

**IN THE HIGH COURT OF LAGOS STATE  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS**

**SUIT NO:**

**BETWEEN:**

- |   |   |                         |
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| <p>1. THE ATTORNEY GENERAL OF LAGOS STATE</p> <p>2. ENVIRONMENTAL RIGHTS ACTION</p> | } | <p><b>CLAIMANTS</b></p> |
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**AND**

- |   |   |                          |
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| <p>1. BRITISH AMERICAN TOBACCO<br/>(NIGERIA) LIMITED</p> <p>2. INTERNATIONAL TOBACCO LIMITED</p> <p>3. BRITISH AMERICAN TOBACCO PLC</p> <p>4. BRITISH AMERICAN TOBACCO<br/>(INVESTMENT) LIMITED</p> <p>5. PHILIP MORRIS INTERNATIONAL</p> <p>6. THE TOBACCO INSTITUTE</p> | } | <p><b>DEFENDANTS</b></p> |
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**STATEMENT OF CLAIM**

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**PARTIES**

1. The 1<sup>st</sup> Claimant is the Chief Law Officer of Lagos State and brings this action pursuant to his statutory functions of prosecuting cases on behalf of the Government of Lagos State, including protecting the citizens of Lagos.
2. The 2<sup>nd</sup> Claimant is a non-profit organisation registered in Nigeria and whose objective is in effecting the control of tobacco use to sustain healthy lifestyles among its members and the public generally.
3. The 1<sup>st</sup> Defendant is a limited liability company registered under the laws of the Federal Republic of Nigeria with its registered office at PC 35 Idowu Taylor Street, Victoria Island, Lagos, and the successors in interest of the assets and liabilities of Nigerian Tobacco Company PLC (“NTC”) by virtue of a merger on or about 27/10/ 2000.

4. The 2<sup>nd</sup> Defendant is a limited liability company with its registered office situate at 247 Apapa Road Lagos and is a subsidiary of the 5<sup>th</sup> Defendant.
5. The 3<sup>rd</sup> Defendant is a British company with its principal place of business at Globe House, 4 Temple Place, London WC2R 2PG, England. The 3<sup>rd</sup> Defendant in this action is sued directly and as successor to B.A.T. INDUSTRIES, P.L.C. ("B.A.T. Industries"). (This action will refer to the 3<sup>rd</sup> defendant in the sense of being and assuming the liabilities of BAT Industries PLC.)
6. The 4<sup>th</sup> Defendant is a British company with its registered office situate at Millbank, Knowle Green, Staines, Middlesex, TW18 1DY, England. The 4<sup>th</sup> Defendant is sued directly and as successor to BRITISH AMERICAN TOBACCO COMPANY, LTD. ("BAT Co."). (This action will refer to the 4<sup>th</sup> Defendant in the sense of being and assuming the liabilities of BAT Co.). At all relevant times pertinent to this action, BAT Co. was a parent company of the 1<sup>st</sup> Defendant and BATUS Holdings. BATUS Tobacco Services Inc. is a wholly-owned subsidiary of BATUS Holdings Inc., which operates as a holding company. BATUS Holdings Inc. is a wholly-owned subsidiary of South Western Nominee Limited, which in turn is a wholly-owned subsidiary of B.A.T. Industries, P.L.C. Before January 1990, BATUS Holdings Inc. was known as BATUS Inc. BATUS Holdings Inc. is a Delaware, United States company with its principal office and place of business in Louisville, KY, United States. The 4<sup>th</sup> Defendant is also the parent company of Brown & Williamson Corp which is its American affiliate.
7. The 5<sup>th</sup> Defendant is a Switzerland company whose principal place of business is located at 107 Avenue de Cour, 1001 Lausanne, Switzerland. The 5<sup>th</sup> Defendant is the parent company of the 2<sup>nd</sup> Defendant.
8. The 6<sup>th</sup> Defendant is or was a New York non-profit corporation with its principal place of business at 1875 I Street N.W., Suite 800, Washington D.C. and has at all relevant times, operated as a public relations arm of the Cigarette Companies.
9. In acting as alleged in this action, the 1<sup>st</sup> -5<sup>th</sup> Defendants, in addition to the 6<sup>th</sup> Defendants engaged and utilised several industry lobby and public relations organisations including, the Tobacco Documentation Center (TDC), Tobacco Advisory Council of Nigeria (TACON), Council for Tobacco Research (CTR), Tobacco Manufacturers Association (TMA) all referred to in this action.
10. The Tobacco Documentation Center is an international non-profit company, and the successor in interest to the International Tobacco Information Center, Inc., ("INFOTAB"), which was the successor in interest to International Committee on Smoking Issues ("ICOSI") which was established by the 1<sup>st</sup> – 5<sup>th</sup> Defendants and other Tobacco Companies to carry on the function of public relations.
11. The Tobacco Advisory Council of Nigeria (TACON) is a Nigerian organisation which at all times pertinent to this suit was a representative of the tobacco manufacturers' association in Nigeria.
12. The Council for Tobacco Research (CTR) is or was a New York non-profit corporation and was the successor in interest to the Tobacco Interest Research Committee ("TIRC").

13. Tobacco Manufacturers Association(TMA) is or was a UK non-profit organisation.and the successor in interest to the TOBACCO ADVISORY COUNCIL (“TAC”), which was the successor in interest to the TOBACCO RESEARCH COUNCIL (“TRC”), which was the successor in interest to the TOBACCO MANUFACTURERS STANDING COMMITTEE (“TMSC”).
14. At all times pertinent to this suit, the Lagos State Government has been responsible for public health care within the state and it executes this duty through the ministry of health, other government parastatals, State-run hospitals, teaching hospitals, and other health institutions.
15. The Claimants aver that at all times material to this suit, the 1<sup>st</sup> Defendant in its present capacity and as successors in interest to NTC has manufactured, advertised, sold cigarettes and cigars, and caused to be placed in the stream of commerce, the following brands: Benson and Hedges, Consulate, Dunhill International, Excel, Gladstone, Gold Leaf, John Player Gold Leaf, L&B, London, Mars, Players, Rothmans, Royal Standard, Royal Standard Menthol, St. Moritz, Super Kings, Sweet Menthol, Target, Three Rings, and Trend. The list is not exhaustive.
16. The Claimants assert that at all relevant times pertinent to this suit, the 2<sup>nd</sup> Defendant has manufactured, advertised, and sold cigarettes, including but not limited to Marlboro, Bond Street, Good Companion, Goldengate Filters, Link, and L&M brand cigarettes throughout Lagos acting as an agent and subsidiary of the 5<sup>th</sup> Defendant. The 5<sup>th</sup> Defendant has participated in the manufacture and distribution of cigarettes and tobacco products both individually and through its agent, the 2<sup>nd</sup> Defendant.
17. The Claimants aver that at all times relevant herein, the 3<sup>rd</sup> Defendant has participated substantially in the management and control of the 1<sup>st</sup> Defendant. Through the 1<sup>st</sup> Defendant, the 3<sup>rd</sup> Defendant has placed tobacco related products into the stream of commerce with the expectation that substantial sales thereof would be made in Lagos.
18. The Claimants further aver that at all relevant times pertinent to this action, the 4<sup>th</sup> Defendant has by itself and its predecessor in interest BAT.Co, been the parent company of the 1<sup>st</sup> Defendant.
19. The Claimants aver that at all times relevant herein, the 5<sup>th</sup> Defendant has participated substantially in the management and control of the 2<sup>nd</sup> Defendant. Through the 2<sup>nd</sup> Defendant, the 5<sup>th</sup> Defendant has placed tobacco related products into the stream of commerce with the expectation that substantial sales thereof would be made in Lagos.
20. The 6<sup>th</sup> Defendant was not primarily a “research” and advisory organisation but was rather established by the leading Cigarette Companies to carry out a particular course of conduct. In acting as alleged herein, the 6<sup>th</sup> Defendant has acted within the course and scope of its agency and with the knowledge, consent, permission, and authorisation of the 1<sup>st</sup>-5<sup>th</sup> Defendants. All actions of the 6<sup>th</sup> Defendant were ratified and approved by the officers and managing agents of the 1<sup>st</sup>-5<sup>th</sup> Defendants.

21. The Claimants assert that the said Tobacco Documentation Center (TDC) and its predecessors in interest ICOSI and INFOTAB, were not primarily “research” organizations but they were established by the leading Cigarette Companies which include the 1<sup>st</sup> to 5<sup>th</sup> Defendants to act as public relations and lobbying arms of the 3<sup>rd</sup> Defendant and BAT Co. and as agent and employee of the 3<sup>rd</sup> Defendant from December 8, 1980 until approximately May 1990.
22. At relevant times, the said TDC operated as public relations and lobbying arms of the leading Cigarette Companies and as agent and employees of the leading Cigarette Companies. In acting as alleged herein, the TDC acted within the course and scope of their agency and with the knowledge, consent, permission, and authorisation of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants. All actions of the TDC were ratified and approved by the officers and managing agents of each of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.
23. The Claimants also aver that Tobacco Advisory Council of Nigeria (“TACON”) was not primarily a “research” and advisory organization but it was rather established by the Nigerian Cigarette Companies to carry out a particular course of conduct beginning approximately in 1980; to wit, to act as Tobacco manufacturers’ representative, public relations and lobbying arm of the Cigarette Companies. In acting as alleged herein, the TACON acted within the course and scope of its agency and employment, and with the knowledge, consent, permission, and authorization of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
24. The Claimants further aver that the Council for Tobacco Research (CTR) and its predecessor in interest, TIRC, were not primarily “research” organizations but they were established by the leading Cigarette Companies to carry out a particular course of conduct beginning in January 1954. At all relevant times, CTR operated as public relations and lobbying arms of the leading Cigarette Companies and as agents and employees of the leading Cigarette Companies including the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.
25. The Claimants aver that the Tobacco Manufacturers Association TMA by itself and its successors in interest, were not primarily “research” and advisory organisations but were rather established by the leading Cigarette Companies to carry out a particular course of conduct. In acting as alleged herein, TMA has acted within the course and scope of its agency and with the knowledge, consent, permission, and authorisation of the 1<sup>st</sup>-5<sup>th</sup> Defendants. All actions of the TMA were ratified and approved by the officers and managing agents of the 1<sup>st</sup>-5<sup>th</sup> Defendants.

### **THE HEALTH EPIDEMIC OF YOUTH AND UNDERAGE SMOKING IN LAGOS**

26. This action, inter alia, is to halt, deter, prevent and prohibit the Defendants from the continuation of their conspiracy to recruit and addict young and under aged persons to tobacco smoking, and to avert, prevent and diminish the attendant health and health care implications in Lagos State.
27. The Claimants have recently come into possession of some internally generated documents of the Defendants, and aver that these documents establish that the Defendants have created, maintained and sustained a concerted effort through the use of subterfuge, to solicit, conscript and enlist young and underage persons to engage in the habit of smoking, with the principal

aim of getting them addicted at an early age and thereby ensuring continued sales and profits through out the lifetimes of these young and underage persons.

28. These documents referred to in Paragraph 27 above, which show the manipulation and exploitation of the youth and under age market in Nigeria, has earlier been used in the course of similar litigation in the United States against the 3<sup>rd</sup>-6<sup>th</sup> Defendants which fact the Defendants have continued to conceal from the Federal and State Governments, regulators and the Lagos citizenry.
29. The Claimants aver that the Defendants principal marketing and expansion strategy in Lagos specifically, and in Nigeria generally, is aimed at ensuring a captive market of youths and under aged smokers (below 18 years of age) to- maintain, sustain and increase the volume of sales and replace its decreased sales and profit in other developed countries based on liability, mutual agreement and/or other tobacco control programmes. In addition, the Defendants desire to replace the hundreds of thousands of smokers who die annually.
30. The Claimants aver that the 1<sup>st</sup> Defendant, in addition to its other target consumer groups, emphasises the importance of the youth and underage market group in all its marketing initiatives and strategies in Nigeria. This market segment copiously referred to as YAUS in its internal documents, relates to different cadres in the youth market including underage persons below 18 years of age. This segment is also the motivation for most of its marketing and publicity campaigns typified by images and themes that attract and lure young and underage persons to their products.
31. In 1991, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants commissioned a market survey and research company, Market Behaviour Limited, a United Kingdom company, to analyse and reassess the status of their brands in the West African region. The objectives of this marketing study were to:
  - *“explore the perceived reasons for the declining brand share and status of Benson and Hedges and to evaluate the extent to which current marketing activity is helping or reducing that movement”* ;
  - *to understand, specifically, reactions to existing BHKS advertising amongst current smokers and non smokers;*
  - *to look at new/ alternative BHKS advertising (to the Nigerian market), to evaluate propensity to maintain loyalty and attract new recruits (wholly new or lapsed) to the brand and the levels of sophistication in terms of advertising.”*

The Defendants are hereby given notice to produce the study report titled “The Cigarette Market in Nigeria- Qualitative Consumer Behaviour and Brand Status Study, Qualitative B&H Advertising and Line Extension Evaluations” submitted to BAT U.K on 25/7/1991. (in the absence thereof the Claimants shall rely on a copy tagged Annexure 121 to this Statement of Claim.

32. In page 1 of the study referred to in Paragraph 31 above, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants recognized and admitted that: *“new smokers enter the “market” at a very early age in*

*many cases, as young as 8 or 9 years seems to be quite common.”* Continuing, it was admitted that *most of the respondents of the survey had started smoking before they left junior school.*

33. One of the recommendations of this study was to place emphasis on the music industry which young and underage persons identify with. This led to the birth and development of the hugely successful advertising strategy the-“Golden Tones Concept”, by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants. In page 48 of the document referred to in Paragraph 31 above, it was stated thus: “... *‘Benson and Hedges bringing music into your life’ was seen to be operating in rather a different way. It was seen to be presenting the brand name in an unrelated but positive context, the intention being to create a positive feeling around the brand...*”
34. After the take-off and initial success of the Golden Tones concept, by 1994, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had planned a worldwide increase in its use of the “Golden Tones” concept in the promotion of its brand, Benson and Hedges (B&H), on account of its measurable success in Nigeria where it started in Easter of 1993 in Lagos, through the instrumentality of the 1<sup>st</sup> Defendant. The Defendants are hereby given notice to produce the Benson and Hedges Business Review dated 13/3/1995. (In the absence thereof, the Claimants shall rely on a copy tagged Annexure 122 to this Statement of Claim).
35. Further to the preceding paragraph 34, the Claimants aver that in the same year (1994), the 1<sup>st</sup> Defendant deliberately planned to exploit and did exploit the use of the Golden Tones concept to portray smoking in the image of *‘quality’, ‘contemporaniety’ and ‘international’* to young and underage persons.(Annexure 122); The Defendants are also given notice to produce the document “Marketing Research-Initiating Project Brief” dated 31/5/1995 (In the absence thereof, the Claimants shall rely on a copy tagged Annexure 123 to this Statement of Claim).
36. By 1996, the “Golden Tones” concept and other aligned publicity and marketing devices employed by the Defendants in luring young and underage persons to smoke B&H, had become such a monumental success that the 1<sup>st</sup> Defendant reported a 29% growth in its market share in the Young and Underage Smokers (YAUS) market segment in Nigeria, the highest internationally. The Defendants are hereby given notice to produce the Benson &Hedges 1997 Brand Guidelines dated July 1996; (In the absence thereof, the Claimants shall rely on a copy tagged Annexure 124 to this Statement of Claim).
37. The Claimants aver that the success in Nigeria translated to an international dimension and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants adopted a brand vision of attaining the leading international YAUS brand status in key markets which led them to declare in the Benson &Hedges 1997 Brand Guidelines (Annexure 124) that *“the age profile for the B&H family has been brought down to more directly target the YAUS consumer”*.
38. The Claimants aver that the 1<sup>st</sup> Defendant reiterated that their marketing strategy was designed to project the B&H brand in the following terms: “...*vitality, adventure, ambitious, fun, approachable...*”, all attributes that appeal to young and underage persons. In addition, its ‘marketing executional requirement’ was also calculated to flow along the following lines: *“Challenge- Ambition- Reward”*, all attributes that attract young and underage persons. (Annexure 124).

39. The significance of the young and underage persons' market segment to the Defendants and sustaining a life time dependence on their products is further depicted by the 3<sup>rd</sup> Defendant's marketing research strategy designed for Nigeria among other places. Some of the enquiries collated for the YAUS factbase of BAT included but was not limited to- "*What is the relative value of YAUS?- switching patterns over a lifetime; quitting rates*". The Defendants are given notice to produce the Internal memo dated 6/2/1996 authored by D. Lucan and addressed to P. Adekunle, among others. (In the absence thereof, the Claimants shall rely on a copy tagged Annexure 125 to this Statement of Claim).
40. In furtherance of this clandestine and ignominious objective of attracting, luring and ultimately securing the addiction of young and underage persons to their products for life, the 1<sup>st</sup> Defendants deployed a significant vast and professional strategy including, several habit, appeal and attraction surveys and research, sustained multimedia presence, through Radio, TV, Newspapers and Outdoor adverts in furtherance of their strategy. The Defendants are given notice to produce a copy of an internal memo authored by Patrick Mulligan dated 8/3/1996. (In the absence thereof, the Claimants shall rely on copies of both documents tagged Annexure 126 to this Statement of Claim).
41. The Golden Tones concept represents one of the most striking and aggressive corporate efforts to direct advertising towards young and underage persons. These concerts were enormous musical events that commenced during the Easter of 1993 in Lagos. It featured celebrity performers and included weeks of radio and TV advertising before and after the event. These efforts targeted at manipulating Nigerian youth culture for the purpose of making the B &H brand more appealing. At these events, free cigarettes, called "starters" were freely distributed to young and underage persons. The Defendants are given notice to produce the 3<sup>rd</sup> Defendants internal Marketing Journal titled "Marketing Excellence" of May 1997, and an article therein authored by Anne Njau- Mambo. (In the absence thereof, the Claimants shall rely on a copy tagged Annexure 127 to this Statement of Claim).
42. In the same article authored by Anne Njau- Mambo, the 1<sup>st</sup> Defendant admits that the sales of its B&H brand in December 1996, the month of a Golden Tones concert was a record 164 million, and it was further admitted that Golden Tones contributed in no small means to its increased "YAUS" share.
43. Further to the preceding paragraphs 26-42, the Claimants aver that the deliberate surreptitious corporate policy of the Defendants was shrouded from the Federal and State Governments, and the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants also hatched and developed a plot to frustrate any control measures initiated by the Government. The Defendants are hereby given notice to produce an internal memo from the 3<sup>rd</sup> Defendant to 1<sup>st</sup> Defendant, authored by Shabanji Opukah to Mrs. Irene Ubah dated 19/10/1995 (In the absence thereof, the Claimants shall rely on a copy tagged Annexure 128 to this Statement of Claim), where it was suggested that the 1<sup>st</sup> Defendant should *stymie* the efforts of a tobacco control body in Nigeria.
44. In the same internal memo referred to in Paragraph 42 above, the author Shabanji Opukah encouraged the Nigerian team (referring to employees and or agents of the 1<sup>st</sup> Defendant) to "*...now begin to work fast on your youth programmes. We do have several cases around*

*the world where youth campaigns have been carried out and I would be happy to provide some guidance on this.”*

45. The Defendants also resorted to such acts that they referred to as “*sponsorship exploitation in dark markets*” to avoid advertising restrictions. The Defendants are hereby given notice to produce the 3<sup>rd</sup> Defendant’s internal memo dated 18/6/1996 authored by J Rempt to Paul Oteri, Ike Emeagwali, et al (In the absence thereof, the Claimants shall rely on a copy tagged Annexure 129 to this Statement of Claim).
46. The Claimants aver that the sustenance of an alluring, unconscionable, deceptive, unscrupulous and damaging advertising campaign is further highlighted by a B&H Storm lights brand presentation where the 1<sup>st</sup> Defendant affirmed that “*Music, football, religion and sex*” were the most important values for young people in Nigeria. The same document admits that the “Nigerian youth is influenced by the U.S. as well as Europe due to the colonial days” and suggests that these should be fully exploited in the media blitz in Lagos. The Defendants are hereby given notice to produce “Project Storm Lights Communication Mix- Agency Brief dated 28/10/1999”. The Defendants are also given notice to produce a BAT internal memo written by Peter Bree to Patrick Mulligan dated 8/4/1992. (In the absence thereof, the Claimants shall rely on copies of both documents tagged Annexure 130 and 131 to this Statement of Claim).
47. The Claimants also aver that in exploiting the Nigerian youth’s preoccupation with sports, the 1<sup>st</sup> Defendant, 3<sup>rd</sup> and 4<sup>th</sup> Defendants utilised a concentrated media campaign in the major football journals covering football events such as the African Nations Cup of 1996. The Defendants are hereby given notice to produce the documents “BAT Benson & Hedges IBG Creative Media Recommendation Status” dated 16/5/1996; and the Faxed copy of Zenith Media correspondence dated 20/9/1995 authored by Lavinia Squarey to Bernadette Wilby and Tim Every- Burne both of BAT co. (In the absence thereof, the Claimants shall rely on copies tagged Annexure 132 and 133 to this Statement of Claim).
48. The Claimants aver that in response to a growing international campaign against cigarette advertising, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants developed a corporate policy to undermine restrictions on advertising through resorting to obvert, “below the line”, and more subliminal and subtle means of advertising their products to keep it etched on the minds of the impressionable young and underage persons.
49. These advertisements referred to in Paragraph 48 above included more subtle and culture-based advertising strategies, such as movie and cinema sponsorship, promotion of the home video industry, and fashion shows with the sole intention of sustaining its product and brand consciousness within the youth populace in Lagos State.
50. The Claimants aver that despite the 1<sup>st</sup> Defendant’s much publicised internal regulation on tobacco control, it still persists with several forms of “below the line”, subliminal advertising in its outdoor advertising, parking sign posts, car branding, gifts branding, et al. The Claimants shall rely on copies of the photographs collectively referred to as Annexure 134.

51. The Claimants aver that the direct effect of the consistent, persistent, massive, direct and/or covert advertising strategies of the Defendants over the years is that the smoking prevalence in Lagos State among young and under aged people has been on a steady increase.
52. The Claimants aver that Statistics from a Global Youth Tobacco Survey carried out in a state in Nigeria among students in Junior Secondary 1-3 and Senior Secondary 1-3 depict that the pattern of smoking among young and underage persons as at 2001 is as follows:

**a. Prevalence-**

- 18.8% of students have smoked cigarettes (Male = 20.4%, Female = 13.7%);
- 22.1% currently use any tobacco product (Male = 23.9%, Female = 17.0%);
- 9.1% currently smoke cigarettes (Male = 9.7%, Female = 5.7%);
- 17.4% currently use other tobacco products (Male = 19.3%, Female = 14.0%);
- 20.4% of never smokers are likely to initiate smoking next year

**b. Knowledge and Attitudes**

- 45.2% think boys and 28.0% think girls who smoke have more friends;
- 16.9% think boys and 15.9% think girls who smoke look more attractive

**c. Access and Availability - Current Smokers;**

- 34.1% usually smoke at home;
- 48.7% buy cigarettes in a store;
- 62.4% who bought cigarettes in a store were NOT refused purchase because of their age

**d. Environmental Tobacco Smoke**

- 34.8% live in homes where others smoke;
- 49.1% are around others who smoke in places outside their home;
- 59.8% think smoking should be banned from public places;
- 33.1% think smoke from others is harmful to them;
- 14.8% have one or more parents who smoke;

- 7.7% have most or all friends who smoke.

**e. Cessation - Current Smokers**

- 81.7% want to stop smoking;
- 66.4% tried to stop smoking during the past year;
- 94.2% have ever received help to stop smoking.

**f. Media and Advertising**

- 69.7% saw anti-smoking media messages, in the past 30 days;
- 61.6% saw pro-cigarette ads on billboards, in the past 30 days;
- 54.7% saw pro-cigarette ads in newspapers or magazines, in the past 30 days;
- 28.3% have an object with a cigarette brand logo;
- 18.0% were offered free cigarettes by a tobacco company representative

**g. School**

- 44.4% had been taught in class, during the past year, about the dangers of smoking;
- 31.9% had discussed in class, during the past year, reasons why people their age smoke;
- 50.2% had been taught in class, during the past year, the effects of tobacco use.

The Claimants shall rely on a copy of the Fact sheet tagged Annexure 135.

53. The Claimants aver that the vast majority of adults who smoke began smoking before they were 18. Children are particularly susceptible to cigarette advertising, especially advertising that presents smoking as a rite of passage into adulthood. When they first begin to smoke, children do not believe that they will have difficulty in quitting, but because of the addictive nature of nicotine, many are unable to quit once they have started. The Claimants shall at the trial of this suit rely on a copy of the World Bank Document “Do Smokers Know Their Risks and Bear Their Costs? (*Curbing the Epidemic : Governments and the Economics of Tobacco Control, Chapter 3*)” tagged Annexure 4 in this Statement of Claim.
54. The Claimants aver that despite denying that they do so, the Defendants have engaged in a campaign to market cigarettes to young people. The cigarette companies have long known

that recruiting new smokers when they are teenagers ensures a stream of profits well into the future because these new smokers will become addicted and continue to smoke for many years, and the young smokers are “replacements” for older smokers who either reduce or cease smoking or die. The Claimants shall at the trial of this suit rely on a copy of *“Young Smokers Prevalence, Trends, Implications, and Related Demographics”* tagged Annexure 5 in this Statement of Claim.

55. The Claimants assert that recognizing the profits to be had from this illegal market, the cigarette companies researched how to target their marketing at young people and actively marketed cigarettes to children. As a result of this research – including, research conducted in the 1950’s into the smoking habits of 12-year-olds – Defendants have long known that young people tend to begin smoking for reasons unrelated to the presence of nicotine in cigarette smoke, but then become confirmed, long-term smokers because they become addicted to nicotine. Defendants are further aware that although beginning smokers realize that there are some health risks associated with long-term smoking, beginning smokers almost universally fail to appreciate the risk that, by engaging in smoking while they are adolescents, they will become long-term smokers because of the development of an addiction to nicotine. Moreover, the earlier a person begins to smoke, the more likely it is that he or she will develop a smoking-related disease. The Claimants shall at the trial of this suit rely on a copy of “Questions About Smoking, Tobacco, and Health” tagged Annexure 6 in this Statement of Claim.
56. The Claimants aver that the Defendants have aggressively targeted their advertising campaigns at young people. Their advertising glamorises smoking, and its content is intended to entice young people to smoke, for example, as a rite of passage into adulthood or as a status symbol. Among the techniques used by the cigarettes companies to attract underage smokers are advertising near schools, promoting brands heavily during festive breaks, giving cigarettes away at places where young people are likely to be present in large numbers (like music concerts and festivals) and sponsoring sporting events and other activities likely to appeal to teenagers. The Claimants shall rely on World Bank document Tobacco Control Country Profiles; Dateline Health Nigeria No. 4; and “Nigeria: experience it, die from it”. They are respectively tagged Annexures 7,8, and 9 in this Statement of Claim.
57. The Claimants aver that tobacco products are sold freely around and within close proximity to bus stops, motor parks, schools, university campuses and Premises of Junior and Senior Secondary School institutions in most areas of Lagos.
58. The presence and easy access to these products within the close proximity of young people’s reach is a direct cause of the increasingly prevalent trend of smoking among young and underage persons in Lagos and its environs.
59. The Claimant asserts that the increase in smoking portends and could have very grave and fatal damage to the health of the populace, citizens and the future of the entire workforce that will be available in Lagos.
60. Many of the diseases associated with smoking tobacco incubates for a period of 20 (twenty) years. An underage child smoker of about 14 years old would be due for mortality by the time

he is 34, and if the current trend is not nipped in the bud, a significant depletion in the work force of the state would be occasioned.

61. The Claimants aver that smoking is dangerous to health and is the cause of life threatening diseases. The health effects of tobacco smoking are related to direct tobacco smoking, as well as passive smoking, inhalation of environmental or secondhand tobacco smoke and are gravely injurious to the general public health.
62. The Claimants aver that this trend if not abated would lead to a health epidemic that would also result in a significant depletion of the State's human and material resources worse than that presented by the HIV/ AIDS pandemic.
63. The Claimants aver that the 1<sup>st</sup> Defendant has also held itself out as willing to adequately facilitate in structuring effective tobacco control programmes aimed at young people. This it has abysmally failed to do, rather the 1<sup>st</sup> Defendant has hidden behind the cloak of paying lip service to youth control programmes. The Defendants are mandated to conduct these programmes in some other jurisdictions.
64. The Claimants aver that the prohibition of selling such products around places where underage people frequent will be a significant step in discouraging consumption and an impediment in the ease of access. This will in turn greatly reduce smoking among young people.
65. The Claimants aver that the nature and character of young people due to the images that they have been exposed to does not discourage smoking around them. On the contrary they relish the habit and consider it upscale and "cool" to smoke or have friends who are smokers.
66. The Claimants aver that this advertising campaign has so far been very successful in Lagos in large part because there is no existing infrastructure to prohibit, limit and or restrict the sale and or distribution of tobacco to minors.
67. The Claimants assert that on the contrary, tobacco companies have engaged in a systematic and calculated strategy to make their products readily available to young people by in addition to their advert campaigns, making the products readily available for free at sponsored concerts and sporting events.
68. Further, the Claimants aver that the current retail strategy of the tobacco companies makes it extremely easy for young people to purchase and consume tobacco products because these products are readily available at all the facilities that are generally attractive and or mandatory for young people to attend, particularly schools, cinema houses, musical concerts, recreation parks and sporting events. Tobacco products are usually very readily available at these facilities and this in turn encourages young people to smoke and for those who are looking for a way to smoke, not constituting an adequate impediment makes it certain that they will smoke and or consume other tobacco products.
69. The Claimants aver that many minors are from homes where smoking is either discouraged or at least not endorsed in Lagos State. However, the tobacco companies know that the majority of their products are sold by the stick, an act which they encourage and perpetrate; it is

therefore easy to conceal the products from teachers, guardians and parents. As such, the combined effect of easy access at these facilities and the ease of concealing the product encourage young people to indulge in the habit. The Defendants are hereby given notice to produce the 3<sup>rd</sup> Defendant's document titled "Launch of B&H Lights". (In the absence thereof, the Claimants shall rely on a copy tagged Annexure 136 to this Statement of Claim).

70. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants have since known that their retail strategy of sale by the stick facilitates young and underage smoking. As stated in page 2 of their market study report titled "The Cigarette Market in Nigeria- Qualitative Consumer Behaviour and Brand Status Study, Qualitative B&H Advertising and Line Extension Evaluations" submitted to BAT U.K on 25/7/1991. (Annexure 121) *"young illicit smokers prefer to buy sticks (except when they are going out for the evening), as they can smoke away in the street and avoid the problem of detection"*.
71. The Claimant further avers that the Defendants were also aware of the ineffectiveness of public written disclosure on product packages that might educate the youth populace on the addictive contents and adverse health effects of smoking. Based on their market analysis and survey, they have always worked under the following favorable "imposition[s]" that prevents any sort of effective disclosure of "WHO recommended restrictions" about addiction and the true health effects of smoking:
- a. "A very large proportion (around 80%) of the cigarettes sold are sold individually by the "stick" and not in packets;
  - b. 75% of the population is illiterate;
  - c. The 25% literacy is spread over a multiplicity of languages.

The Claimants shall rely on the Report: Restrictions in Nigeria (502122487-2489) dated November 11, 1980- Annexure 59;

72. Further to paragraph 71 above, the Claimant avers that in a London meeting between the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, their global subsidiaries, and physicians concerning the connection between smoking and health, a representative from the 1<sup>st</sup> Defendant (NTC) expressed alarm about recommendations concerning "publicised health warnings" to the Nigerian public. The meeting minutes note that Nigeria had some 250 languages and, that literacy in any of them was limited, that cigarettes were often sold singly rather than in packets, and that smuggling of brands from outside the national frontiers was rife. The Claimants shall rely on the Report: Morning Sessions- Smoking and Health dated September 25, 1982; Annexure 74.
73. The Claimants aver that another controlling factor in the nature and extent of underage smoking is affordability. Since minors are able to purchase these products by the stick on account of the Defendants' retail strategy, it becomes considerably more affordable to smoke. The typical school aged minor can better afford cigarette than a decent lunch snack when cigarette is sold by the stick and is more readily available in their school than an affordable lunch snack.

74. The Claimants aver that youths fall victim to peer pressure much more than adults. Reducing the number of youth smokers or the ability of a youth smoker to engage in the habit at a particular location will also reduce the number of other youths who smoke or attempt the habit for the first time due to peer pressure. Essentially, with the opportunity to smoke diminished, there would be a resultant decrease in the number of other youths who are pressured into the habit by the conduct of a friend or peer.
75. The Claimants aver that it is important that minors be monitored in controlled environments because minors do not have the capacity to make rightful choices or make informed decisions. As such since several other dangerous and hazardous products are restricted in their distribution and our possible contact with minors, it is important that tobacco products are also in the same vein restricted from being available where minors are known to be frequent.
76. The Claimants aver that it will be of considerable assistance to schools and other educational and social authorities to restrict the availability of tobacco products at the locations under reference as it will augment current efforts to secure a safe environment for all minors within their control or on their facility, particularly when it is accepted that smoking is harmful both to the health of the smoker and the non-smoker who is around the smoker.
77. The Claimants assert that though it is illegal to sell cigarettes to children, nearly 20% of Nigerian youth aged 13-15 smoke today. The Claimants shall rely on World Health Document "WHO Smoking Statistics—Nigeria", Annexure 15.
78. The Claimants aver that with nearly one-fifth of Nigeria's youth smoking today and most of those continuing to do so until adulthood, the majority of these smokers will suffer from some smoking-related illness and diminished health, which will directly and indirectly have an enormous adverse effect on public welfare and the public fiscal economy. The Claimants shall at the trial of this suit rely on a copy of the World Bank Document "Do Smokers Know Their Risks and Bear Their Costs? (*Curbing the Epidemic: Governments and the Economics of Tobacco Control, Chapter 3*)" tagged Annexure 4 in this Statement of Claim.
79. Further particulars of the Defendants' deceptive advertising to the youth are stated hereunder:

Particulars

- i. The 1st -5th Defendants' advertising glamorises smoking and its content is intended to entice young people to smoke. An instance of this was the St. Moritz advertisement of 1998 and 1999 with the British Rock Group lighthouse family soundtrack "Ocean Drive" that depicted a successful young man ending his day with a St. Moritz cigarette. This presented the use of the product as a rite of passage into adulthood or as a status symbol.
- ii. The Defendants have engaged in a campaign to market cigarettes to children. The Cigarette Companies have long known that recruiting new smokers when they are children ensures a stream of profits well into the future because these new smokers will become addicted and continue to smoke for many years, and the young smokers are "replacements" for older smokers who either reduce or cease smoking or die.

- iii. Recognizing the profits to be had from this youth market, the Cigarette Companies researched how to target their marketing at children and actively marketed cigarettes to children. As a result of this research -- including research conducted in the 1950's into the smoking habits of 12-year-olds -- defendants have long known that young people tend to begin smoking for reasons unrelated to the presence of nicotine in cigarette smoke, but then become confirmed, long-term smokers because they become addicted to nicotine. Defendants are further aware that although some beginning smokers may have heard that there are some health risks associated with long-term smoking, beginning smokers almost universally fail to appreciate the addictive nature of cigarette smoking, and therefore fail to appreciate the risk that, by engaging in smoking while they are adolescents, they will become long-term smokers because of the development of an addiction to nicotine. Moreover, the earlier a person begins to smoke, the more likely it is that he or she will develop a smoking-related disease.
- iv. Tobacco advertising in Nigeria and similar countries tends to reflect the aspirations of the youth to emulate adulthood, prosperity and the culture of the West. As a 1993 Philip Morris (5<sup>th</sup> Defendant) report detailing the Nigerian market reveals, tobacco products are valued for their potential to incite images and/or feelings of regality and high class. Parliament cigarettes are praised for their ability to convey an air of "sophistication," while the "bold inscription" on the pack further elevated the "air of... class" surrounding these cigarettes. The Claimants shall rely on the Report: 'Parliament' Group Discussion dated June 1993; Annexure 78.
- v. Indeed, advertising correspondence from BAT Co conveys the importance of relating a "sophisticated," international flavor to the Nigerian consumer. The Claimants shall rely on the Internal document Memo: Menthol Research - Colombia, Kuwait, Nigeria; Annexure 79;
- vi. Similarly, "sophistication is a theme running through [African] smoking ads." For example, a brand of cigarettes marketed in Nigeria during the 1980s named "Graduate" featured advertisements of a university student in his cap and gown, conveying an association between smoking and professional and economic success. The Claimants shall rely on the document "Cigarettes Companies Develop Third World as a Growth Market" dated July 5, 1985; Annexure 22.
- vii. Other techniques used by the Cigarette Companies to attract underage smokers are: giving away of cigarettes at places where young people are likely to be present in large numbers; paying motion picture producers for product placement in motion pictures designed to attract large youth audiences; placing advertisements in magazines commonly read by teenagers; and sponsoring sporting events and other activities likely to appeal to teenagers. In addition, Cigarette Companies have created a subtle and subliminal advertising campaign by sponsoring the recording of motion pictures, also known as "home videos," which accentuate and place emphasis on a specific brand of cigarette while portraying the sophistication of smoking. The Nigerian home video ("Nollywood") industry is highly rated worldwide and generally accepted to be next only to American Hollywood and Indian Bollywood. Its impact

and ability to affect and shape opinion and/or behaviour of young people in Nigeria and other African countries is immense and immeasurable.

- viii. Indeed, in response to loss of market dominance and income in developed countries, tobacco companies are channeling their massive resources and promotional machinery to lure impressionable youths in the developing countries of Africa to long-term tobacco use. The Defendants have actively endorsed and participated in musical concerts with recognized pop and other celebrated musicians to create an atmosphere that furthers their false deception. The 1<sup>st</sup> Defendant actively marketed its Benson and Hedges brand by putting on musical concerts dubbed with names like "Wild and Wicked" to attract Nigerian youths. At each BAT Nigeria musical concert, young people are provided with a supply of free Benson and Hedges cigarettes in order to get them addicted to cigarette smoking at a young age so as to make them lifelong consumers [Annexure. 7-8]. The Claimants shall rely on World Bank document Tobacco Control Country Profiles; and Dateline Health Nigeria No. 4; They are respectively tagged Annexures 7 and 8 in this Statement of Claim,
  - ix. In November 2003, the 1<sup>st</sup> Defendant launched a promotional campaign called "*Experience It*" in Nigeria, featuring five blockbuster Hollywood films: Ocean's Eleven, Matrix, ShowTime, Romeo Must Die, and Collateral Damage. The promotional campaign was national, reaching six geopolitical regions. At "Experience It" events, young people were given free cigarettes and "starters", as they tend to be known among Defendants, were helped to light them. The Claimants shall rely on "Nigeria: experience it, die from it", Annexure 9;
  - x. Despite what was intended as a ban on tobacco advertisement, the 1<sup>st</sup> Defendant continues to place 'product' advertisement on its vans. It has also increased the number of posters pasted on street walls and at points of sale. In addition, the company continues to use billboards on major streets and newspapers for "non-product" advertisements. The Claimants shall rely on the pictorial representation of one of these Billboards, Annexure 60.
  - xi. A March 31, 1981 report, titled "Young Smokers Prevalence, Trends, Implications, and Related Demographic Trends" explained the importance of this youth market, stating that: "today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens. . . . [I]t is during the teenage years that the initial brand choice is made." The Claimants shall at the trial of this suit rely on a copy of "*Young Smokers Prevalence, Trends, Implications, and Related Demographics*" tagged Annexure 5 in this Statement of Claim.
80. Despite the overwhelming evidence that they have deliberately sought to target young people for the sale of cigarettes, Defendants have denied such activities in false and misleading communications to the public, to legislative and regulatory bodies, and in judicial proceedings. On the contrary, they have made fraudulent representations, including to the Nigerian National Assembly and other government Agencies, about a supposed disinclination to distribute cigarettes to young people. These representations are vastly and evidently belied by their conduct.

81. The Claimants also aver that young people are particularly susceptible to cigarette advertising, especially advertising that present smoking as a rite of passage into adulthood. When they first begin to smoke, young people do not believe that they will have difficulty in quitting, but because of the addictive nature of nicotine, many are unable to quit once they have started.
82. The Claimants aver that there is sufficient cause to believe that if the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are not perpetually restrained, the public health of Lagos State would be endangered bordering on epidemic proportions, as young people constitute a significant portion of the population.

### **PRODUCT COMPOSITION AND HEALTH EFFECTS**

83. The Claimants aver that Cigarette smoking is a preventable cause of too many premature deaths in Lagos. Each year, citizens of Lagos state suffer from smoking-related diseases, which often require a long-term course of medical and surgical treatment.
84. The Claimants assert that smoking is on the rise in Nigeria (as well as in the developing world) but falling in developed nations. These smoking trends are the direct result of litigation and restrictions on the Cigarette Companies in the United States and other developed nations. Specifically,, among Americans, smoking rates shrunk by nearly half in three decades (from the mid-1960s to mid-1990s), falling to 23% of adults by 1997. In the developing world, tobacco consumption is rising by 3.4% per year. The Claimants shall at the trial of this suit rely on a copy of the World Health Organization Smoking Statistics tagged Annexure 10 in this Statement of Claim.
85. The Claimants assert that Smoking-related diseases kill one in 10 adults globally. Unless the Defendants are restrained through litigation such as this action, by 2030 smoking will kill one in six people. The grievous health ramifications of smoking are depicted thus:
  - i. Half of long-term smokers will die from tobacco usage;
  - ii. Every cigarette smoked cuts at least five minutes of life on average - about the time taken to smoke it;
  - iii. Half of long tern smokers would die from tobacco usage;
  - iv. Every cigarette smoked cuts at least five minutes of life on average - about the time taken to smoke it;
  - v. Smoking is the single largest preventable cause of disease and premature death. It is a prime factor in heart disease, stroke and chronic lung disease. It causes cancer of the lungs, larynx, esophagus, mouth, and bladder, and contributes to cancer of the cervix, pancreas, and kidneys;
  - vi. Smoking is responsible for 87% of lung cancer cases (90% in men, 82% in women). Beyond just lung cancer, thirty percent of all cancers are due to smoking;

- vii. At least a quarter of all deaths from heart diseases and about three-quarters of the world's deaths from chronic bronchitis are related to smoking. Smoking triples the risk of dying from heart disease.

The Claimants shall at the trial of this suit rely on the “World Health Organization Smoking Statistics”; “Health news - 1 to 4 cigarettes a day triples the risk of dying from heart disease or lung cancer”; “Health Harms from Smoking and Other Tobacco Use”; (tagged Annexures 10-12 in the Statement of Claim)

86. The Claimants aver that more than 4,000 toxic or carcinogenic chemicals have been found in tobacco smoke. The Claimants shall at the trial of this suit rely on a copy of the World Health Organization Smoking Statistics tagged Annexure 10 in this Statement of Claim.

87. The Claimants aver that these carcinogenic or toxic components in cigarette smoke increases the risk of cancer and other diseases in humans. The particulars of some of the most hazardous of these chemical components are represented hereunder:

a. ***Nicotine:***

- i. General: It is an alkaloid found in the nightshade family of plants (*Solanaceae*) predominantly in tobacco. Nicotine constitutes 0.3 to 5% of the tobacco plant by dry weight, with biosynthesis taking place in the roots, and accumulates in the leaves. It is a potent neurotoxin with particular specificity to insects; therefore nicotine was widely used as an insecticide in the past. The substance acts as a stimulant in mammals and is one of the main factors responsible for the dependence- forming properties of tobacco smoking.
  - ii. Pharmacology: As nicotine enters the body, it is distributed quickly through the bloodstream and can cross the blood-brain barrier. It takes about seven seconds for the substance to reach the brain. The half life of nicotine in the body is around 2 (two) hours. The amount of nicotine absorbed by the body from smoking depends on many factors, including the type of tobacco, whether the smoke is inhaled, and whether a filter is used.
  - iii. Pharmacodynamics: Nicotine acts on the nicotinic acetylcholine receptors. In small concentrations it increases the activity of these receptors, among other things leading to an increased flow of adrenaline, a stimulating hormone. The release of adrenaline causes an increase in heart rate, blood pressure and respiration, as well as higher glucose levels in the blood.
- ◆ The sympathetic nervous system, acting via splanchnic nerves to the adrenal medulla, stimulates the release of epinephrine. Acetylcholine released by preganglionic sympathetic fibers of these nerves acts on nicotinic acetylcholine receptors, causing cell depolarization and an influx of calcium through voltage-gated calcium channels. Calcium triggers the exocytosis of chromaffin granules and thus the release of epinephrine (and norepinephrine) into the bloodstream.

- ◆ Cotinine is a byproduct of the metabolism of nicotine which remains in the blood for up to 48 (forty eight) hours and can be used as an indicator of a person's exposure to smoke. In high doses, nicotine will cause a blocking of the nicotinic acetylcholine receptor, which is the reason for its toxicity and its effectiveness as an insecticide.
- ◆ In addition, nicotine increases dopamine levels in the reward circuits of the brain. In this way, it generates feelings of pleasure, similar to that caused by cocaine and heroin, thus causing the addiction associated with the need to sustain high dopamine levels. Nicotine activates reward pathways—the circuitry within the brain that regulates feelings of pleasure and euphoria. Dopamine is one of the key brain chemicals actively involved in the desire to consume drugs. By increasing the levels of dopamine within the reward circuits in the brain, nicotine acts as a chemical with intense addictive qualities.

**B. Tar**

- i. Tar is the common name for the resinous partially combusted particulate matter produced by the burning in the act of smoking. Tar accumulates in the smoker's lungs over time and damaging them through various biochemical and mechanical processes;
- ii. Tar includes the majority of mutagenic and carcinogenic agents in tobacco smoke. Polycyclic aromatic hydrocarbons (PAH), for example, are genotoxic via epoxidation.

**C. Benzo[a]pyrene  $C_{20}H_{12}$ ,**

- i. It is a five-ring polycyclic aromatic hydrocarbon that is mutagenic and highly carcinogenic. It is a crystalline yellow solid. Benzo[a]pyrene is a product of incomplete combustion at temperatures between 300 and 600 °C;
- ii. The mechanism of its carcinogenity is well-known: oxidation produces an epoxide, which binds to DNA covalently and permanently distorts it. DNA damage is the cause of cancer.

88. The Claimants aver that Secondhand smoke or involuntary smoke, or environmental tobacco smoke (ETS) also contains over 4000 chemicals including more than 40 cancer causing agents and 200 known poisons. Secondhand smoke contains twice as much tar and nicotine per unit volume as does smoke inhaled from a cigarette. It contains three times the amount of the carcinogen benzopyrene, five times as much carbon monoxide, and fifty times as much ammonia. The Claimants shall at the trial of the suit rely on the document Cancer FAQs about Lung Cancer, tagged Annexure 13 in the Statement of Claim. Particularly:

- a. Over the past two decades, medical research has shown that non-smokers suffer many of the diseases of active smoking when they breathe secondhand smoke. Secondhand smoke causes lung cancer and contributes to the development of heart disease. Non-smoking women who have never smoked and who live with a smoker have a 91%

- greater risk of heart disease. They also have twice the risk of dying from lung cancer. Non-smoking spouses who have never smoked and who are exposed to secondhand smoke have about 20% higher death rates for both lung cancer and heart disease. Secondhand smoke increases heart rate and shortens time to exhaustion. Repeated exposure causes thickening of the walls of the carotid arteries, accelerates atherosclerosis, and damages the lining of these arteries. When a pregnant woman is exposed to secondhand smoke, the nicotine she ingests is passed on to her unborn baby [The Claimants shall at the trial of this suit rely on a copy of Secondhand Smoke Facts tagged Annexure 2 in this Statement of Claim].
- b. Children exposed to secondhand smoke before and after birth are at a greater risk of abnormal blood pressure, cleft palates and lips, childhood leukemia, attention deficit disorder, childhood wheezing and respiratory disorders [The Claimants shall rely on Tobacco Free Kids Document “Health Harms from Smoking and Other Tobacco Use” tagged Annexure 12].
89. The Claimants further aver that an additional health risk associated with smoking is sperm abnormalities and it is also a cause of impotence. The Claimants shall rely on “Basic Facts: Two: Smoking & Disease, (*from Action on Smoking and Health*)” tagged Annexure 14 in this Statement of Claim.
90. The Claimants aver that Cigarette smoking by pregnant women is also a leading cause of low birth weight infants.
91. The Claimants aver that Cigarettes contain nicotine, which is a highly addictive drug. The addictiveness of cigarette smoking significantly increases the adverse health consequences of cigarette smoking.
92. The Claimants aver that each year, as a result of the diseases, illness, or injuries caused by cigarettes, the Lagos State Government is forced to spend a significant sum under a variety of programs to pay for or furnish medical care to smokers.

**ADMISSION BY DEFENDANTS OF KNOWLEDGE OF HEALTH RISKS AND PARTICULARS THEREOF**

93. The Claimants aver that the Defendants, particularly the 1<sup>st</sup> Defendant, after several years of persistent denials, have now admitted that they are fully aware of the adverse health effects of the consumption of their products. In an advertorial titled “There is More to our Business-BAT”, it declared vide Aliyu Ma’aji, its Corporate Communications Manager, -

*“ We have long accepted that smoking is risky. Our view is that along with the pleasures of cigarette smoking come real risks of lung cancer, respiratory disease and heart disease” .*

The Claimants shall rely on a copy of Thisday of Monday, September 2006, p. 40, tagged annexure 113

94. The Claimants also aver that the 1<sup>st</sup> Defendant has admitted in its representations to the National Assembly that the consumption of tobacco smoke has adverse effects on the public health. The Claimants shall rely on BAT Memo to Joint House Committee on Public Health and Commerce at the Public hearing of Tobacco Smoking (Control) Amendment Bill tagged Annexure 114.

### **LEGAL ACTION IN FOREIGN JURISDICTIONS, AWARENESS, AND CONTROL**

95. The Claimants aver that similar to its adverse health effects in Nigeria, cigarette smoking is a preventable cause of too many deaths in other jurisdictions. Particularly, in the United States, there are more than 400,000 Americans who die annually from cigarette smoking and many more require some form of long-term medical and/or surgical treatment for smoking-related illnesses and diseases. Each year, as a result of these diseases, illnesses, and injuries caused by cigarettes, the United States spends more than \$20 billion under a variety of healthcare programs to pay for or furnish medical care to smokers. The Claimant shall at the trial of this suit rely on CDC Document “Cigarette Smoking-Related Mortality”, tagged Annexure 16 in this Statement of Claim.

96. On account of the averments in Paragraph 95 hereinbefore, 46 (forty six) of the 50 (fifty) individual U.S. states filed separate lawsuits in the 1990’s to recover the costs of treating diseases caused by tobacco use. The four remaining states reached independent settlements with the tobacco companies over the course of the 1990s for a total of \$40 billion dollars. The Attorneys General and other representatives of the 46 states that filed lawsuits, along with Puerto Rico, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands, Guam and the District of Columbia signed an agreement with the five largest U.S. tobacco manufacturers in November 1998, including Philip Morris USA and BAT Co.’s subsidiary, Brown & Williamson (“B & W”). This agreement, known as the Master Settlement Agreement (“MSA”) included payments totaling \$206 billion dollars over the next three decades to reimburse the states for the costs of healthcare programs to treat those suffering from smoking-related illnesses and diseases. The settlement also included mandatory smoking prevention programs to prevent future healthcare costs. As a result of the MSA and other settlements like it, states such as Mississippi have seen youth smoking rates decline an average of 40%, saving the state government over \$400 million dollars in future healthcare costs. The Claimant shall at the trial of this suit rely on a copy of the Master Settlement Agreement (MSA), tagged Annexure 17 in this Statement of Claim.

97. The Claimant further avers that sometime in 1999, the United States Federal Government filed a lawsuit against all of the major tobacco corporations, including the 4<sup>th</sup> and 5<sup>th</sup> Defendants, and tobacco-related trade organizations to recover the costs incurred by the federal government as a result of smoking-related diseases and associated healthcare. The Claimant shall at the trial rely on a copy of the U.S. Government Complaint, tagged Annexure 18 in this Statement of Claim.

98. The Claimant asserts that specifically, the United States Government in its complaint, alleged that for approximately fifty years, the Defendants have been engaged in a conspiracy with one another to falsely and fraudulently deny:

- i. that smoking causes lung cancer and emphysema, chronic obstructive pulmonary disease, as well as many other types of cancer;
  - ii. that environmental tobacco smoke causes lung cancer and endangers the respiratory and auditory systems of children;
  - iii. that nicotine is a highly addictive drug which they manipulated in order to sustain addiction;
  - iv. that they marketed and promoted low tar/light cigarettes as less harmful when in fact they were not;
  - v. that they intentionally marketed to young people under the age of twenty-one and denied doing so; and
  - vi. that they concealed evidence, destroyed documents, and abused the attorney-client privilege to prevent the public from knowing about the dangers of smoking and to protect the industry from adverse litigation results.
99. In a 1700-page decision issued in August 2006, U.S. District Court Judge Kessler ruled in favour of the government and against the tobacco companies, summarizing the case as follows:

*"It is about an industry, and in particular these Defendants, that survives, and profits, from selling a highly addictive product which causes diseases that lead to a staggering number of deaths per year, an immeasurable amount of human suffering and economic loss, and a profound burden on our national health care system. Defendants have known many of these facts for at least 50 years or more. Despite that knowledge, they have consistently, repeatedly, and with enormous skill and sophistication denied these facts to the public, to the Government, and to the public health community. Moreover, in order to sustain the economic viability of their companies, Defendants have denied that they marketed and advertised their products to children under the age of eighteen and to young people between the ages of eighteen and twenty-one in order to ensure an adequate supply of "replacement smokers," as older ones fall by the wayside through death, illness, or cessation of smoking. In short, Defendants have marketed and sold their lethal product with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted.*

100. Within her ruling, Judge Kessler accurately and comprehensively detailed the fifty-year conspiracy among the tobacco corporations to defraud the public about the health effects of smoking. The Court found that the conspiracy was not confined to the United States but was carried out internationally through the work of subsidiaries and affiliated companies, as well as through industry-supported associations which, consistent with their U.S.-based counterparts, spread the false and misleading information about cigarettes and health on a global basis. It also found as follows:

- i. That there was overwhelming evidence demonstrating the Defendants' recognition that their economic interests would best be served by pursuing a united front on smoking and health issues and by a global coordination of their activities to protect and enhance their market positions in their respective countries;
- ii. In order "to further their shared objectives, the Defendants, over an extended period of time, created, controlled, used, or participated in an astonishing array of international entities, including, among many others (all of which will be discussed infra), the Tobacco Manufacturers' Standing Committee ("TMSC"), which became the Tobacco Research Council ("TRC") and then the Tobacco Advisory Council ("TAC"); the International Committee on Smoking Issues ("ICOSI"), which became the International Tobacco Information Center, Inc. ("INFOTAB") and then the International Tobacco Documentation Center ("TDC").

The Claimants shall rely on the Final Opinion, *United States of America v. Philip Morris Incorporated, et al*, tagged Annexure 19 in this Statement of Claim.

101. The Claimants aver that the U.S. federal decision focused specifically on BAT Co and Philip Morris-(the 3<sup>rd</sup>-5<sup>th</sup> Defendants) based organizations for aiding and abetting this international conspiracy, organizations which have had extended involvement in the Cigarette Companies' markets in Nigeria. For example, defendant INFOTAB, an international tobacco trade group with ties to both BAT Co and Philip Morris and with a historical presence in Nigeria, was cited for its work in opposing World Health Organization (WHO) efforts to reduce smoking, including the 1990 publication entitled "Children & Smoking -- The Balanced View," April 1990 which among other statements, denied that tobacco is addictive. The Defendants are hereby given notice to produce this document. (In the absence thereof, the Claimants shall rely on a copy tagged Annexure 20 to this Statement of Claim).
102. Further to the preceding paragraph 101, the Claimants further aver that in that same year (1990), representatives of INFOTAB and BAT attended a meeting held in Washington, D.C. at the Tobacco Institute (the 6<sup>th</sup> Defendant), which discussed the creation of a "Global Argumentation Project" - an effort to develop standardized fraudulent responses available globally to tobacco firms and trade associations on smoking and health-related issues, such as environmental tobacco smoke and youth marketing. The Claimants shall rely on the document 'Global Argumentation Project' dated Jan 9 1990, tagged Annexure 21.
103. The Claimants aver that the state and federal lawsuits in the United States (along with the mandated public disclosures required therein) have heightened the public's awareness about:
  - a. the true health effects of smoking; and
  - b. the Cigarette Companies' fraud in hiding and manipulating such information.
104. Consequent to the foregoing paragraph 98, the Claimants aver that the awareness, coupled with the enormous financial and legal penalties and restrictions the Cigarette Companies (inclusive of the 3<sup>rd</sup> -5<sup>th</sup> Defendants) now face in the United States, have resulted in a significant decrease of the number of smokers in the United States in the last two decades.

105. This reduction in smoking has saved hundreds of thousands of lives in the United States. This suit intends to yield the same benefits for citizens of Lagos State.

### **EXPANSION AND CONCENTRATION IN NIGERIA**

106. The Claimants aver that as a result of these government lawsuits, settlements therefrom and/or other tobacco control programmes, the Cigarette Companies have experienced reduced business each year in the developing world. The Cigarette Companies have in turn focused their attention to the developing world, including Nigeria.
107. The Claimants assert that as early as 1985, the tobacco companies were beginning to turn their attention to countries such as Nigeria: “Throughout the developing world, the tobacco industry was avidly courting consumers, using catchy slogans, obvious image campaigns and single-cigarette sales that fit a hard-pressed customer's budget. The reason is clear. As Peter Temple, a London tobacco analyst, puts it, the [developing world] ‘is where the growth is’”. The Claimants shall rely on the document” Cigarettes Companies Develop Third World as a Growth Market” dated July 5, 1985, Annexure 22.
108. The Claimants aver that the corporate response of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants to this reduction in business in the United States and European Countries was to increase production, marketing and sales in the developing world with Africa and specifically Nigeria as potential investment targets.
109. Further to the preceding Paragraph 108, the Claimants assert that while smoking rates have been decreasing in the United States and other developed countries; eight out of ten smokers now live in developing countries. The Claimants shall rely on the World Health Organisation Document “WHO Tobacco Atlas” Annexure 24.
110. The Claimants further aver that the Cigarettes and tobacco have become a leading cause of illness and death in developing countries, outpacing AIDS and placing a heavy burden on health systems. More than 2.5 million people die in developing countries each year from illnesses related to tobacco consumption, with the number expected to rise to 7 million within the next two decades. The Claimants shall rely on the World Bank document “Tobacco use and its consequences” and the FAO Report on Tobacco, tagged Annexure 25 and 134 respectively in this Statement of Claim.
111. The Claimants aver that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants intensified its expansionist agenda in Nigeria by utilising Magraeb Limited as a special purpose vehicle for the acquisition of shares in Nigerian Tobacco Company Plc, sometime in 2000.
112. Further to the averments in Paragraph 101 above, the Claimants assert that on the 27<sup>th</sup> of October 2000, the name of the special purpose vehicle, Magraeb Limited was changed to British American Tobacco (Nigeria) Limited (the 1<sup>st</sup> Defendant), with Patrick Heneghan, Robert Gordon Barrie, Robert Fletcher and James Richard Suttie appointed as first directors.
113. The Claimants aver that the 1<sup>st</sup> Defendant thereafter merged with the Nigerian Tobacco Company (its subsidiary) and assumed its assets and liabilities. NTC which was a public

liability company was converted to a private company and was substantially invested into and transformed.

114. The Claimants aver that the 1<sup>st</sup> Defendant signed a memorandum of understanding with the Federal Government of Nigeria to invest \$150m in Nigeria in the form of an ultra-modern cigarette plant in Ibadan, Oyo State.
115. The Claimants assert further, that since 2000 up till date the 1<sup>st</sup> Defendant's share of Nigeria Market has risen from 12% (twelve percent) to 90% (ninety percent). Lagos, one of the most populous states in Nigeria, has a significant smoking population.
116. In response to the increasing demand, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants have increased their plant and factories output significantly.

### **THE INTERNATIONAL CONSPIRACY AND PARTICULARS THEREOF**

117. The Claimants assert that all the Defendants on at least one occasion, conspired to fraudulently suppress, conceal and/ or manipulate the truth about the addiction of nicotine and the adverse health implications of smoking caused to the general public. This course of conduct perpetrated internationally has had substantial effects in Lagos State. The conduct of the Defendants is particularised hereunder:
  - i. In the 1940's and early 1950's, scientific researchers published findings that indicated a relationship between cigarette smoking and diseases, including lung cancer. Senior Cigarette Company executives and researchers closely monitored such research and knew that if the public came to understand that cigarette smoking causes cancer and other diseases, the Cigarette Companies' profits would decline and the industry would face the prospect of civil liability and government regulation. In response to the published research linking cigarettes and disease, in December 1953, Paul Hahn, President of American Tobacco Company, sent a telegram to the other Cigarette Company presidents, suggesting a meeting to formulate "an industry response" to the studies; The Claimant shall at the trial of the suit rely on the document "*In View of the Highly Publicized Claims of Certain Media Men not Sponsored by any Duly Accredited Scientific Medial Organization Charging Serious Danger to Health from Smoking*",tagged Annexure 25.
  - ii. As a direct result of Mr. Hahn's telegram, on December 15, 1953, the chief executives of the Cigarette Companies met at the Plaza Hotel in New York City. At that meeting, these chief executives agreed that the published studies were "extremely serious" and "worthy of drastic action." At the meeting, the chief executives determined to respond to this serious public health issue with a concerted public relations campaign intended to preserve their profits. The decisions made by these chief executives at the Plaza Hotel meeting have shaped the actions of the Cigarette Companies to this day. The chief executives at the Plaza Hotel agreed that the strategy they were implementing was a "long-term one" that required Defendants to act in concert with each other on the current health controversy, as well as on issues that would face them in the future. The Claimants shall rely on the document "Background Material on the Cigarette Industry Client" tagged Annexure 26

- iii. Rather than provide full disclosure to the public about what they knew or learned about the dangers of cigarette smoking, the Defendants and their agents determined, in furtherance of this conspiracy, to deny that smoking caused disease and to maintain that whether smoking caused disease, was an "open question," despite having actual knowledge that smoking did cause disease.
  - iv. The Defendants sought to ensure that no company broke ranks from their corporate public posture, which was based on falsehood and deception. If any Company admitted that smoking was hazardous, that nicotine was addictive, that the delivery of nicotine was manipulated by the cigarette manufacturers, that the Defendants' research commitment was a sham, or that the Cigarette Companies marketed to children, the conspiracy would be endangered.
  - v. To further and protect the conspiracy and their profits, the Defendants:
    - a. made false and misleading statements to the public through press releases, advertising, and public statements that were intended to be heard by the consuming public; and
    - b. adhered to their common scheme of deception and falsehood by, among other things, destroying and concealing documents.
  - vi. The Defendants have knowingly and willfully continued this conspiracy and have:
    - a. sought to create false doubt about the health effects of smoking because they knew that such doubt would influence consumers to begin or to continue smoking;
    - b. falsely denied that nicotine was addictive and controlled the nicotine delivery of cigarettes so that they could addict new users and make it more difficult for addicted cigarette smokers to quit;
    - c. suppressed research, destroyed documents, and took steps to prevent discovery of such documents;
    - d. aggressively targeted children as new smokers because children fail to appreciate the hazards of smoking and the addictiveness of nicotine and are more easily induced to start an addiction that would lead to a lifetime of cigarette purchases; and
    - e. known that use of their product was unreasonably and unnecessarily dangerous to the lifelong customers that they sought to addict.
118. The Claimants aver that the Parent Company Defendants (3<sup>rd</sup> -5<sup>th</sup> Defendants) acted in furtherance of the international conspiracy by using their corporate families to keep documents and research secret and out of reach. Specifically, the 3<sup>rd</sup> Defendant, by itself or through its agents, subsidiaries, or co-conspirators, has conducted significant undisclosed research on the topics of smoking, disease, and addiction.

**INTERNATIONAL CONSPIRACY AND FALSE STATEMENTS IN RELATION TO  
SMOKING AND DISEASE ; PARTICULARS THEROF**

119. The Claimants aver that consistent with the recommendations made in connection with the December 1953 meeting at the Plaza Hotel, Philip Morris, BAT Co subsidiary Brown and Williamson, and other cigarette companies formed the TIRC and, on January 4, 1954, caused to be published a full-page statement to the American public called "A Frank Statement to Cigarette Smokers" in 448 newspapers in the United States. The "Frank Statement" dishonestly claimed, *inter alia*: "We believe the products we make are not injurious to health". The Claimants shall rely on the document "*Report: A Frank Statement to Cigarette Smokers*" tagged Annexure 29.
120. The Claimants assert that before the Frank Statement's claim that "there is no proof that cigarette smoking is one of the causes" of lung cancer, the Cigarette Companies knew that researchers employed by them and other cigarette companies had confirmed the relationship between smoking and disease. Moreover, although the Cigarette Companies refrained from doing much of the basic biological research related to the effects of their products, by January, 1954, all of the companies had identified the presence of carcinogenic substances in tobacco smoke. Thus, Defendants were well aware of the health hazards posed by smoking.
121. Further to Paragraph 116 hereinbefore, the Claimants aver that in 1954, the British Health Minister made a statement before the House of Parliament regarding the report of a special committee appointed by the British Health Ministry which suggested that statistical evidence pointed to a possible causal relationship between smoking and lung cancer. Although the Cigarette Companies agreed to donate money over the next several years for research into smoking and lung cancer, they simultaneously began communications with the TIRC about a liaison which would allow "the British industry [to] clear information regarding developments which it desired to communicate to TIRC". The Claimants shall rely on the Report of Activities Through July 31, 1954; Annexure 30.
122. The Claimants aver that in June 1956, the Tobacco Manufacturers' Standing Committee ("TMSC") was formed by the Cigarette Companies. Although this group was to cooperate with the British Health Ministry and the Medical Research Council and stated their purpose as one which would "assist research into questions concerned with the relationship between smoking and health, to keep in touch with scientists and others working on this subject in the United Kingdom and abroad, and to make information available to scientific workers and the public," TMSC in fact occupied a position in the United Kingdom analogous to the position of the TIRC in the United States. The Claimants shall rely on the Report: Research Conference, Southampton, 1962 Smoking and Health - Policy on Research, tagged Annexure 31 in this Statement of Claim.
123. The Claimants assert that a year after the TMSC was formed, the Medical Research Council in England issued a statement condemning tobacco as a major cause of lung cancer and calling for a program by local health authorities and their education departments that would inform the general public of the risks of smoking. At the trial of the suit, The Claimants shall rely on

the document 'Confidential Report Tobacco Industry Research Committee Meeting' November 8, 1957, tagged Annexure 32.

124. The Claimants aver that in response to health concerns raised by medical authorities in both the U.S. and the UK, TMSC and TIRC member companies began to coordinate their efforts to promote the openness of the question on the relationship between smoking and disease. The Claimants shall at the trial rely on the copy of the Meeting Minutes: *Confidential Report Tobacco Industry Research Committee Meeting November 8, 1957* dated November 8, 1957, tagged Annexure 33.
125. The Claimants aver that the Defendants also worked together to deny smoking as a causative agent of disease. A memorandum, drafted by representatives of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and covering their trip to the U.S. and Canada during the spring of 1958 revealed that although the cigarette manufacturers "continued to assert publicly that there was no proof that cigarette smoking causes any disease," these public positions clearly "did not accord with the private views of their own scientists" The Claimants shall at the trial rely on the Report on Visit to U.S.A and Canada 580417 – 580512; Annexure 34.
126. The Claimants aver that the clandestine actions of TMSC and TIRC member companies began the international conspiracy that would deceive cigarette consumers about the link between smoking and disease worldwide.
127. The Claimants aver that over the next forty years, the Defendants made false and misleading statements to persuade the public, worldwide, that there was an "open question" as to whether smoking caused disease. In every available regulatory, judicial, and congressional proceeding, as well as in every public forum, including through press releases and advertisements, Defendants denied that smoking caused disease or claimed that there was insufficient proof that smoking caused disease.
128. The Claimants aver that the Cigarette Companies went so far as to claim that they would cease selling tobacco if they determined that smoking was harmful or would change the product in order to make certain that it was no longer harmful. Specifically:
  - ii. George Weissman, Vice-President of Philip Morris, told the Pioneer Press on March 31, 1954, that the cigarette industry would "stop business tomorrow" if it believed smoking was harmful. The Claimants shall rely on the document Public Relations and Cigarette Marketing, Annexure 35;
  - iii. Bowman Gray, the head of R.J. Reynolds Tobacco, testified before Congress in June of 1964, that "[i]f it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would do our level best. This is just being human" The Claimants shall rely on House of Representatives, U.S. Report of Proceedings Hearing Held Before Committee on Interstate and Foreign Commerce Cigarettes and Smoking Papers dated June 25, 1964; Annexure 36
129. The Claimants aver that in addition to the false statements made by the Cigarette Companies themselves and in furtherance of their scheme to defraud, in 1958 the Cigarette Companies

created the Tobacco Institute, a public relations organization whose function was to make certain that Defendants' false and misleading positions on issues related to, among other things, the connection between smoking and disease, were kept constantly before the public, doctors, and the public health community. At all times the Cigarette Companies controlled the Tobacco Institute, including its public statements made on behalf of Defendants. The Claimants shall rely on the following documents: Press Release: Ex-Congressman Richards to Head Newly-Formed Tobacco Institute, Inc, ” dated January 30, 1958; Tobacco Insts Objections & Responses to Plaintiffs summons in Attorney General & Blue Cross & Blue Shield of MN vs. Philip Morris Inc. dated July 19, 1995; “Speech: The Mission of the President of the Tobacco Institute” dated April 12, 1966; Annexures 37,38 and 39, respectively.

130. The Claimants aver that in contrast to the Defendants, who long knew and understood the adverse health effects of cigarette smoking, many members of the public did not fully appreciate the risk to their health posed by cigarettes. At all times, Defendants made such false and misleading statements with the express purpose of deceiving the public and inducing smokers and non-smokers to minimize the health risks and continue or start smoking. Defendants also had full knowledge that, as their fraud succeeded, more people worldwide would suffer from tobacco-related disease. Because they failed to warn consumers and lied about the health effects of smoking, individuals, including millions of children, became addicted to cigarettes, and many people who were already smoking had more difficulty quitting, with resulting damage to their health.

#### **PARTICULARS OF THE EXPANSION OF THE INTERNATIONAL CONSPIRACY**

131. The Claimants aver that the International conspiracy continued in the material particulars stated hereunder:
- i. TRC was renamed the Tobacco Advisory Council (“TAC”) in 1978, and was officially joined by the 5<sup>th</sup> Defendant, accurately reflecting the international influences shaping this group;
  - ii. As litigation began to emerge against the Cigarette Companies, solidarity between the Companies and the importance of the international conspiracy were heightened. Speaking of a TAC Meeting on Smoking and Health several years later, a 4<sup>th</sup> Defendant counsel noted that:

*“In BAT’s view, the biggest single threat facing the industry, in both this country and elsewhere, is the issue of smoking and health. Because of this, we believe that the industry must be united in its universal stand on this issue and that no member company should seek to exploit the smoking and health issue for its own commercial advantage. [...] The industry is acutely aware of the possible impact on our business of Product Liability laws around the world [...] I need not remind you that over the past 20 years, no less than 100 civil suits in the U.S.A. have been successfully defended by our Industry. Continuous success has not been coincidental. On the contrary, it has very largely been achieved by a co-ordinated and consistently applied self-discipline on the subject of smoking and health within the Industry.*”

The 4<sup>th</sup> Defendant is hereby given notice to produce the Counsel Notes: TAC Meeting - 5th October 1983 Smoking and Health, dated October 3, 1983; Annexure 42.

- iii. Partly in response to “Product Liability laws around the world,” the Cigarette Companies, particularly the 3<sup>rd</sup> and 4<sup>th</sup> Defendant, sought the creation of international organizations that would serve as public relations and ‘research’ firms akin to the CTR and TAC.
- iv. On December 3, 1976, Hugh Cullman, Executive Vice President of Philip Morris, talked by telephone with R.A. (Tony) Garrett, Chairman of Imperial Tobacco. Cullman’s notes from that call indicate that Garrett explained he had been exploring, with a number of major tobacco companies, including the 4<sup>th</sup> defendant BAT Co, whether company heads might be prepared “to meet discreetly to develop a defensive smoking and health strategy, to avoid our countries and/or companies being picked off one by one, with a resultant domino effect” The Claimants shall rely on a copy of the Letter: Operation 'Berkshire' dated December 3, 1976, annexure 43.
- v. The internal objective of this group was interconnected with the growing number of subsidiaries throughout the world, for the group’s objective would be:

*“to develop a smoking and health strategy which would include a voluntary agreement that no concessions beyond a certain point would be voluntarily made by the members [to their governments] and, if further concessions were required by respective governments, that these not be agreed to and that governments be forced to legislate;*

The Claimants shall rely on the Memorandum dated December 3, 1976; Annexure 44.

- vi. A proposal for the meeting included “consideration of the international dimension to smoking and health. This might include such matters as ... how do developments in one country affect others”. The Claimants shall rely on a letter dated March 7 1977; Annexure 45.
- vii. In 1977, a meeting between the executives of certain cigarette companies, including Defendants Philip Morris, BAT Co, and other manufacturers such as Rothmans International and Imperial Tobacco, was held to develop a common international position on smoking and health issues. The group formed from this meeting was called the International Committee on Smoking Issues (“ICOSI”). The charter of ICOSI states that its purposes and objectives are:

*the establishment of a forum for exchange of views and information on international smoking issues (to include tobacco and health) by the coordination of data and information in economic, scientific, and technical areas. The general objectives are to broaden the knowledge of its members, of consumers, and of appropriate authorities. In large part accomplishment of these objectives will be sought by providing information to various national and other tobacco trade associations and by serving as a resource of expertise, data analysis and opinion on these subjects of interest to the industry and its public. The dissemination of the generality of this information will be made in the form of bulletins, reports, articles, surveys, pamphlets, and other analogous means.*

- The Claimants shall rely on the Contract: Association Charter- International Committee on Smoking Issues (I.C.O.S.I.) document dated August 23, 1978; Annexure 46.
- viii. The inaugural meeting of ICOSI, held by the CEO of the 4<sup>th</sup> Defendant BAT Co and attended by the representatives of the world's major tobacco manufacturers including the 5<sup>th</sup> Defendant Philip Morris, involved the participants agreeing to "hold the line on admissions concerning what they would admit to their individual governments concerning smoking and health, among other things." ICOSI was, according to the 4<sup>th</sup> Defendant's files, "*defensive research aimed at throwing up a smoke screen and to throw doubts on smoking research findings which show smoke cause deceases [sic]*". The Claimants shall rely on the document Report: Menzies Hotel, Sydney March, 1978; Annexure 47;
- ix. ICOSI member companies, including the 3<sup>rd</sup> -5<sup>th</sup> Defendants, agreed to act together to respond to smoking and health risk challenges worldwide by promoting the "open question" controversy and the myth of independent research. Specifically, in advance of the 1979 Fourth World Health Conference on Smoking and Health, ICOSI formed a Task Force to "monitor and combat on the spot the strong propaganda expected to be generated at this Conference" which is "sponsored by the World Health Organisation and the Swedish Health Authorities". A copy of the Report: ICOSI International Committee on Smoking Issues will be relied on at the trial dated April 1, 1979; Annexure 48.
- x. ICOSI engaged a Stockholm-based public relations agency to "monitor the Conference organizers' activities and to assist with press room activities at the Conference". Additionally, the Task Force was charged with preparing a post-conference report covering several matters, including "contradictions," "Conference recommendations to governments," an evaluation of the possible impact of the Conference, and "industry positions" as they relate to the Conference. Copy of Minutes dated November 20, 1978 to be relied upon at the trial. Annexure 49;
- xi. ICOSI was renamed the International Tobacco Information Center/Centre International d'Information Du Tabac, aka International Tobacco Information Incorporated ("INTOTAB") and registered in Geneva, Switzerland on December 8, 1980. INFOTAB's charter was essentially the same as ICOSI's charter. A November 30, 1989 INFOTAB document listed INFOTAB's "most important" roles, including: "Think tank' for industry cooperation worldwide, in association with member companies," "Preparation of positions agreed by the industry," "Preparation of published materials and kit sets for use by NMA's and lead companies," and "Promulgation of strategies agreed by the industry". Claimants shall rely on the Draft Report: INFOTAB dated November 30, 1989. Annexure 50;
- xii. INFOTAB also prepared various materials on smoking and health issues including research-related materials, public relations campaign materials, and advocacy papers. Specifically, in 1986, INFOTAB produced an Issues Binder which provided members with reference materials and quotations in response to the major allegations in the smoking and health area. The binder [was] organized around nine issues – "addiction," advertising and sponsorship, developing countries, the public smoking issue, legislation,

smoking and health, social cost, taxation, and warning labels. The Claimants shall rely on Report: A General Briefing on INFOTAB dated April 15, 1985; Annexure 51;

- xiii. The 4<sup>th</sup> Defendant vide BAT Co relied on position papers developed for the industry by INFOTAB. An internal BAT Co memorandum, distributed “[t]o all No. 1's and Public Relations Managers of Operating Companies,” transmitted an updated INFOTAB paper on "Advertising Argumentation," which provided arguments against advertising restrictions. The transmittal memo urged its recipients to “ensure that no mention is made of its source.” Additionally, BAT Co and other Defendants used INFOTAB to monitor research that suggested smoking caused cancer.
- xiv. INFOTAB continually used its resources to cast doubt upon international agencies attempting to alert the public to the dangers of smoking. For example, a 1989 INFOTAB document outlined how to attack the WHO [World Health Organization]. The tactics it suggested included the following:

*“Criticize budget management, Address health priorities, Expose resource blackmail, Highlight regional failures, Attack “behaviourism,” Counter on public issues, Discredit activists’ credentials, Engage in statistical warfare, Invest in press relations, Show impact of “cuckoo” organisations”.*

The document also suggested the industry should attack IOCU [the International Organization of Consumer Unions] with the following program goals: “Relieve NGO pressure on WHO, Expose activists’ ‘credentials,’ Counter ‘behaviourist’ regulation, correct anti-business slant”.

The Claimants shall rely on the Boca Raton Action Plan: Status Report, dated January 31 1989- Annexure 53 and Outline dated January 30, 1989-Annexure 54.

- xv. INFOTAB was also instrumental in coordinating the international tobacco industries response to critics. On January 19, 1990, Ron Loader, INFOTAB Director of Information Services, confirmed the first meeting of a worldwide industry working group at the offices of the 9th Defendant in Washington, D.C. for the purpose of planning a Global Argumentation Project. The Global Argumentation Project was an effort to develop a standardized and comprehensive collection of argumentation papers on smoking and health issues, including ETS and youth marketing, which could be used by local management and National Manufacturing Associations (“NMAs”) for lobbying, public information campaigns, or as basic documents for responding to public health advocates. The Claimants shall rely on Memo: Global Argumentation Project dated January 19, 1990; Report: Global Argumentation Project January 30, 1990; Meeting Minutes: Global Argumentation Project; Minutes of the Meeting Held on 30th January 1990 at the Tobacco Institute, Washington, D.C. dated January 30, 1990, Annexures 55-57;
- xvi. Although INFOTAB was created for the sole purpose of disseminating such misinformation, documents showing its blatant malfeasance are rare, since it was well protected from within by a small army of legal advisors. For example, a June 28, 1988 memorandum addressed to Todd Sollis, Assistant General Counsel of Philip Morris,

from Donald Hoel, attorney with Shook, Hardy & Bacon, described the central role played by Shook, Hardy & Bacon with respect to INFOTAB. Hoel stated:

*“SHB, as counsel to PM and other international manufacturers, was instrumental in the founding of INFOTAB to help strengthen and coordinate the activities of the various national manufacturers associations. The firm remains active in the operation of INFOTAB. It monitors the meetings and clears the draft minutes of the INFOTAB Board of Directors and the Global Issues Working Party, as well as INFOTAB workshops. All materials prepared by INFOTAB on smoking and health issues, including briefing documents sent to national manufacturers associations and presentations by the INFOTAB staff, are cleared by SHB in order to protect the member association and member companies. SHB also approves all public relations campaigns, tactics and strategies which address smoking and health issues”*

The Defendants are hereby given notice to produce the ‘Memo: Shook Hardy & Bacon's Non-Litigation Responsibilities Regarding Smoking and Health’ dated June 28, 1988; (In absence thereof The Claimants shall rely on a copy tagged Annexure 58 to this Statement of Claim).

- xvii. In order to achieve unscrupulous ends, representatives of the 6<sup>th</sup> Defendant served on international teams, committees, and boards, along with industry representatives from outside the United States, in which strategies were developed for a coordinated approach to scientific research studies and public relations campaigns.
- xviii. Tobacco industry representatives from around the world attended the 6th Defendant’s College of Tobacco Knowledge, seminars held to provide industry managers and other employees the most up to date information and industry positions on smoking and health related issues. At the October 1982 session, for example, seventeen of the forty-nine “students” were from countries outside the U.S. The Claimants shall rely on the Memo: 10th College of Tobacco Knowledge dated November 5, 1982; Annexure 63.
- xix. The 6<sup>th</sup> Defendant coordinated worldwide industry positions by publishing brochures, pamphlets, “backgrounders,” industry position papers, and other materials on the Cigarette Companies stance on controversial smoking and health issues and making them available for overseas distribution, often through INFOTAB.
- xx. The 6<sup>th</sup> Defendant developed a Tobacco Institute “backgrounder” titled “Tobacco in the Developing Nations” and announced its availability in a Tobacco Institute newsletter on January 14, 1980. Copies were to be forwarded to international public relations personnel of member companies, overseas National Manufacturing Associations (“NMAs”) and other trade associations such as TACON, and international organizations such as INFOTAB and ICOSI. The Claimants shall rely on Memo: New TI Backgrounder, "Tobacco in the Developing Nations" dated November 4, 1980 tagged Annexure 64.
- xxi. According to an October 2, 1981 BAT Co (4<sup>th</sup> Defendant) document, the Tobacco Institute commented on the importance of INFOTAB: “INFOTAB has without any doubt at all made an immense change in the general atmosphere in the industry and this has led to an enormous increase in cooperation.” This document further stated that the

Institute had been “looking for 15 years for an international umbrella to enable them to deal with other NMAs and to improve the strength of the industry as a whole; -- the back-wash from events and attacks affecting the industry in smaller countries comes back powerfully to the USA; . . . INFOTAB helps the industry to unite in trying to combat the attacks; -- for years it had been hoped that there would be some sort of organisation of international trade associations, which never happened. The Claimants shall rely on the document “INFOTAB” dated October 2, 1981 tagged Annexure 65.

- xxii. INFOTAB was not however the only organization important for the Tobacco Institute’s success at maintaining the international conspiracy. In a January 17, 1983 form letter to its members, TAC informed each of its member companies, one of which was the 4<sup>th</sup> Defendant BAT Co, that the Tobacco Institute had provided TAC with a copy of a Tobacco Institute videotape compilation showing their spokespersons’ team in action: It shows extracts of the four members of the team being interviewed on television and speaking to live audiences. Two points are of particular interest. The first, the way in which they publicly face and handle health issues. The second that all the team are first and foremost media trained and therefore utterly familiar with, and relaxed in, dealing with hostile interviews and audiences: their knowledge of tobacco matters, while vitally important, is a secondary consideration in the selection and training process. The Claimants shall rely on the Letter: Public Relations Committee (P.R.C. No. 485) dated January 17, 1983, tagged Annexure 66
- xxiii. On December 4, 1991, the Tobacco Documentation Centre (“TDC”), was established as a successor entity to INFOTAB. The Cigarette Companies joined the TDC at its inception. Its charter stated:

*“The Association has as its purpose the establishment of a forum for exchange of views and information on international tobacco issues by the coordination of data and information in economic, social, scientific and technical areas. The general objectives are to broaden the knowledge of its members. In large part accomplishment of these objectives will be sought by providing information to various national and other tobacco trade associations and by serving as a resource of expertise and data analysis on these subjects of interest to the industry.”*

The Claimants shall rely on Tobacco Document Centre Board of Directors Meeting, 1996; Annexure 67.

- xxiv. The TDC was formed to act as a central information resource for the tobacco industry worldwide. Its predecessor, INFOTAB, had an extensive information collection and database, which was considered valuable and worth maintaining.

### **THE CONSPIRACY AND ITS NIGERIAN CONTEXT- PARTICULARS THEREOF**

132. The Claimants aver that the Defendants created the Tobacco Advisory Council of Nigeria (TACON) to further INFOTAB’s efforts in opposing anti-smoking or anti-tobacco information in Nigeria. Beginning in 1980, TACON directed communications to members of INFOTAB regarding the anti-smoking tobacco culture in Nigeria. Specifically, E.O.

Enahoro, Director General of TACON, wrote to the Cigarette Companies, reporting on the Stockholm Conference that had concerned ICOSI years earlier:

*“The first recent signs of movement in the Smoking and Health controversy in Nigeria came in June 1979 and there is no doubt that these were a direct result of the 4th World Conference on Smoking and Health in Stockholm. In June and early July of that year, newspapers suddenly began to carry anti-smoking articles and the phrase: “Smoking death rates soar!”, made banner headlines in the press. A number of Nigerian officials attended the Stockholm Conference from the Federal Ministry of Health and the Federal Health Education Unit.”*

133. The Claimants further aver that Enahoro’s report goes on to warn the Cigarette Companies of current legislative actions in Nigeria that might threaten the livelihood of their business. Beyond positioning the TACON as the Nigerian watchdog of the Defendants, his report also reveals the inner workings of the Cigarette Companies in Nigeria under the guise of TACON, *to wit:*

*“The Inter-ministerial Committee has held a number of meetings from which it has become clear that two subjects are of particular interest to them. Firstly, a Health Warning Clause to be printed on all cigarette packets. Secondly, a request to the industry to supply them with tar and nicotine delivery levels of all brands currently on the market. The two companies involved in the market, Nigerian Tobacco Company Ltd (BAT) and Philip Morris Nigeria are tackling these subjects within the framework of the recently established National Manufacturers’ Association TACON (Tobacco Advisory Council of Nigeria).*

The Claimants shall rely on Report: Restrictions in Nigeria (502122487-2489) dated November 11, 1980; Annexure 59.

134. In 1981-1982, TACON and the Cigarette Companies faced legislative problems regarding their stance on cigarettes and disease. A Private Member’s Bill encouraged the campaign for the Health Warning Clause by seeking *“An Act to make provisions for warning cigarette smokers and for matters connected therewith.”* TACON responded by devising a strategy that would become commonplace to their success in the developing world: prioritizing the economic benefits of the tobacco industry in order to downplay the health effects of smoking. Enahoru wrote in his “National Report to INFOTAB” about TACON’s effort to dismiss the bill: “It was decided that TACON’s main strategy should be to play down the health argument and concentrate instead on the economic. This proved to be the correct approach especially as Nigeria’s economy has been suffering, in concert with most others, from the world recession”. The Claimants shall rely on the National Report to INFOTAB Workshop 821018-821020 Nigeria Private Member’s Bill on Health Warning dated October 18, 1982, tagged Annexure 60.
135. The Claimants aver that the Health Warning Clause legislation was later dismissed. However, INFOTAB, and the Defendants became concerned about the rise of future legislation. In 1983, these parties organized for “management workshops” addressed by the “Director General of TACON.” Beyond discussing advertising codes and problems with the delivery levels of nicotine in Nigerian cigarettes, these workshops also devised strategy to deal with troubling scientific reports “in anticipation of attacks from the medical fraternity.” TACON suggested the hiring of a “medical expert,” who, similar to those specialists involved with the CTR and TRC, “would respond, if needed, to any wild or inaccurate allegations made

publicly” and provide for future “reasoned responses for the use of TACON’s members”. The Claimants shall rely on a copy of the “Report: Visit to Nigeria 830726 – 830731 dated July 26, 1983”, Annexure 61.

136. The Claimants further aver that the goals and activities of TACON, INFOTAB, and of the Defendants in Nigeria were part of the international conspiracy which attempted to maintain the campaign of disinformation critical to the success of the tobacco industry in Nigeria and worldwide. In the 1973 document from the 6th Defendant, General Counsel J.C.B. Ehringhaus Jr. noted that:

*“any success of the anti-smoking group in another country ‘diminishes’ us. [...] We would keep aware of what’s going on around the world and be able to advise our industry people in one country of these happenings so that they may be guided in dealing with their own local situations.”*

The Claimants shall rely on the document “International Activities of the Tobacco Institute, Inc.” dated October 1, 1973; Annexure 62

#### **FRAUD AND CONSPIRACY IN RELATION TO NICOTINE ADDICTION AND MANIPULATION AND PARTICULARS THEREOF**

137. The Claimants assert that Organisations such as TACON and the 6<sup>th</sup> Defendant allowed the other defendants to continue to defraud the public about the health effects of smoking. With an international network in place, the Defendants were also successfully able to deceive the public about the addictive properties of cigarettes as well to manipulate the nicotine delivery in cigarettes.
138. The Claimants aver that the primary factor that prevents cigarette smokers from quitting smoking is their addiction to nicotine, and their need for continuing intake of nicotine in order to avoid nicotine withdrawal. The addictive nature of nicotine is directly related to the harm caused by cigarettes, because the risk from smoking increases with prolonged use.
139. The Claimants aver that the Defendants and their agents have long known that the addictive nature of nicotine is directly related to the harm caused by cigarettes, because the risk from smoking increases with prolonged use.
140. The Claimants also aver that the Defendants have long known that nicotine is an addictive drug and have sought to hide its addictive and pharmacological qualities. They also have long recognized that getting smokers addicted to nicotine is what preserves the market for cigarettes and ensures their profits. In contrast, the average consumer has not been fully aware of the addictive properties of nicotine, and most beginning smokers - particularly children -falsely believe that they will be able to quit after smoking for a few years and thereby avoid the diseases caused by smoking. By hiding their knowledge of the addictive nature of nicotine and making false and misleading statements concerning nicotine, the Defendants have induced existing smokers to continue using their products, and induced others to begin to smoke, particularly children, who believe, usually mistakenly, that they will be able to quit and avoid the diseases caused by smoking.

141. Sequel to the preceding Paragraphs 137-140, the Defendants have all colluded to engage in an international conspiracy that primarily sought to make misrepresentations, albeit fraudulently, on the addictive nature of nicotine, and the manipulation of the nicotine quotient in their products. The Particulars of this fraud and conspiracy are evinced hereunder:

- i. The Defendants have understood nicotine's addictive properties since the early 1960's at the latest. Particularly:
  - a. the 5<sup>th</sup> Defendant internally discussed methods for increasing the nicotine content of cigarettes as early as 1960;
  - b. Sir Charles Ellis, scientific advisor to the board of directors of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, asserted in a 1962 meeting that "smoking is a habit of addiction,";
  - c. scientists in the Geneva laboratories of the International Division of the Battelle Memorial Institute reported to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants on the mechanics of nicotine addiction in 1963. (The 3<sup>rd</sup> and 4<sup>th</sup> Defendants sponsored research at the Battelle Memorial Institute at Geneva to investigate the physiological aspects of smoking).

The Claimants shall rely on Smoking & Health: Policy on Research, 1962; Annexure 68

- ii. Sometime in 1963, Addison Yeaman, general counsel to B&W (The 4<sup>th</sup> Defendant's subsidiary) stated that "nicotine is addictive" and that "we are... in the business of selling nicotine, an addictive drug." The Claimants shall rely on document on "Note regarding filter" ;Annexure 69;
- iii. The Defendants concealed their research on the addictiveness of nicotine because they have known that revelation of that research might substantially change the market for cigarettes. The Defendants performed much of their research clandestinely, and in at least one case threatened scientists who sought to publish their research on addiction. All of this constituted a comprehensive campaign by the Defendants to keep secret their knowledge of nicotine's addictive nature. Specifically:
  - a. In 1977, the 5<sup>th</sup> Defendant study on the withdrawal effects of nicotine was permitted to proceed only if the results were what the Cigarette Companies wanted. If not, as a 5<sup>th</sup> Defendant researcher explained, "we will want to bury it"; The Claimants shall rely on the "Memo: Proposed Study by Levy" dated November 3, 1977- Annexure 70;
  - b. An internal 1978 Brown & Williamson memo discussed addictiveness of nicotine and characterized nicotine as a poison, while noting that most consumers are unaware of this; The Claimants shall rely on "Memo: Future Consumer Reaction to Nicotine" dated August 28, 1978- Annexure 71;
  - c. In the early 1980's, the 5<sup>th</sup> Defendant hired Victor DeNoble and Paul Mele to study the effects of nicotine on the behavior of rats and to research and test

potential nicotine analogues. DeNoble's and Mele's research demonstrated that nicotine was addictive and that in terms of addictiveness, nicotine looked like heroin. In August 1983, Phillip Morris ordered DeNoble to withdraw a research paper on nicotine that had already been accepted for publication after a full peer review by the journal Psychopharmacology. Less than a year later, Philip Morris abruptly closed DeNoble's nicotine research lab. Philip Morris executives threatened DeNoble and Mele with legal action if they published or talked about their nicotine research. The animals were killed, the equipment was removed, and all traces of the former lab were eliminated. The Claimants shall rely on a copy of the Report Prepared By Outside Litigation Counsel And Sent To In-House Australian Philip Morris Counsel Regarding Philip Morris Research On Nicotine Pharmacology And Human Smoking Behavior Prepared For Purpose Of Educating Counsel in Australia dated April 6, 1994, Annexure 72;

- iv. As with the adverse health effects of smoking, the Defendants failed to warn consumers and others of the addictive nature of nicotine and made false and misleading statements to the public and others about addiction. Particularly:
  - a. In 1963, when the United States Surgeon General was preparing his first report on smoking and health, Brown & Williamson (4<sup>th</sup> Defendant's subsidiary) considered whether to provide its research indicating the addictiveness of nicotine, but withheld this research from the Surgeon General. The Surgeon General's Report did not conclude that nicotine is addictive;
  - b. In 1988, when the United States Surgeon General finally concluded, based on non-industry research, that nicotine is addictive, the 6th Defendant, on behalf of the Cigarette Companies, attacked the report by saying that "claims that cigarettes are addictive contradict common sense.... The claim that cigarette smoking causes physical dependence is simply an unproven attempt to find some way to differentiate smoking from other behaviors". The Claimants shall rely on the document "Press Release: Claims that Cigarettes are Addictive Contradict Common Sense" dated May 16, 1988. Annexure 73
- v. The Defendants have withheld information on the addictiveness of nicotine and the health effects of smoking in Nigeria. In addition to the historical efforts of TACON and INFOTAB efforts to defeat health warnings and to promote their own brand of tobacco "science", the Defendants were also aware of the ineffectiveness of public written disclosure on product packages that might educate the Nigerian populace on the addictive contents and adverse health effects of smoking. Based on their market analysis and survey, they have always worked under the following favorable "imposition[s]" that prevents any sort of effective disclosure of "WHO recommended restrictions" about addiction and the true health effects of smoking:
  - a. "A very large proportion (around 80%) of the cigarettes sold are sold individually by the "stick" and not in packets;
  - b. 75% of the population is illiterate;

- c. The 25% literacy is spread over a multiplicity of languages.

The Claimants shall rely on the Report: Restrictions in Nigeria (502122487-2489) dated November 11, 1980- Annexure 59;

- vi. In a London meeting between the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, their global subsidiaries, and physicians concerning the connection between smoking and health, a representative from the 1<sup>st</sup> Defendant (NTC) expressed alarm about recommendations concerning “publicised health warnings” to the Nigerian public. The meeting minutes note that Nigeria had some 250 languages and, that literacy in any of them was limited, that cigarettes were often sold singly rather than in packets, and that smuggling of brands from outside the national frontiers was rife.

The Claimants shall rely on the Report: Morning Sessions- Smoking and Health dated September 25, 1982; Annexure 74.

- vii. Enahoro’s and the 1<sup>st</sup> Defendant’s observations demonstrate that the Cigarette Companies intentionally failed to disclose the addictive and harmful properties of cigarettes, in spite of outside pressure from WHO and medical authorities to do so. As a result of the defendant's false statements denying the addictive nature of cigarettes, and their suppression of information demonstrating the addictive nature of cigarettes, more people have become addicted or remained addicted to the product.
- viii. At the same time they were denying the addictiveness of nicotine, the 1<sup>st</sup>-5<sup>th</sup> Defendants were developing and using highly sophisticated technologies designed to deliver nicotine in precisely calculated ways that are more than sufficient to create and sustain addiction in the vast majority of individuals who smoke regularly. They control the nicotine content of their products through selective breeding and cultivation of plants for nicotine content and careful tobacco leaf purchasing and blending plans, and control nicotine delivery (*i.e.*, the amount absorbed by the smoker) with various design and manufacturing techniques. They also introduce a wide variety of additives aimed at manipulating the addictiveness of the products and thereby increasing the potency, absorption or effect of nicotine.

The Claimants shall rely on:

Testimony Declaration of Ian L. Uydess, PhD- 29 February 1996 (19960229). Ian L. Uydess, Ph.D; Annexure 75:

Report: Development and Research for Benson and Hedges, 1954; Annexure 76;

- ix. The Defendants have repeatedly (and falsely) denied that they manipulate the nicotine levels and nicotine delivery in their products.

The Claimants shall rely on the document “An Outline of Current and Proposed Quality Control, Development and Research for Benson and Hedges” 1954, Annexure 77;

- x. The manipulation of tar and nicotine content in cigarettes manufactured in the developing world is more prevalent and well documented. Research by the U.S.-based Oak Ridge National Laboratory in 1979 found that a Philip Morris brand of cigarette

contained 17 milligrams of tar in the U.S but had 22.3 grams in Kenya and 31.1 grams in South Africa. The Claimants shall rely on the document “Cigarettes Companies Develop Third World as a Growth Market” dated July 5, 1985; and also the document “Product Technology of Benson and Hedges dated , Annexure 135

- xi. By falsely denying that the 1<sup>st</sup>-5<sup>th</sup> Defendants manipulate the delivery of nicotine levels in cigarettes, the Defendants furthered their common efforts to deceive the public concerning the addictive nature of nicotine and consequently of cigarettes that contain nicotine.

**CONSPIRACY TO SUPPRESS THE MANUFACTURE AND MARKETING OF LESS HAZARDOUS CIGARETTES AND PARTICULARS THEROF**

142. The Claimants also aver that the Defendants acting in concert, have been involved in a conspiracy, scheme, design and plot to suppress the production of less hazardous alternatives or safer cigarettes and its sale in the market, in the material particulars depicted hereunder:
  - i. The Defendants retained and maintained their agreement by restraining, concealing, and suppressing the research and marketing of less hazardous cigarettes. The Cigarette Companies have been and are able to develop an alternative product that is less hazardous than the products that they have been selling;
  - ii. Cigarettes are much more complex products than simple rolled tobacco. The Cigarette Companies manipulate their products in many ways. They add chemicals and flavorings (some of which are harmful when burned and inhaled), manipulate levels of nicotine and other chemicals, and engineer the delivery of tobacco smoke through filters, ventilation holes, and other means;
  - iii. At least, since the early 1960's, the Cigarette Companies have been able to remove potential carcinogens and to independently alter the delivery of tar and nicotine respectively. Many alternative designs are possible, some of which are less hazardous than the cigarettes that the Cigarette Companies actually manufactured and sold;
  - iv. By the early 1960s, the Defendants discovered that many specific constituents in tobacco smoke were carcinogens, or were linked to other diseases. By November 1961, Philip Morris had conducted sufficient research to conclude that a "medically acceptable low-carcinogen cigarette may be possible". The Claimants shall rely on “Tobacco and Health- R&D Approach” dated November 15, 1961, Annexure 81;
  - v. Despite their demonstrated ability to design cigarettes that they believed were less hazardous, the Defendants have refused to test and/or actively promote such products, and have suppressed the marketing of such products by others, and have refused to acknowledge the possibility of a less hazardous product;
  - vi. The Defendants' refusal to acknowledge the possibility of a less hazardous product is in part a result of their efforts to avoid liability for, among other things, negligence and product liability claims. To state that a less hazardous product could be - or has

in fact been - developed would constitute an admission that the products they currently sell are hazardous, or unreasonably so. Just as they suppressed information about the health effects and addictive nature of smoking, the Defendants also suppressed any information they developed about less hazardous design.

- vii. Another mechanism the Defendants employed to deter the development and marketing of less hazardous products was the "gentleman's agreement." The Cigarette Companies' mutual commitment to share discovery of a "safe" cigarette with all other Cigarette Companies, by design, substantially reduced the financial incentive any Cigarette Company might otherwise have had to develop and market such a product.

### **PARTICULARS OF FRAUDULENT MISREPRESENTATIONS ABOUT THE DANGERS OF ETS AND SECONDHAND SMOKE**

143. The Claimants assert that the Defendants have all participated in an international conspiracy with consequences of their actions affecting Lagos state substantially, in misrepresenting the health perils associated with Secondhand smoke, also called passive smoke or environmental tobacco smoke ("ETS"), which is a mixture of mostly sidestream smoke given off by the smoldering cigarette and some mainstream smoke exhaled by smokers. The Claimants shall rely on Annexure 82. The particulars of this civil conspiracy and surreptitious misrepresentation is elicited hereunder:

- i. The Defendants' collective effort to maintain an open question as to the health effects of cigarette smoking was not limited to whether cigarettes caused disease in smokers themselves. During the 1970s, scientific evidence suggesting that exposure to cigarette smoke was hazardous to nonsmokers began to grow, and public health authorities began to warn of a potential health risk to both adults and children. Fearing government regulation to restrict smoking in public places and sensing a decrease in the social acceptability of smoking, Defendants were faced with a major threat to their profits;
- ii. A 1986 BAT Co document stated: "*The world tobacco industry sees the ETS issue as the most serious threat to our whole business*" The Claimants shall rely on this document "INFOTAB Project ETS - Action Plan" dated October 23, 1986 and tagged Annexure 83;
- iii. The 5<sup>th</sup> Defendant's Vice Chairman Bill Murray was advised at a presentation by Project Downunder Conference attendees, in 1987: "*The situation can't get any worse. Sales are down, [and] can't be attributed to taxes or price increases. ETS is the link between smokers and non-smokers and is, thus, the anti's [anti-smoking activists] silver bullet*". The Claimants shall rely on the document "Report: Project Down Under-- Group Presentation to Senior Management Friday, 870626" tagged Annexure 84;
- iv. In response, the Defendants crafted and implemented a broad strategy to undermine and distort the evidence indicting passive smoke as a health hazard. The Defendants' initiatives and public statements with respect to passive smoking attempted to deceive the public, distort the scientific record, avoid adverse findings by government agencies, and forestall indoor air restrictions. The Defendants' conduct with respect to passive

smoking continues to this day, when currently no Defendant publicly admits that passive exposure to cigarette smoke causes disease or other adverse health effects;

- v. The 5<sup>th</sup> Defendant knew long before the 1980s that sidestream smoke contained known carcinogens. In 1961, scientist Helmut Wakeham presented a paper to the Research & Development Committee cataloguing known gas and particulate chemicals in cigarette smoke, including those that Wakeham acknowledged had been identified as carcinogens. According to Wakeham's analysis, 84% of cigarette smoke was sidestream smoke. The Claimants shall rely on the document Tobacco and Health- R&D Approach dated November 15, 1961 and tagged Annexure 81;
- vi. In a March 30, 1980 document, a scientist working for the 5th Defendant reviewed the 1980 paper by James White and Herman Froeb, titled "Small Airway Dysfunction in Nonsmokers Chronically Exposed to Tobacco Smoke." White and Froeb concluded in their study that nonsmokers exposed to secondhand smoke suffer significant damage to airway function. The 5th Defendant's scientist wrote to Tom Osdene and Jim Charles, "*I have reviewed the above paper and find it to be an excellent piece of work which could be very damaging to our business.*" The scientist suggested several ways to attack the study, but concluded, "*I can find little to criticize. The authors have put together an excellent paper in my opinion*". The Claimants shall rely on an internal memorandum "Memo: Personal and Confidential Small-Airways Dysfunction in Nonsmoker Chronically Exposed to Tobacco Smoke"- James R. White PhD and Herman F. Froeb, MD dated March 30, 1980 tagged Annexure 85;
- vii. In the 1980s, the 5th Defendant also carried out a study, code-named "Project POLDI," to determine the levels of toxic compounds in sidestream smoke. A 1985 interim report on Project POLDI recorded that the levels of nitrosamine 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone (NNK) "rose sharply" in the secondhand smoke until four hours after smoking; the levels of other TSNAs rose as well; The Scientific Report: POLDI 850100 – 850300 dated April 18, 1985, to be relied on at the trial, tagged Annexure 86;
- viii. The 5th Defendant studied the concentrations of numerous compounds in ETS at its Neuchatel facility. A report, titled "Quantitative Evaluation of Cigarette Sidestream Smoke Components Under Controlled Experimental Conditions," summarized the measurements of known harmful components as a function of time and number of cigarettes smoked. Researchers generated sidestream smoke in ambient air, then measured nicotine, carbon monoxide, ammonia, cyanide, and nitrogen oxides over time in an experimental chamber. The Claimants shall rely on the "Scientific Report: Quantitative Evaluation of Cigarette Sidestream Smoke Components Under Controlled Experimental Conditions" dated January 23 1984, tagged Annexure 87;
- ix. The 4<sup>th</sup> Defendant through its predecessors in interest BAT Co also conducted internal research on the adverse health effects of ETS. The summary/minutes of the 1982 BAT Group Research Conference in Montebello, Canada recorded the following with respect to ETS:
  - a. We must get hard data both to help counter anti-smoking attacks, and to support the design of future products . . . .;

- b. We should keep within BAT:1) animal results on sidestream activity; 2) thoughts on the biological activity of sidestream; and 3) research findings on the consumer annoyance aspects of environmental smoke -- since these have potential commercial value.

The Claimants shall rely on the report of the Research Conference Montebello, Canada 30th August - 3rd September 1982 dated September 3, 1982, tagged Annexure 88.

- x. The 4<sup>th</sup> Defendant understood that the passive smoking issue not only risked an increasing number of smoking restrictions, but even threatened to reduce the number of starting smokers. Without such starting smokers, the industry could not survive. Papers from Australia, the United States, Canada, and Germany presented at the 1976 Hot Springs conference emphasized that the threat of "social unacceptability" emanating from the health risks to nonsmokers "threatens to undermine smokers' confidence and to dissuade people not to take up the habit". The Claimants shall rely on the Report: Hot Springs Papers on the Social Unacceptability Issue September 8, 1976 tagged Annexure 89;
- xi. In preparation for the 1976 Chairman's Conference, former BAT Co chairman T.J.N. Foley described the relationship between the health effects of passive smoking and the "social unacceptability" issue in these terms:

*"The subject is inseparably linked with passive smoking and presents a major danger and challenge to the industry. The danger exists in the clearly evident snowballing effect of the tactics aimed at making smoking a distasteful practice. The challenge lies in the industry's need to devise a counter-campaign".*

The Claimants shall rely on the Report of Conference at Hot Spring, USA June 6-11, 1976 tagged Annexure 90;

- xii. The Defendants recognized from the mid-1970s forward that the health effects of passive smoking posed a profound threat to industry viability and cigarette profits, through:
  - a. increasing numbers of smoking restrictions;
  - b. making smoking "socially unacceptable"; and
  - c. reducing the number of starter smokers.

This recognition resulted in the concerted, international action by Defendants and other members of the industry to meet the passive smoking threat head on.

- xiii. The Defendants' recognition that their economic interests would best be served by pursuing a united front on smoking and health issues led to a global coordination of their activities to protect and enhance their market positions in their respective countries.

- xiv. To further their shared objectives, the Defendants, over an extended period of time, created, controlled, used, or participated in an astonishing array of international entities, including, among many others, the Tobacco Manufacturers' Standing Committee ("TMSC"), which became the Tobacco Research Council ("TRC") and then the Tobacco Advisory Council ("TAC"); the International Committee on Smoking Issues ("ICOSI"), which became the International Tobacco Information Center, Inc. ("INFOTAB") and then the International Tobacco Documentation Center ("TDC"); and the Center for Cooperation in Scientific Research Relative to Tobacco/Centre de Coopération pour les Recherches Scientifiques Relatives au Tabac ("CORESTA").
- xv. ICOSI, one of the organizations that afforded Defendants an opportunity to meet regularly, explicitly recognized the international nature of the "threat" to the Defendants' business. An April 1979 ICOSI document noted:
- "The problems and attacks proposing restrictions of smoking and normal commercial activities like advertising and publicity have become highly international. . . . No one industry in one country nor any one company can wage and win the battle against this sort of organised world-wide attack. . . . The whole Industry, companies and Trade Associations alike must unite with common targets and common approaches."* The Claimants shall rely on the Report: ICOSI International Committee on Smoking Issues, April 1979, tagged Annexure 91
- xvi. The Defendants set up the Research Liaison Committee ("RLC") in 1974 to collectively assess and guide research that was jointly funded and managed by the companies. The RLC was comprised of senior executives and industry attorneys. A subcommittee or "Advisory Group" to the RLC, including outside attorneys Don Hoel and Ed Jacob, was directed in 1975 to consider and recommend research related to the emerging issue of passive smoking. The RLC meetings in 1976 were staffed by company general counsel such as Alex Holtzman of Philip Morris. The Claimants shall rely on the following documents: Outline: Suggested Areas of Research dated April 1975 tagged Annexure 92; Letter: SHB, Shook, Hardy & Bacon dated April 29, 1975 tagged Annexure 93; Letter: At the last meeting of the industry Research Liaison Committee, Dave Hardy Distributed the Enclosed Memoranda and Research Outline dated June 10, 1975 tagged Annexure 94; Memo: Meeting of the Group on Tobacco Smoke in the Environment dated July 31, 1975 tagged Annexure 95;
- xvii. A handwritten Philip Morris summary of the November 5, 1975 meeting of the Advisory Group recorded that: "Ed Jacob suggested that no further formal minutes [of meetings] be made -- also all should destroy [crossed-out] remove notes and previous minutes from corporate files".
- Note of Group Meeting: CTR 751105 dated November 5, 1975, tagged Annexure 96 to be relied upon by the Claimants at the trial;
- xviii. In September 1984, the Committee of Counsel directed Donald Hoel to reconstitute and reconvene the committee he had helped coordinate in the 1970s to manage Defendants' passive smoking efforts. This new group was called the Tobacco Institute ETS Advisory Group (TIETSAG), sometimes referred to as the "Hoel Committee" after its chairman. Along with TIETSAG, The Center for Indoor Air Research ("CIAR") was formally established in 1988 to carry out industry-funded research related to passive smoking.

Although CIAR had a Scientific Advisory Board to review the merit of project proposals, only the CIAR Board of Directors had authority to approve a project for funding. Moreover, a large number of industry-favorable CIAR projects were approved directly by the CIAR Board of Directors without any review by its SAB.

The Claimants shall rely on the following documents: A Letter dated September 13, 1984 tagged Annexure 97; A Letter worded "Enclosed please find a proposal by Dr. Edward Domino et al. entitled "Dietary Nicotine: A possible source of blood, salivary, and urinary [sic] cotinine" which was submitted to CIAR for Consideration in the current research program cycle" dated November 13, 1996, tagged Annexure 98;

- xix. The purpose of the TI-ETSAG was to generate data to resist smoking restrictions and conclusions that supported the industry's public position that ETS posed no proven health risk to nonsmokers. Tom Osdene of Philip Morris wrote the following in an April 25, 1988 letter to Tobacco Institute president Sam Chilcote:

*I think many of us have conceptualized the ETS issue as a battlefield in which the arena is dominated by public relations and legal issues while the ammunition which is used happens to be science. It has been the purpose of CIAR as well as its precursor, the ETS Advisory Committee, to provide ammunition in this fight.*

The Claimants shall rely on a Letter dated April 25, 1988 tagged Annexure 99;

- xx. The Defendants coordinated the actions of the ETSAG with those of other international industry bodies. Specifically, on April 8, 1986, a joint meeting of the ETS Advisory Groups from the United States, the United Kingdom, Germany, and INFOTAB took place in London "to discuss scientific and public relations problems relating to environmental tobacco smoke" and to "avoid duplication of the various efforts". The Claimants shall rely on a Letter: Joint Meeting of ETS Advisory Groups- London, April 8, 1986, dated April 15, 1986, and tagged Annexure 100;
- xxi. Members of the Tobacco Institute met and coordinated with members of INFOTAB. The chairman of INFOTAB gave a speech at the Tobacco Institute on November 16, 1981, in which he recalled how the Tobacco Institute provided INFOTAB with its communications plans regarding a study linking passive smoking and lung cancer. INFOTAB then alerted 28 national associations around the world; as soon as the Tobacco Institute had its press releases prepared, it telexed them to INFOTAB; INFOTAB then transmitted them by telex to the other associations for their use in generating similar press coverage in other countries [Ex. 101]. The Claimants shall rely on this speech titled: "It's a Small World" or "We've Come a Long Way Since Christopher Columbus" dated November 16, 1981, tagged Annexure 101;
- xxii. INFOTAB also prepared an "ETS Kitset" for the industry to coordinate the companies' public positions on ETS. The "Kitset" identified two key strategy objectives for its members:

*Objective 1- To demonstrate the inconclusive nature of claims that ETS has harmful effects, by bringing to light the scientific controversy over such claims;*

*Objective 2 To position ETS as just one (and a very minor) factor in a complex atmospheric mix which also includes petrol/diesel fumes, dust, bacteria (particularly in air conditioned environments), pollen, and in industrial situations an enormous variety of chemical fumes and substances.*

The Claimants shall rely on the Pamphlet: Environmental Tobacco Smoke an Introduction to the Pack dated January 1988 tagged Annexure 102.

- xxiii. At the same time, the "Kitset" introduction made clear the INFOTAB Board's desire to keep its control and influence over the campaign secret:

*This kitset contains two distinct types of document[s]. The leaflets have been written for publication outside the industry and have been scrutinized by industry experts. They are clearly distinguished as printed, two-colour publications, and do not carry either the Infotab name or the ETS campaign logo.*

*IN CONTRAST, THE INTERNAL PAPERS -- OF WHICH THIS INTRODUCTION IS ONE -- ARE FOR USE INSIDE THE INDUSTRY ONLY AND SHOULD BE TREATED AS CONFIDENTIAL. FOR THIS REASON, THE INTERNAL PAPERS HAVE BEEN PRODUCED IN A FORM WHICH IS INAPPROPRIATE FOR PUBLIC USE AND ARE CLEARLY MARKED AS CONFIDENTIAL INFOTAB DOCUMENTS .*

The Claimants shall rely on the Pamphlet: Environmental Tobacco Smoke an Introduction to the Pack dated January 1988 tagged Annexure 102.

- xxiv. In March 1991, after INFOTAB was dissolved, executives and lawyers representing several Defendants and other cigarette manufacturers formed the International ETS Management Committee (IEMC) to-

- a. fund and manage research on ETS; and
- b. coordinate the industry's strategy and position on passive smoking.

- xxv. A May 1991 Philip Morris document stated that the IEMC was established to ensure that:

- a. Common position statements and policies are developed and adopted worldwide;
- b. Major potential threats of smoking restrictions and bans are identified;
- c. Strategies are developed to deal with them;
- d. The necessary resources are made available to the staff in the markets and regions; and

- e. Finally, that optimal coordination and cooperation across the companies is promoted to ensure the best application of those resources.

The Claimants shall rely on the Report: ETS and the European Community dated May 21, 1991, tagged Annexure 103

xxvi. Through the recruiting and training of consultants around the world, the Defendants created a cadre of seemingly independent consultants to support the industry's position on secondhand smoke and to create the impression that a legitimate controversy existed among independent scientists. The global effort to create and manage this program required intense coordination among the companies and their counsel;

xxvii. The need for seemingly independent consultants emanated in part from an internal recognition that the industry had little credibility with the public and among regulatory bodies. As stated in a July 24, 1991 BAT Co summary of the program:

*It has been apparent to the industry for some time that we do not have sufficient credibility to put forward a position on ETS (or any other issue for that matter) unless we can identify independent scientists who are saying the same thing. If independent scientists back up our position, it becomes more credible, not only to the general public and the media, but to politicians and other decision-makers. . . . Although it is essential for the industry to speak up about its positions, there are some things that are better left to independent scientists to express.*

The Claimants shall rely on the document “Industry ETS Consultancy Programmes” dated July 24, 1991 tagged Annexure 104;

xxviii. In a Philip Morris (the 5<sup>th</sup> Defendant) January 31, 1989 report titled “Boca Raton Action Plan,” the company details its worldwide ETS initiatives, including placing consultants scientific seminars, using consultants to resist aircraft smoking bans, using consultants to oppose restaurant smoking restrictions, the creation of Burson- Marsteller “News Bureau” programs in Europe for media distribution, and the coordination with other industry groups, such as INFOTAB and CORESTA. The Claimants shall rely on Annexure 53;

xxix. In July 1989, after less than two years of participating in the program, Philip Morris vice president Andrew Whist reported to Philip Morris International president Geoffrey Bible (who later became CEO of Philip Morris Companies) that:

*“Several hundred specific activities or events have been completed. These have included numerous press briefings, repeated briefings of important government officials, the publication of a number of review articles on the science of ETS, several air quality monitoring studies, convening of a number of scientific conferences, submission of comments on smoking restriction proposals being considered in a number of countries, testimony before a variety of legislative bodies, preparation and submission of affidavits and offers of proof in cases involving claims concerning ETS, publication of a book (“Clearing the Air”) that seeks to put ETS into proper perspective, drafting of two additional books on ETS and indoor air quality issues, and approximately 100 separate presentations at*

*major international scientific meetings challenging the unwarranted health claims that have been made concerning.*

The Claimants shall rely on Memo: ETS dated July 11, 1989, tagged Annexure 105

- xxx. To this day, the 4<sup>th</sup> Defendant continues to publicly dispute that secondhand smoke causes diseases and other adverse health effects in nonsmokers. The 4<sup>th</sup> Defendant also denies that passive smoke is a health hazard to adults or children. On its website, it denies that it presents any risk:

*The science on ETS and chronic diseases, such as lung cancer and heart disease, is in our view not definitive and at most suggests that if there is a risk from ETS exposure, it is too small to measure with any certainty.*

Environmental tobacco smoke printout tagged annexure 106 to be relied upon at the trial;

- xxxii. The 4<sup>th</sup> Defendant's website also claims that the 1998 WHO/IARC study, which reported an increased relative risk of lung cancer of 16% for spousal exposure and 17% for workplace exposure, "found no meaningful increase in lung cancer risk." It summarizes the 2003 Enstrom study results, but fails to state that the study was funded and managed by the tobacco industry through CIAR and the 5<sup>th</sup> Defendant. The 4<sup>th</sup> Defendant has also denied ETS-related health risks in other recent public statements. The Claimants shall rely on Annexure 106;

- xxxiii. In 2002, the 4<sup>th</sup> Defendant published a document titled "British American Tobacco Social Report 2001/2002." In this report, the 4<sup>th</sup> Defendant asserted: There is also a debate about Environmental Tobacco Smoke (ETS), also known as passive smoking. Some say it poses health risks, and others, including ourselves, say there is no convincing evidence that ETS is a cause of chronic diseases such as lung cancer. The Claimants shall rely on BAT Social Report 2001/2002 tagged Annexure 107.

### **THE PRESENT AND CONTINUING THREAT**

144. The Claimants aver that the Defendants' conspiracy to deceive, mislead, and withhold information from the public, and from public legislative, regulatory, and judicial bodies about the adverse health effects of smoking, marketing to children, the addictiveness of nicotine, the manipulation of the delivery of nicotine, and the possibility of less hazardous designs has continued up through the present day. Specifically:
- i. In 1994, the United States Congress held a series of public hearings regarding the addictiveness of cigarettes and the tobacco industry's design of cigarettes and manipulation of nicotine. These hearings, before the House of Representatives Subcommittee on Health and the Environment, later became known as the "Waxman Hearings," referring to Subcommittee Chairman Henry Waxman of California. The Chief Executive Officers ("CEOs") of all the major Cigarette Companies testified at a Subcommittee hearing on April 14, 1994;

- ii. During the April 14, 1994 hearing, the CEOs testified under oath and before television cameras to the following:
- They denied that nicotine is addictive;
  - They denied that research establishes that smoking is addictive;
  - They denied that they manipulate the amount of nicotine contained in cigarettes.
- iii. In a written statement submitted to the U.S. Congress in 1994, the 5<sup>th</sup> Defendant asserted that it "does nothing in the processing of tobacco or the manufacture of cigarettes that increases the nicotine in our products above what is naturally found in tobacco". The Claimants shall rely on Philip Morris Statement On Nicotine In Cigarettes before the U.S Congress of March 1994 tagged Annexure 108;
- iv. A written statement submitted by Brown & Williamson (subsidiary of 4<sup>th</sup> Defendant) in 1994 to the U.S. Congress stated that "[t]he only direct source of nicotine in cigarettes is the tobacco that is used in the cigarettes[,]" and that "[t]he filtering and ventilation techniques result in the smoker's receiving only a small fraction of the nicotine contained in the tobacco that was used to produce the cigarette" The Claimants shall rely on Statement On Nicotine In B&W Cigarettes before the U.S Congress dated March 23rd 1994 tagged Annexure 109;
- v. When asked by a Member of Congress, during a continuation of the Waxman Hearings on June 23, 1994, whether B&W believed "that nicotine is present for taste or is it in cigarettes for its drug-like qualities," Thomas Sandefur, then-Chairman and CEO of B&W, stated under oath, "we very strongly believe that nicotine is a very important constituent in the cigarette smoke for taste." Sandefur further testified at the same hearing that: nicotine is not a drug and
- "We do not manipulate the nicotine levels of our cigarettes. . . ." The Claimants shall rely on the *Hearing Of The Health And Environment Subcommittee Of The House Energy And Commerce Committee, Subject: Tobacco Products, Witness: Thomas Sandefur, Chairman And CEO Brown & Williamson Tobacco Company, Chaired By Representative Henry Waxman* dated 23/6/1994, tagged Annexure 110
- vi. On April 14, 1994, Donald S. Johnston, Chairman and CEO of American Tobacco Company, testified at the Waxman Hearings that: "the American Tobacco Company does not use nicotine in the manufacture of its cigarettes. . . . American has no desire or intent to manipulate nicotine. At no time has the American Tobacco Company attempted to market a cigarette based on its nicotine content. Or more generally, has it ever designed or marketed a cigarette with the purpose or intent of selling nicotine". The Claimant shall rely on the *Oversight Hearing on Tobacco Products* dated 14/4/1994, tagged Annexure 111;

- vii. The 6<sup>th</sup> Defendant (Tobacco Institute) also testified before the U.S. Congress in 1994 that "we do not add nicotine, have not added nicotine, we do not manipulate nicotine". The Claimants shall rely on Annexure 111;
- viii. The Cigarette Company executives made these representations, among others, despite the substantial body of evidence, including information developed by the Cigarette Companies themselves dating back for many years prior to their testimony, indicating that nicotine is addictive and is the central reason why people continue to smoke, that the Cigarette Companies sought to ensure that smokers stayed addicted and that cigarettes are potentially lethal to smokers when used as intended by the Cigarette Companies;
- ix. In their public statements, the Cigarette Companies continued to deny that nicotine is addictive and, instead, used various misleading explanations for the role of nicotine, such as "enhances the taste of the smoke" and affects "the way it feels on the smoker's palate," and that it provides "satisfaction," "strength," "rich aroma," "mouth impact," and "pleasure," despite widespread agreement in the medical and scientific communities that the primary, if not sole, function of nicotine is to provide a pharmacological effect on the smoker that leads to addiction. "The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine" The Claimants shall rely on *Nicotine Addiction: The Health Consequences of Smoking, a report of the Surgeon General*, 1988, U.S., tagged Annexure 112;
- x. In addition to their repetition of the same false and misleading statements discussed above, the Cigarette Companies also continued to suppress and conceal documents and information in their possession concerning, *inter alia*, smoking and health, addiction, the addictiveness of nicotine, the health effects of low tar and low nicotine products, the potential availability of a less hazardous product, and their efforts to market to children.
- xi. The only time the Cigarette Companies have **ever** admitted anything negative about the health effects of smoking or the addictiveness of cigarettes is when they were forced to admit this through litigation or legislation. For example, in January 1998, after 46 U.S. States sued them and the U.S. Congress was considering legislation, the Cigarette Companies finally acknowledged that "a substantial body of evidence [exists] which supports the judgment that cigarette smoking plays a causal role in the development of lung cancer and other diseases in smokers" and that "smoking plays a role in causing cancer, lung cancer in some people."
- xii. The Cigarette Company executives also conceded that cigarettes are addictive under some accepted definitions. In early 1998, Brown & Williamson and RJR Nabisco executives agreed that nicotine is addictive under the "man in the street's definition" and as "people use the term [addiction] today." Moreover, the CEO of Brown & Williamson admitted that his personal position -- that smoking is not addictive -- was at odds with "the rest of the world," and did not dispute the "rest of the world's" use of the word addiction in relation to cigarette smoking."

- xiii. The Cigarette Companies' careful, semantic admissions were short-lived. In the spring of 1998, during the state of Minnesota's trial against the Cigarette Companies, the Defendants' officials returned to the same false and misleading statements that they have always made and denied the addictiveness of nicotine and the health effects of smoking.
- xiv. The Cigarette Companies eventually settled their suits with the states in the fall of 1998 and again were forced to admit that cigarettes are addictive and cause disease. Despite the injunctive relief obtained by the states, Defendants continue to market their products in many of the same ways they had before the settlement, and continue to keep secret research and other documents that would provide the public and regulators with a fuller understanding of the health effects of cigarettes, particularly the addictiveness of nicotine. Specifically, the results of the Defendants' research overseas for the last few decades have not been made public.

145. The Claimants aver that effects of the Defendants' conspiracy will be felt for many years into the future, and the Cigarette Companies continue to benefit from their fraudulent statements, and suppression of information. Smokers remain addicted and will be far into the foreseeable future, and they, as well as the federal and state governments, including those of Lagos, will be forced to furnish and pay for medical care and treatment for smoking-related diminished health, diseases, illnesses, and injuries specifically caused by the Cigarette Companies well into the next century - all while the Defendants continue to earn enormous profits from addicted smokers.

### CAUSES OF ACTION

146. The Claimants repeat and re-allege paragraphs 1-145 of this Statement of Claim as if such were set forth in full here and alleges that the Defendants have been negligent in the sale and distribution of their products:

#### NEGLIGENCE

- i. The Defendants being Tobacco Companies carrying out the business of manufacture, marketing, distribution, and sale of their tobacco related products within Lagos State, and in the course of such a business did put in the stream of commerce, such cigarettes as Benson & Hedges, Rothmans, Marlboro, St. Moritz, Consulate, London, et al, with the knowledge and intent that the same should be consumed by smoking, without any immediate or previous examination thereof; and with the knowledge that the absence of reasonable care in such manufacture would or might result in damage or injury to the health of the persons consuming all or any of these products.
- ii. At all relevant times, citizens of Lagos State and members of the 2<sup>nd</sup> Claimant purchased from the defendants or their agents, tobacco related products manufactured, marketed, distributed and sold by them.

- iii. On diverse occasions and at public functions, the Defendants also distributed for free, their brands of cigarettes to the Citizens of Lagos State and Members of the 2<sup>nd</sup> Claimant with the intention that they may commence an addiction to these products.
- iv. The Defendants were negligent as they knew or had reasonable cause to know that the warning on the tobacco related products were inadequate as the majority of their products are sold by the stick, and the stick of cigarettes contained no such warning as to the health hazards of the product, as the consumers had no opportunity to read the warning on the packet
- v. The Claimants assert that over the years, the citizens of Lagos State and members of the 2<sup>nd</sup> Claimant consumed the products manufactured by the Defendants as they were intended to be consumed, as a result which the consumers of tobacco products in Lagos State sustained severe injuries and damages to their health and were compelled to seek medical care and treatment at the Health facilities of Lagos State at severe costs to the citizens of Lagos State and the Lagos State Government, and the Claimants have therefore suffered loss and damages.

#### PARTICULARS

- a. In the year 2006 alone, there were 9527 (Nine Thousand Five Hundred and Twenty Seven) cases of tobacco related diseases in the Lagos State Government hospitals;
- b. Records taken from the 26 (twenty six) state health facilities, show that at least 2 (two) persons die per day from tobacco related diseases of tobacco related diseases in the Lagos State Government Hospitals;
- c. The World Health Organisation (WHO) and Food and Agricultural Organisation (FAO) statistics show that tobacco smoking incidence increases annually by 20% (twenty percent);
- d. The incubation period for the tobacco related diseases is a period of twenty years by which time the user becomes prone to mortality;
- e. In the year 2006, the Lagos State Government in treating these cases expended ₦216,000.00 (Two Hundred and Sixteen Thousand) Naira per individual, while the individual patient expended ₦70,000 (Seventy Thousand Naira);
- f. The Claimant intends to recover its costs and damages for the preceding (20) twenty years and anticipatory expenditure for the next (20) twenty years
- g. The said injuries, loss, and damages were occasioned to the Claimants by reason of the negligence and/ or breach of duty on the part of the Defendants.

### FURTHER PARTICULARS

- a. Manufacturing, marketing, promoting, distributing and selling the tobacco related products when they knew or ought to have known that same or a part thereof contained hazardous, injurious, deleterious and addictive substances the consumption or smoking of which would cause damage or injury to the consumers or smokers;
- b. Failure to take any adequate or necessary precaution in the manufacture of their products so as to prevent any injurious or hazardous substance contained therein;
- c. Permitting their products to contain injurious or hazardous and addictive substances;
- d. Failing to take any adequate measures to disclose and warn the purchasers and smokers of their products per stick who constitute the overwhelming majority of smokers that the said products manufactured and sold by them, contained hazardous, injurious, deleterious and addictive substances.
- vi. The Defendants owed a duty to the Lagos State Government and its residents to exercise reasonable care in the manufacture, sale and/or distribution of their cigarettes.
- vii. The Defendants breached that duty by the conduct alleged herein.
- viii. As a result of the Defendants' breach, tobacco-smoking residents of Lagos State became nicotine dependent and contracted tobacco-related diseases.
- ix. The defective condition of the Defendants' tobacco products directly and proximately caused thousands of Lagos' residents to suffer various tobacco-related diseases, injuries and sicknesses, and directly and proximately caused the State to expend substantial sums in order to provide necessary health care to many of these citizens, thereby damaging the State.
- x. At all pertinent times, it was foreseeable by the Defendants that certain Lagos residents who used their tobacco products would become ill and suffer injury, disease and sickness as a direct result of using the tobacco products as the Defendants intended. It was further foreseeable by the Defendants that Lagos State would be required, in the past and in the future, to expend substantial sums each year to provide necessary medical treatment and facilities to many of those residents so injured.
- xi. The residents of Lagos State used the Defendants' tobacco products in the manner in which the tobacco products were intended to be used, without any substantive alteration or change in the product.
- xii. The Defendants' products were delivered to the residents of Lagos State in a condition that was unreasonably dangerous to the user. Defendants expected

and intended for the products to be used by residents of Lagos State without substantial change affecting the unreasonably dangerous condition.

- xiii. The Defendant's tobacco products were unreasonably dangerous due to their design in that:
    - a. the tobacco products failed to perform as safely as an ordinary consumer would expect when used as intended; and
    - b. the risk of danger in the design of the tobacco products outweighed any benefits associated with the use of the tobacco products.
  - xiv. In breaching their duties to the consumers, as described above, the Defendants acted negligently in that each Defendant knew or should have known, through information available exclusively to them, that their tobacco products were defective and unreasonably dangerous. The Defendants further knew or should have known that their breach of duty would result in the injuries complained of herein.
  - xv. The Claimants shall further rely on the doctrine of *Res Ipsa Loquitur*.
147. The Claimants repeat and re-allege paragraphs 1-146 of this Statement of Claim as if same was set forth in full here and alleges that the Defendants' products have been negligently designed, as set forth hereunder:

## NEGLIGENT DESIGN

### PARTICULARS

- i. The Claimants aver that the Defendants were negligent in developing, designing, processing, manufacturing, inspecting, testing, packaging, selling, distributing, supplying, marketing and promoting tobacco products which were defective and presented an unreasonable risk of harm to consumers.
- ii. The conduct of the Defendants as described herein was negligent in that their actions involved unreasonable risk causing harm to consumers when they were under a duty to act for the protection of these consumers.
- iii. The Defendants knew or should have known that the use of their tobacco products as intended imposed unreasonable risks to the health of consumers. The Defendants knew of the grave risks caused by their products from investigation and testing performed by themselves or others, or, to the extent they did not fully know of those risks, it was because they unreasonably failed to perform appropriate, adequate and proper investigations and tests that would have disclosed those risks.
- iv. The Defendants owed a duty to Lagos and its citizens to exercise reasonable care in the developing, designing, processing, manufacturing, inspecting, testing,

packaging, selling, distributing, supplying, marketing and promoting tobacco products, and the Defendants breached that duty by the conduct as described above.

- v. As a direct and foreseeable result of the Defendants' negligence, the Lagos State Government has paid and will continue to be required to pay medical costs for diagnosis and treatment of tobacco-related disease. Lagos State is entitled to compensatory damages and punitive damages.

148. The Claimants repeat and re-allege paragraphs 1-147 and specifically incorporates by reference the averments and particulars contained in Paragraphs 117-143 of this Statement of Claim as if set forth in full here, and alleges that the Defendants have been fraudulent and deceitful.

#### FRAUD AND DECEIT

##### PARTICULARS

- i. Pursuant to the averments contained in Paragraphs 117-143, the Claimant alleges that through advertising in the mass media and by other communications, the Defendants repeatedly made misrepresentations. The individual and cumulative effect of these misrepresentations was to mislead the Lagos State Government and its citizens as to the addictiveness and actual health effects of tobacco smoking.
- ii. In their representations to Lagos State and her citizens, the Defendants omitted the following material information:
  - a. nicotine is addictive and Defendants manipulate nicotine levels in their tobacco products so as to addict consumers; and
  - b. the Defendants had detailed knowledge of the harmful health effects of cigarette smoking.
- iii. The Defendants were under a continuing and constant duty to disclose to Lagos State and its citizens the addictive nature of nicotine; the manipulation of the nicotine levels in tobacco products; their intent to addict the cigarette consuming public; and the full extent of their research on the adverse health effects of using their products.
- iv. The Defendants had sole access to material facts concerning the addictive nature of nicotine; the manipulation of nicotine levels in tobacco products; the intent to addict the cigarette consuming public; and their research on the adverse health effects of using their products. Defendants knew that, prior to their addiction to nicotine, the consumers of the products in Lagos could not reasonably have discovered the addictive nature of nicotine; the manipulation of the nicotine levels in tobacco products; the intent to addict the consuming public; and the Defendants' research on the adverse health effects of their products. In addition,

for decades, the Defendants actively concealed the addictive nature of nicotine, the manipulation of nicotine levels in the tobacco products, and the intent to addict the cigarette consuming public.

- v. The representations and/or omissions were false when made and known by Defendants to be false or were made with reckless indifference. The actions of Defendants, all done to maximize sales and profit at the expense of the public's health and safety, were so outrageous as to constitute gross fraud, ill will or evil motive.
  - vi. These misrepresentations and omissions were made deliberately, willfully, and maliciously to mislead the citizens of Lagos State into reliance and action thereon, and to cause Lagos citizens to purchase and use Defendants' tobacco products as the Defendants intended them to be used.
  - vii. Lagos and its citizens had no way to determine that the representations were false and misleading, and that they included material omissions, and these persons reasonably relied on Defendants' representations.
149. The Claimants repeat and re-allege paragraphs 1-148 and specifically incorporates by reference the averments and particulars contained in Paragraphs 117-143 of this Statement of Claim as if set forth in full here, and alleges that the Defendants have fraudulently concealed vital information, to wit:

#### FRAUDULENT CONCEALMENT

##### PARTICULARS

- i. In their voluntary statements and representations to Lagos and its citizens, Defendants had a duty not to deceive Lagos and its citizens, and therefore had a duty to disclose at least the following material information: (1) that nicotine is addictive, (2) that Defendants manipulate nicotine content so as to addict consumers, (3) that Defendants had detailed knowledge of the harmful effects of cigarette smoking, (4) that Defendants had the ability to research, develop and market a safer cigarette, and (5) that Defendants were engaging in the continuous inducement of tobacco sales to and use by minors.
- ii. Despite the Defendants' duty to disclose this information, Defendants intentionally omitted and actively concealed these facts from Lagos and its citizens, thereby deceiving the public into believing that tobacco products were not addictive, that they were not harmful, that Defendants were committed to disclosing the adverse health effects of smoking and that Defendants were actually discouraging the use of tobacco products by minors.
- iii. Defendants fraudulently concealed this material information, intending that consumers would rely on the Defendants' statements and representations and would be induced into believing that tobacco was not addictive or harmful and

thereby purchase and use Defendants' tobacco products as Defendants intended them to be used.

- iv. Defendants had sole or superior access to material facts concerning the addictive nature of nicotine, the manipulation of nicotine levels in tobacco products, the intent to addict the cigarette consuming public, their research on the adverse health effects of using their products, and their marketing activities directed at minors.
- v. Defendants omitted this information intentionally, deliberately, willfully, and maliciously to mislead and to deceive the State and its citizens and to cause Lagos citizens to purchase and use Defendants' tobacco products as Defendants intended them to be used.
- vi. As a direct and foreseeable result of Defendants' wrongful conduct, the Lagos State Government has paid and will continue to be required to pay for medical costs, diagnosis and treatment of tobacco-related disease. Accordingly, Lagos is entitled to compensatory and punitive damages, and injunctive relief.

150. The Claimants repeat and re-allege paragraphs 1-149 of this Statement of Claim as if same were set forth in full here and alleges that the Defendants are in breach of their express and implied warranties:

#### BREACH OF EXPRESS AND IMPLIED WARRANTIES

- i. The Claimants assert that the 1<sup>st</sup>- 5<sup>th</sup> Defendants' products are unmerchantable and are unfit for safe use when sold and consumed as intended. The Claimant further asserts that the 1<sup>st</sup>- 5<sup>th</sup> Defendants have breached their implied warranty of merchantability because their products are not fit for their intended purposes. The Defendants had reason to know that the particular purposes for which their products are intended are unreasonably dangerous.
- ii. The Claimants aver that the Defendants have breached both the express and implied warranties.
- iii. As a direct result of the Defendants' breach of express and implied warranties of merchantability, Lagos State has suffered damage because it has incurred and will incur medical expenses in the treatment of sickness, disease or injury caused by the Defendants' conduct.
- iv. As a result of the Defendants' breach of the express warranties and the implied warranties of merchantability and fitness for a particular purpose, the Claimant has suffered substantial injuries and damages for which the Defendants are jointly and severally liable.

151. The Claimants repeat and re-allege paragraphs 1-150 of this Statement of Claim as if same were set forth in full here and alleges that the Defendants are committing a public nuisance:

#### PUBLIC NUISANCE

- i. The Claimants assert that the Defendants have intentionally interfered with the public's right to be free from unwarranted injury, disease and sickness and have caused damage to the public health, the public safety and the general welfare of the residents of Lagos, especially through the prevalence of ETS or secondhand smoke, and have thereby wrongfully caused the State to expend substantial sums in support of the public health and welfare.
- ii. By the wrongful conduct alleged above, including Defendants' distribution and marketing of tobacco products to the public without sufficient disclosure of information relating to the harmful health effects and addictive properties of their products, their deliberate and intentional campaign to confuse and deceive the public concerning those addictive and harmful health effects, their distribution and marketing of harmful and addictive tobacco products when they knew that safer cigarettes were available, their manipulation of addictive nicotine levels in their products, and their marketing of tobacco products with the intent to induce minors to use them, the Defendants have unreasonably endangered and injured the public health and interfered with the public's right to be free from the widespread distribution of substances causing disease and dependency and to be knowledgeable concerning the dangers of the Defendants' products.
- iii. As a result of the foregoing, Lagos State has incurred special damages the particulars of which are contained in paragraph 152 hereunder, for which the Defendants are jointly and severally liable.
- iv. Unless the Defendants are enjoined and restrained from continuing their harmful activities and ordered to take affirmative steps to undo and abate the harm and confusion caused by their harmful activities, the unreasonable endangerment of the public health as described above will continue, for which the Claimants have no adequate remedy at law.

152. The Claimants repeat and re-allege paragraphs 1-146 of this Statement of Claim as if same were set forth in full here and alleges that the Defendants conspired to all commit an actionable wrong:

#### CONSPIRACY TO COMMIT AN ACTIONABLE WRONG

- i. The Defendants intentionally and willfully combined, conspired and agreed with one another for the purpose of accomplishing the unlawful ends alleged or accomplishing lawful ends unlawfully as alleged in all other allegations in this action, all of which are incorporated by this reference, and for the purposes of performing the acts, among others, set forth above in Paragraphs 117-143.

- ii. In addition, the Defendants intentionally and willfully combined, conspired and agreed with one another for the purpose and effect of, but not limited to:
  - iii. Suppressing scientific, medical and other information concerning the harmful health effects of smoking cigarettes and the addictive effect of nicotine;
    - a. Creating doubt about the scientific studies linking smoking to adverse health consequences and the addictive nature of nicotine and creating a false controversy regarding the health hazards of tobacco use;
    - b. Avoiding competition based on the development, production, sale and marketing of a safer cigarette;
    - c. Making false statements concerning the safety of cigarettes and the adverse health effects of smoking and tobacco and the addictive effect of nicotine;
    - d. Preventing the loss of sales that would have resulted if the information on the harmful effect of cigarette use and the addictive effects of nicotine had been made public;
    - e. Preventing the assumption by the tobacco industry of the health care costs associated with cigarette use; and
    - f. Shifting the costs of health care and medical services and products associated with the adverse health effects from the use of cigarettes and the addictive nature of nicotine to the State, which costs would otherwise have to be borne by the tobacco industry as a cost of the cigarette products market.
  - iv. The acts alleged above in Paragraphs 117-143, among others, were intentionally committed by or participated in by Defendants in furtherance of the purposes of the conspiracy.
  - v. As a direct result of the Defendants' conduct, the State has suffered and will continue to suffer injury and damages as set forth herein.
  - vi. The Defendants acted with malice and with willful, wanton, and reckless disregard for the rights or safety of others to the extent that punitive damages are justified and appropriate.
153. The Claimants repeat and re-allege paragraphs 1-152 of this Statement of Claim as if same were set forth in full here and alleges that the Defendants are strictly liable for the defect in their products:

STRICT LIABILITY

- i. The Defendants have engaged in the business of selling, distributing, supplying, marketing and promoting tobacco products, which were expected to and did reach consumers without substantial change in the condition in which they were sold, which are defective and unreasonably dangerous to consumers.
- ii. The Defendants, in the sale, distribution, supplying, marketing and promoting of their tobacco products, have made misrepresentations as previously described to the public at large and consumers, including the citizens of Lagos concerning the character and quality of their tobacco products.
- iii. As manufactured, manipulated, designed, distributed, promoted and sold by Defendants, the tobacco products were likely to cause injury or death, or to increase the risk of injury or death to persons who used them as intended.
- iv. Alternative designs for the tobacco products sold by the Defendants were available to Defendants that would have made the product safer without unreasonable cost, or such alternative designs would have been available to them had the Defendants undertaken reasonably appropriate, adequate and proper research and development.
- v. Additionally, the Defendants' tobacco products caused consumers to become addicted to nicotine and, accordingly, constitute a product unreasonably dangerous for normal use due to its defective design, defective manufacture, misrepresentations, and inadequate disclosure of facts to the consumers and the public at large.
- vi. Substantial numbers of consumers in Lagos have used the Defendants' tobacco products in a reasonably foreseeable manner and as intended by the Defendants, which included regular and prolonged consumption of the products over a period of years, and as a result of that use and the defective and unreasonably dangerous nature of the products, many of these consumers have become addicted to tobacco and as a result have suffered injury or death, requiring substantial medical care.
- vii. It was foreseeable by the Defendants that certain citizens of Lagos who used their defective tobacco products would become ill as a direct result of using the tobacco products as the Defendants intended. It was further foreseeable by Defendants that the residents of Lagos would be required to expend substantial sums of money to provide the necessary health care services for many of these citizens.
- viii. As a direct and foreseeable result of the Defendants' design, manufacture, sale and distribution of defective tobacco products, Lagos has paid and will continue to be required to pay for medical costs for diagnosis and treatment of tobacco-related disease. Accordingly, Lagos is entitled to compensatory and punitive damages.

154. The Claimants repeat and re-allege paragraphs 1-153 of this Statement of Claim as if same were set forth in full here and alleges that the Defendants are liable to indemnify the 1<sup>st</sup> Claimant for its expenditure on the public health on tobacco related diseases:

INDEMNITY

- i. The Claimants assert that the Defendants breached duties to the Lagos public and to tobacco consumers, including but not limited to the duty not to place in the stream of commerce unreasonably dangerous tobacco products, the duty not to fraudulently conceal or suppress information and research on the safety of tobacco products and the addictiveness of nicotine, the duty undertaken by them to conduct research into the health effects of tobacco use and to disclose the results of that research, the duty to make their products safe and non-addictive, and the duty not to market tobacco products to children.
- ii. As a result of their breach of those duties, Defendants became obligated to pay for the harm caused by their wrongful conduct, yet Defendants have not done so. Instead, Defendants embarked on a campaign of denial, subterfuge, and deceit to maintain their products, and to avoid paying for the consequences of the harm they have caused.
- iii. As set forth herein, the Claimant has been and will be required to expend large sums of money to pay the costs to diagnose and treat citizens in Lagos with tobacco-related diseases and addiction.

155. The Claimants repeat and re-allege paragraphs 1-154 of this Statement of Claim as if same were set forth in full here and alleges that the Defendants have been unjustly enriched by their conduct and are liable to pay restitution to the Claimants:

#### RESTITUTION/ UNJUST ENRICHMENT

- i. The Claimants aver that the Defendants breached their duties, including but not limited to the duty not to place in the stream of commerce unreasonably dangerous tobacco products, the duty not to fraudulently conceal or suppress information and research on the safety of tobacco and the addictiveness of nicotine, the duty undertaken by them to conduct research into the health effects of tobacco use and to disclose the results of that research, the duty to make their products safe and non-addictive, and the duty not to market tobacco products to children.
- ii. As a result of their breach of those duties, Defendants became obligated to pay for the harm caused by their wrongful conduct, yet they have not done so. Instead, the Defendants embarked on a campaign of denial, subterfuge and deceit to deny responsibility, to maintain their profits, and to avoid paying for the consequences of the harm they have caused.
- iii. The Claimant has expended large sums of money to pay for the costs of the harm caused by the Defendants' wrongful conduct. The Claimant's expenditures were and continue to be immediately necessary to protect the health and safety of the public and of the State's citizens.
- iv. The Claimant has the intent to charge and recoup from Defendants these sums of money.

- v. As a result of Defendants' wrongful activities and the necessity of the Claimant's expenditures, the Claimant has paid costs resulting from the Defendants' breach of duty. The Defendants have the duty to pay the costs resulting from their breach of duty; therefore Defendants must jointly and severally make restitution to the Claimant for having paid those costs.
- vi. The Claimants also state that the 1<sup>st</sup>-5<sup>th</sup> Defendants' sale of tobacco products has resulted in substantial health care costs for treating tobacco-related diseases and illnesses, which have been borne by the State through its payment of medical costs and other health care costs incurred because of tobacco-related disease. Defendants have a duty to pay for the harm caused by their wrongful and unlawful conduct, but have refused and continue to refuse to do so.
- vii. As a result, during the relevant time period the State has been unjustly required to pay health care costs resulting from the Defendants' conduct and wrongful acts, and on the basis of equitable principles, those costs should be borne by the Defendants. The expenditures by the State were necessary to protect the public health and safety and were not made gratuitously.
- viii. The State has conferred a benefit on the Defendants, by among other things, satisfying the tobacco companies' legal duties and saving them from initially bearing the costs for harm proximately caused by their fraudulent and wrongful conduct, thereby enabling the Defendants to reap substantial and unconscionable profits from the sale of tobacco products in Lagos.
- ix. The Defendants engaged in their wrongful conduct with knowledge that the State would be required to bear health care costs attributable to their conduct. Defendants knew of and appreciated the benefits that Lagos' payment of increased health care costs conferred on them. Under these circumstances, Defendants' acceptance and retention of the benefits from their wrongful conduct would be inequitable, unconscionable and unjust.
- x. As a result of the Defendants' unfair and deceptive acts or practices, the Defendant tobacco companies have reaped substantial sums in ill-gotten profits and gains, which they otherwise would not have received and which in equity, they should be required to disgorge.
- xi. The State is therefore entitled to disgorgement and restitution from Defendants for the benefits the State conferred on them, and to the extent required by equity to prevent Defendants' unjust enrichment as a result of their wrongful and unlawful conduct.

156. The Claimants aver that the Defendants voluntarily assumed the duty and responsibility to report honestly and completely on all research regarding smoking and health.

#### VOLUNTARY ASSUMPTION OF A SPECIAL UNDERTAKING

- i. The Defendants not only breached their duty and responsibility to report on such research, but also intentionally created and perpetrated a false scientific "controversy" and spurious, unsubstantiated and irrelevant "doubt" about the health dangers of smoking cigarettes and the addictive qualities of nicotine.
- ii. The Defendants, moreover, voluntarily assumed the duty and responsibility to refrain from undertaking strategies and efforts to market cigarettes to minors by and through other publicized programs and pronouncements.
- iii. The Defendants not only breached their duty and responsibility to refrain from such strategies and efforts, but also developed as a crucial component of its marketing strategy the systematic and intentional targeting of minors.
- iv. The Defendants knew or should have known that the residents of Lagos would rely on the tobacco industry's public pronouncements regarding research and marketing.
- v. The Defendants knew or should have known that such reliance would result in injury.
- vi. As a direct and proximate cause of Defendants' negligent performance of their voluntary undertakings, residents of Lagos State have suffered injuries in the form of addiction, cancer and other illness and disease. Many of these residents of Lagos State are recipients of public assistance, health care, and other benefits and services provided by Lagos State. Lagos State thus has borne the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of Lagos State injured by Defendants' cigarettes.
- vii. As a result of Defendants' conduct, Lagos State has suffered and will continue to suffer substantial injuries and damages for which Lagos State is entitled to relief.

157. The Claimants assert that as a direct and proximate result of their wrongful conduct alleged above, the Defendants have unreasonably injured and endangered the comfort, repose, health and safety of the residents of Lagos State by selling tobacco products which are dangerous to human life and health and cause injury, disease and sickness. The Defendants' acts have caused damage to the public, the public safety and the general welfare of citizens of Lagos.

#### PERFORMANCE OF ANOTHER'S DUTY TO THE PUBLIC

- i. The Defendants' conduct has created a health crisis which has required Lagos State to assume the financial burden of smoking-related medical and insurance costs, a burden which should have been borne by the tobacco companies. The State has thus borne the Defendants' duty to the public, which arises in part from the Defendants' assumed duty, their duty not to sell dangerous products, and their duty not to sell products through the use of a scheme, conspiracy and artifice to defraud.

- ii. In assuming this burden belonging to the Defendants, the State was responding to a clear need to relieve the consequences flowing from those who were inflicted and would be inflicted in the future with smoking-related illnesses. Nor did the State intend to confer a gratuitous benefit upon the Defendants. Rather, the State's expenditures were and are aimed at averting a public health crisis.
- iii. As a result of the Defendants' conduct, Lagos State has suffered and will continue to suffer substantial damages for which it is entitled to both monetary and injunctive relief.

148. The Claimants aver that in consequence of the actions of the Defendants, the Lagos State Government has expended substantial resources in dealing with the health perils of tobacco smoking:

**PARTICULARS OF SPECIAL DAMAGES AND PUBLIC HEALTH EXPENDITURE  
ASSOCIATED WITH HEALTH EFFECTS OF TOBACCO SMOKE**

149. The Claimants aver that it has statistically ascertained that over the past twenty years, the growth rate of tobacco smoking incidence has increased annually by 20 % (twenty percent).

150. The Claimants aver that in 2006 alone, the following represents the amount of tobacco related cases in government hospitals in Lagos:

- ❖ Cancer related diseases: 624 cases;
- ❖ Pulmonary related diseases: 6314 cases;
- ❖ Cardiovascular related diseases: 2589 cases.

151. The Claimants further aver that the Government of Lagos spends about ₦216,000.00 (Two Hundred and Sixteen Thousand Naira) on each of this case.

152. The particulars of special damages and expenditure incurred by the Government of Lagos since 1986, in the treatment of tobacco related health issues is represented hereunder:

**Cancer:**

YEAR	EXPENDITURE
1986	₦ 82, 317, 320.45
1987	₦ 102, 896, 650.56
1988	₦ 128, 620, 813.20
1989	₦ 160, 776, 016.50
1990	₦ 200, 970, 020.63
1991	₦ 251, 212, 525.77
1992	₦ 314, 015, 657.23
1993	₦ 392, 519, 571.54
1994	₦ 490, 649, 464.42
1995	₦ 613, 311, 830.53
1996	₦ 776, 639, 788.16

1997	₦ 958, 299, 735.20
1998	₦ 1, 197, 874, 696.00
1999	₦ 1, 241, 320, 901.00
2000	₦ 1, 286, 342, 903.00
2001	₦ 1, 332, 997, 827.00
2002	₦ 1, 381, 344, 898.00
2003	₦ 1, 431, 445, 490.00
2004	₦ 1, 483, 363, 202.00
2005	₦ 1, 537, 163, 940.00
2006	₦ 1, 592, 916, 000.00

**TOTAL      ₦ 16, 916, 681, 890.77**

**Cardiovascular and other heart related diseases:**

2006	₦ 3, 634, 956,000
2005	₦ 2, 907, 964,000
2004	₦ 2, 326, 371,000
2003	₦ 1, 861, 097,472
2002	₦ 1, 488, 877,977.60
2001	₦ 1, 191, 102,382.08
2000	₦ 952, 881,905.67
1999	₦ 762, 305,524.4
1998	₦ 609, 844,419.63
1997	₦ 487, 875,535.70
1996	₦ 390, 300,428.56
1995	₦ 312, 240,342.90
1994	₦ 249, 792,274.30
1993	₦ 199, 833,819.50
1992	₦ 159, 867,055.50
1991	₦ 127, 893,644.40
1990	₦ 102, 314,915.60
1989	₦ 81, 851,232.40
1988	₦ 65, 481,546.90
1987	₦ 52, 385,236.58
1986	₦ 41, 908,189.27

**TOTAL      ₦ 18, 007, 144,903.13**

**Pulmonary Diseases**

<b>YEAR</b>	<b>EXPENDITURE</b>
2006	₦ 3, 223, 584,000
2005	₦ 3, 159, 112,320
2004	₦ 2, 527, 289,856
2003	₦ 2, 021, 831,884.80
2002	₦ 1, 617, 465,507.80

2001	₦ 1, 293, 972,406.30
2000	₦ 1, 035, 177,925.03
1999	₦ 828, 142,340.03
1998	₦ 662, 513,872.02
1997	₦ 530, 011,097.62
1996	₦ 424, 008,878.10
1995	₦ 339, 207,102.50
1994	₦ 271, 365,682.00
1993	₦ 217, 092,545.60
1992	₦ 173, 674,036.50
1991	₦ 138, 939,229.20
1990	₦ 111, 151,383.30
1989	₦ 88, 921,106.00
1988	₦ 71, 136,885.30
1987	₦ 56, 909,508.30
1986	₦ 45, 527,606.60

**TOTAL ₦ 18, 836, 975,173.60**

Grand Total- **₦221, 720,861,295.15**

153. The Claimants aver that there is an increase in the smoking rate in Lagos State and as such there is a foreseeable increase in the health costs that would be associated with tobacco smoking. The statistics of the foreseeable increases for the next twenty years (which is the incubation period for tobacco smoking related health perils) is depicted hereunder:

Cancer:

<b>YEAR</b>	<b>EXPENDITURE</b>
2007	₦ 1, 911, 499, 200
2008	₦ 2, 293, 799, 040
2009	₦ 2, 752, 558, 848
2010	₦ 3, 303, 070, 617.60
2011	₦ 3, 963, 684, 741.12
2012	₦ 4, 756, 421, 689.22
2013	₦ 5, 707, 706, 027.06
2014	₦ 6, 849, 247, 232.47
2015	₦ 8, 219, 096, 678.96
2016	₦ 9, 863, 916, 014.75
2017	₦ 11, 835, 499, 217.70
2018	₦ 14, 202, 599, 061.24
2019	₦ 17, 043, 118, 873.49
2020	₦ 20, 451, 742, 648.20
2021	₦ 24, 542, 091, 177. 82
2022	₦ 29, 450, 509, 413.39
2023	₦ 35, 340, 611, 290.07
2024	₦ 42, 408, 733, 555.28
2025	₦ 50, 890, 480, 266.34

2026 ₦ 61,068,576,919.61

**TOTAL ₦ 356,853,962,518.31**

**Cardiovascular Diseases:**

<b>YEAR</b>	<b>EXPENDITURE</b>
2007	₦ 4,361,947,200
2008	₦ 5,234,336,640
2009	₦ 6,281,203,960
2010	₦ 7,537,444,761.60
2011	₦ 9,044,933,713.92
2012	₦ 10,853,920,456.70
2013	₦ 13,024,704,548.00
2014	₦ 15,629,645,457.60
2015	₦ 18,755,574,549.10
2016	₦ 22,506,689,458.90
2017	₦ 27,008,027,350.60
2018	₦ 32,409,632,820.70
2019	₦ 38,891,559,384.80
2020	₦ 46,669,871,261.70
2021	₦ 56,003,845,514.00
2022	₦ 67,204,614,616.80
2023	₦ 80,645,537,540.10
2024	₦ 96,774,645,048.10
2025	₦ 116,129,574,057.00
2026	₦ 139,355,488,868.00
<b>TOTAL</b>	<b>₦ 761,959,643,930.22</b>

**Other Diseases**

<b>YEAR</b>	<b>EXPENDITURE</b>
2007	₦ 899,683,200
2008	₦ 1,079,619,840
2009	₦ 1,295,543,808
2010	₦ 1,554,652,596.60
2011	₦ 1,865,583,110.52
2012	₦ 2,238,699,732.62
2013	₦ 2,686,439,679.15
2014	₦ 3,223,727,614
2015	₦ 3,868,473,137.96
2016	₦ 4,642,167,765.55
2017	₦ 5,570,601,318.66
2018	₦ 6,684,721,582.39
2019	₦ 8,021,665,898.87
2020	₦ 9,625,999,078.64
2021	₦ 11,551,198,894.37

2022	₦ 13, 861, 438,673.24
2023	₦ 16, 633, 726,407.89
2024	₦ 19, 960, 471,689.47
2025	₦ 23, 952, 566,027.36
2026	₦ 28, 743, 079,232.83
<b>TOTAL</b>	<b>₦ 167, 960, 059, 327.65</b>

**WHEREFORE** the Claimants Claim against the Defendants jointly and severally the following:

- a. An Order of mandatory injunction compelling the Defendants, their successors-in-title, privies and or agents to cease the marketing, promotion, distribution and sale of tobacco-related products to minors or under aged persons;
  - b. An Order of mandatory injunction restraining the Defendants from representing or portraying to minors or persons under the age of eighteen (18), any alluring and/ or misleading image regarding tobacco related products whether by direct depictions, pictorials, advertorials, images, words, messages, sponsorships, branding and/or through overt or covert and/or subliminal means.
  - c. An Order of mandatory injunction restraining the Defendants from marketing, distributing, selling, or putting into the stream of commerce either by themselves or through their distributors, agents, resellers, trade partners, marketers, and/or any other person, any tobacco related products of whatever make or brand within a one thousand (1000) metre radius of any schools, hospitals, cinemas, playhouses or locations, children’s shopping areas, childcare facilities or such other public places in Lagos State that are predominantly a location for minors and young persons under eighteen (18) years old to “hang out”, play, assemble, congregate for any purpose whatsoever including but not limited to educational, recreational, social, religious, sports or any other purposes;
1. An Order of mandatory injunction compelling the Defendants to fund a tobacco control programme to be administered and controlled by an independent third party to be appointed by the Lagos State Government, targeted at minors and young persons under eighteen (18) years old whose objectives include:
    - i. non-access to tobacco products within the 1,000 (one thousand) metre radius of such facilities, locations or area as designated by this Court in the event of an order being granted as specified in subparagraph c hereinbefore;
    - ii. a formulation and implementation of a procedure for the verification of age at all points of sale of tobacco related products;
    - iii. the implementation of an effective awareness campaign on smoking and its health implications, including extensive disclosures of

components of tobacco related products, potential associated diseases and other relevant information;

- d. An Order of mandatory injunction restraining the Defendants from marketing, distributing, selling, or putting into the stream of commerce either by themselves or through their distributors, agents, resellers, trade partners and/or marketers, any tobacco related products of whatever make or brand within Lagos State;
- e. An Order of Mandatory Injunction compelling the Defendants to fund a corrective public awareness campaign relating to the issue of smoking and health, to be administered and controlled by an independent third party to be appointed by the Lagos State Government;
- f. A Declaration of this Honourable Court that the tobacco related products as manufactured, marketed, promoted, distributed and sold by the Defendants are addictive;
- g. An Order of Mandatory Injunction compelling the Defendants to have printed on each stick of tobacco related product manufactured by them, the following disclosures:
  - i. the tar/ nicotine quotient;
  - ii. the relevant age bar requirement;
  - iii. the addictiveness and narcotic qualities of nicotine; and
  - iv. the relevant mandatory health warning prescribed by the Federal Ministry of Health;
- h. A Declaration of this Honourable Court that the tobacco related products as manufactured, marketed, promoted, distributed and sold by the Defendants are hazardous and injurious to the public health;
- i. A Declaration of this Honourable Court that the Defendants' conduct as specified herein in this Complaint/ Statement of Claim, in relation to its misrepresentation and concealment of material facts and other such acts, are unlawful;
- j. An Order of perpetual injunction restraining the Defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect with the subject matter of this complaint/ Statement of Claim;
- k. An Order of Mandatory Injunction compelling the Defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, parent or subsidiary companies, affiliates, servants, officers, directors, employees, and all persons acting in concert with or for them, that relates to the issue of smoking and health;

- l. The sum of ~~₦221, 720,861,295.15~~ (Two Hundred and Twenty One Billion Seven Hundred and Twenty Million Eight Hundred and Sixty One Thousand Two Hundred and Ninety Five Naira Fifteen Kobo) being special damages for Negligence occasioned by the Defendants;
- m. The sum of ~~₦ 2, 008, 759, 013, 056.87~~ (Two Trillion Eight Billion Seven Hundred and Fifty Nine Million Thirteen Thousand and Fifty Six Naira Eighty Seven Kobo) being anticipatory damages for the future expenses to be borne by the Claimant in paying for the injuries created and caused by tobacco smoking to the public health;
- n. The sum of ~~₦100,000,000,000~~ (One Hundred Billion Naira) as punitive damages for the Defendants wrongful conduct;
- o. The sum of ~~₦150,000,000,000~~ (One Hundred and Fifty Billion Naira) being restitution and /or disgorgement of profits for unjust enrichment;
- p. The sum of ~~₦221, 720,861,295.15~~ (Two Hundred and Twenty One Billion Seven Hundred and Twenty Million Eight Hundred and Sixty One Thousand Two Hundred and Ninety Five Naira Fifteen Kobo) being special damages for the actionable wrongs including Public Nuisance, Fraud, Breach of Express and Implied warranties, and conspiracy, occasioned by the Defendants.

DATED THIS \_\_\_\_\_ DAY OF

2007

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Professor Yemi Osinbajo, SAN  
*The Attorney-General of Lagos State*  
 Ministry of Justice  
 Alausa Secretariat  
 Ikeja  
 Lagos

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Ikem Isiekwena  
 M/S *TILAW PARTNERS*  
 Solicitors to the 2<sup>nd</sup> Claimant  
 9<sup>th</sup> Floor Fortune Towers  
 27/29 Adeyemo Alakija Street  
 Victoria Island  
 Lagos

**For Service on:**

**1<sup>st</sup> Defendant**

**BRITISH AMERICAN TOBACCO (NIGERIA) LIMITED**

PC 35 Idowu Taylor Street

Victoria Island

Lagos,

**2<sup>nd</sup> Defendant**

**INTERNATIONAL TOBACCO LIMITED**

247 Apapa Road

Lagos.

**3<sup>rd</sup> Defendant**

**BRITISH AMERICAN TOBACCO PLC**

Globe House

4 Temple Place

London WC2R 2PG

England.

**4<sup>th</sup> Defendant**

**BRITISH AMERICAN TOBACCO (INVESTMENT) LIMITED**

Millbank, Knowle Green

Staines, Middlesex, TW18 1DY

England.

**5<sup>th</sup> Defendant**

**PHILIP MORRIS INTERNATIONAL**

107 Avenue de Cour

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Switzerland.

**6<sup>th</sup> Defendant**

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