Amount ('000s)**
Domestic and Import Duty	Monthly	2 months	116,796
GST/HST/QST	Monthly	2 months	14,217
Income Tax	Monthly	1 month	1,685
Provincial Tobacco Tax	Monthly	2 months	3,393
			136,091
Less: Amounts provided for by surety bonds			**(8,916)**
			127,175
Proposed Sales and Excise Tax Charge			**127,000**

58. As noted above, these tax liabilities have not been taken into consideration in determining the quantum of the Directors' Charge. The Proposed Monitor is of the view that the Sales and Excise Tax Charge is reasonable and appropriate under the circumstances.

ii. CRO Appointment

59. The Applicant seeks the approval and confirmation of the Court of the retention of an experienced CRO to oversee and direct the stakeholder engagement and negotiation process and the approval of the terms of the CRO's engagement letter. The Proposed Monitor understands that the engagement of a CRO is requested in order to minimize the

disruption to the business and the distraction of senior executives away from the task of managing the business.

60. A copy of the unredacted CRO engagement letter is attached to the McMaster Affidavit as Confidential Exhibit "1" (the "**CRO Engagement Letter**").

61. The CRO Engagement Letter provides for both a monthly work fee as well as a success fee. The Proposed Monitor is of the view that the work fee is reasonable and consistent with fees approved in other recent CCAA proceedings.

62. The success fee is only payable if the Quebec Class Actions are settled contractually or compromised pursuant to a CCAA plan or if all claims filed against the Applicant in the CCAA proceedings (including the Quebec Class Actions, the HCCR Actions and the other tobacco related claims) are contractually settled or compromised in a CCAA plan. The success fee is not payable where the assets of JTIM are sold.

63. The Proposed Monitor is of the view that that success fee is reasonable in light of (i) the nature and complexity of the Quebec Class Actions, the HCCR Actions and other tobacco related litigation that has been commenced against JTIM; (ii) the quantum of the QCA Judgment and the amounts asserted in other tobacco related litigation (including the HCCR Actions) against JTIM relative to the success fee; (iii) the enterprise value of JTIM that would be preserved in a successful resolution of such claims relative to the success fee; and (iv) the fact that the success fee is not payable in a liquidation or sale of JTIM's business or assets but only payable in circumstances where a consensual resolution has

been achieved, either by way of a contractual settlement or a CCAA plan that receives requisite creditor support and court approval and is implemented.

64. The Proposed Monitor is of the view that the relief sought in the Proposed Initial Order with respect the CRO, including with respect to limitations of liability of the CRO, are appropriate in the circumstances and consistent with established precedent.

iii. Payment of employees, trade creditors, taxes, pension obligations and other disbursements

65. As described in the McMaster Affidavit, the Applicant proposes to pay its employees, trade creditors, taxes, pension obligations and other disbursements in the ordinary course of business for amounts owing both before and after JTIM's application to the Court for protection under the CCAA.

66. The McMaster Affidavit states that there are approximately 1,300 suppliers and normal course creditors to the Applicant, with approximately 15% being resident in foreign jurisdictions. All such trade suppliers are current at this time, with standard payment terms not typically exceeding 30 days. Management advises the Proposed Monitor that as at December 31, 2018 approximately $108.1 million is owed to non-related third parties. The third party amounts are comprised of taxes and duties, trade creditors, accruals and other liabilities. Further amounts are owed for pension and post-retirement benefits. Additionally, as at December 31, 2018, the current portion of liabilities owed to related parties is approximately $40.0 million.

67. The current portion of related party amounts pertain to trade related payables, demand promissory notes payable to ParentCo, royalty payments due in respect of the license of

trademarks from TM, and interest payable to TM under the TM Term Debentures. Further, the Applicant owes approximately $1.2 billion to TM under the TM Term Debentures.

68. While pre-filing claims could be stayed pursuant to the CCAA, the Proposed Monitor does not object to the Applicant's intention to make the proposed pre-filing payments for the reasons set out below.

69. Employees, Pension Obligations, Taxes and Duties: The Proposed Monitor is supportive of paying pre-filing amounts in relation to payroll and benefits including normal course pension payments and special payments, and taxes and duties, many of which amounts have priority status and/or will give rise to director liability if not paid. In the Proposed Monitor's experience, it is common to pay both pre-filing and post-filing obligations to employees in the normal course, including to ensure continued and uninterrupted service by employees. To the extent that cash flows support the ability to do so, in the Proposed Monitor's experience, it is also common to pay both normal course and special payments pension obligations. Based on the Proposed Monitor's discussions with Management, the Applicant has the cash resources to make the required payments.

70. Third Party Trade Creditors: The Proposed Monitor supports the Applicant's proposal to pay third party trade creditors for the following reasons:

i. As noted in the McMaster Affidavit, related party suppliers have amended their contractual terms to provide for at will supply and do not have long term supply obligations. It is JTIM's intention to treat all categories of suppliers equally and not advantage those that may be better placed to exert commercial pressure because

of their geographic location or supply terms. The incremental cost of paying the pre-filing amounts of those third party suppliers situated in Canada that also have committed supply obligations is not material relative to the value of the Applicant's business, the Applicant's cash resources or the QCA Judgment.

ii. Paying these creditors their pre-filing debt in the ordinary course avoids significant administrative time expenditure of Management and the Proposed Monitor communicating, negotiating future payment terms, and calculating pre- and post-filing cut-off with this large number of parties.

iii. The Applicant's production facility operates on a near-continuous basis. There is significant risk that an unpaid supplier could temporarily disrupt production by withholding supply until such communication and arrangements have been put in place or orders of the Court are enforced. This risk is avoided by paying such suppliers their current invoices in the ordinary course for pre-filing obligations.

iv. The proposed CCAA proceeding is not intended to be an operational restructuring and the Applicant does not seek CCAA protection in response to any liquidity constraints arising from any inability to service its pre-filing trade credit. To the contrary, the Applicant has the cash resources to continue to make such payments in the normal course and minimize any deleterious effects of the proposed CCAA proceedings on the supply chain.

71. Related Party Payments: As noted above, the Applicant's related party suppliers supply on an at will basis. Like third party trade creditors, the Applicant's related party suppliers

provide needed supplies and services pursuant to previously agreed upon trade terms. Making the requested payments in accordance with ordinary terms does not appear to place any undue burden on the cash resources of the Applicant and allows similarly situated trade creditors to be treated rateably. The Proposed Monitor does not see any basis for asymmetrical treatment of suppliers. The Proposed Monitor notes that the Applicant does not owe any amounts to TM in respect of pre-filing royalty payments.

72. Interest Service Payment: In light of the Monitor's Counsel's conclusions about the validity of the TM Security, the Proposed Monitor does not object to ordinary course interest payments under the TM Term Debentures being made. As noted in the McMaster Affidavit, JTIH-BV has provided an undertaking to repay any post-filing interest received during the CCAA proceedings in the event that this Court (or any applicable appellate court) should finally determine that TM was not entitled to such post-filing interest payments.

iv. Scope of the Stay

73. In addition to the standard stay of proceedings contemplated by the CCAA Model Order, under the Proposed Initial Order, the Applicant seeks to stay the Pending Litigation related to a Tobacco Claim (defined terms as defined in the Proposed Initial Order) including the HCCR Actions against all parties thereto, including Reynolds.

74. As noted above, Reynolds benefits from an indemnity for which JTIM could have liability should a judgment be rendered against Reynolds in the HCCR Actions.

75. The Proposed Monitor is of the view that the scope of the stay is appropriate as it affords the parties the opportunity to reach a global settlement to address the potential liability of JTIM as both principal and potential indemnitor.

v. Sealing Order

76. As described in the McMaster Affidavit, the Applicant is seeking a sealing order in respect of the unredacted CRO engagement letter. The CRO engagement letter contains commercially sensitive information regarding the terms of the engagement of the CRO that the CRO has advised may have a detrimental impact on its ability to negotiate compensation on future engagements.

77. The Monitor is of the view that the sealing of the unredacted CRO engagement letter should not materially prejudice any third parties and supports such sealing.

vi. Notice to creditors

78. The Proposed Monitor will fulfill the statutory requirement to send a notice of the CCAA proceedings to every known creditor who has a claim against the Applicant of more than $5,000. Subject to the Court approving this increased threshold, the Proposed Monitor believes this is reasonable notice considering that JTIM proposes to pay its employees, trade creditors, taxes, pension obligations and other disbursements in the ordinary course of business for amounts owing both before and after the CCAA filing. It is the Proposed Monitor's intention to publish two notices of the CCAA filing in each of the national edition of the *Globe and Mail* and *La Presse*. Stakeholder communications and the Initial

Order will be published on the Proposed Monitor's dedicated website in English and French.

CONCLUSION

79. Based on the circumstances and analysis set out above, the Proposed Monitor is supportive of the Applicant's request for relief pursuant to the CCAA and the terms of the Proposed Initial Order.

All of which is respectfully submitted this 8 th day of March, 2019.

Deloitte Restructuring Inc.
Solely in its proposed role as Court-appointed Monitor
of JTIM, and not in its personal capacity

Per:
Paul M. Casey, CPA, CA, FCIRP, LIT
Senior Vice-President

Appendix A

Cash Flow Statement

JTI-Macdonald Corp.
13-week Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	25-Feb-19	4-Mar-19	11-Mar-19	18-Mar-19	25-Mar-19	1-Apr-19	8-Apr-19	15-Apr-19	22-Apr-19	29-Apr-19	6-May-19	13-May-19	20-May-19	13 weeks Total
Receipts															
Sales	2	17,657	17,941	18,165	18,418	18,680	18,960	20,644	17,244	20,077	20,838	22,137	23,340	23,305	257,407
Intercompany Receipts	3	4,064	6,349	4,664	7,840	8,417	4,992	4,992	8,128	4,992	5,101	5,173	5,173	6,074	75,959
Tax Refunds	4	972	-	1,000	-	-	-	-	1,000	-	-	-	1,000	-	3,972
Total Receipts		**22,694**	**24,290**	**23,830**	**26,258**	**27,097**	**23,952**	**25,635**	**26,372**	**25,069**	**25,939**	**27,310**	**29,513**	**29,380**	**337,338**
Disbursement															
General Expenses	5	2,276	2,381	2,381	2,281	2,381	2,273	2,273	2,173	2,273	2,083	1,957	1,957	1,857	28,543
Payroll and Benefits	6	1,845	445	1,845	945	1,845	445	1,845	445	2,345	445	1,845	445	2,345	17,085
Pension	7	-	-	-	767	-	-	-	767	-	-	-	767	-	2,301
Promotions and Marketing	8	878	1,610	1,610	1,610	1,610	2,562	2,562	2,562	2,562	2,004	1,632	1,632	1,632	24,464
Leaf	9	-	-	2,688	-	-	-	-	2,405	-	-	-	-	-	5,093
Capital Expenditures and Leases	10	249	-	1,689	-	241	-	-	-	-	1,757	-	-	-	3,936
Professional Fees	11	305	305	305	305	305	437	437	437	437	229	229	229	229	4,194
Restructuring Costs	12	264	168	168	168	249	153	153	153	249	153	153	153	249	2,430
Domestic and Import Duty	13	48,500	-	-	-	2,000	36,057	-	-	-	57,085	-	-	-	143,642
GST and HST	14	5,000	-	-	-	-	3,804	-	-	-	5,707	-	-	-	14,511
Intercompany Disbursements	15	2,258	350	4,538	10,456	5,258	5,811	5,811	6,665	5,811	6,779	5,468	5,468	6,093	70,766
Intercompany Royalties	16	828	-	-	-	707	-	-	-	-	749	-	-	-	2,284
Intercompany Interest	17	-	-	-	7,648	-	-	-	7,648	-	-	-	-	7,648	22,945
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-	933	933
Income Tax Instalments and PTT	18	16,180	1,500	-	-	-	2,660	1,500	-	-	2,660	1,500	-	-	26,000
Total Disbursements		**78,583**	**6,760**	**15,225**	**24,180**	**14,597**	**54,202**	**14,580**	**23,254**	**13,677**	**79,650**	**12,783**	**10,650**	**20,986**	**369,127**
Cashflow Surplus/Deficit (-)		**(55,889)**	**17,530**	**8,605**	**2,078**	**12,500**	**(30,250)**	**11,055**	**3,118**	**11,391**	**(53,711)**	**14,527**	**18,863**	**8,394**	**(31,789)**
Opening Cash Balance	1	**161,196**	**105,306**	**122,837**	**131,442**	**133,520**	**146,020**	**115,770**	**126,825**	**129,943**	**141,334**	**87,623**	**102,150**	**121,013**	**161,196**
Closing Cash Balance		**105,306**	**122,837**	**131,442**	**133,520**	**146,020**	**115,770**	**126,825**	**129,943**	**141,334**	**87,623**	**102,150**	**121,013**	**129,407**	**129,407**
Cash Collateral	19														
Opening Balance		8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900
Cash Collateral Withdrawal/(deposit)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**
Closing Cash net of Cash Collateral		**96,406**	**113,937**	**122,542**	**124,620**	**137,120**	**106,870**	**117,925**	**121,043**	**132,434**	**78,723**	**93,250**	**112,113**	**120,507**	**120,507**

In the Matter of the *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP.

("JTIM" or the "Applicant")

Notes to the Applicant's Unaudited Cash Flow Statement

Disclaimer

In preparing this cash flow projection (the "**Cash Flow Statement**"), the Applicant has relied upon unaudited interim financial information and the major assumptions listed below. The Cash Flow Statement includes estimates concerning the operations of the Applicant with consideration to the impact of a filing under the *Companies' Creditors Arrangement Act*, as amended (the "**CCAA**"). The Cash Flow Statement is based on assumptions about future events and the actual results achieved during the forecast period will vary from the Cash Flow Statement, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized. Parties using the Cash Flow Statement for reasons other than to assess the cash flows of the Applicant during the forecast period are cautioned that it may not be appropriate for their purposes.

Overview

The Cash Flow Statement reflects cash flows from JTIM. The Applicant, with the assistance of the Monitor, has prepared the Cash Flow Statement based primarily on historical results and JTIM's current expectations derived from their annual budgeting process. Consistent with the Applicant's budgeting process, the Cash Flow Statement is presented in thousands of Canadian Dollars. Receipts and disbursements denominated in U.S. Dollars have been converted into Canadian Dollars using an exchange rate of **CDN$1.29 = USD$1.00**.

Major Assumptions

RECEIPTS

1. Opening cash balance

This is the opening cash balance at the start of the cash flow projection.

2. Sales

Receipts from JTIM's trade sales are estimated based on a weekly forecast of collections from existing accounts. The projected sales are derived from JTIM's annual budget, which includes assumptions surrounding industry wide price fluctuations. JTIM collects payment from its customers via direct debit once product is shipped. The vast majority of JTIM's customers are tobacco wholesalers. In limited circumstances, JTIM sells directly to retail accounts.

3. Intercompany Receipts

JTIM is owned indirectly by Japan Tobacco Inc. ("**Japan Tobacco**"), a publicly listed company in Japan. Certain employees of JTIM, located at either the Mississauga head office or Montreal factory locations, perform services for non-Canadian entities. A charge for time spent is applied to the related party corporation benefiting from the services. The charge is based on time spent by the employees based on an annual submission that the employee provides. The fee rate is based on the cost of each employee to JTIM, plus a 5% mark-up.

JTIM provides other related-party international tobacco companies outside of Japan ("**JT International**") with skilled personnel (i.e. expatriates working abroad), and is reimbursed the costs of such employees.

There are three JT International Global Service Desks ("**GSDs**") located across the world in Canada, Russia and Malaysia. The GSDs handle information and technology queries from JT International employees and corporations on a twenty-four hour basis. The GSDs are managed out of the international headquarters of Japan Tobacco in Geneva, Switzerland. The costs of the Canadian GSD, located in Montreal, are initially paid by JTIM, but fully cross-charged to JT International S.A. ("**JTI-SA**") to be included in the global IT cost base for allocation across Japan Tobacco.

JTIM performs contract manufacturing for non-Canadian branded cigarettes at the Montreal manufacturing facility for JTI-SA.

JTIM also provides services to another JT International entity in Canada with respect to that entity's distribution of potentially reduced risk products in Canada.

JTIM exports Canadian brand cigarettes to other JT International entities for sale.

4. Tax Refunds

The projected tax refunds relate to the collection of QST refunds in Quebec, excise tax refunds for product that require rework or destruction and customs duty refunds for imported product that require destruction.

DISBURSEMENTS

5. General Expenses

These projected disbursements include payments related to non-tobacco materials, travel, service related activities, utilities and rent.

6. Payroll and Benefits

These projected disbursements include payroll and benefit costs for all salaried and hourly plant employees. The forecast amounts are based on historic run rates. Hourly plant employees are paid weekly and salaried employees are paid bi-weekly. Payroll disbursements include all employee source deductions, employee and employer portions of CPP/QPP and EI, and other payroll-related taxes.

7. Pension

These projected disbursements represent payments to JTIM's registered employees plan, registered executive employees plan and the executive supplemental benefit plan. The pension amounts forecast in the cash flow include all current and special obligation amounts.

8. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures and Leases

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures primarily relate to new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety. Additional expenditures are forecast for regional sales office leases, vehicles used by marketing representatives and miscellaneous information technology requirements.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate litigation matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel and the fees and costs of the Chief Restructuring Officer.

13. Domestic and Import Duty

These projected disbursements relate to payments to the Canada Revenue Agency **("CRA")** with respect to tobacco products produced under the *Excise Act*, 2001 and duty on imported tobacco products. Excise duty returns and payments are due on the last day of the month following the reporting period (e.g. a return for a period ending February 28 is due by March 31). Import duty payments are paid once a month on a rolling basis with the 21st being the end of the month.

14. GST and HST

These projected disbursements represent payments to the CRA with respect to GST and HST. Historically, JTIM has always been in a monthly net payable position.

15. Intercompany Disbursements

These projected disbursements represent: (i) payments for goods and services provided by JT International entities such as tobacco products from JTI-SA, LLC Cres Neva, JTI (US) Holdings Inc., and Japan Tobacco International USA Inc., (ii) IT services provided by JTI-SA, (iii) global administrative services provided by JTI Business Services Ltd., (iv) employee arrangements provided by JTI Services Switzerland SA, and (v) global headquarter services provided by JT International Holdings B.V.

16. Intercompany Royalties

JTI-Macdonald TM Corp. ("**TM**") provides licenses to JTIM to use the trademarks to manufacture and sell goods bearing the trademarks in exchange for a monthly royalty payment.

17. Intercompany Interest and Principal

This disbursement represents the semi-annual principal and monthly interest payments on the $1.2 billion secured convertible debentures by JTIM to TM. Principal payments on the debentures are made in May and November.

18. Income Tax Instalments and Provincial Tobacco Taxes

These projected disbursements represent corporate income tax instalments and payments of Provincial Tobacco Taxes **("PTT")** on direct retail sales. The Cash Flow Statement includes a top-up payment for 2018 corporate income tax on February 28, 2019.

19. Cash Collateral

Cash Collateral of $8.9 million was pledged to Citibank pursuant to two agreements dated in 2016 and 2017 to allow for continued central travel account card services and cash management services provided by Citibank.

This is **Exhibit "E"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

Court File No. CV-19-616077-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 12TH
JUSTICE MCEWEN	)	DAY OF MARCH, 2019
	)	

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED (the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Eric Thauvette sworn March 12, 2019 and the exhibits thereto (the "**Thauvette Affidavit**"), (ii) the affidavit of Nancy Roberts sworn March 12, 2019, and (iii) the pre-filing report dated March 12, 2019 (the "**Monitor's Pre-Filing Report**") of FTI Consulting Canada Inc. ("**FTI**") in its capacity as the proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants, BAT (as defined herein), FTI and the Honourable Warren K. Winkler, Q.C. in his capacity as proposed Interim Tobacco Claimant Coordinator (as defined herein), and on reading the consent of FTI to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application

is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

DEFINITIONS

4. THIS COURT ORDERS that for purposes of this Order:

(a) "**BAT**" means British American Tobacco p.l.c.;

(b) "**BAT Group**" means, collectively, BAT, BATIF, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries;

(c) "**BATIF**" means B.A.T. International Finance p.l.c.;

(d) "**Deposit Posting Order**" means the order of the Quebec Court of Appeal granted October 27, 2015 or any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;

(e) "**ITCAN**" means Imperial Tobacco Canada Limited;

(f) "**ITCAN Subsidiaries**" means the direct and indirect subsidiaries of the Applicants listed in Schedule "B";

(g) "**Pending Litigation**" means any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named

defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including without limitation the litigation listed in Schedule "A";

(h) "**Quebec Class Actions**" means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;

(i) "**Sales & Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;

(j) "**Tobacco Claim**" means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced as a government body or agency, insurer, employer, or otherwise, under or in connection with:

(i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada, or in the case of any of the Applicants, anywhere else in the world; or

(ii) the legislation listed on Schedule "C", as may be amended or restated, or similar or analogous legislation that may be enacted in future,

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicants, the ITCAN Subsidiaries or any member of the BAT Group; and

(k) "**Tobacco Products**" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or Business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Thauvette Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or other Person providing the Cash

Management System (including, without limitation, BATIF and its affiliates, The Bank of Nova Scotia and Citibank, N.A.) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive and share compensation plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to the Applicants' employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Applicants' other retirement programs), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance and severance pay payable to employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;

(b) the fees and disbursements of any Assistants retained or employed by the Applicants, including without limitation in respect of any proceedings under Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended, at their standard rates and charges;

(c) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of this Order:

(i) by logistics or supply chain providers, including customs brokers and freight forwarders;

(ii) by providers of information technology, social media marketing strategies and publishing services; and

(iii) in respect of the Loyalty Program as set out in the Thauvette Affidavit;

(d) with the consent of the Monitor, amounts payable in respect of any Intercompany Transactions (as defined herein); and

(e) by other third party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the Business or the Property.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of $1 million or an aggregate of such expenditures in a calendar year in excess of $5 million; and

(c) payment for goods or services supplied or to be supplied to the Applicants on or after the date of this Order (including the payment of any royalties).

9. THIS COURT ORDERS that the Applicants are authorized to complete outstanding transactions and engage in new transactions with any member of the BAT Group and to continue, on and after the date hereof, to buy and sell goods and services and to allocate, collect

and pay costs, expenses and other amounts from and to the members of the BAT Group, including without limitation in relation to head office and shared services, finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licenses (collectively, together with the Cash Management System and all transactions and all inter-company funding policies and procedures between any of the Applicants and any member of the BAT Group, the "**Intercompany Transactions**") in the ordinary course of business as described in the affidavit or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicants and any member of the BAT Group, including the provision of goods and services from any member of the BAT Group to any of the Applicants, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all Sales & Excise Taxes required to be remitted by the Applicants in connection with the Business; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

11. THIS COURT ORDERS that the Applicants are, subject to paragraph 12, authorized to post and to continue to have posted, cash collateral, letters of credit, performance

bonds, payment bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding $111 million (the "**Bonding Collateral**"), to satisfy regulatory or administrative requirements to provide security that have been imposed on the Applicants in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicants as such security.

12. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes are hereby stayed during the Stay Period from requiring that any additional bonding or other security be posted by or on behalf of the Applicants in connection with Sales & Excise Taxes, or any other matters for which such bonding or security may otherwise be required.

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the relevant Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants or claims to which they are subject to any of their creditors as of this date and to post no security in respect of such amounts or claims, including pursuant to an order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations and to dispose of redundant or non-material assets not exceeding $1,000,000 in any one transaction or $5,000,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

16. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the relevant Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the relevant Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

17. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against such Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

18. THIS COURT ORDERS that until and including April 11, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to any Pending Litigation and any other Proceeding in relation to any other Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicants, the ITCAN Subsidiaries, the Monitor, any of their respective employees and representatives acting in that capacity, the Interim Tobacco Claimant Coordinator, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of any of the Applicants or the ITCAN Subsidiaries, any of their respective employees and representatives acting in that capacity or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicants in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. THIS COURT ORDERS that, during the Stay Period, no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicants, the Business or the Property, including the Pending Litigation, shall be commenced, continued or take place against or in respect of any member of the BAT Group except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take

place against or in respect of any member of the BAT Group are hereby stayed and suspended pending further Order of this Court.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

21. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor or their respective employees and representatives acting in that capacity, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicants, the Property or the ITCAN Subsidiaries), are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants or the ITCAN Subsidiaries to carry on any business which the Applicants or the ITCAN Subsidiaries are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

22. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the ITCAN Subsidiaries, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

23. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or the ITCAN Subsidiaries or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services or other services to the Business, the Applicants or the ITCAN Subsidiaries, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or the ITCAN Subsidiaries, and that the Applicants and the ITCAN Subsidiaries shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and the ITCAN Subsidiaries in accordance with normal payment practices of the Applicants and the ITCAN Subsidiaries or such other practices as may be agreed upon by the supplier or service provider and the respective Applicant or ITCAN Subsidiary and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

SALES AND EXCISE TAX CHARGE

25. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes (including for greater certainty the Canada Border Services Agency) shall be entitled to the benefit of and are hereby granted a charge (the "**Sales and Excise Tax Charge**") on the Property, which charge shall not exceed an aggregate amount of $580 million, as security

for all amounts owing by the Applicants in respect of Sales & Excise Taxes, after taking into consideration any Bonding Collateral posted in respect thereof. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 45 and 47 hereof.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $16 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicants in their preparation of the Applicants' cash flow statements;

(d) advise the Applicants in their development of the Plan and any amendments to the Plan;

(e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) assist the Applicants, to the extent required by the Applicants, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;

(i) consult with the Interim Tobacco Claimant Coordinator in connection with the Interim Tobacco Claimant Coordinator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan;

(j) be and is hereby appointed to serve as the "foreign representative" of the Applicants in respect of an application to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, the Ontario *Occupational Health and Safety Act*, the Quebec *Environment Quality Act*, the Quebec *Act Respecting Occupational Health and Safety* and any regulations under any of the foregoing statutes (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the

Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the Interim Tobacco Claimant Coordinator with information provided by the Applicants in response to reasonable requests for information made in writing by such person addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor and counsel to the Applicants retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount

of $5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

INTERIM TOBACCO CLAIMANT COORDINATOR

39. THIS COURT ORDERS that the Hon. Warren K. Winkler Q.C. is hereby appointed, on an interim basis until April 30, 2019 or as may be agreed to by the Applicants and the Monitor (the "**Interim Period**"), as an officer of the Court and shall act as an independent third party (the "**Interim Tobacco Claimant Coordinator**") to assist and to coordinate the interests of all Persons (other than any defendant or respondent, any of their respective affiliates, and the federal, provincial and territorial governments of Canada) in these proceedings (the "**Tobacco Claimants**") in connection with the Pending Litigation and any Tobacco Claim (the "**Interim Duties**").

40. THIS COURT ORDERS that, during the Interim Period, the Interim Tobacco Claimant Coordinator shall be at liberty to, among other things:

(a) retain independent legal counsel and such other advisors and persons as the Interim Tobacco Claimant Coordinator considers necessary or desirable to assist him in relation to the Interim Duties;

(b) consult with Tobacco Claimants, the Monitor, the Applicants and other creditors and stakeholders of the Applicant, including in connection with any recommendations that the Interim Tobacco Claimant Coordinator has in respect of the (i) establishment of a committee of Tobacco Claimants (the "**Tobacco Claimant Committee**") to consult with and provide input to the Interim Tobacco Claimant Coordinator and the procedures to govern the formation and operation of the Interim Tobacco Claimant Committee; and (ii) procedural mechanisms to be implemented to facilitate the resolution of the Tobacco Claims;

(c) accept a court appointment of similar nature to represent claimants with interests similar to the Tobacco Claimants in any proceedings under the CCAA commenced by a company that is a co-defendant with any of the Applicants in any action

brought by one or more Tobacco Claimants, including the Pending Litigation; and

(d) apply to this Court for advice and directions at such times as the Interim Tobacco Claimant Coordinator may so require.

41. THIS COURT ORDERS that, subject to an agreement between the Applicants and the Interim Tobacco Claimant Coordinator, all reasonable fees and disbursements of the Interim Tobacco Claimant Coordinator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to the Interim Duties shall be paid by the Applicants on a monthly basis, forthwith upon the rendering of accounts to the Applicants.

42. THIS COURT ORDERS that the Interim Tobacco Claimant Coordinator shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Tobacco Claimant Coordinator Charge**") on the Property, which charge shall not exceed an aggregate amount of $1 million, as security for his fees and disbursements and for the fees and disbursements of his legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Interim Tobacco Claimant Coordinator Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that the Interim Tobacco Claimant Coordinator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

44. THIS COURT ORDERS that, in addition to the rights and protections afforded as an officer of this Court, the Interim Tobacco Claimant Coordinator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Administration Charge, the Interim Tobacco Claimant Coordinator Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "**Charges**"), as among them, shall be as follows:

(a) First – Administration Charge (to the maximum amount of $5 million) and the Interim Tobacco Claimant Coordinator Charge (to the maximum amount of $1 million), *pari passu*;

(b) Second – Directors' Charge (to the maximum amount of $16 million); and

(c) Third – the Sales and Excise Tax Charge (to the maximum amount of $580 million).

46. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges encumbrances, and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property save and except for:

(a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);

(b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;

(c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, but only to the extent that any such

deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract; and

(d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

49. THIS COURT ORDERS that each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below) and advising of the appointment of the Interim Tobacco Claimant Coordinator, (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than $5,000, except with respect to (I) Tobacco Claimants, in which cases the Monitor shall only send a notice to the Interim Tobacco Claimant Coordinator and to counsel of record in the applicable Pending Litigation (if any) and (II) in the case of beneficiaries of the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, in which case the Monitor shall only send a notice to the trustees of each of the DB Plans, the DC Plan and the Applicants' other pension plans, and the Retraite Québec, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced in subparagraph (C) above shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

52. THIS COURT ORDERS that notice of the appointment of the Interim Tobacco Claimant Coordinator shall be provided to the Tobacco Claimants by:

(a) notice on the Case Website (as defined herein) posted by the Monitor;

(b) advertisements published without delay by the Monitor in The Globe and Mail (National Edition) and La Presse, which advertisements shall be in addition to the advertisement required under paragraph 51 hereof, and which shall be run on two non-consecutive days following the day on which the advertisement set out in paragraph 51 is run; and

(c) delivery by the Applicants of a copy of this Order to counsel of record in the applicable Pending Litigation, who shall thereafter (i) post notice of the appointment of the Interim Tobacco Claimant Coordinator on their respective websites and (ii) deliver notice of the appointment of the Interim Tobacco Claimant Coordinator to each representative plaintiff;

53. THIS COURT ORDERS that notice of any motions or other proceedings to which the Tobacco Claimants are entitled or required to receive in these CCAA proceedings and in respect of which the Interim Tobacco Claimant Coordinator has the authority to represent the Tobacco Claimants may be served on the Interim Tobacco Claimant Coordinator and, unless the Court has ordered some other form of service, such service will constitute sufficient service and any further service on Tobacco Claimants is dispensed with.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL: http://cfcanada.fticonsulting.com/imperialtobacco ("**Case Website**").

55. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier,

personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

56. THIS COURT ORDERS that the Applicants are authorized to rely on the notice provided in paragraph 51 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

57. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List. The Monitor shall manage the scheduling of all motions that are brought in these proceedings.

58. **THIS COURT ORDERS** that the Applicants and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

GENERAL

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions

concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

60. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

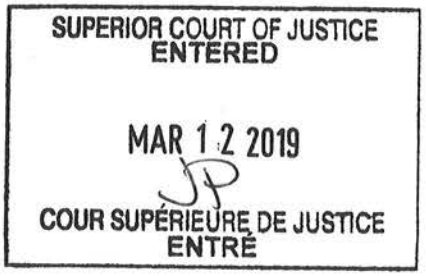
61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or any other country, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. THIS COURT ORDERS that any interested party (including the Applicants, BAT, BATIF, and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicants or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant,

the Property, the Business or the funds deposited pursuant to the Deposit Posting Order shall be deemed not to have been taken or given, as the case may be.



SCHEDULE "A"
PENDING LITIGATION

A. Medicaid Claim Litigation

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
1.	Alberta	June 8, 2012; 1201-07314 (Calgary)	Her Majesty in Right of Alberta	Altria Group, Inc.; B.A.T Industries p.l.c.; British American Tobacco (Investments) Limited; British American Tobacco p.l.c.; Canadian Tobacco Manufacturers Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-MacDonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans, Benson & Hedges Inc.; and Rothmans Inc.
2.	British Columbia	January 24, 2001, further amended February 17, 2011; S010421 (Vancouver)	Her Majesty the Queen in right of British Columbia	Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc., Rothmans International Research Division and Ryesekks p.l.c.
3.	Manitoba	May 31, 2012, amended October 16, 2012; CI 12-01-78127 (Winnipeg)	Her Majesty the Queen in right of the Province of Manitoba	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
4.	New Brunswick	March 13, 2008; F/C/88/08 (Fredericton)	Her Majesty the Queen in right of the Province of New Brunswick	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
5.	Newfoundland and Labrador	February 8, 2011, amended June 4, 2014; 01G. No. 0826 (St. John's)	Attorney General of Newfoundland and Labrador	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., JTI-MacDonald Corp., RJ Reynolds Tobacco Company, RJ 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
6.	Nova Scotia	January 2, 2015; 434868/737868 (Halifax)	Her Majesty The Queen in Right of the Province of Nova Scotia	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited and Canadian Tobacco Manufacturers' Council.
7.	Ontario	Amended December 11, 2009, amended as amended August 25, 2010, fresh as amended March 28, 2014, amended fresh as amended, April 20, 2016; CV-09-387984 (Toronto)	Her Majesty the Queen in right of Ontario	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
8.	Prince Edward Island	September 10, 2012, amended October 17, 2012; SI GS-25019 (Charlottetown)	Her Majesty the Queen in right of the Province of Prince Edward Island	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
9.	Québec	June 8, 2012; 500-17-072363-123 (Montréal)	Procureur général du Québec	Impérial Tobacco Canada Limitée, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Rothmans, Benson & Hedges, Philip Morris USA Inc., Philip Morris International

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
				Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., et Conseil Canadien de Fabricants des Produits du Tabac
10.	Saskatchewan	Amended October 5, 2012; Q.B. 8712012 (Saskatoon)	The Government of Saskatchewan	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council

B. Tobacco Claim Litigation – Certified and Proposed Class Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Alberta	June 15, 2009; 0901-08964 (Calgary)	Linda Dorion	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
2.	British Columbia	May 8, 2003; L 031300 (Vancouver)	John Smith (a.k.a., Kenneth Knight)	Imperial Tobacco Canada Ltd.
3.	British Columbia	June 25, 2010; 10-2780 (Victoria)	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc. Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council[1]

[1] British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
4.	British Columbia	June 25, 2010; 10-2769 (Victoria)	Roderick Dennis McDermid	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc., Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council[2]
5.	Manitoba	June 2009; CI09-01-61479 (Winnipeg)	Deborah Kunta	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc and Ryesekks p.l.c.
6.	Nova Scotia	June 18, 2009; 312869 2009 (Halifax)	Ben Semple	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
7.	Ontario	December 2, 2009; 64757 (London)	The Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler and Arpad Dobrentey	Imperial Tobacco Canada Limited, which is to be heard together with similar actions against Rothmans, Benson & Hedges Inc., and JTI-MacDonald Corp.
8.	Ontario	June 27, 2012; 53794/12 (St. Catharines)	Suzanne Jacklin	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc.,

[2] British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
				R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c
9.	Quebec	September 30, 2005; 500-06-000070-983 (Montreal)	Christine Fortin, Cécilia Létourneau and Joseph Mandelman	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.
10.	Quebec	September 29, 2005; 500-06-000076-980 (Montreal)	Conseil Quebecois Sur Le Tabac Et La Sante and Jean-Yves Blais	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp.
11.	Saskatchewan	July 10, 2009; 1036 of 2009; (June 12, 2009; 916 of 2009 never served) (Regina)	Thelma Adams	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris USA Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc. and Ryesekks p.l.c.[3]

C. Tobacco Claim Litigation – Individual Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Nova Scotia	February 20, 2002, 177663 (Halifax)	Peter Stright	Imperial Tobacco Canada Limited
2.	Ontario	May 1, 1997, amended May 25, 1998; fresh as amended March 28, 2004; C17773/97 (Milton)	Ljubisa Spasic as estate trustee of Mirjana Spasic	Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.
3.	Ontario	Amended September 8, 2014; 00-CV-	Ragoonanan *et al.*	Imperial Tobacco Canada Limited

[3] B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c. have been released from this action.

		183165-CP00 (Toronto)		
4.	Ontario	June 30, 2003; 1442/03 (London)	Scott Landry	Imperial Tobacco Canada Limited
5.	Ontario	June 12, 1997; 21513/97 (North York)	Joseph Battaglia	Imperial Tobacco Canada Limited
6.	Quebec	December 8, 2016; 750-32-700014-163 (Saint-Hyacinthe)	Roland Bergeron	Imperial Tobacco Canada Limited

SCHEDULE "B"
ITCAN SUBSIDIARIES

Imperial Tobacco Services Inc.
Imperial Tobacco Products Limited
Marlboro Canada Limited
Cameo Inc.
Medallion Inc.
Allan Ramsay and Company Limited
John Player & Sons Ltd.
Imperial Brands Ltd.
2004969 Ontario Inc.
Construction Romir Inc.
Genstar Corporation
Imasco Holdings Group, Inc.
ITL (USA) limited
Genstar Pacific Corporation
Imasco Holdings Inc.
Southward Insurance Ltd.
Liggett & Myers Tobacco Company of Canada Limited

SCHEDULE "C"
HEALTH CARE COSTS RECOVERY LEGISLATION

Jurisdiction	Statute
Alberta	*Crown's Right of Recovery Act*, SA 2009, c C-35
British Columbia	*Tobacco Damages and Health Care Costs Recovery Act*, SBC 2000, c 30
Manitoba	*The Tobacco Damages Health Care Costs Recovery Act*, SM 2006, c 18
New Brunswick	*Tobacco Damages and Health Care Costs Recovery Act*, SNB 2006, c T-7.5
Newfoundland and Labrador	*Tobacco Health Care Costs Recovery Act*, SNL 2001, c T-4.2
Nova Scotia	*Tobacco Health-Care Costs Recovery Act*, SNS 2005, c 46
Northwest Territories	Proclaimed but not yet in force: *Tobacco Damages and Health Care Costs Recovery Act*, SNWT 2011, c 33
Nunavut	Proclaimed but not yet in force: *Tobacco Damages and Health Care Costs Recovery Act*, SNu 2010, c 31
Ontario	*Tobacco Damages and Health Care Costs Recovery Act*, 2009, SO 2009, c 13
Prince Edward Island	*Tobacco Damages and Health Care Costs Recovery Act*, SPEI 2009, c 22
Québec	*Tobacco-related Damages and Health Care Costs Recovery Act*, 2009, CQLR c R-2.2.0.0.1
Saskatchewan	*The Tobacco Damages and Health Care Costs Recovery Act*, SS 2007, c T-14.2
Yukon	N/A

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

Court File No:

APPLICANTS

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

INITIAL ORDER

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1 First Canadian Place, P.O. Box 50
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Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers to the Applicants,
Imperial Tobacco Canada Limited
and Imperial Tobacco Company Limited

Matter No: 1144377

This is **Exhibit "F"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires September 27, 2021.

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

AFFIDAVIT OF ERIC THAUVETTE

(Sworn March 12, 2019)

I, Eric Thauvette, of the City of Montreal, in the Province of Quebec, the Vice President and Chief Financial Officer of Imperial Tobacco Canada Limited ("ITCAN"), MAKE OATH AND SAY:

1. This Affidavit is made in support of an application by ITCAN and its affiliated company Imperial Tobacco Company Limited ("ITCO", and collectively with ITCAN, the "Applicants") for an Initial Order and related relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA").

2. I joined ITCAN on August 12, 1996 as an Internal Auditor. In my current role as the Chief Financial Officer of ITCAN, I am responsible for all financial-related aspects of ITCAN's business operations. I am also an officer and director of ITCO. As such, I have personal knowledge of the matters deposed to herein including, without limitation, the business affairs of both Applicants. Where I have relied on other sources for information, I have stated the sources of my belief and believe them to be true. In preparing this Affidavit, I have also consulted with other

members of the Applicants' senior management team (the "Senior Management") and reviewed certain information provided by financial advisors to the Applicants.

3. This Affidavit is organized in the following sections:

I. Introduction

4. ITCAN is primarily a tobacco importer. It is also an importer of Tobacco Heated Products ("THPs") and Vaping Products (collectively with THPs, the "potentially reduced-risk products" or "PRRPs"). Its subsidiary, ITCO, is the exclusive distributor of tobacco products and PRRPs imported into Canada by ITCAN. ITCO sells 15 brands of cigarette products and PRRPs under various trademarks to approximately 26,825 retailers and 184 wholesalers. Collectively, the Applicants' operations generated taxes payable to various levels of government totalling approximately $4.0 billion in 2018. Approximately 466 permanent, full-time and 98 contract employees across Canada rely on the continued existence of the Applicants for their livelihoods. Other key stakeholder groups include ITCAN's ultimate parent company British American Tobacco, p.l.c. ("BAT"), retired employees, customers, landlords, suppliers, and contingent litigation creditors.

5. The Applicants face an existential threat from litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively the "Tobacco Litigation"). While the Applicants dispute liability and entitlement to remedial relief, the plaintiffs in the Tobacco Litigation seek hundreds of billions of

dollars in damages in the aggregate, which exceeds the Applicants' total assets by many orders of magnitude.

6. In particular, on March 1, 2019, the Court of Appeal for Quebec issued an appeal judgment that condemns ITCAN to pay a potential maximum amount that, with interest, is over $9 billion in the Letourneau and Blais class actions in Quebec (bearing court file numbers 500-06-00070-983 and 500-06-000076-80). A copy of the Quebec Court of Appeal's judgment (the "Quebec Appeal Judgment") is attached as Exhibit "A". An English summary of the Quebec Appeal Judgement is attached as Exhibit "B".

7. As the Applicants do not have the financial resources to pay their current and contingent liabilities, they are insolvent and believe that it is in their best interests and the best interests of all of their stakeholders to engage in a restructuring process with the overriding objective of resolving all claims brought or that could be brought under applicable law in relation to the development, manufacturing, production, marketing, advertising of, any representations made in respect of, the purchase, sale, and use of, or exposure to, the Tobacco Products,[1] including but not limited to the claims in the Tobacco Litigation (collectively the "Tobacco Claims") in a controlled and orderly process under Court supervision.

8. In the interim, the Applicants intend to carry on business in the ordinary course to preserve the overall value of the business enterprise in the interests of all stakeholders.

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[1] As defined in the proposed Initial Order, "Tobacco Products" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

9. The Applicants are proposing that the Honourable Warren K. Winkler (the "Tobacco Claimant Representative") be appointed by the Court with the mandate to represent the interests of all persons with any Tobacco Claim (the "Tobacco Claimants"), other than the federal, provincial and territorial governments of Canada (the "Government Claimants"), in negotiating a settlement with the Applicants and others. In the Initial Order, the Applicants are requesting that the Tobacco Claimant Representative be appointed on an interim basis until April 30, 2019, or a later date agreed to by the Applicants and the Monitor (the "Interim Period"). The Applicants propose to commence stakeholder discussions immediately with the assistance of the proposed Monitor and the court-appointed Tobacco Claimant Representative.

10. The Applicants seek a standard stay of proceedings with respect to the Applicants and that the stay be extended to (a) the Applicants' wholly owned non-applicant subsidiaries; and (b) Liggett & Myers Tobacco Company of Canada Limited ("Liggett & Myers"), in which ITCAN holds a 50% voting interest and 70% equity participation. The rationale for extending the stay of proceedings to these non-applicant entities is that they are highly integrated with the Applicants and are indispensable to the Applicants' business and restructuring: certain of these non-applicant entities hold the trademarks or other assets of ITCAN, while others provide services to ITCAN, share the cash management system with ITCAN, or have guaranteed certain ITCAN debts from time to time.

11. The Applicants also seek to extend the stay of proceedings to BAT and certain of BAT's affiliates[2] (collectively, the "BAT Affiliates"), but only in respect of the Tobacco Claims and proceedings related to the Applicants, their business, or their property.

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[2] B.A.T. International Finance p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries (as defined in the Initial Order).

12. The Applicants believe that it is appropriate to extend this limited stay to BAT and the BAT Affiliates for several reasons. First, ITCAN, BAT, and the BAT Affiliates are named as co-defendants in class actions and health care recovery proceedings across Canada and are alleged to be jointly and severally liable for having engaged in a conspiracy to suppress information regarding the dangers of smoking and to encourage smoking. These claims against ITCAN, BAT, and the BAT Affiliates can only be effectively determined in one forum. Moreover, permitting the claims to continue against BAT and the BAT Affiliates while they are also being resolved in the CCAA proceedings creates the risk of inconsistent outcomes. The Applicants therefore seek a stay of proceedings in favour of BAT and the BAT Affiliates with the objective of facilitating a global resolution of the Tobacco Claims.

13. Second, a stay of proceedings in favor of BAT and the BAT Affiliates will allow ITCAN, BAT, and the BAT Affiliates to focus on developing and implementing a plan of compromise or arrangement without the costs and distraction that would inevitably ensue if plaintiffs continued pursuing the Tobacco Litigation against BAT and the BAT Affiliates at the same time as this CCAA proceeding. Given the nature of the Tobacco Claims, I believe that BAT and the BAT Affiliates would require considerable assistance and involvement of ITCAN personnel and resources if the Tobacco Litigation were to continue against them.

14. As described below, the legal tobacco industry is highly regulated and taxed. But, according to estimates from 2016, the illegal tobacco industry constitutes almost one quarter of the Canadian tobacco market.[3] The unlawful production, distribution, and sale of cigarettes in

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[3] Christian Leuprecht, *Smoking Gun: Strategic Containment of Contraband Tobacco and Cigarette Trafficking in Canada* (2016, Macdonald-Laurier Institute) at p. 13-15 [Leuprecht, "Smoking Gun"]; See also: RCMP Report, *Contraband Tobacco Enforcement Strategy* (2013, http://publications.gc.ca/collections/collection_2013/grc-rcmp/PS64-109-2013-eng.pdf) [RCMP, "Contraband Enforcement"]; Public Safety Canada, *The Status Of The Contraband Tobacco Situation In Canada – Report to the Minister of Public Safety by the Task Force on Illicit Tobacco Products* (2009, Public Safety Canada) [Public Safety Canada, "The Status of Contraband"].

Canada has reached unprecedented levels in recent years.[4] I understand from industry, government and academic publications that this deprives Canadian governments of significant revenues,[5] finances criminal gangs and organized crime,[6] fosters other criminal activities,[7] and provides youth with easy and affordable access to tobacco products[8] (a carton of 200 legally sold cigarettes costs upwards of $80, compared to $8-$50 for the same number of illegal cigarettes).[9] The Canadian government recently announced that it will be introducing new and extensive regulations on tobacco products and their packaging following amendments to the *Tobacco Act* made via Bill S-5. These new regulations will almost certainly drive even more consumers of legal and compliant, fully-taxed products to the illicit market. Among other things, I believe that the lack of product differentiation will allow contraband manufacturers to easily "mimic" the legal products and will dramatically impede regulatory and enforcement efforts.

15. Accordingly, there are advantages to ITCAN and its co-defendants in the Tobacco Litigation resolving the outstanding claims in a fair and orderly manner and emerging from these restructuring proceedings as a going concern. Otherwise, it would not be unreasonable to foresee the illegal tobacco trade expanding to fill the void in the marketplace to meet the continuing demand for tobacco products.

16. Based on my own knowledge of the Applicants' business and discussions with Senior Management, I am confident that the Applicants can return to being viable businesses after a CCAA restructuring. This approach will preserve the underlying value of the Applicants' business while facilitating the primary goal of developing a plan of compromise or arrangement

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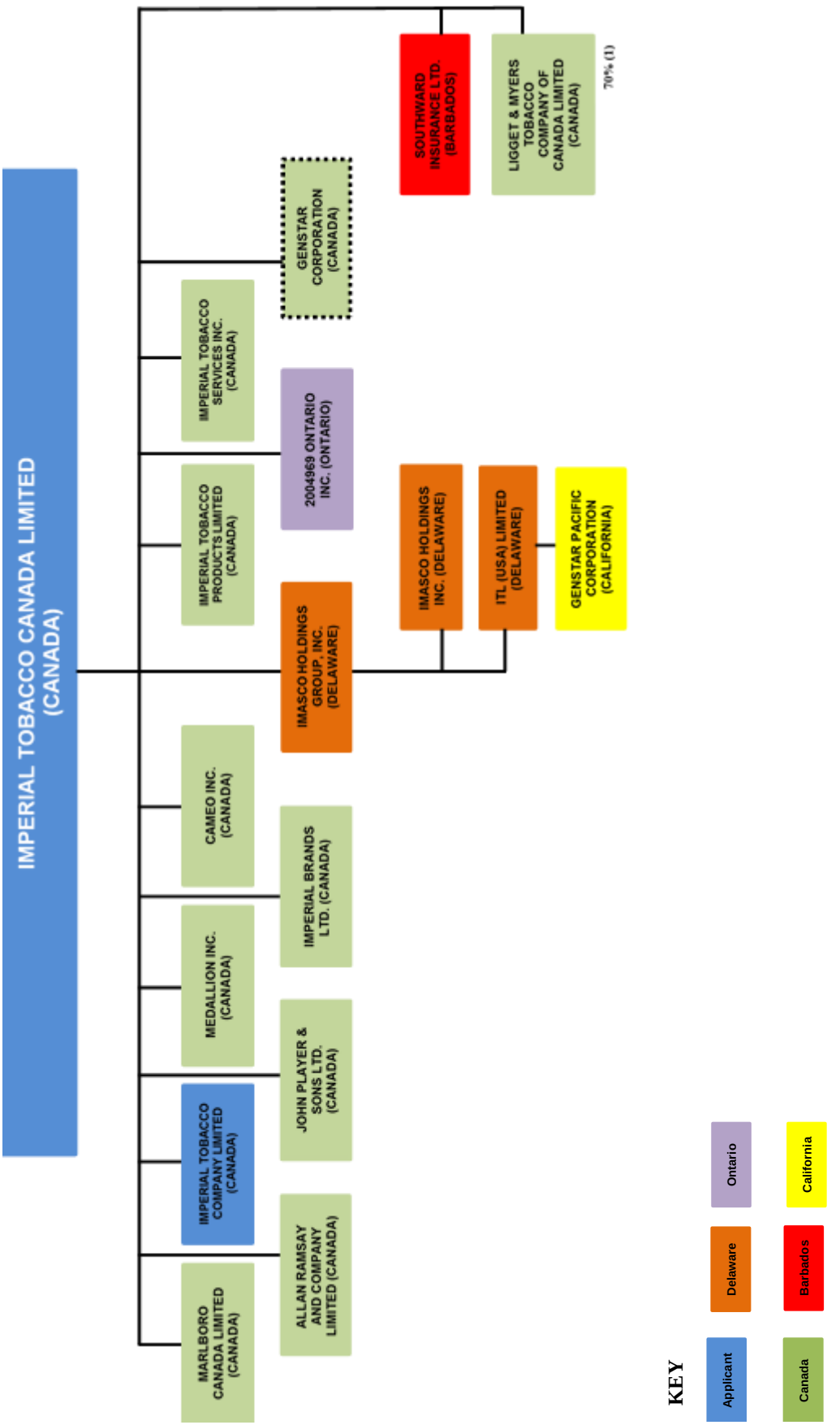
4 Leuprecht, "Smoking Gun" at p. 13; See also RCMP, "Contraband Enforcement" at p. 7.
5 Leuprecht, "Smoking Gun" at p. 15.
6 Leuprecht, "Smoking Gun" at p. 15; See also RCMP, "Contraband Enforcement" at p. 8.
7 Public Safety Canada, "The Status of Contraband" at p. 1 and 3.
8 RCMP, "Contraband Enforcement" at p. 12.
9 Leuprecht, "Smoking Gun" at p. 6.

for the resolution of the Tobacco Claims in the most expeditious manner and under Court supervision.

II. Corporate Structure of the Applicants

17. ITCAN is a privately-held corporation incorporated under the *Canadian Business Corporations Act,* RSC 1985, c C-44, that is 100% owned by British American Tobacco International (Holdings) B.V., which is itself an indirect subsidiary of BAT. ITCO is a privately-held direct subsidiary of ITCAN. The Applicants' registered head offices are located in Brampton, Ontario. The Applicants amended their constating documents on October 4, 2017 to make Brampton the location of their registered head office. The Applicants' central decision making function, both long-range and day-to-day, is exercised in Canada.

18. The chart on the following page shows the organizational structure of the Applicants. ITCAN directly or indirectly owns 100% of the issued and outstanding shares of the entities included in the chart, with the exception of Liggett & Myers. Included in parentheses within the corporate organization chart is the respective jurisdiction of incorporation of each entity.


IMPERIAL TOBACCO CANADA LIMITED (CANADA)
MARLBORO CANADA LIMITED (CANADA)
IMPERIAL TOBACCO COMPANY LIMITED (CANADA)
ALLAN RAMSAY AND COMPANY LIMITED (CANADA)
JOHN PLAYER & SONS LTD. (CANADA)
MEDALLION INC. (CANADA)
IMPERIAL BRANDS LTD. (CANADA)
CAMEO INC. (CANADA)
IMASCO HOLDINGS GROUP, INC. (DELAWARE)
IMPERIAL TOBACCO PRODUCTS LIMITED (CANADA)
2004969 ONTARIO INC. (ONTARIO)
IMPERIAL TOBACCO SERVICES INC. (CANADA)
GENSTAR CORPORATION (CANADA)
IMASCO HOLDINGS INC. (DELAWARE)
ITL (USA) LIMITED (DELAWARE)
GENSTAR PACIFIC CORPORATION (CALIFORNIA)
SOUTHWARD INSURANCE LTD. (BARBADOS)
LIGGET & MYERS TOBACCO COMPANY OF CANADA LIMITED (CANADA)
70% (1)
KEY
Applicant
Canada
Delaware
Barbados
Ontario
California

(a) ***Description of ITCAN and ITCO***

19. ITCAN is the parent company of ITCO and various other affiliated companies. Since July 2015, ITCAN purchases finished tobacco products from its affiliate British American Tobacco Mexico S.A. de C.V. ("BAT MX") and imports them into Canada. ITCAN also buys a small amount of tobacco finished products from two other BAT affiliated companies. Additionally, ITCAN buys raw materials and pays an assembly fee to Bastos du Canada Limitée, a competitor, to manufacture a small amount of Marlboro and other branded cigarettes in Quebec which cannot be produced in Mexico due to trademark issues.

20. ITCO buys finished cigarette products from ITCAN and sells and distributes them to third parties including wholesalers and retailers (including duty free retailers).[10] ITCO also buys materials for roll-your-own cigarettes, such as paper booklets and tubes, from third-party suppliers and sells them to retailers. ITCO is responsible for the operation of all of the Applicants' distribution centres in Canada.

21. ITCO is the largest revenue generator of ITCAN's subsidiaries. ITCO pays discretionary dividends annually to ITCAN from the profits that it earns from its operations. As of December 31, 2018, ITCO employs all of the Applicants' employees who work in sales positions (approximately 255 full-time employees).

[10] ITCO also buys the Glo Products and Vype Products from ITCAN, as described below, but sells them in some different channels than the conventional cigarette products.

22. The Applicants have also entered into new lines of business involving the PRRPs under various licensing agreements, which include:

(a) a tobacco heating product and tobacco sticks named Glo, which creates an inhalable vapour by warming tobacco sticks at temperatures up to 240 degrees Celsius (in contrast to the conventional burning of tobacco); and

(b) electronic cigarettes ("e-cigarettes") and a liquid product named Vype, which is a battery-powered device that converts liquids such as liquid nicotine into a mist or vapor that the user inhales.

23. ITCAN acquires these PRRPs from Nicoventures Trading Limited ("Nicoventures"), a BAT affiliate that sources the PRRPs from outside of Canada, and ITCAN earns licensing fees for distributing the PRRPs in Canada. ITCAN began acquiring Glo heater and component parts as well as the tobacco sticks used in the heater (collectively, the "Glo Products") from Nicoventures in April 2017, and began acquiring the Vype device and the liquids used in the Vype devices (collectively, the "Vype Products") from Nicoventures in May 2018.

(b) ***Description of Other Entities***

24. The following are ITCAN's other wholly-owned Canadian subsidiaries as well as Liggett & Myers, with a short description of the function of each company:

(a) **Imperial Tobacco Services Inc.** ("IT Services"): As of December 31, 2018, IT Services provides payroll services for nine individuals under contract with IT Services. These individuals are based in Canada and provide regional or global services to various affiliates. IT Services pays these salaries and then recoups the amounts plus a markup from the BAT-affiliated companies receiving services.

(b) **Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., and Imperial Brands Ltd**. (collectively, the "Trademark Companies"): These companies hold various Canadian trademarks and have no employees or suppliers. The Trademark Companies earn royalties by licensing their trademarks to ITCAN. The Trademark Companies pay dividends annually to ITCAN. ITCAN pays income taxes on behalf of the Trademark Companies as none of these companies have their own bank accounts. All transactions are effected through intercompany journal transfers.

(c) **Liggett & Myers**: This is a dormant Canadian company in which ITCAN has a 50% voting interest and 70% equity participation. The company holds the Canadian trademark for Chesterfield. The Applicants distribute a small quantity of products with this trademark.

(d) **2004969 Ontario Inc.**: This Ontario corporation is dormant. It holds a small parcel of contaminated land from ITCAN's former tobacco processing and storage operations. There are no outstanding orders to remediate and the Applicants are currently conducting Phase 1 & Phase 2 environmental assessments of the site. Remediation has not been carried out. There is no recent and precise estimate of the remediation costs although a reserve of approximately $5.8 million has been taken for that purpose since 2007.

(e) **Genstar Corporation** ("Genstar"): This is a dormant Canadian company.

25. The following are ITCAN's foreign subsidiaries, with a short description of the function of each company:

(a) **Imasco Holdings Group, Inc.** ("IHGI"): IHGI is a largely dormant Delaware corporation that holds certain legacy obligations as a result of the historical acquisition and restructuring of various companies and businesses of Imasco Limited in the U.S. IHGI has no operations. ITCAN makes capital contributions as necessary to IHGI on a monthly basis and then writes off these amounts (approximately USD $7.0 million a year). IHGI holds various liabilities including: (i) certain workers' compensation claim liabilities; (ii) a U.S. tax-qualified defined benefit pension plan for approximately 2,534 former U.S. employees of Genstar Company, Hardee's Food Systems Inc., and Fast Food Merchandisers Inc. (the "IHGI U.S. Pension Plan"); (iii) 2 leases; and (iv) potential liability with respect to unclaimed balances relating to the acquisition of Peoples Drug Stores Incorporated. Until recently, IHGI provided a post-retirement health benefit obligation for approximately 148 former employees of Genstar Company, Hardee's Food Systems Inc., and Fast Food Merchandisers Inc. This plan was terminated by IHGI effective as of December 31, 2018, and participants are required to file any and all claims incurred on or before such date for eligible care, services or products under the plan on or before March 31, 2019. Various U.S. suppliers, supported by certain ITCAN employees, administer IHGI's and IHGI's subsidiaries' liabilities.

(b) **ITL (USA) Limited** ("ITL USA"): ITL USA is a dormant Delaware company that is a subsidiary of IHGI. It is subject to certain legacy obligations, including certain

contractual pension and deferred compensation obligations, that are described in greater detail in the section regarding pension benefits below.

(c) **Genstar Pacific Corporation**: This is a dormant California company that is a subsidiary of ITL USA. On June 6, 2018, ITCAN received a letter alleging that it, as successor in interest to various entities formerly affiliated with Genstar Pacific Corporation, may be liable for certain environmental response costs incurred by the BKK Working Group in connection with landfills in West Covina, California, based on purported disposal of waste material at one of the landfills by various alleged Genstar-affiliated entities. The BKK Working Group has not commenced any action in relation to the environmental response costs and the parties have entered into a tolling agreement. ITCAN has also indirectly become aware of a letter dated August 13, 2018, sent by the U.S. Environmental Protection Agency, offering an opportunity to accept a "de minimis settlement offer" with respect to alleged environmental liability at the Casmalia Resources Superfund Site in Barbara County, California. The letter references alleged liability of various "Genstar" entities but ITCAN believes the allegations are in error.

(d) **Imasco Holdings Inc.**: This is a dormant Delaware company that is a subsidiary of IHGI.

(e) **Southward Insurance Ltd.**: This company was incorporated under the laws of Barbados as a licensed insurer. Its principal activity currently consists of managing the run off of various treaties, which involve the operation of retrocession pools with various insurance companies. The company is required by its insurance license

to maintain minimum levels of solvency and liquidity. These requirements have been met as at December 31, 2018.

26. ITCAN's subsidiaries (apart from ITCO) are not currently Applicants in these proceedings. However, ITCAN is seeking to extend the stay in these proceedings to its non-Applicant subsidiaries.

27. ITCAN receives dividends from certain of its subsidiaries calculated annually, which amounted to approximately $113 million in 2017 and $102 million in 2018.

III. The Business of the Applicants

(a) *Canadian Tobacco Industry*

28. Five million adult Canadian consumers purchase tobacco products. ITCAN leads the industry with roughly 48% market share of all legal sales in 2018. The two other major Canadian manufacturers and distributors of tobacco products are JTI-Macdonald Corp. ("JTI") and Rothmans Benson & Hedges Inc. ("RBH"). JTI was granted court protection under the CCAA in Ontario on March 8, 2019.

29. The legal tobacco industry is highly regulated and taxed. In 2018, the Applicants' operations generated approximately $4.0 billion in federal and provincial taxes ($590.7 million in Ontario alone). The manufacture, sale, and use of tobacco products are subject to numerous laws and regulations enacted at the federal, provincial, and municipal levels. Legislation in all 13 provinces and territories bans retail display of cigarettes, and federal regulations restrict the use of nearly all ingredients. A few years ago, the government adopted a law to increase the size of graphic health warnings on cigarette packaging from 50% to 75% of the package surface.[11] The

[11] *Tobacco Products Labelling Regulations (Cigarettes and Little Cigars)*, SOR/2011-177.

tax on tobacco products represents 64% or more of the retail price, depending on the province. Following the enactment of Bill S-5,[12] Health Canada proposed the *Tobacco Products Regulations (Plain and Standardized Appearance)* that would implement further extensive regulations on tobacco products and their packaging, including measures that would standardize the appearance of tobacco products and packages, and prohibit any brand colours, logos and other images. The Department of Health published draft regulations and there was a consultation period until September 6, 2018.

30. On the other hand, according to recent estimates, the percentage of Canadians who had smoked contraband doubled from 16.5% to 32.7% between 2006 and 2008.[13] As of 2015, untaxed tobacco was estimated to make up almost one quarter of the market.[14] Based on industry, government and academic publications, the unlawful production, distribution, and sale of cigarettes in Canada has reached unprecedented levels in recent years, with over 50 illegal cigarette factories and roughly 300 smoke shacks in Ontario and Quebec situated, for the most part, on First Nations territories.[15] There are more than 175 groups known or believed to be tied to organized crime that profit from illegal tobacco.[16] If the legal producers of tobacco products in Canada ceased operating, I believe is very likely that the illegal tobacco trade will expand to fill the void in the marketplace to meet the continuing demand for tobacco products.

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12 Bill S-5 was entitled "*An Act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other Act*s".
13 Leuprecht, "Smoking Gun" at p. 13.
14 Leuprecht, "Smoking Gun" at p. 13.
15 RCMP, "Contraband Enforcement" at p. 20 and 27.
16 Leuprecht, "Smoking Gun" at p. 7.

(b) ***Products***

31. The Applicants offer a range of tobacco products, including cigarettes, tobacco heated products, and e-cigarettes. The following chart lists conventional cigarette-related products and the PRRPs that the Applicants offer:

Product	**Brand**
Cigarettes	• du MAURIER • John Player Standard • John Player Plus • John Player Special • Marlboro • Matinée • Medallion • Pall Mall • Peter Jackson • Player's • Viceroy • Vogue • Avanti
Fine cut tobacco (Roll your own)	• Peter Jackson Special Cut 100% Red, Peter Jackson Menthol Special Cut 50% • Player's Fine Cut, John Player Standard Rich Taste Special Cut 50%, John Player Standard Rich Taste Special Cut 90%
Tubes	• Embassy • Peter Jackson Red

Product	**Brand**
	• Player's Blue, Player's Red, Player's Grey
Cigarette paper	• Player's Booklets, Embassy Booklets, Zig Zag Booklets
Potentially Reduced-Risk Products	• Glo • Vype

32. The Applicants have their largest market share in Ontario (54.66% of their sales were in Ontario in 2018). They sell to approximately 9,236 stores in Ontario and generated 37% of their total revenue in 2018 in Ontario, more than in any other province.

33. The Applicants also distribute the Glo tobacco heated product. ITCAN purchases the Glo Products from Nicoventures. The Glo Products are currently only sold to residents of British Columbia, Alberta, and Ontario. In British Columbia, Glo Products are sold (1) at one location called Taste & Circle in Vancouver operated by ITCO, which is described below; (2) online by ITCO, as described below; and (3) from retailers, including some duty-free retailers. In Ontario and Alberta, Glo Products are sold from retailers (including some duty-free retailers) and online.

34. Since the passing of Bill S-5, the Applicants have begun selling their Vype e-cigarette products in Canada to retailers, duty-free retailers, and online. ITCAN purchases both the Vype device and the liquids used in the device from Nicoventures as well.

(c) ***Programs***

35. In 2017, the Applicants launched an online loyalty program for retailers and clerks to educate them about the Applicants' products (the "Loyalty Program"). The Loyalty Program is maintained on a website operated by a third-party service provider named Comarch Canada Corp.

Participating retailers and store clerks were able to earn points that can be redeemed for modest gifts and prizes.[17] These gifts and prizes are provided by KLF Media Inc. (also doing business as Loyalty Source) and Zeste Incentive, a third party that specializes in sourcing prizes for rewards programs. The Loyalty Program is currently under review.

36. In 2017, the Applicants launched the Zyne Platform which allows individuals who register on the platform to receive tobacco information or brand-preference advertising and online publications. This information is only sent to persons who have been verified as adults. Equifax, Transunion, and Jumio provide online identification services to confirm whether a user is an adult and can therefore access the website based on the user's first name, last name, date of birth, and address. The maintenance of the platform (including the publishing of content for online magazines and brand content that focuses on the du Maurier, Pall Mall, and John Player brands) is managed by ITCAN.

37. ITCAN re-launched the Zyne Platform in the fourth quarter of 2018. The platform's development is now managed by Volume 7 Inc. but ownership and maintenance of the platform remains with ITCAN.

(d) ***Real Estate and Leases***

38. ITCAN leases its registered head office space in Brampton and other office space in Montreal.

39. One of ITCAN's subsidiaries owns a small parcel of contaminated land in Ontario at the site of its former tobacco processing and storage operations.

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[17] As at December 31, 2018, the financial liability associated with these points was approximately $660,993.

40. ITCAN leases office space in Manhattan, New York where it is registered to do business and maintains its only place of business in the United States. ITCAN utilizes its New York office to assist in administering the funding of pension plans and certain other obligations of its subsidiaries in the United States, and to otherwise assist in the management of its interests in the United States.

41. ITCO uses distribution centres located in Alberta, British Columbia, Newfoundland and Labrador, Ontario, and Quebec. ITCO has contracted with Ryder Integrated Logistics, a division of Ryder Truck Rental Canada Ltd. ("Ryder"), a leading provider of commercial transportation, logistics, and supply chain management solutions, to supply and operate all of the distribution centres in Canada, with the exception of one distribution centre in Newfoundland and Labrador that is supplied and operated by Baine Johnston Corporation ("BJC").

42. ITCO reimburses Ryder for all approved operating costs Ryder incurs on ITCO's behalf, including leasing costs (which have been accounted for as operating leases) as well as amortization charged back on the carrying costs of property, warehouse and equipment (which have been accounted for as finance lease assets and obligations by the Applicants).[18] At the end of the finance lease term, ITCO has the option to purchase the equipment at a nominal amount. Although Ryder entered into warehouse leases for the distribution centres, the leases specify that, subject to some limitations, the leases can be assigned by Ryder to ITCO under certain circumstances.

[18] BJC is not reimbursed for operating costs. Instead, it receives a Base Fee for its services and an annual Improvements Amortization Fee.

43. On February 1, 2017, ITCO leased space in Vancouver, British Columbia in order to open a retail space. ITCO currently operates a retail space called “Taste and Circle” at this location, which is comprised of one adults-only section that sells Glo Products and accessories.

44. The Applicants intend to maintain their existing leases during the course of these proceedings.

(e) ***Employees***

45. The Applicants employ approximately 466 permanent full-time employees in Canada who rely on the continued existence of the Applicants for their livelihoods. The following chart sets out the approximate number of the Applicants’ permanent employees by province as at December 31, 2018:

Location	**Employees**
Quebec	268
Ontario	103
Alberta	29
British Columbia	35
Saskatchewan	7
Manitoba	7
Nova Scotia	7
New Brunswick	6
Newfoundland and Labrador	4
Total (Approximately)	**466**

46. In addition, as of December 31, 2018, the Applicants employed approximately 98 contract employees on a full-time basis.

47. The Applicants paid wages and salaries of approximately $70 million in 2018.

48. The Applicants do not anticipate any changes with respect to their employees as a result of this CCAA filing.

(f) ***Pension Benefits***

49. The Applicants have three registered Canadian pension plans in place. The Imasco Pension Fund Society ("IPFS") and the Imperial Tobacco Corporate Pension Plan ("ITCPP") are registered, defined benefit pension plans (collectively, the "DB Plans"). The Imperial Tobacco Canada Limited Defined Contribution Pension Plan (the "DC Plan") is a registered, defined contribution pension plan. Benefits under the DB Plans are determined based on a formula which includes the employee's years of service and final average remuneration. The DB Plans were closed to new members in May 2006; however there are still active employees who are DB Plan members. The DC Plan is provided for employees who joined the Applicants since May 2006.

50. The DB Plans are registered in Quebec and both have an actuarial surplus on a "going concern" basis as of January 1, 2018. While the DB Plans are not currently fully funded on a solvency basis, I'm informed by Julien Ranger of Osler, Hoskin & Harcourt LLP ("Osler") and believe that pension plans registered in Quebec are not required to be funded on a solvency basis. Since the DB Plans each have an actuarial surplus on a going concern basis, no amortization payments are required with respect to the DB Plans pursuant to the applicable Quebec pension legislation. ITCAN intends to continue to make "normal cost" payments or "current service" contributions and any legally required amortization payments in respect of the DB Plans and any required employer contributions to the DC Plan during the course of these proceedings.

51. ITCAN has caused two irrevocable Letters of Credit ("LOCs") to be issued in favour of the ITCPP and two LOCs to be issued in favour of the IPFS, as permitted by the *Supplemental Pension Plans Act*, C R-15.1, to partially offset the required pension contributions

for ITCPP and IPFS, as applicable. The total amount of these LOCs is approximately $68 million. Three of the LOCs are issued by the Bank of Nova Scotia ("BNS") ($31 million) and one LOC is issued by HSBC Bank Canada ("HSBC") ($37 million).

52. If for any reason the pension administrator of the ITCPP or the IPFS makes a demand for payment in respect of any of these LOCs, the face value of the LOC becomes immediately payable into the ITCPP or the IPFS, as applicable. ITCAN must reimburse BNS within 5 business days after receiving notice from BNS of a drawing under an LOC issued by BNS.

53. Similar LOC provisions require that ITCAN pay HSBC within 10 business days of HSBC making such a demand after a draw down on the LOC issued by HSBC. ITCAN does not have any bank accounts with HSBC.

54. As mentioned above in the description of IHGI liabilities, there is also a U.S. tax qualified defined benefit pension plan (the "IHGI U.S. Pension Plan"), which Mark Maloney of King & Spalding LLP advises and I believe is subject to Title IV of the *U.S. Employee Retirement Income Security Act of 1974,* as amended ("ERISA"). ITCAN also intends to continue to make ordinary course payments in respect of the IHGI U.S. Pension Plan during the course of these proceedings.

55. Detailed descriptions of these four pension plans as well as other (non-registered) pension and retirement savings obligations are summarized in a chart in Exhibit "C". ITCAN also intends to continue to make its required ordinary course payments in respect of the additional pension and retirement savings obligations during the course of these proceedings, with the exception of (i) a non-U.S. tax qualified "deferred income plan" for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses

("GCDIP"), (ii) a non-U.S. tax qualified "supplemental executive retirement plan" for approximately 14 individuals who were either former Genstar employees or their surviving spouses ("SERP"), and (iii) a non-U.S. tax qualified "supplementary pension plan" for 3 individuals who were either former Genstar employees or their surviving spouses ("SPEN"). The GCDIP, SERP, and SPEN are not U.S.-tax qualified retirement plans or funded. Pursuant to an agreement dated April 2, 1986, ITCAN guaranteed payment of these obligations.

56. The present value of the plan obligations under the GCDIP, SERP, and SPEN is estimated to be approximately $43 million dollars in the aggregate. ITCAN proposes that any further payments with respect to these obligations be stayed pursuant to the Initial Order.

(g) ***Stock-Based Compensation Plans***

57. Eligible senior executives of ITCAN participate in some of BAT's stock-based compensation plans, including a long-term incentive plan ("LTIP") and a deferred share bonus scheme ("DSBS"). Under those plans, participants are awarded common shares in BAT, subject to the terms and conditions of either the LTIP or DSBS and the governing award documentation.

58. Under the LTIP, participants receive an Award Certificate every year setting out the number of shares covered by the award for that year. Participants are eligible to receive BAT shares at no cost – up to the maximum set out in the award – with the actual number of shares to be received depending on the achievement of performance conditions over the three-year period covered by the award. Participants are also entitled to receive a cash payment equivalent to the dividends that would have accrued to a shareholder during the performance period on the number of shares that vest. If a participant ceases employment prior to the end of the performance period, the vesting, if any, is subject to the terms and conditions of the LTIP and related documentation.

59. Under the DSBS, awards of common shares in BAT generally vest after three years from date of grant and may be subject to forfeit if the participant leaves employment before the end of the three-year holding period. If a participant ceases employment prior to the third anniversary of the award, the vesting, if any, is subject to the terms and conditions of the DSBS and related documentation.

60. During the three year vesting period, the BAT shares are held in trust by the Imperial Tobacco Canada Employee Trust (the "Employee Trust"). ITCAN contributes cash to the Employee Trust, which the Trust uses to acquire BAT shares. The shares are then distributed to the beneficiaries – the eligible employees of ITCAN – once the awards vest under the terms of the LTIP and/or DSBS, as applicable. BAT does not pay dividends on the shares to the Employee Trust, as dividends have been waived by the Employee Trust. According to the Employee Trust's financial statement, the assets of the Employee Trust as of December 31, 2018 consist of shares (approximate market value of £7.3 million) and very nominal cash. The trustee of the Employee Trust is AST Trust Company. ITCAN intends to continue the LTIP and DSBS programs during the course of these proceedings.

61. The Applicants have developed an Incentive Bonus Program for certain key employees during the CCAA proceedings. The Program is based on a pre-existing retention and recognition framework that BAT applies globally. It provides incentives for three groups of employees to encourage them to remain with the Applicants during the CCAA proceedings as described below:

(a) *Leadership Team:* Approximately four members of the Applicants' leadership team will be eligible for a bonus of up to 50% of base salary for each year of the program, with half of the amount paid in six-month recognition payouts and half at the end

of the program. The program will end at the end earlier of three years or the completion of a successful CCAA restructuring, and the bonus payments will be pro-rated based on active service during the bonus program period.

(b) *Group 1*: Approximately six employees identified as critical will be eligible for a bonus of up to 25% to 37.5% of base salary for each year of the program, with half of the amount paid in six-month recognition payouts and half at the end of the program. The program will end at the end of earlier of two years or the completion of a successful CCAA proceeding, and the bonus payments will be pro-rated based on active service during the bonus program period.

(c) *Group 2*: Approximately 25 employees identified as having key talents and critical skills will be eligible to receive a bonus of up to 12.5% to 25% of base salary for each year of the program, all of which will be paid at the end of the program. The program will end at the end of earlier of two years or the completion of a successful CCAA proceeding, and the bonus payments will be pro-rated based on active service during the bonus program period.

62. The Incentive Bonus Plan for the Leadership Team and Group 1 was triggered by the Applicants' initial filing, whereas the Plan for Group 2 employees will be triggered by the Applicants at a later date. In each case, the bonus payments are subject to a number of conditions, including successful performance by the employee and the employee remaining in their current role for the entire duration of the program for their group, with a full claw back if an employee resigns or is terminated for cause before the end of the program.

63. The Incentive Bonus Plan will cost an estimated $5 million over the life of the Plan. The payments to employees will not be secured by a court-ordered charge.

(h) ***Post-Retirement and Post-Employment Benefits***

64. In both Canada and the U.S., there are unfunded plans that provide healthcare and life insurance benefits during retirement, as well as post-employment benefits, including various disability plans and medical benefits available to former or inactive employees. These benefits are available to approximately 2051 members of the DB Plans. DC Plan members are not eligible for these benefits. Approximately 148 IHGI U.S. Pension Plan members were also entitled to post-retirement health benefits from IHGI until December 31, 2018. However, this plan was terminated by IHGI effective as of December 31, 2018 and participants are required to file any and all claims incurred on or before such date for eligible care, services or products under the plan by March 31, 2019.

65. The aggregate annual cash contribution in 2018 to provide these post-employment and post-retirement benefits was approximately $5.1 million for Canada and USD $1.7 million for the U.S.

66. The post-retirement health plan is administered by Blue Cross in Canada and by Zenith American Solutions in the U.S. ITCAN intends to continue these programs during the course of these proceedings. However, the U.S. post-retirement health plan will only be continued to the extent necessary to process any and all claims incurred on or before December 31, 2018 (the date this plan was terminated) for eligible care, services or products under the plan that are properly filed by March 31, 2019.

(i) ***Supply Chain***

67. ITCAN purchases finished conventional cigarette products from its affiliate, BAT MX to import into Canada.[19] Invoices from BAT MX are payable within 30 days following the month end. All ITCAN purchases of finished products from BAT affiliates referenced in this affidavit are on an agreed to, arm's length price.

68. ITCAN acquires title to the purchased finished product once it is loaded onto trucks in Mexico to be transported through the U.S. to Canada. Along the way, finished goods are warehoused in two free trade zone distribution centres located in Shelby, Montana and Cleveland, Ohio. ITCAN then imports the finished goods into Canada. Based on historical 2018 data, there are approximately four weeks' worth of finished product inventory stored in the U.S. warehouses, one-and-a-half weeks' worth of inventory in transit, and 8 to 10 days' worth of inventory in Canada at any given time. 73% of the volume of finished product that ITCAN imports (destined for sale in Manitoba, Ontario, Quebec, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island) crosses the Canadian border in Ontario.

69. ITCAN purchases certain finished Vogue super slim, DuMaurier super slim, and Pall Mall super slim cigarettes from ITCAN's affiliate British American Tobacco (Supply Chain WE) Limited. These cigarettes are currently imported from Poland and Switzerland to Montreal by sea or air. ITCAN takes title to these goods according to the terms of the purchase orders, which currently state that ITCAN takes title upon delivery in the Montreal port. A third party, Kuehne

[19] As discussed above, ITCAN also buys certain finished goods directly from British American Tobacco (Supply Chain WE) Limited and Souza Cruz S.A.. Additionally, ITCAN buys raw materials and pays an assembly fee to Bastos du Canada Limitée, a competitor, to manufacture a small amount of Marlboro and other brands of cigarettes in Quebec.

and Nagel, manages the logistics to transport the products into Canada, including the selection of the carriers used to transport the product into Canada.

70. Similarly, ITCAN purchases certain finished John Player Choice cigarettes from ITCAN's affiliate Souza Cruz S.A. ("Souza Cruz"). These cigarettes are currently imported from Brazil to Montreal by sea or air. ITCAN takes title to these goods upon delivery in the Montreal port. Souza Cruz selects the carriers used to transport these products into Canada.

71. ITCAN purchases the Glo Products from Nicoventures.[20] Pursuant to a Distribution Agreement dated July 18, 2017 between ITCAN and Nicoventures, ITCAN is Nicoventures' exclusive distributor of the Glo Products in Canada. However, pursuant to a further agreement between ITCAN and ITCO, ITCO acts as the ultimate distributor of Glo Products in Canada. Nicoventures sources the Glo heater and its component parts from China, and then Kuehne and Nagel manages the logistics to transport the products into Canada, including the selection of the carriers used to transport the product into Canada. Nicoventures sources the tobacco sticks from Russia and they are transported to Canada by various air carriers (depending on availability). Currently, all of the Glo Products arrive by air in Vancouver.[21]

72. ITCAN purchases Vype Products from Nicoventures.[22] Pursuant to a Distribution Agreement dated September 11, 2017, ITCAN is Nicoventures' exclusive distributor of the Vype Products in Canada. However, pursuant to a further agreement between ITCAN and ITCO, ITCO acts as the ultimate distributor of Vype Products in Canada. Nicoventures sources the Vype device

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[20] ITCAN, as licensee under a Trademark Agreement with Imperial Brands Ltd., provides Nicoventures with a sub-license to use the du Maurier trademark for these and related products in Canada.

[21] ITCAN takes title to the Glo Products according to the terms of the purchase order, which currently states that ITCAN takes title upon delivery in the Vancouver airport.

[22] ITCAN, as licensee under a Trademark Agreement with Imperial Brands Ltd., provides Nicoventures with a sub-license to use the du Maurier trademark in relation to the Vype products in Canada.

and its component parts from China and the liquids from the United Kingdom. Kuehne and Nagel manages logistical issues regarding the importation of these products.

73. In addition to the two Distribution Agreements, ITCAN has also entered into a Supply of Marketing Services Agreement with Nicoventures dated July 18, 2017. Under this agreement, ITCAN provides marketing support services to Nicoventures in exchange for Nicoventures paying all "Charges" under the Agreement. The Charges consist of the direct and indirect costs attributable to the marketing support services plus a markup if ITCAN or its subsidiaries are the ones providing the services, or the costs without any markup if a third party is engaged to provide the services. ITCAN invoices the Charges to Nicoventures on a quarterly basis.

74. When finished products arrive in Canada, they are transported to various distribution centres. Pursuant to the General Sales And Distribution Agreement between ITCAN and ITCO, ITCO is in charge of distribution of finished products in the Canadian distribution centres. However, the day-to-day operation and management of the distribution centres in both Canada and the U.S. is performed by either Ryder or BJC.

75. ITCO buys finished products from ITCAN pursuant to a sales and distribution agreement (attached to this Affidavit as Exhibit "D"), which was amended pursuant to an Amendment Agreement effective January 1, 2017 (attached to this Affidavit as Exhibit "E") to reflect the purchase and sale of the PRRPs. ITCO pays a small markup to ITCAN which covers the cost of importing the finished cigarette products (but not for Glo Products and Vype Products). Pursuant to the General Sales And Distribution Agreement, title in the finished cigarette products, Glo Products, and Vype Products is transferred from ITCAN to ITCO when they are received in an ITCO distribution centre. ITCO also buys finished paper products for roll-your-own cigarettes from third party suppliers for sale in the retail market.

76. ITCO is the only Applicant that sells finished cigarette products and PRRPs to wholesalers and retailers. ITCO typically engages Ryder or BJC to pick and pack the orders and to manage the delivery of the orders to ITCO's customers. The delivery is performed by Ryder (or a subcontracted party selected by Ryder such as Celadon), UPS, Millennium Express or Loomis Express, as the case may be. However, in remote or less densely populated areas, ITCO engages a wholesaler (Wallace & Carrey Inc.) to pick and pack the orders and to manage the delivery of those orders to ITCO's customers. The retailers and wholesalers pay ITCO for finished cigarette products through pre-authorized payments.

77. For retail sales of Vype Products and Glo Products, ITCO engages Ryder to pick and pack the orders and to manage the delivery of the orders to ITCO's customers. For online sales of Vype Products, ITCO engages Ryder to pick and pack the orders and Canada Post delivers the orders to ITCO's customers. For online sales of Glo Products, the picking and packing of orders is done at the Taste and Circle store in Vancouver described above, and Canada Post delivers the orders to ITCO's customers.

78. The Applicants also have e-commerce sites for selling the PRRPs online. For Glo Products, on April 1, 2018, ITCO began operating an internet e-commerce site over which customers residing in British Columbia who have been verified as adults can purchase Glo Products. In addition, since the passing of Bill S-5, ITCO has begun selling Vype Products to adult customers residing in Canada, excluding Quebec and Nova Scotia, through an internet e-commerce site managed by Nicoventures. ITCO has agreements with third parties that facilitate these online transactions and collection of funds on the backend.

79. It is essential to the success of these restructuring proceedings that the Applicants' global supply chain is maintained without interruption.

(j) ***Tax Bonds and Letters of Credit***

80. The Applicants are required to collect federal excise taxes and import duties (collectively, "Federal Tobacco Tax") and provincial tobacco taxes ("PTT" and, collectively with Federal Tobacco Tax, "Tobacco Taxes") on all tobacco products imported into Canada and sold in a province. The Applicants currently hold the amounts collected as Tobacco Taxes and remit the Tobacco Taxes so collected as required. Tobacco Taxes are remitted monthly in arrears, with dates that vary by jurisdiction. The Applicants have posted bonds to the federal and provincial governmental authorities in connection with its Tobacco Tax obligations (the largest of which is with respect to its Ontario tax obligations). The Applicants also collect GST, HST, PST, and other retail sales taxes in connection with the sale of tobacco products, which are also remitted monthly in arrears (the "Sales Taxes" and, collectively with Tobacco Taxes, the "Sales & Excise Taxes").

81. The peak monthly Federal Tobacco Tax is estimated to be approximately $228 million, which includes the remittance payment for the month in question and the tobacco importations for a stub period within the same month (as the importation period for Federal tax purposes straddles 2 months). The peak monthly PTT is estimated to be approximately $282 million, including an estimate to address the PTT that has been collected but is to be remitted at the next remittance date and for tobacco products imported in those provinces where importation is the triggering factor. In addition, the peak GST and HST is estimated to be approximately $70 million, including an estimate to address the GST and HST that has been collected but is to be remitted at the next remittance date.

82. In addition to the LOC's relating to pension obligations (as described above), ITCAN and/or ITCO have posted bonds or LOCs in respect of certain obligations, including tax obligations, in the aggregate amount of approximately $111 million.[23]

83. The sureties for the bonds is Ace INA Insurance. The bond documents are largely similar and an example is attached to this Affidavit as Exhibit "F".

84. On March 26, 2010, ITCAN entered into an unsecured committed Credit Agreement of $100 million with the Bank of Nova Scotia ("BNS LOC Facility"), which is extended yearly for an additional period of 364 days. The BNS LOC Facility only permits the issuance of LOCs to meet ITCAN's obligations related to all past, present and future taxes, levies, imports, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority, including any interest, additions to tax or penalties. Two LOCs issued in respect of Alberta and British Columbia Provincial Tobacco Taxes in the total amount of $30 million are the only current LOCs issued under the BNS LOC Facility.

85. ITCAN has an irrevocable standby LOC issued by HSBC for the benefit of the Minister of Finance (Ontario) in the amount of $28 million. This LOC was given only with respect to certain of ITCAN's tax obligations. The LOC is scheduled to expire each year on December 21st but is automatically renewed for successive periods of one year unless written notice is given 90 days prior to the expiry date. No such written notice has been given.

(k) ***Banking and Cash Management System***

86. The only Applicant and Applicant subsidiary companies with bank accounts are ITCAN, ITCO, IT Services, IHGI, ITL USA, and Southward Insurance Ltd. The Canadian bank

[23] In addition, IHGI has posted a LOC in the US in the amount of approximately USD$ 0.3 million.

accounts of ITCAN, ITCO, and IT Services are with BNS and IHGI's Canadian account is with Citibank. ITCAN has a U.S. bank account with Citibank N.A. in New York City, which is used to fund IHGI's operating expenses and to pay the rent for ITCAN's New York office. (Two of ITCAN's subsidiaries, ITL USA and IHGI, have U.S. bank accounts with Citibank in Delaware and Toronto.) Southward Insurance Ltd.'s bank account is with BNS in Barbados.

87. ITCAN, ITCO and IT Services each have one Canadian dollar denominated zero balanced account with BNS. ITCAN has a second Canadian dollar denominated account (the "Master Account") used to sweep and replenish the zero balanced accounts. Positive cash balances from zero balanced accounts are automatically swept into the Master Account on a daily basis with negative cash balances likewise replenished from the Master Account.

88. Similarly, ITCAN and ITCO have US dollar denominated accounts at BNS. ITCO's US dollar denominated account is also a zero dollar balance account, with any balance automatically swept into or replenished from ITCAN's US denominated account on a daily basis. ITCAN also has two foreign currency denominated accounts at BNS: one Euro denominated account and one British Pounds Sterling denominated account. ITCO has one foreign currency denominated account in Euros. Foreign currencies are purchased periodically from a BAT related company, B.A.T. International Finance p.l.c. ("BATIF") pursuant to a Dealing Mandate agreement to pay certain payables denominated in the applicable foreign currency. For any payment in a currency for which there is no bank account, the currency is purchased from BNS at the time of the payment.

89. All bank accounts are used to pay invoices to vendors in their given currency. In addition, ITCAN's accounts are also used for Treasury transactions, while ITCO's Canadian dollar denominated account is also used to collect funds from customers.

90. Movements of cash out of bank accounts (other than one Canadian dollar denominated ITCAN account that is swept into or replenished from the Master Account) are completed through batch file transmissions to the bank except for payments in currency other than Canadian and US dollars, which are paid manually by wire transfers.

91. All of the above-mentioned BNS bank accounts are located in Canada, but are reconciled automatically on a daily basis by a foreign Finance Shared Service Centre ("FSSC") as part of BAT's global cash management system.

92. In addition to the foregoing, IPFS (a standalone legal entity which administers the IPFS pension plan) has a Canadian-dollar-denominated account that was used for the pensioners' payroll and related payments such as deduction at source until January 1, 2018, at which time pension payroll was outsourced to CIBC Mellon.

93. ITCAN's credit arrangements are extended by BATIF. A Master Intra-Group Treasury Products Agreement sets out the framework for procedures and conditions applicable to all loans made between members of the BAT group of companies on arm's length terms. Pursuant to that agreement, and as of June 28, 2018, ITCAN has a $30 million committed secured revolving credit facility (the "Revolving Credit Facility") that matures on June 28, 2019.

94. Any amounts drawn under the Revolving Credit Facility that are not due before the maturity date will be payable on the maturity date. The repayment obligations of ITCAN under the Revolving Credit Facility are secured by the shares of ITCAN's subsidiary Imperial Brands Ltd., a guarantee of Imperial Brands Ltd., and a hypothec on trademarks owned by Imperial Brands Ltd.[24]

[24] Originally du Maurier Company Inc., which amalgamated with Imperial Brands Ltd. effective January 1, 2015.

95. With respect to BATIF's security over the Imperial Brands Ltd. shares and trademarks, ITCAN cannot:

(a) create any security on, over or affecting these trademarks and shares without the consent of BATIF;

(b) dispose of all or any part of the trademarks and shares without the consent of BATIF; or

(c) do or cause or permit anything to be done which in any way depreciates, jeopardizes or otherwise prejudices the value of the trademarks and shares.

96. A critical aspect of the Revolving Credit Facility is that it contains a covenant prohibiting ITCAN and its subsidiaries from additional borrowing in excess of $50 million without BATIF's consent.

97. ITCAN manages liquidity risk by maintaining an 18-month rolling cash forecast, which is regularly compared to actual cash flows, by maintaining adequate reserves and committed credit facilities, and by matching the maturity profiles of financial assets and liabilities.

98. The Revolving Credit Facility is available on an "as needed basis" to pay for ITCAN's operating costs including amounts payable for finished product, transportation costs, provincial and federal taxes, salaries, pension obligations and overhead. On a weekly basis, ITCAN either pays down or draws from the Revolving Credit Facility.

99. As at March 4, 2019, ITCAN had not drawn down on the Revolving Credit Facility. Prior to June 28, 2018, the amount available to be drawn down on the Revolving Credit Facility was $350 million and it was renewed at an amount of $30 million.

100. ITCAN currently has a $25 million overdraft facility with the Bank of Nova Scotia which serves as a back stop to the Revolving Credit Facility. As of the date hereof, nothing has been drawn on the overdraft facility.

101. As of July 2015, ITCAN commenced inter-company netting pursuant to the In-House Cash Settlement Policy followed by the BAT group of companies globally. Once a month, all inter-company transactions between members of the BAT group of companies are pooled together and netted so that each company receives or pays one net amount. The amounts owing are paid to or by BATIF. In effect, for example, amounts owed by BAT MX to ITCAN are netted against amounts owed by ITCAN to BAT MX and the actual amount that is transferred from one company to the other, if any, is the net amount. For the most part, ITCAN is a payor as a result of these arrangements.

102. ITCAN enters into foreign exchange forward contracts with BATIF for terms not exceeding 18 months to manage its foreign currency exposure arising from anticipated cash flows in the normal course of business and which are primarily denominated in US dollars, Mexican Pesos, and British Pounds Sterling. ITCAN does not trade in derivatives for speculative purposes.

103. Prior to the filing date, a minimum cash balance of between $10 and $15 million was targeted in the Master Account. Funds in excess of the target amount are used to reduce the amount owing on a Revolving Credit Facility, if any. If no amounts are outstanding under the Revolving Credit Facility, ITCAN has the option to invest through BATIF.

104. ITCAN’s first opportunity to invest funds with BATIF arose after ITCAN found itself in a cash-positive position once it finished paying the amounts owing under an October 27, 2015 Quebec Court of Appeal order requiring ITCAN to pay $758 million as security into court

(the "Security Judgment"). Beginning in December 2017, ITCAN made short-term investments on a regular basis as follows:

(a) Once a week, ITCAN reviewed its weekly cash flow forecasts to determine a minimum cash balance and the excess funds available for investing.

(b) ITCAN communicated the amount and the duration of the investment along with a requested interest rate to BATIF. ITCAN typically invested funds for 7 to 10 days at a time.

(c) BATIF confirmed the investment and a rate of interest based on its review of the market. The funds were automatically transferred from ITCAN's accounts to BATIF for investing and returned along with interest at the end of the investment period.

105. ITCAN invested funds ranging from $95 million to $325 million in the past six months, with interest rates ranging from 1.1 to 2 percent. ITCAN's final investment with BATIF was in the amount of $260 million for seven days on March 5, 2019. In contemplation of applying for CCAA protection, ITCAN asked BATIF to return the $260 million investment immediately and the funds were returned on March 11, 2019.

106. ITCAN intends to maintain its cash management system throughout the CCAA proceedings, except for ending its short-term investments with BATIF.

(l) ***Comprehensive Agreement***

107. Pursuant to a July 31, 2008 Comprehensive Agreement between ITCAN and Her Majesty the Queen in Right of Canada and the Provinces, ITCAN agreed (without admission of

liability) to make scheduled payments to the Receiver General for Canada in consideration of resolving claims associated with the trade of illicit or contraband products in Canada and related tax collection matters. A copy of the Comprehensive Agreement is attached as Exhibit "G".

108. The Comprehensive Agreement provided for an initial payment by ITCAN of $50 million on or before December 31, 2008 (which was made) together with scheduled annual payments on April 30 of each year for the preceding fiscal year:

> 5. In consideration of the agreements, undertakings and obligations of the Releasing Entities under this Agreement, ITCAN shall pay to Canada, for Canada, and on behalf of and as agent for the Provinces, the amounts provided below as follows in Canadian dollars:
>
> (a) ITCAN shall pay as a liquidated amount $50 million on or before December 31, 2008;
>
> (b) each fiscal year from 2009 to 2018 inclusive, ITCAN will make an annual payment to Canada in an amount equal to 2.65% of the Net Sales Revenue for the then most recent fiscal year completed; provided however, that once ITCAN's payments under this subparagraph total $300 million (in addition to the $50 million in subparagraph (a) above), no further payments or part payment under this subparagraph shall be made; and
>
> (c) Commencing in the first fiscal year following the satisfaction of all payment obligations in subparagraphs (a) and (b) above, and continuing for a total of five fiscal years, ITCAN will make an annual payment to Canada in an amount equal to 1% of the Net Sales Revenue for the then most recent fiscal year completed (in the event that Net Sales Revenue for any year is less than $1 billion or the maximum quantum payable under paragraph 5 (a) and (b) above has not been paid, the percentage for that year shall increase to 2.65%); provided however, that once ITCAN's payments under this subparagraph and subparagraph (b) in the aggregate total $350 million, no further payment or part payment under this subparagraph shall be made.
>
> 6. For each fiscal year, ITCAN shall calculate its Net Sales Revenue and so advise Canada in writing by February 15th of the next year, and (beginning in fiscal 2009) shall pay the annual amounts owing pursuant to this Agreement on or before April 30th of that year.

109. The ITCAN payments under Paragraph 5 (b) of the Comprehensive Agreement for the fiscal years commencing in 2008 are set out below:

2008	$32,089,268
2009	$31,801,071

2010	$31,874,495
2011	$30,893,937
2012	$30,174,426
2013	$30,614,618
2014	$29,182,399
2015	$30,941,824
2016	$32,715,677
2017	$19,712,284

110. Following the payment for fiscal 2017, the payments made by ITCAN equalled the $300 million cap under section 5(b) of the Comprehensive Agreement and no more payments were owed under that paragraph.

111. As a result of satisfying its obligations under sections 5(a) and (b) of the Comprehensive Agreement, ITCAN is now required to make payments under section 5(c) beginning in fiscal 2018. The payment for fiscal 2018 (payable in April 2019) will be approximately $13.9 million. The scheduled payments under paragraph 5(c) of the Comprehensive Agreement total $50 million in the aggregate, with the last payment anticipated in 2022 for the fiscal year 2021.

(m) ***Other Integral Services Provided by BAT and BAT Affiliates***

112. In addition to the manufacturing and financing services provided by certain BAT affiliates (the "BAT Counterparties"), the Applicants benefit from a wide range of services, licenses and rights provided by the BAT Counterparties, including:

- **SAP and IT Infrastructure**: As of July 2015, ITCAN's computer systems are fully integrated with those of BAT and BAT affiliates on a global SAP computer platform. The systems integration involves all digital data and programs being hosted on a global server located in Europe as opposed to being hosted locally. ITCAN paid $13.3 million for the year 2018 with installments remitted quarterly.

- **IT Services**: Souza Cruz, a BAT affiliate in Brazil, provides ITCAN with a full range of IT services including data centre management, local infrastructure management, application support services, service desks, on-site user support, WAN & LAN services, security services, software maintenance and licensing, and project design and build services. ITCAN paid approximately $2.8 million in 2018 to Souza Cruz in relation to IT services with installments remitted monthly.

- **Product Development and Testing**: ITCAN paid approximately $4.5 million in 2018 to Souza Cruz for product development and ancillary product testing with installments remitted monthly.

- **Accounting and Human Resources Services**: In 2018, ITCAN paid approximately $2.9 million to British American Tobacco Caribbean & Central America, a BAT affiliate in Costa Rica, for various accounting (including payroll, accounts payable, accounts receivables, accounts reconciliation, data entry), reporting, treasury, and human resources work with installments remitted quarterly.

- **Innovation Royalties**: ITCAN also pays BAT 3% or 5% of its yearly net sales revenue for sales of du Maurier, Pall Mall, Viceroy, John Player and Vogue brand products, which amounted to approximately $46.8 million in 2018, with installments remitted monthly, for a license to use innovations and technology (including patents, know-how, rights in design, copyright, database rights, and plant variety rights) and communications packages (including advertising, packaging, copy, graphics, point of sale and merchandising materials).

- **Technical and Advisory Services**: In 2018, ITCAN paid BAT technical and advisory fees of approximately $26.8 million to benefit from BAT's corporate, public affairs, manufacturing and production, marketing, tax, accounting, and human resources expertise in relation to ITCAN's business with installments remitted quarterly.

- **Integrated Sales and Operations Plan**: Since 2003, the process of developing ITCAN's sales and operations plan has been integrated with the sales and operations planning of all BAT affiliates. The development of regional plans based on the pooled data from all markets allows ITCAN to benefit from more accurate supply and demand forecasting.

- **Global Sourcing Agreement**: ITCAN benefits from the exponentially increased buying power of the BAT group of companies when it purchases various products and services relating to the operation of the business.

113. The Applicants' agreements with the BAT Counterparties are confidential and contain commercially sensitive information of a competitive nature.

114. Although the Applicants are not arm's length from the BAT Counterparties given that they are all members of the BAT group of companies, the Applicants and the BAT Counterparties endeavour to ensure that any amounts paid for goods and services are consistent with prices that would be paid by arm's length parties in similar circumstances.

115. Certain intercompany agreements between the Applicants and the BAT Counterparties provide the BAT Counterparties with the right to terminate their agreement on the occurrence of certain insolvency events of default and/or unilaterally. The service relationships,

licenses and rights together with the manufacturing and financing services provided by the BAT Counterparties are collectively vital for preserving the value of the underlying business. Therefore, the Applicants have entered into a Accommodation Agreement dated March 12, 2019 with some of the BAT Counterparties (the "Accommodation Agreement") in order to maintain these arrangements and not disrupt the Applicants' operations during these CCAA proceedings. Under the Accommodation Agreement, the relevant BAT Counterparties have agreed to not exercise their termination rights while the Accommodation Agreement is in force. In exchange, the Applicants have agreed to not take certain steps in the CCAA proceedings without the agreement of the relevant BAT Counterparties, including seeking a sanction order or terminating the proceedings, initiating a sales process, or settle any material litigation. A copy of the agreed form of the Accommodation Agreement (which has been signed by the Applicants and will be signed by the relevant BAT Counterparties shortly) is attached as Exhibit "H".

IV. The Financial Position of the Applicants

116. ITCAN's audited consolidated financial statements for the fiscal year ended December 31, 2018 are attached as Exhibit "I". Certain information contained in the consolidated financial statements is summarized below. All amounts in this Affidavit are in Canadian Dollars unless otherwise specified.

(a) ***Assets***

117. As at December 31, 2018, ITCAN had total assets of $5,535 million.

(i) Current Assets

118. ITCAN's current assets (as at December 31, 2018) represented $697 million of its total assets and consisted of:

- Inventories - $182 million;
- Trade and other receivables - $84 million; and
- Cash and cash equivalents - $431 million.

119. Cash and cash equivalents consist of cash and investments that are readily marketable with initial maturities not exceeding 90 days.

(ii) Non-Current Assets

120. ITCAN's non-current assets (as at December 31, 2018) represented $4,838 million of its total assets and consisted of:

- Goodwill - $3,967 million;
- Other intangible assets - $4 million;
- Property, plant and equipment - $17 million;
- Retirement benefit assets - $45 million;
- Deferred tax assets - $40 million;

- Restricted security deposit - $762 million;[25] and

- Other non-current assets - $3 million.

121. The majority of ITCAN's non-current assets are made up of goodwill, restricted security deposit, deferred tax assets, property plant and equipment, and retirement benefit assets. The $762 million security deposit consists of the $758 million of security, plus certain fees, that ITCAN has deposited at the Registry of the Quebec Court of Appeal pursuant to the Security Judgment.

122. Goodwill of $3,967 million resulted from the February 1, 2000 purchase of Imasco Limited by British American Tobacco (Canada) Limited and the subsequent amalgamation of the two companies to form ITCAN. Goodwill represents the excess of the purchase price, including acquisition costs, over the fair value of the identifiable net assets acquired. Goodwill with an indefinite life is not amortized to earnings but is assessed for impairment on an annual basis. ITCAN performs its annual impairment test as at December 31, or more frequently if there are indications that impairment may have occurred.

(b) ***Liabilities***

123. As at December 31, 2018, ITCAN's total liabilities were approximately $1,088 million. These liabilities consisted of current liabilities of approximately $867 million, and non-current liabilities of approximately $221 million.

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[25] This figure included the $758 million security ITCAN was required to pay into court under the Security Judgment. Following the release of the Quebec Appeal Judgment, the Board of Directors of ITCAN has reassessed the recoverability of the deposit and determined that the security's recoverability is, under IFRS, less than virtually certain. Consequently, a provision of approximately $758 million will be charged to ITCAN's income statement in 2019.

(i) Current Liabilities

124. Current liabilities as at December 31, 2018 included the following:

- Current provisions - $14 million;
- Non-operating payables - $54 million;
- Income tax payable - $222 million;
- Trade and other payables - $190 million; and
- Government levies creditors - $387 million.

(ii) Non-Current Liabilities

125. ITCAN's non-current liabilities (as at December 31, 2018) included

- Retirement benefit liabilities - $160 million;
- Non-current payables - $51 million; and
- Non-current provisions - $10 million.

(c) ***Equity***

126. Capital and reserves as at December 31, 2018 totalled $4,447 million and included the following:

- Share capital - $29 million;
- Contributed surplus - $1,280 million;

- Accumulated other comprehensive income - $25 million; and
- Retained earnings - $3,113 million.

127. There are 184,174,156 issued and outstanding common shares.

(d) ***Profits***

128. ITCAN reported profits before taxes and interest of $792 million in 2018 and $673 million in 2017. ITCAN's profits after taxes and interest increased from $487 million in 2017 to $589 million in 2018.

V. Need for the Requested Relief

129. The Applicants face an existential threat from the Tobacco Litigation in Canada. The plaintiffs collectively seek hundreds of billions of dollars in damages, which, if those claims were successful, would exceed the Applicants' total assets many times over. Moreover, the Quebec Court of Appeal recently issued the Quebec Appeal Judgment, which condemns ITCAN to pay a potential maximum amount that, with interest, is over $9 billion. Not only does this amount alone exceed the Applicants' ability to pay, there are many competing claims across Canada that still need to be resolved.

(a) ***Litigation in the Tobacco Industry***

130. The tobacco industry has been the subject of significant product liability and consumer litigation in recent decades. I am advised by Craig Lockwood of Osler and believe that, in Canada, the "traditional" types of claims that have been asserted can be broadly categorized as follows:

(a) "**Personal Injury Claims**" (*i.e.*, claims asserting defective design and/or failures to warn in respect of various illnesses, most notably lung cancer, respiratory diseases, heart diseases, and various other forms of cancer. This category of claims also includes litigation by non-smokers with respect to the alleged ill-effects of second-hand smoke);

(b) "**Addiction Claims**" (*i.e.*, claims asserting defective design and/or failures to warn in respect of the addictive properties of cigarettes);

(c) "**Restitutionary Claims**" (*i.e.*, statutory and/or civil claims seeking the return of the product purchase price or disgorgement of profits based on allegations of misrepresentation and/or false advertising, most notably in relation to historical "light and mild" products); and

(d) "**Non-Pecuniary Claims**" (*i.e.*, claims for non-monetary damages, such as moral damages and/or punitive damages, related to various categories of alleged historical misconduct).

131. Some combination of these claims are the subject of ongoing litigation in all Canadian jurisdictions (as described below). In addition, the Applicants may face material, as-yet-unasserted claims by various classes of Canadian consumers.

(b) ***The Quebec Judgment***

132. In 1998, plaintiffs filed two class actions against ITCAN, JTI and RBH in the Quebec Superior Court seeking in excess of $20 billion in compensatory and punitive damages. On February 21, 2005, certification was granted for both cases. The class definitions include the following individuals as class members:

- **The Letourneau action**: All persons residing in Quebec who, as of September 30, 1998, were addicted to nicotine in cigarettes manufactured by the Defendants and who in addition meet the following three criteria: (i) they started smoking before September 30, 1994 and since that date have smoked principally cigarettes manufactured by the Defendants; (ii) between September 1 and September 30, 1998, they smoked on a daily basis an average of at least 15 cigarettes manufactured by the Defendants; and (iii) on February 21, 2005, or until their death if it occurred before that date, they were still smoking on a daily basis an average of at least 15 cigarettes manufactured by the Defendants. The group also includes the heirs of members who meet the criteria described above.

- **The Blais action**: All persons residing in Quebec who meet the following criteria: (i) having smoked before November 20, 1998 at least 12 pack years of cigarettes manufactured by the Defendants (the equivalent of a minimum of 87,600 cigarettes); and (ii) have been diagnosed, before March 12, 2012 with: (a) lung cancer, (b) cancer (squamous cell carcinoma) of the throat, namely the larynx, oropharynx or hypophalanx, or (c) emphysema. The group also includes the heirs of persons deceased after November 20, 1998 who meet the criteria described above.

(i) Judgment and Provisional Execution

133. The trial concluded in late 2014 and the judgment (the "Quebec Class Action Judgment") was released on May 27, 2015. The trial judge found the co-defendants jointly liable for an amount that, after interest and as of the date of the judgment, amounts to $15.6 billion, with

ITCAN's share being approximately $10.6 billion. A copy of the Quebec Class Action Judgment dated May 27, 2015 is attached as Exhibit "J".

134. The Quebec Class Action Judgment included an order of provisional execution notwithstanding appeal (the "Provisional Execution Order") totalling in excess of $1 billion for the co-defendants combined, with $742.5 million payable by ITCAN (the "Provisional Execution Amount"). The Provisional Execution Amount was initially due and payable by July 26, 2015.

135. ITCAN brought a motion before the Quebec Court of Appeal on July 9, 2015 seeking an order cancelling the Provisional Execution Order. The Court of Appeal cancelled the Provisional Execution Order on July 23, 2015. A copy of the Court of Appeal's decision dated July 23, 2015 is attached as Exhibit "K".

136. On July 6, 2015, counsel for the Quebec Class Action plaintiffs requested that ITCAN provide them with seven days' notice of any CCAA filing. A copy of this letter from counsel is attached as Exhibit "L". ITCAN did not respond to this letter.

(ii) Motion for Security

137. On August 14, 2015, the plaintiffs delivered a motion seeking security in the amount of $5 billion as a condition to proceed with the appeal. On October 27, 2015 the Court of Appeal issued the Security Judgment ordering ITCAN to pay a total of $758 million as security, payable in equal installments of approximately $108.3 million per quarter over seven quarters, starting on December 30, 2015. A copy of the Security Judgment is attached as Exhibit "M". The instalments have all now been paid.

138. Subsequently, ITCAN brought a motion before the Quebec Court of Appeal to vary the security payment terms. The Court of Appeal dismissed the motion on December 9, 2015. A copy of the Court of Appeal's decision dated December 9, 2015 is attached as Exhibit "N".

(iii) The Appeal

139. ITCAN filed its appeal submissions from the trial judgment on December 11, 2015 and the appeal was heard during the week of November 21, 2016 and on November 30, 2016. On March 1, 2019, the Quebec Court of Appeal substantially upheld the lower court's decision. The Quebec Appeal Judgment made two notable modifications to the trial judgment: (i) the total claim amount was reduced by just over $1 million; and (ii) the claim amount was divided into 15 different increments which bear interest from various dates between November 20, 1998 and December 31, 2011 (instead of having the entire claim amount the bear interest from November 20, 1998), which reduced the interest payable on the total claim amount by approximately $3 billion. Following the rendering of the Quebec Appeal Judgment:

(a) the total maximum liability for moral damages, with interest and additional indemnity, is over $13.5 billion, of which ITCAN's share is $9,064,365,117.54 with interest and additional indemnity as of the date of the Quebec Appeal Judgment; and

(b) in addition to moral damages, ITCAN is condemned to pay punitive damages that, with interest and additional indemnity, total $89,199,977.26 as of the date of the Quebec Appeal Judgment. In total, the Quebec Appeal Judgment condemns ITCAN to pay a maximum amount of up to $9,153,565,094.80.

140. The Quebec Appeal Judgment orders the defendants to pay an initial deposit into court within 60 days of the judgment. ITCAN's share of the total initial deposit is $759.2 million. ITCAN is of the view that the $758 million security already deposited by it with the Quebec Court of Appeal should be applied to the initial deposit and that ITCAN is only required to pay an additional $1.2 million into court. As such, ITCAN is of the view that the deposit required under the Quebec Appeal Judgment is already essentially paid into court.

141. Following the release of the Quebec Appeal Judgment, the Applicants have received the following communications:

(a) On March 6, 2019, ITCAN's counsel received a letter from counsel for British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan in connection with the Government Medicaid Actions (described below) requesting advance notice prior to any CCAA filing. ITCAN did not respond to this request. A copy of the March 6, 2019 letter is attached as Exhibit "O".

(b) On March 7, 2019, ITCAN's counsel received a letter from counsel for Ontario in its Government Medicaid Action requesting advance notice prior to any CCAA filing. ITCAN did not respond to this request. A copy of the March 7, 2019 letter is attached as Exhibit "P".

(c) On March 8, 2019, counsel for the Quebec Class Action plaintiffs sent a letter to the Board of Directors of ITCAN threatening to hold the directors personally liable if ITCAN made any payments to shareholders or related parties, and demanding copies of all liability insurance policies insuring the directors and officers of

ITCAN. ITCAN did not respond to this letter. A copy of the March 8, 2019 letter is attached as Exhibit "Q".

(iv) Applicants' Inability to Pay

142. The Applicants are unable to pay the maximum amount owing under the Quebec Appeal Judgment. While the actual amount that ITCAN would be required to pay depends on the rate of take up among class members, the potential maximum amount that ITCAN is condemned to pay under the judgment is billions of dollars more than all of its assets as of December 31, 2018.

(c) ***Other Tobacco Litigation***

143. ITCAN is facing more than 20 large tobacco litigation claims that have been filed across Canada (four of which are in Ontario) with claims for damages totalling well over $600 billion. A chart outlining these proceedings and certain other litigation across Canada is appended at Schedule A. These proceedings include the categories described below.

144. **The Government "Medicaid" Actions**: These actions initiated against ITCAN in ten provinces all arise from the enactment of special purpose provincial legislation creating a statutory claim in favour of the provincial governments to permit the recovery of health care costs incurred in connection with smoking-related diseases. On a substantive basis, the legislation enacted by the various provinces and resultant litigation is virtually identical except for some differences in Quebec.

145. I will use the Ontario Medicaid Action as an example. Her Majesty the Queen in Right of Ontario is claiming $330 billion in damages against various defendants including: (i) ITCAN's ultimate parent, BAT, together with the BAT Affiliates; (ii) RBH and JTI and their affiliates, Rothmans Inc., Rothmans, Benson & Hedges Inc., Altria Group, Inc., Philip Morris

U.S.A. Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc.; and (iii) the Canadian Tobacco Manufacturers' Council, a tobacco trade group. A copy of the Ontario Medicaid Action Amended Statement of Claim is attached as Exhibit "R".

146. The Ontario Medicaid Action seeks to recover health care costs under the *Tobacco Damages and Health Care Costs Recovery Act*, 2009, S.O. 2009, C.13 (the "*Ontario Tobacco Damages Recovery Act*"). In addition to seeking damages for various alleged "tobacco related wrongs" under the *Ontario Tobacco Damages Recovery Act*, Her Majesty the Queen in Right of Ontario advances claims for damages based on an extensive array of conspiracy allegations including, without limitation, a conspiracy among:

(a) **The "International Tobacco Industry"** alleged to have "conspired, and acted in concert in committing tobacco related wrongs";[26]

(b) **The "Canadian Tobacco Industry"** alleged to have "conspired and acted in concert to prevent the Crown and persons in Ontario and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco related wrongs in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the conspiracy, concert of action and common design.";[27] and

(c) **Each of the "Corporate Groups"** including the BAT Group Members (defined to include BAT, B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited) alleged to have caused persons in Ontario to start to, or continue to "smoke

[26] Paragraph 86 of the Ontario Medicaid Action Amended Statement of Claim.
[27] Paragraph 108 of the Ontario Medicaid Action Amended Statement of Claim.

cigarettes manufactured and promoted by the Defendants" or exposed such persons to cigarette smoke thereby creating an "increased risk of tobacco related disease."[28]

147. Furthermore, Her Majesty the Queen in Right of Ontario relies on section 4 of the *Ontario Tobacco Damages Recovery Act* to assert that "the Defendants are jointly and severally liable for the cost of health care benefits provided to insured persons in Ontario resulting from tobacco related disease or the risk of tobacco related disease."[29]

148. The New Brunswick Medicaid trial is currently scheduled to begin in November 2019 under a court order, but will have to be rescheduled as a result of certain recently-released motion decisions. The other Medicaid actions, including the Ontario Medicaid Action, remain at more preliminary stages.

149. **Smoking/Health Class Actions**: Non-government plaintiffs have initiated substantially similar proposed smoking and health class actions against ITCAN in a number of provinces.[30] Many of the class actions name ITCAN, BAT, the BAT Affiliates, the other two major Canadian tobacco manufacturers, a number of other international corporations, the Canadian Tobacco Manufacturers' Council and several *ex juris* tobacco companies and seek unspecified damages on behalf of individuals who have suffered chronic respiratory diseases, heart diseases or cancer. Copies of the class action Statements of Claim are attached as Exhibit "S".

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28 Paragraph 141 of the Ontario Medicaid Action Amended Statement of Claim.
29 Paragraph 158 of the Ontario Medicaid Action Amended Statement of Claim.
30 Not only are the issues in the various class actions similar, seven of the class actions in the provinces of Ontario, Nova Scotia, Manitoba, Saskatchewan, Alberta and British Columbia were filed by the same law firm.

150. As in the Government Medicaid Actions, certain of the class actions allege a conspiracy among the defendants designed to prevent consumers from learning of the health dangers associated with cigarettes.

151. **Ontario Tobacco Grower Class Action**: On December 11, 2009, ITCAN was served with a class action filed by Ontario tobacco farmers and the Ontario Flue Cured Tobacco Growers' Marketing Board ("Growers' Action"). Separate but identical suits were also served on JTI and RBH. The Plaintiffs allege that, during 1989-1995, ITCAN improperly paid lower prices for tobacco leaf destined for duty-free products, as opposed to the higher domestic leaf price. The suit claims $50 million in damages. ITCAN was served with certification materials on September 7, 2011. ITCAN has alleged that the Growers' Action is time barred. In a decision dated June 30, 2014, the Court dismissed this preliminary challenge. ITCAN was granted leave to appeal on April 23, 2015. The appeal was heard by the Divisional Court on April 21, 2016 and dismissed in July 2016. Leave to appeal to the Court of Appeal for Ontario was sought and was dismissed in November 2016. The case remains at a preliminary stage and no certification hearing date has yet been set.

VI. Relief Sought

(a) *Stay of Proceedings*

152. The Applicants are insolvent and require a stay of proceedings and other protections provided by the CCAA so that they are provided with the time to restructure their affairs and attempt to maximize enterprise value. The Applicants are also seeking to have the stay extended to their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, because they are highly integrated with the Applicants and are indispensable to the Applicants' business and their restructuring.

153. As described above, the stay of proceedings is proposed to extend to all Tobacco Claims against not only the Applicants, but also against BAT and the BAT Affiliates. The Applicants believe that it is appropriate to do so for several reasons, including:

(a) ITCAN, BAT and the BAT Affiliates are named as co-defendants in class actions and health care recovery proceedings across Canada and are alleged to be jointly and severally liable for having engaged in a conspiracy to suppress information regarding the dangers of smoking and to encourage smoking. These claims against ITCAN, BAT, and the BAT Affiliates can only be effectively determined in one forum. The Applicants therefore seek a stay of proceedings in favour of BAT and the BAT Affiliates with the objective of facilitating a global resolution of the Tobacco Claims; and

(b) A stay of proceedings in favor of BAT and the BAT Affiliates will allow ITCAN, BAT, and the BAT Affiliates to focus on developing and implementing a plan of compromise or arrangement without the costs and distraction that would inevitably ensue if the plaintiffs were to continue pursuing the Tobacco Claims against BAT and the BAT Affiliates at the same time as this CCAA proceeding.

(b) ***Monitor***

154. FTI Consulting Canada Inc. ("FTI") has consented to act as the Monitor of the Applicants under the CCAA. A copy of the Monitor's consent is attached as Exhibit "T".

(c) ***Administration Charge***

155. The Applicants propose that the Monitor along with its counsel and counsel to the Applicants be granted a court-ordered charge on all of the present and future assets, property and

undertaking of the Applicants (the "Property") as security for their respective fees and disbursements relating to services rendered in respect of the Applicants up to a maximum amount of $5 million (the "Administration Charge"). The Administration Charge is proposed to rank *pari passu* with the Tobacco Claimant Representative Charge (as defined in the Initial Order) and to have first priority over all other charges.

(d) ***Tobacco Claimant Representative***

156. The Applicants propose that the Honourable Warren K. Winkler be appointed by the Court as the Tobacco Claimant Representative to represent the interests of Tobacco Claimants (excluding Government Claimants) in the CCAA proceedings on an interim basis. I understand that an Affidavit of Nancy Roberts, sworn on March 12, 2019, has been filed to address this issue.

(e) ***Directors' and Officers' Protection***

157. I am one of four individuals currently serving on the Board of Directors of both ITCAN and ITCO. I have been on the Boards since June 1, 2013. The other three directors, their additional roles (if any), and their start dates are set out below:

(a) Jorge Araya: A member of the Boards since January 16, 2015. He is also the President and CEO of ITCAN.

(b) Tamara Gitto: A member of the Boards since December 31, 2012. She is also the Vice President, Legal and External Affairs of ITCAN and the Vice President, Law and General Counsel of ITCO.

(c) Robert Casey: A member of the ITCAN Board since March 11, 2019. He is also the Assistant General Counsel – Corporate Legal for British-American Tobacco

(Holdings) Limited and a former director of various BAT Affiliates, including BATIF and B.A.T Industries p.l.c.

158. The Applicants require the continuing support and insight of their Directors and Officers (the "Directors") to preserve the value of the Applicants' business as a going concern enterprise and to address the financial challenges associated with these CCAA proceedings.

159. I am advised by Marc Wasserman of Osler and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages, unpaid accrued vacation pay, unremitted source deductions, health taxes, workers' compensation and other payroll related obligations (the "Employee Liabilities"). In addition, the Applicants are required to collect Federal Tobacco Taxes and PTT on all tobacco products imported into Canada and sold in a province. The Applicants also collect and remit Sales Taxes. I am further advised by Marc Wasserman and believe that the requirement of the Applicants to collect and remit Sales & Excise Taxes likewise creates potential financial exposure for the Directors.

160. Given the discreet nature of the potential Director liabilities associated with each of the potential Employee Liabilities and the Sales & Excise Taxes, the Applicants are seeking separate charges for the Employee Liabilities (the "Directors Charge") and Sales & Excise Taxes (the "Sales & Excise Tax Charge"). This approach has the advantage of segregating the potential Director liabilities arising from different aspects of the Applicant's business and creates transparency for stakeholders such as, for example, the government entities as the intended beneficiaries of the proposed Sales & Excise Tax Charge.

161. The Applicants maintain director and officer liability insurance (the "D&O Insurance") extending primary coverage with $15 million aggregate limits of liability and excess

liability policies with cumulative aggregate limits of liability of $230 Million. The Applicants also granted contractual indemnities in favour of the Directors. However, the economic value of contractual indemnities granted by entities that are admittedly insolvent is questionable. Likewise, the Directors are collectively reluctant to rely solely on the D&O Insurance given the contractual contingencies and uncertainty associated with possible coverage related issues beyond their control in a complex restructuring.

162. With respect to the Employee Liabilities, the Applicants sought the assistance of FTI, in its capacity as proposed Monitor, to estimate the potential scope of the Employee Liabilities. The largest payroll period was used as a proxy and extended to cover the stub period between the payroll cut off date and payment date resulting in a total estimated exposure of approximately $13 million. Although the Applicants intend to comply with applicable laws with respect to matters affecting it, the failure to successfully complete a restructuring creates the prospect of material personal liabilities for Directors.

163. In light of the potential liabilities and the uncertainties surrounding available indemnities and insurance, the Directors have indicated to the Applicants that their continued participation in this proceeding requires the granting of a $16 million Directors Charge. In addition, the proposed Initial Order provides that Directors will only have recourse to the Directors' Charge as a "back-stop" in the event that the D&O Insurance (which covers most typical director and officer liabilities) is not available or applicable.

164. It is imperative that the Directors have the confidence that they will be insulated to the extent possible from post-filing claims arising from the discharge of their duties for the benefit of all stakeholders. Granting the requested Directors Charge will therefore pave the way for the Directors to focus on the ultimate objective of working towards developing and implementing a

successful plan of compromise or arrangement to permit the Applicants to emerge from this CCAA proceeding as a viable business.

(f) ***Sales & Excise Tax Charge***

165. As described previously in this affidavit, the Applicants collect significant amounts of Sales & Excise Taxes with responsibility for remitting these sums to the applicable government authorities on statutory remittance dates.

166. With respect to the Federal Tobacco Tax, ITCAN utilizes the "self-assessment" method which involves ITCAN calculating the tax payable for the import of tobacco in any given month and remitting those taxes on the payment date in the following month. There are two methods for collection and remittance of PTT: the purchase method and the sales method. Under the purchase method, ITCAN collects PTT when tobacco products are delivered to its distribution centres. Under the sales method, ITCAN collects PTT when tobacco products are sold to its customers. The specific collection and remittance method in each jurisdiction is dictated by each province.

167. The Directors have considered alternative methods for the collection and remittance of Sales & Excise Taxes such as segregation of funds or accelerated remittances with a view to limiting the corresponding financial exposure associated with non-payment. These deliberations resulted in the conclusion that continuing with current practices is the most viable option from an operational perspective. The alteration of current practices would materially impair the Applicants' liquidity and the implementation of new procedures contemporaneously with the Applicants initiating a Court supervised restructuring process is viewed as increasing the risk profile of the Directors since the current practices have been reliable in the past.

168. Collected but unremitted Sales Taxes and Tobacco Taxes at any given time have been estimated with the assistance of FTI in its capacity as Proposed Monitor, and can exceed $70 million and $510 million respectively. The collection and remittance obligations for Sales & Excise Taxes therefore exposes the Directors to significant financial liabilities.

169. As a result, it is proposed that this Honourable Court grant a Sales & Excise Tax Charge in favour of Canadian federal, provincial, and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes in the amount of $580 million over the Applicants' property to secure the remittance of any collected but unremitted Sales & Excise Taxes. The quantum of the Sales & Excise Tax Charge takes into account the bonds and letters of credit posted with applicable governmental authorities to avoid double counting. In light of the proposed Sales & Excise Tax Charge, the Initial Order also provides that the applicable government authorities be stayed from requiring that any additional bonding or other security be posted by or on behalf of the Applicants in connection with Sales Taxes.

170. The granting of the requested Sales & Excise Tax Charge is intended to satisfy any concerns that the applicable governmental authorities may have regarding the treatment of Sales & Excise Taxes in these proceedings. The Sales & Excise Sales Tax Charge should assure such governmental authorities that there is no need for concern regarding the Applicant's remittance of Sales & Excise Taxes in accordance with its ordinary practice and no need to seek to impose further bonding requirements on the Applicants with respect to such taxes.

(g) ***Priority of Court-Ordered Charges***

171. It is proposed that the relative priority of the Administration Charge, the Directors' Charge and the Sales & Excise Tax Charge shall be as follows:

First – Administration Charge (to the maximum amount of $5 million) and the Tobacco Claimant Representative Charge (to the maximum amount of $1 million), *pari passu*;;

Second – Directors' Charge (to the maximum amount of $16 million); and

Third – Sales & Excise Tax Charge (to the maximum amount of $580 million).

(h) ***Cash Flow Forecast***

172. ITCAN has prepared 13-week cash flow projections and the underlying assumptions as required by the CCAA. A copy of the cash flow projections is attached as Exhibit "U". The cash flow projections demonstrate that the Applicants have sufficient liquidity to continue going concern operations during the initial stay period. I confirm that:

(a) All material information relative to the 13-week cash flow projections and to the underlying assumptions has been disclosed to FTI in its capacity as Monitor; and

(b) Senior Management has taken all actions that it considers necessary to ensure that: (i) the individual assumptions underlying the 13-week cash flow projections are appropriate in the circumstances; and (ii) the individual assumptions underlying the 13-week cash flow projections, taken as a whole, are appropriate in the circumstances.

173. The Applicants anticipate that the Monitor will provide oversight and assistance and will report to the Court in respect of ITCAN's actual results relative to the cash flow forecast during this proceeding.

(i) ***Critical Suppliers***

174. In addition to the standard provisions in the Model Order, the Applicants also seek the entitlement, but not the requirement, to pay the following expenses:

(a) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of the Initial Order by various third-party suppliers including logistics or supply chain providers, customs brokers and freight forwarders; providers of information technology, social media marketing strategies and publishing services; and in respect of the Loyalty Program.

(b) any other third-party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the business.

(c) any royalties due to arm's length parties.

(d) with the consent of the Monitor, amounts for inventory and other intercompany supplies actually supplied to the Applicants by BAT and its affiliates prior to the Initial Order and amounts due prior to the Initial Order for shared services, licenses or rights provided to the Applicants by BAT and its affiliates. For any amounts that become due after the Initial Order is granted, the Applicants are permitted to continue paying amounts owing to BAT and its affiliates for transactions in the ordinary course of business or as otherwise approved by the Monitor.

(j) ***Chapter 15 Proceedings***

175. FTI, as Monitor, intends to initiate a case under chapter 15 of Title 11 of the United States Code (the "Bankruptcy Code") on behalf of ITCAN, seeking (a) recognition of the Monitor

as the foreign representative of ITCAN, (b) recognition of this CCAA proceeding as a foreign main proceeding pursuant to sections 1515, 1517 and 1520 of the Bankruptcy Code, (c) recognition and enforcement of the Initial CCAA Order, and (d) other appropriate relief under the Bankruptcy Code (the "Chapter 15 Case").

176. FTI, as Monitor, intends to file the Chapter 15 Case in the United States Bankruptcy Court for the Southern District of New York, where it maintains its principle place of business in the United States.

(k) ***Conclusion***

177. I believe that granting the Initial CCAA Order sought by the Applicants is in the best interests of the Applicants and all interested parties. Without the requested stay, the Applicants face cessation of going concern operations, the liquidation of their assets and the loss of their employees' jobs. Furthermore, a successful restructuring of the Applicants' business will avoid the pitfalls associated with contraband tobacco manufacturers having the opportunity to gain additional market share to the detriment of the industry and authorities that regulate and tax the sale of tobacco related products for the benefit of the public at large.

178. The Applicants require a realistic dialogue with their stakeholders under the protection of the CCAA with the goal of negotiating a compromise of the Tobacco Claims, while maintaining the ongoing value of the business. The granting of the requested stay of proceedings and the other relief sought will permit an orderly restructuring of the Applicants' affairs under Court supervision, with minimal short-term disruption to their business.

179. BAT is a publicly traded company that is listed, among other places, on the London Stock Exchange and the New York Stock Exchange. The Applicants have to take into account

potential public market considerations in New York and London in their CCAA application, including in relation to notice and timing of their filing.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 12th day of March, 2019.

Waleed Malik

Commissioner for Taking Affidavits

WALEED MALIK
LSO. No. 67846O

Eric Thauvette

Schedule A - Litigation

Copies of the first page of each of the statements of claim referenced in the chart below are attached to this Affidavit as Exhibit "V".

Jurisdiction	Description
I. Government Medicaid Actions	
Alberta	On May 31, 2012, Alberta enacted its *Crown's Right of Recovery Act*. On August 8, 2012, ITCAN was served with the suit naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The claim seeks damages quantified at $10 billion. This case remains at a preliminary stage. No trial date has been set.
British Columbia	On January 24, 2001, British Columbia enacted the *Tobacco Damages and Health Care Costs Recovery Act*. The provincial government filed a suit against ITCAN, the BAT Affiliates, other Canadian and international tobacco manufacturers, and the Canadian Tobacco Manufacturers' Council. The action did not specify an amount claimed, but seeks to recover the present value of the total expenditures supposedly incurred by the government for health care benefits provided for Insured persons resulting from tobacco-related diseases or the risk thereof, as well as the present value of the estimated total expenditure that could reasonably be expected will be provided for the same purposes. An expert report filed by the province in early 2017 estimated damages to be around $118 billion. Document production is ongoing and examinations for discovery commenced in January 2018. No trial date has been set.
Manitoba	On June 13, 2006, Manitoba enacted its *Tobacco Damages Health Care Costs Recovery Act*. ITCAN was served with the suit on July 4, 2012 naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The province did not quantify the damages. This case remains at a preliminary stage and no trial date has been set.
New Brunswick	On March 14, 2008, the government of New Brunswick filed a Medicaid suit against ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council. ITCAN was served on April 10, 2008. Damages have been quantified by the Province in the range of $11-$60 billion (from 1954 to 2060). Pursuant to a case management order, the trial is

Jurisdiction	**Description**
	scheduled to commence on November 4, 2019. The trial date will have to be rescheduled as a result of certain recently-released motion decisions.
Newfoundland and Labrador	On January 8, 2011, Newfoundland and Labrador enacted its *Tobacco Damages and Health Care Costs Recovery Act* and filed a lawsuit against ITCAN, BAT, the BAT Affiliates, the other two major Canadian manufacturers, a number of other international corporations and the Canadian Tobacco Manufacturers' Council. No damages have been specified. ITCAN was served on February 8, 2011 and has filed its defence. Document production commenced in 2018. No trial date has been set.
Nova Scotia	On December 8, 2005, the province of Nova Scotia enacted its *Tobacco Damages and Health-Care Costs Recovery Act*. On January 22, 2015, ITCAN was served with the Nova Scotia Medicaid suit naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The damages have not been quantified by the province. ITCAN delivered its Statement of Defence on July 3, 2015. This case remains at a preliminary stage and no trial date has been set.
Ontario	See description in the body of the Affidavit.
Prince Edward Island	On June 12, 2012, Prince Edward Island enacted its *Tobacco Damages and Health Care Costs Recovery Act*. ITCAN was served with the PEI Medicaid suit on November 15, 2012 naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The damages have not been quantified by the province. ITCAN delivered its Statement of Defence in February 2015. This case remains at a preliminary stage and no trial date has been set.
Quebec	On August 25, 2009, ITCAN and the other Canadian tobacco manufacturers filed a constitutional challenge of the Quebec Medicaid Legislation. The basis of the challenge is the *Quebec Charter of Human Rights and Freedoms*, and the abrogation of prescription rights that ITCAN has relied on in the Quebec class actions. On March 5, 2014, ITCAN's challenge was dismissed. ITCAN filed its Inscription in Appeal of this judgment on April 4, 2014 and on September 28, 2015, the Quebec Court of Appeal confirmed the first instance judgment dismissing the Corporation's challenge. ITCAN did not appeal the Quebec Court of Appeal judgment to the Supreme Court of Canada. On June 8, 2012, the Quebec Medicaid suit was served upon ITCAN. The suit also names B.A.T. Industries p.l.c., British American Tobacco (Investments) Limited, the two other major Canadian manufacturers and several other *ex juris* tobacco companies. The suit claims $60 billion in

Jurisdiction	Description
	medical recoupment costs. ITCAN filed its plea on December 15, 2014. The case remains at a preliminary stage and no trial date has been set.
Saskatchewan	In April 2007, Saskatchewan enacted its *Tobacco Damages and Health Care Costs Recovery Act*. ITCAN was served with the Saskatchewan Medicaid suit on July 3, 2012 naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The damages have not been quantified by the province. ITCAN delivered its Statement of Defence in February 2015. This case remains at a preliminary stage and no trial date has been set.
II. Class Actions	
Quebec	See description in the body of the Affidavit.
British Columbia	On May 14, 2003, legal proceedings were filed against ITCAN by Kenneth Knight in the Supreme Court of British Columbia. The class action was certified on behalf of British Columbians who purchased ITCAN's cigarettes bearing "light" and "mild" descriptors on the packaging. The action alleges that ITCAN engaged in "deceptive trade practices" contrary to the provincial *Trade Practices Act* in the marketing of its cigarette brands with these descriptors. The proceedings seek to enjoin ITCAN from using these descriptors on its cigarette brands, as well as the compensation of all amounts spent by the proposed class on the said products, and the disgorgement of profits from the sale of these products (although liability is limited to 1997 onwards). On April 30, 2004, ITCAN filed its Statement of Defence. After several preliminary motions and appeals, the action remains at a preliminary stage and no trial date has yet been set.
Nova Scotia, Manitoba, Saskatchewan, Alberta	In June 2009, four smoking and health class actions were filed in Nova Scotia (the Semple claim), Manitoba (the Kunta claim), Saskatchewan (the Adams claim) and Alberta (the Dorion claim) by the same law firm. The suits name ITCAN, BAT, the BAT Affiliates, the two other major Canadian tobacco manufacturers, the Canadian Tobacco Manufacturers' Council and several *ex juris* tobacco companies. The Adams claim has since been discontinued against BAT, the BAT Affiliates and Ryesekks p.l.c. All cases remain at a preliminary stage, and damages have not been quantified by the Plaintiffs. No certification materials have been delivered and no dates for the certification motion have been set.
British Columbia	On July 16, 2010, two new smoking and health class actions were filed against ITCAN in British Columbia. These suits were filed by the same law firm that filed the four smoking and health claims in Nova Scotia, Manitoba, Saskatchewan, and Alberta in June 2009, and named the same

Jurisdiction	Description
	defendants: ITCAN, BAT, the BAT Affiliates, the two other major Canadian tobacco manufacturers, the Canadian Tobacco Manufacturers' Council and several *ex juris* tobacco companies. The Bourassa claim is allegedly filed on behalf of all individuals who have suffered chronic respiratory disease and the McDermid claim proposes a class based on heart disease. Both claims state that they have been brought on behalf of those who have smoked a minimum of 25,000 cigarettes. Both class actions have been dismissed against BAT, Carreras Rothmans Limited and Ryesekks p.l.c. No damages have been quantified and the suits remain at a preliminary stage. No certification motion materials have been delivered and no date for the certification motions have been set.
Ontario	On June 27, 2012 a smoking and health class action was filed against ITCAN in Ontario (the "Ontario Class Action"). These suits were filed by the same law firm that filed the four smoking and health claims in Nova Scotia, Manitoba, Saskatchewan, and Alberta in June 2009 and the two claims in British Columbia in July 2010. The suit names ITCAN, BAT, the BAT Affiliates, the other two major Canadian tobacco manufacturers, a number of other international corporations, the Canadian Tobacco Manufacturers' Council and several *ex juris* tobacco companies and seeks unspecified damages on behalf of individuals who have suffered chronic respiratory diseases, heart diseases or cancer. No damages have been quantified and the suit remains at a preliminary stage. No certification motion materials have been delivered and no date for the certification motion has been set.
Ontario	See description of the Growers' Action in the body of the Affidavit.
III. Other Proceedings	
Ontario	In 2005, the Plaintiff, Ragoonanan, was denied certification of a class proceeding on behalf of "all persons who suffered damage to persons and/or property as a result of fires occurring after October 1, 1987, due to cigarettes that did not automatically extinguish upon being dropped or left unattended." In 2011, the Court granted the Plaintiff's request to continue as an individual action against ITCAN. The Plaintiff's Statement of Claim does not specify the amount of pecuniary damages, but the amount claimed will be in excess of $11 million. ITCAN has filed its defence. The case remains at a preliminary stage.
Ontario	On September 12, 2003, a suit was brought against ITCAN by Scott Landry before the London Ontario Small Claims Court. The Plaintiff alleges that ITCAN was negligent for failing to warn him that nicotine is addictive and dangerous and seeks an amount of $10,000 to cover the costs of fighting his addiction. ITCAN filed its Statement of Defence on or about July 24, 2003. At a pre-trial conference on October 31, 2003, the

Jurisdiction	**Description**
	Plaintiff agreed to provide ITCAN with particulars regarding his claim. The case has been in abeyance since that time.
Ontario	On June 12, 1997, a suit was brought against ITCAN by Joseph Battaglia before the North York Ontario Small Claims Court. The Plaintiff alleged that he suffered from heart disease and that ITCAN was negligent for failing to warn that nicotine is addictive and dangerous. He sought an amount of $6,000. ITCAN filed its Statement of Defence on or about June 27, 1997. After a trial, a judgment was rendered on 1 June 1, 2001, dismissing the Plaintiff's claim. On July 2, 2001 an appeal was filed by the Plaintiff. The appeal was never heard and the Plaintiff passed away on September 3, 2004. The case has been in abeyance since that time.
Nova Scotia	On April 19, 2002, ITCAN was served with an individual product liability claim for unspecified damages alleging that the Plaintiff, Peter Stright, is addicted to tobacco and developed Buerger's disease as a result of smoking. ITCAN filed its Statement of Defence in 2004 and certain documents were subsequently produced by the Plaintiff. No trial date has been set.
Quebec	On December 12, 2016, ITCAN was served with a Statement of Claim filed by Roland Bergeron in the Small Claims Division of the Court of Québec in Saint-Hyacinthe. The Plaintiff alleges that he was diagnosed with pulmonary emphysema in 2015 and is claiming $15,000 in damages for harm to his health. On December 28, 2016, ITCAN filed a contestation to the claim, denying the allegations and arguing that the matter should be stayed pending the outcome of the Blais class action, as the legal issues raised in both proceedings are the same. On February 17, 2017, the Plaintiff consented to the stay request and on February 22, 2017, the Court granted the stay request.

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

Court File No:

Ontario
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC THAUVETTE

(Sworn March 12, 2019)

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Lawyers to the Applicants,
Imperial Tobacco Canada Limited
and Imperial Tobacco Company Limited

Matter No: 1144377

This is **Exhibit "G"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal
A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires September 27, 2021.

Court File No. CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	FRIDAY, THE 22ND
	)	
JUSTICE PATTILLO	)	DAY OF MARCH, 2019

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT* ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

Applicant

INITIAL ORDER

THIS APPLICATION, made by Rothmans, Benson & Hedges Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Peter Luongo sworn March 22, 2019 and the exhibits thereto (the "**Luongo Affidavit**") and (ii) the pre-filing report dated March 22, 2019 of Ernst & Young Inc. ("**EYI**") in its capacity as the proposed Monitor of the Applicant, and on hearing the submissions of counsel for the Applicant and EYI, and on reading the consent of EYI to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

DEFINITIONS

4. **THIS COURT ORDERS** that for purposes of this Order:

(a) "**Deposit Posting Order**" means the order of the Court of Appeal of Quebec granted October 27, 2015 and any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;

(b) "**Pending Litigation**" means any and all actions, applications and other lawsuits existing at the time of this Order in which the Applicant is a named defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including, without limitation, the Quebec Class Actions, the Class Actions, the Health Care Actions, the Tobacco Growers' Action and the Individual Actions (as each of those terms is defined in the Luongo Affidavit);

(c) "**PMI Group**" means Philip Morris International Inc. and all entities related to or affiliated with it, other than the Applicant;

(d) **"Quebec Class Actions"** means the proceedings in the Quebec Superior Court and the Court of Appeal of Quebec in (i) *Cécilia Létourneau et al. v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;

(e) "**Sales & Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;

(f) "**Tobacco Claim**" means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicant or any member of the PMI Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person's own account, on behalf of another Person, as a dependent of another Person or on behalf of a certified or proposed class or made or advanced as a government body or agency, insurer, employer or otherwise, under or in connection with:

(i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada or, in the case of the Applicant, anywhere else in the world; or

(ii) the HCCR Legislation (as defined in the Luongo Affidavit),

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicant or any member of the PMI Group; and

(g) "**Tobacco Products**" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the bank accounts currently used by it as described in the Luongo Affidavit and to use or replace them with other accounts from time to time for similar purposes (the "**Bank Accounts**") and that any present or future bank providing the Bank Accounts and related services ("**Banking Services**") shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken to, from or with the Bank Accounts, or as to the use or application by the Applicant of funds transferred, paid, collected or

otherwise dealt with in or to the Bank Accounts, shall be entitled to provide Banking Services without any liability in respect thereof to any Person other than the Applicant, pursuant to the terms of the documentation applicable to the Bank Accounts and Banking Services, and shall be, in its capacity as provider of the Bank Accounts and Banking Services, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Bank Accounts and Banking Services.

7. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Registered Pension Plans, the Non-Registered Pension Plans and the RRSP (each as defined in the Luongo Affidavit)), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance and severance pay, all of which is payable to or in respect of employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;

(b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges;

(c) any payment under or in respect of any Trade Program (as defined in the Luongo Affidavit) operated by the Applicant; and

(d) any expense that was incurred during or that pertains to the period prior to the date of this Order if, in the opinion of the Applicant and with the consent of the Monitor, the applicable payee or the payment of such expense is necessary or desirable for the

preservation of the Business or the Property or the ongoing operations of the Applicant.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of $1,000,000 or an aggregate of such expenditures in a calendar year in excess of $10,000,000; and

(c) payment for goods or services supplied or to be supplied to the Applicant on or after the date of this Order (including the payment of any royalties or shared services).

9. **THIS COURT ORDERS** that the Applicant is authorized to complete outstanding transactions and engage in new transactions with the members of the PMI Group and to continue, on and after the date hereof, to buy and sell goods and services and to allocate, collect and pay costs, expenses and other amounts from and to the members of the PMI Group, including without limitation in relation to finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licences (collectively, all transactions and all inter-company policies and procedures between the Applicant and any member of the PMI Group, the "**Intercompany Transactions**") in the ordinary course of business or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicant and any member of the PMI Group, including the provision of goods and services from any member of the PMI Group

to the Applicant, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all Sales & Excise Taxes required to be remitted by the Applicant in connection with the Business; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that the Applicant is authorized to post and to continue to have posted cash collateral, letters of credit, performance bonds, payment bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding $31,100,000 (the "**Bonding Collateral**"), to satisfy regulatory or administrative requirements to provide security that have been imposed on it in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicant as such security and the Applicant is authorized to post

and to continue to have posted cash collateral with Citibank Canada and any other issuers of Bonding Collateral as security therefor.

12. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes are hereby stayed during the Stay Period from requiring that any additional bonding or other security be posted by or on behalf of the Applicant in connection with Sales & Excise Taxes or any other matters for which such bonding or security may otherwise be required.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant or claims to which it is subject to any of its creditors as of this date and to post no security in respect of any such amounts or claims, including pursuant to any order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $5,000,000 in any one transaction or $10,000,000 in any calendar year in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

16. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

18. **THIS COURT ORDERS** that until and including April 19, 2019 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to the Pending Litigation and any other Proceeding in relation to a Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicant or the Monitor, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of the Applicant or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicant in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. **THIS COURT ORDERS** that during the Stay Period, no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicant, the Business or the Property, including the Pending Litigation, shall be commenced, continued or take place against or in respect of any member of the PMI Group; except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any member of the PMI Group, or affecting the

Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in this Order, the Applicant is authorized to serve and file an application for leave to appeal the Quebec Appellate Decision to the Supreme Court of Canada, but no further step or proceeding shall be taken by the Applicant or any other Person in respect of such application without further order of this Court.

21. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicant or any member of the PMI Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

22. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), against or in respect of the Applicant or the Monitor, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicant or the Property), are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services, or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

SALES AND EXCISE TAX CHARGE

26. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes shall be entitled to the benefit of and are hereby granted a charge (the "**Sales and Excise Tax Charge**") on the Property, which charge shall not exceed an aggregate amount of $270,000,000, as security for all amounts owing by the Applicant in respect of Sales & Excise Taxes, after taking into consideration any Bonding Collateral posted in respect thereof. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 40 and 42 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

27. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

28. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

29. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $7,000,000, as security for the indemnity

provided in paragraph 28 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

30. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 28 of this Order.

APPOINTMENT OF MONITOR

31. **THIS COURT ORDERS** that EYI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

32. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in its preparation of the Applicant's cash flow statements, which information shall be reviewed with the Monitor;

(d) advise the Applicant in its development of the Plan and any amendments to the Plan;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) assist the Applicant, to the extent required by the Applicant, in its efforts to explore the potential for a resolution of any of the Tobacco Claims; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

33. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

34. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario*

Water Resources Act, the Ontario *Occupational Health and Safety Act*, the Quebec *Environment Quality Act*, the Quebec *Act Respecting Occupational Health and Safety* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

35. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

36. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay the Monitor and counsel to the Monitor, retainers in the amount of $250,000 and $50,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

38. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

39. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $3,000,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the Sales and Excise Tax Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $3,000,000);

Second – Directors' Charge (to the maximum amount of $7,000,000); and

Third – Sales and Excise Tax Charge (to the maximum amount of $270,000,000).

41. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property, save and except for:

(a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);

(b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;

(c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the Registered Pension Plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract;

(d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute; and

(e) cash collateral deposited with a financial institution as security for letters of credit or bank guarantees issued by the financial institution at the request of the Applicant.

43. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

44. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation

of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicant pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

46. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below), (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicant of more than $1,000, except with respect to (I) plaintiffs in the Pending Litigation, in which cases the Monitor shall only send a notice to counsel of record, as applicable, (II) beneficiaries of the Registered Pension Plans (as that term is defined in the Luongo Affidavit), in which case the Monitor shall only send a notice to the trustees of each of the Registered Pension Plans and the Financial Services Commission of

Ontario and the Régie Des Rentes Du Québec, as applicable, and (III) current and former employees of the Applicant; and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced at subparagraph (C) above shall not include the names, addresses, or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

47. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL: www.ey.com/ca/rbh (the **"Case Website"**).

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

49. **THIS COURT ORDERS** that the Applicant is authorized to rely upon the notice provided in paragraph 46 to provide notice of the comeback motion to be heard on a date to be

set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

50. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List. The Monitor shall manage the scheduling of all motions that are brought in these proceedings.

51. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

GENERAL

52. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

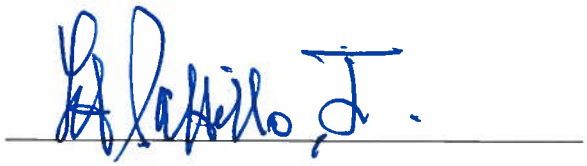
53. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

54. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

55. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

56. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

57. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicant or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property, the Business or the funds deposited pursuant to the Deposit Posting Order shall be deemed not to have been taken or given, as the case may be.



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PER / PAR:

THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

Court File No: CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE-
(COMMERCIAL LIST)

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicant

18937053

This is **Exhibit "H"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires September 27, 2021.

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

Applicant

AFFIDAVIT OF PETER LUONGO
(Sworn March 22, 2019)

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Applicant

AFFIDAVIT OF PETER LUONGO
(Sworn March 22, 2019)

I, Peter Luongo, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Managing Director of Rothmans, Benson & Hedges Inc. ("**RBH**"). I have been employed within the "**PMI Group**", consisting of RBH's ultimate parent, Philip Morris International Inc. ("**PMI**") and its affiliates, including RBH, for nearly 6 years. Throughout this time I have been employed by Philip Morris International Management S.A. I have been in my present role since December 1, 2016. From June 2013 to November 2016, I was the Vice President, Treasury and Planning for PMI. Before that, I was a partner at Centerview Partners, an investment banking advisory firm. Through my current role as Managing Director of RBH, I am familiar with RBH operations, financial results and strategies and, as such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

2. This affidavit is sworn in support of an application by RBH for an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). All dollar references herein are Canadian dollars unless otherwise referenced.

I. INTRODUCTION

3. RBH and its predecessor corporations have been engaged in the business of the production and sale of tobacco products in Canada (the "**Business**") for over 100 years. RBH is a Canadian company that provides employment or consultant work to approximately 800 people across Canada as well as engaging the services of additional contract personnel and summer students. I believe RBH is the largest employer among manufacturers of tax-paid tobacco products in Canada.

4. In addition to providing such work directly to Canadians, RBH benefits numerous other Canadians. For instance, a majority of the tobacco leaf used by RBH in its products is indirectly sourced from Ontario tobacco growers – accounting for 18% of the flue-cured Ontario tobacco crop in 2018. Moreover, substantially all of RBH's sales are in Canada where RBH is the second-largest supplier of traditional tobacco products in the tax-paid Canadian market. RBH sells its products through retailers and wholesale distributors and uses the services of third parties for logistics and other services, each of whom benefits from RBH's continuing operations either directly or indirectly.

5. Further, because of Canada's tax and regulatory schemes applicable to tobacco products, the Business generates substantial revenues for Canada's federal and provincial governments. RBH estimates that in 2018 alone, approximately $3.745 billion in federal and provincial taxes (income taxes, excise tax, sales tax, provincial tobacco tax and customs

duties) were collected in respect of RBH's production and sale of tobacco products. In comparison, RBH's net income after taxes was approximately $647 million for the fiscal year ended December 31, 2018.

6. While the operations of the Business are stable and cash flow positive, this application has become necessary because of recent developments in two class action proceedings in Quebec in which RBH is a defendant (the "**Quebec Class Actions**") and the continuation of a significant number of actions and legal proceedings relating to Tobacco Matters (defined below) in which RBH is a defendant or respondent, including government-initiated litigation and other class action proceedings throughout Canada that are affecting RBH and the entire regulated Canadian tobacco industry (including the Quebec Class Actions, the "**Pending Litigation**" and excluding the Quebec Class Actions, the "**Other Pending Litigation**").

7. In particular, in the recent decision of the Court of Appeal of Quebec issued on March 1, 2019 (the "**Quebec Appellate Decision**") in the Quebec Class Actions, the Court of Appeal of Quebec upheld in most aspects the 2015 trial judgment (the "**Quebec Trial Judgment**") and awarded compensatory and punitive damages (the "**Global Damages Award**") against RBH and its co-defendants, Imperial Tobacco Canada Limited ("**ITCAN**") and JTI-Macdonald Corp. ("**JTIM**" and together with ITCAN, the "**Co-Defendants**"). As a result, RBH is liable to deposit $257 million within 60 days (subject to taking into account, to the extent applicable, amounts already deposited with the Quebec court as discussed below). This includes the punitive damages award for which RBH is individually liable of approximately $46 million as at the date of the Quebec Trial Judgment (or approximately $56.6 million inclusive of interest to March 1, 2019).

8. In addition, RBH and the Co-Defendants have joint and several contingent liability in the Quebec Class Actions in respect of the remainder of the $6.858 billion (or approximately $13.529 billion inclusive of interest to March 1, 2019) Global Damages Award, less the punitive damages awarded against the Co-Defendants. Of that amount, twenty percent (or approximately $2.706 billion inclusive of interest to March 1, 2019) was allocated to RBH. The timing and quantum of any additional portion of the Global Damages Award that RBH will be liable to pay in the future over and above the $257 million deposit are uncertain. The likelihood any such payments will be required depends on, among other things, the number of claimants who come forward.

9. Both the liability for and quantum of the Global Damages Award are vigorously contested by the defendants. RBH seeks authorization in these proceedings to file an application for leave to appeal to the Supreme Court of Canada (with no further step to be taken in respect of such leave application by RBH or any other person thereafter).

10. On March 8, 2019, JTIM filed for creditor protection pursuant to the CCAA, stating in the affidavit of Robert McMaster filed in support of that application that "The total secured and unsecured obligations of JTIM, including the [Quebec Appellate Decision], greatly exceed my expectation of the realizable value of the assets [of JTIM] on a going concern basis."

11. On March 12, 2019, ITCAN filed for creditor protection pursuant to the CCAA, stating in the affidavit of Eric Thauvette filed in support of that application that "The Applicants are unable to pay the maximum amount owing under the Quebec Appeal Judgment. While the actual amount that ITCAN would be required to pay depends on the rate

of take up among class members, the potential maximum amount that ITCAN is condemned to pay under the judgment is billions of dollars more than all of its assets as of December 31, 2018."

12. In the case of RBH, in light of the Quebec Appellate Decision and all the present circumstances, including the insolvency of JTIM and ITCAN, RBH too is insolvent. Specifically, the aggregate value of RBH's property, including the amounts deposited with the Quebec court, is not, at fair valuation, sufficient to satisfy the Global Damages Award or RBH's allocated portion thereof given the amounts ascribed to those liabilities in the Quebec Trial Judgment and all of RBH's other liabilities.

13. In addition to the Global Damages Award in the Quebec Class Actions, RBH is one of a number of defendants in the Other Pending Litigation, consisting of putative class actions, individual actions, and government-initiated litigation throughout Canada relating to the purchase, sale, distribution, manufacture, production, development, advertising or marketing of tobacco products, the use of or exposure to tobacco products, or representations in respect of tobacco products ("**Tobacco Matters**"). Much of the Other Pending Litigation affects the entire legal, tax-paid Canadian tobacco industry and includes health care cost recovery actions brought by all ten provincial governments.

14. The plaintiffs in the Other Pending Litigation seek damages in the aggregate that are exponentially more than the Global Damages Award. While RBH vigorously disputes liability for and the quantum of damages in each of the Other Pending Litigation, the interests of the claimants in the Other Pending Litigation and any contingent liability associated with

their claims are relevant in light of RBH's financial circumstances and RBH's liability in respect of the Global Damages Award.

15. RBH requires CCAA protection at this time to prevent disruption of the Business as a result of the Quebec Class Actions and the Other Pending Litigation. RBH seeks a stay of proceedings, including a stay of the Pending Litigation, to enable it to explore a plan of compromise or arrangement with its creditors, including contingent creditors.

16. A stay of proceedings under the CCAA will keep RBH's creditors and contingent creditors on an equal footing, ensuring that a substantial portion of the assets of RBH is not set aside or applied for the exclusive benefit of one creditor group, while it explores a comprehensive resolution to its current challenges. Addressing the litigation and associated claims in a coordinated and orderly way is necessary under the circumstances to avoid prejudice that may be caused by each litigation matter proceeding in a different manner and at a different pace. It is RBH's view that litigation claims, including the Pending Litigation, ought to be stayed and resolved in the context of the CCAA Proceedings for the sake of efficiency and fairness.

17. It is anticipated that during the CCAA Proceedings, RBH will continue to operate its business as usual. RBH also intends to continue to pursue an important and innovative new aspect to its business that has the potential to revolutionize RBH's business and the tobacco industry. PMI and members of the PMI Group are in the midst of transforming their core businesses by developing smoke-free alternatives to cigarettes with a view to switching existing smokers to new and innovative reduced risk products ("**Reduced Risk Products**") as quickly as possible.

18. For instance, as described further herein, RBH has been distributing a new Reduced Risk Product called "**IQOS**" since 2016 in Canada. IQOS is an electronic device that generates a nicotine-containing aerosol by heating tobacco at controlled temperatures without burning it. Studies conducted by the PMI Group have shown that the aerosol from IQOS, which can be inhaled, has significantly lower levels of the harmful and potentially harmful constituents found in cigarette smoke, thereby representing a reduced risk alternative for existing smokers. To date the PMI Group has launched IQOS in key cities in 44 markets and approximately 6.6 million adult consumers have already stopped smoking and switched to IQOS.

19. IQOS is one of a number of Reduced Risk Products under development by the PMI Group. Such products are expected to become an important part of RBH's product line as the public and government continue to focus on less harmful alternatives to cigarettes. The successful development of Reduced Risk Products by the PMI Group and the participation of RBH in this new core line of business represents a significant opportunity for RBH and a positive and transformational advancement for men and women in Canada who smoke.

20. The continued operation of the Business in the normal course during the CCAA proceedings, including the participation of RBH in the emerging Reduced Risk Product market, is in the best interests of RBH's employees, suppliers, customers, pensioners, creditors, shareholder and governmental revenue authorities (its "**Stakeholders**").

21. RBH requests that this Court grant the relief in the proposed Initial Order to provide RBH with an opportunity to deal in an orderly manner with the litigation claims against it

while enabling it to continue to operate the Business and generate positive cash flow for the benefit of its Stakeholders.

II. BACKGROUND REGARDING RBH

(A) Corporate Structure

22. RBH is incorporated pursuant to the *Canada Business Corporations Act* and its head office is located in Toronto, Ontario. The sole shareholder of RBH is Latin America and Canada Investments B.V., a corporation incorporated pursuant to the laws of the Netherlands. PMI, a corporation incorporated pursuant to the laws of the State of Virginia, is the ultimate indirect parent company of RBH. A corporate chart is attached hereto as **Exhibit "A".**

23. RBH has a single subsidiary, Rothmans Inc., an entity incorporated pursuant to the *Business Corporations Act* (Ontario). RBH owns 100% of the common shares of Rothmans Inc., which is inactive and has total assets of $1. Prior to December 17, 2009, the corporate name of Rothmans Inc. was Aphex Corporation. Rothmans Inc. is not an applicant in these proceedings.

24. Prior to November 2008, RBH was controlled by a corporation that was, at that time, named Rothmans Inc. ("**Old Rothmans**") and was publicly traded on the Toronto Stock Exchange. At that time, Old Rothmans owned 60% of the shares of RBH and a PMI affiliate owned the remaining 40% of the shares of RBH. On October 17, 2008, a PMI affiliate acquired 100% of the issued and outstanding shares of Old Rothmans, thus giving PMI affiliates control over 100% of the shares of RBH. On December 1, 2009, RBH and Old Rothmans were amalgamated to form RBH.

25. The current directors of RBH are Jure Samardzic, Mimi Kurniawan and me, all of whom are employees of one of the members of the PMI Group. None of the other members of the PMI Group is an applicant in these proceedings.

(B) The Business of RBH

(i) Canadian Tobacco Market

26. The Canadian tobacco market is composed principally of consumers who choose from tax-paid premium cigarettes, price category cigarettes and fine-cut tobacco offerings. Unfortunately, consumers also purchase a sizeable volume of untaxed or partially-taxed tobacco products, most of which is illicit trade.

27. Cigarette consumers are principally served by the three major domestic tobacco companies, namely RBH, ITCAN and JTIM, and a number of regional manufacturers. These producers offer products in varying lengths, package formats and tobacco blend characteristics under a variety of trademarks.

28. The Canadian tobacco market is subject to extensive regulation governing the sale and marketing of tobacco products and federal and provincial governments generate substantial revenue from the taxation of tobacco-related activities. See further discussion related thereto beginning at paragraph 113, below. Provincial and federal taxes account for more than 60% of the price of tax-paid cigarettes.

29. RBH pays federal excise taxes, provincial and territorial tobacco taxes and customs and import duties (collectively, "**Excise Taxes**"); remits goods and services, harmonized sales and other applicable federal, provincial or territorial sales taxes (collectively, "**Sales Taxes**");

and pays federal and provincial income taxes. For its fiscal year ended December 31, 2018, RBH had income net of taxes of approximately $647 million. In comparison, RBH estimates that approximately $3.745 billion in Excise Taxes, Sales Taxes and income taxes were collected in respect of RBH's production and sale of tobacco products, as follows (all amounts approximate):

(a) $202.2 million in income tax paid to the federal government (inclusive of amounts collected on behalf of certain provinces);

(b) $38 million in provincial income tax paid directly to the provinces;

(c) $1.228 billion in federal excise taxes and customs duties;

(d) $256 million in net Sales Taxes; and,

(e) $533 million in provincial and territorial tobacco taxes remitted directly by RBH;

(f) $1.488 billion in provincial and territorial tobacco taxes remitted by wholesalers (estimated based on sales by RBH to wholesalers who will ultimately collect on their sales and remit).

30. A significant factor affecting the Canadian tobacco market is the level of illicit trade, meaning the sale of cigarettes without complying with government regulation or payment of some or all of the requisite taxes. In Ontario alone, it is estimated that approximately one-third of cigarettes sold are contraband products for which not all taxes are paid. Contraband activity results in a loss of revenues to provincial and federal governments and creates unfair

competition for manufacturers of tax-paid products that comply with applicable laws, such as RBH. In Ontario, the Ministry of Finance is responsible for enforcement against contraband tobacco products.

(ii) RBH's Traditional Cigarette and Tobacco Product Business

31. RBH is the second-largest supplier of traditional tobacco products in the tax-paid (i.e. non-contraband) Canadian market. RBH manufactures and sells cigarettes and fine-cut tobacco as well as distributing pipe tobacco and cigar products.

A. Locations

32. RBH has its head office in Toronto, Ontario, located in a large commercial building that it owns, and it also owns a manufacturing plant in Quebec City, Quebec where it produces finished tobacco products. The company has sales offices in leased premises located in Alberta, Ontario and Quebec and stores semi-finished products in a leased warehouse in Quebec City, Quebec. RBH's main warehouse for the storage of tobacco leaf is a leased building located in Delhi, Ontario. RBH's Ontario sales office is located in a building it leases in Mississauga, Ontario.

33. Approximately 350 employees work in the Toronto head office and the Ontario sales office.[1]

B. Supplier and Intercompany Supply Arrangements

34. RBH purchases the majority of its packed tobacco leaf (an input in the manufacture of cigarettes) from Alliance One International Inc. and its affiliates (collectively, "**AOI**"). AOI

[1] As of December 31, 2018.

in turn contracts directly with Ontario tobacco growers to acquire flue-cured tobacco crop. Purchases by AOI for resale to RBH accounted for approximately 18% by volume of the 2018 flue-cured tobacco crop produced in Ontario. The tobacco is processed by AOI in the United States after its purchase from Ontario tobacco growers and is then transported by AOI to RBH's leased warehouse premises located in Delhi, Ontario.

35. Most of the remaining packed leaf tobacco used by RBH is grown outside of Canada and is primarily supplied to RBH by affiliates of PMI. In addition to packed leaf tobacco, RBH purchases semi-finished tobacco from an affiliate of PMI and uses this semi-finished tobacco as an input in manufacturing its products.

36. RBH also purchases other non-tobacco inputs used by RBH in the manufacture of tobacco products from third party suppliers. Such inputs include cigarette papers, liners, filters and packaging materials.

37. In addition to producing finished tobacco products at its Quebec manufacturing plant, RBH also purchases certain finished tobacco products from third party suppliers for resale.

C. Retail and Distribution

38. RBH does not sell any combustible tobacco products directly to consumers. RBH's finished tobacco products reach end consumers through a combination of direct sales by RBH to tobacco retailers and direct sales by RBH to wholesale distributors. In the case of wholesale distributors, RBH contracts with a limited number of them to distribute and resell RBH tobacco products to retail accounts in Canada.

39. RBH has one primary third-party logistics service provider. This provider warehouses and delivers substantially all of RBH's finished goods, with the exception of distribution undertaken by wholesale distributors.

40. RBH operates a number of trade programs with wholesalers and retailers of its products (the "**Trade Programs**"), the terms of which vary based on region, market conditions, products and sales volumes (including volume-based allowances). The Trade Programs also include contracts with certain venues for space that is used for targeted communication to legal-aged smokers where allowed by law. Trade Programs are critical to the sales and distribution of traditional tobacco products by RBH, including to maintaining an adequate retail inventory and a committed retailer network for RBH's tobacco products.

(iii) RBH's Reduced Risk Product Business

41. PMI and members of the PMI Group are in the midst of transforming their core businesses. PMI has stated as follows in its Frequently Asked Questions attached hereto as **Exhibit "B"**:

> "[PMI is] dedicated to doing something very dramatic – replacing cigarettes with the smoke-free products that we're developing and selling.
>
> That's why we've invested over USD 6 billion in research and development, and have over 400 dedicated scientists, engineers, and technicians developing and assessing potentially less harmful alternatives to cigarettes.
>
> It's the biggest shift in our history. And it's the right one for our consumers, our company, our shareholders, and society…"

42. RBH is committed to this vision and shares the goal of switching existing smokers who would otherwise continue to smoke to new and innovative Reduced Risk Products as quickly as possible.

43. In November 2014, RBH's parent corporation, PMI, announced the launch of a proprietary Reduced Risk Product, IQOS, in Japan as a pilot market. Since that time, PMI has continued to expand the launch of IQOS in 44 countries worldwide, including Canada where IQOS was introduced in late 2016.

44. IQOS is an electronic device that generates a nicotine-containing aerosol by heating tobacco contained in specialized sticks called HeatSticks or HEETS, which are tobacco products manufactured for use with the IQOS heating device. The IQOS device heats the HEETS at controlled temperatures up to 350 degrees Celsius. By heating tobacco without burning it, a nicotine-containing aerosol is extracted from the tobacco, which can be inhaled.

45. Results of studies conducted within the PMI Group demonstrate that the aerosol from IQOS has significantly lower levels of the harmful and potentially harmful constituents found in cigarette smoke. Further research and development is being performed to provide alternative Reduced Risk Products to existing smokers.

46. On December 1, 2016, RBH entered into a distribution agreement with Philip Morris Products S.A. ("**PMP**"), the owner of the intellectual property rights in IQOS, pursuant to which RBH was granted a non-exclusive right to distribute IQOS and HEETS products in the Canadian market. Currently, RBH purchases IQOS devices and HEETS from PMP and imports the products into Canada. RBH stores IQOS products in warehouses across Canada that are operated by third party logistics providers.

47. Currently, RBH distributes IQOS products to adult consumers in various ways:

a) indirectly through RBH certified retail outlets, which purchase the IQOS

products directly from RBH and/or through its wholesalers; and,

b) directly to consumers both using an online platform in all ten provinces and through dedicated brick-and-mortar IQOS stores in Toronto, Vancouver and Edmonton.

48. Purchases by RBH certified retailers are processed and then shipped to the store by third party logistic providers. Direct online orders from consumers are processed by RBH and delivered by a third party service provider. IQOS brick-and-mortar stores are situated in leased premises and are operated by a third party marketing service provider that hires all or most staff at each location. RBH pays the service provider a fixed fee for staffing at the IQOS stores.

49. To ensure that customers are educated and knowledgeable about IQOS products and where IQOS products can be purchased, RBH maintains a network of coaches to interact with consumers. Coaches are individuals employed by RBH. Referrals from coaches are key to the IQOS direct-to-consumer sales model. Coaches also support IQOS consumers, including servicing the products when needed. RBH presently employs approximately 30 coaches.

50. RBH also maintains a central call centre for IQOS products. The call centre is operated by a third party in Ontario and deals primarily with consumer calls and warranty enquiries.

51. IQOS devices are subject to a one-year warranty for all technical defects. RBH is indemnified by PMP for any warranty claims relating to defective devices.

52. In addition to the existing IQOS product, the PMI Group has been developing three other Reduced Risk Product platforms:

(a) Platform 2, which uses a carbon heat source at the end of the product that is ignited much like a traditional cigarette. However, the patented design of Platform 2 prevents the tobacco from burning and heats it instead so that, like with IQOS, the consumer inhales a nicotine-containing vapor from tobacco that is heated and not burned;

(b) Platform 3, which generates a nicotine-containing vapor in the form of a nicotine salt. When a consumer draws on the mouth piece, a chemical reaction between nicotine (a weak base) and a weak organic acid takes place to produce a vapor containing nicotine salt; and,

(c) Platform 4, which is a next generation e-vapor product platform that uses a metallic mesh punctured with tiny holes to heat a pre-filled, pre-sealed e-liquid cap that contains pharmaceutical-grade nicotine and flavors. In each cap, there is a new mesh heater, eliminating the need to manually replace it. The consumer activates the heating process by pressing on a button. As the heater is in contact with the e-liquid in the cap, it heats the e-liquid to generate a nicotine-containing vapor. Platform 4 also features puff-activated heating and a low-liquid level detection system that ensures the consistency and quality of the vapor generated and inhaled.

53. The development of such products is in furtherance of the vision expressed by PMI and the other members of the PMI Group to replace cigarettes with smoke-free products that

they are developing and selling – providing a choice to the men and women who smoke cigarettes who are looking for a less harmful, yet satisfying alternative to smoking cigarettes.

54. IQOS and the other Reduced Risk Products under development by the PMI Group have the potential to become a significant part of RBH's product line as the public and government continue to focus on less harmful alternatives to cigarettes.

(iv) Employees and Pension Plans

55. RBH has approximately 800 employees located across all ten Canadian provinces, with the majority of such employees located in Ontario and Quebec.[2] RBH also uses the services of approximately 50 contract personnel in the operation of the Business, not including approximately 50 summer students to whom it provides summer contract work. RBH also benefits from certain intercompany personnel arrangements discussed in more detail herein in the section entitled "Intercompany Arrangements".

A. Unionized Employees

56. RBH has approximately 230 unionized employees under two separate collective bargaining agreements, substantially all of whom are employed at the Quebec manufacturing plant and represented by the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union Local 261-T ("**Local 261-T**"). The current collective bargaining agreement ("**CBA**") between RBH and Local 261-T with respect to unionized employees at the Quebec manufacturing plant has a five-year term which runs until March 19, 2020.

[2] As of December 31, 2018.

57. There are 4 other unionized employees who are employed at RBH's Montreal sales office. Employees at the Montreal sales office are represented by Local 261-T under a CBA renewed for 5 years from October 1, 2015 to September 30, 2020.

58. Employees at RBH's former laboratory facility, which was closed in May 2018, are represented by the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union Local 325-T. On April 25, 2018, a letter of understanding was signed between RBH and the bargaining unit, now called Local 264, in relation to the closing of the facility.

59. As at December 31, 2018, RBH was subject to a small number of grievances and claims commenced in Quebec in respect of a number of former unionized employees. The aggregate value of such claims is approximately $150,000. At this time, RBH intends to continue to resolve these grievances in the usual course.

B. Pension Plans

60. RBH has a number of registered and unregistered pension plans in Ontario and Quebec in respect of its active, retired and disabled employees.

a) Ontario Registered Pension Plans

61. RBH is the sponsor of three registered pension plans in Ontario (the "**Ontario Registered Pension Plans**") as follows:

a) a pension plan for salaried employees, with both a defined benefit and defined contribution component (the "**Salaried Pension Plan**");

b) a pension plan for executives and directors, which is a defined benefit plan (the "**Executive Pension Plan**"); and

c) a defined contribution pension plan for unionized employees of the former Brampton manufacturing plant and the laboratory facility represented by the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union Local 325-T (now called Local 264) is in the process of winding up, effective October 5, 2018, following the closure of both facilities.

62. The defined benefit component of the Salaried Pension Plan was closed to new hires effective January 1, 2014. As at its latest actuarial calculation on April 1, 2017, the defined benefit component of the Salaried Pension Plan had a going concern surplus of $13.1 million and a solvency shortfall of $6.5 million.

63. As at its latest actuarial calculation on December 31, 2016, the Executive Pension Plan had a going concern surplus of $11.4 million and a solvency surplus of $1.0 million.

64. RBH is making current service cost contributions for the Salaried Pension Plan and the Executive Pension Plan in accordance with the most recent actuarial calculations and has not reduced its solvency funding of such plans notwithstanding changes to the Ontario pension regulations in 2018.

b) Quebec Registered Pension Plans and RRSP

65. RBH is also the sponsor of a pension plan for hourly Quebec employees that is registered in Quebec (together with the Ontario Registered Pension Plans, the "**Registered Pension Plans**"), which has defined contribution and registered retirement savings plan components.

66. RBH also provides a registered retirement savings plan for the limited number of employees at its Montreal sales office (the "**RRSP**").

67. All required contributions to the Registered Pension Plans and the RRSP have been made to date and, at this time, RBH intends to continue to make all required contributions and payments to such plans.

c) Non-Registered Pension Plans

68. RBH also provides non-registered supplementary plans for certain of its executives and directors (the "**Non-Registered Pension Plans**"). All required contributions to the Non-Registered Pension Plans have been made to date and, at this time, RBH intends to continue to make all required contributions and payments to such plans.

C. Closure of Laboratory and Product Development Operations

69. RBH is part of PMI's Latin America and Canada region. As part of a regional optimization program initiated in 2016 called the New Operations Model, several sectors of RBH operations in Canada were regionalized in 2017: Supply Chain, Engineering, Quality Assurance, and Environmental Health and Safety (EHS). As described below, two additional

sectors of RBH operations, which were based in Mississauga and in the Toronto Head Office prior to the regionalization, were regionalized in 2018: the Smoking Laboratory and Product Development.

70. The Smoking Laboratory functions are essentially aimed at monitoring the Quebec factory performance, namely to monitor the smoke properties of the regular production and to ensure that product meets specifications. In May 2018, the Smoking Laboratory functions were regionalized to a PMI affiliate in Guadalajara, Mexico, which had sufficient spare capacity in its existing laboratory to insource this activity. As a result, the eleven employees who previously performed these functions (nine of whom are unionized) were terminated. The total amount of the employees' severance packages is approximately $1.8 million.

71. RBH's Product Development functions are essentially aimed at the design of new products and packaging for the Canadian market, in line with PMI specifications and respecting external and internal regulations. This function was previously performed by ten employees based in the Mississauga and Toronto offices. The activity was regionalized to a PMI affiliate in Mexico City to benefit from regional synergies and expertise, as well as support from global systems implemented over previous years. As a result of the regionalization, the employees in this sector were terminated as of September 2018. However, four key positions were retained in Toronto, in order to ensure proper proximity with local RBH Marketing and Finance teams and retain specific Canadian regulation knowledge within RBH. The total amount of the employees' severance packages is approximately $1.4 million.

72. RBH is continuing to make severance payments in accordance with the employees' severance packages.

D. Benefits and Life Insurance

73. Medical and dental benefits and life insurance coverage for active and retired employees are managed by Sun Life Financial Canada ("**Sun Life**") and premiums are paid by RBH on a monthly basis. RBH provides short term disability coverage to non-union employees through salary continuance and to unionized employees through Sun Life pursuant to an "administrative services only" ("**ASO**") arrangement in which RBH is invoiced by Sun Life for any short term disability benefits paid by Sun Life to unionized employees. Long term disability coverage is provided to both union and non-union employees through an ASO arrangement with Sun Life. Long-term disability coverage for non-union employees is funded in part through an employee-paid insured component.

74. RBH funds certain other employee benefits including executive health benefits, employee lifestyle allowances and employee assistance programs. RBH also makes certain salary continuance payments relating to its parental leave program, its voluntary termination program for salaried employees and its termination obligations to certain former employees.

75. At this time, RBH expects to continue all benefits programs and administer them in the normal course.

(C) Intercompany Arrangements

76. RBH is party to a number of intercompany arrangements with other members of the PMI Group with respect to particular business operations.

77. Members of the PMI Group are important to the RBH supply chain. As described above, RBH purchases packed leaf tobacco from other PMI affiliates. RBH also purchases semi-finished tobacco materials from an affiliate of PMI and occasionally sells semi-finished tobacco materials to another PMI affiliate. The purchase and sale of leaf and semi-finished tobacco from and to other PMI affiliates occurs on irregular intervals depending on tobacco growing seasons and local requirements. RBH also purchases IQOS products from PMP, a PMI affiliate, for sale in Canada. RBH cannot easily obtain alternative sources of raw materials, nor can it purchase IQOS products from any other source. Such purchases are made on arms' length terms, with quality control overseen centrally.

78. Cash payments from RBH to other members of the PMI Group in respect of the purchase of tobacco and Reduced Risk Products are estimated to total approximately $20 million in 2018.

79. RBH also receives intercompany services, including personnel, general and administrative, IT, technical and professional services, from a number of PMI Group members. In the ordinary course of business, certain employees of the PMI Group are assigned to work at RBH on a temporary basis, and certain of RBH's employees are assigned to work for other PMI Group members. Payments from RBH to other PMI members in respect of such shared services totalled approximately $100 million in 2018.

80. Tobacco products produced by RBH are sold under a variety of registered trademarks. RBH owns some proprietary trademarks and licenses other trademarks from Philip Morris Global Brands Inc. In 2018, RBH paid approximately $25 million in annual royalties to a PMI affiliate and $4 million to third parties for the licence of trademarks.

81. The day-to-day operation of the Business is dependent on existing intercompany arrangements with other PMI Group members related to, among other things, critical tobacco inputs, business and IT services, and trademark licenses. The inability to continue such arrangements would result in serious disruption to the Business.

82. Due to the necessity of these intercompany arrangements, the proposed Initial Order permits RBH to make payments to PMI Group members for post-filing obligations incurred in the normal course by RBH in respect of these intercompany arrangements.

83. As more fully described in the Pre-Filing Report of Ernst & Young Inc. (the "**Monitor**"), the proposed Monitor supports the continuation post-filing of these intercompany arrangements between RBH and the other PMI Group members.

(D) Banking Arrangements

84. RBH has bank accounts with Citibank Canada (the "**Citibank Accounts**") and was, prior to July 2015, party to the PMI Group's integrated cash management system (the "**Cash Management System**"), which is operated by Citibank and enables the use of cash resources across the entire PMI Group. The Cash Management System is a "zero balancing system," such that excess cash balances held by certain PMI Group members are swept on a daily basis and used to offset the short-term cash needs of other PMI Group members. The Cash Management System is managed by Citibank and all transfers under the Cash Management System are structured as interest-bearing intercompany demand loans.

85. Following the issuance of the Quebec Trial Judgment in 2015, Philip Morris Finance S.A., which directs arrangements in respect of the Cash Management System on behalf of the

PMI Group, terminated RBH's involvement in the Cash Management System and directed the repayment of all amounts to RBH in connection with the Cash Management System.

86. In connection with the termination of RBH's participation in the Cash Management System, Citibank Canada required RBH to post cash collateral with Citibank Canada of approximately $31.1 million. This cash collateral was required as security for RBH's obligations to reimburse Citibank Canada under certain letters of credit and bank guarantees ("**LOCs**") issued by Citibank Canada on behalf or for the benefit of RBH with a face value of approximately $31.1 million.[3] The LOCs were issued to a number of provincial and federal governmental authorities to satisfy regulatory or administrative requirements to provide security in relation to the collection and remittance of Excise Taxes.

87. RBH also maintains bank accounts with Bank of Montreal (the "**BMO Accounts**"), which it currently uses primarily for payroll-related disbursements, taxes, and miscellaneous trade payments and for collecting credit card sales for the newly launched IQOS product, as well as for other business-related purposes. Certain of the BMO Accounts are maintained by third parties in escrow for the purpose of supporting RBH's gift card programs and Head Office operations. RBH has historically maintained target daily balances in the BMO Accounts through transfers between the Citibank Accounts and the BMO Accounts. During the CCAA proceedings, RBH intends to use the BMO Accounts and certain of the Citibank Accounts (which are no longer connected with the Cash Management System) for its Business and banking requirements.

[3] As of December 31, 2018.

88. The Business generates free cash flow in excess of the amounts required to finance its ongoing operations in the normal course. In order to generate a return on its excess funds, RBH invests the excess cash primarily in term deposits with maturities of 90 days or less with banks in Canada with strong credit ratings. As of December 31, 2018, RBH had investments of $1.651 billion in term deposits.

89. RBH also entered into a loan agreement with PMI on March 24, 2016 (the "**Demand Loan Agreement**") providing for the periodic advance of demand loans by RBH to PMI (collectively, the "**Demand Loans**"). The Demand Loan Agreement provided that PMI was entitled to request Demand Loans from RBH from time to time, which RBH has the option, but not the requirement, to advance. The Demand Loans advanced would be repayable by PMI no later than the date specified by RBH and not subject to set-off. RBH made a single advance of $180 million to PMI in March 2016 for a term of four days under the Demand Loan Agreement. The Demand Loan was fully repaid by PMI. No further amounts are outstanding under the Demand Loan Agreement, which has since expired.

90. While RBH has historically paid dividends on a regular basis, out of an abundance of caution, RBH has not made any dividend payments since the Quebec Trial Judgment was rendered by the Quebec Superior Court in respect of the Quebec Class Actions.

(E) Financial Position of RBH

91. Copies of the most recent unaudited financial statements of RBH as at December 31, 2018 are attached hereto as **Exhibit "C"** (the "**2018 Financial Statements**"). For the year ended December 31, 2018, RBH generated total revenues of approximately $1.4 billion, net of Excise Taxes, and had net earnings of approximately $647 million.

(i) Assets of RBH

92. Based on the 2018 Financial Statements, RBH had assets with a book value of approximately $2.3 billion, the majority of which related to cash and short term investments, inventories and property, plant and equipment, and the amounts deposited into Court in Quebec in relation to the Quebec Class Actions (which deposit is described at paragraphs 104 and 105 hereof and which is recorded as a long term asset). Due to the unique nature of the tax-paid tobacco product industry, the realizable value of RBH's assets (other than cash, real property and short term investments) is unlikely to exceed their book value. There are a limited number of participants in the industry that would be possible buyers, and the circumstances affecting RBH also affect those same industry participants in the Canadian market. As a result, it is unlikely that there would be a robust market for most of RBH's non-financial/real property assets.

93. In December 2017, RBH purchased the building housing its corporate headquarters at 1500 Don Mills Road, Toronto, after winning a bidding process**.** The required expenditure, including the purchase price, land transfer tax and various fees incurred for the purchase, was approximately $72 million.

94. This office building has been the corporate headquarters of RBH since 1980, with RBH renting more than two floors in the 10-storey building. When the building was put up for sale, RBH decided to make a bid for the property taking into account that RBH has a long-term lease through 2028 and was receiving relatively low returns on existing cash balances in other investments. RBH is now the landlord with respect to approximately 20 tenants in the

building and does not anticipate any change to the ordinary course relationship with the tenants during the CCAA proceedings.

95. As at December 31, 2018, RBH had cash on hand of $1.651 billion, accounts receivable of $17 million, and accrued obligations in respect of Excise Taxes of $120 million that were due in January 2019 (all amounts approximate).

96. RBH historically maintained product liability insurance with a number of different insurers. Notification to insurers of the Quebec Class Actions and the Other Pending Litigation and the insolvency of certain insurance providers prompted coverage discussions between RBH and its insurers, including with respect to coverage exclusions.

97. In and after 2015, after lengthy negotiations, RBH entered into settlement and buy-back agreements with some insurers. The terms of the agreements vary and certain agreements require court approval and/or allocate amounts to be held in trust for plaintiffs with established product liability claims against RBH. The proceeds that are not subject to a trust were received by RBH in 2015.

98. None of RBH's insurers confirmed that coverage existed under their insurance policies. Most expressed a reservation of rights. If the insurers that have not reached settlement or buy-back agreements with RBH and that expressed a reservation of rights assert those rights, it could result in a significant reduction, or total negation, of any existing insurance coverage.

(ii) Liabilities of RBH

99. The 2018 Financial Statements show that as at December 31, 2018, RBH had total liabilities of approximately $338 million. RBH also has various other secured obligations primarily relating to equipment leases and purchase-money security interests. A summary of the security interests registered against RBH is attached hereto as **Exhibit "D"**.

100. The primary liabilities of the Business as at December 31, 2018 (aside from litigation claims in respect of which no specific provision was made) were:

(a) accounts payable and accrued liabilities of approximately $101 million; and

(b) Excise Taxes and other taxes payable, excluding income taxes, of approximately $141 million.

(iii) Provisional and Contingent Litigation Liabilities

E. Quebec Appellate Decision

101. On May 27, 2015, Justice Riordan of the Quebec Superior Court issued a judgment, corrected June 9, 2015 (the Quebec Trial Judgment), in favour of the plaintiffs in the Quebec Class Actions: (i) Cécilia Létourneau v. JTI-Macdonald Corp., Imperial Tobacco Canada Ltd. and Rothmans, Benson & Hedges Inc. and (ii) Conseil Québécois Sur Le Tabac Et La Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Ltd. and Rothmans, Benson & Hedges Inc. The two cases were originally filed in 1998 as separate actions and were certified as class actions in 2005 and subsequently consolidated for trial. Attached hereto as **Exhibit "E"** is a copy of the Quebec Trial Judgment.

102. The Court in the Quebec Trial Judgment found against the defendants in both proceedings and found that the class members' combined compensatory and punitive damages totalled approximately $6.9 billion plus interest. Pursuant to that judgment, RBH was required to pay a deposit of $226 million within 60 days, inclusive of $46 million in punitive damages, with the trial judge ordering provisional execution thereof. In addition, RBH had a contingent liability for the remainder of the $6.858 billion in compensatory damages, awarded jointly and severally amongst the defendants. Of that amount, RBH's specific allocation based on its liability at trial was twenty percent or $1.372 billion (all amounts plus interest).

103. On June 26, 2015, RBH and the Co-Defendants commenced an appeal of the Quebec Trial Judgment. RBH and the other defendants also applied to cancel the provisional execution of a portion of the Global Damages Award ordered by the Quebec Superior Court as part of the Quebec Trial Judgment. On July 23, 2015, the Court of Appeal of Quebec released a unanimous decision cancelling the order for provisional execution.

104. On October 27, 2015, Justice Schrager of the Court of Appeal of Quebec issued an order (the "**Deposit Posting Order**") pursuant to Article 497 of the *Code of Civil Procedure* (Quebec) requiring RBH to post funds as a condition to the continuation of RBH's appeal. The Deposit Posting Order required RBH to post $226 million, in six quarterly instalments commencing on or before December 31, 2015, by way of irrevocable letter of credit or cash deposited with the registry of the Court of Appeal of Quebec. Attached hereto as **Exhibit "F"** is a copy of the Deposit Posting Order.

105. RBH has deposited a total of $226 million into Court in Quebec, in full satisfaction of its obligations under the Deposit Posting Order and continues to treat this amount as an asset of RBH.

106. The Court of Appeal of Quebec heard the appeal of the Quebec Trial Judgment in November 2016 and issued the Quebec Appellate Decision on March 1, 2019, an English summary of which, together with an English translation of the Court of Appeal of Quebec order, are attached hereto as **Exhibit "G"**.

107. As noted above, the Quebec Appellate Decision upheld in most aspects the Quebec Trial Judgment and awarded compensatory and punitive damages against the defendants. As a result, RBH is liable to deposit $257 million within 60 days (subject to taking into account, to the extent applicable, the $226 million already posted pursuant to the Deposit Posting Order). This includes the punitive damages award for which RBH is individually liable of approximately $56.6 million inclusive of interest to March 1, 2019.

108. In addition, RBH has contingent liability for $13.529 billion (inclusive of interest) for which RBH and the Co-Defendants are jointly and severally liable. $2.706 billion of such amount (inclusive of interest) was allocated to RBH by the Quebec trial judge. As discussed below, the timing and quantum of any additional amount of the Global Damages Award that RBH will be liable to pay in the future are uncertain.

109. RBH vigorously contests the liability for and quantum of the Global Damages Award and seeks authorization in these proceedings to file an application for leave to appeal to the Supreme Court of Canada (with no further step to be taken in respect of such leave application by RBH or any other person thereafter).

F. The Pending Litigation

110. In addition to the Quebec Class Actions, RBH is a defendant or respondent in actions and legal proceedings throughout Canada relating to Tobacco Matters, which include the purchase sale, distribution, manufacture, production, development, advertising or marketing of tobacco products (i.e. the Other Pending Litigation).

111. The Other Pending Litigation consists of the following actions:

(a) Health care cost recovery actions brought by all ten provincial governments;

(b) Seven putative class actions for tobacco-related harms;

(c) A putative class action brought by the Ontario Flue-Cured Tobacco Growers' Marketing Board alleging breach of contract by RBH;

(d) Two actions brought by individual plaintiffs; and

(e) One action brought by a commercial plaintiff.

112. The majority of the Other Pending Litigation affects the entire legal, tax-paid Canadian tobacco industry. Certain corporations affiliated with RBH (and certain indemnitees of those affiliates) that do not carry on business in Canada are named as defendants in Other Pending Litigation, as are ITCAN and JTIM, along with certain of their affiliates. The plaintiffs in the Other Pending Litigation cases are seeking aggregate damages that are exponentially more than the Global Damages Award.

G. Health Care Costs Recovery Actions

113. Significant amounts are collected by the provinces each year in respect of the production and sale of tobacco by RBH, ITCAN and JTIM. According to the public accounts of the federal and provincial governments, tax revenue from tobacco sales in the 2017-2018 fiscal year was approximately $4.680 billion for the provincial and territorial governments and $3.156 billion for the federal government, for a total of $7.836 billion. I believe the actual amounts collected by the governments are even higher since, among other things, neither of the above figures includes revenues from sales tax on tobacco products nor do they appear to include income taxes paid by RBH, ITCAN or JTIM.

114. Notwithstanding these significant payments, the governments of all ten Canadian provinces have initiated health care cost recovery actions against RBH, ITCAN and JTIM and certain of their affiliates (each a "**Health Care Action**" and collectively the "**Health Care Actions**"). A list of the defendants in each Health Care Action and the relevant legislation (such legislation as it may be amended or restated or similar or analogous legislation that may be enacted in the future, the "**HCCR Legislation**") is attached hereto as **Exhibit "H"**. The Health Care Actions were initiated between 2001 and 2015.

115. In each of the Health Care Actions, the plaintiff province is seeking damages for the cost of health care benefits that allegedly has been and will be, incurred by the province in respect of disease allegedly caused or contributed to by wrongfully-induced exposure to tobacco products. RBH vigorously disputes both liability and the calculation of alleged damages claimed by the provinces in the Health Care Actions. Among many issues raised by the defendants in response to these actions is that the plaintiff provinces do not account for the

significant revenue they receive in the form of tobacco taxes – a revenue stream that the provinces control. The defendants allege that this revenue exceeds even the plaintiff provinces' own estimates of health care costs caused or contributed by smoking. The plaintiff provinces also do not account for the transfer payments and other funding they receive from the federal government by virtue of their spending on health care.

116. The Health Care Actions are being pursued on the basis of substantially similar legislation enacted by each of the respective provincial government plaintiffs. I understand that the legislation changed existing legal rules to make it easier for provincial governments to prove claims against tobacco manufacturers for the recovery of health care costs incurred, or to be incurred, by the province as a result of what the legislation defines as a "tobacco related wrong." I also understand that the claims of each province – both factually and for damages – go back decades, and go many years into the future.

117. The damages sought by the provincial governments have been quantified in only some of the Health Care Actions. In the five Health Care Actions in which the plaintiffs have quantified their damage claims, the aggregate of the amounts is exponentially more than the Global Damages Award. RBH is vigorously contesting liability and quantum in each of the Health Care Actions.

118. The Health Care Actions have not yet proceeded to trial. The British Columbia, New Brunswick and Ontario Health Care Actions are the most advanced and are currently at the pre-trial discovery stage. The following is a summary of each of the Health Care Actions that lists the year in which the Health Care Action was initiated and the current status of the Health Care Action**:**

Province	Year in which claim was filed	Current status
British Columbia	2001	Pre-trial discovery ongoing.
New Brunswick	2008	Pre-trial discovery ongoing. Trial is currently scheduled to commence on November 4, 2019.
Ontario	2009	Pre-trial discovery ongoing.
Newfoundland & Labrador	2011	Pre-trial discovery ongoing.
Manitoba	2012	Pre-trial discovery ongoing.
Quebec	2012	Pre-trial discovery ongoing.
Alberta	2012	Pre-trial discovery ongoing.
Saskatchewan	2012	Discovery was scheduled to commence in 2017, however the plaintiffs have taken no action.
Prince Edward Island	2012	Discovery was scheduled to commence in 2017, however the plaintiffs have taken no action.
Nova Scotia	2015	Discovery was scheduled to commence in 2017; plaintiffs have since delivered a small test production but have taken no further steps.

119. A very significant expenditure of resources has been required to defend and manage these massive Health Care Actions as they proceed simultaneously in multiple jurisdictions.

Such expenditures are only expected to increase unless the relief requested in these proceedings is granted.

H. Class Action and Other Proceedings

120. In addition to the Health Care Actions, RBH, along with other members of the tobacco industry, is a defendant in seven putative class actions for alleged tobacco addictions and tobacco-related harms caused by products sold by the defendants: two actions in British Columbia and one action in each of Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia (each a "**Class Action**" and collectively, the "**Class Actions**"). A summary of the Class Actions is attached hereto as **Exhibit "I".** The Class Actions were initially filed in 2009 and 2010. The plaintiffs in the Class Actions are seeking compensatory and punitive damages and restitution of profits, among other remedies. None of the Class Actions has been certified. RBH vigorously disputes the allegations and claims asserted in the Class Actions.

121. The Class Actions are at different stages of early development. In *Bourassa v. Imperial Tobacco Canada Limited et al.,* which was commenced in British Columbia, the plaintiffs were scheduled to file their class certification materials in January 2015. To date, the plaintiffs have not filed their class certification materials.

122. Class counsel in the Ontario, Alberta, Manitoba, Nova Scotia or other British Columbia proceedings indicated in a letter dated September 29, 2009 that they did not intend to take any action in those proceedings as the class they are seeking in Saskatchewan will be multi-jurisdictional. No steps have been taken in the Saskatchewan action since January 2010.

I. Tobacco Growers' Action

123. In 2009, the Ontario Flue-Cured Tobacco Growers' Marketing Board filed a putative class action in Ontario against RBH alleging breach of contract and seeking damages on the basis that RBH improperly affected the price of tobacco through alleged smuggling activities in the early 1990s (the "**Tobacco Growers' Action**").

124. The Ontario Superior Court of Justice denied RBH's motion for summary judgment on statute of limitations grounds. The Divisional Court denied the defendants' appeal of the Superior Court ruling by order dated July 4, 2016 and RBH and its co-defendants' motions for leave to appeal were denied on November 4, 2016.

125. The class action has not been certified. RBH vigorously disputes the allegations and claims asserted by the plaintiffs in the Tobacco Growers' Action, who collectively are seeking damages in excess of $100 million.

J. Individual Actions

126. *Paradis Action* In 2010, a claim was filed against RBH in Quebec small claims court alleging that the plaintiff suffers from unspecified smoking-related breathing and cardiac problems (the "**Paradis Action**"). Since the plaintiff also alleges that he is a member of the class of persons represented by Cécilia Létourneau in respect of the Quebec Judgment, in 2010 RBH sought and obtained a stay of the Paradis Action pending a determination of the Quebec Class Actions.

127. *Couture Action:* In July 2017, an Originating Application to Institute Proceedings against RBH was filed in the Quebec Superior Court on behalf of the plaintiffs and the estate

of Lorraine Trépanier ("**Trépanier**") (the "**Couture Action**"). The plaintiffs allege that Trépanier, who worked at the RBH plant in Quebec City, developed lung cancer as a result of acts of RBH. RBH disputes any liability in respect of the Couture Action. The Court has stayed the case until June 2019.

128. *ROOFTOP Action*: RBH is a defendant in an action by Marlboro Canada Limited and ITCAN relating to the cigarette brand ROOFTOP and the plaintiffs' allegations of infringement relative to their MARLBORO trademark registrations (the "**ROOFTOP Action**" and collectively with the Paradis Action and the Couture Action, the "**Individual Actions**"). In the action, ITCAN alleges that changes made to the ROOTFOP packaging were insufficient and constituted an infringement of trademark rights. Another action relating to ROOFTOP was settled for $8 million in 2017.

III. CCAA PROCEEDINGS

(A) RBH is Insolvent

129. RBH is insolvent because the realizable value of its assets, including the deposit, is not sufficient to satisfy the following (all amounts inclusive of interest):

(a) the $257 million that must be deposited by RBH within 60 days of the Quebec Appellate Decision;

(b) RBH's contingent liability for the remainder of the $13.529 billion (other than the punitive damages awards against the Co-Defendants) for which RBH and the Co-Defendants are jointly and severally liable. $2.706 billion of such amount was allocated to RBH by the Quebec trial judge; and,

(c) Other amounts for which RBH is liable such as trade debt.

130. Further, RBH would not be able to satisfy its other significant contingent liabilities in the Other Pending Litigation to the extent any of those materialize.

(i) Realizable Asset Value

131. As set out above, based on the 2018 Financial Statements, RBH had assets with a book value of approximately $2.3 billion as at December 31, 2018. Due to the nature of RBH's assets and its business, the realizable value of RBH's assets, taken as a whole, is unlikely to exceed the book value of such assets.

132. The main categories of RBH assets and the approximate book value in each category according to the 2018 Financial Statements are: cash and short term investments ($1.651 billion); inventories ($170.3 million); property, plants and equipment ($165 million of which real property is $78.3 million); and the payments on account of the amounts paid pursuant to the Deposit Posting Order. Assets in the nature of cash, inventory, real property and the Deposit Posting Order payment can be expected to have a realizable value equivalent to (or, in the case of inventory, approximately equivalent to) the book value. Assets in the nature of plant and equipment, however, tend to be unique to the tobacco product industry. Given the limited number of participants in the tax-paid tobacco product industry and the contingencies affecting participants in the industry, it is unlikely that there would be a robust market for these assets if they had to be realized. Accordingly, the realizable value of such assets is unlikely to exceed their book value.

133. Moreover, given the present lack of stability in the industry, there is a risk that the realizable value of non-financial/real property assets is even less than the book value. Given

the impact of the Quebec Appellate Decision on the Canadian tobacco industry and the CCAA filings of JTIM and ITCAN, it is reasonable to expect that there would be fewer potential purchasers for tobacco-related assets than the small number of parties who may otherwise have been interested in purchasing RBH's specialized assets, and that there will likely be a greater supply for such assets since RBH's competitors may also be selling their assets. Accordingly, given the current state of the industry including the CCAA filings of JTIM and ITL, it is less likely that RBH will be able to achieve the book value for such assets at a fairly conducted sale. As a result, it is reasonable to expect that the realizable value of the assets of RBH at a fairly conducted sale will be less than the $2.3 billion book value.

(ii) Obligations Due and Accruing Due

134. The book value of RBH's liabilities as set out in the 2018 Financial Statements, prior to the release of the Quebec Appellate Decision, was approximately $338 million. This figure does not include:

(a) the $257 million that must be paid by RBH within 60 days of the Quebec Appellate Decision;

(b) RBH's contingent liability in respect of nearly the entire remainder of the $13.529 billion Global Damages Award;

(c) any contingent liability arising from the Other Pending Litigation in which RBH is a defendant, along with ITCAN, JTIM and other industry participants, in which various plaintiffs seek damages in the tens of billions of dollars or more; or

(d) any costs associated with the realization of its assets, such as severance and termination claims and damages for breach of any contracts that RBH was unable to perform.

135. As a result of the Quebec Appellate Decision, RBH must now make a payment of $257 million within 60 days of the Quebec Appellate Decision. The timing and amounts of future payments by RBH in respect of the remainder of the Global Damages Award are uncertain and I understand any such payments may be contingent upon, among other things, an individual claims process for eligible class members. However, the assets of RBH at fair valuation would not be sufficient to enable payment of the portion of the Global Damages Award allocated specifically to RBH by the Quebec trial judge at the amount calculated by the trial judge ($2.706 billion inclusive of interest).

136. The assets of RBH at fair valuation are also insufficient to pay the remainder of the Global Damages Award for which it is jointly and severally liable in the event the Co-Defendants are unable to satisfy their portions, which is of heightened concern given the magnitude of this award and the CCAA filing of JTIM and ITCAN. This additional, joint and several, contingent liability at the amount calculated by the trial judge vastly exceeds the realizable value of RBH's assets.

137. Moreover, the realizable value of the assets of RBH is insufficient to satisfy in full its potential liabilities relating to the Other Pending Litigation in the event that those liabilities ultimately materialize. Indeed, RBH would be unable to satisfy even one judgment if liability were to be found in any one of the Health Care Actions to the extent of the amount claimed (considering those cases in which damages have been quantified).

138. RBH requires CCAA protection because its property, at fair valuation, is not or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all of its obligations, due and accruing due, including its contingent liabilities.

(B) Stay of Proceedings

139. A stay of proceedings against RBH is necessary at this time to, among other things, provide a forum to explore a CCAA plan of compromise or arrangement that would resolve the litigation claims and maximize recovery for creditors and other Stakeholders. In particular, the stay of proceedings would permit RBH to address its litigation exposure in a collective manner while preventing prejudice to certain claimants arising from the happenstance of one massive judgment leading to enforcement proceedings before other claims have been heard.

140. Without a stay of proceedings, RBH is susceptible to enforcement proceedings that would disrupt its Business and impair its ability to resolve the claims against it in an orderly manner, and would incentivize certain claimants (such as those with advanced litigation claims and judgment creditors) to aggressively improve their positions at the expense of other Stakeholders. I expect such actions would result in interruptions to the Business or the cessation of operations, with a corresponding loss of employment, supplier contracts and government revenues and of a profitable, going concern operation. A cessation of Business may also result in an increase in contraband tobacco sales. Without a stay, it is possible that RBH would be unable to pursue the opportunity to transform its business through the distribution of Reduced Risk Products in Canada.

141. It is in the best interests of RBH and its Stakeholders for the Business to continue to operate under a stay of proceedings to provide RBH a forum to manage the multiple litigation claims against it, to avoid prejudicing any particular claimant and to minimize the massive litigation costs while at the same time maximizing revenues and recoveries through the continued operation of its cash flow positive Business.

142. The proposed Initial Order provides for a stay of all enforcement processes and proceedings against or in respect of RBH or the Monitor or affecting the Business or Property (as defined in the Initial Order) or funds deposited pursuant to the Deposit Posting Order, including staying the Quebec Class Actions, the Deposit Posting Order, the Other Pending Litigation and any proceedings relating to the HCCR Legislation. Conducting a defense in each of these complex legal proceedings would cause a meaningful distraction for senior management of RBH from efforts to achieve a CCAA plan of compromise or arrangement with creditors.

143. The proposed Initial Order will also stay Proceedings in Canada against or in respect of any member of the PMI Group pursuant to HCCR Legislation or relating to a Tobacco Matter claim or that relate to RBH or arise from the Quebec Class Actions or the Other Pending Litigation.

144. Generally, allegations made in the Pending Litigation include that the defendants (including RBH) each performed the same or similar acts or conduct, or failed to do the same or similar things. There are frequently allegations that all of the defendants acted in concert and are jointly and severally liable for amounts claimed. Attached hereto as **Exhibit "J"**, as an example, is the statement of claim in the New Brunswick Health Care Action.

145. The proceedings to be stayed against members of the PMI Group are intended to be proceedings that relate to, involve or may otherwise invoke liability for RBH in Canada.

146. The continuation of specified Canadian matters against members of the PMI Group could adversely affect the rights of RBH in those proceedings and any finding of liability and/or award of damages against a member of the PMI Group could have legal and financial consequences for RBH, including claims for indemnification or contribution.

147. It would be prejudicial to RBH for matters to proceed against other members of the PMI Group that relate to RBH or arise from proceedings in which RBH is a defendant. If such proceedings were not stayed against members of the PMI Group, RBH and its management would still be required to devote time and effort to monitoring and participating in the proceedings to ensure RBH's rights and interests are not prejudiced, and RBH would be required to incur legal and other expenses in connection with the complex, highly contested proceedings.

148. In addition, if such matters were to proceed as against members of the PMI Group but are stayed as against RBH, there would be different inquiries at different times into the same underlying facts, creating the possibility for conflicting or inconsistent judgments and wasted judicial resources.

149. To ensure that the stay does not irreversibly affect proceedings by the mere passage of time, the proposed Initial Order provides that, to the extent any limitation period relating to proceedings in respect of RBH or the PMI Group that are stayed by the Initial Order may expire, such period is deemed extended by the length of the Stay Period (as defined in the Initial Order).

150. As an exception to the suspension of all proceedings and steps in respect of the Pending Litigation, the proposed Initial Order authorizes the Applicant to serve and file an application for leave to appeal the Quebec Appellate Decision to the Supreme Court of Canada, but no further step or proceeding is permitted to be taken by the Applicant or any other Person without further order of this Court.

151. The preservation of RBH's ability to seek leave to appeal the Quebec Appellate Decision, before the expiration of the applicable time period, is in the best interests of RBH and its Stakeholders generally. The preservation of RBH's right to pursue leave to appeal does not preclude a resolution within the context of the CCAA proceedings.

152. To ensure the equitable treatment of RBH's creditors, including contingent creditors, and to ensure that a substantial portion of RBH's future profits are not set aside or used to post security for the exclusive benefit of one creditor group, the proposed Initial Order provides that, except as otherwise stated in the Initial Order, RBH is prohibited from posting security or granting security interests without further order of this Court and precludes creditors, including the plaintiffs in the Quebec Class Actions, from seeking payment of any funds paid into Court. In particular, the proposed Initial Order stays the exercise of all rights and remedies pursuant to the Deposit Posting Order.

153. The requested stay of proceedings in the Initial Order will preserve RBH's resources, balance the interests of its various Stakeholders, allow RBH to explore a CCAA plan of compromise or arrangement and enable RBH to carry on the Business in the ordinary course, including continuing to pursue Reduced Risk Products such as IQOS, for the benefit of its Stakeholders during the CCAA proceedings.

(C) Payments During the CCAA Proceedings

154. As set out in the proposed Initial Order, RBH is seeking authorization to pay certain expenses, whether incurred prior to, on or after the date of the Initial Order, in respect of:

a) outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive plan payments, employee and retiree pension benefits and related contributions and payments (including, without limitation, expenses related to employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions or payments in respect of the Registered Pension Plans, the Non-Registered Pension Plans and the RRSP), reimbursement expenses (including without limitation amounts charged to corporate credit cards), termination pay, salary continuance and severance pay, all of which is payable to or in respect of employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;

b) the fees and disbursements of any Assistants (as such term is defined in the Initial Order) retained or employed by RBH; and

c) payments under or in respect of the Trade Programs operated by RBH.

155. The continued payment of these obligations is necessary for the continued operation of the Business or in connection with the CCAA proceedings and efforts to address RBH's current financial circumstances. RBH believes it is in the best interests of its Stakeholders that such expenses continue to be paid in the normal course, regardless of whether such expenses were incurred prior to, on or after the date of the Initial Order.

156. RBH is also seeking the authority to pay all reasonable expenses incurred in carrying on the Business in the ordinary course after the date of the Initial Order, including (a) expenses and capital expenditures reasonably necessary for the preservation of RBH's Business or property; (b) capital expenditures to replace or supplement the Property or that are of benefit to the Business, with Monitor approval for any single expenditure in excess of $1 million or in aggregate in a calendar year in excess of $10 million; and (c) payment for goods and services supplied or to be supplied to RBH after the date of the Initial Order, or to obtain the release of goods contracted for prior to the date of the Initial Order.

157. During the CCAA proceedings, RBH anticipates making certain capital expenditures to maintain and upgrade equipment used in the operation of the Business and the production of tobacco products. Authorizing such expenditures will assist with the preservation and ongoing operations of the Business.

158. RBH is also seeking the authority in the proposed Initial Order to pay pre-filing obligations in respect of the reasonable expenses incurred in carrying on the Business if, in the opinion of RBH and with the consent of the Monitor, the applicable payee or the payment of the expense is necessary or desirable for the preservation of the Business or the Property or the ongoing operations of RBH.

159. It is RBH's current intention that all third-party trade suppliers (but not including members of the PMI Group) will be paid in full for pre-filing expenses since doing so is necessary or desirable for RBH's ongoing operations. I understand that the proposed Monitor will be preparing a pre-filing report that expresses their support for making such payments as well. It is in the best interests of all Stakeholders to minimize disruption to the Business, preserve its goodwill and to enable RBH to continue to generate additional revenue while under CCAA protection.

160. RBH also seeks an order requiring it to continue to pay its ordinary course obligations, whether levied, accrued or collected before, on or after the date of the Initial Order, in respect of statutory deemed trust amounts to the Canadian and provincial revenue authorities (such as **s**ource deductions), Sales Taxes, Excise Taxes, and amounts payable to a taxation authority in respect of municipal realty, business or other taxes that are entitled to be paid in priority to claims of secured creditors and related to carrying on the Business.

161. RBH is seeking authorization to post and continue to have posted cash collateral to satisfy regulatory or administrative requirements to provide security in the ordinary course and consistent with past practice in relation to Excise Taxes, in an aggregate amount not to exceed $31.1 million.

162. RBH also seeks authorization to complete outstanding transactions and engage in new transactions with members of the PMI Group and to continue, on and after the date of the Initial Order, with Intercompany Transactions (as defined in the Initial Order) in the ordinary course of business or as otherwise approved by the Monitor. The importance of these Intercompany Transactions to the Business – including RBH's reliance on intercompany

arrangements relating to tobacco inputs, business and IT services and trademark licenses - is discussed above.

(D) Funding of RBH

163. As set out in the statement of projected cash flows of RBH attached hereto as **Exhibit "K"** (the "**Cash Flow Forecast**"), the current cash balance of RBH is approximately $1.7 billion. RBH is obligated to remit approximately $180 million in Excise Taxes and other taxes to federal and provincial governments within the next 30 days. RBH's principal use of cash during these proceedings will consist of the costs associated with the operation of the Business and ongoing payments made in the ordinary course, including employee compensation, procurement and other supplier obligations and professional fees and disbursements in connection with these CCAA proceedings.

164. As the Cash Flow Forecast indicates, the Business is projected to generate sufficient cash flow over the forecasted period to enable RBH to meet its day-to-day obligations for the stay period sought in this application. Consequently, RBH is not seeking interim financing at this juncture.

(E) Monitor and Administration Charge

165. RBH is seeking the appointment of Ernst & Young Inc. as the proposed CCAA monitor in these proceedings. The consent of Ernst & Young Inc. to act as the Monitor is attached at Tab "5" of RBH's application record. In connection with the appointment of the Monitor, RBH is seeking authorization to pay Ernst & Young Inc. and their counsel retainers

in the amount of $250,000 and $50,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

166. It is contemplated that a Court-ordered charge over the assets, property and undertaking of RBH (the "**Administration Charge**") would be granted in favour of the Monitor, legal counsel to the Monitor and legal counsel to RBH in respect of their fees and disbursements incurred at their standard rates and charges, in order to ensure the active involvement and assistance of such persons during the CCAA proceedings. The proposed Administration Charge is in an aggregate amount of $3 million.

(F) Sales and Excise Tax Charge

167. RBH has significant ongoing liabilities relating to Sales Taxes and Excise Taxes. Excise Taxes (which include provincial and territorial tobacco tax, excise tax and customs and import duties) are collected or otherwise become payable by RBH over a period of time and become due or are remitted at a later time. The exact period between the tax becoming payable and actual remittance depends on the type of Excise Tax and jurisdiction in which it is payable. The amount of such taxes to be remitted by RBH in any given month ranges from roughly $96 million to $167 million and RBH's overall exposure at any particular time can be for up to two months of tax, based on the timing of remittances. RBH is required to collect and remit taxes on the following schedule:

(a) Excise Taxes (other than provincial and territorial tobacco taxes) are based on production in a month and must be remitted by the end of the following month. As a result, RBH's exposure over 60 days is approximately $190 million.

(b) provincial and territorial tobacco taxes are collected in one month and are remitted the following month, with the date varying by province. On average, it is about 45 days before remittance. RBH's exposure for tobacco taxes is approximately $65 million over 45 days; and

(c) Sales Taxes, which are collected on all sales made to retailers over the course of a month. RBH remits such amounts the following month. The amount of such Sales Taxes remitted is approximately $40 million over 60 days.

168. The proposed Initial Order contemplates RBH continuing to pay Sales Taxes and Excise Taxes in the ordinary course. However, to provide security to the relevant Canadian and provincial revenue authorities and assurance to RBH's directors as it relates to potential personal liability for the significant amounts outstanding until remitted, the Sales and Excise Tax Charge is proposed in favour of the relevant Canadian and provincial revenue authorities. I believe the Sales and Excise Tax Charge is appropriate given the substantial amount of Sales Taxes and Excise Taxes arising in the operation of the Business and the time period between remittances.

169. The amount of the Sales and Excise Tax Charge is not to exceed an aggregate amount of $270 million, which would constitute security for all amounts owing by RBH for Sales Taxes and Excise Taxes. I believe this amount is appropriate taking into consideration average exposure for the Sales Taxes and Excise Taxes required to be remitted to each such revenue authority, and the value of Cash Collateral provided to them.

(G) Directors' Charge

170. The directors and officers of RBH will be actively involved in overseeing and directing, among other things, the operation of the Business during the CCAA proceedings and efforts to resolve RBH's current financial situation.

171. It is my understanding that, in certain circumstances, directors and officers can be held personally liable for certain of a company's obligations, including in connection with payroll remittances, workers' compensation remittances, excise taxes, harmonized sales taxes, goods and services taxes and tobacco taxes. Furthermore, I understand it may be possible for directors and officers of a corporation to be held personally liable for certain employment-related obligations.

172. RBH maintains an insurance policy with AIG Insurance Company of Canada for its directors and officers (the "**D&O Insurance Policy**"). The D&O Insurance Policy insures the directors and officers of RBH for certain claims that may arise against them in their capacity as directors and/or officers. As the D&O Insurance Policy is subject to a maximum claim of $5 million and contains exclusions and limitations to the coverage provided, there is a potential for there to be insufficient coverage in respect of the potential director and officer liabilities.

173. The directors and officers of RBH have expressed their desire for certainty with respect to potential personal liabilities if they continue in their current capacities. RBH requires the active and committed involvement of its directors and senior officers to operate the Business during the CCAA proceedings and explore potential solutions of its current challenges.

174. RBH requests a Court-ordered charge (the "**Directors' Charge**") in the amount of $7 million over the assets, property and undertaking of RBH to indemnify its directors and officers in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers. The amount of the Directors' Charge has been reviewed with the prospective Monitor and takes into consideration the Sales and Excise Tax Charge, which provides protection for the significant Excise Tax liability.

(H) Priorities of Charges

175. RBH believes that the amounts of the Administration Charge, Directors' Charge and Sales and Excise Tax Charge (collectively, the "**Charges**") are appropriate in the circumstances. It is contemplated that the priorities of the Charges will be as follows:

d) First - the Administration Charge;

e) Second - the Directors' Charge; and

f) Third - the Sales and Excise Tax Charge.

176. The Initial Order sought by RBH provides for the Charges to rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, (collectively, the "**Encumbrances**"), other than certain specified exceptions, such as purchase-money security interests, statutory deemed trusts for source deductions, certain pension plan amounts, municipal property tax and utility liens (each to the extent it is a super-priority) and certain Cash Collateral. I am advised by James Gage of McCarthy Tétrault LLP and I believe that the specified exceptions are intended to represent those claims that have priority outside of CCAA proceedings and that are not otherwise

addressed in the Initial Order, for instance by way of the Charges themselves (*e.g.*, the Sales and Excise Tax Charge). As described above, RBH does not have any secured debt.

177. RBH is also seeking approval of its proposed manner of service and notice of the Initial Order and the comeback motion authorized pursuant to the Initial Order (the "**Comeback Motion**"). In particular, RBH proposes that the Monitor shall provide notice by way of publication, by making the Initial Order publicly available as prescribed in the CCAA, and by sending a notice (which shall include the date of the Comeback Motion) to known creditors with claims over $1000, except with respect to (i) Tobacco Claimants, in which cases the Monitor shall only send a notice to counsel of record in the applicable Pending Litigation, and (ii) beneficiaries of the Registered Pension Plans, in which case the Monitor shall only send a notice to the trustees of each of the Registered Pension Plans, the Financial Services Commission of Ontario and the Régie Des Rentes Du Québec, and (iii) current and former employees of RBH.

178. The proposed Initial Order also provides that RBH may rely on the notice provided by the Monitor (as described above) to provide notice of the Comeback Motion and shall only be required to serve motion materials in relation to the Comeback Motion on those parties who serve a Notice of Appearance in the proceeding or otherwise request service of such materials or to be added to the service list, in writing, in advance of the Comeback Motion.

(I) Initiation of CCAA Proceedings

179. I am informed by counsel to RBH in the Quebec Class Actions, Simon Potter of McCarthy Tétrault LLP, that Mr. Potter received a letter dated July 6, 2015 from Avram Fishman of Fishman Flanz Meland Paquin, S.E.N.C.R.L./ LLP (the "**Fishman Letter**")

addressed to Justice Castonguay of the Quebec Superior Court and Justice Newbould of the Ontario Superior Court. I have been provided with and have reviewed a copy of the Fishman Letter. The Fishman Letter advised that Mr. Fishman's law firm would like not less than seven days' prior notice of any CCAA filing initiated by a defendant in the Quebec class actions. Mr. Fishman indicated a desire to make representations on behalf of certain class members in the Quebec class actions but did not indicate whether he had been engaged by any such class members. Mr. Fishman also indicated in the letter that unless the defendants provided written confirmation that they would provide such notice to him, he would request a 9:30 a.m. meeting at the convenience of the justices for directives as to notice. I am advised by Mr. Potter that RBH did not agree to provide advance notice to Mr. Fishman and, to his knowledge, Mr. Fishman did not make a 9:30 appointment to speak to the issue nor is he aware of any directions issued by either Justice Castonguay or Justice Newbould in that regard.

180. I am also advised by counsel to RBH, R. Paul Steep of McCarthy Tétrault LLP, that Mr. Steep received (i) a letter dated March 6, 2019 from Jeffrey Leon of Bennett Jones LLP, counsel to the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan in certain Health Care Actions; and (ii) a letter dated March 7, 2019 from Jacqueline Wall of the Ministry of the Attorney General Crown Law Office, Civil Law, counsel to the plaintiff, Her Majesty the Queen in right of Ontario in one of the Health Care Actions. Both Mr. Leon and Ms Wall also requested advance notice of any CCAA application by RBH.

181. In the circumstances, it was not possible for RBH to provide seven days' advance notice of a CCAA filing as requested in the above letters. The board of directors of RBH had

not made a decision to initiate these CCAA proceedings seven days prior to the anticipated filing date. In addition, providing advance notice of this CCAA filing could have led to adverse actions by creditors or other Stakeholders in advance of these CCAA proceedings that would have destabilized the Business and further exacerbated RBH's challenges. Further, RBH's ultimate parent company, PMI, is a public company and therefore subject to disclosure requirements. This was taken into account in relation to the notice for and timing of RBH's CCAA application. I understand that RBH intends to schedule a Comeback Motion for which notice will be given to interested parties.

IV. CONCLUSION

182. RBH operates a stable and cash flow positive Business but is insolvent by virtue of the Quebec Appellate Decision, the Other Pending Litigation, and other present circumstances including the insolvency of JTIM and ITCAN. RBH seeks CCAA protection at this time to protect the value of the Business and keep its creditors and contingent creditors on an equal footing while it explores a CCAA plan of compromise and arrangement.

183. The relief requested in the proposed Initial Order will provide RBH with an opportunity to address its current challenges while ensuring the continued operation of the Business in the normal course during the CCAA proceedings, which will preserve employment, government revenues and supplier and customer relationships, and will allow RBH to continue to participate in and develop the emerging Reduced Risk Product market.

184. The relief requested in the proposed Initial Order is therefore in the best interests of RBH and its Stakeholders.

SWORN ~~AFFIRMED~~ BEFORE ME at the City of Vancouver, in the Province of British Columbia on the 22nd day of March, 2019.

A Commissioner for taking Affidavits
Name: Emily MacKinnon

EMILY MacKINNON
Barrister & Solicitor
McCarthy Tétrault LLP
SUITE 2400 - 745 THURLOW STREET
VANCOUVER, B.C. V6E 0C5
DIRECT 604-643-5986

PETER LUONGO

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.
Applicant

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF PETER LUONGO
(Sworn March 22, 2019)

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6
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James Gage LSO#: 34676I
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Heather Meredith LSO#: 48354R
Tel: 416-601-8342
Email: hmeredith@mccarthy.ca
Lawyers for the Applicant
DOC#: 18937295

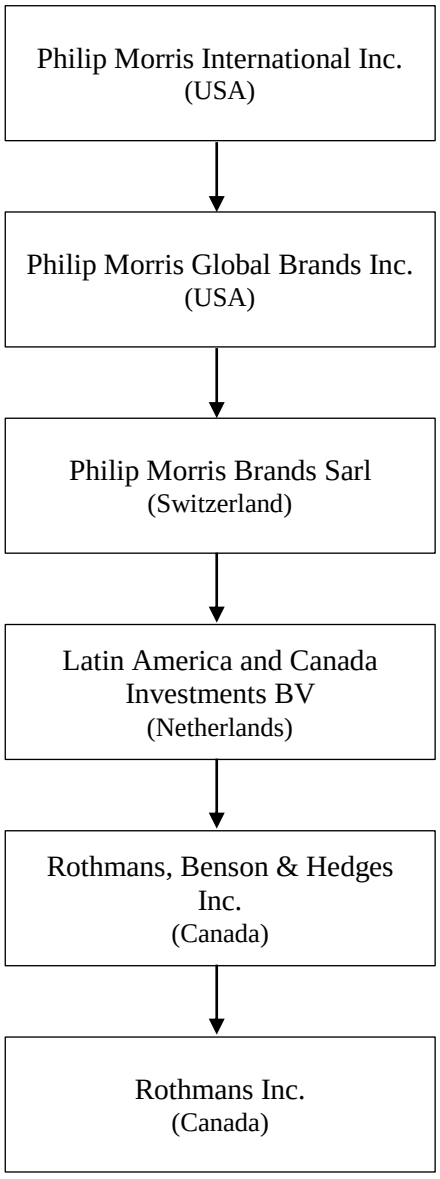
This is Exhibit"...A....."referred to in the
affidavit of ...Peter Luongo.....
made before me on this ...22nd.....
day of .....March....., 20 ..19..

.....
A Commissioner for taking
Affidavits in British Columbia

Exhibit A

PHILIP MORRIS INTERNATIONAL INC.

Organizational Chart



This is Exhibit"H"..."referred to in the
affidavit of Peter Lwongo
made before me on this 22nd
day of March, 20 19

A Commissioner for taking
Affidavits in British Columbia

Exhibit H

HEALTH CARE LAWSUITS AND HEALTH CARE COSTS RECOVERY LEGISLATION

Healthcare Lawsuits

British Columbia Health Care Lawsuit

Philip Morris U.S.A. Inc. (formerly Philip Morris Incorporated)
Philip Morris International Inc.
Rothmans, Benson & Hedges Inc.
Rothmans Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limited
JTI-Macdonald Corp.
Canadian Tobacco Manufacturers' Council
B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International, Inc.
Rothmans International Research Division
Ryesekks p.l.c.

New Brunswick Health Care Lawsuit

Philip Morris International, Inc.
Philip Morris U.S.A. Inc.
Altria Group, Inc.
Rothmans, Benson & Hedges Inc.
Rothmans Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limited
JTI-Macdonald Corp.
Canadian Tobacco Manufacturers' Council
British American Tobacco p.l.c.
B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International, Inc.

Ontario Health Care Lawsuit

Philip Morris International, Inc.
Philip Morris U.S.A. Inc.
Altria Group, Inc.
Rothmans, Benson & Hedges Inc.
Rothmans Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limited

JTI-Macdonald Corp.
Canadian Tobacco Manufacturers' Council
British American Tobacco p.l.c.
B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International, Inc.

Third Party Defendants:
Grand River Enterprises Six Nations Ltd.
Lanwest Manufacturing Technologies Inc.
Rainbow Tobacco
Company G.P. / Tabac Arc En-Ciel S.E.N.C.
Tabac A.D.L. Canada Inc.
Gestion A.D.L. S.E.N.C. A General Partnership Carrying On Business As Tabac A.D.L.
Alain Paul
Donald Paul
Luc Paul
Guy Boulianne
Richard O'bomsawin Carrying On Business As Abenaki Enterprises
Abenaki Enterprises
Choice Tobacco Incorporated
Jacobs Tobacco Company
Rice Mohawk Industries
John Doe #1 Through #70

Newfoundland Health Care Lawsuit

Philip Morris U.S.A. Inc.
Altria Group, Inc.
Philip Morris International, Inc.
Rothmans, Benson & Hedges Inc.
Rothmans Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limited
JTI-Macdonald Corp.
Canadian Tobacco Manufacturers' Council
British American Tobacco p.l.c.
B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International, Inc.

Manitoba Health Care Lawsuit

Philip Morris U.S.A. Inc.
Altria Group, Inc.

Philip Morris International, Inc.
Rothmans, Benson & Hedges Inc.
Rothmans Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limited
JTI-Macdonald Corp.
Canadian Tobacco Manufacturers' Council
British American Tobacco p.l.c.
B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International, Inc.

Quebec Health Care Lawsuit

Philip Morris U.S.A. Inc.
Philip Morris International Inc.
Rothmans, Benson & Hedges Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limitée
JTI-Macdonald Corp.
Conseil Canadien Des Fabricants Des Produits Du Tabac,B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International, Inc.

Alberta Health Care Lawsuit

Philip Morris USA, Inc.
Altria Group, Inc.
Philip Morris International, Inc.
Rothmans, Benson & Hedges Inc.
Rothmans Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limited
JTI-Macdonald Corp.
Canadian Tobacco Manufacturers Council
B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
British American Tobacco p.l.c.
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International, Inc.

Saskatchewan Health Care Lawsuit

Philip Morris U.S.A. Inc.
Altria Group, Inc.
Philip Morris International, Inc.

Rothmans, Benson & Hedges Inc.
Rothmans Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limited
JTI-Macdonald Corp.
Canadian Tobacco Manufacturers' Council
British American Tobacco p.l.c.
B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International Inc.

Prince Edward Island Health Care Lawsuit

Philip Morris U.S.A. Inc.
Altria Group, Inc.
Philip Morris International, Inc.
Rothmans, Benson & Hedges Inc.
Rothmans Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limited
JTI-Macdonald Corp.
Canadian Tobacco Manufacturers' Council
British American Tobacco Canada p.l.c.
B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International Inc.

Nova Scotia Health Care Lawsuit

Philip Morris U.S.A. Inc.
Altria Group, Inc.
Philip Morris International, Inc.
Rothmans, Benson & Hedges Inc.
Rothmans Inc.
Carreras Rothmans Limited
Imperial Tobacco Canada Limited
JTI-Macdonald Corp.
Canadian Tobacco Manufacturers' Council
B.A.T. Industries p.l.c.
British American Tobacco (Investments) Limited
British American Tobacco p.l.c.
R.J. Reynolds Tobacco Company
R.J. Reynolds Tobacco International, Inc.

Health Care Costs Recovery Legislation

Jurisdiction	Statute
Alberta	*Crown's Right of Recovery Act*, SA 2009, c. C-35
British Columbia	*Tobacco Damages and Health Care Costs Recovery Act*, SBC 2000, c. 30
Manitoba	*The Tobacco Damages Health Care Costs Recovery Act*, SM 2006, c. 18
New Brunswick	*Tobacco Damages and Health Care Costs Recovery Act*, SNB 2006, c. T-7.5
Newfoundland and Labrador	*Tobacco Health Care Costs Recovery Act*, SNL 2001, c. T-4.2
Nova Scotia	*Tobacco Health-Care Costs Recovery Act*, SNS 2005, c. 46
Northwest Territories	Proclaimed but not yet in force; *Tobacco Damages and Health Care Costs Recovery Act*, SNWT 2011, c. 33
Nunavut	Proclaimed but not yet in force; *Tobacco Damages and Health Care Costs Recovery Act*, SNu 2010, c. 31
Ontario	*Tobacco Damages and Health Care Costs Recovery Act, 2009*, SO 2009, c. 13
Prince Edward Island	*Tobacco Damages and Health Care Costs Recovery Act*, SPEI 2009, c 22
Québec	*Tobacco-related Damages and Health Care Costs Recovery Act, 2009*, COLR c. R-2.2.0.0.1
Saskatchewan	*The Tobacco Damages and Health Care Costs Recovery Act*, SS 2007, c. T-14.2
Yukon	N/A

This is **Exhibit "I"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021

February 15, 2010

No. CV-09-387984

IN THE ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

PLAINTIFF

AND

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

DEFENDANTS

AFFIDAVIT

I, Thomas R. Adams, of 401 North Main Street, Winston-Salem, North Carolina, based on my personal knowledge, MAKE OATH AND SAY AS FOLLOWS:

1. I am Executive Vice President and Chief Financial Officer of both Reynolds American Inc. ("RAI") and RAI Services Company ("RAI Services"). I have been employed in various positions by affiliated and/or predecessor companies since 1999. In 1999 I was hired as Senior Vice President and Controller of R.J. Reynolds Tobacco Holdings, Inc. ("RJR Holdings"). I was named Senior Vice President and Chief Accounting Officer for RAI, which is a successor to RJR Holdings, and R.J. Reynolds Tobacco Company ("RJRT"), in 2004, and became Senior

Vice President – Business Processes for RJRT the following year. I was named Senior Vice President – Business Process of RAI in 2006, and Senior Vice President and Chief Accounting Officer for RAI in 2007. I assumed my current position with RAI on January 1, 2008, and my current position with RAI Services on January 1, 2010.

2. The statements contained in this affidavit are based on my personal knowledge and are made to the best of my knowledge and belief.

3. R.J. Reynolds Tobacco Company ("RJRTC") is a North Carolina corporation with its principal place of business in Winston-Salem, North Carolina. RJRTC does not have employees or assets in Canada and has not had employees or assets in Canada over the period from 1999 to the present. RJRTC's assets are entirely located within the United States, with the only exception being assets of nominal value from time-to-time that may be in transit outside the U.S. but intended to ultimately to be located in the U.S.

4. R.J. Reynolds Tobacco International, Inc. ("RJRTI"), is incorporated in Delaware and is a shell corporation with no assets or employees. RJRTI is a wholly-owned subsidiary of RJR Holdings.

Dated: February 15, 2010.

Thomas R. Adams

Forsyth County, North Carolina:

Subscribed and sworn to before me February 15, 2010.

Debra H. Wenzel
Notary Public

My commission expires: 3-5-2010

DEBRA H. WENZEL
NOTARY PUBLIC
FORSYTH COUNTY
NORTH CAROLINA
My Commission Expires March 5, 2010

This is **Exhibit "J"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal
A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27 2021

Court File No.: CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

REPLY AFFIDAVIT OF THOMAS R. ADAMS

I, Thomas R. Adams, of 401 North Main Street, Winston-Salem, North Carolina in the United States of America, MAKE OATH AND SAY AS FOLLOWS:

1. I am Executive Vice President and Chief Financial Officer of Reynolds American Inc. ("RAI") and RAI Services Company ("RAI Services"). I have been employed in various positions by affiliated and/or predecessor companies since 1999. In 1999, I was hired as Senior Vice President and Controller of R.J. Reynolds Tobacco Holdings, Inc. ("RJR Holdings"). I was named Senior Vice President and Chief Accounting Officer for RAI, which is a successor to RJR Holdings, and the Defendant R.J. Reynolds Tobacco Company ("RJRT") in 2004, and became Senior Vice President – Business Processes for RJRT the following year. I was named Senior Vice President – Business Processes for RAI in 2006, and Senior Vice President and Chief Accounting Officer in RAI in 2007. I assumed my current position with RAI on January 1, 2008, and I assumed my current position with RAI Services on January 1, 2010. I reside and work in the United States in the State of North Carolina.

2. The statements contained in this affidavit are based on my personal knowledge, my review of company records of the RJR Defendants and/or information provided to me by employees or attorneys of RJRT or related entities, in the course of their employment, which I believe to be true. Where I do not have personal knowledge, I have stated the source of my information and I believe it to be true. All statements are made to the best of my knowledge and belief.

CORPORATE BACKGROUND

RJRT

3. RJRT was incorporated in the State of North Carolina in the United States in 2004 and its principal place of business is Winston-Salem, North Carolina.

4. On July 30, 2004, RAI combined the United States assets, liabilities and operations of Brown & Williamson Holdings, Inc. with R.J. Reynolds Tobacco Company, a New Jersey corporation ("Former RJRT") that was a wholly-owned operating subsidiary of RJR Holdings. These July 30, 2004, transactions generally are referred to as the "B&W Business Combination". In this affidavit, references to Former RJRT relate to the New Jersey corporation. References to RJRT on and subsequent to July 30, 2004, relate to the combined United States assets, liabilities and operations of Brown & Williamson Holdings, Inc. and Former RJRT.

5. RJRT does not have employees or assets in Canada, and it has not had, and the Former RJRT did not have employees or assets in Canada during the period from May 1999 to July 30, 2004. The statements in this paragraph are based on a review of corporate records regarding assets conducted by Mr. Mark Surrat, Lead Financial Analyst, RAI Services Company and a review of corporate records regarding employees conducted by Ms. Carina Cloete, Senior Manager - Information Management, RAI Services Company.

6. RJRT's assets are entirely located within the United States, with the only exceptions being assets of nominal value from time-to-time that may be in transit outside of the United States. The same is true for assets of Former RJRT during the period from May 1999 through July 30, 2004. In addition, some machinery was apparently loaned to an Ontario packaging company by an entity affiliated with Brown & Williamson Holdings, Inc. prior to the B&W

Business Combination, for the purpose of developing processes for use in the United States, and this equipment was apparently subsequently returned to the United States. The statements in this paragraph are based on a review of corporate records regarding assets conducted by Mr. Surrat.

7. Former RJRT became the sole owner of the Canadian entity Macdonald Tobacco Inc. ("MTI") in 1974, and in 1978 all of the assets and liabilities then owing of MTI were transferred to Former RJRT's Canadian subsidiary, RJR Macdonald Inc. ("RJRMI"). RJRMI was connected to Former RJRT through its corporate group until 1999. The statements in this paragraph are based on historic corporate records related to and describing these matters and personal knowledge.

8. On March 9, 1999, as amended and restated on May 11, 1999, Former RJRT and RJR Nabisco, Inc. ("RJRN") entered into an agreement with Japan Tobacco Inc. ("JTI") in which RJRT and RJRN sold non-United States business operations and rights to use Former RJRT's tobacco trademarks outside of the United States. This included the transfer of a Canadian subsidiary of RJRN known as RJR-Macdonald Corp. ("RJRMC"), a Nova Scotia corporation that was formed in 1999 by the amalgamation of RJRMI and a separate wholly-owned subsidiary of RJRMI. The statements in this paragraph are based on historic corporate records related to and describing these matters and personal knowledge.

RJRTI

9. R.J. Reynolds Tobacco International, Inc. ("RJRTI") was incorporated in the State of Delaware in the United States in 1976, and its principal office address is in Winston-Salem, North Carolina. The statements in this paragraph are based on historic corporate records related to and describing these matters.

10. RJRTI is an inactive shell corporation that is wholly-owned by RJR Holdings. Since at least May 1999, RJRTI has had no assets or employees.

11. Since at least May 1999, RJRTI has not manufactured or sold cigarettes in any jurisdiction or market.

LACK OF CONNECTION TO ONTARIO

The RJR Defendants Are Not Resident in Ontario

12. The place of purported service of the Statement of Claim on RJRT was Winston-Salem, North Carolina. The statement in this paragraph is based on my review of RJRT records.

13. The place of purported service of the Statement of Claim on RJRTI was Winston-Salem, North Carolina. The statement in this paragraph is based on my review of RJRT records.

14. Since at least 1977, RJRT and RJRTI (collectively, "RJR Defendants"):

(a) have not been registered in Ontario, and have not had a registered office in Ontario;

(b) have not registered an address in Ontario nor have they nominated an agent in Ontario on whom process may be served generally;

(c) have not maintained places of business in Ontario (other than the counsel retained in connection with this matter, who, for the avoidance of doubt, are not authorised to accept service as agents for the RJR Defendants);

(d) have not owned, leased, used or possessed any real or personal property within Ontario, except as to RJRT as described in paragraph 6; and

(e) have not been managed from Ontario.

The statements in this paragraph are based on research by the Corporation Service Company and the review of corporate records regarding assets conducted by Mr. Surrat referenced above.

RJRT Does Not Conduct Its Activities in Ontario

15. While a Former RJRT subsidiary, RJRMI, manufactured tobacco products in Canada before May 1999, RJRT's records do not reflect that, before May 1999, Former RJRT manufactured tobacco products in Canada, including in Ontario. The statements in this paragraph are based on my review of corporate records and a review of corporate records conducted by Cyndy Spivey, of the law firm Womble, Carlyle, Sandridge & Rice.

16. In 1970, Former RJRT entered into an exclusive licensing agreement with MTI under which MTI agreed to manufacture and sell Canadian blend versions of Winston and Salem cigarettes in Canada and also to sell some RJRT blend products in Canada. This licensing agreement appears to have been in place until 1974. The statements in this paragraph are based on my review of corporate records.

17. During the period from 1974 to 1999, RJRMI, which initially was a subsidiary of Former RJRT and which Former RJRT or related entities have not owned since 1999, manufactured and sold cigarettes in Canada, including limited amounts of United States blend cigarettes. Based on my review of records provided to me, I understand that, at various times between 1977 and 1999, RJRMI estimated that its annual sales of Former RJRT brand products (including United States blend products) across Canada were roughly 0.6% (or less) of the entire Canadian cigarette market. The statements in this paragraph are based on my review of RJRMI corporate records.

18. The volume of Former RJRT brands sold by RJRMI in Ontario between 1974 and 1999 is likely to have constituted a significantly smaller proportion of the entire Canadian cigarette market.

19. As a consequence of the sale of RJRMC in May 1999, Former RJRT ceased to have any significant connection with the Canadian market, including with Ontario. Accordingly, subject only to the assertions in the following paragraph, since May 1999 Former RJRT and subsequently RJRT have not:

(a) directly or indirectly sold, manufactured, imported, distributed cigarettes in Canada, including in Ontario, or carried on business in Ontario;

(b) contracted to supply goods or services in Ontario;

(c) been licensed or qualified to conduct business in Ontario; or

(d) held assets in Ontario or anywhere else in Canada, except as noted in paragraph 6 above.

The statements in this summary paragraph are based on the records referenced above.

20. During the period since May 1999, Former RJRT and RJRT have manufactured minimal amounts of cigarettes intended for sale to consumers in Canada by third party companies in the Canadian tobacco industry as set forth below:

(a) During the period from June 1999 to November 2004, Former RJRT and RJRT manufactured various brands of cigarettes for sale by the defendant JTI-MacDonald Corp. ("JTIM"). Certain Former RJRT sales records indicate that, from May 1999 to December 1999, Former RJRT sold cigarettes to RJRMC. It appears, however, that these records reflect a clerical error that was corrected as of January 2000, at which time the entry name was changed to "JTI-Macdonald Corp."

(b) In March 2005, RJRT sold a minimal quantity (446 cases) of two cigarette brands for sale by JTIM.

(c) During the period from June 1999 to November 2005, Former RJRT and RJRT manufactured and sold various brands of cigarettes to duty-free sellers in Canada (*i.e.* to sellers whose consumer sales were restricted to persons leaving Canada).

(d) During the period from 1999 to 2004, Brown & Williamson Tobacco Corporation ("B&W"), the United States domestic cigarette operations of which merged with Former RJRT in July 2004 in the B&W Business Combination, sold various brands of cigarettes to duty-free sellers in Canada (*i.e.* sellers whose consumer sales were restricted to persons leaving Canada). In 1999 and 2000, B&W sold a minimal quantity (48 cases) of cigarettes to a shipping and supply company with an office in Montreal, Canada. I do not have records indicating the ultimate destination of those cigarettes after they left B&W's possession.

(e) In November 2006, RJRT manufactured a minimal quantity of cigarettes (808 cases) for Imperial Tobacco Canada, Ltd., on a one-time basis for only that month. In the same month, RJRT also manufactured and shipped a minimal quantity of cigarettes (8 cases) to S.A. Landry, a duty-free seller.

The statements in this paragraph are based on my review of corporate records reflecting shipments of cigarettes.

21. Based on the records referenced above, there is no evidence that any of the instances in subparagraphs 20(a) to (e) above resulted in sales by Former RJRT or RJRT directly into Ontario, or that any of them continued after 2006 in Canada.

RJRTI Does Not Conduct Activities in Ontario

22. RJRTI is, as set forth above in paragraphs 9 to 11, an inactive shell corporation that, at least since May 1999, has had no assets or employees and has not manufactured or sold cigarettes in any jurisdiction or market. For these reasons, RJRTI has not, at least since May 1999:

(a) had assets or employees in Canada or, more specifically, in Ontario;

(b) designed, manufactured, imported, marketed, distributed, or sold cigarettes in Canada or, more specifically, in Ontario;

(c) carried on business in Canada or, more specifically, in Ontario;

(d) contracted to supply goods or services in Canada or, more specifically, in Ontario;

(e) been licensed or qualified to conduct business in Ontario; or

(f) held assets in Canada or, more specifically in Ontario.

The statements in this summary paragraph are based on the information referenced with respect to paragraphs 9-11.

Relationship Between the RJR Defendants and RJRT's Former Canadian Subsidiaries

23. Between 1974 and May 1999, the RJR Defendants and Former RJRT's former Canadian subsidiaries (*i.e.*, MTI, RJRMI, and RJRMC) were distinct corporate entities and, on information and belief, maintained corporate formalities (subject to engaging in normal intra-group business communications). Each had its own directors and officers and, on information and belief, each held separate meetings of its own board of directors and maintained its own records and minutes. The statements in this paragraph are based on my review of historic corporate records and

information supplied by R. Michael Leonard, of the law firm Womble, Carlyle, Sandridge & Rice.

The CTMC

24. The RJR Defendants have never been members of the Ad Hoc Committee of the Canadian Tobacco Industry, later named the Canadian Tobacco Manufacturers' Council. The statements in this paragraph are based on my review of historic corporate records.

Sworn to before me this)
1st day of November, 2010)
)
)
)
)

Notary Public in and for the
State of North Carolina

My commission expires: July 7, 2012

OFFICIAL SEAL
ANITA B. DEAL
NOTARY PUBLIC-NORTH CAROLINA
COUNTY OF FORSYTH
My Commission Expires 07-12-2012

Thomas R. Adams
Executive Vice President and
Chief Financial Officer
Reynolds American Inc.

This is **Exhibit "K"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

AFFIDAVIT OF NICOLA SNOOK

I, Nicola Snook, of the Borough of Greenwich, in London, England, MAKE OATH AND SAY:

1. I am the Company Secretary of British American Tobacco p.l.c. ("BAT p.l.c."). I reside and work in England. My affidavit is based on personal knowledge, or information in the company records of BAT p.l.c. which I believe to be true. I submit this affidavit in support of BAT p.l.c.'s motion to dismiss for lack of jurisdiction.

BAT p.l.c. did not exist prior to 1997

2. BAT p.l.c. is a public limited company incorporated under the laws of England and Wales. Its registered office is at Globe House, 4 Temple Place, London WC2R 2PG, England.

3. BAT p.l.c. was incorporated on July 23, 1997, and did not exist prior to that date. Its name was changed to "British American Tobacco p.l.c." on April 24, 1998.

4. BAT p.l.c. was formed in connection with a corporate restructuring of defendant B.A.T Industries p.l.c. ("B.A.T Industries"), whose subsidiaries engaged (at the time of the restructuring) in the financial services and tobacco businesses. As part of the restructuring, and pursuant to a "Scheme of Arrangement", BAT p.l.c. was to become the ultimate owner of all of the ordinary shares of B.A.T Industries.

5. The Scheme of Arrangement was presented to the High Court of Justice of England and Wales under Section 425 of the Companies Act of 1985. The Scheme of Arrangement was approved by the High Court on September 3, 1998. A true copy of the Order sanctioning the Scheme of Arrangement is now shown to me and marked as Exhibit "A" to this my affidavit. Following the High Court's approval, the Scheme of Arrangement was effectuated as of September 7, 1998.

6. Accordingly, as of September 7, 1998, BAT p.l.c. became the ultimate parent company of B.A.T Industries and its tobacco subsidiaries, including defendant British American Tobacco (Investments) Limited (formerly British American Tobacco Company Limited) ("BATCo").

7. The September 7, 1998 restructuring did not entail the combination of two companies to form a new corporation. Neither did the restructuring render BAT p.l.c. a successor to B.A.T Industries or BATCo. Likewise, neither B.A.T Industries nor BATCo is a predecessor of BAT p.l.c. Neither in the September 1998 restructuring nor thereafter did BAT p.l.c. ever agree expressly or implicitly to assume any liabilities of either B.A.T Industries or BATCo. BAT p.l.c. acquired the ordinary shares of B.A.T Industries, and B.A.T Industries continued to retain its separate corporate existence and identity as a subsidiary corporation. The separate corporate existences of BAT p.l.c., B.A.T Industries and BATCo remain to the present day.

8. BAT p.l.c., B.A.T Industries and BATCo have always operated as discrete corporate entities and maintained all corporate formalities. For example, each entity has always had its own directors and officers and has always held separate meetings of its own board of directors and maintained separate records and minutes. BAT p.l.c. has never participated in the day-to-day management and control of either B.A.T Industries or BATCo. Each of B.A.T Industries and BATCo carries on business separate and apart from BAT p.l.c.. Each entity maintains separate accounts, prepares its own financial statements and files its own tax returns.

9. From its incorporation in 1997 until the September 7, 1998 restructuring, BAT p.l.c. was essentially dormant. At all times since the September 7, 1998 restructuring, BAT p.l.c. has been engaged in administering its investment interests as a shareholder, directly and indirectly, of hundreds of subsidiaries, affiliates and associates, including B.A.T Industries and BATCo.

BAT p.l.c. has no connection to Ontario

10. The place of service of the Statement of Claim on BAT p.l.c. was in London, England.

11. BAT p.l.c. is a holding company that has never conducted or commissioned research in relation to, designed, developed, manufactured, produced, assembled, marketed, packaged, designed packaging for, sold, shipped, promoted, advertised or distributed tobacco products, or any other goods or products, sold or intended for sale in Ontario or anywhere else.

12. BAT p.l.c. has never held express or implied authority to act as an agent for any entity, including any subsidiary, affiliate or associate of BAT p.l.c., to conduct or commission research in relation to, design, develop, manufacture, produce, assemble, market, package, design packaging for, sell, ship, promote, advertise or distribute tobacco products, or any other goods or products, sold or intended for sale in Ontario or anywhere else.

13. No entity, including any subsidiary, affiliate or associate of BAT p.l.c., has ever held express or implied authority to act as BAT p.l.c.'s agent to conduct or commission research in relation to, design, develop, manufacture, produce,

assemble, market, package, design packaging for, sell, ship, promote, advertise or distribute tobacco products, or any other goods or products, sold or intended for sale in Ontario or anywhere else.

14. As a holding company, BAT p.l.c.'s income comes from dividends and other financial payments (such as payment of interest and principal on loans) from its subsidiaries, affiliates and associates. BAT p.l.c. is not and never has been an operating company and does not derive revenues from the manufacture or sale of tobacco products in Ontario or anywhere else.

15. BAT p.l.c. is neither licensed nor qualified to conduct business in Ontario, and has never conducted business in Ontario.

16. BAT p.l.c. is not and never has been registered extra-provincially in Ontario.

17. BAT p.l.c. has never maintained any office, employees, records, place of business or representatives in Ontario (other than the counsel it has retained in connection with this matter). BAT p.l.c.'s office and books and records are located in the United Kingdom.

18. BAT p.l.c. has never contracted to supply goods or services in Ontario.

19. At no time has BAT p.l.c. held assets in Ontario (or anywhere else in Canada). All of the assets of BAT p.l.c. are held in the United Kingdom. BAT p.l.c. has never owned, leased, used or possessed any real or personal property of any kind situated within Ontario, and has never maintained any bank account, telephone listing or mailing address anywhere in Ontario.

20. BAT p.l.c. has never been assessed nor paid taxes in Ontario.

BAT p.l.c. has no connection to the organizations, committees, conferences or documents through which the alleged conspiracy is said to have been furthered

21. BAT p.l.c. is not, and never has been, a member of the Tobacco Industry Research Committee ("TIRC"), the Council for Tobacco Research ("CTR"), the Tobacco Research Council ("TRC"), the Centre for Co-Operation in Scientific Research Relative to Tobacco ("CORESTA"), the International Committee on Smoking Issues ("ICOSI"), later known as the International Tobacco

Information Centre/Centre International D'Information du Tabac ("INFOTAB"), and later renamed the Tobacco Documentation Centre ("TDC") or the Committee for Indoor Air Research ("CIAR") or any predecessor or successor committee. BAT p.l.c. has never given any of these organizations express or implied authority to act as BAT p.l.c.'s agent, and none of these organizations has ever been a servant or employee of BAT p.l.c..

22. Paragraph 101 of the Statement of Claim refers to an "Operation Berkshire" which it alleges was "launched" in the "late 1970s". As noted above, BAT p.l.c. did not exist until 23 July 1997, and accordingly was not involved in the launch of any "Operation Berkshire" nor did it join any "Operation Berkshire" upon its incorporation or at any time thereafter.

23. BAT p.l.c. is not and never has been a member of the Ad Hoc Committee on Smoking and Health nor the Canadian Tobacco Manufacturers Council (collectively "CTMC"). At no time has BAT p.l.c. ever directed any other entity on how it ought to vote in committees of the Canadian manufacturers or at meetings of the CTMC, or directed or controlled the activities of the CTMC. BAT p.l.c. has never given the CTMC express or implied authority to act as BAT p.l.c.'s agent, and the CTMC has never been a servant or employee of BAT p.l.c..

24. BAT p.l.c. did not make representations to the Canadian House of Commons, Standing Committee on Health, Welfare and Social Affairs, in 1969 or at any other time.

25. BAT p.l.c. was never a member of and never participated in the Chairman's Policy Committee, the Research Policy Group, the Tobacco Division Board, the Tobacco Executive Committee, the Tobacco Strategy Review Team or the Tobacco Strategy Group. Each of these committees ceased to exist prior to July 23, 1997, the date on which BAT p.l.c. was incorporated.

26. BAT p.l.c. has never been a member of nor has it ever participated in the Scientific Research Group.

27. BAT p.l.c. did not participate in any of the conferences referred to in paragraph 137 of the Statement of Claim (i.e. the "Chairman's Advisory

Conferences," "Group Research Conferences" or "Group Marketing Conferences"). All of these conferences ceased prior to BAT p.l.c.'s incorporation on July 23, 1997.

28. BAT p.l.c. did not prepare or distribute any of the documents described in paragraph 138 of the Statement of Claim. Those documents were all prepared prior to July 23, 1997, the date on which BAT p.l.c. was incorporated.

Relationship between BAT p.l.c. and Imasco (now Imperial)

29. By virtue of the September 1998 restructuring pursuant to which BAT p.l.c. became the ultimate parent company of B.A.T Industries and its subsidiaries, BAT p.l.c. acquired, indirectly through another subsidiary, what was then B.A.T Industries' indirectly owned minority interest (under 50%) in Imasco Limited ("Imasco").

30. In August 1999, Imasco and BAT p.l.c. agreed on a "going-private" transaction by which BAT p.l.c. would tender for the approximately 58% of Imasco's publicly traded shares that it (BAT p.l.c.) did not own. An Independent Committee of Imasco's board was established to render advice with respect to the proposed transaction and, on January 28, 2000, Imasco's public shareholders voted to approve the transaction. On February 1, 2000, Imasco changed its name to Imperial Tobacco Canada Limited ("Imperial") and became, and remains, a wholly owned, indirect subsidiary of BAT p.l.c..

31. BAT p.l.c.'s acquisition indirectly of the shares in Imperial was not an amalgamation of the two companies, as is alleged at paragraph 36 of the Statement of Claim. BAT p.l.c. and Imperial have always operated as separate and distinct corporate entities and have maintained all corporate formalities - for example, each entity has always had its own directors, officers and employees, has held separate meetings of its own board of directors and has maintained separate records and minutes. BAT p.l.c. has never designated a director to be its representative on the board of directors of Imperial, and has never participated in the day-to-day management and control of Imperial. Imperial is licensed to, and does, carry on business separate and apart from BAT p.l.c.. Moreover, Imperial maintains its own bank accounts, payroll,

pension program and legal and budgeting functions, prepares its own financial statements and files its own tax returns. Imperial's head office is located in Montreal, Quebec.

32. BAT p.l.c. has never given Imperial express or implied authority to act as BAT p.l.c.'s agent, and BAT p.l.c. has never held express or implied authority to act as an agent for Imperial.

Sworn before me at London, England, this 12th day of January, 2010

Notary Public in and for England and Wales

My Appointment Expires: at death

N. Snook.

NICOLA SNOOK

E.F.A. FOGAN
Notary Public of London, England

(My commission expires at death)

DE PINNA
35 PICCADILLY
LONDON
W1J 0LJ
SCRIVENER NOTARIES

This is Exhibit "A" referred to in the Affidavit of Nicola Snook sworn before me this 14th day of January, 2010.

~~Notary Public in and for England and Wales~~

My Appointment expires at death

E.F.A. FOGAN
Notary Public of London, England

DE PINNA
35 PICCADILLY
LONDON
W1J 0LJ
SCRIVENER NOTARIES

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

No. 001165 of 1998

MR. JUSTICE Neuberger

September 1998

IN THE MATTER OF B.A.T INDUSTRIES P.L.C.

- and -

IN THE MATTER OF THE COMPANIES ACT 1985

UPON THE PETITION of the above-named B.A.T Industries p.l.c. (the "Company") whose registered office is situate at Windsor House, 50 Victoria Street, London SW1H ONL on 2nd July 1998 preferred unto this Court

AND UPON HEARING Counsel for the Company and for B.A.T Reconstructions Limited, Allied Zurich p.l.c. and British American Tobacco p.l.c. referred to in the Scheme of Arrangement hereinafter mentioned

AND UPON HEARING Counsel for the Blue Cross/Blue Shield companies listed in exhibit "THCT1" to Mr Taylor's Affidavit sworn herein. ("the Objectors")

AND UPON READING the said Petition and the evidence

AND B.A.T Reconstructions Limited, Allied Zurich p.l.c., and British American Tobacco p.l.c., by Counsel submitting to be bound by the said Scheme of Arrangement hereinafter sanctioned under section 425 of the above Act and undertaking to execute all such documents and do all such acts and things as may be necessary or desirable to be executed and done by them respectively for the purpose of giving effect thereto

THIS COURT HEREBY SANCTIONS the Scheme of Arrangement as set forth in the Schedule hereto

AND IT IS ORDERED that the Company do deliver an Office Copy of this Order to the Registrar of Companies.

AND IT IS ORDERED that there be no Order as to costs

AND IT IS ORDERED that the Objectors do have leave to appeal if necessary

THE SCHEDULE BEFORE REFERRED TO

The Scheme of Arrangement

PART 6: B.A.T INDUSTRIES SCHEME OF ARRANGEMENT

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

No. 01165 of 1998

In the Matter of B.A.T Industries p.l.c.

-and-

In the Matter of the Companies Act 1985

Scheme of Arrangement

-under-

Section 425 of the Companies Act 1985

BETWEEN:

(1) B.A.T Industries

(2) the holders of the Scheme Shares

-and-

(3) B.A.T Reconstructions (each as hereinafter defined)

PRELIMINARY:

A. In this Scheme, unless inconsistent with the subject or context, the following expressions shall bear the following meanings:

"Allied Zurich"	means Allied Zurich p.l.c., a public limited company incorporated in England with company number 3525388;
"Allied Zurich Holdings"	means Allied Zurich Holdings Limited, a private limited company incorporated in Jersey with company number 71060;
"Allied Zurich Ordinary Shares"	means ordinary shares of 25p each in the capital of Allied Zurich;
"BAFS"	means British American Financial Services (UK and International) Limited, a private limited company incorporated in England with company number 1860680;
"BAFS Shares"	means ordinary shares of £1 each in the capital of BAFS;
"B.A.T Industries"	means B.A.T Industries p.l.c., a public limited company incorporated in England with company number 233112;
"B.A.T Industries Ordinary Shares"	means ordinary shares of 25p each in the capital of B.A.T Industries;
"B.A.T New Ordinary Shares"	means ordinary shares of 25p each in the capital of B.A.T Industries created pursuant to paragraph 1.3 of the Special Resolution;
"B.A.T Reconstructions"	means B.A.T Reconstructions Limited, a private limited company incorporated in England with company number 3418370;
"B.A.T Reconstructions "A" Ordinary Shares"	means "A" ordinary shares of 12½p each in the capital of B.A.T Reconstructions;
"B.A.T Reconstructions "B" Ordinary Shares"	means "B" ordinary shares of 12½p each in the capital of B.A.T Reconstructions;
"British American Tobacco"	means British American Tobacco p.l.c., a public limited company incorporated in England with company number 3407696;

"British American Tobacco (1998)"	means British American Tobacco (1998) Limited, a private limited company incorporated in England with company number 3422701;
"British American Tobacco Ordinary Shares"	means ordinary shares of 25p each in the capital of British American Tobacco;
"Business Day"	means a day (excluding Saturdays) on which banks are open for business in the City of London;
"Court Meeting"	means the meeting of Shareholders convened by order of the Court pursuant to section 425 of the Companies Act 1985 to consider, and if thought fit, approve this Scheme;
"CREST"	means the system for paperless settlement of trades and the holding of uncertificated shares operated by CRESTCo Limited;
"Effective Date"	means the day on which this Scheme becomes effective in accordance with Clause 10 of this Scheme;
"Farmers"	means Farmers Group, Inc., a company incorporated in the state of Nevada;
"Farmers Shares"	means all the Common Stock, par value $1 per share, of Farmers;
"Farmers Income Shares"	means the Class B Common Stock, par value $1 per share, of Farmers;
"Farmers Ordinary Shares"	means the Class A Common Stock, par value $1 per share, of Farmers;
"holder"	includes a person entitled by transmission;
"Option Schemes"	means together the Savings Related Share Option Scheme, the Employee Share D Option Scheme, and the Employee Share E Option Scheme operated by B.A.T Industries;
"Registrar of Companies"	means the registrar of companies of England and Wales;
"Relevant Holder"	means a Shareholder who appears in the register of members of B.A.T Industries at the Scheme Record Time;
"Scheme Record Time"	means 4.30 p.m. on the Effective Date;
"Scheme Shares"	means the B.A.T Industries Ordinary Shares in issue at the date of this Scheme together with: (i) such additional B.A.T Industries Ordinary Shares (if any) as may be in issue fully paid or credited as fully paid at 6.00 p.m. on the day prior to the day immediately before the date of the Court Meeting; and (ii) such further B.A.T Industries Ordinary Shares as may be issued fully paid or credited as fully paid after the passing of the Special Resolution and before the close of business on the Business Day immediately before the making by the Court of an Order to sanction this Scheme, and in respect of which the original or any subsequent holder shall be bound by this Scheme or has agreed in writing to be so bound before the close of business on the Business Day immediately before the making by the Court of an Order to sanction this Scheme, in each case excluding any B.A.T Industries Ordinary Shares held by B.A.T Reconstructions;
"Share Alternative Scheme"	means the scheme which allows eligible Shareholders to receive B.A.T Industries Ordinary Shares in lieu of dividends;
"Shareholder"	means a holder of B.A.T Industries Ordinary Shares;
"Special Resolution"	means the special resolution to be considered at the extraordinary general meeting of B.A.T Industries convened for Friday, 12th June 1998; and

"this Scheme"	means this Scheme in its present form or with any modification thereof or addition or condition thereto, in each case approved by the Court.

B. At the date of this Scheme the authorised share capital of B.A.T Industries is £1,000,000,000, divided into 4,000,000,000 ordinary shares of 25p each, of which 3,132,038,018 B.A.T Industries Ordinary Shares have been issued and are credited as fully paid and the remainder are unissued. As at the date of this Scheme, there were 23,580,203 options over unissued B.A.T Industries Ordinary Shares pursuant to the Option Schemes which, if exercised, would require that number of additional B.A.T Industries Ordinary Shares to be issued.

C. At the date of this Scheme the authorised share capital of Allied Zurich is £500,000,000 divided into 1,999,800,008 ordinary shares of 25p each, of which 8 Allied Zurich Ordinary Shares have been issued and credited as fully paid and the remainder are unissued, and 49,998 redeemable preference shares of £1 each all of which have been issued and are credited as fully paid, which will be redeemed prior to the Effective Date.

D. At the date of this Scheme the authorised share capital of British American Tobacco is £500,000,000 divided into 1,999,800,008 ordinary shares of 25p each, of which 8 British American Tobacco Ordinary Shares have been issued and are credited as fully paid and the remainder are unissued, and 49,998 redeemable preference shares of £1 each all of which have been issued and credited as fully paid, which will be redeemed prior to the Effective Date.

E. At the date of this Scheme the authorised share capital of B.A.T Reconstructions is £100 divided into 100 ordinary shares of £1 each. Prior to the Effective Date, the share capital of B.A.T Reconstructions shall be increased to £1,000,000,000 divided into 4,000,000,000 "A" ordinary shares of 12½p each and 4,000,000,000 "B" ordinary shares of 12½p each.

F. B.A.T Reconstructions holds one B.A.T Industries Ordinary Share.

G. Each of Allied Zurich, B.A.T Reconstructions and British American Tobacco has agreed to appear by Counsel on the hearing of the Petition to sanction this Scheme and to consent thereto and to undertake to the Court to be bound thereby and to execute all such documents and do all such acts and things as may be necessary or desirable to be executed or done by them for the purpose of giving effect to this Scheme.

THE SCHEME

Cancellation of Scheme Shares

1. The capital of B.A.T Industries shall be reduced by the cancellation of all the Scheme Shares.

2. Forthwith upon the said reduction of capital taking effect:

   (a) the capital of B.A.T Industries shall be increased to its former amount by the creation of such number of B.A.T New Ordinary Shares as shall equal the number of Scheme Shares cancelled; and

   (b) the credit arising in the books of account of B.A.T Industries as a result of the cancellation of the Scheme Shares shall be capitalised and applied in paying up in full the B.A.T New Ordinary Shares created pursuant to paragraph (a) of this Clause 2, which shall be allotted and issued, credited as fully paid, to B.A.T Reconstructions or its nominees.

Consideration for cancellation of Scheme Shares

3. (a) In consideration of the cancellation of the Scheme Shares and the issue to B.A.T Reconstructions of the B.A.T New Ordinary Shares, B.A.T Reconstructions shall allot and issue one B.A.T Reconstructions "A" Ordinary Shares, credited as fully paid, to British American Tobacco and one B.A.T Reconstructions "B" Ordinary Shares, credited as fully paid, to Allied Zurich in respect of each Scheme Share.

   (b) Following the allotment and issue of B.A.T Reconstructions "A" Ordinary Shares and B.A.T Reconstructions "B" Ordinary Shares pursuant to paragraph (a) of this Clause 3, British American Tobacco shall hold all the B.A.T Reconstructions "A" Ordinary Shares in issue and Allied Zurich shall hold all the B.A.T Reconstructions "B" Ordinary Shares in issue. The B.A.T Reconstructions "A" Ordinary Shares and the B.A.T Reconstructions "B" Ordinary Shares shall have the following rights:

Voting

At extraordinary general meetings of the shareholders of B.A.T Reconstructions the holders of B.A.T Reconstructions "A" Ordinary Shares and B.A.T Reconstructions "B" Ordinary Shares shall, on a poll, have one vote per share;

Dividends

Of the profits in respect of any financial period of B.A.T Reconstructions which may be resolved to be distributed, the holders of the B.A.T Reconstructions "B" Ordinary Shares shall be entitled to receive such proportion thereof as represents the proportion which the aggregate of the amount distributed to B.A.T Reconstructions relating to such period in respect of the BAFS Shares and the Farmers Shares bears to the whole amount of the profits of B.A.T Reconstructions in respect of such financial period and the holders of the B.A.T Reconstructions "A" Ordinary Shares shall be entitled to the remainder;

Winding-up

(i) in the event of the voluntary liquidation of B.A.T Reconstructions and the passing in accordance with section 110 of the Insolvency Act 1986 of a special resolution pursuant to which the liquidator of B.A.T Reconstructions is authorised to dispose of the BAFS Shares and the Farmers Shares to Allied Zurich Holdings, and the B.A.T New Ordinary Shares to British American Tobacco (1998), the holders of the B.A.T Reconstructions "A" Ordinary Shares shall be entitled to any shares in British American Tobacco (1998) to be allotted in consideration for the acquisition of the B.A.T New Ordinary Shares and the holders of the B.A.T Reconstructions "B" Ordinary Shares shall be entitled to any shares in Allied Zurich Holdings to be allotted in consideration for the acquisition of the BAFS Shares and the Farmers Income Shares and any loan note in Allied Zurich Holdings to be allotted in consideration for the acquisition of the Farmers Ordinary Shares; and

(ii) without prejudice to the provisions of sub-paragraph (i) above, on a return of assets in any other manner on liquidation or otherwise, the holders of the B.A.T Reconstructions "A" Ordinary Shares shall be entitled to receive such of the surplus assets of B.A.T Reconstructions remaining after the payment of its liabilities as shall comprise all or part of the B.A.T New Ordinary Shares, whilst the holders of the B.A.T Reconstructions "B" Ordinary Shares shall be entitled to receive such of the surplus assets of B.A.T Reconstructions remaining after the payment of its liabilities as comprise all or part of the BAFS Shares and the Farmers Shares, and any balance remaining after the operation of such provisions shall be paid or transferred to the holders of B.A.T Reconstructions "A" Ordinary Shares;

Notwithstanding the rights described above, the holders of the B.A.T Reconstructions "B" Ordinary Shares shall neither as respects dividends nor as respects capital be entitled to participate in any distribution in respect of each such B.A.T Reconstructions "B" Ordinary Share beyond £50 or assets with a value of £50.

4. (a) Forthwith upon the issue of the B.A.T Reconstructions "B" Ordinary Shares pursuant to Clause 3(a) of this Scheme, and in consideration thereof and of the cancellation there referred to, Allied Zurich shall allot and issue to Relevant Holders one Allied Zurich Ordinary Share, credited as fully paid, for every two Scheme Shares held by such person at the Scheme Record Time.

(b) Forthwith upon the issue of the B.A.T Reconstructions "A" Ordinary Shares pursuant to Clause 3(a) of this Scheme, and in consideration thereof and of the cancellation there referred to, British American Tobacco shall allot and issue to Relevant Holders one British American Tobacco Ordinary Share, credited as fully paid, for every two Scheme Shares held by such person at the Scheme Record Time.

(c) No fraction of an Allied Zurich Ordinary Share or a British American Tobacco Ordinary Share shall be allotted or transferred as a result of the provisions of this Clause 4 but all Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares representing such fractions shall be aggregated and sold and the net proceeds of sale distributed amongst the persons who

Rights attaching to Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares

5. The Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares to be allotted pursuant to the provisions of this Scheme shall rank pari passu in all respects with, in each case, such Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares as are in issue on the Effective Date and shall rank for all dividends or distributions made, paid or declared thereon after the Effective Date.

Certificates

6. (a) In respect of Relevant Holders who hold their B.A.T Industries Ordinary Shares in certificated form, Allied Zurich and British American Tobacco shall, not later than 21 days after the Effective Date, deliver in accordance with this Scheme certificates in respect of Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares respectively by sending the same through the post in pre-paid envelopes addressed to the persons entitled thereto at their respective registered addresses appearing in the register of members of B.A.T Industries at the Scheme Record Time (or, in the case of joint holders, to the address of that one of the joint holders whose name stands first in the register in respect of such joint holding), or in accordance with any special instructions regarding communications and Allied Zurich and British American Tobacco shall not be responsible for any loss in transmission.

(b) Not later than 21 days after the Effective Date, Relevant Holders who hold their B.A.T Industries Ordinary Shares in uncertificated form shall have the appropriate entries made in the appropriate CREST member account.

Cash dividend payment mandates

7. Each mandate in force at the Scheme Record Time relating to the payment of dividends in respect of B.A.T Industries Ordinary Shares shall, unless and until amended or revoked, be deemed as from the Effective Date to be a valid and effective mandate to Allied Zurich and British American Tobacco in relation to dividends in respect of the corresponding Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares to be issued pursuant to this Scheme.

Scrip dividend mandates

8. Each mandate in force at the Scheme Record Time relating to the payment of scrip dividends in respect of B.A.T Industries Ordinary Shares pursuant to the Share Alternative Scheme shall, unless and until amended or revoked, be deemed as from the Effective Date to be a valid and effective mandate to British American Tobacco in relation to dividends in respect of the corresponding British American Tobacco Ordinary Shares to be issued pursuant to this Scheme.

Certificates representing Scheme Shares

9. On and from the Effective Date all certificates representing holdings of Scheme Shares shall cease to have effect.

Effective Date

10. (a) This Scheme shall become effective as soon as an office copy of the Order of the Court sanctioning this Scheme under section 425 of the Companies Act 1985 shall have been delivered to the Registrar of Companies for registration, save that the reduction of capital in Clause 1 of the Scheme shall become effective only when an Order of the Court confirming under section 137(1) of the Companies Act 1985 the said reduction of capital shall have been duly registered by the Registrar of Companies.

(b) Unless this Scheme shall have become effective on or before 30th April 1999 or such later date, if any, as the Court may allow, the same shall lapse.

Modification

11. Allied Zurich, B.A.T Industries, B.A.T Reconstructions and British American Tobacco may jointly consent on behalf of all persons concerned to any modification of or addition to this Scheme or to any condition which the Court may approve or impose.

DATED the 18th day of May 1998

[redacted]

No. 001165 of 1998

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

MR. JUSTICE Neuberger

3rd September 1998

IN THE MATTER OF B.A.T INDUSTRIES P.L.C.

- and -

IN THE MATTER OF THE COMPANIES ACT 1985

ORDER

sanctioning Scheme of Arrangement

DUPLICATE

Herbert Smith
Exchange House
Primrose Street
London EC2A 2HS
Tel: 0171 374 8000
Fax: 0171 374 0888
Ref: 127/30695317
Solicitors to the Petitioner

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and ROTHMANS INC., et al.

Court File No. CV-09-387984

Plaintiff Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AFFIDAVIT OF
NICOLA SNOOK
(SWORN JANUARY 12, 2010)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

David R. Byers LSUC#: 22992W
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Tel: (416) 869-5653
Fax: (416) 947-0866

Lawyers for the Defendant, British American Tobacco p.l.c.

This is **Exhibit "L"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal
A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

and

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

Defendants

AFFIDAVIT OF NICOLA SNOOK

I, NICOLA SNOOK, Company Secretary of the Defendant B.A.T Industries p.l.c., of the Borough of Greenwich, London, England, MAKE OATH AND SAY:

1. I am the Company Secretary of B.A.T Industries p.l.c. ("B.A.T Industries"). I reside and work in England.

2. B.A.T Industries has not and does not attorn to the jurisdiction of this Honourable Court. I submit this affidavit solely in support of a motion to be brought on behalf of B.A.T Industries for an Order setting aside the service of the Statement of Claim on B.A.T Industries and to dismiss this action against B.A.T Industries for lack of jurisdiction.

3. The facts set out in this my affidavit are based on my personal knowledge and on information in the company records of B.A.T Industries which I verily believe to be true.

Nature of B.A.T Industries

4. B.A.T Industries is a public limited company incorporated under the laws of England and Wales. Its registered office is at Globe House, 4 Temple Place, London WC2R 2PG, England.

5. Throughout its history, B.A.T Industries has functioned as a holding company. It has never been an operating company. Its office has always been located in London, England and it has never had more than 185 employees.

6. As a holding company within a large corporate group, B.A.T Industries' role was to administer its investment interests as a shareholder, directly and indirectly, of hundreds of subsidiaries and associates worldwide. For many years B.A.T Industries was a diversified holding company, with investments in a variety of areas including financial services, retail, cosmetics and pulp and paper, as well as tobacco. Since 1998 B.A.T Industries' shareholdings have been predominantly in tobacco.

The "BAT Group"

7. The term "BAT Group" is a collective phrase that historically has been used to describe the collection of companies including the parent company and all of the companies that were its subsidiaries and associates. The "BAT Group" is not a separate entity and has no corporate existence. It is not correct to interpret that term to mean B.A.T Industries or any other individual corporate entity.

8. Between 1902 and July 23, 1976, the term "BAT Group" was used to describe the defendant British American Tobacco (Investments) Limited, formerly British-American Tobacco Company Limited ("BATCo") - at that time the ultimate parent company of the Group - and the collection of companies that were its subsidiaries and associates during that period. Between July 23, 1976 and September 7, 1998, the term was used to describe B.A.T Industries - at that time the ultimate parent company of the Group - and the collection of companies that were its subsidiaries and associates, including BATCo. Since September 7, 1998, the term has been used to describe the defendant British American Tobacco p.l.c. ("BAT p.l.c.") - currently the ultimate parent company of the

Group - and the collection of companies that are its subsidiaries and associates, including B.A.T Industries and BATCo.

Corporate history of B.A.T Industries

9. B.A.T Industries became the parent holding company of the BAT Group of companies on July 23, 1976 as the result of a "reverse takeover" under English law whereby B.A.T Industries, which had had a small shareholding in BATCo, became the sole ordinary shareholder of BATCo. (Up until July 23, 1976 B.A.T Industries had been known as Tobacco Securities Trust Company Limited ("TST").) The former public shareholders of the ordinary shares of BATCo became shareholders of B.A.T Industries. B.A.T Industries, as a holding company, became the ultimate owner of the shares of BATCo and the diverse range of other subsidiaries and associates in the BAT Group.

10. As required by law, the reverse takeover was approved by the High Court of Justice of England and Wales under Section 206 of the *Companies Act 1948*. A true copy of the July 19, 1976 Chancery Division Order sanctioning the Scheme of Arrangement, describing its purpose and reciting its terms is now produced and shown to me and marked as Exhibit "A" to this my affidavit. This document has been publicly available for more than 25 years.

11. The July 23, 1976 transaction did not entail the combination of two companies to form a new corporation. BATCo continued its operations and continued to retain its separate corporate existence and identity. B.A.T Industries (formerly TST) also retained its separate corporate existence and identity. The separate corporate existences of these two companies remain to the present day. B.A.T Industries has never participated in the day-to-day management and control of BATCo.

12. Following the Scheme of Arrangement, BATCo transferred its cosmetics, paper and retail holdings to B.A.T Industries, and B.A.T Industries transferred its tobacco holdings to BATCo.

13. In the mid 1980s, B.A.T Industries began adding financial services to its portfolio, and divesting in other areas. By the early 1990s, most of B.A.T Industries' investments were

in the financial services and tobacco businesses, with a large proportion of profit attributable to financial services. For example, in 1996, financial services accounted for 38 percent of the combined tobacco and financial services trading profit.

14. In September 1998, B.A.T Industries undertook a series of transactions by which its holdings in various financial services businesses were demerged from B.A.T Industries and then merged with the financial services holdings of Zurich Insurance Company. The demerger was effected by a Scheme of Arrangement, which was approved by the High Court of Justice of England and Wales on September 3, 1998, a true copy of which is now produced and shown to me and marked as Exhibit "B" to this my affidavit.

15. As a result of these transactions, on September 7, 1998, the former public shareholders of the ordinary shares of B.A.T Industries became shareholders of two newly created publicly listed companies: (i) Allied Zurich p.l.c., which owned 43% of Zurich Financial Services, a corporation that housed the former financial services businesses held by B.A.T Industries and by Zurich Insurance Company; and (ii) BAT p.l.c., a new holding company for the BAT Group and, as such, ultimate owner of the tobacco business investments previously held through B.A.T Industries. B.A.T Industries became, and remains today, one of a number of intermediate holding companies between BAT p.l.c. and its tobacco subsidiaries and associates around the world, including BATCo and, until March 2000, Imasco Limited ("Imasco"), the company now known as defendant Imperial Tobacco Canada Limited ("Imperial").

No connection to Ontario

16. The place of service of the Statement of Claim herein on B.A.T Industries was in London, England.

17. B.A.T Industries is a holding company that has never conducted or commissioned research in relation to, designed, developed, manufactured, produced, assembled, marketed, packaged, designed packaging for, sold, shipped, promoted, advertised or distributed tobacco products, or any other goods or products, sold or intended for sale in Ontario or anywhere else.

18. B.A.T Industries has never held express or implied authority to act as an agent for any entity, including any subsidiary or associate of B.A.T Industries, to conduct or commission research in relation to, design, develop, manufacture, produce, assemble, market, package, design packaging for, sell, ship, promote, advertise or distribute tobacco products, or any other goods or products, sold or intended for sale in Ontario or anywhere else.

19. No entity, including any subsidiary or associate of B.A.T Industries, has ever held express or implied authority to act as B.A.T Industries' agent to conduct or commission research in relation to, design, develop, manufacture, produce, assemble, market, package, design packaging for, sell, ship, promote, advertise or distribute tobacco products, or any other goods or products, sold or intended for sale in Ontario or anywhere else.

20. As a holding company, B.A.T Industries' income comes from dividends and other financial payments (such as payment of interest and principal on loans) from its subsidiaries and associates. B.A.T Industries has never been an operating company and does not derive revenues from the manufacture or sale of tobacco products, in Ontario or anywhere else.

21. At no time has B.A.T Industries held assets in Ontario (or anywhere else in Canada). All of the assets of B.A.T Industries are held in the United Kingdom.

22. B.A.T Industries is not licensed or qualified to conduct, and has never conducted, business in Ontario.

23. B.A.T Industries is not and has never been registered extra-provincially in Ontario.

24. B.A.T Industries has never maintained a place of business in Ontario and has never maintained an office, employees, records or any representatives in Ontario (other than the counsel it has retained in connection with this matter). B.A.T Industries' office and books and records are located in the United Kingdom.

25. B.A.T Industries has never owned, leased, used or possessed any real or personal property of any kind within Ontario, and has never had any bank account, mailing address or telephone listing anywhere in Ontario.

26. B.A.T Industries has never been assessed nor paid taxes in Ontario.

27. B.A.T Industries has never contracted to supply goods or services in Ontario.

No membership in any of the organisations referred to in the Statement of Claim

28. B.A.T Industries was never a member of the Tobacco Industry Research Committee, the Council for Tobacco Research, the Tobacco Research Council, the Centre for Co-operation in Scientific Research Relative to Tobacco, the Ad Hoc Committee on Smoking and Health nor the Canadian Tobacco Manufacturers' Council (collectively "CTMC"), the International Committee on Smoking Issues, later known as the International Tobacco Information Centre/Centre International d'Information du Tabac and subsequently renamed the Tobacco Documentation Centre, nor the Committee for Indoor Air Research or any predecessor or successor committee. B.A.T Industries has never given any of these organisations express or implied authority to act as B.A.T Industries' agent and none of them has ever been a servant or employee of B.A.T Industries.

29. Paragraph 101 of the Statement of Claim refers to an "Operation Berkshire" which it alleges was "launched" in the "late 1970s". B.A.T Industries was not involved in the launch of any "Operation Berkshire" nor did it join any "Operation Berkshire" upon its incorporation or at any time thereafter.

No representations to the Canadian House of Commons

30. B.A.T Industries did not make representations to the Canadian House of Commons, Standing Committee on Health, Welfare and Social Affairs, in 1969 or at any other time.

No direction, control or management of subsidiaries or associates, including through any of the committees, conferences or documents referred to in the Statement of Claim

General

31. In its capacity as a holding company, B.A.T Industries engaged in administering its investment interests as a shareholder, directly and indirectly in hundreds of subsidiaries and associates in diverse business sectors. It never directed, controlled or managed the day-to-day operational activities or policies of its subsidiaries and associates, and it would not have had the human resources to do so.

Committees

32. The Research Policy Group, the Tobacco Division Board and the Tobacco Executive Committee were not B.A.T Industries committees. The Scientific Research Group is not and never was a B.A.T Industries committee.

33. The Chairman's Policy Committee ("CPC") was the key executive body for B.A.T Industries. The purpose of the CPC was to enable B.A.T Industries to oversee its investment interests in hundreds of diverse companies around the world. The CPC was responsible for the day-to-day management and policies of B.A.T Industries itself; it did not direct, control or manage the day-to-day operational activities or policies of any of B.A.T Industries' subsidiaries or associates.

34. The Tobacco Strategy Review Team ("TSRT") and its successor, the Tobacco Strategy Group ("TSG"), included representatives from B.A.T Industries and senior executives of the principal tobacco operating companies (just as the Financial Services Strategy Review Team included senior executives of the principal financial services companies). The purpose of the TSRT (and later the TSG) was to facilitate information exchange amongst Group companies to improve efficiencies and encourage co-operation. Neither the TSRT nor the TSG was a forum through which B.A.T Industries exercised any direction, control or management of the day-to-day operational activities or policies of its subsidiaries or associates. Neither the TSRT nor the TSG was in existence after 1995.

Conferences

35. The Chairman's Advisory Conference ("CAC") was a yearly or biennial conference at which the Chairman of B.A.T Industries and executives from the major operating subsidiaries and associates (including non-tobacco companies) gathered to discuss issues of relevance to the various business sectors across the Group as a whole. The CAC was informational and advisory rather than a decision-making meeting. It was not a forum through which B.A.T Industries exercised any direction, control or management of the day-to-day operational activities or policies of those subsidiaries and associates. The last CAC was held in 1989.

36. B.A.T Industries did not organise or attend Group Research Conferences.

37. Group Marketing Conferences ("GMCs") were not organised by B.A.T Industries although a representative of B.A.T Industries spoke at a GMC in 1991 and a GMC in 1994. GMCs were intended to provide a setting for senior managers from the operating companies to consider key marketing issues and share experience and expertise. They were not fora through which B.A.T Industries exercised any direction, control or management of the day-to-day operational activities or policies of the Group companies represented there.

Documents

38. The document "Legal Considerations on Smoking and Health Policy", referred to in paragraph 138 of the Statement of Claim, was a B.A.T Industries document. To the extent it was distributed to Imasco, it was not a means to direct, control or manage the day-to-day operational activities or policies of Imasco. None of the other documents referred to in paragraph 138 of the Statement of Claim was prepared or authored by B.A.T Industries.

B.A.T Industries' investment in Imasco (now Imperial)

39. In 1976, B.A.T Industries acquired a substantial indirect stake in Imasco by virtue of its establishment as the parent holding company of BATCo, which then held under 50% of

Imasco's shares. At the time, B.A.T Industries (formerly TST) separately owned an additional small stake in Imasco.

40. By 1981, B.A.T Industries indirectly owned a minority interest (under 50%) in Imasco. This remained the case until February 1, 2000, when B.A.T Industries became the indirect holder of 100% of the shares of Imasco (by then Imperial). In March 2000, those shares were transferred to another subsidiary of BAT p.l.c.

Relationship between B.A.T Industries and Imasco (now Imperial)

41. B.A.T Industries and Imasco always operated as separate and distinct corporate entities and maintained all corporate formalities.

42. B.A.T Industries and Imasco each had its own directors, officers and employees and each always held separate meetings of its own board of directors and maintained separate records and minutes.

43. B.A.T Industries and Imasco always had separate accounts, payrolls and pension programs. Each company had independent legal, financial and budgeting functions. Imasco always prepared its own financial statements and filed its own tax returns.

44. B.A.T Industries never designated any director to be its representative on the board of directors of Imasco, and never participated in, directed, controlled or managed the operations or policies of Imasco. B.A.T Industries never directed Imasco how to vote in committees of Canadian manufacturers or at meetings of the CTMC, or otherwise. As a holding company concerned with administering its investment interests, B.A.T Industries would not have had the human resources to direct, control or manage Imasco, or any of the other myriad associates or subsidiaries that it had worldwide.

45. B.A.T Industries never gave Imasco express or implied authority to act as its agent, and B.A.T Industries never held express or implied authority to act as an agent for Imasco.

SWORN BEFORE ME at the City of
London, England
this 12th day of January, 2010.

N. Snook.

Nicola Snook

Notary Public
England and Wales

E.F.A. FOGAN
Notary Public of London, England

(My Commission expires at death)

DE PINNA
35 PICCADILLY
LONDON
W1J 0LJ
SCRIVENER NOTARIES

This is Exhibit "A" to the Affidavit
of Nicola Snook, sworn before me
this 12th day of January, 2010

Notary Public
England and Wales

E.F.A. FOGAN
Notary Public of London, England

(My Commission expires at death)

DE PINNA
35 PICCADILLY
LONDON
W1J 0LJ
SCRIVENER NOTARIES

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
MR. JUSTICE TEMPLEMAN

No. 001608 of 1976

Fo. 55 C. 20

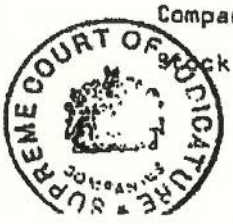
Monday the 19th day of July, 1976

IN THE MATTER OF BRITISH-AMERICAN TOBACCO COMPANY, LIMITED
and
IN THE MATTER OF THE COMPANIES ACT, 1948

UPON THE PETITION of the above-named British-American Tobacco Company, Limited (hereinafter called "the Company") whose registered office is situate at Westminster House, 7 Millbank, London SW1P 3JE on the 22nd June 1976 preferred unto this Court

AND UPON HEARING Counsel for the Company and for Imperial Investments Limited referred to in the Scheme of Arrangement hereinafter mentioned

AND UPON READING the said Petition the Order dated 21st May 1976 (whereby the Company was ordered to convene a Meeting of the holders (other than Tobacco Securities Trust Company Limited) of its Ordinary Stock (including Ordinary Stock represented by warrants to bearer) for the purpose of



considering and if thought fit approving, with or without modification, a Scheme of Arrangement proposed to be made between (inter alios) the Company and the holders of its said Stock (other than as aforesaid) the Order dated the 30th June 1976 (dispensing with the settlement of a list of Creditors) the "Financial Times" newspaper of the 26th May 1976 and the "Times" newspaper of the 27th May 1976 (each containing an advertisement of the notice convening the Meeting directed to be held by the said Order dated the 21st May 1976) the "Times" newspaper of the 10th July 1976 (containing a notice of the presentation of the said Petition and that the same was appointed to be heard this day) the Affidavit of Peter Dudley Tindley filed the 18th May 1976 the several Affidavit of Reginald Illingworth and John James Willoughby filed the 18th June 1976 the two Affidavits of Peter Macadam both filed the 22nd June 1976 and the Exhibits in the said Affidavits respectively referred to

And the said Imperial Investments Limited by its Counsel submitting to be bound by the Scheme of Arrangement hereinafter sanctioned

THIS COURT DOTH HEREBY SANCTION the Scheme of Arrangement as set forth in the Schedule to the said Petition and in the First Schedule hereto

AND THIS COURT DOTH ORDER that the reduction of the capital of the Company from £81,045,000 to £15,717,783.75 resolved on and effected by a Special Resolution passed at an Extraordinary General Meeting of the Company held on the 21st June 1976 be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act

AND THE COURT DOTH HEREBY APPROVE the Minute set forth in the Second Schedule hereto

AND IT IS ORDERED that this Order be produced to the Registrar of Companies and that an Office Copy hereof be delivered to him together with a copy of the said Minute

AND IT IS ORDERED that notice of the registration by the Registrar of Companies of this Order (so far as it confirms the reduction of the capital of the Company) and of the said Minute be published once in the "Times" newspaper within 21 days after such registration

G. DEARBERGH
Registrar

SUPREME COURT OF JUDICATURE (CHANCERY)

THE FIRST SCHEDULE Rule Affidavit Pa

In the High Court of Justice

CHANCERY DIVISION

No. 001608 of 1976

IN THE MATTER of BRITISH-AMERICAN TOBACCO COMPANY, LIMITED

and

No. 001609 of 1976

IN THE MATTER of TOBACCO SECURITIES TRUST COMPANY LIMITED

and

IN THE MATTER of THE COMPANIES ACT 1948

SCHEME OF ARRANGEMENT

(under section 206 of the Companies Act 1948)

between

BRITISH-AMERICAN TOBACCO COMPANY, LIMITED

and

the holders of its Ordinary Stock
(other than Tobacco Securities Trust Company Limited)

and between

TOBACCO SECURITIES TRUST COMPANY LIMITED

and

the holders of

(i) its Ordinary Stock (other than British-American Tobacco Company, Limited and Imperial Investments Limited);
(ii) its Deferred Stock (other than as aforesaid);
(iii) the BAT holding (as defined in the Scheme); and
(iv) the IMPS holding (as so defined).

PRELIMINARY

(A) In this Scheme, unless inconsistent with the subject or context, the following expressions shall bear the following meanings:—

"BAT"	means British-American Tobacco Company, Limited;
"TST"	means Tobacco Securities Trust Company Limited;
"IMPS"	means Imperial Investments Limited;
"the BAT holding"	means (1) the 850,000 Ordinary Shares of £1 each and the £274,069 Ordinary Stock; and (2) the 24,033 Deferred Shares of 25p each and the £17,197·50 Deferred Stock in the capital of TST registered in the name of BAT;
"the IMPS holding"	means (1) the 150,000 Ordinary Shares of £1 each and the £701,525 Ordinary Stock; and (2) the 28,967 Deferred Shares of 25p each and the £233,179 Deferred Stock in the capital of TST registered in the name of IMPS;
"the TST holding"	means the £136,500 Ordinary Stock in the capital of BAT registered in the name of TST;
"the BAT Scheme Ordinary Stock"	means the Ordinary Stock in the capital of BAT other than the TST holding;
"the registered BAT Scheme Ordinary Stock"	means the BAT Scheme Ordinary Stock in registered form;
"the bearer BAT Scheme Ordinary Stock"	means the BAT Scheme Ordinary Stock represented by stock warrants to bearer;
"new TST Ordinary Shares"	means the Ordinary Shares of 25p each of TST to be issued pursuant to clauses 4 and 7 of this Scheme;
"new TST Deferred Ordinary Shares"	means the new Deferred Ordinary Shares of 25p each of TST to be issued pursuant to clause 7 of this Scheme;
"new TST Shares"	means the new TST Ordinary Shares and the new TST Deferred Ordinary Shares;

"the Effective Date" means the date on which this Scheme becomes effective in accordance with clause 14 of this Scheme;

"Terminal Time" means the close of business on the day immediately preceding the Effective Date; and

"holder" in relation to registered stock and shares, includes a person entitled by transmission.

(B) The share capital of BAT is £81,045,000 divided into £4,500,000 5 per cent. Cumulative Preference Stock, £8,000,000 6 per cent. Second Cumulative Preference Stock, £65,466,716·25 Ordinary Stock and 20,317,135 unissued Ordinary Shares of 25p each. On 20th May, 1976 £1,415,413 in nominal amount of the Ordinary Stock of BAT was represented by stock warrants to bearer.

(C) The share capital of TST is £6,000,000 divided into 1,000,000 Ordinary Shares of £1 each (all of which have been issued and are fully paid), £3,000,000 Ordinary Stock, 550,000 Deferred Shares of 25p each (50,000 of which have been issued and are fully paid) and £862,500 Deferred Stock.

(D) BAT and IMPS are the registered holders and beneficial owners of the shares and stock of TST comprised in the BAT holding and the IMPS holding respectively. TST is the registered holder and beneficial owner of the Ordinary Stock of BAT comprised in the TST holding.

(E) The purposes of this Scheme are (i) to reorganise the share capital of TST by the elimination of the BAT holding and the IMPS holding and the conversion of the Deferred Stock of TST into Ordinary Shares and (ii) for BAT to become a subsidiary of TST.

(F) It is proposed that the name of TST should be changed to B.A.T Industries Limited with effect from the Effective Date.

(G) IMPS has agreed to appear by Counsel on the hearing of the petitions to sanction this Scheme and to undertake to the Court to be bound thereby.

THE SCHEME

1. The share capital of TST shall be reduced by the cancellation of the BAT holding and the IMPS holding and forthwith upon such reduction of capital taking effect the capital of TST shall be increased to £4,472,900 by the creation of 8,848,482 new Ordinary Shares of 25p each.

2. In consideration of the cancellation of the BAT holding TST shall issue to BAT credited as fully paid £10,667,976 in nominal amount of 15 per cent. Subordinated Unsecured Loan Stock to be constituted by an instrument in the form of the draft already prepared and signed for purposes of identification by Herbert Smith & Co., solicitors, with such modifications (if any) as may, prior to the execution thereof, be agreed by BAT and TST and approved by the Court.

3. In consideration of the cancellation of the IMPS holding (i) BAT shall on the Effective Date pay to IMPS the sum of £14,332,024 in cash together with interest (if any) payable thereon calculated in accordance with the terms of an agreement dated 29th April, 1976 and made between BAT, Imperial Group Limited and IMPS (as amended by an agreement dated 12th May, 1976 and made between the said three parties) and (ii) TST shall issue to BAT credited as fully paid £14,332,024 in nominal amount of the 15 per cent. Subordinated Unsecured Loan Stock of TST referred to in clause 2 of this Scheme.

4. (a) The £2,024,406 Ordinary Stock in the capital of TST not comprised in the BAT holding or in the IMPS holding shall be reconverted into 8,097,624 Ordinary Shares of 25p each.

(b) The 500,000 unissued Deferred Shares of 25p each in the capital of TST shall be converted into and become 500,000 Ordinary Shares of 25p each.

(c) The £612,123·60 Deferred Stock in the capital of TST not comprised in the BAT holding or in the IMPS holding shall be converted into and become 2,448,494 Ordinary Shares of 25p each and the sum of £1,836,370·50 standing to the credit of Capital Reserve Account in the books of TST shall be capitalised and applied in paying up in full 7,345,482 unissued Ordinary Shares of 25p each of TST (being new TST Ordinary Shares as hereinbefore defined) which shall be allotted and issued credited as fully paid to the persons (other than BAT and IMPS) who were at the Terminal Time the holders of the TST Deferred Stock in the proportion of 3 new TST Ordinary Shares for every 25p in nominal amount of Deferred Stock of TST then held by such holders.

5. (a) The share capital of BAT shall be reduced by the cancellation of the BAT Scheme Ordinary Stock.

(b) Forthwith upon such reduction of capital taking effect:—

(i) the share capital of BAT shall be increased to its former amount by the creation of 261,306,866 new Ordinary Shares of 25p each;

(ii) the reserve of £65,327,216·25 arising on the said cancellation shall be applied in paying up in full the said new Ordinary Shares of BAT which shall be allotted and issued credited as fully paid to TST or its nominees; and

(iii) the TST holding shall be reconverted into 554,000 Ordinary Shares of 25p each.

SUPREME COURT OF JUDICATURE COMPANIES

6. The capital of TST shall be further increased to £100,000,000 by the creation of:—

(a) 318,828,921 new Ordinary Shares of 25p each (being new TST Ordinary Shares as hereinbefore defined);

(b) 26,130,887 new Deferred Ordinary Shares of 25p each (being new TST Deferred Ordinary Shares as hereinbefore defined), which shares shall carry the rights set out in the new Articles of Association of TST to be adopted in the form of the draft already prepared and signed for purposes of identification by Herbert Smith & Co., solicitors, with such modifications (if any) as may, prior to the adoption thereof, be agreed by BAT and TST; and

(c) 36,148,692 unclassified shares of 25p each.

7. (a) In consideration of the cancellation of the BAT Scheme Ordinary Stock, and the issue to TST of the new Ordinary Shares of BAT referred to in clause 8 (b) of this Scheme, TST shall, subject as provided in sub-clause (b) of this clause, allot and issue credited as fully paid:—

(i) to the holders registered as at the Terminal Time of the registered BAT Scheme Ordinary Stock, 12 new TST Ordinary Shares and 1 new TST Deferred Ordinary Share in respect of every £2.50 in nominal amount of registered BAT Scheme Ordinary Stock then held by them respectively; and

(ii) subject as provided in clause 8 of this Scheme, to the persons from time to time on or after the Effective Date delivering up stock warrants in respect of bearer BAT Scheme Ordinary Stock to TST or to any person appointed by TST to receive the same, and otherwise complying with any conditions imposed by TST in relation to such delivery, 12 new TST Ordinary Shares and 1 new TST Deferred Ordinary Share in respect of every £2·50 in nominal amount of bearer BAT Scheme Ordinary Stock comprised in the stock warrants so delivered up by them respectively.

(b) No fraction of a new TST Ordinary Share or of a new TST Deferred Ordinary Share shall be allotted to any holder of registered BAT Scheme Ordinary Stock or to any person delivering up a stock warrant in respect of bearer BAT Scheme Ordinary Stock, but all such fractions shall be aggregated and allotted to some person nominated by TST who shall sell the same and TST shall distribute the net proceeds of sale amongst the persons who would have been entitled to the fractions in due proportion.

8. If any holder of bearer BAT Scheme Ordinary Stock has not, within two years after the Effective Date, duly delivered up his stock warrant so as to become entitled to new TST Shares in respect thereof pursuant to the provisions of clause 7 of this Scheme, the obligation of TST to allot new TST Shares in respect of the relative holding of bearer BAT Scheme Ordinary Stock shall terminate and TST shall instead be bound to pay in cash to such holder, upon delivery up of the relative stock warrant pursuant to clause 7(a) (ii) of this Scheme, a sum equal to the middle market quotation as shown by the Daily Official List of The Stock Exchange on the second anniversary of the Effective Date (or, if such second anniversary is not a dealing day, on the next dealing day thereafter) of the number of new TST Shares to which he would, apart from the provisions of this clause, have been entitled: provided always that this clause shall not have effect to the extent that the aggregate amount of cash which would be payable by TST hereunder, together with the cash payable in respect of fractions pursuant to clause 7 (b) of this Scheme, would exceed 10 per cent. of the nominal value of the new TST Shares to be issued in exchange for the BAT Scheme Ordinary Stock.

9. (a) BAT shall on 1st October, 1976 pay to the holders of its Ordinary Stock a dividend of 3·7p per 25p nominal of Ordinary Stock, but save as aforesaid the holders of the BAT Scheme Ordinary Stock shall not be entitled to any further dividends thereon. The said dividend shall be payable in the case of Ordinary Stock of BAT in registered form to the holders on the register at the Terminal Time, and in the case of Ordinary Stock of BAT represented by stock warrants to bearer to the persons presenting coupon no. 277.

(b) Each mandate in force at the Terminal Time relating to the payment of dividends on BAT Scheme Ordinary Stock shall, unless and until revoked, be deemed as from the Effective Date to be a valid and effective mandate to TST in relation to dividends on the corresponding new TST Shares to be issued pursuant to this Scheme.

(c) TST shall on 31st July, 1976 pay to the holders of its Ordinary and Deferred Stock and Shares on the register at the close of business on 9th July, 1976 dividends of 6p (in the case of the Ordinary Stock and Shares) and 24p (in the case of the Deferred Stock and Shares) respectively per 25p nominal of such capital then held by them.

10. From and after the Effective Date:—

(a) the certificates for the registered BAT Scheme Ordinary Stock shall cease to be of value and shall at the request of BAT be surrendered for cancellation to BAT or to any person appointed by BAT to receive the same; and

(b) the stock warrants for the bearer BAT Scheme Ordinary Stock shall cease to be of value otherwise than for the purpose of delivery up pursuant to the provisions of clause 7 (a) (ii) of this Scheme.

11. The new TST Ordinary Shares to be allotted pursuant to this Scheme shall rank in full for all dividends and other distributions declared, made or paid on or after the Effective Date, except for the dividends referred to in clause 9 (c) of this Scheme.

12. (a) TST shall make the allotments of new TST Shares provided for by clauses 4 and 7 (a) (i) of this Scheme within 28 days after the Effective Date.

(b) Subject as provided in clause 8 of this Scheme, TST shall make any allotments of new TST Shares provided for by clause 7 (a) (ii) of this Scheme within 28 days after the delivery up of the stock warrant in respect of which the obligation to make the allotment in question arises, or within 28 days after the Effective Date, whichever is the later.

(c) TST shall (unless prohibited by law) send by post to the allottees certificates for the new TST Shares and cheques or warrants in respect of fractional entitlements to which such persons are respectively entitled pursuant to this Scheme.

13. All certificates, cheques and warrants required to be sent by TST pursuant to this Scheme shall be sent through the post in prepaid envelopes and TST shall not be responsible for any loss in transmission. Such envelopes shall be addressed:—

(a) in the case of certificates, cheques and warrants to be sent to the persons entitled pursuant to clause 4 of this Scheme and to holders of registered BAT Scheme Ordinary Stock entitled pursuant to clause 7 of this Scheme, to their respective registered addresses appearing in the register of members of TST or, as the case may be, BAT at the Terminal Time (or, in the case of joint holders, to the address of that one of the joint holders whose name stands first in the relevant register in respect of the joint holding); and

(b) in the case of certificates, cheques and warrants to be sent to holders of bearer BAT Scheme Ordinary Stock entitled pursuant to clause 7 of this Scheme, to the addresses given by the persons delivering up the relative stock warrants.

14. This Scheme shall become effective as soon as office copies of the Orders sanctioning this Scheme under section 206 of the Companies Act 1948 and confirming under section 68 of the said Act the reductions of capital provided for in this Scheme are duly delivered to the Registrar of Companies for registration by BAT and TST respectively. If this Scheme has not become effective by 31st October, 1976 (or such later date as the Court may allow) it shall not be capable of becoming effective.

15. BAT and TST may jointly consent on behalf of all concerned to any modification of or addition to this Scheme or any condition which the Court may think fit to approve or impose.

DATED 25th May, 1976.

G.D
REG R

SUPREME COURT OF JUDICATURE
COMPANIES

THE SECOND SCHEDULE before referred to

MINUTE APPROVED BY THE COURT

The capital of British-American Tobacco Company, Limited was by virtue of a Special Resolution and with the sanction of an Order of the High Court of Justice dated the 19th July 1976 reduced from the former capital of £81,045,000 to £15,717,783.75 (divided into £4,500,000 Cumulative Preference Stock, £6,000,000 Second Cumulative Preference Stock, £138,500 Ordinary Stock and 20,317,135 Ordinary Shares of 25p each). By virtue of a Scheme of Arrangement sanctioned by the same Order and of the said Special Resolution the capital of the Company at the date of the registration of this Minute is £81,045,000 (divided into £4,500,000 Cumulative Preference Stock, £6,000,000 Second Cumulative Preference Stock and 282,180,000 Ordinary Shares of 25p each) of which 554,000 have been issued and are deemed to be fully paid and the remainder are unissued.

G.D REGR

Q.L REGR

Q.L REGR

SUPREME COURT OF JUDICATURE

This is Exhibit "B" to the Affidavit
of Nicola Snook, sworn before me
this 12th day of January, 2010

Notary Public
England and Wales

E.F.A. FOGAN
Notary Public of London, England

(My commission expires at death)

DE PINNA
35 PICCADILLY
LONDON
W1J 0LJ
SCRIVENER NOTARIES

IN THE HIGH COURT OF JUSTICE

No. 001165 of 1998

CHANCERY DIVISION

COMPANIES COURT

MR. JUSTICE Neuberger

3rd September 1998

IN THE MATTER OF B.A.T INDUSTRIES P.L.C.

- and -

IN THE MATTER OF THE COMPANIES ACT 1985

UPON THE PETITION of the above-named B.A.T Industries p.l.c. (the "Company") whose registered office is situate at Windsor House, 50 Victoria Street, London SW1H ONL on 2nd July 1998 preferred unto this Court

AND UPON HEARING Counsel for the Company and for B.A.T Reconstructions Limited, Allied Zurich p.l.c. and British American Tobacco p.l.c. referred to in the Scheme of Arrangement hereinafter mentioned

AND UPON HEARING Counsel for the Blue Cross/Blue Shield companies listed in exhibit "THCT1" to Mr Taylor's Affidavit sworn herein ("the Objectors")

AND UPON READING the said Petition and the evidence

AND B.A.T Reconstructions Limited, Allied Zurich p.l.c., and British American Tobacco p.l.c., by Counsel submitting to be bound by the said Scheme of Arrangement hereinafter sanctioned under section 425 of the above Act and undertaking to execute all such documents and do all such acts and things as may be necessary or desirable to be executed and done by them respectively for the purpose of giving effect thereto

THIS COURT HEREBY SANCTIONS the Scheme of Arrangement as set forth in the Schedule hereto

AND IT IS ORDERED that the Company do deliver an Office Copy of this Order to the Registrar of Companies.

AND IT IS ORDERED that there be no Order as to costs

AND IT IS ORDERED that the Objectors do have leave to appeal if necessary

THE SCHEDULE BEFORE REFERRED TO

The Scheme of Arrangement

PART 6: B.A.T INDUSTRIES SCHEME OF ARRANGEMENT

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

No. 01165 of 1998

In the Matter of B.A.T Industries p.l.c.

-and-

In the Matter of the Companies Act 1985

Scheme of Arrangement

-under-

Section 425 of the Companies Act 1985

BETWEEN:

(1) B.A.T Industries

(2) the holders of the Scheme Shares

-and-

(3) B.A.T Reconstructions (each as hereinafter defined)

PRELIMINARY:

A. In this Scheme, unless inconsistent with the subject or context, the following expressions shall bear the following meanings:

"Allied Zurich"	means Allied Zurich p.l.c., a public limited company incorporated in England with company number 3525388;
"Allied Zurich Holdings"	means Allied Zurich Holdings Limited, a private limited company incorporated in Jersey with company number 71060;
"Allied Zurich Ordinary Shares"	means ordinary shares of 25p each in the capital of Allied Zurich;
"BAFS"	means British American Financial Services (UK and International) Limited, a private limited company incorporated in England with company number 1860680;
"BAFS Shares"	means ordinary shares of £1 each in the capital of BAFS;
"B.A.T Industries"	means B.A.T Industries p.l.c., a public limited company incorporated in England with company number 233112;
"B.A.T Industries Ordinary Shares"	means ordinary shares of 25p each in the capital of B.A.T Industries;
"B.A.T New Ordinary Shares"	means ordinary shares of 25p each in the capital of B.A.T Industries created pursuant to paragraph 1.3 of the Special Resolution;
"B.A.T Reconstructions"	means B.A.T Reconstructions Limited, a private limited company incorporated in England with company number 3418570;
"B.A.T Reconstructions "A" Ordinary Shares"	means "A" ordinary shares of 12½p each in the capital of B.A.T Reconstructions;
"B.A.T Reconstructions "B" Ordinary Shares"	means "B" ordinary shares of 12½p each in the capital of B.A.T Reconstructions;
"British American Tobacco"	means British American Tobacco p.l.c., a public limited company incorporated in England with company number 3407696;

"British American Tobacco (1998)"	means British American Tobacco (1998) Limited, a private limited company incorporated in England with company number 3422701;
"British American Tobacco Ordinary Shares"	means ordinary shares of 25p each in the capital of British American Tobacco;
"Business Day"	means a day (excluding Saturdays) on which banks are open for business in the City of London;
"Court Meeting"	means the meeting of Shareholders convened by order of the Court pursuant to section 425 of the Companies Act 1985 to consider, and if thought fit, approve this Scheme;
"CREST"	means the system for paperless settlement of trades and the holding of uncertificated shares operated by CRESTCo Limited;
"Effective Date"	means the day on which this Scheme becomes effective in accordance with Clause 10 of this Scheme;
"Farmers"	means Farmers Group, Inc., a company incorporated in the state of Nevada;
"Farmers Shares"	means all the Common Stock, par value $1 per share, of Farmers;
"Farmers Income Shares"	means the Class B Common Stock, par value $1 per share, of Farmers;
"Farmers Ordinary Shares"	means the Class A Common Stock, par value $1 per share, of Farmers;
"holder"	includes a person entitled by transmission;
"Option Schemes"	means together the Savings Related Share Option Scheme, the Employee Share D Option Scheme, and the Employee Share E Option Scheme operated by B.A.T Industries;
"Registrar of Companies"	means the registrar of companies of England and Wales;
"Relevant Holder"	means a Shareholder who appears in the register of members of B.A.T Industries at the Scheme Record Time;
"Scheme Record Time"	means 4.30 p.m. on the Effective Date;
"Scheme Shares"	means the B.A.T Industries Ordinary Shares in issue at the date of this Scheme together with: (i) such additional B.A.T Industries Ordinary Shares (if any) as may be in issue fully paid or credited as fully paid at 6.00 p.m. on the day prior to the day immediately before the date of the Court Meeting; and (ii) such further B.A.T Industries Ordinary Shares as may be issued fully paid or credited as fully paid after the passing of the Special Resolution and before the close of business on the Business Day immediately before the making by the Court of an Order to sanction this Scheme, and in respect of which the original or any subsequent holder shall be bound by this Scheme or has agreed in writing to be so bound before the close of business on the Business Day immediately before the making by the Court of an Order to sanction this Scheme, in each case excluding any B.A.T Industries Ordinary Shares held by B.A.T Reconstructions;
"Share Alternative Scheme"	means the scheme which allows eligible Shareholders to receive B.A.T Industries Ordinary Shares in lieu of dividends;
"Shareholder"	means a holder of B.A.T Industries Ordinary Shares;
"Special Resolution"	means the special resolution to be considered at the extraordinary general meeting of B.A.T Industries convened for Friday, 12th June 1998; and

"this Scheme" means this Scheme in its present form or with any modification thereof or addition or condition thereto, in each case approved by the Court.

B. At the date of this Scheme the authorised share capital of B.A.T Industries is £1,000,000,000, divided into 4,000,000,000 ordinary shares of 25p each, of which 3,132,038,018 B.A.T Industries Ordinary Shares have been issued and are credited as fully paid and the remainder are unissued. As at the date of this Scheme, there were 33,580,203 options over unissued B.A.T Industries Ordinary Shares pursuant to the Option Schemes which, if exercised, would require that number of additional B.A.T Industries Ordinary Shares to be issued.

C. At the date of this Scheme the authorised share capital of Allied Zurich is £500,000,000 divided into 1,999,800,008 ordinary shares of 25p each, of which 8 Allied Zurich Ordinary Shares have been issued and credited as fully paid and the remainder are unissued, and 49,998 redeemable preference shares of £1 each all of which have been issued and are credited as fully paid, which will be redeemed prior to the Effective Date.

D. At the date of this Scheme the authorised share capital of British American Tobacco is £500,000,000 divided into 1,999,800,008 ordinary shares of 25p each, of which 8 British American Tobacco Ordinary Shares have been issued and are credited as fully paid and the remainder are unissued, and 49,998 redeemable preference shares of £1 each all of which have been issued and credited as fully paid, which will be redeemed prior to the Effective Date.

E. At the date of this Scheme the authorised share capital of B.A.T Reconstructions is £100 divided into 100 ordinary shares of £1 each. Prior to the Effective Date, the share capital of B.A.T Reconstructions shall be increased to £1,000,000,000 divided into 4,000,000,000 "A" ordinary shares of 12½p each and 4,000,000,000 "B" ordinary shares of 12½p each.

F. B.A.T Reconstructions holds one B.A.T Industries Ordinary Share.

G. Each of Allied Zurich, B.A.T Reconstructions and British American Tobacco has agreed to appear by Counsel on the hearing of the Petition to sanction this Scheme and to consent thereto and to undertake to the Court to be bound thereby and to execute all such documents and do all such acts and things as may be necessary or desirable to be executed or done by them for the purpose of giving effect to this Scheme.

THE SCHEME

Cancellation of Scheme Shares

1. The capital of B.A.T Industries shall be reduced by the cancellation of all the Scheme Shares.

2. Forthwith upon the said reduction of capital taking effect:

   (a) the capital of B.A.T Industries shall be increased to its former amount by the creation of such number of B.A.T New Ordinary Shares as shall equal the number of Scheme Shares cancelled; and

   (b) the credit arising in the books of account of B.A.T Industries as a result of the cancellation of the Scheme Shares shall be capitalised and applied in paying up in full the B.A.T New Ordinary Shares created pursuant to paragraph (a) of this Clause 2, which shall be allotted and issued, credited as fully paid, to B.A.T Reconstructions or its nominees.

Consideration for cancellation of Scheme Shares

3. (a) In consideration of the cancellation of the Scheme Shares and the issue to B.A.T Reconstructions of the B.A.T New Ordinary Shares, B.A.T Reconstructions shall allot and issue one B.A.T Reconstructions "A" Ordinary Shares, credited as fully paid, to British American Tobacco and one B.A.T Reconstructions "B" Ordinary Shares, credited as fully paid, to Allied Zurich in respect of each Scheme Share.

   (b) Following the allotment and issue of B.A.T Reconstructions "A" Ordinary Shares and B.A.T Reconstructions "B" Ordinary Shares pursuant to paragraph (a) of this Clause 3, British American Tobacco shall hold all the B.A.T Reconstructions "A" Ordinary Shares in issue and Allied Zurich shall hold all the B.A.T Reconstructions "B" Ordinary Shares in issue. The B.A.T Reconstructions "A" Ordinary Shares and the B.A.T Reconstructions "B" Ordinary Shares shall have the following rights:

Voting

At extraordinary general meetings of the shareholders of B.A.T Reconstructions the holders of B.A.T Reconstructions "A" Ordinary Shares and B.A.T Reconstructions "B" Ordinary Shares shall, on a poll, have one vote per share.

Dividends

Of the profits in respect of any financial period of B.A.T Reconstructions which may be resolved to be distributed, the holders of the B.A.T Reconstructions "B" Ordinary Shares shall be entitled to receive such proportion thereof as represents the proportion which the aggregate of the amount distributed to B.A.T Reconstructions relating to such period in respect of the BAFS Shares and the Farmers Shares bears to the whole amount of the profits of B.A.T Reconstructions in respect of such financial period and the holders of the B.A.T Reconstructions "A" Ordinary Shares shall be entitled to the remainder.

Winding-up

(i) In the event of the voluntary liquidation of B.A.T Reconstructions and the passing in accordance with section 110 of the Insolvency Act 1986 of a special resolution pursuant to which the liquidator of B.A.T Reconstructions is authorised to dispose of the BAFS Shares and the Farmers Shares to Allied Zurich Holdings, and the B.A.T New Ordinary Shares to British American Tobacco (1998), the holders of the B.A.T Reconstructions "A" Ordinary Shares shall be entitled to any shares in British American Tobacco (1998) to be allotted in consideration for the acquisition of the B.A.T New Ordinary Shares and the holders of the B.A.T Reconstructions "B" Ordinary Shares shall be entitled to any shares in Allied Zurich Holdings to be allotted in consideration for the acquisition of the BAFS Shares and the Farmers Income Shares and any loan note in Allied Zurich Holdings to be allotted in consideration for the acquisition of the Farmers Ordinary Shares; and

(ii) without prejudice to the provisions of sub-paragraph (i) above, on a return of assets in any other manner on liquidation or otherwise, the holders of the B.A.T Reconstructions "A" Ordinary Shares shall be entitled to receive such of the surplus assets of B.A.T Reconstructions remaining after the payment of its liabilities as shall comprise all or part of the B.A.T New Ordinary Shares, whilst the holders of the B.A.T Reconstructions "B" Ordinary Shares shall be entitled to receive such of the surplus assets of B.A.T Reconstructions remaining after the payment of its liabilities as comprise all or part of the BAFS Shares and the Farmers Shares, and any balance remaining after the operation of such provisions shall be paid or transferred to the holders of B.A.T Reconstructions "A" Ordinary Shares;

Notwithstanding the rights described above, the holders of the B.A.T Reconstructions "B" Ordinary Shares shall neither as respects dividends nor as respects capital be entitled to participate in any distribution in respect of each such B.A.T Reconstructions "B" Ordinary Share beyond £50 or assets with a value of £50.

4. (a) Forthwith upon the issue of the B.A.T Reconstructions "B" Ordinary Shares pursuant to Clause 3(a) of this Scheme, and in consideration thereof and of the cancellation there referred to, Allied Zurich shall allot and issue to Relevant Holders one Allied Zurich Ordinary Share, credited as fully paid, for every two Scheme Shares held by such person at the Scheme Record Time.

(b) Forthwith upon the issue of the B.A.T Reconstructions "A" Ordinary Shares pursuant to Clause 3(a) of this Scheme, and in consideration thereof and of the cancellation there referred to, British American Tobacco shall allot and issue to Relevant Holders one British American Tobacco Ordinary Share, credited as fully paid, for every two Scheme Shares held by such person at the Scheme Record Time.

(c) No fraction of an Allied Zurich Ordinary Share or a British American Tobacco Ordinary Share shall be allotted or transferred as a result of the provisions of this Clause 4 but all Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares representing such fractions shall be aggregated and sold and the net proceeds of sale distributed amongst the persons who would otherwise be entitled thereto in due proportion.

Rights attaching to Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares

5. The Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares to be allotted pursuant to the provisions of this Scheme shall rank pari passu in all respects with, in each case, such Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares as are in issue on the Effective Date and shall rank for all dividends or distributions made, paid or declared thereon after the Effective Date.

Certificates

6. (a) In respect of Relevant Holders who hold their B.A.T Industries Ordinary Shares in certificated form, Allied Zurich and British American Tobacco shall, not later than 21 days after the Effective Date, deliver in accordance with this Scheme certificates in respect of Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares respectively by sending the same through the post in pre-paid envelopes addressed to the persons entitled thereto at their respective registered addresses appearing in the register of members of B.A.T Industries at the Scheme Record Time (or, in the case of joint holders, to the address of that one of the joint holders whose name stands first in the register in respect of such joint holding), or in accordance with any special instructions regarding communications and Allied Zurich and British American Tobacco shall not be responsible for any loss in transmission.

(b) Not later than 21 days after the Effective Date, Relevant Holders who hold their B.A.T Industries Ordinary Shares in uncertificated form shall have the appropriate entries made in the appropriate CREST member account.

Cash dividend payment mandates

7. Each mandate in force at the Scheme Record Time relating to the payment of dividends in respect of B.A.T Industries Ordinary Shares shall, unless and until amended or revoked, be deemed as from the Effective Date to be a valid and effective mandate to Allied Zurich and British American Tobacco in relation to dividends in respect of the corresponding Allied Zurich Ordinary Shares and British American Tobacco Ordinary Shares to be issued pursuant to this Scheme.

Scrip dividend mandates

8. Each mandate in force at the Scheme Record Time relating to the payment of scrip dividends in respect of B.A.T Industries Ordinary Shares pursuant to the Share Alternative Scheme shall, unless and until amended or revoked, be deemed as from the Effective Date to be a valid and effective mandate to British American Tobacco in relation to dividends in respect of the corresponding British American Tobacco Ordinary Shares to be issued pursuant to this Scheme.

Certificates representing Scheme Shares

9. On and from the Effective Date all certificates representing holdings of Scheme Shares shall cease to have effect.

Effective Date

10. (a) This Scheme shall become effective as soon as an office copy of the Order of the Court sanctioning this Scheme under section 425 of the Companies Act 1985 shall have been delivered to the Registrar of Companies for registration, save that the reduction of capital in Clause 1 of the Scheme shall become effective only when an Order of the Court confirming under section 137(1) of the Companies Act 1985 the said reduction of capital shall have been duly registered by the Registrar of Companies.

(b) Unless this Scheme shall have become effective on or before 30th April 1999 or such later date, if any, as the Court may allow, the same shall lapse.

Modification

11. Allied Zurich, B.A.T Industries, B.A.T Reconstructions and British American Tobacco may jointly consent on behalf of all persons concerned to any modification of or addition to this Scheme or to any condition which the Court may approve or impose.

DATED the 18th day of May 1998

No. 001165 of 1998

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

MR. JUSTICE Neuberger

3rd September 1998

IN THE MATTER OF B.A.T INDUSTRIES P.L.C.

- and -

IN THE MATTER OF THE COMPANIES ACT 1985

ORDER

sanctioning Scheme of Arrangement

DUPLICATE

Herbert Smith
Exchange House
Primrose Street
London EC2A 2HS
Tel: 0171 374 8000
Fax: 0171 374 0888
Ref: 127/30695317
Solicitors to the Petitioner

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Plaintiff

-and-

ROTHMANS INC. et al.
Defendants

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF NICOLA SNOOK
(Sworn January 12, 2010)

LAX O'SULLIVAN SCOTT LLP
Counsel
Suite 1920, 145 King Street West
Toronto, Ontario M5H 1J8

Charles F. Scott LSUC#: 14534N
Tel: (416) 646-7997
Brooke A. Shulman LSUC#: 41032N
Tel: (416) 598-7873
Fax: (416) 598-3730

Lawyers for the Defendant B.A.T. Industries p.l.c.

This is **Exhibit "M"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

Court file no. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

and

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

Defendants

AFFIDAVIT OF RICHARD CORDESCHI
(sworn January 12, 2010)

I, Richard Cordeschi, Director of Carreras Rothmans Limited, of the Borough of Bromley, in London, England, MAKE OATH AND SAY AS FOLLOWS:

1. I am a director of the defendant Carreras Rothmans Limited ("CRL").

2. CRL has not and does not attorn to the jurisdiction of this Honourable Court. I submit this affidavit in support of a motion by CRL for an order dismissing this action as against CRL for lack of jurisdiction.

3. The facts set out in this affidavit are based on my personal knowledge and on information in the CRL annual reports and accounts for the years ended March 31, 1984 through December 31, 2008, which were filed in the United Kingdom with Companies House, the official UK government register of UK companies.

4. CRL is a company incorporated under the laws of England and Wales. It has a registered office at Globe House, 1 Water Street, London WC2R 3LA, England. It has no other offices.

5. The place of service of the statement of claim on CRL was at its registered office in London, England.

6. CRL is a non-trading, non-operating company that carries on no business of any kind. Since March 1984, the company has been dormant in accordance with the meaning ascribed to that term in the United Kingdom *Companies Act 1985* c.6 and the United Kingdom *Companies Act 2006* c.46 (which superseded the *Companies Act 1985* as of 6 April 2008 insofar as dormant companies are concerned), and its functions have been limited to meeting the statutory requirements imposed on dormant companies incorporated in England, such as filing annual reports and accounts.

7. I make this affidavit in support of CRL's motion to dismiss the action against it for lack of jurisdiction and for no improper purpose.

Sworn before me in London, England,)
this 12 day of January, 2010)
)
) Richard Cordeschi
)
Notary Public, England and Wales)

E.F.A. FOGAN
Notary Public of London, England

(My Commission expires at death)

DE PINNA
35 PICCADILLY
LONDON
W1J 0LJ
SCRIVENER NOTARIES

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO - and - **ROTHMANS INC., ET AL**
Plaintiff Defendants

Court file no. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

AFFIDAVIT OF RICHARD CORDESCHI
(sworn January 12, 2010)

Macleod Dixon LLP
Barristers & Solicitors
TD Waterhouse Tower
Toronto-Dominion Centre
Suite 2300, P.O. Box 128
79 Wellington Street West
Toronto M5K 1H1

Steven Leitl, LSUC #28110R
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Erik Penz, LSUC #43145H
Tel: 416 203 4469
Fax: 416 360 8277

Lawyers for the defendant
Carreras Rothmans Limited

This is **Exhibit "N"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires September 27 2021

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

and

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

Defendants

AFFIDAVIT OF RICHARD CORDESCHI

I, RICHARD CORDESCHI, Company Secretary of the Defendant British American Tobacco (Investments) Limited, of the Borough of Bromley, in London, England, ~~England,~~ MAKE OATH AND SAY:

1. I am the Company Secretary of British American Tobacco (Investments) Limited, formerly British-American Tobacco Company Limited ("BATCo").

2. BATCo has not and does not attorn to the jurisdiction of this Honourable Court. I submit this affidavit solely in support of a motion to be brought on behalf of BATCo for an Order setting aside the service of the Statement of Claim on BATCo and to dismiss this action against BATCo for lack of jurisdiction.

3. The facts set out in this my affidavit are based on my personal knowledge and on information in the company records of BATCo which I verily believe to be true.

Corporate history of BATCo

4. BATCo is a limited company incorporated pursuant to the laws of England and Wales. Its registered office is at Globe House, 1 Water Street, London WC2R 3LA, England.

5. BATCo was incorporated in 1902. Between 1902 and 23 July 1976, BATCo was the ultimate parent company of various subsidiary, affiliate and associate companies engaged in the tobacco business as well as other businesses.

6. On 23 July 1976 B.A.T Industries p.l.c. ("BAT Industries") became the parent holding company of the various subsidiary, affiliate and associate companies owned by BATCo, as the result of a "reverse takeover" under English law whereby BAT Industries, which had held a small shareholding in BATCo, became the sole ordinary shareholder of BATCo. The former public shareholders of the ordinary shares of BATCo became shareholders of BAT Industries. BAT Industries, as a holding company, became the ultimate owner of the stock of BATCo and the other subsidiaries, affiliates and associates in the BAT Group. BATCo accordingly became an intermediate holding company, below BAT Industries, for all of the tobacco operating subsidiaries.

7. The 23 July 1976 transaction did not entail the combination of two companies to form a new corporation. BATCo continued its operations and continued to retain its separate corporate existence and identity. BAT Industries also retained its separate corporate existence and identity. The separate corporate existences of these two companies remain to the present day.

BATCo has no connection to Ontario

8. The place of service of the Statement of Claim on BATCo was in London, England.

9. To the best of my knowledge, based on enquiries I have made and searches of the company records:

   (a) BATCo has never researched, designed, developed, manufactured, produced, assembled, marketed, packaged, designed packaging for, sold, shipped, promoted, advertised or distributed tobacco products, or any other goods or products, in Ontario.

   (b) BATCo has never held express or implied authority to act as an agent for any entity, including any subsidiary, affiliate or associate of BATCo, to research, design, develop, manufacture, produce, assemble, market, package, design

packaging for, sell, ship, promote, advertise or distribute tobacco products, or any other goods or products, in Ontario.

(c) No entity, including any subsidiary, affiliate or associate of BATCo, has ever held express or implied authority to act as BATCo's agent to research, design, develop, manufacture, produce, assemble, market, package, design packaging for, sell, ship, promote, advertise or distribute tobacco products, or any other goods or products, in Ontario.

(d) BATCo has never contracted to supply goods or services in Ontario.

(e) BATCo does not hold, and has never held, any assets in Ontario.

(f) BATCo has never owned, leased, used or possessed any real or personal property in Ontario.

(g) BATCo has never been registered extra-provincially in Ontario, and has never been licensed or qualified to conduct, and has never conducted, business in Ontario.

(h) BATCo has never maintained any office, employees, records, place of business, bank account, telephone listing or mailing address in Ontario and has never retained any representatives in Ontario (other than the legal counsel it has retained in connection with this matter). BATCo's office and its books and records are located in the United Kingdom.

(i) BATCo has never been assessed nor paid taxes in Ontario.

BATCo has no connection to the Canadian committees referred to in the Statement of Claim

10. BATCo has never been a member of the Ad Hoc Committee on Smoking and Health or the Canadian Tobacco Manufacturers' Council (collectively "CTMC"). The CTMC has never had express or implied authority to act as an agent for BATCo, and nor has it ever been a servant or employee of BATCo.

11. BATCo did not make representations to the Canadian Federal House of Commons, Standing Committee on Health, Welfare and Social Affairs, in 1969 or at any other time.

BATCo's investment in Imasco

12. Beginning in 1912, BATCo owned approximately 83% of the shares of Imperial Tobacco Company of Canada Limited, which was renamed Imasco Limited ("Imasco") in 1970, and which is now known as Imperial Tobacco Canada Limited ("Imperial"). Over time the shareholding gradually declined, and by 1976 BATCo had become a minority shareholder, owning less than 50% of the shares in Imasco. In 1981, BATCo transferred its remaining shares in Imasco to a fellow subsidiary of BAT Industries, and since that time BATCo has never held any shares, directly or indirectly, in Imasco (now Imperial).

BATCo's relationship with Imasco

13. BATCo and Imasco always operated as separate and distinct corporate entities and maintained all corporate formalities. Each had its own directors, officers and employees, each held separate meetings of its own board of directors and each maintained its own corporate and financial accounts, records and minutes.

14. BATCo never participated in the day-to-day management and control of Imasco, and never directed Imasco how to vote in committees of the Canadian manufacturers or at meetings of the CTMC, or otherwise.

15. BATCo never gave Imasco express or implied authority to act as its agent, and BATCo never held express or implied authority to act as an agent for Imasco.

WORN BEFORE ME at the City of
ondon, England
is 12th day of January, 2010.

Richard Cordeschi

ary Public
d Wales

E.F.A. FOGAN
Notary Public of London, England

(My Commission Expires at death)

DE PINNA
35 PICCADILLY
LONDON
W1J 0LJ
NOTARIES

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Plaintiff

-and-

ROTHMANS INC. et al.
Defendants

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF RICHARD CORDESCHI
(Sworn January 12, 2010)

LAX O'SULLIVAN SCOTT LLP
Counsel
Suite 1920, 145 King Street West
Toronto, Ontario M5H 1J8

Charles F. Scott LSUC#: 14534N
Tel: (416) 646-7997
Brooke A. Shulman LSUC#: 41032N
Tel: (416) 598-7873
Fax: (416) 598-3730

Lawyers for the Defendant British American Tobacco (Investments) Limited

This is **Exhibit "O"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27 2021

SUPERIOR COURT OF JUSTICE – ONTARIO

MASTER D.E. SHORT:	Conference held : January 18, 2018

Telephone Case Conference Report/Order

Court File Number:
HMQ v. Carrerras Rothmans Limited, et al **CV-09-387984CM**

Counsel/Parties at conference:	Email contacts
• Edmund Huang / Shahana Kar / Andi Jin / Peter Entecott for Ontario	
• Sarit Batner / Deborah Templer for RBH; • Steven Sofer / Mischa Armin for the PM defendants; • Craig Lockwood / Sarah Millar for ITL; • Ira Nishisato / Alessandra Nosko / Susan Wortzman for JTI/RJR ;and • Lesley Mercer for the BAT Defendants/CRL.	

Endorsement:

I held a status telephone case conference for the purpose of determining what matters needed to be addressed prior to the hearing of pending motions and to consider appropriate future steps on January 18, 2018.

1. Monthly case conferences shall be held on the second Friday of each month at 1:30pm, with the next case conference scheduled for February 9, 2018. The agenda for each case conference shall be sent out the Monday of that week and shall include the call-in details. The case conferences shall proceed by way of telephone conference, subject to requests by counsel for an attendance in person;

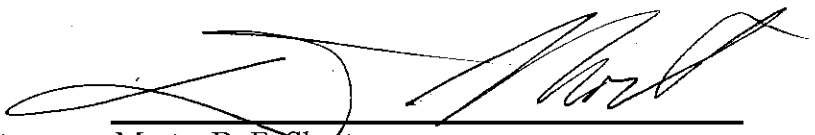
2. The dates reserved for argument of any production/discovery plan motions have been adjourned from February 5/6 to May 2, 3, and 4, 2018. The following timetable was set by the Court:
   a) The plaintiff shall deliver its materials by the end of January;
   b) The defendants shall deliver their responding materials by the end of February;
   c) Cross-examinations, if any, shall be completed by the end of March;
   d) The last day to file materials shall be April 20, 2018;
   e) The plaintiff's two motions shall be separated in materials filed; and
   f) The materials are to be provided to the Court on USB sticks, as well.

3. In addition, I advised counsel that I would speak with Justice Conway regarding the process of scheduling the trial of the Action and would hope to provide counsel with an update at the next case conference (on February 9, 2018).

4. With respect to the scheduling of examinations for discovery, the parties apparently disagree on the specifics of my intended direction as follows:

> *Ontario's view*: The first round of examinations for discovery of all parties shall be completed by December 14, 2018, with undertakings to be answered after that date.
> *Defendants' view*: The parties are to make best efforts to work towards a schedule that would see the first round of examinations for discovery completed by December 14, with answers to undertakings to be answered after that date.

5. Upon reflection, and in keeping with my desire to avoid unnecessary delays, I am directing that the dates for first round discoveries be established by March 31for all examinations. If problems with scheduling arise I will hear submissions and establish a firm schedule for those particular discoveries in the course of the May 2018 motion dates



February 5, 2018

Master D. E. Short

e.c.: Justice Conway

This is **Exhibit "P"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021

SUPERIOR COURT OF JUSTICE – ONTARIO

MASTER D.E. SHORT:	Conference held : February 9, 2018

Telephone Case Conference Report/Order

Court File Number:
HMQ v Rothmans Inc., et al **CV-09-387984**

Counsel/Parties at Conference:	Email contacts
• Antonin I. Pribetic / Shahana Kar / Andi Jin for Ontario	
• Sarit Batner / Deborah Templer for RBH; • Steven Sofer / Mischa Armin for the PM Defendants; • Craig Lockwood for ITL; • Ira Nishisato for JTI/JRJR; • Lesley Mercer for the BAT Defendants/CRL; • John Ormston for CTMC.	

Endorsement:

Pursuant to the Case Conference Report/Order of February 5, 2018, I held a status telephone case conference on February 9, 2018.

1. The next Case Conference in this matter shall be held on March 9, 2018 at 1:30pm. The procedure for this Case Conference shall be in keeping with the procedure described at paragraph 1 of the Case Conference Report/Order of February 5, 2018.

2. The Court advised the parties that Justices Conway and Firestone are aware of Ontario's desire for trial scheduling and the Court shall provide a more fulsome update at the next Case Conference

3. Ontario's production/discovery plan motions are currently scheduled for May 2-4, 2018. The parties agree that these motions do not require three days to argue. The motions are therefore re-scheduled for May 2-3, 2018, only. The parties are directed to file USB

sticks containing their facta and caselaw, in accordance with the timetable provided for at paragraph 2 of the Case Conference Report/Order of February 5, 2018.

4. Ontario is directed to propose a timetable for written interrogatories and examinations for discovery in advance of the next Case Conference.

Master D. E. Short

February 26, 2018

This is **Exhibit "Q"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal
A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021

SUPERIOR COURT OF JUSTICE – ONTARIO

MASTER D.E. SHORT:	Conference held: May 2, 2018

Telephone Case Conference Report/Order

Court File Number: **CV-09-387984**
HMQ v Rothmans Inc., et al

Counsel/Parties at Conference:	Email contacts
• Sunil Mathai/ Shahana Kar/ Edmund Huang/ Andi Jin/ Nansy Ghobrial for Ontario	
• Sarit Batner /Deborah Templer for RBH; • Steven Sofer for the PM Defendants; • Craig Lockwood for ITL; • Ira Nishisato/Caitlin Sainsbury for JTI/RJR; • Lesley Mercer for the BAT Defendants/CRL;	

Endorsement:

I held a status telephone Case Conference on May 2, 2018:

1. Master Short will issue the draft Order approving the Discovery Plan motion and provide the issued Order to Ontario for service on all Defendants.

2. Master Short will make best efforts to finalize and endorse the Case Conference Report/Order for the April 13, 2018 Case Conference by May 4, 2018.

3. Master Short advised that following the last case conference, he discussed timing for the trial with RSJ Morawetz, who at that point, declined to set a trial date pending the release of the SCC decision in the BC HCCR case as in his view it may impact timing of the Ontario HCCR case. Master Short will canvass RSJ Morawetz's availability for an in-person attendance with his Honour for the June 2018 Case Conference, and update the parties accordingly. At that point, the parties may make submissions with respect to the setting of a trial date.

4. Ontario shall forward to Master Short copies of the Facta filed by the Appellant and the Respondent in the Supreme Court of Canada Court File No. 37524.

5. Ontario shall serve Requests to Admit regarding the authenticity of documents by May 31, 2018, and shall make best efforts to do so on a rolling basis before that time. The parties shall address the timing for the delivery of the defendants' responses to the Requests to Admit at the June Case Management Conference.

6. The tentative deadline for the defendants to answer the bulk of Ontario's written interrogatories is February 28, 2019.

Master D. E. Short

Date: May 8, 2018

This is **Exhibit "R"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal
A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021

SUPERIOR COURT OF JUSTICE – ONTARIO

THE HONOURABLE REGIONAL SENIOR JUSTICE G.B. MORAWETZ MASTER D.E. SHORT	Case Conference held : June 8, 2018

Case Conference Report/Order

Court File Number:
***HMQ* v *Rothmans Inc.*, et al.,** **CV-09-387984**

Counsel/Parties at Conference:	Email contacts
• Jacqueline Wall / Shahana Kar / Edmund Huang / Sunil Mathai for Ontario	jacqueline.wall@ontario.ca shahana.kar@ontario.ca edmund.huang@ontario.ca sunil.mathai@ontario.ca
• Paul Steep / Deborah Templer for RBH • Mischa Armin for the PM Defendants • Deborah Glendinning / Craig Lockwood for ITL • Ira Nishisato / Caitlin Sainsbury for JTI/JRJR • David Byers / Lesley Mercer for the BAT Defendants/CRL • John Ormstrom for CTMC	psteeep@mccarthy.ca dtempler@mccarthy.ca mischa.armin@gowlingwlg.com dglendinning@osler.com clockwood@osler.com inishisato@blg.com csainsbury@blg.com dbyers@stikeman.com lmercer@stikeman.com jormston@olflaw.com

Endorsement:

The Honourable Regional Senior Justice Geoffrey B. Morawetz and I held a status case conference in person on June 8, 2018.

1. No trial date will be set at this time. Regional Senior Justice Morawetz and Master Short will continue to monitor the progress of this action.

2. Regional Senior Justice Morawetz advised the parties that he will meet with the Honourable Justice S.E. Firestone in order to identify a trial judge and a back-up trial judge and will report back to the parties in a month's time regarding the identity of the trial judge(s).

3. I will continue to hold monthly case conferences by telephone (CourtCall) on the second Friday of each month.

4. The Honourable Justice B.A. Conway will hear any motions that may be brought by the parties in this matter that fall within her jurisdiction.

5. Regional Senior Justice Morawetz advised the parties that he will make himself available for "reality checks" if the parties wish to discuss their respective strategic objectives. He further advised that the Court's objective is not to hold the parties up and that the Court will keep a trial judge available to hear the trial of this action.

6. I will send updates regarding the monthly case conferences to Regional Senior Justice Morawetz.

7. The defendants shall serve their responses to Ontario's Requests to Admit the authenticity of documents by no later than July 31, 2018.

8. Ontario shall bring its motion in writing seeking leave to amend the Amended Fresh as Amended Statement of Claim to increase the cost of the health care benefits claimed from the $50 billion currently claimed to $330 billion.

9. The parties will advise me if the report regarding the case conference held on April 13, 2018 still needs to be finalized, or whether it is now moot.

10. The next Case Conference in this matter shall be held by telephone (CourtCall) on July 13, 2018 at 1:30 p.m.

June 28, 2018

Master D. E. Short

This is **Exhibit "S"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires September 27 2021

SUPERIOR COURT OF JUSTICE – ONTARIO

MASTER D.E. SHORT	Case Conference held : August 10, 2018

Case Conference Report/Order

Court File Number:
HMQ v *Rothmans Inc.*, et al., CV-09-387984

Counsel/Parties at Conference:	Email contacts
• Jacqueline Wall / Shahana Kar / Edmund Huang / Nansy Ghobrial / Peter Entecott for Ontario	jacqueline.wall@ontario.ca shahana.kar@ontario.ca edmund.huang@ontario.ca nansy.ghobrial@ontario.ca peter.entecott@ontario.ca
• Sarit Batner / Deborah Templer / Michael Feder for RBH • Mischa Armin for the PM Defendants • Deborah Glendinning / Craig Lockwood for ITL • Ira Nishisato / Christine Muir for JTI/JRJR • Lesley Mercer for the BAT Defendants/CRL • John Ormston for the CTMC	sbatner@mccarthy.ca dtempler@mccarthy.ca mfeder@mccarthy.ca mischa.armin@gowlingwlg.com dglendinning@osler.com clockwood@osler.com inishisato@blg.com cmuir@blg.com lmercer@stikeman.com jormston@olflaw.com

Endorsement:

I held a status telephone case conference on August 10, 2018.

1. The parties advised of the release of the Supreme Court of Canada's decision in *British Columbia v Philip Morris International, Inc., et al*, 2018 SCC 36. Ontario takes the position that this decision does not change its proposed late 2020 / early 2021 start of the trial in this action, the Defendants maintain that it is premature to set a trial date. The Court will advise the Honourable Regional Senior Justice Morawetz of the release of the

Supreme Court of Canada's judgment and continue to provide the parties with updates as to the identity of the trial judge and the back-up trial judge.

2. The parties will continue to communicate regarding Ontario's Healthcare Databases.

3. The Defendants undertake to make best efforts to provide Ontario with the documents that they intend to put to each discovery witness in advance of their scheduled examination with as much notice as reasonably possible. The Defendants shall provide the Court with an update on their efforts at the September 14, 2018, case conference.

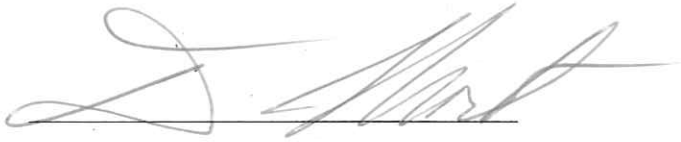
4. The Court is available on short notice to assist with any issues that may arise between the scheduled monthly case conferences.

5. The Defendants shall provide the Court with all the pleadings in the third party actions, including the court file numbers, by way of email. The Court will inquire as to the status of the third party claims and provide the parties with an update at the September 14, 2018, case conference.

6. The parties agreed that the report regarding the case conference held on April 13, 2018 is now moot and does not need to be finalized.

7. The next Case Conference shall be held by telephone conference on September 14, 2018 at 9:30 a.m.

August 31, 2018



Master D. E. Short

This is **Exhibit "T"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27 2021

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

NOTICE

Subject to the approval of this Honourable Court, the defendants, by their respective lawyers, do hereby give notice that they do not oppose the attached draft order granting leave to the plaintiff, Her Majesty the Queen in right of Ontario, to amend its Amended Fresh as Amended Statement of Claim and file the Second Amended Fresh as Amended Statement of Claim.

Date: June , 2018

GOWLING WLG
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Steven S. Sofer
Mischa Armin

Lawyers for the Defendants,
Philip Morris International, Inc., Philip Morris U.S.A. Inc. and Altria Group, Inc.

Date: June , 2018

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

David Byers
Lesley Mercer

Lawyers for the Defendants,
British American Tobacco p.l.c., B.A.T Industries plc, and British American Tobacco (Investments) Limited

Date: June 27 , 2018

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, ON M5H 3Y4

Ira Nishisato
Cindy Clarke
Caitlin Sainsbury

Lawyers for the Defendants,
JTI-MacDonald Corp., R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Date: June , 2018

HARPER GREY LLP
320 Vancouver Center
650 West Georgia Street
Vancouver, BC V6B 4P7

Siobhan Sams

Lawyers for the Defendant, Carreras Rothmans Limited

Date: June , 2018

McCARTHY TÉTRAULT LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Sarit E. Batner
Deborah Templer

Lawyers for the Defendants,
Rothmans Inc. and Rothmans Benson & Hedges, Inc.

Date: June , 2018

OSLER, HOSKIN & HARCOURT LLP
Suite 6100, Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Craig T. Lockwood
Sarah Millar

Lawyers for the Defendant,
Imperial Tobacco Canada Limited

Date: June , 2018

ORMSTON LIST FRAWLEY LLP
Barristers and Solicitors
40 University Ave., Suite 720
Toronto, ON M5J 1T1

John P. Ormston

Lawyers for the Defendant,
Canadian Tobacco Manufacturers' Council

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

MASTER DONALD E. SHORT	)	**DAY, THE**	**DAY**
	)		
	)	**OF**	**, 2018**
	)		

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

ORDER

THIS MOTION, made by the plaintiff, Her Majesty the Queen in right of Ontario (**"Ontario"**), for an Order granting leave to Ontario to amend its Amended Fresh as Amended Statement of Claim in the form attached as **Schedule "A"** to this Order and file the Second Amended Fresh as Amended Statement of Claim was heard in writing this day at the Courthouse at 393 University Avenue, Toronto, Ontario.

ON READING the motion record filed by the plaintiff, including the Notice executed by the defendants, by their respective counsel, stating that the defendants do not oppose the motion,

1. **THIS COURT ORDERS** that Ontario is granted leave to serve and file the Second Amended Fresh as Amended Statement of Claim in the form attached as Schedule "A" to this Order.

2. **THIS COURT ORDERS** that there shall be no costs in respect of this motion.

MASTER DONALD E. SHORT

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

NOTICE

Subject to the approval of this Honourable Court, the defendants, by their respective lawyers, do hereby give notice that they do not oppose the attached draft order granting leave to the plaintiff, Her Majesty the Queen in right of Ontario, to amend its Amended Fresh as Amended Statement of Claim and file the Second Amended Fresh as Amended Statement of Claim.

Date: June , 2018

GOWLING WLG
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Steven S. Sofer
Mischa Armin

Lawyers for the Defendants,
Philip Morris International, Inc., Philip Morris U.S.A. Inc. and Altria Group, Inc.

Date: June 27, 2018

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

David Byers
Lesley Mercer

Lawyers for the Defendants,
British American Tobacco p.l.c., B.A.T Industries plc, and British American Tobacco (Investments) Limited

Date: June , 2018

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, ON M5H 3Y4

Ira Nishisato
Cindy Clarke
Caitlin Sainsbury

Lawyers for the Defendants,
JTI-MacDonald Corp., R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Date: June , 2018

HARPER GREY LLP
320 Vancouver Center
650 West Georgia Street
Vancouver, BC V6B 4P7

Siobhan Sams

Lawyers for the Defendant, Carreras Rothmans Limited

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

NOTICE

Subject to the approval of this Honourable Court, the defendants, by their respective lawyers, do hereby give notice that they do not oppose the attached draft order granting leave to the plaintiff, Her Majesty the Queen in right of Ontario, to amend its Amended Fresh as Amended Statement of Claim and file the Second Amended Fresh as Amended Statement of Claim.

Date: June , 2018

GOWLING WLG
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Steven S. Sofer
Mischa Armin

Lawyers for the Defendants,
Philip Morris International, Inc., Philip Morris U.S.A. Inc. and Altria Group, Inc.

Date: June , 2018

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

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Lesley Mercer

Lawyers for the Defendants,
British American Tobacco p.l.c., B.A.T Industries plc, and British American Tobacco (Investments) Limited

Date: June , 2018

BORDEN LADNER GERVAIS LLP
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Scotia Plaza, 40 King Street West
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Ira Nishisato
Cindy Clarke
Caitlin Sainsbury

Lawyers for the Defendants,
JTI-MacDonald Corp., R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Date: June 27, 2018

HARPER GREY LLP
320 Vancouver Center
650 West Georgia Street
Vancouver, BC V6B 4P7

Siobhan Sams

Lawyers for the Defendant, Carreras Rothmans Limited

Date: June , 2018

McCARTHY TÉTRAULT LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Sarit E. Batner
Deborah Templer

Lawyers for the Defendants,
Rothmans Inc. and Rothmans Benson & Hedges, Inc.

Date: June , 2018

OSLER, HOSKIN & HARCOURT LLP
Suite 6100, Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Craig T. Lockwood
Sarah Millar

Lawyers for the Defendant,
Imperial Tobacco Canada Limited

Date: June , 2018

ORMSTON LIST FRAWLEY LLP
Barristers and Solicitors
40 University Ave., Suite 720
Toronto, ON M5J 1T1

John P. Ormston

Lawyers for the Defendant,
Canadian Tobacco Manufacturers' Council

Date: June , 2018

McCARTHY TÉTRAULT LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Sarit E. Batner
Deborah Templer

Lawyers for the Defendants,
Rothmans Inc. and Rothmans Benson & Hedges, Inc.

Date: June 26 , 2018

OSLER, HOSKIN & HARCOURT LLP
Suite 6100, Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Craig T. Lockwood
Sarah Millar

Lawyers for the Defendant,
Imperial Tobacco Canada Limited

Date: June , 2018

ORMSTON LIST FRAWLEY LLP
Barristers and Solicitors
40 University Ave., Suite 720
Toronto, ON M5J 1T1

John P. Ormston

Lawyers for the Defendant,
Canadian Tobacco Manufacturers' Council

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

NOTICE

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Date: June 27, 2018

GOWLING WLG
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Steven S. Sofer
Mischa Armin

Lawyers for the Defendants,
Philip Morris International, Inc., Philip Morris U.S.A. Inc. and Altria Group, Inc.

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

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Date: June , 2018

GOWLING WLG
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

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Lawyers for the Defendants,
Philip Morris International, Inc., Philip Morris U.S.A. Inc. and Altria Group, Inc.

Date: June , 2018

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5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

David Byers
Lesley Mercer

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Date: June , 2018

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JTI-MacDonald Corp., R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Date: June , 2018

HARPER GREY LLP
320 Vancouver Center
650 West Georgia Street
Vancouver, BC V6B 4P7

Siobhan Sams

Lawyers for the Defendant, Carreras Rothmans Limited

Date: June 27, 2018

McCARTHY TÉTRAULT LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Sarit E. Batner
Deborah Templer

Lawyers for the Defendants,
Rothmans Inc. and Rothmans Benson & Hedges, Inc.

Date: June , 2018

OSLER, HOSKIN & HARCOURT LLP
Suite 6100, Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Craig T. Lockwood
Sarah Millar

Lawyers for the Defendant,
Imperial Tobacco Canada Limited

Date: June , 2018

ORMSTON LIST FRAWLEY LLP
Barristers and Solicitors
40 University Ave., Suite 720
Toronto, ON M5J 1T1

John P. Ormston

Lawyers for the Defendant,
Canadian Tobacco Manufacturers' Council

This is **Exhibit "U"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

Wall, Jacqueline (MAG)

From: Beson Yung <beson@kaplitigation.com>
Sent: February-28-19 4:51 PM
To: Wall, Jacqueline (MAG)
Subject: RE: HMQ v Rothmans et al (CV-09-387984) - Ontario's Motion for Leave to Amend Statement of Claim

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Jacqueline

I spoke to Sandra today, she agrees that we've exhausted all means to track and recover the materials yet to no avail. She recommended to order the file in from storage to confirm if the motion was actually heard and processed, but the file consist of 30 boxes and it is too much trouble to order and go through them. Ultimately, Sandra advised you could re-submit the materials for Master Short to process, you may also prepare a letter of explanation. Please let me know if the above is helpful. Thank you.

Regards,

Beson Yung

393 University Ave., Suite 104, Toronto, ON M5G 1E6
111 Regina Rd. Unit 8, Vaughan, L4L 8A5
T. (416) 861-9122
F. (416) 861-1902
beson@kaplitigation.com

Please visit our website with LIVE-CHAT
www.kaplitigation.com

From: Wall, Jacqueline (MAG) <Jacqueline.Wall@ontario.ca>
Sent: Wednesday, February 27, 2019 8:38 PM
To: Beson Yung <beson@kaplitigation.com>
Subject: RE: HMQ v Rothmans et al (CV-09-387984) - Ontario's Motion for Leave to Amend Statement of Claim

Thank you for your report, Beson. Please make further inquiries of Sandra tomorrow. We are trying to determine whether the motion is still with Master Short or has been misplaced by the Court such that it needs to be refiled.

Jacqueline L. Wall
Counsel
Crown Law Office – Civil
Ministry of the Attorney General
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9

Tel.: 416-325-8435
Fax: 416-326-4181
Email: jacqueline.wall@ontario.ca

From: Beson Yung [mailto:beson@kaplitigation.com]
Sent: February-27-19 4:30 PM
To: Wall, Jacqueline (MAG)
Subject: RE: HMQ v Rothmans et al (CV-09-387984) - Ontario's Motion for Leave to Amend Statement of Claim

Hi Jacqueline

David Beckes told me that he never received the materials personally, however, he did confirm that Master Short did get your materials from another Master as he had ceased it. Having said that, there is no record of the order ever being issued. I spoke to the court's data entry team, they looked all over and could not find the materials or the order, if one exists. The court record indicates that the court office supervisor, Sandra, took the motion materials in, I will check with her tomorrow, she left early today. Thank you.

Regards,

Beson Yung

393 University Ave., Suite 104, Toronto, ON M5G 1E6
111 Regina Rd. Unit 8, Vaughan, L4L 8A5
T. (416) 861-9122
F. (416) 861-1902
beson@kaplitigation.com

Please visit our website with LIVE-CHAT
www.kaplitigation.com

From: Wall, Jacqueline (MAG) <Jacqueline.Wall@ontario.ca>
Sent: Wednesday, February 27, 2019 10:41 AM
To: KAP Litigation (kap@kaplitigation.com) <kap@kaplitigation.com>
Subject: HMQ v Rothmans et al (CV-09-387984) - Ontario's Motion for Leave to Amend Statement of Claim

We would appreciate KAP Litigation's assistance with the following matter. We act for the plaintiff, Her Majesty the Queen in right of Ontario, in **action no. CV-09-387984 (Her Majesty the Queen in right of Ontario v. Rothmans Inc. et al**). Master Short case manages the action. On June 28, 2018, we filed Ontario's motion in writing seeking leave to amend the statement of claim. We also sent an electronic version of the motion materials and draft order to Master Short's Registrar, David Backes. The motion is not opposed by the defendants who did not serve or file any responding materials. To date, we have not been notified by the court that Master Short has decided the motion.

We request that you check the court's computer system to determine whether the Court Office has any record of Master Short having issued the order. If so, please obtain a copy of the order. If there is no record of an order, are you able to confirm that the motion record was actually delivered to Master Short? We wish to be certain that there has not been some court administrative issue with the delivery of the motion record to the Master, before we raise the status of the motion with him as our next Case Conference on March 8, 2019.

We request that you complete this assignment by the end of the day on Thursday February 28. If you have any questions, please contact the undersigned. Thank you very much.

Jacqueline L. Wall
Counsel
Crown Law Office – Civil
Ministry of the Attorney General
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9

Tel.: 416-325-8435
Fax: 416-326-4181
Email: jacqueline.wall@ontario.ca

From: Jin, Andrew (MAG)
Sent: June-28-18 4:16 PM
To: Backes, David (MAG)
Cc: steven.sofer@gowlingwlg.com; mischa.armin@gowlingwlg.com; dbyers@stikeman.com; Lesley Mercer; inishisato@blg.com; cclarke@blg.com; csainsbury@blg.com; ssams@harpergrey.com; sbatner@mccarthy.ca; dtempler@mccarthy.ca; clockwood@osler.com; smillar@osler.com; John Ormston; Wall, Jacqueline (MAG); Mathai, Sunil (MAG)
Subject: HMQ v Rothmans et al (CV-09-387984) - Ontario's Motion for Leave to Amend Statement of Claim

Dear Mr. Backes,

On June 8, 2018, Master Short directed that Ontario should bring its motion for leave to amend its claim in writing, because it is unopposed. Attached is Ontario's covering correspondence, motion record, and draft Order for this motion.

These materials were served and filed at the civil intake counter today. We provide electronic copies to you directly in the event that this may be of assistance to yourself or Master Short.

Yours Respectfully,

Andi Jin
Counsel
Ministry of the Attorney General | Crown Law Office - Civil
720 Bay Street, 8th Floor | Toronto, ON | M7A 2S9
T: 416-326-4110| F: 416-326-4181 | E: andrew.jin@ontario.ca

This is **Exhibit "V"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law Expires September 27 2021

Entecott, Peter (MAG)

From: Wall, Jacqueline (MAG)
Sent: Wednesday, February 27, 2019 3:38 PM
To: Craig Lockwood (clockwood@osler.com); Ira Nishisato; Clarke, Cynthia D.; Nosko, Alessandra; 'Susan Wortzman'; 'lmercer@stikeman.com'; Templer, Deborah; Sofer, Steven; Mischa O. Armin; Millar, Sarah; John Ormston; Siobhan Sams; R. Paul Steep (psteep@mccarthy.ca); Deborah Glendinning (dglendinning@osler.com); dbyers@stikeman.com; Caitlin Sainsbury; Christine Muir; Sarit E. Batner; duxbury@inchlaw.com; Amanda McInnis
Cc: Huang, Edmund (MAG); Kar, Shahana (MAG); Entecott, Peter (MAG); Jin, Andrew (MAG)
Subject: Her Majesty the Queen in right of Ontario v. Rothmans Inc. et al. - Draft Agenda for Case Conference on March 8, 2019
Attachments: Agenda for March 8 2019 Case Conference.docx

Dear Counsel,

We have enclosed the draft agenda for the next Case Conference which is scheduled to be held by telephone conference on Friday March 8, 2019, commencing at 9:30 a.m. Please confirm that you are in agreement with the draft agenda or advise of any additional matters that you may wish to add to the agenda by the close of business on Friday March 1, and we shall send the agenda to Master Short's Registrar thereafter.

Jacqueline L. Wall
Counsel
Crown Law Office – Civil
Ministry of the Attorney General
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9

Tel.: 416-325-8435
Fax: 416-326-4181
Email: jacqueline.wall@ontario.ca

Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.

Court File No. CV-09-387984

Call In Details:

Telephone Conference Details: 416-212-8010 or 1-866-602-5423

Conference ID: 6747367

AGENDA

Case Conference – March 8, 2019 at 9:30 a.m.

1. Update on answers to Ontario's undertakings
2. Ontario's request that deadlines be set for defendants to:
   (a) serve their outstanding responses to Ontario's written examinations for discovery; and
   (b) serve their experts' reports.
3. Defendants' motion to obtain a statistically meaningful sample (June 4-7, 2019)
4. Ontario's motion to amend Amended Fresh as Amended Statement of Claim
5. Grand River Enterprises Six Nations Ltd.'s ("GRE") proposed timetable for June 18-19, 2019 motion to strike the third party claims:
   - GRE shall serve its motion materials by May 1, 2019
   - Responding parties shall deliver their motion materials by May 24, 2019
   - Parties to exchange factums by June 7, 2019

This is **Exhibit "W"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

MASTER DONALD E. SHORT	)	FRI **DAY, THE** 8th **DAY**
	)	
	)	**OF** MARCH **, 2019**
	)	

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

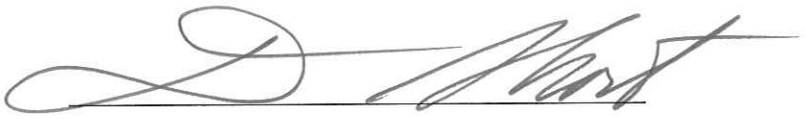
ORDER

THIS MOTION, made by the plaintiff, Her Majesty the Queen in right of Ontario ("**Ontario**"), for an Order granting leave to Ontario to amend its Amended Fresh as Amended Statement of Claim in the form attached as **Schedule "A"** to this Order and file the Second Amended Fresh as Amended Statement of Claim was heard in writing this day at the Courthouse at 393 University Avenue, Toronto, Ontario.

ON READING the motion record filed by the plaintiff, including the Notice executed by the defendants, by their respective counsel, stating that the defendants do not oppose the motion,

1. **THIS COURT ORDERS** that Ontario is granted leave to serve and file the Second Amended Fresh as Amended Statement of Claim in the form attached as Schedule "A" to this Order.

2. **THIS COURT ORDERS** that there shall be no costs in respect of this motion.



MASTER DONALD E. SHORT

SCHEDULE "A"

Court File No.: CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

SECOND AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

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

IF YOU WISH TO DEFEND THAT 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 does not have a lawyer, serve it on the plaintiff, 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.

IF YOU PAY THE PLAINTIFF'S CLAIM AND $1,500 FOR COSTS WITHIN THE TIME FOR SERVING AND FILING YOUR STATEMENT OF DEFENCE, YOU MAY MOVE TO HAVE THIS PROCEEDING DISMISSED BY THE COURT. IF YOU BELIEVE THE AMOUNT CLAIMED FOR COSTS IS EXCESSIVE, YOU MAY PAY THE PLAINTIFF'S CLAIM AND HAVE THE COSTS ASSESSED BY THE COURT.

Date: …….

Issued by: …….

Local Registrar

Address: 393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

TO: Rothmans Inc.
1500 Don Mills Road
Toronto, Ontario

AND TO: Rothmans Benson & Hedges Inc.
1500 Don Mills Road,
Toronto, Ontario.

AND TO: Carreras Rothmans Limited
Globe House
1 Water Street, London.

AND TO: Altria Group, Inc.
6601 Broad Street, Richmond
Virginia, USA

AND TO: Philip Morris USA Inc
6601 Broad Street, Richmond
Virginia, USA

AND TO: Philip Morris International Inc
120 Park Ave.,
New York, New York.

AND TO: JTI-Macdonald Corp.
5151 George Street, Box 247
Halifax, Nova Scotia

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

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

AND TO: Imperial Tobacco Canada Limited
3711 St. Antoine Street
Montreal, Quebec

AND TO: British American Tobacco p.l.c.,
Globe House, 4 Temple Place,
London, England.

AND TO: B.A.T Industries p.l.c.
Globe House
4 Temple Place
London, England

AND TO: British American Tobacco (Investments) Limited
Globe House
1 Water Street,
London, England.

AND TO: Canadian Tobacco Manufacturers' Council
1808 Sherbrooke St. West
Montreal, Quebec

TABLE OF CONTENTS

I. RELIEF CLAIMED

1. The Plaintiff, Her Majesty the Queen in right of Ontario (the "Crown"), claims against the Defendants, jointly and severally:

   (a) recovery in the amount of $~~50~~330,000,000,000.00 (~~fifty~~ three hundred and thirty billion dollars) for the cost of health care benefits, resulting from tobacco related disease or the risk of tobacco related disease, which have been paid or will be paid by the Crown for insured persons;

   (b) its costs of this action on a substantial indemnity basis;

   (c) pre-judgment and post-judgment interest in accordance with the provisions of s. 128 of the *Courts of Justice Act,* 1990, R.S.O. and amendments thereto; and

   (d) such further and other relief as this Honourable Court deems just.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

2. The Crown provides health care benefits for the population of insured persons who suffer tobacco related disease or the risk of tobacco related disease as a result of the tobacco related wrongs committed by the Defendants. Pursuant to section 2 of the *Tobacco Damages and Health Care Costs Recovery Act, 2009,* S.O. 2009 C.13 (the "*Act*"), the Crown claims against the Defendants for recovery of the cost of health care benefits,

namely:

(a) the present value of the total expenditure by the Crown for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease, and

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

caused or contributed to by the tobacco related wrongs hereinafter described. Further particulars of the costs incurred by the Crown will be provided prior to trial.

3. Pursuant to subsection 2(1) and section 2(4)(b) of the Act, the Crown brings this action to recover the costs of health care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes.

4. Pursuant to subsections 2(1) and 2(2) of the Act, the Crown brings this action as a direct and distinct action for the recovery of health care benefits caused or contributed to by a tobacco related wrong as defined in the Act. The Crown does so in its own right and not on the basis of a subrogated claim.

5. The words and terms used in this Statement of Claim including, “cost of health care benefits”, “disease”, “exposure”, “health care benefits”, “insured person”, “manufacture”, “manufacturer”, “promote”, “promotion”, “tobacco product”, “tobacco related disease”, and “tobacco related wrong”, have the meanings ascribed to them in the Act.

6. Also in this Statement of Claim:

(a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and

(b) "to smoke" or "smoking" means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette.

B. The Defendants

7. The Defendant, Rothmans Inc., is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, Toronto, Ontario.

8. The Defendant, Rothmans, Benson & Hedges Inc. (created through the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited), is a company incorporated pursuant to the laws of Canada with a registered office at 1500 Don Mills Road, North York, Ontario.

9. The Defendant, Carreras Rothmans Limited (formerly known as John Sinclair, Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London.

10. The Defendant, Altria Group, Inc. (formerly known as Philip Morris Companies Inc.), is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 Broad Street, Richmond, Virginia, in the United States of America.

11. The Defendant, Philip Morris USA Inc. (formerly known as Philip Morris Incorporated), is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 Broad Street, Richmond, Virginia in the United States of America and it engaged, directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario.

12. The Defendant, Philip Morris International Inc., is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Ave., New York, New York.

13. The Defendant, JTI-Macdonald Corp. (formerly RJR-Macdonald Corp., RJR-Macdonald Inc., and Macdonald Tobacco Inc.), is a company incorporated pursuant to the laws of Nova Scotia with a registered office at 5151 George Street, Box 247, Halifax, Nova Scotia.

14. The Defendant, R.J. Reynolds Tobacco Company, is a company incorporated pursuant to the laws of North Carolina and has its principal office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America and it engaged, directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario.

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

16. The Defendant, Imperial Tobacco Canada Limited (created through the amalgamation of, *inter alia*, Imperial Tobacco Limited and Imasco Ltd.), is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street, Montreal, Quebec.

17. The Defendant, British American Tobacco p.l.c., is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England and is a successor in interest to the Defendants, B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited.

18. The Defendant, B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and Tobacco

Securities Trust Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England and is a successor in interest to the Defendant, British American Tobacco (Investments) Limited.

19. The Defendant, British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England.

20. All of the Defendants described above 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, including cigarettes; or

(d) for one or more of the material fiscal years, each has derived at least 10% of its revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products, including cigarettes, by itself or by other persons.

21. The Defendant, Canadian Tobacco Manufacturers' Council ("CTMC"), is a company incorporated pursuant to the laws of Canada and has a registered office at 1808 Sherbrooke St. West, Montreal, Quebec. It is the trade association of the Canadian tobacco industry, particulars of which are set out in paragraphs 110-116.

22. CTMC is a manufacturer pursuant to the Act by reason of its having been primarily engaged in one or more of the following activities:

(a) the advancement of the interests of manufacturers,

(b) the promotion of cigarettes, and

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

particulars of which are set out in paragraphs 110-116.

III. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

A. Canadian Tobacco Companies

The Defendant Rothmans Inc.

23. Rothmans Inc., and its predecessor corporations, have been part of the Canadian tobacco industry for the past 100 years. Its predecessor companies include Rothmans of Pall Mall Canada Limited, which was incorporated in 1956 and changed its name in 1985 to ROTHMANS INC. Rothmans Inc. was incorporated in 2000 as an amalgamation of ROTHMANS INC., ROTHMANS OF CANADA LTD., and ROTHMANS PARTNERSHIP IN INDUSTRY CANADA LIMITED.

24. Rothmans Inc. has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

The Defendant Rothmans, Benson & Hedges Inc.

25. Rothmans of Pall Mall Limited, incorporated pursuant to the laws of Canada in 1980, acquired part of the tobacco related business of ROTHMANS INC. in 1985 and engaged, until it amalgamated with Benson & Hedges (Canada) Inc. in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

26. Benson & Hedges (Canada) Inc., incorporated in 1934, engaged, until it amalgamated with Rothmans of Pall Mall Limited in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

27. Rothmans, Benson & Hedges Inc., formed in 1986 by the amalgamation of Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc., has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario, including cigarettes manufactured by the Defendant Philip Morris USA Inc.

28. Rothmans, Benson & Hedges Inc. manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names, including Rothmans and Benson & Hedges.

29. Rothmans, Benson & Hedges Inc. is 60% owned by Rothmans Inc. and 40% owned by FTR Holding S.A., a Swiss company. FTR Holding S.A. is a subsidiary of the Defendant, Philip Morris International Inc. and, at one time, was a subsidiary of the Defendant Altria Group, Inc. It is also affiliated with the Defendant, Philip Morris U.S.A. Inc.

The Defendant JTI-Macdonald Corp.

30. MacDonald Brothers and Company Tobacco Merchants carried on business commencing in 1858 and was renamed W.C. MacDonald Incorporated, Tobacco Merchant and Manufacturer, and then renamed W.C. MacDonald Incorporated in 1930, and again changed its name to Macdonald Tobacco Inc. in 1957, and became a wholly owned subsidiary of the Defendant, R.J. Reynolds Tobacco Company, in 1974.

31. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald Tobacco Inc. and acquired all of Macdonald Tobacco Inc.'s assets and liabilities and continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc. RJR-Macdonald Inc. was a wholly owned subsidiary of RJR Nabisco Holdings Corp., which was the ultimate parent of R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International. In March 1999, RJR Nabisco sold RJR-Macdonald Corp., which was the amalgamation of RJR-Macdonald Inc. and a subsidiary of RJR-Macdonald Inc., to Japan Tobacco Inc. As a result of that transaction, the name of the RJR-Macdonald Corp. was changed to JTI-Macdonald Corp.

32. JTI-Macdonald Corp. (and its predecessor corporations, Macdonald Tobacco Inc., RJR-Macdonald Inc. and RJR-Macdonald Corp., for whom it is responsible at law) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario, including cigarettes manufactured by the Defendant R.J. Reynolds Tobacco Company.

33. JTI-Macdonald Corp. manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names including Export "A" and Vantage.

The Defendant Imperial Tobacco Canada Limited

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

35. In or about 1970, part of the tobacco related business of Imasco was acquired by Imperial Tobacco Limited, (a wholly owned subsidiary).

36. In or about February, 2000, a 58% shareholding interest in Imasco was acquired by a wholly owned subsidiary of British American Tobacco p.l.c., British American Tobacco (Canada) Limited. At that time, British American Tobacco p.l.c. was the owner of 42% of the issued and outstanding shares in Imasco. Imasco and British American Tobacco (Canada) Limited were then amalgamated and the name of the amalgamated entity was changed to Imperial Tobacco Canada Limited (“Imperial”). In the result, British American Tobacco p.l.c. became the owner of 100% of the issued and outstanding shares in Imperial.

37. Imperial is a wholly owned subsidiary of the Defendant, British American Tobacco p.l.c.

38. Imperial (and its predecessor corporations) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

39. Imperial manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names, including Player's and duMaurier.

B. Multinational Tobacco Enterprises

40. There are four multinational tobacco enterprises ("Groups") whose member companies engage directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario and throughout the world. The four Groups are:

(a) the Rothmans Group;

(b) the Philip Morris Group;

(c) the RJR Group; and

(d) the BAT Group.

41. At all material times, cigarettes sold in Ontario have been manufactured and promoted by manufacturers who are, or were, members of one of the four Groups, as set out above in paragraphs 23-39.

42. The manufacturers of cigarettes sold in Ontario within each Group have had common policies relating to smoking and health. The common policies have been directed or co-ordinated by the Defendants within each group ("Lead Companies") or their predecessors in interest for whom they are in law responsible. Particulars of the common policies and the manner in which they were implemented are set out in paragraphs 86 to 141.

43. At all material times since 1950, the Lead Companies of the four Groups were as follows:

Group	**Lead Companies**
Rothmans Group	Carreras Rothmans Limited [1950 to present]
Philip Morris Group	Altria Group, Inc. (formerly Philip Morris Companies Inc.) [1985 to present] Philip Morris USA Inc. [1950 to present] Philip Morris International, Inc. [1987 to present]

Group	**Lead Companies**
RJR Group	R.J. Reynolds Tobacco Company [1875 to present] R.J. Reynolds Tobacco International, Inc. [1976 to present]
BAT Group	British American Tobacco p.l.c. [1998 to present] B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and before that Tobacco Securities Trust Limited) [1976 to present] British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited) [1902 to present]

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

(a) Rothmans, Benson & Hedges Inc. (federally incorporated in Canada) [1986 to 2009];

(b) Rothmans Inc. (federally incorporated in Canada) [2000 to 2009];

(c) Rothmans of Pall Mall Limited (incorporated in the United Kingdom) [1960 to present];

(d) John Sinclair, Limited (incorporated in the United Kingdom) [1905 to 1972], later renamed Carreras Rothmans Limited [1972 to present];

(e) Carreras, Limited (incorporated in the United Kingdom) [1903 to 1972], later renamed Rothmans International Limited [1972 to 1981], Rothmans International p.l.c. [1981 to 1993], and Ryesekks p.l.c. [1993];

(f) Rothmans of Pall Mall Canada Limited (federally incorporated in Canada) [1956 to 1985], later renamed ROTHMANS INC. [1985 to 2000];

(g) Rothmans of Canada Kings Limited (federally incorporated in Canada) [1980 to 1985], later renamed Rothmans of Pall Mall Limited [1985 to 1986]; and

(h) Lintpenny Limited (incorporated in the United Kingdom) [1986], later renamed Rothmans International Services Limited [1986 to 1991], Rothmans International Tobacco Limited [1991 to 1993], and then Rothmans International Services Limited [1993 to present].

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

(a) Philip Morris Companies Inc. (incorporated in Virginia) [1985 to 2003], later renamed Altria Group, Inc. [2003 to present];

(b) Philip Morris & Co. Limited (incorporated in Virginia), later renamed Philip Morris USA Inc. [1919 to present];

(c) Philip Morris International, Inc. (incorporated in Virginia) [1987 to present];

(d) Rothmans, Benson & Hedges Inc. (federally incorporated in Canada) [1986 to present]; and

(e) Benson & Hedges (Canada) Inc. (federally incorporated in Canada) [1934 to 1986].

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

(a) R.J. Reynolds Tobacco Company [1875 to present];

(b) R.J. Reynolds Tobacco International, Inc. [1976 to 1999];

(c) Macdonald Tobacco Inc. [1974 to 1979];

(d) RJR-Macdonald Inc. [1978 to 1999]; and

(e) RJR-Macdonald Corp. [1999], later renamed JTI-Macdonald Corp. [1999 to present].

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

(a) Imperial Tobacco Company of Canada, Limited (federally incorporated in Canada) [1912 to 1966], later renamed Imperial Tobacco Company of Canada Limited [1966 to 1970], and then Imasco Limited [1970 to 2000];

(b) B.A.T Industries p.l.c. [1976 to present];

(c) British American Tobacco (Investments) Limited [1902 to present];

(d) British American Tobacco p.l.c. [1998 to present];

(e) Imperial Tobacco Canada Limited (incorporated in Canada) [2000 to present];

(f) Imperial Tobacco Sales Company of Canada Limited (incorporated in Canada) [1931 to 1966], later renamed Imperial Tobacco Sales Limited [1966 to 1969], Imperial Tobacco Products Limited [1969 to 1974], and Imperial Tobacco Limited [1970 to 2000];

(g) Brown & Williamson Tobacco Corporation [1927 to 2004]; and

(h) American Tobacco Company [1994 to present].

IV. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

48. The Crown states that the Defendants, R.J. Reynolds Tobacco Company, Rothmans Inc. (and its predecessor corporations), Rothmans, Benson & Hedges Inc. (and its predecessor corporations), Philip Morris USA Inc. (formerly known as Philip Morris Incorporated), JTI-Macdonald Corp. (and its predecessor corporations) and Imperial (and its predecessor corporations), all of which engaged directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario, have committed tobacco related wrongs as that term is defined in the *Act*. In particular, these Defendants, hereinafter referred to as Direct Breach Defendants, have committed the following breaches of common law, equitable or statutory duties or obligations owed by these Defendants to persons in Ontario who have been exposed or might become exposed to a tobacco product manufactured by them and offered for sale in Ontario. As a result of these tobacco related wrongs, insured persons in Ontario have suffered tobacco related disease or the risk of tobacco related disease and the Crown has incurred expenditures for health care benefits provided to these insured persons.

A. Breaches of Common Law, Equitable or Statutory Duties or Obligations

The Defendants' Knowledge

49. The Direct Breach Defendants designed and manufactured cigarettes sold in Ontario to deliver nicotine to smokers.

50. 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.

51. Smoking and exposure to second hand smoke cause or contribute to disease including, but not limited to:

(a) chronic obstructive pulmonary disease and related conditions, including:

(i) emphysema;

(ii) chronic bronchitis;

(iii) chronic airways obstruction; and

(iv) asthma;

(b) cancer, including:

(i) cancer of the lung;

(ii) cancer of the lip, oral cavity and pharynx;

(iii) cancer of the larynx;

(iv) cancer of the esophagus;

(v) cancer of the bladder;

(vi) cancer of the kidney;

(vii) cancer of the pancreas; and

(viii) cancer of the stomach;

(c) circulatory system diseases, including:

(i) coronary heart disease;

(ii) pulmonary circulatory disease;

(iii) vascular disease; and

(iv) peripheral vascular disease;

(d) increased morbidity and general deterioration of health; and

(e) fetal harm.

52. The Defendants have been aware since 1950, or from the date of their incorporation if subsequent to that date, that, when smoked as intended, cigarettes:

(a) contain substances which can cause or contribute to disease;

(b) produce by-products which can cause or contribute to disease; and

(c) cause or contribute to addiction to nicotine.

53. By 1950, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that smoking cigarettes could cause or contribute to the diseases set out in paragraph 51 herein.

54. By 1950, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that the nicotine present in cigarettes is addictive. In the alternative, at all material times, the Defendants knew or ought to have known that:

(a) nicotine is an active ingredient in cigarettes;

(b) smokers crave nicotine; and

(c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

55. By 1970 or thereabouts, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that exposure to second hand smoke could cause or contribute to disease.

Breach of the Duty - Design and Manufacture

56. At all material times since 1950, the Direct Breach Defendants owed a duty of care to persons exposed to cigarettes manufactured by them to design and manufacture a reasonably safe product which would not cause addiction and disease, and to take all reasonable measures to eliminate, minimize, or reduce the risks of addiction and disease from smoking the cigarettes they manufactured and promoted.

57. The Direct Breach Defendants have breached, and continue to breach, these duties since 1950 by failing to design a reasonably safe product which would not cause addiction and disease, and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of addiction and disease from smoking cigarettes manufactured by them.

58. The Direct Breach Defendants, in the design, manufacture and promotion of their cigarettes, created, and continue to create, an unreasonable risk of harm to the public from addiction and disease as a result of smoking or exposure to second hand smoke from which they have failed to protect the public, particulars of which are set out below.

59. The Direct Breach Defendants increased the risks of addiction and disease from smoking by manipulating the level and bio-availability of nicotine i.e. the biological availability of nicotine in the body from smoking their cigarettes, for purposes of maintaining and increasing sales of their cigarettes, particulars of which include:

(a) special blending of tobacco;

(b) adding nicotine or substances containing nicotine;

(c) introducing substances, including ammonia, to enhance the bio-availability of nicotine to smokers; and

(d) such further and other particulars known to the Direct Breach Defendants.

60. The Direct Breach Defendants increased the risks of addiction and disease from smoking by adding to their cigarettes ineffective filters which did not reduce the risks of addiction and disease from smoking, since, as was known or should have been known by these Defendants, based on the research known to them into smoking practices, smokers would fully compensate for the presence of the filters by taking deeper inhalations of smoke and/or blocking the air holes in the filter; and by nevertheless misleading the public and government agencies by misrepresenting, particulars of which are set out in paragraph 72, that these filters made smoking safer contrary to their knowledge.

61. The Direct Breach Defendants further misled the public from 1950 on through marketing and advertising campaigns, by misrepresenting, particulars of which are set out in paragraph 72, in written and visual material, that “mild”, “low tar” and “light” filter cigarettes were healthier than regular cigarettes contrary to their knowledge.

62. As a result of these tobacco related wrongs, persons in Ontario started to smoke or continued to smoke cigarettes manufactured and promoted by the Direct Breach Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty to Warn

63. At all material times since 1950, the Direct Breach Defendants knew or ought to have

known that their cigarettes, when smoked as intended, were addictive and could cause or contribute to disease, and as manufacturers of cigarettes sold to persons in Ontario they owed a duty of care to warn the public who smoked cigarettes or might become exposed to cigarette smoke of the risks of addiction and disease from smoking or exposure to cigarette smoke, as was known, or should have been known to them based on research known to them on smoking and health.

64. The Direct Breach Defendants breached their duty to persons in Ontario by failing to provide any warning prior to 1972, or any adequate warning thereafter, of:

(a) the risk of tobacco related disease; or

(b) the risk of addiction to the nicotine contained in their cigarettes,

which was known to them, or should have been known to them based on research known to them on smoking and health from 1950 on.

65. Any warnings that were provided by the Direct Breach Defendants were inadequate and ineffective in that they did not accurately reveal the true extent of what they knew or should have known of addiction and disease from smoking or exposure to cigarette smoke based on research known to them on smoking and health and:

(a) failed to warn of the actual and known risks of addiction and disease from smoking;

(b) were insufficient to give users, prospective users, and the public a true indication of the risks of addiction and disease from smoking or exposure to cigarette smoke;

(c) were introduced for the purpose of delaying more accurate government-mandated warnings of the risks of addiction and disease from smoking or exposure to cigarette smoke;

(d) failed to make clear, credible, complete and current disclosure of the risks of addiction and disease inherent in the ordinary use of their cigarettes and therefore failed to permit free and informed decisions concerning smoking; and

(e) and failed to inform persons who might become exposed to cigarette smoke of the risks of disease from such exposure so that they could take measures to limit or eliminate such exposure.

66. The Direct Breach Defendants knew or ought to have known based on research known to them since 1950 that children under the age of 13 and adolescents under the age of 19 in Ontario were smoking or might smoke their cigarettes, but failed to provide warnings sufficient to inform children and adolescents of the risks of addiction and disease, which would have accurately conveyed their knowledge of these risks to children and adolescents.

67. The Direct Breach Defendants engaged in collateral marketing and promotional and public relations activities to neutralize or negate the effectiveness of the stated warnings on cigarette packaging in advertising and in warnings given by governments and other agencies concerned with public health, by mischaracterizing any health concerns relating to smoking, either with respect to addiction or disease, or attempts at regulation by health authorities or governments, as unproven, controversial, extremist, authoritarian, and an infringement of liberty.

68. The Direct Breach Defendants suppressed the information which was known to them or should have been known to them based on research conducted by them or by their Lead Companies or on their behalf, regarding the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke, as directed by their Lead Companies as set out in paragraphs 88 to 107 herein.

69. The Direct Breach Defendants misinformed and misled the public, particulars of which

are set out in paragraph 72, about the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke.

70. As a result of these tobacco related wrongs, persons in Ontario started or continued to smoke cigarettes manufactured and promoted by the Direct Breach Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty - Misrepresentation

71. As manufacturers of tobacco products, the Direct Breach Defendants owed a duty of care to persons in Ontario who consumed, or were exposed to, cigarette smoke from cigarettes manufactured by them and sold in Ontario and ought reasonably to have foreseen that persons in Ontario who smoked would rely on any representations made by them with respect to the risks of addiction and disease from smoking and the risk of disease from exposure to second hand smoke. Such reliance by persons in Ontario was reasonable in all of the circumstances since as set out below the Direct Breach Defendants took steps to assure persons in Ontario of the truth of their misrepresentations and to conceal from them the true extent of the risks of smoking and exposure to second hand smoke. As a result, since 1950 the Direct Breach Defendants owed a duty to persons in Ontario not to misrepresent the risks of addiction and disease from smoking and the risk of disease from exposure to second hand smoke as was known, or should have been known to them based on research known to them on smoking and health.

72. The Direct Breach Defendants, with full knowledge of the risks of addiction and disease,

misrepresented the risks of smoking and exposure to second hand smoke since 1950 by denying any link between smoking and addiction and disease and denying any link between exposure to second hand smoke and disease contrary to what was known or should have been known to them, based on research known to them on smoking and health. In particular, since 1950 and continuing to the present the Direct Breach Defendants misrepresented to persons in Ontario that:

(a) smoking and exposure to second hand smoke have not been shown to cause any known diseases;

(b) they were aware of no research, or no credible research, establishing a link between smoking or exposure to second hand smoke and disease;

(c) 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;

(d) cigarettes were not addictive;

(e) they were aware of no research, or no credible research, establishing that smoking is addictive;

(f) smoking is merely a habit or custom;

(g) they did not manipulate nicotine levels in their cigarettes;

(h) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;

(i) the intake of tar and nicotine associated with smoking their cigarettes was less than they knew or ought to have known it to be;

(j) certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes;

(k) smoking is consistent with a healthy lifestyle; and

(l) the risks of smoking and exposure to second hand smoke were less serious than they knew them to be.

72.1. The above misrepresentations were conveyed to persons in Ontario by the Direct Breach Defendants:

(a) in cigarette brand advertising and related marketing and promotional materials in all media, including radio, television, billboards, bus shelters, posters, displays, signs, print media and various electronic media including the internet. Advertising includes commercials, posters, print ads, news releases, press kits, contest materials, coupons, brand merchandising materials, sampling items and activities, discounting and other marketing activities;

(b) on cigarette packaging, including carton wrappings;

(c) at cigarette brand-promoting activities, including cultural, sporting and other events and activity sponsorships, and in promotional materials prepared in relation to such activities, including news releases, press kits, contests, coupons, brand merchandising materials, sampling items and activity materials, discounting and other marketing activities;

(d) in paid advocacy carried out in media including newspapers, magazines, radio, television, and the internet paid for in whole or in part by the Direct Breach Defendants;

(e) in research results presented to the public, governments, news and information media and other organizations as objective and independent when in fact these results were not and the research itself had been funded by the Direct Breach Defendants;

(f) in media interviews, correspondence and other materials prepared on behalf of, and discussions, speeches and presentations given by, company officials, tobacco industry spokespersons acting on behalf of Direct Breach Defendants directly or indirectly (such as CTMC lobbyists, and public relations experts), to persons in Ontario, elected officials, government bureaucrats, medical, health and scientific organizations and bodies, conferences, columnists and journalists, writers, media editors, publishers and scientists; and

(g) via company or tobacco industry spokespersons who did not represent themselves as such at the time or who held themselves out as 'independent' of the Direct Breach Defendants' interests, but who were in fact acting as agents for the Direct Breach Defendants, having received money or money's worth from the Direct Breach Defendants, directly or indirectly. These individuals communicated to, and corresponded with, and provided information to the public, members of the news and information media, elected officials, government officials, members of scientific and health promotion and research entities as well as members of the general public.

72.2. Since 1950, Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually

by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors through a variety of means, including the following:

(a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969)~~ and the National Association of Tobacco and Confectionery Distributors Convention (October 1969);

(b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), and with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981);

(c) full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart "vital information" as soon as available; and

(d) public and media statements to Canadian newspapers and on national television (including in the Toronto Daily Star (September 1962, June 1969) and in the Globe and Mail (June 1967).

72.3. Since 1950, Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by Rothmans, Benson & Hedges Inc. and its predecessors through a variety of means, including the following:

(a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), <u>and</u> the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)~~;

(b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);

(c) public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978));

(d) Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.);

(e) publications (including in the 1978 Booklet "The Facts" published by Benson & Hedges (Canada) Inc.); and

(f) advertising, marketing and promotional campaigns.

72.4. Since 1950, R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors, as members of the RJR Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors through a variety of means, including the following:

(a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), and the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and 1995), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)~~;

(b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);

(c) publications (including "R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina" in The Tobacco Industry in Transition);

(d) speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts);

(e) public statements (including the 1983 Revised Mission Statement on Smoking and Health); and

(f) advertising, marketing and promotional campaigns.

72.5. Since 1950, Imperial Tobacco Canada Limited and its predecessors, as members of the BAT Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by Imperial Tobacco Canada Limited and its predecessors through a variety of means, including the following:

(a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969),~~ and the National Association of Tobacco and Confectionery Distributors Convention (October 1969), ~~federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996)~~;

(b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);

(c) Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited);

(d) public and media statements to Canadian newspapers and on national television, (including CBC television (December 1969) and in the Toronto Daily Star (June 1971));

(e) publications (including on the topics of smoking and health, “habit or addiction” and environmental tobacco smoke); and

(f) advertising, marketing and promotional campaigns.

73. The Direct Breach Defendants suppressed from persons in Ontario scientific and medical data, which was known or should have been known to them based on research on smoking and health which was known to them, which revealed the serious health risks of smoking and second hand smoke, for the purpose of continuing to misrepresent and conceal the risks of addiction and disease from smoking and exposure to second hand smoke.

73.1. Particulars of this suppression of scientific and medical data by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group:

(a) agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake; and

(b) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.2. Particulars of this suppression of scientific and medical data and research by Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group:

(a) agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);

(b) destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group;

(c) closing research laboratories and destroying related scientific information;

(d) withdrawing internal research relating to nicotine from peer review;

(e) destroying internal research relating to nicotine;

(f) prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the addictive effect of smoking; and

(g) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.3. Particulars of this suppression of scientific and medical data by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors, as members of the RJR Group:

(a) agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);

(b) ceasing research on the effects of smoke because of its potential bearing on product liability;

(c) imposing restrictions on the use of terms, including “drug,” “marketing” and “dependency,” in scientific studies;

(d) invalidating and destroying research reports;

(e) terminating and destroying research associated with R.J. Reynolds Tobacco Company’s “The Mouse House” experiments; and

(f) participating in ICOSI’s total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.4. Particulars of this suppression of scientific and medical data by Imperial Tobacco Canada Limited and its predecessors, as members of the BAT Group:

(a) agreeing with the Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);

(b) agreeing with Rothmans Group to suppress research relating to carbon monoxide and smoke intake;

(c) implementing a policy to avoid written documentation on issues relating to smoking and health;

(d) agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group;

(e) destroying research reports indicating the adverse health effects of smoking and exposure to second hand smoke (1992);

(f) suppressing information and developments relating to potentially safer products; and

(g) participating in ICOSI’s total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

74. The Direct Breach Defendants misinformed the public in Ontario, particulars of which are set out in paragraph 72, as to the harm of both smoking and of exposure to cigarette smoke, which was known or should have been known to them based on research on

smoking and health which was known to them.

75. The Direct Breach Defendants participated in a misleading campaign, particulars of which are set out in paragraph 72, to enhance their own credibility and diminish the credibility of health authorities and anti-smoking groups, for the purpose of reassuring smokers, contrary to what they knew or should have known based on research on smoking and health which was known to them, that cigarettes were not as dangerous as authorities were saying.

76. The Direct Breach Defendants intended that these misrepresentations be relied upon by individuals in Ontario for the purpose of inducing them to start smoking or to continue to smoke their cigarettes. It was reasonably foreseeable that persons in Ontario would and they did, in fact, rely upon these misrepresentations made by the Direct Breach Defendants for the purpose of persuading persons in Ontario to purchase cigarettes manufactured by them.

77. As a result of these misrepresentations, which were either made fraudulently, (contrary to their actual knowledge of the risks of addiction and disease from smoking or exposure to second hand smoke or recklessly without any reasonable basis or belief in their truth) or, in the alternative, negligently (in disregard of research into smoking and health which was available to them and which was known or should have been known to them) persons in Ontario started to, or continued to, purchase and smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke from such cigarettes, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty - Manufacturing or Promoting Products for Children and Adolescents

78. Further to the duty of care alleged in paragraph 71, at all material times since 1950, the Direct Breach Defendants as manufacturers of cigarettes sold in Ontario owed a duty of care to children and adolescents in Ontario to take all reasonable measures to prevent them from starting or continuing to smoke.

79. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age.

80. The Direct Breach Defendants knew or ought to have known that children and adolescents in Ontario were smoking or might start to smoke and that it was contrary to law as further particularized in paragraphs 142 to 147 herein, or public policy to sell cigarettes to children and adolescents or to promote smoking by such persons.

81. The Direct Breach Defendants knew or ought to have known based on research known to them on smoking and health of the risk that children and adolescents in Ontario who smoked their cigarettes would become addicted to cigarettes and would suffer tobacco related disease.

82. The Direct Breach Defendants failed to take reasonable and appropriate measures to prevent children and adolescents from starting or continuing to smoke cigarettes manufactured by them and sold in Ontario.

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

in Ontario to start or continue to smoke.

84. The Direct Breach Defendants, in further breach of their duty of care failed to take all reasonable measures to prevent children and adolescents from starting or continuing to smoke and undermined government initiatives and legislation which were intended to prevent children and adolescents in Ontario from starting or continuing to smoke.

85. As a result of these tobacco related wrongs, children and adolescents in Ontario started to or continued to smoke cigarettes manufactured and promoted by the Direct Breach Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Conspiracy, Concert of Action and Common Design

86. At all material times, the Defendants conspired, and acted in concert in committing the tobacco related wrongs alleged in paragraphs 48 to 85 and paragraphs 142 to 147, particulars of which are set out below. The Defendants are accordingly all deemed to have jointly breached the duties alleged in paragraphs 48 to 85 and paragraphs 142 to 147 under section 4 of the Act.

(i) Conspiracy within the International Tobacco Industry

87. Commencing in or about 1953, in response to mounting publicity and public concern about the link between smoking and disease, the Lead Companies of the four Groups or their predecessors in interest for whom the Lead Companies are in law responsible,

conspired and acted in concert to prevent the Crown and persons in Ontario and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health care costs.

88. This conspiracy, concert of action and common design secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco Company Limited through meetings it attended on behalf of and as directed by its parent corporation British American Tobacco Company Limited), and American Tobacco Company. These companies, on their own behalf and on behalf of their respective Groups, contrary to their knowledge, agreed to:

(a) jointly disseminate false and misleading information regarding the risks of addiction and disease from smoking cigarettes;

(b) make no statement or admission that smoking caused disease;

(c) suppress or conceal research that was known or should have been known to them regarding the risks of addiction and disease from smoking cigarettes; 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 that were known or should have been known to them; and

(iii) reassuring the public that smoking was not hazardous.

89. This conspiracy, concert of action and common design was continued at secret committees, conferences and meetings involving senior personnel of the Lead Companies

and through written and oral directives issued by the Lead Companies to members of their Groups who manufactured cigarettes sold in Ontario.

90. Between late 1953 and the early 1960s, the Lead Companies formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964 (the "CTR")), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Institute (“TI”), and the Tobacco Manufacturers’ Standing Committee, (renamed the Tobacco Research Council ("TRC") and then the Tobacco Advisory Council), collectively referred to as TRC, and Verband der Cigarettenindustrie (“Verband”) which was the German equivalent of the Tobacco Institute to which the Lead Companies were affiliated.

91. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC, CTMC, TI, Verband 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. Particulars of these misrepresentations are within the knowledge of the Defendants but include:

(a) The issuance of the TIRC's 1954 “Frank Statement to Cigarette Smokers” which received coverage in the Canadian press;

(b) Statements made to the Canadian Medical Association in May 1963;

(c) November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare;

~~(d) May 1969 presentation to the House of Commons Standing Committee on Health, We1fare and Social Affairs;~~

(e) Statements to the national press and news organizations in Canada; and

(f) Communications through the CTMC in Canada, including to the federal Department of Health and Welfare.

92. In reality, the Lead Companies conspired with the TIRC, the CTR, CORESTA, the TRC, CTMC, TI, Verband and similar organizations, to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Lead Companies intended to mislead persons in Ontario and the Crown, into believing that there was a real medical or scientific controversy about whether smoking caused addiction and disease contrary to their knowledge.

93. In 1963 and 1964, the Lead Companies agreed to co-ordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes were a harmful and dangerous product.

94. In April and September 1963, the Lead Companies agreed to develop a public relations campaign to counter the Royal College of Physicians report in England, the forthcoming Surgeon General's Report in the United States and a report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes, contrary to their knowledge.

95. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease, as was known to them or should have been known to them based on research on smoking and health which was known to them, unless and until they were forced to do so by government action.

96. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes, which was known to them or should have been known to them based on research on smoking and health which was known to them.

97. By the mid-1970s, the Lead Companies decided that an increased international misinformation campaign was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease as was known to them or should have been known to them based on research on smoking and health which was known to them, could lead to a "domino effect" to the detriment of the industry world-wide.

97.1. In 1974, the Lead Companies as members of TI formed a Research Review Committee, which became known as the Research Liaison Committee to achieve a coordinated approach to all industry research into smoking and health. In 1978, the Research Liaison Committee was replaced with the Industry Research Committee.

98. As a result, in June, 1977, the Lead Companies met in England to establish the International Committee on Smoking Issues ("ICOSI").

99. Through ICOSI, the Lead Companies resisted attempts by governments including in Canada to provide adequate warnings about smoking and disease including the effects of second hand smoke, and pledged to:

(a) jointly disseminate false and misleading information regarding the risks of addiction and disease from smoking;

(b) make no statement or admission that smoking caused disease;

(c) suppress research that was known or should have been known to them regarding the risks of addiction and disease from smoking;

(d) not compete with each other by making health claims with respect to their cigarettes, and thereby avoid direct or indirect admissions about the risks of addiction and disease from 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 Ontario and other jurisdictions that smoking was not hazardous;

hereinafter referred to as the ICOSI policies and position on smoking.

100. 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 the Direct Breach Defendants, would act in accordance with the ICOSI position on smoking and health set out above, including the decision to mislead the public about the link between smoking and disease;

(b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, CTMC, to ensure compliance in the various tobacco markets world wide;

(c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves; and

(d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.

101. In the late 1970s, the Lead Companies launched Operation Berkshire, which was aimed at Canada and other major markets, to further advance their campaign of misinformation and to promote smoking. Operation Berkshire was led by Lead Companies of the Philip Morris Group in concert with the Rothmans Group and the BAT Group.

102. In 1980, ICOSI was renamed the International Tobacco Information Centre / Centre International d'lnformation du Tabac - INFOTAB ("INFOTAB"). In or before 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are hereinafter referred to collectively as "ICOSI").

103. At all material times, the policies of ICOSI were identical to the policies of the NMAs

including CTMC, and were presented as the policies and positions of the NMAs and their member companies so as to conceal from the public and from governments including in Canada the existence of the conspiracy, concert of action and common design.

104. The Lead Companies at all times acted to ensure that the manufacturers of cigarettes sold in Ontario within their Group complied, and did not deviate, from the official ICOSI position on the adverse health effects of smoking, particulars of which are set out below in paragraphs 117 to 140.

105. In addition to the foregoing, the Lead Companies engaged in a conspiracy, concert of action and common design specifically with respect to the issue of second hand smoke, as set out below.

106. In the early 1970s, the Lead Companies began to combine their resources and coordinate their activities specifically with respect to second hand smoke. In 1975, the Lead Companies formed the first of several committees to specifically address second hand smoke, which they also called Environmental Tobacco Smoke (ETS) and passive smoking. The first committee, sometimes referred to as the Public Smoking Committee or Advisory Group, met under the direction of the Research Liaison Committee. Although the Lead 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 Lead Companies of these harmful effects. The Committee formed in 1975 and its various successors, including the Tobacco Institute ETS Advisory Committee ("TI-ETSAG") founded in 1984 and the Committee for Indoor Air Research ("CIAR") founded in 1988,

carried out the mandate of the Lead Companies of challenging the growing consensus regarding second hand smoke 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;

(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;

(d) in the case of TI-ETSAG, meeting monthly to propose, review, and manage scientific projects approved for funding;

(e) in 1988 when it was formed, the Chairman of the CIAR Board told the TI that the purpose of CIAR was providing ammunition for the tobacco industry on the ETS battlefield;

(f) from 1988 until its dissolution in 1999, funding of 150 projects by CIAR at 75 institutions resulting in 250 peer reviewed publications, in addition to special studies on the effects of second hand smoke, 18 of which were released;

(g) creating a consultancy program in June 1987 at a conference called "Operation Down Under" to train and deploy scientists worldwide;

(h) in 1988 forming and funding of the Association for Research on Indoor Air (ARIA) by the Defendants' consultants on second hand smoke; and

(i) in 1989, forming of the Indoor Air International (IAI), a group to address scientific issues related to indoor air quality that the Defendants promoted publicly as learned societies dedicated to promote indoor air quality but failed to disclose that they were funded by the tobacco industry.

The policies and positions referenced above are hereinafter referred to as the CIAR policies and position on second hand smoke.

107. Further particulars of the manner in which the conspiracy, concert of action and common design was 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.

(ii) Conspiracy within the Canadian Tobacco Industry

108. At all material times since in or about 1950, the Direct Breach Defendants, in furtherance of the conspiracy and concerted action within the International Tobacco Industry and within their particular Corporate Groups, conspired and acted in concert to prevent the Crown and persons in Ontario from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco related wrongs, as set out above in paragraphs 48 to 85 and below in paragraphs 142 to 147, in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the conspiracy, concert of action and common design.

109. 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 the Defendants Rothmans Inc., Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp. and Imperial Tobacco Canada Limited and their predecessors in interest for whom they are liable, hereinafter referred to as the Canadian Tobacco Company Defendants, and attended by their senior personnel and through written and oral directives and communications amongst them.

110. The conspiracy, concert of action and common design was continued when, contrary to their knowledge:

(a) in or about 1962, the Canadian Tobacco Company Defendants 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 addiction and disease from smoking;

(b) in 1963, the Canadian Tobacco Company Defendants misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease;

(c) in or about 1963, the Canadian Tobacco Company 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, the Canadian Tobacco Company Defendants misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.~~

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

112. In furtherance of the conspiracy, concert of action and common design, CTMC has lobbied governments and regulatory agencies throughout Canada on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants' since about 1963, with respect to tobacco industry matters, including delaying and minimizing government initiatives in respect of warnings to be placed on cigarette packages and imposing limitations on smoking in public places, as well as misrepresenting the risks of addiction and disease from smoking to the Canadian public, in accordance with the tobacco industry's position, which is the same as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

113. CTMC has co-ordinated, with the Canadian Tobacco Company Defendants and the international tobacco industry associations ICOSI and INFOTAB, through its membership in these organizations, the Canadian cigarette industry's positions on smoking and health issues.

114. In furtherance of the conspiracy, concert of action and common design, CTMC on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants:

(a) disseminated false and misleading information regarding the risks of addiction and disease from smoking including making false and misleading submissions to governments denying any connection contrary to its knowledge;

(b) refused to admit that smoking caused disease contrary to its knowledge;

(c) suppressed research regarding the risks of addiction and disease from smoking which was known or should have been known to them;

(d) participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link, which was known or should have been known to them, between smoking and disease;

(e) lobbied governments in order to delay and minimize government initiatives with respect to smoking and health, including initiatives to place warnings on cigarettes packaging and limiting smoking in public places contrary to its knowledge;

(f) in a 1963 presentation to the Conference on Smoking and Health of the Department of National Health and Welfare, the Ad Hoc Committee of the Canadian Tobacco Industry (the predecessor to the CTMC) claimed that the evidence that tobacco causes disease was inconclusive and used this to undermine the scientific case against tobacco;

(g) stated in a 1968 paper that there is no established proof that tobacco causes harm;

~~(h) in June 1969 made a statement to the House of Commons Standing Committee on Health and Welfare denying that smoking is a major cause of illness or death;~~

(i) at a 1971 meeting of technical representatives of the members of CTMC called by the head of the CTMC, representatives of the CTMC and the Canadian tobacco companies noted the need for minimum nicotine levels in cigarettes;

(j) denied at a 1971 press conference that tobacco causes disease;

(k) in a 1977 Position Paper, stated that there is no persuasive scientific evidence to support the contention that the non-smoker is harmed by the tobacco smoke of others;

(l) in a 1987 Position Statement, stated that:

(i) smoking had not been proven to cause disease;

(ii) smoking is not addictive; and

(iii) there was no conclusive evidence that second hand smoke causes adverse health effects and stated that the scientific community holds the view that there are no proven health consequences to exposure to second hand smoke;

(m) in a 1987 press release denied that second hand smoke is harmful to health; and

~~(n) in 1987 advised a House of Commons Legislative Committee that there was uncertainty regarding the role of smoking in causing disease; and~~

(o) in a 1990 letter wrote to the Canadian government to voice the Industry's opposition to the federal government's proposed amendments to the Tobacco Products Regulations which would require, inter alia, the placing of addiction warnings on cigarette packages. In its letter, the CTMC questioned whether smoking was addictive and whether second hand smoke was dangerous.

115. At all material times, CTMC acted as the agent of the Canadian Tobacco Company Defendants, as members of the CTMC, and as agent of the Lead Companies through its membership with them in the International Associations, ICOSI and INFOTAB. In 1982 CTMC became an associate member of INFOTAB and was a full participant from 1982 to 1989.

116. 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 in furtherance of the conspiracy, concert of action and common design are within the knowledge of these Defendants and the CTMC.

(iii) Conspiracy within Corporate Groups

The Rothmans Group

117. In or about 1953 the Rothmans Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized, convened and attended by senior personnel of the Rothmans Group members, including those of Rothmans International Limited, Rothmans Inc., Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Carreras Rothmans Limited, as well as those of the Philip Morris Group, and through written and oral directives and communications amongst the Rothmans Group members.

118. Carreras Rothmans Limited and affiliated companies were involved in directing or co-ordinating the Rothmans Group's common policies on smoking and health by preparing and distributing statements which set out the Rothmans Group's position on smoking and health issues. Rothmans International Limited functioned as a central body to coordinate and establish policies for all Rothmans Group members worldwide, creating an International Advisory Board for this particular purpose. These positions were then adopted by member companies.

118.1. From 1950 onwards, Rothmans Group policies included denying the existence of any relationship between smoking and adverse health effects, and strenuously opposing the introduction of warning labels on tobacco products. From 1960 onwards, these policies included denying or minimizing the relationship between exposure to cigarette smoke,

including second hand smoke, and adverse health effects.

118.2. Rothmans International Limited and Carreras Rothmans Limited directed Rothmans Inc. (and its predecessor corporations) to maintain the Rothmans Group's position that more research was required to determine whether cigarettes cause disease, and instructed Rothmans Inc. to resist cautionary warnings in advertising. Carreras Rothmans Limited also directed Rothmans Inc. (and its predecessor corporations) on how to vote at CTMC meetings on issues relating to smoking and health, including the approval and funding of research. Rothmans Inc. (and its predecessor corporations) acted as an agent for and as directed by Carreras Rothmans Limited.

118.3. Within the Rothmans Group, scientists worked collaboratively, exchanged research results, and advised senior management of the companies that were part of the Rothmans Group from time to time, through specific committees. From 1978 to 1986, Carreras Rothmans Limited and its research division were designated responsibility for providing direction on tobacco-related health issues and for coordinating the Rothmans Group's research strategy. Rothmans Inc. (and its predecessor corporations) in particular relied on Carreras Rothmans Limited's expertise and direction on smoking-related health issues. Rothmans Group companies also held meetings on issues related to second-hand smoke. Through its conferences, meetings, directives and policies, Carreras Rothmans Limited directed the Rothmans Group to take the same positions on smoking and health as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

119. Carreras Rothmans Limited and affiliated companies also were involved in directing or

co-ordinating the smoking and health policies of Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc. (and its predecessor corporations), by influencing or advising how they should vote in committees of the Canadian manufacturers of cigarettes sold in Ontario 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.

120. 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 Rothmans of Pall Mall Limited, and Rothmans Inc. (and its predecessor corporations), in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Rothmans Group members.

The Philip Morris Group

121. In or about 1953 the Philip Morris Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and attended by senior personnel of the Philip Morris Group companies, including those of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., and through written and oral directives and communications amongst the Philip Morris Group members.

122. The committees used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Committee on Smoking Issues and Management and the Corporate Products Committee.

123. The conferences used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Conference on Smoking and Health and the Corporate Affairs World Conference.

124. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International Inc. further directed or co-ordinated the Philip Morris Group's common policies on smoking and health by means of their respective Corporate Affairs and Public Affairs Departments which directed or advised various departments of the other members of the Philip Morris Group, including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., concerning the Philip Morris Group position on smoking and health issues.

125. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the common policies of the Philip Morris Group on smoking and health by preparing and distributing to the members of the Philip Morris Group including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., written directives and communications including "Smoking and Health Quick Reference Guides" and "Issues Alerts". These directives and communications set out the Philip Morris Group's position on smoking and health issues to ensure that the personnel of the Philip Morris Group companies, including Rothmans, Benson & Hedges

Inc., and its amalgamating company Benson & Hedges (Canada) Ltd., understood and disseminated the Philip Morris Group's position, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

126. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the smoking and health policies of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers of cigarettes sold in Ontario and by CTMC.

126.1 In furtherance of the conspiracy, concert of action and common design, Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and Rothmans Benson & Hedges Inc. and their predecessors participated in the establishment and operation of INBIFO, a research facility in Europe. At INBIFO, research was carried out into the health effects of both smoking and second hand smoke. When the research indicated that smoking and second hand smoke was harmful to health, the research was suppressed and/or destroyed.

127. 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.

The RJR Group

128. In or about 1953 the RJR Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. and attended by senior personnel of the RJR Group members, including those of JTI-Macdonald Corp. (and its predecessor corporations), and through written and oral directives and communications amongst the RJR Group members.

129. The meetings used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health included the Winston-Salem Smoking Issues Coordinator Meetings.

130. The conferences used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health include the "Hound Ears" and Sawgrass conferences.

131. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., further directed or co-ordinated the RJR Group's position on smoking and health by means of a system of reporting whereby each global "Area" had a "smoking issue designee" who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to the Manager

of Science Information in the R.J. Reynolds Tobacco Company. In the case of Area II (Canada), this "designee" was, from 1974, a senior executive of Macdonald Tobacco Inc., and later of JTI-Macdonald Corp. (and its predecessor corporations).

132. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the RJR Group's common policies on smoking and health by preparing and distributing to the members of the RJR Group, including JTI-Macdonald Corp. (and its predecessor corporations), written directives and communications including an "Issues Guide" and a “Media Guide”.

133. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the smoking and health policies of JTI-Macdonald Corp. (and its predecessor corporations) 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 and maintaining the right to veto any particular research proposal.

133.1 The direction and co-ordination of the RJR Lead Companies over the RJR Group was also carried out by:

(a) Developing an action plan which set out the RJR Group’s position on smoking and health issues to ensure that the personnel in the RJR Group companies, including its Canadian subsidiaries, understood and disseminated the RJR Group’s position;

(b) Taking a leadership role in the International Committee on Smoking Issues (ICOSI), particularly in relation to Canada and coordinating CTMC’s positions to align with those of ICOSI as particularized in paragraph 99 herein, as well as the CIAR policies on second hand smoke particularized in paragraph 106 herein;

(c) Placing senior executives of the Lead Companies as senior executives of the Canadian subsidiaries;

(d) Advising the RJR Group's sales representatives that cigarettes did not pose a health hazard to the non-smoker;

(e) Making public statements on behalf of the entire Group denying or marginalizing the link between health and second hand smoke;

(f) Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department;

(g) Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes; and

(h) Holding RJR Group and tobacco industry meetings relating to environmental tobacco smoke.

133.2 These directives and communications set out the RJR Group's position on smoking and health issues, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein. These directives and communications were meant to ensure that the personnel of the RJR Group companies, including those of JTI-Macdonald Corp. (and its predecessor corporations) understood and disseminated the RJR Group's position.

133.3 In furtherance of the conspiracy, concert of action and common design, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., and JTI-Macdonald Corp. (and its predecessor corporations) participated in the removal and destruction of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina and destroyed research relating to the biological activity of cigarettes manufactured and promoted by members of the RJR Group for sale in Ontario.

134. 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., (and its predecessor corporations), and the Defendants, R.J. Reynolds Tobacco International and 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

135. In or about 1953 the BAT Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. and attended by senior personnel of the BAT Group members, including those of Imperial Tobacco Limited and Imasco Limited, and through written and oral directives and communications amongst the BAT Group members.

135.1 The Lead Companies of the BAT Group have consistently held the BAT Group out to the public as a single corporate entity and tobacco enterprise, continuously in operation since 1902, and, as a result, each of the Lead Companies, by its words and conduct, continued and thereby adopted and assumed the benefits of and the liabilities of its predecessors for the conspiracy and acting in concert within the International Tobacco Industry and the Canadian Tobacco Industry and its own Group. British American Tobacco p.l.c. stands where its predecessors stood, at the head of the BAT Group, representing a continuity of control, purpose and policies throughout the past 100 years or more. British American

Tobacco p.l.c., like B.A.T Industries p.l.c. before it, has represented to the public in its annual financial statements and otherwise, that it has been in existence since 1902, employing tens of thousands of people and is one of the largest tobacco companies in the world. British American Tobacco p.l.c. has continued the BAT Group's practice of misleading the public and governments about the dangers of smoking and the risks of second-hand smoke.

136. The committees used by British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c. to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board, the Tobacco Executive Committee, and the Tobacco Strategy Review Team (which later became known as the Tobacco Strategy Group).

137. The conferences used by the Defendants, British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Advisory Conferences, BAT Group Research Conferences, and BAT Group Marketing Conferences. Some of these conferences took place in Canada.

138. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c. further directed or co-ordinated the BAT Group's common policies on smoking and health, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the the CIAR policies and position on second hand smoke particularized in paragraph 106 herein, by creating a Tobacco Strategy Review Team (TSRT) and preparing and distributing to the members of the

BAT Group, including Imperial Tobacco Limited and lmasco Limited, written directives and communications including "Smoking Issues: Claims and Responses", "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues" (that addressed inter alia second hand smoke), "Smoking and Health: The Unresolved Debate", "Smoking: The Scientific Controversy", "Smoking: Habit or Addiction?", and "Legal Considerations on Smoking and Health Policy", “Smoking and Health – Assumptions – Policy – Guidelines”, “Environmental Tobacco Smoke – Improving the Quality of Public Debate, Smoking and Health – The End Result Debate”, and “Answering the Critics”. These directives and communications set out the BAT Group's position on smoking and health issues, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein and were meant to ensure that the personnel of the BAT Group companies, including the personnel of Imperial Tobacco Limited and lmasco Limited, understood and disseminated the BAT Group's position.

138.1 Direction, to this end, was further provided at meetings of the Tobacco Strategy Review Team and recorded in notes of meetings of the Tobacco Strategy Review Team. This strategy for the BAT Group was further set out in corporate documents such as the Listing Particulars of British American Tobacco p.l.c. in 1998, the statement of Policy of the Group on Regulatory and Taxation Issues and through various websites operated by the Lead Companies from and after 1998, including statements made by British American Tobacco p.l.c. on its website in 2003 and thereafter questioning research that exposure to second hand smoke causes disease.

139. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and

B.A.T Industries p.l.c., further directed or co-ordinated the smoking and health policies of Imperial Tobacco Limited and lmasco Limited, by directing or advising how they should vote in committees of the Canadian manufacturers of cigarettes sold in Ontario 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.

140. 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.

141. As a result of the aforementioned conspiracy, concert of action and common design, set out in paragraphs 86 to 140, persons in Ontario started to, or continued to, smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of *Consumer Protection Act, 2002*, the *Competition Act* and their Predecessor Statutes

142. The Direct Breach Defendants, in breach of their statutory duties or obligations pursuant to the *Business Practices Act* S.O. 1974, c.131, s.2 and successor legislation including the *Consumer Protection Act*, 2002 S.O. 2002, s.14 and 17, engaged in unfair practices by making false, misleading or deceptive representations in respect of cigarettes sold to persons in Ontario, by word or by conduct. These Defendants further breached these statutes by making unconscionable representations in respect of cigarettes sold by them to

persons in Ontario, contrary to the *Consumer Protection Act*, 2002 S.O. 2002, s.15. Particulars of the false, misleading or deceptive and unconscionable representations are set out in paragraphs 56 to 85 and 145 herein.

143. In addition, these Defendants, for the purpose of promoting, directly or indirectly, the supply to or use of cigarettes by persons in Ontario, breached their statutory duties or obligations to consumers in Ontario under the *Combines Investigation Act* R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act* S.C. 1968-69, chapter 38, section 116 and amendments thereto and subsequently the *Competition Act* R.C.S. 1985, chapter C-34, sections 52(1), 52(4), 74.1 and 74.03 and amendments thereto. Specifically, the Defendants made representations to the public in Ontario that were false or misleading in a material respect and made representations to the public in Ontario in the form of statements regarding the performance and efficacy of cigarettes that were not based on adequate and proper testing, particulars of which are set out in paragraphs 56 to 85 and 145.

144. Knowing that cigarettes were addictive and would cause and contribute to disease, these Defendants intentionally inflicted harm on persons in Ontario by manufacturing, promoting and selling cigarettes, for profit and in disregard of public health, with knowledge of the risks of addiction and disease and failing to disclose and suppressing this information as particularized herein.

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

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

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

(ii) increasing the level of nicotine through the blending of tobaccos contained in their cigarettes,

(iii) increasing the level of nicotine in their cigarettes by the addition of nicotine or substances containing nicotine,

(iv) introducing substances, including ammonia, into their cigarettes to enhance the bio-availability of nicotine to smokers;

(b) incorporating into the design of their cigarettes ostensible safety features such as filters which they knew or ought to have known were ineffective in reducing the risks of addiction and disease from smoking, yet which would lead a reasonable consumer to believe that the product was safer to use than it was in fact;

(c) failing to disclose to such consumers the risks inherent in the ordinary use of their cigarette products including the risks of disease and addiction which was known or should have been known to them based on research on smoking and health which was known to them;

(d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings regarding the risks of addiction and disease from smoking provided to such consumers;

(e) suppressing or concealing from such consumers scientific and medical information regarding the risks of addiction and disease from smoking;

(f) engaging in marketing and promotional activities having the tendency to lead such consumers to believe that cigarettes have performance characteristics, ingredients, uses and benefits and approval that they did not have;

(g) misinforming and misleading such consumers about the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke by using innuendo, exaggeration and ambiguity having the tendency to mislead them about the material facts regarding smoking and health;

(h) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes;

(i) providing misleading information to the public in Ontario about the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke based upon a failure to provide any or any adequate research or testing of their cigarettes;

(j) publicly discrediting the testing and research undertaken, and information provided by others, regarding the link between smoking and disease and smoking and addiction;

(k) failing to take any, or any reasonable, measures to prevent children and adolescents from starting or continuing to smoke;

(l) targeting children and adolescents in their advertising, promotional and marketing activities with the object of inducing children and adolescents to start or continue to smoke;

(m) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that, when smoked as intended, they are addictive and inevitably cause or contribute to disease and death in large numbers of consumers of cigarettes and persons exposed to cigarette smoke and provide no benefit to either class of persons;

(n) making the following representations to such consumers which they knew or ought to have known were false or misleading:

(i) representing that smoking and exposure to second hand smoke has not been shown to cause any known diseases,

(ii) representing that they were aware of no research, or no credible research, establishing a link between smoking or exposure to second hand smoke and disease,

(iii) representing that 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,

(iv) representing that cigarettes were not addictive,

(v) representing that they were aware of no research, or no credible research, establishing that smoking is addictive,

(vi) representing that smoking is merely a habit or custom,

(vii) representing that they did not manipulate nicotine levels in their cigarettes,

(viii) representing that they did not include substances in their cigarettes designed to increase the bio-availability of nicotine,

(ix) representing that the actual intake of tar and nicotine associated with smoking their cigarettes was less than they knew it to be,

(x) representing that certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes,

(xi) representing that smoking is consistent with a healthy lifestyle,

(xii) representing that the risks of smoking were less serious than they knew them to be; and

(o) making representations about the characteristics of their cigarettes that were not based upon any or any adequate and proper testing of and investigation and research into:

(i) the risk of disease caused or contributed to by smoking their cigarettes and exposure to second hand smoke,

(ii) the risk of addiction to nicotine contained in their cigarettes, and

(iii) the feasibility of eliminating or minimizing the risks referred to in subparagraphs (i) and (ii);

(p) failing to correct statements made by others on their behalf to such consumers regarding the risks of smoking and exposure to second hand smoke, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.

146. In making the representations referred to in paragraph 145, these Defendants knew or ought to have known:

(a) that the consumers are not reasonably able to protect their interests because of disability, ignorance, illiteracy, or similar factors; and

(b) that the consumers are unable to receive a substantial benefit from the subject-matter of the representations (ie. cigarettes).

147. As a result of the aforementioned breaches of statutory duties and obligations by the Direct Breach Defendants, persons in Ontario started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of such disease. The Crown has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

V. CONCLUSION

148. Exposure to cigarettes can cause or contribute to disease. During the period in which the Defendants committed the tobacco related wrongs referred to in Part IV above, cigarettes manufactured or promoted by the Direct Breach Defendants were offered for sale in Ontario.

149. But for the above described tobacco related wrongs, insured persons in Ontario exposed to tobacco products manufactured or promoted by the Direct Breach Defendants would not have been exposed to these products, and as a result, insured persons in Ontario have suffered tobacco related disease or the risk of tobacco related disease. The Crown has incurred expenditures for health care benefits provided to these insured persons. In accordance with the Act, the Crown is entitled to recover these health care costs from the Direct Breach Defendants. The Crown pleads and relies on section 3 of the Act.

150. Furthermore, in accordance with section 4 of the *Act* and as a result of the facts set out in paragraphs 86 through 141, the Crown pleads that all Defendants conspired and acted in concert in committing the tobacco related wrongs committed by the Direct Breach Defendants and as a result, all Defendants are jointly and severally liable for the cost of health care benefits provided to insured persons in Ontario resulting from tobacco related disease or the risk of tobacco related disease caused or contributed to by the breaches of duty of the Direct Breach Defendants.

151. The Crown relies on Rules 17.02(g), (h), (o) and (p) in serving the Statement of Claim on Defendants outside Ontario without leave.

The Crown proposes that this action be tried at Toronto.

Date: ~~March 28, 2014~~ May 29, 2018

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Counsel for the Plaintiff, Her Majesty the Queen in Right of Ontario

Court File No.: CV-09-387984

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO - and - **ROTHMANS INC.,** ***et al***

Plaintiff | Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

SECOND AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

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Counsel for the Plaintiff, Her Majesty the Queen in Right of Ontario

This is **Exhibit "X"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law Expires September 27, 2021

Ministry of the
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720 rue Bay
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Please refer to File
S.V.P. Se Référer au dossier
No. 30653

Ontario

March 7, 2019

BY EMAIL

Guy J. Pratte
Borden Ladner Gervais LLP
East Tower, Bay Adelaide Centre
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

Dear Mr. Pratte:

Re: ***Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.***
Court File No.: CV-09-387984

As you are aware, we are counsel to the plaintiff, Her Majesty the Queen in right of Ontario ("**Ontario**"), in the above captioned action. Pursuant to the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, Ontario is advancing a claim against your client, JTI-Macdonald Corp. ("JTI"), and other defendants to recover costs of approximately $330 billion incurred to provide health care required by persons in Ontario as a result of tobacco related disease or the risk of tobacco related disease.

In a press release posted on March 1, 2019, JTI advised that it is assessing the potential implications of the decision of the Court of Appeal of Quebec in *Imperial Tobacco Canada et al.* v. *Conseil Québécois sur le tabac et la santé et al.* and considering its options, including an application for leave to appeal to the Supreme Court of Canada.

If, at some point in the future, JTI decides to bring an application seeking protection under the *Companies' Creditors Arrangement Act* or any other applicable statute, we request that JTI provide Ontario with reasonable notice of the hearing date and serve its application materials on Ontario in advance of the initial hearing. We thank you for this consideration.

Yours very truly,

Jacqueline Wall

Jacqueline L. Wall
Counsel

This is **Exhibit "Y"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27 2021

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Please refer to File
S.V.P. Se Référer au dossier
No. 30653

Ontario

March 7, 2019

BY EMAIL

Deborah Glendinning
Osler, Hoskin & Harcourt LLP
1 First Canadian Place
100 King Street West,
Suite 6200, Box 50
Toronto, ON M5X 1B8

Dear Ms. Glendinning:

Re: ***Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.***
Court File No.: CV-09-387984

As you are aware, we are counsel to the plaintiff, Her Majesty the Queen in right of Ontario ("**Ontario**"), in the above captioned action. Pursuant to the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, Ontario is advancing a claim against your client, Imperial Tobacco Canada Limited ("**ITCL**"), and other defendants to recover costs of approximately $330 billion incurred to provide health care required by persons in Ontario as a result of tobacco related disease or the risk of tobacco related disease.

In a press release posted on March 1, 2019, British American Tobacco stated that ITCL intends to seek leave to appeal to the Supreme Court of Canada from the decision of the Court of Appeal of Quebec in *Imperial Tobacco Canada et al.* v. *Conseil Québécois sur le tabac et la santé et al.* If, at some point in the future, ITCL decides to bring an application seeking protection under the *Companies' Creditors Arrangement Act* or any other applicable statute, we request that ITCL provide Ontario with reasonable notice of the hearing date and serve its application materials on Ontario in advance of the initial hearing. We thank you for this consideration.

Yours very truly,

Jacqueline Wall

Jacqueline L. Wall
Counsel

This is **Exhibit "Z"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27, 2021.

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Please refer to File
S.V.P. Se Référer au dossier
No. 30653

Ontario

March 7, 2019

BY EMAIL

R. Paul Steep
McCarthy Tétrault LLP
Toronto Dominion Centre
66 Wellington St. West
Suite 5300, Box 48
Toronto, ON M5K 1E6

Dear Mr. Steep:

Re: ***Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.***
Court File No.: CV-09-387984

As you are aware, we are counsel to the plaintiff, Her Majesty the Queen in right of Ontario ("**Ontario**"), in the above captioned action. Pursuant to the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, Ontario is advancing a claim against your client, Rothmans, Benson & Hedges Inc. ("**RBH**"), and other defendants to recover costs of approximately $330 billion incurred to provide health care required by persons in Ontario as a result of tobacco related disease or the risk of tobacco related disease.

In its press release issued on March 1, 2019, RBH announced its intention to seek leave to appeal to the Supreme Court of Canada from the decision of the Court of Appeal of Quebec in *Imperial Tobacco Canada et al.* v. *Conseil Québécois sur le tabac et la santé et al.* If, at some point in the future, RBH decides to bring an application seeking protection under the *Companies' Creditors Arrangement Act* or any other applicable statute, we request that RBH provide Ontario with reasonable notice of the hearing date and serve its application materials on Ontario in advance of the initial hearing. We thank you for this consideration.

Yours very truly,

Jacqueline Wall

Jacqueline L. Wall
Counsel

This is **Exhibit "AA"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal
A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law
Expires September 27 2021

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March 14, 2019

Nancy Roberts
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Our Matter Number: 1144377

HAND DELIVERED

The Honourable Justice Conway
Superior Court of Justice (Ontario)
c/o Judges Administration, Room 170
361 University Avenue
Toronto, ON M5G 1T3

Master Donald E. Short
Superior Court of Justice
393 University Avenue
Civil Intake, 10th Floor
Toronto, ON M5G 1T3

Dear Justice Conway and Master Short:

Re: In the Matter of a Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited ("ITCAN") and Imperial Tobacco Company Limited ("ITCO")

Re: Her Majesty the Queen in Right of Ontario v. Rothmans Inc. et al., Court File No. CV-09-387984

We are counsel for ITCAN and ITCO (the "**Applicants**"). On March 12, 2019, the Ontario Superior Court of Justice (Commercial List) granted the enclosed Initial Order (the "**Order**") pursuant to the *Companies' Creditor Arrangement Act*.

Pursuant to paragraphs 18 and 19 of the Order, until and including April 11, 2019, all proceedings or enforcement process in any court of tribunal (including any "**Tobacco Claim**" as defined in paragraph 4(g) of the Order) against *inter alia*, the Applicants, as well as British American Tobacco p.l.c., B.A.T. Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related or affiliated with them, are stayed and suspended pending further order of the Court. Therefore, the above referenced actions against any of the above referenced parties are stayed.

Under the terms of the Order, FTI Consulting Canada Inc. (the "**Monitor**") will serve as the Court-appointed Monitor in these proceedings. Court materials relating to this proceeding can be found on the Monitor's website at http://cfcanada.fticonsulting.com/imperialtobacco.

The "**Comeback Motion**" has been scheduled for April 4, 2019.

If you have any questions, please contact me.

Yours very truly,

Nancy Roberts
Partner

Enclosure

cc: Jacqueline L. Wall/Edmund Huang, *Ministry of the Attorney General*
David Byers/Lesley Mercer, *Stikeman Elliott LLP*
Ira Nishisato/Cynthia Clark/Caitlin Sainsbury, *Borden Ladner Gervais LLP*
Steven Sofer/Mischa Armin, *Gowling WLG*
Sarit E. Batner/Deborah Templer, *McCarthy Tétrault LLP*
John P. Ormston, *Ormston List Frawley LLP*
Christopher Rusnak/Siobhan Sams, *Harper Grey LLP*

Court File No. CV-19-616077-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 12TH
JUSTICE MCEWEN	)	DAY OF MARCH, 2019
	)	

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED (the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Eric Thauvette sworn March 12, 2019 and the exhibits thereto (the "**Thauvette Affidavit**"), (ii) the affidavit of Nancy Roberts sworn March 12, 2019, and (iii) the pre-filing report dated March 12, 2019 (the "**Monitor's Pre-Filing Report**") of FTI Consulting Canada Inc. ("**FTI**") in its capacity as the proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants, BAT (as defined herein), FTI and the Honourable Warren K. Winkler, Q.C. in his capacity as proposed Interim Tobacco Claimant Coordinator (as defined herein), and on reading the consent of FTI to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application

is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

DEFINITIONS

4. THIS COURT ORDERS that for purposes of this Order:

(a) "**BAT**" means British American Tobacco p.l.c.;

(b) "**BAT Group**" means, collectively, BAT, BATIF, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries;

(c) "**BATIF**" means B.A.T. International Finance p.l.c.;

(d) "**Deposit Posting Order**" means the order of the Quebec Court of Appeal granted October 27, 2015 or any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;

(e) "**ITCAN**" means Imperial Tobacco Canada Limited;

(f) "**ITCAN Subsidiaries**" means the direct and indirect subsidiaries of the Applicants listed in Schedule "B";

(g) "**Pending Litigation**" means any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named

defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including without limitation the litigation listed in Schedule "A";

(h) "**Quebec Class Actions**" means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;

(i) "**Sales & Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;

(j) "**Tobacco Claim**" means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced as a government body or agency, insurer, employer, or otherwise, under or in connection with:

(i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada, or in the case of any of the Applicants, anywhere else in the world; or

(ii) the legislation listed on Schedule "C", as may be amended or restated, or similar or analogous legislation that may be enacted in future,

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicants, the ITCAN Subsidiaries or any member of the BAT Group; and

(k) "**Tobacco Products**" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or Business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Thauvette Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or other Person providing the Cash

Management System (including, without limitation, BATIF and its affiliates, The Bank of Nova Scotia and Citibank, N.A.) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive and share compensation plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to the Applicants' employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Applicants' other retirement programs), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance and severance pay payable to employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;

(b) the fees and disbursements of any Assistants retained or employed by the Applicants, including without limitation in respect of any proceedings under Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended, at their standard rates and charges;

(c) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of this Order:

(i) by logistics or supply chain providers, including customs brokers and freight forwarders;

(ii) by providers of information technology, social media marketing strategies and publishing services; and

(iii) in respect of the Loyalty Program as set out in the Thauvette Affidavit;

(d) with the consent of the Monitor, amounts payable in respect of any Intercompany Transactions (as defined herein); and

(e) by other third party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the Business or the Property.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of $1 million or an aggregate of such expenditures in a calendar year in excess of $5 million; and

(c) payment for goods or services supplied or to be supplied to the Applicants on or after the date of this Order (including the payment of any royalties).

9. THIS COURT ORDERS that the Applicants are authorized to complete outstanding transactions and engage in new transactions with any member of the BAT Group and to continue, on and after the date hereof, to buy and sell goods and services and to allocate, collect

and pay costs, expenses and other amounts from and to the members of the BAT Group, including without limitation in relation to head office and shared services, finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licenses (collectively, together with the Cash Management System and all transactions and all inter-company funding policies and procedures between any of the Applicants and any member of the BAT Group, the "**Intercompany Transactions**") in the ordinary course of business as described in the affidavit or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicants and any member of the BAT Group, including the provision of goods and services from any member of the BAT Group to any of the Applicants, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all Sales & Excise Taxes required to be remitted by the Applicants in connection with the Business; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

11. THIS COURT ORDERS that the Applicants are, subject to paragraph 12, authorized to post and to continue to have posted, cash collateral, letters of credit, performance

bonds, payment bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding $111 million (the "**Bonding Collateral**"), to satisfy regulatory or administrative requirements to provide security that have been imposed on the Applicants in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicants as such security.

12. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes are hereby stayed during the Stay Period from requiring that any additional bonding or other security be posted by or on behalf of the Applicants in connection with Sales & Excise Taxes, or any other matters for which such bonding or security may otherwise be required.

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the relevant Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants or claims to which they are subject to any of their creditors as of this date and to post no security in respect of such amounts or claims, including pursuant to an order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations and to dispose of redundant or non-material assets not exceeding $1,000,000 in any one transaction or $5,000,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

16. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the relevant Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the relevant Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

17. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against such Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

18. THIS COURT ORDERS that until and including April 11, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to any Pending Litigation and any other Proceeding in relation to any other Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicants, the ITCAN Subsidiaries, the Monitor, any of their respective employees and representatives acting in that capacity, the Interim Tobacco Claimant Coordinator, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of any of the Applicants or the ITCAN Subsidiaries, any of their respective employees and representatives acting in that capacity or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicants in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. THIS COURT ORDERS that, during the Stay Period, no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicants, the Business or the Property, including the Pending Litigation, shall be commenced, continued or take place against or in respect of any member of the BAT Group except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take

place against or in respect of any member of the BAT Group are hereby stayed and suspended pending further Order of this Court.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

21. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor or their respective employees and representatives acting in that capacity, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicants, the Property or the ITCAN Subsidiaries), are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants or the ITCAN Subsidiaries to carry on any business which the Applicants or the ITCAN Subsidiaries are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

22. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the ITCAN Subsidiaries, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

23. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or the ITCAN Subsidiaries or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services or other services to the Business, the Applicants or the ITCAN Subsidiaries, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or the ITCAN Subsidiaries, and that the Applicants and the ITCAN Subsidiaries shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and the ITCAN Subsidiaries in accordance with normal payment practices of the Applicants and the ITCAN Subsidiaries or such other practices as may be agreed upon by the supplier or service provider and the respective Applicant or ITCAN Subsidiary and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

SALES AND EXCISE TAX CHARGE

25. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes (including for greater certainty the Canada Border Services Agency) shall be entitled to the benefit of and are hereby granted a charge (the "**Sales and Excise Tax Charge**") on the Property, which charge shall not exceed an aggregate amount of $580 million, as security

for all amounts owing by the Applicants in respect of Sales & Excise Taxes, after taking into consideration any Bonding Collateral posted in respect thereof. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 45 and 47 hereof.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the **"Directors' Charge"**) on the Property, which charge shall not exceed an aggregate amount of $16 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicants in their preparation of the Applicants' cash flow statements;

(d) advise the Applicants in their development of the Plan and any amendments to the Plan;

(e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) assist the Applicants, to the extent required by the Applicants, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;

(i) consult with the Interim Tobacco Claimant Coordinator in connection with the Interim Tobacco Claimant Coordinator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan;

(j) be and is hereby appointed to serve as the "foreign representative" of the Applicants in respect of an application to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, the Ontario *Occupational Health and Safety Act*, the Quebec *Environment Quality Act*, the Quebec *Act Respecting Occupational Health and Safety* and any regulations under any of the foregoing statutes (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the

Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the Interim Tobacco Claimant Coordinator with information provided by the Applicants in response to reasonable requests for information made in writing by such person addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor and counsel to the Applicants retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount

of $5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

INTERIM TOBACCO CLAIMANT COORDINATOR

39. THIS COURT ORDERS that the Hon. Warren K. Winkler Q.C. is hereby appointed, on an interim basis until April 30, 2019 or as may be agreed to by the Applicants and the Monitor (the "**Interim Period**"), as an officer of the Court and shall act as an independent third party (the "**Interim Tobacco Claimant Coordinator**") to assist and to coordinate the interests of all Persons (other than any defendant or respondent, any of their respective affiliates, and the federal, provincial and territorial governments of Canada) in these proceedings (the "**Tobacco Claimants**") in connection with the Pending Litigation and any Tobacco Claim (the "**Interim Duties**").

40. THIS COURT ORDERS that, during the Interim Period, the Interim Tobacco Claimant Coordinator shall be at liberty to, among other things:

(a) retain independent legal counsel and such other advisors and persons as the Interim Tobacco Claimant Coordinator considers necessary or desirable to assist him in relation to the Interim Duties;

(b) consult with Tobacco Claimants, the Monitor, the Applicants and other creditors and stakeholders of the Applicant, including in connection with any recommendations that the Interim Tobacco Claimant Coordinator has in respect of the (i) establishment of a committee of Tobacco Claimants (the "**Tobacco Claimant Committee**") to consult with and provide input to the Interim Tobacco Claimant Coordinator and the procedures to govern the formation and operation of the Interim Tobacco Claimant Committee; and (ii) procedural mechanisms to be implemented to facilitate the resolution of the Tobacco Claims;

(c) accept a court appointment of similar nature to represent claimants with interests similar to the Tobacco Claimants in any proceedings under the CCAA commenced by a company that is a co-defendant with any of the Applicants in any action

brought by one or more Tobacco Claimants, including the Pending Litigation; and

(d) apply to this Court for advice and directions at such times as the Interim Tobacco Claimant Coordinator may so require.

41. THIS COURT ORDERS that, subject to an agreement between the Applicants and the Interim Tobacco Claimant Coordinator, all reasonable fees and disbursements of the Interim Tobacco Claimant Coordinator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to the Interim Duties shall be paid by the Applicants on a monthly basis, forthwith upon the rendering of accounts to the Applicants.

42. THIS COURT ORDERS that the Interim Tobacco Claimant Coordinator shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Tobacco Claimant Coordinator Charge**") on the Property, which charge shall not exceed an aggregate amount of $1 million, as security for his fees and disbursements and for the fees and disbursements of his legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Interim Tobacco Claimant Coordinator Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that the Interim Tobacco Claimant Coordinator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

44. THIS COURT ORDERS that, in addition to the rights and protections afforded as an officer of this Court, the Interim Tobacco Claimant Coordinator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Administration Charge, the Interim Tobacco Claimant Coordinator Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "**Charges**"), as among them, shall be as follows:

(a) First – Administration Charge (to the maximum amount of $5 million) and the Interim Tobacco Claimant Coordinator Charge (to the maximum amount of $1 million), *pari passu*;

(b) Second – Directors' Charge (to the maximum amount of $16 million); and

(c) Third – the Sales and Excise Tax Charge (to the maximum amount of $580 million).

46. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges encumbrances, and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property save and except for:

(a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);

(b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;

(c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, but only to the extent that any such

deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract; and

(d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

49. THIS COURT ORDERS that each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below) and advising of the appointment of the Interim Tobacco Claimant Coordinator, (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than $5,000, except with respect to (I) Tobacco Claimants, in which cases the Monitor shall only send a notice to the Interim Tobacco Claimant Coordinator and to counsel of record in the applicable Pending Litigation (if any) and (II) in the case of beneficiaries of the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, in which case the Monitor shall only send a notice to the trustees of each of the DB Plans, the DC Plan and the Applicants' other pension plans, and the Retraite Québec, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced in subparagraph (C) above shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

52. THIS COURT ORDERS that notice of the appointment of the Interim Tobacco Claimant Coordinator shall be provided to the Tobacco Claimants by:

(a) notice on the Case Website (as defined herein) posted by the Monitor;

(b) advertisements published without delay by the Monitor in The Globe and Mail (National Edition) and La Presse, which advertisements shall be in addition to the advertisement required under paragraph 51 hereof, and which shall be run on two non-consecutive days following the day on which the advertisement set out in paragraph 51 is run; and

(c) delivery by the Applicants of a copy of this Order to counsel of record in the applicable Pending Litigation, who shall thereafter (i) post notice of the appointment of the Interim Tobacco Claimant Coordinator on their respective websites and (ii) deliver notice of the appointment of the Interim Tobacco Claimant Coordinator to each representative plaintiff;

53. THIS COURT ORDERS that notice of any motions or other proceedings to which the Tobacco Claimants are entitled or required to receive in these CCAA proceedings and in respect of which the Interim Tobacco Claimant Coordinator has the authority to represent the Tobacco Claimants may be served on the Interim Tobacco Claimant Coordinator and, unless the Court has ordered some other form of service, such service will constitute sufficient service and any further service on Tobacco Claimants is dispensed with.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL: http://cfcanada.fticonsulting.com/imperialtobacco ("**Case Website**").

55. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier,

personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

56. THIS COURT ORDERS that the Applicants are authorized to rely on the notice provided in paragraph 51 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

57. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List. The Monitor shall manage the scheduling of all motions that are brought in these proceedings.

58. **THIS COURT ORDERS** that the Applicants and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

GENERAL

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions

concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

60. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or any other country, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. THIS COURT ORDERS that any interested party (including the Applicants, BAT, BATIF, and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicants or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant,

the Property, the Business or the funds deposited pursuant to the Deposit Posting Order shall be deemed not to have been taken or given, as the case may be.

SCHEDULE "A"
PENDING LITIGATION

A. Medicaid Claim Litigation

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
1.	Alberta	June 8, 2012; 1201-07314 (Calgary)	Her Majesty in Right of Alberta	Altria Group, Inc.; B.A.T Industries p.l.c.; British American Tobacco (Investments) Limited; British American Tobacco p.l.c.; Canadian Tobacco Manufacturers Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-MacDonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans, Benson & Hedges Inc.; and Rothmans Inc.
2.	British Columbia	January 24, 2001, further amended February 17, 2011; S010421 (Vancouver)	Her Majesty the Queen in right of British Columbia	Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc., Rothmans International Research Division and Ryesekks p.l.c.
3.	Manitoba	May 31, 2012, amended October 16, 2012; CI 12-01-78127 (Winnipeg)	Her Majesty the Queen in right of the Province of Manitoba	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
4.	New Brunswick	March 13, 2008; F/C/88/08 (Fredericton)	Her Majesty the Queen in right of the Province of New Brunswick	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
5.	Newfoundland and Labrador	February 8, 2011, amended June 4, 2014, 01G. No. 0826 (St. John's)	Attorney General of Newfoundland and Labrador	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., JTI-MacDonald Corp., RJ Reynolds Tobacco Company, RJ 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
6.	Nova Scotia	January 2, 2015; 434868/137868 (Halifax)	Her Majesty The Queen in Right of the Province of Nova Scotia	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited and Canadian Tobacco Manufacturers' Council.
7.	Ontario	Amended December 11, 2009, amended as amended August 25, 2010, fresh as amended March 28, 2014, amended fresh as amended, April 20, 2016; CV-09-387984 (Toronto)	Her Majesty the Queen in right of Ontario	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
8.	Prince Edward Island	September 10, 2012, amended October 17, 2012; S1-G-S-25019 (Charlottetown)	Her Majesty the Queen in right of the Province of Prince Edward Island	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
9.	Québec	June 8, 2012; 500-17-072363-123 (Montréal)	Procureur général du Québec	Impérial Tobacco Canada Limitée, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Rothmans, Benson & Hedges, Philip Morris USA Inc., Philip Morris International

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
				Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., et Conseil Canadien de Fabricants des Produits du Tabac
10.	Saskatchewan	Amended October 5, 2012; Q.B. 871/2012 (Saskatoon)	The Government of Saskatchewan	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council

B. Tobacco Claim Litigation – Certified and Proposed Class Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Alberta	June 15, 2009; 0901-08964 (Calgary)	Linda Dorion	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
2.	British Columbia	May 8, 2003; L 031300 (Vancouver)	John Smith (a.k.a., Kenneth Knight)	Imperial Tobacco Canada Ltd.
3.	British Columbia	June 25, 2010; 10-2780 (Victoria)	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc. Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council[1]

[1] British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
4.	British Columbia	June 25, 2010; 10-2769 (Victoria)	Roderick Dennis McDermid	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc., Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council[2]
5.	Manitoba	June 2009; CI09-01-61479 (Winnipeg)	Deborah Kunta	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc and Ryesekks p.l.c.
6.	Nova Scotia	June 18, 2009; 312869 2009 (Halifax)	Ben Semple	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
7.	Ontario	December 2, 2009; 64757 (London)	The Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler and Arpad Dobrentey	Imperial Tobacco Canada Limited, which is to be heard together with similar actions against Rothmans, Benson & Hedges Inc., and JTI-MacDonald Corp.
8.	Ontario	June 27, 2012, 53794/12 (St. Catharines)	Suzanne Jacklin	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc.,

[2] British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
				R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c
9.	Quebec	September 30, 2005; 500-06-000070-983 (Montreal)	Christine Fortin, Cécilia Létourneau and Joseph Mandelman	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.
10.	Quebec	September 29, 2005, 500-06-000076-980 (Montreal)	Conseil Quebecois Sur Le Tabac Et La Sante and Jean-Yves Blais	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp.
11	Saskatchewan	July 10, 2009, 1036 of 2009; (June 12, 2009; 916 of 2009 never served) (Regina)	Thelma Adams	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris USA Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc. and Ryesekks p.l.c.[1]

C. Tobacco Claim Litigation – Individual Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Nova Scotia	February 20, 2002, 177663 (Halifax)	Peter Stright	Imperial Tobacco Canada Limited
2.	Ontario	May 1, 1997, amended May 25, 1998, fresh as amended March 28, 2004, C17773/97 (Milton)	Ljubisa Spasic as estate trustee of Mirjana Spasic	Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.
3.	Ontario	Amended September 8, 2014, 00-CV-	Ragoonanan *et al*	Imperial Tobacco Canada Limited

[1] B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c. have been released from this action

		183165-CP00 (Toronto)		
4	Ontario	June 30, 2003; 1442/03 (London)	Scott Landry	Imperial Tobacco Canada Limited
5	Ontario	June 12, 1997; 21513/97 (North York)	Joseph Battaglia	Imperial Tobacco Canada Limited
6.	Quebec	December 8, 2016; 750-32-700014-163 (Saint Hyacinthe)	Roland Bergeron	Imperial Tobacco Canada Limited

SCHEDULE "B"
ITCAN SUBSIDIARIES

Imperial Tobacco Services Inc.
Imperial Tobacco Products Limited
Marlboro Canada Limited
Cameo Inc.
Medallion Inc.
Allan Ramsay and Company Limited
John Player & Sons Ltd.
Imperial Brands Ltd.
2004969 Ontario Inc.
Construction Romir Inc.
Genstar Corporation
Imasco Holdings Group, Inc.
ITL (USA) limited
Genstar Pacific Corporation
Imasco Holdings Inc.
Southward Insurance Ltd.
Liggett & Myers Tobacco Company of Canada Limited

SCHEDULE "C"
HEALTH CARE COSTS RECOVERY LEGISLATION

Jurisdiction	Statute
Alberta	*Crown's Right of Recovery Act*, SA 2009, c C-35
British Columbia	*Tobacco Damages and Health Care Costs Recovery Act*, SBC 2000, c 30
Manitoba	*The Tobacco Damages Health Care Costs Recovery Act*, SM 2006, c 18
New Brunswick	*Tobacco Damages and Health Care Costs Recovery Act*, SNB 2006, c T-7.5
Newfoundland and Labrador	*Tobacco Health Care Costs Recovery Act*, SNL 2001, c T-4.2
Nova Scotia	*Tobacco Health-Care Costs Recovery Act*, SNS 2005, c 46
Northwest Territories	Proclaimed but not yet in force: *Tobacco Damages and Health Care Costs Recovery Act*, SNWT 2011, c 33
Nunavut	Proclaimed but not yet in force: *Tobacco Damages and Health Care Costs Recovery Act*, SNu 2010, c 31
Ontario	*Tobacco Damages and Health Care Costs Recovery Act*, 2009, SO 2009, c 13
Prince Edward Island	*Tobacco Damages and Health Care Costs Recovery Act*, SPEI 2009, c 22
Québec	*Tobacco-related Damages and Health Care Costs Recovery Act*, 2009, CQLR c R-2.2.0.0.1
Saskatchewan	*The Tobacco Damages and Health Care Costs Recovery Act*, SS 2007, c T-14.2
Yukon	N/A

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

INITIAL ORDER

OSLER, HOSKIN & HARCOURT LLP
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Lawyers to the Applicants,
Imperial Tobacco Canada Limited
and Imperial Tobacco Company Limited

Matter No: 1144377

This is **Exhibit "BB"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a
Commissioner, etc., Province of
Ontario while a Student-at-Law
Expires September 22, 202[illegible]

Osler, Hoskin & Harcourt LLP
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OSLER

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Ottawa
Vancouver
New York

March 14, 2019

Nancy Roberts
Direct Dial: 416.862.5867
nroberts@osler.com
Our Matter Number: 1144377

HAND DELIVERED

Registrar
Superior Court of Justice (Ontario)
393 University Avenue
10th Floor
Toronto, ON M5G 1T3

Dear Sir/Madam:

Re: In the Matter of a Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited ("ITCAN") and Imperial Tobacco Company Limited ("ITCO")

Re: Her Majesty the Queen in Right of Ontario v. Rothmans Inc. et al., Court File No. CV-09-387984

Re: The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Imperial Tobacco Canada limited, Court File No. 64757

Re Jasmine Ragoonanan et al. v. Imperial Tobacco Canada Limited, Court File No. 00-CV-183165

We are counsel for ITCAN and ITCO (the "**Applicants**"). On March 12, 2019, the Ontario Superior Court of Justice (Commercial List) granted the enclosed Initial Order (the "**Order**") pursuant to the *Companies' Creditor Arrangement Act*.

Pursuant to paragraphs 18 and 19 of the Order, until and including April 11, 2019, all proceedings or enforcement process in any court of tribunal (including any "**Tobacco Claim**" as defined in paragraph 4(g) of the Order) against *inter alia*, the Applicants as well as British American Tobacco p.l.c., B.A.T. Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related or affiliated with them, are stayed and suspended pending further order of the Court. Therefore, the above referenced actions against any of the above referenced parties, are stayed.

Under the terms of the Order, FTI Consulting Canada Inc. (the "**Monitor**") will serve as the Court-appointed Monitor in these proceedings. Court materials relating to this proceeding can be found on the Monitor's website at http://cfcanada.fticonsulting.com/imperialtobacco.

The "**Comeback Motion**" has been scheduled for April 4, 2019.

If you have any questions, please contact me.

Yours very truly,

Nancy Roberts
Partner

Enclosure

cc: Jacqueline L. Wall/Edmund Huang, Ministry of the Attorney General
David Byers/Lesley Mercer, *Stikeman Elliott LLP*
Ira Nishisato/Cynthia Clark/Caitlin Sainsbury, *Borden Ladner Gervais LLP*
Steven Sofer/Mischa Armin, *Gowling WLG*
John P. Ormston, *Ormston List Frawley LLP*
Christopher Rusnak/Siobhan Sams, *Harper Grey LLP*
Harvey T. Strosberg, Q.C., *Sutts Strosberg LLP*
Sarit E. Batner/Deborah Templer, *McCarthy Tétrault LLP*
Joel P. Rochon/Ron Podolny/Adam Rochwerg, *Rochon Genova*

Court File No. CV-19-616077-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 12TH
JUSTICE MCEWEN	)	DAY OF MARCH, 2019
	)	

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED (the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Eric Thauvette sworn March 12, 2019 and the exhibits thereto (the "**Thauvette Affidavit**"), (ii) the affidavit of Nancy Roberts sworn March 12, 2019, and (iii) the pre-filing report dated March 12, 2019 (the "**Monitor's Pre-Filing Report**") of FTI Consulting Canada Inc. ("**FTI**") in its capacity as the proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants, BAT (as defined herein), FTI and the Honourable Warren K. Winkler, Q.C. in his capacity as proposed Interim Tobacco Claimant Coordinator (as defined herein), and on reading the consent of FTI to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application

is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

DEFINITIONS

4. THIS COURT ORDERS that for purposes of this Order:

(a) "**BAT**" means British American Tobacco p.l.c.;

(b) "**BAT Group**" means, collectively, BAT, BATIF, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries;

(c) "**BATIF**" means B.A.T. International Finance p.l.c.;

(d) "**Deposit Posting Order**" means the order of the Quebec Court of Appeal granted October 27, 2015 or any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;

(e) "**ITCAN**" means Imperial Tobacco Canada Limited;

(f) "**ITCAN Subsidiaries**" means the direct and indirect subsidiaries of the Applicants listed in Schedule "B";

(g) "**Pending Litigation**" means any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named

defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including without limitation the litigation listed in Schedule "A";

(h) "**Quebec Class Actions**" means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;

(i) "**Sales & Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;

(j) "**Tobacco Claim**" means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced as a government body or agency, insurer, employer, or otherwise, under or in connection with:

(i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada, or in the case of any of the Applicants, anywhere else in the world; or

(ii) the legislation listed on Schedule "C", as may be amended or restated, or similar or analogous legislation that may be enacted in future,

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicants, the ITCAN Subsidiaries or any member of the BAT Group; and

(k) "**Tobacco Products**" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or Business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Thauvette Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or other Person providing the Cash

Management System (including, without limitation, BATIF and its affiliates, The Bank of Nova Scotia and Citibank, N.A.) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive and share compensation plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to the Applicants' employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Applicants' other retirement programs), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance and severance pay payable to employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;

(b) the fees and disbursements of any Assistants retained or employed by the Applicants, including without limitation in respect of any proceedings under Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended, at their standard rates and charges;

(c) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of this Order:

(i) by logistics or supply chain providers, including customs brokers and freight forwarders;

(ii) by providers of information technology, social media marketing strategies and publishing services; and

(iii) in respect of the Loyalty Program as set out in the Thauvette Affidavit;

(d) with the consent of the Monitor, amounts payable in respect of any Intercompany Transactions (as defined herein); and

(e) by other third party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the Business or the Property.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of $1 million or an aggregate of such expenditures in a calendar year in excess of $5 million; and

(c) payment for goods or services supplied or to be supplied to the Applicants on or after the date of this Order (including the payment of any royalties).

9. THIS COURT ORDERS that the Applicants are authorized to complete outstanding transactions and engage in new transactions with any member of the BAT Group and to continue, on and after the date hereof, to buy and sell goods and services and to allocate, collect

and pay costs, expenses and other amounts from and to the members of the BAT Group, including without limitation in relation to head office and shared services, finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licenses (collectively, together with the Cash Management System and all transactions and all inter-company funding policies and procedures between any of the Applicants and any member of the BAT Group, the "**Intercompany Transactions**") in the ordinary course of business as described in the affidavit or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicants and any member of the BAT Group, including the provision of goods and services from any member of the BAT Group to any of the Applicants, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all Sales & Excise Taxes required to be remitted by the Applicants in connection with the Business; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

11. THIS COURT ORDERS that the Applicants are, subject to paragraph 12, authorized to post and to continue to have posted, cash collateral, letters of credit, performance

bonds, payment bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding $111 million (the "**Bonding Collateral**"), to satisfy regulatory or administrative requirements to provide security that have been imposed on the Applicants in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicants as such security.

12. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes are hereby stayed during the Stay Period from requiring that any additional bonding or other security be posted by or on behalf of the Applicants in connection with Sales & Excise Taxes, or any other matters for which such bonding or security may otherwise be required.

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the relevant Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants or claims to which they are subject to any of their creditors as of this date and to post no security in respect of such amounts or claims, including pursuant to an order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations and to dispose of redundant or non-material assets not exceeding $1,000,000 in any one transaction or $5,000,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

16. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the relevant Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the relevant Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

17. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against such Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

18. THIS COURT ORDERS that until and including April 11, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to any Pending Litigation and any other Proceeding in relation to any other Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicants, the ITCAN Subsidiaries, the Monitor, any of their respective employees and representatives acting in that capacity, the Interim Tobacco Claimant Coordinator, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of any of the Applicants or the ITCAN Subsidiaries, any of their respective employees and representatives acting in that capacity or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicants in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. THIS COURT ORDERS that, during the Stay Period, no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicants, the Business or the Property, including the Pending Litigation, shall be commenced, continued or take place against or in respect of any member of the BAT Group except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take

place against or in respect of any member of the BAT Group are hereby stayed and suspended pending further Order of this Court.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

21. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor or their respective employees and representatives acting in that capacity, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicants, the Property or the ITCAN Subsidiaries), are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants or the ITCAN Subsidiaries to carry on any business which the Applicants or the ITCAN Subsidiaries are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

22. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the ITCAN Subsidiaries, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

23. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or the ITCAN Subsidiaries or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services or other services to the Business, the Applicants or the ITCAN Subsidiaries, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or the ITCAN Subsidiaries, and that the Applicants and the ITCAN Subsidiaries shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and the ITCAN Subsidiaries in accordance with normal payment practices of the Applicants and the ITCAN Subsidiaries or such other practices as may be agreed upon by the supplier or service provider and the respective Applicant or ITCAN Subsidiary and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

SALES AND EXCISE TAX CHARGE

25. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes (including for greater certainty the Canada Border Services Agency) shall be entitled to the benefit of and are hereby granted a charge (the "**Sales and Excise Tax Charge**") on the Property, which charge shall not exceed an aggregate amount of $580 million, as security

for all amounts owing by the Applicants in respect of Sales & Excise Taxes, after taking into consideration any Bonding Collateral posted in respect thereof. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 45 and 47 hereof.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $16 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicants in their preparation of the Applicants' cash flow statements;

(d) advise the Applicants in their development of the Plan and any amendments to the Plan;

(e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) assist the Applicants, to the extent required by the Applicants, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;

(i) consult with the Interim Tobacco Claimant Coordinator in connection with the Interim Tobacco Claimant Coordinator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan;

(j) be and is hereby appointed to serve as the "foreign representative" of the Applicants in respect of an application to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, the Ontario *Occupational Health and Safety Act*, the Quebec *Environment Quality Act*, the Quebec *Act Respecting Occupational Health and Safety* and any regulations under any of the foregoing statutes (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the

Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the Interim Tobacco Claimant Coordinator with information provided by the Applicants in response to reasonable requests for information made in writing by such person addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor and counsel to the Applicants retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount

of $5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

INTERIM TOBACCO CLAIMANT COORDINATOR

39. THIS COURT ORDERS that the Hon. Warren K. Winkler Q.C. is hereby appointed, on an interim basis until April 30, 2019 or as may be agreed to by the Applicants and the Monitor (the "**Interim Period**"), as an officer of the Court and shall act as an independent third party (the "**Interim Tobacco Claimant Coordinator**") to assist and to coordinate the interests of all Persons (other than any defendant or respondent, any of their respective affiliates, and the federal, provincial and territorial governments of Canada) in these proceedings (the "**Tobacco Claimants**") in connection with the Pending Litigation and any Tobacco Claim (the "**Interim Duties**").

40. THIS COURT ORDERS that, during the Interim Period, the Interim Tobacco Claimant Coordinator shall be at liberty to, among other things:

(a) retain independent legal counsel and such other advisors and persons as the Interim Tobacco Claimant Coordinator considers necessary or desirable to assist him in relation to the Interim Duties;

(b) consult with Tobacco Claimants, the Monitor, the Applicants and other creditors and stakeholders of the Applicant, including in connection with any recommendations that the Interim Tobacco Claimant Coordinator has in respect of the (i) establishment of a committee of Tobacco Claimants (the "**Tobacco Claimant Committee**") to consult with and provide input to the Interim Tobacco Claimant Coordinator and the procedures to govern the formation and operation of the Interim Tobacco Claimant Committee; and (ii) procedural mechanisms to be implemented to facilitate the resolution of the Tobacco Claims;

(c) accept a court appointment of similar nature to represent claimants with interests similar to the Tobacco Claimants in any proceedings under the CCAA commenced by a company that is a co-defendant with any of the Applicants in any action

brought by one or more Tobacco Claimants, including the Pending Litigation; and

(d) apply to this Court for advice and directions at such times as the Interim Tobacco Claimant Coordinator may so require.

41. THIS COURT ORDERS that, subject to an agreement between the Applicants and the Interim Tobacco Claimant Coordinator, all reasonable fees and disbursements of the Interim Tobacco Claimant Coordinator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to the Interim Duties shall be paid by the Applicants on a monthly basis, forthwith upon the rendering of accounts to the Applicants.

42. THIS COURT ORDERS that the Interim Tobacco Claimant Coordinator shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Tobacco Claimant Coordinator Charge**") on the Property, which charge shall not exceed an aggregate amount of $1 million, as security for his fees and disbursements and for the fees and disbursements of his legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Interim Tobacco Claimant Coordinator Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that the Interim Tobacco Claimant Coordinator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

44. THIS COURT ORDERS that, in addition to the rights and protections afforded as an officer of this Court, the Interim Tobacco Claimant Coordinator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Administration Charge, the Interim Tobacco Claimant Coordinator Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "**Charges**"), as among them, shall be as follows:

(a) First – Administration Charge (to the maximum amount of $5 million) and the Interim Tobacco Claimant Coordinator Charge (to the maximum amount of $1 million), *pari passu*;

(b) Second – Directors' Charge (to the maximum amount of $16 million); and

(c) Third – the Sales and Excise Tax Charge (to the maximum amount of $580 million).

46. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges encumbrances, and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property save and except for:

(a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);

(b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;

(c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, but only to the extent that any such

deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract; and

(d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

49. THIS COURT ORDERS that each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below) and advising of the appointment of the Interim Tobacco Claimant Coordinator, (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than $5,000, except with respect to (I) Tobacco Claimants, in which cases the Monitor shall only send a notice to the Interim Tobacco Claimant Coordinator and to counsel of record in the applicable Pending Litigation (if any) and (II) in the case of beneficiaries of the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, in which case the Monitor shall only send a notice to the trustees of each of the DB Plans, the DC Plan and the Applicants' other pension plans, and the Retraite Québec, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced in subparagraph (C) above shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

52. THIS COURT ORDERS that notice of the appointment of the Interim Tobacco Claimant Coordinator shall be provided to the Tobacco Claimants by:

(a) notice on the Case Website (as defined herein) posted by the Monitor;

(b) advertisements published without delay by the Monitor in The Globe and Mail (National Edition) and La Presse, which advertisements shall be in addition to the advertisement required under paragraph 51 hereof, and which shall be run on two non-consecutive days following the day on which the advertisement set out in paragraph 51 is run; and

(c) delivery by the Applicants of a copy of this Order to counsel of record in the applicable Pending Litigation, who shall thereafter (i) post notice of the appointment of the Interim Tobacco Claimant Coordinator on their respective websites and (ii) deliver notice of the appointment of the Interim Tobacco Claimant Coordinator to each representative plaintiff;

53. THIS COURT ORDERS that notice of any motions or other proceedings to which the Tobacco Claimants are entitled or required to receive in these CCAA proceedings and in respect of which the Interim Tobacco Claimant Coordinator has the authority to represent the Tobacco Claimants may be served on the Interim Tobacco Claimant Coordinator and, unless the Court has ordered some other form of service, such service will constitute sufficient service and any further service on Tobacco Claimants is dispensed with.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL: http://cfcanada.fticonsulting.com/imperialtobacco ("**Case Website**").

55. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier,

personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

56. THIS COURT ORDERS that the Applicants are authorized to rely on the notice provided in paragraph 51 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

57. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List. The Monitor shall manage the scheduling of all motions that are brought in these proceedings.

58. **THIS COURT ORDERS** that the Applicants and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

GENERAL

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions

concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

60. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or any other country, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. THIS COURT ORDERS that any interested party (including the Applicants, BAT, BATIF, and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicants or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant,

the Property, the Business or the funds deposited pursuant to the Deposit Posting Order shall be deemed not to have been taken or given, as the case may be.

SUPERIOR COURT OF JUSTICE
ENTERED

MAR 12 2019

JP

COUR SUPÉRIEURE DE JUSTICE
ENTRÉ

SCHEDULE "A"
PENDING LITIGATION

A. Medicaid Claim Litigation

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
1.	Alberta	June 8, 2012; 1201-07314 (Calgary)	Her Majesty in Right of Alberta	Altria Group, Inc.; B.A.T Industries p.l.c.; British American Tobacco (Investments) Limited; British American Tobacco p.l.c.; Canadian Tobacco Manufacturers Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-MacDonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans, Benson & Hedges Inc.; and Rothmans Inc.
2.	British Columbia	January 24, 2001, further amended February 17, 2011; S010421 (Vancouver)	Her Majesty the Queen in right of British Columbia	Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc., Rothmans International Research Division and Rycsekks p.l.c.
3.	Manitoba	May 31, 2012, amended October 16, 2012; CI 12-01-78127 (Winnipeg)	Her Majesty the Queen in right of the Province of Manitoba	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
4.	New Brunswick	March 13, 2008; F/C/88/08 (Fredericton)	Her Majesty the Queen in right of the Province of New Brunswick	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
5.	Newfoundland and Labrador	February 8, 2011, amended June 4, 2014, 01G. No. 0826 (St. John's)	Attorney General of Newfoundland and Labrador	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., JTI-MacDonald Corp., RJ Reynolds Tobacco Company, RJ 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
6.	Nova Scotia	January 2, 2015, 434868/737868 (Halifax)	Her Majesty The Queen in Right of the Province of Nova Scotia	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited and Canadian Tobacco Manufacturers' Council.
7.	Ontario	Amended December 11, 2009, amended as amended August 25, 2010, fresh as amended March 28, 2014, amended fresh as amended, April 20, 2016; CV-09-387984 (Toronto)	Her Majesty the Queen in right of Ontario	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
8.	Prince Edward Island	September 10, 2012, amended October 17, 2012; SI GS-25019 (Charlottetown)	Her Majesty the Queen in right of the Province of Prince Edward Island	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
9.	Québec	June 8, 2012; 500-17-072363-123 (Montreal)	Procureur général du Québec	Impérial Tobacco Canada Limitée, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Rothmans, Benson & Hedges, Philip Morris USA Inc., Philip Morris International

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
				Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., et Conseil Canadien de Fabricants des Produits du Tabac
10.	Saskatchewan	Amended October 5, 2012, Q.B. 871/2012 (Saskatoon)	The Government of Saskatchewan	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council

B. Tobacco Claim Litigation – Certified and Proposed Class Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Alberta	June 15, 2009; 0901-08964 (Calgary)	Linda Dorion	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
2.	British Columbia	May 8, 2003; L 031360 (Vancouver)	John Smith (a.k.a., Kenneth Knight)	Imperial Tobacco Canada Ltd.
3.	British Columbia	June 25, 2010; 10-2780 (Victoria)	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc. Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council[1]

[1] British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
4.	British Columbia	June 25, 2010; 10-2769 (Victoria)	Roderick Dennis McDermid	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc., Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council[2]
5.	Manitoba	June 2009; CI09-01-61479 (Winnipeg)	Deborah Kunta	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc and Ryesekks p.l.c.
6.	Nova Scotia	June 18, 2009; 312869 2009 (Halifax)	Ben Semple	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
7.	Ontario	December 3, 2009; 64757 (London)	The Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler and Arpad Dobrentey	Imperial Tobacco Canada Limited, which is to be heard together with similar actions against Rothmans, Benson & Hedges Inc., and JTI-MacDonald Corp.
8.	Ontario	June 27, 2012; 53794/12 (St. Catharines)	Suzanne Jacklin	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc.,

[2] British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
				R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c
9.	Quebec	September 30, 2005; 500-06-000070-983 (Montreal)	Christine Fortin, Cécilia Létourneau and Joseph Mandelman	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.
10.	Quebec	September 29, 2005, 500-06-000076-980 (Montreal)	Conseil Quebecois Sur Le Tabac Et La Sante and Jean-Yves Blais	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp.
11.	Saskatchewan	July 10, 2009, 1036 of 2009; (June 12, 2009; 916 of 2009 never served) (Regina)	Thelma Adams	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris USA Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc. and Ryesekks p.l.c.[3]

C. Tobacco Claim Litigation – Individual Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Nova Scotia	February 20, 2002, 177663 (Halifax)	Peter Stright	Imperial Tobacco Canada Limited
2.	Ontario	May 1, 1997, amended May 25, 1998, fresh as amended March 28, 2004, C17773/97 (Milton)	Ljubisa Spasic as estate trustee of Mirjana Spasic	Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.
3.	Ontario	Amended September 8, 2014, 00-CV-	Ragoonanan *et al*	Imperial Tobacco Canada Limited

[3] B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c. have been released from this action

		183165-CP00 (Toronto)		
4	Ontario	June 30, 2003; 1442/03 (London)	Scott Landry	Imperial Tobacco Canada Limited
5	Ontario	June 12, 1997; 21513/97 (North York)	Joseph Battaglia	Imperial Tobacco Canada Limited
6.	Quebec	December 8, 2016; 750-32-700014-163 (Saint-Hyacinthe)	Roland Bergeron	Imperial Tobacco Canada Limited

SCHEDULE "B"
ITCAN SUBSIDIARIES

Imperial Tobacco Services Inc.
Imperial Tobacco Products Limited
Marlboro Canada Limited
Cameo Inc.
Medallion Inc.
Allan Ramsay and Company Limited
John Player & Sons Ltd.
Imperial Brands Ltd.
2004969 Ontario Inc.
Construction Romir Inc.
Genstar Corporation
Imasco Holdings Group, Inc.
ITL (USA) limited
Genstar Pacific Corporation
Imasco Holdings Inc.
Southward Insurance Ltd.
Liggett & Myers Tobacco Company of Canada Limited

SCHEDULE "C"
HEALTH CARE COSTS RECOVERY LEGISLATION

Jurisdiction	Statute
Alberta	*Crown's Right of Recovery Act*, SA 2009, c C-35
British Columbia	*Tobacco Damages and Health Care Costs Recovery Act*, SBC 2000, c 30
Manitoba	*The Tobacco Damages Health Care Costs Recovery Act*, SM 2006, c 18
New Brunswick	*Tobacco Damages and Health Care Costs Recovery Act*, SNB 2006, c T-7.5
Newfoundland and Labrador	*Tobacco Health Care Costs Recovery Act*, SNL 2001, c T-4.2
Nova Scotia	*Tobacco Health-Care Costs Recovery Act*, SNS 2005, c 46
Northwest Territories	Proclaimed but not yet in force: *Tobacco Damages and Health Care Costs Recovery Act*, SNWT 2011, c 33
Nunavut	Proclaimed but not yet in force: *Tobacco Damages and Health Care Costs Recovery Act*, SNu 2010, c 31
Ontario	*Tobacco Damages and Health Care Costs Recovery Act*, 2009, SO 2009, c 13
Prince Edward Island	*Tobacco Damages and Health Care Costs Recovery Act*, SPEI 2009, c 22
Québec	*Tobacco-related Damages and Health Care Costs Recovery Act*, 2009, CQLR c R-2.2.0.0.1
Saskatchewan	*The Tobacco Damages and Health Care Costs Recovery Act*, SS 2007, c T-14.2
Yukon	N/A

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers to the Applicants,
Imperial Tobacco Canada Limited
and Imperial Tobacco Company Limited

Matter No: 1144377

This is **Exhibit "CC"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27 2021

PRESS RELEASE
FOR IMMEDIATE DISTRIBUTION

Imperial Tobacco Canada Obtains Creditor Protection

Business as Usual for Employees, Customers, Consumers and Other Stakeholders

MONTREAL, March 12, 2019 – Imperial Tobacco Canada, Canada's leading legal tobacco company, and its affiliates (collectively "Imperial Tobacco Canada" or "the Company") have obtained an Initial Order from the Ontario Superior Court of Justice granting the Company protection under the *Companies' Creditors Arrangement Act* ("CCAA").

This protection will enable the Company to continue to operate in the normal course, thereby generating the cash flow necessary to pay its employees, suppliers and various levels of government — which in 2018 received taxes of approximately $3.8 billion from the Company.

The Company's decision to file for protection under the CCAA follows the Quebec Court of Appeal judgment holding the industry liable for a maximum of $13.6 billion, and the recent decision by one of the other Canadian tobacco companies, JTI-Macdonald, to seek, and subsequently obtain, CCAA protection. If Imperial Tobacco Canada had not also obtained court protection, it could have been required to pay for all or part of JTI-Macdonald's share of the Quebec judgment, in addition to its own.

Across Canada, tobacco plaintiffs and provincial governments are collectively seeking hundreds of billions of dollars in damages. In seeking protection under the CCAA, the Company will also look to resolve all tobacco litigation in Canada under an efficient and court supervised process.

It will remain business as usual for Imperial Tobacco Canada, its employees, customers and suppliers. In addition, the Company's products, both cigarettes and potentially reduced risk products, will remain available across the country for adult consumers.

Quebec Class Actions

On March 1, 2019 the Quebec Court of Appeal upheld a 2015 Quebec Superior Court judgment under which Imperial Tobacco Canada and two other Canadian tobacco companies are jointly and severally liable to pay a maximum of $13.6 billion in damages to Quebec class action plaintiffs. Imperial Tobacco Canada's share of the judgment is a maximum of approximately $9.2 billion. Following the first instance judgment, the Company made an initial deposit of $758 million in escrow. This amount, as directed by the first instance judge and affirmed by the Court of Appeal, should satisfy any order to pay the claimants.

.../2

Imperial Tobacco Canada continues to disagree with the judgments by the Quebec Court of Appeal and the Quebec Superior Court. Canadian consumers and governments have been aware of the health risks associated with smoking for decades, and the Company has always operated and sold its legal products within a regulatory framework dictated by governments.

Companies' Creditors Arrangement Act

Under the terms of the Initial Order, FTI Consulting Canada Inc. will serve as the Court-appointed Monitor of Imperial Tobacco Canada. Additional information regarding Imperial Tobacco Canada's CCAA proceedings will be available on the Monitor's website at http://cfcanada.fticonsulting.com

Source: Imperial Tobacco Canada: http://www.imperialtobaccocanada.com/

-30-

For more information or interview requests, please contact:

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This is **Exhibit "DD** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27 2021

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2018 key Group statistics

Contact the press office

News Release

Imperial Tobacco Canada Ltd. files for CCAA

12 March 2019

An opportunity to settle all outstanding Canadian tobacco litigation

British American Tobacco p.l.c. has today been informed by its Canadian subsidiary, Imperial Tobacco Canada Ltd (ITCAN), that ITCAN has obtained an Initial Order from the Ontario Superior Court of Justice granting it protection under the *Companies' Creditors Arrangement Act* ("CCAA"). This has the effect of staying all current tobacco litigation in Canada against ITCAN and other Group companies.

ITCAN's decision to file for protection under the CCAA follows the Quebec Court of Appeal judgment holding the industry jointly and severally liable for a maximum of CAD$13.6 billion, and the recent decision by one of the other Canadian tobacco companies, JTI-Macdonald, to seek, and subsequently obtain, CCAA protection. If ITCAN had not also obtained court protection, it could have been required to pay for all or part of JTI-Macdonald's share of the Quebec judgment, in addition to its own.

In addition, across Canada, other tobacco plaintiffs and provincial governments are collectively seeking significant damages which substantially exceed ITCAN's total assets. In seeking protection under the CCAA, ITCAN will look to resolve not only the Quebec case but also all other tobacco litigation in Canada under an efficient and court supervised process, while continuing to trade in the normal course.

It will remain business as usual for ITCAN, its employees, customers and suppliers and during the CCAA process, ITCAN's management will continue to focus on growing its current cigarette and potentially reduced risk products business.

The Group will continue to consolidate the results of ITCAN, in line with IFRS 10 *"Consolidated Financial Statements"*, and ITCAN's CCAA filing will not negatively affect the Group's adjusted net debt to adjusted EBITDA ratio.

The £2.3 billion of goodwill relating to ITCAN on the Group's balance sheet at 31 December 2018 will continue to be reviewed on a regular basis. Any future impairment charge would result in a non-cash charge to the income statement that will be treated as an adjusting item.

Since 2014 the Group has received no dividends from ITCAN and expects that this situation will continue whilst ITCAN remains under CCAA protection. Notwithstanding this, there will be no impact on the BAT Group's dividend payments or policy.

A British American Tobacco spokesperson said:

"Imperial Tobacco Canada has informed us that it disagrees with the Court's judgment. However, we understand that CCAA protection will provide Imperial Tobacco Canada an opportunity to settle all of its outstanding tobacco litigation under an efficient and court supervised process whilst continuing to run its business in the normal course."

Quebec Class Action Update

Following the upholding of the Quebec Superior Court's judgment on 1 March 2019, ITCAN's share of the judgment is a maximum of approximately CAD$9.2 billion. Following the first instance judgment, ITCAN made an initial deposit of CAD$758 million into escrow. As announced on 5 March 2019, an amount of approximately £436 million (CAD$758 million) will be charged to the Group's consolidated income statement in 2019 in respect of this sum and treated as an adjusting item.

ITCAN continues to disagree with the judgments of the Quebec Court of Appeal and the Quebec Superior Court. Canadian consumers and governments have been aware of the health risks associated with smoking for decades, and ITCAN has always operated and sold its legal products within a regulatory framework prescribed by successive governments.

Notes to Editors

CCAA is the Companies' Creditors Arrangement Act, and it refers to the Canadian Federal Act that allows corporations the opportunity to restructure their affairs. An organisation that files for court protection under CCAA continues to

operate and maintain business that is “in the ordinary course” or business as usual.

Enquiries

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Forward looking statements

This announcement contains certain forward-looking statements, including “forward-looking” statements made within the meaning of Section 21E of the United States Securities Exchange Act of 1934. These statements are often, but not always, made through the use of words or phrases such as “believe,” “anticipate,” “could,” “may,” “would,” “should,” “intend,” “plan,” “potential,” “predict,” “will,” “expect,” “estimate,” “project,” “positioned,” “strategy,” “outlook”, “target” and similar expressions. These include statements regarding our intentions, beliefs or current expectations concerning, amongst other things, our results of operations, financial condition, liquidity, prospects, growth, strategies and the economic and business circumstances occurring from time to time in the countries and markets in which the Group operates.

All such forward-looking statements involve estimates and assumptions that are subject to risks, uncertainties and other factors that could cause actual future financial condition, performance and results to differ materially from the plans, goals, expectations and results expressed in the forward-looking statements and other financial and/or statistical data within this announcement. Among the key factors that could cause actual results to differ materially from those projected in the forward-looking statements are uncertainties related to the following: the impact of competition from illicit trade; the impact of adverse domestic or international legislation and regulation; changes in domestic or international tax laws and rates; adverse litigation and dispute outcomes and the effect of such outcomes on the Group’s financial condition; changes or differences in domestic or international economic or political conditions; adverse decisions by domestic or international regulatory bodies; the impact of market size reduction and consumer down-trading; translational and transactional foreign exchange rate exposure; the impact of serious injury, illness or death in the workplace; the ability to maintain credit ratings and to fund the business under the current capital structure; the inability to develop, commercialise and roll-out Potentially Reduced-Risk Products; and changes in the market position, businesses, financial condition, results of operations or prospects of the Group.

It is believed that the expectations reflected in this announcement are reasonable but they may be affected by a wide range of variables that could cause actual results to differ materially from those currently anticipated. Past performance is no guide to future performance and persons needing advice should consult an independent financial adviser. The forward-looking statements reflect knowledge and information available at the date of preparation of this announcement and the Group undertakes no obligation to update or revise these forward-looking statements, whether as a result of new information, future events or otherwise. Readers are cautioned not to place undue reliance on such forward-looking statements.

No statement in this communication is intended to be a profit forecast and no statement in this communication should be interpreted to mean that earnings per share of BAT for the current or future financial years would necessarily match or exceed the historical published earnings per share of BAT.

Additional information concerning these and other factors can be found in the Company's filings with the U.S. Securities and Exchange Commission ("SEC"), including the Annual Report on Form 20-F filed on 15 March 2018 and Current Reports on Form 6-K, which may be obtained free of charge at the SEC's website, http://www.sec.gov, and the Company's Annual Reports, which may be obtained free of charge from the British American Tobacco website www.bat.com.

Latest tweets

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@BATPress

On #WorldWaterDay, we look at how our Project AQUA is making a difference in Fiji by providing local tobacco farmin…

twitter.com/i/web/status/

22 Mar

Current UK share price

3090.0(

+6.50p

27 Mar 2019 17:06

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Site map

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British American Tobacco p.l.c.
Globe House
4 Temple Place
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WC2R 2PG

T: +44 (0) 20 7845 1000

This is **Exhibit "EE"** to the

affidavit of **PETER ENTECOTT**

sworn before me this

28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires September 27 2021

Rothmans, Benson & Hedges Inc. Granted Protection Under the Companies' Creditors Arrangement Act, Including a Stay of Litigation

Français

Rothmans, Benson & Hedges Inc.

NEWS PROVIDED BY
Rothmans, Benson & Hedges Inc. →
Mar 22, 2019, 17:58 ET

TORONTO, March 22, 2019 /CNW/ - Acting on an application by Rothmans, Benson & Hedges Inc. (RBH), the Ontario Superior Court of Justice today granted the company protection under the *Companies' Creditors Arrangement Act* (CCAA). The Court's initial order imposes a comprehensive stay of litigation proceedings against RBH while allowing the company to carry on its business in the ordinary course.

CCAA protection is a court-supervised proceeding designed to bring creditors and potential creditors together to resolve claims while the business continues to operate with minimal disruption. Consistent with this objective, the initial CCAA order authorizes RBH to pay all expenses incurred in carrying on its business in the ordinary course, including obligations to employees, vendors, and suppliers.

"The CCAA forum provides RBH with a promising opportunity to resolve all the pending litigation we have faced for decades in Canada," said Peter Luongo, Managing Director of RBH.

RBH sought the Court's order following an adverse appellate decision in two Class Action lawsuits in Québec against RBH, Imperial Tobacco Canada Limited, and JTI-Macdonald Corp.

As part of RBH's filing for creditor protection, the Ontario Superior Court of Justice made an initial order staying proceedings in the Québec class action proceedings and the other pending litigation, including the litigation brought by all ten provinces related to the recovery of health care costs.

Creditor Protection Offers an Opportunity to Resolve All Pending Canadian Litigation while RBH Continues Normal Business Operations

"While RBH disputes liability in the Canadian litigation given the widespread awareness of the health risks of smoking, we are optimistic about reaching an arrangement that could resolve all pending litigation and allow RBH to focus on the future," said Luongo.

"RBH and its predecessors have been in business for over 100 years. The company is operationally sound thanks to the hard work and commitment of its more than 800 employees across Canada. Furthermore, we are determined to replace cigarettes with innovative, smoke-free technologies that are a better choice for the millions of adults in Canada who would otherwise keep smoking," added Luongo.

Québec Class Actions Judgment and Filing for Creditor Protection

In 2015, the Québec trial court ruled in favor of the plaintiffs and found that the estimated class members' damages totaled approximately CAD 15.6 billion including interest. On March 1, 2019, the Court of Appeal largely affirmed the total amount of compensatory and punitive damages, but reduced the total class member damages due to an error in the interest calculation to approximately CAD 13.6 billion including interest.

While the trial court found that the ultimate damages disposition would depend on an individual claims process, the three defendants in the cases—RBH, JTI-Macdonald Corp., and Imperial Tobacco Canada Limited—are jointly and severally liable for the compensatory damages to be distributed to eligible class members. JTI-Macdonald Corp. and Imperial Tobacco Canada Limited were granted creditor protection under the CCAA in connection with the class actions, on March 8 and 12, 2019, respectively. Without creditor protection, RBH could have been required to pay, in addition to its allocated portion, the portions of the class actions judgment allocated to JTI-Macdonald Corp. and Imperial Tobacco Canada Limited.

RBH has not paid dividends since the trial court judgment in May 2015 and does not anticipate doing so while under creditor protection.

The Ontario Superior Court of Justice has scheduled the next hearing on RBH's CCAA filing for April 4-5, 2019 at which time the Court will consider requests, if any, from interested parties to vary the terms of the initial order for creditor protection.

Pursuant to the initial order, Ernst & Young Canada Inc. has been appointed as RBH's Monitor in the CCAA proceeding. Information regarding RBH's CCAA proceedings, including court orders and the Monitor's reports, will be available on the Monitor's website at: http://www.ey.com/ca/rbh.

About Rothmans, Benson & Hedges Inc.

Rothmans, Benson & Hedges Inc., an affiliate of Philip Morris International Inc., is one of Canada's leading tobacco companies and employs over 800 people across the country with its headquarters in Toronto and a factory in Québec City.

SOURCE Rothmans, Benson & Hedges Inc.

For further information: Media inquiries, Sarah Tratt, T: (416) 442-3545 or (437) 828 1090, E: sarah.tratt@rbhinc.ca or media@rbhinc.ca

Related Links

https://www.pmi.com/markets/canada/en/about-us/ove

This is **Exhibit "FF"** to the
affidavit of **PETER ENTECOTT**
sworn before me this
28th day of March, 2019

Harmehak Kaur Somal

A commissioner for taking oaths, etc.

Harmehak Kaur Somal, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires September 27 2021

PRESS RELEASE

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PHILIP MORRIS INTERNATIONAL

PHILIP MORRIS INTERNATIONAL INC.'S CANADIAN SUBSIDIARY, ROTHMANS, BENSON & HEDGES INC., GRANTED CCAA PROTECTION; REPRESENTS OPPORTUNITY TO RESOLVE ALL OUTSTANDING CANADIAN TOBACCO LITIGATION; PMI REVISES FULL-YEAR 2019 REPORTED DILUTED EPS FORECAST, REFLECTING DECONSOLIDATION OF RBH WHILE UNDER CCAA; FORECAST CONTINUES TO REPRESENT CURRENCY-NEUTRAL, LIKE-FOR-LIKE ADJUSTED DILUTED EPS GROWTH OF AT LEAST 8%

NEW YORK, March 22, 2019 – Today, Philip Morris International Inc. (PMI) was informed by its Canadian subsidiary, Rothmans, Benson & Hedges Inc. (RBH) that RBH had obtained an initial order from the Ontario Superior Court of Justice granting it protection under the *Companies' Creditors Arrangement Act* (CCAA). RBH announced that obtaining creditor protection became necessary following recent developments in two Class Action proceedings in Québec against RBH, Imperial Tobacco Canada Limited, and JTI-Macdonald Corp. (see "The Class Actions & Other Pending Litigation" below for details).

Key Elements and Impact of RBH's Decision to File for Creditor Protection

- The initial order includes a comprehensive stay of all tobacco-related litigation pending in Canada against RBH and PMI, thus providing an efficient forum for RBH to seek resolution of all such litigation.
- The CCAA process allows RBH to carry on its business in the ordinary course with minimal disruption to its customers, suppliers and employees.
- As a result of the filing, and under U.S. GAAP, PMI will deconsolidate RBH from its financial statements, resulting in an estimated one-time non-cash charge of approximately $0.10 per share, as described below.
- While it remains under creditor protection, RBH does not anticipate paying dividends. As RBH has not paid dividends since the trial court's judgment in May 2015, the deconsolidation will not have an impact on PMI's current annualized dividend rate.

2019 PMI Full-Year Forecast & Assumptions and 2019-2021 Targets

As a result of the deconsolidation of RBH, PMI today revises its full-year 2019 reported diluted earnings per share forecast to be at least $4.90 at prevailing exchange rates. This full-year guidance reflects:

- The current estimated one-time net impact of the deconsolidation of RBH under U.S. GAAP of approximately $0.10 per share, to be recorded in the first quarter of 2019, which is a non-cash item, plus the tobacco litigation-related charge of approximately $0.09 per share announced on March 4, 2019; and

- The exclusion of RBH's previously anticipated earnings from PMI's consolidated financial statements from the date of deconsolidation to December 31, 2019, of approximately $0.28 per share.

Excluding the above deconsolidation-related items and the unfavorable impact of currency, at prevailing exchange rates, of approximately $0.14 per share, this forecast represents a projected increase of at least 8.0% versus a pro forma adjusted diluted earnings per share of $4.84 in 2018. The 2018 pro forma adjusted diluted EPS of $4.84 is calculated as reported diluted EPS of $5.08, plus tax items of $0.02 per share primarily related to the implementation of the Tax Cuts and Jobs Act, less approximately $0.26 of estimated net earnings attributable to RBH from March 22 through December 31, 2018, in order to present a like-for-like comparison.

Assumptions underlying this forecast, and PMI's 2019-2021 targets, as communicated by PMI in its earnings release of February 7, 2019, and reiterated at the CAGNY Conference of February 20, 2019, remain unchanged on a like-for-like basis, except for 2019 operating cash flow, which, due to the impact of the deconsolidation, is now estimated to be approximately $9.5 billion, subject to year-end working capital requirements.

This forecast excludes the impact of: any future acquisitions; unanticipated asset impairment and exit cost charges; future changes in currency exchange rates; further developments related to the Tax Cuts and Jobs Act; further developments pertaining to the two Québec Class Action lawsuits and the CCAA protection granted to RBH; and any unusual events. Factors described in the Forward-Looking and Cautionary Statements section of this release represent continuing risks to these projections.

Matters Relating to the CCAA Initial Order and PMI's Deconsolidation of RBH

- The *Companies' Creditors Arrangement Act* (CCAA) is a Canadian federal law that permits Canadian businesses to restructure their affairs while maintaining business as usual.
- The initial CCAA order authorizes RBH to pay all expenses incurred in carrying on its business in the ordinary course after the CCAA filing, including obligations to employees, vendors, and suppliers.
- While it remains under creditor protection, RBH does not anticipate paying dividends. As RBH has not paid dividends since the trial court's judgment in May 2015, the deconsolidation will not have an impact on PMI's current annualized dividend rate; as always, future dividend increases remain subject to the discretion of PMI's Board of Directors.
- Beginning with the first quarter of 2019, PMI's adjusted diluted EPS and other impacted results will reflect the deconsolidation of RBH. PMI believes that the adjusted measures will provide useful insight into underlying business trends and results, and will provide a more meaningful performance comparison for the period during which RBH remains under CCAA protection.

The Class Actions & Other Pending Litigation

On March 1, 2019, the Court of Appeal of Québec in Montreal issued its judgment in two class action lawsuits against RBH, as well as Imperial Tobacco Canada Limited, and JTI-Macdonald Corp. PMI is not a party to the cases.

In 2015, the trial court ruled in favor of plaintiffs and found that the estimated class members' damages totaled approximately CAD 15.6 billion including interest. In its decision, the Court of Appeal largely affirmed the total amount of compensatory and punitive damages, but reduced the total class member damages due to an error in the interest calculation to approximately CAD 13.6 billion including interest. The trial court's order, as upheld by the Court of Appeal, required the defendants to deposit a portion of the damages, approximately CAD 1.1 billion, into trust accounts within 60 days. RBH's share of the deposit is approximately CAD 257 million. RBH had already deposited CAD 226 million as security with the Court of Appeal. See PMI's Form 10-K for the year ended December 31, 2018 for more information about these legal proceedings.

On March 4, 2019, as a result of this decision against RBH, PMI announced that it will incur in its consolidated results a pre-tax charge of approximately $194 million, representing approximately $142 million net of tax, in the first quarter of 2019, recorded as tobacco litigation-related expenses. The charge reflects PMI's assessment of the portion of the judgment that it believes is probable and estimable at this time and corresponds to the trust account deposit required by the court. PMI will continue to monitor developments in the CCAA proceedings as there is a significant lack of clarity with respect to several factors, including the likelihood of resolving in the CCAA process the underlying litigation to which RBH is a party, the financial and other parameters of any resolution of the underlying litigation, and the length of the CCAA process.

While the trial court found that the ultimate damages disposition would depend on an individual claims process, the three defendants in the cases -- RBH, JTI-Macdonald Corp., and Imperial Tobacco Canada Limited -- are jointly and severally liable for the compensatory damages to be distributed to eligible class members. JTI-Macdonald Corp. and Imperial Tobacco Canada Limited were granted creditor protection under the CCAA in connection with the class actions, on March 8 and 12, 2019, respectively. Without creditor protection, RBH could have been required to pay, in addition to its allocated portion, the portions of the class actions judgment allocated to JTI-Macdonald Corp. and Imperial Tobacco Canada Limited.

RBH is also a defendant in litigation brought by the Canadian Provinces related to the recovery of health care costs. As part of RBH's filing for creditor protection, the Ontario Superior Court of Justice made an initial order staying proceedings, including the Québec Class Action proceedings and all other tobacco-related litigation

pending in Canada against RBH and PMI, including the litigation with the Provinces, to provide RBH with the necessary time to explore a court-supervised resolution of such matters.

The Ontario Superior Court of Justice has scheduled the next hearing (known as the "comeback hearing") on RBH's filing for creditor protection for April 4-5 at which time the Court will consider any requests from interested parties, if any, to vary the terms of the initial order for creditor protection.

Pursuant to the initial order, Ernst & Young Canada Inc. has been appointed as Monitor in the CCAA proceedings. Information regarding RBH's CCAA proceedings, including copies of all court orders made and the Monitor's reports, will be available on the Monitor's website at: http://www.ey.com/ca/rbh. The information on this website is not, and shall not be deemed to be, part of this press release or incorporated into any filings we make with the SEC.

2018 Key Market Facts: Canada

The total market in Canada, defined as cigarette and heated tobacco unit volume, was 23.4 billion units, down by 5.1% from 24.6 billion units in 2017. PMI's total shipments volume, defined as the combined total of cigarette shipment volume and heated tobacco unit shipment volume, was 8.9 billion units, down by 4.0% from 9.3 billion units in 2017. PMI's total market share, based on in-market sales, was 38.1%, up by 0.8 percentage points from 37.3% in 2017. Brands sold by RBH include: in the premium segment, *Belmont*; in the mid-price segment, *Canadian Classics*; and, in the low-price segment, *Next*. RBH also sells the heated tobacco device, *IQOS*, and its heated tobacco consumable *HEETS*.

Forward-Looking and Cautionary Statements

This press release contains projections of future results and other forward-looking statements. Achievement of future results is subject to risks, uncertainties and inaccurate assumptions. In the event that risks or uncertainties materialize, or underlying assumptions prove inaccurate, actual results could vary materially from those contained in such forward-looking statements. Pursuant to the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, PMI is identifying important factors that, individually or in the aggregate, could cause actual results and outcomes to differ materially from those contained in any forward-looking statements made by PMI.

PMI's business risks include: excise tax increases and discriminatory tax structures; increasing marketing and regulatory restrictions that could reduce our competitiveness, eliminate our ability to communicate with adult consumers, or ban certain of our products; health concerns relating to the use of tobacco products and exposure to environmental tobacco smoke; litigation related to tobacco use; intense competition; the effects of global and individual country economic, regulatory and political developments, natural disasters and conflicts; changes in adult smoker behavior; lost revenues as a result of counterfeiting, contraband and cross-border

purchases; governmental investigations; unfavorable currency exchange rates and currency devaluations, and limitations on the ability to repatriate funds; adverse changes in applicable corporate tax laws; adverse changes in the cost and quality of tobacco and other agricultural products and raw materials; and the integrity of its information systems and effectiveness of its data privacy policies. PMI's future profitability may also be adversely affected should it be unsuccessful in its attempts to produce and commercialize reduced-risk products or if regulation or taxation do not differentiate between such products and cigarettes; if it is unable to successfully introduce new products, promote brand equity, enter new markets or improve its margins through increased prices and productivity gains; if it is unable to expand its brand portfolio internally or through acquisitions and the development of strategic business relationships; or if it is unable to attract and retain the best global talent. Future results are also subject to the lower predictability of our reduced-risk product category's performance.

PMI is further subject to other risks detailed from time to time in its publicly filed documents, including those described under Item 1A. “Risk Factors” in PMI’s annual report on Form 10-K for the year ended December 31, 2018. PMI cautions that the foregoing list of important factors is not a complete discussion of all potential risks and uncertainties. PMI does not undertake to update any forward-looking statement that it may make from time to time, except in the normal course of its public disclosure obligations.

# # #

Philip Morris International: Building a Smoke-Free Future

Philip Morris International (PMI) is leading a transformation in the tobacco industry to create a smoke-free future and ultimately replace cigarettes with smoke-free products to the benefit of adults who would otherwise continue to smoke, society, the company and its shareholders. PMI is a leading international tobacco company engaged in the manufacture and sale of cigarettes, smoke-free products and associated electronic devices and accessories, and other nicotine-containing products in markets outside the U.S. PMI is building a future on a new category of smoke-free products that, while not risk-free, are a much better choice than continuing to smoke. Through multidisciplinary capabilities in product development, state-of-the-art facilities and scientific substantiation, PMI aims to ensure that its smoke-free products meet adult consumer preferences and rigorous regulatory requirements. PMI's smoke-free *IQOS* product portfolio includes heated tobacco and nicotine-containing vapor products. As of December 31, 2018, PMI estimates that approximately 6.6 million adult smokers around the world have already stopped smoking and switched to PMI’s heated tobacco product, which is currently available for sale in 44 markets in key cities or nationwide under the *IQOS* brand. For more information, please visit www.pmi.com and www.pmiscience.com.

TAB 3

AMENDED THIS April 20th 2016 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☐ RULE/LA RÈGLE 26.02 ( )
☑ THE ORDER OF Justice Conway
L'ORDONNANCE DU
DATED / FAIT LE June 12th 2014

REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE
W. Grant
Registrar

Court File No.: CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

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

IF YOU WISH TO DEFEND THAT 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 does not have a lawyer, serve it on the plaintiff, 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.

IF YOU PAY THE PLAINTIFF'S CLAIM AND $1,500 FOR COSTS WITHIN THE TIME FOR SERVING AND FILING YOUR STATEMENT OF DEFENCE, YOU MAY MOVE TO HAVE THIS PROCEEDING DISMISSED BY THE COURT. IF YOU BELIEVE THE AMOUNT CLAIMED FOR COSTS IS EXCESSIVE, YOU MAY PAY THE PLAINTIFF'S CLAIM AND HAVE THE COSTS ASSESSED BY THE COURT.

Date: Dec. 11th 2009 Issued by: Y. Grant Registrar

Local Registrar

Address: 393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

TO: Rothmans Inc.
1500 Don Mills Road
Toronto, Ontario

AND TO: Rothmans Benson & Hedges Inc.
1500 Don Mills Road,
Toronto, Ontario.

AND TO: Carreras Rothmans Limited
Globe House
1 Water Street, London.

AND TO: Altria Group, Inc.
6601 Broad Street, Richmond
Virginia, USA

AND TO: Philip Morris USA Inc
6601 Broad Street, Richmond
Virginia, USA

AND TO: Philip Morris International Inc
120 Park Ave.,
New York, New York.

AND TO: JTI-Macdonald Corp.
5151 George Street, Box 247
Halifax, Nova Scotia

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

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

AND TO: Imperial Tobacco Canada Limited
3711 St. Antoine Street
Montreal, Quebec

AND TO: British American Tobacco p.l.c.,
Globe House, 4 Temple Place,
London, England.

AND TO: B.A.T Industries p.l.c.
Globe House
4 Temple Place
London, England

AND TO: British American Tobacco (Investments) Limited
Globe House
1 Water Street,
London, England.

AND TO: Canadian Tobacco Manufacturers' Council
1808 Sherbrooke St. West
Montreal, Quebec

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I. RELIEF CLAIMED

1. The Plaintiff, Her Majesty the Queen in right of Ontario (the "Crown"), claims against the Defendants, jointly and severally:

   (a) recovery in the amount of $50,000,000,000.00 (fifty billion dollars) for the cost of health care benefits, resulting from tobacco related disease or the risk of tobacco related disease, which have been paid or will be paid by the Crown for insured persons;

   (b) its costs of this action on a substantial indemnity basis;

   (c) pre-judgment and post-judgment interest in accordance with the provisions of s. 128 of the *Courts of Justice Act,* 1990, R.S.O. and amendments thereto; and

   (d) such further and other relief as this Honourable Court deems just.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

2. The Crown provides health care benefits for the population of insured persons who suffer tobacco related disease or the risk of tobacco related disease as a result of the tobacco related wrongs committed by the Defendants. Pursuant to section 2 of the *Tobacco Damages and Health Care Costs Recovery Act, 2009,* S.O. 2009 C.13 (the "*Act*"), the Crown claims against the Defendants for recovery of the cost of health care benefits,

namely:

(a) the present value of the total expenditure by the Crown for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease, and

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

caused or contributed to by the tobacco related wrongs hereinafter described. Further particulars of the costs incurred by the Crown will be provided prior to trial.

3. Pursuant to subsection 2(1) and section 2(4)(b) of the Act, the Crown brings this action to recover the costs of health care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes.

4. Pursuant to subsections 2(1) and 2(2) of the Act, the Crown brings this action as a direct and distinct action for the recovery of health care benefits caused or contributed to by a tobacco related wrong as defined in the Act. The Crown does so in its own right and not on the basis of a subrogated claim.

5. The words and terms used in this Statement of Claim including, "cost of health care benefits", "disease", "exposure", "health care benefits", "insured person", "manufacture", "manufacturer", "promote", "promotion", "tobacco product", "tobacco related disease", and "tobacco related wrong", have the meanings ascribed to them in the Act.

6. Also in this Statement of Claim:

(a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and

(b) "to smoke" or "smoking" means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette.

B. The Defendants

7. The Defendant, Rothmans Inc., is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, Toronto, Ontario.

8. The Defendant, Rothmans, Benson & Hedges Inc. (created through the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited), is a company incorporated pursuant to the laws of Canada with a registered office at 1500 Don Mills Road, North York, Ontario.

9. The Defendant, Carreras Rothmans Limited (formerly known as John Sinclair, Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London.

10. The Defendant, Altria Group, Inc. (formerly known as Philip Morris Companies Inc.), is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 Broad Street, Richmond, Virginia, in the United States of America.

11. The Defendant, Philip Morris USA Inc. (formerly known as Philip Morris Incorporated), is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 Broad Street, Richmond, Virginia in the United States of America and it engaged, directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario.

12. The Defendant, Philip Morris International Inc., is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Ave., New York, New York.

13. The Defendant, JTI-Macdonald Corp. (formerly RJR-Macdonald Corp., RJR-Macdonald Inc., and Macdonald Tobacco Inc.), is a company incorporated pursuant to the laws of Nova Scotia with a registered office at 5151 George Street, Box 247, Halifax, Nova Scotia.

14. The Defendant, R.J. Reynolds Tobacco Company, is a company incorporated pursuant to the laws of North Carolina and has its principal office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America and it engaged, directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario.

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

16. The Defendant, Imperial Tobacco Canada Limited (created through the amalgamation of, *inter alia*, Imperial Tobacco Limited and Imasco Ltd.), is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street, Montreal, Quebec.

17. The Defendant, British American Tobacco p.l.c., is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England and is a successor in interest to the Defendants, B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited.

18. The Defendant, B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and Tobacco

Securities Trust Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England and is a successor in interest to the Defendant, British American Tobacco (Investments) Limited.

19. The Defendant, British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England.

20. All of the Defendants described above 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, including cigarettes; or

(d) for one or more of the material fiscal years, each has derived at least 10% of its revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products, including cigarettes, by itself or by other persons.

21. The Defendant, Canadian Tobacco Manufacturers' Council ("CTMC"), is a company incorporated pursuant to the laws of Canada and has a registered office at 1808 Sherbrooke St. West, Montreal, Quebec. It is the trade association of the Canadian tobacco industry, particulars of which are set out in paragraphs 110-116.

22. CTMC is a manufacturer pursuant to the Act by reason of its having been primarily engaged in one or more of the following activities:

(a) the advancement of the interests of manufacturers,

(b) the promotion of cigarettes, and

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

particulars of which are set out in paragraphs 110-116.

III. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

A. Canadian Tobacco Companies

The Defendant Rothmans Inc.

23. Rothmans Inc., and its predecessor corporations, have been part of the Canadian tobacco industry for the past 100 years. Its predecessor companies include Rothmans of Pall Mall Canada Limited, which was incorporated in 1956 and changed its name in 1985 to ROTHMANS INC. Rothmans Inc. was incorporated in 2000 as an amalgamation of ROTHMANS INC., ROTHMANS OF CANADA LTD., and ROTHMANS PARTNERSHIP IN INDUSTRY CANADA LIMITED.

24. Rothmans Inc. has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

The Defendant Rothmans, Benson & Hedges Inc.

25. Rothmans of Pall Mall Limited, incorporated pursuant to the laws of Canada in 1980, acquired part of the tobacco related business of ROTHMANS INC. in 1985 and engaged, until it amalgamated with Benson & Hedges (Canada) Inc. in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

26. Benson & Hedges (Canada) Inc., incorporated in 1934, engaged, until it amalgamated with Rothmans of Pall Mall Limited in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

27. Rothmans, Benson & Hedges Inc., formed in 1986 by the amalgamation of Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc., has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario, including cigarettes manufactured by the Defendant Philip Morris USA Inc.

28. Rothmans, Benson & Hedges Inc. manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names, including Rothmans and Benson & Hedges.

29. Rothmans, Benson & Hedges Inc. is 60% owned by Rothmans Inc. and 40% owned by FTR Holding S.A., a Swiss company. FTR Holding S.A. is a subsidiary of the Defendant, Philip Morris International Inc. and, at one time, was a subsidiary of the Defendant Altria Group, Inc. It is also affiliated with the Defendant, Philip Morris U.S.A. Inc.

The Defendant JTI-Macdonald Corp.

30. MacDonald Brothers and Company Tobacco Merchants carried on business commencing in 1858 and was renamed W.C. MacDonald Incorporated, Tobacco Merchant and Manufacturer, and then renamed W.C. MacDonald Incorporated in 1930, and again changed its name to Macdonald Tobacco Inc. in 1957, and became a wholly owned subsidiary of the Defendant, R.J. Reynolds Tobacco Company, in 1974.

31. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald Tobacco Inc. and acquired all of Macdonald Tobacco Inc.'s assets and liabilities and continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc. RJR-Macdonald Inc. was a wholly owned subsidiary of RJR Nabisco Holdings Corp., which was the ultimate parent of R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International. In March 1999, RJR Nabisco sold RJR-Macdonald Corp., which was the amalgamation of RJR-Macdonald Inc. and a subsidiary of RJR-Macdonald Inc., to Japan Tobacco Inc. As a result of that transaction, the name of the RJR-Macdonald Corp. was changed to JTI-Macdonald Corp.

32. JTI-Macdonald Corp. (and its predecessor corporations, Macdonald Tobacco Inc., RJR-Macdonald Inc. and RJR-Macdonald Corp., for whom it is responsible at law) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario, including cigarettes manufactured by the Defendant R.J. Reynolds Tobacco Company.

33. JTI-Macdonald Corp. manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names including Export "A" and Vantage.

The Defendant Imperial Tobacco Canada Limited

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

35. In or about 1970, part of the tobacco related business of Imasco was acquired by Imperial Tobacco Limited, (a wholly owned subsidiary).

36. In or about February, 2000, a 58% shareholding interest in Imasco was acquired by a wholly owned subsidiary of British American Tobacco p.l.c., British American Tobacco (Canada) Limited. At that time, British American Tobacco p.l.c. was the owner of 42% of the issued and outstanding shares in Imasco. Imasco and British American Tobacco (Canada) Limited were then amalgamated and the name of the amalgamated entity was changed to Imperial Tobacco Canada Limited ("Imperial"). In the result, British American Tobacco p.l.c. became the owner of 100% of the issued and outstanding shares in Imperial.

37. Imperial is a wholly owned subsidiary of the Defendant, British American Tobacco p.l.c.

38. Imperial (and its predecessor corporations) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

39. Imperial manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names, including Player's and duMaurier.

B. Multinational Tobacco Enterprises

40. There are four multinational tobacco enterprises ("Groups") whose member companies engage directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario and throughout the world. The four Groups are:

(a) the Rothmans Group;

(b) the Philip Morris Group;

(c) the RJR Group; and

(d) the BAT Group.

41. At all material times, cigarettes sold in Ontario have been manufactured and promoted by manufacturers who are, or were, members of one of the four Groups, as set out above in paragraphs 23-39.

42. The manufacturers of cigarettes sold in Ontario within each Group have had common policies relating to smoking and health. The common policies have been directed or co-ordinated by the Defendants within each group ("Lead Companies") or their predecessors in interest for whom they are in law responsible. Particulars of the common policies and the manner in which they were implemented are set out in paragraphs 86 to 141.

43. At all material times since 1950, the Lead Companies of the four Groups were as follows:

Group	**Lead Companies**
Rothmans Group	Carreras Rothmans Limited [1950 to present]
Philip Morris Group	Altria Group, Inc. (formerly Philip Morris Companies Inc.) [1985 to present] Philip Morris USA Inc. [1950 to present] Philip Morris International, Inc. [1987 to present]

Group	Lead Companies
RJR Group	R.J. Reynolds Tobacco Company [1875 to present] R.J. Reynolds Tobacco International, Inc. [1976 to present]
BAT Group	British American Tobacco p.l.c. [1998 to present] B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and before that Tobacco Securities Trust Limited) [1976 to present] British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited) [1902 to present]

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

(a) Rothmans, Benson & Hedges Inc. (federally incorporated in Canada) [1986 to 2009];

(b) Rothmans Inc. (federally incorporated in Canada) [2000 to 2009];

(c) Rothmans of Pall Mall Limited (incorporated in the United Kingdom) [1960 to present];

(d) John Sinclair, Limited (incorporated in the United Kingdom) [1905 to 1972], later renamed Carreras Rothmans Limited [1972 to present];

(e) Carreras, Limited (incorporated in the United Kingdom) [1903 to 1972], later renamed Rothmans International Limited [1972 to 1981], Rothmans International p.l.c. [1981 to 1993], and Ryesekks p.l.c. [1993];

(f) Rothmans of Pall Mall Canada Limited (federally incorporated in Canada) [1956 to 1985], later renamed ROTHMANS INC. [1985 to 2000];

(g) Rothmans of Canada Kings Limited (federally incorporated in Canada) [1980 to 1985], later renamed Rothmans of Pall Mall Limited [1985 to 1986]; and

(h) Lintpenny Limited (incorporated in the United Kingdom) [1986], later renamed Rothmans International Services Limited [1986 to 1991], Rothmans International Tobacco Limited [1991 to 1993], and then Rothmans International Services Limited [1993 to present].

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

(a) Philip Morris Companies Inc. (incorporated in Virginia) [1985 to 2003], later renamed Altria Group, Inc. [2003 to present];

(b) Philip Morris & Co. Limited (incorporated in Virginia), later renamed Philip Morris USA Inc. [1919 to present];

(c) Philip Morris International, Inc. (incorporated in Virginia) [1987 to present];

(d) Rothmans, Benson & Hedges Inc. (federally incorporated in Canada) [1986 to present]; and

(e) Benson & Hedges (Canada) Inc. (federally incorporated in Canada) [1934 to 1986].

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

(a) R.J. Reynolds Tobacco Company [1875 to present];

(b) R.J. Reynolds Tobacco International, Inc. [1976 to 1999];

(c) Macdonald Tobacco Inc. [1974 to 1979];

(d) RJR-Macdonald Inc. [1978 to 1999]; and

(e) RJR-Macdonald Corp. [1999], later renamed JTI-Macdonald Corp. [1999 to present].

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

(a) Imperial Tobacco Company of Canada, Limited (federally incorporated in Canada) [1912 to 1966], later renamed Imperial Tobacco Company of Canada Limited [1966 to 1970], and then Imasco Limited [1970 to 2000];

(b) B.A.T Industries p.l.c. [1976 to present];

(c) British American Tobacco (Investments) Limited [1902 to present];

(d) British American Tobacco p.l.c. [1998 to present];

(e) Imperial Tobacco Canada Limited (incorporated in Canada) [2000 to present];

(f) Imperial Tobacco Sales Company of Canada Limited (incorporated in Canada) [1931 to 1966], later renamed Imperial Tobacco Sales Limited [1966 to 1969], Imperial Tobacco Products Limited [1969 to 1974], and Imperial Tobacco Limited [1970 to 2000];

(g) Brown & Williamson Tobacco Corporation [1927 to 2004]; and

(h) American Tobacco Company [1994 to present].

IV. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

48. The Crown states that the Defendants, R.J. Reynolds Tobacco Company, Rothmans Inc. (and its predecessor corporations), Rothmans, Benson & Hedges Inc. (and its predecessor corporations), Philip Morris USA Inc. (formerly known as Philip Morris Incorporated), JTI-Macdonald Corp. (and its predecessor corporations) and Imperial (and its predecessor corporations), all of which engaged directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario, have committed tobacco related wrongs as that term is defined in the *Act.* In particular, these Defendants, hereinafter referred to as Direct Breach Defendants, have committed the following breaches of common law, equitable or statutory duties or obligations owed by these Defendants to persons in Ontario who have been exposed or might become exposed to a tobacco product manufactured by them and offered for sale in Ontario. As a result of these tobacco related wrongs, insured persons in Ontario have suffered tobacco related disease or the risk of tobacco related disease and the Crown has incurred expenditures for health care benefits provided to these insured persons.

A. Breaches of Common Law, Equitable or Statutory Duties or Obligations

The Defendants' Knowledge

49. The Direct Breach Defendants designed and manufactured cigarettes sold in Ontario to deliver nicotine to smokers.

50. 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.

51. Smoking and exposure to second hand smoke cause or contribute to disease including, but not limited to:

(a) chronic obstructive pulmonary disease and related conditions, including:

(i) emphysema;

(ii) chronic bronchitis;

(iii) chronic airways obstruction; and

(iv) asthma;

(b) cancer, including:

(i) cancer of the lung;

(ii) cancer of the lip, oral cavity and pharynx;

(iii) cancer of the larynx;

(iv) cancer of the esophagus;

(v) cancer of the bladder;

(vi) cancer of the kidney;

(vii) cancer of the pancreas; and

(viii) cancer of the stomach;

(c) circulatory system diseases, including:

(i) coronary heart disease;

(ii) pulmonary circulatory disease;

(iii) vascular disease; and

(iv) peripheral vascular disease;

(d) increased morbidity and general deterioration of health; and

(e) fetal harm.

52. The Defendants have been aware since 1950, or from the date of their incorporation if subsequent to that date, that, when smoked as intended, cigarettes:

(a) contain substances which can cause or contribute to disease;

(b) produce by-products which can cause or contribute to disease; and

(c) cause or contribute to addiction to nicotine.

53. By 1950, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that smoking cigarettes could cause or contribute to the diseases set out in paragraph 51 herein.

54. By 1950, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that the nicotine present in cigarettes is addictive. In the alternative, at all material times, the Defendants knew or ought to have known that:

(a) nicotine is an active ingredient in cigarettes;

(b) smokers crave nicotine; and

(c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

55. By 1970 or thereabouts, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that exposure to second hand smoke could cause or contribute to disease.

Breach of the Duty - Design and Manufacture

56. At all material times since 1950, the Direct Breach Defendants owed a duty of care to persons exposed to cigarettes manufactured by them to design and manufacture a reasonably safe product which would not cause addiction and disease, and to take all reasonable measures to eliminate, minimize, or reduce the risks of addiction and disease from smoking the cigarettes they manufactured and promoted.

57. The Direct Breach Defendants have breached, and continue to breach, these duties since 1950 by failing to design a reasonably safe product which would not cause addiction and disease, and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of addiction and disease from smoking cigarettes manufactured by them.

58. The Direct Breach Defendants, in the design, manufacture and promotion of their cigarettes, created, and continue to create, an unreasonable risk of harm to the public from addiction and disease as a result of smoking or exposure to second hand smoke from which they have failed to protect the public, particulars of which are set out below.

59. The Direct Breach Defendants increased the risks of addiction and disease from smoking by manipulating the level and bio-availability of nicotine i.e. the biological availability of nicotine in the body from smoking their cigarettes, for purposes of maintaining and increasing sales of their cigarettes, particulars of which include:

(a) special blending of tobacco;

(b) adding nicotine or substances containing nicotine;

(c) introducing substances, including ammonia, to enhance the bio-availability of nicotine to smokers; and

(d) such further and other particulars known to the Direct Breach Defendants.

60. The Direct Breach Defendants increased the risks of addiction and disease from smoking by adding to their cigarettes ineffective filters which did not reduce the risks of addiction and disease from smoking, since, as was known or should have been known by these Defendants, based on the research known to them into smoking practices, smokers would fully compensate for the presence of the filters by taking deeper inhalations of smoke and/or blocking the air holes in the filter; and by nevertheless misleading the public and government agencies by misrepresenting, particulars of which are set out in paragraph 72, that these filters made smoking safer contrary to their knowledge.

61. The Direct Breach Defendants further misled the public from 1950 on through marketing and advertising campaigns, by misrepresenting, particulars of which are set out in paragraph 72, in written and visual material, that "mild", "low tar" and "light" filter cigarettes were healthier than regular cigarettes contrary to their knowledge.

62. As a result of these tobacco related wrongs, persons in Ontario started to smoke or continued to smoke cigarettes manufactured and promoted by the Direct Breach Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty to Warn

63. At all material times since 1950, the Direct Breach Defendants knew or ought to have

known that their cigarettes, when smoked as intended, were addictive and could cause or contribute to disease, and as manufacturers of cigarettes sold to persons in Ontario they owed a duty of care to warn the public who smoked cigarettes or might become exposed to cigarette smoke of the risks of addiction and disease from smoking or exposure to cigarette smoke, as was known, or should have been known to them based on research known to them on smoking and health.

64. The Direct Breach Defendants breached their duty to persons in Ontario by failing to provide any warning prior to 1972, or any adequate warning thereafter, of:

(a) the risk of tobacco related disease; or

(b) the risk of addiction to the nicotine contained in their cigarettes,

which was known to them, or should have been known to them based on research known to them on smoking and health from 1950 on.

65. Any warnings that were provided by the Direct Breach Defendants were inadequate and ineffective in that they did not accurately reveal the true extent of what they knew or should have known of addiction and disease from smoking or exposure to cigarette smoke based on research known to them on smoking and health and:

(a) failed to warn of the actual and known risks of addiction and disease from smoking;

(b) were insufficient to give users, prospective users, and the public a true indication of the risks of addiction and disease from smoking or exposure to cigarette smoke;

(c) were introduced for the purpose of delaying more accurate government-mandated warnings of the risks of addiction and disease from smoking or exposure to cigarette smoke;

(d) failed to make clear, credible, complete and current disclosure of the risks of addiction and disease inherent in the ordinary use of their cigarettes and therefore failed to permit free and informed decisions concerning smoking; and

(e) and failed to inform persons who might become exposed to cigarette smoke of the risks of disease from such exposure so that they could take measures to limit or eliminate such exposure.

66. The Direct Breach Defendants knew or ought to have known based on research known to them since 1950 that children under the age of 13 and adolescents under the age of 19 in Ontario were smoking or might smoke their cigarettes, but failed to provide warnings sufficient to inform children and adolescents of the risks of addiction and disease, which would have accurately conveyed their knowledge of these risks to children and adolescents.

67. The Direct Breach Defendants engaged in collateral marketing and promotional and public relations activities to neutralize or negate the effectiveness of the stated warnings on cigarette packaging in advertising and in warnings given by governments and other agencies concerned with public health, by mischaracterizing any health concerns relating to smoking, either with respect to addiction or disease, or attempts at regulation by health authorities or governments, as unproven, controversial, extremist, authoritarian, and an infringement of liberty.

68. The Direct Breach Defendants suppressed the information which was known to them or should have been known to them based on research conducted by them or by their Lead Companies or on their behalf, regarding the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke, as directed by their Lead Companies as set out in paragraphs 88 to 107 herein.

69. The Direct Breach Defendants misinformed and misled the public, particulars of which

are set out in paragraph 72, about the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke.

70. As a result of these tobacco related wrongs, persons in Ontario started or continued to smoke cigarettes manufactured and promoted by the Direct Breach Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty - Misrepresentation

71. As manufacturers of tobacco products, the Direct Breach Defendants owed a duty of care to persons in Ontario who consumed, or were exposed to, cigarette smoke from cigarettes manufactured by them and sold in Ontario and ought reasonably to have foreseen that persons in Ontario who smoked would rely on any representations made by them with respect to the risks of addiction and disease from smoking and the risk of disease from exposure to second hand smoke. Such reliance by persons in Ontario was reasonable in all of the circumstances since as set out below the Direct Breach Defendants took steps to assure persons in Ontario of the truth of their misrepresentations and to conceal from them the true extent of the risks of smoking and exposure to second hand smoke. As a result, since 1950 the Direct Breach Defendants owed a duty to persons in Ontario not to misrepresent the risks of addiction and disease from smoking and the risk of disease from exposure to second hand smoke as was known, or should have been known to them based on research known to them on smoking and health.

72. The Direct Breach Defendants, with full knowledge of the risks of addiction and disease,

misrepresented the risks of smoking and exposure to second hand smoke since 1950 by denying any link between smoking and addiction and disease and denying any link between exposure to second hand smoke and disease contrary to what was known or should have been known to them, based on research known to them on smoking and health. In particular, since 1950 and continuing to the present the Direct Breach Defendants misrepresented to persons in Ontario that:

(a) smoking and exposure to second hand smoke have not been shown to cause any known diseases;

(b) they were aware of no research, or no credible research, establishing a link between smoking or exposure to second hand smoke and disease;

(c) 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;

(d) cigarettes were not addictive;

(e) they were aware of no research, or no credible research, establishing that smoking is addictive;

(f) smoking is merely a habit or custom;

(g) they did not manipulate nicotine levels in their cigarettes;

(h) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;

(i) the intake of tar and nicotine associated with smoking their cigarettes was less than they knew or ought to have known it to be;

(j) certain of their cigarettes, such as "filter", "mild", "low tar" and "light" brands, were safer than other cigarettes;

(k) smoking is consistent with a healthy lifestyle; and

(l) the risks of smoking and exposure to second hand smoke were less serious than they knew them to be.

72.1. The above misrepresentations were conveyed to persons in Ontario by the Direct Breach Defendants:

(a) in cigarette brand advertising and related marketing and promotional materials in all media, including radio, television, billboards, bus shelters, posters, displays, signs, print media and various electronic media including the internet. Advertising includes commercials, posters, print ads, news releases, press kits, contest materials, coupons, brand merchandising materials, sampling items and activities, discounting and other marketing activities;

(b) on cigarette packaging, including carton wrappings;

(c) at cigarette brand-promoting activities, including cultural, sporting and other events and activity sponsorships, and in promotional materials prepared in relation to such activities, including news releases, press kits, contests, coupons, brand merchandising materials, sampling items and activity materials, discounting and other marketing activities;

(d) in paid advocacy carried out in media including newspapers, magazines, radio, television, and the internet paid for in whole or in part by the Direct Breach Defendants;

(e) in research results presented to the public, governments, news and information media and other organizations as objective and independent when in fact these results were not and the research itself had been funded by the Direct Breach Defendants;

(f) in media interviews, correspondence and other materials prepared on behalf of, and discussions, speeches and presentations given by, company officials, tobacco industry spokespersons acting on behalf of Direct Breach Defendants directly or indirectly (such as CTMC lobbyists, and public relations experts), to persons in Ontario, elected officials, government bureaucrats, medical, health and scientific organizations and bodies, conferences, columnists and journalists, writers, media editors, publishers and scientists; and

(g) via company or tobacco industry spokespersons who did not represent themselves as such at the time or who held themselves out as 'independent' of the Direct Breach Defendants' interests, but who were in fact acting as agents for the Direct Breach Defendants, having received money or money's worth from the Direct Breach Defendants, directly or indirectly. These individuals communicated to, and corresponded with, and provided information to the public, members of the news and information media, elected officials, government officials, members of scientific and health promotion and research entities as well as members of the general public.

72.2. Since 1950, Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually

by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors through a variety of means, including the following:

(a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969)~~ and the National Association of Tobacco and Confectionery Distributors Convention (October 1969);

(b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), and with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981);

(c) full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart "vital information" as soon as available; and

(d) public and media statements to Canadian newspapers and on national television (including in the Toronto Daily Star (September 1962, June 1969) and in the Globe and Mail (June 1967).

72.3. Since 1950, Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by Rothmans, Benson & Hedges Inc. and its predecessors through a variety of means, including the following:

(a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), and the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)~~;

(b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);

(c) public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978));

(d) Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.);

(e) publications (including in the 1978 Booklet "The Facts" published by Benson & Hedges (Canada) Inc.); and

(f) advertising, marketing and promotional campaigns.

72.4. Since 1950, R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors, as members of the RJR Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors through a variety of means, including the following:

(a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), and the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and 1995), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)~~;

(b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);

(c) publications (including "R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina" in The Tobacco Industry in Transition);

(d) speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts);

(e) public statements (including the 1983 Revised Mission Statement on Smoking and Health); and

(f) advertising, marketing and promotional campaigns.

72.5. Since 1950, Imperial Tobacco Canada Limited and its predecessors, as members of the BAT Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by Imperial Tobacco Canada Limited and its predecessors through a variety of means, including the following:

(a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969),~~ and the National Association of Tobacco and Confectionery Distributors Convention (October 1969), ~~federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996)~~;

(b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);

(c) Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited);

(d) public and media statements to Canadian newspapers and on national television, (including CBC television (December 1969) and in the Toronto Daily Star (June 1971));

(e) publications (including on the topics of smoking and health, "habit or addiction" and environmental tobacco smoke); and

(f) advertising, marketing and promotional campaigns.

73. The Direct Breach Defendants suppressed from persons in Ontario scientific and medical data, which was known or should have been known to them based on research on smoking and health which was known to them, which revealed the serious health risks of smoking and second hand smoke, for the purpose of continuing to misrepresent and conceal the risks of addiction and disease from smoking and exposure to second hand smoke.

73.1. Particulars of this suppression of scientific and medical data by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group:

(a) agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake; and

(b) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.2. Particulars of this suppression of scientific and medical data and research by Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group:

(a) agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);

(b) destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group;

(c) closing research laboratories and destroying related scientific information;

(d) withdrawing internal research relating to nicotine from peer review;

(e) destroying internal research relating to nicotine;

(f) prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the addictive effect of smoking; and

(g) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.3. Particulars of this suppression of scientific and medical data by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors, as members of the RJR Group:

(a) agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);

(b) ceasing research on the effects of smoke because of its potential bearing on product liability;

(c) imposing restrictions on the use of terms, including "drug," "marketing" and "dependency," in scientific studies;

(d) invalidating and destroying research reports;

(e) terminating and destroying research associated with R.J. Reynolds Tobacco Company's "The Mouse House" experiments; and

(f) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.4. Particulars of this suppression of scientific and medical data by Imperial Tobacco Canada Limited and its predecessors, as members of the BAT Group:

(a) agreeing with the Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);

(b) agreeing with Rothmans Group to suppress research relating to carbon monoxide and smoke intake;

(c) implementing a policy to avoid written documentation on issues relating to smoking and health;

(d) agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group;

(e) destroying research reports indicating the adverse health effects of smoking and exposure to second hand smoke (1992);

(f) suppressing information and developments relating to potentially safer products; and

(g) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

74. The Direct Breach Defendants misinformed the public in Ontario, particulars of which are set out in paragraph 72, as to the harm of both smoking and of exposure to cigarette smoke, which was known or should have been known to them based on research on

smoking and health which was known to them.

75. The Direct Breach Defendants participated in a misleading campaign, particulars of which are set out in paragraph 72, to enhance their own credibility and diminish the credibility of health authorities and anti-smoking groups, for the purpose of reassuring smokers, contrary to what they knew or should have known based on research on smoking and health which was known to them, that cigarettes were not as dangerous as authorities were saying.

76. The Direct Breach Defendants intended that these misrepresentations be relied upon by individuals in Ontario for the purpose of inducing them to start smoking or to continue to smoke their cigarettes. It was reasonably foreseeable that persons in Ontario would and they did, in fact, rely upon these misrepresentations made by the Direct Breach Defendants for the purpose of persuading persons in Ontario to purchase cigarettes manufactured by them.

77. As a result of these misrepresentations, which were either made fraudulently, (contrary to their actual knowledge of the risks of addiction and disease from smoking or exposure to second hand smoke or recklessly without any reasonable basis or belief in their truth) or, in the alternative, negligently (in disregard of research into smoking and health which was available to them and which was known or should have been known to them) persons in Ontario started to, or continued to, purchase and smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke from such cigarettes, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty - Manufacturing or Promoting Products for Children and Adolescents

78. Further to the duty of care alleged in paragraph 71, at all material times since 1950, the Direct Breach Defendants as manufacturers of cigarettes sold in Ontario owed a duty of care to children and adolescents in Ontario to take all reasonable measures to prevent them from starting or continuing to smoke.

79. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age.

80. The Direct Breach Defendants knew or ought to have known that children and adolescents in Ontario were smoking or might start to smoke and that it was contrary to law as further particularized in paragraphs 142 to 147 herein, or public policy to sell cigarettes to children and adolescents or to promote smoking by such persons.

81. The Direct Breach Defendants knew or ought to have known based on research known to them on smoking and health of the risk that children and adolescents in Ontario who smoked their cigarettes would become addicted to cigarettes and would suffer tobacco related disease.

82. The Direct Breach Defendants failed to take reasonable and appropriate measures to prevent children and adolescents from starting or continuing to smoke cigarettes manufactured by them and sold in Ontario.

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

in Ontario to start or continue to smoke.

84. The Direct Breach Defendants, in further breach of their duty of care failed to take all reasonable measures to prevent children and adolescents from starting or continuing to smoke and undermined government initiatives and legislation which were intended to prevent children and adolescents in Ontario from starting or continuing to smoke.

85. As a result of these tobacco related wrongs, children and adolescents in Ontario started to or continued to smoke cigarettes manufactured and promoted by the Direct Breach Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Conspiracy, Concert of Action and Common Design

86. At all material times, the Defendants conspired, and acted in concert in committing the tobacco related wrongs alleged in paragraphs 48 to 85 and paragraphs 142 to 147, particulars of which are set out below. The Defendants are accordingly all deemed to have jointly breached the duties alleged in paragraphs 48 to 85 and paragraphs 142 to 147 under section 4 of the Act.

(i) Conspiracy within the International Tobacco Industry

87. Commencing in or about 1953, in response to mounting publicity and public concern about the link between smoking and disease, the Lead Companies of the four Groups or their predecessors in interest for whom the Lead Companies are in law responsible,

conspired and acted in concert to prevent the Crown and persons in Ontario and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health care costs.

88. This conspiracy, concert of action and common design secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco Company Limited through meetings it attended on behalf of and as directed by its parent corporation British American Tobacco Company Limited), and American Tobacco Company. These companies, on their own behalf and on behalf of their respective Groups, contrary to their knowledge, agreed to:

(a) jointly disseminate false and misleading information regarding the risks of addiction and disease from smoking cigarettes;

(b) make no statement or admission that smoking caused disease;

(c) suppress or conceal research that was known or should have been known to them regarding the risks of addiction and disease from smoking cigarettes; 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 that were known or should have been known to them; and

(iii) reassuring the public that smoking was not hazardous.

89. This conspiracy, concert of action and common design was continued at secret committees, conferences and meetings involving senior personnel of the Lead Companies

and through written and oral directives issued by the Lead Companies to members of their Groups who manufactured cigarettes sold in Ontario.

90. Between late 1953 and the early 1960s, the Lead Companies formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964 (the "CTR")), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Institute ("TI"), and the Tobacco Manufacturers' Standing Committee, (renamed the Tobacco Research Council ("TRC") and then the Tobacco Advisory Council), collectively referred to as TRC, and Verband der Cigarettenindustrie ("Verband") which was the German equivalent of the Tobacco Institute to which the Lead Companies were affiliated.

91. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC, CTMC, TI, Verband 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. Particulars of these misrepresentations are within the knowledge of the Defendants but include:

(a) The issuance of the TIRC's 1954 "Frank Statement to Cigarette Smokers" which received coverage in the Canadian press;

(b) Statements made to the Canadian Medical Association in May 1963;

(c) November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare;

~~(d) May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs;~~

(e) Statements to the national press and news organizations in Canada; and

(f) Communications through the CTMC in Canada, including to the federal Department of Health and Welfare.

92. In reality, the Lead Companies conspired with the TIRC, the CTR, CORESTA, the TRC, CTMC, TI, Verband and similar organizations, to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Lead Companies intended to mislead persons in Ontario and the Crown, into believing that there was a real medical or scientific controversy about whether smoking caused addiction and disease contrary to their knowledge.

93. In 1963 and 1964, the Lead Companies agreed to co-ordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes were a harmful and dangerous product.

94. In April and September 1963, the Lead Companies agreed to develop a public relations campaign to counter the Royal College of Physicians report in England, the forthcoming Surgeon General's Report in the United States and a report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes, contrary to their knowledge.

95. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease, as was known to them or should have been known to them based on research on smoking and health which was known to them, unless and until they were forced to do so by government action.

96. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes, which was known to them or should have been known to them based on research on smoking and health which was known to them.

97. By the mid-1970s, the Lead Companies decided that an increased international misinformation campaign was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease as was known to them or should have been known to them based on research on smoking and health which was known to them, could lead to a "domino effect" to the detriment of the industry world-wide.

97.1. In 1974, the Lead Companies as members of TI formed a Research Review Committee, which became known as the Research Liaison Committee to achieve a coordinated approach to all industry research into smoking and health. In 1978, the Research Liaison Committee was replaced with the Industry Research Committee.

98. As a result, in June, 1977, the Lead Companies met in England to establish the International Committee on Smoking Issues ("ICOSI").

99. Through ICOSI, the Lead Companies resisted attempts by governments including in Canada to provide adequate warnings about smoking and disease including the effects of second hand smoke, and pledged to:

(a) jointly disseminate false and misleading information regarding the risks of addiction and disease from smoking;

(b) make no statement or admission that smoking caused disease;

(c) suppress research that was known or should have been known to them regarding the risks of addiction and disease from smoking;

(d) not compete with each other by making health claims with respect to their cigarettes, and thereby avoid direct or indirect admissions about the risks of addiction and disease from 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 Ontario and other jurisdictions that smoking was not hazardous;

hereinafter referred to as the ICOSI policies and position on smoking.

100. 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 the Direct Breach Defendants, would act in accordance with the ICOSI position on smoking and health set out above, including the decision to mislead the public about the link between smoking and disease;

(b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, CTMC, to ensure compliance in the various tobacco markets world wide;

(c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves; and

(d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.

101. In the late 1970s, the Lead Companies launched Operation Berkshire, which was aimed at Canada and other major markets, to further advance their campaign of misinformation and to promote smoking. Operation Berkshire was led by Lead Companies of the Philip Morris Group in concert with the Rothmans Group and the BAT Group.

102. In 1980, ICOSI was renamed the International Tobacco Information Centre / Centre International d'lnformation du Tabac - INFOTAB ("INFOTAB"). In or before 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are hereinafter referred to collectively as "ICOSI").

103. At all material times, the policies of ICOSI were identical to the policies of the NMAs

including CTMC, and were presented as the policies and positions of the NMAs and their member companies so as to conceal from the public and from governments including in Canada the existence of the conspiracy, concert of action and common design.

104. The Lead Companies at all times acted to ensure that the manufacturers of cigarettes sold in Ontario within their Group complied, and did not deviate, from the official ICOSI position on the adverse health effects of smoking, particulars of which are set out below in paragraphs 117 to 140.

105. In addition to the foregoing, the Lead Companies engaged in a conspiracy, concert of action and common design specifically with respect to the issue of second hand smoke, as set out below.

106. In the early 1970s, the Lead Companies began to combine their resources and coordinate their activities specifically with respect to second hand smoke. In 1975, the Lead Companies formed the first of several committees to specifically address second hand smoke, which they also called Environmental Tobacco Smoke (ETS) and passive smoking. The first committee, sometimes referred to as the Public Smoking Committee or Advisory Group, met under the direction of the Research Liaison Committee. Although the Lead 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 Lead Companies of these harmful effects. The Committee formed in 1975 and its various successors, including the Tobacco Institute ETS Advisory Committee ("TI-ETSAG") founded in 1984 and the Committee for Indoor Air Research ("CIAR") founded in 1988,

carried out the mandate of the Lead Companies of challenging the growing consensus regarding second hand smoke 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;

(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;

(d) in the case of TI-ETSAG, meeting monthly to propose, review, and manage scientific projects approved for funding;

(e) in 1988 when it was formed, the Chairman of the CIAR Board told the TI that the purpose of CIAR was providing ammunition for the tobacco industry on the ETS battlefield;

(f) from 1988 until its dissolution in 1999, funding of 150 projects by CIAR at 75 institutions resulting in 250 peer reviewed publications, in addition to special studies on the effects of second hand smoke, 18 of which were released;

(g) creating a consultancy program in June 1987 at a conference called "Operation Down Under" to train and deploy scientists worldwide;

(h) in 1988 forming and funding of the Association for Research on Indoor Air (ARIA) by the Defendants' consultants on second hand smoke; and

(i) in 1989, forming of the Indoor Air International (IAI), a group to address scientific issues related to indoor air quality that the Defendants promoted publicly as learned societies dedicated to promote indoor air quality but failed to disclose that they were funded by the tobacco industry.

The policies and positions referenced above are hereinafter referred to as the CIAR policies and position on second hand smoke.

107. Further particulars of the manner in which the conspiracy, concert of action and common design was 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.

(ii) Conspiracy within the Canadian Tobacco Industry

108. At all material times since in or about 1950, the Direct Breach Defendants, in furtherance of the conspiracy and concerted action within the International Tobacco Industry and within their particular Corporate Groups, conspired and acted in concert to prevent the Crown and persons in Ontario from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco related wrongs, as set out above in paragraphs 48 to 85 and below in paragraphs 142 to 147, in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the conspiracy, concert of action and common design.

109. 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 the Defendants Rothmans Inc., Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp. and Imperial Tobacco Canada Limited and their predecessors in interest for whom they are liable, hereinafter referred to as the Canadian Tobacco Company Defendants, and attended by their senior personnel and through written and oral directives and communications amongst them.

110. The conspiracy, concert of action and common design was continued when, contrary to their knowledge:

(a) in or about 1962, the Canadian Tobacco Company Defendants 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 addiction and disease from smoking;

(b) in 1963, the Canadian Tobacco Company Defendants misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease;

(c) in or about 1963, the Canadian Tobacco Company 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, the Canadian Tobacco Company Defendants misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.~~

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

112. In furtherance of the conspiracy, concert of action and common design, CTMC has lobbied governments and regulatory agencies throughout Canada on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants' since about 1963, with respect to tobacco industry matters, including delaying and minimizing government initiatives in respect of warnings to be placed on cigarette packages and imposing limitations on smoking in public places, as well as misrepresenting the risks of addiction and disease from smoking to the Canadian public, in accordance with the tobacco industry's position, which is the same as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

113. CTMC has co-ordinated, with the Canadian Tobacco Company Defendants and the international tobacco industry associations ICOSI and INFOTAB, through its membership in these organizations, the Canadian cigarette industry's positions on smoking and health issues.

114. In furtherance of the conspiracy, concert of action and common design, CTMC on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants:

(a) disseminated false and misleading information regarding the risks of addiction and disease from smoking including making false and misleading submissions to governments denying any connection contrary to its knowledge;

(b) refused to admit that smoking caused disease contrary to its knowledge;

(c) suppressed research regarding the risks of addiction and disease from smoking which was known or should have been known to them;

(d) participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link, which was known or should have been known to them, between smoking and disease;

(e) lobbied governments in order to delay and minimize government initiatives with respect to smoking and health, including initiatives to place warnings on cigarettes packaging and limiting smoking in public places contrary to its knowledge;

(f) in a 1963 presentation to the Conference on Smoking and Health of the Department of National Health and Welfare, the Ad Hoc Committee of the Canadian Tobacco Industry (the predecessor to the CTMC) claimed that the evidence that tobacco causes disease was inconclusive and used this to undermine the scientific case against tobacco;

(g) stated in a 1968 paper that there is no established proof that tobacco causes harm;

~~(h) in June 1969 made a statement to the House of Commons Standing Committee on Health and Welfare denying that smoking is a major cause of illness or death;~~

(i) at a 1971 meeting of technical representatives of the members of CTMC called by the head of the CTMC, representatives of the CTMC and the Canadian tobacco companies noted the need for minimum nicotine levels in cigarettes;

(j) denied at a 1971 press conference that tobacco causes disease;

(k) in a 1977 Position Paper, stated that there is no persuasive scientific evidence to support the contention that the non-smoker is harmed by the tobacco smoke of others;

(l) in a 1987 Position Statement, stated that:

(i) smoking had not been proven to cause disease;

(ii) smoking is not addictive; and

(iii) there was no conclusive evidence that second hand smoke causes adverse health effects and stated that the scientific community holds the view that there are no proven health consequences to exposure to second hand smoke;

(m) in a 1987 press release denied that second hand smoke is harmful to health; and

~~(n) in 1987 advised a House of Commons Legislative Committee that there was uncertainty regarding the role of smoking in causing disease; and~~

(o) in a 1990 letter wrote to the Canadian government to voice the Industry's opposition to the federal government's proposed amendments to the Tobacco Products Regulations which would require, inter alia, the placing of addiction warnings on cigarette packages. In its letter, the CTMC questioned whether smoking was addictive and whether second hand smoke was dangerous.

115. At all material times, CTMC acted as the agent of the Canadian Tobacco Company Defendants, as members of the CTMC, and as agent of the Lead Companies through its membership with them in the International Associations, ICOSI and INFOTAB. In 1982 CTMC became an associate member of INFOTAB and was a full participant from 1982 to 1989.

116. 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 in furtherance of the conspiracy, concert of action and common design are within the knowledge of these Defendants and the CTMC.

(iii) Conspiracy within Corporate Groups

The Rothmans Group

117. In or about 1953 the Rothmans Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized, convened and attended by senior personnel of the Rothmans Group members, including those of Rothmans International Limited, Rothmans Inc., Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Carreras Rothmans Limited, as well as those of the Philip Morris Group, and through written and oral directives and communications amongst the Rothmans Group members.

118. Carreras Rothmans Limited and affiliated companies were involved in directing or co-ordinating the Rothmans Group's common policies on smoking and health by preparing and distributing statements which set out the Rothmans Group's position on smoking and health issues. Rothmans International Limited functioned as a central body to coordinate and establish policies for all Rothmans Group members worldwide, creating an International Advisory Board for this particular purpose. These positions were then adopted by member companies.

118.1. From 1950 onwards, Rothmans Group policies included denying the existence of any relationship between smoking and adverse health effects, and strenuously opposing the introduction of warning labels on tobacco products. From 1960 onwards, these policies included denying or minimizing the relationship between exposure to cigarette smoke,

including second hand smoke, and adverse health effects.

118.2. Rothmans International Limited and Carreras Rothmans Limited directed Rothmans Inc. (and its predecessor corporations) to maintain the Rothmans Group's position that more research was required to determine whether cigarettes cause disease, and instructed Rothmans Inc. to resist cautionary warnings in advertising. Carreras Rothmans Limited also directed Rothmans Inc. (and its predecessor corporations) on how to vote at CTMC meetings on issues relating to smoking and health, including the approval and funding of research. Rothmans Inc. (and its predecessor corporations) acted as an agent for and as directed by Carreras Rothmans Limited.

118.3. Within the Rothmans Group, scientists worked collaboratively, exchanged research results, and advised senior management of the companies that were part of the Rothmans Group from time to time, through specific committees. From 1978 to 1986, Carreras Rothmans Limited and its research division were designated responsibility for providing direction on tobacco-related health issues and for coordinating the Rothmans Group's research strategy. Rothmans Inc. (and its predecessor corporations) in particular relied on Carreras Rothmans Limited's expertise and direction on smoking-related health issues. Rothmans Group companies also held meetings on issues related to second-hand smoke. Through its conferences, meetings, directives and policies, Carreras Rothmans Limited directed the Rothmans Group to take the same positions on smoking and health as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

119. Carreras Rothmans Limited and affiliated companies also were involved in directing or

co-ordinating the smoking and health policies of Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc. (and its predecessor corporations), by influencing or advising how they should vote in committees of the Canadian manufacturers of cigarettes sold in Ontario 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.

120. 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 Rothmans of Pall Mall Limited, and Rothmans Inc. (and its predecessor corporations), in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Rothmans Group members.

The Philip Morris Group

121. In or about 1953 the Philip Morris Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and attended by senior personnel of the Philip Morris Group companies, including those of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., and through written and oral directives and communications amongst the Philip Morris Group members.

122. The committees used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Committee on Smoking Issues and Management and the Corporate Products Committee.

123. The conferences used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Conference on Smoking and Health and the Corporate Affairs World Conference.

124. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International Inc. further directed or co-ordinated the Philip Morris Group's common policies on smoking and health by means of their respective Corporate Affairs and Public Affairs Departments which directed or advised various departments of the other members of the Philip Morris Group, including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., concerning the Philip Morris Group position on smoking and health issues.

125. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the common policies of the Philip Morris Group on smoking and health by preparing and distributing to the members of the Philip Morris Group including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., written directives and communications including "Smoking and Health Quick Reference Guides" and "Issues Alerts". These directives and communications set out the Philip Morris Group's position on smoking and health issues to ensure that the personnel of the Philip Morris Group companies, including Rothmans, Benson & Hedges

Inc., and its amalgamating company Benson & Hedges (Canada) Ltd., understood and disseminated the Philip Morris Group's position, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

126. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the smoking and health policies of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers of cigarettes sold in Ontario and by CTMC.

126.1 In furtherance of the conspiracy, concert of action and common design, Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and Rothmans Benson & Hedges Inc. and their predecessors participated in the establishment and operation of INBIFO, a research facility in Europe. At INBIFO, research was carried out into the health effects of both smoking and second hand smoke. When the research indicated that smoking and second hand smoke was harmful to health, the research was suppressed and/or destroyed.

127. 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.

The RJR Group

128. In or about 1953 the RJR Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. and attended by senior personnel of the RJR Group members, including those of JTI-Macdonald Corp. (and its predecessor corporations), and through written and oral directives and communications amongst the RJR Group members.

129. The meetings used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health included the Winston-Salem Smoking Issues Coordinator Meetings.

130. The conferences used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health include the "Hound Ears" and Sawgrass conferences.

131. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., further directed or co-ordinated the RJR Group's position on smoking and health by means of a system of reporting whereby each global "Area" had a "smoking issue designee" who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to the Manager

of Science Information in the R.J. Reynolds Tobacco Company. In the case of Area II (Canada), this "designee" was, from 1974, a senior executive of Macdonald Tobacco Inc., and later of JTI-Macdonald Corp. (and its predecessor corporations).

132. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the RJR Group's common policies on smoking and health by preparing and distributing to the members of the RJR Group, including JTI-Macdonald Corp. (and its predecessor corporations), written directives and communications including an "Issues Guide" and a "Media Guide".

133. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the smoking and health policies of JTI-Macdonald Corp. (and its predecessor corporations) 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 and maintaining the right to veto any particular research proposal.

133.1 The direction and co-ordination of the RJR Lead Companies over the RJR Group was also carried out by:

(a) Developing an action plan which set out the RJR Group's position on smoking and health issues to ensure that the personnel in the RJR Group companies, including its Canadian subsidiaries, understood and disseminated the RJR Group's position;

(b) Taking a leadership role in the International Committee on Smoking Issues (ICOSI), particularly in relation to Canada and coordinating CTMC's positions to align with those of ICOSI as particularized in paragraph 99 herein, as well as the CIAR policies on second hand smoke particularized in paragraph 106 herein;

(c) Placing senior executives of the Lead Companies as senior executives of the Canadian subsidiaries;

(d) Advising the RJR Group's sales representatives that cigarettes did not pose a health hazard to the non-smoker;

(e) Making public statements on behalf of the entire Group denying or marginalizing the link between health and second hand smoke;

(f) Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department;

(g) Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes; and

(h) Holding RJR Group and tobacco industry meetings relating to environmental tobacco smoke.

133.2 These directives and communications set out the RJR Group's position on smoking and health issues, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein. These directives and communications were meant to ensure that the personnel of the RJR Group companies, including those of JTI-Macdonald Corp. (and its predecessor corporations) understood and disseminated the RJR Group's position.

133.3 In furtherance of the conspiracy, concert of action and common design, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., and JTI-Macdonald Corp. (and its predecessor corporations) participated in the removal and destruction of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina and destroyed research relating to the biological activity of cigarettes manufactured and promoted by members of the RJR Group for sale in Ontario.

134. 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., (and its predecessor corporations), and the Defendants, R.J. Reynolds Tobacco International and 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

135. In or about 1953 the BAT Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. and attended by senior personnel of the BAT Group members, including those of Imperial Tobacco Limited and Imasco Limited, and through written and oral directives and communications amongst the BAT Group members.

135.1 The Lead Companies of the BAT Group have consistently held the BAT Group out to the public as a single corporate entity and tobacco enterprise, continuously in operation since 1902, and, as a result, each of the Lead Companies, by its words and conduct, continued and thereby adopted and assumed the benefits of and the liabilities of its predecessors for the conspiracy and acting in concert within the International Tobacco Industry and the Canadian Tobacco Industry and its own Group. British American Tobacco p.l.c. stands where its predecessors stood, at the head of the BAT Group, representing a continuity of control, purpose and policies throughout the past 100 years or more. British American

Tobacco p.l.c., like B.A.T Industries p.l.c. before it, has represented to the public in its annual financial statements and otherwise, that it has been in existence since 1902, employing tens of thousands of people and is one of the largest tobacco companies in the world. British American Tobacco p.l.c. has continued the BAT Group's practice of misleading the public and governments about the dangers of smoking and the risks of second-hand smoke.

136. The committees used by British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c. to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board, the Tobacco Executive Committee, and the Tobacco Strategy Review Team (which later became known as the Tobacco Strategy Group).

137. The conferences used by the Defendants, British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Advisory Conferences, BAT Group Research Conferences, and BAT Group Marketing Conferences. Some of these conferences took place in Canada.

138. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c. further directed or co-ordinated the BAT Group's common policies on smoking and health, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the the CIAR policies and position on second hand smoke particularized in paragraph 106 herein, by creating a Tobacco Strategy Review Team (TSRT) and 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" (that addressed inter alia second hand smoke), "Smoking and Health: The Unresolved Debate", "Smoking: The Scientific Controversy", "Smoking: Habit or Addiction?", and "Legal Considerations on Smoking and Health Policy", "Smoking and Health – Assumptions – Policy – Guidelines", "Environmental Tobacco Smoke – Improving the Quality of Public Debate, Smoking and Health – The End Result Debate", and "Answering the Critics". These directives and communications set out the BAT Group's position on smoking and health issues, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein and were meant to ensure that the personnel of the BAT Group companies, including the personnel of Imperial Tobacco Limited and Imasco Limited, understood and disseminated the BAT Group's position.

138.1 Direction, to this end, was further provided at meetings of the Tobacco Strategy Review Team and recorded in notes of meetings of the Tobacco Strategy Review Team. This strategy for the BAT Group was further set out in corporate documents such as the Listing Particulars of British American Tobacco p.l.c. in 1998, the statement of Policy of the Group on Regulatory and Taxation Issues and through various websites operated by the Lead Companies from and after 1998, including statements made by British American Tobacco p.l.c. on its website in 2003 and thereafter questioning research that exposure to second hand smoke causes disease.

139. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and

B.A.T Industries p.l.c., further directed or co-ordinated the smoking and health policies of Imperial Tobacco Limited and Imasco Limited, by directing or advising how they should vote in committees of the Canadian manufacturers of cigarettes sold in Ontario 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.

140. 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.

141. As a result of the aforementioned conspiracy, concert of action and common design, set out in paragraphs 86 to 140, persons in Ontario started to, or continued to, smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of *Consumer Protection Act, 2002*, the *Competition Act* and their Predecessor Statutes

142. The Direct Breach Defendants, in breach of their statutory duties or obligations pursuant to the *Business Practices Act* S.O. 1974, c.131, s.2 and successor legislation including the *Consumer Protection Act*, 2002 S.O. 2002, s.14 and 17, engaged in unfair practices by making false, misleading or deceptive representations in respect of cigarettes sold to persons in Ontario, by word or by conduct. These Defendants further breached these statutes by making unconscionable representations in respect of cigarettes sold by them to

persons in Ontario, contrary to the *Consumer Protection Act*, 2002 S.O. 2002, s.15. Particulars of the false, misleading or deceptive and unconscionable representations are set out in paragraphs 56 to 85 and 145 herein.

143. In addition, these Defendants, for the purpose of promoting, directly or indirectly, the supply to or use of cigarettes by persons in Ontario, breached their statutory duties or obligations to consumers in Ontario under the *Combines Investigation Act* R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act* S.C. 1968-69, chapter 38, section 116 and amendments thereto and subsequently the *Competition Act* R.C.S. 1985, chapter C-34, sections 52(1), 52(4), 74.1 and 74.03 and amendments thereto. Specifically, the Defendants made representations to the public in Ontario that were false or misleading in a material respect and made representations to the public in Ontario in the form of statements regarding the performance and efficacy of cigarettes that were not based on adequate and proper testing, particulars of which are set out in paragraphs 56 to 85 and 145.

144. Knowing that cigarettes were addictive and would cause and contribute to disease, these Defendants intentionally inflicted harm on persons in Ontario by manufacturing, promoting and selling cigarettes, for profit and in disregard of public health, with knowledge of the risks of addiction and disease and failing to disclose and suppressing this information as particularized herein.

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

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

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

(ii) increasing the level of nicotine through the blending of tobaccos contained in their cigarettes,

(iii) increasing the level of nicotine in their cigarettes by the addition of nicotine or substances containing nicotine,

(iv) introducing substances, including ammonia, into their cigarettes to enhance the bio-availability of nicotine to smokers;

(b) incorporating into the design of their cigarettes ostensible safety features such as filters which they knew or ought to have known were ineffective in reducing the risks of addiction and disease from smoking, yet which would lead a reasonable consumer to believe that the product was safer to use than it was in fact;

(c) failing to disclose to such consumers the risks inherent in the ordinary use of their cigarette products including the risks of disease and addiction which was known or should have been known to them based on research on smoking and health which was known to them;

(d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings regarding the risks of addiction and disease from smoking provided to such consumers;

(e) suppressing or concealing from such consumers scientific and medical information regarding the risks of addiction and disease from smoking;

(f) engaging in marketing and promotional activities having the tendency to lead such consumers to believe that cigarettes have performance characteristics, ingredients, uses and benefits and approval that they did not have;

(g) misinforming and misleading such consumers about the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke by using innuendo, exaggeration and ambiguity having the tendency to mislead them about the material facts regarding smoking and health;

(h) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes;

(i) providing misleading information to the public in Ontario about the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke based upon a failure to provide any or any adequate research or testing of their cigarettes;

(j) publicly discrediting the testing and research undertaken, and information provided by others, regarding the link between smoking and disease and smoking and addiction;

(k) failing to take any, or any reasonable, measures to prevent children and adolescents from starting or continuing to smoke;

(l) targeting children and adolescents in their advertising, promotional and marketing activities with the object of inducing children and adolescents to start or continue to smoke;

(m) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that, when smoked as intended, they are addictive and inevitably cause or contribute to disease and death in large numbers of consumers of cigarettes and persons exposed to cigarette smoke and provide no benefit to either class of persons;

(n) making the following representations to such consumers which they knew or ought to have known were false or misleading:

(i) representing that smoking and exposure to second hand smoke has not been shown to cause any known diseases,

(ii) representing that they were aware of no research, or no credible research, establishing a link between smoking or exposure to second hand smoke and disease,

(iii) representing that 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,

(iv) representing that cigarettes were not addictive,

(v) representing that they were aware of no research, or no credible research, establishing that smoking is addictive,

(vi) representing that smoking is merely a habit or custom,

(vii) representing that they did not manipulate nicotine levels in their cigarettes,

(viii) representing that they did not include substances in their cigarettes designed to increase the bio-availability of nicotine,

(ix) representing that the actual intake of tar and nicotine associated with smoking their cigarettes was less than they knew it to be,

(x) representing that certain of their cigarettes, such as "filter", "mild", "low tar" and "light" brands, were safer than other cigarettes,

(xi) representing that smoking is consistent with a healthy lifestyle,

(xii) representing that the risks of smoking were less serious than they knew them to be; and

(o) making representations about the characteristics of their cigarettes that were not based upon any or any adequate and proper testing of and investigation and research into:

(i) the risk of disease caused or contributed to by smoking their cigarettes and exposure to second hand smoke,

(ii) the risk of addiction to nicotine contained in their cigarettes, and

(iii) the feasibility of eliminating or minimizing the risks referred to in subparagraphs (i) and (ii);

(p) failing to correct statements made by others on their behalf to such consumers regarding the risks of smoking and exposure to second hand smoke, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.

146. In making the representations referred to in paragraph 145, these Defendants knew or ought to have known:

(a) that the consumers are not reasonably able to protect their interests because of disability, ignorance, illiteracy, or similar factors; and

(b) that the consumers are unable to receive a substantial benefit from the subject-matter of the representations (ie. cigarettes).

147. As a result of the aforementioned breaches of statutory duties and obligations by the Direct Breach Defendants, persons in Ontario started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of such disease. The Crown has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

V. CONCLUSION

148. Exposure to cigarettes can cause or contribute to disease. During the period in which the Defendants committed the tobacco related wrongs referred to in Part IV above, cigarettes manufactured or promoted by the Direct Breach Defendants were offered for sale in Ontario.

149. But for the above described tobacco related wrongs, insured persons in Ontario exposed to tobacco products manufactured or promoted by the Direct Breach Defendants would not have been exposed to these products, and as a result, insured persons in Ontario have suffered tobacco related disease or the risk of tobacco related disease. The Crown has incurred expenditures for health care benefits provided to these insured persons. In accordance with the Act, the Crown is entitled to recover these health care costs from the Direct Breach Defendants. The Crown pleads and relies on section 3 of the Act.

150. Furthermore, in accordance with section 4 of the *Act* and as a result of the facts set out in paragraphs 86 through 141, the Crown pleads that all Defendants conspired and acted in concert in committing the tobacco related wrongs committed by the Direct Breach Defendants and as a result, all Defendants are jointly and severally liable for the cost of health care benefits provided to insured persons in Ontario resulting from tobacco related disease or the risk of tobacco related disease caused or contributed to by the breaches of duty of the Direct Breach Defendants.

151. The Crown relies on Rules 17.02(g), (h), (o) and (p) in serving the Statement of Claim on Defendants outside Ontario without leave.

The Crown proposes that this action be tried at Toronto.

Date: March 28, 2014

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Court File No.: CV-09-387984

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO - and - **ROTHMANS INC., *et al***

Plaintiff | Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

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TAB 4

Court File No.: CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

– and –

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

Defendants

STATEMENT OF DEFENCE OF THE DEFENDANT ALTRIA GROUP, INC.

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1. The defendant Altria Group, Inc. (hereafter "Altria") denies, or where applicable does not admit, the allegations made in the Amended Fresh as Amended Statement of Claim amended on April 26, 2016 (the "Statement of Claim") by the plaintiff ("Ontario" or the "Province"), unless expressly admitted, and puts the Province to the strict proof thereof. Altria admits the allegations contained in paragraphs 10-12 and 26-27 of the Statement of Claim.

2. Altria denies the allegations contained in paragraphs 1-6, 20, 29, 40-45, 48-72.1, 73, 74-127, and 141-150 of the Statement of Claim.

3. Altria has no knowledge in respect of the allegations contained in paragraphs 7-9, 13-19, 21-25, 28, 30-39, 46-47, 72.2-72.5, 73.1-73.4, 128-140, and 151 of the Statement of Claim.

I. RELIEF CLAIMED

4. Altria denies that the Province is entitled to the relief claimed in paragraph 1 of the Statement of Claim and that the Statement of Claim should be dismissed with costs.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Case

5. Altria denies the allegations in paragraphs 2-4 in the Statement of Claim and denies the Province's ability to seek relief or recover the cost of health care benefits described in paragraph 1 of the Statement of Claim (the "Claimed Cost") from Altria, except that Altria admits that this action is brought pursuant to the provisions of the *Tobacco Damages and Health Care Costs Recovery Act*, 2009, S.O. 2009 C.13 (the "Act").

6. Altria admits only that the Statement of Claim states the definitions referred to in paragraphs 5-6 of the Statement of Claim for the purposes of the Statement of Claim but not otherwise.

B. The Defendants

7. Altria has no knowledge of the allegations in paragraphs 7-9 of the statement of Claim and therefore denies the same.

8. Altria admits that Altria Group, Inc. (formerly known as Philip Morris Companies Inc.) is a Virginia corporation with offices at 6601 West Broad Street, Richmond, Virginia in the United States of America.

9. Altria admits that Philip Morris USA Inc. (hereafter, collectively with its predecessors, "PM USA") was formerly known as Philip Morris Inc. and is a Virginia corporation with offices at 6601 West Broad Street, Richmond, Virginia in the United States of America. Altria further states that U.S.-sourced tobacco products manufactured by PM USA accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market. Further, tobacco products manufactured in the U.S. by PM USA for the Canadian duty-free market were provided for sale only to individuals leaving Canada and had to be taken out of the country immediately after purchase. To the very limited extent that cigarettes manufactured by PM USA were ever offered for sale in Canada, Altria states that such cigarettes were at all material times a legal product sold in compliance with all applicable laws.

10. Altria admits that Philip Morris International Inc. ("PMI") is a Virginia company with offices located at 120 Park Avenue in New York, New York in the United States of America.

11. Altria has no knowledge of the allegations in paragraphs 13-19 of the Statement of Claim and therefore denies the same.

12. Altria denies the allegations in paragraph 20 of the Statement of Claim. Altria further states that it is a holding company which has never engaged in the manufacture of tobacco products as defined in the Act and has never engaged in the promotion of tobacco products in Canada. Furthermore, U.S.-sourced tobacco products manufactured by PM USA accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market. Further, tobacco products manufactured in the U.S. by PM USA for the Canadian duty-

free market were provided for sale only to individuals leaving Canada and had to be taken out of the country immediately after purchase. To the very limited extent that cigarettes manufactured by PM USA were ever offered for sale in Canada, Altria states that such cigarettes were at all material times a legal product sold in compliance with all applicable laws. Altria further states that it has no knowledge as to the truth of the allegations made with respect to other defendants and therefore denies the same.

13. Altria has no knowledge of the allegations in paragraphs 21-22 of the Statement of Claim and therefore denies the same.

III. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

A. Canadian Tobacco Companies

The Defendant Rothmans Inc.

14. Altria has no knowledge of the allegations in paragraphs 23-24 of the Statement of Claim and therefore denies the same.

The Defendant Rothmans, Benson & Hedges Inc.

15. Altria has no knowledge of the allegations in paragraph 25 of the Statement of Claim and therefore denies the same.

16. Altria admits that Rothmans, Benson & Hedges Inc. ("RBH") was created through the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited in 1986 and admits that Benson & Hedges (Canada) Ltd. (renamed Benson & Hedges (Canada) Inc. in 1979), at various times since 1950, manufactured and promoted cigarettes offered for sale in Ontario.

17. Altria admits that RBH has, at various times since 1986, manufactured and promoted cigarettes offered for sale in Ontario. Altria also admits that, between 1986 and 1989, RBH distributed in Canada a small amount of U.S.-sourced tobacco products manufactured by Philip Morris Incorporated (now PM USA), but these products accounted for less than 0.1% of all duty-paid cigarettes sold in Canada during this time period.

18. Altria has no knowledge of the allegations in paragraph 28 of the Statement of Claim and therefore denies the same.

19. Altria denies the allegations in paragraph 29 of the Statement of Claim. Altria states that between 1986 and March 2008, corporate entities related to Altria Group, Inc. maintained a 40% shareholder interest in RBH. Since September 2008, RBH has been an indirect wholly owned subsidiary of PMI. Altria further states that it and PM USA have had no corporate affiliation with PMI since a March 28, 2008 spinoff.

The Defendant JTI-Macdonald Corp.

20. Altria has no knowledge of the allegations in paragraphs 30-33 of the Statement of Claim and therefore denies the same.

The Defendant Imperial Tobacco Canada Limited

21. Altria has no knowledge of the allegations in paragraphs 30-39 of the Statement of Claim and therefore denies the same.

B. Multinational Tobacco Enterprises

22. Altria denies the allegations in paragraphs 40-45 of the Statement of Claim. Altria states additionally that paragraphs 40-45 of the Statement of Claim purport to collectively categorize

separate entities as certain "Groups" or "Lead Companies", and Altria denies that such characterization is accurate, proper or has any legal significance whatsoever relevant to the Province's claims or the Province's ability to seek relief or recover the Claimed Cost from Altria. Altria further states that, to the extent that companies have had policies in common with Altria in relation to smoking and health, such common policies were developed for appropriate business purposes and were lawful. In further answer, Altria states that:

(a) While its corporate affiliates had a corporate relationship over the years with RBH, at all material times, operating decisions were made in Canada by RBH, and RBH arrived at its own positions on smoking-related issues;

(b) It never entered into a conspiracy or common design with the Defendants PMI, PM USA, or RBH, or any other defendant in this action;

(c) It never acted in concert with the Defendants PMI, PM USA, or RBH, or any other defendant in this action;

(d) RBH was never the agent of Altria; and

(e) Altria never directed the activities of RBH or any other defendant in this action.

23. Altria has no knowledge of the allegations in paragraphs 46-47 of the Statement of Claim and therefore denies the same.

TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. General

24. Altria states that Altria is a holding company which has never engaged in the manufacture of tobacco products as defined in the *Act* and has never engaged in the promotion of

tobacco products in Canada. Furthermore, U.S.-sourced tobacco products manufactured by PM USA, accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market. Further, tobacco products manufactured in the U.S. by PM USA for the Canadian duty-free market were provided for sale only to individuals leaving Canada and had to be taken out of the country immediately after purchase. To the very limited extent that cigarettes manufactured by PM USA were ever offered for sale in Canada, Altria states that such cigarettes were at all material times a legal product sold in compliance with all applicable laws. Altria states that it has no knowledge as to the truth of the allegations made with respect to other Defendants and therefore denies the same. Altria denies the remaining allegations in paragraph 48 of the Statement of Claim. Specifically, Altria denies that:

(a) it has committed any tobacco related wrong, or breached any common law, equitable or statutory duty as alleged in the Statement of Claim or at all;

(b) it manufactures or has manufactured a defective product;

(c) it fails or has failed to warn, unlawfully sells or markets to children and adolescents or has ever done so;

(d) it makes or has made any deceitful or negligent misrepresentations;

(e) it contravenes or has contravened any consumer protection or competition legislation; or

(f) it takes or has taken part in any conspiracy, concerted action or common design as alleged.

Altria further states the following:

(g) At all times, Altria conducted itself in accordance with appropriate business practices and in compliance with the applicable common law, equitable and statutory duties governing its conduct;

(h) In addition, a significant and growing proportion of the Canadian cigarette market is supplied by manufacturers other than those identified in the Claim. Specifically, manufacturers located on aboriginal reserves (the "Aboriginal Manufacturers") produce, promote and provide cigarettes to numerous consumers across Canada. Vendors selling cigarettes produced by the Aboriginal Manufacturers routinely fail to collect the federal and provincial taxes applicable to sales to non-aboriginal purchasers, creating a substantial incentive for non-aboriginal to purchase cigarettes from these manufacturers instead of the manufacturers identified in the Claim. Additionally, cigarettes produced by the Aboriginal Manufacturers dominate the market for contraband cigarettes in Canada. As a result, a significant fraction of the cigarettes consumed in Canada are not supplied by manufacturers identified in the Claim, but rather by the Aboriginal Manufacturers; and

(i) In particular, Altria denies that any breach of duty by Altria caused persons in Ontario to start or continue to smoke cigarettes or be exposed to cigarette smoke from cigarettes manufactured or promoted by it; and

(j) Without limiting the generality of the foregoing, Altria specifically denies that it has breached any common law, equitable or statutory duty or obligation owed to persons in Ontario as alleged in the Statement of Claim. Altria specifically denies that any such alleged breach of duty or obligation caused any population of

insured persons to smoke cigarettes or to continue to smoke cigarettes. Altria specifically denies that it committed any tobacco related wrong or acted in a manner that wrongfully caused any person in Ontario to smoke and/or continue smoking.

B. Breaches of Common Law, Equitable or Statutory Duties or Obligations

The Defendants' Knowledge

25. Altria denies the allegations made in paragraphs 49-50 of the Statement of Claim. Altria does admit that:

(a) cigarettes contain· tobacco and nicotine occurs naturally in tobacco;

(b) nicotine, as found in cigarette smoke, has pharmacological effects; and

(c) nicotine in cigarette smoke is addictive and cigarette smoking is addictive.

Altria further states that it has never manufactured cigarettes in Canada at any material time. In admitting (a) to (c) above, Altria states that it can be difficult for smokers to quit smoking, but this should not deter smokers who want to quit from trying to do so. Altria denies the allegations in paragraph 50 of the Statement of Claim to the extent that the term "addictive" is intended to assert that cigarette smokers are unable to quit smoking if they decide to do so.

26. Altria admits that cigarette smoking causes or contributes to cancers of the lung, bronchus, trachea, larynx, pharynx, lip, esophagus, bladder, kidneys, and pancreas; leukemia; emphysema; chronic bronchitis; chronic airways obstruction; chronic obstructive pulmonary disease; coronary heart disease; peripheral vascular disease; and vascular disease. Altria states that "cancer of the stomach," "cancer of the nose," and "cancer of the oral cavity" are relatively vague terms which might encompass a number of different and varied anatomical structures, but

admits that smoking causes cancer in certain of the anatomical structures associated with the stomach, nose, and mouth. Altria denies that smoking causes or contributes to cancers of the liver, colon, rectum, or uterus, or to pulmonary circulatory disease or miscarriage. Altria states that "fetal harm" is a relatively vague term which might encompass a number of different and varied anatomical structures, but admits that smoking is associated with an increased risk of placental abruption, premature birth, stillbirth, neonatal mortality, and intrauterine growth restriction; and that cigarette smoking causes lower infant birth weight in infants whose mothers were smokers during pregnancy. Altria further states that many other factors, whether environmental, physiological, genetic, or based upon lifestyle choices, can also have harmful effects on pregnancy. Altria acknowledges that the Surgeon General's 2014 Report (entitled "The Health Consequences of Smoking – 50 Years of Progress") concluded that there is sufficient evidence to infer a causal relationship between smoking and asthma and increased morbidity and general deterioration of health, but Altria's position is that at this time, these conclusions are based on inadequate scientific support. Altria further states that diseases caused or contributed to by cigarette smoking are complex and may be caused or contributed to by many different factors, whether environmental, physiological, genetic or based upon lifestyle choices. With respect to environmental tobacco smoke ("ETS") (referred to in the Statement of Claim as "second hand smoke"), Altria acknowledges that the Surgeon General's 2006 Report (entitled "The Health Consequences of Involuntary Exposure to Tobacco Smoke") concluded that there is sufficient evidence to infer a causal relationship between ETS and lung cancer, coronary heart disease, and cough in children, but Altria's position is that at this time, these conclusions are based on inadequate scientific support. Altria denies the remaining allegations in paragraph 51 of the Statement of Claim.

27. Altria denies the allegations in paragraphs 52-53 of the Statement of Claim. Altria states that cigarette smoke contains numerous constituents, some of which are acknowledged by public health organizations, such as the U.S. Food and Drug Administration, Health Canada, and the International Agency for Research on Cancer, to be hazardous to health. Altria further states that, at all material times, persons in Ontario have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government, the Province and the public health community have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by the federal government, the Province and the public health community have reinforced the awareness of persons in Ontario with respect to cigarette smoking and its potential risks. At all material times, Altria had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the Province and the public health community.

28. Altria denies the allegations in paragraph 54 of the Statement of Claim and repeats paragraph 25 hereof.

29. Altria denies the allegations in paragraph 55 of the Statement of Claim.

Breach of Duty – Design and Manufacture

30. In response to the allegations in paragraphs 56-62 of the Statement of Claim, Altria states that it does not manufacture, advertise, market, distribute, or sell cigarettes in Ontario. Altria denies the allegations made in paragraphs 56-62 of the Statement of Claim. Altria has never breached any duty with respect to the design or manufacture of cigarettes as alleged or at all, nor

has Altria made any misrepresentations with respect to tobacco products or their characteristics. Altria repeats paragraphs 31-33 and 46 hereof, and states that it complied with all applicable common law, equitable, and statutory duties that govern its conduct. Altria further states the following:

(a) To date, there are no technologically possible and commercially feasible features that could potentially reduce the harm of cigarette smoking that could have been incorporated into the design or manufacture of traditional cigarettes that have not been so incorporated. Notwithstanding its efforts and numerous advancements in scientific knowledge on the subject of smoking and health, no entity has yet been able to produce a commercially viable traditional cigarette that is free of health risks.

(b) At all material times, the federal government has directed and supported the manufacture and sale of cigarettes in Canada, and set the standard of care required for cigarette manufacturers. As part of its direction and supervision of the cigarette industry, the federal government (among other things):

(i) Researched and developed strains of tobacco which became effectively the only varieties available for use in Canadian cigarettes;

(ii) Advised manufacturers on the necessity and efficacy of printed package warnings, as well as their content; and

(iii) Advised and directed manufacturers on the need to develop and promote lower-yield cigarettes.

(c) Beginning in the 1950s, the government and public health community called for and otherwise encouraged the development and marketing of lower tar cigarettes. During this time, consumer demand also increased for lower tar cigarettes;

(d) Altria cooperated with the government and health community and complied with all common law, equitable and statutory duties that governed its conduct at all material times;

(e) At all material times the Province informed the public within Ontario of the risks associated with the consumption of tobacco products; and

(f) In further answer, Altria admits that it has been unlawful to sell cigarettes to persons under a certain age. Notwithstanding those laws, some persons under a certain age have smoked. Further, Altria has never targeted under-aged smokers or non-smokers.

Breach of Duty to Warn

31. Altria denies the allegations in paragraphs 63-70 of the Statement of Claim. Altria pleads and relies on paragraphs 30, 32-33 and 46 hereof and states that it complied with all common law, equitable and statutory duties that governed its conduct at all material times. Further, Altria states that cigarettes manufactured by PM USA and sold in Canada were labelled consistently with all applicable federal and provincial legislation and regulations and with the voluntary advertising code, to the extent that its products were ever subject to such legislation or regulation or to the voluntary advertising code. Specifically, by 1972, the voluntary advertising code adopted by certain Canadian cigarette manufacturers required package warnings concerning the health risks of smoking. Prior to 1972, representatives of the federal government had advised

against package warnings concerning health risks, on the ground that such risks were already well-understood and written warnings would only confuse the public. Package labels subsequently disclosed tar and nicotine levels by 1976. Thereafter, health warnings on cigarette packaging became increasingly prominent, in accordance with increasing federal and provincial legislation and regulation. By 2000, federal regulations required rotating graphic health warnings to cover at least 50% of cigarette packaging.

Breach of the Duty – Misrepresentation

32. Altria denies the allegations made in paragraphs 71-72.1, 73, and 74-77 of the Statement of Claim and repeats paragraph 48 hereof. Altria has never at any time made representations that were false and has never suppressed any such scientific and medical data. No representations were made by Altria at any time which were false or made with willful blindness or recklessness as to their truth or falsity. Further, Altria states that it never represented that any tobacco products were less hazardous than any others, and that any tobacco products manufactured by PM USA and sold in Canada were labelled consistently with all applicable federal and provincial legislation and regulations and with the voluntary advertising code, to the extent that its products were ever subject to such legislation or regulation or to the voluntary advertising code. Altria pleads and relies on paragraphs 30-31, 33 and 46 hereof. Altria has no knowledge of the allegations in paragraphs 72.2, 72.3, 72.4, 72.5, 73.1, 73.2, 73.3, and 73.4 and therefore denies the same.

Breach of the Duty - Manufacturing or Promoting Products for Children and Adolescents

33. Altria denies the allegations made in paragraphs 78-85 of the Statement of Claim. Altria has never breached any duty to children or adolescents as alleged or at all, and denies that it

targeted children or adolescents in its advertising or other activities. Altria also pleads as follows:

(a) At all material times the Province had and undertook a program of informing children and adolescents within Ontario of the risks associated with the consumption of tobacco products, and if such persons have not been informed of such risks, which is denied, the Province failed to perform that program adequately;

(b) At all material times the Province alone had the obligation to enforce all relevant statutes and regulations pertaining to the sale of tobacco products to under-aged smokers, as defined from time to time by statutes or regulations, and failed to do so.

Conspiracy, Concert of Action and Common Design

34. Altria denies the allegations in paragraph 86 of the Statement of Claim. At no time did Altria enter into or engage in any conspiracy, concert of action or common design with other persons. Altria further states that:

(a) It conducts business in a highly regulated industry which leads, in some instances, to uniformity and consistency in the industry's manufacturing, packaging and promotional activities;

(b) It conducted itself at all times in accordance with appropriate business practices and in compliance with any applicable common law, equitable, and statutory duties that governed its conduct;

(c) In response to the allegation that unlawful acts were committed by Altria in furtherance of an alleged conspiracy, Altria repeats paragraphs 1-33 hereof, and in particular, paragraphs 27-33 hereof; and

(d) Altria states that it never conspired or acted in concert or with a common design with any of the Lead Companies or defendants. Further, to the extent that other Lead Companies or defendants may have had policies in common with Altria in relation to smoking and health, those policies were developed for appropriate business purposes and were lawful. Altria further states that the risks associated with smoking have been widely known in Ontario, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Ontario through a variety of sources and that Altria had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the Province and the public health community.

(i) Conspiracy within the International Tobacco Industry

35. Altria denies the allegations in paragraphs 87-107 of the Statement of Claim and repeats paragraph 34 hereof.

(ii) Conspiracy within the Canadian Tobacco Industry

36. Altria denies the allegations in paragraphs 108-116 of the Statement of Claim and repeats paragraph 34 hereof.

(iii) Conspiracy within Corporate Groups

The Rothmans Group

37. Altria denies the allegations in paragraphs 117-120 of the Statement of Claim and repeats paragraph 34 and refers to paragraph 38 hereof.

The Philip Morris Group

38. Altria denies the allegations in paragraphs 121-127 of the Statement of Claim and repeats paragraph 34 hereof.

The RJR Group

39. Altria has no knowledge of the allegations in paragraphs 128-134 of the Statement of Claim and therefore denies the same.

The BAT Group

40. Altria has no knowledge of the allegations in paragraphs 135-140 of the Statement of Claim and therefore denies the same.

41. Altria denies the allegations in paragraph 141 of the Statement of Claim and repeats paragraph 34 hereof.

Breach of Consumer Protection Act, 2002, the Competition Act and their Predecessor Statutes

42. Altria denies the allegations at paragraphs 142-147 of the Statement of Claim and repeats paragraphs 24 and 30-34 hereof.

V. CONCLUSION

43. Altria denies the allegations at paragraphs 148-150 of the Statement of Claim and repeats paragraphs 24 and 30-34 hereof.

44. Altria has no knowledge of the allegations in paragraph 151 of the Statement of Claim and therefore denies the same.

ANSWERS TO THE STATEMENT OF CLAIM AS A WHOLE

A. GENERAL DEFENCES

(i) No cause of action

45. The Statement of Claim discloses no cause of action because:

(a) There has been no pecuniary damage suffered by insured persons in respect of the "cost of health care benefits" as defined by the *Act*;

(b) The statutory liability the Province is attempting to impose on the defendants in this action is an after the fact attempt to make actionable conduct that was not actionable when it occurred;

(c) If the Claimed Cost was incurred as alleged or at all, which is denied, it was incurred by the federal government by means of transfer payments, conditional grants and shared cost programmes, and not by the Province;

(d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was incurred to provide services to insured persons that the Province was and is required to provide pursuant to Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes; and

(e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by the conduct and acts or omissions of the federal government and of the Province.

(ii) No breach of duty

46. Altria repeats paragraph 12 hereof and states:

(a) Altria never owed nor breached a duty to persons in Ontario;

(b) Altria conducted itself at all times in accordance with appropriate business practices and in compliance with the common law, equitable and statutory duties that governed its conduct; and

(c) At all material times, the manufacture, sale, advertising and promotion of tobacco products in Ontario and throughout Canada has been supervised, regulated and controlled by the Province and the federal government. The Province encouraged or participated in such supervision, regulation and control in Ontario either directly or indirectly through agreements, express or implied with the federal government. Together the said governments have defined and delineated the duties of tobacco manufacturers in Canada including Ontario and have given advice, recommendations, directions and suggestions in relation to, *inter alia*:

(i) The nature and scope of research into the properties of cigarettes to be undertaken by Canadian tobacco manufacturers;

(ii) Whether warnings of the health risks and addictive character of cigarettes should be provided to consumers;

(iii) The content and placement of any such warnings to be provided;

(iv) Product modifications, including the development, manufacture, promotion, distribution and sale of cigarettes containing lower amounts of tar and nicotine as measured by standard smoking machines;

(v) Communications by Canadian manufacturers with consumers about the health risks and addictive character of cigarettes and their tar and nicotine content when measured by standard smoking machines; and

(vi) The acceptability of the types of advertising and other forms of promotion that have been used in the past by Canadian manufacturers to promote the sale of their products.

(iii) No damage

47. Altria states that the Province has (i) suffered no damage, and (ii) incurred none of the Claimed Cost, as a result of anything that the Province alleges in this action that Altria did or failed to do. Altria further states that:

(a) If Altria breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to the Claimed Cost as alleged or at all;

(b) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, without limitation, one or more of the following:

(i) The requirement that the Province provide services to insured persons pursuant to the Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes;

(ii) The conduct and acts or omissions of the federal government and of the Province;

(iii) The conduct and acts or omissions of individual insured persons as further particularized herein; and

(iv) Disease or risk of disease in individual insured persons unrelated to smoking cigarettes;

(c) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by the tax revenue received by the Province from the sale of cigarettes in Ontario so that no cost is ultimately incurred by the Province;

(d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by monies received by the Province from the federal government by means of transfer payments, conditional grants and shared-cost programmes for the purpose of funding the Claimed Cost so that no cost is ultimately incurred by the Province; and

(e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was inflated by overbilling, waste, abuse, neglect and other misconduct by various of the Province, persons involved in the administration and delivery of health care benefits and insured persons.

(iv) Causation

48. Altria admits that smoking causes or contributes to disease. These diseases are complex and may be caused or contributed to by many different factors, including genetics, stress, excess weight, alcohol, environmental factors and other consumer products. If Altria breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to:

(a) any tobacco related disease in any insured person; or

(b) any increased risk of tobacco related disease in any insured person.

(v) Limitations

49. Altria pleads and relies upon the provisions of the *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, both in respect of the Province's claim and in respect of the health care costs of those persons on which the Province's claim is alleged to be based and calculated.

B. DEFENCES ARISING OUT OF THE PROVINCE'S CONDUCT AND KNOWLEDGE

(i) General

50. The Province's claim to recover the Claimed Cost is subject to complete defences, by reason of information the Province knew or should have known, and the Province's own conduct, including:

(a) The Province's knowledge of health risks associated with cigarette smoking;

(b) The Province's licensing and regulation of the production, manufacture and sale of cigarettes, including its failure to enforce or implement such regulation to the extent constitutionally permissible;

(c) The Province's voluntarily undertaking obligations to pay the cost of health care benefits allegedly caused or contributed to by cigarette smoking;

(d) The Province's failure to establish or delay in developing, or both, policies and practices, including health care expenditures and taxation policies and practices, legislation and regulations, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;

(e) The Province's failure to fund, develop and implement health promotion and smoking cessation practices and policies, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;

(f) The Province's failure to take any steps prior to commencement of this action to attempt to recover the alleged cost of health care benefits by subrogation;

(g) The Province's delay in implementing and failure to enforce laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time;

(h) The Province's own decision to regulate many aspects of the tobacco business and to keep the largest portion of the proceeds from the sale of tobacco products;

(i) The Province's taxation of cigarettes in excess of the cost (if any) of health care benefits allegedly resulting from tobacco related disease or the risk thereof; and

(j) The Province's own breaches of its duty or duties to insured persons as particularized herein.

51. Further, for decades Ontario has exercised its legislative and regulatory authority with respect to the sale, use and taxation of tobacco, and has either prohibited or regulated all activities and conduct with respect to tobacco and its sale that it considered to be necessary, appropriate or desirable. In this regard, Altria pleads and relies on the *Minors' Protection Act*, R.S.O. 1990, c M.38 (superseded); *Smoking in the Workplace Act*, R.S.O. 1990, c S.13 (superseded); the *Public Vehicles Act*, R.S.O. 1990, c P.54, s. 20; and the *Smoke-Free Ontario*

Act, S.O. 1994, c. 10 and O. Reg. 48/06; the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes and regulations.

52. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario subject to certain exceptions and restrictions all of which have been fully complied with by Altria.

53. At all material times, the Province, through its ministers, ministries, departments, servants and agents, has known as much regarding the material risks associated with smoking cigarettes and ETS as Altria.

54. Despite its knowledge of risks associated with smoking cigarettes and ETS, the Province continued to license and regulate the production, manufacturing, advertising, promotion and sale of cigarettes in Ontario and to impose heavy taxation upon, *inter alia*, manufacturers, distributors and consumers of cigarettes.

55. The Province benefits from the taxes imposed on and in relation to the sale of cigarettes in Ontario, which results in complete mitigation of the claim. Altria pleads and relies on the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes.

56. Despite its knowledge of risks associated with cigarette smoking and ETS, the Province took no steps to restrict or limit the sale of cigarettes save for restrictions on sale to persons below a prescribed age and in that case, delayed in implementing such restrictions, and subsequently took no reasonable steps to enforce them. Altria pleads and relies on the *Smoke-Free Ontario Act*, S.O. 1994, c. 10 and O. Reg. 48/06, as amended, and any predecessor statutes.

57. Despite its knowledge of risks associated with cigarette smoking, the Province voluntarily undertakes the obligation of paying for the costs of health care benefits including such costs it alleges are caused or contributed to by cigarette smoking and ETS and sets its taxation and health care policies accordingly.

58. Despite its knowledge of risks associated with cigarette smoking, the Province, at all material times, permitted the sale and consumption of cigarettes in Ontario and derived substantial revenue therefrom.

59. The Province is wrongfully attempting, by statute, to make conduct actionable which was not actionable at the time it occurred. As a result and because the Province waited for decades to commence a claim, Altria pleads that the Province's action should be dismissed on the basis of voluntary assumption of risk, laches, estoppel and the *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes.

(ii) Voluntary assumption of risk

60. Altria repeats paragraphs 50-59 hereof and states that at all material times the Province has been aware of health risks associated with cigarette smoking and ETS. Accordingly, the Province voluntarily assumes such risks, whatever their extent, in incurring the costs it alleges are caused or contributed to by cigarette smoking and ETS, and the Province is barred from recovering any of the Claimed Cost from Altria in this action by reason of its own actions and its voluntary assumption of risk.

(iii) Contributory negligence

61. Altria repeats paragraphs 50-59 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or

contributed to, in whole or in part, by the acts or omissions of the federal government acting alone or as agent for or in concert with the Province, or due to the acts or omissions of the Province as pleaded herein, and not any act or omission of Altria. Altria pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

62. Altria repeats and relies on paragraphs 50-59 hereof and states that it was governments that decided many aspects of the tobacco business and who kept the largest portion of the proceeds from the sale of tobacco products. To the extent insured persons, including under-aged persons, were not informed of the risks associated with smoking cigarettes or purchased low tar cigarettes as a result of a misrepresentation (all of which is denied), it is because the Province or the federal government, or both, failed to perform their obligations adequately.

(iv) The Province cannot profit from its wrongful conduct

63. Altria repeats paragraphs 24-42 and 50-59 hereof and states that the Province is barred from recovering any damages or costs it has suffered, the existence of which is denied, as any damages or costs flowed from its participation as set out herein in conduct which the Province itself alleges in the Statement of Claim constituted breaches of duty.

(v) Legal and equitable bars

64. Altria repeats paragraphs 50-59 hereof and states that by reason of the facts set out therein and the knowledge, conduct and delay of the Province and the prejudice thereby caused to Altria, the Province is barred in law and in equity from advancing the claims made in the Statement of Claim against Altria. Altria pleads and relies on the *Health Insurance* Act, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes.

(vi) Mitigation

65. Altria repeats paragraphs 50-59 hereof and states that if the Province has incurred the Claimed Cost, as alleged or at all, which is denied, the Province has failed to mitigate the Claimed Cost.

C. DEFENCES ARISING OUT OF INDIVIDUAL CONDUCT

(i) General

66. If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, and the Province's claim to recover the Claimed Cost is subject to complete defences by reason of the conduct of individual insured persons, including their voluntary decisions to commence or continue smoking with awareness of the associated risks.

67. All of the insured persons who smoke or have smoked cigarettes were aware or had been warned of risks associated with smoking.

68. Each insured person became aware or received warnings of risks associated with smoking by various means, including, without limitation, one or more of the following:

(a) Warnings, including on the packaging of cigarettes, as required from time to time pursuant to federal and provincial legislation and regulations and voluntary codes of compliance by Canadian tobacco manufacturers;

(b) Mandatory displays, signs and other warnings required by provincial legislation in premises where sales of cigarettes take place;

(c) Discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;

(d) Education programmes including courses, seminars and lectures and educational literature and other media;

(e) Oral and written warnings from physicians and other health practitioners;

(f) Oral and written warnings from family members, friends and other acquaintances; and

(g) The common general understandings and historical beliefs about adverse health consequences attributed to cigarette smoking dating back hundreds of years.

69. By reason of the foregoing, Altria states that all of the insured persons who smoke or have smoked cigarettes were aware or had been warned of associated risks.

70. Each of those insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking, and each such insured person voluntarily consented to accept such risks.

71. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the associated risks. Altria had and has no legal duty to such persons, or alternatively, no legal duty to such persons that has not been fulfilled.

72. Altria denies that any insured persons began, continued, or were unable to cease smoking by reason of any of the alleged breaches of duty of Altria, or that any alleged breach of duty caused or contributed to any alleged tobacco related disease or increased costs of tobacco related disease in any insured person.

73. If the federal government did not act as an agent for or in concert with the Province, then to the extent insured persons were not adequately informed about the risks of smoking cigarettes or purchased low tar cigarettes as the result of a misrepresentation (all of which is denied), they did so as a result of the breach of duty owed to them by the federal government.

74. Finally, to the extent the Province incurred health care costs due to smoking by insured persons, which is denied, the cost was caused by Aboriginal Manufacturers who breached duties owed to insured persons by the way they packaged and sold their products.

(ii) Voluntary assumption of risk

75. Altria repeats paragraphs 66-74 hereof and states that at all material times individual insured persons were aware of health risks associated with cigarette smoking. Accordingly, such persons voluntarily assumed such risks, whatever their extent, when they decided to commence and continue smoking.

(iii) Contributory negligence

76. Altria repeats paragraphs 66-74 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of Altria. Altria pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

(iv) Legal and equitable bars

77. Altria repeats paragraphs 66-74 hereof and states that by reason of the facts set out therein and the knowledge and conduct of insured persons and the prejudice thereby caused to

Altria, the Province is barred at law and in equity from advancing the claims made in the Statement of Claim against Altria.

(v) Limitations

78. Altria pleads and relies upon the provisions of the *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, in respect of the claims of any individual insured person upon which the Province's cause of action is alleged to rest.

79. Altria pleads and relies upon the limitation provisions in the *Competition Act*, RSC 1985, c. C-34, as amended, and any predecessor statutes.

(vi) Mitigation

80. Altria repeats paragraphs 66-74 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, individual insured persons have failed to mitigate the Claimed Cost.

RELIEF SOUGHT BY ALTRIA

81. In the circumstances, Altria submits that the Province's claim should be dismissed, with costs.

Date: April 29. 2016

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B E T W E E N :

Her Majesty The Queen in Right of Ontario - and - Rothmans Inc., Rothmans, et al.

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding Commenced at TORONTO

STATEMENT OF DEFENCE OF THE DEFENDANT ALTRIA GROUP, INC.

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TAB 5

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and –

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

Defendants

STATEMENT OF DEFENCE OF
B.A.T INDUSTRIES PLC

1. The defendant B.A.T Industries plc (hereinafter "Industries") denies, or where applicable does not admit, all allegations contained in the Amended Fresh as Amended Statement of Claim (the "Statement of Claim"), unless and except where expressly admitted herein, and puts the plaintiff to the strict proof thereof.

2. Without limiting the generality of the foregoing, Industries specifically denies:

   (a) that it took part in any conspiracy, concert of action or common design as alleged or at all; or

   (b) that it has owed or breached any common law, equitable or statutory duty or obligation to persons in Ontario as alleged in the Statement of Claim or at all; or

   (c) that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes, to continue to smoke cigarettes, or to be exposed to cigarette smoke; or

(d) that it acted in a manner that wrongfully caused any person in Ontario to smoke or continue smoking cigarettes or the plaintiff to incur the cost of health care benefits resulting from tobacco related disease or the risk thereof.

3. Industries adopts headings used in the Statement of Claim but it does not thereby admit any facts or allegations contained within such headings. Except where indicated to the contrary, Industries adopts on the same basis the definitions used in the Statement of Claim.

4. Except as expressly admitted below, Industries denies the allegations contained in paragraphs 19, 20, 40 to 43, 47, 50 to 55, 68, 73.1(b), 73.2(g), 73.3(f), 73.4(d)(g), 77, 79, 86 to 107, 115, 135 to 141 and 148 to 150 of the Statement of Claim. With respect to paragraph 20 and allegations throughout the Statement of Claim, Industries denies that it has any predecessors in interest for whom it is in law responsible.

5. Industries has no knowledge of the facts alleged in paragraphs 7 to 18, 21 to 39, 44 to 46, 48, 49, 56 to 67, 69 to 73, 73.1(a), 73.2(a)-(f), 73.3(a)-(e), 73.4 (a)-(c)(e), 74 to 76, 78, 80 to 85, 108 to 114, 116 to 134 and 142 to 147 of the Statement of Claim, and puts the plaintiff to the strict proof thereof.

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

6. Industries denies that the plaintiff is entitled to the relief sought in paragraphs 1 to 4 and 149 of the Statement of Claim.

7. With respect to paragraphs 5 and 6 of the Statement of Claim, Industries repeats paragraph 3 above.

B. The Defendants

8. With respect to paragraph 18 of the Statement of Claim, Industries:

(a) states that:

(i) it was incorporated on September 3, 1928 as an investment trust company named Tobacco Securities Trust Company Limited;

(ii) its name was changed by resolution on July 23, 1976 to B.A.T Industries Limited; and

(iii) it was re-registered as a public limited company on July 8, 1981 as B.A.T Industries p.l.c.; and

(b) admits that it has a registered office at Globe House, 4 Temple Place, London, England but states that it is a public limited company incorporated pursuant to the laws of England and Wales; and

(c) denies that it is a successor in interest to the defendant British American Tobacco (Investments) Limited, formerly named British-American Tobacco Company Limited (hereinafter "Investments").

9. Throughout its history, Industries has functioned as a share holding company. It has never had any commercial operations. Its office has always been located in London, England. As an investment holding company, Industries has never been involved in the research, development, design, manufacture, advertisement, marketing, distribution or promotion of tobacco products sold in Ontario, Canada or anywhere else.

10. With respect to paragraphs 86 and 150 of the Statement of Claim, Industries denies that it jointly breached any of the alleged duties or that it is jointly and severally liable for any of the alleged cost of health care benefits.

11. Industries denies the existence of any conspiracy or that it was a member of any such alleged conspiracy and denies that it conspired or acted in concert or with common design with any other defendant, or has been involved either as principal or as agent for any other defendant.

12. Industries states that it has never carried on business in Ontario and, as a holding company, has never researched, developed, designed, manufactured, advertised, marketed, distributed, promoted or sold cigarettes or other tobacco products in Ontario or anywhere else.

13. Any activity by another defendant or company, including but not limited to the manufacture or promotion of cigarettes sold in Ontario, cannot and does not constitute

such activity by Industries. Any plea otherwise is deficient by reason of the absence of the pleading of material facts in support. Industries denies that it is a "manufacturer" within the meaning of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, SO 2009 c 13 (the "*Act*") or at all, or that the *Act* has any permissible application to it.

II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

Multinational Tobacco Enterprises

14. Industries denies, if it is alleged, that it is a Multinational Tobacco Enterprise, and specifically denies that it was ever, together with its subsidiaries and associates, operated as a single corporate entity or enterprise.

15. Industries denies that the "BAT Group" is a designation with any legal significance whatsoever and makes no admissions as to the membership of the "BAT Group".

16. Industries is unable to determine what, if any, legal or other significance the plaintiff ascribes to the term "Lead Companies" as defined in paragraphs 42 and 43 of the Statement of Claim. Without prejudice to the foregoing, Industries denies that it was in such relation to any of the companies identified in paragraph 47 of the Statement of Claim, and specifically denies the allegation that it has directed or co-ordinated within those companies common policies relating to smoking and health.

17. Industries became the parent holding company of the BAT group of companies on July 23, 1976 as the result of a "reverse takeover" under English law whereby Industries, which had had a small shareholding in Investments, became the sole ordinary shareholder of Investments. The former public shareholders of the ordinary shares of Investments became shareholders of Industries. Industries, as a holding company, became the ultimate owner of the shares of Investments and the diverse range of other subsidiaries and associates in the BAT group of companies. As required by law, the reverse takeover was approved by the High Court of Justice of England and Wales under Section 206 of the *Companies Act* 1948 (the "1976 Transaction").

18. The 1976 Transaction did not entail the combination of two companies to form a new company, nor did it render Industries a successor to Investments. Investments is not a predecessor to Industries. Each company retains its own separate corporate identity and

existence. Each of Industries and Investments is incorporated pursuant to the law of England and Wales and any question of whether Investments is a predecessor in interest for whom Industries is in law responsible is subject to the law of England and Wales, which does not recognise any doctrine of successor liability as a matter of law.

19. From July 1976 to September 1998 Industries was the ultimate parent company of the collection of companies sometimes referred to (although without legal significance) as the BAT group of companies. During that time, Industries owned under 50% of the shares of Imasco Limited ("Imasco") which made Imasco an associated company of Industries. The defendant Imperial Tobacco Canada Limited is a corporate successor to Imasco, and also to Imperial Tobacco Limited (all three of which are collectively referred to hereinafter as "ITCAN"). At all material times Industries observed all formalities of corporate separateness with ITCAN and neither functionally nor legally exerted control or undue influence over or dominated ITCAN. In the normal course of business Industries and ITCAN legitimately and appropriately exchanged information relevant to ITCAN's operations in Canada. However, Industries had no involvement in the day-to-day management of ITCAN's operations or programmes, and Industries did not dominate or exert functional or legal control or undue influence over ITCAN, with respect to smoking and health issues or at all.

20. Industries specifically denies the allegations contained in paragraphs 42, 68, 89 and 135 to 140 of the Statement of Claim. To the extent that Industries had any involvement in the committees, conferences, meetings and communications referred to, they were not used as vehicles to direct or co-ordinate ITCAN's activities or its policies on smoking and health. Industries did not direct ITCAN to adopt policies or positions on smoking and health in Canada through the meetings and structures identified in the Statement of Claim or at all. Ultimately, it was up to ITCAN to assess its own legal and commercial needs, to form its own scientific and business judgments, and to develop policies and day-to-day execution of those policies that best promoted the company-specific needs and judgments.

21. ITCAN acted independently in adopting its own policies and undertaking its own actions relating to smoking and health and research and development issues. ITCAN always retained the ultimate operational decision-making authority with respect to,

among other subjects, the public statements it made and the positions it took relating to smoking and health issues.

22. Further, Industries denies that any alleged tobacco-related wrongs in Canada (which are not admitted but denied) are a proximate or direct result of the committees, conferences, meetings and communications identified in the Statement of Claim.

III. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Breaches of Common Law, Equitable or Statutory Duties or Obligations

23. Industries repeats paragraphs 12 and 13 above and denies that it owes or ever owed a duty to persons in Ontario.

24. Further, and in the alternative, to the extent that Industries owes or ever owed a duty to persons in Ontario (which is not admitted but denied), Industries complied with any such duty, whether based in common law, equity or statute.

25. Further, and in the alternative, if Industries breached any duty to persons in Ontario (which is not admitted but denied), Industries says no such breach resulted in persons in Ontario starting or continuing to smoke cigarettes manufactured or promoted by the defendants, or being exposed to cigarette smoke, or suffering tobacco related disease or an increased risk of tobacco related disease.

The Defendants' Knowledge

26. Industries admits that nicotine occurs naturally in the tobacco plant and is a constituent of tobacco smoke. Nicotine has pharmacological properties; it has both a mild stimulant effect and a mild relaxant effect. While the pharmacological effects of nicotine are an important aspect of smoking behaviour, consumers enjoy many sensorial aspects of smoking, including smoke taste, aroma and the sensation resulting from stimulation of nerve endings in the mouth, nose and upper airway (throat "impact"). Many of those sensorial aspects of smoking are caused by non-nicotine components in smoke. Smoking is, for many people, difficult to quit and can be termed an "addiction" or dependency. However, millions of smokers have quit without any medical help, and millions have modified where and when they smoke in the light of differing social norms, and nothing about smoking precludes smokers from either quitting or understanding the serious

health risks of smoking. It has been known during all material times that smoking is difficult to quit and that smoking poses serious health risks.

27. The number of discrete compounds identified in tobacco smoke has increased rapidly over time and now totals over 4,000, most in minute quantities. Those constituents include the constituents of tar, gases and the emissions listed on packages, such as nicotine. Water vapour is also produced by the combustion, because the burning of any organic material breaks down the chemical components and produces water.

28. Smoking is a cause, in some smokers, of serious diseases. The health risks of smoking are derived from epidemiology, the study of the incidence and distribution of diseases in human populations, and the factors which affect such distribution. Science to date has not been able to identify biological mechanisms which can explain with certainty the statistical findings linking smoking or exposure to smoke with certain diseases, nor has science been able to clarify the role of particular smoke constituents in those disease processes.

29. Industries states that, at all material times, persons in Ontario have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government of Canada and the plaintiff have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by, the federal government, the plaintiff and the public health community have reinforced the awareness of persons in Ontario with respect to smoking and its potential risks. At all material times, Industries had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the plaintiff and/or the public health community.

30. With respect to paragraphs 73.1(b), 73.2(g), 73.3(f) and 73.4(d)(g) of the Statement of Claim, Industries denies that it suppressed or concealed scientific and medical data. Industries had no policy to avoid public disclosure or to conceal its knowledge of such data. Without prejudice to the generality of the foregoing, Industries specifically denies:

(a) that it participated in "ICOSI's total embargo of all research relating to the pharmacology of nicotine" in concert with the other "Groups" or at all, or that any such embargo existed; or

(b) that it agreed not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the "BAT Group".

Exposure

31. Industries denies that any of the identified individual tobacco related wrongs (the commission of which is denied) caused or contributed to insured persons starting or continuing to smoke or otherwise being exposed to cigarette smoke and says further in respect of such allegations:

(a) the decision to commence or to continue smoking by any individual insured person is an individual decision taken by that person for reasons specific to that person;

(b) while Industries accepts that smoking is for many people difficult to quit and that it can be termed an "addiction" or dependency, Industries says that the decision by any insured person to continue smoking is a true choice exercised by that person, and denies that an insured person who smokes is deprived, by reason of the effects of nicotine, of the ability to exercise a free choice to stop smoking; and

(c) while Industries accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, Industries says that at all material times insured persons have been aware of, or had available to them, information which recognises the existence of health risks associated with smoking and the fact that smoking is difficult to quit. Therefore, and without prejudice to its primary case, Industries denies that insured persons relied, reasonably or otherwise, on positions adopted by Industries as to the health risks associated with smoking.

Disease and the Risk of Disease

32. Industries says that the risks and incidence of diseases that are associated with smoking vary considerably and may depend upon numerous factors including, but not limited to, cigarettes smoked per day, years smoked, periods of smoking cessation, and the presence or absence of other risk factors associated with the disease. Further, if Industries had any duties or obligations in Ontario (which is denied), and if Industries breached any such duties or obligations (which is denied), no such breach caused or contributed to:

(a) any tobacco related disease in any insured person; or

(b) any increased risk of tobacco related disease in any insured person.

No Market Share

33. By reason of the facts and matters pleaded above, in particular at paragraphs 12 and 13, Industries has never possessed any share of the market for tobacco products in Ontario whether as defined by the *Act* or at all. Accordingly, Industries can have no liability quantifiable by reference to its market share and to the extent that liability under the *Act* is determined by reference thereto then Industries can have no liability at all.

Conspiracy, Concert of Action and Common Design

34. In the following section, Industries pleads as fully as it currently is able to the allegations contained in paragraphs 86 to 116, 135 to 141 and 150 of the Statement of Claim. Industries reserves the right to supplement this Statement of Defence if further particulars become known in the future.

35. If, which is denied, Industries has any liability to the plaintiff by reason of the matters pleaded at paragraphs 56 to 85 and 142 to 147 of the Statement of Claim, then the extent of such liability will fall to be determined by reference to the extent of the liability of each individual defendant, if any, with whom Industries is found to be jointly and severally liable in respect of a tobacco related wrong. Accordingly, without prejudice to the balance of this Statement of Defence, and without advancing a positive case beyond the scope of that otherwise set out in this Statement of Defence, Industries claims the

benefit of all and any defences of all and any defendants with whom Industries is alleged to be jointly and severally liable for the purposes of avoiding or reducing the amount, if any, for which each such defendant and, hence, Industries is alleged to be jointly and severally liable.

36. Without prejudice to the foregoing, in the generality in respect of paragraphs 86 to 116, 135 to 141 and 150 of the Statement of Claim, Industries denies that it:

(a) conspired with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

(b) acted in concert or with a common design with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

(c) was involved either as principal or as agent for any other defendant with respect to the commission of any tobacco related wrong; or

(d) acted so as to render it jointly or vicariously liable with any other defendant in respect of any tobacco related wrong, whether pursuant to section 4(2)(b)(iii) of the *Act* or otherwise pursuant to section 4 of the *Act*, or at all.

37. Further, Industries denies that it directed or co-ordinated the activities of, or conspired or acted in concert with the defendant ITCAN, as alleged or at all.

38. Further, the plaintiff has no claim in respect of the alleged conspiracy, concert of action or common design because the plaintiff agreed to and adopted the design of what it alleges is a conspiracy, concert of action or common design and became a party thereto and carried out acts in Ontario in furtherance thereof that the plaintiff alleges are unlawful.

39. Further, the plaintiff has profited from the sale of tobacco products and if, which is denied, any of the defendants has committed a tobacco related wrong, then the plaintiff has directly benefitted from the tax revenue raised by each and every purchase of tobacco products which was entered into in consequence of that tobacco related wrong.

Accordingly, the cost of health care benefits described in paragraph 2 of the Statement of Claim must be adjusted to reflect the financial benefits which the plaintiff has obtained by reason of the foregoing.

(i) Conspiracy within the International Tobacco Industry

40. Industries states that it never conspired or acted in concert with any of the Lead Companies. Industries further states that the risks associated with smoking have been widely known in Ontario, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Ontario through a variety of sources and that Industries had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the plaintiff and/or the public health community.

41. With respect to allegations contained in paragraphs 68, 73 to 73.4 and 88 to 107 of the Statement of Claim, Industries denies that it agreed with any other defendant to suppress or conceal, or suppressed or concealed, or directed any Direct Breach Defendant to suppress or conceal, or had any policy to suppress or conceal information about the risks associated with smoking and exposure to smoke.

42. Industries denies that it formed, joined or was ever a member of any of the industry organizations identified in the Statement of Claim. More particularly, Industries was not involved in the formation of, was never a member of, never undertook any activities through or with, never participated in meetings of, and never entered into agreements through or with the Tobacco Industry Research Committee ("TIRC"), the Council for Tobacco Research ("CTR"), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Institute ("TI"), the Tobacco Research Council ("TRC"), the Tobacco Manufacturers' Standing Committee ("TMSC"), the Tobacco Advisory Council ("TAC"), the Verband der Cigarettenindustrie, the International Committee on Smoking Issues ("ICOSI"), the International Tobacco Information Centre/Centre International d'Information du Tabac – INFOTAB ("INFOTAB"), the Tobacco Documentation Centre ("TDC"), the Committee for Indoor Air Research, the

Association for Research on Indoor Air or Indoor Air International, or any of the committees or groups allegedly formed by those organizations.

43. None of those organizations, referred to in paragraphs 90 to 106 of the Statement of Claim, was under the direction or control of Industries and neither was any of those organizations ever used by Industries to direct or co-ordinate the activities, policies or positions of ITCAN or any other defendant.

44. Industries denies that it was involved in the launch of, or led, or ever joined any "Operation Berkshire".

45. Industries specifically denies the allegations contained in paragraph 91 of the Statement of Claim:

(a) with respect to paragraph 91(a), Industries did not make the Tobacco Industry Research Council's 1954 "Frank Statement to Cigarette Smokers". Industries did not draft, sign or publish or direct anyone else to draft, sign or publish the "Frank Statement to Cigarette Smokers";

(b) with respect to paragraph 91(b), Industries did not make representations in May 1963 to the Canadian Medical Association;

(c) with respect to paragraph 91(c), Industries did not make a presentation to the Conference on Smoking and Health of the Federal Department of National Health Welfare on November 25-26, 1963;

(d) with respect to paragraph 91(e), Industries did not make statements to the National Press or news organisations in Canada; and

(e) with respect to paragraph 91(f), Industries did not make communications through the Canadian Tobacco Manufacturers' Council ("CTMC") in Canada including, without limitation, to the Federal Department of Health Welfare.

(ii) Conspiracy within the Canadian Tobacco Industry

46. Industries was not involved in the formation of the CTMC. The CTMC was a Canadian organization whose members were from the Canadian tobacco industry. Industries has

never been a member of the CTMC and has never engaged in any co-ordinated efforts with the CTMC.

47. With respect to paragraph 115 of the Statement of Claim, Industries denies that the CTMC ever acted as agent for Industries, as alleged or at all.

48. Industries specifically denies that allegations contained in paragraph 139 of the Statement of Claim. Industries has never directed or advised how ITCAN should vote in committees of Canadian manufacturers or at meetings of the CTMC. Member companies of the CTMC, which did not include Industries, exclusively decided issues relating to smoking and health including, in particular, the approval and funding of CTMC research.

IV. RELIEF

49. In answer to the entire Statement of Claim, Industries states that the costs that have been incurred or will be incurred by the plaintiff in respect of health care benefits for insured persons resulting from tobacco-related disease or the risk thereof have not been and will not be caused or contributed to by exposure of insured persons to tobacco products attributable to the tobacco-related wrongs alleged. Further, and in particular:

(a) if Industries breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to, or will cause or contribute to, the cost of health care benefits as alleged or at all

(b) if the plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, the cost of health care benefits was caused by one or more of the following:

(i) requirements of the statutes and regulations that were voluntarily enacted by the plaintiff and which provide for health care in Ontario, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in the definition of "health care benefits" in subparagraph 1(1) of the *Act*;

(ii) the conduct and acts or omissions of the plaintiff as further particularized herein;

(iii) the conduct and acts or omissions of individual insured persons as further particularized herein;

(iv) disease or risk of disease in individual insured persons unrelated to smoking tobacco or exposure to tobacco smoke; and

(v) the manufacture, promotion and sale of tobacco products by persons other than the defendants, including manufacturers located on First Nations reserves, whose tobacco products are packaged and sold to persons in Ontario in breach of duties owed to them.

(c) if the plaintiff has incurred or will incur the cost of health care benefits as alleged, which is denied, then the plaintiff has made no expenditure and suffered no loss for which it is legally entitled to be compensated by reason of any or all of the following:

i. that cost constitutes the utilization of a pre-determined budget for the provision of health care generally and is the product of decisions by the plaintiff based upon, *inter alia*, political expediency, policy considerations and the availability of finance;

ii. that cost reflects monies received from the government of Canada by means of transfer payments, conditional grants and shared-cost programmes;

iii. that cost is or will be exceeded by tax revenues received by the plaintiff from the sale of tobacco products in Ontario alleged to have been caused by the tobacco-related wrongs alleged; and

iv. that cost is not influenced by the tobacco-related wrongs alleged.

V. THE PLAINTIFF'S OWN CONDUCT

50. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario and have been supervised, regulated and controlled by the plaintiff and the Government of Canada. Within that legal and regulatory

framework, if the plaintiff has incurred or will incur the cost of health care benefits that have been or will be provided to insured persons who have suffered tobacco-related disease, as alleged (which is denied), Industries states that such costs were caused, and the plaintiff's claim to recover such costs is subject to complete defences, by reason of the plaintiff's own conduct and knowledge.

51. At material times and at least since 1950, the plaintiff, through its ministers, ministries, departments, servants and agents, has been apprised of the information that was available, according to the state of the art of the day, regarding the health risks associated with smoking tobacco and exposure to tobacco smoke. Despite its knowledge of those risks, the plaintiff:

(a) continued to license and regulate the production, manufacture, advertising, promotion, distribution and sale of tobacco products in Ontario and insured persons have relied upon the plaintiff's activities in such areas in relation to their decisions to take up and continue smoking

(b) has sought to benefit financially from the sale of tobacco products in Ontario, and has so benefited, by taking advantage of its ability to impose and to collect heavy taxation and licensing fees from, *inter alia*, manufacturers, distributors (both wholesalers and retailers) and consumers of tobacco products and, in particular but not exclusively, has justified the fact and scale of the taxation and licensing fees by reference to the health risks associated with smoking tobacco and exposure to tobacco smoke;

(c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of tobacco products by people under the legal age for purchasing them as defined by law from time to time; and

(d) has voluntarily undertaken the obligations of paying for the cost of health care benefits, including such costs as it alleges are caused or contributed to by tobacco smoking or exposure to tobacco smoke, and has set its taxation and health care policies accordingly.

52. Further, without prejudice to its pleading herein that it is not a manufacturer of tobacco products under the *Act* or at all, Industries states that manufacturers of tobacco products in Canada complied at all times with government requests, mandates and directions (including from the plaintiff) in respect of, *inter alia*,

(a) the type of tobacco that would be purchased (which tobacco was developed by the government of Canada);

(b) the type of tobacco products that would be sold;

(c) product modifications;

(d) whether tobacco products require health warnings, and the content, size and placement of those warnings;

(e) the type of promotion that would be permitted; and

(f) where tobacco products could be sold and used,

and in doing so, acted reasonably in all the circumstances and committed no "tobacco-related wrong" in these respects or otherwise.

53. Further, Industries states that if the plaintiff has incurred the cost of health care benefits as alleged or at all (which is denied) then that cost was caused or contributed to, in whole or in part, by the plaintiff's own acts or omissions as pleaded herein, and not any act or omission of Industries. Industries pleads and relies upon the provisions of the *Negligence Act*, RSO 1990, c N.1.

54. Further, Industries states that by reason of the facts set out herein and the knowledge, conduct and delay of the plaintiff and the prejudice thereby caused to Industries, the plaintiff is barred in law and in equity from advancing the claims made in the Statement of Claim against Industries. Industries also pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco-related wrongs alleged, including (if applicable) the *Limitations Act, 2002*, SO 2002, c 24.

55. Further, Industries states that, if the plaintiff has incurred the cost of health care benefits resulting from tobacco-related disease or the risk of tobacco-related disease as alleged (which is denied), the plaintiff has mitigated its loss and such costs must be adjusted to reflect the financial benefits the plaintiff thereby obtained.

56. Without prejudice to the foregoing, Industries repeats paragraph 50 above and states that the acts, errors and omissions pleaded therein represent failures by the plaintiff to act reasonably to mitigate the "cost of health care benefits" as alleged, and any such costs must be adjusted to reflect this failure.

VI. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

57. If the plaintiff has incurred the cost of health care benefits as alleged (which is denied), the cost was caused by, and the plaintiff's claim to recover that cost is subject to complete defences by reason of, the conduct of individual insured persons, including their voluntary decisions to commence or to continue smoking with awareness of the associated risks.

58. At all material times insured persons who smoke or have smoked cigarettes were aware of the risks associated with smoking during all material times.

59. Insured persons became, or should have become, aware of the risks associated with smoking at all material times by various means, including, without limitation, one or more of the following:

(a) discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;

(b) education programmes including courses, seminars and lectures and educational literature and other media;

(c) oral and written warnings from physicians and other health practitioners and public health authorities;

(d) oral and written warnings from family members, friends and other acquaintances;

(e) common general understandings and historical beliefs;

(f) warnings on the packaging of tobacco products, as required for decades pursuant to federal and provincial legislation and regulations and/or voluntary codes of compliance by Canadian tobacco manufacturers; and

(g) mandatory displays, signs and other warnings required by provincial legislation in premises where sales of tobacco products take place.

60. By reason of the foregoing, Industries states that insured persons who smoke or have smoked cigarettes were aware of, or should have been aware of, the associated risks at all material times.

61. Insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking and voluntarily consented to accept such risks.

62. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the associated risks. Industries had and has no legal duty to such persons, or, alternatively, no legal duty that has not been fulfilled.

63. Further, the cause of (i) an individual's choice to smoke or to continue to smoke or (ii) disease consists not of alleged breaches of duty but, rather, of some or all of the following:

(a) individual choices and decisions of the smoker;

(b) requests, mandates and directions from the plaintiff and the government of Canada, and Industries repeats and relies on paragraphs 50 to 52 herein;

(c) the many and varied causes of certain diseases including genetics, stress, excess weight, alcohol, environmental factors and other consumer products; and

(d) the manufacture, promotion and sale of tobacco products by persons other than defendants, including manufacturers located on First Nations reserves, whose tobacco products are packaged and sold to persons in Ontario in breach of duties owed to them.

64. Industries denies that insured persons began, continued or were unable to stop smoking by reason of any of the alleged breaches of duty of Industries (which are denied) or that any such breach of duty caused or contributed to any alleged tobacco-related disease or increased risk of tobacco-related disease in any insured person or the cost of health care benefits.

65. Industries states that at all material times insured persons have been, or should have been, aware of health risks associated with smoking cigarettes. Accordingly, such persons voluntarily assume such risks when they decide to commence or continue smoking.

66. Further, Industries states that if the plaintiff has incurred the cost of health care benefits as alleged (which is denied) then that cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of Industries. Industries pleads and relies upon the provisions of the *Negligence Act*, RSO 1990, c N.1.

67. Further, Industries states that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to Industries, the plaintiff is barred at law and in equity from advancing the claims made in the Statement of Claim against Industries.

68. Industries pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco-related wrongs alleged in respect of the claims of any individual insured person upon which the plaintiff's cause of action is alleged to rest, including (if applicable) the *Limitations Act, 2002*, SO 2002, c 24.

69. Further and in the alternative, Industries states that, if the plaintiff has incurred the cost of health care benefits as alleged (which is denied), individual insured persons have failed to act reasonably to assist the plaintiff to mitigate that cost.

70. Industries requests that the claim against it be dismissed with costs.

Date: 2016 April 29

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO **Plaintiff**	**and**	**ROTHMANS INC., et al** **Defendants**	**Court File No. CV-09-387984**

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Statement of Defence of
B.A.T Industries p.l.c.

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TAB 6

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and –

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

Defendants

STATEMENT OF DEFENCE OF
BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED

1. The defendant British American Tobacco (Investments) Limited (hereinafter "Investments") denies, or where applicable does not admit, all allegations contained in the Amended Fresh as Amended Statement of Claim (the "Statement of Claim"), unless and except where expressly admitted herein, and puts the plaintiff to the strict proof thereof.

2. Without limiting the generality of the foregoing, Investments specifically denies:

   (a) that it took part in any conspiracy, concert of action or common design as alleged or at all; or

   (b) that it has owed or breached any common law, equitable or statutory duty or obligation to persons in Ontario as alleged in the Statement of Claim or at all; or

(c) that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes, to continue to smoke cigarettes, or to be exposed to cigarette smoke; or

(d) that it acted in a manner that wrongfully caused any person in Ontario to smoke or continue smoking cigarettes or the plaintiff to incur the cost of health care benefits resulting from tobacco related disease or the risk thereof.

3. Investments adopts headings used in the Statement of Claim but it does not thereby admit any facts or allegations contained within such headings. Except where indicated to the contrary, Investments adopts on the same basis the definitions used in the Statement of Claim.

4. Except where expressly admitted below, Investments denies the allegations contained in paragraphs 19, 20, 40 to 43, 47, 50 to 55, 68, 73.1, 73.2(a)(g), 73.3(a)(f), 73.4(d)(g), 77, 79, 86 to 107, 115, 135 to 141 and 148 to 150 of the Statement of Claim.

5. Investments has no knowledge of the facts alleged in paragraphs 7 to 18, 21 to 39, 44 to 46, 48, 49, 56 to 67, 69 to 73, 73.2(b)-(f), 73.3(b)-(e), 73.4 (a)-(c)(e), 74 to 76, 78, 80 to 85, 108 to 114, 116 to 134 and 142 to 147 of the Statement of Claim, and puts the plaintiff to the strict proof thereof.

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

6. Investments denies that the plaintiff is entitled to the relief sought in paragraphs 1 to 4 and 149 of the Statement of Claim.

7. With respect to paragraphs 5 and 6 of the Statement of Claim, Investments repeats paragraph 3 above.

B. The Defendants

8. With respect to paragraph 19 of the Statement of Claim, Investments admits that it was formerly known as British-American Tobacco Company Limited, and states that in this Statement of Defence the defined term "Investments" incorporates reference to the

company's former name. Investments admits that it has a registered office at Globe House, 1 Water Street, London, England but states that it is incorporated pursuant to the laws of England and Wales.

9. With respect to paragraph 20 of the Statement of Claim, Investments denies that it has any predecessors in interest for whom it is in law responsible, and denies that it is a "manufacturer".

10. With respect to paragraphs 86 and 150 of the Statement of Claim, Investments denies that it jointly breached any of the alleged duties or that it is jointly and severally liable for any of the alleged cost of health care benefits.

11. Investments denies the existence of any conspiracy or that it was a member of any such alleged conspiracy and denies that it has conspired or acted in concert or with common design with any other defendant, or has been involved either as principal or as agent for any other defendant.

12. Investments states that it does not carry on business in Ontario and has never manufactured, advertised, marketed, distributed, promoted or sold cigarettes in Ontario.

13. Any design, manufacture or promotion of cigarettes in Ontario by another defendant cannot and does not constitute such activity by Investments. Any plea otherwise is deficient by reason of the absence of the pleading of material facts in support.

II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

Multinational Tobacco Enterprises

14. Investments denies, if it is alleged, that it is a Multinational Tobacco Enterprise, and specifically denies that it was ever, together with its subsidiaries and associates, operated as a single corporate entity or enterprise.

15. Investments denies that the "BAT Group" is a designation with any legal significance whatsoever and makes no admissions as to the membership of the "BAT Group".

16. Investments is unable to determine what, if any, legal or other significance the plaintiff seeks to ascribe to the term "Lead Companies" as defined in paragraphs 42 and 43 of the Statement of Claim. Without prejudice to this, Investments denies that it was in such relation to any of the companies identified in paragraph 47 of the Statement of Claim, and specifically denies the allegation that it has directed or co-ordinated within those companies common policies relating to smoking and health.

17. Between 1902 and July 23, 1976, Investments was the ultimate parent company of the collection of companies sometimes referred to (although without legal significance) as the BAT group of companies. During that time certain of the corporate predecessors of the defendant Imperial Tobacco Canada Limited were associated companies of Investments (those predecessors and Imperial Tobacco Canada Limited are collectively referred to hereinafter as "ITCAN"). At all material times Investments observed all formalities of corporate separateness with ITCAN and neither functionally nor legally exerted control or undue influence over or dominated ITCAN. In the normal course of business Investments and ITCAN legitimately and appropriately exchanged information relevant to ITCAN's operations in Canada. However, Investments had no involvement in the day-to-day management of ITCAN's operations or programmes, and Investments did not dominate or exert functional or legal control or undue influence over ITCAN, with respect to smoking and health issues or at all.

18. Investments specifically denies the allegations contained in paragraphs 42, 68, 89 and 135 to 140 of the Statement of Claim. The committees, conferences, meetings and communications referred to were not used as vehicles to direct or co-ordinate ITCAN's activities or its policies on smoking and health. Investments did not direct ITCAN to adopt policies or positions on smoking and health in Canada through the meetings and structures identified in the Statement of Claim. Ultimately, it was up to ITCAN to assess its own legal and commercial needs, to form its own scientific and business judgments, and to develop policies and day-to-day execution of those policies that best promoted the company-specific needs and judgments.

19. ITCAN acted independently in adopting its own policies and undertaking its own actions relating to smoking and health and research and development issues. ITCAN always retained the ultimate operational decision-making authority with respect to,

among other subjects, the public statements it made and the positions it took relating to smoking and health issues. In particular, ITCAN:

(a) directed and controlled the operation of its R&D facilities;

(b) determined its own research agenda and did not seek or require Investments' agreement or approval for any aspect of its R&D program;

(c) designed and developed the specific products that it sold or intended to sell in the Canadian market, including in the Ontario market, based on its own specific knowledge and assessment of these markets' legal and consumer requirements and other local considerations; and

(d) adopted its own policies and made its own public statements with respect to smoking and health related issues.

20. Further, Investments denies that any alleged tobacco related wrongs in Canada (which are denied) are a proximate or direct result of the communications or structures identified in the Statement of Claim.

III. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Breaches of Common Law, Equitable or Statutory Duties or Obligations

21. Investments repeats paragraphs 12 and 13 above and denies that it owes or ever owed a duty to persons in Ontario.

22. Further, and in the alternative, to the extent that Investments owes or ever owed a duty to persons in Ontario (which is not admitted but denied), Investments complied with any such duty, whether based in common law, equity or statute.

23. Further, and in the alternative, if Investments breached any duty to persons in Ontario (which is not admitted but denied), Investments says no such breach resulted in persons in Ontario starting or continuing to smoke cigarettes manufactured or promoted by the defendants, or being exposed to cigarette smoke, or suffering tobacco related disease or an increased risk of tobacco related disease.

The Defendants' Knowledge

24. Investments admits that nicotine occurs naturally in the tobacco plant and is a constituent of tobacco smoke. Nicotine has pharmacological properties; it has both a mild stimulant effect and a mild relaxant effect. While the pharmacological effects of nicotine are an important aspect of smoking behaviour, consumers enjoy many sensorial aspects of cigarette smoking, including smoke taste, aroma and the sensation resulting from stimulation of nerve endings in the mouth, nose and upper airway (throat "impact"). Many of those sensorial aspects of smoking are caused by non-nicotine components in cigarette smoke. Smoking is, for many people, difficult to quit and it can be termed an "addiction" or dependency. However, millions of smokers have quit without any medical help, and millions have modified where and when they smoke in the light of differing social norms, and nothing about smoking precludes smokers from either quitting or understanding the serious health risks of smoking. It has been known during all material times that smoking is difficult to quit and that smoking poses serious health risks.

25. The number of discrete compounds identified in cigarette smoke has increased rapidly over time and now totals over 4,000, most in minute quantities. Those constituents include the constituents of tar, gases and the emissions listed on packages, such as nicotine. Water vapour is also produced by the combustion, because the burning of any organic material breaks down the chemical components and produces water.

26. Smoking is a cause, in some smokers, of serious diseases. The health risks of smoking are derived from epidemiology, the study of the incidence and distribution of diseases in human populations, and the factors which affect such distribution. Science to date has not been able to identify biological mechanisms which can explain with certainty the statistical findings linking smoking or exposure to smoke with certain diseases, nor has science been able to clarify the role of particular smoke constituents in those disease processes.

27. Investments states that at all material times, persons in Ontario have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government of Canada and the

plaintiff have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by, the federal government, the plaintiff and the public health community have reinforced the awareness of persons in Ontario with respect to cigarette smoking and its potential risks. At all material times, Investments had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the plaintiff and/or the public health community.

28. With respect to paragraphs 73.1, 73.2(a)(g), 73.3(a)(f) and 73.4(d)(g) of the Statement of Claim, Investments denies that it suppressed or concealed scientific and medical data. Investments had no policy to avoid public disclosure or to conceal its knowledge of such data. Without prejudice to the generality of the foregoing, Investments specifically denies:

(a) that it agreed with Canadian members of the "Rothmans Group" to suppress research relating to carbon monoxide and smoke intake; or

(b) that it agreed in 1965 and 1966 with the "RJR Group" and Canadian members of the "Philip Morris Group" to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K.; or

(c) that it agreed not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the "BAT Group". Investments further denies that it participated in "ICOSI's total embargo of all research relating to the pharmacology of nicotine" or that any such embargo existed. While Investments may have maintained the commercial confidentiality of certain product design issues for competitive reasons, Investments published, circulated and supported research with respect to smoking and health issues, including with respect to the pharmacology of nicotine.

Exposure

29. Investments denies that any of the identified individual tobacco related wrongs (the commission of which is denied) caused or contributed to insured persons starting or continuing to smoke or otherwise being exposed to cigarette smoke and says further in respect of such allegations:

(a) the decision to commence or to continue smoking by any individual insured person is an individual decision taken by that person for reasons specific to that person;

(b) while Investments accepts that smoking is for many people difficult to quit and that it can be termed an "addiction" or dependency, Investments says that the decision by any insured person to continue smoking is a true choice exercised by that person, and denies that an insured person who smokes is deprived, by reason of the effects of nicotine, of the ability to exercise a free choice to stop smoking; and

(c) while Investments accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, Investments says that at all material times insured persons have been aware of, or had available to them, information which recognises the existence of health risks associated with smoking and the fact that smoking is difficult to quit. Therefore, and without prejudice to its primary case, Investments denies that insured persons relied, reasonably or otherwise, on positions adopted by Investments as to the health risks associated with smoking.

Disease and the Risk of Disease

30. Investments states that the risks and incidence of diseases that are associated with smoking vary considerably and may depend upon numerous factors including, but not limited to, cigarettes smoked per day, years smoked, periods of smoking cessation, and the presence or absence of other risk factors associated with the disease. Further, if Investments had any duties or obligations in Ontario (which is denied), and if

Investments breached any such duties or obligations (which is denied), no such breach caused or contributed to:

(a) any tobacco related disease in any insured person; or

(b) any increased risk of tobacco related disease in any insured person.

No Market Share

31. By reason of the facts and matters pleaded above, in particular at paragraphs 12 and 13, Investments has never possessed any share of the market for tobacco products in Ontario whether as defined by the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, SO 2009 c 13 (the "*Act*") or at all. Accordingly, Investments can have no liability quantifiable by reference to its market share and to the extent that liability under the *Act* is determined by reference thereto then Investments can have no liability at all.

Conspiracy, Concert of Action and Common Design

32. In the following section, Investments pleads as fully as it currently is able to the allegations contained in paragraphs 86 to 116, 135 to 141 and 150 of the Statement of Claim. Investments reserves the right to supplement this Statement of Defence if further particulars become known in the future.

33. If, which is denied, Investments has any liability to the plaintiff by reason of the matters pleaded at paragraphs 56 to 85 and 142 to 147 of the Statement of Claim, then the extent of such liability will fall to be determined by reference to the extent of the liability of each individual defendant, if any, with whom Investments is found to be jointly and severally liable in respect of a tobacco related wrong. Accordingly, without prejudice to the balance of this Statement of Defence, and without advancing a positive case beyond the scope of that otherwise set out in this Statement of Defence, Investments claims the benefit of all and any defences of all and any defendants with whom Investments is alleged to be jointly and severally liable for the purposes of avoiding or reducing the amount, if any, for which each such defendant and, hence, Investments is alleged to be jointly and severally liable.

34. Without prejudice to the foregoing, in the generality in respect of paragraphs 86 to 116, 135 to 141 and 150 of the Statement of Claim, Investments denies that it:

(a) conspired with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

(b) acted in concert or with a common design with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

(c) was involved either as principal or as agent for any other defendant with respect to the commission of any tobacco related wrong; or

(d) acted so as to render it jointly or vicariously liable with any other defendant in respect of any tobacco related wrong, whether pursuant to section 4(2)(b)(iii) of the *Act* or otherwise pursuant to section 4 of the *Act*, or at all.

35. Further, Investments repeats paragraphs 18 to 20 above and denies that it directed or co-ordinated the activities of, or conspired or acted in concert with the defendant ITCAN, as alleged or at all.

36. Further, the plaintiff has no claim in respect of the alleged conspiracy, concert of action or common design because the plaintiff agreed to and adopted the design of what it alleges is a conspiracy, concert of action or common design and became a party thereto and carried out acts in Ontario in furtherance thereof that the plaintiff alleges are unlawful.

37. Further, the plaintiff has profited from the sale of tobacco products and if any of the defendants has committed a tobacco related wrong (which is denied), then the plaintiff has directly benefitted from the tax revenue raised by each and every purchase of tobacco products which was entered into in consequence of that tobacco related wrong. In the premises, the cost of health care benefits described in paragraph 2 of the Statement of Claim must be adjusted to reflect the financial benefits which the plaintiff has obtained by reason of the foregoing.

(i) Conspiracy within the International Tobacco Industry

38. Investments states that it never conspired or acted in concert with any other defendant including any of the Lead Companies. Further, to the extent that other Lead Companies may have had policies in common with Investments in relation to smoking and health, such were developed for appropriate business purposes and were lawful. Investments further states that the risks associated with smoking have been widely known in Ontario, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Ontario through a variety of sources and that Investments had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the plaintiff and/or the public health community.

39. With respect to allegations contained in paragraphs 68, 73 to 73.4 and 88 to 107 of the Statement of Claim, Investments denies that it agreed with any other defendant to suppress or conceal, or suppressed or concealed, or directed any Direct Breach Defendant to suppress or conceal, or had any policy to suppress or conceal information about the risks associated with smoking and exposure to smoke.

40. To the extent that paragraph 88 of the Statement of Claim is directed at Investments under its former name of British-American Tobacco Company Limited, Investments denies the allegations that, through an agent, it participated in the meetings or communications alleged.

41. Investments was never a member of the Tobacco Industry Research Council or the Council for Tobacco Research. These were American organizations formed by and composed of members of the U.S. tobacco industry and have not existed as of 1998.

42. The Centre for Cooperation and Scientific Research Relative to Tobacco is an international organization founded in 1956 for the study of science and technology related to tobacco products, and in particular the development of analytical and testing methodologies, including with the World Health Organization and the International Organization for Standardization. Its reports in this regard have been and are publicly

available. Membership is open to organizations with research and development activities related to tobacco. Investments did not become a member until 1972.

43. Investments was never a member of or affiliated to the Tobacco Institute or any Tobacco Institute committee. The Tobacco Institute was an American organization formed by and composed of members of the U.S. tobacco industry.

44. The Tobacco Research Council, originally known as the Tobacco Manufacturers' Standing Committee, was a U.K. organization, of which Investments was a founding member, which sponsored and conducted extensive published research relating to smoking and health. In 1978, the Tobacco Research Council merged with the Tobacco Advisory Committee to form the Tobacco Advisory Council. Investments was a member of the Tobacco Advisory Council.

45. Investments was never a member of the Verband der Cigarettenindustrie. This was a German trade association whose members include German cigarette manufacturers.

46. The International Committee on Smoking Issues was established in 1977 as a forum for the exchange of views and information on international tobacco issues (including smoking and health) among various unaffiliated tobacco companies. In December 1980, it become known as The International Tobacco Information Centre/Centre International d'Information du Tabac – INFOTAB ("INFOTAB"). Investments announced its withdrawal from INFOTAB in 1987.

47. The Tobacco Documentation Centre was a separate body established in 1992 as a repository for published literature relevant to the tobacco industry.

48. Investments was never a member of the Committee for Indoor Air Research, the Association for Research on Indoor Air or Indoor Air International.

49. None of those organizations, referred to in paragraphs 90 to 106 of the Statement of Claim, was under the direction or control of Investments and neither was any of those organizations ever used by Investments to direct or co-ordinate the activities, policies or positions of ITCAN. None ever determined the direction of Investments' research into issues relating to smoking and health.

50. Investments specifically denies the allegations contained in paragraph 91 of the Statement of Claim:

(a) with respect to paragraph 91(a), Investments did not make the Tobacco Industry Research Council's 1954 "Frank Statement to Cigarette Smokers". Investments did not draft, sign or publish or direct anyone else to draft, sign or publish the "Frank Statement to Cigarette Smokers";

(b) with respect to paragraph 91(b), Investments did not make representations in May 1963 to the Canadian Medical Association;

(c) with respect to paragraph 91(c), Investments did not make a presentation to the Conference on Smoking and Health of the Federal Department of National Health Welfare on November 25-26, 1963;

(d) with respect to paragraph 91(e), Investments did not make statements to the National Press or news organisations in Canada; and

(e) with respect to paragraph 91(f), Investments did not make communications through the Canadian Tobacco Manufacturers' Council ("CTMC") in Canada including, without limitation, to the Federal Department of Health Welfare.

(ii) Conspiracy within the Canadian Tobacco Industry

51. Investments was not involved in the formation of the CTMC. The CTMC was a Canadian organization whose members were from the Canadian tobacco industry. Investments has never been a member of the CTMC and has never engaged in any co-ordinated efforts with the CTMC.

52. With respect to paragraph 115 of the Statement of Claim, Investments denies that the CTMC ever acted as agent for Investments, as alleged or at all.

53. Investments specifically denies the allegations contained in paragraph 139 of the Statement of Claim. Investments has never directed or advised how ITCAN should vote in committees of Canadian manufacturers or at meetings of the CTMC. Member companies of the CTMC, which did not include Investments, exclusively decided issues

relating to smoking and health including, in particular, the approval and funding of CTMC research.

IV. RELIEF

54. In answer to the entire Statement of Claim, Investments says that the costs that have been incurred or will be incurred by the plaintiff in respect of health care benefits for insured persons resulting from tobacco related disease or the risk thereof have not been and will not be caused or contributed to by exposure of insured persons to tobacco products attributable to the tobacco related wrongs alleged. Further, and in particular:

(a) if Investments breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to, or will cause or contribute to, the cost of health care benefits as alleged or at all;

(b) if the plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, the cost of health care benefits was caused by one or more of the following:

(i) requirements of the statutes and regulations that were voluntarily enacted by the plaintiff and which provide for health care in Ontario, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in the definition of "health care benefits" in subparagraph 1(1) of the *Act*;

(ii) the conduct and acts or omissions of the plaintiff as further particularized herein;

(iii) the conduct and acts or omissions of individual insured persons as further particularized herein;

(iv) disease or risk of disease in individual insured persons unrelated to smoking tobacco or exposure to tobacco smoke; and

(v) the manufacture, promotion and sale of tobacco products by persons other than the defendants, including manufacturers located on First

Nations reserves, whose tobacco products are packaged and sold to persons in Ontario in breach of duties owed to them;

(c) if the plaintiff has incurred or will incur the cost of health care benefits as alleged, which is denied, then the plaintiff has made no expenditure and suffered no loss for which it is legally entitled to be compensated by reason of any or all of the following:

(i) that cost constitutes the utilization of a pre-determined budget for the provision of health care generally and is the product of decisions by the plaintiff based upon, *inter alia*, political expediency, policy considerations and the availability of finance;

(ii) that cost reflects monies received from the government of Canada by means of transfer payments, conditional grants and shared-cost programmes;

(iii) that cost is or will be exceeded by tax revenues received by the plaintiff from the sale of tobacco products in Ontario alleged to have been caused by the tobacco related wrongs alleged; and

(iv) that cost is not influenced by the tobacco related wrongs alleged.

V. THE PLAINTIFF'S OWN CONDUCT

55. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario and have been supervised, regulated and controlled by the plaintiff and the Government of Canada. Within that legal and regulatory framework, if the plaintiff has incurred or will incur the cost of health care benefits that have been or will be provided to insured persons who have suffered tobacco related disease, as alleged (which is denied), Investments states that such costs were caused, and the plaintiff's claim to recover such costs is subject to complete defences, by reason of the plaintiff's own conduct and knowledge.

56. At all material times and at least since 1950, the plaintiff, through its ministers, ministries, departments, servants and agents, has been apprised of the information that

was available, according to the state of the art of the day, regarding the health risks associated with smoking tobacco and exposure to tobacco smoke. Despite its knowledge of those risks, the plaintiff:

(a) continued to license and regulate the production, manufacture, advertising, promotion, distribution and sale of tobacco products in Ontario and insured persons have relied upon the plaintiff's activities in such areas in relation to their decisions to take up and continue smoking;

(b) has sought to benefit financially from the sale of tobacco products in Ontario, and has so benefited, by taking advantage of its ability to impose and to collect heavy taxation and licensing fees from, *inter alia*, manufacturers, distributors (both wholesalers and retailers) and consumers of tobacco products and, in particular but not exclusively, has justified the fact and scale of the taxation and licensing fees by reference to the health risks associated with smoking tobacco and exposure to tobacco smoke;

(c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of tobacco products by people under the legal age for purchasing them as defined by law from time to time; and

(d) has voluntarily undertaken the obligations of paying for the cost of health care benefits, including such costs as it alleges are caused or contributed to by smoking or exposure to tobacco smoke, and has set its taxation and health care policies accordingly.

57. Further, Investments says that manufacturers of tobacco products in Canada complied at all times with government requests, mandates, and directions (including from the plaintiff) in respect of, *inter alia*,

(a) the type of tobacco that would be purchased (which tobacco was developed by the government of Canada);

(b) the type of tobacco products that would be sold;

(c) product modifications;

(d) whether tobacco products require health warnings, and the content, size and placement of those warnings;

(e) the type of promotion that would be permitted; and

(f) where tobacco products could be sold and used,

and in doing so, acted reasonably in all the circumstances and committed no "tobacco related wrong" in these respects or otherwise.

58. Further, Investments states that if the plaintiff has incurred the cost of health care benefits as alleged or at all (which is denied) then that cost was caused or contributed to, in whole or in part, by the plaintiff's own acts or omissions as pleaded herein, and not any act or omission of Investments. Investments pleads and relies upon the provisions of the *Negligence Act,* RSO 1990, c N.1.

59. Further, Investments states that by reason of the facts set out herein and the knowledge, conduct and delay of the plaintiff and the prejudice thereby caused to Investments, the plaintiff is barred in law and in equity from advancing the claims made in the Statement of Claim against Investments. Investments also pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged, including the *Limitations Act*, *2002*, SO 2002, c 24 (if applicable).

60. Further, Investments states that, if the plaintiff has incurred the cost of health care benefits resulting from tobacco related disease or the risk of tobacco related disease as alleged (which is denied), the plaintiff has mitigated its loss and such costs must be adjusted to reflect the financial benefits the plaintiff thereby obtained.

61. Without prejudice to the foregoing, Investments repeats paragraph 55 above and says that the acts, errors and omissions pleaded therein represent failures by the plaintiff to act reasonably to mitigate the "cost of health care benefits" as alleged, and any such costs must be adjusted to reflect this failure.

VI. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

62. If the plaintiff has incurred the cost of health care benefits as alleged (which is denied), the cost was caused by, and the plaintiff's claim to recover that cost is subject to complete defences by reason of, the conduct of individual insured persons, including their voluntary decisions to commence or to continue smoking with awareness of the associated risks.

63. At all material times insured persons who smoke or have smoked cigarettes were aware of the risks associated with smoking during all material times.

64. Insured persons became, or should have become, aware of the risks associated with smoking at all material times by various means, including, without limitation, one or more of the following:

(a) discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;

(b) education programmes including courses, seminars and lectures and educational literature and other media;

(c) oral and written warnings from physicians and other health practitioners and public health authorities;

(d) oral and written warnings from family members, friends and other acquaintances;

(e) common general understandings and historical beliefs;

(f) warnings on the packaging of tobacco products, as required for decades pursuant to federal and provincial legislation and regulations and/or voluntary codes of compliance by Canadian tobacco manufacturers; and

(g) mandatory displays, signs and other warnings required by provincial legislation in premises where sales of tobacco products take place.

65. By reason of the foregoing, Investments states that insured persons who smoke or have smoked cigarettes were aware of, or should have been aware of, the associated risks at all material times.

66. Insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking and voluntarily consented to accept such risks.

67. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the associated risks. Investments had and has no legal duty to such persons, or, alternatively, no legal duty that has not been fulfilled.

68. Further, the cause of (i) an individual's choice to smoke or to continue to smoke or (ii) disease consists not of alleged breaches of duty but, rather, of some or all of the following:

    (a) individual choices and decisions of the smoker;

    (b) requests, mandates and directions from the plaintiff and the government of Canada, and Investments repeats and relies on paragraphs 55 to 57 herein;

    (c) the many and varied causes of certain diseases including genetics, stress, excess weight, alcohol, environmental factors and other consumer products; and

    (d) the manufacture, promotion and sale of tobacco products by persons other than defendants, including manufacturers located on First Nations reserves, whose tobacco products are packaged and sold to persons in Ontario in breach of duties owed to them.

69. Investments denies that insured persons began, continued or were unable to stop smoking by reason of any of the alleged breaches of duty of Investments (which are denied) or that any such breach of duty caused or contributed to any alleged tobacco related disease or increased risk of tobacco related disease in any insured person or the cost of health care benefits.

70. Investments states that, at all material times, insured persons have been, or should have been, aware of health risks associated with smoking tobacco products. Accordingly, such persons voluntarily assume such risks when they decide to commence or continue smoking.

71. Further, Investments states that if the plaintiff has incurred the cost of health care benefits as alleged (which is denied) then that cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of Investments. Investments pleads and relies upon the provisions of the *Negligence Act*, RSO 1990, c N.1.

72. Further, Investments states that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to Investments, the plaintiff is barred at law and in equity from advancing the claims made in the Statement of Claim against Investments.

73. Investments pleads and relies upon the limitation of actions statute (or statutes) applicable on a proper choice of law analysis to the tobacco related wrongs alleged in respect of the claims of any individual insured person upon which the plaintiff's cause of action is alleged to rest, including the *Limitations Act, 2002*, SO 2002, c 24 (if applicable).

74. Further and in the alternative, Investments states that, if the plaintiff has incurred the costs of health care benefits as alleged (which is denied), individual insured persons have failed to act reasonably to assist the plaintiff to mitigate that cost.

75. Investments requests that the claim against it be dismissed with costs.

Date: 2016 April 29

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO **Plaintiff**	**and**	**ROTHMANS INC., et al** **Defendants**	**Court File No. CV-09-387984**

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Statement of Defence of British American Tobacco (Investments) Limited

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TAB 7

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and –

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

Defendants

STATEMENT OF DEFENCE OF
BRITISH AMERICAN TOBACCO P.L.C.

1. The defendant British American Tobacco p.l.c. (hereinafter "BAT plc") denies, or where applicable does not admit, all allegations contained in the Amended Fresh as Amended Statement of Claim (the "Statement of Claim"), unless and except where expressly admitted herein, and puts the plaintiff to the strict proof thereof.

2. Without limiting the generality of the foregoing, BAT plc specifically denies:

   (a) that it took part in any conspiracy, concert of action or common design as alleged or at all; or

   (b) that it has owed or breached any common law, equitable or statutory duty or obligation to persons in Ontario as alleged or at all; or

   (c) that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes, to continue to smoke cigarettes, or to be exposed to cigarette smoke; or

(d) that it acted in a manner that wrongfully caused any person in Ontario to smoke or to continue smoking or the plaintiff to incur the cost of health care benefits resulting from tobacco related disease or the risk thereof.

3. BAT plc adopts headings used in the Statement of Claim but does not thereby admit any facts or allegations contained within such headings. Except where indicated otherwise, BAT plc adopts on the same basis the definitions used in the Statement of Claim

4. Except as expressly admitted below, BAT plc denies the allegations contained in paragraphs 17, 20, 36, 37, 40 to 43, 47, 50 to 55, 68, 77, 79, 86 to 107, 115, 135 to 141 and 148 to 150 of the Statement of Claim. With respect to paragraph 20 and allegations throughout the Statement of Claim and in the plaintiff's Further Particulars provided on March 3, 2016 pursuant to the Order of Master Short (the "Further Particulars"), BAT plc denies that it has any predecessors in interest for whom it is in law responsible.

5. The following paragraphs of the Statement of Claim do not appear to contain allegations relating to BAT plc or any of the entities for whom BAT plc is alleged to be in law responsible: 7 to 15, 23 to 33, 44(a)-(d)(f)(g), 45, 46 and 121 to 134 of the Statement of Claim. Accordingly, BAT plc does not plead to these paragraphs in the Statement of Claim, but reserves its position in the event that the plaintiff subsequently asserts that these paragraphs of the Statement of Claim do purport to contain allegations against BAT plc.

6. BAT plc has no knowledge of the facts alleged in paragraphs 16, 18, 19, 21, 22, 34, 35, 38, 39, 44(e)(h), 48, 49, 56 to 67, 69 to 76, 78, 80 to 85, 108 to 114, 116 to 120 and 142 to 147 of the Statement of Claim, and specifically denies that the Canadian Tobacco Manufacturers' Council or any other defendant has ever acted as agent for BAT plc. BAT plc also denies that it has ever engaged in any co-ordinated efforts with the Canadian Tobacco Manufacturers' Council or any other defendant as alleged in the Statement of Claim.

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

7. BAT plc denies that the plaintiff is entitled to the relief sought in paragraphs 1 to 4 and 149 of the Statement of Claim.

8. With respect to paragraphs 5 and 6 of the Statement of Claim, BAT plc repeats paragraph 3 above.

B. The Defendants

9. With respect to paragraph 17 of the Statement of Claim, BAT plc:

   (a) admits that it has a registered office at Globe House, 4 Temple Place, London, England, but states that it is a public limited company incorporated pursuant to the laws of England and Wales; and

   (b) denies that it is a successor in interest to either the defendant B.A.T Industries p.l.c. ("Industries") or the defendant British American Tobacco (Investments) Limited ("Investments").

10. BAT plc was incorporated on July 23, 1997, and did not exist prior to that date. During the period from its incorporation until September 7, 1998, BAT plc was a dormant company. Consequently, BAT plc states that it was impossible for it to be a participant in any conduct which took place prior to September 7, 1998 and accordingly denies that it was a participant in any conduct alleged to have taken place prior to that date and which forms the basis of allegations made in the Statement of Claim. BAT plc states that as a matter of law, it cannot be held liable for conduct which took place prior to its existence.

11. BAT plc was formed in connection with a corporate restructuring of Industries. As part of the restructuring, and pursuant to a "Scheme of Arrangement", BAT plc was to become the ultimate owner of all of the ordinary shares of Industries.

12. The Scheme of Arrangement was presented to the High Court of Justice in England and Wales under Section 425 of the *Companies Act* of 1985. The Scheme of Arrangement was

approved by the High Court on September 3, 1998. Following the High Court's approval, the Scheme of Arrangement was effective as of September 7, 1998. On that date, BAT plc became the ultimate parent company of the collection of companies sometimes referred to (although without legal significance) as the BAT group of companies, including Industries and its tobacco subsidiaries such as Investments (the "1998 Restructuring").

13. As stated, BAT plc denies that it has any predecessors in interest for whom it is in law responsible. Without prejudice to the generality of the foregoing denial, BAT plc states that the 1998 Restructuring did not entail the combination of BAT plc and Industries to form a new company, nor did it render BAT plc a successor to either Industries or Investments. Neither Industries nor Investments is a predecessor to BAT plc. BAT plc, Industries and Investments are all entities incorporated pursuant to the law of England and Wales and any question of whether Industries and Investments are predecessors in interest for whom BAT plc is legally responsible is subject to the law of England and Wales, which does not recognize any doctrine of successor liability as a matter of law. Further, neither by way of the 1998 Restructuring nor at any other point in time did BAT plc either expressly or implicitly assume any liabilities of Industries or Investments. Each company retains its own separate corporate identity and existence.

14. Further, BAT plc denies the allegation contained in section 1 of the Further Particulars that any company named "Rothmans International" is a predecessor in interest to BAT plc for whom BAT plc is in law responsible and specifically denies, if it is alleged, that any company referred to in paragraph 44 of the Statement of Claim whose name includes the words "Rothmans International" is a predecessor in interest to BAT plc for whom BAT plc is in law responsible.

15. BAT plc denies that it acted either as principal or as agent for any other defendant.

16. BAT plc is a holding company which has never had any commercial operations of any kind. Its office has always been located in London, England. BAT plc has never carried on business in Ontario and, as a holding company, BAT plc has never been involved in the research, development, design, manufacture, advertisement, marketing, distribution or promotion of cigarettes or other tobacco products sold in Ontario, Canada or

elsewhere. BAT plc denies any involvement with or attendance at any of the committees, conferences or meetings identified in the Statement of Claim and denies that any alleged tobacco related wrongs in Canada (which are not admitted, but denied) are a proximate or direct result of the committees, conferences, meetings and communications identified in the Statement of Claim.

17. Any activity by another defendant or company, including but not limited to the manufacture or promotion of cigarettes sold in Ontario, cannot and does not constitute such activity by BAT plc. Any plea otherwise is deficient by reason of the absence of the pleading of material facts in support. BAT plc denies that it is a "manufacturer" within the meaning of the *Tobacco Damages and Health Care Costs Recovery Act*, 2009, SO 2009 c 13 (the "*Act*") or at all, or that the *Act* has any permissible application to it.

II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

Multinational Tobacco Enterprises

18. BAT plc denies, if it is alleged, that it is a Multinational Tobacco Enterprise, and specifically denies that it was ever, together with its subsidiaries and associates, operated as a single corporate entity or enterprise.

19. BAT plc denies that the so-called "BAT Group" is a designation with any legal significance whatsoever and makes no admissions as to the membership of the "BAT Group".

20. BAT plc is unable to determine what, if any, legal or other significance the Plaintiff ascribes to the term "Lead Companies" as defined in paragraphs 42 and 43 of the Statement of Claim. Without prejudice to the foregoing, BAT plc denies that it was in such relation to any of the companies identified in paragraph 47 of the Statement of Claim, and specifically denies the allegation that it has directed or co-ordinated within those companies common policies relating to smoking and health.

21. By way of the 1998 Restructuring described above, BAT plc acquired, indirectly through another subsidiary, what was then Industries' indirectly owned minority interest in Imasco Limited ("Imasco"). In August 1999, Imasco and BAT plc agreed on a "going

private" transaction by which BAT plc would tender for the approximately 58% of Imasco's publicly traded shares that BAT plc did not own. An Independent Committee of Imasco's board was established to render advice with respect to the proposed transaction and, on January 28, 2000, Imasco's public shareholders voted to approve the transaction.

22. On February 1, 2000, Imperial Tobacco Canada Limited ("Imperial") was formed as a result of various corporate transactions (including the amalgamation of Imasco and Imperial Tobacco Limited) and became, and remains, a wholly owned, indirect subsidiary of BAT plc. Subject to the qualification that BAT plc became the indirect owner of the issued and outstanding shares in Imperial as a result of those transactions, the final sentence of paragraph 36 of the Statement of Claim is admitted.

23. Subject to the qualification that Imperial is an indirect wholly owned subsidiary of BAT plc, paragraph 37 of the Statement of Claim is admitted.

24. BAT plc's acquisition, indirectly through another subsidiary, of the shares in Imperial was not an amalgamation of the two companies. BAT plc and Imperial have always operated as separate and distinct corporate entities. BAT plc denies paragraphs 42, 68, 89 and 135 to 140 of the Statement of Claim and further denies:

    (a) that it ever directed or co-ordinated Imperial's activities or policies on smoking and health or positions Imperial took on smoking and health; or

    (b) that it is jointly and severally liable for the alleged "tobacco related wrongs" of Imperial; or

    (c) that it conspired or acted in concert or with common design with Imperial in committing "tobacco related wrongs".

III. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Breaches of Common Law, Equitable or Statutory Duties or Obligations

25. BAT plc repeats paragraphs 16 and 17 above and denies that it owes or ever owed a duty to persons in Ontario.

26. Further, and in the alternative, to the extent that BAT plc owes or ever owed a duty to persons in Ontario (which is not admitted but specifically denied), BAT plc complied with any such duty, whether based in common law, equity or statute.

27. Further, and in the alternative, if BAT plc breached any duty to persons in Ontario (which is not admitted but specifically denied), BAT plc states that no such breach resulted in persons in Ontario starting or continuing to smoke cigarettes manufactured or promoted by the defendants, or being exposed to cigarette smoke, or suffering tobacco related disease or an increased risk of tobacco related disease.

28. With respect to any and all allegations that BAT plc had any involvement in the commission of tobacco related wrongs, such allegations are denied. Further, BAT plc states that actions taken or not taken by any other defendant in Canada are not the actions or omissions of BAT plc and are not a proximate result of any direction or co-ordination by BAT plc. Without prejudice to the generality of the foregoing, BAT plc states specifically that actions taken or not taken by Imperial in Canada were undertaken by Imperial pursuant to the business, legal and scientific judgments of Imperial's executives and not as a proximate result of any direction or co-ordination by BAT plc.

The Defendants' Knowledge

29. BAT plc admits that nicotine occurs naturally in the tobacco plant and is a constituent of tobacco smoke. Nicotine has pharmacological properties; it has both a mild stimulant effect and a mild relaxant effect. While the pharmacological effects of nicotine are an important aspect of smoking behaviour, consumers enjoy many sensorial aspects of cigarette smoking, including smoke taste, aroma and the sensation resulting from stimulation of nerve endings in the mouth, nose and upper airway (throat "impact"). Many of those sensorial aspects of smoking are caused by non-nicotine components in cigarette smoke. Smoking is, for many people, difficult to quit and can be termed an "addiction" or dependency. However, millions of smokers have quit without any medical help, and millions have modified where and when they smoke in the light of differing social norms and nothing about smoking precludes smokers from either quitting or understanding the serious health risks of smoking. It has been known during

all material times, including by persons in Ontario, that smoking is difficult to quit and that smoking poses serious health risks.

30. The number of discrete compounds identified in cigarette smoke has increased rapidly over time and now totals over 4,000, most occurring in minute quantities. Those constituents include the constituents of tar, gases and the emissions listed on packages, such as nicotine. Water vapour is also produced by the combustion, because the burning of any organic material breaks down the chemical components and produces water.

31. Smoking is a cause, in some smokers, of serious diseases. The health risks of smoking are derived from epidemiology, the study of the incidence and distribution of diseases in human populations, and the factors which affect such distribution. Science to date has not been able to identify biological mechanisms which can explain with certainty the statistical findings linking smoking or exposure to smoke with certain diseases, nor has science been able to clarify the role of particular smoke constituents in those disease processes.

32. BAT plc states that, at all material times, persons in Ontario have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government of Canada and the plaintiff have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by, the federal government, the plaintiff and the public health community have reinforced the awareness of persons in Ontario with respect to cigarette smoking and its potential risks. At all material times, BAT plc had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the plaintiff and/or the public health community.

Exposure

33. BAT plc denies that any of the identified individual tobacco related wrongs (the commission of which is denied) caused or contributed to insured persons starting or

continuing to smoke or otherwise being exposed to cigarette smoke and says further in respect of such allegations:

(a) the decision to commence or to continue smoking by any individual insured person is an individual decision taken by that person for reasons specific to that person;

(b) while BAT plc accepts that smoking is for many people difficult to quit and it can be termed an "addiction" or dependency, BAT plc says the decision by any insured person to continue smoking is a true choice exercised by that person, and denies that an insured person who smokes is deprived, by reason of the effects of nicotine, of the ability to exercise a free choice to stop smoking; and

(c) while BAT plc accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, BAT plc says that at all material times insured persons have been aware of, or had available to them, information which recognises, the existence of health risks associated with smoking and the fact that smoking is difficult to quit. Therefore, and without prejudice to its primary case, BAT plc denies that insured persons relied, reasonably or otherwise, on any positions of BAT plc as to the health risks associated with smoking.

Disease and the Risk of Disease

34. BAT plc states that the risks and incidence of diseases that are associated with smoking vary considerably and may depend upon numerous factors including, but not limited to, cigarettes smoked per day, years smoked, periods of smoking cessation, and the presence or absence of other risk factors associated with the disease. Further, if BAT plc had any duties or obligations in Ontario (which is denied), and if BAT plc breached any such duties or obligations (which is denied), no such breach caused or contributed to**:**

(a) any tobacco related disease in any insured person; or

(b) any increased risk of tobacco related disease in any insured person.

No Market Share

35. By reason of the facts and matters pleaded above, in particular at paragraphs 16 and 17, BAT plc has never possessed any share of the market for tobacco products in Ontario whether as defined by the *Act* or at all. Accordingly, BAT plc can have no liability quantifiable by reference to its market share and to the extent that liability under the *Act* is determined by reference thereto then BAT plc can have no liability at all.

Conspiracy, Concert of Action and Common Design

36. In the following section, BAT plc pleads as fully as it currently is able to the allegations contained in paragraphs 86 to 116, 135 to 141 and 150 of the Statement of Claim. BAT plc reserves the right to amend this Statement of Defence if further particulars become known in the future.

37. If BAT plc has any liability to the plaintiff by reason of the matters pleaded in paragraphs 56 to 85 and 142 to 147 of the Statement of Claim, which is not admitted but denied, then the extent of such liability will fall to be determined by reference to the extent of the liability of each individual defendant, if any, with whom BAT plc is found to be jointly and severally liable in respect of a tobacco related wrong. Accordingly, without prejudice to the balance of this Statement of Defence and without advancing a positive case beyond the scope of that otherwise set out in this Statement of Defence, BAT plc claims the benefit of all and any defences of all and any defendants with whom BAT plc is alleged to be jointly and severally liable, for the purposes of avoiding or reducing the amount, if any, for which each such defendant and, hence, BAT plc, is alleged to be jointly and severally liable.

38. Without prejudice to the foregoing, to the extent that the conduct alleged in paragraphs 86 to 116, 135 to 141 and 150 of the Statement of Claim occurred prior to September 7, 1998, BAT plc repeats paragraph 10 above including that, as a matter of law, it cannot be held liable for conduct which took place prior to its existence.

39. By reason of the failure of the plaintiff to plead any conduct undertaken by BAT plc since September 7, 1998 within the scope of the allegations pleaded at paragraphs 86 to

116, 135, 136 to 138, 139 to 141 and 150 of the Statement of Claim, such allegations are irrelevant to any claim against BAT plc and BAT plc denies these allegations.

40. With respect to allegations contained in paragraph 135.1 of the Statement of Claim, BAT plc:

(a) repeats paragraphs 4 and 13 above and denies that either Industries or Investments is a predecessor in interest to BAT plc for whom BAT plc is in law responsible; and

(b) denies that it has made statements about the dangers of smoking and the risks of second-hand smoke in furtherance of any conspiracy, and further denies that any statements it made were misleading or inaccurate. Any statements made by BAT plc with respect to the dangers of smoking and the risks of second-hand smoke were based on BAT plc's reasonably and genuinely held beliefs given the scientific state of the art.

41. With respect to allegations contained in paragraph 138.1 of the Statement of Claim, BAT plc denies that it directed the strategy for the "BAT Group" through statements made on its website questioning research that exposure to second hand smoke causes disease. As stated, any statements made by BAT plc with respect to the risks of second hand smoke were based on BAT plc's reasonably and genuinely held beliefs given the scientific state of the art.

42. With respect to the allegations that the alleged conspiracy, concert of action and common design was continued as set out in paragraphs 89, 135 and 135.1 of the Statement of Claim and to the extent that any conduct is alleged to have taken place since September 7, 1998 then, in respect of paragraphs 86 to 116, 135 to 141 and 150 of the Statement of Claim, BAT plc denies that it:

(a) conspired, or joined any ongoing conspiracy, with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

(b) acted in concert or with common design with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

(c) was involved either as principal or as agent for any other defendant or any other person or entity with respect to the commission of any tobacco related wrong; or

(d) acted so as to render it jointly or vicariously liable with any other defendant in respect of any tobacco related wrong, whether pursuant to section 4(2)(b)(iii) of the *Act* or otherwise pursuant to section 4 of the *Act*, or at all.

43. BAT plc states that it never conspired or acted in concert with any of the Lead Companies.

44. BAT plc denies that it formed, joined or was ever a member of any of the industry organisations identified in the Statement of Claim or any of the committees allegedly formed by any of those organisations. In addition, none of the industry organisations identified in the Statement of Claim has ever been under the direction or control of BAT plc and neither was any of those organisations ever used by BAT plc to direct or co-ordinate the activities or policies of or positions taken by any other defendant or any other company at all.

45. BAT plc was not involved in the formation of, and has never been a member of, the Canadian Tobacco Manufacturers' Council. BAT plc has never directed or advised how Imperial should vote in committees of Canadian manufacturers, at meetings of the Canadian Tobacco Manufacturers' Council or at meetings of the Tobacco Institute. And, as stated, BAT plc denies that the Canadian Tobacco Manufacturers' Council (or any other defendant) ever acted as agent for BAT plc.

46. BAT plc denies that it directed or co-ordinated the activities or policies of, or conspired or acted in concert with the defendant Imperial, as alleged or at all. At all material times, to the extent that BAT plc indirectly held shares in Imperial, BAT plc and Imperial observed all corporate separateness formalities. BAT plc did not dominate or exert functional or legal control or undue influence over Imperial.

47. BAT plc states that the plaintiff has no claim in respect of the alleged conspiracy or concert of action or common design because the plaintiff agreed to and adopted the design of what it alleges is a conspiracy, concert of action or common design and became a party thereto and carried out acts in Ontario in furtherance thereof that the plaintiff alleges are unlawful.

48. Further, the plaintiff has profited from the sale of cigarettes and if any of the defendants has committed a tobacco related wrong (which is not admitted but denied), then the plaintiff has directly benefitted from the tax revenue raised by each and every purchase of tobacco products which was entered into in consequence of the tobacco related wrong. Accordingly, the cost of health care benefits described in paragraph 2 of the Statement of Claim must be adjusted to reflect the financial benefits which the Plaintiff has obtained by reason of the foregoing.

IV. RELIEF

49. In answer to the entire Statement of Claim, BAT plc states that the costs that have been incurred or will be incurred by the plaintiff in respect of health care benefits for insured persons resulting from tobacco related disease or the risk thereof have not been and will not be caused or contributed to by exposure of insured persons to tobacco products attributable to the tobacco related wrongs alleged. Further, and in particular:

(a) if BAT plc breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to, or will cause or contribute to, the cost of health care benefits as alleged or at all;

(b) if the plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, the cost of health care benefits was caused by one or more of the following:

(i) requirements of the statutes and regulations that were voluntarily enacted by the plaintiff and which provide for health care in Ontario, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in the definition of "health care benefits" in subparagraph 1(1) of the *Act*;

(ii) the conduct and acts or omissions of the plaintiff as further particularized herein;

(iii) the conduct and acts or omissions of individual insured persons as further particularized herein;

(iv) disease or risk of disease in individual insured persons unrelated to smoking tobacco products or exposure to tobacco smoke; and

(v) the manufacture, promotion and sale of tobacco products by persons other than the defendants, including manufacturers located on First Nations reserves, whose tobacco products are packaged and sold to persons in Ontario in breach of duties owed to them.

(c) if the plaintiff has incurred or will incur the cost of health care benefits as alleged, which is denied, then the plaintiff has made no expenditure and suffered no loss for which it is legally entitled to be compensated by reason of any or all of the following:

(i) that cost constitutes the utilization of a pre-determined budget for the provision of health care generally and is the product of decisions by the plaintiff based upon, *inter alia*, political expediency, policy considerations and the availability of finance;

(ii) that cost reflects monies received from the government of Canada by means of transfer payments, conditional grants and shared-cost programmes;

(iii) that cost is or will be exceeded by tax revenues received by the plaintiff from the sale of tobacco products in Ontario alleged to have been caused by the tobacco related wrongs alleged; and

(iv) that cost is not influenced by the tobacco related wrongs alleged.

V. THE PLAINTIFF'S OWN CONDUCT

50. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario and have been supervised, regulated and controlled by the plaintiff and the Government of Canada. Within that legal and regulatory framework, if the plaintiff has incurred or will incur the cost of health care benefits that have been or will be provided to insured persons who have suffered tobacco related disease, as alleged (which is denied), BAT plc states that such costs were caused, and the plaintiff's claim to recover such costs is subject to complete defences, by reason of the plaintiff's own conduct and knowledge.

51. At material times and at least since 1950, the plaintiff, through its ministers, ministries, departments, servants and agents, has been apprised of the information that was available, according to the state of the art of the day, regarding the health risks associated with smoking cigarettes and exposure to cigarette smoke. Despite its knowledge of those risks, the plaintiff:

(a) continued to license and regulate the production, manufacture, advertising, promotion, distribution and sale of cigarettes in Ontario, and insured persons have relied upon the plaintiff's activities in such areas in relation to their decisions to take up and continue smoking;

(b) has sought to benefit financially from the sale of cigarettes in Ontario, and has so benefited, by taking advantage of its ability to impose and to collect heavy taxation and licensing fees from, *inter alia*, manufacturers, distributors (both wholesalers and retailers) and consumers of cigarettes and, in particular but not exclusively, has justified the fact and scale of the taxation and licensing fees by reference to the health risks associated with smoking cigarettes and exposure to cigarette smoke;

(c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time; and

(d) has voluntarily undertaken the obligations of paying for the costs of health care benefits, including such costs as it alleges are caused or contributed to by cigarette smoking or exposure to cigarette smoke, and has set its taxation and health care policies accordingly.

52. Further, without prejudice to its pleading that it is not a manufacturer of tobacco products under the *Act* or at all (as set out in paragraphs 16 and 17 above and throughout this Statement of Defence), BAT plc says that manufacturers of tobacco products in Canada complied at all times with government requests, mandates, and directions (including from the plaintiff) in respect of, *inter alia*,

(a) the type of tobacco that would be purchased (which tobacco was developed by the government of Canada);

(b) the type of tobacco products that would be sold;

(c) product modifications;

(d) whether tobacco products require health warnings, and the content, size and placement of those warnings;

(e) the type of promotion that would be permitted; and

(f) where tobacco products could be sold and used,

and in doing so, acted reasonably in all the circumstances and committed no "tobacco related wrong" in these respects or otherwise.

53. Further, BAT plc states that if the plaintiff has incurred the cost of health care benefits as alleged or at all (which is denied) then that cost was caused or contributed to, in whole or in part, by the plaintiff's own acts or omissions as pleaded herein, and not any act or omission of BAT plc. BAT plc pleads and relies upon the provisions of the *Negligence Act*, RSO 1990, c N.1.

54. Further, BAT plc states that by reason of the facts set out herein and the knowledge, conduct and delay of the plaintiff and the prejudice thereby caused to BAT plc, the

plaintiff is barred in law and in equity from advancing the claims made in the Statement of Claim against BAT plc. BAT plc also pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged, including (if applicable) the *Limitations Act, 2002*, SO 2002, c 24.

55. Further, BAT plc states that, if the plaintiff has incurred the cost of health care benefits resulting from tobacco related disease or the risk of tobacco related disease as alleged (which is denied), the plaintiff has mitigated its loss and such costs must be adjusted to reflect the financial benefits the plaintiff thereby obtained.

56. Without prejudice to the foregoing, BAT plc repeats paragraph 50 above and says that the acts, errors and omissions pleaded therein represent failures by the plaintiff to act reasonably to mitigate the "cost of health care benefits" as alleged, and any such costs must be adjusted to reflect this failure.

VI. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

57. If the plaintiff has incurred the cost of health care benefits as alleged (which is denied), the cost was caused by, and the plaintiff's claim to recover that cost is subject to complete defences by reason of, the conduct of individual insured persons, including their voluntary decisions to commence or to continue smoking with awareness of the associated risks.

58. At all material times insured persons who smoke or have smoked cigarettes were aware of the risks associated with smoking during all material times.

59. Insured persons became, or should have become, aware of the risks associated with smoking at all material times by various means, including, without limitation, one or more of the following:

(a) discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;

(b) education programmes including courses, seminars and lectures and educational literature and other media;

(c) oral and written warnings from physicians and other health practitioners and public health authorities;

(d) oral and written warnings from family members, friends and other acquaintances;

(e) common general understandings and historical beliefs;

(f) warnings on the packaging of cigarettes, as required for decades pursuant to federal and provincial legislation and regulations and/or voluntary codes of compliance by Canadian tobacco manufacturers; and

(g) mandatory displays, signs and other warnings required by provincial legislation in premises where sales of cigarettes take place.

60. By reason of the foregoing, BAT plc states that insured persons who smoke or have smoked cigarettes were aware of, or should have been aware of, the associated risks at all material times.

61. Insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking and voluntarily consented to accept such risks.

62. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke with awareness of the associated risks. BAT plc had and has no legal duty to such persons, or, alternatively, no legal duty that has not been fulfilled.

63. Further, the cause of (i) an individual's choice to smoke or to continue to smoke or (ii) disease consists not of alleged breaches of duty but, rather, of some or all of the following:

(a) individual choices and decisions of the smoker;

(b) requests, mandates and directions from the plaintiff and the government of Canada, and BAT plc repeats and relies on paragraphs 50 to 52 above;

(c) the many and varied causes of certain diseases including genetics, stress, excess weight, alcohol, environmental factors and other consumer products; and

(d) the manufacture, promotion and sale of cigarettes by persons other than defendants, including manufacturers located on First Nations reserves, whose cigarettes are packaged and sold to persons in Ontario in breach of duties owed to them.

64. BAT plc denies that insured persons began, continued or were unable to stop smoking by reason of any of the alleged breaches of duty of BAT plc (which are denied) or that any such breach of duty caused or contributed to any alleged tobacco related disease or increased risk of tobacco related disease in any insured person or the cost of health care benefits.

65. BAT plc states that at all material times insured persons have been, or should have been, aware of health risks associated with smoking cigarettes. Accordingly, such persons voluntarily assume such risks when they decide to commence or to continue smoking.

66. Further, BAT plc states that if the plaintiff has incurred the cost of health care benefits as alleged (which is denied) then that cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of BAT plc. BAT plc pleads and relies upon the provisions of the *Negligence Act*, RSO 1990, c N.1.

67. Further, BAT plc states that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to BAT plc, the plaintiff is barred at law and in equity from advancing the claims made in the Statement of Claim against BAT plc.

68. BAT plc pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged in respect of the claims of any individual insured person upon which the plaintiff's cause of action is alleged to rest, including (if applicable) the *Limitations Act, 2002*, SO 2002, c 24.

69. Further and in the alternative, BAT plc states that, if the plaintiff has incurred the costs of health care benefits as alleged (which is denied), individual insured persons have failed to act reasonably to assist the plaintiff to mitigate that cost.

70. BAT plc requests that the claim against it be dismissed, with costs.

Date: 2016 April 29

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO **Plaintiff**	**and**	**ROTHMANS INC., et al** **Defendants**	**Court File No. CV-09-387984**

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Statement of Defence of
British American Tobacco p.l.c.

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TAB 8

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and –

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

Defendants

STATEMENT OF DEFENCE OF CARRERAS ROTHMANS LIMITED

1. The defendant Carreras Rothmans Limited (hereinafter "CRL" or the "defendant CRL") denies, or where applicable does not admit, all allegations contained in the Amended Fresh as Amended Statement of Claim (the "Statement of Claim"), unless and except where expressly admitted herein, and puts the plaintiff to the strict proof thereof.

2. In general answer to the whole of the Statement of Claim, CRL denies:

   (a) that it took part in any conspiracy, concert of action or common design as alleged or at all; or

   (b) that it owed or breached any common law, equitable or statutory duty or obligation to persons in Ontario as alleged in the Statement of Claim; or

   (c) that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes, to continue to smoke cigarettes or to be exposed to cigarette smoke; or

(d) that it acted in a manner that wrongfully caused any person in Ontario to smoke or continue smoking or the plaintiff to incur the cost of health care benefits resulting from tobacco related disease or the risk thereof.

3. CRL adopts headings used in the Statement of Claim but does not thereby admit any facts or allegations contained within such headings. Except where indicated to the contrary, CRL adopts on the same basis the defined terms used in the Statement of Claim.

4. Except where expressly admitted below, CRL denies the allegations contained in paragraphs 9, 20, 40 to 44, 50 to 55, 68, 73.2(g), 73.3(f), 73.4(b)(g), 77, 79, 86 to 107, 115, 117 to 120, 141 and 148 to 150 of the Statement of Claim.

5. CRL has no knowledge in respect of the allegations contained in paragraphs 7, 8, 10 to 19, 21 to 39, 45 to 49, 56 to 67, 69 to 73.1, 73.2(a)-(f), 73.3 (a)-(e), 73.4(a)(c)-(f), 74 to 76, 78, 80 to 85, 108 to 114, 116, and 121 to 140 and 142 to 147 of the Statement of Claim and puts the plaintiff to the strict proof thereof.

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

6. CRL denies that the plaintiff is entitled to the relief sought in paragraphs 1 to 4 and 149 of the Statement of Claim.

7. In respect of paragraphs 5 and 6 of the Statement of Claim, CRL repeats paragraph 3 above.

B. The Defendants

8. In respect of paragraph 9 of the Statement of Claim, the defendant CRL:

(a) admits that it has a registered office at Globe House, 1 Water Street, London, England but says that it is incorporated pursuant to the laws of England and Wales; and

(b) says, and the fact is, it was incorporated in 1905 as John Sinclair, Limited, and became known as Carreras Rothmans Limited as the result of a corporate name change on September 7, 1972.

9. Since March 31, 1984 the defendant CRL has carried on no business of any kind, and has been dormant in accordance with the meaning ascribed to that term in the *Companies Act* (U.K.), as amended. Consequently, CRL cannot have been a participant in any conduct which took place after March 31, 1984 and accordingly CRL denies that it was a participant in any conduct alleged to have taken place after that date and which forms the basis of allegations made in the Statement of Claim.

10. The Statement of Claim as supplemented by the Response to Demands for Particulars provided on September 15, 2014 (the "Particulars") and by the Further Particulars provided on March 3, 2016 pursuant to the Order of Master Short (the "Further Particulars") indicates that the plaintiff's claim is directed at a corporate entity (the "Other Rothmans Entity") that is not the defendant CRL. CRL says, and the fact is:

(a) it has never had subsidiary companies that included Rothmans Inc or Rothmans, Benson & Hedges Inc or any of their predecessors;

(b) it does not have predecessors in interest that include Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada or Carreras Limited; and

(c) it does not have, nor has it ever had, subsidiary companies or predecessors in interest in Canada.

11. CRL says that the plaintiff's allegations as pleaded are directed at the Other Rothmans Entity and disclose no cause of action against the defendant CRL.

12. CRL says further that:

(a) the plaintiff's allegations relating to acts or omissions of alleged subsidiary companies of the Other Rothmans Entity disclose no cause of action against the defendant CRL; and

(b) the plaintiff's allegations relating to acts or omissions of alleged predecessors in interest of the Other Rothmans Entity, including Rothmans of Pall Mall Limited,

Rothmans of Pall Mall Canada and Carreras Limited, disclose no cause of action against the defendant CRL.

13. In respect of paragraph 20 of the Statement of Claim, CRL denies that it has any predecessors in interest for whom it is in law responsible, and denies that it is a "manufacturer".

14. In respect of paragraphs 86 and 150 of the Statement of Claim, CRL denies that it jointly breached any of the alleged duties or that it is jointly and severally liable for any of the alleged cost of health care benefits.

15. CRL denies that it acted either as principal or as agent for any other defendant, and specifically denies that Rothmans Inc or any of its predecessor corporations ever acted as agent for CRL, as alleged in paragraph 118.2 of the Statement of Claim or at all. In respect of the allegation in section 5 of the Further Particulars that the agency relationship alleged in paragraph 118.2 of the Statement of Claim relates to "the parent/subsidiary relationship", CRL repeats paragraph 10(a) above and denies that Rothmans Inc or any of its predecessor corporations was a subsidiary of CRL.

16. CRL denies the existence of any conspiracy or that it was a member of any such alleged conspiracy and denies that it conspired or acted in concert or with a common design with any other defendant.

17. CRL says that it does not carry on, and has never carried on, business in Ontario and has never manufactured, promoted, marketed, advertised, distributed or sold cigarettes in Ontario.

18. Any activity including but not limited to the design, manufacture, promotion, marketing, advertising, distribution or sale of cigarettes in Ontario by another defendant or company cannot and does not constitute the action of CRL. Any plea otherwise is deficient by reason of the absence of a pleading of material facts in support.

II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

Multinational Tobacco Enterprises

19. CRL denies, if it is alleged, that it is or ever was a Multinational Tobacco Enterprise.

20. CRL denies that the "Rothmans Group" is a designation with any legal significance whatsoever and makes no admissions as to the membership of the "Rothmans Group".

21. CRL is unable to determine what, if any, legal or other significance the plaintiff ascribes to the term "Lead Companies" as defined in paragraphs 42 and 43 of the Statement of Claim. Without prejudice to the foregoing, CRL denies that it was in such relation to any of the companies identified in paragraph 44 of the Statement of Claim, and specifically denies the allegation that it has directed or co-ordinated within those companies common policies relating to smoking and health.

22. From time to time during the period between September 7, 1972 and March 31, 1984, CRL had dealings with the Canadian company then named Rothmans of Pall Mall Canada Limited ("RPMCL"). CRL never had dealings with any Canadian company named Rothmans Inc or Rothmans, Benson & Hedges Inc or Rothmans of Pall Mall Limited. Further, it is specifically alleged in paragraph 44 of the Statement of Claim that such companies were not incorporated, or if incorporated were not named Rothmans Inc or Rothmans, Benson & Hedges Inc or Rothmans of Pall Mall Limited, until various dates after March 31, 1984 by which time CRL had ceased to carry on business of any kind. Further, CRL never had dealings with any company named Rothmans of Canada Kings Limited.

23. CRL specifically denies the allegations contained in paragraphs 42, 68, 89 and 117 to 120 of the Statement of Claim. To the extent that CRL had any involvement in the communications, meetings, committees and conferences referred to, they were not used by CRL as vehicles to direct or co-ordinate RPMCL's activities or its policies on smoking and health. CRL did not direct RPMCL to adopt policies or positions on smoking and health in Canada. Actions RPMCL took or refrained from taking in Canada

were undertaken by RPMCL pursuant to its own business, legal and scientific judgments and not as a proximate result of any direction or co-ordination by CRL.

24. Further, CRL denies that any alleged tobacco related wrongs in Canada (the commission of which is denied) are a proximate or direct result of the communications, meetings or structures identified in the Statement of Claim.

III. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Breaches of Common Law, Equitable or Statutory Duties or Obligations

25. CRL repeats paragraphs 17 and 18 above and denies that it owes or ever owed a duty to persons in Ontario.

26. Further, and in the alternative, to the extent that CRL owes or ever owed a duty to persons in Ontario (which is not admitted but denied), CRL complied with any such duty, whether based in common law, equity or statute.

27. Further, and in the alternative, if CRL breached any duty to persons in Ontario (which is not admitted but denied), CRL says no such breach resulted in persons in Ontario starting or continuing to smoke cigarettes manufactured or promoted by the defendants, or being exposed to cigarette smoke, or suffering tobacco related disease or an increased risk of tobacco related disease.

The Defendants' Knowledge

28. CRL admits that nicotine occurs naturally in the tobacco plant and is a constituent of tobacco smoke. Nicotine has pharmacological properties; it has both a mild stimulant effect and a mild relaxant effect. While the pharmacological effects of nicotine are an important aspect of smoking behaviour, consumers enjoy many sensorial aspects of tobacco smoking, including smoke taste, aroma and the sensation resulting from stimulation of nerve endings in the mouth, nose and upper airway (throat "impact"). Many of those sensorial aspects of smoking are caused by non-nicotine components in tobacco smoke. Smoking is, for many people, difficult to quit and can be termed an "addiction" or dependency. However, millions of smokers have quit without any medical

help, and millions have modified where and when they smoke in the light of differing social norms, and nothing about smoking precludes smokers from either quitting or understanding the serious health risks of smoking. It has been known during all material times that smoking is difficult to quit and that smoking poses serious health risks.

29. The number of discrete compounds identified in cigarette smoke has increased rapidly over time and now totals over 4,000, most in minute quantities. Those constituents include the constituents of tar, gases and the emissions listed on packages, such as nicotine. Water vapour is also produced by the combustion, because the burning of any organic material breaks down the chemical components and produces water.

30. Smoking is a cause, in some smokers, of serious diseases. The health risks of smoking are derived from epidemiology, the study of the incidence and distribution of diseases in human populations, and the factors which affect such distribution. Science to date has not been able to identify biological mechanisms which can explain with certainty the statistical findings linking smoking or exposure to smoke with certain diseases, nor has science been able to clarify the role of particular smoke constituents in those disease processes.

31. CRL says that, at all material times, persons in Ontario have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government of Canada and the plaintiff have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by, the federal government, the plaintiff and the public health community have reinforced the awareness of persons in Ontario with respect to smoking and its potential risks. At all material times, CRL had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the plaintiff and/or the public health community.

32. To the extent that the allegations in paragraphs 73.2(g), 73.3(f) and 73.4(b)(g) are directed at CRL, CRL denies that it suppressed or concealed scientific and medical data. CRL had no policy to avoid public disclosure or to conceal its knowledge of such data.

Exposure

33. CRL denies that any of the identified individual tobacco related wrongs (the commission of which is denied) caused or contributed to insured persons starting or continuing to smoke or otherwise being exposed to cigarette smoke and says further in respect of such allegations:

(a) the decision to commence or to continue smoking by any individual insured person is an individual decision taken by that person for reasons specific to that person;

(b) while CRL accepts that smoking is for many people difficult to quit and it can be termed an "addiction" or dependency, CRL says the decision by any insured person to continue smoking is a true choice exercised by that person, and denies that an insured person who smokes is deprived, by reason of the effects of nicotine, of the ability to exercise a free choice to stop smoking; and

(c) while CRL accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, CRL says that at all material times insured persons have been aware of, or had information available to them, which recognises the existence of health risks associated with smoking and the fact that smoking is difficult to quit. Therefore, and without prejudice to its primary case, CRL denies that insured persons relied, reasonably or otherwise, on positions adopted by CRL as to the health risks associated with smoking.

Disease and the Risk of Disease

34. CRL says that the risks and incidence of diseases that are associated with smoking vary considerably and may depend upon numerous factors including, but not limited to, cigarettes smoked per day, years smoked, periods of smoking cessation and the presence or absence of other risk factors associated with the disease. Further, if CRL had any duties or obligations in Ontario (which is denied), and if CRL breached any such duties or obligations (which is denied), no such breach caused or contributed to:

(a) any tobacco related disease in any insured person; or

(b) any increased risk of tobacco related disease in any insured person.

No Market Share

35. By reason of the facts and matters pleaded above, in particular at paragraphs 18 and 19 CRL has never possessed any share of the market for cigarettes in Ontario whether as defined by the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, SO 2009 c 13 (the "*Act*") or at all. Accordingly, CRL can have no liability quantifiable by reference to its market share and to the extent that liability under the *Act* is determined by reference thereto then CRL can have no liability at all.

Conspiracy, Concert of Action and Common Design

36. In the following sections, CRL pleads as fully as it is currently able to the allegations contained in paragraphs 86 to 120, 141 and 150 of the Statement of Claim. CRL reserves the right to supplement this Statement of Defence if further particulars become known in the future.

37. If, which is denied, CRL has any liability to the plaintiff by reason of the matters pleaded in paragraphs 56 to 85 and 142 to 147 of the Statement of Claim, then the extent of such liability will fall to be determined by reference to the extent of the liability of each individual defendant, if any, with whom CRL is found to be jointly and severally liable in respect of a tobacco related wrong. Accordingly, without prejudice to the balance of this Statement of Defence, and without advancing a positive case beyond the scope of that otherwise set out in this Statement of Defence, CRL claims the benefit of all and any defences of all and any defendants with whom CRL is alleged to be jointly and severally liable for the purposes of avoiding or reducing the amount, if any, for which each such defendant and, hence, CRL is alleged to be jointly and severally liable.

38. Without prejudice to the foregoing, to the extent that the conduct alleged in paragraphs 86 to 120, 141 and 150 of the Statement of Claim occurred after March 31, 1984, CRL repeats paragraph 9 above including that it cannot have been a participant in such conduct after it ceased to carry on business of any kind.

39. Without prejudice to the foregoing, in the generality in respect of paragraphs 86 to 120, 141 and 150 of the Statement of Claim, CRL denies that it:

(a) conspired with any other defendant with respect to the commission of any tobacco-related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

(b) acted in concert or with a common design with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

(c) was involved either as principal or as agent for any other defendant with respect to the commission of any tobacco related wrong; or

(d) acted so as to render it jointly or vicariously liable with any other defendant in respect of any tobacco related wrong, whether pursuant to section 4(2)(b)(iii) of the *Act* or otherwise pursuant to section 4 of the *Act*, or at all.

40. Further, CRL denies that it directed or co-ordinated the activities or policies of or positions taken by RPMCL, as alleged or at all.

41. Further, the plaintiff has no claim in respect of the alleged conspiracy, concert of action or common design because the plaintiff agreed to and adopted the design of what it alleges is a conspiracy, concert of action or common design and became a party thereto and carried out acts in Ontario in furtherance thereof that the plaintiff alleges are unlawful.

42. Further, the plaintiff has profited from the sale of tobacco products and if any of the defendants has committed a tobacco related wrong (which is denied), then the plaintiff has directly benefitted from the tax revenue raised by each and every purchase of tobacco products which was entered into in consequence of that tobacco related wrong. In the premises, the cost of health care benefits described in paragraph 2 of the Statement of Claim must be adjusted to reflect the financial benefits which the plaintiff has obtained by reason of the foregoing.

(i) Conspiracy within the International Tobacco Industry

43. CRL says that it never conspired or acted in concert with any other defendant including any of the Lead Companies, as alleged or at all. CRL says further that the risks associated with smoking have been widely known in Ontario, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Ontario through a variety of sources and that CRL had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the plaintiff and/or the public health community.

44. With respect to allegations contained in paragraphs 68, 73 to 73.4 and 88 to 107 of the Statement of Claim, CRL denies that it agreed with any other defendant to suppress or conceal, or suppressed or concealed, or directed any Direct Breach Defendant to suppress or conceal, or had any policy to suppress or conceal information about the risks associated with smoking and exposure to smoke.

(ii) Conspiracy within the Canadian Tobacco Industry

45. CRL says that it never conspired or acted in concert or common design with, or co-ordinated the positions on smoking and health issues of any of the defendants in Canada or their predecessors including RPMCL, or the Canadian Tobacco Manufacturers' Council (the "CTMC"), as alleged or at all.

46. In respect of paragraph 115 of the Statement of Claim, CRL specifically denies that the CTMC ever acted as agent for CRL.

IV. RELIEF

47. In answer to the whole of the Statement of Claim, CRL says the costs that have been incurred or will be incurred by the plaintiff in respect of health care benefits for insured persons resulting from tobacco related disease or the risk thereof have not been and will not be caused or contributed to by exposure of insured persons to tobacco products attributable to the tobacco related wrongs alleged. Further, and in particular:

(a) if CRL breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to, or will cause or contribute to, the cost of health care benefits as alleged or at all;

(b) if the plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, the cost of health care benefits was caused by one or more of the following:

(i) requirements of the statutes and regulations that were voluntarily enacted by the plaintiff and which provide for health care in Ontario, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in the definition of "health care benefits" in subparagraph 1(1) of the *Act*;

(ii) the conduct and acts or omissions of the plaintiff as further particularized herein;

(iii) the conduct and acts or omissions of individual insured persons as further particularized herein;

(iv) disease or risk of disease in individual insured persons unrelated to smoking cigarettes or exposure to cigarette smoke; and

(v) the manufacture, promotion and sale of cigarettes by persons other than the defendants, including manufacturers located on Indian reserves, whose cigarettes are packaged and sold to persons in Ontario in breach of duties owed to them.

(c) if the plaintiff has incurred or will incur the cost of health care benefits as alleged, which is denied, then the plaintiff has made no expenditure and suffered no loss for which it is legally entitled to be compensated by reason of any or all of the following:

(i) that cost constitutes the utilization of a pre-determined budget for the provision of health care benefits generally and is the product of decisions

by the plaintiff based upon, *inter alia*, political expediency, policy considerations and the availability of finance;

(ii) that cost reflects monies received from the government of Canada by means of transfer payments, conditional grants and shared-cost programmes;

(iii) that cost is or will be exceeded by tax revenues received by the plaintiff from the sale of cigarettes in Ontario alleged to have been caused by the tobacco related wrongs alleged; and

(iv) that cost is not influenced by the tobacco related wrongs alleged.

V. THE PLAINTIFF'S OWN CONDUCT

48. At all material times the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario and have been supervised, regulated and controlled by the plaintiff and the Government of Canada. Within that legal and regulatory framework, if the plaintiff has incurred or will incur the cost of health care benefits that have been or will be provided to insured persons who have suffered tobacco related disease, as alleged (which is denied), CRL states that such costs were caused, and the plaintiff's claim to recover such costs is subject to complete defences, by reason of the plaintiff's own conduct and knowledge.

49. At material times and at least since 1950, the plaintiff, through its ministers, ministries, departments, servants and agents, has been apprised of the information that was available, according to the state of the art of the day, regarding the health risks associated with smoking cigarettes and exposure to cigarette smoke. Despite its knowledge of those risks, the plaintiff:

(a) continued to license and regulate the production, manufacture, advertising, promotion, distribution and sale of cigarettes in Ontario and insured persons have relied upon the plaintiff's activities in such areas in relation to their decisions to take up and continue smoking;

(b) has sought to benefit financially from the sale of cigarettes in Ontario, and has so benefited, by taking advantage of its ability to impose and to collect heavy taxation and licensing fees from, *inter alia*, manufacturers, distributors (both wholesalers and retailers) and consumers of cigarettes and, in particular but not exclusively, has justified the fact and scale of the taxation and licensing fees by reference to the health risks associated with smoking cigarettes and exposure to cigarette smoke;

(c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time; and

(d) has voluntarily undertaken the obligations of paying for the costs of health care benefits, including such costs as it alleges are caused or contributed to by cigarette smoking or exposure to cigarette smoke, and has set its taxation and health care policies accordingly.

50. Further, CRL says that manufacturers of tobacco products in Canada complied at all times with government requests, mandates, and directions (including from the plaintiff) in respect of, *inter alia*:

(a) the type of tobacco that would be purchased (which tobacco was developed by the government of Canada);

(b) the type of tobacco products that would be sold;

(c) product modifications;

(d) whether tobacco products require health warnings, and the content, size and placement of those warnings;

(e) the type of promotion that would be permitted; and

(f) where tobacco products could be sold and used,

and in doing so, acted reasonably in all the circumstances and committed no "tobacco related wrong" in these respects or otherwise.

51. Further, CRL states that if the plaintiff has incurred the cost of health care benefits as alleged or at all (which is denied) then that cost was caused or contributed to, in whole or in part, by the plaintiff's own acts or omissions as pleaded herein, and not by any act or omission of CRL. CRL pleads and relies upon the provisions of the *Negligence Act*, RSO 1990, c N.1.

52. Further, CRL states that by reason of the facts set out herein and the knowledge, conduct and delay of the plaintiff and the prejudice thereby caused to CRL, the plaintiff is barred in law and in equity from advancing the claims made in the Statement of Claim against CRL. CRL also pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged, including (if applicable) the *Limitations Act, 2002*, SO 2002, c 24.

53. Further, CRL says that if the plaintiff has incurred the cost of health care benefits resulting from tobacco related disease or the risk of tobacco related disease as alleged (which is denied), the plaintiff has mitigated its loss and such costs must be adjusted to reflect the financial benefits the plaintiff thereby obtained.

54. Without prejudice to the foregoing, CRL repeats paragraph 48 above and says that the acts, errors and omissions pleaded therein represent failures by the plaintiff to act reasonably to mitigate the "cost of health care benefits" as alleged, and any such costs must be adjusted to reflect this failure.

VI. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

55. If the plaintiff has incurred the cost of health care benefits as alleged, which is denied, then that cost was caused by, and the plaintiff's claim to recover that cost is subject to complete defences by reason of, the conduct of individual insured persons, including their voluntary decisions to commence or to continue smoking with awareness of the associated risks.

56. At all material times insured persons who smoke or have smoked cigarettes were, or should have been, aware of risks associated with smoking.

57. Insured persons became, or should have become, aware of risks associated with smoking at all material times by various means including, without limitation, one or more of the following:

(a) discussions and writing in all forms of media, including newspapers, magazines, journals, television, movies and radio;

(b) education programmes, including courses, seminars and lectures and educational literature and other media;

(c) oral and written warnings from physicians, other health practitioners and public health authorities;

(d) oral and written warnings from family members, friends and other acquaintances;

(e) common general understandings and historical beliefs;

(f) warnings on the packaging of cigarettes, as required for decades pursuant to federal and provincial legislation and regulations and/or voluntary codes of compliance by Canadian tobacco manufacturers; and

(g) mandatory displays, signs and other warnings required by provincial legislation in premises where sale of cigarettes take place.

58. By reason of the foregoing, CRL says that insured persons who smoke or have smoked cigarettes were, or should have been, aware of the associated risks at all material times.

59. Insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking and voluntarily consented to accept such risks.

60. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the associated risks. CRL had and has no legal duty to such persons or, alternatively, no legal duty that has not been fulfilled.

61. Further, the cause of (i) an individual insured person's choice to smoke or to continue to smoke cigarettes or (ii) disease consists not of alleged breaches of duty but, rather, of some or all of the following:

(a) individual choices and decisions of the smoker;

(b) requests, mandates and directions from the plaintiff and the government of Canada, and CRL repeats and relies on paragraphs 48 to 50 herein;

(c) the many and varied causes of certain diseases including genetics, stress, excess weight, alcohol, environmental factors and other consumer products; and

(d) the manufacture, promotion and sale of cigarettes by persons other than defendants, including manufacturers located on Indian reserves, whose cigarettes are packaged and sold to persons in Ontario in breach of duties owed to them.

62. CRL denies that any insured persons began, continued or were unable to stop smoking by reason of any of the alleged breaches of duty of CRL (which are denied) or that any such breach of duty caused or contributed to any alleged tobacco related disease or increased risk of tobacco related disease in any insured person or to the cost of health care benefits.

63. Further, CRL says that at all material times individual insured persons have been, or should have been, aware of health risks associated with smoking cigarettes. Accordingly, such persons voluntarily assume such risks when they decide to commence and continue smoking.

64. Further, CRL says that if the plaintiff has incurred the cost of health care benefits as alleged, which is denied, then that cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not by any act or omission of CRL. CRL pleads and relies upon the provisions of the *Negligence Act*, RSO 1990, c N.1.

65. Further, CRL says that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to CRL, the plaintiff is barred at law and in equity from advancing the claims made in the Fresh Statement of Claim against CRL.

66. CRL pleads and relies upon the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged in respect of the

claims of any individual insured person upon which the plaintiff's cause of action is alleged to rest, including (if applicable) the *Limitations Act, 2002*, SO 2002, c 24.

67. Further and in the alternative, CRL says that if the plaintiff has incurred the cost of health care benefits as alleged, which is denied, individual insured persons have failed to mitigate that cost.

68. CRL requests that the claim against it be dismissed with costs.

Date: 2016 April 29

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Plaintiff

-and-

ROTHMANS INC. et al.
Defendants

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE OF CARRERAS ROTHMANS LIMITED

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TAB 9

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and –

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

Defendants

STATEMENT OF DEFENCE OF CANADIAN TOBACCO MANUFACTURERS' COUNCIL

1. In this Statement of Defence, the Fresh as Amended Statement of Claim is referred to as the "Statement of Claim" for ease of reference.

2. The Canadian Tobacco Manufacturers' Council (the "CTMC") admits:

   (a) with respect to paragraphs 2, 3, and 4 of the Statement of Claim, that this action is brought pursuant to the provisions of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, S.O. 2009 c. 13 (the "Act"), but the CTMC denies the other allegations in paragraphs 2, 3, and 4 of the Statement of Claim;

   (b) with respect to paragraphs 5 and 6 of the Statement of Claim, only that these paragraphs state the definitions referred to therein;

   (c) with respect to the first sentence of paragraph 21 of the Statement of Claim, only that it is a corporation incorporated pursuant to the laws of Canada. It has a registered office in Gatineau, Quebec. CTMC denies the balance of the allegations contained therein. In particular, the CTMC has not, at any time, been the "trade association of the Canadian tobacco industry". At all material times, its members have included only certain Canadian tobacco manufacturers. At present, its members are the three Canadian tobacco manufacturers who are defendants in this action: Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.

(together the "Members"). The remaining defendants have never been members of the CTMC.

3. The CTMC denies, or where applicable does not admit, the remaining allegations in the Statement of Claim, unless expressly admitted herein. In particular, the CTMC denies all of the allegations of wrongdoing and breaches of duties and obligations made against it (including, without limitation, those of conspiracy, misrepresentation and other "tobacco related wrongs" as defined in the Act) that are alleged against the CTMC. Contrary to the allegations in the Statement of Claim, the CTMC met and complied with all common law, equitable and statutory duties that, in the circumstances, existed at various places and times.

4. The CTMC further denies that any persons in Ontario started or continued to smoke, or that any persons in Ontario were exposed to tobacco products, as a result of any tobacco related wrongs committed by the CTMC, as alleged by the plaintiff or at all, which commission is in any event denied. Nor did, or will, any persons in Ontario suffer any "tobacco related disease" (as defined in the Act) or an increased risk of tobacco related disease as a result of such tobacco related wrongs, the commission of which is denied.

5. With respect to and in response to all of the legal and factual allegations made against all defendants generally, the CTMC adopts the responses and other pleadings set out in the statements of defence of its Members.

6. The CTMC denies the allegations contained in paragraph 22 of the Statement of Claim.

7. The CTMC denies the allegations in paragraphs 91 and 92 of the Statement of Claim and says that it did not make any misrepresentations as alleged or at all. The CTMC further denies the allegations in paragraph 73 of the Statement of Claim and says that it did not suppress scientific or medical information as alleged or at all.

8. The CTMC denies the allegations contained in paragraph 110 of the Statement of Claim. Further, with respect to paragraph 110(c) of the Statement of Claim, the CTMC says that in 1963, an ad hoc committee (the "Ad Hoc Committee") of some Canadian tobacco manufacturers was created at the request of the Federal Government to present the points of view of the Canadian tobacco manufacturers at the 1963 National Conference on Smoking and Health. The Ad Hoc Committee continued to function until 1971. In February 1971 an unincorporated

association also named the "CTMC" replaced the Ad Hoc Committee. The defendant CTMC was incorporated in 1982. The CTMC has been inactive in all material respects since June 2001.

9. The CTMC cannot be liable in respect of any conduct prior to 1982 or following June 2001.

10. The CTMC denies the allegations made in paragraphs 110 through 116 of the Statement of Claim and denies that it provided a means or method for any conspiracy, concert of action or common design or that it agreed to, adopted or participated in any conspiracy, concert of action or common design, as alleged or at all.

11. The CTMC acknowledges that it met and discussed with governments matters of interest to its Members and at times served as a conduit for the passage of information between its Members and governments (including the directions, mandates and requirements of governments to its Members). The CTMC denies that it misrepresented or disseminated false information regarding the risks of addiction and disease from smoking or the cause of disease, or engaged in any wrongful conduct, as alleged in paragraphs 112 and 114 of the Statement of Claim, or at all. The CTMC complied reasonably with the standards, directives, recommendations, suggestions and advice of governments and thereby discharged its duties in dealing with insured persons in Ontario and others and, in all of the circumstances, committed no tobacco related wrongs as alleged in the Statement of Claim or at all.

12. The CTMC's Members compete and have competed vigorously against each other for market share in the Canadian market, but the CTMC states that they did work together in relation to certain dealings with the Federal Government and the plaintiff. The Federal Government and the plaintiff, in turn, worked closely with the CTMC's Members (sometimes through the Ad Hoc Committee and the unincorporated association and, after it was incorporated, through the CTMC). The Federal Government and the plaintiff gave advice and directions and made various representations and requests to all or some of the CTMC Members on smoking and health issues and/or with regard to the design (including the tobacco to be used), manufacture, and promotion of their products, and in particular with respect to restrictions on the advertising and promotion of tobacco products and the development and promotion of lower tar products, upon which the CTMC and its Members reasonably relied.

13. The CTMC denies the allegations made in paragraph 113 of the Statement of Claim.

14. The CTMC denies the allegations made in paragraphs 91, 92, 100, 103 and 110 through 116 of the Statement of Claim and denies that the CTMC was itself a member of or ever acted in furtherance of any conspiracy, concert of action, or common design, as alleged or at all. Among other things, the CTMC denies that it disseminated false or misleading information, made any false or misleading submissions to or otherwise misled governments, promoted tobacco products, suppressed research regarding the risks of smoking or misrepresented the risks of exposure to tobacco products or the cause of disease, or at all. To the contrary, the CTMC commissioned research at the request of its Members, including research that added to the already overwhelming knowledge in the public domain, including that of "insured persons" (as defined in the Act) in Ontario, regarding the risks of exposure to tobacco products, which research was published.

15. Further, the CTMC states that, given the amount of information available and publicly disseminated, the plaintiff and persons in Ontario were aware at all material times of the risks of (and literature regarding) exposure to tobacco products and the fact that cigarette smoking can be difficult to quit. The CTMC relies on and adopts the pleadings in the statements of defence of its Members in this regard.

16. The CTMC states that at times it funded legitimate research conducted by highly regarded scientists at the request of its Members, including research participated in and recommended by the plaintiff. The CTMC did not take directions from any of the defendants other that its Members (in this regard or with respect to any other matters, including issues relating to smoking and health generally). Nor did it take directions from or act as the agent for any other entity, such as:

(a) The International Committee on Smoking Issues;

(b) The International Tobacco Information Centre, Inc.; and

(c) The Tobacco Documentation Centre.

The CTMC relies on and adopts the pleadings in the statements of defence of its Members in this regard.

17. The CTMC denies that the plaintiff has suffered any damages as a result of any "tobacco related wrong" (as defined in the Act) committed by the CTMC and puts the plaintiff to the strict proof thereof in respect of the "cost of health care benefits" (as defined in the Act) incurred or to be incurred as claimed by the plaintiff.

18. The CTMC states that to the extent, if any, that the plaintiff has incurred or will incur costs of health care benefits arising from the consumption of or exposure to tobacco products by insured persons in Ontario, which is denied, those costs are a result of the plaintiff's own acts and omissions for the reasons pleaded herein and in the statements of defence of its Members. The plaintiff has:

(a) regulated the promotion and sale of tobacco products,

(b) promoted and participated in the sale of tobacco grown in Ontario;

(c) participated in the development and approved the registration of tobacco strains with increased levels of nicotine in the plant (and marginally higher levels of nicotine in the smoke), which strains were grown by farmers in Ontario; and

(d) benefited from the sale of those products in the form of significant revenues accruing from taxation and licensing fees imposed on manufacturers, growers, exporters, distributors and/or consumers of tobacco.

19. The CTMC also states that to the extent that they exist, the existence of which is denied, the plaintiff voluntarily assumed the risks of increased "cost of health care benefits" by virtue of its taxation and regulation of the legal sale of tobacco in Ontario. The CTMC states that to the extent that they exist, the existence of which is denied, the plaintiff has failed to mitigate or reduce any increased "cost of health care benefits" stemming from or related to the use of or exposure to tobacco products by insured persons in Ontario, despite its power to do so as the authority controlling regulation of the distribution and sale of tobacco.

20. The plaintiff undertook a course of conduct consisting of legislative and regulatory actions, representations and voluntary actions which the plaintiff intended, knew, or ought to have known, would lead the CTMC to believe that its conduct was not in breach of any provincial statute or regulation and that its conduct was not actionable, on which course of conduct the CTMC and its Members reasonably relied. The CTMC relies on and adopts the pleadings in the statements of defence of its Members in this regard.

21. The CTMC further states that to the extent, if any, that the plaintiff has incurred or will incur costs of health care benefits arising from the consumption of or exposure to tobacco products by insured persons in Ontario, which is denied, those costs are a result of the conduct of individual insured persons who voluntarily decided to commence or continue to smoke despite the widespread and continuing dissemination of information and warnings regarding the risks associated with the consumption of tobacco products and their awareness of such risks. The CTMC relies on and adopts the pleadings in the statements of defence of its Members in this regard.

22. The CTMC states that if the plaintiff incurred any costs of health care benefits as alleged or at all, which is denied, then such costs were caused or contributed to, in whole or in part, by the plaintiff's own acts or omissions as pleaded herein and in the statements of defence of its Members. The CTMC pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1 and the Act.

23. The CTMC pleads the provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24 both in respect of the plaintiff's claim and in respect of the cost of health care benefits of those insured persons on which the plaintiff's claim is alleged to be based and calculated.

24. The CTMC states that the plaintiff is barred at law and in equity from advancing the claims made in the Statement of Claim against CTMC on the basis of the pleadings herein and as pleaded in the statements of defence of its Members.

25. For all the foregoing reasons, CTMC denies that it is liable for the costs of any health care benefits and denies that it is jointly and severally liable for the costs of any health care benefits (as alleged in paragraph 150 of the Statement of Claim) and denies that the plaintiff is entitled to the relief sought in paragraphs 1 of the Statement of Claim.

26. CTMC submits that the plaintiff's claim should be dismissed as against it, with costs payable to CTMC on the substantial indemnity scale.

April 29, 2016

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Court File No.: CV-09-387984

HER MAJESTY THE QUEEN – Plaintiff –

v.

CANADIAN TOBACCO MANUFACTURERS' COUNCIL ET AL – Defendants –

ONTARIO
SUPERIOR COURT OF JUSTICE

(PROCEEDING COMMENCED AT TORONTO)

STATEMENT OF DEFENCE OF CANADIAN TOBACCO MANUFACTURERS' COUNCIL

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TAB 10

Court File No.: CV-09-387984

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

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

Defendants

STATEMENT OF DEFENCE OF
IMPERIAL TOBACCO CANADA LIMITED

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I. OVERVIEW

1. The Defendant Imperial Tobacco Canada Limited ("Imperial") admits the allegations contained in the following paragraphs of the Amended Fresh As Amended Statement of Claim, dated April 20, 2016 (the "Claim"):

(a) with respect to paragraphs 2 and 3 of the Claim, Imperial admits that this action is brought pursuant to the provisions of the *Tobacco Damages and Health Care Costs Recovery Act, 2009,* S.O. 2009, c. 13 (the "*Act*"), but denies the other allegations in paragraphs 2 and 3 of the Claim; and

(b) with respect to paragraphs 5 and 6 of the Claim, Imperial admits only that these paragraphs state the definitions referred to therein.

2. Imperial denies, or where applicable does not admit, the remaining allegations in the Claim, unless expressly admitted below. Imperial puts the Plaintiff, Her Majesty the Queen in Right of Ontario (the "Province"), to the proof thereof.

3. In particular, in all the circumstances, Imperial did not and does not, as alleged or at all:

(a) engage in any misrepresentations;

(b) fail to warn of the risks and dangers of smoking or exposure to second-hand smoke;

(c) unlawfully promote cigarettes to children or adolescents, or otherwise breach duties owed to such individuals;

(d) manufacture or design a defective or dangerous product;

(e) contravene any other common law, equitable or statutory duty or obligation;

(f) take part in any conspiracy, concert of action or common design; or

(g) contravene the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, the *Competition Act*, R.S.C. 1985, c. C-34 and/or any predecessor legislation.

4. To the contrary, Imperial has complied with all applicable common law, equitable and statutory duties, if any, at all material times.

5. The use of tobacco in our society represents a complex societal phenomenon, which must be viewed in proper context.

6. In particular, the issues that arise in this litigation cannot be viewed through the lens of hindsight, without regard to historical or social context (including the state of accepted scientific knowledge at the relevant times). Nor can the issues be viewed without regard to the role played by governments (including the Province), the scientific community and other non-governmental organizations and groups.

7. Further, the Province's Claim ignores the fact that individuals have the right and autonomy to make – and do constantly make – personal choices, and to engage in corresponding behaviour that exposes them to risks that may entail negative consequences. The Claim further ignores the fact that by making these choices, such individuals voluntarily assume those selfsame risks and consequences.

8. Indeed, a significant amount of people continue to take up smoking each year with full knowledge of the risks of smoking, despite numerous warnings and in the complete or near-absence of advertising for tobacco products in Canada.

II. IMPERIAL AND ITS PRODUCTS

9. Imperial is a company incorporated pursuant to the laws of Canada, with its registered head office in Montreal, Quebec. Imperial is or has been a manufacturer of tobacco products.

10. Imperial is a wholly owned subsidiary of British American Tobacco International (Holdings) B.V., and is a wholly owned indirect subsidiary of British American Tobacco p.l.c.

11. Imperial was formed in 2000 as a result of various corporate transactions, including the amalgamation of Imperial Tobacco Limited ("ITL") and Imasco Limited ("Imasco"). Prior to 2000, ITL was a wholly-owned subsidiary of Imasco, a publicly traded company incorporated pursuant to the laws of Canada. Imasco was initially incorporated pursuant to federal letters patent under the name "Imperial Tobacco Company of Canada,

Limited", which subsequently changed its name to Imasco in 1970. In addition to ITL, Imasco had a number of other subsidiaries and ownership interests which were wholly unrelated to tobacco products.

12. For over one hundred years, Imperial or its predecessors manufactured tobacco products, including cigarettes, which have been sold in Ontario and elsewhere in Canada.

13. At all material times, the manufacture and the sale of cigarettes have been legal activities in Ontario and elsewhere in Canada.

14. Cigarettes contain tobacco leaves. Nicotine is a naturally occurring substance in the tobacco leaf and "tar" is the name given to a combination of substances produced by combustion, which occurs when a cigarette is lit.

15. Imperial does not itself grow the tobacco used in its products. Rather, Imperial purchased all of the tobacco used in its products from third parties, the preponderance of which tobacco is or was grown by Canadian tobacco growers (often times acting under the guidance and direction of Health Canada, the Department of Agriculture and/or the Ontario Ministry of Agriculture and Food ("OMAF")). Among other things, OMAF recommended to Ontario tobacco growers the tobacco strains to grow and the optimum conditions for growing same, including, *inter alia*, the type and quantity of fertilizer to use, which use impacted on the nicotine levels in the plants.

16. The tobacco used by Imperial in its cigarettes does not contain any flavours or additives, apart from the menthol used for menthol cigarettes.

17. The tobacco industry is and has been for many years one of the most extensively regulated industries in Canada, whether through legislation or through the requests, directions and mandates of the federal government and the provinces.

18. Indeed, Canada is at the forefront of tobacco regulation *vis-à-vis* advertising restrictions, warnings, constituent reporting, testing and disclosure requirements, all of which have been mandated by the federal government.

19. Beginning in the 1970s, health warnings and detailed information regarding the average yields of certain smoke constituents appeared on all cigarette packaging, either as a

result of consultation with – or at the direction of – the federal government, or pursuant to legislation (being the regulations pursuant to *The Tobacco Act*, S.C. 1997, c. 13 ("*The Tobacco Act*"), or predecessor statutes/regulations).

III. IMPERIAL HAS COMMITTED NO "TOBACCO RELATED WRONGS"

20. At all material times, the cigarettes manufactured by Imperial were fit for the purpose for which they were intended. Imperial has complied with its duties and obligations to persons in Ontario, whether imposed through legislation or otherwise, and has committed no "tobacco related wrong" as defined by the *Act* (a "Tobacco Related Wrong").

21. Further, persons in Ontario did not start or continue to smoke, nor were any persons exposed to cigarette smoke, as a result of any Tobacco Related Wrongs committed by Imperial, as alleged by the Province (the commission of which is in any event denied). Nor did or will any persons in Ontario suffer any tobacco-related disease or an increased risk of tobacco-related disease as a result of such Tobacco Related Wrongs.

22. At all material times, Imperial has reasonably complied with (and relied on) the requests, directions and mandates of the federal government and/or the Province in respect of, among other things:

(a) the reduction of tar and nicotine content in cigarette smoke;

(b) the type of tobacco that would be purchased (which tobacco was developed by the Canadian government, with the involvement and approval of the Province);

(c) the design and manufacture of cigarettes, including low-tar cigarettes;

(d) the advertising and promotion initiatives in furtherance of the government health objectives of the time to encourage smokers to switch to low tar products;

(e) the nature and scope of research into the properties of cigarettes;

(f) the content and placement of warnings to be provided to consumers; and

(g) the disclosure of the properties of cigarettes to consumers;

and thereby discharged its duties in its dealings with consumers or potential consumers.

23. Each of the federal government and the Province assumed a duty to Imperial in respect of the matters described above.

24. Further, the federal government and the Province assumed a duty to persons in Ontario in respect of the relevant health issues, advertisings and warnings.

25. By complying with the various requests, directions and mandates of the federal government and/or the Province, Imperial acted reasonably in all the circumstances and committed no Tobacco Related Wrongs as alleged in the Claim, or at all.

26. Imperial further states that the conduct of the federal government, as set out in further detail below, is inextricably intertwined with the claims of the Province against Imperial in respect of, *inter alia*, the alleged negligent design of tobacco products, the alleged negligent manufacture of tobacco products, the alleged misrepresentations with respect to nicotine levels and/or machine measurements of tar and nicotine, the manufacture and design of "safer" cigarettes, the alleged negligent failure to warn, the alleged wrongs with respect to the promotion of cigarettes and certain other alleged practices, all of which are alleged to be Tobacco Related Wrongs.

IV. ADDICTION AND HEALTH RISKS ASSOCIATED WITH SMOKING

27. Imperial acknowledges that smoking can be described as an addiction.

28. However, the definition of "addiction" and, in particular, whether or not smoking could be considered to be addictive, has altered over time.

29. The U.S. Surgeon General's 1964 Report on Smoking and Health (the "1964 Report") received wide-spread media coverage throughout the world, including in Ontario and throughout Canada.

30. The 1964 Report was the first public health report in the U.S. to survey the medical and scientific literature in an effort to present a consensus of medical and scientific thinking on the subject of smoking behaviour. The 1964 Report concluded, consistent with previous statements from public health authorities, that smoking was habituative (or habit-forming) and not addictive. Notwithstanding this conclusion, the 1964 Report recognized that smoking can be difficult to quit, a fact that had been widely known.

31. Indeed, over many generations, some smokers have expressed the opinion that they have had difficulty stopping smoking. The common understanding and historical beliefs in the community about the habit-forming nature of tobacco have been passed down from generation to generation for more than four hundred years.

32. In 1988, the U.S. Surgeon General posited a new definition for addiction, with criteria that focussed primarily on psychological rather than physiological factors. It was no longer necessary that the particular component in question produce intoxication, tolerance or physical dependence in order to be classified as addictive, as had previously been the case. With that new definition in hand, the U.S. Surgeon General concluded that nicotine, a component of cigarettes, was addictive.

33. Similarly, in 1989, the Royal Society of Canada reviewed various definitions for addiction that had been used over the years, and then proposed yet a new definition.

34. Regardless of the terminology used, Imperial states that by 1950, the Province and persons in Ontario were both aware of the fact that it may be difficult for individuals to quit smoking.

35. Smoking is a complex human behaviour which involves much more than the intake of nicotine. It is both the behavioural aspects of smoking and the effects of nicotine which may make it difficult for some people to stop smoking. However, the existence of an "addiction" or "dependence" does not prevent people from quitting.

36. Smokers do not continue to smoke because the nicotine in cigarettes deprives a smoker of the ability to freely exercise the choice to continue or stop smoking. This is made abundantly clear by the fact that there are presently more former smokers than smokers in Canada and indeed, this has been the case for many years.

37. Many smokers choose to smoke for the pleasurable effects cigarettes produce in them, making the decision that the pleasure or other benefits of smoking outweigh the risks. While such pleasurable effects are connected, in part, to the nicotine in cigarettes, the fact is that a significant number of smokers can and do quit smoking every year, notwithstanding any nicotine addiction.

38. Imperial acknowledges that smoking causes or contributes to certain diseases in some smokers. Publicly available statistical and epidemiological research identifies smoking as a risk factor for certain of the diseases identified in paragraph 51 of the Claim – as well as certain of the additional diseases identified in the Response to the Demand for Particulars provided by the Province in respect of paragraph 51 of the Claim – with the reported association between smoking and those diseases having been well-known for many decades.

39. The rise of lung cancer as a cause of mortality during the first half of the 20th century led to several major research studies that attempted to determine the cause of this rise.

40. By 1950, the Province and persons in Ontario were aware of the fact that there were serious diseases associated with smoking.

41. The association between smoking and detrimental health effects reported in the 1964 Report received wide-spread media coverage throughout the world, including Canada and Ontario.

42. While:

(i) there remained a lack of scientific consensus of the mechanics by which disease was caused; and

(ii) the scientific community rejected that smoking was properly labelled as "addictive",

the Province and persons in Ontario were nonetheless aware of the risks associated with smoking.

43. By the end of the 1960s, smoking incidence had declined from 1965, the first year for which the government collected statistics, a decline that continues to this date.

44. The amount of information available and disseminated to the public regarding the risks associated with smoking continued unabated and only increased in the following decades, rendering it impossible for the Province or persons in Ontario to be unaware of the risks associated with smoking.

45. Although the Province has not particularized the "substances which can cause or contribute to disease" of which the Defendants are alleged to have been aware since 1950, many of the substances in tobacco smoke that are considered to be related to disease are also present in the environment or in commonly consumed products to which non-smokers are also exposed in equal or greater amounts.

V. IMPERIAL HAS MADE SIGNIFICANT EFFORTS TO DEVELOP SAFER CIGARETTES

46. Imperial denies the allegations in paragraphs 56 to 62 of the Claim, and states that it complied with all common law, equitable and statutory duties, at all material times.

47. At all material times, the cigarettes manufactured by Imperial were fit for the purpose for which they are intended.

48. At all material times, Imperial acted reasonably in changes and alterations made to the design and manufacture of cigarettes.

49. Imperial did not add nicotine or substances containing nicotine to its commercially available cigarettes, and did not manipulate the level or "bio-availability" of nicotine in its commercially available cigarettes. In particular, Imperial specifically denies the allegations of "special blending" set out in the Province's Response to Demand for Particulars in respect of paragraph 59 of the Claim.

50. Imperial did not include substances in its commercially available cigarettes (including ammonia), to increase the "bio-availability of nicotine" or at all.

51. Imperial did not artificially raise the nicotine level in its cigarettes to a level higher than that naturally occurring in the tobacco plant. In fact, the average nicotine yield of the cigarettes manufactured by Imperial has been dramatically reduced since the 1960s.

52. In any event, the level of nicotine in tobacco plants is irrelevant beyond 1976, as beginning that year the machine derived nicotine yields of its products were disclosed on all cigarette packages, either at the direction of the federal government or by legislation (being the regulations pursuant to *The Tobacco Act*).

53. To the extent that there has been any manipulation of the nicotine content of cigarettes (none of which has been engaged in by Imperial), such manipulation, if any, was effected by the federal government, which was itself responsible for and engaged in selective breeding and/or genetic engineering of tobacco plants to produce tobacco strains containing increased levels of nicotine in the plants (and marginally higher levels of nicotine in tobacco smoke). The registration of these strains was approved by both the federal government and the Province, with full knowledge of the characteristics of such strains.

54. For many years, the scientific community and Health Canada officials advocated the development of a low-tar, medium nicotine cigarette. The prevailing view among the scientific community, public health authorities and governments (including the Province) at that time was that for smokers who continued to smoke, the development of such cigarettes might increase consumer acceptability of low-tar cigarettes.

55. In 1977, federal officials at the Delhi Research Station and Health Canada conducted a project entitled "Delhi Tobacco and Health Bio-Assay Programme" as part of its Less Hazardous Cigarette Programme.

56. That same year, Health Canada, in a published report, identified the potential need for cigarettes with lower tar and carbon monoxide yields, but with a sufficient nicotine yield to satisfy certain smokers.

57. As of this time, the federal government was directly engaged in developing strains of tobacco, which when combined with filtering technology, would be suitable for use in low-delivery products.

58. The result of this programme was that the Department of Agriculture and Agri-Food Canada ("Agriculture Canada"), during the 1970s and continuing for many years thereafter, created varieties of tobacco with a lower tar to nicotine ratio. These tobacco strains produced lower tar when burned and contained marginally higher levels of nicotine than previously available varieties, which when smoked produced a lower tar to nicotine ratio. They were therefore believed by the federal government to produce a less-hazardous cigarette.

59. The federal government licensed and received fees for those tobacco strains and promoted them for use by all growers of tobacco in Canada, including Ontario tobacco growers.

These new strains became virtually the only strains of tobacco available to the manufacturers in Canada for producing commercially available cigarettes. These strain were similarly promoted and recommended by the Province to, *inter alia*, growers in Ontario and exporters.

60. For example, in May 1981, the federal government represented to smokers and cigarette manufacturers in published material that the relatively low tar to nicotine ratio of Canadian tobacco offered the manufacturers in Canada greater flexibility in producing light brand cigarettes, while still maintaining adequate nicotine and flavour to satisfy consumer demands.

61. Similarly, OMAF made specific recommendations to growers over the years with respect to the appropriate strains of tobacco for use in Ontario. In this regard, OMAF expressly acknowledged that "more emphasis has been placed on breeding varieties that produce more mature styles of leaf with a high alkaloid content and are adapted to Canadian environmental conditions".

62. Imperial denies that its purchase of tobacco grown from seeds designed and developed by Agriculture Canada, with the encouragement of the federal government and the Province, constitutes a Tobacco Related Wrong or could otherwise serve as a basis for liability.

63. Imperial denies that filters were "ineffective", and denies that smokers "fully compensate" for the presence of filters by taking deeper inhalations or by blocking holes. Imperial further denies that it made any representations contrary to its knowledge to the effect that filters made smoking safer.

64. Imperial denies that it misled the public – through marketing and advertising campaigns, or otherwise – by misrepresenting that "mild", "low tar" and/or "light" filter cigarettes were healthier than "regular" cigarettes.

65. Imperial has consistently attempted to develop a cigarette with less risks, both by way of long-term research and the implementation of changes to cigarette designs.

66. Some of these efforts, in conjunction with and at the prompting of Health Canada and Agriculture Canada, were aimed at reducing the standard tar deliveries in cigarettes, based on reports that it was the tar in tobacco smoke that most likely caused disease.

67. Among other means, reducing the tar levels in cigarette smoke was achieved through the addition of filter tips. Filters reduce the amount of tar in the smoke inhaled from a cigarette.

68. Imperial did not increase the risks of smoking by adding "ineffective filters" to its cigarettes. The use of filters has widely been accepted as reducing the risks associated with smoking. Changes to the designs of cigarettes (including the porosity of cigarette paper) have also allowed for the reduction of carbon monoxide yields. In 1982, the United States Surgeon General specifically concluded that the reduction of tar in the smoke inhaled from a cigarette attributable to filters lowers the risk of cancer of the lung and other diseases.

69. At all material times, the federal government independently arrived at the position that low tar cigarettes were less hazardous than high tar cigarettes. In particular, the federal government encouraged Imperial and the other members of the Canadian tobacco industry to manufacture low tar cigarettes and encouraged Imperial to market and to promote low tar cigarettes so as to persuade Canadian consumers to switch to such cigarettes.

70. Imperial made significant and consistent attempts to reduce the risks associated with smoking, including, *inter alia*:

(a) research regarding the use of tobacco substitutes;

(b) the use of dried ice expanded tobacco in an effort to reduce standard tar and nicotine deliveries;

(c) detailed investigations regarding the biological and chemical composition of tobacco smoke;

(d) research involving numerous long-term bioassays and short-term toxicity tests in order to measure the biological activity of existing and modified products;

(e) long-term efforts to develop generally lower biologically active cigarettes; and

(f) long-term efforts to identify and eliminate or reduce the amount of specific undesirable elements in tobacco smoke.

71. Imperial has undertaken for many decades a multi-faceted and multi-functional project which represents a substantial effort in the development of a consumer tobacco product that could reduce the risks associated with smoking. Many millions of dollars have been expended by Imperial in furtherance of this project.

72. At no time did Imperial know of, or ought to have been aware of, a reasonable, safer alternative design that could have been adopted in the manufacture of its products. Nor has the Province identified, or provided particulars of, what constitutes – or would at any given point in time have constituted – a safer cigarette.

73. At all material times, Imperial has demonstrated a constant commitment to reduce the risks and dangers associated with its products.

VI. IMPERIAL DID NOT BREACH ANY DUTY TO WARN

74. Imperial denies the allegations in paragraphs 63 to 70 of the Claim.

75. Imperial complied with all applicable common law, equitable and statutory duties, if any, at all material times.

76. For the reasons set out below, Imperial had no independent duty to inform of the risks as alleged by the Province.

77. Among other things, an examination of the duty to inform must take into account the state of the accepted scientific knowledge, as well as public awareness of the risks and dangers associated with smoking.

78. At all material times, persons in Ontario and the Province were aware, or should have been aware, of the risks associated with smoking or exposure to second-hand smoke based on then-current scientific knowledge and the public dissemination of information regarding risks, including the fact that it can be difficult to quit smoking. Notwithstanding this awareness, persons in Ontario who smoked Imperial's products voluntarily chose to smoke.

79. Although the Canadian public was aware of the material risks of smoking at all material times, Imperial voluntarily placed warnings on its packs as early as 1972. Notably, it did so in direct consultation with – and with the approval of – the federal government. These

warnings evolved over time pursuant to requests, directions and/or legislative mandates by the federal government.

80. The Province and the federal government voluntarily undertook and assumed a duty to persons in Ontario and to Imperial for the timeliness and content of information, advice and warnings regarding the risks associated with tobacco products.

81. At all material times, the federal government requested, mandated, directed or otherwise approved of the content of the warnings to be provided by Imperial to the public, and Imperial complied with any such requests, mandates, directions and requirements.

82. Prior to the early 1970s, the federal government's position was that warnings regarding the risks of smoking were unnecessary, given the public's overwhelming knowledge of same.

83. Nonetheless, in direct consultation with the Department of National Health and Welfare, Imperial and the other Canadian tobacco manufacturers agreed to voluntarily include a health warning on all of its products as of 1972 – and immediately thereafter, on all of its print advertising – which read as follows:

> WARNING: The Department of National Health and Welfare advises that danger to health increases with amount smoked

84. At that time, it was one of the few consumer products in all of Canada to include an express health warning on its packaging and advertising.

85. Effective January 1, 1976, as a result of consultations with and directions from the federal government, the warnings were amended to read as follows:

> WARNING: Health and Welfare Canada advises that danger to health increases with amount smoked – avoid inhaling

86. Further warnings provided by Imperial, in reliance on and at the direction and/or approval of the federal government, reiterated knowledge that at all material times had been in the public domain. Imperial denies that such warnings were "inadequate and ineffective".

87. The content of warnings was specifically legislated by the federal government from 1989 to 1995, and from 2000 forward.

88. Between January 1996 and December 2000, Imperial continued to comply with the previously legislated warnings (together with attributions to the federal government).

89. While the federal government approved of and/or directed that certain warnings appear on cigarette packages at all times since 1972, no warning regarding addiction was requested or mandated until 1994. In fact, Health Canada specifically rejected the application of the term "addiction" to tobacco products until 1989.

90. Consistent with all previous directions, policies and requirements of the federal government, Imperial complied with the federal government's standards in this regard.

91. Further, from 1989 to 1995, the *TPCA* expressly prohibited Imperial from including any messages on its packaging other than those specifically prescribed.

92. Imperial acted reasonably when complying with the requests, mandates, directions or legislation of the Province and the federal government.

93. In addition, Imperial – in consultation with and approval by the federal government – implemented "point-of-sale" ("POS") warnings as early as 1975. These POS warnings expanded over time, and were eventually codified by the federal government as part of its regulation of the sale of cigarettes in Canada. All of these warnings were seen and read by persons in Ontario, who nonetheless continued (and continue) to smoke for their own personal reasons.

94. Imperial denies that it in any way delayed or otherwise interfered with "more accurate government-mandated warnings". Nothing prevented the Province or the federal government at any time from providing different or additional warnings of the health risks or potential health risks of smoking or exposure to second-hand smoke, including the potential of habituation or addiction, which risks were fully known to the Province and federal government at all material times.

95. Imperial further denies that it engaged in any form of "collateral marketing … promotional [or] public relations activities to neutralize or negate the effectiveness of the stated

warnings". To the contrary, every Imperial advertisement since at least 1973 included an express health warning on its face, which again was at all times the subject of direct consultation with and/or direction by the federal government.

VII. IMPERIAL DID NOT MISREPRESENT RISKS AND DANGERS ASSOCIATED WITH SMOKING

(a) Imperial Did Not Make Any Misrepresentations as Alleged

96. Imperial denies the allegations in paragraphs 71-77 (inclusive of paragraphs 72.1 to 72.5, and 73.1 to 73.4) of the Claim. Imperial states that:

(a) there is no special relationship between Imperial and all insured persons in Ontario and, accordingly, Imperial has no duty of care "at large" to persons in Ontario;

(b) it did not falsely or negligently misrepresent any material fact to the Province or the public in Ontario or wrongfully suppress or conceal disclosure of the risks and dangers associated with smoking;

(c) there was no reliance (reasonable or otherwise) by persons in Ontario on any alleged misstatements pleaded by the Province in the Claim; and

(d) no damages or losses resulted from the alleged misrepresentations.

97. Beyond making cigarettes available for purchase, Imperial's actions played no role in determining why consumers begin to smoke or continue to smoke.

98. At no time did Imperial:

(a) fraudulently or negligently misrepresent its knowledge of the risks and dangers associated with smoking or second-hand smoke to persons in Ontario; or

(b) misinform persons in Ontario as to the harm of smoking or of exposure to cigarette smoke,

nor did Imperial engage in a misleading campaign to enhance its own credibility or diminish the credibility of health authorities and anti-smoking groups.

99. Imperial did not make any statements containing any wrongful denials or trivializations of the risks associated with smoking or exposure to smoke. If any person made such wrongful denials or engaged in such trivializations, Imperial denies that any such statements were heard or read by, or were relied upon or influenced the behaviour of all or any persons in Ontario, who, in each case, made their decision to start or stop smoking, or to switch brands, for their own personal reasons.

100. To the extent that Imperial engaged in any form of limited public discourse on the issue of smoking and disease causation, it did so in the context of a legitimate scientific debate that was neither created nor maintained by Imperial. Indeed, to this day the precise mechanism of smoking-related disease causation is unknown.

101. With respect to any statements at any point in time that smoking was not an addiction but rather a habit, such statements were consistent with the prevailing scientific definitions at the time. In 1969, 1986 and again in 1988, the federal government considered and rejected a warning on addiction. At those times, the federal government endorsed the view that smoking was properly to be considered a habit and not an addiction, and advised Imperial of that position.

102. Imperial denies that it wrongfully "denied any link" between smoking / exposure to smoke and disease (including addiction), but instead relied on and explained the inherent limitations of epidemiological studies in the determination of cause and effect.

103. In any event, Imperial denies that its involvement in any scientific debates affected the smoking behaviour of any person in Ontario or misled the Province itself.

(b) Imperial Did Not Suppress or Conceal Any Scientific or Medical Data

104. Further, at no time did Imperial "suppress scientific and medical data", which revealed the serious health risks of smoking and second-hand smoke or otherwise. Instead, Imperial directly and, through funding projects conducted by third parties, participated in the publication of a multitude of research studies on various topics, including:

(a) the components and chemistry of tobacco smoke;

(b) the structure and physical properties of tobacco;

(c) the determination of components in tobacco smoke;

(d) the effects of the addition of constituents to tobacco smoke;

(e) smoking behaviour and compensation, including the effects of nicotine enhanced cigarettes on human smoking parameters;

(f) the pharmacological effects of nicotine; and

(g) animal studies and the effect of exposing animals to smoke.

105. Imperial, together with other manufacturers in Canada, began in the 1950s to provide funds to the National Cancer Institute. Soon thereafter, the federal government sought out the co-operation of the industry on the smoking and health issue by specifically requesting the industry's collaboration on ways to eliminate or reduce the deleterious effects of smoking.

106. Such collaborations resulted in, among other things, the long-standing industry policy whereby the companies agreed to refrain from making health claims about their products.

(c) No Misrepresentations Re "Light" Cigarettes or Tar & Nicotine Deliveries

107. Imperial made no misrepresentations regarding filtered cigarettes or those labelled as "mild", "low tar" or "light", nor did it represent that the intake of tar and nicotine associated with smoking was less than actual yields obtained by individual smokers.

108. At no time in the marketing of its products did Imperial advise consumers or the Province that one product was safer than another, despite the federal government's own express promotion of lower delivery products as being a "safer" and "less hazardous" cigarette and a preferable alternative for smokers.

109. At no time did Imperial represent that light, mild or low tar cigarettes constituted "safer" or "less hazardous" cigarettes than cigarettes containing higher levels of tar or nicotine or that filtered cigarettes constituted "safer" cigarettes. At all material times, any such assertions were made by the federal government, who represented to persons in Ontario and the Province that brands containing standard deliveries with lower levels of tar and nicotine were "safer" or "less hazardous" and that these lower yield products were preferable to higher yield cigarettes.

110. For decades, the reduction of tar yields was the cornerstone of the federal government's "less hazardous cigarette" programme.

111. If representations regarding the benefits of such products – or regarding the import and meaning of machine derived deliveries – were communicated, such representations were made by the federal government and/or the Province.

112. In July 1957, the federal government requested that tobacco manufacturers in Canada embark on a program of selective reduction; namely, to support independent research directed to identifying the presence in cigarette smoke of compounds or groups of compounds that might be responsible, in whole or in part, for the potential risks of smoking, and developing means of removing or greatly reducing yields of the same.

113. In the mid-1960s, officials at Health Canada and Agriculture Canada explored ways to reduce "tar" in tobacco smoke. This approach reflected the conclusion of officials that a programme of "selective reduction" was unlikely to yield satisfactory results, and that a programme of general reduction of "tar" exposure might reduce the incidence of disease on a population basis.

114. Thereafter, the federal government requested and advised manufacturers in Canada on how they might research and design a cigarette that could reduce the potential health risks from smoking.

115. Beginning in the late 1960s and continuing for decades thereafter, it was considered by the federal government and the Province that smokers who choose not to quit smoking were better served by switching to lower standard delivery brands, and in particular, cigarettes with lower standard tar deliveries.

116. Standard tar and nicotine deliveries in cigarettes were first published by the federal government beginning in 1968.

117. The federal government's stated purpose in publishing these numbers was to provide this information to smokers as a comparative measure and to convince smokers to switch to lower yield cigarettes if they were going to continue to smoke.

118. Imperial cautioned the federal government and others about the publication of tar and nicotine numbers. Specifically, Imperial cautioned that because of the many different ways people smoke, including the frequency and intensity, it was possible that there might be little relation between published tar figures and the exposure of an individual smoker to any given cigarette.

119. Nonetheless, the federal government continued to release the standard tar and nicotine content of various Canadian cigarette brands, as it had since 1968. The federal government also persisted in calling upon tobacco companies to reduce tar deliveries and to print the tar and nicotine numbers on packages.

120. The use of descriptors such as "light" and "mild" provided information to smokers which allowed them to readily navigate the strength and taste spectrums of cigarettes. From the outset, such descriptors merely referred to the relative standard tar deliveries of cigarettes within a brand family and were understood by consumers as such.

121. Further and in any event, Imperial states that, based on the science known to date, lower standard delivery cigarettes may in fact reduce the health risks associated with smoking.

122. In accordance with the federal government's directives, beginning in 1975, Imperial began printing the machine derived average tar and nicotine numbers on some advertisements, with all advertisements and products bearing the numbers by 1976.

123. Average tar and nicotine yields of cigarettes, in accordance with government approved measurements, and at the direction of the federal government, appeared on all cigarette packages from 1976 until 2011.

124. The declared average deliveries were and are machine-derived deliveries, established under standard testing parameters. These standard deliveries were never intended to represent the yields that would actually be obtained by any particular smoker, as was acknowledged by the federal government in its statements to the public.

125. It is impossible to have a standardized testing regime that would produce yields actually obtained by all smokers, as smoking behaviour varies between individual smokers. Furthermore, each individual smoker smokes differently at different times.

126. The testing parameters initially used and mandated by the federal government were based in large measure on the studies and methods of the U.S. Federal Trade Commission.

127. The testing parameters were only slightly modified with the passage of the *TPCA* in 1988. At that time, the regime was changed by legislation to the "ISO Method" (a standard machine method for measuring deliveries approved by the International Organization for Standardization) and the federal government legislated the printing of certain machine-derived numbers on cigarette packages (including tar and nicotine).

128. In 2001, the federal government legislated a modification to the testing parameters again, under regulations to *The Tobacco Act*, requiring the use of both the ISO Method and a newly designed "intense method" in respect of certain smoke constituents (including tar and nicotine).

129. In 2011, after decades of requiring specific yields of certain smoke constituents to be printed on cigarette packages, the federal government, under regulations to *The Tobacco Act*, again changed the pack label requirements and now requires mandated toxic emissions statements without reference to yields.

130. Throughout the 1960s and for many decades thereafter, the federal government, and in particular Health Canada, continued to request and insist that the tobacco manufacturers in Canada reduce standard deliveries in their products.

131. Among other things, the federal government insisted that Imperial and other cigarette manufacturers attempt to reduce the "sales weighted average tar" content of cigarettes (or "SWAT" levels) in accordance with government targets. SWAT levels are a measurement of the average tar content of cigarettes as measured by the standard testing methods, taking into account the sales volumes of each of the manufacturer's brands. Imperial complied with these governmental directives.

132. To comply with the SWAT levels set by officials, cigarette manufacturers necessarily had to introduce, promote and sell brands with lower tar yields. At no time, however, did Imperial promote its brands on the basis that lower yield cigarettes (as measured by the standard testing methods) were "safer" or "less hazardous" than cigarettes containing higher deliveries.

133. The federal government also established sales weighted average nicotine targets and Imperial complied with these targets as well.

134. In complying with the federal government's requests, mandates and directions in this regard, Imperial acted reasonably in all the circumstances and committed no Tobacco Related Wrong in this regard or otherwise.

VIII. IMPERIAL DID NOT MARKET OR PROMOTE ITS CIGARETTES TO THOSE UNDER THE LEGAL AGE TO SMOKE

135. Imperial denies the allegations in paragraphs 78 to 85 of the Claim.

136. Imperial did not target "children and adolescents" in its advertising, promotional and marketing activities, for the purpose of inducing such children and adolescents to start or continue to smoke or otherwise.

137. At all times, Imperial took all reasonable measures to ensure that its marketing activities were addressed to consumers of legal purchasing age. In particular, the industry's Voluntary Codes – jointly agreed to and adopted by the Canadian cigarette manufacturers, and consented to by the federal government, with a view to supplementing the federal government's regulation of the Canadian industry – specifically prohibited any form of youth marketing. In addition, Imperial specifically tailored its marketing and focused its promotion on adult-oriented publications. Further, Imperial specifically limited its broadcast promotion as of 1964 to avoid periods of high media consumption by youth, and ceased all forms of broadcast product promotion as of 1972 (since which time Imperial has conducted no radio or television product promotion).

138. At all material times, the Province and the federal government had and undertook the obligation of informing children and adolescents within Ontario of the risks associated with the consumption of tobacco products. If such persons have not been informed of such risks, which is denied, the Province and the federal government failed to perform that obligation adequately, whether negligently or otherwise, and thereby caused or contributed to exposure.

139. Notably, at no point did Imperial sell cigarettes directly to consumers in Ontario. At all material times, the Province alone had the obligation to enforce all relevant statutes and regulations pertaining to the sale of tobacco products to under-aged smokers, as defined from

time to time by statutes or regulations. Any failure on the part of the Province to do so necessarily caused or contributed to exposure.

140. Notwithstanding the fact that Imperial and the other Canadian tobacco manufacturers were prohibited by law from advertising after 1988 (except for a brief period between December 1995 and April 1997), consumers over the last 3 decades – possibly including under-age consumers – have started or continued smoking for reasons that have nothing to do with the actions or omissions of Imperial.

IX. IMPERIAL DID NOT ENGAGE IN THE ALLEGED CONSPIRACY, CONCERT OF ACTION OR COMMON DESIGN

141. Imperial denies the allegations in paragraphs 86 to 141 of the Claim.

142. There was no agreement between Imperial and any of the other defendants to commit the Tobacco Related Wrongs alleged in the Claim, or to otherwise engage in an unlawful conspiracy.

143. Further, there was no concert of action or common design, as alleged or at all, to carry out unlawful acts in Ontario.

144. Prior to February 2000, the relationship between Imasco, ITL and the pertinent B.A.T entity was one of providing appropriate information to and consultation with B.A.T., so that Imasco and ITL could receive the benefit of the advice and experience of B.A.T. It was acknowledged, however, that ultimate responsibility for decisions would be made by the management of Imasco or ITL, who at all relevant times exercised their own independent judgment with respect to operating decisions, programs and smoking-related issues.

145. With respect to the Canadian Tobacco Manufacturers' Council (the "CTMC"), Imperial was and remains a member of the CTMC, but denies that either the CTMC or its predecessor, the Ad Hoc Committee, was formed in order to maintain a united front on smoking and health issues or to provide a "means and method to continue the conspiracy, concert of action and common design" as alleged in, *inter alia,* paragraph 111 of the Claim.

146. The Ad Hoc Committee was established in 1963, at the federal government's request, to interface with government authorities at the federal government's 1963 National Conference on Smoking and Health. The Ad Hoc Committee continued to function until 1971.

147. In 1971, the "CTMC" – an unincorporated association – replaced the Ad Hoc Committee. The Defendant CTMC was eventually incorporated in 1982. The CTMC has been inactive in all material respects since June 2001.

148. At all times, the CTMC and its predecessor acted as an industry association, akin to other such associations in other Canadian industries, and was in no way a vehicle for unlawful conspiracy, concert of action or common design.

149. As the Province's Further Particulars expressly acknowledge, the federal government recognizes the CTMC as an entity whose mandate includes "cooperation with governments and others" on issues related to smoking and health, taxation, product standards, the exchange of statistical information and support for technical research, as well as liaising with the members of the industry on other "matters of common interest of a non-competitive nature".

150. Imperial on its own and through the CTMC engaged in a co-operative dialogue with the federal government on issues of smoking and health until the passage of the *TPCA*, when the federal government chose to legislate, *inter alia,* the various warnings to be placed on tobacco packaging.

151. Imperial did not, whether directly or through its participation in the CTMC, engage in any concerted strategies to:

(a) misrepresent the risks of smoking or exposure to second-hand smoke to the Canadian public;

(b) disseminate false and misleading information regarding the risks of smoking or exposure to second-hand smoke;

(c) wrongfully refuse to admit that smoking causes disease;

(d) wrongfully suppress or conceal research regarding the risks of smoking;

(e) wrongfully participate in public relations programs on smoking or health issues; or

(f) wrongfully lobby governments in order to delay and minimize government initiatives with respect to smoking and health.

152. At all material times, the Province and persons in Ontario were aware of the harmful properties of cigarettes, as well as the fact that it can be difficult to quit.

153. Imperial denies that it agreed to adopt common policies or a common design, as alleged or at all, to carry out unlawful acts in Ontario. In the alternative:

(a) if there was any conspiracy or concert of action as alleged in the Claim, which is denied, then the Province has no claim in respect thereof because it agreed to and adopted the design of what it alleges is a conspiracy or concert of action, such that the Province became a party thereto and carried out acts in Ontario in furtherance thereof; and/or

(b) if the acts alleged in the Claim are found to be unlawful, which is denied, and are deemed to constitute a conspiracy or unlawful concert of action, which is denied, these acts were also done by the Province itself. In particular, the Province agreed and continued to agree and condone the design, manufacture, marketing, distribution and sale of tobacco.

X. IMPERIAL DID NOT BREACH ANY OTHER ALLEGED COMMON LAW, EQUITABLE AND STATUTORY DUTIES

154. Imperial denies the allegations in paragraphs 142 to 147 of the Claim, for the reasons particularized above. Imperial states that paragraphs 144 to 146 of the Claim disclose no cause of action and are frivolous and vexatious.

XI. RESPONSES TO CLAIM AS A WHOLE

155. Imperial denies that it has breached any common law, equitable or statutory duties, as alleged in the Claim or at all. Specifically, given the widespread knowledge of consumers of the risks believed to be associated with the use of tobacco products, Imperial did

not and does not manufacture a dangerous or defective product. Imperial did not and does not, as alleged or at all:

(a) engage in any misrepresentations;

(b) fail to warn of the risks and dangers of smoking or exposure to second-hand smoke;

(c) unlawfully promote cigarettes to children or adolescents;

(d) manufacture or design a defective or dangerous product;

(e) contravene any other common law, equitable or statutory duty or obligation; or

(f) take part in any conspiracy or concert of action.

156. Imperial denies that persons have started or continued to smoke, or suffered any tobacco-related disease or risk of tobacco-related disease, as a consequence of any alleged breach of duty by Imperial.

157. At all material times, Imperial has cooperated with governments in Canada in furtherance of their properly exercised constitutional authority to regulate the tobacco industry. In particular, Imperial has been guided by, encouraged by and participated with the governments and public health agencies in product development initiatives, including the development of raw materials, the reduction of tar and nicotine content in cigarette smoke, the design and manufacture of low tar cigarettes, as well as advertising and promotional initiatives in pursuance of past government health objectives to encourage smokers to switch to lower tar products.

158. At all material times, the manufacture, sale, advertising and promotion of tobacco products in Ontario and throughout Canada has been supervised, regulated and controlled by the Province and the federal government. The Province encouraged or participated in such supervision, regulation and control in Ontario either directly or indirectly through agreements, express or implied, with the federal government. Together the said governments have defined and delineated the duties of Imperial and other tobacco manufacturers throughout Canada, including Ontario, and gave advice, recommendations, directions and suggestions in relation to, *inter alia*:

(a) the nature and scope of research into the properties of cigarettes to be undertaken by Imperial and other Canadian tobacco manufacturers;

(b) whether warnings of the alleged health risks and properties of cigarettes, including their alleged addictive character, should be provided to consumers;

(c) the content and placement of any such warnings to be provided;

(d) product modifications including the development, manufacture, promotion, distribution and sale of cigarettes containing lower amounts of tar and nicotine as measured by standard smoking machines;

(e) communications by Imperial and other manufacturers in Canada with consumers about the properties of cigarettes including their alleged health effects, allegedly addictive character and their tar and nicotine content when measured by standard smoking machines; and

(f) the acceptability of the types of advertising and other forms of promotion used by Imperial and other manufacturers in Canada to promote the sale of their products.

159. At all material times, Imperial reasonably complied with the standards, regulations, directives, recommendations, suggestions and advice of the said governments and thereby discharged its duties and standards in its dealings with consumers or potential consumers.

160. By complying with the various standards, regulations, directives, recommendations, suggestions and advice of the said governments, Imperial acted reasonably in all the circumstances and committed no Tobacco Related Wrongs as alleged in the Claim or at all.

161. At various material times, the said governments made representations to Imperial which the governments knew or ought to have known would be relied upon by Imperial including representations relating to:

(a) the prevalence of public awareness of the health risks of smoking, including the allegedly addictive properties of cigarettes;

(b) whether warnings of the health risks of smoking, including the allegedly addictive properties of cigarettes, were necessary or effective to inform consumers of those risks or properties;

(c) whether warnings of the health risks of smoking, including the allegedly addictive properties of cigarettes, would be effective to persuade consumers not to start or to stop smoking;

(d) the form and placement of warnings on packages and other materials;

(e) the health benefits to consumers of smoking cigarettes containing lower levels of tar and nicotine as measured by standard smoking machines;

(f) whether tar and nicotine measuring standards provided accurate information to consumers on which they could make informed smoking decisions having regard to the alleged health effects of smoking and the allegedly addictive properties of cigarettes;

(g) whether altering the tar/nicotine ratio in cigarettes would have beneficial public health effects; and

(h) the types of advertising and other forms of promotion used by Imperial and other manufacturers in Canada to promote the sale of their products.

162. Imperial relied on these representations, *inter alia*, and thereby complied with the standards, regulations, directives, recommendations, suggestions, advice and representations of the said governments and committed no Tobacco-Related Wrongs as alleged in the Claim or at all.

XII. THE PROVINCE HAS SUFFERED NO DAMAGE

163. In answer to the entire Claim, Imperial says that the Province has not suffered any damages as a result of any Tobacco Related Wrong committed by Imperial.

164. If Imperial has breached any duty to insured persons, as alleged or at all, which is denied, no such breach has been the proximate cause of any tobacco-related disease or cost of health care expenditures or benefits as alleged or at all.

165. If the Province has incurred the cost of health care expenditures or benefits as alleged or at all, which is denied, then the proximate cause of the Province incurring such costs is one or more of the following:

(a) the requirements of the statutes providing for health care in the province of Ontario, namely *The Health Insurance Act*, R.S.O. 1990, c. H.6, *The Health Protection and Promotion Act,* R.S.O. 1990, c. H.7 and *The Public Hospitals Act*, R.S.O. 1990, c. P.40 (*inter alia*), as well as any predecessor statutes;

(b) the conduct and acts or omissions of the federal government and the Province;

(c) the conduct and acts or omissions of individual insured persons;

(d) disease or risk of disease in individual insured persons unrelated to smoking cigarettes; and

(e) the Province establishing a pre-determined budget for the provision of health care services that is the product of decisions by the Province based upon, *inter alia*, political expediency, policy considerations and the ability to finance.

166. If the Province has incurred the cost of health care expenditures or benefits as alleged or at all, which is denied, then such costs have not been or will not be increased by the consumption of tobacco products by insured persons.

167. If the Province has incurred health care expenditures or benefits as alleged or at all, which is denied, any costs in providing health care services to insured persons who have suffered tobacco-related disease are exceeded by the tax revenue and fees received from the regulation and sale of tobacco products in Ontario and elsewhere, such that no cost of health care expenditures or benefits is incurred by the Province in respect of such individuals.

168. If the Province has incurred health care expenditures or benefits as alleged or at all, which is denied, the Province has not and does not incur any net cost in providing health care services to insured persons who have suffered tobacco-related disease. In particular, and without limiting the generality of the foregoing, the Province does not incur the cost of health care expenditures or benefits which are paid for by the government of Canada, by means of transfer payments, conditional grants, shared-cost programmes or otherwise, nor does the Province incur

the cost of health care expenditures or benefits for which it is reimbursed by any third party, including, *inter alia*, other governments or government agencies, private insurers or individuals.

XIII. CAUSATION

169. Imperial admits that smoking causes or contributes to certain diseases in some smokers. These diseases are complex and may be caused or contributed to by many different factors, including, *inter alia*, genetics, stress, excess weight, alcohol, environmental factors and other consumer products.

170. If Imperial breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to any tobacco-related disease in any insured person or any increased risk of tobacco-related disease in any insured person.

XIV. DEFENCES ARISING OUT OF THE PROVINCE'S CONDUCT AND KNOWLEDGE

171. If the Province has incurred or will incur the cost of health care expenditures or benefits that have been or will be provided to insured persons who have suffered tobacco-related disease or the risk of tobacco-related disease, as alleged or at all, which is denied, Imperial says that such costs were caused, and the Province's claim to recover such costs is subject to complete defences, by reason of the Province's own conduct and knowledge, or by the conduct of the federal government, including:

(a) the Province's own knowledge of health risks believed to be associated with the consumption of tobacco products;

(b) the Province's promotion, licensing and regulation of the production, manufacture and sale of tobacco products, including its failure to enforce or implement such regulation to the extent constitutionally permissible;

(c) the Province's undertaking obligations to pay the cost of health care benefits allegedly caused or contributed to by exposure to tobacco products;

(d) the Province's establishment of policies and practices, including health care expenditures and taxation policy and practices, with knowledge of the alleged risks and costs of exposure to tobacco products;

(e) the Province's failure to take any steps prior to commencement of this action to attempt to recover the alleged cost of health care benefits by subrogation;

(f) the Province's failure to enforce laws prohibiting the sale to and use of tobacco products by under-aged smokers as defined by law from time to time;

(g) the Province's taxation of tobacco products in excess of the cost (if any) of health care benefits;

(h) the Province's own breaches of its duty or duties to insured persons; and

(i) the Province's course of conduct consisting of legislative and regulatory actions, representations, omissions and voluntary actions which the Province intended, knew, or ought to have known would lead Imperial to believe that its conduct in Ontario was not in breach of any laws and that its conduct was not actionable. In reliance on that course of conduct, Imperial has continued to allow its tobacco products to be sold and consumed in Ontario, in compliance with applicable legislation and regulations and subject to the applicable fees and taxes.

172. Imperial further states that:

(a) at all material times, the sale, advertising, promotion and consumption of tobacco products has been legal in Ontario, subject to certain exceptions and restrictions, all of which have been fully complied with by Imperial;

(b) at all material times since 1950, the Province, through its ministers, ministries, departments, servants and agents, has known as much regarding any risks believed to be associated with smoking or exposure to second-hand smoke as Imperial;

(c) despite its knowledge of risks believed to be associated with the consumption of tobacco products, the Province continued to promote the use of tobacco grown in Ontario, and to license and regulate the production, manufacturing, advertising, promotion and sale of tobacco products in Ontario and to impose heavy taxation upon, *inter alia*, manufacturers, distributors and consumers of tobacco products;

(d) the Province has benefited from the taxes imposed on and in relation to the sale of tobacco products in Ontario, which amounts are in excess of the cost (if any) of health care benefits provided by the Province to insured persons in connection with tobacco-related disease or the risk of tobacco-related disease;

(e) despite its knowledge of risks believed to be associated with the consumption of tobacco products, the Province took no steps to restrict or limit the access to, sale of, and exposure to tobacco products, save for restrictions on the sale of tobacco to persons below a prescribed age and in that case took no reasonable steps to enforce the law; and

(f) despite its knowledge of risks believed to be associated with the consumption of tobacco products, the Province undertook the obligation of paying for the costs of health care benefits, including such costs it alleges are caused or contributed to by the consumption of tobacco products, and set its taxation and health care policies accordingly. Imperial pleads and relies on *The Tobacco Tax Act*, R.S.O. 1990 c. T.10 and its predecessor statutes.

173. The Province has been aware of health risks believed to be associated with exposure to tobacco. Accordingly, the Province voluntarily assumed such risks, if any and whatever their extent, when it incurred and continues to incur the alleged cost of health care benefits or expenditures that have been provided and will be provided to persons who are or have been exposed to tobacco products, and the Province was the proximate cause of any such exposure.

174. If the Province has incurred the cost of health care benefits or expenditures as alleged or at all, which is denied, then such costs were caused or contributed to, in whole or in part, by the Province's own acts or omissions as pleaded herein, and not any act or omission of Imperial. Imperial pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1 (the "*Negligence Act*").

175. The Province is barred from recovering any damages or costs it has suffered, the existence of which are denied, as any damages or costs flowed from its participation in such

breaches of duty as set out herein. Imperial relies on the doctrines of *ex turpi causa non oritur actio* and *in pari delicto potior est conditio defendentis*.

XV. DEFENCES ARISING OUT OF INDIVIDUAL CONDUCT

176. In answer to the whole of the Claim, if the Province has incurred or will incur the cost of health care expenditures or benefits that have been or will be provided to insured persons alleged to have suffered tobacco-related disease or the risk of tobacco-related disease, which is denied, such costs were caused, and the Province's claim to recover such costs is subject to complete defences, by reason of the conduct of individual insured persons, including their voluntary decision to commence or continue smoking with knowledge of risks believed to be associated with the consumption of tobacco products. Accordingly, no common law, equitable or statutory duty or obligation was breached by Imperial in respect of any persons in Ontario who have been exposed or might become exposed to Imperial's products.

177. All of the insured persons who consume or have consumed tobacco products were aware or had been warned of risks believed to be associated with the consumption of tobacco products.

178. Such knowledge or warnings of risks believed to be associated with tobacco products have been received by each insured person by various means, including, without limitation, one or more of the following:

(a) warnings included on the packaging of tobacco products, on promotional materials and at the point of sale, as voluntarily communicated by Imperial and as required from time to time by applicable legislation and regulations;

(b) discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;

(c) education programs including courses, seminars and lectures and educational literature and other media;

(d) oral and written warnings from physicians or other medical practitioners;

(e) oral and written warnings from family members, friends and other acquaintances; and

(f) the common general understandings and historical beliefs about risks to health associated with smoking.

179. All of the insured persons who consume or have consumed tobacco products knew or have been warned of risks believed to be associated with the consumption of tobacco products.

180. Each of those insured persons who commenced or continued to consume tobacco products manufactured by Imperial did so with knowledge of risks believed to be associated with the consumption of tobacco products, and each such insured person voluntarily consented to accept such risks. Imperial denies that any insured persons began, continued, or were unable to cease smoking by reason of any the alleged breaches of duty of Imperial (which breaches are denied) or that such breaches of duty were the cause, proximate or otherwise, of any alleged tobacco-related disease or cost of health care benefits or expenditures.

181. Rather, the cause of any tobacco-related disease or cost of health care expenditures or benefits in respect of such insured persons was one or more of:

(a) individual choices and decisions of the smoker;

(b) requests, mandates and directions from the Province and the federal government;

(c) other risk factors for certain diseases, including, *inter alia*, genetics, stress, excess weight, alcohol, environmental factors and other consumer products; and

(d) the manufacture, packaging, promotion and sale of cigarettes by persons other than Imperial, including manufacturers located on reserve lands (as defined in the *Indian Act*, R.S.C., 1985, c. I-5), whose cigarettes are manufactured, packaged, promoted and sold to persons in Ontario in breach of duties owed to them.

182. At all material times, individual insured persons were aware of health risks believed to be associated with exposure to tobacco. Accordingly, such persons voluntarily

assume such risks, if any and whatever their extent, when they decide to commence using and to continue to use tobacco products.

183. If the Province has incurred the costs of health care benefits or expenditures as alleged or at all, which is denied, then such costs were caused by the acts or omissions of individual insured persons and not any act or omission of Imperial. Imperial pleads and relies upon the provisions of the *Negligence Act*.

184. By reason of the facts set out herein, specifically the knowledge and conduct of the insured persons and the Province causing prejudice to Imperial, the Province is barred at law and in equity from advancing the claims made in the Claim against Imperial.

XVI. LIMITATIONS

185. Imperial pleads the provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24, both in respect of the Province's Claim and in respect of the health care costs of those persons on which the Province's Claim is alleged to be based and calculated.

186. By reason of the facts set out herein and the knowledge, conduct and delay of the Province and the prejudice thereby caused to Imperial, the Province is also barred in law and in equity from advancing the claims made in the Claim against Imperial. Imperial relies on, *inter alia*, the doctrines of laches, acquiescence and waiver.

XVII. MITIGATION

187. In the alternative, and in further answer to the whole of the Claim, if the Province has incurred the cost of health care expenditures or benefits, as alleged or at all, resulting from tobacco-related disease or the risk of tobacco-related disease, both the Province and individual insured persons have failed to act reasonably to reduce such costs.

188. Imperial denies the Province's claim and asks this Honourable Court to dismiss the action, with costs.

April 29, 2016

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and IMPERIAL TOBACCO CANADA LIMITED, ET AL.

Court File No: CV-09-387984

Plaintiff

Defendants

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF DEFENCE OF IMPERIAL TOBACCO CANADA LIMITED

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TAB 11

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

– and –

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

Defendants

STATEMENT OF DEFENCE OF JTI-MACDONALD CORP.

Introduction

1. In this Statement of Defence, the Amended Fresh As Amended Statement of Claim is referred to as the "Statement of Claim" for ease of reference.

2. The Defendant JTI-Macdonald Corp. ("JTIM") was first incorporated on or about September 12, 1978 as RJR-Macdonald Inc. ("RJRMI"), a subsidiary of R.J. Reynolds Tobacco Company of New Jersey ("RJRT NJ"). JTIM denies the allegations contained in paragraphs 30-32 of the Statement of Claim as pleaded. JTIM relies upon the statements of its corporate history as further contained herein. JTIM specifically denies that Macdonald Tobacco Inc. ("MTI") was a wholly owned subsidiary of the Defendant R.J. Reynolds Tobacco Company ("RJRT"), a

company formed in 2004 pursuant to the laws of North Carolina. JTIM further specifically denies that MTI is a predecessor in interest of JTIM and denies that JTIM is responsible at law for the actions and conduct of MTI. JTIM further denies that it has promoted or sold in Ontario cigarettes manufactured by RJRT.

3. JTIM has no knowledge of the allegations contained in paragraphs 7-12, 16-19, 23-29, 34-39, 44-45, 47, 72.2, 72.3, 72.5, 73.1, 73.2, 73.4, 117-127 and 135-140 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

4. Except as otherwise expressly admitted herein, JTIM denies the balance of the allegations in the Statement of Claim and puts the Plaintiff to the strict proof thereof. Without limiting the generality of the foregoing, JTIM specifically denies that it has breached any common law, equitable or statutory duty or obligation owed to persons in Ontario as alleged in the Statement of Claim. JTIM denies that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes or to continue to smoke cigarettes. At all material times, JTIM manufactured, distributed and promoted a legal product in material compliance with applicable legal requirements in Ontario.

5. JTIM specifically denies the allegations of negligent design and manufacture, misrepresentation, failure to warn of risks, unlawful promotion of cigarettes to children and adolescents and any and all other alleged breaches of common law, equitable or statutory duties and obligations alleged in the Statement of Claim.

6. JTIM specifically denies that it or MTI acted in a manner that wrongfully caused any person in Ontario to smoke and/or to continue to smoke cigarettes.

7. With respect to paragraphs 56, 63, 71, 78, 142 and 143 of the Statement of Claim it is for the Court to determine whether the duty or duties of care alleged therein existed at the time of the alleged breach of the same and, if so, the appropriate standards(s) of care.

JTIM's Corporate History

8. W.C. Macdonald Inc. was incorporated in 1930. W.C. Macdonald Inc. changed its name to MTI in 1957. In 1974, RJRT NJ acquired all of the shares of MTI.

9. JTIM was incorporated on or about September 12, 1978 as RJRMI, a subsidiary of RJRT NJ. On or about September 19, 1978, RJRMI acquired all of the shares of MTI. On or about October 26, 1978, RJRMI acquired all of the assets of MTI and agreed pursuant to a General Conveyancing Agreement (the "Agreement") to assume and discharge the liabilities and obligations of MTI then owing. Such obligations and liabilities do not include any obligations or liabilities allegedly owing under the *Tobacco Damages and Health Care Costs Recovery Act*, *2009,* S.O. 2009, c.13-(the "Act"). The Agreement stated that nothing in it, express or implied, was intended to confer upon any other person any rights or remedies under or by reason of its operation. Following the Agreement, RJRMI then elected to be continued as a Canadian business corporation. In July 1979, MTI applied to the Minister of Consumer Affairs, Cooperatives and Financial Institutions to surrender its charter and be dissolved pursuant to Quebec law. MTI was dissolved and ceased to exist on or about February 15, 1983.

10. In 1999, RJRMI ceased to have any corporate relationship with RJRT NJ or R.J. Reynolds Tobacco International, Inc. (the "RJR Companies"). As a result of a series of transactions in or around May 1999, RJRMI continued as JTIM.

11. JTIM denies that MTI is a predecessor of JTIM. JTIM denies that it is or can be liable to the Plaintiff under the Act as a result of any act or omission that is alleged to have occurred before October 26, 1978, or as a result of any alleged act or omission by MTI. JTIM was not a "manufacturer" within the meaning of the Act before October 26, 1978.

12. On April 5, 2012, JTIM was converted from an unlimited liability company governed by the laws of Nova Scotia to a "company limited by shares" under the laws of Nova Scotia and was continued as a corporation under the *Canada Business Corporations Act*.

13. In the alternative, and entirely without limiting the meaning and effect of paragraph 11 hereof, JTIM has, to the extent possible and out of an abundance of caution, responded to the allegations contained in the Statement of Claim in so far as they relate to MTI.

14. JTIM admits that during the period from its incorporation on September 12, 1978 to 1999, JTIM was a company related to the RJR Companies. However, at all material times, JTIM was a separate legal entity responsible for manufacturing, distributing and promoting its products in Canada. JTIM acknowledges that information and communications passed between JTIM and the RJR Companies from time to time, and previously between MTI and the RJR Companies, and that it, and previously MTI, participated in various meetings and conferences with the RJR

Companies from time to time, in the normal course of intra group business, including matters concerning smoking and health issues.

15. JTIM denies that any information, communication, meeting or conference with the RJR Companies was for any unlawful purpose and denies that any unlawful acts were committed as a result of any such information or communications. Such meetings and exchanges of information did not render its actions or inactions those of the RJR Companies nor does it mean that the actions or inactions of JTIM, RJRMI, or MTI were controlled or directed by the RJR Companies.

16. JTIM denies that it is liable for any of the alleged tobacco related wrongs, including for any alleged wrongs of the RJR Companies, on the alleged basis of joint or vicarious liability, agency, conspiracy, or acting in concert.

The Act

17. JTIM admits that this action is brought pursuant to the provisions of the Act.

18. JTIM further admits that the Province of Ontario (the "Province") does not bring this action on the basis of a subrogated claim but brings this action in its own right on an aggregate basis pursuant to subsections 2(1), 2(2) and 2(4)(b) of the Act.

19. JTIM adopts the definitions contained in the Act and in paragraph 5 of the Statement of Claim for the purposes of this Statement of Defence.

20. The Act creates a civil cause of action for the Province. However, except to the extent expressly provided for in the Act, the Act does not alter the substantive, evidentiary, or procedural laws of Ontario or Canada.

The Regulatory Framework

21. The manufacturing and promotion of cigarettes in Canada are, and have been at all material times, highly regulated activities. Both the Federal Government and the Province have regulated the tobacco industry in Ontario at all material times. Further, both the Federal Government and the Province have at all material times played a significant operational role in the tobacco industry in Ontario, as described in paragraphs 86 to 93 below.

22. At all material times, it has been legal to manufacture, distribute, promote, sell and consume cigarettes in Canada, including in Ontario, subject to legislative and regulatory restrictions, which have changed over time.

23. JTIM is a Canadian manufacturer which has manufactured, distributed and promoted cigarettes in Canada, including in Ontario, since October, 1978. At all material times, JTIM and (so far as JTIM is aware) MTI and their cigarettes have complied in all material respects with the applicable laws, regulations and directions of the Federal Government and the Province.

24. The regulatory framework, requirements and standards prevailing from time to time and the acts and omissions of both the Province and the Federal Government, including their acts and omissions regarding the provision of relevant information to the public, were and are important

in assessing the standard(s) of care owed by the manufacturers, including MTI and JTIM, to persons in Ontario and the reasonableness and lawfulness of the conduct of manufacturers, including MTI and JTIM, at all material times.

25. In particular, at all material times, JTIM and (so far as JTIM is aware) MTI acted in reliance on the advice, recommendations and directions (or lack thereof) given by the Federal Government and the Province from time to time.

Smoking and Disease

26. JTIM admits that there are serious potential health risks associated with smoking cigarettes and that epidemiological studies have shown statistical associations between smoking and certain diseases. The strength of the epidemiological or statistical associations between smoking and various diseases vary widely.

27. All of the diseases associated with smoking are multi-factorial. Each such disease has various risk factors associated with it, which may include genetic, environmental, occupational, dietary and lifestyle factors. All such diseases occur in non-smokers as well as in smokers. While, for example, cardiovascular disease has been associated with smoking, it is also the leading cause of death and disability among non-smokers. Similarly, not all smokers develop diseases which have been associated with smoking.

28. The association between smoking and a particular disease may be related to the intensity, duration and history of smoking. In addition, the time period between smoking (or exposure to

any other risk factor) and the development of diseases associated with smoking cigarettes may vary between individuals, populations and for different specific diseases.

29. The disease descriptions contained at paragraph 51 of the Statement of Claim are general or broad categories of disease, within which are many types or subdivisions of specific disease with differing associations to their own various risk factors. JTIM puts the Plaintiff to the strict proof of the fact that smoking can cause or contribute to each specific disease in respect of which the Plaintiff seeks to recover the cost of health care benefits. To the extent that allegations concerning exposure to second hand smoke or environmental tobacco smoke ("ETS") form part of the Statement of Claim, JTIM puts the Plaintiff to the strict proof of the fact that ETS can cause or contribute to each specific disease in respect of which the Plaintiff seeks to recover the cost of health care benefits.

Awareness of the Risks of Smoking

30. In response to the allegations in paragraphs 48-55 of the Statement of Claim, JTIM says that at all material times, persons in Ontario have been aware of the serious potential health risks associated with smoking, and of the fact that it may be difficult to stop smoking.

31. At all material times, the Federal Government and the Province have been aware of the serious potential health risks associated with smoking, and of the fact that it may be difficult to stop smoking. The actions of, and information provided by, the Federal Government, the Province and the public health community from time to time (in the context of education programs and otherwise) have reinforced the awareness of persons in Ontario with respect to

smoking cigarettes, and the potential risks thereof, and have established the reasonable expectations of persons in Ontario with respect to the same.

32. At all material times, JTIM and (so far as JTIM is aware) MTI had no materially greater awareness of the potential health risks associated with smoking, and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the Federal Government, the Province and/or the public health community. MTI and JTIM's conduct in manufacturing, distributing and promoting a legal product must be assessed in the context of the awareness existing at the time of persons in Ontario, the Federal Government, the Province and/or the public health community.

33. On the basis of the above, among other reasons, JTIM denies that cigarettes manufactured and promoted by JTIM or (so far as JTIM is aware) MTI have at any material time posed an unreasonable risk of harm to consumers, including persons in Ontario.

Why People Smoke

34. Despite their awareness of the serious potential health risks associated with smoking, and of the fact that it may be difficult to stop smoking, persons in Ontario have voluntarily elected to smoke and to continue to smoke. Smoking initiation and continuation are not the result of a lack of information or awareness or a lack of understanding of the potential risks.

35. It is a common and normal aspect of human behaviour that people consciously and voluntarily elect to engage in specific behaviours which carry an element of risk. People

frequently choose to engage in an activity with a short term utility, despite their knowledge that doing so may potentially lead to a detrimental result in the longer term.

36. People smoke for many reasons. These reasons for smoking differ from individual to individual, and from time to time. While the presence of nicotine in tobacco smoke may be an important factor in why some people smoke, it is not sufficient to account for smoking behaviour. Neither nicotine nor any other feature of smoking impairs smokers' decision-making or judgment.

37. The decision to begin or to continue smoking is one made by individuals, based on their values, circumstances, experiences and motivations at the time, and is one for which they remain responsible, given their awareness and understanding of the material risks. Smoking does not affect smokers' understanding or appreciation of the potential health risks of smoking or their ability to make judgments and decisions, including the decision to stop smoking and to implement that decision successfully.

38. At various times, different terms have been used to describe the difficulty in stopping smoking, including "habituation", "dependence" and "addiction". JTIM accepts that smoking is addictive, in the sense that the term is commonly used today. Regardless of what term is used, smokers retain the capacity to quit. Millions of people have successfully quit smoking, the vast majority without medical help.

Alleged Breach of Duty – Design and Manufacture

39. JTIM and (so far as JTIM is aware) MTI have complied in all material respects with all common law, equitable and statutory duties and obligations, as they existed from time to time, owed to persons in Ontario. JTIM specifically denies each and every allegation set forth in paragraphs 56-62 of the Statement of Claim. Any alleged breach of duty must be assessed in the context of the circumstances, both general and specific, existing at the time.

40. JTIM denies that it was at any material time possible to design and manufacture cigarettes, acceptable to consumers, which represented a less harmful feasible alternative to the cigarettes manufactured, distributed and promoted by MTI and JTIM, to the extent that the Plaintiff shows that cigarettes manufactured and promoted by either were offered for sale in Ontario. JTIM puts the Plaintiff to the strict proof of what would constitute a "reasonably safe product" and of what feasible measures could have been taken to "eliminate, minimize, or reduce the risks of addiction and disease from smoking cigarettes manufactured by them" as alleged in paragraphs 56 and 57 of the Statement of Claim.

41. JTIM denies that the cigarettes manufactured and promoted by it or (so far as JTIM is aware) MTI were negligently designed or manufactured at any material time. JTIM used reasonable efforts to develop cigarettes that might reduce the potential risks associated with smoking, including by participating in Federal Government initiatives and by working with the RJR Companies in this regard from time to time.

42. The standard of care with respect to the design and manufacture of cigarettes must be assessed in the context of the generally accepted standards and practices for designing and manufacturing cigarettes existing at the time of their manufacture, the legislative and regulatory framework governing cigarettes in effect at that time, and the awareness by the Federal Government, the Province, the public health community and persons in Ontario of the potential risks of smoking. At all material times, cigarettes manufactured, distributed and promoted by JTIM and (so far as JTIM is aware) MTI complied in all material respects with the then generally accepted standards and practices for cigarette design and manufacture and with all applicable legislative and regulatory standards of both the Federal Government and the Province.

43. JTIM notes, in this regard, that, from the late 1960s, the Federal Government (by means of its Less Hazardous Cigarette Programme and otherwise) undertook a leadership role in relation to the design and manufacture of potentially less harmful cigarettes, among other things, by developing varieties of tobacco containing elevated levels of nicotine, for use by the manufacturers in their products, and by directing or requesting the manufacturers to develop, manufacture, distribute and promote cigarettes with lower machine yields of tar and nicotine (lowered tar and nicotine, or "LTN" products). JTIM and (so far as JTIM is aware) MTI cooperated with the Federal Government in respect of such initiatives and participated in the same.

44. With respect to the allegations at paragraph 61 of the Statement of Claim, JTIM denies that it marketed or advertised its brands in a manner designed to mislead the public and reinforce

any alleged perception that "certain filter cigarettes, including but not limited to "mild", "low tar" and "light" cigarettes were healthier for the public than "regular cigarettes". In this regard, JTIM refers to and relies on the statements in paragraph 54 of this Statement of Defence, and further says that all marketing was done in material compliance with all legislation, regulations, and directives of the Federal Government and the Province.

Alleged Breach of the Duty to Warn

45. JTIM and (so far as JTIM is aware) MTI have complied in all material respects with all common law, equitable and statutory duties and obligations, as they existed from time to time, owed to persons in Ontario. JTIM specifically denies each and every allegation set forth in paragraphs 63-70 of the Statement of Claim and puts the Plaintiff to the strict proof thereof. In particular, JTIM puts the Plaintiff to the strict proof of when it was known to persons in Ontario, or if different, to MTI or JTIM, that smoking may cause or contribute to each of the diseases in respect of which the Plaintiff seeks to recover the cost of health care benefits. Any alleged act or omission of MTI or JTIM must be assessed in the context of the circumstances, both general and specific, existing at the time.

46. At all material times, the actions of JTIM and (so far as JTIM is aware) MTI with respect to the information provided to consumers concerning the risks of smoking were lawful and reasonable. These actions must be considered in their appropriate scientific and historical context, including: the state of scientific knowledge, from time to time, concerning the potential risks of smoking, and in particular the genuine and protracted debate within the scientific

community as to whether epidemiological associations could be said to amount to proof of disease causation; the public health community's changing characterization of smoking as involving "habituation", "dependence" or "addiction"; and the awareness at all material times of governments, the public health community and persons in Ontario of both the potential health risks of smoking and of the difficulty in quitting.

47. The legislative and regulatory framework, requirements and standards relating to warnings on cigarette packaging and permitted advertising are likewise important considerations in assessing the reasonableness of the actions of the manufacturers, including JTIM and MTI, with respect to such warnings. In this regard, and in relation to the allegation that the Defendants failed to provide any warning prior to 1972, JTIM notes that it was the view of the Federal Government during this period that public awareness of the potential risks of smoking was essentially universal and that no such warning was required. When, in 1972, the Federal Government changed its position, and requested the manufacturers, including MTI, to place a warning on cigarette packaging, MTI did so.

48. Since 1972, the Federal Government has directed or approved the language, format and content of warnings. Every package of cigarettes manufactured and distributed in Canada, including Ontario, by JTIM since its incorporation in 1978 (and, so far as JTIM is aware, by MTI between 1972 and 1978) has displayed warnings directed and/or approved by the Federal Government. From 1976, all advertising in Ontario for cigarettes manufactured, distributed and promoted by JTIM (at times when such advertising was permitted by law) has carried warnings.

The warnings directed and/or approved by the Federal Government from time to time since 1972 were sufficient to reinforce the awareness of consumers, including consumers in Ontario, of the potential risks of smoking. JTIM acted reasonably in the circumstances.

49. More generally, JTIM and (so far as JTIM is aware) MTI have distributed and promoted their products in Ontario in material compliance with the legislation, regulations and directives established by the Federal Government and the Province in effect from time to time, as well as the Voluntary Codes from time to time.

Alleged Breach of Duty – Misrepresentation

50. JTIM and (so far as JTIM is aware) MTI have complied in all material respects with all common law, equitable and statutory duties and obligations, as they existed from time to time, owed to persons in Ontario. JTIM specifically denies each and every allegation set forth in paragraphs 71-72, 72.1, 72.4, 73, 73.3 and 74-77 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

51. JTIM expressly denies that it or (so far as JTIM is aware) MTI made any materially false, inaccurate or misleading representation or statement, which they knew or should have known to be false, inaccurate or misleading as assessed at the time such statement was made, or made any such statement with the intent to misrepresent to, or conceal from, persons in Ontario, the risks of smoking or exposure to second hand smoke as alleged. In the alternative, JTIM denies that persons in Ontario relied on any such representation or statement to their detriment.

52. JTIM further denies that it is responsible or liable for any statements or representations alleged to have been made by the RJR Companies.

53. Any statements made by JTIM or MTI must be assessed in the context of the circumstances, both general and specific, existing at the time of the particular statement. The acts and omissions of the Federal Government form an important part of this context. In this regard, in relation to the allegations contained in paragraph 72 of the Statement of Claim:

a) By the mid-1960's the international and Canadian scientific and public health consensus was that lowering the tar yield of tobacco smoke was likely to reduce the incidence of tobacco related disease among smokers. In this context, the Federal Government researched methods of reducing machine-measured tar yields, through its Less Hazardous Cigarette Programme, and gave directions, advice and/or made requests to the manufacturers to develop, manufacture, distribute and promote LTN products.

b) Commercially available cigarettes in Canada have for decades been manufactured using varieties of tobacco leaf developed by or for the Federal Government in the context of its "Less Hazardous Cigarette Programme". These varieties contain elevated levels of nicotine.

c) The protocol for standardized measurements of tar, nicotine and other smoke constituents used in Canada was selected and recommended by the Federal Government.

d) The same or a comparable testing protocol was then used by the Federal Government as the basis for its publication at various times of "League Tables", showing the machine measured standardized tar and nicotine yields of cigarette brands sold in Canada, and by the manufacturers, who in 1975, at the direction or request of the Federal Government, agreed to publish tar and nicotine yields on all cigarette packages and on advertising. This was consistent with the position of the Federal Government that LTN products were likely to be less harmful to health than cigarettes with higher yields.

e) In the late 1970s, the Federal Government agreed with the manufacturers to express targets for the reduction of the "Sales Weighted Average Tar" yield of cigarettes.

f) Beginning in the late 1960s, the Federal Government also began to encourage smokers who did not want to quit smoking to select LTN products, by the publication of League Tables and otherwise. As late as August 2003, Health Canada's website continued to advise smokers that LTN cigarettes had been shown to present a lower risk of certain diseases than other cigarettes.

g) At all material times, the Federal Government knew that such standardized results were not predictive of actual deliveries of tar and nicotine to any individual smoker, which might vary depending on individual smoking behaviour. The Federal Government advised smokers in Canada of this.

h) The Federal Government did all these things despite knowing that some smokers who switch from cigarettes with higher machine-measured yields of tar and nicotine to LTN products may alter their smoking behaviour so as to compensate for reductions in taste and nicotine, and may thereby not achieve a proportionate reduction in their actual intake of tar and nicotine.

54. JTIM further notes that in 1964 the manufacturers, including MTI, entered into a Cigarette Advertising Code (the "Voluntary Code"), by which they agreed, among other things, to avoid any claims in advertising that smoking a particular brand of cigarettes might promote physical health or was better for health than any other brand. The contents of the Voluntary Code were developed in consultation with and endorsed by the Federal Government and were subsequently amended from time to time, with the knowledge and approval of the Federal Government. JTIM and (so far as JTIM is aware) MTI complied with the Voluntary Code at all material times and in all material respects.

55. In specific reply to the allegations in paragraphs 73 and 73.3 of the Statement of Claim, JTIM denies that it, or (so far as JTIM is aware) MTI, have unlawfully suppressed scientific and

medical data or unlawfully acted on policies to withhold, alter or destroy research as alleged in the Statement of Claim.

56. JTIM denies that it is responsible or liable for any acts or omissions alleged in paragraph 73.3 of the Statement of Claim or the particulars related thereto concerning the RJR Companies.

57. In specific reply to the allegations in paragraphs 76-77 of the Statement of Claim, JTIM expressly denies that it or (so far as JTIM is aware) MTI, made any fraudulent, reckless or negligent representation or statement, as assessed at the time such statement was made, or made any such statement with the intent to induce persons in Ontario to use cigarettes or to commence smoking or to continue to smoke as alleged. In the alternative, JTIM denies that persons in Ontario relied on such representation or statement to their detriment.

58. JTIM and (so far as JTIM is aware) MTI conducted its advertising, marketing or promotional campaigns in Ontario in the normal course of marketing and in material compliance with all legislation, regulations and directives of the Federal Government and the Province concerning such advertising, marketing and promotional campaigns that may have been in existence from time to time (at times when such advertising was permitted by law).

59. JTIM denies that it is responsible or liable for any alleged advertising, marketing or promotional campaigns of the RJR Companies.

Alleged Breach of the Duty – Manufacturing or Promoting Products for Children and Adolescents

60. JTIM does not admit the existence of the duty to children and adolescents in Ontario in the terms alleged in paragraph 78 of the Statement of Claim.

61. JTIM and (so far as JTIM is aware) MTI have complied in all material respects with all common law, equitable and statutory duties and obligations, as they existed from time to time, owed to persons in Ontario. JTIM specifically denies each and every allegation set forth in paragraphs 79-85 of the Statement of Claim. Any alleged act or omission of MTI or JTIM must be assessed in the context of the circumstances, both general and specific, existing at the time.

62. With respect to the allegations contained in paragraphs 79-85, JTIM notes that:

a) JTIM believes that children and adolescents should not smoke. It is committed to youth smoking prevention. JTIM supports and has long supported programs by the Federal Government and the Province to educate children and adolescents about the potential risks of smoking and to dissuade them from starting to smoke. Neither JTIM nor (so far as JTIM is aware) MTI has promoted cigarettes to children and adolescents; nor has JTIM or (so far as JTIM is aware) MTI sought to undermine the Federal Government's initiatives in the area of youth smoking prevention.

b) At all material times, JTIM and (so far as JTIM is aware) MTI have distributed and promoted their products in Ontario in material compliance with all applicable

laws, regulations and directives of both the Federal Government and the Province with respect to the age of persons to whom cigarettes may be lawfully sold or furnished in Ontario. The federal and provincial legal age for the purchase and sale of tobacco products has varied over time. From 1908 to 1994, the federal legal age for the purchase and sale of cigarettes was 16 years of age. The federal legal age was raised to 18 years of age in 1994 and remains 18 years of age today. The provincial legal age in Ontario is 19 years of age. Prior to 1994, the provincial legal age was 18 years of age.

c) Advertising and promotion for tobacco products do not, in any event, play any significant role in why minors smoke. Youth smoking needs to be seen in the broader context of adolescent behaviour.

d) Nevertheless, in recognition of societal concerns over tobacco advertising and promotion, the Voluntary Code entered into by the manufacturers, including MTI, in 1964 prohibited the advertising and promotion of cigarettes to minors, provided that models appearing in tobacco advertisements be at least 25 years old, forbade the use of athletes and celebrities in such advertising and required that posters and billboards advertising tobacco products should not appear in the vicinity of schools. These rules were maintained and/or tightened in subsequent iterations of the Voluntary Code, with the knowledge and approval of the Federal

Government. JTIM and (so far as JTIM is aware) MTI complied with the Voluntary Code at all material times and in all material respects.

e) To the extent allegations are made regarding the improper sale of cigarettes to minors in Ontario, neither JTIM nor MTI was or is a retailer, and neither JTIM nor (so far as JTIM is aware) MTI has sold cigarettes directly to persons in Ontario.

Alleged Breaches of Statutory Duties and Obligations

63. JTIM and (so far as JTIM is aware) MTI have complied in all material respects with all applicable statutory duties and obligations, as they existed from time to time, owed to persons in Ontario. JTIM specifically denies each and every allegation set forth in paragraphs 142-147 of the Statement of Claim.

64. JTIM denies that it has materially breached the provisions of any of the statutes generally referenced in paragraphs 142-147 of the Statement of Claim, and puts the Plaintiff to the strict proof of the circumstances, timing and facts alleged to constitute breaches of same. The allegations as pleaded in paragraphs 142-147 of the Statement of Claim do not set forth any legal, equitable or statutory duties or obligations known to law in Ontario and therefore do not disclose or support a cause of action under the Act.

65. Any alleged breach of statutory duty or obligation must be assessed in the context of the circumstances, both general and specific, existing at the time. JTIM pleads and relies upon the context as previously described in its Statement of Defence.

Alleged Conspiracy, Concert of Action and Common Design

66. JTIM denies the existence of any conspiracy, concert of action or common design as alleged in the Statement of Claim. JTIM specifically denies each and every allegation set forth in paragraphs 86-116 and 128-134 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

67. JTIM further denies that JTIM or (so far as JTIM is aware) MTI participated in, or was a member of, or a party to any conspiracy, concert of action or common design as alleged in the Statement of Claim and puts the Plaintiff to the strict proof thereof.

68. JTIM further denies that JTIM or (so far as JTIM is aware) MTI engaged in any unlawful act or conduct as alleged in the Statement of Claim in furtherance of any alleged conspiracy, concert of action or common design and puts the Plaintiff to the strict proof thereof.

69. JTIM has only been in existence since on or about September 12, 1978. JTIM could not have engaged, either in fact or in law, in any conspiracy, concert of action, common design or unlawful act or conduct alleged to have occurred prior to September 12, 1978.

70. At all material times, JTIM and (so far as JTIM is aware) MTI acted lawfully in the advancement of their own legitimate commercial interests in material compliance with the legislation, regulations and directives of the Federal Government and the Province in effect from time to time. JTIM denies that, at any material time, it or (so far as JTIM is aware) MTI engaged in any lawful or unlawful acts or conduct directed at, or for the purpose of causing injury to the Province or to persons in Ontario in circumstances where MTI or JTIM knew or ought to have known that injury to the Province or persons in Ontario was likely to occur. JTIM further denies that any such injury was so caused.

71. JTIM and (so far as JTIM is aware) MTI participated in various meetings, conferences and communications from time to time with other manufacturers and with the Canadian Tobacco Manufacturers' Council ("CTMC"). Such meetings, conferences and communications were legitimate and appropriate, and did not constitute a conspiracy, concert of action, common design or result in the commission of any unlawful acts or conduct.

72. JTIM specifically denies that JTIM or (so far as JTIM is aware) MTI participated in, was a member of, or a party to any conspiracy, concert of action or common design to prevent the Province or persons in Ontario or other jurisdictions from acquiring knowledge of the potential risks of smoking cigarettes and/or to commit tobacco related wrongs, and puts the Plaintiff to the strict proof thereof.

(i) Conspiracy Within The International Tobacco Industry

73. JTIM admits that representatives of JTIM (and as far as it is aware MTI) met and otherwise communicated with representatives of other cigarette manufacturers from time to time, including in the context of meetings of trade associations. Such meetings and communications (as the case may be) have been commonplace across many manufacturing sectors for many years, were legitimate and appropriate, and did not constitute a conspiracy, concert of action or common design or result in the commission of any unlawful acts of conduct.

74. JTIM denies that it (and as far as it aware MTI) communicated with any other cigarette manufacturer or trade association for any unlawful purpose, or employing any unlawful means, or with the intent of injuring any person in Ontario. JTIM further denies that any unlawful acts were committed as a result of any communication between JTIM (or MTI) and any other person.

(ii) Conspiracy Within The Canadian Tobacco Industry

75. With respect to the allegations at paragraphs 108-116 of the Statement of Claim concerning alleged conspiracy and concerted action in Canada:

a) JTIM notes that the CTMC is a legitimate, non-profit trade organization of the sort that is commonplace in many industries. The CTMC was founded in 1963 in response to a request by the Federal Government that the Canadian tobacco manufacturers create an *ad hoc* committee to represent the industry at that year's National Conference on Smoking and Health. Thereafter, the CTMC functioned

as a forum in which its members could exchange views and share information on the key issues facing the industry. It also represented the Canadian manufacturers in discussions with the Federal Government from time to time.

b) JTIM denies that it or (so far as JTIM is aware) MTI, through the CTMC, has participated in, was a member of, or a party to any conspiracy or concert of action as alleged in the Statement of Claim. JTIM denies that it or (so far as JTIM is aware) MTI, through the CTMC, has engaged in any unlawful act or conduct in furtherance of any such alleged conspiracy or concert of action. JTIM denies that, so far as JTIM is aware, the CTMC has participated in, or was a member of, any such conspiracy or concert of action.

76. In the alternative, if there was any conspiracy, concert of action or common design as alleged in the Statement of Claim, which is specifically denied, such conspiracy, concert of action or common design was ineffective in preventing or delaying any of the Federal Government, the Province, or persons in Ontario from acquiring knowledge of the potential risks of smoking cigarettes.

(iii) Alleged Conspiracy Within Corporate Groups

77. JTIM denies the existence of any conspiracy, concert of action or common design as alleged in the Statement of Claim among those Defendants alleged to constitute the "RJR Group". JTIM specifically denies each and every allegation contained in paragraphs 128-134 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

78. JTIM denies that it or (so far as JTIM is aware) MTI participated in, or was a member of, or a party to any conspiracy, concert of action or common design as alleged in the Statement of Claim with any or all of the Defendants alleged to constitute the "RJR Group", and puts the Plaintiff to the strict proof thereof.

79. JTIM further denies that it or (so far as JTIM is aware) MTI engaged in any unlawful act or conduct in furtherance of any alleged conspiracy, concert of action or common design with any or all of the Defendants alleged to constitute the "RJR Group" and puts the Plaintiff to the strict proof thereof.

80. As previously outlined in this Statement of Defence, JTIM admits that during the period from its incorporation on September 12, 1978 to 1999, JTIM was a company related to the RJR Companies. However, at all material times, JTIM was a separate legal entity responsible for manufacturing, distributing and promoting its products in Canada. JTIM acknowledges that information and communications passed between JTIM and the RJR Companies from time to time in the normal course of intra group business, including information and communications with respect to smoking and health issues. JTIM made use of such information and communications with the RJR Companies as it deemed appropriate in operating its own business and affairs in Canada.

81. JTIM denies that any information or communications with the RJR Companies was for any unlawful purpose and denies that any unlawful acts were committed as a result of any such information or communications.

82. JTIM and (so far as JTIM is aware) MTI participated in various meetings, conferences and communications from time to time with the RJR Companies. Such meetings, conferences and communications were legitimate and appropriate among related companies, and did not constitute a conspiracy, concert of action or common design or result in the commission of any unlawful acts or conduct.

83. With respect to the allegations at paragraphs 128-134 of the Statement of Claim, JTIM specifically denies that its smoking and health policies are or have been directed and coordinated by the RJR Companies through the means and methods alleged in those paragraphs of the Statement of Claim. JTIM further specifically denies that it unlawfully participated in the removal and destruction of smoking and health materials or unlawfully destroyed research relating to the biological activity of cigarettes as alleged in paragraph 133.3 of the Statement of Claim.

84. The awareness of the risks of smoking cigarettes by persons in Ontario was not reduced or adversely affected as a result of any meetings, conferences, or other communication between MTI or JTIM and either of the RJR Companies.

85. Accordingly, JTIM denies that it is jointly and severally liable with any or all of the other Defendants, or any of the Defendants alleged to constitute the RJR Group, for the cost of health care benefits provided to insured persons in Ontario pursuant to section 4 of the Act as alleged in paragraph 148 of the Statement of Claim.

The Role of the Federal Government

86. The Federal Government, which at all material times had a responsibility to promote and preserve the health and well-being of the people of Canada, was an active and prominent presence in the tobacco industry in Canada, directing, and otherwise influencing, the actions of the industry and shaping the views and behaviour of persons in Ontario.

87. The Federal Government and its officials working in its departments and agencies worked closely with the cigarette manufacturers, including MTI and JTIM, gave advice and directions and made various representations and requests to the cigarette manufacturers on smoking and health issues and with regard to the design, manufacture and promotion of their products. The actions and conduct of the Federal Government occurred principally through Health Canada and Agriculture Canada and their respective predecessor departments and agencies. The Federal Government was particularly active in relation to the information provided to the Canadian public, including the public in Ontario, about the potential risks of smoking. Further, the Federal Government directed and advised the cigarette manufacturers in respect of their communications with persons in Ontario concerning the properties of cigarettes and the potential risks of smoking, including the form of printed warnings on packaging and other materials.

88. In furtherance of its role in the tobacco industry, and more particularly with respect to issues which are alleged in the Statement of Claim to have a relevance to consumers' health, the

Federal Government implemented a number of operational programmes and engaged in numerous other operational activities from time to time, including:

a) Analysis of the potential risks of smoking, including the risks of “habituation”, “dependence” and “addiction”.

b) Monitoring and assessing the level of awareness of consumers in Canada, including those in Ontario, of the potential risks of smoking.

c) Considering the need to educate and advise consumers as to the properties of cigarettes and to inform and/or remind those consumers of the potential risks of smoking.

d) Providing such education, advice and information and/or reminders at certain material times as was considered necessary.

e) Imposing taxes for the purpose of obtaining the majority of the revenue from the sale of cigarettes to consumers in Canada.

f) Giving advice, recommendations and directions to manufacturers of cigarettes as to whether printed warnings on packages of cigarettes and other advertising media were necessary or desirable.

g) Giving advice, recommendations and directions as to the form of such warnings.

h) Giving advice, recommendations and directions to manufacturers of cigarettes on the form of packaging to be used by manufacturers.

i) Giving advice and recommendations to manufacturers of cigarettes in respect of the relevant codes or practices governing the advertising and promotion of cigarettes.

j) Research into the chemistry of tobacco smoke and fundamental research into potential smoking and health effects.

k) Research into and analysis of the chemical and physical composition of tobacco.

l) Since 1971, implementing the “Less Hazardous Cigarette Programme”, including the Delhi Tobacco and Health Bio-Assay Programme.

m) Developing and cultivating varieties of tobacco plant with elevated levels of nicotine and giving advice, recommendations and directions to cigarette manufacturers to use such varieties in cigarettes sold in Canada.

n) Advising the cigarette manufacturers to design, manufacture, distribute and promote LTN products and, indeed, taking a position of leadership in relation to the same in Canada.

o) Giving advice, recommendations and directions to cigarette manufacturers regarding targets for the reduction of the "Sales Weighted Average Tar" yield of cigarettes.

p) At least until 2003, encouraging those smokers who did not want to quit to switch to LTN products, on the basis that these might be less harmful to health, and informing such smokers to avoid compensating if they did switch to such cigarettes.

89. The acts and omissions of the Federal Government influenced the views and behaviour of persons in Canada, including Ontario, and had a significant effect on, among other things, the manner in which the manufacturers conducted their business and the contents and properties of the cigarettes that they manufactured, distributed and promoted in Canada, including Ontario. The standard(s) of care allegedly owed by the manufacturers to persons in Ontario and the reasonableness of the manufacturers' conduct must be considered in light of these acts and omissions.

The Role of the Provincial Government

90. The Province was also involved in the activities of the tobacco industry in Ontario, including supervising, advising and directing the actions of the tobacco manufacturers in relation to the market for tobacco and tobacco products in Ontario.

91. At all material times, the Province was aware of the potential serious health risks of smoking and the difficulty of giving up smoking. At all material times, the Province was at least as aware of the potential risks of smoking as the manufacturers, including MTI and JTIM.

92. At all material times, the Province:

a) Permitted persons in Ontario to purchase and consume cigarettes.

b) Permitted the distribution, promotion and sale of cigarettes in Ontario by the manufacturers, including MTI and JTIM.

c) Licensed sellers of cigarettes in Ontario as part of the marketing system for cigarettes in Ontario.

d) Imposed taxes for the purpose of obtaining the revenue from the sale of cigarettes to persons in Ontario.

e) Cooperated with, and participated in, Federal Government tobacco initiatives and programs.

f) Directly and indirectly supported and promoted the agricultural cultivation and marketing of Ontario tobacco for use in the manufacture of Canadian cigarettes.

g) Had a duty to promote and preserve the health and well-being of the public in Ontario.

h) Played an important role in educating persons in Ontario, and in particular children and adolescents, about the potential risks of smoking and in dissuading them from smoking or starting to smoke.

93. The acts and omissions of the Province influenced the views and behaviour of persons in Ontario and had a significant effect on, among other things, the manner in which the manufacturers conducted their business, and the contents and properties of the cigarettes that they manufactured, distributed and promoted in Ontario. The standard(s) of care allegedly owed by the manufacturers to persons in Ontario and the reasonableness of the manufacturers' conduct must be considered in light of these acts and omissions.

The Cost of Health Care Benefits

94. Under the Act, the Province can only recover the cost of health care benefits caused or contributed to by a tobacco related wrong, which breach resulted in smoking of cigarettes or other tobacco products by, or exposure to, a specific and relevant population of insured persons in Ontario and which smoking or exposure actually caused or contributed to disease in such persons. JTIM puts the Province to the strict proof of its claim for the cost of health care benefits.

95. JTIM denies that any population of insured persons who smoked cigarettes or were exposed to tobacco smoke started or continued to smoke or were exposed to tobacco smoke because of any breach of any common law, equitable or statutory duty or obligation owed by MTI or JTIM to persons in Ontario, which breach is expressly denied. JTIM denies that the

Province is entitled to recover the cost of health care benefits resulting from smoking or exposure for any population of insured persons.

96. The Province is not entitled to claim for or recover the total cost of health care benefits for a disease which can be caused by smoking cigarettes or exposure to tobacco smoke. All of the diseases associated with smoking occur in non-smokers as well as smokers. Not every case of such a disease that occurs in smokers results from smoking cigarettes or exposure to tobacco smoke. The Province must prove, in relation to each disease, the cost of health care benefits that was actually caused or contributed to by smoking cigarettes or exposure to tobacco smoke.

97. The cost of health care benefits to be determined on an aggregate basis under section 3(3)(a) of the Act includes only the cost of health care benefits provided after the date of the breach, which breach is expressly denied, resulting from smoking cigarettes or exposure to tobacco smoke. Without limiting the generality of the foregoing, the cost of health care benefits to be determined on an aggregate basis:

a) Must not include the cost of any health care benefits incurred before the date of the breach, which breach is expressly denied.

b) Must be determined in relation to the specific and relevant population of insured persons in Ontario, determined at the time of the breach, to whom the duty or obligation was owed and in relation to whom the duty or obligation was breached.

c) Must be limited to the specific and relevant population of insured persons in Ontario during the period of the breach.

d) Must not include the cost of health care benefits for any non-tobacco related disease.

e) Must not include the cost of health care benefits for a disease resulting from exposure to tobacco products other than cigarettes.

98. The Province is not entitled to recover, on an aggregate basis for any population of insured persons, the cost of health care benefits that it would have incurred in any event. JTIM denies that the Province has incurred any cost of health care benefits as a result of persons smoking cigarettes or being exposed to tobacco smoke in excess of any cost that the Province would have incurred in any event.

99. Further, the Province is not entitled to recover, on an aggregate basis for any population of insured persons, the cost of health care benefits that were not incurred by the Province, but were incurred, in whole or in part, by the Federal Government by means of transfer payments, funding arrangements, grants and shared cost programs. The Province is not entitled to recover the cost of health care benefits which the Province has not actually incurred itself.

100. Further, taking into account sections 3(2) and 3(4) of the Act, the cost of health care benefits assessed against any Defendant under section 3(3) of the Act based upon that Defendant's market share in cigarettes must be eliminated or reduced to the extent, *inter alia*,

that persons, events, factors or circumstances, other than the Defendant's breach, caused or contributed to the smoking or exposure or to the disease or risk of disease in the population of insured persons. Without limiting the generality of the foregoing, the cost of health care benefits must be eliminated or reduced based upon:

a) The awareness of persons in the population during and after the period of the breach of the potential health risks of smoking.

b) The conscious and voluntary decisions by persons in Ontario to start smoking and/or to continue smoking notwithstanding the awareness of the potential health risks associated with smoking.

c) The actions and conduct of other persons and entities, including without limitation, the Federal Government and the Province, which may have influenced persons in Ontario to start smoking and/or to continue smoking during and after the period of the breach.

d) All other events, factors or circumstances which influenced persons in the population to start smoking and/or to continue smoking during and after the period of the breach.

101. The Province has agreed to and accepted the manufacture, distribution, promotion and sale of cigarettes in Ontario. As described above in paragraph 92, the Province's acts and conduct in imposing taxes on the sale of cigarettes influenced the views and behaviour of

persons in Ontario. The tax revenue received by the Province from the sale of cigarettes in Ontario has exceeded the cost of health care benefits resulting from smoking cigarettes or exposure to tobacco smoke. The Province has not incurred the cost of any health care benefits resulting from smoking cigarettes and/or exposure to tobacco smoke, since such costs have been fully paid from taxes on the sale of cigarettes in Ontario.

102. If the Plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, then the cause of the Plaintiff incurring such costs is a requirement of the statutes which have provided or are providing for health care in Ontario, including, without limitation, the *Health Insurance Act*, R.S.O. 1990, c. H.6, *Charitable Institutions Act*, R.S.O. 1990, c. C.9, *Homemakers and Nurses Services Act,* R.S.O. 1990, c. H. 10, *Homes for the Aged and Rest Homes Act,* R.S.O. 1990, c. H. 13, *Independent Health Facilities Act,* R.S.O. 1990, c. I. 3, *Local Health System Integration Act, 2006,* S.O. 2006, c. 4, *Long-Term Care, 1994,* S.O. 1994, c. 26*, Long-Term Care Homes Act, 2007,* S.O. 2007, c. 8, *Nursing Homes Act,* R.S.O. 1990, c. N.7, *Ontario Drug Benefit Act*, R.S.O 1990, c. O. 10 and *Public Hospitals Act* R.S.O. 1990, c. P. 40 and predecessor statutes and regulations.

103. Further, and as already described, the acts and omissions of the Federal Government and the Province influenced the views and behaviour of persons in Ontario and had a significant effect on, among other things, the manner in which the manufacturers conducted their business, and the contents and properties of the cigarettes that they manufactured, distributed and promoted in Ontario. The Plaintiff is not entitled to recover from JTIM the cost of health care

benefits resulting from such actions and conduct by the Federal Government and/or the Province or from compliance by the manufacturers with their advice, recommendations or directions.

104. JTIM says that the Plaintiff is precluded, by common law and equitable principles, from recovering the cost of health care benefits arising out of the consumption of cigarettes in Ontario when the Plaintiff permitted (and benefited from) the sale of cigarettes with knowledge of the potential health risks.

105. JTIM pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N. 1, and the *Limitations Act*, *2002*, S.O. 2002, c. 24.

Mitigation

106. JTIM says, in further answer to the whole of the Statement of Claim, the Plaintiff has mitigated the cost of health care benefits as aforesaid, and the cost of health care benefits has therefore been eliminated or reduced. In the alternative, the Plaintiff has failed to mitigate such costs.

Relief Claimed

107. JTIM denies that the Plaintiff is entitled to the relief claimed, or any relief, and says that the action should be dismissed as against it with costs.

Date: April 29, 2016

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Court File No. CV-09-387984

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO - and - **ROTHMANS, INC., et al.**

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF DEFENCE
OF JTI-MACDONALD CORP.

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TAB 12

Court File No.: CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

– and –

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

Defendants

STATEMENT OF DEFENCE OF THE DEFENDANT PHILIP MORRIS INTERNATIONAL INC.

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1. The defendant Philip Morris International Inc. (hereafter "PMI") denies, or where applicable does not admit, the allegations made in the Amended Fresh as Amended Statement of Claim amended on April 26, 2016 (the "Statement of Claim") by the plaintiff ("Ontario" or the "Province"), unless expressly admitted, and puts the Province to the strict proof thereof.

2. PMI admits the allegations contained in paragraphs 8, 10-12, and 26-28 of the Statement of Claim.

3. PMI denies the allegations contained in paragraphs 1-7, 20, 29, 40-45, 48-72.3, 73-73.2, 74-127, and 141-150 of the Statement of Claim.

4. PMI has no knowledge in respect of the allegations contained in paragraphs 9, 13-19, 21-25, 30-39, 46-47, 72.4-72.5, 73.3-73.4, 128-140, and 151 of the Statement of Claim.

I. RELIEF CLAIMED

5. PMI denies that the Province is entitled to the relief claimed in paragraph 1 of the Statement of Claim and that the Statement of Claim should be dismissed with costs.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Case

6. PMI denies the allegations in paragraphs 2-4 in the Statement of Claim and denies the Province's ability to seek relief or recover the cost of health care benefits described in paragraph 1 of the Statement of Claim (the "Claimed Cost") from PMI, except that PMI admits that this action is brought pursuant to the provisions of the *Tobacco Damages and Health Care Costs Recovery Act*, 2009, S.O. 2009 C.13 (the "Act").

7. PMI admits only that the Statement of Claim states the definitions referred to in paragraphs 5-6 of the Statement of Claim for the purposes of the Statement of Claim but not otherwise.

B. The Defendants

8. PMI denies the allegations in paragraph 7 of the Statement of Claim. For clarification, PMI states that Rothmans Inc. amalgamated into Rothmans, Benson & Hedges Inc. (hereafter "RBH") in 2009.

9. PMI admits the allegations in paragraph 8 of the Statement of Claim. For clarification, PMI admits that RBH's corporate headquarters are located at 1500 Don Mills Road, North York, Ontario.

10. PMI has no knowledge of the allegations in paragraph 9 of the Statement of Claim and therefore denies the same.

11. PMI admits that Altria Group Inc. was formerly known as Philip Morris Companies Inc. and is a Virginia corporation with offices at 6601 West Broad Street, Richmond, Virginia in the United States of America.

12. PMI admits that Philip Morris USA Inc. (hereafter, collectively with its predecessors, "PM USA") was formerly known as Philip Morris Inc. and is a Virginia corporation with offices at 6601 West Broad Street, Richmond, Virginia in the United States of America. PMI further states that U.S.-sourced tobacco products manufactured by PM USA accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market. Further, tobacco products manufactured in the U.S. by PM USA for the Canadian duty-free market were provided for sale only to individuals leaving Canada and had to be taken out of the country immediately after purchase. To the very limited extent that cigarettes manufactured by PM USA were ever offered for sale in Canada, PMI states that such cigarettes were at all material times a legal product sold in compliance with all applicable laws.

13. PMI admits that it is a Virginia company with offices located at 120 Park Avenue in New York, New York in the United States of America.

14. PMI has no knowledge of the allegations in paragraphs 13-19 of the Statement of Claim and therefore denies the same.

15. PMI denies the allegations in paragraph 20 of the Statement of Claim. PMI further states that it is a holding company which has never engaged in the manufacture of tobacco products as defined in the *Act* and has never engaged in the promotion of tobacco products in Canada. PMI further states that it has no knowledge as to the truth of the allegations made with respect to other defendants and therefore denies the same.

16. PMI has no knowledge of the allegations in paragraphs 21-22 of the Statement of Claim and therefore denies the same.

lII. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

A. Canadian Tobacco Companies

The Defendant Rothmans Inc.

17. PMI has no knowledge of the allegations in paragraph 23 of the Statement of Claim and therefore denies the same. PMI states that Rothmans Inc. amalgamated into RBH in 2009.

18. PMI has no knowledge of the allegations in paragraph 24 of the Statement of Claim and therefore denies the same.

The Defendant Rothmans, Benson & Hedges Inc.

19. PMI has no knowledge of the allegations in paragraph 25 of the Statement of Claim and therefore denies the same.

20. PMI admits that Benson & Hedges (Canada) Limited was incorporated in 1934 and that RBH was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited. PMI also admits that Benson & Hedges (Canada) Ltd. (renamed Benson & Hedges (Canada) Inc. in 1979), at various times since 1950, manufactured and promoted cigarettes offered for sale in Ontario.

21. PMI admits that RBH has, at various times since 1986, manufactured and promoted cigarettes offered for sale in Ontario. PMI also admits that, between 1986 and 1989, RBH distributed in Canada a small amount of U.S.-sourced tobacco products manufactured by Philip Morris Incorporated (now Philip Morris USA Inc.), but these products accounted for less than 0.1% of all duty-paid cigarettes sold in Canada during this time period.

22. PMI admits that, at various times since 1950, RBH (or its predecessors) has manufactured and promoted cigarettes in Ontario and Canada under several brand names, including Rothmans and Benson & Hedges.

23. PMI denies the allegations in paragraph 29 of the Statement of Claim. PMI further states that between 1986 and March 2008, corporate entities related to Altria Group, Inc. maintained a 40% shareholder interest in RBH. Since September 2008, RBH has been an indirect wholly owned subsidiary of PMI. PMI further states that it has had no corporate affiliation with PM USA or Altria Group, Inc. since a March 28, 2008 spinoff.

The Defendant JTI-Macdonald Corp.

24. PMI has no knowledge of the allegations in paragraphs 30-33 of the Statement of Claim and therefore denies the same.

The Defendant Imperial Tobacco Canada Limited

25. PMI has no knowledge of the allegations in paragraphs 30-39 of the Statement of Claim and therefore denies the same.

B. Multinational Tobacco Enterprises

26. PMI denies the allegations in paragraphs 40-45 of the Statement of Claim. PMI states additionally that paragraphs 40-45 of the Statement of Claim purport to collectively categorize separate entities as certain "Groups" or "Lead Companies", and PMI denies that such characterization is accurate, proper or has any legal significance whatsoever relevant to the Province's claims or the Province's ability to seek relief or recover the Claimed Cost from PMI. PMI further states that, to the extent that companies have had policies in common with PMI in relation to smoking and health, such common policies were developed for appropriate business purposes and were lawful. In further answer, PMI states that:

(a) While it has had a corporate relationship over the years with RBH, at all material times, operating decisions were made in Canada by RBH, and RBH arrived at its own positions on smoking-related issues;

(b) It never entered into a conspiracy or common design with the Defendants PM USA, Altria Group, Inc., or RBH, or any other defendant in this action;

(c) It never acted in concert with the Defendants PM USA, Altria Group, Inc., or RBH, or any other defendant in this action;

(d) RBH was never the agent of PMI; and

(e) PMI never directed the activities of RBH or any other defendant in this action.

27. PMI has no knowledge of the allegations in paragraphs 46-47 of the Statement of Claim and therefore denies the same.

IV. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. General

28. PMI denies the allegations in paragraph 48 of the Statement of Claim, and states that it is a holding company which has never engaged in the manufacture of tobacco products as defined in the *Act* and has never engaged in the promotion of tobacco products in Canada. Specifically, PMI denies that:

(a) it has committed any tobacco related wrong, or breached any common law, equitable or statutory duty as alleged in the Statement of Claim or at all;

(b) it manufactures or has manufactured a defective product;

(c) it fails or has failed to warn, unlawfully sells or markets to children and adolescents or has ever done so;

(d) it makes or has made any deceitful or negligent misrepresentations;

(e) it contravenes or has contravened any consumer protection or competition legislation; or

(f) it takes or has taken part in any conspiracy, concerted action or common design as alleged.

PMI further states the following:

(g) At all times, PMI conducted itself in accordance with appropriate business practices and in compliance with the applicable common law, equitable and statutory duties governing its conduct;

(h) In addition, a significant and growing proportion of the Canadian cigarette market is supplied by manufacturers other than those identified in the Claim. Specifically, manufacturers located on aboriginal reserves (the "Aboriginal Manufacturers") produce, promote and provide cigarettes to numerous consumers across Canada. Vendors selling cigarettes produced by the Aboriginal Manufacturers routinely fail to collect the federal and provincial taxes applicable to sales to non-aboriginal purchasers, creating a substantial incentive for non-aboriginal to purchase cigarettes from these manufacturers instead of the manufacturers identified in the Claim. Additionally, cigarettes produced by the Aboriginal Manufacturers dominate the market for contraband cigarettes in Canada. As a result, a significant fraction of the cigarettes consumed in Canada are not supplied by manufacturers identified in the Claim, but rather by the Aboriginal Manufacturers; and

(i) In particular, PMI denies that any breach of duty by PMI caused persons in Ontario to start or continue to smoke cigarettes or be exposed to cigarette smoke from cigarettes manufactured or promoted by it; and

(j) Without limiting the generality of the foregoing, PMI specifically denies that it has breached any common law, equitable or statutory duty or obligation owed to persons in Ontario as alleged in the Statement of Claim. PMI specifically denies that any such alleged breach of duty or obligation caused any population of

insured persons to smoke cigarettes or to continue to smoke cigarettes. PMI specifically denies that it committed any tobacco related wrong or acted in a manner that wrongfully caused any person in Ontario to smoke and/or continue smoking.

B. Breaches of Common Law, Equitable or Statutory Duties or Obligations

The Defendants' Knowledge

29. PMI denies the allegations made in paragraphs 49-50 of the Statement of Claim. PMI does admit that:

(a) Cigarettes contain tobacco and nicotine occurs naturally in tobacco;

(b) Nicotine, as found in cigarette smoke, has pharmacological effects; and

(c) Nicotine in cigarette smoke is addictive and cigarette smoking is addictive.

PMI further states that it has never manufactured cigarettes in Canada at any material time. In admitting (a) to (c) above, PMI states that it can be difficult for smokers to quit smoking, but this should not deter smokers who want to quit from trying to do so. PMI denies the allegations in paragraph 50 of the Statement of Claim to the extent that the term "addictive" is intended to assert that cigarette smokers are unable to quit smoking if they decide to do so.

30. PMI admits that cigarette smoking causes or contributes to cancers of the lung, bronchus, trachea, larynx, pharynx, lip, esophagus, bladder, kidneys, and pancreas; leukemia; emphysema; chronic bronchitis; chronic airways obstruction; chronic obstructive pulmonary disease; coronary heart disease; peripheral vascular disease; and vascular disease. PMI states that "cancer of the stomach," "cancer of the nose," and "cancer of the oral cavity" are relatively vague terms which might encompass a number of different and varied anatomical structures, but admits that

smoking causes cancer in certain of the anatomical structures associated with the stomach, nose, and mouth. PMI denies that smoking causes or contributes to cancers of the liver, colon, rectum, or uterus, or to pulmonary circulatory disease or miscarriage. PMI states that "fetal harm" is a relatively vague term which might encompass a number of different and varied anatomical structures, but admits that smoking is associated with an increased risk of placental abruption, premature birth, stillbirth, neonatal mortality, and intrauterine growth restriction; and that cigarette smoking causes lower infant birth weight in infants whose mothers were smokers during pregnancy. PMI further states that many other factors, whether environmental, physiological, genetic, or based upon lifestyle choices, can also have harmful effects on pregnancy. PMI acknowledges that the Surgeon General's 2014 Report (entitled "The Health Consequences of Smoking – 50 Years of Progress") concluded that there is sufficient evidence to infer a causal relationship between smoking and asthma and increased morbidity and general deterioration of health, but PMI's position is that at this time, these conclusions are based on inadequate scientific support. PMI further states that diseases caused or contributed to by cigarette smoking are complex and may be caused or contributed to by many different factors, whether environmental, physiological, genetic or based upon lifestyle choices. With respect to environmental tobacco smoke ("ETS") (referred to in the Statement of Claim as "second hand smoke"), PMI acknowledges that the Surgeon General's 2006 Report (entitled "The Health Consequences of Involuntary Exposure to Tobacco Smoke") concluded that there is sufficient evidence to infer a causal relationship between ETS and lung cancer, coronary heart disease, and cough in children, but PMI's position is that at this time, these conclusions are based on inadequate scientific support. PMI denies the remaining allegations in paragraph 51 of the Statement of Claim.

31. PMI denies the allegations in paragraphs 52-53 of the Statement of Claim. PMI states that cigarette smoke contains numerous constituents, some of which are acknowledged by public health organizations, such as the U.S. Food and Drug Administration, Health Canada, and the International Agency for Research on Cancer, to be hazardous to health. PMI further states that, at all material times, persons in Ontario have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government, the Province and the public health community have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by the federal government, the Province and the public health community have reinforced the awareness of persons in Ontario with respect to cigarette smoking and its potential risks. At all material times, PMI had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the Province and the public health community.

32. PMI denies the allegations in paragraph 54 of the Statement of Claim and repeats paragraphs 29 hereof.

33. PMI denies the allegations in paragraph 55 of the Statement of Claim.

Breach of Duty – Design and Manufacture

34. PMI denies the allegations in paragraphs 56-62 of the Statement of Claim. PMI has never breached any duty with respect to the design or manufacture of cigarettes as alleged or at all, nor has PMI made any misrepresentations with respect to tobacco products or their characteristics. PMI states that it does not manufacture, advertise, market, distribute or sell

cigarettes in Ontario. In further answer, PMI states that at all material times, it has monitored the world-wide development of tobacco products, implemented all product modifications as appropriate, and ensured that its products were free of latent defects and fit for the purposes intended by the provincial and federal governments. PMI repeats paragraphs 35-37 and 50 hereof, and states that it complied with all applicable common law, equitable, and statutory duties that govern its conduct. PMI further states the following:

(a) To date, there are no technologically possible and commercially feasible features that could potentially reduce the harm of cigarette smoking that could have been incorporated into the design or manufacture of traditional cigarettes that have not been so incorporated. Notwithstanding its efforts and numerous advancements in scientific knowledge on the subject of smoking and health, no entity has yet been able to produce a commercially viable traditional cigarette that is free of health risks.

(b) At all material times, the federal government has directed and supported the manufacture and sale of cigarettes in Canada, and set the standard of care required for cigarette manufacturers. As part of its direction and supervision of the cigarette industry, the federal government (among other things):

(i) Researched and developed strains of tobacco which became effectively the only varieties available for use in Canadian cigarettes;

(ii) Advised manufacturers on the necessity and efficacy of printed package warnings, as well as their content; and

(iii) Advised and directed manufacturers on the need to develop and promote lower-yield cigarettes.

(c) Beginning in the 1950s, the government and public health community called for and otherwise encouraged the development and marketing of lower tar cigarettes. During this time, consumer demand also increased for lower tar cigarettes;

(d) PMI cooperated with the government and health community and responded to consumer demand by developing lower tar cigarettes;

(e) At all material times the Province had and undertook a program of informing children and adolescents within Ontario of the risks associated with the consumption of tobacco products, and if such persons have not been informed of such risks, which is denied, the Province failed to perform that program adequately; and

(f) At all material times the Province alone had the obligation to enforce all relevant statutes and regulations pertaining to the sale of tobacco products to under-aged smokers, as defined from time to time by statutes or regulations, and failed to do so.

Breach of Duty to Warn

35. PMI denies the allegations in paragraphs 63-70 of the Statement of Claim. PMI pleads and relies on paragraph 34, 36-37 and 50 hereof and states that it complied with all common law, equitable and statutory duties that governed its conduct at all material times. PMI states additionally that cigarettes sold in Canada by the manufacturers identified in the Statement of Claim were at all times labelled consistently with all applicable federal and provincial legislation

and regulations and with the voluntary advertising code. Specifically, by 1972, the voluntary advertising code adopted by certain Canadian cigarette manufacturers required package warnings concerning the health risks of smoking. Prior to 1972, representatives of the federal government had advised against package warnings concerning health risks, on the ground that such risks were already well-understood and written warnings would only confuse the public. Package labels subsequently disclosed tar and nicotine levels by 1976. Thereafter, health warnings on cigarette packaging became increasingly prominent, in accordance with increasing federal and provincial legislation and regulation. By 2000, federal regulations required rotating graphic health warnings to cover at least 50% of cigarette packaging.

Breach of the Duty – Misrepresentation

36. PMI denies the allegations made in paragraphs 71-72.3, 73-73.2, and 74-77 of the Statement of Claim and repeats paragraph 28 hereof. PMI has never at any time made representations that were false and has never suppressed any such scientific and medical data. No representations were made by PMI at any time which were false or made with willful blindness or recklessness as to their truth or falsity. Further, PMI states that it never represented that any tobacco products were less hazardous than any others, and that any tobacco products manufactured by PM USA and sold in Canada were labelled consistently with all applicable federal and provincial legislation and regulations and with the voluntary advertising code, to the extent that its products were ever subject to such legislation or regulation or to the voluntary advertising code. PMI pleads and relies on paragraphs 34-35, 37 and 50 hereof. PMI has no knowledge of the allegations in paragraphs 72.4, 72.5, 73.3, and 73.4 and therefore denies the same.

Breach of the Duty - Manufacturing or Promoting Products for Children and Adolescents

37. PMI denies the allegations made in paragraphs 78-85 of the Statement of Claim. PMI has never breached any duty to children or adolescents as alleged or at all, and denies that it targeted children or adolescents in its advertising or other activities. PMI also pleads as follows:

(a) At all material times the Province had and undertook a program of informing children and adolescents within Ontario of the risks associated with the consumption of tobacco products, and if such persons have not been informed of such risks, which is denied, the Province failed to perform that program adequately; and

(b) At all material times the Province alone had the obligation to enforce all relevant statutes and regulations pertaining to the sale of tobacco products to under-aged smokers, as defined from time to time by statutes or regulations, and failed to do so.

Conspiracy, Concert of Action and Common Design

38. PMI denies the allegations in paragraph 86 of the Statement of Claim. At no time did PMI enter into or engage in any conspiracy, concert of action or common design with other persons. PMI further states that:

(a) It conducts business in a highly regulated industry which leads, in some instances, to uniformity and consistency in the industry's manufacturing, packaging and promotional activities;

(b) It conducted itself at all times in accordance with appropriate business practices and in compliance with any applicable common law, equitable, and statutory duties that governed its conduct;

(c) In answer to the allegation that unlawful acts were committed by PMI in furtherance of an alleged conspiracy, PMI repeats paragraphs 1-37 hereof, and in particular, paragraphs 31-37 hereof; and

(d) PMI states that it never conspired or acted in concert or with a common design with any of the Lead Companies or defendants. Further, to the extent that other Lead Companies or defendants may have had policies in common with PMI in relation to smoking and health, those policies were developed for appropriate business purposes and were lawful. PMI further states that the risks associated with smoking have been widely known in Ontario, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Ontario through a variety of sources and that PMI had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the Province and the public health community.

(i) Conspiracy within the International Tobacco Industry

39. PMI denies the allegations in paragraphs 87-107 of the Statement of Claim and repeats paragraph 38 hereof.

(ii) Conspiracy within the Canadian Tobacco Industry

40. PMI denies the allegations in paragraphs 108-116 of the Statement of Claim and repeats paragraph 38 hereof.

(iii) Conspiracy within Corporate Groups

The Rothmans Group

41. PMI denies the allegations in paragraphs 117-120 of the Statement of Claim and repeats paragraph 38 and refers to paragraph 42 hereof.

The Philip Morris Group

42. PMI denies the allegations in paragraphs 121-127 of the Statement of Claim and repeats paragraph 38 hereof.

The RJR Group

43. PMI has no knowledge of the allegations in paragraphs 128-134 of the Statement of Claim and therefore denies the same.

The BAT Group

44. PMI has no knowledge of the allegations in paragraphs 135-140 of the Statement of Claim and therefore denies the same.

45. PMI denies the allegations in paragraph 141 of the Statement of Claim and repeats paragraph 38 hereof.

Breach of Consumer Protection Act, 2002, the Competition Act and their Predecessor Statutes

46. PMI denies the allegations at paragraphs 142-147 of the Statement of Claim and repeats paragraphs 28 and 34-38 hereof.

V. CONCLUSION

47. PMI denies the allegations at paragraphs 148-150 of the Statement of Claim and repeats paragraphs 28 and 34-38 hereof.

48. PMI has no knowledge of the allegations in paragraph 151 of the Statement of Claim and therefore denies the same.

ANSWERS TO THE STATEMENT OF CLAIM AS A WHOLE

A. GENERAL DEFENCES

(i) No cause of action

49. The Statement of Claim discloses no cause of action because:

(a) There has been no pecuniary damage suffered by insured persons in respect of the "cost of health care benefits" as defined by the *Act*;

(b) The statutory liability the Province is attempting to impose on the defendants in this action is an after the fact attempt to make actionable conduct that was not actionable when it occurred;

(c) If the Claimed Cost was incurred as alleged or at all, which is denied, it was incurred by the federal government by means of transfer payments, conditional grants and shared cost programmes, and not by the Province;

(d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was incurred to provide services to insured persons that the Province was and is required to provide pursuant to Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes; and

(e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by the conduct and acts or omissions of the federal government and of the Province.

(ii) No breach of duty

50. PMI repeats paragraph 15 hereof and states:

(a) PMI never owed nor breached a duty to persons in Ontario;

(b) PMI conducted itself at all times in accordance with appropriate business practices and in compliance with the common law, equitable and statutory duties that governed its conduct; and

(c) At all materials times, the manufacture, sale, advertising and promotion of tobacco products in Ontario and throughout Canada has been supervised, regulated and controlled by the Province and the federal government. The Province encouraged or participated in such supervision, regulation and control in Ontario either directly or indirectly through agreements, express or implied with the federal government. Together the said governments have defined and delineated the duties of tobacco manufacturers in Canada including Ontario and have given advice, recommendations, directions and suggestions in relation to, *inter alia*:

(i) The nature and scope of research into the properties of cigarettes to be undertaken by Canadian tobacco manufacturers;

(ii) Whether warnings of the health risks and addictive character of cigarettes should be provided to consumers;

(iii) The content and placement of any such warnings to be provided;

(iv) Product modifications, including the development, manufacture, promotion, distribution and sale of cigarettes containing lower amounts of tar and nicotine as measured by standard smoking machines;

(v) Communications by Canadian manufacturers with consumers about the health risks and addictive character of cigarettes and their tar and nicotine content when measured by standard smoking machines; and

(vi) The acceptability of the types of advertising and other forms of promotion that have been used in the past by Canadian manufacturers to promote the sale of their products.

(iii) No damage

51. PMI states that the Province has (i) suffered no damage, and (ii) incurred none of the Claimed Cost, as a result of anything that the Province alleges in this action that PMI did or failed to do. PMI further states that:

(a) If PMI breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to the Claimed Cost as alleged or at all;

(b) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, without limitation, one or more of the following:

(i) The requirement that the Province provide services to insured persons pursuant to the Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes;

(ii) The conduct and acts or omissions of the federal government and of the Province;

(iii) The conduct and acts or omissions of individual insured persons as further particularized herein; and

(iv) Disease or risk of disease in individual insured persons unrelated to smoking cigarettes;

(c) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by the tax revenue received by the Province from the sale of cigarettes in Ontario so that no cost is ultimately incurred by the Province;

(d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by monies received by the Province from the federal government by means of transfer payments, conditional grants and shared-cost programmes for the purpose of funding the Claimed Cost so that no cost is ultimately incurred by the Province; and

(e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was inflated by overbilling, waste, abuse, neglect and other misconduct by various of the Province, persons involved in the administration and delivery of health care benefits and insured persons.

(iv) Causation

52. PMI admits that smoking causes or contributes to disease. These diseases are complex and may be caused or contributed to by many different factors, including genetics, stress, excess

weight, alcohol, environmental factors and other consumer products. If PMI breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to:

(a) any tobacco related disease in any insured person; or

(b) any increased risk of tobacco related disease in any insured person.

(v) Limitations

53. PMI pleads and relies upon the provisions of the *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, both in respect of the Province's claim and in respect of the health care costs of those persons on which the Province's claim is alleged to be based and calculated.

B. DEFENCES ARISING OUT OF THE PROVINCE'S CONDUCT AND KNOWLEDGE

(i) General

54. The Province's claim to recover the Claimed Cost is subject to complete defences, by reason of information the Province knew or should have known, and the Province's own conduct, including:

(a) The Province's knowledge of health risks associated with cigarette smoking;

(b) The Province's licensing and regulation of the production, manufacture and sale of cigarettes, including its failure to enforce or implement such regulation to the extent constitutionally permissible;

(c) The Province's voluntarily undertaking obligations to pay the cost of health care benefits allegedly caused or contributed to by cigarette smoking;

(d) The Province's failure to establish or delay in developing, or both, policies and practices, including health care expenditures and taxation policies and practices, legislation and regulations, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;

(e) The Province's failure to fund, develop and implement health promotion and smoking cessation practices and policies, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;

(f) The Province's failure to take any steps prior to commencement of this action to attempt to recover the alleged cost of health care benefits by subrogation;

(g) The Province's delay in implementing and failure to enforce laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time;

(h) The Province's own decision to regulate many aspects of the tobacco business and to keep the largest portion of the proceeds from the sale of tobacco products;

(i) The Province's taxation of cigarettes in excess of the cost (if any) of health care benefits allegedly resulting from tobacco related disease or the risk thereof; and

(j) The Province's own breaches of its duty or duties to insured persons as particularized herein.

55. Further, for decades Ontario has exercised its legislative and regulatory authority with respect to the sale, use and taxation of tobacco, and has either prohibited or regulated all

activities and conduct with respect to tobacco and its sale that it considered to be necessary, appropriate or desirable. In this regard, PMI pleads and relies on the *Minors' Protection Act*, R.S.O. 1990, c M.38 (superseded); *Smoking in the Workplace Act*, R.S.O. 1990, c S.13 (superseded); the *Public Vehicles Act*, R.S.O. 1990, c P.54, s. 20; and the *Smoke-Free Ontario Act*, S.O. 1994, c. 10 and O. Reg. 48/06; the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes and regulations.

56. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario subject to certain exceptions and restrictions all of which have been fully complied with by PMI.

57. At all material times, the Province, through its ministers, ministries, departments, servants and agents, has known as much regarding the material risks associated with smoking cigarettes and ETS as PMI.

58. Despite its knowledge of risks associated with smoking cigarettes and ETS, the Province continued to license and regulate the production, manufacturing, advertising, promotion and sale of cigarettes in Ontario and to impose heavy taxation upon, *inter alia*, manufacturers, distributors and consumers of cigarettes.

59. The Province benefits from the taxes imposed on and in relation to the sale of cigarettes in Ontario, which results in complete mitigation of the claim. PMI pleads and relies on the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes.

60. Despite its knowledge of risks associated with cigarette smoking and ETS, the Province took no steps to restrict or limit the sale of cigarettes save for restrictions on sale to persons

below a prescribed age and in that case, delayed in implementing such restrictions, and subsequently took no reasonable steps to enforce them. PMI pleads and relies on the *Smoke-Free Ontario Act*, S.O. 1994, c. 10 and O. Reg. 48/06, as amended, and any predecessor statutes.

61. Despite its knowledge of risks associated with cigarette smoking, the Province voluntarily undertakes the obligation of paying for the costs of health care benefits including such costs it alleges are caused or contributed to by cigarette smoking and ETS and sets its taxation and health care policies accordingly.

62. Despite its knowledge of risks associated with cigarette smoking, the Province, at all material times, permitted the sale and consumption of cigarettes in Ontario and derived substantial revenue therefrom.

63. The Province is wrongfully attempting, by statute, to make conduct actionable which was not actionable at the time it occurred. As a result and because the Province waited for decades to commence a claim, PMI pleads that the Province's action should be dismissed on the basis of voluntary assumption of risk, laches, estoppel and the *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes.

(ii) Voluntary assumption of risk

64. PMI repeats paragraphs 54-63 hereof and states that at all material times the Province has been aware of health risks associated with cigarette smoking and ETS. Accordingly, the Province voluntarily assumes such risks, whatever their extent, in incurring the costs it alleges are caused or contributed to by cigarette smoking and ETS, and the Province is barred from recovering any of the Claimed Cost from PMI in this action by reason of its own actions and its voluntary assumption of risk.

(iii) Contributory negligence

65. PMI repeats paragraphs 54-63 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or contributed to, in whole or in part, by the acts or omissions of the federal government acting alone or as agent for or in concert with the Province, or due to the acts or omissions of the Province as pleaded herein, and not any act or omission of PMI. PMI pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

66. PMI repeats and relies on paragraphs 54-63 hereof and states that it was governments that decided many aspects of the tobacco business and who kept the largest portion of the proceeds from the sale of tobacco products. To the extent insured persons, including under-aged persons, were not informed of the risks associated with smoking cigarettes or purchased low tar cigarettes as a result of a misrepresentation (all of which is denied), it is because the Province or the federal government, or both, failed to perform their obligations adequately.

(iv) The Province cannot profit from its wrongful conduct

67. PMI repeats paragraphs 28-46 and 54-63 hereof and states that the Province is barred from recovering any damages or costs it has suffered, the existence of which is denied, as any damages or costs flowed from its participation as set out herein in conduct which the Province itself alleges in the Statement of Claim constituted breaches of duty.

(v) Legal and equitable bars

68. PMI repeats paragraphs 54-63 hereof and states that by reason of the facts set out therein and the knowledge, conduct and delay of the Province and the prejudice thereby caused to PMI, the Province is barred in law and in equity from advancing the claims made in the Statement of

Claim against PMI. PMI pleads and relies on the *Health Insurance* Act, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes.

(vi) Mitigation

69. PMI repeats paragraphs 54-63 hereof and states that if the Province has incurred the Claimed Cost, as alleged or at all, which is denied, the Province has failed to mitigate the Claimed Cost.

C. DEFENCES ARISING OUT OF INDIVIDUAL CONDUCT

(i) General

70. If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, and the Province's claim to recover the Claimed Cost is subject to complete defences by reason of the conduct of individual insured persons, including their voluntary decisions to commence or continue smoking with awareness of the associated risks.

71. All of the insured persons who smoke or have smoked cigarettes were aware or had been warned of risks associated with smoking.

72. Each insured person became aware or received warnings of risks associated with smoking by various means, including, without limitation, one or more of the following:

(a) Warnings, including on the packaging of cigarettes, as required from time to time pursuant to federal and provincial legislation and regulations and voluntary codes of compliance by Canadian tobacco manufacturers;

(b) Mandatory displays, signs and other warnings required by provincial legislation in premises where sales of cigarettes take place;

(c) Discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;

(d) Education programmes including courses, seminars and lectures and educational literature and other media;

(e) Oral and written warnings from physicians and other health practitioners;

(f) Oral and written warnings from family members, friends and other acquaintances; and

(g) The common general understandings and historical beliefs about adverse health consequences attributed to cigarette smoking dating back hundreds of years.

73. By reason of the foregoing, PMI states that all of the insured persons who smoke or have smoked cigarettes were aware or had been warned of associated risks.

74. Each of those insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking, and each such insured person voluntarily consented to accept such risks.

75. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the associated risks. PMI had and has no legal duty to such persons, or alternatively, no legal duty to such persons that has not been fulfilled.

76. PMI denies that any insured persons began, continued, or were unable to cease smoking by reason of any of the alleged breaches of duty of PMI, or that any alleged breach of duty

caused or contributed to any alleged tobacco related disease or increased costs of tobacco related disease in any insured person.

77. If the federal government did not act as an agent for or in concert with the Province, then to the extent insured persons were not adequately informed about the risks of smoking cigarettes or purchased low tar cigarettes as the result of a misrepresentation (all of which is denied), they did so as a result of the breach of duty owed to them by the federal government.

78. Finally, to the extent the Province incurred health care costs due to smoking by insured persons, which is denied, the cost was caused by Aboriginal Manufacturers who breached duties owed to insured persons by the way they packaged and sold their products.

(ii) Voluntary assumption of risk

79. PMI repeats paragraphs 70-78 hereof and states that at all material times individual insured persons were aware of health risks associated with cigarette smoking. Accordingly, such persons voluntarily assumed such risks, whatever their extent, when they decided to commence and continue smoking.

(iii) Contributory negligence

80. PMI repeats paragraphs 70-78 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of PMI. PMI pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

(iv) Legal and equitable bars

81. PMI repeats paragraphs 70-78 hereof and states that by reason of the facts set out therein and the knowledge and conduct of insured persons and the prejudice thereby caused to PMI, the Province is barred at law and in equity from advancing the claims made in the Statement of Claim against PMI.

(v) Limitations

82. PMI pleads and relies upon the provisions of the *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, in respect of the claims of any individual insured person upon which the Province's cause of action is alleged to rest.

83. PMI pleads and relies upon the limitation provisions in the *Competition Act*, RSC 1985, c. C-34, as amended, and any predecessor statutes.

(vi) Mitigation

84. PMI repeats paragraphs 70-78 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, individual insured persons have failed to mitigate the Claimed Cost.

RELIEF SOUGHT BY PMI

85. In the circumstances, PMI submits that the Province's claim should be dismissed, with costs.

Date: April 29. 2016

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B E T W E E N :

Her Majesty The Queen in Right of Ontario - and - Rothmans Inc., Rothmans, et al.

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding Commenced at TORONTO

STATEMENT OF DEFENCE OF THE DEFENDANT PHILIP MORRIS INTERNATIONAL INC.

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TAB 13

Court File No.: CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

– and –

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

Defendants

STATEMENT OF DEFENCE OF THE DEFENDANT PHILIP MORRIS USA INC.

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1. The defendant Philip Morris USA Inc. (hereafter "PM USA") denies, or where applicable does not admit, the allegations made in the Amended Fresh as Amended Statement of Claim amended on April 26, 2016 (the "Statement of Claim") by the plaintiff ("Ontario" or the "Province"), unless expressly admitted, and puts the Province to the strict proof thereof.

2. PM USA admits the allegations contained in paragraphs 10-12 and 26-27 of the Statement of Claim.

3. PM USA denies the allegations contained in paragraphs 1-6, 20, 29, 40-45, 48-72.1, 73, 74-127, and 141-150 of the Statement of Claim.

4. PM USA has no knowledge in respect of the allegations contained in paragraphs 7-9, 13-19, 21-25, 28, 30-39, 46-47, 72.2-72.5, 73.1-73.4, 128-140, and 151 of the Statement of Claim.

I. RELIEF CLAIMED

5. PM USA denies that the Province is entitled to the relief claimed in paragraph 1 of the Statement of Claim and that the Statement of Claim should be dismissed with costs.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Case

6. PM USA denies the allegations in paragraphs 2-4 in the Statement of Claim and denies the Province's ability to seek relief or recover the cost of health care benefits described in paragraph 1 of the Statement of Claim (the "Claimed Cost") from PM USA, except that PM USA admits that this action is brought pursuant to the provisions of the *Tobacco Damages and Health Care Costs Recovery Act*, 2009, S.O. 2009 C.13 (the "Act").

7. PM USA admits only that the Statement of Claim states the definitions referred to in paragraphs 5-6 of the Statement of Claim for the purposes of the Statement of Claim but not otherwise.

B. The Defendants

8. PM USA has no knowledge of the allegations in paragraphs 7-9 of the Statement of Claim and therefore denies the same.

9. PM USA admits that Altria Group, Inc. was formerly known as Philip Morris Companies Inc. and is a Virginia corporation with offices at 6601 West Broad Street, Richmond, Virginia in the United States of America.

10. PM USA admits that it was formerly known as Philip Morris Inc. and is a Virginia corporation with offices at 6601 West Broad Street, Richmond, Virginia in the United States of America. PM USA further states that U.S.-sourced tobacco products manufactured by PM USA accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market. Further, tobacco products manufactured in the U.S. by PM USA for the Canadian duty-free market were provided for sale only to individuals leaving Canada and had to be taken out of the country immediately after purchase. To the very limited extent that cigarettes manufactured by PM USA were ever offered for sale in Canada, PM USA states that such cigarettes were at all material times a legal product sold in compliance with all applicable laws.

11. PM USA admits that Philip Morris International Inc. ("PMI") is a Virginia company with offices located at 120 Park Avenue in New York, New York in the United States of America.

12. PM USA has no knowledge of the allegations in paragraphs 13-19 of the Statement of Claim and therefore denies the same.

13. PM USA denies the allegations in paragraph 20 of the Statement of Claim. PM USA states that it does not manufacture, advertise, market, distribute, or sell cigarettes in Ontario. PM USA admits that U.S.-sourced tobacco products manufactured by PM USA (or its corporate predecessors) accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the

early 1960s until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market. Further, tobacco products manufactured in the U.S. by PM USA for the Canadian duty-free market were provided for sale only to individuals leaving Canada and had to be taken out of the country immediately after purchase. To the very limited extent that cigarettes manufactured by PM USA were ever offered for sale in Canada, PM USA states that such cigarettes were at all material times a legal product sold in compliance with all applicable laws. PM USA further states that it has no knowledge as to the truth of the allegations made with respect to other defendants and therefore denies the same.

14. PM USA has no knowledge of the allegations in paragraphs 21-22 of the Statement of Claim and therefore denies the same.

III. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

A. Canadian Tobacco Companies

The Defendant Rothmans Inc.

15. PM USA has no knowledge of the allegations in paragraphs 23-24 of the Statement of Claim and therefore denies the same.

The Defendant Rothmans, Benson & Hedges Inc.

16. PM USA has no knowledge of the allegations in paragraph 25 of the Statement of Claim and therefore denies the same.

17. PM USA admits that Benson & Hedges (Canada) Limited was incorporated in 1934 and that RBH was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and

Rothmans of Pall Mall Limited. PM USA also admits that Benson & Hedges (Canada) Ltd. (renamed Benson & Hedges (Canada) Inc. in 1979), at various times since 1950, manufactured and promoted cigarettes offered for sale in Ontario.

18. PM USA admits that RBH has, at various times since 1986, manufactured and promoted cigarettes offered for sale in Ontario. PM USA also admits that, between 1986 and 1989, RBH distributed in Canada a small amount of U.S.-sourced tobacco products manufactured by Philip Morris Incorporated (now PM USA), but these products accounted for less than 0.1% of all duty-paid cigarettes sold in Canada during this time period.

19. PM USA has no knowledge of the allegations in paragraph 28 and therefore denies the same.

20. PM USA denies the allegations in paragraph 29 of the Statement of Claim. PM USA further states that between 1986 and March 2008, corporate entities related to Altria Group, Inc. held a 40% shareholder interest in RBH. PM USA further states that it and Altria Group, Inc. have had no corporate affiliation with PMI since a March 28, 2008 spinoff. PM USA has no knowledge of the remaining allegations in paragraph 29 of the Statement of Claim and therefore denies the same.

The Defendant JTI-Macdonald Corp.

21. PM USA has no knowledge of the allegations in paragraphs 30-33 of the Statement of Claim and therefore denies the same.

The Defendant Imperial Tobacco Canada Limited

22. PM USA has no knowledge of the allegations in paragraphs 30-39 of the Statement of Claim and therefore denies the same.

B. Multinational Tobacco Enterprises

23. PM USA denies the allegations in paragraphs 40-45 of the Statement of Claim. PM USA states additionally that paragraphs 40-45 of the Statement of Claim purport to collectively categorize separate entities as certain "Groups" or "Lead Companies", and PM USA denies that such characterization is accurate, proper or has any legal significance whatsoever relevant to the Province's claims or the Province's ability to seek relief or recover the Claimed Cost from PM USA. PM USA further states that, to the extent that companies have had policies in common with PM USA in relation to smoking and health, such common policies were developed for appropriate business purposes and were lawful. In further answer, PM USA states that:

(a) While it has had a corporate relationship over the years with RBH, at all material times, operating decisions were made in Canada by RBH, and RBH arrived at its own positions on smoking-related issues;

(b) It never entered into a conspiracy or common design with the Defendants PMI, Altria Group, Inc., or RBH, or any other defendant in this action;

(c) It never acted in concert with the Defendants PMI, Altria Group, Inc., or RBH, or any other defendant in this action;

(d) RBH was never the agent of PM USA; and

(e) PM USA never directed the activities of RBH or any other defendant in this action.

24. PM USA has no knowledge of the allegations in paragraphs 46-47 of the Statement of Claim and therefore denies the same.

IV. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. General

25. PM USA states that PM USA has never manufactured tobacco products in Canada at any material time. Furthermore, U.S.-sourced tobacco products manufactured by PM USA, accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market. Further, tobacco products manufactured in the U.S. by PM USA for the Canadian duty-free market were provided for sale only to individuals leaving Canada and had to be taken out of the country immediately after purchase. To the very limited extent that cigarettes manufactured by PM USA were ever offered for sale in Canada, PM USA states that such cigarettes were at all material times a legal product sold in compliance with all applicable laws. PM USA states that it has no knowledge as to the truth of the allegations made with respect to other Defendants and therefore denies the same. PM USA denies the remaining allegations in paragraph 48 of the Statement of Claim. Specifically, PM USA denies that:

(a) it has committed any tobacco related wrong, or breached any common law, equitable or statutory duty as alleged in the Statement of Claim or at all;

(b) it manufactures or has manufactured a defective product;

(c) it fails or has failed to warn, unlawfully sells or markets to children and adolescents or has ever done so;

(d) it makes or has made any deceitful or negligent misrepresentations;

(e) it contravenes or has contravened any consumer protection or competition legislation; or

(f) it takes or has taken part in any conspiracy, concerted action or common design as alleged.

PM USA further states the following:

(g) At all times, PM USA conducted itself in accordance with appropriate business practices and in compliance with the applicable common law, equitable and statutory duties governing its conduct;

(h) In addition, a significant and growing proportion of the Canadian cigarette market is supplied by manufacturers other than those identified in the Claim. Specifically, manufacturers located on aboriginal reserves (the "Aboriginal Manufacturers") produce, promote and provide cigarettes to numerous consumers across Canada. Vendors selling cigarettes produced by the Aboriginal Manufacturers routinely fail to collect the federal and provincial taxes applicable to sales to non-aboriginal purchasers, creating a substantial incentive for non-aboriginal to purchase cigarettes from these manufacturers instead of the manufacturers identified in the Claim. Additionally, cigarettes produced by the Aboriginal Manufacturers dominate the market for contraband cigarettes in Canada. As a result, a significant fraction of the cigarettes consumed in Canada are not supplied by

manufacturers identified in the Claim, but rather by the Aboriginal Manufacturers; and

(i) In particular, PM USA denies that any breach of duty by PM USA caused persons in Ontario to start or continue to smoke cigarettes or be exposed to cigarette smoke from cigarettes manufactured or promoted by it; and

(j) Without limiting the generality of the foregoing, PM USA specifically denies that it has breached any common law, equitable or statutory duty or obligation owed to persons in Ontario as alleged in the Statement of Claim. PM USA specifically denies that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes or to continue to smoke cigarettes.

B. Breaches of Common Law, Equitable or Statutory Duties or Obligations

The Defendants' Knowledge

26. PM USA denies the allegations in paragraphs 49-50 of the Statement of Claim. PM USA does admit that:

(a) cigarettes contain· tobacco and nicotine occurs naturally in tobacco;

(b) nicotine, as found in cigarette smoke, has pharmacological effects; and

(c) nicotine in cigarette smoke is addictive and cigarette smoking is addictive.

PM USA further states that it has never manufactured cigarettes in Canada at any material time. In admitting (a) to (c) above, PM USA states that it can be difficult for smokers to quit smoking, but this should not deter smokers who want to quit from trying to do so. PM USA denies the

allegations in paragraph 50 of the Statement of Claim to the extent that the term “addictive" is intended to assert that cigarette smokers are unable to quit smoking if they decide to do so.

27. PM USA admits that cigarette smoking causes or contributes to cancers of the lung, bronchus, trachea, larynx, pharynx, lip, esophagus, bladder, kidneys, and pancreas; leukemia; emphysema; chronic bronchitis; chronic airways obstruction; chronic obstructive pulmonary disease; coronary heart disease; peripheral vascular disease; and vascular disease. PM USA states that “cancer of the stomach,” “cancer of the nose,” and “cancer of the oral cavity” are relatively vague terms which might encompass a number of different and varied anatomical structures, but admits that smoking causes cancer in certain of the anatomical structures associated with the stomach, nose, and mouth. PM USA denies that smoking causes or contributes to cancers of the liver, colon, rectum, or uterus, or to pulmonary circulatory disease or miscarriage. PM USA states that “fetal harm” is a relatively vague term which might encompass a number of different and varied anatomical structures, but admits that smoking is associated with an increased risk of placental abruption, premature birth, stillbirth, neonatal mortality, and intrauterine growth restriction; and that cigarette smoking causes lower infant birth weight in infants whose mothers were smokers during pregnancy. PM USA further states that many other factors, whether environmental, physiological, genetic, or based upon lifestyle choices, can also have harmful effects on pregnancy. PM USA acknowledges that the Surgeon General’s 2014 Report (entitled “The Health Consequences of Smoking – 50 Years of Progress”) concluded that there is sufficient evidence to infer a causal relationship between smoking and asthma and increased morbidity and general deterioration of health, but PM USA’s position is that at this time, these conclusions are based on inadequate scientific support. PM USA further states that diseases caused or contributed to by cigarette smoking are complex and may be

caused or contributed to by many different factors, whether environmental, physiological, genetic or based upon lifestyle choices. With respect to environmental tobacco smoke ("ETS") (referred to in the Statement of Claim as "second hand smoke"), PM USA acknowledges that the Surgeon General's 2006 Report (entitled "The Health Consequences of Involuntary Exposure to Tobacco Smoke") concluded that there is sufficient evidence to infer a causal relationship between ETS and lung cancer, coronary heart disease, and cough in children, but PM USA's position is that at this time, these conclusions are based on inadequate scientific support. PM USA denies the remaining allegations in paragraph 51 of the Statement of Claim.

28. PM USA denies the allegations in paragraphs 52-53 of the Statement of Claim. PM USA states that cigarette smoke contains numerous constituents, some of which are acknowledged by public health organizations, such as the U.S. Food and Drug Administration, Health Canada, and the International Agency for Research on Cancer, to be hazardous to health. PM USA further states that, at all material times, persons in Ontario have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government, the Province and the public health community have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by the federal government, the Province and the public health community have reinforced the awareness of persons in Ontario with respect to cigarette smoking and its potential risks. At all material times, PM USA had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the Province and the public health community.

29. PM USA denies the allegations in paragraph 54 of the Statement of Claim and repeats paragraphs 49-50 hereof.

30. PM USA denies the allegations in paragraph 55 of the Statement of Claim.

Breach of Duty – Design and Manufacture

31. PM USA denies the allegations in paragraphs 56-62 of the Statement of Claim. PM USA has never breached any duty with respect to the design or manufacture of cigarettes as alleged or at all, nor has PM USA made any misrepresentations with respect to tobacco products or their characteristics. PM USA states that it does not manufacture, advertise, market, distribute or sell cigarettes in Ontario. In further answer, PM USA states that at all material times, it (and its corporate predecessors) have monitored the world-wide development of tobacco products, implemented all product modifications as appropriate, and ensured that its products were free of latent defects and fit for the purposes intended by the provincial and federal governments. PM USA repeats paragraphs 32-34 and 47 hereof, and states that it complied with all applicable common law, equitable, and statutory duties that govern its conduct. PM USA further states the following:

(a) Over the years, PM USA has modified its cigarette design and manufacturing processes for all of its cigarettes to generally reduce the levels of smoke constituents, including allegedly harmful constituents, of cigarette smoke. These modifications have included filtration, paper porosity/air dilution, and the use of reconstituted and/or expanded tobacco, among others;

(b) To date, there are no technologically possible and commercially feasible features that could potentially reduce the harm of cigarette smoking that could have been

incorporated into the design or manufacture of traditional cigarettes that have not been so incorporated. Notwithstanding its efforts and numerous advancements in scientific knowledge on the subject of smoking and health, no entity has yet been able to produce a commercially viable traditional cigarette that is free of health risks.

(c) At all material times, the federal government has directed and supported the manufacture and sale of cigarettes in Canada, and set the standard of care required for cigarette manufacturers. As part of its direction and supervision of the cigarette industry, the federal government (among other things):

(i) Researched and developed strains of tobacco which became effectively the only varieties available for use in Canadian cigarettes;

(ii) Advised manufacturers on the necessity and efficacy of printed package warnings, as well as their content; and

(iii) Advised and directed manufacturers on the need to develop and promote lower-yield cigarettes.

(d) Beginning in the 1950s, the government and public health community called for and otherwise encouraged the development and marketing of lower tar cigarettes. During this time, consumer demand also increased for lower tar cigarettes;

(e) PM USA cooperated with the government and health community and responded to consumer demand by developing lower tar cigarettes;

(f) PM USA denies that it has ever stated in its advertising that "light" brands are "safer" than full-flavored brands;

(g) At all material times the Province informed the public within Ontario of the risks associated with tobacco products; and

(h) At all times the Province alone had the obligation to enforce all relevant statutes and regulations pertaining to the sale of tobacco products to under-aged smokers, as defined from time to time by statutes or regulations, and failed to do so; and

(i) In further answer, PM USA admits that it has been unlawful to sell cigarettes to persons under a certain age. Notwithstanding those laws, some persons under a certain age have smoked. Further, PM USA has never targeted under-aged smokers or non-smokers.

Breach of Duty to Warn

32. PM USA denies the allegations in paragraphs 63-70 of the Statement of Claim. PM USA repeats paragraphs 31, 33-34 and 47 hereof and states that it complied with all common law, equitable and statutory duties that governed its conduct at all material times. PM USA states additionally that cigarettes sold in Canada by the manufacturers identified in the Statement of Claim were at all times labelled consistently with all applicable federal and provincial legislation and regulations and with the voluntary advertising code. Specifically, by 1972, the voluntary advertising code adopted by certain Canadian cigarette manufacturers required package warnings concerning the health risks of smoking. Prior to 1972, representatives of the federal government had advised against package warnings concerning health risks, on the ground that such risks were already well-understood and written warnings would only confuse the public. Package

labels subsequently disclosed tar and nicotine levels by 1976. Thereafter, health warnings on cigarette packaging became increasingly prominent, in accordance with increasing federal and provincial legislation and regulation. By 2000, federal regulations required rotating graphic health warnings to cover at least 50% of cigarette packaging.

Breach of the Duty – Misrepresentation

33. PM USA denies the allegations in paragraphs 71-72.1, 73, and 74-77 of the Statement of Claim and repeats paragraph 48 hereof. PM USA has never at any time made representations that were false and has never suppressed any such scientific and medical data. No representations were made by PM USA at any time which were false or made with willful blindness or recklessness as to their truth or falsity. Further, PM USA states that it never represented that any tobacco products were less hazardous than any others, and that any tobacco products manufactured by PM USA and sold in Canada were labelled consistently with all applicable federal and provincial legislation and regulations and with the voluntary advertising code, to the extent that its products were ever subject to such legislation or regulation or to the voluntary advertising code. PM USA repeats paragraphs 31-32, 34 and 47 hereof. PM USA has no knowledge of the allegations in paragraphs 72.2, 72.3, 72.4, 72.5, 73.1, 73.2, 73.3, and 73.4 and therefore denies the same.

Breach of the Duty - Manufacturing or Promoting Products for Children and Adolescents

34. PM USA denies the allegations in paragraphs 78-85 of the Statement of Claim. PM USA has never breached any duty to children or adolescents as alleged or at all, and denies that it targeted children or adolescents in its advertising or other activities. PM USA also pleads as follows:

(a) At all material times the Province had and undertook a program of informing children and adolescents within Ontario of the risks associated with the consumption of tobacco products, and if such persons have not been informed of such risks, which is denied, the Province failed to perform that program adequately; and

(b) At all material times the Province alone had the obligation to enforce all relevant statutes and regulations pertaining to the sale of tobacco products to under-aged smokers, as defined from time to time by statutes or regulations, and failed to do so.

Conspiracy, Concert of Action and Common Design

35. PM USA denies the allegations in paragraph 86 of the Statement of Claim. At no time did PM USA enter into or engage in any conspiracy, concert of action or common design with other persons. PM USA further states that:

(a) It conducts business in a highly regulated industry which leads, in some instances, to uniformity and consistency in the industry's manufacturing, packaging and promotional activities;

(b) It conducted itself at all times in accordance with appropriate business practices and in compliance with any applicable common law, equitable, and statutory duties that governed its conduct;

(c) In late 1953 and early 1954, representatives of the cigarette industry and tobacco growers based in the United States met to address scientific developments regarding smoking and health. As a result of those meetings, of which the U.S.

Department of Justice received notice, the Tobacco Industry Research Committee, later known as the Council for Tobacco Research ("TIRC/CTR"), was formed to support and fund research. An independent scientist of national repute was appointed as the Scientific Director as was an Advisory Board of distinguished scientists disinterested in the cigarette industry. Over the years, the U.S. Surgeon General has cited more than 350 studies funded by TIRC/CTR starting with the 1964 Surgeon General Report;

(d) In answer to the allegation that unlawful acts were committed by PM USA in furtherance of an alleged conspiracy, PM USA repeats paragraphs 1-34 hereof, and in particular, paragraphs 28-34 hereof; and

(e) PM USA states that it never conspired or acted in concert or with a common design with any of the Lead Companies or defendants. Further, to the extent that other Lead Companies or defendants may have had policies in common with PM USA in relation to smoking and health, those policies were developed for appropriate business purposes and were lawful. PM USA further states that the risks associated with smoking have been widely known in Ontario, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Ontario through a variety of sources and that PM USA had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the Province and the public health community.

(i) Conspiracy within the International Tobacco Industry

36. PM USA denies the allegations in paragraphs 87-107 of the Statement of Claim and repeats paragraph 35 hereof.

(ii) Conspiracy within the Canadian Tobacco Industry

37. PM USA denies the allegations in paragraphs 108-116 of the Statement of Claim and repeats paragraph 35 hereof.

(iii) Conspiracy within Corporate Groups

The Rothmans Group

38. PM USA denies the allegations in paragraphs 117-120 of the Statement of Claim and repeats paragraph 35 and refers to paragraph 39 hereof.

The Philip Morris Group

39. PM USA denies the allegations in paragraphs 121-127 of the Statement of Claim and repeats paragraph 35 hereof.

The RJR Group

40. PM USA has no knowledge of the allegations in paragraphs 128-134 of the Statement of Claim and therefore denies the same.

The BAT Group

41. PM USA has no knowledge of the allegations in paragraphs 135-140 of the Statement of Claim and therefore denies the same.

42. PM USA denies the allegations in paragraph 141 of the Statement of Claim and repeats paragraph 35 hereof.

Breach of Consumer Protection Act, 2002, the Competition Act and their Predecessor Statutes

43. PM USA denies the allegations at paragraphs 142-147 of the Statement of Claim and repeats paragraphs 25 and 31-35 hereof.

V. CONCLUSION

44. PM USA denies the allegations at paragraphs 148-150 of the Statement of Claim and repeats paragraphs 25 and 31-35 hereof.

45. PM USA has no knowledge of the allegations in paragraph 151 of the Statement of Claim and therefore denies the same.

ANSWERS TO THE STATEMENT OF CLAIM AS A WHOLE

A. GENERAL DEFENCES

(i) No cause of action

46. The Statement of Claim discloses no cause of action because:

(a) There has been no pecuniary damage suffered by insured persons in respect of the "cost of health care benefits" as defined by the *Act*;

(b) The statutory liability the Province is attempting to impose on the defendants in this action is an after the fact attempt to make actionable conduct that was not actionable when it occurred;

(c) If the Claimed Cost was incurred as alleged or at all, which is denied, it was incurred by the federal government by means of transfer payments, conditional grants and shared cost programmes, and not by the Province;

(d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was incurred to provide services to insured persons that the Province was and is required to provide pursuant to Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes; and

(e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by the conduct and acts or omissions of the federal government and of the Province.

(ii) No breach of duty

47. PM USA repeats paragraph 13 hereof and states:

(a) PM USA never owed nor breached a duty to persons in Ontario;

(b) PM USA conducted itself at all times in accordance with appropriate business practices and in compliance with the common law, equitable and statutory duties that governed its conduct; and

(c) At all materials times, the manufacture, sale, advertising and promotion of tobacco products in Ontario and throughout Canada has been supervised, regulated and controlled by the Province and the federal government. The Province encouraged or participated in such supervision, regulation and control in Ontario either directly or indirectly through agreements, express or implied with

the federal government. Together the said governments have defined and delineated the duties of tobacco manufacturers in Canada including Ontario and have given advice, recommendations, directions and suggestions in relation to, *inter alia*:

(i) The nature and scope of research into the properties of cigarettes to be undertaken by Canadian tobacco manufacturers;

(ii) Whether warnings of the health risks and addictive character of cigarettes should be provided to consumers;

(iii) The content and placement of any such warnings to be provided;

(iv) Product modifications, including the development, manufacture, promotion, distribution and sale of cigarettes containing lower amounts of tar and nicotine as measured by standard smoking machines;

(v) Communications by Canadian manufacturers with consumers about the health risks and addictive character of cigarettes and their tar and nicotine content when measured by standard smoking machines; and

(vi) The acceptability of the types of advertising and other forms of promotion that have been used in the past by Canadian manufacturers to promote the sale of their products.

(iii) No damage

48. PM USA states that the Province has (i) suffered no damage, and (ii) incurred none of the Claimed Cost, as a result of anything that the Province alleges in this action that PM USA did or failed to do. PM USA further states that:

(a) If PM USA breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to the Claimed Cost as alleged or at all;

(b) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, without limitation, one or more of the following:

(i) The requirement that the Province provide services to insured persons pursuant to the Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes;

(ii) The conduct and acts or omissions of the federal government and of the Province;

(iii) The conduct and acts or omissions of individual insured persons as further particularized herein; and

(iv) Disease or risk of disease in individual insured persons unrelated to smoking cigarettes;

(c) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by the tax revenue received by the Province from the sale of cigarettes in Ontario so that no cost is ultimately incurred by the Province;

(d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by monies received by the Province from the federal government by means of transfer payments, conditional grants and shared-cost programmes for the purpose of funding the Claimed Cost so that no cost is ultimately incurred by the Province; and

(e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was inflated by overbilling, waste, abuse, neglect and other misconduct by various of the Province, persons involved in the administration and delivery of health care benefits and insured persons.

(iv) Causation

49. PM USA admits that smoking causes or contributes to disease. These diseases are complex and may be caused or contributed to by many different factors, including genetics, stress, excess weight, alcohol, environmental factors and other consumer products. If PM USA breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to:

(a) any tobacco related disease in any insured person; or

(b) any increased risk of tobacco related disease in any insured person.

(v) Limitations

50. PM USA pleads and relies upon the provisions of the *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, both in respect of the Province's claim and in respect of the health care costs of those persons on which the Province's claim is alleged to be based and calculated.

B. DEFENCES ARISING OUT OF THE PROVINCE'S CONDUCT AND KNOWLEDGE

(i) General

51. The Province's claim to recover the Claimed Cost is subject to complete defences, by reason of information the Province knew or should have known, and the Province's own conduct, including:

(a) The Province's knowledge of health risks associated with cigarette smoking;

(b) The Province's licensing and regulation of the production, manufacture and sale of cigarettes, including its failure to enforce or implement such regulation to the extent constitutionally permissible;

(c) The Province's voluntarily undertaking obligations to pay the cost of health care benefits allegedly caused or contributed to by cigarette smoking;

(d) The Province's failure to establish or delay in developing, or both, policies and practices, including health care expenditures and taxation policies and practices, legislation and regulations, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;

(e) The Province's failure to fund, develop and implement health promotion and smoking cessation practices and policies, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;

(f) The Province's failure to take any steps prior to commencement of this action to attempt to recover the alleged cost of health care benefits by subrogation;

(g) The Province's delay in implementing and failure to enforce laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time;

(h) The Province's own decision to regulate many aspects of the tobacco business and to keep the largest portion of the proceeds from the sale of tobacco products;

(i) The Province's taxation of cigarettes in excess of the cost (if any) of health care benefits allegedly resulting from tobacco related disease or the risk thereof; and

(j) The Province's own breaches of its duty or duties to insured persons as particularized herein.

52. Further, for decades Ontario has exercised its legislative and regulatory authority with respect to the sale, use and taxation of tobacco, and has either prohibited or regulated all activities and conduct with respect to tobacco and its sale that it considered to be necessary, appropriate or desirable. In this regard, PM USA pleads and relies on the *Minors' Protection Act*, R.S.O. 1990, c M.38 (superseded); *Smoking in the Workplace Act*, R.S.O. 1990, c S.13 (superseded); the *Public Vehicles Act*, R.S.O. 1990, c P.54, s. 20; and the *Smoke-Free Ontario Act*, S.O. 1994, c. 10 and O. Reg. 48/06; the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes and regulations.

53. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario subject to certain exceptions and restrictions all of which have been fully complied with by PM USA.

54. At all material times, the Province, through its ministers, ministries, departments, servants and agents, has known as much regarding the material risks associated with smoking cigarettes and ETS as PM USA.

55. Despite its knowledge of risks associated with smoking cigarettes and ETS, the Province continued to license and regulate the production, manufacturing, advertising, promotion and sale of cigarettes in Ontario and to impose heavy taxation upon, *inter alia*, manufacturers, distributors and consumers of cigarettes.

56. The Province benefits from the taxes imposed on and in relation to the sale of cigarettes in Ontario, which results in complete mitigation of the claim. PM USA pleads and relies on the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes.

57. Despite its knowledge of risks associated with cigarette smoking and ETS, the Province took no steps to restrict or limit the sale of cigarettes save for restrictions on sale to persons below a prescribed age and in that case, delayed in implementing such restrictions, and subsequently took no reasonable steps to enforce them. PM USA pleads and relies on the *Smoke-Free Ontario Act*, S.O. 1994, c. 10 and O. Reg. 48/06, as amended, and any predecessor statutes.

58. Despite its knowledge of risks associated with cigarette smoking, the Province voluntarily undertakes the obligation of paying for the costs of health care benefits including

such costs it alleges are caused or contributed to by cigarette smoking and ETS and sets its taxation and health care policies accordingly.

59. Despite its knowledge of risks associated with cigarette smoking, the Province, at all material times, permitted the sale and consumption of cigarettes in Ontario and derived substantial revenue therefrom.

60. The Province is wrongfully attempting, by statute, to make conduct actionable which was not actionable at the time it occurred. As a result and because the Province waited for decades to commence a claim, PM USA pleads that the Province's action should be dismissed on the basis of voluntary assumption of risk, laches, estoppel and the *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes.

(ii) Voluntary assumption of risk

61. PM USA repeats paragraphs 51-60 hereof and states that at all material times the Province has been aware of health risks associated with cigarette smoking and ETS. Accordingly, the Province voluntarily assumes such risks, whatever their extent, in incurring the costs it alleges are caused or contributed to by cigarette smoking and ETS, and the Province is barred from recovering any of the Claimed Cost from PM USA in this action by reason of its own actions and its voluntary assumption of risk. PM USA further states that:

(a) the Province has had knowledge of the health risks for over 50 years. Despite that knowledge, the Province and the federal government have continued to permit the sale of tobacco products in Ontario;

(b) PM USA's activities over the last 50 years took place with the knowledge and consent of the governments, including the Province; and

(c) relying on the Province's course of conduct, PM USA continued to make its tobacco products available for sale in Ontario in compliance with all applicable government direction until 1989.

(iii) Contributory negligence

62. PM USA repeats paragraphs 51-60 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or contributed to, in whole or in part, by the acts or omissions of the federal government acting alone or as agent for or in concert with the Province, or due to the acts or omissions of the Province as pleaded herein, and not any act or omission of PM USA. PM USA pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

63. PM USA repeats and relies on paragraphs 51-60 hereof and states that it was governments that decided many aspects of the tobacco business and who kept the largest portion of the proceeds from the sale of tobacco products. To the extent insured persons, including under-aged persons, were not informed of the risks associated with smoking cigarettes or purchased low tar cigarettes as a result of a misrepresentation (all of which is denied), it is because the Province or the federal government, or both, failed to perform their obligations adequately.

(iv) The Province cannot profit from its wrongful conduct

64. PM USA repeats paragraphs 25-43 and 51-60 hereof and states that the Province is barred from recovering any damages or costs it has suffered, the existence of which is denied, as any

damages or costs flowed from its participation as set out herein in conduct which the Province itself alleges in the Statement of Claim constituted breaches of duty.

(v) Legal and equitable bars

65. PM USA repeats paragraphs 51-60 hereof and states that by reason of the facts set out therein and the knowledge, conduct and delay of the Province and the prejudice thereby caused to PM USA, the Province is barred in law and in equity from advancing the claims made in the Statement of Claim against PM USA. PM USA pleads and relies on the *Health Insurance* Act, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes.

(vi) Mitigation

66. PM USA repeats paragraphs 51-60 hereof and states that if the Province has incurred the Claimed Cost, as alleged or at all, which is denied, the Province has failed to mitigate the Claimed Cost.

C. DEFENCES ARISING OUT OF INDIVIDUAL CONDUCT

(i) General

67. If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, and the Province's claim to recover the Claimed Cost is subject to complete defences by reason of the conduct of individual insured persons, including their voluntary decisions to commence or continue smoking with awareness of the associated risks.

68. All of the insured persons who smoke or have smoked cigarettes were aware or had been warned of risks associated with smoking.

69. Each insured person became aware or received warnings of risks associated with smoking by various means, including, without limitation, one or more of the following:

(a) Warnings, including on the packaging of cigarettes, as required from time to time pursuant to federal and provincial legislation and regulations and voluntary codes of compliance by Canadian tobacco manufacturers;

(b) Mandatory displays, signs and other warnings required by provincial legislation in premises where sales of cigarettes take place;

(c) Discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;

(d) Education programmes including courses, seminars and lectures and educational literature and other media;

(e) Oral and written warnings from physicians and other health practitioners;

(f) Oral and written warnings from family members, friends and other acquaintances; and

(g) The common general understandings and historical beliefs about adverse health consequences attributed to cigarette smoking dating back hundreds of years.

70. By reason of the foregoing, PM USA states that all of the insured persons who smoke or have smoked cigarettes were aware or had been warned of associated risks.

71. Each of those insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking, and each such insured person voluntarily consented to accept such risks.

72. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the associated risks. PM USA had and has no legal duty to such persons, or alternatively, no legal duty to such persons that has not been fulfilled.

73. PM USA denies that any insured persons began, continued, or were unable to cease smoking by reason of any of the alleged breaches of duty of PM USA, or that any alleged breach of duty caused or contributed to any alleged tobacco related disease or increased costs of tobacco related disease in any insured person.

74. If the federal government did not act as an agent for or in concert with the Province, then to the extent insured persons were not adequately informed about the risks of smoking cigarettes or purchased low tar cigarettes as the result of a misrepresentation (all of which is denied), they did so as a result of the breach of duty owed to them by the federal government.

75. Finally, to the extent the Province incurred health care costs due to smoking by insured persons, which is denied, the cost was caused by Aboriginal Manufacturers who breached duties owed to insured persons by the way they packaged and sold their products.

(ii) Voluntary assumption of risk

76. PM USA repeats paragraphs 67-75 hereof and states that at all material times individual insured persons were aware of health risks associated with cigarette smoking. Accordingly, such persons voluntarily assumed such risks, whatever their extent, when they decided to commence and continue smoking.

(iii) Contributory negligence

77. PM USA repeats paragraphs 67-75 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of PM USA. PM USA pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

(iv) Legal and equitable bars

78. PM USA repeats paragraphs 67-75 hereof and states that by reason of the facts set out therein and the knowledge and conduct of insured persons and the prejudice thereby caused to PM USA, the Province is barred at law and in equity from advancing the claims made in the Statement of Claim against PM USA.

(v) Limitations

79. PM USA pleads and relies upon the provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, in respect of the claims of any individual insured person upon which the Province's cause of action is alleged to rest.

80. PM USA pleads and relies upon the limitation provisions in the *Competition Act*, RSC 1985, c. C-34, as amended, and any predecessor statutes.

(vi) Mitigation

81. PM USA repeats paragraphs 67-75 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, individual insured persons have failed to mitigate the Claimed Cost.

RELIEF SOUGHT BY PM USA

82. In the circumstances, PM USA submits that the Province's claim should be dismissed, with costs.

Date: April 29. 2016

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B E T W E E N :

Her Majesty The Queen in Right of Ontario - and - Rothmans Inc., Rothmans, et al.

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at TORONTO

STATEMENT OF DEFENCE OF THE DEFENDANT PHILIP MORRIS USA INC.

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TAB 14

Court File No.: CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

– and –

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

Defendants

STATEMENT OF DEFENCE OF THE DEFENDANTS ROTHMANS INC. and ROTHMANS, BENSON & HEDGES INC.

TABLE OF CONTENTS

1. The defendants Rothmans Inc. and Rothmans, Benson & Hedges Inc. (which have amalgamated with each other under the name Rothmans, Benson & Hedges Inc. - hereafter **"RBH Inc."**) deny, or where applicable do not admit, the allegations made in the Fresh as Amended Statement of Claim, amended on April 26, 2016 (the **"Statement of Claim"**) by the plaintiff (**"Ontario"** or the **"Province"**), unless expressly admitted, and put the Province to the strict proof thereof.

2. RBH Inc. admits the allegations contained in paragraphs 8, 12, and 26-28 of the Statement of Claim.

3. RBH Inc. denies the allegations contained in paragraphs 2-7, 20-22, 23, 25, 29, 40-45, 48-127, and 141-150 of the Statement of Claim.

4. RBH Inc. has no knowledge in respect of the allegations contained in paragraphs 9-11, 13-19, 24, 30-39, 46-47, 128-140, and 151 of the Statement of Claim.

I. RELIEF CLAIMED

5. RBH Inc. denies that the Province is entitled to the relief claimed in paragraph 1 of the Statement of Claim and says that this action should be dismissed with costs.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Case

6. RBH Inc. denies the allegations in paragraphs 2-4 in the Statement of Claim and denies the Province's ability to seek relief or recover the cost of health care benefits described in paragraph 1 of the Statement of Claim (the **"Claimed Cost"**) from RBH Inc., except that RBH Inc. admits that this action is brought pursuant to the provisions of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, S.O. 2009, C.13 (the **"Act"**).

7. RBH Inc. admits only that the Statement of Claim states the definitions referred to in paragraphs 5-6 of the Statement of Claim for the purposes of the Statement of Claim but not otherwise.

B. The Defendants

8. RBH Inc. denies the allegations in paragraph 7 of the Statement of Claim. For clarification, RBH Inc. states that Rothmans Inc. amalgamated into RBH Inc. in 2009.

9. RBH Inc. admits the allegations in paragraph 8 of the Statement of Claim. For clarification, RBH Inc. admits that its corporate headquarters are located at 1500 Don Mills Road, North York, Ontario.

10. RBH Inc. has no knowledge of the allegations in paragraphs 9-11 of the statement of Claim and therefore denies the same.

11. RBH Inc. admits that Philip Morris International Inc. is a Virginia company with offices located at 120 Park Avenue in New York, New York.

12. RBH Inc. has no knowledge of the allegations in paragraphs 13-19 of the Statement of Claim and therefore denies the same.

13. RBH Inc. admits that, at various times since 1950, cigarettes that it has manufactured and promoted have been offered for sale in Ontario, but has no knowledge as to the other defendants in paragraph 20 and therefore denies the same.

14. RBH Inc. denies the allegations in paragraphs 21-22 of the Statement of Claim.

III. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

A. Canadian Tobacco Companies

(i) The Defendant Rothmans Inc.

15. RBH Inc. admits that Rothmans of Pall Mall Canada Limited was incorporated in 1956 and that in 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc. At the same time, Rothmans Inc. became a holding company and its tobacco business was transferred to its wholly-owned subsidiary, Rothmans of Pall Mall Limited. RBH Inc. further states that Rothmans Inc. amalgamated into RBH Inc. in 2009. RBH Inc. has no knowledge as to the remaining allegations in paragraph 23 of the Statement of Claim and therefore denies the same.

16. RBH Inc. has no knowledge of the allegations in paragraph 24 of the Statement of Claim and therefore denies the same.

(ii) The Defendant Rothmans, Benson & Hedges Inc.

17. RBH Inc. admits that Rothmans of Pall Mall Limited acquired the tobacco business of Rothmans Inc. in 1985. RBH Inc. also admits that Rothmans of Pall Mall, at various times, manufactured and promoted cigarettes offered for sale in Ontario. RBH Inc. denies the remaining allegations in paragraph 25.

18. RBH Inc. admits that Benson & Hedges (Canada) Limited was incorporated in 1934 and that RBH Inc. was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited. RBH Inc. also admits that Benson & Hedges (Canada) Ltd. (renamed Benson & Hedges (Canada) Inc. in 1979), at various times since 1950, manufactured and promoted cigarettes offered for sale in Ontario.

19. RBH Inc. admits that it has, at various times since 1986, manufactured and promoted cigarettes offered for sale in Ontario. RBH Inc. also admits that, between 1986 and 1989, it distributed in Canada, including in Ontario, a small amount of U.S.-sourced tobacco products manufactured by Philip Morris Incorporated (now Philip Morris USA Inc.), but these products accounted for less than 0.1% of all duty-paid cigarettes sold in Canada during this time period.

20. RBH Inc. admits that, at various times since 1950, it (or its predecessors) has manufactured and promoted cigarettes in Ontario and Canada under several brand names, including Rothmans and Benson & Hedges.

21. RBH Inc. denies the allegations in paragraph 29 of the Statement of Claim. RBH Inc. further states that between 1986 and July 2008, Rothmans Inc. maintained a 60% shareholder interest in RBH Inc. Between 1986 and March 2008, corporate entities related to Altria Group, Inc. maintained a 40% shareholder interest in RBH Inc. Since September 2008, RBH Inc. has been an indirect wholly owned subsidiary of Philip Morris International Inc.

(iii) The Defendant JTI-Macdonald Corp.

22. RBH Inc. has no knowledge of the allegations in paragraphs 30-33 of the Statement of Claim and therefore denies the same.

(iv) The Imperial Tobacco Canada Limited

23. RBH Inc. has no knowledge of the allegations in paragraphs 30-39 of the Statement of Claim and therefore denies the same.

B. Multinational Tobacco Enterprises

24. RBH Inc. denies the allegations in paragraphs 40-45 of the Statement of Claim. RBH Inc. states additionally that paragraphs 40-45 of the Statement of Claim purport to collectively categorize separate entities as certain “Groups” or “Lead Companies”, and RBH Inc.

denies that such characterization is accurate, proper or has any legal significance whatsoever relevant to the Province's claims or the Province's ability to seek relief or recover the Claimed Cost from RBH Inc.

25. RBH Inc. has no knowledge of the allegations in paragraphs 46-47 of the Statement of Claim and therefore denies the same.

IV. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. General

26. RBH Inc. admits that, at various times since 1950, cigarettes that it has manufactured and promoted have been offered for sale in Ontario, but denies that:

(a) it has committed any tobacco related wrong, or breached any common law, equitable or statutory duty as alleged in the Statement of Claim or at all;

(b) it manufactures or has manufactured a defective product;

(c) it fails or has failed to warn, unlawfully sells or markets to children and adolescents or has ever done so;

(d) it makes or has made any deceitful or negligent misrepresentations;

(e) it contravenes or has contravened any consumer protection or competition legislation; or

(f) it takes or has taken part in any conspiracy, concerted action or common design as alleged.

27. RBH Inc. further states the following:

(a) RBH Inc., through predecessor companies, has been manufacturing tobacco products in Canada for over 100 years;

(b) At all material times, it was generally accepted by persons in Ontario, as well as by the plaintiff, that there were health risks associated with smoking and that smoking could be difficult to quit. Accordingly, it has been generally accepted that persons below a certain age should not be smoking and it has been unlawful to sell cigarettes to persons under a certain age since 1908;

(c) Despite the health concerns and the prohibition on selling to underage persons, advertising, promotion and consumption of tobacco products, and selling cigarettes to adults in Ontario is, and has always been, legal, subject to certain exceptions and restrictions, all of which have been fully complied with by RBH Inc. In fact, the federal and provincial governments, including Ontario, were highly supportive of the tobacco industry in Canada and among other things:

(i) supported the farmers' growing of tobacco in Canada, and especially in Ontario;

(ii) supported the sale of tobacco both in Canada and abroad;

(iii) provided cigarettes to Canadian soldiers; and

(iv) established tax policies to maximize government revenue from the sale of tobacco products;

(d) Matters of health fall within the jurisdiction of both Ontario and the Parliament of Canada. Apart from collecting its own share of tobacco-related taxes, Ontario generally followed the federal government's lead on tobacco matters, supplementing federal activity where it thought appropriate. Ontario looked to the federal government and its own initiatives to keep it apprised on smoking related issues;

(e) When Ontario and the federal government were not acting in concert regarding smoking related issues, the federal government acted as the agent of Ontario in giving directions and making representations to RBH Inc. (thereby establishing the applicable standard of care) and in communicating with persons in Ontario;

(f) Over the last 50 years, federal and provincial governments, including Ontario, became highly involved in regulating the tobacco industry and controlling the messaging to the public regarding the health risks of smoking and received most of the proceeds from the sale of tobacco products. In particular, they dictated:

(i) the kinds of tobacco that would be grown;

(ii) the type of tobacco products that would be sold;

(iii) whether tobacco products required health warnings, and the content, size and placement of those warnings;

(iv) the types of promotion that would be permitted;

(v) where tobacco products could be sold and used; and

(vi) the price at which tobacco products would be sold.

(g) In particular, the federal government directed RBH Inc. to sell and promote low tar products and represented to both RBH Inc. and persons in Ontario that these products were less hazardous than higher tar products;

(h) At all times RBH Inc. acted as a reasonable tobacco manufacturer having regard to all the circumstances, which include the fact that its activities were largely

directed by the federal government (as agent for Ontario or otherwise), and that at no time did RBH Inc. commit any tobacco related wrongs;

(i) In part because of the widespread public awareness of the health risks of smoking, any tobacco related wrong RBH Inc. may have committed did not cause anyone in Ontario to smoke or to continue to smoke, or to be exposed to cigarette smoke;

(j) The consumption of cigarettes, either as a result of a breach of duty as alleged in the Claim or otherwise has not caused the Claimed Cost to increase beyond what such costs would have been if no cigarettes had been consumed in Ontario;

(k) In addition, a significant and growing proportion of the Canadian cigarette market is supplied by manufacturers other than those identified in the Claim. Specifically, manufacturers located on aboriginal reserves (the **"Aboriginal Manufacturers"**) produce, promote and provide cigarettes to numerous consumers across Canada. Vendors selling cigarettes produced by the Aboriginal Manufacturers routinely fail to collect the federal and provincial taxes applicable to sales to non-aboriginal purchasers, creating a substantial incentive for non-aboriginal to purchase cigarettes from these manufacturers instead of the manufacturers identified in the Claim. Additionally, cigarettes produced by the Aboriginal Manufacturers dominate the market for contraband cigarettes in Canada. As a result, a significant fraction of the cigarettes consumed in Canada are not supplied by

manufacturers identified in the Claim, but rather by the Aboriginal Manufacturers; and

(l) Ontario has profited from the sale of tobacco products in the province for well over 50 years. Given Ontario's knowledge of the health risks and its role – directly and through its agent the federal government – in regulating the tobacco business and controlling the messaging to the public regarding the health risks of smoking, Ontario has no claim against RBH Inc. and this action should be dismissed.

B. Breaches of Common Law, Equitable or Statutory Duties or Obligations

(i) The Defendants' Knowledge

28. RBH Inc. denies the allegations made in paragraphs 49-50 of the Statement of Claim. RBH Inc. does admit that cigarettes are made from tobacco, which contains naturally occurring nicotine, and further pleads as follows:

(a) Over many generations, some smokers have expressed the opinion that they have had difficulty stopping smoking. There has been a widespread public belief for generations that smoking is "addictive". RBH Inc. has always acknowledged that smoking can be difficult to quit for some people. However, in the past, it has disputed whether smoking met the traditional definition of "addiction" as that term is used by health professionals.

(b) The term "addiction" has had different definitions over the years. Until the late 1980s, government and health professionals considered smoking to be a habit not an "addiction". Nevertheless, using common parlance, many smokers referred to themselves as being "addicted". On the basis of a modification to the traditional definition of the term, "addiction" became the preferred term of government, while health professionals refer to both "addiction" and "dependence".

(c) As the term "addictive" is commonly used today, RBH Inc. admits that nicotine in cigarette smoke is addictive, and that cigarette smoking is addictive. Regardless of the term used in connection with smoking – "addiction", "dependence" or "difficult to quit" – smokers can and do quit smoking all the time. Millions of smokers, including in Ontario, have successfully stopped smoking without withdrawal symptoms and without assistance. Neither "addiction" nor "dependence" deprives smokers of their free will or renders them incapable of stopping to smoke.

(d) At all relevant times, individual insured persons were aware that smoking could be difficult to quit before they started smoking and made informed voluntary decisions to start and to continue to smoke.

(e) Further, people smoke or continue to smoke for various reasons including but not limited to nicotine, taste, pleasure, ritual and social reasons. As is pleaded herein, the federal government concluded that products delivering too little nicotine

would not advance the health agenda because smokers would reject these products for higher tar and nicotine products.

29. RBH Inc. admits that cigarette smoking causes or contributes to cancers of the lung, bronchus, trachea, larynx, pharynx, lip, esophagus, bladder, kidneys, and pancreas; leukemia; emphysema; chronic bronchitis; chronic airways obstruction; chronic obstructive pulmonary disease; coronary heart disease; peripheral vascular disease; and vascular disease. RBH Inc. states that "cancer of the stomach", "cancer of the nose", and "cancer of the oral cavity" are relatively vague terms which might encompass a number of different and varied anatomical structures, but admits that smoking causes cancer in certain of the anatomical structures associated with the stomach, nose, and mouth. RBH Inc. denies that smoking causes or contributes to cancers of the liver, colon, rectum, or uterus or to pulmonary circulatory disease or miscarriage. RBH Inc. states that "fetal harm" is a relatively vague term which might encompass a number of different and varied anatomical structures, but admits that smoking is associated with an increased risk of placental abruption, premature birth, stillbirth, neonatal mortality, and intrauterine growth restriction; and that cigarette smoking causes lower infant birth weight in infants whose mothers were smokers during pregnancy. RBH Inc. further states that many other factors, whether environmental, physiological, genetic, or based upon lifestyle choices, can also have harmful effects on pregnancy. RBH Inc. acknowledges that the Surgeon General's 2014 Report (entitled "The Health Consequences of Smoking – 50 Years of Progress") concluded that there is sufficient evidence to infer a causal relationship between smoking and asthma and increased morbidity and general deterioration of health, but RBH Inc.'s position is that at this time, these conclusions are based on inadequate scientific support. RBH Inc. further

states that diseases caused or contributed to by cigarette smoking are complex and may be caused or contributed to by many different factors, whether environmental, physiological, genetic or based upon lifestyle choices. With respect to environmental tobacco smoke ("ETS") (referred to in the Statement of Claim as "second hand smoke"), RBH Inc. acknowledges that the Surgeon General's 2006 Report (entitled "The Health Consequences of Involuntary Exposure to Tobacco Smoke") concluded that there is sufficient evidence to infer a causal relationship between ETS and lung cancer, coronary heart disease, and cough in children, but RBH Inc.'s position is that at this time, these conclusions are based on inadequate scientific support. RBH Inc. denies the remaining allegations in paragraph 51 of the Statement of Claim.

30. RBH Inc. denies the allegations in paragraphs 52-53 of the Statement of Claim. RBH Inc. states that cigarette smoke contains numerous constituents, some of which are acknowledged by public health organizations, such as the U.S. Food and Drug Administration, Health Canada, and the International Agency for Research on Cancer, to be hazardous to health. RBH Inc. further states that, at all material times, persons in Ontario have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government, the Province and the public health community have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by the federal government, the Province and the public health community have reinforced the awareness of persons in Ontario with respect to cigarette smoking and its potential risks. At all material times, RBH Inc. had no materially greater awareness of the potential health risks associated with

smoking and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the federal government, the Province and the public health community.

31. RBH Inc. denies the allegations in paragraph 54 of the Statement of Claim and repeats paragraph 28 hereof.

32. RBH Inc. denies the allegations in paragraph 55 of the Statement of Claim.

(ii) Breach of Duty – Design and Manufacture

33. RBH Inc. denies the allegations made in paragraphs 56-62 of the Statement of Claim. RBH Inc. has never breached any duty to with respect to the design or manufacture of cigarettes as alleged or at all, nor has RBH Inc. made any misrepresentations with respect to its products or their characteristics. Rather, at all material times RBH Inc. acted reasonably in designing and manufacturing its products, and in the changes and alterations that it made to the design and manufacture of cigarettes. Specifically with respect to paragraph 59 of the Statement of Claim, it was a federal government program that led to the development of a high nicotine tobacco plant. RBH Inc. further states the following:

(a) RBH Inc. denies that it manufactures or manufactured its products to create, facilitate, maintain or heighten "addiction". The federal government itself concluded that RBH Inc. did not add nicotine to its products and, with knowledge of all ingredients in cigarettes, has never suggested that RBH Inc. added chemicals to boost the impact of nicotine.

(b) When studies suggested a link between smoking and cancer, governments and the health community independently concluded that tar was the substance in tobacco smoke that increased risks to health and that therefore lower tar cigarettes were less hazardous than high tar cigarettes. The federal government advised RBH Inc. of its position and directed it to manufacture and promote lower tar products.

(c) The federal government urged RBH Inc. and the other members of the Canadian tobacco industry to manufacture low tar cigarettes and encouraged RBH Inc. to market and promote them so as to persuade consumers to switch to such cigarettes.

(d) The federal government published the "tar" levels of cigarettes first in tables and later directed RBH Inc. to do so on packaging and advertisements to provide information to persons in Ontario with the objective of inducing consumers to switch to lower tar products. These tar levels were determined according to testing protocols developed or approved by the federal government.

(e) When the federal government and others began publishing the tar levels of cigarette brands, consumers started to switch from higher tar to lower tar products.

(f) In response to government direction and consumer demand, RBH Inc. began to manufacture products with lower tar. Concerned that Canadians, including

persons in Ontario, were not switching to lower tar products fast enough, the federal government directed RBH to develop and market low tar products to meet specified sales weighted average of the tar ("SWAT") targets. RBH Inc. complied with the government direction and met those SWAT targets.

(g) The government and the health community concluded that their health objectives would not be advanced if products with reduced tar and nicotine were unacceptable to consumers, as they would be less likely to switch to lower tar products with poorer taste and less smoking satisfaction.

(h) Accordingly, officials from the federal government determined that it would be in the best interests of both tobacco growers and smokers if the growers grew varieties of tobacco with a higher content of nicotine than previous varieties. The federal government developed these varieties, which it licensed to the growers. RBH Inc. then purchased tobacco leaves from the growers through the Tobacco Marketing Boards.

(i) Using these tobacco leaves, RBH Inc. manufactured a range of lower tar products that would respond to the federal government's direction and also be acceptable to smokers.

(j) RBH Inc. reasonably relied on the federal government in developing and promoting lower tar products. The federal government considered the concept of

smokers' compensation and concluded and advised RBH Inc. that any compensation that occurred would not negate the benefits of consumers switching to lower tar products.

(k) RBH Inc. monitored world-wide development of tobacco products, implemented all product modifications as appropriate, and ensured that its products were free of latent defects and were fit for the purpose intended by both the Province and the federal government.

(iii) Breach of Duty to Warn

34. RBH Inc. denies the allegations in paragraphs 63-70 of the Statement of Claim and repeats paragraphs 33, 35 and 49 hereof. RHB Inc. further denies that it breached any common law, equitable, or statutory duties, if any, that in the circumstances existed at all relevant places and times, or failed to warn persons in Ontario, and denies that any of its warnings were inadequate or defective. RBH Inc. also pleads as follows:

(a) The risks associated with smoking, including difficulty of quitting, have been widely known in Ontario for more than 50 years.

(b) Before 1972, the federal government determined and advised RBH Inc. that it was not necessary or warranted to place warnings on tobacco products as the health risks were well known and the warnings would have no impact on smoking.

(c) In 1972, the federal government determined that it was appropriate to have health warnings on tobacco products. Thereafter, the federal government directed the content, size and placement of the warnings on packages and the Province determined what health-related signs would be posted at retail outlets.

(d) At all times, RBH Inc. complied with the government's direction with respect to warnings. Since 1972, all RBH Inc. cigarettes sold in Ontario carried the government-mandated health warnings.

(e) Well before and after packages contained warnings, information about the risks of smoking was communicated to persons in Ontario by television and radio programmes, magazines, newspapers, journal articles, government publications, health advocates, parents, physicians, teachers and religious leaders. Persons in Ontario attached credibility to these sources.

(f) RBH Inc. possessed no more material knowledge about the health risks associated with smoking than the health community, the Province, the federal government or than was contained in information that was publicly disseminated to persons in Ontario.

(g) At times, statements by representatives of RBH Inc. or the Canadian Tobacco Manufacturers' Council (**"CTMC"**) questioning whether the causal link between smoking and disease and whether smoking was an "addiction" may have been

published. RBH Inc. states that there was an honest belief and a reasonable basis for that questioning.

(h) In any event, in the 1960s the federal government concluded that smoking caused disease, and in the 1990s that it was appropriate to use the word "addictive" in connection with smoking. More recently the federal government appears to have changed its view on low tar products. These conclusions: (1) were widely communicated to persons in Ontario through the sources referred to in subparagraph (e) above; and (2) were received, believed and relied upon by Ontarians, who did not accept or rely upon any statement made by RBH Inc.

(iv) Breach of the duty - Misrepresentation

35. RBH Inc. denies the allegations made in paragraphs 71-72.3, 73-73.2, and 74-77 of the Statement of Claim and repeats paragraphs 26, 33 and 34 hereof. RBH Inc. has never at any time made representations that were false and has never suppressed any such scientific and medical data. RBH Inc. has no knowledge of the allegations in paragraphs 72.4, 72.5, 73.3, and 73.4 and therefore denies the same. Further, RBH Inc. pleads as follows:

(a) At all material times RBH Inc. complied with all common law, equitable and statutory duties that, in the circumstances, existed at various places and times;

(b) Over many generations, some smokers have expressed the opinion that they have had difficulty stopping smoking. There has been a widespread public belief for

generations that smoking is “addictive”. RBH Inc. has always acknowledged that smoking can be difficult to quit for some people. However, in the past, it has disputed whether smoking met the traditional definition of “addiction”.

(c) The term “addiction” has had different definitions over the years. Until the late and health professionals considered smoking to be a habit not an “addiction”. Nevertheless, using common parlance, many smokers referred to themselves as being “addicted”. On the basis of a modification to the traditional definition of the term, “addiction” became the preferred term of government, while health professionals refer to both “addiction” and “dependence”.

(d) As the term “addictive” is commonly used today, RBH Inc. admits that nicotine in cigarette smoke is addictive, and that cigarette smoking is addictive. Regardless of the term used in connection with smoking – “addiction”, “dependence” or “difficult to quit” - smokers can and do quit smoking all the time. Millions of smokers, including persons in Ontario, have successfully stopped smoking without withdrawal symptoms and without assistance. Neither "addiction" nor "dependence" deprives smokers of their free will or renders them incapable of stopping to smoke.

(e) RBH Inc. maintains that, at all relevant times, individual insured persons were aware that smoking could be difficult to quit before they started smoking and made informed voluntary decisions to start and to continue to smoke.

(f) For over 40 years, the federal government and the Province have directed how tobacco products are permitted to be promoted in Ontario through their involvement in the modification of industry codes and later through legislation.

(g) Throughout that period, RBH Inc.'s promotion complied with that direction. Specifically, RBH Inc.'s promotional activities never targeted under-aged smokers or non-smokers; all of RBH Inc. 's promotion was designed to persuade adult smokers to choose or continue to choose RBH Inc.'s brands in preference to the brands of its competitors. RBH Inc. supported efforts by retailers to ensure that tobacco products were sold only to adults.

(h) Through that period, RBH Inc.'s promotion never stated that any of its products were less hazardous than any others. Based upon representations made to persons in Ontario by both the federal government and the health community, persons in Ontario reasonably concluded that, although they still entailed significant health risks, lower tar products were less hazardous than higher tar products.

(i) Since 1989, RBH Inc. has generally been prohibited, or extremely restricted, from conducting product advertising in Ontario, and has been prohibited from advertising its sponsorship of events since 2003. Accordingly, since those times (and to a large degree even before) the only information or promotion communicated to persons in Ontario with respect to smoking has been that of

governments and the health community. Nevertheless, with knowledge of the health risks, persons in Ontario still choose to start and continue to smoke.

(j) Since and before that time, the Province has dictated from where tobacco products can be sold and, more recently, where they cannot be displayed or used. As a result of the taxes imposed by the Province and the federal government, the price of tobacco products legally sold in Ontario is largely determined by governments.

(v) Breach of the duty - Manufacturing or Promoting Products for Children and Adolescents

36. RBH Inc. denies the allegations made in paragraphs 78-85 of the Statement of Claim. RBH Inc. has never breached any duty to children or adolescents as alleged or at all, and denies that it targeted children or adolescents in its advertising or other activities. RBH Inc. also pleads as follows:

(a) At all material times the Province had and undertook a program of informing children and adolescents within Ontario of the risks associated with the consumption of tobacco products, and if such persons have not been informed of such risks, which is denied, the Province failed to perform that program adequately.

(b) At all material times the Province alone had the obligation to enforce all relevant statutes and regulations pertaining to the sale of tobacco products to under-aged

smokers, as defined from time to time by statutes or regulations, and failed to do so.

(vi) Conspiracy, Concert of Action and Common Design

37. RBH Inc. denies the allegations in paragraph 86 of the Statement of Claim. At no time did RBH Inc. enter into or engage in any improper conspiracy, concert of action or common design with other persons. RBH Inc. further states that:

(a) RBH Inc. periodically received information from its parent and shareholders but never received any material information about the health risks of smoking that was not generally known by governments and persons in Ontario.

(b) RBH Inc. was never instructed by any of its parent or shareholders (nor did RBH Inc. ever agree) to suppress any information or do anything contrary to any common law or statutory obligation and denies the existence of any legal or factual conspiracy between it and any of its parent or shareholders.

(c) In the early 1960s, the federal government invited the Canadian manufacturers to engage in dialogue with it as a single unit on issues related to tobacco. As a result, an ad hoc committee of manufacturers was created which eventually led to the creation of the CTMC.

(d) Thereafter, for the most part, the federal government directed the regulation of promotion (including warnings) and the development of less hazardous products through the CTMC.

(e) Neither the CTMC nor any of its other members ever dictated to RBH Inc. what it should or should not do or say. Moreover, there was never any agreement among or between manufacturers to refrain from communicating any information to persons in Ontario or to governments.

(f) RBH Inc. denies the existence of a conspiracy or of concerted action as alleged or at all and denies it agreed to adopt common policies or a common design as alleged or at all to carry out unlawful acts in Ontario. RBH Inc. repeats paragraphs 34 hereof, and states:

(i) If there was any conspiracy, concerted action or a common policy or design as alleged in the Statement of Claim, which is denied, Ontario has no claim in respect thereof because it agreed to and adopted the design of what it alleges is a conspiracy or concerted action and became a party thereto and carried out acts in Ontario in furtherance thereof that Ontario alleges are unlawful;

(ii) If any of the acts alleged in the Claim are found to be an unlawful conspiracy or unlawful concerted action, these acts were also engaged in

by Ontario, and Ontario is therefore estopped from relying on such acts in this action; and further

(iii) In any event Ontario agreed and continues to agree to, and condoned and condones, RBH Inc.'s design, manufacture, marketing, distribution and sale of tobacco, and is therefore estopped from relying on such acts in this action.

(a) Conspiracy within the International Tobacco Industry

38. RBH Inc. denies the allegations in paragraphs 87-107 of the Statement of Claim and repeats paragraph 37 hereof.

(b) Conspiracy within the Canadian Tobacco Industry

39. RBH Inc. denies the allegations in paragraphs 108-116 of the Statement of Claim and repeats paragraph 37 hereof.

(c) Conspiracy within Corporate Groups

- **The Rothmans Group**

40. RBH Inc. denies the allegations in paragraphs 117-120 of the Statement of Claim, repeats paragraph 37 ands refers to paragraph 41 below.

- **The Philip Morris Group**

41. RBH Inc. denies the allegations in paragraphs 121-127 of the Statement of Claim and repeats paragraph 37 hereof. RBH Inc. further states that:

(a) RBH Inc. periodically received information from its parent and shareholders but never received any material information about the health risks of smoking that was not generally known by governments and persons in Ontario;

(b) RBH Inc. was never instructed by any of its parent or shareholders (nor did RBH Inc. ever agree) to suppress any information or do anything contrary to any common law or statutory obligation and denies the existence of any legal or factual conspiracy between it and any of its parent or shareholders; and

(c) RBH Inc. was never the agent of Philip Morris USA Inc., Philip Morris International Inc., or Altria Group, Inc.

- **The RJR Group**

42. RBH Inc. has no knowledge of the allegations in paragraphs 128-134 of the Statement of Claim and therefore denies the same.

- **The BAT Group**

43. RBH Inc. has no knowledge of the allegations in paragraphs 135-140 of the Statement of Claim and therefore denies the same.

44. RBH Inc. denies the allegations in paragraph 141 of the Statement of Claim and repeats paragraph 37 hereof.

(vii) Breach of *Consumer Protection Act, 2002*, the *Competition Act* and their Predecessor Statutes

45. RBH Inc. denies the allegations in paragraphs 142-147 of the Statement of Claim and repeats paragraphs 26 and 33-37 hereof.

V. CONCLUSION

46. RBH Inc. denies the allegations at paragraphs 148-150 of the Statement of Claim and repeats paragraphs 26 and 33-37 hereof.

47. RBH Inc. has no knowledge of the allegations in paragraph 151 of the Statement of Claim and therefore denies the same.

VI. ANSWERS TO THE STATEMENT OF CLAIM AS A WHOLE

A. General Defences

(i) No cause of action

48. The Statement of Claim discloses no cause of action because:

(a) There has been no pecuniary damage suffered by insured persons in respect of the "cost of health care benefits" as defined by the *Act*;

(b) The statutory liability the Province is attempting to impose on the defendants in this action is an after the fact attempt to make actionable conduct that was not actionable when it occurred;

(c) If the Claimed Cost was incurred as alleged or at all, which is denied, it was incurred by the federal government by means of transfer payments, conditional grants and shared cost programmes, and not by the Province;

(d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was incurred to provide services to insured persons that the Province was and is required to provide pursuant to Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes; and

(e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by the conduct and acts or omissions of the federal government and of the Province.

(ii) No breach of duty

49. RBH Inc. states as follows:

(a) RBH Inc. denies that it has breached any common law, equitable or statutory duties as alleged in the Statement of Claim or at all. Specifically, given the widespread knowledge of consumers of the risks associated with the use of

tobacco products, RBH Inc. did not and does not manufacture a defective product, nor, given that knowledge, had a duty to warn. RBH Inc. did not and does not unlawfully sell or market to or otherwise target children and adolescents, make any deceitful or negligent misrepresentations, contravene any consumer protection or competition legislation, or take part in any conspiracy, unlawful concerted action or common design as alleged or at all.

(b) RBH Inc. denies that persons have started or continued to smoke, or suffered any tobacco related disease, as a consequence of any alleged breach of duty.

(c) At all material times RBH Inc. has cooperated with governments in Canada when the latter have properly exercised their constitutional authority in their regulation of the tobacco industry. In particular, RBH Inc. has been guided by, encouraged and participated with the governments and public health agencies in product development initiatives, including the development of raw materials, the reduction of tar and nicotine content in cigarette smoke, the design and manufacture of low tar cigarettes as well as advertising and promotion initiatives, in pursuance of government health objectives of the time, to encourage smokers to switch to lower tar products.

(d) At all materials times, the manufacture, sale, advertising and promotion of tobacco products in Ontario and throughout Canada has been supervised, regulated and controlled by the Province and the federal government. The

Province encouraged or participated in such supervision, regulation and control in Ontario either directly or indirectly through agreements, express or implied with the federal government. Together the said governments have defined and delineated the duties of tobacco manufacturers in Canada including Ontario and have given advice, recommendations, directions and suggestions in relation to, *inter alia*:

(i) the nature and scope of research into the properties of cigarettes to be undertaken by RBH Inc. and other Canadian tobacco manufacturers;

(ii) whether warnings of the health risks and addictive character of cigarettes should be provided to consumers;

(iii) the content and placement of any such warnings to be provided;

(iv) product modifications, including the development, manufacture, promotion, distribution and sale of cigarettes containing lower amounts of tar and nicotine as measured by standard smoking machines;

(v) communications by Canadian manufacturers with consumers about the health risks and addictive character of cigarettes and their tar and nicotine content when measured by standard smoking machines; and

(vi) the acceptability of the types of advertising and other forms of promotion that have been used in the past by Canadian manufacturers to promote the sale of their products;

(e) At all material times RBH Inc. complied with the standards, regulations and directives imposed by the said governments, and complied reasonably with their recommendations, suggestions and advice and thereby discharged material duties and met appropriate standards in dealings with consumers or potential consumers.

(f) By complying with the various standards, regulations, directives, recommendations, suggestions and advice of the said governments, RBH Inc. acted reasonably in all the circumstances and committed no tobacco related wrongs as alleged in the Statement of Claim or at all.

(g) At various material times the said governments made representations to tobacco manufacturers in Canada which the said governments knew or ought to have known would be and were relied upon by the said manufacturers including representations relating to:

(i) the prevalence of public awareness of the health risks and addictive character of cigarettes;

(ii) whether warnings of the health risks and addictive character of cigarettes were necessary or effective to inform consumers of those risks or properties;

(iii) whether warnings of the health risks and addictive character of cigarettes would be effective to persuade consumers not to start or to stop smoking;

(iv) the form and placement of warnings on packages and other materials;

(v) diminished health risk to consumers from smoking cigarettes containing lower levels of tar as measured by standard smoking machines;

(vi) whether tar and nicotine measuring standards provided information to consumers on which they could make informed smoking decisions having regard to the health risks and addictive character of cigarettes;

(vii) whether the phenomenon of smoker "compensation", if real, negated the health benefits of low tar tobacco;

(viii) whether altering the tar/nicotine ratio in cigarettes would have less risk to public health; and

(ix) the types of advertising and other forms of promotion that have been used in the past by Canadian tobacco manufacturers to promote the sale of their products.

(h) RBH Inc. relied on the said representations and thereby complied with the standards, regulations, directives, recommendations, suggestions, advice and representations of the said governments and committed no tobacco related wrongs as alleged in the Statement of Claim or at all.

(iii) No damage

50. RBH Inc. states that the Province has (i) suffered no damage, and (ii) incurred none of the Claimed Cost, as a result of anything that the Province alleges in this action that RBH did or failed to do. RBH Inc. further states that:

(a) If RBH Inc. breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to the Claimed Cost as alleged or at all;

(b) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, without limitation, one or more of the following:

(i) the requirement that the Province provide services to insured persons pursuant to the Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes;

(ii) the conduct and acts or omissions of the federal government and of the Province;

(iii) the conduct and acts or omissions of individual insured persons as further particularized herein; and

(iv) disease or risk of disease in individual insured persons unrelated to smoking cigarettes;

(c) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by the tax revenue received by the Province from the sale of cigarettes in Ontario so that no cost is ultimately incurred by the Province;

(d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by monies received by the Province from the federal government by means of transfer payments, conditional grants and shared-cost programmes for the purpose of funding the Claimed Cost so that no cost is ultimately incurred by the Province; and

(e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was inflated by overbilling, waste, abuse, neglect and other

misconduct by various of the Province, persons involved in the administration and delivery of health care benefits and insured persons; and

(f) RBH Inc. denies that any alleged breach of duty by RBH Inc. caused persons in Ontario to smoke or to continue to smoke. Further, RBH Inc. states that the consumption of cigarettes, as a result of a breach of duty as alleged in the Statement of Claim, or otherwise, has not caused the Claimed Costs to increase beyond what such costs would have been if no cigarettes had been consumed in Ontario.

(iv) Causation

51. RBH Inc. admits that smoking causes or contributes to disease. These diseases are complex and may be caused or contributed to by many different factors, including genetics, stress, excess weight, alcohol, environmental factors and other consumer products. If RBH Inc. breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to any tobacco related disease in any insured person or any increased risk of tobacco related disease in any insured person.

(v) Limitations

52. RBH Inc. pleads and relies upon the provisions of the *Limitations Act*, *2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, both in respect of the Province's

claim and in respect of the health care costs of those persons on which the Province's claim is alleged to be based and calculated.

B. Defences Arising out of the Province's Conduct and Knowledge

(i) General

53. If the Province has incurred or will incur the Claimed Costs as alleged, or at all, which is denied, RBH Inc. states that such costs were or will be caused, and the Province's claim to recover such costs is subject to complete defences, by reason of the knowledge, acts or omissions of the federal government acting alone or as an agent for or in concert with the Province or due to the acts or omissions of the Province as particularized herein and including:

(a) The Province's knowledge of health risks associated with cigarette smoking;

(b) The Province's licensing and regulation of the production, manufacture and sale of cigarettes, including its failure to enforce or implement such regulation to the extent constitutionally permissible;

(c) The Province's voluntarily undertaking obligations to pay the cost of health care benefits allegedly caused or contributed to by cigarette smoking;

(d) The Province's failure to establish or delay in developing, or both, policies and practices, including health care expenditures and taxation policies and practices, legislation and regulations, when the Province knew or should have known of the

alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;

(e) The Province's failure to fund, develop and implement health promotion and smoking cessation practices and policies, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;

(f) The Province's failure to take any steps prior to commencement of this action to attempt to recover the alleged cost of health care benefits by subrogation;

(g) The Province's delay in implementing and failure to enforce laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time;

(h) The Province's own decision to regulate many aspects of the tobacco business and to keep the largest portion of the proceeds from the sale of tobacco products;

(i) The Province's taxation of cigarettes in excess of the cost (if any) of health care benefits allegedly resulting from tobacco related disease or the risk thereof;

(j) The Province's own breaches of its duty or duties to insured persons as particularized herein; and

(k) The Province's undertaking a course of conduct consisting of legislative and regulatory actions, representations, omissions and voluntary actions which the Province intended, knew, or ought to have known would lead RBH Inc. to believe that its conduct in Ontario, if any, was not in breach of any provincial statute or regulation and that its conduct was not actionable. In reliance on that course of conduct, RBH Inc. has continued to allow its tobacco products to be sold and consumed in Ontario, it has complied with applicable legislation and regulations and it has paid the applicable fees and taxes.

54. Further, for decades Ontario has exercised its legislative and regulatory authority with respect to the sale, use and taxation of tobacco, and has either prohibited or regulated all activities and conduct with respect to tobacco and its sale that it considered to be necessary, appropriate or desirable. In this regard, RBH Inc. pleads and relies on the *Minors' Protection Act*, R.S.O. 1990, c M.38 (superseded); *Smoking in the Workplace Act*, R.S.O. 1990, c S.13 (superseded); the *Public Vehicles Act*, R.S.O. 1990, c P.54, s. 20; and the *Smoke-Free Ontario Act*, S.O. 1994, c. 10; O. Reg. 48/06; the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes and regulations.

55. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario subject to certain exceptions and restrictions all of which have been fully complied with by RBH Inc.

56. At all material times, the Province, through its ministers, ministries, departments, servants and agents, has known as much regarding the material risks associated with smoking cigarettes and ETS as RBH Inc.

57. Despite its knowledge of risks associated with smoking cigarettes and ETS, the Province continued to license and regulate the production, manufacturing, advertising, promotion and sale of cigarettes in Ontario and to impose heavy taxation upon, *inter alia*, manufacturers, distributors and consumers of cigarettes.

58. The Province benefits from the taxes imposed on and in relation to the sale of cigarettes in Ontario, which results in complete mitigation of the claim. RBH Inc. pleads and relies on the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes.

59. Despite its knowledge of risks associated with cigarette smoking and ETS, the Province took no steps to restrict or limit the sale of cigarettes save for restrictions on sale to persons below a prescribed age and in that case, delayed in implementing such restrictions, and subsequently took no reasonable steps to enforce them. RBH Inc. pleads and relies on the *Smoke-Free Ontario Act*, S.O. 1994, c. 10 and O. Reg. 48/06, as amended, and any predecessor statutes.

60. Despite its knowledge of risks associated with cigarette smoking, the Province voluntarily undertakes the obligation of paying for the costs of health care benefits including

such costs it alleges are caused or contributed to by cigarette smoking and ETS and sets its taxation and health care policies accordingly.

61. Despite its knowledge of risks associated with cigarette smoking, the Province, at all material times, permitted the sale and consumption of cigarettes in Ontario and derived substantial revenue therefrom.

62. The Province is wrongfully attempting, by statute, to make conduct actionable which was not actionable at the time it occurred. As a result and because the Province waited for decades to commence a claim, RBH Inc. pleads that the Province's action should be dismissed on the basis of voluntary assumption of risk, *laches*, estoppel and the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes.

(ii) Voluntary assumption of risk

63. RBH Inc. repeats paragraphs 53-62 hereof and states that at all material times the Province has been aware of health risks associated with cigarette smoking and ETS. Accordingly, the Province voluntarily assumes such risks, whatever their extent, in incurring the costs it alleges are caused or contributed to by cigarette smoking and ETS, and the Province is barred from recovering any of the Claimed Cost from RBH Inc. in this action by reason of its own actions and its voluntary assumption of risk. RBH Inc. further states:

(a) The Province has had knowledge of the health risks for over 50 years. Despite that knowledge, the Province and the federal government have continued to permit the sale of tobacco products in the province.

(b) RBH Inc.'s activities over the last 50 years took place with the knowledge and consent of the governments, including the Province.

(c) Relying on the Province's course of conduct, RBH Inc. has continued to make its tobacco products available for sale in Ontario in compliance with all applicable government direction.

(iii) Contributory negligence

64. RBH Inc. repeats paragraphs 53-62 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or contributed to, in whole or in part, by the acts or omissions of the federal government acting alone or as agent for or in concert with the Province, or due to the acts or omissions of the Province as pleaded herein, and not any act or omission of RBH Inc. RBH Inc. pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

65. RBH Inc. repeats and relies on paragraphs 54-63 hereof and states that it was governments that decided many aspects of the tobacco business and who kept the largest portion of the proceeds from the sale of tobacco products. To the extent that insured persons, including under-aged persons, were not informed of the risks associated with smoking cigarettes or

purchased low tar cigarettes as a result of a misrepresentation (all of which is denied), it is because the Province or the federal government, or both, failed to perform their obligations adequately.

(iv) The Province cannot profit from its wrongful conduct

66. RBH Inc. repeats paragraphs 26-45 and 53-62 hereof and states that the Province is barred from recovering any damages or costs it has suffered, the existence of which is denied, as any damages or costs flowed from its participation as set out herein in conduct which the Province itself alleges in the Statement of Claim constituted breaches of duty.

(v) Legal and equitable bars

67. RBH Inc. repeats paragraphs 53-62 hereof and states that by reason of the facts set out therein and the knowledge, conduct and delay of the Province and the prejudice thereby caused to RBH Inc., the Province is barred in law and in equity from advancing the claims made in the Statement of Claim against RBH Inc. RBH Inc. pleads and relies on the *Health Insurance* Act, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes.

(vi) Mitigation

68. RBH Inc. repeats paragraphs 53-62 hereof and states that if the Province has incurred the Claimed Cost, as alleged or at all, which is denied, the Province has failed to mitigate the Claimed Cost.

C. Defences Arising out of Individual Conduct

(i) General

69. If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, and the Province's claim to recover the Claimed Cost is subject to, complete defences by reason of the conduct of individual insured persons, including their voluntary decisions to commence or continue smoking with awareness of the associated risks.

70. All of the insured persons who smoke or have smoked cigarettes were aware or had been warned of risks associated with smoking.

71. Each insured person became aware or received warnings of risks associated with smoking by various means, including, without limitation, one or more of the following:

(a) Warnings, including on the packaging of cigarettes, as required from time to time pursuant to federal and provincial legislation and regulations and voluntary codes of compliance by Canadian tobacco manufacturers;

(b) Mandatory displays, signs and other warnings required by provincial legislation in premises where sales of cigarettes take place;

(c) Discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;

(d) Education programmes including courses, seminars and lectures and educational literature and other media;

(e) Oral and written warnings from physicians and other health practitioners;

(f) Oral and written warnings from family members, friends and other acquaintances; and

(g) The common general understandings and historical beliefs about adverse health consequences attributed to cigarette smoking dating back hundreds of years.

72. By reason of the foregoing, RBH Inc. states that all of the insured persons who smoke or have smoked cigarettes were aware or had been warned of associated risks.

73. Each of those insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking, and each such insured person voluntarily consented to accept such risks.

74. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the associated risks. RBH Inc. had and has no legal duty to such persons, or alternatively, no legal duty to such persons that has not been fulfilled.

75. RBH Inc. denies that any insured persons began, continued, or were unable to cease smoking by reason of any of the alleged breaches of duty of RBH Inc., or that any alleged breach of duty caused or contributed to any alleged tobacco related disease or increased costs of tobacco related disease in any insured person.

76. If the federal government did not act as an agent for or in concert with the Province, then to the extent insured persons were not adequately informed about the risks of smoking cigarettes or purchased low tar cigarettes as the result of a misrepresentation (all of which is denied), they did so as a result of the breach of duty owed to them by the federal government.

77. Finally, to the extent that the Province incurred health care costs due to smoking by insured persons, which is denied, the cost was caused by Aboriginal Manufacturers who breached duties owed to insured persons by the way they packaged and sold their products.

(ii) Voluntary assumption of risk

78. RBH Inc. repeats paragraphs 69-77 hereof and states that at all material times individual insured persons were aware of health risks associated with cigarette smoking. Accordingly, such persons voluntarily assumed such risks, whatever their extent, when they decided to commence and continue smoking.

(iii) Contributory negligence

79. RBH Inc. repeats paragraphs 69-77 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of RBH Inc. RBH Inc. pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

(iv) Legal and equitable bars

80. RBH Inc. repeats paragraphs 69-77 hereof and states that by reason of the facts set out therein and the knowledge and conduct of insured persons and the prejudice thereby caused to RBH Inc., the Province is barred at law and in equity from advancing the claims made in the Statement of Claim against RBH Inc.

(v) Limitations

81. RBH Inc. pleads and relies upon the provisions of the *Limitations Act*, *2002,* S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, in respect of the claims of any individual insured person upon which the Province's cause of action is alleged to rest.

82. RBH Inc. pleads and relies upon the limitation provisions in the *Competition Act*, R.S.C. 1985, c. C-34, as amended, and any predecessor statutes.

(vi) Mitigation

83. RBH Inc. repeats paragraphs 69-77 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, individual insured persons have failed to mitigate the Claimed Cost.

VII. RELIEF SOUGHT BY RBH INC.

84. In the circumstances, RBH Inc. submits that the Province's claim should be dismissed, with costs.

Date: 2016 April 29

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Court File No.: CV-09-387984

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
– Plaintiff –

v.

ROTHMANS INC. and others
– Defendants –

ONTARIO
SUPERIOR COURT OF JUSTICE

(PROCEEDING COMMENCED AT TORONTO)

STATEMENT OF DEFENCE OF THE DEFENDANTS ROTHMANS INC. AND ROTHMANS, BENSON & HEDGES INC.

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TAB 15

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

– and –

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

Defendants

STATEMENT OF DEFENCE OF R.J. REYNOLDS TOBACCO COMPANY

Introduction

1. In this Statement of Defence, the Amended Fresh As Amended Statement of Claim is referred to as the "Statement of Claim" for ease of reference.

2. The Defendant, R.J. Reynolds Tobacco Company of North Carolina, is a company incorporated pursuant to the laws of North Carolina ("RJRT").

3. RJRT admits that this action is brought pursuant to the *Tobacco Damages and Health Care Costs Recovery Act, 2009,* S.O. 2009, c. 13 ("the Act").

4. RJRT further admits that the Province of Ontario (the "Province") does not bring this action on the basis of a subrogated claim but brings this action in its own right on an aggregate basis pursuant to subsections 2(1) and 2(2) of the Act.

5. RJRT adopts the definitions contained in the Act and in paragraph 6 of the Statement of Claim for the purposes of this Statement of Defence.

6. The Act creates a civil cause of action for the Province. However, except to the extent expressly provided for in the Act, the Act does not alter the substantive, evidentiary, or procedural laws of Ontario or Canada.

7. RJRT has no knowledge of the allegations contained in paragraphs 7-12, 16-19, 23-29, 34-39, 44-45, 47, 72.2, 72.3, 72.5, 73.1, 73.2, 73.4, 117-127 and 135-140 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

8. Except as otherwise expressly admitted herein, RJRT denies the balance of the allegations in the Statement of Claim and puts the Plaintiff to the strict proof thereof. Without limiting the generality of the foregoing, RJRT specifically denies that it has breached any common law, equitable or statutory duty or obligation owed to persons in Ontario as alleged in the Statement of Claim. RJRT denies that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes or to continue to smoke cigarettes or to be exposed to tobacco smoke.

9. With respect to paragraphs 56, 63, 71, 78, 142 and 143 of the Statement of Claim, it is for the Court to determine whether the duty or duties of care alleged therein existed at the time of the alleged breach of the same and, if so, the appropriate standards(s) of care.

RJRT's Corporate History

10. RJRT was formed in 2004, pursuant to the laws of the State of North Carolina.

11. In 2004, R.J. Reynolds Tobacco Company of New Jersey, a company that was previously incorporated pursuant to the laws of the State of New Jersey ("RJRT NJ"), merged with another corporate entity and thereafter ceased to exist. RJRT says that, as a result of the merger, it did not become subject to any liability under the Act, which statute had not been enacted in 2004.

12. RJRT NJ is not a predecessor in interest of RJRT. RJRT denies that it is responsible in law for the actions or conduct of RJRT NJ. Accordingly, RJRT cannot be liable for any tobacco related wrongs allegedly committed in Ontario prior to 2004, its date of incorporation. However, without prejudice to the generality of the foregoing, RJRT, to the extent possible and out of an abundance of caution, defends in respect of its own conduct and that of RJRT NJ.

13. Prior to 1970, RJRT NJ had no interest in the cigarette market in Ontario, nor did it own any shares of any corporation so interested. Accordingly, RJRT NJ cannot be held liable for any tobacco related wrong allegedly committed in Ontario prior to 1970.

14. In 1970, RJRT NJ entered into a business relationship with Macdonald Tobacco Inc. ("MTI") for the distribution of small volumes of RJRT NJ's cigarette brands in Canada.

15. On February 15, 1974, RJRT NJ purchased all of the shares of MTI. MTI became a subsidiary of RJRT NJ. Prior to that date, RJRT NJ did not hold shares in MTI or any other Canadian tobacco company. RJRT denies that MTI was, or has ever been, a subsidiary of RJRT.

16. RJR-Macdonald Inc. ("RJRMI") was incorporated on or about September 12, 1978 as a subsidiary of RJRT NJ. RJRT denies that RJRMI was, or has ever been, a subsidiary of RJRT. On or about September 19, 1978, RJRMI acquired all of the shares of MTI.

17. On or about October 26, 1978, RJRMI acquired all of the assets of MTI and agreed pursuant to a General Conveyancing Agreement ("Agreement") to assume and discharge the liabilities and obligations of MTI then owing. Such obligations and liabilities do not include any obligations or liabilities allegedly owing under the Act. The Agreement stated that nothing in it, express or implied, was intended to confer upon any other person any rights or remedies under or by reason of its operation. Following the Agreement, RJRMI then elected to be continued as a Canadian business corporation. In July 1979, MTI applied to the Minister of Consumer Affairs, Cooperatives and Financial Institutions to surrender its charter and be dissolved pursuant to Quebec law. MTI was dissolved and ceased to exist on or about February 15, 1983.

18. On May 11, 1999, RJRT NJ sold and transferred its shares in RJRMI to JT Nova Scotia Corporation and therefore RJRMI ceased to have any corporate relationship with RJRT NJ or R.J. Reynolds Tobacco International, Inc. (the "RJR Companies"). Since that time:

a) neither RJRT NJ nor RJRT has owned shares of any corporation involved in the Canadian cigarette market;

b) no significant quantities of cigarettes manufactured by RJRT NJ and/or RJRT have been distributed for sale in Ontario.

Accordingly, RJRT says that neither it nor RJRT NJ can be liable for any tobacco related wrong allegedly committed in Ontario after May 11, 1999.

19. In the normal course of business, RJRT NJ and MTI, and later RJRMI, legitimately exchanged information relevant to MTI and/or RJRMI's operations in Canada. However, such exchange of information does not render the acts of MTI or RJRMI the acts of RJRT NJ, nor does such exchange of information mean that the actions or inactions of MTI or RJRMI were controlled or directed by RJRT NJ.

20. RJRT denies that it or RJRT NJ would be liable for any of the alleged tobacco related wrongs of JTIM, RJRMI, or MTI on the basis of joint or vicarious liability, agency, conspiracy, or acting in concert.

General

21. RJRT denies, on its own behalf and that of RJRT NJ, the allegations of negligent design and manufacture, misrepresentation, failure to warn of risks, unlawful promotion of cigarettes to children and adolescents, and any and all other alleged breaches of common law, equitable or statutory duties and obligations alleged in the Statement of Claim.

22. RJRT specifically denies that any act or omission on the part of RJRT or RJRT NJ in the design, manufacture, advertising, promotion or marketing of their products wrongfully caused persons in Ontario to start smoking and/or to continue smoking cigarettes.

23. RJRT says that its conduct and that of RJRT NJ must be judged with reference to the time and the circumstances in which they took place. Those circumstances would include, but are not limited to, the awareness – from time to time – of the public, the public health authorities, the Federal Government, and the Plaintiff of the potential risks of smoking cigarettes.

24. The manufacturing and promotion of cigarettes in Canada are, and have been at all material times, highly regulated activities. Both the Federal Government and the Province have regulated the tobacco industry in Ontario at all material times. Further, both the Federal Government and the Province have at all material times played a significant operational role in the tobacco industry in Ontario, as described at paragraphs 70 to 78 below.

25. The regulatory framework, requirements and standards prevailing from time to time and the acts and omissions of both the Province and the Federal Government were and are important in assessing the standard(s) of care owed by cigarette manufacturers to persons in Ontario and the reasonableness and lawfulness of cigarette manufacturers' conduct at all material times.

Smoking and Disease

26. RJRT admits that there are serious potential health risks associated with smoking cigarettes and that epidemiological studies have shown statistical associations between smoking

and certain diseases. The strength of the epidemiological or statistical associations between smoking and various diseases vary widely.

27. All of the diseases associated with smoking are multi-factorial. Each such disease has various risk factors associated with it, which may include genetic, environmental, occupational, dietary and lifestyle factors. All such diseases occur in non-smokers as well as in smokers. While, for example, cardiovascular disease has been associated with smoking, it is also the leading cause of death and disability among non-smokers. Similarly, not all smokers develop diseases which have been associated with smoking.

28. The association between smoking and a particular disease may be related to the intensity, duration and history of smoking. In addition, the time period between smoking (or exposure to any other risk factor) and the development of diseases associated with smoking cigarettes may vary between individuals, populations and for different specific diseases.

29. The disease descriptions contained at paragraph 51 of the Statement of Claim are general or broad categories of disease, within which are many types or subdivisions of specific disease with differing associations to their own various risk factors. RJRT puts the Plaintiff to the strict proof of the fact that smoking can cause or contribute to each specific disease in respect of which the Plaintiff seeks to recover the cost of health care benefits. To the extent that allegations concerning exposure to second hand smoke or environmental tobacco smoke ("ETS") form part of the Statement of Claim, RJRT puts the Plaintiff to the strict proof of the fact that ETS can

cause or contribute to each specific disease in respect of which the Plaintiff seeks to recover the cost of health care benefits.

Awareness of the Risks of Smoking

30. In response to the allegations in paragraphs 48-55 of the Statement of Claim, RJRT says that at all material times, persons in Ontario have been aware of the serious potential health risks associated with smoking, and of the fact that it may be difficult to stop smoking. RJRT notes that beginning in 1972 – two years prior to RJRT NJ's purchase of the shares of MTI – all packages of cigarettes sold in Canada displayed health warnings. Shortly thereafter all cigarette advertising contained similar warnings.

31. At all material times, the Federal Government and the Province have been aware of the serious potential health risks associated with smoking, and of the fact that it may be difficult to stop smoking. The actions of, and information provided by, the Federal Government, the Province and the public health community from time to time (in the context of education programs and otherwise) have reinforced the awareness of persons in Ontario with respect to smoking cigarettes, and the potential risks thereof, and have established the reasonable expectations of persons in Ontario with respect to the same.

32. At all material times, neither RJRT nor RJRT NJ had any materially greater awareness of the potential health risks associated with smoking, and of the fact that it may be difficult to stop smoking, than did persons in Ontario, the Federal Government, the Province and/or the public health community. RJRT and RJRT NJ's conduct must be assessed in the context of the

awareness existing at the time of persons in Ontario, the Federal Government, the Province and/or the public health community.

Why People Smoke

33. Despite their awareness of the serious potential health risks associated with smoking, and of the fact that it may be difficult to stop smoking, persons in Ontario have voluntarily elected to smoke and to continue to smoke. Smoking initiation and continuation are not the result of a lack of information or awareness or a lack of understanding of the potential risks.

34. It is a common and normal aspect of human behaviour that people consciously and voluntarily elect to engage in specific behaviours which carry an element of risk. People frequently choose to engage in an activity with a short term utility, despite their knowledge that doing so may potentially lead to a detrimental result in the longer term.

35. People smoke for many reasons. These reasons for smoking differ from individual to individual, and from time to time. While the presence of nicotine in tobacco smoke may be an important factor in why some people smoke, it is not sufficient to account for smoking behaviour. Neither nicotine nor any other feature of smoking impairs smokers' decision-making or judgment.

36. The decision to begin or to continue smoking is one made by individuals, based on their values, circumstances, experiences and motivations at the time, and is one for which they remain responsible, given their awareness and understanding of the material risks. Smoking does not affect smokers' understanding or appreciation of the potential health risks of smoking or their

ability to make judgments and decisions, including the decision to stop smoking and to implement that decision successfully.

37. At various times, different terms have been used to describe the difficulty in stopping smoking, including "habituation", "dependence" and "addiction". RJRT accepts that smoking is addictive, in the sense that the term is commonly used today. Regardless of what term is used, smokers retain the capacity to quit. Millions of people have successfully quit smoking, the vast majority without medical help.

Alleged Breach of the Duty - Design and Manufacture

38. RJRT and RJRT NJ have complied in all material respects with all common law, equitable and statutory duties and obligations, as they existed from time to time, owed to persons in Ontario. On its own behalf and on behalf of RJRT NJ, RJRT specifically denies each and every allegation set forth in paragraphs 56-62 of the Statement of Claim. Any alleged breach of duty must be assessed in the context of the circumstances, both general and specific, existing at the time.

39. RJRT denies that it was at any material time possible to design and manufacture cigarettes, acceptable to consumers, which represented a less harmful feasible alternative to the cigarettes manufactured, distributed and promoted by MTI and JTIM or by RJRT NJ and/or RJRT, to the extent that the Plaintiff shows that cigarettes manufactured and promoted by any of them were offered for sale in Ontario. RJRT puts the Plaintiff to the strict proof of what would constitute a "reasonably safe product" and of what feasible measures could have been taken to

"eliminate, minimize, or reduce the risks of addiction and disease from smoking the cigarettes" as alleged in paragraphs 56 and 57 of the Statement of Claim.

40. At all material times, RJRT and RJRT NJ acted reasonably and lawfully in the design and manufacture of their products.

41. At all material times, persons in Ontario, the Federal Government, and the Plaintiff were aware that smoking could be harmful to smokers' health and that it could be difficult to stop smoking.

42. RJRT and RJRT NJ dedicated substantial resources with the objective of developing cigarettes that may reduce the health risks associated with smoking. Between the mid-1950's and 2004, RJRT NJ dedicated over a billion dollars to this research and to efforts to bring such products to market and investigated numerous potential innovations in cigarette design, including:

a) selective reduction, i.e. attempting to remove or reduce specific constituents of smoke identified as potentially being of particular concern by the scientific and public health community;

b) general reduction, i.e. attempting to reduce machine-measured levels of tar, nicotine and other smoke constituents through the use of filtration, ventilation, processed tobaccos and other techniques;

c) the use of tobacco substitutes, i.e. attempting to replace some or all of the tobacco in cigarettes with other substances that generate simpler smoke chemistry;

d) reducing the ratio of tar to nicotine, i.e. attempting to change the amount of nicotine yielded per unit tar, as has been recommended by some in the public health and wider scientific community since the 1970s and 1980s; and

e) developing new products with dramatically simplified smoke chemistry, by reason of the fact that they heat, rather than burn, tobacco.

43. At all material times, RJRT NJ worked with RJRMI in this regard and shared the fruits of its research with RJRMI.

Alleged Breach of the Duty to Warn

44. RJRT specifically denies, on its own behalf and on behalf of RJRT NJ, each and every allegation set forth in paragraphs 63-70 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

45. Any statements, warnings or failure to warn of risks by RJRT or RJRT NJ must be assessed in the appropriate scientific and historical context including: the state of scientific knowledge, from time to time, concerning the potential risks of smoking, and in particular the genuine and protracted debate within the scientific community as to whether epidemiological associations could be said to amount to proof of disease causation; the public health community's changing characterization of smoking as involving "habituation", "dependence" or

"addiction"; and the awareness at all material times of governments, the public health community and persons in Ontario of both the potential health risks of smoking and of the difficulty of quitting.

46. Neither RJRT nor RJRT NJ made health claims with respect to any products sold in Ontario. RJRT and RJRT NJ complied in all material respects with the legislation, regulations and directives established by the Federal Government and the Province in effect from time to time, as well as the industry Voluntary Codes from time to time.

Alleged Breach of the Duty – Misrepresentation

47. RJRT and RJRT NJ have complied in all material respects with all common law, equitable and statutory duties and obligations, as they existed from time to time, owed to persons in Ontario. RJRT specifically denies each and every allegation set forth in paragraphs 71-72, 72.1, 72.4, 73, 73.3 and 74-77 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

48. RJRT expressly denies that it or RJRT NJ made any materially false, inaccurate or misleading representation or statement, which they knew or should have known to be false, inaccurate or misleading, as assessed at the time such statement was made, or made any such statement with the intent to misrepresent to, or conceal from, persons in Ontario, the risks of smoking or exposure to second hand smoke as alleged. In the alternative, RJRT denies that persons in Ontario relied on any such representation or statement to their detriment and says that

any such representation or statement must be assessed in the context of the circumstances, both general and specific, existing at the time of the particular statement.

49. In specific reply to the allegations in paragraphs 73 and 73.3 of the Statement of Claim, RJRT denies that it, or RJRT NJ, have unlawfully suppressed scientific and medical data or unlawfully acted on policies to withhold, alter or destroy research as alleged in the Statement of Claim.

50. In specific reply to the allegations in paragraphs 76-77 of the Statement of Claim, RJRT expressly denies that it or (so far as RJRT is aware) RJRT NJ, made any fraudulent, reckless or negligent representation or statement, as assessed at the time such statement was made, or made any such statement with the intent to induce persons in Ontario to commence smoking or to continue to smoke as alleged. In the alternative, RJRT denies that persons in Ontario relied on such representation or statement to their detriment.

Alleged Breach of the Duty – Manufacturing or Promoting Products for Children and Adolescents

51. RJRT does not admit the existence of the duty to children and adolescents in Ontario in the terms alleged in paragraph 78 of the Statement of Claim.

52. RJRT and RJRT NJ complied in all material respects with all common law, equitable and statutory duties and obligations, as they existed from time to time, owed to persons in Ontario. On its own behalf and on behalf of RJRT NJ, RJRT specifically denies each and every allegation set forth in paragraphs 79-85 of the Statement of Claim. Any alleged act or omission of RJRT or

RJRT NJ must be assessed in the context of the circumstances, both general and specific, existing at the time.

53. Neither RJRT nor RJRT NJ targeted children or adolescents in the promotion, advertising or marketing of cigarettes at all or, in particular, in Ontario, in order to convince such children or adolescents to smoke; nor did either company suggest that MTI or RJRMI should do so. In any event, advertising and promotion for cigarettes do not play any significant role in why minors smoke.

54. RJRT does not admit that either it or RJRT NJ was obliged to take measures to prevent children or adolescents from starting to smoke or continuing to smoke cigarettes. The sale of cigarettes to children or adolescents under the age of 16 in Ontario was, at all material times, illegal. The Federal Government and the Province determined the age at which persons in Ontario may lawfully purchase cigarettes and other tobacco products. The enforcement of the law was not the responsibility of RJRT or RJRT NJ. From 1908 to 1994, the federal legal age for the purchase and sale of cigarettes was 16 years of age. The federal legal age was raised to 18 years of age in 1994 and remains 18 years of age today. The provincial legal age in Ontario is 19 years of age. Prior to 1994, the provincial legal age was 18 years of age.

55. To the extent allegations are made regarding the improper sale of cigarettes to minors in Ontario, neither RJRT nor RJRT NJ was or is a retailer, and neither has sold cigarettes directly to persons in Ontario.

Alleged Breaches of Statutory Duties and Obligations

56. RJRT and RJRT NJ complied in all material respects with all applicable statutory duties and obligations, as they existed from time to time, owed to persons in Ontario. On its own behalf, and on behalf of RJRT NJ, RJRT specifically denies each and every allegation set forth in paragraphs 142-147 of the Statement of Claim.

57. On its own behalf, and on behalf of RJRT NJ, RJRT denies that it has materially breached the provisions of any of the statutes generally referenced in paragraphs 142-147 of the Statement of Claim, and puts the Plaintiff to the strict proof of the circumstances, timing and facts alleged to constitute breaches of same. The allegations as pleaded in paragraphs 142-147 of the Statement of Claim do not set forth any legal, equitable or statutory duties or obligations known to law in Ontario and therefore do not disclose or support a cause of action under the Act.

58. Any alleged breach of statutory duty or obligation must be assessed in the context of the circumstances, both general and specific, existing at the time. No act or omission on the part of RJRT or RJRT NJ in the design, manufacture, advertising, promotion or marketing of their products wrongfully caused persons in Ontario to start smoking or to continue smoking cigarettes. RJRT, on its own behalf and on behalf of RJRT NJ, pleads and relies upon the context as previously described in its Statement of Defence.

Alleged Conspiracy, Concert of Action and Common Design

59. On its own behalf and on behalf of RJRT NJ, RJRT denies the existence of any conspiracy, concert of action or common design as alleged in the Statement of Claim. RJRT, on

its own behalf and on behalf of RJRT NJ, specifically denies each and every allegation set forth in paragraphs 86-116 and 128-134 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

60. RJRT further denies that it or RJRT NJ participated in, or was a member of, or a party to any conspiracy, concert of action or common design as alleged in the Statement of Claim and puts the Plaintiff to the strict proof thereof.

61. RJRT further denies that it or RJRT NJ engaged in any unlawful act or conduct as alleged in the Statement of Claim in furtherance of any alleged conspiracy, concert of action or common design and puts the Plaintiff to the strict proof thereof.

62. In response to the allegations at paragraphs 128-134 of the Statement of Claim, RJRT specifically denies that it or RJRT NJ directed and coordinated the smoking and health policies of JTIM, MTI or RJRMI through the means and methods alleged in those paragraphs of the Statement of Claim. RJRT further specifically denies that it, or RJRT NJ, unlawfully participated in the removal and destruction of smoking and health materials or unlawfully destroyed research relating to the biological activity of cigarettes as alleged in paragraph 133.3 of the Statement of Claim.

63. RJRT admits that representatives of RJRT NJ met and otherwise communicated with representatives of other cigarette manufacturers from time to time, including in the context of meetings of trade associations. Such meetings and communications (as the case may be) have been commonplace across many manufacturing sectors for many years, were legitimate and

appropriate, and did not constitute a conspiracy, concert of action or common design or result in the commission of any unlawful acts of conduct.

64. RJRT denies that it or RJRT NJ communicated with any other cigarette manufacturer or trade association, or with MTI or RJRMI, for any unlawful purpose, or employing any unlawful means, or with the intent of injuring any person in Ontario. RJRT further denies that any unlawful acts were committed in Ontario as a result of any communication between RJRT or RJRT NJ and any other person.

65. In the normal course of business, RJRT NJ and MTI, and later RJRMI, legitimately exchanged information relevant to MTI and/or RJRMI's operations in Canada. However, such exchange of information does not render the acts of MTI or RJRMI the acts of RJRT NJ, nor does such exchange of information mean that the actions or inactions of MTI or RJRMI were controlled or directed by RJRT NJ.

66. From time to time, employees of RJRT NJ participated in meetings at which issues relating to smoking and health were discussed. These meetings and the exchange of information more generally were means by which to discuss issues common to companies with some connection to RJRT NJ, including smoking and health issues. The communications did not constitute directives or orders, and, in any event, did not encourage the commission of unlawful acts.

67. No communication between RJRT or RJRT NJ and any other person, or any other act or omission of RJRT or RJRT NJ, reduced or adversely affected the awareness of persons in Ontario regarding the risks associated with smoking.

68. RJRT denies the existence of any conspiracy, concert of action or common design as alleged in the Statement of Claim among those Defendants alleged to constitute the "RJR Group".

69. Accordingly, RJRT denies that it is jointly and severally liable with any or all of the other Defendants, or any of the Defendants alleged to constitute the RJR Group, for the cost of health care benefits provided to insured persons in Ontario pursuant to section 4 of the Act as alleged in paragraph 148 of the Statement of Claim.

The Role of the Federal Government

70. The Federal Government, which at all material times had a responsibility to promote and preserve the health and well-being of the people of Canada, was an active and prominent presence in the tobacco industry in Canada, directing, and otherwise influencing, the actions of the industry and shaping the views and behaviour of persons in Ontario.

71. The Federal Government and its officials working in its departments and agencies worked closely with the cigarette manufacturers, gave advice and directions and made various representations and requests to the cigarette manufacturers on smoking and health issues and with regard to the design, manufacture and promotion of their products. The actions and conduct

of the Federal Government occurred principally through Health Canada and Agriculture Canada and their respective predecessor departments and agencies. The Federal Government was particularly active in relation to the information provided to the Canadian public, including the public in Ontario, about the potential risks of smoking. Further, the Federal Government directed and advised the cigarette manufacturers in respect of their communications with persons in Ontario concerning the properties of cigarettes and the potential risks of smoking, including the form of printed warnings on packaging and other materials.

72. In furtherance of its role in the tobacco industry, and more particularly with respect to issues which are alleged in the Statement of Claim to have a relevance to consumers' health, the Federal Government implemented a number of operational programmes and engaged in numerous other operational activities from time to time, including:

a) analysis of the potential risks of smoking, including the risks of "habituation", "dependence" and "addiction";

b) monitoring and assessing the level of awareness of consumers in Canada, including those in Ontario, of the potential risks of smoking;

c) considering the need to educate and advise consumers as to the properties of cigarettes and to inform and/or remind those consumers of the potential risks of smoking;

d) providing such education, advice and information and/or reminders at certain material times as was considered necessary;

e) imposing taxes for the purpose of obtaining the majority of the revenue from the sale of cigarettes to consumers in Canada;

f) giving advice, recommendations and directions to manufacturers of cigarettes as to whether printed warnings on packages of cigarettes and other advertising media were necessary or desirable;

g) giving advice, recommendations and directions as to the form of such warnings;

h) giving advice, recommendations and directions to manufacturers of cigarettes on the form of packaging to be used by manufacturers;

i) giving advice and recommendations to manufacturers of cigarettes in respect of the relevant codes or practices governing the advertising and promotion of cigarettes;

j) research into the chemistry of tobacco smoke and fundamental research into potential smoking and health effects;

k) research into and analysis of the chemical and physical composition of tobacco;

l) since 1971, implementing the “Less Hazardous Cigarette Programme”, including the Delhi Tobacco and Health Bio-Assay Programme;

m) developing and cultivating varieties of tobacco plant with elevated levels of nicotine and giving advice, recommendations and directions to cigarette manufacturers to use such varieties in cigarettes sold in Canada;

n) advising the cigarette manufacturers to design, manufacture, distribute and promote LTN products and, indeed, taking a position of leadership in relation to the same in Canada;

o) giving advice, recommendations and directions to cigarette manufacturers regarding targets for the reduction of the "Sales Weighted Average Tar" yield of cigarettes; and

p) at least until 2003, encouraging those smokers who did not want to quit to switch to LTN products, on the basis that these might be less harmful to health, and informing such smokers to avoid compensating if they did switch to such cigarettes.

73. The acts and omissions of the Federal Government influenced the views and behaviour of persons in Canada, including Ontario, and had a significant effect on, among other things, the manner in which the manufacturers conducted their business and the contents and properties of the cigarettes that they manufactured, distributed and promoted, in Canada, including Ontario. The standard(s) of care allegedly owed by the manufacturers to persons in Ontario and the reasonableness of the manufacturers' conduct must be considered in light of these acts and omissions.

The Role of the Provincial Government

74. The Province was also involved in the activities of the tobacco industry in Ontario, including supervising, advising and directing the actions of the tobacco manufacturers in relation to the market for tobacco and tobacco products in Ontario.

75. At all material times, the Province was aware of the potential serious health risks of smoking and the difficulty of giving up smoking. At all material times, the Province was at least as aware of the potential risks of smoking as RJRT NJ or RJRT.

76. At all material times, the Province:

a) permitted persons in Ontario to purchase and consume cigarettes;

b) permitted the distribution, promotion and sale of cigarettes in Ontario by the manufacturers, including MTI and JTIM;

c) licensed sellers of cigarettes in Ontario as part of the marketing system for cigarettes in Ontario;

d) imposed taxes for the purpose of obtaining the revenue from the sale of cigarettes to persons in Ontario;

e) cooperated with, and participated in, Federal Government tobacco initiatives and programs;

f) directly and indirectly supported and promoted the agricultural cultivation and marketing of Ontario tobacco for use in the manufacture of Canadian cigarettes;

g) had a duty to promote and preserve the health and well-being of the public in Ontario; and

h) played an important role in educating persons in Ontario, and in particular children and adolescents, about the potential risks of smoking and in dissuading them from smoking or starting to smoke.

77. The acts and omissions of the Province influenced the views and behaviour of persons in Ontario and had a significant effect on, among other things, the manner in which the manufacturers conducted their business, and the contents and properties of the cigarettes that they manufactured, distributed and promoted, in Ontario. The standard(s) of care allegedly owed by the manufacturers to persons in Ontario and the reasonableness of the manufacturers' conduct must be considered in light of these acts and omissions.

78. The Plaintiff is precluded, by common law and equitable principles, from recovering the cost of health care benefits arising out of the consumption of cigarettes in the Province when the Plaintiff permitted (and benefited from) the sale of cigarettes with knowledge of the potential health risks.

79. RJRT pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N. 1 and the *Limitations Act*, *2002*, S.O. 2002, c. 24.

The Cost of Health Care Benefits

80. RJRT repeats its denial that neither it nor RJRT NJ committed any tort or breached any common law, equitable or statutory duty or obligation owed by them to persons in the Province of Ontario, which led such persons to start smoking or to continue to smoke.

81. Under the Act, the Province can only recover the cost of health care benefits caused or contributed to by a tobacco related wrong, which breach resulted in smoking of cigarettes or other tobacco products by, or exposure to, a specific and relevant population of insured persons in Ontario and which smoking or exposure actually caused or contributed to disease in such persons. RJRT puts the Province to the strict proof of its claim for the cost of health care benefits.

82. RJRT denies that any population of insured persons who smoked cigarettes or were exposed to tobacco smoke started or continued to smoke or were exposed to tobacco smoke because of any breach of any common law, equitable or statutory duty or obligation owed by RJRT or RJRT NJ to persons in Ontario, which breach is expressly denied. RJRT denies that the Province is entitled to recover the cost of health care benefits resulting from smoking or exposure for any population of insured persons.

83. The Province is not entitled to claim for or recover the total cost of health care benefits for a disease which can be caused by smoking cigarettes or exposure to tobacco smoke. All of the diseases associated with smoking occur in non-smokers as well as smokers. Not every case of such a disease that occurs in smokers results from smoking cigarettes or exposure to tobacco

smoke. The Province must prove, in relation to each disease, the cost of health care benefits that was actually caused or contributed to by smoking cigarettes or exposure to tobacco smoke.

84. The cost of health care benefits to be determined on an aggregate basis under section 3(3)(a) of the Act includes only the cost of health care benefits provided after the date of the breach, which breach is expressly denied, resulting from smoking cigarettes or exposure to tobacco smoke. Without limiting the generality of the foregoing, the cost of health care benefits to be determined on an aggregate basis:

a) must not include the cost of any health care benefits incurred before the date of the breach, which breach is expressly denied;

b) must be determined in relation to the specific and relevant population of insured persons in Ontario, determined at the time of the breach, to whom the duty or obligation was owed and in relation to whom the duty or obligation was breached;

c) must be limited to the specific and relevant population of insured persons in Ontario during the period of the breach;

d) must not include the cost of health care benefits for any non-tobacco related disease; and

e) must not include the cost of health care benefits for a disease resulting from exposure to tobacco products other than cigarettes.

85. The Province is not entitled to recover, on an aggregate basis for any population of insured persons, the cost of health care benefits that it would have incurred in any event. RJRT denies that the Province has incurred any cost of health care benefits as a result of persons smoking cigarettes or being exposed to tobacco smoke in excess of any cost that the Province would have incurred in any event.

86. Further, the Province is not entitled to recover, on an aggregate basis for any population of insured persons, the cost of health care benefits that were not incurred by the Province, but were incurred, in whole or in part, by the Federal Government by means of transfer payments, funding arrangements, grants and shared cost programs. The Province is not entitled to recover the cost of health care benefits which the Province has not actually incurred itself.

87. Further, taking into account sections 3(2) and 3(4) of the Act, the cost of health care benefits assessed against any Defendant under section 3(3) of the Act based upon that Defendant's market share in cigarettes must be eliminated or reduced to the extent, *inter alia*, that persons, events, factors or circumstances, other than the Defendant's breach, caused or contributed to the smoking or exposure or to the disease or risk of disease in the population of insured persons. Without limiting the generality of the foregoing, the cost of health care benefits must be eliminated or reduced based upon:

a) the awareness of persons in the population during and after the period of the breach of the potential health risks of smoking;

b) the conscious and voluntary decisions by persons in Ontario to start smoking and/or to continue smoking notwithstanding the awareness of the potential health risks associated with smoking;

c) the actions and conduct of other persons and entities, including without limitation, the Federal Government and the Province, which may have influenced persons in Ontario to start smoking and/or to continue smoking during and after the period of the breach; and

d) all other events, factors or circumstances which influenced persons in the population to start smoking and/or to continue smoking during and after the period of the breach.

88. The Province has agreed to and accepted the manufacture, distribution, promotion and sale of cigarettes in Ontario. The Province's acts and conduct in imposing taxes on the sale of cigarettes influenced the views and behaviour of persons in Ontario. The tax revenue received by the Province from the sale of cigarettes in Ontario has exceeded the cost of health care benefits resulting from smoking cigarettes or exposure to tobacco smoke. The Province has not incurred the cost of any health care benefits resulting from smoking cigarettes or exposure to tobacco smoke, since such costs have been fully paid from taxes on the sale of cigarettes in Ontario.

89. If the Plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, then the cause of the Plaintiff incurring such costs is a requirement of the statutes which

have provided or are providing for health care in the Province of Ontario, including, without limitation, the *Health Insurance Act*, R.S.O. 1990, c. H.6, *Charitable Institutions Act*, R.S.O. 1990, c. C.9, *Homemakers and Nurses Services Act,* R.S.O. 1990, c. H. 10, *Homes for the Aged and Rest Homes Act,* R.S.O. 1990, c. H. 13, *Independent Health Facilities Act,* R.S.O. 1990, c. I.3, *Local Health System Integration Act, 2006,* S.O. 2006, c. 4, *Long-Term Care, 1994*, S.O. 1994, c. 26*, Long-Term Care Homes Act, 2007,* S.O. 2007, c. 8, *Nursing Homes Act,* R.S.O. 1990, c. N.7, *Ontario Drug Benefit Act*, R.S.O 1990, c. O. 10 and *Public Hospitals Act*, R.S.O. 1990, c. P. 40 and predecessor statutes and regulations.

90. Further, and as already described, the acts and omissions of the Federal Government and the Province influenced the views and behaviour of persons in Ontario and had a significant effect on, among other things, the manner in which the manufacturers conducted their business, and the contents and properties of the cigarettes that they, distributed and promoted in Ontario. The Plaintiff is not entitled to recover from RJRT or RJRT NJ the cost of health care benefits resulting from such actions and conduct by the Federal Government and/or the Province or from compliance with their advice, recommendations or directions.

Mitigation

91. RJRT says, in further answer to the whole of the Statement of Claim, the Plaintiff has mitigated the cost of health care benefits as aforesaid, and the cost of health care benefits has therefore been eliminated or reduced. In the alternative, the Plaintiff has failed to mitigate such costs.

Relief Claimed

92. RJRT denies that the Plaintiff is entitled to the relief claimed, or any relief, and says that the action should be dismissed as against it with costs.

Date: April 29, 2016

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Court File No. CV-09-387984

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO - and - **ROTHMANS, INC., et al.**

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF DEFENCE OF R.J. REYNOLDS TOBACCO COMPANY

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TAB 16

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

– and –

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

Defendants

STATEMENT OF DEFENCE OF R.J. REYNOLDS TOBACCO INTERNATIONAL INC.

Introduction

1. In this Statement of Defence, the Amended Fresh As Amended Statement of Claim is referred to as the "Statement of Claim" for ease of reference.

2. The Defendant, R.J. Reynolds Tobacco International, Inc. ("RJRTI"), admits that it is a company incorporated pursuant to the laws of the State of Delaware but says that its registered office address is 327 Hillsborough Street, Raleigh, North Carolina 27603, in the United States of America.

3. RJRTI admits that this action is brought pursuant to the *Tobacco Damages and Health Care Costs Recovery Act, 2009,* S.O. 2009, c. 13 ("the Act").

4. RJRTI further admits that the Province of Ontario (the "Province") does not bring this action on the basis of a subrogated claim but brings this action in its own right on an aggregate basis pursuant to subsections 2(1) and 2(2) of the Act.

5. RJRTI adopts the definitions contained in the Act and in paragraph 6 of the Statement of Claim for the purposes of this Statement of Defence.

6. The Act creates a civil cause of action for the Province. However, except to the extent expressly provided for in the Act, the Act does not alter the substantive, evidentiary or procedural laws of Ontario or Canada.

7. RJRTI has no knowledge of the allegations contained in paragraphs 7-12, 16-19, 23-29, 34-39, 44-45, 47, 72.2, 72.3, 72.5, 73.1, 73.2, 73.4, 117-127 and 135-140 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

8. Except as otherwise expressly admitted herein, RJRTI denies the balance of the allegations in the Statement of Claim and puts the Plaintiff to the strict proof thereof. Without limiting the generality of the foregoing, RJRTI specifically denies that it has breached any common law, equitable or statutory duty or obligation owed to persons in Ontario as alleged in the Statement of Claim. RJRTI denies that any such alleged breach of duty or obligation caused

any population of insured persons to smoke cigarettes, or to continue to smoke cigarettes, or to be exposed to tobacco smoke.

9. RJRTI specifically denies the allegations of negligent design and manufacture, misrepresentation, failure to warn of risks, unlawful promotion of cigarettes to children and adolescents, and any and all other alleged breaches of common law, equitable or statutory duties and obligations alleged in the Statement of Claim.

10. RJRTI denies that it is liable for any of the alleged tobacco related wrongs, including for any alleged wrongs of the RJR Companies, on the alleged basis of joint or vicarious liability, agency, conspiracy or acting in concert.

11. RJRTI specifically denies that it acted in a manner that wrongfully caused any person in Ontario to smoke and/or to continue to smoke cigarettes.

12. With respect to paragraphs 56, 63, 71, 78, 142 and 143 of the Statement of Claim, it is for the Court to determine whether the duty or duties of care alleged therein existed at the time of the alleged breach of the same and, if so, the appropriate standards(s) of care.

RJRTI's Corporate History

13. RJRTI was incorporated in the State of Delaware in the United States of America in 1976. RJRTI is, and since its incorporation has been, a subsidiary of R.J. Reynolds Tobacco Holdings, Inc. (formerly named R.J. Reynolds Industries, Inc. and RJR Nabisco, Inc.).

14. Since 1999, RJRTI has been an inactive shell corporation that is wholly-owned by R.J. Reynolds Tobacco Holdings Inc., without assets or employees.

15. Macdonald Tobacco Inc. ("MTI") and RJR-Macdonald Inc. ("RJRMI") were legal entities separate and apart from RJRTI. JTI-Macdonald Corp. ("JTIM") is a legal entity separate and apart from RJRTI. At no time has RJRTI held shares in MTI, RJRMI or JTIM.

Alleged Tobacco Related Wrongs

16. RJRTI has not:

a) designed, manufactured, distributed or sold cigarettes in Ontario;

b) advertised, marketed or promoted cigarettes or smoking in Ontario;

c) made statements or representations to persons in Ontario concerning smoking and health, addiction and/or any other risk or benefit allegedly associated with smoking or tobacco smoke;

d) conducted research into the design of cigarettes sold in Ontario;

e) interacted with the Government of Canada or the Government of Ontario;

f) held shares in any corporation engaged in the activities listed in subparagraphs (a) through (e).

17. RJRTI therefore denies that it can be held liable for the tobacco related wrongs alleged in paragraphs 48-85 of the Statement of Claim.

Alleged Conspiracy, Concert of Action and Common Design

18. RJRTI denies the existence of any conspiracy, concert of action or common design as alleged in the Statement of Claim. RJRTI specifically denies each and every allegation set forth in paragraphs 86-116 and 128-134 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

19. RJRTI further denies that it participated in, or was a member of, or a party to any conspiracy, concert of action or common design as alleged in the Statement of Claim and puts the Plaintiff to the strict proof thereof. RJRTI specifically denies that it has ever been a member of the Canadian Tobacco Manufacturers' Council.

20. RJRTI further denies that it engaged in any unlawful act or conduct as alleged in the Statement of Claim in furtherance of any alleged conspiracy, concert of action or common design and puts the Plaintiff to the strict proof thereof.

21. In response to the allegations at paragraphs 128-134 of the Statement of Claim, RJRTI specifically denies that it directed and coordinated the smoking and health policies of JTIM, MTI or RJRMI through the means and methods alleged in those paragraphs of the Statement of Claim. RJRTI further specifically denies that it unlawfully participated in the removal and destruction of

smoking and health materials or unlawfully destroyed research relating to the biological activity of cigarettes as alleged in paragraph 133.3 of the Statement of Claim.

22. RJRTI admits that its representatives met and otherwise communicated with representatives of cigarette manufacturers from time to time, including in the context of meetings of trade associations. Such meetings and communications (as the case may be) have been commonplace across many manufacturing sectors for many years, were legitimate and appropriate, and did not constitute a conspiracy, concert of action or common design or result in the commission of any unlawful acts or conduct. RJRTI denies that it communicated with any cigarette manufacturer or trade association, or with MTI or RJRMI, for any unlawful purpose, or employing any unlawful means, or with the intent of injuring any person in Ontario. RJRTI further denies that any unlawful acts were committed in Ontario as a result of any communication between RJRTI and any other person.

23. In the normal course of business, RJRTI and MTI, and later RJRTI, legitimately exchanged information relevant to MTI and/or RJRMI's operations in Canada. However, such exchange of information does not render the acts of MTI or RJRMI the acts of RJRTI, nor does such exchange of information mean that the actions or inactions of MTI or RJRMI were controlled or directed by RJRTI.

24. RJRTI participated in meetings, including the Winston-Salem Smoking Issues Coordinator Meetings and the "Hounds Ears" and "Sawgrass" conferences. RJRTI nominated smoking issue designees. The designee for Canada was an executive of MTI and later RJRMI.

These meetings, the nomination of a smoking issue designee, and the exchange of information more generally, were means by which to discuss issues common to companies with some connection to RJRTI, including smoking and health issues. The communications did not constitute directives or orders and, in any event, did not encourage the commission of unlawful acts.

25. No communication between RJRTI and any other person, or any other act or omission of RJRTI, reduced or adversely affected the awareness of persons in Ontario regarding the risks associated with smoking.

26. RJRTI specifically denies that RJRTI participated in, was a member of, or a party to any conspiracy, concert of action or common design to prevent the Province or persons in Ontario or other jurisdictions from acquiring knowledge of the potential risks of smoking cigarettes and/or to commit tobacco related wrongs and/or to engage in the acts alleged in paragraphs 87 to 107 of the Statement of Claim.

27. Accordingly, RJRTI denies that it is jointly and severally liable with any or all of the other Defendants, or any of the Defendants alleged to constitute the RJR Group, for the cost of health care benefits provided to insured persons in Ontario pursuant to section 4 of the Act as alleged in paragraph 148 of the Statement of Claim.

28. RJRTI denies there is any basis to find joint or vicarious liability, agency, conspiracy, acting in concert or common design as between it and any other person for any alleged tobacco related wrongs.

The Cost of Health Care Benefits

29. RJRTI repeats its denial that it breached any common law, equitable or statutory duty or obligation owed by it to persons in Ontario, which led such persons to start smoking or to continue to smoke.

30. Under the Act, the Province can only recover the cost of health care benefits caused or contributed to by a tobacco related wrong, which breach resulted in smoking of cigarettes or other tobacco products by, or exposure to, a specific and relevant population of insured persons in Ontario and which smoking or exposure actually caused or contributed to disease in such persons. RJRTI puts the Province to the strict proof of its claim for the cost of health care benefits.

31. RJRTI denies that any population of insured persons who smoked cigarettes or were exposed to tobacco smoke started or continued to smoke or were exposed to tobacco smoke because of any breach of any common law, equitable or statutory duty or obligation owed by RJRTI to persons in Ontario, which breach is expressly denied. RJRTI denies that the Province is entitled to recover the cost of health care benefits resulting from smoking or exposure for any population of insured persons.

32. The Province is not entitled to claim for or recover the total cost of health care benefits for a disease which can be caused by smoking cigarettes or exposure to tobacco smoke. All of the diseases associated with smoking occur in non-smokers as well as smokers. Not every case of such a disease that occurs in smokers results from smoking cigarettes or exposure to tobacco smoke. The Province must prove, in relation to each disease, the cost of health care benefits that was actually caused or contributed to by smoking cigarettes or exposure to tobacco smoke.

33. The cost of health care benefits to be determined on an aggregate basis under section 3(3)(a) of the Act includes only the cost of health care benefits provided after the date of the breach, which breach is expressly denied, resulting from smoking cigarettes or exposure to tobacco smoke. Without limiting the generality of the foregoing, the cost of health care benefits to be determined on an aggregate basis:

a) must not include the cost of any health care benefits incurred before the date of the breach, which breach is expressly denied;

b) must be determined in relation to the specific and relevant population of insured persons in Ontario, determined at the time of the breach, to whom the duty or obligation was owed and in relation to whom the duty or obligation was breached;

c) must be limited to the specific and relevant population of insured persons in Ontario during the period of the breach;

d) must not include the cost of health care benefits for any non-tobacco related disease; and

e) must not include the cost of health care benefits for a disease resulting from exposure to tobacco products other than cigarettes**.**

34. The Province is not entitled to recover, on an aggregate basis for any population of insured persons, the cost of health care benefits that it would have incurred in any event. RJRTI denies that the Province has incurred any cost of health care benefits as a result of persons smoking cigarettes or being exposed to tobacco smoke in excess of any cost that the Province would have incurred in any event.

35. Further, the Province is not entitled to recover, on an aggregate basis for any population of insured persons, the cost of health care benefits that were not incurred by the Province, but were incurred, in whole or in part, by the Federal Government by means of transfer payments, funding agreements, grants and shared cost programs. The Province is not entitled to recover the cost of health care benefits which the Province has not actually incurred itself.

36. Further, taking into account sections 3(2) and 3(4) of the Act, the cost of health care benefits assessed against any Defendant under section 3(3) of the Act based upon that Defendant's market share in cigarettes must be eliminated or reduced to the extent, *inter alia*, that persons, events, factors or circumstances, other than the Defendant's breach, caused or contributed to the smoking or exposure or to the disease or risk of disease in the population of

insured persons. Without limiting the generality of the foregoing, the cost of health care benefits must be eliminated or reduced based upon:

a) the awareness of persons in the population during and after the period of the breach of the potential health risks of smoking;

b) the conscious and voluntary decisions by persons in Ontario to start smoking and/or to continue smoking notwithstanding the awareness of the potential health risks associated with smoking;

c) the actions and conduct of other persons and entities, including without limitation, the Federal Government and the Province, which may have influenced persons in Ontario to start smoking and/or to continue smoking during and after the period of the breach; and

d) all other events, factors or circumstances which influenced persons in the population to start smoking and/or to continue smoking during and after the period of the breach.

37. The Province has agreed to and accepted the manufacture, distribution, promotion and sale of cigarettes in Ontario. The Province's acts and conduct in imposing taxes on the sale of cigarettes influenced the views and behaviour of persons in Ontario. The tax revenue received by the Province from the sale of cigarettes in Ontario has exceeded the cost of health care benefits resulting from smoking cigarettes or exposure to tobacco smoke. The Province has not

incurred the cost of any health care benefits resulting from smoking cigarettes or exposure to tobacco smoke, since such costs have been fully paid from taxes on the sale of cigarettes in Ontario.

38. If the Plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, then the cause of the Plaintiff incurring such costs is a requirement of the statutes which have provided or are providing for health care in Ontario, including, without limitation, the *Health Insurance Act*, R.S.O. 1990, c. H.6, *Charitable Institutions Act*, R.S.O. 1990, c. C.9, *Homemakers and Nurses Services Act,* R.S.O. 1990, c. H. 10, *Homes for the Aged and Rest Homes Act,* R.S.O. 1990, c. H. 13, *Independent Health Facilities Act,* R.S.O. 1990, c. I.3, *Local Health System Integration Act, 2006,* S.O. 2006, c. 4, *Long-Term Care, 1994*, S.O. 1994, c. 26*, Long-Term Care Homes Act, 2007,* S.O. 2007, c.8, *Nursing Homes Act,* R.S.O. 1990, c. N.7, *Ontario Drug Benefit Act*, R.S.O 1990, c. O. 10 and *Public Hospitals Act*, R.S.O. 1990, c. P. 40 and predecessor statutes and regulations.

39. Further, the acts and omissions of the Federal Government and the Province influenced the views and behaviour of persons in Ontario and had a significant effect on, among other things, the manner in which the manufacturers conducted their business, and the contents and properties of the cigarettes that they manufactured, distributed and promoted, in Ontario. The Plaintiff is not entitled to recover from RJRTI the cost of health care benefits resulting from such actions and conduct by the Federal Government and/or the Province or from compliance by the manufacturers with their advice, recommendations or directions.

40. RJRTI pleads that the Plaintiff is precluded, by common law and equitable principles, from recovering the cost of health care benefits arising out of the consumption of cigarettes in the Province when the Plaintiff permitted (and benefited from) the sale of cigarettes with knowledge of the potential health risks.

41. RJRTI pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N. 1 and the *Limitations Act*, *2002*, S.O. 2002, c. 24.

Mitigation

42. RJRTI says, in further answer to the whole of the Statement of Claim, the Plaintiff has mitigated the cost of health care benefits as aforesaid, and the cost of health care benefits has therefore been eliminated or reduced. In the alternative, the Plaintiff has failed to mitigate such costs.

Relief Claimed

43. RJRTI denies that the Plaintiff is entitled to the relief claimed, or any relief, and says that the action should be dismissed as against it with costs.

Date: April 29, 2016

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Court File No. CV-09-387984

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO - and - **ROTHMANS, INC., et al.**

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF DEFENCE OF R.J. REYNOLDS TOBACCO INTERNATIONAL INC.

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TAB 17

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Applicant

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initial deposit of $145 million. JTIM intends to file an application for leave to appeal the QCA Judgment to the Supreme Court of Canada.[24]

HCCR Actions

17. As mentioned above, in addition to the QCA Judgment, JTIM is also a defendant in the HCCR Actions. This litigation is pursuant to provincial legislation enacted exclusively for the purpose of authorizing the provincial government to file a direct action against tobacco manufacturers to recoup the health-care costs the government has allegedly incurred and will incur, resulting from alleged "tobacco related wrongs".[25] The total potential quantum of damages claimed against the defendants in the HCCR Actions, including JTIM on a joint and several basis, is not yet known as some provincial plaintiffs have not specified the amounts of their claim. However, to date, a total of approximately $500 billion, plus interest and costs, has been claimed to be owing by all defendants in the five provinces that have specified amounts in their claims or that have been detailed in expert reports.[26] These claims are vastly in excess of the total value of the business of the Applicant and are likely vastly in excess of the value of the entire tobacco industry in Canada.[27]

18. The HCCR Actions have also been initiated against Reynolds Tobacco and R.J. Reynolds Tobacco International, Inc. (together, "**Reynolds**") as predecessors to JTIM. Japan Tobacco has indemnified Reynolds pursuant to a Purchase Agreement dated as of March 9, 1999 (as amended) as described in the McMaster Affidavit.[28] The status of the HCCR Actions is detailed in the McMaster Affidavit.

The Applicant's Insolvency

19. As at December 31, 2018, the Applicant's assets had a book value of approximately $1.9 billion.[29] As at December 31, 2018, the Applicant had non-contingent liabilities totalling

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[24] *Ibid.*
[25] McMaster Affidavit at para. 60.
[26] McMaster Affidavit at para. 7.
[27] *Ibid.*
[28] McMaster Affidavit at para. 61.
[29] McMaster Affidavit at para. 72.

(f) if the restructuring proceedings are successful, the debtor company will continue to operate for the benefit of all of its stakeholders, and its stakeholders will retain all of its remedies in the event of future breaches by the debtor company or breaches that are not related to the released claims; and

(g) the balance of convenience favours extending the stay to the third party.

33. Granting such a stay to the Other Defendants will allow the Applicant to attempt to effect a collective solution with respect to the HCCR Actions. Without the benefit of a stay, the stayed actions could potentially continue against the Other Defendants, preventing the Applicant's ability to reach a collective solution, especially as that would relate to Reynolds. This could cause significant economic harm for all stakeholders.

34. Further, Reynolds is named as a defendant in the HCCR Actions as it was the predecessor to JTIM at the relevant times. As the defence of Reynolds and JTIM are connected, it would be inequitable, and a potential disadvantage to the Applicant, to allow the actions to continue against Reynolds alone.

35. In consideration of the above factors, the balance of convenience favours granting the stay to the Other Defendants in connection with proceedings described herein.

C. The Proposed Monitor should be appointed as Monitor as requested.

36. Upon the granting of an Initial Order, section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs. The Proposed Monitor has consented to act as monitor in these CCAA proceedings and is a trustee within the meaning of subsection 2(1) of the BIA.[49]

37. The Proposed Monitor is not subject to any of the restrictions as to who may be appointed as monitor set out in section 11.7(2) of the CCAA.

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[49] CCAA, s. 11.7.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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