

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No. 500-17-072363-123

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**PROCUREUR GÉNÉRAL DU QUÉBEC**

Plaintiff

v.

**IMPERIAL TOBACCO CANADA LIMITÉE**

-and-

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

-and-

**BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED**

-and-

**CARRERAS ROTHMANS LIMITED**

-and-

**ROTHMANS, BENSON & HEDGES INC.**

-and-

**PHILIP MORRIS USA INC.**

-and-

**PHILIP MORRIS INTERNATIONAL INC.**

-and-

**JTI-MACDONALD CORP.**

-and-

**R.J. REYNOLDS TOBACCO COMPANY**

-and-

**R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.**

-and-

**CONSEIL CANADIEN DES FABRICANTS DES PRODUITS DU TABAC**

Defendants

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**DEFENCE OF PHILIP MORRIS INTERNATIONAL INC.**

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**FOR PLEA TO THE PLAINTIFF'S AMENDED AND PARTICULARIZED MOTION TO INSTITUTE PROCEEDINGS (THE "MOTION"), DEFENDANT PHILIP MORRIS INTERNATIONAL INC. ("PMI") STATES AS FOLLOWS:**

1. PMI denies the fact alleged in paragraphs 1, 2, 3 and 4 of the Motion.
2. PMI denies the facts alleged in paragraph 5 of the Motion and adds that Quebec's public finances have greatly benefited and continue to benefit from the massive revenues generated by the sale of tobacco products.
3. PMI prays act of the admissions in paragraphs 6 to 7 of the Motion, adding that the *Act* was specifically designed to target the Defendants in this action, and that the special rules put in place by the Act violate Defendants right to a fair and equitable trial and deprive them of due process of law.
4. With respect to the facts alleged in paragraphs 8 to 17 of the Motion, PMI admits only that more than 5,000 chemicals, or smoke constituents, are formed when tobacco is burned. More than 100 of these smoke constituents have been identified by public health authorities as causes or potential causes of smoking related diseases, including cardiovascular disease (heart disease), lung cancer, and chronic obstructive pulmonary disease (emphysema, chronic bronchitis). In addition, smoking is addictive, and it can be very difficult to stop smoking. However, PMI specifies that many other factors, whether environmental, physiological, genetic or lifestyle choices can also cause or contribute to these diseases and negative health outcomes. Most of the substances listed in paragraph 10 of the Motion have been identified in cigarette smoke, although in many cases the substances are found in trace amounts measured in billionths of gram, many of which are present in the environment and in commonly consumed products to which non-smokers are also exposed in equal or greater amounts. PMI further states that, at all material times, persons in Québec have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government, the Province and the public health community have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by the federal government, the Province and the public health community have reinforced the awareness of persons in Québec with respect to cigarette smoking and its potential risks. At all material times, PMI had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Québec, the federal government, the Province and the public health community.
5. With respect to the facts alleged in paragraph 11 of the Motion, PMI states the following, and denies anything inconsistent therewith:
  - a) PMI admits that smoking causes or contributes to cancers of the lung, bronchus, trachea, larynx, pharynx, esophagus, pancreas, kidneys, and bladder; and leukemia;
  - b) PMI states that "cancer of the nose," "cancer of the stomach," and "oral cancer" are relatively vague terms which might encompass a number of different and varied anatomical structures, but admits that smoking causes cancer in certain of the anatomical structures associated with the nose, stomach and mouth;

- c) PMI denies that smoking causes or contributes to cancers of the colon, rectum, liver, and cervix. PMI acknowledges that the Surgeon General's 2014 Report concluded that there is sufficient evidence to infer a causal relationship between smoking and colorectal cancer, cancer of the liver, and cervical cancer, but PMI's position is that at this time, this conclusion is based on inadequate scientific support.
6. With respect to paragraph 12 of the Motion, PMI repeats its response at paragraph 4 above.
7. PMI admits the fact alleged in paragraph 13 of the Motion.
8. With respect to the fact alleged in paragraph 14 of the Motion, PMI admits that smoking is associated with a decrease in oxygen in the blood and damage to the arterial wall but denies the remainder of the facts alleged in paragraph 14.
9. PMI admits the facts alleged in paragraph 15 of the Motion.
10. With respect to the facts alleged in paragraph 16 of the Motion, PMI admits that nicotine and carbon monoxide are associated with short term increases in blood pressure and heart rate and admits that smoking increases the risk of blood clots but denies the remainder of the facts alleged in paragraph 16 of the Motion.
11. With respect to paragraph 17 of the Motion, PMI admits that smoking can contribute to arteriosclerosis, heart disease, vascular disease, and strokes.
12. PMI admits that the decisions mentioned in paragraphs 18 and 19 of the Motion were rendered, but specifies that they were rendered in contexts very different from the present proceedings and that the findings of fact in those cases have no *res judicata* effect on the present proceedings.
13. With respect to the facts alleged at paragraph 20 of the Motion, PMI admits that cigarette smoking causes certain reproductive complications in female smokers and that smoking is associated with an increased risk of placental abruption, premature birth, intrauterine growth restriction, stillbirth, spontaneous abortion, and neonatal mortality. PMI further states that many other factors, whether environmental, physiological, genetic, or based upon lifestyle choices, can also have harmful effects on pregnancy. As to the risk of miscarriage, PMI notes that there is some medical literature finding a correlation between maternal smoking and miscarriage, but the U.S. Surgeon General has not concluded that there is sufficient evidence to infer a causal relationship.
14. PMI admits the facts alleged in paragraph 21 of the Motion with respect to its own conduct only and denies the facts alleged as to the other Defendant companies. PMI repeats its response at paragraph 4 above and adds that it has been common knowledge for decades that smoking is harmful to health and creates an increased risk of lung cancer, emphysema, chronic bronchitis and heart disease.
15. PMI denies the facts alleged in paragraph 22 of the Motion but admits that, as the term "addictive" is commonly used today, nicotine in cigarette smoke is addictive, and that cigarette smoking is addictive. Regardless of the term used in connection with smoking – "addiction", "dependence" or "difficult to quit" – smokers can and often do quit smoking all

the time. Neither addiction nor dependence deprives smokers of their free will or renders them incapable of stopping to smoke.

16. PMI admits the allegations contained in paragraph 23 of the Motion.
17. With respect to paragraph 24 of the Motion, PMI denies that anyone is unable to quit smoking. PMI admits that the decision mentioned in paragraph 24 was rendered, but specifies that it was rendered in a context very different from the present proceedings and that the findings of fact in that case have no *res judicata* effect on the present proceedings.
18. With respect to paragraph 25 of the Motion, PMI admits that the company position with respect to smoking and health can be found on pmi.com and adds that it has been common knowledge for decades that some people find it very difficult to stop smoking.
19. With regard to the facts alleged in paragraph 26, 27 and 28 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, denies any statement inconsistent therewith, and prays act of the admission that a link between cancer and tobacco was published in common literature and part of the public domain in Québec at least as early as 1953.
20. With respect to paragraph 29 of the Motion, PMI admits that some American tobacco manufacturers joined together to establish the Tobacco Industry Research Committee in 1953.
21. PMI admits that A Frank Statement to Cigarette Smokers was published in 1954 but denies the remaining facts alleged in paragraph 30 of the Motion.
22. PMI denies the facts alleged in paragraphs 31 to 34 of the Motion.
23. PMI admits the facts alleged in paragraph 35 of the Motion.
24. PMI denies the facts alleged in paragraph 36 of the Motion.
25. With regard to the facts alleged in paragraph 37 of the Motion, PMI refers the Court to the exhibit referred to therein, without admission of its contents, and denies any statement inconsistent therewith.
26. PMI admits the facts alleged in paragraph 38 of the Motion.
27. PMI has no knowledge of the facts alleged in paragraph 39 of the Motion.
28. With regard to the facts alleged in paragraph 40 of the Motion, PMI refers the Court to the exhibit referred to therein, without admission of its contents, and denies any statement inconsistent therewith.
29. With regard to the facts alleged in paragraph 41 of the Motion, PMI refers the Court to the exhibit referred to therein, without admission of its contents, and denies any statement inconsistent therewith.

30. With regard to the facts alleged in paragraph 42 of the Motion, PMI refers the Court to the exhibit referred to therein, without admission of its contents, and denies any statement inconsistent therewith.
31. With regard to the facts alleged in paragraph 43 of the Motion, PMI refers the Court to the exhibit referred to therein, without admission of its contents, and denies any statement inconsistent therewith.
32. PMI has no knowledge of the facts alleged in paragraph 44 of the Motion.
33. PMI has no knowledge of the facts alleged in paragraph 45 and 46 of the Motion.
34. With regard to the facts alleged in paragraph 47 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.
35. PMI has no knowledge of the facts alleged in paragraphs 48 to 52 of the Motion.
36. PMI admits that PM Inc. was a member of ICOSI, INFOTAB, and TDC but denies the remaining facts alleged in paragraph 53 of the Motion.
37. With regard to the facts alleged in paragraph 54 of the Motion, PMI refers the Court to the exhibits referred to therein and denies any allegation inconsistent therewith.
38. PMI has no knowledge of the facts alleged in paragraph 55 of the Motion.
39. With regard to the facts alleged in paragraph 56 of the Motion, PMI refers the Court to the exhibit referred to therein, without admission of its contents, and denies any allegation inconsistent therewith.
40. PMI admits the facts alleged in paragraph 57 of the Motion.
41. With regard to the facts alleged in paragraph 58 of the Motion, PMI refers to the *Tobacco Products Control Act*, S.C. 1988, c. 20 and denies everything not in strict conformity therewith.
42. PMI has no knowledge of the facts alleged in paragraphs 59 and 60 of the Motion.
43. PMI admits the facts alleged in paragraph 61 of the Motion.
44. PMI has no knowledge of the facts alleged in paragraphs 62 to 64 of the Motion.
45. PMI admits the allegations contained in paragraph 65 of the Motion.
46. PMI has no knowledge of the facts alleged in paragraph 66 of the Motion.
47. PMI admits that the judgment referenced in paragraph 67 of the Motion was issued, refers the Court to that judgment, which speaks for itself, and denies any allegation inconsistent therewith.
48. PMI has no knowledge of the facts alleged in paragraphs 68 and 69 of the Motion.

49. With regard to the allegations contained in paragraph 70, PMI refers the Court to the Act, which speaks for itself, and denies any allegation inconsistent therewith.
50. PMI admits the facts alleged in paragraph 71 of the Motion.
51. PMI admits that the Minnesota depository was created but has no knowledge of the remaining facts alleged in paragraph 72 of the Motion.
52. With regard to the facts alleged in paragraph 73 to 75 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.
53. PMI has no knowledge of the facts alleged in paragraphs 76 and 77 of the Motion.
54. PMI admits the facts alleged in paragraph 78 of the Motion.
55. PMI has no knowledge of the facts alleged in paragraph 79 of the Motion.
56. PMI denies the facts alleged in paragraph 80 of the Motion, and states that PMI does not necessarily have or ever had the original of the Plaintiff's exhibits which "relate to" PMI, and that Plaintiff must bear the burden of proof of the case which it chose to bring many decades after becoming aware of the risks and costs of tobacco-related diseases.
57. PMI denies the allegations in paragraphs 81-101 of the Motion. PMI further denies the existence of a "Rothmans Group" and states that Plaintiff's reference to a "Rothmans Group" throughout its Statement of Claim has no legal significance.
58. PMI has no knowledge of the facts alleged in paragraph 101 of the Motion.
59. PMI admits that RBH was formed in 1986 but has no knowledge of the remaining facts alleged in paragraph 102 of the Motion.
60. PMI has no knowledge of the facts alleged in paragraphs 103 to 105 of the Motion.
61. With respect to the facts alleged in paragraph 106 of the Motion, PMI admits only that PMI was the ultimate beneficial owner of a 40% interest in RBH from 1986 until 2008, when PMI became the sole ultimate beneficial owner.
62. Paragraph 107 does not require a response.
63. PMI has no knowledge of the facts alleged in paragraphs 108 to 112 of the Motion.
64. With respect to paragraph 113 of the Motion, PMI admits that it started as Philip Morris & Co., Ltd., later changed its name to PM Inc., and again changed its name to PM USA in 2003 but denies that there is a "PM group" acting in concert.
65. With respect to paragraph 114 of the Motion, PMI admits that Benson & Hedges was owned by PM Inc. from 1958 to 1986, when it was combined with RPM to form RBH, at which time PM Inc. held 40% ownership. PMI states that PM Inc.'s 40% ownership of RBH was transferred to PMI in 1987 and that PMI acquired all shares of RBH in 2008. PMI denies the remaining facts alleged in paragraph 114.

66. Paragraph 115 does not require a response.
67. PMI admits the facts alleged in paragraph 116 of the Motion.
68. PMI admits that RPM and B&H were amalgamated to form RBH in 1986 and states that PMI acquired all shares of RBH in 2008 but denies the remaining facts alleged in paragraph 117 of the Motion.
69. PMI denies that the Rock City Tobacco Company is an active entity but otherwise admits the facts alleged in paragraph 118 of the Motion.
70. PMI admits the facts alleged in paragraphs 119 to 121 of the Motion.
71. With respect to paragraph 122 of the Motion, PMI admits that since the beginning of the twentieth century, PM Inc. was involved in the manufacture, marketing, and promotion of tobacco products. PMI admits that it exported a small amount of tobacco products for sale in Canada, including cigarettes under the brand names Virginia Slims, Eve, Plus, Plus 120, Lark, Merit, Parliament, and Silk Cut but denies the remainder of the facts alleged in paragraph 122.
72. PMI admits the facts alleged in paragraph 123 of the Motion.
73. PMI denies the allegations in paragraph 124 of the Motion and states that PMI began as the Overseas Division of PM Inc. In 1967, the Overseas Division, an administrative division of PM Inc., was renamed PM International, which was incorporated as PMI in 1987.
74. PMI denies the allegations in paragraph 125 of the Motion and states that PMI was incorporated in 1987 in Delaware and was a wholly-owned subsidiary of PM Companies Inc., which was later renamed Altria Group, Inc.
75. PMI admits the facts alleged in paragraph 126 of the Motion.
76. With respect to the facts alleged in paragraph 127 of the Motion, PMI admits only that it was indirectly the owner of a beneficial interest in RBH from 1987 to the present, which interest was a minority interest until 2008.
77. PMI does not answer paragraph 128 of the Motion because it calls for a conclusion of law.
78. With respect to the facts alleged in paragraph 129 of the Motion, PMI refers to the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies any allegations inconsistent therewith.
79. PMI has no knowledge of the facts alleged in paragraphs 130 to 153 of the Motion.
80. PMI does not answer because paragraph 154 of the Motion calls for a conclusion of law.
81. With respect to the facts alleged in paragraph 155 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of the contents thereof, and denies any allegation not in strict conformity therewith.



82. PMI has no knowledge of the facts alleged in paragraph 156 of the Motion.
83. With respect to the allegations contained in paragraphs 157 to 217 of the Motion, PMI need not admit or deny this summary of allegations, in accordance with this Court's February 28, 2014 Judgment on Motions for Particulars and the Production of Documents at para. 68.
84. PMI denies the facts alleged in paragraphs 218 to 221 of the Motion, except to admit that it developed, organized, or funded some research programs.
85. PMI denies the facts alleged in paragraph 222 of the Motion and specifies that at all material times persons in Quebec and elsewhere have been aware of the potential health risks associated with tobacco products.
86. Paragraphs 223 and 224 do not require a response.
87. PMI has no knowledge of the facts alleged in paragraphs 225 to 249 of the Motion.
88. With regard to the allegations contained in paragraph 250 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
89. PMI has no knowledge of the facts alleged in paragraphs 251 to 256 of the Motion.
90. With respect to paragraph 257 of the Motion, PMI admits that this study occurred.
91. PMI denies the facts alleged in paragraph 258 of the Motion.
92. PMI has no knowledge of the facts alleged in paragraphs 259 to 302 of the Motion.
93. PMI has no knowledge of the facts alleged in paragraphs 297 to 302 of the Motion.
94. With regard to the facts alleged in paragraph 303 of the Motion, PMI prays act of the admission that there were studies published in the 1950s associating smoking with cancer and other disease, and denies the remainder of the paragraph.
95. PMI has no knowledge of the facts alleged in paragraphs 304 to 346 of the Motion.
96. With respect to paragraph 347 of the Motion, PMI denies the existence of a "PM Group" and states that Plaintiff's reference to a "PM Group" throughout its Statement of Claim has no legal significance. PMI further denies the facts alleged in paragraph 347 and states that, at all material times, persons in Quebec have been aware of the potential health risks of smoking and, at no material time, did PMI ever possess knowledge regarding the risks of smoking that was materially greater than that of Plaintiff, the federal government, the scientific community, the media and the general public, including insured persons living in Quebec.
97. With regard to the allegations contained in paragraphs 348 to 349 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.

98. With regard to the facts alleged in paragraph 350 of the Motion, PMI admits only that it produced different types of filtered cigarettes.
99. PMI denies the facts alleged in paragraphs 351 to 354 of the Motion.
100. With regard to the allegations contained in paragraphs 355 to 359 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
101. PMI denies the facts alleged in paragraphs 360 and 361 of the Motion.
102. With regard to the allegations contained in paragraphs 362 and 363 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
103. PMI denies the facts alleged in paragraph 364 of the Motion.
104. With regard to the allegations contained in paragraph 365 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
105. PMI denies the facts alleged in paragraph 366 of the Motion.
106. With regard to the allegations contained in paragraphs 367 to 373 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
107. PMI denies the facts alleged in paragraphs 374 and 375 of the Motion.
108. With regard to the allegations contained in paragraphs 376 to 379 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
109. PMI admits the facts alleged in paragraph 380 of the Motion.
110. With regard to the allegations contained in paragraph 381 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
111. PMI denies the facts alleged in paragraph 382 of the Motion.
112. With regard to the allegations contained in paragraphs 383 and 385 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
113. PMI denies the facts alleged in paragraphs 386 to 388 of the Motion.
114. With regard to the allegations contained in paragraphs 389 and 390 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.

115. PMI denies the facts alleged in paragraphs 391 and 392 of the Motion.
116. With regard to the allegations contained in paragraphs 393 to 402 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
117. PMI denies the facts alleged in paragraph 403 of the Motion.
118. With regard to the allegations contained in paragraph 404 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
119. PMI has no knowledge of the facts alleged in paragraph 405 of the Motion.
120. With regard to the allegations contained in paragraph 406 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
121. PMI has no knowledge of the facts alleged in paragraphs 407 and 408 of the Motion.
122. PMI denies the facts alleged in paragraphs 409 to 411 of the Motion.
123. PMI has no knowledge of the facts alleged in paragraphs 412 to 487 of the Motion.
124. With respect to the facts alleged in paragraph 488 of the Motion, PMI notes the Plaintiff's use of the words "dependence" and "addiction", but adds that the definitions of these terms have changed over time.
125. PMI admits the facts alleged in paragraph 489 of the Motion.
126. With regard to the facts alleged in paragraph 490 of the Motion, PMI admits that cigarette smoking is addictive (as that term is now used) and adds that it has been common knowledge for decades that it can be very difficult to quit smoking.
127. PMI has no knowledge of the facts alleged in paragraph 491 of the Motion.
128. PMI denies the facts alleged in paragraph 492 of the Motion.
129. PMI has no knowledge of the facts alleged in paragraphs 493 to 517 of the Motion.
130. With regard to the allegations contained in paragraph 518 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
131. PMI denies the facts alleged in paragraph 519 of the Motion.
132. PMI has no knowledge of the facts alleged in paragraphs 520 to 528 of the Motion.
133. With regard to the allegations contained in paragraph 529 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.

134. With regard to the allegations contained in paragraphs 530 and 531 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith, admits that nicotine can be addictive to some people (as that term is used today in non-scientific language) and adds that at no time did PMI have more material knowledge with regard to the addictive character of nicotine than did the Plaintiff, the federal government, the scientific community, the media or the general public, including insured persons in Quebec, who were fully aware that smoking can be difficult to quit.
135. With regard to the allegations contained in paragraphs 532 and 533 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
136. PMI denies the facts alleged in paragraph 534 of the Motion.
137. With regard to the allegations contained in paragraphs 535 to 539 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
138. PMI denies the facts alleged in paragraphs 540 to 544 of the Motion.
139. With regard to the facts alleged in paragraph 545 of the Motion, PMI admits that cigarette smoking is addictive to some people (as that term is now used in non-scientific language) and that it has been known for decades that some people find it hard to quit smoking, but specifies that, at no material time, did it possess knowledge to that effect greater than the knowledge of Plaintiff, the federal government, the scientific community, the media and the general public, including insured persons living in Quebec.
140. PMI denies the facts alleged in paragraphs 546 to 547 of the Motion.
141. With regard to the allegations contained in paragraphs 548 and 549 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
142. PMI has no knowledge of the facts alleged in paragraphs 550 and 551 of the Motion.
143. With regard to the allegations contained in paragraphs 552 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith. PMI also states that allegations involving events and entities elsewhere in the world are irrelevant in this matter.
144. PMI denies the facts alleged in paragraphs 553 and 554 of the Motion.
145. With regard to the allegations contained in paragraphs 555 to 559 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
146. PMI has no knowledge of the facts alleged in paragraph 560 of the Motion.

147. With regard to the facts alleged in paragraph 561 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
148. PMI denies the facts alleged in paragraphs 562 and 563 of the Motion.
149. PMI has no knowledge of the facts alleged in paragraphs 564 to 589 of the Motion.
150. PMI denies the facts alleged in paragraph 590 of the Motion.
151. PMI has no knowledge of the facts alleged in paragraph 591 of the Motion.
152. PMI denies the facts alleged in paragraph 592 of the Motion insofar as it applies to it.
153. With regard to the facts alleged in paragraphs 593 and 594 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.
154. PMI has no knowledge of the facts alleged in paragraph 595 of the Motion.
155. PMI denies the facts alleged in paragraph 596 of the Motion.
156. PMI has no knowledge of the facts alleged in paragraph 597 of the Motion.
157. With regard to the facts alleged in paragraph 598 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.
158. PMI has no knowledge of the facts alleged in paragraphs 599 to 605 of the Motion.
159. With respect to paragraph 606 of the Motion, PMI states that PM Inc.'s then-CEO and President, William I. Campbell, testified before Congress on April 14, 1994, as did certain other cigarette company officers. PMI further states that the testimony of William I. Campbell and certain other cigarette company officers can be ascertained from the hearing record. PMI denies the remaining allegations of paragraph 606 of the Motion.
160. PMI has no knowledge of the facts alleged in paragraphs 607 to 611 of the Motion.
161. With regard to the allegations contained in paragraphs 612 to 613 of the Motion, PMI admits that cigarette smoking is addictive (as that term is now used in non-scientific language) and that some people find it very hard to quit smoking, but specifies that at no material time did PMI possess materially more knowledge to that effect than did the Plaintiff, the federal government, the scientific community, the media and the general public, including insured persons living in Quebec, who were fully aware that smoking can be difficult to quit.
162. PMI denies the facts alleged in paragraphs 614 and 615 of the Motion.
163. Paragraphs 616 and 617 do not require a response.
164. PMI has no knowledge of the facts alleged in paragraph 618 of the Motion.

165. With regard to the facts alleged in paragraph 619 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.
166. PMI denies the facts alleged in paragraphs 620 and 621 of the Motion.
167. PMI has no knowledge of the facts alleged in paragraphs 622 and 623 of the Motion.
168. With regard to the allegations contained in paragraph 624 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
169. PMI has no knowledge of the facts alleged in paragraph 625 of the Motion.
170. PMI denies the facts alleged in paragraph 626 of the Motion.
171. PMI has no knowledge of the facts alleged in paragraph 627 of the Motion.
172. With regard to the allegations contained in paragraph 628 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
173. PMI has no knowledge of the facts alleged in paragraphs 629 and 630 of the Motion.
174. PMI denies the facts alleged in paragraphs 631 to 633 of the Motion.
175. With regard to the allegations contained in paragraph 634 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
176. PMI has no knowledge of the facts alleged in paragraphs 635 and 636 of the Motion.
177. PMI denies the facts alleged in paragraphs 637 to 641 of the Motion.
178. PMI admits the facts alleged in paragraph 642 of the Motion but states that at no time did it ever possess knowledge regarding the phenomenon of compensation that was materially greater than that of Plaintiff, the federal government, the scientific community, the media and the general public, including insured persons living in Quebec.
179. PMI has no knowledge of the facts alleged in paragraph 643 of the Motion.
180. With regard to the facts alleged in paragraph 644 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
181. With regard to the facts alleged in paragraph 645 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
182. PMI admits the facts alleged in paragraph 646 of the Motion, but adds that at no time did it ever possess knowledge regarding the phenomenon of compensation that was greater

than that of Plaintiff, the federal government, the scientific community, the media and the general public, including insured persons living in Quebec.

183. With regard to the facts alleged in paragraph 647 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith and states that it has no knowledge of the allegations concerning other Defendants.
184. With regard to the allegations contained in paragraphs 648 and 649 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
185. PMI denies the facts alleged in paragraphs 650 to 652 of the Motion.
186. PMI has no knowledge of the facts alleged in paragraph 653 of the Motion.
187. PMI denies the facts alleged in paragraph 654 of the Motion.
188. With regard to the allegations contained in paragraphs 655 and 656 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
189. PMI denies the facts alleged in paragraphs 657 and 658 of the Motion.
190. With regard to the allegations contained in paragraphs 659 to 660 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies everything inconsistent therewith.
191. Assuming the facts alleged in paragraph 661 of the Motion reference the Canadian manufacturers, PMI has no knowledge of the facts alleged of the facts alleged in paragraph 661 of the Motion.
192. With regard to the facts alleged in paragraph 662, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegations inconsistent therewith.
193. PMI denies the facts alleged in paragraphs 663 to 665 of the Motion.
194. PMI has no knowledge of the facts alleged in paragraphs 666 and 667 of the Motion.
195. PMI denies the facts alleged in paragraph 668 of the Motion.
196. PMI has no knowledge of the facts alleged in paragraph 669 of the Motion.
197. PMI denies the facts alleged in paragraphs 670 and 671 of the Motion.
198. PMI has no knowledge of the facts alleged in paragraphs 672 to 675 of the Motion.
199. With regard to the facts alleged in paragraphs 676 to 677 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.

200. PMI has no knowledge of the facts alleged in paragraphs 678 to 681 of the Motion.
201. PMI denies the facts alleged in paragraphs 682 and 683 of the Motion.
202. PMI has no knowledge of the facts alleged in paragraph 684 of the Motion.
203. PMI denies the facts alleged in paragraph 685 of the Motion.
204. PMI has no knowledge of the facts alleged in paragraphs 686 and 687 of the Motion.
205. PMI denies the facts alleged in paragraph 688 of the Motion.
206. With regard to the facts alleged in paragraphs 689 to 691 of the Motion, PMI refers the Court to the rulings referenced therein, which speak for themselves, but specifies that they were rendered in contexts very different from the present proceedings and that the findings of fact in those cases have no *res judicata* effect on the present proceedings.
207. PMI denies the facts alleged in paragraphs 692 to 696 of the Motion.
208. PMI denies the facts alleged in paragraph 697 of the Motion but prays act of the admission of the publication in 1953 in the widely-read *Readers' Digest* of an article linking smoking with cancer.
209. PMI denies the facts alleged in paragraphs 698 and 699 of the Motion.
210. PMI admits the facts alleged in paragraph 700 of the Motion.
211. PMI denies the facts alleged in paragraphs 701 and 702 of the Motion.
212. PMI has no knowledge of the facts alleged in paragraph 703 of the Motion.
213. With regard to the facts alleged in paragraph 704 of the Motion, PMI refers the Court to the exhibit referred to therein, without admission of its contents, and denies any allegation inconsistent therewith.
214. PMI admits the facts alleged in paragraph 705 of the Motion.
215. Paragraph 706 does not require a response.
216. With regard to the facts alleged in paragraphs 707 and 708 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.
217. PMI denies the facts alleged in paragraph 709 of the Motion.
218. PMI denies the facts alleged in paragraph 710 of the Motion and states that the CTR was led by a Scientific Director who was an independent scientist of national repute and an Advisory Board of distinguished scientists disinterested in the cigarette industry.
219. PMI denies the facts alleged in paragraph 711 of the Motion.



220. With regard to the facts alleged in paragraph 712 of the Motion, PMI refers the Court to the exhibit referred to therein, without admission of its contents, and denies any allegation inconsistent therewith.
221. PMI has no knowledge of the facts alleged in paragraph 713 of the Motion.
222. PMI denies the facts alleged in paragraphs 714 to 719 of the Motion.
223. With regard to the facts alleged in paragraph 720 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
224. PMI denies the facts alleged in paragraph 721 of the Motion.
225. PMI has no knowledge of the facts alleged in paragraphs 722 and 723 of the Motion.
226. With regard to the facts alleged in paragraph 732 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith;
227. PMI has no knowledge of the facts alleged in paragraph 733 of the Motion.
228. PMI denies the facts alleged in paragraph 734 of the Motion insomuch as it applies to it.
229. PMI has no knowledge of the facts alleged in paragraph 735 of the Motion.
230. PMI denies the facts alleged in paragraph 736 of the Motion insomuch as it applies to it.
231. PMI denies the facts alleged in paragraphs 737 to 741 of the Motion.
232. PMI has no knowledge of the facts alleged in paragraphs 742 and 743 of the Motion.
233. PMI denies the facts alleged in paragraphs 744 to 748 of the Motion.
234. With respect to paragraph 749, PMI admits that PM Inc. was a member of ICOSI, INFOTAB, and TCD and, with regard to the remaining facts alleged in paragraph 749, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
235. PMI denies the facts alleged in paragraphs 750 to 752 of the Motion.
236. PMI has no knowledge of the facts alleged in paragraphs 753 to 755 of the Motion.
237. With regard to the facts alleged in paragraph 756 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.
238. PMI has no knowledge of the facts alleged in paragraph 757 of the Motion.

239. With regard to the facts alleged in paragraph 758 of the Motion, PMI refers the Court to the exhibit referred to therein, without admission of its contents, and denies any allegation inconsistent therewith.
240. PMI denies the facts alleged in paragraphs 759 to 761 of the Motion.
241. PMI has no knowledge of the facts alleged in paragraph 762 of the Motion.
242. PMI denies the facts alleged in paragraph 763 of the Motion.
243. With regard to the facts alleged in paragraph 764 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
244. PMI has no knowledge of the facts alleged in paragraph 765 of the Motion.
245. With regard to the facts alleged in paragraphs 766 to 776 of the Motion, PMI refers the Court to the exhibit referred to therein, without admitting the truth of its contents, and denies everything inconsistent therewith.
246. PMI has no knowledge of the facts alleged in paragraph 777 of the Motion.
247. PMI denies the facts alleged in paragraphs 778 and 779 of the Motion.
248. PMI has no knowledge of the facts alleged in paragraphs 780 to 832 of the Motion.
249. PMI admits the facts alleged in paragraph 833 of the Motion.
250. PMI has no knowledge of the facts alleged in paragraph 834 of the Motion.
251. With regard to the facts alleged in paragraph 835 to 837 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
252. PMI has no knowledge of the facts alleged in paragraphs 838 to 841 of the Motion.
253. PMI denies the facts alleged in paragraph 842 of the Motion.
254. PMI has no knowledge of the facts alleged in paragraphs 843 to 851 of the Motion.
255. PMI denies the facts alleged in paragraph 852 of the Motion, adding that Plaintiff has without explanation alleged the contrary fact that the "Rothmans Group" controlled RBH and was therefore liable for any alleged wrongful acts of RBH following the amalgamation in 1986 and until 2009.
256. PMI admits the facts alleged in paragraphs 853 and 854 of the Motion.
257. PMI denies the facts alleged in paragraph 855 of the Motion.
258. PMI admits that PMI became a publicly traded company in 2008 but states that PMI acquired all shares of RBH in 2008, not 2009.

259. PMI denies the facts alleged in paragraph 857 of the Motion.
260. With regard to the facts alleged in paragraph 858 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith. PMI further states that PMI's involvement with B&H in the early years after its acquisition was nothing more than normal and legitimate investments by a corporate parent in its subsidiary, taking steps to grow B&H into a company with the ability to develop, manufacture, and market its own brands of Canadian cigarettes.
261. With regard to the facts alleged in paragraphs 859 and 860 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.
262. PMI denies the facts alleged in paragraph 861 of the Motion.
263. PMI admits that in the early days of the parent-subsidiary relationship, PM Inc.'s Board of Directors approved B&H's capital expenditures but otherwise denies the facts alleged in paragraph 862 of the Motion.
264. PMI admits the facts alleged in paragraphs 863 and 864 of the Motion.
265. With respect to paragraph 865, PMI admits only that there was an amalgamation in 1986.
266. With regard to the facts alleged in paragraph 866 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
267. With respect to paragraph 867, PMI admits that RBH's board of directors and senior management took into account the interests of all appropriate stakeholders in making their decisions in the best interests of RBH.
268. With regard to the facts alleged in paragraphs 868 to 872 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
269. PMI denies the facts alleged in paragraphs 873 and 874 of the Motion.
270. With regard to the facts alleged in paragraphs 875 and 876 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
271. PMI admits the facts alleged in paragraph 877 of the Motion.
272. PMI denies the facts alleged in paragraphs 878 and 879 of the Motion.
273. With regard to the facts alleged in paragraph 880 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
274. PMI denies the facts alleged in paragraph 881 of the Motion.

275. With regard to the facts alleged in paragraphs 882 to 883 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith. PMI further denies that it controlled the public relations strategy of B&H.
276. PMI denies the facts alleged in paragraphs 884 and 885 of the Motion.
277. With regard to the facts alleged in paragraphs 886 to 888 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
278. PMI denies the facts alleged in paragraph 889 of the Motion.
279. With regard to the facts alleged in paragraph 890 of the Motion, PMI refers the Court to the exhibits referred to therein, without admission of their contents, and denies any allegation inconsistent therewith.
280. PMI denies the facts alleged in paragraphs 891 and 892 of the Motion.
281. With regard to the facts alleged in paragraph 892 to 896 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
282. PMI admits the facts alleged in paragraph 897 of the Motion.
283. With regard to the facts alleged in paragraph 898 of the Motion, PMI refers the Court to the exhibits referred to therein, without admitting the truth of their contents, and denies everything inconsistent therewith.
284. PMI denies the facts alleged in paragraphs 898 to 900 of the Motion.
285. PMI has no knowledge of the facts alleged in paragraphs 901 to 945 of the Motion.
286. With regard to the allegations contained in paragraphs 946 to 953 of the Motion, PMI refers to the legislation referred to therein, which speaks for itself, and denies everything not in conformity therewith.
287. PMI has no knowledge of the facts alleged in paragraphs 954 to 961 of the Motion.
288. Paragraph 955 does not require a response.
289. PMI admits the facts alleged at paragraph 962 of the Motion, and puts the Plaintiff to the strict proof of the provenance of the funds expended, including federal transfer payments received and revenues derived from the sale of tobacco and tobacco products.
290. PMI has no knowledge of the facts alleged in paragraphs 963 to 968 of the Motion.
291. PMI denies the facts alleged in paragraph 969 of the Motion.
292. PMI has no knowledge of the facts alleged in paragraph 970 of the Motion.

293. With regard to the allegations contained in paragraphs 971 to 973 of the Motion, PMI refers to the legislation referred to therein, which speaks for itself, and denies everything not in conformity therewith.
294. PMI denies the facts alleged in paragraph 974 of the Motion.
295. PMI admits the facts alleged at paragraph 975 of the Motion, and puts the Plaintiff to the strict proof of the provenance of the funds expended, including federal transfer payments received and revenues derived from the sale of tobacco and tobacco products.
296. Paragraphs 976 to 983 do not require a response.
297. PMI denies the facts alleged in paragraph 984 of the Motion.
298. Paragraphs 985 to 988 do not require a response.
299. PMI denies the facts alleged in paragraph 989 of the Motion.
300. Paragraph 990 does not require a response.
301. PMI denies the facts alleged in paragraphs 991 to 993 of the Motion.

**AND, FOR FURTHER PLEA TO THE MOTION, PMI RESPECTFULLY STATES AS FOLLOWS:**

**I. INTRODUCTION**

302. In its Motion, Plaintiff seeks to recover from the Defendants the sum of \$60,657,392,273 for the reimbursement of the health care costs it has allegedly incurred between 1970 through 2030 in connection with tobacco-related diseases suffered by persons living in Quebec who were insured by Plaintiff (the “**Claimed Costs**”).
303. Plaintiff alleges that Defendants have committed five (5) “wrongs” within the meaning of the *Tobacco-Related Damages and Health Care Costs Recovery Act*, R.S.Q., c. R-2.2.0.0.1 (the “**HCCR Act**”), namely that:
  - a) Defendants hid, denied and falsely represented the hazardous nature of their products (**Motion, paras. 160-180 and 218-487**);
  - b) Defendants failed to inform or warn the Quebec population that cigarettes are addictive (**Motion, paras. 181-188 and 488-615**);
  - c) Defendants induced the Quebec population to erroneously believe that certain of their tobacco products were less dangerous or safer (**Motion, paras. 189-194 and 616-658**);
  - d) Defendants failed to inform or warn children and adolescents in Quebec that cigarettes are hazardous to their health (**Motion, paras. 195-202 and paras. 659-693**); and

e) Defendants conspired to deny the hazardous nature of tobacco products and their addictive character (**Motion, paras. 203-217 and 694-945**).

304. PMI denies that it has committed any wrong which caused or contributed to tobacco-related diseases suffered by insured persons in Quebec for which reimbursement of health care costs was paid by the Plaintiff ("**Tobacco-Related Wrong**"), as alleged by Plaintiff in its Motion.

## II. CORPORATE HISTORY OF RBH, PM USA AND PMI

### A. ROTHMAN, BENSON & HEDGES INC. ("RBH")

305. RBH is the result of a series of amalgamations, most notably the amalgamation in 1986 of Benson & Hedges (Canada) Inc. ("B&H") and Rothmans Pall Mall Limited ("RPM").

306. B&H had been selling tobacco products in Canada for many years.

307. In 1958, it was acquired by Philip Morris Inc. ("PM Inc.") and placed under its Overseas Division (PM Inc. later changed its name to Philip Morris USA Inc. ("PM USA") in 2003).

308. In 1967, PM Inc. reorganized its internal operating structure and created three managerial and administrative divisions, including PM International (previously the Overseas Division), which oversaw the performance of B&H.

309. On July 1, 1985, PM Inc. shareholders exchanged shares held in that company for shares of a newly incorporated holding company, PM Companies Inc., and PM Companies became the parent company and sole shareholder of PM Inc., and thus the ultimate parent of B&H.

310. During the time that B&H was a wholly-owned subsidiary, it remained a distinct and separate corporate entity, a self-financing independent organization with significant operational independence.

311. In 1986, B&H amalgamated with RPM, forming Rothmans, Benson & Hedges ("RBH").

312. This amalgamation was favoured by Plaintiff as being a necessary restructuring in the industry, in the interest of preserving jobs in the industry, but without any apparent public health considerations by Plaintiff.

313. RPM itself was the product of various mergers. It traces its Canadian original to a company that has been operating in Quebec since 1899. Around 1958, RPM was owned by a foreign parent, Rothmans International. Rothmans International held a majority interest in RPM (and later RBH) until 2000.

314. RPM operated largely autonomously from its major shareholders.

315. For convenience, the defined term "RBH" used herein includes B&H and RPM, unless mentioned otherwise.

316. RBH's independence from PM Inc. grew when PM Inc. was reduced to only minority ownership status of RBH as a result of the 1986 amalgamation.

317. In 1987, PM Inc.'s International Division (previously the Overseas Division) was separately incorporated as Philip Morris International Inc. ("PMI"). PM Inc.'s 40% interest in RBH was transferred to a subsidiary of PMI at that time. Between 1987 and 2008, PMI held an indirect 40% ownership stake in RBH.
318. In 2000, Rothmans International's stake in RBH was divested to the public in a public offering following BAT's acquisition of Rothmans International in 1999.
319. In 2008, PMI acquired all shares of RBH that it did not already own. In 2009, RBH and Rothmans Inc. amalgamated.
320. B&H, RPM and RBH arrived at their own position on corporate affairs, public statements about tobacco and health, product development, and marketing.

**B. PHILIP MORRIS INC. AND PM USA**

321. PM USA had its origins as Philip Morris & Company, Ltd., Inc., and later PM Inc.
322. In 2003, PM Inc. changed its name to Philip Morris USA Inc.
323. PM USA is a Virginia corporation with its corporate headquarters located in Richmond, Virginia, USA.
324. PM USA has never manufactured, advertised, or sold tobacco products in Canada at any material time.
325. PM USA did export a small amount of U.S.-manufactured tobacco products to B&H, who then sold them in the Canadian market.
326. These U.S.-made tobacco products manufactured by PM USA accounted for less than 0.1% of all duty-paid cigarettes sold in Canada from the early 1960s until 1989, after which time U.S.-sourced products were no longer offered for sale in the Canadian duty-paid market.
327. PM USA's direct sales into the Canadian market were thus insignificant, and consequently PM USA itself played no significant role in the Canadian cigarette industry.

**C. PHILIP MORRIS INTERNATIONAL INC. ("PMI")**

328. PMI began as the Overseas Division of PM Inc. In 1967, the Overseas Division, an administrative division of PM Inc., was renamed PM International.
329. In 1987, the PM International division was incorporated as Philip Morris International Inc., a Delaware corporation with its corporate headquarters located in the State of New York, USA. PMI was a wholly-owned subsidiary of PM Companies Inc. (by that time the parent company of PM USA).
330. After 1987, PM Inc. continued to manufacture a small amount of cigarettes for export to Canada and PMI became responsible for the export of those cigarettes to RBH for sale in the Canadian market until PM Inc. exited the Canadian market in 1989.

- 331. In 2003, PM Companies Inc. was renamed Altria Group, Inc..
- 332. In 2008, PMI was spun off from Altria Group, Inc. and became a publicly traded company listed on the New York Stock Exchange with its corporate headquarters located in the State of New York.
- 333. Also in 2008, PMI acquired all outstanding common stock of Rothmans Inc. such that by September 2008 PMI became the sole ultimate shareholder of RBH.
- 334. PMI has never engaged in the manufacture of tobacco products in Canada.

### **III. PMI'S DEFENCES**

#### **A. PMI HAS COMMITTED NO TOBACCO RELATED WRONGS BECAUSE IT DID NOT PARTICIPATE IN THE CANADIAN MARKET**

- 335. Other than the packaging of the small amount of U.S.-made tobacco products sold in Canada, never made any public statements to Canadian consumers.
- 336. PMI never itself sold tobacco products to consumers in Canada.
- 337. Other than the packaging of the small amount of U.S.-made tobacco products sold in Canada and statements on company websites, PMI never made any representations to Canadian consumers with respect to the use of tobacco products.
- 338. Other than the packaging of the small amount of U.S.-made tobacco products sold in Canada and statements on company websites, PMI never disseminated any information to the Canadian public about tobacco products.
- 339. PMI has not committed any of the Tobacco-Related Wrongs alleged by Plaintiff in its Motion.
- 340. Specifically, at all material times, PMI did not:
  - a) fail to warn the insured persons of Quebec with respect to the hazardous nature of its products;
  - b) fail to warn the insured persons of Quebec with respect to the addictive properties of its products;
  - c) unlawfully implement a policy of systematic non-disclosure with respect to the risks and dangers associated with smoking tobacco products;
  - d) trivialize or deny these risks and dangers;
  - e) disseminate false information about smoking tobacco products;
  - f) make any false, misleading, negligent or deceitful representations with respect to the use of tobacco products;
  - g) unlawfully sell or market a product that could create addiction;



- h) unlawfully sell or market to children and adolescents; or
- i) take part in any conspiracy, concerted action or common design to do any of the above with any of the other Defendants; and
- j) furthermore, to the extent that the other Defendants may have had policies in common with PMI in relation to smoking and health, those policies were developed for appropriate business purposes and were lawful.

341. At all relevant times, PMI conducted itself in accordance with appropriate business practices and in compliance with Quebec law and with the applicable statutory and regulatory duties governing its conduct.

**B. PMI HAD EXTREMELY LIMITED INVOLVEMENT IN QUEBEC.**

342. At all relevant times, sales of Philip Morris tobacco product in the Canadian domestic market were extremely minimal.

343. The market for American-style cigarettes in Canada has always been especially limited because Canadian smokers overwhelmingly prefer unblended straight-tobacco cigarettes (also known as "Virginia-style") to the blended style popular in the U.S.

344. Thus, sales of American-style cigarettes have always constituted an extremely small part of the market.

345. PM Inc.'s most significant product, Marlboro brand cigarettes, could not be sold in the Canadian duty-paid market for trademark reasons.

346. Even of the very limited market in Canada for blended cigarettes, Philip Morris originated only a small portion of U.S.-manufactured cigarettes sent into Canada.

347. From the early 1960s through the late 1970s, sales of U.S.-manufactured Philip Morris product (product manufactured in the U.S. by PM Inc., later PM USA, and sold in Canada, duty-paid, by B&H and later RBH) in the domestic Canadian market were negligible - no more than 2 million cigarettes per year, or approximately less than one hundredth of one percent.

348. PM Inc. never set out to develop a market for its American-style, U.S.-manufactured products in the Canadian domestic market because Canadian smokers heavily prefer the unblended "Virginia-style" cigarettes.

349. In the early 1980s, those sales increased slightly, reaching a high point of nearly 25 million cigarettes in 1981, which still represented no more than 0.035% (3.5 hundredths of one percent) of the domestic Canadian market.

350. In the late 1980s, sales of U.S.-manufactured product quickly declined and PM Inc. exited the domestic Canadian market in 1989.

**C. PMI DID NOT TRIVIALIZE OR DENY THE HEALTH RISKS OF SMOKING.**

351. PMI does not contest that cigarette smoking causes or contributes in some smokers to lung cancer, laryngeal cancer, coronary heart disease, emphysema, chronic bronchitis, chronic obstructive pulmonary disease, chronic airway obstruction, pharyngeal cancer, lip cancer, bladder cancer, kidney cancer, pancreatic cancer, esophageal cancer, cancer of certain anatomical structures associated with the nose, stomach, and mouth; leukemia, cerebrovascular disease, aortic aneurysms, atherosclerosis, and peripheral vascular disease.
352. Some compounds that have been classified as carcinogenic have been identified as cigarette smoke constituents.
353. Diseases caused or contributed to by cigarette smoking are complex and may be caused or contributed to by many different factors, including but not limited to genetic predispositions, individual biological phenomena, personal lifestyle choices and environmental factors, none of which are related to smoking.

**D. PMI NEVER WRONGFULLY CAUSED ANY PERSON IN QUEBEC TO BEGIN OR CONTINUE SMOKING.**

354. PMI also does not contest that some smokers find it difficult to quit.
355. However, PMI specifically denies that it has committed any Tobacco-Related Wrong or acted in a manner that wrongfully caused any insured person in Quebec to commence smoking or to continue smoking cigarettes.
356. No message or statement made (or not made) by PMI could have changed the general public awareness in Quebec of the addictive nature of smoking.
357. Plaintiff and the Federal Government, who were at all material times fully aware of the risks associated with smoking and who were responsible for protecting the health of insured persons living in Quebec, provided them with accurate and reliable health information, heavily regulated the tobacco industry, and condoned the use of tobacco products (from which they were and are deriving substantial revenue).
358. If insured persons in Quebec smoked and continued to smoke it is:
- a) a result of informed personal choice;
  - b) because of the sensory experience associated with smoking, pleasure, stress relief, taste, ritual, the occasion of socialization, emulating the behaviour of others, personal image, and other such personal choices;
  - c) because smoking was and is legal.
359. PMI specifically denies that its actions or omissions caused insured persons in Quebec to suffer the diseases alleged by Plaintiff in its Motion.

**E. SMOKERS IN QUEBEC WERE AWARE OF THE HEALTH RISKS AND VOLUNTARILY ASSUMED THOSE RISKS.**

360. At all material times, insured persons living in Quebec were aware or could have been aware of the risks associated with smoking and the difficulty for some individuals to quit smoking.
361. In fact, the risks associated with smoking have been widely known by the public as early as the 19<sup>th</sup> century.
362. Indeed, going back as far as the 1870s, it was known and discussed in Parliament that the consumption of tobacco products carries adverse health effects.
363. In 1908, arising out of that common understanding, the federal parliament enacted the *Tobacco Restraint Act*, 7-8 Edw VII, c. 73, which prohibited the sale of tobacco products to persons under the age of 16 years.
364. Even before the published studies in the 1950s of the possible association between smoking and lung cancer, there was a widespread public knowledge and understanding that smoking could be harmful to health.
365. Moreover, tobacco products in Canada have carried a health warning on every pack since 1972 – more than forty (40) years ago.
366. Well before and well after the first use of health warnings on packaging, information about the risks of smoking was widely communicated by television and radio programs, magazines, newspaper and journal articles, government publications, anti-smoking advocates, parents, physicians, teachers and religious leaders.
367. The actions of, and information provided by Plaintiff, the Federal Government and the public health community in their anti-smoking campaigns have reinforced the awareness of Quebec smokers with respect to cigarette smoking and its potential risks.
368. PMI had no materially greater knowledge of the potential health risks associated with smoking and of the fact that it may be difficult for some to stop smoking, than did insured persons living in Quebec (including smokers and potential smokers), Plaintiff, the Federal Government, the public health community in general and the media.
369. PMI never made any statements about the risks associated with smoking to insured persons living in Quebec (other than statements on company websites).
370. By reason of the foregoing, each of the insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking, and each such insured person voluntarily consented to accept such risks.
371. PMI denies that any insured persons began, continued or were unable to cease smoking by reason of any of the alleged breaches of duty of PMI, or that any alleged breach of duty caused or contributed to any alleged tobacco related disease or increased costs of tobacco related disease in any insured person.

372. If the Federal Government did not act as an agent for or in concert with the Province, then to the extent insured persons were not adequately informed about the risks of smoking cigarettes or purchased low tar cigarettes as the result of a misrepresentation (all of which is denied), they did so as a result of the breach of duty owed to them by the Federal Government.
373. Finally, to the extent the Province incurred health care costs due to smoking by insured persons, which is denied, the cost was caused by Aboriginal Manufacturers who breached duties owed to insured persons by the way they packaged and sold their products.

**F. THE FEDERAL AND PROVINCIAL GOVERNMENTS ENCOURAGED THE PRODUCTION OF LOW TAR PRODUCTS.**

374. The Federal Government, in concert with the Plaintiff and other provincial governments, directed Canadian tobacco manufacturers to manufacture, sell and promote low tar products and represented to the population of Quebec that these products were less hazardous than higher tar products.
375. PMI has never represented in any way that filtered cigarettes or lower-delivery cigarettes were danger-free.
376. At all material times, it was generally known and accepted by smokers that there were health risks associated with smoking filtered cigarettes, lower tar cigarettes, or any other kind of cigarette.
377. Furthermore, it has been generally accepted that persons below a certain age should not be smoking. Pursuant to a federal law passed in 1908 (*Tobacco Restraint Act*, S.C. 1908, c. 73), the legal smoking age was 16 years of age. It was not until 1998 that the Province of Quebec also made it unlawful to sell cigarettes to minors (*Tobacco Act*, R.S.Q., c. T-0.01). Despite the health concerns and the prohibition on selling to underage persons, selling cigarettes to adults in Quebec is, and has always been, legal.
378. In fact, Plaintiff and the Federal Government were highly supportive of the tobacco industry in Quebec and throughout Canada until at least the 1980s.
379. Indeed, both Plaintiff and the Federal Government have, *inter alia*:
- a) supported the farmers' growing tobacco;
  - b) established tax policies to maximize the revenue from the sale of tobacco products;
  - c) received most of the proceeds over the past 50 years from the sale of tobacco products;
  - d) become highly involved over the past 50 years in regulating the tobacco industry and controlling the message to the public regarding the health risks of smoking.
380. Because of their intricate and instrumental involvement in the regulation of the tobacco industry, the Federal Government, in concert with the Provinces, including the Plaintiff, directed or dictated, *inter alia*:

- a) the kinds of tobacco that would be grown;
- b) the types of tobacco products that would be sold;
- c) whether tobacco products required health warnings;
- d) the content, size and placement of health warnings;
- e) the types of promotion that would be permitted;
- f) where tobacco products could be sold and to whom;
- g) where tobacco products could be used; and
- h) the price at which tobacco products would be sold.

381. PMI states that at all material times, the Federal Government, in concert with the Plaintiff and other provincial governments, has directed and supported the manufacture and sale of cigarettes in Canada and has set the standard governing the conduct of Canadian cigarette manufacturers.

382. As part of its direction and supervision of the cigarette industry, the Federal Government, in concert with Plaintiff and other provincial governments, *inter alia*:

- a) researched and developed strains of tobacco which became effectively the only varieties available for use in Canadian cigarettes;
- b) advised manufacturers on the necessity and efficacy of printed package warnings, as well as their content; and
- c) advised and directed Canadian cigarette manufacturers on the need to develop and promote lower-yield cigarettes.

**G. PMI DID NOT CONSPIRE WITH RBH AND HAS MAINTAINED AN APPROPRIATE INTRA-CORPORATE RELATIONSHIP AT ALL TIMES.**

383. As noted above in paragraphs 69, PM Inc. acquired B&H in 1958.

384. Prior to 1958, B&H was a small cigar company located in Montreal.

385. Prior to the acquisition, B&H had only very limited cigarette manufacturing capabilities.

386. Upon acquiring B&H, PM Inc.'s efforts regarding B&H focused on growing B&H into a large Canadian cigarette manufacturer that operated independently of its U.S. corporate parent.

387. PM Inc. took steps to grow B&H into a company with the ability to develop, manufacture, and market its own brands of Canadian cigarettes.

388. The relationship between RBH and PM Inc., PMI, and PM USA (collectively, "the PM entities") was at all times driven by a parent corporation's legitimate commercial interest in its subsidiary, given that the PM entities and B&H/RBH made similar products, the PM

entities operated in Canada's closest (and most economically and culturally similar) neighbour, and the PM entities were much larger and possessed significantly more industry knowledge and expertise.

389. The PM entities provided B&H/RBH with routine assistance to help a subsidiary compete against other major cigarette manufacturers, a natural and appropriate way for the PM entities to maximize their return on investment in Canada.
390. As sole owner of B&H, PM Inc. endeavoured to build B&H into a larger company and managed B&H's overall growth and development (as would be typical of a parent-subsidiary relationship), including by making personnel available to provide management training to B&H's management; lending B&H funds for capital acquisitions, especially in the 1960s and early 1970s as B&H was growing; and providing guidance on capital expenditures such as purchasing and leasing factories, purchasing manufacturing equipment, executive awards and bonuses, and updating tobacco-processing facilities.
391. The interactions between the two entities changed over time as B&H grew into an operation with its own infrastructure and institutional knowledge and expertise.
392. The 1986 amalgamation of B&H with RPM led to the PM entities taking a backseat to Rothmans Inc., the majority owner of the new RBH.
393. From 1987 to 2008, when PMI owned only 40% of RBH, PMI had an even more limited relationship with RBH, which minimal oversight continued until 2008, when PMI acquired RBH in its entirety.

**i. PMI did not control RBH's public statements regarding smoking and health.**

394. At all material times, RBH retained near complete control over their own corporate affairs, including interactions with the Canadian Federal Government on smoking and health issues.
395. The PM entities did not actively manage RBH's public statements about the health consequences of smoking, leaving RBH free to make its own decisions.
396. When, in 1962, Health Canada assumed the responsibility for the dissemination of information regarding the risks of tobacco products, and assumed a duty of care and obligation to smokers and potential smokers, B&H determined its own course of action in response to the Canadian government's concerns about smoking and health.

**ii. RBH determined its own marketing and advertising**

397. While PMI did occasionally provide input on marketing and advertising, B&H/RBH maintained full control over all related decisions.
398. When the Canadian tobacco industry's first Voluntary Advertising Code was introduced in 1964 to ensure the manufacturers' advertising was responsible and to minimize the spill-over effect on those under the legal age of 16, B&H independently decided to agree with this code.

**iii. The PM entities provided reasonable technological support.**

- 399. In the early years of its ownership, PM Inc. made its technical personnel and laboratory facilities available to test new products for sale in Canada and products made by B&H's competitors.
- 400. The discussion between PM Inc. and B&H professionals eventually included the use of advanced filter and paper technology to achieve a consumer-acceptable lower tar cigarette.
- 401. B&H began working with PM Inc. to develop a lower tar cigarette for sale in Canada in 1967 and intended to use the PM Inc. technology of puffed stem in its cigarettes.
- 402. This technological assistance was used to help B&H lower the tar yields in its cigarettes, which helped to lower the SWAT, ensuring their compliance with the Health Canada-mandated SWAT targets.
- 403. Throughout the 1970s and 1980s, B&H (and later RBH) continued to develop lower tar offerings with the government's approval.

**iv. RBH was in control of its own research and development.**

- 404. In large part because Canadian cigarettes are different from U.S. cigarettes, B&H and RBH had different product offerings than those in the U.S. – and these product offerings were developed in Canada by Canadians.
- 405. Throughout the research and development process, B&H retained all final authority regarding the introduction of a new cigarette in Canada.
- 406. B&H performed much of its R&D work independent of PM Inc. because it needed to develop products using Canadian tobacco and crafted for Canadian consumers.
- 407. After the PM entities' ownership fell to 40% in 1986, this relationship became even more limited with respect to both research and development and other technological support.

**v. PMI did not conspire with RBH.**

- 408. The interactions of the PM entities and B&H/RBH were, at all times, consonant with typical corporate family interactions and do not evidence any intent by any of the entities to deceive Canadian consumers.
- 409. The PM entities never directed or conspired with RBH regarding its product development, marketing, or corporate affairs/government relationship goals.
- 410. B&H and RBH did not act in concert with any of the PM entities to create a scientific controversy on smoking and health (or otherwise).
- 411. The PM entities and RBH never agreed to form a common front to tell the same story or make any false or misleading statements regarding smoking and health.

412. As for Plaintiff's allegations of vertical conspiracy within its alleged corporate group, PMI submits that:

- a) PMI occasionally provided information to RBH but never any material information about the health risks of smoking not generally known by governments and persons in Quebec;
- b) PMI never instructed RBH to misinform or to suppress any information or do anything contrary to any civil law or statutory obligation, and denies the existence of any legal or factual conspiracy between it and any of its subsidiaries;
- c) PMI did not enter into a conspiracy or act in concert with RBH as alleged.

413. PMI denies the existence of any conspiracy or of any concerted action as alleged by Plaintiff in its Motion.

**H. PMI DID NOT ACT IN CONCERT OR CONSPIRE WITH ANY OTHER DEFENDANTS TO DENY THE HARMFUL NATURE OF TOBACCO PRODUCTS.**

414. PMI did not participate in any marketing strategies orchestrated with the other Defendants to disseminate false information about the tobacco products it sold.

415. PMI never conspired with anyone to present a common front in order to prevent smokers or prospective smokers from learning about the dangers associated with tobacco smoking.

416. In any case, insured persons living in Quebec were aware or could have been aware at all material times of the risks associated with smoking as a result of the common knowledge of those risks and the anti-smoking campaign lead by the Federal Government, the Plaintiff and the public health community, among other sources of information.

417. To the extent that the other Defendants may have had policies in common with PMI in relation to smoking and health, those policies were adopted independently for appropriate business purposes and were lawful.

418. PMI conducts business in a highly regulated industry which leads, in some instances, to the uniformity and consistency in the industry's manufacturing, packaging and promotional activities.

419. PMI never entered into a conspiracy or common design, nor acted in concert, with any of the other Defendants.

**I. THE PLAINTIFF IS NOT ENTITLED TO THE CLAIMED COSTS.**

420. There has been no pecuniary damage suffered by insured persons in respect of the "cost of health care benefits" as defined by the Act;

421. The statutory liability the Plaintiff alleges is an *ex post facto* attempt to make actionable conduct that was not actionable when it occurred.



422. If the Claimed Costs were incurred as alleged or at all, which is denied, they were incurred by the Federal Government by means of transfer payments, conditional grants and shared-cost programmes, and not by the Plaintiff;
423. If the Plaintiff has incurred the Claimed Costs as alleged or at all, which is denied, the Claimed Costs were incurred to provide services to insured persons that the Plaintiff was and is required to provide pursuant to the Hospital Insurance Act and the Health Insurance Act .
424. If the Plaintiff has incurred the Claimed Costs as alleged or at all, which is denied, the Claimed Costs were caused by the conduct and acts or omissions of the Federal Government and of the Plaintiff.
425. If PMI breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to the Claimed Costs as alleged or at all.
426. If the Province has incurred the Claimed Costs as alleged or at all, which is denied, the Claimed Costs were caused by, without limitation, one or more of the following:
- a) the requirement that the Province provide services to insured persons pursuant to *The Health Services Insurance Act*, as amended, and any predecessor statutes;
  - b) the conduct and acts or omissions of the federal government and of the Province;
  - c) the conduct and acts or omissions of individual insured persons as further particularized herein; and
  - d) disease or risk of disease in individual insured persons unrelated to smoking cigarettes;
427. If the Province has incurred the Claimed Costs as alleged or at all, which is denied, the Claimed Costs are exceeded by the tax revenue received by the Province from the sale of cigarettes in Quebec so that no cost is ultimately incurred by the Province.
428. If the Province has incurred the Claimed Costs as alleged or at all, which is denied, the Claimed Costs are exceeded by monies received by the Province from the federal government by means of transfer payments, conditional grants and shared-cost programmes for the purpose of funding the Claimed Costs so that no cost is ultimately incurred by the Province.
429. If the Province has incurred the Claimed Costs as alleged or at all, which is denied, the Claimed Costs were inflated by overbilling, waste, abuse, neglect and other misconduct by various of the Province, persons involved in the administration and delivery of health care benefits and insured persons.
430. If the Province has incurred the Claimed Costs as alleged or at all, which is denied, all of the claims are prescribed.

**J. THE PLAINTIFF'S OWN CONDUCT CAUSED THE ALLEGED CLAIMED COSTS.**

431. The Province's claim to recover the Claimed Costs is precluded by reason of information the Province knew or should have known, and the Province's own conduct, including:
- a) the Province's knowledge of health risks associated with cigarette smoking;
  - b) the Province's licensing and regulation of the production, manufacture and sale of cigarettes, including its failure to enforce or implement such regulation to the extent constitutionally permissible;
  - c) the Province's voluntarily undertaking obligations to pay the cost of health care benefits allegedly caused or contributed to by cigarette smoking;
  - d) the Province's failure to establish or delay in developing, or both, policies and practices, including health care expenditures and taxation policies and practices, legislation and regulations, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking;
  - e) the Province's failure to fund, develop and implement health promotion and smoking cessation practices and policies, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking;
  - f) the Province's failure to take any steps prior to commencement of this action to attempt to recover the alleged cost of health care benefits by subrogation;
  - g) the Province's delay in implementing and failure to enforce laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time;
  - h) the Province's own decision to regulate many aspects of the tobacco business and to keep the largest portion of the proceeds from the sale of tobacco products;
  - i) the Province's taxation of cigarettes in excess of the cost (if any) of health care benefits allegedly resulting from tobacco related disease or the risk thereof; and
  - j) the Province's own breaches of its duty or duties to insured persons as particularized herein.
432. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Quebec subject to certain exceptions and restrictions all of which have been fully complied with by PMI.
433. At all material times, the Province, through its ministers, ministries, departments, servants and agents, has known as much regarding the material risks associated with smoking cigarettes as has PMI.
434. Despite its knowledge of risks associated with smoking cigarettes, the Province continued to license and regulate the production, manufacturing, advertising, promotion and sale of

cigarettes in Quebec and to impose heavy taxation upon, *inter alia*, manufacturers, distributors and consumers of cigarettes.

435. The Province benefits from the taxes imposed on and in relation to the sale of cigarettes in Quebec, which results in complete mitigation of the claim..
436. Despite its knowledge of risks associated with cigarette smoking, the Province took no steps to restrict or limit the sale of cigarettes save for restrictions on sale to persons below a prescribed age and in that case, delayed in implementing such restrictions, and subsequently took no reasonable steps to enforce them..
437. Despite its knowledge of risks associated with cigarette smoking, the Province voluntarily undertakes the obligation of paying for the costs of health care benefits, including such costs it alleges are caused or contributed to by cigarette smoking, and sets its taxation and health care policies accordingly.
438. Despite its knowledge of risks associated with cigarette smoking, the Province, at all material times, permitted the sale and consumption of cigarettes in Quebec and derived substantial revenue therefrom.
439. The Province is wrongfully attempting, by statute, to make conduct actionable which was not actionable at the time it occurred. As a result and because the Province waited for decades to commence a claim, PMI pleads that the Province's action should be dismissed on the basis of voluntary assumption of risk, bad faith, fin de non-recevoir and prescription.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present Defence;

**DISMISS** Plaintiff's claim against PMI;

**THE WHOLE**, with costs, including the costs of any experts.

Montréal, December 23, 2014

*McCarthy Tétrault LLP*

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